



**Testimony of Deuel Ross  
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**Before the United States House of Representatives  
Committee on House Administration  
Subcommittee on Elections (116th Congress)**

**Hearing on  
Voting Rights And Election Administration In America**

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## I. INTRODUCTION

Good morning, Chair Fudge, Ranking Member Davis, Representative Butterfield and Representative Aguilar. My name is Deuel Ross, and I am a Senior Counsel at the NAACP Legal Defense and Educational Fund, Inc. (LDF).<sup>1</sup> Thank you for the opportunity to testify on the state of voting rights litigation and other election administration issues cross our country.

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the fight to secure, protect, and advance the voting rights of Black voters and other communities of color. Through litigation, public policy, and public education, LDF's mission is to expand democracy, eliminate racial disparities, and fulfill the U.S. Constitution's promise of equal justice for all. From LDF's earliest days, protecting the right to vote for Black people has been at the epicenter of our work. Beginning with Smith v. Allwright,<sup>2</sup> LDF's successful U.S. Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has been fighting to overcome a myriad of obstacles to ensure the full, equal, and active participation of Black voters.

LDF's mission to protect voting rights, however, has gotten much more difficult in the years since the U.S. Supreme Court's 2013 decision in Shelby County, Alabama v. Holder.<sup>3</sup> LDF attorneys argued the Shelby County case in the Supreme Court and defended Congress's reauthorization of preclearance review under Section 5 of the Voting Rights Act (Section 5). The Shelby County decision, however, held that Congress had not sufficiently updated the "coverage formula"—which identifies those places subject to preclearance—when Congress last reauthorized Section 5 in 2006.<sup>4</sup>

The Shelby County decision has had a devastating effect on citizens of color's right to vote. It effectively ended preclearance review, making it extremely difficult to stop discriminatory voting changes before they occur. Since that decision in 2013, LDF has had to make innovative use of the U.S. Constitution, the Voting Rights Act (VRA), and lesser known mechanisms to defend voting rights and to replicate what we all lost. LDF has continued to challenge numerous changes related to voting in places formerly covered by Section 5. Each of these changes were or would have been subject to preclearance review. Often LDF has proven or offered substantial evidence that these changes were the product of unconstitutional intentional discrimination.

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<sup>1</sup> LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights

<sup>2</sup> 321 U.S. 649 (1944).

<sup>3</sup> 570 U.S. 529 (2013).

<sup>4</sup> Congress most recently reauthorized the VRA in 2006. Between October 2005 and July 2006, the House Judiciary Committee had 12 hearings, called 46 witnesses, and compiled more than 12,000 pages of evidence from over 60 groups and individuals. The Senate had 9 hearings and called 46 witnesses between May and July 2006. See Shelby Cnty., Ala. v. Holder, 811 F. Supp. 2d 424, 435 (D.D.C. 2011) (describing the 2006 reauthorization record and acknowledging that it was "one of the most extensive legislative records in the Committee on the Judiciary's history.").

In a regularly updated report entitled “Democracy Diminished: State and Local Threats to Voting Post-Shelby County, Alabama v. Holder,” LDF also continues to track and monitor various discriminatory voting changes employed across America.<sup>5</sup>

In addition, in States in the Deep South and elsewhere, LDF has used litigation and advocacy to address issues like discriminatory methods of election, barriers to registration, untrained poll workers, polling place closures, and voting machine problems.

Beyond litigation, LDF has a “Prepared to Vote” program, which is designed to work with local partners to educate voters before Election Day about their rights at the polls, and to be on the ground with trained volunteers to assist voters with problems on Election Day. A new LDF report entitled “Democracy Defended: Analysis of Barriers to Voting in the 2018 Midterm Elections” describes the many issues that voters encountered in the 2018 election.<sup>6</sup> Copies of both the “Democracy Diminished” and “Democracy Defended” reports have been submitted to the Committee.

Based on our ongoing efforts to expand voting rights and strike down barriers to voting, LDF is well-qualified to state that there is an urgent need for Congress to act now to strengthen the Voting Rights Act and improve election administration.

## II. VOTING RIGHTS LITIGATION

### A. Background

The VRA is “the crown jewel” of civil rights laws. It is one of our Nation’s most successful pieces of legislation ever. For nearly a century before enactment of the VRA in 1965, States and the federal government had used the law and extra-judicial violence to thwart voting rights for people of color. From 1876 to 1965, the Fifteenth Amendment to the U.S. Constitution, which prohibits racial discrimination in voting, was a dead letter law.<sup>7</sup> Since 1965, however, the efforts and votes of bipartisan Congresses to first enact and then to periodically renew Section 5 and, where needed, improve the VRA have made real the promises of non-discrimination in voting. Today, the VRA rightfully remains the centerpiece of ongoing congressional efforts to enforce the Fourteenth and Fifteenth Amendments to the U.S. Constitution.

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<sup>5</sup> Leah Aden, “Democracy Diminished,” NAACP LDF Thurgood Marshall Institute (last updated Aug. 30, 2019), <https://www.naacpldf.org/wp-content/uploads/State-local-responses-post-Shelby-8.30.19-1.pdf>.

<sup>6</sup> *Democracy Defended*, NAACP LDF Thurgood Marshall Institute, (Sept. 6, 2019) [https://www.naacpldf.org/wp-content/uploads/Democracy\\_Defended\\_\\_9\\_6\\_19\\_final.pdf](https://www.naacpldf.org/wp-content/uploads/Democracy_Defended__9_6_19_final.pdf)

<sup>7</sup> *See generally* Deuel Ross, Pouring Old Poison into New Bottles: How Discretion and the Discriminatory Administration of Voter ID Laws Recreate Literacy Tests, 45 COLUM. HUM. RTS. L. REV. 362, 368-73 (2014)

But the VRA of 1965, or even 2005, is not the VRA we have today.<sup>8</sup> In 2013, the Shelby County decision gave States and municipalities carte blanche to unleash discriminatory voter suppression schemes. The Supreme Court’s decision effectively ended Section 5 preclearance review, which had required jurisdictions across the country, though primarily in the South, to (a) provide notice of every proposed change related to voting and to (b) demonstrate to the federal government that any proposed change was non-discriminatory before the jurisdiction could implement that change.<sup>9</sup>

By ending preclearance review, the Shelby County decision let jurisdictions with a consistent record of voting discrimination change their laws without any scrutiny. The result was predictable. For example, within hours of the decision, Texas revived a voter photo identification (ID) law that had previously been blocked under Section 5.<sup>10</sup> Within days of the decision, Alabama announced that it would move to enforce a photo ID law that it had refused to submit to preclearance.<sup>11</sup> And within months, New York departed from past practices and declined to hold special elections to fill 12 legislative vacancies, denying representation to 800,000 voters of color.<sup>12</sup>

Even more alarming, voter suppression has spread to locations that were not covered by Section 5 preclearance review. In the six years since the Shelby County decision, places like Arkansas,<sup>13</sup> Pennsylvania,<sup>14</sup> Kansas,<sup>15</sup> North Dakota,<sup>16</sup> and Wisconsin<sup>17</sup> have adopted the types of voter suppression practices that are more closely associated with states with much longer histories of overt discrimination.

Moreover, decades old election administration problems like at-large methods of election, closing of polling places, and limits on voter registration opportunities still act as barriers to voting in Alabama, Arkansas, Louisiana, Georgia, and elsewhere.

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<sup>8</sup> The Department of Justice reports that in just the three years before the Shelby decision, between 2010-2013, it considered 44,790 voting changes under Section 5. Section 5 Changes By Type and Year, Total Section 5 Changes Received By The Attorney General 1965 Through 2013, <https://www.justice.gov/crt/section-5-changes-type-and-year-2> (last visited June 24, 2019).

<sup>9</sup> Between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory. H.R.Rep. No. 109-478, at 21.

<sup>10</sup> Ed Pilkington, Texas rushes ahead with voter ID law after Supreme Court decision, *The Guardian* (June 25 2013), <https://www.theguardian.com/world/2013/jun/25/texas-voter-idsupreme-court-decision>.

<sup>11</sup> Kim Changler, “Alabama photo voter ID law to be used in 2014, state officials say,” *Alabama Media Group* (June 25, 2013), [https://www.al.com/wire/2013/06/alabama\\_photo\\_voter\\_id\\_law\\_to.html](https://www.al.com/wire/2013/06/alabama_photo_voter_id_law_to.html).

<sup>12</sup> *Democracy Diminished* at 36.

<sup>13</sup> *Martin v. Kohls* 444 SW 3d 844 (Ark. 2014).

<sup>14</sup> *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988 (Pa.Comm.w.Ct. Jan. 17, 2014) (unreported).

<sup>15</sup> *Fish v. Kobach*, 309 F. Supp. 3d 1048 (D. Kan. 2018).

<sup>16</sup> *Brakebill v. Jaeger* 905 F. 3d 553 (8th Cir. 2018).

<sup>17</sup> *Frank v. Walker* 819 F. 3d 384 (7th Cir. 2016); *One Wisconsin Institute, Inc. v. Thomsen* 198 F. Supp. 3d 896 (WD Wis. 2016).

## B. Post-Shelby LDF Litigation

Despite the Shelby County decision, we still have Section 2 of the VRA, the provision that authorizes private actors and the U.S. Department of Justice to challenge discriminatory voting practices in federal court.<sup>18</sup> Section 2 applies nationwide, but it places the burden on voters harmed by discrimination to bring litigation to prove that a law has a discriminatory result or purpose. Section 2 is the main protection available to people of color after the Shelby County decision in 2013.<sup>19</sup>

As a result of litigation brought under Section 2 or the U.S. Constitution, LDF has convinced numerous federal judges—appointed by Democratic and Republican Presidents alike—to act as our democracy’s checkpoint or to expand voting rights.

In formerly covered jurisdictions, LDF has successfully challenged voting changes that would have been blocked by Section 5. In Texas, the Fifth Circuit U.S. Court of Appeals held in 2016 that Texas’s ID law violated Section 2.<sup>20</sup> The same law was previously blocked by Section 5 in 2012.<sup>21</sup> On remand, the trial court found that Texas had enacted the law for the purpose of discriminating against voters of color.<sup>22</sup>

In 2016, the largely white City of Gardendale, Alabama attempted to secede from the more diverse Jefferson County School Board. The Gardendale secession would have effectively transferred Black voters from the County School Board’s election system—in which Black voters have some representation—to the jurisdiction of Gardendale city council’s at-large election system in which Black voters have no representation at all.<sup>23</sup> In 2018, the Eleventh Circuit U.S. Court of Appeals blocked the secession after LDF successfully proved that Gardendale was motivated by racial discrimination.<sup>24</sup> Before Shelby County, the Department of Justice had used Section 2 to block similar discriminatory school district secessions in Alabama and elsewhere.<sup>25</sup>

In 2015 in Fayette County, Georgia, the County Commission tried to revert to an at-large voting system in a special election to replace a Black Commissioner who had died unexpectedly. LDF won a Section 2 ruling that stopped this change and

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<sup>18</sup> 52 U.S.C. § 10301.

<sup>19</sup> Shelby Cty., 570 U.S. at 536-37.

<sup>20</sup> Veasey v. Abbott 830 F. 3d 216 (5th Cir. 2016) (en banc).

<sup>21</sup> Texas v. Holder, 888 F.Supp.2d 113, 144-45 (D.D.C. 2012), vacated and remanded, \_\_\_ U.S. \_\_\_, 133 S.Ct. 2886 (2013).

<sup>22</sup> Veasey v. Abbott, 249 F. Supp. 3d 868 (S.D. Tex. 2017).

<sup>23</sup> Stout v. Jefferson County Bd. of Educ., 250 F. Supp. 3d 1092, 1142, 1183 (N.D. Ala. 2017) (finding that the all-white Gardendale city council had declined to appoint a Black person with more experience to the proposed city board of education and ordering the appointment of a Black member).

<sup>24</sup> Stout v. Jefferson County Bd. of Educ. 882 F. 3d 988 (11th Cir. 2018).

<sup>25</sup> See, e.g., Lee v. Chambers County Bd. of Educ. 849 F. Supp. 1474, 1479 (M.D. Ala. 1994); Robinson v. Alabama State Dept. of Educ., 652 F.Supp. 484, 485-86 (M.D. Ala. 1987) (three judge court).

required the election to use single-member districts, which allowed Black voters to again elect their preferred candidate.<sup>26</sup>

LDF also has several pending cases in formerly covered states opposing voting changes under Section 2 or the U.S. Constitution. For instance, on the eve of the 2018 election, LDF filed a motion for a temporary restraining order on behalf of Black students at the historically Black Prairie View A&M University in Waller County, Texas. County officials have long discriminated against Black students in Prairie View. In 2018, the students sought to stop cuts to early voting hours, which would have left Prairie View without any early voting opportunities on weekends, evenings, or during the first week of early voting. In response to LDF's ongoing case, however, county officials agreed in 2018 to add several hours of early voting in Prairie View.<sup>27</sup>

In June 2019, LDF and others filed a lawsuit to stop Florida from effectively imposing a poll tax on people with felony convictions attempting to register to vote. The rights of many people who have served their time were restored in 2018 when Florida voters' overwhelming passed Amendment 4. Earlier this year, however, the Florida Legislature enacted a law that, amongst other requirements, mandates that people with past felony convictions pay all of their civil or other fees before being able to register. LDF attorneys recently presented evidence at a hearing seeking a preliminary injunction to stop this discriminatory change before the 2019 elections.<sup>28</sup>

And, in 2015, LDF brought a lawsuit challenging Alabama's discriminatory photo voter ID law.<sup>29</sup> Among other evidence, LDF showed that a state senator who had for over a decade led the effort to enact a strict photo ID law had promised that it would undermine Alabama's "black power structure" and that other legislative sponsors had been recorded planning ways to discourage Black people from voting.<sup>30</sup> A study by Dr. Zoltan Hajnal at the University of California, San Diego, comparing the 2012 and 2016 presidential elections, found that, after Alabama implemented its ID law, turnout in its most racially diverse counties declined by almost 5 percentage points, which is even more than the drop in similarly diverse counties in other states.<sup>31</sup> This case is currently pending on appeal before the Eleventh Circuit.

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<sup>26</sup> Ga. State Conf. of the NAACP v. Fayette Cty. Bd. of Comm'rs, 118 F.Supp.3d 1338 (ND Ga. 2015).

<sup>27</sup> NAACP LDF Press Release, Waller County Modestly Expands Early Voting in Prairie View, LDF's Suit Still Pending (Oct. 25, 2018), <https://www.naacpldf.org/press-release/waller-county-modestly-expands-early-voting-prairie-view-ldfs-suit-still-pending-2/>.

<sup>28</sup> NAACP LDF Press Release, Groups File Motion for Preliminary Injunction to Block SB7066 (Aug. 8, 2019), <https://www.naacpldf.org/press-release/groups-file-motion-for-preliminary-injunction-to-block-sb7066/>.

<sup>29</sup> Greater Birmingham Ministries v. Merrill, 250 F. Supp. 3d 1238 (N.D. Ala. 2017).

<sup>30</sup> Scott Douglas, "The Alabama Senate Race May Have Already Been Decided," N.Y. Times (Dec. 11, 2017), <https://www.nytimes.com/2017/12/11/opinion/roy-moore-alabama-senate-voter-suppression.html>

<sup>31</sup> Zoltan Hajnal, The Effect of Alabama's Strict Voter ID Law on Racial and Ethnic Minority Turnout (April 12, 2017), <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3A852c0485-70a3-4aa7-b4ec-3c0137037522>.

Further, LDF has used Section 2 to expand democracy by attacking existing at-large voting systems that would not have been subject to Section 5 review. These Section 2 cases seek to integrate state courts and other localities across the country. In 2017, LDF proved that the Louisiana Legislature had intentionally maintained at-large elections for the state courts in Terrebonne Parish to prevent the election of a Black judge in violation of Section 2 and the U.S. Constitution.<sup>32</sup> Last week, in Section 2 litigation brought by LDF, a federal court ordered the City of Pleasant Grove, Alabama to change from at-large elections to a cumulative voting system.<sup>33</sup> And, earlier this year, LDF filed an ongoing Section 2 case challenging the Arkansas Court of Appeals' electoral districts and the at-large system for the State Supreme Court.<sup>34</sup>

Finally, beyond Section 2, LDF continues to use other federal laws like the National Voter Registration Act (NVRA) or state constitutions to improve election administration and challenge voter suppression tactics. In 2014, for example, LDF won an NVRA case, in which the Fifth Circuit ruled that the Louisiana Secretary of State is responsible for enforcing compliance with the NVRA across all relevant state agencies.<sup>35</sup> The NVRA requires states to offer voter registration opportunities at drivers' license and welfare benefits offices. And, in 2014, LDF filed an amicus brief in the Arkansas Supreme Court in a successful challenge to a voter ID law.<sup>36</sup> LDF offered unique evidence that over 1,000 ballots were rejected because of this law.<sup>37</sup>

### C. The Limits of Litigation

Unfortunately, voting rights litigation is slow and expensive. The parties often spend millions litigating these cases.<sup>38</sup> The cases take up significant judicial resources.<sup>39</sup> And the average length of Section 2 cases is two to five years.<sup>40</sup> But, in the years during a case's pendency, thousands and, in some cases, millions of voters are effectively disenfranchised. In Texas, for example, the Fifth Circuit affirmed the finding that over half a million registered voters and up to a million eligible voters

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<sup>32</sup> *Terrebonne Par. Branch NAACP v. Jindal*, 274 F.Supp.3d 395, 462 (MD La. 2017).

<sup>33</sup> Anna Beahm, "Pleasant Grove voting method changed to cumulative voting, according to approved settlement," *Alabama Media Group* (Oct. 13, 2019), <https://www.al.com/news/2019/10/pleasant-grove-voting-method-changed-to-cumulative-voting-according-to-approved-settlement.html>.

<sup>34</sup> NAACP LDF Press Release, *LDF Files Lawsuit to Ensure Black Voters Have Voice in Electing Judges to Highest State Courts in Arkansas* (June 10, 2019), <https://www.naacpldf.org/press-release/ldf-files-lawsuit-to-ensure-black-voters-have-voice-in-electing-judges-to-highest-state-courts-in-arkansas/>

<sup>35</sup> *Scott v. Schedler*, 771 F.3d 831 (5th Cir. 2014).

<sup>36</sup> *Martin v. Kohls* 444 SW 3d 844 (Ark. 2014).

<sup>37</sup> Amicus Curiae Brief by NAACP LDF, et al., *Martin v. Kohls*, 2014 WL 4950020 (Aug. 11, 2014).

<sup>38</sup> NAACP LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation* (Feb. 14, 2019), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs02.14.19.pdf>.

<sup>39</sup> Federal Judicial Center, *2003-2004 District Court Case-Weighting Study*, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources out of sixty-three types of cases analyzed).

<sup>40</sup> *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 92 (2005) ("Two to five years is a rough average" for the length of Section 2 lawsuits).

were negatively impacted by the state’s voter ID law. But during the three years of litigation in which Texas was free to use its law, Texans elected dozens of members of Congress, the Governor, Attorney General, and over a hundred state legislators, trial judges, and district attorneys. For the 500,000 Texans disenfranchised by the discriminatory ID law the remedy we won in 2016 came too late for these elections.

The beauty and innovative genius of Section 5 preclearance review was that it allowed federal authorities to stop voting discrimination before it inevitably harmed voters in a variety of federal, state or local elections. That is why voters of color in states with a demonstrated pattern of discrimination needed—and still need—laws to safeguard their fundamental right to vote. For nearly 50 years, members of Congress and Presidents from both parties have supported Section 5 and other legislation to address discrimination in voting before it can affect voters in elections. This Congress must again take up the mantle to fight racial discrimination in voting.

### **III. ELECTION ADMINISTRATION ADVOCACY**

In many ways, 2018 was a good year for our democracy. Millions of voters turned out<sup>41</sup> and we saw many historic many firsts, including the first ever election of Native American women<sup>42</sup> and Muslim-American women<sup>43</sup> to Congress.

Although voter turnout was at an all-time high, many more people would have voted in the absence of under-resourced poll workers or under-serviced election machinery. Unfortunately, while the harms of election administration problems like poorly trained poll workers and outdated machines are obvious, these problems are jeopardizing and creating barriers to the basic right to vote. After-the-fact litigation offers too few remedies, for too few voters, and too often those remedies come too late.

For that reason, LDF has developed its Prepared to Vote advocacy program. Every year LDF creates, prints, and distributes thousands of palm cards, flyers, and other informational material to educate voters about their rights before, during, and after an election. LDF also sends dozens of well-trained volunteers to states like Louisiana, Mississippi, Missouri, and South Carolina on Election Day to help voters in real-time at the polls.<sup>44</sup> The “Democracy Defended” report summarizes the many issues that LDF confronted and tried to resolve for voters on Election Day in 2018.

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<sup>41</sup> Camila Domonoske, A Boatload Of Ballots: Midterm Voter Turnout Hit 50-Year High (Nov. 8, 2018), <https://www.npr.org/2018/11/08/665197690/a-boatload-of-ballots-midterm-voter-turnout-hit-50-year-high>

<sup>42</sup> Eli Watkins, First Native American women elected to Congress, CNN (Nov. 7, 2018), <https://www.cnn.com/2018/11/06/politics/sharice-davids-and-deb-haaland-native-american-women/index.html>

<sup>43</sup> Tara Isabella Burton, Tlaib and Omar are the first Muslim women elected to Congress. They’re also so much more, Vox (Nov. 8, 2018), <https://www.vox.com/2018/11/8/18072610/rashida-tlaib-ilhan-omar-congress-election-muslim-women>

<sup>44</sup> Prepared to Vote, NAACP LDF, <https://www.naacpldf.org/case-issue/prepared-to-vote/>



In Richland County, South Carolina, voters reported that machines were changing their selections.<sup>45</sup> Officials worked to address the issue, but the county elections director told LDF that he only had one technician for every five polling sites. In Charleston County, LDF observed over three hour wait-times at predominately Black polling sites. These long waits were caused by insufficient numbers of voting machines, computer malfunctions, and ill-trained poll workers enforcing the state voter photo ID law.<sup>46</sup>

In Missouri, LDF volunteers contacted local officials about touchscreen voting machines that were incorrectly switching votes. LDF began recommending that people use paper ballots until election officials corrected the problem. LDF had a private citizen removed from outside a polling place because she was providing false information about the forms of photo ID required to vote. Because of a lack of Spanish-language ballots, LDF volunteers had to assist Spanish speaking voters with casting ballots. LDF also helped a Black voter who was turned away after he tried to vote with an expired ID. Although the voter was able to return with a different form of ID to vote, the ID law caused an extra unnecessary hurdle to vote.<sup>47</sup>

In Madison County, Mississippi, LDF witnessed a number of voters who were either turned away or required to cast provisional ballots because poll workers could not find these voters' names in the electronic poll-book. In fact, however, most of these voters were registered to vote. Poll workers had simply failed to check the printed supplement to the electronic poll book to find voters' names. Following the election, LDF, One Voice, and the Mississippi Center for Justice filed a public records request with the Madison County Election Commission inquiring about the voter roll purges that took place prior to the election.<sup>48</sup>

In Louisiana, at precincts in Orleans Parish, LDF found polling places inaccessible because they lacked handicap accessible entrances and ramps, adequate parking, and even adequate lighting. At one polling place, LDF volunteers saw a poll worker using a cell phone flashlight to direct voters because of poor lighting. Although state law permits voters who lack acceptable ID to sign an affidavit to verify their identity before casting a ballot, voters without ID are often turned away because poll workers make the discretionary decision not to inform voters of the affidavit option.<sup>49</sup>

And, in Alabama, many voters who were listed as "inactive" were told they must cast provisional ballots, even though state law allows inactive voters to cast

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<sup>45</sup> <https://thehill.com/homenews/campaign/415152-voters-in-south-carolina-say-voting-machines-are-changing-their-choices>

<sup>46</sup> Democracy Defended at 21-24.

<sup>47</sup> Id. at 19-20.

<sup>48</sup> Id. at 15-18.

<sup>49</sup> Id. at 13-14.

regular ballots if they fill out a new registration form. LDF has repeatedly written letters to Alabama’s Secretary of State to ask him to address this training issue.<sup>50</sup>

#### IV. CONGRESS MUST ACT TO DEFEND VOTING RIGHTS

We should not be surprised by problems like discrimination in voting and election administration issues that disproportionately affect voters of color. But, we should be ashamed if Congress does not urgently act to restore the VRA to full strength and to pass other reforms to relieve the burden on voters and local officials.

LDF and others have long warned that increased voter suppression would be the consequence of the Shelby County decision. Despite our vigorous litigation and advocacy efforts to fend off voter suppression, the current VRA can only get us so far. The evidence of widespread discrimination against Black voters is overwhelming.

Therefore, Congress must not only restore Section 5 preclearance review, it should also strengthen Section 2 and other provisions. Congress may, for example, lessen the burden on plaintiffs to achieve preliminary relief against discriminatory voting laws. Plaintiffs should not have to wait up to five years or spend millions to win a Section 2 case. By strengthening Section 2, Congress can again “shift the advantage of time and inertia from the perpetrators of the evil to its victims.”<sup>51</sup>

Likewise, state and local election officials are well-aware of the problem of old voting machines and ill-equipped poll workers. Many officials, however, simply lack the funds needed to buy new equipment or adequately train poll workers. A 2014 report from the Brennan Center for Justice, for example, found that the majority of America’s voting machines are obsolete.<sup>52</sup>

Congress should give states the necessary funds to purchase new, secure voting technology, and to properly train poll workers. Congress can also lessen the burden on voters and poll workers by enacting reforms like automatic voter registration and early voting for federal elections. If we are serious about the well-being of our democracy, Congress must ensure that poorer jurisdictions and communities of color are not stuck with long lines and old equipment staffed by untrained poll workers.

Moreover, as our democracy faces new and pervasive threats, Congress must act to ensure the actual integrity of our elections. Digital platforms are being used to discourage Black voters from voting and to sow racial division. It is critical therefore that Congress act to investigate and regulate these activities. Congress must reframe

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<sup>50</sup> Id. at 3-6.

<sup>51</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

<sup>52</sup> Lawrence Nordin, *America’s Voting Machines at Risk*, Brennan Center for Justice (Sept. 15, 2014), <https://www.brennancenter.org/publication/americas-voting-machines-risk#Executive%20Summary>.

the conversation from important, but narrow issues like privacy, to a conversation that examines racial injustice and voter suppression in digital social media.

## V. CONCLUSION

The undermining of the VRA by the Shelby County decision has made our democracy vulnerable and allowed for voter suppression to go unchecked. One election in which the fundamental right to vote is restricted is one election too many. Prior to that decision, Section 5 would have prevented many of the discriminatory voting changes at the local and statewide level that LDF is challenging in court. But, it would not have reached other issues like long lines and faulty voting machines.

As we prepare for state, federal and local elections in 2020, it is critical that Congress act to restore federal preclearance, using provisions such as those proposed in the Voting Rights Advancement Act or Voting Rights Amendment Act, support funding for local officials, and enact laws that make voting easier rather than harder.

The need to fix our democracy should not be up for debate. It's time for unity. It is time to act. Thank you.