

**TESTIMONY OF**

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**HEARING ON**

**VOTING IN AMERICA: A NATIONAL PERSPECTIVE ON  
THE RIGHT TO VOTE, METHODS OF ELECTION,  
JURISDICTIONAL BOUNDARIES, AND REDISTRICTING**

**THE COMMITTEE ON HOUSE ADMINISTRATION  
SUBCOMMITTEE ON ELECTIONS  
U.S. HOUSE OF REPRESENTATIVES**

**June 24, 2021**

Chair Butterfield, Ranking Member Steil, and members of the Subcommittee:

Thank you for the opportunity to testify in support of strengthening the Voting Rights Act (“VRA”).<sup>1</sup> The Act was perhaps the most effective civil rights law in our nation’s history. It should be modernized and restored to full strength. To that end, the Brennan Center strongly supports the John Lewis Voting Rights Advancement Act (“VRAA”).

The House considers this measure at a time of crisis for our democracy. Legislatures across the country are moving to enact curbs on voting, proposed laws that uncannily target people of color. The VRAA would restore the strength of the Voting Rights Act. It would modernize its coverage formula and do so in a way reflecting the Supreme Court’s strictures. Once again, any future legislatures that seek to enact racially discriminatory voting rules would find their actions subject to the strictest of legal scrutiny. The VRAA works in tandem with H.R.1, the For the People Act, which would set national standards and preempt existing discriminatory state laws. The VRAA is vital to restoring the promise of equality in representation in our democracy.

## **I. VOTER SUPPRESSION SINCE *SHELBY COUNTY***

The Voting Rights Act was widely considered the most effective civil rights legislation in our nation’s history.<sup>2</sup> It ended Jim Crow era voting practices and blocked new discriminatory voting measures. For nearly five decades, the law’s central feature was the Section 5 preclearance provision, which required states with a history of discriminatory voting practices to obtain advance approval from the federal government for changes to voting rules. Between 1998 and 2013, Section 5 blocked 86 discriminatory changes, including 13 in the 18 months before *Shelby County*.<sup>3</sup> It prompted jurisdictions to withdraw hundreds of potential discriminatory changes, and it dissuaded them from offering even more such changes in the first place.<sup>4</sup> As recently as 2006, Congress reauthorized the VRA with overwhelming bipartisan support.<sup>5</sup> President George W. Bush proudly signed it into law.<sup>6</sup>

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<sup>1</sup> The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that works to strengthen the systems of democracy and justice so they work for all Americans. Michael Waldman, president of the Center since 2005, is the author of *The Fight to Vote* (Simon & Schuster: 2016). Brennan Center experts and staff contributed to the preparation of this written testimony. Special thanks to Alan Beard, Andrew Garber, Maya Efrati, and Sam Linn. This testimony does not purport to convey the views, if any, of NYU School of Law.

<sup>2</sup> *The Effect of the Voting Rights Act*, U.S. Department of Justice (June 19, 2009), <https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0>.

<sup>3</sup> Wendy Weiser & Alicia Bannon, *An Election Agenda for Candidates, Activists, and Legislators*, Brennan Center for Justice (2018), <https://www.brennancenter.org/sites/default/files/publications/Brennan%20Center%20Solutions%202018.%20Democracy%20Agenda.pdf>; Tomas Lopez, ‘*Shelby County*’: *One Year Later*, Brennan Center for Justice, June 24, 2014, <https://www.brennancenter.org/our-work/research-reports/shelby-county-one-year-later>.

<sup>4</sup> Tomas Lopez, ‘*Shelby County*’: *One Year Later*, Brennan Center for Justice (June 24, 2014), <https://www.brennancenter.org/our-work/research-reports/shelby-county-one-year-later>.

<sup>5</sup> The vote was unanimous in the Senate and 390–33 in the House. See U.S. Senate, “H.R.9 Vote Summary,” July 20, 2006, [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=109&session=2&vote=00212](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00212); U.S. House of Representatives, “Final Vote Results for Roll Call 374,” July 13, 2006, <http://clerk.house.gov/evs/2006/roll374.xml>.

<sup>6</sup> White House, Press Release, *Fact Sheet: Voting Rights Act Reauthorization and Amendments Act of 2006* (July 27, 2006), <https://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060727-1.html>.

In 2013, in *Shelby County v. Holder*, the U.S. Supreme Court gutted this crucial piece of the Voting Rights Act.<sup>7</sup> Chief Justice Roberts argued that times had changed, and that the coverage formula in Section 4 was thus out-of-date. In doing so, the Court removed a key tool, passed by Congress under its authority, to protect voters. In dissent, Justice Ginsburg famously responded, “throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” What we have seen since is a relentless storm, bearing down on communities of color and the most vulnerable.

## **EIGHT YEARS OF IMPACT**

*Shelby County* loosed a flood of discriminatory voting rules, contributing to a now nearly decade-long trend in the states of restrictive laws, which the Brennan Center has documented extensively.<sup>8</sup> (I attach Appendix B as prior testimony the Brennan Center submitted to Congress on this topic. A compendium of our documentation can be found in Appendix A).

### **Voter Purges**

Improper purges disenfranchise legitimate voters and cause confusion at the polls. States can take steps to clean up voter rolls, but abusive purges can remove duly registered citizens, often without their knowledge. Alarming, purges have surged in states once subject to federal oversight under the VRA.<sup>9</sup> States once covered by Section 5 saw purges at a 40 percent higher rate than the rest of the country.<sup>10</sup> This disparity continued over several election cycles, suggesting something much more troubling than mere cleanup of voter lists. All told, more than 17 million voters were removed from the rolls nationwide between 2016 and 2018 alone.<sup>11</sup> (I attach a copy of this analysis in Appendix C.)

### **Polling Place Closures**

Polling place closures in jurisdictions previously covered by Section 5 of the VRA — often jurisdictions with high minority populations — have become another major barrier to access. A study by the Leadership Conference on Civil and Human Rights uncovered nearly 1,700 polling place closures in jurisdictions formerly covered by Section 5, despite a

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<sup>7</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>8</sup> See, e.g., Wendy Weiser and Max Feldman, *The State of Voting 2018*, Brennan Center for Justice (2018), <https://www.brennancenter.org/our-work/research-reports/state-voting-2018>; Brennan Center for Justice, *New Voting Restrictions in America*, (Nov. 19, 2019), <https://www.brennancenter.org/new-voting-restrictions-america>; *Voting Laws Roundup: May 2021*, Brennan Center for Justice (May 26, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2021>; Wendy Weiser and Lawrence Norden, *Voting Law Changes in 2012*, Brennan Center for Justice (2011), <http://www.brennancenter.org/publication/voting-law-changes-2012>.

<sup>9</sup> Jonathan Brater et al., *Purges: A Growing Threat to the Right to Vote*, Brennan Center for Justice (July 20, 2018), 3–5, <https://www.brennancenter.org/publication/purges-growing-threat-right-vote>.

<sup>10</sup> Kevin Morris, *Purge Rates Remain High*, Brennan Center (Aug. 21, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds>.

<sup>11</sup> *Id.*

significant rise in voter turnout during the same period.<sup>12</sup> Polling place closures often disproportionately harm voters of color. During the 2020 presidential primary election in Wisconsin, for example, Milwaukee closed all but five of its 182 polling places. A peer-reviewed academic journal article by the Brennan Center’s Kevin Morris and Peter Miller found that this closure depressed turnout by more than 8 percentage points overall — and by about 10 percentage points among Black voters.<sup>13</sup>

### **Strict Voter ID Laws**

Since *Shelby County*, several states have enacted new strict voter ID laws that target voters of color.<sup>14</sup> In 2013, at least six states—Alabama, Mississippi, North Carolina, North Dakota, Virginia, and Texas—implemented or began to enforce strict photo ID laws, most of which had previously been blocked by the Department of Justice due to their discriminatory impact. Federal courts in at least four states have found that strict voter ID laws were racially discriminatory, including the Texas and North Carolina laws. The Fourth Circuit Court of Appeals famously said that North Carolina’s law disenfranchised Black voters “with almost surgical precision.”<sup>15</sup>

### **Curbs on Voter Registration**

Since *Shelby County*, some states have imposed new restrictions on the voter registration process that take aim at organizing efforts to boost participation by voters of color and low-income voters. For example, in 2017, Georgia enacted an “exact match” law mandating that voters’ names on registration records must perfectly match their names on approved forms of identification.<sup>16</sup> A Brennan Center analysis of the policy found that, in the months leading up to the 2018 election, roughly 70 percent of Georgia voters whose registrations were blocked by the policy were people of color.<sup>17</sup> Similarly, in 2018, Tennessee responded to a major get-out-the-vote effort by enacting a law inflicting civil penalties on groups that employed paid canvassers if they submitted incomplete or inaccurate voter registration forms.<sup>18</sup>

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<sup>12</sup> *Democracy Diverted: Polling Place Closures and the Right to Vote*, The Leadership Conference Education Fund (Sept. 2019), 10, <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

<sup>13</sup> Kevin Morris & Peter Miller, *Voting in a Pandemic: COVID-19 and Primary Turnout in Milwaukee, Wisconsin*, Urb. Aff. Rev., (Apr. 13, 2021), <https://journals.sagepub.com/doi/full/10.1177/10780874211005016>; Kevin Morris, *Did Consolidating Polling Places in Milwaukee Depress Turnout?*, Brennan Center for Justice (June 24, 2020), <https://www.brennancenter.org/our-work/research-reports/did-consolidating-polling-places-milwaukee-depress-turnout>.

<sup>14</sup> See, e.g., *Election 2016: Restrictive Voting Laws by the Numbers*, Brennan Center for Justice (Sept. 28, 2016), <https://www.brennancenter.org/our-work/research-reports/election-2016-restrictive-voting-laws-numbers#legalchallengestorestrictivephotoidlaws>.

<sup>15</sup> *N.C. State Conf. NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

<sup>16</sup> Jonathan Brater & Rebecca Ayala, *What’s the Matter with Georgia?*, Brennan Center for Justice (Oct. 12, 2018), <https://www.brennancenter.org/blog/whats-matter-georgia>.

<sup>17</sup> *Id.*

<sup>18</sup> Theodore R. Johnson & Max Feldman, *The New Voter Suppression*, Brennan Center for Justice (January 16, 2020), <https://www.brennancenter.org/our-work/research-reports/new-voter-suppression>; Amy Gardner, *How a Large-Scale Effort to Register Black Voters Led to a Crackdown in Tennessee*, Washington Post (May 24, 2019), [https://www.washingtonpost.com/politics/how-a-large-scale-effort-to-register-black-voters-led-to-a-crackdown-in-tennessee/2019/05/24/9f6cee1e-7284-11e9-8be0-ca575670e91c\\_story.html](https://www.washingtonpost.com/politics/how-a-large-scale-effort-to-register-black-voters-led-to-a-crackdown-in-tennessee/2019/05/24/9f6cee1e-7284-11e9-8be0-ca575670e91c_story.html).

## Cutbacks to Early Voting

Multiple states have also reduced early voting days or sites used disproportionately by voters of color. In Ohio and Florida, for example, legislatures eliminated early voting on the Sundays leading up to Election Day after African American and Latino voters conducted successful “souls to the polls” voter turnout drives on those days.<sup>19</sup> Federal courts have struck down early voting cutbacks in North Carolina, Florida, and Wisconsin because they were intentionally discriminatory.<sup>20</sup> Similar efforts continue today.

## TODAY’S VOTER SUPPRESSION WAVE

Today, controversy rages across the country as state legislators move to enact restrictive voting laws, the most significant such effort since the Jim Crow era. Make no mistake: if the Voting Rights Act were at full strength, it would have blocked or blunted much of this push for voter suppression laws. As restored by the VRAA, a strong law would apply to future abusive voting law changes. In states with a significant history of discrimination in voting, new changes in vote by mail, early voting, and voter registration, among others, could not take effect without being precleared by the Justice Department or a federal court in Washington, D.C. This extra layer of scrutiny would make a huge difference to protect citizens’ right to vote.

As of May 14, 2021, lawmakers had introduced more than 389 bills in 48 states to curb the vote.<sup>21</sup> This is more than four times the number of restrictive bills introduced just two years before.<sup>22</sup> Crucially, these are not backbenchers tossing a bill in the hopper in the hope of getting a good day on Twitter. Already, at least 17 states have enacted new laws with provisions that restrict access to voting.

As in previous eras, these laws and proposals purport to be racially neutral. In fact, often they precisely target voters of color.

- Georgia’s recent law made it harder to vote by mail. For years, Georgia voters cast ballots in this way without controversy. (Indeed, Republican legislators took the lead in enacting no-excuse absentee balloting sixteen years ago.) More recently, however, Black voters began to use vote by mail in greater numbers. (Democrats overall in 2020 used

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<sup>19</sup> See David G. Savage, “Federal Judge Orders Ohio to Keep Its Early Balloting in Place,” *Los Angeles Times*, August 31, 2012, <https://www.latimes.com/politics/la-xpm-2012-aug-31-la-pn-ohio-early-voting-judge-20120831-story.html>; Michael C. Herron & Daniel A. Smith, “Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355,” 11 *Election Law Journal* 331, <https://www.liebertpub.com/doi/pdf/10.1089/elj.2012.0157>.

<sup>20</sup> *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 219 (4<sup>th</sup> Cir. 2016); *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 925 (W.D. Wis. 2016); *Federal Court Blocks Discriminatory Early Voting Changes in Florida*, Brennan Center for Justice (Aug. 21, 2012), <https://www.brennancenter.org/our-work/analysis-opinion/federal-court-blocks-discriminatory-early-voting-changes-florida>.

<sup>21</sup> *Voting Laws Roundup: May 2021*, Brennan Center for Justice (May 28, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021>.

<sup>22</sup> *Voting Laws Roundup 2019*, Brennan Center for Justice (July 10, 2019), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2019>.

vote by mail at a markedly higher rate than before. Republicans were more likely to choose to vote on Election Day.<sup>23</sup>) Now the legislature has enacted a measure to curb voting by mail. Its original proposal, which was changed only days before a final vote, would actually have effectively ended vote by mail for those under 65.<sup>24</sup>

- Georgia’s newly enacted law also prohibits voters from casting a ballot at the wrong precinct unless it is after 5:00PM, thus barring out-of-precinct voting for most of Election Day.<sup>25</sup> A Brennan Center analysis of the legislation found that Black voters live in neighborhoods with much higher rates of in-county moves and thus are more likely to be hit especially hard by this new rule.<sup>26</sup>
- Other current proposals would make it less likely that voters of color can have their ballots counted — including signature matching requirements, vote-by-mail ID mandates, and postage costs.<sup>27</sup> Several studies have found that absentee ballots cast by voters of color have in recent years been rejected at much higher rates than those cast by their white counterparts.<sup>28</sup> A study published in the *Election Law Journal* found that in Florida, in both the 2018 and 2016 federal elections, absentee ballots returned by African American and Latino voters were twice as likely to be rejected as those cast by white voters.<sup>29</sup> Studies regarding Florida’s 2020 presidential primary,<sup>30</sup> Georgia’s 2020 primaries,<sup>31</sup> and North Carolina’s 2020 primaries have resulted in similar findings.<sup>32</sup>
- In Texas, the legislature was minutes away from enacting new voting rules when Democratic lawmakers walked out and denied a quorum. Governor Greg Abbott has promised to call a special session of the legislature to complete its task.<sup>33</sup> As the

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<sup>23</sup> Charles Stewart III, *How We Voted in 2020: A First Look at the Survey of the Performance of American Elections. Version 0.1*, 3-4 MIT Election Data + Science Lab (Dec. 15, 2020), <http://electionlab.mit.edu/sites/default/files/2020-12/How-we-voted-in-2020-v01.pdf>.

<sup>24</sup> Mark Niesse, “Georgia voting limits bill may preserve Sunday and no-excuse absentee voting,” *Atlanta Journal-Constitution*, March 18, 2021, <https://www.ajc.com/politics/georgia-voting-limits-bill-may-preserve-sunday-and-no-excuse-absentee/YZF24BYJG5C73KXKARJ6RMFHUY/>.

<sup>25</sup> Ga. Code Ann. § 21-2-418(a) (2021); see also Ga. S.B. 202 § 34 (2021).

<sup>26</sup> Kevin Morris, *Georgia’s Attempt to Limit out-of-Precinct Voting Will Hurt Black Neighborhoods*, Brennan Center for Justice (Mar. 16, 2021), <https://www.brennancenter.org/our-work/research-reports/georgias-attempt-limit-out-precinct-voting-will-hurt-black-neighborhoods>.

<sup>27</sup> *Voting Laws Roundup: March 2021*, Brennan Center for Justice (April 1, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021#rbe>.

<sup>28</sup> See, e.g., Sophie Chou & Tyler Dukes, *In North Carolina, Black Voters’ Mail-In Ballots Much More Likely to Be Rejected Than Those From Any Other Race*, ProPublica (Sept. 23, 2020), <https://www.propublica.org/article/in-north-carolina-black-voters-mail-in-ballots-much-more-likely-to-be-rejected-than-those-from-any-other-race>.

<sup>29</sup> Anna Baringer et al., *Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus*, *Election Law Journal: Rules, Politics, and Policy*, Vol. 19, No. 3 (Sept. 17, 2020), <https://www.liebertpub.com/doi/full/10.1089/elj.2020.0658>.

<sup>30</sup> Daniel A. Smith, *Vote-By-Mail Ballots Cast in Florida*, ACLU of Florida (Sept. 19, 2018), <https://www.aclufi.org/en/publications/vote-mail-ballots-cast-florida>.

<sup>31</sup> Kevin Morris, *Digging Into the Georgia Primary*, Brennan Center for Justice (Sept. 10, 2020), <https://www.brennancenter.org/our-work/research-reports/digging-georgia-primary>.

<sup>32</sup> Sam Levine, “Black Voters’ Mail-In Ballots Being Rejected at Higher Rate,” *The Guardian* (Oct. 17, 2020), <https://www.theguardian.com/us-news/2020/oct/17/black-voters-mail-in-ballots-rejected-higher-rate-north-carolina>.

<sup>33</sup> Amanda Ruis, “Special session expected after Texas House Democrat walkout over SB 7,” *Fox 7 Austin*, May 31, 2021, <https://www.fox7austin.com/news/special-session-expected-after-texas-house-democrat-walkout-over-sb-7>.



*Washington Post* aptly summarized, the “measure would have made it harder to vote by mail, empowered partisan poll watchers and imposed stiff penalties on election administrators.”<sup>34</sup> It would also prohibit drive-up voting and other steps used heavily by Black and Latino voters in 2020.<sup>35</sup>

- In Arizona, the Governor recently signed a law that makes it harder for voters to vote by mail. Any voter who did not cast an early voting ballot in two consecutive election cycles will be removed from the permanent early voting list.<sup>36</sup> The Arizona House has also advanced a bill that would require county recorders to refer voters who return a mail ballot with a mismatched signature to prosecutors. This would turn common, harmless mistakes into potential crimes.<sup>37</sup> These policies would be subject to preclearance under Section 5 but for the Court’s ruling in *Shelby County*.

## II. BEHIND THE BIG LIE

Why are these laws being pushed? Proponents claim they are needed to thwart “voter fraud” and preserve “election integrity.” These arguments are animated by the Big Lie — the notion that the 2020 election was stolen, riddled with fraud. Such assertions animated the push for discriminatory voting laws well before Donald Trump’s most outlandish claims.

The animus behind these fraud claims becomes clearer when we realize these assertions are, simply, *false*. They are a conspiracy theory, often one with barely disguised racial subtext. Such theories cannot be allowed to guide policy, let alone justify laws that would make it harder for our fellow Americans to vote.

Voter fraud in the United States is vanishingly rare. You are more likely to be struck by lightning than to commit in-person voter impersonation, for example.<sup>38</sup> A comprehensive analysis from the *Washington Post* found only 31 credible instances of voter fraud between 2000 and 2014 — out of one billion ballots cast.<sup>39</sup>

These conspiracy theories have been debunked repeatedly. In 2016, Donald Trump insisted, “I won the popular vote if you deduct the millions of people who voted illegally,” and

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<sup>34</sup> Elise Viebeck, “Here’s where GOP lawmakers have passed new voting restrictions around the country,” *Washington Post*, June 2, 2021, <https://www.washingtonpost.com/politics/2021/06/02/state-voting-restrictions/#texas-1>

<sup>35</sup> *Id.*

<sup>36</sup> *Arizona Governor Signs Bill Restricting Mail Voting*, Brennan Center for Justice (May 11, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/brennan-center-statement-arizona-governor-signs-bill-restricting-mail>.

<sup>37</sup> Marian K. Schneider, *Arizona Bill Would Refer Mismatched Mail Ballot Signatures to Prosecutors*, Brennan Center for Justice (May 28, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/arizona-bill-would-refer-mismatched-mail-ballot-signatures-prosecutors>.

<sup>38</sup> Brennan Center for Justice, *The Myth of Voter Fraud* (March 20, 2021), <https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/myth-voter-fraud>; *Debunking the Voter Fraud Myth*, Brennan Center for Justice (January 31, 2017), <https://www.brennancenter.org/our-work/research-reports/debunking-voter-fraud-myth>.

<sup>39</sup> Justin Levitt, “A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast,” *Washington Post*, August 6, 2014, <https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/>.

claimed there were three to five million illegal voters.<sup>40</sup> He established a commission to prove his claim. It collapsed without finding any evidence.<sup>41</sup> In 2020, the election was confirmed to be smoothly run and extraordinarily secure.<sup>42</sup> Indeed, the Department of Homeland Security deemed the election the “most secure in American history.”<sup>43</sup> In the frenzy of lawsuits brought to overturn the results, 60 courts considered claims, and rejected them. Trump’s attorneys, under oath, were forced to confess repeatedly they could press no charges of fraud. Federal Judge Stephanos Bibas, appointed by President Trump, ruled definitively on behalf of a three-judge appeals court panel: “Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”<sup>44</sup> Attorney General William Barr confirmed that there was no widespread election fraud.<sup>45</sup> Privately to the president, he used a more colorful barnyard epithet.<sup>46</sup>

Ultimately, such fraud fears provide a pretext for discriminatory laws. This did not start with Donald Trump. Rather, over years, the myth has built momentum as the basis for a drive to curb the vote. Few remember it now, for example, but Attorney General Alberto Gonzales was forced to resign in a scandal in 2007 when he fired U.S. Attorneys after they refused to prosecute nonexistent voter fraud.<sup>47</sup> The roar about voter fraud had one significant consequence: it made it seem to be a real problem. If not, why was everyone talking about it? The courts have allowed fear of admittedly rare misconduct, largely imagined, to justify laws that affect actual voters.<sup>48</sup> Election integrity is important, of course. But efforts to protect it should target actual problems (such as cyber security risks). Instead, the clamor about illegal voting is used to justify measures that target not misconduct, but voters and their rights. Going back over a century, claims about fraud especially target lower income, lower status voters. In the 19<sup>th</sup> century such assertions

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<sup>40</sup> Cleve R. Wootson, Jr., “Donald Trump: ‘I won the popular vote if you deduct the millions of people who voted illegally,’” *Washington Post*, November 27, 2016, <https://www.washingtonpost.com/news/the-fix/wp/2016/11/27/donald-trump-i-won-the-popular-vote-if-you-deduct-the-millions-of-people-who-voted-illegally/>.

<sup>41</sup> Ed Pilkington, “Trump Scraps His Widely Denounced Commission on Voter Fraud,” *The Guardian*, January 4, 2018, <https://www.theguardian.com/us-news/2018/jan/03/donald-trump-election-integrity-commission-dissolved-kobach>

<sup>42</sup> Jen Kirby, *Trump’s own officials say 2020 was America’s most secure election in history*, *Vox*, November 13, 2020, <https://www.vox.com/2020/11/13/21563825/2020-elections-most-secure-dhs-cisa-krebs>; Christina A. Cassidy, Anthony Izaguirre, and Julie Carr Smyth, *States cite smooth election, despite Trump’s baseless claims*, *Associated Press*, November 11, 2020, <https://apnews.com/article/election-2020-donald-trump-virus-outbreak-general-elections-elections-4060823b211ce91959b26f46efb73636>.

<sup>43</sup> Cybersecurity and Infrastructure Security Agency, Department of Homeland Security, Joint Statement From Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees, November 12, 2020, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

<sup>44</sup> Aaron Blake, *The Most Remarkable Rebukes of Trump’s Legal Case: From the Judges He Hand-Picked*, *Washington Post*, December 14, 2020, <https://www.washingtonpost.com/politics/2020/12/14/most-remarkablerebuked-trumps-legal-case-judges-he-hand-picked/>.

<sup>45</sup> Michael Balsamo, *Disputing Trump, Barr Says No Widespread Election Fraud*, *Associated Press*, December 1, 2020, <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

<sup>46</sup> Jonathan Swan, *Trump Turns on Barr*, *Axios*, January 18, 2021, <https://www.axios.com/trump-barr-relationshipoff-the-rails-b33b3788-e7e9-47fa-84c5-3a0016559eb5.html>.

<sup>47</sup> Steven Lee Myers and Philip Shenon, “Attorney General Alberto R. Gonzales Resigns,” *The New York Times*, August 24, 2007, <https://www.nytimes.com/2007/08/27/washington/27cnd-gonzales.html>; Dana Milbank, “Maybe Gonzales Won’t Recall His Painful Day on the Hill,” *Washington Post*, April 20, 2007, <https://www.washingtonpost.com/wp-dyn/content/article/2007/04/19/AR2007041902571.html?nav=E8>; *An Investigation into the Removal of Nine U.S. Attorneys in 2006*, U.S. Department of Justice (2008), <https://www.justice.gov/opr/page/file/1206601/download>.

<sup>48</sup> See, e.g., *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).



targeted Black voters in the South, and Catholic and immigrant voters in the North. Today — spoken or implied — such claims target voters of color and immigrants.

Increasingly, the racial subtext of the Big Lie pokes to the surface. Those who push discriminatory measures have begun to openly acknowledge that the goal of the measures is to subtract voters — particularly voters of color — from the electorate. In one instance a few months ago, an Arizona legislator made headlines when he said that he did not think everyone should vote.<sup>49</sup> At a hearing on a proposed voting bill, Rep. John Kavanaugh explained, “Quantity is important but we have to look at quality as well.”<sup>50</sup> Meanwhile, Texas bill SB7 originally included language that it was meant to protect the “purity of the ballot box,” a phrase from the state’s constitution used to justify all-white primaries in the Jim Crow era.<sup>51</sup> It was removed only after it was called out during a contentious May 9 debate on the bill.<sup>52</sup>

### **III. CONGRESS SHOULD SWIFTLY PASS THE VRAA**

The VRAA is designed to respond to discriminatory practices in a way that is responsive to the Supreme Court’s concerns. Notably, through its “geographic coverage” provisions, it modernizes the formula used to determine which jurisdictions will be subject to preclearance, drawing on a recent history of discrimination in voting. This updated formula targets discrimination as it exists in 2021.

In addition, the VRAA introduces limits on measures that have historically been used to discriminate against voters of color.<sup>53</sup> This “known practices” provision uses the wealth of evidence accrued since passage of the original VRA to identify categories of changes that will always be subject to preclearance when made in jurisdictions that meet minority population thresholds. A report by the Mexican American Legal Defense and Educational Fund, Asian Americans Advancing Justice, and NALEO Educational Fund found that nearly two-thirds of preclearance denials between 1990 and 2013 related to changes in methods of election, redistricting, annexations, polling place relocations, and interference with language assistance.<sup>54</sup> Each of these types of laws, and several others, would be covered under the VRAA.

The VRAA also provides for notice to be given to the public when certain election changes are made in close proximity to federal elections, restores the federal observer program, and makes it easier for those challenging discriminatory voting laws in court to obtain relief.

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<sup>49</sup> Timothy Bella, *A GOP Lawmaker Says the ‘Quality’ of a Vote Matters. Critics Say That’s ‘Straight out of Jim Crow,’* Washington Post, March 13, 2021, <https://www.washingtonpost.com/politics/2021/03/13/arizona-quality-votes-kavanaugh/>.

<sup>50</sup> *Id.*

<sup>51</sup> S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021); TEX. CONST., art. 6, § 4.

<sup>52</sup> Hannah Knowles, “A Texas Bill Drew Ire for Saying It Would Preserve ‘Purity of the Ballot Box.’ Here’s the Phrase’s History,” *Washington Post*, May 9, 2021, <https://www.washingtonpost.com/history/2021/05/09/texas-purity-ballot-box-black/>.

<sup>53</sup> Voting Rights Advancement Act, H.R. 4, 116<sup>th</sup> Cong. §4(b) (2019).

<sup>54</sup> Erin Hustings, et al., *Practice-Based Preclearance: Protecting Against Tactics Persistently Used to Silence Minority Communities’ Voters*, 14 (2019), <https://www.maldef.org/wp-content/uploads/2019/11/Practice-Based-Preclearance-Report-Nov-2019-FINAL.pdf>.

These provisions are more than justified and well-tailored to the record of discrimination before Congress. In requiring preclearance in the places with the greatest record of discrimination and for the measures most likely to be discriminatory, the VRAA “link[s] coverage to the devices used to effectuate discrimination and to the resulting disenfranchisement,” as the Supreme Court in *Shelby County* said the Voting Rights Act must.<sup>55</sup> The bill is well equipped to attack the kinds of discriminatory practices we have seen implemented over the last few years.

Congress has the constitutional authority to enact this measure. The vast trove of evidence gathered by this committee and others in Congress provides ample constitutional justification for this legislation. The text, structure, and history of the relevant constitutional provisions confirm Congress’ preeminent role in protecting the right to vote. The Fifteenth Amendment’s Section 2 makes clear “Congress shall have power to enforce this article by appropriate legislation.” Similarly, the Fourteenth Amendment states, “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.” The drafters of these amendments chose their words carefully. They chose not to rely on the courts alone to enforce equal protection or voting rights.

The VRAA would work in tandem with another piece of legislation: the For the People Act (H.R.1). H.R.1 sets national standards for fair, secure, and accessible elections; the VRAA is targeted at the pernicious problem of states with a history of racial discrimination in voting. H.R.1 would override existing discriminatory state laws; the VRAA would establish preclearance for future such laws. Both are vitally needed to strengthen our democracy.

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John Lewis with countless others brought the Voting Rights Act into being through physical and moral courage. He worked ardently on this legislation, and it carries his name and honors his legacy. He was intimately involved, too, in writing H.R.1. When it counted—in the streets or in the halls of Congress — John Lewis acted to move our nation toward its best self, toward its democratic ideals. This generation of lawmakers can do the same by restoring the Voting Rights Act in his name and protecting the right to vote for all Americans.

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<sup>55</sup> *Shelby County*, 570 U.S. at 546.