



**STATEMENT OF VANITA GUPTA, PRESIDENT AND CEO, THE LEADERSHIP  
CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**U.S. HOUSE COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES  
HEARING ON “EVIDENCE OF CURRENT AND ONGOING VOTING DISCRIMINATION”**

**SEPTEMBER 10, 2019**

Chairman Cohen, Ranking Member Johnson, and members of the Subcommittee: my name is Vanita Gupta and I am the president and CEO of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations working to build an America as good as its ideals. We were founded in 1950 and have coordinated national advocacy efforts on behalf of every major civil rights law since 1957, including the Voting Rights Act of 1965 (“VRA”) and subsequent reauthorizations. I previously served as head of the Justice Department’s Civil Rights Division from 2014 until January 2017, where I oversaw the enforcement of the civil provisions of the federal laws that protect the right to vote, including the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act, the Help America Vote Act, and the Civil Rights Acts.

The ability to participate in civic life – to have a voice in choosing the elected officials whose decisions impact our lives, families, and communities – is at the core of what it means to be a citizen. It is long past time to build a 21<sup>st</sup> century democracy that is representative of, and responsive to, our growing, diverse nation; a democracy that welcomes and protects every person’s voice and vote; and a democracy that demands fairness and transparency in the administration of its elections. Our democracy works best when everyone, no matter who they are, what language they speak, or their race, ethnicity, or disability status, can fully participate.

It was not long ago – just in 2006 – that this body reauthorized the VRA with sweeping bipartisan support. The House of Representatives voted to reauthorize the VRA by a 390-33 vote and the Senate passed it *unanimously*. Given the importance of the VRA, Congress undertook that reauthorization with great care and deliberation – holding 21 hearings, hearing from more than 90 witnesses, and compiling a massive record of more than 15,000 pages of evidence of continuing racial discrimination in voting.

In 2013, in *Shelby County v. Holder*,<sup>1</sup> five justices of the Supreme Court gutted the most powerful provision of the VRA – the Section 5 preclearance system.<sup>2</sup> That system had enabled the U.S. Department

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<sup>1</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>2</sup> Under Section 5 of the VRA, jurisdictions with a demonstrated record of racial discrimination in voting were required to submit all proposed voting changes to the U.S. Department of Justice or the U.S. District Court in Washington, D.C., for “preclearance” in advance of implementation. The jurisdictions were required to prove that the proposed voting change would not deny or adversely affect the right to vote on the basis of race, color, or an eligible voter’s membership in a language minority group. Preclearance was a crucial element of the VRA because it

of Justice and federal courts to block proposed discriminatory voting restrictions in states and localities with the most pervasive histories of discrimination before these restrictions could disenfranchise voters. It ensured that, when jurisdictions changed the rules or operations of voting, that the changes were public, transparent, and studied to ensure they would not discriminate against voters because of their race or language. In *Shelby*, Chief Justice Roberts, on behalf of the five-person majority, stated that Congress must assess current conditions in order to lawfully require states to preclear voting changes.

When I was at the Justice Department, we tried our best to mitigate the damage done by the *Shelby* decision. We challenged discriminatory laws passed in North Carolina and Texas in the immediate aftermath of *Shelby*, and we were successful. In striking down the North Carolina law in 2016, the U.S. Court of Appeals for the Fourth Circuit described the law as “the most restrictive voting law North Carolina has seen since the era of Jim Crow” with provisions that “target African Americans with almost surgical precision.”<sup>3</sup> There have also been findings of intentional discrimination in at least nine voting rights decisions since *Shelby*.<sup>4</sup> Notwithstanding these positive developments, there are many discriminatory measures going unchallenged by the current administration. And that means voters are being disenfranchised.

Many of the tactics that state and local policymakers have enacted with alarming speed since the *Shelby* decision include barriers to voter registration, cuts to early voting, purges of the voter rolls, strict photo identification requirements, and last-minute polling place closures and consolidations. In almost every instance these changes have no effective remedy because once an election is held, there is no way to hold it again. That is why Congress must restore safeguards like preclearance: so the myriad tactics used to make it harder for people to participate in their elections can be vetted to ensure that they don’t discriminate based on race.

### **Rise in Polling Place Closures Since *Shelby County***

Polling place closures are a common and pernicious tactic for disenfranchising voters. Polling place closures can result in long lines, transportation hurdles, and mass confusion about where eligible voters may cast their ballot. For many people, particularly voters of color, older voters, rural voters, and voters with disabilities, these burdens make it harder to vote.

Prior to the *Shelby* decision, there was a process to ensure that jurisdictions known to engage in voting discrimination were not using budget cuts or voter modernization as cover to disenfranchise people of color. Now that that process has been removed, it is much harder to know what goes into decision making around polling place closures. To be clear, there are processes that can be put in place to make sure polling place reductions do not discriminate against voters of color, including formal letters to impacted voters, approval of proposed changes from diverse cross-sections of the community, and thoughtful

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ensured that no new voting law or practice, such as closing or moving a polling place, would be implemented in a place with a history of racial discrimination in voting unless that law was first determined not to discriminate against voters of color. However, in *Shelby*, the U.S. Supreme Court invalidated the formula that determined which states and jurisdictions are covered by Section 5 of the VRA and thus are required to undergo preclearance. Without that determination, the preclearance provision essentially became inoperable.

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

<sup>4</sup> <https://docs.house.gov/meetings/JU/JU00/20190129/108824/HHRG-116-JU00-Wstate-Ifills-20190129.pdf>.

studies of impact on voters from all backgrounds. Before the 2013 *Shelby* decision, voting changes in covered jurisdictions were scrutinized under Section 5 of the VRA to ensure they would not be discriminatory<sup>5</sup> – but *Shelby* eliminated this critical protection for voters. The bottom line is that the closure of polling places, especially without clear public notice to all impacted voters and formal input and recommendations from diverse community stakeholders, creates barriers to the ballot box that are incredibly difficult for people to overcome.

The 2016 election was the first presidential election conducted without the full safeguards of the VRA and, in advance of it, jurisdictions closed polling places on a massive scale. The Leadership Conference Education Fund released a report titled *The Great Poll Closure*<sup>6</sup> before the 2016 election that documented a portion of those polling place reductions in many of the jurisdictions that were once protected by Section 5 of the VRA. Polling place closure data and information that was once publicly available under Section 5 was difficult – and in some instances, impossible – to obtain in many jurisdictions. It required several months of research and analysis of data from the U.S. Election Assistance Commission (EAC) and public records requests from state and local election officials.

Today, The Leadership Conference Education Fund is releasing a new report – *Democracy Diverted: Polling Place Closures and the Right to Vote*<sup>7</sup>. Our first report, *The Great Poll Closure*, drew on a sample of fewer than half of the approximately 860 counties or county-equivalents that were once covered by Section 5. Our new report, *Democracy Diverted*, covers an expanded data set of 757 counties. *The Great Poll Closure* relied on voluntary reports of aggregate numbers of polling places that state election officials gave to the EAC. This report, however, relies largely on independent counts of polling places from public records requests and publicly available polling place lists.

In *Democracy Diverted*, we found 1,688 polling place closures between 2012 and 2018, almost double the 868 closures found in our 2016 report. Additionally, *Democracy Diverted* analyzes the reduction of polling places in the formerly covered Section 5 jurisdictions in the years between the 2014 and 2018 midterm elections. We found 1,173 fewer polling places in 2018 – despite a significant increase in voter turnout. To better understand the potentially discriminatory impact of these closures, additional analysis beyond what is included in this report must be completed at the precinct level. This analysis – precisely the kind that the Justice Department conducted under preclearance – takes time and resources. Our hope is that journalists, advocates, and voters will use this county-level polling place data to scrutinize the impact of poll closures in their communities, to understand their impact on voters of color, and to create a fairer and more just electoral system for all.

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<sup>5</sup> States and localities required to submit their voting changes for federal approval were: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia, and counties in California, Florida, Michigan, New York, North Carolina, and South Dakota. Counties and townships in a few other states were removed from coverage through the “bailout” provision in Section 4(a) of the VRA.

<sup>6</sup> The Leadership Conference Education Fund, “The Great Closure Report.” *Civilrights.org*. November 2016. <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

<sup>7</sup> The Leadership Conference Education Fund, “Democracy Diverted: Polling Place Closures and the Right to Vote,” *democracydiverted.org*. September 2019.

## Mega Closers of Polling Places

The *Shelby* decision paved the way for systematic statewide efforts to reduce the number of polling places in Texas (–750), Arizona (–320), and Georgia (–214). Quieter efforts to reduce the number of polling places without clear notice or justification spread throughout Louisiana (–126), Mississippi (–96), Alabama (–72), North Carolina (–29), and Alaska (–6).

Our analysis also found that South Carolina (–18) is unique among southern states in that it has state laws regarding stakeholder approval and for polling place changes. Despite barriers to voting in other contexts, South Carolina has closed relatively few polling places since *Shelby*.

Though not inherently discriminatory, these polling place closures occurred in states and localities with past histories of racial discrimination in voting. And some took place amid a larger constellation of efforts to prevent voters of color from electing the candidates of their choice, such as enactment of stricter voter identification laws, restrictions on voter registration, and voter purges.

### Arizona

With a reduction of 171 polling places, Maricopa County is by far the largest closer of polling places in our study. It closed more polling places than the second and third highest-ranked counties combined. In advance of the 2016 presidential preference election, Maricopa drastically reduced polling places, resulting in long lines that drew national attention and lawsuits from civil rights groups. A settlement with civil rights groups led the county to reopen polling places for the 2016 general election – albeit with fewer than it had in the pre-*Shelby* 2012 presidential election. Two years later, instead of responding to the clear demand for more polling places, the county cut well over 100 more voting locations. Between Arizonans’ increased use of mail-in ballots and Maricopa County’s experimentation with vote centers, it is difficult to determine the full impact of polling place closures on various communities without additional analysis. Yet it is incumbent upon the county to ensure that closures do not have a racially discriminatory impact.

The drive to reduce polling places was not confined to Maricopa. In fact, four of the top 10 closers in our sample were counties in Arizona: Maricopa (–171), which is 31 percent Latino; Mohave (–34), which is 16 percent Latino; Cochise (–32), which is 35 percent Latino; and Pima (–31), which is 37 percent Latino.<sup>8</sup> In the 2016 edition of *The Great Poll Closure*, Pima was the biggest closer in the nation (though it has since reopened 31 polling places). The scale of closures throughout the state is equally concerning in Cochise (–65 percent), Graham (–50 percent), Mohave (–49 percent), and Gila (–48 percent) Counties, all of which closed about half or more of their polling places.<sup>9</sup>

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<sup>8</sup> See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_17\\_5YR\\_B03002&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_B03002&prodType=table).

<sup>9</sup> See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_17\\_5YR\\_B03002&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_B03002&prodType=table).

Some counties in Arizona, however, are clearly trying to ensure that voters of color can access the ballot box. Navajo County, which is 46 percent Native American, maintained a steady number of polling places despite its conversion to vote centers. In Coconino County, which is 26 percent Native American and 14 percent Latino, many polling places on a Navajo reservation were not compliant with the Americans with Disabilities Act. Yet the county has opted to keep these polling places open and make low-cost modifications to ensure voter accessibility – rather than close them outright.<sup>10</sup>

## Texas

Almost half of all shuttered polling places in our sample took place in Texas, where voters have lost at least 750 polling places since *Shelby*. Most of these closures (–590) took place after the 2014 midterm election. After top-ranked Maricopa County in Arizona, the next six largest polling place closers by number were Texas counties: Dallas (–74), which is 41 percent Latino and 22 percent African American; Travis (–67), which is 34 percent Latino; Harris (–52), which is 42 percent Latino and 19 percent African American; Brazoria (–37), which is 30 percent Latino and 13 percent African American; and Nueces (–37), which is 63 percent Latino.<sup>11</sup> Furthermore, 14 Texas counties closed at least 50 percent of their polling places after *Shelby County*.

These drastic reductions occurred against a backdrop of multiple court battles over state laws that discriminate against Black and Latino voters. These laws relate to electoral processes ranging from voter identification requirements, racial gerrymandering to prevent voters of color from electing their preferred candidates, purging voters from registration lists, and access to language assistance when voting. Hours after the *Shelby* decision, the Texas attorney general announced the state would implement a strict voter ID law that had been blocked from taking effect from 2011–2013 under Section 5’s preclearance system. In 2017, a federal judge ruled that the law was enacted with intent to discriminate against Black and Latino voters.

In Texas, conversions to vote centers contributed to the majority of polling place closures. By design, conversions reduce the number of polling places and therefore the cost of holding elections, encourage counties to use only the most physically accessible sites for voting, and improve flexibility for voters.<sup>12</sup> As the Texas secretary of state outlined in early 2019, the conversion program allows counties to reduce polling places by 35 percent in the first year and 50 percent in a subsequent year.<sup>13</sup> While the state encourages counties to engage with voters of color in a public forum or on a committee when determining

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<sup>10</sup> See Kira Lerner, The ADA Is Being Used to Disenfranchise Minority Voters, THINKPROGRESS (Aug. 24, 2018, 1:46PM), <https://thinkprogress.org/ada-voter-suppression-cd7031080bfd/>

<sup>11</sup> See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_17\\_5YR\\_B03002&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_B03002&prodType=table).

<sup>12</sup> See TEX. SEC’Y OF STATE, DIR. OF ELECTIONS, ELECTION ADVISORY NO. 2019-01, 2019 OPPORTUNITIES TO USE COUNTYWIDE POLLING PLACES (Jan. 2, 2019), <https://www.sos.state.tx.us/elections/laws/advisory2019-01.shtml>.

<sup>13</sup> See TEX. SEC’Y OF STATE, DIR. OF ELECTIONS, ELECTION ADVISORY NO. 2019-01, 2019 OPPORTUNITIES TO USE COUNTYWIDE POLLING PLACES (Jan. 2, 2019), <https://www.sos.state.tx.us/elections/laws/advisory2019-01.shtml>.

the placement and number of polling places, it does not require such involvement. Nor does it require a study of the impact of proposed changes on voters of color or provide a means to ensure they are not racially discriminatory. In the absence of Section 5, the onus is on voters and community organizations to hold counties accountable for racial discrimination when closing polling places.

But counties converting to vote centers aren't alone. Counties like Somervell (-80 percent), Loving (-75 percent), Stonewall (-75 percent), and Fisher (-60 percent) – all of which have large Latino populations – cut voting locations even though they did not transition to vote centers. In fact, voters in counties that still hold precinct-style elections have 250 fewer voting locations than they did in 2012.

## Georgia

Counties drastically reduced polling places across Georgia after *Shelby*. According to the *Atlanta Journal-Constitution*, voters across the state now have 214 fewer places to cast ballots; in some rural counties, voters are left with only one polling place. More than half (-113) of these sites have closed since the 2014 midterm election. One of the most troubling facets of Georgia's great poll reduction is its scale: Eighteen counties closed more than half of their polling places, and several closed almost 90 percent.

These sharp declines all occurred when Brian Kemp, current Governor of Georgia, was overseeing elections while serving as secretary of state (between the years of 2010 and 2018). It is worth noting that in 2018, then-Secretary Kemp was managing the Georgia statewide elections while also running for governor. During his tenure, he erected barriers that made it harder for people of color to vote. From 2010 to 2018, he purged more than 1.4 million voters from the state's voter registration rolls, many simply because they did not vote in previous elections.<sup>14</sup>

In the wake of the *Shelby* decision, Kemp's office began to encourage polling place reductions leading up to the 2016 presidential election. In a February 2015 memo to local election officials, Kemp asked, "When should you begin the plan of consolidation or making changes to precincts or polling places?" The answer? "Now. Plan to spend 2015 making all the changes so that you, your county and your voters are ready for the 2016 elections."<sup>15</sup>

The six-page document offers guidance on how to change and consolidate polling places. It does not recommend – or even acknowledge the obligation to consider – the impact of polling place changes on low-income communities and communities of color. The only reference to voting rights is the following sentence, which appears twice in the document: "As a result of the *Shelby vs. Holder (sic)* Supreme Court decision, you are no longer required to submit [precinct or polling place] changes to the Department of Justice for preclearance."<sup>16</sup>

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<sup>14</sup> Alan Judd, Georgia's Strict Laws Lead to Large Purge of Voters, *AJC* (Oct. 27, 2018), <https://www.ajc.com/news/state--regional-govt--politics/voter-purge-begs-question-what-the-matter-withgeorgia/YAFvuk3Bu95kJIMaDiDFqJ/>

<sup>15</sup> Memorandum from Ga. Sec'y of State Elections Div. to Ga. Local Election Officials 2 (Feb. 2015)

<sup>16</sup> Memorandum from Ga. Sec'y of State Elections Div. to Ga. Local Election Officials 3 (Feb. 2015)

Georgia's 2018 gubernatorial election received national attention because Stacey Abrams, a civil rights advocate and former minority leader of the Georgia House of Representatives, became the first African American woman to be nominated by a major party to run for the state's top office. She ran against Kemp, who was overseeing the election at the time and actively working to disenfranchise people of color. Before Election Day, 53,000 voter registration applications were put on hold, 75 percent of which belonged to voters of color.<sup>17</sup>

The systematic effort to reduce polling places continued in advance of the 2018 election. Mike Malone, an elections consultant recommended by Kemp, led an effort to close polling places in 10 counties with large Black populations.<sup>18</sup> Malone told local boards of elections that Kemp had recommended polling place consolidation and sought to close seven of nine polling places in Randolph County, which is 60 percent African American. The plan was ultimately abandoned after an outcry from local and national advocates drew national attention.<sup>19</sup> In addition to five-hour lines, voters in communities of color faced countless obstacles on Election Day, including delayed polling place openings and broken voting machines.<sup>20</sup> In the end, Kemp narrowly won. But advocates have since filed a lawsuit alleging that the election deprived Georgians, especially Georgians of color, of their right to vote.

## Recommendations

In order to ensure a fully functioning democracy, we offer the following recommendations to the subcommittee:

- Pass H.R. 4, the Voting Rights Advancement Act, to restore the key preclearance provision of the VRA that blocked discriminatory voting practices before their implementation.
- Require jurisdictions to provide greater transparency, public notice, and disclosure of voting changes well in advance of the election. These voting changes should also be posted online.
- Require jurisdictions that receive federal funds to conduct voter impact studies, including a racial impact analysis on poll closures and consolidations. These studies should be made in consultation with impacted communities.

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<sup>17</sup> <https://apnews.com/fb011f39af3b40518b572c8cce6e906c>

<sup>18</sup> See Matt Vasilogambros, Polling Places Remain a Target Ahead of November Elections, PEW CHARITABLE TRUSTS (Sep. 4, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/09/04/polling-places-remain-a-target-ahead-of-november-elections>

<sup>19</sup> See RELEASE: NEW AUDIO — Kemp Associate Mike Malone Reveals Brian Kemp Recommended “Consolidation” of Randolph County Polling Places, GA. DEMOCRATS (Aug. 20, 2018), <https://www.georgiademocrat.org/2018/08/randolph-county-polling/>.

<sup>20</sup> Ontaria Woods, We waited almost 5 hours to vote in my Georgia precinct. How convenient for Kemp., WASHINGTON POST, (Nov. 6, 2018) <https://www.washingtonpost.com/outlook/2018/11/07/we-waitedalmost-hours-vote-my-georgia-precinct-how-convenient-kemp/>.

## Conclusion

Since *Shelby*, the national conversation about barriers to voting in the absence of Section 5 has focused on statewide issues like restrictive voter identification laws, racially discriminatory redistricting plans, and efforts to curtail policies that make voting more accessible, like early voting and same-day registration.

Identifying and describing polling place closures paints a fuller picture about how racial discrimination happens without appropriate oversight. We can fill in more details of this picture about how local decisions greatly impact the ability of communities of color to cast ballots for their candidates of choice.

Next to the ballot itself, the most identifiable element of our democracy's voting process is the polling place. It should – and it must – be available to all. When it is not, the barriers to participation can be high. Moving or closing a polling place – particularly without notice or input from communities – disrupts our democracy. It can mean the choice between picking up a child from school or voting. Taking needed overtime or voting. Or taking a bus across town or voting. In a truly inclusive democracy, no one is forced to make these difficult choices.

While there are justifiable reasons for closing polling places, the sheer scale of closures we've identified since *Shelby*, coupled with other, more starkly racially discriminatory actions to deny voting rights to people of color, demand a response. The federal government must scrutinize these closures – especially in states and localities formerly covered by Section 5.

Without a functional democracy in which everyone is included, heard, and represented, we cannot make real progress on other civil and human rights issues like education, justice reform, and economic security – to name just a few. When our democracy is in peril, so, too, are our civil and human rights.

Thank you for your leadership on this critical issue.