

Testimony of

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Hearing on Evidence of Current and Ongoing Voting Discrimination

The Committee on the Judiciary, U.S. House of Representatives

Subcommittee on the Constitution, Civil Rights and Civil Liberties

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Thank you for the opportunity to submit this testimony in support of restoring the Voting Rights Act (“VRA” or “Act”), a law that has been an important guardian of American democracy. The Brennan Center for Justice at NYU School of Law strongly supports this Committee’s important efforts to restore and revitalize the Act. My oral testimony will focus on voter purges. In this written testimony, I also highlight additional problems caused by the Supreme Court’s *Shelby County v. Holder* decision² and the concomitant need for an updated VRA.

The VRA is considered the most effective civil rights legislation in the history of our country.³ In June 2013, however, a 5-4 majority of the Supreme Court struck down a key provision of the VRA.⁴ That provision—Section 4(b)—determined which jurisdictions were required to pre-clear any changes to their voting rules with the federal government prior to implementing them.⁵ In his majority opinion, Chief Justice Roberts claimed that the coverage formula was no longer “grounded in current conditions” because the “country has changed” since the formula was first adopted.⁶ By striking down Section 4, the Court effectively mothballed the pre-clearance regime.

The years that have followed provide ample evidence to justify congressional action. State and local jurisdictions have continued to implement discriminatory voting rules,

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² 570 U.S. 529 (2013) (Ex. A).

³ U.S. Dep’t of Justice, “The Effect of the Voting Rights Act,” last modified June 19, 2009, <https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0> (Ex. A).

⁴ *Shelby Cty.*, 570 U.S. at 556-57.

⁵ *Id.* at 536-40.

⁶ *Id.* at 554, 557.

disenfranchising voters of color in election after election.⁷ The Brennan Center has documented a particularly disturbing increase in the number of people purged from the voter rolls in states formerly subject to preclearance.⁸ These ongoing problems demand a strong, but measured response. We urge the Committee to act expeditiously to restore the VRA to full strength.

I. The VRA and *Shelby County*

The VRA is the engine of voting equality in our nation. Congress has repeatedly recognized its importance and effectiveness, as well the ongoing need for its protections. Since its initial passage in 1965, Congress has reauthorized, updated, and expanded the VRA four times.⁹ As recently as 2006, Congress reauthorized the VRA with overwhelming bipartisan support and the reauthorization was signed into law by President George W. Bush.¹⁰

For almost half a century, the Section 5 pre-clearance provision was central to the VRA's success. That provision required certain jurisdictions with a history of voting discrimination to obtain approval from the federal government for any voting rules changes before putting them into effect. As the Supreme Court acknowledged in *Shelby County*, the VRA "proved immensely successful at redressing racial discrimination and integrating the voting process."¹¹ Indeed, Section 5 deterred discriminatory voting rules changes right up until the Court froze its operation. Between 1998 and 2013, Section 5 blocked 86 discriminatory changes (including 13 in the 18 months before *Shelby County* was handed down). It prompted hundreds more changes to be withdrawn, and it prevented even more of those changes from being offered in the first place because policymakers knew they would not get federal approval.¹²

Shelby County gutted Section 5 by invalidating the "coverage formula" that determined which jurisdictions were subject to pre-clearance. Predictably, a flood of discriminatory voting changes followed.

⁷ Wendy Weiser and Max Feldman, *The State of Voting 2018*, Brennan Center for Justice, 2018, available at https://www.brennancenter.org/sites/default/files/publications/2018_06_StateOfVoting_v5%20%281%29.pdf; Brennan Center for Justice, "New Voting Restrictions in America," last modified July 3, 2019, <https://www.brennancenter.org/new-voting-restrictions-america>; Brennan Center for Justice, "Voting Laws Roundup 2019," last modified July 10, 2019, <https://www.brennancenter.org/analysis/voting-laws-roundup-2019> (Ex. B).

⁸ Kevin Morris, Brennan Center for Justice, "Voter Purge Rates Remain High, Analysis Finds," Aug. 1, 2019, <https://www.brennancenter.org/blog/voter-purge-rates-remain-high-analysis-finds>; Jonathan Brater et al., *Purges: A Growing Threat to the Right to Vote*, Brennan Center for Justice 2018, 3-5, available at https://www.brennancenter.org/sites/default/files/publications/Purges_Growing_Threat_2018.pdf (Ex. C).

⁹ U.S. Dep't of Justice, "History of Federal Voting Rights Laws," last modified July 28, 2017, <https://www.justice.gov/crt/history-federal-voting-rights-laws> (Ex. A).

¹⁰ 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; U.S. House of Representatives, "Final Vote Results for Roll Call 374," July 13, 2006, <http://clerk.house.gov/evs/2006/roll374.xml>; The 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> (Ex. A).

¹¹ *Shelby Cty.*, 570 U.S. at 548.

¹² Tomas Lopez, *Shelby County: One Year Later*, Brennan Center for Justice, June 24, 2014, <https://www.brennancenter.org/analysis/shelby-county-one-year-later> (Ex. D).

II. Direct Burdens on Voting Since *Shelby County*

Over the course of the last decade, we have seen a surge in *direct* burdens on the right to vote (in addition to efforts to dilute minority voting power), which the Brennan Center has documented extensively.¹³ The *Shelby County* decision gave the greenlight to states to continue to implement these voting restrictions.

a. Restrictive Voting Laws Implemented Immediately Following *Shelby County*

The damage caused by *Shelby County* started the same day the Supreme Court handed down its opinion, as states put in place voting rules that either were or likely would have been blocked by the federal government under Section 5.

- Within hours of the Court’s decision, Texas moved forward with implementing what was then the nation’s strictest voter identification law, which had been denied preclearance because of its discriminatory impact.¹⁴ Years and years of expensive and burdensome litigation by many dozen lawyers resulted in the federal courts striking down the law as unlawfully discriminatory on two different occasions.¹⁵ But even after all that expense and time, Texas passed a different photo ID law in 2017.¹⁶
- Mississippi also announced that it would move to implement its voter ID law the same day the Court’s decision was handed down.¹⁷ The state had previously submitted the policy for preclearance but had not obtained approval to implement it.¹⁸
- The day after the *Shelby County* decision, Alabama moved forward with its strict voter ID law. The state passed the law in 2011 and would have been required to obtain preclearance, but state officials never submitted the bill for approval.¹⁹ The law is subject to an ongoing lawsuit in the federal courts.²⁰
- Within two months after *Shelby County*, North Carolina enacted a law that imposed a strict photo ID requirement, cut back on early voting, and reduced the window for voter

¹³ Weiser & Feldman, *supra* note 7; Brennan Center for Justice, “New Voting Restrictions in America,” *supra* note 7; Brennan Center for Justice, “Voting Laws Roundup 2019,” *supra* note 7; Wendy Weiser and Lawrence Norden, *Voting Law Changes in 2012*, Brennan Center for Justice, 2011, *available at* <http://www.brennancenter.org/publication/voting-law-changes-2012> (Ex. B).

¹⁴ Lopez, *supra* note 12.

¹⁵ Brennan Center for Justice, “Texas NAACP v. Steen (consolidated with Veasey v. Abbott),” last modified Sept. 21, 2018, <https://www.brennancenter.org/legal-work/naacp-v-steen>; *Veasey v. Abbott*, 265 F. Supp. 3d 684, 693 (S.D. Tex. 2017), *rev’d in part*, 888 F.3d 792 (5th Cir. 2018); *Veasey v. Abbott*, 249 F. Supp. 3d 868, 875 (S.D. Tex.), *reconsideration denied*, 265 F. Supp. 3d 684 (S.D. Tex. 2017), *rev’d in part*, 888 F.3d 792 (5th Cir. 2018); *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014), *aff’d in part, vacated in part, remanded sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), *on reh’g en banc*, 830 F.3d 216 (5th Cir.), *and aff’d in part, vacated in part, rev’d in part sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (Ex. E).

¹⁶ Brennan Center for Justice, “Texas NAACP v. Steen (consolidated with Veasey v. Abbott),” *supra* note 15.

¹⁷ Press Release, Secretary of State of Mississippi, Statement on Supreme Court Voting Rights Act Opinion, June 25, 2013, <https://www.sos.ms.gov/About/Pages/Press-Release.aspx?pr=422> (Ex. F).

¹⁸ Lopez, *supra* note 12.

¹⁹ *Ibid.*

²⁰ NAACP LDF, “Case: Greater Birmingham Ministries v. Alabama,” last accessed Sept. 3, 2019, <https://www.naacpldf.org/case-issue/greater-birmingham-ministries-v-alabama/> (Ex. G).

registration. Following the decision, a state senator told the press, “now we can go with the full bill,” rather than less a restrictive version.²¹ As in Texas, extensive and protracted litigation resulted in a federal appeals court striking down the law, finding that it targeted African-Americans with “surgical precision.”²²

b. Restrictive Voting Laws Passed in the Years After *Shelby County*

This burst of restrictive voting laws was not contained to the period immediately following *Shelby County*. In the six years since the decision, states have continued to enact burdensome voting laws, in some cases piling restriction on restriction. For example:

- Georgia has repeatedly implemented—and repeatedly been forced to alter—a requirement that voter registration forms match exactly with other state records in order for an individual to be registered.²³ In 2017, the state enacted a “no match, no vote” law, even though only months earlier, the secretary of state agreed in a court settlement to stop a similar procedure that had blocked tens of thousands of registration applications.²⁴ The new law drew a court challenge and a federal district court entered a preliminary injunction prior to the 2018 election, halting its effect with respect to certain impacted voters.²⁵ The state subsequently enacted a law that largely ended the policy.²⁶
- Florida this year passed a law cutting back on the expansive changes made by Amendment 4—a constitutional amendment that restores voting rights to many Floridians with a felony conviction and that was passed overwhelmingly by Florida voters in November 2018. The new law is subject to a series of federal court challenges.²⁷
- North Carolina lawmakers enacted a law in 2018, initially introduced in the middle of the night, cutting back early voting opportunities.²⁸ They also put a constitutional amendment enshrining a photo ID requirement for voting on the 2018 ballot, which subsequently passed, and then rushed to pass implementing legislation prior to a change

²¹ Lopez, *supra* note 12.

²² *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016) (Ex. H).

²³ Jonathan Brater and Rebecca Ayala, “What’s the Matter with Georgia?.” Brennan Center for Justice, Oct. 12, 2018, <https://www.brennancenter.org/blog/whats-matter-georgia> (Ex. I).

²⁴ *Ibid.*; Press Release, Lawyers’ Committee for Civil Rights Under Law, “Voting Advocates Announce a Settlement of ‘Exact Match’ Lawsuit in Georgia,” Feb. 10, 2017, <https://lawyerscommittee.org/voting-advocates-announce-settlement-exact-match-lawsuit-georgia/> (Ex. J).

²⁵ *Georgia Coal. for People’s Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (Ex. J).

²⁶ Press Release, Lawyers’ Committee for Civil Rights Under Law, “Georgia Largely Abandons Its Broken ‘Exact Match’ Voter Registration Process, Apr. 5, 2019, <https://lawyerscommittee.org/georgia-largely-abandons-its-broken-exact-match-voter-registration-process/> (Ex. J).

²⁷ Brennan Center for Justice, “*Gruver v. Barton* (consolidated with *Jones v. DeSantis*),” last modified Aug. 3, 2019, <https://www.brennancenter.org/legal-work/gruver-v-barton>; Complaint, *Gruver v. Barton*, No. 1:19-cv-00121 (N.D. Fla. June 28, 2019) (Ex. K). The Brennan Center represents individual returning citizens, the Florida NAACP, and the League of Women Voters of Florida, along with co-counsel at the ACLU, the ACLU of Florida, and the NAACP Legal Defense and Education Fund in one of the cases. That case has been consolidated with others.

²⁸ Max Feldman, “A Familiar Scene in North Carolina as State Lawmakers Introduce New Voting Restrictions,” Brennan Center for Justice, June 15, 2018, <https://www.brennancenter.org/blog/familiar-scene-in-north-carolina-as-state-lawmakers-introduce-new-voting-restrictions> (Ex. H).

in the partisan composition of the state legislature.²⁹ The voter ID law has drawn a series of state and federal court challenges.³⁰

- Texas, as described above, implemented its strict photo ID law in 2013. After it was repeatedly struck down, the state enacted a new law in 2017. While an improvement over the law that was implemented in 2013, the new law is still harsher than the temporary, court-ordered ID requirements that were in place for the 2016 election.³¹ In addition, this year, the state enacted a new law restricting the use of mobile early voting units.³²
- Virginia enacted a new photo ID law in 2013, which went into effect in 2014. The state also enacted new limits on third-party voter registration in 2013.³³
- Arizona enacted a law in 2016 limiting collection of mail-in ballots and making it a felony to knowingly collect and turn in another voter's completed ballot, even with that voter's permission (with some exceptions).³⁴ This year, the state imposed new restrictions on access to emergency early and absentee voting and extended voter ID requirements to early voting.³⁵

These are only some of the restrictive voting laws that states have enacted since *Shelby County*. Furthermore, many forms of voter suppression are implemented administratively or at the sub-state level. Our research regarding last year's election confirmed that state and local officials continue to develop new tactics to keep people from voting.³⁶

c. Voter Purges After *Shelby County*

One significant, specific area of concern in the wake of *Shelby County* is voter purges—the sometimes-flawed process by which election officials attempt to remove from voter registration lists the names of those ineligible to vote.³⁷ When they are executed properly, purges

²⁹ Lynn Bonner, “NC Senate overrides Cooper’s voter ID veto,” *The News & Observer*, Dec. 18, 2018, <https://www.newsobserver.com/news/politics-government/article223216960.html> (Ex. H).

³⁰ Max Feldman and Peter Dunphy, “The State of Voting Rights Litigation (July 2019),” Brennan Center for Justice, July 31, 2019, <https://www.brennancenter.org/analysis/state-voting-rights-litigation-july-2019> (Ex. L).

³¹ Brennan Center for Justice, “Texas NAACP v. Steen (consolidated with Veasey v. Abbott),” *supra* note 15.

³² Brennan Center for Justice, “Voting Laws Roundup 2019,” *supra* note 7.

³³ Brennan Center for Justice, “New Voting Restrictions in America,” *supra* note 7; Brennan Center for Justice, “Voting Laws Roundup 2013,” last modified Dec. 19, 2013, <https://www.brennancenter.org/analysis/election-2013-voting-laws-roundup> (Ex. B).

³⁴ Brennan Center for Justice, “New Voting Restrictions in America,” *supra* note 7; Brennan Center for Justice, “Voting Laws Roundup 2016,” last modified Apr. 18, 2016, <https://www.brennancenter.org/analysis/voting-laws-roundup-2016> (Ex. B).

³⁵ Brennan Center for Justice, “Voting Laws Roundup 2019,” *supra* note 7; 2019 Ariz. Legis. Serv. Ch. 15 (S.B. 1072); 2019 Ariz. Legis. Serv. Ch. 107 (S.B. 1090) (Ex. M). South Carolina also enacted a voter ID law in 2011. The law obtained pre-clearance after state officials interpreted it to be substantially less restrictive during the course of the pre-clearance litigation. See the materials collected as Exhibit U.

³⁶ Zachary Roth and Wendy Weiser, Brennan Center for Justice, “This Is the Worst Voter Suppression We’ve Seen in the Modern Era,” last modified Nov. 2, 2018, <http://www.brennancenter.org/blog/worst-voter-suppression-weve-seen-modern-era>; Rebecca Ayala, Brennan Center for Justice, “Voting Problems 2018,” last modified Nov. 5, 2018, <https://www.brennancenter.org/blog/voting-problems-2018> (Ex. B).

³⁷ See Myrna Pérez, *Voter Purges*, Brennan Center for Justice 2008 1-3, <https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf> (explaining voter purge process) (Ex. C).

ensure that the voter rolls are accurate and up-to-date. When they are executed improperly, however, purges disenfranchise legitimate voters—often too close to an election to correct the error—and cause confusion and delay at the polls.

Prior to the *Shelby County* decision, covered jurisdictions were required to pre-clear changes to their purge practices before implementing them.³⁸ This requirement protected voters from ill-conceived purge practices. That protection is now gone. And voter purges are on the rise.

Between 2014 and 2016, states removed almost 16 million voters from the rolls—nearly 4 million more than they removed between 2006 and 2008.³⁹ This growth in the number of removed voters represented an increase of 33 percent, which far outstrips growth in both total registered voters (18 percent) and total population (six percent). Brennan Center research suggests that *Shelby County* has had a profound and negative impact. Prior to the *Shelby County* decision, jurisdictions that had been subject to pre-clearance had purge rates in line with the rest of the country. In the election cycles following the decision—those ending in 2014, 2016, and 2018—those same jurisdictions that were previously subject to preclearance had purge rates that were significantly higher than other jurisdictions.⁴⁰ We calculated that 2 million fewer voters would have been purged between 2012 and 2016 if previously covered jurisdictions had purged at the same rate as other jurisdictions.⁴¹

Improper purges, and attempts at improper purges, litter our recent history. These purges can have severe consequences for voters. For example:

- Earlier this year, a federal court stopped Texas’s attempt to purge approximately 95,000 purported non-citizens from the voter rolls. Texas relied on stale data and weak comparisons between databases to develop its purge plan. As a result of this attempted purge, Texas’s Secretary of State resigned.⁴²
- In the leadup to the April 2016 primary election, New York election officials improperly removed more than 200,000 names from the voter rolls, giving little notice to those who had been purged.⁴³ During the September 2018 primary, some voters reported that they continued to encounter significant problems at the polls as a result of the purge.⁴⁴

³⁸ See, e.g., *Curtis v. Smith*, 121 F. Supp. 2d 1054, 1060 (E.D. Tex. 2000); Letter from John Tanner, Chief, Voting Section, Civil Rights Division, U.S. Dep’t of Justice to Charlie Crist, Attorney General of Florida (Sept. 6, 2005); Letter from John R. Dunne, Asst. Att’y Gen., Civil Rights Division, U.S. Dep’t of Justice to Debbie Barnes, Chairperson, Dallas County (Alabama) Board of Registrars (June 22, 1990) (interposing Section 5 objection to implementation of new purge practices) (Ex. C).

³⁹ Brater et al., *supra* note 8.

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 4; see also Kevin Morris and Myrna Pérez, “Florida, Georgia, North Carolina Still Purging Voters at High Rates,” Brennan Center for Justice, Oct. 1, 2018, <https://www.brennancenter.org/blog/florida-georgia-north-carolina-still-purging-voters-high-rates> (Ex. C).

⁴² See the materials collected as Exhibit O.

⁴³ Brater et al., *supra* note 8, at 5-6.

⁴⁴ Ayala, *supra* note 38. See also the materials collected as Exhibit P.

- In 2016, the Arkansas Secretary of State sent the state’s county clerks more than 7,700 names to be removed from the rolls due to felony convictions. The list, however, was highly inaccurate. It included some people who had never been convicted of a felony and others with past convictions whose voting rights had been restored.⁴⁵
- In 2013, in Virginia, nearly 39,000 voters were removed from the rolls after the state relied on a faulty database to delete voters who had allegedly moved out-of-state. In some counties, error rates ran as high as 17 percent.⁴⁶
- The same year, Florida officials sought to purge thousands of purported non-citizens people from the rolls, but ultimately suspended the purge. When the state tried the same thing in 2012, its purge list was reduced from 180,000 supposed non-citizens to approximately 2,700. Notably, that purge list contained a disproportionate number of Latino surnames.⁴⁷

Purges tend to be problematic for at least two reasons. First, they happen behind closed doors. As a result, voters often only learn that they have been purged when they show up to the polls. Second, states sometimes rely on faulty data and fail to conduct sufficient research before concluding that a voter is ineligible to vote. Furthermore, improper matching of data between databases in order to identify voters for purging can lead to discriminatory results.⁴⁸ The last election provided a clear example of discriminatory outcomes resulting from improper data matching, albeit outside of the purge context. In the leadup to the 2018 election, approximately 80 percent of Georgia voters not registered because of the state’s “no match, no vote” law were people of color.⁴⁹

III. Congress Should Act to Renew and Revitalize the VRA

It is undeniable that our nation has suffered from a long, sorry, and sometimes violent history of racialized voter suppression. The VRA was enacted to confront this suppression head on. Despite the VRA’s substantial success over the past five decades, racial discrimination still infects our election system, as the preceding sections make clear. While the *Shelby County* Court was correct that the “country has changed,” it has not changed enough to warrant halting preclearance.

Federal courts have repeatedly found that new laws passed after *Shelby County* made it harder for minorities to vote, some intentionally so.⁵⁰ These conclusions have been confirmed by academic studies finding that a state’s racial makeup is related to its adoption of voting

⁴⁵ Brater et al., *supra* note 8, at 5. See also the materials collected as Exhibit Q.

⁴⁶ Brater et al., *supra* note 8, at 8. See also the materials collected as Exhibit R.

⁴⁷ Lopez, *supra* note 7. See also the materials collected as Exhibit S.

⁴⁸ Brater et al., *supra* note 8, at 7 (explaining that voters with common names are more likely to match with other individuals in database comparisons and that “African-American, Asian-American, and Latino voters are much more likely than Caucasians to have one of the most common 100 last names in the United States”).

⁴⁹ Amended Complaint at 5, *Georgia Coal. for People’s Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (No. 1:18-cv-04727); Answer at 5, *Georgia Coal.*, 347 F. Supp. 3d at 1251 (No. 1:18-cv-04727) (Ex. J).

⁵⁰ See, e.g., *McCrary*, 831 F.3d at 214; *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 904-05 (W.D. Wis. 2016), *order enforced*, 351 F. Supp. 3d 1160 (W.D. Wis. 2019) (Ex. T); *Veasey*, 71 F. Supp. 3d at 633.

restrictions.⁵¹ At times they have been confirmed by the public comments of these restrictions' proponents themselves.⁵²

To be clear, voting rights advocates are not going to stand on the sidelines when would-be suppressors act, notwithstanding a weakened VRA. Section 2 of the VRA, which allows private parties and the Justice Department to challenge discriminatory voting practices in court is being readily leaned on to fight racial discrimination in the post-*Shelby* world. In some circumstances, these Section 2 lawsuits have ultimately been successful. But they are not a substitute for pre-clearance. Litigating section 2 cases is far more lengthy and expensive than being involved in the pre-clearance process, and these cases often do not yield results for impacted voters until after an election is over.⁵³

Our case against Texas's 2011 voter ID law illustrates this point.⁵⁴ After the state passed the law, a three-judge federal court prevented the state from implementing it, refusing to preclear the law under Section 5. That decision, however, was vacated after *Shelby County*, leading to years of litigation under Section 2. Even though every court that considered the law found it to be discriminatory (and a federal district court found that it was intentionally discriminatory), the law remained in effect until a temporary, court-ordered remedy was put in place for the November 2016 election. In the meantime, Texans were forced to vote in 3 federal and 4 statewide elections and numerous local elections under discriminatory voting rules. Moreover, litigating the case was extremely expensive. According to news reports, the state spent more than \$3.5 million defending the law through 2016—before the last round of appeals in the case concluded.⁵⁵ Plaintiffs in the case have filed attorneys' fees petitions totaling millions of dollars more.

The Texas case is consistent with other voting discrimination cases since *Shelby County*. For example, a challenge to Alabama's voter ID law was filed in December 15, 2015 and is still ongoing.⁵⁶

Furthermore, courts have permitted potentially discriminatory laws to govern our elections, under the Supreme Court's *Purcell* doctrine, supposedly to avoid disrupting election administration.⁵⁷ Ironically, this approach may *compound* confusion at the polls, by constantly shifting the ground rules that govern elections in a state. Preclearance pretermits this disruption by forcing covered jurisdictions to establish that new voting rules are non-discriminatory prior to implementing them.

In short, the *Shelby County* Court has left us with a system that is both ineffective and inefficient. Congress can and should fix this problem. The Supreme Court has repeatedly

⁵¹ See, e.g., Bentele & O'Brien, *Jim Crow 2.0?: Why States Consider and Adopt Restrictive Voter Access Policies*, 11 *Perspective on Politics* 1088 (Dec. 2013) (Ex. B).

⁵² Brennan Center for Justice, "When Politicians Tell the Truth on Voting Restrictions," Aug. 10, 2016, <https://www.brennancenter.org/analysis/when-politicians-tell-truth-voting-restrictions> (Ex. B).

⁵³ Lopez, *supra* note 7.

⁵⁴ The Brennan Center represented the Texas State Conference of the NAACP and the Mexican American Legislative Caucus of the Texas House of Representatives, along with the Lawyers' Committee for Civil Rights Under Law and other co-counsel. The case was consolidated with several others.

⁵⁵ Jim Malewitz and Lindsay Carbonell, *Texas' Voter ID Defense Has Cost \$3.5 Million*, *Texas Tribune*, June 17, 2016, <https://www.texastribune.org/2016/06/17/texas-tab-voter-id-lawsuits-more-35-million/> (Ex. E)

⁵⁶ See NAACP LDF, "Case: Greater Birmingham Ministries v. Alabama," *supra* note 20.

⁵⁷ See, e.g., *Veasey v. Perry*, 769 F.3d 890, 893-96 (5th Cir. 2014) (issuing stay and collecting cases) (Ex. E).

affirmed congressional power to enact a coverage formula for Section 5 pre-clearance, including in *Shelby County*. We urge Congress to act expeditiously to renew and revitalize the VRA.