



NATIONAL
COMMISSION ON
VOTING RIGHTS



PROTECTING MINORITY VOTERS



..... 2014

OUR WORK IS NOT DONE

A REPORT BY THE
NATIONAL COMMISSION
ON VOTING RIGHTS





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The National Commission on Voting Rights is proud to have the following distinguished leaders serving as National Commissioners: Social justice leader, Dolores Huerta; Law Professor and Director of the Indian Law Clinic at the Sandra Day O' Connor School of Law, ASU, Patty Ferguson-Bohnee; Civil Rights Leader and NAACP Vice Chair, Leon Russell; Youth Engagement Leader, Biko Baker; and former Assistant Attorney General for Civil Rights, John Dunne.

Biko Baker

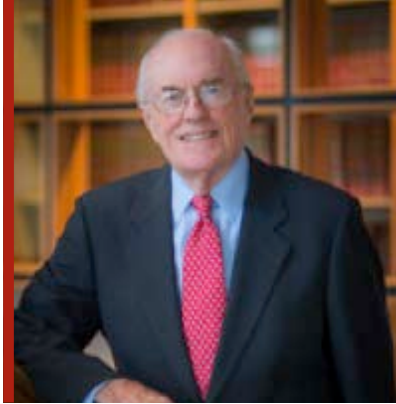


Executive Director of League of Young Voters and National Leader in Youth Civil Engagement Programs

Rob "Biko" Baker is the Executive Director of the League of Young Voters, and a nationally-recognized youth leader. Based in Milwaukee, Mr. Baker is a pioneer in running city-level, data-driven voter turnout campaigns that dramatically increase the voter participation of young urban citizens. A leading voice on field campaigns targeting young African American voters,

Baker serves on CIRCLE's research advisory board and is a board member of the New Organizing Institute. He is also a well known communicator around elections, as well as cultural and political issues including gun violence and voting rights. In addition to being a former contributor to The Source, he has appeared on C-SPAN, Fox News and CNN. A popular and powerful speaker at conferences and events, Mr. Baker has interviewed luminaries Cornel West, Russell Simmons, and Howard Dean, and has been on panels with many of the nation's strongest progressive voices. Baker holds a Ph.D. in History from UCLA.

John Dunne



Former Assistant Attorney General for Civil Rights under President George H. W. Bush

Prior to joining Whiteman Osterman & Hanna as counsel to the Firm, John Dunne had served in a variety of federal, state and local government positions for thirty years. From 1990 to 1993 he was the Assistant Attorney General for Civil Rights at the U.S. Department of Justice. From 1966 to 1989 he was a member of the New York State Senate. Throughout his local and state service, he actively practiced law on Long Island, as a

partner in the national law firm of Rivkin, Radler, Dunne & Bayh.

From 1990 until 1993 Dunne, as Assistant Attorney General, headed up the enforcement of all federal civil rights laws. As part of his duties, he argued cases in federal appeals courts and in the U.S. Supreme Court. He was awarded both the Edmund Randolph and the John Marshal awards for distinguished service.

During 24 years as a state senator, Dunne served at various times as Deputy Majority Leader and chair of the judiciary, environmental protection, insurance and prisons committees.

John Dunne has authored a number of articles for various law school journals including Hofstra, Fordham and St. Louis, the op-ed pages of The New York Times, The Washington Post, U.S.A. Today and the New York Law Journal, Business Insurance and New York Bar Journal.

Patty Ferguson-Bohnee



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Patty Ferguson-Bohnee has substantial experience in Indian law, election law and policy matters, voting rights, and status clarification of tribes. She has testified before the United States Senate Committee on Indian Affairs and the Louisiana State Legislature regard-

ing tribal recognition, and has successfully assisted four Louisiana tribes in obtaining state

recognition. Professor Ferguson-Bohnee has represented tribal clients in administrative, state, federal, and tribal courts, as well as before state and local governing bodies and proposed revisions to the Real Estate Disclosure Reports to include tribal provisions. She has assisted in complex voting rights litigation on behalf of tribes, and she has drafted state legislative and congressional testimony on behalf of tribes with respect to voting rights' issues.

Professor Ferguson-Bohnee clerked for Judge Betty Binns Fletcher of the 9th U.S. Circuit Court of Appeals and was an associate in the Indian Law and Tribal Relations Practice Group at Sacks Tierney P.A. in Phoenix. As a Fulbright Scholar to France, she researched French colonial relations with Louisiana Indians in the 17th and 18th centuries. Professor Ferguson-Bohnee, a member of the Pointe-au-Chien Indian tribe, serves as the Native Vote Election Protection Coordinator for the State of Arizona.

Dolores Huerta



Founder and President of the Dolores Huerta Foundation and Social Justice Activist

As founder and president of the Dolores Huerta Foundation, Dolores Huerta travels across the country engaging in campaigns and influencing legislation that supports equality and defends civil rights. She often speaks to students and organizations about issues of social justice and public policy. The Dolores Huerta Foundation is a not-for-profit community organization that organizes at the grassroots level, engaging and developing natural leaders. The Dolores Huerta Foundation creates leadership opportunities for community organizing, leadership development, civic engagement, and policy advocacy in the following priority areas: health and environment, education and youth development, and economic development.

Ms. Huerta is a life-long labor leader and civil rights activist who co-founded the National Farmworkers Association, which later became the United Farmworkers. She has received numerous awards for her community service and advocacy for workers', immigrants', and women's rights, including the Eugene V. Debs Foundation Outstanding American Award, the United States Presidential Eleanor Roosevelt Award for Human Rights, and the Presidential Medal of Freedom presented to her by President Obama in 2012.

Leon Russell



NAACP Vice Chair of the National Board of Directors

Leon W. Russell retired in January of 2012, after serving as the Director of the Office of Human Rights for Pinellas County Government, Clearwater, Florida. He had held this post since January of 1977. In this position Mr. Russell was responsible for implementing the county's Affirmative Action and Human Rights Ordinances. In September of 2007, Mr. Russell was elected President of the International Association of Official Human Rights

Agencies during its annual meeting in Atlanta, Georgia. The IAOHRA Membership is agency based and consists of statutory human and civil rights agencies from throughout the United States and Canada as well as representation from several other nations.

Mr. Russell served as the President of the Florida State Conference of Branches of the NAACP from January 1996 until January 2000, after serving for fifteen years as the First Vice President. He has served as a member of the National Board of Directors of the NAACP since 1990. He has served that board as the assistant secretary and currently serves as Vice Chairman of the National Board. He is a member of the International City Management Association; a member of the National Forum for Black Public Administrators; member of the Board of Directors of the Children's Campaign of Florida; past Board Member of the Pinellas Opportunity Council, past President and Board Member of the National Association of Human Rights Workers; member of the Blueprint Commission on Juvenile Justice with responsibility for recommending reforms to improve the juvenile justice system in the state of Florida.

Mr. Russell also served as the Chairman of Floridians Representing Equity and Equality. FREE was established as a statewide coalition to oppose the Florida Civil Rights Initiative, an anti-Affirmative Action proposal authored by Ward Connerly. Ultimately, the initiative failed to get on the Florida Ballot, because of the strong legal challenge spearheaded by FREE.

Letter from the National Commissioners

We accepted the invitation to serve as National Commissioners on the National Commission on Voting Rights because of our long-standing commitment to the preservation of equal access and rights for all Americans, regardless of race or ethnic background. And we believe that one of the most fundamental of these rights is voting. The National Commission on Voting Rights was convened last year in the aftermath of the Supreme Court's decision to gut a vital protection of the Voting Rights Act, concluding that such protections were no longer needed. Those of us who had been working for years defending voting rights in minority communities strongly disagreed. Soon afterward, the Commission set out with two charges: first, to compile a comprehensive record of voting laws, practices and cases impacting minority voting rights and election administration issues; and second, to issue two reports based on our findings.

With the support of a broad-based coalition of national, state and community-based organizations, the Commission conducted twenty-five state and regional hearings across the country, where we heard from hundreds of voters, grassroots activists, state and local advocates, and experts on the wide range of issues impacting voters today. The Commission also examined state voting laws as well as recent legal cases brought on behalf of minority voters. The amassed record is clear—although we have made significant strides in expanding voting opportunities for all voters, voting discrimination is not a relic of the past but a very real problem that continues to persist in America.

Far too many of our constituencies are kept from the franchise. Far too many localities lack district elections that make it easier for minorities to elect their candidate of choice or disenfranchise incarcerated or formerly incarcerated individuals. Restrictive voter ID laws that make it harder for students and the elderly to vote, demands for proof of citizenship before allowing voters to cast a ballot, and continued instances of scare tactics and intimidation are just some additional examples of the practices that continue to plague our nation.

Protecting Minority Rights: Our Work is not Done, is the first of our national reports. We hope that this report will provide valuable information to voters in communities across the country. We also hope that it will give further evidence for why our nation should continue to provide the necessary protections to all voters—including African American, Latino, Asian American, American Indian and Alaskan Natives—so that we may all cast our ballots as freely as we believe was intended in our democracy.

Signed,

Dolores Huerta, John Dunne, Patty Ferguson Bohnee, Leon Russell, Biko Baker

“The **right** to
vote is precious,
almost **sacred.**”

U.S. Representative John Lewis
Georgia's 5th Congressional District

EXECUTIVE SUMMARY

There are many reasons to celebrate the 49th anniversary of the Voting Rights Act of 1965 (VRA). We have made enormous progress since the turbulent and momentous years that preceded the enactment of the VRA. The VRA ended the virtual total exclusion of minority voter participation in areas of the country with the worst voting discrimination. It has also removed from use, or blocked implementation, of thousands of discriminatory voting practices. This law and others, as well as social and cultural advances, have resulted in increased minority registration and turnout and the election of thousands of minority elected officials at the federal, state, and local levels, including an African-American President.

But to congratulate ourselves for ending racial voting discrimination would be both premature and unwise. Most minority elected officials come from majority-minority single-member districts in which minority citizens have a fair opportunity to elect candidates of their choice despite lack of support from white voters; minority candidates elected from outside such districts remain the rare exception. Courts are hearing new legal challenges and are continuing to make findings of voting discrimination. A number of states have enacted laws that seem intended only to restrict access to the franchise, especially in ways that impact minority voters more than white. Participation for most minority groups still lags far behind that of white voters (for purposes of this report “white” means “white, non-Hispanic”).

Shortcomings in election administration and burdensome voting procedures also remain widespread. The symptoms of these problems took the national stage in the 2000 election, and prompted the enactment of Help America Vote Act and the creation of the U.S. Election Assistance Commission (EAC). But the 2012 election—with embarrassing election administration failures in some jurisdictions, hours-long lines of voters, protracted litigation and the EAC sidelined by partisan infighting—showed that the cure continues to elude us.

Given this landscape, many Americans were shocked and perplexed in June 2013 when the U.S. Supreme Court held, in *Shelby County v. Holder*, that the 2006 reauthorization of key provisions of the Voting Rights Act was unconstitutional. This decision effectively killed Section 5 of the VRA—surely one of the most effective antidiscrimination laws ever enacted. Section 5 provided for federal screening of all new voting practices in nine states and in parts of six others, where there had been a history of discrimination. After going into effect, Section 5 blocked thousands of racially discriminatory voting changes from being implemented, and deterred countless others. It had been reauthorized by a unanimous vote in the Senate and by a virtually unanimous vote in the House in 2006. Why did the Supreme Court do this?

In *Shelby County*, Chief Justice Roberts wrote that “voting discrimination still exists; no one doubts that.” However, that important concession was lost in the Court’s focus on progress since 1965 in minority participation and election to public office and in the Court’s use of a

legal analysis that avoided the extensive record that Congress compiled of voting discrimination in the Section 5 covered jurisdictions between 1982 and 2005.

Whether you agree with the Court or not, the *Shelby County v. Holder* decision demands a nationwide assessment of recent racial voting discrimination. We need to know how much voting discrimination is still occurring, who it is affecting and where it is occurring.

This report—issued by the **National Commission on Voting Rights**—is intended to help answer those questions. We conclude that:

- *Voting discrimination is a frequent and ongoing problem in the United States.* There were 332 successful voting rights lawsuits and denials of Section 5 preclearance from 1995 through 2013 and another ten non-litigation settlements.
- *Some areas of the country have far worse records of voting discrimination than others.* Texas stands out as having a remarkably high level of documented voting discrimination, including multiple state-level violations. Georgia, Louisiana, Mississippi and South Carolina each had far higher levels of problems than average. Overall, the Section 4(b) jurisdictions with approximately 25 percent of the nation's population had more than 70 percent of the successful Section 2 cases.
- *Voting discrimination takes a variety of forms.* Discriminatory redistricting plans and at-large elections continue to prompt the most successful lawsuits. However, there were also 48 successful lawsuits and ten non-litigation settlements relating to language translation and assistance.
- *Voting discrimination has significantly affected African Americans, Latinos, Native Americans, and Asian Americans.* Each of these minority groups suffered extensive official voting discrimination in the past. Since 1995, successful lawsuits have been brought on behalf of each group to remedy voting discrimination and to provide equal electoral opportunities.
- *New problems with voting discrimination are arising even as the old ones persist.* Courts continue to find that at-large election systems and gerrymandered redistricting plans dilute minority voting strength. At the same time, new laws have been enacted, making it more difficult to register and cast a ballot, which is especially problematic for minority citizens.

THE NATIONAL COMMISSION ON VOTING RIGHTS

The Lawyers' Committee for Civil Rights Under Law along with more than a dozen partners organized the nonpartisan National Commission on Voting Rights (NCVR), which conducted 25 regional and state-based hearings between June 2013 and May 2014. The Commission is a successor to the National Commission on the Voting Rights Act, which released an extensive report in 2006 on the record of voting discrimination after 1982.

The NCVR was overseen by a distinguished panel of national commissioners and additional panels of guest commissioners at the state and regional hearings covering 48 states. Testimony and research from Hawaii and Alaska were submitted separately. 494 witnesses testified at the hearings.

The NCVR set out to learn about both racial voting discrimination and election administration issues in its hearings. A report devoted to election administration barriers and reform efforts will be issued at a later date.

This Report, *Protecting Minority Voters: Our Work Is Not Done*, documents the national record of voting discrimination since 1995. The Report examines the nationwide incidence of successful litigation under Section 2 of the VRA, objections under Section 5, and successful language minority litigation, together with testimony, demographic analysis, and in-depth discussions of important issues. The commission testimony was especially helpful in illuminating those areas where litigation is ongoing and highlighting those areas where litigation under current laws has been unable to resolve grave problems.

OVERVIEW OF CHAPTERS

This Report provides a look in the mirror as our country nears the half-century mark after passage of the Voting Rights Act. There is no doubt that the VRA, including the Section 5 preclearance provision, has been extraordinarily effective in combating voting discrimination. Nor is there any doubt that certain state and local jurisdictions continue to enact discriminatory voting laws.

Thus, the loss of federal review of voting changes in certain states makes it essential to closely examine the record of recent voting discrimination. The voting rights of minority citizens are too fundamental, and have been denied too often in the past, to accept the assumption that the Supreme Court merely did away with an unnecessary vestige of a bygone era. Section 5 in fact was targeting the states with the worst records of recent, repeated voting discrimination when it was neutralized by the *Shelby County* decision.

Chapter 1 provides the background on the VRA; a discussion relevant to the debate of whether some of its provisions are still necessary.

The VRA was Congress' response to persistent voting discrimination. Congress acted under its powers to enforce the constitutional protections under the Fourteenth and Fifteenth Amendments for citizens to vote free from racial discrimination. When the VRA was originally enacted, the predominant focus was on eliminating discrimination against African Americans, but beginning in 1975 and based on extensive testimony, Congress added voting protections for language minorities—Latinos, Native Americans, and Asian Americans.

There are two primary forms of discrimination—limitations on ballot access and vote dilution—and the Act addresses both at least in part. The category of limitations on ballot access consists of laws and practices that disproportionately prevent or make it more difficult for minorities to cast a ballot, such as literacy tests. Minority vote dilution consists of electoral systems—such as a redistricting plan that divides a minority community or the use at-large (jurisdiction-wide) elections—that, combined with white voters voting as a bloc and other factors, prevents a sizable minority community from electing its candidates of choice.

The Act, prior to its major modification in *Shelby County*, consisted of a system of permanent and temporary provisions. Chief among the permanent provisions is Section 2, which enables the federal government and private parties to sue to stop a voting practice or procedure that was enacted or has been maintained with a racially discriminatory intent or result. Section 2 cases are notably complex and resource-intensive.

The primary other types of provisions—minority language, preclearance, and observer provisions—have all been temporary in nature because they place affirmative burdens on jurisdictions where voters need the particular protections. Congress most recently reauthorized these temporary provisions in 2006. Section 203 is the primary minority language provision. Jurisdictions are covered where five percent or (in the case of a political subdivision), ten thousand of their voting age citizens have limited English proficiency and are members of a single language minority group and where the English illiteracy rate of those citizens is greater than the national illiteracy rate. Where a Native American reservation meets this five percent threshold and the illiteracy standard is also satisfied, any jurisdiction containing part or all of that reservation is also covered by Section 203. Covered political subdivision must provide citizens who need it with language assistance in all stages of the electoral process.

Section 5 preclearance required covered jurisdictions to demonstrate to the Department of Justice (DOJ) or a federal district court in Washington D.C. that a proposed change in voting did not have a discriminatory purpose or effect before the jurisdiction could implement the change. The observer provision under Section 8 enabled the U.S. Attorney General to send

federal observers to monitor polling places and the vote-counting process in a covered jurisdiction when DOJ believed it was necessary to prevent discrimination. The determination of which jurisdictions were subject to Section 5 and Section 8 was based on the formula contained in Section 4(b) of the Act. The formula—which was based on a jurisdiction’s low voter participation in the 1964, 1968, or 1972 Presidential elections and the use of a discriminatory test or device in the same election—had not changed since 1975 because Congress had found in subsequent reauthorizations in 1982 and 2006 that these jurisdictions continued to have significant records of discrimination. The covered states under the Section 4(b) formula were primarily in the South and Southwest, as well as Alaska.

In the challenge before the Supreme Court, Shelby County argued that Congress acted beyond its constitutional powers when it reauthorized Section 5 and did not update the formula determining which states and jurisdictions were subject to Section 5. The Supreme Court ruled that the existing formula was unconstitutional. Without a formula, Section 5 cannot be used. Unless and until Congress acts in response to *Shelby County*, Section 5 is essentially dead.

Chapter 2 presents a national analysis from 1995 to the present of successful enforcement of the Voting Rights Act (Section 2 litigation, Section 5 litigation and preclearance denials, and litigation against English-only elections.)

The findings include:

- Racial voting discrimination remains an ongoing problem, with about 332 successful Voting Rights Act lawsuits or denials of Section 5 preclearance since 1995.
- This includes at least 171 successful Section 2 lawsuits (not including minority language cases), 113 Section 5 preclearance denials, and 48 successful lawsuits raising language assistance claims. There were also ten pre-litigation settlements regarding minority language cases.
- The voting discrimination documented in Section 2 lawsuits is not evenly dispersed around the country. It is geographically concentrated, most heavily in Texas, but also in Florida, Georgia, Louisiana, Mississippi, and South Dakota. Each of these states was fully or partially covered under Section 4(b) of the VRA when the Supreme Court decided in *Shelby County v. Holder* that Section 4(b) was too outdated to target present-day discrimination.
- Louisiana led the way in Section 5 preclearance denials with Texas, South Carolina, Mississippi, and Georgia not far behind. These numbers, combined with the Section 2 data,

made these five states are the worst performers when it comes to discrimination cases outside of those involving language assistance.

- New York, Texas, and California were the states with the most successful minority language assistance cases or pre-litigation settlements. Each had at least ten.

Chapter 3 describes what has been lost as a result of the *Shelby County* decision.

First, Section 5 prevented discriminatory voting changes from being put into use before they underwent federal review. More than 3,000 voting changes in over 1,000 separate objection letters and court judgments were denied Section 5 preclearance between 1965 and 2013.

Second, Section 5 deterred the enactment of discriminatory laws. For example, it was not until after the *Shelby County* decision that the North Carolina legislature amended a photo ID bill to add numerous other voting restrictions; that law is the subject of three pending federal lawsuits.

Third, the Section 5 process promoted transparency because DOJ and minority citizens or organizations (after DOJ contacted them) would know about voting changes before they would be implemented.

Fourth, jurisdictions are now implementing voting changes that had been blocked by DOJ or federal courts under Section 5.

Fifth, Section 2 is not an adequate substitute for Section 5 for several reasons. Under Section 5 the review of a voting change occurred before the change was implemented, whereas under Section 2, the change gets implemented and is in effect while litigation is ongoing unless and until a court stops it—and this takes years except in the simplest cases. In addition, under Section 2, the minority plaintiffs or DOJ have the burden of proof; under Section 5, the jurisdiction had the burden of proof. Moreover, Section 2 cases tend to be complex, time-consuming, and expensive as compared to the 60-day administrative review process under Section 5.

Sixth, DOJ appears to have interpreted *Shelby County* to also prevent it from sending observers to the jurisdictions covered previously for federal review.

Chapter 4 discusses the different historical contexts and geographic areas in which African Americans, Latinos, Native Americans, and Asian Americans have been affected by voting discrimination.

African-American Citizens

African Americans were subjected to pervasive and longstanding voting discrimination preventing them from voting until Congress passed the VRA in 1965. After the passage of the VRA, there have been repeated efforts to undo gains in minority voter registration and turnout, particularly in the form of election methods that systematically diluted and negated African American voting strength.

Today African Americans comprise approximately 14 percent of the United States' population with 55 percent of the country's African-American population living in the South. This has particular meaning in light of the *Shelby County* decision. National registration and turnout rates for whites and African Americans have been similar in the last two presidential elections (when an African-American candidate was running for President from a major party for the first time) but African-American participation remains lower for midterm elections. Though there are a significant number of African-American elected officials, this is largely a function of the number of majority-minority districts that exist because of both VRA protections and residential segregation.

African Americans are particularly hard-hit by the *Shelby County* decision. The overwhelming majority of voting changes stopped by Section 5 between 1995 and 2014 (101 of 113, or approximately 90 percent) involved a discriminatory purpose or effect with respect to African-American voters.

In addition, African-American plaintiffs and DOJ on behalf of African Americans brought approximately 36 percent of the successful Section 2 cases nationwide between 1995 and 2014, and more than 60 percent of those cases were brought in the jurisdictions formerly covered by Section 5.

Latino Citizens

Latinos have faced a long history of electoral exclusion and discrimination in the United States that included the use of literacy tests, intimidation, and English-only elections. When the VRA was amended in 1975 and 1982, Congress recognized not only that English-only elections led to pervasive discrimination against Latino citizens, but also that many of the methods being used to dilute the voting strength of African-American citizens were also being used against Latino citizens.

Latinos have grown to be the largest minority group in the United States (17 percent) and though about three quarters of the Latino population resides in eight states, the population lives throughout the country so that 23 states have at least one jurisdiction that is covered for Spanish-language voting assistance under Section 203 of the VRA.

Voter participation rates for Latino citizens lag behind the participation rates for white citizens. For example, in the 2012 presidential election among voting age citizens, white registration was 14 percentage points higher than Latino registration, and the turnout disparity was 18 percentage points. The number of Latino elected officials has increased markedly in recent years but this success is closely tied to majority-minority election districts and the opportunities that they provide for Latinos to elect the candidates of their choice.

Approximately 56 percent of the successful Section 2 cases (96 of 172) brought between 1995 and 2014 involved Latino plaintiffs or were brought by DOJ on behalf of Latino citizens; most of these involved the use of at-large election systems or racially gerrymandered election districts. Between 1995 and 2013, 29 of the Section 5 preclearance denials involved voting changes that had a discriminatory purpose or effect with respect to Latino voters.

Compliance with the language assistance provisions of the VRA is critically important for Latino citizens to fully engage in the electoral process, but noncompliance is widespread. Of the 58 successful language assistance cases or pre-litigation settlements between 1995 and 2014, 46 (79 percent) involved claims on behalf of Latinos.

Native American citizens (American Indians and Alaska Natives)

Native Americans have been subjected to blatant discrimination for centuries that, among other things, affected their right to vote. They were granted citizenship in 1924 but it was not until their designation by Congress as a language minority group subject to protection under the VRA in 1975 that many Native American citizens were able to exercise their right to vote.

Native Americans comprise less than one percent of the total U.S. population, but because they are concentrated primarily in portions of Oklahoma, Arizona, New Mexico, North and South Dakota, Montana, and Alaska, Native Americans in certain counties comprise a significant portion—if not a majority—of the population. Voter turnout by Native American voting age citizens continues to lag far behind that of white voting age citizens (an estimated 17-18 percentage point disparity in the November 2012 election). There are only 64 Native American state legislators across the entire country and 2 federal legislators.

Between 1995 and 2014 there were at least 18 successful challenges to discriminatory voting practices brought on behalf of Native American citizens under Section 2 of the VRA (not including bilingual assistance claims). Most of these involved vote dilution challenges to at-large election systems. There were five successful language assistance lawsuits and

pre-litigation settlements. Because relatively few jurisdictions with concentrated Native American populations were covered under Section 5, there was only one Section 5 objection regarding discrimination against Native Americans, as well as one objection involving a jurisdiction covered under Section 3(c).

Asian American Citizens

Asian Americans historically were denied U.S. citizenship under discriminatory immigration laws, leaving them unable to vote, and both Asian immigrants and native-born Asian Americans have been targeted by other discriminatory laws and practices. A 1965 change to the immigration laws led to a dramatic increase in Asian immigration. In 1975 Congress recognized the history of exclusion and voting discrimination against Asian American citizens in the form of English-only elections when it reauthorized and amended the VRA to include new language minority provisions, and specified Asian Americans as a language minority group.

Asian Americans comprise approximately five percent of the total population of the United States. The Asian American population grew by 46 percent between 2000 and 2010, and much of that increase was due to immigration. Asian American voting age citizens participate in elections at rates significantly lower than white voting age citizens; in the 2012 election, there was a 17 percentage point disparity in registration and a 19 percentage point disparity in turnout. Studies have found that at least some part of those disparities is due to language accessibility issues and other forms of voting discrimination. The Asian American population resides primarily in heavily populated urban areas and so there are relatively few electoral districts with Asian American voting majorities. There are currently 11 Asian American members of Congress, 98 Asian American members of state legislatures, and two Asian American governors.

Asian American citizens benefit greatly from bilingual election assistance in areas covered by the language minority provisions of the VRA. From 1995 to 2014, ten successful language assistance lawsuits and non-litigation settlements involved Asian languages. Because the jurisdictions covered under Section 4(b) of the VRA at the time of the *Shelby County* decision had relatively low concentrations of Asian American citizens, only three preclearance denials between 1995 and 2013 have involved the effect of the proposed voting changes on Asian American citizens. In large part because of the dearth of jurisdictions where Asian Americans are large enough to comprise a majority in a single-member district, there were no successful vote dilution cases brought on behalf of Asians.

Chapter 5 discusses the problem of minority vote dilution since 1995.

Minority vote dilution involves electoral systems that devalue, negate or diminish the voting strength of racial minority groups by unnecessarily putting them in majority-white jurisdictions

where they usually cannot elect their preferred candidates because most voters vote along racial lines. The two principal forms of minority vote dilution are the use of at-large elections and racially gerrymandered election districts. The majority of successful Section 2 cases between 1995 and 2014 were minority vote dilution claims, and the majority of Section 5 objections since 1995 were based upon minority vote dilution.

Racially Polarized Voting

The presence of racially polarized voting is a necessary element of minority vote dilution claims. Racially polarized voting is defined as “a pattern of voting along racial lines where voters of the same race support the same candidate who is different from the candidate supported by voters of a different race.” Racially polarized voting is not assumed to exist; its presence must be proven as a matter of fact. Racially polarized voting typically is proven by a statistical analysis that estimates group voting preferences based upon precinct-level vote totals and demographic data.

Racially polarized voting continues to be widespread. Since 1995 federal courts made findings of racially polarized voting in challenges to statewide redistricting plans in Colorado, Massachusetts, Montana, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin. Experts retained for purposes of statewide redistricting also reported racially polarized voting patterns in Alaska, Arizona, California and Kansas. DOJ noted racially polarized voting as a factor in denying Section 5 preclearance to statewide redistricting plans in Arizona, Florida, Louisiana, South Carolina, and Texas. More generally, any judicial finding of a Section 2 vote dilution violation, and any Section 5 preclearance denial based upon vote dilution, reflects a determination that racially polarized voting is present.

Studies have shown more severe racially polarized voting in the states that were covered under Section 4(b) of the VRA. For example, a Supreme Court brief submitted by prominent academic experts in the *Northwest Austin v. Holder* lawsuit showed that, according to exit polls taken during the 2008 Presidential election, Barack Obama was supported by 26 percent of white voters in the states covered by Section 4(b) versus 48 percent in the non-covered states. The six states with the lowest rates of white support for Obama were all fully covered under Section 4(b): Alabama, Mississippi, Louisiana, Georgia, South Carolina, and Texas.

Racially Discriminatory Methods of Election

Over 70 percent of successful cases brought under Section 2 between 1995 and 2014 raised claims against methods of election. These cases were brought in 21 states, of which 18 had between one and four cases; Texas had 78 cases, Mississippi had seven and Georgia had six.

Changes to methods of election accounted for 19 Section 5 preclearance denials in nine different states between 1995 and 2013. These included one state-level objection in Mississippi, with a total of five in Texas and four in South Carolina.

Racially Discriminatory Redistricting Plans

Racially discriminatory redistricting plans accounted for the second principal category of successful Section 2 vote dilution cases and Section 5 preclearance denials. Redistricting plans that dilute minority voting strength typically submerge minority voters in overpopulated districts, divide minority population concentrations to prevent them from comprising the majority of a fairly-drawn district (“fragmentation” or “cracking”), or unnecessarily overconcentrate them in a minimal number of districts (“packing”).

Redistricting changes accounted for more than half (58 of 113) of the Section 5 preclearance denials between 1995 and 2013. These included denials of statewide redistricting plans in Arizona, Florida, Louisiana, South Carolina, and Texas (four statewide preclearance denials).

Between 1995 and 2013, there were successful Section 2 challenges to 30 redistricting plans, including statewide plans in Colorado, Massachusetts, Rhode Island, South Dakota, Tennessee, Texas, and Wisconsin.

Chapter 6 discusses a variety of state laws and practices that can restrict or interfere with access to the ballot for minority citizens to a greater extent than white voters.

Far too many states and jurisdictions have enacted laws or adopted practices that have created unnecessary barriers to the ballot. These include restrictions on community voter registration drives, proof-of-citizenship requirements, the failure to provide voter registration at public assistance agencies, felony disenfranchisement laws, dual voter registration systems, flawed voter purging, voter identification requirements, cutbacks on early in-person voting, problems with access to polling places, special barriers affecting Native Americans, and voter intimidation. These problems were the subject of extensive testimony at NCVR hearings, and some of them are the subject of heated public debate and current litigation.

Community Voter Registration Drives

Community-based registration drives are effective and especially benefit minority citizens. According to 2010 Census Bureau data, African Americans (7.2 percent) and Latinos (8.9 percent) report having registered to vote at voter registration drives at significantly higher rates than white voters (4.4 percent). Therefore, restrictions on voter registration drives raise serious concerns about limiting minority voter participation. There have been repeated efforts in Florida to restrict community voter registration drives. Florida historically did not permit voter registration drives before passage of the NVRA and has attempted to limit their

availability on repeated occasions despite the National Voter Registration Act of 1993 (NVRA). Two recent federal court judgments based on non-racial theories found that the State was imposing unconstitutional restrictions on voter registration drives.

Proof of Citizenship

Several states in recent years have adopted voter registration procedures that require providing documentary proof of U.S. citizenship in order to register to vote or in response to voter challenges brought by election officials. For example, the State of Georgia in 2008 attempted to use administrative record-matching between driver's license data and voter registration files to purge registered voters, unless the voters provided proof of U.S. citizenship to election officials. After a three-judge court issued a preliminary injunction against Georgia, which required the State to submit its procedure for administrative preclearance under Section 5 of the VRA, DOJ denied preclearance to the program, noting its unreliability and impact on minority voters. After filing a Section 5 declaratory judgment action seeking judicial preclearance, Georgia modified its procedure, which DOJ administratively precleared.

Proof of citizenship for voter registration has been a highly contentious issue. Arizona and Kansas have put these requirements into effect, while Alabama and Georgia have enacted these requirements but not yet implemented them. In 2013 the U.S. Supreme Court held in *Arizona v. ITCA* that Arizona must accept and use "federal forms" for voter registration under the NVRA, even if the applicants do not provide the proof of citizenship required by Arizona state law. The federal form establishes proof of U.S. citizenship via an attestation under oath, as do the vast majority of state forms. After the *Arizona v. ITCA* decision, Kansas and Arizona filed a lawsuit in Kansas seeking to compel the U.S. Election Assistance Commission to modify the federal form instructions for those states. This case remains in litigation.

Voter Registration at Public Assistance Agencies

Section 7 of the NVRA requires public assistance agencies to offer voter registration in conjunction with applications for benefits, renewals of benefits, and changes of address. Because minorities are a relatively larger share of the client population for the two largest public assistance programs, the failure to provide voter registration opportunities during covered agency transactions has a disproportionately negative impact on minority citizens. Since 2006, a concerted effort by voting rights organizations to remedy widespread noncompliance with Section 7 has involved extensive outreach to state officials and a series of successful lawsuits. This has resulted in the submission of more than two million voter registration applications above the preexisting levels.

Felony Disenfranchisement

Nearly 6 million Americans are banned from voting because, at some point, they were convicted of a felony offense. These laws affect minority citizens at a substantially higher rates than white citizens overall. In three states (Florida, Kentucky, and Virginia) at least one in five

African-American adults is disenfranchised. This is a major issue without a litigation solution because federal courts will only accept a challenge to a felony disenfranchisement law if the plaintiffs can prove that the law was enacted with a racially discriminatory purpose. Federal courts have uniformly rejected challenges to felony disenfranchisement laws based upon other constitutional theories or the Section 2 results test.

Voter Identification

The increased enactment by states of laws requiring registered voters to provide government-issued photo identification (ID) before their votes are counted may be the most contentious voting-related issue of the last decade. Several of these laws have been subject to legal challenge. Georgia and Indiana passed the first two of these laws in 2005, and the ensuing federal legal challenges have provided proponents and opponents of these laws with a number of lessons, including the following:

- A state with a photo ID requirement must provide an effective method for citizens to obtain a free ID. The first Georgia law did not and was found to be an unconstitutional poll tax. Georgia revised its law to enable a registered voter to obtain a free qualifying ID at the county registrar's office. The second law was upheld against a challenge that included a variety of legal theories.
- After the Supreme Court upheld Indiana's law against a right-to-vote challenge, certain state legislators and proponents interpreted the decision as providing legal immunity to any kind of voter identification law.
- Conversely, opponents of the photo ID laws who are bringing legal challenges read the Indiana decision as requiring them to show more definitively the number of people negatively affected by the law, demonstrate implementation problems, and provide compelling testimony from individuals burdened by the law.

The end result has been that new restrictive laws have passed and there have been additional legal challenges. The more recent cases, such as the federal cases involving laws in Wisconsin, South Carolina, and Texas and the state case involving the Pennsylvania law, have shown the following trends, though it is important to note that the jurisprudence is still evolving.

- There is now a wealth of statistical data allowing opponents of the laws to show the real impact of these laws on voters, and in the cases in Wisconsin, South Carolina, and Texas, the disproportionate impact on minority voters. The cases have also provided compelling testimony from witnesses and other evidence demonstrating implementation issues that affected voters. This was particularly true in Pennsylvania.

- The courts in Wisconsin and Pennsylvania were skeptical about the stated rationale for these laws because of a dearth of proof that the primary rationale—the prevention of voter fraud—is advanced by the law.
- Courts have been hesitant to accept a law that does not enable any, or virtually any, voter to easily obtain a free ID or provide another alternative, such as signing an affidavit at the polling place, for any voter to vote without an ID.

Early In-Person Voting

Early in-person voting has proven to be increasingly popular over the last several years, as currently 33 states and the District of Columbia provide for some form of early voting. African Americans in particular favor early in-person voting; a 2008 statistical analysis of election data in Cuyahoga County in 2008 showed that African Americans voted early at a rate of 26 to 1 as compared to whites and studies from other jurisdictions, while not showing that degree of disparity, consistently show that African Americans employ early voting much more often. In spite, or perhaps because, of the popularity of early voting amongst African Americans, states such as Florida, North Carolina, Ohio, and Wisconsin have recently scaled back the availability of early voting.

Problems at Polling Places

There have been several instances where the closing or consolidation of polling places has been blocked by a court or DOJ because of concerns about its discriminatory impact on minority voters, including in Benson County, North Dakota; Bexar County, Texas; Monterey County, California; and Alaska. In addition, the refusal of certain officials in jurisdictions containing Native American reservations to provide satellite registration offices or voting sites on reservations has only been overcome where litigation was filed or threatened.

Voter Intimidation and Voter Challenges

DOJ has been reluctant to bring voter intimidation cases because, according to DOJ's Federal Prosecution of Election Offenses manual, intimidation is "subjective" and often there is not concrete evidence or witnesses. DOJ's previous means of preventing voter intimidation was through the use of federal observers. It remains to be seen whether DOJ's decision to terminate its observer coverage in the formerly covered jurisdictions after the *Shelby County* decision will result in a substantial increase in voter intimidation.

Voter intimidation-type tactics may be employed by election officials or by private parties. A particularly egregious recent example from the 2012 election was the placement of billboards in predominantly minority communities in Ohio and Wisconsin "notifying" voters that voter fraud was a felony subject to prison terms or fines. Only after significant pressure and media attention did Clear Channel, the owner of the billboards, take them down because its client

would not divulge its identity. Concerns about voter challenges and voter deception and challenges before the November 2012 election led the North Carolina State Board of Elections to issue a directive to the county boards of elections on how to deal with these issues.

Chapter 7 reviews the record of violations and enforcement of the language minority provisions of the VRA.

As discussed above, Section 203, the chief language assistance provision, was enacted in 1975 to address the exclusionary and discriminatory effect of English-only elections on Latino, Native American, and Asian voting age citizens with limited English proficiency in jurisdictions where they comprise more than five percent of the citizen voting age population or number more than 10,000 people. Other provisions specifically address the right of Puerto Rican voters to vote free from discrimination based on their limited English proficiency and the right of a voter who cannot read the ballot to have an assistor of his or her choice. In addition, minority language cases have occasionally been brought under the general Section 2 non-discrimination provision.

Voter participation has improved for all three sets of language minorities in recent years but continues to lag significantly behind whites, making non-compliance with these provisions a particular reason for concern. From 1995 to 2014, there have been 48 successful cases and ten non-litigation settlements involving the minority language protections. These cases demonstrate several trends, including the long-standing refusal of certain jurisdictions to provide assistance prior to litigation, that effective language assistance leads to electoral success for the language minority group, and the interconnection between the lack of minority language assistance and racial hostility.

Chapter 8 includes some brief concluding thoughts. This is followed by an Appendix that contains maps and details with some of the key metrics discussed in the report.

In addition to this report, the NCVR's website, votingrightstoday.org, includes additional information, including state-level analyses and photos, quotes, and pictures from the 25 Commission hearings.

The foregoing briefly summarizes the NCVR's first report. This report and its Appendices provide detailed discussions of the preceding summary.



CHAPTER 1

Background: The Voting Rights Act of 1965

This Report's assessment of recent voting discrimination in the United States begins with an overview of the Voting Rights Act of 1965 (VRA), including the statute's origins, provisions, and impact on minority electoral opportunity up until the time period examined in this report (the years 1995 to the present). This chapter also provides an overview of the Supreme Court's momentous decision in *Shelby County v. Holder*¹ in June 2013, and that decision's negation of the VRA's preclearance requirement and possibly other VRA requirements as well.

As Chief Justice Warren observed in his seminal opinion in *South Carolina v. Katzenbach* upholding the VRA's constitutionality a few months after it was enacted,

[t]he Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting. The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant... [Other] remedial portions of the Act are aimed at voting discrimination in any area of the country where it may occur.^{1a}

For over three decades, Congress, the Executive Branch, and the federal courts joined together in a historic effort to vigorously enforce the VRA and give life to the 15th Amendment's guarantee that the right to vote shall not be denied or abridged on account of race or color. This consensus began to erode, however, in the time period under review in this Report. Then, in *Shelby County*, the Supreme Court essentially stopped the use of the Section 5 preclearance requirement (and also perhaps the federal observer program) by ruling unconstitutional the VRA provisions which identified the parts of the country where Section 5 (and the observer program) applied. Other VRA remedies remain in effect and continue to be enforced.

I. THE PRELUDE TO THE 1965 ACT: ALMOST A CENTURY OF AFRICAN-AMERICAN DISENFRANCHISEMENT

The VRA was enacted against the backdrop of this country's shameful and almost century-long disenfranchisement of millions of its African-American citizens. That history of pervasive discrimination was not the inevitable result of the social and economic conditions that

preceded the Civil War and the end of slavery but, instead, represented a substantial backsliding from the initial progress in voting rights that followed after the Civil War.

In 1868 and 1870, the country ratified the 14th and 15th Amendments to the Constitution guaranteeing to all citizens equal protection of the law, and prohibiting any denial or abridgment of the right to vote on account of race or color. Both Amendments included enforcement clauses giving Congress specific power to implement these guarantees through appropriate legislation. While the Amendments did not promise voting rights for all citizens—women were not enfranchised until the ratification of the 19th Amendment in 1920, and the status of Native Americans living on reservations was not addressed—the 14th and 15th Amendments appeared to herald the end of racial discrimination in voting.

Indeed, during the Reconstruction era former slaves registered, voted, and were elected to political office in significant numbers. These gains in black political empowerment were the direct result of the federal government's enforcement of the 14th and 15th Amendments through legislation and the presence of federal troops in the former Confederate States. But in 1876 the Supreme Court narrowly interpreted these Amendments to invalidate congressional civil rights legislation,² and that was immediately followed by the Hayes-Tilden Compromise of 1877, which ended Reconstruction. This ushered in a long era during which all three branches of the federal government took a “hands-off” approach to racial discrimination generally and racial discrimination in voting in particular. By 1900, nearly all of the Reconstruction-era gains in voting rights had been reversed, and the resulting Jim Crow era persisted until the second half of the 20th Century. The concerted to effectively nullify the 15th Amendment was carried out in a variety of ways, including racially-inspired and racially-enforced restrictions on voter registration and voting, election methods that sought to dilute any residual voting power of African Americans, and fraud and violence directed against African-American voters.³

After World War II, the Jim Crow regime began to crumble in the face of civil rights protests, a Supreme Court and lower federal courts that rejected racial discrimination, tentative action by the federal Executive Branch, and a national consciousness that at least raised questions about Jim Crow.⁴ Congress enacted its first voting rights laws since the 19th Century in 1957, 1960, and 1964, and lawsuits were filed against numerous voting registrars in the South by the newly created Civil Rights Division of the U.S. Department of Justice (DOJ).⁵ Still, these efforts were only able to dent the structure of oppression. As of March 1965, less than one-third of all African Americans living in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia were registered to vote, whereas about three-fourths of the white population of those States was registered.⁶



Marchers walk toward the Edmund Pettus Bridge during the Selma to Montgomery March for Voting Rights of 1965.

Finally, after the 1964 Freedom Summer in Mississippi saw both valiant efforts to register African Americans to vote and retaliatory violence including the murders of three civil rights workers, and after the brutal March 7, 1965 attack on protesters peacefully marching across the Edmund Pettus Bridge in Selma, Alabama, President Johnson stood before Congress on March 15, 1965 to urge the adoption of a new voting rights bill. Johnson declared that “There is no issue of States rights or national rights. There is only the struggle for human rights,” and “we shall overcome.”⁷ Congress responded, and less than five months later, President Johnson signed the Voting Rights Act of 1965 into law on August 6.⁸

II. THE 1965 VOTING RIGHTS ACT

The VRA’s first order of business was to knock down the registration laws and stop the actions by local registrars that were preventing African Americans from registering and voting. The VRA sought to do this in several ways. First, Section 4 of the Act laid out a formula for identifying areas where voting discrimination was most prevalent and temporarily prohibited the use of voting “tests or devices” in those areas.⁹ These “tests or devices” included any requirement that voters “(1) demonstrate the ability to read, write, understand, or interpret any matter; (2) demonstrate any educational achievement or his knowledge of any particular subject; (3) possess good moral character; or (4) prove his qualifications by the voucher of

registered voters or members of any other class.”¹⁰ Second, Section 6 of the Act gave the U.S. Attorney General the authority to bypass local election officials by dispatching federal registrars (known as “examiners”) to register qualified voters in these same areas designated by Section 4.¹¹ Third, Section 8 gave the Attorney General the authority to send federal observers into polling places in the Section 4 areas to monitor and document the conduct of elections and to deter misconduct by election officials and intimidation by private citizens.¹²

Congress understood, however, that once minority voters became able to vote, the risk was substantial that states and localities where discrimination had been most prevalent would enact or seek to administer new techniques for minimizing or canceling out minority electoral participation. Thus, Congress included Section 5 in the VRA. Section 5 requires that all new voting practices and procedures in areas identified by Section 4 undergo federal review before implementation. This review—called “preclearance”—was designed to ensure that new practices and procedures did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color.¹³

The VRA also included, in Section 2, a nationwide general prohibition on voting discrimination.¹⁴ In Section 4(e), Congress took a first step toward addressing potential discrimination in English-only elections, establishing a remedy for Puerto Rican citizens educated in schools where the predominant language was not English.¹⁵ And in Section 11, Congress prohibited voter intimidation.¹⁶

The constitutionality of the VRA was immediately challenged by several of the states covered by Section 4 and thus subject to the Act’s special remedies regarding voter registration, election monitoring, and preclearance. Their lawsuit was filed directly in the Supreme Court, and on March 7, 1966, exactly one year after the events of Bloody Sunday on the Edmund Pettus Bridge, the Court decisively upheld all the challenged provisions in *South Carolina v. Katzenbach*.¹⁷ Discussing the VRA’s specially targeted provisions, the Court captured the essence of the new legal framework Congress had established for addressing racial discrimination in voting:

Congress... found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.¹⁸

III. REAUTHORIZATION AND EXPANSION OF THE VRA'S REMEDIES AFTER 1965

Part of Congress' original structuring of the targeted "test or device," preclearance, examiner, and observer remedies was the inclusion of a sunset provision which would have effectively terminated these remedies in 1970 by allowing the Section 4 coverage to expire.¹⁹ In that year, however, Congress reauthorized Section 4 coverage for another five years, and then reauthorized coverage for an additional seven years in 1975, 25 years in 1982, and 25 years again in 2006 (terminated then in 2013 by the *Shelby County* decision).²⁰

The congressional debates in 1970, 1975, 1982, and 2006 over reauthorizing the Section 4 coverage formula focused mostly on whether to continue requiring Section 5 preclearance for voting changes. This is because the other most significant remedy applied to the Section 4 areas – the prohibition on voting "tests or devices" – was expanded by Congress into a nationwide five-year suspension in 1970²¹ and a permanent, nationwide ban in 1975.²²

As part of the debate over each post-1965 reauthorization of Section 4 coverage and thus Section 5, Congress examined the recent record of voting discrimination in the covered areas to assess whether there was a current need for the preclearance requirement. As a result of each review, Congress found that there was a significant and ongoing pattern of voting discrimination in these areas, and that, accordingly, there continued to be a significant risk that the electoral gains that had been achieved in these areas would be rolled back without federal oversight.²³

In 1975, Congress also received extensive information indicating that in certain parts of the country, the use of English-only elections was having a substantial and discriminatory impact on language minority citizens – Hispanic Americans, Asian Americans, American Indians, and Alaska Natives.²⁴ Congress also received information indicating that in a subset of these areas, the impact of English-only elections and other discriminatory practices was comparable to the voting "tests or devices" that had prevented African Americans from effectively participating in the electoral process.²⁵ Accordingly, as part of the 1975 reauthorization legislation, Congress extended Section 4 coverage – and thus the Section 5 preclearance requirement – to particular states and localities that were conducting English-only elections. Congress also prohibited English-only elections in these newly-designated Section 4 areas for as long as Section 4 coverage continued.²⁶ In addition, the 1975 legislation added Section 203 to the VRA, which requires bilingual election assistance in other areas around the country. These areas are identified by a separate coverage formula laid out in Section 203.²⁷ Finally, the 1975 legislation amended Section 2 and Section 5 of the VRA to include a prohibition on discrimination against language minority citizens.²⁸

The 1982 reauthorization legislation also included an expansion of the VRA, in the form of an amendment to Section 2 adding a results test to that section's general prohibition on racial and language minority discrimination in voting. The amendment was adopted to respond to a 1980 Supreme Court decision, *Mobile v. Bolden*, in which the Court made it significantly more difficult for minority plaintiffs to successfully challenge at-large and multi-member election plans under the 14th Amendment.²⁹ Congress based the new results test on the standard that courts had relied upon prior to *Mobile* for resolving claims against at-large and multi-member elections.³⁰

After the Supreme Court's initial decision in March 1966 upholding the constitutionality of the VRA, the Supreme Court continued to reject constitutional challenges to the Act. Later in 1966, the Court upheld the constitutionality of the bilingual provisions of Section 4(e),³¹ and following the 1970 reauthorization, the Court summarily rejected a renewed challenge to Section 5.³² Following the 1975 reauthorization, the Supreme Court issued a third decision in favor of Section 5 in 1980, rejecting claims that Section 5 violated principles of federalism, that Congress lacked the authority to reauthorize Section 5, and that Congress could not include in Section 5 a prohibition on voting changes that have a discriminatory effect.³³ The Supreme Court's last decision upholding the constitutionality of Section 5 was in 1999, following the 1982 reauthorization. In that case, the Court again rejected the assertion that Section 5 violated federalism principles.³⁴

Most recently, in 2005 and 2006, Congress conducted a series of 20 hearings and heard testimony from 90 witnesses in deciding whether to reauthorize Sections 5 and 203.³⁵ The evidence received included the 2006 Report of the National Commission on the Voting Rights Act, which summarized and detailed numerous findings of voting discrimination within the jurisdictions covered by Section 4 between 1982 and 2005.³⁶ By margins of 390-33 in the House of Representatives and 98-0 in the Senate, Congress voted to extend Section 4 coverage, and thus Section 5, for an additional 25 years, and to extend Section 203 for an additional 25 years as well. President George W. Bush signed the 2006 reauthorization into law on July 27, 2006.³⁷

As in 1982, the 2006 legislation included amendments to respond to recent Supreme Court decisions that Congress believed had undermined voting rights enforcement. Those decisions, in 2000 in *Reno v. Bossier Parish School Board*³⁸ and in 2003 in *Georgia v. Ashcroft*,³⁹ had significantly restricted the scope of Section 5's prohibition on voting changes with either a discriminatory purpose or a discriminatory effect.⁴⁰

The 1970, 1975, and 1982 reauthorizations also extended the application of the federal examiner and observer provisions in areas covered by Section 4. In 2006, Congress again extended the observer authority, but repealed the examiner provisions since they had not been used for several years and were no longer needed.⁴¹

IV. THE VRA'S MAJOR PROVISIONS

Section 2

Section 2 of the VRA is a permanent nationwide prohibition against voting practices and procedures that discriminate on the basis of race, color, or membership in a language minority group. Section 2 is violated both by practices and procedures that have a discriminatory purpose and those that have a discriminatory result.⁴² Section 2 is enforced through lawsuits filed in local federal courts (i.e., the court where the defendant jurisdiction is located).

The Section 2 results standard provides that a violation exists

if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election... are not equally open to participation by... citizens protected by [Section 2] in that [they] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.⁴³

A detailed explanation of this broad standard was set forth in the 1982 Senate Judiciary Committee report for the legislation. The Senate Report identified a variety of factors that may be considered in undertaking a “totality of the circumstances” analysis,⁴⁴ and in practice courts have relied upon these factors in applying Section 2.⁴⁵

While Section 2 applies to all voting practices and procedures, it has most frequently been applied in “vote dilution” challenges to at-large election systems and redistricting plans. There have been numerous court decisions finding that at-large systems and redistricting plans violate Section 2, and there have been hundreds of Section 2 settlements requiring counties, cities, and school districts to abandon at-large voting and adopt district-based methods of election.⁴⁶ Successful Section 2 vote dilution claims like these must meet three “preconditions” first identified by the Supreme Court in *Thornburg v. Gingles*: (1) the minority population must be sufficiently numerous to comprise a majority of the eligible population in a reasonably-drawn single member district, (2) the minority voting population must be politically cohesive, and (3) minority voters’ candidates of choice must generally be defeated as the result of white bloc voting.^{46a} Once these preconditions are satisfied, plaintiffs must then establish a violation under the full “totality of the circumstances” analysis.⁴⁷

Section 5

Section 5 required certain states and political subdivisions of other states to obtain federal preclearance whenever they would “enact or seek to administer any [new] voting...qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting.”⁴⁸

Section 5 applied broadly to any change affecting voting, even one that might seem minor or unobjectionable on its face.⁴⁹ Voting changes subject to Section 5 were not permitted to be implemented unless and until preclearance was obtained.⁵⁰

Jurisdictions were required to seek preclearance either by filing suit in the U.S. District Court for the District of Columbia (requesting a declaratory judgment) or by making an administrative submission to the U.S. Attorney General.⁵¹ Whichever forum was chosen, it was the jurisdiction that had the burden of proof, not minority citizens or the Justice Department.⁵² The jurisdiction was required to demonstrate that each voting change “neither ha[d] the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or [language minority status]....”⁵³

The Section 5 “effect” standard, distinct from the Section 2 “results” standard discussed above, prohibited backsliding. More specifically, Section 5 barred the implementation of any voting change “that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.”⁵⁴ Thus, effect was evaluated by comparing minority electoral opportunity under the new practice to minority electoral opportunity under the pre-existing practice. A discriminatory effect existed if the new practice would make that opportunity worse.

As noted earlier, the states and localities subject to Section 5 were identified by a series of provisions contained in Section 4 of the Act. The Section 4 coverage formula, first enacted in 1965 and then amended in 1970 and 1975, operated as follows: jurisdictions were covered if (1) they employed a “test or device” for registration or voting at the time of the 1964, 1968, or 1972 presidential election, and (2) less than 50 percent of the jurisdiction’s eligible voters registered or voted in the same election.⁵⁵ For the coverage determinations based upon the 1964 and 1968 elections, the VRA defined the term “test or device” as those practices (such as literacy tests) which, as described above, the VRA temporarily and then later permanently banned. For coverage determinations based upon the 1972 election, the meaning of “test or device” was expanded to also include the use of English-only election procedures where a language-minority citizen group constituted more than five percent of the citizen voting age population of the jurisdiction.⁵⁶

As also discussed earlier, Section 4 coverage – and thus Section 5 – was further subject to recurring sunset provisions. Congress reauthorized and extended coverage in 1970, 1975, 1982, and 2006 after finding on each occasion that a high level of voting discrimination had continued in the Section 4 areas.

Thus, Section 5 remained in effect until *Shelby County* based upon a combination of evaluations by Congress. First, Congress relied upon the evaluations built into the coverage formula, which looked at electoral conditions existing in 1964, 1968, and 1972 to identify

those areas of the country that had a history of persistent voting discrimination.⁵⁷ Second, Congress relied upon four separate evaluations that updated Congress' assessments of whether a pattern of voting discrimination was continuing in the jurisdictions with a history of voting discrimination.

From the outset, Section 4 permitted individual jurisdictions to sue to remove themselves from coverage (to "bail out" of coverage).⁵⁸ Over the years, a number of jurisdictions took advantage of this exit ramp.⁵⁹

As a result, at the time *Shelby County* was decided, there were nine States subject to Section 5 in their entirety – Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. In addition, portions of six other States were covered – California (three counties), Florida (five counties), Michigan (two townships), New York (three counties in New York City), North Carolina (40 of the State's 100 counties), and South Dakota (two counties).⁶⁰

Language assistance requirements

In 1975, Congress enacted two complementary provisions, Section 4(f)(4)⁶¹ and Section 203,⁶² requiring certain jurisdictions around the country to provide voting materials in one or more languages in addition to English. These sections incorporated identical substantive requirements for language assistance.⁶³ They differed in terms of the processes used to identify the covered jurisdictions. These provisions, like Section 2, are enforced through litigation filed by the Justice Department or minority individuals.

Section 4(f)(4) applied to those jurisdictions covered by the 1975 amendment to the Section 4 coverage formula. Given that the Supreme Court found the coverage formula unconstitutional in the *Shelby County* case, it is unclear whether there continue to be jurisdictions to which Section 4(f)(4) applies. The Supreme Court did not discuss Section 4(f)(4) in the *Shelby County* decision and thus did not specifically rule upon that section's continuing viability.

Section 203 relies on a different coverage formula, which takes into account the number or percentage of voting age citizens in a state or political subdivision who are members of a single language minority group and who have limited proficiency in English, and whether the illiteracy rate of the jurisdiction's language minority group is higher than the national illiteracy rate. Section 203 also includes a sunset proviso; it was reauthorized in 1982, 1992, and once again in 2006. The relevant coverage data are drawn from data collected by the U.S. Census Bureau, and thus the jurisdictions subject to Section 203 change somewhat over time. New determinations were originally made at ten-year intervals; since 2006 they are to be made at five-year intervals. Each Section 203 coverage determination is accompanied by a specification of the specific language or languages for which the jurisdiction is required to provide language assistance in the voting process.



According to the most recent determinations issued in 2011, the States of California, Florida, and Texas are fully covered under Section 203 (for Spanish), and individual counties are also separately covered in those States. Individual counties and townships are covered in 22 other States. Local jurisdictions are predominantly covered for Spanish, but many are covered for other languages including a variety of Asian, Native American, and Alaska Native languages.⁶⁴

Sections 4(f)(4) and 203 apply to all stages of the election process, i.e., to “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots.”⁶⁵ The sections require that both written election materials and oral assistance be provided in the language of the covered language minority group.

The substantive requirements of Sections 4(f) and 203 are further described in the Attorney General’s Guidelines on Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.⁶⁶ The Guidelines specify that covered jurisdictions “should take all reasonable steps” to provide language assistance “in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities....”⁶⁷ The Guidelines further explain that “[c]ompliance... is best measured by results[,]” and that the requisite results are most likely to be achieved by covered areas working in close cooperation with local community organizations.⁶⁸ The Guidelines also endorse the targeting of language assistance to those language minority citizens in need, so that language assistance is not necessarily required to be provided to all eligible voters in the jurisdiction.⁶⁹

Section 4(e) of the VRA, enacted in 1965, requires jurisdictions to provide language assistance to United States citizens who were “educated in American-flag schools in which the predominant classroom language was other than English.”⁷⁰ This section primarily affects citizens who attended primary school in Puerto Rico. There is no particular geographic coverage provision attached to this section. Section 4(e) also is enforced through litigation.

Federal observers

Since 1965, the Attorney General has been authorized by Section 8 of the VRA to send federal observers into polling places located in jurisdictions covered under Section 4, provided that the Attorney General certifies a particular county or parish for observers. As with Section 4(f)(4), the *Shelby County* ruling against the Section 4 coverage formula raises the question of whether there continue to be jurisdictions that are subject to the Section 8 authority, even though *Shelby County* did not discuss Section 8. DOJ apparently has concluded that the Section 8 observer authority no longer is enforceable after *Shelby County*.

Coverage of additional areas for preclearance and federal observers

The 1965 Act also includes provisions allowing courts to designate a jurisdiction not covered by Section 4 for similar coverage for a specified time period. Under Section 3(a), a court may designate a jurisdiction for federal observers (and, before the 2006 amendments, for federal examiners as well).⁷¹ Under Section 3(c), a court may designate a jurisdiction for preclearance of all or a subset of its voting changes.⁷² These “bail in” provisions continue in effect after *Shelby County*.

Permanent prohibition of certain tests and devices for voting

Section 201 of the VRA is a permanent nationwide ban on the use of specified “tests or devices” as prerequisites to registration or voting.⁷³

Other VRA provisions

Section 208 of the VRA, enacted in 1982, provides that any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be assisted by a person of the voter’s choice, other than the voter’s employer or agent of the employer or officer or agent of the voter’s union.⁷⁴

Section 11(a) of the VRA prevents election officials from refusing to count legitimate votes.⁷⁵

Section 11(b) of the VRA prohibits intimidation, threats, or coercion in the voting process and applies to private persons as well as persons acting under color of law (that is, governmental officials).⁷⁶

V. THE TWO FORMS OF VOTING DISCRIMINATION: LIMITATIONS ON BALLOT ACCESS AND VOTE DILUTION

Voting discrimination generally may be characterized as occurring in one of two forms, restrictions on ballot access and election methods or structures that dilute minority voting strength.⁷⁷

Ballot access restrictions

Voting practices that limit or restrict access to registration or voting may discriminate on the basis of race or language minority status (depending upon the particular practice involved and/or the circumstances in which the practice is being implemented). Practices that may be of concern include: registration limitations or the improper purging of registration rolls; a lack of bilingual assistance or ineffective bilingual assistance; limitations on early in-person voting or absentee voting; a photo ID requirement for in-person voting; the elimination of polling places or polling place changes; voter intimidation; and restrictions on candidate qualifications or on candidate qualification procedures.

Minority vote dilution

Voting practices that may dilute minority voting strength are those election methods or structures which, in the context of racially polarized voting, tend to minimize or cancel out the ability of minority voters to elect their preferred candidates to office. Such practices may include: at-large election systems; multi-member election districts; redistricting plans that unnecessarily fragment minority areas or pack minority voters into a limited number of districts; and annexations of white residential areas that either fence out minority residential areas or reduce a city's minority population percentage in the context of at-large voting.

Discriminatory ballot-access restrictions are sometimes referred to as “first generation” discrimination and vote dilution as “second generation” discrimination. This reflects the fact that, historically, restrictions on ballot access were often the initial method chosen to deny or abridge the right to vote, and vote dilution was undertaken only after minority voters gained access to the ballot at least to some extent.⁷⁸ However, in reality, both types of discrimination may occur concurrently, and instances of “first generation” discrimination may follow after “second generation” discrimination. Nor is it accurate to view “second generation” discrimination as something that occurred only after the VRA was adopted, or to view “first generation” discrimination as something that existed only in the past.

For example, there is a long history of “second generation” voting discrimination in Alabama that predates the VRA. In 1911, although the State had almost completely disenfranchised its African-American citizens, the City of Mobile, Alabama changed to an at-large method of

electing its city government “to reinforce the 1901 [State] Constitution as a buttress against the possibility of black office holding.”⁷⁹ Later in the 1950s, although African-American registration remained depressed, the Alabama Legislature redrew the boundaries of the City of Tuskegee to remove 99 percent of the city’s African-American population.⁸⁰ The author of that legislation also sponsored legislation that banned the technique of single-shot voting in at-large elections for county commissioners across Alabama, out of a concern that those African Americans who were registered to vote might use this technique to elect individuals to office.⁸¹

On the other hand, “first generation” discrimination clearly remains a present-day concern. For example, as discussed in detail in Chapter 6, several States recently have enacted photo ID laws that, because of their particular provisions, discriminate against minority voters.

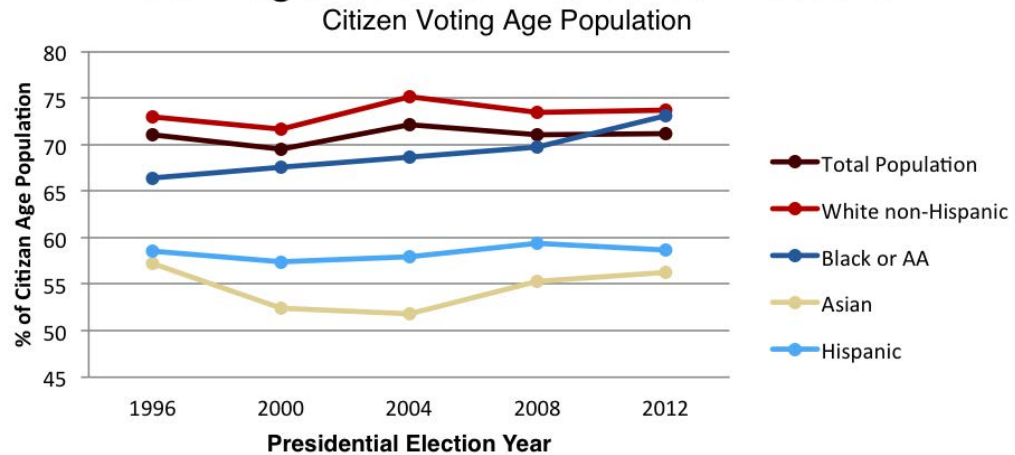
VI. IMPACT OF THE VRA ON MINORITY ELECTORAL OPPORTUNITY, 1965 TO 1995

The impact of the VRA on our Nation’s political processes has been profound. The opportunity of minority citizens to register, vote, and elect candidates of choice dramatically improved from 1965 to 1995, most notably in the South and Southwest, but throughout the country as well.⁸²

The initial focus of the VRA in 1965 on removing barriers to voter registration by African Americans had the desired result to a substantial degree. Within about six years of the enactment of the VRA, the combined African-American registration rate in the States of Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia climbed to about 57 percent, almost 30 points higher than that rate had been in March 1965. Still, the African-American registration rate in 1971-72 remained a substantial eleven points below the white registration rate in those States.⁸³ Through continued enforcement efforts, the African-American registration rates further improved thereafter, such that by the time of the 2006 reauthorization the African-American rates were comparable to the white registration rates in most of the South, with a few exceptions.⁸⁴

However, the efforts that began in the mid-1970s to address discrimination against language minority citizens have not yielded the same results. As shown on the graph on the following page, substantial disparities between registration rates for language minority citizens and whites are continuing.⁸⁵

Voter Registration for Presidential Elections



As Congress anticipated in 1965, the enactment of the VRA was followed by a series of new discriminatory measures in the specially covered areas. For example, in 1965 Mississippi repealed provisions allowing illiterate voters to receive assistance in voting, and in 1966 adopted a state law to enable county boards of supervisors to switch from district to at-large elections. DOJ interposed Section 5 objections to both changes.⁸⁶ Other examples included Georgia's adoption of restrictions on assistance to illiterate voters, to which the DOJ objected in 1968,⁸⁷ and South Carolina's adoption of a discriminatory redistricting plan for its state senate, to which the DOJ objected in 1972.⁸⁸

By 1975, a pattern of conduct by Section 4 jurisdictions was apparent. As the House Judiciary Committee observed in its 1975 report supporting Section 5's reauthorization,

[t]he recent objections entered by the Attorney General... to Section 5 submissions clearly bespeak the continuing need for [the Section 5] preclearance mechanism. As registration and voting of minority citizens increases, other measures may be resorted to which would dilute increasing minority voting strength. Such other measures may include switching to at-large elections, annexations of predominantly white areas, or the adoption of discriminatory redistricting plans.”⁸⁹

This did not mean, however, that ballot access discrimination had ended, as Section 5 objections were also interposed to many such changes.⁹⁰

In the years after 1975, this pattern continued. During the remainder of the 1970s, and then in the 1980s, 1990s, and into the 2000s, a majority of the objected-to voting changes involved discriminatory election methods, redistrictings, and annexations.⁹¹ Objections to changes affecting ballot access were also interposed. Congress reiterated its particular

concern about “second generation” discrimination that would undo the “first generation” progress when it reauthorized Section 5 in 1982⁹² and again in 2006.⁹³

A positive pattern also emerged in the 1970s and continued with increasing force in the 1980s and 1990s: a substantial number of cities, counties, and school districts – particularly in the areas subject to Section 5 – changed from at-large to district election systems. The initial impetus was a Supreme Court decision in 1973, *White v. Regester*, overturning multi-member districts for the Texas Legislature on the ground that they diluted African-American and Latino voting strength in violation of the 14th Amendment.⁹⁴ Other successful dilution suits based on the 14th Amendment followed. In 1980, however, the Supreme Court did a sharp U-turn in its *Mobile v. Bolden* decision, substantially re-interpreting the constitutional cause of action and making it much more difficult for plaintiffs to prevail.⁹⁵ As explained above, Congress then amended Section 2 in 1982 to revive the pre-*Mobile* standard by creating the new Section 2 results test. Thereafter, hundreds of Section 2 suits were filed leading to decisions and settlements in which at-large systems were abandoned, and many other localities abandoned at-large systems in anticipation that they might be sued. Section 5 objections to dilutive annexations also led to the adoption of district election methods.⁹⁶

Finally, lawsuits also were brought under Section 2 challenging discriminatory redistricting plans, particularly (although not exclusively) in the areas not subject to Section 5. For example, in 1990 the Ninth Circuit Court of Appeals upheld a district court ruling invalidating the redistricting plan for the Los Angeles County Board of Supervisors because it discriminated against Latino voters.⁹⁷ This led to the election of the first Latino to the Board in over a century.⁹⁸

VII. SUPREME COURT'S LIMITS ON SECTION 5, CONGRESS' RESPONSE, AND THE SUPREME COURT'S DECISION IN *SHELBY COUNTY V. HOLDER*

After 1995, the Supreme Court issued three decisions substantially curtailing the scope of the Section 5's nondiscrimination requirements. Then, in 2013, the Court issued its decision in *Shelby County v. Holder*, which effectively nullified the preclearance requirement.

- In 1997, the Supreme Court ruled in *Reno v. Bossier Parish School Board* that, a finding that a voting change had a discriminatory result under Section 2 of the VRA could not be used to object to a voting change under Section 5 of the VRA.⁹⁹

- In 2000, the case returned to the Supreme Court, and the Court held in *Bossier Parish II* that Section 5 is generally not violated where a jurisdiction adopts a voting change with a discriminatory intent if the change would not make minority voters worse off compared to what existed before.¹⁰⁰ The Bossier Parish school district intentionally drew its post-1990 redistricting plan to avoid creating even one majority African American single-member district, but this discriminatory intent did not violate Section 5, according to the Court, because the old plan did not include any majority African American districts either and thus the new plan was not retrogressive or intended to be retrogressive.¹⁰¹ The Court's ruling was particularly troublesome because it meant that DOJ and the federal court in Washington D.C. would now be required to preclear intentionally discriminatory practices, contrary to their prior practice¹⁰² and inconsistent with prior decisions by the Supreme Court.¹⁰³
- In 2003, in *Georgia v. Ashcroft*, the Supreme Court substantially re-interpreted the Section 5 retrogression standard as applied to redistricting plans. The Court held that redistricting reviews were required to take into account minority "influence districts" in addition to considering those districts where minority voters would have the opportunity to elect their preferred candidates.¹⁰⁴ This was highly problematic since it is unclear what constitutes a minority "influence district" and, whatever the term means, it is questionable whether such districts, in the context of racially polarized voting, in fact offer much if any real opportunity to minority voters to influence elections.¹⁰⁵

As noted, as part of the 2006 reauthorization of Section 5, Congress amended Section 5 in response to *Bossier Parish II* and *Ashcroft*. The amendments essentially returned the statute to the discrimination standards that pre-dated the Supreme Court decisions.¹⁰⁶

Shelby County v. Holder was filed in the U.S. District Court for the District of Columbia by Shelby County, Alabama on April 27, 2010. The federal judge hearing the case conducted a thorough review of the record before Congress and concluded that the 2006 reauthorization was constitutional.¹⁰⁷ On appeal, the U.S. Court of Appeals for the District of Columbia Circuit conducted its own review of the record and agreed with district court ruling, with one judge dissenting.¹⁰⁸

The Supreme Court then took the case and, on June 25, 2013, reversed the judgment of the district court and held that the Section 4 formula that determined which states or jurisdictions had to seek federal review for their voting changes is unconstitutional.¹⁰⁹ The Court did not address the constitutionality of the preclearance remedy. As a result, today, no jurisdiction is subject to the Section 5 preclearance requirement. As noted above, the Section 4(f)(4) prohibition on English-only elections and the Section 8 authority for federal observers also apply only to Section 4 jurisdictions, and although neither provision was at issue in or mentioned in *Shelby County*, DOJ does not appear to be enforcing either provision.

In the 5 - 4 decision, Chief Justice Roberts concluded that the Section 4 coverage provisions were not properly based on “current needs” because the Section 4 coverage formula was based on electoral conditions in 1964, 1968, and 1972.¹¹⁰ The Chief Justice thereby ignored the fact that Section 5’s reauthorization in 2006, like the reauthorizations that preceded it, was premised on Congress’ evaluation of current needs, and that Congress had concluded in 2006 that a pattern of voting discrimination was continuing in the areas identified by the Section 4 coverage formula. Chief Justice Roberts conceded that “voting discrimination still exists; no one doubts that[,]”¹¹¹ but did not conduct any detailed review of the massive record Congress had gathered in 2005 and 2006, based on which Congress made a direct and specific legislative finding of the current need for Section 5.

Justice Ginsburg authored the dissenting opinion for herself and for Justices Breyer, Sotomayor, and Kagan.¹¹² Justice Ginsburg began her opinion with the following overview of the 2006 reauthorization and its constitutional validity:

Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, §5 remains justifiable, this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments “by appropriate legislation.” With overwhelming support in both Houses, Congress concluded that, for two prime reasons, §5 should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would guard against backsliding. Those assessments were well within Congress’ province to make and should elicit this Court’s unstinting approbation.¹¹³

And, as Justice Ginsburg stated later in her opinion, “[t]hrowing out preclearance when it has worked as and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”¹¹⁴

The consequence of *Shelby County* is that all the previously covered states and localities are now able to implement voting changes without advance federal review to determine whether the new practices are discriminatory. As was true before 1965, the burden is now back on the DOJ and minority citizens to identify and obtain court judgments against discriminatory voting practices in the jurisdictions with the worst histories of voting discrimination.



“The suppression is geared toward the minority vote, the African American vote, and the Hispanic vote. Because if you can suppress that vote, then you don’t have to worry about losing the power that you have gained as a result of what we put in some time ago.”

–State Rep. Mickey Michaux (NCVR North Carolina Hearing)

CHAPTER 2

National Overview Of Voting Discrimination, 1995–2014

Racial voting discrimination remains a serious problem in the United States. Several states, especially Texas, have shown a pattern of repeated and varied violations since 1995. Texas and other states with the worst records each: (1) have significantly more documented indicators of voting discrimination than average; and (2) were covered under Section 4(b) of the Voting Rights Act (VRA) prior to the *Shelby County* decision. This pattern is clearly seen in the post-1995 record of at least 171 successful lawsuits under Section 2 of the VRA, 113 Section 5 preclearance denials and 48 successful lawsuits and ten non-litigation settlements enforcing the language assistance provisions of the VRA.¹

The voting rights record reviewed in this chapter focuses upon three types of compliance issues arising under the Voting Rights Act since 1995:

- Affirmative litigation brought in federal court under Section 2 of the VRA, including challenges to redistricting plans and methods of election (including at-large elections) that minimize or cancel out the ability of minority voters to elect their preferred candidates to office (i.e., vote dilution challenges), and vote denial challenges to other voting practices involving access to the ballot (bilingual procedures are treated separately);
- Section 5 preclearance denials, either in the form of administrative objections interposed by the United States Department of Justice (DOJ) or in litigation before a three-judge panel in the United States District Court for the District of Columbia, along with denials of preclearance for jurisdictions covered under Section 3(c) of the VRA; and
- Cases concerning bilingual election assistance for language minority voters, brought under Sections 203, 4(f)(4), and 4(e) of the VRA, as well as related claims brought on occasion under Section 2 and Section 208 of the VRA.

Separate listings identifying each individual matter in the three categories are included in the Supplemental Online Appendix (<http://votingrightstoday.org/ncvr/resources/discrimination-report>). While these categories are not the only relevant indicators of voting discrimination, each one sheds light on the critical questions of how frequently voting discrimination occurs today and whether it is geographically concentrated.²

As shown in Table 1, between January 1995 and June 2014 over 300 lawsuits or administrative determinations under the VRA led to the prohibition, abandonment, or alteration of a variety of voting practices at both the state and local levels. While one or more of these matters occurred in 31 different states, the activity was heavily concentrated in the jurisdictions that were specially covered under Section 4(b) at the time of *Shelby County*. In fact, approximately three-fourths of these matters involved Section 4(b) jurisdictions.

Table 1: VRA Enforcement: January 1995 to June 2014

Type of Enforcement Matter	Number of Matters	Number of Matters Involving a State-Level Practice	Number of Matters Involving Jurisdictions That Were Covered Under Section 4	Number of Matters, By Type of Voting Practice at Issue
Preclearance Denials	113	21	113	58 Redistricting 20 Methods of election/selection 7 Jurisdictions' annexations/de-annexations 20 Ballot access (not bilingual) 4 Bilingual
Section 2 (non-bilingual) Cases	171	16	123	30 Redistricting 123 Methods of election/selection 21 Ballot access
Bilingual Cases	58	2	15	58 Bilingual

As shown in Tables 2, 3, and 4, Texas, a state fully covered by Section 4(b), had, by far, the greatest overall number of enforcement matters—over 110. Four states—Georgia, Louisiana, Mississippi, and New York—had between 20 and 28 enforcement matters each; three of these states were wholly covered under Section 4(b) and New York was partially covered (i.e., some local jurisdictions were covered and therefore subject to the Section 5 preclearance requirement though the state as a whole was not). Three states had between 13 and 19 enforcement matters each—California, Florida, and South Carolina; South Carolina was fully covered by Section 4(b) and California and Florida were partially covered.

Minority vote dilution was the problem in most of the Section 2 litigation and Section 5 preclearance denials, in the form of discriminatory redistricting plans or methods of election. However, discriminatory access to the ballot comprised a sizable minority of the Section 2 cases and Section 5 preclearance denials as well. The numerous lawsuits under the language assistance provisions of the VRA showed widespread failure by local jurisdictions to comply with those provisions.



Rogene Gee Calvert, director of the Texas Asian American Redistricting Initiative testified about the need for additional bilingual poll workers in Harris County, which now mandates Vietnamese and Chinese language assistance; she also discussed the difficulty Asian seniors have in obtaining proper documents to get a photo ID. (NCVR Texas Hearing) PHOTO CREDIT: SAMUEL WASHINGTON

About 10 percent of these enforcement matters (identified in Table 1) dealt with state-level voting practices. That is, about 10 percent dealt with practices adopted by or being administered by a state; in some instances, the discriminatory effect of these practices was state-wide or nearly so, while in other instances the discrimination was more localized.

In its *Shelby County* decision, the Supreme Court admonished Congress to consider current conditions when it acts to address voting discrimination through a preclearance requirement. As discussed in detail below, the current conditions show that voting discrimination is a serious present-day problem and occurs most frequently in specific states.

I. LITIGATION UNDER SECTION 2 OF THE VRA

Section 2 of the VRA has applied nationwide since it was enacted in 1965. The record of successful lawsuits brought under Section 2 is not, on its own, sufficient to show the full extent of voting discrimination, but it is the logical point at which to begin that assessment. If voting discrimination is no longer a serious problem in the United States, then the overall number of successful Section 2 cases should be small, and the cases should either be evenly distributed among the states, or there should be fewer Section 2 cases in the states

formerly covered under Section 4(b) (since their voting changes had been federally screened for decades).³

In fact, there were at least 171 successful Section 2 cases since 1995, an average of nearly nine per year.⁴ These included 16 state-level cases where a state law or practice, rather than a local one, was in question. Nearly 90 percent of the practices that were successfully challenged under Section 2 involved vote dilution claims, principally redistricting plans or at-large voting rules. These cases are summarized in Table 2 and are listed individually in the Supplemental Online Appendix.

Table 2: Successful Section 2 Cases: January 1995 to June 2014

State	Number of Cases	Coverage Under Section 4	State-Level Cases	Successfully Challenged Practices ^{ab}
TOTAL (27 States)	171	123 cases dealt with jurisdictions covered under Section 4	16 cases	Ballot access (21); Method of election (123); Redistricting (30)
Alabama	2	State	--	Method of election (1); Redistricting (1)
Arizona	1	State	1	Voter identification for in-person voting (Native American tribal members)
Arkansas	2	None	--	Election schedule (1); Method of election (1)
California	4	Partial (1 case)	1 (voting method)	Method of election (2); Redistricting (1); Voting method (1)
Colorado	2	None	1 (redistricting)	Method of election (1); Redistricting (1)
Florida	6	Partial (2 cases)	2 (poll worker training, provisional ballots, voting method, voter purges)	Method of election (4); Poll worker training (1); Provisional ballots (1); Voter purge (2); Voting method (1)
Georgia	9	State	--	Method of election (6); Redistricting (2); Voter challenges (1)
Hawaii	1	None	1	Candidate qualification
Illinois	5	None	1 (voting method)	Candidate qualification (1); Method of election (1); Redistricting (2); Voting method (1)
Louisiana	6	State	--	Method of election (2); Redistricting (5)
Massachusetts	2	None	1 (legis. redistricting)	Method of election (1); Redistricting (2)
Michigan	1	None	--	Race-based polling place challenges

State	Number of Cases	Coverage Under Section 4	State-Level Cases	Successfully Challenged Practices ^{ab}
Mississippi	13	State	--	Method of election (7); Redistricting (5); Voter intimidation (1)
Montana	5	None	--	Method of election (4); Registration and early voting sites (1)
Nebraska	1	None	--	Method of election
New York	5	Partial (1 case)	1 (voting method)	Method of election (2); Redistricting (2); Voting method (1)
North Carolina	2	Partial (both cases)	--	Method of election (2)
North Dakota	2	None	--	Method of election (1); Polling place (1)
Ohio	2	None	--	Method of election (2)
Pennsylvania	1	None	--	Polling place
Rhode Island	1	None	1 (legis. redistricting)	Redistricting
South Carolina	3	State	--	Method of election (3)
South Dakota	7	Partial (1 case)	2 (legis. redistricting & method of election)	Early voting (1); Method of election (2); Redistricting (3); Voting qualifications (1)
Tennessee	3	None	1 (legis. redistricting)	Method of election (1); Redistricting (2)
Texas	82	State	1 (cong. redistricting)	Method of election (78); Redistricting (2); Unknown (2)
Wisconsin	2	None	2 (photo ID; legis. redistricting)	Photo ID requirement (1); Redistricting (1)
Wyoming	1	None	--	Method of election

a Bilingual Section 2 claims are included together with other claims under the VRA language assistance provisions (see Table 4).

b A few lawsuits involved more than one voting practice.

These cases were—by an overwhelming margin—disproportionately concentrated in the states that were covered by Section 4(b) of the VRA at the time of *Shelby County v. Holder*. Specifically, nearly three-quarters (123 of 171) of the successfully resolved Section 2 lawsuits were brought in jurisdictions that were covered under Section 4(b).⁵ By contrast, the 2000 census data showed that more than three-fourths of the nation's total population lived in non-covered areas, as did substantial majorities of the African-American (61 percent), Hispanic (68 percent), and Native American (75 percent) populations.⁶

Thus, one quarter of the nation's population resided in states or counties that prompted three-quarters of all successful Section 2 claims.

Approximately two-thirds (110) of the successful Section 2 suits were brought against jurisdictions in just four states: Georgia, Louisiana, Mississippi, and Texas. These included three state-level cases.

The Section 2 record in Texas is indisputably the worst of any state, both qualitatively and quantitatively. Texas alone accounted for about half of the successful Section 2 litigation since 1995.

The Supreme Court's 2006 decision in *LULAC v. Perry*,⁷ which found that Texas' congressional redistricting plan violated Section 2 of the VRA and bore the "mark of intentional discrimination that could give rise to an equal protection violation,"⁸ was but one instance where federal courts have found racial discrimination in a Texas statewide redistricting plan.⁹ As discussed in more detail in Chapter 5, after having lost the *LULAC* case before the Supreme Court, based upon the racial gerrymandering of Congressional District 23 in West Texas, the Texas legislature used its next opportunity for redistricting to do precisely the same thing in the State's 2011 congressional redistricting plan, which a three-judge court found to be intentionally discriminatory and retrogressive under Section 5.¹⁰

California provides an informative contrast to Texas. California has had relatively few successful Section 2 cases since 1995. However, California did have extensive litigation under the language assistance provisions of the VRA, which coincided with a rapidly growing minority population and no shortage of racial tensions. The relatively small number of Section 2 cases in California might be seen as an anomaly given these other factors, but that can be largely explained because California has a state law, the California Voting Rights Act (CVRA),¹¹ that has been used to change the method of electing city councils and school boards from at-large to single-member districts. The legal showing that plaintiffs must make under the CVRA is somewhat less demanding than under Section 2 of the VRA, but there is little doubt that California would have seen a much greater number of Section 2 cases without the CVRA.¹² Unfortunately, California is the only state that provides a statutory remedy for vote dilution in local governmental election systems.

II. PRECLEARANCE DENIALS UNDER SECTION 5 OF THE VRA

Preclearance was denied on 113 occasions since 1995. DOJ issued 109 objection letters including 108 objections to voting changes covered under Section 5 and one objection concerning a jurisdiction covered under Section 3(c).¹³ The U.S. District Court for the District of Columbia (DDC) denied preclearance on four occasions.¹⁴ These 113 preclearance denials are summarized in Table 3 and listed individually in the Supplemental Online Appendix.¹⁵

Table 3: Administrative and Judicial Preclearance Denials: January 1995 to June 2014^a

State	Coverage Under Section 4	Objection Letters ^b	DDC Denials ^{cd}	State-Level Denials	Types of Voting Changes Denied Preclearance ^e
TOTAL		109	4	21	20 Ballot access (non-bilingual) (10 state-level); 4 Bilingual (1 state-level); 7 Jurisdictions' annexations and de-annexations; 20 Methods of election/selection (1 state-level); 58 Redistricting (8 state-level)
Alabama	State	3	0	0	Annexation (2 cities); Redistricting (2)
Alaska	State	0	0	N/A	
Arizona	State	2	0	1	Method of election (1); Redistricting (1 state-level)
California	Partial	1	0	0	Method of election
Florida	Partial	2	1	3	Absentee voting procedure (1 state-level); Redistricting (1 state-level); Reduction in early voting hours (1 state-level)
Georgia	State	14	0	2	Election date (1 state-level); Method of election (2); Polling place (1); Redistricting (8); Voter registration/candidate qualification (1); Voter registration procedure (1 state-level)
Louisiana	State	21	0	3	Annexation (5 objections for a city court); Precinct change procedure (2 state-level); Redistricting (13 with 1 state-level); Reduction in size of elected body (1)
Michigan	Partial	1	0	0	Voter registration location
Mississippi	State	15	0	3	Annexation (1 city); Candidate qualification (1 state-level); Election cancellation (2); Method of election (1 state-level); NVRA implementation plan (1 state-level); Polling place (1); Redistricting (9); Special election (1)
New York	Partial	2	0	0	Changing an elected position to appointed (1); Method of election (1)
North Carolina	Partial	6	0	1	Method of election (3); Redistricting criteria (1 state-level); Redistricting (2)
South Carolina	State	15	1	2	Annexation (1 city); Defunding of school district (1); Method of election (4); Photo ID requirement (1 state-level); Redistricting (8 with 1 state-level); Reduction in size of elected body (1)

State	Coverage Under Section 4	Objection Letters ^b	DDC Denials ^{cd}	State-Level Denials	Types of Voting Changes Denied Preclearance ^e
South Dakota	Partial and Section 3(c)	1	0	0	Redistricting (Section 3(c))
Texas	State	20	2	6	Redistricting (8 with 4 state-level); Redistricting criteria (1); Method of election (5); Annexation, de-annexation (2 cities); Registration procedure (1 state-level); Photo ID req't (1 state-level); Bilingual procedure (4 with 1 state-level); Candidate qualification (1 state-level); General election procedure (1); Polling place & early voting location (1); Voting method (1)
Virginia	State	6	0	0	Method of election (1); Polling place (1); Redistricting (5)

a *Shelby County v. Holder* did not affect the ability of the Attorney General to interpose objections to changes affecting voting in jurisdictions covered by federal court preclearance orders under Section 3(c) of the VRA, but no such objections have been issued since June 2013.

b Administrative objections in this table are counted by objection letter, as opposed to the total number of voting changes objected to. Judicial preclearance denials are similarly counted in this table by lawsuit, as opposed to the total number of voting changes denied preclearance. On multiple occasions, a single objection letter blocked multiple voting changes, and in one judicial preclearance action the D.D.C. denied preclearance to three Texas statewide redistricting plans. The counts of administrative objections and D.D.C. denials are therefore conservative. The objection figures also exclude six objections withdrawn by the Attorney General based upon changes in fact or law, and exclude one other objection after which the United States consented to judicial preclearance.

c DDC refers to the U.S. District Court for the District of Columbia.

d Two administrative objections were followed by judicial preclearance denials in South Carolina and Texas (these two are included in this table in the counts of DDC denials, and not in the objection letters counts); two other judicial preclearance denials from Texas and Florida concerned voting changes for which no administrative preclearance decision was made.

e The counts in this column refer to specific voting changes denied preclearance, and thus will sum to a greater number than the counts of administrative objection letters and D.D.C. judgments that denied preclearance, per note b.

Texas and Louisiana vie for the worst Section 5 record. Texas had 22 total preclearance denials (20 administrative objections from the DOJ and two judicial preclearance denials), six of which were state-level in scope. Louisiana, a far smaller state, had a total of 21 preclearance denials, three of which were state-level in scope. Texas and Louisiana are followed closely by South Carolina (16 denials, two at the state level), Mississippi (15 denials, three at the state level), and Georgia (14 denials, two at the state level). These five states together accounted for four-fifths of the preclearance denials since 1995.

About a fifth (21) of the 113 total preclearance denials concerned voting changes at the state level—either statewide redistricting plans or state laws of general applicability. In the case of statewide redistricting plans, the concerns often focused upon a limited number of districts or geographic areas, but a preclearance denial for a statewide redistricting plan represented a determination that the plan would reduce or deliberately restrict minority representation across the state as a whole. The other state-level laws for which preclearance was denied restricted minority voters’ access to the ballot, and applied generally across an entire state and had the potential to affect the electoral opportunities of hundreds of thousands—or even millions—of minority citizens in the affected state.

These 113 preclearance denials blocked the implementation of 58 redistricting plans (eight of which were at the state level); 20 changes to jurisdictions’ methods of election/selection (one of which was at the state level); annexations or de-annexations involving seven jurisdictions; 20 restrictions on ballot access (10 at the state level); and four changes affecting bilingual procedures (one at the state-level).

Vote dilution was the issue in most preclearance denials (redistricting plans and method of election changes). At the same time, nearly one-quarter of all preclearance denials concerned discrimination in restricting ballot access. A number of these denials were at the state level, and included some of the most controversial recent voting law changes, such as photo identification requirements in Texas and South Carolina and cutbacks to early voting in Florida. It remains to be seen whether Section 2 will prove to be as effective as Section 5 in dealing with such problems. At a minimum, the loss of Section 5 has required private citizens and civil rights groups (joined by the DOJ) to assume the considerable burden of litigating Section 2 ballot access challenges in Texas and North Carolina.

Section 5 preclearance denials do not represent a nationwide sample of jurisdictions, but they are highly relevant to the national picture for a number of important reasons.

“As the redistricting process unfolded, we saw there would be no transparency. Changes in House districts [...] seemed motivated by partisan and racial gerrymandering,” testified Dierdre Payne of the League of Women Voters of Mississippi at the NCVR Mississippi state hearing.

First, Section 5 preclearance denials were documented determinations by either the Department of Justice or a three-judge federal court. Any administrative determination could be reviewed de novo by a three-judge court, meaning that, unlike typical litigation challenging federal agency decisions, the court began with a fresh record and was not required to defer to the DOJ’s fact findings or interpretation of the law. The DOJ therefore had to hew closely to how the D.C. Court would construe the law and the facts—assuming the role of a surrogate for the D.C. Court—when making administrative determinations.¹⁶

Second, vote dilution objections to redistricting plans and method of election changes rested in significant part upon findings that voting was racially polarized in the relevant areas. Racially polarized voting is a fact-based determination that does not rely upon generalized assumptions, and it is a key factor in Section 2 vote dilution litigation. These findings of racially polarized voting reflected considerable quantitative analysis by the Department of Justice, even if they were expressed in a summary form in objection letters. This “screening” for racially polarized voting provides an important reason to believe that many of the voting changes blocked by Section 5 preclearance denials would otherwise have been found to violate Section 2.

Third, the 113 preclearance denials in the covered jurisdictions since 1995 show that the Section 2 record in the covered jurisdictions—representing about three-fourths of all successful Section 2 cases—is a very conservative measure of the concentration of voting discrimination. Not every voting change that was blocked by a preclearance denial would have resulted in a successful Section 2 case, but there can be no doubt that Section 5 significantly reduced the need for Section 2 suits in the covered jurisdictions. This is true based solely upon the record of preclearance denials, and it is even more so the case if the deterrent effect Section 5 had on state and local decision-makers is properly credited, as discussed in Chapter 3.

III. LITIGATION UNDER THE LANGUAGE ASSISTANCE PROVISIONS OF THE VRA

Since 1995, there have been 48 cases involving successful claims relating to oral and/or written language assistance under the VRA. Additionally, there have been ten non-litigation settlements involving enforcement of the VRA’s language assistance provisions. Most of these matters were brought under Section 203, but some were brought under Section 4(f)(4), Section 4(e), Section 2, and Section 208. The vast majority of these cases were resolved by consent decrees or other settlements. These cases are summarized in Table 4 and are listed individually in the Supplemental Online Appendix.

Table 4: Successful Bilingual Election Cases: January 1995 to June 2014

State	(Count for the State) Subjurisdictions Involved	Covered Under Section 4	Affected Language Minority Group/ Language ^a & Case Count
TOTAL (16 States)	48 cases (2 state-level); 10 non-litigation settlements	13 cases and 2 non-litigation settlements dealt with jurisdictions covered under Section 4	1 Bengali 7 Chinese 1 Creole 1 Ilocano 1 Japanese 2 Keresan 2 Korean 1 Lakota 3 Navajo 46 Spanish 1 Tagalog 4 Vietnamese 1 Yup'ik
Alaska	(1) State	Yes	Yup'ik
Arizona	(1) Cochise County	Yes	Spanish
California	(10) Alameda County (two cases); Riverside County; San Benito County; San Diego County; Ventura County; and the Cities of Azusa, Paramount, Rosemead, and Walnut (all cities in Los Angeles County)	No	4 Chinese; 1 Korean; 8 Spanish; 1 Tagalog; 2 Vietnamese
Florida	(4) Miami-Dade County; Orange County; Osceola County; Volusia County	No	1 Creole; 3 Spanish
Hawaii	(1) State	No	1 Chinese; 1 Ilocano; 1 Japanese
Illinois	(1) Kane County	No	Spanish
Massachusetts	(4) City of Boston; City of Lawrence; City of Springfield; City of Worcester (non-litigation)	No	1 Chinese; 4 Spanish; 1 Vietnamese
Nebraska	(1) Colfax County	No	Spanish
New Jersey	(2) Passaic County and City of Passaic; Salem County and Penns Grove	No	2 Spanish
New Mexico	(3) Bernalillo County; Cibola County; Sandoval County	No	1 Keresan; 3 Navajo
New York	(13) Orange County; Suffolk County; Westchester County; New York City (Kings, New York, & Queens Counties); New York City (Queens County); Dutchess, Montgomery, Putnam, Rockland, Schenectady, Sullivan, & Ulster Counties (separate non-litigation agreements with State AG); Brentwood Union Free School District	One case involved a covered jurisdiction	1 Bengali; 1 Chinese; 1 Korean; 11 Spanish

State	(Count for the State) Subjurisdictions Involved	Covered Under Section 4	Affected Language Minority Group/ Language ^a & Case Count
Ohio	(2) Cuyahoga County; Lorain County	No	2 Spanish
Pennsylvania	(2) Berks County; Philadelphia County	No	2 Spanish
South Dakota	(1) Shannon County (non-litigation settlement)	Yes	Lakota
Texas	(11) Brazos County; Ector County; Fort Bend County; Galveston County; Hale County; Harris County; City of Earth (Lamb County); Littlefield Independent School District (ISD); Post ISD; Seagraves ISD; Smyer ISD	Yes	10 Spanish; 1 Vietnamese
Washington	(1) Yakima County	No	Spanish

a Some cases involved more than one language for which voting assistance was required in addition to English.

Sections 203, 4(f)(4) and 4(e) of the VRA place specific responsibilities upon election administrators to provide the effective written and oral assistance that is required for a segment of the language minority population.¹⁷ These responsibilities are widely understood by the affected jurisdictions. The DOJ individually notifies each political subdivision that comes under Section 203 coverage of its responsibilities and also provides guidance and offers DOJ's assistance.¹⁸ Thus, there is little reason to provide the "benefit of the doubt" to election administrators in Section 203 covered areas who fail to provide bilingual assistance that is specifically required by federal law. Instead, such noncompliance is better understood as involving a choice to evade those responsibilities for as long as possible, and it is fair to count such cases as evidence of voting discrimination.

Most of the 48 cases and ten non-litigation settlements identified in Table 4 involving minority language assistance issues did not arise in jurisdictions covered under Section 4(b) of the VRA. However, 15 did involve Section 4(b) jurisdictions: 11 in Texas and one each in Alaska, Arizona, New York, and South Dakota. On this measure Texas once again stands out as having the worst record among the Section 4(b) covered states.

Apart from the states covered by Section 4(b), the most successful cases, a total of 13, were in New York. These included two cases involving New York City, 10 concerning counties (including seven non-litigation settlements initiated by the New York Attorney General), and one against a school district. California had 10, including six cases against counties (Alameda being sued twice by DOJ) and four cases against municipalities within Los Angeles County.

Spanish was the language most often involved in these cases (46 of the 58). Asian languages were involved in 10 cases; Native American languages in four cases; an Alaskan Native language in one case; and Creole in one case.

These cases typically involved two basic issues: the translation of written materials and the availability of oral assistance to language minority voters. Some cases also involved claims that language minority voters were subjected to hostile treatment by poll workers and election officials.

In some of these cases no written materials were translated, while in other cases there were significant gaps in the types of documents that were translated, or problems with quality of the translations. Fortunately, this is a relatively straightforward form of noncompliance to remedy, once there is an enforceable commitment to do so.

The failure to provide adequate oral assistance was most typically the more challenging issue in these cases. The Department of Justice's policy is that targeting oral assistance to precincts with a demonstrated need is the most effective means of complying with the language minority requirements.¹⁹ However, many jurisdictions that were sued lacked any program to identify the need for bilingual assistance in the first place, or to deploy competent bilingual poll workers in appropriate numbers to appropriate locations. The remedies for these problems typically included the designation of a bilingual program manager, who is made responsible for conducting outreach to the community to identify those areas where assistance is needed, recruiting bilingual poll workers, and supervising their deployment.

In a number of these cases brought outside the Section 4(b) covered jurisdictions, the Department of Justice and the defendant jurisdiction agreed to the court-ordered certification of the jurisdiction for federal observer coverage pursuant to Section 3(a) of the VRA. Federal observers were critically important to monitor the quality of translations being provided at the polling places and to identify occasions upon which minority voters were treated in a hostile or discriminatory manner.

One additional area of VRA noncompliance that came to light in some of these cases was poll workers' refusal to allow language minority voters to their assistance of choice in the polling place, including friends or family members. Under Section 208 of the VRA, voters are generally entitled to receive assistance from the person of their choice.²⁰ Compliance with Section 208 is particularly important in those jurisdictions that are not required to provide translated written materials. It is also important to voters who speak a language for which Section 203 does not require their jurisdiction to provide language assistance.



“I am a registered voter. I have a valid state ID. I speak reasonably well. I present myself reasonably well, and I got challenged for early voting. [...] my address was correct. It matched my ID. And the woman said to me, ‘Well, are you sure this is all correct?’”

–Testimony from Cynthia Spooner, former sworn deputy voter registrar and election precinct judge, about her experience voting in Harris County, Texas. (Texas NCVR hearing)

CHAPTER 3

What Has Been Lost as a Result of *Shelby County v. Holder*

This chapter provides an overview of the remarkable and enormous impact Section 5 of the Voting Rights Act (VRA) has had on the opportunity of minority citizens to participate in our Nation's political processes. Thus, this chapter provides insight into what has been lost as a result of the Supreme Court's decision in *Shelby County v. Holder*. This chapter also discusses *Shelby County's* effect on the Department of Justice (DOJ)'s federal observer authority under Section 8 of the VRA.

I. SHELBY COUNTY AND SECTION 5'S IMPACT ON MINORITY ELECTORAL OPPORTUNITY

The termination of Section 5 preclearance is having and will continue to have an immense impact on minority voting rights. As discussed in Chapter 1, Section 5 was focused on those states and localities with two defining characteristics: first, these jurisdictions had a long and pervasive history of voting discrimination; and second, these jurisdictions evidenced an ongoing pattern of voting discrimination after they became covered under Section 5. In other words, Section 5 was focused on the areas of the country where voting discrimination had been and continues to be most prevalent.

From 1965 until June 25, 2013 when *Shelby County* was handed down, Section 5 objections by DOJ and preclearance denials by the federal district court in Washington, D.C. prevented thousands of discriminatory voting changes from being implemented. Moreover, covered jurisdictions left other potentially discriminatory practices on the drawing board as a result of Section 5's deterrent effect. And the flow of Section 5 submissions to DOJ enabled DOJ, minority voters, and civil rights advocates to monitor in real time the status of voting practices in the areas where voting discrimination has most often occurred.

After *Shelby County*, Section 2 of the VRA remains as a nationwide prohibition on voting discrimination. While Section 2 provides important and considerable safeguards against discrimination, it does not provide the same level of protection that Section 5 afforded minority voters.

Section 5 Preclearance Denials

By any measure, Section 5 was responsible for preventing a very large amount of voting discrimination. From 1965 to 2013, DOJ issued approximately 1,000 determination letters denying preclearance for over 3,000 voting changes.¹ This included objections to over 500 redistricting plans and nearly 800 election method changes (such as the adoption of at-large election systems and the addition of majority-vote and numbered-post requirements to existing at-large systems).² Much of this activity occurred between 1982 (when Congress enacted the penultimate reauthorization of Section 5) and 2006 (when the last reauthorization occurred); in that time period approximately 700 separate objections were interposed involving over 2,000 voting changes, including objections to approximately 400 redistricting plans and another 400 election method changes.³

Each objection, by itself, typically benefited thousands of minority voters, and many objections affected tens of thousands, hundreds of thousands, or even (for objections to statewide changes) millions of minority voters. It would have required an immense investment of public and private resources to have accomplished this through the filing of individual lawsuits.

The application of Section 5 to Texas is illustrative. When Section 5 coverage began in 1975, the Attorney General interposed objections (in December 1975 and January 1976) to several state laws, including one that would have required all registered voters in the State to re-register in order to continue to be eligible to vote and another that sought to redraw the districts for the State House of Representatives.⁴ When Section 5 coverage was nearing its end, the federal court in Washington, D.C. issued decisions in August 2012 denying preclearance to Texas' photo identification (ID) requirement for in-person voting,⁵ and the State's redistricting plans for Congress, the State House of Representatives, and the State Senate (finding that two of the plans were intentionally discriminatory and that the third showed signs of discriminatory intent).⁶ In the years in between, DOJ interposed scores of objections to voting changes adopted by Texas and by its counties, cities, school districts, and special districts, particularly to discriminatory methods of election and redistricting plans.⁷

Section 5's Deterrent Effect: South Carolina's Photo ID Law and North Carolina's Voting Restrictions

Section 5's impact on minority electoral opportunity was not limited to the hundreds of preclearance denials: Section 5 also deterred the enactment of many other potentially discriminatory changes. South Carolina's adoption of a photo ID law in 2011, and the State's subsequent development of administrative rules for implementing that law, provides a good illustration of this preventative power.

Prior to 2011, South Carolina had a voter ID requirement for in-person voting but not a photo ID requirement. Voters were required to present either their voter registration card (automatically distributed to all registered voters) or a South Carolina driver's license or state ID card. The 2011 law (known as R54) deleted reference to the registration card as a polling place ID, and specified a limited set of photo IDs instead (a South Carolina driver's license or state ID card, passport, military ID, or a new photo registration card that could be obtained only by visiting a county office). The 2011 law also exempted voters from having to present photo ID if the voter had encountered a "reasonable impediment" to obtaining that ID.⁸

South Carolina sought preclearance from DOJ, and in December 2011 the Department objected.⁹ DOJ explained in its determination letter that the data presented by the State indicated that African-American voters were significantly less likely than white voters to have the photo ID specified by the 2011 law, and that the law's "reasonable impediment" exemption did not mitigate the negative effects of changing to a photo ID requirement because it was unclear what the exemption covered.

South Carolina then sought preclearance from the federal court in Washington, D.C. After trial, the district court agreed that African-American voters were less likely to possess photo ID than white voters, and that voters would encounter significant burdens in attempting to obtain a photo ID.¹⁰ However, South Carolina clarified and significantly expanded the scope of the "reasonable impediment" exemption while the litigation was ongoing. As a result, the district court found that the exemption would "permit voting by registered voters who have the non-photo voter registration card [used for voting under the pre-2011 law], so long as the voter states the reason for not having obtained a photo ID,"¹¹ which could be "any reason" that was not untrue.¹² Thus, the court concluded that "Act R54 will deny no voters the ability to vote and have their votes counted if they have the non-photo voter registration card..."¹³



Nikkey Finney, an award-winning American poet and South Carolina resident urged attendees to "Please get involved, don't be silent."

Based principally upon the State's inclusion of the "reasonable impediment" provision in the 2011 law and the State's subsequent interpretation of what it would allow, the district court precleared the 2011 law for elections held after 2012.¹⁴ However, the court denied the State's request to preclear the law for use in the November 2012 election because the State did not have sufficient time to properly implement the "reasonable impediment" provision before the election, and thus mitigate the otherwise retrogressive effect of the law.¹⁵

U.S. District Judge Bates, joined by District Judge Kollar-Kotelly, wrote separately to underscore the central role Section 5 played in the process that led to the State seeking to implement a nondiscriminatory, rather than a discriminatory, photo ID law:

[O]ne cannot doubt the vital function that Section 5 of the Voting Rights Act has played here. Without the review process under the Voting Rights Act, South Carolina’s voter photo ID law certainly would have been more restrictive. Several legislators have commented that they were seeking to structure a law that could be precleared... The key ameliorative provisions were added during that legislative process and were shaped by the need for pre-clearance. And the evolving interpretations of these key provisions of Act R54, particularly the reasonable impediment provision, subsequently presented to this Court were driven by South Carolina officials’ efforts to satisfy the requirements of the Voting Rights Act...

The Section 5 process here did not force South Carolina to jump through unnecessary hoops. Rather, the history of Act R54 demonstrates the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging nondiscriminatory, changes in state and local voting laws.¹⁶

In contrast, the situation in North Carolina, discussed in more detail later in this chapter, illustrates what could occur now that Section 5 deterrence does not play a role in decision making. In 2013, as *Shelby County* was pending before the Supreme Court, the North Carolina General Assembly was considering a photo ID bill whose future was uncertain. After the *Shelby County* decision, the General Assembly immediately moved to enact not only a photo ID requirement but a host of other voting restrictions, including a reduction in early voting, a prohibition on same-day voter registration as part of early voting, a prohibition on pre-registration of 16 and 17 year olds, and a prohibition on counting ballots cast in the correct county but the wrong precinct.

Section 5 and Transparency

An important but less obvious aspect of Section 5 was that it provided a comprehensive, up-to-date inventory of voting changes in the covered jurisdictions. Each week, DOJ published a notice (available on its website) that listed all new Section 5 submissions, identifying the affected jurisdiction and the types of voting changes being submitted.

Accordingly, DOJ, citizens residing in the covered jurisdictions, and civil rights advocates could track the current status of election practices in these areas, make informed evaluations of what was happening, and then respond as appropriate. There is no other source for this

information since no other federal law requires states or localities to identify or report voting changes, and it does not appear that any state requires this either.

With the *Shelby County* decision and the loss of this information, it is now less likely that minority voters will learn of discriminatory voting changes before implementation is imminent or even underway. For example, if a polling place is moved or closed in a discriminatory manner, minority voters might not find this out until it is too late before an election to protest to election officials or challenge the change in court.

In testimony to the NCVR, Alabama State Senator Hank Sanders called Alabama's new photo ID law "the literacy test of the 21st century." Sanders noted that the law was enacted in 2011, but the state avoided seeking Section 5 preclearance because it expected DOJ would object. After *Shelby County*, photo ID is now being implemented in the State.

Changes Blocked by Section 5 that Now Are Being Implemented

Augusta-Richmond, Georgia

The consolidated city and county of Augusta-Richmond, Georgia is one location where a voting change blocked by Section 5 is now being implemented in the aftermath of *Shelby County*. In 2012, the Georgia General Assembly amended a statewide law so as to move the election date for Augusta-Richmond from November of even-numbered years to the date in even-numbered years when county primary elections are conducted. On December 21, 2012, DOJ interposed a Section 5 objection.¹⁷

DOJ determined that the change in the election date would have a retrogressive effect on minority voters and that the State had not carried its burden of showing the absence of a discriminatory purpose. With regard to effect, the Department reviewed turnout data for Augusta-Richmond for county primary elections and November elections, and found that while both African Americans and whites turned out at a lower rate on the primary date, the drop-off for African-American voters had been substantially larger. With regard to purpose, the Department found that the reasons offered for the change were pretextual and that Augusta-Richmond's governing board had actually opposed the change. DOJ further noted that it had previously interposed a Section 5 objection to a similar election-date change for Augusta-Richmond.^{17a} DOJ also found it particularly significant that African Americans constitute a slight majority of the jurisdiction's voting age population and thus, in the context of racially polarized voting, "electoral outcomes are particularly dependent on voter turnout."¹⁸

In 2014, with Section 5 no longer in effect, the Augusta-Richmond government prepared to hold its election on the county primary date. African-American residents sued claiming that *Shelby County* only applied prospectively, and that Section 5 therefore continued to prevent the date change from being implemented.^{18a} A federal district court disagreed,¹⁹ and the election was held on the county primary date.²⁰ African-American candidates did quite well in the first election, allaying immediate concerns about the effect of this change. However, time will tell whether future elections are more in line with the historical voter turnout patterns. More generally, the federal court's decision appears to have removed any lingering doubt about the retroactive applicability of the *Shelby County* decision to post-2006 preclearance denials.

Beaumont Independent School District, Texas

Another such example involves the Beaumont Independent School District (ISD) in Texas. The events involving the ISD also illustrate how advances made in recent years may now be reversed after *Shelby County*.

In 1985, a federal court in a school district desegregation case ordered the ISD to change from a system of five districts and two at-large seats ("5-2") to a system of seven single-member districts. In 2011, however, the ISD held an initiative election in which voters authorized the ISD to return to the 5-2 system. The change back to 5-2 was submitted for preclearance and, on December 21, 2012, DOJ interposed a Section 5 objection to the change.²¹

In its objection letter, the Department explained that a 5-2 system would lead to a retrogression in African-American electoral opportunity. Under the pre-existing system of seven districts, African Americans had the opportunity (in the context of racially polarized voting in ISD elections) to elect a majority of the board members; under the 5-2 system, DOJ's analysis showed that minority voters would have the opportunity to elect only three of the seven board members (African Americans would likely have an electoral opportunity in three of the new five districts but not in elections for the at-large seats).^{21a} DOJ also found "overwhelming evidence that both the campaign leading to the [2011 initiative] election as well as the issue itself carried racial overtones with the genesis of the change and virtually all of its support coming from white residents."²²

With the demise of Section 5, the ISD is once again planning to implement the 5-2 system. The 5-2 system is being challenged in a Section 2 lawsuit.²³

Texas photo ID requirement

Litigation regarding Texas' photo ID law is discussed in detail in Chapter 6. This requirement was enacted in 2011, but because Section 5 preclearance was denied (first by DOJ and then

by the court in Washington, D.C.) it was not implemented in the 2012 elections. After *Shelby County*, Texas has begun implementation while Section 2 lawsuits challenging the law are moving forward.

Why Section 2 Does Not Adequately Compensate for Section 5's loss

After *Shelby County*, case-by-case litigation is now the only tool for challenging discriminatory voting changes. Section 2 is the principal federal law that may be used for this purpose, although litigation also may be brought under Sections 4(e) and 203 of the VRA to challenge language-assistance restrictions.

As discussed in Chapter 1, Congress determined in 1965 that case-by-case litigation is inadequate to address ongoing voting discrimination in the areas of the country where this discrimination has been most prevalent, i.e., the areas identified by the Section 4 coverage formula. In 2006, Congress again considered this question and, in deciding that Section 5 is still needed, reaffirmed that case-by-case litigation is “ineffective to protect the rights of minority voters” in the specially covered areas.²⁴

While Section 2 does offer a potentially powerful remedy, there are a number of significant difficulties inherent to it, and Section 2 clearly does not afford the same level of protection to minority voters that Section 5 did. To paraphrase Chief Justice Warren’s observation in *South Carolina v. Katzenbach* (quoted in Chapter 1), the *Shelby County* decision has essentially shifted the advantage of time and inertia back to the perpetrators of voting discrimination.



Voting Rights Attorney Robert Rubin testified about the impact of the loss of Section 5 at the California NCVR hearing. “Without Section 5,” stated Rubin, “it would be extremely difficult to challenge discriminatory voting changes before these go into effect.” PHOTO CREDIT: ANDRIA LO

A key distinction between the Section 2 and Section 5 remedies is the nature of the review process. Preclearance reviews were essentially automatic (since jurisdictions were required to submit all voting changes, and generally had become accustomed to doing so by the time *Shelby County* was decided). In addition, preclearance was largely handled by DOJ through an administrative process that did not involve litigation. In order to bring a Section 2 challenge, on the other hand, the minority community or DOJ must first become aware of the voting practice in question. The purpose and effect of the change must then be investigated and analyzed, and minority plaintiffs or DOJ must have the resources needed to pursue litigation.

Section 2 litigation is often complex and can be slow, time-consuming, and expensive. For example, as noted by the D.C. Circuit when it decided *Shelby County*, the legislative history for the 2006 reauthorization included “a Federal Judicial Center study finding that voting rights cases require nearly four times more work than an average district court case and rank as the fifth most work-intensive of the sixty-three types of cases analyzed.”²⁵ That court also noted that Congress heard testimony “from witnesses who explained that ‘it is incredibly difficult for minority voters to pull together the resources needed’ to pursue a section 2 lawsuit, particularly at the local level and in rural communities.”²⁶

A second important distinction between Sections 2 and 5 is that the covered jurisdictions had the burden of proof in Section 5 preclearance reviews whereas minority plaintiffs and DOJ have the burden of proof in Section 2 cases. It is generally understood that the party bearing the burden of proof faces a higher level of difficulty in prevailing.

Third, Section 5 required pre-implementation review of voting changes but, when a Section 2 case is filed, the jurisdiction is free to implement the disputed voting change while the litigation is ongoing, unless plaintiffs are able to obtain a preliminary injunction. Thus (as noted above), Texas has enforced its photo ID requirement in several elections in 2013 and 2014 although the requirement is being litigated under Section 2. Texas did not implement the requirement before *Shelby County* because preclearance had not been granted.

Obtaining a preliminary injunction in a Section 2 case is burdensome, challenging, and uncertain, even in the most meritorious cases. Moving for such relief requires plaintiffs to bear the expense of litigation, and to delay requesting relief until the evidence is sufficiently developed. In addition, in order to obtain a preliminary injunction, plaintiffs often must demonstrate that they have a substantial likelihood of prevailing at trial, and even with that, they must also satisfy several other conditions in order for an injunction to be granted.²⁷ Furthermore, obtaining preliminary relief may require plaintiffs to overcome a judge’s disinclination to grant an injunction before the court has been able to evaluate all the relevant information at trial.²⁸ The reluctance of federal courts to delay a scheduled election or order an interim remedy into place via

a preliminary injunction is particularly impactful as that is the only realistic way to stop some changes (such as redistricting) where the pre-existing practice can no longer be used.

The Section 2 suit that was litigated against Charleston County, South Carolina's at-large election system illustrates the difficulty of obtaining preliminary relief in a voting case. After filing suit in January 2001, DOJ moved for a preliminary injunction in advance of the June 2002 primary for the County Council, and the district court denied the request.²⁹ DOJ then moved for partial summary judgment, and in July 2002 the court found that the Department had proven all three of the *Gingles* preconditions for demonstrating a Section 2 violation;³⁰ the court thus concluded that the central elements of a Section 2 violation were present, and this indicated that it was highly likely the Department would prevail at trial. Yet, when DOJ moved again for a preliminary injunction in advance of the November 2002 general election, the court again refused to grant relief.³¹ In 2003, the district court ruled in favor of DOJ after trial,³² and in 2004 the Fourth Circuit Court of Appeals affirmed that ruling.³³

This Charleston County example also highlights how Section 2 and Section 5 differ. In 2003, after the district court's ruling that the County Council's at-large system violated Section 2, the county school district adopted the same at-large method. DOJ initially responded by requesting additional information, and then interposed a Section 5 objection less than nine months after the initial submission. Thus, this change was blocked by Section 5 before it could be implemented and without years of costly litigation.³⁴

Lastly, the Section 5 "effect" standard was specifically aimed at preventing backsliding (retrogression), whereas the results standard employed by Section 2 focuses on equal electoral opportunity. The Section 2 standard is broader in one sense, in that it allows plaintiffs to challenge practices that are discriminatory but not retrogressive. On the other hand, the results standard may require a more complex analysis to stop retrogressive changes than did the relatively straightforward Section 5 standard.

II. SHELBY COUNTY AND THE FEDERAL OBSERVER PROGRAM

Since 1965, federal observers have played a key role in voting rights enforcement. As discussed in Chapter 6, the presence of federal observers may deter misconduct by election officials and others at the polls. Furthermore, if problems do arise on Election Day when observers are present, the observers are required to promptly inform DOJ of what is happening so that DOJ can immediately contact the responsible election officials to attempt to remedy the situation. In addition, if problems identified by observers are not resolved and

are significant and ongoing, the post-election written reports provided by the observers can provide the basis for DOJ litigation.

As discussed in Chapter 1, DOJ's principal authority for sending observers was provided by Section 8, which authorizes observers in areas covered under Section 4, but DOJ's continuing ability to rely upon that section is in doubt because of *Shelby County*. The Department has not sent observers to any of the Section 4 areas since the Supreme Court's decision and DOJ apparently has concluded that the decision effectively has terminated the Section 8 observer program.

After *Shelby County*, DOJ still has the authority to send observers to jurisdictions designated by federal courts that made use of the Section 3(a) remedy in voting rights litigation (where those remedies have not expired). The Section 3(a) designations have been ordered in lawsuits brought by DOJ to enforce the VRA's language assistance requirements.

Case Spotlight

North Carolina 2013: The Post-*Shelby* World in a Microcosm

2000 - 2010, North Carolina is a Leader in Increasing Voter Participation: Reforms enacted in North Carolina led to increasing voter participation rates in North Carolina, making the state a model for the country in creating a voting system that brought new voters into the process. For example, in 2001 the state implemented early voting³⁵ followed by the implementation of same-day voter registration in 2007.³⁶ In 2009, the legislature passed a bill that allowed for pre-registration of 16 and 17 year-olds with overwhelming bi-partisan support.³⁷

During this time, the voter participation percentage in North Carolina increased steadily from 54.2 percent in the 2000 presidential election to 60.4 percent in the 2004 presidential election.³⁸ The state witnessed another increase in voter participation in the 2008 presidential election when the rate increased to 69.6 percent. Although the voter participation decreased slightly during the 2012 presidential election (68.3 percent) the voter participation rate of African Americans in North Carolina was the highest of any state at 70.2 percent.³⁹

And Then Shelby County Came Down...: The decision in *Shelby County v. Holder* in 2013 opened the door for a new legislature to completely reverse course, passing a bill that eliminated much of the voting rights progress made over the prior decade.⁴⁰ The process behind the turnaround and the passage of the most comprehensively restrictive law in the country makes North Carolina the perfect case study for what the *Shelby* decision means.

Before *Shelby County*, only a voter identification bill was being contemplated in North Carolina, and, Speaker Thom Tillis assured voters that the process of drafting would be a “deliberative, responsible and interactive approach” and “slow walk...through the House.”⁴¹ Additionally, House Elections Committee Chairman David Lewis called for open negotiations in the legislative process for a stand-alone voter ID bill. The original H.B. 589 was indeed filed as a stand-alone voter ID bill that allowed for a wide range of acceptable identification, including student and employee IDs.⁴² It was introduced on April 4, 2013 and passed the House on April 24, 2013. At that point, the 16 page bill was moved from the North Carolina State House to the North Carolina Senate.

However, no action would be taken for months—in fact, until one month after the decision in *Shelby County*. The reason for the delay was no secret: according to Senator Tom Apodaca, Chair of the Senate Elections Committee, the Senate did not want “the legal headaches of having to go through pre-clearance [under the Voting Rights Act] if it wasn’t necessary and having to determine which portions of the proposal would be subject to federal scrutiny.”⁴³

Accordingly, on July 23, 2013, two days before the end of the legislative session, the Senate revealed a new, heavily amended H.B. 589. The bill had evolved from a stand-alone voter ID

bill to an omnibus bill, packed with multiple voting restrictions. The Senate version, now 56 pages long, reduced early voting by one week, eliminated Sunday voting, eliminated same day registration, prohibited the counting of out-of-precinct provisional ballots and eliminated pre-registration for 16-17 year olds.⁴⁴ Additionally, the new bill limited the forms of acceptable photo ID to (1) a North Carolina driver's license; (2) a special (non-operator's) ID issued by the North Carolina DMV; (3) a U.S. passport; (4) military ID; (5) veteran's ID; (6) a tribal ID (from a federally or state-recognized tribe); and (7) a driver's license or non-operator ID issued by another state but only if the voter had registered within 90 days of the election.⁴⁵

During hastily held hearings in the Senate, opponents of the bill both testified and produced evidence that the restrictive changes would have a damaging effect on African American voters. Despite the concerns raised by legislators opposed to the new omnibus bill, the new H.B. 589 passed the Senate and the House without a single supporting vote from an African American legislator.⁴⁶ It was signed into law by Governor McCrory on August 12, 2013.⁴⁷

The Upshot: Without Section 5 in its way, the North Carolina legislature was able to pass measures that clearly threatened, and indeed were likely designed, to reverse a historic rise in voter engagement in one fell swoop, without having to provide any justification for the measures or any meaningful review. The new law is now being challenged in Section 2 litigation, and may not be fully addressed until after the 2014 election.

PHOTO CREDIT: ERIC PRESTON



“As elections administrator for Guilford County for 25 years, I never found a compelling public interest that justified the voter ID requirements of House Bill 589 nor any of the other rollbacks of voting opportunities that had been granted voters during the past 20 years...”

–Testimony from George Gilbert, economist and former director of elections for Guilford County, NC at the NCVR North Carolina hearing

Without Section 5 in its way, the North Carolina legislature was able to pass measures that clearly threatened, and indeed were likely designed, to reverse a historic rise in voter engagement in one fell swoop, without having to provide any justification for the measures or any meaningful review. The new law is now being challenged in Section 2 litigation, and may not be fully addressed until after the 2014 election.



Kari Stellanberger
Executive Director, American Union

CHAPTER 4

Impact of Discrimination on Protected Groups

African Americans, Latinos, Native Americans, and Asian Americans are the four groups that Congress primarily (though not exclusively) has sought to protect in the Voting Rights Act (VRA).¹ In 1965, Congress made extensive findings regarding how tests and devices, such as literacy tests and other laws and procedures, had been used to discriminate against African Americans. In 1975, Congress expanded the Voting Rights Act to cover language minorities, in particular Latino, Native-American, and Asian-American voting age citizens because of discrimination they had faced.² Included was the determination that the use of English-only elections in jurisdictions where more than 5 percent of the voting age citizens were of a single language minority constituted a test or device because it effectively excluded those citizens from participating in the electoral process.

As detailed below, voting discrimination affecting African Americans, Latinos, Native Americans, and Asian Americans is long-standing and persistent, has taken many forms, and continues today. There is a serious concern that the remaining legal remedies after the *Shelby County v. Holder* decision will not be adequate to deter new discriminatory voting laws and practices from being enacted and implemented.

I. AFRICAN AMERICANS

Since the Civil War, African Americans have been targeted through discriminatory laws and practices that have resulted in exclusion from the democratic process. Particularly in Southern states, the response to African-American political participation has often been the implementation of new mechanisms for disenfranchisement. This legacy of voting discrimination, like discrimination against African Americans in social and economic arenas, poses an ongoing threat to African-American inclusion in the political process. Though protection under the Voting Rights Act has produced significant gains, African Americans are continually subjected to new threats to their full enfranchisement. The ongoing protection of the Voting Rights Act is vital to the inclusion of this community.

LEFT: Aida Macedo, former Field Manager for the Election Protection Legal Committee, testified at the NCVR hearing in San Francisco about voter intimidation of Latino voters at the polls in Orange Cove, CA in 2012.

PHOTO CREDIT: ANDRIA LO

History and Background

The passage of the VRA is often referred to as the Second Reconstruction. The first Reconstruction, as referenced in Chapter 1, followed the Civil War; in the second, the civil rights movement confronted and fought a system of Jim Crow laws that permeated the country, particularly in the South.

As noted in the 2006 National Commission on the Voting Rights Act report,³

Following the Civil War, passage of the Fourteenth and Fifteenth Amendments gave to black males a constitutional right to vote and take part in the civic life of the nation, and they took full advantage of that right during the Reconstruction period. Large numbers of African Americans were elected in the early years of the First Reconstruction, when they composed 15 percent of all southern officeholders. However, following the Compromise of 1877, the Republicans agreed to refrain from using federal troops to protect black voting rights in the South, and white Democrats in that region embarked on a generation-long effort both to disfranchise blacks and remove them from office ... In addition to violence and fraud, all manner of legal devices were used to keep blacks, as well as various other minorities, from casting a ballot, including the poll tax, the literacy test, the grandfather clause, the good-character test, the understanding test, and the white primary.⁴

For nearly 100 years, Southern states used the law and force to continually and systematically exclude African-American citizens from registering and voting on a massive scale.⁵ In 1890, Mississippi held the first constitutional convention for the purpose of altering the state's suffrage laws to remove blacks from political life. These new provisions included a sharp increase in the duration of residency requirements, the adoption of a poll tax, and the imposition of a literacy test.⁶ Other Southern states followed suit and began a series of state constitutional or statutory changes that instituted, in varying forms and combinations, poll taxes, literacy tests, secret ballot laws, lengthy residency requirements, complex voter registration systems, multiple voting-box arrangements, and white-only primaries. These practices systematically intimidated and precluded African Americans in the South from voting and registering to vote. During this period, literacy tests continued to be used in six of the 11 ex-Confederate states. Louisiana blocked African-American voters arbitrarily deemed to have "bad character" from voting, and African-American voters in Alabama were barred from voting unless a white citizen would "vouch" for them.⁷

The mass exclusionary tactics employed in the South during the post-Reconstruction era were successful in blocking African Americans from registering and voting. In Mississippi, African-American voter turnout, which had exceeded 70 percent in the 1870s, dropped to 15 percent by the early 20th century. While more than 130,000 African Americans were registered to vote in Louisiana in 1896, that number dropped to 1,342 by 1904.⁸ State actors devised obstacle after obstacle aimed at preventing political participation by African Americans. Legal victories eliminated one practice, and another would pop up in its place to achieve the same result of exclusion.⁹ For example, in 1927, 1944, and 1953, the Supreme Court struck down three different versions of the “white primary” in Texas “because it kept reappearing in slightly modified form after each ruling.”¹⁰ Unable to keep up with the pace of tactics used by Southern states to curb registration and turnout, federal intervention and private litigation proved ineffective. The VRA was enacted to confront this long-standing, persistent, and all-encompassing voting discrimination against African Americans.

Following the passage of the VRA, African-American voter registration and turnout increased significantly. It is estimated that more than one million new African-American voters were registered between 1964 and 1972.¹¹ In the seven covered or partially covered Southern states, African-American registration increased from 29.3 percent to 56.6 percent between the enactment of the VRA in August 1965 and January 1972.¹² In Mississippi alone, African-American voter registration rates rose from 6.7 percent to 59.8 percent.¹³ In fact, this increase was relatively immediate, a testament both to the much-needed protections provided by the VRA and the devastating effects of prior disenfranchisement. The U.S. Commission on Civil Rights found that, by 1968, African-American voter registration was over 50 percent in several Southern states; prior to the passage of the Act, only Florida, Tennessee, and Texas recorded African-American registration at those levels.¹⁴



Wade Henderson, Executive Director of the Leadership Conference on Civil and Human Rights and guest commissioner, received testimony at the NCVR Ohio regional hearing. PHOTO CREDIT: JIMMY MCEACHERN

Yet, the large successes of the Voting Rights Act of 1965 in protecting the right to register and vote prompted officials to continue targeting African American voting strength through

dilutive tactics. At-large elections were seen as an especially effective way to prevent African-American candidates from getting elected, as were municipal annexations of predominantly white suburbs, and reapportionment and redistricting statutes.¹⁵ A landmark decision by the Supreme Court in *Allen v. State Board of Elections* held that these and other electoral modifications were subject to preclearance under Section 5 of the Act.¹⁶

Still, Section 5 alone was not sufficient to eliminate certain discriminatory voting mechanisms in the South during the 1970s. Some jurisdictions implementing these tactics remained uncovered, and even in covered jurisdictions citizens were unable to challenge long-standing dilutive practices unless and until changes were proposed.¹⁷ In addition, jurisdictions that passed laws diluting the African-American vote often were noncompliant and did not submit these changes to the United States Department of Justice (DOJ) or the district court for preclearance, as required by the VRA.¹⁸ Many such discriminatory practices were thus implemented and left unchallenged in the Southern states.

As jurisdictions adopted a range of ingenious dilutive tactics, Congress recognized that the VRA needed to be extended and strengthened. As a result of the 1982 adoption of the results standard under Section 2, voting rights litigation changed dramatically nationwide. Section 2 has since been widely used as a means to combat racial vote dilution and has been critically important for the success of minority candidates at the local level.¹⁹ The 1980s saw an explosion in the number of these cases.²⁰ “The number of Section 2 cases filed between 1982 and 1989 dwarfed the number of constitutional challenges brought during the 1970s,” with one study finding “over 150 Section 2 challenges to municipal elections in the eight states that were covered by Section 5 during this time period alone.²¹ Moreover, municipal data from these states” show that “[n]early 65 percent of all changes from at-large elections were attributable to litigation or settlements resulting from litigation.”²²

In some instances, officials made little effort to disguise their efforts to adopt racially discriminatory districting schemes despite the existence of Section 2. Governor Dave Treen of Louisiana proposed three districting schemes that would have left Orleans Parish, which was 55 percent African American by 1980, without a single majority African-American congressional district.²³

It was not until after a federal court rejected Treen’s proposal and a new redistricting plan was adopted that Louisiana was able to elect its first African-American congressional representative since Reconstruction.²⁴

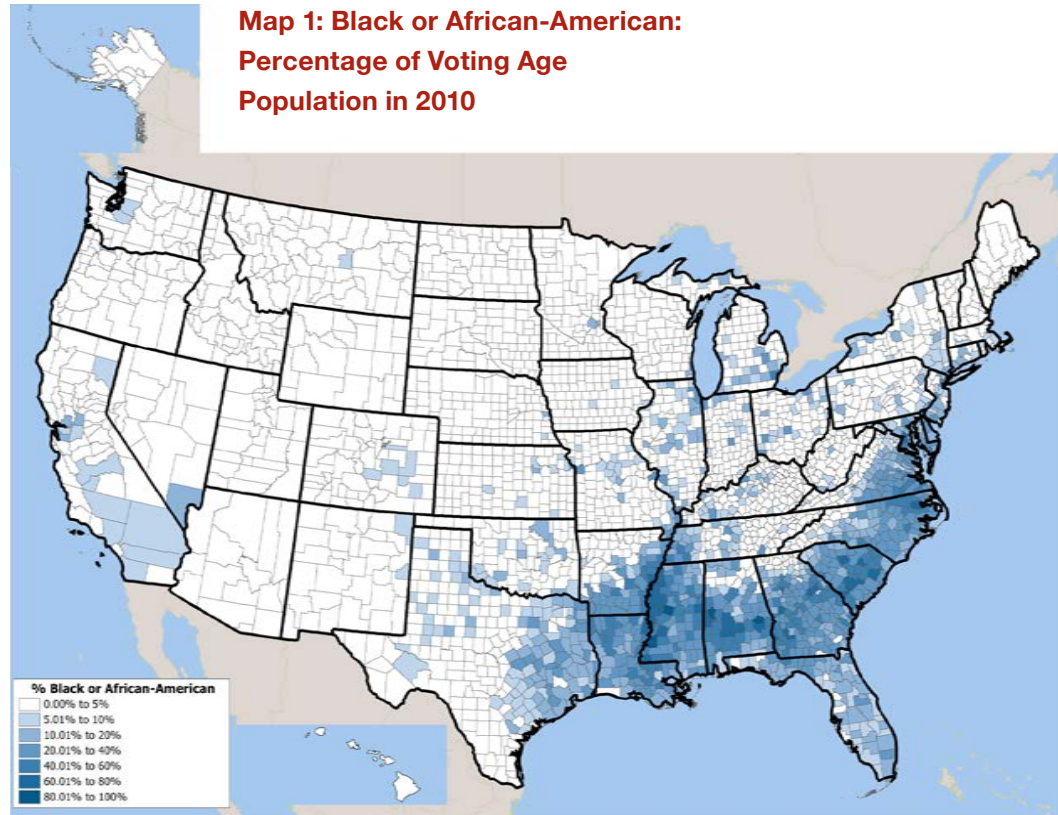
Still, the adoption of the Section 2 results standard did not stop states from creating and attempting to create racially discriminatory election structures.²⁵ In fact, the number of Section 5 objections increased after 1982 in spite of improved registration and turnout numbers and successful litigation.²⁶ In Mississippi alone, the DOJ lodged 37 objections just

to county redistricting plans following the 1980 census.²⁷ In particular, jurisdictions in some circumstances attempted to re-implement discriminatory tactics previously used to dilute the African-American vote, even where those tactics had been previously successfully challenged.²⁸ For example, in Lancaster County, South Carolina, the General Assembly adopted staggered terms for at-large seats on the local area school boards in 1972 and again in 1976 and 1984 following the DOJ's initial objection.²⁹ Based on the evidence it received, the 2006 U.S. House Judiciary Committee report concluded that "[t]he changes sought by covered jurisdictions were calculated decisions to keep minority voters from fully participating in the political process."³⁰

Alabama, a state historically and continually at the center of the battle for racial equality in voting rights, is an example of how litigation dismantled policies that intentionally discriminated against African-American voters. A series of cases brought in the 1980s aided in breaking apart some of Alabama's most overt racially discriminatory electoral schemes. In a seminal 1986 case, African-American plaintiffs challenged the use of at-large elections for commissioners in nine counties in *Dillard v. Crenshaw County*.³¹ The court relied on evidence that 1951 and 1961 statewide electoral changes, both of which utilized vote dilution tactics, were adopted by the Alabama legislature with a discriminatory intent.³² Among other probative evidence, expert testimony was presented "that a third of the state's counties shifted from district to at-large elections between 1947 and 1971, after blacks began to register and vote in large numbers."³³ Based on the court's finding of a statewide policy of intentional discrimination, the federal district court enjoined the use of at-large elections in these counties.³⁴ This ruling propelled subsequent litigation challenging dilutive practices that resulted in more than 100 Alabama jurisdictions changing their method of election.³⁵ African-American plaintiffs in Alabama also challenged the discriminatory appointment of poll workers under Section 2 of the VRA. The district court first granted preliminary relief against almost every county, prohibiting further enforcement or implementation of the widespread practice of appointing "disproportionately too few"³⁶ African-American poll workers. The court later found that the dearth of African-American poll workers was the product of intentional discrimination by the state.³⁷

Despite these successful challenges to discriminatory voting laws over the past 50 years, recently there has been a resurgence in barriers to African-American voter participation through such measures as voter identification laws as well continued vote dilution. Discrimination against African Americans did not end with the passage of the VRA, and as has been and as will be detailed throughout this Report, continues to plague the American voting system today.

Geography



As shown in Map 1, the African-American population is still heavily concentrated in the South, as well as big cities in other parts of the country. The most recent census found that 14 percent of all people in the United States identified as black, with 55 percent of the black population living in the South. One-hundred five Southern counties had a black population of 50 percent or higher.³⁸

Participation

As can be seen in the graphs in Appendix C, registration and turnout among African Americans has been improving in recent years, according to the U.S. Census Bureau. In the last two presidential elections that brought President Barack Obama into office, African-American voter registration and turnout rates increased. In 2012 and 2008, African-American turnout levels among citizens of voting age were at approximately 66 and 65 percent, respectively, which represents a steady increase in turnout from previous years (compared with 60, 57, and 53 percent in 2004, 2000, and 1996, respectively).³⁹ However, this has not been the case in other types of elections. In the last two midterm elections, for example, African-American participation rates continued to fall below that of whites. In 2010 and 2006, the

negative differentials between African-American and white participation rates were 5 and 11 percentage points, respectively.⁴⁰

Elected Officials

Section 2 and Section 5 of the VRA were highly effective working in tandem to reduce minority vote dilution, including through the districting process.⁴¹ As a result, in jurisdictions where the African-American population is sufficiently concentrated, African-American candidates can regularly gain elected office. Between 1970 and 2000, the nation saw a 600 percent gain in the number of African-American elected officials nationally and a 1,000 percent gain in those states that were formerly entirely covered by Section 5.⁴² Nonetheless, getting elected in areas without a majority of minority voters continues to be a challenge for African-American candidates. As several voting rights experts recently concluded, “Although there is evidence to suggest that minority candidates are beginning to win elections in some non-minority districts, the overwhelming number of minority legislators continue to represent majority-minority districts.”⁴³

Current Types of Discrimination

Several types of election procedures have been used to discriminate against African-American citizens, including vote dilution, barriers to voting, and even attempts at intimidation, and these procedures continue to be used to disempower African Americans. As is demonstrated by the tables outlining the cases litigated under the Voting Rights Act since 1995 (see Supplemental Online Appendix), there have been numerous cases striking down redistricting plans, at-large elections, and other election practices that were found to discriminate against African Americans. Over 1/3 of the successful Section 2 cases⁴⁴ brought from January 1995 to June 2014 involved African-American voters.⁴⁵ These cases continue to be largely concentrated in the Southern United States. About 2/3 of the cases involving African Americans occurred in jurisdictions in the former Section 5-covered jurisdictions, with Mississippi, Louisiana, and Georgia alone accounting for 42 percent of these cases.⁴⁶ Additionally, the overwhelming majority of Section 5 and Section 3(c) preclearance denials, where the Justice Department or federal court refused to preclear election changes, issued between January 1995 and June 2014 were for changes impacting African Americans. Of the 113 Section 5 preclearance denials issued during this period, 101—or nearly 90 percent of the denials—involved circumstances where the submitting jurisdictions failed to prove the proposed change would not discriminate against African Americans.⁴⁷



Dr. Brenda Williams of The Family Unit testified at the NCVR South Carolina state hearing, stating “[T]he South Carolina Election Commission now has a dress code for people wanting and needing photo IDs in the State. [...] You have to wear a certain kind of attire. No hats are allowed, no scarves. African-American women oftentimes adorn ourselves in scarves and turbans. It’s a part of our culture. [...] [T]he voter registration office people have the authority to stop and not take your picture if you don’t fit their attire guidelines.”

At-large elections and discriminatory redistricting plans have been the primary tactics most recently employed to dilute African-American voting strength. Of the 62 successful Section 2 cases involving African Americans, almost 1/2 involved at-large methods of election and 1/3 involved redistricting plans.⁴⁸ Additionally, as is discussed in Chapter 6, evidence indicates that increasingly stringent voter identification requirements, restrictions on voter registration drives, and reductions in early voting opportunities disproportionately affect African Americans compared to whites.⁴⁹ The cases and research discussed in depth in the following chapters will demonstrate the panoply of ways African Americans are denied their full and equal voting rights in the 21st century.

II. LATINOS

Latinos comprise approximately 17 percent of the U.S. population⁵⁰ and are the nation’s largest minority group.⁵¹ As explained below, however, voter participation rates for Latinos—despite recent increases—continue to lag behind those of other groups. A leading Latino organization points out that “[m]ore than 100 years of virtually unchecked discrimination at the polls against Latino U.S. citizens gave birth to this situation, and a number of factors have sustained it.”⁵²

As detailed below, Latinos have historically faced discrimination in voting. This discrimination has come through formal and informal methods such as state-sanctioned violence and intimidation, racially targeted voter challenges, and English-only elections. Other persistent forms of discrimination include discrimination in the redistricting process, the use of at-large elections to dilute the Latino vote, and the failure to comply with the VRA's language assistance requirements to ensure equal access for Spanish-speaking voters, among others.

History and Background

The history of Latinos in the United States, like the group itself, is quite diverse.⁵³ It is not an overgeneralization, however, to say that Latinos, as a whole, have faced a history of discrimination and exclusion in the United States, some of which continues to the present day and has contributed to the existing disparities in electoral participation and opportunity.

Mexican Americans and Puerto Ricans are the two largest Latino heritage⁵⁴ groups and those with the longest history in the United States. Mexican Americans were present in what is now the Southwest of the United States even prior to the U.S. border expansion to include this territory in the 1840s. With the 1845 annexation of Texas and the 1848 Treaty of Guadalupe Hidalgo, a great part of Northern Mexico became part of the United States, and the Mexican citizens living in that territory became U.S. citizens.⁵⁵ Similarly, the United States acquired control of Puerto Rico in 1898,⁵⁶ and Puerto Ricans were granted U.S. citizenship in 1917, after which hundreds of thousands of Puerto Ricans migrated to the continental United States.⁵⁷ Despite these formal grants of citizenship, however, both Puerto Ricans and Mexican Americans experienced acts of discrimination and obstacles to their full integration as equal citizens of the United States. Other Latino heritage groups with a more recent history in the United States have similarly faced barriers to equality under the law.

Mexican Americans throughout the Southwest have been the target of discrimination including unlawful deportations,⁵⁸ state-sanctioned violence,⁵⁹ segregation in schooling,⁶⁰ and exclusion from juries.⁶¹ In the watershed case of *Hernandez v. Texas* in 1954, the first in which the Supreme Court recognized that Mexican Americans were entitled to equal protection under the Fourteenth Amendment,⁶² Hernandez challenged a Jim Crow practice in Texas that denied Mexican Americans the opportunity to serve on trial or grand juries.⁶³ The Supreme Court recognized that Hernandez proved that persons of Mexican descent constituted a separate class, stating:

The participation of persons of Mexican descent in business and community groups was shown to be slight. Until very recent times, children of Mexican descent were required to attend a segregated school for the first four grades. At least one restaurant in town prominently displayed a sign announcing ‘No Mexicans Served.’ On the courthouse grounds at the time of the hearing, there were two men’s toilets, one unmarked, and the other marked ‘Colored Men’ and ‘Hombres Aqui’ (‘Men Here’).⁶⁴

Early Discrimination in Voting

This widespread discrimination against Mexican Americans also manifested itself in the electoral process. The Texas Rangers, for example, who utilized their position as law enforcement agents to terrorize the Mexican American community through “lynchings, burning houses, executions in front of family members and murder,” also specifically discouraged Mexican Americans from voting.⁶⁵ Texas further excluded Mexican Americans through its white primaries, lauded for “eliminat[ing] the Mexican voter as a factor in nominating county candidates,” and the imposition of a poll tax.⁶⁶

Literacy tests were another tool used throughout the Southwest and in New York to block the Latino vote.⁶⁷ New York, for example, instituted its English literacy test in 1922,⁶⁸ just five years after Puerto Ricans were granted citizenship and New York City experienced an influx of Puerto Ricans.⁶⁹ Later, in the 1920s, 1930s, and 1940s as Latino populations rose in the Southwest, Latino voters were the target of further intimidation efforts to keep them away from the polls.⁷⁰ Operation Eagle Eye, for example, deployed volunteers in Arizona to “question[] would-be Latino voters about their residence and ability to read and understand English.”⁷¹

Continued Discrimination into the Second Half of the 20th Century

Although, as mentioned, the VRA was originally designed with African Americans’ voting rights in mind, the 1965 Act included an important provision for some Latinos: Section 4(e). Section 4(e) provides that the right to vote cannot be denied to U.S. citizens who completed the sixth grade in an American public school where instruction was conducted primarily in a language other than English.⁷² The provision was instrumental to the protection of Puerto Rican voting rights in that it invalidated the English literacy tests that had been implemented to block Puerto Ricans’ access to the polls.⁷³ This protection, however, was resisted by New York State, which challenged it all the way to the Supreme Court. In *Katzenbach v. Morgan*,⁷⁴ the Supreme Court rejected the challenge, holding that Section 4(e) was constitutional. Eventually, Section 4(e) was to pave the way for more expansive provisions protecting language minority voters.

In the hearings leading up to the reauthorization of the Voting Rights Act in 1975 and 1982, witnesses testified that the discrimination methods used against African Americans in the South were similarly being used against Latinos in the Southwest.⁷⁵ Some of these methods

included “intimidation, capricious changes in voting rules, English-language registration and voting requirements, lengthy residential requirements, and the manipulation of the Mexican American vote by non-Mexican American political leaders.”⁷⁶ After finding that voting discrimination against citizens with limited English proficiency was “pervasive and national in scope,” Congress in 1975 expanded the protections of the VRA to specific language minorities, including those with Spanish heritage.⁷⁷ In doing so, it sought to address a “racialized inequity that was purposefully directed at [Mexican-American voters] that turned on their racial/ethnic characteristics and not only on their language minority status.”⁷⁸ Importantly, Congress found that English-only elections in jurisdictions where more than 5 percent of the voting age citizens were a minority language group constituted a “test or device” under the Voting Rights Act, and hence were prohibited.⁷⁹

In recent decades, Latinos have also experienced discrimination in the redistricting process. In *White v. Regester*, for example, the Supreme Court struck down a redistricting plan for the Texas State House of Representatives.^{79a} In invalidating the plan, the district court noted that in Bexar County, “cultural incompatibility... conjoined with the poll tax and the most restrictive voter registration procedures in the nation ha[d] operated to effectively deny Mexican-Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary.”⁸⁰

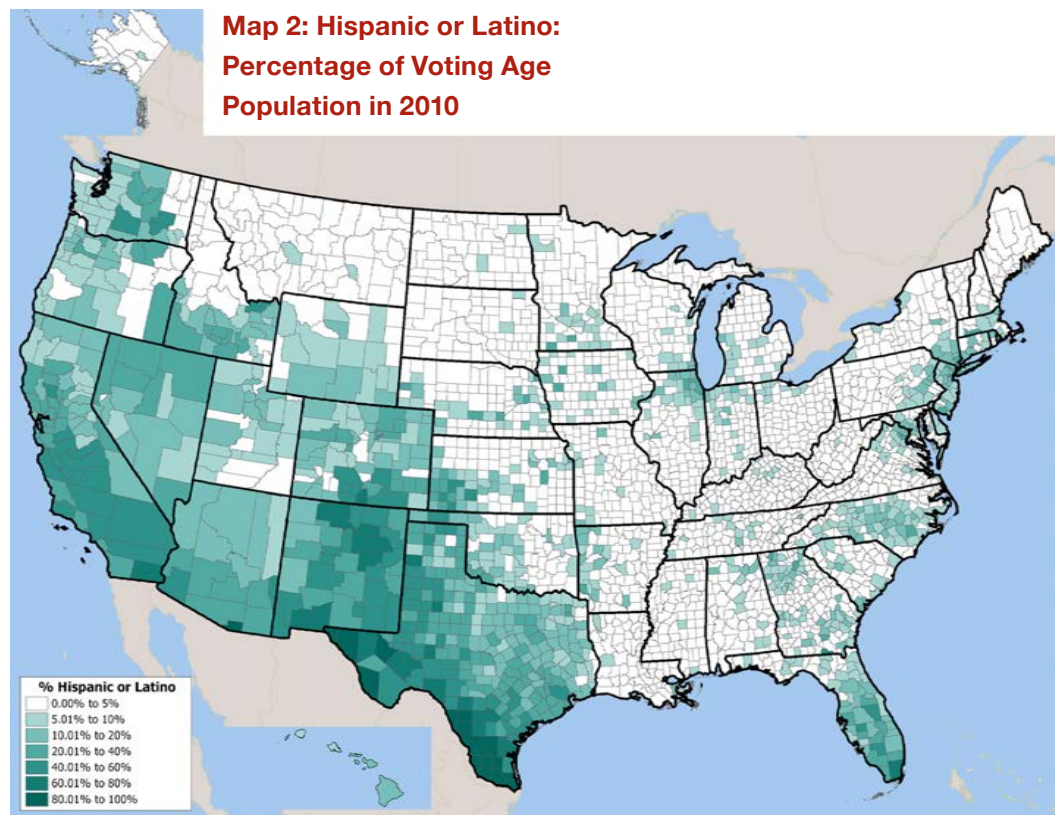


George Korbel, Attorney with the League of United Latin American Citizens, holding up two models of Texas gerrymandered House districts while testifying about what he called “the vast arc of exclusion” in the State.

PHOTO CREDIT: SAMUEL WASHINGTON

Similarly, in a 1990 decision in the case of *Garza v. County of Los Angeles*, a federal judge declared that, when drawing the district lines after the 1980 census, the Los Angeles County Board of Supervisors had intentionally violated the rights of Latino citizens, in violation of Section 2 of the Voting Rights Act and the Fourteenth Amendment, by intentionally dividing a geographically compact area of Latinos for several rounds of redistricting after a Latino candidate almost won election in 1958.⁸¹ To remedy this violation, the court ordered the district to redraw its district lines,⁸² resulting in the creation of a majority-Latino district that resulted in the election of Gloria Molina, the first Latino Los Angeles county supervisor in modern history.

Geography



As can be seen from Map 2, there continue to be significant concentrations of Latinos in the Southwest, but the population has grown tremendously including in major cities and smaller industrial cities. Arizona, California, Florida, Illinois, New Jersey, New Mexico, New York, and Texas contain three-quarters (74 percent) of the nation's Latino population. This is down from 79 percent in 2000 and 84 percent in 1990.⁸³ As a reflection of the increasing dispersal of the Latino population, 23 states have at least one jurisdiction that meets the minimum population thresholds and are hence covered under Section 203 of the VRA for the Spanish language, which requires them to provide election materials in Spanish and Spanish-language assistance at polling places.

Participation

Large turnout disparities exist between white and Latino populations, including Mexican Americans and Puerto Ricans.⁸⁴ Among citizens, the Hispanic voter turnout rate in the 2012 presidential election was 48.0 percent, while the turnout rate for white voters was 64.1 percent.⁸⁵ The socioeconomic differences between Latinos and other groups help to explain this disparity. A study seeking to understand why turnout differs between Latinos and other groups analyzed the factors impacting voter participation.⁸⁶ Using data contained in the U.S. Census Bureau's Current Population Survey, the researchers ran two statistical models.⁸⁷ The first used only racial-ethnic and national-origin factors, while the second tested the impact of socioeconomic variables including age, education, family income, and residential stability.⁸⁸ The researchers found that “virtually all of the overall Latino group differences disappear when socioeconomic variables are taken into account.”⁸⁹ Education, age, and income are the demographic factors most strongly related to voter turnout⁹⁰ and Mexican Americans and Puerto Ricans are at a disadvantage compared with Anglos on each of those indicators.⁹¹

Courts have repeatedly noted the relationship between discrimination and social inequality.⁹² A U.S. Senate Judiciary Committee report accompanying the 1982 amendments to Section 2 of the VRA identified several factors for courts to use when assessing whether a violation exists.⁹³ One of these factors is “the extent to which members of the minority group ... bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.”⁹⁴ As the Supreme Court explained in *Thornburg v. Gingles*, “political participation...tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes.”⁹⁵ Between 1982 and 2005, in 13 reported successful Section 2 cases involving Latinos, courts found that discrimination in these other areas did inhibit Latinos' ability to effectively participate in the political process.⁹⁶

The ongoing discriminatory efforts discussed below—including voter intimidation, discriminatory redistricting, attempts to dilute the Latino vote, and the denial of language assistance—combine with this history of prior discrimination to further suppress Latino participation.

Elected Officials

The last 15-20 years have seen some improvement in Latino electoral opportunity. Data from the National Association of Latino Elected Officials shows that in 1996, 180 Latinos held elected office at the state or federal level.⁹⁷ By 2009, that number had increased to 277, and it climbed to 320 by 2013.⁹⁸ Though this trajectory is impressive, its significance should not be exaggerated. A separate statistical analysis shows that it continues to be difficult for a Latino candidate to get elected in a jurisdiction without a Latino majority:

Hispanic voters are now more likely to elect Latino candidates in the majority-minority districts that have been created [for them] than they were in 1992 (at least with regard to state senate and congressional districts) ... [but] like African American representatives, the vast majority of Latino representatives are elected from majority-minority districts. The percentage of districts with non-Hispanic majorities represented by Latino legislators has risen since 1992, but, like the increase in the number of African American representatives elected from majority-nonblack districts, this increase has been small. Moreover, a number of the Latino representatives elected from districts with non-Latino majorities won in districts where blacks and Latinos together formed a majority—although the share of Latino victories in districts characterized by black-and-Hispanic majorities is lower than the share of African American victories in such districts.⁹⁹

Types of Discrimination

Voting barriers for Latino voters have continued to the present day, not only in jurisdictions where they have historically had a strong presence,¹⁰⁰ but also in places where the community has just recently started to grow.¹⁰¹ Historical—and ongoing—types of discrimination include voter intimidation, discriminatory redistricting, the use of at-large elections to dilute the Latino vote, and the denial of language assistance. Additionally, Latino voters have encountered other modern-day voting restrictions that present significant challenges in exercising their right to vote.

Between January 1995 and June 2014, 29 of the denials of preclearance under Section 5 of the VRA have concerned Latino voting rights. Additionally, over half of the successful cases filed during this time period under Section 2 of the VRA have involved Latino voters (96 out of 171).¹⁰² Out of these cases affecting Latino voters, 82 involved a successful challenge to the use of at-large methods of election and seven successfully challenged a redistricting plan.

Sanchez v. Colorado,¹⁰³ which was decided in 1996 by the Tenth Circuit, was a classic case of Latino vote dilution. The Latino plaintiffs in the case challenged a state legislative

redistricting plan that did not provide for a majority Latino district (House District 60) in the San Luis Valley. A consulting firm hired by the Colorado Reapportionment Commission found that there was racially polarized voting and it was “necessary to create districts that are more heavily Hispanic in the San Luis Valley than elsewhere in the state because of the degree of racially polarized voting found in this area of the state.”¹⁰⁴ Nonetheless, the commission’s apportionment of District 60 resulted in a district where Latinos comprised only 42.4 percent of the voting age population.¹⁰⁵ Other factors also painted a picture of the hostility faced by the Latino community in the area. For example, the Anglo incumbent for the District 60 House seat had referred to Latinos as “wetbacks,” and plaintiffs testified about problems such as: the placing of voter registration branches “in Anglo homes, where Hispanics would feel uncomfortable entering... the appointment of all Anglo election judges,” and missing Latino voters from the registration rolls.¹⁰⁶ Importantly, since the District 60 house seat was drawn in 1940, it had only been held by Anglos.¹⁰⁷ The court ultimately held that the configuration of District 60 diluted the Latino vote and remanded the case back to the district court, with directions that the court order the State of Colorado to implement a remedial plan that would include a Latino-majority district centered in the San Luis Valley.¹⁰⁸

Additional Section 2 cases have included claims such as discriminatory challenges to individuals’ voting rights. A recent example is *United States v. Long County, Georgia*,¹⁰⁹ a 2006 lawsuit filed against the County for unlawfully targeting Latino voters. Long County had experienced a dramatic increase (460 percent) in its Latino population between 1990 and 2000, and in 2000, the community made up 8.4 percent of the County’s population. In the 2004 election, the right to vote of 45 Latino residents was challenged on the grounds that they were not U.S. citizens. Even though none of these challenges were actually supported, the County required all 45 Latino residents to attend a hearing and prove their U.S. citizenship. Other non-Latino residents whose right to vote had been challenged on other grounds, however, were not required to attend such a hearing. In 2006, the federal court entered a consent decree requiring the County to (1) notify the 45 Latino voters that the challenges to their right to vote were unsubstantiated, (2) implement uniform voter challenge procedures, and (3) properly train their election officials and poll workers.¹¹⁰



At the NCVR regional hearing in New York City, Juan Cartagena, President & General Counsel of Latino Justice PRLDEF, (far right) said “[W]e consistently treat citizens in this country as if they have to earn and re-earn their right to vote. We don’t treat it as a right. [...] [That] explains why so many of us who are eligible to vote and have registered to vote have to re-approve that we are eligible to vote again, and again. [...] It is time that we treat the vote as a right in a democracy.” PHOTO CREDIT: CHRIS FIELDS

Another example of targeted challenges against Latinos took place in Atkinson County, Georgia. In 2004, 95 Latino registered voters—78 percent of all Latino voters in the county—had their right to vote challenged on the basis of their citizenship. Like in Long County, the challenged voters were forced to appear at the county courthouse to defend their voting rights.¹¹¹ However, “after county attorney Russ Gillis began the hearing, it didn’t take him long to get to his point. The challenges were dismissed because they were ‘legally insufficient because they’re based solely on race,’ he said to the courtroom.”¹¹²

Jurisdictions’ failure to provide the necessary and often required language assistance is also a persistent problem for Latino voters. Out of the 58 successful language assistance cases and pre-litigation settlements filed between January 1995 and June 2014, 46 of them (79 percent) were brought on behalf of Spanish-speaking voters. As discussed above, English-only elections were historically utilized to keep Spanish-speaking voters from the polls. Today, as some jurisdictions throughout the United States fail to adequately comply with federal requirements for language assistance, Spanish-speaking voters continue to be denied full, meaningful, and equal access to the polls. As discussed in more detail in Chapter 7, the provision of language assistance at the polls has been shown to positively impact voter participation in Latino communities.

According to the Pew Hispanic Center, Latinos “will account for 40% of the growth in the eligible electorate in the U.S. between now and 2030, at which time 40 million Hispanics will be eligible to vote, up from 23.7 million now.”¹¹³ Whether these new eligible voters become actual voters will depend, in large part, on the legal protections in place to ensure that access to all aspects of voting is free of discrimination and unnecessary barriers. As the Latino electorate continues to grow, it is more imperative than ever that access to the ballot is not encumbered by racial discrimination.

III. NATIVE AMERICANS

Although they inhabited what is now the United States long before white settlers arrived, Native Americans have only relatively recently been given the right to vote under the laws of the United States and still struggle to achieve full participation in the political process. While the Voting Rights Act applies to Native Americans, relatively little voting rights litigation was brought on behalf of Native Americans until fairly recently.¹¹⁴ But when such litigation has been brought, “courts have invariably found patterns of widespread discrimination against Indians in the political process.”¹¹⁵

History and Background

As President Richard Nixon said in 1970,

The First Americans—the Indians—are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, health—the condition of the Indian people ranks at the bottom. This condition is the heritage of centuries of injustice. From the time of their first contact with European settlers, the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny.¹¹⁶

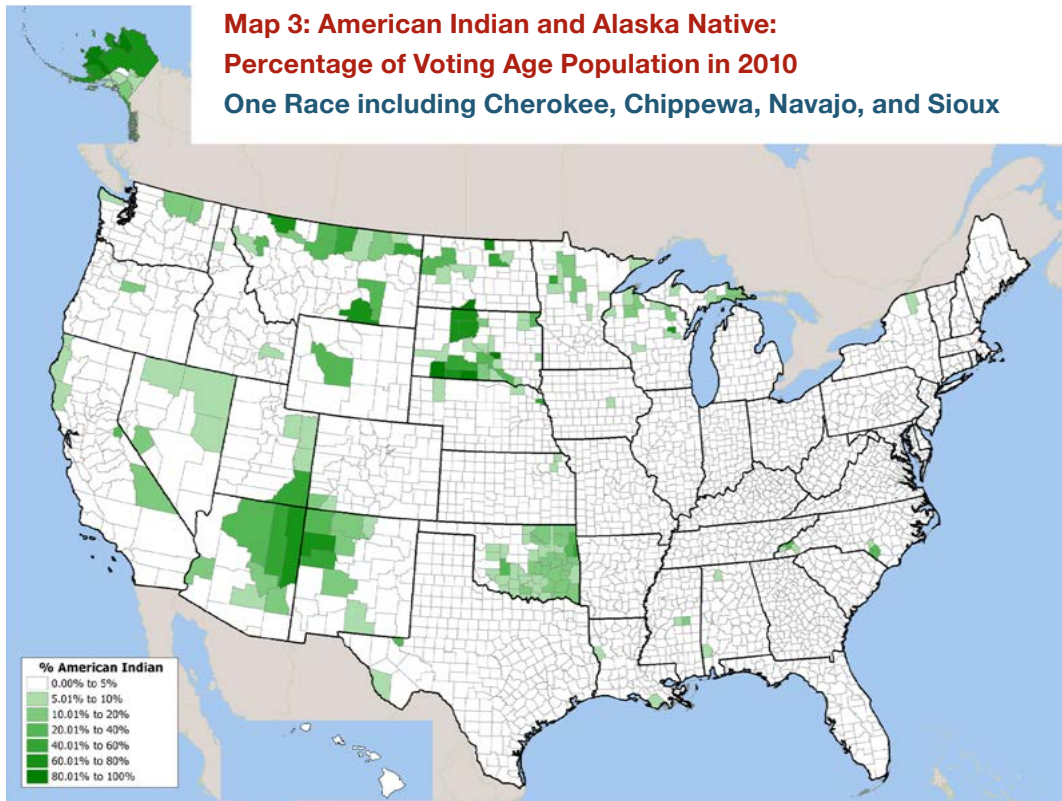
Discrimination against Native Americans in voting can be traced back to at least 150 years ago—to a time when Native Americans were deemed not to be citizens of the United States and the policy of the federal government was the “eventual assimilation of the Indian population” and the “gradual extinction of Indian reservations and Indian tribes.”¹¹⁷ Throughout the 1800s, Native-American tribes were forcibly removed from their lands to reservations, where they were to end their nomadic way of life and, as President Andrew Jackson put it, “cast off their savage habits and become an interesting, civilized, and Christian community.”¹¹⁸ The intentional extermination of the buffalo that Native Americans needed to survive—an estimated 15 million buffalo were killed between 1872 and 1883—forced Native Americans into dependency upon the United States and kept them confined to the reservations.¹¹⁹ Sacred Native-American rituals and practices were outlawed, and the government attempted to “detritalize” young Native Americans by sending them to federally supervised schools in which students were forbidden to speak their native languages or practice Native-American traditions.¹²⁰ The adoption of a land allotment system proved another “efficient device for separating Indians from their land and pauperizing them.”¹²¹ While some treaties provided that Native Americans could become citizens of the United States, the naturalization process was often so demanding that few Native Americans could undertake it.¹²² And those Native Americans who were not citizens had no federally protected right to vote and thus had no power to influence the laws passed by Congress to control their affairs.¹²³

Congress extended citizenship—including the federally protected equal right to vote—to all Native Americans in 1924, yet a systemic denial of the right to vote continued.¹²⁴ For example:

- In 1925, the Alaska Territorial Legislature enacted a literacy law that required “voters in territorial elections be able to read and write the English language.” When Alaska’s constitution became operative in 1959, it included an English literacy requirement as a qualification for voting; the requirement was not repealed until 1970.¹²⁵
- Into the 1940s Idaho, Maine, Mississippi, New Mexico, and Washington prohibited “Indians not taxed” from voting, even though they allowed whites who did not pay taxes the right to vote.¹²⁶
- Arizona denied Native Americans living on reservations the right to vote because they were “under guardianship” of the federal government. This policy remained in place until 1948.¹²⁷
- Utah denied Native Americans living on reservations the right to vote because, under state law, they were considered non-residents. The Utah Supreme Court upheld this law, and only after the United States Supreme Court agreed to review the case did the state legislature repeal it in 1957.¹²⁸
- In Colorado, Native Americans residing on reservations were not permitted to vote until 1970.¹²⁹

These abuses were a major impetus for Congress’s extension of the Voting Rights Act to language minorities, including Native Americans, in 1975.¹³⁰

Geography



As can be seen in Map 3, the American Indian and Alaska Native population is concentrated in states such as Alaska, Arizona, Montana, New Mexico, North Dakota, Oklahoma, and South Dakota.¹³¹ They are a small share of the population, but in certain counties they make up a significant portion—if not a majority—of the population. In a handful of states Native Americans have sufficient numbers and potential voting power to affect election outcomes, for example in recent races for U.S. Senate in Alaska and Montana.¹³²

Participation

Although the U.S. Census does not publish as much data on voting by Native Americans as it publishes regarding voting by whites and other groups, analyses show Native-American voting rates are among the lowest of all racial and ethnic groups in the United States. Courts have consistently found participation differentials, and census data from the 2008 and 2012 presidential elections show a differential on a national basis. In the 2008 election, 47.5 percent of American Indian and Alaska Native citizens of voting age voted, while 66.1 percent of non-Hispanic white citizens of voting age voted.¹³³ Similarly, in the 2012 election, 46.6

percent of American Indian and Alaska Native citizens of voting age reported voting, compared to 64. percent of non-Hispanic white citizens of voting age.¹³⁴

Courts charged with addressing voting discrimination against Native Americans have acknowledged that low political participation is one of the effects of past discrimination.¹³⁵ One of the legacies of the discrimination faced by Native Americans is a severely depressed socioeconomic status—in every socioeconomic factor reported in the census, Native Americans today lag far behind their white counterparts.¹³⁶ Disparities in socioeconomic status are causally connected to Native Americans’ depressed level of political participation.¹³⁷ These disparities combine with “the pervasive myth that Indians care only about politics on the reservation, and the lack of VRA enforcement” to create an environment in which many Native-American communities still, de facto, lack the right to vote.¹³⁸ Harassment, intimidation, and misinformation further thwart Native Americans’ efforts to register and vote, despite the protections of the VRA.¹³⁹

Elected Officials

Though the numbers are slowly increasing, it has proven very difficult for Native Americans to get elected to high office. They have been most successful in state legislatures: there are currently 75 American Indian, Alaska Native, and Native Hawaiian state legislators in 17 states.¹⁴⁰ In 2012 there were no Native-American members of the U.S. Senate and two Native-American members of the U.S. House of Representatives.¹⁴¹

Types of Discrimination

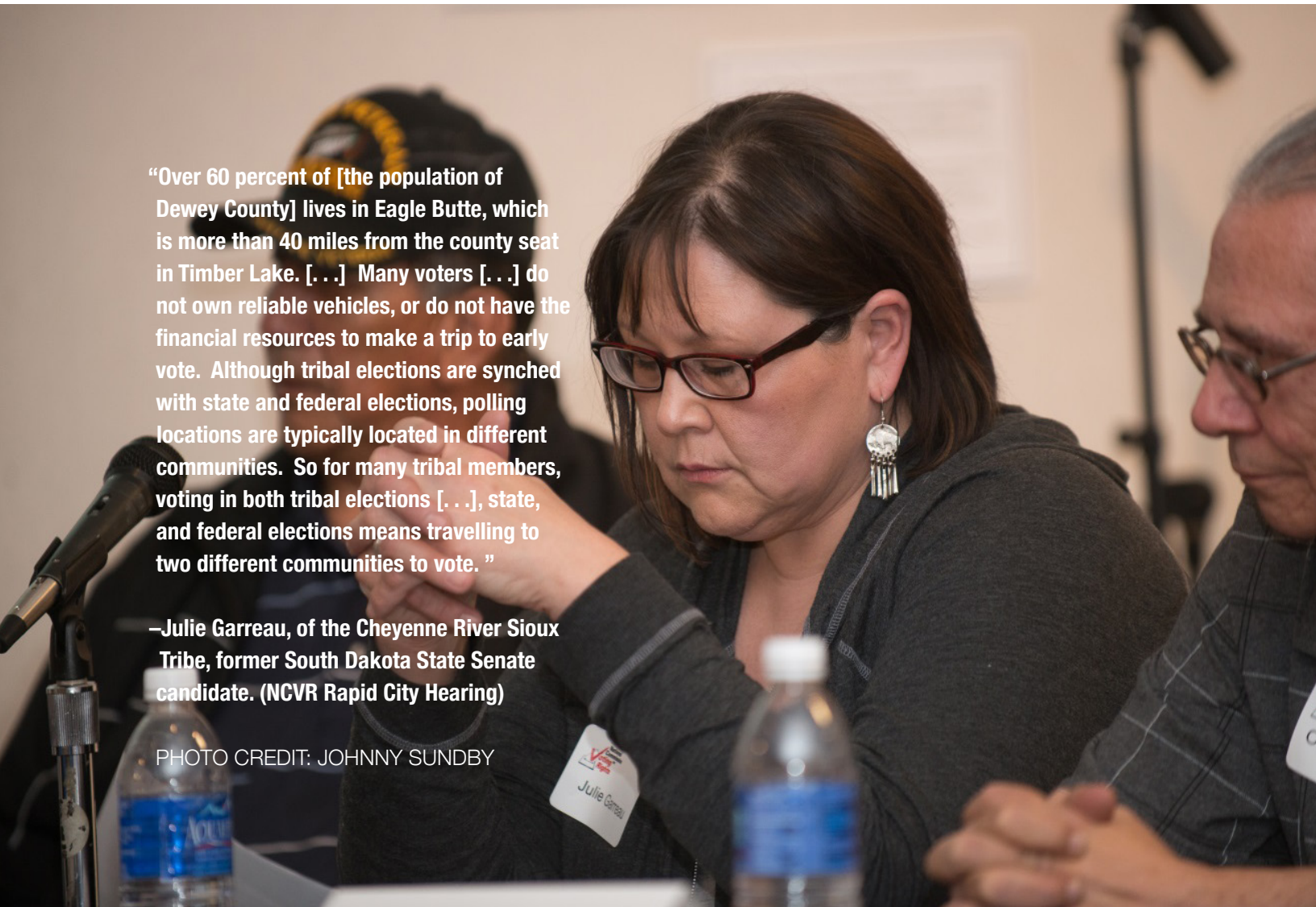
Since 1973, there have been more than 30 successful challenges to redistricting schemes and methods of election that dilute Native-American voting power.^{141a} Between January 1995 and June 2014 there were 18 successful cases brought by or on behalf of Native-American plaintiffs under Section 2 of the VRA (not including language assistance cases). Over half of those cases involved at-large methods of election; three of the cases involved redistricting plans.

Also between January 1995 and June 2014, there were five successful cases brought by Native Americans or on behalf of Native Americans by DOJ under the VRA’s language assistance provisions concerning bilingual election assistance; the languages involved were Keresan, Lakota, Navajo, and Yup’ik.¹⁴² A recent case from Alaska is illustrative. Prior to the 2008 election, plaintiffs sued Alaska for failure to provide translated election materials and language assistance at polling places to thousands of Yup’ik-speaking voters in the Bethel Census Area. The court in *Nick v. Bethel* granted the plaintiffs a preliminary injunction requiring the state to provide language assistance to Yup’ik voters, including translators, sample ballots in Yup’ik, pre-election publicity in Yup’ik, and a Yup’ik glossary of election terms

for the 2008 primary and general election.¹⁴³ In 2010, the parties entered into a settlement requiring the state to provide bilingual election materials, outreach workers, and notices of election in all subsequent elections as long as the Bethel Census Area remains subject to the language provisions of the VRA.¹⁴⁴

There also have been several cases involving blatant interference with Native Americans registering and voting. Incidents have included:

- Refusal by election registrars to provide registration forms to groups involved in registering American Indians and Alaska Natives;
- Purging Native Americans from voter registration lists;
- Baseless charges of voter fraud against American Indians and Alaska Natives; and
- Failure to provide sufficient polling places in Native-American communities.¹⁴⁵



“Over 60 percent of [the population of Dewey County] lives in Eagle Butte, which is more than 40 miles from the county seat in Timber Lake. [. . .] Many voters [. . .] do not own reliable vehicles, or do not have the financial resources to make a trip to early vote. Although tribal elections are synched with state and federal elections, polling locations are typically located in different communities. So for many tribal members, voting in both tribal elections [. . .], state, and federal elections means travelling to two different communities to vote.”

—Julie Garreau, of the Cheyenne River Sioux Tribe, former South Dakota State Senate candidate. (NCVR Rapid City Hearing)

PHOTO CREDIT: JOHNNY SUNDBY

Case Study

South Dakota

South Dakota, which has a Native-American population that is 8.9 percent of the state's total population and had two counties that were covered jurisdictions under Section 5 of the VRA, provides examples of many of the types of discrimination that Native Americans have faced in voting. Even after the VRA was expanded in 1975 to incorporate language minorities, including Native Americans, South Dakota persistently engaged in discriminatory conduct—using a broad range of tactics—that limited the voting rights of Native Americans. Whether simply denying counties with large Native-American populations the ability to form a government, or redistricting after a Native-American candidate won a primary, or diluting the Native vote through malapportionment or packing, the actions of officials in South Dakota exemplify the various forms of voting discrimination faced by Native Americans across the country.

VOTE DENIAL BASED ON RESIDENCE IN AN “UNORGANIZED” COUNTY

In 1975, a federal court of appeals in *Little Thunder v. South Dakota* found that the State's prohibition on residents of “unorganized” Counties voting for county government officials violated the Equal Protection Clause of the Fourteenth Amendment.¹⁴⁶ “Organized” counties all had a full complement of elected county officials who administered the affairs of the county (i.e., county commissioners, judges, auditor, sheriff, etc.).¹⁴⁷ The “unorganized” counties did not elect their own county officials but, rather, were attached to an adjoining county for purposes of government and administration. The residents of unorganized counties, however, could not vote for the county officials in the county to which theirs was attached.¹⁴⁸ Those residents, therefore, were not able to vote for most of the elected county officials who governed them.¹⁴⁹ The residents of the “unorganized” counties—Todd, Shannon, and Washabaugh—were overwhelmingly Native American.¹⁵⁰

Even after the residents of Todd, Shannon, and Washabaugh counties were granted the right to vote for the elected officials who conducted the affairs of their counties, they were still denied the right to run for those offices. The United States challenged the denial of the right of residents of Shannon County to run for the county offices of Fall River County that governed Shannon County in *United States v. South Dakota*.¹⁵¹ The justification offered for this restriction was that “the great majority of Shannon County voters reside on the Pine Ridge Indian Reservation and hence have little, if any, interest in the county government of either Shannon or Fall River County,” and “a personal stake in the government insufficient to insure responsible exercise of their duties.”¹⁵² The United States Court of Appeals for the Eighth Circuit found this justification insufficient and held that the practice violated the Equal Protection Clause of the Fourteenth Amendment and required that residents of Shannon County be allowed to run for the offices in question in Fall River County.¹⁵³

DISTRICT BOUNDARIES DRAWN TO INCLUDE ONLY LAND OWNED BY NON-NATIVE AMERICANS

In 1999, the United States sued Day County, South Dakota, for denying Indians the right to vote in a sanitary district.¹⁵⁴ In 1993, officials in Day County created a sanitary district near Enemy Swim Lake, but the district boundaries included only 13 percent of the land around the lake, all of which was owned by non-Native Americans.¹⁵⁵ The County intentionally excluded the remaining land around the lake, which was owned by the Sisseton-Wahpeton Sioux Tribe and about 200 of the tribe's members.¹⁵⁶ Thus, "all of the voters in the district were white."¹⁵⁷ The case settled, and both the County and the district admitted that the boundaries unlawfully denied Native-American citizens the right to vote and agreed to a new plan that included the Native-owned land.¹⁵⁸

MID-DECADE REDISTRICTING TO ELIMINATE A MAJORITY-MINORITY DISTRICT

In 2000, in *Emery v. Hunt*, voters in South Dakota successfully challenged the state legislature's attempt to abolish a majority Native-American single-member state house district. A 1991 apportionment provided that each of the State's 35 districts would be entitled to one senate member and two house members elected on an at-large basis, with the exception of two single-member house districts—District 28A and District 28B—that were explicitly drawn to protect minority voting rights.¹⁵⁹ Native Americans comprised 60 percent of the voting age population (VAP) of District 28A, which included the Cheyenne River Sioux Reservation and portions of the Standing Rock Sioux Reservation, but less than 4 percent of the VAP of District 28B.¹⁶⁰ After a Native American won a Democratic primary in District 28A, the legislature adopted a mid-census plan that replaced District 28A and District 28B with a single majority-white multi-member house district.¹⁶¹

Members of the Cheyenne River Sioux Tribe sought relief under both the South Dakota Constitution and Section 2 of the Voting Rights Act.¹⁶² The U.S. District Court for the District of South Dakota certified the state law question to the South Dakota Supreme Court, which held that the state legislature had "acted beyond its constitutional limits."¹⁶³ The South Dakota Constitution mandated apportionment in 1991 and every 10 years thereafter,¹⁶⁴ and a 1995 memorandum by the South Dakota Legislative Research Council confirmed that, in the absence of a successful legal challenge, no redistricting could take place before 2001.¹⁶⁵ The 1991 plan was reinstated, and Tom Van Norman became the first Native American from the Cheyenne River Sioux Indian Reservation to be elected to the South Dakota state legislature.¹⁶⁶

REFUSAL TO COMPLY WITH PRECLEARANCE REQUIREMENT OF SECTION 5 OF THE VRA

Shannon County and Todd County, South Dakota, home to the Pine Ridge and Rosebud Indian Reservations respectively, were covered by Section 5 of the VRA as a result of the 1975 amendments to the Act.¹⁶⁷ Thus, any voting changes affecting those counties—including statewide changes—should have been submitted to the DOJ or the U.S. District Court for

the District of Columbia for preclearance.¹⁶⁸ From 1976 to 2002, South Dakota enacted over 600 statutes and regulations that affected elections or voting in Shannon and Todd counties, yet *fewer than 10 were submitted for preclearance*.¹⁶⁹ Some of the changes that were enacted without being submitted for preclearance that had the potential to dilute Native-American voting strength were authorization for municipalities to enact numbered place systems, which prevent single-shot voting, and a majority-vote requirement for primary races for the U.S. Senate, the U.S. House of Representatives, and governor (see Chapter 5 for more detail about these tactics).¹⁷⁰

In August 2002, members of the Oglala and Rosebud Sioux Tribes in Shannon and Todd counties filed suit against South Dakota seeking to force it to submit the more-than 600 voting changes for preclearance.¹⁷¹ The court entered a consent order in December 2002 in which the State admitted that it had failed to obtain preclearance for all of the voting changes it was required to preclear under Section 5.¹⁷² The State was immediately enjoined from implementing the statutes discussed above regarding a numbered seat requirement and majority-vote requirement, and required to develop a plan to submit all un-precleared voting changes in order to “promptly bring the State into full compliance with its obligations under Section 5.”¹⁷³ The State made its first submission under the consent order in April 2003; it took approximately three years to complete the process of submitting the un-precleared voting changes.¹⁷⁴

“PACKING” MINORITIES INTO A DISTRICT

As discussed in Chapter 5, one method of diluting a minority group's voting power is to “pack” the minorities into as few districts as possible. In 2006, a federal appeals court found in *Bone Shirt v. Hazeltine* that South Dakota's 2001 legislative redistricting plan violated Section 2 of the VRA by packing one district with Native Americans at the expense of allowing Native Americans the opportunity to elect a candidate of their choice in two separate districts.¹⁷⁵ As discussed above, South Dakota's legislative plan has 35 districts, with each district electing two members of the State House of Representatives at-large and one member of the state Senate. The exception was District 28, which was divided into two single-member districts (28A and 28B). In the plan at issue, there were only two Native American-majority districts: Districts 27 and 28A. District 27 had a 90 percent Native-American population.¹⁷⁶ District 26 was adjacent to District 27 and had only a 30 percent Native-American population. Under the plaintiffs' proposed plan, District 26 would be split into 26A and 26B for the State House of Representatives, and Native Americans would comprise over 65 percent of the voting age population in District 27 and over 74 percent of the voting age population in District 26A.¹⁷⁷ When the district court found that the State's plan violated Section 2, it ordered the State to submit a remedial plan, but the State refused to do so. The district court adopted the plaintiffs' remedial plan, and the appeals court affirmed.¹⁷⁸

TWO FORMS OF VOTE DILUTION: MALAPPORTIONMENT AND THE CREATION OF NEW DISTRICTS

As discussed in Chapter 5, when districts are malapportioned it can impermissibly dilute the voting strength of a minority group. In 2005, the U.S. District Court for the District of South Dakota ruled that county commissioner districts in Charles Mix County “[we]re malapportioned in violation of the one-person-one-vote standard of the Equal Protection Clause.”¹⁷⁹ Native Americans made up 29.5 percent of the population of Charles Mix County, which was governed by a three-member County Commission elected from three single-member districts.¹⁸⁰ While the ideal district size—one where all districts have the same population—was 3,117, district populations ranged from 2,850 persons to 3,443 persons (a deviation of 19 percent from equally apportioned districts).¹⁸¹ “[N]o Native Americans had ever been elected from the districts.”¹⁸² In response to a lawsuit brought by four members of the Yankton Sioux Tribe, the county justified the malapportionment by pointing to its policy against splitting townships, towns, or cities when creating voting precincts.¹⁸³ When evidence demonstrated that it would be possible to draw districts with a total deviation of less than 10 persons without splitting a single township, town, or city,¹⁸⁴ the court ruled the apportionment unconstitutional and ordered that the districts be redrawn.¹⁸⁵ The county then adopted a plan that created one majority-Native American district out of three, and in 2006 that district elected a tribal member to represent it on the Commission.¹⁸⁶ Although the court had ruled on the malapportionment claim, the plaintiffs’ other claims were pending, and the parties entered into a consent decree in December 2007 under which the County became subject to preclearance until 2024 under the provisions of Section 3(c) of the VRA.¹⁸⁷

Shortly after the court ruled in the plaintiffs’ favor on the malapportionment claim, however, voters circulated a petition to increase the number of commissioners from three to five—a change that would have again diluted Native-American representation.¹⁸⁸ They obtained enough signatures to get the proposal on the ballot, and county voters approved the measure in November 2006.¹⁸⁹ “The county . . . redrew its districts in early 2007, creating [only] one majority-[Native American] district out of five, thus diluting [Native-American] voting strength.”¹⁹⁰ But pursuant to the consent decree, the County submitted the plan to DOJ for preclearance.¹⁹¹ DOJ interposed an objection to the five-member plan, noting that Charles Mix County and the State of South Dakota have a history of voting discrimination against Native Americans and that support for the effort to change the number of county commissioners increased dramatically following a Native-American candidate’s success in the June 2006 Democratic primary election.¹⁹² As a result of that denial of preclearance, the three-member plan remains in effect today.

UNEQUAL ACCESS TO EARLY VOTING SITES AND LATE REGISTRATION

South Dakota also provides an example of how expanding access to the ballot often does not benefit all groups equally. As discussed in detail in Chapter 6, in *Brooks v. Gant*, Native Americans in Shannon County, South Dakota, sought equal access to early voting and late registration sites.¹⁹³ The site for early voting and late registration was a great distance from where most Native Americans in Shannon County lived; that distance, combined with limited access to vehicles and high rates of poverty, essentially meant that most Native Americans could vote only on Election Day and most non-Native Americans could vote—and register late—for 46 days before Election Day. The plaintiffs in *Brooks* sought to have a satellite office for early voting established on the reservation. The case settled when South Dakota officials and county defendants agreed to provide early voting at the satellite locations proposed by the plaintiffs through the year 2018.

IV. ASIAN AMERICANS

Asian Americans have long been denied the right to vote through restrictive naturalization laws and social and economic discrimination. Although they are currently the fastest-growing minority group in the United States,¹⁹⁴ “Asian Americans are underrepresented in almost every measure of political participation, from ballot boxes to the hallowed halls of government.”¹⁹⁵ Ongoing discrimination, low rates of political participation and representation, and unmet language assistance needs continue to impede Asian-American enfranchisement and justify the need for continued protection under the Voting Rights Act.

History and Background

Throughout U.S. history, Asians have been the target of discriminatory laws aimed at political and economic disenfranchisement. Foreign-born Asians had long been excluded from American political life due to citizenship restrictions based on race and national origin.¹⁹⁶ One of the most powerful barriers to citizenship was the U.S. Naturalization Act of 1790, which specified that only “free white person[s]” were eligible to become naturalized citizens.¹⁹⁷ While the 1870 Naturalization Act extended citizenship rights to individuals “of African descent,”¹⁹⁸ courts continued to deny immigrants of Asian descent naturalization privileges. In 1878, the U.S. Court of Appeals for the Ninth Circuit interpreted the Act to bar Chinese naturalization because Chinese immigrants, as “Mongolians,” were not “white person[s]” within the meaning of the term in the statute, and thus not eligible for U.S. citizenship.¹⁹⁹ In 1923, the Supreme Court reached a similar holding in *United States v. Bhagat Singh Thind*,²⁰⁰ when it determined that Thind, an Indian national, was “Caucasian” but not “white” within the meaning of the Act; he was therefore ineligible to become a naturalized citizen.

Asians were often victims of violence and scapegoating as nativist movements gained popularity, leading to widespread denial of social, political, and economic rights. Immigrant communities were targeted by discriminatory laws and regulations that placed restrictions on property and business ownership. One scholar noted,

For example, a “miner’s tax” had to be paid by any foreigner (miner or not) who lived in a mining district, targeting the Chinese in effect if not by name. Similarly, commutation taxes required ship owners to post a \$500 bond (or a payment of \$5 to \$50 per passenger) on each Chinese immigrant coming into the country, and more for mentally ill or disabled passengers. The 1862 Chinese police tax, designed to discourage Chinese immigration, forced all Chinese laborers to pay \$2.50 per month.²⁰¹

In *Yick Wo v. Hopkins*, the Supreme Court heard an appeal from *Yick Wo*, a Chinese immigrant who was imprisoned in 1885 for violating a San Francisco ordinance that prohibited the

ownership of laundries constructed from certain building materials without the approval of the Board of Supervisors.²⁰² At that time, many laundries were owned by residents of Chinese origin²⁰³ and requests for approval from Chinese business owners were uniformly denied.²⁰⁴ The Court held that the discriminatory enforcement of the law violated the Equal Protection Clause.²⁰⁵ In its decision the Court asserted that, “[Voting] is regarded as a fundamental political right, because [it is] preservative of all other rights.”²⁰⁶

Despite this victory, the decision inflamed opposition to the rights of Asian immigrants, leading many Americans to support exclusion.²⁰⁷ In the 1944 case of *Korematsu v. United States*, the Supreme Court found that the federal government did not violate equal protection or due process when it excluded U.S. citizens who were of Japanese origin from certain designated military areas within the United States during World War II, which included large regions of the West Coast.²⁰⁸ Executive Order 9066,²⁰⁹ which was at issue in the *Korematsu* case, also authorized the internment of approximately 120,000 Japanese Americans who had been residing in these areas.²¹⁰

It was only relatively recently that Asian immigrants were finally granted the ability to naturalize and attain the rights of American citizenship. Prior to 1965, U.S. immigration policy heavily restricted immigration from Asia; the majority of people of Asian descent in the United States during this time were native-born Americans.²¹¹ It was not until 1943 that Chinese-born residents were first permitted to become citizens.²¹² Asian Indians and Filipinos were permitted to naturalize in 1946.²¹³ For Japanese and other Asian ethnic groups, that right came in 1952.²¹⁴

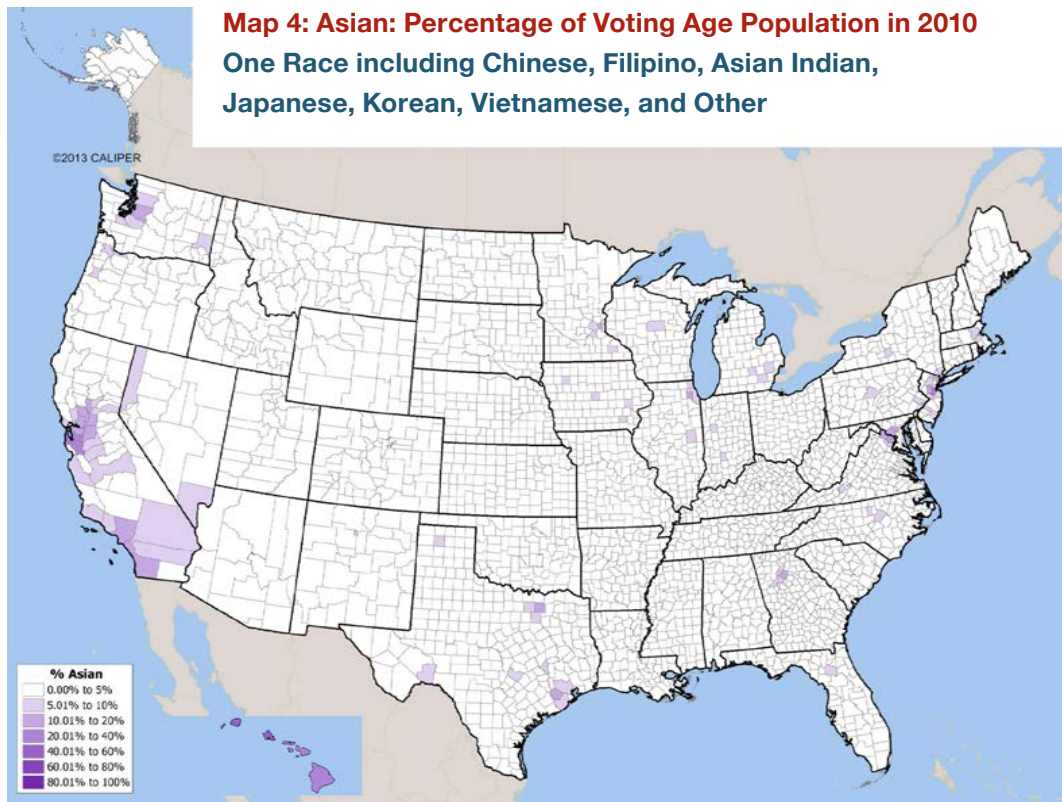
As immigration from Asia increased, Asian Americans still faced substantial barriers to full enfranchisement. In 1965, the Hart-Celler Act removed immigration restrictions on the basis of national origin.²¹⁵ This led to “unprecedented” immigration to the United States from Asia.²¹⁶ Between 1976 and 1988 the Asian and Pacific Islander population in the United States grew by 107.8 percent.²¹⁷

The Asian-American communities that emerged often suffered discrimination due to their language minority status. Thus, Asian Americans who were eligible to vote were often prevented from exercising their rights by English literacy and language requirements.²¹⁸ As Representative Edward R. Roybal noted in 1975, Asian Americans “bor[e] the brunt of this exclusionary practice not only at the voting booth but in the classroom as well[,]” where Asian-American students faced profound discrimination.²¹⁹

When Congress enacted Section 203 of the Voting Rights Act in 1975, jurisdictions were required to provide bilingual voting materials for designated language minorities. Yet areas with significant Asian-American populations with limited English proficiency were only covered under the bilingual assistance provisions in a few jurisdictions because there were few

places where limited English proficient voting age citizens from a particular Asian language comprised at least 5 percent of the citizen voting age population, which was the required threshold.²²⁰ To help address the problem of excluding large numbers of language-minority voters who did not meet the 5 percent coverage formula originally enacted in 1975, the 1992 Voting Rights Language Assistance Act expanded the coverage formula to include an alternative where a jurisdiction would also be covered if 10,000 voting age citizens from a minority language group were limited English proficient and the other criteria for coverage were satisfied.²²¹ This amendment expanded Section 203 coverage to areas such as New York County for Chinese languages and Los Angeles County, where Chinese, Filipino, Japanese, and Korean communities benefitted from the newly offered language assistance.²²² Though bilingual assistance under Section 203 certainly removed some barriers to Asian-American enfranchisement, Asian Americans have historically had limited success in invoking other protections under the Voting Rights Act.²²³ These difficulties are discussed at greater length below.

Geography



In 1960, there were fewer than 1 million Asian Americans in the United States, less than 0.5 percent of the country's population.²²⁴ Asians were 5 percent of the population in 2005 and will be at least 9 percent in 2050.²²⁵ The Asian population grew by 46 percent from 2000 to

2010, a rate higher than any other group.²²⁶ This high growth rate is owed mostly to immigration, with 2012 statistics suggesting that 74 percent of Asian adults in the United States are foreign-born.²²⁷

As can be seen from Map 4, Asians are concentrated in urban areas, and continue to live mostly on the coasts. New destination cities include Houston, Minneapolis, and Washington, D.C.²²⁸ Notably, although Asian-American populations are relatively concentrated in urban centers, this population distribution allows Asian Americans to exert relatively little electoral power, even in California, Hawaii, and New York.²²⁹ For example, while one-third of the Asian-American population resides in California, this population accounts for only 12 percent of California's total electorate.²³⁰

Even at lower levels of jurisdictional granularity, there are only eleven congressional districts in which Asian Americans make up 20% or more of the district's electorate. Of the eleven congressional districts, all but one are in California or Hawaii. Among municipalities, Asian Americans make up 25% or more of the electorate in seventy-five districts.²³¹

The demographic distribution of Asian Americans has thus limited the group's electoral impact.²³²

Participation

Compared to other racial minority groups protected by the VRA, Asian Americans have low voter registration and turnout rates, despite being higher up on the education and income scales, indicators usually associated with higher levels of political participation.²³³ In 2008 and 2012, Asian Americans and Latinos voted at roughly the same rate even though other socioeconomic factors would normally suggest that their turnout rate would be higher.²³⁴ The voting gaps are not uniform across Asian groups—for example, participation rates are fairly high among Japanese Americans and quite low among Chinese Americans.²³⁵ The ethnic diversity among Asian Americans generally and the range in lengths of residence in the United States make it difficult to pinpoint explanations for Asian American turnout rates.²³⁶ “[L]imited political power and sustained disadvantages,” minimal availability of aid through “mobilization networks and organizational support,” and “institutional constraints such as haphazard naturalization requirements or tricky registration and voting rules” likely all contribute to low turnout rates.²³⁷

Asian-American participation rates are likely also attributable to past and ongoing language discrimination. Asian Americans have long been discriminated against in the form of English-only voting mechanisms, in much the same way that African Americans were at one time effectively prevented from voting by literacy tests and other devices.²³⁸ Research indicates

that language assistance materials are of substantial importance to Asian-American voters. According to a 2013 report by Asian Americans Advancing Justice, “30 percent of Chinese Americans, 33 percent of Filipino Americans, 50 percent of Vietnamese Americans and 60 percent of Korean Americans in Los Angeles County used some form of language assistance in the 2008 presidential election.”²³⁹ Additionally, according to a 2012 report by Asian & Pacific Islander American (APIA) Vote, more than 1/5 of Asian-American voters surveyed indicated they would be more likely to vote if language assistance was provided.²⁴⁰

Elected Officials

There are currently 11 Asian-American members of the U.S. House of Representatives, 98 members of state legislatures, and two Asian American governors.²⁴¹ Of these officials, most represent jurisdictions in California, Hawaii, and New York, all of which are Asian-American population centers. Although data are scarce, research shows that that it becomes increasingly difficult for an Asian-American candidate to get elected the higher the office, indicating that many elected officials may only get elected in those places where there is a high voting concentration of Asian Americans.²⁴² Data from the 2008 National Asian American Survey shows that 22 percent of Asian Americans are represented by an Asian member of the city council, 17 percent have an Asian state representative and 8 percent have an Asian-American member of Congress.²⁴³ If one excludes California and Hawaii from the data pool, those numbers drop to 10 percent, 5 percent, and 1 percent, respectively.²⁴⁴

“[W]e settled a case with San Mateo County [...] to change the at-large system there to the district-based system. San Mateo County is over 40 percent Asian and Latino, yet their board of supervisors have been predominantly white for as long as people can remember. Through the settlement process in the California Voting Rights Act, communities will be able to engage in a community-based redistricting process and be able to ensure that Asian-American voters, as one district, [are] able to have meaningful opportunities to vote,” Joanna Cuevas Ingram, an attorney with the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, testified at the NCVR California state hearing.

Types of Discrimination

Some of the gap in Asian-American registration and voting may be explained by the fact that a majority of Asian Americans are foreign born and thus are not native English speakers, and may not speak English proficiently.²⁴⁵ Indeed, the 2006-2008 American Community Survey reported that 75 percent of Asian-American adults speak a language other than English at home. The “rate is 89 percent among foreign-born adults and...31 percent among native-born Asian Americans.”²⁴⁶

As is documented in every election cycle by the Asian American Legal Defense and Education Fund (AALDEF), discrimination against Asian Americans persists at the polls. This is particularly true with regard to the failure to provide required language assistance and poll workers who are poorly trained on how to assist predominantly Asian and Asian-language-speaking voters at the polls.

In 2008, AALDEF observers monitored 229 poll sites in 11 targeted states and surveyed 16,665 voters.²⁴⁷ The organization reported that, “Language assistance, such as interpreters or translated voting materials, if any, was far from adequate. Notwithstanding federal mandates, poll workers were cavalier in providing language assistance to voters. In our survey, 254 Asian American voters complained that there were no interpreters or translated materials available to help them vote.”²⁴⁸ In one example from that year, AALDEF observers found that in New York City, where language assistance is required by law, a quarter of the Chinese and Korean interpreters needed were absent from the polls.²⁴⁹ In Boston, the United States DOJ had sued the city under Section 2 of the VRA for discrimination against Chinese interpreters and more than a quarter of Vietnamese voters, and a settlement was reached, applicable through the end of 2008, in which language assistance was mandated.²⁵⁰ None the less, in the 2008 election the AALDEF survey found 38 percent of respondents in Boston “wished to receive oral language assistance [but] could not find interpreters who spoke their language or dialect.”²⁵¹

According to AALDEF observers, problems continued in 2012, especially with regard to localities newly covered by Section 203 a result of the 2011 coverage determinations. As discussed in Chapter 7, Bengali ballots were not provided to voters in Queens, New York; interpreters were lacking throughout New York City; and in Hamtramck, Michigan, there were insufficient numbers of Bengali interpreters.²⁵² In both the 2008 and 2012 elections AALDEF found instances of hostility and rudeness, and occasional outright racist attitudes among poll workers.

From 1995 to 2014, 17 percent of successful challenges to a jurisdiction’s failure to provide adequate bilingual voting assistance involved one or more Asian language.²⁵³ Of these, Chinese was the language most often involved; the other languages involved in at least one case were Bengali, Ilocano, Japanese, Korean, Tagalog, and Vietnamese.²⁵⁴

Of those jurisdictions formerly covered under Section 4 of the VRA, relatively few are home to a concentrated Asian-American population. Accordingly, a proportionally small number of Section 5 objections concerned Asian-American voters.

Of the 113 Section 5 preclearance denials during this time period, only three dealt with discrimination against these minority voters.²⁵⁵ Two of the three objections addressed procedures adopted by Georgia and Texas for verifying the citizenship status of voter registration

applicants.²⁵⁶ This suggests that Asian Americans continue to face additional burdens associated with demonstrating their eligibility to participate in the political process.

As referenced above, Asian Americans also face particular difficulties in bringing successful challenges under Section 2 due to patterns of population distribution.²⁵⁷ Because the population of Asian Americans in most jurisdictions is proportionally small, there are not many jurisdictions where Asian Americans could satisfy the first *Gingles* precondition of being able to constitute a voting majority in a geographically compact single-member district, which is necessary for a successful vote dilution challenge under Section 2 of the VRA.²⁵⁸

V. CONCLUSION

As discussed above, voting discrimination affecting African Americans, Latinos, Native Americans, and Asian Americans remains a significant issue. In the next two chapters, this report will explore in greater depth the various ways in which voting laws and practices impact the right to vote of these racial and ethnic minorities.



Hearing witnesses listen to testimony at the NCVR Nashville hearing held at the Greater Bethel AME Church.
PHOTO CREDIT: JOSEPH GRANT



“In the June 2010 Democratic primary for the Attorney General race, looking within the boundaries of Assembly District 53 [...], the candidate supported by an estimated 83% of Asian American voters received support from only an estimated 4% of non-Asian American voters.”

–Eugene Lee of Asian Americans Advancing Justice, Los Angeles at the NCVR California state hearing

CHAPTER 5

Voting Discrimination, 1995–2014: Minority Vote Dilution

I. INTRODUCTION

As discussed in various places in this Report, most forms of voting discrimination fall into one of two categories. The first form consists of practices that have the intent or result of making it more difficult for citizens to vote, commonly called “vote denial,” or ballot access restrictions. These issues are discussed in Chapters 6 and 7. The second form consists of circumstances where minority voters are not prevented from voting but where their votes are devalued. This form of discrimination is called “vote dilution” and is the subject of the present chapter.

The Supreme Court first recognized the concept of vote dilution in the 1964 case *Reynolds v. Sims*.¹ In *Reynolds*, Alabama voters challenged the constitutionality of Alabama’s legislative districts, which had not been redrawn in decades. The existing plan allotted, for example, over 600,000 people to one Alabama Senate district and fewer than 20,000 to two others.² The Supreme Court found that this violated the equal protection rights of voters in the most populated districts. In doing so, the Court stated that “[t]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”³

Since the late 1960s, the predominant form of discrimination suffered by minority voters has been vote dilution. Because the VRA’s ban on tests and devices made it more difficult for jurisdictions to prevent voters from voting, jurisdictions moved to dilute the minority vote instead.⁴ As discussed in Chapter 1, Sections 2 and 5 of the VRA prevent minority vote dilution, but what constitutes vote dilution is usually not as clear-cut as what constitutes a test or device. Indeed, cases based on the Section 2 results standard are notoriously complex⁵ because plaintiffs must first satisfy three preconditions (regarding district size and geographical compactness, minority political cohesion, and the defeat of minority-preferred candidates because of white bloc voting) and then prevail on the multi-factor and all-inclusive “totality of the circumstances” balancing test.⁶

Nonetheless, courts have repeatedly found Section 2 vote dilution violations and the Department of Justice (DOJ) has interposed hundreds of Section 5 objections to practices because they weakened the voting strength of minority voters. Vote dilution violations are most common in the context of redistricting and in the use of at-large elections or

multi-member districts. These two phenomena are discussed below, after a discussion of racial polarized voting, which is a necessary component of vote dilution.

II. RACIALLY POLARIZED VOTING AND ITS ONGOING PREVALENCE

How Analyses of Racial Bloc Voting are Performed

Racially polarized voting occurs when whites and minorities consistently support different political candidates. By definition, racially polarized voting is “a pattern of voting along racial lines where voters of the same race support the same candidate who is different from the candidate supported by voters of a different race.”⁷ In areas where racially polarized voting exists, there is an increased need for vigilance against attempts to dilute minority power. As the district court explained in *Northwest Austin Municipal Utility District No. One v. Mukasey*, racially polarized voting “enables the use of devices such as multi-member districts and at-large elections that dilute the voting strength of minority communities.”⁸ Conversely, where voters do not typically vote along racial lines, racial vote dilution cannot occur because voter preferences are not correlated to the race of those voters.

In the process of proving minority vote dilution, plaintiffs typically establish the presence of racially polarized voting by conducting a statistical analysis of voting patterns. The two most frequently used analyses are Bivariate Ecological Regression Analysis and Ecological Inference Analysis. Both of these analyses use two variables, the racial composition of each precinct and the number of votes each candidate received in the precinct, to estimate the amount of white and minority support each candidate received. The accuracy of the analysis depends on the quality of the demographic data for each precinct, the number of precincts, and the variation of the racial demographics among the precincts.⁹ Analysts examine a series of elections to determine whether a pattern of racially polarized voting exists.¹⁰

Findings of Racially Polarized Voting Regarding State Redistricting Plans

Fifty years after the passage of the VRA, racially polarized voting remains a prevalent and persistent phenomenon. The many successful vote dilution claims under Section 2 of the VRA constitute proof of its persistence because one must prove the existence of racially polarized voting to be successful. However, the proof does not stop there. Experts and scholars, both independent and state-hired, have made findings of racially polarized voting. These findings have recognized the existence of racially polarized voting on both national and state levels. Additionally, DOJ has cited racially polarized voting in interposing hundreds of Section 5

objections against proposed voting changes. Thus, racially polarized voting continues to be widespread. Examples of the aforementioned findings are discussed below.

Judicial Findings of Racially Polarized Voting in Challenges to Statewide Redistricting Plans

Over the last three decades, courts across the country have consistently acknowledged the continued presence of racially polarized voting while applying the factors outlined in the Supreme Court's *Thornbug v. Gingles* ruling.¹¹ The following are cases since 1995 regarding statewide redistricting plans where courts have found racially polarized voting:

Colorado

In *Sanchez v. Colorado*,¹² Hispanic voters challenged the post-1990 State House redistricting plan, alleging that the plan failed to draw a majority Hispanic district, thus violating Section 2 of the VRA. The Tenth Circuit of Appeals found that the plaintiffs “established under the totality of circumstances [that] racial polarization drive the voting community in HD 60 despite limited local success in being elected or appointed to political office.”¹³ The Tenth Circuit directed the district court to impose a remedy that drew a majority Hispanic district in Southern Colorado.

Montana

Native American voters in Montana challenged the constitutionality of the state legislature redistricting plan adopted after the 1990 census. In *Old Person v. Cooney*, the Ninth Circuit Court of Appeals “conclude[d] that the white majority in the four districts ‘votes sufficiently as a bloc to enable it...usually to defeat the [American Indians]’ preferred candidate.”¹⁴ The plaintiffs ultimately lost the case on other grounds.¹⁵

South Carolina

African-American and white voters in *Smith v. Beasley*¹⁶ challenged the constitutionality of the 1995 State House and Senate redistricting plans in South Carolina. The challenge was raised on the grounds that race was the predominant factor considered in redrawing election districts. The district court noted, “[i]n South Carolina, voting has been, and still is, polarized by race. This voting pattern is general throughout the state and is present in all of the challenged House and Senate districts in this litigation.”¹⁷

Voters in *Colleton County Council v. McConnell*¹⁸ challenged the 2000 state and congressional redistricting plans of South Carolina. In its opinion, the district court directly addressed the presence of severe and persistent racially polarized voting, stating that “[v]oting in South Carolina continues to be racially polarized to a very high degree, in all regions of the state and in both primary elections and general elections. Statewide, black citizens generally are a highly politically cohesive group and whites engage in significant white-bloc voting.”¹⁹ Moreover,

[I]n order to give minority voters an equal opportunity to elect a minority candidate of choice as well as an equal opportunity to elect a white candidate of choice in a primary election in South Carolina, a majority-minority or very near majority-minority black voting age population in each district remains a minimum requirement.²⁰

Massachusetts

In *Black Political Task Force v. Galvin*,²¹ voters challenged the 2001 Massachusetts State House redistricting plan. The lawsuit alleged that the redistricting plan eliminated two majority-minority districts, reduced the minority population into one district and “super-packed” another district so that minorities made up 98 percent of the district’s voting age population.²² The district court found racially polarized voting, noting “the presence of both cohesive African-American voting and a white bloc voting staunch enough to defeat a black-preferred candidate.”²³ The district court struck down the redistricting plan and ordered the State to prepare and submit a new plan consistent with Section 2 of the Voting Rights Act.²⁴

Tennessee

In *West Tennessee African-American Affairs Council v. Sunquist*,^{24a} African-American voters successfully challenged a 1994 redistricting plan for the Tennessee House of Representatives under Section 2 based upon a dilution of minority voting strength in the western portion of the State. Tennessee agreed in the litigation that African Americans vote in a cohesive manner but claimed that white voters do not usually vote as a bloc to defeat candidates supported by African-American voters. On appeal from the district court’s ruling in favor of plaintiffs, the U.S. Court of Appeals for the Sixth Circuit affirmed. The court undertook a detailed review of the evidence, and concluded that the district court had not erred in finding that white voters typically cast their ballots against minority-supported legislative candidates.

Wisconsin

In response to a lawsuit filed by Latino voters in Wisconsin, a three-judge district court in *Baldus v. Members of Wisconsin Government Accountability Board*,^{24b} found that the post-2010 plan for the State Assembly violated Section 2. The court agreed with expert testimony that voting is polarized between Latino and white voters.

South Dakota

Native American voters in *Bone Shirt v. Hazeltine* challenged a 2001 South Dakota legislative districting plan.²⁵ The district court concluded that “substantial evidence, both statistical and lay, demonstrates that voting in South Dakota is racially polarized among whites and Indians.” In addition, “the white majority in District 26 ‘votes sufficiently as a bloc to enable it... to usually defeat the [Indian] preferred candidate.’”²⁶ The district court ruled that the redistricting plan violated the VRA and the State was ordered to redraw district lines in compliance with Section 2.

Texas

As discussed later in this chapter, federal courts found that racially polarized voting exists throughout Texas in finding that Texas's 2003 congressional redistricting plan and 2011 congressional, State House, and State Senate plans violated the VRA.

State-Hired Expert Findings of Continuing Racial Polarization

It is not only courts that acknowledge the existence of racially polarized voting; state-hired experts have conducted analyses of racial bloc voting and also found that racially polarized voting persists in other states.

Arizona

In 2011, Harvard University Professor of Government Gary King and mapping consultant Ken Strasma were hired by the Arizona Independent Redistricting Commission to conduct an analysis of racially polarized voting in Arizona. King and Strasma found that racially polarized voting continues to exist in multiple legislative districts in the State.^{26a}

Alaska

At the request of the Alaska Redistricting Board, voting rights and redistricting expert Dr. Lisa Handley conducted an analysis of voting patterns by race in recent Alaska elections. Dr. Handley found that racially polarized voting is increasing in Alaska. According to Dr. Handley, “voting was more polarized in Alaska this past decade than in the previous decade.”^{26b}

California

University of Washington Professor of Political Science Matt Barreto and counsel for the California Citizens Redistricting Commission, the official redistricting body in California, found that racially polarized voting continues to exist in California. Specifically, Dr. Barreto stated that “there was strong evidence of racially polarized voting with respect to Latinos and non-Latinos in Fresno, Orange, San Diego, Riverside, and San Bernardino Counties.”^{26c} Dr. Barreto also found racially polarized voting with regard to Latinos, African Americans, and Asians in Los Angeles County.

Kansas

In 2012, Dr. Handley was hired by the Kansas Legislative Research Department to conduct an analysis of racial bloc voting in elections during 2008 and 2010. Her research revealed that Kansas continues to wrestle with the issue of racially polarized voting.²⁷ During her study, Dr. Handley examined 14 statewide and legislative elections in Kansas that included a minority candidate. Of the 14 elections that Dr. Handley examined, she found that the majority of the contests (9 of 14) showed trends of racially/ethnically polarized voting: “minority and white voters clearly supported different candidates.”²⁸

Other Expert Findings of Increasing Racial Polarization in Voting in a State or Region

The phenomenon of racially polarized voting not only continues to exist; many experts have recognized a trend of increased polarization. During the most recent VRA reauthorization proceedings, Congress heard testimony about increasing polarization in Southern jurisdictions. The House Report documenting those proceedings notes that “Testimony presented indicated that ‘the degree of racially polarized voting in the South is increasing, not decreasing... [and is] in certain ways re-creating the segregated system of the Old South.’”²⁹

Similarly, David Bositis of the Joint Center for Political and Economic Studies stated that

[F]ollowing the election of President Barack Obama, many political observers—especially conservative ones—suggested that the United States is now a post-racial society. Three years later, in the region of the country where most African Americans live, the South, there is strong statistical evidence that politics is re-segregating, with African Americans once again excluded from power and representation.³⁰

At the National Commission for Voting Rights hearing held in Nashville, Tennessee, Professor Sekou Franklin of Middle Tennessee State University testified about increasing racially polarized voting in the State. He testified that African-American and white voters became 25 percent more polarized between the 2000 and 2012 presidential elections and further noted that in the 2007 Nashville mayoral race, the African-American candidate received 80 percent of African-American votes while only receiving 11 percent of white votes.³¹



Sekou Franklin, Ph.D., Professor of Political Science at Middle Tennessee State University, testified about racially polarized voting at the NCVR Nashville regional hearing. PHOTO CREDIT: JOSEPH GRANT

DOJ Findings of Racially Polarized Voting in Statewide Redistricting Plans

In addition to federal court findings of racially polarized voting and expert reports on the presence of racially polarized voting, there have been numerous DOJ objections that note the presence of racially polarized voting as a reason for denying preclearance for a statewide redistricting plan in a formerly covered jurisdiction, including the following:

Arizona

DOJ objected to the 2001 legislative redistricting plan. In the objection letter, DOJ noted that Arizona provided insufficient evidence to show that voting was not racially polarized. As such, Arizona failed to prove that a decrease in the number of majority-minority districts would not be retrogressive.³²

Florida

In 2002, DOJ objected to a redistricting plan for the State House of Representatives insofar as it affected the State's covered counties. DOJ found that Hispanic voters support Hispanic candidates but Anglo voters do not.³³

Louisiana

DOJ objected to a 1996 congressional redistricting plan in Louisiana. The objection letter noted that "in... interracial contests, black voters overwhelmingly supported the black candidate and white cross-over was minimal." DOJ concluded: "In light of the pattern of racially polarized voting that appears to prevail in elections in the State, Act No. 96 [the redistricting plan] would appear to provide no realistic opportunity for black voters to elect a candidate of their choice outside the New Orleans area."³⁴

South Carolina

South Carolina submitted a State Senate redistricting plan in 1997 for preclearance, and the DOJ objected. According to the objection letter, there were clear findings of racially polarized voting. The letter noted, "In the context of the racially polarized voting patterns that the court found to exist, see *Smith*, 946 F. Supp. at 1202, these reductions [in black voting age population] will significantly hinder black voters' electoral opportunities in these districts."³⁵

Texas

In 2001, DOJ objected to the proposed State House redistricting plan. The objection letter found racially polarized voting in those elections.³⁶

Greater Racially Polarized Voting in the Formerly Covered Jurisdictions than in Non-Covered Jurisdictions

In *Northwest Austin Municipal Utility District No. One v. Holder*,³⁷ several prominent academics authored an amicus brief that included, among other things, an analysis comparing the degree of support Barack Obama received from white voters in covered and non-covered jurisdictions in the 2008 general election. According to an exit poll, 26 percent of white voters supported Barack Obama in covered states compared to 48 percent white voters in non-covered states.³⁸ Moreover, the six states with the lowest percentage of whites voting for Obama were fully covered by Section 5 at the time: Alabama (10 percent), Mississippi (11 percent), Louisiana (14 percent), Georgia (23 percent), South Carolina (26 percent), and Texas (26 percent).³⁹ The five states where Obama received the lowest levels of white support are among the six states where African Americans make up the greatest percentage of the population.⁴⁰ The county-level regression analysis showed similar results: Obama received the estimated support of 24 percent of white voters in counties formerly covered by Section 5 compared to 46 percent of white voters in non-covered counties.⁴¹

Similarly, in 2005, the National Commission on the Voting Rights Act received testimony from Dr. Richard Engstrom, a noted expert on the issue of racially polarized voting, who has testified on behalf of the federal government, state, and local governments, and private parties. Dr. Engstrom stated that based on recent analyses he had done, voting was racially polarized throughout Louisiana, South Carolina, Georgia, Florida, Alabama, North Carolina, and Texas.⁴²

The presence of racially polarized voting is the “evidentiary linchpin” of a successful vote dilution claim. Federal courts, DOJ (in its administrative review function), and several analysts have demonstrated that voting remains polarized in many areas of the country, and particularly in the states that were covered by Section 5. Given this persistent trend, minorities are likely to continue finding themselves subject to election schemes and redistricting plans that limit their ability to fully participate in the electoral process.

III. AT-LARGE AND MULTI-MEMBER METHODS OF ELECTION AND RELATED PRACTICES DILUTE MINORITIES' VOTING STRENGTH

Introduction

As was detailed at the beginning of this Report, vote dilution schemes have taken many forms over the years. The use of at-large elections and multi-member districts remains one of the common vote dilution schemes. The Supreme Court has explained that

At-large voting schemes and multimember districts tend to minimize the voting strength of minority groups by permitting the political majority to elect all representatives of the district. A distinct minority, whether it be a racial, ethnic, economic, or political group, may be unable to elect any representatives in an at-large election, yet may be able to elect several representatives if the political unit is divided into single-member districts. The minority's voting power in a multimember district is particularly diluted when bloc voting occurs and ballots are cast along strict majority-minority lines.⁴³

In an at-large or multi-member district system, all voters in the jurisdiction vote for all of the seats on a governmental body for that jurisdiction; if there are five seats on the county council, for instance, each voter is able to cast a vote for all five seats. At-large elections and multi-member districts are not *per se* a violation of the Constitution or of Section 2 of the VRA.⁴⁴ Rather, it is only when at-large elections and multi-member districts are used *and voting is also racially polarized* that these methods of election can dilute minority voting strength and violate Section 2. When voting is racially polarized in at-large and multi-member systems, the majority will be able to elect all of its candidates of choice and the minority will not be able to elect any.⁴⁵ Even if the polarization is “less than absolute,” at-large and multi-member systems can still severely inhibit the ability of minorities to elect their candidates of choice.⁴⁶

There are several other election practices that can dilute minority votes when used where voting is racially polarized. One such practice is a majority vote requirement in the context of at-large or multi-member elections, which requires that a candidate garner a majority—not simply a plurality—of the votes in order to win. If the white majority splits its votes among many candidates, it is possible that a minority-preferred candidate may win a plurality. If there is a majority vote requirement and a runoff is necessary, however, the minority candidate will not win in a racially polarized context.

Another practice that can dilute minority voting strength if voting is racially polarized is the prevention of “single-shot” or “bullet” voting in at-large or multi-member elections. Single-shot voting is only possible in contests where multiple seats are open and top vote-getters fill the available seats. When a voter “single-shoots” he has the opportunity to vote for multiple

candidates but chooses to cast only one vote in order to concentrate support for his preferred candidate. “Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates.”⁴⁷ Single-shot voting has often led to the election of a minority-preferred candidate where voting is racially polarized, though it does require that minority voters forgo their say over the other candidates for the office in question.⁴⁸

One anti-single-shot device is the “full-slate rule,” wherein voters are required to cast all of their available votes for an office (or their ballots will be invalidated). A second is a numbered place system, wherein each candidate must run for a specific place (1, 2, 3, etc.) rather than against all of the candidates.⁴⁹ Much like numbered place systems, residency districts prevent single-shot voting by restricting candidacy for a position to individuals who live in a certain district, even though voters from all districts will choose among the candidates for that district. Both numbered place systems and residency districts also tend to reduce the number of candidates in a contest, which makes it less likely that majority support will be divided and that a minority candidate will be able to win with a plurality of votes. In a racially polarized setting, any of these devices may prevent election of a minority-preferred candidate.⁵⁰

Many current attempts to dilute the voting power of minorities are reactions to changes in the location and size of minority populations. What follows are several examples that provide an overview of the types of vote dilution cases from the very recent past.

Overview of successful Section 2 challenges and Section 5 objections to at-large and multi-member methods of election, 1995 to present⁵¹

Of the cases brought between 1995 and June 2014 under Section 2 of the VRA in which plaintiffs have been successful (excluding cases regarding bilingual requirements), the vast majority—over 70 percent—related to methods of election. These cases were brought in 21 different states, including six of the states formerly covered in whole by Section 5. Most of these 21 states had between one and three successful cases related to methods of election, but Georgia had six, Mississippi had seven, and Texas had 78.

In the same time period, 20 voting changes related to methods of election were denied preclearance under Section 5 of the VRA by the Attorney General. These denials represent a much smaller share of Section 5 denials than the percent of successful Section 2 cases that relate to election methods. The difference in these percentages is illustrative of the different types of problems that Section 2 and Section 5 are able to address most effectively. The 20 preclearance denials were spread out among jurisdictions in nine different states, though there were four denials for jurisdictions in South Carolina and five denials for jurisdictions in Texas. There was only one preclearance denial for a state-level method of election: in 2010,

the Attorney General denied preclearance to Mississippi for a majority vote requirement for certain county boards of trustees and boards of education.⁵²

Changing to At-Large Elections as Minority Groups Grow

In certain areas of the country, the minority population has markedly increased its share of the overall population over the last several decades. In some places, as the minority population grew, jurisdictions changed their method of election from single-member districts—through which the minority group may have been able to elect a candidate of choice—to at-large elections where the minority group's votes would be diluted. In each of the following examples, a Section 2 challenge resulted in the restoration of single-member districts several years after a jurisdiction changed to at-large elections.

United States v. Benson County, North Dakota

In March 2000, the United States and Benson County, North Dakota ended litigation by entering into a consent decree in which the County admitted that its at-large method of electing its five County Commissioners violated Section 2 of the VRA. Prior to 1992, the members of the Benson County, North Dakota Board of Commissioners had been elected from single-member districts.⁵³ Between the 1980 census and the 1990 census, the Native American population in Benson County grew as a share of the County's total population. In 1980, Native Americans constituted 29.2 percent of the County's total population;⁵⁴ by 1990 they had grown to be 38.3 percent of the County's total population and 29.3 percent of the voting age population.⁵⁵ As of the 1990 census, two of the districts for the County Commission were majority Native American.⁵⁶ In 1992, the county changed its method of electing the County Commissioners from single-member districts to at-large.⁵⁷ No Native American was elected to the County Commission under the at-large method of election.⁵⁸

In March 2000, the United States filed suit against Benson County, alleging that the at-large method of electing county commissioners, adopted after the Native American share of population increased, violated Section 2 of the VRA.⁵⁹ The district court entered a consent decree four days later in which Benson County admitted that the at-large method of elections for the County's Commissioners violated Section 2 of the VRA.⁶⁰ The consent decree provided that Benson County would devise a new single-member district voting plan including two majority-Native American districts if they could be constitutionally drawn.⁶¹

United States v. Osceola County, Florida

In 2006, a U.S. district court in Florida held that Osceola County's method of electing its five-member County Commission caused a dilution of Hispanic votes in violation of Section 2 of the VRA.⁶² The total population of Osceola County had increased dramatically over the previous decades, and the percentage of the population that is Hispanic had also increased

dramatically. In 1980, Hispanics represented only two percent of the County's population; by 2000, Hispanics made up almost 30 percent of the County's population.⁶³ Additionally, the Hispanic population, as a portion of all registered voters in the County, grew from about 20 percent in 2000 to almost 31 percent in 2006. As the Hispanic population grew, leaders in the Latino community began to express an interest in political representation at the county level, but Latino candidates had not been successful in getting elected. In 1991, the Osceola County Hispanic American Association requested that the County Commission change the election system from at-large to single-member districts.⁶⁴ A public referendum to change to single-member districts passed in the 1992 election, with 57 percent of voters in favor. Less than two weeks later, efforts began to return the system to at-large. The 1996 election was conducted under a single-member district system, but included a referendum for a return to at-large elections.⁶⁵ A Hispanic candidate was elected from a single-member district in the 1996 election, but the referendum to return to at-large elections also passed.⁶⁶ Members of the Hispanic community continued to advocate for single-member districts, but the County Commission was not responsive to their requests. Hispanic candidates also continued to run unsuccessfully for County Commission.⁶⁷

In 2005, the United States sued Osceola County alleging that the at-large method of electing the County Commissioners violated Section 2 of the VRA. The defendants did not dispute that the second and third *Gingles* preconditions were satisfied (i.e., that Hispanics in the county were politically cohesive and that white voters generally voted in a bloc to defeat minority candidates).⁶⁸ After a trial, the district court found that the first *Gingles* precondition was also satisfied, and that, under the totality of the circumstances, the County's at-large method diluted the voting strength of Hispanics in violation of Section 2. In its analysis of the totality of the circumstances, the court relied on the extent of racially polarized voting; the history of a lack of success by Hispanic candidates at the polls (other than when the County employed a single-member plan); the socioeconomic disparities between Hispanics and non-Hispanics in the County; and a history of discrimination against Hispanics in the County, including discrimination at the polls in the 2000 election when Hispanics "were turned away without being allowed to vote, refused assistance, forbidden to use their own interpreters, asked for multiple forms of identification (unlike non-Hispanic voters), and treated in a hostile manner by poll workers."⁶⁹

The court also noted that several of Osceola County's election practices—including the requirement of a runoff in primary elections and Commissioners' residency districts—further enhanced opportunities for discrimination and contributed to the lack of success of Hispanic candidates.⁷⁰



Jeff Wice, Fellow at the Jaeckle Center at the SUNY Buffalo Law School; Susan Lerner, Executive Director of Common Cause New York; Aunna Dennis, National Coordinator for the Legal Mobilization Project at the Lawyers' Committee for Civil Rights Under Law; DeNora Getachew, Campaign Manager and Legislative Counsel at the Brennan Center for Justice; and Dan Kolb, Co-Chair of the New York State Bar Association's Special Committee on Voter Participation and Lawyers' Committee board member, answered questions at the NCVR New York City regional hearing. PHOTO CREDIT: CHRIS FIELDS

Refusal to Change to Single-Member Districts as a Minority Population Increases

In some areas of the country where the minority population has grown as a share of the total population, minority groups have advocated for a change from an at-large system in order to increase the chances of electing a candidate of choice. Jurisdictions have staunchly refused to change to a more racially-fair alternative and have needed to be compelled by court order to do so.

United States v. Village of Port Chester, New York

In January 2008, a U.S. district court found that the at-large method of election for the six-member Board of Trustees of the Village of Port Chester, New York violated Section 2 of the VRA by impermissibly diluting the voting strength of Latinos.⁷¹ From 1990 to 2000, the Latino population of Port Chester had grown 73 percent, and, as of the 2000 census, Latinos constituted 46.2 percent of the village's population, while 42.8 percent of the population was white and 6.6 percent was non-Hispanic black.⁷² The citizen voting age population was 65.5 percent white, 21.9 percent Hispanic, and 8.9 percent non-Hispanic black.⁷³ Despite the increase in and substantial size of the Latino population of Port Chester, no Latino had ever been elected to the Board of Trustees (or, as of the time of the trial in the case, to any elected office in Port Chester).⁷⁴

In finding a violation of Section 2, the court’s discussion included the history of official discrimination in Port Chester Village and Westchester County against Latinos, including disparate treatment of Spanish-speaking voters and failure to provide sufficient Spanish language assistance at the polls; the nominating process for getting on the ballot, which favored those with political ties or institutional support, which most Latinos lacked; the lower average levels of income and formal education for Latinos in Port Chester; and racial appeals in campaigns in Port Chester, including a flyer stating, “The Hispanics are running the show already.”⁷⁵

The Village of Port Chester proposed cumulative voting—a system where every voter is allotted as many votes as there are candidates and may give all to one candidate or varying numbers to several candidates—as a remedy, and the court accepted a plan of at-large elections with cumulative voting. In 2010 the Village of Port Chester elected its first Latino member of the Board of Trustees.⁷⁶

United States v. Blaine County, Montana

“Official discrimination against American Indians, racially polarized voting, voting procedures that enhanced the opportunities for discrimination against American Indians, depressed socioeconomic conditions for American Indians, a tenuous justification for [the] at-large voting system. While Blaine County argued that none of this existed in their voting system, the record was clear to the contrary.”

William ‘Snuffy’ Main at the NCVR Rapid City regional hearing

In 2002, a U.S. district court found that Blaine County, Montana’s at-large system for electing its three-member County Commission violated Section 2 of the VRA.⁷⁷ From 1980 to 2000, the share of the population of Blaine County that was Native American had increased dramatically. In 1980, Native Americans made up 31.7 percent of the population of Blaine County;⁷⁸ as of the 1990 census, that number had increased to 39.6 percent.⁷⁹ By the time of the 2000 census, Native Americans comprised 45.2 percent of the total population and 38.8 percent of the voting age population of Blaine County (with 80 percent of the Native population concentrated on the Fort Belknap Reservation), yet no Native American had ever been elected to the County Commission.⁸⁰ In 1999, the United States sued Blaine County, alleging that the at-large voting system for electing County Commissioners violated Section 2 of the VRA. In concluding that the at-large system violated Section 2, the court found that there was a history of official discrimination against Native Americans, racially polarized voting, voting procedures that enhanced the opportunities for discrimination against Native Americans, and a tenuous justification for the at-large voting system.⁸¹ Blaine County proposed a remedial plan with three single-member districts, which the district court approved. In 2002, a tribal member, Delores Plumage, was elected to the County Commission.⁸²

United States v. City of Euclid

Until the late 1970s, the city of Euclid was a predominantly white suburb of Cleveland. In the 1970s, African Americans represented only half of one percent of the city's total population. The African-American population grew in the 1980s and 1990s, while the white population decreased. As of the 2000 census, Euclid's African-American voting age population was 27.8 percent of the total population, yet none of Euclid's four wards had a majority of African Americans of voting age.⁸³ The nine-member City Council was elected as follows: four members were elected from single-member districts, four were elected at-large from numbered posts, and one was elected at-large to serve as president of the council.⁸⁴ African-American candidates had run for city council ten times since 1981, but lost each time. No African-American had ever been elected to the City Council, School Board or as Mayor of Euclid.⁸⁵

In 2008, the United States filed a suit alleging that Euclid's method of electing its City Council resulted in the dilution of African-American voting strength in violation of Section 2. The court agreed that Euclid's method of electing its City Council violated Section 2 based on racially polarized voting, a history of discrimination in several areas including housing and education, and a persistent lack of responsiveness to the needs of the African-American community by elected officials.

In response, the city divided Euclid into eight single-member districts, while retaining the at-large Council President position. After implementation of the plan, an African American was elected to the Euclid City Council from one of the majority-minority districts established by the remedial plan.⁸⁶ Since then, a second African American has been elected to the Euclid City Council.

Entrenched Opposition to Minority Representation

Other cases of minority vote dilution, whether or not they follow an increase in the minority group's share of the population, demonstrate entrenched opposition to minority representation. From refusing to submit a single-member plan as ordered by a court, to attempting to return to an at-large system after having changed to a single-member system, to refusing to settle cases where the Section 2 violation is so clear that it had been decided on summary judgment, there are several examples of this entrenched opposition, including the following.

Large v. Fremont County, Wyoming

In Wyoming, a U.S. district court found in 2010 that Fremont County's at-large system for the election of County Commissioners violated Section 2 of the VRA by impermissibly diluting the voting strength of Native American voters.⁸⁷ Fremont County is home to the Wind River Indian Reservation, which includes Eastern Shoshone and Northern Arapaho Tribes.⁸⁸ As of the 2000 census, the population of the County was about 20 percent Native American.⁸⁹ Yet prior to the filing of *Large*, no Native American had ever been elected to the five-seat County

Commission. The district court found that discrimination against Indians in Fremont County was “ongoing, and that the effects of historical discrimination remain[ed] palpable[,]” and the court rejected “any attempt to characterize this discrimination as being politically, rather than racially, motivated.”⁹⁰ The evidence of ongoing discrimination included the use of racial slurs against Native Americans, including signs on stores that said “No Dogs or Indians Allowed”; Native Americans being followed around in stores, ignored by sales people, or served only after whites had been served; disparate treatment in the criminal justice system; and even a comment by a County Commissioner (before he was in office) that, “I hate the [expletive] Indians.”⁹¹ Additionally, when Native Americans had run for office in Fremont County, the campaigns against them included racial appeals such as ads reminding voters that a candidate was “an enrolled member and that he would be voting on water issues,” and a warning not to vote for one Native American candidate because if elected he “was going to give [a town in Fremont County] back to the Indians.”⁹² After *Large* was filed (but before the case concluded), one Native American was elected to the County Commission. During her campaign, she voiced support for at-large elections, which is a position that the white majority would likely favor.⁹³

“The issue is, we weren’t being represented and our population is 20 percent of the county... [and] our population is growing.”

Gary Collins, Northern Arapaho Tribal Liaison, at the NCVR Rapid City regional hearing

After finding that the at-large plan violated Section 2, the district court ordered the County to propose a plan to elect Commissioners by district rather than at-large.⁹⁴ Despite this order, the County proposed another plan that negated the voting power of Native Americans. This hybrid plan consisted of two districts: one single-seat majority-Native American district, with 19.2 percent of the county’s population, and one four-seat majority white district covering the rest of the county.⁹⁵ Candidates from the majority-Native American district would be required to live in the district and would be elected only by voters in that district; the four remaining seats would be elected by the remaining population using an at-large scheme.⁹⁶ Essentially, members of the white majority would be allowed to vote for four commissioners while Native Americans would be allowed to vote for only one. The district court found that the plan “perpetuat[ed] the separation, isolation, and racial polarization in the County, guaranteeing that the non-Indian majority continues to cancel out the voting strength of the minority.”⁹⁷ The district court rejected the county’s proposed plan and ordered a single-member district plan be implemented.⁹⁸

Cuthair v. Montezuma-Cortez School District

In 1998, a district court in Colorado found that the at-large elections of the six-member Board of Education for the Montezuma-Cortez School District diluted Native American voting strength in violation of Section 2 of the VRA.⁹⁹ The plaintiffs, members of the Ute Mountain Ute Tribe and Southern Ute Tribe, had originally brought suit in 1989 challenging the at-large

method.¹⁰⁰ In 1990, the district court entered a consent decree establishing a majority Native American district (“District D”) for the 1991 and 1993 school board elections; the remaining five positions on the School Board were still elected at-large. The consent decree also included the unusual provision that if no Native American candidate (or candidate endorsed by the Tribal Council) was elected for District D in 1991 or 1993, the defendants would have a year in which they could request that the court allow them to restore at-large elections for all school board positions.¹⁰¹ When no Native American was elected to District D in 1991 or 1993, the defendants sought permission to resume at-large elections.

A different district court judge determined that the consent decree was unenforceable, and held that the at-large elections violated Section 2 of the VRA. The court reviewed an extensive history of “pervasive discrimination and abuse at the hands of the government” suffered by Native Americans in the United States and specifically in Colorado. That history, which includes government seizure of Ute land, a massacre of Indians in eastern Colorado, and decades of official policies of coercive assimilation, led to dire social and economic situations for Native Americans.¹⁰² The court also found that voting in the county was racially polarized, that the historical use of at-large elections presented the opportunity for discrimination against minority groups in Colorado and the County, that Native Americans in the County bore the effects of discrimination, and that no Native American had been elected to a non-tribal office in the County. The district court ordered the parties to submit appropriate districting plans for future elections.

Georgia State Conference of the NAACP v. Fayette County, Georgia

In 2013, the U.S. District Court for the Northern District of Georgia found that Fayette County, Georgia’s at-large method of electing members of the Board of Commissioners and Board of Education diluted the voting strength of African-American voters in violation of Section 2 of the VRA.¹⁰³ The court made this finding on a motion for summary judgment—meaning there was not even a trial because the court found that the key facts were undisputed. Indeed, some of the Board of Education defendants had already conceded that the at-large election of its members violated Section 2. This case is an example of *both* a refusal to change methods of election when a minority population increases and entrenched opposition to minority representation.

The percentage of the population of Fayette County that is African-American had almost doubled between 2000 and 2010. As of the 2000 census, African Americans comprised 11.5 percent of the County’s population.¹⁰⁴ By the time of the 2010 census, African Americans comprised 20.1 percent of the population and 19.5 percent of the voting age population, yet no African-American candidate had ever been elected to the five-member Board of Commissioners or five-member Board of Education.¹⁰⁵ Five African-American candidates had run for the Board of Education and seven had unsuccessfully run for the Board of Commissioners.

“Elections in Fayette County show a clear pattern of racially polarized voting. Although, Black voters are politically cohesive, bloc voting by other members of the electorate consistently defeats black-preferred candidates.”

Stated Rep. Virgil Fludd at the NCVR Georgia hearing.

The members of the County’s Board of Commissioners and Board of Education served staggered four-year terms and had to reside in the district from which they were elected, though the elections were at-large.¹⁰⁶ No African American had ever been elected to either the Board of Commissioners or Board of Education, and only one African American had ever been elected to a county-wide office.¹⁰⁷

In arguing against the plaintiffs’ motion for summary judgment, Fayette County did not even dispute the second and third *Gingles* preconditions.¹⁰⁸ The court found that the first precondition was satisfied and that the totality of the circumstances demonstrated vote dilution. In addition to finding a history of racial discrimination and racially polarized voting, the court also noted that election practices enhanced opportunities for discrimination. First, the County split its Commissioners into five individual contests and used numbered posts, eliminating the opportunity for single-shot voting. Second, the County had a majority-vote requirement, which can also dilute the voting strength of minority voters.¹⁰⁹

Case Spotlight

Charleston County, South Carolina

In 2003, a district court found that the at-large method of election of the members of the County Council of Charleston County, South Carolina, impermissibly diluted minority voting strength in violation of Section 2 of the VRA. As of the 2000 census, African Americans comprised 34.3 percent of Charleston County's total population and 30.6 percent of its voting age population.¹¹⁰ Only one of the nine members of the County Council was African-American, and he was not a minority-preferred candidate. At the time, Charleston County was one of only three counties in South Carolina that elected its entire County Council at-large, and was the only county in South Carolina to do so where whites were a majority of the population.¹¹¹ In July 2002, the court granted summary judgment to the plaintiffs on the three *Gingles* preconditions, meaning that the facts upon which the court relied to determine if the preconditions had been met were undisputed. The trial that followed thus focused on the totality of the circumstances, and the plaintiffs prevailed.

In the court's discussion of the totality of the circumstances in its 2003 opinion, it noted the "egregious" racial polarization in voting in Charleston County; that only one African-American candidate had ever won a county-wide election for any of the seven single-seat offices (including probate judge, sheriff, and auditor); and the vast socioeconomic disparity between African Americans and whites, with 34.2 percent of African Americans in the County living below the poverty level, compared with 7.9 percent of whites.¹¹² The court found that the depressed socioeconomic status of African Americans was "a direct legacy of Charleston County's history of official discrimination" and "makes it more difficult presently for Charleston County's African-American citizens to participate in the political process and elect candidates of choice."¹¹³ Additionally, the residency districts, staggering of terms, and primary nominating system meant that there was essentially a majority vote requirement, as all contests were either single-seat or two-seat contests with only two viable candidates per seat (one Democrat, one Republican). Such a situation also denied minority voters the opportunity to exert influence through single-shot voting.¹¹⁴

The court also found "significant evidence of intimidation and harassment" of African-American voters at predominantly African-American polling places; the Charleston County Circuit Court had even issued a restraining order against the Election Commission to cease the ongoing interference with the ability of African Americans to vote.¹¹⁵ There was also evidence that the right of African-American voters to receive assistance had been violated, with white poll managers asking questions such as, "Why do you need assistance? . . . [C]an't you read and write?" and "[Y]ou know how to spell your name, why can't you just vote by yourself?"¹¹⁶

After finding a violation of Section 2, the district court ordered single-member districts to replace the at-large system. In the first election by districts, in 2004, African-American voters elected three African-American council members, all of whom were minority-preferred candidates.¹¹⁷ The County appealed the case first to the Fourth Circuit Court of Appeals and then to the U.S. Supreme Court. The appeals court affirmed the district court, and the Supreme Court did not hear the case.¹¹⁸ As a result, Charleston County spent more than \$2 million defending its discriminatory election system.¹¹⁹ The County was ordered to pay several hundred thousand dollars in attorneys' fees to the private plaintiffs.

This case also provides an illustration of the differences between Section 2 and Section 5. Like the County Council, the Charleston County School Board has nine members. At the time of the trial regarding the County Council's method of election, a majority of the School Board, which was elected by a different method, was African American.¹²⁰ In 2003, while the case regarding the County Council was on appeal, the South Carolina General Assembly, led by legislators from Charleston County, enacted a law changing School Board elections from nonpartisan to partisan. DOJ objected to the change on the ground that it would decrease minority voting strength, noting, among other things, that it eliminated the opportunity for single-shot voting.¹²¹ The Section 5 process thus prevented the implementation of a discriminatory voting change that could have taken several years and millions of dollars to invalidate in a Section 2 lawsuit.

IV. REDISTRICTING PLANS

There are three ways that redistricting plans can dilute minority voting strength. The first is through malapportionment, which the Supreme Court recognized in *Reynolds v. Sims* to be an unconstitutional form of vote dilution,¹²² as discussed above. When minority voters are in an overpopulated district, their votes are being diluted. The other two methods are fragmenting (or “cracking”) the minority population into different districts or packing it into a single district. The Supreme Court described these principles in *Voinovich v. Quilter*:

In the context of single-member districts, the usual device for diluting minority voting power is the manipulation of district lines. A politically cohesive minority group that is large enough to constitute the majority in a single-member district has a good chance of electing its candidate of choice, if the group is placed in a district where it constitutes a majority. Dividing the minority group among various districts so that it is a majority in none may prevent the group from electing its candidate of choice: If the majority in each district votes as a bloc against the minority candidate, the fragmented minority group will be unable to muster sufficient votes in any district to carry its candidate to victory.

This case focuses not on the fragmentation of a minority group among various districts but on the concentration of minority voters within a district. How such concentration or “packing” may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a supermajority, it will be assured only two candidates. As a result, we have recognized that “[d]ilution of racial minority group voting strength may be caused” either “by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.”¹²³

The following discussion sets forth examples of all three and how malapportionment, cracking, and packing have been used to dilute minority voting strength.

Malapportionment

The example of a recent case in Montana involving Native American voters demonstrates how malapportionment is used to dilute minority voting strength.

In August 2013, the American Civil Liberties Union filed a federal lawsuit against the Board of Trustees of Wolf Point, School District 45A, for creating a multimember districting plan that gave residents in a predominantly white voting district vastly more voting power than those in a majority Native American voting district.¹²⁴ The Wolf Point School District, located in north-eastern Montana, resides entirely in the Fort Peck Indian Reservation.¹²⁵ Wolf Point School District 45A was created with the merger of High School District 45 and Elementary School District 3.¹²⁶ When the merger took place, Wolf Point assigned five electable trustee positions to District 45 and three to District 3.¹²⁷ District 45 is a majority Native American district.¹²⁸ In April of 2014 the Court approved a consent decree finding that the Wolf Point School Board districts were malapportioned in violation of the 14th Amendment.¹²⁹ The consent decree recognized that, with respect to District 45, the ideal population for a district electing five of the eight Board members should be 2,897, as opposed to the 4,205 found under the existing plan.¹³⁰ The consent decree also recognized that, with respect to District 3, the ideal population for a district electing three members of the Board should be 1,738, rather than the 430 that it actually had.¹³¹ Through the consent decree the School District agreed to redraw voting areas for board elections and to eliminate two seats from District 3 for the 2014 election.¹³² The School District also agreed to create five single-member districts with an approximately equal number of residents and one at large position.¹³³ Each of the new single-member districts will have populations that vary no more than 1.54 percent.¹³⁴

Cracking

The following examples demonstrate how jurisdictions have sought to dilute the minority voting strength by cracking cohesive effective minority districts.

Arizona: Southwest Phoenix and Central and Southwest Tucson, 2002

In May 2002 in Arizona, the United States Department of Justice (DOJ) objected under Section 5 of the Voting Rights Act (VRA) to the proposed 2001 legislative redistricting plan for the state, finding that southwest Phoenix voters from the existing House District 22 would “lose their present ability to elect their candidate of choice.” In its proposal, Arizona sought to split the existing District 22 between two districts, Districts 13 and 14. The resulting proposed districts would have Latino voting age populations of 51.2 and 50.6 percent, respectively, a significant reduction from the 65 percent found under the old District 22. DOJ noted that Arizona districts with Latino voting age population percentages in the low 50s had not historically permitted Latino voters “to elect a candidate of their choice.” In central and southwest Tucson, the DOJ also objected to proposed District 29. Proposed District 29 was created by cracking the previous Districts 9, 10, 11, and 14, and would have had “a Hispanic voting age population of 45.1 percent.” In particular the DOJ noted that the majority of proposed District 29’s population came from the previous “District 10, which had a Hispanic

voting age population of 55.3 percent,” and that Arizona did not present credible evidence allowing DOJ to conclude that the drop of eight percentage points in the Hispanic voting age population would result in the “continued ability of voters in Proposed District 29 to elect candidates of their choice.” More generally, the DOJ determined that the proposed plan would result in a net loss of three districts in which minority voters could elect candidates of choice.¹³⁵

Virginia: Northampton County, 2001-03

Prior to its 2001 redistricting, the board of supervisors for Northampton County, Virginia had two majority black supervisor districts where African Americans had elected their candidates of choice for the last decade.¹³⁶ During the next several years, the county repeatedly submitted retrogressive redistricting plans and associated voting changes to DOJ for preclearance.

First, in September 2001, DOJ objected to the redistricting plan for the board of supervisors, as well as changes to the method of election for the board of supervisors in Northampton County.¹³⁷ Under the existing method of election, which included six single-member districts, two African-American supervisors, both from majority-black districts (and a third majority-minority district had previously elected minority candidates), were in office.¹³⁸ However, the proposed redistricting plan and change to three two-member districts contained no districts in which minorities constituted a majority of the voting age population. The DOJ cited that one district in the proposed plan would have “a minority voting age population of 48.8 percent.”¹³⁹ Others would have voting age populations of 39.3 percent and 43.5 percent.¹⁴⁰ The DOJ was not persuaded by the county’s argument that these changes were required to include “incorporated towns within single election districts” and to make access to polling places more convenient to voters.¹⁴¹ In fact the DOJ provided an illustrative six-district plan that addressed these concerns. The illustrative plan was very similar to the benchmark plan already in place. In all, the DOJ concluded that after examining the populations in question the proposed plan would have made it unlikely for the minority community to “elect two, much less, three candidates of choice.”¹⁴²

The next year Northampton County submitted a new redistricting plan and DOJ objected to it in May 2003.¹⁴³ DOJ again noted that under the existing plan there were three majority-minority (two of them majority African-American) districts.¹⁴⁴ However, “[t]he proposed plan has no district in which black persons constitute a majority of the [voting age population].”¹⁴⁵ Moreover, under the proposed plan, none of the districts had a combined minority voting age population above 52.1 percent, whereas the *lowest* combined minority voting age population among the three existing majority-minority districts was 52.8 percent.¹⁴⁶ The county defended its proposed redistricting plan by arguing that Northampton voters no longer voted on “purely racial grounds.”¹⁴⁷ The DOJ disagreed with this view. It cited evidence to the contrary, namely that “[i]n the last ten years, no black preferred candidate has won in a district in

which whites were a majority of the [voting age population] and in the district in which neither blacks nor whites constitute a majority of the total [voting age population], a black-preferred candidate has only won once in the past three elections.”¹⁴⁸ Based on this evidence the DOJ determined that even a slight reduction in the voting age population would make it less likely for African Americans to elect candidates of choice.

In October 2003, DOJ objected to the proposed redistricting plan for board of supervisors in Northampton County for a third time. Under the proposed redistricting plan one of the two majority African-American districts would be cracked by reducing its African-American voting age population “from 53.3% to 48.2%, thereby eliminating the ability of black voters to elect their candidates of choice.”¹⁴⁹

Wisconsin: 2012

In 2012, a federal court held that the state of Wisconsin’s legislative redistricting act, known as Act 43, violated Section 2 of the VRA, by “improperly diluting the citizen voting age population of Latinos across New Assembly Districts 8 and 9.”¹⁵⁰ The defendants sought to rely on voting age population as opposed to citizen voting age population. The defendants had argued that in drawing the districts they had given Latinos 60.5 percent of the voting age population in “New Assembly District 8 and 54.03 percent of the voting age population in New Assembly District 9.”¹⁵¹ However, as the trial unfolded the state conceded that “the relevant measure is citizen voting age population, at least for an ethnic group with as high a proportion of lawful non-citizen residents as Latinos.”¹⁵² The defendants also argued that two Latino influence districts would be superior to one majority-minority district.¹⁵³ The court was not convinced by either argument. Relying on *Bartlett v. Strickland*,¹⁵⁴ it held that “the creation of influence districts in lieu of a majority-minority district is not on the menu of options for relief.”¹⁵⁵ It also held that sacrificing influence in one district for the benefit of another “flies in the face of Section 2’s protection against cracking minority populations.”¹⁵⁶

The court noted that “Latinos in Milwaukee are politically cohesive in their voting behavior... [and] voting is racially polarized, such that the majority group can block the Latino candidate from winning.”¹⁵⁷ For instance, during trial an expert testified that, in surveying 36 elections since 1989, Latino candidates only had an 11.1% success rate when they “ran against one or more Caucasian, non-Latino candidates...”¹⁵⁸ The court also noted that neither party disputed that “Milwaukee’s Latino community bears the socioeconomic effects of historic discrimination in employment, education, health, and other areas, and that its depressed socioeconomic status hinders its ability to participate in the electoral process on an equal basis with other members of the electorate.”¹⁵⁹ The court concluded that the plaintiffs are entitled to relief because “Act 43 fails to create a majority-minority district for Milwaukee’s Latino population.”¹⁶⁰



Kendra Glover, a paralegal in the office of the General Counsel of the National Association for the Advancement of Colored People who is from Suffolk, Virginia, testified about the redistricting process in her hometown after the 2010 census. On the right is Jean Jensen, former Secretary of the Virginia State Board of Elections and Guest Commissioner at the NCVR Virginia state hearing. PHOTO CREDIT: ROSE CLOUSTON

Packing

The following examples demonstrate how jurisdictions have sought to dilute the minority vote by over-concentrating such voters into one or as few as possible jurisdictions. This is typically done at the expense of minority-influence districts or districts with small or border-line majorities.

Louisiana: City of Plaquemine, Iberville Parish, 2003

In Louisiana, in December 2003, the DOJ objected to a redistricting plan for the City of Plaquemine, in Iberville Parish. In its proposed plan, the City of Plaquemine sought to create two packed districts, by reassigning and therefore reducing the African-American voting age population in a third district. Under the benchmark plan the city had three districts where African-Americans constituted a majority of the voting age population and were able to elect candidates of their choice to office.¹⁶¹ The proposed packed districts, Districts 2 and 6, would have African-American voting age population percentages of 80.4 and 86.9, respectively, while District 3 would see its African-American voting age population drop to 48.5 percent from the benchmark 51.1 percent.¹⁶² The DOJ determined that the voting age population reduction found in proposed District 3, while small, called into question the ability of African-American voters to elect their candidate of choice. The DOJ also determined that the “reduction in the black voting age population percentage in District 3 was neither inevitable nor required by any constitutional or legal imperative.”¹⁶³

Louisiana: City of Ville Platte, Evangeline Parish, 2004

In June 2004, the DOJ objected to a redistricting plan for the City of Ville Platte in Evangeline Parish in Louisiana. In its proposed plan the city sought to pack District B – which was almost 80 percent African-American – with African Americans from District F, and thereby eliminate that district's African-American voting majority by reducing the African-American voting age population to 38.1 percent.¹⁶⁴ The DOJ determined that reassigning voters from District F would have produced a “precipitous drop in black voting strength,” which “was not driven by any constitutional or statistical necessity.”¹⁶⁵ In fact, the DOJ made clear that the city “provided no evidence to rebut the conclusion” that its efforts were intentionally designed to “retrogress minority voting strength by eliminating the electoral ability of black voters in District F.”¹⁶⁶ In its analysis the DOJ found that the African-American population in District F had steadily increased since it was created in 1997 and that census data suggested that African-Americans constituted a majority 55.1 percent of District F's voting age population.¹⁶⁷

Nebraska: Thurston County, 1997 (Cracking and Packing)

In *Stabler v. County of Thurston*, Native American citizens and organizations filed suit against Thurston County, Nebraska. The plaintiffs claimed that the County's seven member district plan for the County Board diluted Native American voting strength by packing most of the County's Native American population into two voting districts and fragmenting the remaining Native American population into three other districts.¹⁶⁸ The district court found that the plan violated Section 2 and ordered the county to draw a plan with three majority Native American districts,¹⁶⁹ and the Eighth Circuit affirmed.¹⁷⁰ The judgment was left undisturbed on appeal to the Supreme Court.¹⁷¹

A Category of its Own: Randolph County, Georgia

Another example of discriminatory conduct that deprived a minority group from electing its candidates of choice, but which defies the categories set forth above, occurred in Randolph County, Georgia.

In September 2006, DOJ objected to the Randolph County Board of Education's proposed reassignment of sitting Board Chair Henry L. Cook from District 5 to District 4.¹⁷² Randolph County is located in the Southwest corner of Georgia. Cook, an African-American, had served on the Randolph County Board of Education since 1993, representing a District that was over 70 percent African-American.¹⁷³ The Board of Registrars sought to remove Cook as an Education Board member by simply redrawing the district line around his home and placing him in a new district—one that was over 70 percent Anglo.¹⁷⁴ In so doing, the Board of Registrars was effectively seeking to deprive the district of the ability to elect its longstanding candidate of choice.

Because Cook's property had straddled the line between the two districts, the issue of his residency had been raised previously in 2002. At that time, Superior Court Judge Gary McCorvey, serving as an acting election superintendent, had held a hearing regarding Cook's eligibility status, after it was challenged by an opponent. Judge McCorvey found that "the residence of Henry L. Cook is within the boundaries of such 'new' district five as contemplated by the Laws and Constitutions of both the State of Georgia and the United States of America."¹⁷⁵ Despite this 2002 decision, the three-member Randolph County Board had proceeded to hold a special meeting three years later "for the sole propose of determining anew the proper voter registration location of Mr. Cook and his family members living at his address."¹⁷⁶ The DOJ found it unusual that the Board would revisit an issue "without any intervening change in fact or law, and without notifying Mr. Cook that it was doing so."¹⁷⁷ The DOJ also noted that it was "particularly unusual for officials with no legal training to overturn, in effect, a decision by a judge in order to disturb an incumbent officeholder."¹⁷⁸ In support of its objection the DOJ further cited a "history of discrimination in voting in the County" and that the Board failed to carry its burden in demonstrating that Cook's proposed reassignment to District 4 lacked a "discriminatory purpose."¹⁷⁹

Case Spotlight

Texas Redistricting Post-2000

Federal courts have found that Texas violated the Voting Rights Act with respect to its 2003 congressional redistricting plan and its 2011 congressional, State Senate, and State House plans. The reviewing courts found that the State repeatedly manipulated district lines to the detriment of minority voters.

In *League of United Latin American Citizens (LULAC) v. Perry*, the Supreme Court held in 2006 that changes to District 23, a Latino-majority district in west Texas, in Texas's 2003 congressional redistricting plan violated Section 2 of the VRA.¹⁸⁰ District 23 was redrawn by the Legislature to protect incumbent Republican Henry Bonilla, who had decreasing Latino support.¹⁸¹ After his election in 1992, Bonilla's share of Latino support decreased with each election cycle, bottoming out in 2002 when he "captured only 8% of the Latino vote and 51.5% of the overall vote."¹⁸² Bonilla likely prevailed in that election because "88% of non-Latinos voted for him."¹⁸³ To protect Bonilla's seat the Texas Legislature divided District 23 by removing half of Webb County and the city of Laredo. At the time, Webb County was 94% Latino.¹⁸⁴ This change alone reassigned 100,000 individuals from Bonilla's district to "another district in which Latinos already controlled election outcomes."¹⁸⁵ The Legislature then added largely Anglo—and Republican—voters from neighboring central Texas.¹⁸⁶ Consequently, the Latino share of the citizen voting age population in District 23 dropped from 57.5 percent before redistricting to 46 percent.¹⁸⁷ The Supreme Court noted Texas's well-documented history of discrimination, and that the diminishing support for Congressman Bonilla indicated a belief among the Latino voters that Bonilla was unresponsive to their needs.¹⁸⁸ The Court also noted that even if the changes were largely motivated by political rather than racial goals, redrawing a district along racial lines to protect an incumbent is not a valid policy justification.¹⁸⁹ The Court observed that Latino voters in District 23 were poised to elect their candidate of choice as "[t]hey were becoming more politically active, with a marked and continuous rise in Spanish-surnamed voter registration."¹⁹⁰ Accordingly, the Court held that the 2003 congressional redistricting plan bore "the mark of intentional discrimination," and the districts in south and west Texas would have to be redrawn to remedy the Section 2 violation.¹⁹¹

Undeterred by the Supreme Court's decision, the Texas Legislature went to even greater lengths in its post-2010 redistricting. Deciding to bypass the DOJ preclearance process, Texas filed suit in July 2011 for judicial preclearance of new redistricting plans for the Texas House of Representatives, the Texas Senate, and Congress.¹⁹² All three redistricting plans were denied preclearance by a three-judge panel of the federal district court in Washington D.C.¹⁹³ The panel concluded that the State of Texas engaged in intentional discrimination against minority voters in enacting the 2011 State Senate and congressional redistricting

plans, that the State House and congressional plans were retrogressive, and that the State House plan also showed signs of purposeful discrimination.¹⁹⁴

The case regarding the Senate plan focused on Senate District 10. The existing Senate District 10 (SD 10) was located in Tarrant County, which includes Fort Worth.¹⁹⁵ Evidence from the trial cited by the Court included testimony by the defendant's own expert, Dr. John Alford, who agreed that "the enacted plan 'diminishes the voting strengths of Blacks and Latinos in [SD 10].'"¹⁹⁶ The court also cited testimony by Texas State Senator Rodney Ellis, who explained that:

The demolition of District 10 was achieved by cracking the African American and Hispanic voters into three other districts that share few, if any, common interests with the existing District's minority coalition. The African American community in Fort Worth is "exported" into rural District 22—an Anglo-controlled District that stretches over 120 miles south to Falls [County]. The Hispanic Ft. Worth North Side community is placed in Anglo suburban District 12, based in Denton County, while the growing South side Hispanic population remains in the reconfigured majority Anglo District 10.¹⁹⁷

This testimony was further supported by a report provided by expert witness Dr. Allan J. Lichtman, who wrote:

The state legislature, in dismantling benchmark SD 10 cracked the politically cohesive and geographically concentrated Latino and African American communities and placed members of those communities in districts in which they have no opportunity to elect candidates of their choice or participate effectively in the political process.¹⁹⁸

Ultimately, the court denied preclearance "because Texas failed to carry its burden to show that it acted without discriminatory purpose in the face of largely un rebutted defense evidence and clear on-the-ground evidence of cracking minority communities of interest in SD 10."¹⁹⁹

The court's findings of fact detailed other actions taken by the State of Texas to intentionally discriminate against voters on the basis of race.²⁰⁰ For example, as to the congressional plan, the court made the following findings: (1) Texas grew by 4.3 million people between 2000 and 2010 of which Latinos accounted for 65 percent of the increase, African Americans 13.4 percent and Asian-Americans 10.1 percent;²⁰¹ (2) as a result of the growth in population, the state gained four congressional seats;²⁰² and (3) nonetheless, the number of seats to which minority voters could elect a candidate did not increase (two of the three judges concluded

that this number had decreased by one).²⁰³ In addition, the court noted that the legislature had removed the “economic guts” from the African-American districts, but “[n]o such surgery was performed on the districts of Anglo incumbents.”²⁰⁴

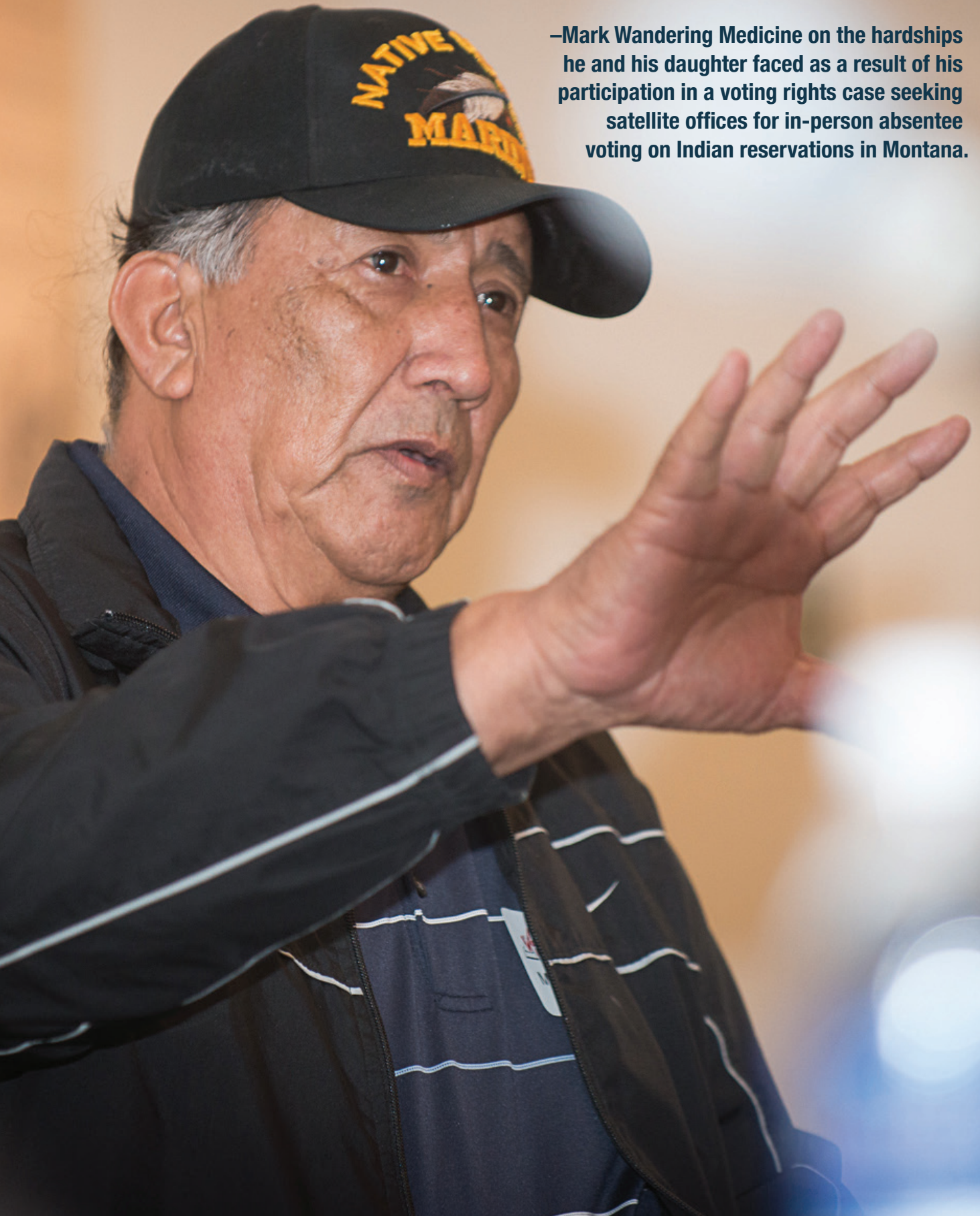
With regard to the State House redistricting plan, the court did not make formal findings of intentional discrimination, but did conclude that the plan would have a retrogressive effect on minority voters.²⁰⁵ The court did note, however, that it had been presented with substantial evidence that the State House plan was also motivated by discriminatory intent.²⁰⁶ For instance, the court noted that “the process for drawing the House Plan showed little attention to, training on, or concern for the VRA.”²⁰⁷ In terms of the process used to create House District 117, the court noted that map-drawers altered it “so that it would elect the Anglo-preferred candidate yet would look like a Hispanic ability district on paper.”²⁰⁸ This was accomplished by using “voting and population data” to distinguish “between minorities who turn out heavily to vote and those who do not ...”²⁰⁹ In this way, districts with large minority populations could be created that would feature “a much smaller number of minority voters.”²¹⁰ The court found this evidence “concerning because it shows a deliberate, race conscious method to manipulate not simply Democratic vote but, more specifically, the *Hispanic* vote.”²¹¹ The court cited the testimony provided by the lead house map-drawer, Gerardo Interiano, which it found “reinforces evidence suggesting map-drawers cracked [voter tabulation districts] along racial lines to dilute minority voting power.”²¹²

The panel’s decision was vacated after the *Shelby County* decision, and after the Texas Legislature enacted new plans. The new congressional and State House plans are being challenged in consolidated Section 2 lawsuits with trial to occur in summer 2014.²¹³

Deciding to bypass the DOJ preclearance process, Texas filed suit in July 2011 for judicial preclearance of new redistricting plans for the Texas House of Representatives, the Texas Senate, and Congress. All three redistricting plans were denied by a three-judge panel of the federal district court in Washington D.C. The panel concluded that the State of Texas engaged in intentional discrimination against minority voters in enacting the 2011 State Senate and congressional redistricting plans, that the State House and congressional plans were retrogressive, and that the State House plan also showed signs of purposeful discrimination.

“The intimidation I faced as a lead plaintiff I wouldn’t want to wish it on anybody.”

—Mark Wandering Medicine on the hardships he and his daughter faced as a result of his participation in a voting rights case seeking satellite offices for in-person absentee voting on Indian reservations in Montana.



CHAPTER 6

Access to the Ballot

I. INTRODUCTION

As discussed in Chapter 1, states and their political subdivisions have historically used a variety of tests and devices to prevent minority voters from registering to vote. Since the mid-1990s, a new generation of tactics for limiting minority voters' access to the ballot has emerged. Though these have replaced poll taxes, literacy tests, and other overt mechanisms of the pre-Voting Rights Act (VRA) era, the practices covered in this chapter demonstrate that minority voters, in numerous respects, still confront barriers when trying to register and cast a ballot throughout the country.

Since the mid-1990s, states have curtailed voter registration opportunities by limiting the registration methods that are most accessible to and popular among minority voters, such as community voter registration drives and registration through public assistance agencies. Other states have focused a great deal of energy on burdensome procedures they claim are needed to prevent noncitizens from registering and voting. Despite scant evidence that this is a problem, these states have adopted heightened requirements for proving citizenship in order to register to vote that can pose obstacles for minority voters in particular.

An additional discriminatory device discussed in this chapter is the disenfranchisement of citizens because at some point in time they were convicted of a felony. While felony disenfranchisement laws date back to the 19th century, their impact has grown substantially in recent decades. As discussed below, these laws now deny the right to vote to 2.2 million African Americans nationwide.

Unfortunately, the post-VRA methods of restricting minority voters' access to the ballot go beyond the qualification and registration processes. Voters who have successfully registered are now facing an array of practices that may impede their ability to actually cast a ballot and have that ballot counted. Many of these practices have been shown to disproportionately impact minority voters by preventing or simply deterring their participation in elections. Some of the most concerning include new state laws that limit the acceptable types of voter identification (ID) to those types that racial minorities are least likely to possess, substantial cutbacks to the days and hours of early voting periods popular with minority voters, and polling place relocations and closures in heavily-minority communities. Finally, reports of voter intimidation and discriminatory voter challenge efforts indicate that both tactics continue to undermine minority voters' full and unencumbered access to the ballot.

As demonstrated throughout this chapter, racial discrimination in laws and practices around voting remain a significant concern. Through non-compliance with federal laws, such as the National Voter Registration Act (NVRA), and through troubling legislative and regulatory action, states and local jurisdictions have shown that the threat to minority voters' access to the ballot continues unabated.

II. COMMUNITY VOTER REGISTRATION DRIVES

Community-based voter registration drives play an essential role in expanding opportunities for participation in the political process. By reaching would-be voters at common community gathering places, such as churches, campuses, festivals, or senior centers, community drives can make it easier for individuals with time, mobility, or language challenges to register and receive assistance with the registration process. Community-based registration has proven effective, with participating groups having registered tens of millions of voters from 2000 to 2008.¹

The available data from surveys conducted by the U.S. Census Bureau in 2010 indicates that minorities rely more heavily on community drives than whites. Latinos reported registering through drives at nearly twice the rate of whites (8.9 percent compared to 4.4 percent), and African Americans also reported registering at a higher rate (7.2 percent).² Given their popularity, limitations on the ability of citizens and grassroots organizations to conduct voter registration drives can significantly impact registration opportunities for minority voters.

Florida has been one of the epicenters of recent efforts to curtail community registration drives. Historically, Florida did not allow private citizens to conduct such drives; it was not until the State began compliance with the NVRA in 1995 that private organizations and individuals were permitted to transmit completed voter registration applications to election officials.³ Ten years later, in 2005, the State enacted a series of restrictions on citizen registration efforts, including imposing large fines on organizations and citizens who failed to submit—or timely return—the applications they collected to election officials. The League of Women Voters and other groups sued, and a federal court enjoined the law, finding that the severity of the fines “chill[ed] Plaintiffs’ First Amendment speech and association rights...”⁴

In 2011, the Florida Legislature again sought to restrict community registration drives, enacting an even more onerous and complex set of requirements. In addition to pre-existing provisions imposing fines for late delivery of completed applications, requiring those conducting drives to pre-register with the State, and requiring them to submit quarterly reports of voter registration activities, the new law added some additional requirements. The new law required voter registration groups to account monthly for all registration forms used and not

used in voter registration drives, return completed forms to election officials within 48 hours of receipt from the voter, and file the names of every officer, employee, or volunteer who solicited or collected voter registration applications.⁵ The League of Women Voters and other groups again sued and, once again, a federal court in Florida issued an injunction based upon the First Amendment. That court found that the new law, and its accompanying administrative rule,

severely restrict an organization’s ability to [conduct registration drives]. The[y] [...] impose a harsh and impractical 48-hour deadline for an organization to deliver applications to a voter-registration office and effectively prohibit an organization from mailing applications in. And the[y] [...] impose burdensome record-keeping and reporting requirements that serve little if any purpose...⁶

Before the 2011 law was enjoined (in significant part) by the court in Florida, the State of Florida filed suit in federal court in Washington D.C. seeking Section 5 preclearance for the new restrictions (necessary because five Florida counties were covered under Section 5 of the VRA). Although there was no finding of discrimination in that case concerning registration drives, the evidence developed in that lawsuit demonstrated the potential impact of community registration drive restrictions on minority voters. In 2008 and 2010, Florida’s African-American and Hispanic voters registered through community drives at higher rates than whites.⁷ Results from a U.S. Census Bureau survey indicated that, in 2008, 10.9 percent of African Americans and 10.4 percent of Hispanics in Florida registered through community drives. In 2010, the rates were similar at 10.0 percent and 12.0 percent, respectively.⁸ By comparison, whites reported registering through drives at notably lower rates—5.2 percent in 2008 and 5.3 percent in 2010.⁹

Civic groups submitted testimony in the case on the burdens the restrictions placed on their ability to register their constituents. The law was described as having a “devastating impact” on the Florida NAACP’s ability to recruit branch units and members to participate in voter registration drives and as “crippling” the organization’s registration efforts in the State.¹⁰ National Council of La Raza (NCLR) and the League of Women Voters of Florida imposed moratoriums on their community registration drives. The Supervisor of Elections for Hillsborough County sympathized, adding that some individuals in minority communities “are less prone to view government as being friendly” and may prefer registering with someone of their own race or ethnicity or who speaks their same language.¹¹ Several election supervisors testified that the limitations on community registration drives in formerly covered counties would reduce voter registration opportunities—and registration rates—for minority voters.¹²

III. FAILURE TO PROVIDE VOTER REGISTRATION AT PUBLIC ASSISTANCE AGENCIES DIMINISHES ACCESS FOR MINORITY VOTERS

Section 7 of the NVRA requires that state public assistance agencies, as well as certain other agencies, offer a comprehensive set of voter registration services to their clients. Public assistance agencies administering benefit programs that fall within the scope of Section 7 are generally required to distribute registration applications with each public assistance application, recertification, renewal, or change of address; provide assistance completing voter registration forms to their clients; and submit completed applications directly to elections officials on a voter's behalf.¹³ There has been significant, widespread noncompliance with Section 7 across the country, which can have serious consequences for minority voters' access to registration opportunities.

Nationally, African Americans disproportionately receive benefits from two of the larger public assistance programs covered under Section 7 of the NVRA—Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP). Recent data from each program indicates that African Americans accounted for 31.9 percent of TANF families and 23.6 percent of households on SNAP.¹⁴ Hispanics comprised 30.0 percent of TANF families and 9.1 percent of SNAP households.¹⁵ By comparison, 37.6 percent of SNAP households and 31.8 percent of TANF families are white, a small share relative to their share of the overall population.¹⁶ Census data further shows that minorities tend to register to vote at public assistance agencies more than whites. Latinos register through agencies at four times the rate of whites (2.8 percent versus 0.7 percent), and African Americans at three times the rate (2.5 percent).¹⁷

The NVRA was designed to expand access to registration opportunities for low-income individuals, and these data demonstrate that states' full compliance with Section 7 will create significant benefits to minority voters, in particular. The marked increase in new registration following successful enforcement actions or negotiations by public interest groups reinforces this. Since 2008, settlements in private lawsuits and outside of court have been reached with Georgia, Indiana, Missouri, New Mexico, Ohio, Pennsylvania, and Alabama,¹⁸ and since 2002, the Department of Justice (DOJ) settled suits against Rhode Island and Tennessee, and entered into out-of-court settlements with Arizona and Illinois.¹⁹ Efforts of private organizations, such as the Lawyers' Committee, Demos, and Project Vote, have resulted in nearly 2 million *additional* low-income citizens who have applied to register to vote at public assistance offices, most of which occurred in the last six years.²⁰ This surge in registration is also indicative of how significant non-compliance with Section 7 of the NVRA had become; after the first two years of NVRA implementation (1995-1996), when 2.6 million individuals registered at public assistance offices, registration plummeted by almost 80 percent over the next decade,

to just 540,000 during 2005-2006.²¹ This steep decline is particularly striking because it occurred during a period when participation in SNAP was increasing substantially.²²

Continuing noncompliance by state public assistance agencies threatens to foreclose one of the more convenient and accessible avenues for voter registration available to minority voters.

Case Spotlight

What is Old is New Again: Dual Voter Registration Systems

One method of restricting voting opportunities for minorities has been the implementation of dual voter registration systems, wherein voters who register using certain means of registration are registered for some, but not all, purposes. Alongside poll taxes, literacy tests, and other tactics, such systems were enacted in many Southern states following the Reconstruction era. Once thought to be a thing of the past, the practice has unfortunately enjoyed somewhat of a renaissance in recent years.

Mississippi has one of the worst histories with dual voter registration. The State's dual registration system was enacted in 1892, along with a number of other provisions designed to exclude African-American citizens from the electoral process. Under the 1892 law, prospective voters were required to register separately for municipal elections, and this posed a particular burden on disproportionately poor African-American voters, for whom the necessity of registering multiple times often prevented participation in municipal elections.²³ For much of the next century, Mississippi maintained its dual registration system, becoming the last state to have such a law, and refining it as recently as 1984. Finally, in 1987, a federal court overturned the dual registration system, holding that it was a violation of Section 2 of the VRA.²⁴



“Arizona has recently implemented this dual voter registration system, and I believe it is one of the most complex, confusing, and burdensome voter registration systems in the country. It’s confusing to the county recorders who handle and process the voter registrations. It’s confusing to the organizations conducting voter registration guides, and it’s confusing to our voters who monitor it.” –Patty Hansen, Coconino County Recorder, at the NCVR Arizona state hearing. PHOTO CREDIT: MIKE ELLER (HMA PUBLIC RELATIONS)

In 1995, Mississippi implemented a new dual registration system in response to the NVRA. Pursuant to the NVRA, Mississippi was required to permit voter registration for federal elections through a federal mail-in form, at driver's license offices, and at public assistance offices.²⁵ Mississippi's implementation of the law allowed voters who registered under the NVRA-mandated options to vote in federal elections only. If those voters wanted to vote in state elections, they were required to re-register using state forms. By contrast, every other state implementing the NVRA's requirements made NVRA registrations effective for all purposes. After DOJ raised concerns, Mississippi refused to submit this system for Section 5 preclearance, and private plaintiffs commenced a Section 5 enforcement action, with the Supreme Court ultimately holding that the State was required to obtain preclearance.²⁶ When the State did so, DOJ objected, and the State abandoned the dual registration system.²⁷

Several years later, dual voter registration has been revived by two states following the Supreme Court's 2013 decision in *Arizona v. ITCA*. That ruling held that states are required to "accept and use" the NVRA's federal mail-in registration forms, even when they are not accompanied by the specific documentary proof of citizenship that state law requires.²⁸ Adopting a tack similar to Mississippi's, Arizona and Kansas are in the process of adopting dual voter registration systems. These systems would limit citizens who register to vote using the federal form but who do not satisfy the states' documentary proof-of-citizenship requirements to voting for federal offices only.²⁹ The resurrection of dual registration, with its sordid history of suppressing poor and minority voters, is a matter of continuing concern.

IV. PROOF OF CITIZENSHIP

In recent years, a number of states have adopted additional procedures related to confirming the citizenship of registered voters and voter registration applicants. In particular, states have adopted new procedures ostensibly intended to purge noncitizens from registration rolls—which have often led to the improper purge of eligible citizen voters—or have imposed heightened proof-of-citizenship requirements for voter registration. Both types of activity raise concerns about their impact on the ability of eligible citizens, particularly minorities, to participate in the political process.

Citizenship Verification for List Maintenance

Numerous states have adopted citizenship verification procedures to facilitate purges of ineligible voters from their registration lists. As discussed later in this chapter, when conducted properly, purges are an important part of effective election administration. However, problems arise when purge procedures seemingly target minority voters, or impose unreasonable citizenship verification burdens on such voters.

A significant portion of voter purges are aimed at identifying noncitizens. Many states use a computerized matching process—which typically involves cross-checking the statewide voter registration list with citizenship information in the statewide driver's license database—to identify noncitizen registrants. While there is little dispute that this matching is a useful aid in identifying potentially ineligible voters, high rates of false positives and the potential for discrimination raise serious concerns. The high error rates are usually the result of predictable shortcomings, such as matching errors (i.e., a registrant is matched with the wrong person on the license list) or because the citizenship information in the driver's license database may not reflect subsequent naturalization (and thus voting eligibility). Because a substantial majority of recently naturalized citizens immigrated from Latin America, sub-Saharan Africa, or Asia, this latter problem particularly impacts minority communities.³⁰ Accordingly, state officials should be careful not to presume that those identified in the matching are noncitizens.

An example from Georgia is particularly instructive. In 2007, Georgia instituted a computerized citizenship matching procedure to identify and remove noncitizens from its voter rolls. Its procedure involved cross-checking the statewide voter registration list with citizenship information in the state's driver's license database. The matching procedure in Georgia had a high rate of error, which disproportionately impacted minority voters, in part because of its systematic failure to update driver's license records after an individual's naturalization.³¹ After Georgia performed this matching, it provided a computer printout of the potential noncitizens to local election officials with instructions that they use the printout as a means of reviewing voter eligibility, without providing uniform procedures about how to use that information.³² Local election officials informed thousands of voters by letter that they would

be removed from the voter registration lists unless they appeared and presented proof of their U.S. citizenship,³³ in at least some cases providing a very short time period—as little as a few days—to do so. One voter, Jose Morales, who had obtained his driver’s license in April 2006 and became a citizen in November 2007, received multiple such letters from Cherokee County election officials over the course of several weeks after his registration in September 2008. Mr. Morales was forced to travel 30 minutes to prove his citizenship.³⁴ Mr. Morales brought a Section 5 enforcement action because the State had failed to submit this procedure for preclearance. Shortly before the November 2008 general election, a federal court in Georgia enjoined the State from using the challenged voter verification process until it obtained preclearance and ordered the State to take steps to remedy its previous unauthorized use of the process.³⁵

In May 2009, DOJ interposed a Section 5 objection to the procedure, noting that “[t]his flawed system frequently subjects a disproportionate number of African-American, Asian, and/or Hispanic voters to additional and, more importantly, erroneous burdens on the right to register to vote.”³⁶ DOJ confirmed the disproportionate impact after conducting its own analysis of new voter registrants during the period May 2008 through March 2009. Over that period, African Americans and whites comprised approximately equal shares of new registrants, yet over 60 percent more African Americans were flagged as potential noncitizens than whites. Similarly, Latino and Asian registrants were more than twice as likely as whites to be flagged as noncitizens.³⁷ Over one half of the new registrants initially flagged as noncitizens were, in fact, citizens and were forced to take additional steps to prove as much by presenting birth certificates, proof of naturalization, or other documentation.³⁸

Georgia filed a lawsuit seeking preclearance from the federal court in Washington D.C. After it filed suit, and at DOJ’s urging, Georgia revised its verification procedure, making it more accurate and less discriminatory. DOJ precleared the amended version, rendering the lawsuit moot.³⁹

In 2012, Florida sought to institute a database matching procedure through which it cross-referenced state driver’s license records with its voter registration lists. The Florida Secretary of State identified over 180,000 registrants as potential noncitizens, and ultimately sent a smaller list of approximately 2,700 individuals to local election officials for action. Local officials notified those on the lists that they would be removed from the rolls unless they provided proof of citizenship by the deadline indicated.⁴⁰ There were widespread complaints about the list’s inaccuracy and its reliance on outdated immigration status information. The program also had a disparate effect on minority voters: 82 percent of voters on the list sent to local officials were minorities, and the majority were Latino.⁴¹ The Secretary of State temporarily suspended the program.⁴²

Shortly before the November 2012 election, the State sought to implement a different list maintenance procedure that relied on a Department of Homeland Security database known as the Systematic Alien Verification for Entitlements Program (SAVE). SAVE provides information related to an individual's eligibility for public benefits, but may not be an accurate indicator of the person's current citizenship status or voting eligibility.⁴³ The implementation of this cross-check was challenged as a violation of the NVRA's requirement that such systematic purges be completed at least 90 days before any federal election, and, in 2014, a federal court of appeals held that Florida had violated the requirement.⁴⁴ A second lawsuit was filed challenging Florida's failure to submit both purge programs for Section 5 preclearance.⁴⁵ The case was stayed pending the Supreme Court's decision in *Shelby County v. Holder*, and after that decision, plaintiffs voluntarily dismissed the lawsuit.⁴⁶ Florida has continued its voter purge efforts, but additional problems with the information used for matching have forced further delays.⁴⁷

Iowa also sought to implement a similar program in 2012, through a regulation that would have permitted the Secretary of State to cross-reference Iowa's voter rolls with state and federal databases to identify suspected noncitizens and remove them from the voter rolls if they failed to provide proof of citizenship within 14 days.⁴⁸ The American Civil Liberties Union (ACLU) of Iowa and the League of United Latin American Citizens (LULAC) sued in state court. The two groups provided evidence of inaccuracy in the citizenship information being relied upon, and the effect on voter registration among naturalized citizens. The Director of LULAC of Iowa testified that his members were concerned that the State's program would result in the removal of registered Latino voters from rolls and that many new, eligible U.S. citizens with Latino names would be deterred from even registering to vote in Iowa.⁴⁹ Due to the plaintiffs' efforts, this purge program (as well as a rule expanding the grounds for voter challenges) has yet to be implemented: plaintiffs obtained a temporary injunction against implementation of these rules just before the 2012 election, and the Secretary of State voluntarily rescinded the voter challenge rule.⁵⁰ Litigation over the purge process, however, is continuing. The case remains on appeal to the Iowa Supreme Court after a lower court ruled in March 2014 in favor of the plaintiffs' motion for summary judgment.⁵¹

Proof of Citizenship for Voter Registration

During the last decade, laws subjecting individuals registering to vote to heightened requirements for proving U.S. citizenship have been passed in several states. A challenge to one such law was recently decided by the U.S. Supreme Court. Since 2004, four states—Arizona, Georgia, Kansas, and Alabama—have passed proof-of-citizenship laws (though only Arizona and Kansas have actually implemented their laws to date).⁵²

Under federal law, states must allow individuals to register using the federal mail-in registration form (commonly called the "federal form"), provided for by the NVRA.⁵³ On the federal

form, a registrant proves his U.S. citizenship by an affirmation made under penalty of perjury.⁵⁴ A primary purpose of the NVRA is to increase citizen participation by making voter registration practices for federal elections simple and uniform.⁵⁵ The uniform federal mail-in form—which Congress intended to be easily used for community registration drives—supports that goal.

In addition to the federal form, which states must accept and use, states may develop and use their own mail-in registration forms. Those with proof-of-citizenship laws typically require applicants to submit additional documentation beyond the simple affirmation of citizenship. Required documentation may include naturalization certificates, copies of passports, or certified birth certificates, all of which can be difficult for registrants—including those from minority groups—to obtain, copy, and submit with their applications. Like the limitations on community registration drives discussed above, laws heightening requirements for voter registration confront potential voters at their entry point into the political process. Requiring documentary proof of citizenship for voter registration can pose particularly troubling barriers to minority voter participation.

Proponents of such laws contend that requiring additional layers of proof from applicants will help prevent noncitizens from registering to vote and casting ballots. But, as discussed below, available information shows that it is rare for noncitizens to attempt to register to vote, either mistakenly or knowingly.

The Supreme Court Rules on Proof of Citizenship in *Arizona v. ITCA*



John R. Lewis, Executive Director of the Inter Tribal Council of Arizona, Inc., and guest commissioner, received testimony at the NCVR Arizona state hearing. PHOTO CREDIT: MIKE ELLER (HMA PUBLIC RELATIONS)

The week before the 2013 *Shelby County* decision, the Supreme Court weighed in on Arizona's proof-of-citizenship law.⁵⁶ The Court considered whether Arizona could reject voter

registration applications submitted on the federal form that were not accompanied by the additional evidence of citizenship required by the State for its own form. Plaintiffs in *Arizona v. Inter Tribal Council of Arizona* successfully argued that the NVRA preempted Arizona's law, and the Court ruled that the State was in violation of the NVRA for attempting to add its additional documentary proof-of-citizenship requirements to applications submitted on the federal form without the approval of the Election Assistance Commission (EAC), the agency designated to monitor NVRA compliance and maintain the federal form.⁵⁷ The result is that, for purposes of federal elections, Arizona is required to accept otherwise-complete applications submitted using the federal form that contain the simple attestation of citizenship—without additional proof.

The Aftermath of *Arizona v. ITCA*

Following the Supreme Court's ruling, Arizona and Kansas petitioned the EAC to amend the federal form, as used in those states, to incorporate each state's proof-of-citizenship law. Their requests were denied in January 2014, and the two states sued the EAC in federal court in Kansas seeking to force it to permit their heightened proof requirements to apply to the federal form.⁵⁸ Civil rights groups intervened in the case, *Kobach v. EAC*, joining the EAC as defendants. In March 2014, the district court in Kansas ruled for the two states, requiring the EAC to permit their heightened proof requirements to apply for federal form registration.⁵⁹ The decision has been stayed pending an appeal to the Tenth Circuit Court of Appeals, from which a decision is expected in the fall of 2014.⁶⁰

Within days of the district court's ruling in favor of Arizona and Kansas, Alabama officials announced plans to move forward with implementation of its proof-of-citizenship law. Alabama Secretary of State Jim Bennett stated that the *Kobach* decision "has given us the confidence that Alabama has strong footing for implementation of the rules regarding proof of citizenship..."⁶¹

As states with proof-of-citizenship laws on their books anxiously await the Tenth Circuit's decision in *Kobach*, it is important to consider the limited benefits and high costs of such laws.

The existing safeguards against noncitizen registration are highly effective. In its decision denying the Arizona and Kansas requests to add their documentary proof-of-citizenship requirements to the federal form, the EAC determined that the federal form already includes ample safeguards against noncitizens registering, and the EAC also determined that registrations by noncitizens are a rare event, representing an "exceedingly small" percentage of all registration applicants (less than one-hundredth of one percent).⁶² Elections officials' experiences from other states have been in line with EAC's findings. In Georgia, where the proof-of-citizenship law has been inactive since its passage in 2008, respondents to a 2009 Brennan Center survey of elections officials reported that noncitizen registration is rare and, to the extent that it does occur, results from mistake, not fraud: "Of the elections officials who were interviewed,

representing counties that comprised 40 percent of Georgia's population, none believed that noncitizens had fraudulently registered to vote or voted.⁶³ Further, a Supreme Court amicus curiae brief submitted by current and former state and local elections administrators in *Arizona v. ITCA* echoed the survey findings:

[I]n the more than 150 years that they have collectively spent administering elections, amici have experienced almost no cases of noncitizens registering to vote, let alone actually casting a ballot. In light of this, amici's view is that the danger of noncitizen registration and voting does not justify the imposition of significant new barriers to registration by eligible individuals.⁶⁴

In addition to being an unnecessary response to an exceedingly rare problem, documentary proof-of-citizenship laws risk closing new voters out of the political process. These additional registration requirements have the potential to have the same effect on minority voters as strict photo ID laws, discussed later in this chapter. Minorities may be less likely to possess the required documentation, such as birth certificates, or to have the resources to obtain missing documents.⁶⁵ Further, a proof-of-citizenship requirement may decrease participation in community registration drives—which, as discussed earlier, minorities rely upon to a greater extent than whites—because potential voters may not carry on their person the documentation needed to register.⁶⁶

While Alabama and Georgia have not implemented their laws yet, the evidence discussed herein, as well as the evidence revealed during litigation about the Arizona and Kansas laws, suggests that their heightened requirements for registration are similarly unnecessary and overly burdensome for minority voters.

“There is not an epidemic of non-citizens yearning to stand in long lines to cast votes in Florida. Take it from an organization that dedicates all of its resources trying to get eligible Latinos to the polls. Voter fraud from non-citizens is a nonissue.”

Ana Della Rosa, Mi Familia Vota Educational Fund, at the NCVR Florida state hearing

Case Spotlight

Section 5 at Work: Safeguarding Voter Registration at Public Assistance Agencies

A separate proof-of-citizenship issue arose in Texas in 1996. DOJ interposed a Section 5 objection to a Texas law that barred employees of public assistance agencies from offering voter registration to clients, as required by Section 7 of the NVRA, until they first determined the client's citizenship.⁶⁷ Agency employees were to rely solely upon citizenship information contained in agency files, which DOJ determined were unlikely to remain up-to-date, given the rising numbers of new citizens in Texas during the relevant period. 1990 census figures indicated that minorities were 34 percent of the State's population and 30 percent of its voting age population, and that two-thirds of new citizens in 1993 and 1994 were Hispanic or Asian.⁶⁸

DOJ found that Texas' procedure lacked safeguards to ensure that agency information was current and accurate. Under the procedures at issue, clients would not be informed that the reason they were not offered voter registration was their alleged noncitizen status, leaving them with no opportunity to update or correct citizenship information in their files. DOJ determined that this flaw was likely to disproportionately affect minorities.⁶⁹ Without the Section 5 review process, Texas' procedures could have foreclosed the opportunity for voter registration for large numbers of minority public assistance clients. As seen in Texas and more recently in Arizona, the potential of voting practices focused on citizenship verification to most heavily burden minority voters remains a serious concern.



PHOTO CREDIT: Wikimedia Commons/Public Domain

V. VOTER PURGES

The maintenance (or purging) of voter registration lists involves removing registrants who are not eligible to vote in the relevant jurisdiction, and is an important part of maintaining the effectiveness and integrity of election administration. In conformity with federal law, voters may be deemed ineligible due to relocation, death, conviction for a disfranchising crime, ineligibility at the time of registration (such as noncitizenship), or other reasons.

If done incorrectly, however, purges can also result in the improper removal and disenfranchisement of eligible voters. Thus, Congress, through the NVRA, enacted a variety of safeguards for purging registration lists, including: (1) requiring list maintenance procedures to be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965”; (2) prohibiting a voter from being removed from the rolls solely for failure to vote; (3) mandating that any systematic program to remove registrants (i.e., one that is not based on particularized information about specific voters) be completed at least 90 days before a federal election; and (4) directing that notice be provided to registrants removed based on a change of address to ensure that the change-of-address information received by the registrar is accurate.⁷⁰ The NVRA also requires that certain registered voters who have moved, but who have not updated their registration, still be allowed to vote.⁷¹ Despite these safeguards, however, numerous disputes have arisen surrounding voter purges in recent years.

In addition to citizenship-matching (discussed above), other systematic methods are used to execute voter purges, and these have also sometimes affected minority voters disproportionately. Two examples have been seen recently in Florida.

In 2000, Florida improperly purged thousands of voters, a disproportionate number of whom were African Americans, based on a flawed comparison of voter registration files to lists of felony convictions. A vice president of the company that generated the list later testified that the Florida Division of Elections had deliberately chosen a matching technique that would overstate the number of matches between the registration list and lists of convicted individuals.⁷² The State also included as disenfranchised felons, for instance, individuals convicted in another state who had regained their right to vote before moving to Florida, where they were not disenfranchised under Florida law.⁷³ Given the razor-thin margins of the 2000 presidential contest in Florida, these improper purges and the confusion they caused may have had a monumental national impact.

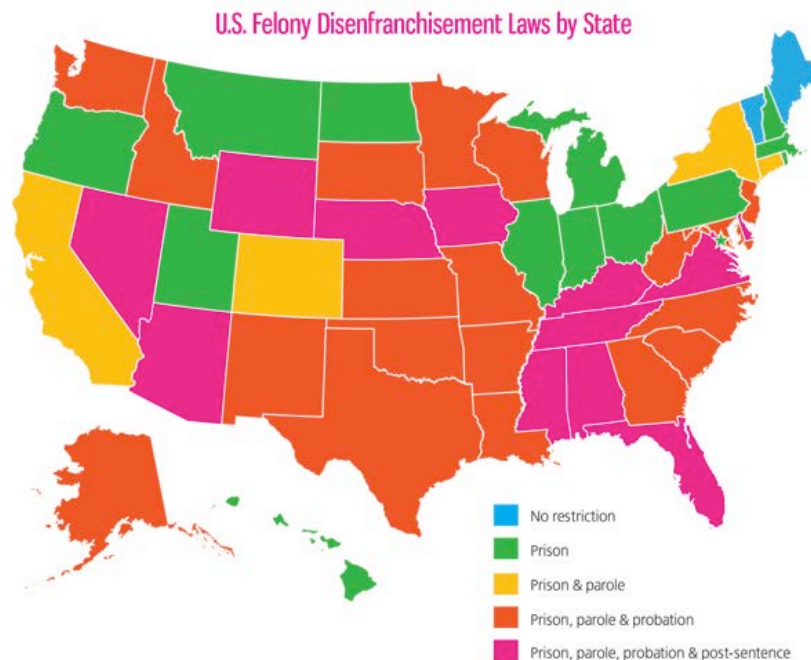
In 2004, Florida planned to remove 48,000 suspected felons from its voter rolls based on a list from the Florida Department of Law Enforcement. One indicator of the list’s inaccuracy was that it employed race as an identifying attribute but relied on one database that included Hispanic as a racial category and one that did not. Nearly half of the people on the flawed list were African American, and thousands of those listed had already had their voting rights

restored under state law. Though the State abandoned this purge under pressure from voting rights groups, county election officials in Florida retain the ability to purge voters based on locally generated lists.⁷⁴

VI. FELONY DISENFRANCHISEMENT

Over 5 million Americans are banned from voting because they have at some point been convicted of a felony.⁷⁵ Laws barring citizens with prior felony convictions from voting, sometimes for a lifetime, impact minority voters at a far higher rate than whites. Yet courts have rejected finding such laws unconstitutional or in violation of the VRA.

The rules around felony disenfranchisement vary widely by state. Two states—Maine and Vermont—allow persons in prison to vote. Most other states deny voting rights to persons with felony convictions through the end of their terms of probation and/or parole. A few states make it extremely difficult for a person with certain kinds of prior felony convictions to vote again, leaving the restoration of such rights up to the discretion of the executive. Finally, four states—Florida, Iowa, Kentucky, and Virginia—permanently disenfranchise all persons with a felony conviction absent executive action.



The difficulty in bringing successful legal challenges to felony disenfranchisement laws is largely due to the Supreme Court's interpretation of Section 2 of the 14th Amendment. In *Richardson v. Ramirez*,⁷⁶ three men from California who had already completed their sentences sued for the right to vote, arguing the State's felony disenfranchisement law violated the Equal Protection Clause of the 14th Amendment by denying their fundamental right to vote. The Court rejected this argument, and looked to Section 2 of the 14th Amendment, which allows the denial of voting rights "for participation in rebellion, or other crime." Using that clause, the Court determined that

the exclusion of felons from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment, a sanction which was not present in the case of the other restrictions on the franchise... We hold that the understanding of those who adopted the Fourteenth Amendment, as reflected in the express language of § 2 and in the historical and judicial interpretation of the Amendment's applicability to state laws disenfranchising felons, is of controlling significance in distinguishing such laws from those other state limitations on the franchise which have been held invalid under the Equal Protection Clause by this Court.⁷⁷

Largely as a result of this decision, courts have rejected challenges to felony disenfranchisement laws under the discriminatory results standard of Section 2 of the VRA, as discussed below. Evidence of discriminatory intent, on the other hand, may allow for a successful challenge to a felony disenfranchisement law; however, even that has not always been sufficient. The only case that was successful in this regard was *Hunter v. Underwood*, in which the Supreme Court held unconstitutional a provision in the State of Alabama's 1901 constitution disenfranchising individuals convicted of a crime of "moral turpitude."⁷⁸

The Racially Disproportionate Effect of Felony Disenfranchisement

Felony disenfranchisement laws, and courts' reluctance to strike them down, have led to millions of Americans without voting rights. Moreover, those laws have had particularly dramatic effects on minority citizens' ability to participate in elections.

The statistics show the dramatic effect of felony disenfranchisement laws on racial minorities:

There is clear evidence that state felony disenfranchisement laws have a disparate impact on African Americans and other minority groups. At present, 7.7% of the adult African-American population, or one out of every thirteen, is disenfranchised. This rate is four times greater than the non-African-American population rate of 1.8%. In three states, at least one out of every five African-American adults is disenfranchised: Florida (23%), Kentucky (22%), and Virginia (20%). Nationwide, 2.2 million African-Americans are disenfranchised on the basis of involvement with the criminal justice system, more than 40% of whom have completed the terms of their sentences. Information on the disenfranchisement rates of other groups is extremely limited, but the available data suggests felony disenfranchisement laws may also disproportionately impact individuals of Hispanic origin and others. Hispanics are incarcerated in state and federal prisons at higher rates than non-Hispanics: about 2.4 times greater for Hispanic men and 1.5 times for Hispanic women. If current incarceration trends hold, 17% of Hispanic men will be incarcerated during their lifetimes, in contrast to less than 6% of non-Hispanic white men. Given these disparities, it is reasonable to assume that individuals of Hispanic origin are likely to be barred from voting under felony disenfranchisement laws at disproportionate rates.⁷⁹

This means that, as a result of felony disenfranchisement, there is a structurally imposed subclass of Americans, mostly minority, who are deprived of the most fundamental right, the right to vote. Moreover, scholarly research indicates that in the post-Civil War years, several felony disenfranchisement laws were enacted with the aim of limiting the voting rights of the newly enfranchised African-American population.⁸⁰

The Lack of Judicial Receptivity to Challenges to Felony Disenfranchisement Claims

As noted above, there have been a number of different legal efforts to challenge the felony disenfranchisement laws of various states.

Johnson v. Governor of Florida, ultimately decided in 2005, provides an example of a case in which evidence was presented that the law had originally been enacted in 1868 with a discriminatory purpose, and yet was nonetheless upheld. This case was a class action of 525,000 disenfranchised Florida citizens, in which the plaintiffs claimed that Florida's law, which permanently bans persons currently or formerly incarcerated for felonies, violates the 14th and 15th Amendments of the Constitution and Section 2 of the VRA.⁸¹

The plaintiffs showed that the historical record demonstrated the racial origins of the felony disenfranchisement law in the State. Florida's first constitution of 1838 authorized felony disenfranchisement laws, and in 1845 Florida's legislature enacted such a law.



Tanya Fogle, a member of Kentuckians for the Commonwealth, testified about the lengthy process and difficulty she experienced regaining her right to vote following a felony conviction. (NCVR Nashville regional hearing)

PHOTO CREDIT: JOSEPH GRANT

It was just after the Civil War, in 1868, when all states were required to amend their constitutions to comply with the new suffrage requirements, that Florida held a constitutional convention and included mandatory disenfranchisement of all persons with felony convictions in the state constitution. It also added the specific crime of larceny to the list of disenfranchising crimes, which would greatly increase the number of affected citizens. As the plaintiffs explained:

The broad disenfranchisement of every convicted felon in Florida’s 1868 Constitution and the addition of larceny as a disenfranchising crime were enacted with the intention of restricting the voting rights of Florida’s newly freed black population. White Floridians were strongly opposed to black suffrage after the Civil War. Blacks were finally given the right to vote in the 1868 Constitution so that Florida could gain readmission to the Union. However, the 1868 Constitution contained several measures in addition to the felon and specific crime disenfranchisement provisions that were adopted to limit the power of black votes. Further measures to restrict black suffrage were adopted as part of the 1885 Constitution. The discriminatory intent behind the disenfranchisement provisions is demonstrated by the history of the 1865, 1868, and 1885 Constitutions as well as Florida’s use of criminal laws to control former slaves and create a low-wage labor force to replace that lost by the abolishment of slavery.⁸²

When the 1968 Florida Constitution was drafted, the larceny provision was removed, but the provision requiring disenfranchisement of all convicted felons was left intact.⁸³ When challenged in 2000, the district court found, even in awarding summary judgment to the defendants, that “Plaintiffs have presented to this Court an abundance of expert testimony about the historical background of Florida’s felon disenfranchisement scheme as historical evidence that the policy was enacted originally in 1868 with the particular discriminatory purpose of keeping blacks from voting.”⁸⁴ Nevertheless, in a ruling of the entire Eleventh Circuit en banc, overturning the decision of a three-judge panel of the same court (which had reversed the district court’s summary judgment ruling on the Section 2 claim⁸⁵) the felony disenfranchisement provision was upheld and ruled not to run afoul of the Equal Protection Clause or Section 2. The en banc court found that, even if there was racial animus behind the provision in 1868, there was no evidence of racial motivation in the drafting of the 1968 version, so the historical evidence of the original discriminatory intent was insufficient to prove a constitutional violation. While acknowledging that typically Section 2 cases are subject to a discriminatory results test, the court cited the Supreme Court’s decision in *Richardson* in stating that felony disenfranchisement laws are distinct because they “are deeply rooted in this Nation’s history and are a punitive device stemming from criminal law.... Florida’s discretion to deny the vote to convicted felons is fixed by the text of § 2 of the Fourteenth Amendment.”⁸⁶ The Supreme Court denied certiorari.

As a result, to this day Florida permanently disenfranchises all individuals with a felony conviction, unless they receive discretionary executive clemency. As of 2010, Florida had disenfranchised 1,541,602 citizens due to a felony conviction. This amounts to the disenfranchisement of 10.4 percent of the State’s voting age population and 23.3 percent of Florida’s African-American voting age population.⁸⁷

In *Farrakhan v. Gregoire*, several minorities with felony convictions challenged the State of Washington’s felony disenfranchisement law under the VRA’s Section 2 results test.⁸⁸ Plaintiffs argued that the discriminatory impact of the felony disenfranchisement law was a result of racial bias throughout the criminal justice system, using extensive data to demonstrate discrimination in all stages of the criminal process. The federal district court granted summary judgment for the State, and several rounds of appeals followed.⁸⁹ Ultimately, the case was argued before an en banc panel of eleven judges in the United States Court of Appeals for the Ninth Circuit. The en banc court subsequently upheld the felony disenfranchisement law. It stated that only intent claims could be made against felony disenfranchisement laws, holding that “plaintiffs bringing a section 2 VRA challenge to a felon disenfranchisement law based on the operation of a state’s criminal justice system must at least show that the criminal justice system is infected by intentional discrimination or that the felon disenfranchisement law was enacted with such intent.”⁹⁰

Following the decision in *Farrakhan*, and given the difficulty plaintiffs face in bringing intentional discrimination claims, advocates have abandoned federal challenges to felony disenfranchisement laws for now.

The Effect of Felony Disenfranchisement Laws in Particular States

As discussed above, the rules around restoration of voting rights for persons with prior felony convictions vary widely by state. In the states that make it the most difficult—or nearly impossible—to regain voting rights, a great number of individuals have been disenfranchised. The numbers of African Americans banned from voting in these states is remarkable. The following are a few examples:

Virginia permanently disenfranchises all persons with felony convictions unless they receive clemency. In 2000, the Fourth Circuit rejected a challenge under the VRA to Virginia's felony disenfranchisement law, holding that the plaintiff had failed to demonstrate that the law was the result of racially discriminatory intent or that there was "any nexus" between the disenfranchisement of felons and race.⁹¹ At least 20 percent of adult African Americans in Virginia are disenfranchised.⁹² A July 2013 executive order from Governor Bob McDonnell now allows individuals convicted of certain non-violent felonies to apply to restore their voting rights.⁹³ According to testimony the National Commission on Voting Rights (NCVR) heard at its Virginia hearing, an estimated 350,000 Virginians are disenfranchised because of the State's law.⁹⁴

Similarly, Kentucky permanently disenfranchises formerly incarcerated citizens, even after they have completed their sentences. The authority for Kentucky's lifetime voting ban for persons convicted of a felony is established under the state constitution, and rights may only be restored through an executive pardon by the Governor.⁹⁵ The Kentucky Advisory Committee to the U.S. Commission on Civil Rights (USCCR) notes, however, that the pardoning process varies depending on Administration and is not subject to any established law, statute, or regulation.⁹⁶ Thus, it is estimated that 243,842 residents in the State of Kentucky were barred from voting in 2010, including approximately 181,000 who had completed their full sentences.⁹⁷ The Kentucky Advisory Committee reports that those disenfranchised are disproportionately minorities⁹⁸—at 22 percent, Kentucky has the second highest rate of voter disenfranchisement among African Americans in the country.⁹⁹

According to testimony submitted by the ACLU of Iowa at the NCVR's Kansas City hearing, in 2005 one of four voting age African Americans were disenfranchised under Iowa's lifetime voting ban for individuals with felony convictions. That year, the governor issued an executive order automatically restoring the rights of formerly incarcerated persons. In 2011, however, a new governor rescinded the policy and reinstated the process of individual review, under

which formerly incarcerated persons must apply to the governor's office for restoration of rights. One requirement for restoration is that the individual be up to date on paying fines, fees, and restitution. As a result, in the last year only 40 people applied to have their voting rights restored.¹⁰⁰

Thomas Castelli, Legal Director of the ACLU of Tennessee, testified at the NCVR hearing in Nashville about Tennessee's felony disenfranchisement law. To be eligible for restoration of rights in Tennessee, one with a prior felony conviction must complete his term, and all fines, fees, and restitution must also be paid in full. In addition, as of recently, a citizen must also be current on child support payments. As a result, according to Mr. Castelli, "only 2% of disenfranchised citizens who have completed their sentences, probation and parole have successfully restored their voting rights."¹⁰¹ He further reported that in Tennessee, 341,815 people are disenfranchised and that one out of every 5.25 African-American adults is disenfranchised.¹⁰²



Betty C. Andrews, President of the Iowa-Nebraska State Conference of the National Association for the Advancement of Colored People, testified at the NCVR Kansas City regional hearing about the detrimental effect of the permanent disenfranchisement of individuals with criminal convictions in Iowa. PHOTO CREDIT: BRUCE MATHEWS (MATHEWS COMMUNICATION)

Confusion Regarding When and How Rights are Restored Results in Further Disenfranchisement

Another problem arises with respect to notifying persons with prior felony convictions that they have reacquired their voting rights and informing them about the process for re-registering once they become eligible. In many instances these citizens are provided with no such information, or are misinformed by election officials who are unfamiliar with these laws. NCVR heard testimony to this effect, for example, in South Carolina and California,¹⁰³ and with respect to Minnesota, where one witness cited the governor's task force finding that "[n]o database exists that can accurately identify when a felon regains the eligibility to vote, and that the question of disenfranchisement creates significant confusion among the public election judges, election administrators and the individual convicted of a felony. There are currently no notification procedures consistently followed" in Minnesota.¹⁰⁴

Once individuals are aware of the restoration process, there are the procedural obstacles many persons with former felony convictions must address to regain their rights, which they may or may not know how to navigate. The obstacles can include financial costs and be extremely time consuming to overcome.



At the NCVR Nashville regional hearing, 74-year-old Teddy Smith Roglar stated that she could have been arrested for voting with a felony record in the state of Kentucky. PHOTO CREDIT: JOSEPH GRANT

The NCVR heard a number of poignant stories related to felony disenfranchisement throughout its proceedings. To provide just one example, at the Commission's Florida hearing, Desmond Meade, president of the Florida Rights Restoration Coalition, told the NCVR the following:

Not too long ago, August of 2005, I remember standing in front of the railroad tracks in Miami waiting on a train to come so I could jump in front of it to commit suicide because at that time I was recently released from prison, I was addicted to drugs and alcohol, I was homeless and I saw no hope, no future. But by the grace of God the train never came and I crossed those tracks and I entered into the substance abuse treatment facility and after graduating there I went to Miami-Dade College while I was living in a homeless shelter. I enrolled in Miami-Dade College and I was able to complete the paralegal program there. One thing led to another and today I am happy to announce that I am a month away from graduating law school at Florida International University.

While I appreciate the applause, my story does not have a happy ending because I am among the over 1.54 million Floridians who cannot vote as a result of Florida's policy on felony disenfranchisement. As it stands today an individual will have to wait five to seven years after completion of their sentence before being able to apply to have their rights restored. After they apply, there's an application process in time of approximately six years.

We recently heard of a story of a gentleman who had been waiting ten years to find out the status of his application. And, therefore, we have a system or policy that would dictate that a person wait anywhere between 11 to 13 years before they see if they have a chance.¹⁰⁵

VII. VOTER ID

Introduction

During the last decade, legislators, courts, and the public have grappled with questions of whether, and if so what types of, ID should be required in order for a voter's vote to be counted. The more restrictive laws—which require voters to produce one of a limited set of government-issued photo IDs—impact minority voters disproportionately, and two federal courts have enjoined these laws because of their racial impact.

Prior to the 2000 election, states generally had ID requirements that most, if not all, voters could satisfy. In most states, voters simply attested to their identity. Most states did not require a form of ID, and even amongst those that did, a document provided by the election authority sufficed (as was the case in South Carolina and Texas).¹⁰⁶ Alternatively, in lieu of providing a document, an individual would be able to vote after signing an affidavit attesting to his or her identity (as was the case in Louisiana).¹⁰⁷



Justin Jones, Chair of the Nashville Student Organizing Committee, holding up his student ID and voter registration card. Jones testified about the barriers to student voting, pointing out that Tennessee allows voters to use their gun registration card, but not student IDs as an acceptable form of ID. PHOTO CREDIT: JOSEPH GRANT

After the 2000 election, Congress passed the Help America Vote Act, which included a voter ID requirement that applies only to first-time voters who register by mail and allows for a wide range of acceptable identifying documents.¹⁰⁸

In 2005, Georgia and Indiana became the first states to require voters to produce one of a short list of government-issued photo IDs before their votes would be counted. As discussed more fully below, these laws were challenged in both states, and the federal court decisions that resulted have framed the parameters of subsequent voter ID laws and litigation. A combination of the Supreme Court's decision upholding Indiana's law and political changes arising from the 2010 election resulted in seven states enacting photo ID bills during the 2011-2012 legislative sessions.

The *Shelby County* decision had an immediate impact on voter ID laws in states that were formerly covered by Section 5 of the VRA. On the day of the *Shelby County* decision, Texas announced that it would immediately begin to implement its voter ID bill that had been blocked under Section 5 (first by DOJ and then the federal district court). Alabama also announced on the same day that it would begin implementing its government-issued photo ID requirement for voting.¹⁰⁹ Within a few days, Mississippi made the same announcement with respect to a similar requirement.¹¹⁰ Shortly thereafter, as discussed below, North Carolina passed legislation including stringent new voter ID requirements.¹¹¹

Justifications for ID Laws and Statistics Regarding ID

The primary justification given by proponents of ID laws is that they are necessary to prevent fraud. However, as has been demonstrated in repeated academic studies and government investigations, the only form of fraud that would be addressed by voter identification laws—commission of fraud by impersonating a voter—is practically nonexistent.¹¹² Of the few election fraud cases brought by DOJ between 2002 and 2005, none appears to be of the type that would have been addressed by a voter ID requirement.¹¹³ This is particularly striking as we now know that U.S. attorneys were under enormous pressure to pursue these types of cases in the 2000s.¹¹⁴ It is also quite telling that in virtually every lawsuit where states have identified prevention of voter fraud as a justification for their voter ID laws, they have been unable to identify any actual examples of voter impersonation in their state.¹¹⁵ Indeed, in *Crawford v. Marion County Election Board*, the Supreme Court decision upholding Indiana's voter identification law, Indiana admitted that it had not identified any examples of such voter fraud and Justice Stevens, in his plurality opinion, could only cite two allegations of voter impersonation fraud from other states: the Boss Tweed regime in New York in the nineteenth century and a single case of possible impersonation in the Washington State gubernatorial election of 2004.¹¹⁶ Most recently, a federal judge pointed out in a Wisconsin ID case that the defendants had been unable to provide one instance of fraudulent impersonation in the State.¹¹⁷

Given the lack of evidence of voter impersonation, proponents of ID laws have sought to defend their legitimacy by other means. They claim that voter impersonation is a reality, even though it cannot be proven.¹¹⁸ They also contend that voter ID laws increase voter confidence in the electoral process because with ID laws in place, voters perceive that there will be less fraud.¹¹⁹ This unproven assertion ignores the likelihood that voter ID laws may cause some voters—particularly those that lack the required ID—to have less confidence in the electoral process.

While claims that ID laws increase voter confidence remain unverified, it is well-documented that racial minorities are less likely than whites to have the most common forms of government-issued photo ID. While about 11 percent of Americans do not have a driver's license or non-driver's government ID, African Americans, Latinos, immigrants, Native Americans, and the poor disproportionately lack the required documentation. Academic study after academic study has shown that these groups are much less likely than whites to have government-issued photo ID, such as a driver's license.¹²⁰ A national survey by the Brennan Center found that Americans earning less than \$35,000 are twice as likely to lack ID as Americans who earn more than \$35,000, and that African Americans are more than three times as likely as whites to not have ID. Indeed, the survey found that one-fourth of African Americans do not have a government-issued photo ID.¹²¹

The legal cases discussed below present a multiplicity of state-specific data confirming the fact that minority voters are overrepresented among those who lack ID. To many civil and voting rights advocates, these new voter ID laws are just a more subtle reincarnation of the poll tax.

The Georgia and Indiana Laws: Setting the Stage

In 2005, Georgia and Indiana became the first states to significantly restrict the types of government-issued photo ID that would be required from voters. Both laws have been challenged in court, and the outcomes have informed subsequent legislation and litigation around voter ID.

In 2005, the Georgia General Assembly passed its first voter ID law over protests and walkouts by its Black Legislative Caucus.¹²² The law required that a voter provide one of six forms of government-issued ID: a Georgia driver's license; a valid ID card issued by the State of Georgia, by another state, or by the United States; a valid U.S. passport; a valid employee photo ID card issued by the State of Georgia, by one of its subdivisions, or by the United States; a valid U.S. military photo ID card; or a valid tribal photo ID card.¹²³ The law did not provide for a free means of obtaining ID. In *Common Cause of Georgia v. Billups*,¹²⁴ the district court issued a preliminary injunction enjoining the law and finding that the plaintiffs

were likely to prevail on multiple claims, including the claim that failure to provide for free ID constituted a poll tax.

The next year the General Assembly amended the law, and part of the amendment and implementing regulations enabled any voter to obtain a voter ID for free from the county registrar.¹²⁵ The registrar could use the signature on the voter's registration application as a means of verifying the voter's identity. Plaintiffs challenged the amended law but were unsuccessful: federal courts found that the availability of free IDs that are relatively easy to obtain solved the problem with the earlier law.¹²⁶

The significance of the Georgia case is that subsequent state legislatures have had to be careful to ensure that they make free IDs available when adopting new, restrictive voter ID laws. Not all have made it as easy for voters to obtain the free ID, however, and some states' procedures for obtaining ID can significantly burden voters.

In *Crawford v. Marion County Election Board*,¹²⁷ the U.S. Supreme Court voted 6-3 to uphold Indiana's voter ID law against a facial challenge that it violated the fundamental right to vote under the 14th Amendment.¹²⁸ The law required that voters present a form of ID that was issued by the State of Indiana or by the United States and displayed the voter's photo, name (which had to conform, but not necessarily be identical, to the name listed on their voter registration card), and an expiration date indicating that the ID was currently valid or had expired after the date of the last General Election.¹²⁹

The plurality opinion balanced the State's justifications for the law against the burden that the law imposed on voters. Drawing from the district court's determinations, the Supreme Court found that the burden on voters was "limited"¹³⁰ because the evidence in the record was lacking: the record did "not provide us with the number of registered voters without identification[.]"¹³¹ did "not provide any concrete evidence of the burden imposed on voters who currently lack photo identification[.]"¹³² and said "virtually nothing about the difficulties faced by either indigent voters or voters with religious objections to being photographed."¹³³ Accordingly, the Supreme Court upheld the law.¹³⁴

Proponents and opponents of restrictive voter ID laws have interpreted the *Crawford* decision differently. After *Crawford*, some proponents have erroneously interpreted the ruling as a blanket imprimatur of legality to any voter ID law. This is distinctly not the case. For example, Texas has repeatedly made that argument in litigation surrounding its law (see sidebar later in this chapter for details involving the Texas ID law and the litigation). In the initial Section 5 litigation, Texas argued that *Crawford* required the court to uphold its ID requirement, saying that it "controls this case[.]"¹³⁵ In the subsequent post-*Shelby County* Section 2 litigation concerning the Texas law, Texas moved to dismiss the challenge to its ID law, in part on the grounds that "[v]oter-identification laws are constitutional. The Supreme Court so held

in *Crawford v. Marion County Election Board*. . . .”¹³⁶ In denying the motion to dismiss, the Texas district court explicitly rejected this argument: “Defendants overstate the Supreme Court’s approval of voter identification laws. . . . While a photo identification law was squarely at issue in *Crawford*, the terms of that law, the nature of the claims, and the specific holding fail to produce any Supreme Court preclusion of the claims made here.” The judge specifically pointed to the fact that in *Crawford* there was a necessary balancing test under the 14th Amendment, under which the defendants narrowly succeeded; *Crawford* said nothing about claims brought under Section 2 of the VRA or the First, Fifteenth, and Twenty-fourth Amendments against a photo ID law.¹³⁷

The opponents of voter ID have drawn their own lessons from the *Crawford* decision. In order to craft stronger legal challenges, they have placed more emphasis on developing a record that: (1) shows more definitively how many people are affected by the law, (2) demonstrates implementation problems, and (3) includes compelling testimony from individuals affected by the law.

The VRA at Work: Wisconsin, South Carolina, and Texas

There are three states where the VRA has affected an enacted voter ID law in recent years: Wisconsin, where the federal district court enjoined the law as a violation of Section 2 of the VRA; South Carolina, where the State significantly modified the law during a Section 5 preclearance lawsuit; and Texas, where the federal district court found that the law violated Section 5, a decision that was vacated after the *Shelby County* case, and is now the subject of multiple Section 2 lawsuits. Wisconsin is discussed below, South Carolina in Chapter 3, and Texas in the sidebar later in this chapter.

In a decision issued on April 29, 2014, a federal district court judge found that Wisconsin’s voter ID law has a racially discriminatory result in violation of Section 2 of the VRA, and that the law violates the fundamental right to vote under the 14th Amendment.¹³⁸ The court found that approximately 300,000 registered voters lacked one of the nine required forms of photo ID.¹³⁹ Drawing from expert and fact witness testimony, the court then found that those without ID, especially those in poverty, faced significant financial, transportation-related, and administrative hurdles in obtaining identification.¹⁴⁰ In addition, the court found that the evidence presented at trial showed that African-American and Latino voters in Wisconsin are far less likely to have an acceptable ID because of socioeconomic disparities traceable to the effects of discrimination.¹⁴¹ In contrast, the court found that the justifications for the law were tenuous at best. It rejected Wisconsin’s voter fraud justification by finding that “there is virtually no voter-impersonation fraud in Wisconsin.”¹⁴² The court also found Wisconsin’s argument that voter ID laws promote public confidence in the electoral process to be unsupported by the social science research and that such laws may tend to undermine confidence in the electoral process as much as they promote it.¹⁴³

At the NCVR hearing in Minneapolis, Karyn Rotker, Senior Staff Attorney at the Wisconsin ACLU, which represented plaintiffs, submitted testimony citing expert statements provided to the court in the case showing that in “Milwaukee County alone—where the vast majority of the State’s entire African-American population and a substantial plurality of its Latino population resides—13.2% of eligible African-American voters and 14.9% of eligible Latino voters lacked accepted ID, compared to 7.3% of eligible white voters.”¹⁴⁴ Moreover, she cited statements demonstrating that “15.3% of registered African-American voters and 11.3% of registered Latino voters lack accepted forms of ID, compared to 6.0% of registered white voters. An analysis of statewide data shows similar disparities.”¹⁴⁵

Using State Law to Block Voter Identification Provisions: Missouri, Arkansas, and Pennsylvania

Most states have a provision guaranteeing the fundamental right to vote in their state constitutions,¹⁴⁶ and in Missouri, this provision was used successfully to challenge the state’s government-issued photo ID requirement in *Weinschenk v. State*.¹⁴⁷ In May 2014, a state court found that Arkansas’ 2003 photo ID law violated the state constitution because it impermissibly added a qualification for voting.¹⁴⁸ The Arkansas case remains in litigation.

The most intensively litigated case applying state law to block an ID provision was brought in Pennsylvania. On March 14, 2012, Pennsylvania passed a law requiring voters to show a valid photo ID in order to vote. The ID law was challenged in May 2012 as a violation of Pennsylvania’s fundamental right to vote in *Applewhite v. Commonwealth of Pennsylvania*.¹⁴⁹ After the trial court denied the plaintiffs’ motion for preliminary relief, plaintiffs successfully appealed to Pennsylvania Supreme Court. The Pennsylvania Supreme Court found the availability of the State’s free voter ID problematic. The ID law had a “liberal access” provision, which allowed voters to obtain a free ID through the Pennsylvania Department of Transportation (PennDOT) by completing an application stating that they did not have an ID that could be used for voting. However, state officials had made it difficult for voters to actually obtain a free ID.¹⁵⁰ The Pennsylvania Supreme Court noted that although the free ID provisions affected “a minority of the population,” those most affected are “members of some of the most vulnerable segments of the society.”¹⁵¹ The State Supreme Court instructed the trial court to enjoin the voter ID law for the November 2012 election, unless the trial court was “convinced in its predictive judgment that there will be no voter disenfranchisement arising out of the Commonwealth’s implementation of a voter identification requirement for purposes of the upcoming election.”¹⁵² The trial court subsequently enjoined the law for that election.

The parties tried the case in 2013, and on January 17, 2014, a judge issued an injunction permanently blocking the enforcement of Pennsylvania’s voter ID law on the grounds that it violated the fundamental right to vote.¹⁵³ According to the court opinion, the State’s own database comparison showed that 759,000 registered voters did not have a Pennsylvania

ID and another 575,000 did not have an ID that would be valid for the 2012 election. In total, 1.3 million registered voters lacked the ID needed to vote. Moreover, the judge found that “[i]n contrast to the hundreds of thousands who lack compliant photo ID, only 17,000 photo IDs for voting purposes (DOS [Department of State] IDs + PennDOT Voting IDs) have been issued.... This includes issuance of less than four thousand DOS IDs.”¹⁵⁴ The court found that there were a number of impediments to getting a voter ID, including that in many counties the state offices were only open two days a week, state employees had received inadequate training, and inaccurate messages were sent to voters.¹⁵⁵ In addition to finding that the law burdened voters, the court found that the State had failed to provide any evidence supporting the two justifications it offered for the law—preventing voter fraud and promoting public confidence in the electoral system. Thus, the court found the law unconstitutional. On May 8, 2014 the Governor of Pennsylvania announced that he would not appeal the case to the State Supreme Court.

Pending Litigation over North Carolina’s Photo ID Requirement

Less than two months after the *Shelby County* decision, North Carolina passed a wide-ranging voting law, H.B. 589, that includes a new government-issued photo ID requirement. DOJ and two sets of private plaintiffs have challenged H.B. 589 on a number of grounds. These three different cases challenge the North Carolina law under the VRA and have been consolidated.¹⁵⁶ DOJ’s complaint included the following allegations regarding the disproportionate impact of the new ID requirements on African Americans. The complaint draws largely from an April 2013 study where North Carolina’s State Board of Elections matched the registered voter list to Department of Motor Vehicles (DMV) records:¹⁵⁷



Barbara Arnwine, Executive Director of the Lawyers’ Committee for Civil Rights Under Law and a guest commissioner at the NCVR hearing in North Carolina.

PHOTO CREDIT: ALLISON MEDER

Voters who need a special identification card to meet HB 589’s voter photo identification requirement will have to travel to a DMV office to obtain the card. In 10 North Carolina counties, the only DMV office is open only once per month. Four of these counties are among the 10 North Carolina counties that have the highest percentage of African-American voting-age populations in the State, including Bertie County, which has the highest at 60.7 percent. [...] Although African-American voters comprised 22.5 percent of total registered voters in

the State at the time of the analysis, 33.8 percent (107,681) of the registered voters on the no-match list [of those citizens with DMV issued ID] were African-American. In contrast, white voters constituted 71.0 percent of the total registered voter population in the State, but were only 54.2 percent (172,613) of the registered voters on the no-match list. Further, of the 4,562,097 white registered voters in the State, 3.8 percent appeared to not have DMV-issued identification, whereas of the 1,445,799 African-American registered voters, 7.4 percent appeared not to have DMV-issued identification.¹⁵⁸

Examples of Poll Workers Improperly Requiring Identification from Minority Voters



“At certain poll sites, poll workers would only ask Asian-American voters for their ID and make it a requirement. We’ve seen that across the country, whether there is a voter ID law or not, poll workers use that as an opportunity to selectively disfranchise certain voters.” Jerry Vattamala (seated far right), Attorney for the Asian American Defense and Educational Fund, at the NCVR Pennsylvania state hearing. PHOTO CREDIT: BEN BOWENS

Another notable problem is poll workers requiring identification from minority voters when it is not legally required. This has not only been documented anecdotally, it has been found to be the case in two major academic studies, one focused on New Mexico and the other on Boston, Massachusetts.¹⁵⁹ The studies found that Latinos and African Americans were consistently asked for identification at higher rates, regardless of whether voter ID was actually required by law.¹⁶⁰

The NCVR also heard testimony to this effect with respect to Asian Americans. In Pennsylvania, Rahat Babar, the president of the Asian Pacific American Bar Association of Pennsylvania testified that,

Even when the law was subject to a partial preliminary injunction during the 2012 elections [when poll workers were supposed to request ID, but still allow those without ID to vote], we discovered that poll workers applied the voter ID law in a discriminatory way against Asian Americans and other persons of color. Some Asian-American voters were subject to excessive requests to present identification and, in other instances, required to prove citizenship.¹⁶¹

Case Spotlight **Voter ID in Texas**

Texas' voter ID requirement perhaps best illustrates the questionable necessity of these laws and their relationship to the VRA.

Prior to 2011, Texas law required that an in-person voter present his or her voter registration certificate in order to vote.¹⁶² Any voter without a certificate had to complete an affidavit stating that he or she did not have a certificate, and the voter would be required to present another form of ID.¹⁶³

Nonetheless, in 2011, Texas enacted what the court in *Texas v. Holder* would later call the "most stringent" voter ID law in the country.¹⁶⁴ Texas submitted its law, S.B. 14, to DOJ for Section 5 preclearance. DOJ denied preclearance on the grounds that Texas failed to show that the law would not have a retrogressive effect. This was partially based on data from Texas state databases submitted to the DOJ, which revealed that a Latino registered voter was at least 46.5 percent, and potentially 120.0 percent, more likely than a non-Latino registered voter to lack the requisite ID.¹⁶⁵

Undeterred, Texas next sought preclearance in the U.S. District Court for the District of Columbia. Like DOJ, the federal court denied preclearance on the grounds that Texas failed to show that the law did not have a discriminatory effect.¹⁶⁶ The court noted that not all voter ID laws are alike and laws "might well be precleared if they ensure (1) that all prospective voters can easily obtain free photo ID and (2) that any underlying documents required to obtain that ID were truly free of charge."¹⁶⁷ The court concluded that:

record evidence suggests that SB 14, if implemented, would in fact have a retrogressive effect on Hispanic and African-American voters. This conclusion flows from three basic facts: (1) a substantial subgroup of Texas voters, many of whom are African-American or Hispanic, lack photo ID; (2) the burdens associated with obtaining ID will weigh most heavily on the poor; and (3) racial minorities in Texas are disproportionately likely to live in poverty.¹⁶⁸

Part of this determination was based on evidence that some voters would have to travel more than 200 miles roundtrip to obtain an accepted ID and that they would have to pay at least \$22 to obtain a birth certificate that would enable them to obtain an ID.¹⁶⁹ In addition, the court found it significant that the legislature rejected a number of proposed amendments that would have made identification more accessible for certain groups, stating:

[C]rucially, the Texas legislature defeated several amendments that could have made this a far closer case. Ignoring warnings that SB 14, as written, would disenfranchise minorities and the poor, the legislature tabled or defeated amendments that would have:

- **waived all fees for indigent persons who needed the underlying documents to obtain an EIC [Election Identification Certificate];**
- **reimbursed impoverished Texans for EIC-related travel costs;**
- **expanded the range of identifications acceptable under SB 14 by allowing voters to present student or Medicare ID cards at the polls;**
- **required DPS [Department of Public Safety] offices to remain open in the evening and on weekends; and**
- **allowed indigent persons to cast provisional ballots without photo ID.**

“Put another way, if counsel [defending the Texas law] faced an ‘impossible burden,’ it was because of the law Texas enacted—nothing more, nothing less.”¹⁷⁰

Texas appealed the district court’s ruling. During the course of the appeal, the Supreme Court decided *Shelby County*, which effectively ended the case because Texas was no longer covered by Section 5.¹⁷¹ On the day of the *Shelby County* decision, Texas Attorney General Greg Abbott announced that Texas would begin implementing its voter ID law.¹⁷² As discussed above, the United States and multiple sets of private plaintiffs have brought challenges to the Texas ID law under Section 2 of the VRA, and the case is pending in federal court.¹⁷³

VIII. EARLY IN-PERSON VOTING

In recent decades, the option of voting in person on days prior to Election Day has become enormously popular with voters and election administrators. Today, 33 states and the District of Columbia offer some form of early voting.¹⁷⁴ Early voting makes it easier to vote, especially for working people who have multiple commitments and responsibilities. As a federal district court in D.C. noted, African Americans in several Florida counties took advantage of early voting opportunities at a rate nearly double that of white voters in the 2008 election.¹⁷⁵ Inflexible work schedules, limited access to reliable transportation (including lower car-ownership rates), and the focus on early voting by get-out-the-vote efforts in minority communities were cited as factors accounting for African Americans' higher early voting rate in the State.¹⁷⁶

Unfortunately, in recent years, several states have significantly cut back on the number of days and hours of early voting. Critically, these reductions have often eliminated voting in the evening and on Saturdays and Sundays, including the Sunday before Election Day. This change has hit African Americans particularly hard because it had become a popular practice in African American churches in some states, including Florida, for congregants to go vote together after Sunday church services.

Florida is one state that has sought to restrict early voting. In advance of the 2012 election, Florida enacted H.B. 1355 which, among other things, reduced the number of days that counties were permitted to offer early voting from 14 to eight, cut in half the number of total hours that counties were required to offer for early voting from 96 to 48, and eliminated in-person voting on the Sunday before Election Day.¹⁷⁷ As a result, early voting turnout dropped by over 225,000 voters from 2008 to 2012.¹⁷⁸ Long lines were prevalent during both the early voting period and on Election Day. Election Day lines were so long that some people only managed to vote after midnight.¹⁷⁹ One study indicated that more than 201,000 voters likely did not vote because of long lines.¹⁸⁰

Data from previous elections in Florida foreshadowed the disproportionate effect early voting cuts would have on African Americans and other minorities. An analysis of voting data from 2008 found that "not only did African Americans cast more [early in-person] ballots than they cast on Election Day, but also that African Americans accounted for a much greater proportion of the early voting electorate than they did on Election Day, Tuesday, November 4, 2008. Perhaps due to the early voting mobilization efforts by the Obama campaign and their allies which encouraged early voting by African Americans, black voters ended up casting 22 percent of the total EIP [early in-person] votes in the 2008 General Election even though they comprised approximately 13 percent of the State's total registered electorate."¹⁸¹ With respect to the Sunday before Election Day, the findings were especially telling, with African Americans constituting 31 percent of early voters on the final Sunday of voting

before Election Day.¹⁸² White voters, relatively speaking, had the lowest participation rates for Sunday early in-person voting. By comparison, African Americans had the highest rate on the first Sunday of early voting, while Latinos participated at the highest rate on the last Sunday of early voting (followed by African American voters).¹⁸³ The differential rates of early voting were part of the basis for the U.S. District Court for D.C.'s denial of preclearance to the five Florida counties that were covered under Section 5 when they attempted to implement the aforementioned statewide changes to early voting. The court recognized the potential for a racially discriminatory effect.¹⁸⁴

One study conducted after the 2012 election concluded that the “effect of early voting changes reflected in H.B. 1355 was to inconvenience African Americans specifically.”¹⁸⁵ The research found that the cutbacks led to more crowded polling places and that “voters who faced greater congestion, and presumably longer lines... were disproportionately African American.”¹⁸⁶ Notably, beyond Florida, the report highlighted the increasing popularity of early voting among African Americans nationally. In the 2012 general election, the number of African Americans voting early in-person reportedly tripled compared to 2008. Similarly, this same figure doubled in the 2014 midterm election compared to the 2010 midterm.¹⁸⁷

Notably, African Americans in Southern states continued to vote early in-person at higher rates than other groups: 41 percent of African Americans in the South voted early in-person, compared to 34.8 percent of white voters. Moreover, African-American early in-person voters in the South also outpaced this same group of African-American voters in all other regions of the U.S.¹⁸⁸

In 2013, North Carolina enacted a law, H.B. 589, that, among other measures, eliminated the first seven days of early voting, reducing the number of days to vote early in person from 17 to 10. In addition, the law eliminated the first Sunday of early voting. A number of civil rights groups, as well as the DOJ, have brought lawsuits challenging H.B. 589.

The data in North Carolina mirrors the findings in Florida regarding early voting:

- In the 2008 general election, African-American voters made up 22 percent of registered voters, but cast about 29 percent of early votes and about 32 percent of votes during the first week of early voting. About 71 percent of African American voters cast their ballot during early voting in the 2008 general election, compared to 51 percent of white voters.¹⁸⁹
- In the 2012 general election, African-American voters made up an estimated 22 percent of registered voters, but were approximately 29 percent of early voters and 33 percent of voters in first week of early voting. About 71 percent of African American voters cast their ballot during early voting in the 2012 general election, as compared with 52 percent of white voters.¹⁹⁰ Over 36 percent of all North Carolinians who voted during the first week

of early voting in 2012 were African-American. Additionally, there was a notable peak in African-American participation during weekend voting, while weekend early voting for whites declined. African Americans cast 43 percent of all Sunday ballots.¹⁹¹ The disproportionate use of early voting by African Americans in North Carolina has been confirmed by academic research.¹⁹²

Cutbacks to early voting have also disproportionately affected African American voters in Ohio. A Lawyers' Committee analysis of voting patterns in 2008 in Cuyahoga County, which includes Cleveland, found that African-American voters used early in-person voting at a rate approximately 26.6 times greater than that of whites. Put another way, "African Americans accounted for nearly 78% of all early in person voters, compared to less than 7% for whites."¹⁹³ Similarly, in 2012, African American voters in Cuyahoga County utilized early voting at a rate more than 20 times greater than white voters. About 77.6 percent of early voters in Cuyahoga in 2012 are estimated to have been African American.¹⁹⁴



Petee Talley, Secretary-Treasurer of the Ohio State AFL-CIO and co-chair of the Ohio Voter Protection Coalition, testified about the need for ongoing community voter education and outreach, at NCVR Columbus regional hearing. PHOTO CREDIT: JIMMEY MCEACHERN

In Franklin County, Ohio (which includes Columbus), African Americans represented 21 percent of all ballots cast in 2008, but cast 31 percent of early in-person ballots, while whites made up 74 percent of the electorate but cast only 65 percent of early in-person ballots. Overall, 13.3 percent of all African-American ballots cast in 2008 in Franklin County were done early in-person, as opposed to only 8 percent of white ballots.¹⁹⁵

In 2011 and 2012, Ohio enacted legislation that, among other things, changed the last permissible day for early in-person voting by non-uniformed and overseas voters from the Monday before the election to the Friday before the election, thereby eliminating three early vote days. A federal court blocked implementation of the law and ordered the restoration of the three early vote days, however, because the law violated the 14th Amendment's Equal Protection Clause by treating uniformed and overseas citizens, and other voters, differently.¹⁹⁶ The judge noted:

On balance, the right of Ohio voters to vote in person during the last three days prior to Election Day—a right previously conferred to all voters by the State—outweighs the State's interest in setting the 6 p.m. Friday deadline. The burden on Ohio voters' right to participate in the national and statewide election is great, as evidenced by the statistical analysis offered by Plaintiffs and not disputed by Defendants[, and] the State's interests are insufficiently weighty to justify the injury to Plaintiffs.¹⁹⁷

Also in 2012, Ohio Secretary of State Husted issued Directive 2012-35, which required all counties in Ohio, regardless of size and other differences, to conduct early voting at a single site following a specific schedule set by the State. Directive 2012-35 eliminated early voting opportunities that African Americans had traditionally taken advantage of, including all week-end hours and certain evening hours.¹⁹⁸

Subsequently, in late 2013 and early 2014, the Ohio legislature hastily passed S.B. 238, which eliminated the first week of early voting and, because that was the only week during which one could both register and vote, S.B. 238 eliminated the only opportunity for same-day voter registration. Several days later, Secretary of State Husted issued Directive 2014-06, forcing all counties to eliminate all evening early voting hours, all Sunday voting, and early voting on the Monday before Election Day.¹⁹⁹ On May 1, 2014, a coalition of civil rights organizations and churches filed a lawsuit challenging these changes.²⁰⁰ According to the complaint, 157,000 Ohio citizens voted in 2012 during the periods that S.B. 238 and Directive 2014-06 eliminate for the 2014 election.²⁰¹ The plaintiffs' motion for a preliminary injunction was filed June 30, 2014 and remains pending.

The recent actions that Ohio's legislators and Secretary of State have taken to restrict early voting were taken in the face of well-publicized data demonstrating that cuts in early voting would disproportionately burden African-Americans.²⁰² In fact, statements and actions by public officials make clear that the effects of the cutbacks were well understood. For example, in the words of a local newspaper, a member of the Franklin County Board of Elections explained his support for the 2012 cutback like this: "I guess I really actually feel we shouldn't contort the voting process to accommodate the urban—read African-American—voter turnout machine."²⁰³

Finally, in Wisconsin, another state that has seen a number of voting controversies in recent years, Governor Scott Walker has signed a bill that eliminates weekend early voting altogether. Many in the State have expressed concern that the cutback will bear particularly heavily on Milwaukee voters, where a significant proportion of the State's minority population resides.²⁰⁴



“Even with extended hours, we still saw long lines on election days [in 2008 and 2012]... Assembly Bill 54 and Senate Bill 324 in our current legislative session would eliminate any weekend hours for in-person absentee voting and would not allow municipal clerks to offer hours later than 6:00 p.m. during the week. We believe the passage of this bill would absolutely devastate the ability of many voters marginalized in other ways to access their right to vote...” –Analiise Eicher, *One Wisconsin Now*, at the NCVR Minneapolis regional hearing.

PHOTO CREDIT: TIM RUMMELHOFF

IX. PROBLEMS AT POLLING PLACES

An accessible, fully-equipped, and functioning polling place is, of course, critical to the voting process. The recent history of voting discrimination and restricted ballot access for minority voters, however, contains reports of polling place closures in minority areas and jurisdictions' refusals to expand voting locations into more remote communities where minority voters reside. The record documented in the 2006 NCVR report also contains numerous examples of how such activities disadvantage minority voters. As is detailed in Chapter 7, implementation of language assistance requirements at the polls continues to be a problem; accessibility of polling places for people with disabilities, a major problem in American elections, will be addressed at length in the forthcoming report on election administration.

One common and well-publicized problem at the polls in recent elections has been long lines. Whether a reflection of inadequate staffing, too few voting locations, or problems with poll books, long lines on Election Day may be more than just an inconvenience; for some, long lines prevent or deter voting. Research on recent elections has shown that African-American and Hispanic voters are likely to experience longer wait times than white voters. One study using 2008 and 2012 post-election survey data concluded that minority voters waited longer than white voters at the polls. The average wait time for African Americans was highest at 24 minutes, followed by an average wait time of 19 minutes for Hispanic voters. By comparison, white voters waited an average of 12 minutes to vote. Notably, the authors point out that these disparities in wait time by race largely remained in place after controlling for state residence and voting mode (Election Day versus early voting).²⁰⁵ Further, voters in urban areas waited longer to vote than their counterparts in suburban and rural areas.²⁰⁶

The experiences with long lines in particular states help illustrate these national findings. A study of precinct-level data, including closing times, in Florida from the November 2012 election found that “precincts with greater proportions of Hispanics—and in several counties, with high proportions of Blacks, as well as younger voters—had later closing times on Election Day relative to precincts with higher concentrations of White and elderly voters.”²⁰⁷ Long lines in minority communities were also a pressing issue during the 2004 election, as seen in Ohio. An investigation found that the “misallocation of voting machines led to unprecedented long lines[,]” which disenfranchised minority voters disproportionately.²⁰⁸

“In 2004, Election Day was a fiasco in many places around Ohio. Local, state, and national media covered the multitude of problems stemming from excessively long lines of voters waiting, many of them for hours on end. These lines led an estimated 130,000 voters to leave their polling locations without casting a ballot. African-American voters waited in line an average of three times longer than their white counterparts.”

Gary Daniels, Associate Director of the Ohio American Civil Liberties Union at the NCVR Columbus regional hearing

Closing and Consolidating Polling Places

Closure of polling places serving minority voters continues to raise concerns about equal access to the ballot. For example, on October 8, 2010, plaintiffs in *Spirit Lake Tribe v. Benson County* secured a preliminary injunction under Section 2 of the VRA, which curtailed the North Dakota county’s plans to close all but one of the eight voting locations in the county (citing financial reasons) and implement a mail-in ballot program.²⁰⁹ The tribe was successful in keeping open the two polling places located on its reservation.²¹⁰ The federal court in Spirit

Lake Tribe agreed with plaintiffs that the severe reduction in voting locations would risk effectively disenfranchising a portion of the tribe's voters; noting the well-documented "historic pattern of discrimination suffered by members of [the tribe]," the court considered evidence that closing the voting locations on and near the reservation would likely have a disproportionate impact on tribal members, which supported the decision to require the county to keep open the two on-reservation polling places.²¹¹ Tribal members testified that they would not be able to vote at the one proposed voting location because they lacked access to reliable public or private transportation, could not afford to pay for transportation costs, or were concerned about the distance from remote parts of the reservation to the one location.²¹² In addition, members testified that a mail-in ballot process would be ineffective and undesirable.²¹³ The tribal members and the court were skeptical that the county could ensure that the tribe's sizable transient population would receive their ballots by mail.²¹⁴

In reaching its decision, the court recognized that Spirit Lake's population was "more economically and educationally challenged" than the rest of the county, and had "staggering problems in areas including economics, education, housing, and employment."²¹⁵ The court further observed:

[T]here are burdens that fall on the voting process on the Spirit Lake Reservation that simply do not exist elsewhere in Benson County. Thus, a system that might be entirely appropriate for the County as a whole, could well create a significant burden on voting within the confines of the Spirit Lake Reservation.²¹⁶

In 2003, Bexar County, Texas announced plans to reduce the number of early voting polling places from 20 to 11, in the process eliminating the five such polling places serving the predominantly-Latino west side of San Antonio.²¹⁷ Bexar County moved forward with these plans, even though DOJ had yet to make a decision on the County's request for Section 5 preclearance. This led the Mexican American Legal Defense and Education Fund (MALDEF) to file a Section 5 enforcement action in federal court, which alleged that the county's changes would infringe on west side residents' right to vote by forcing them to go far from their homes to cast their ballots. Plaintiffs sought an injunction to prevent the closures.²¹⁸ The closures were enjoined shortly after MALDEF filed its action.²¹⁹

In 2003, Monterey County, California announced plans to, *inter alia*, consolidate precincts and change the locations of polling places in predominantly Latino areas as part of the preparations for a then-upcoming special gubernatorial recall election.²²⁰ According to testimony at the NCVR California state hearing from an attorney for the plaintiffs in a case challenging the changes, one consolidation would have moved a polling place nearly five miles away from its previous location in a predominantly Latino community into an area without easy access to public transportation.²²¹ Another would have forced voters residing

in predominantly Latino communities to cast their ballots at the Sheriff's Posse Club House, a hunting club in a predominantly Anglo neighborhood.²²² Plaintiffs brought suit, seeking to enjoin the recall election on the basis that, *inter alia*, Monterey County's plan to consolidate precincts and reduce the number of polling places was legally unenforceable due to the county's failure to secure preclearance of the proposed changes from the DOJ under Section 5 of the VRA.²²³ After the federal trial court entered a limited temporary restraining order and ordered the county to show cause why a preliminary injunction halting any further election preparations should not issue,²²⁴ Monterey County informed the district court that the proposed changes would not occur and withdrew the problematic polling place changes from DOJ's review.²²⁵ While DOJ ultimately approved the voting precinct changes (minus the proposals at issue), it was action taken under Section 5 that led to the withdrawal of the problematic polling place consolidations.²²⁶

As set forth in testimony submitted at the NCVR hearing in Denver, in 2008 Alaska submitted for Section 5 preclearance a proposal to close polling places in several Native villages. DOJ responded with a More Information Request, at which point the State abruptly withdrew the proposal. The same witness testified that DOJ also blocked efforts to close polling places in Navajo Nation in Arizona.²²⁷

In 2006, DOJ objected to the reduction in the number of polling places and early voting locations for the North Harris Montgomery Community College District in Texas. Under the proposal, the site with the smallest proportion of minority voters was meant to serve 6,500 voters, while the most heavily minority site (79.2 percent African-American and Latino) would serve over 67,000 voters.²²⁸

Inadequate Polling Places

At the Pennsylvania state hearing, NCVR received testimony about the Lower Oxford East precinct in Pennsylvania, where 61.8 percent of the voting age population was African-American in 2008. According to a complaint filed against Chester County officials under Section 2 of the VRA, the polling place for that jurisdiction could only fit six voting booths and one optical scanner, had only one bathroom, and had no shelter for waiting voters.²²⁹ During the 2008 primary election, it had to remain open until 10:30 p.m. to process all of the waiting voters.²³⁰

Local election officials, fearing even worse conditions for the general election, requested that the County Board of Elections move the polling place to Lincoln University, a historically black university that was the former, more spacious, site of the precinct's polling place.²³¹ The Board refused. According to the lawsuit, so many voters waiting in line needed restroom facilities that a campaign volunteer arranged for the delivery of six portable toilets at his own

expense.²³² Further, plaintiffs alleged that a Republican poll watcher challenged the identities of young African-American voters exclusively, even those with valid registration cards and photo ID, and that an election official dismissed voters' concerns about this.²³³ As a result,

[t]he combination of an inadequately-sized polling place, unlawful challenges, failure of Voter Services to provide an up-to-date poll book and lack of other polling place resources created a perfect storm of long lines and disenfranchised voters of color.²³⁴

One voter reportedly attempted to vote at three times throughout the day, but was unable to do so each time due to the long lines.²³⁵ Others reportedly waited six hours or longer, with many leaving without having the chance to vote; one student was given an estimated wait time of eight hours.²³⁶ In 2009, after receiving complaints about long lines during the 2008 election, the township relocated the polling place to a building that is “even farther away from campus, even less-accessible to African-American voters, and equally small.”²³⁷ The parties later settled the lawsuit, and the Board of Elections agreed to move the polling place back to Lincoln University’s campus.²³⁸



On the right, Marian Schneider, Senior Attorney at the Advancement Project, testified at the NCVR Pennsylvania state hearing about the failure of a local board of elections to move a polling place in a predominantly African-American community to a larger, central location, resulting in excessively long lines and depressed turnout.

PHOTO CREDIT: BEN BOWENS

Barriers to Exercising Voting Rights for Native Americans

At NCVR's Denver regional and Arizona state hearings, Native American voting advocates spoke of Native American voters living in very rural areas without cell service, Internet, even roads, electricity, or running water, who had to drive an hour and a half each way to the nearest polling place.²³⁹

Witnesses at NCVR's Rapid City, South Dakota hearing testified that advocates in the State have been working for some time to get election officials to provide satellite offices for registration and in-person absentee voting—South Dakota's version of early voting—on Indian reservations. Currently, the only place to take advantage of the more than five weeks of early voting in most counties in South Dakota is at the county seat, typically a great distance away from reservation lands. The lack of early voting sites on reservations essentially means that most Native Americans in the county get no early voting and can only vote on Election Day.²⁴⁰ For example, in Dewey County, South Dakota, which has a population that is 74 percent Native American, "over 60 percent of [the] population lives in Eagle Butte, which is 40 miles from the county seat in Timber Lake."²⁴¹ As Julie Garreau, an enrolled member of the Cheyenne River Sioux Tribe, testified, more than 30 percent of the population lives below the poverty line, and "many voters do not own reliable vehicles, or do not have the financial resources to make a trip to early vote."²⁴² Native Americans were able to work with county officials to set up a satellite office on the reservation.

In Shannon County, however, Native Americans were forced to file suit in 2012 under Sections 2 and 5 of the VRA, among other federal and state laws.²⁴³ As the *Brooks v. Gant* lawsuit progressed, South Dakota officials and the county defendants changed their position, agreeing to provide the early voting at the satellite locations proposed by the plaintiffs through the year 2018. On August 6, 2013, given the resolution of the issue for the time being, the court concluded the plaintiffs could no longer show the required "immediate injury" and dismissed the lawsuit as unripe for consideration; the dismissal was "without prejudice," so the plaintiffs may file a new lawsuit in the future should the State fail to extend the satellite early voting on the reservation beyond 2018.²⁴⁴

The problems Native Americans in Montana face in using in-person absentee voting are similar. Mark Wandering Medicine, a member of the Northern Cheyenne Tribe, testified at the NCVR Rapid City hearing that poverty and traveling great distances to the county seat create barriers for Native Americans in his tribe to take advantage of in-person absentee voting; it is a two-hour drive one way from his home on the Northern Cheyenne Reservation to Forsyth, the county seat of Rosebud County, Montana.²⁴⁵

On October 10, 2012, Native Americans from Montana's Fort Belknap, Crow, and Northern Cheyenne Reservations brought suit seeking to open satellite county offices with in-person

absentee voting and late voter registration in Blaine, Rosebud, and Big Horn Counties. After a federal district judge in Missoula refused to dismiss the lawsuit,²⁴⁶ the case settled out of court on June 10, 2014. Under the terms of the settlement, election officials agreed to open voting sites on reservations for two days a week during the month-long period during which Montana allows in-person absentee voting and late registration.²⁴⁷

Native American plaintiffs also achieved a measure of success in challenging Arizona's 2004 voter ID law. Among other claims in the case, the Navajo Nation challenged the voter ID law based upon evidence that the law had a disproportionate effect on Native American voters.^{247a} The claim was settled, with the State agreeing to change the types of ID permitted,^{247b} and the amended list of acceptable IDs was precleared by the DOJ.



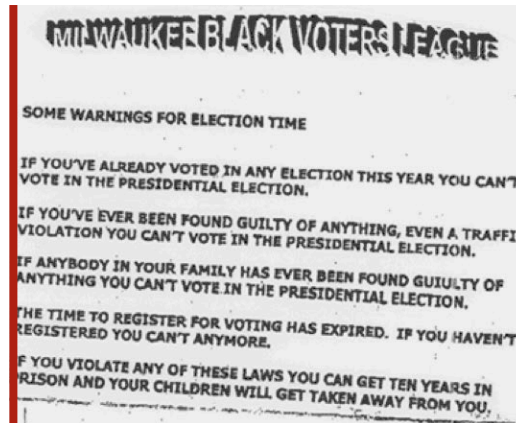
From Left, OJ Seamans Sr., Executive Director of Four Directions, and Bret Healy, consultant at Four Directions, testified at the NCVR Rapid City hearing. Healy testified about the hardships and intimidation plaintiffs have faced in voting rights cases in Montana. PHOTO CREDIT: JOHNNY SUNDBY

X. VOTER INTIMIDATION AND VOTER CHALLENGES

Outright voter intimidation is sadly not a complete vestige of the past.

Although for the most part schemes designed to restrict voting that rely on physical violence have become rare, more sophisticated tactics, relying on the use of intimidating misinformation campaigns, most commonly in the form of flyers and mailings, are still frequent. For example, in 2004 in Milwaukee, a flier purportedly from the “Milwaukee Black Voters League” was distributed in African-American neighborhoods to discourage people from voting.

During the 2012 election, billboards were placed in predominantly minority areas in Cleveland and Cincinnati and later Milwaukee, with menacing warnings about voter fraud and the penalties for violations. The Lawyers’ Committee used census tract population data to demonstrate that the signs were targeted at African-American communities. For example, one billboard was mounted in an area in Cleveland that was 96 percent black. The Lawyers’ Committee sent a letter to Clear Channel, the owner of the billboard spaces, and that organization, along with several others, undertook a campaign to get the signs taken down. In its letter to Clear Channel, the Lawyers’ Committee said the signs, “stigmatize the African-American community by implying that voter fraud is a more significant problem in African American neighborhoods than elsewhere,” and the billboards “attach an implicit threat of criminal prosecution to the civic act of voting.”²⁴⁸ The company ultimately took down the signs after the client who paid for the billboards would not identify itself publicly.



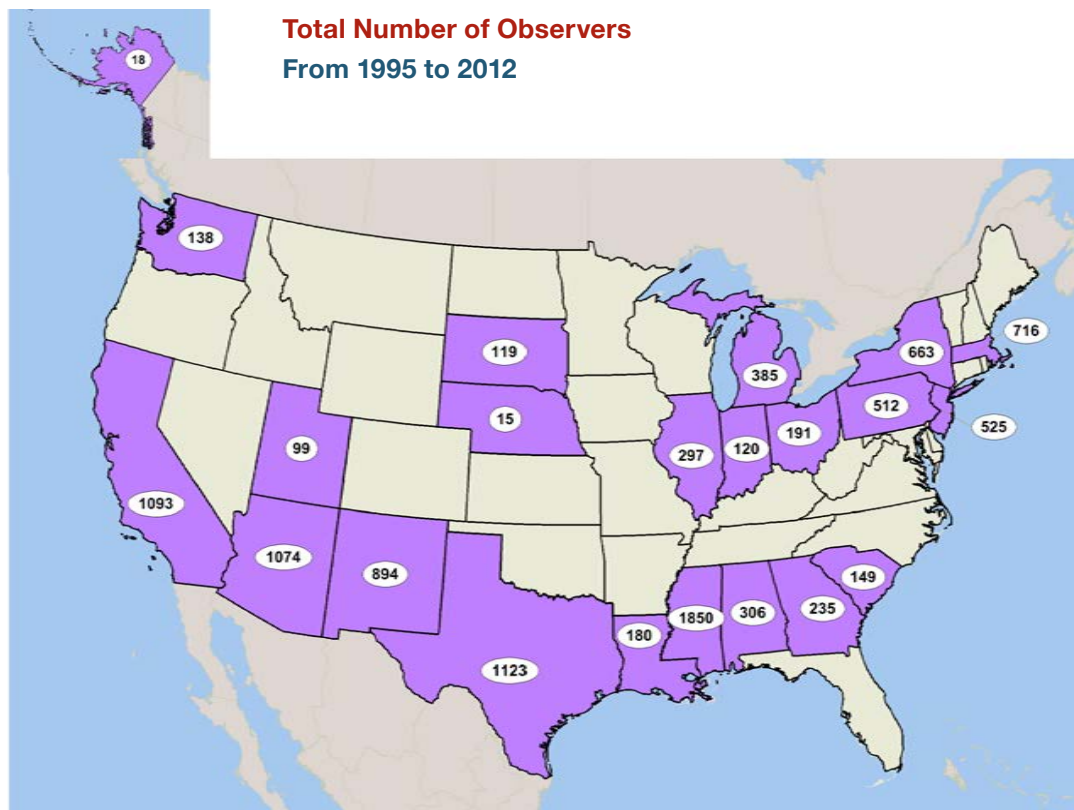
Section 11(b) of the VRA states that “no person... shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote.”

However, since the Act’s initial passage in 1965, DOJ has filed suit for intimidation or deceptive practices under the VRA in only four instances, and only twice in recent years.²⁴⁹ Though many have argued that 11(b) could be utilized more vigorously and that DOJ has interpreted it too narrowly,²⁵⁰ the fact that it has not been used more often is mostly the result of the challenges in bringing an intimidation claim.²⁵¹ The Federal Prosecution of Election Offenses manual itself describes intimidation as being subjective and often without concrete evidence or witnesses.²⁵² The perpetrators, particularly of deceptive practices, are often difficult to find. This makes prosecutors reluctant to devote resources to pursuing such cases.



Federal Observers Deter Voter Intimidation

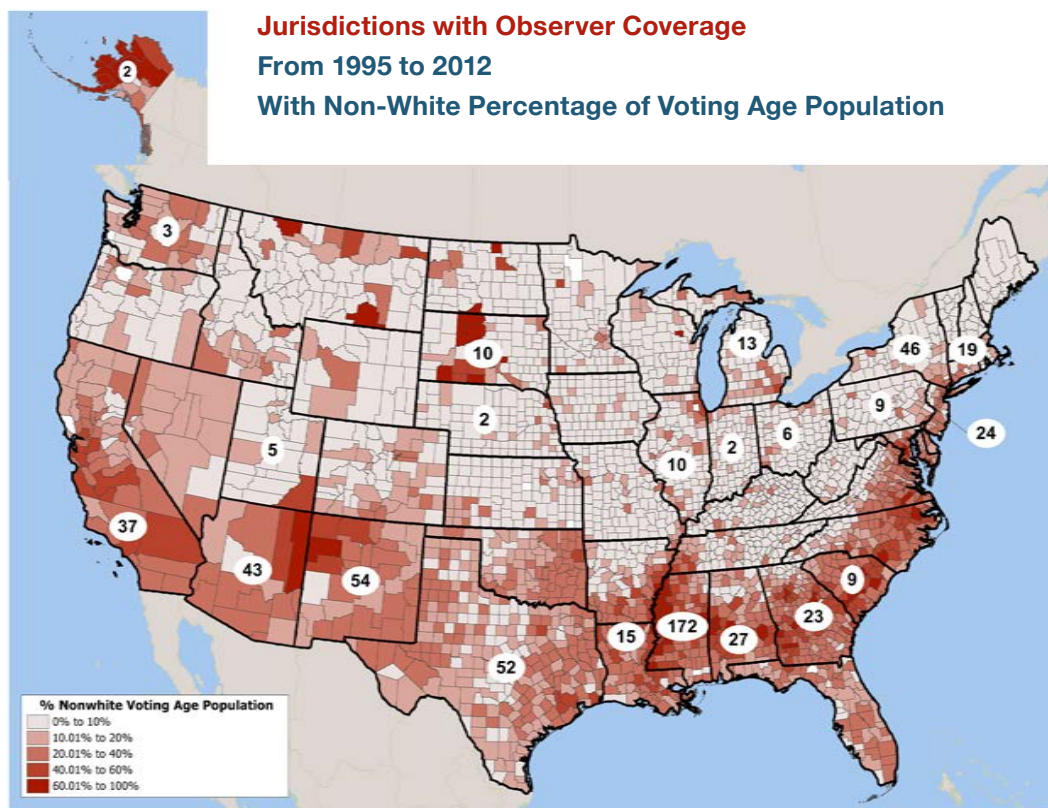
Another reason that DOJ has brought few intimidation cases has been because of its ability to send federal observers to the polls where such activities might take place. Where DOJ was concerned about potential problems on Election Day it frequently sent observers or attorneys, who deterred and at times could address intimidating or discriminatory acts at the time they were occurring. An enforcement lawsuit could also ensue from an observed incident.



Under Section 3(a) of the VRA, a federal court may authorize observers where the court finds it is necessary to enforce the voting guarantees of the 14th and 15th Amendments during the course of a case or after a finding of intentional racial voting discrimination.²⁵³ Prior to *Shelby County*, the Attorney General could send observers to political subdivisions covered under Section 4(b) of the VRA, if the Attorney General believed it was necessary to prevent constitutional violations regarding racial or ethnic voting discrimination.²⁵⁴ In order to determine where observers were to be sent, the DOJ Voting Section looked at where it was likely that minority voters would confront barriers or intimidation. Federal observers wrote reports of what they saw, and submitted them to DOJ. The Voting Section reviewed these reports to determine whether further enforcement action should be taken.²⁵⁵ A total of 153 counties and parishes in 11 states covered by Section 4(b) have been certified by the Attorney General for appointment of federal

observers: Alabama (22 counties), Alaska (1 county), Arizona (4 counties), Georgia (29 counties), Louisiana (12 parishes), Mississippi (51 counties), New York (3 counties), North Carolina (1 county), South Carolina (11 counties), South Dakota (1 county) and Texas (18 counties).²⁵⁶ Thousands of observers have been deployed in the years since 1995.

Observers deterred election officials and others present at the polls from conducting discriminatory acts or engaging in harassment. Their presence also allowed for problems to be addressed immediately. As testimony given during the 2006 VRA reauthorization hearings by a long-time attorney with the Voting Section indicated,



the existence of Federal observers is crucial, and it's irreplaceable in the Voting Rights Act. After all, there's no other way for the law enforcement function of the Justice Department to be able to be performed with regard to harassment and intimidation and disenfranchisement of racial and language minority group members in the polling place on Election Day.²⁵⁷

Observers report problems to a Civil Rights Division attorney at DOJ who can immediately discuss the problem with local officials, or if that is not sufficient, the Civil Rights Division may intervene with local officials directly. Reports can also be used for future litigation if necessary.²⁵⁸

As Congressman John Conyers described at a hearing regarding the reauthorization of this section of the VRA, “discrimination at the polls remains a problem. Where jurisdictions have a record of discrimination or current threats exist to ballot access, minority voters should not have to wait for federal assistance to come after the fact. Monitors play the important role of addressing concerns about racial discrimination and ensuring compliance, so that voters can rely on a fair process now, rather than waiting for litigation later.”²⁵⁹

Unfortunately, at the time of this Report’s publication, it appears that DOJ has suspended sending federal observers into polling stations in Section 4(b) jurisdictions, believing that it no longer has that legal authority under the Supreme Court’s *Shelby County* ruling. However, the jurisdictions covered by Section 3(a) court orders are unaffected.²⁶⁰

Voter Challenges

One of most frequently-used methods of voter intimidation in contemporary times is actually one that has been used quite often throughout the darker side of our voting history: vote challengers at heavily minority polling places. This is a technique by which a group will use voter lists and send volunteers to challenge the eligibility of voters at pre-selected polling places, in numerous instances those that are predominantly African-American, and increasingly, Latino- or student-heavy.

A joint report by Demos and Common Cause reports the following:

[In 2010] an organized and well-funded Texas-based organization with defined partisan interests, the King Street Patriots, through its project True the Vote, was observed intimidating voters at multiple polling locations serving communities of color during early voting in Harris County [Texas.] [...] In a 2011 special election in Massachusetts, a Tea Party group was reported to have harassed Latino voters and others at the polls in Southbridge, Massachusetts.²⁶¹

A witness at the Texas NCVR hearing noted that True the Vote activists were challenging voters on the basis, for example, that six or more people were living at the same address. Minority citizens are much more likely to live in multiple family and multi-generational homes.²⁶² Pew studies have found that indeed Hispanics (22 percent), blacks (23 percent) and Asians (25 percent) are all significantly more likely than whites (13 percent) to live in a multi-generational family household.²⁶³

In 2012, True the Vote announced that it would ramp up its activities, claiming it would recruit one million monitors to man the polls on Election Day. The group’s national recruiter declared at its national summit that “his recruits’ job is chiefly to make voters feel like they’re ‘driving and seeing the police following you.’” Tom Fritton of Judicial Watch has been a featured



At the NCVR Texas state hearing, Maureen Haver, a Common Cause Texas Board Director, testified about voter suppression tactics deployed in Harris County during the 2010 election cycle. PHOTO CREDIT: SAMUEL WASHINGTON

guest at True the Vote events, telling recruits prior to the 2012 election that “[w]e are concerned that Obama’s people want to be able to steal the election in 2012” with the “illegal alien vote” and a “food stamp army.”²⁶⁴

In Massachusetts, NCVR heard testimony that local “voter integrity” groups in 2012 had observers challenging the ballots of those who brought someone to the polls to help them vote, anyone who was speaking Spanish, and people with Spanish sounding last names. In addition, according to testimony, “observers were directly confronting and engaging with voters in an intimidating manner, they were photographing their identification when it was presented to poll workers, and they were videotaping people.”²⁶⁵

In North Carolina in 2012, the State Board of Elections itself reported a number of complaints about voter challenges and intimidation and issued a directive to county boards on how such activities should be stopped. The Board was compelled to clarify the illegal nature of such acts. The Board reported that campaign and party supporters were breaching the buffer zones of polling places and approaching voters, using aggressive and profane language in some instances. It further reported on a series of deceptive practices, including voters being told that they can vote by phone or online; that if they affiliated with a certain political party that they must vote on Wednesday, November 7, instead of Tuesday, November 6; that if they have an outstanding ticket they cannot vote; and that they are required to re-register in order to vote.²⁶⁶

The new all-encompassing election law passed in North Carolina may facilitate large-scale voter challenge efforts because challengers are no longer required to live in the precinct where they issue challenges. At the March 28, 2014 NCVR hearing in North Carolina, the Legal Director of the ACLU of North Carolina related that,

[j]ust last night in Buncombe County Voter Integrity Project challenged over 180 voters on the voter rolls in Buncombe County. [T]here are 80 precincts in Buncombe County. [...] All of those challenges were to voters living in 11 precincts in the city center of Asheville, which is the only place in Buncombe County that has a sizable African-American population.²⁶⁷

As described in Chapter 7, in Hamtramck, Michigan, DOJ filed a complaint after the November 2, 1999 general election, leading to a consent order.²⁶⁸ On Election Day, more than 40 voters who were dark skinned or appeared to be of Arab background had been challenged by a group calling itself “Citizens for a Better Hamtramck” on the basis of citizenship, either before or after they had signed their applications to vote. As a result, election inspectors required those voters to take a citizenship oath as prerequisite to voting.²⁶⁹

Other Recent Forms of Intimidation

While private individuals at the polling place are often a problem, sometimes it is poll workers and other people officially associated with elections operations who engage in intimidating behavior. The district court in *Shelby County v. Holder* noted that Congress, prior to reauthorizing the VRA, heard testimony that “[i]n *Shelby County’s* home state of Alabama, there were reports of voting officials closing the doors on African-American voters before the... voting hours were over,” as well as “of white voting officials using racial epithets to describe African-American voters in the presence of federal observers.”²⁷⁰ The district court further related that a DOJ official “described the harassment of black voters by white poll officials in Alabama, including one instance in which a local poll official remarked while remarking in the presence of a federal observer,” using a derogatory slur, that African-Americans, “don’t have principle enough to vote and they shouldn’t be allowed.”²⁷¹

In Iowa, the activities of the Secretary of State appear to have created an intimidating climate. According to testimony from the ACLU of Iowa provided to the NCVR, the Iowa Secretary of State’s long-running and costly investigation into the alleged presence of noncitizens on the voter registration list has had an intimidating effect. The organization recounted having heard from two people that armed investigation agents showed up at their homes—after having questioned their friends, family, and neighbors—and demanded papers proving citizenship. So far only a handful of charges have been brought as a result of this investigation, and according to the ACLU, none of them indicate any intent by the individual to commit fraud.²⁷² Secretary of State Matt Schultz ordered a two-year investigation that culminated in a report issued in May, 2014 in which he announced finding a total of 117 possible cases of election misconduct over two election cycles, most of which were unrelated to noncitizens. Only 27 people have been charged with a crime—half of whom were persons with prior felony convictions who had voted but had not applied to the governor to get their voting rights restored—with six convictions, four dismissals, and one trial acquittal at the time of the release

of the report.²⁷³ Schultz had used federal grant money to hire an investigator to conduct the investigation.²⁷⁴

In Tennessee, the NCVR learned of ways in which election officials were actually training poll workers to act in ways that could be intimidating and deter voters. At the Commission's hearing in Nashville, Eben Cathey from the Tennessee Immigrant and Refugee Rights Coalition testified about the poll worker training that had taken place in Davidson County, Tennessee in 2012. He showed NCVR a slide (shown below) from the training that reminded poll workers that only citizens are allowed to vote, incorrectly implying that to be eligible to vote people must be able to read, write, and speak basic English. The slide also noted that the proper procedure when a voter's citizenship is questioned is to challenge that voter's right to vote.²⁷⁵

Citizenship and Voting

- Only US Citizens who are TN residents may vote
- Naturalized citizenship requires reading, writing, speaking basic English [8CFR312]
 - There are some exceptions for those over 50 or those impaired in some way
- Challenge the Right To Vote (T.C.A. § 2-7-123) is the proper procedure if citizenship is questioned

APPLICATION CLERK PROCEDURES "Gatekeeper"

Slide from the Davidson County Election Commission's training for poll workers

In 2012, DCEC poll workers were trained to challenge a voter's eligibility based on their language ability. This is a clear violation of Tenn. Code Ann. 2-7-124, which provides the only grounds on which a voter may be challenged – not being registered, not being a resident of the precinct where s/he seeks to vote, not being registered under the correct name, already having voted, and having become ineligible to vote since the person registered. Language ability is not one of the five criteria. Nor, for that matter, is citizenship, which is established at the time of registration.

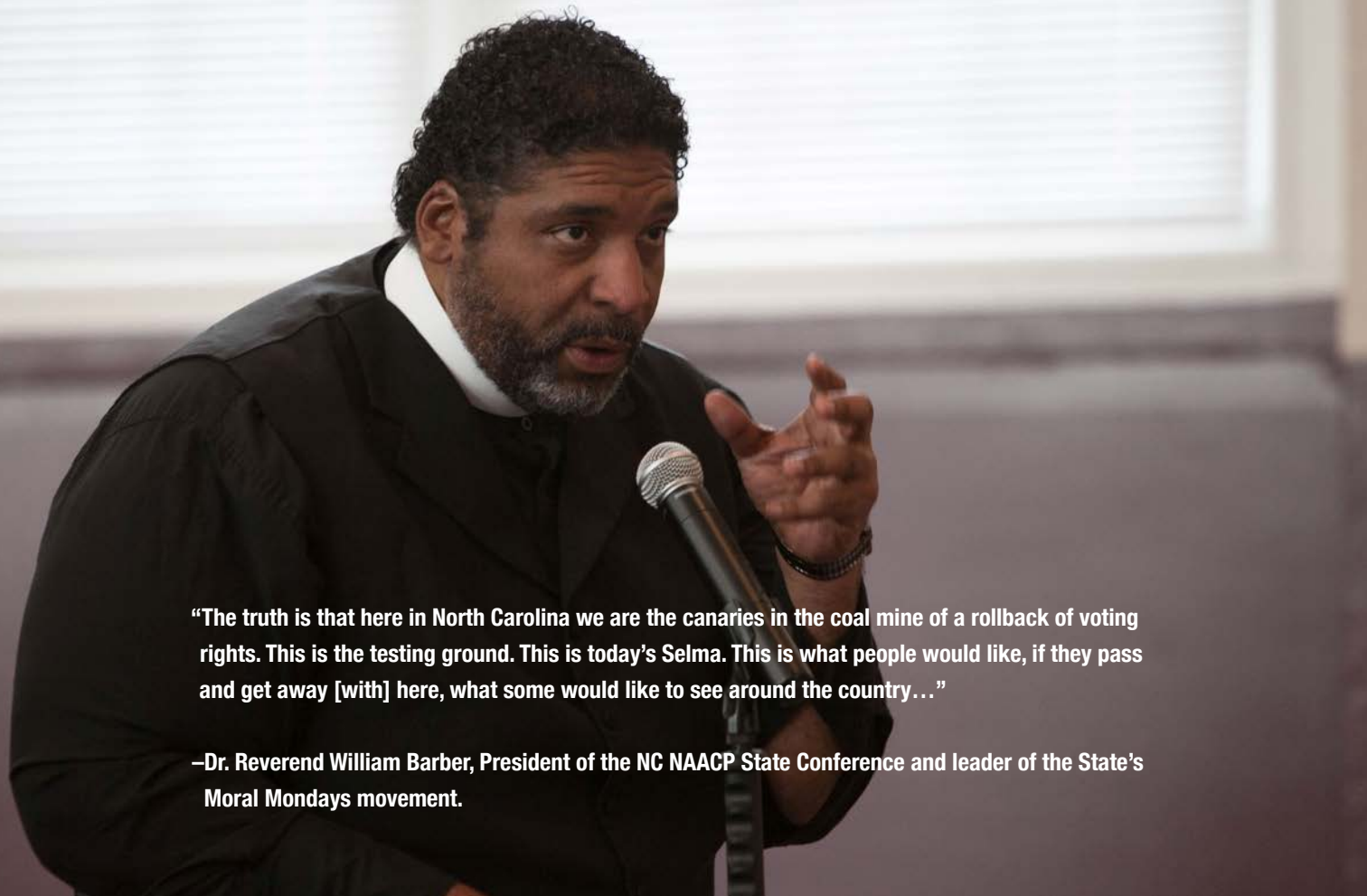
Slide image submitted by Eben Cathey with the Tennessee Immigrant Rights Coalition at the NCVR Nashville regional hearing. The slide was used in a poll worker training in Davidson County.

In other cases, state legislatures have passed laws that would require poll workers to act in ways that could be suppressive. In *Boustani v. Blackwell*, a 2006 case, a federal district court found unconstitutional an Ohio statute allowing any election judge to challenge any voter's citizenship and requiring any naturalized citizen to produce their naturalization certificate in order to be eligible to cast a regular ballot.²⁷⁶ The law had also stipulated that those naturalized

citizens whose eligibility was challenged but who were unable to provide a naturalization certificate would be required to cast a provisional ballot, which would only be counted if the citizen were to submit additional information to the Board of Elections within ten days.²⁷⁷

Noting that the law facially discriminated against naturalized citizens with regard to their right to vote, thereby casting them as second-class citizens, the court in *Boustani* made clear that for the statute to be valid the State would need to demonstrate a compelling governmental interest requiring the measure. The court found no compelling justification for the distinction drawn by the State between naturalized and native-born citizens.²⁷⁸ The court further found that because replacing a lost or otherwise unavailable certificate of naturalization costs two hundred and twenty dollars, and the ability to pay this price bore “no relation to voting qualifications and burden[ed] a fundamental right of the citizenry,” the requirement to produce a certificate of naturalization could not stand.²⁷⁹ The court concluded by expressing “grave” concern about the effects of implementing the statute as it gave wide latitude to election judges or poll workers to profile voters—using their unbridled discretion to challenge based on “appearance, name, looks, accent or manner”—and found it “offensive to single out a voter in the public polling place, thereby subjecting him to embarrassment or ridicule while attempting to exercise a citizenship privilege.”²⁸⁰

PHOTO CREDIT: ALLISON MEDER



“The truth is that here in North Carolina we are the canaries in the coal mine of a rollback of voting rights. This is the testing ground. This is today’s Selma. This is what people would like, if they pass and get away [with] here, what some would like to see around the country...”

—Dr. Reverend William Barber, President of the NC NAACP State Conference and leader of the State’s Moral Mondays movement.

Case Spotlight

The Long Struggle for Voting Rights at Prairie View A&M University

The longstanding struggle of students at historically-black Prairie View A&M University in Waller County, Texas for full and equal voting opportunities is illustrative of the evolution of tactics aimed at making voting more difficult. Prairie View A&M is located in Waller County, a small rural county outside of Houston. Over the past four decades, county officials have repeatedly taken actions that interfered with the voting rights of students at Prairie View A&M.

In the 1970s, the County required college students wishing to register to vote to complete a “Questionnaire Pertaining to Residence,” which asked students various additional questions not required of other registrants. The questionnaire effectively precluded most students from registering to vote. Several lawsuits were brought challenging the practice. The U.S. District Court for the Southern District of Texas court invalidated the practice as a violation of the 26th Amendment,²⁸¹ and the Supreme Court summarily affirmed.²⁸²

Around the same time, DOJ, relying on Section 5 of the VRA, blocked a 1975 redistricting plan by the Commissioners’ Court of Waller County. The DOJ’s objection was based on the redistricting plan’s failure to include many of the Prairie View A&M students in the population base for the reapportionment of Waller County, resulting in a malapportionment.²⁸³

In 1992, the local district attorney, Buddy McCraig, indicted 19 Prairie View A&M students for allegedly voting twice, once in their hometown and once at the school. After groups asserted that the indictments were an act of voter intimidation and the district attorney’s actions were scrutinized, all 19 indictments were thrown out due to the lack of evidence. One of the indictments had involved an instance where a father and son with the same name had voted in the different locations.²⁸⁴

In 2003, a subsequent district attorney, Oliver Kitzman, also challenged the eligibility of Prairie View A&M students to vote, drafting a letter to the editor of the local paper publicly questioning the eligibility of students and threatening to prosecute students if they registered and voted in Waller County.²⁸⁵ Civil rights groups sued Kitzman for voter intimidation under Section 11(b) of the VRA, and Kitzman agreed to a consent decree affirming students’ right to vote.²⁸⁶

Shortly after the Section 11(b) lawsuit was filed in 2004, and a month before primary elections, the Waller County Commissioners’ Court voted to reduce the availability of early voting at the polling place closest to campus, from 17 hours over two days to six hours in

one day. This was particularly significant because the primary was scheduled during the students' spring break, so students would have to vote early if they planned on leaving town for the break. Civil rights groups filed a Section 5 enforcement action seeking to prevent implementation of the change without preclearance, and the County restored the early voting hours. Those restored voting hours appear to have been critical to the outcome of the election, as approximately 300 Prairie View A&M students exercised the early voting option (compared to only 60 on primary day), and a Prairie View A&M student who ran for a seat on the Commissioners' Court narrowly prevailed.²⁸⁷

In 2006, after more than 700 votes cast at the city of Prairie View polling station were challenged as having been cast without proper voter registration verification, numerous unprocessed voter registration applications were uncovered in the Election Office.²⁸⁸

In 2008, the County initially decided to offer only one early voting site, which was seven miles from campus, for the November general election. Following pressure from activists who sought an on-campus voting location, the County agreed to move the early voting site to a different location one mile from campus, but declined to create an on-campus voting option.²⁸⁹ Even as late as summer 2013, there was still no polling site on the Prairie View A&M campus. In July 2013, students drafted a letter to the Texas Secretary of State complaining of the lack of an on-campus voting option. The letter successfully pressured the Commissioners' Court, which finally agreed to install a polling site at the campus student center in September 2013.²⁹⁰

Without Section 5's protections, it may be difficult to respond as effectively to new threats to the voting rights of Prairie View A&M students.

“In 2012 [...] less than one-third of eligible youth went out to the polls in Texas. [...] And 36 public institutions of higher education [...] and dozens of quality private universities are available here in Texas, yet the voices of young people are still not being heard...”

Crystal Sowemimo, an intern for the Texas Public Interest Research Group, speaking on youth voter turnout in Texas. (NCVR Texas Hearing)



“I became a U.S. citizen on November 20th, 2013. I registered to vote right away. But I’m always afraid when I go to vote. No one will be able to speak Mandarin and help me if I have questions. Also at the Registrar Office, they should have staff who speak in Asian language[s] to help us understand the proposition that we are voting for. Many seniors like me want to vote. But we don’t want to make mistakes when we vote. We also don’t want to be treated with disrespect at voting place[s] because we do not speak English well.”

—Su Fang Gao, an 80-year-old public witness, testified in Cantonese about the need for staffing polling sites with workers who speak Chinese languages. (NCVR California state hearing)



CHAPTER 7

Language Assistance for Limited English-Speaking Citizens

One of the primary ways that minority language voters have suffered discrimination is through the use of English-only elections. It is difficult for a voter who cannot understand the ballot or a voter registration form to effectively participate in the electoral process. Recognizing this problem, beginning in 1975, Congress found that the use of English-only elections in jurisdictions with a significant number of limited-English proficient (LEP) voting age citizens discriminated against those voters. Congress imposed affirmative obligations on those jurisdictions to provide materials and language assistance in the language of the particular minority group. As discussed below, these language minority provisions have resulted in substantial progress; however, lack of compliance with these legal protections is not uncommon. The denial or insufficiency of language assistance in certain jurisdictions where it is legally required continues to deny language minority groups equal access to the polls.

Today, there are over 25 million people in the United States who do not speak English proficiently. Over 57 million adults speak a language other than English at home.¹ This is a 148 percent increase since 1980. Moreover, the trends indicate that these numbers will only continue to grow over the next decade and beyond. Experts predict that by 2020 there will be somewhere between 64 and 68 million people in the United States who do not primarily speak English at home.² As language minority communities continue to grow in the coming decades, it will be crucial to ensure that they are equal participants in the democratic process.

I. FEDERAL VOTING PROTECTIONS FOR LIMITED ENGLISH PROFICIENT CITIZENS

There are several federal voting protections for minority language citizens contained within the Voting Rights Act (VRA), including the following:

- **Section 203** places an affirmative obligation on covered jurisdictions to provide all voting information such as registration and voting notices, forms, instructions, polling site assistance, and ballots in the applicable minority group language.³ The covered minority groups under these provisions are voters who are of Spanish heritage, or are Asian Americans, American Indians, or Alaska Natives.



Drost Kokoye, a member of the public, spoke about the lack of minority language assistance at the Paragon Hills polling place in Nashville, Tennessee, at the NCVR Nashville regional hearing.
PHOTO CREDIT: JOSEPH GRANT

Every five years, the Census Bureau applies a formula to determine which jurisdictions are covered under Section 203 and for which language groups. For a jurisdiction to be covered under Section 203, the number of LEP, voting age citizens from the group must be either:

- » More than five percent of all voting age citizens within a state or locality,
- » More than 10,000 in number within a political subdivision, or
- » In the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American-Indian or Alaska-Native voting age citizens within the Indian reservation.⁴

Additionally, the illiteracy rate of such language minority citizens in the jurisdiction must be higher than the national illiteracy rate.⁵ Currently 25 states are either fully or partially covered by Section 203.

- **Section 4(e)** protects the right to vote of United States citizens educated in a language other than English in American-flag schools in any state, territory, the District of Columbia, or Puerto Rico. The provision provides that these citizens' voting rights cannot be denied because of their inability to read, write, understand, or interpret English.⁶
- **Section 208** provides that "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union."⁷

- The applicability of one other provision, **Section 4(f)(4)**, is uncertain in light of the *Shelby County v. Holder* decision. Jurisdictions covered under the Section 4(b) formula—i.e., jurisdictions that held English-only elections and had a registration rate lower than 50 percent or a turnout rate lower than 50 percent for the November 1972 elections and where more than five percent of the voting age citizens were from a minority language group—were subject to Section 5 preclearance and were required to provide the same types of language assistance as specified by Section 203. The *Shelby County* decision eliminated Section 5 preclearance for these jurisdictions but did not address the law’s constitutionality as it applies to the affirmative obligation to provide language assistance under Section 4(f)(4). Regardless, most of the Section 4(f)(4) jurisdictions are still obligated to provide language assistance under Section 203.

The scope of the minority language provisions has changed over the course of the VRA’s history based on the conditions found by Congress at the time.

1965: Limited Protections for Language Minorities

The original Voting Rights Act included a limited, yet important, provision for some language minority citizens: Section 4(e). This provision provides that an eligible voter who was educated up to the sixth grade in an American public school where the instruction was conducted in a language other than English cannot be denied the right to vote because of his or her inability to read or write English.⁸ The primary focus of this provision is on citizens who received their education in Puerto Rico. A challenge under Section 4(e) ended New York’s English literacy test, which had been utilized to disenfranchise Puerto Rican voters in New York.⁹

1975: Significant Expansion of the VRA to Protect Limited English Proficient Citizens

In 1975, Congress expanded the Voting Rights Act to provide significant legal protections for language minority citizens. Congress found that these protections were necessary because

voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language.¹⁰

Since “states and local jurisdictions have been disturbingly unresponsive to the problems of these minorities,”¹¹ Congress found it imperative to institute legal protections to ensure that language minority citizens are afforded equal access to voting, as required by the Fourteenth and Fifteenth Amendments to the United States Constitution. Among other things, Congress

added Section 203, which places affirmative language access obligations on jurisdictions¹² to provide “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots... in the language of the applicable minority group as well as in the English language.”¹³

Notably, the 1975 amendments also established that in some jurisdictions English-only elections constituted a “test or device” for purposes of coverage under Section 4(b) of the Voting Rights Act.¹⁴ Preclearance and federal observer protections were therefore extended to any jurisdiction in which more than 5 percent of voting age citizens were of a single language minority, election materials had been prepared only in English in the 1972 presidential election, and less than 50 percent of voting-age citizens had registered for or voted in the 1972 presidential elections.¹⁵

Although the additions to the VRA were intended primarily to assist Spanish-speaking citizens, Congress also found “evidence that although other language groups do not suffer from the same pervasive voting discrimination which has been demonstrated for persons of Spanish origin, they do register and vote in fewer numbers than their English-speaking neighbors.”¹⁶ As a result, Native Americans and Asian Americans were also covered under the VRA’s language assistance provisions.

1982: Reauthorization of Language Provisions for Ten Years

Originally enacted for a seven-year period, the language assistance provisions were reauthorized in 1982. During the debates surrounding reauthorization, Congress learned that in Texas the language assistance provisions contributed to a 64 percent increase in Mexican-American voter registration and a 30 percent increase in Hispanic elected officials in Texas over the prior four years.¹⁷

However, hostility and insufficient compliance with the language provisions continued. For example, U.S. Representative Robert Garcia testified in 1982 about the continuing unavailability of language assistance for language-minority voters, such as “election officials who did not permit bilingual poll workers to speak Spanish when that was what they were hired to do.”¹⁸ Finding that “[u]nless they have access to materials in a language they can understand, minority Americans clearly cannot exercise their right to vote”¹⁹ and acknowledging its “obligation to erase discrimination against Hispanic Americans and other minorities,”²⁰ Congress reauthorized the language assistance provisions for another 10 years.



Guest Commissioner Kathay Feng, Executive Director of California Common Cause, received testimony at the NCVR California state hearing. PHOTO CREDIT: ANDRIA LO

1992: Extension of the Coverage Formula for Section 203

In 1992, Congress not only reauthorized the existing language assistance provisions but extended them to “provide coverage for jurisdictions with significant populations which currently do not provide language assistance under Federal mandate.”²¹ It did this by extending the language assistance coverage formula to provide two additional criteria for coverage.

First, the 1992 amendments added the provision that a political subdivision is covered if “more than 10,000 of the citizens of voting age... are members of a single language minority and are limited-English proficient,”²² and if the illiteracy standard is also met. The House report explained that “[d]uring the period from 1982 until the present, the need for a numerical benchmark became clear, so that jurisdictions with large language minority populations that do not meet the 5 percent trigger” could otherwise attain coverage.²³ The House report found that—under the old formula—Latino, Asian-American and Native-American communities were insufficiently protected.²⁴ As such, the change was intended to address the fact that some language minority communities, though sizeable, are located in such populous areas that they do not constitute more than five percent of the population.²⁵ This 10,000 citizen benchmark has been particularly crucial for Asian-American citizens. “After the 1982 reauthorization, no Asian-American community outside of Hawaii qualified for assistance. Under the 1990 census, only Chinese Americans in San Francisco County would qualify on the mainland... [A] 10,000-citizen benchmark [resulted in] coverage for three additional Asian languages and five additional counties, including three large counties in the State of New York.”²⁶

Secondly, Congress also provided that “in the case of a political subdivision that contains all or any part of an Indian reservation,” a jurisdiction is covered if “more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient,”²⁷ and the illiteracy standard is met. Experience had shown, the House report stated, that “the American Indian and Alaska Native populations were not receiving the type of assistance they needed.”²⁸ Reservations, which have relatively small populations, often have boundaries that do not coincide with county or state lines, as many reservations were established before the states or counties came into existence.²⁹ The division of Native American communities across multiple states or political subdivisions allowed even areas with a relatively strong Native American presence to avoid coverage.³⁰ Thus, the House report found, “the 5 percent trigger has proven to be ineffectual in the Native American context.”³¹

Beyond expanding the reach of the language assistance provisions, Congress also reauthorized them for an additional 15 years. It found that “the four language minority groups covered by section 203—Hispanics, Asian Americans, American Indians and Alaska Natives—continue to experience educational inequities, high illiteracy rates and low voting participation.”³² Congress recounted numerous examples of the barriers to literacy and participation faced by non-English speakers, such as the fact that in 1991, Latinos age 25 and older had a high school graduation rate of only 51.3 percent, compared to 80.5 percent for non-Latinos.³³ While the language assistance provisions had produced a “closing of the gap between Hispanic and Anglo voter registration in areas where language assistance is provided”³⁴ and had not proved to be burdensomely costly,³⁵ Congress found that persistent disparities in access to the electoral process between English and non-English speakers justified the language assistance provisions’ further extension.

2006: Extension of Section 203 for 25 Years

In 2006, Congress reauthorized the provisions for an additional 25 years, and emphasized that covered jurisdictions “were required to provide language minorities with not only bilingual election materials but also bilingual election assistance, including oral assistance and other written election and voting assistance, such as instructions, guides, forms, notices, and ballots, in response to the needs demonstrated by limited English speaking citizens.”³⁶ The House Judiciary Committee Report accompanying the bill detailed a litany of problems facing voters with limited English proficiency and/or little education. For example, it recounted testimony that during the 2004 election in Pima County, Arizona, many LEP Latino voters were denied equal access to the electoral process due to a lack of bilingual ballots.³⁷ It noted that the Department of Justice (DOJ) had litigated an increased number of Section 203 cases since 2000, which the report described as “critical to protecting language minority voters.”³⁸

II. PROGRESS AND BARRIERS FOR LIMITED ENGLISH PROFICIENT VOTERS

The VRA's language assistance provisions are essential to ensuring equal participation for language minority communities that have historically been the targets of discrimination. Although voter participation rates for Asian Americans (47.3 percent), Latinos (48 percent),³⁹ and American Indians and Alaska Natives (46.6 percent)⁴⁰ continued to lag behind to that of whites (64.1 percent) in 2012,⁴¹ the VRA's language protections have positively influenced voter participation and turnout. Following the enactment of the language assistance provisions of the VRA, voter registration and turnout rates for Native Americans, Asian Americans, and Latinos have greatly increased:

- Following the 1992 extension of coverage under Section 203 to jurisdictions that had more than 10,000 LEP language minority voting age citizens, “the number of Asian-Americans registered to vote increased dramatically. Between 1996 and 2004, Asian-Americans had the highest increase of new voter registration[s], approximately 58.7 percent. During that same period, Asian-Americans experienced an increase in turnout of 71 percent.”⁴²
- The Latino voter registration rate has nearly doubled since the addition of the language assistance requirements in 1975. Additionally, between 1980 and 1990, Latino “voter participation increased [at] five times the national rate.”⁴³
- For Native Americans, between 1975 and 2013, in covered counties “[r]egistration and turnout increased between 50 percent and 150 percent.”⁴⁴

Studies and surveys have nearly uniformly shown a substantial increase in voter participation when language materials and assistance are provided—and by implication, participation is lower than it would be when language assistance is not provided.⁴⁵ For example, one witness testified at the National Commission on Voting Rights (NCVR) California state hearing that, “in San Diego County, [] once the county adopted a comprehensive [language assistance] program, voter registration increased by 20 [percent] in the Filipino American community and increased by 40 [percent] in the Vietnamese American community.”⁴⁶

A recent study found that even controlling for other variables, a county that is covered by Section 203 has a Latino voter turnout that is 15 percent higher than a similarly situated county that is not covered; counties with Spanish-speaking staff see Latino registration that is 6 percent higher than those without such staff; counties that provide voting materials in Spanish have a 4 percent higher Latino voter registration rate; and, finally, that “[a]ll other things equal, a county covered under Section 203 has Latino voter turnout that is 11 percent higher than non-covered counties.”⁴⁷ Moreover, Latino voter registration in covered counties is almost 15 percent higher than in non-covered counties.⁴⁸

Despite its effectiveness, some jurisdictions continue to fail to comply with Section 203. A 2005 study found that of jurisdictions covered for an Asian, Spanish, or Native language, a large number failed to provide at least one element of the language assistance required.⁴⁹ A memo provided to the Presidential Commission on Election Administration states flatly, “Despite an array of federal, state, and local laws and practices requiring accommodations for voters of limited English proficiency, the need for assistance is often unmet.”⁵⁰ The memo cites numerous recent problems, including poor and inaccurate translations that could have impacted voters’ ability to cast a meaningful ballot.⁵¹



On the left, Henry Yee, Co-Chair of the Chinatown Residents Association in Boston, testified at the NCVR Boston regional hearing on the need for Chinese language ballots in the City of Boston. He said, “The biggest right that we enjoy as American citizens is the right to vote, and because of the language barrier, a lot of times when these citizens will go and vote, it’s hard for them to tell on the ballot which—which one is maybe Bush or Obama, and there’s a lot of mistakes that would occur when they’re trying to vote.”

PHOTO CREDIT: MEREDITH HORTON

There are several recent examples of significant translation errors. In 2012, Maricopa County, Arizona published the wrong election date in the Spanish translation of official election materials, listing the election date as November 8 instead of November 6.⁵² The same problem was repeated on Spanish-language bookmarks distributed at a voter-education event.⁵³ In 2012, the Spanish translation of Maryland’s ballot summary misstated the proposed effect of the voter initiative on same-sex marriage.⁵⁴ “Barack Obama” was misspelled as “Barack Osama” on New York’s absentee ballots for Spanish speakers in 2008, and a 2010 ballot in Massachusetts had to be reprinted when it improperly spelled the word “Alguacil” (Spanish for “sheriff”) as “Aguacil” (Spanish for “dragonfly”).⁵⁵

In another memo for the Presidential Commission on Election Administration, it was noted that one in seven jurisdictions could not provide researchers registration materials in required languages, one in four did not have the necessary personnel to provide assistance, and one-third failed to provide either translated materials or bilingual personnel.⁵⁶

Additionally, at the California state hearing of the NCVR, Deanna Kitamura, a senior staff attorney for the Voting Rights Project of Asian Americans Advancing Justice of Los Angeles, told the Commission of serious failures to comply with Section 203 obligations for Asian languages during the 2012 election, including missing translated materials and the absence of bilingual poll workers.⁵⁷ The Commission further received testimony stating that the

Department of Justice has filed nine lawsuits for failure to comply with Section 203 in California since 2004.⁵⁸

At the NCVR Pennsylvania state hearing, Jerry Vattamala, an attorney for the Asian American Legal Defense and Education Fund, talked about voting accessibility for language minorities in Philadelphia. The City agreed to provide voting assistance in Chinese, Khmer, Korean, and Vietnamese. Vattamala remarked, “Since that time, they have significantly backslid each successive election, until the point in 2012 where there were only four Asian language interpreters for the entire city... [In] South Philadelphia... there was long lines of Vietnamese-American voters that needed language assistance, but there was no interpreter.”⁵⁹

The Commission also heard about a failure to provide language assistance for Haitian Creole speakers in several counties in Florida. Until 2006, Miami-Dade County was required by a consent decree to provide Creole language assistance and hire Creole-speaking poll workers. However, by 2012, Creole-speaking voters in Palm Beach, Broward, and Miami-Dade Counties reported “that they did not have adequate access [to] translation or literacy assistance.” In some cases this led to voters mistakenly invalidating their ballots.⁶⁰

The impressive gains in voter registration and participation for LEP voters after the enactment of the VRA’s language minority provisions are a welcome sign of progress. However, the continued reports of insufficient compliance with language assistance requirements and hostility toward LEP voters in some jurisdictions, as illustrated by testimony before the NCVR and the litigation summaries below, highlight the need to continue working to ensure true equal and meaningful access to voting throughout the United States.

III. EXAMPLES OF RECENT LANGUAGE ACCESS LITIGATION

Between 1995 and 2014, there have been 58 successful language minority cases and settlements (matters) throughout the United States (see Table 4 in Chapter 2 for a table outlining the languages and states involved). A great majority of these cases involved Spanish-speaking voters. A breakdown for the matters involving different language minorities is as follows:

- 46 matters involved Spanish.
- Ten discrete matters involved Asian languages: Seven involved Chinese, four involved Vietnamese, two involved Korean, one involved Japanese, one involved Bengali, one involved Tagalog, and one involved Ilocano.

- Five discrete matters involved a Native American language: Three involved Navajo, two involved Keresan, one involved Lakota, and one involved Yup'ik.
- One matter involved Creole.

Some of these recent matters are summarized below.

Refusal to Provide Language Assistance

In *Nick v. Bethel*,⁶¹ the State of Alaska entered into a settlement agreement as a result of its longstanding disregard for the federally protected voting rights of its Native citizens. The Bethel Census Area is 81.6 percent Alaska Native or American Indian, and its most populous town the City of Bethel has a population that is 61.8 percent Alaska Native or American Indian. Yup'ik is the most common native language in Alaska, and many elders cannot read or speak English. Language assistance is especially important in Bethel because the illiteracy rate among the Eskimo limited-English proficient population is 21.46 percent, almost 16 times the national illiteracy rate of 1.35 percent.⁶² However, plaintiffs contended that the State failed to provide the language assistance required by Section 203 of the VRA.

Yup'ik is historically a written language, and the State of Alaska has provided other, non-election documents in Yup'ik.⁶³ The City of Bethel was continuously covered by Section 4(f)(4) since October 22, 1975.⁶⁴ Despite this, plaintiffs, who were illiterate in English, alleged that Bethel had falsely told Yup'ik-speaking voters that they must go into the voting booth alone and that no one may see their votes, denied voters their right to select or receive assistance from the assistor of their choice, required Yup'ik-speaking voters to be assisted by poll workers not fluent in Yup'ik, and required that all assistance take place outside the voting booth.⁶⁵ In 2002 and 2004, the DOJ sent letters to remind Bethel of the VRA's bilingual election requirement.⁶⁶

The State's response to the litigation was characterized by a high degree of resistance and hostility. The district court found that "evidence of past shortcomings justifies the issuance of injunctive relief to ensure that Yup'ik-speaking voters have the means to fully participate in... State-run elections."⁶⁷ Although the State had been "covered by Sections 203 and 4(f)(4) for many years[, it] lacks adequate records to document past efforts to provide language assistance to Alaska Native voters" and "the revisions to the State's minority language assistance program, which are designed to bring it into compliance[,] are relatively new and untested."⁶⁸ In granting a preliminary injunction ahead of the 2008 elections to obligate the State to provide language assistance to Yup'ik voters (including translators, sample ballots, and a Yup'ik-English glossary of election terms), the district court observed that

the State “had failed to [...] provide print and broadcast public service announcements (PSA’s) in Yup’ik, or to track whether PSA’s originally provided to a Bethel radio station in English were translated and broadcast in Yup’ik; ensure that at least one poll worker at each precinct is fluent in Yup’ik and capable of translating ballot questions from English into Yup’ik; ensure that ‘on the spot’ oral translations of ballot questions are comprehensive and accurate, or require mandatory training of poll workers in the Bethel census area, with instructions on translating ballot materials for Yup’ik-speaking voters with limited English proficiency.”⁶⁹

The State argued that because it had already begun to take steps to remedy its defective language assistance program, an injunction was not necessary, an argument that the district court rejected because of the long history of noncompliance.⁷⁰

Effective Minority Language Assistance Leads to Electoral Success

A 1999 case filed in Passaic County, New Jersey, illustrates the impact of increased compliance with Section 203 of the VRA.⁷¹ Starting after World War II, Passaic County experienced an influx of Latino residents, and eventually became covered by Section 203 in 1984.⁷² Latino presence continued to increase, going from 21.7 percent of the county population in 1990 to 30 percent in 2000. The County, however, had failed to comply with the language assistance requirements of state and federal statutes, which resulted in a state court invalidating the result of the Patterson city council elections in 1986 and ordering the County to provide bilingual poll workers in future elections.⁷³ Over the next several years, the County continued to disenfranchise Latino voters by failing to comply with the court order. Latino voters continued seeing a lack of Spanish-speaking poll workers, insufficient Spanish-language materials at the polls, failure to advertise election information in Spanish-language media, as well as ethnically derogatory remarks by poll workers and their refusal to allow voters to obtain assistance in voting by a person of their choice.⁷⁴ Eventually in 1999, the DOJ filed suit, which resulted in a consent decree, but the County failed to comply.⁷⁵ In 2000, the DOJ filed an application to hold the County in contempt, and under an agreed order, the court appointed an independent elections monitor, granting him sweeping authority to bring the County into compliance with its language assistance obligations.⁷⁶ By May 2002, vast improvements had been made, including:

- the appointment of the County’s first Latino member to the four-member Board of Elections;
- the appointment of a Latino to a senior position in the County’s elections office (i.e., deputy superintendent of elections);

- registration of thousands of new Latino voters; and
- increasing availability of Spanish-language materials at the polls and a record-breaking Latino voter turnout.

These improvements were followed in short order by the election of the first Latino member of the County Board of Freeholders and the election of the first Latino mayor in Passaic City.⁷⁷

Similarly, in 1998, the Department of Justice filed a lawsuit against the City of Lawrence, Massachusetts, on behalf of Latino citizens, some of whom were LEP voters.⁷⁸ The City of Lawrence had been covered under Section 203 since 1984; however, “the jurisdiction had done little to comply with” its obligations.⁷⁹ Along with vote dilution claims relating to the election systems for city council and school committee, the lawsuit alleged that the City had (1) failed to provide election-related materials in Spanish, as required by Section 203; (2) failed to assign Latino poll workers on the same basis as whites, in violation of Section 2; and (3) provided ineffective oral and written bilingual assistance and discriminatory poll worker assignments, in violation of Section 2.⁸⁰ In 1990, Latinos comprised 41.6 percent of the Lawrence population and 34.1 percent of the voting age population. As of 1997, approximately 31 percent of Lawrence’s registered voters were Latino. Importantly, 51.8 percent of Latino voting age citizens (or 12.8 percent of all voting age citizens) were LEP.⁸¹

In September 1999, the City entered into a settlement agreement with the DOJ, which, among other things, required the city to (1) hire a coordinator to implement the language access program;⁸² (2) provide Spanish translations of all election-related information;⁸³ (3) provide bilingual poll workers at each precinct; and (4) assign Latino poll workers in each precinct that was proportionate to the share of Latino registered voters in the precinct.⁸⁴

The settlement agreement had a major impact. Previously, only one Latino had been elected to the City Council in its history, and that candidate had run from a majority-Latino district.⁸⁵ “In the first election after the settlement, three Latinos were elected to the nine-member City Council.”⁸⁶ One of these candidates, Marcos Devers, won running at-large. Devers had lost four previous times in at-large elections for City Council.⁸⁷ Later, in 2009, William Lantigua was elected mayor of Lawrence, making him the first elected Latino mayor in the State of Massachusetts.⁸⁸

A third matter that highlights the positive impact of Section 203 compliance involved Harris County, Texas. Though the County took some steps to comply in 2002 when it was first required to provide assistance in Vietnamese under Section 203,⁸⁹ it did not translate its electronic ballot. According to Trang Q. Tran of the Asian American Legal Center, while the remedy had “been to provide paper templates in [the] Vietnamese language to be used with

the E-Slate machines in the polling booths” these were, at times, denied to Vietnamese voters requesting them, or they arrived late to the polling locations and were not distributed.⁹⁰ After the November 2003 election, the County and the DOJ arrived at an agreement, which resulted in the translation of the County’s ballot into Vietnamese, the hiring of a Vietnamese staff member in the county clerk’s office, and the staffing of precincts with a significant number of Vietnamese-speaking poll workers. These changes resulted in the doubling of Vietnamese-American voter turnout,⁹¹ and “are probably responsible, in part, for the [2004] election of Hubert Vo, the first member of the Texas legislature of Vietnamese descent.”⁹² Vo defeated “the incumbent chair of the Appropriations Committee by sixteen votes out of more than 40,000 cast.”⁹³

Hostility Toward Limited English Proficient Voters



On the left, Ana Sostre-Ramos testified at the NCVR Pennsylvania state hearing about Spanish-speaking voters being turned away at residential polling sites in Philadelphia. PHOTO CREDIT: BEN BOWENS

In July 2008, DOJ filed suit against Salem County, New Jersey, in *United States v. Salem County*, alleging violations of Sections 4(e), 208, and 2 of the VRA related to Puerto Rican and other Latino voters in Penns Grove, a Borough of Salem County.⁹⁴ DOJ claimed that Salem County and Penns Grove officials failed to translate ballots into Spanish, prohibited family members or other people from assisting voters with limited English skills, interfered with assistance when it was allowed, directed hostile or discriminatory remarks to Latino voters at elections, turned away Latino voters, and committed other violations of the law.⁹⁵ On the same day DOJ filed its complaint, it entered into a settlement agreement with Salem County to resolve the dispute, and the court approved the settlement agreement shortly after it was filed.⁹⁶

In another case in Pennsylvania, *United States v. Berks County*, language issues joined with hostile actions led the court to require Berks County to provide Spanish language assistance. In this case, the DOJ brought suit under Sections 2, 4(e), and 208 (the jurisdiction was not covered by Section 203). The court found that poll workers made discriminatory remarks to Latino voters, prevented and discouraged them from voting (e.g., because they could not understand their names or refused to “deal” with Latino last names),⁹⁷ and treated them differently with respect to voter identification requirements—they demanded photo identification from Latino voters even though such identification was not legally required in order to vote in the State.⁹⁸ The court also found that the County did not provide bilingual oral and written assistance at the polls and barred Latino voters from bringing in people to assist them.⁹⁹ In granting the United States’ motion for preliminary injunction, the court ruled that the lack of bilingual materials and poll workers had a “severe” impact on limited-English proficient voters.¹⁰⁰ In that same order, the court noted the problems in voting experienced by a woman born in Puerto Rico who was unable to read the English-language ballot, and consequently pushed all the buttons on the ballot and was unsure who she had voted for.¹⁰¹

Moreover, the Berks County government had been made aware of the above issues by the Department of Justice four separate times between 2001 and 2002—after four elections—but the County still failed to take action to remedy the situation.¹⁰² The district court granted permanent relief on August 20, 2003.¹⁰³ The permanent injunction authorized the appointment of federal observers and ordered, among other things, that the County: (1) provide bilingual election materials; (2) provide trained bilingual poll workers and interpreters; (3) provide dedicated phone lines staffed by trained bilingual employees; (4) provide training for all poll workers to make them aware of voting rights and compliance with the VRA; and (5) appoint language coordinators to hold regular meetings with the Latino community and investigate and report on any complaints related to hostility toward Latino voters.¹⁰⁴

“In 2012 , APIA Vote-Michigan [...] [found that m]any poll sites failed to provide Bengali ballots, make translated materials available, or provide interpreters. [...] In one case [...] the translated sign displayed next to the Voter Bill of Rights had nothing to do with voter [...] rights at all. Poll workers also complained that voting machine scanners would not read the translated Bengali ballots,” testified Theresa Tran of APIA Vote-Michigan at the NCVR Michigan state hearing.

The case *United States v. City of Hamtramck*, Michigan is an additional example of the interconnection between racial hostility and minority language issues. Though this case was brought under Sections 2 and 208 of the VRA because Hamtramck was not covered under Section 203, a substantial part of the remedy involved requirements for language assistance. A group of Arab citizens in Hamtramck, an enclave surrounded by the City of Detroit, had their right to vote challenged and were not allowed to vote in a 1999 election until they

recited an oath of citizenship—even when some were able to produce an American passport. The challenges were made by a “group named Citizens for a Better Hamtramck..., which had registered with the city clerk to provide challengers for the city elections in an effort to keep the election ‘pure.’”¹⁰⁵ In 2000, a court entered a consent decree:

“order[ing] the city to establish a program to train election officials and private citizens regarding the proper grounds for election challenges.” The order also required the placement of bilingual poll workers at every polling location in Hamtramck on Election Day and assigned federal observers to ensure the city’s compliance with the order.¹⁰⁶

There continued to be problems in Hamtramck after the consent decree, including the City’s failure to hire sufficient numbers of bilingual poll workers. This led the court to extend the consent decree to 2004, amending it to require at least two bilingual poll workers in every precinct for the assistance of Arab-American voters.¹⁰⁷

Case Spotlight

California's English-Only Initiative and Recall Petition Process

A major barrier identified by witnesses from the Greenlining Institute and the Mexican American Legal Defense and Educational Fund (MALDEF) during the NCVR California state hearing is that, according to a ruling by the U.S. Court of Appeals for the Ninth Circuit, individuals and organizations that circulate recall petitions and initiatives for voter signatures may do so only in English without violating Section 203 of the VRA. California's ballot initiative process, established in 1911, plays a crucial role in determining public policy in California. However, because initiative petitions may be circulated in English only, LEP voters are subject to manipulation by unscrupulous paid signature gatherers who misinterpret or deliberately lie about the substance of the initiative the LEP voter is being asked to support. In *Padilla v. Lever*, an en banc panel of the Ninth Circuit determined that the scope of Section 203 is limited to "voting materials" provided by the government, which does not include recall petition materials.¹⁰⁸ In that case, plaintiffs challenged a recall petition that was circulated in English in a district with a high concentration of LEP voters. MALDEF, who represented the challengers, testified that a number of people signed the petition after being told that they were signing in support of something else, and that the petition resulted in the recall of a school board member who was supported by the Latino community, according to MALDEF.

At the NCVR California hearing, MALDEF President Thomas Saenz testified about the barriers Latinos face when voting in English-only elections. PHOTO CREDIT: ANDRIA LO



“For Latino citizens that speak little English, [much recent research shows that] access to Spanish ballots [...] and language assistance increases and influences election turnout.”

– Dr. Mindy Romero, Director of the California Civic Engagement Project at the UC Davis Center for Regional Change (NCVR California hearing)

“I have been part of those who have gone abroad extolling the American process [...] I went to the Soviet Union [...] I went to South Africa [...] during Apartheid [...] I was there to try to offer a little encouragement [...] I cited the American experience. I cited the struggle we had in the South with voting rights, the lynchings of persons who attempted to exercise their right[s] [...] We had the ‘64 Civil Rights Act. We had the ‘65 Voting Rights Act. [...] Throughout the country, we had African Americans serving on our various bodies of jurisprudence. These things, I felt, were made possible because persons were able to vote. [...] And, now, here in this country [...] we are engaged in a degree of voter repression [...] [and] it’s urgent that we turn this around.”

—Guest Commissioner and retired Judge for the U.S. Court of Appeals for the Sixth Circuit, Hon. Nathaniel Jones at the NCVR Columbus regional hearing



CONCLUSION

This report sets forth in substantial detail the breadth and depth of how election laws and practices adopted or implemented since 1995 have had a negative and disproportionate impact on the full and equal participation of African-American, Latino, Native American, and Asian voting age citizens.

Voting Rights Act violations, other than those related to language assistance, remain most concentrated in the jurisdictions that were formerly covered by Section 5. Although the full impact of the *Shelby County* decision and its effective nullification of Section 5 cannot be fully comprehended so soon after the decision, the immediate reaction of several formerly covered states has been to implement voting changes that a federal court or the Department of Justice had affirmatively blocked or that the jurisdiction had deferred while waiting for the *Shelby County* decision. These states' instantaneous reaction to the Court's decision does not portend well for the future.

As the minority language population continues to grow and move in larger numbers to more states and localities, violations of Section 203 and the other language-related protections—sometimes in combination with intimidation or harassment—are occurring in new areas of the country. Indigenous peoples also continue to suffer recent and severe discrimination in voting.

Perhaps the most disturbing emerging trend involves the spike in activities described in Chapter 6: laws and practices—like government-issued photo identification requirements for voters—which effectively disenfranchise racial minorities in greater number, and the laws that reduce the availability of methods of voting—like early voting—that minority voters use more than white voters. It is difficult not to view these voting changes with a jaundiced eye, given the practical impediments they create and the minimal, if any, measurable legitimate benefit they offer. The “omnibus” voting legislation passed in North Carolina is perhaps the best example of how this emerging trend and the *Shelby County* decision have coalesced: after *Shelby County*, the North Carolina legislature quickly enacted a law that, among other things, contains a restrictive voter identification requirement, reduces the duration of early voting, and eliminates same-day voter registration during the early voting period.

In 1964, the Supreme Court stated in *Reynolds v. Sims* that because “the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” This principle of constitutional law should guide courts, policymakers, election administrators, and citizens every time they contemplate an election law or practice. All too often, however, this principle is ignored—to the detriment of minority voters. As long as this is the case, specific legal protections that deter and combat the broad range of methods of discriminating against minority voters, and the vigorous enforcement of these protections, remain vitally important to American democracy.

ENDNOTES

CHAPTER 1

- 1 *South Carolina v. Katzenbach*, 383 U.S. 301, 315–16
- 2 See *United States v. Cruikshank*, 92 U.S. 542 (1876); *United States v. Reese*, 92 U.S. 214 (1876).
- 3 See J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910*, at 45–62 (1974).
- 4 Richard Wormser, *The Rise and Fall of Jim Crow* 165–82 (2003).
- 5 See, e.g., *Katzenbach*, 383 U.S. at 313.
- 6 U.S. Comm'n on Civil Rights, *The Voting Rights Act: Ten Years After* 43 (1975).
- 7 President Lyndon B. Johnson, Special Message to Congress: The American Promise (Mar. 15, 1965), available at <http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650315.asp>.
- 8 Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437.
- 9 *Id.* § 4 (codified as amended at 42 U.S.C. § 1973b).
- 10 42 U.S.C. § 1973b(c).
- 11 Voting Rights Act, § 6.
- 12 42 U.S.C. § 1973f.
- 13 See 42 U.S.C. § 1973c.
- 14 See Voting Rights Act, § 2 (codified as amended at 42 § 1973).
- 15 42 U.S.C. § 1973b(e).
- 16 42 U.S.C. § 1973i.
- 17 *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966).
- 18 *Id.* at 328 (footnote omitted).
- 19 Voting Rights Act, § 4.
- 20 Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314; Voting Rights Amendments of 1975, Pub. L. No. 94-73, 89 Stat. 400; Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131; Fannie Lou Hamer, Rosa Parks, Coretta Scott King, Cesar Chavez, Barbara C. Jordan, William C. Valasquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577.
- 21 Voting Rights Act Amendments of 1970.
- 22 Voting Rights Amendments of 1975.
- 23 H.R. Rep. No. 109-478 (2006); H.R. Rep. No. 97-205 (1982); H.R. Rep. No. 94-196 (1975); H.R. Rep. No. 91-397 (1969).
- 24 H.R. Rep. No. 94-196.
- 25 *Id.*
- 26 *Id.*
- 27 *Voting Rights Amendments of 1975* § 203 (codified as amended at 42 U.S.C. § 1973aa-la).
- 28 *Id.*
- 29 See *Mobile v. Bolden*, 446 U.S. 55 (1980).
- 30 S. Rep. No. 97-417 (1982).
- 31 *Katzenbach v. Morgan*, 384 U.S. 641 (1966).
- 32 *Georgia v. United States*, 411 U.S. 526, 535 (1973).
- 33 *City of Rome v. United States*, 446 U.S. 156, 172–82 (1980).
- 34 *Lopez v. Monterey Cnty.*, 525 U.S. 266 (1999).
- 35 *Backgrounder: The Voting Rights Act*, VRA for Today, http://vrafortoday.org/?attachment_id=212 (last visited July 16, 2014).
- 36 See generally Nat'l Comm'n on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work 1982-2005* (2006).
- 37 Press Release, Leadership Conference on Civil Rights, Civil Rights Coalition Celebrates Renewal of Landmark Voting Rights Act (July 27, 2006), available at <http://www.civilrights.org/press/2006/civil-rights-coalition-celebrates-renewal-of-landmark-voting-rights-act.html>.
- 38 *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471 (1997).
- 39 *Georgia v. Ashcroft*, 539 U.S. 461 (2003).
- 40 H.R. Rep. No. 109-478, at 66-72.
- 41 *Id.* at 61-62.
- 42 *Section 2 of the Voting Rights Act*, U.S. Dep't of Justice, http://www.justice.gov/crt/about/vot/sec_2/about_sec2.php (last visited July 16, 2014).
- 43 42 U.S.C. § 1973(b).
- 44 S. Rep. No. 97-417, 28-29 (1982).
- 45 *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986). The potential Section 2 factors include:
 1. the history of official voting-related discrimination in the state or political subdivision; 2. the extent to which voting in the elections of the state or political subdivision is racially polarized; 3. the extent to which the state of political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting; 4. the exclusion of members of the minority group from candidate slating processes; 5. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; 6. the use of overt or subtle racial appeals in political campaigns; and 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.
- See *id.* at 36–37. Also potentially relevant is: whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group [or] whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.
- Id.* at 37 (quoting S. Rep. 97-417, at 28-29).
- 46 See Nat'l Comm'n on the Voting Rights Act, *supra* note 36, at 88.
- 46a *Gingles*, 478 U.S. at 49-51.
- 47 *Id.* at 46.

- 48 Section 5 defines a voting change as any practice that differs either from the pre-existing practice or from the practice in effect on the date that the jurisdiction's coverage began. 42 U.S.C. § 1973c(a). Most of the Section 5 jurisdictions were covered for changes after November 1, 1964 based upon the original enactment of Section 5 in 1965; a few were covered for changes after November 1, 1968 based upon a 1970 amendment to Section 5; and others were covered after November 1, 1972 based upon the 1975 amendments to the statute. *Jurisdictions Previously Covered by Section 5*, U.S. Dep't Justice, http://www.justice.gov/crt/about/vot/sec_5/covered.php.
- 49 *Allen v. State Board of Elections*, 393 US 544, 566 (1969).
- 50 *Clark v. Roemer*, 500 U.S. 646, 658 (1991).
- 51 Submissions to the Attorney General generally were required to be decided within 60 days or the submitted voting change automatically was precleared by operation of law. However, in certain circumstances the Attorney General was authorized to extend the review period, most particularly when needed to ensure that preclearance decisions regarding controversial changes were based on a complete factual record. See Procedures for Administration of Section 5 of the Voting Rights Act of 1965, As Amended, 28 C.F.R. § 51.10.
- 52 See *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966); 28 C.F.R. § 51.52(a).
- 53 See 42 U.S.C. § 1973c(a).
- 54 *Beer v. United States*, 425 U.S. 130, 141 (1976).
- 55 See 42 U.S.C. § 1973b(c).
- 56 *Id.* § 1973b(f)(3).
- 57 See *Katzenbach*, 383 U.S. at 329–33.
- 58 42 U.S.C. § 1973b(a)(1)–(6).
- 59 See Section 4 of the Voting Rights Act, U.S. Dep't of Justice, http://www.justice.gov/crt/about/vot/misc/sec_4.php#bailout (last visited July 24, 2014).
- 60 *Jurisdictions Previously Covered by Section 5*, *supra* note 48.
- 61 Voting Rights Act Amendments of 1975 (enacting 42 U.S.C. § 1973b(f)(4)).
- 62 *Id.* (enacting 42 U.S.C. § 1973 aa-1a).
- 63 28 C.F.R. § 55.8(a).
- 64 Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 198 (Oct. 13, 2011).
- 65 42 U.S.C. § 1973b(f)(4); *id.* § 1973aa-1a(b)(3)(A).
- 66 Attorney General's Guidelines on Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 76 Fed. Reg. 169 (Aug. 31, 2011) (codified at 28 C.F.R. pt. 55).
- 67 *Id.* § 55.2(b).
- 68 *Id.* § 55.16.
- 69 *Id.* § 55.17.
- 70 42 U.S.C. § 1973b(e).
- 71 42 U.S.C. § 1973a(a).
- 72 *Id.* § 1973a(c).
- 73 *Id.* § 1973aa.
- 74 *Id.* § 1973aa-6.
- 75 *Id.* § 1973i(a).
- 76 *Id.* § 1973i(b).
- 77 See generally Nat'l Comm'n on the Voting Rights Act, *supra* note 36, at 15-25 (discussing "The Two Problems Addressed by the Act[.]" disfranchisement and vote dilution).
- 78 See *Shelby County v. Holder*, 133 S. Ct. at 2633-35 (Ginsburg, J., dissenting).
- 79 *Bolden v. Mobile*, 542 F. Supp. 1050, 1075 (S.D. Ala. 1982).
- 80 *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).
- 81 *Dillard v. Crenshaw Cnty*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986).
- 82 This transformation of American politics has been documented in numerous reports, books, and articles. See, e.g., *Quiet Revolution in the South* (Chandler Davidson & Bernard Grofman eds., 1994); Nat'l Comm'n on the Voting Rights Act, *supra* note 36; U.S. Comm'n on Civil Rights, *supra* note 6; U.S. Comm'n on Civil Rights, *The Voting Rights Act: Unfulfilled Goals* (1981).
- 83 U.S. Comm'n on Civil Rights, *supra* note 6, at 43.
- 84 H.R. Rep. No. 109-478, at 12–17, 25–28.
- 85 *Id.* at 29-31.
- 86 *Voting Determination Letters for Mississippi*, U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=ms (referencing determination letters issued May 21, 1969 and May 26, 1969).
- 87 *Voting Determination Letters for Georgia*, U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=ga (referencing determination letters issued June 19, 1968 and July 11, 1968). *Voting Determination Letters for South Carolina*, U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=sc.
- 88 *Voting Determination Letters for South Carolina*, U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=sc (referencing determination letter issued March 6, 1972).
- 89 H.R. Rep. No. 94-196, at 10.
- 90 *Section 5 Objection Letters*, U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/index.php.
- 91 See Mark A. Posner, *The Real Story Behind the Justice Department's Implementation of Section 5 of the VRA: Vigorous Enforcement, as Intended by Congress*, 1 Duke J. Const. L. & Pub. Pol'y 79, 104-05 (2006).
- 92 S. Rep. No. 97-417, at 9–11.
- 93 S. Rep. No. 97-417, at 9–11.
- 94 *White v. Regester*, 412 U.S. 755 (1973).
- 95 S. Rep. No. 97-417, at 24-27 (discussing *Mobile v. Bolden*, 446 U.S. 55 (1980)).
- 96 *Quiet Revolution in the South*, *supra* note 82, at 35–36 (overview), 54–56, 61–64 (Alabama), 78, 99–100 (Georgia), 112–13, 120–21, 133 (Louisiana), 142–43, 151–52 (Mississippi), 171–73, 189 (North Carolina), 226–27, (South Carolina), 254–55, 264–68 (Texas), 297 (Virginia); Nat'l Comm'n on the Voting Rights Act, *supra* note 36, at 81–88.
- 97 *Garza v. County of L.A.*, 918 F. 2d 763 (9th Cir. 1990).
- 98 Mark Rosenbaum, Op-Ed, *Drawing Fair District Lines*, L.A. Times, (Sept. 27, 2011), <http://articles.latimes.com/2011/sep/27/opinion/la-oe-roosenbaum-county-supervisors-redistricting-20110927>.
- 99 *Reno v. Bossier Parish School Bd.*, 520 U.S. 471 (1997).
- 100 *Reno v. Bossier Parish School Bd. (Bossier Parish II)*, 528 U.S. 320 (2000).
- 101 *Id.* at 342-53 (Souter, J., dissenting).
- 102 Mark A. Posner, *Time is Still on Its Side: Why Congressional Reauthorization of Section 5 of the Voting Rights Act Represents a Congruent and Proportional Response to Our Nation's History of Discrimination in Voting*, 10 N.Y.U. J. Legis. & Pub. Pol'y 51, 114 (2006); Peyton McCrary et al., *The End of Preclearance As We Knew It: How the Supreme Court*

Transformed Section 5 of the Voting Rights Act, 11 Mich. J. Race & L. 275, 276, 284–86, 297 (2006). In *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), the district court denied preclearance to a Georgia congressional redistricting plan that was not retrogressive but which was adopted specifically to minimize the opportunity of African Americans to elect any members of the State's congressional delegation. The plan was adopted pursuant to the leadership of a redistricting committee chair who openly avowed a racial intent. The district court's decision was summarily affirmed by the Supreme Court. *Busbee v. Smith*, 459 U.S. 1166 (1983).

- 103 See *Pleasant Grove v. United States*, 479 U.S. 462, n.11 (1987); *City of Richmond v. United States*, 422 U.S. 358, 378–79 (1975).

104 *Georgia v. Ashcroft*, 539 U.S. 461, 482 (2003).

105 H.R. Rep. No. 109-478, at 68–72.

106 H.R. Rep. No. 109-478, at 68, 71.

107 *Shelby Cnty. v. Holder*, 811 F. Supp. 2d 424 (2011).

108 *Shelby Cnty. v. Holder*, 679 F. 3d 848 (2012).

109 *Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013).

110 *Id.* at 2627.

111 *Id.* at 2619.

112 *Id.* at 2632–52.

113 *Id.* at 2632–33 (footnote omitted).

114 *Id.* at 2650

CHAPTER 2

- 1 Cases brought under Section 2 of the VRA that raised successful claims based upon the failure to provide language assistance are included in the separate category of language assistance cases, along with cases brought under Sections 203, 4(f)(4), and 4(e) of the VRA.

- 2 The Section 2 and language assistance cases include those in which a court ruled for the plaintiffs, and those in which the parties entered into a consent decree or settlement requiring that the challenged election practice be replaced or altered (including decrees and settlements in which the defendants admitted a violation (or the equivalent) and those in which no violation was admitted). The language cases include a few matters where out-of-court settlements were reached without litigation being filed.

- 3 Had the passage of time purged the vestiges of historic voting discrimination (*i.e.* conditions as they existed *circa* 1965–75), then the cases should show no geographic clustering.

- 4 As indicated in note 2, in identifying successful Section 2 lawsuits we include adjudicated court findings of Section 2 violations as well as settlements of Section 2 claims for which there was no court finding. This is because it would seriously understate the scope of the problem to rely exclusively upon adjudicated violations. In the first place, it would be incorrect to assume that the strongest Section 2 cases were those that were finally adjudicated. Indeed, strong Section 2 cases are very likely to settle. Voting rights cases are widely known for being “fact-heavy”, and it is the policy of the Federal Rules of Civil Procedure and the federal courts to encourage settlements and to conduct trials only when necessary to resolve genuine factual disputes. Cases are routinely weeded out via dispositive motions when courts conclude that they do not present triable factual claims. While defendants frequently deny liability in settlement agreements, the fact that a settlement has altered the status quo in the plaintiffs' favor weighs strongly in favor of including them for purposes of assessing the extent of voting discrimination and the impact of the Voting Rights Act. Plaintiffs carry the burden of proof under Section 2, and a settlement is a reasonable indication that the defendants made a considered judgment that they stood a substantial risk that trial would result in a finding of liability against them.

- 5 At the time of the 2000 Census, nine states were fully covered under Section 4(b), and seven states were covered in

part, leaving 34 states and the District of Columbia entirely uncovered. When Shelby County was decided, there was one fewer partially-covered state, since the covered townships in New Hampshire had bailed out of coverage.

- 6 See *Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 202-03 (2006) (Findings of the Michigan Voting Rights Initiative).

7 *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006).

8 *Id.* at 440.

9 *White v. Regester*, 412 U.S. 755 (1973), the first case in which the Supreme Court upheld a claim of minority vote dilution, involved a Texas state legislative redistricting plan.

10 *Texas v. United States*, 887 F. Supp. 2d 133, 153, 159 (D.D.C. 2012) *vacated and remanded*, 133 S.Ct. 2885 (2013).

11 Cal. Elec. Code. §§ 14027-14032.

12 The constitutionality of the CVRA was unsuccessfully challenged in *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660 (2007). See also generally National Commission on Voting Rights, California State Hearing (Jan. 30, 2014) (transcript on file with the Lawyers' Committee) (discussing examples of successful litigation under the CVRA).

13 See Table 3, note b for an explanation as to six objections that are omitted from this objection count.

14 Two of the preclearance denials by the D.C. district court were preceded by administrative preclearance denials by DOJ regarding the same voting changes. Since the district court rulings superseded the DOJ determinations, these two administrative denials are not included in the total number of objection letters issued by DOJ.

15 This Report does not include Section 5 enforcement actions since 1995. Such cases concerned the limited (but important) question of whether voting changes were being implemented by a covered jurisdiction without the requisite preclearance. These cases can provide indirect evidence of efforts to implement discriminatory voting changes, but because they did not deal with the substantive question of whether the voting practices at issue were discriminatory or not, they are not included here.

16 28 C.F.R. § 51.52.

- 17 By contrast, Section 2 and Section 5 of the VRA do not require states to follow any specific procedures. Instead, they prohibit the use of voting practices and procedures that are shown to be racially discriminatory (under Section 2) or that jurisdictions could not show to be nondiscriminatory (under Section 5).
- 18 See Attorney General's Guidelines on Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. § 55 (2011), *available at* http://www.justice.gov/crt/about/vot/28cfr/55/28cfr55_2011.pdf; see also Thomas E. Perez, Assistant Att'y Gen., Dep't of Justice, Assistant Attorney General Thomas E. Perez Speaks at the National Association of Secretaries of State 2012 Conference (Jan. 30, 2012), *available at* <http://www.justice.gov/crt/opa/pr/speeches/2012/crt-speech-1201301.html>.
- 19 28 C.F.R. § 55.17
- 20 42 U.S.C. § 1973aa-6 ("Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.")

CHAPTER 3

- 1 See Mark A. Posner, *The Real Story Behind the Justice Department's Implementation of Section 5 of the VRA: Vigorous Enforcement, as Intended by Congress*, 1 Duke J. Const. L. & Pub. Pol'y 79, 102, 104–05 (2006).
- 2 See *id.*
- 3 See *id.*; see generally *Section 5 Objection Letters*, U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/index.php (last visited July 23, 2014), (listing determination letters issued by the Department of Justice by State). It was rare that a covered jurisdiction filed for preclearance with the U.S. District Court for the District of Columbia. From 1965 to 2006, that court denied preclearance in eleven cases. Posner, *supra* note 1, at 113–14. After the 2006 reauthorization, the district court denied preclearance in four additional cases: *Florida v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012); *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012), vacated and remanded, 133 S. Ct. 2886 (2013); *Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2013), *vacated and remanded*, 133 S. Ct. 2885 (2013); and *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012).
- 4 Determination Letter from J. Stanley Pottinger, Assistant Att'y Gen., U.S. Dep't of Justice, to State of Texas (Dec. 10, 1975), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-1000.pdf; Determination Letter from J. Stanley Pottinger, Assistant Att'y Gen., U.S. Dep't of Justice, to State of Texas (Jan. 3, 1976), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-1010.pdf.
- 5 *Texas v. Holder*, 888 F. Supp. 2d at 115.
- 6 *Texas v. United States*, 887 F. Supp. 2d at 138, 159, 161, 162, 177–78.
- 7 See *Voting Determination Letters for Texas*, U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=tx (last visited July 23, 2014), (listing determination letters issued by the Department of Justice pertaining to the State of Texas).
- 8 *South Carolina v. United States*, 898 F. Supp. 2d at 32.
- 9 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, to State of South Carolina, 1–3, (Dec. 23, 2011), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/SC/L_111223.pdf.
- 10 See 898 F. Supp. 2d at 40 ("About 96% of whites and about 92–94% of African-Americans currently have one of the . . . photo IDs [listed by the 2011 statute]. That racial disparity, combined with the burdens of time and cost of transportation inherent in obtaining a new photo ID card, might have posed a problem for South Carolina's law under the strict effects test of Section 5 of the Voting Rights Act. . . .").
- 11 *Id.* at 36.
- 12 *Id.*
- 13 *Id.*
- 14 *Id.* at 48.
- 15 *Id.* at 48–50.
- 16 *Id.* at 53–54.
- 17 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, to State of Georgia (Dec. 21, 2012), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/L_121221.pdf.
- 17a *Id.*
- 18 *Id.* at 3.
- 18a Complaint at 5–6, *Howard v. Augusta-Richmond Cnty.*, No. 1:14-cv-00097 (S.D. Ga. May 13, 2014), *available at* <http://redistricting.ils.edu/files/GA%20howard%2020140414%20complaint.pdf>.
- 19 Order Granting Motion to Dismiss at 8, *Howard v. Augusta-Richmond Cnty.*, No. 1:14-cv-00097 (S.D. Ga. May 13, 2014), *available at* <http://redistricting.ils.edu/files/GA%20howard%2020140513%20order.pdf>.
- 20 Sandy Hodson, *City Wins Lawsuit over Change in Election Date for Local Offices*, *Augusta Chron.* (May 13, 2014), <http://chronicle.augusta.com/news/government/elections/2014-05-13/city-wins-lawsuit-over-change-election-date-local-offices>.
- 21 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, to Beaumont Indep. Sch. Dist. (Dec. 21, 2012), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/L_121221.pdf.
- 21a *Id.* at 1–3.
- 22 *Id.* at 2.
- 23 See Complaint, *Walker v. Beaumont Indep. Sch. Dist.*, No. 1:13-cv-128 (E.D. Tex.), *available at* <http://redistricting.ils.edu/files/20131223%20walker%20v%20bisd%20complaint.pdf>.
- 24 H.R. Rep. No. 109-478 (2006), at 57.
- 25 *Shelby Cnty. v. Holder*, 679 F.3d 848, 872 (D.C. Cir. 2012).
- 26 *Id.* (quoting *Modern Enforcement of the Voting Rights Act: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 22 (2006)).
- 27 See *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see also *id.* at 51 (Ginsburg, J., dissenting).

- 28 In sum, the preliminary injunction remedy is considered “extraordinary” and “drastic.” 11A Wright, Miller, Kane, Marcus & Steinman, *Federal Practice & Procedure* § 2948 (3d ed.).
- 29 *United States v. Charleston Cnty.*, 316 F. Supp. 2d 268, 272 (D. S.C. 2003).
- 30 *Id.* at 272.
- 31 *Id.* at 273.
- 32 *Id.* at 307.
- 33 *United States v. Charleston Cnty.*, 365 F.3d 341 (4th Cir. 2004).
- 34 Determination Letter from Assistant Att’y Gen. R. Alexander Acosta, U.S. Dep’t of Justice, to Charleston Cnty. Sch. Dist. (Feb. 26, 2004), available at http://www.justice.gov/crt/records/vot/obj_letters/letters/SC/SC-2180.pdf
- 35 N.C. Gen. Stat. §§ 163-227.2 (2013) (amended 2013).
- 36 N.C. Gen. Stat. § 163-82.6(a) (2013) (amended 2013).
- 37 N.C. Gen. Stat. § 163-82.1(d) (repealed by H.B. 589 (2013)).
- 38 *2012 Election Turnout Dips Below 2008 and 2004 Levels: Number Of Eligible Voters Increases By Eight Million, Five Million Fewer Votes Cast*, Bipartisan Policy Ctr. (Nov. 8, 2012), bipartisanpolicy.org/news/press-releases/2012/11/2012-election-turnout-dips-below-2008-and-2004-levels-number-eligible.
- 39 Press Release, Democracy N.C., Republicans, African Americans, Women and Seniors Post the Highest Voter Turnout Rates in North Carolina (Dec. 19, 2012), available at democracy-nc.org/downloads/NCVoterTurnout2012PR.pdf.
- 40 *Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013). *Shelby County* effectively removed the preclearance provision of Section 5 of the Voting Rights Act, which had required covered jurisdictions to prove that proposed voting changes had neither a discriminatory purpose or a discriminatory retrogressive effect.
- 41 Expert Report of J. Morgan Kousser at 38, *League of Women Voters of N.C. v. North Carolina*, No. 1:13-cv-00660-TDS-JEP (M.D.N.C. May 19, 2014) (quoting Rob Christensen & John Frank, *Confident GOP Preps for Voter ID Bill - Democrats Say It’s More the Same; Poll Shows Bill Has Support*, News & Observer, Mar. 6, 2013), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/League1557.pdf>.
- 42 The bill allowed voters to use employee ID; ID issued by the University of North Carolina or its constituent institutions; ID issued by a North Carolina community college; ID issued to a fireman, EMS or hospital employee, or law enforcement officer; ID issued by a unit of local government, public authority, or special district; and ID issued for a government program of public assistance.
- 43 United States’ Memorandum of Law in Support of its Motion for a Preliminary Injunction and for the Appointment of Federal Observers at 12, *League of Women Voters of N.C.*, No. 1:13-cv-00660-TDS-JEP (internal citation omitted).
- 44 See N.C. Sess. Laws 2013-381 (H.B. 589).
- 45 *Id.* at § 2.1.
- 46 United States’ Memorandum of Law in Support of its Motion for a Preliminary Injunction and for the Appointment of Federal Observers, *supra* note 43, (internal citation omitted).
- 47 Aaron Blake, *North Carolina Governor Signs Extensive Voter ID Law*, Wash. Post (Aug. 12, 2013), www.washingtonpost.com/blogs/post-politics/wp/2013/08/12/north-carolina-governor-signs-extensive-voter-id-law/; cf. N.C. Sess. Laws 2013-381 (H.B. 589).

CHAPTER 4

- 1 This report uses the terms “African American” and “black” interchangeably. In addition, the report uses the terms as “Latino” and “Hispanic” interchangeably. “Native Americans” include American Indians and Alaska Natives.
- 2 Whereas this report refers to Latinos, the statute refers to “persons . . . of Spanish heritage.” Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 203, 89 Stat. 400, 401–02.
- 3 Nat’l Comm’n on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work, 1982–2005* (2006).
- 4 *Id.* at 15.
- 5 Jon Greenbaum et al., *Shelby County v. Holder: When the Rational Becomes Irrational*, 57 How. L.J. 811, 816 (citing Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (2000)); J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Part South, 1880-1910* (1974); see also Ellen Katz et al., *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982*, 39 U. Mich. J.L. Reform 643, 646 (2006).
- 6 Keyssar, *supra* note 5, at 111.
- 7 Joel Heller, *Shelby County and the End of History*, 44 U. Mem. L. Rev. 357, 367 (2013).
- 8 Keyssar, *supra* note 5, at 114–15. Additionally, in Georgia by 1910, only 4% of all black males were registered to vote. *Id.* at 114–15. In 1964, only 6.7% of African Americans eligible to vote in Mississippi were registered compared to 70.2% of whites. *Extension of the Voting Rights Act: Hearings Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary*, 94th Cong. 4 (1975) [hereinafter House VRA Hearings of 1975] (statement of Hon. Peter W. Rodino, Jr.). Just prior to the enactment of the VRA in March of 1965, “registration statistics in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia were 19.3, 27.4, 31.6, 6.7, 46.8, 37.3, and 38.3 percent, respectively.” H.R. Rep. No. 109-478, at 7 n.8 (2006) (citing H.R. Rep. No. 94-196, at 6 (1975)).
- 9 Katz et al., *supra* note 5, at 646.
- 10 Heller, *supra* note 7, at 367 n.51.
- 11 House VRA Hearings of 1975, *supra* note 8, at app. 1023. The disparity between black and white registration rates in the covered states was approximately 44.1 percent prior to the Act (in March 1965). *Id.* at app. 1026. This disparity was approximately 27.4 percent in September 1967 and 11.2 percent for 1971–1972. *Id.* The 1975 legislative history also highlights the overall increase in turnout from pre-VRA to post-VRA elections. As compared to the 1964 presidential election, turnout in the 1968 presidential election increased

- in all seven covered states. *Id.* at app. 1029. “The increase ranged from 0.1 percentage point in Georgia to 19.3 percentage points in Mississippi.” *Id.* at app. 1029; see also *id.* at app. 1028 tbl. 4 (depicting “Voter Turnout in the Presidential Elections of 1964, 1968, and 1972 in Southern States Covered by the Voting Rights Act”). National turnout dropped for the 1972 election but remained above the 1964 rates in four of the seven covered states. *Id.* at app. 1029. The record notes that “[w]here persons vote in States with traditionally low turnout, despite a strong national trend toward nonvoting, it seems likely that many of the voters are persons who had previously been denied the opportunity to vote.” *Id.* Further, this conclusion is supported by survey data that Congress relied upon in 1975, which indicated that participation rates among Southern blacks “increased sharply” from 1964 to 1968. *Id.* at app. 1031. Though it declined slightly between 1968 and 1972, the 1972 rates remained higher than 1964 rates. *Id.*
- 12 *Id.* at 20 (statement of Hon. Arthur S. Fleming, Chairman, U.S. Comm’n on Civil Rights). Additionally, the U.S. Census found that the voter turnout rate of African Americans and other nonwhites in the South rose from 44 to 51 percent between the 1964 and 1968 elections despite an overall decline in voting turnout nationally in that year. U.S. Census Bureau, *Current Population Reports: Voting and Registration in the Election of November 1968* 1 (1969).
- 13 *1975 House VRA Hearings*, *supra* note 8, at 31.
- 14 U.S. Comm’n on Civil Rights, *Political Participation* 12 (1968).
- 15 *Id.* at 21.
- 16 *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969).
- 17 *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990* 33 (Chandler Davidson & Bernard Grofman eds., 1994).
- 18 *Id.*
- 19 *Id.* at 384.
- 20 See, e.g., Katz, *supra* note 5, at 656 (“Courts identified violations of Section 2 more frequently between 1982 and 1992 than in the years since. Of the 92 total violations identified, courts found 46.7% of them during the 1980s.”); see also Nat’l Comm’n on the Voting Rights Act, *supra* note 3, at 81–83.
- 21 *Quiet Revolution in the South*, *supra* note 17, at 385.
- 22 *Id.*
- 23 See Debo P. Adegbile, *Voting Rights in Louisiana: 1982-2006*, 17 S. Cal. Rev. L. & Soc. Just. 413, 429 (2008) (“In fact, [the governor] ‘publicly expressed his opposition to the concept of a majority black district, stating that districting schemes motivated by racial considerations, however benign, smacked of racism, and in any case were not constitutionally required.’”).
- 24 See *id.* at 429–30 (citing *Major v. Treen*, 574 F. Supp. 325, 355–56 (E.D. La. 1983)).
- 25 Though the rates of African American voter registration, turnout, and elected officials had increased, there were more Section 5 objections “lodged between 1982 and 2004 than were interposed between 1965 and 1982 and . . . such objections did not encompass minor inadvertent changes[,]” nor does this account for the number of withdrawals. H.R. Rep. No. 109-478, *supra* note 8, at 21 (citing Nat’l Comm’n on the Voting Rights Act, *supra* note 3, at 54).
- 26 H.R. Rep. No. 109-478, *supra* note 8, at 21.
- 27 *Voting Determination Letters for Mississippi*, U.S. Dep’t of Justice, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=ms (last visited July 23, 2014).
- 28 Katz et al., *supra* note 5, at 646; see also H.R. Rep. No. 109-478, *supra* note 8, at 21.
- 29 H.R. Rep. No. 109-478, *supra* note 8, at 23.
- 30 *Id.* at 21.
- 31 *Dillard v. Crenshaw*, 640 F. Supp. 1347 (M.D. Ala. 1986).
- 32 *Id.* at 1356–57.
- 33 *Quiet Revolution in the South*, *supra* note 17, at 53–54.
- 34 *Dillard*, 640 F. Supp. at 1373.
- 35 James Blacksher et al., *Voting Rights in Alabama 1982–2006* 9 (2006), available at <http://www.protectcivilrights.org/pdf/voting/AlabamaVRA.pdf>.
- 36 *Harris v. Graddick*, 593 F. Supp. 128, 130 (M.D. Ala. 1984).
- 37 *Harris v. Siegelman*, 695 F. Supp. 517, 526 (M.D. Ala. 1988).
- 38 Press Release, U.S. Census Bureau, 2010 Census Shows Black Population has Highest Concentration in the South (Sept. 29, 2011), available at http://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn185.html.
- 39 See *Historical Time Series Tables*, U.S. Census Bureau, <https://www.census.gov/hhes/www/socdemo/voting/publications/historical/> (last visited July 23, 2014) (download Table A-1. Reported Voting and Registration by Race, Hispanic Origin, Sex, and Age Groups: November 1964 to 2012).
- 40 See *id.*
- 41 Nat’l Comm’n on the Voting Rights Act, *supra* note 3, at 11–25.
- 42 *Id.* at 37.
- 43 David Lublin et al., *Has the Voting Rights Act Outlived its Usefulness? In a Word, “No”*, 34 Legis. Studies Q. 525, 526 (2009). It may be the case that coalition districts, or districts in which “more than one protected minority group combined forms a majority in a district,” have been particularly successful in electing African American candidates. Matt Barreto et al., *Redistricting: Coalition Districts and the Voting Rights Act* 1 (2011), available at <https://www.law.berkeley.edu/files/Coalition.pdf> (discussing voting patterns among Black and Latino voters in Los Angeles County in the 2010 election of Kamala Harris as California Attorney General).
- 44 Throughout this chapter, references to “Section 2 cases” refer only to those cases not involving bilingual assistance.
- 45 See Supplemental Online Appendix, available at <http://votingrightstoday.org/discriminationreport>
- 46 See *id.*
- 47 See *id.*
- 48 See *id.*
- 49 See *infra* Chapter 6.
- 50 Paul Taylor et al., Pew Research Ctr., *An Awakened Giant: The Hispanic Electorate Is Likely to Double by 2030* 5 (2012), available at http://www.pewhispanic.org/files/2012/11/hispanic_vote_likely_to_double_by_2030_11-14-12.pdf.
- 51 Mark Hugo Lopez et al., Pew Research Ctr., *Diverse Origins: The Nation’s 14 Largest Hispanic-Origin Groups* 5 (2013), available at http://www.pewhispanic.org/files/2013/06/summary_report_final.pdf.
- 52 NALEO Educ. Fund, *Latino Voters at Risk: The Impact of Restrictive Voting and Registration Measures on the Nation’s Fastest Growing Electorate* (2012), available at <http://www.naleo.org/downloads/LatinoVotersatRisk.pdf>.

- 53 The Latino community in the United States, although often referred to as a cohesive ethnic group, is in fact comprised of groups that are quite diverse in important aspects, including race and country of origin, tracing their family heritage to “more than 20 Spanish-speaking nations worldwide.” Lopez et al., *supra* note 51, at 3.
- 54 Mexican Americans and Puerto Ricans comprise 64.6 % and 9.5% of all Latinos in the U.S., respectively. *Id.*
- 55 In 1836, Anglo-Americans took control of the Texas government, then part of Mexico, and eventually Texas was annexed to the U.S. in 1845. Expert Report of Dr. Andres Tijerina at 2–3, *Texas v. United States*, 2011 WL 6476787 (D.D.C. Aug. 8, 2011); Juan F. Perea, *A Brief History of Race and the U.S.-Mexican Border: Tracing the Trajectories of Conquest*, 51 UCLA L. Rev. 283, 284–85 (2003). Shortly after, the Treaty of Guadalupe Hidalgo in 1848 which ended the Mexican–American War, ceded to the United States a great portion of land that belonged to Mexico, including California, present-day Arizona and New Mexico and parts of Utah, Nevada, and Colorado. *Id.*
- 56 Later, the Foraker Act of 1900 established a civilian government in Puerto Rico consisting in part of a governor and supreme court appointed by the President of the United States. César A. López Morales, Note, *A Political Solution to Puerto Rico’s Disenfranchisement: Reconsidering Congress’s Role in Bringing Equality to America’s Long-Forgotten Citizens*, 32 B.U. Int’l L.J. 185, 192–93 (2014). Congress authorized Puerto Ricans to elect their own governor and draft their own constitution in 1947 and 1950; in 1952, Congress approved a constitution providing for the establishment of the Commonwealth of Puerto Rico. *Id.* at 195. Importantly, because state electors have exclusive authority to elect the President, the 3.7 million U.S. citizens of Puerto Rico who reside on the island are unable to participate in the election of the President and Vice-President. *Id.* at 187–88
- 57 Katherine Culliton-González, *Time to Revive Puerto Rican Voting Rights*, 19 Berkeley La Raza L.J. 27, 29–31 (2008). This migration accelerated after World War II, when Puerto Ricans were recruited to work in East Coast factories and to support seasonal farm labor. New York has been and continues to be the most popular point of entry, but large concentrations of Puerto Ricans are also located in Chicago and Philadelphia. *Id.* at 43.
- 58 During the Great Depression, Mexican Americans were targeted through what came to be known as the Mexican “repatriation.” As unemployment rose, so did the level of hostility toward Mexican Americans and possibly 400,000 people, many of whom were U.S. citizens, were forced out of the country. Wendy Koch, *U.S. Urged to Apologize for 1930s Deportations*, USA Today (Apr. 5, 2006), http://www.usatoday.com/news/nation/2006-04-04-1930s-deportees-cover_x.htm. Although not at a massive scale, incidents of unlawful deportation of U.S. citizens of Mexican ancestry have continued to take place. In 2007, for example, Peter Guzman, a U.S. citizen was deported to Tijuana with \$3 in his pocket. He had not visited Tijuana in more than a decade and knew no one there. He survived by begging and eating from garbage cans. A lawsuit was filed by the ACLU in 2008. *Family of U.S. Citizen Illegally Deported to Mexico Says Government Endangered His Life*, Am. Civil Liberties Union (Feb. 27, 2008), <https://www.aclusocal.org/family-of-u-s-citizen-illegally-deported-to-mexico-says-government-endangered-his-life/>.
- 59 For example, Mexican-Americans in South Texas were the victims of government-sponsored vigilante raids to drive them away from land grants. In 1874, in a raid aimed at taking land south of Corpus Christi, every adult, male Mexican American in a community of 500 was murdered by white vigilantes whose leaders were deputized in Brownsville. See Juan Cartagena, *Latinos and Section 5 of The Voting Rights Act: Beyond Black and White*, 18 Nat’l Black L.J. 201, 212 n.69 (2004) (citing Expert Report of Dr. Andres Tijerina, *Balderas v. Texas*, No. 6:01CV158 (E.D. Tex. Nov. 28, 2001)). Another example of violence toward Mexican Americans were the Los Angeles “Zoot Suit” riots during World War II, during which “over a period of days, Anglo servicemen beat Mexican Americans on the city streets while police watched...and, if arresting anyone, only arresting the victims.” Kevin R. Johnson, *Hernandez v. Texas: Legacies of Justice and Injustice*, 25 Chicano-Latino L. Rev. 153, 165 (2005). Racial strife and hate crimes against Mexican Americans have not been completely eradicated. According to a leading Latino organization, hate crimes against Latinos have risen by 40%. *Hate Crimes*, Mexican Am. Legal Def. & Educ. Fund, http://www.maldef.org/immigration/public_policy/hate_crimes/ (last visited July 23, 2012).
- 60 See *Mendez v. Westminster*, 64 F. Supp. 544 (S.D. Cal. 1946), *aff’d*, 161 F.2d 774 (9th Cir. 1947) (en banc) (holding that the segregation of Latinos in public schools is unlawful).
- 61 See *Hernandez v. Texas*, 347 U.S. 475, 482 (1954) (holding that the dearth of persons of Mexican or Latin American descent serving on juries in the previous 25 years “bespeaks discrimination,” in violation of the Fourteenth Amendment). In 1977, the Supreme Court also held that a Texas county’s system for impaneling grand juries was unconstitutional. *Castaneda v. Partida*, 430 U.S. 482, 501 (1977). Mexican Americans made up approximately 80% of the county but from 1962 to 1972 they made up less than 40% of the grand jurors. *Id.* at 486–87 & n.7. Similarly, between 1959 and 1969, “Mexicans were under-represented on Los Angeles grand juries by a ratio of 8 to 1.” Johnson, *supra* note 59, at 185 (quoting Ian F. Haney Lopez, *Racism on Trial: The Chicano Fight for Justice* (2003)) (internal quotation marks omitted).
- 62 Ian Haney Lopez, *Race and Colorblindness After Hernandez and Brown*, 25 Chicano-Latino L. Rev. 61, 62 (2005).
- 63 *Hernandez*, 347 U.S. at 482.
- 64 *Id.* at 479–80.
- 65 Cartagena, *supra* note 59, at 212. In 1918, Texas Governor, William Hobby established an additional force of 1000 men to supplement the work of the Texas Rangers. Private citizens also attempted to block the Mexican vote. In 1928 in Welasco, Texas, a group of Anglo Texans headed to the polls with shotguns and yelling “Don’t let those Mexicans in to vote.” *Id.* (citing Expert Report of Dr. Andres Tijerina, *supra* note 59, at 4, 8).
- 66 Cartagena, *supra* note 59, at 213.
- 67 California adopted its English literacy test in 1894 and it was not invalidated until 1970 by the California Supreme Court. See *Castro v. California*, 466 P.2d 244, 256 (1970). Arizona passed its literacy test in 1912 “in an acknowledged attempt to deter the ‘ignorant Mexican vote.’” NALEO Educ. Fund, *supra* note 52, at 6.

- 68 NALEO Educ. Fund, *supra* note 52, at 6.
- 69 Culliton-González, *supra* note 57, at 29–31. The literacy test was used for voters who could not present a certificate demonstrating that they were educated in English up to the eighth grade. Even though English was the official language of schools in Puerto Rico until 1946, inspectors often denied certificates from Puerto Rican schools. Rodolfo O. de la Garza & Louis DeSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 *Tex. L. Rev.* 1479, 1493 (1993).
- 70 NALEO Educ. Fund, *supra* note 52, at 6.
- 71 *Id.*
- 72 42 U.S.C. § 1973b(e).
- 73 Testimony during the legislative process estimated that in New York, approximately 330,000 Puerto Ricans had been prevented from registering as a result of the literacy test. The literacy tests were not only discriminatory on their face, but also in application: “literacy test certificates would ‘suddenly disappear’ causing delays of hours, if not the entire day, to replace them, or how basic supplies like pencils would be missing whenever Puerto Ricans sought to take the test.” Cartagena, *supra* note 59, at 206.
- 74 *Katzenbach v. Morgan*, 384 U.S. 641, 646 (1966).
- 75 See Brief of National Latino Organizations as Amici Curiae in Support of Respondents at 11–12, *Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013); de la Garza & DeSipio, *supra* note 69, at 1492.
- 76 de la Garza & Desipio, *supra* note 69, at 1492.
- 77 Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 203, 89 Stat. 400, 401–02. See also de la Garza & DeSipio, *supra* note 69, at 1481–82.
- 78 Cartagena, *supra* note 59, at 212. The 1975 Amendments extended preclearance and federal observer protections to any jurisdiction in which more than 5 percent of voting age citizens were of a single language minority, election materials had been prepared only in English in the 1972 presidential election, and less than 50 percent of voting age citizens had registered for or voted in the 1972 presidential election. Voting Rights Act Amendments of 1975 § 203; see also de la Garza & DeSipio, *supra* note 69, at 1481–82. Bilingual election materials were mandated in jurisdictions where a single language minority constituted more than 5 percent of the voting age population and the illiteracy rate among the language minority was higher than the national English illiteracy rate, and the use of literacy tests in voter registration were permanently banned. See Voting Rights Act Amendments of 1975 § 203.
- 79 42 U.S.C. §§ 1973b(f)(1)–(2).
- 79a *White v. Regester*, 412 U.S. 755, 769 (1973).
- 80 *Id.* at 768 (first alteration in original).
- 81 *Garza v. Cnty. of Los Angeles*, 756 F. Supp. 1298, 1303–04 (C.D. Cal. 1990), *aff’d*, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991).
- 82 *Id.* at 1351.
- 83 Anna Brown & Mark Hugo Lopez, Pew Research Ctr., *Mapping the Latino Population, By State, County and City 4* (2013), available at <http://www.pewhispanic.org/2013/08/29/mapping-the-latino-population-by-state-county-and-city/>; see generally *id.* (providing a complete breakdown and maps of the Latino population growth by state, county and metropolitan area).
- 84 Benjamin Highton & Arthur L. Burris, *New Perspectives on Latino Voter Turnout in the United States*, 30 *Am. Pol. Res.* 285, 300 (2002).
- 85 *Current Population Survey*, U.S. Census Bureau (Nov. 2012).
- 86 See generally Highton & Burris, *supra* note 84.
- 87 *Id.* at 294–95.
- 88 *Id.* at 295.
- 89 *Id.* at 295.
- 90 de la Garza & DeSipio, *supra* note 69, at 1509–10.
- 91 Highton & Burris, *supra* note 84, at 294.
- 92 Nina Perales et al., *Voting Rights in Texas: 1982-2006*, 17 *S. Cal. Rev. L. & Soc. Just.* 713, 726 (2008).
- 93 S. Rep. No. 97-417, at 28–29 (1982).
- 94 *Id.* at 29.
- 95 *Thornburg v. Gingles*, 478 U.S. 30, 69 (1986).
- 96 Katz et al., *supra* note 5, at app. For complete VRI Database Master List, visit <http://www.sitemaker.umich.edu/votingrights/home>, select “Final Report” and download “MasterList.xls.”
- 97 NALEO Educ. Fund, *1996 National Directory of Latino Elected Officials* (on file with the Lawyers’ Committee).
- 98 NALEO Educ. Fund, *2009 National Directory of Latino Elected Officials* (on file with the Lawyers’ Committee); NALEO Educ. Fund, *2013 National Directory of Latino Elected Officials* (on file with the Lawyers’ Committee).
- 99 Lublin et al., *supra* note 43, at 532.
- 100 See, e.g., *League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399, 408, 423–43 (2006) (holding that changes to a Latino-majority district in west Texas violated Section 2); *Texas v. United States*, 887 F. Supp. 2d 133, 135 (D.D.C. 2012) (denying preclearance by unanimously concluding that the State of Texas engaged in intentional discrimination against African-American and Latino voters in enacting the 2011 State Senate and Congressional redistricting plans, and that the Congressional plan was retrogressive).
- 101 See, e.g., *United States v. Osceola County, Fla.*, 475 F. Supp. 2d 1220, 1235 (M.D. Fla. 2006) (holding that the county’s voting system diluted Hispanic votes in violation of Section 2).
- 102 See Supplemental Online Appendix, *supra* note 45.
- 103 *Sanchez v. Colorado*, 97 F.3d 1303 (1996).
- 104 *Id.* at 1307.
- 105 *Id.*
- 106 *Id.* at 1323.
- 107 See *id.* at 1308, 1319.
- 108 *Id.* at 1329.
- 109 *United States v. Long County*, No. 2:06-cv-00040 (S.D. Ga., Feb. 10, 2006).
- 110 *Id.*
- 111 Russ Bynum, *Georgia County Questions 95 Hispanics’ Right to Vote*, Fla. Times-Union (Oct. 28, 2004), <http://jacksonville.com/apnews/stories/102804/D860K2N01.shtml>.
- 112 Brannon Stewart, *Challenge Dropped Against Most Atkinson Voters*, WALB News (Oct. 28, 2004).
- 113 Paul Taylor et al., *supra* note 50, at 6.
- 114 Am. Civil Liberties Union, *Voting Rights in Indian Country 2* (Sept. 2009), available at <https://www.aclu.org/files/pdfs/votingrights/indiancountryreport.pdf>.
- 115 *Id.* at 16.

- 116 President Richard Nixon, Message to the Congress of the United States on the American Indians (July 8, 1970), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=2573&st=&st1=>.
- 117 Am. Civil Liberties Union, *supra* note 114, at 5 (quoting *Draper v. United States*, 164 U.S. 240, 240, 246 (1896)).
- 118 Laughlin McDonald, *American Indians and the Fight for Equal Voting Rights* 5–7 (2010). Congress terminated the treaty-making process in 1871.
- 119 *Id.* at 11.
- 120 *Id.* at 10, 13.
- 121 Am. Indian Policy Review Comm'n, *Final Report* 66 (1977).
- 122 McDonald, *supra* note 118, at 6.
- 123 *Id.* at 12.
- 124 *Id.* at 18.
- 125 Natalie Landreth & Moira Smith, *Voting Rights in Alaska: 1982-2006* 4 (Mar. 2006), available at <http://www.protectcivilrights.org/pdf/voting/AlaskaVRA.pdf>.
- 126 Am. Civil Liberties Union, *supra* note 114, at 7.
- 127 *Id.*
- 128 *Id.*
- 129 *Id.*
- 130 McDonald, *supra* note 118, at 26.
- 131 *Id.* at 46.
- 132 *Every Native Vote Counts: Fast Facts*, Nat'l Congress of Am. Indians, available at http://api.ning.com/files/p5H7-N8Ot6oPr2YAnodb2julJeBCSZyUzu*8mwLExUIWlcHSI05tI5aYJM44Plw-YObm-USu6-wzlyZ5e7uaDvXMhxGA*YxQ/NVInfographic.compressed.pdf.
- 133 *Current Population Survey: Voting & Registration Supplement*, U.S. Census Bureau (Nov. 2008).
- 134 *Current Population Survey: Voting & Registration Supplement*, U.S. Census Bureau (Nov. 2012).
- 135 See *Buckanaga v. Sisseton Indep. Sch. Dist.*, No. 54-5, S.D., 804 F.2d 469, 474–75 (8th Cir. 1986).
- 136 Ryan D. Dreveskracht, *Enfranchising Native Americans After Shelby County v. Holder: Congress's Duty to Act*, 70 Nat'l Law. Guild Rev. 193, 205 (2013).
- 137 *Stabler v. Cnty. of Thurston*, Neb., 129 F.3d 1015, 1023 (8th Cir. 1997).
- 138 Dreveskracht, *supra* note 136, at 205.
- 139 See Am. Civil Liberties Union, *supra* note 114, at 52–53.
- 140 *National Caucus of Native American of State Legislators*, Nat'l Conf. of St. Legis., <http://www.ncsl.org/research/state-tribal-institute/national-caucus-native-american-state-legislators.aspx> (last visited July 28, 2014) (reporting “76 members from 17 states”).
- 141 Nat'l Congress of Am. Indians, *supra* note 132.
- 141a Daniel McCool et al., *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote* 48–67 (2007).
- 142 Separate listings identifying each matter in these categories is included in the Supplemental Online Appendix, *supra* note 45, to this Report.
- 143 Order Re: Plaintiffs' Motion for a Preliminary Injunction Against the State Defendants, *Nick v. Bethel*, No. 3:07-cv-00098 (D. Alaska July 30, 2008).
- 144 Settlement Agreement, *Nick v. Bethel*, No. 3:07-cv-00098 (D. Alaska Feb. 16, 2010).
- 145 Tova Wang, *Ensuring Access to the Ballot for American Indians & Alaska Natives: New Solutions to Strengthen American Democracy* 9 (2012), available at <http://www.demos.org/sites/default/files/publications/IHS%20Report-Demos.pdf>.
- 146 *Little Thunder v. South Dakota*, 518 F.2d 1253, 1254 (8th Cir. 1975).
- 147 *Id.* at 1254.
- 148 *Id.* at 1254–55.
- 149 *Id.* at 1255.
- 150 Am. Civil Liberties Union, *supra* note 114, at 7.
- 151 *United States v. South Dakota*, 636 F.2d 241, 243 (8th Cir. 1980).
- 152 *Id.* at 244.
- 153 *Id.* at 243.
- 154 *United States v. Day Cnty.*, No. 1:99-cv-01024-RHB (D.S.D. 2000).
- 155 Am. Civil Liberties Union, *supra* note 114, at 19.
- 156 *Id.*
- 157 *Id.*
- 158 Amended Consent Judgment and Decree at 7, *United States v. Day Cnty.*, No. 1:99-cv-01024-RHB; see also Am. Civil Liberties Union, *supra* note 114, at 19.
- 159 *Emery v. Hunt*, 615 N.W.2d 590, 593 (S.D. 2000).
- 160 McDonald, *supra* note 118, at 55.
- 161 *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1028 (D.S.D. 2004).
- 162 *Emery*, 615 N.W.2d at 592–93.
- 163 *Id.* at 597.
- 164 *Id.* at 593.
- 165 S.D. Legislative Research Council, *Issue Memorandum 95-36, Majority-Minority Districts: Legislative Reapportionment After Miller v. Johnson* 6 (1995), available at <http://legis.sd.gov/docs/referencematerials/IssueMemos/im95-36.pdf>.
- 166 *Bone Shirt*, 336 F. Supp. 2d at 1028.
- 167 Laughlin McDonald et al., *Voting Rights in South Dakota: 1982-2006*, 17 S. Cal. Rev. L. & Soc. Just. 195, 196 (2007); see also Partial List of Determination Pursuant to Voting Rights Act of 1965, as Amended, 41 Fed. Reg. 784 (Jan. 5, 1976).
- 168 For a discussion of the pre-clearance requirement of Section 5, see Chapter 1.
- 169 McDonald et al., *supra* note 167, at 196–97.
- 170 McDonald, *supra* note 118, at 140.
- 171 Complaint, *Quick Bear Quiver v. Hazeltine*, No. 5:02-cv-05069-KES (D.S.D. 2002).
- 172 Consent Order at 2, *Quick Bear Quiver v. Hazeltine*, No. 5:02-cv-05069-KES.
- 173 *Id.* at 2–3.
- 174 McDonald, *supra* note 118, at 140.
- 175 *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1016 (2006).
- 176 *Id.*
- 177 *Id.* at 1019.
- 178 *Id.* at 1029.
- 179 *Blackmoon v. Charles Mix Cnty.*, CIV. 05-4017, 2005 WL 2738954, at *3 (D.S.D. Oct. 24, 2005).
- 180 *Blackmoon v. Charles Mix Cnty.*, 386 F. Supp. 2d 1108, 1110 (D.S.D. 2005) (order permitting discovery on plaintiff's motion for summary judgment).
- 181 See *id.* at 1112.
- 182 Am. Civil Liberties Union, *supra* note 114, at 32.
- 183 *Blackmoon*, 2005 WL 2738954, at *1.
- 184 See *id.*
- 185 *Id.* at *2.
- 186 Am. Civil Liberties Union, *supra* note 114, at 32.

- 187 Consent Decree at 2–3, *Blackmoon v. Charles Mix Cnty.*, No. 05-4017, (D.S.D. Dec. 4, 2007).
- 188 Am. Civil Liberties Union, *supra* note 114, at 32.
- 189 *Id.*
- 190 *Id.*
- 191 *Id.*
- 192 Determination Letter from Grace Chung Becker, Acting Assistant Att’y Gen., U.S. Dep’t of Justice, to Charles Mix Cnty., S.D. (Feb. 11, 2008), available at http://www.justice.gov/crt/records/vot/obj_letters/letters/SD/_080211.pdf.
- 193 *Brooks v. Gant*, No. 12-5003-KES, 2013 WL 4017036, at *1 (D.S.D. Aug. 6, 2013).
- 194 See Anna Brown, *U.S. Hispanic and Asian Populations Growing, but for Different Reasons*, Pew Res. Center (June 26, 2014), available at <http://www.pewresearch.org/fact-tank/2014/06/26/u-s-hispanic-and-asian-populations-growing-but-for-different-reasons> (reporting that since 2012, the Asian population has grown at a rate of 2.9 percent, compared to the Hispanic growth rate of 2.1 percent).
- 195 Ming Hsu Chen & Taeku Lee, *Reimagining Democratic Inclusion: Asian Americans and the Voting Rights Act*, 3 U.C. Irvine L. Rev. 359, 360 (2013); see also Brown, *supra* note 194.
- 196 See, e.g., Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, repealed by Act of Dec. 17, 1943, Pub. L. No. 78-199, 57 Stat. 600.
- 197 Naturalization Act of 1790, ch. 3, 1 Stat. 103.
- 198 Naturalization Act of 1870, ch. 254, 16 Stat. 254, 256.
- 199 *In re Ah Yup*, 1 F. Cas. 223, 224 (C.C.D. Cal. 1878).
- 200 *United States v. Bhagat Singh Thind*, 261 U.S. 204, 214–15 (1923).
- 201 Marie A. Fallinger, Yick Wo at 125: *Four Simple Lessons on the Contemporary Supreme Court*, 17 Mich. J. Race & L. 217, 228 (2012) (footnotes omitted).
- 202 *Yick Wo v. Hopkins*, 118 U.S. 356, 358–59 (1886).
- 203 Fallinger, *supra* note 201, at 223.
- 204 *Id.* at 227–28.
- 205 *Yick Wo*, 118 U.S. 356, at 373–74.
- 206 *Id.* at 370.
- 207 Fallinger, *supra* note 201, at 233–34.
- 208 *Korematsu v. United States*, 323 U.S. 214, 219 (1944).
- 209 Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).
- 210 Natsu Taylor Saito, *Symbolism Under Siege: Japanese American Redress and the “Racing” of Arab Americans as “Terrorists”*, 8 Asian L.J. 1, 4 (2001).
- 211 Wendy K. Tam Cho & Albert H. Yoon, *Pan-Ethnicity Revisited: Asian Indians, Asian American Politics, and the Voting Rights Act*, 10 Asian Pac. Am. L.J. 8, 9 (2005).
- 212 Act of Dec. 17, 1943, Pub. L. No. 78-199, 57 Stat. 600 (repealing the Chinese Exclusion Act).
- 213 Act of July 2, 1946, Pub. L. No. 79-482, 60 Stat. 416 (repealing exclusion of Indians and Filipinos and granting naturalization rights).
- 214 Immigration and Nationality Act of 1952, Pub. L. No. 85-414, § 311, 66 Stat. 163, 239 (permitting Japanese Americans and other Asian Americans to naturalize).
- 215 Chen & Lee, *supra* note 195, at 378 (citing Immigration and Nationality Act of 1965 (Hart-Cellar Act), Pub. L. No. 89-236, 79 Stat. 911).
- 216 *Id.*
- 217 *Voting Rights Act Language Assistance Amendments of 1992: Hearing on S. 2236 Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 102nd Cong. 134 (1992) [hereinafter *Hearings on Language Assistance Amendments of 1992*] (statement of Sen. Orrin Hatch).
- 218 *Extension of the Voting Rights Act: Hearings on H.R. 939, H.R. 2148, H.R. 3427, and H.R. 3501 Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary*, 94th Cong. 926 (1975) (statement of Rep. Edward R. Roybal).
- 219 *Id.*
- 220 See *Hearings on Language Assistance Amendments of 1992*, *supra* note 217, at 144 (statement by Sen. Hatch).
- 221 See 42 U.S.C. § 1973aa-1a(b)(2)(A)(ii) (applying the bilingual voting materials requirement to areas in which “more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient”).
- 222 See *Hearings on Language Assistance Amendments of 1992*, *supra* note 217, at 254 (letter from Morton H. Halperin & Antonio J. Califa, Legislative Counsel, Am. Civil Liberties Union) (discussing the need for expanded coverage); *id.* at 294 (statement of the Nat’l Asian Pacific Am. Legal Consortium) (discussing the communities in these jurisdictions that would benefit from a 10,000 person population benchmark).
- 223 See Chen & Lee, *supra* note 195, at 361.
- 224 Janelle Wong et al., *Asian American Political Participation: Emerging Constituents and Their Political Identities* 3 (2011).
- 225 Jeffrey S. Passel & D’Vera Cohn, Pew Research Ctr., *U.S. Population Projections: 2005–2050* 2 (2008).
- 226 Karthick Ramakrishnan & Farah Z. Ahmad, Ctr. for Am. Progress, *Demographics: Part of the “State of Asian Americans and Pacific Islanders” Series* 2 (2014).
- 227 Brown, *supra* note 194.
- 228 Wong et al., *supra* note 224, at 99.
- 229 See Chen & Lee, *supra* note 195, at 392.
- 230 *Id.*
- 231 *Id.* (footnote omitted).
- 232 See *id.* at 396 (discussing historically low, albeit increasing, geographical compactness as one barrier to Asian Americans’ ability to bring successful Section 2 claims).
- 233 Wong et al., *supra* note 224, at 27.
- 234 *Id.*; see *Current Population Survey*, U.S. Census Bureau (Nov. 2012).
- 235 *Id.* at 56.
- 236 See Seung-Jin Jang, *Get Out on Behalf of Your Group: Electoral Participation of Latinos and Asian Americans*, 31 Pol. Behav. 511, 512 (2009) (pointing to past research that found “length of residence and nativity” significantly affected voter participation rates).
- 237 *Id.* at 516.
- 238 In its 1975 amendment of the Voting Rights Act, Congress mandated the use of bilingual assistance materials in jurisdictions with proportionally high populations of language minorities, indicating that “voting discrimination against citizens of language minorities is pervasive and national in scope.” Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 203, 89 Stat. 400, 401 (1975).
- 239 Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections* 5 (2013) (citing Asian Pacific Am. Legal Ctr., *Asian Americans at the Ballot Box: The 2008 General Election in*

- Los Angeles County 24 (2011), available at http://apalc.org/sites/default/files/APALC_BallotBox_LA2008_FINAL.pdf.
- 240 Press Release, Asian & Pacific Islander Am. Vote, New Poll Finds Major Political Parties Ignore Asian Americans, Huge Gaps and Opportunities for Engagement Remain Untapped (May 4, 2012), available at <http://www.apiavote.org/newsroom/press-releases/2012/new-poll-finds-major-political-parties-i>.
- 241 See generally *National Asian Pacific American Political Almanac (2014–2015)* (Don T. Nakanishi & James Lai eds., 2014).
- 242 Two notable exceptions are U.S. Representative Bobby Scott from Virginia's 3rd District and Attorney General of California, Kamala Harris. Scott, who is both Asian American and African American, was elected in a majority African American district. Harris, also Asian American and African American, was elected in a statewide election. For further discussion of how voting patterns in Los Angeles County in the election of Harris may demonstrate coalitions between multiple minority groups, see Barreto et al., *supra* note 43, at 5–6.
- 243 Wong et al., *supra* note 224, at 116.
- 244 *Id.*
- 245 *Id.* at 75.
- 246 *Id.* at 65.
- 247 Asian Am. Legal Def. & Educ. Fund, *Asian American Access to Democracy in the 2008 Elections* 7 (2009), available at <http://www.aaldef.org/docs/AALDEF-AA-Access-to-Democracy-2008.pdf>.
- 248 *Id.* at 12.
- 249 *Id.* at 13.
- 250 *Id.* at 9.
- 251 *Id.* at 14.
- 252 Asian Am. Legal Def. & Educ. Fund, *Asian American Access to Democracy in the 2012 Elections* 16 (2013).
- 253 See Supplemental Online Appendix, *supra* note 45.
- 254 See *id.*
- 255 See *id.*
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CHAPTER 5

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- 42 Nat'l Comm'n on the Voting Rights Act, *Highlights Of Hearings Of The National Commission On The Voting Rights Act, 2005: A Supplement to: Protecting Minority Voters: The Voting Rights Act at Work, 1982-2005* 7–8 (2006).
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- 55 Consent Decree at 3 ¶ 10, *United States v. Benson Cnty., N.D.*, No. A2-00-30 (D. N.D. Mar. 10, 2000).
- 56 Complaint at ¶ 10, *United States v. Benson Cnty., N.D.*, No. A2-00-30 (D. N.D. Mar. 6, 2000).
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- 61 *Id.* at 7 ¶ 6.
- 62 *United States v. Osceola Cnty., Fla.*, 475 F. Supp. 2d 1220, 1235 (M.D. Fla. 2006).
- 63 *Id.* at 1222.
- 64 *Id.* at 1223.
- 65 *Id.* at 1224.
- 66 *Id.*
- 67 *Id.* at 1225–26. Around the same time, the County was failing to provide Spanish-speaking citizens an equal opportunity to vote. In 2002, the United States sued the County alleging this denial of equal opportunity to vote based on “the failure of poll officials to communicate effectively with Spanish-speaking voters, the refusal to allow certain Spanish-speaking voters assistance in voting by the person of their choice, and hostile remarks by poll officials.” *Id.* at 1226. The case was settled by consent decree, though in 2005 the United States advised the county that its Spanish language program was not equal in scope and effectiveness to its English language program, and the county agreed, in writing, to continue using the consent decree as a guide to complying with the VRA and to take additional steps to improve its Spanish language program.
- 68 *Id.* at 1232.
- 69 *Id.* at 1232–35.
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- 73 *Id.* at 420.
- 74 *Id.* at 438.
- 75 *Id.* at 431–37.
- 76 *United States v. Village of Port Chester*, Brennan Ctr. for Justice (Apr. 22, 2011), <https://www.brennancenter.org/legal-work/united-states-v-village-port-chester>.
- 77 *United States v. Blaine Cnty., Mont.*, 363 F.3d 897, 900 (9th Cir. 2004).
- 78 *General Population Characteristics, Montana* (1980 Census), U.S. Census Bureau 10, Table 15, available at http://www2.census.gov/prod2/decennial/documents/1980a_mtABCD.zip (last visited July 23, 2014).
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- 82 Daniel McCool et al., *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote* 129 (2007).

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- 84 *Id.* at 588.
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- 87 *Large v. Fremont Cnty., Wyo.*, 709 F. Supp. 2d 1176, 1231 (D. Wyo. 2010).
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- 91 *Id.* at 1186–88.
- 92 *Id.* at 1219–20.
- 93 *Id.* at 1220.
- 94 *Id.* at 1232.
- 95 *Large v. Fremont Cnty., Wyo.*, 670 F.3d 1133, 1136 (10th Cir. 2012).
- 96 *Id.*
- 97 Order on Remedial Plan at 25, *Large v. Fremont Cnty., Wyo.*, No. 2:05-cv-00270-ABJ (D. Wyo. Aug. 10, 2010).
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- 100 *Id.* at 1154.
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- 106 *Id.* at 1300.
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- 112 *Id.* at 278, 280, 285 n.20.
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- 114 *Id.* at 294.
- 115 *Id.* at 286 n.23.
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- 132 *Id.* at 6 ¶ 5(a).
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- 158 *Id.* at 856.
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- 181 *Id.* at 423–24.
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- 183 *Id.* at 427.
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- 185 *Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options After LULAC v. Perry: Hearing Before the Subcomm. on the Constitution, Civil Rights and Property Rights of the S. Comm. on the Judiciary*, 109th Cong. 2 (2006) (opening statement of Sen. Kennedy, Member, S. Comm. on the Judiciary).
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- 188 *Id.* at 439–41.
- 189 *Id.* at 441.
- 190 *Id.* at 438–439.
- 191 *Id.* at 440, 442.
- 192 *Texas v. United States*, 887 F. Supp. 2d 133, 138 (D.D.C. 2012).
- 193 *Id.* at 178.
- 194 *Id.* at 152, 161–62, 177.
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- 196 *Id.* at 163.
- 197 *Id.* at 163–164.
- 198 *Id.* at 164.
- 199 *Id.* at 162.
- 200 *See id.* at 197–247 (lengthy appendix detailing the court's factual and legal findings).
- 201 *Id.* at 197.
- 202 *Id.*
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- 205 *Id.* at 177.
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- 209 *Id.* at 234.
- 210 *Id.*
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- 212 *Id.*
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CHAPTER 6

- 1 Brief of Community Voter Registration Orgs. as Amici Curiae in Support of Appellants at 19, *Kobach v. U.S. Election Assistance Comm'n*, Nos. 14-3062 and 14-3072 (10th Cir. June 3, 2014).
- 2 Decl. of Russell Weaver at A7688, *Florida v. United States*, No. 1:11-cv-01428 (D.D.C. April 10, 2012).
- 3 *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1317 (S.D. Fla. 2006).
- 4 *Id.* at 1316.
- 5 *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1159–65 (N.D. Fla. 2012).
- 6 *Id.* at 1157–58.
- 7 United States' and Defendant-Intervenor's Joint Submission Concerning Proposed Findings of Fact and Conclusions of Law at 26, *Florida v. United States*, No. 1:11-cv-01428 (D.D.C. May 3, 2012).
- 8 Decl. of Russell Weaver, *supra* note 2, at A7688–89.
- 9 *Id.*
- 10 United States' and Defendant-Intervenor's Joint Submission Concerning Proposed Findings of Fact and Conclusions of Law, *supra* note 7, at 31.
- 11 *Id.* at 27.
- 12 *Id.* at 32.
- 13 42 U.S.C. § 1973gg-5(a)(6)(A). Federal public assistance programs covered by Section 7 include, inter alia: the Supplemental Nutrition Assistance Program (SNAP, formerly the Food-Stamp Program); the Special Supplemental Nutrition Program for Women, Infants and Children (WIC); the Temporary Assistance for Needy Families (TANF) program (formerly the Aid to Families with Dependent Children or AFDC program); the Medicaid program; and the State Children's Health Insurance Program (SCHIP). State public assistance programs are also covered. *The National Voter Registration Act of 1993 (NVRA)*, U.S. Dep't of Justice, http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php (last visited July 28, 2014).
- 14 U.S. Dep't of Health & Human Servs., *Characteristics and Financial Circumstances of TANF Recipients, Fiscal Year 2010: Appendix tbl.8* (2011), available at http://www.acf.hhs.gov/sites/default/files/ofa/appendix_fy2011_final_amend.pdf; Kelsey Farson Gray & Esa Eslami, U.S. Dep't of Agric. Food and Nutrition Serv., Office of Policy Support, *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2012*, at 76 tbl.B.10 (2014), available at <http://www.fns.usda.gov/sites/default/files/2012Characteristics.pdf>.

- 15 *Id.*
- 16 *Id.*
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- 18 *Voting Rights Litigation*, Lawyers' Comm. for Civil Rights Under Law, http://www.lawyerscommittee.org/projects/voting_rights/page?id=0025 (last visited July 28, 2014).
- 19 *Voting Section Litigation*, U.S. Dep't of Justice, <http://www.justice.gov/crt/about/vot/litigation/caselist.php> (last visited July 28, 2014).
- 20 Lisa J. Danetz, Senior Counsel, Dēmos, Testimony to the U.S. Commission on Civil Rights: Increasing Compliance with Section 7 of the NVRA (April 19, 2013), *available at* <http://www.demos.org/sites/default/files/publications/Final%20USCCR%20Testimony.pdf>.
- 21 *Id.*
- 22 *Id.*
- 23 See *Miss. State Chapter, Operation Push v. Allain*, 674 F. Supp. 1245, 1251-52 (N.D. Miss. 1987), *aff'd* 932 F.2d 400 (5th Cir. 1991).
- 24 *Id.* at 1268. Plaintiffs also brought constitutional claims based on the clear discriminatory intent of the 1892 law and subsequent revisions, but the district judge found it unnecessary to address those claims in light of his statutory ruling. *Id.*
- 25 See 42 U.S.C. §§ 1973gg-3 to -5.
- 26 *Young v. Fordice*, 520 U.S. 273, 291 (1997).
- 27 Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Mississippi (Sept. 22, 1997), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/MS/MS-2650.pdf.
- 28 *Arizona v. Inter Tribal Council of Ariz.*, 133 S. Ct. 2247 (2013).
- 29 See Voter Registration, Op. Ariz. Att'y Gen., No. 113-011 (R13-016) (Oct. 7, 2013), *available at* <https://www.azag.gov/sites/default/files/sites/all/docs/Opinions/2013/113-011.pdf>; Letter from Kris W. Kobach, Sec'y of State, State of Kan., to Alice Miller, Acting Exec. Dir., Election Assistance Comm'n (Aug. 2, 2013), *available at* [http://www.eac.gov/assets/1/Documents/KW%20to%20EAC%20%20\(8%202%2013\)-with-Kansas-to-Counties-OCR.pdf](http://www.eac.gov/assets/1/Documents/KW%20to%20EAC%20%20(8%202%2013)-with-Kansas-to-Counties-OCR.pdf).
- 30 *Yearbook of Immigration Statistics: 2013*, Dep't of Homeland Security, <http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-naturalizations> (click to download tbl.21).
- 31 See Determination Letter from Loretta King, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Georgia (May 29, 2009), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/I_090529.php [hereinafter King Determination Letter].
- 32 Compl. at ¶¶ 33-40, *Morales v. Handel*, No. 1:08-cv-3172 (N.D. Ga. October 9, 2008) [hereinafter *Morales* Complaint].
- 33 See *Morales v. Handel*, No. 1:08-CV-3172, 2008 WL 9401054 (N.D. Ga. Oct. 27, 2008).
- 34 *Morales* Complaint, *supra* note 32, at ¶¶ 49-63.
- 35 *Morales*, 2008 WL 9401054 at *8-9.
- 36 King Determination Letter, *supra* note 31.
- 37 *Id.*
- 38 *Id.*
- 39 See *Morales v. Kemp*, Lawyers' Comm. for Civil Rights Under Law, http://www.lawyerscommittee.org/projects/voting_rights/page?id=0021 (last visited July 28, 2014).
- 40 Compl., *Arcia v. Detzner*, No. 1:12-CV-22282 (S.D. Fla., June 19, 2012).
- 41 *Id.* at ¶ 26.
- 42 *Arcia v. Florida Secretary of State*, 746 F.3d 1273, 1276-77 (11th Cir. 2014).
- 43 *Id.* See generally *What is SAVE?*, U.S. Citizenship and Immigration Services, <http://www.uscis.gov/save/what-save/what-save> (last visited July 28, 2014).
- 44 *Arcia*, 746 F.3d at 1286.
- 45 Compl., *Mi Familia Vota Education Fund v. Detzner*, No. 8:12-CV-01294-JDW-MAP (M.D. Fla. June 8, 2012).
- 46 Order of Dismissal, *Mi Familia Vota Education Fund v. Detzner*, No. 8:12-CV-01294-JDW-MAP (M.D. Fla. July 24, 2013).
- 47 Brandon Larrabee, *Appeals Court: Florida Voter Purge Violated Federal Law*, News-Press Apr. 2, 2014, <http://www.news-press.com/story/news/politics/2014/04/01/appeals-court-florida-voter-purge-violated-federal-law/7181283/>.
- 48 Rita Bettis, Written Testimony, National Commission on Voting Rights, Hearing in Kansas City, Missouri (Apr. 22, 2014) (on file with the Lawyers' Committee).
- 49 Aff. in Support of Resistance to Motion to Dismiss at 1-2, *Am. Civil Liberties Union v. Iowa Sec'y of State Matt Schultz*, No. CVCV009311, 2012 WL 4054139 (Iowa Dist. Sept. 13, 2012), *available at* <http://moritzlaw.osu.edu/electionlaw/litigation/documents/PetitionersExhibitList.pdf>.
- 50 Bettis, *supra* note 48, at 1-2.
- 51 *Id.*
- 52 Ariz. Rev. Stat. Ann. § 16-166(F); Kan. Stat. Ann. § 25-2309(l); Ala. Code § 31-13-28; Ga. Code Ann. § 21-2-216(g)(1); see also Wendy R. Weiser & Erik Opsal, Brennan Ctr. for Justice, *The State of Voting in 2014*, at 3 (2014), *available at* <http://www.brennancenter.org/analysis/state-voting-2014>.
- 53 42 U.S.C. §§ 1973gg-4(a)(1), 1973gg-7(a)(2).
- 54 See *Register to Vote in Your State by Using This Postcard Form and Guide*, http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_6-25-14_ENG.pdf (last visited July 25, 2014).
- 55 See 42 U.S.C. § 1973gg(b).
- 56 *Arizona v. ITCA*, 133 S. Ct. 2247 (2013).
- 57 *Id.* Plaintiffs also asserted in that litigation that the proof-of-citizenship requirement violated Section 2 of the Voting Rights Act, but that claim was not resolved on appeal to the Ninth Circuit and was not addressed by the Supreme Court. *Gonzalez v. Arizona*, 677 F.3d 383, 404 n.30 (9th Cir. 2012).
- 58 *Kobach v. U.S. Election Assistance Comm'n*, No. 13-cv-4095-EFM-TJJ, 2014 WL 1094957 (D. Kan. Mar. 19, 2014); See generally U.S. Election Assistance Comm'n, *Memorandum of Decision Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Registration Form 41-43* (2014), [hereinafter EAC Proof-of-Citizenship Decision] *available at* <http://www.eac.gov/assets/1/Documents/20140117%20EAC%20Final%20Decision%20on%20Proof%20of%20Citizenship%20Requests%20-%20FINAL.pdf>. The EAC denied Georgia's similar request, but the state is not participating in the lawsuit with Arizona and Kansas. *Id.*
- 59 *Kobach*, 2014 WL 1094957 at *13.
- 60 *Kobach v. U.S. Election Assistance Comm'n*, Nos. 14-3062 and 14-3072 (10th Cir. June 3, 2014).

- 61 Erik Eckholm, *After Ruling, Alabama Joins 2 States in Moving to Alter Voting Rules*, N.Y. Times (Mar. 21, 2014), <http://www.nytimes.com/2014/03/22/us/after-ruling-alabama-joins-2-states-in-moving-to-alter-voting-rules.html>.
- 62 EAC Proof-of-Citizenship Decision, *supra* note 58, at 28–31, 33–35.
- 63 Kristen Baker & Nelly Ward, Brennan Ctr. for Justice, *Survey of Georgia Elections Officials on Voting by Non-Citizens 1* (2009), available at <http://www.brennancenter.org/sites/default/files/legacy/blog/GA.survey.e.officials.doc>.
- 64 Brief for Election Administrators as Amici Curiae in Support of Respondents, at 7, *Arizona v. ITCA*, 133 S.Ct. 2247 (2013), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/AmicusBriefofElectionAdministrators.pdf>.
- 65 Jessica Gonzalez, Congressional Hispanic Caucus Institute, *New State Voting Laws: A Barrier to the Latino Vote?* 5 (2012).
- 66 EAC Proof-of-Citizenship Decision, *supra* note 58, at 42–43.
- 67 Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att’y Gen., U.S. Dep’t of Justice, to State of Tex. (Jan. 16, 1996), available at http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=tx.
- 68 *Id.*
- 69 *Id.*
- 70 42 U.S.C. § 1973gg-6(b)-(d).
- 71 42 U.S.C. § 1973gg-6(e).
- 72 See U.S. Civil Rights Comm’n, *Voting Irregularities in Florida During the 2000 Presidential Election* ch. 5 (2001).
- 73 *Id.*; see also Tova Andrea Wang, *The Politics of Voter Suppression: Defending and Expanding Americans’ Right to Vote* 120 (2012).
- 74 Myrna Pérez, Brennan Ctr. for Justice, *Voter Purges 1* (2008), available at <http://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf>; *Florida Scraps Flawed Felon Voting List*, USA Today (July 10, 2004), http://usatoday30.usatoday.com/news/nation/2004-07-10-felons-vote-fla_x.htm; Laleh Ispahani & Nick Williams, Am. Civil Liberties Union et al., *Purged* (2004), available at https://www.aclu.org/files/FilesPDFs/purged%20-voting_report.pdf.
- 75 Wang, *supra* note 73, at 115. (“The huge number of people with felony convictions has everything to do with the change in approach to criminal law in the 1980s and 1990s that increased the number of crimes considered felonies. And even though crime rates dropped in the 1990s, the national prison population grew at an unusually high rate because of the so-called war on drugs that increased penalties for drug crimes. These new sentencing rules for drug offenses also had a disproportionate effect on minority communities, particularly African Americans. African Americans are convicted of drug crimes at a much higher rate than white Americans, despite the fact that white Americans report higher rates of drug use. The disparities in the criminal justice system for African Americans and whites can be seen throughout the process from arrest, conviction, sentencing, and incarceration.”).
- 76 *Richardson v. Ramirez*, 418 U.S. 24 (1974).
- 77 *Id.* at 54.
- 78 *Hunter v. Underwood*, 471 U.S. 222 (1985).
- 79 Am. Civil Liberties Union et al., *Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States 2* (2013) [hereinafter *Democracy Imprisoned*].
- 80 See generally Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (2008).
- 81 Compl., *Johnson v. Bush*, No. 1:00-cv-03542-JLK (S.D. Fla. Sept. 21, 2000).
- 82 *Id.* at ¶ 31.
- 83 *Id.* at ¶ 44.
- 84 *Johnson v. Bush*, 214 F. Supp. 2d 1333, 1338–39 (S.D. Fla. 2002).
- 85 *Johnson v. Governor of State of Florida*, 353 F.3d 1287 (11th Cir. 2003).
- 86 *Johnson v. Governor of State of Florida*, 405 F.3d 1214, 1228 (11th Cir. 2005) (en banc) (citing *Richardson v. Ramirez*, 418 U.S. 24, 48–52 (1974)).
- 87 *Democracy Imprisoned*, *supra* note 79, at 6.
- 88 *Farrakhan v. Gregoire*, 590 F.3d 989 (9th Cir. 2010).
- 89 *Id.*
- 90 *Farrakhan v. Gregoire*, 623 F.3d 990, 993 (9th Cir. 2010) (en banc) (emphasis omitted).
- 91 *Howard v. Gilmore*, No. 99-2285, 2000 WL 203984 (4th Cir. Feb. 23, 2000); see also Anita S. Earls et al., RenewtheVRA.org, *Voting Rights in Virginia: 1982-2006*, at 23–24 (2006).
- 92 *Democracy Imprisoned*, *supra* note 79, at 5.
- 93 *Id.*
- 94 National Commission on Voting Rights, Richmond, Virginia Hearing 27 (Apr. 29, 2014) (transcript on file with the Lawyers’ Committee).
- 95 Ky. Const. § 145.
- 96 Ky. Advisory Comm. to the U.S. Comm’n on Civil Rights, *Voting Rights in Kentucky: Felons Who Have Completed all Terms of Their Sentences Should Have the Right to Vote 22* (2009), [hereinafter *Voting Rights in Kentucky*] available at <http://www.usccr.gov/pubs/KYVotingRightsReport.pdf>.
- 97 Christopher Uggen, Sarah Shannon & Jeff Manza, Sentencing Project, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*, at 16 tbl.3 (2012), available at http://www.sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf.
- 98 *Voting Rights in Kentucky*, *supra* note 96, at 22.
- 99 Phillip M. Bailey, *Opposition to Felon Voting Rights Thawing, Kentucky Lawmaker Says*, WFPL News (Oct. 21, 2013), <http://wfpl.org/post/opposition-felon-voting-rights-thawing-kentucky-lawmaker-says>.
- 100 Bettis, *supra* note 48, at 2.
- 101 Thomas H. Castelli, Written Testimony, National Commission on Voting Rights, Hearing in Nashville, Tennessee 3 (May 8, 2014) (on file with the Lawyers’ Committee).
- 102 *Id.*
- 103 See generally National Commission on Voting Rights, California State Hearing 50–53 (Jan. 30, 2014) (transcript on file with the Lawyers’ Committee).
- 104 National Commission on Voting Rights, Minnesota and Wisconsin Hearing 113 (Feb. 25, 2014) (transcript on file with the Lawyers’ Committee).
- 105 National Commission on Voting Rights, Miami, Florida Hearing 34 (Mar. 31, 2014) (transcript on file with the Lawyers’ Committee).
- 106 See, e.g., *South Carolina v. United States*, 898 F. Supp. 2d 30, 32 (D.D.C. 2012); *Texas v. Holder*, 888 F. Supp. 2d 113, 115 (D.D.C. 2012).

- 107 For Louisiana, see Tyler Bridges, *Louisiana's Voter ID Law from 1997 Eases Effects of Supreme Court Decision*, *The Lens* (June 27, 2013), <http://thelensnola.org/2013/06/27/louisianas-voter-id-law-from-1997-eases-effects-of-supreme-court-decision/>; see also Wendy Underhill, *Voter Identification Requirements | Voter ID Laws*, National Conference of State Legislatures (June 25, 2014), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Details> ("If the applicant does not have identification, s/he shall sign an affidavit to that effect before the commissioners, and the applicant shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners."). For Virginia, see *Election 2012: Voting Laws Roundup*, Brennan Ctr. for Justice (Oct. 11, 2012), <http://www.brennancenter.org/analysis/election-2012-voting-laws-roundup> ("Virginia passed a law requiring an ID to vote, including various forms of photo. *Id.* This law eliminated an option to sign an affidavit to confirm identity when voting at the polls or applying for an absentee ballot in person.").
- 108 42 U.S.C. § 15483(b)(2)(A). Acceptable identifying documents include current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. *Id.*
- 109 See Sarah Childress, *With Voting Rights Act Out, States Push Voter ID Laws*, PBS Frontline (June 26, 2013), <http://www.pbs.org/wgbh/pages/frontline/government-elections-politics/with-voting-rights-act-out-states-push-voter-id-laws/>.
- 110 Martha Bergmark, *Mississippi's Secretary of State Moves to Enforce Voter ID Law*, Huffington Post (July 10, 2013), www.huffingtonpost.com/martha-bergmark/voting-rights-act-shelby-county-v-holder_b_3575216.html. Mississippians in 2011 voted in favor of an initiative to amend the State Constitution to require that all voters seeking to vote in person (with certain limited exceptions) present a government-issued photo ID in order to cast a ballot that will be counted. A subsequent analysis of the initiative vote by the Lawyers' Committee showed that voting on the ballot measure was highly racially polarized—over 75% of non-white voters opposed the initiative while only about 17% of white voters opposed it. See Russell C. Weaver, Lawyers' Comm. for Civil Rights Under Law, *Pulling Back the Curtain: An Analysis of Racial Voting Shows that Mississippi's Ugly History of Voter Suppression Continues* (2012), available at <http://www.lawyerscommittee.org/admin/site/documents/files/Pulling-Back-the-Curtain.pdf>.
- 111 Tomas Lopez, Brennan Ctr. for Justice, *Shelby County: One Year Later 3* (2014), available at http://www.brennancenter.org/sites/default/files/analysis/Shelby_County_One_Year_Later.pdf; see also Kara Brandeisky & Mike Tigas, *Everything That's Happened Since Supreme Court Ruled on Voting Rights Act*, Pro Publica (Nov. 1, 2013), <http://www.propublica.org/article/voting-rights-by-state-map>.
- 112 Indeed, incidents of fraud perpetrated by voters of any kind are rare. See, e.g., Lorraine C. Minnite, *The Myth of Voter Fraud* (2010); Justin Levitt, Brennan Ctr. for Justice, *The Truth About Voter Fraud* (2007); Natasha Khan & Corbin Carson, *Comprehensive Database of U.S. Voter Fraud Uncovers No Evidence That Photo ID Is Needed*, News 21 (Aug. 12, 2012), <http://votingrights.news21.com/article/election-fraud/>.
- 113 See Lorraine C. Minnite, Project Vote, *The Politics of Voter Fraud* (2007); Eric Lipton & Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. Times (Apr. 12, 2007), www.nytimes.com/2007/04/12/washington/12fraud.html?pagewanted=all&r=0.
- 114 In early 2007, there was a major political controversy over the firings of several U.S. attorneys. As a larger picture of the politicization of the Department of Justice emerged, especially the Civil Rights Division, the focal point was the firing and forced resignations of nine U.S. attorneys and the consideration of three more for sudden removal, for apparent political reasons. As it turned out, five of those twelve were targeted because they had not pursued alleged voter fraud accusations with sufficient vigor for the political operatives in the Bush administration. See Lipton & Urbina, *supra* note 113; see also Dan Eggen & Amy Goldstein, *Voter Fraud Complaints by GOP Drove Dismissals*, Wash. Post (May 14, 2008) <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/13/AR2007051301106.html>; Eric Lipton, *Panel Asks Official about Politics in Hiring*, N.Y. Times (June 6, 2007) <http://www.nytimes.com/2007/06/06/washington/06justice.html>; Frank Morris, *Attorneys Scandal May be Tied to Missouri Voting*, NPR (May 3, 2007) <http://www.npr.org/templates/story/story.php?storyId=9981606>
- 115 According to Lorraine C. Minnite,
- [n]o state considering or passing restrictive voter identification laws has documented an actual problem with voter fraud. In litigation over the new voter identification laws in Wisconsin, Indiana, Georgia and Pennsylvania, election officials testified they have never seen cases of voter impersonation at the polls. Indiana and Pennsylvania stipulated in court that they had experienced zero instances of voter fraud.
- When federal authorities challenged voter identification laws in South Carolina and Texas, neither state provided any evidence of voter impersonation or any other type of fraud that could be deterred by requiring voters to present photo identification at the polls.
- Lorraine C. Minnite, *SSN Key Findings: The Misleading Myth of Voter Fraud in American Elections* (2014), available at http://www.scholarsstrategynetwork.org/sites/default/files/ssn_key_findings_minnite_on_the_myth_of_voter_fraud.pdf; see also *Applewhite v. Pennsylvania*, No. 330 MD 12, 2012 WL 3332376 (Pa. Commw. Ct. Aug. 15, 2012), vacated, 617 Pa. 563 (2012), remanded to 2012 WL 4497211 (Pa. Commw. Ct. Oct. 2, 2012), *subsequent determination* in 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014) ("The parties are not aware of any incidents of any in-person voter fraud in Pennsylvania and do not have direct personal knowledge of in[-]person voter fraud elsewhere"); Nick Wing, *Pennsylvania Voter ID Law Trial Set To Begin As State Concedes It Has No Proof Of In-Person Voter Fraud*, Huffington Post (July 24, 2012) http://www.huffingtonpost.com/2012/07/24/pennsylvania-voter-id-trial_n_1697980.html. In North Carolina,

[t]he state presented no tangible evidence of voter fraud to justify the new restrictions. "There is no evidence we had problems with these enhanced forms of participation," Senator Dan Blue, the Democratic minority leader, testified. (Ironically, the law does nothing to restrict absentee voting, where the potential for fraud is greatest.)

Ari Berman, *North Carolina Will Determine the Future of the Voting Rights Act*, *The Nation* (July 10, 2014) <http://www.thenation.com/blog/180608/north-carolina-will-determine-future-voting-rights-act#>; see also Press Release, Advancement Project, North Carolina's Answer to Lawsuit Offers No Justification for Making It Harder to Vote (Oct. 21, 2013), <http://www.advancementproject.org/news/entry/north-carolinas-answer-to-lawsuit-offers-no-justification-for-making-it-harder-to-vote>.

116 *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008).

117 *Frank v. Walker*, No. 11-CV-01128, 2014 WL 1775432, at *6 (E.D. Wisc. Apr. 29, 2014).

118 Said Rep. Todd Rokita (R-IN), a former Indiana Secretary of State:

Whether or not you agree that in-person voter impersonation fraud exists -- and I will say that as eight years of being Indiana's Secretary of State, it does exist, we have allegations made every election . . . [b]ut if it's happening in Indiana, it's happening everywhere from New York to California. . . .

Now these gentleman and others say 'well you can't produce one case, you can't produce one conviction, therefore it doesn't exist,' the word evidence was used. Well that's not true, there's a lot of evidence

There are several cases that I presented to prosecutors who didn't take up the case, not because of a lack of evidence, but think about the kind of fraud it is, think about the kind of crime it is It's something that happens in an instant and than it's gone. . . .

It's the kind of cases, the kind of fraud, that's very hard to prosecute, but that doesn't mean it doesn't exist

Ryan J. Reilly, *GOP Rep: Voter Fraud 'Happening Everywhere,' But Prosecutors Wouldn't Take Cases*, Talking Points Memo (Sept. 13, 2011) <http://talkingpointsmemo.com/muckraker/gop-rep-voter-fraud-happening-everywhere-but-prosecutors-wouldn-t-take-cases-video>. Rokita said that the Indiana voter ID law

is intended to encourage "faith in the election process, and in the integrity of it. Identify theft is the fastest-growing problem in America."

He acknowledges there have been no prosecutions for impersonating a voter. "But we still have a

right to protect ourselves against the possibility of voter fraud," he said.

ID Laws Spur Voting Legal Battle, Assoc. Press (Jan. 23, 2008) http://usatoday30.usatoday.com/news/nation/2008-01-23-voting-court_N.htm. Testifying before the Indiana Committee on House Administration, he said

This is not about voter intimidation. It is about voter confidence. It is about the right of a legally registered voter to have her ballot counted and to expect that ballot to have exactly the same weight as every other legally registered voter's ballot. Inherent in this is the right not to have her vote diluted or cancelled out by someone who would act to defraud the system. Requiring government issued photo identification at the polls is a way to ensure this.

Testimony of Indiana Secretary of State Todd Rokita for the Committee on House Administration, Indiana Sec'y of State, Elections Division (Feb. 9, 2005), www.in.gov/sos/3183.htm. North Carolina House Speaker Thom Tillis offered a similar rationale for North Carolina's voter ID law:

"There is some evidence of voter fraud, but that's not the primary reason for doing this," Tillis told Melvin. "We call this restoring confidence in government," Tillis said. "There are a lot of people who are just concerned with the potential risk of fraud."

He added a voter ID law "would make nearly three-quarters of the population more comfortable and more confident when they go to the polls."

Laura Leslie, *Tillis: Fraud 'Not the Primary Reason' for Voter ID Push*, WRAL (updated Mar. 17, 2013), www.wral.com/tillis-actual-voter-fraud-not-the-primary-reason-for-voter-id-push-/12231514/. The U.S. Supreme Court has expressed similar reasoning:

Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (per curiam). In *Purcell*,

The state Respondents' brief was most emphatic in its advocacy of a state interest to restore confidence in elections. Citing Gallup and Rasmussen polls attesting to the widespread lack of confidence Americans have in the integrity of elections, the state's brief contained an entire subsection titled, "The need to preserve public confidence in elections justifies the Voter ID Law." Because opportunities for abuse exist, this state interest in restoring confidence is compelling, the brief argued, "[r]egardless whether particular instances of fraud are well documented."

Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements* 4–5 (Columbia Law Sch. Pub. Law & Legal Theory Working Paper Grp., Paper No. 08-170, 2008), available at <http://www.brennancenter.org/sites/default/files/legacy/Democracy/Persily%20Ansolabehere%20attitudes%20study.pdf> (citations omitted).

- 119 *Crawford*, 553 U.S. at 197 (while “Indiana’s interest in protecting public confidence ‘in the integrity and legitimacy of representative government’ . . . is closely related to the State’s interest in preventing voter fraud, public confidence in the integrity of the electoral process [also] has independent significance, because it encourages citizen participation in the democratic process”) (citation omitted).
- 120 See, e.g., Matt A. Barreto et al., *The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate* (Wash. Inst. for the Study of Race and Ethnicity, Working Paper, 2007), available at http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf; Matt A. Barreto et al., *Voter ID Requirements and the Disenfranchisement of Latino, Black and Asian Voters* (Sept. 1, 2007) (prepared for presentation at the Am. Political Science Ass’n Annual Conference), available at http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf; Brennan Ctr. for Justice, *Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification* (2006) [hereinafter *Citizens Without Proof*], available at http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf; John Pawasarat, Univ. of Wisc.-Milwaukee Employment and Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin* (2005), available at <https://www4.uwm.edu/eti/barriers/DriversLicense.pdf>.
- 121 *Citizens Without Proof*, supra note 120, at 3.
- 122 Shailla Dewan, *In Georgia, Thousands March in Support of Voting Rights*, N.Y. Times (Aug. 7, 2005) http://www.nytimes.com/2005/08/07/national/07march.html?_r=0; Ellen Berry, *Georgia Gov. Signs Voter ID Bill Into Law*, L.A. Times (Apr. 23, 2005) <http://articles.latimes.com/2005/apr/23/nation/na-voterid23>.
- 123 Ga. Code Ann. § 21-2-417.
- 124 *Common Cause of Ga. v. Billups*, 406 F. Supp. 2d 1326, 1376 (N.D. Ga. 2005).
- 125 Vishal Agraharkar, Wendy Weiser & Adam Skaggs, Brennan Ctr. for Justice, *The Cost of Voter ID Laws: What the Courts Say* 3 (2011), available at <http://www.brennancenter.org/sites/default/files/legacy/Democracy/Voter%20ID%20Cost%20Memo%20FINAL.pdf>.
- 126 *Common Cause III*, 504 F. Supp. 2d 1333, 1377–80.
- 127 *Crawford*, 553 U.S. 181.
- 128 *Id.*
- 129 From the Indiana Election Division’s website:

Public Law 109-2005 requires Indiana residents to present a government-issued photo ID before casting a ballot at the polls on Election Day.

Your photo ID must meet 4 criteria to be acceptable for voting purposes. It Must:

1. Display your photo
2. Display your name, and the name must conform to your voter registration record . . .
3. Display an expiration date and either be current or have expired sometime after the date of the last General Election . . .
4. Be issued by the State of Indiana or the U.S. government

In most cases, an Indiana driver license, Indiana photo ID card, Military ID or U.S. Passport is sufficient.

A student ID from an Indiana State school may only be used if it meets all of the 4 criteria specified above. A student ID from a private institution may not be used for voting purposes.

Photo ID Law, Indiana Election Div., www.in.gov/sos/elections/2401.htm (last visited July 30, 2014). The law provides certain exemptions:

Exemptions do exist for the indigent, those with a religious objection to being photographed, and those living in state-licensed facilities that serve as their precinct’s polling place. If you are wishing to claim an exemption from the photo ID requirement based on indigence or a religious objection, you may do so in one of two ways:

1. Go the polls on Election Day, and cast a provisional ballot. Within 10 days of the election, visit the county election office and affirm that an exemption applies to you.
2. Vote absentee-in-person at the county election office before Election Day, and while there, affirm that an exemption applies to you.

If you are a resident at a state-licensed facility that serves as your polling place, you may claim the exemption at the polls on Election Day.

If you are unable or unwilling to present photo ID on Election Day, you may cast a provisional ballot. Upon casting a provisional ballot, you have until noon 10 days after the election to follow up with the County Election Board and either provide photo ID or affirm one of the law’s exemptions applies to you.

Also, if you qualify to vote absentee-by-mail or absentee-by-traveling board, and you chose to vote as such, you are not required to present photo ID.

Exemptions, Indiana Election Division, <http://www.in.gov/sos/elections/2624.htm> (last visited July 30, 2014). In *Crawford*, the Court asserted that “the evidence in the record does not provide us with the number of registered voters without photo identification[.]” *Crawford*, 553 U.S. at 200. Drawing from the district court’s determinations, the Supreme Court found that the burden on voters was “limited[.]” *Id.* at 203 (quoting *Burdick v. Takushi*, 504 U.S. 428, 439).

- 130 *Crawford*, 553 U.S. at 203 (quoting *Burdick*, 504 U.S. at 439).
- 131 *Id.* at 200.
- 132 *Id.* at 201.
- 133 *Id.*
- 134 *Id.* at 204.
- 135 *Texas v. Holder*, 888 F. Supp. 2d at 124, *vacated and remanded*, 133 S. Ct. 2886 (2013).
- 136 Defendants' Motion to Dismiss at 1, *Veasey v. Perry*, No. 2:13-CV-193, 2013 WL 6046807 (S.D. Tex. June 26, 2013). Texas cited *Crawford* repeatedly throughout its Motion to Dismiss.
- 137 Order on Motions to Dismiss at *14-*15, *Veasey v. Perry*, No. 2:13-CV-193, 2014 WL 3002413 (S.D. Tex. July 2, 2014).
- 138 *Frank v. Walker*, No. 11-CV-01128, 2014 WL 1775432 at *3, *18, *33 (E.D. Wisc. 2014).
- 139 *Id.* at 23.
- 140 *Id.* at 24-38.
- 141 *Id.* at 33.
- 142 *Id.* at 8.
- 143 *Id.* at 8-10.
- 144 Karyn L. Rotker, Written Testimony, Nat'l Comm'n on Voting Rights, Hearing in Minneapolis, Minnesota 9 (Feb. 25, 2014) (citing Matt A. Barreto, Rates of Possession of Accepted Photo Identification Among Different Subgroups in the Eligible Voter Population, Milwaukee County, Wisconsin, Expert Report Submitted on Behalf of the Plaintiffs in *Frank v. Walker* at 18-19, 34, *Frank v. Walker*, No. 11-CV-01128, 2014 WL 1775432 (Apr. 23, 2012), available at <https://www.aclu.org/files/assets/062-10-exhibitjexpertreport.pdf>).
- 145 *Id.* at 10.
- 146 See Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 Vand. L. Rev. 89, 91, 101-05 (2014).
- 147 *Weinschenk v. State*, 203 S.W.3d 201, 221-22 (Mo. 2006).
- 148 Order on Preliminary Injunction at 3, *Kohls v. Martin*, No. 60CV-14-1495 (Ark. Cir. May 23, 2014). According to the ACLU of Arkansas, "as many as 25% of African-Americans in the state lack government issued photo ID, compared to 8% of their white counterparts." *Voter ID Laws Disenfranchise Eligible, Longtime Voters*, Am. Civil Liberties Union of Ark. (2013), www.acluarkansas.org/content/voter-id-bill-in-arkansas-house#.U9fdlPldVp6.
- 149 *Applewhite v. Commonwealth of Pennsylvania*, 617 Pa. 563 (2012).
- 150 *Id.* at 567 ("PennDOT—apparently for good reason—has refused to allow such liberal access. Instead, the Department continues to vet applicants for Section 1510(b) cards through an identification process that Commonwealth officials appear to acknowledge is a rigorous one.").
- 151 *Id.* at 569 ("While there is a debate over the number of affected voters, given the substantial overlap between voter rolls and PennDOT's existing ID driver/cardholder database, it is readily understood that a minority of the population is affected by the access issue. Nevertheless, there is little disagreement with Appellants' observation that the population involved includes members of some of the most vulnerable segments of our society (the elderly, disabled members of our community, and the financially disadvantaged).").
- 152 *Id.* at 570 ("[I]f the Commonwealth Court is not still convinced in its predictive judgment that there will be no voter disenfranchisement arising out of the Commonwealth's implementation of a voter identification requirement for purposes of the upcoming election, that court is obliged to enter a preliminary injunction.") (emphasis added).
- 153 *Applewhite*, 2014 WL 184988 at *26-27.
- 154 *Id.* at *11-*12.
- 155 *Id.* at *14-*17.
- 156 In the first case, the North Carolina State Conference of the NAACP and other individuals and churches challenge portions of House Bill 589 pursuant to the federal Voting Rights Act, 42 U.S.C. § 1973, and pursuant to the Fourteenth and Fifteenth Amendments to the Constitution. *N.C. State Conference of the NAACP v. McCrory*, No. 1:13-CV-658 (M.D.N.C. 2014). In the second case, the League of Women Voters of North Carolina and other individuals and groups raise similar challenges under the Voting Rights Act, 42 U.S.C. § 1973 and § 1973a, and under the Fourteenth Amendment. *League of Women Voters of N.C. v. North Carolina*, No. 1:13-CV-660 (M.D.N.C. 2014). Finally, in the third case, the Department of Justice also raises similar challenges pursuant to the Voting Rights Act, 42 U.S.C. § 1973. In all three cases, the claims are asserted against the State of North Carolina, the members or director of the State Board of Elections, and/or North Carolina Governor McCrory. *United States v. North Carolina*, No. 1:13-CV-861 (M.D.N.C. 2014). See Order, *N.C. State Conference of the NAACP v. McCrory*, No. 1:13-CV-658 (M.D.N.C. 2014), available at <http://www.advancementproject.org/page/-/esjt/files/resources/NC%20Order.pdf>.
- 157 N.C. State Board of Elections, *Apr. 2013 SBOE-DMV ID Analysis* (Apr. 17, 2013), www.democracy-nc.org/downloads/SBOE-DMVMatchMemoApril2013.pdf.
- 158 Compl. at 15-16, *United States v. North Carolina*, No. 13-CV-861 (M.D.N.C. Sept. 30, 2013).
- 159 Rachael V. Cobb, D. James Greiner & Kevin M. Quinn, *Can Voter ID Laws Be Administered in a Race-Neutral Manner? Evidence from the City of Boston in 2008*, 7 Q.J. Pol. Sci. 1, 3 (2010); Lonna R. Atkeson et al., *A New Barrier to Participation: Heterogeneous Application of Voter Identification Policies*, 29 Electoral Stud. 66, 66-73 (2010).
- 160 *Id.*
- 161 National Commission on Voting Rights, Pennsylvania State Hearing 125 (Feb. 6, 2014) (transcript on file with the Lawyers' Committee).
- 162 *Texas v. Holder*, 888 F. Supp. 2d at 115.
- 163 *Id.* at 124-25.
- 164 *Id.* at 144.
- 165 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., Dep't of Justice to State of Texas (Mar. 12, 2012), available at http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/I_120312.pdf.
- 166 *Texas v. Holder*, 888 F. Supp. 2d at 144.
- 167 *Id.*
- 168 *Id.* at 138.
- 169 *Id.* at 139-40. At the NCVR Texas hearing, the Commission heard direct testimony regarding the hours it can take some voters to get to the Department of Public Safety. See Rogene Gee Calvert, Testimony of Rogene Gee Calvert, Dir., Tex. Asian American Redistricting Initiative 122, National Commission on Voting Rights, Houston, Texas Regional Hearing (Apr. 5, 2014) (transcript on file with the Lawyers' Committee).
- 170 *Id.* at 144 (internal citations omitted).

- 171 *Texas v. Holder*, 133 S. Ct. 2886 (2013); *Texas v. Holder*, No. 1:12-cv-00128 (D.D.C. Aug. 27, 2013).
- 172 Sarah Ferris, *Texas Revives Voter ID Law in Wake of Supreme Court Decision, Opponents Pledge to Keep Up Fight*, Houston Chron. (June 25, 2013) blog.chron.com/txpotomac/2013/06/texas-revives-voter-id-law-in-wake-of-supreme-court-decision-opponents-pledge-to-keep-up-fight/#13481101=0.
- 173 The lawsuit brought by the United States and the private suits have been consolidated using the caption of the first-filed case, *Veasey v. Perry*, No. 2:13-cv-193 (S.D. Tex. 2014).
- 174 *Absentee and Early Voting*, Nat'l Conference of State Legislatures, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#early> (last visited July 30, 2014).
- 175 *Florida v. United States*, 885 F. Supp. 2d 299, 322–23 (D.D.C. 2012).
- 176 See, e.g., *id.* at 329–30, 337.
- 177 *Id.* at 308–09.
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- 189 Compl. at ¶ 29, *United States v. North Carolina*, No. 13-CV-861 (M.D.N.C. Sept. 30, 2013).
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- 191 Compl. at ¶¶ 37–39, *League of Women Voters of N.C. v. North Carolina*, No. 13-CV-660 (M.D.N.C. Aug. 12, 2013). The trial in this case is not expected to take place until 2015, although motions for a preliminary injunction are pending.
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- 194 Statistical Analysis on file with the Lawyers' Committee for Civil Rights Under Law.
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- 242 Garreau, *supra* note 240.
- 243 *Brooks v. Gant*, No. CIV. 12–5003–KES., 2012 WL 4482984, at *1 (D.S.D. Sept. 27, 2012).
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- 250 See e.g., Adam Serwer, *Section 11(b) And Why the NBPP Case Was Dropped*, Am. Prospect (July 12, 2014) <http://prospect.org/article/section-11b-and-why-nbpp-case-was-dropped>. In a 2008 article, voting rights advocates argued for greater use of the VRA against voter intimidation:
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CHAPTER 7

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- 4 42 U.S.C. § 1973aa-1a(b)(2)(A).
- 5 42 U.S.C. § 1973aa-1a(b)(2)(A)(ii); 28 C.F.R. Pt. 55.6(a)(2)(ii).
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- 7 42 U.S.C. § 1973aa-6.
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- 10 S. Rep. No. 94-295, at 3 (1975).
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- 12 42 U.S.C. § 1973aa-1a. The illiteracy rate of such language minority citizens in the political subdivision must also be higher than the national illiteracy rate. *Id.*
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- 102 *Id.* at 531.
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APPENDIX A

ABBREVIATIONS

ABBREVIATIONS

AALDEF

Asian American Legal Defense Fund

ACLU

American Civil Liberties Union

DMV

Department of Motor Vehicles

DOJ

Department of Justice

EAC

Election Assistance Commission

Lawyers' Committee

Lawyers' Committee for Civil Rights
Under Law

LEP

Limited English Proficiency

MALDEF

Mexican American Legal Defense and
Educational Fund

NAACP

National Association for the Advancement of
Colored People

NALEO

National Association of Latino
Elected Officials

NCVR

National Commission on Voting Rights

NVRA

National Voter Registration Act

SNAP

Supplemental Nutrition Assistance Program

TANF

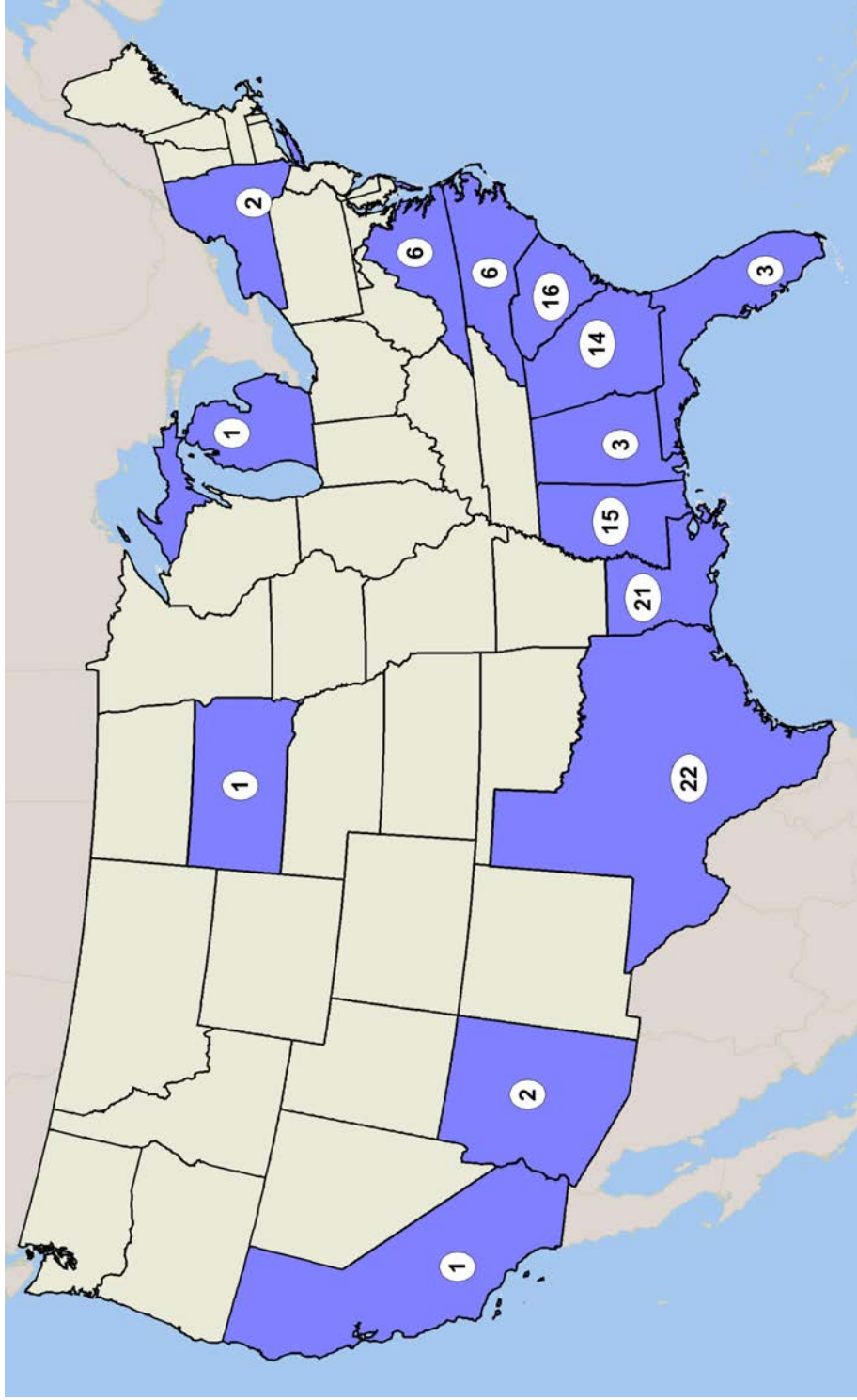
Temporary Assistance for Needy Families

VRA

Voting Rights Act

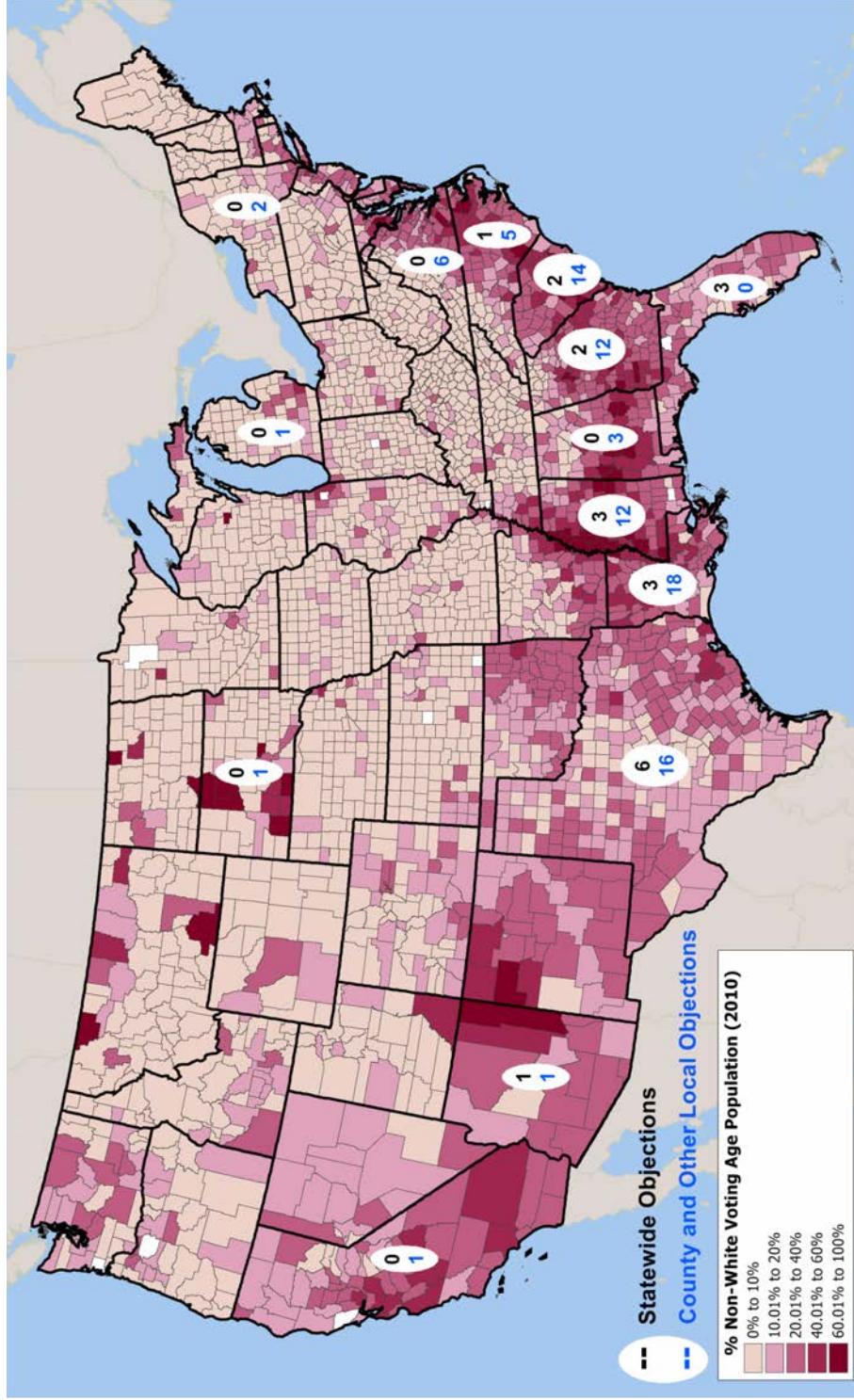
APPENDIX B MAPS

Map 1: Preclearance Denials
From 1995 to June 2014



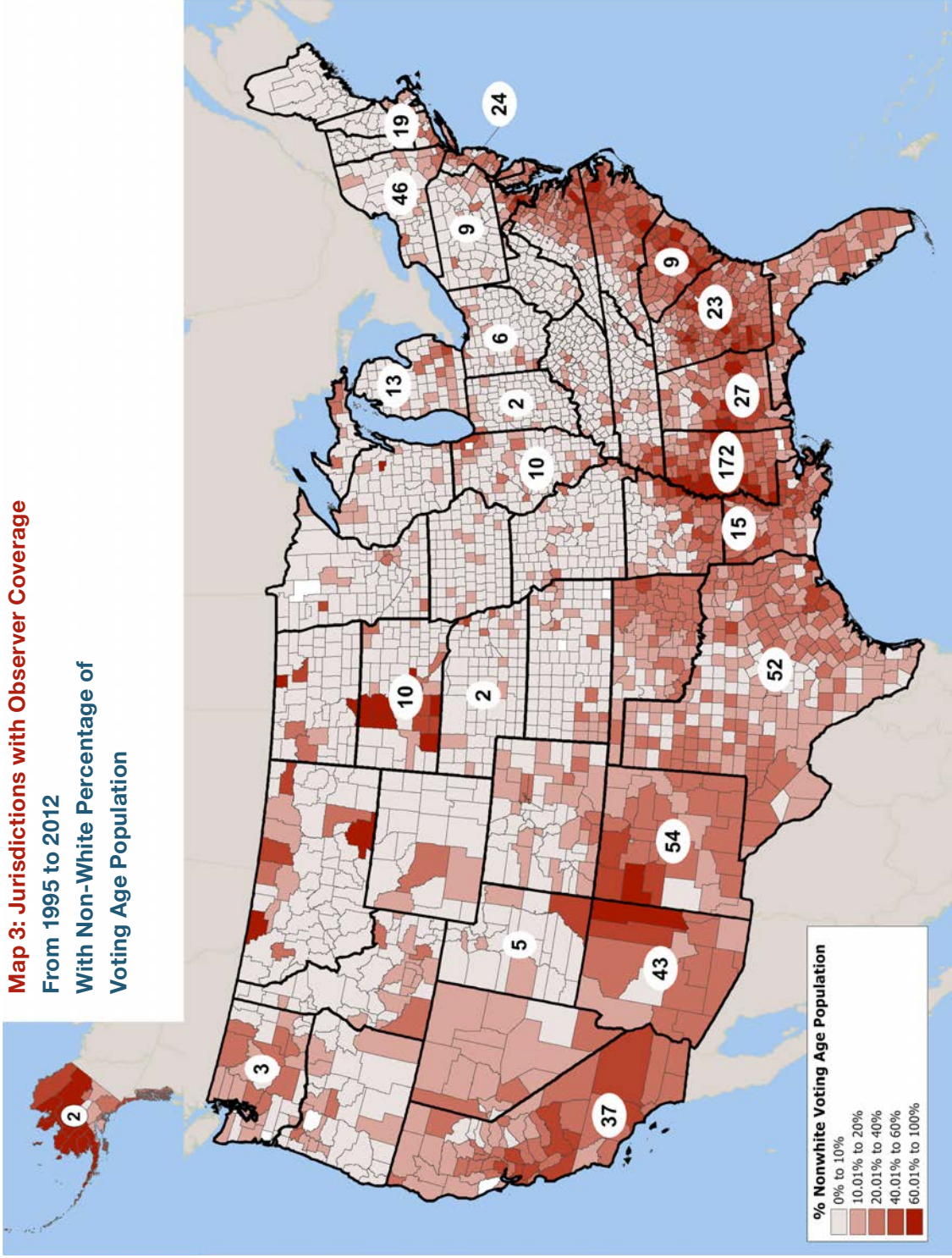
Objections counted by objection letter, and court denials counted by unsuccessful Section 5 declaratory judgment actions. Includes one Section 3 objection in South Dakota. Figures do not include objections withdrawn based upon a subsequent change in law or fact, and an objection where preclearance subsequently was granted by the U.S. District Court for the District of Columbia. There were no denials in Hawaii or Alaska during this period. Data: derived from U.S. Department of Justice records. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law.

**Map 2: Preclearance Denials
From 1995 to 2013
With Non-White Percentage of
Voting Age Population**



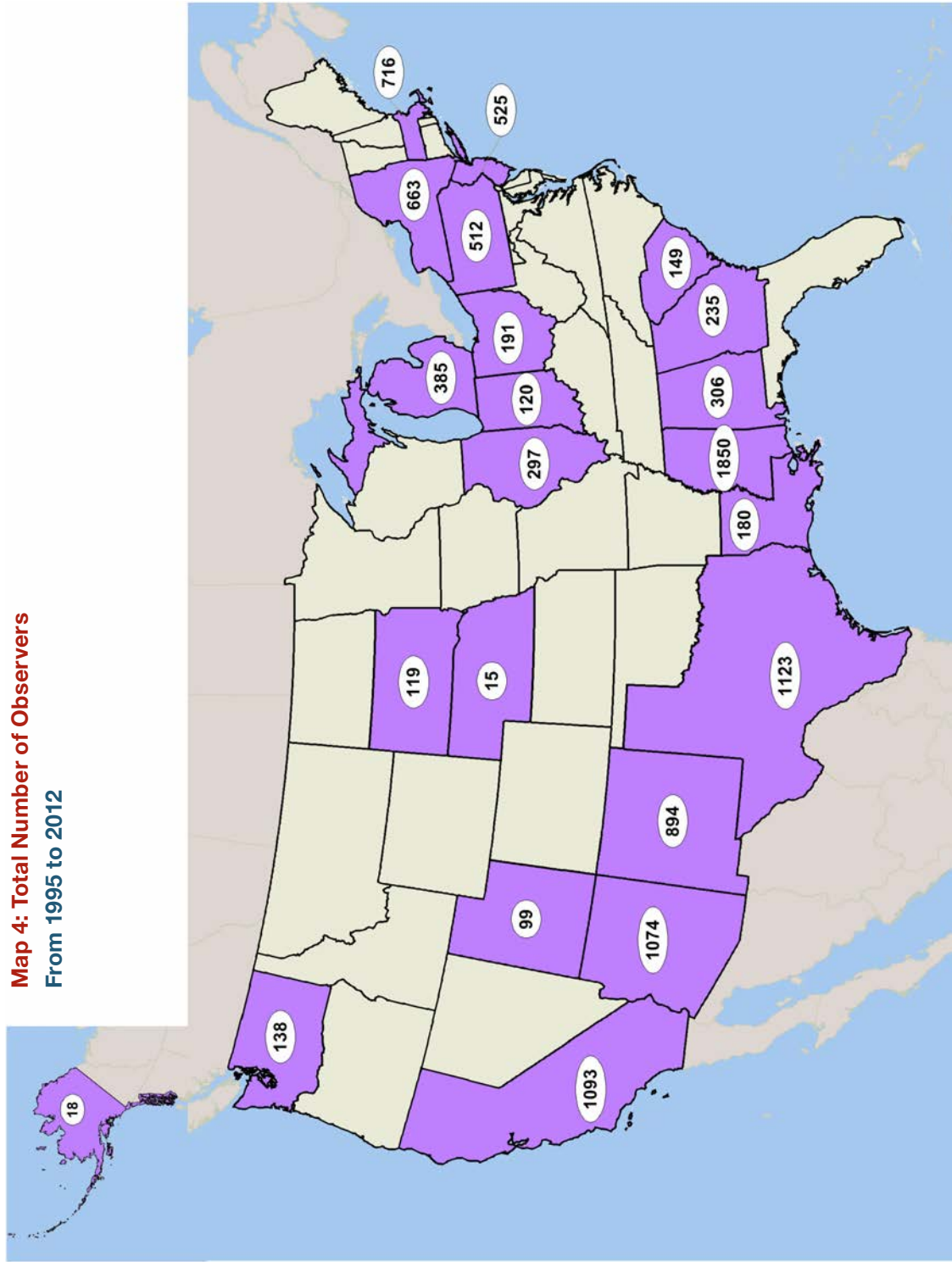
Objections counted by objection letter, and court denials counted by unsuccessful Section 5 declaratory judgement actions. Includes one Section 3 objection in South Dakota. Figures do not include objections withdrawn based upon a subsequent change in law or fact, and an objection where preclearance subsequently was granted by the U.S. District Court of the District of Columbia. There were no denials in Hawaii or Alaska during this period. Data: derived from U.S. Department of Justice records and U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law.

**Map 3: Jurisdictions with Observer Coverage
From 1995 to 2012
With Non-White Percentage of
Voting Age Population**



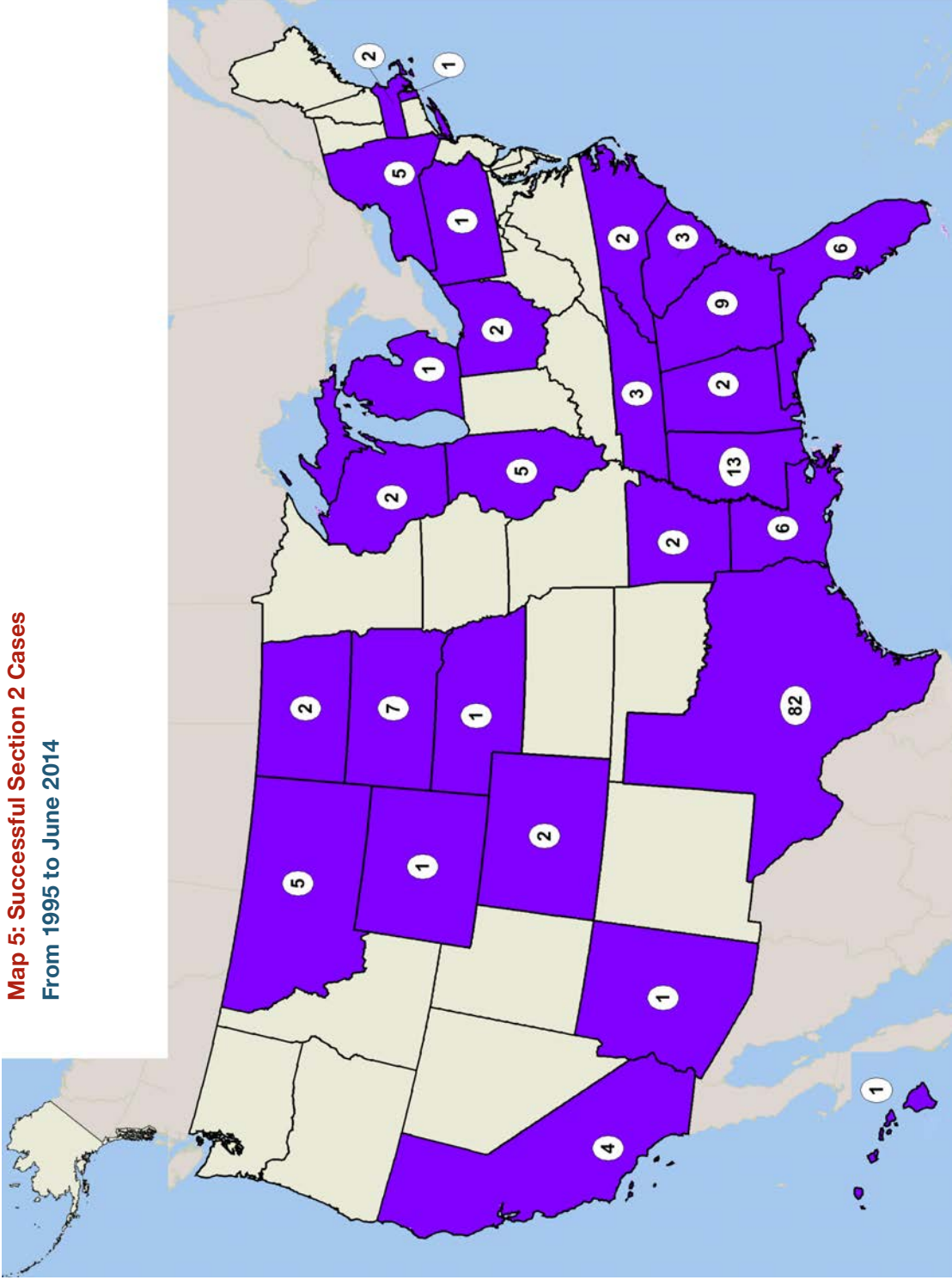
There were no observers in Hawaii during this period. Data: U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File and observer data derived from U.S. Department of Justice records. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

**Map 4: Total Number of Observers
From 1995 to 2012**



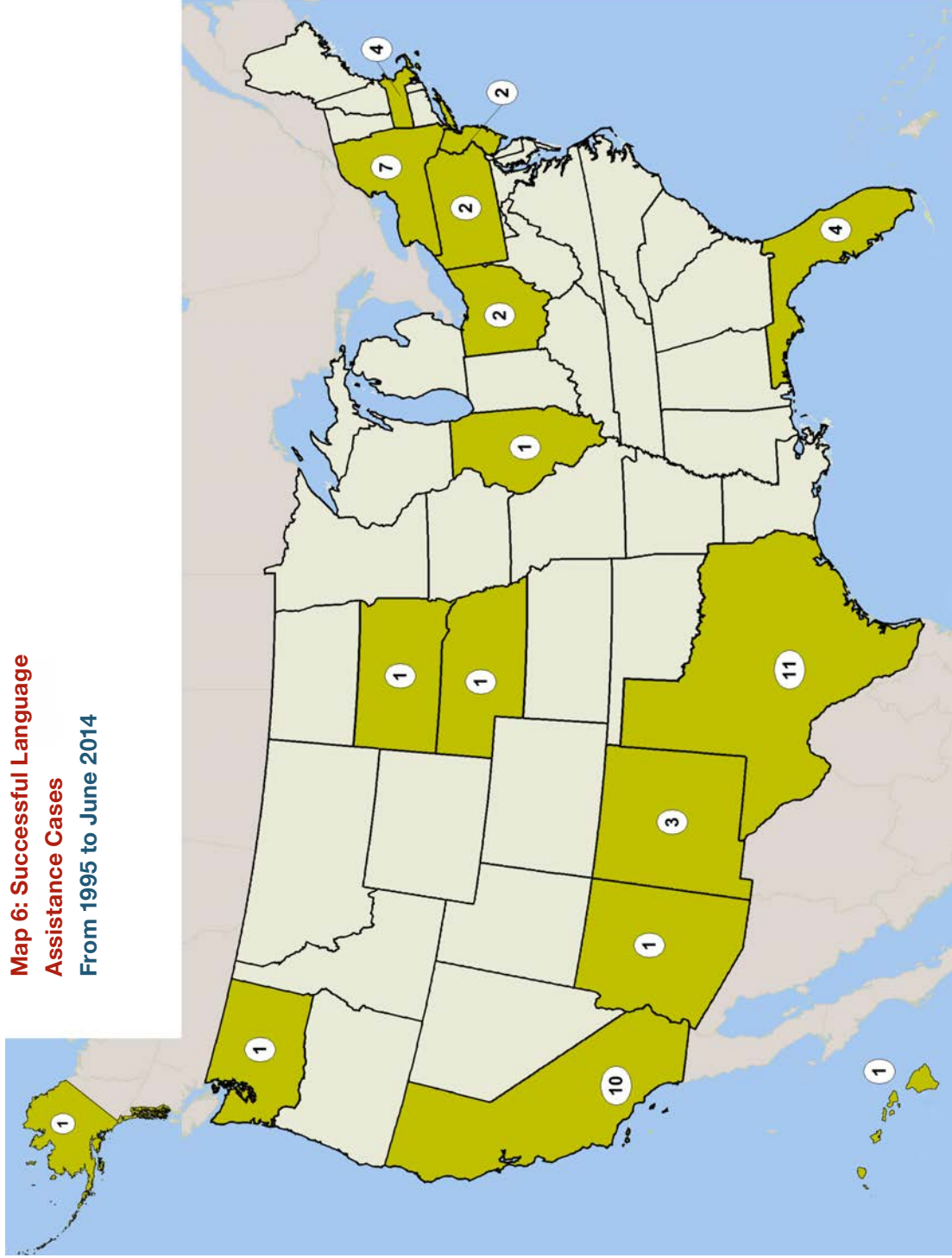
There were no observers in Hawaii during this period. Data: Derived from U.S. Department of Justice records. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 5: Successful Section 2 Cases
From 1995 to June 2014



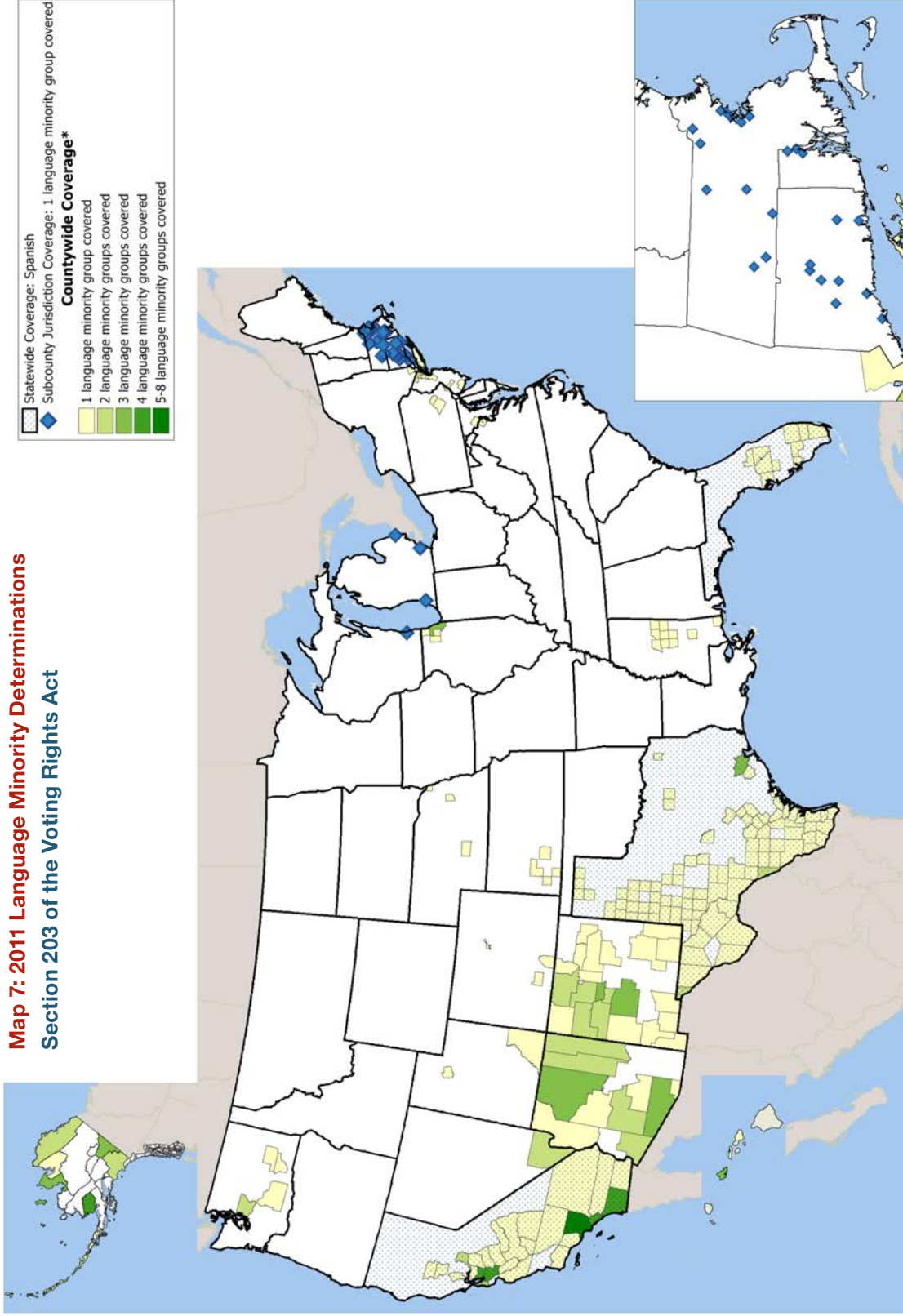
Includes cases in which courts ruled for plaintiffs and litigation settlements; does not include Section 2 cases challenging a failure to provide language assistance. Data and cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 6: Successful Language Assistance Cases
From 1995 to June 2014



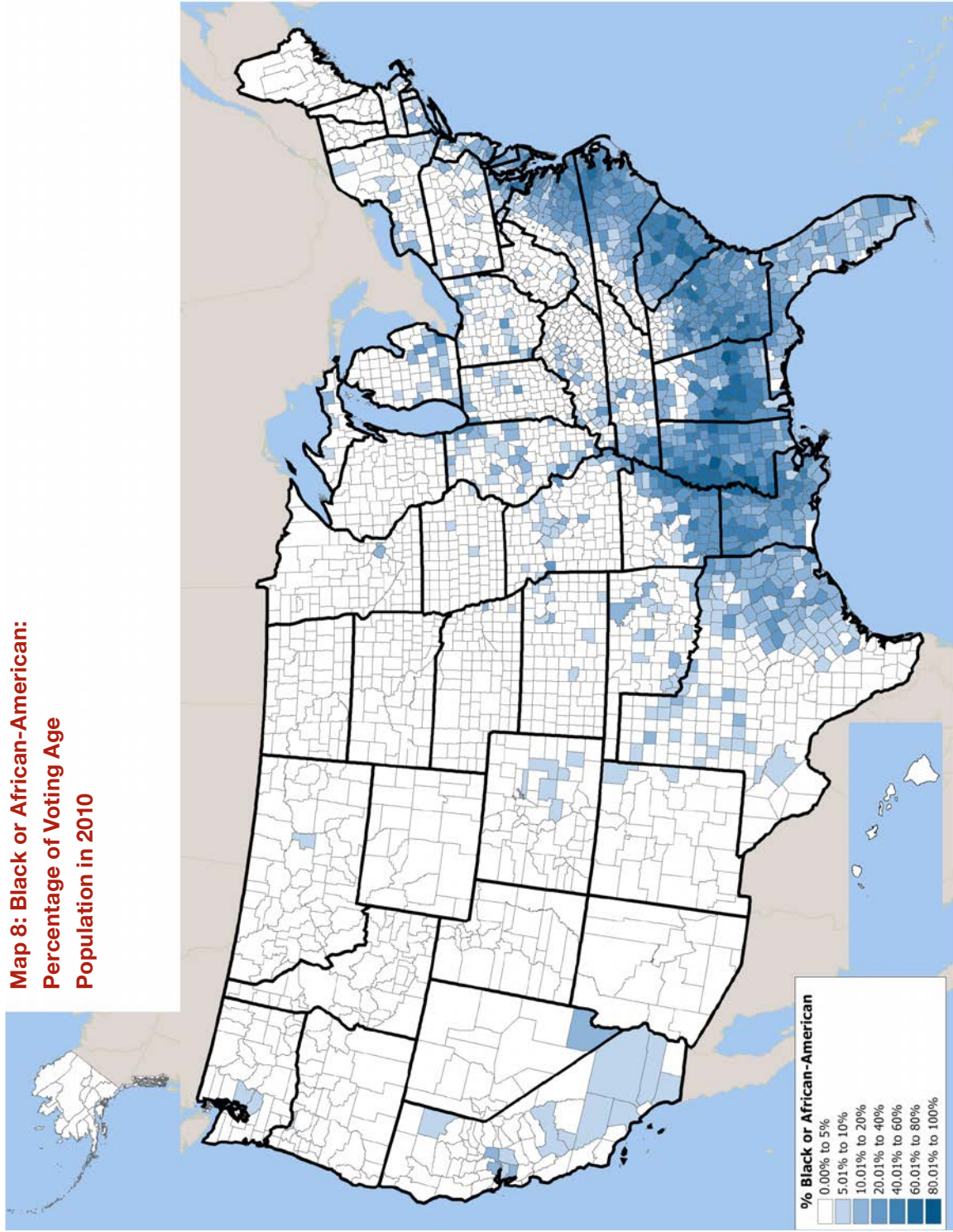
Includes cases in which courts ruled for plaintiffs, litigation settlements, and non-litigation settlements. Cases filed under Sections 2, 4(e), 4(f)(4), 203, and/or 208 of the Voting Rights Act. Data and cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

**Map 7: 2011 Language Minority Determinations
Section 203 of the Voting Rights Act**



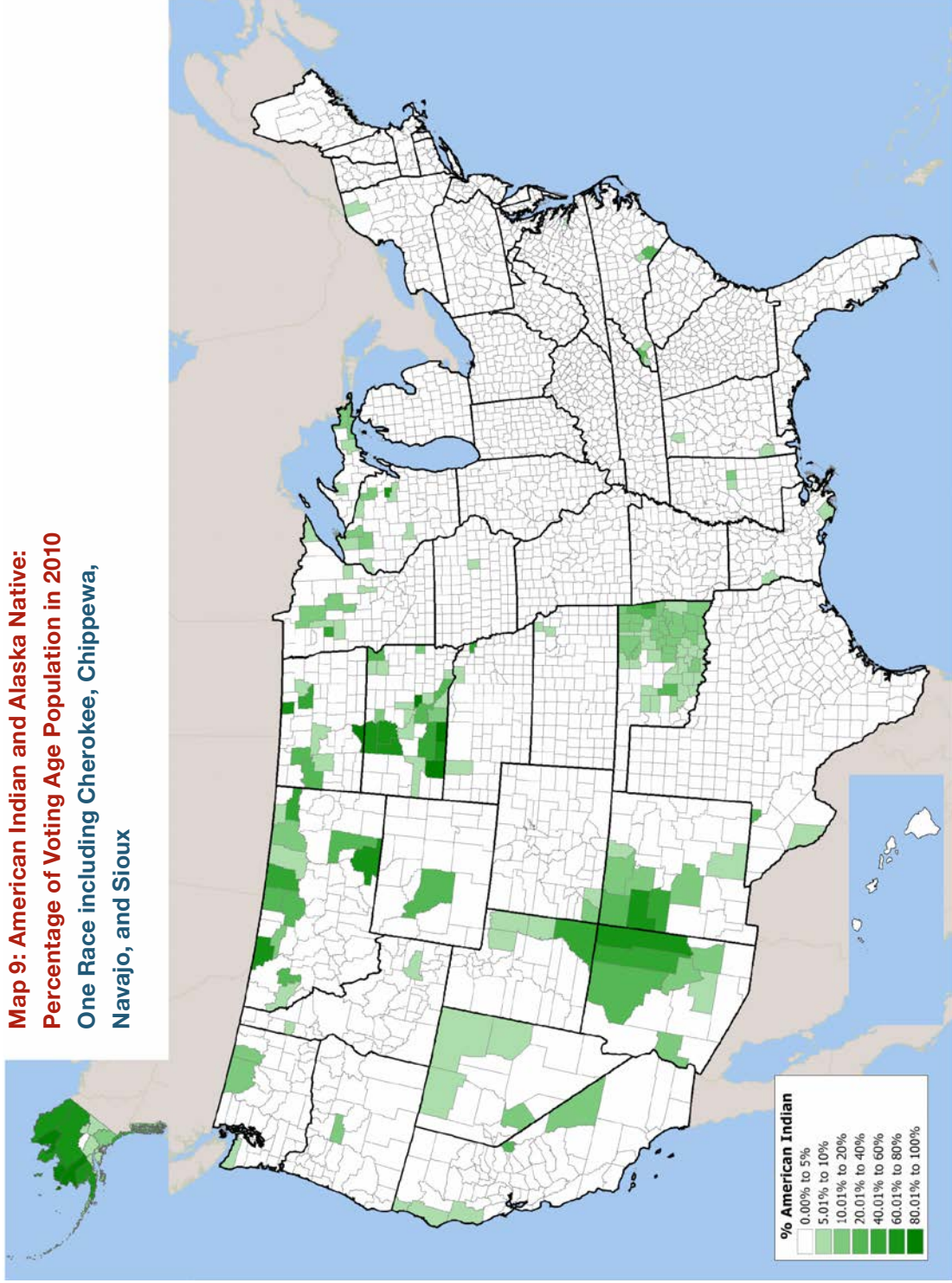
*For Alaska, coverage refers to coverage of a borough or census area. Data: U.S. Census Bureau, 2011 Determinations under Section 203. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

**Map 8: Black or African-American:
Percentage of Voting Age
Population in 2010**



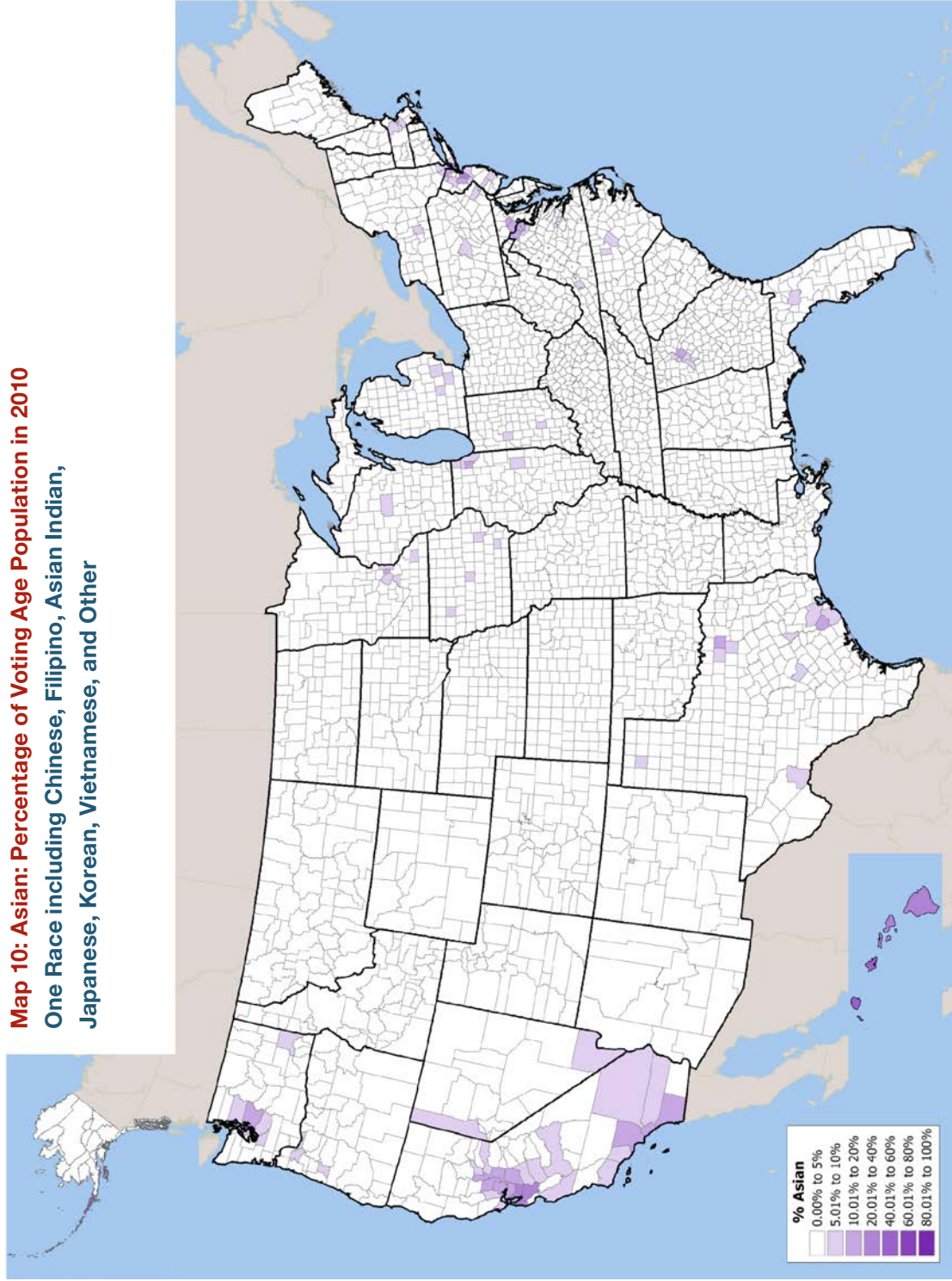
Data: U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 9: American Indian and Alaska Native: Percentage of Voting Age Population in 2010
One Race including Cherokee, Chippewa, Navajo, and Sioux



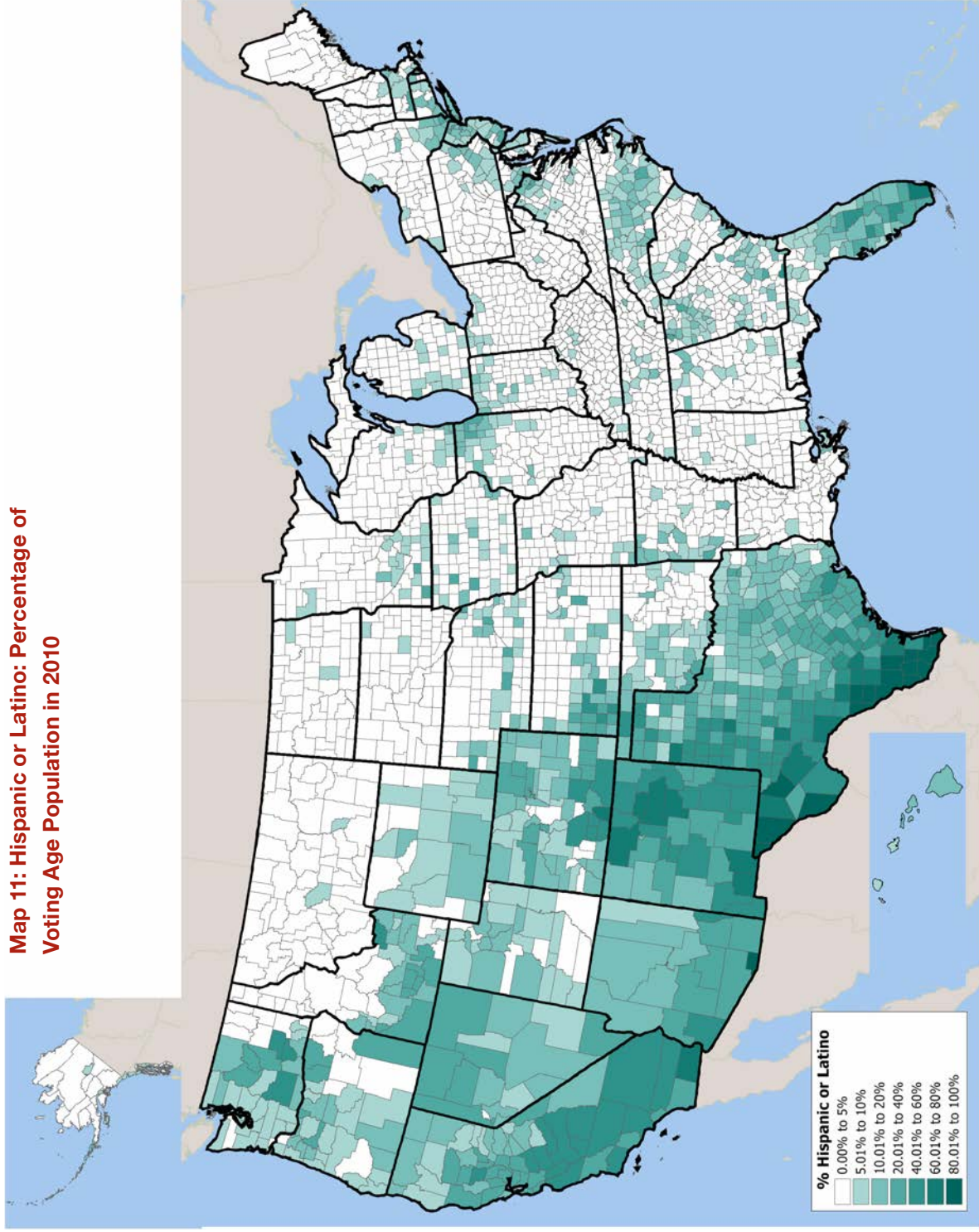
Data: U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 10: Asian: Percentage of Voting Age Population in 2010
One Race including Chinese, Filipino, Asian Indian, Japanese, Korean, Vietnamese, and Other



Data: U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 11: Hispanic or Latino: Percentage of Voting Age Population in 2010



Data: U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

APPENDIX C TABLES AND LINE GRAPHS

Table 1: Federal Observers by Election Type and State (1995 – 2012)

	Election Type (Jurisdiction Counts)						Total Observers
	Federal	State	School District	Municipal	Other	Total Jurisdictions	
AK	0	1	0	1	0	2	18
AL	3	16	0	8	0	27	306
AZ	8	33	0	2	0	43	1,074
CA	3	21	0	12	1	37	1,093
GA	4	15	1	2	1	23	235
IL	1	4	0	5	0	10	297
IN	0	0	0	2	0	2	120
LA	0	10	0	3	2	15	180
MA	0	8	0	8	3	19	716
MI	2	5	0	4	2	13	385
MS	18	129	0	18	7	172	1,850
NE	0	2	0	0	0	2	15
NJ	2	13	4	4	1	24	525
NM	17	33	3	0	1	54	894
NY	8	27	2	9	0	46	663
OH	0	6	0	0	0	6	191
PA	0	7	0	2	0	9	512
SC	1	7	0	1	0	9	149
SD	0	10	0	0	0	10	119
TX	4	29	0	18	1	52	1,123
UT	4	1	0	0	0	5	99
WA	0	2	1	0	0	3	138
Total	75	379	11	99	19	583	10,702

Data: Information derived from U.S. Department of Justice records.

Table 2: Federal Observers by Election Type (1995 – 2012)

	Election Type					Total
	Federal	State	School District	Municipal	Other	
Total Jurisdictions	75	379	11	99	19	583
Total Observers	1,235	7,196	173	1,733	365	10,702

Data: Information derived from U.S. Department of Justice records.

Tables 3–5: Limited English Proficiency (LEP) Populations

Top Ten Languages Spoken by Limited English Proficiency Individuals, 2010			
Rank	Language	Number (in thousands)	Share
1	Spanish or Spanish Creole	16,524	65.5
2	Chinese	1,548	6.1
3	Vietnamese	836	3.3
4	Korean	635	2.5
5	Tagalog	489	1.9
6	Russian	416	1.7
7	French Creole	323	1.3
8	Arabic	321	1.3
9	Portuguese or Portuguese Creole	277	1.1
10	African Languages	276	1.1

Data: Migration Policy Institute, National Center on Immigrant Integration Policy, "LEP Data Brief". Dec. 2011

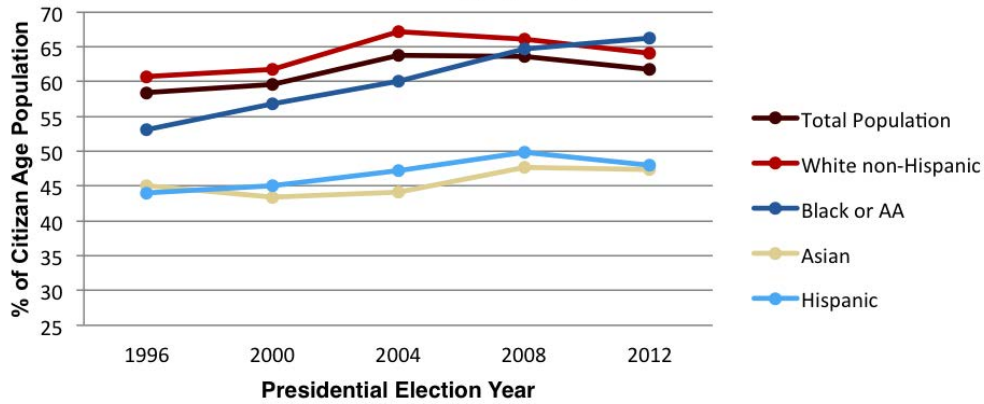
Top States for Number and Share of Limited English Proficiency Residents, 2010			
Rank	State	LEP Population (thousands)	Share of Total US LEP Population (percent)
1	California	6,898	27.3%
2	Texas	3,359	13.3%
3	New York	2,458	9.7%
4	Florida	2,112	8.4%
5	Illinois	1,158	4.6%
6	New Jersey	1,031	4.1%

Data: Migration Policy Institute, National Center on Immigrant Integration Policy, "LEP Data Brief". Dec. 2011

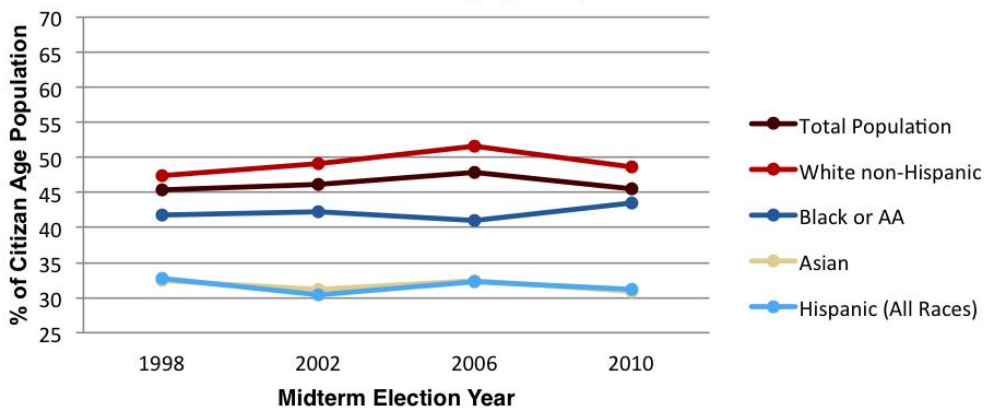
Top Ten States with the Highest Growth in Limited English Proficiency Population, 1990 to 2010				
Rank	State	1990 LEP Population (thousands)	2010 LEP Population (thousands)	Change from 1990 to 2010 (percent)
1	Nevada	62	310	398.2
2	North Carolina	87	430	395.2
3	Georgia	109	522	378.8
4	Arkansas	21	88	311.5
5	Tennessee	46	174	281.4
6	Nebraska	22	76	242.2
7	South Carolina	38	127	237.2
8	Utah	41	137	235.2
9	Washington	165	512	209.7
10	Alabama	36	109	202.1
	U.S.	13,983	25,223	80.4

Data: Migration Policy Institute, National Center on Immigrant Integration Policy, "LEP Data Brief". Dec. 2011

Graph 1: Voter Turnout for Presidential Elections
Citizen Voting Age Population

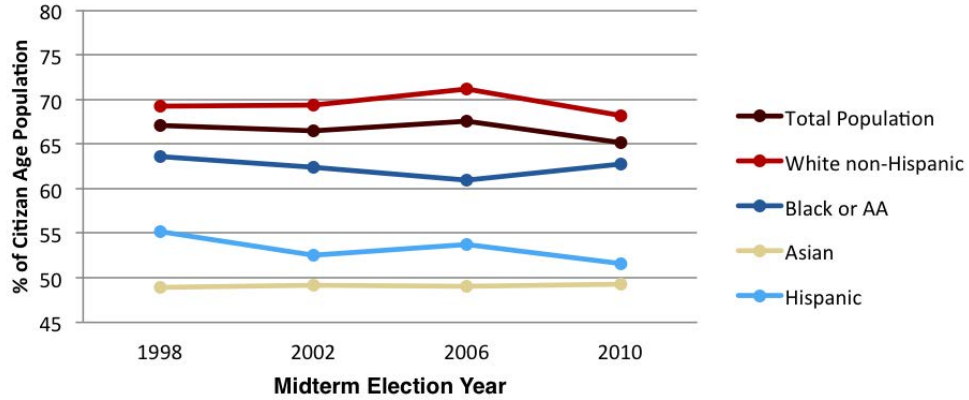


Graph 2: Voter Turnout for Midterm Elections
Citizen Voting Age Population

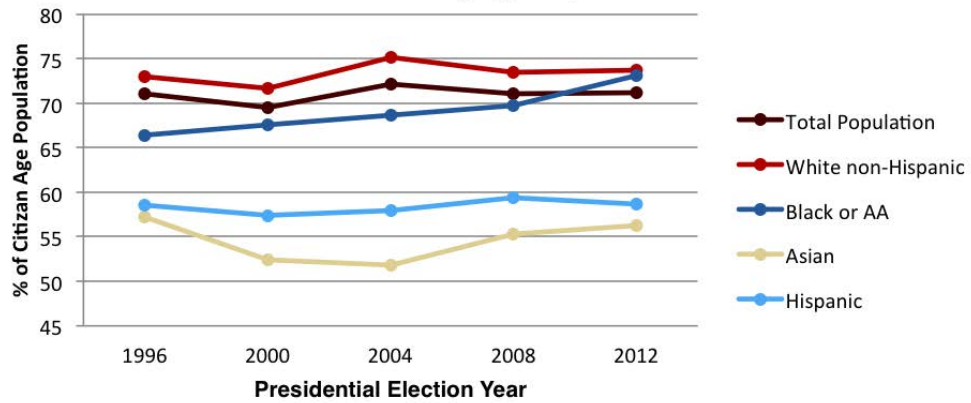


Data: U.S. Census Bureau, Current Population Survey, November 2012 and earlier reports, Table A-1. Analysis by Voting Rights Project, Lawyers' Committee for Civil Rights Under Law. *Due to changes in the CPS race categories beginning in 2003, 2004-2012 data on race are not directly comparable with data from earlier years.

Graph 3: Voter Registration for Midterm Elections
Citizen Voting Age Population



Graph 4: Voter Registration for Presidential Elections
Citizen Voting Age Population



Data: U.S. Census Bureau, Current Population Survey, November 2012 and earlier reports, Table A-1. Analysis by Voting Rights Project, Lawyers' Committee for Civil Rights Under Law. *Due to changes in the CPS race categories beginning in 2003, 2004-2012 data on race are not directly comparable with data from earlier years.

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ALABAMA STATE HEARING

NATIONAL COMMISSION ON VOTING RIGHTS

DATE: April 1, 2014
TIME: 3:00 p.m.
PLACE: St. Paul's Methodist Church
1500 6th Avenue North
Birmingham, Alabama 35203

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APPEARANCES

Appearing For The Lawyers' Committee for Civil
Rights Under Law:

Mr. Alejandro T. Reyes
1401 New York Avenue NW
Suite 400
Washington, DC 2005-2124

Members of the Commission:

Mr. Jerome Gray
Mr. Scott Douglas
Mr. Lee Loder
Mr. Bernard Simelton, Chair

Court Reporter: Anne E. Miller

1 P R O C E E D I N G S

2

3 MR. REYES: Hello, everyone. We are
4 going to go ahead and get started. I am going to
5 briefly introduce our guest commissioners, and the
6 Chair today will be Mr. Bernard Simelton. My name
7 is Alejandro Reyes. I'm an attorney for Civil
8 Rights in the Law, and I'm very happy to be here
9 today. I want to thank everyone who has come out.
10 I want to especially thank our co-sponsors for
11 this event, State Conference of NAACP, National
12 Congress of Black Women. And with that, I would
13 like to introduce our guest speakers.

14 Before I do, just to let you know that
15 we will have food downstairs. There is a restroom
16 out this door. For those of you who will be
17 testifying either formally on a panel or during
18 the public testimony portion of our hearing,
19 please be sure that when you begin, you say your
20 name; if you are with an organization, the name of
21 your organization. And this will allow the court
22 reporter to transcribe your testimony. Please be
23 mindful that everything we are saying today will

1 be transcribed and will be made publicly
2 available.

3 With that, I would like to introduce our
4 guest commissioners. Starting here on your right,
5 my left -- I will begin here on your right,
6 beginning here is Mr. Lee Loder. Mr. Loder is an
7 attorney and founder of Gift Corps. To his left
8 is Mr. Bernard Simelton, president of Alabama
9 State Conference of NAACP. To his left is
10 Mr. Scott Douglas, the executive director with the
11 Greater Birmingham Ministries. And to his left is
12 Mr. Jerome Gray, Senior, retired, Democrat
13 Conference, ADC field director. With that, I will
14 turn it over to you, Mr. Simelton. Thank you.

15 MR. SIMELTON: Good afternoon, everyone.
16 We certainly want to thank the Lawyers Group for
17 coming to Alabama, which is a cradle of the Voting
18 Rights Act, where it was born and unfortunately
19 it's where it met its death. But it's not dead
20 because we are going to keep it alive. But we are
21 glad to be here this afternoon, and we thank all
22 of you all for taking the time to come out and
23 share your views of what has happened to you

1 during the -- be it good or bad during the voting
2 process. And voting is a process. It just
3 doesn't start on voting day or election day. It
4 starts much sooner than that. And so we are glad
5 to have all of you here. Thank our commissioners
6 who took time out of their busy schedule to be
7 here today, and we also want to thank the sponsors
8 for being here and to show their support as well.

9 What we would like to do, first of all,
10 is before the commissioners have an opportunity to
11 give their testimony, we just want since it's a
12 small audience for everyone to stand up and just
13 tell who you are and what organization or where
14 you are from. So we will start with the gentleman
15 in the back.

16 MR. O'NEAL: My name is Ervin O'Neal.
17 I'm not a committee, just a citizen coming out to
18 hear what's being said and maybe if there is any
19 opportunity will give some involvement.

20 MR. SIMELTON: You are from?

21 MR. O'NEAL: I live here in Birmingham.

22 MR. SIMELTON: Okay, Birmingham. Okay.

23 Thank you.

1 MS. LEWIS: Good afternoon. My name is
2 Chastity Lewis, and I am with Congresswoman Terri
3 Sewell's office here in Birmingham.

4 MS. LEWIS: Good afternoon also. I'm
5 from Shelby County NAACP, Ms. Joyce Lewis. I am
6 glad to be here.

7 MR. HARRIS: Bobby Lee Harris, former
8 councilman, City of Alabaster in Shelby County.

9 MR. THREAT: Mark Threat. I live at
10 5515 Highway 62 in Vincent, Alabama, and I'm
11 representing myself.

12 MS. MIDDLETON: Good afternoon. My name
13 is Shirley Middleton. I serve on the town council
14 of Harpersville. That's in Shelby County.

15 MS. THREAT: Good afternoon. My name is
16 Wanda Threat. I have just come with my husband.

17 MS. GIBBONS: I'm Ann Gibbons. I'm an
18 attorney. I have a home in Vincent, Alabama, and
19 I have been involved with the election over the
20 past four years in Vincent.

21 MR. HARRIS: Good afternoon. My name is
22 Commissioner John Andrew Harris. I'm from Lee
23 County. I come to give a testimony here. I have

1 been an elected official of Lee County for over
2 26 years. Thank you.

3 MR. HENDERSON: Good afternoon. Jerry
4 Henderson, Pike County, Alabama.

5 MS. SHORT: Good afternoon. I'm Karen
6 Short, and I live in Montgomery, Alabama. And I'm
7 an attorney at Southern Poverty Law Center.

8 MRS. SERVIN: Hello all. My name is
9 Evelyn Servin, and I am with the Alabama Coalition
10 for Immigrant Justice. And I actually live in
11 Russellville, Franklin County.

12 MR. DALE: Good afternoon. I'm
13 Reverend Charles A. Dale, Franklin County, and
14 ADC chairman from Franklin County. Also I'm with
15 the NAACP Tri County branch. And I am going to be
16 testifying. Okay.

17 MR. SIMELTON: Okay. Thank you all. I
18 know you are with the church, ma'am.

19 MS. BELL: Well, I represent the church,
20 and I'm Lesley Bell. I'm a member of St. Paul's,
21 and we welcome you all. We are honored that you
22 are here.

23 MR. SIMELTON: Thank you all. And at

1 this time, I believe our agenda calls for the
2 commissioners to have up to five minutes to give
3 an introductory statement about themselves, and I
4 will start on my left with Mr. Jerome Gray,
5 Senior.

6 MR. GRAY: I'm not a senior, but I'm
7 Jerome Gray. My home is Evergreen, Alabama. I'm
8 retired. I serve as state field director for the
9 Alabama Democratic Conference for 27 years. I
10 served as Deputy Commissioner of Agriculture for
11 three years with the State of Alabama, 2008. I
12 was state political director for the Barak Obama
13 campaign. And since I have been retired, one of
14 the things I have continued to do is stay involved
15 in my community. And one of the things that
16 happened in the last year is that through our
17 local NAACP and Democratic conference, we
18 challenged the City of Evergreen in Section 2
19 voting rights lawsuit that we won. It took about
20 a little over a year, but we became the first
21 jurisdiction after Shelby County to become covered
22 by Section 3 of the Voting Rights Act. So we will
23 have protection in terms of the City of Evergreen

1 through 2020 elections, and we will have the
2 advantage of having federal observers to come and
3 monitor our elections. The city cannot draw new
4 lines, cannot make any changes without the court's
5 approval. No annexations can be made without the
6 plaintiffs having an opportunity to participate in
7 that process. So we are happy to have been
8 organized to the point to be able to push back and
9 win a Section 2 lawsuit post Shelby that gives us
10 this protection going forward under Section 3 of
11 the 1965 Voting Rights Act through 2020.

12 MR. SIMELTON: Next Mr. Scott Douglas.
13 Go ahead.

14 MR. DOUGLAS: Good afternoon. I'm Scott
15 Douglas, and like Lesley, I'm executive director
16 of the Greater Birmingham Ministries. And like
17 Lesley, I'm a member of St. Paul's United
18 Methodist Church. And I want to extend a welcome
19 because this church in 1963 was the departure
20 point for most of the failed marches in the civil
21 rights demonstration of 1963. I call them failed
22 marches because they were going from this church
23 to city hall, but something happened along the

1 way; the dogs, Bull Connor, the fire hoses.

2 In the basement, in the fellowship hall
3 in this church is where Reverend C. T. Vivian
4 conducted nonviolence civil disobedience training
5 where they passed around our collection plates.
6 They weren't collecting money. They were
7 collecting guns and knives and other things that
8 could deter from the peaceful nature of the
9 nonviolence civil disobedience protest. People
10 learned how to be nonviolent, how to practice love
11 in the face of hate. So welcome to this place.

12 And I will just finish by saying I'm not
13 a Voting Rights Act expert. I'm just a person who
14 wants to vote, exercise my full citizenship and
15 choose the leadership of my local, state and
16 national government. But we operate in a state
17 that in 1901 adopted a constitution whose stated
18 purpose was one major goal, to quote
19 "disenfranchise the negro," the newly freed slaves
20 who had come to vote after the Civil War. And the
21 vote had been restored by the 14th Amendment. But
22 that struggle still continues, the one that
23 began -- really began in 1901.

1 There were some heroes in the 1901
2 constitution. Yeah. One white delegate, no black
3 delegates were allowed, male or female, said,
4 "Sir," to the proponents of this
5 disenfranchisement, if you disenfranchise the
6 negro with a poll tax, you also disenfranchise
7 poor whites." And his response was, "So be it."
8 The efforts to shut up the voices of the newly
9 freed slaves continued for decades and for a
10 century or more until this day. And I see it as
11 part of one effort to silence all poor people and
12 black people in particular from having a voice in
13 the government of this state.

14 I'm saddened by the fact that Alabama
15 never chose justice on its own. The justice that
16 we have was demanded in the streets of Birmingham,
17 demanded on the bridge in Selma, and produced by
18 congress and the conscience of the nation. Once
19 again we must waken the conscience of the nation
20 and the world to the plight of the diminishing
21 democracy that we are facing today. So I look
22 forward to hearing the testimony. We have a case
23 to fight for, and we are not fighting for our

1 vote. We are fighting as Dr. King fought to save
2 the sole of America.

3 MR. SIMELTON: Thank you.

4 MR. LODER: Good afternoon. I'm Lee
5 Loder, and I am an attorney here in Birmingham. I
6 have handled several civil rights cases. I served
7 on the Birmingham City Council for approximately
8 two terms in the early part of 2000. Speaking of
9 voting rights, my father was one of the plaintiffs
10 on the lawsuit in Birmingham that ultimately led
11 to the district voting in the city. At that time
12 there was a question about voter dilution of
13 residents of the eastern area, most of whom were
14 white residents, but that voter dilution also
15 affected black residents who lived on the eastern
16 side of town. My father participated in that
17 lawsuit. I had a firsthand -- front row seat on a
18 voting rights challenge that now, you know,
19 districts seem to be and everybody seems to be
20 really comfortable with their districts. And who
21 knows where we are headed from here now.

22 But additionally, I have been in the
23 ministry for, I guess, almost two decades. And I

1 wanted to mention something. Ms. Kennedy, Yvonne
2 Kennedy is here, and we are also sitting in
3 hallowed halls because her father, the Reverend
4 Dr. Joseph Lowery, pastored here for four and a
5 half years. A lot of people don't know that
6 tidbit of history, and he happened to be my pastor
7 under watch here while I was in Atlanta serving in
8 school at Morehouse College and serving at Kent
9 State. But we are truly on hallowed ground.

10 I'm not going to talk long because I
11 really want to listen to what everybody has to
12 say, and our job is going to be to try to prick
13 your conscience and try to encourage you to really
14 dig deep within the wells of your conscience to
15 try to figure out this dilemma that we have with
16 the Voting Rights Act. And I was listening to
17 Mr. Gray. Mr. Gray is one of the premiere -- he
18 is the guru -- he won't say this, but I will --
19 activist. And he does such a good job of
20 protecting his community and this state. And you
21 can see, they are covered down there in his area.
22 So we have a lot of work to do. We need a lot of
23 Mr. Grays.

1 But I read the opinion, the Supreme
2 Court opinion, before I came here. I wanted to
3 try to understand exactly what they said. And
4 these are the things that I'm listening for as you
5 give your testimony. A couple of things, when I
6 first read it, the first thing that happened, I
7 became really afraid, alarmed and to some degree
8 concerned about the extent to which even this kind
9 of hearing might help. One of the reasons why I
10 say that is because the current court -- obviously
11 the court changes. That's going to solve part of
12 the problem, but we don't know how quickly. We
13 don't know when that will happen. That could be
14 years from now. But assuming that the courts
15 remain similar to its current structure, one of
16 the things that the court rejected was the
17 congressional record, the argument that the
18 congressional record had a lot of instances of
19 current discriminatory acts. And, you know, those
20 of us who are lawyers or law school in other
21 words, we know judges like to do that when we are
22 trying to obtain an opinion and support. They
23 will just ignore stuff that really matters. So

1 apparently there was a congressional record that
2 had evidence of current Voting Right Acts since
3 the enactment that the Supreme Court chose to
4 ignore. One of the reasons they ignored it is
5 because they argued that congress ignored it.

6 The second thing is they also ignore
7 this notion that there is second generation
8 discrimination going on. Second generation
9 discrimination. This notion that maybe we don't
10 have to read, you know, the constitution in order
11 to take a test or we don't have to pay a poll tax
12 or we don't have to do that. But the notion that,
13 you know, our children, the children of those who
14 had to pay poll tax or who had to read lengthy
15 scripts before they could vote, are still affected
16 by what happened to their parents and to their
17 grandparents. They rejected that notion. So
18 that's something I'm listening to because maybe
19 there is more scientific support for second
20 generation effects of voting rights.

21 The other thing is this is probably the
22 most important argument that the Court used to
23 strike down Section 4 was the argument that the

1 states weren't being treated equally. I mean,
2 that's interesting that they would argue that, the
3 states were being discriminated against.
4 Fundamentally that's what they said. So that's
5 interesting because I think any strategy that we
6 have to address it is going to have to be a
7 national strategy. It's going to have to be a
8 strategy, and I think -- my time is already up.
9 So that's something I will also be looking for is
10 issues that affect everyone equally all across the
11 country. So I look forward to it.

12 MR. SIMELTON: Okay. Thank you, Mr.
13 Loder. And I would just like to say in addition,
14 Bernard Simelton, president of the state NAACP.
15 And for years the NAACP has been very instrumental
16 in helping people to register to vote and get out
17 to vote. But I think one of the things that we
18 have not done as well as we should is educating
19 people on why it is really important to vote.
20 Because if you educate them on why it's important
21 to vote, we believe that, you know, the person
22 will vote year after year after year after year
23 rather than voting only during the presidential

1 election. And all politics are local, so a lot of
2 the local elections can be won by these two or
3 three votes. So it's important for people at the
4 local level to understand why it is so important
5 to not let that right that your forefathers and
6 your foreparents, you know, fought so hard and
7 died for. And every time I cross the Pettus
8 Bridge, you know, I'm thoroughly reminded of the
9 beating that took place on that bloody Sunday.
10 And it was a senseless beating that, you know,
11 changed the nation. And if it had not been for
12 the press, if it not been for the press that was
13 there to show the world and show this nation what
14 was happening in Selma, Alabama, you know, voting
15 rights certainly would have been delayed. I'm
16 quite sure we would have it by now, but it
17 certainly would have been delayed.

18 But we want to thank again all of you
19 for being here, and at this point we are going to
20 call our first two guest panelists. I think we
21 are at that point. So we are going to call
22 Mr. Bobby Harris and Mr. John Harris to come and
23 testify.

1 AUDIENCE: She told me to advise you
2 that the news media were here.

3 MR. SIMELTON: That's fine. They can
4 come on in. So if Mr. Harris and Mr. Harris would
5 take their seats. And if you have a schedule in
6 front of you, we are going to have to mix it up
7 because some of the panel members are not here.
8 So rather than try and wait, we are going to go
9 forth with the ones that are here. And the ones
10 that come late, we will catch them up. Please
11 before you start your testimony, please state your
12 name for the court reporter, and I have been
13 reminded that she does not -- if you don't do it
14 the first couple of times, she will hit you over
15 the head to get your attention. So with that
16 being said, Mr. Bobby Harris, if you want to go
17 first.

18 MR. BOBBY HARRIS: Yes. Thank you, sir.
19 Bobby Harris from the City of Alabaster in Shelby
20 County. I have about three and a half pages, and
21 I will use up four minutes. Prior to the year
22 2004, I served 12 years on the Alabaster, Alabama,
23 City Council. I represented Ward One, minority

1 ward, so designated by the Dillard lawsuit. A
2 minority had represented this ward since 1976 or
3 earlier. During the years 1995 through 2000, the
4 City of Alabaster approved ordinances which
5 assigned large white populations to my ward, Ward
6 One. During the 2000 municipal elections, it was
7 determined by the United States Department of
8 Justice voting right section that the city
9 approved ordinances to my ward had not been
10 cleared by that department. So the Lawyers
11 Committee in Washington, along with attorney Ed
12 Steel, attorneys from the U. S. Justice Department
13 and attorneys from North Carolina, the Justice
14 Department came to Alabaster. And they allowed
15 the city election from mayor and council to go on
16 according to state law. However, the unapproved
17 neighborhood, Weatherly, which was the white
18 annexed neighborhood, they could vote for mayor
19 but they could not vote for City Council.

20 I was opposed by a white gentleman, Todd
21 Goode. After the election, my opponent received
22 the most votes, but the Justice Department
23 disallowed all votes from the unprecleared section

1 of Weatherly for council. I was allowed to remain
2 in office for four more years in spite of state
3 and federal litigation. The local, the state and
4 the federal courts affirmed my election in respect
5 to the voting rights at the 1965 and beyond, which
6 is preclearance. United States Supreme Court took
7 no position when it was appealed all the way to
8 the U. S. Supreme Court.

9 However, I ran once again for reelection
10 in 2004, and I was defeated by another white
11 opponent from the same annexed Weatherly
12 subdivision. I was defeated by less than 50
13 votes. As a result of my defeat and the failure
14 of the City of Alabaster to remedy the voting
15 blight, there is no minority representation on the
16 City Council as of this date. Since 2004, a
17 minority has failed to seek election to the
18 council from Ward One, the designated minority
19 ward. The ward is represented today by a white
20 female, Sophia Martin.

21 Finally, as a result, Section 5 of the
22 Voting Rights Act helped me in the year 2000.
23 However, the retro regression did me in in 2004,

1 and there was no remedy sought to rectify the loss
2 of minority representation in Alabaster, Alabama,
3 the largest city in Shelby County, Alabama. Thank
4 you.

5 MR. SIMELTON: Okay. Thank you, Mr.
6 Harris, Mr. Bobby Harris. Shall we ask questions
7 now or just go to the next one and ask questions?

8 MR. GRAY: I say let's go to the next
9 one.

10 MR. SIMELTON: Mr. John Harris.

11 MR. JOHN HARRIS: My name is
12 Commissioner John Andrew Harris. I'm from Lee
13 County. I'm the oldest serving commissioner in
14 Lee County, and I have talked to Mr. Gray about
15 this voting precinct in my district, one in my
16 district and one in part of my district. That's
17 at the Thomas and the National Guard Armory in Lee
18 County. And those voting places have been in
19 existence ever since I have been in the county
20 commission. I have been a county commissioner
21 since '94, and I have been in the City Council
22 area since 1986. And at this commission two weeks
23 ago, our channel building has brought a resolution

1 to the other commissioners requesting that there
2 be some voting places changed. I questioned that.
3 I said the commission hasn't deliberated on the
4 voting changes. We have no public input in a
5 voting change. How can you come up at election
6 time in June and got one in November and come
7 about a change now? Because what I was concerned
8 about and I told him, I said, this year we had a
9 very tough time in the changing of the district
10 line. And they had talked to all the commission
11 about what district they are going to get. Then
12 they are going to come to me at the last minute
13 and say, "Well, Commissioner, you have to do this.
14 No, you can't do that." We have to be fair about
15 this, and we have to have all types of input
16 there.

17 And we had contention -- a debate on the
18 county commission, and they were saying they are
19 going to vote. They said they had voted four to
20 one, and I threatened them with a lawsuit. So at
21 the next commission meeting, they came to the
22 conclusion and said, "Commission, if you will drop
23 your lawsuit, we will come and raise your

1 percentage up a little bit."

2 Then after that, I got notice because
3 I'm very active in keeping registered voters and
4 being active about changing some things in our
5 area. And I went into the voter register list,
6 and they have taken 780 felonies off the voting
7 list this year. I said, "Why are you all doing
8 that?" I said, "Give me the names" because these
9 people weren't notified and some of the letters --
10 they got a certified letter and some of the
11 addresses, they weren't notified. Some of them
12 weren't felonies because I had straightened them
13 out myself, and they knock on my door. They said,
14 "We have being voting 30 years, 10 years. We have
15 never been taken off the list. Why are they doing
16 this now?" I asked the question. I went to voter
17 registration and said give me the names and
18 addresses.

19 I contacted Jerome, saying they are
20 going to -- with the state, they told me that I
21 had to fill out a public information thing. And
22 there was still no way. I needed that list to
23 help those people get straightened out. Then

1 after that, that's when they had this polling
2 place change. I said, "Why are you messing with
3 my district?" They haven't messed with no other
4 commission district. But part of that, one of the
5 commissioners, he got part and I got part. But
6 one of them was directly in my district. So what
7 I did -- and I talked to Jerome about that -- is
8 that I said, "Why did we request the change?" He
9 said the mayor, Gary Fuller, and him talked.
10 That's the mayor. I said the mayor hasn't got
11 anything to do with our election. This is a
12 county building. We should sit around the table
13 as a commission and deliberate on this, and if we
14 are going to change, do all the boxes. But what
15 my thinking is what is convenient for the citizens
16 of Lee County? Let's bring the public in because
17 most of the people are telling me they didn't like
18 that change. They didn't want to do that. They
19 rejected the public input about them changes.
20 They said the channel made a statement saying,
21 "well, in this law book, we don't have to have a
22 public hearing. We can go ahead and do it anyway.
23 We have the vote. He said the mayor said he would

1 accommodate us and put on that new facility and
2 without any regards to what I had to say. One of
3 them was directly in my district and one of them
4 was part of my district, but lots of people in
5 that district. I want to remind the panel that
6 changes, the move, there was a larger precinct in
7 the City of Opelika, a larger voting. That place
8 was for people to vote there in high percentages,
9 and lots of people in my district voted there.

10 I asked for a list -- I asked for a list
11 because I want to know the name because, you know,
12 Mr. Gray had talked to me about this and how many
13 people are going to be affected. And I did that
14 because I needed that information. At the last --
15 I asked that two weeks ago. You know what they
16 did? I got a sheet of paper with some numbers. I
17 didn't get no names. They gave me a sheet of
18 paper saying that they had 5,000 something votes
19 in this other man's district and 245 in my
20 district. I know that was wrong. I said, "Well,
21 why don't they give me no names because I know
22 most of the people and the address?" I didn't ask
23 for this. You can put any numbers on it. 5,000

1 is unrealistic because if you look at this and the
2 City of Opelika, every City Council person, there
3 is about 5,000 votes for the City Council. It has
4 five wards. That's a whole City of Opelika
5 voting. You have kids and everything. Them
6 numbers are unrealistic. I told them that. I
7 can't accept this. This is just some numbers you
8 are going to put on a piece of paper. What's
9 wrong with giving me the voting list with the
10 address and names? What's wrong with bringing
11 people up here to a public hearing? Because if we
12 are talking about accommodating the people, that
13 would be a way to accommodate the people.
14 Somebody had a problem, they said the air-
15 condition. But we didn't have no air-conditioner.
16 I had a guy, Reverend Wilson. I think, Jerome,
17 you know Reverend Wilson. But he has been voting
18 in this place 40 years. I talked to him. Said
19 never had a problem. Used to be a poll worker
20 over there. Never had a problem. So you all want
21 to let people -- and we take them to the polls and
22 never had a problem.

23 So I have a direct conflict with the

1 commission because of the changes in this Voting
2 Rights Act, which Jerome knows what I'm talking
3 about. They feel let down, says the law is going
4 to change, they can do what they want to do. We
5 had a lot of people at that commission meeting,
6 and they said they didn't like it. They wanted
7 some change. But that's basically why I'm here
8 today to give you my testimony of what went on.

9 MR. SIMELTON: Okay. Thank you, Mr.
10 Harris, John Harris that is. Okay. Now we'll ask
11 the commissioners if they have questions of either
12 of the panel members. Mr. Gray?

13 MR. GRAY: I guess I do to Mr. Bobby
14 Harris first. You indicated that since you were
15 defeated in 2004, that no black candidates have
16 sought election to City Council in Alabaster since
17 2004?

18 MR. BOBBY HARRIS: Have not.

19 MR. GRAY: Right, have not. What would
20 be your response to a city that would say that
21 these annexations that we are making and that we
22 have made going forward are not racial, but we are
23 doing it simply for growth potential and economic

1 development?

2 MR. BOBBY HARRIS: Well, that's a very
3 good question. I even suggested to the city that
4 we assign the new ordinances, the new annex
5 people, we will assign them to different city
6 wards. Instead of assigning them to the ward
7 which was contiguous to my ward for voting
8 purposes, assign them to another ward which would
9 also be contiguous. We have seven wards. So that
10 means this particular population that was annexed
11 is contiguous to at least three wards. My
12 recommendation was that you assign the voters, the
13 new voters, to another majority white ward. And
14 eventually you can go back and count the votes and
15 come up with a way. You may have to go to nine
16 districts. Instead of seven wards, go to nine
17 wards. Homewood, Alabama, has 11 or 12, I
18 believe. So I know it's valid. So that would be
19 my recommendation.

20 MR. GRAY: Did you propose to them,
21 let's say, if their response probably would be
22 that we do not want to increase the number of
23 districts just so that we can keep a minority

1 black district per se in terms of the sharing of
2 the new population that was added to the City of
3 Alabaster to annexations, did you propose or get
4 anyone to draft a plan that would disperse that
5 population in such a way that it still would have
6 allowed that Ward One to remain majority black or
7 nearly so?

8 MR. BOBBY HARRIS: In 2004, I did not
9 make that recommendation because I had been
10 defeated. I lost the election. When I lost the
11 election, there was more like a ground swell of
12 support from various people in the community, in
13 the white community, that this is really what we
14 want. And it was just like me fighting as a lone
15 ranger at that particular time. And I didn't make
16 any other recommendations as to what we can do. I
17 made my recommendation prior to the election.
18 Prior to -- see, I had -- the Justice Department
19 and Lawyers Committee came in in the year 2000.
20 That's when I recommended the remedy. The Justice
21 Department and the Lawyers Committee kept me on
22 the council up to 2004. So in 2004, I lost the
23 election. After I was defeated, I didn't make any

1 recommendations as to which direction we should go
2 because there was almost nonsupport.

3 MR. GRAY: Nonsupport from the white
4 community?

5 MR. BOBBY HARRIS: Yes.

6 MR. GRAY: Yeah. But if you all are
7 thinking about maintaining minority representation
8 as a strategy, even though you had been defeated
9 as a candidate, in terms of making a record, I
10 think it would probably have been a good strategy
11 even though you were a losing candidate to have
12 some group or demographer to draw a plan that
13 would have shown from a record that if this
14 annexed population had been dispersed in a
15 different way or assigned a different way to these
16 seven districts, the outcome could have been
17 different or may be different going forward for
18 other candidates who may compete, minority
19 candidates.

20 MR. BOBBY HARRIS: That's good in
21 hindsight, yes. And that's one reason I'm here
22 today. Perhaps the Lawyers Committee or some
23 other group can come in and take look at the

1 demographics from here, yes.

2 MR. LODER: Mr. Chairman, Mr. Bobby
3 Harris, was your testimony a part of the record or
4 did you give an affidavit in the Shelby County
5 case?

6 MR. BOBBY HARRIS: I did, yes.

7 MR. LODER: I also wanted to ask
8 Mr. John Harris, can you clarify for me exactly
9 what they were doing to the box you were talking
10 about? I know you were saying they were
11 manipulating the box. Did you say they were
12 splitting the box or --

13 MR. JOHN HARRIS: No, they didn't split
14 the box. Basically what they did, they had the
15 box located at the National Guard Armory. They
16 moved it to the sports complex.

17 MR. LODER: They moved the boxes, one of
18 your boxes?

19 MR. JOHN HARRIS: Part of my boxes. One
20 of the boxes at Tom, that's my district. The
21 other box is in the -- you are talking about an
22 additional four not in my district, because a lot
23 of my voters vote at that place because it's

1 centrally located. Most of the people that vote
2 in my district use that box to vote at. Where
3 they have located at now, it's at a nice facility,
4 but it's inconvenient for them to go there because
5 if you know anything about Opelika, where the
6 Opelika High School is at, teachers and students,
7 when they get out from the school, the teachers
8 get out from their job, they can go right across
9 the street and vote.

10 And you look at the history of that box,
11 more people in Opelika vote at that box at the
12 National Guard Armory because it's centrally
13 located than any box in the City of Opelika. They
14 have a big turnout, my constituents and the other
15 constituents too. So that was the reason I asked
16 why are you going to move it. The commission
17 didn't deliberate on it. We didn't have no public
18 hearing for it. The citizens said, "Well, it's
19 inconvenient to us." And the other commissioners
20 up there -- I'm the only candidate that got
21 elected -- nine in the county, Lee County, the
22 only Democrat in the courthouse.

23 So I asked the question, "Why do you

1 three move the people in my district that vote for
2 me and the people that vote for the state
3 representative?" He was at that meeting, he was
4 very concerned with that. They were trying to put
5 it on the mayor. See, the City of Opelika changed
6 their voting places, and I wanted that testimony
7 to be said. Two years from now, they are going to
8 be voting at the sports complex. So what they
9 were thinking that they didn't confuse the people
10 during this election this time. See, their
11 election is two years from now. If they are going
12 to change, why are you going to change in two
13 years? Why do you want to do it right now? It's
14 early to move it now.

15 Then I said -- I can understand we had a
16 public input like Jerome and I talked about. You
17 bring it to a public hearing. And most of the
18 people in the armory said they want a change. As
19 being a commissioner and a veteran representative,
20 I couldn't say anything. We had had one citizen
21 request a change. But I asked the citizens come
22 to the meeting and say they didn't want no change.

23 MR. GRAY: John Harris, I wanted to ask

1 you just on the record, you were elected to the
2 commission in 1994?

3 MR. JOHN HARRIS: That's correct.

4 MR. GRAY: And that National Guard
5 Armory site has been used as a polling place
6 without any problem or request from you or
7 citizens to be moved since 1994; is that correct?

8 MR. JOHN HARRIS: That's correct.

9 MR. GRAY: Give the specific reason that
10 was told at the county commission meeting a couple
11 of Mondays again that they wanted to move it.

12 MR. JOHN HARRIS: Well, the probate
13 judge came in with a resolution and said he had
14 talked to Mayor Fuller. He is the mayor of the
15 City of Opelika. And Mayor Fuller told him that
16 they had made a move to the city to the sports
17 complex because they said that the
18 air-conditioning. And when they feed that, you
19 know, them ballots in the box, they had a little
20 problem. That's what he said.

21 So I talked to the mayor about that, and
22 the mayor said he didn't say that. It was a
23 little different. He said the probate judge is

1 trying to kind of encourage him to make a move by
2 the air-conditioning. He said, "Well, there is
3 something wrong with the air-conditioning. We
4 moved over here where the county can move over
5 there." So he brought that back to the county
6 commission. I called the mayor. I asked him, I
7 said, "Mayor, did you say that?" He said no. He
8 said the probate judge asked me if there was any
9 problem there." And I said, "I have been in the
10 commission since '94. I ain't never had a citizen
11 come up here, talk to me or said anything to the
12 commission about they wanted to move or change."
13 I said, "That's my district, and this is the other
14 commissioner's district. Even he didn't make no
15 request to change. How can you all come up here
16 and make the change? Plus one of those boxes,
17 here is my district, Thomas.

18 MR. GRAY: Why did they want to move --
19 what was the reason given for wanting to move the
20 one from Tom's to a new location?

21 MR. JOHN HARRIS: Well, that is simply
22 saying -- I want to make that statement too.
23 People that vote in my district, 77 percent of my

1 constituents vote in that. The reason they said
2 they were going to move that because when it rains
3 sometimes, Jerome, the ground get a little -- when
4 people are trying to park and stuff like that,
5 that was the reason they do it. But like I
6 said --

7 MR. GRAY: But that place has been used
8 how long has as a polling place?

9 MR. JOHN HARRIS: Ever since I have been
10 there.

11 MR. GRAY: Since 1994?

12 MR. JOHN HARRIS: Yes, since 1994.
13 Never had no problems. You probably have that
14 problem with some parking, but what's wrong with
15 us taking care of that and fixing that? If you
16 have a -- they put it back over there at the fire
17 station, about a mile away from where the original
18 poll. And that's really the heart of my district.

19 MR. GRAY: Okay. Thank you.

20 MR. DOUGLAS: Yeah. Mr. John Harris, I
21 lost track of the time sequence. When did these
22 polling place changes happen?

23 MR. JOHN HARRIS: Okay. About two weeks

1 ago, they voted to change because what the probate
2 judge read to us, they had a state law saying you
3 had nine days prior to the election that you can
4 move a voting place. See, they didn't give the
5 commission time to do anything. They read 90
6 days, he brought it to the commission saying he
7 wanted the commission to move. That's too fast.
8 Why we shouldn't talk about that move a long time
9 ago, get a chance to get the people together, give
10 me some information. He gave me a resolution
11 talking about change. I sat down. I can't
12 understand that because the two places you are
13 talking about moving, it affected me because at
14 the National Guard Armory a lot of my constituents
15 vote there. It's centrally located. Nobody had
16 expressed to me they want a change.

17 Same way with Tom, you get the
18 statistics, I can go back and show percentage wise
19 that there is a bigger turnout in that area of
20 voters. They don't have that many people to vote
21 there, but percentage wise because the people that
22 live in that percentage, a big turnout.

23 MR. DOUGLAS: One more thing. In your

1 jurisdiction, county, who has the authority to
2 locate voting places?

3 MR. JOHN HARRIS: The County Commission.

4 MR. DOUGLAS: You are the County
5 Commission?

6 MR. JOHN HARRIS: That's correct.

7 MR. DOUGLAS: Did the County Commission
8 vote on the voting changes?

9 MR. JOHN HARRIS: Yeah. Once they
10 brought the resolution, it was four to one.

11 MR. DOUGLAS: Four to one?

12 MR. JOHN HARRIS: That's correct.

13 MR. DOUGLAS: Who recommended the new
14 voting place? You mentioned the mayor?

15 MR. JOHN HARRIS: The mayor of the City
16 of Opelika. I said how can the mayor recommend us
17 to move a voting place? I said that's County
18 Commission's job to move the voting place. We
19 didn't have no public input. I haven't had one
20 citizen come up here and say, "We are going to the
21 commission. We want a change." You are correct.

22 MR. DOUGLAS: And you also mentioned
23 that one of the reasons given for the change in

1 voting places is that when it rains, it gets
2 muddy?

3 MR. JOHN HARRIS: That's one voting
4 place. That's at the Tom.

5 MR. DOUGLAS: The Tom?

6 MR. JOHN HARRIS: Yeah, the ground, you
7 know, when people drive up.

8 MR. DOUGLAS: Yeah.

9 MR. JOHN HARRIS: But they could have
10 fixed that if we had a problem with that ground.
11 I told them we have equipment that we repaired
12 roads and stuff. That could have been an
13 agreement because we moved in a house that -- you
14 know, these things they have at these schools?

15 MR. DOUGLAS: Portables?

16 MR. JOHN HARRIS: Portable things, they
17 were going to use one of them at this place. One
18 thing about the people that I know to vote, they
19 don't like to vote at the police precinct and
20 where you have all these fire stations because we
21 have one up here. Low voter turnout because they
22 are intimidated. We have a place in Opelika, Lee
23 County, when you put it over there to the City of

1 Opelika, you can't do no kind of campaigning.
2 They can't put signs on the city property. See,
3 that's intimidation. You have to go by the
4 guidelines because we were down there at Best
5 Western one time passing out literature, and I
6 have come in there five times because they said a
7 man on the property and nobody can't pass no
8 literature out. I said the law says you can stand
9 30 feet in front of the voting place and you can
10 pass out any materials. I said that's a law. We
11 used that place, and if we can't do that, we don't
12 need to use that place no more. So when I went
13 down to assist, they sent a sheriff down there two
14 or three times.

15 MR. SIMELTON: I thank you very much for
16 your testimony. Any more questions? Yes in the
17 audience?

18 MS. ROSE. Thank you. I may have
19 misunderstood what the commissioner for the City
20 Council person at Alabaster said, but this is my
21 confusion. If the Justice Department and the
22 Lawyers Committee intervened to allow him to win
23 the election in 2000, what happened different in

1 2004? My question is did they intervene the same
2 way? Were the districts the same? Section 5 was
3 clearly the law in 2004. So if Section 5 clearly
4 could not help you and support you then, why -- I
5 mean, in reviewing Section 5, I would assume it
6 would still help you. So could you please explain
7 to us because I don't think I heard all the facts?
8 What is it are you saying that the Justice
9 Department and the Lawyers Committee should have
10 done something differently? Was there a change in
11 the districts? Exactly what happened to cause you
12 to lose the election or was it just voter turnout?

13 MR. BOBBY HARRIS: That's a good
14 question. Thank you for asking. After the
15 election, I contacted the Lawyers Committee, one
16 of the representatives at the Lawyers Committee,
17 and I was told to wait perhaps another year or
18 later, 18 months. They were going through some
19 transitions, and they would get back with me. We
20 never did get back together. We never did go
21 revisit the defeat, neither did we go back and
22 revisit the reassignment of populations in the
23 City of Alabaster. As a result of that, we have

1 had two elections since that time, 2000, and each
2 time no minority has qualified for election. The
3 population today is around 66 percent white in
4 that particular district, 66 percent. That's
5 where we are right now.

6 MR. LODER: Just to close out, I want to
7 ask two quick questions to summarize. Mr. John
8 Harris, is it my understanding that your testimony
9 is that the moving of the electoral box was an
10 effort to dilute the African-American voting?

11 MR. JOHN HARRIS: That's correct.

12 MR. LODER: And discourage?

13 MR. JOHN HARRIS: Discourage, that's
14 correct.

15 MR. LODER: And same something with
16 Mr. Harris, is it your understanding or is it your
17 position that the annexation of the land and the
18 attempt to place the annexed population in your
19 district was an effort to dilute the African-
20 American voting power?

21 MR. JOHN HARRIS: I would say yes. And
22 the same year I lost in 2004, they moved my --
23 they moved the city election that year also. They

1 moved it from the traditional place of voting to a
2 more consolidated place of voting, somewhat
3 similar to what they attempted to do in Lee
4 County.

5 MR. LODER: And finally, you talked
6 about there was a collective conscience to move on
7 beyond the challenge to the district by
8 particularly what you described were white. Would
9 you describe or did you feel that it rose to the
10 level of intimidation? Did you feel the
11 collective conscience or the members of the
12 community were asking you to not -- to take it
13 under conceal? Did you feel that that was --

14 MR. JOHN HARRIS: I think so because I
15 had fought many fights in the city. I had sued
16 for the principalship of the school and won it
17 through the courts, and there was a lot of --
18 during the same time period, there was a lot of
19 backlash going on in the city. So it was kind of
20 an exhale moment, kind of a moment to exhale. I
21 exhaled and other people in the community exhaled,
22 white and black. And because of that -- and I'm
23 going to admit it -- somebody dropped the ball as

1 relates to going back and revisit it.

2 MR. GRAY: I want to make a final, I
3 guess, comment. It kind of picks up on Ms.
4 Standard's question to you. And it makes me, I
5 guess, raise the question on annexation issues
6 going forward. And we saw this a lot in the '80's
7 and '90's in redistricting, and particularly in
8 that Dillard case. And we have to be careful
9 about annexations because we saw in the Dillard
10 case where in a number of instances, we wanted and
11 black citizens were requesting local governments,
12 municipalities, to annex certain black areas so
13 that cities would grow and become blacker in terms
14 of minority populations. And the white city
15 fathers many times would refuse because they knew
16 the implications of that. So we have to really
17 watch that whole -- our approach to annexations
18 because we don't want to box ourselves in because
19 if we say that we don't want white growth to take
20 place in certain localities, if it's happening,
21 you know, naturally and not discriminatorily. By
22 the same token, we don't want places where we are
23 growing to be shut out if we are in a position to

1 increase our populations. And we aren't given
2 that opportunity for areas to be annexed in so
3 that communities and cities can become -- increase
4 their black populations.

5 And the other thing when you mentioned
6 about the lawyers didn't get back and you didn't
7 get back to them, I think as community groups, we
8 have to have a strategy ourselves in terms of what
9 we expect and want lawyers to do. And if we can't
10 get free counsel from, say, New York, Washington,
11 DC, sometimes we may have to raise money locally
12 and hire attorneys to represent our interest, if
13 that gives us results more quickly. And I think
14 maybe that's something -- that's why I asked you
15 the question I did earlier about did you all draft
16 a plan to test what the city had done, whether it
17 really was discriminatory. Did you have something
18 to offer to show that if you did it this way, the
19 outcome could have been different, might have been
20 different?

21 MR. BOBBY HARRIS: During 2000, right
22 after 2000, yes. But not in 2004, no.

23 MR. GRAY: Okay. Thank you.

1 MR. SIMELTON: Okay. All right. We
2 want to thank our first panel. You finished your
3 testimony, right? We want to thank you all for
4 your testimony, and we really appreciate your time
5 and very good statements. Thank you all. Give
6 them a round of applause.

7 The next panels that we will call is --
8 and we are not going by the script because some of
9 the people are not here. We will call Theangelo
10 Perkins.

11 THE AUDIENCE: He is not here.

12 MR. SIMELTON: Then we will call Ms. Ann
13 Gibbons and Mr. Mark Threat. Just a reminder to
14 please state your name when you first begin
15 speaking so the stenographer or court reporter
16 will not hit you on the head. Yes, sir? Question
17 from the audience?

18 MR. HENDERSON: If I am in order, if I
19 could offer a suggestion and recommendation to the
20 commissioners. That as we look at strategies
21 going forward -- and I get back to the point that
22 Mr. Loder raised about looking at what the Supreme
23 Court said last year. And I go to Commissioner

1 Harris's comment that the commissioners stated
2 that they could do whatever they want to do, I
3 don't think that anywhere in the Supreme Court
4 ruling last year they moved discrimination off the
5 table in terms of anything going forward. They
6 talked about it does not exist from the past. But
7 if we will consider as a commission the point that
8 Mr. Harris made that tied the city -- the mayor
9 into this equation, if it was a city
10 recommendation to the commission, there must be
11 something in the minutes of the City Council
12 meeting to move to that point. It's just a
13 detailed point and a procedure matter.

14 And on the question on the four to one
15 vote on the County Commission, back to the issue
16 of the discrimination and the intent, and I think
17 that to some extent --

18 MR. SIMELTON: Are you giving a
19 testimony now or --

20 MR. HENDERSON: No, no.

21 MR. SIMELTON: And could you state your
22 name?

23 MR. HENDERSON: Jerry Henderson.

1 MR. SIMELTON: Jerry Henderson? Thank
2 you, Mr. Henderson. Okay. Are we ready to move
3 on, panel? Commissioners? Okay. We'll start
4 with Attorney Gibbons.

5 MS. GIBBONS: I'm Ann Gibbons,
6 G-i-b-b-o-n-s. I worked 20 years in the United
7 States government in the judicial branch in the
8 chambers of Judge Gewin in the Northern District
9 of Alabama. I now do work -- I have since retired
10 from the government. I do what I want to do, and
11 that's been representing just causes and people
12 that I really care about.

13 I became involved in voting about four
14 years ago when I found out that they were putting
15 a quarry in Shelby County, in Vincent, right next
16 to my farm. I immediately became involved. This
17 was not things that the citizens had known about
18 because it was done surreptitiously. The property
19 was bought without the citizens knowing who had
20 bought it. The problem was that they bought the
21 land in a residential area, and that was zoned
22 agricultural/residential area. They had to redo
23 the city code in order to get that. They bought

1 the land in a predominantly black area. Knowing
2 that this had to be done, they waged a campaign to
3 get the city zoning ordinances changed. I sued
4 them. I kept them in court for over three years,
5 slowing down things while we could get organized
6 in that -- so that we could fight this. We
7 realized -- Vincent did, however, pass the zoning
8 code, which was drafted primarily by White Rock's
9 attorneys, Balch, Bingham. I'm not saying they
10 drafted it themselves, but they certainly had
11 major input into what was there. It was exactly
12 what White Rock Quarries wanted.

13 We realized that we were going to have
14 to elect a council that would represent the
15 people, and we started a campaign to get people to
16 run for office. We were fortunate to have people
17 who volunteered to run for every district, and we
18 were confident that we would be able to win a City
19 Council election the next time. In between time,
20 White Rock had to get the Harpersville -- they
21 were planning to take their product out through
22 Harpersville, and they wanted -- they needed to
23 get a change from a county road to -- from a

1 residential area to a county road. So they took
2 it before the Shelby County Commission.

3 The night that ensued, I was in
4 attendance. The meeting was presided over by
5 Lindsey Allison, chairman of the County
6 Commission. I knew that she was one of the
7 attorneys for White Rock Quarries, and she did not
8 disclose that to anyone until I called it to the
9 attention of the audience. Also sitting on that
10 commission was Mr. Ellis, who is the son of the
11 Shelby County attorney. Mr. Ellis represented us,
12 but he did not represent us. He voted the county
13 line, and he went right along with them and
14 changed that road.

15 When election time came, the city
16 realized that they were going to be able to --
17 that they were going to lose that election. And
18 so they had Shelby County come in and redistrict
19 Vincent. We had candidates who were going to run
20 in every district. Mrs. Threat, who is sitting
21 over there, was going to run in her district.
22 When the redistricting came in, we found that they
23 -- they had moved all of our candidates into one

1 district, and that district was the district for
2 the one councilman who had voted for us.

3 I'm about out of time, but there is so
4 much involved here. We lost the election by eight
5 votes. The election was posted with eight votes
6 the night of the election. Amazingly the next
7 day, the vote had changed, and they won by 24
8 votes instead of eight votes. This has involved a
9 recount. It's involved petitions for recounts.
10 We found out that the ballots, the absentee
11 ballots, were not handled correctly. The
12 provisional ballots were not handled correctly.
13 And the board of registrars had to seize the
14 provisional ballots by a court order. All of this
15 has gone on and so much more that I could tell you
16 about. Thank you.

17 MR. DOUGLAS: Thank you.

18 MR. SIMELTON: Thank you, Attorney
19 Gibbons. At this time we will hear from
20 Mr. Threat. Remember to state your name.

21 MR. THREAT: My name is Mark Threat, and
22 I live in 5515 Highway 62, Vincent, Shelby County,
23 Alabama. And I received this letter from the

1 voters administration on the 4th and the 18th of
2 2008. And kind of like John Harris, I have a
3 voter number. My voter number is 580035740. And
4 it reads, "Removal from voters list due to felony
5 conviction. In accordance with Section 17-4-131
6 Code of Alabama as amended, the Circuit Clerk has
7 notified the Shelby County Board of Registrars
8 that you have been convicted of a felony which
9 disqualifies you from voting under Amendment 579
10 of the constitution of Alabama. Section 17-4-132
11 requires that you be notified by certified letter
12 that the Board of Registrars will strike your name
13 from the list of registered voters. Section
14 17-4-132 also provides that any person whose name
15 is stricken from this list can appeal the decision
16 of the Board of Registrars without giving security
17 for cost, and a trial by jury may be had. If you
18 wish to appeal this decision, please provide
19 official documentation as to why you feel this
20 action to be incorrect. You have 30 days from the
21 date of this letter to submit your formal appeal
22 request to the Shelby County Board of Registrars.
23 In the event that you appeal, your voting rights

1 will be restored during the appeal process pending
2 the final resolution. Your voting rights may be
3 also restored should you provide official document
4 in proof of the registration of the voting rights
5 by the Board of Pardons and Parols."

6 I received this letter, and I was
7 disturbed. And me and my wife talked about it.
8 So she called her sister, and her sister works for
9 the State of Alabama. But I don't know what kind
10 of letter she wrote, but she wrote a letter to the
11 Board of Registrars. In, I guess, about ten days,
12 I got another letter, which says, "We have
13 received notification from Mary Harris, circuit
14 clerk for Shelby County, advising our office that
15 information contained in the above referenced case
16 number has been correct. The notification sent
17 earlier to our office stating this was a felony
18 conviction was in error. Therefore, we are
19 reinstating your voter's registration to active
20 status. It will not be necessary for you to
21 reregister." But I had a letter saying that --
22 before I got this letter that I had to reregister.
23 But then I guess she sent them another letter, and

1 now they said that I don't have to reregister.

2 But this was right before the Obama election.

3 MR. DOUGLAS: In '12? 2012?

4 MR. THREAT: 2008. The crime was I was
5 burning some trash. And some trash got away,
6 which I own about 28 acres of land, and the fire
7 got away. And they said that -- I guess setting a
8 fire on your property is a felony. But that was
9 -- that was the only thing that -- which I was not
10 arrested for it. I had -- I posted my own bond
11 that day that the game wardens came.

12 MR. SIMELTON: Are you finished or is
13 there more testimony?

14 MR. THREAT: No.

15 MR. SIMELTON: Okay. Well, we will see
16 if our commissioners have any questions for you.
17 At this time we will go to our right since I
18 started on my left last time. Mr. Loder?

19 MR. LODER: Sure. Mr. Threat, now did
20 you actually have a felony?

21 MR. THREAT: No.

22 MR. LODER: Actually the information was
23 incorrect?

1 MR. THREAT: Yeah.

2 MR. LODER: Is what you are saying? So
3 your concern -- let me ask you this: Are you
4 aware of after that happened to you of any other
5 voters who received those letters in error? Is it
6 your opinion that that may be a common mistake and
7 practice that were happening?

8 MR. THREAT: Well, I mean, I hadn't
9 heard of anyone in my county or in Vincent that
10 received a letter like that. But I was listening
11 to John Harris when he said that there was some
12 people that -- I mean, some voters, numbers that
13 were sent to him instead of names that were sent
14 to him that they were convicted of felonies. And
15 it sounds like it's about the same thing.

16 MR. LODER: Sure. And it sounds like
17 there was probably some kind of check, it wasn't a
18 comprehensive check, it was a check of people who
19 had been cited or accused or arrested of things.
20 And as a result of that, they fundamentally put
21 the onus on you to prove that you didn't have --

22 MR. THREAT: Right.

23 MR. LODER: And trying to change the --

1 and then, Ms. Gibbons, I wanted to ask you about
2 you said that they redistricted and all of your
3 candidates were in the same district. So you ran
4 one in that district? Or was this after you had
5 ran --

6 MS. GIBBONS: The incumbent still ran in
7 that district, and he has represented us quite
8 well. We got someone to run in all the other
9 districts. I campaigned -- I campaigned heavily
10 for Bruce Hamilton, who is black, in a
11 predominantly white district, and he won. This
12 involved voter registration. I went door to door.
13 I registered voters. I was intimidated, but I was
14 not intimidated, but the effort was made to
15 intimidate me. I was followed everywhere I went.
16 One of the ladies who did run was intimidated.
17 She was harassed at her home by she did not know
18 who they were. But things like that happened.

19 If I may make a comment about the
20 question that was asked to Mark, it was my
21 understanding that Vincent purged its voter list
22 between the last election and this one we just had
23 without reason. And I'm certain they didn't send

1 -- I'm appalled about what Mark got. I'm certain
2 they didn't send letters like that out. We just
3 had voters who kept insisting they were registered
4 to vote, and they weren't on that list anymore.
5 They had been purged from the voters list.

6 MR. LODER: Thank you.

7 MR. DOUGLAS: Ms. Gibbons, Shelby County
8 has changed. I would like both of you to speak --
9 are you both natives of Shelby County?

10 MR. THREAT: Yes, I am.

11 MR. DOUGLAS: You are not? You retired
12 there?

13 MS. GIBBONS: No. I spent -- my father
14 owned this place all my life. I have grown up
15 there, but I live in Birmingham. My second home
16 is there.

17 MR. DOUGLAS: Both of you are old enough
18 to remember Shelby County say 20, 30 years ago?

19 MS. GIBBONS: Yeah.

20 MR. DOUGLAS: What's the difference
21 between now and then demographically and
22 economically?

23 MR. THREAT: Well, where I am -- which

1 they call the Vincent area the poor neighborhood
2 of Shelby County -- it's primarily the same. It's
3 growing a little bit, but Vincent is not growing.
4 Harpersville is growing a little bit, but the
5 Vincent area is not growing that much. But you do
6 have -- you do have two blacks on the City Council
7 at Vincent.

8 MR. DOUGLAS: In Vincent?

9 MR. THREAT: Yeah.

10 MR. DOUGLAS: How about you?

11 Differences?

12 MS. GIBBONS: Not greatly, no. I think
13 what I have seen during the 2012 election is so
14 horrible that it could be compared to Jim Crow
15 south. Voters were not allowed -- we had blacks
16 who came to vote who were told that they were not
17 on the list. They did not use provisional ballots
18 in Vincent, and they sent them away without being
19 given the opportunity to vote. I have affidavits
20 from three poll watches to that effect. They were
21 sent away. How many people did they influence
22 when they left that came early in the morning?
23 How many people did they influence when they went

1 out "there is no point in your going because they
2 are not going to let you cast a vote"? They
3 closed the poll before seven o'clock. We had
4 black citizens standing outside waiting to vote,
5 and they were not allowed to vote. There was no
6 official timekeeper there.

7 When the ballots came in, the absentee
8 ballots, they did not check to see if those
9 ballots had been signed, if they were notarized,
10 if they were witnessed. They didn't follow any
11 portion of Alabama law. They refused to let the
12 poll watchers see what envelopes were there, whose
13 name was on the envelope. They just opened those
14 ballots, and without looking at them, stuck them
15 in the machine. Those were part of the
16 irregularities that went on there. I have a list.
17 I have documentation to leave with someone, which
18 can substantiate all of this. You just wouldn't
19 believe what went on at Vincent. I see no
20 difference at all.

21 I know I laughed when you said that
22 intermingled between Shelby County and Vincent. I
23 have seen a different side of it. I see White

1 Rock's attorney sitting as head of the Shelby
2 County Commission. I was told when I originally
3 got involved in this that the next vacancy on the
4 circuit court had already been promised to Corey
5 Moore, who was the Vincent attorney. The next
6 vacancy that came up came up in 2014, and Corey
7 Moore was speedily appointed circuit court judge.
8 In addition to that, the presiding judge of the
9 Circuit Court in Shelby County's sister works in
10 the office at Vincent. There is just so much that
11 goes on. There is -- there is so much going on
12 down there that I said it would be -- that John
13 Gresham should write a novel about what's going on
14 there. You wouldn't believe what goes on out
15 there.

16 MR. DOUGLAS: And he is a prolific
17 writer. Maybe more than one. I think about 30
18 years ago, I used to have one of my mentors,
19 Reverend Carl Williams, live in a place called
20 Fungo Hollow outside of Alabaster. Do you know
21 what that is?

22 THE AUDIENCE: I live in Fungo Holler.

23 MR. DOUGLAS: You live in Fungo Holler?

1 Thank you. Pelham, I'm sorry. And I couldn't
2 find it any more.

3 THE AUDIENCE: It's still there.

4 MR. DOUGLAS: It's still there? My X is
5 gone with all the development around there. And
6 there was a TV story. A lot of wealth is in
7 Shelby County now when it used to be all pretty
8 much poor. And there was a TV news story about a
9 parent who had been fined or arrested for not
10 attending -- to make sure their son attended
11 school. This was two white parents. The school
12 had sent -- Shelby County school has sent notice
13 to the parents several times, and they never came
14 to see about their son. His family is white. The
15 TV crew came out there and found out that the
16 parents were illiterate. The parents could not
17 read the note that the school board had sent.
18 That was the first clash between the new Shelby
19 Countians, wealthy folks pursuing land and new
20 suburb development, coming into clash with the old
21 Shelby Countians; poor, landless, rural whites
22 whose ancestors had been sharecroppers and tenant
23 formers. And the two don't mix very well. That

1 was '82, '84. And when you add racism to classism
2 and nepotism together, you have a -- after this
3 hearing, the jury maybe will have an ethics
4 hearing of Shelby County as well.

5 MR. SIMELTON: I'm sorry. There is a
6 question from the audience.

7 THE AUDIENCE: Yes. Thank you for your
8 honesty. My question is in North Carolina, which
9 is a perfect example, they moved that they were
10 able to form a coalition of organizations, black,
11 brown, white, etc. They have been able to
12 organize poor white people, working class white
13 people, to vote in their own interest. And one
14 reason why we have this voter suppression laws is
15 because the majority of Alabamians, white
16 Alabamians, elect people who pass these bad laws.
17 And there has got to be a coalition of people who
18 are adversely affected by these bad laws. My
19 question to you is: I heard you say that four
20 years ago, you became aware and became involved.
21 So my question is what advice can you offer?
22 People are trying to organize a movement of people
23 that were collectively -- what advice can you give

1 us in terms of your experiences, in terms of how
2 we can organize not just in Shelby County but
3 statewide similar to they are doing in North
4 Carolina? Is it possible poor whites in Alabama
5 are so hopelessly brainwashed? Is there any
6 method of strategy that can be used to move them
7 forward as you have been moved?

8 MS. GIBBONS: We have the most wonderful
9 group of friends in Vincent. Wanda and Mark, just
10 we are close friends. We have worked together,
11 and what we have accomplished could not have been
12 accomplished unless we had worked together. We
13 have met regularly. We have played together. We
14 have worked together cleaning up a cemetery. We
15 have celebrated birthdays together. We have cried
16 when our people died. But there is a common bind
17 there. It's not -- I don't view it as a racial
18 bind. I just view it as Christian people working
19 together for one goal, and it's benefitted all of
20 us in this effort. We have been very fortunate in
21 this.

22 One thing that has helped, the election,
23 the last election, they have a vote count a little

1 over 200 people. In the 2012 election, there was
2 708 people who voted in that municipal election.
3 We did voter registration. I had never been
4 involved in a voter registration before, but I
5 walked to every house in Riverview, which is where
6 we are. If they weren't registered, I carried
7 registration forms with me. If they were
8 registered, they got on my mailing list, and I
9 sent them emails. Judy Noggle has just been
10 wonderful sending emails, and we -- she and I
11 together organized the Vincent Historical and
12 Environmental Society, and we have been involved
13 in historical things and environmental projects
14 benefitting our area. And it's led to a wonderful
15 closeness.

16 MR. SIMELTON: Okay. Thank you. Let me
17 just remind everyone that we have a time frame
18 that we are trying to stay within, and we want to
19 give everybody an opportunity to speak. And what
20 we are going to ask is that in the future, if
21 there is questions from the audience, if you could
22 save those until the end. And that way at least
23 we will get all the speakers in because it's

1 important to hear their comments. Not that your
2 questions are not important, but the speakers did
3 come here to share their testimony. And also when
4 the speakers are responding -- and I know you have
5 a lot that you want to share. But if you could,
6 you know, condense it as much as possible so that
7 we can get all the speakers in. So Mr. Gray?

8 MR. GRAY: My first question is to Ms.
9 Gibbons. What is the black percentage today in
10 the town of Vincent? Do you know?

11 MS. GIBBONS: I do not know. I would --
12 it depends upon the area. The River Loop is
13 predominantly black.

14 MR. GRAY: The reason why I ask that is
15 I understood you to say that two blacks were
16 elected to the council?

17 MS. GIBBONS: Yes.

18 MR. GRAY: I know Vincent was in that
19 Dillard case that the organization that I worked
20 for before I retired filed back in the mid '80's.
21 And I would think based upon the black population
22 percentage -- that's why I asked -- based on the
23 2010 census, that you probably -- if you have two

1 black council members who were elected, that you
2 have population or equality in terms of
3 representation or parody on the Vincent City
4 Council even though you all are running blacks for
5 other positions as well. But what I want to get
6 to is let's say if the representation in terms of
7 election success, the outcome, gave you parody of
8 equity, what would you consider to be the most
9 flagrant abuses? I heard you say that the
10 absentee ballots, I believe you said, were not
11 handled correctly. They just pretty much did what
12 they wanted to do. And I guess my follow-up
13 question to that was: Did each candidate or the
14 candidates that you all were supporting, did they
15 have poll watchers?

16 MS. GIBBONS: Yes, we did.

17 MR. GRAY: And the absentee ballot box?

18 MS. GIBBONS: Yes, we did.

19 MR. GRAY: Okay. What did they report
20 that they observed that was not done correctly?

21 MS. GIBBONS: With the absentee ballots?

22 MR. GRAY: Yes.

23 MS. GIBBONS: Well, in the first place,

1 they were not kept in town hall. The city clerk
2 had to send out and get them from wherever they
3 were. We do not know where she even kept them and
4 who had custody of those absentee ballots. She
5 did not let anyone check the voter list of the
6 absentee list that had been posted. So there was
7 no way to check and see if the votes submitted
8 were the votes of people who had actually applied
9 for an absentee ballot.

10 MR. GRAY: So there was no daily posting
11 of who had requested an absentee ballot by the
12 clerk?

13 MS. GIBBONS: No. No, there was not.

14 MR. GRAY: Where was the absentee --
15 where were the absentee ballots counted? Do you
16 all know that?

17 MS. GIBBONS: They were counted --

18 MR. GRAY: At city hall?

19 MS. GIBBONS: -- at the poll. They were
20 counted that night. They were placed right into
21 the voting machine. Nobody -- they just -- she
22 gave them to the poll inspector. He stuck them
23 right on in the box. They never looked at them.

1 They don't know if they were signed. They don't
2 know if the person who submitted it was a
3 registered voter.

4 MR. GRAY: Where were the watchers?
5 Where were the watchers for the candidates?

6 MS. GIBBONS: They were there. They saw
7 this. They were not allowed to comment.

8 MR. GRAY: They were not --

9 MS. GIBBONS: They were not allowed to
10 comment. In fact the city clerk at one time told
11 one of our poll watchers that if he -- he who had
12 asked her a question, that if he didn't hush, she
13 was going to have him put out of the poll, and she
14 would have done it. It's --

15 MR. GRAY: Why I ask that because I
16 think it's testimony like that that's important to
17 have because many times after elections, the
18 abuses that are observed by poll watchers and
19 others are not documented quickly and reported to
20 -- you have it, but to the Justice Department or
21 to attorneys so that that can become a part of a
22 known record and also probably go public to the
23 media because I think sometimes if we were to

1 embarrass these people and cite what the state law
2 is as well as a Voting Rights Act, that will maybe
3 stay the hands of some of these elected officials
4 and officials like the clerk who do these abusive
5 things.

6 MS. GIBBONS: I have tried to get the
7 Justice Department to send a poll monitor in. I
8 had been -- I originally contacted U. S.
9 Attorney's office in Birmingham, and eventually
10 was referred to Mr. Russ, Bert Russ, in
11 Washington, DC. He and I were communicating back
12 and forth. I requested that they send a poll
13 watcher. I knew the election would be stolen if
14 we didn't have a -- did not have someone from the
15 federal government there. A week ahead, I kept
16 talking to him. Things were so bad the day of the
17 election, things that were reported to me were so
18 bad the day of the election, I called him
19 repeatedly that day and asked him to please send
20 somebody from the justice department. The closest
21 person he had, to send somebody to us.

22 We sent -- when the redistricting plan
23 came out -- I didn't have time to say this -- they

1 approved that plan prior to the date for
2 opposition letters to be received. That's just
3 horrible. The very idea that they had already
4 made a decision to okay that plan prior to the
5 deadline when our citizens could oppose it should
6 not have taken place. I did involve the Justice
7 Department. I tried to involve the Justice
8 Department. I would have loved to have the
9 Justice Department here. As far as publicity is
10 concerned, we have had great difficulty in having
11 anything put in the papers or the television which
12 was adverse to the quarries.

13 MR. GRAY: Even in Birmingham, try to
14 get them in Birmingham?

15 MS. GIBBONS: Yes, yes. We have. It's
16 hard to get people to come or to know if you can't
17 get the media to publish what's going on. I
18 believe the majority of the citizens of Alabama
19 would be appalled if they knew what had taken
20 place in that little town. It's a wonderful town.
21 The people are wonderful for the most part. I
22 hope that -- my husband and I had planned to live
23 the rest of our lives down there. His health has

1 prevented us from doing that. But it's such a
2 peaceful, wonderful place, wonderful people. I
3 hate to see them treated as they have been.
4 Somebody said, "Why do you care what goes on?" I
5 care because it's wrong. I care because these are
6 my friends. I don't like the quarry there and I
7 don't want it to come, but I can also leave and
8 come back to my home in Birmingham. The rest of
9 the people there can't. That is their home. I
10 have seen people there who have spent their entire
11 lives working hard to build a life for themselves,
12 and they are about to have it destroyed. And as
13 the chairman of the Planning Commission in Vincent
14 said to me, "We don't care what happens to the
15 people in the River Loop." And that's exactly
16 right. They don't care because they don't live in
17 that area.

18 MR. GRAY: Thank you.

19 MR. SIMELTON: Okay. I don't have any
20 follow-up questions. I think your testimony has
21 been very effective, and we appreciate your time
22 both. And we just appreciate you being here
23 today.

1 MS. GIBBONS: Thank you so much for
2 letting me say.

3 MR. THREAT: Thank you.

4 MS. GIBBONS: With whom do I leave this?
5 Thank you very much.

6 MR. SIMELTON: Okay. If the
7 commissioners are ready, we will call the next.
8 Okay. And I will just go down my list here.
9 Shirley Gavin, Dorothy Swain?

10 MS. FLOYD: My last name is Floyd,
11 Shirley Gavin Floyd.

12 MR. SIMELTON: Okay. I thank you all
13 again, and I just remind you to give your
14 statement, be sure you give your name for the
15 court reporter. SO we will start with Ms. Gavin.

16 MS. FLOYD: My name is Shirley Gavin
17 Floyd, and I serve as the business manager of the
18 Civil Rights Activists Committee, the home of the
19 Foot Solders. Also I serve as the research and
20 historian of the civil rights movement and how we
21 got the right to vote and the struggle that we
22 went through. So the purpose of the office was to
23 engage ordinary people and ex-cons even to be

1 reregistered to restore their voting rights so
2 that they would have equal access with the
3 decisions that are made in the country. So we set
4 out to do that, and it was quite hard to get an
5 ex-con to come in our office and willing to admit
6 that he had committed a crime and regardless of
7 whether he had served his time or not. So it took
8 a lot of time to explain to him no matter what you
9 have done, him or her, no matter what you have
10 done, if you have served your time, you have the
11 right to vote. But you must restore your voting
12 rights.

13 So we worked in the historical district
14 of the civil rights movement on 4th Avenue North.
15 And in that district, we find there are a lot of
16 beauty shops and barber shots. And the people
17 that were convicts at one time visit the barber
18 shops or the beauty shops. I think they felt more
19 comfortable talking to their barbers and their
20 beauticians and cosmetologists about the problem
21 with voting. So what we did was we set up little
22 substations in these venues so that when we went
23 there, maybe they would be encouraged just to fill

1 out the voter registration form. And once a week,
2 it was my duty to go by and pick up the forms and
3 make sure I got them to the county courthouse in
4 order for them to be recorded so that processes
5 could be made to restore their voting rights. I
6 encouraged them that, yes, you have served your
7 time. You are paroled, pardoned, and you should
8 be receiving your voter rights card in about no
9 later than six weeks. That was my grace time for
10 them. But many of them came back and said that
11 they were denied their voting rights because of
12 the criminal acts that they were charged with in
13 the past and even though they had served their
14 time.

15 So having a close relationship with our
16 county clerk, Ann Marie Adams, I was able to go to
17 her. And she was very receptive to my need. And
18 she would do follow up on it and then direct me
19 where to go in order to direct them where to go in
20 order to go through the channels of Birmingham.
21 And when we got to the pardon and parol board, we
22 usually were met with the accusation that there
23 was nothing on file about their completing their

1 probation or parole status or that they had served
2 their time, and as a result they were not allowed
3 to vote.

4 Now when we came up in the year 2007, we
5 had a surge of citizens who really wanted to vote
6 because of the anticipation of the first African-
7 American president. So we were swamped with many
8 of those persons who would not have come on a
9 normal day coming into the office because they
10 wanted to be a part of this great historical saga,
11 and many of them were turned around. So what we
12 did was we kept a log of all those persons who
13 were rejected, and we contacted the Department of
14 Pardons and Parole Board and invited to see if we
15 could get the information whether they were
16 cleared of a crime where they could legally vote
17 again by restoration of their voting rights or
18 whatever. However, that information was not privy
19 to us. We were not privy to that because of the,
20 I guess, nonrelationship to the person which we
21 were inquiring about. So our office was at a
22 standstill. It was up to that person himself to
23 go, and many of them -- many of them probably

1 could have done it, but they were somewhat
2 illiterate to the words to use and to the Pardons
3 and Parole. And many of them didn't even want to
4 disturb that entity again, seeing that they had
5 been under the auspices of so many years. So we
6 found it difficult to register citizens here in
7 Birmingham, and we are not just talking about
8 black citizens. We had white citizens as well
9 that underwent that. So my thing is the Pardons
10 and Parole employee is effective in their record
11 keeping of making sure that you have a record,
12 each and every individual who completes the status
13 of parole or probation and make sure that that is
14 sealed so when it's time to come to vote, to
15 register, there would not be a road block.

16 And that's our major concern. We
17 continued. We continued to register people. We
18 continued to hand walk those registrations to the
19 county courthouse because we feel that we are --
20 if we put them in the mail, anything can happen.
21 So we put them in the hands of the workers at the
22 county courthouse. And a lot of times because we
23 go so much, many of the employees will stop what

1 they are doing and just key it in. And they can
2 tell us straight away no, they can't register or
3 yes, they can. So that's where we are.

4 MR. SIMELTON: Okay. Thank you.

5 Dr. Rimpsey?

6 DR. RIMPSEY: My name is Freddy Rimpsey.
7 I spell Freddy with a Y instead of i-e. I'm the
8 president of the Alabama Voters League in
9 Anniston, Calhoun County, and I had received the
10 best training that one can receive in knowing our
11 Alabama politics from your own Mr. Jerome Gray,
12 who is also a high school teacher of mine,
13 biology. But upon my return to Alabama after
14 going to college, I went back to my hometown,
15 which is Anniston. And they were operating a
16 system that made it impossible for any black man
17 to be elected unless the white folks wanted him to
18 be elected. They had an at-large system. There
19 was one black that was on it, City Council
20 Dr. Gordon Rogers. When he did or said something
21 they didn't want him to say, they voted him out
22 and put a black man of their choosing in that
23 wouldn't say anything. And so even though all the

1 blacks in the city voted for Dr. Rogers, but the
2 at-large system of whites defeated him.

3 So we worked with ADC for many years,
4 over 20 years, to do away with that system. And
5 we were able to create two black wards, get two
6 blacks elected. They would be part of the lawsuit
7 that went down at the prison county system and
8 elected in the county government. And later we
9 were able to redistrict it. We were able to get
10 Dr. Bartley in the state legislature. So those
11 are the only blacks in the whole county, in
12 Anniston. Because of the system and the lawsuit
13 we had to file, we were able to move towards.

14 But we still haven't been able to make a
15 lot of changes in the city because we have the
16 city manager, male city manager. We have four
17 wards, and the mayor runs at large. On every
18 issue that's involved in advancing black people,
19 the vote is always three to two. The two blacks
20 will vote for it and the two whites against it.
21 And the mayor runs at large, he votes against it.
22 So we are really not making much progress in that
23 area.

1 We cannot even get a street named in
2 honor of Dr. King in Anniston because the whites
3 didn't want it. And so we just -- but things have
4 changed. I was told if we would just pray and
5 wait on the Lord, a change will come. And so the
6 city now, because of white flight, white people
7 running into the suburbs and not wanting to go to
8 school with blacks, our schools have went from 90
9 percent white to all black. We are now over 52
10 percent of the population in Anniston. We can
11 very easily elect a third black councilman and
12 even a mayor. And so the people who want to keep
13 things as they are know that.

14 And so in this last election, the black
15 boxes where we had blacks running and they put
16 whites to run against them, some of their kind of
17 blacks, Oreos we call them, at the polling places,
18 they ran out of ballots. When blacks went down
19 there to vote, they were told we don't have any
20 more ballots. We have to go to Birmingham to pick
21 up ballots, and you know people are not going to
22 come back later to vote. So they were able to get
23 rid of our people that we had in those two black

1 wards and got somebody else of their people in
2 those wards who are not going to stand up and
3 speak up for justice, particularly when it comes
4 to blacks.

5 So we went backwards because of trickery
6 and those types of things. And so -- and even
7 though -- let me say this to you. We don't just
8 hang out a sign and say we are here. We work hard
9 to -- we work hard to make changes by monitoring
10 elections, put people out working, screening
11 candidates. But all in all, we are still not
12 making very much progress because of the trickery
13 that's been -- the tricks that they pull. And not
14 just have time to -- but we want to stop these
15 kind of things, if at all possible. So when
16 someone that we select, a black that runs, is
17 going to speak out for the black people and be
18 elected fair and square without something being
19 taken from them through trickery. Thank you for
20 giving me this opportunity to speak.

21 MR. DOUGLAS: Ms. Gavin, just one
22 question about you mentioned the part about how
23 the employees for the county were able to relate

1 to the ex-offenders, ex-felons you were trying to
2 get registered to vote, how did that happen? Did
3 you introduce them to the people at the --

4 MS. FLOYD: No, no. It was when, you
5 know, I went on a personal basis on many to hand
6 deliver.

7 MR. DOUGLAS: Hand deliver?

8 MS. FLOYD: And at that time we had a
9 registrar by the name of Ms. Mary Hunter, and what
10 I did was I formed a bond with Ms. Hunter. So
11 when I would come into the office, she would
12 receive me and the employees would too. So I
13 would ask, you know, can you run this real quick.
14 I need to know if this person -- and they were
15 cooperative there. I had no problem really with
16 the county part. It was when the county rejected
17 them for reasons from the Parol Board, for
18 instance, that we were stalled at that point. And
19 as a result, we lost a lot of voters that possibly
20 could have voted in the elections. I think
21 because by the time they got through going to the
22 Parole Board and following up, the election had
23 come and gone.

1 MR. DOUGLAS: Is there any expense other
2 than time and effort to the ex-felon in getting
3 these records cleared up with the Parol Board?
4 Number one, is there any way they can let these
5 people know before it's too late in the time frame
6 for an election?

7 MS. FLOYD: That was our concern. And
8 it seemed like that was not working. That's when
9 we asked to at least let them know the reason why
10 they can't get their voting rights restored,
11 whether you didn't fulfill all the days or you
12 skipped out of town or you came -- whatever it
13 was, communicate with that person. That person
14 was held in limbo, and all they knew was that
15 their voting rights were rejected, which was quite
16 depressing and that that caused them not to even
17 want to try again -- you know, many of them have
18 been waiting to vote for 10 or 15 years and didn't
19 have -- they didn't have the knowledge that if
20 they had done their time and fulfilled the duties
21 of the court or whatever, the parole board, that
22 they were entitled to get their voting rights
23 restored. As a result a lot of them could not get

1 a place to live because there is no -- voting
2 rights give you a lot of privileges. They
3 couldn't get a bank account. You know, a lot of
4 them became homeless and ended up in the park. We
5 did a lot of extensive work in the parks with the
6 homeless people, trying to see why you can't get
7 your voting rights. Did you do a crime? And many
8 of them just had a streak of bad luck. Didn't go
9 to the polls and vote for the last five years, and
10 they were dropped from the rolls.

11 MR. DOUGLAS: If anything else comes out
12 of these hearings, if we can begin to build an
13 understanding of the voting rights as rights, they
14 are not privileges, and that people shouldn't have
15 to depend on the kindness of strangers to exercise
16 their right to vote, that will be a good day.

17 MR. SIMELTON: A couple of questions.
18 Dr. Rimpsey, you are saying that they ran out of
19 ballots at the polling place. Do you think that
20 the election was lost because those voters said I
21 don't have time to wait for you run to Birmingham
22 to get ballots?

23 DR. RIMPSEY: I don't think. I know. I

1 talked to several, many hundreds. They said, "We
2 didn't vote. We had to get a ride down there, and
3 they didn't have any ballots." And when they got
4 back home, they weren't able to get back down
5 there. There was a lot of people, especially a
6 lot of people living in the area where they have
7 to travel a couple of miles. There is an area on
8 the south end of the city, there is a housing
9 project called Constantine Town. Well, just out
10 of that, just out of that area, you are talking
11 about over a thousand people voting and in South
12 Highland Center. And we don't really have mass
13 transit. We have a little bus that may run every
14 hour or two, and many of them don't have cars.
15 And they got a ride there, and they just didn't go
16 back. And a lot of them was angry about it. They
17 said we didn't get a chance to vote. They said,
18 "How long do you think it will be before you get
19 ballots? Well, we have to go to Birmingham and
20 get them." And some of the places, they never
21 even got back from Birmingham with ballots.

22 MR. SIMELTON: Was there any -- and you
23 may have mentioned this, but I don't remember.

1 Was there anything filed with the Justice
2 Department? That was in 2000 what again?

3 DR. RIMPSEY: Two years ago.

4 MR. SIMELTON: Two years ago. Was there
5 anything filed with the Justice Department?

6 THE WITNESS: I don't think so. I spoke
7 to somebody with the Justice Department, but not
8 officially filed. There was one candidate, Ben
9 Little who was in ward two, Reverend Ben Little.
10 Now he officially filed some paperwork because he
11 lost.

12 MR. SIMELTON: So he did file the
13 paperwork?

14 DR. RIMPSEY: He did file.

15 MR. SIMELTON: And you mentioned -- Ms.
16 Gavin, the ex-felons, Alabama is one of those
17 states that you have to apply -- of course, you
18 know that -- to have your voting rights restored.
19 Did they really understand what all needed to be
20 done for the process? And I think now that when
21 they exit -- when they complete their sentence, if
22 they are confined, I think they are supposed to
23 receive some kind of checklist to tell you what

1 you need to do to get your voting rights restored.

2 MS. FLOYD: Perhaps they did. But by

3 the time they got to us, they were not aware of

4 that or they didn't have the document. And I'm

5 sure they got a document when they were released,

6 and they are coming -- certainly I have never been

7 in that situation. But I would think that if you

8 are cleared of something, you would get it in

9 writing. And many of them were just satisfied

10 with being cleared and out of trouble. The voting

11 wasn't really something important to them. It was

12 because we were coming up to this great election

13 that our office really got people coming to us

14 instead of us going out to them. And that's when

15 the castrophy of knowing you can't do it, and what

16 a depressing thing. You want to vote in this

17 great election and be a part of history. I did

18 something 20 years ago, and I don't have my slip.

19 And they gave me 20 years to prove that I'm

20 cleared and they say I'm not, I can't register and

21 restore my voting rights. And many of those

22 persons of that nature, they really slipped

23 through the drain. Many of them were cleared, but

1 they didn't have the documents. And then by the
2 time they got the word whether they were or not,
3 the election was over. And we were faced with
4 those obstacles.

5 MR. LODER: Good afternoon. Good to see
6 you, Ms. Gavin. I wanted to ask you: Who was it
7 that told you that you couldn't inquire and you
8 were -- you are still with the Foot Soldiers
9 organization?

10 MS. FLOYD: Yes.

11 MR. LODER: So you were acting on behalf
12 of the advocacy organization when you were
13 inquiring. Who was it that told you that you
14 couldn't inquire about a felon's right because
15 they weren't the actual felon?

16 MS. FLOYD: Well, you know, when I made
17 the call, I called, introduced ourselves and the
18 nature of the call. And I have that recorded.
19 But today I can't tell you if it was Pardons and
20 Parole or the sheriff's department, the attorney
21 general's office or what. But we got word from
22 higher up that we would not be privy to that
23 person. Now he had the right to get his

1 information himself.

2 MR. LODER: Well, you were an advocacy
3 organization so that's all a part.

4 MS. FLOYD: And what was so depressing
5 was that our organization that was founded in the
6 year 2002 by Mr. Tommy Wren, he set up a Board of
7 Directors and Articles of Incorporation. And we
8 had a purpose mission statement, all of it was
9 recorded in the state of Alabama, especially the
10 Articles of Incorporation with a real book number
11 and page number on there. So we were a legitimate
12 organization. But for some reason, we could not
13 get any information. That led me to get back with
14 the person and say, "Look, this is what you need
15 to do. You need to get in touch with this
16 department and try to get this document or
17 whatever." And, of course, they were not -- you
18 know, they were insecure. A lot of them were
19 insecure with trying to do it on their own. They
20 didn't really know the language to use, and some
21 of them felt that, you know, they were out of
22 touch with reality really.

23 MR. LODER: Thanks.

1 MR. GRAY: Ms. Floyd, I'm going to start
2 with you first. The whole issue of felony
3 restorations has certainly been something that's
4 been dear to me. Back in around 2003, '04, Scott
5 Douglas and Olivia Turner and a bunch of us, we
6 formed something called the Alabama Restore the
7 Vote Coalition to try to get legislation through
8 the legislature to make it easier for ex-felons to
9 get that voting right restored. And we did get a
10 bill passed. And one of the provisions in that
11 bill requires the Board of Registrars to notify
12 the ex-felon within, I believe it says, 45 days of
13 being contacted by the ex-felon of whether he or
14 she is going to get his or her voting rights. If
15 they are denied, they just give a reason, an
16 objective reason, why that ex-felon is denied.
17 The reason -- and must be a majority of the
18 members of the board. And the reason must be you
19 either have some time left on your probation or
20 parole or you owe some fines and restitution.
21 What we found to be most helpful though is that
22 since in Alabama the ex-felon has to really take
23 the initiative to begin to get the voting rights

1 restored, we worked out a compromise through the
2 legislature and the legislature requires an
3 ex-felon to get something called a CERV,
4 certificate of eligibility to register and vote.
5 And when the ex-felon fills out that simple form,
6 it's an easy form, one of the things we began to
7 do -- and I say we, the Alabama Restore the Vote
8 Coalition -- we had staff that would track -- we
9 developed a relationship with the Board of Pardons
10 and Parole, and we would track once that
11 application went in to the Board of Pardons and
12 Parole the turnaround time to see if they would
13 get that response back within that 45-day period.
14 If the ex-felon had not heard from the Board of
15 Pardons and Parole within that 45-day period, then
16 we would write a letter to the Board of Pardons
17 and Parole saying Jerome Gray has sent in his
18 application for felony restoration on this date.
19 We would always keep a copy. He has not heard
20 from the board. What is the status of that? And
21 we would track that felon's form over usually a
22 two month period, and we found that that was one
23 of the most workable things we could have done by

1 us being there as an advocate for that ex-felon
2 and because we had developed that relationship.
3 And we could call the Board of Pardons and Parole
4 also and ask for an update on the status of that
5 ex-felon if that ex-felon had not heard from the
6 Board of Pardons and Parole, say, within a 45 or
7 60 day period.

8 And before I retired, I know the ACLU of
9 Alabama continued to do that through a project
10 they had. But that, I found, was one of the most
11 helpful things. Now one of these I can say is
12 that the Board of Pardons and Parole is extremely
13 backlogged, and they use parole officers many
14 times to do the background check. So that's
15 another thing is that if we know these parole
16 officers in communities, that's another place
17 where we need to sometimes put some pressure on
18 them to say, "look, I know you have got a full
19 load of other things you have to do. But one of
20 things we would like for you to do also is help us
21 to expedite the turnaround time of felons getting
22 their voting rights restored. But that tracking
23 process is one of the most important things that

1 needs to happen in that process.

2 MS. FLOYD: Let me ask you though:
3 After you track, what kind of communication was
4 directed from your organization to that
5 particular?

6 MR. GRAY: We had a form letter. Just a
7 form letter.

8 MS. FLOYD: That's it? So, I mean, you
9 send him a form letter?

10 MR. GRAY: We would send one to the
11 Board of Pardons and Parole, and we would send the
12 ex-felon a copy of it.

13 MS. FLOYD: So in other words, it could
14 have been -- are you saying it could have been
15 negligence on their part not to respond to the
16 form letter the reason --

17 MR. GRAY: Yeah. In other words, we
18 were documenting because we knew what the law said
19 the response time should be to notify. So we were
20 putting them under the gun. The law says that you
21 shall notify the ex-felon within 45 days the
22 status of his voting rights.

23 MS. FLOYD: Well, you know, when we

1 questioned, they only tell us "I did this and
2 served this time. I have been through 20 years."
3 Things like that, you track them and notify them
4 with a form, and we fill it out. We only know I
5 need my voting rights back. So I'm glad to know
6 that such an organization is in place on the
7 board, and I would just like to have that
8 information so that I can reach out to you through
9 this organization. And you can be my front line
10 leader to get them --

11 MR. GRAY: I'm retired, but I will be
12 glad -- the ACLU is doing that now.

13 MS. FLOYD: When I have to put their
14 names in a dead file and say I have to -- it's a
15 cold case to me because eventually you have to go
16 back in there and try again. So that doesn't work
17 and it's --

18 MR. GRAY: It works though because even
19 though I am retired, if I get an application of an
20 ex-felon and a relationship I had before I
21 retired, I just write that form letter and send it
22 to a mole I know inside the Board of Pardons and
23 Parole.

1 MS. FLOYD: I'm happy to know -- now
2 that I know that, we can utilize some other assets
3 to get to these dreams they have because it's such
4 a joy when they do get their voting rights and
5 they come by with tears in their eyes and they
6 thank us so much. They feel so worthy as a
7 citizen all over again, and that's what we need to
8 build on.

9 MR. SIMELTON: You need to push Alabama
10 to pass a law where it's automatic. Once they pay
11 the fines, restitution, it should be automatic.

12 MR. GRAY: I'm not optimistic on that,
13 Mr. Simelton. We are in Alabama. We are one of
14 the red states. I want to ask Reverend Rimpsey a
15 quick question. On the inadequate resources,
16 ballots, not enough in these majority black
17 polling places, did you for the record check to
18 see if they had that problem in any of the
19 majority white voting places?

20 REVEREND RIMPSEY: We did. Yes, we did.

21 MR. GRAY: Did they run out? Any
22 reports of that?

23 REVEREND RIMPSEY: That did not happen

1 at the white boxes because we also monitored those
2 boxes too. We had our people, you know, handing
3 out ballots at all our boxes in the county. And
4 one thing -- I don't think anybody can stop this,
5 we need to hire better people. We had far more
6 racist white people riding around paying people
7 that we had hired to work, paying them more to --
8 so we just got some Uncle Toms out there that we
9 had not -- and they were taking the money, and
10 they were buying the ballots. Like we put a guy
11 out there and gave him a handful of ballots to
12 hand out, paid him \$100. Some white guy riding
13 around and said, "Give me those ballots, and I
14 will give you \$100." So he is paying the workers,
15 and even those racist redneck Chamber of Commerce
16 were all involved in election. The Chamber of
17 Commerce. It's just sad. It's bad. I don't
18 know -- seems like we have more problems in that
19 county than any county in the state. Chambers of
20 Commerce openly involved in it. Doing things,
21 putting money, paying people, trying to get their
22 people elected. Just don't want to give up that
23 control, and it's just bad. Paying people off,

1 but can you imagine somebody riding around, people
2 working, and giving them money and buying our
3 ballots? So I had people going around monitoring
4 the election, and they called me, "Our folks don't
5 have any ballots." I said we have a whole box of
6 ballots. You have given out a whole box of
7 ballots since you were out here? And that was the
8 other blacks that saw what was happening. Said,
9 "Reverend, a white man came and bought your
10 ballots. Your workers sold them to his guy going
11 around buying your ballots." And they worked that
12 hard just to defeat our candidates, to keep that
13 control. It's all about racism, and I'm sick of
14 it.

15 MR. SIMELTON: Let me follow up on that
16 point because -- and I work the polls, and I don't
17 understand how you can buy a ballot because those
18 ballots are counted for. They are not just
19 like -- even the workers, you know, they have to
20 count for the ballots. You can't tear up a whole
21 or give a person a whole -- unless everybody in
22 that polling place is on the take more or less.

23 MR. GRAY: Sample ballots.

1 REVEREND RIMPSEY: Sample ballots that
2 our workers hand out. The workers at every
3 polling place that hand out --

4 MR. SIMELTON: I'm sorry?

5 REVEREND RIMPSEY: Paying them and
6 buying them.

7 MR. GRAY: As my former boss, Joe Higg,
8 would say, you can't stop bootlegging. All you
9 can do is try to control it a little bit, but you
10 can't stop it.

11 REVEREND RIMPSEY: But it's that
12 mentality you are dealing with. Dr. King said a
13 man struck him in the face, and they said, "Do you
14 want to press charges, Dr. King?" He said,
15 "Putting that man in jail will serve no purpose."
16 He said, "That's why we are marching today, to let
17 our white sisters and brothers know we must be
18 respected." It's just been another one take his
19 place that a black man don't have to be respected
20 and he is nothing. You can hit him in the face,
21 and nothing will be done to you. And we just have
22 to pray and keep working at it. But that
23 mentality, you can't put your candidate out there

1 and let him campaign, and we ain't fair and
2 square. You have to do all these undermining and
3 low down things to defeat the man that's running
4 against your man, and that's what whites are
5 continuing to do because they realize that. If we
6 just stick together, the black folk, and go out
7 and vote for somebody that's going to stand up and
8 do us right, we can be in control of our own
9 destiny over there. But they don't want to give
10 up the control. But as long as I'm living, it
11 ain't going to happen.

12 MR. SIMELTON: Anything else? Okay. At
13 this time we are going to take a 20 minute break
14 so we will be back at 5:30. And there is food
15 downstairs for the panel members and the
16 commissioners and volunteers. Thank you all.

17 (Recess taken.)

18 MR. SIMELTON: At this time we are going
19 to go to a little departure here and do public
20 testimony. So if you have public testimony, we
21 have Ms. Shirley Middleton and Richard Rutledge
22 and Mark Threat.

23 MR. THREAT: I'm out.

1 MR. SIMELTON: And John Harris. So are
2 we allowing five minutes? You have time for five
3 minutes?

4 MR. GRAY: Can we do a little shorter?

5 MR. SIMELTON: Okay. Let's do three
6 minutes then. Three minutes for your public
7 testimony. And please, again, state your name for
8 the court reporter.

9 MS. MIDDLETON: My name is Shirley
10 Middleton. I serve on the town council of
11 Harpersville in Shelby County. Well, right now
12 many of you may have heard of Harpersville. We
13 are in a lawsuit. This lawsuit has been in the
14 allegation against the court. And as you may or
15 may not know -- I don't want to talk about the
16 lawsuit, but you may or you may not know that the
17 council and the mayor, once you choose your mayor
18 or your judge, you have no control over your
19 judge. You have no control over the court. The
20 judge has all that control. But the town has been
21 sued in this lawsuit, and it said that -- I want
22 to say that we hired a judge back in -- I think it
23 was 2004 is when we hired this judge. And he has

1 been our judge ever since. Now when this case got
2 started, when we found out about it, the county
3 judge, Judge Harrington, ordered the council and
4 the mayor to appear in his court. Okay. And
5 anyway, and this is -- remember, we have the one
6 black mayor in Shelby County. We have two black
7 representatives in Shelby County. Now we are not
8 the only municipality that this judge is over, but
9 we are the only one named in this lawsuit of some
10 of these things going on. Okay.

11 Now let me read what I got wrote down
12 here, that this order was for Mayor Perkins and
13 the council to appear before him one week before
14 the elections. And we felt that it was to
15 influence the elections. Now in my -- you know, I
16 have been on the council now since 1988. I'm very
17 rarely challenged. But, you know, Mayor Perkins
18 has been mayor -- he is on his third term. Okay.
19 He has been challenged heavily, and it's at large.
20 But we are so successful because we are so
21 organized. We set up a campaign. Way back in
22 '82, I think it was, when the Dillard case came
23 out was George Daily, Booker Kelly and Mr. Gray.

1 You all came out, and y'all set it up. And we
2 have been organized. We set up poll watchers,
3 and we set people on the outside where we check
4 off who has been to vote, who has not been to
5 vote, go get this person, go get that person. So
6 we are very organized. It's not that they gave up
7 mayor. We worked hard to get this mayor, and
8 every time we still work hard to get him. And he
9 has been heavy -- the last two times, he has had
10 heavy competition.

11 But so when this came up, you know,
12 about -- first of all, our lawyer said he can't
13 just order y'all -- the judge cannot just come and
14 order you all to do this in your town, but we
15 closed our court and we don't have court now. We
16 closed the court, and they came and got our books
17 and records and everything. And now we felt -- of
18 course, when we did that, we didn't know we no
19 longer had to go to court. The council did not
20 have to appear in court, but we had signed
21 documents that we -- have that we would be there
22 and they gave us -- I'm sorry, I'm not
23 exaggerating, a paper this big, a stack of papers

1 this big. You have to read this and sign that you
2 have read this before you come to court. I read
3 every page because I wanted to know what he was
4 talking about.

5 MR. SIMELTON: Can you kind of
6 summarize?

7 MS. MIDDLETON: Okay. Now let me be
8 real quick with this. Our representation on the
9 -- okay. Back to what we were talking about White
10 Rock. White Rock decided they were going to come
11 through Harpersville. White Rock wanted to come
12 through Harpersville with hazardous waste. They
13 didn't come to us and ask for any kind of council
14 vote, what do you all feel. They went to the
15 county. The county, you know, is all white. No
16 black representation on the commission at all.
17 And so a bunch of us was down. Said, no, we don't
18 want that to come through Harpersville. We don't
19 want that to come through our residential area,
20 that hazardous waste. Well, the council passed it
21 anyway. We felt that if we were represented, they
22 would not have come through our heavily populated
23 black residential area. And anyway, let me just

1 stop with that because I could go on. But we feel
2 like they have been -- no matter what they say --

3 MR. SIMELTON: The bottom line, they
4 didn't allow your vote to count or what or put it
5 up for a vote?

6 MS. MIDDLETON: Well, no. They voted.
7 The commissioners voted, even the one who
8 represented us. The comment he made was all
9 commissioners we invited, please come see what --
10 one of the representatives said that's not my
11 district so I don't have any business to go up
12 there. But I said, "But you are going to vote on
13 it. So you should come see what you are talking
14 about, 25 to 50 trucks a day through this area
15 with these people, with children playing, you
16 know, in the road all the time still." They walk,
17 you know, they walk back and forth from down --
18 what we call downtown and everything. They said,
19 "It's not my district so I'm not going to come
20 there."

21 MR. SIMELTON: Okay. And again in the
22 interest of time, I hate to stop you short.

23 MS. MIDDLETON: That's okay.

1 MR. SIMELTON: Any questions? Okay.
2 Mr. John Harris. Just a reminder that you have
3 three minutes and please state your name again for
4 the court reporter.

5 MR. JOHN HARRIS: My name is John C.
6 Harris. I was a candidate in the council race on
7 August the 27th. Ms. Jordan Jackson, who was my
8 poll watcher, who has worked this poll watching
9 for Mayor Kincaid and myself for twice, we filed a
10 complaint with the Secretary of State because of
11 some voter irregularities at Memorial Park. One
12 was that people did not have an idea who was
13 allowed to vote. The second one was they stopped
14 the voting machine to allow another voting machine
15 to catch up to that machine. She was not allowed
16 even though -- other times she was allowed to help
17 people who needed help to vote. The fourth thing
18 is that they had her to sign an envelope at 3:30,
19 long before the polls closed, and the fifth thing
20 was that they held open the boxes until they left
21 the poll. The Secretary of State sent out
22 complaints to Alabama attorney general. They also
23 sent out complaints to Jefferson County district

1 attorney. I met with a person from the district
2 attorney's office. We met with a person from the
3 district attorney's office, and they basically
4 said he was concerned about signing the envelope
5 before time. But what he said was most of the
6 other was not criminal. And that's where we were,
7 and I would like to present this to the body.

8 MR. GRAY: What city are you from?

9 MR. JOHN C. HARRIS: City of Birmingham.

10 MR. SIMELTON: Are there any questions
11 for Mr. John Harris? Thank you, Mr. Harris. Was
12 there anyone else for public testimony?

13 MR. GRAY: Reverend Dale?

14 MR. SIMELTON: I saw this gentleman
15 first.

16 MR. RUTLEDGE: My name is Richard
17 Rutledge. Like Mr. Harris, I was a candidate for
18 Birmingham City Council District 2. These are
19 three Birmingham News articles that were written.
20 This one was my predictions on some of the chaos
21 that we would see because of some issues that were
22 occurring with the registered voter list and the
23 maps of the district. This was the account of

1 what happened in District 6 that Mr. Harris was
2 talking about, and the third is the article from
3 Birmingham News about the certification of the
4 vote for the Birmingham City Council and school
5 board elections, even though there were
6 discrepancies.

7 For a year and a half or so prior to the
8 City Council election, I'm state chairman for the
9 Conservative party for the US, which is a national
10 binder party. So did not know whether I was going
11 to run, but figured at the very least that I would
12 be involved in campaigns for candidates in this
13 election so I became concerned. The City Council
14 district lines were approved by the council in
15 January of 2011. But the maps, district lines and
16 registered voter lists were not released to
17 potential candidates or to the public until early
18 May of 2013. And the reason being is outlined in
19 this: I filled two complaints with the Department
20 of Justice prior to the election on this matter.
21 I also was in direct contact with the Secretary of
22 State's office and with the county registrar's
23 office. This contains the first DOJ complaint

1 that I filed on March 5th that also contains an
2 email that I had gotten from Barry Stephens, the
3 registrar from Jefferson County outlining why they
4 could not release the registered voter list or the
5 maps of the district.

6 And then I filed the second complaint on
7 the 15th of August, which was 12 days out from the
8 election, because I saw the confusion that was
9 coming. When they sent out the voter registration
10 cards, for example, they notified individuals that
11 they had changed possibly the polling location,
12 but what they did not notify them of was that they
13 may be voting in the same polling location that
14 they voted in for many, many years but were voting
15 in different council districts. Nobody, including
16 myself, knew how to read the thing. And
17 consistently on the campaign trail, I was seeing a
18 consistent problem with going into areas, I was in
19 the wrong district. Secondly, because of the
20 lateness of the data being released and the fact
21 that the Birmingham city council elections were
22 off the normal election cycle for many county and
23 state elections, your major companies that

1 generally do the mailing lists, do your phone
2 banks and other crucial campaign issues did not
3 have fully updated voter lists. And we played
4 havoc. It created all sorts of havoc in this
5 election, and I literally went through hell
6 getting my registered voter list to these
7 individuals, making sure it was accurate and being
8 able to get a mailing list and a phone bank list
9 out. Other candidates didn't. We had a lot of
10 crossover and a tremendous amount of confusion at
11 the polls.

12 MR. SIMELTON: Let's fill out -- is that
13 a report there?

14 MR. RUTLEDGE: This is the Birmingham
15 News article. This is the first complaint with
16 DOJ, and this second one was filed after the
17 election. John Harris is one of the individuals
18 on that. There was a number of us that filed this
19 complaint and sent it to the Department of
20 Justice. So there was a total of three complaints
21 that was filed with DOJ that I was a party of.

22 MR. SIMELTON: The DOJ, have they
23 resolved this?

1 MR. RUTLEDGE: They haven't resolved it.
2 We never got a reply. Had a hard time trying --
3 I'm trying to raise the issues prior to the
4 certification vote. Other things, couldn't get
5 media coverage. Just seemed like nobody cared
6 frankly.

7 MR. SIMELTON: Okay.

8 MR. RUTLEDGE: But this is a very
9 serious, serious issue. A number of voters in the
10 city were disenfranchised. There was a tremendous
11 amount of confusion, and it was created --

12 MR. SIMELTON: Your three minutes are
13 up.

14 MR. RUTLEDGE: Can I get this on the
15 record because it was caused by a specific
16 legislative act in 2008. It was 416-2008 was the
17 legislative known as the Mary Moore bill. It was
18 unintended, but the consequences of that bill
19 being passed is what created this. And in ten
20 years, we are going to go through the same thing
21 again if we don't correct this. I will leave them
22 here. Thank you, gentlemen.

23 MR. SIMELTON: Thank you, sir. Again, I

1 will remind you to state your name and you have
2 three minutes.

3 REVEREND DALE: My name is Reverend
4 Charles A. Dale. I'm from the County of Franklin,
5 City of Russellville. And I come before you today
6 to give some information that was supposed to have
7 happened and didn't, which was -- one of the
8 things that was happening, we were in on the
9 Dillard deal with the redistricting. And every
10 ten years, you are supposed to go back and
11 re-evaluate that district. I went before the
12 mayor and the City Council, notified the clerk
13 first, to get re-evaluated. And I stayed on the
14 clerk so much, she went before the mayor and told
15 him. So he was supposed to have presented it to
16 the council. So it was election year. So he
17 didn't want to be bothered with it because he
18 thought he was going to get reelected. And come
19 to find out, he wound up he lost the election.

20 So when the new mayor and council came
21 in, I notified the clerk again. And she said she
22 talked to the new mayor and council about it. But
23 as of this date, as of this hour, nobody has done

1 anything about the re-evaluation of the
2 redistricting and looking at the districts. And
3 the reason this is so important to me is because
4 of the fact that Franklin County, Alabama, has the
5 largest immigration Hispanic organization in the
6 whole state of Alabama. And if we went back and
7 re-evaluated, we have a black district, but we
8 could get a Hispanic district. So without
9 re-evaluation, we will never know that.

10 The other thing very shortly is that in
11 the last election that we had, we had -- we got
12 five districts, and that was a person that ran
13 that lives in the county but he ran for City
14 Council in the city. And the opponent that ran
15 against him, she knew that he lived in the county,
16 but she was afraid to bring it forth so she lost
17 the election. He wound up on the City Council,
18 and he is serving right now on the City Council of
19 Russellville but he lives in the county. And
20 that's illegal. So something needs to be done
21 about it.

22 MR. SIMELTON: Okay.

23 REVEREND DALE: Thank you very much.

1 MR. SIMELTON: Any questions? Okay.

2 Thank you, Reverend Dale. Okay. Are there any
3 more public testimonies? Are you public?

4 MR. GRAY: He is one of the named people
5 to testify, Norman Gibbons.

6 MR. SIMELTON: So you are not a public.
7 Okay. If not, then we will -- I think Ms. Carter
8 is back there. Ms. Catrena Carter and
9 Mr. Gibbons, if you all will come forth and give
10 your testimony. And while you are coming, I will
11 just remind you to please state your name again
12 for the reporter, and you will have five minutes
13 to give your testimony. And are there any others
14 to participate on the panel? We are ready, Ms.
15 Carter. Do you want to go first?

16 MS. CARTER: If you insist. Ladies
17 first. Thank you. I'm Catrena Norris Carter, and
18 I am president and CEO of Women of Will. When
19 asked to testify at these hearings, there are a
20 whole lot of issues that comes along with these
21 voter suppression tactics that are being -- that
22 we are dealing with here in Alabama. But the one
23 thing that troubled me and my organization most is

1 a bill that has been passed and codified. It can
2 be found by googling Alabama code section 17-9-30
3 online or on the Secretary of State web site.
4 Application for an Alabama voter identification
5 card shall elicit the information required under
6 subdivisions one to seven, inclusive of subsection
7 H. The application shall be signed and sworn to
8 by the applicant, and any falsification or fraud
9 in the making of the application shall constitute
10 a Class C. Felony. If someone already has a valid
11 ID, accusations can be made if they attempt to
12 get a free voter ID that they are falsifying
13 information. In laymen terms, this means if you
14 attempt or if you get that state issued ID that's
15 supposed to be free for anyone who does not have
16 one and they find out later that you worked at the
17 Social Security office and your employee ID was
18 sufficient, that's a felony. That is a Class C
19 felony for something that most of us lay people
20 would see just as a mistake. You know, no attempt
21 to fraud the State of Alabama.

22 We want to contend that this law and
23 others disproportionately affect elderly, minority

1 and low income groups that tend to vote
2 democratic. Obtaining voter ID can be costly and
3 burdensome, and so now we are adding to that
4 burden that you might just be prosecuted and get a
5 felony if you are misinformed or you are old or
6 you are young or you are poor and don't know all
7 of the many issues that go along with obtaining
8 these free state ID's. We believe that this is
9 another attempt to dissuade people for applying
10 for this free state issued ID, along with the
11 other issues that go along with getting these free
12 ID's. A lot of our folks may have some driving
13 violations that oftentimes results in warrants if
14 you haven't paid a ticket. You know, we feel that
15 those people aren't going to be going down to any
16 place, any government place, to get these ID's in
17 fear that they will be arrested. So once again,
18 these state issued ID's, this voter ID issue, we
19 see as something to dissuade poor people, young
20 people, elderly people and even some of our, you
21 know, white counterparts that may not be in that
22 top, you know, 10 or 20 percent. So we feel that
23 this is the literacy test of 2013. So I wanted to

1 come here to exclusively talk about this voter ID
2 law and the long term impacts it could have on us
3 as far as, you know, we getting into trouble with
4 the law by simply trying to get these ID's that
5 they say are free.

6 MR. SIMELTON: Okay. Mr. Gibbons?

7 REVEREND GIBBONS: My name is Reverend
8 Norman L. Gibbons from Lineville. Clay County is
9 my county. I ran for the mayor in 2012, and the
10 reason I came is to -- I can't do anything about
11 what happened two years ago, but I can do
12 something to the next person -- a minority to run
13 for mayor. There was a lot of infractions taking
14 place. One thing was like voter suppression.
15 They had a lot of policemen there. People voted
16 twice, absentee ballots and going to the poll.
17 The things that disturbed me the most, I had poll
18 watchers to observe the process, and they was
19 denied. So I felt like that was a violation of
20 the voter, and it was a lot of small town politics
21 going on.

22 I'm not going to speculate, but small
23 town, the mayor and the judge and everybody is in

1 together. And I feel like a lot of my absentee
2 ballots was not counted. I have some people that
3 came forward to talk to me about it, but they
4 won't come forward to testify. So I took them to
5 court, and I lost my case because of family stayed
6 together because they had -- the mayor's aunt was
7 the secretary. So it was stacked against me when
8 I went in there. So I just wanted to make you
9 aware of small town politics, what happened in a
10 small rural town. And like I said, can't do
11 nothing about two years ago, but I can make it
12 better for the next person of minority to run for
13 office.

14 MR. SIMELTON: Questions from
15 commissioners?

16 MR. DOUGLAS: Ms. Carter, in the
17 Secretary of State's documents explaining the
18 other valid ID's that can be used, do they define
19 what valid is?

20 MS. CARTER: Well, I guess so. I mean,
21 they have passports, you know, different state
22 ID's. But again when we are talking about our
23 young folk, first time voters. We are talking

1 about elderly folk who can't even read sometimes
2 at this point. You are talking about poor people
3 who may not always have access to even a computer
4 to get online to get this information of what
5 valid documentation is. You know, these were our
6 concerns that, you know --

7 MR. DOUGLAS: Do you think that -- I
8 think I heard you say fear of doing something
9 wrong would keep people from applying for --

10 MS. CARTER: We feel that this is
11 another form of voter suppression to keep
12 democratic -- most of these folks, I mean, let's
13 be real here. Most of these folks are Democrats.
14 We feel this is yet another tactic to keep these
15 demographic of people from the polls, dissuade
16 them from going.

17 REVEREND GIBBONS: Can I add to that?
18 In my election they had policemen everywhere.
19 Then in October, I went up, wasn't no policemen to
20 be found. So the common factor was that when a
21 minority run for office. I'm like what? I'm
22 looking around, what is the policeman doing here?
23 And when I ran for mayor, they were everywhere.

1 They were in the parking lot. They were guarding
2 doors. It was kind of like they suppressing the
3 vote or keep people from coming in.

4 MR. SIMELTON: What had been the
5 precedence in the past of the policemen at the
6 polling places?

7 REVEREND GIBBONS: It got out that I was
8 way ahead in the polls. So they got together and
9 kind of suppressed the minority vote. But it was
10 obvious that in October when wasn't nobody there,
11 what in the world is going on? But I knew what
12 the situation was. They didn't want no black
13 mayor in a small town. So that was suppressed.

14 MR. LODER: I think both of you all have
15 mentioned what I'm going to call we talked about
16 felony disfranchisement. So I'm going to call it
17 misdemeanor disenfranchisement because I think
18 that's a big issue. I think you just identified
19 two very significant intimidation issues that
20 don't even relate felonies, but people who may
21 have warrants for failure to pay fines, for
22 tickets, traffic tickets, or child custody. I
23 mean, a very common issue, both issues that

1 disproportionately affect particularly
2 African-American men, especially child support
3 warrants that may be out, but I don't know. I
4 don't think they eliminate their voting rights. I
5 think your driver's license may be suspended.

6 MS. CARTER: You won't have a valid ID.

7 MR. LODER: But they don't automatically
8 disqualify people for not making child support
9 from voting. So --

10 MS. CARTER: If you don't have that
11 valid ID, if they revoke your driver's license,
12 which they do after a certain amount that your
13 back pay in child support, they revoke your
14 driver's license. So that will affect your voting
15 because you won't have a valid driver's license.

16 MR. LODER: Nor will you want to go to a
17 state agency to get a new one, to do that. So I
18 do think that's a significant issue that
19 ultimately clearly with disproportionate effect.

20 REVEREND GIBBONS: What I was going to
21 say is if they got a warrant or something like
22 that, they are not going to come and vote. And
23 then if you don't have the proper identification,

1 you can't do that. So that's suppressing the
2 vote.

3 MR. LODER: Absolutely, absolutely.

4 MR. SIMELTON: Mr. Gray?

5 MR. GRAY: I guess I want to ask
6 Gibbons, you being from a small town like I am
7 from, it can be rough.

8 REVEREND GIBBONS: Yes, sir.

9 MR. GRAY: But what do you see going
10 forward that could maybe prepare other candidates
11 for what they may face, say, in the next municipal
12 election cycle? What would be some of the things
13 that you think we ought to know that this group is
14 going to do a report that would be worth knowing
15 in terms of kind of a to-do list for folks going
16 forward, knowing you have small town politics.
17 That's not likely to change. And, you know, like
18 mentioning the police presence, that's probably
19 not likely to change. So what do you see that we
20 need to do? Here we are in Birmingham, you know,
21 and we know what happened in this city in order
22 for things to change and how students and young
23 people faced police dogs and fire hose and so

1 forth. So what do you think should happen in
2 Lineville and other small towns like Lineville to
3 prepare for police presence in the future and
4 small town politics to make it so that black
5 candidates may be more successful in the future?

6 REVEREND GIBBONS: Okay. A couple of
7 things is that we have to educate the people on
8 the committee on how to be an effective poll
9 watcher, what to look for, and make sure they have
10 a proper identification, make sure that they live
11 where they say they live at. It's a lot of small
12 things that we can do in our strategy. And one
13 thing that excited me about running for mayor, I
14 went and counted the number of minorities within
15 the city limits. And, hey, I thought wasn't no
16 way I could lose. But, you know, they did some
17 things to strike some of my votes and things. But
18 one thing I will say, we have to educate them.
19 You know, maybe go to classes on how to be a poll
20 watcher, maybe ADC, some kind of organization.
21 And once a person decides they are going to run
22 for office, do your homework, do your research,
23 and make sure that the people that are working for

1 you are effective by knowing the knowledge on how
2 to be a better poll watcher and making sure that
3 you go out in the community with the churches
4 coming together in one car because of the strength
5 of numbers and educate our minority people, not
6 only blacks, Hispanics, on the proper
7 identification and things you have where you will
8 not be turned away at the polls.

9 MR. GRAY: How do you see young people,
10 new voters, helping to change some of these
11 dynamics in these small towns?

12 REVEREND GIBBONS: They have to get
13 involved. And being a pastor myself, we need to
14 do more to educate them to our right to vote and
15 the price that was paid for us to have a right to
16 vote. People died, you know, in order for us to
17 vote, to make a difference in our community
18 because a lot of young people don't know about
19 what Dr. King and everybody went through in order
20 to get the Voting Rights Act passed back in the
21 '60's, you know. We just have to get to the young
22 people. And we always are complaining about who
23 is in office, but the only way you are going to

1 make a change, you have to cast that vote. So we
2 need to educate them the importance of casting a
3 vote and being prepared to cast a vote. And
4 that's the only way we are going to make a
5 difference in our nation, our state, our
6 candidates in our small towns.

7 MR. GRAY: Great. Well said. Thank
8 you.

9 MR. SIMELTON: Any other questions?

10 MS. MIDDLETON: Can I ask a question? I
11 went with the voter ID, and I have heard people
12 talk about it before. But this is maybe unique to
13 us. We have a lady, she is 80 years old. The two
14 forms of ID that -- the two things they will take
15 is a marriage certificate or a birth certificate.
16 Well, back in about five years ago, we tried to
17 get her a birth certificate. Back then they
18 wasn't keeping too good of records. We couldn't
19 get her birth certificate and she went to
20 passport. They would give her a temporary six
21 month passport, but it's not good for anything
22 else. She is lucky that she has a driver's
23 license. She is 80, but she still has a driver's

1 license. She has something like -- suppose she
2 wasn't married, and she can't get a birth
3 certificate and she didn't have a driver's
4 license, could she not vote? There could be
5 people that don't have either one of those things,
6 and they can't vote.

7 MR. SIMELTON: I understand what you are
8 saying. But yeah. Yes, ma'am?

9 MS. CARTER: I wanted to make sure that
10 I address the issue of women when she talked about
11 that too. There have been challenges with women
12 with name changes when they are going in to get
13 these state ID's. If your, you know, your maiden
14 name versus your married name versus like Catrena
15 Norris, if it says a hyphened Carter and I'm not
16 hyphened, I can't -- I couldn't get that state
17 issued ID. So we need to talk about that along
18 with the minorities and the older and the young
19 folks that no longer drive. So what about our
20 disabled older folks? Now they are talking about
21 sending out these mobile units, but how are these
22 disabled folks going to get to these mobile units?
23 And here in Alabama, our Secretary of State talked

1 about they would be going into some of the nursing
2 homes and things of that nature, but who is
3 checking to see if that's happening?

4 MR. SIMELTON: They put a list where
5 they were going into a nursing home -- at least on
6 the list I saw -- were not -- they didn't have
7 those designated. They were going to -- most of
8 them are already in the city where the -- you can
9 get the regular ID anyway.

10 MS. CARTER: So those people that are in
11 rural areas that don't have cars and that don't
12 drive, what happens?

13 MR. SIMELTON: That's an issue.

14 MS. MIDDLETON: And a birth certificate
15 is \$25.

16 MR. SIMELTON: Birth certificate, you
17 can get free.

18 MS. MIDDLETON: Where?

19 MR. SIMELTON: You don't get them in
20 hand, but they have an agreement with the Office
21 of Vital Statistics or whatever it's called,
22 bureau, that will allow you to get a birth
23 certificate. It will be transferred to where you

1 get your ID.

2 MS. MIDDLETON: If you were 80 years
3 old, you can't get that.

4 MR. SIMELTON: If you read the
5 regulation or the law, you can get a -- you don't
6 get it in your hand, but they do it
7 electronically.

8 REVEREND GIBBONS: One illustration I
9 used, I know you can't have too many, to answer
10 your question is the absentee ballots. The
11 absentee ballots is good for elderly people that
12 can't get to the polls.

13 MS. CARTER: Haven't the times been cut
14 in half on all those absentee ballots? I know
15 that's another issue. I'm not sure about Alabama.
16 I don't want to stray too far away, but I know
17 some of the times have gone from 40 days to 20
18 days to 10 days in some of our southern states.

19 MR. GRAY: It stayed the same though.
20 They were trying to reduce the number of days that
21 you could fill out a registration form and turn it
22 in. But the absentee ballots provision in terms
23 of execution and turning it in, that didn't

1 change.

2 MS. CARTER: That hasn't changed in
3 Alabama?

4 MR. GRAY: No, huh-uh (no).

5 AUDIENCE: I go to the nursing homes,
6 and I'm scared about the absentee. Someone said
7 that you have to bring the person to the, you
8 know, visibly have that person there to ID them.
9 How do you do that because I have people in the
10 nursing home that's been all paper, 15 years?

11 MR. SIMELTON: You said that they have
12 -- you heard that they have to do what now?

13 MS. CARTER: Physically be there.

14 AUDIENCE: I think I took about 220 in
15 2012 out to the nursing home, and the social
16 worker and some of the help out there filled out
17 all of those papers and sent them out. And we had
18 a problem that you have to be there physically. I
19 said what about -- they don't have driver's
20 licenses. People put out false information.
21 Because I think it's about 250 people out there.
22 I went out there, and I said (inaudible) if you
23 are talking about voting for the older people.

1 This man here had been on paper for 15 years at
2 the prison and everybody was telling him you
3 can't. So having him fill out his registration
4 (inaudible), but you fill out false information to
5 these people. Now we were told that you could go
6 to the Boutwell this Saturday and get your ID, get
7 your ID's, and they will send it to somebody at
8 the health department to give you birth
9 certificates and picture ID's. I don't know who
10 told it. They will fill out the different areas.

11 MR. SIMELTON: Are there any other
12 questions for the visitors? We want to thank Ms.
13 Carter and Mr. Gibbons for your testimony. We
14 appreciate your time and your efforts.

15 REVEREND GIBBONS: Thank you, sir.

16 MR. SIMELTON: Are there any other panel
17 members to testify? I know I haven't seen Ms.
18 Glasgow, Eric Hutchins, Dorothy Swain or Robert
19 Binion, I haven't seen any of those individuals.
20 Yes, ma'am?

21 MS. VOLKER: I had signed the sheet
22 saying is that the time now for the audience.

23 MR. SIMELTON: Yeah. We had one

1 period. So we will have another period if there
2 are no more panel members to testify. Your name,
3 please?

4 MS. VOLKER: Virginia Volker.

5 MR. SIMELTON: How many further
6 testimonies do we have? And we know Ms. Gray had
7 to leave. We want to certainly thank him for
8 being on the panel today as commissioner, and he
9 has to leave so he can get home. Is there just
10 one to testify? Please state your name again.

11 MS. VOLKER: I'm Virginia Volker, and
12 what I want to talk about is sort of a view from
13 the campaign trail and my concerns about some
14 things I have seen changed that are really -- that
15 are really contributing to voter suppression and
16 are undercutting the democratic process. First of
17 all, I think Ms. Carter certainly talked about a
18 lot of those key issues that we have seen here in
19 Birmingham. I have been on the campaign trail. I
20 have had three very successful elections and one
21 that was not so successful, and a lot of issues
22 were involved. But in each of those three
23 campaigns over the past decade, what I have seen

1 are some real changes in the way people come out
2 to vote. Number one, I would like to say that I
3 am very upset about the Section 5 of the Voting
4 Rights Act being gutted by the Supreme Court
5 because from my daily interaction with all the
6 people I see in my community, there is still a
7 great, great need for federal oversight of
8 elections from the beginning until the end. Not
9 just saying hey, we have solved the problems that
10 are addressed. So I can't say that enough. We
11 need that restored, and we need it expanded.

12 The next thing I see is the influence of
13 money in campaigns. Sure, it takes money, but
14 there has been an increasing part of me for a
15 candidate has to have money to quote "buy your
16 volunteers." It's like -- you know, and sometimes
17 these volunteers that are your buddies are there
18 for the highest bidder. And that includes
19 everything from who is going to hand out
20 literature for you to who is going to be at the
21 polls during the day, who is going to be a poll
22 watcher. We have always had some money, and
23 certainly people need to be compensated. But

1 there is an increasing cost to that, and it's a --
2 I think that's an issue that we need to sometime
3 get a handle on. Also I see that there probably
4 have been contributions that go to certain groups
5 or I should say group leaders to either do a big
6 campaign to get out the vote or to as voters not
7 to go out.

8 I think in this very past election in
9 Birmingham with the City Council and the school
10 board, I think there was an effort to not get out
11 the vote. And I with -- my suspicion is that some
12 people got some help to discourage people from
13 voting, and I think this is a very subtle but real
14 form of voter suppression. I think that also the
15 media increasingly will not speak about campaigns
16 or not speak about upcoming elections unless they
17 are getting money for advertisements. Campaigns
18 have been very low gear. The last campaign was
19 extremely low gear. Very few people were talking
20 about it. It was not the big issue, and yet there
21 was some very important issues at stake. And I
22 think that there has been too much effort to
23 deliberately keep the vote low. There is also an

1 undercurrent among younger people of all
2 persuasions throughout the city to say what
3 difference does it make if you voted or you vote.
4 There has been told, well, look, we have Obama in
5 the White House and he was going to do good
6 things, and dang, I still don't have a job. And
7 that's very true for a lot of our younger people.
8 That is an issue, and that is being fanned in by
9 certain people to say, well, it doesn't matter if
10 you vote or not. So people don't bother to vote,
11 even if they may have gotten registered because in
12 the high schools for a period of time we were
13 making a great effort to get people to register to
14 vote.

15 And the other thing -- could I just say
16 one more thing? I think we need voter education
17 from the top down, and I would like to see this
18 state require teaching about real citizenship, how
19 the laws are made and how people are elected and
20 then the nuts and bolts of how to get your
21 registration and the importance of voting. I
22 can't say that enough. I just think that's key,
23 and thank you for listening.

1 MR. SIMELTON: Thank you, Ms. Volker.
2 Are there any questions for her? Okay. I see
3 Mr. Eric Hutchins, an attorney, has stepped in.
4 So he was one of the panel members so we are going
5 to take his testimony at this time. You have your
6 choice, either mic.

7 MR. HUTCHINS: Good evening. I
8 apologize.

9 MR. SIMELTON: Let me remind you, give
10 your name, restate your name, and you have five
11 minutes.

12 MR. HUTCHINS: Yes, sir. My name is
13 Eric Hutchins, and I'm an attorney. And I'm also
14 here for the Alabama State Conference NAACP. And
15 I would like to thank the commission for inviting
16 me here to speak, and hopefully my appearance, my
17 experience, that I had can shed some light on some
18 of the issues in terms of voting rights. Back in
19 August of 2012, I had the opportunity to represent
20 a gentleman by the name of --

21 MR. SIMELTON: Excuse me. Let me --
22 Mr. Gibbons testified earlier so --

23 MR. HUTCHINS: Okay. And just generally

1 speaking, when I went to Lineville, one thing that
2 I discovered going there was that Reverend
3 Gibbons, he had a well organized campaign. And it
4 looked as though he was going to create something
5 very historic, to be the first African-American
6 elected to the City of Lineville, and for that
7 matter, as mayor of Lineville. Lineville is in
8 Clay County, Alabama, which is the home county of
9 former Governor Bob Riley. Demographically, it's
10 majority white, and now it is Republican. I say
11 that as it being a relevant issue towards voting
12 for the simple fact that Reverend Gibbons had
13 created a threat to the incumbent mayor. And in
14 the process of going through registering people or
15 campaigning or whatnot and both organizations
16 getting together, getting people out to vote,
17 getting absentee votes in, what ended up happening
18 is in terms of folks at the courthouse or people
19 administering elections, they ended up getting
20 information about -- internal private information
21 about seeing which way these people were voting.
22 One can conclude or they guessed that the people
23 that were submitting these ballots which were

1 supposed to be private and not seen, that the
2 assumption was that since they were African-
3 American, you were voting for a very viable
4 candidate who was African-American.

5 Reverend Gibbons had played football,
6 was the first African-American quarterback up
7 there, and he had been successful with his own
8 business. And then he was successful in terms of
9 operating a -- rising up to, I think, higher
10 management for Hardee's. And to make a long story
11 short, in order to curtail his ability to get
12 elected, what local officials ended up concocting
13 was rumors of him registering or submitting
14 ballots for people who were deceased. And then
15 they began -- some people close to the mayor began
16 spreading rumors that Reverend Gibbons and an
17 elected official from Clay County who is African-
18 American had paid people money and promised them
19 alcohol and everything in exchange for their vote
20 for Reverend Gibbons.

21 But it even went further than that.
22 What we had in Clay County was a person who was
23 over monitoring elections and making sure

1 everything went fairly was the mother-in-law to
2 the incumbent mayor's secretary. And in addition
3 to that, her son was also at the sheriff's
4 department. Well, what we ended up finding out
5 was that her son had contacted a Caucasian female
6 who had earlier supposedly gotten into some
7 trouble, and he never did prosecute her, never did
8 submit that to the DA's office or anything like
9 that. So what he did was as months went by and
10 this individual was -- you know, everything was
11 leaning towards Reverend Gibbons possibly being
12 elected, he contacted this female on numerous
13 occasions by phone. And then as it got closer and
14 closer to the election, he called her probably a
15 total of about eight or nine times in one day and
16 with the very purpose of getting her to say that a
17 local elected African-American had paid her to --
18 and given her beer and given her promises for
19 voting for Reverend Gibbons and basically doing
20 something fraudulent. And she refused to do so.
21 She refused to answer the calls, and he became
22 upset. He told her that he had found some
23 marijuana in her vehicle earlier before and that

1 he was going to prosecute her or send her to the
2 DA's office to have her prosecuted because she
3 didn't do what he wanted her to do. And he even
4 went so far to say that they elected a nigger for
5 president, but I will be damned if they elect a
6 nigger to be mayor of Lineville.

7 As the election rolled on, during the
8 election day when ballots were to be counted,
9 ballots were supposed to be counted in a
10 centralized location according to statute at the
11 city hall. That was never done. This was seen as
12 though it was a mere oversight. But what I failed
13 to mention was leading up to the election, when
14 people were doing absentee votes and everything,
15 you had members of the sheriff's department and
16 law enforcement going out to people's individual
17 homes and telling them that they could not vote if
18 they were delinquent on their power bill. And
19 they also told them that what they were doing was
20 illegal and they would be arrested for doing that.
21 And then they also told individuals that they had
22 to go on the day of the election and actually
23 vote.

1 Now the question is this: To have, you
2 know, someone so active, so concerned about
3 people's voting habits, but the question is how do
4 you know how a person voted? How is it that
5 government officials can go to people's actual
6 homes, knock on their doors in a very intrusive
7 manner using Gestapo type tactics? This is
8 happening in America. It's happening in 2012.
9 But on the day that it came time to count the
10 votes, you had police officers and the sheriff's
11 department surrounding the ballots. People going
12 in and out, and any effort by Mr. Gibbons,
13 Reverend Gibbons, or anybody else to monitor and
14 be poll watchers to see what was going on, it was
15 usurped by the fact that the sheriff's department
16 ended up conspiring in a veil of secrecy.

17 So what we eventually did was this:
18 When they tried to certify the votes, we filed the
19 open records -- we filed an open meeting suit, and
20 the whole purpose of filing that was we were going
21 to try to do the Rule 27 petition or we were going
22 to try to go through discovery to get what we
23 could get in terms of information and then

1 challenge the number of votes counted. I think
2 the most important thing we learned from this is,
3 number one, when things like this are going on, I
4 came in on the tail end as an attorney. We didn't
5 have any way to, you know, I guess, prevent the
6 wrongdoing or I say to respond to it. That's
7 number one. And number two, when it came time to
8 challenge what was going on in that critical time,
9 we missed the ball on a lot of that. So the
10 remedy that we were left with is an open meeting
11 suit. And to me, there was a weak and tepid
12 response to something that was painful then and
13 blatantly wrong.

14 So at this point, there is other avenues
15 potentially, you know, maybe a federal lawsuit
16 that we considered. But, you know, whenever a
17 person goes through something like that and they
18 have something stolen from them, it becomes an
19 individual decision for an individual person. I
20 mean, on the one hand, they want to be the trail
21 blazer for people to come. But on the other hand,
22 a person -- they make the individual choice of I
23 have to move on with my life. I have to deal

1 with, you know, other things in the future. But I
2 think a lesson learned from Reverend Gibbons'
3 debacle -- and I call it a debacle. Not on his
4 part, but it was a debacle on the part of people
5 who are still entrenched in victory and
6 intimidation and deception -- is I think on a
7 local level, you know, when things like this are
8 going on, we had to be cognizant and then it was
9 respond as quickly as possible and have some
10 people or an organization available to assist a
11 person and prevent this. Thank you.

12 MR. SIMELTON: Thank you, Attorney
13 Hutchins. Any questions from the panel members?

14 MR. LODER: I have a quick question.
15 It's good seeing you, Attorney Hutchins. But I
16 think we have kind of -- your testimony, listening
17 to your testimony and the testimony of Mr. Bobby
18 Harris from earlier, I think we are starting to
19 establish another pattern. I notice when I was
20 reading the Supreme Court opinion that one of the
21 ways they measured whether a district is still
22 acting like it was before the segregation laws
23 were passed or whether it was acting like a modern

1 city is the success of Section 2 lawsuit. In
2 other words, how much success our lawyers have in
3 winning voting rights lawsuits in that district.
4 So I think you brought up an interesting thing. I
5 think Mr. Harris mentioned some of the lawsuits
6 are never even brought because there is a lack
7 of -- a lot of it is lack of it's hard to find an
8 attorney who will do that. Not even pay an
9 attorney. Don't even get to the point where you
10 can pay one. Mr. Harris was, you know, having to
11 go to DC, and they can't do everything in DC. So
12 I think that's definitely something that we need
13 to document is that a lot of these lawsuits you
14 say you all missed the vote, it was too late to do
15 anything other than the open meetings, follow the
16 statute and everything. But one of the things
17 they need to document is that it's difficult to
18 even find an attorney to bring the Section 2
19 lawsuits in this state that's conservative because
20 lawyers don't want to buck. They don't want to
21 fight the hand that feeds them because a lot of
22 time, the judges are the same ones who are doing
23 the child support cases and doing the -- they are

1 relying on getting their fees from. So that's a
2 significant issue. And you might want to comment
3 also on how difficult that is, you know, for -- I
4 think you are not even -- you don't live in
5 Lineville, do you?

6 MR. HUTCHINS: No.

7 MR. LODER: So he had to come down to
8 Russellville, I guess.

9 MR. HUTCHINS: Alex City, yeah.

10 MR. LODER: So you might want to comment
11 on that because I think that's the difficulty even
12 to find attorneys or a machine to bring these
13 Section 2 lawsuits.

14 MR. HUTCHINS: I think that I would
15 agree in the sense that you have a civil rights
16 organization, and then you will have, say, ABC,
17 New South and you have organizations such as
18 those. And I think whenever there is some sort of
19 education, educational meetings or anything like
20 that that's there, it's not too often that you are
21 going to have a local attorney that is there at
22 the meeting that's involved. And it is not an
23 involvement for a political end. To me it's a

1 civil liberty thing. It's a matter of basic human
2 rights for a vote to be legitimate. I mean, I
3 don't care if you are a Republican. I don't care
4 if you are a Democrat. I don't care what party
5 you are. But in America, the election process
6 needs to be fair, and it must have some sort of
7 transparency. It must have some sort of
8 legitimacy, and there must be some sort of
9 (inaudible) regardless of the party that's
10 involved.

11 And I was in Ohio during the John Kerry,
12 when he ran back in -- I want to say it was 2000
13 -- was it 2004? During the 2004 presidential
14 campaign, and one thing that I noticed that was
15 interesting was when it came to voter rights
16 issues or challenges, a party that traditionally
17 is not known to raise those sort of issues and be
18 proactive in those issues, you have a well
19 developed and organized machine in the Republican
20 party in Ohio when it came to that. And what I
21 would like to see at some point is on local
22 elections, if there is some sort of mass or some
23 sort of attorneys where we want to have a large

1 association to have watch dogs there. And the
2 reason why I mention that is oftentimes the case,
3 it's targeted towards the African-American
4 population or minority population because the
5 intent is to dilute or totally eliminate the voice
6 of minorities in the election process, to make the
7 minority become irrelevant. And the way to make
8 people become irrelevant is to make your vote not
9 count. And, you know, I wish there were a way
10 that, you know, we can get something centralized
11 and we can make that something critical. I think
12 the recent decision, the Shelby County decision,
13 maybe that opens people's eyes up to that. It's
14 not the equivalent of a person walking across the
15 Edmund Pettus Bridge. But I hope the younger
16 generation of attorneys and people as civil rights
17 advocates, that they take an interest. Thank you.

18 MR. SIMELTON: Any other questions?

19 Okay. I think that concludes all of our
20 testimonies. I don't see anyone else jumping up
21 to testify. We certainly again want to thank all
22 of our members who testified, and this should help
23 paint a better picture of the voting rights issues

1 that we face here in the State of Alabama.

2 And we don't know where this will go,
3 but Mr. Reyes said earlier this will be a public
4 record so we will be able to use this testimony
5 for various reasons and for various issues that we
6 come -- that come up in our communities. And we
7 want to make sure that it's available to you, and
8 I know maybe tell us how we can get copies of the
9 testimonies. With that --

10 MR. DOUGLAS: I don't have a question,
11 but I do have a comment. And I do hope that we
12 can use the transcript not just to inform federal
13 level congress work what voting rights really
14 means, but also to use it here in Alabama to
15 inform our dearly misinformed legislature that
16 there is a voting problem in Alabama. It has
17 nothing to do with voter ID. There is voter fraud
18 in Alabama as being conducted by public officials
19 who are colluding and conniving to deter, suppress
20 and lower the voting right of poor people and
21 especially people of color. And the other thing I
22 found is there is a pattern throughout this whole
23 hearing today was particularly in small towns, the

1 collusion that's nepotism in these small towns
2 where small families rule absolutely. Nephews,
3 uncles, nieces, dealing, trading, wielding power
4 on behalf of families. There is a precedent for
5 that. It was called the plantation, the last time
6 families control masses of people. I think we
7 should break away from that.

8 And in Vincent, there is collusion
9 between families and corporations in terms of
10 White Rock quarry places. So I just think that
11 there are several targets for this. We mentioned
12 at the city level, at the county level, and at the
13 state level, not just the national, there is work
14 for everybody to do. So I just want to thank
15 everybody for the courage in speaking out,
16 especially some of these small towns. You can
17 stand up and find out that your credit at the
18 local hardware outlet has been cancelled. Your
19 credit at the local car dealership is no good. So
20 there is all kinds of repression that comes to
21 people in small towns that has nothing to do with
22 oppression from the state but from the economic.
23 Sorry about that point. But the prevalence of

1 nepotism and power in this day and age, that was
2 the biggest surprise to me of who is kin to who.
3 Birmingham, we have our problems too.

4 MR. LODER: Mr. Chairman, just real
5 quickly. I want to follow up on Mr. Douglas
6 because, remember, at the beginning, I mentioned
7 about second -- and the Supreme Court brushed out
8 the idea of second generational discrimination.
9 That's basically what Mr. Douglas is talking
10 about. Yes, there are more African-Americans and
11 minorities who are registered to vote. Yes, there
12 are more elected officials than there have been
13 before. But the backlash is that you increase the
14 participation, and then you get the nepotism and
15 the families who have been in power for years,
16 okay, generational power that they transfer from
17 daughter to son to children. And then all the
18 sudden, they are trying to keep those folks who
19 are voting from voting or their vote. So I think
20 this is definitely an accomplishment of this
21 hearing to evidence, strong evidence, of second
22 generational discrimination. It's blatant. It
23 doesn't matter how many folks you get to vote or

1 register to vote. We are going to keep things the
2 way they are in our town because we have been
3 running it like this and we are going to keep
4 running it like this because my mama ran it like
5 this, my granddaddy, etc., etc. So I think that's
6 a great point.

7 MR. SIMELTON: Yes, ma'am, question?

8 MS. BENNETT: Yes. I want to bring up
9 something too about the last. It was so
10 secretive.

11 MR. SIMELTON: I'm sorry. So what now?

12 MS. BENNETT: So secretive. People
13 didn't even know it was voting time. I'm being
14 honest because (inaudible).

15 MR. SIMELTON: Ma'am, you need to speak
16 up.

17 MS. BENNETT: Mildred Bennett. I want
18 to know why you don't supposed to know about the
19 voting period when it's voting time because I just
20 barely know because I'm out there in the clinches,
21 but my people been down there in Alice. But I'm
22 saying I knew about the voting happening about
23 three weeks before it was, before they put these

1 people in their 15 years. This is the council now
2 and the mayor. I went out and exercised my voting
3 rights. And I would say now are you going to vote
4 today? We don't know anything about voting, and I
5 mean this went on to day one of them being put
6 back in office. But they were about three days
7 with them, you know, with their shirts on and
8 their people coming to the poll and everything.
9 But these were people that they had told secretly
10 about the voting. And how do you put somebody in
11 office and then ask them to give their son -- get
12 my son a job on the council and put me in the
13 president's seat? How do you do stuff like that?
14 But it happened. It was such a secretive -- it
15 was a secret. And I'm not guessing. I know it
16 because I was out there.

17 See, I was out there in 2012, and I took
18 over 200 youngsters to the polls. I took my
19 voting right papers to the Parole Board. They
20 don't have the kind of felony papers that Mildred
21 have, and the people that work out there had me to
22 swap those at the Parole Board. They don't want
23 these youngsters to know that you can vote, but my

1 felony papers proved that to some of them.
2 Everything was secret in the last voting right
3 period, and God in heaven, I'm telling you the
4 truth. I didn't know, and today, somebody just
5 told me they are voting today. And I left the
6 council this morning. I'm just about there every
7 Tuesday. But they put who they wanted in the
8 chair because when I saw our president in there,
9 out there on the 44th Street North, it shocked me.
10 I can't think of his name. When I saw him sitting
11 in the president's chair, I liked to have fainted.
12 They got rid of (inaudible) and put -- but, see,
13 he knew I didn't know it because we had something
14 like a program dedication until I could just
15 faint. But we were out there, and when they
16 mentioned "and we are going to introduce the
17 president," when he got up there and saw me, he
18 got down in the chair just like this, like I
19 couldn't see him. But everything in this voting
20 right period, it was a secret. And everybody I
21 told to get to vote, "well, we didn't know about
22 it."

23 MR. SIMELTON: Okay. I think your three

1 minutes are up.

2 MR. SIMELTON: We have Ms. Charles
3 Hicks, wherever he is, to testify. But you can
4 come up afterwards. And this is probably --
5 Helen, you will be the last one. Mr. Hicks,
6 please state your name, and you have three
7 minutes.

8 MR. HICKS: Thank you very much. My
9 name is Charles Hicks. I'm a citizen of
10 Birmingham, been here most of my life. But there
11 are so many irregularities in Jefferson County
12 that occurs at election time until it's just
13 pathetic. And then there is no way to verify
14 these things. The biggest reason why I'm here
15 right now is that during the last election, I
16 think the last large election, I think it was the
17 mayor's election at that time, some six or eight
18 months ago, there was a -- the Justice Department
19 allowed Jefferson County to put most of the black
20 people into two specific districts. And I'm just
21 a little bit shook up about that because I don't
22 think we live in just two particular districts.

23 Secondly, there is no one doing any --

1 what do you call it? You call it security when
2 you have money. Your vote is just as important.
3 The problem I'm seeing is that there are too many
4 irregularities as it relates to how the votes are
5 counted. We don't know who counts the votes. We
6 don't know who is on the committee. There is not
7 enough information prior to the election. It
8 needs to be out there who is on the committee that
9 decides where the polling places are going to be.
10 We need to have all this information. There are
11 too many people sitting in positions that should
12 be able to give this data to the citizens, but
13 they are not doing it. I think we need to call on
14 these people to get up off of it. They can't
15 continue to receive these wages or these salaries
16 if they are not performing.

17 But I'm really here about the two
18 districts where it's just black people in two
19 districts. I'm a little upset about how they drew
20 the lines is what I'm trying to say.

21 MR. SIMELTON: Are you talking about the
22 city or the county?

23 MR. HICKS: I'm talking about the county

1 and the city when it comes to county and then
2 there are irregularities in the city. The problem
3 I'm seeing is just too much unfairness here. We
4 need to look at it like it really is. And if we
5 are going to deal with it, we need to deal with it
6 or we need to communicate and let people know who
7 is over the election committee, who has the -- how
8 many votes are on there. We need to know the
9 times and dates. We don't need to be told we can
10 advance the election because people have schedules
11 to keep and they have income to earn. I just
12 think we need to be a little bit more about the
13 business. I don't see the stewardship that needs
14 to be on the voting committees, and I want to know
15 who counts the votes.

16 MR. SIMELTON: Okay.

17 MR. HICKS: That's very important. But
18 we don't seem to know this information.

19 MR. SIMELTON: Okay. Who counts the
20 votes, that's certainly -- the probate judge is
21 responsible for that.

22 MR. HICKS: Well, he is just a judge.
23 You know, I can't give to the judge because he is

1 a judge.

2 MR. SIMELTON: No, no. I'm saying he is
3 responsible for that, for the election.

4 MR. HICKS: He, who?

5 MR. SIMELTON: The probate judge. Or
6 she. And I'm quite sure Birmingham and Jefferson
7 County has electronic feeders. I don't know what
8 kind of machines you have.

9 MR. HICKS: Well, we need to verify
10 those feeders.

11 MR. SIMELTON: One thing I think that
12 can help is if people will sign up to work the
13 polls. You can see what goes on.

14 MR. HICKS: Well, we are not talking
15 about seeing. We are talking about verification
16 of who we have in that actual slot of who is the
17 computer person that's handling that. We are
18 talking about real information and how this -- you
19 know, who is collecting this data. We know that
20 there are poll counters at each poll, but we don't
21 know the summation of any of this.

22 MR. SIMELTON: Okay.

23 MR. HICKS: You know what I'm talking

1 about. It's not Greek. You are talking about
2 stealing, and you know we see that here in
3 Birmingham. I see it. We see it here in the
4 county. We see some things that we shouldn't be
5 seeing in 2014. It's sad.

6 MR. SIMELTON: I agree with you.

7 MR. HICKS: It is very sad.

8 MR. SIMELTON: Your time is up.

9 MR. HICKS: I know you are pushing me
10 out of the way, but I'm not through.

11 MR. SIMELTON: Okay.

12 MR. HICKS: It's just crooked is what
13 I'm trying to say to you. You need to clean it
14 up.

15 MR. SIMELTON: Yes, sir.

16 MS. REVIS: Thank you. My name is Helen
17 Revis, and I'm a resident of Birmingham for the
18 past 33 years. And today I voted in an election
19 for District 53. We have been without a
20 representative for the entire legislative session,
21 even though our representative died last August.
22 And I think that the process is somewhat
23 disenfranchising, and it had all kinds of serious

1 consequences for the legislative session. It
2 threw our delegation out of balance, and those are
3 political things that may or may not have
4 happened. So we will be represented tomorrow and
5 Thursday in the legislature and in a possible
6 legislative session. And also because of the
7 snow, it was postponed a week, but we were not
8 notified of that. But I would like to say
9 generally that the Jefferson County county clerk
10 does a good job, but I am concerned at the amount
11 of time it takes to replace an official because I
12 think we have not been represented. Thank you.

13 MR. SIMELTON: I see Judge Batiste
14 trying to slip out of the room. Thank you for
15 being with us, Judge. I guess that's all our
16 public testimony, and I think this concludes our
17 program. Do we have any closing remarks that our
18 commissioners have? And we will start with my
19 left.

20 MR. LODER: Just want to thank Alejandro
21 and his organization for their efforts to
22 encourage us to put this together down here. It
23 was certainly a pleasure to meet you. Thank you.

1 MR. SIMELTON: I would like to echo
2 those comments and also thank the committee that
3 worked with Alejandro, Ms. Yvonne Kennedy and --

4 THE AUDIENCE: The National Congress of
5 Black Women.

6 MR. SIMELTON: The National Congress of
7 Black Women. And was there anyone else?

8 MS. KENNEDY: NAACP, yourself.

9 MR. SIMELTON: At this time we are going
10 to -- these are all our comments, and we will turn
11 it back over to Alejandro from the Lawyers
12 Committee who certainly did an excellent job
13 keeping us here and all the work they did.

14 MR. REYES: Just very quickly want to
15 thank everyone for coming out. We are really in
16 the age of we are back where we started in terms
17 of voting rights. So this is an incredibly
18 important time in history to be fighting for a
19 very simple right that we are all entitled to.
20 And I think someone said earlier today, we are not
21 talking about a privilege. We are talking about a
22 right, and that's really where we need to be. I
23 would like to thank everyone at St. Paul's for

1 making this space available to us. Ms. Yvonne
2 Kennedy, thank you so much for everything. The
3 guest commissioners, we couldn't do this without
4 you and everyone on the planning committee. We
5 actually worked on this for a number of months to
6 coordinate, to get the witnesses together, and I
7 want to thank everyone. That's all I have. Thank
8 you very much for coming out.

9

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11 (Hearing concluded at 7:09 p.m.)

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C E R T I F I C A T E

STATE OF ALABAMA)

JEFFERSON COUNTY)

I hereby certify that the above and foregoing proceeding was taken down by me by stenographic means, and that the questions and answers therein were produced in transcript form by computer aid under my supervision, and that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings occurring on said date at said time.

I further certify that I am neither of counsel nor of kin to the parties to the action; nor am I in anywise interested in the result of said case.

/s/Anne E. Miller

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NATIONAL COMMISSION FOR VOTING RIGHTS

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In Re:)
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Arizona Voting Rights Hearing)
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TRANSCRIPT OF PROCEEDINGS

Tempe, Arizona
January 9, 2014
10:05 a.m.

REPORTED BY:
Kristy A. Ceton, RPR
AZ Certified Court Reporter No. 50200
Job 69254

1 Transcript of Proceedings of the National
 2 Commission for Voting Rights commenced at 10:05 a.m.,
 3 on January 9, 2014, at Arizona State University
 4 College of Law, 1100 S. McAllister Avenue, Tempe, Arizona,
 5 before Kristy A. Ceton, RPR, Arizona Certified Court Reporter No.
 6 50200.

7 * * *

10 APPEARANCES:

- 11 Doris Marie Provine
- 12 John Lewis
- 13 Penny Ladell Willrich
- 14 Charles Fanniel
- 15 Patty Ferguson-Bohnee
- 16 Judy Stinson
- 17 Erandi Zamora

1 Tempe, Arizona
 2 January 9, 2014
 3 10:05 a.m.

3 TRANSCRIPT OF PROCEEDINGS

4 MS. STINSON: Good morning. I'd like to
 5 welcome you all here to the Sandra Day O'Connor
 6 College of Law. Thank you so much for coming. We
 7 are thankful to the law school for providing space to
 8 discuss important issues affecting your community;
 9 voting rights, obviously, being -- anyway. Voting
 10 rights being key among them because it affects so
 11 many other rights important in our society.

12 Here at ASU we've been engaged in
 13 protecting the right to vote in a number of ways.
 14 Course law in democracy, legal program. Discussing
 15 the important issues about protecting the right to
 16 vote. Our students have also been very actively
 17 engaged in these issues, and we feel very fortunate
 18 they've been able to work with our clinics and
 19 program they administer Arizona legal to vote
 20 election protection project.

21 They've also written and submitted for
 22 Shelby v. Holder and five cases. So we feel very
 23 fortunate to be able to provide this forum.

24 We want to thank the Commission very much
 25 for coming here to Arizona to take this testimony, to

1 discuss these issues. We hope that the result of
 2 today's events and hearings will be that we end up
 3 with important reform in Arizona, and, frankly,
 4 throughout the country on voting rights issues.

5 So thank you all. Welcome to ASU. And
 6 we hope you have a productive and wonderful day.

7 MS. ZAMORA: Good morning, Everyone. And
 8 before I say anything else, I just want to take a
 9 minute to make a quick announcement. We do have
 10 Spanish interpretation and American Sign Language
 11 interpretation available. So if anybody needs these
 12 at any point during the hearing, please go to the
 13 registration table to request these.

14 So now that that's been taken care of,
 15 welcome to the National Commission for Voting Rights.
 16 Sorry.

17 So welcome to the National Commission for
 18 Voting Rights at Arizona State hearing. My name is
 19 Erandi Zamora. I am an attorney with the Lawyers
 20 Committee for Civil Rights Under Law.

21 I would like to start off by thanking
 22 Judy Stinson and Sandra Day O'Connor College of Law
 23 for providing such a beautiful space for this very
 24 important discussion about one of our most
 25 fundamental rights, which is the right to vote.

1 The Lawyer's Committee, if you're not
 2 familiar with our work, is a national, nonprofit,
 3 nonpartisan organization. We're based in Washington,
 4 D.C., and we were founded at the request of
 5 President Kennedy 50 years ago.

6 Fifty years later, we continue our work
 7 in the areas of fair housing, employment, education,
 8 community development, and, of course, voting rights.
 9 This hearing is the second in a series of nationwide
 10 hearings that are being held throughout the country
 11 by the National Commission on Voting Rights.

12 As many of you know, the Supreme Court
 13 this last summer in Shelby v. Holder struck down a
 14 key provision of the Voting Rights Act, leaving many
 15 voters here in Arizona and throughout the country
 16 without a key protection against racial
 17 discrimination in voting.

18 So one of our goals today in this
 19 hearing, and in our hearings throughout the country,
 20 is to document the current state of racial
 21 discrimination in voting.

22 As you know as well, we have seen a wave
 23 of restricted voting laws throughout the country, and
 24 these are limited access to the ballot for eligible
 25 citizens. In Arizona, they have taken the form of

1 voting laws, proof of citizenship laws that have made
2 it harder for eligible voters to participate in our
3 democratic process.

4 We have also seen a continued --
5 continued challenge with election administration.
6 This -- These, of course, also keep voters away from
7 the ballots. And these take the form of long lines,
8 as we saw here in Arizona, the misuse and overuse of
9 provisional ballots, and poor poll worker trainer.

10 Your input on these issues is critical to
11 the continued advocacy and reform efforts at the
12 national, state, and local levels. So we really
13 thank you for your participation here today.

14 We also, of course, want to know what is,
15 in fact, working in the elections process; what
16 states and municipalities are doing to protect the
17 right to vote and to expand access for eligible
18 voters. The National Commission will create two
19 comprehensive reports, and these will become
20 available to anybody seeking to improve or reform
21 voting laws.

22 And these, of course, include
23 legislators, advocates, and the voting public.

24 We also expect these reports to inform
25 Congress and the American public of the current state

1 of racial discrimination in voting.

2 And without further adieu, I would like
3 to introduce our four guest commissioners and our
4 National Commission commissioner who joins us here
5 today. They have all demonstrated a commitment to
6 protecting the right to vote and making sure that
7 access to the ballot is equal for all.

8 They are Charles Fanniel, who is
9 president of the Arizona State Conference of branches
10 of the NAACP.

11 John Lewis, executive director of the
12 Inter Tribal Council of Arizona.

13 Doris Marie Provine, who is professor
14 emerita at Arizona State University.

15 Penny Ladell Willrich, who is Associate
16 Dean of Academic Affairs and Professor of Law at
17 Arizona State Law School.

18 And we are also joined by our national
19 commissioner, Patty Ferguson-Bohnee. She is the
20 director of the legal -- Indian legal clinic here at
21 the Sandra Day O'Connor College of Law.

22 Our commissioners will receive testimony
23 and they will ask questions, where appropriate, to
24 ensure that we have a robust record of the state of
25 voting here in Arizona.

1 And now before I go, I just want to go
2 over a few housekeeping items. If you've been
3 confirmed on one of the formal witness panels, we ask
4 that you please check in at the registration table.
5 If you have not been assigned to one of these formal
6 panels but would like to share your experience as a
7 voter, we would definitely like to hear from you, so
8 we ask that you please register at the registration
9 table. We will have public comment periods at 12:35
10 and at 3:50 p.m.

11 Also, I would like to let you all know
12 that this hearing is being transcribed, so, please,
13 if you are a witness, please speak clearly and state
14 your name clearly for the reporter.

15 Please be mindful of the timekeepers and
16 their signs. Again, you have Spanish and American
17 Sign Language interpretation available. And if
18 you're on Twitter, we've set up a hashtag for this
19 hearing so that friends who are not with us here
20 today can join the events. They are hashtag NCVR and
21 you can tag my organization, which is @lawyerscom.

22 And, finally, I would like to thank -- in
23 addition to thanking the College of Law and our
24 commissioners, I would like to thank the individuals
25 and organizations who have helped us and have been

1 integral in planning this event: The American Civil
2 Liberties of Arizona, the Arizona Advocacy Network,
3 the Arizona Center for Disability Law, Arizona State
4 University Legal Clinic, the Arizona Students
5 Association, the Inter Tribal Council of Arizona, the
6 League of Women Voters for Arizona, and the Mexican
7 American Legal Defense and Educational Fund, the
8 National Action Network, the National Association for
9 the Advancement of Colored People. And a lot of
10 other individuals and volunteers who are here making
11 this event happen today.

12 So thank you very much, and I will turn
13 it over to our commissioners. Thank you.

14 MS. FERGUSON-BOHNEE: Good morning.
15 Sorry. I'm very honored to be here. My name is
16 Patty Ferguson-Bohnee, and I am the director of the
17 Indian Legal Clinic. And I'm honored to be asked to
18 serve as a national commissioner.

19 I would like to thank the lawyers'
20 committee for selecting me. I think that this
21 hearing is very important to identify and address
22 issues impacting voters across Arizona and also the
23 series of hearings identifying those issues impacting
24 voters across the country.

25 At the Indian Legal Clinic, I should

1 mention that we work closely with a lot of our
2 partners on election protection, native vote election
3 protection in the State of Arizona. We work with the
4 Tribal Council of Arizona, the Arizona Indian Gaming
5 Association, and the Native American Bar Association
6 of Arizona providing voter education and also
7 identifying, addressing voter concerns on election
8 day, and we've identified numerous concerns impacting
9 Indian voters across the State of Arizona.

10 In addition, I have been involved in
11 filing amicus briefs on behalf of native voters on
12 voting rights issues and involved in redistricting
13 litigation and the recent voter ID litigation that
14 resulted in a settlement for Native American voters
15 in the State of Arizona.

16 We know that the Voting Rights Act has
17 been a success. It's led to improved access to the
18 polls. And in 1970, it invalidated the English
19 language literacy requirement for voters in Arizona.
20 And that's when native voters in Arizona really were
21 able to access the ballot with the invalidation of
22 the English literacy requirement.

23 The Voting Rights Act has also reversed
24 redistricting that packed minorities in one district
25 to reduce the effectiveness of the minority vote, and

1 be a guest commissioner at this particular hearing
2 and really appreciate the work that the National
3 Commission and their report -- their forthcoming
4 report that will be available to us and to help
5 document the important information that's going to be
6 presented to us today from very key experts here in
7 this State of Arizona.

8 We welcome you to our country and really
9 appreciate you joining the efforts to ensure that
10 there is equal access and opportunity for voting for
11 the American Indian. The continuing struggle to --
12 on access to voting and participation in voting.

13 In 1924, it was recognized that American
14 Indians were citizens in the United States and
15 eligible to vote. We formally began the struggle in
16 1928 with individuals, the Gila River Indian
17 Community going to court and wanting to vote here in
18 Arizona. They were denied that right.

19 It wasn't until 1948 when it was
20 recognized that American Indians could vote here in
21 the State of Arizona. And then it wasn't until 1970,
22 until really they were able to participate fully in
23 voting here in this state.

24 So it's been an 85-year struggle formally
25 through the courts and others and it continues to

1 it's been used to increase language access for
2 limited English proficient voters through the
3 preclearance requirements of Section 5 of the Voting
4 Rights Act.

5 With the invalidation of the coverage
6 under Section 4 of the Voting Rights Act, we've
7 already seen changes across the country that seek to
8 impede voter rights and restrict access to the
9 ballot.

10 In our democracy, our goal should be that
11 all voters have access to the ballot. We should be
12 making it easier for our citizens to vote, not
13 harder. Although we've seen gains over the years,
14 we've also encountered roadblocks that attempt to
15 move us backwards.

16 I'd like to say again, it's an honor to
17 serve in this position, and I'd like to thank the law
18 school for providing the forum. And I would also
19 like to thank all of our guest commissioners for
20 their service and all of the panelists for taking the
21 time to prepare and present testimony today.

22 Thank you.

23 MR. LEWIS: My name is John Lewis,
24 executive director of the Inter Tribal Council of
25 Arizona. And I really appreciate the opportunity to

1 today. And, again, sharing many of the issues that
2 are going to be presented today further documented
3 and with some good recommendations to go forward to
4 ensure voting for all citizens.

5 So this is a struggle for all of us, and
6 we appreciate the opportunity to work with all to
7 ensure that in the future things are changed and we
8 are able to access and participate more fully in
9 voting here in Arizona and in the United States.

10 Thank you.

11 MS. LADELL-WILLRICH: Good morning. My
12 name is Penny Willrich, and it is an honor and a
13 privilege to be invited to be -- a second time to be
14 a guest commissioner, to be a part of this
15 fact-finding process to determine the challenges
16 faced and the opportunities for reform in preserving
17 and protecting the voting rights of all citizens of
18 the State of Arizona.

19 It has been said by countless individuals
20 who have testified before Congress or in judicial
21 proceedings that the right to vote is the most
22 fundamental right within our democratic system. We
23 know that the purpose of the Voting Rights Act of
24 1965 was to enforce the core principals of the 15th
25 Amendment, prohibition against the denial of the

1 right to vote based on race.
 2 We are currently in an era in which we
 3 need to help our Congressional leaders develop a new
 4 and better formula under Section 5 of the Voting
 5 Rights Act to ensure that the historical legacy of
 6 discriminatory practices in voting and voting
 7 administration that Section 5 was mandated to protect
 8 continues to be protected today.
 9 When the Act was passed and signed into
 10 law by President Lyndon Johnson who lived under a
 11 code of laws that were commonly known as Jim Crow
 12 laws or Black Crows that disenfranchised,
 13 specifically black Americans, under calculated -- a
 14 calculated set of laws and practices to keep them
 15 from voting.
 16 And though since 1965 we have made
 17 tremendous strides for people of color in this nation
 18 and in this state to vote, there is still documented
 19 proof that discrimination at the polls and in the
 20 redistricting process and in the electoral
 21 policymaking still exists.
 22 While in the past, it was the grandfather
 23 clause of literacy tests and the poll tax that
 24 jeopardized voting; today it is voter suppression
 25 through photo identification requirements,

1 registration restrictions, precinct changes without
 2 notice, and reduction in early voting process.
 3 Even after the enactment of the Voting
 4 Rights Act of 1965, numerous laws and numerous
 5 lawsuits across the nation have been filed in order
 6 to challenge the redistricting schemes that eluded
 7 voting power or packed districts to voter
 8 registration, to challenge voter registration systems
 9 and voter ID laws, such as the two-tiered system in
 10 Arizona, to challenge prohibitions against same-day
 11 registrations or prohibitions on out-of-precinct
 12 voting, and to challenge elimination of the early
 13 vote.
 14 The Supreme Court's dismantling of
 15 Section 4, the preclearance process formula that put
 16 Section 5 into operation has really sent us back to
 17 the pre-1965 days of strategy in that we have to
 18 challenge the -- the actions on a case-by-case basis
 19 in order to look at what is happening in voter
 20 discrimination.
 21 But we know that challenging on a
 22 case-by-case basis is a long process and it is an
 23 expensive process. And while that process goes on,
 24 the discriminatory practice is put in place by these
 25 laws and policies are existing and it impacts the

1 vote of minority citizens.
 2 We are here today to document what has
 3 occurred in Arizona. And so, perhaps, it's time for
 4 us to begin to collectively think about a set of
 5 national voting standards that must be complied with
 6 by every state.
 7 Our democratic system of government
 8 should encourage expanding access to the polls,
 9 expanding early voting, utilizing technology for
 10 online voter registration and same-day registration.
 11 And we need to visit -- revisit and repeal voter
 12 disenfranchise laws that prohibit persons with felony
 13 convictions from voting.
 14 It is our duty to ensure a fair electoral
 15 process. We can only do that if we have a strong
 16 Voting Rights Act.
 17 So I look forward to the remarks that are
 18 going to be made today and the testimony, because as
 19 long as there is discrimination in the electoral
 20 process, we know that our work is not done.
 21 Thank you for being here. Thank you to
 22 the National Committee on Civil Rights Under the Law
 23 for choosing Arizona as a jurisdiction to collect
 24 public testimony.
 25 MR. FANNIEL: Good morning, ladies and

1 gentlemen. My name is Charles Fanniel and I am the
 2 president of the NAACP Arizona State Conference. It
 3 is, indeed, my honor to be here today to serve as a
 4 commissioner for the first time on this voting rights
 5 panel of this esteemed group of men and women up
 6 here.
 7 Historically, the NAACP has always been
 8 on the battle grounds fighting for voting rights.
 9 Many of our comrades have given their money, their
 10 time, and in the case of warriors like Medgar Evers,
 11 Harry and Harriet Moore, gave their lives to fight
 12 for and defend voting rights.
 13 Today, a half a century later, we're
 14 still fighting that fight on the local to national
 15 levels, from redistricting and proof of citizenship,
 16 to expensive, restrictive, and arbitrary voter ID and
 17 voter registration laws, our nation is under attack.
 18 Our state has been caught in the fray.
 19 Shortly after 2008, the elections, we were faced with
 20 the introduction, proof of citizenship laws at the
 21 polls of a two-tiered election system that would rip
 22 our efforts to register voters apart. Fortunately,
 23 we are winning some of these battles.
 24 A key decision last summer, the Supreme
 25 Court supported the role of the National Voter

1 Registration Act in Arizona, election law changes.
2 And in December, the Arizona Supreme Court took a
3 stand against money in our political system.

4 Despite these wins in local, state, and
5 national tactics on voting rights are ongoing and we
6 hear these stories today. We're reminded that we
7 must update the Voting Rights Act.

8 Last June, the Supreme Court invalidated
9 Section 4 of the Voting Rights Act, a provision that
10 helps identify states with a history and contemporary
11 record of voter discrimination.

12 In districts across our state and the
13 U.S., we're seeing now how the Voting Rights Act has
14 protected our citizens all along. A flood of
15 relentless attacks that would not only keep our
16 community out of the ballot box, but also have a
17 profound impact on our school boards, city councils,
18 where our voices are sometimes needed the most.

19 Without a question, the Supreme Court
20 decision cracked the foundation that we built to
21 protect voters from discrimination as we called for
22 VRA to update.

23 We must not only fill those cracks in the
24 foundation, but also reenforce it so we would have a
25 stronger foundation for the future.

1 In order to do this, we must all realize
2 that voting rights is not a partisan issue. It is
3 not a right that belongs solely in the hands of the
4 far left or the far right. The fight doesn't end
5 with the people in this room. This is an Arizona
6 fight. This is an American fight.

7 It will be necessary for our Congress to
8 guarantee fairness and equality in the democratic
9 process. A fully functioning voter rights act is
10 critical to every American. And as an American, we
11 need to make sure this happens.

12 In 2014, the Voting Rights Act must be a
13 priority. It is up to us, those in this room, our
14 partners, our local coalitions, and our leaders on
15 both sides of the political spectrum to make this
16 happen on behalf of the NAACP Arizona State
17 Conference.

18 I look forward to hearing your testimony
19 today. Thank you for being here today, and thank you
20 for inviting me.

21 Thank you.

22 MS. PROVINE: My name is Doris Marie
23 Provine. I am a political scientist and lawyer and
24 professor, until very recently, at this institution.
25 I work on issues of naturalization and voting access.

1 And as the other commissioners have said, I'm honored
2 to be selected for this opportunity. I'm grateful to
3 the organizers and I'm also very grateful to the
4 witnesses who are coming forward to inform us today.
5 Thank you very much for coming.

6 Our democratic goal has got to be to make
7 registration for voting and voting easy, as well as
8 secure, and I might add, meaningful as well. We've
9 had struggles historically at every stage in
10 expanding the vote to the whole citizenry of this
11 country. And that is still true, although the
12 character of those struggles has changed over time.

13 And there are good reasons why Arizona
14 has been the subject of considerable Voting Rights
15 Act activity. Arizona has been a state with problems
16 of voting access and participation.

17 Arizona is a simple-looking state that's
18 actually pretty complicated. We're not that big.
19 We're actually pretty new as states go. And yet, we
20 have a geography that is unusual, with about half the
21 state concentrated in big cities and the other half
22 spread out very thinly in the rest of the state.

23 We have very complicated language issues.
24 In addition to Spanish and English, which we think
25 about quite a bit here in Phoenix, Indian tribes have

1 many different languages to deal with too. And
2 getting access to voting materials in all of these
3 languages is a problem in this state.

4 We're a transient state, which means
5 voter education needs to be particularly healthy and
6 strong in a place where people are moving in and
7 moving out. We have concentrations of students.
8 Students suffer certain difficulties with voting
9 because they are, by definition, transient. They
10 often have difficulty getting access to the vote.

11 We have problems of dark money in this
12 state where we have difficulty controlling, knowing
13 even where the money is coming from that influences
14 elections. And as others have noted, we have a
15 legacy of overt discrimination in voting and in
16 housing and public facilities and many other areas
17 that has been repeatedly addressed by courts and is
18 in a kind of underlying sense part of the story we're
19 dealing with today.

20 We also have issues of neglect and
21 failure to invest in voting education and voting
22 issues because this is not a wealthy state.

23 Finally, I would like to allude to the
24 problem of politics in this state. There are fears
25 that as registration of groups grows, there will be a

1 surge of undesirable voting. There is a tendency in
 2 our state to criminalize activities associated with
 3 voting that shouldn't be criminalized.
 4 And there is, of course, an issue that's
 5 been alluded to of dual ballots, which is going to be
 6 a huge mess for the people -- the administrators of
 7 elections and a very costly bill to our taxpayers for
 8 dubious results.
 9 Also, I want to say that Arizona has had
 10 some good ideas that might be valuable to other
 11 states. So one of the things we'll do today is
 12 collect those good ideas, as well as the things that
 13 Congress needs to think about in revising and
 14 revamping and, as Charles says, hopefully improving
 15 the foundation of voting rights in Arizona.
 16 Thank you very much.
 17 MS. LADELL-WILLRICH: At this time, we'll
 18 begin with the first panel. And the first speaker is
 19 LeNora Fulton. Ms. Fulton, if you would come forward
 20 to the podium.
 21 MS. FULTON: Good morning. It's always a
 22 pleasure to come down to Phoenix area. Coming from
 23 up North, we have almost zero degrees temperature, so
 24 thank you for sharing your wonderful weather with me.
 25 I am the county recorder for Apache

1 County since 2004, and I'm honored to present this
 2 testimony on behalf of Apache County.
 3 Apache County is located in the
 4 northeastern of Arizona bordered by New Mexico and
 5 Utah and is unique among all small counties in the
 6 country in many ways, particularly because it is the
 7 longest county in the country. 211 miles from the
 8 Utah border to just south of Alpine.
 9 Two thirds of the population and over one
 10 half of the land area is comprised of the Navajo
 11 Nation, the largest Native American tribe. Its
 12 population in Apache County is over 71,000 with over
 13 50,000 registered voters and over 40,000 of the
 14 voters are based within the Navajo Nation.
 15 It is important that we have access, as
 16 mentioned, to the voting process and the registration
 17 should be easy so that people can register or
 18 participate in the electoral process. The concerns,
 19 as expressed by the citizens, in reference to the ID
 20 or the identification requirement at the polling
 21 place.
 22 Many of the poll workers are selected
 23 from the local rural communities where everyone knows
 24 everyone else by first name. During election time,
 25 the poll workers show up at a polling place where the

1 poll workers require that the citizens have an ID.
 2 Sometimes the citizens have insufficient ID or no ID
 3 at all, and then people say that they should be
 4 allowed to vote in the regular ballot.
 5 On native lands, family is a way of life,
 6 and family clanship is closely knit and almost all
 7 family live close together. For the lack of
 8 sufficient ID or no ID, the voter will make a
 9 provisional or a transitional provisional ballot, and
 10 this process is not accepted to the rural community.
 11 Poll workers state that many of the people walk away
 12 in frustration without voting.
 13 Another concern expressed by the majority
 14 of the voting population is the removal or the
 15 nonrenewable of the preclearance requirement without
 16 the consultation or without hearings. They feel that
 17 the preclearance will be protection of their voting
 18 rights, especially for those that do not speak or
 19 understand English.
 20 Another concern is the lack of sufficient
 21 funding for counties to invest in translation of
 22 minority language of the election-related materials
 23 and through educations through the mass media.
 24 The lack of emphasis for aggregate voting
 25 and education created in the state's education system

1 concerning the voting information at the high school
 2 and elementary level is another concern. Lack of
 3 training for teachers about election and voting
 4 registration and time for classroom learning is very
 5 limited.
 6 A large population of our county are,
 7 again, between the ages of 18 and 24. It ranges
 8 almost half of the population. The dual registration
 9 system that is needed to be maintained and developed
 10 by counties due to the bifurcation, which the federal
 11 voter registration forms lacks the Arizona
 12 citizenship requirement language.
 13 This is costly and causes more confusion
 14 and frustration to the voters and more work for
 15 county staff. To develop such a complex system,
 16 there are not many voters who fall into this category
 17 so it does not justify the expense and time invested.
 18 Most voters who fill out the federal form are not
 19 aware that they are signing up to vote for only --
 20 only for federal offices and races.
 21 The lack of funding to counties to
 22 continue to develop the street file, particularly in
 23 Apache County, we're very rural and there are very
 24 few, if any, standardized street addresses outside of
 25 three towns in the county. The development and

1 completion of the street file is essential to ensure
2 that the voters are placed in correct voting
3 precincts.

4 With all the concerns and challenges that
5 we have, we do have some successes. And I will list
6 a few of those.

7 First of all, the Apache County Election
8 and Recorder's Office have merged so that we will
9 enable the offices to streamline logistics and for
10 grammatic services, and also to ensure that
11 additional safeguards during the election process to
12 address certain changes to the election laws in a
13 uniformly maximized manner so that we can provide
14 services to this citizen.

15 We also work closely with the Navajo and
16 the Apache tribes to maximize voter participation.
17 One of the successes we had with the Navajo Nation is
18 that they changed their primary election date to
19 coincide with the primary election date in Arizona so
20 that on election day, we have a huge turnout and that
21 there's not any confusion as far as the different
22 dates of the election dates.

23 The White Mountain Apache is in
24 discussion with that, and perhaps that would be
25 something they would look forward to.

1 MS. PROVINE: Ms. Fulton, one thing. It
2 was very interesting to hear all the things that have
3 happened in Apache County because it's historically
4 been a real site for interest from the Voting Rights
5 Act, as you know. But one thing, if you would talk a
6 bit more about whether the level of registered voters
7 in Apache County is what it should be in relation to
8 other counties in the state. Is it low, is it about
9 average, or is it on the high side?

10 MS. FULTON: Thank you.

11 MS. LADELL-WILLRICH: If you'll push the
12 button on the mic.

13 MS. FULTON: Thank you.

14 As I stated, the population of Apache
15 County is about 71,000. So we have 50,000 and over
16 that are registered voters. So the registration is
17 high, although we know that the population may not be
18 accurate according to the census of 2010. But
19 according to that, we see it's high. We know there
20 are many more people that we can register to vote.

21 MS. LADELL-WILLRICH: Other questions?
22 Yes.

23 MS. FERGUSON-BOHNEE: Thank you for your
24 testimony. I'm so sorry about this mic. I don't
25 know what to do. I'll sit back.

1 Apache County established also an
2 outreach office with a little more staff near the
3 Navajo Nation capital in an effort to expand the
4 outreach program to work closely with language
5 translation and also to function as a satellite
6 office.

7 And, lastly, Apache County, with its
8 increase in voter registration within the last 10
9 years -- within the last 8 years have increased
10 almost 10,000 registered voters. And as a result,
11 members of the Navajo Nation has assumed for the
12 first time in its history certain offices, such as
13 the county sheriff, the county superintendent of
14 school, the treasurer, recorder, and assessor.

15 So we really feel strongly that all
16 efforts that can be made that we would have a strong
17 voting rights that would be accessible to all the
18 citizens within the county and within the State of
19 Arizona.

20 Thank you.

21 MS. LADELL-WILLRICH: Ms. Fulton, if you
22 would take a seat at one of the chairs there at the
23 table to face the commissioners, because there may be
24 some questions for you.

25 And so now I'll open it up for questions.

1 You said a couple of things that were
2 really interesting and concerning to me. And the
3 first is you discussed the voter ID law and that
4 there are people who walk away. And I was wondering
5 if you could explain a little bit more as to if you
6 have any idea of what percentage that may be.

7 Is it a high percentage of people that
8 don't have ID when they leave the polling location?
9 Because these really aren't captured in numbers, but
10 it seems to be an indication that the voter ID law is
11 impacting the ability of voters to exercise their
12 right to vote.

13 MS. FULTON: Thank you.

14 That's always been a concern to us as
15 well. And we know throughout the county that the ID
16 requirement is something that people are still
17 learning about. But a lot of times people don't
18 carry an ID, particularly up within the Navajo Nation
19 and in the rural community in Apache County.

20 We ask the poll workers and they don't
21 normally keep track of it. But I know they say from
22 10 to 20 per precinct. And we're trying to figure
23 out how to work around that. I think one of the
24 problems that we found is people just feel that an ID
25 is kind an infringement on their rights.

1 And within the Native American Nation,
 2 many, many people do not carry any type of documents.
 3 And one of the things that the poll workers have
 4 always expressed is since it's a rural community,
 5 everyone knows, you know, who one another is. And
 6 poll workers are selected from the community. So an
 7 individual will come up and say to them and say, You
 8 know who I am and you know who my mother is. This is
 9 where I live. Why do I need to bring an ID?

10 And so it becomes a conflict. And so
 11 they try to work with him. People get frustrated and
 12 say, I'm not going to vote.

13 MR. FANNIEL: Ms. Fulton, you said that
 14 you had significantly increased your voter
 15 registration numbers. However, you also said that
 16 there is inadequate funding and training. Could you
 17 be a little bit more specific in reference to your
 18 funding and training? Has your budget been cut or
 19 can you explain?

20 MS. FULTON: Thank you.

21 In Apache County, of course, we're one of
 22 the rural communities. And because of the majority
 23 of our land-based population goes into the Native
 24 American Nation, especially the Navajo Nation, you
 25 know, lack of jobs and things, is very obvious that

1 address, which is that 120 South, North, West. Then
 2 there's a nonstandard address which is one mile south
 3 of the chapter house or the store.

4 And so when we converted our database
 5 into the PowerProfile, we found that about 33,000 of
 6 the registered voters within our communities have a
 7 nonstandard address. So we did approach the
 8 Secretary of State. Did offer some more funding for
 9 us to develop a portion into the software that would
 10 be able to convert a nonstandard address to a
 11 standard address within the software.

12 We felt that it was still quite a few
 13 that was not converted. And what it is, is in the
 14 rural community, a person would list an address.
 15 Maybe it would be two miles south of a store and so,
 16 in order for us to precinct that person in the
 17 correct voting precinct, we're not sure exactly where
 18 they're at.

19 And so the system that we have is we have
 20 a GIS individual that's hired that can use
 21 coordinates or the GPS units, and so it's a long
 22 process. Because of lack of funding, we're not able
 23 to completely do that with the program. So that's
 24 where we do need additional funding.

25 MR. LEWIS: Thank you.

1 specific problem that we have.

2 Now, within the county, it's very
 3 limited. And each year my program has reduced its
 4 budget, and so it's very difficult to put money into
 5 radio. A lot of the people listen to the radio as a
 6 way of getting information. Translation, this is
 7 something that we're sometimes very limited. And so
 8 we do the best that we can as far as the training.

9 Now, the training is really with the
 10 school system, I think. For whatever reason, the
 11 curriculum does not include voter registration.
 12 There's not Kids Voting. Those are good programs
 13 that go through the school, but because of lack of
 14 funding, lack of time with the classroom that's
 15 offered, that is something that's always been a
 16 concern to us.

17 MR. LEWIS: I have a question with the
 18 street file and what is involved with that and what
 19 is it going to take to complete that?

20 MS. FULTON: Thank you.

21 So of the 15 counties, the voter
 22 registration went into a new software. It's called
 23 PowerProfile. All 15 counties utilize that. It's a
 24 uniform system that we have. And within that system,
 25 we do have a field. It's called a standardized

1 I have one other question in terms of
 2 your work and coordination with the federal
 3 government. Do you have any formal type of agreement
 4 as to how you coordinated work with them or what is
 5 your relationship on that?

6 MS. FULTON: A lot of it is we don't
 7 really have a formal agreement between the two
 8 governments. But we do have an understanding and so
 9 both the Navajo Nation Election Administration and
 10 the county work very closely in related areas. The
 11 White Mountain Apache also have some verbal
 12 understanding. So I feel that is working well.

13 For example, a person is registered to
 14 vote in the county, but did not have a physical
 15 address or we didn't have a mailing address. We're
 16 able to contact the Navajo Nation and they're able to
 17 give us some direction of how to address it. Perhaps
 18 working with each house and we're able to contact the
 19 voter so that we could get additional information.
 20 So there's that type of information.

21 And we also share the same polling place
 22 in -- for example, on the primary election, a certain
 23 chapter house that we utilize for both the Nation's
 24 voting and then also the county. We use the same
 25 building. We do it in the same room and so that poll

1 workers from both sides can work together.
 2 MS. LADELL-WILLRICH: Thank you,
 3 Ms. Fulton. I'm going to ask you to stay there with
 4 the panel in case there are other questions later.
 5 I'm also going to invite the other panelists to the
 6 table at this time.
 7 Alessandra Soler, Paul Eckstein, Leonard
 8 Gorman. If you would please come down to the chairs
 9 and we'll have Ms. Soler speaking to us next.
 10 I've been asked to limit the questions
 11 until after the testimony. And then the
 12 commissioners will be able to question the panelists
 13 at that time.
 14 Thank you. Ms. Soler.
 15 MS. SOLER: Thank you very much. Should
 16 I continue to sit at the table or would you like me
 17 to stand at the podium. This is good?
 18 MS. LADELL-WILLRICH: Yes. Great.
 19 MS. SOLER: Thank you so much for the
 20 opportunity to participate in today's hearing and the
 21 National Commission on Voting Rights Hearing. I'm
 22 the executive director of the ACLU of Arizona. And I
 23 especially want to thank the Lawyer's Committee for
 24 Civil Rights Under the Law for its leadership in
 25 establishing a commission and convening today's

1 hearing of voting experts.
 2 The ACLU of Arizona is the -- is a
 3 leading civil rights advocacy organization in the
 4 state with about 6,000 members and supporters. We're
 5 part of a nationwide network of 53 affiliates and we
 6 work for support in the communities and in the state
 7 legislatures to ensure that everyone receives the
 8 protection under the Constitutional rights.
 9 So the ACLU are also co-counsel in Shelby
 10 County, two Supreme Court cases that were heard by
 11 the Court this past summer: Shelby County v. Holder,
 12 and Arizona v. ITCA. And we have been actively
 13 engaged in state-level advocacy on a variety of
 14 voting and election reform issues, including leading
 15 statewide efforts to end Arizona's discriminatory
 16 voting ban. And most recently we lobbied against
 17 state and local changes regarding provisional ballots
 18 and concerns with registration.
 19 So I want to -- given that we have a
 20 brief amount of time, I want to just talk about two
 21 issues.
 22 One, I want to discuss today why it's
 23 absolutely critical that Congress work in a
 24 bipartisan manner to restore and redesign the Voting
 25 Rights Act, parts of which, as you all correctly

1 noted, have been rendered obsolete by the U.S.
 2 Supreme Court in Shelby County v. Holder. A brief
 3 summary of recent voting changes that we believe will
 4 make it harder to vote.
 5 Since its passage in 1965, the Voting
 6 Rights Act has proven to be one of the most effective
 7 civil rights statutes in blocking and preventing
 8 numerous forms of voting discrimination. And
 9 presidents from Ronald Reagan to George W. Bush have
 10 joined alongside members of Congress, including Bob
 11 Inglis, Tom Feeney, and former House Judiciary
 12 Committee Chairman, James F. Sensenbrenner, is now,
 13 once again, a leader to restore the Voting Rights
 14 Act, to speak out in favor of the law.
 15 Unfortunately, the most recent decision
 16 in Shelby County v. Holder invalidated the coverage
 17 formula of Section 4(b) which determines which
 18 jurisdictions are subject to preclearance. The Court
 19 found that while "voting discrimination still
 20 exists," Section 4(b) of the Voting Rights Act was
 21 Constitutional on the basis that the coverage formula
 22 had not been updated recently and no longer reflected
 23 current conditions of discrimination.
 24 In Arizona, and across the country,
 25 Section 5 of the law -- with its preclearance and

1 notice position has been instrumental in -- it's been
 2 an instrumental tool in preventing discrimination
 3 before it happens.
 4 I won't get into the specific examples of
 5 the Section 5 objections, but I think it's worth
 6 noting that for all the testimony which I have
 7 submitted, but I think it's worth hearing that here
 8 in Arizona, the most recent objection came in 2003,
 9 when the Bush administration, the Department of
 10 Justice objected to proposed changes to elect board
 11 members of a joint technological education
 12 district -- the Coconino Association for Vocations,
 13 Industry and Technology -- because they found the
 14 change would have had a retrogressive effect,
 15 diminishing the opportunity for Native American
 16 voters to elect a representative of their choice.
 17 That happened in 2003.
 18 And in a moment, you'll hear from Paul
 19 Eckstein on the various redistricting that were also
 20 objected.
 21 I do want to point out that, and it's
 22 certainly worth noting that just two months after the
 23 Shelby County decision, our state Attorney General
 24 Tom Horne issued a number of statements that six
 25 previously enacted statutes and policies that were

1 submitted for preclearance here in Arizona but were
 2 withdrawn were actually going into effect.
 3 And one of those, which H.B. 2261 created
 4 additional proposed at-large seats to the Maricopa
 5 County Governing Board of the Maricopa Community
 6 College District.
 7 The lawyers have been challenging that
 8 law under State Constitutional ground. At-large
 9 districts have been found to be voter swayed, and
 10 although there is no racial impact record at this
 11 time, in terms of impact of age to be determined
 12 2261, it's worth noting that no state or
 13 Constitutional claim is a substitute for Section 5
 14 because they do not provide the provision and they do
 15 not prevent discrimination before it happens.
 16 That is why we are calling on Congress to
 17 work together to do the following: Establish a new
 18 preclearance formula. Jurisdictions with a recent
 19 history of voting discrimination should be subject to
 20 preclearance. And they need to expand to judicial
 21 bail-in provisions. Allow a federal district court
 22 to order a preclearance remedy upon a finding of a
 23 violation of the Voting Rights Act and other federal
 24 voting rights laws that protect minority voting.
 25 Under the current law, the Court can only order this

1 after a finding of intentional discrimination.
 2 Stopping new discrimination. Going
 3 forward, we need an effective and less burdensome way
 4 to freeze discriminatory voting changes in these
 5 noncovered jurisdictions from being implemented while
 6 lawsuits are brought under other provisions of the
 7 VRA, such as Section 2, are being heard by federal
 8 courts.
 9 My time is up, actually.
 10 And then finally, providing notice and
 11 disclosure. Jurisdictions should be required to
 12 provide public notice of proposed voting changes,
 13 particularly those that have meaningful impact on
 14 minority voters. Otherwise, we would never have any
 15 information about these changes and the impacts on
 16 our community.
 17 My time is up.
 18 I'll just briefly identify one of the
 19 voting issues that is particularly problematic here
 20 in Arizona, and that's the criminal
 21 disenfranchisement laws here in the State of Arizona,
 22 which remain the most significant means of preventing
 23 formerly incarcerated individuals from having a voice
 24 in the political process.
 25 Arizona is one of only eight states in

1 the country to bar individuals with certain felonies
 2 from ever voting again unless they go through an
 3 extremely complicated process that even county
 4 officials have a hard time understanding.
 5 We issued a report in 2006 where we
 6 analyzed how the civil rights restoration process
 7 here in Arizona worked and found that 54 percent of
 8 election officials are unable to answer elementary
 9 eligibility questions concerning individuals with
 10 felony convictions. And our survey showed that
 11 election officials are confused as to what the law is
 12 in Arizona and are dispensing incorrect and false
 13 information.
 14 One of the possible solutions here,
 15 obviously, is an appeal to the state law. And given
 16 the issues with the state legislature, Congress -- it
 17 would the national level for Congress to pass
 18 Democracy Restoration Act, which would restore voting
 19 rights in federal elections to over 4 million
 20 Americans and eliminate this complicated patchwork of
 21 state laws that we have here in Arizona.
 22 My time is up. I'm happy to take
 23 questions.
 24 MS. LADELL-WILLRICH: Thank you.
 25 We'll come back with questions after all

1 the panels have presented. Next we'll call on
 2 Mr. Paul Eckstein.
 3 MR. ECKSTEIN: Good morning. My name is
 4 Paul Eckstein. I'm a lawyer with the law firm of
 5 Perkins Coie in the Phoenix office of Perkins Coie.
 6 My remarks today reflect my views and not necessarily
 7 the views of the law firm or any of the lawyers in
 8 the law firm. We have a very active political law
 9 practice nationally and in Arizona as well.
 10 I've been practicing law approximately 48
 11 and a half years. And for much of that time I have
 12 been litigating election law issues. And hearing
 13 Mr. Lewis talk about the fact that reservation
 14 Indians were not allowed to vote in Arizona elections
 15 until 1948 reminds me of a case I handled as a baby
 16 lawyer in 1972, '73 involving the right of a
 17 reservation Indian, who happened to be a Navajo,
 18 Mr. Tom Shirley, who was elected to the county board
 19 of supervisors in Apache County and was enjoined from
 20 taking office on the grounds that he could pass laws
 21 that he wasn't subject to and wasn't subject to
 22 service of process.
 23 It took about nine months for us to get
 24 him his office back and the right to sit as a
 25 commissioner. But I'm happy to report today that

1 that principle was established. But in my
 2 lifetime -- my lifetime as a lawyer, that was not an
 3 established principle.
 4 I'm going to talk primarily about
 5 redistricting because I've also been involved in
 6 redistricting matters in the 1980s and in the early
 7 2000s when I represented the Arizona Minorities for
 8 Voting Rights in Fair Redistricting.
 9 A little background about the Arizona
 10 legislature, and our issues involved redistricting
 11 with respect to the legislature not with respect to
 12 the Congressional seats.
 13 Number one, Arizona has 30 legislative
 14 districts. We have one senator elected from each of
 15 the 30 districts and two representatives elected from
 16 each of the 30 districts. I thought for a long time
 17 that the fact that we have two representatives
 18 elected from one legislative district presents
 19 significant problems.
 20 We've had it in our constitution for
 21 almost 50 years. It hasn't been challenged, but I
 22 think it is ripe for a challenge. In 2000, the
 23 voters of Arizona adopted another amendment to the
 24 constitution that created the Independent
 25 Redistricting Commission which took over

1 redistricting from the legislature.
 2 Because Arizona was a covered
 3 jurisdiction, redistricting had to be precleared by
 4 the Department of Justice. And that was a good thing
 5 in the early 2000s because, as you know from the
 6 written statement that I have filed, the Independent
 7 Redistricting Commission didn't exactly do a good job
 8 in protecting minority voting rights.
 9 The Department of Justice not only found
 10 that with respect to five legislative districts, the
 11 effect of what is to create retrogression, that is to
 12 move backwards in terms of voting rights for
 13 minorities, but with respect to one of those
 14 districts, District 23, the Department of Justice
 15 speculated, somewhat, that it was the intent of the
 16 Independent Redistricting Commission to create a
 17 retrogressive effect.
 18 And what happened was, the Department of
 19 Justice refused to preclear it, and in a proceeding
 20 that was held before a three-judge district court,
 21 some interim lines were drawn and the Redistricting
 22 Commission was given the responsibility to come up
 23 with permanent lines for the 2004, '6, '8, and '10
 24 elections, which they did.
 25 But when they did it, they did what is

1 often done, and that is packed minorities into at
 2 least one district, District 14, and moved three
 3 percentage points more than was required by the
 4 justice department Hispanics into that district,
 5 which made it less likely that Hispanics would be
 6 able to elect representatives of their choice in one
 7 of several neighboring districts.
 8 So from my personal experience, I've seen
 9 how the preclearance process is beneficial to making
 10 sure that the people who are doing the redistricting,
 11 whether it's the legislature or whether it's an
 12 independent commission, understand that there's
 13 someone watching you. And if they don't do it right,
 14 if they attempt to lose minority voters, attempt to
 15 pack minority vote, someone -- someone under the old
 16 law in the justice department is likely to catch it.
 17 I know there are a lot of people in
 18 Arizona who believe that it was wrong for Arizona to
 19 be included in covered jurisdictions in the 1960s and
 20 1970s. I think my experience and the experience just
 21 from what I've heard up here today demonstrates that
 22 maybe the reasoning wasn't right, but certainly the
 23 fact that Arizona was included as a covered
 24 jurisdiction resounded to the benefit of minorities
 25 and minority voting rights in Arizona.

1 Thank you.
 2 MS. LADELL-WILLRICH: Thank you,
 3 Mr. Eckstein.
 4 And we'll again take questions at the
 5 end.
 6 Now, Mr. Richard Gorman.
 7 MR. GORMAN: The mic system is wrong on
 8 this side.
 9 My name is Leonard Gorman and I'm a
 10 member of the Navajo Nation, and a registered voter
 11 in the State of Arizona. I will primarily talk about
 12 the redistricting activities of the past. I'm
 13 currently the director of the Native Rights
 14 Commission.
 15 In March 2011, the Commission was
 16 directed by the Speaker of the Navajo Nation to
 17 represent the Navajo Nation and the Navajo people in
 18 the decennial redistricting activities in Arizona,
 19 Utah, New Mexico, and Colorado. I and my staff
 20 actively participated in redistricting meetings,
 21 providing input to those in each state charged with
 22 redistricting efforts, proposing Navajo-sponsored
 23 plans, and providing commentary on other plans.
 24 When litigation was necessary, I was a
 25 plaintiff to ensure that my rights under the Voting

1 Rights Act were protected.
 2 The Navajo Nation is the most populated
 3 United States Indian Nation. Over 300,000 Navajos,
 4 of which approximately half live within the
 5 geographic district of the Navajo Nation. Navajo
 6 voters are sufficiently large and geographically
 7 compact as to constitute a majority in certain of the
 8 legislative districts in the states of Arizona and
 9 New Mexico, and have therefore been afforded
 10 protection under such institute and five of the
 11 Voting Rights Act.
 12 Regarding a progression, in Arizona there
 13 has only been one majority ruling. The Navajo Nation
 14 has objected to it, that there not be retrogression
 15 or dilution and that the Native American Voting Age
 16 Population be enhanced. The Navajo voting age
 17 population using 2010 census for the 2000
 18 redistricting plans was 59 percent.
 19 The Navajo Nation was successful in
 20 advocating for the enhancement of the voting age
 21 population between the redistricting plan that
 22 consists of 63 percent in the Legislative District 7,
 23 the relevant legislative district.
 24 In New Mexico, there are several
 25 legislative districts on the Navajo Nation.

1 Historically, these legislative districts have
 2 consisted of 70 to 90 percent of the NAVAP. The
 3 Navajo Nation objective was to create additional
 4 districts with significant NAVAP in order for more
 5 Navajos and other Native Americans to vote in
 6 districts where the Native American voters would have
 7 an opportunity to elect candidates of their choice.
 8 A similar situation exists in San Juan
 9 County, Utah. Fifty-two percent of the population in
 10 San Juan County, Utah, is Native American. There are
 11 three geographically elected county commissioners.
 12 District 1 has a 90 percent NAVAP; while Districts 2
 13 and 3 have significantly lower NAVAP.
 14 The Navajo Nation has presented
 15 redistricting plans that would unpack the current
 16 District 1 so that it would share some of its 90
 17 percent NAVAP with at least one other district.
 18 However, the county commission charged with
 19 redistricting resisted Navajo's recommendations and
 20 the Navajo commissioner was continuously outvoted to
 21 maintain two Anglo districts and continue to pack
 22 Navajos in District 1.
 23 Successes in Native American voting and
 24 threats of Native American voting strength in this
 25 century have led to new forms of attack on Native

1 American voting. The voter identification law in
 2 Arizona resulted in a significant decrease in the
 3 number of Native Americans who voted in the 2006
 4 elections.
 5 The Navajo Nation filed a lawsuit against
 6 the State of Arizona challenging that law, which suit
 7 was settled by expanding the types of documents that
 8 Native American voters can use for identification.
 9 Further attempts to disenfranchise Native
 10 American voters occurred during the 2008 Arizona
 11 election where the candidacy of Navajo candidates
 12 were challenged because the addresses on the
 13 signature petitions included post office boxes and
 14 not physical addresses.
 15 Litigation to enforce voting rights is
 16 not a sufficient alternative to Section 5 coverage.
 17 Litigation is not quick, easy, or cost-effective.
 18 The Navajo Nation cannot afford to challenge every
 19 law that impacts Native American voting rights.
 20 Section 5 has been a deterrent to even more
 21 challenges to Native American voting.
 22 In conclusion, the Commission has
 23 participated in the redistricting efforts by
 24 providing testimony in the redistricting processes in
 25 Arizona, New Mexico, and in San Juan County, Utah.

1 We have testified in several court cases in New
 2 Mexico, appeared as an amicus in a federal court case
 3 in Arizona, and is a plaintiff in an ongoing court
 4 case in San Juan County, Utah.
 5 We have expressed our concerns regarding
 6 Section 5 preclearance by filing an amicus brief with
 7 the U.S. Supreme Court in Shelby County v. Holder.
 8 On behalf of the Commission and the
 9 Navajo Nation, we hope that the Congress will remedy
 10 the situation and restore protections of Section 5 of
 11 the Voting Rights Act.
 12 MS. LADELL-WILLRICH: Thank you,
 13 Mr. Gorman.
 14 Now, we'll open it up for questions from
 15 the commissioners.
 16 MS. PROVINE: We've talked about the
 17 ineffectiveness of litigation as a substitute for
 18 preclearance requirements under Section 5, but could
 19 anybody on the panel talk more specifically about the
 20 financial cost of the litigation, the poor litigation
 21 alternative versus the preclearance requirement,
 22 either for your organizations or even estimating what
 23 they might be for the State of Arizona taxpayers?
 24 MS. SOLER: This is Alessandra again.
 25 That's actually a very good point is that the

1 administrative costs, there are administrative costs.
2 I don't have those figures, but are substantially
3 less than the actual litigation costs. And so I
4 think that that's one of the positive factors that if
5 we can convince Congress to include to make -- to
6 expand the ban on the provision to make it easier for
7 states that are not covered to be precleared, to not
8 have to go through the boards.

9 Ultimately, it would be better -- a
10 better situation for taxpayers, less costly for
11 taxpayers.

12 MR. ECKSTEIN: Cost is certainly an
13 important consideration, but I think an even more
14 important consideration is the fact that under
15 Section 5, the law is, in effect, staying until the
16 Department of Justice or the District of Columbia
17 District Court preclears the legislation or electoral
18 change, whichever it is.

19 And the burden is on the jurisdiction
20 purporting to adopt the legislation or the change
21 that demonstrate that it doesn't cause retrogression
22 and that it allows protected minorities, language
23 groups, and racial and ethnic groups to have a fair
24 opportunity to elect representatives of their choice,
25 particularly in the redistricting context.

1 three states: Arizona, New Mexico, and Utah. And
2 also in Colorado.

3 Navajo Nation has a solution and its
4 people have allocated a sufficient amount of funds.
5 I wouldn't say a war chest of surety that protects
6 the rights of the Navajo people. However, and for
7 the current redistricting activities of the Navajo
8 Nation, it's at least a million dollars, which will
9 address at least those three states at the present
10 time.

11 We've gone through litigation on the New
12 Mexico side and have prevailed on all four cases.
13 And then we are currently in litigation on the
14 Arizona side and we're in litigation on the Utah
15 side. So I don't monitor the pocketbook of the
16 Navajo Nation as far as that million-dollar
17 appropriation.

18 But it has been a struggle for the Navajo
19 to protect the rights of the people in setting aside
20 these monetary resources.

21 Section 5 has been, I think, in my
22 opinion, involved in two activities. Powerful
23 measure for the Navajo people. We've been able to, I
24 think, advocate for all three states Section 5. New
25 Mexico and Utah are not covered jurisdictions. And

1 If you don't have Section 5, which we
2 don't have now, you have to do one or two things. We
3 have to revert to bringing an action under Section 2
4 where the burden shifts to the plaintiffs who were
5 going to be asserting the action, or you have to find
6 some other vehicle to make the point.

7 And I should have mentioned that I am one
8 of the vice presidents of the Lawyer's Committee for
9 Civil Rights, sit on the board, and filed in the last
10 couple weeks an action involving at-large elections
11 in Maricopa County.

12 And we had opportunities to consider
13 filing under the State Constitution or under Section
14 2. And, at least at this point, we opted to file
15 under the State Constitution because of the costs and
16 because of the fact that we have something that was
17 fairly well-tested in the law.

18 So it's -- it's -- Cost is important.
19 And I know there's going to be a lot of litigation
20 under Section 2. And maybe when those cases win
21 their way through the courts, we will know better
22 what the rights and remedies are under Section 2.

23 MR. GORMAN: I think regarding the
24 question of cost, as far the Navajo Nation, the
25 Navajo Nation is very spread out into, for sure,

1 setting standards to meet where you talk about such
2 impact, and what the voting age population should be
3 for a Navajo is the majority of that district.

4 And setting those standards, for example,
5 we agreed with the District of New Mexico that we
6 would set the standard at 60 percent of the voting
7 age population -- the Native American voting age
8 population. And that is sufficient to ensure -- at
9 least ensure the popularity of having Navajos elect
10 the person of their choice.

11 Primarily because if you take 100 voting
12 age population -- the Navajo voting age population,
13 you whittle it down to about 45 of that number.
14 Because I took off the top about 28 of the voting age
15 population who simply just don't care to vote in any
16 of the elections.

17 You take another 20 off that have a
18 difficult time voting. Basically because while I
19 think Navajo Nation adjusting its laws to provide for
20 some -- perhaps some accessibility to voting places,
21 there are a strong number of pockets of Navajo
22 voters, voting age population that have a very
23 difficult time traveling from polling place to
24 polling place, which, on an average, takes about an
25 hour and a half to drive from one polling place to

1 the next polling place. And that's a part of the
 2 disenfranchisement.
 3 And then the weather conditions and the
 4 transportation costs. So really, for us, we whittle
 5 that down to about a good reasonable 45 voting age
 6 population on the Navajo Nation that do actually go
 7 out and vote in the Navajo Nation elections, plus
 8 also the state elections.
 9 But Section 5 I think it might be very
 10 enforceable advocacy for Navajo Nation to achieve
 11 from 59 percent as a standard in District 7 in
 12 Arizona to 63 percent in Navajo. That was
 13 comfortable.
 14 MS. PROVINE: Thank you.
 15 MS. LADELL-WILLRICH: Other questions by
 16 the Commission?
 17 MS. FERGUSON-BOHNEE: I have another
 18 question for Ms. Fulton, because we're talking about
 19 Section 5 and as a county recorder, as part of the
 20 lawsuit, the Shelby County case, there was a
 21 discussion that Section 5 is burdensome for county
 22 recorders, the preclearance requirement.
 23 Can you respond to that, in your opinion,
 24 as a county recorder who would be involved in the
 25 Section 5 process?

1 deemed voting is also a race concern, so -- which is
 2 why it was detailed to us.
 3 I think the basis of participation is
 4 you're expected as who you are, and the tradition
 5 that you exist as a human being. And on the Navajo
 6 Nation as calling -- as addresses. Rural addressing
 7 is -- rural addresses are not -- I guess, let me just
 8 say "fashionable," as it is here in the City of
 9 Tempe.
 10 But the reality is that there are things
 11 that are helping and they should live in the manner
 12 that they feel comfortable with. And that is their
 13 ability to communicate with other individuals through
 14 the clanship in the case of the Navajo people, and be
 15 able to use that form of identification as a right to
 16 have somebody, a relative, a brother, sister,
 17 grandmother, aunt that is sitting and manning the
 18 state election that he or she calls sister, brother,
 19 mother.
 20 Yet that same person has the ability
 21 under state law to not permit that individual to cast
 22 a ballot. That's ridiculous. That seems to be so
 23 inhumane. I mean, a vastly different point than the
 24 last commission is expressing.
 25 While we realize that we're talking about

1 MS. FULTON: Thank you.
 2 My comment is that if it wasn't for
 3 Section 5, we would have thousands of voters,
 4 citizens that would not have the opportunity to
 5 participate in the electoral process. Since 2004,
 6 coming on board, we worked very well for Section 5,
 7 didn't have any problems, and I don't recognize it as
 8 a burden.
 9 I think, because a long history of Apache
 10 County, there is a need for protection for voters.
 11 And I hope that there would be something in place
 12 because things do not change, you know, quickly. And
 13 so as the recorder and as the election -- overseeing
 14 the election office now, both offices and the staff,
 15 we don't see it as a problem in the past, and I don't
 16 see it as a problem in the future.
 17 MR. LEWIS: I have a question.
 18 Regarding the challenges the candidates
 19 had in 2008, you had mentioned because of the
 20 addresses and the city provision, what sort of
 21 actions are your commission taking to address those
 22 concerns and have they been responded to?
 23 MR. GORMAN: Thank you for the question.
 24 I think my commission as the human rights
 25 advocacy commission, and as a matter of government,

1 straps and straps of policies here that have been
 2 built for so long, for some time, on trying to untie
 3 all these straps I think is very difficult. So rural
 4 addressing, I think, is one of the biggest problems.
 5 A lot of us use post office boxes.
 6 And the other issue about identification.
 7 Identification, as I mentioned, is a form of
 8 identification. Clanship is form of identification.
 9 And it's recognized. It's been recognized. So
 10 trying to have all of us as human beings understand
 11 that these forms of existence do carry on in all of
 12 our lives and there is a language to it in the State
 13 of Arizona.
 14 I don't think I intend to apologize
 15 because I'm a Navajo person that has the ability to
 16 speak the Navajo language fluently. I have no
 17 business apologizing for that.
 18 MS. LADELL-WILLRICH: Other questions?
 19 I want to thank the panelists on behalf
 20 of the National Commission on Voting Rights. Thank
 21 you for your response to this and thank you for your
 22 written comments as well.
 23 At this time, we're going to take an
 24 approximately 10-minute break and we'll be back.
 25 (A break was taken at 11:23 a.m.)

1 MR. FANNIEL: Good morning. We are going
 2 to begin with our second panel, and, I believe that
 3 we have Nina Perales, Pastor Stewart, and Judy
 4 Dworkin. All right. Then, Mrs. Perales, you will be
 5 first.

6 MS. PERALES: Thank you very much.
 7 Members of the Commission on Voting Rights, thank you
 8 for the invitation to testify.

9 My name is Nina Perales, and I serve as
 10 vice president of litigation for MALDEF, the Mexican
 11 American Legal Defense and Educational Fund.

12 Since our founding as a nonpartisan civil
 13 rights organization in 1968, MALDEF has served as the
 14 primary organization that litigates voting rights on
 15 behalf of Latinos in the United States.

16 According to the census, the Latino
 17 community in the United States grew by over 15
 18 million from 2000 to 2010, and accounted for more
 19 than half of the nation's total growth. Over the
 20 same decade, the number of Latino-eligible voters --
 21 U.S. citizen adults -- also increased from 13.2
 22 million in 2000 to 21.3 million in 2010.

23 In Arizona, over the last decade, the
 24 Latino United States citizen adult population grew at
 25 a rate of more than 50 percent, adding more than

1 250,000 potential Latino voters to the State's
 2 population. At the same time, Latinos are
 3 underregistered in Arizona, compared to Anglos who
 4 are registered at a rate of about 70.5 percent.
 5 Latinos are only registered at 52.2 percent.

6 As the Latino and other racial minority
 7 communities have grown and expanded their share of
 8 the U.S. electorate, some states have attempted to
 9 cap or even reduce the electoral strength of minority
 10 voters. This testimony will focus on one example of
 11 recent state laws that operate to limit Latino
 12 political participation, and that's Arizona's
 13 Proposition 200, formally known as the Arizona
 14 Taxpayer and Citizen Protection Act of 2004.

15 Arizona voters adopted Prop 200 and
 16 changed the voter registration rules to require all
 17 new voter registrants to provide documentary proof of
 18 U.S. citizenship. Those already on the voter roles
 19 were grandfathered in, an old phrase with which we
 20 are familiar, and don't have to show documents
 21 proving citizenship.

22 Following enactment of Proposition 200,
 23 over 30,000 individuals were rejected for voter
 24 registration in Arizona. Voter registration and
 25 community-based voter drives in Maricopa County

1 plummeted by 44 percent.

2 Because I only have a few minutes, I
 3 wanted to focus not on Proposition 200's broad
 4 disenfranchising effect, which is described in
 5 greater detail in my written submission, but in
 6 Proposition 200's special barriers for naturalized
 7 citizens.

8 My client, Mr. Jesus Gonzales, tried to
 9 register to vote on the day he took the oath of U.S.
 10 citizenship at a naturalization ceremony in Yuma,
 11 Arizona. He was excited. After over 30 years of
 12 being a permanent legal resident in the United
 13 States, he was going to become a U.S. citizen, and
 14 exercise the rights of citizenship, including voting.

15 He followed the instructions on the
 16 Arizona voter registration form and, as requested,
 17 provided the number of his certificate of
 18 naturalization, which he happened to be holding in
 19 his hand because he had just exited his
 20 naturalization ceremony.

21 Mr. Gonzales was promptly rejected for
 22 voter registration because the Yuma County Recorder
 23 was unable to confirm his citizenship using the
 24 number of his certificate of naturalization in the
 25 federal database. That's because the federal

1 database cannot confirm citizenship based on anyone's
 2 naturalization certificate number, although that is
 3 the number requested by Proposition 200.

4 Mr. Gonzales tried to register to vote
 5 again. This time, asking his daughter for help
 6 registering online using the Internet and going onto
 7 the website for the Arizona Secretary of State. He
 8 was rejected for voter registration again, either
 9 because the computer found that his driver's license
 10 was issued before 1996, or because he was coded as a
 11 foreigner in the driver's license database.

12 At trial, Mr. Gonzales testified that for
 13 many years he had been discriminated against as a
 14 fieldworker and somebody from Mexico, and that upon
 15 gaining citizenship he felt, once again, that he was
 16 being treated as a second-class human being.

17 The problems for naturalized citizens who
 18 tried to register are predictable and systematic to
 19 Proposition 200 and its implementation by election
 20 officials. And the impact is not insubstantial. In
 21 2012, over 13,000 individuals in Arizona naturalized
 22 and became eligible to vote.

23 As I mentioned previously, in addition to
 24 asking for a naturalization number that cannot be
 25 verified, the flaws in the Arizona Motor Vehicle

1 Division database create unique problems for
2 naturalized citizens. Most naturalized citizens got
3 their driver's licenses when they were permanent
4 legal residents of the United States.

5 And Arizona will put a code in the
6 database for the driver's licenses "F" for
7 "foreigner." Well, at least it's literal. And the
8 "F" does not show up on your driver's license. So
9 you don't know that you are "F" for "foreigner" until
10 some day, happily, you naturalize and then attempt to
11 use your driver's license to register to vote, in
12 which case, you are immediately flagged because, of
13 course, there is no system by which the Arizona Motor
14 Vehicle's database updates itself based on
15 naturalization records with -- with the federal
16 government.

17 The purpose of Prop 200's registration
18 requirement, as described in the statute, is to
19 combat undocumented immigration. However, Arizona
20 hasn't identified a single instance in which
21 undocumented immigrants registered or voted in
22 Arizona.

23 The federal court, once Mr. Gonzales and
24 others brought suit, found that there were only a
25 handful of instances in which noncitizens had

1 registered to vote, and even fewer in which
2 noncitizens had cast a ballot. Importantly, the
3 Court cited evidence that the small number of
4 noncitizens who had registered to vote had done so
5 mistakenly and without realizing that they were
6 ineligible.

7 In recent years, very public attempts by
8 election officials in other states to claim
9 widespread voter fraud by immigrants have met with
10 embarrassing failure. And, in my written submission,
11 I describe efforts in Florida and Colorado, and now
12 Kansas to whip up anti-immigrant fervor, and
13 conveniently, also, make it much more difficult to
14 register to vote by claiming that there are
15 noncitizens polluting the voter roll of their
16 particular state.

17 The voting restrictions of Prop 200,
18 ostensibly to curb registration by immigrants who are
19 not qualified, comes at a time when Latinos comprise
20 Arizona's fastest-growing citizen voting age
21 population, and Arizona is engulfed in an
22 often-heated debate about immigrants from Mexico
23 living in the state.

24 As Latinos strive to overcome the effects
25 of past exclusion from the political process,

1 Proposition 200 has operated to thwart Latino entry
2 into the electorate.

3 Last year in our case against Proposition
4 200, the U.S. Supreme Court declared that Prop 200
5 must yield to the National Voter Registration Act
6 when an individual seeks to register using the
7 federal voter registration postcard.

8 This decision provides some protection to
9 voters in Arizona who can still register using the
10 federal form, but, of course, as you know, Arizona
11 has now moved to split its voter rolls so that anyone
12 registered to vote in federal elections will not be
13 allowed to vote in state or local elections unless he
14 or she provides documentary proof of citizenship.

15 This move by Arizona will substantially
16 increase the cost of conducting elections and will
17 undoubtedly cause voter confusion as Arizona election
18 officials try to administer two sets of voter rolls
19 and two sets of ballots.

20 Although Latino registration and voting
21 rates do lag behind those of Anglos in Arizona and
22 elsewhere, Latino voters are steadily increasing in
23 number and achieving higher levels of voter
24 participation in each four-year cycle.

25 State practices that seek to freeze in

1 place the current electorate and limit the entry of
2 Latino voters can run afoul of federal law as we saw
3 to some degree in Proposition 200, as well as the
4 Constitution. And, most importantly, they are
5 fundamentally undemocratic.

6 Thank you.

7 MR. FANNIEL: Thank you very much.
8 Pastor Stewart, you're next.

9 MR. STEWART: Commissioners, thank you
10 for the opportunity to witness today testifying about
11 issues affecting African-American voters in Arizona.
12 My name is Warren H. Stewart, Sr., and I'm the senior
13 pastor of the First Institutional Baptist Church,
14 Phoenix, Arizona.

15 The right to vote came to millions of
16 African-Americans at a very high cost involving
17 blood, sweat, and tears, generations before and since
18 the Voting Rights Act of 1965.

19 In Arizona, where the African-American
20 population is less than five percent, issues
21 affecting African-American voters become pronounced
22 and challenging. I remember shortly after I became
23 senior pastor of the First Institutional Baptist
24 Church in Phoenix in 1977, hearing this state's
25 governor reminding a group of African-American

1 leaders meeting with him that we were only three
 2 percent of the State's population.
 3 The inference was that we should not
 4 expect more from Arizona government than our
 5 percentage of population warranted. Over 30 years
 6 later, African-American voters still face many issues
 7 that impede our right to vote.
 8 In gathering input from African-American
 9 leaders in Arizona, I offer the following as issues
 10 affecting African-American voters in Arizona.
 11 Check. Voting rights are subject to
 12 State regulations, which mean Arizona's laws are
 13 affected by the changes of political climate and
 14 leadership and have led to a regression in voter
 15 access, voter education, and voter participation.
 16 Check. Election laws passed under the
 17 super majority of the Republican-controlled State
 18 legislature have led to practices that favor the
 19 Republican party and the majority white population of
 20 Arizona.
 21 Check. Redistricting has often
 22 gerrymandered districts in favor of the Republican
 23 party and have diluted African-American's voter
 24 strength.
 25 Check. The very small percentage of

1 African-Americans in Arizona in any district makes it
 2 challenging to elect African-Americans to political
 3 office without an effective crossover appeal to
 4 non-African-American voters.
 5 Check. A tax on grassroots voter
 6 education and organizing by the Republican-controlled
 7 State legislature have led to criminalizing voter
 8 education, community led voter registration and
 9 ballot collecting, particularly in communities of
 10 people of color.
 11 Cost prohibitive voter identification
 12 requirements, for example, quasi poll tax for the
 13 required identification.
 14 Check. Voter disenfranchisement after
 15 not voting in two consecutive elections, as well as
 16 after committing felonies with no restoration of
 17 voting rights for most felons in State elections.
 18 Check. Identifying ballots clearly as to
 19 not appear like legal summons.
 20 Check. Possible two-tier voting system
 21 for federal and state elections.
 22 Check. Many African-Americans refuse to
 23 vote because they feel that issues affecting them
 24 daily are hardly ever addressed by elected officials.
 25 The aforementioned issues affecting

1 African-American voters in Arizona are an incomplete
 2 summary. It is my prayerful hope that this testimony
 3 has been helpful to the National Commission on voting
 4 rights.
 5 Thank you.
 6 MR. FANNIEL: Thank you, Pastor Stewart,
 7 for your testimony on African-American issues.
 8 At this time, we will go to Ms. Judith
 9 Dworkin.
 10 MS. DWORKIN: You got it right.
 11 Good morning. My name is Judith Dworkin,
 12 and I'm the managing partner of the law firm of Sacks
 13 Tierney here in Arizona and special outside counsel
 14 for the Navajo Nation on redistricting and election
 15 issues.
 16 I'm providing testimony of the Navajo
 17 Election Administration in Window Rock, Arizona, this
 18 morning. The Election Administration monitors all
 19 Navajo Nation election matters. This includes
 20 tribal, county, state, and federal elections.
 21 The Navajo Nation extends into three
 22 states: Arizona, Utah, and New Mexico, and includes
 23 11 counties within those three states.
 24 The Election Administration is
 25 responsible for ensuring that the voting rights of

1 the Navajo people are protected. The Navajo Nation
 2 has brought litigation against the counties and the
 3 states for voting rights violations, and these
 4 lawsuits have resulted in consent decrees, memoranda
 5 of understanding, and agreements for protection of
 6 Navajo voting rights.
 7 The Voting Rights Act has been essential
 8 in protecting Navajo voting rights. Although
 9 proposed laws may not intentionally discriminate
 10 against Native Americans, Native Americans often
 11 become the unintended casualties of these laws.
 12 Such laws include voter identification
 13 requirements, early voting laws, and changes to
 14 voting site locations.
 15 Adoption of these laws has an adverse
 16 impact on the ability of Navajos to exercise their
 17 Constitutional right to vote. A substantial number
 18 of Navajos still live in locations where there are no
 19 paved roads, no electricity, no running water, no
 20 stores, no governmental facilities, no employment, no
 21 street addresses, no immediate access to the
 22 amenities that urban Americans take for granted.
 23 The adoption of election laws developed
 24 for urban Americans often does not work as intended
 25 in Indian country. And the right to vote is too

1 important for the legislators and administrators to
2 fail to prospectively consider the impact of these
3 laws on Native Americans.

4 Most Native American tribes in the
5 Southwest have retained their native language. Many
6 tribal members have limited or no knowledge of the
7 English language. All of the 11 counties covering
8 the Navajo Nation are required to provide language
9 assistance under Section 203 of the Voting Rights
10 Act.

11 Despite the need for language
12 translations, some counties do not readily provide
13 these services in a manner to ensure that Navajo
14 voters can equally participate in the electoral
15 process. As a result, U.S. Department of Justice
16 filed actions alleging violations of the Voting
17 Rights Act which resulted in consent decrees and
18 agreements to ensure that Navajo language assistance
19 is provided to Navajo voters with limited English
20 proficiency.

21 The Navajo election administration
22 collaborates on voter education with election
23 officials from the 3 states and 11 counties. Through
24 these collective efforts, the election entities
25 develop voting materials in the Navajo language.

1 Although some Native American languages
2 remain unwritten, the counties in the Navajo Nation
3 developed a glossary of election terms in the Navajo
4 language. The Navajo glossary is used for
5 election-related projects on the reservation.

6 Materials, such as public service
7 announcements, poll worker instructions, ballot
8 language interpretation, and election terminology
9 translations are made using this Navajo glossary. In
10 order to maintain this uniformity, the Navajo Nation,
11 county, state, and federal governments need to
12 continue to work together.

13 Before each election the Navajo Election
14 Administration, along with county and state election
15 officials, translate ballot language from English
16 into the Navajo language. These translations are
17 used for voter education for the Navajo people so
18 they can better understand the ballots and the voting
19 process.

20 With the coordination and collaboration
21 of the federal, state, county, and Navajo Nation
22 officials, assistance is provided, as best as
23 possible, for the Navajo people.

24 While much progress has been made in
25 Section 25 and 20 of the Voting Rights Act, Navajos

1 still face problems at the polls and do not have the
2 same access to voting as other voters.

3 First, language translations are not
4 always available when early voting begins.

5 Second, there are limited early voting
6 hours on the reservation as compared to early voting
7 opportunities for off-reservation voting.

8 I see my time has ended. I have a few
9 more comments, if possible.

10 Third, the lack of permanent addresses
11 with which Mr. Gorman talked about. Navajos who are
12 registered to vote sometimes are not included on the
13 voter roster for the precinct or are turned away from
14 the polls. Navajos do not have the same access
15 because of the lack of language translation, lack of
16 early voting locations, distance to the post office,
17 and lack of transportation to get to the required
18 location.

19 In Arizona, this results in Navajo voters
20 being subject to the heightened voter ID requirements
21 when voting on election day, as compared to early
22 voters who are not required to show such
23 documentation.

24 The invalidation of the coverage form on
25 Section 5 preclearance in Shelby County v. Holder

1 raises concerns regarding implementation of existing
2 laws and adoption of new ones.

3 In conclusion, the Navajo Election
4 Administration appreciates the opportunity to present
5 this statement. We have more written comments, but
6 thank you very much.

7 MR. FANNIEL: Thank you. We appreciate
8 your comments. We will ask questions later.

9 Last, but certainly not least, we'll have
10 Steve Titla.

11 MR. TITLA: Thank you for allowing me the
12 opportunity to present testimony on behalf of Native
13 American voters. My name is Steve Titla and I'm a
14 member of the San Carlos Apache Tribe. I have been
15 active in representing the San Carlos Apache Tribe on
16 voting rights issues in the State of Arizona.

17 I'm also a Native Vote Election
18 Protection volunteer and have served the San Carlos
19 Apache Reservation in this capacity during the past
20 three election cycles.

21 I would like to discuss three issues with
22 the Commission: Redistricting, and the ongoing need
23 for Section 5 coverage in Arizona; access to the
24 ballot issues for Native American voters; and the
25 disparate impact voter ID has had on Native American

1 voters in Arizona.
 2 Redistricting. There are 22 tribes in
 3 Arizona, and approximately 27 percent of land in
 4 Arizona is located in Indian country. There have
 5 been widespread practices of discrimination against
 6 Native Americans in Arizona, and there have been
 7 numerous attempts to reduce the effectiveness of
 8 Native American voting strength.
 9 The San Carlos Apache Tribe has fought
 10 hard to be included in a Native American
 11 majority-minority district to ensure that the Apache
 12 voice is represented in the State. During the 2000
 13 election cycle, we were unsuccessful in advocating
 14 for inclusion in the Native American
 15 majority-minority legislative district and the Native
 16 American vote was diluted.
 17 The Commission did not enhance the only
 18 Native American majority-minority district in Arizona
 19 because of an aberration in high voter turnout of
 20 Native American voters resulting from the Proposition
 21 202 Indian Gaming Initiative. As a result, the
 22 effectiveness of the Native American vote was
 23 actually reduced because white voters were successful
 24 in preventing Native Americans from electing
 25 candidates of choice.

1 During the most recent redistricting
 2 cycle we were successful in presenting evidence to
 3 the Arizona Redistricting Commission that the Apaches
 4 should be included in the Native American
 5 majority-minority legislative district because we are
 6 a community of interest with other Native American
 7 voters.
 8 Because Arizona was covered by Section 5
 9 of the Voting Rights Act, the Commission took
 10 potential retrogression of the Native American vote
 11 into consideration and sought to maintain a robust
 12 Native American majority-minority district.
 13 Without Section 5, it is not clear that
 14 similar measures would be taken to analyze the voting
 15 strength of Native American voters in Arizona.
 16 Section 2 is not a viable alternative to
 17 Section 5 because of the expense and time involved in
 18 Section 2 lawsuits. Therefore, I recommend that
 19 efforts be made to update the coverage formula so
 20 that Section 5 can be effective again in Arizona.
 21 Second, access to the polls. During the
 22 2012 general election a number of issues were
 23 identified on reservations in Arizona. Common types
 24 of incidents included voters not found on the
 25 registration rolls; issues relating to provisional

1 ballots and voter identification; incidence of voter
 2 intimidation; problems with early ballot requests;
 3 long lines; and inadequate poll worker training.
 4 Issues relating to inactive lists, voter
 5 registration, and insufficient addresses on the voter
 6 registration rolls, and voters who left without
 7 voting based on some of the aforementioned issues.
 8 The most common problem reported in 2012
 9 was voters being turned away from the polls because a
 10 poll worker said they were not on the voter rolls.
 11 In many instances, the voters were not
 12 offered provisional ballots as required under the
 13 Help America Vote Act. At times, election protection
 14 volunteers were able to confirm a voter's
 15 registration and either sent the voter back to the
 16 polls because the voter's registration was confirmed
 17 or directed the voter to the correct polling
 18 location.
 19 Some voters complained because they have
 20 been voting at the same voting location for years and
 21 they now have to vote at a new location. This was
 22 fairly common in Whiteriver on the White Mountain
 23 Apache Reservation.
 24 In Whiteriver, for example, a voter
 25 exited the Whiteriver poll and spoke to election

1 protection volunteers because she was denied a
 2 ballot. She stated that she voted in Whiteriver
 3 during the primary, but now the poll workers told her
 4 she needed to vote in Graham County. The voter was
 5 confused as to the change in polling location from
 6 the primary to the general election. The change in
 7 polling locations was confusing for many of these
 8 voters.
 9 Another example of voters not found on
 10 the polls was in Apache County -- Still got a couple
 11 pages. I'm trying to read as fast as I can.
 12 MS. PROVINE: Can you abbreviate maybe?
 13 MR. TITLA: Yeah.
 14 There were other -- also other access
 15 issues. On some reservations, people waited from one
 16 to three hours to cast a ballot. In Whiteriver, poll
 17 workers told voters that they could not pick a person
 18 of their choice to vote for when the poll worker had
 19 denied the voter a ballot.
 20 Voter ID. In 2004, Arizona voters passed
 21 Proposition 202 in their attempt to combat alleged
 22 voter fraud at the polls. Proposition 202 requires
 23 all Arizona voters to present ID when voting in
 24 person on election day. This law resulted in a sharp
 25 decrease in the Indian voters in 2006 and

1 disproportionately impacted Native Americans for
 2 several reasons.
 3 First, Native Americans vote at the polls
 4 in higher numbers than off-reservation voters due to
 5 language translation issues, socioeconomic issues,
 6 and cultural reasons.
 7 Second, the types of ID initially listed
 8 as acceptable forms of proof did not take into
 9 consideration the types of documents that are easily
 10 accessible to Native American voters. It was found
 11 that some Native American voters had a very difficult
 12 time obtaining a photo identification from the
 13 Arizona Department of Transportation.
 14 One voter went to the Department several
 15 times only to be turned away because she was born at
 16 home and the Department would not accept her
 17 certificate of live birth document issued by the
 18 Bureau of Indian Affairs.
 19 In 2012, voter ID continued to be an
 20 obstacle for many Native American voters. Native
 21 vote volunteers sought to educate voters on the type
 22 of education voters needed to bring into the polls
 23 with them to vote. Too often poll workers would turn
 24 away voters who did not have proper ID rather than
 25 offer them provisional or conditional provisional

1 ballots.
 2 In some instances, the voters did have
 3 sufficient ID under the special procedures for Native
 4 American voters, but the poll workers did not accept
 5 it. Sometimes Native vote volunteers were able to
 6 troubleshoot the issue with voters to determine if
 7 they had valid ID under the special procedures for
 8 Native American instituted as part of the voter ID
 9 lawsuit.
 10 There were a number of voters who were
 11 not even offered provisional ballots if they lacked
 12 ID, and there were ballots not counted because of
 13 failure to provide ID.
 14 We still have a long way to go to make
 15 sure that Native American voters have equal access to
 16 the ballot box. We hope that issues can be improved
 17 so that Native voters are not discouraged from
 18 participating in the voting process.
 19 Section 5 is needed to ensure that Native
 20 American voters are not prevented from participating
 21 in voting.
 22 Thank you for the opportunity to present
 23 testimony. I would be happy to address any questions
 24 the Commission may have. I think the written
 25 testimony is submitted. Thank you.

1 MR. FANNIEL: Thank you very much. We
 2 appreciate your testimony. At this time, the
 3 Commissioners have questions.
 4 MS. LADELL-WILLRICH: I have a question
 5 for the panel -- the panel as a whole.
 6 Do any of you have an opinion with
 7 respect to the barriers to the voting -- voter
 8 registration that occurs in Arizona? If that has an
 9 impact on the number of people of color who are
 10 elected to office in Arizona?
 11 MS. PERALES: For my part, I would say
 12 that the ability to elect your preferred candidate to
 13 office turns not just on registration, but also two
 14 additional factors, which is turnout and the way your
 15 boundaries are drawn for your election district,
 16 districtwide or jurisdictionwide.
 17 And so thwarting voter registration is
 18 one component of reducing the ability to elect and
 19 can go hand in hand with efforts that reduce voter
 20 turnout or that impact the vote through
 21 redistricting.
 22 MS. DWORKIN: I'd like to sort of follow
 23 up with Ms. Perales' comment. As Mr. Eckstein
 24 commented on earlier, in Arizona, legislative
 25 districts included one Senate and then at-large two

1 representatives in the House. And what this permits
 2 is for, depending upon how the district is drawn,
 3 even in a majority-minority district, like a district
 4 in which the Navajo Nation is found, there can be
 5 single-shot voting in communities, such that you
 6 wouldn't be able to elect the first candidate of
 7 choice, but you elected the second candidate.
 8 So that in the period between 2002 and
 9 2010, but for the first election in which the gaming
 10 issue came up, the representatives from that
 11 district, which was the only Native American
 12 majority-minority district included a single Navajo
 13 for one of the seats, and someone from Flagstaff.
 14 So it would be two -- of the two elected
 15 from that district, which was at the time legislative
 16 District 2, one would be Navajo and the other would
 17 be a group from Flagstaff. And that's a concern that
 18 we have.
 19 MR. FANNIEL: Pastor Stewart, you
 20 mentioned in your statement that over 30 years ago
 21 you had a governor reminding you of the population of
 22 African-Americans here in the State of Arizona, and
 23 the reference that since you make up such a small
 24 population, then you should get just a small piece of
 25 the pie.

1 Today, do you feel that the attitudes
 2 still possessed in government today or with a lot of
 3 elected officials?
 4 MR. STEWART: Very much so. It is --
 5 There is a consensus among African-American leaders
 6 and community members that neither major political
 7 party takes African-Americans seriously because of
 8 our low percentage. And with the increase of Latino
 9 population, they -- they consider African-American
 10 voters virtually irrelevant. So I think it's worse.

11 And without throwing the name, that
 12 governor was a Democratic governor who reminded us we
 13 were only three percent.

14 MS. PROVINE: I have a question. I have
 15 a question for Ms. Perales. On this naturalization
 16 issue, is this fixable as far as you can determine
 17 from your own research? I'm thinking particularly of
 18 requiring the DMV to be at all naturalization
 19 ceremonies since it actually is important on your
 20 driver's license and in their database whether you're
 21 marked as a foreigner or a citizen, or maybe a
 22 technological fix, or would you direct your efforts
 23 in a different direction?

24 MS. PERALES: Well, after we brought the
 25 lawsuit, after Mr. Gonzales and others sued Arizona,

1 The other issue, which I didn't mention
 2 with respect to naturalization, is that, while
 3 registering under Prop 200, the law allows you to
 4 photocopy your passport or your U.S. birth
 5 certificate, but the law as it's written does not
 6 allow you to photocopy your naturalization
 7 certificate. And the law as written says you must
 8 present it in person.

9 And some counties then informally began
 10 to say to people, Well, we'll take the photocopy of
 11 naturalization certificate, but the additional
 12 problem is that the naturalization certificate itself
 13 says that it is a crime to photocopy it for purposes
 14 outside of law, which is kind of a vague phrase that
 15 strikes fear in people, especially if your
 16 certificate is new.

17 And so there is this tension around the
 18 naturalization certificate also with respect to
 19 whether in-person registration is required, and
 20 that's never been resolved.

21 And then, finally, I wanted to mention
 22 that there are persons who do not have documentary
 23 proof of citizenship, including young people who
 24 naturalized by operation of law when their parents
 25 formally naturalized. Such young people do not

1 Arizona tried to attempt to fix some of the problems
 2 that were in Proposition 200. And a naturalization
 3 issue in Prop 200 isn't the only drafting problem
 4 there. It does list as several items of proof of
 5 citizenship: Native American documents that don't
 6 exist and immigration documents that don't exist.

7 But putting that aside and just focusing
 8 on naturalization, Arizona tried to fix the problem
 9 to some degree by asking naturalized citizens to
 10 provide the number, their alien registration number
 11 which, for some people, is printed on their
 12 naturalization certificate, not for others.

13 So Arizona did make an attempt in
 14 litigation to try to reduce its liability. It has
 15 not tried to fix the problem with Motor Vehicles.
 16 And, certainly, updating Motor Vehicle's records
 17 based on naturalization information would go a long
 18 way towards fixing this problem.

19 Being present at naturalization
 20 ceremonies, though, I'm not sure would fix the
 21 problems because not everybody stops at a table when
 22 they do leave the naturalization ceremony.
 23 They're often there with lots of relatives, everybody
 24 is very excited, you might have lunch planned. So
 25 not everybody stops, although many do.

1 receive a naturalization certificate or any other
 2 document and would have to write away to the federal
 3 government to either get a U.S. passport or a
 4 certificate of citizenship in order to even have a
 5 document demonstrating citizenship for Proposition
 6 200.

7 So, yes, there are things that can be
 8 done to make it better. I'm not sure that it will
 9 ever be completely fixed unless you were to rewrite
 10 the statute or strike it down.

11 MR. FANNIEL: Another question I had, and
 12 anybody else could answer this if they know.

13 We hear constantly in discussions about
 14 voter fraud that noncitizens have attempted to vote.
 15 Admittedly, the numbers that can be verified are
 16 absolutely tiny.

17 I also suspect that a lot of those
 18 suspicious voters are probably legal permanent
 19 residents who get confused rather than the real
 20 target of concern in this state of people who are
 21 utterly without legal status.

22 Do you have any data on that?

23 MS. PERALES: Well, that information was
 24 brought forward in the Gonzales litigation. Arizona
 25 has never identified an undocumented person who

1 registered or voted in the state. And those people
2 who were, that very small handful of people who did
3 register while they were not citizens were legal
4 permanent residents or other people with status who
5 were confused about their eligibility to register.

6 And I think we have to recognize that
7 there is a tiny number of noncitizens who mistakenly
8 register and probably look at that in the context of
9 other people who mistakenly register.

10 So, for example, some people own two
11 homes in two different states and they do register in
12 both places by mistake.

13 It's, again, a very tiny number of
14 people. So there is some error along the edges of
15 our voter rolls. Certainly nothing has drawn the
16 kind of vociferous remarks and comments as the
17 noncitizen. And it relates really to old narratives
18 around the purity of the ballot that have been used
19 historically to disenfranchise minority voters.

20 MS. PROVINE: Of course, if you go back
21 far enough, many of the Western states allowed
22 noncitizens to vote in order to attract population,
23 but we won't go there right now.

24 I do want to ask the panel in general.
25 This is my last question.

1 that effort and I wanted to recognize that.

2 MS. PERALES: Thank you.

3 MR. LEWIS: I also have a question for
4 Steve, in relation to the San Carlos Apache Tribal
5 Government and its coordination with the surrounding
6 counties. You addressed a number of issues, and are
7 you getting good cooperation and coordination in some
8 of those issues and the counties and their resources
9 regarding the education, and as-needed, to increase
10 the voter participation of the San Carlos Apache
11 Tribal citizens?

12 MR. TITLA: I think that's the issue I
13 talked about earlier. Thanks for your question.

14 We're getting some cooperation, but it's
15 still not enough to gain full access to the voting in
16 the election. We have three counties. We're in
17 three counties. We're in Pinal County, Gila County,
18 and Graham County and so we have to vote in those
19 areas.

20 But I think that the people that work in
21 the counties, the elections, the state, county,
22 federal elections, they try to help, but I don't
23 think they have the funding. The voter outreach, the
24 voter education necessary to really access all
25 Apaches.

1 Reverend Stewart mentioned the problem of
2 discouraged voters because of lack of representation
3 in the legislature and lack of addressing of the
4 issues of the community. And I wonder if others of
5 you -- or perhaps we would want to elaborate on that,
6 Dr. Stewart -- see a kind of a vicious cycle working
7 between lack of access that ends with lack of what we
8 might call effective representation that leads to
9 discouragement that goes back to lack of access, so
10 that it becomes a kind of a self-perpetuating cycle
11 that needs to be broken if we're going to have an
12 effective democratic process.

13 MR. STEWART: Well, that's very much so.
14 I encountered that in the recent city council
15 election, and there were people who just said,
16 There's no reason to vote. It's not going to make
17 any difference. So I encountered that much in the
18 last city council election.

19 MR. LEWIS: I want to take the
20 opportunity at this time to thank Nina Perales for
21 her role in Arizona, and also along with her time in
22 Arizona, her participation in the issue in last
23 year's U.S. Supreme Court decision that Arizona
24 Proposition 200 must yield to the National Voting and
25 Registration Act. And she's had an exemplary role in

1 Apaches want to vote, but they just don't
2 have the access to the areas. Therefore, this
3 results in the lack of choice to vote for your choice
4 in office.

5 I think earlier, you had discussion by
6 the Honorable Willrich about the impact. We don't
7 have the chance to vote. We don't have the choice in
8 the election because of the area.

9 And then the other question that we got
10 was by Professor Provine about voting fraud. We
11 don't have voter fraud because we don't have a chance
12 because we can't vote.

13 Thank you.

14 MR. FANNIEL: Were you about to say
15 something?

16 MS. DWORKIN: I was going to respond to
17 the question about frustration of voters. I think as
18 Steve Titla has indicated, the Native American voter
19 is very, very interested in exercising their
20 franchise because it is so new. For many older
21 Native Americans, they have seen that change in their
22 lifetimes.

23 And so eligible Native American voters
24 who speak no English will go to the polls and have
25 someone translate into Navajo what will take

1 sometimes an hour with all the ballot propositions in
 2 order to be able to exercise their election
 3 franchise.
 4 And they are very, very interested in
 5 doing that. And, particularly, the voter ID
 6 requirement which doesn't occur if you early vote,
 7 but which is so difficult to do for very many of
 8 these Native American voters has become an incredibly
 9 problematic issue, particularly on the Navajo
 10 Reservation.

11 MR. FANNIEL: I want to pose a question
 12 either one of these panelists can answer.

13 How do you feel the laws -- if you feel
 14 like the laws -- the proposed laws are racially
 15 discriminatory and have an impact on your community?

16 And the second question is, what is the
 17 number one barrier affecting your community? So
 18 either one can answer that.

19 MS. PERALES: I don't think there's any
 20 question that Proposition 200 was racially
 21 discriminatory. If you look at the proposition
 22 itself, it talks about noncitizens, and specifically
 23 undocumented people, the vast majority of whom in
 24 both categories are Latino in the State of Arizona,
 25 stealing the value of citizenship from the real

1 and leadership of the State of Arizona.

2 And I agree with my fellow panelist's
 3 witness that it's couched in a language that's not
 4 racist, but the intent is to discourage and decrease
 5 the number of -- of the participation, I believe, in
 6 people of color in the State of Arizona.

7 MR. TITLA: My response on the question
 8 is that I'd like to talk about the election. In one
 9 district, San Carlos Apache district, that's where
 10 I'm from. It's where the good Apaches are from, by
 11 the way.

12 In that district, they have over 90
 13 percent voting in that district on the Apache
 14 Reservation for tribal elections. And then we get to
 15 a county, federal, state elections, and I think the
 16 end result of Proposition 202, the numbers showed
 17 that there's a sharp decrease in the voters in 2006,
 18 is that this unfortunately impacts Native Americans
 19 for several reasons, as stated earlier.

20 I think that is a very interesting impact
 21 on the voting population.

22 MR. FANNIEL: Anyone else?

23 Thank you so very much. I appreciate
 24 your testimony and your time today.

25 MS. FERGUSON-BOHNEE: At this time, we're

1 citizens of Arizona.
 2 The language of Proposition 200 is
 3 heavily laden with racial ideas, even though they're
 4 couched in terms of immigration because immigration
 5 is often used as a code word for Latino. And many
 6 Latinos feel that anti-immigrant hysteria is being
 7 not only an immigrant, but also as Latinos who are
 8 U.S. citizens.

9 And certainly the fight over Arizona
 10 SB1070 and the whole idea of being stopped because
 11 you look possibly undocumented, which kind of boggles
 12 the mind of many native-born Latinos and Native
 13 Americans, to be honest. I don't think there's any
 14 doubt, and certainly there's no doubt in my mind that
 15 Proposition 200 was aimed at the issue of race.

16 MR. FANNIEL: Thank you.

17 Anyone else?

18 MR. STEWART: Most recent legislation
 19 last year, I think it's House Bill 2305, that
 20 definitely -- the intent appears to be a way to ward
 21 off an increasing number of people of color who are
 22 -- who are citizens in the State of Arizona and who
 23 are either voting or registered to vote that -- that
 24 as people of color, coupled with if they become
 25 active, it will change the whole political climate

1 going to move into public testimony and I have some
 2 cards of individuals who have submitted requests to
 3 speak, and I'd like to call those individuals forward
 4 one at a time.

5 The first individual, and I apologize but
 6 I think I'm going to say this name wrong is Rivko
 7 Knox, from the League of Women Voters in Arizona.

8 MS. KNOX: You pronounce it Rivko Knox.
 9 The hat I'm wearing today is on behalf of the League
 10 of Woman Voters of Arizona, and this is the statement
 11 that we submitted in writing on behalf of the
 12 president of the League of Women Voters of Arizona
 13 whose name is Robyn Prud'homme-Bauer, whose name I
 14 can't pronounce correctly.

15 I won't read all of it because time is
 16 short, and, of course, where I stand I can't see the
 17 time cards, so it's a problem.

18 The League of Women Voters of Arizona,
 19 which is also first open to many and has many male
 20 members is excited to be here today to give our
 21 testimony and acknowledge our organization and
 22 experience in Arizona.

23 The League was founded by activists who
 24 secured voting rights for women in 1920 and formed
 25 the basic principle of the organization, which is a

1 belief that every citizen has a right to vote.
 2 Since then the League has always worked
 3 to protect the voting rights for all Americans,
 4 assure opportunities for citizen participation and
 5 work for open, accountable representatives and
 6 responsive government at every level.
 7 We support the rights of all citizens to
 8 vote and encourage all citizens to vote in individual
 9 liberties guaranteed by the Constitution of the
 10 United States. And although our focus is not in the
 11 testimony, I've heard many people talk about the
 12 inability of smaller groups, minority groups to get
 13 people elected.
 14 We'd also very strongly support choice
 15 voting which you all ought to look into. During the
 16 '80s and '90s, we were having the lobby and
 17 organization of Voting Rights Act and then passage
 18 and implementation of the National Voter Registration
 19 Act, and we work for -- we advocate for compliance of
 20 existing laws and regulations, such as the National
 21 Voter Registration Act of 1993.
 22 In 2006, the National League launched
 23 something called Public Advocacy for Voter Protection
 24 Project. And by the early 2010, the Public Advocacy
 25 for Voter Protection had the standard to 18 states

1 and targeted state-based advocacy.
 2 In 2008, the League of Voters in Arizona
 3 was given a grant to do a project. The goal was to
 4 provide voter protection to underrepresented voters
 5 such as Latinos, Native American communities, urban
 6 central voters. At that time, the League developed a
 7 very public campaign because of the voter ID lawsuit
 8 the League was involved in.
 9 So we developed a very modest plan that
 10 we thought was doable, not involving the legislature.
 11 And one of the goals of the project which was voter
 12 database management. The specific objective to the
 13 project was to improve the rate in which eligible
 14 voters were being registered through the motor
 15 vehicle department and state offices that provide
 16 public assistance, DES, prior to 2010 election.
 17 For the 2008 project, we surveyed 111
 18 people who came to the DES offices and went to 18 DES
 19 offices in four counties: Maricopa, Pinal, Pima, and
 20 Coconino. Here are some of the overall findings.
 21 Only one office had voter registration applications
 22 in the waiting area.
 23 Only 5 of the 18 reported that they
 24 automatically provided the voter registration
 25 application with the initial benefits application.

1 No opposition that they provided voter
 2 registration application with an address change
 3 report. And only one office asked the person being
 4 surveyed for this project if he or she would like to
 5 register to vote. I know a lot of this is outlined
 6 now and more people are using it.
 7 So overall, Arizona DES offices did not
 8 seem to provide voter registrations in a consistent
 9 manner. A small outcome of this project was to have
 10 the DES offices agree to post signs stating that
 11 voter registration applications were available.
 12 Today, we focus on education and advocacy
 13 and we -- both the Arizona League and the League of
 14 Voters of United States were involved in the Supreme
 15 Court ruling voting rights case Arizona versus Inter
 16 Tribal Council of Arizona which examined whether the
 17 National Voter Registration Act prevented states from
 18 passing laws that restrict the voter registration
 19 process. The Supreme Court, of course, upheld the
 20 NVRA resulting in a victory for voters.
 21 Because of the recent actions of the
 22 Arizona State Attorney General, the Arizona League
 23 continues to work to protect voters as we have sought
 24 to intervene as defendants in the case Kobach,
 25 et al., v. U.S. Election Assistance Commission, along

1 with the League of Woman Voters of the United States
 2 and the League of Woman Voters of Kansas.
 3 So, in summary, we continue to work to
 4 secure the rights to vote for everybody. It started
 5 with women but have now moved on to all potential
 6 registered voters, and for all of the people to have
 7 access to the polls. And we will continue to do so
 8 to work to close the door to voter discrimination.
 9 As I said, this is a statement in the
 10 record on behalf of the president of the League of
 11 Woman Voters of Arizona.
 12 Thank you all.
 13 MS. FERGUSON-BOHNEE: Thank you.
 14 Could you sit right there in case the
 15 commissioners have any questions for you, or stand?
 16 That's fine.
 17 Anyone have any questions for her? Okay.
 18 Thank you.
 19 All right. Our next presenter is Tonya
 20 Norwood, President of the National Organization for
 21 Women.
 22 MS. NORWOOD: Commissioners Provine,
 23 Willrich, Lewis, and Ferguson, thank you for the
 24 opportunity.
 25 Voting ID laws, provisional ballots,

1 fewer voting locations in districts that need more,
 2 boundaries, manipulations, redistricting.
 3 Proposition 200, misuse of provisional ballots, poor
 4 training for poll watchers, questioning felony
 5 status, and redirecting to different locations.
 6 Al Sharpton said, We are no longer
 7 challenged by Jim Crow laws, we are now struggling
 8 against his offspring, James Crow, Esquire.
 9 My name is Tonya Norwood, and I stand
 10 before you first and foremost as a mother; secondly,
 11 as a citizen, a member of Delta Sigma Theta Sorority,
 12 Incorporated, and the president of the National
 13 Organization for Women, Phoenix metropolitan chapter.
 14 I have witnessed the 1965 Voting Rights
 15 Act sidestepped through legislation, print, and
 16 practice propaganda, intellectual intimidation. You
 17 see I was a candidate in 2012.
 18 The one thing that we did that validates
 19 my standing here today is on election day, we sent
 20 out over 30 members of my campaign to elections
 21 polling places and we asked them not only to be
 22 involved with direction, but be poll watchers and to
 23 also report back.
 24 You see, we hired lawyers to be at our
 25 campaign headquarters to retrieve calls and respond

1 changes. I would like to utilize the model -- the
 2 Pima County model, which they have a separate
 3 commission on voting integrity. Now, that is amazing
 4 to me.
 5 I love the idea that there were a group
 6 of people that said, We need outside help on
 7 maintaining integrity in our -- in our area.
 8 Secondly, expand our voting model.
 9 Washington State and Oregon have done this. They
 10 have come up with innovative ways. And I'm going to
 11 go backward and then go forward.
 12 This year -- I'm sorry. Last year,
 13 Oregon was the first state to vote by iPad. Now,
 14 that's a bit much. You know, that's a bit much. But
 15 I'd like to point out that these two states vote by
 16 mail.
 17 Now, I don't know if that's totally
 18 feasible, but I do like the idea of voting by mail
 19 with municipality voting locations, which means you
 20 cannot only, you know, have a comfort of your own
 21 home of voting, being able to do the research. But
 22 you also, for those of us who like to go down and get
 23 our stickers, you have the opportunity to show your
 24 pride.
 25 Now, why does this help? That totally

1 to issues. Why did we do this? We did this because
 2 prior to the election cycle on the dates that were
 3 set, letters were sent out saying the wrong date,
 4 saying the wrong time, saying the wrong places,
 5 predominantly, in Latino areas.
 6 We also found out that there were people
 7 out there coming up with their own ways of
 8 discrimination, which were through local -- let's
 9 call them, clubs, which would tell people not to
 10 vote, which would tell people that they don't have
 11 the right to vote because maybe they were in the
 12 law -- had issues with the law.
 13 Well, I'm here not to complain. I'm here
 14 to offer solutions. We have made some strides within
 15 the State of Arizona by the installation of an
 16 Arizona Independent Redistricting Commission, which
 17 is continuously challenged. But the two solutions I
 18 would like to talk about today are, first and
 19 foremost, to expand access to our polls, which is
 20 directly addressed under Section 5, and to remove
 21 barriers to our voting population.
 22 The first way I'd like to talk about --
 23 the first thing I'd like to talk about is an
 24 independent commission on how we access our voting
 25 law, what changes are made, and if they are just

1 eliminates the voter suppression at the polls. I
 2 witnessed this. I know for a fact there's
 3 intimidation factors that go on there. If you are
 4 not -- if you're in my living room, you're there
 5 because I asked you to be there.
 6 If I am discussing my vote, I'm doing it
 7 because I want to, not because you're quizzing me.
 8 Those are the two areas of solution that I offer that
 9 I will pursue and that I --
 10 Time's up. Thank you for your time.
 11 Commissioners, thank you.
 12 MS. FERGUSON-BOHNEE: Thank you. I do
 13 have one question. So if you could just take a seat
 14 right there. And then anyone else has a question,
 15 they can follow up.
 16 Ms. Norwood, I just wanted to follow up
 17 because you said that there were letters sent out
 18 with the wrong date during the election that you were
 19 discussing. Can you let us know the time frame for
 20 that and who sent those letters?
 21 MS. NORWOOD: I do not want to misspeak.
 22 I do not have that -- I do have a copy of it, but I
 23 do not have it with me. Let's just say it was a -- a
 24 strategic letter through an organization that knew
 25 what they were doing, and it was definitely -- I know

1 there was mostly in Spanish and the timing was, I do
 2 believe, two weeks before the actual November voting
 3 date.
 4 MS. FERGUSON-BOHNEE: The 2012 general
 5 election?
 6 MS. NORWOOD: Yes.
 7 MS. LADELL-WILLRICH: Okay.
 8 Ms. Norwood, one of the things that you
 9 mentioned was felony disenfranchisement. Do you
 10 believe that felony disenfranchisement laws are
 11 outdated?
 12 MS. NORWOOD: I'm sorry. They're
 13 outdated?
 14 MS. LADELL-WILLRICH: Outdated.
 15 MS. NORWOOD: Oh, definitely. I believe
 16 that the laws themselves need to be revisited and
 17 revised.
 18 MS. FERGUSON-BOHNEE: Any other
 19 questions? Okay. Thank you very much.
 20 Our next presenter is Bishop Jeff
 21 Metcalfe from the National Action Network.
 22 MR. METCALFE: Good afternoon to you. I
 23 am Bishop Metcalfe, president of the National Action
 24 Network in Arizona under the leadership of Reverend
 25 Al Sharpton. I have just a couple comments today.

1 paper.
 2 Hispanics and African-Americans were
 3 automatically handed provisional ballots before they
 4 even asked if they needed one. I have been a
 5 resident, though I have a couple homes in -- the same
 6 home for over 20 years. The person they had
 7 volunteering did not know me from Adam and I did not
 8 identify myself until I had to sign in.
 9 One minute left already. Three minutes.
 10 Okay. Thank you.
 11 And so when I approached that person
 12 about, "Why are we getting a provisional ballot?"
 13 they apologized to me and then asked me the question,
 14 "Are you a resident of -- is this your area to vote
 15 in?" I witnessed that.
 16 I also witnessed a letter from one of my
 17 church members that went out a few weeks before the
 18 election telling them a different date on when to go
 19 vote.
 20 I also witnessed someone having to come
 21 down and take the train we have here, the new train,
 22 and at a certain time, it's 2 o'clock and they had a
 23 group of people telling people on the train that most
 24 Hispanics are illegal to vote, and most
 25 African-Americans are felons.

1 I want to thank you all for having this
 2 voting rights in the State of Arizona and allowing
 3 the citizens to be heard, and for what they have
 4 shared with us today is very helpful. I have a few
 5 concerns.
 6 A couple of my concerns have been already
 7 somewhat mentioned, but I want to talk a little bit
 8 about I made a phone call on election day and I did a
 9 follow-up call. It was an 800-number stating that if
 10 you need some information about federal observers or
 11 having more observers at the polls to call and let
 12 them know what was going on.
 13 Some things that troubled me on the 2012
 14 election and I witnessed it with other people. I'm
 15 not only the president, but I am the Bishop of four
 16 churches, so I have a very multi-cultured church and
 17 I saw a lot of things happened.
 18 One of the things that happened was when
 19 we were in line, they were giving out provisional
 20 ballots before they even knew if a person needed
 21 provisional ballots. And this is the way I saw it
 22 going. There were lines of people, that if you
 23 were -- to me, it seemed, if you were Anglo -- if you
 24 were a white American, they didn't ask you any
 25 questions. They gave you some kind of a voting

1 These are the kind of things that I want
 2 to address because I have a multi-cultural church and
 3 most of our Anglo or white members never was
 4 approached, never saw these kind of letters until
 5 they came by the church and I showed it to them.
 6 And so I want to bring to your attention
 7 that I am asking the State of Arizona, especially, to
 8 have more federal observers.
 9 Also, intimidation was very heavy.
 10 People can do a couch intimidation and don't need to
 11 be very out front with it. But there were a lot of
 12 innuendos to people that were in line.
 13 Again, we were in a line that we had been
 14 a resident of over 20 years, always go to vote, and
 15 then assumptions were made when we entered the room.
 16 And so we got to find out who these volunteers are,
 17 what they're being taught, and who is talking to
 18 them. That's all I can say in the few minutes I
 19 have.
 20 I wanted to be a part of the panel
 21 discussion today, but, however, somehow we got this
 22 information going back and forth five times. On the
 23 fifth time, somebody said, We'll add you to a
 24 sponsorship, but Reverend Sharpton asked for two
 25 weeks straight through e-mails to put us on that.

1 Thank you very much. God bless you.
 2 MS. FERGUSON-BOHNEE: Yes, thank you.
 3 Can you stay at the microphone for one
 4 second because I have a question and I appreciate
 5 your sharing of this information.
 6 The first thing, I don't know if you're
 7 willing to share, but I think it's very important, is
 8 if you can share the county of the polling location
 9 you were in or if you know the name of it, because I
 10 think that kind of information is very important
 11 to --
 12 MR. METCALFE: Maricopa County.
 13 MS. FERGUSON-BOHNEE: Okay. Maricopa.
 14 MS. PROVINE: I have a question. Sorry.
 15 Did -- When you looked at the election
 16 workers that were in that polling place, these are
 17 people who were not part of your community? Nobody
 18 knew them? They were simply sort of dropped in from
 19 another place? Is that the situation?
 20 MR. METCALFE: I want to say that Arizona
 21 is growing. We used to know everybody in a small
 22 town. These people I did not recognize. Although I
 23 did recognize two of them, yes, I did. And the two I
 24 recognized were just doing as they were told. The
 25 ones that were doing most of the talking, I did not

1 recognize. They're new into the West Valley.
 2 MS. PROVINE: So you had the sense that
 3 they were instructed in some way that was intended to
 4 be at least somewhat intimidating?
 5 MR. METCALFE: Absolutely. Handing me a
 6 provision ballot, me being a citizen and a resident
 7 all these years and well-known in the area was an
 8 outright disgrace -- and my wife.
 9 MR. FANNIEL: Two questions. Did you --
 10 You spoke with, I guess, perhaps maybe the supervisor
 11 on a site there. Did you file a complaint with the
 12 election department? And the second piece of that
 13 is, do you have any letters that you were speaking
 14 about?
 15 MR. METCALFE: I had no idea that we were
 16 going to have this wonderful meeting today in
 17 Arizona. Had I known that, I would have kept them as
 18 record. I don't have a letter, but I can ask Sonny.
 19 I do know the members who the letters were given to,
 20 and I can ask them if they still have the letters.
 21 In the future, those kind of letters will be kept.
 22 As far as calling a number, I did call
 23 the number and I spoke to the person there. They
 24 were very disappreciative (sic) of me speaking about
 25 any kind of discriminatory or any kind of unbalanced

1 -- at the election sites.
 2 And I did call the -- there's a number
 3 you call to ask, you know, if anybody was talking
 4 about having federal appointers there. I think they
 5 said they will have this in the next discussion. I
 6 did not know we were going to have a meeting like
 7 this. I'm happy we're having one.
 8 I have a special ballot in the future
 9 waiting for someone who wants to listen. There used
 10 to be a song, I'll give you 25 cents and tell
 11 somebody who cares. I called and I called. It takes
 12 a long time to get through. When I finally got a
 13 hold of somebody, the conversation was just very
 14 short.
 15 MR. FANNIEL: Thank you very much.
 16 MS. FERGUSON-BOHNEE: Thank you. We
 17 appreciate it.
 18 Our next speaker is Vince Rabago.
 19 MR. RABAGO: Thank you, members of the
 20 Commission. Again, my name is Vince Rabago. I'm a
 21 former Assistant Attorney General with the State of
 22 Arizona, and prior to that, I was a California
 23 Attorney General. Now, I'm in private practice.
 24 I've worked on election matters at the
 25 trial court level and before the Arizona Supreme

1 Court, and I've also previously last year served on
 2 the Redistricting Commission for the City of Tucson.
 3 Last year -- and I've also served in
 4 political positions. I'm the former chairman of the
 5 Democratic County of Pima County. I'm currently the
 6 chairman of the Latino Democratic Caucus in Pima
 7 County, and I've been active in politics. In my
 8 government work, I served with Republican
 9 administrations and Democratic administrations.
 10 And this past election cycle, afterwards,
 11 I was approached by both former elected legislator,
 12 an election attorney, and also former candidates for
 13 office -- or candidate for office who expressed to me
 14 their direct experiences with efforts to suppress
 15 Latino voters and communities of color in Arizona in
 16 the last election cycle.
 17 And so on their behalf, and I'll be
 18 giving copies, both electronic and paper, with the
 19 Commission of a complaint that I filed on their
 20 behalf with the United States Department of Justice
 21 last June just before the Shelby County decision that
 22 was issued.
 23 So I wanted to just briefly give you an
 24 overview of what was -- what we found to be occurring
 25 in three different counties in the State of Arizona,

1 both with respect to private efforts to suppress
 2 voting as well as government-related efforts.
 3 First, a former lawmaker, Ted Downing and
 4 an election attorney named Bill Riley contacted me
 5 and provided affidavits, which are here under penalty
 6 of perjury, which you will have at your disposal,
 7 regarding outside efforts using deceptive
 8 Spanish-automated phone calls known as robocalls into
 9 Pima County deceptively telling Spanish-speaking
 10 voters that it was a call from a purported federal
 11 election center and that they had to bring their
 12 identification documents in Spanish to the poll in
 13 order to vote. And as everyone here ought to know,
 14 Arizona certainly does not provide any identification
 15 document in Spanish.
 16 The -- Both of these gentlemen heard the
 17 calls and provided affidavits. We tracked the calls
 18 to a switchboard in Pennsylvania, and we don't know
 19 who was behind those automated calls to suppress the
 20 vote because people would certainly not go to vote if
 21 they didn't have the right identification.
 22 The other section of misconduct that we
 23 discovered and presented to the U.S. Department of
 24 Justice involved Yuma County. And on behalf of a
 25 former candidate for sheriff in Yuma County,

1 Mr. Ricardo Sandoval, a retired federal law
 2 enforcement officer who ran for sheriff. Members of
 3 his family and other Democratic Latino voters
 4 actually received the wrong party ballot during the
 5 primary election cycle.
 6 It's unknown how many, but there were
 7 many reports of that happening. And it was quite a
 8 hassle, particularly for elderly voters of any
 9 community, whether they be African-American, Native
 10 American, or Hispanic to go down and have to deal
 11 with finding out why they're getting the wrong
 12 party's ballot to vote. And there's affidavits under
 13 penalty of perjury to that effect.
 14 There were other activities in Yuma
 15 County. I'm sure there are some other speakers here
 16 today. I believe they've testified about the
 17 problems we've had in Yuma County. But the
 18 inaccuracy of the number of ballots that were
 19 presented at various poll locations led to huge
 20 lines, particularly in minority areas, precinct
 21 polling locations.
 22 And many people, hundreds and hundreds of
 23 people, according to these affidavits and witnesses,
 24 simply did not vote because they could not wait hours
 25 and hours and hours to be able to be have access to a

1 ballot.
 2 There were other activities involving
 3 other violations of federal law, including the hat
 4 jack who had deputized law enforcement officers,
 5 obtaining signatures for the Republican sheriff
 6 candidate from Latino voters, who certainly felt
 7 pressure apparently to sign to get these people on
 8 the ballot, when you have an armed law enforcement
 9 officer asking for your signature to get a certain
 10 person on the ballot. Those issues happened as well.
 11 And then finally, and some people I'm
 12 sure will talk a little about this. The issue that
 13 happened here in Maricopa County. And I'm not sure
 14 if there was an allusion to it with your former
 15 speaker that just finished a few minutes ago,
 16 Ms. Norwood, but in Maricopa County you had official
 17 government activity with respect to official
 18 government documents from the county recorder's
 19 office that actually had the correct election date in
 20 English, but the incorrect election date in Spanish.
 21 Two separate sets of documents.
 22 There's the old saying, you know, fool me
 23 once, you know, shame on me -- you know the old
 24 saying -- but twice. It was quite astounding. And
 25 there were many efforts in Maricopa County to get

1 newly registered voters, predominantly Latino and
 2 other people of color, to vote with respect to the
 3 sheriff's election.
 4 And as a direct result of those efforts,
 5 there were misleading reports that were allowed to
 6 stand by government officials here in Maricopa County
 7 suggesting that it was illegal for one person as a
 8 volunteer to take another person's ballot in.
 9 Thereafter, the Arizona legislature, this
 10 last session, changed the law, the HB2305, to make it
 11 a crime for organizations to help gather ballots and
 12 take them into polling locations.
 13 So there are many activities here across
 14 the state. I don't know of anyone else that
 15 submitted something involving the entire state of
 16 Arizona, but we did submit this complaint. The
 17 Department of Justice did receive it and we've heard
 18 nothing further.
 19 So we're grateful today to have the
 20 opportunity to present these issues to the Commission
 21 for their review. Certainly, issues such as Voting
 22 Rights Act, Section 4, of the quota of numbers, the
 23 preclearance, the statute needs to be authorized and
 24 changes need to happen.
 25 I'll sum up by saying this: I think

1 Justice Ginsburg said it best in her consent in the
2 Shelby County decision; and that is, When you cut off
3 one head of the snake, many more arise. And that's
4 the situation we find ourselves here both in Arizona
5 and across the country.

6 You stop at one specific type of
7 activity, which is designed to suppress voting, and
8 they find many others, whether they be through laws
9 or other types of activity.

10 MS. FERGUSON-BOHNEE: Thank you very
11 much.

12 You have a question?

13 MS. PROVINE: Thank you very much for
14 clarifying that it was actually an official
15 government activity, that incorrect date in the
16 Spanish ballot information. It's good to have that
17 in the record.

18 I want to ask you, you mentioned a
19 switchboard in Pennsylvania. We haven't talked yet
20 in this hearing about outside influences that are
21 making it harder to vote in Arizona, and I don't know
22 whether you're the right one to ask about this. But
23 a lot of observers say that Arizona is on the cusp of
24 a major political change or described as a purchase
25 state, as opposed to a red state.

1 And I wonder if you anticipate or you can
2 inform us about out-of-state efforts to suppress the
3 vote or to affect the vote in Arizona.

4 MR. RABAGO: Well, to the extent that I
5 have been involved in elections, I have previously
6 myself personally run for office, and I've helped
7 other candidates. I've been successfully elected to
8 office. I can't say I think the demographics are
9 changing. It's hard when you get a great new group
10 of people that want to vote and then their efforts
11 become suppressed and laws are enacted and designed
12 specifically to suppress them.

13 What I can say is, in this particular
14 last election cycle, these were efforts that we
15 believe they were from out of state, but it certainly
16 could have been from in state given the way the
17 telecommunications work.

18 I know Arizona is also an almost ground
19 zero for what is the dark money movement. There's a
20 nonprofit, which was cited for violating California
21 law, but it's an Arizona nonprofit, for laundering
22 millions and millions of dollars in California's
23 elections.

24 I, myself, have previously represented a
25 -- a supervisor for the Pima County Board of

1 Supervisors with respect to illegal dark money that
2 came in which was funneled through Delaware and then
3 sent back into Arizona to impact her election.

4 And we presented those sorts of
5 complaints to the Arizona Secretary of State, which
6 basically said, We're not going to look at this, and
7 sent it back to the county to deal with.

8 So I believe there are many different --
9 it's very hard, given the abuse of the nonprofit
10 system, sometimes to track who is behind these
11 efforts to suppress votes from a private side of
12 things.

13 But when you see, like, in Yuma or in
14 Maricopa County when you have official government
15 acts, the wrong ballot is being given to communities
16 of color, or in Maricopa County the wrong date on
17 official government documents, that's why I say it's
18 like a hiking because it's coming at you from many
19 different ways.

20 I know with reenactment, it had Voting
21 Rights Act, we can fix some of that, but much more
22 needs to be done. It is like a hydra. It has many
23 different faces and many different things.

24 MS. PROVINE: Thank you.

25 MS. FERGUSON-BOHNEE: Thank you very much

1 for your testimony. If you leave us copies, we will
2 make sure it's included in the record. You can bring
3 it up here.

4 MR. RABAGO: Thank you very much.

5 MS. FERGUSON-BOHNEE: Our next speaker is
6 Randall Holmes from the Arizona Advocacy Network
7 Board.

8 MR. HOLMES: Hi, folks. I didn't notice
9 any C-span camera, so I guess I didn't need to dress
10 up.

11 My name is Randall Holmes. I have the
12 honor of sitting on the Board of Arizona Advocacy
13 Network. They brought to you the Arizona Clean
14 Elections and have been defending democracy in
15 Arizona since about 2006 or so, and long before that
16 as individuals.

17 We wear partisan and nonpartisan hats,
18 because in Arizona, statutorily, the political
19 parties have a whole lot of rights and
20 responsibilities. And I help to administer
21 elections, and particularly the county chairs of the
22 political parties can appoint poll workers,
23 officially known as election board workers.

24 They can appoint election observers who
25 are observing voting procedures, as well as at the

1 central count and at the receiving sites where
2 ballots are dropped off and things like that. And in
3 -- I chair the State Democratic Party Election
4 Committee, which we established in 2005.

5 In the year 2000, we saw voter
6 suppression and election fraud, electronic as well as
7 other types in Florida and other states. And we
8 thought, Well, our parties can get serious about this
9 and we're going to get on top of this issue and we'll
10 do something about it.

11 And 2004 came around and Ohio was stolen
12 and other states as well, but we paid attention to
13 Ohio because it was the last one that decided the
14 election. And so we noticed that.

15 And still nothing was happening, either
16 partisan -- there was some nonpartisan activity
17 around election integrity, election administration
18 reform and things like that. And so we established
19 the Election Integrity Committee in Pima County and
20 in Maricopa County party organizations, and then we
21 established the State Party Election Integrity
22 Committee.

23 Progressive Democrats of America was
24 founded during the 2004 campaign, as well as
25 Democracy for America. Progressive Democrats of

1 America has issue organizing teams that work on
2 general legislation, among other things. And we're
3 particularly interested in HR12 introduced by John
4 Lewis.

5 I've had the honor of coordinating the
6 election integrity issue team for PDA on a national
7 basis. We promote good legislation, try to stop bad
8 legislation, and try to facilitate state and local
9 groups around the country who want to work on voting
10 rights and election integrity.

11 HR12 was introduced by John Lewis of
12 Georgia and has a lot of cosponsors with the Election
13 Integrity Voting Rights bill. And, of course, it
14 won't see the light of day with the present House
15 makeup.

16 What I really want to talk to you about,
17 though, is politics. When we started the Election
18 Integrity community in the State party and we asked,
19 Why hasn't this been done before? Doesn't anybody
20 care? We spent millions of dollars and man hours
21 getting people out to vote and go to the polls.

22 What happens to them when they get to the
23 polls? Where are they going to be able to vote and
24 will the votes be counted by the computers once they
25 are turned into electrons and you can no longer look

1 at them?

2 And they said, Well, we don't want people
3 -- we don't want the voters to think there's
4 something wrong with the elections because they won't
5 turn out if they think that the elections are rigged.
6 And what I said was, Well, the voters know that the
7 elections are rigged. That's why they don't turn
8 out. And if they see us as defending democracy and
9 their right to vote, maybe they'll turn out to vote
10 for us.

11 So the solution to all our problems, we
12 keep running into politics, and that includes the
13 Supreme Court, of course, which is extremely right
14 wing and extremists right now and they read the
15 Constitution differently than the rest of us. They
16 don't see a Constitutional right to vote, even though
17 the 15th Amendment, you know, talks about the right
18 to vote.

19 There's far too much to talk about in
20 five minutes, but let me say this. The only solution
21 to our problems is critical political mass --
22 political critical mass. We need enough citizens to
23 consider themselves as citizens and not just
24 consumers, and we need them to think about voting.

25 In order to do that we have to give them

1 something to vote for. The 2012 cycle in Maricopa
2 County groups, like Promise Arizona, who you'll hear
3 from this afternoon, registered 30,000 new voters in
4 Maricopa County because we have a very popular county
5 sheriff, and so they had motivation to go vote.

6 It's when they got to the polls or when
7 they tried to register to vote and ran into
8 roadblocks of obstruction and voter suppression,
9 that's when we got interested in election integrity
10 and voting rights.

11 And so the vast number of citizens aren't
12 going to be interested in voting rights until they
13 have something that they feel they need to go vote
14 for. And that's what we need to do.

15 And I'm going to stop now. The dog ate
16 my homework. I didn't get my testimony written, and
17 so I'll try to e-mail it tomorrow to Erandi Zamora.
18 I'd like to meet her. I got her picture on Twitter,
19 but I don't know if I can find her or not.

20 Unless you have any questions, I'll stop
21 there.

22 MS. FERGUSON-BOHNEE: Any questions?

23 MR. LEWIS: I have a question in relation
24 to your Election Integrity Committee.

25 What are some of the issues that you're

1 working on in terms of that committee?
 2 MR. HOLMES: The political party
 3 committees in Maricopa County and State party. One
 4 of the main things we do is try to recruit people,
 5 voters, to be poll workers. And, as I said, the
 6 county sheriff can appoint or at least nominate
 7 people to be poll workers.
 8 One of the problems we saw, Arizona
 9 Advocacy Network was kind of the Arizona affiliate of
 10 election -- national election protection put on by
 11 the Lawyers Committee and others. And we recruited
 12 observers to be inside the polls. And through some
 13 cooperation with some of the county chairs, we got
 14 credentials by the county chairs for our observers to
 15 be inside, and saw a whole lot of problems.
 16 And I forgot to mention, I was a poll
 17 worker for Maricopa County elections from about 2005
 18 to 2007 or '8. And I was a troubleshooter, which
 19 means I was a supervisor at five or six polling
 20 places and drive around and see if the poll workers
 21 knew what they were doing and helping them follow
 22 procedures.
 23 One voter suppression is that the rules
 24 and regulations and laws and procedures are so
 25 complex. And I think they do this on purpose to

1 confuse people and frustrate them so that they give
 2 up. And we have a hard time finding poll workers,
 3 election board workers who understand the rules or
 4 who are able to follow a checklist in the manual and
 5 are motivated to do so and treat the voters right and
 6 make sure that they get to vote, you know, if they're
 7 eligible. Make sure they get to the right polling
 8 place. Make sure they understand the voter ID law,
 9 which is way too complex for the average human to
 10 understand.
 11 So it's important that we have observers;
 12 more particularly poll workers who understand these
 13 rules. And so we need citizens to be motivated to
 14 vote. We need them to be frustrated with voting
 15 procedures, and we need them to be motivated to do
 16 something about it and to make it an issue in
 17 political campaigns. And vote for the Secretary of
 18 State who will uphold their voting rights. Vote for
 19 the President and U.S. Senators who interpret the
 20 Constitution the way we do and who will militantly
 21 screen their applications to the federal match to
 22 people who interpret the Constitution the way we do.
 23 Did that answer the question?
 24 MS. FERGUSON-BOHNEE: Thank you very
 25 much, and thank you for your testimony and your

1 written testimony. If you would like to submit it
 2 after, anyone in the room will accept that.
 3 Our last speaker for our public testimony
 4 for this session is Jim Maleaky from Democracy for
 5 America. I apologize if I said your name wrong.
 6 MR. MALEAKY: Thank you. No, name
 7 pronouncement was perfect.
 8 DFA is one of the number of organizations
 9 I belong to. I'd rather speak upon myself. What I
 10 want to share with you is that basically there's a
 11 belief that I have in the project that is called
 12 America. And that project means that we need to be
 13 inclusive of people within the democratic process.
 14 If we were to follow our founding
 15 fathers, none of you would be on this panel today.
 16 And we have over the past couple centuries plus
 17 strove to include more and more people.
 18 Unfortunately, what has happened has been
 19 this issue of voter integrity has taken upon a
 20 partisanship element. It's an us-versus-them
 21 argument.
 22 One of the things that I would share is
 23 that I recall in 2012 seeing on the news here in
 24 Arizona, there were long lines in downtown Phoenix,
 25 in minority areas, but what we saw were long lines in

1 North Scottsdale, Paradise Valley.
 2 And so the knee-jerk reaction comes to
 3 be, Oh, there's long lines for the rich white, that
 4 means it's okay for there to be long lines for the
 5 lower, socioeconomic minority class. I would present
 6 to you that that is the wrong answer. The right
 7 answer is that it does not need to take three hours
 8 for anybody to vote in person, by all means.
 9 What I would ask of you is to consider
 10 referring more funding to occur. Higher voter
 11 turnout is a good thing. I cannot stress that
 12 enough. Partisanship comes in line, but we, as a
 13 good government, need to make sure that more and more
 14 people are involved.
 15 I have worked with Spanish-speaking
 16 people in terms of coming to the polls. I've seen --
 17 Well, basically, it's a bookmark that occurs from one
 18 party or another that is left at the polling sites
 19 where somebody comes to vote and there it is and
 20 election workers are not removing those.
 21 It's a really difficult job that we're
 22 asking these people to do despite party lines.
 23 I would also ask that, quite frankly,
 24 regarding the recent Supreme Court decisions, that
 25 Arizona -- I understand the preclearance, but

1 already? We've earned the right to be on the watch
 2 list again immediately.
 3 So I would recommend that you put forth
 4 the idea that we get on that watch list right away;
 5 not only for Democrats, not only for minorities, but
 6 for Republicans and well-to-do white folks because we
 7 saw the long lines across the state.
 8 Thank you.
 9 MS. FERGUSON-BOHNEE: Thank you very
 10 much.
 11 Any questions?
 12 Thank you very much. We would like to
 13 thank the public for participating and for offering
 14 testimony. I think it's very important to have the
 15 perspectives of all citizens and to hear the actual
 16 stories and the experiences of our -- of our
 17 citizenry.
 18 At this time, we're going to take a lunch
 19 break. We're going to -- I think we'll take about 25
 20 minutes, so we'll see you back here in about 25
 21 minutes.
 22 (A break was taken at 1:21 p.m.)
 23 MR. LEWIS: Good afternoon. We're ready
 24 to begin our afternoon session. We have -- On this
 25 panel, we're going to begin with Governor Gregory

1 Mendoza from the Gila River Indian Community. And I
 2 want to note to the Commissioners that Governor
 3 Mendoza does have to leave after his presentation of
 4 his testimony, and we'll take some questions
 5 following his testimony from the Commission.
 6 And then we'll proceed with the panel,
 7 and we'll hold the questions until the remainder of
 8 the panel is completed.
 9 I really appreciate Governor Mendoza
 10 taking some of his valuable time to come here and
 11 present some information.
 12 MR. MENDOZA: Good afternoon. I am
 13 Gregory Mendoza, the governor of the Gila River
 14 Indian Community. I want to thank the commissioners
 15 for providing me with an opportunity to discuss the
 16 voting barriers facing American Indians within my
 17 community.
 18 The Gila River Indian Community is
 19 comprised of the Akimel O'otham and the Pee-Posh
 20 Tribes, and has over 20,000 enrolled members.
 21 Approximately 12,000 of these members live on our
 22 reservation, which is roughly 372,000 acres and
 23 located in the Phoenix metropolitan area, just south
 24 of the cities of Phoenix, Tempe, and Chandler.
 25 Our reservation is divided into seven

1 political districts. The legislative body of the
 2 community is called the Community Council and is
 3 comprised of 17 representatives who are elected by
 4 the members that reside within their respective
 5 districts.
 6 The executive branch of our government is
 7 comprised of the governor and the lieutenant governor
 8 positions, which are each elected by the majority of
 9 all tribal members.
 10 The community's leadership values the
 11 importance of engaging our members in both tribal and
 12 state elections and strive to ensure their
 13 participation in the electoral process. In the 2012
 14 election cycle, we designated an individual to lead
 15 the Get Out The Vote efforts, which included
 16 assisting community members with voter registration.
 17 We also undertook nonpartisan efforts to
 18 educate voters about the ballot initiatives and
 19 candidates for various offices. Through these
 20 education campaigns we successfully published a
 21 detailed voter guide in our community's newspaper for
 22 the first time.
 23 As an example, I am proud to share that
 24 we hosted a debate between two state candidates for
 25 the U.S. Senate seat.

1 Despite these critical and innovative
 2 efforts, our community's voter turnout still must
 3 improve. Obstacles continue to hinder further
 4 increases in voter turnout and must be tackled.
 5 One of the main obstacles that I saw
 6 during the last election was that the voters are
 7 still turned away from the polls over address issues.
 8 In some instances, they are offered and allowed to
 9 cast provisional ballots. However, there needs to be
 10 more done to increase the ability of voters to use
 11 regular ballots, and the default should not be to
 12 provide voters with provisional ballots.
 13 The issue of provisional ballots is
 14 fairly common here in our state. A voter may use a
 15 provisional ballot if their name does not appear on
 16 the precinct register or if the voter has moved and
 17 failed to update their voter registration.
 18 It is my understanding that more than
 19 120,000 provisional ballots were cast in Maricopa
 20 County during the 2012 election; the most provisional
 21 ballots used in the County's history. The vast
 22 majority of the provisional ballots were cast due to
 23 people moving or requesting an early ballot, but
 24 showing up in person to vote.
 25 It is common within my tribe for voters

1 to change addresses between election cycles. And it
2 is also common that our voters fail to update their
3 voter registration forms. And many of our tribal
4 citizens do not have street addresses. Thus,
5 completing the necessary paperwork may be
6 challenging.

7 There must be a better way to allow our
8 tribal members to vote that doesn't rely on them
9 having these updated address on file or use
10 provisional ballots. While the use of provisional
11 ballots may appear to increase a voter -- voter's
12 opportunity to vote, overutilization of provisional
13 ballots can be a hindrance to the actual counting of
14 the voter's ballot. And a voter who votes a
15 provisional ballot leaves the ballot box never
16 knowing if their actual vote was actually counted or
17 will be counted.

18 Additionally, during the last election,
19 both the poll workers and voters within my tribe
20 seemed uninformed about the ability of the
21 provisional ballots and when a provisional ballot is
22 appropriate to be used. Several voters contacted the
23 tribal government indicating that they were not
24 allowed to vote in the precincts in which they lived.

25 Others indicated that they were not

1 tribe was provided more information about the use of
2 regular ballots and provisional ballots, we could
3 include that information in our voter guide and
4 publish it in our tribal newspaper.

5 Lastly, tribes and the Secretary of
6 State's office should meet after each election to
7 assess the rate of voter turnout on each reservation
8 and debrief in order to apply lessons learned to the
9 next election process. Tribal governments are
10 committed to improving voter turnout within our
11 communities, but we need better educational tools to
12 help us to do so effectively.

13 Lastly, I would like to conclude my
14 testimony by expressing my appreciation that tribal
15 identification cards are an acceptable form of
16 identification for voting in this state. Allowing
17 the use of this form of identification respects our
18 tribal sovereignty as governments and allows our
19 tribal members to use the form of identification that
20 they are most comfortable with. Any attempts to
21 limit the use of tribal identification for voting
22 purposes should be discouraged.

23 Thank you for your time. And I want to
24 thank the Commission for inviting me to testify today
25 on this very important issue.

1 offered a provisional ballot by the poll workers.
2 And others felt that their vote may not have been
3 counted because they voted a provisional ballot
4 versus a regular ballot. The problem is one of
5 education for both the poll workers and the voters.

6 In one of our busiest precincts, a poll
7 worker was trained the night before the election.
8 Voting precincts lack adequate information about the
9 availability of provisional ballots. Given how
10 provisional ballots are used within Arizona, more
11 information and training about when such ballots may
12 be used should be posted and available as well as
13 when regular ballots should be used.

14 Again, all efforts should be prioritized
15 toward a voter casting a regular ballot and then a
16 provisional ballot, but that doesn't seem to be the
17 case in practice.

18 It is also important to improve
19 communication between our tribal government and the
20 Secretary of State's office.

21 For example, the Secretary of State's
22 office could work with us before election to seek
23 volunteers for polling precincts and to assure that
24 they are properly trained well in advance.

25 Furthermore, if the community or our

1 Thank you.

2 MR. LEWIS: Thank you, Governor. One of
3 the issues you have raised, the provisional ballots.
4 The Secretary of State, as you had mentioned to
5 really increase opportunities to work together, and
6 in addition, the delivering. The community is
7 involved in more than one county which also
8 complicates matters.

9 But in terms of your relationship with
10 the counties, they also can be a resource to the
11 issues you raised. And have there been response to
12 the Gila River community by the counties in
13 addressing some of these issues, and particularly the
14 address issue and the provisional ballots issue?

15 MR. MENDOZA: Thank you, Commissioner.

16 And, yes, we do. We do have ongoing
17 communications with not just the two counties that
18 are represented within my community, that includes
19 Maricopa County and Pinal County. But, yes, we are
20 in communications. But I believe those efforts do
21 need to include, as mentioned, with regard to
22 education and providing some of those additional
23 tools that are needed for us.

24 MS. PROVIN: Governor Mendoza, I know
25 you need to leave so we're going to ask you questions

1 before the others.
 2 I think it was really helpful that you
 3 mentioned that discouraging impact of overuse of
 4 provisional ballots because in one sense, they're an
 5 innovation that has actually helped voters be able to
 6 vote when they otherwise might not be. But there's a
 7 serious downside, as you point out.

8 I wondered if you could tell us if you
 9 think Arizona could clarify more clearly for members
 10 of your community that being on the permanent early
 11 voting list means that you must use that ballot and
 12 not show up at the polls? And also, I wonder if you
 13 could tell us if you think that the tribal ID could
 14 somehow be used in place of address information?

15 I don't know what information is on file
 16 through the tribal ID, but is there potential for
 17 that as a way of dealing with the address issue that
 18 you mentioned?

19 MR. MENDOZA: Thank you, Commissioner,
 20 for that question.

21 Yes, I think at this point it's worth
 22 exploring for us as tribal governments, because, you
 23 know, we have the same issues with regard to border
 24 crossing issues. You know, the form of tribal
 25 identification is used in some cases such as that.

1 And I think if we can come to some type of
 2 arrangement, I think it could help our efforts. I
 3 believe it's worth exploring.

4 MS. FERGUSON-BOHNEE: Governor Mendoza,
 5 thank you for your testimony. I think it's very
 6 important that you highlighted that there are address
 7 issues at Gila River, which is a -- a community close
 8 to the Phoenix Metro area.

9 Earlier, we heard testimony from the
 10 Navajo Nation and Apaches that they also have address
 11 issues. And I think, for the record, I think it's
 12 very helpful to explain how that hinders their right
 13 to vote. And I just want to give you one snippet,
 14 because we were at the hotline for Native Vote on
 15 election day.

16 And at Gila River, a lot of people have
 17 some physical address, but it's not a given physical
 18 address or street address, and so people use their
 19 P.O. boxes. And under state law, the -- the counties
 20 are supposed to provide both your physical and your
 21 street address on the voter roster. And we received
 22 a lot of calls from Gila River from people who were
 23 being turned away because they didn't have both
 24 addresses. So their ID might have been physical
 25 address, which is put down, but the voter roster had

1 their P.O. box or vice versa. And so they were told
 2 that their IDs didn't match.

3 So if you could just expound on those
 4 issues and disenfranchisement and discouragement of
 5 voters at Gila River, I think that would be helpful.

6 MR. MENDOZA: Thank you, Commissioner,
 7 for that question as well.

8 And, you know, to this Commission, you
 9 know, I would invite you to come to Indian country so
 10 that you could have a better understanding. A lot of
 11 us do live in rural situations. As Commissioner
 12 Ferguson-Bohnee pointed out, a lot of our tribal
 13 members face that. We don't have those physical
 14 addresses that are required.

15 I think definitely we can work with the
 16 State to, again, explore ways we can change that.
 17 And for a lot of our tribal members, as you know, we
 18 have our own form of elections as well. We have our
 19 own tribal elections. And a lot of our tribal
 20 members are comfortable with their tribal election
 21 process.

22 And for them to go into a precinct,
 23 whether it be a state election, federal election, to
 24 follow another process, becomes very confusing for a
 25 lot of our members, particularly a lot of the elders.

1 Some, as you know, don't speak English. We have
 2 issues with our elders that don't speak English, and,
 3 again, that is a problem.

4 And for a lot of our tribal members, they
 5 use their tribal identification as a form of
 6 identification for everything that they do, not just
 7 within our community, but even they use it outside
 8 the community. If there would be a way for us to
 9 work to change so that it could be recognized, their
 10 identification and their address. And I think that
 11 it would be something that would be positive, not
 12 just for my community, but for all tribes.

13 Thank you.

14 MR. LEWIS: Any other questions?

15 Thank you, Governor.

16 MR. MENDOZA: Thank you again. And I
 17 apologize for leaving. Thank you.

18 MR. LEWIS: Next on the list is Casey
 19 Dreher.

20 MR. DREHER: Commissioner Ferguson-Bohnee
 21 and guest commissioners, I appreciate the opportunity
 22 to present testimony on voting rights, and more
 23 specifically in this section, issues affecting
 24 students' ability to register to vote here in
 25 Arizona.

1 My name is Casey Dreher and I am
 2 currently the organizing director of the Arizona
 3 Students' Association, ASA. ASA is a student-led,
 4 student-directed, nonpartisan, nonprofit organization
 5 whose mission is to give students a voice in the
 6 State by increasing their electoral participation.
 7 Since 2008, I've personally been involved
 8 with registering over 55,000 students in both Oregon
 9 and here in Arizona. I'm also a registered voter
 10 here in the 24th legislative district in Arizona,
 11 encompassing Central Phoenix. Every semester, ASA
 12 organizes students on campus to conduct statewide
 13 voter registration, nonpartisan voter education, and
 14 Get Out The Vote activities.
 15 Like -- Many of the issues you've heard
 16 today affects students, as well, such as the P.O.
 17 boxes, especially up at Northern Arizona University,
 18 as well as difficulties providing the documentation
 19 needed at the polls. But, today, I'm going to focus
 20 my remarks specifically on the issues that increased
 21 voter registration ID requirements have had on the
 22 participation levels of university and community
 23 college students here in Arizona.
 24 I want to be clear and not sugarcoat the
 25 program. By adding the additional requirements for

1 proof of citizenship and the dual track system that
 2 you'll hear about later, thousands of students --
 3 thousands of students that want to vote here in
 4 Arizona will be disenfranchised from being able to
 5 vote in State elections.
 6 Although many efforts have been made to
 7 work with our university administrators to increase
 8 student and parent awareness of these ID
 9 requirements, such as sending letters home requesting
 10 birth certificates, little progress has been achieved
 11 on that front.
 12 Students come to Arizona to study, but
 13 they do so believing that they'll be able to
 14 participate in elections like students in any and
 15 every other state. However, due to the burdensome
 16 requirements of having to have your birth certificate
 17 on hand or an Arizona driver's license, these
 18 students will not be allowed to vote for the very
 19 legislators that will be deciding how much to fund
 20 their universities, how much state-based financial
 21 aid will be available, or the many other policies
 22 that affect students that require state legislative
 23 approval.
 24 Additionally, they would be prevented
 25 from voting for statewide offices, such as Arizona's

1 governor who appoints all the members of the
 2 university's governing board, the Arizona Board of
 3 Regents.
 4 Nearly 90 percent of the students in
 5 Arizona choose to register here in Arizona. So all
 6 the out-of-state students included, 90 percent of
 7 them would like to vote here in Arizona, so that they
 8 can have a say in the policies that affect their
 9 day-to-day lives. But of that 90 percent, nearly 60
 10 percent of them use the last four numbers of their
 11 Social Security number to prove citizenship.
 12 Students today, however, don't carry
 13 their birth certificates with them to class, nor
 14 should they be expected to. Furthermore, the State
 15 believes every student should just get an Arizona ID.
 16 However, out-of-state students on certain
 17 scholarships, such as the Western Undergraduate
 18 Exchange Program or Alaskan students receiving an oil
 19 stipend, will lose their financial aid if they change
 20 their residency to Arizona.
 21 These burdensome requirements are
 22 preventing 60 percent of students that we've
 23 registered to vote who just want to participate in
 24 elections in the state in which they live and have
 25 direct consequences on their lives from participating

1 in the election.
 2 Prior to the Prop 200 decision, we were
 3 traditionally used to Arizona voter registration form
 4 going back to around 2010, but we would literally
 5 register several thousand students just here at the
 6 ASU Tempe campus. In 2010, out of about 4,000 voter
 7 registration forms, when we got 1,000 of those
 8 actually turned in, and the other 3,000 were waiting
 9 on follow-up with the birth certificate, and those
 10 students never became registered voters.
 11 In 2012, after the Prop 200 decision, we
 12 used a federal voter registration form, and we
 13 tripled our record for voter registration in this
 14 state. And that shows that students want to vote,
 15 but these requirements are preventing them from doing
 16 so.
 17 With no evidence of large-scale or even
 18 small-scale voter fraud among students, these added
 19 requirements do nothing but drive down student
 20 participation in elections.
 21 Arizona's voter registration requirements
 22 are teaching us a civics lesson to university and
 23 community college students. Your energy, your skills
 24 that you're learning and the talent you have really
 25 are not welcome in Arizona. It's no wonder that half

1 of all college graduates here leave the state.
 2 The solution, though, is simple. We
 3 shouldn't require additional and unnecessary
 4 documentation or proof of citizenship beyond the
 5 federal requirements. Arizona should match voters
 6 through the Social Security Administration primarily
 7 rather than the Arizona motor vehicle database for
 8 all of these out-of-state students.

9 County election commissioners have
 10 already demonstrated the viability of this system to
 11 verify citizenship. Make no mistake, to not use the
 12 Social Security Administration to verify citizenship
 13 is not due to preventing voter fraud; it is not used
 14 to prevent voting by students, period.

15 Thank you. And I'd be happy to answer
 16 questions after the rest of the panel.

17 MR. LEWIS: Questions?

18 MS. PROVINE: Are we going to wait?

19 MR. LEWIS: Excuse me. Yes. I forgot my
 20 own rules.

21 Peri Jude Radecic.

22 MS. RADECIC: Thank you, Commissioners,
 23 for your time today and for the opportunity for
 24 persons with disabilities to highlight those
 25 barriers.

1 The Arizona Center for Disability Law,
 2 which I'm the executive director, is an independent
 3 nonprofit organization. We're designated by the
 4 governor of Arizona to administer a federally
 5 mandated protection and advocacy system, and there is
 6 one of us in every state and territory.

7 So on behalf of our board, our staff, and
 8 our mental health council, we appreciate the
 9 opportunity to present comments today regarding
 10 voting for persons with disabilities, as well as
 11 voting access issues for Hopi and Navajo voters with
 12 disabilities.

13 Voting is certainly one of the
 14 fundamental legal service programs at the Arizona
 15 Center for Disability Law, and I have served as the
 16 voting rights staff attorney for nine years. Voters
 17 with disabilities, as we know, represent every
 18 gender, every race, and every national origin.

19 Voters with disabilities in Arizona have
 20 reported to us their frustration with the voting
 21 process. These problems include access to the
 22 polling site itself, language barriers for persons
 23 with intellectual disabilities, difficulty waiting in
 24 long lines, and accessible voting systems that fail
 25 to operate.

1 We provide legal representation to
 2 clients regarding these issues. And as recently as
 3 the 2012 federal election, we provided legal
 4 representation regarding two issues: The failure of
 5 an accessible voting system and an inaccessible
 6 voting site.

7 So to address the inaccessible polling
 8 places, we conduct surveys using the Department of
 9 Justice polling site survey in every county in
 10 Arizona. In the early stages of our work under the
 11 Help America Vote Act, only 20 percent of the polling
 12 places we surveyed were accessible.

13 Thanks to the work we have done with
 14 county election directors and monies that have flowed
 15 from the Help America Vote Act, I can now say 80
 16 percent of those polling sites around Arizona are now
 17 accessible. But more work remains to be done.
 18 Accessible voting systems fail to work on election
 19 day.

20 Under the Help America Vote Act, every
 21 polling site is supposed to have a machine that is
 22 accessible to people with disabilities, particularly
 23 persons who are blind. Yet, we know those systems
 24 fail. I can assure you that every elections director
 25 makes sure those systems leave the -- leave the

1 warehouse the day before the election date in working
 2 order, but yet, the morning of election day, those
 3 machines are set up and something happens and they
 4 fail. And they have been failing.

5 And so the Help America Vote Act is a law
 6 that for the first time guarantees a private and
 7 independent vote for people with disabilities. That
 8 didn't happen before 2002. But yet, these machines
 9 fail and people with disabilities no longer have a
 10 private, independent vote guaranteed by the law.

11 The Native American Disability Law
 12 Center, one of our sister agencies that serve people
 13 on the Hopi and Navajo Nation, worked with the Navajo
 14 Nation Advisory Council on Disabilities and the Hopi
 15 Disability Advocacy Group, and in 2013, issued a
 16 voter survey and a report and found voter
 17 accessibility issues for people on the Hopi and
 18 Navajo Nations.

19 Those surveys found that there were
 20 accessibility problems, like a dirt parking lot or
 21 loose gravel, and entrances that were not accessible
 22 to people in wheelchairs. And, again, I know
 23 elections directors that work with the tribes to make
 24 sure money flows to the tribes first. However, that
 25 money has been cut off by Congress.

1 I think it's important that we continue
 2 to work with Congress to ensure that the Help America
 3 Vote Act money flows into our State of Arizona, flows
 4 into the -- our nations here so that we can continue
 5 to address accessibility problems that are a barrier
 6 to people with disabilities.

7 If people with disabilities can't get to
 8 the polls to vote, that vote doesn't count.

9 Thank you.

10 MR. LEWIS: Thank you.

11 Patty Hansen.

12 MS. HANSEN: Thank you for allowing me to
 13 come today and testify on the Arizona dual voter
 14 registration system. Some people refer to it as the
 15 bifurcated system.

16 Arizona has recently developed and
 17 implemented this dual voter registration system, and
 18 I believe it is one of the most complex, confusing,
 19 and burdensome voter registration systems in the
 20 country. It's confusing to the county recorders who
 21 handle and process the voter registrations. It's
 22 confusing to organizations conducting voter
 23 registration guides, and it's confusing to our voters
 24 who monitor it.

25 The dual system came about because the

1 registered voters now in Arizona that the -- Maricopa
 2 County has put together.

3 I shut down every time I look at it
 4 because it looks like a complex computer design. But
 5 this is how we're processing and determining voter
 6 registrations now in Arizona.

7 I should mention this is changing. We're
 8 in the process still of working with the Secretary of
 9 State's office and the Attorney General and the
 10 county recorders on developing our final procedures.

11 We only have voters now that are
 12 registered to vote and eligible to vote in federal
 13 elections. They're now in two different statuses.
 14 We have federal voters that have provided proof of
 15 identity, which means the last four digits of their
 16 Social Security were provided and it matched with the
 17 Social Security Administration's database.

18 They're eligible to vote their federal
 19 ballot by mail. So they can be mailed an early
 20 ballot in the -- Then we have federal letters in the
 21 status that have not proved their identity because
 22 there wasn't a match on Social Security. Are they
 23 going to provide anything? Those voters have to show
 24 up and vote in person for the first time.

25 So now we have not only two separate

1 Arizona Attorney General's office issued an opinion
 2 in regards to the ruling by the U.S. Supreme Court's
 3 decision on the Inter Tribal Council of Arizona v.
 4 The State of Arizona, also referred to as the
 5 Gonzales case.

6 The ruling said that Arizona -- the
 7 Supreme Court's ruling said that Arizona could not
 8 reject voter registrations that are on the federal
 9 voter registration form by the NVRA, National Voter
 10 Registration Act.

11 And so the Attorney General's opinion has
 12 come out and has told us that these new registrants
 13 -- that's the thing to keep in mind -- it's new
 14 registrants that are being affected -- that use the
 15 federal form and fail to provide the state-required
 16 proof of U.S. citizenship are only eligible to vote
 17 in federal elections. They are not eligible to vote
 18 in our state and local elections.

19 This means that county recorders are now
 20 maintaining two rolls of registered voters in our
 21 county. This may sound like an easy thing to
 22 implement. It's just two rolls of registered voters.
 23 But it's turning out to be very complex and costly.

24 I have given you a -- in your handouts I
 25 think you may have a flowchart of processing

1 rolls, we have some people on one of the rolls that
 2 has -- is limited on how they can vote. Implementing
 3 this dual voter registration system has proven to be
 4 very costly for the State of Arizona.

5 The initial changes that are being made
 6 to our state voter registration computer system that
 7 does all of this matching is costing well over
 8 \$100,000. Our Secretary of State's office is using
 9 HAVA phones to implement the new changes to our
 10 system. And I don't know if you're familiar, Peri
 11 Jude mentioned the HAVA phones.

12 The intent of the HAVA phones were to
 13 improve our election processes in the State, making
 14 it more accessible for voters to be able to vote, but
 15 instead, we're now spending this money to implement
 16 this dual voter registration system.

17 No matter what your personal position is
 18 on requiring proof of citizenship to register to
 19 vote, I think you can agree that some of the
 20 registration procedures we're now following in
 21 Arizona make no sense.

22 For example, our state procedures now
 23 require a county recorder to reject any voter
 24 registration application for a new registered voter
 25 that uses a state form if there is no proof of

1 citizenship on it.
 2 Now, this is new to the county. If
 3 you're registered in Maricopa County and you move to
 4 Flagstaff, it's a new county. You have to prove your
 5 U.S. citizenship again when you move to Flagstaff,
 6 Coconino County.

7 We get in our state voter registration
 8 system the digital images of the Maricopa County
 9 voter registration forms that have proof of
 10 citizenship on it, but we can't accept it in Coconino
 11 County. This just didn't make any sense to me on why
 12 you have to prove your citizenship. Nobody loses
 13 their U.S. citizenship because they move from one
 14 county to another.

15 Supporters of this dual voter
 16 registration system have told me that it affects so
 17 few people that it isn't a big deal. And I will
 18 agree, it doesn't affect a lot of people. In
 19 Coconino County, less than one percent of our
 20 registered voters are federal voters only.

21 But I disagree that it's not a big deal,
 22 because these are new registered voters. And people
 23 that are newly registered are excited to participate
 24 in the system, and they are being frustrated and
 25 discouraged from participating because when they go

1 make it possible for students to show evidence of
 2 their Arizona residency?

3 They obviously don't have a citizenship
 4 issue, because that's clear, but it's a residency
 5 issue for them. Could that -- could the universities
 6 be part of the solution in your view?

7 MR. DREHER: I think absolutely they
 8 could be. If the State would accept the student IDs,
 9 and they certainly are accepted in other states.

10 MS. PROVINE: Could the student ID itself
 11 be changed in a way that would make it acceptable?
 12 That's actually the gist of my question.

13 MR. DREHER: I don't think under current
 14 law it could be. It has to be in the motor vehicle
 15 database driver's license.

16 MS. PROVINE: Okay. And then,
 17 Ms. Hansen, it's really good to have someone in the
 18 weeds of these issues.

19 One of my questions for you is, why is it
 20 that all of the county recorders have accepted the
 21 Attorney General's opinion on the necessity for a
 22 dual system? It simply was an interpretation that he
 23 offered. It's not a piece of legislation. So why --
 24 why, given all of the problems it's caused, has this
 25 been uniformly accepted?

1 vote, they're going to find out they cannot vote for
 2 governor, they can't vote for county commissioner,
 3 they can't vote, except in the upcoming election just
 4 for U.S. Representatives in Congress.

5 And this is based on what paper they used
 6 to register. And it makes -- it doesn't make sense
 7 to me.

8 So, in conclusion, I would like to point
 9 out my personal belief is, when we're conducting an
 10 election, we're trying to determine the will of the
 11 government. We're not trying to test their
 12 determination and fortitude to participate. And I
 13 think right now what we have in Arizona is not doing
 14 a good job of that and we deserve better.

15 So I want to thank you very much today
 16 for letting me come and speak a little bit on the
 17 system.

18 MR. LEWIS: Thank you. And I have some
 19 questions.

20 MS. PROVINE: Yes. I want to thank --
 21 this panel has been excellent in giving us a lot to
 22 chew on.

23 I have several questions, but let me
 24 start with you, Casey. Is there any way that the ASU
 25 or other Arizona university IDs could be revamped to

1 MS. HANSEN: I know I have struggled with
 2 that, personally. But the State procedures manual,
 3 we have to follow. It is a misdemeanor for us not to
 4 follow the State procedures manual.

5 MS. PROVINE: And this opinion has been
 6 incorporated into the State procedures manual?

7 MS. HANSEN: That's correct. The
 8 procedures are being developed through the Secretary
 9 of State. They end up being approved by the Attorney
 10 General and the Governor.

11 MS. PROVINE: I see.

12 And then picking up on Mr. Dreher's
 13 testimony about the value of Social Security numbers
 14 for student voters. I understand that, at least in
 15 Maricopa County, there are efforts afoot to try to
 16 access the Social Security federal database, but so
 17 far haven't borne fruit.

18 Could you inform us as to why this seems
 19 to be so difficult? Is it a question of not enough
 20 technical expertise or not putting time enough into
 21 it? Is it a cross-issue? Why is it that we can't
 22 access that database, and, therefore, validate for
 23 full voting those people who use the federal form?

24 MS. HANSEN: I believe the problem is the
 25 matching criteria. If you've changed your name,

1 either through marriage or otherwise, you're not
2 coming up as a match because your name is different.
3 Your birthdate may be the same and the number may be
4 the same, but you don't come back as a match.

5 MS. PROVINE: So in Coconino County, you
6 are actually accessing the Social Security database,
7 you just have match issues; whereas, Maricopa County,
8 apparently, it hasn't gotten to that.

9 MS. HANSEN: It goes through the same
10 database. It goes through the State Voter
11 Registration System. So I am not familiar with the
12 problems they have had in Maricopa County, but I know
13 in our county, we were very frustrated that several
14 of the college students, they used it at NAU to
15 register, that were coming back without a match.

16 And when we would contact them, we would
17 ask them, Is this correct? And they would say, Yes.
18 But for some reason, when the computer databases ran
19 against each other, it did not come back as a match.

20 MS. PROVINE: Just one final question.
21 You said that in Coconino County, you have a recent
22 move in and people have to prove citizenship all over
23 again. Would these be people without an Arizona
24 driver's license, because wouldn't that be proof --
25 adequate proof of citizenship for them?

1 MS HANSEN: Well, that's what doesn't
2 make sense to me. If you use the state form, it has
3 to be on there. If you leave it blank, we reject it.
4 We are told we have to reject it.

5 MS. PROVINE: Rather than inquire if they
6 might actually have an Arizona driver's license?

7 MS. HANSEN: Yes. Where if it's a
8 federal form, we can run it, we put it in the system.
9 It is run against the database, and we can fill it in
10 for those voters. And they have made a match. This
11 is just part of how they're being treated unequally
12 based on a piece of paper they're using to register
13 to vote.

14 MS. PROVINE: Thank you very much.
15 That's enlightening.

16 MS. HANSEN: Thank you.

17 MS. LADELL-WILLRICH: I have a question
18 or a couple of questions for Ms. Radevic.

19 I'm really interested in the issues that
20 are faced by citizens with disabilities with respect
21 to accessibility to the polls. One of the things I
22 was wondering is what is done preelection to either
23 investigate or determine whether or not there's going
24 to be accessibility based upon any of the voters at
25 various precincts or polling places?

1 MS. RADECIC: Well, county elections
2 directors do. They identify the counties, they
3 identify the polling places, and prior to that,
4 before the county supervisors act, elections
5 directors -- and you can certainly ask Ms. Hansen how
6 she operates, but county elections directors will go
7 out and they will put together a survey instrument
8 and they will have their staff go out and survey
9 polling sites to see if they're accessible.

10 It's been my experience after we come
11 behind and survey behind them, that sometimes where
12 the failures happen is the survey instrument they use
13 may be shorter than the Department of Justice survey.
14 And somebody might decide what to pick and choose off
15 that survey instrument that might be important to
16 them. They may not be a person with a disability, or
17 as they survey a polling site, they might decide that
18 a parking lot might be three percent -- have a three
19 percent slope when the standard is a two percent
20 slope.

21 And if you have ever tried to transfer
22 out of a car into a wheelchair, that one percent
23 makes a difference whether your chair is going to
24 slide away from you or not as you transfer. So those
25 are the types of things that can make a difference

1 when we come back out and find a problem.

2 And you have to measure the right way for
3 a front door. So those are the kinds of things. And
4 they identify those polling sites and then give them
5 to the county supervisors and the supervisors approve
6 those polling sites.

7 Over the years, it has gotten better. As
8 we point those problems out, the county elections
9 directors, for the most part, are good and they will
10 look at the next election for a better site. And
11 that's why we've gone from 20 percent accessible to
12 80 percent accessible.

13 MS. LADELL-WILLRICH: Just a follow-up
14 question.

15 Do you find or has the -- has there been
16 a report where persons with disabilities have
17 actually been turned away from the polls or have left
18 and not exercised their right to vote because of
19 accessibility issues?

20 MS. RADECIC: Yes. We have not issued
21 that report. But in the case that I spoke about from
22 2012, the person was frustrated and left because she
23 could not get in the front door to vote.

24 Now, the civil rights laws for people
25 with disabilities are layered. So the -- there's

1 always been the rule that polling places are supposed
 2 to be accessible since 1973, but they're not. So the
 3 law was for a long time that you could vote a person
 4 at curbside -- curbside voting as an accommodation.
 5 I don't know how you get those big
 6 machines out there to go vote somebody, but you could
 7 vote somebody curbside. But now under the Help
 8 America Vote Act, a new layer is on top of that which
 9 guarantees a private, independent vote. It's a
 10 little harder to take a ballot out curbside now
 11 because you've got this machine you've got to get out
 12 to the curbside.
 13 So if a polling place is not accessible,
 14 which by law, shouldn't be, but then you could vote
 15 curbside. You now have an accessible machine that
 16 you're supposed to have a private, independent vote.
 17 I don't know how you get that curbside. Disability
 18 law for voting is complicated. There are a lot of
 19 layers. And, frankly, that needs to be fixed as
 20 well.
 21 MS. LADELL-WILLRICH: Thank you so much.
 22 Let me just follow up with one last
 23 question as to Ms. Hansen.
 24 Can you describe what the process is for
 25 providing accessibility in your county?

1 vote privately and independently. And so then
 2 somebody has to -- a person who is blind who intended
 3 to use a device to have the ballot read to them and
 4 vote privately and independently now has to have a
 5 poll worker read them the ballot and fill the ballot
 6 out for them, and it is no longer private and
 7 independent. And that is the only option available.
 8 And then they call us.
 9 MR. LEWIS: You had made mention that
 10 there are limited additional resources from the
 11 federal government to address some of these issues.
 12 Are there resources available also from the county to
 13 address some of these issues?
 14 MS. RADECIC: Unfortunately, the counties
 15 do not have the money to address those issues. Money
 16 had been made available under the Help America Vote
 17 Act, and that was the purpose to improve the voting
 18 systems, the voting machine itself, and then to help
 19 with the accessibility.
 20 And some Secretaries of State have not
 21 spent the money. Apparently, maybe Arizona is in
 22 that situation, and maybe using it for different
 23 purposes. And so it was for that purpose. And when
 24 Congress found out that maybe some Secretaries of
 25 State were not spending the money, they cut the money

1 MS. HANSEN: Well, we do use the
 2 Department of Justice's survey. We're checking our
 3 accessibility for our polling places. Now, we do
 4 have several polling places on the Navajo Nation, and
 5 we have one at the bottom of the Grand Canyon, Supai
 6 Village, where there's no motorized vehicles and the
 7 only way to get around is to hike.
 8 In fact, we had a poll worker there who
 9 had broken her leg and her husband brought her to the
 10 polling place in a wheelbarrow because that was the
 11 only way she could get around. So it is a challenge
 12 in rural areas.
 13 Also on the Navajo Nation we have one at
 14 the coal mine. It's the only building that we can
 15 use within probably a 20- or 30-mile radius, and it
 16 has a gravel parking lot. And it's not real
 17 accessible, but there's no other alternative.
 18 And we do use curbside polling, though
 19 with our voting equipment, we can pop out the
 20 touchscreen into a smaller unit and bring it out.
 21 But it is a challenge, especially in the rural areas.
 22 MR. LEWIS: It was made mention that the
 23 machines fail. So what are the options when the
 24 machines fail?
 25 MS. RADECIC: The person does not get to

1 off to the Secretaries of State.
 2 But yet we still have polling places
 3 around the country that have technology problems that
 4 could be addressed and could be used with those
 5 resources.
 6 MS. FERGUSON-BOHNEE: I have a question
 7 about the dual registration. And I guess I have kind
 8 of two questions because one is for Casey. And I
 9 assume -- I know in the past that students use the
 10 federal form for registration, and I'm just kind of
 11 wondering if what y'all have been planning in the
 12 wake of the opinion and how to try to address those
 13 issues?
 14 And then for Ms. Hansen, it's my
 15 understanding the opinion came out in October. So
 16 there hasn't been a federal election that's applied
 17 the dual registration yet, and I know that you
 18 anticipated frustration problems. But I'm just
 19 wondering, you know, for the next general election,
 20 if this is still in place, you'll have people who are
 21 going out trying to register people to vote, and what
 22 sort of, I think, more people registered a dual
 23 registration and participate in that, and what other
 24 types of challenges do you foresee?
 25 MR. DREHER: So as to the kind of

1 contingency plan there, we've definitely looked at a
 2 lot of different options but we really only have two
 3 options. Use their Arizona voter registration form
 4 or use the federal form. And like I had mentioned
 5 earlier, when we used the Arizona voter registration
 6 form, we may collect 4,000 voter registration forms,
 7 but that still isn't going to get the student to be
 8 able to provide a birth certificate. And like Patty
 9 said, if it's not provided, that's rejected entirely.

10 So we're going to continue to prioritize
 11 using the federal form to get out-of-state students a
 12 chance to at least vote in the federal election; and
 13 then as well as in-state students can still use their
 14 Arizona driver's license number on that form.

15 So that's still our best alternative, but
 16 it's still keeping a significant number of students
 17 from voting in the state elections.

18 MS. HANSEN: What we're going to do is
 19 try to educate people that are in the federal-only
 20 status on how they can get to the state status, so
 21 they can vote in all of the elections if they want
 22 to.

23 I do -- One thing I do think is good is
 24 that I don't want that to go away. And I know there
 25 is a lawsuit right now where Arizona and Kansas are

1 trying to get the Federal Election Assistance
 2 Commission to have to put the proof of citizenship on
 3 the registration form.

4 But I know for college students, when
 5 it's a presidential year, I have spoken to many and
 6 they just want to vote for president. So there are
 7 some students that will be able to participate, where
 8 in the past when it was just the state forms, they
 9 will not be able to participate.

10 But I agree with you. The numbers are
 11 only going to go up. We are -- Our office also is
 12 going to be a lot more aggressive in doing voter
 13 registration. In the past we've left it mostly to
 14 organizations and political parties. But to try to
 15 explain this to people, it's just going to be
 16 confusing.

17 And when a person is registering to vote,
 18 they see a table and they're going to go there and
 19 register. They're not going to know, is it the
 20 federal form or is it the state form and one I'm
 21 going to be eligible for. So it's really increased,
 22 I think, our responsibility to be more actively
 23 involved in voter registration to provide the
 24 education.

25 MR. LEWIS: No more questions, then.

1 Thank you for your time.

2 (A break was taken at 2:49 p.m.)

3 MS. PROVINI: Sam Wercinski, executive
 4 director of the Arizona Advocacy Network.

5 Raquel Teran, who is the state director
 6 of Mi Familia Vota.

7 Petra Falcon, executive director of
 8 Promise Arizona.

9 And John Sherman, staff attorney for Fair
 10 Elections Legal Network.

11 Welcome everybody. We'll start with Sam.

12 MR. WERCINSKI: Thank you, Commissioner
 13 Provinie. Thank you all commissioners for accepting
 14 our testimony on the state of the right to vote and
 15 election day barriers to voting in Arizona.

16 Arizona Advocacy Network's mission is to
 17 secure poll justice, political rights, and full civic
 18 participation, especially for low efficacy voters and
 19 those who are underrepresented or marginalized to
 20 achieve government of, by, and for the people. We do
 21 this by advocating and defending the Citizens Clean
 22 Election Act, passed by voters to fight political
 23 corruption and encourage civic participation by
 24 protecting voting rights and by promoting fair and
 25 impartial courts.

1 In 2005, we were one of the organizations
 2 who organized plaintiffs that successfully challenged
 3 the State's voter registration requirements under
 4 Prop 200 before the Supreme Court of the United
 5 States, often referred to as the Inter Tribal Council
 6 of Arizona v. Bennett.

7 Since receiving the federal court order
 8 on August 9th, 2012, nearly 40,000 eligible citizens
 9 have been able to register to vote in Arizona using
 10 the federal form who otherwise may not have been able
 11 to register using the State form with its additional
 12 unnecessary documentation requirements.

13 Our testimony today addresses the state
 14 of voting rights in Arizona as witnessed by Arizona
 15 Advocacy Network at the polls on election day.
 16 Despite the favorable ruling of ITCA v. Bennett,
 17 Arizona voters continue to face barriers to voting
 18 when using the federal voter registration form.

19 On election day 2012, some counties
 20 placed citizens who use the federal form on a
 21 suspense list if these citizens did not provide the
 22 last four of their Social Security number, an Arizona
 23 driver's license, or nonoperating ID number. These
 24 citizens did not receive sample ballots for voter
 25 registration cards.

1 They were not placed on the permanent
 2 early voter list if they requested it, and were not
 3 sent mail-in ballots, and they were not found on the
 4 voter registration rolls on election day. This
 5 procedure had a disparate impact on citizens of
 6 color, individuals who lack a driver's license or
 7 state ID, and eligible high school and college
 8 students.

9 As a result, many of these voters were
 10 left without the necessary information to find their
 11 assigned polling place, and some of them went to vote
 12 on election day who were turned away for lacking the
 13 state-required ID, a requirement that they would not
 14 have had to comply with if they had been allowed to
 15 vote by mail.

16 Other counties, however, placed these
 17 voters on their scrolls, a clear indication of
 18 unequal access to voting in Arizona.

19 As Recorder Hansen addressed earlier
 20 today, for the 2014 elections, the State Attorney's
 21 General issued an opinion in late 2013, and the
 22 Secretary of State, based on this opinion, has
 23 implemented a two-class of voters system for both
 24 registration and voter ballot access.

25 Some counties may choose to implement it,

1 western metropolitan Phoenix, a heavily Latino
 2 precinct, a first-time voter came with an Arizona
 3 driver's license that had his old address in Santa
 4 Cruz County. Unfortunately, this voter was forced to
 5 vote a provisional ballot.

6 Another registered voter, a Latina had
 7 moved from Yavapai County to Maricopa County after
 8 the voter registration deadline and was denied the
 9 right to vote in her new community. She was
 10 confused, heartbroken, and couldn't understand why
 11 she couldn't vote for statewide candidates or the
 12 presidency.

13 Arizonans seek free, fair, and accessible
 14 elections and voter registration, but the state has
 15 much work to accomplish this goal. The right to vote
 16 is one of our most fundamental rights afforded to us
 17 as citizens of the United States. This fundamental
 18 right protects our individual freedoms and preserves
 19 the democratic system.

20 Arizona Advocacy Network and our partners
 21 on the One Arizona Coalition firmly believes in the
 22 protection of this fundamental right and appreciates
 23 the Commission's work to achieve this.

24 MS. PROVINCE: Thank you very much, Sam.
 25 Raquel.

1 others may try to object and not implement it. We're
 2 waiting to see what happens. This two-class system
 3 will increase confusion at the polls, disenfranchise
 4 voters, create longer lines, and discourage citizens
 5 from voting.

6 As we have seen in Arizona history, for
 7 every expansion of access to vote, there have been
 8 efforts to delay or reverse that enfranchisement.
 9 Arizona voters already face great challenges on
 10 election day.

11 On November 6th, 2012, election day,
 12 volunteers and I personally witnessed poll workers
 13 accepting one type of identification in electronic
 14 form, utility statements, at some polls for some
 15 voters but not others.

16 At the Arizona State University Hudson
 17 Precinct in Maricopa County, paper utility bills were
 18 accepted while electronic ones, incorrectly, were
 19 rejected.

20 A U.S. passport was not enough to prove
 21 one college voter's identity, nor were out-of-state
 22 driver's licenses or university photo ID cards,
 23 sufficient proof of ID for hundreds of students
 24 trying to vote in person.

25 At the Desert Sky polling place in

1 MS. TERAN: Good afternoon,
 2 Commissioners. My name is Raquel Teran, and I'm the
 3 state director for Mi Familia Vota in Arizona. I
 4 have been engaged in the organization since 2006 and
 5 have collaborated with many other organizations in
 6 the civic engagement process.

7 For the last nine years, Mi Familia has
 8 had constant communication with the recorder's
 9 offices in Maricopa County, Pima County, Pinal
 10 County, and Yuma County to ensure that the Latino
 11 community is registered to vote, and voters could
 12 sign up on the permanent early voting list and are
 13 processed correctly.

14 Since 2010, our organization alone has
 15 registered more than 15,500 voters and has signed up
 16 more than 48,000 Latino voters to the permanent early
 17 voting list. In partnership with organizations from
 18 the One Arizona table, the Latino Civic Engagement
 19 Coalition, we have seen the number of Latinos
 20 registered on the pedal grow from 95,000 to 220,000
 21 in 2012. 95,000 in 2010, to more than 220,000 in
 22 2012.

23 Over the years, we have knocked on
 24 hundreds of thousands of doors and our organization
 25 has built a trust among the Latino community. And

1 our organization and all of our partners many times
 2 are the premiere source of education on the voting
 3 process.
 4 Every year we encounter more and more
 5 voters who want to participate in the decisionmaking
 6 process. These same voters want the assurance that
 7 their vote will be counted. Unfortunately, the high
 8 number of provisional ballots casted in 2012 prompted
 9 the state legislature to pass House Bill 2305 which
 10 would make it more difficult to start citizen
 11 initiatives keeping third parties off the ballot,
 12 making it a felony to a volunteer group to help
 13 elderly, homebound voters get their early voting
 14 ballots to the polls, and establishes a process to
 15 remove voters from the permanent early voting list if
 16 they don't vote an early ballot in two consecutive
 17 federal elections.
 18 This will impact thousands of eligible
 19 Latino and Native American voters. It will put a
 20 damper on the growing Latino electorate that has
 21 signed up on the pedal at a record pace.
 22 We have a new dynamic in the early voting
 23 -- in the early voting process. Voters are learning
 24 how to participate, and that's a great thing. The
 25 County Recorder should educate the -- to educate the

1 process -- they should -- they should facilitate the
 2 voting process.
 3 To take steps that are punitive, or
 4 restrictive is not the solution to the high number of
 5 provisional ballots. Volunteer, paid staff,
 6 community all benefit from a higher participation.
 7 So the State should have considered investing more
 8 money in the County Recorder's office in order to
 9 have more staff and resources allocated to educate
 10 voters, including -- and also including stronger
 11 partnership with organizations like Mi Familia Vota
 12 and the One Arizona Partners.
 13 Having County Recorders communicate
 14 electronically via e-mail or mail regarding early
 15 ballots, early voting sites, and election day
 16 operations that includes 10-day notification of
 17 election day, begin before election day notification.
 18 Election day notification also require the County
 19 Recorder to notify the voter when to return their
 20 ballot -- return their ballot notice, provide
 21 information on early voting location and website on
 22 election day and polling locations and hours, promote
 23 more early voting locations and weekend voting and
 24 voter assistance sites to make sure the voter is
 25 instructed in how to fill out the ballot.

1 The last official mailing or
 2 communication from the Recorder's office in early --
 3 in the early ballot -- I'm sorry --
 4 For the last -- the last official mailing
 5 or communication from the Recorder's office is when
 6 they mail out their early ballots. It has been 26
 7 days before election day, prompting organizations
 8 like ours to be the main source of information for
 9 the voter.
 10 So we would like to see the counties have
 11 more resources to educate our community rather than
 12 making it -- making it punitive, purging, or
 13 restrictive solutions.
 14 Thank you.
 15 MS. PROVINE: Thank you.
 16 MS. FALCON: Good afternoon, and thank
 17 you. And, again, thank you distinguished commission
 18 panel, Commissioners, this afternoon. Okay.
 19 My name is Petra Falcon. I'm the
 20 executive director of Promise Arizona, founded in
 21 April of 2010. I was born here in Arizona and have
 22 worked most of my adult life organizing across the
 23 state throughout the Southwest, but mostly in
 24 southern Arizona from 1997 to 2009.
 25 Promise Arizona is a statewide

1 organization that focuses on leadership development
 2 and civic engagements, specifically in immigrant and
 3 Latino communities. And we are in Maricopa, Pima,
 4 and Yuma County. And since 2010, we have registered
 5 over 200,827 Latino voters.
 6 I'm here to talk to you today about our
 7 experiences, especially working in these communities,
 8 about the barriers of civic engagements and
 9 especially the last two election cycles. Promise
 10 Arizona organized and volunteer leaders registered
 11 close to 1,000 new Latino voters in Yuma County in
 12 the last two election cycles of 2010 and 2012, and
 13 with 173 volunteers.
 14 And this past fall, in 30 days, in Yuma
 15 County, our volunteers collected 1,406 petition
 16 signatures to put HB2305 on the ballot this fall.
 17 Yuma County is unique in many, many ways.
 18 Population is small, just under 200,000. It's rural,
 19 on-the-border, farm-working community, Native
 20 American community. And it is currently under court
 21 order by the Department of Justice because of low
 22 Latino voter turnout to have the County Recorder mail
 23 to each home a request to vote by mail.
 24 And yet, the county still lags behind on
 25 the number of people voting early. And this causes a

1 lot of voter confusion, especially because there's so
2 much work going on right now in the community to get
3 voters engaged.

4 Yuma County is small, as I mentioned,
5 with only about 75,000 registered voters. About
6 32,000 of those are Latino. And in 2012, 42,000
7 voters came to the polls. And you would think voting
8 would be easy in smaller communities. Latino voters
9 in Yuma face the same barriers that they were facing
10 in Maricopa County and across the state.

11 There were long lines. Ten years ago,
12 lines were long, and I was there. And with the
13 increased civic engagement, voter registration, and
14 voter engagement, you would think that the county
15 would be even better prepared on election day this
16 past year.

17 Voters waited in line four to five hours.
18 We were thrilled that voters stayed in line. In
19 fact, we were handing out water and snacks so that
20 people would be comfortable. This last year, in
21 November, it was hot on election day. And especially
22 in south counties, there is only one polling place.
23 And in San Luis and Pinal County, those two polls
24 were running out of provisional ballots. The
25 machines were slow. They handed them -- the

1 provisional ballots were very slow.

2 Another key issue in South County Yuma,
3 the elderly not trusting the mail, prefer to go to
4 the polling places. And in Yuma County, the lines --
5 they like to get there. They like to get in their
6 polling booth, and they like to read the
7 propositions. And guess what? That takes time. So
8 there has to be initiatives for these situations. We
9 have heard about these issues over and over.

10 What was not mentioned in Maricopa County
11 is that even the education ballot information sent in
12 Spanish, the date was wrong for the election date.

13 And in Promise Arizona's experience, not
14 only in Yuma County and across the board, it is clear
15 that we need to work to make sure that voting
16 practices are in line of making sure that each voice
17 is counted. Our government has to do a better job to
18 be prepared for high turnout.

19 With no evidence of voter fraud, the
20 State keeps instituting laws with more hoops for
21 voters to jump through. Is there a better way to
22 communicate with voters? I think we could talk about
23 that all day. For young people, they use texts. For
24 the elderly, they need personal contact.

25 And the Constitution and its amendments

1 are clear in demanding that the right to vote is
2 sacred. Watching our local politicians treat voting
3 rights as a game where they keep changing the rules
4 to their own party politics is unacceptable.

5 Our organization and other organizations
6 met with state officials and county officials and
7 offered our participation in this and offered to move
8 forward to make sure that every vote is counted and
9 that voter education is taking place, and we were
10 turned down.

11 Thank you again to the Commission for
12 listening today.

13 MS. PROVINE: Thank you very much, Petra.
14 John.

15 MR. SHERMAN: Good afternoon. I want to
16 thank the Lawyers Committee and the commissioners for
17 holding this here today, giving me a chance to talk.
18 My name is John Sherman. I'm a staff attorney with
19 the Fair Elections Legal Network. We are a national,
20 nonpartisan voting rights and election reform
21 organization dedicated to removing barriers to
22 registration and voting for traditionally
23 underrepresented constituencies, and improving
24 overall election administration.

25 In some areas of election

1 administrations, Arizona has led the nation, for
2 instance, by adopting online voter registration as
3 early as 2002. So it is surprising that the State
4 has lagged so far behind on provisional ballot
5 counting. By Arizona law, a provisional ballot that
6 is cast in the wrong precinct is rejected in full,
7 top to bottom.

8 That means that a voter who shows up at
9 or is directed by a poll worker to the wrong precinct
10 will see all of their votes discarded, even votes for
11 President, Congress, and statewide votes for Governor
12 and Secretary of State.

13 Arizona is typically first in the nation
14 or among the top three states in this specific type
15 of disenfranchisement. In the 2012 election, 10,979
16 provisional ballots were rejected in full because
17 they were cast in the wrong precinct. That was the
18 highest state total of wrong-precinct rejections in
19 the country; more than double the next highest in
20 Illinois at 5,326.

21 It also constituted 37.4 percent of
22 wrong-precinct rejections nationwide. In the 2008
23 election, a staggering 14,885 provisional ballots
24 were rejected in full because they were cast in the
25 wrong precinct. That figure represented 33.9 percent

1 of the nationwide total.
 2 That is nearly 15,000 ballots that are
 3 never opened, and in a close election, that can be
 4 outcome determinative. That means in any
 5 presidential election, if your vote for President was
 6 rejected because you showed up at or were directed to
 7 the wrong precinct, on average you had slightly
 8 better than one-in-three odds of being an Arizona
 9 voter.
 10 Part of the explanation for the size of
 11 this problem in Arizona may be the frequency of
 12 polling location changes. In 2010, the ACLU of
 13 Arizona reported that at least 43 percent of polling
 14 locations in Maricopa County changed between 2006 and
 15 2008.
 16 The high number of rejections in 2012
 17 cannot be explained, but the use of multi-precinct
 18 polling locations, specifically in Maricopa and Pima
 19 County which both had one-to-one ratios of precincts
 20 to polling places.
 21 Fifteen states, plus the District of
 22 Columbia have taken a different approach. This is
 23 what I want to emphasize. Alaska, California,
 24 Georgia, Illinois, Kansas, Louisiana, Maryland,
 25 Massachusetts, New Jersey, New Mexico, Oregon,

1 Pennsylvania, Rhode Island, Utah, and Washington,
 2 which together comprise a politically diverse and
 3 regionally diverse election collection of states,
 4 have all adopted partial counting laws.
 5 These laws require the counting of all
 6 votes on an out-of-precinct provisional ballot that
 7 the voter would have been eligible to cast in his or
 8 her correct precinct. In short, the State
 9 prioritizes voter eligibility over location and
 10 salvages validly cast votes. It is a simple and fair
 11 rule.
 12 Some of these states require the
 13 provisional ballot to be cast in the correct county,
 14 but even that is far superior to rejecting the ballot
 15 in full.
 16 Two additional states, New York and
 17 Missouri, will partially count a provisional ballot
 18 in the same way as long as it is passed in the right
 19 polling place. This is the so-called "right church,
 20 wrong pew" provisional ballot.
 21 An additional 10 states have election day
 22 registration, and one state, North Dakota, has no
 23 registration system at all. Technically speaking, a
 24 person could still wind up in the wrong place in EDR
 25 states, but, practically speaking, very few voters

1 do. EDR has done wonders to minimize the rate at
 2 which voters wind up casting out-of-precinct
 3 provisional ballots.
 4 Thus, 28 states in total in this country
 5 have figured out a way to either minimize or
 6 eliminate this problem. A minority of 22 holdouts,
 7 including Arizona, insists on penalizing a voter if
 8 he or she votes in the wrong precinct, regardless of
 9 whether it was an innocent mistake or poll worker
 10 error. But why?
 11 The only reason can be to deter voters
 12 from just showing up anywhere to vote, but
 13 provisional ballots are almost always cast in the
 14 wrong precinct by accident, not wilfully. It's time
 15 for a change on this issue.
 16 With 29 million voting-age Americans
 17 moving every year and the frequent changes to
 18 precinct and polling locations, voter and poll worker
 19 mistakes are inevitable. Punishing voters for these
 20 wholly understandable errors undermines the most
 21 basic right in our democracy. Numerous states
 22 preserve votes on out-of-precinct provisional ballots
 23 and should be the norm in all 50 states.
 24 MS. PROVINE: Thank you, panel, for a
 25 very informative and detailed set of issues for us to

1 consider and for Congress ultimately to consider.
 2 My fellow commissioners, would you like
 3 to ask questions?
 4 MS. LADELL-WILLRICH: I'd like to address
 5 this to any of the panel members. I'm really
 6 concerned about the provisional ballots not being
 7 counted. And I guess I'm wondering what kind of
 8 check-and-balance system exists to oversee or monitor
 9 who makes the decision on which ballot to count and
 10 which ballot not to count?
 11 MR. WERCINSKI: The Secretary of State's
 12 procedure manual would cover that. And then each of
 13 the County Recorders would be in charge of overseeing
 14 whether or not the provisional ballots are accepted.
 15 One example in which we're actually
 16 seeing an increase in the number of ballots rejected
 17 has to do with signature verification once the
 18 ballots are brought back to the election offices. If
 19 we have elderly voters casting these ballots, of
 20 course their handwriting is going to change over
 21 time. If you have an individual who loses the use of
 22 their writing hand, their signature will have changed
 23 significantly than the time, perhaps, when they were
 24 issued their voter -- or their driver's license here
 25 in Arizona.

1 So it's up to the particular county
2 election official to determine what's accepted or
3 not, and then to follow through by contacting voters
4 for the procedures to come down in person and to
5 provide additional documentation or present
6 themselves in person and have that ballot counted or
7 not.

8 MS. FALCON: These are concerning that we
9 learned after the fact and people have been waiting
10 in a line to vote and their name wasn't on the list
11 and they were given a provisional ballot. If that
12 precinct was not their correct precinct, we
13 understood that that provisional was not going to be
14 counted. They had to vote at the correct precinct
15 for the provisional to be counted.

16 And that happened in many, many, many
17 instances, especially because this was a year where
18 districts changed, polling places changed,
19 legislative districts changed, and there was just a
20 lot of confusion on election day and a lot of
21 misinformation.

22 MS. LADELL-WILLRICH: So, for example,
23 there was no master list of polling locations so that
24 if someone shows up at the incorrect polling place to
25 vote, there's not a way that the person can be told

1 that, well, you used to be here, but now you're
2 somewhere else, so that they can be redirected.

3 MS. FALCON: I don't think that was the
4 case.

5 MR. WERCINSKI: There is a master list,
6 but it's not available to the poll workers, to my
7 knowledge. What is available at each polling
8 location is a small map, typically on a piece of
9 paper this large, that's behind the provisional
10 ballot table. And on that map, you will have the
11 precinct outline and major streets identified and the
12 other precincts around that particular location.

13 So it's up to the voter to determine if
14 they're in the correct location before they vote that
15 provisional ballot if their name is not on the
16 signature roster.

17 MS. TERAN: And there is also no official
18 count of the ballots and no accountability of the
19 ballots from the polling locations, early ballots, or
20 the tabulation centers.

21 MR. WERCINSKI: In other states they do
22 have precinct guides that poll worker will have, but
23 even in that case, many, many times what happens is
24 the voter will walk in to vote, if they don't appear
25 on the rolls, the poll worker may not say, Let me

1 find your correct address and what precinct you
2 should have been in. And the voter will simply cast
3 a provisional ballot.

4 It comes time for certification, they
5 look it up, realize they're in the wrong place, it
6 will be rejected in full.

7 The other thing I would add in response
8 to your question is, one of the best checks on this
9 process would be better information, better data. We
10 simply don't have that. Some counties, it seems
11 like, do a good job of breaking it out by precinct so
12 you can see where specific provisional ballots were
13 rejected for specific reasons.

14 I've seen that in Pima County. The EAC
15 collects data that I cited in my testimony. But it's
16 insufficient to sort of demonstrate what the scope of
17 the problem is, and we basically have to rely on the
18 voters following up and determining whether or not
19 the provisional ballot was ultimately counted.

20 MS. PROVINE: It does seem as if a theme
21 of these remarks on this panel is that election
22 workers need to be better trained and actually better
23 -- have better information put in their hands. But
24 I'm also hearing the theme, especially from you,
25 John, that we need specific legislative changes to

1 make things work better, including changes in the law
2 that say that if you voted the wrong precinct, you're
3 totally done.

4 Are there other legislative changes that
5 you would recommend apart from the issue of better
6 training for elections workers at the polls?

7 MS. FALCON: Same-day voter registration.

8 MS. PROVINE: Others on the panel?

9 MR. WERCINSKI: Yes. Commissioner
10 Provine, there is -- to address the provisional
11 ballots, which has become a hot topic in Arizona
12 because of the large number in 2012, there's some
13 very simple solutions to reduce the number of
14 provisional ballots.

15 First, to address the voter ID under Prop
16 200, the legislature has the ability to advance the
17 intent of voters because this is a voter-protected
18 law. With a three-quarters vote to expand the
19 acceptable forms of ID to incorporate, perhaps, ID
20 that isn't accepted today. And they've done that
21 once where they allowed veterans to use their
22 military ID cards as one form of ID that wasn't
23 originally in Prop 200.

24 College students, high school students
25 today get photo IDs. The legislature could advance

1 the intent of Prop 200 and pass legislation that
 2 allows those to be acceptable forms of ID.
 3 College students have secure online
 4 accounts at their universities. For example, at ASU
 5 it's called "My ASU Account." These are secure
 6 accounts, as secure as your bank accounts that you
 7 access online. At the Hudson Precinct for about an
 8 hour during election day, the poll workers were
 9 accepting printouts of the My ASU Account from
 10 students, along with an out-of-state driver's license
 11 as sufficient form of ID because the account had
 12 their dorm addresses on, which is what was in the
 13 signature roster.
 14 A partisan poll observer challenged that
 15 practice. A call was made to the county elections
 16 chief official and they stopped that -- they no
 17 longer allowed that to occur. That could be expanded
 18 to be another form. And then -- That's the ID
 19 requirement.
 20 Another way to address the ID requirement
 21 would be to allow what we call a signature ballot to
 22 be cast at the correct polling location. An
 23 individual shows up at the poll, doesn't have the
 24 acceptable ID. They should be given a ballot to cast
 25 just as an individual does with an early ballot.

1 They cast the ballot, they put it in the envelope,
 2 they attest that that's them, they sign it, and it
 3 goes into the early ballot box to be counted later
 4 with signature verification. That's going to reduce
 5 the provisional ballots significantly.
 6 Finally, to help the County Recorders and
 7 the election officials reduce the number of ballots
 8 being counted after election day, the procedure could
 9 be put in place to allow individuals who have an
 10 early ballot and show up at their current polling
 11 site with acceptable ID to take that ballot out of
 12 the envelope and run it through the machine, count it
 13 on election day, rather than having to be carried
 14 back and counted after the fact.
 15 That would help our election officials.
 16 That would speed up the voting count process and
 17 still maintain our election integrity.
 18 MS. PROVINE: Thank you very much.
 19 I have a question particularly for Petra
 20 Falcon and for Raquel Teran. There were some remarks
 21 by someone -- I'm not even sure it was on this
 22 panel -- that the legislature seems to be kind of
 23 playing with voting rules for whatever its own
 24 purposes are rather than thinking about opening up
 25 voting. And both of you have noted an incredible

1 number of new registrants through the efforts of your
 2 organizations.
 3 And so my first question is, has the
 4 legislature or any representative of Arizona thanked
 5 either or both of your organizations for these
 6 outstanding efforts to increase voter enfranchisement
 7 in the State through volunteer efforts?
 8 And my second question -- I have the
 9 feeling the answer may not be a resounding "Yes" on
 10 that first one.
 11 My second question is, with the felony
 12 status for young people, often it is young volunteers
 13 involved in trying to assist voters, how are
 14 organizations staffed by volunteers going to respond
 15 to this criminalization of their activities? Now,
 16 this is, I know, currently in abeyance while we go
 17 through the HB2305 decisions.
 18 But it may well come into being that
 19 there will -- that criminalization will come back at
 20 us, and I just wonder how these organizations are
 21 going to be able to operate with new voters with the
 22 threat of criminal sanctions for their activities.
 23 MS. TERAN: Well, in terms of the
 24 gratitude from the state legislature as a whole, we
 25 have not received a thanks. And Petra can say for

1 herself.
 2 Senator Gallardo, Senator Quezada --
 3 Representative Quezada and a few others who are
 4 grateful to the process who also invest in the
 5 process because all of this takes a lot of resources.
 6 And -- But coming back to the
 7 criminalization of volunteers or staff, we have to be
 8 mindful, like I said in our testimony, folks have
 9 only 26 -- they have -- when -- the last day that
 10 folks get a notification from the county that they --
 11 that they need to turn in their ballot, it doesn't
 12 come.
 13 So that's kind of the contract by the
 14 county is when they receive the ballot. So having
 15 this criminalization really is going to affect our
 16 efforts on making sure that ballots get to the
 17 polling place or to the county by Tuesday, because
 18 they have to be earmarked by Tuesday.
 19 But it is going to be a challenge not
 20 having our volunteers or our staff being able to
 21 collect those ballots for that reason.
 22 Unfortunately, if -- if the referendum is
 23 not stopped at -- because HB2305 is now going to be
 24 on the ballot in November of 2014, if it's not
 25 stopped, we're going to have to retrain our

1 volunteers and our staff to make sure that none of
 2 them are in jeopardy of any bad record -- any
 3 felonies.

4 MS. FALCON: First of all, I think I
 5 would want to -- No. I would want to remind the
 6 Arizona legislature or elected officials that there
 7 was an effort in an East Valley district where we did
 8 elect a Republican, and we elected Jerry Lewis that
 9 ran against Russell Pearce.

10 So we are able to cross the line and work
 11 with all communities if we need to in the interests
 12 of our community and the State.

13 But in terms of how we will impact our
 14 community effort, I think there needs to be a real
 15 serious pushback from the community, because it is
 16 our right to be involved and to make sure that our
 17 voice is counted and that volunteers cannot take that
 18 bite and put it to work.

19 I think that it's a travesty. And I
 20 think that's why we have continued working on what
 21 we're doing in the community. And really, quite
 22 frankly, worked with this legislature and elect those
 23 people that best represent our values.

24 MS. PROVINE: Thank you.
 25 Other questions from commissioners?

1 ticket races, federal only.

2 But most will count certain -- restricted
 3 to being in the right county. Some allow you to vote
 4 anywhere statewide and will count any votes that
 5 would have been eligible to pass if you were in the
 6 right precinct.

7 So it would be interesting to sort of
 8 research the legislative history for each of those
 9 particular statutes and how they came about. Further
 10 research them.

11 MS. PROVINE: Other questions?
 12 MR. FANNIEL: I wanted to address
 13 Mr. Sherman. You point out some very interesting
 14 statistics. You raised the -- the identification
 15 here as Arizona being the first in the nation among
 16 the three states with disenfranchisement of over
 17 10,979 provisional ballots rejected. That can change
 18 some elections, couldn't it?

19 MR. SHERMAN: Certainly could if it was a
 20 close election.

21 MR. FANNIEL: So I believe -- it appears
 22 that everything that we are hearing here today seems
 23 like the majority of the problem lies with -- you can
 24 tell me if I'm wrong -- the County Recorder and the
 25 Secretary of State.

1 MR. LEWIS: I have a question regarding
 2 the movements that made changes in the way the
 3 provisional ballots were addressed. Arizona has such
 4 a great disparity in the numbers presented here and a
 5 number of other states that have taken action to do
 6 that. And I guess ultimately the state legislature
 7 does that, but how did that come about?

8 Is there information as to why those
 9 states moved in the way they did? And is there a
 10 commonality in how that policy and legislation was
 11 put in place?

12 MR. WERCINSKI: It's an excellent
 13 question. The -- I don't know the answer offhand to
 14 what would unify all these different states. As I
 15 said, it's a pretty diverse election. There are
 16 states like Washington and Oregon which have already
 17 sort of moved to all-mail voting, so they have
 18 partial county rules on the books, but they have a
 19 limited need for them.

20 You know, other states on the list
 21 include Georgia and Louisiana, which I believe have
 22 had these rules for a long time. I should emphasize
 23 that there's some diversity even within this group of
 24 partial counting states. Some of them, like
 25 Louisiana, will only count certain specific top

1 MR. SHERMAN: Well, I would put it first
 2 on the State legislature to change the law. I mean,
 3 they've had this law on the books, but then there's
 4 problems. So that would be the easiest way to fix
 5 it. We just -- the state legislative fix. And it's
 6 a simple rule to write.

7 As far as working within this law, yes,
 8 to bring down the number from 15,000, almost 11,000
 9 wrong precinct. And this is just in provisional
 10 ballots rejected because they were cast in the wrong
 11 precinct, as Sam was talking about.

12 Others that were cast because of lack of
 13 voter ID, itself, would be to work with Secretary of
 14 State to work with County Recorders, so that training
 15 is better, so that people know to sort of proactively
 16 direct voters to the correct precinct.

17 As far as I can tell, these things in
 18 2012, this wasn't a problem of multi-precinct polling
 19 locations in places like Ohio. Ohio had major
 20 litigation over this issue. In Ohio there will be,
 21 for instance, in the Cleveland Public Library alone
 22 in one general election year, 40 provisional ballots
 23 at that one polling location were rejected because
 24 they were cast in the wrong precinct.

25 That's a simple error. A poll worker

1 directed someone into the wrong line. The ballot is
2 rejected in full.

3 So, yes, training and better procedures
4 to sort of direct would help. It's not a cure-all
5 because at the end of the day the rule of law is
6 there.

7 MS. PROVINE: And Commissioner
8 Ferguson-Bohnee.

9 MS. FERGUSON-BOHNEE: I was going to ask
10 a question as to provisional ballots too, but I think
11 he answered the question.

12 MS. PROVINE: Other questions from the
13 commissioners?

14 MS. LADELL-WILLRICH: I have a question
15 for Mr. Wercinski. One of the panelists talked about
16 voter disenfranchisement because of felony
17 convictions and stated that our state has among -- is
18 among the toughest in laws in terms of restoration of
19 civil rights to vote for felons.

20 And the question is, do we know what the
21 numerical impact is, how many potential voters are
22 out there in Arizona who are essentially prohibited
23 from voting because of a felony conviction?

24 MR. WERCINSKI: Unfortunately, I don't
25 have those statistics today or with me. There has

1 been research and there are groups in Arizona
2 specifically focused on that. And the initiative --
3 the statute allows an individual with a felony --
4 with their first felony who has served their time, is
5 off probation, and has paid their fines to just
6 petition the County Recorder or the Court to restore
7 their rights. And it's relatively simple if they've
8 met all those requirements.

9 It's when an individual might have a
10 second felony that the procedure becomes much more
11 difficult.

12 MS. PROVINE: We may hear something from
13 one of our public testifiers. They'll be talking
14 about ex-defendants' rights.

15 If there are not other questions, I want
16 to thank this very distinguished panel for their
17 excellent help with our questions and with their own
18 presentations. Thank you very much.

19 We will move on to public testimony at
20 this point. We have eight people signed up for
21 public testimony, and I want to remind the testifiers
22 that we have given four to five minutes for each of
23 you and we need you to stay on schedule. And if that
24 means you have to abbreviate your presentation, you
25 should think about doing that.

1 And if we ask you questions, we would ask
2 you that your responses be brief in order that we be
3 able to finish this -- this day of learning on time.

4 Rachel Phillips is our first speaker.

5 MS. PHILLIPS: I have a whole lot to say.
6 I know I'm limited on time and I've already read
7 this. And I'll try to go slow.

8 Hello to the commissioners. Thank you
9 for your time today. My name is Rachel Phillips, and
10 I'm the owner of Educated Souls, LLC, which involves
11 students in the community as volunteers and a way of
12 giving back.

13 I'd like to start out by saying that
14 there must be a sense of accountability and a desire
15 to be ethical from everyone involved in the State of
16 Arizona, especially when it comes to voting rights.
17 Many parts of society are unaware of the voting
18 procedure, they're uneducated as to how the voting
19 process advances.

20 This is a huge contributor to the fears
21 that exist in society today, and a fear or nonbelief
22 that each vote counts is passed down to each
23 generation. And when we diminish of the
24 representation of leaders that lead by example, then
25 you leave each generation that follows less hope that

1 they will feel and believe that they have no
2 contribution to the progress and success of change in
3 their future.

4 This subliminally causes the breakdown of
5 togetherness and brings to each his or her own
6 mentality which at times is despair. I have
7 witnessed many of the concerns mentioned here today
8 throughout the years, so no need to reiterate.

9 But I would like to share that while
10 attending a redistricting meeting at Fiesta Inn in
11 Tempe, there was a huge debate between panel members
12 in regards to county inmates that are incarcerated in
13 state prisons when drawing the lines. And I believe
14 that this contributed to -- that meeting, the lines
15 that were drawn for District 8 specifically for voter
16 suppression for south Phoenix.

17 And this is where it gets a little
18 scattered. So I ask of you today to please hold the
19 State of Arizona accountable in regards to voting
20 rights.

21 I am a commissioner with the City of
22 Tempe disability concerns. I am a resident advisor
23 board member with Section 8. I'm an ASU graduate
24 with justice studies, minor in sociology. Single
25 mother of four, one who is enlisted in the Army who

1 just came home Afghanistan.
 2 I thank you for your time. We appreciate
 3 all your efforts as commissioners and the other
 4 titles that you hold. I have a little bit more time.
 5 So I just wanted to mention, and this is in no means
 6 to offend anyone, but I don't understand some of the
 7 problems because I received my ballot in the mail and
 8 I mail it back.
 9 So there's no lines, there's no one
 10 wondering who I am. I don't have to show ID. And I
 11 also have a voter registration card, so I haven't
 12 heard that mentioned from anyone today. If you have
 13 a voter registration card, I don't know that you
 14 still need to show ID.
 15 I don't expect you guys to answer any of
 16 that right now. But I also think that when you talk
 17 to people, and I'm going to say teach, it doesn't
 18 cost anything. Teaching youth and adults about
 19 voting, there shouldn't be any funding.
 20 I don't understand the funding part
 21 because I talk to people all the time and it doesn't
 22 cost me a dime. Not to say that there's other needs
 23 for funding. I'm not disputing that.
 24 The DES forms, when they ask you if you
 25 want to be registered as a voter, if I'm not

1 mistaken, that form only asks you if you want to be a
 2 registered voter, and then you sign it saying that
 3 you deny it. There's nowhere on there that says, I'm
 4 already a registered voter.
 5 So I always -- And, yes, I'm on AHCCCS.
 6 I always write it on there. I have to share that
 7 with you so you understand I know what I'm talking
 8 about. I write it on there. I am already a
 9 registered voter. So somewhere maybe that would help
 10 because I'm clueless.
 11 I also used to canvas for Mayor Stanton,
 12 Greg Stanton, not knowing because I was in Tempe, I
 13 can't vote for him, but I still canvassed for him.
 14 And we were getting piles of names with addresses and
 15 phone numbers and their political party. So I don't
 16 know where the -- you know, what's going on with the
 17 polls having misinformation.
 18 And, let's see. What else? Thank you
 19 for being patient with me. I just wanted to say that
 20 Arizona has the highest high school dropout rate, but
 21 we have the most charter schools with 535 currently.
 22 And I'm mentioning that because it's all about
 23 education, and I'm an advocate for education.
 24 And there is no reason why we can't teach
 25 the youth and anybody else that wants to learn how to

1 vote to be voters, but there's no encouragement from
 2 the state at every level. And that's just my
 3 opinion. I've seen it.
 4 MS. PROVINE: I have a question for you.
 5 You mentioned you have been by the DES office. In
 6 earlier testimony, I'm not sure you were here at the
 7 time, was that it has been difficult to have voter
 8 registration forms at DES offices and there has been
 9 an effort to have those forms there. I'm just
 10 wondering, have you noticed voter registration forms?
 11 Have you encountered encouragement to register to
 12 vote when you've talked with DES personnel?
 13 MS. PHILLIPS: The form is given to us
 14 every single time that we go into the office when you
 15 sit down with someone at a desk. It's -- I don't
 16 recall if it's attached to the actual application
 17 when you go there on your own. It's always rushed.
 18 And so there's just, "Hey, sign this," and then they
 19 take it back. That's it.
 20 There's no -- You know, there might be,
 21 like with me, I'm like tough and smart. I'm like, I
 22 don't need all that. But there's people that I think
 23 if they would talk to them, they would be more
 24 inclined to go, "Hey, I'd like to know more about
 25 that."

1 MS. PROVINE: So it's not occurring, as
 2 far as you know?
 3 MS. PHILLIPS: It's not occurring, but
 4 the paper -- I want to say it's offered. It's kind
 5 of slid across the desk. And I read everything. I
 6 don't know if everybody else does. So sometimes they
 7 just sign it because they want to get their benefits
 8 and they don't really know what it is.
 9 MS. PROVINE: Questions from the
 10 commissioners?
 11 Okay. Thank you so much.
 12 Our next witness is Lydia Guzman. She's
 13 representing LULAC as well as probably other
 14 organizations.
 15 MS. GUZMAN: Thank you, Commissioners.
 16 I had an opportunity to sit here earlier
 17 today so that I could hear most of the testimony so
 18 that I don't repeat a lot of what has already been
 19 said in an effort to save time.
 20 I did take down some notes and I'm hoping
 21 to help answer some of the questions that have
 22 already been asked by the Commission to some of the
 23 panelists in the best way that I can.
 24 First of all, let me start by thanking
 25 the Commission for holding these meetings and for the

1 opportunity to speak before you today.
 2 My name is Lydia Guzman. I represent
 3 LULAC. LULAC is the nation's largest and oldest
 4 civil rights volunteer-based organization that
 5 empowers Americans and builds stronger communities.

6 Our volunteers with LULAC have
 7 participated in voter education with many of the
 8 organizations that not only have testified here today
 9 on a local level but on a national level. LULAC was
 10 also a named plaintiff on the Prop 200 ITCA lawsuit.

11 I'm the national chairman for the
 12 immigration committee. Also the Arizona state
 13 chairman for the civil rights committee.

14 It's been almost 10 years since I have
 15 testified before this very same commission. And back
 16 then, when I testified, I didn't feel that we would
 17 be here again today to talk about the issues. And
 18 when I testified then, I talked about some of the
 19 obstacles that we were faced. This was very recent
 20 post-Prop 200, and the obstacles of registering
 21 voters with the proof of citizenship, as well as some
 22 of the obstacles with lack of language access
 23 volunteers at the polls. And so I think that we
 24 would have that problem today.

25 But, now, what I'm here to talk about

1 today is that we need voter protections now more than
 2 ever before because our right to vote has been in the
 3 most recent years under attack more now. We're faced
 4 with a conservative state legislature who has come up
 5 with new and creative ways to oppose our voter
 6 registration and Get Out The Vote efforts.

7 Apache County Recorder, LeNora Fulton,
 8 just mentioned a lack of research to do some basic
 9 things, like proper updating of our voter
 10 registration polls, when we've seen a surge of
 11 dropping voters from the polls. We've all seen where
 12 voters show up to the polls and say that the voter --
 13 or the poll workers say that they're simply not there
 14 and they're given provisional ballots. In which the
 15 County Recorders have to go and -- you know, I blame
 16 the unnecessary purge of the voting rolls on the
 17 increase of provisional ballots and this is what
 18 happens.

19 Phoenix had done so hastily in a matter
 20 to comply with Help America Vote Act, with some of
 21 the provisions of the Help America Vote Act in order
 22 to make sure that they comply with the voter
 23 registration system.

24 Now, recently, in Maricopa County, a
 25 mistake was also made to the voters in the Spanish

1 language materials that went out to the public. They
 2 printed an incorrect election date on the Spanish
 3 material. And then they requested -- they requested
 4 an extra effort to be made to conduct a campaign to
 5 educate the voters -- the Spanish language voters on
 6 the correct date.

7 And Maricopa County responded with
 8 they're just -- We don't have enough money to do
 9 this. And so it wasn't until the County Board of
 10 Supervisors in an emergency meeting approved
 11 additional funding so that they could do this -- this
 12 campaign because we were days away from an election
 13 and we were afraid that we were going to have lots of
 14 voters showing up to the polls, you know, on an
 15 incorrect date.

16 So one of the ways that we've been
 17 disenfranchised is through the lack of proper funding
 18 to -- to -- to our election systems.

19 Now, a little bit of background, and I
 20 know I have a little of time here. As a teenager --
 21 I've been conducting voter registration since the
 22 early '80s, so I've been involved in this.

23 I've also worked as the director of voter
 24 outreach for the Arizona Secretary of State's office.
 25 I've also worked as the director of -- the Arizona

1 effort for the Southwest Voter Registration Education
 2 project, as well as a director of voter outreach for
 3 the Clean Elections Institute.

4 I just want to say that when we were
 5 given the money to upgrade our voting equipment and
 6 all the things that HAVA required, the money was to
 7 be allocated to provide for different things. The --
 8 Each state was supposed to submit a plan to the
 9 government accounting office, and the government
 10 accounting office was supposed to be responsible to
 11 make sure that all of this money was distributed and
 12 applied in the same way.

13 MS. PROVINE: Your time is up.

14 MS. GUZMAN: Okay. I know I have a
 15 little bit more.

16 But there's been no accountability. The
 17 Secretary of State's office has not really told the
 18 public or the government on how this money has been
 19 allocated. We need to provide money for education
 20 for -- so that we can educate our workers on all of
 21 the things that were just mentioned before me with
 22 respect to consolidated voting places and moving of
 23 the polling places.

24 One of the things that was mentioned
 25 earlier was we talked a lot about the provisional

1 ballots. Another way that our voters have been
 2 disenfranchised is through something called a
 3 conditional provisional ballot. A conditional
 4 provisional ballot is when someone shows up to the
 5 poll and they say, Well, you don't have the proper
 6 ID, but they let them vote.
 7 They're given a provisional ballot but
 8 they say, On the condition we won't count this until
 9 you come to our elections office and you provide
 10 proof that, you know, you are, you know, who you say
 11 you are with ID. Because they're not going back to
 12 the same polling place, it's days after the election
 13 they have to drive sometimes very far.
 14 Many people do not have transportation so
 15 that they can go and provide the proof needed so that
 16 their conditional provisional ballot can be counted.
 17 So these votes are tossed in the trash. The voters
 18 simply give up.
 19 One of the speakers gave an example that
 20 we can continue to be challenged by a lot of these
 21 efforts. You know, the -- our legislature, local and
 22 some of the national, they use spin and pundits.
 23 They say things like, noncitizens are coming into
 24 this country, sneaking in the darkness of night to
 25 register to vote so that they tell the government

1 where they can be sent their ballot.
 2 That's simply not happening. When I
 3 worked for the Secretary of State's office, during
 4 the last part of my employment there was to compel
 5 the reports that were given quarterly by this -- by
 6 the County Recorder's office. I reported to the
 7 Department of Justice on any of voter fraud. Voter
 8 fraud does not exist in Arizona. It didn't exist
 9 then and it does not exist now.
 10 Most recently, the Walter Cronkite School
 11 of Journalism conducted a study in between the years
 12 of 2000 and 2011. And in those 11 years, they only
 13 found 11 cases of voter fraud. We're talking about
 14 11 cases in 11 years compared to the millions of
 15 voters that came out. So voter fraud does not exist
 16 in Arizona.
 17 So all of these unnecessary obstacles and
 18 rules and laws are unnecessary.
 19 If this Commission is going to make
 20 recommendations to Congress to -- you know, on voter
 21 issues, my recommendation is to make sure that
 22 Congress holds the Secretary of State's office
 23 accountable for the proper disbursement of HAVA funds
 24 as well as for some sort of accountability.
 25 One of the last things I just want to

1 mention is if -- if we can also be very involved in
 2 the reinstating of the preclearance piece of any
 3 changes to the election law or the election process
 4 of voting, it's important because of issues like this
 5 that we continue to have input and share some of the
 6 cases so that they can see the kind of impact that
 7 those types of changes are going to make to us and
 8 how we continue to be further disenfranchised.
 9 Thank you so much. I apologize for
 10 extending the time.
 11 MS. PROVINE: I wonder if you could
 12 clarify for the record that -- it's come up several
 13 times about the mistaken voting date, but it needs to
 14 be clarified whether that mistake was before or after
 15 the election. It would have been much less serious
 16 problem if the mistaken date was before, but if it's
 17 after the election, then that would directly
 18 disenfranchise people who took account of this
 19 official communication.
 20 MS. GUZMAN: When that error took
 21 place -- this happened in Maricopa County, it took
 22 place in several different forums. There was some
 23 printed material that was distributed to the
 24 different community centers in forms of printed
 25 material: Election day is going to be on this day.

1 Bookmarks were sent out. And it was only
 2 in Spanish, not in English. So only the Spanish
 3 voters are disenfranchised. This was days before the
 4 election. I want to say, if I remember correctly,
 5 maybe about --
 6 MS. PROVINE: Was the date -- the date
 7 specified for the election, it was after the
 8 election; is that not correct?
 9 THE WITNESS: That's correct. It did
 10 specify that. So what wound up happening is if that
 11 matter did not get -- wasn't caught and went through
 12 with nobody catching it, all of those voters,
 13 Spanish-speaking voters, would have turned up to the
 14 polls after the election took place and their voice
 15 would never have been heard.
 16 MS. PROVINE: Thank you.
 17 Questions from the panel? Other
 18 commissioners.
 19 MS. FERGUSON-BOHNEE: I just want to say
 20 thank you for bringing up the conditional provisional
 21 ballots. I think with Prop 200 that it's complicated
 22 things a little bit more. I know in Maricopa County,
 23 there were over 1,000 conditional provisional ballots
 24 that weren't counted. And I think you explained what
 25 it was, but I just wanted to thank you for bringing

1 that to our attention.
 2 MS. PROVINE: I just also wanted to ask,
 3 you were mentioning the need for more accountability
 4 from the Secretary of State's office. What about,
 5 there's been a lot of concern in Arizona about people
 6 from out of state coming and voting in our election.
 7 What about out-of-state money coming and influencing
 8 our elections?

9 MS. GUZMAN: That is another way that a
 10 lot of our -- we have outside influence pour money
 11 into our elections. Back in 2003, the Fannie Lou
 12 Gainer (sic) project, they conducted a study, and in
 13 the study, they took a look at several candidates and
 14 some of the candidates that they took a look at were
 15 candidates that participate in our state's clean
 16 elections system.

17 What they wanted to see is the engagement
 18 that voters had when they were talking to candidates
 19 that were not influenced by the Clean Elections Act.
 20 And these candidates had to go out and reach out to
 21 all of those voters in order to not only get support,
 22 but, B, also get those private dollar contributions.

23 We saw an increase in the engagements and
 24 the participation of a lot of our dollars that the
 25 State had. I'll give you an example.

1 MS. UMARETIYA: Hi. My name is Amy
 2 Umaretiya. I'm an undergraduate student here at
 3 Arizona State University. I wasn't going to testify.
 4 But I noticed there were no students who spoke today,
 5 so I thought I would actually provide some
 6 illustration about what goes on to some of the
 7 panelists.

8 I was a freshman living on campus during
 9 the 2012 election. My precinct location was the
 10 Hudson Precinct and so I thought this is my first
 11 chance. I went on there. And, naturally, there were
 12 long lines, as there were with many polling locations
 13 in that election.

14 The added component of student voters,
 15 many of us are first-time voters, caused a lot of
 16 confusion. First-time student voters aren't
 17 well-versed in voter ID laws. And so when many of
 18 them showed up to the polling location with their
 19 driver's licenses, unfortunately, they registered to
 20 vote with their on-campus addresses, their addresses
 21 on their licenses didn't match up. And so they
 22 needed another form of identification to go along
 23 with that.

24 Students who live at the dorms, however,
 25 don't receive utility bills. They don't have bank

1 One of the persons that they looked at
 2 was -- there was a candidate named Alfredo Gutierrez
 3 who ran for governor. And rather than seeing a lot
 4 of his donations come from areas like, you know,
 5 Scottsdale or Fountain Hills or the more affluent
 6 places, you saw a lot of support and contributions
 7 from places where candidates never visited before,
 8 places like Yuma, San Luis, Somerton.

9 So this is one of those ways where these
 10 -- where money can certainly influence not only the
 11 candidates, but also voter participation. And in
 12 many times, when our voters engage, they will
 13 participate. And this is another way, you know, to
 14 silence.

15 I'm very fearful for when I hear in court
 16 a business say, Well, it's our First Amendment right.
 17 They say this is our First Amendment right. I don't
 18 know where a corporation is a human being that has a
 19 right. And, secondly, since when is a -- a First
 20 Amendment right given to the highest bidder?

21 MS. PROVINE: Thank you.

22 Questions? Other questions from the
 23 Commissioners? Thank you so much.

24 Our next testifier is Amy
 25 Umaretiya. I hope I got that right.

1 statements or credit card statements sent to their
 2 dorms. So when they show up to vote the day of
 3 election, if it hadn't saved that piece of mail where
 4 they got the sample ballot or saved their voter ID
 5 card or they didn't have it anymore, they were kind
 6 of out of luck. There was nothing that they could
 7 print out.

8 And it turns out that the Hudson polling
 9 location was allowing students to bring in a printout
 10 of their ASU account. I think it was for quite some
 11 time. It was a few hours that they were allowing for
 12 that. And it was a solution, but many students
 13 didn't take advantage of it because they would have
 14 to go back to campus and print out that document.
 15 And many students just came to the polling location
 16 between classes when they thought they had time.
 17 They didn't have time to come back and wait in line
 18 after they had that printout.

19 So what a few students and I did was
 20 bring a printer out to the polling location because
 21 we figured if we could get things printed while
 22 students were waiting in line, it would move a lot
 23 faster. It definitely worked. We were getting
 24 students through the polls pretty fast.

25 And we had worked with a nearby business

1 if we could use their wi-fi, so people were being
2 pretty helpful as well. After we had gotten about 50
3 printouts, at least on my laptop, students started
4 coming back to us saying they were no longer
5 accepting this ASU account page.

6 And so we were just confused, through
7 election day, to suddenly switch the rules on us
8 again. And so these students were forced to vote
9 provisionally once more. Now, some students went
10 home that day thinking an ASU account page was proper
11 identification; some students went home not thinking
12 that it was.

13 And I understand that the onus is on us
14 to know voter rules so we can vote properly. But we
15 should also be able to have consistency in the
16 information that is given to us when we go vote.
17 Students have a hard time getting their voices heard
18 in elections because the process is so new to them.

19 So they may mess up in their first
20 election, learn from their mistakes, and get it right
21 the next time. But then they might not represent
22 that mindset that they were in four years ago or two
23 years ago. And so there's a big gap in the
24 representation for the first-time voters, especially
25 people who move during the location like the

1 university student.

2 So we should be attempting to make the
3 process a lot easier and less cumbersome, not making
4 it more difficult by implementing things like this
5 dual-track voting system that we've heard a lot about
6 today.

7 I'm also the director of state and
8 national affairs for the undergraduate government at
9 ASU, And I know about how this really affects
10 out-of-state student voter registrations.

11 And I would also like to add that the way
12 students are going to be voted by, they're only
13 eligible for a partial ballot is through the mail.
14 And a student is transitory in nature and we're
15 afraid that a lot of these students aren't going to
16 know until they show up at the polls that they aren't
17 getting their full ballot. It's going to lead to
18 even more confusion on that front.

19 So that's all I have to say.

20 MS. PROVINE: Amy, is there any way that
21 you believe that the ASU student ID could be changed
22 or amplified to deal with some of the problems you
23 observed?

24 MS. UMARETIYA: One of the problems I'm
25 working on and I'm still trying to see the

1 feasibility of this is maybe not changing the ID, but
2 when the students enroll at ASU, they're asked to
3 provide proofs of citizenship. And some of these
4 match the proofs that are required using this new
5 system. I talked to the registrar's office and they
6 said, most of the proof comes from birth
7 certificates.

8 So if we can somehow get the university
9 registrant's database consolidated with Maricopa
10 County elections or have a checked box on the
11 application saying students with a visa information
12 when submitted to ASU. This is a public university
13 and you think you would be able to somehow work so
14 when you turn in your information to a university, it
15 goes to the county elections as well.

16 MS. PROVINE: The big issue is really
17 that home address issue that you mentioned and having
18 that be verified somehow with a picture ID?

19 MS. UMARETIYA: Yeah. So right now,
20 student services, you can go print out a verification
21 of your home address -- or your dorm address saying
22 that you live there. Students don't know this is an
23 available option and students don't know that they
24 need to do this. So it still requires them to go
25 back and forth.

1 MS. PROVINE: Big educational effort for
2 the required.

3 Other questions from other panels?

4 I just want to thank you for a really
5 moving exercise in engagement -- in civic engagement
6 when you went and got a printer and helped other
7 students vote. That is really a terrific thing to
8 do. So thank you.

9 Our next witness is Greg Jones, Maricopa
10 County Democratic Party.

11 MR. JONES: Good afternoon. My name is
12 Greg Jones. I am the election integrity chairperson
13 for Maricopa County Democratic Party. Let me give a
14 few comments that I have on the dual registration
15 system specifically.

16 I've been the election integrity chair
17 for a little more than a year, and with some other
18 people in the party, we have had a sense of meetings
19 with the county elections officials specifically
20 trying to sort through some of the problems with the
21 federal form processing by the elections people.

22 And a lot of those had to do with ASU
23 students because they use federal forms. The problem
24 that we heard was that the County wasn't ready to
25 process the federal forms and as of 11 days before

1 the election, something like 1,350 people still
2 hadn't been processed and were in suspense and were
3 required to send out letters that supposedly told
4 them which poll to go to, they could take that letter
5 to register.

6 Well, we found out two days before the
7 election that the students very, very few had
8 received that. And they had been receiving letters
9 saying, You're not eligible to vote unless you have
10 an Arizona driver's license. The ballot was supposed
11 to be sent home to people who use a driver's license
12 but it doesn't match.

13 So under the existing rules for the
14 federal form, they were weren't following them. So
15 in the process of meeting with them and trying to get
16 to the bottom of it, become more knowledgeable about
17 the way that they process the federal form. And I've
18 gone to the community network meetings, the community
19 outreach and educational were the same.

20 So when the dual registration system
21 issue came up, me and the individuals who have been
22 involved in this, we had at least a little bit of a
23 unique vantage point and specific knowledge.

24 So a couple of the things that I don't
25 think that have really come out in the press and not

1 necessarily here today, number one, the way that
2 Maricopa County processes the federal form is, and
3 this has been specifically verified by the federal
4 complaints office during the elections, that they --
5 they followed the HAVA rules which have been
6 incorporated into the voter registration manual for
7 Arizona by the Secretary of State.

8 Hansen mentioned that earlier.
9 Apparently that process of it. But the current one
10 says how you to have to process federal forms. That
11 was amended after the Gonzales case and the tribal
12 case in the 9th Circuit.

13 So to implement ways that they had to
14 process the federal form, the federal -- the
15 requirement is that if someone uses their last four
16 digits of their Social Security number, which is most
17 typical, then they check it against the Social
18 Security database, or are supposed to, and if it
19 comes back with a match as to identity, then they're
20 placed on the rolls. As of today, that's what is
21 still Arizona law, according to the Secretary of
22 State's office.

23 When the Supreme Court decision came out,
24 that nearly -- it really confirmed the status quo.
25 So that didn't change anything about what the law

1 was, because the law was -- it merely affirmed the
2 9th Circuit.

3 So at the time that these changes were
4 made, Tom Horne, as Attorney General, issued an
5 opinion saying that these changes, these provisions
6 using the federal form to place people onto the State
7 rolls were consistent with Arizona law and were
8 consistent specifically with Arizona elections
9 statutes.

10 So now, a few months later or, you know,
11 when they lost the Supreme Court case and they were
12 scrambling to do something different, then they
13 suddenly have issued an opinion opposite saying, We
14 have to have a two-tiered system because we don't
15 have any other choice.

16 Well, the status quo is clearly a choice,
17 and the -- so that's one point that I think is very
18 important. It's going to be extremely expensive.
19 It's not necessary. But it's also going to affect
20 very few people who don't -- who aren't identified by
21 using a Social Security number, because, again, the
22 County has also indicated that what they're going to
23 do now, and what they have been doing on the federal
24 forms is once they're identified and their Social
25 Security numbers are entered into the database, that

1 then -- it tells you whether they're a citizen or
2 not. It comes up.

3 So they are putting people on the State
4 rolls and you'll get a State ballot if it shows up
5 they're citizens. So only the people who haven't
6 been identified at all and fall into the cracks they
7 have a bad address, so there's a false negative
8 perhaps, those are the only ones who would be
9 affected. And so this whole process is for a very,
10 very tiny number.

11 But also, if I could just wrap up, is
12 those individuals either they -- they'll be allowed
13 to vote, be on the State rolls because we know
14 they're U.S. citizens and they qualify under state
15 and federal law and have been verified.

16 If that happens, that will be actually
17 against State law, which is Proposition 200, which
18 doesn't say you have to be a citizen. It says you
19 have to prove you're a citizen in these specific
20 ways. We know they're citizens, but they didn't
21 prove it, so they would be in violation of State law.

22 If they changed the manual to have those
23 people not, even though we know they're citizens and
24 they've been verified by the Social Security
25 Administration, if they say, You don't get a State

1 ballot, you're not qualified, that is a much worse
2 problem, which would be -- you know, there would be
3 two classes of citizenship, and it would be a due
4 process issue.

5 So it remains to be seen how we're going
6 to handle that. I don't believe they can implement
7 the system and, you know, keep the system.

8 MS. PROVINE: Questions from
9 Commissioners?

10 Thanks very much.

11 Our next witness is Tia Oso. Is Tia Oso
12 here? Well, I'll leave her on the list to come back.

13 Representative Martin Quezada is our --
14 will follow all of that.

15 MR. QUEZADA: Good afternoon, members of
16 the Commission.

17 First, I want to thank you for being here
18 and listening to the very important testimony that's
19 been shared with you today. My name is Martin
20 Quezada. I'm a State Representative out of
21 Legislative District 29.

22 My district incorporates the west part of
23 Phoenix known as Maryvale and parts of South and West
24 Glendale. According to the 2010 census, my district
25 is 78.3 percent minority, 67.7 percent Latino. It is

1 a humble, working class, and immigrant community. It
2 is exactly the population that is affected by the
3 efforts that are being discussed here today.

4 It is the exact population that Section 5
5 of the Voting Rights Act was put in place for, and it
6 is the exact population who have the potential to be
7 hurt most now that Section 5 has been made
8 operational as a result of the Shelby County
9 decision.

10 I ran for office in that same
11 neighborhood on four separate occasions already.
12 Once in 2006 for school board for legislative
13 District 13 in 2010, for the Pendergast School Board
14 in 2012, and for my current District 29 in 2012. And
15 I'm about to start two more campaigns for reelection
16 to the House and to the school board in '14.

17 So I know these communities very well.
18 These communities are my family members. These
19 communities are my home. This is where I live. I
20 have a very personal knowledge of this community, and
21 their concerns are real. The concerns that have been
22 expressed today are very real.

23 I want to talk about the need for Section
24 5 because that was a huge blow, I think, especially
25 to my community. As the Apache County Recorder,

1 Ms. Fulton, described earlier, the benefits of
2 fulfilling the obligations of Section 5, I truly
3 believe outweighed the burden that was opposed by the
4 County -- on the County Recorders and our government
5 for having complied with that.

6 If one person's fundamental right to vote
7 is preserved because of this option that we had in
8 our group, I think that benefit absolutely outweighed
9 the burden. And that cost is something that I also
10 want to talk about, because cost is something that is
11 a major factor when we consider the effects of these
12 types of policies on our communities.

13 As it was touched on earlier, without
14 Section 5, the cost of justice becomes prohibitive.
15 We have had -- we have been fortunate to have
16 excellent help from groups like the ACLU, from LULAC,
17 from the Lawyers Committee. In fact, I have the
18 lawsuit that is challenging the community college
19 districts at large seats right now.

20 But, ultimately, those efforts through
21 our courts won't be enough, because of the cost in
22 which that we will have to face in order to pursue
23 that route. We're not always going to have the
24 benefit of having pro bono representation in the
25 Court. We are not going to be able to raise the

1 funds to fight every battle.

2 We are going to be left picking and
3 choosing the worst of the worst situations to fight
4 in court.

5 So, again, those concerns out of respect
6 are real. Those costs are going to be real. And all
7 of the situations that were touched on before, I have
8 witnessed firsthand in my work out in the community:
9 The abundance of voter confusion, voters being turned
10 away at the polls after waiting for hours in line,
11 the harassment and intimidation of the voters who
12 don't have a full command of the English language.

13 The harassment and even intimidation of
14 voters by electioneers. The consolidation of
15 precincts and the changing of polling locations
16 which, again, adds to the voter confusion. These are
17 all happening very regularly and they're happening in
18 my backyard.

19 Now, I sit here today as a State
20 Representative, as a member of the legislature, which
21 many people have talked about, has the authority and
22 really the ability to change a lot of these
23 situations. But the political reality here in
24 Arizona is that the efforts to address these issues
25 have been, and likely will continue to be,

1 unsuccessful in the near future.
 2 I have actually sponsored a lot of those
 3 efforts that have been suggested here today. Those
 4 efforts haven't gotten anywhere in the legislature as
 5 of right now. As a result, my colleagues that I
 6 think share my mindset to voter access, on both sides
 7 of the aisle, Democrats and Republicans, have been
 8 left to resort to playing defense.
 9 And funny that we're playing defense more
 10 often at this time. We are still seeing an increase
 11 in the number of bills that are seeking to harm our
 12 communities. And that, in my opinion, is an attempt
 13 to or intentionally disenfranchise voters. The fact
 14 that efforts are occurring immediately after efforts
 15 successful GOTV efforts by groups like Promise
 16 Arizona, by groups like Ti Mas and HAVA, et cetera,
 17 is not, in my opinion, coincidental. But it's a
 18 reality of the situation that we're living in.
 19 I'm out of time. I want to thank you,
 20 again, for listening to these concerns. And I ask
 21 that you take these concerns back to Congress because
 22 Congressional action is needed, especially in my
 23 hometown.
 24 Thank you.
 25 MS. PROVINE: I think we have some

1 But without help, it will be a long time
 2 before we can really make true changes.
 3 MS. PROVINE: Questions from other
 4 commissioners?
 5 Thank you very much for being our only
 6 legislative representative who spoke today. We
 7 really appreciate you coming. Thank you.
 8 MR. QUEZADA: And thank you again.
 9 MS. PROVINE: Next we have Mel Hannah,
 10 speaking about ex-offenders' rights and voting poll
 11 locations.
 12 MR. HANNAH: Good afternoon,
 13 Commissioners. My name is Mel Hannah. And let me
 14 just say, as everyone testified so far, thank you
 15 very much for doing what you're doing.
 16 You heard today, in my humble opinion
 17 very happy to be stating the concerns of Arizonans
 18 about the voter rights and lack of voter rights. I
 19 want to talk about two things real quickly. Again,
 20 brief background on myself.
 21 I am a policy advisor for Mayor Greg
 22 Stanton here in Phoenix. Previously worked 15 years
 23 for the Greater Phoenix Urban League, the second
 24 oldest civil rights organization after the NAACP.
 25 And before that, I have been an elected

1 questions for you, if you can stay for a moment. Any
 2 of the commissioners want to raise a question? If
 3 they don't, I actually do.
 4 I gather your bottom line is, if Congress
 5 doesn't act, the Arizona legislature is unlikely to
 6 do its own housekeeping on this issue, and litigation
 7 is going to be a partial solution, at best. Is that
 8 basically --
 9 MR. QUEZADA: Yeah, I agree. I think at
 10 this point, litigation is one of our only options.
 11 We have a legislature that the last day of session
 12 last year passed House Bill 2305 on the last day of
 13 the session. So that's the makeup of the legislature
 14 we're living in right now, and that's the mindset we
 15 have. Passing bills like that, which I do believe
 16 truly harm our access to the ballot box.
 17 So because of that, we're looking to the
 18 courts to provide justice for us. We're looking to
 19 Congress to help rectify these situations and those
 20 are cost prohibitive. They really are. So with
 21 limited options, our community organization will
 22 continue to try to Get Out The Vote, will continue to
 23 try to change the makeup of the legislature, and
 24 they'll continue to do a fantastic job and will
 25 continue to have successes.

1 official in Northern Arizona, served on the City
 2 Council in Flagstaff, the Coconino County Board of
 3 Supervisors. And the people I have not heard today
 4 and this is -- when I stepped out a few times, it may
 5 have come up.
 6 I appreciate the Commission's inference
 7 because she was speaking at my sign-in sheet that
 8 there might be a bellman expert. Let me rephrase
 9 that. An expert on felons. I did have a comment on
 10 that, but I know I'm not an expert.
 11 I do want to supplement the comment that
 12 Sam made and that's something we need to deal with
 13 here in Arizona. I am on the advisory council
 14 through the Arizona Department of Corrections, so I
 15 do have access.
 16 Arizona currently incarcerates about
 17 40,000 folks. Unlike some of the statements made
 18 earlier by Reverend Stewart in that jurisdiction, if
 19 you will. The minorities, collectively folks of
 20 color, make up over 60 percent of that 40,000. And
 21 each year, maybe up to 10 percent are released back
 22 into our communities.
 23 So any given year, you're going to have
 24 anywhere from 3,000 to 3,500, quote, felons coming
 25 back to our communities. You can see after a very

1 short period of time, that's a very large number of
 2 folks. Mostly they are quite a bit young minority
 3 men of color.
 4 When you take that figure and you realize
 5 that those folks in most cases are now
 6 disenfranchised, not just from voting but from quite
 7 a few other things forever, you can see why this
 8 voting rights section is so important. The -- My
 9 experience has been and, again, Sam mentioned the
 10 process. They come out of prison, if you only have
 11 one felony, it should be a simple mechanism to be
 12 reinstated.
 13 If you have more than one, you go to the
 14 Court and it's not that simple. That doesn't work.
 15 That isn't working and the Urban League, we're doing
 16 a lot with youths, a lot of clients who are
 17 unfortunately released from prison. Either they have
 18 not heard of that process or haven't been informed of
 19 it.
 20 When, in fact, they inquired about it,
 21 usually they just do it. It didn't happen. So we
 22 certainly need work on that portion, where other
 23 states have restoration of rights, in Arizona, we
 24 continue to be behind in this.
 25 The other point I want to comment on that

1 I haven't heard. It might sound, in a moment, kind
 2 of contradictory to some of these statements we've
 3 heard today about frustration and the whole process.
 4 The right to vote, you know, is a -- it is a right.
 5 And a lot of African-Americans historically, if you
 6 will, coming out of the deep South, Jim Crow area,
 7 their right to vote after that was earned after, as
 8 he said, a lot of folks died for that right.
 9 The right to vote becomes -- the right to
 10 vote and the ability to vote took place to cast your
 11 ballot became almost synonymous. I guess what I'm
 12 really saying is we move forward into the 21st
 13 Century, high-tech, mail ballots and registration
 14 online and perhaps one day voting online.
 15 I think there's still -- I think there's
 16 still a need for some to have the ability to take
 17 their ballot and go to the ballot place and cast that
 18 ballot through -- African-Americans that are my age
 19 and older, that physical right, that physical piece
 20 was and is very, very important.
 21 So again, I'm not resisting the future.
 22 I understand the high-tech, et cetera, et cetera. I
 23 understand there's a place and a traditional right
 24 that you might want to consider. Just look at that.
 25 I'm still in the 20th century. I have a phone

1 sitting over here. It's a flip phone. I asked my
 2 seven-year-old grandson to hand me the phone the
 3 other day. I said, There it is on my desk. He said,
 4 This ain't a phone.
 5 So I realized I'm kind of backward, but
 6 those are my comments.
 7 Thank you so much.
 8 MS. PROVIN: Questions from the
 9 commissioners?
 10 Well, thank you very much, Mr. Hannah.
 11 Good luck getting that Smartphone one of these days.
 12 Our next speaker is Michael Powell.
 13 While you're coming to the front, let me ask you, is
 14 Tia Oso in the room? She's not. Okay. This will be
 15 our last testifier.
 16 MR. POWELL: I have testimony on the back
 17 of a napkin as I've been typing all day. My name is
 18 Michael Powell. I am currently executive director of
 19 the Arizona Students Association. But I am
 20 commenting just as a private citizen in this matter,
 21 as someone who has gone through many different types
 22 of voting processes, both in California and here in
 23 Arizona.
 24 I've been living in Arizona since 1990.
 25 And I've seen a few things that have worked that have

1 been, I think, maybe solutions being offered.
 2 One is when you go to a municipal polling
 3 place, I worked for the City of Avondale for 10 years
 4 and so we had a place for voters to come to at City
 5 Hall. The ballot, no matter what precinct you were
 6 in, was printed out because the access was easy to
 7 find. So I'm not quite sure we have a problem with
 8 that.
 9 In early voting, citizens can mail their
 10 ballot, but if they forget to mail their ballot, they
 11 can drop it off at any polling place on the day of
 12 the election and the ballot is counted and sent to
 13 the proper location.
 14 So when we have issues of provisional
 15 ballots, I'm not quite sure why we just don't use
 16 early ballot formats that people could just fill out
 17 and print it out at the site at the polling place and
 18 then people complete their early ballot on the day of
 19 the election, drop it in the ballot box, and then
 20 it's -- and it's sent to the system that's already
 21 established.
 22 As far as a student ID, I would agree
 23 with Sam Wercinski. Students are required to
 24 basically demonstrate citizenship when they register
 25 for college or the universities, and so all the data

1 is within that. So student IDs that added whatever
 2 address that the student are currently living in
 3 going to school could easily be used as voter ID
 4 mechanisms.
 5 Okay. It would require a change by the
 6 legislature, but as Sam mentioned, military IDs were
 7 added by the legislature of the 75 percent provision.
 8 And then I think part of the issue is,
 9 other than precincts, for election material for
 10 precinct captains, for political parties, et cetera,
 11 maybe that's more of an anachronism than we realize.
 12 And so taking some of these pieces that
 13 already exist and applying them to a new way
 14 methodology of voting, streamline it, we already
 15 have. All right. Here in Arizona. It's a matter of
 16 having a legislative will that is required to make
 17 those minor changes.
 18 And so that basically, I think, is the --
 19 the sense of my remarks. That's changes that I've
 20 recommended.
 21 MS. PROVINE: Questions for Mr. Powell?
 22 MS. FERGUSON-BOHNEE: I have a question.
 23 I think Sam mentioned this too.
 24 You're talking about the military ID.
 25 Was that actually changed by the legislature, or was

1 I'll look it up afterwards, because on the actual law
 2 initially -- and y'all could be right. It could have
 3 changed.
 4 It said, you know, you can have this form
 5 of ID, you know, a photo ID, whatever kind, a
 6 government ID, or two forms of other sorts of ID with
 7 your name and your address. And then it was actually
 8 the Secretary of State that created the list of what
 9 -- what meets the statute.
 10 MR. POWELL: A government-issued ID.
 11 MS. FERGUSON-BOHNEE: Because military
 12 would be a government-issued ID.
 13 MR. POWELL: I mean, as a student at
 14 community college, I also taught as faculty. When I
 15 needed an ID, I went to the registration desk. I had
 16 whatever paper I had that was already within the
 17 system, and had my photo taken. So just expanding
 18 student IDs at both community colleges and
 19 universities to add the physical location that
 20 students are staying where they're at now I think is
 21 a really easy fix that then takes that information
 22 that is already on file to what was required for
 23 applying to the university or college in the first
 24 place, and then enables that form that could easily
 25 be used for student voting purposes.

1 that changed in the proof of the procedure within the
 2 Secretary of State's office?
 3 MR. POWELL: I heard that they're --
 4 because of the Prop 200, you were required to have a
 5 -- you could change a legislative ballot. If you
 6 didn't change the intent by three-fourths vote of the
 7 legislature. That's what I heard from Sam.
 8 MS. FERGUSON-BOHNEE: My understanding of
 9 the Prop 200 law is that it was very -- it's very
 10 broad, and that then the Secretary of State
 11 promulgated rules to implement that and this --
 12 actually, the Secretary of State who lists the types
 13 of ID that are allowed and that had to receive
 14 preclearance.
 15 MR. POWELL: That may be true.
 16 MS. FERGUSON-BOHNEE: Okay. I was just
 17 wondering if I missed something.
 18 MR. POWELL: It was legislation, wasn't
 19 it? I think it's in the statute.
 20 Military ID as part of the accepted forms
 21 of ID, right?
 22 MS. FERGUSON-BOHNEE: Well, just the
 23 accepted forms of ID are listed in the Secretary of
 24 State's procedures. And I guess that's why -- I was
 25 trying to look it up while I was sitting here, and

1 MS. PROVINE: Well, thank you very much,
 2 Mr. Powell.
 3 I got a last-minute addition here from
 4 one of my fellow commissioners. Someone named AJ,
 5 and I'm not quite clear on your last name.
 6 MR. BRE'HAUT: I won't take up a lot of
 7 time. I just want to explain what happened to me.
 8 I'm a member of the U.S. Navy and I've been in
 9 Arizona about seven -- actually eight years now. I
 10 relocated from San Diego, and since then, I have
 11 taken my civic duty to vote. And the last main
 12 election when President Obama was running for
 13 reelection, I found the idea was kind of weird, I
 14 voted at the same place as I had for several years at
 15 a church over in my district where the representative
 16 is, Martin Quezada.
 17 And for some reason, when I went to vote,
 18 I was told I cannot vote. They told me, basically,
 19 that I have to fill out a provisional ballot. I
 20 became upset at that and confused because I was
 21 asking why. They claim they sent me something in the
 22 mail, and because I didn't respond to something I did
 23 not see in the mail or never recalled getting in the
 24 mail, I had to put my ballot into a box and vote in a
 25 different manner than I have ever voted in my entire

1 life.

2 On that day, at that moment, as I asked

3 for a supervisor or someone to come and explain this

4 to me because I wanted to take it to the top and find

5 out exactly who is responsible, I got more of a

6 runaround that day than any time that I had ever

7 asked of any service, say they acknowledge you asked

8 for a manager or you're upset or your bill maybe is

9 miscalculated, you can get to a supervisor to fix it.

10 So I took a step and followed the chain

11 of command, obviously, as I was taught in the

12 military.

13 The problem on that day in waiting for

14 that supervisor or someone to come and talk to me, I

15 glanced over at the table where all the voters and

16 folks had voted that day were on the list. They had

17 a party affiliations there, and about 98 percent of

18 anyone who was Democrat or Independent, not

19 Republican, again, if you were Democrat or

20 Independent, you had to fill out a provisional ballot

21 that day.

22 I began to become concerned after so many

23 years of my life -- I went to a college down in

24 Louisiana. I got to see a lot of things, and also

25 being overseas in Afghanistan and other places, I had

1 unfortunate that the education level is third to last

2 in the United States of America in the Union.

3 It speaks to how things are done here in

4 this State of Arizona. I can't speak for other

5 places, but on that day, I felt like I didn't deserve

6 to be there.

7 Thank you for your time.

8 MS. PROVINE: Thank you.

9 Questions from the commissioners? I'm

10 glad you are able to speak because it kind of makes a

11 full circle, doesn't it? Service in Afghanistan and

12 not being able to vote is definitely a problem.

13 MR. BRE'HAUT: Yeah. It's different.

14 You go to other countries and you look and you

15 appreciate what you have back home. But then to come

16 home and get told, No, you can't do that and then see

17 somewhat of a form of a discriminatory fashion.

18 They're saying this party affiliation can vote, but

19 you folks over here, you got to put your ballot in a

20 box. That anyone who knows any history made it feel

21 like you were back in Mississippi somewhere.

22 MS. PROVINE: Thank you very much.

23 That concludes our public testimony. I

24 guess we're at the moment where we wrap this up.

25 Just to start off, as a commissioner who

1 seen how our country is trying to teach other

2 countries to become more democratic, to have free

3 voting rights.

4 The actual act is not being followed here

5 in our own country. It's hypocritical in the fashion

6 in which it's being done.

7 So, to this day, I still have not been

8 confirmed that my vote counted that day. I have not

9 spoken to anyone. I was told by the folks at that

10 facility I had no other choice but to put my vote in

11 a provisional box, without a guarantee.

12 And I felt so alone that day and

13 discriminated against to the point where after

14 serving my country, I stop to wonder, Is this America

15 or is this some Third World country, because this is

16 not the way we do things and not what we teach other

17 places to do. But yet in our own backyard, as Martin

18 talked about and others, it is a disgrace to anyone

19 who goes to vote, who pays taxes, who has done their

20 civic duty to show up and be turned away, and told,

21 You have to do something else.

22 And because of the history with Arizona

23 being one of the last states in America to recognize

24 the Martin Luther King holiday as a national holiday

25 here in this state and also as a discredit, it's

1 has learned a lot, I appreciate so much what people

2 have contributed today and your patience. It's been

3 a long day, but I think we've provided a lot of

4 information for this report that will be going to

5 Congress and that's the purpose of this.

6 It was a fact-finding exercise and we got

7 a lot of facts, and there is a tremendous amount to

8 work on. And I think a lot of those issues have been

9 clarified by the help that people provided today.

10 So thank you, Everyone.

11 (The proceedings concluded at 4:39 p.m.)

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CERTIFICATE

I, Kristy A. Ceton, Certified Court Reporter for the State of Arizona, certify:

That the foregoing proceedings were taken by me; that the testimony was taken down by me in shorthand and thereafter reduced to print by computer-aided transcription under my direction; that the foregoing pages are a full, true, and accurate transcript of all proceedings and testimony had upon the taking of said proceedings, all to the best of my skill and ability.

I FURTHER CERTIFY that I am in no way related to nor employed by any of the parties hereto nor am I in any way interested in the outcome hereof.

DATED this 22nd day of January, 2014.

Kristy A. Ceton
Certified Court Reporter No. 50200
For the State of Arizona

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1 NATIONAL COMMISSION ON VOTING RIGHTS
2 MID-ATLANTIC HEARING SCHEDULE
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4 _____/

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8 The Hearing in the above-entitled matter
9 was held on Tuesday, April 29th, 2014, commencing at
10 3:11 p.m., at the University of Baltimore, John &
11 Frances Angelos Law Center, Baltimore, Maryland, 21201,
12 before the Honorable GILDA DANIELS, moderator, and
13 R. Dwayne Harrison, Notary Public.
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23

24 REPORTED BY: R. Dwayne Harrison

25 Job # 72977

1 APPEARANCES:

2

3 THE COMMISSIONERS:

4 GILDA DANIELS

5 J. HOWARD HENDERSON

6 KIM KEENAN

7 REVERAND TODD YEARY

8 MARCIA JOHNSON-BLANCO

9

10 Lawyers Committee for Civil Rights Under Law

11 BY: Eileen O'Connor Esq.

12 1401 New York Avenue, NW

13 Washington, DC 20005

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PROCEEDINGS,

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2 MS. SCHULTZ: Good afternoon. Welcome to
3 University of Baltimore School of Law and to our
4 exciting new John and Frances Angelos Law Center.
5 We're extremely proud and honored to host the National
6 Commission on Voting Rights Mid-Atlantic hearing.

7 As a public law school, we have a long
8 tradition of deep engagement in the community. For our
9 clinics, our centers, our excellent faculty and a very
10 devoted alumni, we model for our students that the law
11 is dynamic and its impact on all aspects of our society
12 profound. Nowhere is that more evident than in the
13 most basic right we have as citizens of a democratic
14 nation, the right to vote. It is the cornerstone of
15 democracy. Our privilege and our obligation as
16 citizens to the left are representatives of government.
17 The Voting Rights Act that passed August 6 1965 was a
18 recognition that many of our citizens had been denied
19 that most basic right. Literacy tests, pole taxes kept
20 millions of voters of color from exercising their right
21 to vote.

22 Today's hearing demonstrates that this
23 right, like so many fundamental rights guaranteed
24 through our laws and our Constitution, require our
25 vigilance and our attention.

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2 When I was at the Department of Justice in
3 the civil rights division, my colleagues and I took
4 seriously our role in enforcing those rights and
5 protecting them.

6 We at the University of Baltimore look
7 forward to playing a role in protecting the rights and
8 in gathering this important information about the state
9 of voting in our country. We look forward to the
10 commission and our distinguished commissioners who
11 welcome you all today and hope that this exercise will
12 contribute to the important work of guaranteeing all of
13 our citizens the right and the ability to vote.

14 I want to introduce Eileen O'Connor from
15 the Lawyers Committee For Civil Rights who will be
16 giving some welcoming remarks and introducing our guest
17 commissioners today.

18 Thank you so for being here. We look
19 forward to the hearing ahead.

20 MS. O'CONNOR: Thank you very much, Dean
21 Schultz. I'm going to hop up here. Thank you again,
22 Dean Schultz, for that wonderful welcome and to the
23 University of Baltimore School of Law for hosting us in
24 this beautiful new building. You've been very, very
25 gracious hosts. Your staff has been wonderful and

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1
2 accommodating.

3 I also want to say a special thank you to
4 Laura Hunt who is a student here at the law school.
5 She's not in here right now because she's out there
6 working hard. But she is a former intern at the
7 Lawyers' Committee and the voting rights project. She
8 organized all of the volunteers that are helping to
9 make this event run so smoothly today.

10 As Vicki said, my name is Eileen O'Connor.
11 I'm an attorney at the Lawyers' Committee for Civil
12 Rights in Washington, D.C. For those of you who aren't
13 familiar with the lawyers committee, it's a non-profit,
14 nonpartisan organization founded in 1963 at the request
15 of President Kennedy to engage the private bar in the
16 civil rights movement.

17 We're continuing that fight today in a wide
18 variety of areas, fair housing, community development,
19 public policy, education, employment and, of course,
20 voting which is why we're here today.

21 The lawyers committee has convened the
22 national commission on voting rights which is
23 conducting a series of hearings like this one across
24 the country. This hearing today covers Maryland/D.C.
25 and Delaware. It covers both issues of election

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2 administration and voting discrimination and this is
3 actually the 20th hearing, I believe, although there's
4 one happening at this very moment in Virginia. So
5 maybe we're the 21st if they got started on time. And
6 at the end of the series of hearings, the national
7 commission will be putting together two reports, one on
8 voting discrimination or discrimination in voting and
9 one on election administration and those reports will
10 be used to inform the public debate, possibly inform a
11 new voting rights act and be available to advocates and
12 to the public for use in improving voting in our
13 country.

14 I'd like to introduce the commissioners for
15 today's hearing. I need to come up front to make sure
16 I don't get anyone's names wrong. We have, Gilda
17 Daniels who's a professor at the University of
18 Baltimore School of Law; J. Howard Henderson from The
19 Urban League; Kim Keenan who is general counsel at the
20 NAACP; the Reverend Todd Yearly who is political action
21 chair of the Maryland State conference of the NAACP;
22 and Marcia Johnson-Blanco who is co-director of the
23 voting rights project of the Lawyers' Committee.

24 I just have a few housekeeping matters
25 mostly directed towards the witnesses. The hearing is

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2 being transcribed. So please speak into the microphone
3 clearly. You each have five minutes for your testimony
4 and there's a timekeeper over there. So please pay
5 attention to him and when he says stop, try to wrap it
6 up.

7 You'll each have your five minutes of
8 testimony and then the commissioners will ask you
9 questions for about 15 or 20 minutes after that.

10 Also, the witnesses and the commissioners,
11 please sign a photo release form if you have not
12 already done that. We have a photographer who will be
13 taking some pictures today.

14 And last but not least, for those of who
15 tweet, we have hash tags and a CVR and voting rights
16 and we're at lawyerscomm which those of you who tweet
17 know what that means. So with that I will hand over to
18 the guests -- to our commissioners today to give their
19 brief opening remarks and then to invite the testimony
20 from the witnesses.

21 Thank you again to everyone for coming.

22 MS. DANIELS: Thank you, Eileen. Good
23 afternoon. Thank you so much. As Eileen mentioned,
24 I'm professor Gilda Daniels and we've made an executive
25 decision to forego our opening statements because we're

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2 starting late so that we can hear from you all. We are
3 here today from those of you who braved the rain to
4 come and talk to us today about the state of voting
5 rights in Delaware, Maryland and D.C. So, with that,
6 if we can start with our first person which is
7 Ms. Alyssa Fieo.

8 MS. FIEO: Thank you. Good afternoon,
9 members of the commission. My name is Alyssa Fieo.
10 I'm the Director of Legal Advocacy, Maryland Disability
11 Law Center and I do appreciate the opportunity to
12 provide testimony today regarding the issues facing
13 Maryland voters with disabilities.

14 Pursuant to the Help America Vote Act, MDLC
15 is a protection and advocacy agency for Maryland who is
16 charged with assisting voters with disabilities to
17 participate fully in the electoral process.

18 All of our work has centered on ensuring
19 that voters with disabilities have a meaningful
20 opportunity to register to vote and to cast their
21 ballots both privately and independently.

22 While Maryland has had success in
23 addressing many of the barriers facing voters with
24 disabilities, there is still work to be done and new
25 challenges particularly related to the issue of voting

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2 system technology. When MDLC started its voting work,
3 our first barrier to address was the issue of polling
4 basic accessibility and over the years Maryland had
5 worked diligently on this issue and can now boast that
6 its polling places are approximately 95 percent
7 accessible.

8 Despite the significant accomplishment,
9 there still is room for improvement and there are
10 potential problems on election day related to
11 accessibility. Through MDLC's voter hotline, MDLC has
12 received calls about locked and blocked accessible
13 entrances and lack of adequate signage.

14 Physical accessibility of polling sites
15 requires constant reexamination and vigilance.

16 Training of election judgments is critical
17 for ensuring that polling sites are accessible on
18 election day and voters have access to the voting
19 process and that they have a positive voting
20 experience.

21 Just last month, Maryland Disability law
22 Center and the National Federation For the Blind had
23 the opportunity to present Maryland association of
24 election officials and given past complaints about
25 problems using the accessible features of the voting

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2 system, particularly related to the audio ballot, we
3 recommended that election judges provide a hands-on
4 training of the voting system and the accessible
5 features. We suggested that local boards provide job
6 aids or tools to election judges including visual aids,
7 checklists, picture guides, setup maps and training on
8 how to use those tools.

9 MDLC also created an election judges
10 guidebook which you have before you which is called
11 Helping Maryland Vote. I'm sorry, I think I'm missing
12 one copy, but can get one to all of you if you don't
13 all have it.

14 MDLC has also advocated for many years with
15 the creation of a disability advisory committee which
16 is consistent with the current recommendation of the
17 presidential commission on election administration and
18 currently we do not have a state-wide disability
19 related committee, nor do we have it on a local level
20 and definitely recommend that.

21 The issues related to accessibility and
22 system technology are a critical issue facing voters
23 with disabilities and they're quite nuanced. I
24 provided more detailed information in my written
25 testimony, but I do want to highlight just two points.

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2 The first one has to do with the lack of
3 accessibility of Maryland's absentee ballot voting
4 process. Maryland has a no excuse absentee ballot
5 process, meaning that any eligible voter can request an
6 absentee ballot.

7 However, Maryland's current paper-based
8 absentee ballot process is not accessible. State board
9 of election was recently in a position to take positive
10 steps to correct this inaccessibility by authorizing
11 the use of an accessible online absentee ballot marking
12 tool along with the online delivery of absentee
13 ballots. We believe that such action is supported by
14 the ADA and section 504 of the Rehabilitation Act.

15 However, despite assurances from a security
16 study standard commissioned by the state board, the
17 state board members did not vote to certify the
18 absentee ballot marking tool due to security concerns.

19 As a result, the state board will make
20 available online deliver of the absentee ballot -- it
21 will have to be hand-marked -- without the possibility
22 of using the accessible ballot marking tool and the
23 absentee ballots will be in a PDF format that will not
24 be accessible for many voters with disabilities.

25 The inaccessibility of Maryland's absentee

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2 ballot voting process remains a critical problem. As
3 voting advocates, we all remain concerned about voting
4 system security issues. However, there is a growing
5 force, particularly in Maryland, that is pitting
6 security interests against the accessibility that is
7 required -- that requires the use of technology. Our
8 challenge is to ensure the accessible voting technology
9 is developed and made available while security concerns
10 are reasonably addressed without disenfranchising
11 voters with abilities.

12 The final technology issue I want to talk
13 about is the move that Maryland will be making from the
14 universally accessible touch screen voting system to a
15 paper based voting system which is most likely going to
16 take place by the 2016 election.

17 Any system that Maryland procures must meet
18 high accessibility requirements without creating what's
19 called a segregated ballot for voters with disabilities
20 which is required under Maryland law.

21 There is a risk of creating a segregated
22 ballot when a separate voting system is used solely by
23 voters with disabilities that produces a paper ballot
24 that's distinguishable in size and perhaps content from
25 a hand marked ballot, thus jeopardizing the secrecy and

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2 privacy of the vote.

3 The Maryland Attorney General's Office has
4 concluded that there are two possible ways avoiding the
5 segregation of a ballot for voters with disabilities
6 and we'll be working with the state board to ensure
7 that privacy of voters with disabilities is secure,
8 whatever system they decide to select. Thank you so
9 much for giving me this opportunity to testify.

10 MS. DANIELS: Thank you. Ms. Blake?
11 Please introduce yourself.

12 MS. BLAKE: Thank you for this opportunity.
13 My name is Lou Ann Blake. I work for the National
14 Federation of the Blind managing our HAVA grant from
15 the U.S. Department of Health and Human Services.

16 Under that grant, we provide assistance to
17 touch screen advocacy system personnel, state local
18 election officials, developers of accessible election
19 technology and [inaudible] voters. Our focus is on the
20 initial access to the voting process.

21 My testimony today, I think the overarching
22 theme is that we've had a lot of progress since passing
23 HAVA in terms of accessible voting. However, that
24 progress is being eroded and I want to demonstrate that
25 by talking about three areas.

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2 Our current touch screen system, our move
3 here in Maryland to the paper ballot system in 2016 and
4 absentee ballot voting. Our current system, the
5 Diebold touch screen has enabled blind and low vision
6 voters to vote privately and independently for the
7 first time using the audio ballot component and the
8 large print high contrast screen, a component of that
9 machine.

10 This system is what we would consider to be
11 the ideal system because everybody uses the same
12 machine. Everybody's vote is cast, tabulated and
13 stored in the same manner. However, there are some
14 problems associated with this system. This system is
15 not accessible to the deaf/blind voter and there
16 continue to be issues with poll workers who do not know
17 how to properly activate the audio ballot.

18 Consequently, some blind voters are not
19 able to vote privately and independently. They have to
20 use sight assistance to cast their ballot.

21 In 2016, the plan is for Maryland to move
22 to a paper based system. As Alyssa pointed out --
23 well, first of all, papers aren't accessible to a blind
24 voter -- to many blind voters, not all, but most as
25 well as to limited vision voters and voting with a

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2 paper base system will prevent many -- well, has the
3 possibility of preventing some blind or limited vision
4 voters from being able to cast an independent ballot
5 and, of course, deaf/blind voters will still have that
6 same problem of being able -- not being able to vote
7 privately and independently.

8 As Alyssa pointed out, the machines that
9 we'll be using in 2016 will have to be certified in the
10 2005 EVSG. Some of these machines will use the same
11 ballot as hand marked by voters who do not need to use
12 the accessible machine.

13 Some of the machine will be creating or
14 printing out a paper ballot that is different in size
15 and content from the hand marked ballot. Consequently,
16 my vote -- my ability to vote privately is jeopardized
17 by that because it can be -- the ballot can be
18 identified as being cast by someone with a disability.

19 Now, we are -- the NFB of Maryland
20 submitted a letter to the State Attorney General's
21 Office expressing our opposition to the use of these
22 machines that produces the paper ballot here in
23 Maryland. However, in the instance that that does
24 happen, that the state board does procure a machine of
25 that nature, we are certainly committed to working with

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2 SBE to implement procedures to prevent a segregation of
3 those ballots to ensure that other people are using
4 that machine so that not all ballots are cast by people
5 with disabilities.

6 MS. DANIELS: One minute.

7 MS. BLAKE: Finally, the absentee ballot
8 system is currently used here in Maryland is not
9 accessible to blind voters because it consists of hand
10 marking a paper ballot. The state board attempted to
11 remedy that problem by extending the use of the online
12 or the Internet ballot delivery system and the online
13 ballot marking tool to all voters. The NFB worked very
14 closely with SBE to ensure that that system was
15 assessable. It is a model of accessibility.

16 Unfortunately, the state board members
17 failed to certify that system last Thursday and, as a
18 result, that system will not be available to impaired
19 vision and deaf/blind voters which that system would
20 enable deaf/blind voters to vote independent for the
21 first time ever.

22 There is currently no system available
23 other than an online ballot marking system that
24 deaf/blind voters can use and cast a private and
25 independent ballot.

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2 At the moment, the NFB is investigating all
3 of our options on how we can respond to that failure to
4 certify the system. Thank you very much. I appreciate
5 this opportunity.

6 MS. DANIELS: Thank you. Mr. Willis?

7 MR. WILLIS: I'm going to stand because I
8 sort of have my grad assistant go through a PowerPoint
9 very quickly which we will provide a copy to the
10 commission.

11 Thank you very much for participating -- to
12 allow me to participate in your hearing. My name is
13 John Willis and I'm a senior executive here at the
14 University of Baltimore and in the College of Public
15 Affairs and I teach courses in campaign selection,
16 state and local government, lobbying -- which we have
17 some good advocates for lobbying on the panel -- as
18 well as American public policy.

19 I've been involved in elections at the
20 local, state and national level for about 40 years. I
21 had the privilege of serving as secretary of the State
22 of Maryland from 1995 to 2003 and was involved heavily
23 in a variety of election related issues including at
24 the National Association of Secretaries stage
25 co-chairing the elections committee in voter

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2 participation as well as more than twelve secretaries
3 of state to develop principles and guidelines that
4 became a predicate for 2002 Help America Vote Act. So
5 I'm very well aware of what goes on. I'm also the
6 editor of a 44 year old newsletter on election
7 administration reports your commission might want to
8 read which tracks a lot of developments and changes in
9 election law over the last four decades and it goes to
10 election administrators throughout the country.

11 Most recently -- I want to talk to you
12 about two things. I'm trying to do this as quickly as
13 possible. One is some of the recent work that we've
14 done here at the University of Baltimore and what the
15 findings of that were and then, secondly, offer you
16 some just broad general concepts of what I think you
17 may want to consider, this committee, as well as the
18 staff in developing their final report and would be
19 pleased to work with you on that in the future.

20 We have done a lot of things here at the
21 University of Baltimore including being one of -- the
22 only university that participated in three college poll
23 worker programs. We also have developed and managed an
24 election judge training program. We trained almost
25 30,000 individuals or had 30,000 individuals attend

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2 training classes since 2004 in the Baltimore
3 metropolitan area.

4 Most recently we presented an exhaustive
5 study of what happened in Maryland in 2010, 2012
6 elections and produced this report Voting In the
7 Administration of Elections in Maryland and I'll have a
8 copy for each of the members as well as for the staff
9 and this PowerPoint is based on that.

10 Very quickly, some of the findings of this
11 report is rather complex. There are about 3.7 million
12 registered voters counting -- nearly four million
13 counting the active voters. We studied every single
14 piece of equipment in Maryland. Every single -- over
15 20,000 voting machines, all of the poll booths that
16 were we used. We interviewed every election director
17 in the state. We made direct observation of municipal
18 elections timing, how people would vote. We did
19 surveys, supplemental surveys, all of which we cited in
20 the report that confirmed some of the national findings
21 and did prove that in Maryland we had some problems
22 with wait times and developed a very sophisticated
23 weight time simulation model that I think can be used
24 to predict where problems are going to occur in the
25 future.

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2 The key findings are ballot length was
3 extraordinarily significant. We had a variance in
4 Maryland between ballot length of one jurisdiction of
5 well over 2,000 words to jurisdictions that had under
6 900 words on the ballot. Not surprising, the
7 jurisdictions with the longer ballots had the longer
8 wait times and they included the popular jurisdictions
9 like Baltimore City, Anne Arundel County, Prince
10 George's County.

11 The availability and allocation of
12 resources was another very significant finding.
13 Suitable polling locations, voting equipment, election
14 judges, uneven allocation of resources and the need for
15 more resources was an obvious finding. And the
16 characteristics of a precinct meaning both the physical
17 characteristics -- not so much ballot size, but where
18 it's located, availability parking, how much room
19 inside and how much outside impacted a voter. And not
20 surprisingly we found that that does disproportionately
21 affect minority voters to the extent that they
22 constitute a higher percentage within those urban
23 jurisdictions. They get impacted by older antiquated,
24 inadequate facilities and resources.

25 Two general points -- I see my sign is

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2 ready to come up. Three general points for the
3 commission to consider. One is I think -- I've been
4 involved in elections for a long time and had
5 responsibility for elections.

6 Number one, there is a need in this country
7 for the independence of election administration away
8 from political influence. It is -- just like we need
9 the independence of the judiciary, we need the
10 independence of election administration so
11 administrators are buffeted from efforts to persuade
12 based on perceived political advantage, electoral
13 advantage.

14 Number two, we have to curb the instinct to
15 micromanage and legislate. Legislative bodies around
16 the country, including here in Maryland, are
17 restricting product innovation in technology and
18 modernization by detailed rules that are not always
19 practical or serve, as we've heard, constituencies that
20 need to be served.

21 Number three, there is a necessity and the
22 presidential commission -- and I went to several of
23 their hearings and talked with them. They just turned
24 away the notion of adequate funds. They didn't even
25 consider it from the very beginning and I attended at

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2 least four of their sessions and talked with every
3 commission member personally. That's just unrealistic.
4 In previous testimony I've given to congress, I said it
5 ought to be a dollar, a dollar, a dollar. A dollar
6 federal, a dollar state and a dollar local. And some
7 of these jurisdictions are dealing with inadequate
8 resources that impact their ability to properly
9 administer elections.

10 Those are my general comments. I'll look
11 forward to any questions you might have.

12 MS. DANIELS: Thank you so much. The
13 PowerPoint is part of the record.

14 MS. KEENAN: We'll take the report.

15 MS. DANIELS: Mr. Male?

16 MR. MALE: Thank you. Let me introduce
17 myself. My name is Timothy Male. I'm a city council
18 member in the small Maryland city of Takoma Park.
19 We're a majority/minority city where one in three of
20 our residents were born overseas, primarily in North
21 Africa and Latin America. Takoma Park is the only
22 place in the country that allows 16 and 17 year olds to
23 vote. We're one of the very places that allows
24 non-citizens to vote. We recently followed Minnesota's
25 lead and mandate that landlords allow political

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2 candidates into apartment buildings to knock on doors
3 and we allow paroled felons to vote in local elections.

4 My other role is as chair of Montgomery
5 County's right to vote task force which I can talk
6 about in the Q&A, but it's a task force set up by the
7 county council to look at access to polls, turnout
8 issues and [inaudible] the question of voting rights.

9 So I chair that committee. My comments
10 here are my own, although they're obviously informed by
11 both of those experiences.

12 I want to talk about two issues that I
13 think may not come up in other testimony review and
14 perhaps other hearings received. One is municipal
15 elections and the second is overseas voter issues.

16 A large percent, the majority of Americans
17 live in urban areas most of which are incorporated.
18 Here in Maryland, about one in four residents live in
19 cities, incorporated cities. Probably the biggest is
20 Baltimore down to places that only have 2 or 300
21 residents and the attention that I see given to
22 municipal elections is scant. It's very difficult to
23 find information about turnout, patterns of turnout,
24 how you motivate voters, representation of elected
25 bodies at a municipal level. And I served in one of

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2 those places where, for example, for us turnout in the
3 last municipal election was ten percent. New York
4 City's recent mayoral election was 25 percent. So just
5 incredibly low turnout.

6 I would bring to you the suggestion that a
7 big part of that turnout has to do with the year in
8 which elections are held. So for us in Takoma Park an
9 election -- federal election and traffic is something
10 like 85 to 90 percent turnout of registered voters.
11 One year later we got to ten percent.

12 So that's a huge problem in and of itself.
13 I think it's particularly a problem because the turnout
14 is disproportionally older, more affluent and property
15 owning residents and non-younger, minority and renting
16 residents and I think that pattern is true across the
17 country, although the best evidence I've seen of that
18 comes from research in California where 40 percent of
19 cities have now adopted even-year elections where the
20 research shows again and again that minority voters are
21 impacted, lower income and renters are impacted by odd
22 year elections. And this is a technical problem that
23 could be fixed and would have a huge increase in
24 turnout and thus representation in places that manage
25 school districts, police forces, recreation programs

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2 and a whole host of other services.

3 On the second issue of overseas voting
4 rights -- and this is something that comes from the
5 county task force -- there are a host of
6 recommendations that have been made in terms of
7 implementation of existing federal statutes and the
8 presidential commission that was just mentioned talked
9 about some of these recommendations and they're really
10 about the practicality of getting simple information to
11 military voters and overseas voters, information on how
12 long an absentee ballot request is valid. I have seen
13 ballots that were processed and how quickly they can be
14 processed and on voters' ability to figure out -- to
15 trace their ballot, where it is in the process. And
16 I'm proud to say that Maryland has adopted many of
17 these recommendations before the commission report came
18 out, although I note that Maryland is still 42nd
19 because of its rejection rate for absentee ballots not
20 counting them as absentee ballots.

21 In particular, the standardized information
22 that, again to go back to municipal elections, very,
23 very few overseas voters hear about elections and that
24 comes from information from the state board of
25 elections [inaudible]. I have one minute left.

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2 I would be happy to speak more broadly on
3 the task force we have in Montgomery County looking at,
4 one, our county counsel committed itself to encourage
5 congress to pass a constitutional amendment to
6 establish a right to vote and then a whole bunch of
7 issues that have been created by bipartisan, an
8 appointed body, to look at how to improve turnout in
9 the county election. Thank you.

10 MS. DANIELS: Thank you, Mr. Males.

11 Ms. Pierson?

12 MS. PIERSON: Thank you for inviting me to
13 participate. Thank you for inviting all of us.

14 The participant from the League of Women
15 Voters was originally scheduled to be our current state
16 president, Sue Cochran, and she asked me to step in at
17 the last minute. I'm glad to be here.

18 I am a previous member of the Baltimore
19 City election board and a previous member of the
20 Maryland State election board. So I have experience on
21 all levels and I will say that I'm actually delighted
22 to be able to stand up here and tell you that I hope
23 that you hear in other places that Maryland actually
24 does a lot of things right, that we are actually -- and
25 I'm talking about election administration and our --

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2 they were recently named 7th in the country in the Pew
3 Election Performance Index and over the last decade
4 we've adopted no excuse absentee voting, early voting,
5 online voter registration and, coming up soon -- I'm
6 not sure which year -- it will be the debut of same day
7 voter registration, although initially only during the
8 early voting period.

9 And I will say that our legislators also
10 are really on top of voting issues in this state. They
11 spend a lot of time during the legislative session on
12 these issues. They have learned over the years not to
13 tamper too much during an election year and they've
14 done that very well and most recently when they knew
15 there were problems with long lines, they asked
16 Mr. Willis report them and it is an excellent report.
17 I certainly recommend that to you.

18 The report did mention a problem with
19 allocation of voting machines. I would hope that that
20 gets taken care of somewhat when we go to a new
21 machine. Maryland has a mandatory polling place
22 evaluation program. All of the local jurisdictions are
23 required to do some sort of polling place evaluation on
24 election day and I think if that program were advanced
25 further and were made a little more robust,

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2 identification of problems like the allocation of the
3 machines and the allocation of workers could be
4 enhanced.

5 In 2007, the General Assembly passed
6 legislation to re-enfranchise convicted felons who have
7 completed their sentence including incarceration and
8 parole probation.

9 While it's possible to identify registered
10 voters who were registered at the time of their
11 conviction, lost their right to vote and subsequently
12 re-enfranchised after serving their sentence, it is not
13 possible to identify those who were never registered
14 before their conviction and who continued to fail to
15 register to vote after serving their sentence because
16 of misinformation about the current law.

17 The league supports expanded voter outreach
18 to this specific population of ex-offenders and we
19 think we could boost our voter registration numbers
20 significantly, particularly in the Baltimore City area,
21 if this -- if the election boards had expanded outreach
22 and I'm not sure whether redistricting is one of the
23 areas you all want to hear about. But it does, in one
24 small way, actually become part of the election
25 administration and in Maryland during our recent

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2 redistricting there were a million people that went to
3 a new district, a new congressional district. And,
4 actually, Mr. Willis, in his report actually points out
5 one of the problems with long lines had to do with
6 unfamiliarity of voters with the polling place.

7 So -- and at some point there were a
8 million people who went to a different voting -- or a
9 new voting place. A proportion of those actually were
10 new voters going for the first time. There was
11 actually a large number of people who went to vote
12 someplace they weren't familiar with and a number of
13 them who went to the wrong place because they didn't
14 know they had been redistricted.

15 I think if the powers that be in
16 redistricting could ask for the participation of the
17 local election officials who actually know the predicts
18 and the maps that they could perhaps have some positive
19 input in how this actually affects the voters. Thank
20 you.

21 MS. DANIELS: Thank you so much.

22 We're going to start our Q&A portion for
23 this panel. We can start off with a question for
24 Ms. Fieo.

25 You mentioned that there was security

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2 concerns for the absentee ballot. So I want you to
3 elaborate on the security concerns and what steps you
4 think the state should take to overcome those.

5 MS. FIEO: So, basically, from the
6 admissibility/advocacy perspective, the security
7 concerns were addressed through the state board who had
8 hired a security consultant to do a review of the
9 delivery of the online ballot and the ballot marking
10 tool. Staff at the State Board of Election were
11 satisfied by the findings of that security evaluation
12 and addressed any concerns that were identified in that
13 evaluation.

14 Proponents who were community members are
15 the ones who raised the security issues and felt that
16 the security report that was made public was not public
17 enough and did not provide enough information. The
18 State Board of Election -- I know Nikki Charlson from
19 the state board will be here later and she can address
20 this. But this -- I believe the state board felt they
21 could not release the entire report because it would
22 reveal what the security vulnerabilities were.

23 Now, Maryland has been using the online
24 delivery of the absentee ballot with the 2010 and the
25 2012 and there has never been a security breach.

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2 From our perspective, we felt that the
3 proponents were really raising hypothetical security
4 concerns. They were concerned about bad actors who
5 would perhaps intercept the email delivery of the
6 absentee ballot.

7 The other point I want to make is the
8 proponents were really, I think, concerned about the
9 delivery of the absentee ballot. That's where their
10 real security concerns were and not necessarily as much
11 on the ballot marking.

12 MS. DANIELS: Delivery online?

13 MS. FIEO: Delivery online. This is not --
14 I want to make this very clear. This is not online
15 voting. Once you receive the absentee ballot, you need
16 to mark it or mark it online if you have that
17 capability, print it and then mail it back in.

18 The state board has determined that it has
19 the authority still to do the delivery of the absentee
20 ballot. But because of a certain issue of the marking
21 tool was not voted on by the state board they can't
22 provide that accessible feature.

23 So now we're going to have the delivery of
24 a PDF version of a paper absentee ballot. It cannot be
25 necessarily read by a person who has a vision

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2 disability or marked by a person who is blind or has a
3 dexterity disability, can't use a pen or a pencil. So
4 it's really unfortunate because the state board, I
5 think, did a fantastic job in shepherding this issue
6 and I also add that they had a \$30,000 grant from the
7 federal government to develop this tool so that it can
8 be used by overseas and military voters. And because
9 of this failure to certify it, overseas and military
10 voters will not have the benefit of the ballot marking
11 as well.

12 MS. DANIELS: Are there any questions for
13 Ms. Fieo?

14 MR. HENDERSON: I have one for Ms. Blake.

15 Ms. Blake, in terms of -- we were talking
16 about the training that was needed for poll workers.

17 What kind of training were you suggesting
18 and how do you propose us putting something in place to
19 have adequate training for all poll workers?

20 MS. BLAKE: Well, we suggest that poll
21 workers receive actual training on the actual voting
22 system, the voting machine, rather than be shown a
23 video or just a PowerPoint how to enable the audio
24 ballot.

25 What the voter -- what the poller has to do

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2 is they have to -- when they're loading the voter card
3 that is inserted into the machine, they need to check a
4 box to enable the audio ballot once the card is
5 inserted in the machine. If that box is not checked
6 when the card is inserted, the audio ballot does not
7 start and, unfortunately, most many blind voters don't
8 know that that's what has to be done. So they don't
9 know and the poll worker, if they're not trained
10 properly, they don't know why the audio ballot is not
11 starting. So actual training on the machine and the
12 poll book on how to check the box, they already have to
13 do that, I think would go a long way to solve that
14 problem.

15 Also, having poll workers with disabilities
16 at the poll to ensure that the accessible machines is
17 properly set up or properly functioning and the poll
18 owners know how to check the box I think would help as
19 well.

20 MR. HENDERSON: So do they have a procedure
21 manual that they're utilizing that's consistent across
22 the state?

23 MS. BLAKE: That's a question I don't know.
24 You might want to ask Nikki Charlson about that.

25 MS. DANIELS: Mr. Willis, do you have an

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2 answer to that?

3 MR. WILLIS: Yes, I do. There is a
4 statewide election manual that has a disability
5 awareness section in it and I know in all of the
6 trainings that we do here at the University of
7 Baltimore -- we just had twelve hours of training
8 yesterday with about 350 people. Every judge touches
9 the machine and is shown by the trainer, you know,
10 about the box to check the audio ballot. We have the
11 headset and keypad and bracket that's used for
12 disability training that's available.

13 I can't say what happens in every
14 jurisdiction. I would concur, though, as a possible
15 solution, the enhancement of the polling place
16 evaluation because it is important with over -- well
17 over 20,000 election judges, it's really important that
18 any feedback get to the election administrators so they
19 can, in fact, either retrain that worker or substitute
20 someone else for that worker who is not following the
21 proper procedures and directions.

22 And the other suggestion, I know that you
23 made about having people there to be as resources,
24 either as voters -- providing voting assistance or
25 guidance, you know, that could probably also be

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2 enhanced with additional resources as well.

3 The materials there printed, it's a pretty
4 good manual. All the election directors participated
5 in developing that manual. You might ask Nikki. I can
6 give you a copy of the statewide manual. It is
7 localized for each jurisdiction. So it's not exactly
8 the same in every jurisdiction.

9 MS. DANIELS: Those of you who mentioned
10 training. Do you have anything in addition about
11 training of election judges or things you think should
12 be made a part of the record at this time?

13 MS. FIEO: The only thing I want to add is
14 the -- we've offered training multiple times to
15 election judges at the local level. One of the
16 concerns is that there's not a lot of time to focus on
17 the specific issue.

18 This was the first time that NFB and MUSC
19 were invited to the Maryland Association of Election
20 Officials which was a fantastic first step.

21 The state board has also agreed to help us
22 distribute the Helping Maryland Vote booklet that you
23 have so that one of those will be available at every
24 polling site during -- hopefully, the primary but
25 definitely the general election and I think that will

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2 be helpful as well. So we are starting to really
3 elaborate, but it's really creating a space in time for
4 that very specific training to take place.

5 MS. DANIELS: Thank you.

6 MS. KEENAN: I have another question for
7 Mr. Willis.

8 You indicated three systemic problems with
9 the voting that you identified which is the
10 independence of the election administration;
11 impediments to modernization and innovation; and,
12 finally, you said that every time you went to the
13 presidential commission they basically totally rejected
14 the issue of having adequate funding and I got the
15 impression that you had an opinion on that and that
16 having it just sort rejected out of hand seemed not to
17 make sense. So I would like to have you elaborate on
18 that point.

19 MR. WILLIS: Well, going backwards, with
20 the necessity for adequate resources, there's --
21 jurisdictions face different challenges. For example,
22 here in the city, they have a warehouse and the
23 election board, they've been told they've got to move
24 out of that facility to make way for an improvement in
25 transportation. They have no new modern facility to

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2 move to where they store things and where they keep all
3 of their supplies. Their main headquarter offices
4 they've been told they have to move out of there.
5 There's no place to go.

6 So what we proposed in the report was to
7 creation of an election infrastructure fund whereby
8 just similar to other funds that are used for other
9 government services, where state and local governments
10 could either borrow or grants could be made to allow
11 them the transition to the facility.

12 So if you go around the State of Maryland,
13 in Harford County there's a wonderful facility, new
14 facility. Other jurisdictions are still sort of
15 squeezed and crunched. Baltimore County is not in the
16 center -- its current facility is not in the center of
17 the county. It's in the western part of the county.
18 It's the larger of the counties as you know, 820,000
19 people, and the people on the east side have a hard
20 time to getting where the election board is.

21 So there's real facility issues that they
22 face and you can't deal with that just by saying that,
23 oh, everybody follows the best practices, we're going
24 to suddenly solve all the problems, you know. You
25 can't do just best practices, you have to invest and

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2 the same thing on resource allocation. Early voting is
3 terrific. I'm a proponent of early voting but the
4 problem with early voting was that when you put a
5 machine at an early voting site, it's a machine that
6 can't be used on election day.

7 So Prince George's and Montgomery County
8 had significant problems in the 2012 presidential
9 election when they had early voting sites where
10 machines -- because you don't count those votes until
11 the election is over. So we had, like, 763 less
12 machines available on election day than would have been
13 available had the early voting sites not been there.

14 What had to happen was the state and local
15 government needed to buy more machines, but the
16 machines we're using aren't being manufactured anymore.
17 So you had a lack of capacity.

18 One of the reasons they're not manufactured
19 is because state legislators around the country are
20 trying to mandate the kinds of machines that get used
21 instead of letting election administrators have
22 machines properly certified and tested and there has
23 been written articles about this. There's less vendors
24 now than they were 20 years ago, there's less product
25 innovation and all of that is the result of tightening

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2 legislative laws in response to, you know, certain --
3 whether their agendas, you know. I don't want to
4 attribute direct things to them, but it's changed the
5 marketplace for election equipment and we had growth in
6 that in the '90s and early 2000s and that's been really
7 limited in the last several years. That's a much
8 bigger issue.

9 MS. KEENAN: Do you have a position on why
10 you think that investing in election infrastructure is
11 just sort of a, oh, no, we can't don't that?

12 MR. WILLIS: Well, it's always been a low
13 priority. I'm sure Lou can say when she was on the
14 board fighting to it -- or you take Montgomery County.
15 You're now at 620,000 voters and you're operating with
16 about the same number of people you had 20 years ago.
17 So whether it's personnel --

18 MS. DANIELS: You're talking about people
19 or machines?

20 MR. WILLIS: People and, actually, machines
21 per people is less because they haven't bought any
22 machines. So you're dumping more and more on to the
23 election administration process with less resources in
24 many instance and were you to compare -- they did a
25 study, the secretary state, when we changed voting

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2 systems in 2001 and 2002 and found out tremendous
3 disparities from jurisdiction to jurisdiction and the
4 number of people working in election administration
5 versus the size of the population they were tending to
6 serve and Prince George's was -- and the city were down
7 staff compared to, you know, suburban counties. Things
8 that you would find all over the country, but they
9 impact the quality of the election administration and
10 thereby affecting voters.

11 MR. HENDERSON: This is a followup to
12 Mr. Willis before you pass it on. When you say you
13 cannot utilize those same machines, can technology be
14 utilized to download some of those machines and reset
15 them or is that --

16 MR. WILLIS: You can't end of vote. You
17 cannot end the election on the machine from early
18 voting. What happens there's securely -- after early
19 voting has ended, they're securely locked up and
20 they're not -- the election has not ended and you can't
21 reuse the machine or take the --

22 MR. HENDERSON: So you can't download the
23 information and store it somewhere safely.

24 MR. WILLIS: They're under tight security.

25 MR. HENDERSON: We're going to have the

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2 same problem in the next election.

3 MR. WILLIS: Oh, yes. They can used for
4 the next election.

5 MR. HENDERSON: 2016, that's going to be
6 issue again if we have an early election, right?

7 MR. WILLIS: Correct. I don't anticipate,
8 given turnout factors, there will be that much of an
9 impact in 2014, but I worry about 2016 depending on the
10 type of voting system we're using and what the
11 economy -- for example, the change of system, one of
12 the other problems was the legislature said they wanted
13 a new voting system, but they said that right in the
14 middle of the recession. Well, there's -- and they
15 postponed the decision or implementation or transition
16 to a new system because the legislature never prorated
17 the money for it. So the legislature tells you to do
18 something and then there's no money to do it.

19 MR. YEARY: So when we raise the question
20 of voter access, I think, Professor Willis, you raise
21 an interesting point and I want to tie into Mr. Male's
22 acknowledgement of low voter participation overall
23 depending on which election cycle you're in.

24 In Baltimore City, they just moved the
25 city-wide election to coincide with the federal

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2 election. So they added a year to the term because I
3 think in the back of some folks' minds that was a
4 concern.

5 But if we're trying to expand that early
6 voting period -- and it's come up a couple of times in
7 terms of legislative proposals in Annapolis -- one of
8 the pushbacks is if you try to move too close to the
9 actual election day, this makes it difficult for the
10 turnover time for the election boards to get ready for
11 the actual election day independent of the number
12 there's a couple of things going on.

13 My question really is tied to what is -- do
14 we know, the fiscal note thing that always seems to be
15 the boogie man when you propose this stuff. What's the
16 cost projected or estimated, however we come up with
17 it, that would accomplish and achieve the goal of the
18 maximum participation for all of the voters that you
19 think we would need?

20 The reason I'm asking that is on one hand
21 we have an issue with the hardware, right, and the mode
22 of transmission for disabled voters. Then we have the
23 issue of accessibility in the early voting window and
24 we have all of these things kind of running together.

25 Now, you mentioned the length of the ballot

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2 has something to do with participation tied to wait
3 times, 900 to 2,000, I think, was kind of the number
4 range.

5 If we were to do election consolidations,
6 so let's handle all of our business according to the
7 same time line, that doesn't necessarily make us more
8 efficient. So how do we resolve this concern so that
9 we can get more folks engaged in the process in the
10 most efficient manner, expand the opportunity for folks
11 to vote in a formal that allows them to vote and
12 participate?

13 MR. WILLIS: That's a very complex
14 question. Mr. Male is correct about the participation
15 rates in Maryland. I mean, you have mayors and local
16 officials being elected by very small numbers of
17 potential voters. But the problem is the converse
18 problem -- and that legislature just did that -- you
19 allow municipalities to now go on an even year election
20 cycle. But if you do it in a presidential year, you're
21 only going to have a lengthy the ballot problem. With
22 Montgomery County with 26 municipalities and Prince
23 George's with 28 you're going to make the problem
24 course. So if you're going to even year, you may want
25 to do gubernatorial years.

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2 With regard to their -- some consolidation
3 can work with the -- for example, the largest precinct
4 in Maryland with the total -- the largest registration,
5 the largest voter turnout on election day didn't have a
6 problem and the reason they didn't have a problem is
7 because they were in a brand new country school with
8 parking, more parking than you have within blocks of
9 this facility right here. You had adequate machines.
10 You had well over 30 machines at the -- in that polling
11 place and they were able to handle and process people.

12 In Augusta, Maine, everybody votes at the
13 convention center. It's a mid to small city,
14 twenty-some thousand, you know, potential voters.

15 So consolidation can create efficiencies.
16 But when you do that, that doesn't necessarily address
17 all of the turnout issues. That -- that's a much more
18 complex question about motivating a turnout. You can
19 enhance it, you can improve it. And we've made
20 progress in Maryland over the last 30 years or so with
21 some of the things that we've done to improve turnout.
22 We rank higher now than we did 30 years ago, but that's
23 the margins.

24 In terms of cost, I estimated for this
25 report that if we had a \$50 million-dollar

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2 infrastructure fund in Maryland, that would go a long
3 way to helping the local governments and the local
4 administrators solve a lot of their problems, staffing
5 problems, their facility problems and maybe even some
6 of their equipment problems because they could use it
7 for technology.

8 MR. YEARY: My followup question has to do
9 with timing. You talked about the redistricting piece
10 and making sure that voters know which precincts
11 they're now voting in. There's been some redrawing of
12 those. But the other piece is that the primary this
13 year is at a different point in time.

14 Are there concerns from any of the members
15 of the panel in terms of the impact of the -- well,
16 one, what is your evaluation of voter information about
17 the change in the primary date and do you have concerns
18 about possible adverse impact on voter participation
19 based on your assessment of the information that's
20 available?

21 MS. PIERSON: Yes, I think there is a
22 problem. I think it's going to cause -- there will be
23 lower turnout in the primary. I think candidates who
24 are now going door to door are finding that people have
25 no clue that there's an election a month and a half

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2 away.

3 The reason for the change, of course, was
4 to accommodate the overseas -- voting overseas and the
5 45-day extra time that they need to allow them the
6 opportunity to vote and you add that with the amount of
7 time it takes to actually certify the ballot and then
8 go forward to the next election and do all that, then
9 that's sort of how we got where we are. But I do
10 anticipate it's going to be a problem.

11 I have not seen a lot of either local or
12 state-wide advertisement, so to speak, about the new
13 election day. I will get an occasional Facebook update
14 from a local election board here in Baltimore City, but
15 I do think it's going to be a problem and, frankly, the
16 date has moved around quite a bit in the last few
17 cycles and people just aren't used to voting in June.
18 I mean, it's what you get used to because other places
19 have, you know, elections at this time all the time.
20 But I think it is going to be a problem.

21 MS. DANIELS: So you think affect --

22 MS. PIERSON: I think it will affect
23 turnout. I think people will be on vacation and
24 forget.

25 MR. WILLIS: It's one of my -- I have every

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2 turnout election back to 1789 in this state and I can
3 tell you I am very concerned about a late June primary
4 and it's effect on turnout.

5 Last time we had a June primary in Maryland
6 was 1954. The difference is in 1954 we had a shorter
7 legislative session and, in fact, that's one of the
8 reasons, I think, that later date was chosen, to get as
9 far away from the end of the legislative session as
10 possible.

11 On the other hand, we don't know. We've
12 never experienced this particular date before in the
13 history of Maryland and I think that that is the number
14 one factor, uncertain factor having it in June and the
15 impact.

16 We have eight days of early voting. We've
17 expanded from six days to eight days of early voting so
18 that may help. That may help boost turnout. Early
19 voting was a little less than 15 percent of the vote in
20 2012. Our expectation is -- and we talk about that
21 also in the report is that could grow to 25 percent of
22 the total vote. But getting that number up -- you
23 know, our highest turnout in Maryland within recent
24 memory were in the '80s, '82 and '86 gubernatorial
25 elections. They were the highest. It spiked up a

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2 little bit in '94 and then on a downward trend since.

3 MS. JOHNSON-BLANCO: First I want to say
4 this panel has just a great wealth of information and
5 if you have not shared task force recommendations or
6 other materials with us regarding election
7 administration, please do. I look forward to getting
8 this list. I am learning more.

9 Mr. Willis, I have a question about the
10 training of election workers, whether it's supplemental
11 or is it part of what the state does and I also have a
12 question for Mr. Male about -- can you talk more about
13 the rejection of absentee ballots and why?

14 I'm particularly curious also about why the
15 state is moving to a paper ballot system and what the
16 reasoning you've heard has been for that.

17 Is the election worker training, is it
18 supplemental or --

19 MR. WILLIS: Well, it is -- the local
20 government does it. The State Board of Elections
21 designs a manual and then the local jurisdictions can
22 supplement that with additional instructions and times.
23 The jurisdictions -- depending on their own needs, some
24 jurisdictions have the ability -- Howard County, for
25 example, does a pre-test with judges online. But, of

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2 course, that's one of the wealthiest counties in the
3 entire county and it's a whole different -- you know,
4 they have a different size, number of people
5 participating. Montgomery County trains their election
6 judges for specific jobs. So they'll have -- they do
7 it by job. Baltimore City, in contrast, trains judges
8 on voting units, traditional ballots and electronic
9 poll booths. So they multi train, they cross train.
10 So there are variances at the local level on the
11 training which probably are fine. It accommodates
12 their needs and how they're going to run the system.
13 Montgomery County has one that I like. They have --
14 train judges that come in to just close the election at
15 the end of the day. Other jurisdictions don't do that.
16 I think there's value in that because people make less
17 mistakes. I understand it's a very hard job. You show
18 up 6:00 in the morning and you don't leave until 9:00
19 or 10:00 in the evening.

20 In other jurisdictions around the county
21 you're experimenting now with split shifts. But that's
22 a resource issue. When I've raised that issue over the
23 last 20 or 30 years about split shifts or other -- oh,
24 we don't have the money to hire anybody else. You
25 know, we don't have this. You said it to Reverend

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2 Yearly, that always becomes an obstacle and I think if
3 you want to -- if you value participation and you want
4 to increase it, you've got to invest in it.

5 MS. JOHNSON-BLANCO: So the training you
6 do at the University of Maryland will help --

7 MR. WILLIS: He did hear classrooms here at
8 the University of Baltimore last night and we'll be
9 using Morgan State University in a couple of weeks to
10 do --

11 MS. JOHNSON-BLANCO: Local jurisdiction
12 training here or...

13 MR. WILLIS: The hearing -- we actually
14 started in Baltimore County and other jurisdictions do
15 it in-house with their own people if they have it. The
16 election director of Baltimore County when they got
17 over a half million, people came and said the HAVA was
18 being implemented, different laws, different change of
19 voting system and she said I can't do this anymore.

20 So we developed a model based on using
21 classroom, bringing the adult learners into a classroom
22 setting, have the machines there available and we found
23 that to be fairly effective and we've been doing that
24 in the city since 2006 and we've used mainly the
25 University of Baltimore and Morgan and we've also been

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2 at the community college in Baltimore County. We used
3 the community colleges out there as well to train. But
4 other jurisdictions, particularly small -- Kent County
5 has only got nine precincts and they train by precinct
6 team which I think, actually, is a very good idea where
7 you just -- all the people who are going to serve in
8 that predict come in together and you can train as a
9 team, but they only have nine predicts. Baltimore City
10 has 294. So every jurisdiction has a different
11 problem.

12 MS. JOHNSON-BLANCO: And some other
13 rejections --

14 MR. WILLIS: One other comment, though.
15 This latest manual for 2014, in addition to the state
16 efforts -- they hired an educator to help them in
17 training material. The local Maryland Association of
18 Election officials also helped with drafting of that.
19 So the state/county -- the state local participation,
20 as you indicated with your disability issues, has
21 improved in the last several years and I think it
22 reflects itself in a manual that has better problems
23 solving chapters in it.

24 So I think we've made improvements. I want
25 to be positive about that.

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2 MR. MALE: So the Pew study found that one
3 in ten overseas ballots were received back by the state
4 or rejected and I wish I could answer your question
5 because our county is requesting from the state
6 information and the thought is potentially that's
7 because some of those people are requesting an absentee
8 ballot and then, not receiving it, they're using
9 federal write-in absentee ballots which is another
10 option.

11 So essentially they're receiving absentee
12 ballots. Maybe it's the second one that's being
13 appropriately rejected. We just don't know that.

14 MR. WILLIS: There is data and when Nikki
15 becomes the deputy director, she has all of that data.
16 The two principle reasons for rejection are that the
17 person was not registered and so that may be a
18 registration issue, either due to timing or due to
19 whatever and the second major rejection is received too
20 late.

21 In other words, coming from overseas
22 military it's received too late, which the whole
23 Internet and technology part could help. I mean, the
24 State of Washington does well with that and other
25 states have voting -- even West Virginia has

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2 experimented with it for military voting on a pilot
3 program basis similar to Virginia because we see the
4 online deliver of ballots for persons serving overseas.

5 MR. MALE: That's true but it's unclear why
6 Maryland would stand out in percentages. We're
7 11 percent. Other jurisdictions are two or three
8 percent rejection rate. So those issues, it's not
9 clear why those would be specific to Maryland.

10 MS. DANIELS: Takoma Park is very unique in
11 that it allows parole felons to vote, 16 and 17 year
12 olds, even non-citizens.

13 I wanted to know if you all are having
14 issues with ensuring that voters are educated and
15 knowing that they can only vote for these local
16 elections as opposed to federal or state elections and
17 if you're having issues with voter fraud and voter
18 confusion.

19 MR. MALE: I think the answer to all of
20 those questions is yes. It's a small municipality. So
21 just to make people aware that we even have municipal
22 government is a challenge at some level.

23 So it's constant education. I think the
24 issue is more of people just learning about the city
25 election system as to opposed to our city election

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2 creating people who then turn out to vote in a federal
3 election or state election and being turned away. It's
4 more the other way around.

5 MS. DANIELS: Are you spending more money
6 to educate voters about the uniqueness of the system?

7 MR. MALE: Yeah. We do a lot of --
8 landlords now hand out voter registration information
9 when you turn these in. We do poster campaigns, you
10 know, social media. We do our best to try to spend
11 money essentially on the elections. The turnout is
12 still very low, but we are doing our best to get it
13 higher.

14 MS. DANIELS: Ms. Keenan?

15 MS. KEENAN: I was going to ask you about
16 the decision to allow felons to be re-enfranchised and
17 what the experience has been with that because it seems
18 like in other places around the country they're
19 restricting -- they give it and in Florida and take it
20 away in a stroke with a pen, but you all are trying to
21 expand it in a way that's seems to be working for you
22 guys. I just want to hear what the experience has been
23 about.

24 MR. MALE: Yeah. I mean, there was a
25 recent exit poll in one of our city elections that show

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2 the public -- the majority of the public supports it.
3 We had, during the process, people with felony
4 convictions come to speak to us about how important
5 that was to them personally. So on a local scale we'd
6 only be one of the states that allows municipalities to
7 do the innovation order we're taking on. It's been a
8 positive experience and each of these changes are one
9 or two percent of the total electorate. We're not -- I
10 think the change in year would make a bigger
11 difference, but we're getting, you know, one, two
12 percent changes. 16, 17 year olds are three percent of
13 our voting population now. So, you know, we can't make
14 dramatic improvements, but each of those things play an
15 important role in getting our elections being more
16 representative.

17 MS. DANIELS: One last question. In your
18 survey in regards to wait time, did you find that
19 polling places where voters of color were, the majority
20 had a longer wait time than other polling places?

21 MR. WILLIS: We found that urban voters
22 waited longer than suburban or rural voters with one
23 exception, Anne Arundel County, that they had a very
24 long ballot with 15 local charter amendments on their
25 ballot and they had problems in Anne Arundel County not

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2 just in minority areas, but throughout the county of
3 Anne Arundel. But Prince George's did, but they had
4 resource issues. They had issues with the quality and
5 adequacy facility. They had different arrival time
6 issues.

7 MS. DANIELS: The arrival time of the
8 election workers?

9 MR. WILLIS: The voters. Oh, no. We did
10 have those problems about ten years ago. We've done a
11 lot to -- we had them in the city. The first time that
12 the university got involved, through our call center,
13 operated like a hotel. We did wake-up calls to the
14 judges. Since we did that for an election cycle, it's
15 been much improved. But in terms of our report, the
16 impact -- we also -- part of the reason that number of
17 impact goes up is the early voting. The early voting
18 sites were limited and constricted in Prince George's.
19 They weren't equally used. Some were more popular than
20 others. How that close the site -- one of our
21 researchers did a lot of work on graphing out the
22 proximity of a site. The siting is very important
23 particularly if you're dealing with communities that
24 don't use the automobile as the primary form of
25 transportation, but are using other ways to get to the

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2 site, that that impacted. Because the further away
3 from a site you are, the less likely you are to use an
4 early voting site and who does that disproportionately
5 impact? It disproportionately impacts those who don't
6 live on the means of transportation.

7 MS. DANIELS: So the early voting waiting
8 time as well as election day wait time.

9 MR. WILLIS: Correct. It operates both
10 ways.

11 MS. DANIELS: Thank you. Are there any
12 other questions?

13 MR. YEARY: Just one clarification.

14 With the designated early voting sites,
15 particularly for persons with disabilities, do you have
16 any concerns about where the sites are, how the sites
17 function, any issues of persons -- how does that work
18 in terms of the participation of persons with
19 disabilities in that early voting?

20 MS. FIEO: I could just say that we're very
21 pleased that the early voting sites are a hundred
22 percent accessible and that's been great. But there
23 are at least five percent state-wide that are not
24 accessible still, but every early voting center is, in
25 fact, accessible.

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2 MR. YEARY: Thank you.

3 MS. BLAKE: And if I may add, I would add
4 also that early voting centers should be located near
5 public transportation. Transportation is the biggest
6 issue for people with disabilities. So it needs to be
7 in a place where they can get to easily.

8 MR. YEARY: Thank you.

9 MS. DANIELS: Thank you so much. We'll now
10 public testimony. Mr. Akbar, please come forward while
11 the panel is leaving. Thank you again.

12 Mr. Akbar, go ahead, please.

13 MR. AKBAR: Thank you. My name is Rais
14 Akbar. I'm an attorney in Maryland and I work for Fair
15 Vote which is a 501 B3 organization based in Takoma
16 Park which advocates for electoral reform issues and
17 fair representation issues and things of that nature.

18 I think most -- I was going to give some
19 comments regarding Takoma Park's experiences with local
20 elections, but Mr. Male covered that ground adequately.
21 So I'd like to talk a little bit about representation
22 and redistricting issues. I hope that is not beyond
23 the ambit of the panel.

24 So just as a -- I'm not sure how many
25 people in the room are attorneys, many are not. But in

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2 the voting rights world, there's often a distinction
3 made between litigation that concerns vote denial or
4 abridgment and other litigation that involves vote
5 dilution claims.

6 Mostly litigation under the federal VRA is
7 actually concerned with vote dilution. Recently
8 there's been considerable attention to voter ID laws
9 including a decision handed down today in Wisconsin
10 that's relatively major. But despite the proper and
11 valid attention paid to voter ID issues, actually voter
12 dilution has occupied the bulk of the body of law under
13 section [inaudible] of the Voters Rights Act.

14 The distinction would be something like
15 vote denial and enrichment concerns that barriers that
16 are or may be in place to casting of a ballot in the
17 first place versus what dilution is concerned with,
18 even if you cast a ballot, will your ballot then
19 translate into adequate and effective representation.

20 So the standard fact pattern in a vote
21 dilution basis, there will be some local jurisdiction
22 that uses an at large voting system which is to say
23 that every member -- every seat of a governing body,
24 the city council, the school board, whathaveyou, is
25 elected by all of the voters of that district, however

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2 many seats there are and if there's a pattern of racial
3 block moving in which white majority consisting of a
4 block, minority residents will have no representation
5 whatsoever. And the standard remedy has been under
6 the -- it's not the required remedy, but it's the
7 remedy that tends to be adopted in voter dilution cases
8 is that single member districts are carved out of this
9 system on the theory that you'll have one or more
10 majority/minority districts which elect minority
11 representatives.

12 A better system, in my view, would be one
13 in which an alternate voting system is used rather than
14 winner take all because then you would have to go
15 through the question of drawing districts at all and at
16 large system combined with something like a single
17 transferable vote or cumulative voting would have all
18 the advantages of ensuring minority representation on a
19 governing body without the bother and expense and the
20 politics and potential litigation over race conscious
21 districting that would necessarily follow if you use
22 the standard remedy and my time is up.

23 There's so much to say on this matter, but
24 my time is up. Thank you.

25 MS. DANIELS: Do you have questions for

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2 Mr. Akbar?

3 MR. YEARY: Since he's the panel, I guess
4 so.

5 MS. DANIELS: Do you think that -- where do
6 you think cumulative voting or, in particular, the type
7 of alternate method of election do you think would work
8 best for this particular --

9 MR. AKBAR: Well, the federal Voter Rights
10 Act does not preclude better remedies, but because the
11 Gingles factor is made -- G-I-N-G-L-E-S, that's the
12 name of the Supreme Court case that described the
13 pre-conditions that are necessary for a group of
14 plaintiffs can establish that there's a violation.

15 The first of the three Gingles factors says
16 that if a minority committee is large enough and
17 geographically cohesive enough to form the majority of
18 some district that could be created, then that's one of
19 pre-conditions necessary to sustain a claim.

20 The problem is that that -- having that as
21 one of the pre-conditions suggests that the proper
22 remedy would be to just create a district which is
23 fine, which often works fine. But it has a set of
24 associated problems because single member districting
25 can potentially pack in minority voters where their

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2 influence might be better -- might increase if they
3 were spread out a bit more --

4 MS. DANIELS: But are you arguing for a
5 different system for, say, legislature for the City
6 Council?

7 MR. AKBAR: Oh, I see. I'm sorry.

8 MS. DANIELS: Where do you think this
9 method would work better or best for?

10 MR. AKBAR: The proper [inaudible] would be
11 city council, all municipalities. Something like
12 congressional districts are probably -- that's a
13 different matter. But so long as the scale of the
14 governing body is not too large and you could very well
15 have local legislative bodies that don't bother
16 [inaudible] districts at all. That would be very
17 effective, not just for ensuring that actual election
18 of minority members, but it would also increase the
19 influence of minority members even beyond the actual
20 ability to elect a candidate.

21 So you can have both. You can have your
22 cake and eat it too. You can guarantee elections and
23 you can have added influence on top of that using
24 multi-member districting and using something like
25 single transferable vote.

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2 MR. HENDERSON: Have you been identify any
3 places that this has been a problem?

4 MR. AKBAR: In Maryland, there have not
5 been any session II cases brought. Racially polarizing
6 voting does exist, though. Baltimore County is one
7 area in which the patterns of voting clearly
8 demonstrate fairly distinct difference -- consistent
9 difference in candidates of choice for the white
10 majority and the racial minority communities there.

11 California is instructive in this case --
12 in this situation because California also did not see a
13 lot of federal enforcement. But once California
14 adopted a state level Voting Rights Act, which they did
15 in 2001, there was actually a lot of litigation brought
16 under state law.

17 So the lack of federal enforcement in a
18 given area does not necessarily indicative that a
19 problem doesn't exist. It's just that the remedies are
20 often possible under federal law, but not really
21 possible unless a state law supplements some federal
22 legislation.

23 MR. YEARY: To that point, just in this
24 session, chapter 50, the governor just signed it which
25 is -- it authorizes States Attorneys and the Attorney

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2 General to take on certain enforcement mechanisms in
3 cases of what sounds like your point, the dilution
4 issue. I want to go, though, to your assessment of the
5 recent redistricting in the State of Maryland.

6 Assuming your initial argument is the
7 platform, give me your assessment of what you think the
8 impact is going to be practically since we know it's
9 already been taken through the court system.

10 But are there cautions that we need to be
11 sensitive to in light of that based on your concern
12 around that issue?

13 MR. AKBAR: The recent districting in
14 Maryland, a lot of commentary has been made and a lot
15 has been written about how Maryland has one of the most
16 blatant gerrymandered congressional maps in the nation.
17 The federal jurisprudence on the matter of partisan
18 gerrymandering is that it's not illegal. But if it has
19 a racial valance to it, then it has all sorts of
20 potential issues.

21 The Maryland congressional redistricting,
22 as far as I know, did not really have a problematic
23 racial valance to it. African-Americans generally vote
24 democratic. The map was generally in favor of
25 democrats. So it did not -- in any case, it did not

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2 harm racial representation.

3 MS. DANIELS: But you're not arguing
4 [inaudible] congressional elections?

5 MR. AKBAR: No, certainly not.

6 MR. YEARY: The general assembly map.

7 MR. AKBAR: Oh, I see.

8 MR. YEARY: Let's say in Baltimore City
9 there's a loss in population, you lose representation.
10 Now we have to figure out which district gets redrawn
11 to balance out the representation in Annapolis.

12 Is there any analysis that you bring to
13 that around the dilution issue?

14 MR. AKBAR: I don't think I can really
15 comment on that right now. I have not studied that
16 particular matter closely enough. I would just say
17 that having single member districts in the first place
18 will always raise these concerns. Any time you try to
19 do it this way, there will always have to be this
20 consideration of what sort of racial valance is there.

21 MR. YEARY: The reason I ask is that in --
22 particularly on the senate side and because of the loss
23 of population there is one less senator in Baltimore
24 City. So there is a district that's redrawn where
25 there's kind of a shared senator.

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2 In some -- I don't know if there's a
3 formula to determine what the ratio is, but let's say
4 44A and 44B, now you have this kind of redesigned
5 district that puts, actually, representatives in
6 competition with one another for the seat. So now to
7 get to the city's representation, how do we look at
8 which seat gets redrawn to affect which population
9 around dilution? Any thoughts on that when we start
10 looking at the General Assembly map?

11 MR. AKBAR: My thought would be that if you
12 had a single transferable vote system of allocating
13 your votes, that's a sort of poly sided topic, but
14 it's -- single transferable just means that you can
15 rank your candidates of choice and so long as the
16 threshold of the victory is met, you win.

17 The representation for the city could be
18 better achieved by having candidates that try to appeal
19 to cross-racial coalitions which is possible under our
20 choice voting system in a way that is not impossible,
21 but considerably less likely under a winner take all
22 system such as we have now.

23 So vote dilution problems arise when
24 minority and majority voters consistently prefer
25 different candidates. But if you had a system of

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2 voting which properly incentivized candidates to appeal
3 to people outside of what they may think of as their
4 natural constituency, rightly or wrongly, then you have
5 less concern about voter dilution because in many cases
6 people's interests are more likely to be represented.

7 MR. YEARY: That assumes, though, that the
8 redrawing -- that the redrawing creates the potential
9 for this cross-racial coalitions. If you are pitting
10 groups from within the same voting block based on the
11 relationship and the ties to the existing
12 representative, then you're not going to get the
13 benefit for the coalition. What you're actually going
14 to get is the removal of the interest factor because
15 now you've taken members of the same general voting
16 block and pitting them against each other based on
17 demography -- say when you have part of a district in
18 the city and part of the district in the county, but
19 basically the same demographic that you're drawing.

20 MR. AKBAR: You're describing a single
21 winner district. This would work under a multi-member
22 district. So if you have -- for example, the Maryland
23 House of Delegates uses anywhere between three and, I
24 think, five. But the problem with the House of
25 Delegates force is you just vote as a block for the

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2 member from that distinct. Instead you had a three to
3 five member district using random choice voting. The
4 minority community would almost certainly be able to
5 elect one member and almost certainly be able to have
6 the influence a second seat.

7 MS. DANIELS: Thank you, Mr. Akbar.

8 MR. AKBAR: Thank you.

9 MS. DANIELS: We're now going to take a
10 break until -- a 10 or 15 minutes break and there are
11 refreshments in the lobby. So please take advantage of
12 the refreshments in the lobby and we'll reconvene at
13 5:05.

14 (There was a recess taken at 4:53 and the
15 hearing resumed at 5:28 p.m.)

16 MS. DANIELS: We're getting ready to start
17 the second panel. Our first speaker is Reverend
18 Gloria -- would you please pronounce your last name for
19 us?

20 MS. SWIERINGA: Swieringa.

21 MS. DANIELS: Swieringa, Reverend Gloria
22 Swieringa. Please go ahead.

23 MS. SWIERINGA: Thank you very much for the
24 opportunity to be here today and my name is Pastor
25 Gloria Joan Swieringa. I'm co-chair of Communities

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2 United of Greater Washington and we are very interested
3 in social justice.

4 So the subject of restoring the right to
5 vote to ex-offenders is monumentally important.
6 Maryland took a very important step in that direction
7 in '07 when the law changed to allow ex-offenders to
8 regain the franchise once they had served their
9 sentence and satisfied any demands with regard to
10 parole or probation.

11 However, as many things happened, what was
12 supposed to be a supportive mechanism to help the
13 reentry process by having these individuals attain a
14 very important point of inclusion became somehow
15 somewhat dysfunctional because it is very unclear. We
16 know it's estimated that about 50,000 people regained
17 the right to have the franchise. When the law changed,
18 they regained the right, but there's absolutely no
19 information about how many registered, how many voted,
20 what the law is doing, how we can be intentional
21 enough, that this is not just one more law that rests
22 dormant on the books -- and don't get me started on
23 that subject because I'm, you know -- as a social
24 justice volunteer, I have some laws that negatively
25 affect me that we don't implement. But there is

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2 nothing more important than the right to vote. It's
3 one of the most important fundamental privileges that
4 American citizens can possess and we need to be
5 extremely supportive when -- especially when it comes
6 to the reentry process of making sure that the things
7 that are supposed to happen happen and, as most things
8 do, the negatives of this more greatly affect people of
9 color. All of this is documented and we have come to
10 encourage you to see what we can do to improve upon
11 this situation because the Freestate isn't very free if
12 we can't un-incarcerate our residents who have learned
13 the right to be so because of what we have not done
14 about a law that's been on the books since '07.

15 For example, a check of the website for the
16 Department of Safety and Correctional Services -- I
17 hope I said that right. I'm getting all of this
18 secondhand because access to ADA is another law that
19 Maryland has not -- no, I won't bore you with the kind
20 of problems I run into because we're still going to get
21 around to implementing that law. It's been on the
22 books since July 26, 1990 for heaven's sake. I'm not
23 sure I'm a member of the commission for persons with
24 disabilities, so I know that. I don't know what we're
25 waiting for, but we haven't gotten around to it.

PROCEEDINGS

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2 But when it comes to reentry, that's a
3 passion for me because for some 30 years I was a
4 volunteer for the DC Department of Correction most of
5 my time and on call for Maryland because, as you know,
6 ordained clergy have a lot more privileges when it
7 comes to people who are residents of our penal
8 institutions than even the family does.

9 So if a family has someone on the inside
10 and they really want to know what's happening, they're
11 going to go see a pastor because I can go and see them.
12 You can't force me to sit behind the glass, although
13 one or two chaplains for reasons known only to God
14 unsuccessfully tried to do that. You can't do it, it's
15 illegal.

16 But we need to -- we really need to
17 consider the blood, the suffering, the treasure that
18 went into the right to vote. Viola Liuzzo left six
19 motherless children so that black folks could vote.
20 Three babies, Chaney -- Schwerner, Goodman and Chaney
21 died in Mississippi so that people can have the right
22 to vote and it fuels my boiler that we still treat that
23 so casually. The information on the website as of
24 April 23rd, 2014 was all incorrect. It's been taken
25 down now and we're hoping that we get to a better

PROCEEDINGS

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2 point.

3 MS. DANIELS: Thank you so much. Time is
4 up.

5 MS. SWIERINGA: So this is what we've come
6 to encourage you to do is to let that process begin
7 before -- when they're released from prison because
8 maybe there needs to be more time to implement it
9 properly. But whatever needs to be happen, we need to
10 do it. Thank you.

11 MS. DANIELS: Thank you so much.

12 MS. YEOMANS: Good afternoon. I'm Barbara
13 Yeomans. As president of the League of Women Voters of
14 the District of Columbia, I am pleased to provide
15 information about a special effort in voter service
16 undertaken by League members Melody Webb and Emily
17 Tamlyn.

18 DC laws says a person otherwise eligible to
19 vote may do so so long as he or she is not currently
20 incarcerated for a felony. On the record you'll see
21 the citation and the code. A person may vote while
22 charged and awaiting trial after having served time for
23 a felony conviction and while on probation or parole.

24 However, many persons who have a "criminal
25 record" think that they are not allowed to vote in D.C.

PROCEEDINGS

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2 and that they have lost this right when they were
3 convicted of a crime.

4 League members, in fact, Webb and Tamlyn,
5 in fact, found that many citizens returning to the
6 community from jail are unaware of their ability to
7 vote in the district. Also, although DC's laws
8 regarding their voting rights have been in place for
9 some time, it seems that there is not a lot of
10 information directed toward those returning.

11 Therefore, since early 2013, league members have been
12 working with another nonpartisan organization, Second
13 Chance to Vote, to develop strategies on how to educate
14 returning citizens on registering to vote as well as
15 voting. In July of 2013, we participated in
16 registration drives with Second Chance to Vote -- for
17 example, one at the Anacostia Metro Station and another
18 at a concert at the large centrally located Verizon
19 Center. These were special efforts distinguished from
20 other registration efforts.

21 With the assistance of the DC Board Of
22 elections, Ms. Webb and Ms. Tamlyn created a brochure
23 called The Right to Vote of Incarcerated and Returning
24 Citizens of the District of Columbia. The brochure is
25 also featured on our website and I brought a copy for

PROCEEDINGS

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2 the record for all others who do not know this already,
3 the dog ate my homework and you don't have the
4 pamphlet, you know, foldout, but you do have a hard
5 copy.

6 Ms. Webb and Ms. Tamlyn also put together a
7 presentation based on the brochure to educate returning
8 citizens. We are now prepared to present information
9 on voting and voter registration at the DC jail and we
10 have proposed this to officials.

11 A basic mission of the League is to
12 encourage all DC citizens to understand their rights to
13 vote and to vote. We hope their efforts directed
14 toward returning citizens will help them to become more
15 fully integrated within the community. Thank you.

16 MS. DANIELS: Thank you.

17 MR. ABRIGO: Lennox Abrigo.

18 MS. DANIELS: Yes, go ahead.

19 MR. ABRIGO: I'm pastor of Seventh Day New
20 Covenant Ministries and also the founder of the
21 Washington, D.C. Chapter of National Action Network.

22 However, when the request came to us, they
23 specifically asked that we give a local perspective.
24 So, today, I'm representing -- speaking for the
25 Washington, D.C. coalition of civil rights -- local

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2 civil rights leaders. We have all of the local civil
3 rights leaders represented in our coalition. It is a
4 coalition of DC civil rights leaders and, just like the
5 constitution of the panel, we have two local presidents
6 for local chapters of the NAACP. I don't know what
7 that indicates, but that is the way it is. We're both
8 here today in our coalition.

9 I want to take a chance to talk a little
10 bit about some new ideas that we are proposing for
11 increasing voter participation. We believe that the --
12 that voting is the nucleus of any democratic system.
13 There is equivalence between the legitimacy of
14 democratic systems and the participation quotient of
15 voters within that system. If that was not so, then
16 there would be no outcry against monarchies,
17 oligarchies or dictatorships. So the more one -- the
18 more a democracy allows its constituents to vote, the
19 higher the rate of participation, the more legitimate
20 we believe the democracy is and there has been many
21 studies written that support that thesis.

22 So we want to propose that education of
23 voters and potential voters be continuous. We would
24 like to suggest that begins in high school, that
25 somehow voter experience and voter volunteering in

PROCEEDINGS

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2 voting booths -- in voting centers are conducted and
3 tied to graduation, high school graduation,
4 qualifications and community service.

5 Isn't it strange that when the community --
6 that we send our high school students out for community
7 service away from the school, but when the community
8 comes to that high school -- because so many high
9 schools are voting centers, when the community comes to
10 that high school, we do not allow the students to
11 participate in their community being in their building.

12 So we're suggesting to this commission,
13 this honor and distinguished commission, group of
14 commissioners that we believe that should be addressed.
15 We do not have a prototype for you or a profile, but
16 we -- or even a facsimile, probably not even precedent,
17 but we would like to suggest that they be investigated
18 and we can be called upon to give more testimony in
19 this regard.

20 I think, also -- we think, also, that there
21 should be some connection to voting education to
22 acquiring a driver's license. If being qualified to
23 drive is important for all of society, then voting is
24 equally important to a democracy. So since most people
25 transition in life and acquire a driver's license, we

PROCEEDINGS

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2 think that that's a good point, nexus point, at which
3 to attach the importance of voting and voting
4 education.

5 Churches -- as a pastor, I notice that you
6 have able representative of the clergy in the group of
7 commissioners. Churches are -- play an important role
8 in this and we think it should be ongoing because a lot
9 of people do not qualify to vote because they haven't
10 prepared to vote. They might not be aware of the
11 things that they need and it's too late to get it
12 sometimes. So voting should be ongoing and we suggest
13 that there be a need for preparation.

14 So it is our petition to this honest panel,
15 to this honest group of commissioners that we tie
16 voting education to our schools and driver's license
17 acquisition and that they be an ongoing process.

18 Thank you.

19 MS. DANIELS: Thank you. Ms. Taylor?

20 MS. TAYLOR: Hello. My name is Sharon
21 Taylor. I'm secretary and vice-president of the Prince
22 George's County NAACP and the communications chair for
23 the state conference of the NAACP.

24 I'm not really quite sure where I was
25 supposed to begin, but I'm going to start with what our

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2 regional person talked about and I think it's kind of
3 five minutes. I'd like to speed read it.

4 I don't want to point at individuals
5 because I think the problem is a process that I think
6 allow a lot of good -- men of good will to not be their
7 best selves.

8 The Voting Rights Act changed the character
9 of American politics. I'm quoting a constitutional law
10 professor in Maryland, state senator Jamie Raskin who
11 in his 2003 book, *Overruling Democracy*, goes on to say
12 that the result was the African-American population in
13 the south which had a voter registration averaging less
14 than 25 percent in 1956 reached 62 percent registration
15 in 1968.

16 With the Voting Rights Act in after a near
17 century, post-reconstruction Jim Crow was out of
18 business. Now less than 60 years in the face of
19 overwhelming evidence to the contrary, including
20 30-plus states and acting voters, suppression
21 legislation limiting access to the franchise, Judge
22 Robert's court believes that provisions of the Voting
23 Rights Act harken to a time gone by. It's cognitive
24 dissidence. He is not unique in this, but, rather,
25 follows a long line of judicial decisions after the

PROCEEDINGS

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2 Voting Rights Act that, under the cover of law,
3 undermines black political power.

4 Read's instruction occurred as a result of
5 the shear numbers of black southern voters who's having
6 been counted in the census, notwithstanding their
7 no-vote status, helped the south maintain dominance in
8 congress access to the government's largesse. America
9 has always counted Africans in this country whether as
10 a function of trade and business or as a function of
11 political power in the reapportionment and
12 redistricting process. It is in perfection of the
13 gaming of these processes played out both -- by both
14 parties in which voters of color have been and continue
15 to be shortchanged.

16 Black representation has been thwarted at
17 every turn under the cover of law. Amendments to the
18 Voting Rights Act in 1982 ushered in, after the
19 1990 census, growth of majority minority districts from
20 26 to 52 and, along with them, historical numbers of
21 black and Hispanic members to Congress and state
22 legislators.

23 The racial quota narrative raised its ugly
24 head over two majority minority districts out of
25 twelve, narrow though they were, 53.4 percent black and

PROCEEDINGS

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2 45.5 percent white and 53.3 percent black to 45.2 white
3 respectfully.

4 Shaw v. Reno paved the way for an avalanche
5 of lawsuits that reversed many of those districts,
6 essentially saying that the strict, strict scrutiny is
7 required whenever majority minority districts are
8 consciously created but not necessarily so in the
9 creation of white majorities.

10 I quote Senator Raskin: Under this
11 asymmetrical doctrine, whites gain a presumptive
12 constitutional right to be the majority of territorial
13 districts at every level of government unless
14 minorities can form majorities by being concentrated in
15 enclosed geographic areas. Enclosed geographic area
16 most certainly applies to Congresswoman Donna Edward's
17 congressional district four. It was undone in the last
18 redistricting.

19 The growth of the voting power minority
20 voters has to pay off for communities of color rather
21 than simply perpetuating white male dominance
22 protecting incumbency, seniority and party dominance no
23 matter the party.

24 Here in Maryland, minority voters
25 consistently deliver seven points margins of victory

PROCEEDINGS

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2 for the democratic party. While half of the democratic
3 voters in Maryland are minority voters, most of the
4 important issues facing communities of color that stand
5 to be elected because elected people can't, dare not or
6 don't respond and communities are not included in
7 discussions on matters related to opportunities.

8 In anticipation of a presidential election,
9 the narrative of Maryland's redistricting was the
10 importance of national party dominance and a single
11 congressional seat that would surely save the
12 presidency. It, of course, would have been blasphemy
13 to utter the possibility that two Republican
14 congressional seats is fair in Maryland notwithstanding
15 population over history. Meanwhile, Maryland's real
16 opportunity for two majority minority districts was
17 tossed away for a single goal by flinging
18 African-American, Hispanic-American and Asian-American
19 populations across the state to shore up safe districts
20 and effectively diluting the voting power of
21 communities of color across Maryland, minority voters
22 on lockdown for another ten years.

23 In addition, safe congressional and state
24 districts that had become too largely populated by
25 minority voters, even though minority voters had proven

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2 themselves loyal and reliable, were adjusted to reduce
3 the influence on minority votes. This, then, I believe
4 is central to where we find ourselves today regaining
5 ground we thought already won.

6 One can hardly doubt the willingness of
7 minority voters to vote for non-white candidates. But,
8 today, the assurance of our vote is manipulated so that
9 non-white candidates are our only choice and we do not
10 have the right to concentrate our voting power.

11 Perhaps we've invested too much time in
12 permanent interests. In the political landscape, as
13 minority voters have become mobile and reliable, we've
14 seen the unraveling of our rights and, along with it,
15 fairness and decency. Where are the beneficiaries of
16 our loyalty when multiple states duplicated the Stand
17 Your Ground like laws all over the country? Why didn't
18 they sound the alarm when state legislators were
19 pushing through voter suppression legislation
20 registration all over the country? Why didn't they
21 move to act on the court's warning at the last
22 reauthorization that the formula related to
23 pre-clearance was outdated?

24 MS. DANIELS: Ms. Taylor, your time is up.
25 Do you want to give a summary?

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2 MS. TAYLOR: Well, let me just say, in
3 closing, I think I get most of my facts right. I think
4 these are complicated issues, but I think that people
5 can get it. Millions of men and women pave the civil
6 rights highway so other seeking their civil rights
7 would know the way with no toll to pay. I think they
8 have to be in the fight, not kind of in the fight. All
9 in. Thank you.

10 MS. DANIELS: Thank you. You have
11 submitted your written testimony, right?

12 MS. TAYLOR: I have.

13 MS. DANIELS: Thank you. Mr. Sloane?

14 MR. JAMES: No, Mr. James. I have
15 submitted the written testimony. So I won't go over
16 some of that same ground. However, I have some points
17 with regard to what we have done in the State of
18 Maryland.

19 We've been very active over the last
20 20-some years and prior to that I wasn't around with
21 regard to making sure there was equal opportunity for
22 fair representation at the polls. It's not perfect.
23 It's a work in progress but we're moving forward. In
24 the last several years, the last ten years, one of the
25 big important things we've done is have

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2 re-enfranchisement of our ex-offenders, our returning
3 citizens, if you wish, so that, in fact, at first they
4 get the right to vote with some delays in terms of how
5 soon they could apply for their vote. In fact, now we
6 have a point where they can now be eligible to vote as
7 soon as they're off of parole based on everything
8 outside the state system.

9 What we want to see with regard to that is,
10 in fact, an administration that says when you're in and
11 when you're about ready to come out, we're going to
12 give you those applications, those forms so, in fact --
13 so you know and you're educated that you can return to
14 become a full citizen in this country and in this state
15 because, without that, the form says under penalty of
16 perjury and probation and law, all of those other good
17 stuff. Some ex-offenders do not want to take the risk
18 but yet they're in our communities. And I say to you
19 voting is not only citizenship, voting is economic
20 community because a lot of our legislators enact laws
21 that affect us economically.

22 We understand if we had more voters and we
23 had other things, the war on poverty would never have
24 happened. But it did and now it takes away our voting
25 opportunities. We want those ex-offenders to have the

PROCEEDINGS

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2 right to vote. We're talking about 200,000 citizens in
3 the State of Maryland that should have their voting
4 rights returned to them. We have reached 40,000.
5 There's another 160 that still have to go. We still
6 have to make that happen.

7 With regard to protecting us so, in fact,
8 we're not the subject of what I call predatory actions
9 by those that wanted to suppress our voting, the State
10 of Maryland has turned around and has -- five years
11 ago, if I'm correct, started a process where, in fact,
12 we will penalize you, put you in jail for criminal
13 behavior when you take actions that really suppress the
14 vote. When you tell people it's the next election day,
15 you send out flyers and this and that nature, when
16 you're told you gotta have your paid up gas bill or
17 your paid up water bill to go to vote.

18 You know, we'll put people in jail, but
19 that was at the state level. This year we passed it
20 where, in fact, it goes down to the municipal level.
21 So we're looking at protecting all of our citizens.
22 But, also, we're fighting at the state level so that,
23 in fact, we don't have those who want to, in fact, deny
24 our right to vote by requiring unjust, unrequired and
25 unneeded ID checks. Every year as state legislators we

PROCEEDINGS

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2 have to, in fact, say to folks there is voter fraud in
3 Maryland. Why do you want to put these Draconian
4 measures in place that really do nothing but, in fact,
5 deter the right to vote?

6 We're constantly against and fighting to
7 stop those behaviors and stop that action.

8 And, finally, the one thing that I would
9 like to say, the fact is that we need education.
10 Education, education, education. It's not on who
11 you're voting for, but it is on the issues. We have,
12 in fact, an educated population. They can make up
13 their minds who to vote for. We need to have the right
14 to know what are the issues and, in this state, with
15 all of this opportunity, there is no reason why our
16 legislators, our officials, our churches, even our
17 schools, our communities organizations cannot get
18 together to say these are the issues that are affecting
19 our population. We encourage you to vote. Some people
20 say that, in fact, we are a pro democratic party.
21 We're not. We're pro issues. I want the person in
22 Western Maryland who may be part of the Klu Klux Klan
23 and is not part of the party that I might vote for as
24 an individual to really turn around and say I know the
25 issues. So, in fact, if I'm voting for someone, that

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2 someone should protect issues, to protect my children,
3 protect my opportunity so, in fact, I can participate
4 also. Western Maryland, eastern shore, central
5 Maryland, we as the citizenry need to have the best
6 education and the best information possible to make
7 good decisions, but also to be encouraged to vote. I
8 want to step back on that last part. It is economic
9 necessity that we vote because the law is now our
10 economic future. Thank you.

11 MS. DANIELS: Thank you. We'll allow time
12 for question from the panel. This seems to be a common
13 thing from this group vote, the need for voter
14 education as well as the issue of felony
15 disfranchisement and its impact on voters. We're
16 certainly interested in hearing. Mr. James we're
17 talking about 200,000 voters in the State of Maryland?

18 MR. JAMES: In the State of Maryland
19 because -- unfortunately, because of the war on drugs,
20 you have taken some of our ordinary citizens on minor
21 penalties and have disenfranchised them. So the list
22 of statistics that I've looked at -- and I have to
23 admit that was in 2012 -- there was, like, 200,000
24 ex-offenders coming out from the system that would be
25 allowed to go vote if, in fact, they had the proper

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2 information.

3 So we're asking the fact that our
4 Department of Corrections and public safety put a
5 program in place so, in fact, they can encourage these
6 individuals to, in fact, as soon as they're out,
7 register to vote.

8 If you want to talk about a sad situation,
9 be at a mall and you can see this gentleman with his
10 children and we talk voter registration and he can't --
11 his children don't know why, but he can't because he's
12 an ex-offender. And when you tell him now what they
13 can do, the smile that they have because they've been
14 holding it.

15 MS. DANIELS: Ms. Yeomans, in DC, what
16 numbers are we talking about?

17 MS. YEOMANS: I don't have those numbers.
18 Our particular members just are now getting engaged in
19 this phase.

20 MS. KEENAN: I do want to ask some
21 questions about the felony -- the issue of felony
22 dis-enfranchisement and I certainly would like if
23 people -- this is directed to everyone on the panel, if
24 anyone and has anecdotes like you were talking about at
25 the mall, I'd like to hear those. But I'd also like to

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2 hear what the impact has been of the outreach to let
3 people know that they really can vote. In other words,
4 you know, what people are saying in terms of the
5 response when, you know, the law is revealed in these
6 jurisdictions where you, in some cases, have the
7 opportunity to vote.

8 MR. JAMES: Again, this is August James.
9 The only impression that I have and that is working,
10 for instance, is the job opportunities task force here
11 in Baltimore with several ex-offender groups that are
12 located in Baltimore and Prince George's County, that
13 the response they have -- on the individual basis
14 because we're talking about ones and twos initially.
15 When you talk to someone and they find out that they
16 can vote, it's sort of, okay, I can vote. But then
17 when it sinks in what that means and when we're under,
18 as we will be in the next several months, all the
19 campaign advertising and of these other things where
20 you can say, okay, I can't vote, they turnout. There
21 is good turnout. I know there was in Baltimore City
22 several years back and I imagine across the state.
23 But, again, the right to vote is the individual vote
24 and I really don't want to shout out that I had my vote
25 returned to me when people don't even know I lost it.

PROCEEDINGS

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2 So all they do is go vote.

3 MS. TAYLOR: May I say something about
4 that? I really believe that process -- you know, too
5 much process can paralyze you, but a little process can
6 take you a very long way and I think in government we
7 could use our best commonsense. Somebody in a
8 correctional facility knows who's coming in and out,
9 some kind of caseworker. And I'm sure the world would
10 come to an end if we did something like counsel a
11 person as they prepare to leave that, based on whatever
12 your term and your sentence and your circumstances, you
13 are eligible to vote now, you will be eligible to
14 register to vote now or you will be in six months and
15 give them some direction because, of course, voter --
16 you know, driver's license, voter registration, the
17 world came to an end when we did that.

18 But the place where we know an incarcerated
19 individual will be touched is the place where he or she
20 is incarcerated. So it makes sense in a country that
21 really believes that the right to vote is an important
22 right, then that would seem the most logical place for
23 us to put that in place rather than running various...

24 MS. DANIELS: What does the state currently
25 do?

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MS. TAYLOR: Nothing.

MS. DANIELS: In Maryland, it's once you've completed probation and parole in D.C. is the felony conviction, you are no longer incarcerated.

MS. YEOMANS: The brochure --

MS. DANIELS: This is from the League of Women Voters.

MS. YEOMANS: This is just come out?

MS. DANIELS: Do you know what the District of Columbia does as far as educating persons who are out there about how to get their right to vote?

MS. YEOMANS: I want to put this fairly. We are prepared to give that presentation. There's been some difficult in trying to set that up and I cannot speak beyond that.

MS. KEENAN: Could we ask that you submit those materials, though, so we have that as a part of the record?

MS. YEOMANS: Materials meaning...

MS. KEENAN: You said there was a presentation on the issue --

MS. YEOMANS: It has been prepared.

MS. KEENAN: Right. What I'm saying is when you get in a position or posture where you can

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2 provide it, we certainly -- the hearing ends today, but
3 it doesn't mean that you can't submit it --

4 MS. YEOMANS: You say the presentation
5 itself?

6 MS. DANIELS: Whatever information you get
7 about what D.C. is doing...

8 MS. KEENAN: Right, right. We'd like you
9 to add those materials to the record so that people
10 have access to them because, of course, DC is a lot
11 more broad in its ability to accept people, to
12 re-enfranchise people. So, again, other places are
13 saying this is impossible, it can't be done, it's been
14 given and taken away sometimes between elections. But,
15 obviously, in a place where it is happening and the law
16 allows it, we certainly want to hear what the
17 experience of that jurisdiction has been.

18 MR. ABRIGO: We have begun to look into
19 that and what we have found is that probation officers
20 are acting on theory and illegal to re-imprison people
21 because we have a lot of offenders who spend equal or
22 more time for parole violation than the original prison
23 terms.

24 So we're looking into that and I think that
25 one of the reasons probably why those who are being

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2 released aren't getting that information is because the
3 prison system expects them to return and they have a
4 system -- and this is just an assumption on our part,
5 but there seems to be a system that wants to put them
6 back.

7 I want to talk a little bit about the --
8 this matter of educating voters. I think it's
9 incumbent upon government. Every local, state and
10 federal government agency should attempt to educate and
11 prepare voters because it's not a matter of just
12 telling people to vote and the means to talk about the
13 right to vote. But the right to vote should also be
14 accompanied by preparation because we know that you
15 can't just stop at a polling station one morning and
16 vote. You have to be registered. Then you have to
17 have the right IDs. So I think the panel needs to -- I
18 would like to suggest that the committee pursue that in
19 some way and they can give you more data.

20 The last thing I want to say on that is, as
21 a pastor, the psychological benefit of a person who was
22 incarcerated, be approached to say I can help you get
23 you qualified to vote, that act in itself is
24 restorative and healing for him because it's the
25 opposite of what incarceration does. Incarceration

PROCEEDINGS

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2 shuts him away from society. It says you are not able
3 to be in society either because you hurt somebody or
4 because you're being punished. But when we approach
5 someone who -- an ex-offender and say to him here is a
6 chance to vote, here is how we're going to register
7 you, it's psychologically -- it's a welcoming act and
8 then it's also an act of acceptance that he knows in
9 this hullabaloo that is costing probably billions of
10 dollars or, let's say, multi-million amounts of
11 dollars, he is participating, he or she, and we have a
12 rally coming up on females who have been incarcerated
13 and it's amazing how the community reaching out and
14 voting is just one way that we can reach out to
15 ex-offenders, male and female, how it is -- how it has
16 destroyed families. I think it will be a good thing
17 for us to have, again, an education program that is
18 targeted at ex-offenders whether we do it in prison or
19 outside.

20 MS. KEENAN: I just have a quick followup
21 to that because you mentioned IDs and, because you
22 mentioned it, I feel compelled to ask this question.

23 In D.C., you don't need your ID to vote and
24 I never hear or read anything about voter fraud in the
25 District of Columbia.

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2 So I was just wondering, since we have some
3 representatives from D.C., has anyone encountered
4 individuals trying to vote on behalf of people other
5 than themselves?

6 MS. YEOMANS: I will tell you that when my
7 husband was incapacitated a lot, I would definitely
8 have to help him vote. We had discussed it. It's
9 almost like helping the elderly.

10 MS. DANIELS: Yeah, but you didn't vote in
11 his place. You still voted as you and he still voted
12 as him?

13 MS. YEOMANS: Right.

14 MR. HENDERSON: In terms of process, it was
15 brought up by a number of folks that have testified
16 here today. As it relates to putting a process in
17 place, what would it take to be able to have -- before
18 you are released, have someone as you said, Ms. Taylor?
19 What would it take to have a requirements that this is
20 in place in terms of having folks who are coming out
21 who assert all of their time and register vote prior to
22 their release.

23 MR. ABRIGO: We'd have to have the
24 attention of the mayor.

25 MR. HENDERSON: Hold on. What else would

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2 it take for those who are coming probation at that
3 point, after their probation officer registered them to
4 vote? Is that something that's realistic or not?

5 MR. JAMES: The fiscal on that is zero.
6 It's the will of the government to put training in
7 place for leadership to say, at this point, you need
8 to -- but also it is a mental note. These are
9 returning citizens. Don't call them ex-offenders.
10 They're returning citizens and key officials need to
11 think of them as returning citizens. That's why I said
12 the fiscal limit is zero. It's just a will of the
13 different administrations. I was an R person. It was
14 easy --

15 MR. HENDERSON: So you're saying that that
16 would be a governor's decision to make that a policy or
17 a requirement?

18 MR. JAMES: Yes. Can I ask you one other
19 point because this is going to be critical. You go
20 back because we can't answer it here. Since we're
21 talking ex-offenders, returning citizens, we understand
22 that with new laws coming into place because of
23 decriminalization of marijuana and, in fact, we have
24 the president and probably certain governors will
25 commute sentences, things of this nature, how will that

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2 affect our process to get people eligible for
3 elections?

4 I mean, that's a question. It's not
5 something I can answer, but it is one that we need to
6 think of. Like I said earlier, war on -- the war on
7 crime and the war on drugs devastated our communities.
8 We all know that and now with the different laws
9 changing with regard to minimal sentences and low
10 levels of marijuana use and things of this nature and
11 the decriminalization of marijuana, that affects
12 probably hundreds of thousand if not millions of
13 individuals across the country. That's why I'm saying
14 it's across the country with regard to their ranks,
15 Mississippi, Alabama, Georgia and places like this. In
16 Maryland, we have it covered because you get your
17 voting rights back.

18 MS. TAYLOR: Well, there is a louder voice
19 in the country. The state's rights voice in the
20 country would make this a state by state decision and
21 so, like health care, you have all the southern states
22 don't want to that and, you know, some of the northern
23 states would, you know, blink, and then get it done.

24 So, I mean, it would wind up being this
25 patchwork of places where we would have it done or not

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2 have it done. I mean, it is exactly where we are in an
3 America in terms of who is it we really say we are. I
4 mean, we say that the vote is both a right and
5 responsibility, but all of these years later we're
6 still figuring out whether it really is or not.

7 Do you know what I mean? So it becomes
8 a -- we say it's the right thing to the rest of the
9 world, but then it becomes a struggle to get any of
10 these things done because ideology, you know, has moved
11 us away from any discussion of what is right.

12 MR. YEARY: In the consideration of how
13 voting rights are restored -- so in some instances you
14 say it's automatic. I know in some places you have to
15 register in order to get to complete that reinstatement
16 and going back a few presidential elections we do know
17 that there are some persons who were improperly
18 disqualified from voting because they were still listed
19 as having been disqualified for a conviction.

20 So does anybody know whether or not there's
21 automatic information sharing between departments of
22 corrections and election boards to make it known on the
23 election board side that if they get a re-registration,
24 that this person has satisfied and completely fulfilled
25 their sentence including any parole or probation?

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2 How do we know when the re-registration
3 goes in to the election board that the election board
4 has accurate information upon which to issue the voter
5 registration card?

6 MR. ABRIGO: It's not accurate. Sometimes
7 it's not updated. Sometimes they're in possession of
8 the accurate information, but they're updating their
9 systems and that's why I think this has to be
10 approached on the question of possibilities as a
11 partnership. We have to talk with government leaders,
12 not just the government officials. We have to get the
13 attention, as in the District of Columbia, of the mayor
14 and we have gotten a lot of results by talking to the
15 mayor directly and him bringing in his agency head like
16 the head of prisons and discussing the issue.

17 So I think the partnership is what makes it
18 possible and once we get the mayor's attention, that
19 will forge the allocation of funds because education is
20 going to require funds, as somebody said earlier, to
21 make what policy states be implemented.

22 MR. YEARY: But the requirement that
23 agencies, government agencies share information is
24 often not done by executive order. It's often done by
25 legislation and do we have the legislation in place

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2 that then becomes an enforceable framework upon which
3 to know when the accurate information has been shared
4 or to impose appropriate remedies in instances where it
5 should have been shared but it was not?

6 MR. JAMES: In Maryland -- I work with the
7 ACLU on this. When, in fact, there was a delay --
8 there was a waiting period, that was one of the
9 arguments with regard to when a waiting period ended
10 and how the individual board of elections because in
11 Maryland, if I'm correct, you have a State Board of
12 Election. But, really, the board of elections are by
13 county and that's where that information is housed.
14 That's where the problem lies because the State Board
15 of Election probably can talk to the Department of
16 Corrections and give that information and I think it
17 goes by executive board that they were doing that. We
18 did not float it down to the County Board of Elections
19 and so what the wording was, if I'm correct on this,
20 was that when we changed to -- there's not a waiting
21 period. As soon as you're outside of any kind of
22 probation, control or whatever, you can apply and at
23 that point there has to be a reason to deny you. But
24 here again, that is on the wishes of the executive
25 coming down. That is not on legislation that was made

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2 permanent throughout the state law binding.

3 MR. YEARY: Now, the other piece --
4 Ms. Taylor, you raised an interesting concern about
5 concentration of votes in the safe districts and the
6 question is, with redistricting and the analysis, is
7 what is the appropriate balance for effective
8 engagement, not just the exercise of the right to vote
9 but the ability to influence potential outcomes?

10 The reason I raise that is two points.
11 One, when the current commission published its report
12 on the 1968 uprisings, the '65, '66, '67 uprisings when '68
13 came out, is that -- they noted that any progress made
14 around what we would call at that time "black
15 empowerment" was concentrated in those areas where
16 there was a sizable enough electoral population to
17 swing elections and so when we look at redistricting on
18 one hand, when we look at processes of reinstatement of
19 rights, is there a need to reconsider what the ultimate
20 goal is in a redistricting plan so as not to have an
21 overconcentration of voters in single districts, but to
22 more equitably distribute them so that the potential to
23 impact the outcome of the election causes all voters to
24 reengage in the process?

25 MS. TAYLOR: Right. Well, let me just say

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2 I've done -- you know, I'm not a lawyer. I do this --
3 this is just a subject that's of enormous interest to
4 me and I've done a lot of work on it. The whole
5 redistricting piece, we apportioned it in the
6 Constitution and there are two questions they just left
7 unresolved which is the status of the District of
8 Columbia and this issue.

9 So, as it is today, it's manmade and with
10 the addition of dollars coming down to communities
11 based on the count, talk to the people who have prisons
12 in their population and they get more money because
13 they got a bigger prison population. So it's about a
14 system that was not supposed to be political. You're
15 supposed to just divide up the country and you're
16 supposed to just make sure you have X number -- equal
17 number of people so that everybody would be
18 represented. That's sort of a broad brush of the way
19 it goes, but the deal is -- what you do is we wind up
20 with these districts where people understand that the
21 way to protect incumbency, the way to protect seniority
22 is simply to draw it the way you need it. And, with
23 regard to the minority community, since *Shaw v. Reno*,
24 the whole deal is, well, let's make sure that there's
25 not enough minority population either to effect me --

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2 even though they've been loyal voters to me, I don't
3 want them to get up to the 40 and 50 percent where they
4 could actually change their mind about me and maybe
5 vote somebody else in or you want to make sure that you
6 don't wind up with a lot -- majority minority.

7 To make a majority minority district now,
8 you gotta move heaven and hell and it's completely at
9 odds, plus, you know, post 1990 census, you have this
10 humongous undercount as a result of not being able to
11 use statistical sampling and the decision isn't made by
12 the director of the bureau of the census, it's now made
13 by the commerce director. I mean, the whole thing has
14 been so adulterated that it's almost not what's it was
15 originally designed to be. So that's an enormous -- I
16 think in this discussion, as we move toward reinstating
17 the vote, that's an enormously important part of that,
18 I think.

19 MS. KEENAN: But you're essentially saying
20 that's why we need section 5 because people stopped --

21 MS. TAYLOR: Absolutely. And I'm sure the
22 way to get back to it is being proposed to us
23 incrementally. But you know what? We need to leap
24 forward on this because this is ground we've already
25 been over. We can't get back to it incrementally.

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2 MS. DANIELS: But Maryland, DC and Delaware
3 are accessioned by states.

4 MS. KEENAN: No, they're not. She's
5 talking about a problem --

6 MS. TAYLOR: But that's because, you know,
7 I think I might have asked to be on a later panel. I
8 really kind of thought it was more -- it was more
9 related to that whole section. But, still, I think the
10 incarcerated population voter rights is enormously
11 important.

12 MS. DANIELS: These are all very complex
13 and important issues. We've run out of time for this
14 panel.

15 Do you have a question?

16 MS. JOHNSON-BLANCO: It has to do -- back
17 to the point about the education that's needed.
18 Ms. Taylor, I just wanted to talk with you.

19 With your discussion about the
20 redistricting process that took place, what would you
21 recommend that would be needed for public education?
22 What would the elected officials or community leaders
23 and organizations would need to do to educate the
24 public? How could the public have engaged better?

25 MS. TAYLOR: I happen to have been the head

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2 of redistricting commission for my county and I will
3 tell you that the point person for me, I said -- I
4 would love to have X number of public meetings because
5 I knew that it was not only a matter of drawing lines,
6 there was also a matter of educating the people and I'm
7 telling you this person was like concrete in front of
8 me to stop me and I simply said, you know what, I'll go
9 public with the idea that I'm thwarted at every turn
10 here because this is a public issue and it's public
11 understanding that helps people. This is not a
12 redistricting plan that is the gospel according to
13 Sharon Taylor.

14 So I believe everybody who is an elected
15 official who has earned the vote of some constituency
16 has a responsibility as early as three years before the
17 census, first, to tell people why the census is
18 important because it is from those numbers that come
19 the reapportionment and redistricting process.

20 I think that any public official who
21 doesn't see that as, you know, critical in terms of
22 educating his or her constituency about their own self
23 interest, really has already fallen down on the job.

24 So I think that's the perfect way to do it.

25 MR. JAMES: The critical point on this is,

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2 like I said, you spend a lot of money -- the federal
3 government spends a lot of money on getting people to
4 participate in the census and yet we spend very little
5 money on the back end that the census will determine
6 redistricting and that should go out before or at the
7 same time.

8 MS. JOHNSON-BLANCO: I just want to say,
9 commissioners, it's a privilege -- I am concerned about
10 the recommendation about, when folks leave prison, to
11 let them know that they can register upon completion of
12 their sentence because, if that's given to someone
13 before -- when they leave prison and they still have
14 the probation or parole to complete, there's concern
15 about it causing confusion. They can think, oh, I can
16 register right now.

17 So I'm just wondering about putting that in
18 the hands of the parole officer. I know there's a
19 caution program about the probation officer. I just
20 wanted to raise a concern about misinforming if they --
21 depending upon the release from incarceration, do they
22 still have to complete probation.

23 MR. JAMES: If I'm correct -- and somebody
24 here might be able to tell me if I'm incorrect -- you
25 have to have an education level to become a parole

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2 officer. You have to have capacity to understand
3 rules, regulations, policies and procedures. You can't
4 tell me that a parole officer, parole administrator,
5 governing body cannot have this caveat as part of the
6 requisition in the job structure.

7 MS. JOHNSON-BLANCO: I'm not arguing. I
8 agree with the probation officer. I was just speaking
9 to the point about someone has handed the information
10 as they're leaving prison and not fully understanding
11 any cohesive sense of what means, that might cause
12 confusion. I just wanted to raise that point and I
13 need --

14 MR. JAMES: I understand.

15 MS. DANIELS: Thank you all so much.
16 Please make sure that you submit your written testimony
17 or any other documents so we can include those in the
18 record. Thank you all so much.

19 (There was a brief recess taken.)

20 MS. DANIELS: This is panel three.
21 Ms. Banks and Ms. Charlson. Are we ready to begin?

22 Ms. Banks, go ahead.

23 MS. BANKS: Good evening. I would like to
24 first take this opportunity to thank you for coming to
25 speak today. My name is Daneen Banks and I'm the

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2 deputy administrator for the Prince George's County
3 Board of Elections.

4 I was asked to cover topics including
5 advances Prince George's County has made in election
6 administration; plans that Prince George's County has
7 for changes in the near future; and what the county has
8 done to improve access for the language minority
9 communities.

10 Currently, Prince George's County has
11 565,000 registered voters which is approximately
12 87 percent of the voting age population in the county.
13 We have moved from five early voting centers in 2012 to
14 8 early voting centers beginning this June and we have
15 also increased to 2,074 precincts for the 2014
16 elections.

17 Given the economic constraints experienced
18 by the county and state, the board was faced with
19 challenges in determining how to efficiency use its
20 resources. As a result, we have been resourceful when
21 it comes to looking for polling places. We look for
22 places that are county owned facilities when practical.

23 As a result of redistricting, the board had
24 a challenge of securing almost 50 new polling places.
25 Using the current technology that we have with our

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2 voting equipment, the board was able to cut costs by
3 combining smaller precincts into one polling place.
4 Instead of using 274 separate polling places, we were
5 able to combine some of the smaller precincts and
6 reduce the number of polling places to 243. And by
7 doing that, we eliminated the need for paying certain
8 rental costs for additional polling places. We also
9 eliminated the need for hiring additional election day
10 poll workers to operate those sites. Many of the
11 policies and procedures implemented for election
12 administration in Maryland or the same state-wide. We
13 are using the same equipment state-wide and
14 Ms. Charlson will be able to provide more information
15 on the type of equipment we use and where we're going.

16 Our election judges are required to attend
17 training prior to each election and we decided in
18 Prince George's County to try to make it a little more
19 convenient for our judges. What we did was we offered
20 online registration for the trainings so that they
21 could schedule their own training at their convenience.

22 In the past, prior to this year, we would
23 schedule the judges and end up having to reschedule the
24 judges because of scheduling conflicts. So this is
25 working out well. That's one of the things

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2 technologically that we've done to try to make it a
3 little easier for our judges.

4 The board maintains connections with voters
5 as well using social media. We have a Facebook
6 editorial account on our Facebook and Twitter accounts.
7 We update them regularly. We're planning to use these
8 accounts during early voting and on election day to
9 disseminate information. We also want the voters to be
10 able to communicate with us and they will be able to do
11 so using those sites. We will have someone manning
12 those sites on election day and during the entire early
13 voting period all day.

14 Line management is a huge focus for the
15 Prince George's Board of Elections. We expect that
16 adding an additional three early voting centers this
17 time around we'll reduce some of the wait times that we
18 experienced during the 2012 cycle.

19 We also are training our judges to be able
20 to handle the lines, to walk the lines and actually ask
21 questions and take care of needs while the voters are
22 standing there instead of them waiting until they get
23 to the registration desk and find out something is
24 totally wrong.

25 Our outreach plan has been impacted due to

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2 physical constraints. We know that we're moving to a
3 June primary and this is the first time that we are
4 going to be having June primary.

5 However, we are notifying everyone of the
6 dates. We're including our community groups. We're
7 including churches. We're sending out flyers to be
8 disseminated through the schools, college,
9 universities. In addition to our sample ballots that
10 will be mailed out, we will also use our office of
11 community relations to disseminate that information.
12 So I guess I'll stop at that point.

13 MS. DANIELS: Ms. Charlson?

14 MS. CHARLSON: Thank you very much. My
15 name is Nikki Charlson. I'm the deputy administer for
16 the State Board of Elections and I would like to thank
17 you for inviting me here today for having this
18 opportunity to speak.

19 In Maryland, I'm proud to say that we have
20 a strong history of election reform and initiatives
21 here and I'd like to share some of them with you. Some
22 of them are really obvious to the voters and to all of
23 you and then some them are initiatives on the back end
24 that make our lives a little easier which means we can
25 focus on resources and energy in other places.

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2 We've had early voting since 2012. So we
3 are a new state to early voting and have already seen
4 its popularity grow. 2010 started with about
5 12 percent of voters going into early voting and we
6 expect it to be about 19 percent for the primary
7 election. While it doesn't seem like a huge job, when
8 you looked at the county levels, we have counties at
9 nine percent of voters. But then we have another
10 county where it's almost 30 percent. So there's huge
11 variations among the counties for turnout. It
12 obviously reduces lines on election day and it reduces
13 the stress of election day for the poll workers and the
14 system and what we're finding is that most of our early
15 voters are actually election day voters who are moving
16 to voting earlier.

17 We do have a few counties where we're
18 seeing reduction in absentee voting. Those voters are
19 transitioned to early voting. So we're starting to see
20 some trends and will be able to get more after probably
21 this election. This will be our third cycle with it.

22 One of the election administration
23 improvements that we've been using for the last couple
24 of election years is our call center to help answer
25 calls to our office, Daneen's office and for other

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2 local boards of elections. And what that -- the call
3 center handles basic questions of am I registered to
4 vote, when do I vote, the basic institute services that
5 we have a hard time answering in our office. The call
6 center in 2012 generally handled 97,000 calls. Those
7 are calls that we wouldn't have the ability to answer.
8 So that's a great tool for us.

9 In 2012 which rolled out online voter
10 registration and expanded online voter services, hugely
11 popular in 2012, over 180,000 Marylanders used online
12 registration to register, update registration
13 information.

14 We also participated in a multistate
15 program. The electronic registration information
16 center which allows us to share databases in other
17 states to try to improve the accuracy of our voter
18 lists. And then in 2013 the governor's office had a
19 bill that expanded some more -- expanded early voting,
20 the number of days, hours and locations as Daneen
21 talked about. It allows any voter to use the online
22 system to request a ballot, to receive their ballot
23 electronically. And so those changes will be in place
24 for this election cycle.

25 In 2016, we have some big changes coming.

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2 We're implementing a new voting system. We're moving
3 away from our touch screen system to our paper based
4 voting system and that will be a huge undertaking for
5 us at this table as well as all of the voters. It will
6 start with selecting a system, then do training of all
7 of us and then ultimately educating the voters on how
8 to vote on the new system.

9 Also in 2016 we'll be releasing new
10 registration during early voting. We're going to be
11 busy in the next couple of years. So this means that
12 individuals who aren't registered to vote or need to
13 make a change can do that on election day and vote a
14 regular ballot instead of being a provisional vote.

15 Daneen talked about wait times and we are
16 equally investing time and resources in that -- the
17 first step was to amend our regulations so that we had
18 some flexibility in allocating equipment. Our
19 regulations were pretty rigid before. It was just a
20 flat one, the equipment. One unit for so many voters
21 and after the University of Baltimore said, as you
22 heard from John Willis earlier, we took their
23 suggestions and made our regulations a little more
24 fluid so we have more flexibility. We can look at
25 historical turnout. We can look at how long is the

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2 ballot which I'm not sure if he spoke about that. But
3 the length of ballot is really key.

4 And also looking at ways of notifying
5 voters of how long the wait times are. Montgomery
6 County posts on the website the wait time for this
7 voting center is 20 minutes. So how can we start
8 putting that information out there so people can
9 decide, yes, I can commit to that or I'll try another
10 day.

11 I think one of the interesting things from
12 the University of Baltimore study was the impact that
13 voters' preparedness had on wait times and that the
14 more prepared the voter is the quicker they vote. It
15 makes sense. So that's our job is to make sure and
16 Daneen's -- all of our jobs is to make sure that voters
17 come prepared so that they can help us move them
18 through the process more quickly. Thank you.

19 MS. DANIELS: Thank you very much. I just
20 want to start -- certainly an issue that was talked
21 about earlier with the earlier panel was the move from
22 touch screens to paper ballots.

23 Can you explain why the state decided to
24 move from touch screens to paper ballots? Pallets.

25 MS. CHARLSON: Sure. The law has been in

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2 effect since 2007. The General Assembly passed a law
3 that changed -- well, it didn't change. It actually
4 defined a kind of a new system that we need to have.

5 So there was a movement against touch
6 screens and to move to paper based voter verifiable
7 system. Our current system can't be adapted for that
8 and the legislature passed the bill saying that it was
9 a paper based voter verified system with some kind of
10 unit for voters with disabilities. And it wasn't
11 funded for many years and funding started this year or
12 last year for some planning -- last year for some plan
13 and more money this year to do more planning and then
14 move forward with a request for proposals.

15 MS. DANIELS: What were the problems with
16 the touch screen?

17 MS. CHARLSON: So there's a movement out
18 there with people who don't like the electronic voting.
19 There is no way that I can see how my vote was and we
20 obviously do extensive testing on the equipment.

21 The local Board of Elections right now is
22 in the process of voting the ballots on each unit and
23 testing. They have a script, how many -- we're going
24 vote this many and these are the results and we're
25 going to do it and then compare the results. So it's a

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2 different process with the touch screen to validate the
3 security but we've been doing that since we had it.

4 MS. DANIELS: Did you find any security
5 issues with the touch screen machine?

6 MS. CHARLSON: Initially when we -- about
7 2001 when we signed the contract there was a report of
8 some vulnerabilities of the system that were quickly
9 fixed and all of the security procedures that were
10 identified for us to implement were implemented
11 immediately and continued to do so.

12 MR. HENDERSON: I just want to ask you a
13 question of you or Ms. Banks.

14 In terms of your social media and your
15 communication with your voters, what has been your
16 experience in relation to racial moving in terms of --
17 have you done any analysis of that, of how many folks
18 that have access to that technology and how many people
19 have responded to you?

20 MS. BANKS: We have not done an analysis of
21 that yet. This is new for us and we wanted to go this
22 route because young people that have a phone, that's
23 what they do. So we're trying to capture as many
24 people and we can to provide information. But we will
25 take a look at our followers and see if we can figure

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2 that out.

3 MS. DANIELS: Back to the machines.

4 Earlier we were with persons who represented groups
5 with the Maryland Disability Law Center and other --
6 what is the other group? I'm sorry. National
7 Federation of the Blind. They said they had issues
8 with moving from touch screen to paper ballot in that
9 the ballot for persons with disabilities would be
10 different from ballots -- than the other ballots. The
11 Board of Elections evaluated or assessed --

12 MS. CHARLSON: The 2007 legislation defines
13 how the voting system, the new voting system has to
14 address voters with disabilities and there's a
15 requirement in that law that says -- I'm not going to
16 get verbatim, but says that the ballots casts on the
17 accessible ballot marking device cannot be segregated
18 from other ballots and we didn't know exactly what that
19 meant. So we asked the Attorney General's Office for
20 an opinion and they've issued one to us talking about
21 that -- it sort -- it was a two-part question, the
22 ballot should look the same, be tallied the same. But
23 you could also implement a system in a way that
24 everybody is offered the opportunity to vote a paper
25 ballot or vote on the ballot marking device and so that

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2 my ballot could be different than your ballot. But as
3 long as that is equally implemented, that that would be
4 a sufficient way to implement a system.

5 So, at this point, we're just waiting to
6 see what the marketplace submits and then decide do we
7 have that issue and, if we do, how do we implement it
8 in such a way that we comply with the requirements of
9 the law.

10 MR. YEARY: Can you provide a copy of the
11 AG's opinion?

12 MS. CHARLSON: Sure.

13 MR. YEARY: I want to go back to the social
14 media question, if I might. So Facebook and Twitter,
15 if you want them to follow you, they have to know you
16 exist in the social media world.

17 So how do you communicate to folks you're
18 trying to get to follow you that, one, you exist and,
19 two, they need to follow you and for what reason?
20 That's still kind of interesting to me in terms of how
21 you begin to expand your social media.

22 MS. BANKS: Well, the Prince George's
23 County has a social media account as well as the State.
24 We drum up for those accounts. In addition, we friend
25 our friends who friend promoting everyone, please,

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2 friend this account. And the more people that we can
3 get to friend us, the more other people will see and
4 hopefully do the same. We have it on our website. We
5 put it on the bottom of many of our letters, on our
6 flyers, follow us, trying to promote that. And we have
7 received, in boxes and things of that nature, on
8 election day in the past from individuals who may have
9 said, oh, there's a line here or someone is standing
10 too close to -- an election year standing too close to
11 the polling place. We've gotten those kinds of items
12 from just friends of the board of elections Facebook
13 account.

14 MR. YEARY: How many followers do you have
15 right now?

16 MS. BANKS: I think we have about 2 or 300.

17 MR. YEARY: Out of 560,000?

18 MS. BANKS: Right. Right now, yes. But,
19 again, this is a new process for us.

20 MS. CHARLSON: Yeah, I think that we are
21 equally novice at the State Board of Elections about
22 this. Many -- I think it's safe to say that every
23 local board of elections in the state and certainly
24 staffs, we don't have communications people. We don't
25 have a staff person to do this.

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2 So it becomes another thing that somebody
3 has to do and we're -- we've been -- we had some
4 presentations last year on social media and how we do
5 it and we're all learning and the numbers don't look
6 good when you compare, but we're coming along slowly.

7 MR. YEARY: And one quick question. On the
8 smaller precincts that were consolidated, what was the
9 associated impact? Do we know the SES, racial
10 composition, length of time? Is this the first
11 election since the consolidation?

12 MS. BANKS: We had a couple consolidated in
13 the past, but this is the first time that we've had 30.

14 MR. YEARY: Is there a plan to monitor what
15 the impact is in terms of wait time, participation?

16 Do you know what the transportation
17 impact -- what are some of the factors that you're
18 going to be monitoring to reinforce the decision to
19 consolidate?

20 MS. DANIELS: If I could add to that, and
21 to educate the persons that their polling places have
22 been closed and moved.

23 MS. BANKS: Well, we -- during the
24 redistricting process, we've already notified everyone
25 of their polling place. So they have received their

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2 voter notification card back in January for us stating
3 where they're scheduled to vote.

4 Some -- to answer your question, the
5 various polling places could have had maybe 200, 300
6 voters. These combinations of co-polling places, it's
7 not going to rise to the level of one of our larger
8 polling places. We may have taken one area that had
9 250 voters and then another area had 400 voters and
10 combined those together as one polling place.

11 So it's not going to generate the same type
12 of line that even a polling place with 1,500 to 2,000
13 people would generate. So I think we've accounted for
14 it in -- with our election judges and our poll workers
15 that are going to be in that precinct also with the
16 number of voting units because it is mandated by law
17 how many voting units we have to service a certain
18 number of individuals in a polling place.

19 MR. YEARY: How many voters total were
20 impacted by the consolidation of those 30 precincts?

21 MS. BANKS: Probably about 6 or 7,000, off
22 the top of my head.

23 MS. JOHNSON-BLANCO: I have a couple of
24 questions. I'd like to give you an opportunity to talk
25 about the Asian minority language voters that you had

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2 mentioned. Those are two of my questions for the
3 county and then I'd love to know about the board's
4 outreach as well.

5 On an earlier panel, we heard about the
6 absenteeism ballot rejections. I'd just to hear some
7 of the reasons why absentee ballots have been rejected
8 and how that could be addressed and then -- with
9 regards to the last panel and to talk generally about
10 voter education.

11 I'd like to hear your thoughts about some
12 of the suggestions there and, generally, from an
13 election administration civics type of cross education
14 aspect what the county or the State does to educate
15 voters both about election administration process, the
16 "how to vote" as well as the issues, if any -- any
17 issues related to education is done.

18 MS. BANKS: Okay. I'll start with the
19 minority language. Prince George's County, since 2002,
20 have been printing all of our literature, ballots,
21 specimen ballots in both English and Spanish. We've
22 done that again since 2002 because of our growing
23 Spanish population, Hispanic population. We -- again,
24 that's everything that we have.

25 MS. DANIELS: It's not a section 203 code,

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2 is it?

3 MS. BANKS: No, this is not. We chose to
4 do it on our own. We also participate in a number of
5 outreach activities at various civic associations,
6 community associations. We provide voting units for
7 the children to vote on and schools and that is a part
8 of our public outreach, to let them get familiar with
9 how to use the touch screens. We do that for a number
10 of elementary and high schools. We also do it for
11 colleges and universities in the area. We use our
12 office of community relations to promote voter
13 registration and to inform everyone of all of our
14 deadlines and the new election date.

15 Going to your question in reference to
16 absentee ejection, if I'm remembering correctly, you
17 wanted to know specifically about the overseas and
18 military voters?

19 MS. JOHNSON-BLANCO: Well, are there any
20 more reasons why absentee ballots are generally
21 rejected?

22 MS. BANKS: In Prince George's County, the
23 reasons could be failure to sign the oath, the voter is
24 not -- mainly failure to sign the oath, I think.

25 MS. CHARLSON: I think the most common

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2 reason for absentee ballots to be rejected is because
3 they were mailed late or received late. Maryland has
4 a -- it's a two-part deadline. It's a postmarked
5 deadline and a receipt deadline. So absentee ballots
6 have to be postmarked on or before election day and
7 received by 10:00 a.m. on the second Friday. So the
8 most common rejection reason is late.

9 Daneen mentioned the voter's failure to
10 sign and that used to be a higher rejection rate and
11 this is a good example of how just something really
12 simple in an election administration has a pretty
13 significant impact.

14 We just decided one year, well, let's put a
15 big X at the signature line of the absentee ballot
16 oath. So it's printed on the back of the envelope. We
17 just put a big bolded X and the number of ballots that
18 got rejected for missing a signature went way down. So
19 we kept it there and it didn't cost us anything. It
20 was just looking at the numbers and what can we do to
21 get people to sign where they're supposed to and we
22 tried an X and it worked.

23 So late -- the rejection reasons for
24 overseas ballots do differ slightly. Generally, it's
25 late as well, but they have some other nuances that

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2 cause a slightly different pattern of their rejections.
3 So we're working on the late, but sometime it adds a
4 little piece of the puzzle that we can't really
5 control.

6 MS. JOHNSON-BLANCO: I must say that the
7 [inaudible] 2012 and the extension of the early voting
8 and all of that, I go on social media to get my
9 information about that. So I find that would be very
10 effective.

11 MS. KEENAN: I just want to jump in. I
12 missed it when I should have jumped in. But I want to
13 know -- you talked about that you had a number of
14 efforts that made voters more successful in voting more
15 rapidly and that's what moved the line. That's one of
16 the key factors is moving the line and being prepared.
17 But you didn't get a chance to talk about what factor
18 or what you've seen in your experience that makes those
19 voters more prepared so that they can respond more
20 rapidly when they have to do their -- and I want to add
21 a part two to that. It seems to me that moving from
22 the touch screen to a physical ballot is going to
23 compound that process.

24 So I just want to get a sense of what you
25 think will be successful and what things might be done

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2 to deal with that because it seems to me we're moving
3 backwards in technology, not forward.

4 MS. CHARLSON: So in answer to the first
5 question, of the questions in University of Baltimore's
6 voter survey was were you -- did you prepare before you
7 came to vote? Did you take the simple ballot that the
8 local board of elections mailed to you? Did you look
9 at it? Did you fill it out? That's what we do at
10 home. We sit down and we fill out our sample ballot
11 and we take it with us to the polls. I'm trying to
12 teach a civics lesson to my daughter. But I live in
13 Anne Arundel County. You had something like 20 ballot
14 questions. I couldn't remember them all, how I wanted
15 to vote and I'm an elections person.

16 So I think what is really interesting about
17 the University of Baltimore's voter survey is they
18 found -- it was something like a prepared -- an
19 unprepared voter took at least 30 seconds longer to
20 vote than a prepared voter. That really quickly adds
21 up if you have too many unprepared voters versus a
22 precinct that has a lot of prepared voters.

23 I recall voting in Severna Park and there
24 was a woman who was at the touch screen for at least 15
25 minutes working through the ballot. And that was one

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2 touch screen that was, in essence, out of operation for
3 that 15 minutes when you might have been able to get
4 three people on.

5 So I think, really, the sample ballot and
6 filling out at home and bringing it in with you,
7 that's -- it's acceptable. We encourage people to do
8 that and also, to the extent that your schedule
9 allows -- and I get that absolutely this is an option
10 for some people and not for others -- but coming in off
11 peak times. You can come in at 10:30, 11:00 in the
12 morning and you probably won't have to wait in line.
13 But I realize that I couldn't do that. Lots of people
14 can't do that, but those that can, please do that. But
15 really being educated and using your sample ballot as a
16 resource especially on the ballot questions.

17 Your second question about the transition
18 back to paper. Certainly while at the State level and
19 at the local board of election level, we will have some
20 money to do voter outreach. We have a model. We've
21 implemented a new voting system in 2002 through '06.
22 We did early voting in 2010. We have a model for how
23 to educate voters and while we hope that we can touch
24 everybody, we know that we're going to miss large
25 sections of the population. It's just inevitable.

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2 So that's going to be a struggle for us.
3 It's a new system. We already have some wait lines.
4 We're implementing in the presidential election which
5 is when, of course, we have the longest wait lines and
6 we're going to need some help. We're hoping that the
7 University of Baltimore and their research team will
8 help us on how we can manage wait times.

9 It's an entirely different flow in the
10 polling place than we have now. We know where our
11 bottlenecks are and we can figure out how to solve
12 them. This is a new system. So we're going to have to
13 spend time laying out all the polling places and what
14 makes sense for one in management and we're dealing
15 with some old polling places that aren't designed to
16 have even a small precinct of 300 or 400 people come
17 through. It's -- a cafeteria in a small school doesn't
18 provide you with a great way to manage lines.

19 So some of it is constrained by our
20 facilities. We have a lot more flexibility in early
21 voting because they're bigger facilities. So it's top
22 on our list. I don't have the answer to that but we're
23 going to work through that.

24 MR. HENDERSON: Let me just follow up with
25 a question that was raised in the last panel.

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2 What role can and do you play as in
3 relations to getting ex-offenders back on the roll?

4 MS. CHARLSON: So I guess I'm going to let
5 Daneen talk -- the first thing I'd like to clarify is
6 that the requirement of the courts provide the data
7 about individuals who have been convicted of a felony.
8 That is a statutory requirement in the election article
9 and it requires the courts to give the data to us and
10 we are required to give it to the local election
11 officials and that process has been in place for a long
12 time and it's electronic now. So we get an electronic
13 file, we load it into the state-wide voter restriction
14 list for the local election officials to process. So
15 it is a statutory process.

16 MR. YEARY: How does it work in terms of
17 effectiveness.

18 MS. CHARLSON: So we get files regularly
19 that we -- it's not a perfect file because it includes
20 misdemeanors. So we have to go through that. Just
21 send us what we really need and then we vote it and
22 then the locals process it within a few days and then
23 I'll let Daneen talk about that processing at the local
24 level.

25 MS. BANKS: So as it's processed on the

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2 local level, it will show up in our system possible
3 conviction and what we, in turn, will do is research it
4 along with the State board will contact them, ask them
5 look on their list and we'll research it to make sure
6 that we actually see what it was that was there.

7 We send a letter to the individuals saying
8 that you appeared on this list, please let us know
9 what's going on. If you've completed your sentence,
10 you're eligible to vote, but we just need to hear from
11 you.

12 MS. DANIELS: Is the list only persons who
13 have been convicted of felony or persons released or --
14 what is the list -- on the list?

15 MS. BANKS: The list is what the State
16 loads which are the convictions.

17 MS. DANIELS: All the convictions?

18 MS. CHARLSON: Convictions from the last
19 month. We get them regularly. So there's an immediate
20 window of time when the conviction is entered until we
21 get it.

22 MS. BANKS: Right. And so we generate this
23 process, send a letter out to the individual. Many
24 times they'll call, they'll write us and say, hey, no,
25 you're wrong, you know, I've completed my sentence and

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2 we've complete the process. There's no issue. They'll
3 be registered to vote. They'll get their notification
4 card in the mail.

5 MR. YEARY: I'm confused. So when you get
6 the information from the court, is that after the
7 conviction is entered or after the conviction has been
8 satisfied?

9 MS. CHARLSON: After the conviction has
10 been entered.

11 MR. YEARY: So if I'm getting new data, I'm
12 trying to understand how someone that has a felony
13 conviction, to notify them now at the beginning of
14 their process that they're on a list.

15 MS. CHARLSON: All right. So this is the
16 process to make sure that somebody who is not eligible
17 is not on the list. This is the front end. This isn't
18 at the back end when the person has finished serving
19 his or her sentence, parole or probation getting them
20 re-registered. This is the process to determine
21 whether the person is eligible to stay on the list now.

22 MR. YEARY: And to make sure that if
23 they're not, that they know they're not so that they
24 don't attempt to vote while they are ineligible?

25 MS. CHARLSON: Correct.

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2 MS. DANIELS: How do you purge someone from
3 the list.

4 MS. CHARLSON: We put them in a canceled
5 status.

6 MS. JOHNSON-BLANCO: There is no process
7 to notify them when they're again eligible to vote
8 because the courts don't notify you affirmatively that
9 this person who previously was ineligible has completed
10 their sentence?

11 MS. CHARLSON: That's correct.

12 MS. KEENAN: So what do they have to do?

13 MS. CHARLSON: They could just re-register?

14 MS. JOHNSON-BLANCO: I do have a followup
15 question. If you called someone and they say there's a
16 mistake, that I've completed my sentence, do you
17 require any documentation to show that they have
18 completed their sentence is it just or a verbal...

19 MS. BANKS: They sign the document saying
20 that they have completed it. Oftentimes they will send
21 stuff just because --

22 MS. DANIELS: The mere attestation.

23 MR. HENDERSON: So is that a resource issue
24 in terms of you're not following up to let those folks
25 know when they are eligible to register to vote?

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2 MS. BANKS: Well, we, I don't think, would
3 have that access.

4 MS. CHARLSON: We don't know. We know what
5 the initial -- we know what the initial sentence is.
6 We don't know if it's been shortened. We don't know if
7 it's been lengthened. We only know what it was when it
8 was originally entered.

9 MR. HENDERSON: Where is that all of that
10 information kept, in one place or this everywhere?

11 MS. CHARLSON: It would be judiciary,
12 parole and probation, perhaps.

13 MR. YEARY: One of the other panels talked
14 about how you develop an informed civic mind. You
15 mentioned your daughter, electorate, and the question
16 that was raised on the panel just before you about
17 engaging particularly high school students whose
18 schools might be used as a precinct in some sort of
19 service learning capacity around the electoral process
20 and what's involved.

21 Has there been any thought given to any
22 kind of service learning opportunities when it comes to
23 staffing polling places by some students?

24 MS. BANKS: In Prince George's County we
25 have students who served as elections judges. They

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2 come in, they go through the training and they
3 participate on election day.

4 MS. CHARLSON: And I think Montgomery
5 County has a good program too. At the State level, we
6 have in the past worked with the national
7 parent-student mock election program where it's a high
8 school based program, typically, where they have
9 debates and it's integrated into their civic government
10 class and they vote and then there's usually an
11 election night celebration. It's not Tuesday election
12 day, it's a little bit before and they pick the winner
13 and they do it nationally. So it's a neat program. It
14 only goes under residential. It's only active in
15 presidential elections.

16 MR. YEARY: My final question is, if you
17 can answer it -- because I want to go back to the point
18 that was raised. It seems like we're doing the
19 regression thing.

20 With the efforts that must be made to go
21 back to a somewhat antiquated voting system, what
22 impact would you experience if there were focused
23 efforts to try to undo this regression from electronic
24 balloting back to paper?

25 MS. CHARLSON: It would require a

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2 legislative change.

3 MR. YEARY: I'm clear on that. But if the
4 legislative change were to come, how difficult would it
5 be to kind of stay on track of what we got prior to the
6 2016 ramp-up?

7 MS. CHARLSON: 2016 -- well, we would be
8 well on our way for 2016. We're -- our schedule has us
9 issuing it at the end of 2014 to start receiving
10 equipment in 2015, first or second quarter. So any
11 legislative changes in '15 would -- we'd already have a
12 contract in place.

13 MS. DANIELS: What is the plan for the
14 touch screen machines once the new machines come in,
15 just sell them other jurisdictions?

16 MS. CHARLSON: We're sort of looking at --
17 there's not really a market for used touch screens.

18 MS. DANIELS: Let me ask you one more
19 question. You mentioned that Maryland has had early
20 voting since 2010 and that you've had -- you've seen
21 increases and you also said that people essentially
22 moved from election day voting to early voting.

23 Has it been a real increase in voter
24 participation with early voting or are we just shifting
25 people from one way of voting to several days of

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2 noting? Are we shifting the same people?

3 MS. CHARLSON: It's the latter. We did
4 some analysis before 2010 to figure out what should be
5 our projected turnout and everything we read was it
6 doesn't impact voter turnout at all, it just shifts
7 people from one way to another.

8 MS. DANIELS: Do you think that same day
9 registration will increase?

10 MS. CHARLSON: In other states, that says
11 an increase in voter registration. Ours will only be
12 in 2016 during early voting. So it's only during that
13 window can you register to vote and vote on the same
14 day. To make it be same day registration on election
15 day requires a constitutional amendment.

16 MR. YEARY: Is that for the primary and the
17 general election in 2016? That would be the case?

18 MS. CHARLSON: Yes, yes.

19 MR. HENDERSON: Let me ask one other
20 question. What are you doing to educate those
21 individuals who will be eligible to vote who are not of
22 the proper age at this point to be able to vote?

23 Are you doing any outreach to that group?

24 MS. BANKS: In Prince George's County we
25 have a relationship with the school systems. We send

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2 out information to guidance counselors. We, again,
3 host a lot of those school elections and provide them
4 with information while our staff is on-site assisting
5 with those elections. That's the extent of what we do
6 as far as any public school or even private school
7 systems in Prince George's County.

8 MR. HENDERSON: How does that work? If
9 they're -- after the age of, I believe, 18 by the
10 general election, they can vote in the primary? Is
11 that --

12 MS. BANKS: Yes. They can register at age
13 17. So we can hit some juniors and seniors, pretty
14 much.

15 MR. YEARY: Any thoughts about trying to
16 connect that to the requirement to register for the
17 selective service?

18 MS. BANKS: Not on our level. I guess
19 that's something that we can look at.

20 MS. DANIELS: Any other questions?

21 (No response.)

22 Thank you all so much. There are no other
23 questions from the panel. Thank you. We do not have
24 persons who signed up for public testimony. Therefore,
25 that concludes our commission questioning. Do any

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2 commissioners have any closing statements?

3 MS. KEENAN: I want to say each one of
4 these is different. We did the one in New York and it
5 had a different focus. I just want to say a couple of
6 things about today. One, I want to do a thank you. I
7 saw so many members of the NAACP leadership here today
8 and I want to commend them for the work that they do
9 year-round, regardless of the election or regardless
10 whether there is an election, to make sure that people
11 know that voting matters.

12 And today I want to just focus on this
13 notion of felon re-enfranchisement. If we are going to
14 allow them to become active members of society, then
15 essentially what we're saying is you can never pay your
16 debt to society and if you can never pay your debts to
17 society, then you can never be a part of how it will go
18 forward and, essentially, you know, you dame (phonetic)
19 them to a world where they can't participate. And so
20 that keeps the cycle of them returning to a world where
21 criminalization is the world that they live in.

22 So I think it's very important that we're
23 thoughtful about this and I haven't heard anybody say
24 anything here today about why it's a problem to
25 re-enfranchise people. In other words, there's no

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2 reason why can't do it and then what that makes you
3 wonder is why we don't want to do it.

4 And then, finally, I would note that a
5 recurring theme through all of the testimony today was
6 this notion of voter education and how having better
7 prepared voters means that they are able to execute
8 their service to the democracy in a way that is
9 befitting of the importance of the vote itself.

10 So I'm very pleased to have had that
11 opportunity to hear that from various segments of the
12 community and I look forward to reading the University
13 of Baltimore study because a lot of the patterns that
14 it raises are reoccurring themes. And it's not just a
15 question of the problems that we saw, you know, that
16 are legislated and helped through section 5, but there
17 are other problems that serve as barriers to the right
18 to vote and I think it's very important that we treat
19 voting more importantly. Voting has to have the
20 constituency of someone voicing that this is important
21 and that we have advocates who do this. I just want to
22 add that the commentary as a guest commissioner.

23 MR. HENDERSON: And I would just like to
24 add onto that. I want to, first of all, thank the
25 panel for their great presentations and taking time out

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2 of their busy schedule to speak on this.

3 It's a very important issue to me because I
4 feel that if we're going to continue as a
5 representative form of government and in order for our
6 voices and our values to be represented, we must vote
7 and vote people in who represent our values so that our
8 voices can be heard. So I think that's very important
9 that we look how we can get more folks engaged in the
10 voting process. I just want to say thank you to the
11 panels that were here today.

12 MR. YEARY: To our transcriber, thank you
13 for hanging in there. You get to stay from beginning
14 to end, so you get the star. To those who have hung in
15 there, we appreciate the audience.

16 My feeling in my gut right now is it feels
17 like we keep playing Whac-A-Mole with the franchise.
18 We find something that should enhance participation and
19 before we get a chance to see the results, some
20 interest causes us to regress back.

21 So we have created this almost intentional
22 structure of confusion amongst folks who really want to
23 exercise their right to vote, but every time there's an
24 election, whether it's local, state or federal, there's
25 some new rule, some new process, some new step that

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2 requires that we all stay engaged in an ongoing process
3 of voter education. This is not a one time do it and
4 go away because, as we just heard from our state
5 elections officials, their job is real-time and it
6 feels like it's real frustrating.

7 So we're going to have to figure out what's
8 the legislative plan to make it clear, particularly in
9 Annapolis, that we need some sensibility in the process
10 to protect the franchise whether it is the enhancement
11 around early voting so that we can get more folks
12 participating. The sign up and vote on the day of, how
13 do we get that advanced. How do we get folks to really
14 appreciate it, I think for some folks, particularly in
15 poorer communities and communities of color.

16 I'm frustrated and I don't have that
17 particular barrier, right? I get the information, I
18 ask the church to have folks come through and want to
19 talk to my congregation when it's time. So I know when
20 the primary is, I know when early voting is. I don't
21 have that as an issue. But for folks who are
22 disconnected from the church and the electoral process,
23 we have created a stratified electoral system that to
24 be remedied and I think we've got to put commonsense
25 back in the process at some level. So to all of you

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2 that can help, rally for commonsense, sign up, then
3 stay engaged and we're ready to do our part. Thank you
4 for your time and your participation.

5 MS. JOHNSON-BLANCO: I also would like to
6 thank the University of Baltimore for hosting and, as
7 Eileen mentioned, this was either our 20th or 21st
8 hearing depending on when Virginia got started today.
9 But each hearing brings a particular emphasis and focus
10 regarding voting rights and election administration.
11 Commissioner Keenan already expressed, you know, what
12 the focus here today. But I just wanted to let you
13 know that this testimony that we received today is
14 going to be very valuable in filling out our reports as
15 we look nationally at voting discrimination and
16 election administration and I particularly appreciate
17 the election officials coming out and testifying
18 because it's also important to know about how your
19 world works, what the impact is and also it helps us to
20 fill out the picture about best practices and
21 recommendations that we can make because we're not just
22 looking to identify problems, but we want to also make
23 recommendations about how election administration could
24 be improved and also looking at the impact of some of
25 our laws and it was highlighted here today,

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2 particularly the felony disenfranchisement laws and,
3 more importantly, I think the need to properly
4 education our electorates so they can really engage
5 fully in our democracy.

6 MS. DANIELS: Thank you so much. To my
7 fellow commissioners and all of you, hopefully we can
8 take this wealth of information that you heard today
9 and use it because we know knowledge is power and we
10 can take this information to empower our communities
11 and our organizations and even our elected officials.
12 Thank you so much for attending today and, hopefully,
13 you have learned a lot and will take all of this
14 information into your community. Thank you.

15 (Hearing concluded at 7:15 p.m.)
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1 State of Maryland

2 County of Baltimore, to wit:

3 I, R. DWAYNE HARRISON, a Notary Public of
4 the State of Maryland, Baltimore County, do hereby
5 certify that the within-named proceedings took place
6 before me at the time and place herein set out.

7 I further certify that the proceedings were
8 recorded stenographically by me and this transcript is
9 a true record of the proceedings.

10 I further certify that I am not of counsel
11 to any of the parties, nor an employee of counsel,
12 nor related to any of the parties, nor in any way
13 interested in the outcome of this action.

14 As witnessed my hand and notarial seal this
15 13th day of May, 2014.

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21 R. DWAYNE HARRISON

22 Notary Public

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24 My commission expires:

25 September 15th, 2017

1 NATIONAL COMMISSION ON VOTING RIGHTS - NEW ENGLAND HEARING

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4 NATIONAL COMMISSION ON VOTING RIGHTS
5 NEW ENGLAND HEARING

6
7 Monday, March 31, 2014
8 10:06 a.m.
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11 COMMISSIONERS:

12 RAHSAAN HALL, Deputy Director, Lawyers' Committee for Civil
Rights and Economic Justice

13
14 BRENDA WRIGHT, Litigation Director, Demos

15 JOHN DUNNE, former Assistant U.S. Attorney General for
Civil Rights

16 RACHAEL COBB, Associate Professor and Chair, Suffolk
University Government Department

17
18 DARNELL WILLIAMS, Executive Director, Urban League of
Eastern MA Chairman

19
20
21 Held At: Suffolk University Law School
120 Tremont Street
22 Boston, Massachusetts

23
24 Reporter: James A. Scally, RMR, CRR

25 Job # 72547

1 NATIONAL COMMISSION ON VOTING RIGHTS - NEW ENGLAND HEARING

2 A P P E A R A N C E S

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4 LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

5 1401 New York Avenue NW

6 Washington, District of Columbia 20005

7 By: Meredith Horton, Esq.

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2 MS. HORTON: So we are going to get started.
3 Will folks be able to hear me if I just don't use a mike?

4 MR. HALL: Yes. Here.

5 MS. HORTON: Or we can do that. Thank you.
6 Okay. So welcome, everyone. Good morning.
7 Thank you for braving some kind of nasty weather to come
8 join us today.

9 So welcome to the New England regional
10 hearing of the National Commission on Voting Rights. I'm
11 Meredith Horton. I'm an attorney at the Lawyers' Committee
12 for Civil Rights Under Law in Washington, DC.

13 The Lawyers' Committee is a nonprofit,
14 nonpartisan civil rights organization founded 50 years ago
15 to engage the private bar in the fight for civil rights and
16 racial justice in the United States. So we continue our
17 work today in areas of fair housing, employment
18 discrimination, education, community development, and
19 voting rights, the reason that we're all here today.

20 Our partner in organizing today's event is
21 the Lawyers' Committee for Civil Rights and Economic
22 Justice, which serves the Greater Boston area. And so on
23 behalf of both lawyers' committees, we'd like to welcome
24 you and thank you for your support and participation today.

25 So today's hearing is the 11th in a series

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2 of nationwide fact-finding hearings convened by our
3 National Commission on Voting Rights. The commission, the
4 charge of the commission is to gather information about the
5 current landscape of voting rights and election
6 administration across the country. So today we'll focus on
7 five states, Massachusetts, Rhode Island, New Hampshire,
8 Vermont, and Maine.

9 As many of you know, last summer the Supreme
10 Court -- US Supreme Court effectively gutted a key
11 protection of the Voting Rights Act, one that protected
12 voters from the effects of discriminatory changes in voting
13 practices. The court released states with some of the most
14 troubling histories of race discrimination in voting from a
15 critical responsibility to demonstrate up front that voting
16 changes, such as moving a polling place, would not
17 disadvantage minority voters. So in the Supreme Court's
18 view, this requirement was outdated and no longer related
19 to current needs. We believe they got this wrong. So one
20 of our main purposes through these national hearings is to
21 identify the needs for strong protections against
22 discrimination in voting by looking at the current records
23 in states across the country.

24 In addition, today we also want to hear from
25 you about election administration and election reform. So

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2 across the country over the past few years, we've seen a
3 wave of restrictive voting laws, those making it harder for
4 many eligible voters to cast a ballot. Some of these have
5 taken the form of strict ID laws, proof of citizenship,
6 registration laws and others. Further, we continue to see
7 similar election administration challenges, cycle after
8 cycle, related to poll worker training, voter registration,
9 use of provisional ballots and the like.

10 So your input today on these issues in this
11 region is really critical for ongoing advocacy and reform
12 at the state, local, and national level. So the testimony
13 that we receive today, and after the hearing, the national
14 commission will use to prepare two reports, one on voting
15 discrimination and another on election administration. The
16 reports and records from the hearings will be available to
17 anyone seeking to reform or improve existing voting laws,
18 including policymakers, advocates, and the voting public.

19 So now I'd like to introduce you to our
20 commissioner panel for today's hearing. So presiding over
21 our event are four commissioners, each with a deep
22 commitment to protecting access to the ballot on equal
23 terms for all.

24 First I'll introduce John Dunne in the
25 center. Mr. Dunne is a former Assistant Attorney General

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2 for Civil Rights in the US Department of Justice. Mr.
3 Dunne is also one of our national commissioners, so we're
4 particularly excited he could join us today for this
5 hearing.

6 And from right here in the New England
7 region, we have Rahsaan Hall, who's the deputy director of
8 the Lawyers' Committee for Civil Rights and Economic
9 Justice. Rahsaan's work includes policy and legislative
10 advocacy, community outreach, and he maintains a litigation
11 caseload that includes voting rights work as well as police
12 misconduct and public accommodations. Rahsaan's voting
13 work has also involved coordination of the state-wide
14 Election Protection program as well.

15 We also have Brenda Wright. Brenda is the
16 vice president of legal strategies at Demos. Brenda has
17 led many progressive legal and policy initiatives on voting
18 rights, campaign finance reform, redistricting, election
19 administration, and other democracy and electoral reform
20 issues, and is a nationally known expert in these areas.

21 We also have Rachael Cobb. Rachael is an
22 associate professor and chair of the Suffolk University
23 Government Department. Her work as a political scientist
24 includes research that focuses on US elections, election
25 administration, electoral politics, civic engagement, and

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2 political participation.

3 And last on the panel we have Darnell
4 Williams, who's with the Urban League.

5 And Darnell, I apologize, I will let you
6 give a more extensive introduction as well.

7 So our commissioners, as I said, will
8 preside over today's event. They'll receive testimony from
9 our witnesses, which we'll have several panels, and we'll
10 ask follow-up questions as well to ensure that we create as
11 robust a record as possible about the state of voting in
12 the New England region today.

13 So before I turn it over to our
14 commissioners to introduce themselves, just a few
15 housekeeping items.

16 If you're here and you've been confirmed on
17 a panel, please check in at the sign-in table, if you
18 haven't already.

19 And for individuals who are here today who
20 would like to share their voting experiences but did not
21 sign up in advance and have not been placed on a panel, we
22 want to hear from you too. You can sign in at the
23 registration table and speak to one of our volunteers for
24 instructions. And a commissioner will call your name when
25 it's time for you to come up and testify.

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2 So a few other items. Our hearing is being
3 transcribed. Our court reporter is on that side of the
4 room. So please speak clearly, especially your name.
5 We're also being videotaped. The video camera's at the
6 back of the room facing the commissioners and will remain
7 in that position for the duration of the hearing. I also
8 will be taking photos, so just putting you on the alert for
9 that as well.

10 So please make sure you've signed the two
11 media releases, one for Suffolk and one for the Lawyers'
12 Committee, which are out on the table, and see me if you
13 have any questions or concerns.

14 Also, please be mindful of the timekeepers
15 and their signs. Timekeepers will be here. We'd like to
16 really try to keep the program running on schedule, so we
17 appreciate that.

18 Another note is that later on we'll have a
19 Cantonese translator on site. So if you need those
20 services or know others who do, our translator will be here
21 at 1:30 and is certainly happy to help as she can.

22 As far as our schedule, we'll begin this
23 morning with two witness -- two witness panels and then the
24 session for open testimony. That will take us to 12:30.

25 So 12:30 we'll break for lunch. We'll break for one hour.

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2 So we ask you to come back by 1:30 for part two of the
3 afternoon.

4 And if you're a tweeter, we have a hashtag
5 for our hearings. It's hashtag NCVR, for National
6 Commission on Voting Rights, and my organization is
7 @LawyersComm, with two M's. I don't know about Boston,
8 maybe Lawyerscom with one M?

9 MR. CROSBY: Yes, that's right.

10 MS. HORTON: Okay. So you can spell it or
11 misspell it and we'll get it right.

12 So, finally, before I stop talking, I just
13 wanted to do a round of thank you's. This event, as I'm
14 sure many of you in the room who plan events, it always
15 takes a lot of work that you don't see behind the scenes.

16 So I wanted to first thank Professor Cobb
17 and Suffolk University for being wonderful hosts and
18 supporters of this program. We really appreciate that.

19 I'd also like to thank Access Strategies. I
20 don't know if anyone from Access Strategies is in the room,
21 but Access Strategies provided generous funding directly to
22 the Lawyers' Committee in Boston for this event as well, so
23 we definitely appreciate that support.

24 I'd like to thank the numerous organizations
25 and individuals who work on voting issues and civic

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2 engagement issues throughout this region, particularly in
3 Massachusetts, for all of your help organizing, planning,
4 promoting the event, coming up with just great ideas for
5 the concept of the event. It makes a huge difference. And
6 as well as our witnesses and our commissioners for your
7 time and support for this effort as well.

8 And, finally, I want to issue a very special
9 thank you to the Lawyers' Committee for Civil Rights and
10 Economic Justice here in Boston, in particular Rahsaan Hall
11 and Tyler Crosby, who -- you have to stand up.

12 As many of you know, Tyler has done a
13 wonderful and diligent job in helping put together this
14 event, recruiting organizations, just thinking through all
15 of the details, and his commitment to voting rights and
16 this community has definitely been evident to me and I'm
17 sure to you as well. So we've got a gem here in the Boston
18 area.

19 So thank you, everyone. I'm going to turn
20 it over to our commissioners to allow them to give brief
21 opening remarks, and then they will call up our first
22 panel.

23 MR. HALL: Okay. I guess I'll go first.

24 And thank you, Meredith, for the
25 introductory remarks, and thank you to all of our witnesses

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2 who are here.

3 This is a very significant time here in the
4 Commonwealth, but also in the country for voting rights.
5 And I take very seriously the work that is before us and
6 the contribution that we have to make to the larger
7 narrative around voting rights, particularly in light of
8 the Shelby v. Holder decision. So I'm glad that folks are
9 here to testify and to make contributions to this effort to
10 building this record.

11 I know that oftentimes people kind of
12 overlook Massachusetts and New England when we think about
13 voting rights and voting rights issues because of the very
14 visible voting rights issues that happen in some places in
15 the South and even in the Midwest and in the West. But
16 there are significant concerns. But there's also an
17 opportunity to talk about the things that are being done
18 right, here in Massachusetts as well.

19 So we look forward to your commentary. I am
20 certainly appreciative of it, and I am honored and humbled
21 to be on the panel with such illustrious commissioners.

22 So I will now allow Brenda to make a few
23 opening remarks as well.

24 MS. WRIGHT: Okay. Thanks, Rahsaan. And
25 thanks to the organizers of this event, the Lawyers'

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2 Committee for Civil Rights Under Law in particular.

3 I also want to give a nice shout-out to
4 Suffolk University Law School, which is hosting us today.
5 I happen to know that the Suffolk Law School moot court
6 team was in New York last weekend at a major national
7 tournament, made it to the finals, and came in second out
8 of 24 --

9 MR. HALL: Great.

10 MS. WRIGHT: -- very impressive schools. So
11 congratulations to Suffolk Law School and to the students
12 involved, and thank you for hosting us here.

13 I'm very happy to be part of this panel this
14 morning. The work that I've done in voting rights goes
15 back more than 20 years now starting out in Washington, DC
16 at the Lawyers' Committee for Civil Rights Under Law there,
17 and continuing through my work today at Demos, which is a
18 national public policy organization that works to ensure
19 that every American has an equal say in our democracy and
20 an equal chance in our economy.

21 I moved here to the Boston area about 15
22 years ago. And as Rahsaan said, it's -- it's -- it's easy
23 to sometimes overlook the fact that voting rights problems
24 are not confined to any one part of this nation. There are
25 issues with access to the ballot and access to registration

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2 throughout our country, and New England is no exception to
3 that.

4 When -- when I arrived here, I got involved
5 in the litigation and was part of the legal team that
6 challenged the redistricting of the Massachusetts
7 legislature after the 2000 Census, and many of you may
8 recall that that litigation not only resulted in a finding
9 that the districts were drawn in a way that violated the
10 Voting Rights Act and dug into the votes of communities of
11 color in the Boston area, but also resulted in an
12 obstruction of justice indictment for the Speaker of the
13 House himself here in Massachusetts.

14 So voting rights in Massachusetts and New
15 England is a very serious business. I'm very happy to say
16 that in the wake of that -- that experience, Massachusetts
17 really did step up to the table during the redistricting
18 process of 2010 and ran an open and accessible and
19 transparent process that resulted in redistricting plans
20 that were pretty much unanimously applauded as fair and
21 giving opportunity to communities of color and being fair
22 to everyone in the state. And I think that's something for
23 Massachusetts to be proud of.

24 I also know that we have a ways to go here
25 in this state and in other New England states in terms of

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2 access to registration and voting. We don't have here in
3 Massachusetts, for example, yet some of the procedures that
4 we take for granted in other states, such as early voting.
5 I'm hopeful that we are on the way to change that with
6 bills that are pending in the legislature.

7 But I just -- you know, I want to mention
8 that my organization is actually currently involved in two
9 voting rights-related lawsuits here in New England. One
10 involves the administration of the National Voter
11 Registration Act of 1993, looking at the way that law has
12 been implemented in public assistance agencies, and a
13 colleague of mine from Demos will be testifying in more
14 detail about that later today.

15 We're also involved in Rhode Island in a
16 lawsuit regarding the practice of prison-based
17 gerrymandering in the city of Cranston. The city of
18 Cranston has its entire -- the entire state-incarcerated
19 population of Rhode Island concentrated in just one ward of
20 the city council, and we have filed a lawsuit challenging
21 that under the one-person-one-vote protections of the
22 Fourteenth Amendment.

23 So this is just by way of saying there is a
24 lot of work to do on voting rights and access to voter
25 registration here in New England, and I think it's terrific

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2 that we're holding this hearing today, and I'm very eager
3 to hear the testimony of the witnesses this morning.

4 MR. DUNNE: I'm John Dunne. I'm warning you
5 up front, I'm a New York lawyer, and I'm here in
6 preparation for the hearing which we will conduct in New
7 York City in about two weeks.

8 Everyone in the room knows, really, what the
9 problem is. So if I may be egocentric, I'd like to just
10 tell you about who I am.

11 I was appointed by the first President Bush
12 to be the Assistant Attorney General for Civil Rights,
13 coming on the heels of eight years of a frigid attitude
14 toward enforcement of civil rights. It was a tremendous
15 challenge, and it was really, as I say to so many people,
16 it was a lawyer's dream to have that opportunity to serve
17 and be involved with real issues.

18 Once you've been stung with the civil rights
19 bug, you just never get over it. And while the wisdom of
20 the American electorate in 1992 told President Bush to go
21 home and take his pals with him, I found myself without a
22 job, and I thought I would return to New York state, where
23 previous to going to the Justice Department, I served for
24 24 years in the New York State Senate, where I was
25 privileged to serve as chairman of a number of committees,

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2 including crime and correction, the environment, judiciary
3 committee, and served in my final years as the deputy
4 majority leader, and I was involved in a lot of very
5 crucial issues.

6 But I think my motivation came from my law
7 school experience. Actually, I tell people I didn't go to
8 a law school; I went to the New Haven Institute of Social
9 Policy and Justice, some call it Yale Law School, but
10 that's one of the realities of life. And we had just a
11 great class, group of classmates. Three of my classmates
12 were the first three executive directors of the United
13 States Civil Rights Commission, and another one of my
14 distinguished classmates is Judge Stephen Reinhardt from
15 the Ninth Circuit, who's the hero of every liberally
16 oriented thinking citizen. And they really set me on a
17 course for a career which has been extremely fulfilling.

18 However, I point out -- and if I've used my
19 three minutes, give me another one -- when you get stung
20 with that civil rights bug, it doesn't leave. And when we
21 were thrown out of Washington, I went back to New York to
22 practice law. But I kept my hand in a great many issues.
23 I chaired the capital punishment committee, which provided
24 representation for indigents who were charged with capital
25 crimes, New York State having restored capital punishment

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2 in 1995. And, fortunately, by dint of the work of a
3 extraordinary staff, we convinced the state's highest court
4 to declare the statute unconstitutional, and there's been
5 no more talk ever since that time.

6 I led the effort to reform our criminal drug
7 laws and seeking principally to provide for diversion and
8 treatment and to give the courts that discretion.

9 I've been a long-time defender for indigent
10 representation. The governor appointed me to the recently
11 created state office of indigent legal services. We have a
12 dish (phon sp) program to provide uniform standards for the
13 attorneys who are going to provide indigent services.

14 I've been involved through the state bar
15 with regard to Family Court matters, particularly to raise
16 in New York the age of responsibility, New York being one
17 of two states in the union which still has criminal
18 responsibility for youngsters under 18.

19 I fought for a court consolidation,
20 particularly with regard to the criminal division, which
21 had serious backlogs. I chaired a committee on judicial
22 independence when the sport of the day by the president,
23 the mayor, and the governor were all to beat up on judges
24 for unpopular decisions. I just finished chairing a
25 committee for the state bar on ballot access, and I also

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2 chaired the chief judge's commission on the future of
3 probation.

4 So I'm with you. I'm engaged, just as
5 everyone on this panel is, and I take my hat off to the
6 courageous and brilliant members of this panel who have
7 committed so much more than just a simple operation of a
8 lawyer.

9 So I look forward to hearing from you, I
10 won't pull this New York lawyer cross-examination with
11 anyone, be assured, and I look forward to learning from you
12 during the day.

13 MS. COBB: Good morning, everyone. I'm
14 Rachael Cobb, and I'm chair of the government department at
15 Suffolk University.

16 And I first got involved in -- seriously
17 involved in voting rights in 2006 when I started a program
18 at Suffolk to recruit students to be poll workers. At the
19 time the City of Boston was under a memorandum of
20 understanding with the Justice Department for noncompliance
21 on providing services for language minorities.

22 And so one of the advantages of recruiting
23 college students was that they brought to the table, first
24 of all, their youth, but also, some of them, having
25 capacity to be bilingual poll workers and could offer that,

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2 and to do outreach to other communities.

3 So since then I've been running that
4 every -- very aggressively in every even-numbered year to
5 recruit college students.

6 In addition, in 2008, we did an exit poll in
7 the City of Boston in four different languages, Vietnamese,
8 Chinese, Spanish, and English, to ask voters about their
9 voting experience, whether they were treated with dignity
10 and respect, and to also ask about whether they were asked
11 for identification, which, in Massachusetts, you should not
12 be asked for identification unless you're a first-time
13 voter who did not provide identification at the time of
14 registration. So, in the course of doing analysis for
15 that, we found that specifically African-Americans,
16 Latinos, and Asians were asked for ID at a higher rate than
17 their white counterparts, and we published that article.

18 And we would love to do more studies like
19 that. However, running an exit poll is a lot of work and
20 costs a lot of money to do it right. And to do it in four
21 languages requires even more effort. So I dream of the day
22 when we can do more.

23 I also wanted to just provide a brief
24 overview. Over the weekend I just did a very quick
25 analysis of where we are in the New England states of the

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2 kinds of voting things that we do either to promote access
3 or to prevent access to voting. So I scored all of the
4 states along five measures, because I'm a political
5 scientist, so I like to do things like that.

6 So I proceeded as follows: If your state
7 had a statute on the books intended to make voting easier,
8 you received a 3 in that category. So Connecticut, for
9 example, has online voter registration, so it receives a 3.
10 Massachusetts does not -- although it's pending -- so it
11 received a zero. I'm just dealing with statutes that are
12 currently on the books.

13 Along five reforms, which included online
14 voter registration, voter identification requirements --
15 and these are mostly convenience voting in terms of online
16 voter registration -- preregistration for 16- and 17-year-
17 olds, same-day registration, is that five or is that four?
18 I'll add it up in just a minute. Along these five reforms,
19 the highest score a state could receive would be a perfect
20 15. And when I tabulated the results, who do you think was
21 the highest-scoring state in the New England region?

22 MS. WRIGHT: Connecticut.

23 MS. COBB: Maine. Maine, which scored a 9.
24 Maine does not require documentation to vote. It has
25 preregistration and early voting, no-fault absentee.

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2 Massachusetts, Rhode Island, and New Hampshire tied for
3 last, scoring 3. But Massachusetts has the opportunity to
4 be a perfect 15 if it passes election-day registration
5 along with all of the other reforms in the bill.

6 New Hampshire has same-day registration but
7 none of the other reforms, and Rhode Island has
8 preregistration but none of the other reforms. Vermont
9 scored a 6, and Connecticut scored a 5 for having online
10 voter registration and requiring that poll workers request
11 an ID, but I gave them a 2 because they permit them to
12 provide just the name and address if they don't have
13 documentation.

14 So I hope that we can talk about all of the
15 various reforms that are trying to promote access and as
16 well talk about all of the states, I think today we have a
17 very Massachusetts focus, which is absolutely fine. But we
18 are part of a set of states, and New Hampshire, of course,
19 is now a swing state. So what happens in New Hampshire
20 also has an impact on the rest of the country in a profound
21 way.

22 So thank you for coming; thank you for being
23 here.

24 MR. WILLIAMS: Good morning, everyone. My
25 name is Darnell Williams, and I'm very humbled and honored

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2 to be sitting on this panel. I know that they have been
3 trying to track me down for some time for some of the
4 calls. I was either in Cuba or China somewhere, and,
5 obviously, with the cell systems the way they are, I was
6 not able to join the calls. So I do want you to know I do
7 apologize profusely.

8 But let me just tell you why I think I'm
9 sitting here as a civil rights person. My focus -- I'm so
10 glad that we're surrounded by these talented attorneys, but
11 I come at it from the actual voter standpoint of view.
12 I've been around the track as a candidate for office, three
13 times. I lost three times. And my wife took the checkbook
14 and told me I needed to find another line of work, so I
15 became the president of the Springfield branch of the
16 NAACP. Subsequently I became (sic) the New England Area
17 Conference of all the New England states, and now I
18 currently serve at the national board of the Urban League,
19 as well as the local president.

20 But having said that, I've been around since
21 1976, when Jimmy Carter and Mo Udall ran. So you go
22 through, between Mike Dukakis, Ted Kennedy in 1980. I was
23 a Ted Kennedy delegate in New York City. I've been to
24 probably every Democratic National Convention and midterm
25 along the way.

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2 And so I think I've had good fortune to be
3 at the ground level where the actual voters were being
4 impacted by many of the things that have been previously
5 articulated. So I have a deep compassion and sensitivity
6 to when democracy is supposed to work. It's supposed to
7 work when people are engaged or enticed to be participants,
8 as opposed to having barriers. And when barriers are put
9 up, that's when I go to work.

10 And so, therefore, we are no stranger to
11 this. I believe in 2000 I found myself marching in the
12 city of Miami when we came up with the phrase, "Make every
13 vote count" and "One vote count," or whatever the phrase
14 was back in 2000. It's 13 some-odd years later. But we
15 were there very much stridently challenged by the votes
16 that were the hanging chads and the Supreme Court decisions
17 around that, and then four years later we found ourselves
18 in Ohio with some of the similar kinds of incidents.

19 And so I think it really just baffles me as
20 an American that we talk about our voting system around the
21 world and we can -- we can serve as observers in elections
22 across the world, but then we can't get it right at home.

23 And so it really gives me really a burr in
24 my saddle that I would love for us to get it right here,
25 that every person regardless of race, creed, or sexual

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2 orientation can show up on the day of an election, cast his
3 or her ballot for the candidate who they believe represents
4 their interest, and if we can get that right, then I think
5 that this panel and the panels that are set up around the
6 country will be doing this nation a great service.

7 And also I think lastly, as I'll close, this
8 is not the first time that the Supreme Court got it wrong.
9 As a nonlawyer speaking, I believe that, this is my life,
10 my last 32 years of living, we have challenged the Supreme
11 Court in many judicial decisions across this nation, and
12 we've done it not because they are bad people or they
13 just -- they're interpreting the law wrong. And then
14 when -- the group of us who see it differently are able to
15 coalesce our thoughts and our legal prudence around it to
16 get them to change that. So change is good, but also
17 remind them that this is a land of laws, but also in terms
18 of enforcement, it's about really holding them accountable
19 to the promises of the founding fathers of this nation, and
20 it's our job to do that to make sure that everybody has the
21 right to the democracy that we hold and cherish so much.

22 So I'm very grateful to be part of this
23 process.

24 MR. HALL: Well, thank you all. Again, very
25 distinguished group of commissioners.

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2 So we will begin to proceed. First I want
3 to take a brief moment to acknowledge Ms. Stephona Stokes
4 from Access Strategies. Again, Meredith mentioned her, or
5 mentioned Access Strategies earlier on. And I also wanted
6 to acknowledge Senator Stanley Rosenberg, who is with us.
7 Very appreciative of his efforts. Brenda mentioned the
8 redistricting process, and he was a critical champion on
9 making that process what it was.

10 So without further ado, we will have our
11 first panel. The first panel, each of the panel is to have
12 ten minutes to testify each, and then there will be a
13 period of question-and-answer from the commissioners for
14 approximately 30 minutes.

15 So the first panel discussing an overview of
16 the current voting rights issues in Massachusetts, we have
17 Pam Wilmot from Common Cause, Sara Brady from MassVOTE,
18 Gavi Wolfe of ACLU of Massachusetts, and Cheryl Clyburn
19 Crawford of MassVOTE.

20 So our timekeeper, Ms. Sasha Kopf, will give
21 you the notice at five minutes, three minutes, one minute,
22 and stop. And, again, you have ten minutes.

23 MS. BRADY: Thank you so much for having me
24 today. My name is Sara Brady, and I'm the policy director
25 at MassVOTE here in Boston, Massachusetts.

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2 A little background on MassVOTE before I get
3 started. We are a nonpartisan, nonprofit organization that
4 works to increase voter participation here in
5 Massachusetts. We focus particularly on low-income
6 communities and in communities of color. We go about our
7 work in a couple of different ways. What I'm going to
8 focus on in my testimony is around the policy efforts that
9 we have to increase voter access and voter participation.
10 So, you know, what changes can we make to our current
11 system to encourage more people to come out and vote.

12 We also do voter engagement and voter
13 turnout work with community partners across Massachusetts,
14 providing individual voters with the information and
15 resources they need to be able to get out to vote, which
16 Cheryl Crawford will touch on a bit later.

17 And in addition to kind of what we're
18 talking about today, we've also been a partner in Election
19 Protection efforts with the Lawyers' Committee for Civil
20 Rights and Common Cause and many others over the years,
21 making sure that we have observers at the polls on election
22 day to catch any issues as they are going on, and to
23 address them as best as possible and look for, you know,
24 solutions that we can make to improve future elections down
25 the line.

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2 So for my testimony today, I'm going to
3 focus on kind of where we are right now in Massachusetts in
4 terms of our election policies and some of the legislation
5 that we are hearing about that's being considered right
6 now.

7 So Massachusetts is, unfortunately, pretty
8 far behind, I think, as a couple of our commissioners
9 mentioned, and as Commissioner Rachael Cobb highlighted.
10 In New England we are at the bottom of the pack, and
11 unfortunately it's not just in New England. If we look
12 across the country, we've really fallen behind where it
13 comes to taking opportunities to pass legislation that will
14 encourage participation.

15 While we might not be kind of the hotbed of
16 voter suppression in some of what we've seen, you know,
17 across the country in terms of voter ID efforts or a lot of
18 voter suppression at the polls, though you'll hear some
19 tales of Massachusetts in the next panel, we've really
20 fallen behind when it comes to having legislation in place
21 that will encourage participation. In fact, in 2012, Rock
22 the Vote ranked Massachusetts 42nd in the country when it
23 came to having voting laws that encouraged participation,
24 particularly amongst young voters.

25 Fortunately, we're in a position now where

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2 the Massachusetts State House and State Senate have both
3 passed legislation to update our voting laws. It's been a
4 long time coming. We're really excited that this year
5 could be the year that we surge to the head of the pack. A
6 lot of the reforms that are being considered right now have
7 actually passed in the past in one body or another, but
8 this is definitely the closest we've been to crossing the
9 finish line.

10 For a couple of the pieces, one of the most
11 substantial being election day registration, that actually
12 passed in the Senate back in 2008, and it passed again this
13 session. I'm going to talk a little bit about election-day
14 registration, as well as preregistration for 16- and 17-
15 year-olds in our state, as well as permanent registration,
16 and then I'm going to leave it to Pam to my right to
17 highlight a couple of the other pieces that were included
18 in this comprehensive package that's under consideration in
19 conference committee right now.

20 So the first piece that I am going to touch
21 base on is the -- is preregistration. So what
22 preregistration is, it would allow 16- and 17-year-olds to
23 preregister to vote. It doesn't change the voting age, but
24 gets young people on the voting rolls, with the expectation
25 that once they're on the rolls, we'll be kind of better

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2 able to encourage them to participate in the election.

3 It's actually been found that one of the
4 biggest barriers to participation for young people is
5 actually the registration process. It's just getting on
6 that list in the first place. So we think that
7 preregistration will go a long way in helping with that
8 specific demographic, and there we're really looking at
9 that youngest group, that 18- to 21-year-olds.

10 14 states have preregistration, and based on
11 experiences in the other states, it's been seen that the --
12 there's been an increase in participation amongst 18- and
13 19-year-olds to about 5 to 10 percent. Which might not
14 sound a lot to the average person, but I think to most of
15 the election folks here, you know, that's a substantial --
16 that's a substantial number.

17 It's also important to highlight that, you
18 know, voter -- voter participation is habit forming, right?
19 So if you get these young people to be able to come out and
20 vote that first time, when they're 18 or 19 years old, the
21 chances of them continuing to vote dramatically increase.

22 In the 2012 elections, about 50 percent of
23 eligible youth, 18 to 29, turned out to vote, but amongst
24 registered youth, 84 percent turned out. So there's
25 definitely -- you know, there's this gap between voter

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2 participation when it comes to the registration numbers.

3 So, you know, that's why we focus on this preregistration;

4 we think it's really one of the keys to engaging our

5 youngest demographics.

6 I also just wanted to point out kind of a

7 personal story around -- all around preregistration. So

8 Cheryl and myself actually went up to, I think it was

9 actually Lawrence, where we were doing a presentation

10 around the 2012 election for a group of ESL students.

11 Actually, something like 80 students were there, really

12 engaged around the presidential election, had a lot of

13 questions about just how the voting process worked, and

14 then we did just kind of a Q&A.

15 And one of the facilitators for -- for this

16 meeting came up to me afterwards and said, "So if -- if

17 you're going to be 18 on election day, you can actually

18 register to vote? Like you don't have to be 18, you know,

19 like already in order to register for the election?"

20 I said, "Yeah, that's it. You know, if

21 they're going to be 18, you know, by election day, then

22 they, you know, they can cast a ballot."

23 She was like, "Okay. You can't tell my

24 daughter, because she's going to kill me, because she's not

25 going to be able to vote in this election."

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2 So her daughter was 17, and her birthday was
3 the day before the election. And, you know, she just
4 thought that her daughter wouldn't be eligible -- or it was
5 the day of the election, and she just thought her daughter
6 wouldn't be eligible to vote in that election.

7 So preregistration, you know, in addition to
8 these other benefits, you know, hopefully there is a
9 uniform voting age so there's less confusion about when
10 exactly it is that you can register to vote in order to be
11 able to cast a ballot in your first election. So it
12 happens in real life is something I wanted to touch base
13 on.

14 So, briefly, two other pieces that are being
15 considered right now include permanent registration, which
16 there's kind of a couple of different forms, but what we're
17 looking at here in Massachusetts is a way to keep people's
18 voter registration up to date by using address changes
19 provided by the Registry of Motor Vehicles and by the US
20 Post Office.

21 In fact, a lot of people right now think if
22 they change their address with the Registry of Motor
23 Vehicles it updates their voter registration, and, in fact,
24 it does not. It's an opportunity to use our state
25 databases to get them to better communicate with one

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2 another and in order to keep folks on the voting rolls. In
3 Massachusetts one out of ten people move within
4 Massachusetts each year. So we'd be, you know, reducing
5 the administrative burden in terms of folks having to re-
6 register each time after they move and be able to save some
7 money too by making sure we're sharing that information
8 between our databases.

9 As you can imagine, lower-income voters,
10 people of color, younger people are more likely to be
11 renters, are more likely to move from year to year. This
12 would be a big benefit to increasing participation amongst
13 those communities.

14 And the last piece I wanted to touch base on
15 would be election-day registration, which is by far the
16 most significant reform that we can do to increase voter
17 participation. On average, states with election-day
18 registration have turnout rates of about 10 to 12 percent
19 higher than the national average. In the '09 report by
20 Demos, they estimate that Massachusetts could see an
21 increase of about 4.9 percent. So, again, sounds like a
22 small number, but a big pretty number when it comes to
23 voter participation. Again, amongst young people,
24 communities of color, and lower-income voters, we would see
25 this number even higher.

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2 Again, I worked as a poll worker for several
3 elections in the city of Boston, and, again the number one
4 issue I'd run into is people with registration problems.
5 Election-day registration provides a solution to that
6 problem and allows voters to be able to exercise the right
7 to vote. So there's not a better reform to increase
8 participation in Massachusetts.

9 So thank you so much. I'll pass it on to
10 Pam to talk a bit more.

11 MR. HALL: Thank you very much.

12 MS. WILMOT: Hi, folks. My name is Pam
13 Wilmot, and I am executive director of Common Cause
14 Massachusetts. We are a state chapter of the national
15 organization Common Cause, which was founded in 1970 by
16 John Gardner, who was a liberal Republican in a Democratic
17 administration. And John founded an organization that
18 would focus on a number of things, but eventually to
19 establishing the rules of democracy that would work for
20 all, an open, accountable government and free and fair
21 elections. And we've been involved with these issues ever
22 since.

23 Here in Massachusetts, we also were founded
24 very shortly after, in 1972, were involved in many
25 different campaigns to -- to improve the rules and the

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2 enforcement of participation in both elections and campaign
3 finance reform, ethics, and the rest. We've had, since
4 we've been doing election protection here in Massachusetts,
5 we've had the privilege of working with Rahsaan and the
6 Lawyers' Committee and MassVOTE and ACLU and others to turn
7 out -- to man the hotline and to turn out grassroots poll
8 workers. Last time in 2012, Common Cause recruited about
9 150 poll monitors, trained all the poll monitors, and
10 placed them in some of the urban locations across the
11 state.

12 Like many other states, Massachusetts had
13 problems in 2012. We had a wide range of issues that were
14 reported to the hotline, from requiring ID, to telling
15 people how to vote, to tons of problems with inactive
16 voting, with provisional balloting, language assistance.
17 Over the years, Lawyers' Committee has represented a number
18 of communities, and a number of them have been under DOJ
19 consent decrees around providing language assistance.

20 But in 2012, we had people in most of our
21 major cities waiting for two and three hours to vote. That
22 is just unacceptable. And now, of course, we're not the
23 eight hours that we saw in a few places across the country,
24 but as the president said, no individual in the bipartisan
25 presidential commission, which, you know, was truly a

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2 consensus report that was released recently, no voter
3 should have to wait more than 30 minutes. And as Sara
4 mentioned, we're missing many of the reforms here in
5 Massachusetts that would make that possible.

6 32 states have early voting. We do not.
7 The bill that passed the House and the Senate would
8 establish early voting. The House bill is much more
9 minimal than the Senate, which would allow for weekend
10 early voting.

11 This is really important. Waiting in line
12 isn't just about convenience; it is also about the right to
13 vote. Because not -- some of us have flexible schedules
14 and can commit that time, but the vast majority of the
15 population really doesn't.

16 Making all the other barriers that we have
17 to register to vote is also a real challenge to the
18 franchise, because 20 days before the election, which is
19 Massachusetts standard, is a time where many people aren't
20 actually thinking about the election. If you move every
21 year, you're -- the burdens on you are much higher than a
22 stable family that stays in the same place for year after
23 year.

24 So we're particularly excited about the
25 provisions in the bill that's being considered that Sara

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2 mentioned, but there's also online voter registration,
3 which has increased participation in the states that have
4 it, as well as providing for more accuracy, cost
5 effectiveness, and with the tie-in with permanent
6 registration, really can help increase getting people who
7 are not registered actually registered.

8 We brought in a number of speakers recently,
9 including David Becker from Pew, to talk about the ERIC
10 program and were able to bring him around to many of the
11 legislators that are considering this, and it's a terrific
12 program, and we would really like to see Massachusetts
13 participate.

14 One other piece that isn't about bringing
15 more folks to the polls and allowing them to participate,
16 but ensuring that their vote counts is post-election
17 audits. We submitted the -- helped to write and submit the
18 first post-election audit bill in 2004, and the first
19 preregistration bill in 2004 as well. I participated in
20 the HAVA committee around that area -- era.

21 But the post-election audits, we have not
22 actually had -- experience here in Massachusetts during
23 recounts, we find some small changes when -- because
24 machines can't pick up what is really the voter intent.
25 But we've seen across the country how they can actually

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2 fail to properly record, and even if there's a huge vote
3 spread, not accurately reflect the ballots that were cast.

4 In Florida in 2012, there was a city council
5 election where there were three races that were transposed
6 by the counting machine, by the scanner, and two of them
7 actually flipped. Even though there was no recount
8 recorded, this was -- the audit found the error, was able
9 to fix it. More importantly -- or actually not more
10 importantly, because that's about as important as you can
11 get. More frequently, it finds problems with voter
12 instruction, so that people are confused about how to fill
13 out the ballot, other -- other issues with pens,
14 programming of the scanners, and the like. It's a very
15 cost-effective reform, but the cost of not doing it is so
16 high, which is -- makes it such a clear solution.

17 So we think that this is a really -- all of
18 these issues are very critical reforms that need to be
19 enacted, and we have a great chance to do it.

20 I'm just going to touch very briefly on
21 redistricting as well. I know Brenda mentioned it, and
22 Demos and MassVOTE were very involved for a long time;
23 we've been involved for decades. Massachusetts issues with
24 redistricting didn't just start in 2000, however. There
25 was a violation of the Voting Rights Act found in the

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2 1980s. In the 1990s there was also a lot of controversy.

3 There was no successful lawsuit in the 1990s, however.

4 And -- and that led to a number of -- of actions in 2000.

5 Of course, the lawsuit was a big -- big
6 issue. We conducted a campaign for an independent
7 redistricting commission that would have a -- a diverse
8 commission that would adhere to strict principles and have
9 a whole transparent process and then ultimately still be
10 approved by the legislature.

11 But in 2010, because of, I think, the
12 lawsuit, because of the people that were in charge, because
13 of the campaign from the independent commission, the
14 legislature really did step up to the plate -- to the plate
15 and really did a terrific job. They exceeded all of our
16 expectations in terms of transparency of the process and
17 then also in terms of representing minority voters in the
18 districts that were drawn, triple the number in a number of
19 instances. And it just shows, I think, what an active
20 citizenry can do when you're concerned about an issue and
21 proceed with a well-thought campaign.

22 I'm going to stop there and just say that
23 we're going to continue our advocacy for reform, regardless
24 of what happens here, and also participation in Election
25 Protection, which is so critical to having your eyes and

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2 ears on the ground. There's another panel that is going to
3 talk -- Tyler from my office will be there to talk about
4 what we found in Lawrence and then also some more specifics
5 for 2012. Thank you.

6 MR. HALL: Thank you.

7 MR. WOLFE: Good morning. My name is Gavi
8 Wolfe. I'm here on behalf of the American Civil Liberties
9 Union of Massachusetts. And thank you for inviting us to
10 testify.

11 The ACLU of Massachusetts represents about
12 25,000 members and supporters around the state, and our
13 work is -- takes on a number of different forms:
14 litigation, legislative advocacy, community organizing. It
15 also spans a wide range of issue areas. But, to be frank,
16 the voting rights work underpins a whole lot of it. If we
17 don't have people out participating in their government and
18 holding their government accountable, directing the course
19 of our government, then many of the other issues that we
20 work so hard for sort of fall by the wayside. So voting
21 rights is a core component of what we do.

22 Much of that work takes place in -- has to
23 do with Election Protection efforts, and my colleague,
24 Chris Robarge, will speak a little bit later about those --
25 that piece of our work, and in particular our efforts in

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2 Worcester. But I've had the pleasure of working in our
3 legislative advocacy with my colleagues on this panel, and
4 I'd like to speak for a moment about one of the components
5 of the reforms that we're seeking to pass here in
6 Massachusetts. That's online voter registration.

7 So the ACLU has a priority -- has identified
8 a priority area. We -- that's called the Technology for
9 Liberty Project. We've created this project within the
10 ACLU of Massachusetts because we have come to appreciate
11 that we live in a digital age. And in a digital age, there
12 are particular challenges for civil rights and civil
13 liberties that we have to address head on.

14 So often we're in the process -- we're in
15 the position of dealing with those issues -- with
16 technology as a challenge. How do you grapple with it?
17 How does it affect our privacy? How does it affect access
18 to opportunity? But technology can also be an incredible
19 gift for civil rights, and there is no doubt that in this
20 instance it, you know, presents an opportunity for us that
21 we need to take advantage of.

22 Online voter registration is really a no-
23 brainer. 19 states have -- have put it on their books.
24 And here in Massachusetts we are -- we consider ourselves a
25 technology leader, we think of ourselves as a high-tech

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2 hub, and that's all true, but somehow we're not taking
3 advantage of the opportunity that we have. Those 19
4 states, one of them is Connecticut, so that's very -- you
5 know, that's one of the New England states, but this
6 hearing today is focussed on the other five New England
7 states, none of which has online voter registration.

8 If we want people to vote, we first need
9 them to be able to register. And if they -- if
10 registration is a cumbersome process, that means that fewer
11 people are going to participate. Today in Massachusetts,
12 in order to register to vote, you have to fill out an
13 application, a paper application, you have to sign it, and
14 you have to get it to the appropriate office, either by
15 walking it there or by mailing it in.

16 But if we allow people to register to vote
17 online, it's a simple process that can be done with a click
18 of a mouse. And it takes advantage of the fact that people
19 already are -- their information is already present in the
20 Registry of Motor Vehicle database; their signature is on
21 file. If those conditions exist, then they could register
22 online very easily.

23 It's important to say up front that online
24 voter registration is secure, and it's something that,
25 because it -- because the voter puts in their own

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2 information, as opposed to where they've written it out on
3 a piece of paper, and their handwriting might be a little
4 bit illegible, somebody else has to translate that into the
5 information that gets into a database, it actually has a
6 greater accuracy than, you know, the paper ballot, the
7 paper registration forms.

8 It's also secure in the sense that newly
9 registered voters would -- at the polls for the first time,
10 they'd have to show their -- their proof of residence the
11 first time that they vote.

12 Online voter registration increases
13 registration. In Arizona, it's been shown to increase
14 registration quite substantially. The number that we have
15 is 9.5 percent, which is extraordinary, and that may be
16 because it's combined with a lot of other efforts to get
17 people to register, take advantage of other -- you know, of
18 technology to make sure that people are -- there's a sort
19 of outreach going on. But even just enabling people to
20 vote -- to register to vote online increases people's
21 registration.

22 It also is a cost-saving measure, and I
23 think it's puzzling that we should not take advantage of an
24 efficiency that also saves money. So I'm hopeful that when
25 we -- you know, when we end this legislative session, we

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2 will certainly have accomplished online voter registration,
3 and it will be on our books. But it saves money to the
4 tune of in -- I understand that it's about -- the
5 difference between a paper registration and an online
6 registration, processing costs in Arizona, the difference
7 is 83 cents to 3 cents. Now, that's a nice little bit of
8 change that you can put away. Maricopa County alone, since
9 2008, has saved \$1.4 million. So this is -- this is a
10 pretty easy step forward for voting rights and one that we
11 should take advantage of right away.

12 MR. HALL: Thank you.

13 MS. CRAWFORD: Good morning. I'm Cheryl
14 Clyburn Crawford, currently the executive director of
15 MassVOTE.

16 So MassVOTE has been involved with voting
17 rights issues during all of my tenure and way before that.
18 In terms of the election-day registration, and
19 reprecincting, all of those things that my colleagues so
20 eloquently spoke of.

21 But, you know, one of the mainstays at
22 MassVOTE is our Democracy for Nonprofits, where we engage
23 all nonprofit organizations in talking with them about
24 election reform and the best practices around electoral
25 work and getting out the vote. We monitor -- one of our

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2 projects is a group, Civic Engagement Initiative, CEI,
3 where we monitor organizations to see what the impact is in
4 the communities that they're serving.

5 We've touched upon the redistricting;
6 MassVOTE was very much involved with that, as already
7 mentioned. But even when we were doing the redistricting,
8 one of the challenges was redistricting the city of Boston
9 in particular. And a part of that is due to the fact that
10 reprecincting has not occurred in Boston in over 80 years.

11 Every ten years, the census occurs, and most
12 of the cities and towns in Massachusetts reprecinct
13 according to their needs. But there was an exemption put
14 in place many, many years ago which prevented Boston from
15 being reprecincted. 80 years. And as you can imagine, the
16 landscape has changed in 80 years; the population for sure
17 has changed. We now have precincts, some with as little as
18 500 people and others with as many as 4,000. So it's very
19 unequal, and we believe that this is one of the major
20 causes of long lines.

21 And, you know, I've served as a warden
22 several times in these local precincts here, and oftentimes
23 at the polling location, you'll have two or three
24 precincts, and you'll have two precincts where people are
25 in and out in five minutes, five, ten minutes, especially

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2 in presidential election years, right, it's not that long.
3 But then you'll have this third precinct, because it's so
4 unbalanced and unequal, where they may be in line two
5 hours. So there's a lot of confusion right there at the
6 polling location that people want to jump in a shorter
7 line, of course, right? But because of it not being
8 equalized, we have this issue going on.

9 But we see -- some of these are problems
10 that reprecincting has caused, like the landscape over on
11 the waterfront, for instance, has been really built up over
12 the past 80 years, which causes some people to have to walk
13 over a mile to get to their polling location. That's a
14 problem for many people.

15 Another problem is it causes the election
16 department additional work, because you can't send out
17 uniform packages of ballots right, you can't even staff it
18 uniformly, because it's so different, and that just causes
19 them extra work to figure out how many ballots need to go
20 to each polling location. Whereas if it was equalized,
21 then you could just send out the standard batch.

22 Again, the long lines are quite a burden.
23 But also smaller precincts are a waste of money, really,
24 because they require you the same things. They require the
25 exit table. They require, which is -- which Boston,

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2 Massachusetts is the only state that has exit tables. But
3 also a police officer. So each polling location costs
4 about \$3,000 per election, right, per precinct per
5 election.

6 We have currently 254 precincts in the City
7 of Boston. If we were able to remove this exemption and
8 have Boston reprecincted like most cities and towns, we
9 could drop that from 254 precincts down to about 190, which
10 would give us a savings of over \$100,000, and we would
11 reprecinct such that it would be approximately 2,000 people
12 in every polling location.

13 I really believe that with the evisceration
14 of the Voting Rights Act of 1965, it brought attention to
15 Massachusetts. We are not considered a swing state, but
16 because this is going on, it gave us an opportunity to
17 highlight some of the issues that are happening here in the
18 City of Boston.

19 I know later today, on another panel,
20 they'll talk about other issues that are pertinent to
21 Boston, such as the bilingual ballots and things of that
22 nature. But I just wanted to highlight the reprecincting.
23 If we're able to -- and it's already passed as a home rule
24 petition, and it's currently at the State House. We have
25 legislation that we're hoping to pass around the

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2 reprecincting which would require it to be reprecincted
3 every ten years, like every other city and town in Boston,
4 Massachusetts. Excuse me.

5 MR. HALL: Great. Well, thank you all very
6 much. We appreciate your testimony, and if you would
7 endure with us for a little while, we'll have some
8 questions from our commissioners. So I'll open it up.

9 MR. DUNNE: Ms. Crawford, while it's fresh
10 in our mind, the redrawing of the precincts, the existing
11 law, has it been challenged in court?

12 MS. CRAWFORD: For one thing, we were
13 looking for the existing law. They had not been able to
14 find it, right? And that's what brought about our work at
15 city hall in challenging them to find this exemption. No
16 one has really been able to put their finger on this
17 exemption. So they did take a vote, and we got a home rule
18 petition passed where we will be able to do it. But at
19 this time, they have not been able to find that exemption.

20 MR. DUNNE: Thank you.

21 MS. WRIGHT: To follow up on that, I'm just
22 curious about what is the opposition to reprecincting or to
23 enacting home rule legislation to allow that? It seems
24 like a fairly -- should be fairly straightforward.

25 MS. CRAWFORD: That's what we say as well.

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2 MS. WRIGHT: That there's an obvious need
3 for it. So I'm just curious about where is the opposition?

4 MS. CRAWFORD: It's come up after the
5 redistricting, you know, the census, that there's not
6 enough time. That's generally the response we have
7 received in the past. There's not enough time. It's going
8 to take more time to look at these maps, to be able to draw
9 these precincts. And that's why we've got a jump start on
10 it now, before the 2020 census is taken, that we'll be able
11 to have everything already in place and they're already
12 starting that process.

13 I don't know if you want to --

14 MS. BRADY: Yes. I was just going to add,
15 you know, I think that the city actually lost time. The
16 election department told us that they were planning on
17 doing the reprecincting, but they kind of -- they ran into
18 the -- you know, their perceived legal barriers to being
19 able to do that with this exemption. So, then, you know,
20 kind of back to the State House, and they think that, you
21 know, with it being a city-specific issue, you know,
22 especially as we were talking about some of this other
23 election legislation, it might not be that kind of, you
24 know, number one, you know, priority issue for a lot of
25 folks if you're looking at Massachusetts generally, but it

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2 would be a really, you know, a really substantial help.

3 As Cheryl was saying, you know, as much as,
4 you know, these other reforms will go a long way to
5 reducing lines and increasing participation with having the
6 city not be reprecincted, we're still going to see, as Pam
7 had mentioned, you know, some of these two- or three-hour
8 waits, you know, within the city.

9 But I think that there is -- I think most
10 people want to do that -- do this at this point. You know,
11 it's a matter of, you know, getting this exemption removed.
12 And it will be a big help, you know, come 2020 to have our
13 elections start looking a little bit more like they should.

14 MS. CRAWFORD: And we've had conversations
15 with the local commissioner here who's very much in favor
16 of the reprecincting part. It only makes sense if we're
17 going to have these other reforms.

18 MR. WILLIAMS: I believe, Ms. Brady and Mr.
19 Wolfe, you both referenced the 14 states that have
20 preregistration, and I believe you quoted a figure around a
21 4.9 percent increase? Is that increase of the voters who
22 preregistered actually showed that there was a higher
23 turnout in the 14 states, or was that across the board for
24 all 14 states?

25 MS. BRADY: So I think that --

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2 MR. WILLIAMS: I just wanted to clarify
3 that.

4 MS. BRADY: Yeah. I think the number that I
5 suggested was -- was across the board, but it has been, you
6 know, proven in the states that have preregistration, if
7 you are preregistered, versus registering, you know, kind
8 of standard at the age of 18, you are more -- you have a
9 higher rate of voter participation, like as a preregistered
10 voter.

11 MR. WILLIAMS: But I'm asking you a
12 different question, though. My question is, okay, presume
13 that we have voter registration on the books, and you have
14 the 14 states, has there been demonstrated increase in the
15 voters in those preregistered states to show that the
16 number -- I believe you quoted 18 to 21, and I believe, Mr.
17 Wolfe, you quoted the same 14 states.

18 MR. WOLFE: No. I'm just referring to the
19 online registration.

20 MR. WILLIAMS: Online registration.

21 MR. WOLFE: Online registration was 19
22 states.

23 MR. WILLIAMS: Online -- I think they're
24 comparable in a sense, are they not?

25 MS. WILMOT: No.

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2 MS. BRADY: No. They both help young
3 voters, right.

4 MS. WILMOT: Professor --

5 MR. WILLIAMS: Let me give you my question,
6 so if you can collectively answer it, it's fine. I'm just
7 looking to see if there has been an increase in the number
8 of voters in those states, whether it's online or
9 preregistration, that will suggest that because they're in
10 place, we will see a higher number of voters. That's what
11 I'm trying to get at.

12 MR. WOLFE: For online registration, the
13 only state that I have --

14 MR. WILLIAMS: Definitive.

15 MR. WOLFE: -- statistics for is Arizona,
16 whereby enabling people to vote online, it increased voter
17 registration 9.5 percent, which is an enormous number.

18 MR. WILLIAMS: So let me make sure I'm
19 hearing what you're saying. 9.5 percent higher voter
20 participation --

21 MR. WOLFE: Voter registration.

22 MS. WILMOT: Registration, not
23 participation.

24 MR. WILLIAMS: Registration. So I'm --

25 MR. WOLFE: You're trying to get to do those

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2 people actually cast a ballot.

3 MR. WILLIAMS: That's right.

4 MS. WILMOT: So --

5 MR. WOLFE: I'll let Pam answer.

6 MS. WILMOT: Yeah. On online, there is not
7 any data that I know. On preregistration, Professor --
8 Professor Eric Plutzer at Penn State, and I believe there
9 is another -- is it Michael McDonald?

10 MS. BRADY: Michael McDonald, yes.

11 MS. WILMOT: Michael McDonald did a study
12 too where they did show a participate rate, not just a
13 registration rate boost.

14 And, in fact, here in Massachusetts, the
15 Worcester Telegram was going to editorialize against
16 preregistration because our town clerks were against it and
17 worked hard to oppose it. One, they think that they might
18 have to have a card file and look through it to find
19 people's birthdays rather than having an online database
20 that actually makes people turn automatically a registrant
21 once they turn 18. But the Worcester Telegram reviewed
22 these studies and said, "Yeah, we're convinced." It does
23 provide a demonstrable increase in voter participation, as
24 well as registration, and therefore it's worth a try here
25 in Massachusetts.

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2 MS. COBB: A recent Pew study looked at the
3 device ownership of people in the United States by device.
4 So basically the more affluent you are, the more likely you
5 are to have a laptop. But 91 percent of Americans have a
6 cell phone, although not all Americans have a smartphone.

7 What -- and I don't know if you're able to
8 answer this, but can you talk about the technology involved
9 in online registration and what kinds of technology is --
10 would the -- would the laws that are currently being
11 suggested enable people to register on their devices or
12 only with a laptop?

13 MS. WILMOT: That's not -- that's not a law.
14 That would be an implementation issue. And, actually, Rock
15 the Vote has a nice app that allows you to register, and I
16 assume that whatever we put in place in Massachusetts could
17 be captured by that app.

18 But the level of detail of how this would be
19 implemented would be something the secretary and the
20 Registry would need to work out together, hopefully with
21 input from the rest.

22 But, you know, you're totally right;
23 accessing a smartphone is a critical piece, and we've been
24 so remiss in that. We not only have not had online voter
25 registration, you have not been able to even look up

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2 your -- your voter registration status to see whether you
3 were an active voter, where you were registered to vote,
4 until we tried to pass it legislatively, it didn't get
5 through, but then -- well, anyway, we won't get into that.

6 But the secretary did do that as something
7 he felt he could do administratively, and we're looking for
8 the whole thing coming up soon. But that just went online,
9 what --

10 MS. BRADY: No, not even that, two months
11 ago.

12 MS. WILMOT: Three months ago, yeah.

13 So 42 other states had that capacity. And
14 so we're technologically -- I'm going to -- we're so far
15 behind when it comes to this stuff. The fact that a fear
16 about, you know, registration is they'd have to look at a
17 card file clearly speaks volumes to where we are in
18 thinking about voter registration.

19 MR. HALL: So my question is to you, as
20 advocates, having been raising these issues for quite some
21 time and advocating for this legislation to be passed, what
22 do you all identify as the stumbling blocks as to why
23 Massachusetts is so far behind with the advent of
24 technology and with the fact that there are so many other
25 states that are doing these things that are working and

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2 that are increasing access to the polls?

3 MS. WILMOT: I think change is always
4 difficult, and we're very much of a traditionalist state.
5 We don't change easily. We don't tend to like to be the
6 first person to do anything, first state to implement
7 reforms. Of course, we're considerably behind the times,
8 we're behind that line, and many of these reforms are not
9 just in the first half or on the second half or in the last
10 quintile or in the last decile.

11 So I think inertia is part of it. We do
12 also have -- the Town Clerks' Association has been a pretty
13 active opponent to a number of these items, and that is
14 critical. They've moved. So, for example, they're
15 supporting online voter registration. The association has
16 not been opposing early voting. But -- but that has been a
17 stumbling block.

18 MS. BRADY: I was just going to add, you
19 know, I don't think state legislatures change, you know,
20 voting laws lightly. So, you know, that's maybe on kind on
21 either side of that issue. But, you know, I think that,
22 you know, we're at a point now where a lot of these reforms
23 obviously have been in place in other states. We've been
24 able to see the effect, to set the benefits of these
25 reforms. And they've been discussed, you know, extensively

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2 in the -- in Massachusetts now that, you know, the
3 conversations I think that we have with legislators now are
4 maybe -- you know, they're different than the ones we had,
5 you know, ten years ago, a lot of people being very
6 familiar with the benefits of something like, you know,
7 preregistration that's been discussed for several years
8 now.

9 So I do hope that, you know, I think, you
10 know, obviously with the State House and Senate both
11 passing legislation this year, you know, we're confident,
12 you know, that something, and we hope something very
13 substantial, you know, will ultimately come out of the
14 conference committee. But, you know, it takes time, but
15 we're -- hopefully we're at that time now.

16 MS. CRAWFORD: I also think a major part of
17 this is the implementation, right, and adding the task
18 force to, as a piece of this legislation, with the town
19 clerks and city clerks and this whole panel will have an
20 opportunity to take a look at how this is going to be
21 implemented. It's not something to be handed from the top
22 down, but they'll have an opportunity to figure out, you
23 know, what works best in their town and their city.

24 MR. WILLIAMS: Ms. Wilmot, you asked a
25 couple of -- you made a couple of comments, and I want to

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2 just find out for clarification, you talked about requiring
3 ID's, telling people how to vote, and language assistance.
4 Was that in any particular part of Massachusetts, or was
5 that broad stroke, or was it isolated?

6 MS. WILMOT: The next panel will get into
7 some of the places where we saw some particularly egregious
8 examples of those.

9 There was an issue in New Bedford in 2010
10 where an organization was setting up tables and holding
11 signs saying you had to show your ID to vote and kind of
12 ended up -- I think they were eventually kicked out, but it
13 took basically all day for that to happen.

14 In 2012, we had one precinct, which I can't
15 remember the town, where there was a sign up that said you
16 had to show -- Southbridge, where you had to show ID to
17 vote.

18 MR. WILLIAMS: Okay.

19 MS. WILMOT: There was a poll worker -- they
20 were scattered. In the general election, there was a big
21 issue in the primary, which we'll hear from Chris Robarge
22 about, and -- but I think the more comprehensive kind of
23 issues we have are more around some of these reform pieces,
24 but also around inactive voting rules, around provisional
25 balloting, who gets a provisional ballot.

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2 One of my board members was a warden in
3 Brookline, 17 percent provisional ballots, which probably
4 was a misinterpretation of an active voting rules and what
5 kind of ballot, because we have challenge ballots, we also
6 have provisional ballots, and those get very confused.

7 We had reports throughout the hotline, all
8 over the state, including Hamilton, which is an incredibly
9 wealthy town, of somebody being turned away and the poll
10 worker not looking at the inactive voting list. And that's
11 just the tip of the iceberg. I'm sure this happens
12 consistently.

13 One of the other pieces that we've been
14 pushing for reform on that we did not mention -- I meant
15 to, but I forgot -- was that we need to change our inactive
16 voting rules. In Massachusetts, we're unique in the
17 country in tying your inactive voting status to whether you
18 return the state census form every year. So municipal --
19 I'm sorry.

20 So you can become an inactive voter even if
21 you voted three times in the past year, if you don't return
22 your -- your census form. Most other states have it tied
23 to voting history and then with a confirmation card. That
24 is our suggestion. That's what the Senate passed. I think
25 there's some controversy over that. I'm not sure it

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2 ultimately will come out. But the fact that so many voters
3 here are legally required to be inactive really increases
4 the -- and you can still vote, of course, you just have to
5 show more identification, sign an affidavit, and that slows
6 down the lines and the processing time.

7 MR. WILLIAMS: Thank you.

8 MS. WRIGHT: I have a question on another
9 topic, and that is the topic of prison-based gerrymandering
10 in Massachusetts. I understand there is a resolution
11 that's been introduced in the legislature that would call
12 on the Census Bureau to change its method of allocating
13 incarcerated populations so that it would -- they would be
14 allocated to their home communities rather than to the
15 prison location, and I'd love to hear any commentary from
16 anyone on this panel about -- about that measure and, you
17 know, your thoughts about the issue.

18 MS. CRAWFORD: I believe it would make a
19 significant difference if we were able to take that
20 challenge up right with the prison gerrymandering. Many of
21 the prisoners come from cities, the larger cities, right?
22 Censuses dole out money based on population. And then here
23 in Massachusetts where those citizens do not have the right
24 to vote renders their voice insignificant, right, but the
25 money is going into that particular city or town wherever

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2 the prison is. I think it will make a major difference if
3 you were able to allocate those ballots back to -- or just
4 made it available, right, where people were counted
5 absolutely where they come from or where they're going back
6 to, you know, pretty much. Because most of them are not
7 staying in the little towns where they're being imprisoned
8 at this time.

9 So we have worked with many organizations, I
10 know MassVOTE has collaborated with several organizations
11 in talking about how to make this happen.

12 MS. WILMOT: As have we. And the other
13 thing I would say is it was a recommendation, as well, from
14 the redistricting committee. So this isn't just a -- a
15 resolution that's on the side. It's part of the
16 recommendations going forward from the official committee
17 addressing that, including the chairman that's here today.
18 So I would guess that it would have a good -- our belief is
19 that it will pass. It's an important issue. It's an
20 important national issue. And thank you for continuing to
21 bring that up and making sure that we do.

22 MR. HALL: Note to our commissioners, we're
23 about at the three-minute mark, or three minutes left.
24 We're at it now. So if there are any final questions that
25 we want to ask this panel, now would be the time.

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2 MS. COBB: Another thing that you've raised
3 is confusion on election day because of poll workers not
4 necessarily having the training that they need in order to
5 carry out the election efficiently, confusion over
6 provisional ballots to other issues. Do you have some
7 thoughts about what you'd like to see happen around that?

8 MS. BRADY: So one piece that I was actually
9 going to kind of add on when Pam was talking about the
10 inactive voters, actually changing our inactive, you know,
11 kind of voter procedures would go a long way to, I think,
12 reducing that confusion at the polls.

13 So in the 2012 election, actually, I was the
14 warden at my local precinct, and all I did for the entire
15 14 hours was do paperwork the entire day for inactive
16 voters. Most of them actually were not provisional
17 ballots. I think I had maybe five provisional ballots.
18 But I probably had 30, 40, or something like that,
19 challenged ballots, and, you know, usually because, you
20 know, folks had not replied to the census.

21 So if we were looking for ways to, you know,
22 reduce that, that would help a lot of voters, and it would
23 help a lot of poll workers who, again, as we were saying,
24 you know, there's kind of, you know, depending on when a
25 voter comes in, they get -- one, they might just have to

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2 fill out a form affirming they live at the same address;
3 two, they might have to fill out a form, but if they don't
4 have the identification, then it has to be a challenge
5 ballot, where you read them an oath and you're writing on
6 the ballot, and people don't like it when you write on
7 their ballots; or, three, they could end up as a
8 provisional ballot if they were kind of nowhere to be found
9 and you can't, you know, redirect them.

10 So if we look at ways to reduce the number
11 of people that are appearing as inactive, that's going to
12 help a lot of ways in terms of poll worker training, and
13 just the fact that poll worker training, I think, really
14 varies, not, you know, Boston -- you know, across
15 Massachusetts, and just making sure that they, you know,
16 have the resources, you know, that they need to really
17 provide adequate training.

18 MS. WILMOT: One of the provisions of the
19 bill is for election administrators to get extra training,
20 but that does not filter down to the poll workers. And
21 part of it, I think, is a resource issue; part of it is a
22 cultural issue in the sense of having the diversity of age,
23 race, and other dimensions to be poll workers. Many of our
24 poll workers are quite elderly. Some of the rules around
25 that tend to facilitate it, again, the low pay, then also

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2 that you have to be there all day long. So I think some of
3 the programs that we have done to try to recruit a more
4 diverse poll-working base are important and then having
5 training. I think that's something that probably needs to
6 come rather than statute based but more from the secretary.

7 MR. DUNNE: Do you think that --

8 THE TIMEKEEPER: Sorry. We're out of time.

9 MR. HALL: We're out of time, but we'll --

10 MR. DUNNE: Just one brief question.

11 We all acknowledge difficulty in getting
12 poll workers --

13 MS. WILMOT: Yes.

14 MR. DUNNE: -- put in. New York is a 15-
15 hour day. Have you considered split, getting them for
16 eight hours each?

17 MS. WILMOT: Yes.

18 MR. DUNNE: And has that worked?

19 MS. BRADY: Well, I was going to say, a
20 couple of cities do. Actually, the first time I was a poll
21 worker, I could only commit to -- you know, I could only
22 commit to, you know, to a half day, and they were able to
23 do that.

24 I think, you know, for some of the bigger
25 cities, it's a little more difficult just kind of

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2 administratively figuring -- you know, obviously recruiting
3 more people to cover the day. But I think -- I think that
4 can be really beneficial, especially if we're talking about
5 bringing younger people in who might, you know, not be able
6 to do the full-day commitment.

7 MS. WILMOT: There's no statutory
8 requirement that they do a day. It's really just the
9 culture and practice.

10 MR. DUNNE: Thank you.

11 MR. HALL: All right. Well, thank you all
12 very much for your testimony and for your advocacy, and if
13 you have any copies of your testimony or any remarks or
14 information that you would like to -- or materials you'd
15 like to provide us with, please do so.

16 MS. CRAWFORD: Thank you for having us.

17 MR. HALL: So we will now invite the next
18 panel to come forward that will talk about Election
19 Protection issues. And so far who I see here for this
20 panel are Chris Robarge from the ACLU of Massachusetts and
21 Tyler Creighton from Common Cause. We were expecting Aron
22 Goldman, but I don't see him as yet. So hopefully he will
23 join us. He's from the Springfield Institute. So given
24 the weather conditions and the distance, he may be a bit
25 delayed.

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2 Each of our panelists on this panel are
3 invited to testify for five minutes each, and we will
4 reserve 15 minutes for question and answer from our
5 commissioners.

6 So the panel is yours, gentlemen.

7 MR. CREIGHTON: So thank you for having me.
8 My name is Tyler Creighton. I'm the assistant director at
9 Common Cause Massachusetts with Pam. So you guys already
10 kind of heard what Common Cause does. I think Pam touched
11 a little bit on the work we do around Election Protection,
12 but just a little overview.

13 Election Protection is a national initiative
14 led by Lawyers' Committee and the other groups across the
15 country to combat a concerted effort to suppress voting
16 rights and also problems with unintentional problems of
17 election administration, and just making sure that voters
18 have the correct information, are able to cast their votes
19 on election day.

20 Common Cause has been involved with these
21 efforts in Massachusetts for a number of years. In 2012,
22 we teamed up with the ACLU, MassVOTE, the Lawyers'
23 Committee, and others to recruit and train and deploy about
24 150 poll monitors across the state, primarily in Boston,
25 Worcester, Springfield, and a couple of other urban areas.

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2 The poll monitors, you know, passed out accurate
3 information to voters about when the polls were open, what
4 sort of identification they needed to provide.

5 There was a lot of problems with voters
6 going to the wrong polling location. It was the first
7 election with new districts. So we helped voters find
8 their correct polling locations, made sure poll workers
9 were doing their jobs correctly and according to the law.

10 There are, you know, as you mentioned, some
11 poll workers that just don't know all of the intricacies,
12 making sure that they were applying the law appropriately,
13 and others that are intentionally flouting the law, either
14 by asking for the wrong types of ID or, in some cases,
15 actually telling people how to vote on ballot questions.
16 And, you know, we tried to alert authorities if there are
17 any ballot bullies, which I think Chris will touch on a
18 little bit more, since Worcester has been an area where,
19 you know, groups have actively tried to suppress voting
20 rights.

21 I want to talk a little bit about some work
22 that we did in Lawrence last year. There was a mayoral
23 election in November. We in -- we got a report that was
24 actually put out by the Lawrence Eagle-Tribune that there
25 were a lot of election irregularities up in Lawrence during

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2 the mayoral primary race. This included things like
3 candidates or campaign workers electioneering in polling
4 locations and trying to tell people how to vote within the
5 polling location itself.

6 There was reports that voters that weren't
7 on the rolls were coming to the poll worker check-in desk
8 and being able to get ballots even though they weren't on
9 the rolls. Problems with poll workers looking over ballots
10 and, you know, stepping on the secret -- the idea of a
11 secret ballot, and just general confusion and a chaos
12 within the location.

13 So we, in kind of a rapid-response way,
14 recruited about 25 poll workers to go up in Lawrence and
15 spend the day up there. I was up there all day driving
16 around to different polling locations, in particular, ones
17 that had been identified during the primary as particularly
18 problematic.

19 The Secretary of State actually ended up
20 deploying, I think, three to five monitors himself,
21 including his general counsel, that drove around with the
22 Lawrence city clerk to make sure there wasn't any -- any
23 problems.

24 And by and large, it was a relatively
25 successful election, and we didn't end up seeing a lot of

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2 problems, but I think in many ways it was because of this
3 increased presence and watch -- watchdog capacity that both
4 we were involved in and the Secretary of State.

5 We did see problems with signage; that was
6 something across the board, not adequate signage as to
7 where the polling location was, both from the street and
8 once you kind of got up to the building. Continued to see
9 some problems with secret ballots and poll workers, I
10 think, unintentionally looking over ballots, not really
11 understanding the importance of the secret ballot.

12 But by and large, things went quite
13 smoothly, and we were -- we were glad to be up there. But,
14 you know, it's not something that I think should be
15 necessary that we should have to, you know, have these poll
16 monitors up there, and I think, as the previous panel
17 touched on, there's a number of election administration
18 solutions that we could implement legislatively to solve
19 some of these issues. So thank you.

20 MR. HALL: Thank you.

21 MR. ROBARGE: Good morning. My name is
22 Chris Robarge, and I am the Central Mass. field coordinator
23 for the ACLU of Massachusetts. And for the purposes of
24 some of the Election Protection work we've done in 2012, I
25 was one of the folks who coordinated and organized our

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2 efforts in central Massachusetts.

3 So I want to apologize in advance. I'm
4 going to have a really hard time doing this in five
5 minutes. I've been trying to figure out what I can pare
6 down. So I will do my best. I may have to beg for an
7 extra minute.

8 MR. DUNNE: Use some of his time.

9 MR. ROBARGE: I'll use his time.

10 MR. CREIGHTON: We do have Q&A after as
11 well, so.

12 MR. ROBARGE: That's true.

13 So, and for the purposes of being brief, I'm
14 going to mention two groups. I will just explain them very
15 briefly now. If you have further questions about them, I'd
16 be happy to try to answer them. But two groups that I'll
17 reference in my testimony will be Activate Worcester and
18 Show ID to Vote.

19 Activate Worcester is a fairly prototypical
20 voter integrity, quote/unquote, so-called voter integrity
21 organization that doesn't actually seem to do a lot of
22 voter integrity work, but tends to push more for ballot
23 challenges and things of that nature.

24 Show ID to Vote is pretty self-explanatory
25 with what they do by the name of their organization.

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2 They're ostensibly an organization that seeks to promote
3 the idea of us having a voter ID law but in reality
4 sometimes tends to seemingly misguide folks into believing
5 that we currently have a voter ID law.

6 So that's a very brief description of those
7 two, and then I will talk about our experience in Worcester
8 between September and November of 2012, which was our last
9 major election.

10 So in June of 2012, we began organizing a
11 voter protection network in Central Massachusetts in
12 conjunction with the statewide Election Protection
13 organization that was developed for the elections of 2012
14 with all the groups that have already been mentioned.

15 In September of 2012, September 7th,
16 specifically, it was a Thursday primary, we had a -- a
17 number of primary races across the state, including a race
18 in the Worcester 15th. We were primarily organizing for
19 the November election, but we did decide to put out sort of
20 a skeleton crew of folks, and I had given people my
21 information and told them to let me know if there were any
22 issues.

23 On the morning of September 7th, I started
24 to receive calls, probably around 8:00 or 9:00 in the
25 morning, that there were voter intimidation issues

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2 happening primarily at the 50 Murray Avenue polling
3 location, and that is Ward 10, Precincts 3 and 5, for
4 anyone who's counting, in Worcester. The initial complaint
5 that I received was that there were challenges being made
6 for voters who were trying to bring voting assistance in
7 with them, so another person who they could bring into the
8 polling location with them, and that there were some
9 challenges happening around that.

10 When I arrived at 50 Murray Avenue a short
11 time later, I observed not only that issue but several
12 other issues, which I'll try to just quickly highlight.
13 The issues included ballots being challenged for people
14 bringing voting assistants into the polls, for voting
15 assistants specifically who were wearing Neighbor to
16 Neighbor T-shirts, anyone who was speaking Spanish or any
17 other non-English language in the polling location, or, in
18 some cases, seemingly for no reason other than that the
19 potential voter had a Latino-sounding name.

20 In addition, observers were directly
21 confronting and engaging with voters in an intimidating
22 manner, they were photographing their identification when
23 it was presented to poll workers, and they were videotaping
24 people in one of the two precincts, up-close videotaping.

25 An observer that is known to me as a member

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2 of Activate Worcester had also set herself up in one of the
3 two precincts as the first point of contact, so she was
4 actually set up in front of the check-in table, and she
5 would be the first person you'd encounter before you
6 actually got to a clerk. And that was an activity that was
7 being allowed by one of the two clerks that was there.

8 There was another observer who was in the
9 other precinct who had refused to identify herself and was
10 essentially just getting into verbal altercations with
11 voters, challenging ballots, verbally engaging with voters
12 in an intimidating manner.

13 Having personally observed all of the above,
14 there's no doubt in my mind that voters were intimidated,
15 ballots were challenged without any legal basis, and that
16 potential voters were scared into declining to participate
17 in the election.

18 Murray Ave. was definitely the worse of the
19 problems. It was definitely by no means the only place
20 where there were problems.

21 One of the other pieces that I wanted to
22 highlight, speaking of the Show ID to Vote folks, rather,
23 there is another polling location nearby, which is the
24 Belmont Street Towers, and at the Belmont Street Towers, I
25 was sent over to -- to check out a report that I had gotten

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2 that there were people from the group that were outside
3 that were actually asking people to show them their
4 identification on their way into the polling place. They
5 were actually out in the back parking lot. They had been
6 asked to move along by someone else, another citizen,
7 before I arrived. But I did speak to several people who'd
8 had that experience.

9 We had a great deal of testimony in the
10 coming weeks after this all came to light. There were
11 reports in the paper. Several rules were changed for how
12 observers, specifically, were handled in elections. And
13 our election in November did go quite a bit more smoothly.
14 We had a lot less problems. I would attribute that both to
15 the changes that were made by the election commission and
16 the fact that we had a very robust presence. We were in
17 essentially every polling location at some point or another
18 during the day.

19 The last thing I just wanted to talk about
20 quickly, it was mentioned in the last panel, a lot of folks
21 have talked to you about the election modernization
22 legislation that's currently in the State House. One piece
23 that I wanted to highlight as a serious, serious problem in
24 Worcester that I'm hoping this legislation will be able to
25 solve is the issue of inactive voting.

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2 So Worcester is one of the largest
3 communities that actively uses response or nonresponse to
4 the city census as a primary basis for determining voter
5 activity. Thus, one can vote in every election, like I do,
6 and they can also be rendered an inactive voter, like I was
7 in 2012, as a result of not returning their city census.

8 The census is mailed to the last address
9 that the clerk has for you, which may or may not be where
10 you live, and I'm sure you can imagine, particularly in a
11 city that is very heavy on renters, many times where you
12 were in last November or December is not where you are now.

13 If you're rendered inactive, it's required
14 that you show proof of residence and you also sign a voter
15 affidavit. This creates a huge logjam in polling locations
16 where there are many inactive voters who have to wait in
17 line for a warden. The warden is the only person,
18 apparently, in Worcester at least, who can give you the
19 voter affidavit.

20 It also creates a de facto show ID to vote
21 situation. People are being asked for ID. They should be
22 asked for proof of residency, but essentially the shorthand
23 that winds up developing again and again is, you know, "Can
24 I have your ID?"

25 According to statistics from the city, this

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2 problem disproportionately affects people of color in
3 Worcester, particularly our Latino and Southeast Asian
4 communities. I don't have the numbers with me,
5 unfortunately, but I believe for the Southeast Asian
6 community, it was almost a twofold increase in terms of
7 folks who were inactive.

8 The city census, I should mention quickly,
9 is only sent in English. So if English is not a language
10 you read or understand, it would be very difficult to
11 understand what you're supposed to do with it even if you
12 receive it.

13 The bill that is in conference committee
14 currently contains a component that would change how
15 inactive voting is defined, and it would change it from a
16 response to the city census or nonresponse to the city
17 census to, I believe, a failure to vote in two consecutive
18 federal elections. I just wanted to highlight this piece.
19 It's not something I hear a lot of people talking about;
20 it's not one of the marquee items of the bill. But it's so
21 important; particularly in a place like Worcester, it would
22 have a huge impact on helping people be able to go to the
23 polls and alleviate these logjams that we have at the polls
24 and also this ID situation that we're encountering.

25 So thank you.

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2 MR. HALL: Thank you very much.

3 MR. ROBARGE: Thank you for the extra time.

4 MR. HALL: Any questions from our
5 commissioners?6 MS. WRIGHT: Sure. I'd love to hear more
7 about the changes in procedures that were put into place
8 between the primary and the general election that you said
9 alleviated the situation somewhat, and then any other
10 commentary you might have about does Massachusetts need
11 stronger protections against unfounded challenges at the
12 ballot box itself?13 MR. ROBARGE: Sure. So some of the -- some
14 of the procedures that were -- that were either highlighted
15 or altered included the -- the real definition of the -- I
16 believe the law says for observers that you're supposed to
17 stay behind the guardrail. If you've been to polling
18 locations, as I'm sure many of you have or all of you have,
19 there doesn't tend to be a guardrail to be behind. So what
20 the city actually did was they made tape guardrails. This
21 was definitely effective in keeping observers in specific
22 places.23 Not to, you know, to deviate too far, I
24 actually thought that it was probably a little bit too far.
25 It made it difficult to observe what was happening out in

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2 the voting area. So it really kind of dealt with how all
3 observers were treated instead of addressing conduct. But
4 it was effective, at least, in keeping people in their
5 area. Observers were also asked to identify themselves,
6 although that was not required. But they were also asked
7 to wear a badge that said that they were an observer.

8 So one of the problems we've had is that
9 with these situations, someone comes up to the check-in or
10 check-out table, and someone's right there; they're behind
11 the table, which is where observers usually are, and
12 they're just sort of yelling, and someone's taking
13 instructions from the person who's yelling at them the
14 loudest, not really understanding that they're not a poll
15 worker. They're just there; ostensibly they're there to
16 observe. So poll workers -- I'm sorry. Observers were
17 asked to identify themselves.

18 I think those were the primary changes,
19 other than the city also brought in some extra assistant
20 commissioners so they'd have more manpower. They did offer
21 some retrainings or refresher courses for the existing poll
22 workers. They also trained the police, which hadn't
23 happened in Worcester in years. The police that monitor
24 the polls were actually given a poll worker training so
25 that they understood what the rules were.

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2 So those were some of the changes that were
3 made. And, I'm sorry, I've forgotten your second question.

4 MS. WRIGHT: Do you think Massachusetts
5 needs stronger laws or changes in its laws to deal with
6 this problem?

7 MR. ROBARGE: I mean I certainly think that
8 what -- it needs to be taken more seriously. My personal
9 opinion is that there is a fairly good structure of laws
10 dealing with the observer process.

11 What hasn't happened so well in the past,
12 particularly in Worcester or from my experience, at least,
13 in Worcester, is an understanding of the officials in the
14 polling place as to what they can and can't do, which,
15 again, leads in situations where you might have even a poll
16 worker or maybe even a warden who is being told what to do
17 by an observer. And we had observers telling poll workers
18 that challenged ballots go in the same place as provisional
19 ballots, and they did it, because they didn't understand
20 what the rule was.

21 So I think the enforcement of bad
22 behavior -- or in dealing with bad behavior consistently is
23 important, and also making sure that the poll workers are
24 very, very clear on the rules and very confident so that
25 they can feel empowered that they know what the rules are,

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2 regardless of what someone is yelling, is also very
3 important.

4 MR. DUNNE: Mr. Robarge, tell me, if you
5 would, please, how do you qualify to get one of these
6 observer badges?

7 MR. ROBARGE: Anyone, in my understanding at
8 least, of state election laws, certainly in Worcester,
9 anyone can walk in to observe a polling location. You
10 don't have to be a part of an organization; you don't have
11 to qualify in any manner. Any citizen can walk into any
12 polling location and say, "I would like to observe at this
13 polling location," and they'll say, "Okay. This is the
14 place for observers," and you're in.

15 MR. DUNNE: But there's no official badge?
16 You made reference to something of that sort.

17 MR. ROBARGE: In Worcester, between -- after
18 what happened in September of 2012 in the primaries, the
19 city -- the city created an observer badge that said "Poll
20 Observer," and they asked that when poll observers came in
21 and identified themselves as poll observers that they be
22 given one of these badges and asked to wear it. It's
23 unclear to me what would have happened if someone said no.
24 To my knowledge, no one did. But that's where that process
25 began.

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2 MR. DUNNE: Are there any guidelines with
3 regard to the legitimacy of an objection or an interruption
4 which a self-appointed observer might raise? I mean how do
5 you legitimize a challenge?

6 MR. ROBARGE: So there are. There's -- it
7 would be a lot to try to get into all of it, but for the
8 purposes of discussing quickly, let's talk about the
9 challenge ballot process.

10 So there -- there are supposed to be
11 guidelines, and this is, again, where knowing the
12 guidelines is so important. We had people who were
13 challenging -- just challenging ballots, just, you know,
14 one after the other, or about half the people who came in.

15 To make a challenge to a voter, you are
16 supposed to have specific knowledge that that voter is not
17 who they say that they are. If you don't have specific
18 knowledge to that, you know, to that point, you know, that
19 this voter says that they are Joe Smith, and I know that
20 Joe Smith is 23 years old, because it's here on my list,
21 and this person who's here is 90. Or I know Joe Smith and
22 that definitely is isn't Joe Smith. It's supposed to be
23 that general level of burden.

24 But what happens in practice, when you have
25 someone who is actively challenging and you have poll

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2 workers who don't understand the rule, or in some cases who
3 might not necessarily mind the fact that there are so many
4 challenges happening. One of the issues we have in
5 Worcester continuing is that many of the folks who had been
6 doing this observation process are now poll workers. So
7 that's -- it's -- that's supposed to be the sort of level
8 of proof that you need. And so it needs -- it needs to be
9 held that way in practice so that people aren't just
10 blindly challenging.

11 MR. HALL: I think it's worth adding there's
12 some -- there are other people here --

13 MR. CREIGHTON: So there's a list of items,
14 not just on, you know, you're not who you say you are, but
15 it could be that you're not registered at that address, or
16 any number of -- there's a number of things. I don't
17 remember all the specifics. And you just have to name one
18 of these six things or seven things that are listed in the
19 law. But as far as I'm aware, there isn't either strict
20 rules or enforcement around, you know, providing concrete
21 evidence. You just have to be able to name one of these
22 items.

23 In any case --

24 MR. HALL: I think the Secretary of State
25 offered some clarification on the regulations that have

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2 been previously promulgated on voter challenges, and I
3 think that was in light of, maybe it was 2012 or it was
4 2010, a special election or primary election that happened
5 in -- there were some issues around Worcester, and so the
6 Secretary of the Commonwealth re-issued these regulations
7 with some clarification specifically directed towards poll
8 observers.

9 So there is a regulation in place that both
10 Chris and Tyler, the comments that you made, are a point
11 regarding some of the examples that they use for how to
12 make challenges or what's required, but I don't think it
13 goes into specific documentary proof that is needed.

14 MR. ROBARGE: And I should just preface by
15 saying that my knowledge of how it is handled is with, A,
16 from 2012 primarily, and B, from the documentation that the
17 city gives to poll workers and not from the state law.
18 They should -- you know, presumably they should be one and
19 the same. That's where the information should be coming
20 from. But that's where I was drawing my information from.

21 MR. WILLIAMS: Mr. Robarge, you had
22 mentioned in your presentation that there were voters who
23 were intimidated and they were afraid, and I wanted to make
24 sure: Was that at the Belmont Street Towers only or was
25 that in several of the locations?

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2 MR. ROBARGE: There were issues in several
3 locations. The hot spot in that particular primary was --
4 was actually not at the Belmont Street location but at the
5 50 Murray Avenue. But it did happen at other locations,
6 including the Belmont Street location.

7 Essentially, we had -- we had other races
8 where people were going to the polls, but we had a race in
9 the Worcester 15th that was a hotly contested primary. And
10 so those -- pretty much all of those spots were the spots
11 where the most voters were and where the most observers
12 were and where the issues came from. I spoke mostly about
13 50 Murray Avenue, mainly because it was the worst place
14 that I saw, and --

15 MR. WILLIAMS: I'm sorry. Secondary
16 question would be is that were there any identifiers for
17 the folks who, I believe you said these were observers that
18 were in the parking lot, and some of them were in parked
19 cars, some with identifying nature of the groups that were
20 actually intimidating or causing fear for the voters?

21 MR. ROBARGE: So there's sort of different
22 specific issues. At Belmont Street where we had the issue
23 with people who were asking voters on their way into the
24 building, asking them to show them their identification
25 before they went in to vote, those folks had literature

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2 with them, the Show ID to Vote literature with them. So
3 based on the information that I have about that incident, I
4 would presume that that was the group that was asking
5 people.

6 In terms of some of the issues with poll
7 observers, the poll observers, in my experience, have not
8 generally been asked to or been particularly willing to
9 identify either themselves or who they are with.

10 MR. WILLIAMS: Very helpful. Thank you.

11 MS. WRIGHT: Did you observe people actually
12 turning away and not voting because of the intimidation
13 that they were experiencing?

14 MR. ROBARGE: I did not. I was inside of
15 the polling location, so I did not see anyone leaving.

16 MS. WRIGHT: Okay.

17 MR. HALL: We have three minutes remaining.
18 So if there are any other questions.

19 MR. DUNNE: I wonder if we could focus our
20 attention on another subject. When I was at Justice, I was
21 charged with enforcement of the Americans with Disabilities
22 Act. And you made reference to a situation where there was
23 a challenge or a question raised with regard to an eligible
24 voter to bring a person as an assistant to aid them casting
25 their ballot. Can you tell me about that, and have you

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2 heard about such situation and how those have been
3 resolved?

4 MR. ROBARGE: I can tell you about the
5 process of bringing a voting assistant or about the issues
6 that were happening?

7 MR. DUNNE: The issues.

8 MR. ROBARGE: Okay. So the issues that were
9 happening primarily seemed to be around -- they primarily
10 seemed to be around the group Neighbor to Neighbor.
11 Neighbor to Neighbor is a statewide community organization.
12 They have offices and a fairly strong presence in
13 Worcester. And there had been prior questions that had
14 been brought before our election commission on whether or
15 not they could wear identifying shirts into polling places
16 at all, and it had been determined by our elections
17 commission and the city clerk that they could.

18 And so most of the questions that -- or most
19 of the issues, rather, that I experienced at 50 Murray
20 Avenue around people wanting to bring voting assistants
21 into the polls with them were people who were -- who were
22 not -- people who were wearing Neighbor to Neighbor shirts
23 who were being challenged by poll observers and being told
24 by poll observers that they shouldn't be allowed to go and
25 assist those people with their ballot.

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2 MR. CREIGHTON: And, in general, we're
3 talking about language assistance, not generally disability
4 assistance. These are Latino voters in most cases, or you
5 had you have a big Southeast Asian population as well?

6 MR. ROBARGE: Yeah. I mean and other
7 populations. But a good deal of people who do not speak a
8 language that is addressed with a ballot, at least in
9 Worcester.

10 But I mean in Massachusetts you can bring --
11 I think the only exceptions are you can't bring your boss
12 and you can't bring your union steward. But you can bring
13 anyone else you want for any reason or no reason whatsoever
14 into a polling location with you. That's your choice.
15 Certainly if -- you know, there are situations where a
16 voter may be asked, "Do you want this person to be with
17 you," and if the answer is anything besides a confident,
18 resounding yes, they should be asked to leave. But people
19 do have that right for essentially any reason.

20 MR. DUNNE: Other than that one incident,
21 have you found any kind of a pattern of practices with
22 regard to discouraging the use of assistants in voting?

23 MR. ROBARGE: I would say that between that
24 election in not just that location but in other locations,
25 and some of the other elections around that time that I

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2 have observed in Worcester, many of the challenges seemed
3 to arise around language issues. So "I object to you
4 bringing in someone to assist you in voting because you
5 speak Spanish or a non-English language," or "I object to
6 you speaking in a non-English language in the polling
7 place." Those sorts of things. That to me, my observation
8 would be that that was a major unifying factor in many of
9 the challenges.

10 MR. DUNNE: Thank you.

11 MR. HALL: All right. We are at our time
12 for this panel. So, gentlemen, we appreciate your
13 testimony and the work that you all are doing in this
14 field. We appreciate it. Thank you.

15 We have come to the point where we are
16 taking open testimony, and we would just ask that the
17 people have a list of several names of people who have
18 signed up for open testimony. If you are here and you
19 would like to testify and you have not signed up, please do
20 so.

21 We're going to ask that the panelists --
22 that you give us your name and what organization you're
23 representing, and if you're not representing a particular
24 organization, at least what municipality or city or state
25 you're from. We're giving each individual three minutes to

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2 testify. After that we will follow with any questions or
3 concerns.

4 And so the first person that we'll have
5 testify for this open period is Lisa Danetz from Demos.

6 MS. DANETZ: Good morning. I'll just get my
7 stuff out. All right. I will try to move it. Good
8 morning, commissioners.

9 MR. DUNNE: Good morning.

10 MS. DANETZ: I am Lisa Danetz from Demos. I
11 am co-counsel for the New England Area Conference of the
12 NAACP and New England United for Justice in a lawsuit
13 against the Commonwealth for various state agencies and the
14 Secretary of the Commonwealth's failure to ensure that
15 voter registration services are provided by public
16 agencies, and in particular public assistance agencies, as
17 required by the federal National Voter Registration Act.

18 And I think it's important, although I think
19 many of you here today know this, but I think it's worth
20 noting that the NVRA requires that voter registration
21 services be offered in an affirmative way by public
22 assistance offices and agencies, because low-income people
23 are less likely to have cars and less likely to go to the
24 Registry of Motor Vehicles and therefore less likely to
25 come into contact with what is viewed as the primary

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2 location to access voter registration opportunities. And
3 the motivation behind the NVRA is to provide voter
4 registration at those government agencies where people come
5 into contact and where they kind of do their business with
6 the government.

7 The lawsuit was filed in the spring of 2012,
8 about six months prior to the presidential election, and is
9 ongoing. I -- I'm going to give you some of the background
10 factual information. Just to be clear, I am not going to
11 discuss much of any of the discovery that has come up
12 during the lawsuit, because there's a protective order in
13 place, and so I'm somewhat limited.

14 I see I have one minute, and I'm just in my
15 introduction. So I better get going.

16 MR. HALL: We'll give you a little extra
17 time.

18 MS. DANETZ: Okay. So let me just get to
19 the bottom line, then.

20 I think the first thing is that there is an
21 enormous voter registration gap in Massachusetts. So in
22 2010, a census data showed that the gap was 18.7 percentage
23 points; in 2008, a presidential election year, the gap was
24 28 percent points. And it's notable that the voter
25 registration rate for the low-income population of citizens

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2 in the Commonwealth was virtually identical in the
3 presidential and non-presidential election years, which is
4 pretty significant. The entire reason for the increased
5 gap between 2008 and 2010 was because our affluent
6 citizens, and those are in households making \$100,000 or
7 more, were registered at 10 percentage points higher, but
8 there was no notable shift for our low-income citizens
9 between those federal election years. It's that kind of
10 problem that the NVRA aims to address.

11 So how do we know that Massachusetts is not
12 really doing its job here? First, the state provides data
13 to the EAC on a biannual basis. And just by way of
14 example, in the -- and it's a two-year reporting period.
15 In the '99-2000 period, Massachusetts reported that just
16 shy of 27,000 voter registration applications came in from
17 public assistance offices. 10 years later, 2009-2010,
18 which was the reporting period immediately preceding our
19 lawsuit, that number was down to just over 2,000 in the
20 two-year period. So a reduction of 92.5 percent.

21 There was a ground investigation done by our
22 clients, New England United for Justice. They visited six
23 DTA offices around the state, and they found a widespread
24 failure to offer voter registration opportunities.

25 I see I'm about to get the zero.

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2 Of the 174 public assistance clients
3 interviewed, 73 percent, or 129 individuals, reported they
4 did not receive voter registration in any way. That means
5 there was not the required written offer of voter
6 registration; there was not a voter registration
7 application provided to them; nobody asked them orally;
8 nobody offered them assistance. There was no way, no how,
9 no voter registration offered in almost three-quarters of
10 the time.

11 The offices similarly didn't provide voter
12 registration applications to people who didn't respond to
13 any voter registration question, and they also didn't have
14 voter registration materials on hand in the office.

15 I see that I've been told to stop. I would
16 just like to make two additional points if that's okay.

17 I've kind of talked about the facts that
18 we're -- that underlay the lawsuit. I do want to note that
19 in the summer of 2012, the parties entered into an interim
20 agreement in lieu of a preliminary injunction under which
21 the Commonwealth took various remedial efforts to address
22 some, although not all, of the systemic problems.

23 As part of that, the Commonwealth sent out a
24 recapture mailing to 478,000 households. At a minimum,
25 32,000 voter registration applications were returned. It

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2 is likely more. We don't know about the return rate to
3 local elections officials directly.

4 And I think it's really important to keep
5 that return in mind, that 32,000 from the one-time mailing,
6 because from my conversations with folks at the state table
7 here in Massachusetts, I know that all of the organizations
8 focusing their voter registration efforts in low-income
9 communities collectively collected and submitted 19,000
10 voter registration applications from around the state. So
11 from that you can see just how important the state's role
12 in providing voter registration opportunities to our low-
13 income citizens actually is.

14 So thank you for giving and extended my time
15 to speak today.

16 MR. HALL: You're welcome, and thank you for
17 your testimony and work.

18 Are there any questions from our
19 commissioners?

20 MS. DANETZ: Come on.

21 MR. HALL: Okay. I have one. I probably
22 shouldn't. I'm counsel on this case as well.

23 How many other lawsuits like this have been
24 filed?

25 MS. DANETZ: Well, we have represented

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2 parties around the country. I think -- I don't know the
3 number offhand, but I'm going to guess that there have been
4 around six or eight lawsuits, but we've also, in addition,
5 had pre-litigation settlements with several states. So
6 we've probably worked on this issue in between, you know,
7 15 and 20 states. We don't have it concluded in all those
8 places, but we've probably concluded in maybe 13 or 14.

9 MR. HALL: And what are some of those
10 states -- where there's been some pre-litigation
11 resolution, what are some of the states and what have some
12 of the resolutions been?

13 MS. DANETZ: Sure. I'm going to actually
14 just highlight two states in particular that I think are
15 worthwhile, one that is an outcome that resulted from
16 litigation and one that was a pre-litigation settlement.

17 So in Ohio, which we were part of the co-
18 counsel team in litigation, that was filed in 2006. I mean
19 that's probably the state where we have the most
20 experience, because we went through two and a half years of
21 litigation, and then the settlement agreement was, I think
22 it was three and a half years. It expired just less than a
23 year ago.

24 And in Ohio, before the lawsuit and before
25 any intervention, the state was seeing about 1775 voter

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2 registration applications per month submitted statewide
3 from public assistance offices, and in the first few years
4 after the settlement agreement was entered into, the state
5 averaged about 15 or 16 thousand voter registration
6 applications per month. So an enormous increase.

7 I would say there was somewhat of a decline
8 in the last year of the settlement agreement, but I would
9 note that even with that decline, the rate of voter
10 registration applications coming in through Ohio public
11 agencies is higher than in almost any state. I mean if you
12 look at the number of voter registration applications
13 coming in through the agencies compared to covered
14 transactions, you know, those times when voter registration
15 needs to be offered, you know, it went from something like
16 40 percent to 20 percent. So it's still quite high.

17 The other state that I would highlight is
18 Alabama. Alabama is a state where we certainly did not
19 expect to have a cooperative negotiation. And we brought
20 the problems to the Secretary of State of Alabama, and she
21 corralled all the agencies, and we did have, you know, a
22 year and a half of negotiation, and finally came to a
23 settlement agreement, it was a few months ago, but now I'm
24 forgetting the exact date.

25 But Alabama agreed to a comprehensive set of

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2 practices, both in the office, in terms of oversight and
3 tracking and monitoring, and that, you know, it didn't
4 necessitate litigation and they too, actually, like
5 Massachusetts in the interim agreement, Alabama on its
6 own -- well, we certainly suggested it, but it wasn't part
7 of the agreement. They did a mailing as well to their
8 Medicaid and other public assistance, you know, SNAP
9 caseload.

10 Did that answer your question?

11 MR. HALL: It did. Thank you.

12 MS. WRIGHT: One more softball question for
13 you, Lisa. You know, since we've begun this work, and much
14 of it is in partnership with groups like Project Vote
15 and --

16 MS. DANETZ: Yes.

17 MS. WRIGHT: -- Lawyers' Committee and other
18 partners, what's the total number of voter registration
19 applications that's been generated at public assistance
20 agencies nationwide?

21 MS. DANETZ: From around the country, the
22 numbers that have been generated through our work with our
23 partners is 2.5 million. And that's 2.5 million above and
24 beyond what you would otherwise expect.

25 Any other softball questions?

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2 MR. HALL: Are any of those mailings or
3 voter registrations directed by party?

4 MS. DANETZ: No, none of them are. And, in
5 fact, the NVRA includes strict prohibitions against
6 partisan influence and manipulation, and you can be
7 prosecuted for that.

8 MR. HALL: Okay. If there are no other
9 questions, thank you very much. Thank you for your time --

10 MS. DANETZ: Thank you.

11 MR. HALL: -- and thank you for your
12 testimony.

13 The next witness we're calling is former
14 representative John Businger, who was the chairman of the
15 Mass. Joint Committee on Election between '85 and '91 and a
16 member of the Commission on Election Laws between '71
17 and '99.

18 So watch out for our timekeeper, three
19 minutes, and we will ask questions afterwards.

20 MR. BUSINGER: Well, I could talk about this
21 all day, having been one of the few people in America,
22 probably, who's served 28 years on a committee on election
23 laws. I was chairman for six years, and also I was the
24 originator of mail-in voter registration in this state,
25 based on a book by Frances Fox Piven and Richard Cloward

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2 from BU in 1985. I also was the main sponsor of Motor
3 Voter registration, working with Human SERVE, an affiliate
4 of the Service Employees International Union.

5 Without cutting into my time, I'd like to
6 ask a question, because I'm going to touch on it. Did you
7 say that Maine has a different system on voter
8 identification than Massachusetts? They have to follow the
9 federal law, don't they?

10 MS. COBB: I was talking about a different
11 state. I think it was Connecticut. So all they do is they
12 are required to ask for photo identification.

13 MR. BUSINGER: Under the federal law?

14 MS. COBB: Under -- no. No, no, no. The
15 state says that they would like -- that the poll worker has
16 to ask for identification.

17 MR. BUSINGER: To everybody?

18 MS. COBB: To everybody. But if the person
19 doesn't have --

20 MR. BUSINGER: Oh, right, that's true. But
21 in Massachusetts, we don't do that.

22 MS. COBB: You are not required to ask --

23 MR. BUSINGER: Right.

24 MS. COBB: -- for identification except in
25 the case of a first-time voter.

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2 MR. BUSINGER: Right. Okay. Okay.

3 Actually, the lack of -- I want to analogize the
4 discrimination in registration to that in voting, okay, and
5 I'll tell you about the root causes.

6 It's very popular to talk about the Voting
7 Rights Act in the '60s and the Civil Rights Act, mainly
8 thought to be based on race, a very important, obviously,
9 topic and a target of much of discrimination. But there's
10 other kinds of discrimination we have to be very aware of,
11 and I think it all goes to one root cause, which I'll
12 mention.

13 There's by gender. I remember a young woman
14 calling me in the early '70s crying at the end of a desk, a
15 table, in the Boston Election Commission. The clerk or the
16 assistant, whoever it was, harassed the young lady and
17 said, "Why don't you go back to your suburb." And I said,
18 "You don't have to do that."

19 There's discrimination by age, young people,
20 particularly. I remember I found a young woman, I still
21 remember her name, Patricia Garrett, to sue my own town.
22 They weren't letting her register. She was young, and she
23 was also a student, another category, because there's
24 discrimination by type.

25 There's discrimination by perceived income

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2 levels. There's discrimination based, I think, on all of
3 these things, on political philosophy. People who run
4 elections are often the people who are the ins, and it's us
5 against them.

6 And while the comment about Mitt Romney
7 winning the election because of voter ID in Pennsylvania
8 got a lot of publicity last year, I would think an equally
9 salient comment which didn't get as much publicity was the
10 comment by the Iowa Republican Secretary of State saying we
11 need all these restrictive laws because elections are
12 closer than they used to be. Now, who's he kidding?
13 Elections have always been close. I think they just want
14 to win more. There's much more discord between the
15 parties.

16 I remember when John F. Kennedy was
17 president, he had a commission, and, unfortunately, like a
18 lot of voting rights issues, they get ignored; they get on
19 the shelf. In 1962 there were razor-thin elections across
20 the country. I believe one involved the governor of
21 Minnesota and one the governor of Maine.

22 So there is this discrimination across a
23 whole way of thinking, both in registration, and there's a
24 lot of people I think -- we talk about voting being a
25 right, but a lot of people really think they shouldn't

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2 question authority. I remember a young class came in front
3 of me in the '70s. Voting is a privilege. I said no, it's
4 a right. Because if you think it's a privilege, you're
5 going to not complain. You're going to think you're so
6 honored just to vote. It's a right. Registration is only
7 an administrative procedure to effectuate that right.

8 Let me get to another question. I'm taking
9 a little bit of time because I want to answer some things
10 that came up here. One was a point about clerks.

11 The League of Women Voters, I think in the
12 late '70s or '80's, did a survey across the country. Every
13 group, including the most conservative groups, the chambers
14 of commerce, the VFW, voting rights groups, they're all way
15 above 50 percent for the changes. The clerks were
16 uniformly at 20 to 30. Why? Because, again, they tend to
17 represent the ins. They tend to be more politically
18 conservative, though it's been changing a lot in
19 Massachusetts.

20 And I think also clerks know that they are
21 going to be at the bottom of the totem poll in their towns
22 for getting money, because their selectmen or their city
23 counsel aren't going to give them money. And even
24 progressive reps oftentimes will vote with their clerks,
25 because you want to be friendly with your local clerk.

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2 Now, I want to say this: We do have a lot
3 of changes here in Massachusetts in the last 40 years.
4 We're a lot better than we were 40 years ago. In fact,
5 we're fortunate now to have a very effective Secretary of
6 State, Bill Galvin. He's also very adept and eloquent in
7 resisting on -- in fact, he had a town clerk as his
8 opponent last time -- in arguing against restrictive laws
9 and procedures that stifle or suppress the right to vote.

10 And he's been an active member of our
11 Democratic state committee, appearing in front of us. I am
12 on our Democratic state committee. I'm part of the
13 committee that put some of these laws we're talking about
14 in front of the legislature. He's been a frequent guest on
15 the -- at the committee, and he's been a frequent help in
16 the State House in trying to get these laws passed, for
17 example, on early voting.

18 But the reality is there's still resistance.
19 No Secretary of State can do it alone. You need
20 legislative help, and it's the responsibility of all of us
21 in this room to go out and preach the gospel on these
22 issues so that we have a unified front so that we can
23 convince the legislature to change some of these laws.

24 I want to mention -- just end with a couple
25 of other things.

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2 MR. HALL: Okay. We are at --

3 MR. BUSINGER: I would like to end with
4 this.

5 MR. HALL: Okay. Thank you.

6 MR. BUSINGER: You know what's the problem
7 with the voter ID? It's not just what all the commentators
8 say, many of whom politically are on my side. They're very
9 right to question how many people may not have one. But,
10 remember, the Tea Party likes to compare -- complain about
11 government, government has too much power over people. By
12 asking for voter ID, you're giving a government official,
13 somebody representing government, even if it be a poll
14 worker, the right to say, "Yeah, you have your voter ID,
15 but that doesn't look like you."

16 This kind of thing used to happen in the
17 state of registration, which is why I passed the affidavit
18 of registration law in 1972, getting rid of the ID
19 requirement. Because if the government official has all
20 the power and has the -- you have the burden of proof, they
21 can do anything they want. They can ask you any number of
22 questions until you answer it wrong. They can say you
23 don't have your voter -- "I don't see your voter ID. Your
24 picture, it's 20 years old. It doesn't look like you."

25 I'm also waiting for some well-off person

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2 making six figures walking in the poll at quarter of 8:00
3 at night -- and I have experience with this, because I know
4 some of these people. They don't always take their wallet
5 to work. They don't always drive. They show up at the
6 poll at quarter of 8:00 and all of a sudden realize they
7 don't have their voter ID. Wait until they complain,
8 because, quite frankly, these laws, these voter ID laws,
9 discriminate against everybody.

10 And the last thing I want to answer is
11 somebody talked about the reprecincting. I know the
12 reason. I was the guy who fought for it. It took me a
13 while to find out what was going on, and I'm surprised that
14 nobody told the individual the law. It's from the 1920s,
15 like a lot of the laws, they exempt Boston from their laws.
16 It was Boston, quite frankly, that opposed my efforts to
17 get rid of the state census, and ironically that speaker
18 only got in trouble because the state census I had
19 abolished, and he wouldn't have been testifying, because
20 that was the first time we were using the federal census.

21 But the reality is Boston opposed it for a
22 very simple reason. The individuals in Boston, they get
23 elected every four years to their ward committees. You
24 start fooling around with precincts and wards, they're
25 running in hostile territory. So the reason the

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2 reprecincting was never done, and I know it for a fact, was
3 because it changes the who gets elected to the local
4 political party positions. And so Boston wanted to
5 maintain its pride and not reprecinct for years, and if
6 they're not -- either they're not telling the truth because
7 they don't know, or they know but they don't want to tell
8 anybody that it was a political reason.

9 So a lot of these issues are very political
10 at their core, and we have to get the politics on our side,
11 and that's the only way we're going to effect change, to
12 change the politics, to change who makes the decisions. To
13 elect a Secretary of State like a Bill Galvin who works
14 with his Democratic state committee, who works in his
15 political party, and like the legislators who will work
16 with their political party to get the kind of changes we
17 need so that people really can effectuate the right that is
18 so sacred, and that is the right to vote.

19 And I want to thank you, and I'll be happy
20 to answer any questions.

21 MR. HALL: Okay. Thank you very much for
22 your testimony. Any questions from our commissioners?
23 Okay.

24 MR. BUSINGER: My pleasure to speak in front
25 of you.

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2 MR. HALL: Thank you very much. And thank
3 you for your former years of service and your current --

4 MR. BUSINGER: And I will be happy to be a
5 resource to the committee on any of the issues you
6 encounter going around the country.

7 And if I have to say one thing to take
8 around the country, don't fall for this thing about
9 students not voting in their town, okay? For residence
10 voting purposes, physical presence plus intent to remain
11 indefinitely.

12 I remember in Cambridge one time, they
13 excluded students back in the '70s before this affidavit
14 took effect because the person was taking a vacation. That
15 person is no different than some contract employee who
16 comes to another state, okay, who's only going to be there
17 a short time. And where is that student going to vote?
18 You've got to vote somewhere. Are you going to vote back
19 in your parents' place? What if they moved to Florida from
20 Ohio?

21 MR. HALL: Yes. Thank you.

22 MR. BUSINGER: Then you have no place to
23 vote.

24 MR. HALL: Thank you very much.

25 MR. BUSINGER: Please take that around.

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2 That's one of the craziest notions that students shouldn't
3 be able to vote in the town in which they reside.

4 Thank you.

5 MR. HALL: Thank you.

6 Our next witness is Jonathan Simon --
7 Simmons? Simon.

8 MR. SIMON: Simon.

9 MR. HALL: Simon. Thank you.

10 MR. SIMON: Hi. My name is Jonathan Simon.
11 I'm the executive director of Election Defense Alliance,
12 which is an organization founded in 2006 with the purpose
13 of restoring observable vote counting as the foundation for
14 American democracy.

15 I want to thank the commissioners and the
16 committee for staging this broad-based inquiry. So far, to
17 my view, it hasn't been quite broad based enough. So I
18 want to add something which probably has not been
19 discussed. I wasn't here for the whole morning's
20 proceedings.

21 But the preceding panel was nominally about
22 election protection, and we take a somewhat broader view of
23 election protection. And that comes down to the fact that
24 you can make a lot of things right with elections. But
25 it's all for naught if the security of the counting process

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2 is inadequate or compromised. And the most direct and
3 pernicious way to negate hard-won voting rights is to
4 directly manipulate vote counts.

5 And we have a faith-based counting system in
6 America where the votes, the vast majority of the votes,
7 all but a sprinkling of the votes, are counted in
8 cyberspace, in the pitch dark of cyberspace. And my
9 colleagues and I, our experience with this is that we've
10 been doing election forensics, what we call election
11 forensics, which is trying to verify vote counts by
12 whatever means are available since 2002, and it hasn't been
13 encouraging.

14 You know, we live in a culture where, I
15 think it's become pretty obvious that it's a "just win"
16 culture, "just win, baby," and cheating is in many high-
17 stakes ventures, from sports to high finance to academia,
18 job applications even. It's become somewhat the norm.

19 And the security of cyberspace is also not
20 very commendable at this point. Target, banks, the IMF.
21 What contest, what stakes are higher and what prize greater
22 than control of the American government or state
23 governments in America?

24 And yet we entrust this counting process to
25 private corporations, and the vulnerability of this

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2 counting process should be one of the things that is most
3 directly considered with regard to voting rights.

4 And, again, you know, when I talked to Tyler
5 about the testimony, he asked me to give him a synopsis,
6 and I said somewhat snarkily that three minutes would be a
7 synopsis, and like the other testifiers, I haven't, you
8 know, even broken the surface.

9 But what I do want to get to is the fact
10 that if we don't take very, very serious attention, pay
11 very serious attention to the way votes are counted, then
12 all the other things that we're discussing, access and
13 qualifications, voter ID, can be -- can be really rendered
14 almost useless because the votes, when cast, are not
15 necessarily going to be counted in a way that reflect the
16 voters' will in casting those votes.

17 And where we want to go with this is to have
18 observable vote counting. And there's a certain amount of
19 debate about what observable vote counting means and
20 entails. For some, it's hand counting paper ballots. For
21 others, it's a robust and well-administered audit process,
22 which is what I hope we're on the way to as part of the new
23 legislation here in Massachusetts. Because until now we've
24 had nothing. We've had no audits, no spot checks, zero.
25 And elections that really were anybody's guess as to

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2 whether the numbers that the computers were spitting out
3 reflected the votes that were being put in.

4 And I want to conclude with the fact that we
5 are discussing voting rights, but it's my very deeply held
6 belief that rights come with duties. And that if we want a
7 democracy on the cheap, where convenience rules, and we
8 don't want to really be bothered with the process of
9 counting, we've got it.

10 But the relatively trivial duty, much less
11 burdensome, let's say, than jury duty, to be participants
12 in the vote-counting process, to have hand-counted paper
13 ballots or seriously run audits, at the very least, is
14 something that we should very seriously consider adopting
15 if we believe we deserve a democracy.

16 MR. HALL: I'm sorry. Could you give me the
17 name of your organization again?

18 MR. SIMON: Election Defense Alliance, EDA
19 for short, dot org.

20 And I'd be happy to answer any questions.
21 I'm very well aware that this is not a comfortable topic.
22 We've been banging our heads against the wall for more than
23 a decade. It does seem that America -- you know, our
24 reputation as the beacon of democracy somewhat stands
25 against us in this area, because it becomes very hard to

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2 consider that our vote-counting process is no better than
3 many of those that we would find in the Third World and
4 send in observers and monitors and overturn elections, as
5 in the Ukraine or Kenya or one of those places. Our pride
6 militates against looking at ourselves with that same
7 vision.

8 MR. HALL: So are there any questions from
9 our commissioners?

10 MR. DUNNE: Yes. Mr. Simon, very
11 interesting observation. But tell me, can you give me an
12 example of how you would implement what you described as
13 observable vote-counting process? Who would do it? How
14 would it be done, by what authority?

15 MR. SIMON: Yes. Well, again, there's a
16 great deal of inertia that would have to be overcome,
17 because we've basically adopted with HAVA a fait accompli
18 of computerized vote counting, which seems to jibe with the
19 overall modernization of culture, which now, of course,
20 we're looking at with a bit of a cost/benefit analysis and
21 seeing that a lot of the modernization has led to other
22 problems.

23 But you could have hand-counting of paper
24 ballots. We've done an econometrics study of that. It
25 would require about four hours per voter lifetime to

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2 actually have volunteer hand-counters at all the polls for
3 the federal elections. Minimal federal and -- I'm sorry --
4 federal and statewide elections.

5 You could also have an audit system that
6 takes the problem of ballot custody very much to heart and
7 is willing to implement that audit, that sampling of
8 ballots or sampling of precincts, and human counting to
9 verify the count from the machines, but does it on election
10 night before those ballots leave and exit the chain of
11 custody and could be stored or substituted for in any
12 number of ways.

13 So an audit bill that is risk sensitive,
14 which I believe is, you know, one of the ones that has been
15 proposed -- there are several architects of that
16 approach -- really minimizes the amount of labor involved
17 in the process.

18 And I should say, you know, this is a lot of
19 topic to handle in a very short space. I have written a
20 book. I'd be very happy -- I brought some with me -- to
21 make it available on a complementary basis to each of the
22 commissioners. There's -- you know, there's bread and
23 cheese upon the shelf, and there's a lot to be found in
24 there that I wouldn't have time for today.

25 There are many in election integrity who

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2 bristle at the idea of audits, feel that that is false
3 reassurance. I've gradually come around to the position
4 that if we're not going to see hand-counted paper ballots,
5 if that's too much of a leap culturally, in most places in
6 America, that we should at least take care to have a
7 verification process that's a hell of a lot better than
8 what we have now.

9 MR. DUNNE: Thank you very much.

10 MR. SIMON: You're welcome.

11 MR. HALL: Any additional questions from our
12 commissioners?

13 I thank you, Mr. Simon. And I believe on
14 behalf of myself and the other commissioners, we'd
15 certainly appreciate receiving a copy of your book. And
16 for yourself and any other of our witnesses, please feel
17 free to supplement any of your testimony with written
18 testimony that we'll continue to receive even after this
19 hearing today.

20 MR. SIMON: Thanks very much. And the book
21 is called Code Red, so you'll be able to identify it. And
22 it does contain within it, by way of appendices, a lot of
23 factual studies, evidentiary studies, forensic studies that
24 could help shed some light on these issues.

25 MR. HALL: Thank you very much.

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2 So right now we have reached a breaking
3 point for the day, for now. We'll be taking a lunch break
4 from 12:30 to 1:30, at which point we will reconvene, and
5 from 1:30 to 2:10 -- okay. Sure. That's a good idea.

6 It may make sense at this point, there is a
7 second open testimony panel this afternoon from 2:10 to
8 3:30, but I think some of the commissioners have raised a
9 concern around whether or not there is somebody that may
10 need to testify for which coming back in the afternoon is
11 too much of a burden or difficulty to overcome, recognizing
12 that we'll be back in the afternoon and there will be this
13 opportunity. But if that is the case, I think we can make
14 one exception.

15 MS. HORTON: Have you guys all signed in?

16 UNIDENTIFIED SPEAKER: Yes.

17 MS. HORTON: Okay.

18 MR. FERRITER: I'd like to take one minute
19 of your time. Is that okay?

20 MR. HALL: That's fine.

21 MR. FERRITER: Thank you very much. Mike
22 Ferriter. I'm also with Election Defense Alliance. And
23 I'm very pleased that you're taking the time to listen to
24 me just for a second.

25 I just wanted to mention, I've worked with

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2 Jonathan for a long time. The depth of the knowledge that
3 he has is incredible. The book that you're going to read
4 will amaze you and frighten you, and it will also point to
5 the fact -- the reason I wanted to mention this is because
6 five other nations in the world have decided to not use
7 computers to count ballots, because, as most election-
8 counting specialists will tell you, anything electric can
9 be manipulated. It doesn't matter how trustworthy you are.
10 That's why those five other nations said, "We're going back
11 to paper ballots." They do it now. It's cost effective.
12 It's efficient. They get the numbers done by the next day.
13 Thank you.

14 MR. HALL: Thank you very much for your
15 testimony. Appreciate it.

16 Okay. So at this time, we will break for
17 the afternoon, and reconvene at -- promptly at 1:30.
18 There'll be a panel immediately at 1:30, and then at 2:10,
19 we'll have remaining open testimony. Thank you very much.

20 (Recess: 12:36 p.m. to 1:31 p.m.)

21 MR. HALL: Okay. Good afternoon, everyone,
22 and welcome back. We are reconvening the National
23 Commission on Voting Rights, New England.

24 We'll begin with a third panel which --
25 okay. So our third panel, which will run from 1:30 to 2:10

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2 with each witness testifying for approximately five
3 minutes, and then a 20-minute question-and-answer period
4 from our commissioners, will be individuals talking about
5 various aspects of the voter registration, voter
6 participation, election administration barriers to access
7 at the polls, experiences as a poll worker, and a
8 grassroots-organizing perspective of voter registration.

9 So our first panel consists of Kate Bowden
10 from the Rhode Island Disability Law Center; Elainy Mata
11 from Suffolk University, a student here; and Sandra Klautz,
12 who is with Grassroots -- Grassroots SW Boston.

13 So if you all could please come forward.
14 And, again, testimony is limited to five minutes. Keep an
15 eye for our timekeeper, who will give you the three-minute
16 sign and the one-minute sign and the stop sign. Thank you.
17 Please proceed.

18 MS. BOWDEN: Good afternoon. My name is
19 Kate Bowden. I'm a lawyer with the Rhode Island Disability
20 Law Center. Thank you very much for inviting me to
21 testify.

22 As I said, I'm here on behalf of the Rhode
23 Island Disability Law Center. We are a federally funded,
24 nonprofit law office designated as Rhode Island's
25 protection and advocacy system to advocate for people who

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2 have disabilities. With our grant funding under the Help
3 America Vote Act, we work to ensure that people with
4 disabilities participate in the electoral process.

5 Turning to voting and the landscape in Rhode
6 Island, I will start with photo ID. Studies have shown
7 that photo ID requirements can impose a barrier to all
8 people, including people with disabilities. We worked with
9 many organizations to oppose voter ID legislation in Rhode
10 Island, and we were successful for a number of years, but
11 then it did pass. This year is the first year with a
12 strict photo requirement. So we will be monitoring the
13 impact through our voting rights hotline as well as through
14 outreach.

15 We have noticed that discrimination can be a
16 barrier at the polls. We are aware of one serious incident
17 that occurred. Following the general election in November
18 of 2010, we learned of problems in the small town near the
19 state long-term hospital. As patients from the hospital
20 were arriving to vote, these patients had obvious physical
21 disabilities. Political party watchers reportedly
22 intimidated the voters and questioned their mental capacity
23 to vote. The actions of the party watchers caused the poll
24 workers to commence to treat these voters with disabilities
25 differently than they were treating other voters. After

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2 investigation, the Board of Elections agreed with us and
3 found that the conduct that occurred was egregious.

4 Thereafter, we advocated for the Board of
5 Elections to promulgate regulations concerning permissible
6 conduct at the polls, which they did. The regulations
7 state that only challenges based on identity can occur at
8 the polls.

9 We also represented two forensic patients
10 from the state psychiatric hospital. There we prevailed at
11 the Board of Elections and preserved our clients' right to
12 vote. Following that matter, the Board of Elections
13 updated its voter registration form in order to update and
14 clarify Rhode Island's competency requirement.

15 Physical access can be a barrier at the
16 polls. Luckily in Rhode Island, we have had many fewer
17 problems with physical access. The kinds of things that we
18 see are problems with lack of adequate signage to show
19 where the accessible parking would be or lack of adequate
20 signage to show the path of travel to the polling place.

21 We work collaboratively with state agencies
22 to troubleshoot these problems through our voting rights
23 hotline, we negotiate for changes on the spot where we can,
24 and we file complaints when necessary. We have advocated
25 for Rhode Island to update its standards for choosing

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2 accessible polling places, and we expect to monitor that
3 process.

4 Problems with technology can be a barrier
5 for people. Rhode Island uses the AutoMARK voting system
6 for its accessible voting equipment. When this program
7 first rolled out in 2006, there were many problems,
8 problems with malfunctioning with the equipment as well as
9 with adequate -- inadequate poll worker training. Excuse
10 me.

11 So we filed a number of complaints on these
12 issues, and the Board of Elections responded by creating a
13 hands-on training program which better assists poll workers
14 with understanding the technology. And they also
15 implemented -- implemented a protocol whereby poll workers
16 are required to test the machines on site on election day.
17 And with these procedures, we have seen the number of
18 complaints -- reported problems reduced significantly.

19 On the bright side in Rhode Island, the mail
20 balloting system has been broadened. So now anyone who may
21 not be able to get to the polls is allowed to vote by mail.
22 So this helps people with voting.

23 Also, my office has worked to ensure that
24 information about best practices on working with people
25 with disabilities is in the poll worker training, and this

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2 has been a good thing.

3 So in closing, I would just like to say that
4 my agency will support any kind of policy or legislation or
5 reform that would enhance opportunities for electoral
6 participation for voters with disabilities, and we see
7 those as including modern standards for the selection of
8 accessible polling places, the opportunity for early
9 voting, online voter registration, and a robust list of IDs
10 that would satisfy the requirements for proving identity at
11 the polls.

12 Thank you for the opportunity to testify
13 before you, and I would be happy to answer any questions
14 you may have.

15 MR. DUNNE: Just give me that last point,
16 robust? What was that?

17 MS. BOWDEN: A robust list of identification
18 that one could use to prove identity at the polls.

19 MR. DUNNE: Thank you very much.

20 MR. HALL: Ms. Bowden, you mentioned that
21 your organization would support any policy around
22 modernization efforts. Is there -- are you aware of the
23 current status of any pending legislation in your state?

24 MS. BOWDEN: My understanding is that the
25 Board of Elections is open to and planning to update the

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2 standards. I think by federal law, states are supposed to
3 have standards for choosing polling places, and Rhode
4 Island's are outdated. So they will be -- I understand
5 they will be working on that issue.

6 MR. HALL: Okay. Great. Thank you. And is
7 your program, is it an LSC-funded program?

8 MS. BOWDEN: We are federally funded under
9 federal legislation that's referred to as the Protection
10 and Advocacy System. So there's an agency like mine in
11 every state. I think here in Boston they're called the
12 Disability Law Center. Each one of us is incorporated, and
13 they function differently in different states.

14 MR. HALL: Okay.

15 MS. WRIGHT: I have a question about the
16 Rhode Island photo ID law. Now, my recollection about the
17 law was that I thought it contained at least some sort of
18 backup provision for persons who don't have the actual ID
19 that the law calls for. So I just -- I'd be interested in
20 having you lay that out in a little more detail.

21 MS. BOWDEN: The way it currently works in
22 Rhode Island is that if a person arrives to vote and they
23 do not have a photo ID, they would vote by a provisional
24 ballot. So that ballot would not automatically be counted.
25 The provisional ballots then go back to the local

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2 municipality, and if the signature on the provisional
3 ballot appears to match the signature of the person when
4 they registered, then the ballot is supposed to be kept.

5 MS. WRIGHT: Okay. I'd also be interested
6 in knowing what steps, if any, did Rhode Island take to
7 expand the availability of photo ID for people who might
8 not have one?

9 MS. BOWDEN: The secretary -- the
10 legislation requires that the state provide a free ID if a
11 person does not have one that qualifies. And the Secretary
12 of State's office is responsible for that program.

13 MS. WRIGHT: How did you feel about the
14 extent of educational opportunities or outreach that was
15 conducted to make that -- you know, to make people aware of
16 the new requirement and of the possibilities for how you --
17 how you go about getting an ID?

18 MS. BOWDEN: I know that efforts were made,
19 and I'm aware of some of the efforts. I don't know whether
20 it was robust enough, and I think this year will tell the
21 story, because this is the year when the requirement is at
22 its strictest.

23 I will add that there is legislation pending
24 this session, one, to repeal the legislation all together,
25 and another that they're referring to as the so-called

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2 freeze, which would include some forms of ID that are
3 non-photo, such as a Social Security card or a birth
4 certificate. We're not clear whether either of those will
5 get any traction this season.

6 MS. WRIGHT: Okay. Thanks.

7 MS. COBB: You said that the poll workers
8 treated the voters with disabilities differently. Can you
9 elaborate on what that difference was?

10 MS. BOWDEN: Reportedly what happened was --
11 so these -- these folks were people who are very physically
12 disabled from a local hospital, and the party watchers were
13 scrutinizing them, looking them up and down, trying to get
14 close to them, questioning whether they could have the
15 mental capacity to vote. And my understanding is that the
16 poll workers became very sort of flustered by the
17 atmosphere that was created, and they started saying things
18 such as "Do you know why you're here today?" Which is
19 just -- you can't ask that unless you're asking everyone
20 else. It's discriminatory.

21 But we were pleased with the state's
22 response to the situation.

23 MR. HALL: Thank you. And, Ms. Bowden, if
24 you don't mind, maybe just stay for the rest of the panel,
25 in case some other questions may be able to be answered

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2 from the other panelists or what some of the other
3 panelists say may influence -- or you may have some input
4 on. Thank you.

5 Either, I believe -- Ms. Klautz?

6 MS. KAUTZ: It's Kautz.

7 MR. HALL: Okay. I said it the wrong the
8 first time. Kautz. You can go ahead. And Elaine? Okay,
9 go ahead.

10 MS. KAUTZ: I'm Sandy Kautz. I live in
11 Southwest Boston, Roslindale part of Boston. I've been
12 active in progressive causes since a teenager, but since
13 2004, I've taken on some leadership and organizing roles in
14 our community through local and national campaigns for
15 president, right down to city council.

16 And as a result of this process, I've formed
17 a neighborhood coalition I call Grassroots Southwest
18 Boston. About a thousand people engage with me through
19 e-mail and outreach to get information about elections,
20 about when they can register to vote, and engagement in our
21 election process. I'm also very active in registering
22 voters and enabling people to get the information they
23 need.

24 During regular-scheduled elections and
25 during special elections, I've managed campaign

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2 headquarters for various candidates, election-day
3 storefronts, and then setting up election-day command
4 centers out of my home, mobilizing volunteers to do this.

5 I wanted to let everyone know that getting
6 out the vote on election day takes an army, an absolute
7 army of people. A lot of volunteers are needed to knock on
8 doors, to call people, for various reasons. One is many
9 people do not know there's an election. Unless it's a
10 national election, which is inescapable from every kind of
11 media perspective, people don't know that there is an
12 election going on.

13 In Massachusetts, we had many special
14 elections in the last year or two, and the voter turnout
15 was terrible. Other than having those little sandwich
16 boards on the corners of streets, most -- most communities
17 don't engage or tell people there's an election.

18 During our mayoral election last year in
19 Boston, the local papers didn't even engage this field of
20 12 people until September, and then people were shocked
21 about what day or when they were going to vote and for how
22 many people.

23 There's a crucial lack of information and a
24 lack of outreach for letting people know that there's an
25 election going on.

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2 I understand my friends at MassVOTE and
3 Common Cause described very much the problems in voter
4 registration in Massachusetts, which is very cumbersome and
5 old fashioned. In a state where people move through
6 academic and nonacademic programs, they're moving around a
7 lot, our rules make people jump through hoops at odd
8 registration dates, and until recently, you had to have a
9 card stock that can only be obtained through the city
10 election department and you had to mail that in. The
11 innovation has been to get an online printout which you
12 mail in.

13 The same goes for absentee voting. I get
14 calls from people who have a job such as medical emergency
15 people, religious relief organizations, that don't have
16 regular schedules. So they can't say when an emergency
17 comes up or if a family has a problem, there are so many
18 reasons why somebody can't vote that Tuesday. And in order
19 to get that absentee ballot in Massachusetts, it's a long
20 wait or it's a cumbersome process which is not understood
21 and has to happen in two parts. So because my day job is
22 right across from the city election department, I do a lot
23 of running back and forth for people to get -- get their
24 absentee ballots.

25 Also, a lot of people at the polls show up

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2 thinking that they are registered when they in fact are not
3 registered. If they didn't vote in the last election, they
4 might be on an inactive list. How you get on that inactive
5 list is kind of a mystery. So people show up thinking that
6 they can vote, and they can't.

7 Also, I just wanted to say briefly about
8 young people's engagement. I understood in the last couple
9 of years for the first time that civics class disappeared
10 sometime, which is a great explanation for the
11 disengagement of most young voters who don't understand the
12 basic rights and responsibilities of citizenship in
13 registering to vote and what a gift it is in order to vote.

14 I just wanted to say that democracy is
15 complicated, that all kinds of procedures happen way before
16 we get to the voting booth. There are caucus process,
17 conventions, all kinds of things to bring our candidates to
18 the voting booth. The end of line in the democracy is that
19 voting right. And it should be made easy, and it should be
20 obvious when the time is to vote. By more aggressive
21 action to make people aware that participation is the
22 absolute key to a democracy, that we participate, that is
23 what it's supposed to be about.

24 Thank you for listening.

25 MR. HALL: Thank you.

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2 Any questions from our commissioners?

3 MR. WILLIAMS: I just have a quick question.

4 You -- I think you -- first of all, thank you for your
5 volunteer efforts in doing what you've been doing. I don't
6 want to mispronounce it -- Klautz?

7 MS. KAUTZ: Kautz.

8 MR. WILLIAMS: Okay. I'll stay with Sandra.

9 Ms. Sandra, question: You've done a great
10 job in outlining what I would consider the problems or the
11 barriers. Would you spent a few minutes, if you can, just
12 talking about what would you recommend to us to improve
13 some of those items that you highlighted?14 MS. KAUTZ: Well, it is -- I remember --
15 well, first of all, the civics part is I think something
16 that's very actionable in schools so that you have a real
17 foundation in schools, a requirement that -- to teach young
18 people what -- that democracy is a gift of participation.
19 It is not something that you fling around, that it's
20 something you take part in.21 The publicity piece for knowing when to vote
22 is -- I'm not sure can be legislated, but to make --23 MR. WILLIAMS: It can be more increased, at
24 least.

25 MS. KAUTZ: Yes. I mean it's really -- some

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2 of us have bought -- paid to buy our own banners to hang up
3 in our streets, on street corners, you know, to say "Vote
4 Today," because there aren't any. I mean these are simple,
5 pretty simple things, to have giant banners, to enable the
6 media, the press, to say and impress upon them somehow that
7 they should be telling people when they're going to be
8 voting.

9 And in special elections, it's a nightmare.
10 There's no -- people don't know that's going to happen.
11 They think they vote in November. Or maybe they remember
12 that they're going to vote in a primary in the springtime.

13 But in a national election year, these are
14 things that the media can't stop talking about. But in a
15 nonelection -- national election year, a non-presidential
16 year, everyone is aware that the voting participation goes
17 way down. So even if you are lucky enough to know how to
18 register to vote and don't live in a state where you have
19 repressive voting problems, in a state like Massachusetts,
20 you would think this is -- this is going to be easy. It's
21 really not. And ...

22 MR. WILLIAMS: Thank you.

23 MS. KAUTZ: All right.

24 MR. HALL: Any additional questions?

25 Okay. Thank you.

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2 So, Elaine Mata, and I'll just briefly
3 acknowledge our fourth panelist, Mr. Avi Green from
4 Scholars Strategy Network. So after Elaine.

5 MS. MATA: So my name's Elaine Mata, and I'm
6 a student here, a sophomore here at Suffolk University.
7 And I have participated in being a poll worker for the 2012
8 presidential election and the mayoral primary election here
9 at city hall. I had the opportunity -- the opportunity
10 came to me in Class Government 120, taught by Rachael Cobb,
11 and she encouraged all of her students to be a poll worker,
12 and we were all located in different areas within Boston.

13 For -- I remember that I had to go to a
14 training and -- in city hall in this very bleak room with
15 cement walls with bleachers going so high, taller than me,
16 and I'm only five two, and we -- there were about 50 of us,
17 and we had to listen to one man over on the ground floor
18 yelling to us, telling us what to do. It was a three-hour
19 training, and I barely got anything out of it.

20 So when I went to the day -- November 4th, I
21 did not know much until I actually was put on the floor and
22 I actually had to do things. And even then I had to
23 constantly ask questions about what I had to do.

24 And that day -- and I'll first talk about
25 the 2012 presidential election. That day I -- as great of

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2 an experience as it was, I did see some difficulties that I
3 didn't think I would come across.

4 First off, there was -- I was located in
5 Roxbury, which is very far from me, because I was living on
6 campus over on Somerset Street. And they located me there
7 because I am a Hispanic and I am a Spanish speaker, and
8 they needed translators. So it made sense. But because it
9 was so far, it was difficult for me to get there. So I had
10 to spend my own money to go there, and it took a while, and
11 I had to be there at 6:00 a.m., so I had to get up at 4:00
12 a.m. to make sure I was ready.

13 I got there. There were already protestors
14 across the street, but I understand the buffer. I get
15 there. There was this disorganization, and there were
16 people arguing about getting in already and wanting to
17 vote, and there was a little bit of hostility towards those
18 people who already wanted to get in because it was such a
19 cold day.

20 When we started letting people in, there was
21 a long line. There were four tables, and it depended on
22 what area of the city you were in. And they made -- the
23 first job that I had to do was walk up and down the lines
24 to tell them which table they're supposed to go to, because
25 they didn't know. And it was very difficult for me to tell

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2 them that they weren't even in the right polling location.

3 And I had this book this thick that I had to search through
4 which address they lived in and tell them which table to go
5 to, and also where they really belonged, in which polling
6 location.

7 I also saw that there were people -- there
8 were handicapped people that did need assistance in
9 their -- in their booth, and I was always the one being
10 sent to help them. I did not give -- tell them what to
11 vote for. I just told them what each question said, and I
12 stepped away and let them do it. But the fact that I was
13 the only one doing so was a bit disappointing.

14 Also, the lack of translators there. There
15 were not just Hispanic speakers, there were Cape Verdean
16 speakers, there were Chinese speakers, and I couldn't help
17 them. They could barely speak English. But the lack of
18 translators baffled me, because it didn't make sense that
19 they couldn't have help.

20 And with the provisional ballots, there were
21 a lot of people that were listed as inactive or they had to
22 show ID. People either didn't drive or didn't have a
23 passport because they didn't want to travel. And it was
24 difficult to turn them away or to tell them that they
25 couldn't vote that day or that their vote might not even

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2 count because they had to fill out a different form. And I
3 had to turn away a lot of people.

4 And at last for the mayoral primary, there
5 was barely anybody there. So as compared to the 2012
6 election, where there was a huge turnout and everybody was
7 complaining about the amount of people there, and then to
8 the mayoral primary, where nobody showed up, and it was
9 complaints about people not showing up, there's this mixed
10 message here of whether we're ready for a big national
11 turnout and whether we should have it.

12 And I think mobilization is key, and I
13 commend Suffolk, because they harassed me to the ground for
14 registering to vote. And I am from Peabody, Massachusetts,
15 so I had to come register here to vote in the City of
16 Boston, which I did. I'm a government major.

17 So I do think that there are -- there are
18 improvements -- there need to be improvements within our
19 election days, with voter registration as well, and I'll
20 answer any questions that you guys have.

21 MR. HALL: Thank you, Ms. Mata.

22 Any questions from our commissioners?

23 MR. WILLIAMS: May I ask, where were you in
24 Roxbury?

25 MS. MATA: I was located I think at the Boys

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2 & Girls Club or the YMCA. I don't remember.

3 MR. WILLIAMS: Do you remember what street?

4 MS. MATA: I do not.

5 MR. WILLIAMS: Okay. Because that would be
6 helpful to know.

7 Secondly, you raised some very, very
8 interesting components in terms of your experience, and you
9 said that there was a high turnout at the national
10 election, but it was lower in the mayoral, so that means
11 you worked in both?

12 MS. MATA: Yes, sir.

13 MR. WILLIAMS: Same location?

14 MS. MATA: No. I was located at city hall
15 for the mayoral primary election.

16 MR. WILLIAMS: Okay. So the one that you --
17 where there was a high turnout, that was in?

18 MS. MATA: Roxbury.

19 MR. WILLIAMS: In Roxbury.

20 MS. MATA: Yes.

21 MR. WILLIAMS: Because they had problems
22 there. But when you worked at City Hall, there were less
23 problems --

24 MS. MATA: Because there were less people.

25 MR. WILLIAMS: Okay. So is there any

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2 connection between the high turnout/low turnout that you
3 think you can surmise from your experience?

4 MS. MATA: Connections as in? I'm sorry.

5 MR. WILLIAMS: In other words, why? Help me
6 understand why. Why was there less people voting in the
7 mayoral versus the presidential, from your experience or
8 observations?

9 MS. MATA: Well, I didn't think that the
10 mayoral primary was advertised enough, I mean just going
11 out to vote in general. I know the debate was -- the
12 mayoral debate was here at Suffolk, which I did participate
13 in, and Twitter is a strong thing. So is Facebook, and so
14 is every other social media. And they tried too. But
15 young -- I mean they don't really know what's going on, and
16 I do agree that they don't know when the elections are, and
17 I think that's why, they don't -- or they just don't think
18 it's that big of an election.

19 MR. WILLIAMS: So social media is not being
20 utilized to reach that audience; is that what you're
21 suggesting?

22 MS. MATA: I'm sorry?

23 MR. WILLIAMS: That social media, Twitter,
24 Facebook, are not being utilized in order to reach that
25 segment --

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2 MS. MATA: Not enough for these small
3 elections, especially here with the mayor, Mayor Tom
4 Menino, leaving and somebody new is coming in. I just
5 don't think people thought it mattered that much for the
6 primary.

7 Unfortunately, I couldn't work for the main
8 election.

9 MR. WILLIAMS: Thank you.

10 MR. HALL: Any additional questions?

11 MS. WRIGHT: Yeah. So I'm sorry that you
12 found the poll worker training to be not sufficient, and
13 I'd like to just ask a few more questions about that.

14 You said it was three hours, and just an
15 individual sort of talking to people?

16 MS. MATA: Yes.

17 MS. WRIGHT: Were there written materials
18 that you got?

19 MS. MATA: We did get written materials of
20 what we expected for that day. We got a packet of what we
21 were to expect that day. We also got to see what the
22 ballot would look like, and that's about it. And he would
23 show us the machines, but because I was sitting so up, so
24 high up, I could barely -- only when I was leaving.

25 But when being trained for the mayoral

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2 primary election, it was a smaller room with a lot less
3 people. But it was still one person lecturing, and it's
4 the same deal, just a smaller room, less people.

5 I just -- I agree that I think if we got
6 more hands-on training of how to use the machines, what
7 sort of books are we looking at when it comes to addresses,
8 it'll help me more. Because I learned more being on the
9 floor and just putting -- getting everything in my face
10 rather than having that training.

11 MS. WRIGHT: Okay. Thanks.

12 MR. HALL: Would you do it again?

13 MS. MATA: Of course I'll do it again.

14 MR. HALL: Good. And thank you.

15 All right. If there are no further
16 questions, we'll go to Avi Green.

17 MR. GREEN: Thanks so much for having me,
18 and I want to apologize for coming in late. I was flying
19 in from out of town.

20 So I'll just start, first of all, by saying
21 that I'm deeply impressed by everybody else I'm sitting
22 here with on the panel, and especially you, Elaine.

23 So my name is Avi Green. I work at the
24 Scholars Strategy Network, where I co-chair the task force
25 on protecting and expanding the right to vote. I was the

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2 executive director of MassVOTE for six years from 2012 --
3 from 2006 to 2012, when I left the organization with more
4 capable hands than mine, and I serve on the Massachusetts
5 State Ballot Law Commission as well.

6 I'll keep my comments really brief, but I
7 think Massachusetts is a state and part of a nation where
8 differences drive disparities. Differences between
9 elections, differences between localities, and
10 difference -- and racial and economic differences and
11 inequalities drive deep disparities.

12 So first of all, there's major differences
13 between elections. The amount of resources available to
14 every city and town for different elections varies, and
15 it's simply impossible to maintain the level of turnout and
16 participation that you'd like to when a municipality might
17 experience 12 elections over the course of three years,
18 which often happens, given special elections, special
19 primaries, local preliminaries, local general elections,
20 presidential primaries, state primaries on a different date
21 from the presidential, and then the presidential. That
22 could easily happen. Plus you might have a few vacancies,
23 which would be additional special primaries and special
24 general.

25 So the City of Boston has had over 20

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2 elections in the last three years in different parts of the
3 city. Some -- and some individual citizens living in a
4 single neighborhood might go through many elections, as
5 many as ten elections, over the course of two years easily.
6 So there's no surprise that turnout is a lot lower in some
7 elections that really matter.

8 Second disparity is the disparity between --
9 between localities. So elections are funded partially at
10 the state level but partially at the local level, and local
11 city and town officials run those elections. There's vast
12 disparities, and particularly in the cities and in our
13 poorest towns, there is just not enough resource for
14 elections, and the state regulates and reimburses, but does
15 not lift the bar.

16 For example, in the area of poll worker
17 training, unlike other states, you can't -- you can't take
18 the poll worker training online. There's no same training
19 for the whole state. You can't watch films; you can't be
20 quizzed. You know, all those resources that could be made
21 available to people across the whole state aren't.

22 Where do those two disparities leave us?
23 They leave us actually in a situation where because our
24 lowest -- our communities with the least resources for
25 running elections are also home to our highest amount of

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2 diversity, we have some extreme disparities in voter
3 turnout. Massachusetts -- and I would just say that those
4 disparities in voter turnout have become a national
5 problem.

6 The -- Massachusetts is a relatively wealthy
7 and highly educated state, and so as a result, we have
8 relatively high levels of voter participation. However,
9 because we tolerate massive economic inequality and racial
10 inequality in terms of wealth and educational outcomes and
11 also because of those election administration disparities,
12 we see really low turnout again and again in some of our
13 communities of color across the state.

14 And it's not just immoral, it's also
15 impacting voters in other parts of the state. Chief
16 Justice John Roberts, for example, brought up Massachusetts
17 as an example of a state with really low -- with a really
18 high -- excuse me -- disparity between the turnout of white
19 voters versus the turnout of black voters, and he said,
20 well, if this is tolerable in Massachusetts, because
21 Massachusetts is not recognized under the Voting Rights Act
22 as requiring special preclearance, then why should Texas or
23 Mississippi be required?

24 And our -- our politicians in the state were
25 forced to argue that, well, the census data that was

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2 involved was slight -- was not quite specific enough, and
3 we were within the margin of error with Mississippi.

4 Mississippi is one of the poorest states in
5 the union, and -- in a state -- in a nation in which we
6 know that economics drives voter participation, and we're
7 one of the wealthiest states, then what that means is that
8 we are tolerating absolutely abysmal voter education and
9 absolutely abysmal voting administration.

10 Thank you.

11 MR. HALL: Thank you.

12 Any questions for Mr. Green from our
13 commissioners?

14 MR. DUNNE: If you have a minute. Do we
15 have any time left?

16 MR. HALL: Oh, yeah. We have plenty of
17 time. We have 20 minutes, actually, for --

18 MR. DUNNE: Ms. Mata.

19 MS. MATA: Yes.

20 MR. DUNNE: You touched on something which
21 we've heard kind of recurring in an abject sort of way.
22 When you went to the polls to open them up at six o'clock
23 in the morning, you said that there were a lot of voters
24 waiting and there were also crowds of interested people.
25 Are these people who were going to be challenging voters?

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2 I'm concerned that we hear that there are, I almost
3 characterize it as vigilantes, citizens who really want to
4 challenge the right of others to vote, although they don't
5 have any really official role. Are we seeing much of that
6 from your standpoint?

7 MS. MATA: When I participated in the 2012
8 election, I know that there's a buffer zone that protestors
9 cannot be within X amount of feet in the polling location.
10 They did not challenge anybody. They just stayed in their
11 way and said what they wanted to say. And of course with
12 being Obama versus Romney, they were very one-sided. So
13 especially within that area, within Roxbury.

14 But the people that -- the people that
15 wanted to get in were people that had work at 6:30 and they
16 just wanted to go in, vote, and get out. And of course we
17 tried to accommodate, and I told them, you know, "I know
18 it's cold. At least you can wait in the lobby."

19 But there were people -- and I noticed that
20 I was the youngest one there. There were people older than
21 me telling them that, "No, you need to stay outside." So
22 they were a bit rude. But nobody challenged them or swayed
23 them from who they wanted to vote for.

24 MR. DUNNE: All right. Thank you.

25 MR. HALL: And I stand corrected. I said we

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2 have 20 minutes for question and answer. But we've been
3 doing the question and answer along the way. So I think we
4 have closer to three minutes.

5 MS. WRIGHT: Yeah. For Avi or for anybody,
6 actually, picking up on the issue that we don't have
7 uniform poll worker training, that we don't have training
8 online that people can access for refresher, have there
9 been legislative recommendations, has there been
10 legislation introduced over the past several years that
11 would make some improvements and changes, and if not, is
12 that something that ought to be considered?

13 MR. GREEN: There's been a couple of pieces
14 of legislation that have passed, mainly in the middle part
15 of the last decade. There was legislation that passed that
16 allowed for 16- and 17-year-olds to become poll workers and
17 that allowed for poll workers to come from communities
18 outside of the actual municipality so that you didn't have
19 to be a Brookline resident to run a Brookline election.
20 Those were positive steps forward. And also the
21 Massachusetts Voters Bill of Rights was a positive step
22 forward.

23 But I think that most of the things that
24 would be required to improve voters -- to improve the
25 experience of poll workers, they certainly could be done by

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2 legislation, and occasionally you see some legislation, but
3 a lot of this poll worker stuff rests in the hands of the
4 Secretary of State, and if the Secretary chose to exert
5 greater leadership -- I think that in a lot of other
6 states, you haven't needed statewide legislation for a
7 Secretary who already regulates how poll workers would be
8 trained by the municipalities to say, "Not only am I
9 regulating it, but I'm going to go ahead and promulgate a
10 set of free tools that you can all use." So that could be
11 legislation. It -- you shouldn't have to.

12 MS. WRIGHT: Okay.

13 MR. HALL: Please go ahead.

14 MS. BOWDEN: This is Kate Bowden.

15 Rhode Island, as you all know, is very
16 small. We have under 600 polling places, and 3500 poll
17 workers. We do have a uniform poll worker training
18 program. All of the poll workers are trained by the Board
19 of Elections. It's the same training, and I think we've
20 benefitted from that.

21 MR. GREEN: Can I add one thing?

22 MS. WRIGHT: Sure.

23 MR. GREEN: The only other thing that I'd
24 add, and I've served as a poll worker in Boston a few times
25 and helped the city, along with Professor Cobb, in revising

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2 their poll worker training several years ago. The City of
3 Boston has a particularly different problem with attracting
4 and retaining good poll workers, which is that it has on
5 average the smallest precinct size in the state of
6 Massachusetts, because it's grandfathered out of
7 participating in the decennial reprecincting. And what
8 that means is it needs more personnel per location, and
9 that means that the selectivity of that personnel is less
10 rigorous and that the city has its hands full simply
11 training the 2,000 people they need instead of training,
12 say, 1400 really excellent people.

13 MS. KAUTZ: I just wanted to underscore
14 the -- my observations of chaos in the polls and poll
15 workers over time. That's part of the election day
16 procedure when we have a bunch of volunteers for every
17 campaign is to respond to the different polling locations
18 because of chaos and confusion by people who are confused
19 by the books, are confused by what they're looking up, what
20 does inactive mean, they have to ask a few people what's
21 inactive, what's a provisional ballot. We've seen all of
22 that. So I understood score the -- that point.

23 MS. MATA: I just think that it'd be great
24 if we had more younger poll workers. Because me being the
25 only -- the only two times that I've served as a poll

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2 worker, I was the youngest one, and it's --

3 MR. GREEN: Was it close?

4 MS. MATA: No. Do you mean close as in age?

5 MR. GREEN: Yes.

6 MS. MATA: No. But so I would really -- I
7 mean I think with more participation with younger poll
8 workers, I think there'll be more participation in voting.
9 And showing them the background and showing them the behind
10 the scenes and showing them what it really takes to be part
11 of this whole voting process, it will encourage them to
12 want to vote and actually be part of that process, not just
13 being a poll worker, but being a voter. And I think if we
14 really mobilize the young people between ages 18 through
15 24, and college students and all, and tell them that it is
16 a good opportunity to work as a poll worker, and you get
17 paid, it's -- I really think that it's going to increase
18 voter participation if they see how it all happens
19 firsthand.

20 MR. WILLIAMS: Mr. Green, you made a comment
21 in your presentation that there was a clear demarcation in
22 terms of the wealth and the education of Massachusetts
23 voters and a clear distinction that there was a low turnout
24 in people of color, I think the term that you used. What
25 recommendations would you present to the commission in

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2 terms of what would reverse that trend or to increase the
3 low people-of-color turnout?

4 MR. GREEN: Sure. So I guess I would start
5 by saying that -- this is going to sound like an overly
6 simplistic comment, but it's incredibly important at the
7 beginning of thinking about this. Obviously all people of
8 color are different from each other, and even if you look
9 at subgroups like African-Americans, Latinos, and Asian
10 Americans, each of those communities face different
11 challenges.

12 That said, the first thing that I would look
13 at is the issue that about 1 million people in
14 Massachusetts need to register to vote or need to upgrade
15 their -- update their voter registration at any given
16 moment, and that group is much more diverse than the group
17 of people who already have their registration up to date.
18 And that's largely because they are younger and because
19 they are poorer, because they involve more people who are
20 renters and therefore have moved to a new place.

21 About 600,000 people in our state move to a
22 new home each year; about 100,000 people turn 18, and
23 that's a lot -- that's an extremely diverse 100,000 people.
24 And 100,000 people move to our state from other states.
25 And of course since those 800,000 people -- oh, and 25,000

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2 people become new citizens. So, but of course that 825,000
3 people are not registered effectively each year, so there's
4 a backlog that moves over from year to year.

5 What could help? Extremely efficient voter
6 registration, including full implementation of the Motor
7 Voter Act, not just for its current agencies, but for more
8 agencies. And also for agencies that are moving their
9 services online, voter registration needs to seamlessly
10 move online as well so that if you can now -- and I should
11 also say by telephone. That is, if you can apply for
12 unemployment insurance over the phone, well, I'm really
13 glad. It saves money, and it works efficiently. But it's
14 taken some of the wind out of the sails of the Motor Voter
15 Registration Act, because people are going to the office
16 less. So that enhanced voter registration would be the
17 first thing.

18 And I should say, of the voter registration
19 tools, the one that's actually got the best track record --
20 online registration is very promising, but it's very new.
21 The one that has the real track record is election-day
22 registration, because that means that the criteria to vote
23 is are you a citizen over the age of 18. And when that
24 happens, get out the vote efforts are much more vibrant,
25 and the whole community is brought in, and disparities in

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2 voting are decreased. It really has a great impact on not
3 just bringing out low-income Americans, bringing out young
4 Americans, African-Americans, Latinos. It's a really good
5 measure.

6 MR. HALL: Thank you very much. Thank you
7 all to all of our panelists. We'll have to move on to the
8 next segment of testimony. But if there is any testimony
9 that you all have -- would like to supplement, feel free to
10 leave that with us, and we can -- we'll continue to take
11 testimony even beyond today's hearing.

12 And, again, thank you all for your time and
13 effort and the distance you drove and the flight you caught
14 back. Thank you.

15 MR. GREEN: Thank you all.

16 MR. HALL: We've now come to a portion where
17 we will receive testimony from the general public who is
18 here. There are several folks who have been here from this
19 morning, and then there are several folks we need to make
20 special accommodation for. So I will read the list of
21 individuals that will be coming to testify in the specific
22 order.

23 Because the next group of people need the
24 assistance of a Cantonese translator, we will be calling
25 Henry Yee, Tong Kinwah, and Karen Chen to testify.

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2 Following them, we'll have Leila Quinn, Wendy Joseph,
3 Michael Arnott, Grace Ross, Tony Mack, and Phi Tran, in
4 that order. I'll repeat these names after this panel.

5 Again, each of our panelists, we ask that
6 you take three minutes to testify. Watch for our sign, our
7 timekeeper, who will give you the one-minute notice and the
8 stop notice. And then we may ask some follow-up questions.
9 Thank you. Please go ahead.

10 MR. YEE (through interpreter): My name is
11 Henry Yee. I am the co-chair of the Chinatown Residents
12 Association. Because there will be interpretation going on
13 simultaneously, I would be asking for twice the time to
14 speak, because it takes twice as long to be able to get the
15 message across.

16 MR. HALL: Yes. Thank you.

17 MR. YEE: We're here today to speak about
18 the issue with bilingual ballots. I understand that the
19 government has made special provisions for immigrants who
20 speak their mother language to take the citizenship exam in
21 their mother language so that they could become citizens of
22 the United States.

23 The biggest right that we enjoy as American
24 citizens is the right to vote, and because of the language
25 barrier, a lot of times when these citizens will go and

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2 vote, it's hard for them to tell on the ballot which --
3 which one is maybe Bush or Obama, and there's a lot of
4 mistakes that would occur when they're trying to vote.

5 After a very long and difficult struggle for
6 bilingual ballots in Massachusetts from the year 2003 and
7 2010, during the seven years, we were able to have
8 bilingual ballots or bilingual translation on our ballots.
9 And because of having this luxury of having bilingual
10 ballots in 2010, the people who actually came out to vote
11 in Chinatown has increased exponentially.

12 What's really too bad is that we only have a
13 three-year period where this bilingual ballot is in effect.
14 So last year in 2013, the privilege has expired. So right
15 now what we're trying to advocate for is a provision that's
16 going to allow bilingual ballots to be in Massachusetts
17 forever and not for just three years.

18 It seems like an uphill battle every three
19 years when we're about to expire this privilege that we
20 should have that a lot of these senior citizens or elderly,
21 they will have to march from Chinatown to here for their
22 basic right. It doesn't seem to make sense at all. And we
23 hope that everyone here at this panel would also support
24 bilingual ballots forever here in Massachusetts and that
25 this will be in effect as soon as possible.

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2 Thank you.

3 MR. HALL: Thank you. Any questions for Mr.
4 Yee from our commissioners?

5 MR. DUNNE: I'm not from Massachusetts, so
6 help me here. Why has there been a three-year limitation?

7 MR. YEE: We asked for permanence. We asked
8 for that provision to stay forever. But, however, this was
9 the condition that the government allowed at the time when
10 we tried to ask for bilingual ballots.

11 MS. CHEN: Well, I was just going to say
12 that the reason why there's bilingual ballots, one, because
13 we don't have enough -- we don't have the numbers to get
14 bilingual ballots for Chinese and Vietnamese in
15 Massachusetts, but because this is part of our struggle in,
16 you know, 2001, some voters actually filed complaints with
17 the election commissioner and eventually there was a
18 Department of Justice investigation, and as part of
19 investigation, there was a settlement, you know, with the
20 city's election department in 2003, and that's how they
21 provided a bilingual ballot.

22 And, then, thereafter the community, you
23 know, lobbied for legislation, which we asked for permanent
24 bilingual ballot, but, you know, the state because, you
25 know, this is part of like the negotiation, right, and

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2 actually the Secretary of State was, you know, really
3 against it, and at that time, actually, he was very -- he
4 was trying to exclude transliterated names, which is the
5 most important part of the ballot. And that's why, you
6 know, I think, you know, as a compromise, there's like a
7 sunset clause on the bilingual legislation which expires on
8 April 21st, 2013.

9 MR. HALL: And just to be clear, this was a
10 complaint that was filed with the Department of Justice
11 specific to Boston?

12 MS. CHEN: Yes.

13 MR. HALL: Okay. And then it sounds like a
14 three-year consent decree to monitor the continued use of
15 the bilingual ballots, but then at that three-year --

16 MS. CHEN: Right.

17 MR. HALL: -- it sunset --

18 MS. CHEN: Right. And then after that, the
19 community, you know, applied for -- to try to get passed
20 the legislation to allow a bilingual ballot in Boston, so.

21 MR. HALL: Okay. And currently there are
22 no --

23 MS. CHEN: Currently, no, there isn't. But
24 I'm going to give you guys a copy of the legislation draft
25 that's currently in the State House.

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2 THE INTERPRETER: Just a quick pause so that
3 our audience can also hear, who need interpretation, just
4 to follow, I will just summarize really quickly.

5 MR. WILLIAMS: Just a question. You have
6 legislation pending that would provide the provisions for
7 it to be not only in Boston but across the Commonwealth?

8 MS. CHEN: It only covers City of Boston.

9 MR. WILLIAMS: Covers the City of Boston?

10 MS. CHEN: Yes. And we would like for it to
11 be across the Commonwealth. But, you know, our work is
12 mostly here in Boston, so.

13 MR. WILLIAMS: Okay.

14 MR. HALL: Okay. And the rest of the panel.

15 MS. KINWAH (through interpreter): My name
16 is Tong Kinwah. I live in the second voting district,
17 South End. I'm a long-time voter of Boston. I am also on
18 the board of the Chinese Progressive Association.

19 So the legislation for bilingual ballots has
20 expired in 2013, December 31st. So in February of this
21 year, we have already passed the -- we passed unanimously
22 bilingual ballots in the city voting -- in voting in the
23 city government. And so even though this has passed on the
24 city level, we still have to go through the Senate and the
25 House of Massachusetts and then to the governor before we

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2 are able to make this permanent.

3 The evidence of bilingual ballots to assist
4 in voting, it's not something that's rare. And it's not
5 something that hasn't been done before. It's been long
6 existing in cities like New York and San Francisco.

7 Asian Americans have been in America for a
8 very long time. Although our English might not be very
9 fluent, but we love America, and we call this our home, and
10 to be able to vote is the basic right that we Americans
11 have.

12 Many Chinese Americans might take the
13 advantage of using Chinese so that they could pass their
14 citizenship exam. However, but without the assistance of
15 the mother language on a voting ballot, a lot of times
16 there's a lot of error that could occur, and it also limits
17 their rights to vote. And in other words, it's actually
18 violated their voting rights. They do not have the full
19 privilege that most people enjoy as voters. I think this
20 is absolutely unfair and unjust.

21 Having bilingual ballots also protects the
22 privacy of voters, so that it could prevent them from third
23 parties' interference when they're voting.

24 The fact that bilingual ballots have been
25 anonymously passed in the city government, we hope that

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2 everyone here sitting at this panel will also unanimously
3 support us. Because we all understand how important this
4 is to have this permanence in bilingual voting ballots in
5 the history of America.

6 Thank you very much.

7 MR. HALL: You're welcome. Thank you.

8 Any questions from our commissioners?

9 I'll just note that although we may have our
10 individual preferences and support for initiatives, the
11 primary focus of this commission is to take testimony and
12 to take evidence that can be used to advance different
13 initiatives and bring about change in the voting in this
14 country.

15 I do have a question for Ms. Kinwah.
16 Currently there is a federal formula that determines which
17 locations will have bilingual ballots based on the
18 percentage of a language minority in that city. Are you
19 suggesting that it would be better that the formula would
20 be changed so that the percentage to require bilingual
21 ballots would be lower now?

22 MS. KINWAH: I'm not really understanding
23 what you're suggesting.

24 MS. CHEN: What is the percentage now?

25 MR. HALL: Offhand, I can't recall what the

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2 specific percentage is.

3 MS. KINWAH: So, yeah, of course we would
4 like for that percentage to be lower, and, you know, as you
5 heard from us, we expressed how important bilingual ballots
6 is to the community, and that's why we are here at the, you
7 know, State House lobby over and over again and, you know,
8 to get, you know -- to pass the legislation that would give
9 us bilingual ballots. So yes.

10 MR. WILLIAMS: I offer my support, not as a
11 member of this commission, but extend my greetings to Lydia
12 Lo (phon sp). And after this meeting I'll love to be able
13 to connect up with you to see if I can help in terms of my
14 work with you at the State House.

15 MS. KINWAH: Thank you.

16 MS. CHEN: Well, I guess Mr. Yee and Tong
17 Kinwah talked a lot about the importance of bilingual
18 ballots, so I'm not going to, you know, go over that. But
19 apparently, you know, it's really important for the
20 community.

21 But there's a few things I want to touch on
22 in terms of redistricting. So, you know, the Chinese
23 community, you know, even though improvement has been made,
24 the Chinese community is lacking, you know, equal
25 opportunities and representation, you know, in the city

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2 council, in the state, and, you know, federal level as
3 well. And basically, you know, in drawing the district
4 lines, you know, Boston -- you know, Boston to Chinatown is
5 a small community, right? But we always share the city
6 council with, you know, one of the political dominant
7 neighborhoods, South Boston.

8 So actually during the last, you know,
9 redistricting, we've been trying to actually redraw the
10 district lines so we're not with South Boston so that we
11 can have, you know, equal representation so our votes, you
12 know, count more. But, you know, is really difficult, and
13 we're still part of South Boston.

14 So we would encourage the federal guidelines
15 for taking responsibility for redistricting out of the
16 hands of the interested elected officials, because during
17 redistricting, you know, a lot of the city council was just
18 interested in, you know, preserving their incumbency, and
19 that was what happened. That's why, you know, Boston --
20 you know, Chinatown is still with, you know, South Boston.

21 So, and also the other thing in terms of --
22 that's important is for them to reprecinct Chinatown. So,
23 you know, in Chinatown, we have two precincts, one with
24 like 4,290 voters, another with like 4,416 registered
25 voters. So, you know, there's one of the biggest

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2 precincts, right, in, you know, some city council
3 districts. So I think that, you know, it would be great if
4 it could be redrawn, because it disproportionately, you
5 know, like prohibits elderly from like waiting because
6 like, you know, because in the 20 -- 2012 election year,
7 elderly members were like, you know, in walkers and stuff,
8 they have to wait, you know, for hours and hours, and then
9 finally like some actually couldn't stand anymore and they,
10 you know, left. And they tried to come back again and, you
11 know, still couldn't vote because the precinct was so big.

12 And also, you know, it would be really good
13 to have absentee ballots, for the same reasons, to have
14 absentee ballots in demand. So we do -- you know, during
15 the election season, we go to the elderly buildings for
16 people who, you know, can't walk to help them fill out, you
17 know, absentee ballots.

18 But, you know, it would be really important,
19 you know, for -- you know, but right now the state law
20 requires that absentee ballots only to those who are out of
21 town, disabled, you know, infirm or otherwise unable to get
22 to the poll. But I think that, you know, for people who
23 want to -- you know, need absentee ballots should just be
24 able to, you know, get it.

25 And the other thing is same-day registration

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2 because, you know, particularly with people with limited
3 proficiency, sometimes they may have registered or they
4 don't remember whether or not they registered, and actually
5 just filling out a new, you know, registration form, you
6 know, is difficult. So having same-day, you know, same-day
7 registration would encourage more voter participation.

8 So thank you.

9 MR. HALL: Okay. Thank you very much.

10 Any questions from the commissioners?

11 MS. WRIGHT: I would just like to thank you
12 all for making these really serious problems known and for
13 speaking up about them. I think that the issue of
14 bilingual ballots is critical for our democracy here in
15 Massachusetts, and thanks for bringing that to the
16 forefront.

17 MR. HALL: Thank you very much.

18 Next we'll have Leila Quinn.

19 MS. QUINN: Hi. My name is Leila Quinn. I
20 work for a national nonprofit called Generation Citizen.
21 It's a civic education nonprofit. And I am here in support
22 of the election reform bills that are happening in
23 Massachusetts right now, because House Bill 3788 and Senate
24 Bill 1981 are currently in conference committee, and
25 Generation Citizen, as an organization that's dedicated to

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2 empowering young people to be politically active through
3 action civics, encourages a substantial election reform
4 bill, such as the Senate bill.

5 The provisions that they provide are
6 preregistration for 16- and 17-year-olds and election-day
7 registration, as well as other important initiatives, such
8 as post-election audits, and a home rule petition allowing
9 17-year-olds in Lowell, Massachusetts to vote in municipal
10 elections.

11 We support the -- this legislation as a
12 means to combat civic disengagement, which is an issue
13 we've seen, for instance, when only 30 percent -- 38
14 percent of citizens in Boston participated in their recent
15 mayoral election here. Civic disengagement is particularly
16 pronounced among youth, especially those from low-income
17 and minority backgrounds, many of which Generation Citizen
18 works with.

19 The proposed reforms are crucial for
20 encouraging young people to become genuinely interested in
21 political involvement. While there are many valuable means
22 of participating in democratic processes, voting is often
23 the first entry point and is a habit that's formed early in
24 one's life. Voting is the basis for creating knowledgeable
25 and motivated citizens.

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2 In 2008, 83 percent of registered 18- to
3 24-year-olds voted, but only 51 percent -- sorry -- were
4 registered to vote, but only 51 percent of those eligible
5 between 18 and 24 actually voted.

6 Young people are an important voting
7 demographic, and getting them registered and to the polls
8 remains a crucial task. Youth that preregister are more
9 likely to vote than those who register at 18, and we could
10 have an impressive 5 to 10 percent increase in
11 participation, especially from marginalized groups, from
12 election-day registration, as seen in 11 states, including
13 Washington, DC.

14 Additionally, civics and social studies will
15 become increasingly important in our schools and we
16 encourage districts and the board of elementary and
17 secondary education to continue their increased support for
18 social studies and civics education, as young people are
19 increasingly given a voice in our local, state, and federal
20 elections.

21 So, in conclusion, preregistration and
22 election-day registration are the two most important
23 initiatives we see, because they'll ensure that underserved
24 young people regain the political voice that they deserve.
25 Empowering young people to become informed political actors

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2 will ensure not just the long-term health of our civic
3 society but to ensure that young people can realize their
4 potential and attain educational and career success
5 regardless of their socioeconomic status or cultural
6 background. Thanks.

7 MR. HALL: Thank you, Ms. Quinn. I
8 apologize, it's Leila?

9 MS. QUINN: Yes.

10 MR. HALL: Okay. I said Layla.

11 MS. QUINN: It's all right.

12 Any of our commissioners have any questions?

13 MR. DUNNE: If I may, Ms. Quinn, you said 38
14 percent participated in the mayoral election. Is that 38
15 percent of registered -- actual registered voters?

16 MS. QUINN: Yes.

17 MR. DUNNE: Wow.

18 MS. COBB: And where is your organization
19 based?

20 MS. QUINN: Generation Citizen, we have --
21 we work in Boston, New York, Providence, and the Bay Area.
22 Boston and New York kind of split our major hubs where we
23 work out of, yeah.

24 MS. WRIGHT: Is that a membership
25 organization?

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2 MS. QUINN: No. So we -- our program model
3 is that I, as the program associate, work with college
4 students. We train them to be democracy coaches, and they
5 go to local middle schools and high schools and lead the
6 youth through the process of designing an advocacy
7 campaign, so they're learning about advocacy and community
8 organizing to make lasting systemic change in our
9 communities. So that's what our basic program model looks
10 like.

11 MR. HALL: Do you have any data or
12 information about other municipalities where 17-year-olds
13 are allowed to vote on municipal elections?

14 MS. QUINN: I don't offhand, but I have
15 plenty of allies who do.

16 MR. HALL: Okay.

17 MS. QUINN: I can follow up with that in an
18 e-mail.

19 MR. HALL: If you could.

20 MS. QUINN: Absolutely. Sure.

21 MR. HALL: Thank you very much.

22 If there are no other questions, we thank
23 you and thank you for the great work that you're doing.

24 MS. QUINN: Thanks. Have a great day.

25 MR. HALL: You too.

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2 MR. WILLIAMS: I have to excuse myself, as
3 previously stated.

4 MR. HALL: Oh, yes, absolutely.

5 MR. WILLIAMS: Thank you so much. It's been
6 an honor to serve with all of you.

7 MR. HALL: And thank you, Mr. Williams, for
8 your time serving on this commission. We appreciate it,
9 and your contributions are duly noted.

10 Wendy Joseph from Highlands Coalition.

11 Hello, Ms. Joseph. How are you?

12 MS. JOSEPH: Hello. Nice to see you in
13 person.

14 MR. HALL: Nice to see you in person too.

15 MS. JOSEPH: My name is Wendy Joseph. I am
16 a member of the Highlands Coalition in Lynn, Massachusetts.
17 We are a 501(c)(3) social justice organization advocating
18 for the Highlands neighborhood.

19 The Highlands is a gateway community for
20 most immigrants. It is by far the poorest neighborhood in
21 the city, with 95 percent of the school children eligible
22 for federally assisted free breakfast and lunch in school.
23 We have double the amount of English as a second language
24 speakers than in the rest of the Lynn as a whole and 10
25 percent more people live below the poverty line. In an

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2 area of less than one-half of a mile, there are 14,000
3 residents, making the Highlands three times more densely
4 populated than the rest of Lynn.

5 Now, here is a tale of straight, blatant,
6 systematic disenfranchisement of a community of color by
7 the city. In 2004 local elections, there was a Hispanic
8 gentleman, I think his name was Manny Nunez (phon sp),
9 running for a board councillor. He won in the primary and
10 made a strong showing in the general election against a
11 white incumbent, and that would not do in the city of Lynn,
12 Massachusetts.

13 The polling station, which was based in our
14 beloved community school, was pulled, ostensibly for
15 financial reasons. Soon afterward our neighborhood was
16 gerrymandered right down the middle so that while I go to
17 the North Shore Community College on the waterfront to
18 vote, my neighbor goes almost to the Saugus line on the
19 other end of the city.

20 Since 2004, the numbers show, from now until
21 2012, where the latest numbers were available, voting in
22 the Highlands has dropped by 34.5 percent. In ward 1,
23 where the rich white people live, called the diamond
24 district, they have three polling places.

25 We've been fighting for this restoring

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2 voting to our neighborhood for ten years. I'm going to
3 tell you about some of the players.

4 In 2013, the Lynn city council created a
5 human rights commission, and returning voting to the
6 Highlands was their first inaugural case. The knee-jerk
7 reason that city hall has for pulling voting, they say, is
8 that the school is not handicapped accessible. It's, of
9 course, accessible for the Highlands children to learn
10 there. And because of this, the Human Rights Commission
11 requested a site visit from Attorney Galvin's office to
12 report on the accessibility with the clerk of elections
13 supposedly in attendance.

14 The elections clerk ducked the city council
15 order for over 120 days with no repercussions. I actually
16 had to sit down with the city council president and ask to
17 be put on the agenda. "How is this site visit thing going?
18 How is it being handled?"

19 And he said, "Please don't ask me that
20 question. I'm going to ask you not to ask me that,"
21 basically.

22 When the site visit actually occurred, the
23 city clerk was not even in attendance, but did leak the
24 report to the local paper, even before the city councillors
25 and the human rights commission even got a look at it.

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2 MR. HALL: Thank you, Ms. Joseph. I know
3 we've had some previous conversations about some of the
4 things that have been going on in the Highlands. And one
5 of the questions I may have asked you, and I don't recall,
6 are some of the demographics of the Highlands area, and
7 specifically is there one racial or ethnic group that is
8 highly concentrated there that would create a majority
9 minority vote in the district?

10 MS. JOSEPH: Thank you for that question.
11 That's exactly what you left me with when we finished our
12 phone conversation. And then upon further investigation,
13 we realized that -- I'm not sure if it was you, but someone
14 was saying that the census data, the language of it was
15 written back in '69 or '72, where it was, you could check
16 off "Black" or "Hispanic." Now the check-off you can do is
17 "Mixed." So, consequently, all of these people that are
18 checking off "Mixed" do now -- now do not get counted as
19 either black or Hispanic. So it absolutely skews our
20 demographics. And right now we're trying to kind of tease
21 and pull apart demographics that could be brought back to
22 the language of either black or Hispanic. But right now
23 it's -- basically it was supposed to help, but it's
24 actually hurt.

25 MR. HALL: All right. And then you

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2 referenced the Manny Nunez election and seemed to suggest
3 that that was the jumping-off place for the redistricting
4 and the gerrymandering of the Highlands.

5 MS. JOSEPH: That was the jumping off for
6 the polling being pulled.

7 MR. HALL: The polling place being pulled,
8 okay. And do you recall what the election -- or what the
9 voter turnout was in the Highlands area for Manny Nunez?

10 MS. JOSEPH: I don't have the numbers
11 specifically for that. It was -- it was just a complete
12 surprise to everyone, especially in city hall.

13 MR. HALL: That that candidate was --

14 MS. JOSEPH: That the -- yes. That that --
15 basically that the Highlands voted as a group and had some
16 power to change some things.

17 MR. HALL: Okay. Any other questions?

18 MS. WRIGHT: What year was that?

19 MS. JOSEPH: The polling place, the election
20 was in 2000, and the polling place got pulled in 2004.

21 MS. COBB: What was -- did the Secretary of
22 State's office indeed come and make a determination about
23 the accessibility of it?

24 MS. JOSEPH: They did, and I have much to
25 say about that, that site visit.

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2 The report looked like it was written by a
3 fifth grader. It was very discouraging, and basically did
4 not refer to the -- I believe it's 950 CMR, which is the
5 statute that is giving the tolerances. So, for example,
6 you get a pass/fail as opposed to the railings failed. How
7 much did the railings fail? Well, according to the
8 statute, they failed by 2 inches.

9 The handicapped spaces, accessible spaces on
10 her first page, she said there were no designated spaces.
11 We have pictures of the designated spaces. Then on page 2,
12 she says these designated spaces, which did not exist on
13 page 1, were 6 inches off. Actually, she didn't say. She
14 said failed. According to the statute, they were 6 inches
15 off.

16 So in addition, our -- the Highlands
17 Coalition has identified donors and grants so that the city
18 does not have to pay for anything to be changed in order to
19 get the voting back in our neighborhood.

20 MS. WRIGHT: So how many polling places
21 does -- is the Highlands area assigned to now?

22 MS. JOSEPH: It's split so that there's none
23 in the Highlands, and we get to go to two different places.

24 MR. HALL: What's the average traveling
25 distance for those polling locations for the people in the

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2 Highlands?

3 MS. JOSEPH: In order to -- I actually did a
4 run. From the Highlands -- there is no -- actually, there
5 is no public transportation within the Highlands. It's a
6 brisk ten-minute walk for someone with no mobility issues
7 to get to the bus. It's a 40-minute bus drive. Any of the
8 old New England towns, you just know that you're going in
9 and out, in and out. And then they let you off at Mass
10 State Highway Route 1A, you have to cross the state
11 highway, and then two more blocks to the polling place.
12 Again, with no -- myself, no mobility issues, and that bus
13 ride was not during rush-hour traffic.

14 MR. HALL: Okay. Any other questions from
15 our group?

16 Okay. Well, thank you for coming and
17 testifying, and continue to raise awareness around this
18 issue and continue to advocate for the people of the
19 Highlands. We certainly appreciate --

20 MS. JOSEPH: Thank you.

21 MR. HALL: -- your testimony.

22 Michael Arnott.

23 MR. ARNOTT: Hi. My name is Michael Arnott.
24 I'm a resident of Cambridge. My professional background is
25 public policy, but for the -- oh, more than a decade or

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2 more, I've been a poll worker in the city of Cambridge.

3 Started out as an inspector, moved up to clerk, and for

4 many years now I'm a warden.

5 I'm going to just go over some -- there's
6 many issues, but the ones that in my experience as a warden
7 are the ones I'm going to touch on.

8 The inactive voter procedures. That seems
9 to be one of the things that I find really slows up a lot
10 of people. A lot of these things that say if there's going
11 to be improvements, it can't be by municipality. It really
12 needs to be mandated by the state so it can be statewide.

13 I've talked to poll workers and wardens in
14 other municipalities, and I see a wide range of quality of
15 training. In Cambridge, we've got every election separate
16 trainings for the inspectors and one for the clerks and the
17 wardens. They're very comprehensive. No more than about
18 30 people per training, so you get the -- get more
19 experience on the machines, answer all the questions. That
20 should be in every -- and also we get a thick book.

21 Inspectors get their own book; clerk and wardens, we get
22 our own book.

23 Some of the things I've heard today really
24 amaze me about the differences from one to the other.

25 One interesting thing is that in the Motor

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2 Voter, there's a lot of problems in getting registrations
3 from the registry to the state back to the municipality and
4 to the actual printed list. A lot of times I'm calling up
5 the Election Commission to find out that somebody is
6 registered, but it somehow didn't make it to our list.

7 When I started doing this many years ago,
8 there was -- there was -- ID had to be something like a --
9 from your landlord or utility bill or your driver's
10 license. Now, in Cambridge at least, it's anything printed
11 with your name and current address. I don't know how
12 widespread that is. There's -- oh. Wait a minute. I'm
13 trying to look for ones that -- of many.

14 Oh. In Cambridge now we're required two
15 test runs, one in the morning, one in the afternoon, for
16 the handicapped voter machine to make sure it's working and
17 we know how to use it. That would be great statewide,
18 again.

19 I think a lot has to be done to state-
20 mandated rules and regulations so that you don't have this
21 great disparity in training and how it's implemented from
22 municipality to municipality.

23 One is, I thought earlier today would be a
24 great idea, have election observers at the trainings as
25 well as at the polling station to see how -- the quality of

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2 the training. I bet a lot of them would -- the trainings
3 would go up.

4 When I was working in a previous position,
5 knew that conservation commissioners had regular trainings
6 that they were required to go to. That would be great if
7 election commissioners had regular trainings and
8 retrainings and refreshers that they were required to do.
9 If we can do it in Massachusetts for conservation
10 commissions, how about for election commissioners.

11 MR. HALL: Thank you. Thank you very much.

12 Any questions from our commissioners? Okay.
13 Seeing none around --

14 MR. ARNOTT: Well, thank you.

15 MR. HALL: Thank you, and thank you for your
16 service as a poll worker.

17 Grace Ross.

18 MS. ROSS: Hi there. So I realized that
19 three minutes was not probably -- I really didn't know what
20 made sense to capture in three minutes.

21 My name's Grace Ross, and I live in
22 Worcester. I'm not here representing anybody in
23 particular. I have been passionate about voting rights
24 stuff for a long time, and, among other things, when the
25 issues came down in the presidential elections, first in

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2 Florida and then in Ohio, I actually filed briefs at the
3 United Nations to seek election observers with a number of
4 national organizations. And I'm assuming you guys are
5 going to have access to the data that we built up about
6 what happened in the -- particularly in the Ohio election.

7 I was part of the process of the five teams
8 that ended up descending on Congress to try to get an
9 objection filed to the Ohio vote count. What was dramatic
10 about that was the way in which, when we drilled down into
11 all the communities and states where there was assumptions
12 that there might have been various kinds of voter
13 suppression and voter tampering, was the way in which it
14 appeared to all come from the same playbook, literally
15 fliers that were used in the Haitian community in Florida
16 being visually similar as well as worded the same to fliers
17 that were used in Ohio -- in Illinois and some of the
18 communities of color, et cetera, et cetera.

19 So I'm hoping you're going to grab those
20 stories. They didn't happen in Massachusetts at the time,
21 but I had friends who did Election Protection work, and one
22 of them is one of the long-time diversity committee members
23 of the Massachusetts Democratic Party, and she said, as one
24 of the folks who came from Massachusetts and worked as an
25 Election Protection volunteer in Florida, that it was the

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2 most traumatic experience she had ever had as an African-
3 American woman, that she was targeted by a bunch of the
4 suppression activities, because they assumed she was a
5 voter, not an Election Protection volunteer, because she
6 wasn't white. And she's an incredibly powerful woman. She
7 spent three weeks in bed trying to recuperate from the
8 experience.

9 So I think that's really a rich area of
10 information, and if you have problems accessing the data
11 that we created out of that, I'd be happy to help.

12 Two things I draw from that, one was the
13 EUCD election volunteers who did come in 2008, the woman
14 from Venezuela talked about how impossible the US system
15 is. She's like why can't you just use indelible ink on
16 people's hands like everybody does in developing nations to
17 show that someone's voted and, you know, if they've got
18 their Social Security card, they should be there.

19 So I've also run for office, and the thing
20 that's most striking for me about that is voter
21 registration deadlines that are a few weeks in advance of
22 the vote. People wake up to the vote usually within, you
23 know, maybe a week or two before the vote for folks who are
24 not kind of tied into the electoral insanity, and to not
25 have same-day registration I think should be a national

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2 law. I just don't see how we can possibly claim to be a
3 democracy without that.

4 In terms of Massachusetts, I think folks
5 assume that we're better in terms of voting stuff. I think
6 the things that came out earlier around the testimony
7 around the Voting Rights Act says a lot. But I have
8 friends who work in the blind community, and they say
9 the -- getting Braille information related to anything in
10 elections is impossible. You simply can't educate people
11 about who's voting. When I ran, I actually printed Braille
12 information cards, but it's not just access to the physical
13 voting machine; it's access to voting information.

14 So I'm going to stop and, I guess, let folks
15 ask questions, but there's stuff about the money we don't
16 have to train poll workers, translation, and I was at the
17 polling lines in Worcester in 2012 and witnessed all sorts
18 of mess, so if it's appropriate to talk about that. But
19 I'm out of my time, so I'm not sure.

20 MS. WRIGHT: Actually, I was just going to
21 ask whether you were -- saw or witnessed any of the
22 problems in Worcester?

23 MS. ROSS: Yeah. Well, so I was in the
24 busiest polling place in Worcester. There are three
25 precincts that vote there, and we had extensive lines.

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2 MS. COBB: Which precincts?

3 MS. ROSS: I'm sorry?

4 MS. COBB: Which precincts?

5 MS. ROSS: You know, I don't -- I'd have to
6 go look them up, and I think Chris left. It's the senior
7 center in Worcester. And we had folks out the door, a lot
8 of folks who got in, you know, inside the door at eight
9 o'clock to make sure they'd be able to vote. We were there
10 until almost nine.

11 The three lines made it almost impossible,
12 and actually the only reason that folks figured out which
13 line they should be in was sometime late in the morning,
14 the local rep, state representative, showed up, and he
15 decided to make it his job for the next, I don't know, six
16 or seven hours to go through where people were standing in
17 line with a registration booklet and make sure they were in
18 the right polling place. We had tons of folks who weren't.

19 Worcester has redone its polling places in
20 the last few years. You're no longer -- you're often --
21 the place near you to go vote, which is where everybody
22 walks to, is not your polling place. This came out of a
23 bunch of complexities around accessibility. And I'm not
24 sure what Worcester did with it was really legal.

25 Our guy who is in charge of the voter

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2 registration stuff is fabulous and very committed, and he's
3 tried to balance things. But they had problems with sex
4 offenders, third-level registered sex offenders. Of
5 course, the schools are mostly where people vote, and so
6 they moved all the polling places out of schools so that
7 they wouldn't run into problems with folks who are not
8 supposed to be around children being able to exercise their
9 right to vote. It's created a bunch of other complexities
10 that are problems for us.

11 But in that precinct, what was dramatic to
12 me was the number of young folks, sort of early twenties,
13 who showed up after work, around like 6:30, trying to vote,
14 and it was their second time ever voting. They had come
15 out for the first Obama election, often, you know,
16 literally just 18 years old. Young people of color. There
17 were lot of them. And if they were in the wrong place,
18 they didn't find out in time to go to a new place because
19 of the way that people waited in line and then found out,
20 oh, the polling place had changed, but they couldn't get
21 from where they were to where they needed to be.

22 There was no way to do provisional ballots
23 for the wrong place. There are other things you can get
24 them for. Lots of people got provisional ballots who
25 shouldn't have. I ended up complaining about it because I

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2 know the voting laws really well. And the problem in
3 Worcester anyway is they don't count provisional ballots in
4 the first count. They only count them if they, quote, need
5 them. Well, what does that mean? I don't even -- I don't
6 even get that. What do you mean you don't need someone's
7 vote?

8 Okay. Anyway, I think it's just a bad
9 experience. My big concern is that we've figured out how
10 to discourage people from voting in such a powerful way.
11 You can't register; you want to register.

12 You know, I've had folks who didn't come
13 vote because they're older voters who had never registered
14 before or had registered but had never voted. They were
15 embarrassed to show up and not know how to use a voting
16 machines. You know, they might move from one community to
17 another -- we have five different voting machines in
18 Massachusetts -- and they didn't want to look stupid.

19 And it's like why can't we just have a video
20 that shows people how to use the voting machines in their
21 community, and anybody can watch it and then go in and not
22 feel like an idiot. Maybe it would help the poll workers.
23 I don't know.

24 We also had voting machines that were down.
25 The amount of voters was just over the capacity, the pace,

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2 for the voting machines to handle it. They were pretty
3 good about getting them back up. But, again, folks would
4 come to come vote at lunch hour, the machine takes 40
5 minutes to get up. They can't necessarily come back.

6 And the other thing I find most dramatic
7 about that is people have no clue that you're allowed to
8 take time from work to vote. We've had employers tell
9 people that they weren't allowed to when they tried to
10 exercise that right. And I think for folks who are often
11 these days working odd hours, two jobs, et cetera, et
12 cetera. If you can get one job, you usually have to have
13 two; everybody else doesn't have any. It's really, really
14 bad.

15 And even with a clerk who's so committed to
16 voting, you can't get through to the -- to the voter
17 registrar's office on the day of the election. So if you
18 have a problem, the lines are jammed, the poll workers
19 can't get through with their questions, the fact that most
20 of the stuff is not just available online, at least to the
21 poll workers, seems insane to me. They should be able to
22 check stuff.

23 But if we're going to have long lines, the
24 more important thing is there has to be someone at the door
25 that helps people figure out, am I in the right voting

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2 place, am I not in the right voting place, what do I need
3 to do, you know, am I even active, which is a huge problem
4 that Chris already talked about from Worcester; it just
5 plagues us with the inability to really have a real vote.

6 So that's just the beginning of the tip of
7 the iceberg.

8 MS. WRIGHT: Thank you.

9 MR. HALL: Thank you very much, Grace.

10 Any other questions?

11 MS. COBB: I'm just curious what -- if all
12 of these schools stopped being locations, where did they
13 move them to?

14 MS. ROSS: Well, it's part of my concern was
15 that part of the problem was then identifying public
16 buildings in each precinct. So we ended up with folks with
17 some pretty weird places to go. One of the places that
18 they did was the EcoTarium, which is a great building, but
19 you have to pay to get in the gate. And so they had to try
20 and sort out who was there to vote and who -- who was there
21 to get in. It's up to two very long flights of stairs from
22 the regular parking, unless you park in the handicapped
23 parking. There were problems about people doing that.

24 The other thing is they ended up renting
25 space in stores. So there are folks, you know, lined up to

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2 pay for their groceries here and folks lined up to vote
3 over there.

4 It seemed like a pretty dysfunctional
5 solution, but I think that whoever had organized for the
6 rights of folks who were sex offenders had done a pretty
7 good job of convincing the city that, you know, they had to
8 move everything.

9 So the bigger issue here to me is just the
10 public commitment to voting, right? I mean they did find
11 places, but they were crazy places sometimes, right? And
12 to me that's the deeper issue here. I just sort of feel
13 like if we have a commitment to democracy, then we have a
14 commitment to everybody being able to vote, and we have to
15 put the resources -- our state doesn't put a lot of
16 resources into training poll workers. That's part of our
17 problem.

18 And I think -- I always feel like this is
19 the larger issue, having been up at the State House to
20 lobby for any number of electoral reforms. And we have
21 Spanish ballots in Worcester. When the Secretary of the
22 Commonwealth found out we did when we don't have the
23 threshold requiring them, he tried to get them rescinded,
24 even though we'd had them for 15 years already in
25 Worcester, English/Spanish.

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2 So, I don't know, I feel like the deeper
3 issue here is do we have a moral call for people to be able
4 to vote or not. And I think if we don't, then I think we
5 have to -- have to be real about that. I mean, you know,
6 somebody was saying other countries look to us, but I think
7 that we have to decide whether we look to ourselves or not.

8 We can do this. These are all things that
9 can be done, different states have done great with
10 different ones of them. I shudder to think what happens
11 when we end up with -- and I hope we don't -- an ID
12 requirement, because I just think that's so far beyond
13 reasonable. It's completely unnecessary.

14 And we have street listings in
15 Massachusetts, and our legislators are very attached to
16 those, as one of them said, "So that I know who I have to
17 talk to before an election." Like it would be nice to talk
18 to all the constituents, whether they vote for you or not.

19 MR. HALL: Exactly. Thank you very much.

20 MS. ROSS: Thank you.

21 MR. HALL: Okay. Mr. Dunne has to depart,
22 but we certainly appreciate his time and service on this
23 commission and know that you will continue to do great work
24 in this vein.

25 MR. DUNNE: See you soon.

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2 MR. HALL: All right. We have four
3 remaining witnesses, that is Tony Mack from the Mass Voter
4 Table. After him will be Phi Tran. Following Phi will be
5 Ryan Thomas, then Chris Maynard.

6 MR. MACK: Hi. So I am Tony Mack from the
7 Mass Voter Table. I'm actually going to be reading
8 testimony from Neighbor to Neighbor Massachusetts. They
9 could not be here today, but they had submitted written
10 testimony, and so I'm going to read it for them.

11 The Mass. Voter Table is a network of
12 currently 40 community-based nonprofit groups based in low-
13 income communities and communities of color that does voter
14 participation and engages communities in elections and in
15 issues. And Neighbor to Neighbor is one of our 40
16 partners.

17 So this testimony was written by Ivette
18 Luna, so I'm going to speak in her voice -- no. Ivette is
19 the organizing director of Neighbor to Neighbor.

20 So with over 18,000 low-income and working
21 class members in the cities of Springfield, Holyoke,
22 Worcester, Salem, and Lynn, Neighbor to Neighbor builds
23 political power that improves the quality of our lives.

24 For the past 18 years, Neighbor to Neighbor
25 has been leading the charge in the cities where we work to

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2 ensure that low-income communities of color and communities
3 of color raise their voice through voting. We prioritize
4 electoral organizing as a way to build, strengthen, and
5 enhance the communities in which we work. We strive to
6 build awareness in our communities about the important role
7 that voting plays in our lives, from electing leaders who
8 will prioritize our needs to passing ballot initiatives
9 that will effectively alter our living conditions.

10 Because we understand that problems such as
11 poverty, unemployment, education, housing, health care, to
12 name a few, are concentrated in particular demographic
13 groups, we've worked to increase voter participation among
14 what we call the rising Massachusetts electorate, comprised
15 of low-income people, people of color, unmarried women, and
16 youth.

17 Throughout the past decade, we've seen
18 repeatedly our community's voice diminished through voter
19 suppression efforts. We've seen how in part, due to
20 problems with current election regulations, such as
21 inactive voting procedures, lack of access to early voting,
22 lack of accessibility to the polls, our community has been
23 turned away by the dozens from the polling booth.

24 In 2012 Neighbor to Neighbor experienced the
25 following voter suppression incidents. People were turned

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2 away at the polls because of inactive status. They were
3 not offered provisional ballots. Poll checkers asked for
4 state-issued identification cards of voters, even though
5 they had a household utility bill, so many voters were
6 turned away.

7 Due to redistricting and lack of information
8 from the city to the voters, voters didn't have the right
9 polling place and thus were turned away at the polls.

10 Voters with language barriers were not allowed to have
11 translators at the booths, even though voters requested the
12 support. At the polls, there was a lack of translators to
13 help new voters vote. New voters were turned away at the
14 polls because of inaccuracies in the voting lists at
15 polling places.

16 For example, one voter who had a letter from
17 the Springfield election office stating that he was
18 registered was not on the voting list at the correct
19 polling place. With lines backed up at this presidential
20 election, poll workers didn't have the time -- didn't take
21 the time to call city hall to find out if he was indeed
22 registered or even offer him a provisional ballot, and he
23 was turned away. But because Neighbor to Neighbor
24 advocates were with him, we insisted that he be given a
25 provisional ballot.

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2 Neighbor to Neighbor fully supports
3 legislation currently being considered by the state
4 legislature that will increase and improve access to
5 voting, particularly in the communities where our members
6 live and work. This legislation includes online voter
7 registration, early voting, preregistration of 16- and 17-
8 year-olds, post-election audits, election-day registration,
9 automatically updated registration, and improved inactive
10 voting procedures so that a one-time failure to reply to
11 the city census does not make a voter inactive.

12 In closing, we hope that these provisions
13 will make Massachusetts a national leader in having an
14 efficient, modern, fair, and accessible system that truly
15 works to voter engagement and participation. We have begun
16 the process of ending voter suppression. Our challenge is
17 to pass and enact these measures to ensure getting to the
18 polls is not a foreign or intimidating experience for our
19 communities.

20 And I just wanted to add that the
21 Massachusetts Voter Table as a whole has also endorsed all
22 of those pieces of legislation, and it's one of the
23 priorities for the Table for this year.

24 MR. HALL: Thank you. Thank you very much.
25 Thank you for relaying those -- that testimony for us.

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2 Any questions from the commission?

3 Even though those aren't your words

4 exactly --

5 MR. MACK: Yes.

6 MR. HALL: -- I know that you agree with the
7 spirit of them.8 MR. MACK: I do agree with it. And I
9 should -- as full disclosure, I used to be an organizer
10 with Neighbor to Neighbor before I did this, and I
11 experienced many of those things myself when I worked with
12 them. Thanks.

13 MR. HALL: Thank you very much.

14 Phi Tran.

15 MR. TRAN: Hello. Thanks for having me. My
16 name is Phi Tran. I represent Asian American Resource
17 Workshop. We are a civil rights, Asian American, Pan-
18 Asian, social justice organization, and I work specifically
19 in Dorchester running the Dorchester organizing and
20 training initiative. It is a program to get young
21 Vietnamese residents of Dorchester to become more
22 politically and civically engaged in the community.23 And I'm here to testify on behalf of the
24 bilingual ballot, which is also in Vietnamese. Just to
25 supplement all of the great things that have been said

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2 already by the Chinese community, the Vietnamese community
3 wants to double that as well.

4 We also want to talk about this little bit
5 of history you might have heard of this tiny war called the
6 Vietnam War that happened in the '60s and the '70s that
7 caused a lot of immigration to happen in the Vietnamese
8 community.

9 So just to break down a small amount of
10 history. Three main waves of immigration happened in '75,
11 1980, and the 1990s up until now. I mention these dates
12 because a really specific immigration issue that happened
13 in the community is that because of the timing of
14 immigration, now is the right time for naturalization to
15 happen for these citizens in these communities.

16 Vietnamese -- the Vietnamese population --
17 well, just to show you this new report that was released
18 this year, 2013, by the Asian American Advancement of
19 Justice, which a disaggregation of the US census data of
20 2006 to 2012, I believe, the Vietnamese community is at
21 around 64 percent legal permanent resident with a high rate
22 of nationalization possibility. And as Mr. Yee has stated
23 before, being able to take the nationalization test in your
24 mother language is a huge advantage that a lot of people
25 don't know in the community, which is a shame.

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2 And to back that up, two-thirds of the
3 Vietnamese population in Boston is limited English
4 proficient, again backing up the claim -- the need for
5 bilingual ballots in our community to really further boost
6 our civic engagement process.

7 I also used to work for the Vietnamese
8 American Initiative for Development, it's a community
9 development corporation, as their civic engagement
10 coordinator. And through my years of working there, I've
11 seen higher rates of voter turnout in the community
12 specifically in the precincts that I worked because of the
13 bilingual ballots from 2010 to 2013.

14 And also with the Vietnamese-American Civic
15 Association, which works in promoting all of these legal
16 forms and promoting civic engagement, they recorded over
17 200 applications for naturalization in 2013 alone for
18 Vietnamese citizens. And so with that, we really want to
19 push bilingual ballots as an even playing field to support
20 everything the Chinese community has said for the
21 Vietnamese community as well.

22 MR. HALL: Thank you very much.

23 Any questions?

24 Okay. Thank you for your testimony.

25 Thank you.

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2 Ryan Thomas.

3 MR. THOMAS: Hi. My name is Ryan Thomas.

4 I'm a student at Suffolk University, undergraduate student
5 at the college of arts and sciences. I'm a resident of
6 Kingston. And I voted in both the presidential election of
7 2012 as well as the special election for the US Senate in
8 2013.

9 I would just like to open by stating that I
10 had positive experiences when voting in both elections.
11 But I did take note of certain areas of the process that
12 could be improved upon.

13 Specifically I'd like to address my voting
14 experience during the presidential election year of 2012.
15 At the time I was attending college in South Carolina and
16 would not be home to vote on election day. So to solve
17 this, I decided to vote absentee. I did this in the town
18 of Kingston, where I live, when I was home on school break,
19 and this was around October 19th. So it was a couple weeks
20 before the election.

21 Everything went as planned. I was able to
22 fill out my application form and vote in that one visit.
23 But while my voting experience went smoothly, I just wanted
24 to offer a couple comments on the process that I observed.

25 I noticed that it took longer than usual as

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2 I was taking -- when I went in to vote. I was taken into a
3 side room to fill out my absentee ballot. It worked
4 sufficiently, because it was in a small town like Kingston,
5 and there was not a logjam; it wasn't crowded. But I could
6 see problems with this procedure in larger areas with
7 greater populations where the town hall could become more
8 crowded with absentee ballot requests.

9 So to avoid a logjam of voters, I would
10 suggest clarifying the state guidelines on absentee voting,
11 especially pertaining to the final weeks before the
12 election. The website for the Massachusetts state
13 government instructs potential absentee voters to plan to
14 visit their town hall two to three weeks before the
15 election. But then this, just to clarify, is when voting
16 absentee in person.

17 In order to clarify and simplify this
18 process for potential absentee voters, I would suggest a
19 revision of the absentee voting guidelines on the state
20 website to include the earliest possible date that an
21 absentee voter could be counted. Because I know from my
22 experience, when I went to check, we could not find that
23 out, and we had to go there in person to find that out.
24 They do advise you to go there two to three weeks
25 beforehand so you won't run into any problems, but they

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2 don't give you any specific dates.

3 And I'd just like to clarify, this is just
4 my personal experience voting at the town hall and doesn't
5 really address voting absentee by mail.

6 So thank you.

7 MR. HALL: Thank you.

8 Any questions from our commissioners?

9 MS. WRIGHT: No. But thank you for taking
10 the time to share your experience.

11 MR. THOMAS: Thanks.

12 MR. HALL: Thank you very much. We
13 appreciate it.

14 Chris Maynard.

15 MR. MAYNARD: How are you all doing today?

16 MR. HALL: Good. How are you?

17 MR. MAYNARD: Doing quite well.

18 My name is Chris Maynard. I'm a BSBA
19 candidate here at Suffolk University, and I'd like to thank
20 you all for coming here today.

21 And before I get started, I would just like
22 to touch upon the issue of Worcester and voting. And it
23 seems clear, from my perspective -- I'm not an expert --
24 however, if someone is unable to vote in the public
25 destination, they should be issued an absentee ballot.

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2 There's no reason for taxpayers' dollars to be spent
3 renting out a private venue, nor should that business be
4 disrupted due to the actions of another. That's my take on
5 the city of Worcester.

6 My name is Chris Maynard, and I'm here to
7 largely talk positively about my experience as an election
8 official in the city of Boston. I work in the State House
9 and the Boston Copley Library during state and national
10 elections, and I think it goes great. We have about 20
11 percent turnout in both precincts. And people glow when
12 they vote. It's just tremendous to see. People are happy
13 to be there, and they're excited. And I came here today to
14 relay that excitement of voting and to propose a new venue
15 of voting that the Commonwealth has yet to see this
16 century.

17 I am here to propose today that voting be
18 implemented in the higher education level. As a student
19 here at Suffolk University, a \$100 million yearly
20 operation, the students have no say whatsoever in how the
21 money is spent here. And being that this is a project that
22 we fund entirely, the students believe that we should have
23 a right to vote on the projects and initiatives that are
24 taken in higher education.

25 Suffolk University is a very progressive

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2 school in the heart of Boston, and we believe that we can
3 start it here. And if we work together, we can issue
4 voting into higher education and make the 21st century the
5 year of voting for higher education. Thank you.

6 MR. HALL: Thank you. Any questions?

7 MS. WRIGHT: I'm just interested in, do you
8 have an organization that's pushing this idea within
9 Suffolk, and where does it stand?

10 MR. MAYNARD: I came here today to start it.

11 MS. WRIGHT: Okay. Everything has to start
12 somewhere. So thank you for sharing that.

13 MR. HALL: Thank you very much.

14 MR. MAYNARD: Thank you.

15 MR. HALL: Appreciate it.

16 All right. And the last witness that we
17 have signed up is Andy Morgan from Rosie's Place.

18 MR. MORGAN: I just want to say I commend
19 you all for doing this all day, with such an upbeat
20 attitude.

21 MR. HALL: Thank you very much.

22 MR. MORGAN: Good afternoon, members of the
23 National Commission on Voting Rights. My name is Andy
24 Morgan, and I am the public policy assistant at Rosie's
25 Place in Boston.

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2 Rosie's Place is committed to providing a
3 safe and nurturing environment to help poor and homeless
4 woman maintain their dignity, seek opportunity, and find
5 security in their lives. I'm here today to speak on behalf
6 of Rosie's Place and the thousands of women we serve.

7 During each election, we conduct voter
8 registration and education at Rosie's Place. To date,
9 almost 300 women are registered to vote with Rosie's Place
10 as their address. In the past 18 months alone, we've
11 registered over 800 individuals to vote.

12 The reason we take voter registration
13 seriously is because poor and homeless people face great
14 barriers to casting their ballot. Voting is a fundamental
15 right of every American citizen. No one should be denied
16 that right because they have no place to call home.

17 In Massachusetts, voters who are homeless or
18 at risk of homelessness can use the address of their
19 shelter or temporary accommodation, or even a street corner
20 they reside, to register to vote. Our guess is that other
21 people experiencing homelessness, across this state and
22 others, are transient, either due to unstable housing or
23 shuffling between shelters. When it comes down to it, many
24 of our guests simply do not know where they will be on
25 election day.

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2 Voters who reside in family shelters may be
3 placed in shelters that are up to 20 miles from their
4 original residence. Many more temporarily couch-surf with
5 friends and family until their options run out. Many
6 shelters for homeless individuals have time constraints,
7 such as daily bed lotteries, which can mean a homeless
8 individual does not know day to day where he or she is
9 sleeping that night, all contributing to the barriers of
10 casting their vote on election day.

11 Our guests are highly motivated to vote.
12 Many of them assisted with voter registration efforts or
13 conducted their own voter drives at other shelters, day
14 centers, support groups and community centers.

15 On election days, the women we serve try to
16 squeeze in voting between bed lottery, shelter curfew, meal
17 programs, and other obligations. As we like to say, being
18 homeless is a full-time job. Oh, sorry.

19 Okay. Take the election day experience of a
20 guest. She was an elderly survivor of violence who was
21 eager to vote. She participated in all of our candidate
22 forums, and come election day, due to the transient nature
23 of being homeless, she was unable to cast her vote because
24 of the long lines.

25 I'm just going to be very quick.

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2 Election policies that we urge the
3 commission to support include allowing citizens who are
4 housing -- or who have unstable housing to have the
5 flexibility in their address for voter registration;
6 Massachusetts election-day registration, which will allow
7 voters to vote instead of being turned away from the polls
8 because they don't know where they'll be housed or
9 sheltered on election day; removing a lifetime ban on
10 people with criminal records, similar to what Massachusetts
11 does.

12 Civic and electoral engagement have been
13 tied to reduced recidivism. Considering that a majority of
14 people who are in prison or have a criminal record due to
15 either the crimes of poverty or crimes of addiction, a
16 lifetime ban on voting is the wrong policy that other
17 states have adopted.

18 And early voting and at-will absentee voting
19 will also go a long way in making sure that citizens who
20 are homeless or at risk of being homeless are still able to
21 cast their ballots without being dictated by circumstances
22 beyond their control.

23 Thank you. I have copies.

24 MR. HALL: Great. If you could leave us
25 with some copies, we'd appreciate it.

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2 Any questions from our commissioners? Okay.

3 MS. WRIGHT: Thank you for the work you do.

4 Thanks.

5 MS. COBB: Thank you.

6 MS. HORTON: Is there anyone else in the
7 audience who signed up to testify or didn't sign up but
8 would like to testify? Questions? Well, actually not
9 questions.

10 So I'm just going to close this out. By,
11 one, saying thank you to all of you who are still in the
12 audience who testified or participated, and we hope it's
13 been an informative experience for you, as it has for us.

14 Thank you to our panel of commissioners, as
15 well, for continuing the conversation today and making
16 everyone feel heard and creating what I'm sure will be a
17 pretty full record for us out of the New England hearing.

18 I wanted to let each of the commissioners
19 just close this out with final remarks, but I also wanted
20 to say that for individuals who either testified but have
21 written materials that you'd like to submit, or if you know
22 of folks who weren't able to attend but still have
23 testimony that would be helpful, we are still collecting
24 testimony for the next two weeks from this hearing, and you
25 can e-mail that to ncvr@lawyerscommittee.org. So that's

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2 our central space to collect testimony. If you happen to
3 forget that, if you have my e-mail or Rahsaan's or anyone
4 who's on the panel, that's always a fallback as well. But
5 ncvr@lawyerscommittee.org.

6 I just wanted to thank everyone. Thank you,
7 thank you. And I'll let each of you finish up with closing
8 remarks.

9 MR. HALL: Okay.

10 MS. COBB: I'll be brief, but I want to just
11 highlight some of the key themes that I thought came out
12 today.

13 First of all, the issue of inactive voters
14 being a real problem, along with provisional ballots that
15 causes great confusion to poll workers, voters, and it's
16 one of the additional layers that adds to the long -- when
17 we do have a lot of voters -- to the long lines because of
18 that confusion that can botch up the works.

19 The other key thing that I think came out
20 today, along with the issues of adequate translators,
21 bilingual ballots, accessibility for disabled voters, was
22 really statewide training for poll workers, because so much
23 of the issues occur as a result of this largely -- even
24 though they are paid, largely volunteer workforce.

25 Imagine a job where you have to show up at

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2 6:00 a.m. and have really no prior training, and you're on
3 the minute you begin, you have to implement very
4 complicated law and make sure that you're right, and not
5 necessarily know the team, not necessarily, as Elaine
6 pointed out, know anything the day you begin. And you have
7 one shot at it to get it right, and that's it. That is not
8 helpful to the functioning of democracy.

9 So implementing some form of statewide
10 training for poll workers that is accessible, that can be
11 online, where you can do refreshers, you can watch videos,
12 and then have also hands-on training in small groups doing
13 all of the pedagogical techniques that we know are
14 effective for active learning, would help tremendously to
15 make that core of people competent and also feel confident
16 themselves when it comes to actually implementing the laws
17 on election day. And also avoid additional issues with the
18 lack of training that leads to when there are people
19 present at voting locations who are engaging in kinds of
20 intimidation that we heard about today, they will feel
21 confident about knowing what is and is not permissible and
22 acceptable and legal.

23 So those were the key themes that I heard
24 today, and I look forward to the work of this group to be
25 able to make changes that are necessary to ensure that

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2 everyone who wants to vote may vote.

3 MS. WRIGHT: So I very much appreciated the
4 opportunity to be here and to see the incredible commitment
5 and passion that so many people from so many communities
6 have about accessing the right to register and to vote.

7 I was really struck by the, you know, many
8 different stories of difficulty and exclusion, you know,
9 everything from the Highlands community in Lynn and
10 discrimination in voting that they are experiencing to the
11 voter intimidation that happened in Worcester, to, you
12 know, the problems with -- throughout the state with the
13 inactive list which, you know, I think was in fact a theme
14 here. Access to bilingual ballots is clearly an absolutely
15 crucial issue that Massachusetts needs to address.

16 A couple of other themes that I thought kept
17 resurfacing: One was the issue of reprecincting in Boston
18 and how many problems that -- the fact that that hasn't
19 been done is causing. That just -- you know, long lines in
20 certain parts of the city with the largest precincts, but
21 also effects on being able to recruit the best folks for
22 poll workers, because you have just too many that you need
23 to recruit. So that's clearly a problem that needs to be
24 solved.

25 I was, you know, really inspired by the work

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2 that so many folks are doing to make voting accessible. I
3 was talking with Commissioner Dunne, before he left, during
4 the lunch break, we were talking a little bit about
5 Representative John Lewis, because we were talking about
6 the new Voting Rights Act amendments that he's really one
7 of the key sponsors of. And it reminded me that one of the
8 things that Representative Lewis always says, which is that
9 voting is the most powerful nonviolent tool that we have in
10 a democracy. And we have to make sure that people can use
11 that tool and exercise their right to vote.

12 So I really thank all the people who brought
13 us the testimony and the evidence about how far we need to
14 go in Massachusetts and Rhode Island and in the whole New
15 England region to really realize that right and make sure
16 it's accessible to everyone.

17 Thank you.

18 MR. HALL: I would echo the sentiments of
19 both Rachael and Brenda. I think those themes captured my
20 attention as well.

21 I would also say that I am inspired by the
22 young people who came forward who are engaged in the
23 process of getting other young people to turn out to vote,
24 to register, to advocate on behalf of historically
25 disenfranchised communities. That was refreshing and

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2 reassuring to know that there -- that the next generation
3 is in touch with these issues and engaged with these
4 issues.

5 I cannot say, however, that I am surprised
6 by what I've heard, in part because many of the advocates
7 that came forward have been the advocates that I've been
8 partnering with over the last several years at the Lawyers'
9 Committee. But it certainly did underscore the fact that
10 there are gross disparities that exist, certainly
11 throughout this country, but particularly here in
12 Massachusetts, that leave historically disenfranchised
13 communities on the margins of the electoral process.

14 And, you know, despite the best intentions
15 of election officials, there are -- we are still beset with
16 gaps in funding and in resources, and antiquated procedures
17 that end up forcing these people to the margins, because
18 the voting process is not necessarily an easy one in this
19 Commonwealth. And it can certainly be made easier, and
20 we've heard a lot of great suggestions of how it can be
21 improved.

22 So I'm certainly honored to be a part of
23 this commission and glad for the work that has been going
24 on.

25 I want to take a brief moment to acknowledge

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2 some folks, certainly our partners in helping to coordinate
3 this. MassVOTE, Common Cause, the ACLU of Massachusetts
4 have been consistent partners in our voting rights work and
5 consistent in working with us to get this -- to hold this
6 hearing.

7 We also had support from the League of Women
8 Voters, the New England Area Conference of the NAACP, the
9 Urban League of Eastern Massachusetts.

10 Brenda, Demos is certainly very well
11 respected and appreciated, and your support and
12 participation is appreciated.

13 Suffolk Law School and the School of
14 Government, we're glad to have you on board, Rachael.

15 Also Access Strategies for funding us, the
16 Springfield Institute, MIRA Coalition, Progressive Mass,
17 and Lawyers' Committee, national Lawyers' Committee and the
18 local affiliate. Thank you for doing this work and for
19 bringing it to the New England area and for your resources
20 and support.

21 And I would be remiss if I were not to thank
22 Tyler Crosby, who spearheaded all this work on the ground
23 here while I was tied up getting prepared for a trial. I
24 just kind of turned it over and said, "Tyler, run with it,"
25 and he ran with it.

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2 And certainly, Meredith, we appreciate all
3 your support, guidance, and technical assistance.

4 And to the rest of the Lawyers' Committee
5 staff, who I believe are out in the hall, for their help as
6 well.

7 So hopefully we look to see the great work
8 that comes out of this great work moving forward.

9 Thank you all.

10 (Hearing concluded: 3:44 p.m.)

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2 C E R T I F I C A T E

3
4 I, James A. Scally, RMR, CRR, a Certified
5 Shorthand Reporter and Notary Public in and for the
6 Commonwealth of Massachusetts, do hereby certify that the
7 foregoing transcript is a complete, true, and accurate
8 transcription of my stenographic notes/audiographic
9 recordings taken in the aforementioned matter to the best
10 of my knowledge, skill, and ability.

11 Dated: 4/10/2014

12
13 James A. Scally, RMR, CRR

14 CSR/Notary Public

15 My Commission Expires:

16 April 23, 2015
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1 NATIONAL COMMISSION ON VOTING RIGHTS

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11 TRANSCRIPT OF PROCEEDINGS

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January 30, 2014

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San Francisco, California

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23 Reported By:

24 Hanna Kim, CLR, CSR No. 13083

25 Job No. 69470

1 January 30, 2014

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3 Transcript of proceedings of the National
4 Commission on Voting Rights commenced at 9:10 a.m., on
5 January 30, 2014, at UC Hastings College of Law,
6 located at 198 McAllister Street, San Francisco,
7 California 94102, before Hanna Kim, CLR, CSR No. 13083.

8
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22 KATHAY FENG, California Common Cause

23 ALICE HUFFMAN, President of NAACP

24 CRUZ REYNOSO, (ret.) Justice of California Supreme

25 Court, UC Davis School of Law

1 struggle between those who would engage, those who wish
2 to participate, those who want to assert their rights
3 and fulfill their responsibilities, no matter who they
4 are, what their walk of life, what their economic
5 means, and those who would exclude, who would
6 marginalize, who would say that some voices are left
7 unheard.

8 I know from my own family background, with
9 parents who came to this nation to pursue that great
10 American Dream that we all hold so dear, even if, from
11 time to time, we take it for granted, that for some
12 people, it is difficult -- for many people, it is
13 difficult to gain access to the courtroom, to the
14 polling place, because they may not have the language
15 skills; or even if they do, they make speak with an
16 accent, as my parents did, and no matter how
17 grammatically perfect, no matter what their vocabulary,
18 however learned they were, others wouldn't take them
19 quite as seriously.

20 That is what we seek to change. Here, this is
21 an effort to bring about progress, to ensure that
22 everyone who wants to be part of this body politic, who
23 wants to say that they too have an idea, that they have
24 a candidate they wish to support, or perhaps even to
25 run for office themselves, that they will be given an

1 TRANSCRIPT OF PROCEEDINGS

2 THURSDAY, JANUARY 30, 2014; SAN FRANCISCO, CALIFORNIA

3 9:12 a.m.

4
5 MR. AARONSON: Good morning. And it's my
6 pleasure to introduce, to welcome you and start this
7 terrific event, with our Chancellor and Dean, Frank Wu.

8 MR. WU: Good morning, and welcome to the
9 University of California, Hastings College of the Law.

10 Many people suppose that the study of law and
11 the practice of law is an end in itself. I'd like to
12 suggest that, to the contrary, it is a means to an end.
13 The statutes, the case law, the arguments that we make,
14 they are a means of achieving justice, of doing right
15 in the world, of ensuring that we are able to persuade
16 one another.

17 That is why it is so fitting that we here host
18 and co-sponsor these public hearings, because these too
19 are a means to an end, of ensuring participation in
20 this diverse democracy of ours, of creating a system, a
21 set of procedures, a structure in concrete terms
22 whereby everyone can stand up and speak out, even if,
23 literally, they do not stand nor speak. For in this
24 democracy of ours, there is even now, in this day after
25 voting rights acts have been passed and undone, a

1 equal and fair opportunity. That is what makes this
2 nation great. And it is up to us to take this
3 rhetoric, all these ideals, and to make it a reality.

4 So I say to you, welcome to the University of
5 California, Hastings of the Law. Welcome to San
6 Francisco. I know this is an important day, when
7 everything you do in this dialogue will allow us to
8 make good on these ideals of ours.

9 Thank you very so much.

10 MS. RAPP: Good morning and welcome. I'm
11 Kimberly Thoms Rapp, the executive director of the
12 Lawyers' Committee for Civil Rights of the San
13 Francisco Bay Area, and it is really our pleasure to
14 join Chancellor and Dean Wu and David Young and
15 Professor Mark Aaronson to collaborate in sponsoring
16 and supporting today's very important hearing.

17 On behalf of my colleagues here in the San
18 Francisco Bay Area and our colleagues at the National
19 Lawyers' Committee for Civil Rights Under Law in D.C.,
20 we welcome all of you. And we are particularly pleased
21 to be joined by a distinguished panel of commissioners,
22 who will be introduced in great detail very shortly.

23 I think it's important, as we start
24 the -- begin to start the day and before we open the
25 proceedings, to really remember why it is that we are

1 here. You may recall that back in 2005, the National
 2 Lawyers' Committee established the National Commission
 3 on Voting Rights at that time to determine whether or
 4 not widespread discrimination was still happening,
 5 still taking place in jurisdictions covered by
 6 Section 5 of the Voting Rights Act.

7 The commission at that time held hearings
 8 around the country and issued a report of its findings
 9 that Congress was able to rely on at the time to inform
 10 its considerations as it was looking at whether to
 11 reauthorize Section 5 of the Voting Rights Act.

12 And, in fact, Congress did rely on the
 13 information yielded from the hearings and other
 14 information to determine that Section 5 should, in
 15 fact, be reauthorized.

16 And here we are, fast-forward to the summer of
 17 last year, when the U.S. Supreme Court in Shelby County
 18 v. Holder, was reviewing and considering the
 19 constitutionality of the coverage formula that enforces
 20 the preclearance provisions under Section 5. And, of
 21 course, the coverage formula came under challenge. And
 22 the coverage formula is extremely important because it
 23 is what really determines which jurisdictions really
 24 need to go through the process of having any changes to
 25 their election systems reviewed and approved prior to

1 any election.

2 And so the Court, in a 5/4 decision, struck
 3 down Section 4 of the Act, which, as I have mentioned,
 4 established the coverage formula. And by doing so, the
 5 Court effectively struck down Section 5, effectively
 6 nullified Section 5, the preclearance provision, which
 7 really had been the strongest antidote to voting
 8 discrimination other the last 50 years.

9 And here we are now, in 2014 here in
 10 California, with that decision having gutted the
 11 preclearance provisions, needing to take a look at the
 12 same thing that the commission back in 2005 looked at,
 13 whether or not discrimination is continuing in
 14 jurisdictions that were previously covered under
 15 Section 5.

16 And this commission also, in addition to
 17 looking at whether or not discrimination -- voter
 18 discrimination and racial discrimination is continuing,
 19 will also be looking at the structural barriers to
 20 voting, including electoral administration and reform
 21 issues.

22 So this commission will be issuing two
 23 reports: one report focused on racial discrimination
 24 and a second report focused on election administration
 25 problems and the barriers that these particular

1 problems create.

2 I know I have people ask questions about why
 3 it is that there is a need for voting rights here in
 4 California. Some suspect that California is far too
 5 progressive to face the kind of challenges that have
 6 been seen in Shelby County, for example, and other
 7 areas in the South. However, right here in California,
 8 there are several jurisdictions that were covered under
 9 Section 5, including Kings, Yuba, and Monterey
 10 Counties.

11 In addition, during the 2012 election cycle, a
 12 number of our volunteer attorneys and pro bono
 13 partners, who were helping us to monitor elections and
 14 monitor polling locations, observed a number of
 15 barriers and challenges to folks exercising their very
 16 basic fundamental rights. And these barriers included
 17 things like excessively long lines in order to be able
 18 to vote; voter intimidation issues, particularly in
 19 predominantly Latino and African-American
 20 jurisdictions. There was excessive provision balloting
 21 being required of registered voters, and de facto
 22 disenfranchisement of folks who have been formerly
 23 incarcerated.

24 So there are a number of continuing barriers
 25 and different things that are taking place that are

1 interfering with the fundamental exercise of the right
 2 to vote.

3 So we are very pleased to be here with all of
 4 you today to look at the existence and the extent of
 5 those particular barriers. We are very honored to be
 6 joined by several panels of witnesses today who have
 7 expertise in all of these areas. And for us here in
 8 California, as we're looking at implementation of the
 9 California Voting Rights Act, today's hearing is
 10 incredibly important. And the findings will be used
 11 during our work to look at that implementation and also
 12 to deal with the Voting Rights Act amendments that
 13 Congress will be considering going forward.

14 And so with that, I want to especially thank
 15 Joanna Cuevas Ingram, our equal justice work voting
 16 rights fellow here at the Lawyers' Committee in San
 17 Francisco, and Erandi Zamora, who is the associate
 18 counsel from the National Lawyers' Committee, who has
 19 been incredibly instrumental in helping to organize the
 20 proceedings here today, along with the planning
 21 committee, and all of our partners who have worked with
 22 us to put the hearings on today. And I particularly
 23 want to acknowledge the support -- the very important
 24 support that we've received from the James Irvine
 25 Foundation; the Silicon Valley Community Foundation;

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1 O'Melveny & Myers; Manatt, Phelps & Phillips;
 2 Morrison & Foerster. And, of course, DLA Piper has
 3 been a very important partner of our training volunteer
 4 lawyers to do these election monitoring, polling site
 5 monitoring. I would also refer you to the back of the
 6 program for information on all of our supporting
 7 partners and sponsors.
 8 And to introduce our distinguished panel of
 9 commissioners and so that we can begin today's
 10 proceedings, I want to introduce Erandi Zamora from the
 11 National Lawyers' Committee.
 12 MS. ZAMORA: Good morning. How are you all
 13 doing today?
 14 So thank you very much, Kimberly, for your
 15 introduction and your very thoughtful remarks.
 16 My name is Erandi Zamora, and I'm an attorney
 17 with the Lawyers' Committee for Civil Rights Under the
 18 Law, based in Washington, D.C., and it is a great
 19 pleasure for me to be here with you today. I want to
 20 join Kimberly in thanking UC Hastings and the Center
 21 for State and Local Government Law here at UC Hastings
 22 for hosting us.
 23 And I want to thank the Lawyers' Committee of
 24 the Civil Rights of the San Francisco Bay Area for all
 25 your work, your countless hours in putting this

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1 all.
 2 In the role of national commissioner, with
 3 have Dolores Huerta. Ms. Huerta is the president of
 4 the Dolores Huerta Foundation, and she has been working
 5 as a social justice activist for over 50 years. Her
 6 many accolades include the Medal of Freedom Award
 7 received from President Obama, the Eleanor D. Roosevelt
 8 Human Rights Award received from President Clinton. As
 9 I'm sure you all know, she is cofounder of the United
 10 Farm Workers, along with Cesar Chavez, and is a
 11 founding board member of the Feminist Majority
 12 Foundation. She has been a strong advocate for social
 13 justice, women's rights, the working poor, immigrants,
 14 reproductive freedom, and LGBT civil rights.
 15 Kathy Feng, serving as guest commissioner, is
 16 the executive director of California Common Cause. And
 17 under her leadership, Common Cause has championed
 18 election and redistricting reforms here in California.
 19 Most recently, Ms. Feng led the efforts to pass online
 20 voter registration and same-day voter registration here
 21 in California.
 22 We are also joined by guest commissioner Alice
 23 A. Huffman. Ms. Huffman is president of the California
 24 NAACP. And under her tenure, the organization has
 25 become one of the most sought-after organizations in

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1 together, our steering committee, of course, and our
 2 funders.
 3 For those of you who might not be aware, the
 4 Lawyers' Committee for Civil Rights Under the Law is a
 5 nonpartisan civil rights organization. We're based in
 6 Washington, D.C., and we were founded at the request of
 7 President Kennedy 50 years ago to engage the private
 8 bar in the fight for racial justice and equality.
 9 Today, we continue our work in the areas of
 10 fair housing, employment discrimination, community
 11 development, education, and, of course, voting rights.
 12 As Kimberly mentioned, this is a crucial time
 13 for voting rights in the United States, and your
 14 participation here today, your -- the expertise and
 15 experiences that you will share, with regards to racial
 16 discrimination and election administration, will be
 17 instrumental in educating and informing our legislators
 18 and our voting public about the barriers that continue
 19 to exist to this day throughout the United States. So,
 20 again, thank you for all being here.
 21 As -- now it is my honor to introduce our very
 22 distinguished panel of commissioners who will be
 23 presiding over today's event. Each of our
 24 commissioners has a remarkable commitment to equality
 25 and to protecting access to ballot on equal terms for

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1 the California policy arena. Ms. Huffman is also
 2 president and CEO of her consulting firm, AC Public
 3 Affairs. And for the last five years, she has been
 4 named as one of the "100 Most Influential
 5 Californians."
 6 Mr. -- sorry.
 7 Our third commissioner is Justice Cruz
 8 Reynoso. Mr. Reynoso is professor of law emeritus at
 9 UC Davis School of Law. And he has served as vice
 10 chair of the U.S. Commission on Civil Rights and was
 11 awarded the Presidential Medal of Freedom by President
 12 Clinton. A former associate justice of the California
 13 Supreme Court, he is recognized for his leadership in
 14 civil rights, immigration, and refugee policy,
 15 government reform, the administration of justice, legal
 16 services for the poor, and education.
 17 So we are in really good company today. So
 18 please join me in welcoming our distinguished panel.
 19 And now, before we start the program, I just
 20 have a few housekeeping items. As you know, there will
 21 be three formal panels today, with witnesses and
 22 experts. These three panels will address systemic
 23 procedural barriers to voting in California. The
 24 second will address ongoing second-generation harms and
 25 vote dilution and voting discrimination. And the third

1 panel will address barriers to language access for
 2 California voters.
 3 There will also be opportunities for public
 4 testimony. We will have three public comment periods,
 5 and we really encourage you all to sign up. They will
 6 start at 10:40, 12:35, and 2:55.
 7 And I -- just a few other items: Our hearing
 8 is being video recorded and transcribed, so, please, if
 9 you are testifying, speak clearly and be mindful of the
 10 timekeepers and their signs. It will be right over
 11 there. And we have Spanish and sign-language
 12 interpretation available today. If you would like to
 13 take advantage of either service, please go to the
 14 registration desk. And these services are provided
 15 thanks to the courtesy and generosity of TransPerfect
 16 and Bay Area Communication Access.
 17 Also, as I'm sure you have seen, we have
 18 breakfast in the back of room, and we will be serving
 19 lunch thanks to the generosity of Panache Catering.
 20 And, lastly, if you are on Twitter, please
 21 join the conversation by using the hash tags "NCVR" and
 22 "voting rights."
 23 So without further ado, I will turn it over to
 24 our guest commissioners. Thank you.
 25 COMMISSIONER D. HUERTA: Good morning,

1 everyone. Good morning, everyone, and thank you very
 2 much for being here, especially thanking to the
 3 Lawyer's Committee for Civil Rights for all the work
 4 that they've done to make sure that our voting rights
 5 are secured and that we can really make a democracy
 6 work, because we know that the basis of our foundation
 7 of democracy is that people participate and also one of
 8 the basic ways to participate is that they vote.
 9 And I know many of you that are here will be
 10 testifying today. I want to thank you for taking the
 11 time to be here.
 12 I think it's very interesting in that I talked
 13 with Judge Reynoso about this, that my first
 14 activism -- and I always say that the first step to
 15 becoming a leader is to go out and register voters door
 16 to door. And that's what we did way back almost
 17 60 years ago. I was just doing the math on that, and I
 18 think my first voter registration door to door was back
 19 in 1955, almost 60 years ago. That was back in the
 20 community service organization. It was the first, you
 21 might say, mass-based Spanish-speaking organization
 22 that we formed here in the State of California under
 23 the leadership of the Fred Ross, Sr.
 24 And it was interesting because we had so much
 25 discrimination then that you could not even register

1 voters door to door. You really had to -- you had to
 2 pick a site, get it approved. You had to go down to
 3 the registrar's office to get yourself boarded as a
 4 deputy registrar, and it made it very, very difficult.
 5 So one of the first acts that we did in the
 6 committee service organization, once we got people
 7 registered up and down the State of California was,
 8 change some of the laws. And one of the first laws
 9 that we changed was, yes, you could register voters
 10 door to door. We actually had to pass a law to make it
 11 happen, and that was in 1963.
 12 And then we passed another law that said you
 13 can get your ballots in the Spanish language and other
 14 ethnic languages. And who would think that we are
 15 still not there yet, that we still have barriers to
 16 keep people from voting. We still have that
 17 discrimination and those out there that would like to
 18 keep, especially people of color, and also have to add
 19 the young people and older people, to keep them from
 20 voting.
 21 So we still have a lot of work to do. We're
 22 still not there yet. We still do not have a perfect
 23 democracy. And unless we can raise those barriers, we
 24 know that we have not arrived.
 25 So I want to thank you again for being here,

1 and I know we're going to have a very fruitful session
 2 today. Thank you.
 3 COMMISSIONER A. HUFFMAN: Good morning. I'm
 4 Alice Huffman, president of NAACP in California, and
 5 I'm also on the National Board of Directors of the
 6 California -- of the National NAACP. And I'm glad to
 7 see my Regional Director Dugar, here, who was really
 8 instrumental in getting me up and out here this morning
 9 from Sacramento. And I see a few other NAACP members
 10 in the room. And I hope you are all NAACP members, but
 11 there's a couple I recognize.
 12 You know, the NAACP -- as I stand here, I
 13 carry a heavy tradition because we're the ones who have
 14 the hoses turned on us, who had people murdered and all
 15 kinds of horrible things happen to us as we forged our
 16 right to vote in this country. And it's kind of
 17 ironic; I was up in D.C. in 2005 when we were able to
 18 get the Voting Rights Act to reauthorize, and it was a
 19 unanimous decision. I think it was 2005. It was a
 20 unanimous decision. Everyone realized that while we've
 21 come a long way in America, we still have a long ways
 22 to go. And while voting is something that many of us
 23 take for granted, in certain pockets in this country,
 24 it is denied to people who should vote.
 25 I once did a focus group of African-Americans

1 that were occasional voters. They were registered to
2 vote. And I go -- you know, the long lines had just
3 happened in Africa, where people stood out there for
4 days to get a chance to vote. And I go, "What's the
5 matter with you guys? Why don't we have long lines?"

6 And they go, "We've already gotten past that.
7 We have the right to vote. Now we need something to
8 vote for."

9 Well, we have to make sure that when we have
10 something to vote for, like these last couple of
11 elections, that everybody can participate freely.
12 Doesn't matter what race you are. While we may have
13 led the way and have had a lot of harm done to us for
14 the right to vote, women did it before us. It doesn't
15 matter what color you are, what creed you are, what
16 sexual orientation you are, what disability you might
17 have or physical challenge you might have; it is
18 everybody's right in America to vote. And I am
19 standing here because it's a sacred principle in the
20 NAACP. That is one of our most sacred canons that we
21 fight for across this country, is to make sure that
22 everyone has equal opportunity, equal access to the
23 voting ballots.

24 So I'm particularly pleased to be on this
25 panel. I believe that we have lived long enough to see

1 that in order for our society to work, we need
2 100 percent participation; and when we have not reached
3 that 100 percent goal, what do we need to do coactively
4 to open those doors, remove those barriers, and find a
5 way for society to be fully embracing of all of our
6 nation's diversity.

7 I will say that I'm very active with many of
8 the groups who are in this room, around thinking about
9 voting rights policies, but also in participating in
10 what we call the Election Protection Network, which
11 monitors how election days are going, receives calls
12 from voters and, on election day, leading up to
13 election days, really gets at the heartbeat at what
14 some of the biggest problems are.

15 And, in California, I'm sad to say that we
16 still get thousands of phone calls asking for help.
17 And when we monitor poll sites and work with many other
18 organizations that do this kind of work, what we find
19 again and again is, there are continuing reports of
20 problems in the poll sites, denial of access, people
21 being told to go to the back of the line because they
22 don't speak English like everybody else.

23 And so I think it's important for us to
24 document that information, in part because it's an
25 important reminder to Congress, as well as our Supreme

1 that everything given to us is eventually taken away,
2 and we start to bow all over again to maintain and
3 support our rights.

4 And I want to pay homage to this distinguished
5 panel that is here today. I am privileged to serve
6 with the people on this panel, and I hope this is very
7 productive, and I hope we get the kind of information
8 and input from you today that will really make a
9 difference.

10 They think California doesn't need this. We
11 do. I mean, I have seen things happen in California
12 with the non-English-speaking people in certain
13 pockets, where they have put up barriers, given them
14 the wrong voting date, tell them all kinds of things to
15 stop them from going to the polls. So we hope that we,
16 once again, from this hearing, lead the way. Thank
17 you.

18 COMMISSIONER K. FENG: I was trying to be
19 deferential, but Cruz insisted that I come up here and
20 speak, first.

21 Two days ago, we heard President Obama remind
22 us that citizenship means standing up for everyone's
23 right to vote. And I think, fundamentally, that's what
24 today's hearings are about: How do we affirm and
25 uphold that basic principle of our democracy, which is

1 Court, that there is still much to be learned and to be
2 improved upon in order to reach that ultimate goal
3 where everyone has the right and the ability to vote.

4 I just want to end on a sentence that I
5 thought was very powerful for myself coming from the
6 State of the Union that President Obama said: "It
7 should be the power of our vote, not the size of our
8 bank account, that carries and drives our democracy."

9 Thank you.

10 COMMISSIONER C. REYNOSO: Voting in democracy
11 is essential. We do have to remember we've come a long
12 way. When the country was first formed, you had to be
13 male and you had to be a property owner to vote. Since
14 that time, we've reached the point where we believe
15 that every citizen has a right to vote. But often, the
16 problem is in administering that. Perhaps some of you
17 remember the -- the joke of many years ago.
18 Particularly, there was an effort to have
19 African-Americans not vote in the South, where
20 the -- where the law required in that state that you be
21 able to read. When African-Americans showed up to try
22 to register, the registrar showed them writing. The
23 writing happened to be in a Chinese language. And he
24 says, "Can you read this?"

25 And the man who wanted to vote said, "Oh, I

1 read that very well. It says, 'No black person is
 2 going to vote in this county today.'
 3 So very often, the registrar gets the
 4 operation, and that's what I have seen in California.
 5 When I was a young lawyer, I saw efforts to intimidate
 6 Latino lawyers because the law at that time required
 7 that a person be able to read in the English language.
 8 That's been declared unconstitutional since that time.
 9 It's sad to say I was also on the U.S. Commission of
 10 Civil Rights that reviewed the disaster of Florida a
 11 few years ago where, in my view, frankly, the vote was
 12 stolen and a person became president who didn't win the
 13 election. And that's a matter of operation.
 14 So we have to worry a great deal, and I think
 15 that we'll be spending time today talking not just
 16 about the laws, but how they're operated on, because
 17 the operation itself is -- is as important as the law.
 18 Thank you very much.
 19 COMMISSIONER D. HUERTA: Excuse me. I just
 20 want to add something that I left out. I left my notes
 21 over there on the desk. But we still have,
 22 unfortunately, in many parts of California, where we do
 23 not have -- excuse me, we do not have representation.
 24 We do not have people of color on school boards, on
 25 city councils, on as supervisors. And so we know the

1 mics are working now. Can you hear me all right?
 2 It's my honor to call the first panel up. So
 3 if the first panelists would come up. And I have here
 4 Lori Schellenberger; Fred Nisen; Dorsey Nunn; Aida
 5 Macedo, a former student of mine; and Joanna Caevas
 6 Ingram.
 7 Now, I understand that I don't have to be the
 8 time sergeant. We have somebody over here being the
 9 time sergeant. So -- but it's my job to simply hear
 10 from you, and then the panelists will have questions
 11 for you as they seem appropriate.
 12 So the first witness is Lori Schellenberger,
 13 if you can proceed, please. And I hope your mic is
 14 working.
 15 L. SCHELLENBERGER: Is it working?
 16 COMMISSIONER C. REYNOSO: I don't know if you
 17 will be picked up on it or what.
 18 (Inaudible.)
 19 L. SCHELLENBERGER: I don't know. I have
 20 never said anything less than five minutes.
 21 Good morning, and it's an honor to be here.
 22 I'm Lori Schellenberger. I'm the director of the
 23 Voting Rights Project for the American Civil Liberties
 24 Union of California. When I was hired a few years ago
 25 to do voting rights, having come from Ohio, where

1 way the districts have drawn is -- really keeping
 2 people from having the proper representation. And that
 3 is, of course, a very big issue.
 4 And I just want to say, about the power of the
 5 voting, we know that in the last election here in
 6 California, because we did -- the voters did vote for
 7 Proposition 30, which, if you will remember, was the
 8 proposition that said that millionaires had to pay 3
 9 percent more in state income taxes -- remember that
 10 one -- and people who made half million had to pay 2
 11 percent more, and 250,000, one percent more in state
 12 income taxes.
 13 Hey, guess what? We are now in a good place
 14 in terms of our budget in the State of California, and
 15 we can thank that. And one of the organizations that
 16 was behind the movement to make sure that we passed
 17 Proposition 30 -- I know we had many people involved:
 18 labor unions, California Teachers Association and many
 19 others. But I just want to give a shout-out to an
 20 organization called California Cause, which is
 21 dedicating all of its efforts to make sure that people
 22 register to vote, that they're educated on how to vote,
 23 and that they do vote.
 24 Thank you.
 25 COMMISSIONER C. REYNOSO: I understand these

1 things are very heated and contested there, I thought,
 2 hmm, this was going to be a smooth ride. Voting rights
 3 in California, that couldn't be so bad. And as our
 4 esteemed commissioners have already pointed out,
 5 California is not a safe haven from an attack on voting
 6 rights, and we remain ever vigilant in protecting the
 7 rights, particularly protecting minorities, racial,
 8 ethnic, and language, those with disabilities,
 9 repeatedly being excluded from -- from the franchise
 10 and facing increasing challenges in participation.
 11 I just quickly -- the second panel today will
 12 talk more about the Voting Rights Act, and I just
 13 wanted to place procedural barriers into -- into the
 14 voting rights context, because one of the things I
 15 noticed when I started doing this work here was that
 16 there was this kind of sense of a procedural and
 17 election reform policy, and that's very distinct and
 18 separate from civil rights and voting rights.
 19 And I think what this panel will demonstrate
 20 is that they are entwined and that they're -- there
 21 continue to be procedural law -- laws and procedurals
 22 in place that put up barriers to participation
 23 and -- and that we have to continue to monitor.
 24 So one of the things the second panel will
 25 talk about -- and I just want to highlight very

1 briefly -- is that the Voting Rights Act was amended
2 after its passage to make a very important distinction
3 between intentional and -- discrimination and -- and
4 policies that result in discrimination. And with very
5 few exceptions, the Voting Rights Act protects people
6 against policies that result in -- we do not have to
7 show that someone intended to exclude people. The
8 second panel will address that. I want to just
9 highlight a few -- just a few -- of those examples in
10 California in the last couple of years.

11 The first is probably more overt -- overt
12 state policy that was implemented that excludes those
13 convicted of a crime of certain categories of people
14 sentenced that have a felony conviction from a right to
15 vote, stripping -- an act to strip and reduce the
16 number of people that can participate in the franchise
17 after the passage of the Criminal Justice Realignment
18 Act in California, which was a criminal justice policy
19 reform that shifted the sentencing of low-level felony
20 offenders to local supervision rather than state
21 supervision.

22 The California Constitution was amended in
23 1974 to protect and expand the franchise, and the only
24 exception of voting with a criminal conviction is those
25 people who are currently in prison or on parole. So

1 significant changes to the system so that now that
2 system will be available to people without
3 identification, will be accessible in those languages,
4 and is more accessible to people with disabilities.
5 That was only done through hard-fought and advocacies
6 by civil rights group.

7 The third category is -- is really legislation
8 that exists that people are just lazy about
9 implementing, like, yeah, that's a nice law, but no one
10 really cares if we enforce it, right. And one of those
11 is the National Voter Registration Act, which --
12 commonly known as Motor Voter, which requires DMV to
13 offer voter registration, but also requires public
14 assistance agencies to offer voter registration. And
15 the intent of that law when it was passed 21 years ago
16 was to reach those people who slipped through the
17 cracks, right, who don't have opportunities to register
18 to vote.

19 But when they're interacting with government
20 to get services, either those people who have
21 disability and they're getting government services or
22 are applying for public assistance, and that law was
23 not enforced in State of California. But currently --
24 we're doing better, but it's another example of the
25 need for vigilance.

1 that is just one example.

2 This new category of people were deemed by the
3 Secretary of State through a directive they issued to
4 counties and sort of through administrative fiats that
5 these people will not be allowed to vote. So this is
6 one example of a state policy that was done, sort of,
7 very quietly that disenfranchised disproportionately
8 people of color.

9 And second is something that we remain very
10 cognizant of, is reforms that, in our eagerness, right,
11 to achieve reform, that we still continue to do those
12 things without being conscious of certain categories of
13 people who are left out of those reforms. Online voter
14 registration is one example where we have had to fight
15 very hard, and we have successfully fought that battle.
16 But to have online voter registration be available in
17 Spanish, be available in the languages that Section 203
18 of the Voting Rights Act requires that the counties
19 offer voter materials in. In addition, the systemwide
20 launch was not accessible to people with disabilities.
21 That is being changed. Online voter registration has
22 one -- one of the caveats is that one has to have an ID
23 to use it, and are we disproportionately impacting
24 people who don't have access to state-issued
25 identification. And the Secretary of State has made

1 COMMISSIONER C. REYNOSO: Thank you very much.
2 And you're still sitting, so that's very good.

3 F. NISEN: Thank you for the opportunity be
4 here. (Inaudible.)

5 COMMISSIONER A. HUFFMAN: Are you reading from
6 testimony so we can find -- this one? Thank you.

7 F. NISEN: (Inaudible.)

8 COMMISSIONER C. REYNOSO: Thank you.

9 And I would like to comment that Mr. Nisen has
10 presented the commission with some written materials
11 that are very helpful. So I'm sure that if any of you
12 haven't presented the commission with written
13 materials, even after the hearing, I'm sure the
14 commissioners will welcome it.

15 With that, I would like to call up on Mr.
16 Nunn, Dorsey Nunn.

17 D. NUNN: I very seldom write anything. But I
18 curse a lot, so I figure it's important for me to write
19 so I could be understood.

20 My name is Dorsey Nunn, and I'm the executive
21 director of Legal Services for Prisoners with Children.
22 I'm also the cofounder and proud member of All of Us or
23 None, a civil and human rights organization comprised
24 of formerly incarcerated people. I have been engaged
25 one way or another in fighting for the full restoration

1 of the civil and human rights of people with a
2 conviction history for approximately 40 years. I have
3 been doing voter registration for over 20 years. I'm
4 honored to have an opportunity to witness today,
5 because very seldom do people like me get an
6 opportunity to speak in our own voice.

7 I'm a member of a community that has yet to be
8 recognized, even though our membership numbers' in the
9 millions. I must point out that the question of
10 feeling disenfranchised holds much more important than
11 people normally assigned to this issue. It is
12 certainly much more than the issue of voting rights for
13 an individual person in one particular state. I'm on a
14 national conference call every other week with formerly
15 incarcerated people from across the United States, and
16 we have organized a delegation of -- reorganized the
17 delegation of formerly incarcerated from 15 states to
18 going to Pennsylvania to register people from the
19 formerly incarcerated community to vote in the 2012
20 election.

21 Formerly incarcerated people have been in
22 continuous dialogue since the 2000 presidential
23 election, where our votes were contested and legally
24 stolen. During these conference calls, so many
25 questions have been raised. I want to make sure that I

1 State of Vermont and Maine because of the relatively
2 low amount of Black citizens in those states? Is
3 criminal conviction a proxy for race? When entering a
4 guilty plea, why are immigrants advised of potential
5 collateral consequences on residence status, and yet we
6 are not advised of a guilty plea's impact on
7 citizenship? Do we really have freedom of movement
8 when our citizenship status can be stripped simply by
9 moving across state lines.

10 My involvement in California started with a
11 simple gesture of trying to register formerly
12 incarcerated people to vote. I approached people going
13 and coming from Alcoholics Anonymous and Narcotics
14 Anonymous meetings, knowing that people addressing
15 issues of addiction would most likely have a greater
16 chance of having a conviction. From countless
17 responses from people I was trying to register, I
18 learned many thought they could not vote because they
19 had been convicted of a felony. A number of people
20 could recite the Miranda warning or come fairly close
21 to reciting the plea bargain colloquy they had heard
22 before the pronouncement of the citizen rights, but
23 couldn't tell me the same about the right to vote.

24 The other thing that stood out was the age.
25 Many of us -- many of the first time-voters, many of

1 share some of these questions before addressing the
2 issue of my voting rights as a California resident.

3 Many of us see the fundamental rights
4 of -- many of us see voting as a fundamental right of
5 citizenship. But the extensive disenfranchisement of
6 formerly incarcerated people raise numerous questions:
7 Are we saying that during the period of time when we
8 are unable to legally vote? If voting rights are
9 solely determined by the state, then where does our
10 citizenship attach? Are we citizens of a particular
11 state or are we citizens of the United States? What
12 does equal protection mean when our voting rights vary
13 from one state to another? Are prisoners allowed to
14 vote in the State of Vermont and Maine because of the
15 relatively low number of Blacks in those states? Is
16 criminal conviction a proxy for race? When entering a
17 guilty plea, why are immigrants advised of potential
18 collateral consequences on residence status, and yet we
19 are not advised of our guilty impact --

20 COMMISSIONER C. REYNOSO: That's a powerful
21 statement.

22 D. NUNN: Yeah, it is, if I got to read it --

23 COMMISSIONER K. FENG: Just lean in to your
24 microphone.

25 D. NUNN: Are prisoners allowed to vote in the

1 them were well into their 40s. I myself cast my first
2 vote at the age of 35.

3 Earlier in the process, we made efforts to
4 access our incarcerated community, housing and county
5 jails, so we could advise them of their voting rights,
6 as well as to register them. These efforts were not
7 taken seriously by various sheriffs departments or by
8 the Secretary of State. These marginalized voters were
9 not considered valuable to the body of politics or to
10 any real particular party. Many of us knew that during
11 the "tough on crime" era, people were often voted --
12 often voting via ballot initiative to extend the length
13 of sentences and establish new laws.

14 COMMISSIONER C. REYNOSO: And, sir, I'm sorry.
15 I thought I wasn't going to enact the role of a
16 communist sergeant, but the lady has put up a stop
17 sign, so if you could summarize.

18 D. NUNN: I can summarize this way: If we
19 sent my family members into the Iraqi war, the action
20 that required a right to vote in an Iraqi prison, I
21 think I should be able to vote in any prison inside the
22 United States. You are sending my children into harm's
23 way and you're not giving me the right to vote here.

24 So if I have to summarize this, I declare that
25 I'm a human being and a citizen of the United States,

1 and I demand a god-damn right to vote.
 2 COMMISSIONER A. HUFFMAN: Don't get mad and
 3 walk away.
 4 COMMISSIONER C. REYNOSO: We might have
 5 questions.
 6 D. NUNN: All right. I'll stay.
 7 COMMISSIONER A. HUFFMAN: Thank you.
 8 COMMISSIONER C. REYNOSO: Ms. Macedo.
 9 A. MACEDO: Good morning, Commissioner. Can
 10 you hear me okay?
 11 COMMISSIONER C. REYNOSO: Yes, we can hear
 12 you.
 13 A. MACEDO: My name is Aida Macedo. I was the
 14 field project manager for the Election Protection
 15 Project in Fresno, and it's an honor to be here before
 16 you today.
 17 This is the first time that we've had an
 18 election protection team in Fresno, California, which
 19 is an essential valley, rural area of California. As
 20 it was mentioned earlier, anybody who thinks that there
 21 are no longer any issues of voting rights, I welcome
 22 and invite all of you to come to the Central Valley in
 23 Fresno to see what is going on in the rural areas of
 24 California.
 25 Some of the testimony I will give before you

1 today includes also issues in Southern California from
 2 our partner groups in the Election Protection. Just
 3 quickly, I would like to thank the leadership of the
 4 Election Protection Project. As I said, this is the
 5 very first time we did anything in Central Valley. It
 6 was a small group of 20 of us. As you will see, we
 7 discovered so much with just a small group who led the
 8 effort there.
 9 Some of the main issues that we saw -- the
 10 filing issue that I want to cover is -- the issue I
 11 want to cover is the issue of inadequate paper ballots
 12 and incomplete ballots in areas of Fresno County and
 13 Southern California. We also got reports of vote by
 14 mail ballots not received before the election by many
 15 voters. The biggest issue we saw in Fresno County,
 16 which was in the City of Orange Cove, was voter
 17 intimidation for folks who went and showed up at the
 18 polling sites. Fourth issue that we saw, which was
 19 especially prevalent in Southern California, was voter
 20 ID issues where folks were being asked for voter
 21 identification. And then the fifth issue that we saw
 22 were incomplete voter roll, where people showed up at
 23 the polls and their name was not on the roll.
 24 So the first issue I want to cover is, in
 25 Fresno County, in particular, folks who were registered

1 to vote by mail received their ballot. And people had
 2 voted absentee for years, after submitting their
 3 ballot, received a letter from the county registrar
 4 explaining that the letter -- that their ballot was
 5 incorrect. The -- I have a copy of the letter that I
 6 will submit to the Commission. But this letter was
 7 explaining that due to a redistricting error, all the
 8 ballots sent in were incorrect and the ones that had
 9 been submitted were to be destroyed, and that these
 10 voters had to vote again. And we got a voter who
 11 reported this to us and said that she had -- she had
 12 already voted, and a few days later, on October 22nd,
 13 she received a new ballot. She was concerned that
 14 people who had already voted may not want to do it
 15 again, and they might not remember their previous votes
 16 and generally be confused and dismayed.
 17 This was an issue for an election -- the
 18 ballot, it didn't include the Fresno County School
 19 District race. As you will see, the letter is quite
 20 confusing in terms of how voters were supposed to vote
 21 again, whether their initial vote was going to be
 22 counted or not or were these votes going to be
 23 destroyed. That is the first issue.
 24 There are also -- in Southern California,
 25 there were wide-state precincts that ran out of paper

1 ballots. And that was in the 2008 election. This was
 2 a statewide problem, but it was especially severe in
 3 Southern California. So because of that, many voters
 4 were forced to vote provisionally.
 5 The second issue that I want to cover, because
 6 my time is short, is voter intimidation. We had
 7 several legal observers, volunteers, go out to Orange
 8 Cove, which is almost 95 percent a Latino community.
 9 And there have been rumors that police officers were
 10 going to be present at the polling site. There is only
 11 one polling site in that location. We received word
 12 from committee members saying that they were afraid to
 13 go because there was going to be police officers; there
 14 was going to be intimidation.
 15 And when we sent out volunteers, sure enough,
 16 there was. There were members from the voter -- the
 17 Voting Integrity Project or True The Vote Project, who
 18 stood behind voters, within 5 feet of the ballot box,
 19 and continuously took notes while voters were casting
 20 their vote. And we have contacted some of those polls
 21 who felt intimidated and felt threatened by the
 22 presence of these folks. And in general, it seemed
 23 that the poll workers were not adequately trained and
 24 did not handle the situation. Orange Cove is out in a
 25 rural area, about an hour south of Fresno, Downtown

1 Fresno, so it was very difficult to get anybody down
 2 there to help.
 3 I have a lot more examples of some of the
 4 issues that we face, and I will submit that to the
 5 Commission.
 6 COMMISSIONER C. REYNOSO: Thank you very much.
 7 We may have questions for you at a later time.
 8 Now I would like to have Joanna Ingram.
 9 J. INGRAM: Hello.
 10 COMMISSIONER C. REYNOSO: Hi.
 11 J. INGRAM: Professor Reynoso, I'm here today
 12 filling in for (inaudible).
 13 COMMISSIONER C. REYNOSO: Move up a little
 14 bit.
 15 J. INGRAM: Yes.
 16 I am an attorney Lawyers' Committee for Civil
 17 Rights. And we at the Lawyers' Committee worked
 18 together with my colleague (inaudible) and others in
 19 2012, along with a number of pro bono volunteers -- 90
 20 pro bono volunteers here in Northern California -- to
 21 observe aberrations and barriers in potential voting
 22 elections on election day in 2012. And one of the
 23 things that we found is that structural barriers, as
 24 Aida mentioned, persist here in California. With
 25 regard to who is affected, we do believe that it's a

1 racial justice issue.
 2 So just to give a few examples of our what
 3 volunteers saw on election day in Northern California,
 4 in San Jose, a voter received a deceptive phone call
 5 saying that there was a problem with voter
 6 registration. And also, all the voters are generally
 7 not required to present identification in order to vote
 8 once they are registered here in California. Poll
 9 workers in San Mateo County were requiring some voters
 10 to present ID in order to vote.
 11 There were issues with discrimination based on
 12 race, as well, here in California in 2012. We received
 13 a report from a Humboldt County voter who was denied a
 14 provisional ballot, and felt it was because of
 15 discrimination based on his or her multiethnic heritage
 16 as part African-American.
 17 In Vallejo, a predominant African-American
 18 neighborhood, were telling a substantially large number
 19 of voters that they registered to vote absentee, and
 20 therefore, they had to vote by provisional ballot.
 21 In San Mateo County, as well, at least Palo
 22 Alto, a largely Latino, African-African, and Pacific
 23 Islander precinct, the city hall precinct, we received
 24 numerous reports from our volunteers that there was
 25 excess numbers of provisional balloting going on and

1 that ballots -- they ran out of ballots by 10 a.m. in
 2 the morning in San Mateo County. No less than
 3 one-third of the people who were voting in that period
 4 were completing provisional ballots rather than full
 5 ones. One election day volunteer said that since she's
 6 been a resident, for other 30 years, she's confident
 7 there has been no turnover in the population since 2008
 8 and 2012 that would otherwise rationalize effective
 9 results. Many voters walked away from precincts in
 10 anger and frustration over the use of provisional
 11 ballots.
 12 And in Alameda County, an African-American
 13 voter reported that, despite being registered to vote
 14 by regular ballot in person and at the same address for
 15 40 years, she was forced to vote by provisional ballot
 16 on election day. According to poll workers at her
 17 polling place, she was registered as a mail-in voter
 18 and was only eligible to cast a provisional ballot.
 19 The voter insisted that she had never registered to
 20 vote by mail and never received a mail-in ballot. And
 21 she noted that another African-American friend in line
 22 near her had the same experience.
 23 So we know that excessive provisional ballots,
 24 long lines and, as Aida Macedo testified, intimidation
 25 continues to persist here in California. There were

1 also reports from San Diego County of a racial epithet
 2 being used by a poll worker against a Latino voter. So
 3 we understand, the Lawyers' Committee, that even that
 4 we've come (inaudible) local level, and particularly in
 5 rural areas, but also in rural areas, there are
 6 procedures that are systemically impacting community of
 7 color in a way that we do not see precincts that are
 8 largely White being impacted.
 9 Another -- another set of issues that we will
 10 be addressing -- we don't have written testimony --
 11 testimony here for you here today, but we will
 12 publishing a report in March 2014, outlining and giving
 13 an overview of the systemic barriers to voting in
 14 California, including felony disenfranchisement, de
 15 facto disenfranchisement as it impacts the formerly
 16 incarcerated Californians, as Dorsey mentioned, as well
 17 as these issues that we see with election coalition and
 18 vote dilution.
 19 The next panel will be addressing the lack of
 20 representation at the local level. We, at the Lawyers'
 21 Committee, have been very much involved in the last ten
 22 years in working with the California Voting Rights Act
 23 to address vote dilution or the lack of representation
 24 and racial polarization in communities throughout
 25 California where city councils, school boards, boards

1 of supervisors, do not represent the community.
 2 One example of that that we can give from this
 3 past year is that we settled a case with San Mateo
 4 County, the last county in California as an at-large
 5 system to a district-based system thanks to the
 6 pressure of the California Voting Act lawsuit and the
 7 ultimate measure to change the at-large system there to
 8 the district-based system. San Mateo County is over 40
 9 percent Asian and Latino, yet their board of
 10 supervisors have been predominantly White for as long
 11 as people can remember.

12 Through the settlement process in the
 13 California Voting Rights Act, communities will be able
 14 to engage in a community-based redistricting process
 15 and be able to ensure that Asian-American voters, as
 16 one district, be able to have meaningful opportunities
 17 to vote; and coalition voters in another district,
 18 Asian, Latino, and African-American voters now have a
 19 right to vote in a meaningful vote in three out of the
 20 new five districts in San Mateo County thanks to the
 21 California Voting Rights Act. We know over 17 cases
 22 have been filed since 2001, and over 100 school
 23 districts have changed voluntarily from at-large to
 24 district-based systems to comply with the California
 25 Voting Rights Act.

1 To conclude our remarks, we will be providing
 2 this information in a forthcoming formal report on
 3 voting rights violations in the last 13 to 15 years
 4 here in California on March 14th.

5 COMMISSIONER C. REYNOSO: Thank you very much.
 6 Thank you very much, panelists. Now members of this
 7 commission will have questions for various of you. And
 8 I would like to start with -- first, and just go this
 9 way, and then there will be a free-for-all.

10 Why don't you start.

11 COMMISSIONER A. HUFFMAN: I do. I have a
 12 question for Aida. You mentioned an incomplete ballot.
 13 What is an incomplete ballot?

14 A. MACEDO: So what I meant there, the ballots
 15 that were sent out -- by mail ballots that were sent
 16 without one of those local --

17 COMMISSIONER A. HUFFMAN: Without the race,
 18 uh-huh.

19 A. MACEDO: And they were sent corrected ones
 20 after that. I think it was -- they were --
 21 October 9th. They received the second ballot -- I'm
 22 not sure -- maybe about 10 days, 15 days later --

23 COMMISSIONER A. HUFFMAN: Does the voter
 24 registrar have the ability to change the election date
 25 to a later date?

1 A. MACEDO: No.

2 COMMISSIONER A. HUFFMAN: So it was not legal.

3 A. MACEDO: They didn't change the date, no.
 4 What was your question? Sorry.

5 COMMISSIONER A. HUFFMAN: I thought you said
 6 they made a mistake, they sent a new ballot out for
 7 people to vote again, which is not on election day.

8 A. MACEDO: They were vote-by-mail ballots.

9 COMMISSIONER C. REYNOSO: They could receive
 10 both before -- before election.

11 L. SCHELLENBERGER: It was that time period
 12 for early voting by mail --

13 COMMISSIONER A. HUFFMAN: So it was, ten days
 14 left. I got it.

15 I have a lot of questions on disabilities.
 16 Your testimony is a real education for people like me,
 17 who take certain things for granted. And I'm not
 18 sure -- some of my colleagues here have probably done
 19 more work in the area of challenge voters.

20 But if I understand your testimony, when you
 21 go to a public polling place, they don't have the
 22 facilities to accommodate you or they're second rate,
 23 and therefore, people who have challenges are
 24 disadvantaged in the voting process.

25 F. NISEN: (Inaudible) They are accessible --

1 machine but California's allow only one. That can't --
 2 they have to ask somebody else, but that may not mean
 3 the ballot's not private, although a big problem is
 4 people don't know how to set up or after.

5 COMMISSIONER A. HUFFMAN: Thank you.

6 My Chair has suggested that we go down and
 7 then I might get to come back. I have other questions.

8 COMMISSIONER C. REYNOSO: Just that we just
 9 ask one question and then keep going.

10 SPEAKER: We have copies of his testimony if
 11 you would like.

12 COMMISSIONER K. FENG: We have. Thank you.

13 Let me follow up with a question to Fred.

14 I think in your written testimony, there was
 15 some mention that, when you all are monitoring poll
 16 sites, you oftentimes find that they're inaccessible.
 17 And one of the things that you find is that elevators
 18 can be locked, that there is no ramp, there is no space
 19 for people to actually be able to get into the poll
 20 site.

21 Can you share with us any specific examples
 22 that DRC has recently had reports of?

23 F. NISEN: Yes. The problem is that even the
 24 accessible sites, the old ones -- that is accessible,
 25 is locked.

1 COMMISSIONER K. FENG: Yep.
 2 F. NISEN: And one polling site, the elevator
 3 access is in a school. But the school decided to lock
 4 the elevator, and the coworkers didn't know that -- and
 5 didn't know; had them locked.
 6 COMMISSIONER D. HUERTA: My question is for
 7 Lori.
 8 You mentioned that there are some agencies
 9 that are supposed to be promoting voter registration,
 10 and they're not really doing what they're supposed to
 11 be doing. And I have another question about that.
 12 At the same time, part of the Affordable Care
 13 Act that was enacted in Congress, it was supposed to
 14 include voter registration. And I wanted to ask if
 15 your organization has done any work on that to see if
 16 we can get that enforced. I know there have been some
 17 reluctance in California, because as people are
 18 supposed to be signing up for Affordable Healthcare
 19 Act, they're also supposed to be able to press a button
 20 if they're not registered to vote, so they can vote. I
 21 wanted to ask if your organization has taken any direct
 22 action or legal action to make sure that that happens.
 23 And we also have a lot of people that have
 24 already registered for the Affordable Care Act. I know
 25 there's people that are still not registered. I

1 wondered if you can enlighten us on if there are any
 2 acts that have been taken in that matter.
 3 L. SCHELLENBERGER: Of course. I don't think
 4 my mic is working. Can you hear me?
 5 COMMISSIONER K. FENG: Lean in.
 6 L. SCHELLENBERGER: There you go.
 7 Yes. It's still unclear at the federal level
 8 whether they're required to offer voter registration.
 9 The Federal Exchange has not done so. But the State of
 10 California, we advocated for a long time to have
 11 Covered California our state's exchange designated as a
 12 mandatory voter registration agency. What that means
 13 is that Covered California is required with every
 14 transaction, whether it be an application, a renewal,
 15 someone submitting a change of address, it triggers a
 16 statutory obligation for them to offer that person
 17 voter registration and assistance in completing the
 18 voter registration application to the same level that
 19 they would provide assistance in completing their own
 20 forms.
 21 Covered California has resisted this. They
 22 continue to resist it. As of last Tuesday, 2 million
 23 people have successfully completed an application on
 24 the Covered California site or through with the
 25 assistance of -- of a certified enrollment counselor or

1 their county office. And none of them have been
 2 offered voter registration. And so we are seeking to
 3 enforce that, both -- and -- and to be clear, we want
 4 to make sure that prospectively they have best
 5 practices and they incorporate voter registration but
 6 that we also feel strongly that every person who has
 7 gone through that date Cover California have an
 8 obligation to offer those people voter registration as
 9 well. Because as you can imagine, the people applying
 10 for the cover for Affordable Care Act very much mirror
 11 the almost 6 million eligible Californians who are
 12 still not registered to vote.
 13 COMMISSIONER C. REYNOSO: And I would like to
 14 have a question for Mr. Nunn.
 15 I got to do it right I've got a question for
 16 Mr. Nunn. Some of the matters you mentioned, sad to
 17 say, in my view, are based on statutes.
 18 What specific statutes might would you suggest
 19 be changed or that we consider recommending being
 20 changed?
 21 D. NUNN: I have a lot of recommendations. I
 22 don't know if they're about -- about your statute.
 23 COMMISSIONER C. REYNOSO: Yes.
 24 D. NUNN: Some things that I know, I know we
 25 fall for voting rights and we contact the Kevin Shelly

1 who didn't respond to us until six days after the
 2 election. We had to ACLU fight for us and file a writ
 3 of mandate, and that came in after the elections. So
 4 for me, I don't have a right. I think I only have a
 5 privilege that people take at will. I think Deborah
 6 Borns just grabbed between 67 -- between 63- and 67,000
 7 votes, just on a whim. So if you ask me what statute
 8 need to be changed, I think I have the right, but I
 9 don't think that people respect me enough to actually
 10 allow the law to be enforced, that's there. All the
 11 way up until then, my right to vote inside of a county
 12 Jill was determined by a conviction by a status of
 13 parole or being incarcerated in prison. And
 14 administrative decision have rushed out between 63- and
 15 67,000 votes. And nobody came to the aid.
 16 COMMISSIONER C. REYNOSO: Well, we've been
 17 hearing actually that many of the problems in
 18 California are problems of how the law is executed and
 19 not being executed well. But there is statutory
 20 example that say felons can't vote while they're in
 21 prison. Should that be changed there is a law they're
 22 on parole they can't vote, should that be vote.
 23 D. NUNN: But I think the legal women voters
 24 under Bruce McPherson, what they basically determined
 25 in that particular case, that prison was a particular

1 place and in imprisonment in the county jail didn't
 2 constitute being in prison. I believe that was the
 3 determination.
 4 COMMISSIONER C. REYNOSO: Right, right.
 5 D. NUNN: Right?
 6 COMMISSIONER C. REYNOSO: Right.
 7 D. NUNN: So if we're never going to see
 8 parole based on realignment put us in a status of, I
 9 think you called it a -- a community supervision, and
 10 not necessarily parole, we're not on parole and we
 11 should have a right to vote. In the event that we're
 12 not in state prison and you start serving extraordinary
 13 long periods of time in county jails, we are not in the
 14 prison in the state prison, and I believe that was the
 15 distinction in that particular case.
 16 When you ask what should be changed, what I
 17 think that I -- I think I just want you -- to live up
 18 to the letter of the law when it applies to me.
 19 Because I see that my rights are not being respected.
 20 COMMISSIONER C. REYNOSO: Okay.
 21 D. NUNN: And I'm sorry for getting angry.
 22 But if your stuff is consistently being stole, not over
 23 a period of couple of days but over the course of a
 24 lifetime, it's not hard to not be angry about it. And
 25 we wrote at a certain point, we conduct -- conducted

1 COMMISSIONER C. REYNOSO: And to provide a
 2 facility for them to vote.
 3 L. SCHELLENBERGER: Exactly.
 4 COMMISSIONER C. REYNOSO: I understand that.
 5 L. SCHELLENBERGER: So that's -- there is no
 6 statute that requires that but that would do a lot to
 7 end de facto disenfranchisement.
 8 COMMISSIONER C. REYNOSO: Ms. Ingram?
 9 J. INGRAM: Yes, just to give some number and
 10 context to that and also to speak more to the
 11 implementation of to AB149 which is something that the
 12 ACLU, Officer Nunn, Lawyers' Committee worked on. Our
 13 understanding is that de facto -- this will be
 14 forthcoming in the Lawyer's Committee report. There
 15 may be de facto disenfranchisement for over 350,000
 16 Californians who are on probation or incarcerated in
 17 county jail who are now unclear as to their voting
 18 rights, even though there was this decision in
 19 McPherson in 2006 there was an executive action by our
 20 Secretary of State in 2011 to affirmatively
 21 disenfranchise on community supervision, under the
 22 realignment act. So many people who report sometimes
 23 to same the probationary officers are confused about
 24 their rights. One of the things that ACLU and Officer
 25 Nunn and other allies did in 2012 was to pass AB149.

1 and asked to be advised and we wrote every public
 2 defender in the State of California. We contacted
 3 Attorney General, we contacted the Democratic Party, we
 4 contacted the Republican Party and our rights are not
 5 still being respected.
 6 COMMISSIONER C. REYNOSO: Thank you very much.
 7 L. SCHELLENBERGER: Can I add one more thing?
 8 COMMISSIONER C. REYNOSO: I beg your pardon?
 9 L. SCHELLENBERGER: Can I add one more thing
 10 to what Dorsey said in terms of -- ou asked for a
 11 concrete recommendation. And I think the definition of
 12 who gets to vote is defined in our California
 13 constitution. So to expand that, beyond what it is
 14 now, would require constitutional amendment.
 15 COMMISSIONER C. REYNOSO: Sure.
 16 L. SCHELLENBERGER: But I think the issue
 17 Dorsey eloquently heartbreaking issue of hundreds of
 18 thousands of people who mistakenly believe they fall
 19 into the exceptions of people who can -- who are
 20 deprived of the right to vote. And we worked on
 21 legislation this year to require probation officers,
 22 county probation officers, county jails and parole
 23 officers to inform people of their right to vote so
 24 that when somebody's parole ends, they're handed a
 25 voter registration card.

1 Unfortunately, the bill was somewhat watered down upon
 2 passage and now only requires probation departments to
 3 either post the Secretary of State's guideline for
 4 persons who are currently from incarcerated or to post
 5 it online.
 6 We did an initial survey of that online and
 7 found that three -- I'm sorry, actually, 30 county
 8 probation departments actually posted this online by
 9 January 6th. So it wasn't that they were truly
 10 compliant, when the law was implemented but it wasn't
 11 required to do so. It was an either or requirement.
 12 It was either you could post it in your office or you
 13 could post it online. There was no requirement that it
 14 be visible or that there be active registration under
 15 the NVRA as Lori's mentioned. There was no requirement
 16 that we register people in county jails or on probation
 17 under the NVRA even though it's not prohibited in
 18 California.
 19 COMMISSIONER C. REYNOSO: Thank you.
 20 A. HUFFMAN: I have no further questions.
 21 COMMISSIONER K. FENG: I want to go back the
 22 Aida Macedo's testimony.
 23 I'm interested in hearing the additional
 24 stories that you said that you had collected from the
 25 2008 and '12 elections. And in particular, to what

1 extent have groups like True the Vote vote or even less
2 organized groups exercised voter intimidation practices
3 in recent elections.

4 A. MACEDO: So we know that there -- those
5 groups have a strong -- they're highly organized in the
6 Central Valley, hold recruitment meetings often and we
7 have gotten some reports that some of them actually
8 apply to be poll workers in the Central Valley.

9 One of the anecdotes that I wanted to share
10 with the commission was that we had a report from a
11 voter who showed up to vote and he is a -- he was -- he
12 is a Maong decent who is a huge community in the
13 Central Valley in Fresno County. And the poll worker
14 actually said to him, "you know who to vote for, right.
15 You know who to vote for, right." He was kept
16 mentioning this. It was at a small voting site. So we
17 immediately contacted the county clerk and said, you
18 know, there is intimidation by one of your poll
19 workers, intimidating workers of Asian -- Asian
20 American decent. And so, they sent out somebody to
21 remove that poll worker but that had been in the
22 evening, so he had been there for a long time already.
23 And so, we know that they're highly organized. They
24 recruit a lot of people in the Central Valley, and we
25 got, you know, propaganda from them. We saw them

1 visible in other polling sites, not just in Orange
2 Cove. And, you know, they were observing from afar.
3 While our election protection volunteers were there, we
4 didn't see any issues at the other polling locations
5 but they were present at the locations. And before
6 that, we think that it actually intimidated, hindered a
7 lot of voters from actually showing up from the polls
8 they had heard there was going to be present and they
9 had heard there was going to be police officers
10 present. So that's one of the issues. And then
11 something -- let me make sure I covered everything.

12 Oh, and also at one the polls locations,
13 Orange Cove, the poll worker was actually requesting
14 voters announcing their address out loud and also to
15 state their party affiliation when they were giving
16 their address. And this was out loud. Our volunteer
17 witness, at least four voters, if they were Republican
18 or Democrat and required to answer before they were
19 given a provisional ballot. So there are various
20 anecdotes of various situations that we saw where
21 voters were just intimidated who had even showed up.
22 There was a lot of confusion, also. Even for poll
23 workers to look up polling sites. If people -- voters
24 showed up and they weren't sure if they were at the
25 correct site. Instead of look up the information, the

1 poll workers just fell back to provisional ballots. We
2 saw a lot of that, that they weren't even trained at
3 all, but the fall back was just give provisional
4 ballots without explaining to voters what that meant.

5 COMMISSIONER C. REYNOSO: We have time for one
6 more question. Do you want to --

7 D. HUERTA: Thank you. Ms. Macedo, I know
8 what you experienced is pretty much -- I'm in
9 Bakersfield, California and we do a lot of -- also.

10 A. MACEDO: Yes.

11 D. HUERTA: So what you're telling us that you
12 are experiencing in that area also. And I do want to
13 make a comment -- and I don't know whether in the work
14 that you do and in the Voting Rights Project and what
15 the other folks are doing if you are going in get more
16 poll workers back who either speak Spanish or some of
17 the other ethnic languages that people need. We have
18 been doing that with our organization when they say
19 they can't find poll workers that can't speak Spanish.
20 And we had a press conference. We had over 50 people
21 that volunteered to be poll workers so I think that's
22 the work that needs to be done in terms of making sure
23 the voters are taken care of when they go into the
24 polling place.

25 The other thing that I wanted to mention was

1 all your groups of work on the issues of people who
2 have been in prison and be able to vote. I agree that
3 we should eventually completely eliminate that, you
4 know -- take away that prohibition because that -- what
5 are they going to vote on? I mean, how are they going
6 to -- affect the voting -- affect the issues, I mean,
7 there's unless they are going to legalization of
8 marijuana or something like that, you know, which we
9 know that has been happening in Colorado or Washington
10 State. And so, I mean, we should definitely think
11 about in the future how to handle that is another form
12 of Jim Crow basically because a large number of African
13 Americans and Latinos are in the prison system right
14 now.

15 And I don't know, often thought that maybe
16 approaching the administration here, you know, our
17 state administration and instead of having to pass
18 legislation in terms of giving people as they are being
19 released from the prison system, that they can know
20 when they can require voting rights, because many
21 people after even though -- they have -- they're no
22 longer on probation they still don't know that they can
23 vote now. And I think some work should be done maybe
24 at the administrative level, because they need to
25 educate people as they are coming out of prison. And

1 also while they're incarcerated have them learn about
2 their rights as voters so by the time they come out,
3 some kind of civic education system I think would also
4 help.

5 A. MACEDO: I just want to comment. I think
6 one of the issues that we're facing in the Central
7 Valley is lack of resources like I mentioned this was
8 the first time we had the election protection project
9 in Fresno and there was a small group of us, many 20.
10 I took the punch to lead it without knowing much really
11 what I was getting myself into, but there were
12 only -- we only had about 20 volunteers an were
13 covering a large number, as you know, the rural areas
14 in Central Valley are widespread. I think some of the
15 advocacy work they try to do ahead of time, those are
16 spread really thin. So that is one of the things I
17 wanted to convey today. We really need more resources
18 in the Central Valley advocacy to ensure that these
19 face specific issues and rural areas such as being
20 living really far from a their only being one polling
21 place in an entire city so that they're able to
22 exercise the right to vote adequately even when we try
23 to do advocacy before the election we face a lot of
24 resistance from the elected officials from the county
25 clerk because we thought we were out to get them we

1 stolen we ended up with a president that was not
2 elected. So how laws are enforced are equally what the
3 laws are. So thank you very much. I very much
4 appreciate it and now I turn the -- the chair over to
5 my fellow commissioner, Ms. Huffman for -- for those
6 who are here who are not panel lists who have indicated
7 they would like to speak for a few minutes.

8 Thank you very much. Thank you.
9 A. HUFFMAN: Time allotted for public
10 testimony is 10:40 to 11:10. We would ask you limit
11 your comments to three minutes. We have a time keeper.
12 There is a microphone that someone could pull over to
13 the center to the floor, whoever the first speaker is.
14 And I will ask each of you to please state your name
15 again and your organization for the recorder. And the
16 first person is Manuel Fontan.

17 Second person is Chris Lavin. That's you.
18 Who is the first person, there? We would like
19 you to line up so we maximize our time. So we'll put
20 three of you up there at a time. David Gary.
21 Are you here, David?
22 Okay.

23 M. FONTAN: My name is Manuel Fontan. I'm a
24 father of three, a community organizer, and formerly
25 incarcerated person. Most importantly I'm a human

1 just wanted people to have the opportunity to vote and
2 be well informed and know where they are to go vote to
3 know that their -- their names would be on the role.

4 D. NUNN: Just one point that I think I need
5 to address. I'm from East Palo Alto and Menlo Park.
6 So it took two efforts before East Palo Alto became a
7 city. The determinative factor of it becoming a city
8 was less than 80 votes. The first time it failed, we
9 had that many people in the county jail that didn't
10 have access to the right to vote. Justice Reynoso, you
11 talked about the 2000 elections, so I assume you're
12 conscious to recognize that it was more than our votes
13 that were being stole. It took our kids to war almost
14 immediately after we were stripped after the right to
15 vote in Florida. So it's not just a common -- a
16 conversation, how it impacts me. I write the vote our
17 black and brown people. It's not just us, it's not an
18 individual feely touchy type thing.

19 COMMISSIONER C. REYNOSO: No. You're
20 perfectly right. I want to thank this panel very much
21 and the emphasis I notice has been even more on the
22 practices rather than the statutes not being
23 interpreted properly and so on. I was sad to say I was
24 on the U.S. commission of civil rights when we had
25 hearings on Florida. My own conclusion the vote was

1 being. And I'm also part of the National Movement of
2 Formerly Incarcerated People and Families for a
3 Brighter Community here in the U.S.

4 As someone considered expendable since the
5 first grade with zero tolerance policies, through most
6 of my teen years being locked up in Juvenile Hall and
7 going to State Prison, caged up as an adult, I know
8 firsthand why many people with similar backgrounds see
9 voting as a gimmick. And a gimmick can be defined as a
10 trick or device to get people's attention. I remember
11 coming home from incarceration back in 2003. And I was
12 under the assumption I did not have the right to vote
13 because of my felony conviction. And it was not until
14 I joined All of Us or None that I learned it was a
15 possibility.

16 But the fact still remain that I didn't have
17 trust in our current government. But after such
18 misinformation was clarified, I was tasked to surveying
19 my community. We decided to do rise in county jails,
20 Alameda County, San Mateo, to survey and hopefully help
21 individual family members who are in the visiting
22 lines. Most people we engage with either assumed they
23 couldn't vote or that they believed that voting didn't
24 matter. So it's easy to incriminate ideas that voting
25 is hope less when poor people are ignored by local as

1 well as statewide politicians when widespread voter
 2 intimidation aims to keep peoples of color away from
 3 the polls and when the proceed -- the electoral college
 4 failure to accurately and consistently reflect the
 5 national popular will. In addition, it's contradictory
 6 to work in the U.S. whether in the fields as farm
 7 workers as homes as domestic workers, in farm works as
 8 pack as not have a voice in matters pertaining to our
 9 existence despite to house corporation and broader
 10 America. So it behoves us all to build courage to be
 11 able to address this in more fundamental meaningful
 12 ways. So that other people like me who presently don't
 13 have to again face our current government can become
 14 more engaged in a civic process. In closing, everyone
 15 who resides, works and lives off the land in America,
 16 must have the right to have a meaningful voice in their
 17 community particularly held in dungeons like San
 18 Quintin, Pelican Bay, Corcoran, Florence and the likes.

19 Thank you.

20 A. HUFFMAN: Thank you. I would ask the
 21 speakers to glance over to the timetable so you can
 22 pace yourself better.

23 C. LAVIN: I also have a public written
 24 testimony that I have submitted earlier. Members of
 25 national committee.

1 would not discount achievements of PM and polices and
 2 certainly have made great strides however many of us in
 3 my community remain puzzled we cannot breakthrough the
 4 gripes of local I electoral structure and politics can
 5 potentially influence constituency in our state or in
 6 our country. At more than 14 million people,
 7 approximate the largest here in California. Many of us
 8 are not naturalized citizen of adopted. State and
 9 national representation as of November 2012 there is
 10 only one fill American in the state legislature and
 11 across the United States. Among the solutions in
 12 (inaudible) want to make you aware of include the
 13 following. outreach participating of voter but more
 14 why voting in our active way of getting involved. For
 15 opportunities for leadership training by working with
 16 community organizations to harness the untapped
 17 potential leaders in the Filipino American community.
 18 To develop a more robust team we encouraged local
 19 leaders to run for county, statewide and national
 20 office. Finally, I would like to end comments with a
 21 statement. Evidence from numerous studies has
 22 repeatedly shown that the Filipino American community
 23 is an active force driving our nations over we
 24 currently remain voiceless -- remain voiceless in the
 25 political process that directly impacts our economic,

1 COMMISSIONER K. FENG: Remind your name and
 2 organization.

3 C. LAVIN: Yeah, my name is Chris Lavin. I'm
 4 a representative of the Filipino Service Group in Los
 5 Angeles.

6 Members of the National Committee. Good
 7 morning. It's privilege to provide oral testimony here
 8 today in the California statewide hearing and voting
 9 about Filipino American and political involvement.
 10 Providing testimony here as one of the current board
 11 members of the Filipino American group as one of the
 12 Filipino champions was previously participant of the
 13 California registrants and most recently Los Angeles
 14 alternatives of voting matters. City clerk is now
 15 resulted in the formation of a Los Angeles city voter
 16 participation commission, whose primary tasks to
 17 increase voter participation in the City of Los
 18 Angeles. As a member of the Filipino American
 19 community, I say our community needs representation.
 20 And voting rights and access to voting is a gate way to
 21 ensure that we as community are heard and represented.
 22 Everything from history began migration into the United
 23 States in the 17 hundreds. But I look around our
 24 country and find no one except here in California and
 25 looks like or reflects the Filipino American voices. I

1 social and political rights. I see the day where we as
 2 a community would have more representatives and in
 3 higher levels government for the future of our country.
 4 Representatives who -- of our goals and aspirations of
 5 our people, and it all starts with one vote.

6 Thank you so much for this opportunity to
 7 speak.

8 A. HUFFMAN: Chris, are you going to?

9 C. LAVIN: I have a written testimony with
 10 more details.

11 A. HUFFMAN: Thank you very much.

12 While David comes forth, will Peter Mendoza
 13 and Anne Gutierrez -- is it Gutierrez -- join us at the
 14 microphone.

15 D. KERRY: Thank you commissioners. My name
 16 the David Kerry. I'm speaking on my own behalf. I'm
 17 going to start with some testimony about my service on
 18 San Francisco's election of observation panel for the
 19 November 2012 election. During that election, on
 20 election day, I visited a number of precincts it's to
 21 see what was happening in the pre criminal intents. I
 22 had selected those precinct its on evidence and
 23 statistical voting data that suggested those PP were
 24 having problems with votes. Inevitably when precincts
 25 were dominated by voters from low income background and

1 people of color.
 2 There is also some problems with accessible
 3 voting including one case where voter who needed
 4 accessible voting had to wait for 45 minutes while the
 5 poll workers including a field election deputy tried to
 6 get the machine to work so she could begin the voting
 7 process. While I washed and talked to field election
 8 deputy who described the well the problem is sometimes
 9 you have to turn this machine off and on before you can
 10 get it to work. And not just off an on but off an on
 11 several times. And not just on and off several times,
 12 but on and off several times quickly if you do it
 13 quickly enough, eventually you can usually get the
 14 machine to work. These are the types of problems that
 15 people who need accessible voting are having in -- in
 16 San Francisco. I also found that very often those
 17 accessible voting machines were not set up properly, so
 18 voters could cast the vote independently and in secret
 19 and sometimes they weren't completely assembled. I had
 20 one poll worker say he had to help a poll
 21 worker -- help a voter cast their vote while -- because
 22 it wasn't set up correctly, and they didn't know how to
 23 get it set up correctly. Also witnesses -- witnessed
 24 here at the long lines here at city hall snakes up and
 25 down in halls up and I down I didn't time it exactly

1 I'm sure it was payment people waiting for more than an
 2 hour. Consistently, there were seeing problems with
 3 poll -- adequate poll education and people providing
 4 adequate assistance to voters. One of the problems we
 5 saw was that as people wanted to -- were in San
 6 Francisco they reside in another county. They were not
 7 able to cast a ballot, not even a provisional ballot
 8 that would count for statewide contest. And often the
 9 poll workers didn't even know how to handle that
 10 situation. When I tried to call the help line to help
 11 in one case, I was kept on -- on hold for 20 minutes.
 12 Have and that's the kind of help voters are getting
 13 then there's the definite problem that voters are
 14 seeing in San Francisco.
 15 Thank you very much.
 16 A. HUFFMAN: Thank you.
 17 COMMISSIONER K. FENG: Thank you.
 18 A. HUFFMAN: Peter Mendoza. And is Eric -- I
 19 have to say the name right.
 20 P. MENDOZA: Madam Chairman and distinguished
 21 members. For the record, my name is Peter Mendoza,
 22 from the Community Learning Resource Center of San
 23 Francisco. And I briefly provided services and -- for
 24 people of disability in all ages including veterans of
 25 San Francisco. I don't want to be redundant and go

1 over the eloquent of many folks that talked about the
 2 various experience by persons with disabilities. But
 3 as we -- people with disabilities have a very difficult
 4 time voting and often times these barriers worldly
 5 inhibit them from participating in the fundamental
 6 right to vote. I.
 7 Wanted to give you a couple of personal
 8 experiences that kind of explain some of the
 9 problematic and problems we often have. As was stated
 10 earlier, a lot of times the accessible accommodations
 11 are not available at a polling place or if an example
 12 of electronic polling machine no one knows how to
 13 operate it and many types. Or the machine itself is
 14 not functioning.
 15 Oftentimes in my own personal experience, I
 16 found that maybe there is a ramp to go to accessible
 17 door and the door is locked. Can't get in. When
 18 there's a problem -- forgive my voice -- when there's a
 19 problem, it takes a long time to have it resolved even
 20 if you call the help line, there's nobody immediately
 21 available that can assist you or they tell you to come
 22 back later. If you're working, you know, it becomes a
 23 corporate issue.
 24 You can't miss work, so you miss your right to
 25 vote. Also when you have maybe the voting place is

1 accessible but the travel to the voting place is not
 2 accessible. I lived in Marin County and there is poll
 3 place that the fire house. The fire house is
 4 accessible however the main roadway to the fire house
 5 is not paved, so no sidewalk, so I couldn't get
 6 thereafter work one day. And it was dark and raining.
 7 If I tried to travel on the dark it would probably hit
 8 by a car so therefore I couldn't vote. Those are just
 9 a few of the issues that we all experience. I want to
 10 reemphasize that people who are also under served are
 11 with intellectual disabilities and accessible voting
 12 for them.
 13 I want to commend you both as -- as an
 14 individual and as members that of ICF for hearing this
 15 hears to address these issues and look forward to the
 16 voting process to be accessible to all.
 17 A. HUFFMAN: Thank you.
 18 I would like Pamela Strong and Jerry Elser to
 19 line up with the mic, please.
 20 A. GUTIEREZ: First name is actually Arie.
 21 A. HUFFMAN: Thank you, Arie.
 22 A. GUTIEREZ: Thank you to the Lawyer's
 23 Committee for civil right under the law for the
 24 opportunity to speak today.
 25 My name is Arie Gutierrez, and I am the

1 founding co chair of the Latino Equality Alliance, a
 2 nonprofit organization established in response to the
 3 intimidating experience its founding members
 4 encountered during the December 2008 election cycle.
 5 Specific to this election an anti LGBT, which means
 6 lesbian, gay, bisexual and transgender initiative was
 7 on the ballot. California Proposition 8 with the
 8 intention of taking away -- as LGBT Latinos I and
 9 fellow community members volunteered to defend this
 10 right in independent campaign rights. However our
 11 effort to exercise our rights to persuade voters
 12 leading to and on election day was met with harassment,
 13 intimidation and an active effort to prevent our
 14 legally allowed campaign efforts at polling places.

15 As an example of the situation, on election
 16 day, November 4th, 2008, Mr. Rolland Polinski, an
 17 executive with a statewide philanthropy organization
 18 and highly respected LGBT community leader was
 19 threatened with arrest if he handed a flyer to a voter
 20 that included a slate of voter appeals including one
 21 against the anti LGBT ballot initiative. Mr. Polinski
 22 had been acting within the legally allowed election
 23 their boundaries, but was harassed by a poll worker in
 24 a polling place in East Los Angeles. The incident was
 25 neutralized with the support of ACLU attorneys

1 intimidation. Never should a voter feel suspect or be
 2 remorseful in casting a vote that may or may not be in
 3 line of the teachings of the facility acting as a
 4 polling location as I dared to do that year.

5 A. HUFFMAN: Time.

6 A. GUTIEREZ: If I may please have an extra
 7 minute.

8 A. HUFFMAN: Yes.

9 A. GUTIEREZ: Stricter guidelines for entities
 10 like churches that openly campaign for or against
 11 ballot issues and also host polling locations should
 12 not be located in church facilities in which Los
 13 Angeles County seems to be commonplace.

14 Thank you for your time.

15 A. HUFFMAN: Thank you.

16 Yes, we have seven more minutes. For those of
 17 you that do not get an opportunity to speak, there are
 18 hearings, public testimony throughout the agenda, so
 19 after each segment we will again take public testimony.

20 Pam?

21 P. STRONG: Good morning. I'm Pamela Strong,
 22 proud member of All of Us or None, and a formerly
 23 incarcerated person that needs to be heard. I find the
 24 opportunity to give some of the things that we go
 25 through when we come home. And one thing is a mother

1 stationed at our East LA campaign office (inaudible).

2 Likewise, our volunteers experienced similar
 3 intimidation at the polling locations set over the
 4 previous weekend for early voting. Due to the
 5 increased voter interest in the historical presidential
 6 election that year, early voting was set up in the
 7 county of Los Angeles registrar's main office in
 8 Norwalk California. The license of voters were very
 9 long and wrapped around buildings, exceeding 100-foot
 10 boundary for election and here again our voters -- our
 11 volunteers were threatened and intimidated by poll
 12 workers. Further, polling places themselves were
 13 intimidating to voters who identify as LGBT including
 14 myself. And those supportive of LGBT issues when the
 15 voting booths on the property of faith institutions.
 16 These sites were often sometimes the same locations
 17 community members heard from and on pulpit on radio,
 18 urging a vote in favor of the anti LGBT initiative and
 19 the political climate of the time was clearly hostile
 20 toward LGBT and people and issues to vet we were
 21 expected onto property and facilities operated by the
 22 entities driving the hostility. Clearly, as to not
 23 deter voting by LGBT people and our allies polling
 24 places should be located on neutral grounds where
 25 voters can cast their vote without direct or indirect

1 that couldn't see her son for six years because I was
 2 an ex-inmate, I think that's kind of absurd when you
 3 have no one dad is not in your life now he's deceased
 4 and they gave my son 15 years. And I hadn't seen him
 5 in 14 years so I finally got approved now I can visit
 6 him because I was formerly incarcerated. I can't visit
 7 my son, what can I do what is intimidating for an
 8 inmate to see your own child. And I think that's
 9 really something we should look at.

10 And I really -- when I came home from prison,
 11 I really got into my parole agent because I went to the
 12 program when I was there. Prison is nothing like I
 13 thought. And no one wants to be a -- a felon or no one
 14 asked for this. And I think I could have done better.
 15 And I really -- I'm going to back to school now,
 16 because I was in default. I didn't know how I was
 17 going to go to student loans -- the money, they kept
 18 the money too, so I was in default. I once you was
 19 default I went back to school and I saw a lot of
 20 opportunities for people that do come home and want to
 21 do something with their life. We're not bad people we
 22 just made bad choices. So I would like support in
 23 getting our communities back together because we take
 24 so many from the community and when they come home they
 25 have nothing to do but go back. They don't get a job.

1 They don't have housing. So what do you do. You know,
2 what can we do. Him -- not going to take all day, by I
3 just wanted to address that I think people that come
4 home should have better accesses to the compute, like
5 getting back to the life and community.

6 A. HUFFMAN: Thank you, Pam. Justice Reynoso
7 here, and my other colleagues are miracle workers. I
8 think they heard you even though it wasn't on voting
9 rights. They took what you said. Point well taken.

10 Jerry. Is jerry here. And I think we may
11 have time for maybe the -- Jerry's going to be the last
12 one in the segment if he uses his three minutes.

13 J. ELISON: My name is Jerry Elison. I'll
14 read from a quick note for time sake. Mass
15 incarceration of people of color. This was not so
16 apparent to me as a young marginalized black man
17 growing up in south central Los Angeles. My rebellious
18 nature crossed paths with that criminal justice system.
19 I rarely accepted responsibility. Upon arriving to
20 prison I became aware of the overwhelming
21 disproportionate number of black and brown people
22 there.

23 A. HUFFMAN: Incarcerated.

24 J. ELISON: This was the first time I had
25 actually understood that crime in America was

1 predisposed -- was predisposed to race. I accepted the
2 personal responsibility and did the personal work
3 toward educating myself and gaining my freedom. After
4 26 years of incarcerate, I was granted parole. As a
5 black man I was oppression that rebelliousness however
6 as formerly incarcerated person I found out the full
7 intent of the American justice system when at 50 years
8 old. I have never been eligible to vote in a national
9 election. Approximately 12 -- 12 to 13 percent of
10 America's population is African-American, but we make
11 it about 81 percent of the penal system in America.
12 Looking back upon the future, marginalized targeted
13 community, my home was a little home, I can see why
14 they feel in this country, their vote doesn't count.
15 When they can look at us and say, these are the guys
16 the old Gs and this is what America had for them? They
17 just don't understand. And they don't want to be part
18 of system that's not a part of them.

19 Thank you.

20 THE WITNESS: We're going to conclude this
21 segment but four cards left and I'm sure there will be
22 others. The other public testimony will be taken at
23 12:35 to 1:05. And I believe we are ready for a break.
24 11:10 to 11:25. A break and we'll pick up panel two.

25 (Short recess taken.)

1 COMMISSIONER A. HUFFMAN: Please come forth
2 forth and take your seats. And the moderator of the
3 second, third panel is our most distinguished Dolores
4 Huerta and she will guide you through your panel. Keep
5 time you and crack the whip. We have a time keeper.
6 Thank you.

7 COMMISSIONER D. HUERTA: Thank you very much,
8 Ms. Huffman.

9 And we know that this second panel of, we're
10 going to hearing testimonies on the ongoing second
11 generation harms, voter dilution, and voting
12 discrimination. So this panel will cover racial
13 discrimination and will constitute voting right
14 violations including Section 5, Section 2,
15 redistricting, CVRA violation implementation of
16 discriminatory changes post the Shelby decision, et
17 cetera.

18 And thank you very much panelists for coming
19 and preparing giving us your testimonies.

20 And our first witness is Mr. James Morgan, and
21 I am going to pronounce this right.

22 J. KOUSSER: Kousser.

23 COMMISSIONER D. HUERTA: Mr. Kousser.

24 He's a professor at California institute of
25 Technology.

1 J. KOUSSER: Yes. I'm not representing
2 anybody but myself. I teach at Cal Tech. And I will
3 try to go very fast. I've got numbers. I -- they're
4 based upon two data sets that I've been collecting for
5 a long time. Since 2009, I've been collecting a data
6 set on essentially all voting rights, events throughout
7 the country from 1957 to the present; Section 2 cases;
8 Section 5 cases; Section 5 objections; more information
9 requests; settlements to the extent that we got them;
10 Section 203 cases; and so on.

11 And the second data set is on the CVRA, and
12 that just started. And what I've looked at is the
13 K through 12 school districts. So both of the data
14 sets are incomplete. But they have interesting
15 implications for what ought to be done about changes in
16 the -- in voting rights laws and how they have worked.
17 In particular, there was a lot of discussion in 2005,
18 2006 on the renewal of voting rights acts about the
19 inhibitory effects of Section 5, proflactac effects,
20 stopping local jurisdictions that were adverse to the
21 rights of minorities. That is very important, but we
22 have now lost that, at least temporarily. One of the
23 things that was not discussed to the same extent was
24 the degree of which having a favorable voting rights
25 acts environment, Section 2 in VRA cases and the CVRA,

1 has actually forced settlements and the extent to which
2 settlements have been important in voting rights
3 successes, i.e., wins by minorities, hasn't really been
4 understood. These two data sets give you a good chance
5 to -- to understand that.

6 Does this work? Okay. There we go.
7 There -- I have records of around 6,000 -- a
8 bit more than 6,000 voting rights cases, or actions, of
9 which, by the way that I counted them about 4100 have
10 been successes, nationally. The ones that came from
11 lawsuits under Section 2, there were 1800 roughly
12 successes, nationally, during that whole period of
13 time. And a third of those approximately came out of
14 consent agreements or other sorts of settlements.

15 And I only counted things as consent
16 agreements if I had positive -- positive indication
17 that they were consent agreements or other settlements.
18 They're probably a lot of settlements than that. Some
19 more lawsuits successes than that. But about a
20 third -- the bottom line is, about the third of the
21 total successes came from consent agreements. So
22 that's what the voting rights -- it's one of the things
23 that the Voting Rights Act does. It encourages people
24 to make changes, which make it possible to for
25 minorities to elect candidates of their choice. This

1 is -- oops.

2 This is even with the case with the CVRA. And
3 the CVRA has really revolutionized things in
4 California. The first Voting Rights Act success in
5 California came in 1976. And through 2013, about
6 three-fourths of all successes came from the CVRA, the
7 rest from the VRA or 13th, 14th, or 15th Amendments.

8 If you look at the districts and the number
9 that have elected Hispanics, the -- there were 55
10 districts that were drawn, 55 jurisdictions that had
11 school districts before 2007. After 2007, which is the
12 major case, that Robert will tell you about, there have
13 been 88 that switched, probably more than that. Now,
14 almost all of those have districts associated with
15 them.

16 If you look at at-large elections, districts
17 without at-large elections, they're less likely to
18 elect Hispanics than local school districts that elect
19 their candidates by districts. If you look at
20 districts that are over than 60 percent Hispanic in
21 population, then they'll elected -- you'll elect
22 Hispanic members, either they're at-large or district
23 systems. But if you go down to districts that are 40
24 percent Hispanic in population they're more likely to
25 elect Hispanic members if you have local district

1 elections.

2 So the -- in considering changes that
3 the -- that the C -- VRAA, the new proposal may make,
4 the -- one of the most important things that ought to
5 be taken into account is that it may well encourage
6 people to -- to settle by making districts switch,
7 which are more likely to elect minorities. That's
8 particularly true because it's got a 15-year rolling
9 trigger to settle and that will encourage districts to
10 settle rather than to be brought under the Section 3
11 preclearance. So that's actually very important, I
12 think, in considering national changes under the VRA,
13 and the CVRA has led the way.

14 I will shut up now.
15 COMMISSIONER D. HUERTA: Thank you very much.
16 As -- our next panelist will be Mr. Rubin, Mr.
17 Robert Rubin from the University of California Hastings
18 of Law. He's a teacher here.

19 R. RUBIN: That's why I have professor Kousser
20 as my expert. He knows how to operate the remote. I
21 would like to talk a little bit about, before we move
22 to CVRA, which we've been very extensively involved in,
23 I would like to talk about Section 5 and what that's
24 meant here in California.

25 You know, we -- we appear in front of judges

1 throughout California. And we typically get the same
2 reaction: Oh, voting rights violations, you're in the
3 wrong state. This isn't Mississippi or Alabama. And
4 we have to overcome that bias, this notion that there
5 are no voting right prompts in California. And
6 obviously just in the couple of hours that we heard
7 this morning, that is certainly not the case.

8 In 1962, California was one of only of 19
9 states that made English language literacy a
10 requirement of voting. As late as 1962. One of only
11 19 states that had the English literacy requirement.
12 That, of course, was one of the reasons why the four
13 counties in California were designated under Section 5.
14 And utilizing that very effective tool, perhaps, the
15 most effective tool in the history of civil rights
16 enforcement in -- in 2002, we secured a letter of
17 objection from the Department of Justice, regarding the
18 Chular School District that was switching from a
19 district system to an at-large system, a blatant
20 violation and retrogressive finding that took place.
21 And this is late as 2002.

22 And shortly thereafter, in August of 2003,
23 together with my colleagues from Waldorf we obtained
24 temporary restraining orders against the gubernatorial
25 recall election for moving precincts. And moving

1 precincts might not like sound that big a deal, but if
 2 you are low income, you don't own a car, you can't get
 3 to the other side of town, and you're informed two days
 4 before the election, that your precinct has moved
 5 around the corner to up the hill and around the bend,
 6 that can be a barrier to voting and often a tool used
 7 be southern politicians to deny the rights to Black
 8 folks in -- in those areas.

9 It also highlights the strategic advantage
 10 that Section 5 gives us because oftentimes these
 11 changes, subject to Section 5, happen at the last
 12 minute. And because the burden is placed on the
 13 jurisdiction to justify those changes, it -- it keeps
 14 those discriminatory practices from going into effect
 15 until they've been pre-cleared by the justice
 16 department.

17 And I haven't even mentioned Lopez versus
 18 Monterey County, which is a Section 5 case that we went
 19 to the Supreme Court case twice in the mid-'90s and
 20 late-'90s and prevailed both times finding California
 21 and the four counties in violation of Section 5. So
 22 California voters have not only benefitted from
 23 Section 5's protections, but they are harmed by
 24 dismantlement.

25 Let me move quickly to the California voting

1 right act. As you know, California Voting Rights Act
 2 was enacted in 2001. Allows challenges to at-large
 3 systems and seek to convert them into district systems
 4 or other alternative systems such as cumulative voting.
 5 There have been approximately 20 suits filed. We've
 6 won all of them, most by settlement. One is pending in
 7 the Court of Appeals right now, the City of Palmdale
 8 that we just finished briefing and will probably be
 9 arguing shortly. So the CVRA has been hugely
 10 successful as Professor Kousser's data confirmed.

11 Indeed, in the truest traditions of private
 12 attorney generals, the private bar and -- and the civil
 13 rights organizations around the state have acted to
 14 defend the constitutionality of the statute and indeed
 15 has gone further than that to enforce the law through
 16 monitoring our advocacy and litigation.

17 But there are limitations to the CVRA and
 18 we're likely proposing changes to it. There's
 19 frustration of getting a district converted from
 20 at-large districts and then having the lines drawn so
 21 poorly, that where -- is equally disenfranchised under
 22 district system that's jerrymander than we are with an
 23 at-large system. In a way, the CVRA is like Moses.
 24 That is, they take you to the periphery of the Promise
 25 Land. However, if you are still subject to the

1 oppression of -- of -- of -- even if you have escaped
 2 the prison of at-large system and you're still subject
 3 to district that are malapportioned and jerrymandered,
 4 you might as well be in Egypt.

5 My rabbi insisted that I include that.
 6 We had a recent instance of -- of this very
 7 fact. In San Mateo County, where after a lawsuit was
 8 settled, they were drawing the lines. And the
 9 community came together in a wonderful display of
 10 colescing and presented a unity map that all elements
 11 of the community supported. We assumed that, since
 12 that was pretty much the only map that was presented to
 13 board, that's what they would go with. They chose a
 14 map that we didn't even present to them from the
 15 community. And they denied us the right we thought we
 16 had of establishing an Asian/Latino coalition district.

17 COMMISSIONER D. HUERTA: Okay. Thank you very
 18 much. I think your time is up, but I think you will be
 19 able to introduce more of your testimony during the
 20 questioning period.

21 And I think that what happened there happened
 22 in other areas like mine. Okay.

23 R. RUBIN: Unfortunately, that's all too true.

24 COMMISSIONER D. HUERTA: Thank you.

25 Our next panelist is Mr. Eugene Lee, who is

1 with the Voter Rights Project and is director of the
 2 Asian American Advancing Justice Project from Los
 3 Angeles.

4 Mr. Lee.

5 E. LEE: Honorable, Commissioners, thank you
 6 for holding this hearing on the critical subject of
 7 voting rights. And thank you for the invitation to
 8 testify before you today.

9 My name is Eugene Lee, and I direct the Voter
 10 Rights Project at the Asian American Justice Project in
 11 Los Angeles which is a civil rights organization based
 12 in Southern California and formerly known as the Asian
 13 Pacific American Legal Center.

14 In my time today, I wanted to do three things.
 15 The first is to provide a very quick overview of what
 16 the Shelby decision means for Asian nationally, to put
 17 the decision in context. The next few things I wanted
 18 to do was to make two points about vote dilution faced
 19 by Asian Americans. The first point on vote dilution
 20 is that Asian American communities in California do
 21 face racially polarized voting. The second point is
 22 that Section 2 of the Voting Rights Act, while a
 23 powerful and important tool, is insufficient as a
 24 safeguard against dilution of Asian American electoral
 25 opportunities. I have prepared testimony that I will

1 provide you after this panel.

2 So the impact of Shelby County. Again I want
3 to try to put that decision in context very quickly.
4 Immediately prior to Shelby, there were 15 states that
5 were covered in whole or in part under Section 5. And
6 of these states, over half or among the top 20 having
7 the largest Asian American populations in the country.
8 Former Section 5 jurisdictions are home to the most
9 rapidly growing Asian American populations. From 2000
10 to 2010, the country's Asian American population grew
11 by 46 percent, making Asian Americans making the
12 fastest racial group in country. Notably in two-thirds
13 of former Section 5 states, the Asian American
14 population actually grew at a more rapid rate than
15 this.

16 The termination of Section 5 coverage for
17 these states comes at a pivotal moment for Asian
18 Americans, who in recent years have begun to emerge
19 politically in these states as they increase in size.
20 As our nation has historically witnessed, when groups
21 of racial minorities move into an area or outpace the
22 general population growth in an area, the result is
23 often racial tension and sometimes racial
24 discrimination including voting discrimination.

25 Turning to vote dilution, my first point there

1 is that Asian Americans are confronted with racially
2 polarized voting, that impairs their ability to elect
3 candidates of choice, perhaps not in every area of the
4 state where Asian Americans are concentrated, but at
5 least in certain areas of the state.

6 Leading up to the redistricting that followed
7 the 2010 census, we worked with a political scientist
8 to access the existence of racially polarized voting
9 against Asian American in the San Gabriel Valley and in
10 the south bay regions of Los Angeles county. The
11 political scientist looked at 13 elections from 2002 to
12 2010. He found that in all elections Asian American
13 voters demonstrated cohesive voting patterns in favor
14 of Asian American candidates. Non-Asian Americans
15 tended to vote against the candidates preferred by
16 Asian American voters. In ten of the elections,
17 non-Asian Americans gave less than 50 percent of their
18 vote to candidates preferred by Asian Americans.

19 For example, in the June 2006 Democratic
20 Primary for Assembly District 49 located in the West
21 San Gabriel Valley, candidates supported by 74 percent
22 of Asian Americans received support from only 24
23 percent of non-Asian American voters.

24 As another example, in the June 2010
25 Democratic Primary election for attorney general race

1 looking within the boundaries of Assembly District 53
2 located in the South Bay, the candidates supported by
3 83 percent of Asian American voters received only
4 supported from four percent from non-Asian Americans
5 voters.

6 The second point on vote dilution is that
7 Section 2 is insufficient to protect against vote
8 dilution of Asian Americans communities. Generally
9 speaking, Section 2 is an inadequate substitute for the
10 Section 5 pre-clearance process because of its expense
11 and the uncertainty of obtaining injunctive relief.

12 For Asian American communities specifically
13 the first jingles precondition particularly after
14 Bartlett vs. Strickland makes Section 2 an illusive
15 safeguard against vote dilution. This is because it in
16 many of the areas of the state, Asian Americans are
17 sizable, but not sufficiently large and geographically
18 compact to form a majority of a hypothetical district.

19 If forced to rely on Section 2 alone, Asian
20 American communities face a significantly uphill battle
21 in asserting challenges to at-large election systems
22 and unfairly drawn districts.

23 Thank you, again, for your invitation to
24 testify before you.

25 COMMISSIONER D. HUERTA: Thank you very much,

1 Mr. Lee.

2 Our next presenter will be Mr. Thomas Saenz,
3 president and general counsel of the Mexican American
4 Legal Defense and Educational Fund, MALDEF.

5 T. SAENZ: Good morning. Commissioners, it's
6 a deep honor and pleasure to be before four folks who
7 have esteem and admiration for their record and
8 understanding of these issues in California and across
9 the nation.

10 I am Thomas Saenz, president and general
11 counsel of MALDEF. And I am pleased to be before you
12 to talk about California voting rights issues.

13 My colleague Nina Perales, a few weeks ago,
14 testified before the commission about some of the
15 voting rights issues faced in Arizona.

16 Today, I will focus on California and begin
17 with a premise alluded to by my good friend Robert
18 Rubin. There is a perception by some inside and
19 outside of outside of California that somehow this
20 state is a progressive island, not susceptible to the
21 kinds of discriminatory patterns that we see in other
22 parts of the country. And, indeed, we have to
23 acknowledge a great progress has been made in
24 California. This is not the same California of
25 20 years ago, when we saw repeatedly wedge issues based

1 on race like Proposition 187 and Proposition 209
 2 presented to voters and exploited by state political
 3 leaders.
 4 But, despite the progress, we continue to face
 5 challenges in the State of California. And today I
 6 would like to highlight three of them. First, I would
 7 like to talk about statewide redistricting.
 8 We, as you know, have an independent
 9 redistricting commission in California which undertook
 10 its efforts for the first time, following the last
 11 census. It's important for me to note that that
 12 commission did a good job. In part, it did a good job
 13 because it included commissioners with deep knowledge
 14 of voting right issues that were there for obtaining
 15 and looking at data on racially polarized voting going
 16 on throughout the State of California.
 17 Using that data, they made important decisions
 18 about creating majority/minority for the state
 19 legislature and the Congress. But, despite that
 20 overall good job done by that commission that included
 21 those very well-informed and experienced commissioners,
 22 at MALDEF, we concluded that the maps drawn and adopted
 23 by the commission still failed to draw two Latino
 24 majority districts that should have been drawn based on
 25 the ability to do so and the existence of racially

1 polarized voting: One a state senate district in the
 2 Inland Empire; the other a congressional district in
 3 the Inland Empire as well. As I know you are, you are
 4 familiar with the Inland Empire, and you can understand
 5 how important creating majority/minority districts
 6 given longstanding patterns of racially polarised
 7 voting and policymaking in that area is.
 8 Second, I would like to talk about board of
 9 supervisors redistricting, redistricting of those seats
 10 so important in California because of the critical
 11 role, particularly in the delivery of social services,
 12 healthcare, and mental healthcare that boards of
 13 supervisors play. Redistricting lies in the hands of
 14 supervisors themselves.
 15 After the last redistricting round, following
 16 the 2010 census, MALDEF identified 10, 10 counties out
 17 of a total 58 in the State of California, that failed
 18 to draw a Latino majority supervisorial district even
 19 though there was evidence before them of the ability to
 20 do so and the existence of racially polarized voting.
 21 Of those 10, two should have created the first
 22 Latino majority supervisorial district in their
 23 histories, seven should have created a second Latino
 24 majority district. Even though they had one in
 25 existence, there was the ability and the necessity,

1 given the demonstrated racially polarized voting, to
 2 create a second.
 3 And in one county, a county previously covered
 4 by Section 5 of the Voting Rights Act, they should have
 5 drawn a third Latino majority supervisorial district.
 6 Thus, problems around redistricting continue
 7 to apply in the State of California. Ordinarily, the
 8 failure to draw these districts seem to be justified by
 9 concerns about protecting incumbents and concerns about
 10 changing the political policy views of a majority or
 11 significant minority of the board of supervisors in the
 12 county involved.
 13 Third and finally, I would like to talk about
 14 how our progressive -- progressive measures that were
 15 well known for in the State of California such as
 16 initiative, referendum, and recall themselves sometimes
 17 raise voting rights concerns. I want to particularly
 18 highlight the inability or the unwillingness to require
 19 that petitions for initiatives, referenda, and recall
 20 be presented in languages other than English.
 21 Now, this relates to Section 203, but it also
 22 relates to other concerns of the Voting Rights Act,
 23 particularly as where we have seen at MALDEF and,
 24 indeed, litigated, voters are misled through the use of
 25 nontranslated materials into signing petitions that

1 they did not agree with. In particular, MALDEF
 2 represented a number of years ago challengers to a
 3 recall position that was circulated in -- in English
 4 only in a district with large numbers of
 5 non-English-speaking voters and parents. And resulted
 6 in the recall of a school board member who appeared to
 7 have the support of the Latino community. We had
 8 testimony from a number of people who signed the
 9 petition, indicating that they had been told, when they
 10 asked in Spanish, that the recall was about something
 11 other than what it actually involved. So I highlight
 12 those three issues and I look forward to expand upon
 13 them in written testimony submitted later. And I look
 14 forward to your questions.
 15 Thank you, commissioners.
 16 D. HUERTA: Thank you, Thomas, Mr. Saenz.
 17 And our next presenter is Mr. Sean Dugar, who
 18 is the western regional field director of the National
 19 Association for Colored People.
 20 S. DUGAR: Thank you.
 21 Good morning, commissioners. You have my
 22 testimony written in front of you, and I am actually
 23 going to stick to that script this morning.
 24 As was said, my name is Sean Dugar, and I'm
 25 the western regional field director for National

1 Association for the Advancement of Colored People, the
 2 NAACP. The NAACP is the oldest, largest nonpartisan
 3 organization fighting for civil and human rights. For
 4 more than 1800 active volunteer branches, youth
 5 councils, and college chapters, there are few issues
 6 more sacred and important than unfettered access to the
 7 ballot box. Our members have organized, marched,
 8 suffered beatings, and, yes, even have lost their lives
 9 for this right.

10 As we focus on updating Section 4 of the VRA,
 11 nationally, many of our state-level organizations have
 12 stepped up to the plate to ensure continued, equal
 13 representation through the redistricting process. A
 14 great example of that process -- of that process is the
 15 California/Hawaii State Conference of NAACP and their
 16 engagement in redistricting here in California.

17 As you know, in the presidential election of
 18 2008, California voters approved the Voters First Act
 19 establishing the independent citizens redistricting
 20 commission. And subsequently in 2010, voted to amend
 21 the commission to include congressional districts. In
 22 doing its task, redrawing the legislative districts of
 23 California, the commission sought the advice and
 24 opinions of statewide advocacy groups, like the NAACP.

25 In this process, the California State

1 Conference and NAACP submitted a number of draft maps
 2 to the redistricting commission encouraging it to look
 3 beyond what may be considered packed minority
 4 districts. It's the belief of the California NAACP,
 5 that because of urban centers African-Americans,
 6 Latinos, Asian Pacific, and Whites all live in the same
 7 neighborhoods. This means we must work, socialize,
 8 attend school, and compete with each other to create
 9 diverse and thriving communities.

10 In the redistricting context, communities of
 11 interest -- it's a traditional and important
 12 redistricting principle that should be employed in the
 13 process of drawing a fair map. This approach was
 14 unique to the NAACP. Like many other minority
 15 organizations that would push for districts that would
 16 include 50 percent plus 1 -- or 50 percent --
 17 50 percent of an ethnic group, while this approach
 18 should ensure minority districts would remain, it would
 19 have consolidated and reduced the number of elected
 20 officials of color throughout the state. In maps
 21 submitted and mostly adopted by the redistricting
 22 commission from the California State Conference NAACP,
 23 their position resulted in multiple districts in Los
 24 Angeles, Alameda, and Contra Costa Counties that most
 25 likely would elect a minority to office, but would also

1 require a majority of votes for more than one ethnic
 2 group.

3 For instance, in its first draft of maps, the
 4 commission took a traditionally African-American
 5 district, held by then-assembly member Mike Davis and
 6 converted it to a 47 percent African-American,
 7 42 percent Latino, and 3 percent Asian Pacific Islander
 8 district. It was at the urging at the California state
 9 Conference NAACP that we saw the commission redraw the
 10 map to include Koreatown thus allowing the API
 11 community to have more influence in the district, while
 12 also allowing the African-American community have more
 13 influence in another district.

14 In addition to advising the Citizens
 15 Redistricting Commission, the California State
 16 Conference filed an amicus brief in the Ward Connelly
 17 v. State of California case. The amicus responded to
 18 the plaintiffs' challenge to the California
 19 redistricting assertion that the commission is required
 20 to be reasonable -- to be reasonably representative of
 21 the state's diversity. The plaintiff claimed that
 22 Proposition 11 is unconstitutional and -- because it
 23 impermissibly required the commission to grant
 24 preferential treatment to applicants on the basis of
 25 race, ethnicity, and gender and, accordingly, to

1 discriminate against other applicants on the same
 2 basis. As we -- and ultimately the Court decided --
 3 that was not true.

4 So today we see the fruits of the California
 5 State Conference and the commission, redistricting
 6 commission's efforts to members of the legislative
 7 Black, Latino, and API caucuses from districts that
 8 were not previously competitive.

9 While the process was new and results not
 10 always ideal, we overall are pleased with the results
 11 from the redistricting commission. After all, this is
 12 the most diverse state in the nation, and we must lead
 13 by example when it comes to living, working, and
 14 electing together.

15 Thank you.

16 COMMISSIONER D. HUERTA: Thanks very much. We
 17 would like to start the questioning process, and we'll
 18 start here with Ms. Feng.

19 COMMISSIONER K. FENG: You caught me off
 20 guard. I was so engaged. And now I pushed my name
 21 over.

22 Robert Rubin, you were about to tell us about
 23 some of the litigation that was successful around the
 24 state using the California Voting Rights Act. And
 25 maybe you could share a few more of the details of the

1 jurisdictions that you all have brought some litigation
2 against and how those resulted in different
3 representation.

4 R. RUBIN: Well, first off, I think the impact
5 to the litigation has produced voluntary compliance
6 than we actually achieved through the courts, which is
7 great. You know, we're often challenged at the end of
8 the case of, you know, you file this, you're getting
9 millions of dollars in attorneys' fees, and why does it
10 cause so much money. Jurisdictions don't have to wait
11 for us to sue. They actually can comply with the law
12 voluntarily, which is the way it's set up to do. And
13 since 2001, that's been -- the law of the land at-large
14 elections that impair the right to vote are illegal,
15 and they should have been voluntarily compliant. So we
16 reject this -- this criticism that we're filing
17 lawsuits to collect attorneys' fees. That could be
18 easily be avoided.

19 I'm proud to say that we have gotten the 58th
20 and last county in California to comply with the CVRA,
21 San Mateo County, and is now done by districts.
22 Although as I say, that is a partial victory because
23 again, like Moses, gets only the periphery of the
24 Promised Land, we still need to get decent districts to
25 escape the oppression. And here, our fairly drawn

1 politician, the politician chooses the voters
2 through -- through this line-drawing process. So
3 that's -- that's one change. And we would like
4 to -- we would like to sort of deal with the ignorance
5 of California courts, too, by instructing them as to
6 what remedies they can actually apply. Because as we
7 talked about earlier, California judges don't think
8 there is discriminatory voting practices that go on.
9 And so, when we say, not only is there a discriminatory
10 voting practice, but you need to join us up on upcoming
11 election, they're horrified. I'm an elected judge, and
12 you can't stop my election.

13 And this is just something that we would not
14 encounter in the South. And that's one area where I
15 think we need some enlightenment as to what happens.

16 So we're going to try to push for some of
17 those changes in the CVRA, to open it up to challenges
18 to districts and to challenge district lines that are
19 unfairly gerrymandering and diluting the minority vote,
20 and specify the remedies so the judges can have some
21 greater level of comfort.

22 I know how that strikes you, Justice Reynoso.
23 I would think the judge would feel better if they
24 remedy listed in a statute, that they would have that
25 much greater comfort level in ordering and joining in

1 districts are rejected by the county. So one thing --

2 COMMISSIONER K. FENG: Can you describe what
3 they ultimately enacted?

4 R. RUBIN: We had sought a majority/minority
5 Asian District which was, it was pretty unavoidable for
6 them to do. But we also had which was very nice
7 coalition effort that resulted in the Asian and Latino
8 communities coming together in which there would have
9 been a coalition districts so that coalition districts
10 are not majority/minority but they are together a
11 majority/minority, that is, one might comprise 30 and
12 the other might comprise 25. And as long as they're
13 voting in similar ways, that's what we call a coalition
14 district, which under state law, the CVRA, California
15 Voting Rights Act is permissible. Under federal law,
16 it's a little more questionable.

17 So we were -- we would actually like to see
18 some changes in the CVRA. It's been a wonderful tool,
19 but we would like into get into the Promised Land, and
20 we would like to get fairly drawn districts. And so, I
21 think what we need to see is, like, as it was being
22 discussed. We need citizen commissions at the local
23 level. We need to get the politicians out from drawing
24 their own lines because there's many saved today. It's
25 not a politician no longer -- voters no long choose a

1 on an upcoming election.

2 COMMISSIONER A. HUFFMAN: I have a question.
3 And I think anybody can answer it, but the NAACP.

4 As Sean alluded, during the redistricting, we
5 did not seek a majority African-American district. We
6 found, over the past years, that our strength was to
7 have enough potent numbers to have influence, but that
8 we diminished our voting power when we locked ourselves
9 into a majority district because then we impact one
10 district instead of spreading it out. And I think I
11 hear testimony that you want a majority Asian district,
12 a majority Latino district. And I come from the
13 vantage point that one of these days we're really going
14 to rule California if we don't turn on each other. And
15 I am just wondering as to where your boundaries are as
16 having a focused, single district as opposed to
17 spreading it out and letting those who are protected by
18 the -- were protected by the Voting Rights Act fight it
19 out as it happened in Oakland when Bante, and an
20 African-American didn't win. It was a fair fight, but
21 it was, you know, a couple of protected classes
22 and -- and still a minority won. I'm wondering what
23 your point of view is on that for redistricting in case
24 I'm involved.

25 COMMISSIONER K. FENG: I think Tom Saenz

1 should respond to that.
 2 MR. SAENZ: I will. Of course, I think that I
 3 am proud, and I know that Eugene shares that pride that
 4 in the redistricting round, minority communities worked
 5 together by and large to present, wherever possible,
 6 unity maps. In doing so, of course, we became everyone
 7 more acutely aware, as I think everyone should be,
 8 while we ought to work together, minority communities
 9 have different experiences. Today, with voting in
 10 California.

11 So, for example, because of differentials in
 12 participation and turnout, you can create a district in
 13 which African-American voters are likely to control the
 14 outcome and have a candidate of choice elected and much
 15 lower percentages than you could either for the Latino
 16 and Asian American community. And that's simply
 17 because of the differentials between those groups in
 18 turnout and participation, that continues.

19 So I think the answer has to be that there is
 20 no one answer for every community. There is no one
 21 answer for the entire State of California. You really
 22 have to be aware of what's happening in each local area
 23 when your drawing the statewide maps. And I think all
 24 communities benefited going out prior to the commission
 25 beginning its process and talking to constituents in

1 they -- under the law, they really had to settle or
 2 they had a chance of losing. So I wonder, whether it
 3 would be helpful in local -- in local elections,
 4 particularly counties and cities, if we had -- I don't
 5 know if whether it could be done in California
 6 constitutionally or statutorily that -- that they, too,
 7 establish reapportionment commissions the way we have
 8 now for states, rather than allowing them as Mr. Rubin
 9 say, where you have those running for office
 10 decide -- decide who their constituents will be rather
 11 than the voters deciding who will represent them. I
 12 wonder if you have given some thought on that.

13 J. KOUSSER: It's conceivable that you could
 14 do that. One of the difficulties with commissions is
 15 that commissions can be simply a blind for the
 16 incumbents actually drawing things --

17 COMMISSIONER A. HUFFMAN: Excuse me. Let me
 18 interrupt.

19 That's absolutely true. I think one of the
 20 saving graces that the state experienced were the
 21 guidelines given to the commission. So I was wondering
 22 if that could also be done locally.

23 J. KOUSSER: That would help. But long ago, I
 24 had worked in the Gartha vs. Los Angeles Board of
 25 supervisors case. And each redistricting, the LA

1 those communities of what's going on locally to
 2 understand where coalition districts might make most
 3 sense, where influence districts might lead eventually,
 4 or even more immediately to outcomes that would be more
 5 commensurate of the views of minority voting
 6 communities and where you still need to create minority
 7 majority different community by community.

8 So, for example, you're approaching Los
 9 Angeles County, is likely to be different than it would
 10 be in the Inland Empire, as I discussed previously.
 11 Your approach in the Bay Area is likely to be different
 12 from what it would be in the San Joaquin Valley. You
 13 really have to be attentive to the different needs of
 14 the different communities in local areas of the state.

15 So I guess that's my way of saying, I can't
 16 answer the question because I think it has to be
 17 multifaceted answer that continues to involve as a
 18 process matter coalitions between all minority
 19 communities in California to present unity maps
 20 wherever possible.

21 COMMISSIONER A. HUFFMAN: Thank you.

22 COMMISSIONER C. REYNOSO: Mr. Kousser, I was
 23 interested in particularly the statistics of how often
 24 there is a settlement. And it seems to me there's got
 25 to be a settlement because the defendants saw that

1 County Board of Supervisors would appoint a commission,
 2 and it would be ethically representative, and it was a
 3 total blind because the commissioners just told their
 4 representatives -- sometimes the representatives didn't
 5 even see the plans before they, quote, voted on them.

6 So as you were emphasizing before, the way
 7 that the law is carried out is more important than law
 8 states on its face. And to look at the -- the
 9 redistricting commission that did the state, in 2011,
 10 the first draft that they put out of the legislative
 11 districts was quite deficient. And it was pressure
 12 after the first draft, I think, that that caused them
 13 to draw districts.

14 There were -- the Latino districts,
 15 proportionate Latino districts was woefully inadequate
 16 in the first draft. I looked at it very closely in LA
 17 County. And those were just awful districts. So
 18 commissions are perhaps helpful, but what goes on
 19 underneath the tent may not be what you think. It's
 20 not -- it's not a be all and end all.

21 If I may say something about the redistricting
 22 question, that was asked earlier. We need more
 23 studies -- we put into effect the top two system and
 24 the top two system is going to change the proportions
 25 that are needed of any particular minority group and

1 the degree to which minority groups cooperate. And
 2 studies or biases that we have based upon pre-top two
 3 experiences are not necessarily going to be applicable
 4 in the -- the next redistricting, the 2021
 5 redistricting. We need more studies of the post-top
 6 two district competition before we can really get an
 7 idea of the proportions of each minority group and the
 8 likelihood of minor groups to work together under that
 9 system. This is a call for political science studies.

10 COMMISSIONER A. HUFFMAN: I would like to make
 11 a comment on the commission because I did follow that
 12 commission very closely. And Thomas, unlike what you
 13 think, I wanted to sue ourselves for making sure that
 14 they were ignorant. They were not expert
 15 commissioners. They were absolutely grass -- I won't
 16 say grass roots people. They went so far as to the
 17 language that which I didn't have draft and some people
 18 at the table did. They were actually having trying
 19 people had no political acumen which I thought was a
 20 danger but on the other hand, they had to learn, I
 21 think that 's why the first maps were dismal. They
 22 were not manipulated by the politicians. It was groups
 23 like us going in after -- over and over, testifying.
 24 And even in their hearings they worked very hard to not
 25 show any bias even toward our various groups. But I

1 think a commission at a local level, with the right
 2 guidelines, would be a lot better than what they're
 3 doing now locally, because they're just protecting
 4 incumbents. And that's what went on in the state level
 5 for so long.

6 COMMISSIONER C. REYNOSO: Excuse me. Those
 7 commissions need a lot of help. I know leadership of
 8 California forward and we actually set aside several
 9 staff people a lot of money to help them and I think
 10 that -- that helped a lot with the improvements.

11 I'm sorry. Go on.

12 MR. SAENZ: I think commissions can be
 13 helpful, particularly, again, where you have
 14 decision-makers who are focused on their -- protecting
 15 their own incumbency. But I do think, as has been
 16 suggested and explicitly stated, it depends on who the
 17 commissioners are. And it's not clear you can come up
 18 with a selection process that will ensure you get the
 19 right commissions.

20 I think in this case, by and large,
 21 Commissioner Huffman, you are right. There were two or
 22 three had enough knowledge they brought expertise to
 23 the table, but happenstance we ended up with those two
 24 or three people sitting on the commission and certainly
 25 there is no guaranty that will happen in ten years or

1 that will happen with local commissions where they're
 2 credited. I also think it's important to note the
 3 critical importance of the advisors, paid and unpaid of
 4 any commission. Certainly, our experience, even on the
 5 state legislature in 2001, the influence of the
 6 consultant who was hired --

7 COMMISSIONER A. HUFFMAN: Oh, yes.

8 MR. SAENZ: -- to draw the line was
 9 substantially more than any individual legislator and
 10 perhaps of entire caucuses of legislators. And there's
 11 not, in my view, enough protection against the
 12 possibility of bias consultants with the statewide
 13 commission.

14 And, finally, I will say while we have I agree
 15 a good experience with this first use of the
 16 commission, there is no guaranty that it will work the
 17 same the next time and we have to constantly individual
 18 lent. Exhibitions cannot be a substitute for a
 19 vigorous law protecting votes rights, vigorous laws
 20 both at state and federal level because of deterrent
 21 effect that they have. And also how important it is to
 22 continue to have court intervention as a realistic
 23 possibility even where commissions are drawing the
 24 line. And that too is really in having vigorous
 25 protection violates in law and both in federal statute

1 and state statutes.

2 COMMISSIONER D. HUERTA: On that note. I
 3 would like to ask the panel list what has been done in
 4 those areas where we know that the districts were not
 5 Drawn the way they were supposed to be drawn, but they
 6 were, as Professor Rubin said, the politicians were
 7 keeping the vote.

8 So can you give us some examples of -- of a
 9 cases that you're working on or what is being done, I'm
 10 just thinking in my own county, in Kern County, we were
 11 totally robbed of a second supervisorial district of
 12 Latinos. Now that county is more than half of Latinos.
 13 And combined with the African-American and the Asian
 14 population, it's much more than the majority. So, you
 15 know, what can communities do to defend themselves or
 16 what actions can they take it's either board, school
 17 districts, water boards, et cetera.

18 J. KOUSSER: Well, the problem right now is
 19 that the only remedy is under federal law, Section 2,
 20 and it's very expensive and it's very burdensome in an
 21 evidence standpoint. You have to prove histories of
 22 discrimination and -- and hire -- justifiable apply
 23 well-paid experts. But they're expensive. And that's
 24 why we would like to make some changes under our state
 25 law to allow us to challenge those gerrymandered

1 districts. We know it's that Kern County is a problem.
2 We know there's a number of other counties that are a
3 problem. We have them all converted 58 counties to
4 districts but many of them are malapportioned. And
5 gerrymandered and dilutive of the protective groups
6 voting power. And so, it is a call for professor
7 courthouse for political science, I call for more
8 lawyers and litigators to challenging these districts.
9 Maybe we will have everybody employed by the end of the
10 day.

11 MR. SAENZ: STWOEKTS expensive times and the
12 others that are required. Any tests that the court is
13 applying, totality of the circumstances test, you can
14 imagine how much has to be presented.

15 The other difficulty is there are just a
16 handful of lawyers with experience doing Section 2
17 work, and that means it's a limited bar available. But
18 currently, that's the remedy that exists to challenge
19 in court the board of supervisors redistricting that
20 they did not create districts that they should have.
21 MALDEF certainly is committed to pursuing as many of
22 those cases as possible, given those resource
23 constraints. There is no way -- there is no way that
24 MALDEF can do ten cases in the course of a decade under
25 Section 2 against the ten counties that fail to draw a

1 cases are elected by the same electorate, same county,
2 that elects those supervisors. In any county around
3 the state, among the most powerful political figures in
4 countywide voting and elections are supervisors.

5 COMMISSIONER C. REYNOSO: Yeah.

6 MR. SAENZ: So I'm going to work as anyone,
7 and Hal is going to work as hard as anyone to get in
8 amendment to CVRA. We still need to have a strong
9 federal Voting Rights Act and mechanism for challenging
10 voting violations that include preclearance as well as
11 the ability to resort to Section 2.

12 COMMISSIONER D. HUERTA: Could I ask Mr.
13 Saenz, the panelist, when you give us your written
14 testimony, did you include the ten counties that you're
15 talking about?

16 MR. SAENZ: Yes.

17 COMMISSIONER D. HUERTA: If you can three in
18 some school districts that would be cool also.
19 Whatever evidence I think that would help us in terms
20 of advocating again for the return of Section 5 and for
21 those clearance provisions MR. SAENZ absolutely.

22 COMMISSIONER K. FENG: So I want to thank you
23 commissioner H for takes us out of the battleground and
24 referendum of the commission.

25 Much as I love that issue, I actually did want

1 district.

2 That's why Section 5, which the Supreme Court
3 disabled under Shelby County, is so critically
4 important. It's an effective mechanism to ensure that
5 situations where there is vote dilution and district
6 drawing can be prevented without resort to Section 2
7 litigation. That's why it's so critically important to
8 ensure that the congress re-I that is corrects a
9 coverage formula under Section 5. I hope that the
10 commission will conclude that that preclearance
11 mechanism, that coverage formula, needs to reach into
12 this progressive island of California because of what
13 we continue to see of patterns of voting rights
14 violations.

15 The other alternative and one that Robert
16 alluded and we're working with Robert with a coalition
17 and one to my right in the state is a possibility of
18 having the CVRA apply to already districted systems. I
19 think that's an important step. But as strong as the
20 CVRA is, it has one indelible, inherent flaw, and that
21 is any CVRA case comes before an elected state judge.
22 And that raises concerns, particularly when you talk
23 about county board of supervisors.

24 COMMISSIONER C. REYNOSO: Yeah.

25 MR. SAENZ: These judges who are hearing these

1 to dig a little bit more into the ten counties that you
2 talked about. And if you could give us more details
3 or -- or even focus on the particular county for the
4 record to talk about what the Latino population is like
5 and -- and what happened in the redistricting
6 circumstances where the Latino community ended up not
7 being represented or have (inaudible) in the
8 redistricting process.

9 MR. SAENZ: Sure. Let me identify the ten
10 counties. The two that should have drawn their first
11 Latino majority district ever are Orange County and
12 Santa Barbara County.

13 The seven that should have drawn a second
14 Latino majority supervisorial district, they already
15 have one, are Los Angeles, Ventura, San Bernardino,
16 Riverside, Kern, Fresno, and Tulare.

17 The county that shouldn't drawn a third Latino
18 majority supervisorial district is Monterey.

19 Now, MALDEF weighed in a handful of these
20 presenting maps, and we provided technical assistance
21 to a handful of others to local community groups that
22 were presenting maps with the Latino majority districts
23 that we believed should have been drawn. Also
24 presented was evidence of racially polarized voting
25 much of that courtesy of the statewide commissions

1 having collected that data about various areas of the
 2 state. So supervisors had before them enough to get
 3 legal advice telling them you need to draw these
 4 districts, but they didn't. You asked me to focus. I
 5 will focus on Los Angeles County, where they were
 6 basically the board ended up split, 3 to 2. The three
 7 White incumbents did not want to create a second Latino
 8 supervisorial. The African were strongly in support of
 9 a map that would have created both two Latino majority
 10 and supervisorial retained the district in which the
 11 African-American incumbent selected. In other words
 12 this change in Los Angeles County, an overwhelming
 13 minority population, for the first time, a board of
 14 supervisors that would be majority minority 3 of the 5
 15 would have likely been candidates selected by minority
 16 communities.

17 Now, what's interesting about Los Angeles
 18 County is they have term limits, so it was not
 19 necessarily individually incumbency protection that
 20 motivated all the supervisors, because they were all
 21 term limited, very shortly. But it may have been an
 22 interest in seeing their successors, someone they
 23 wanted to succeed them, have a district in which he or
 24 she could be elected. But what we saw was the
 25 emergence of the, I think, facially superficially

1 polarization not decrease it, but with no other
 2 evidence whatsoever there were assertions that no race
 3 (inaudible) simply do minimal changes to maps.

4 COMMISSIONER A. HUFFMAN: I will have a
 5 follow-up question.

6 Is it -- does the law prevent or allow a local
 7 supervisorial district from running its own, I don't
 8 know you call it, ordinance or initiative to insist on
 9 a citizen's committee selected not by nonpoliticians to
 10 do the redistricting?

11 MR. SAENZ: Sure. Locally, Los Angeles County
 12 could adopt an independent commission. Los Angeles
 13 county does have a commission, but it's an advisory
 14 commission.

15 COMMISSIONER A. HUFFMAN: I mean an
 16 independent -- like state the voters vote --

17 MR. SAENZ: Yes. They could do it locally, or
 18 it could be imposed by the state. But it has not, and
 19 so what LA County has is an advisory commission
 20 appointed by the supervisors themselves, and it comes
 21 through the supervisors and they make decisions.

22
 23 R. RUBIN: That might not be so easy.
 24 Because it's part of the charter so it will require a
 25 vote by the people before it can be changed it can't be

1 appealing to some argument that somehow a policy
 2 consideration ought to involve preserving districts as
 3 they have existed for the last ten years and longer,
 4 that somehow continuity for as many voters as possible
 5 of being in same district for more than a decade indicate
 6 a, three decades was somehow an important policy
 7 consideration. This became an argument for making
 8 minimal changes to previously existing map, only to
 9 reconfigure population so they were close to equal
 10 after the 2010 census. But that argument, which I'm
 11 not sure beyond its soup I believe appeal what it said
 12 frankly had to give way to voting rights
 13 considerations, and it did not in the course of policy
 14 making in the Los Angeles County.

15 At the same time, there were assertions of
 16 racially polarized voting doesn't exist in Los Angeles
 17 County; not based on evidence, but based on anecdotal
 18 experience and, I think, based on wishful thinking.
 19 They all wanted to believe that we changed and Los
 20 Angeles County could be a place where voters all races
 21 will vote for candidates of any race despite the fact
 22 there is evidence from social scientists to count that
 23 is not the case and the time they were going through
 24 the redrawing exercise things were going on nationwide
 25 demonization of Latino that was highly likely increase

1 changed by a stroke of the pen. And that's actually an
 2 issue that's being litigated right now, and that is the
 3 power or state versus the power of charter cities and
 4 charter counties to control the method of election. So
 5 that will probably be decided by the courts in the next
 6 four to six months. So it might be a little bit more
 7 difficult.

8 (Inaudible)

9 COMMISSIONER C. REYNOSO: And could I ask a
 10 question of Mr. Lee?

11 Because the concentrations of Asian-Americans
 12 is not quite as great as Latinos and African-Americans,
 13 how do you look at it in terms of still protecting the
 14 political influence, if you will, of Asian Americans?
 15 Do you look at a certain percent, ten percent or
 16 something of that sort? I wondered how you looked at
 17 it.

18 Liaison: We look at it from both what would
 19 be required to state claim under Section 2 and where
 20 that ability to do that is not possible to look at from
 21 strategies that would comport with state criteria, such
 22 as communities of interest. And that is largely the
 23 strategy that we use in coalition with AP organizations
 24 across the state in 2011 to amplify the voice of Asian
 25 Americans in redistricting talking about Asian

1 Americans of interest. That were tied together by
 2 race, by ethnicity but also by other considerations
 3 such as in some instances common concern education.
 4 COMMISSIONER C. REYNOSO: Coalitions liaison
 5 jobs concerns pertaining to immigrant communities.
 6 I -- I wanted to go back to the commission
 7 that -- the question that Commissioner Huffman raised
 8 earlier, which I think is really about this question of
 9 what percentage of the district are we really looking
 10 at for various communities of color when talking about
 11 what is going to be enough for the opportunity to elect
 12 for a given compute of color. And I fully echo
 13 Mr. Science comments that the circumstances and the
 14 experiences of various communities of color can differ
 15 in terms of both as Mr. Science said turn out patterns
 16 and registration pattern. I would also add the degree
 17 of communities of color may voice polarized voting in a
 18 given area. And I wanted to take the opportunity to
 19 repeat the point of Section 2 of the Voting Rights Act
 20 and how, because of the Bartlett v. Strickland case, in
 21 2009 Section 2, has been made inflexible as a remedy
 22 for vote dilution where -- where that Bart let
 23 case -- as -- as you know, now requires that in order
 24 for a plaintiff to be able to say claim under vote of
 25 Section 2 it Mr. Chairman hypothetical district in

1 which the protected class mains up at least the
 2 majority of that district and it's a bright line rule
 3 ignoring the reality of that, the protected class may
 4 be just under 50 percent, at 45, 48 percent, and still
 5 be -- if a district were drawn at that percentage, that
 6 community would have the opportunity to elect, even
 7 though it doesn't need that red line test.
 8 The Bartlett ignores that in some
 9 jurisdictions and some election systems. Majority is
 10 not required. Peculiarity is allowed to win that
 11 election. So I repeat that point because it under
 12 scores the -- the -- the -- one of the reasons we're
 13 having this hearing today, which is something needs to
 14 be done to restore the vitality of our federal
 15 antidiscrimination system. And, again, it's because
 16 Section 2 for various reasons that we stated today is
 17 not a sufficient safeguard against vote dilution
 18 against voting discrimination.
 19 COMMISSIONER D. HUERTA: So thank you very
 20 much.
 21 Are there any questions from the
 22 commissioners?
 23 COMMISSIONER A. HUFFMAN: I have one. I have
 24 one little teaser here. You know, I thought about this
 25 a long time. And we all -- as minority people, we talk

1 about protected classes. And I found during the
 2 redistricting, arguing against some of you,
 3 that -- arguing for a protected class that polarization
 4 was going on between protected classes. And my
 5 question is how can that be if you have two protected
 6 classes let the best person win. But I think I was on
 7 the minority on that because someone I heard in
 8 testimony that, you know, a Black and brown, blacks are
 9 never voting with the Latino or never vote with Asians
 10 therefore we became the enemy of the other group as
 11 opposed to two protected classes going at it and
 12 letting the best one win, which is what I thought we
 13 were all fighting for, just a little teaser, I'm sure
 14 you don't agree with me I thought levity into the
 15 conversation.
 16 MR. SAENZ: And I would go back by saying, I
 17 think that there is no such thing as enemies when
 18 you're talking about voting rights that we all share a
 19 concern that making sure all communities have the
 20 opportunity to compete fairly and I think last the
 21 matter. That the matter figuring out what that means.
 22 And that is tied into history. It's tied into
 23 historical local and nation in lots of cases. It's
 24 tied into structure. And I think that's what we're
 25 talking about today. It's tied into structure of

1 decision-making. It's tied into structure of voting
 2 and the mechanics of voting. It's tied into a lot of
 3 things, and we have to be sophisticated about it and
 4 recognize that this is not one group versus another.
 5 It never is. It's really about ensuring that taking
 6 into account all context, we are protecting voting
 7 rights of everyone and being fair in the political
 8 arena.
 9 R. RUBIN: There are winners and losers in
 10 this process. I can't say there aren't enemies, but I
 11 think we know --
 12 COMMISSIONER K. FENG: We're just frenemies.
 13 COMMISSIONER D. HUERTA: I want to challenge
 14 that a little bit, because I can say that with my
 15 experience I can think of many examples that -- in our
 16 community of Kern, California, where we have an
 17 African-American major, with a population of about
 18 90 percent Latino, okay. And I can give other
 19 examples. And Los Angles, where Latino to support
 20 African-American candidates. They just did happen to
 21 be the best candidate because, as you said, the
 22 mechanics of voting, people doing the work on the
 23 ground to try the get the person best elected. And
 24 sometimes you have to have an organization to work to
 25 get that person elected, where she come a long way and

1 where he come forward, correct these flaws that you
 2 have all testified to today.
 3 I want to thank the panel. Thank you all.
 4 You're such high level, excellent people. You've done
 5 such good work in the whole area. I want to thank you
 6 for doing the work here. Public testimony. Thank you.
 7 COMMISSIONER C. REYNOSO: The time is 12:35,
 8 probably 6, and we'll have second section of public
 9 testimony. I have some cards left over from this
 10 morning, from the first one. I don't know if we have
 11 additional cards, but you have three minutes. You're
 12 asked to please give your name and organization for
 13 recording purposes. And we'll start with Christine
 14 (inaudible)
 15 Can you hear me now?
 16 My name is Christine Chune. I'm the senior
 17 staff attorney at Disability and Rights Advocates. I
 18 want to touch on a couple issues that were raised by
 19 the first panel today, the first failure of the state
 20 to implement voting laws that exist that protect the
 21 right to vote. The second is the inaccessibility of
 22 poll sites.
 23 I'm currently litigating two voting rights
 24 cases on behalf of people with disabilities. We
 25 brought a lawsuit against Alameda County after the 2012

1 elections continues to tell voters with disabilities
 2 that they need to locate an alternate accessible poll
 3 site to control and as a result many voters have been
 4 deterred.
 5 Thank you.
 6 COMMISSIONER A. HUFFMAN: Thank you.
 7 I want to say it's almost disheartening when
 8 you want the vote and you realize that elections are
 9 rigged. So I voted for the first time when I was 18.
 10 It was an exciting experience but once I realized like
 11 I said, elections are rigged, so and I just hear you
 12 guys talking about how your going to get people to vote
 13 you're talking about people that the government doesn't
 14 care about and they don't give them anything so I why
 15 would I vote for anybody or try to vote for somebody
 16 who probably doesn't have even my interest or best
 17 interest at all.
 18 You know, and I haven't really heard about
 19 getting the youth to vote. We're the next to run this
 20 country. You know, so I think that's where you should
 21 really start, is, you know, trying to getting kids to
 22 vote and teaching them, you know, just what really
 23 voting is about. I don't have nothing to write. I
 24 just come here spin this top of my head. I think it's
 25 really important to look at the kids and they're the

1 general election, after the widespread malfunctioning
 2 of accessible voting machines at poll sites. As Fred
 3 of the DRC mentioned, the California secretary of state
 4 is required to place one accessible voting machine at
 5 each poll site for voters with disabilities. We had
 6 clients who were ushered from poll sites having cast a
 7 ballot but using because the machines were broken or
 8 not properly set up therefore they were denied the
 9 right to a private and independent vote. We brought
 10 the action and one of our state law claims was under
 11 the California election placement of the machine.
 12 However the second tear of state has failed to issue
 13 regulations to implement the law, our state law claim
 14 was dismissed with prejudice, and we were not able to
 15 proceed with that claim. So this is concerning because
 16 the law exists, but you're unable to enforce it.
 17 The second involves the widespread
 18 inaccessibility of poll sites for physical poll sites.
 19 This case was actually in New York City, but one
 20 concerning argument that the board of elections raised
 21 in our case in New York was that it was the burden of
 22 the voter with a disability to locate an amount ive
 23 accessible pole site and not the board of elections.
 24 And the district court rejected this argument, but the
 25 court appealed. And in the meantime, the board of

1 future. If you don't get them now, you know, before
 2 they get older they're going to lose faith like I did,
 3 because I lost faith in the system, and I still don't
 4 have faith in the system. You know, when you learn
 5 that this president, his brother owns Debolt, and they
 6 own the machines that were breaking down when we were
 7 voting, you know, back in the day, that's just
 8 disheartening to learn.
 9 So I think teaching kids what they're doing,
 10 how to do it, you know, and just doing the right thing
 11 because at the end of the day, you're voting -- you're
 12 voting for people that are all going to go to the same.
 13 They might be two different people, but it's going in
 14 the same direction. So I think teaching kids about who
 15 they are voting for and what they'll really voting for
 16 is just really the most important thing that you can
 17 do.
 18 Thank you.
 19 COMMISSIONER D. HUERTA: Thank you very much.
 20 COMMISSIONER A. HUFFMAN: I want to thank you
 21 for coming, and I have a comment or two.
 22 COMMISSIONER D. HUERTA: Me too.
 23 COMMISSIONER A. HUFFMAN: It's not
 24 appropriate, but I'm going to make it anyway because
 25 I'm supposed be taking testimony.

1 I think your comments are very poignant. But
 2 I will probably suggest that if you didn't vote, you
 3 might get something worse than what you might have the
 4 voted for the country and democracy won't work unless
 5 you vote. I think your points are well taken that you
 6 should focus on youth and we do in some organizations
 7 you just can't feel I but many of do but you can't give
 8 up on us, if you give up on us where is our future. So
 9 ma will be my comment that's my \$0.02 lecture that you
 10 didn't ask for I see somebody else that would like to
 11 address you as well.

12 COMMISSIONER D. HUERTA: First of all thank
 13 you for being here thank you for comments. I think the
 14 youth is very important it's not about voting. It's
 15 about advocacy, whomever assembly, your congressman,
 16 they need to hear from you. They have offices in your
 17 area. You go over there and you talk to, them. And
 18 you take some people with you. You be in their face
 19 and you tell them what you need. It's not about people
 20 in office. It's about educating them about what your
 21 community needs. You never have to step back.
 22 Remember, every politician works for you, because you
 23 pay for their salary with your taxes. And that's what
 24 our community needs to hear. Just don't give up. Keep
 25 on working.

1 here to speak to you about the importance placed or
 2 lack of importance placed studies disabling voter
 3 participation and effected on variety of different
 4 issues. According to the last census, 57 million
 5 Americans have disabilities. It's certainly a sizable
 6 community whose voter participation should be cataloged
 7 and referenced equally with other populations.

8 As you know, Rutgers University and the
 9 National Council on Disability do substantial studies.
 10 Quite frankly, this community is under studied and
 11 cataloged in that participation compared to other
 12 communities. My background is actually in LGBT field
 13 politics. I was the senior staff member of the "No On
 14 Prop 8" campaign, so I've worked with populations all
 15 over the country. And similar to the LGBT community,
 16 people with disabilities are Black and White, they're
 17 older, younger; they're male, female. They cross all
 18 sorts of different boundaries. And I would challenge
 19 you to find a voter block that doesn't touch
 20 accessibility. You can't. We are in every single
 21 voter block. So for the example I'm going to leave are
 22 you today, we've been advocating with covered
 23 California for accessible. For the past year. Their
 24 website is not access toll people with disability,
 25 their town haul forms are not quite and push back

1 COMMISSIONER A. HUFFMAN: Thank you for being
 2 here.

3 Ted Jackson.

4 Hi. My name is Ted Jackson I'm the community
 5 organizing director at California foundation for
 6 independent living centers and we're a statewide
 7 disability rights organization. We -- our membership
 8 organization of 21 of the 28 independent living
 9 centers, and we support approximately 350,000 people
 10 with disabilities who seek assistance. But also
 11 through our programs, one of which I run, the
 12 Disability Organizing Network, or the DO Network, we
 13 support the disability community statewide, people with
 14 disabilities, whether they need services or anything
 15 like that. And voting is a primary issue for us. It's
 16 something that we worked on a lot and even last year we
 17 were recommended with the California secretary of state
 18 with a medallion award for outstanding advocacy on
 19 behalf of voters with disabilities.

20 There are other groups here that are talking
 21 about more specifics regarding voters with disabilities
 22 today, and our community partners and I greatly
 23 appreciate their information. Mine is going to be more
 24 anecdotal and, really, to speak to your sense of
 25 leadership in a spiritual and temporal way, and I'm

1 response. Eventually went to a senate hearing which
 2 was very educational and informational and found out
 3 they were using voter data to chart their marketing for
 4 the health benefits exchange. Which the disability can
 5 community fought for very vehemently. So right now,
 6 there is a whole sector of the population who are
 7 disabled, who are not on Medi-Cal or Medi-Cal expansion
 8 who are not being served by the health benefits
 9 exchange because their voter participation was not
 10 cataloged.

11 And so I really encourage you, even if our own
 12 coalition partners we find they use terminology and
 13 words in presentations to the community that would
 14 deter the community from taking part, like the words
 15 handicapped instead of accessible disability. Hand
 16 anecdotes for you I strongly encourage you use your
 17 leadership role to get secretaries of states and county
 18 government add well as federal government in other
 19 academic institutions to really take a good strong look
 20 at voters with disabilities and cataloging their
 21 participation, their barriers, and access to successes.

22 Thank you.

23 COMMISSIONER A. HUFFMAN: Thank you. The last
 24 card I have looks like L-E-N-C-O-M-O-M.

25 B. TURNER: No longer here.

1 COMMISSIONER A. HUFFMAN: No longer here.
 2 That's the last card I have for public testimony. You
 3 have one?
 4 You have a card up here?
 5 B. TURNER: Yes, I do. Thank you.
 6 My name is Brent Turner. And I'm here on
 7 behalf of California Association of Voting Officials.
 8 We have been doing election systems security work
 9 in -- for over a decade and have demonstrated open
 10 source election systems. The reason why I wanted to
 11 bring this to your attention there is a security at
 12 issue inherent with the secret software,
 13 corporate-owned software systems that are used for
 14 elections and this of course have been all
 15 well-documented in the California secretary of state's
 16 top to bottom review. But I want you to do know we are
 17 working on federal and state levels to get an
 18 open-source system certified in the State of California
 19 that can be utilized nationwide in creating a better
 20 environment for election administrators to have the
 21 option of a more secure system at a -- with taxpayer
 22 savings.
 23 So I just wanted to bring that to your
 24 attention because I didn't see the morning session and
 25 I don't know what's going on next, but -- and I

1 choices and a perfectly printed ballot comes out. I
 2 think this the direction LA is going but the difference
 3 is we want to make sure that the software code that
 4 they utilize this their systems is -- is general public
 5 license open source software because that is the way to
 6 maximize the security and to make sure that other
 7 counties and states can bet fit from the work done
 8 there. But whether they go the proper direction or
 9 not, I think these subpoenas will get certified in
 10 California and the state can be a model for the rest of
 11 the country.
 12 COMMISSIONER A. HUFFMAN: Thank you.
 13 B. TURNER: Thank you.
 14 COMMISSIONER A. HUFFMAN: You kept going along
 15 to get the other cards. Thanks very much.
 16 We have a Perry Grossman and Frank Williams
 17 are the next speakers.
 18 Are you Perry?
 19 P. GROSSMAN: I am. Thank you very much,
 20 Madam and Mr. Commissioners.
 21 I'm Perry Grossman (inaudible) Oakland. I'm a
 22 Yolo County resident and voter deficit Section 2 in
 23 Mr. Science and Mr. Rubin both alluded to the
 24 difficulty of bringing Section 2 cases they're profound
 25 expense and the time consuming nature of them and

1 appreciate all the all great work that's gone on
 2 regarding lines and so forth because, you know,
 3 that's -- those are crucial elements. But we deal
 4 specifically with the software that runs the systems
 5 from the central tabulator forward, and we just wanted
 6 to be on record with your good commission that there is
 7 a solution available and we're trying to gather the
 8 political will for implementation.
 9 COMMISSIONER A. HUFFMAN: What is an open
 10 source?
 11 B. TURNER: Open-source system is a --
 12 consistent with what the Defendant of Defense and Air
 13 Force uses in critical situations. It's a transparent,
 14 actually publically owned free software that creates a
 15 great security -- security environment because if there
 16 were any bugs in the system, or miss happens within the
 17 system they would be easily spotted and remedied to any
 18 election system lock down.
 19 COMMISSIONER A. HUFFMAN: Does that system
 20 have a receipt or something once you vote, you know, a
 21 piece of paper trail or something that goes with it?
 22 B. TURNER: Yes. Actually, Ephraim Esposito
 23 was going to be here this morning. I don't think he
 24 made this event. That would be a paper ballot printing
 25 system where the voters experience is you press your
 1 difficulty injunctive relief. The most available data
 2 is from this commission's last report in 2005 which is
 3 written by Mr. Lee. And Jay Keen, who couldn't be here
 4 today, but is instrumental to the passage of CBRA,
 5 really one of the great champions of voting rights of
 6 California.
 7 And as of the last report, there was over
 8 4,000 city council seats -- other 4,000 school board
 9 seats in the state of California, 15 percent were
 10 occupied by Latinos and Latinos. And even smaller
 11 percentage occupied by Asian-Americans. And given
 12 these sheer number --
 13 COMMISSIONER K. FENG: Say the numbers -- slow
 14 down and say the numbers again.
 15 THE WITNESS: I wrote them down just in case.
 16 This is Footnote 8 from the 2005 report that was
 17 authored by the Commission of California Hearing. 535
 18 out of 4,850 school board seats were occupied by
 19 Latinos or Latinas, and 14.2 out of -- 14.2 percent out
 20 of 2,507 council seats, total of 357, were occupied by
 21 Latinos and Latinas. And in 2003, 2004, only 38 Asian
 22 Americans Pacific city council seats out of that 2,507.
 23 Out of those it's very difficult to monitor
 24 4800 plus city council seats and very difficult to
 25 monitor 2500 plus -- sorry 48 and 25 plus city council

1 seats and those local level districts which have the
 2 greatest degree of primary agency of the people. They
 3 affect transportation. They affect school, property
 4 taxation. They don't get media coverage. They don't
 5 get coverage from statewide and civil rights
 6 organizations because who has the resources to cover
 7 all that. So there is a really strong need for as many
 8 enforcement enforces as many transparency as possible
 9 to make sure that those district and those seats are
 10 being voted for by people casting effective ballots.
 11 There needs to be greater data transparency in
 12 California so we can monitor those districts.

13 I recently budgeted possible Section 2
 14 (inaudible)in California city council and school board
 15 that might (inaudible) voter dilution. The expert
 16 witness fees alone would have topped \$35,000 out of
 17 pocket, and that doesn't include the overruns for
 18 trial. Making election data, which should be publicly
 19 available and easily accessible to any voter in the
 20 State of California, would reduce that cost
 21 significantly and allow to make one final point and
 22 professor is checking my research there has not been a
 23 single vote dilution, a Section 2 vote dilution case
 24 brought against a local jurisdiction in California in
 25 the last ten years. There hasn't been a single success

1 we need to take a -- look at what does that mean once
 2 you do your time. You do your time. Once you did your
 3 time, it should be over with. You shouldn't -- you
 4 should not have to follow them the Rest of our lives.
 5 We are human beings, and that he has people will.

6 Second of all, I would like to say that it's
 7 nice be here, but it would have been better to have
 8 this in bay just Hunters Point, like western addition,
 9 like in our communities where our -- our -- our
 10 communes should be sitting in here hearing from you
 11 guys. This is why, young lady feel this way they not
 12 being educated this way. You know, if more of her
 13 appears probably part of this have an impacts on them
 14 we have these meetings just like selective and secluded
 15 because of our organizations don't even get e-mails for
 16 this that is going on where we can bus them here.
 17 Bayview, Hunter's Point, mull PI senior, which I'm a
 18 part of under executive director Kathy Davis, we help
 19 our seniors to do the vote every -- every four years.
 20 We help them -- prepare them to vote. We have buses
 21 and stuff where we take people to go vote. So we also
 22 work with seniors as well and also work with the
 23 criminal justice system, so together, we need more help
 24 with this. We need some of these policies change. I
 25 don't understand we're in 2014 and we still got all

1 vote dilution case brought by a plaintiff in the State
 2 of California since 1995. So anything that can be done
 3 to improve the quality and quantity of litigation in
 4 local level would be appreciated.

5 Thank you.

6 COMMISSIONER A. HUFFMAN: Thank you.
 7 Frank Williams.

8 F. WILLIAMS: My name is Frank Williams. I'm
 9 the director of the senior expanded program of point in
 10 San Francisco. I will say it's a pleasure to be here,
 11 but I'm glad to be here with so many professors and
 12 students that aspire to become lawyers. However, with
 13 the disenfranchisement of any race, Black, White,
 14 green, yellow that has been incarcerated is still
 15 prevalent today, as you have heard from testimony from
 16 (inaudible). We also help them get employment. We
 17 break down barriers. We have housing for them and the
 18 whole nine yards, but it's hard for us to get them
 19 actively involved. If I can aspire a senior to regain
 20 purpose and life all over again because he felt his
 21 whole life has ended, but I can get them at City
 22 College, he can become a community health outreach
 23 worker, become certified treatment counselor, can come
 24 out here in the social model to help people change
 25 their lives, but he can't vote. It's a travesty. So

1 this discrimination and racism going on with all the
 2 powerful minds why is this all happening. We really
 3 need to make change profiting we are need make that is
 4 my comment. Thanks for hearing me.

5 COMMISSIONER A. HUFFMAN: Thank you.

6 If I could tell you why racism is still going
 7 on. I would be a zillion year it's deep in fabric and
 8 some cultures things are getting better I want to
 9 defend the hearing being here. Any time you make a
 10 decision to hold the hearing it's never the right
 11 place. But I think your point is well taken it would
 12 be nice maybe the NAACP and some of us brought the
 13 community so we could hear back from the compute. But
 14 the thing about doing a hearing like this is you get
 15 more than what you thought your were going to get. And
 16 my question all of this testimony that we gotten on
 17 disenfranchisement of ex-offenders. It's like a state
 18 issue that we should take up with the state
 19 legislature; not to say that there are not voting
 20 rights implications there. As I think it was Mike
 21 Davis who carried a bill that said your vote should be
 22 counted if you vote in county polices where you live.
 23 I think these state issues that we should take up at
 24 the state level. Shouldn't we go up and talk to
 25 Governor Brown that the fact that realignment --

1 F. WILLIAMS: Right.
 2 COMMISSIONER A. HUFFMAN: -- has left some
 3 quirks in the system? I would like to engage you all
 4 to talk to the NAACP and see if we can take care of
 5 some of this at the state level.
 6 F. WILLIAMS: I would love to. Thank you.
 7 COMMISSIONER A. HUFFMAN: Well -- well, I
 8 don't know. Maybe everybody is hungry. I don't have
 9 any more cards. And despite the fact that we are ten
 10 minutes --
 11 COMMISSIONER K. FENG: Five minutes.
 12 COMMISSIONER A. HUFFMAN: -- only five minutes
 13 early, let's take a lunch break. And we would like to
 14 be back at 1:45. Thank you.
 15 (Lunch recess taken.)
 16 COMMISSIONER K. FENG: I'd like to call back
 17 our hearing participants and invite our next panel up
 18 to the table. Our next panel is on language access,
 19 and it's an issue that's near and dear to my heart.
 20 Prior to joining California Common Cause -- Common
 21 Cause, I worked for what used to be the Asian Pacific
 22 Legal Center, which is now gone through a couple of
 23 transformations and is now the Asian American Advanced
 24 Justice. But I did a lot of work on monitoring
 25 elections and making sure that elections were

1 accessible for people who have a need for language
 2 assistance. And not so long ago, we regularly
 3 documented examples of voters who were literally told
 4 to go to the back of the line because they didn't speak
 5 English so that regular voters could vote first or be
 6 helped. So I'm very excited to welcome up our esteemed
 7 panel. And I think we have everybody now.
 8 Deana Kitamura, senior staff attorney of the
 9 Asian American Advanced Justice of Los Angeles.
 10 Dr. Mindy Romero of California Civic
 11 Engagement -- sorry. She is the California Civic
 12 Engagement project director of UC Davis Center for
 13 Regional Change.
 14 Neal Kelley, who is Orange County registrar of
 15 voters.
 16 And Michelle Romero, the Claiming Our
 17 Democracy director of Greenlining Institute.
 18 Please join me in welcoming our panel.
 19 So we're going to start out with Deanna
 20 Kitamura of the Asian Americans Advancing Justice.
 21 D. KITAMURA: Thank you, and good afternoon.
 22 Again, my name is Deanna Kitamura. I'm a senior staff
 23 attorney for the Voting Rights Project at Asian
 24 Americans Advancing Justice of Los Angeles. Thank you
 25 for holding this important hearing. And thank you to

1 the Lawyers' Committee for inviting me to testify.
 2 You've already heard from my colleague -- colleague
 3 Eugene Lee about vote dilution in Asian American
 4 communities. I would like to focus my testimony on
 5 language assistance for Asian American voters.
 6 Most of my testimony is based on the report
 7 entitled, "Voices of Democracy," which was produced by
 8 the four Asian American Advancing Justice affiliates.
 9 For that report we and our local partner organizations
 10 monitored nearly 900 precincts in a total of seven
 11 states during the November 2012 elections. And I have
 12 given you all a copy of that report as well as my
 13 written testimony.
 14 Language is a significant barrier to the -- to
 15 ability for many Asian Americans to vote. Three in
 16 four Asian Americans speak a language other than
 17 English at home. And almost one-third of all Asian
 18 Americans have some difficulty communicating in
 19 English. Of course rates vary by ethnic community.
 20 Among Asian Americans, Vietnamese Americans have one of
 21 the highest rates of limited English proficiency at
 22 51 percent. Koreans, Cambodians, Mong, and Bangladesh
 23 communities all have English proficiency rates above
 24 40 percent.
 25 Fortunately, Section 203 of the Voting Rights

1 Act requires translated material -- written materials
 2 and oral assistance at poll sites when certain language
 3 groups -- including Asian language groups -- reach
 4 specific population thresholds.
 5 The map I'm showing you now shows the
 6 jurisdictions which must provide language assistance
 7 under Section 203 for Asian languages. The populations
 8 in blue font are those that are currently covered. And
 9 those in green font are populations that may be covered
 10 in the near future.
 11 Currently 11 states have at least one Asian
 12 language covered under Section 203. In California,
 13 eight counties must provide assistance in at least one
 14 Asian language. Los Angeles County has the most number
 15 of Section 203 languages. In addition to Spanish, it
 16 must provide assistance in eight Asian languages.
 17 Those languages are Chinese, Hindi, Khmer -- that's the
 18 Cambodian language -- Japanese, Korean, Tagalog, Thai,
 19 and Vietnamese.
 20 In addition to poll monitoring, my
 21 organization has conducted election day exit polling.
 22 From our sampling, we found that Asian American voters
 23 are using the available language assistance to vote.
 24 For example, for Los Angeles for the 2008
 25 election, 30 percent of Chinese American voters

1 informed us they used some type of language assistance.
 2 Use among Filipino American voters was 33 percent. It
 3 was 50 percent among Vietnamese American voters and
 4 60 percent among Korean American voters.
 5 In Orange County, we found that 62 percent of
 6 Vietnamese American voters used some form of language
 7 assistance in the 2004 election. While a number of
 8 jurisdictions meet their Section 203 obligations in
 9 commendable fashion, common problems emerge among the
 10 nearly 900 precincts that we monitored in the
 11 November 2012 elections.
 12 The most disconcerting statistic was that 45
 13 percent of the precincts monitored had either missing
 14 translated materials or poorly displayed translated
 15 materials. Oftentimes, the translated materials were
 16 hidden under the English versions.
 17 Twenty-three percent of the precincts
 18 monitored were missing at least one Asian language
 19 speaking bilingual poll worker -- poll monitor -- I'm
 20 sorry, yeah, poll worker. In some of those instances,
 21 we were able to ask the county to send a replacement
 22 poll worker. But in other instances, there were no
 23 replacements to send.
 24 Another trend we saw in the precincts that we
 25 monitored was that 35 percent of poll workers waited

1 for voters to request help, instead of actively
 2 approaching voters.
 3 Lastly, we saw that many pollers were
 4 unfamiliar with voting laws. For example, 14 percent
 5 did not provide provisional ballots when a voter's name
 6 was not on the roster.
 7 Although many jurisdictions strive to improve
 8 their language assistance at the polls, in the past
 9 decade the United States Department of Justice brought
 10 Section 203 enforcement actions in California in San
 11 Diego County, the City of Rosemead, the City of Walnut,
 12 and Alameda County were noncompliant with respect to
 13 Asian language requirements.
 14 Once comprehensive language assistance is
 15 provided by a county under Section 203, we find that
 16 voter registration and turnout increases. In San Diego
 17 County, once the County adopted a comprehensive
 18 program, voter registration increased by 20 percent in
 19 the Filipino American community and increased by
 20 40 percent in the Vietnamese American community. We
 21 also found out, voter turnout doubled once Harris
 22 County in Texas provided comprehensive language
 23 assistance.
 24 In my written testimony, I have provided
 25 information regarding language assistance under

1 California law, and I would be happy to answer
 2 questions you have about the State's requirements
 3 during the question-and-answer session.
 4 But in closing I would like to add that,
 5 should this commission wish to review suggested
 6 practices to ensure that elections are accessible to
 7 voters who are not fully proficient in English, I would
 8 like to refer you to pages 25 through 27 of our report
 9 which I have given you.
 10 Thank you for allowing me to testify today.
 11 COMMISSIONER K. FENG: Next, we have Dr. Mindy
 12 Romero of UC Davis, Center for Regional Change.
 13 M. ROMERO: Thank you. Good afternoon,
 14 Commissioners. It's a pleasure and a privilege to be
 15 here today.
 16 Jumping in: Language access. So my goal
 17 today, by the way, I should say at the outset, is to
 18 speak more broadly in regard of the trends and to
 19 emphasize some future potential direction, as well.
 20 So language access, simply put, matters. So
 21 there's been lots of research that has demonstrated a
 22 clear association between language access and voter
 23 participation rates. Both nationally and in
 24 California, we know that language assistance remain as
 25 factor in low voter participation rates in English

1 proficiency.
 2 Let me back up for a moment though and talk
 3 about the disparities in California with regard to
 4 turnout rates and registration by race and ethnicity.
 5 So we know that over the last decade, largely due to
 6 dramatic increases in eligible voter population of
 7 Latinos and Asian Americans, there has been dramatic
 8 increases in their share of the vote. For many folks
 9 that's quite encouraging.
 10 But at the same time, by 2012, there are
 11 still -- both groups are underrepresented in terms of
 12 their proportion of actual voters and the proportion
 13 that are actually eligible. Currently Latinos and
 14 Asians make up about a third of the State's vote, and
 15 along with African Americans, about 40 percent.
 16 The reason why they're underrepresented is
 17 because they both register and turn out to vote at
 18 rates much lower than non-Latino and non-Latino White
 19 electorates, and of course, there are dramatic
 20 disparities. And these disparities as I have mentioned
 21 have remained consistent through 2012. And just really
 22 briefly -- in all of these slides, I should say, in my
 23 expanded testimony, I have laid out all the details.
 24 So if we look over the decade 2000, 2012, we
 25 see a lot of fluctuation. But what really matters here

1 in this slide and what I want to emphasize now is, we
 2 see the continuing story of disparity, right, And also
 3 a gap. A gap between the Latino and Asian vote, the
 4 voter -- eligible voter turnout rates, and White
 5 non-White Latino rates as well. And that gap has
 6 decreased slightly from 2012 on average a few
 7 percentage points. But for Latinos, actually, the gap
 8 actually increased from 2008.

9 Okay. And, briefly, of course, as we talk
 10 about state levels, we have to recognize that there are
 11 dramatic disparities throughout the state, community
 12 and county levels. There are many communities for
 13 Latinos and Asians, where their registration rates and
 14 their turnout rates are much lower than their state
 15 averages and much lower than the general electorate
 16 rates, for the nonLatino, nonLatino Whites. And
 17 briefly, as you can see from left to right, running
 18 from the north of the state to San Diego, showing
 19 really quickly, some of those differences by region in
 20 the state in terms of rates and gaps.

21 Language access. So 10 percent of all
 22 households, according to the U.S. census, American
 23 community survey, are linguistically isolated. They
 24 defined it in 2012. Of course, for Spanish-speaking
 25 it's higher. It's about 22 percent. Households

1 speaking Asian and Pacific Islander languages are about
 2 28 percent. That totals about to 1.2 million
 3 Californian households. And at the individual level,
 4 that's 33 and 36 percent of Latinos and Asians,
 5 respectively, that speak less than very well as the
 6 measure.

7 Language access and voter participation. So
 8 I'm going to breeze through this because my wonderful
 9 colleague has talked on some of this already. We know
 10 that Hispanics who are naturalized citizens generally
 11 now -- recent research has shown us, vote at higher
 12 rates than Hispanics who are U.S. born citizens -- but
 13 the rates, I want to emphasize, are still low and lower
 14 than non-Latino Whites. Generally, nationalization
 15 votes at the same or lower registration than
 16 native-born voters. And a key barrier to these rates
 17 are their lower registration rates.

18 In 2012, registered Asian voter turnout was 9
 19 percentage points lower, and this is the national Asian
 20 American political survey. A percentage of those
 21 folks, Asian respondents, indicated that those that had
 22 difficulty speaking English cited language barriers for
 23 not voting. And of that study identified 55 percent of
 24 respondent living in 203 jurisdictions indicated, like
 25 Deanna mentioned as well, that translated election

1 documents or bilingual poll workers were actually not
 2 available.

3 For Latino citizens that speak little English,
 4 lots of research now, in recent years have shown us
 5 that there's a difference in terms of, it affects
 6 turnout rates, so access to Spanish ballots, for
 7 instance, and language assistance increases and
 8 influences election turnout. Additional research
 9 supports conclusions that structural barriers also
 10 influence. And studies examining the impact of Section
 11 203 tell us that when implemented properly, it can play
 12 a significant role in increasing turnout rates for
 13 Latinos.

14 So, in closing, I just want to emphasize that
 15 as we talk about the topics that we're talking about
 16 today, we really need to look towards the future. The
 17 State of California is going to be experiencing
 18 demographic dramatic changes over the next 30 years,
 19 and these changes will not be even across the State.

20 So if projections hold, we're going to gain
 21 8.3 million new eligible voters, 8 million will be
 22 people of color, non-White. We're going to shift our
 23 electorate from one that's dominated by non-Latino
 24 Whites.

25 Oops.

1 By 2040, assuming parity -- and there's lots
 2 of different ways that we measure this -- but
 3 potentially Latinos are projected to be just over --
 4 and Asians together -- over 50 percent of California
 5 actual California voters and in some areas much higher.
 6 But here is the kicker and here is the challenge. So
 7 population change, eligible voter change, mean lots of
 8 opportunity for increased voice. But if these new
 9 voters entering into the electorate are not
 10 transitioned into actual -- from eligible to actual
 11 then we can have a decrease in representation.

12 And that's it. Thank you.

13 COMMISSIONER K. FENG: Our next speaker -- our
 14 next speaker is Neal Kelley, Orange County Registrar of
 15 Voters.

16 N. KELLEY: Good afternoon.

17 I don't have a presentation although I
 18 presented some materials to -- prior to the meeting. I
 19 would like to express my gratitude to the commission
 20 for giving me the opportunity to share from my
 21 experience and lessons learned as an elections official
 22 in Orange County. It's both an honor and a challenge
 23 to be responsible for providing high-quality election
 24 services, now supported in nine languages which include
 25 Spanish, Chinese, Tagalog, Japanese, Khmer, Korean,

1 Vietnamese, and Hindi, which includes the State's
 2 Voting Act requirements. This is to Orange County's
 3 3 million residence and 1.6 million registered voters.
 4 In the materials I provided to you, I've
 5 included demographic and minority language information
 6 for you. In light of these challenges, I'm proud of
 7 the accomplishments that we have made in the area of
 8 language compliance and support and being a partner in
 9 the nation's proud tradition of expanding the
 10 franchise. I want to start first and tell you about
 11 what we did in 2006. And that was during that year, to
 12 increase by 20 percent what was required by the
 13 Department of Justice for bilingual poll worker
 14 recruitment. That's allowed us to be over-staffed in
 15 many areas, but also allowed for cancellation and
 16 no-shows when we have them. Since that time we've
 17 expanded our outreach operations to include not -- not
 18 only oral and written support, but a comprehensive
 19 language and support program that grows with each
 20 election.
 21 We conduct all elections that occur in Orange
 22 County. This includes 34 cities, 26 special districts
 23 and 32 school districts as well as unincorporated
 24 areas. We have established a unique program within
 25 Orange County that the City Clerks now can access their

1 language requirements by city on a specialized website
 2 that is only accessible to those City Clerks. Using
 3 standards for measuring compliance that mirrors both
 4 the federal and state Voting Rights Act that allows to
 5 produce voting materials that are translated and
 6 proofread by our outreach team. This is a duty shared
 7 by court-certified translators and our community
 8 specialists.
 9 In order to track each word and document
 10 through the process we have developed applications
 11 in-house that track the workflow and location of every
 12 translated item whether it's web pages, ballots, or
 13 other voter materials. This allows us to track
 14 corrections very accurately, court-ordered changes and
 15 translate web pages in less than 24 hours. This also
 16 provides a level of quality control to ensure the
 17 accuracy, completeness, and cultural sensitivity of
 18 translated materials. A minimum of six people review
 19 each document prior to its dissemination.
 20 The reduction of risk was a major factor in
 21 developing a system that could be described by my staff
 22 as excessive but absolutely necessary in my opinion.
 23 We have designed two-tier system in providing language
 24 material or assistance required by the Voting Rights
 25 Act.

1 Specifically in recruiting election officers
 2 to provide language assistance at the polling place, we
 3 use language request criteria for Spanish and
 4 Vietnamese while place of birth criteria for Korean and
 5 for Chinese. Voter instructions are translated into
 6 the eight languages that we now support covered in
 7 Orange County and can be found in the sample ballot
 8 our website posted in the polling places and the voting
 9 booths, this taking exception with the state voting
 10 rights requirement where it would be precinct-specific
 11 so that would not be county wide for those four
 12 languages. All notices, instructions, ballots and
 13 other pertinent materials are provided in those eight
 14 languages at every polling place. Affidavits of
 15 registration, request for permanent vote by mail
 16 status, and applications for one-time-vote-by-mail
 17 ballots are all translated into our minority language,
 18 and these forms are placed in public places, including
 19 our website where voters can have easy access to them.
 20 Our efforts for publicizing the availability of
 21 materials and assistance in the minority language is
 22 specific to each language community. Spanish speaking
 23 television stations are most effective for us in Orange
 24 County to reach the Latino community. And in the
 25 Vietnamese community, both radio stations and

1 Vietnamese newspapers are effective for communicating
 2 to the voters. In the Chinese and Korean communities,
 3 Orange County sections of major ethnic newspapers are
 4 the most effective means for reaching voters
 5 themselves.
 6 Our polling places are supplied with sample
 7 ballots in all the languages and are placed on a table
 8 for voters' reference. All voters including minority
 9 voters are allowed and encouraged to take their sample
 10 ballots into the voting booths which also have an
 11 electronic translated in all four federally required
 12 languages. And I believe, with the exception of San
 13 Mateo County, we're the only county in California that
 14 has a full compliment of electronic voting booths in
 15 all of the polling places with the heart system.
 16 New for 2014 will be bilingual welcome name
 17 badges. This is a significant changes. We used to
 18 send those to the inspectors in the polling places to
 19 disseminate to the poll workers. But as Deana found in
 20 some of her polling place observations, the poll
 21 workers don't always get that information out, so we're
 22 now sending it out to the bilingual poll workers so
 23 they can peel it off and stick it on themselves prior
 24 to going to the polling place.
 25 Finally, our community engagement program has

1 increased the way we reach out in general to our voters
2 in our county. Through community events, intimate
3 speaking engagements, neighborhood gatherings,
4 award-winning programs such as our student My Ballot
5 Program, customized music events to reach out to
6 culturally sensitive areas in the county, and large
7 scale events, we have found new and unique ways to
8 connect with voters.

9 One last word, if I may, and I will sum up
10 here. While we make every effort to exceed voters
11 expectations, I do want to take an opportunity to make
12 an observation that I don't have is lost on this
13 commission. Elections are the only government
14 operation of its kind at the federal, state, or local
15 level. And specifically I'm talking about, volunteers
16 make up the a majority of that staffing on election day
17 out in the field. As such, the commitment and skill
18 set sometimes vary. Although I love my poll workers
19 dearly, that's something I think we need to point out.

20 Thank you again for the opportunity and I hope
21 the information I provided gives you a glimpse of what
22 we're doing in Orange County. Thank you.

23 COMMISSIONER K. FENG: Finally but not least
24 Michelle Romero of the Greenlining Institute.

25 MICHELLE ROMERO: Thank you. Thank you for

1 to the guides as too complex or too confusing. Some
2 even equated voting with taking an exam. Many voters
3 with limited English proficiency also complained that
4 then the translated material didn't make sense.

5 When we ran a Flesch-Kincaid reading grade
6 level analysis on various sections of the voter guide
7 over the past five years -- or 5 election cycles, I'm
8 sorry, we found over the past five cycles several
9 sections would require above a twelfth grade reading
10 level to understand. The most extreme examples were
11 where parts of the voters guides scored at a sixteenth
12 grade reading level. That's a college degree. No
13 wonder those with college degrees are voting at higher
14 rates. That's how we're designing the system.

15 Additionally the more difficult the text is in
16 English, we found that then the word-for-word
17 translations are poor in quality as well.

18 Language access isn't just about translating
19 material from one language to another. It's about
20 ensuring that the audience can actually understand the
21 content. So to this end, language access should
22 include policies to provide material in plain language
23 that's readily understood and relevant to our diverse
24 voters.

25 Plain language is a studied concept. It

1 inviting me to come testify today. My name is Michelle
2 Romero. I'm the Claiming Our Democracy director at
3 Greenlining Institute. And I want to talk today about
4 two areas of our democracy where I think we can better
5 serve and empower limited English communities to
6 participate where there isn't already existing law. So
7 each year, the Greenlining Institute's Claiming Our
8 Democracy program convenes a series of community focus
9 group style sessions across the State to learn more
10 about how voters of color interact with voting
11 material, make decisions on ballot measures, and
12 experience and engage in our democracy.

13 We use this information to inform policymakers
14 and our own advocacy to improve democracy by ensuring
15 they can participate. From these community sessions,
16 we have identified two what we call modern literacy
17 tests that I would like to talk to you about today.
18 The first deals with our voter information guides and
19 voting information in general. But the state's voting
20 information guide is a single piece of information that
21 every voter receives. Yet when we held focus groups on
22 the issue, we learned quickly that voters across the
23 spectrum both limited in English and fluent in English
24 found the voter information guides to be full of
25 legalese -- these are their words -- and often referred

1 encourages the use of things like active versus passive
2 voice, shorter words compared to words with many
3 syllables and many other best practices for
4 readability. The plain language movement in the United
5 States began in the 1970s when President Nixon ordered
6 the Federal Register to read in laymen's terms. Then
7 in 1998, President Clinton issued orders to require
8 federal employees to write regulations in plain
9 language. Most recently, in 2010, President Obama had
10 signed a Plain Language Writing Act to promote clear
11 government communications that the public can
12 understand and use, and it applies to federal agencies.

13 We should have something similar to ensure
14 voting material is clear, concise, and voter friendly.

15 The second modern day literacy test that I
16 would like to talk to you about appears in the ballot
17 initiative process. The ballot initiative system plays
18 an important role in setting policy in California.
19 Established in 1911, the initiative system was the way
20 to give people make and unmake their own state laws and
21 hold their government accountable. However, these
22 initiative petitions are in English only, and they
23 leave millions of eligible voters in California who
24 don't speak English very well out of the process
25 entirely. Between 1990 and 2010, California's limited

1 population grew 56 percent to a total of 6.9 million
 2 residents. At least 2.6 million in California are
 3 eligible voters. They make up approximately 11 percent
 4 of our total citizen voting age population in our
 5 state.
 6 By failing to provide language accessible
 7 initiative petitions, many voters are out left out of
 8 the process. I would call this, you know -- we can
 9 compare it basically to White primaries of -- before,
 10 where Blacks were excluded from voting in primary even
 11 after they had gained the right to vote by engaging in
 12 selective inclusivity, where only Whites were included.
 13 English only signature processes function in this way,
 14 where in the primaries, we're nominating candidates to
 15 move forward in the ballot. In the signature gathering
 16 of an initiative process, we're nominating issues to
 17 move forward. And so our electoral process doesn't
 18 begin on election day; it start much sooner. This
 19 issue effects California and several other states to
 20 have an initiative process. And so, we would encourage
 21 this commission and the civil rights community as a
 22 whole to begin to think how we can fill that gap.
 23 Unfortunately, there seems to be some
 24 confusion as to how the federal Voting Rights Act
 25 language assistance provision would or should be

1 applied to the initiative referendum and recall
 2 materials.
 3 So with that, I would like to thank you for
 4 considering both of these issues and providing the
 5 space to discuss solutions.
 6 COMMISSIONER K. FENG: Thank you so much to
 7 our panel again. Let me turn the questions over to my
 8 fellow commissioners and we will start with Dolores
 9 Huerta.
 10 She's going to pass. All right.
 11 Anybody. Justice Reynoso.
 12 COMMISSIONER C. REYNOSO: I have tons of
 13 questions.
 14 I would like the first -- well, we'll just ask
 15 one question each again. I want to ask Ms. -- this --
 16 this Ms. Romero a question.
 17 M. ROMERO: It could be confusing.
 18 COMMISSIONER C. REYNOSO: What -- the report
 19 is obviously instructive in terms of what's happening,
 20 but it seems to manifest that we need to change some of
 21 the things that are happening, for example, the
 22 language isolation that -- that you pointed to.
 23 What should be done about those things?
 24 That's not what you studied, but I'm just curious.
 25 What are your thoughts in terms of what can be done to

1 ameliorate the language isolation, because, you know,
 2 we have, as indicated Kelley, language assistance and
 3 all that and yet your studies that is all, yet your
 4 study shows that you still have that. So give us your
 5 thoughts.
 6 A. HUFFMAN: What is language isolation before
 7 you answer his. That is going to be my question
 8 before you answer his.
 9 M. ROMERO: Yes. And I do give you a
 10 definition in my -- in my written testimony.
 11 So according to the American community survey,
 12 it's all members of a household over age 14 that don't
 13 speak English, so, yeah.
 14 A. HUFFMAN: Oh, okay.
 15 M. ROMERO: There's a very specific
 16 definition.
 17 Well, if you're speaking about language
 18 isolation with regard to participation voter
 19 participation?
 20 COMMISSIONER C. REYNOSO: Yes, yes,
 21 particularly. Actually, there's also another -- I'm
 22 sure there's another problem, and that is voter
 23 registration. But your study just went to voting
 24 participation. So that's what my question is about.
 25 M. ROMERO: Sure. And what we're talking about

1 today about language access can extend to registration
 2 process as well.
 3 So I think it goes back -- certainly having
 4 materials available is key and having that
 5 assistance -- hands on assistance is key. But I think
 6 ultimately it comes to mobilization and education.
 7 Just as with voter turnout, period, whether there is a
 8 language access issue. Latinos and Asians, we know --
 9 and all groups -- all subgroups responds to direct
 10 mobilization, but more so for Latinos and Asians. And,
 11 you know, there is recognizing the institutional
 12 barriers that we're talking about today, language
 13 access being one. There is recognizing resource
 14 barriers in terms of for Latinos and Asians more and
 15 particularly those that are linguistically isolated --
 16 if I can say it -- find themselves with lower resources
 17 more likely to be in groups of lower income and lower
 18 education, and those are predictive of lower turnout.
 19 But besides that, probably one of the single
 20 biggest ways to address that or counters that -- those
 21 trends, is direct mobilization. And we know that
 22 there's so many good things that are happening in
 23 California, so much good work that is done to mobilize
 24 communities, but there is not enough. And there's
 25 research that shows us that community Latinos and

1 Asians -- and little more on the Latino side, in terms
 2 of actual established research, but we know that these
 3 communities are less likely actually to be contacted,
 4 particularly by their traditional dominant ways that
 5 folks get contacted. So people will vote and Latinos
 6 and Asians will vote if they are asked, but they also
 7 need information. They need to be asked and recruited,
 8 and they also need information to feel confident in
 9 their vote. And we get that from candidates, we get
 10 that information from parties, Get Out the door --
 11 knob -- Get Out the Vote doorknob hangers to calls to
 12 door knocks or whatever it might be. And that system,
 13 the way our system is designed to recruit folks it is
 14 still very much based on the likely voter model.
 15 Whether it's accurate or not, often not in many of
 16 these communities. And so, many Latinos and Asian
 17 communities, particularly linguistically isolated
 18 communities, are not getting that mobilization or that
 19 contact. So it's addressing that and making it very
 20 tailored and specific to the needs of those
 21 communities, too, not just a blanket formula.
 22 D. KITAMURA: And can I add one thing to that.
 23 When I speak about Section 203 jurisdiction, that does
 24 not require the jurisdiction to provide language
 25 assistance in every precinct. It's a very targeted

1 Latinos in terms of cultural -- community of origin or
 2 country of origin statuses in terms of citizenship, in
 3 terms of naturalization rates, all different factors
 4 that play into differing turnout rates differing
 5 challenges.
 6 COMMISSIONER A. HUFFMAN: Any thought given
 7 to -- any thought about what we do to -- what we do for
 8 voters who are unable to read?
 9 N. KELLEY: Thank you for the question.
 10 That's a great question.
 11 We do offer oral assistance both in the
 12 polling place as well in our phone banks. One of the
 13 things we have been providing are CDs that voters can
 14 order, if they have trouble reading. And providing
 15 that text of like what Michelle was talking about where
 16 it's very lengthy and involved, we're translating that
 17 and putting that down to audio and sending to voters
 18 that's one way. It's hard to get the message out. I
 19 want to make that pretty clear because in Orange
 20 County, like most of the Southern California counties,
 21 we're very large. And the resources are limited. But
 22 that shouldn't be an excuse, so we do our best to
 23 provide what we can.
 24 COMMISSIONER A. HUFFMAN: And then a comment.
 25 I've been in California quite a few years. And I

1 decision how and -- where and how they provide that
 2 assistance. And Neal Kelley talked about going above
 3 and beyond what is required under Section 203. And
 4 wouldn't it be great if all registrars of voters went
 5 above and beyond and provided more assistance than they
 6 really had to provide.
 7 COMMISSIONER C. REYNOSO: Sometimes we have a
 8 general term, like, Asian Americans. But as folk who
 9 work in that field, hey, folks don't say I'm an Asian
 10 American. They will say I'm a Korean, I'm Japanese, or
 11 whatever. And presumably particularly immigrants
 12 still, if they aren't dominant in English presumably
 13 speak Korean, Japanese, or Chinese or whatever. So
 14 obviously it's got to be focussed on that. It seems to
 15 me to get over that to a certain extent.
 16 M. ROMERO: If I may add something to that.
 17 Because of time and ease of conversation, you
 18 know, I have been talking about Latinos and Asians.
 19 But recognizing that particularly within Asian
 20 community there is a wide turnout rates and access and
 21 familiarity to the system. And just as with education
 22 levels and income levels and so forth, it -- there
 23 really is no blanket kind of formula for the Asian
 24 community either. And there should be a recognition of
 25 the different needs and access. And same thing for the

1 remember Orange County. You sound like a new Orange
 2 County. What happened?
 3 COMMISSIONER K. FENG: It's a new Orange
 4 County, that's what happened.
 5 N. KELLEY: Thanks for that observation.
 6 We're proud of our team. We have turned our office
 7 upside down. I can tell you that for sure, and that
 8 trend will continue.
 9 COMMISSIONER A. HUFFMAN: Thank you.
 10 COMMISSIONER D. HUERTA: I also have a
 11 question for Mr. Kelley.
 12 In terms of the poll workers that you do have,
 13 what percentage of the poll workers are Latino and/or
 14 Asian?
 15 N. KELLEY: 30 percent of our poll workers are
 16 either mixed in with Latino or Asian. I don't have
 17 that specific breakdown for you. 30 percent of the
 18 overall number of poll workers. And we have, by the
 19 way, close to 10,000 poll workers. So that gives you
 20 an idea. In many of our cases, we have bilingual poll
 21 workers in our polling places that are not required to
 22 be targeted for bilingual support, so that allows us to
 23 move them around a little bit, which helps quite a bit.
 24 COMMISSIONER D. HUERTA: And I might add
 25 that's a little bit low, considering the population of

1 Orange County and how it's grown in terms of Asian and
 2 Latino community.
 3 And are your poll workers, are they trained in
 4 terms of handling of voter intimidation, which I do
 5 understand has happened even as recently as the last
 6 election in Orange County where Latino voters and Asian
 7 voters were challenged when they were trying to vote.
 8 N. KELLEY: Yes, ma'am. We do quite an
 9 extensive training program with the poll workers. In
 10 fact, there is legally-mandated training that, as a
 11 result of the 1988 incident, that many of you are
 12 probably aware of, where there was intimidation in the
 13 polling places. And that is included in all of the
 14 polling packets to the poll workers.
 15 COMMISSIONER D. HUERTA: Ms. Romero, I wanted
 16 to ask you, in terms of trying to get the ballot
 17 language in plain English as you mentioned and plain
 18 Spanish also, I think, or other languages, are you
 19 doing anything in terms of working with the Attorney
 20 General's Office to make that happen?
 21 MICHELLE ROMERO: We haven't yet approached
 22 the Attorney General's Office. We introduced a bill
 23 that would address language access in the initiative
 24 system in the past two years, but with respect to voter
 25 information guide, we haven't gotten there yet. We

1 have begun to engage the Secretary of State Office. I
 2 think the other office that we should be looking at is
 3 the legislative analyst office that produces a lot of
 4 the analysis for the voter guide. So there are a few
 5 different offices that are involved in producing
 6 material that end up going into that pamphlet.
 7 COMMISSIONER D. HUERTA: So I recommend that
 8 you also check with the Attorney General's Office.
 9 MICHELLE ROMERO: Thank you.
 10 N. KELLEY: I serve with Michelle on
 11 consortium called Future of California Elections, as
 12 well as Deanna and other colleagues -- Kathay, as well.
 13 And out of that process, I really got intrigued with
 14 plain language. And as a result, we're putting all of
 15 our sample ballots and voter materials through a plain
 16 language process. So for June, we'll have plain
 17 language material. And it was a result of that
 18 consortium that led us to do that.
 19 COMMISSIONER D. HUERTA: And I think also, we
 20 have to have a plain Spanish, please.
 21 N. KELLEY: Yes, ma'am.
 22 COMMISSIONER K. FENG: And there is also, I
 23 should mention, an effort not only to convert to plain
 24 language but to use icons and commonly used symbols so
 25 that people don't necessarily even need to read the

1 language to understand what we're pointing to.
 2 I do have a question.
 3 So, in 2012, California implemented for the
 4 first time online voter registration. And while some
 5 of the research has shown that there's a tremendous
 6 response to that, some 800,000 people registering for
 7 the first time and it's a fairly diverse one. And I
 8 would love to hear -- Dr. Romero, you talk a little bit
 9 about that.
 10 I think the question is, there has also been
 11 concern that, in the initial rollout, that has not been
 12 fully accessible to all language groups.
 13 Deanna Kitamura, can you talk about what's
 14 been available for some groups but not all groups and
 15 what the challenges are and have you heard difficulties
 16 from the Asian American communities in using online
 17 voter registration.
 18 D. KITAMURA: Sure.
 19 California online voter registration was
 20 launched and was in English and in Spanish and has been
 21 a huge success for those languages. But it has not
 22 been translated on -- online live, for any of the Asian
 23 languages. It will be done in March of this year. The
 24 Secretary of State Office has indicated in March that
 25 will happen.

1 Currently, for Asian languages, they can get a
 2 form, print it out, fill it out, and mail it in. And
 3 that's the way that they can -- that they can register
 4 using online capabilities.
 5 COMMISSIONER K. FENG: So not so online. Not
 6 realtime.
 7 D. KITAMURA: That's right. That's right.
 8 COMMISSIONER K. FENG: And my question for
 9 Neal Kelley, working with your counterparts -- without
 10 having to name anybody's name -- what are some of the
 11 challenges that other registrars might face as they try
 12 to implement bilingual assistance? And do you ever see
 13 less than full excitement about implementing them -- in
 14 commitment -- I guess is a better word in -- in
 15 implementing them.
 16 N. KELLEY: That's a tough question.
 17 COMMISSIONER K. FENG: Without naming -- it
 18 could be counties around the country, even.
 19 N. KELLEY: I will say this, and I think Deann
 20 touched on this quite well is that what we found is
 21 that some counties do only do targeted precinct
 22 support. And we have found in Orange County, that the
 23 best way to approach it is across the entire county so
 24 that you will have translated materials regardless of
 25 whatever polling place you go into.

1 So if you are a voter that needs language
2 assistance and you happen to be in Laguna Beach and you
3 live in Anaheim, you're going to get that language
4 assistance. Now, you might not get the oral, but you
5 will have that written assistance.

6 So I think that's probably the biggest thing
7 that I see, Kathay, across the state.

8 And one other quick comment on the Voting
9 Rights Act for the state side, you know, that data was
10 provided to us a couple of months ago. And there's
11 certainly a little bit of a scramble statewide among
12 some of my colleague on how this will be implemented
13 for June. I can definitely be honest with you about
14 that.

15 COMMISSIONER D. HUERTA: In terms of the
16 registrars all over the State of California, that do
17 the same kind of work that you do, now, do they have
18 access -- or when you have your meetings, is this
19 discussed, are their training sessions for the
20 registrar of voters so that they can keep implement the
21 same type of procedures and practices that you're
22 doing.

23 N. KELLEY: We do a lot of best practice
24 sharing that occurs twice a year, in December as well
25 as July. So there are times we do get together. And I

1 would say that out of the 58 counties, 90 percent
2 participate, which is good. So we do see quite a bit
3 of sharing go on and training.

4 COMMISSIONER D. HUERTA: Thank you.

5 COMMISSIONER K. FENG: I think some of my
6 colleagues are eager to ask more questions.

7 COMMISSIONER C. REYNOSO: Yes. I have a
8 different sort of question for -- I have a different
9 sort of question for Mr. Kelley.

10 The voting registration and voting percentages
11 are the lowest for the young people, 18 to 25. And I
12 was reading that a county near where I live, near
13 Sacramento, has a program sponsored by the voter
14 registrar's office to encourage high schools to have a
15 mock -- well, two things: have a mock voting; and two,
16 encourage as many young people who are going to be 18
17 at the next election to register. And the figures they
18 show are phenomenally higher than the surrounding
19 counties. So I just wondered whether you have any such
20 program, have you thought about it or what you have
21 heard about those programs.

22 N. KELLEY: Thank you, Justice Reynoso, for
23 the question. That is actually a very passionate part
24 of my job that I love to do.

25 We developed a program called My Ballot. And

1 we took a step farther rather than have a mock
2 election. We bring -- we first go to the high school
3 and teach the kids about the voting right struggle.

4 COMMISSIONER C. REYNOSO: Let me just mention.
5 I got to vote when 18-year olds couldn't vote. And I
6 was so anxious and I thought, what a great law, as soon
7 as they change that, all the 18-year olds are going to
8 vote. Well it hasn't turned out that way.

9 N. KELLEY: You're right.

10 But what we have found is, through our
11 program, we teach the kids about voting right
12 struggles. We then bring them to our office and they
13 create their own ballot for their ASB election for our
14 system. So it teaches them the complexity of building
15 a ballot. And then we take or system. The students
16 vote in our voting booth for their ASB elections. It
17 gives them direct access to the voting booths.

18 And from that -- here is the selfish part: We
19 recruit them to be bilingual poll workers. And we
20 found that the high school students are fantastic at
21 it, and we have 2200 that participated in the
22 November 2012 election.

23 COMMISSIONER C. REYNOSO: That's frankly so
24 encouraging -- ta-da. Can you hear me now?

25 Now I forget what I was going to say.

1 I beg your pardon?

2 N. KELLEY: I will tell you this, Justice,
3 that the -- the issue is, that you can -- we are seeing
4 registration numbers increase for 18 to 25-year olds.
5 The problem is getting them to vote consistently. That
6 is what we are finding to be the problem.

7 COMMISSIONER C. REYNOSO: There is a different
8 problem in that regard, I teach courses, sometimes
9 seminars, to true freshmen even though I teach at the
10 law school. They're 17 and 18 years old. And the ones
11 who sign up for my registrar are obviously interested.
12 So I ask them, why do your colleagues not vote. And
13 they say, they don't see the relationship of government
14 to their lives. And these are kids in a public
15 university, so we have a lot of educating to do,
16 apparently.

17 COMMISSIONER A. HUFFMAN: Yes.

18 Michelle, I was thinking of doing some work on
19 the initiative process now, and I was thinking about
20 you recommendation. And I was wondering about the
21 mechanics of it. I'm on the petition side, not on the
22 ballot language side of it.

23 But for a person who's circulated petitions,
24 how in the world could I handle how many languages? I
25 would have to have out there with my -- my flip chart

1 and my petition. How would that work? Do you have
 2 some idea with what the mechanics would with.
 3 MICHELLE ROMERO: We can sign on iPads -- no.
 4 Well, we have given some thought to this. I
 5 mentioned the Greenlining Institute sponsored
 6 legislation in the past two years to try to do this in
 7 California. And so, there's a couple of ways that we
 8 thought about it under our current structure of how we
 9 gather signatures now which is pen and paper,
 10 basically.
 11 So each county has to -- for each county, you
 12 have to circulate a different petition, so a signature
 13 gather has a petition that they fill in the line of
 14 what county you're circulating in today. So they're
 15 used to -- and oftentimes they're circulating several
 16 different initiatives at the same time, so they carry
 17 different clipboards, and they're used to that.
 18 What we could do to ensure there is language
 19 access is, when you're going to be circulating in a
 20 county where Spanish is also a required language that
 21 you need to have material in or there are four
 22 different languages that you have to provide material
 23 in, you would have an English title and summary at the
 24 top and then the Spanish title and summary, and then
 25 you would sign on that page.

1 that -- like Los Angeles county is the most complex,
 2 right. There are nine languages that you would have to
 3 provide material in. You can have the title and
 4 summary in English, and then in each of the nine
 5 languages all in 1 or 2 pages and attach to the
 6 petition so that it's easier for folks to just
 7 reference as they're out in the field. But I think the
 8 complexity of how we do it is, it's always in the
 9 details, right. We can talk about those things. But I
 10 think it's a worthwhile pursuit to figure out how we
 11 ensure that these communities can have a voice and a
 12 say and what issues that move on to the ballot.
 13 COMMISSIONER A. HUFFMAN: I guess as -- if I
 14 were on the end of paying for the signatures, as we
 15 know is done, I think I would be looking for some
 16 avenues to make sure that I wasn't signing up a lot of
 17 people that were not either citizens or not registered.
 18 I'm thinking of the money -- I'm thinking of the
 19 opposition you would get that. You should think about
 20 that a little bit, because I'm sure we could find some
 21 safeguards somewhere. But that would be one of the
 22 first concerns because every signature collected in
 23 theory represents money and counts toward
 24 qualification.
 25 MICHELLE ROMERO: Yeah. You actually -- so

1 So we're talking about maybe translating the
 2 title and summary, not the entire initiative. Most
 3 voters don't bother to read the entire --
 4 COMMISSIONER A. HUFFMAN: Petition.
 5 MICHELLE ROMERO: -- legal text in the minute
 6 they might give you to look at the petition. But that
 7 information would at least voters allow to verify what
 8 a signature gather is explaining.
 9 There was an issue in the Inland Empire when
 10 we went around and did our listening sessions where we
 11 heard Spanish-speaking voters talking about signing --
 12 that they had signed an initiative petition that was a
 13 recall effort for government Gray Davis several years
 14 ago. And they don't know that it was going to recall
 15 the Governor. They thought it was just going to
 16 overturn the vehicle license fee. And so, it wasn't
 17 until they learned on Spanish-language television later
 18 that there was actually a targeted effort to do this
 19 petition that they thought themselves, I think that's
 20 probably what I signed. And so, it gave them greater
 21 distrust of the process as a whole. And so, providing
 22 some of initial material gives them a way to verify
 23 what someone is telling them and also to read for
 24 themselves whether it's something they want to sign.
 25 Another way to do it for some of the counties

1 you raise another issue which is that, not only are
 2 voters potentially misled or manipulated by paid
 3 signature gatherers to sign an initiative. Proponent
 4 groups that want to engage those communities to sign an
 5 initiative that may actually be well-supported by that
 6 group are at a disadvantage, too.
 7 In some counties, and so, where there's the
 8 higher levels of concentration of limited English
 9 communities, those are the same counties that have high
 10 activity in terms of initiatives being circulated. And
 11 it's purely a population game as you say, right.
 12 You're looking for the most signatures in the shortest
 13 amount of time, like Los Angeles County.
 14 The limited English share of the citizen
 15 voting age population there is 17 percent. In other
 16 counties like Imperial, it's 20 percent. And so, if
 17 one in five of the voters, you know, the eligible
 18 voters, that you're coming into contact with, aren't
 19 able to even participate purely because of language
 20 access, you could make the argument that providing
 21 material in those languages would allow you to engage
 22 those voters that you are not currently engaging to
 23 gather signatures faster.
 24 COMMISSIONER D. HUERTA: Thank you for that.
 25 Mr. Kelley, just one more question. In terms

1 of, you know, there is a statement that has been made,
2 I think, it's 55,000 Latinos graduate from high school
3 every month throughout the country. And so this idea
4 of registering high school seniors is very important.

5 In terms of getting the cooperation of the
6 high schools, has that been easy for you? Because I
7 know in other place where people try to go into high
8 schools to register the seniors, they are not given
9 that permission to do so.

10 N. KELLEY: It depends on the district, and
11 that's that good question. Some of the districts are
12 not as cooperative as others, but I found it to be much
13 useful to go to the elected school board members than
14 to deal with the administrators. And once we do that,
15 we are given access to the campus. So it seems to work
16 out pretty well for us. We are using a lot of repeat
17 schools. For example, Anaheim High School in Anaheim
18 is the one of the largest providers of bilingual high
19 school students to us in any election. So we continue
20 to develop those relationships where that matters.

21 COMMISSIONER C. REYNOSO: Don't forget
22 Fullerton High School. That's where I went.

23 N. KELLEY: Yes, sir, we wouldn't.

24 COMMISSIONER K. FENG: Sorry. Go ahead.

25 COMMISSIONER C. REYNOSO: Have -- I have heard

1 studies that indicate that the percentage of
2 that -- the percentage of voting depends a lot on the
3 economic background of the voter -- well, I said the
4 voter, of those vote that don't vote and analyze what
5 happened if we have universal voting.

6 Any concepts of how we can get closer to
7 universal? Doesn't Australia actually require you to
8 vote, for example?

9 M. ROMERO: I can jump in.

10 In universal voting, you mean near 100 percent
11 of those are eligible, correct?

12 COMMISSIONER C. REYNOSO: Yeah.

13 M. ROMERO: Yeah. So not only is
14 California -- well, it fluctuates, but on any given
15 election year, we're in the bottom 20 percent of states
16 of U.S. in terms of eligible turnout rates. The U.S.
17 as a whole is one of the lowest -- has one of the
18 lowest turnout rates internationally of quote/unquote
19 "developed nations."

20 So, yes, Australia, many European countries,
21 all have some sort form of, if they don't require, they
22 have either the incentive -- they have either the
23 carrot or stick approach, where they will give
24 incentives for folks to vote or they will give
25 disincentives. There will be a tax or something --

1 either tax break or a tax benefit. There's been
2 several, you know, well-known studies looking at the
3 U.S. and how we can get close to those to comparable
4 nations and increase our turnout rate. And most of the
5 work that's been done is along the lines of what we
6 have been talking about: Reforms to our electoral
7 system itself. So there is work in mobilization, which
8 we know is a key way to overcome many of the barriers.
9 But in terms of, if we look just at the institutional
10 barriers, the fact that it's -- it can be cumbersome to
11 register still or at least in the terms of the
12 education around it and the knowledge around it and the
13 familiarity and comfort level and the actual voting
14 process and all the issues around that.

15 If we eliminate that on a national scale, then
16 we would make up much of the ground, not all of it, but
17 much of the ground and close the gap, the U.S. turnout
18 rate, the gap with the U.S. turnout and other
19 industrialized nations. So most of the focus has been
20 on industrial factors.

21 Does that answer your question?

22 COMMISSIONER C. REYNOSO: Yes, yes.

23 Thank you very much.

24 COMMISSIONER K. FENG: I have a question for
25 Neal. You mentioned briefly that Orange County is one

1 of two counties that provides multiple languages using
2 an electronic voting system.

3 Can you describe what the voter experience is
4 when they come into a poll site and how that might make
5 a difference? Or what, if you -- to the extent that
6 you know, how other counties operate, what are they
7 facing when they go to other counties by comparison?

8 N. KELLEY: So I can tell you very briefly, in
9 our county, when they do come to the polling place and
10 they engage with the poll worker, they don't have to
11 express a desire a specific language to the poll
12 worker; they can do that in private. So when they go
13 to the voting booth and they are given an access code,
14 they can select their language in the privacy of the
15 voting booth.

16 In other counties, it is a little bit
17 different because, in 2007, the majority of systems
18 were decertified for use in California. And when that
19 happened, the majority of counties went to paper. And
20 so when you go to paper, then you're left with a
21 situation where you have to decipher which languages
22 that the voter would like a ballot in. And so that is
23 really, I think, a big difference, Kathay, between, you
24 know, our county versus the other counties that have to
25 use paper. That may change going down the road in

1 certification of California changing. We may get new
2 voting systems on board, but, for now, that's the way
3 it is.

4 D. KITAMURA: And can I add to that, with
5 regard to specific Los Angeles County specifically.
6 Los Angeles County has a paper ballot, and it's the
7 ballot that you get is a Scantron card, so all you get
8 are numbers and bubbles, so there are no words on it.
9 So you take your Scantron card and you slip it in the
10 ballot holder. And so, you see the list of
11 presidential candidates and you mark the bubble that
12 you want.

13 For a non-English speaker, who wants to use a
14 translated ballot, they need to take their translated
15 ballot, and then line it up to the English version, and
16 then make sure that they are not moving their hand or,
17 you know -- make sure that they then mark the correct
18 bubble.

19 COMMISSIONER K. FENG: Let me see if I
20 understand this. What you're saying is, the
21 actual -- hello. If I'm understanding -- what you're
22 saying the actual voting equipment that they're using
23 does not have translations?

24 D. KITAMURA: That's right. It's a paper ball
25 and doesn't have the translation. You would have a

1 separate translated ballot that you would use. And
2 L.A. County is looking into updating its system, and I
3 know that the Registrar Voter very much wants to update
4 the system. But the current system that we have now is
5 the one I just described.

6 COMMISSIONER D. HUERTA: One more comment. I
7 don't know whether they still do this or not in Orange
8 County. But I attended the Santa Ana Community
9 College, where they call Kinder Caminata, where -- this
10 is incredible. They have all the kindergarten kids.
11 And they get them from different school districts. And
12 there's like about a thousand of them, I think. And
13 they have all the little kindergarten kids and they
14 march into the community college. And they have a
15 march, "Si Se Pueda," if you can, and then they have
16 entertainment, and they all get to vote. And they get
17 to vote for their best -- favorite cartoon character.
18 But it's just amazing when you see all the kindergarten
19 kids marching with the whole idea that they will be
20 voting when they become adults and what kind of
21 vocation they want to choose. I don't know if they
22 still have that or no.

23 N. KELLEY: They do, and that's an event that
24 we participate in every year..

25 COMMISSIONER D. HUERTA: I would suggest it to

1 people. I don't know if it's on YouTube, but it's
2 overwhelming and inspirational.

3 N. KELLEY: I agree.

4 COMMISSIONER A. HUFFMAN: Well, no. I'm going
5 to ask a point of personal privilege to not speak on
6 language because we have one voter registrar. I want
7 to ask a question, but it's not on this topic.

8 COMMISSIONER K. FENG: I think you're allowed
9 to deviate from the topic.

10 COMMISSIONER A. HUFFMAN: May I deviate.

11 COMMISSIONER K. FENG: I think we already
12 have, so go ahead.

13 COMMISSIONER A. HUFFMAN: Were you here this
14 morning?

15 N. KELLEY: No ma'am.

16 COMMISSIONER A. HUFFMAN: Did you hear some of
17 the testimony from people with disabilities that --
18 well, it was very touching to hear some of the
19 barriers.

20 And I wondering since you seem so progressive
21 in Orange County, tell me how you dealt with access or
22 challenge to people who are physically challenged one
23 way or the other. Let me tell you some of the things
24 they talked about: Not sufficient polling places; they
25 get there, and the door, the ramp, that they can get

1 in, the door is locked and people don't know how to
2 unlock; the elevator is not up or down; and sometimes
3 it's just one spot, they're isolated to vote; they're
4 not part of the general flow of voting traffic -- lots
5 and lots of barriers that discourage people with
6 disabilities from participating.

7 Have you dealt with that in your county? And
8 if yes, how?

9 N. KELLEY: Yes, ma'am, we have.

10 I have been very aggressive on the grant side
11 to obtain state and federal grants to update our
12 polling places. And we now have a very extensive
13 inventory of ramps and items we can upgrade polling
14 places to become close to accessible on election day,
15 the closest that we can.

16 We are also fortunate with our electronic
17 system, that allows voters with disabilities to vote
18 without assistance. These have sip and puff devices.
19 There are jelly switches. There is audio. There's all
20 the things that are necessary to provide a voter with
21 disabilities with the option to vote on their own.

22 I have a sister in her late 30s with severe
23 CP. It's an issue near and dear in my heart but at the
24 same time, seeing what Santa Cruz County went through
25 with their accessible polling issues and being sued by

1 the state, we don't want to be in that same boat. So
2 we have been very aggressive in getting grants to
3 upgrade.

4 COMMISSIONER A. HUFFMAN: I hope when you meet
5 with your other colleagues, when you do your best
6 practices, you will indicate that there's some of the
7 things that came up here ought to be addressed
8 voluntarily by them.

9 And at the same time, there's one other quick
10 one: When the Marriage Equality Act was on the ballot,
11 some polling places were in the churches. And members
12 of that community felt like they were going into the
13 enemy camp to vote -- just to say it briefly. And that
14 might be something that never crosses the radar unless
15 you're a member of that community. But it is very
16 real, people not wanting to go to the polling places
17 where -- just some things that came up that you might
18 want to --

19 COMMISSIONER C. REYNOSO: Could I add
20 something?

21 The commission -- the president-appointed of
22 measures, just recommended that often as possible the
23 polling places be a public schools. Does that make
24 sense to you, or is that possible?

25 N. KELLEY: It does especially in Orange

1 County, where we have very large residential
2 communities with very limited access to public places.
3 And those areas tend to be schools or churches,
4 particularly in south county, Orange County. So we're
5 really forced to go to those public places to reduce
6 the reliance on residences because you can't get those
7 compliant on election day. You can get close, but you
8 can't get them fully compliant.

9 Just the one issue on that is, you know,
10 safety on school campuses and we have to cognisant of
11 that. So it's important for registrars to work with
12 the school officials to make sure the polling places
13 are in the front of the campuses so you don't have
14 voters walking through the entire campus.

15 (Interruption.)

16 COMMISSIONER C. REYNOSO: I guess you heard
17 me, maybe the others didn't. I just had raised that
18 issue, because, one, there was the recommendation; and
19 two, it would get way from anybody that feels
20 uncomfortable to religious institutions.

21 COMMISSIONER D. HUERTA: I might say, that
22 also applies to not -- to the LGBT community in
23 Proposition 8 every other year, we have these
24 anti-choice initiatives that are aimed against women's
25 right to choose. And, again, having the voting place

1 in a church -- might be a little issue with that, so
2 I -- I also wanted to second with what the commissioner
3 said and people who testified -- do try to get those
4 voting sites, community centers or public schools --
5 places that are politically neutral.

6 N. KELLEY: Because the precincts are so
7 dense, it's sometimes very difficult to find polling
8 places. In the north in Orange County, our most
9 creative is a mortuary, and in the south, it's a VW
10 dealership. So sometimes we are -- we have to be
11 creative.

12 COMMISSIONER D. HUERTA: We have a lot of
13 rural areas. I work out a lot in rural areas, and I
14 think that's another issue that we have to talk about
15 and we haven't talked about that much in this
16 particular session. But the size of voting districts
17 also is a real -- inhibits. It makes people to vote
18 when you got these precincts with thousand voters. And
19 some people have to even cross boulevards and freeways
20 and highways, where it's dangerous for them to even
21 walk to their polling. And, of course, if they don't
22 have transportation, they can't even make it. I know
23 that that's probably a county issue, but I think it's
24 one that we all need to think about and start focusing
25 on. We need to make the precincts of a size that are

1 manageable and have voting sites where people can
2 actually walk to the precinct, if they don't have
3 transportation.

4 COMMISSIONER K. FENG: I am being signalled
5 that we should be wrapping this panel up. I do want,
6 just as the Chair of this particular panel to ask the
7 last question:

8 Earlier, in the morning panel, we actually had
9 a very vivid testimony of people who had been engaged
10 in electronic monitoring observing that, as recently as
11 the 2008 and 2012 elections, there are documented
12 incidents of voter intimidation by groups whose intent
13 it is to try to push for purging of lists or to target
14 voters either based on minority status or in some cases
15 their perception that some voters don't belong.

16 I'm wondering if any people -- any of our
17 panelists have any anecdotes or information that would
18 like to share with the commission about your own
19 experience with observing or -- or collecting evidence
20 about election intimidation.

21 D. KITAMURA: I would like to add one thing.

22 Our monitors have seen in some -- very few
23 cases where a poll worker might say that a voter needs
24 to be able to speak English, so they don't want -- they
25 begrudgingly provide the translated material to the

1 person if the person specifically asks for it. But
 2 where we see that, we notate it, and we inform
 3 the -- the Registrar Voter that that has happened.
 4 N. KELLEY: I just want to add one quick item.
 5 And that is, in 2012, what we decided to do is
 6 offer training to those individuals who wanted to
 7 monitor the polling places. And we saw a variety of
 8 groups that came in. One of the advantages -- now that
 9 doesn't prevent them from doing things at the polling
 10 place they shouldn't be, but at least we can tell them
 11 the laws and the requirements for them to observe in
 12 polling place. And I think that did help a little bit.
 13 But that is going to be a challenge moving forward for
 14 sure.
 15 COMMISSIONER K. FENG: Thank you so much.
 16 Let's give our panel a hand.
 17 I will hand the gavel over to Alice Huffman for
 18 the public.
 19 COMMISSIONER A. HUFFMAN: You have listened to
 20 us all day. This is your last chance. This is the
 21 public testimony from 2:55 to 3:55. We have a few
 22 cards here from people who would like to testify. We
 23 will take other cards, if you are interested and would
 24 like to share some thoughts with us.
 25 I'm going to start with Matt Martini. And

1 after Matt, it will be Fang G-A-O, Gao.
 2 COMMISSIONER K. FENG: Maybe Gao Su Fung?
 3 COMMISSIONER A. HUFFMAN: Is that right?
 4 Okay. And then Jim Soper.
 5 SPEAKER: Good afternoon, Commissioners. My
 6 name is Matthew Martini. I'm actually a graduate of
 7 this institution. And like Justice Reynoso, I had to
 8 wait until I was 21 to vote, but I was active in
 9 politics and very much interested. And that was a long
 10 three years for me.
 11 I have been an election inspector here in the
 12 city -- I'm semiretired -- for about the last 13
 13 inspections. And I would like to echo what the
 14 Registrar Kelley said in terms of having the students
 15 participate in the process. It's absolutely fabulous.
 16 And I did become an naturalized citizen, so I
 17 was born in Budapesh, Hungary, and I'm an immigrant.
 18 And we're a country of immigrants. And I can be fairly
 19 certain, there never will be a bilingual Hungarian
 20 English ballot as long as I'm a citizen of the United
 21 States. But that does not mean that you can't exercise
 22 the franchise. And more than anything else, and I know
 23 this beyond the purview possible of this commission or
 24 this particular hearing, but I just would like to
 25 remind the commission that, if it's not broke, don't

1 fix it.
 2 And this whole issue of voter ID becomes very
 3 problematic because what it's really doing is
 4 complicating something that is not at all complicated.
 5 So with that, my anecdotal experience, I wish the best
 6 and we can go forward, and getting this country, our
 7 voting record up to the rest of the First World's.
 8 COMMISSIONER A. HUFFMAN: Well, I thank you.
 9 We are very wary of voter ID. We know that it's not
 10 intended to increase access at all.
 11 Yes, sir.
 12 SPEAKER: Good afternoon. My name is Jim
 13 Soper. I am a techie, a -- was a senior consultant for
 14 digital equipment. I currently teach people how to
 15 write mobile apps. I'm also the author of a website
 16 called CountItAsCast.org and -.com and cochair of the
 17 Voting Rights Task Force.
 18 The issues that you have been talking about
 19 today are indeed very important. But I want to shift
 20 the topic a few minutes here, if I may, to what we call
 21 election integrity. Because from my experience the
 22 civil rights lawyer are not really aware of what's
 23 going on.
 24 One of the things that was highly discussed
 25 today was, if you're a felon, you can't vote. But if

1 you're name is Jeffrey Dean and you have 23 convictions
 2 for embezzlement; you were a senior vice president
 3 writing source code for the Diebold machines that were
 4 counting your ballots. He got hired by John Elder, who
 5 was convicted cocaine trafficker. They met in prison.
 6 These are the Diebold -- this was the global election
 7 systems that Diebold bought up. The code is still in
 8 there. This is not speculation from the National
 9 Inquirer. These are conviction papers.
 10 I could go on with a whole bunch of other
 11 things, we don't have time. Would be a separate
 12 hearing.
 13 But the important point is, that there are
 14 people writing the code, that have control over how
 15 those votes are being counted. They can flip tens of
 16 thousands, hundreds of thousands of votes. And we're
 17 getting very little check on this.
 18 One of the things we need is open source
 19 software so we can read the code, but open source
 20 software is not enough because the code gets extremely
 21 complicated.
 22 On my website there's something called the --
 23 there's a procedures diagram. And people say this is
 24 really complicated. Yeah. Running an election is
 25 really complicated. It's something that election

1 integrity advocates sometimes don't understand.
 2 The point of the diagram is that everything
 3 was going in and out of one computer. It's called the
 4 election management system. And that computer is not
 5 well-protected. All you need is a password --
 6 COMMISSIONER A. HUFFMAN: Are you talking
 7 about at the state or the county level? I want to
 8 follow you because --
 9 THE WITNESS: At the county level. Every
 10 county has their own system.
 11 COMMISSIONER A. HUFFMAN: Uh-huh. So which
 12 county are you referencing so we have --
 13 THE WITNESS: Well, I have a photo. I'm going
 14 to -- but this is every county. This is the entire
 15 United States.
 16 COMMISSIONER A. HUFFMAN: Okay.
 17 THE WITNESS: I have a photo here of two
 18 gentlemen sitting at a central tabulator typing in
 19 votes. This is not the Ukraine. This is not Bulgaria.
 20 This is San Francisco, November 2006. And they're
 21 sitting at the central tabulator typing in the votes.
 22 They have that power.
 23 Now, I double-checked. I took the photograph.
 24 And then I asked around and said, you know, what was
 25 going on. And they said, well, the janitor locked up

1 the memory cards, so they had to hand-type them in.
 2 There was no close election that election, so I didn't
 3 worry about it. But they had the possibility to do
 4 that. And I think San Francisco is honest, but there
 5 are other counties throughout the country and
 6 throughout California that are not honest. Now, we
 7 need to be aware of that.
 8 COMMISSIONER A. HUFFMAN: I think your time is
 9 up, although this is intriguing.
 10 COMMISSIONER K. FENG: You can share your
 11 written testimony, if you've got anything, with folks
 12 here so that we can make sure it's captured.
 13 THE WITNESS: Okay. If I may add one more
 14 statement.
 15 COMMISSIONER A. HUFFMAN: Yeah.
 16 THE WITNESS: The Lawyers' Committee for Civil
 17 Rights held a hearing -- or co-hosted a hearing in
 18 Washington, D.C., today, at which there was some talk
 19 about Internet voting. If you want to let insiders and
 20 outsiders to have at your central tabulators, those
 21 vulnerable machines, go ahead and vote on the Internet.
 22 If you want to protect your elections, then we
 23 need state by state people stopping this, because
 24 they're pushing it all over the country.
 25 Thank you.

1 SPEAKER: (Translation.)
 2 Good afternoon. I am Sun Fung Gao, and I'm
 3 80 years old. I became a U.S. citizen on
 4 November 20th, 2013. I registered to vote right away.
 5 But I'm always afraid when I go to vote. No one will
 6 be able to speak in Mandarin and help me if I have
 7 questions.
 8 (Translation.)
 9 Also at the Registrar Office, they should have
 10 staff who speak in Asian language to help us understand
 11 the proposition that we are voting for. Many seniors
 12 like me want to vote. But we don't want to make
 13 mistakes when we vote. We also don't want to be
 14 treated with disrespect at voting place because we do
 15 not speak English well.
 16 Please protect our voting rights. Please make
 17 sure there are enough interpreters to help us.
 18 Thank you very much.
 19 SPEAKER: By the way, I want to spend one
 20 minute to talk something very serious. My name is Lynn
 21 Tao with the Self-Help for the Elderly.
 22 Should I stop?
 23 COMMISSIONER A. HUFFMAN: One comment. The
 24 comment I want to make was, I appreciate your request
 25 for language help, but I'm 77 years old. And I make

1 mistakes. So don't let that stop you from voting
 2 because the ballots have very tricky.
 3 Yeah, I'm talking to her.
 4 (Translation.)
 5 Thank you.
 6 SPEAKER: Okay, I want to mention it, I am
 7 from Self-Help for the Elderly. I have several
 8 wonderful new citizens that came here.
 9 Today is a very special day for Chinese
 10 people. They should stay home, prepare food to
 11 celebrate for Chinese New Year. They are here.
 12 But, unfortunately, there is no Chinese
 13 interpreter for us. So for the last one hour, they
 14 watch everybody. Yeah. Anyway, the spirit is here,
 15 not leave here.
 16 COMMISSIONER A. HUFFMAN: When it's Chinese
 17 New Year, do we have say Happy New Year?
 18 THE WITNESS: Happy Chinese New Year.
 19 COMMISSIONER K. FENG: (In Chinese).
 20 Thank you for staying for this whole hearing.
 21 COMMISSIONER A. HUFFMAN: Are there any other
 22 persons wishing to testify that we missed? No cards
 23 missed? Everybody talked out?
 24 COMMISSIONER C. REYNOSO: You did a good job.
 25 COMMISSIONER A. HUFFMAN: All right.

1 We get to close. If anyone would like to make
 2 closing remarks. Shall we.
 3 COMMISSIONER C. REYNOSO: Dolores.
 4 COMMISSIONER D. HUERTA: First of all, I want
 5 to thank our commissioners that came today. Let's give
 6 them an applause, please, over here. Justice Reynoso,
 7 Alice Huffman, and Kathay Feng.
 8 And, of course, we want to thank all of you
 9 that came here today and prepared your statements and
 10 are helping us so much. This is so important. This
 11 commission is a national commission. It is taking
 12 testimonies all over the United States of America.
 13 And like many of you said today, we think
 14 California, our Golden State doesn't have any problems,
 15 but, of course, we know that it does.
 16 And so all the testimonies people gave us
 17 today are going to help us. We're going to incorporate
 18 these testimonies. And these will be presented and, of
 19 course, they will be used to try to correct and make
 20 sure that our democracy does work; that all the
 21 irregularities, they will be fixed. We know, when I
 22 say that, it's not always to do that. Some of these
 23 provisions, as you know, the Supreme Court had a great
 24 say in terms of terminating some of the protections we
 25 had under the Voting Rights Act, we know that there is

1 legislation that's been introduced in the Congress to
 2 try to remedy that.
 3 But the thing that we do know is that, if we
 4 all keep on working, not only out there in our
 5 precincts and getting people to vote, but coming to
 6 these sessions and talking to our Congress people, that
 7 we will be able to someday achieve the true promise of
 8 our democracy, that we will have everybody that will
 9 vote, they will be able to elect the kind of
 10 representatives that really represent the communities,
 11 and we can make it happen. Si, se puede. We can do
 12 it.
 13 COMMISSIONER A. HUFFMAN: I would like to
 14 thank my fellow commissioners, as well, and the lawyers
 15 committee and all the staff and volunteers that have
 16 made this happen. I'm always hardened when I see
 17 people who really care about full participation and
 18 diversity in California. Sometimes we work in isolated
 19 environments in our own little own silos and we forget
 20 the beauty and dynamics of coming together for working
 21 for a common good. So I appreciate having the
 22 opportunity to serve as your commissioner today. And I
 23 am really assured that something great is going to come
 24 from this hearing. Thank you.
 25 COMMISSIONER C. REYNOSO: And I want to thank

1 the staff that worked so hard to put this together and
 2 those -- and those who came. Thank you very much.
 3 COMMISSIONER K. FENG: I will just say, I was
 4 inspired today, both by the hard work that many of the
 5 advocates do in -- every day being out in the field to
 6 defend the rights of voters, but also our very last
 7 group of speakers who moved me to tears.
 8 I also should be home cleaning my house. And
 9 I really appreciate your taking this very important day
 10 to sit here and defend your -- your rights as American
 11 citizens. And so, we should all be very proud and
 12 inspired. Thank you.
 13 Ms. Huerta says I should say happy new year.
 14 (In Chinese).
 15 MS. INGRAM: And so with that, we want to wish
 16 everyone a Happy New Year. And we want to thank our
 17 national commissioner, Dolores Huerta; our guest
 18 commissioners, Kathay Feng, Alice Huffman, and Justice
 19 and Professor Cruz Reynoso, for taking the time today
 20 to look at the history and the record of barriers that
 21 we continue to face here in California to the right to
 22 vote.
 23 We also want to thank all of our -- our formal
 24 panelists, formal witnesses, members of the public, who
 25 came forth today to give their testimony based on their

1 experience and the experiences of their constituencies
 2 regarding these continued barriers and how we can work
 3 together to address them, particularly as our Congress
 4 considers a new voting rights amendments act of 2014.
 5 So once, again, we want to thank all of our
 6 supporters, our steering committee, or co-sponsors on
 7 behalf of the staff and community served by the
 8 Lawyers' Committee for Civil Rights of the San
 9 Francisco Bay Area and the Lawyers' Committee for Civil
 10 Rights Under Law, the National Lawyers' Committee, for
 11 all of your efforts and all of your support to make
 12 this event, this important and critical hearing to
 13 happen today. Thank you, again. And have a wonderful
 14 day. Thank you.
 15 (Proceedings concluded at 3:16 p.m.)
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CERTIFICATE OF REPORTER

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I, Hanna Kim, a Certified Shorthand Reporter,
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my name.

Dated: 7th day of February, 2014

Hanna Kim
CLR, CSR No. 13083

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In The Matter Of:

*Lawyers' Committee for Civil Rights Under Law
National Commission on Voting Rights*

*Colorado & New Mexico Statement on Voting
March 7, 2014*

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Chris Melody Fields Figueredo, Manager
Lawyers' Committee for Civil Rights Under Law

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Connie Talmage, Executive Director
Colorado Lawyers Committee

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COMMISSIONERS PRESENT:

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18

Chair John Zakhem
Dr. Lonna Atkeson
Dede Feldman
Rosemary Harris Lytle

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The above captioned hearing came on as scheduled at Sturm College of Law, University of Denver, 2255 East Evans Avenue, Denver, Colorado on March 7, 2014, at 1:15 PM before Martha Loomis, Certified Shorthand Reporter and Colorado Notary Public.

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1 * * * * *

2 MS. TALMAGE: Good morning, everyone. My name is
3 Connie Talmage. I'm the executive director of the Colorado
4 Lawyers' Committee. I'm delighted to welcome you here today
5 to the Colorado and New Mexico State Hearing for the
6 Commission on Voting Rights. We are pleased to be a
7 co-sponsor of this event with the Lawyers' Committee for Civil
8 Rights and the Law.

9 I did want to tell you who the other sponsors are
10 of this event. Colorado's Common Cause, the Elections Task
11 Force of the Lawyers' Committee, the Legal Center for People
12 with Disabilities and Older People, Common Cause of New
13 Mexico, the University of Denver Sturm College of Law, and
14 last but certainly not least, the Sweetser Law Firm

15 I would like to give a special thank-you to two
16 people who have worked tirelessly here in Colorado to help set
17 up this event.

18 Elizabeth Steele, would you please take a bow?

19 (Applause.)

20 MS. TALMAGE: And Dan Sweetser, would you please
21 take a bow?

22 (Applause.)

23 MS. TALMAGE: Thank you. And I think that's really
24 all I have to say.

25 Now it is my pleasure to introduce to you Chris

1 Melody Fields. Chris is the manager of Legal Mobilization and
2 Strategic Campaigns. Say that fast three times

3 MS. FIGUEREDO: You stole my line.

4 MS. TALMAGE: I'm sorry. You can say it again,
5 because I'm not certain that I didn't stumble on it.

6 For the Lawyers' Committee for Civil Rights Under
7 Law in Washington, DC. Welcome, Chris.

8 MS. FIGUEREDO: Thank you, Connie, so much for that
9 introduction, and for thanking our partner organizations.
10 It's always really great to be able to work with one of our
11 local affiliates.

12 Connie's been certainly a great leader in the state
13 of Colorado, and we appreciate everything that she does.

14 Good afternoon. Buenas tardes. On behalf of the
15 Lawyers' Committee for Civil Rights Under Law, I would love to
16 thank you, and also welcome you to the Colorado and New Mexico
17 hearing for the National Commission on Voting Rights.

18 As Connie mentioned, my name is Chris Melody Fields
19 Figueredo. I'm the manager of Legal Mobilization and
20 Strategic Campaigns at the Lawyers' Committee.

21 Besides being an incredibly long title, essentially
22 I'm not a lawyer; I just play one on TV. But I'm the chief
23 organizer for the Lawyers' Committee.

24 I want to thank the Sturm College of Law here at the
25 University of Denver for hosting us, for giving us the

1 opportunity to have this discussion of what I think we all
2 believe in this room is one of the most fundamental pillars of
3 our democracy, the right to vote.

4 Today's hearing in Denver is the ninth in a series
5 of hearings we're having all across the country that are being
6 convened by the Commission.

7 As many of you may know, last summer the Supreme
8 Court handed us a wonderful decision -- and I mean that
9 completely ironically -- striking down a very key provision of
10 the voting rights act, a provision that protected many voters
11 from discriminatory voting practices.

12 The Court released states, who have a troubling
13 history of voting discrimination, from critical notice and
14 procedure before they move forward with those voting changes.
15 The Court found that the requirement was outdated, and no
16 longer related to the current needs. I'm pretty sure they're
17 wrong, and we'll learn that today.

18 The Lawyers' Committee felt it was incredibly
19 important -- and we actually started to talk about this before
20 the Supreme Court decision -- to convene hearings across the
21 country to look at the current record of voting
22 discrimination. So we're having hearings all across the
23 country that include all 50 states and the District of
24 Columbia.

25 In addition today, we're also going to hear about

1 election administration issues and election reform.

2 One of the reasons I put Colorado together in my
3 thinking of the larger hearings is, you know, Colorado and New
4 Mexico have been really leaders in the voting rights community
5 of working in nonpartisan coalitions to improve elections and
6 advance the franchise, so I thought it was very fitting to put
7 both states together.

8 The issues that we're going to talk about today will
9 be very critical as we move forward in advocacy and trying to
10 improve our elections. The testimony given today and through
11 all of our hearings will be put into the record, and the
12 National Commission will be issuing two reports, one that
13 focuses on voting discrimination, and the second that focuses
14 on election administration and electoral reform.

15 And later this year these reports will be made
16 available to the public for policymakers, advocates like
17 ourselves, and the voting public so they can look at the state
18 of voting in both states.

19 Now I would love to introduce our illustrious panel
20 of Commissioners, each of them who has a deep commitment to
21 protecting access to the ballots, and making sure that
22 everyone has an opportunity to vote.

23 Dr. Lonna Atkeson from the University -- excuse me.
24 I'm starting to lose my voice -- of New Mexico, Dede Feldman,
25 who's a former state senator in New Mexico, Rosemary Harris

1 Lytle, president of the Colorado, Montana, and Wyoming NAACP
2 state conference. And our de facto chair, John Zakhem, who is
3 the president of the Zakhem Law Firm.

4 So the Commissioners, their role is to preside over
5 the hearing. They'll be taking the testimony from our two
6 formal witness panels, asking followup questions so we have a
7 good record of what the state of voting is in both states.

8 A few housekeeping items. For those of you who are
9 not formal witnesses and would like to talk about your voting
10 experiences, if you'd go out to the registration table there
11 are index cards. If you haven't already filled it out
12 already, put your name, your first name and your last name,
13 and what topic you would like to speak about. You'll have
14 three minutes to speak.

15 The Commissioners will call you. You can come speak
16 up front. If you have a very loud, booming voice you can
17 speak from where you are. You'll have three minutes to speak.
18 And that will come after the formal testimony.

19 Also, rest rooms. This is about a four-hour
20 hearing, although we'll try to wrap early if we can,
21 especially since we started a little late. I think we can get
22 it done. There are rest rooms right out through the hall to
23 the left right past the elevators. Both men and women's rest
24 rooms are together.

25 The hearing is being transcribed over here by our

1 fantastic court reporter. So if you are giving testimony
2 please speak loudly and clearly so she can make sure that she
3 records your testimony correctly.

4 Also, we have sign language interpreters here today.
5 If you are social media savvy we were using two hash tags,
6 NCVR or Voting Rights to talk about the hearing, so those of
7 us who are not here present can talk about, be up to date in
8 the conversation.

9 Also the hearing is being recorded, and we are live
10 streaming as well. So fix your hair real quick.

11 And then finally, after the event there will be a
12 reception just down the hall. We welcome everybody to attend
13 that. Thank you so much Colorado Lawyers' Committee for
14 making sure that happens.

15 I know that Connie thanked some folks, but I wanted
16 to do some personal thank-yous as well. I certainly could not
17 have done this without a fantastic group of partners. Thank
18 you so much to Connie and Lisa Prado from the Colorado
19 Lawyers' Committee.

20 Thanks to the members of the Elections Task Force of
21 the Colorado Lawyers' Committee. Two former colleagues and
22 friends, Elizabeth Steele and Elena Nunez from Colorado Common
23 Cause. Another former colleague and friend, Vickie Harrison
24 of the Common Cause of New Mexico, Jennifer Levin of the Legal
25 Center for People with Disabilities and Older People, and Dan

1 Sweetser from the Sweetser law firm, thank you so very very
2 much for everything you guys did to make today possible.

3 So with that, I want to thank our Commissioners
4 again. I want to thank our witnesses. I turn it over to the
5 Commissioners for opening remarks.

6 MR. ZAKHEM: I think we'll start alphabetically.
7 Dr. Atkeson, if you'd make your opening remarks, three
8 minutes.

9 DR. ATKESON: Over my entire life I've been excited
10 and interested in elections and governing. And frankly, I
11 think it's hardwired into my DNA because it happened so young.

12 Elections are like rock concerts to me. I think I
13 said that to some of the staff earlier. And I spent my entire
14 life participating and observing them. So I was deeply
15 honored to have been selected as a commissioner as this public
16 hearing focuses on voting rights, and that I get to play a
17 central role in this very important hearing which seeks
18 information.

19 The work of this Commission is central to the
20 ongoing collection of data about the state of voting rights
21 and election administration in both New Mexico and Colorado.
22 And the collection analysis of data is a key feature in our
23 country's ongoing efforts to have well run, accessible, and
24 efficient elections for all voters.

25 It is through the examination of data that we can

1 truly have a scientific understanding of our election
2 processes and where and how they are succeeding and/or
3 failing; therefore, I have always strongly advocated for a
4 data driven approach to election reform.

5 Over the past eight years I have been especially
6 working with Bernalillo County and County Clerk Maggie
7 Toulouse Oliver in a joint academic local election official
8 project to continue to assess and reform our election process
9 year after year based upon a data driven approach.

10 This project has produced much fruit. And the
11 citizens of Bernalillo County in particular, and in New Mexico
12 more broadly, have benefitted from the openness and innovation
13 of Maggie Toulouse Oliver.

14 Most recently during our election observations in
15 the mayoral election in Albuquerque I was approached by a poll
16 worker while observing the process. And he told me how much
17 he appreciated all the work we did, and how he really feels
18 more confident in the election process in New Mexico because
19 he's been a poll worker over the last ten years and he's seen
20 how much has changed, and what a difference it's made to the
21 citizens of New Mexico, especially Bernalillo County.

22 His point and the point that I want to make here is
23 that our efforts in collecting data and using data to
24 continually reform and reflect on the process is critically
25 important to the ongoing efforts, and what we're going to do

1 in the 2014 midterm elections.

2 Thank you.

3 MR. ZAKHEM: Thank you.

4 Senator Feldman?

5 MS. FELDMAN: Thank you. Well, this is two New
6 Mexicans in a row. I don't know how much you can take here.

7 We bring greetings from the south. And I want to
8 thank you for having these hearings. It's a real matter of
9 importance to us in New Mexico.

10 We are, as you know, a majority minority state
11 where we have a majority of all of our minorities put
12 together, Hispanics, Native Americans, and a number of others,
13 a number of African Americans, Laotians, all kinds of people
14 thrown together in what we call the land of enchantment.

15 So I am a former New Mexico state senator. I was in
16 the New Mexico senate for 16 years, elected five times. So
17 I've been through, in a very real sense, I've been through the
18 election process as a candidate five times, and of course been
19 through it many more times. That's just myself with the
20 others that I have supported and opposed.

21 So, you know, one of the things that I found out in
22 serving in the New Mexico senate -- and I just recently wrote
23 a book about that called Inside the New Mexico Senate, Boots,
24 Suits, and Citizens. And those are three of the major players
25 in the New Mexico senate and New Mexico legislature.

1 And one of the things I found out is that, while we
2 would like to say that data drives our reforms, quite often
3 it's politics that drives our reforms and drives our changes.

4 So it was in 2003 in New Mexico when in the
5 aftermath of the Gore v Bush election and Supreme Court
6 decision, New Mexico decided to go to paper ballots rather
7 than the old Shouptronic machines that we were relying upon up
8 until that.

9 This was at great expense to the state because we
10 had just purchased a lot of these electronic voting machines,
11 so here was a decision though that came through the
12 legislature that was really advocated by a lot of citizens who
13 were not happy with what happened in the 2000 election in
14 Florida and elsewhere.

15 So that's just one of the lessons I learned in the
16 New Mexico legislature. You know, and I'm not sure how much
17 you all -- and perhaps we're going to get into this a little
18 bit more today -- know about New Mexico in comparison to
19 Colorado and some of the other states.

20 But New Mexico's legislature has been controlled by
21 the Democratic party for the past 30 years with the exception
22 of one year. But now we have a divided government. We've
23 often had a divided government in the past with a Republican
24 governor and a Democratic legislature.

25 And we do not have statewide voter ID requirement in

1 New Mexico. That, again, has been something that the
2 legislature has resisted mostly on behalf of minority voters.
3 And we yet, you know, we do have I think a somewhat cumbersome
4 process of voter registration. We do not have same day voter
5 registration, and it can be a little difficult. Perhaps we'll
6 get into that here.

7 But the cities, of course, have -- some of them do
8 have different processes for elections than the counties and
9 the state. So some of those have voter ID requirements, photo
10 voter ID requirements.

11 Anyway, I want to thank everyone for coming out
12 today, especially with this snow. I think it was a surprise
13 to all of us from New Mexico who envy you Coloradans. Snow
14 and moisture seems to stop at the state line.

15 We're in a severe drought, so coming here for
16 something like this is really quite amazing. Thank you.

17 MR. ZAKHEM: Ms. Harris Lytle?

18 MS. LYTTLE: Thank you, thank you. It's an honor to
19 be here. I'm Rosemary Harris Lytle, president of the NAACP
20 Colorado, Montana, Wyoming state conference.

21 Our state conference coordinates the activities of
22 23 charter NAACP units in our three states. And we help to
23 carry out our national NAACP strategic game changer initiative
24 in education, in criminal justice, in health, economic and
25 climate justice, and of course in civic engagement and voting

1 rights.

2 I am a journalist by profession who, after that
3 career was done, worked in communications for organizations
4 like the ACLU of Colorado and the National Office of 9 to 5, a
5 national association of working women.

6 The first time that I participated in a political
7 campaign, or anything that could be described as political,
8 was when my grandmother decided that she would volunteer on
9 the campaign of Gary, Indiana's first African American,
10 Richard Gordon Hatcher.

11 I went with her from door to door and from church to
12 church. What she talked about most was democracy. So as we
13 advocate in the NAACP for full voting rights, for full access
14 to voting rights for all people, it's about what my big mama
15 talked about, and that is full access to democracy.

16 The NAACP is celebrating this year its 105th
17 anniversary. And our oldest unit in the Colorado, Montana,
18 Wyoming state conference will mark 100 years of civil rights
19 advocacy this year.

20 We are intimately connected with these issues even
21 today in the model of those on whose shoulders we stand,
22 concerned about changes that particularly affect people of
23 color even in our own three states, concerned about sudden
24 changes, concerned about misinformation like robo calls that
25 say, Don't forget to vote on Wednesday, or information that

1 says, You can't vote in Colorado if you owe anyone child
2 support.

3 We know those things not to be true. So we work to
4 make sure that voters know their own rights, and that all of
5 us are connected to the process.

6 In Colorado we're proud to have been a strong
7 advocate of legislation last year that enabled 16 and 17 year
8 olds to register to vote, pre-register, pre-registration to
9 vote.

10 We believe that early engagement, as in my
11 grandmother's model, makes for a better and stronger
12 democracy. And knowing the rights of voters early will ensure
13 that, in the future, in the future we will have people who are
14 all vigilant about these issues.

15 Thank you so much.

16 MR. ZAKHEM: Thank you. Well, we saved Z for last.
17 I'm used to going last. I was always last to recess, last to
18 lunch. It was rough.

19 I as well got an early start in politics. My dad,
20 when I was a little kid, ran for statewide office here in
21 Colorado right after becoming a US citizen.

22 It was fun to watch a guy whose third language was
23 English talking in Spanish, which was a new language to him,
24 in southwest Denver running as a Republican, and actually
25 beating the incumbent minority leader in the Watergate era.

1 So I've seen a lot of politics happen in my life.
2 And when I became a lawyer I got engaged right away as an
3 advocate.

4 I do a lot of the lecture and law campaign finance
5 work. In Colorado it's tough to cross aisles when you're a
6 worker bee like I am, so I work for Republicans.

7 And one of the first things that I did, had the
8 fortune of doing, was getting recruited to the Colorado Lawyer
9 Committee election task force by Connie Talmage.

10 I quickly learned how important it is for
11 professionals to come together in an objective manner,
12 discussing the law with elected officials, with the Secretary
13 of State's office, with professors talking about data, as
14 Dr. Atkeson was talking about, on how to best manage
15 elections, and meet our common goal of ensuring that those who
16 are entitled to vote have the ability to do so, and that that
17 vote is counted accurately and reported accurately and
18 efficiently at a reasonable cost to the citizens of the
19 jurisdiction in which they're voting.

20 Now, the reality is there's no such thing as a
21 perfect election. Believe me, I know. I've litigated many of
22 them. I have done voting contests, petition challenges,
23 redistricting litigation at the state and federal level, taken
24 cases on redistricting all the way to the United States
25 Supreme Court.

1 If I am certain of one thing for sure, it is that
2 there's no such thing as the perfect election. That doesn't
3 mean that it is not incumbent upon us as Americans, who
4 invented this system of democracy and have expanded the notion
5 of civic franchise beyond any other place on the face of this
6 world, to continually strive to improve it for all of those
7 who live here.

8 I think that's the common bond and interest that
9 brings us all together, and I look forward to all of our
10 participation today in looking at Colorado and New Mexico, and
11 how we can improve the system of voting and counting that
12 we're looking at in the next few hours.

13 Thank you all for participating. With that we will
14 call our first witness. It is, please, Ms. Ariel Bickel,
15 owner of the Chispa Consulting, formally with New Mexico Vote
16 Matters.

17 She'll be speaking on the issue of language access
18 for Spanish speaking voters.

19 MS. BICKEL: All right. Thank you so much.

20 Well, good afternoon, everyone. I'm extremely
21 excited and honored to be here and share with you the
22 firsthand knowledge that I have about voting access issues
23 from my work in New Mexico.

24 I am originally a Coloradoan. I grew up just north
25 of here in Denver -- in Loveland, excuse me, north of Denver.

1 So excited to be back. It's changed a lot.

2 But New Mexico has become my new home. I've been
3 there about a decade. And my background is actually in
4 advocacy. Started out here in Colorado, lived for 16 years in
5 Durango doing advocacy work particularly in the immigrant race
6 community and working with mostly Mexican nationals, but in
7 general the Latino population, which, now that I live in New
8 Mexico, we say Hispanic.

9 So moving to New Mexico in the southwest, really
10 being surprised at the differences as well as the similarities
11 between Colorado and New Mexico in voting, voting access,
12 attitude towards and also participation of, as Senator Feldman
13 referred to minority majority state, majority minority state
14 as they call it.

15 And there's a whole different feeling, as far as my
16 experience, to the entitlement to participation, understanding
17 the system, and the demand of participation, particularly in
18 Spanish speaking communities.

19 We have folks who can trace their ancestry back 3-,
20 4-, 500 years who speak Spanish, and then we have a whole new
21 wave of immigrants who speak Spanish. So elections become
22 really interesting when we start talking about language
23 access.

24 So what I prepared today is a presentation on
25 language access. I will make a reference to disability access

1 in my case study, although I am not even going to claim to be
2 an expert working in that community.

3 And hopefully I'll give you a little bit of an
4 insight of what my experience in the field has been and what I
5 have heard over the years working with folks on this.

6 So my title, Why aren't these people voting and what
7 we should be doing about it, conventional assumption, voters
8 don't vote because they're apathetic or they just don't care.

9 Now, a lot of what I'm saying today I want it to be
10 clear I think are challenges to voting access across the
11 board. And they're challenges in our urban areas, not just
12 rural, not just low income, not just Hispanic.

13 But these are the communities particularly I worked
14 with in 2012. So I just want to say I think this is a
15 statement frankly that I've heard in general.

16 So basically my next slide, my next comment is that
17 really voters know exactly why they're not voting. They may
18 not even realize it, but they know. They're mad. They have
19 been disenfranchised, they're hopeless, it's just too
20 difficult, it's really challenging either because of language
21 or time or lifestyle, whatever it is.

22 But one thing that's so exciting about this kind of
23 a hearing is that I think we know what a lot of the challenges
24 are, but maybe sometimes we're overlooking the really basic
25 obvious kind of challenges that we're facing.

1 And so what this is -- I'm going to back up. This
2 is a woman. I'm going to be talking about a case study from
3 Chaparral, New Mexico, on the Otero County side.

4 It is a town unincorporated way down in the southern
5 regions of New Mexico often overlooked, and really surrounded
6 by a big swath of desert.

7 This is one of the voters on the Dona Ana County
8 side, great county clerk, a team that's very concerned about
9 enfranchisement. On the Otero County side, it was very
10 different.

11 And I was in the trenches that night on election
12 night in 2012, and experienced some really disheartening
13 things.

14 (Video.)

15 MS. BICKEL: I apologize for the really poor quality
16 of that video, but I think it tells a very "impactful" story
17 that I heard over and over and over.

18 Somehow we just got them out of order.

19 So I put a lot of text in my slides. I'm not going
20 to go over all of it. I have a pdf version that I'm happy to
21 share with you folks. But I really wanted to get some points
22 in there. And these aren't even an exhaustive list.

23 I think we make a lot of common assumptions about
24 Hispanic, Spanish speakers, any minority, about voting,
25 particularly if they're rural areas or low income areas, even

1 in urban centers.

2 And I will say that being an advocate for many years
3 I only came to voting rights and election law in 2007 when I
4 served as a legislative analyst in New Mexico at our round
5 house, our state capital, on the voters and elections
6 committee.

7 And the light bulb went off for me. It was a 60-day
8 session. And after about 30 days in I said, Oh, my God. This
9 is the basis of everything.

10 And as an advocate it had never really been
11 explained to me. And I had never really talked to people in
12 the field about it.

13 What I found out, when I started talking to all
14 these people, they were extremely concerned, they were
15 extremely fired up; they all have a story to tell about being
16 turned away because they refused a translator, or they don't
17 have access, or there aren't any forms that they can
18 understand.

19 When, based upon the events that happened in 2012 a
20 bunch of disenfranchised in Chaparral, we went to actually
21 give testimony in the 2013 legislative session. Our secretary
22 of state, who is still currently secretary of state, as well
23 as some legislators said, Well, only a couple hundred people
24 didn't get to vote so it's not really that big a deal.

25 And that's the attitude that I find particularly

1 with minority groups, Spanish speakers, rural and low income
2 communities.

3 So, you know, voters report a lot of different
4 issues. But mainly it's intimidating. And we're not
5 educated. We're not talking.

6 I had a gentleman, a DJ, played at our early vote
7 rally in Anthony, New Mexico, another tiny town way down by
8 Texas on the New Mexico border said, Nobody's ever come to my
9 town to talk to me about voting. Please come back during the
10 next election.

11 If you'd been here in 2008 when they asked me for my
12 ID even though I speak English and even though -- and again,
13 these are Hispanics that I work with largely -- even though I
14 had my ID and I speak English I was asked for my ID. I was
15 harassed at the polls, and I left because it was too
16 intimidating and it wasn't worth it.

17 I heard the story countless times, not just in
18 Chaparral, but lots of places.

19 So jumping from Chaparral to Otero County case
20 study.

21 So administratively there was some, certainly some
22 issues going on there. Also election code violations. It's
23 written very clearly in our statute in our election code that
24 each precinct must have its own polling, its rolls, it's got
25 to have its own place to check in for voters. They were

1 combined. Just a whole bunch of stuff going on.

2 All Anglo workers with almost all Hispanic voters,
3 no Spanish translators. They sent down a couple from the
4 county clerk's for a couple of minutes, but it was not
5 sufficient.

6 Folks were being told election protection agents
7 such as myself, or even family members or friends were not
8 allowed to translate for them.

9 So here's the line when we showed up. We went to
10 Chaparral, the election protection team, probably got there at
11 3:30 in the afternoon. We didn't leave until 11:00 that
12 night.

13 This is the line as it's starting to grow. It wraps
14 all the way around the fire station. This is maybe 7:30,
15 8 o'clock at night. Here's an election protection guy marking
16 the last voter in line so we can make sure she gets to vote.
17 This wraps all the way, in and around.

18 This is only after dark they moved out the fire
19 trucks from the bay and finally let people -- we passed out
20 pizza, fruit, muffins, water, just to keep them to stand in
21 line. People had their kids there with them. They'd been
22 there for hours.

23 Here's a picture. We had no fewer than ten, maybe a
24 dozen sheriff's deputies showed up. They put crime scene tape
25 between the election protection workers and the voters and

1 then proceeded to stay and stand around.

2 They probably had six to eight big Blazers,
3 sheriff's cruisers plus cars. According to them they were
4 keeping the peace.

5 People were standing in line waiting to vote, that
6 was it. They wouldn't let us talk to them, they wouldn't let
7 us hand out chairs. They didn't want us giving water,
8 nothing.

9 So a bunch of external challenges. And, you know,
10 again, you can read through it but, you know, from the whole
11 life cycle of voting, particularly if you're a Spanish
12 speaker, we don't have -- we do have our registration forms in
13 Spanish, but people do not always carry them.

14 We don't have enough folks who are voter
15 registration agents, poll workers, poll watchers, precinct
16 judges who speak Spanish or a Native American dialect or
17 something else that are working the polls, and more
18 importantly, guarding and protecting the vote.

19 The entire life cycle we're having a lack of
20 reaching out, doing education, and asking these folks from
21 these other communities to get engaged.

22 So internally there's certainly some discriminatory
23 attitude; there absolutely is, even in New Mexico where it's
24 assumed if you speak Spanish you must be illegal.

25 And we actually have had some witch hunts happening

1 over the last couple of years with Hispanic voters, pulling
2 files of names of Hispanic voters and assuming, putting them
3 on a watch list that they're undocumented, and they're
4 illegally registered to vote.

5 Well, the results were it was false; it wasn't going
6 on. Maybe out of thousands of people that were pulled, maybe
7 three or four names showed up.

8 So there's a lot going on here. But what I wanted
9 to say, just to wrap up, proving people right as far as
10 Spanish language access, is that we really need to train and
11 employ people.

12 We, for our program, doing election protection and
13 voter registration, one of my activists in one of these small
14 communities said, I want to take a little bit of extra money
15 that we have and pay our poll watchers, place them in all of
16 these little towns surrounding the urban area at the polls,
17 and have our people watching.

18 And we did. And we didn't have people in Chaparral
19 until we raced over there later in the day. We did not have
20 problems in those polls for the first time in a long time,
21 they said.

22 People that were harassing those people, that had
23 been asking Spanish speaking voters for ID -- in fact, one
24 poll worker during early voting was actually let go.

25 And we have one of our poll watchers, a young woman

1 at a high school on election day, was approached by somebody
2 who said, We've been watching you guys. We know that you're
3 taking people to vote in a limo. Are you paying them?

4 So we knew that it was a boring election day in
5 those small rural Spanish speaking communities, probably we'd
6 like to think because they were out there watching.

7 So I think we can do more of that, training
8 community members, educating them, making sure that we are
9 putting out our resources in other languages.

10 And just some pictures of folks getting engaged.
11 I've got -- there's part of the team.

12 I'm happy to talk to anybody if they have any
13 questions. Thank you.

14 MR. ZAKHEM: Any questions from the Commission?
15 (Applause.)

16 DR. ATKESON: So what is the county clerk doing to
17 correct the problems here in 2014?

18 My understanding was that it was due to high
19 turnout. But that's the newspaper accounts. What's your
20 interpretation of why was the long lines? Was it high
21 turnout?

22 Are they breaking it out for 2014? What's the
23 administrative solution to it?

24 MS. BICKEL: Right. That's a really good question.

25 So I think the answer is yes to all of those. So

1 there was added high turnout in Chaparral particularly because
2 community activists had been educating on voter rights and
3 getting people registered to vote and turning them out.

4 So they're going very grassroots, and the
5 administration never saw that coming. They're used to a
6 couple hundred people showing up to vote. We had well over
7 6-, 7-, 800 people.

8 And they did not have an early voting place, even
9 though they'd asked for it. The closest early voting place is
10 85 miles away one way, so -- and when they asked the
11 commission for it -- we were talking to the county clerk -- an
12 early voting site had been denied that summer. So people only
13 had the option to go on election day.

14 So we lobbied in 2013, after the election, for an
15 early voting site. We got a lot of pushback. Now the county
16 clerk says that she's going to put a mobile site in the
17 county, and travel around to these more rural communities, and
18 we'll try it out for five days in Chaparral, a couple days
19 here, a couple days there and try and provide access.

20 I believe that's because of the testimony from the
21 activists from -- those communities gave in English and
22 Spanish during the election. It really raised the bar I
23 think, and made them realize these people are serious about
24 voting and that they're going to be engaging from now on.

25 MR. ZAKHEM: Was there any change in policy, prior

1 to the 2012 election, that resulted in the some of the
2 deficiencies or inefficiencies in the vote?

3 And has the election administration officials,
4 county clerk, been receptive to the complaints, and
5 acknowledged the shortcomings in order to rectify the
6 situation going forward?

7 MS. BICKEL: Well, I think as far as all the changes
8 to legislation and policies -- I'm not going to claim to be an
9 expert other than the areas I've dealt with. I know that the
10 early voting access has really really helped expand that.

11 I will say unfortunately on election day the county
12 clerk at the time and her assistant, who is now the county
13 clerk, maintained there wasn't any long lines and weren't any
14 problems. I would beg to differ. I was in the field.

15 MS. FELDMAN: Was this a consolidated precinct,
16 whereas where there had been two before now there was one?
17 Anything like that?

18 MS. BICKEL: It wasn't -- they were two different
19 precincts, but they still were supposed to have separate
20 lists.

21 MS. FELDMAN: Right, but they're under one group?

22 MS. BICKEL: They were being run together with one,
23 one setup.

24 I mean, physically administratively they had one
25 small table. They weren't connected lifetime. That's a huge

1 problem in these areas in New Mexico.

2 A lot of these places, they don't even have
3 broadband. They're technologically challenged beyond belief,
4 which is a huge problem for access, you know, across the
5 board.

6 So unfortunately in the beginning they weren't
7 really receptive. And what we're seeing change is that as
8 these people self-empower, and as they learn their voting
9 rights, and as they have resources and field people reaching
10 out to them to talk to them about voting -- and it doesn't
11 take much. It's like planting the seeds -- then they become
12 engaged and they push back or they ask for things and say,
13 Will you work with us?

14 I think the fact that the county clerk now is going
15 to do a mobile site for early voting means she's finally
16 hearing these communities want equal access.

17 MR. ZAKHEM: Thank you.

18 So next we have Jennifer Weddle. Jennifer? Who is
19 next? That's what's on my list. Who wants to go next?

20 STAFF: Anybody can be plugged in. I actually
21 thought we were going this way.

22 MR. ZAKHEM: Grace Lopez-Ramirez is next up. She's
23 a communication specialist for the SEIU, former Colorado State
24 Director for Mi Familia Vota.

25 Her issues will be language access for Spanish

1 speaking voters. So Grace, thank you for joining us.

2 MS. LOPEZ-RAMIREZ: Sure. Thank you.

3 So SEIU stands for Service Employees International
4 Union. We obviously do a lot of -- well, maybe not obviously.
5 Not everyone may know, but we do a lot of get out the vote
6 work.

7 I've been doing election work with Latino voters for
8 a little over a decade now. I'm here to speak to you today on
9 behalf of ACCESO. I'm the chair of the committee for the
10 county clerk and recorder but I am, as John mentioned in my
11 introduction, the former state director for Mi Familia Vota,
12 a voter education participation campaign, which is a 501(c)(3)
13 organization that's been in Colorado since 2006 doing
14 nonpartisan voter registration or GOTV work -- get out the
15 vote work for those of you who are not familiar with the
16 acronym GOTV -- with Colorado's Latino communities.

17 So ACCESO, why are we here? So what is ACCESO?
18 ACCESO I should say is, I know it's all capitalized. Everyone
19 always thinks it's an acronym for something. But it's
20 actually the informal name of our committee obviously meaning
21 "access" in Spanish.

22 It's an election division with the primary goal of
23 providing guidance, Spanish language outreach, voting
24 materials, and increasing participation amongst Denver's
25 Spanish language voters. Not Latino, Spanish language voters.

1 Currently we have 17 community members serving in a
2 voluntary role. They're appointed by the county clerk and
3 recorder. I've been on the committee off and on since 2007.
4 I just recently became chair two months ago.

5 So ACCESO -- I'm sure everyone in this room knows we
6 are covered here in Denver County by the Federal Voting Rights
7 Act of '73 and the Section 203, which mandates that if more
8 than five percent or 10,000 people of the county's population
9 speak another language, that county then must provide voting
10 information and materials in that other language.

11 Here in Denver City and County, we reached that
12 threshold in 2002. And at that time Denver's election
13 division -- we've gone through a couple of forms of what
14 Denver elections really is.

15 At the time in 2002 we did set up this advisory
16 committee, but it was voluntary; it was not set in any kind
17 of, you know, any other way other than, Oh, you know, we
18 should probably do this in order to implement Section 203 in a
19 good way.

20 The advisory committee was, kind of went through all
21 these different formations and hiccups until finally in 2010
22 we decided that, in order to establish it as a permanent
23 advisory committee to Denver elections, we needed to do that
24 through a city ordinance, which we did in 2010. I believe
25 that is the first of its kind in the nation.

1 I was on the committee at the time. And we looked
2 at models that were being used in other counties across the
3 country that were falling under 203. And it just made the
4 most sense for us to establish it at the time through an
5 ordinance.

6 And again, I think we're the first ones then to do
7 it. In these last four years, who knows? There may be other
8 counties I might not be aware of have.

9 This is also interesting in the sense that here in
10 Colorado we at one point had eight to ten counties covered by
11 Section 203. We lost a number of those counties in the 2010
12 census and went down to three counties.

13 Denver is the only city and county that has this
14 kind of advisory board in the state of Colorado.

15 This is a map of Spanish speaking households in
16 Denver City and County. This map is made up with some data
17 information from the Denver public schools. It comes from
18 Denver public schools, this map.

19 You can see, you know -- obviously I know it's hard
20 to read. But the red is really the neighborhoods in the
21 Denver City and County where you have over a
22 thousand households that speak Spanish as their primary
23 language at home.

24 As you can see, it's mainly west Denver; not too far
25 from here. We're in University right now. And just west of

1 here if you go down Evans you're going to hit the Federal, the
2 south Federal corridor, which is where you have -- southwest
3 Denver, as John mentioned earlier as well when he was speaking
4 about his father, still has a large Spanish speaking
5 population.

6 We also have some in the north there Auraria,
7 Swansea, and then what we call the far northeast part of the
8 Denver County which is Green Valley Ranch neighborhood,
9 Montbello, and there's a couple of new neighborhoods up there
10 that I haven't unfortunately memorized their names.

11 But in any case, this just kind of shows you where
12 the Spanish speaking voters live in Denver County.

13 Spanish language access. Because of 203 and because
14 of the work that we've done in partnership with the Denver
15 Election Division -- and I want to thank Amber McReynolds
16 who's on the panel. She the director of Denver elections.

17 We worked so well in partnership. And we've been
18 able to provide, you know, all of the ballots, voting guides,
19 election signs, voting materials; everything is bilingual for
20 the Denver County.

21 Also the Denver Elections website is also completely
22 available in Spanish. And then all those translations are
23 done in partnership with our translation subcommittee of the
24 ACCESO board, which is chaired by a speaker from Peru, and a
25 naturalized citizen.

1 ACCESO also helps recruit bilingual election judges
2 and poll workers to make sure that every single voting center
3 has at least one bilingual election judge and poll worker. If
4 nothing else, at least in the voting centers that we know, are
5 going to have a large Spanish speaking voter population use
6 that voting center, you know.

7 In some elections I know we've had to allocate
8 resources. We have not been able to recruit all of the
9 election judges and poll workers that we ideally want. You
10 know, we've worked with Amber and her team to make sure that
11 those that we have are placed in the right places.

12 We get input on the location accessibility of voting
13 centers in the Spanish speaking voting community. Some of you
14 may have heard in the 2006 election we had some of the same
15 problems that Ariel was talking about as far as lines around
16 the door.

17 I can tell you as Mi Familia Vota at the time we
18 were also feeding people pizza and water in snow to try to
19 keep people in lines.

20 Thankfully, I think that since then we've had really
21 smooth elections; not perfect. I'll agree with you there's
22 never a perfect election. But definitely very very smooth
23 elections in the 2006 election cycle.

24 What else? Yeah. So we also recommend policies and
25 legislative positions, and we evaluate the voter outreach

1 perspective. Because one of the things that we as ACCESO do
2 is not just advocate for Spanish speaking voters and make sure
3 that all the, you know, everything is available in culturally
4 sensitive general elections, but also that, but we do voter
5 participation outreach.

6 We want to make sure that there's higher voter
7 participation among Spanish speaking voters in Denver County,
8 but that we as Denver County are supporting the right policies
9 and legislative initiatives that are going to continue to
10 enfranchise Spanish speaking voters.

11 Here in Colorado I think it was mentioned that House
12 Bill 1303 that passed through the state legislature last
13 year -- and there's a number of people in this room that had a
14 lot to do with crafting that bill and making sure it passed
15 through successfully.

16 We as ACCESO board recommended to the Denver county
17 clerk to support that bill because we thought it helped
18 enfranchise Spanish speaking voters.

19 This is just a sample of the bilingual ballot in
20 Denver. Everything is again English and Spanish.

21 Voter outreach. This is a pretty much the crux of
22 what we do as ACCESO. We conduct bilingual voter registration
23 in high traffic Latino community events.

24 We've actually been looking at really what is the
25 best bang for our buck as far as reaching Spanish speaking

1 voters. Much like New Mexico we have, you know, we have
2 Hispanic/Latino -- I'll use the words interchangeably --
3 voters that have been here, you know, for four or five or six
4 generations.

5 That means they'll speak Spanish especially in the
6 south, southern part of our state, you know, that borders New
7 Mexico.

8 Funny. We also have an Otero County. When you were
9 saying it, Ariel was saying it I was, Is she talking about
10 our Otero County? Oh, no, it's a different Otero County. Our
11 Otero County in Colorado is in the south.

12 But in any case, traditionally, we've had booths for
13 Cinco de Mayo, (untranslated) which is a big event around
14 independence days of Native, excuse me, of South American
15 Countries, which is usually the middle of September.

16 Neighborhood and church festivals, Puerto Rican.
17 There's a large Puerto Rican festival here in Denver, even
18 though we don't have a large Puerto Rican population.

19 Then one of the biggest I think bangs for our buck
20 as far as outreach has been doing voter registration at
21 swearing in ceremonies for new citizens.

22 I think most of you know that nationalized citizens
23 vote at a higher rate than born in US citizens. So just
24 getting that information to them as soon as they become
25 citizens, getting them registered to vote literally minutes

1 after they've sworn an oath is really, we found a really great
2 way of educating Spanish speaking voters.

3 We also do work with high schools -- I didn't list
4 that there -- and in our primary areas of Denver County that
5 have large Spanish speaking populations.

6 We promote voting through a series of -- we usually
7 do all kinds of targeted communications to Spanish speaking
8 voters in partnership with UniVision and some of the Spanish
9 speaking radio stations.

10 You know, our committee members serve as guests on
11 different talk shows, like radio afternoon talk shows. Denver
12 public schools has a radio talk show called (untranslated),
13 which is three days a week, Tuesdays, Wednesdays, and
14 Thursdays.

15 We pretty much before every election make sure that
16 one of our members is there talking about voting, talking
17 about the voting centers, and making sure that we are using
18 every single resource that we have in our community to get out
19 the word about voting and promoting civic engagement.

20 We also have some social media outreach. As far as
21 Facebook, unfortunately we don't have as many likes on there
22 as we'd like. So please like us. It's ACCESO is the name,
23 and again, it's all capitalized.

24 This little picture is actually us at the Puerto
25 Rico festival last year. We partnered with Mi Familia Vota,

1 which is again a (c)(3) nonpartisan organization because of
2 their voter registration drive number.

3 ACCESO doesn't have their own voter registration
4 drive number, so we've partnered with Mi Familia Vota.
5 Sometimes we do with NCLR as well, National Council of La
6 Raza.

7 The targeted precincts. This year, 2014, we're
8 really looking at specific precincts and increasing voter
9 participation in the larger Spanish speaking precincts in
10 Denver County.

11 You'll see that we identified seven precincts that
12 are kind of blown up a little bit so they're not as big as
13 they look like on this map in key neighborhoods in the Denver
14 metro area, in the Denver County that I mentioned earlier,
15 Auraria, Montbello, Gateway, and west Denver, the
16 neighborhoods of Westwood and Ruby Hill.

17 And then our goals this year are obviously
18 registering Spanish speaking Denver voters, educating Spanish
19 speaking voters on HB 1303, which was passed last year, which
20 allows for same day voter registration.

21 Green launching survey. At the end of 2012, after
22 that election we launched a voter survey to see how voters
23 were voting and how they got their information.

24 I'm being told to stop, but I'm going to take
25 another couple of seconds just to round this out as far as,

1 you know, we're also looking at increasing our voter
2 participation in the targeted precincts that I mentioned
3 earlier, which are right here, and then conducting Spanish
4 voter engagement again through the strategic communication.

5 Some extra resources. Denver County has a 311
6 hotline that is, that does have bilingual folks available,
7 agents, operators available if you have any questions.

8 Also the justvotecolorado dot org website which, you
9 know, many in this room have something to do with the Just
10 Vote Coalition. That website is very informative and has a
11 Spanish translation.

12 Then 1-888 VeyVota is a hotline, a national election
13 protection hotline by the National Association of Latino
14 Elected Officials. In the past couple of cycles we've
15 partnered with them as ACCESO but also Just Vote Colorado
16 Coalition to offer 1-888 VeyVota through our call centers here
17 in Colorado to ensure the Colorado voters are getting
18 bilingual election information, Spanish -- bilingual
19 information from people living here in Colorado.

20 The pictures, voting. We had a great voting party
21 last year where we promoted through UniVision and UniVision
22 radio had 50 community members come, explain the ballot to
23 them. We voted as a group together so that everyone
24 understood fully how to fill out their ballot.

25 And our county clerk here in Denver was able to join

1 us and that's the picture at the bottom.

2 You can find us on the web. Here's a couple of
3 websites, the Denver website in Spanish, ACCESO's website and
4 Facebook page, and then this is where you can reach me.

5 Thank you.

6 (Applause.)

7 MR. ZAKHEM: Any questions from the Commission?

8 MS. FELDMAN: Yes, I have a question.

9 What percentage of eligible Hispanic voters or
10 Latino voters in Colorado have a record of voting?

11 MS. LOPEZ-RAMIREZ: You know, I wouldn't know.

12 MS. FELDMAN: That certainly would be a good
13 statistic to have. I don't know.

14 MS. LOPEZ-RAMIREZ: Yeah. I'm so sorry I don't have
15 that. I've been a little removed from this for the last year.

16 MS. FELDMAN: It might not be that easy to get. I
17 mean, you'd have to compare the Hispanic population over
18 18 with the number that are registered to vote, and then the
19 number of those registered voters that actually vote.

20 MS. LOPEZ-RAMIREZ: I mean, I think that we all know
21 probably anecdotally, but also the news reports after each of
22 the last big elections that Latino voters are participating in
23 higher levels every day because of some of the work that has
24 been done in the civic engagement infrastructure that I think
25 really is here in Colorado. We've been able to leverage so

1 many resources to make sure that young Latino voters are
2 voting and educated.

3 There's like a whole table of actually of folks that
4 actually go out and do voter registration in schools. And in
5 big election years there's kind of like a fight like, No,
6 that's my high school. I'm sorry, like, You can't come to my
7 high school 'cause I already do voter registration here, and
8 it's voter registration.

9 I think there's a lot of resources here. I would
10 say, I would think those numbers have increased
11 exponentially -- maybe not exponentially, but have increased
12 in every election.

13 MS. FELDMAN: Well, I think that the conventional
14 wisdom is the Hispanic population is growing and so therefore
15 the number of voters is growing and will grow in future
16 elections.

17 But seems like without a baseline calculation, you
18 know, how do you measure, how do you measure progress I guess
19 would be my question.

20 MS. LOPEZ-RAMIREZ: For us I can tell you with
21 ACCESO, our work plan for this year is identifying the
22 targeted precincts. We know many of those voters voted in the
23 last three elections and how many more we want to vote, right?

24 I mean, so we have measurements very --

25 MS. FELDMAN: You're looking at people that are

1 registered already? Or not?

2 MS. LOPEZ-RAMIREZ: Well --

3 MS. FELDMAN: Or population of the precincts?

4 MS. LOPEZ-RAMIREZ: -- precincts already registered
5 to vote, and increasing voter participation among those
6 already registered in those precincts.

7 Do we still conduct voter registration with a target
8 of those precincts? Yes. We're still doing voter
9 registration outreach.

10 But the way we chose those precincts was based on
11 the low turnout.

12 MR. ZAKHEM: Ms. Lytle?

13 MS. LYTTLE: Yes. I thought about this question
14 during the last presenter, but I do want to ask this.

15 I know, I recognize this forum is about elections
16 and voting, but I also want to concentrate on that word
17 democracy.

18 Grace, what are you seeing in terms of Latinos,
19 Hispanics, moving from voting to fuller participation in the
20 way of becoming candidates or managers of campaigns?

21 I find that the, and even anecdotally I'd like to
22 hear, I find that voting is that first step in our true
23 democracy. But developing, identifying candidates for office
24 and then running them in credible campaigns often has been
25 shown to up numbers, especially within affinity groups if you

1 will.

2 Can you speak to whether or not there's any work
3 being done through ACCESO or other organizations with that
4 work of developing candidates for office?

5 MS. LOPEZ-RAMIREZ: Here in Colorado there is -- so
6 I mentioned earlier the National Association of Latino Elected
7 Officials. I know that they have some training programs at
8 the national level.

9 Here locally we have a number of Latino leadership
10 training organizations focused on young Latino women, some
11 focused on, you know, other aspects of leadership.

12 I think that directly to your question an
13 organization called Colorado Latino Forum, a (c)(4)
14 organization, they began in I want to say December of 2008 to
15 kind of pull together Latino community leaders from across the
16 state and say, Besides increased voter registration, besides
17 increasing voter education within the Latino community, how
18 can we make sure that we are getting more civic engagement,
19 that we're recruiting folks to run from our own communities.

20 And so they started a campaign training for folks
21 that want to run for office, but also folks that want to run
22 campaigns that are Latino.

23 It's annual in the spring. It's a weekend long so
24 it's not, you know, I think intensive enough. But I think at
25 least it's like the first door opening for folks that are

1 interested and just don't know where to plug in.

2 I've spoken at that training before. I know a
3 number of folks have. So I think there is a place there.

4 We have a growing Latino elected official group here
5 in Colorado. I know you know my good friend State Senator
6 Jesse Ulibarri, who ran in Adams County.

7 I know at Mi Familia Vota we did voter turnout work
8 in that district. And I think that there was like an
9 emotional, Oh, I know the Ulibarris. I know that family. Of
10 course I'm going to go out and vote for Jesse.

11 You know, and it wasn't about parties or anything.
12 It was about recognizing somebody on the ballot or recognizing
13 a name similar to yours.

14 I think there are lots of resources here in
15 Colorado. I think there needs to be an extension of that.

16 MS. LYTTLE: There are some perfect elections, and
17 perfect elections yield candidates for the future. They're
18 done right so that someone says, who hasn't said it before, I
19 would like to have my name on this ballot. I'd like to run
20 for office.

21 So there are perfect elections and they yield
22 candidates for office in the future.

23 Thanks for that information. I appreciate it.

24 MS. LOPEZ-RAMIREZ: Thank you.

25 MR. ZAKHEM: Grace, your picture how Latinos are

1 enfranchised in Denver County is much different than Otero
2 County in New Mexico.

3 And it seems to me, based on what Ariel was talking
4 about in terms of efforts not being as fruitful in registering
5 voters, voter protection, getting the participation level that
6 we're enjoying here in Denver, is based in part on the
7 resources that are deployed toward that effort.

8 We saw the pictures of get out the vote efforts,
9 voter registration at naturalization ceremonies.

10 Where are all those resources coming from in Denver,
11 and why aren't they being deployed in New Mexico?

12 MS. LOPEZ-RAMIREZ: Well, I can tell you when we
13 established ACCESO through the city ordinance in 2010, we then
14 acquired some staffing resources from Denver elections.

15 That's in the form of a wonderful wonderful woman
16 named Tina Romero, who continues to like make sure our
17 meetings are as effective as possible; that, you know, makes
18 sure that we are all plugged in with information from Amber
19 and her team. So we do have some staff resources.

20 But actually all the work and all the outreach and
21 everything that I kind of went through right now is all
22 volunteer based; it's all through the committee and working
23 with partner organizations that are 501 (c)(3) organizations.

24 MR. ZAKHEM: Who's funding the (c)(3)s?

25 MS. LOPEZ-RAMIREZ: I think it's a network group,

1 right? Some of them are getting large grants at the national
2 level. Some are getting statewide foundation grants, Denver
3 foundation, a number of places.

4 But, you know, frankly it's more time than anything
5 else. Like the Puerto Rico festival was a three day festival
6 outside at the end of June.

7 You know, and so how much does it cost to buy a case
8 of water? You know, I don't know, three or four bucks, throw
9 it in the cooler. I happen to have, you know, you know, a
10 little tent at home that I can bring, and a foldout six footer
11 that I bought at Costco and we have our banner and we have
12 our, you know, our information and we have our knowledge, high
13 propensity voters out there you know, educating our Spanish
14 speaking voters about the process.

15 So I think it's want, like it's people wanting to do
16 the work, to having the support of the Denver -- of your
17 clerk, and we have that support with Denver county clerk and
18 the Denver elections division.

19 And I think just making sure that everything is in
20 partnership. Like, you know, before we set our ordinance, I
21 know there was a number of ACCESO members that really thought
22 that they were just kind of flailing around; that we really
23 green

24 Didn't have the support of Denver elections.

25 And once we sat down together, wrote the ordinance

1 together, started planning elections together for Spanish
2 speaking voters, that made all the difference.

3 And it sounds from Ariel, from your experience in
4 case studies, there was no communication really. And for us
5 there's constant communication.

6 And we meet monthly. And Amber and the county clerk
7 come to our monthly meetings, so they've made it a priority as
8 well.

9 MR. ZAKHEM: Thank you.

10 (Applause.)

11 MR. ZAKHEM: Our next presenter is going to be
12 Jennifer Weddle. She's the chair of the Colorado Indian Bar
13 Association, an attorney at Greenburg Traurig. She's going to
14 be talking about language access for Native American voters.

15 Thank you, Jennifer. Good to see you. She's also
16 a member of our Colorado Lawyers' Election Task Force.

17 I'm going to point out for the benefit of everybody
18 here, in particular to keep me in Connie's good graces, there
19 is a timer over here.

20 When she waves at you with a sign and it says, Stop,
21 it means shut up.

22 MS. LOPEZ-RAMIREZ: Are you referring to me because
23 I went last? I didn't even notice where I was until I was at
24 the two minute mark.

25 STAFF: I'll give you five minutes, three minute,

1 and then one minute, and then stop.

2 MS. WEDDLE: Why do I have to be the one?

3 Good afternoon, everyone. Great to be here with
4 you. I'm Jennifer Weddle. I co-chair of the Greenburg
5 Traurig American Indian law practice at the Denver office here
6 in Colorado.

7 And for the last ten years I have served as the
8 Native vote election protection coordinator for the National
9 Congress of American Indians here in Colorado.

10 NCAI is really the national intertribal
11 organization, kind of like the UN for tribes. I've had that
12 Native vote role since 2004.

13 Part of my work has also been working with the
14 election task force and with John, Connie, and Dan Sweetser,
15 who have been completely amazing colleagues. And with their
16 guidance and support we've actually been able to do some
17 really amazing things in Colorado in advancing protections for
18 Native voters.

19 The Native vote election protection project is the
20 umbrella organization that I work for, and has really three
21 primary goals. That's to ensure that every Native voter who's
22 eligible to vote was able to vote, and that their vote was
23 fairly counted, and to provide general voting legal assistance
24 to voters in their Native communities.

25 The catalyst for that program is very similar to

1 what the previous speakers were talking about in terms of
2 increased voter participation in the community.

3 I brought some slides today, which have a lot of
4 pictures. You'll see random pictures of my kids. But I'm a
5 very visual person, so you're going to see some pictures.

6 The Native vote has become more and more active in
7 recent years, and it's been credited in determining outcomes
8 in a number of very high profile elections including Senator
9 Maria Cantwell's election in Washington, Senator Tim Johnson's
10 election in South Dakota, Governor Janet Nopalitano's victory
11 in Arizona to name just a few.

12 With that increased voter turnout has increased
13 awareness of the disenfranchisement issues the Native voters
14 face. In particular, the Native vote project has been
15 concerned with very restricted state laws that have the affect
16 of disenfranchising Native voters, poorly prepared or
17 culturally insensitive election officials, and purposeful
18 voter intimidation and/or confusion.

19 Very similar examples occur in Indian country to
20 some of what we heard from earlier panels. Election officials
21 who will come up to Indian voters and touch their hair and do
22 other very inappropriate things with them.

23 Instances of voter, purposeful misinformation being
24 deployed into Indian country, Vote or Thursday not Tuesday,
25 things like that, that we've tried to overcome.

1 This is a map of where reservations are in the
2 United States. All the gray shaded areas are reservations. I
3 always like to point out that we got all the cherry spots.

4 Native Americans and Alaskan Natives have endured a
5 particularly extended history of exclusion from the ballot
6 box, and unconscionable mistreatment.

7 It was not until 1924 that the United States
8 recognized an Indian right to vote in federal elections;
9 thereafter, it took nearly four decades for all 50 states to
10 recognize the right of American Indians to vote in state
11 elections.

12 Colorado recognized an Indian right to vote in 1936,
13 and New Mexico was the last state to enfranchise Native
14 Americans in 1962.

15 The diversity of languages spoken by Native voters
16 and the physical seclusion of those who reside in Indian
17 country exacerbate the acute disenfranchising effect of
18 discriminatory voting and election practices.

19 A single voting change, the closure of the only one
20 polling places in a village, for example, can make it
21 virtually impossible for an entire community to vote.

22 However, scarce resources for litigation,
23 particularly where the affected voters are very geographically
24 isolated or are very isolated because of their language, have
25 led to many laws that disenfranchised Native voters going

1 unchallenged.

2 In these pictures that's Santa Claws, C-l-a-w-s, if
3 any of you don't know it.

4 Within the Native vote project structure we worked
5 with Native American bar associations around the country, in
6 13 states with very significant Native populations, to really
7 work on our election protection efforts.

8 Colorado and New Mexico were both states among those
9 election protection efforts, and have been since 2004. The
10 level of that presence has varied by state.

11 The factors that were considered, like I said, in
12 choosing those states were the Native population, the level of
13 anticipated partisan activity, race is a special importance to
14 Indian country, and the ability to recruit the state's
15 coordination and volunteers.

16 In very heavily partisan areas where the Native vote
17 has had some demonstrated effect in being the swing vote
18 really in races, we've seen increasing partisan activity from
19 both parties coming out to Indian country and doing things
20 like following people to and from the polling place, taking
21 down their license plate numbers, stopping people, purporting
22 to stop people who were giving rides to folks on the
23 reservation who didn't have a car or didn't have a driver's
24 license and nonetheless wanted to get to the polls, and being
25 accused of some inappropriate activity in that regard.

1 So we've tried to do a massive educational effort,
2 and also working very closely with state officials to try to
3 preserve and protect the Native vote.

4 In Colorado, very very proud of the successful
5 efforts that we had. Tribal IDs are now regularly accepted
6 for all voting purposes in Colorado, and that's memorialized
7 in Colorado law, thank you, Judd Choate.

8 It's been a real pleasure over the course of ten
9 years working with our Secretary of State from both parties.
10 They've been extraordinarily open to hearing about Indian
11 country's concerns.

12 Tribal IDs have been traditionally a major
13 impediment because they haven't been accepted for voting
14 purposes in state elections in Colorado and elsewhere.

15 But in most Indian communities, tribal members don't
16 have state issued IDs. Here in Colorado, for example, the
17 closest place to get a state-issued ID is more than an hour
18 away from the Mountain Ute reservation, which is in a remote
19 area of southwest Colorado.

20 Subsequently, the tribe has purchased its own ID
21 hardware and software, and issues -- exactly the same hardware
22 and software that the State of Colorado uses, and offers
23 tribal members IDs that have all the same information as State
24 IDs: height, weight, eye color, an address, your tribal
25 enrollment number; in fact, it has more information than a

1 typical Colorado ID.

2 But those were nonetheless, in previous years, not
3 being accepted for voting purposes. We were able to work
4 through that initially with some HAVA alert, Help America Vote
5 Act alert, for county clerks to accept the IDs.

6 Then over the course of the last years have amended
7 the statute and regulations in Colorado so that tribal IDs are
8 now accepted as a matter of course for all voting purposes,
9 including registration. That's been really great.

10 The issue that you-all asked me to come and talk
11 about today specifically was Native language access. And
12 again, we've had very happy success stories in Colorado.

13 There are two tribes located in Colorado, the
14 southern Ute Tribe, the Ute Tribe, and the Ute Mountain Ute
15 Tribe. Those Ute tribes speak the Ute language extensively.

16 That is an entirely oral language. It's not
17 written. They have oral interpreters available at polling
18 place to assist them.

19 The Navajo nation is not resident in Colorado. But
20 there are numerous Navajo speakers who are resident in
21 Colorado, and counties do make available written ballots in
22 Navajo for those voters.

23 So rather than giving you a glowing report about
24 just how great things are in Colorado, I wanted to take a step
25 back and tell you a little bit about what we're doing on the

1 national forefront to try to make sure that we embed these
2 rights in national voting rights acts legislation underway.

3 I do have one statistic to report, which is that in
4 ten years of manning the hotline for any Native voter's
5 disenfranchisement issues in Colorado, I've had exactly one
6 phone call.

7 That alleged discrimination was actually a woman who
8 called and said she was being intimidated at the polling
9 place. I was, This is great. Okay, I'm ready. How are you
10 being intimidated?

11 Her response was her former mother-in-law was an
12 election judge. I said, Okay, so is she telling you you can't
13 vote? What's happening? And she's like, No, I just really
14 don't like her and I don't want to go in there. I had to
15 explain to her that probably wasn't an actionable problem.

16 Indian country, these are pictures from around the
17 country. They're very remote places, very geographically
18 isolated, not a lot of resources.

19 We make the best out of what we can. This is a
20 typical firewood gathering. That is actual Native voters.
21 They really dressed up to come and vote.

22 I have in my written testimony a lot of concepts are
23 known practices concepts, some of the work that NCAI is doing
24 to try to advance various amendments to the voting rights act
25 legislation that's now making its way through congress and

1 will throughout the spring.

2 One thing I wanted to draw your particular attention
3 to was the recommendation that we have to amend Section 603 of
4 the voting rights act to require bilingual materials for
5 written Native languages.

6 In 1975 when congress added language assistance
7 provisions to the voting rights act, an amendment was included
8 that added an exception to provided bilingual election
9 materials for historically unwritten languages.

10 The voting rights act does not define what
11 "historically unwritten" means. But the exact language that
12 made it into the bill without any edits was that where the
13 language of the applicable minority group is oral or
14 unwritten, or in the case of Alaska Natives and American
15 Indians, the predominant language is historically unwritten.

16 And the state or political subdivision is only
17 required to furnish oral instruction or other information
18 relating to registration and voting.

19 We've recommended a change that takes that language
20 out, and removes any reference to American Indian or Alaskan
21 Native voters at all, and instead makes written voting
22 materials dependent upon the only metric that really matters,
23 whether the language is presently unwritten or entirely oral.

24 The way that the 1975 provision's been interpreted
25 by a number of states, such as Alaska -- and I have extensive

1 material in my testimony, written testimony on Alaska -- the
2 way it's been interpreted is that, even if a Native language
3 has been written today, if it's a modern language that's
4 written today, the State has no obligation to furnish a
5 written ballot in that language.

6 Some states have viewed that as a reason not to
7 provide Navajo language ballots. Navajo is a historically
8 unwritten language that now is commonly written. The Yupik
9 language in Alaska is another example. It's historically
10 unwritten, and now commonly written.

11 Native language groups are really fighting to make
12 sure that languages that are commonly written today in
13 communities are available for the same bilingual language
14 benefits that are afforded to other language groups under the
15 voting rights act.

16 So that's the major one. I'll actually end there
17 since I have a big stop sign. And I'll answer questions.

18 MR. ZAKHEM: Questions?

19 MS. FELDMAN: So this did go through? The change
20 did go through?

21 MS. WEDDLE: No. This is pending in a US senate
22 bill and a house bill now. But that's our recommendation.

23 MS. FELDMAN: You know, I think Navajos in New
24 Mexico really support that. I don't know whether you've
25 conferred with them or not.

1 MS. WEDDLE: Yes, we have. So the National Congress
2 for American Indians has developed this proposal and the other
3 five proposals that are laid out in my written testimony in
4 coordination with tribal leaders around the country.

5 We have these marathon conference calls that last
6 like a whole day where we go through this stuff.

7 DR. ATKESON: I was wondering about the groundwork
8 on voter registration, given the rural nature of most Native
9 American communities.

10 That's the one thing I found most difficult is
11 getting the opportunity for them to be registered. I was
12 amazed, in talking to many of these people after the 2008
13 election, and they weren't even asked -- they were like 30,
14 40, 50 years old and have never been asked, Do you want to
15 register to vote? Never been asked.

16 So how, what kind of outreach efforts are going on
17 in the chapter houses or other areas to reach these voters,
18 and encourage them to register to vote?

19 MS. WEDDLE: There have been huge efforts from
20 NCAI's Native vote project. I've been involved in the
21 election protection, and there's a huge get out the vote
22 component to it as well.

23 It involves working with the tribal governments, the
24 folks on the ground, in the community who know people. I
25 mean, things as simple as passing out pens and T-shirts and

1 information pamphlets.

2 I think that's one of the things that Nadine's going
3 to talk about, getting the word out that registering to vote
4 is okay and it's empowering to do.

5 There's a lot of resistance in Indian country to
6 signing up and registering to do anything because of the
7 historic unconscionable treatment of Native Americans.

8 If you went in and raised your hand to identify
9 yourself, you were promptly shipped off to a boarding school
10 and separated from your family.

11 So there's a lot of mistrust of going in and
12 registering for anything with any non-Indian government. And
13 we're trying to overcome a lot of that and provide
14 information, education, and really grassroots level type ways.

15 (Applause.)

16 MR. ZAKHEM: Okay. Our next presenter is Nadine
17 Padilla. She's here from the Native American Voters Alliance.
18 Her issue will be language access for Native America
19 voters.

20 MS. PADILLA: Thank you, everybody. Sorry I didn't
21 prepare a power point like the rest of my panel. But I did
22 prepare a statement, and my statement is primarily focused on
23 the disenfranchisement that our Native voters face out in
24 western New Mexico.

25 And my name is Nadine Padilla. I am with the Native

1 American Voters Alliance. We are a nonpartisan group based
2 out of Albuquerque, but we work with the 22 Native American
3 nations in New Mexico.

4 There are 19 pueblos in New Mexico, two Apache
5 nations and the Navajo nation that we work with.

6 So as Jennifer stated earlier, Native Americans were
7 barely granted the right to vote in 1948. And that was after
8 a veteran, Miguel Trujillo, had went to World War II and came
9 back and discovered that he was denied the right to vote.

10 After series of legal challenges, Native Americans
11 in New Mexico were finally granted that right to vote. And
12 since then there has been many instances of it
13 disenfranchisement, of which I've been working on voting
14 issues for about eight years now, and have, you know, worked
15 several elections out in rural New Mexico, and have a lot of
16 experience with those different types of disenfranchisements.

17 One of the biggest things is that our Native
18 community live in very rural areas. There's, you know,
19 limited cell service, limited Internet, limited even
20 infrastructure like roads and electricity and running water.
21 So those are the conditions that our communities live in
22 today.

23 So some of them may have to drive an hour and a half
24 to the nearest polling location, an hour and a half one way to
25 vote and then to turn around and come back.

1 A lot of our Native communities are low income or
2 living in poverty, just even just affording the gas to go and
3 vote is enough to, you know, convince somebody to stay at home
4 and skip their right to vote.

5 The other issue is that polling locations often in
6 what we call border towns which are, in western New Mexico,
7 they're hotbeds for racism. And people are still very divided
8 along racial lines, and there's a lot of racism that still
9 exists out there.

10 So to ask a Native voters to go into the nearest
11 border town vote and interact with, you know, members of that
12 town might not be appealing, to put it nicely.

13 So a lot of the times the environment at a lot of
14 county clerks' offices is very hostile, and that definitely
15 disenfranchises voters.

16 A few examples, a few specific examples that I have
17 is that in 2008 we were working a state senate race out there.
18 And it was a very close race. There was a Indian candidate
19 and a non Indian candidate.

20 And on the election night as they were bringing in
21 the ballot boxes, and two of the ballot boxes from the pueblo
22 went missing, just completely went missing so nobody knew
23 where they went or what happened.

24 And there was about two weeks of media around the
25 issue, but in the end nobody, there was no definitive answer

1 of what happened to those votes and if they were actually
2 counted.

3 In that race the race was decided by eight votes and
4 the Indian candidate lost, so those two ballot boxes
5 definitely would have had an impact on that election turnout.

6 In 2012, county clerks in New Mexico were sending
7 out information in Indian areas that had the wrong polling
8 location in our Indian community. So they said, You'll be
9 voting at the chapter house whereas no, they're not, they're
10 voting, you know, 20 minutes away in a different location.

11 So we called the county clerk and said, All your
12 information is wrong; like, this isn't where they're voting.
13 And she was like, Oh, I'm sorry about that. We'll get it
14 right next time. But that doesn't help.

15 So like Ariel Bickel's, there's not realtime
16 solutions to address the problems that are occurring as they
17 occur.

18 The other thing in that specific election is that
19 they listed all of the candidates, but they left off the one
20 Indian candidate in that area. And it turns out the county
21 clerk was a cousin of one of the candidates running. So it's
22 very kind of like small-town politics that still plays out
23 very big in New Mexico.

24 In both 2008 and 2012, there weren't enough ballots
25 available when people went to go vote. And instead of being

1 offered a provisional ballot they were given the offer of
2 either waiting about two hours while their poll workers drove
3 to the nearest clerk's office, printed more ballots, and then
4 came back with it.

5 So they could choose to wait or they could just
6 choose to go home without voting, and unfortunately a lot of
7 those voters in those instances just turned around and went
8 home and didn't vote in those elections.

9 Provisional ballots were not available. The
10 verification of the physical addresses is a big problem for
11 our Native voters. So many of our community use PO boxes, and
12 so when they ask for a physical address, you know, they ask
13 you to write things like, I live two miles south of this main
14 road.

15 So when you go in to verify your address, if you
16 don't remember exactly word for word how you described where
17 you lived, then you could be turned away.

18 So if, if you, you know, when you registered to vote
19 four years ago you said, Two miles south, but you went in and
20 you said, Well, actually there's a new store now and I live
21 one mile north of that store, then, you know, that difference
22 could cost you, cost your vote.

23 Another common practice that was mentioned earlier
24 to disenfranchise voters is tow trucks will usually go to the
25 polling locations of Native communities, and they'll be

1 looking for license plate numbers for people who are behind on
2 their car or truck payments.

3 And so word like that gets around pretty quickly,
4 and that will "disencourage" voters from going to the polls.
5 In the last election in 2012 reports of tires being slashed of
6 everybody that was going to go vote. So those, that's a
7 common practice as well.

8 As far as language barriers, New Mexico has the
9 22 Native nations, which has eight distinct languages with
10 varying dialects between them.

11 One of the issues is translating voter terms into a
12 Native language. So if they're talking about like a bond or
13 something, then, you know, Native languages are largely
14 descriptive, but trying to describe what that means and
15 ensuring that your translators have a solid understanding of
16 what the bond measure is, how it would impact, and making sure
17 all translators are correctly and uniformly giving that
18 information to the people they're translating the information
19 for is an issue.

20 Another issue is that translators may not be
21 immediately available at the polling locations. So they may
22 have a translator on call, so the voter will have to wait if
23 they didn't bring somebody with them.

24 They will have to wait while they call around and
25 say, Are you available? Can you come down? We've got a

1 voter. So it's more of that type of situation.

2 The final thing concerning language is that the
3 county clerks determine for which languages they'll provide
4 funding to, and how the language program will be implemented.

5 So depending on if you have a friendly county clerk,
6 or maybe a not so friendly county clerk, that could influence
7 the level of the program that you'll get for the voters.

8 So I think remedies such as the election day voter
9 registration would be great for our Native communities.
10 Increasing the use of mobile voting sites would also be very
11 helpful, and efforts such as requiring voter ID would not be
12 supportive of because it would further disenfranchise our
13 Native voters.

14 That's all I have if anybody has any questions.

15 MS. LYTLE: I have a question.

16 What has been done to establish some accountability
17 with the egregious, you know, acts of these public officials
18 especially?

19 And then 2, have you or anyone in your area
20 considered some perhaps legislation -- it was not successful
21 in Colorado but it almost was, I think -- to establish some
22 penalties for this kind of misuse of voter information in the
23 public process?

24 MS. PADILLA: Yeah. It's pretty sad really. But
25 there hasn't been a lot of accountability for all of the stuff

1 that goes on, especially in western New Mexico.

2 Part of the problem is that a lot of the elected
3 officials are not necessarily allies of the Indian communities
4 that they serve, so there's not a lot of interest in really
5 addressing the issues.

6 MS. FELDMAN: I guess I have a followup question to
7 that too.

8 The example of the tow trucks in the parking lots, I
9 assume that's in Gallup. Was that in Gallup?

10 MS. PADILLA: Yeah, it happens in Gallup, and also
11 kind of the rural --

12 MS. FELDMAN: Well, you know, I never even heard any
13 publicity about that.

14 Is that documented? Was that publicized? Some of
15 these things, simply the publicity surrounding it would be a
16 starting point.

17 MS. PADILLA: Yeah. Usually there's, there's I
18 guess a little bit of media coverage on some of this stuff,
19 like when the ballot boxes went missing.

20 MS. FELDMAN: Right, we know about that.

21 MS. PADILLA: There was about two weeks worth of
22 media on that, and then it just faded away.

23 MS. FELDMAN: Well, but are there any newspaper
24 articles or documentation of the tow trucks? Because that's
25 certainly I think is the kind of thing that spurs legislation.

1 Were there any?

2 MS. PADILLA: I think there was only just the one
3 article in the Gallup Independent regarding that.

4 MS. FELDMAN: That was in the 2012 election?

5 MS. PADILLA: Um-hum, um-hum.

6 But the county clerks are very aware of these types
7 of issues; so it's not like people, it's not like people
8 haven't been telling people, like, This is what's going on.
9 It just hasn't reached that level.

10 MS. FELDMAN: Well, it sounds like statewide
11 publicity would be, would be in order in such an egregious
12 case.

13 But there are no penalties for county clerks who do
14 these kinds of things. That's what you're getting at, right?
15 I mean, I mean other than at the ballot box themselves.

16 MR. ZAKHEM: Some of this is criminal, and needs to
17 be reported to the Department of Justice.

18 Have you done that?

19 MS. PADILLA: Yeah, there's been -- maybe Jennifer
20 knows more. But the Department of Justice is looking into
21 these areas.

22 But that's been since 2008, and as far as I can tell
23 there hasn't been much difference in the actual day to day on
24 the ground.

25 MS. FIGUEREDO: There has been federal legislation

1 introduced, the deceptive practices and voter
2 intimidation act. The Lawyers' Committee and Common Cause
3 worked on model legislation at the state level.

4 There are no statutes right now that have legal
5 ramification on that. What we have we're happy to send that
6 information to folks afterwards.

7 MS. FELDMAN: I mean, I served on the senate
8 committee that oversees these things and I never heard about
9 this.

10 And so, you know, that would be, you know, certainly
11 a target for some of this information, the senate rules
12 committee and house voters and elections committee.

13 DR. ATKESON: I wondered what kind of coordination
14 there was between the local groups and the lobbying group in
15 the legislature or, you know, how are the groups connecting or
16 interacting to make sure this information gets out.

17 MS. PADILLA: I think one of the problems with all
18 of this is that there aren't a lot of groups out there working
19 on the ground. So there are, you know, the Native American
20 Voters Alliance, and that's about it.

21 MS. FELDMAN: And I wonder if some of those groups
22 are allowed to lobby and allowed to bring that information
23 forward as a result of their tax status.

24 MS. PADILLA: Thank you.

25 (Applause.)

1 MR. ZAKHEM: Okay. Our last presenter in our first
2 segment will be Judd Choate, the director of elections for the
3 Colorado Secretary of State's Office.

4 Judd will be talking about accessibility for persons
5 with disabilities.

6 MR. CHOATE: Thank you very much for inviting me. I
7 really appreciate it. It's an outstanding panel. I've really
8 enjoyed the presentation so far.

9 My name is Judd Choate. I'm the director of the
10 division of elections for the Colorado Secretary of State's
11 Office. Our role at the Secretary of State's Office is to
12 oversee the work of the counties.

13 The counties do the real work of elections. They're
14 the people who print the ballots and send them to the voters.
15 The voters vote those ballots and they come back to the
16 counties.

17 Our work is really to help assist the counties and
18 work on legislation, run the voter registration system, run
19 the campaign finance system.

20 But in the kinds of issues that we're describing
21 today we have a central role because we sort of are the point
22 of the spear when it comes to actual legislation and then the
23 implementation of that legislature through rules.

24 So this is a great panel for us, and I appreciate
25 the fact that we can take part in it.

1 The topic that I'm talking about is accessibility,
2 but it's a different kind of accessibility than the ones
3 you've heard about today. This is about physical
4 accessibility.

5 So there are a number of sort of legislative,
6 historical legislative federal and state bills that have
7 created the parameters of physical accessibility to the
8 polling places.

9 Let me go through a couple of the sort of starting
10 points of federal legislation. So the Voting Rights Act
11 broadly talks about access to the polling place. There's also
12 the Voting Accessibility for the Elderly and Handicapped Act
13 of 1984.

14 That is woefully outdated by the Help America Vote
15 Act, which came much later and was much more specific. The
16 ADA, which was effectively implemented by the Help America
17 Vote Act, which I'm going to talk about here in a minute, and
18 then the National Voter Registration Act of 1993, which has a
19 stated purpose to help with access, but really doesn't speak
20 much about people with disabilities.

21 So those were sort of the forerunners to the Help
22 America Vote Act, which is the real piece of legislation which
23 is important to people with disabilities accessing polling
24 places and county facilities.

25 So the Help America Vote Act of 2002 was a very

1 important piece of legislation. It has several major
2 components to it. The most important relevance to this
3 particular discussion deals with access and independence for
4 voters with disabilities to all polling locations, and then to
5 full service offices, which is going to become more important
6 as I go forward and show you some pictures.

7 There's actually very little litigation around this
8 central concept of accessibility for people with disabilities.
9 So what does this particular part of that legislation mean?

10 Really, the way that we understand that legislation
11 is through two different documents: the DOJ opinion letter
12 regarding physical access to polling places and offices, and
13 the EAC advisory for accessibility for voting systems for
14 in-person voting, so that deals both with location and then
15 with machinery.

16 And then another big component of the Help America
17 Vote Act was money. There is both the money that was given to
18 states, which then was distributed to counties and
19 municipalities, which supports the technology which can be
20 used by people with disabilities, and then there's also a
21 grant program, which also is used to fund particular
22 improvements to locations.

23 So what happened with HAVA? Well, as with most
24 major pieces of legislation in this area, we had to do
25 implementing legislation at the state level.

1 Our implementing legislation for HAVA is Article
2 1.5, so Title 11.5 Article 1.5, and particular 104 and 105.
3 Then we also have accessibility in polling locations for
4 persons with disabilities under 15703, and then we elaborate
5 on that in our rules, which is Rule 7.9.

6 So the major points of our legislation, and then the
7 actual application of that legislation through rule, is that
8 there is an accessibility survey that must be done for each
9 VSPC each election cycle.

10 VSPC, by the way, for those of you who aren't
11 familiar with Colorado, election laws are Voters Service and
12 Polling Centers. That's the new terminology out of 1303,
13 which describes each one of the places where you can vote in
14 the state of Colorado are both voters service, meaning that
15 they can do things like registration and change your
16 registration, and polling places where you can actually vote.

17 So they're all full service. They represent
18 everything from registration through voting.

19 So at all VSPCs there must be an accessibility
20 survey for each election. Secretary of State's Office may
21 deny HAVA funds for the failure to utilize an accessible site.
22 The Secretary of State can conduct onsite visits to assess
23 compliance. And then in extraordinary circumstances, the
24 Secretary of State can seek an injunction for the failure to
25 meet ADA requirements.

1 To my knowledge we've never done that, nor have we
2 ever done Item No. 2, to deny HAVA funds. We do onsite visits
3 quite often, which again we'll talk about.

4 If you think about pre HAVA and post HAVA, HAVA was
5 passed in 2002. The Government Accountability Office did a
6 national survey in 2000, and found that 18 percent of the
7 polling locations in the United States were accessible -- not
8 inaccessible, accessible -- in 2000 for people with
9 disabilities.

10 You can see that has improved greatly. By 2008 it
11 went up a grand total of 10 percent to be 28 percent are
12 considered accessible by 2008 for people with disabilities.

13 In 2012 to 2013, Colorado surveyed 38 of
14 64 counties, and found general adherence to HAVA, the ADA
15 requirements of HAVA with some exceptions, for virtually every
16 location.

17 Colorado does very well on the ADA front. We do
18 have some failures, which again, I'll talk about.

19 If you break down these numbers -- I don't know how
20 well you can see that -- and you look closer into the poll,
21 this is percentage of polling places with potential
22 impediments.

23 And the first -- and it's by 2000, which is the
24 white section and then the shaded section is the 2008 numbers
25 you can see that in parking areas actually the number of areas

1 with impediments actually went up. So with regard to parking
2 we're not seeing any improvement.

3 We're also seeing very little improvement on the
4 path from parking to a building entrance. Great improvement
5 with the actual building entrance.

6 This is probably with the advancement of the button
7 that opens the door automatically, and with the expanded
8 doorways and single doors as opposed to double doors with the
9 poll in the middle, so there's been a lot of improvements
10 there. And there's been some improvement on the path in the
11 building from the entrance to the voting location.

12 So our real problem appears to be from the parking
13 lot to the front door. And that's historically been the major
14 problem with ADA compliance with people with disabilities, and
15 it remains so.

16 We do have HAVA funds for ADA compliance. Congress
17 has established a grant program which we are the central
18 office for the State of Colorado. We can request funds, or
19 historically could have requested funds from the Department of
20 Health and Human Services.

21 We have, over the last several years, requested up
22 to \$2.5 million. And we granted out \$1 million of that. So
23 we still have almost \$1.5 million that we could grant out to
24 counties for improvement of their locations.

25 And we do still do grants. And we'll talk a little

1 bit about that. But for the most part, the interest in grants
2 has waned over the last couple of years as we've done a lot of
3 bigger items.

4 One thing I would mention, sort of to toot our own
5 horn a little bit, the last couple of times that they had
6 money to distribute out of this fund, the State had to request
7 it. And our state actively requested it.

8 A number of states, a whole bunch of states did not
9 actively request this money and so it went away. That money
10 was lost, and will never be used for ADA compliance. But
11 Colorado has requested and we have, because of that, a lot of
12 money.

13 Let me go through sort of the good, the bad, and the
14 ugly of compliance in the state of Colorado.

15 I notice that there are lawyers in the room. This
16 is where you might want to start taking notes, because we do
17 have some ADA compliance in the state of Colorado.

18 The good. We have a number of counties that have
19 really embraced training, and a lot of different things that
20 you can do with money and our funding resources.

21 There's also a lot of outside the box thinking, and
22 we've done a lot of hard work with some counties and county
23 officials that have been difficult to work with. And we've
24 made serious headway in many respects.

25 Let's talk about a couple of particular items. This

1 is a great example of a wonderful old courthouse. This is one
2 of the oldest courthouses, oldest continuously used courthouse
3 in the state. This is in Bent County.

4 You can see in the picture that before the makeover
5 it just had a series of steps going up to the front, and a
6 whole bunch of ADA requirement issues. No way to get into the
7 building if you were in a wheelchair, and then all sorts of
8 problems once you got in the building.

9 Now with the addition of the grant money and the
10 work that they did, they added this ramp that you can get in,
11 and then a lot of work on the inside.

12 This is in Gunnison County. This is the Blackstock
13 building, which is their county building. This is the before
14 picture. Again, it doesn't show any of the railing required,
15 doesn't show any of the required parking spots.

16 After we've done some significant work on the front
17 parking lot, and then the proper railing. There's also,
18 within that building, a significant ramping structure that
19 they had to put in, which works very well for people with
20 disabilities.

21 Then in Adams County, another building here looks
22 perfectly reasonable. But if you look closely you've got a
23 couple of steps there. They do have a ramp here, but that
24 ramp was not ADA compliant.

25 So we put in a ramp in the front that gets you

1 straight to the front door, and now that building is ADA
2 compliant. So there's some good stuff that's happening.

3 We also -- I'm sort of stealing from Denver just a
4 bit. And I notice in fact that even this picture is used in
5 Amber's presentation. So I'm not going to talk a lot about
6 this because I think Amber's going to come back to this.

7 But there's a great program that Denver's been doing
8 that came through grant money that was supplied through the
9 HAVA grant.

10 By the way, for your edification, at a later time if
11 you're interested I brought a list of all the different grants
12 that we've done through our grant money. It's about 100, a
13 little bit fewer than 100. Seven of those were Denver County,
14 by the way.

15 Seven of those were from Denver County. Denver
16 County's obviously taken this particular part of our ability
17 to assist those kinds of locations very very seriously. And
18 then, of course, with this program that they're going to talk
19 about.

20 A couple more things. Here's some bad. A couple of
21 pictures related to bad. I love this picture. You can kind
22 of see the problem here. We've got a spacing problem where
23 you couldn't possibly get that person in the door without
24 opening, forwardly opening that door.

25 How is he going to do that? That's a really

1 difficult thing for him to do. This of course speaks to that
2 kind of issue that we see pretty routine.

3 This is a pretty innocuous picture, but if you look
4 here, there's a significant gravel and dirt problem with the
5 ramp. That's going to create a particular kind of issue for a
6 person that's in a wheelchair.

7 And then love this one. You know, sometimes you
8 just really need to pay the extra couple of bucks and get a
9 permanent sign, because the sign in the sandbox is really not
10 going to probably work.

11 And then a couple of uglies. This is San Miguel.
12 San Miguel County. This is their courthouse, one of the most
13 beautiful courthouses in the state. Incredibly beautiful
14 building. It's got 10 stairs, 10 stairs, and no reasonable
15 back entrance.

16 I was there just in the 2013 election. I was there
17 mere months ago. And I approached the county clerk and
18 expressed my concern about the fact that their building wasn't
19 accessible and was effectively told, Look, it's a great old
20 building. We love our old building. We're really not going
21 to do much to change that building.

22 I was pretty stunned by that. I thought to myself,
23 Wow, if I was in the private world I wanted to hang out in
24 Telluride for a while. I might find a reason to -- wow, I'm
25 going to tuck that one away in the back of my brain for a

1 later date perhaps.

2 Hinsdale County, very nice people, really want to do
3 good. But they've got this old courthouse, or old county
4 court building, county building, and it's, you know, not
5 accessible in the front, has a door that doesn't open, they
6 don't have enough space for somebody to open that door.

7 We've talked to them. I think there's probably ways
8 in which we can improve upon that.

9 In Las Animas County, if you look here you've got a
10 terrible angle on this ramp. You're basically putting
11 somebody in jeopardy to go down that ramp. And that's
12 something we're trying to working with them to fix.

13 There's a lot of these type of examples. Another
14 great example in Mineral County with a building that's not ADA
15 compliant.

16 A lot of these counties really want to do something.
17 They don't have the resource or the time, and this is
18 something that's not high on their list of to-dos.

19 And then the last thing I was going to say we are
20 always going around the state. I'm going to 12 counties in
21 the primary, so I'll be in the northwest section of the state
22 for the primary. I'm going to go to another 12 for the
23 general, so I'm going to catch 24 counties this year.

24 I'm going to be there with my tape measure and my
25 level and all of that stuff and, you know, they should be

1 concerned because I'm coming their way.

2 And by the way I should note that Lisa -- who helped
3 me so much with this by the way -- she's on our staff and does
4 all of our ADA compliance, and Jennifer who is here from the
5 Center for People with Disabilities and Older People, they
6 also go around the state and advise us on counties we need to
7 be concerned about so that we can double down on trying to get
8 them to meet those ADA requirements.

9 That's all I had. Thank you very much. I'll take
10 any questions you have.

11 (Applause.)

12 MS. FELDMAN: I'll just ask the obvious. Are any of
13 the those HAVA monies available for ADA compliance?

14 MR. CHOATE: Absolutely. That is a particular grant
15 for ADA compliance.

16 MS. FELDMAN: You have over a million?

17 MR. CHOATE: We have \$1.5 million solely available
18 for ADA compliance.

19 MS. FELDMAN: Sounds like a jobs program to me as
20 well.

21 MR. CHOATE: It could be, especially in a smaller
22 county where they might be suffering. Absolutely.

23 DR. ATKESON: What kind of auto vote machine do you
24 use for people with physical disabilities?

25 MR. CHOATE: We are, in the state of Colorado we

1 don't have one particular vendor. So we have actually four
2 vendors which operate that DREs in our state.

3 Denver uses the Sequoia system. Other counties use
4 Premier and Hart. We have sort of a panoply of different
5 systems so it's really very county specific.

6 Any other questions?

7 THE FLOOR: Yes. Does your office direct the use of
8 the money to the various counties?

9 MR. CHOATE: Yes. So the way it works is that they
10 ask, so they fill out the paperwork to request that money.

11 Then we evaluate it, and we have a committee of both
12 internal and external stakeholders. They consider it. And
13 ultimately that request is sent to the Secretary and the
14 Secretary approves or does not approve.

15 In my experience, the Secretary always approves if
16 we're supportive of it. And then that money is distributed as
17 fast as we can; in many respects that's very quick. We get
18 the bulldozer going very fast.

19 We've supported programs like putting elevators in
20 buildings, hundreds of thousands of dollars of work in older
21 buildings.

22 In fact, there's a great example of two buildings
23 next to each other that we put an elevator in between and
24 attached the two buildings together.

25 We can do some pretty funky things with significant

1 ADA funds.

2 MR. ZAKHEM: Thank you.

3 (Applause.)

4 MR. ZAKHEM: So now it's time for the best part of
5 the program, the break and cookies. So we're going to break.
6 If you want to sign up for public testimony do it now. In
7 five minutes we'll reconvene.

8 (Short break.)

9 MR. ZAKHEM: Please take your seats.

10 All right. We're on to our second panel involving
11 election administration initiatives. The first witness is the
12 director of elections for the City and County of Denver,
13 Ms. Amber McReynolds.

14 She's going to talk to us about the new iPad project
15 initiative. Welcome, Amber.

16 MS. MC REYNOLDS: Okay, thank you for inviting me to
17 speak today. We're very excited to be here to share this
18 innovation and solution that we believe is really leading the
19 way, and going to provide more access for more of our voters
20 in the future.

21 Our iPad or iAP program is called our iPad
22 accessibility pilot project. We started in 2012 in Denver.
23 I'll talk through kind of how we developed that program, how
24 we obtained grant money, as Judd from the State mentioned
25 earlier, and sort of how the process change happened from the

1 previous way that we dealt with group residential facilities,
2 and then now the new way.

3 So kind of an overview of what I'm going to go over,
4 what is a group residential facility and what are the legal
5 requirements for that, the need for that service, the number
6 of voters that were actually surveyed and that fall into this
7 category, our HAVA grant application process, and then the
8 2012 primary and sort of how we implemented, and then lessons
9 learned, and then how we made some changes for the general
10 election, and what we've been doing since then.

11 A group residential facility under Colorado law can
12 be a nursing home, an assisted living home, a home for persons
13 with developmental disabilities, a home for people with mental
14 illness. And most of the facilities that we tend to work with
15 are assisted living or nursing home type facilities.

16 So the requirements under Colorado law is if the
17 facility falls into one of those categories, and they have
18 seven or more residents and there's also a central mail
19 delivery, meaning that mail is not delivered to a specific
20 mailbox in the facility, our services are triggered.

21 And we do have a couple of exceptions to that. Some
22 of the facilities are small, and they sort of go back and
23 forth between seven and six and those kinds of things. If
24 we've provided service to them in the past, we offer it again
25 and make sure that we meet those facility needs.

1 So what we've had to do then, if they do fall under
2 that category, we then need to deliver, hand deliver the mail
3 ballots to them, and send election judges out to facilitate
4 the voting process, assist if needed.

5 That's what Colorado is required to do. All
6 counties are required to meet this requirement.

7 So our previous process, we kind of got a little van
8 that shows our transport to and from the facility. But we
9 would go out to the facility with our mail ballots and we
10 would send election judges to deliver it to them.

11 We would facilitate the voting process, assist where
12 we could. If any voters needed to update an address or if
13 they qualified for emergency registration or what have you, we
14 couldn't do it right there on site so we would have to travel
15 back with the forms, make those updates, then we'd have to
16 send another team out with additional mail ballots to service
17 the voters.

18 And the mail ballots aren't necessarily accessible.
19 They're a paper ballot; they don't have assistive technology
20 on them to assist the voters in an objective way.

21 For Denver, we have over 2,700 voters that fall into
22 this category. We have 53 facilities, including three
23 long-term rehabilitation centers that we service.

24 So our new process, with the iPad accessibility
25 project, pilot project, is we basically have, it's a one stop

1 shop. We can send a team of election judges out now with the
2 iPads, provide all the services necessary, including
3 registration related services. So we can offer a couple of
4 different things in addition to voting.

5 Under the new law 1303, now that we have same day
6 registration and voters have more of an opportunity to update
7 their address more frequently within the 30-day period leading
8 up to the election, we actually can use the iPads as vote
9 marking devices, but also to make the registration updates.

10 We can facilitate on the iPads updates in the voter
11 registration system. We can immediate identify what ballot
12 style the voter needs to get, and then we can facilitate the
13 voting process then on the iPad that's designated for voting.

14 So the way the program works is we use iPads as
15 ballot marking devices. So we use a similar program and
16 system to what our military and overseas voters use in
17 Colorado.

18 It's a similar platform. It has all the assistive
19 technology available on the iPad, so the iPads are actually a
20 lot more accessible than even some of our electronic voting
21 machine equipment, and they're easier for folks to use.

22 There's language accessibility. They can use the
23 headphones. They can use the touch technology that enables
24 them to, if they have any disability or difficulty using their
25 hands, they can sort of use the back of their hand if needed.

1 So the iPads offer a more complete solution, if you will, for
2 accessibility.

3 And so in addition to them, the vote marking, once
4 we figure out their registration issues and figure out what
5 ballot style they need, the election judges will bring up the
6 appropriate ballot style on the iPad.

7 The voter can then vote the ballot. They can use
8 the headphones. They can use any of that assistive technology
9 to do that.

10 We set up voting booths so they have privacy screens
11 while they complete the voting process, so they're solely
12 independent. They have an independent voting experience,
13 which prior to this program we did not offer; we couldn't
14 offer because we had to deliver mail ballots that aren't
15 necessarily accessible.

16 Once they complete that process, there's no votes
17 that are cast on line. The ballot actually is printed. So at
18 the end of their voting process on the iPad they can review,
19 they can listen to the ballot, make the review, confirm that
20 it's as they expected it to be for the vote, and then the
21 ballot is actually printed onto a computer printer.

22 We deliberately have the ballot printed so that the
23 votes are all face down, and then it's taken and can be put
24 right into a ballot box using a secrecy sleeve, and then we
25 now can take all those back to the office and tally them.

1 Prior to this service, we didn't necessarily have an
2 accessible voting option for all of these individuals. This
3 has significantly enhanced our services to the voters in the
4 City and County of Denver in how they vote.

5 So the HAVA grant, we applied for the HAVA grant for
6 the 2012 primary election for our initial implementation. And
7 so this is kind of a list of the things that we purchased.

8 And in the general election we requested additional
9 HAVA money to roll it out in a more complete way, add
10 additional iPads, and provide enhanced service.

11 So our planning and implementation for both the
12 general and the primary. We established a technical working
13 group within our office to analyze the different components
14 from a technology perspective, including the iPads, including
15 mifi wireless devices. Not every facility had wifi. We had
16 to make sure we had that mobile.

17 We also had a four person team that looked at
18 staffing and how to train. And then the iPad training itself
19 we conducted extensive training with our teams.

20 For the primary we did an extensive review to look
21 for ways to improve for the general. And so for the general
22 we made a lot of those improvements.

23 And then for the general we sort of had a new issue
24 to deal with, which is the long ballot, making sure that we
25 had enough time and the voters had an ability to get through

1 the long ballot and navigate the iPad in an easy way.

2 So with this program we received some significant
3 national recognition for our effort in this area. We received
4 the 2013 NACO award. We also received an award from the
5 election center, which is a professional innovation award from
6 across the country.

7 We actually were awarded the top honor for
8 innovation from the election center last year. So we were
9 very proud of that. We actually beat out LA County for two of
10 their programs, which is a significant achievement for us.

11 With that, I'm happy to take questions.

12 DR. ATKESON: What kind of memory does it keep of
13 the voters? Do you print it out and it disappears? How do
14 you maintain the privacy of the voter?

15 MS. MC REYNOLDS: It doesn't keep any memory. Once
16 the ballot is confirmed and we click print, it's gone. So it
17 doesn't store any of that. There's nothing cast on line.
18 Everything, once it's printed, that's it.

19 MS. LYTTLE: Is there any interaction at all with
20 voters as you use this technology? You know, how do you
21 "elevator speech" this to them, if there is any?

22 MS. MC REYNOLDS: Yeah. We have done a few
23 different things, and we're going to do a little bit more this
24 year in terms of education, prior to going out to the
25 facility, on what the service delivery will be.

1 With the iPad, as we know, you have to kind of get
2 used to the touch technology a little bit. If you're not used
3 to that, you know, using your fingernail or things like that
4 can be tough.

5 We actually downloaded, interesting enough, Angry
6 Birds onto all of them. If people wanted to sort of try that
7 first it helped them get used to how to touch and sort of use
8 the iPads.

9 We did that. What was interesting is a lot of the
10 voters that took advantage of this program, you know, we kept
11 hearing them say, Oh, this is what I use to communicate with
12 my, you know, relatives or, you know, use the Facetime.
13 They're like, Does this have Facetime?

14 You know, they had actually seen this technology
15 before, as opposed to say our traditional electronic voting
16 machines, which people aren't used to; they're new when they
17 go in.

18 We really felt we were enhancing their service. And
19 they were very excited to have an opportunity to use this in
20 an accessible way.

21 MS. TALMAGE: Do you have any plans to expand this?

22 MS. MC REYNOLDS: Yes, we do.

23 I was making notes while Judd was talking that they
24 have all this money available. We have requested a lot
25 of HAVA money to make improvements in various ways in Denver

1 County. This has been a very, a very good program for us and
2 we definitely want to expand it further.

3 It is like a mobile voting site in a lot of ways so
4 we've done a lot of different things now where we do surveys
5 similar to our voting site, map out an actual floor plan of
6 how we're going to set them up.

7 We've done some of those things. And I think, you
8 know, whatever we can do to provide additional service is
9 always good; we're always looking to do that.

10 So I just wanted to say, to add to her words and
11 accolades when they submitted their first grant to me for
12 this, I talked to the federal auditor in Washington DC.

13 I called and I said, I know this money is for
14 polling place accessibility and education. And I think this
15 is a really great thing. I explained what she wanted to do.
16 And verbal cartwheels over the phone; she went nuts with it
17 and said, This is exactly what they envisioned.

18 I mean, they wanted polling places made accessible
19 with grants, and concrete and, you know, whatever was needed.
20 But this kind, this is a thinking out of the box that we were
21 talking about when Judd was doing his presentation.

22 And our goal, to add to that for this year -- and it
23 was prior to Judd saying that. We have been thinking about
24 what we were going to do this year.

25 And I think one of the things that's the most

1 obvious next step for this is for provisional voting. Right
2 now provisionals are on paper; they're not necessarily
3 accessible.

4 So I, we would like to do that. And that's likely
5 what we will do for, you know, probably apply for some
6 additional money to look at using them for that.

7 THE FLOOR: So this probably doesn't extend to
8 Denver County. But are there any plans to extend this
9 technology even beyond persons with disabilities and HAVA?

10 What came to mind was rural counties. It seems to
11 me that if you could, you know, get a group of people with a
12 van with iPads and a printer, you could access a lot of these
13 places. And if you could get that technology to especially
14 people who are familiar with the iPad technology, which is
15 actually similar technology, you could really reach out to
16 very remote places.

17 MS. MC REYNOLDS: I think so.

18 And I think that the other thing -- I didn't talk
19 about costs, but this is a better option in terms of
20 accessibility and solutions than what an electronic voting
21 machine is.

22 Electronic voting machines, at least the ones we
23 currently have, cost \$4,000 apiece. This setup with the
24 printer is 700.

25 So in terms of money, you know, this is the first

1 step in looking at voting systems that are less expensive, but
2 provide better service. And the iPads can be used for other
3 reasons.

4 We use them for training, we use them for other
5 reasons outside of an election cycle. Our DREs sit in storage
6 until the next election, and they're not usable for anything
7 else.

8 So this is a much better solution sort of for
9 elections going forward and meeting technology requirements.

10 MS. TALMAGE: You've been great with working with
11 the jail base voting in Denver County. I was wondering, could
12 this ever be used for going into the jails?

13 MS. MC REYNOLDS: Yeah. We could look at that.

14 We've been delivering -- and just so everybody's
15 clear, you can't vote if you're, you know, if you're on parole
16 or you've been convicted.

17 But for the folks that are maybe in holding or
18 haven't been convicted yet we deliver -- pre trial
19 detainees -- we've helped, we've sent election judges to take
20 the ballots out.

21 So yeah, I mean, I think, you know, really for us,
22 all options in terms of accessibility are on the table.
23 Provisional was the first thing that we've really been talking
24 about this year because it's not accessible at all as it
25 currently is. That would be another, another possibility.

1 DR. ATKESON: Given that the votes are traveling,
2 what kind of auditing process or security do you provide, or
3 an overview of that progression?

4 When they get back, before they get into the
5 machine, how do you know they get into the machine? How does
6 the voter know they get into the machine?

7 MS. MC REYNOLDS: So we have, since they're paper
8 ballots, we have a secure ballot box that's locked and meets
9 all the seal requirements under statute and rule similar to
10 our other, the way we handle ballot box transport. We have
11 security procedures, protocol in terms of chain of custody.

12 All of this equipment is the same. We actually
13 purchased some large boxes that the iPads are carried in and
14 the printer, and everything is sort of sealed and locked.

15 And then when everything comes back in, we do
16 similar to what we do with our voter service and polling
17 centers, and what we do is we make sure that what went out
18 came back. We do that with our mail ballots as well.

19 And it's election judges, so it's bipartisan teams
20 that are going out transporting all of that to and from.

21 MR. ZAKHEM: Anybody else?

22 MS. FELDMAN: Yes. Does it require Internet access
23 in the rural areas in any way?

24 MS. MC REYNOLDS: Yes. So what we've used is mifi
25 cards. So we set up like a wireless device and we can use

1 that access right there.

2 What I've suggested to the vendor, which I would
3 like to see in the future, is potentially creating more of a
4 standalone AP where it wouldn't require network. So
5 downloading everything and then everything -- because you're
6 not transferring anything on line anyway.

7 MS. FELDMAN: Right.

8 MS. MC REYNOLDS: So that would potentially be a
9 solution.

10 MS. FELDMAN: Lack of Internet access I think in
11 rural areas is a problem.

12 How many people voted this way last time?

13 MS. MC REYNOLDS: So we've had, I think in the last
14 one, approximately 105 or so, 110 used it in the most recent
15 one. And we've got, and we service 2,700 voters at that
16 location or in these facilities.

17 So our goal this time is really to educate and, you
18 know, and sort of start making sure that people are aware that
19 they can do this.

20 Part of it, too, is, you know, we're out there for a
21 specific period of time too, so we need to make sure we have
22 enough iPads and enough judges there to assist if needed.

23 And so that's why we think that we haven't had as
24 much usage because that's sort of been limited. So now with
25 expanding it we may, you know, request additional funds to

1 cover more iPads.

2 MS. LYTTLE: What's the cost of using this program?
3 Perhaps you said this and I missed it. But maybe perhaps for
4 those 105 voters, what's the cost to taxpayers for this?

5 MS. MC REYNOLDS: So the iPad and the printer itself
6 that's about a \$700 or so investment; that's the
7 infrastructure. And then there's a software component to it
8 all.

9 Depending on how the software licensing is
10 structured you might be paying a yearly contract or you might
11 be paying a per election kind of thing so it sort of depends
12 on how that is structured.

13 And then of course the cost of staff, so election
14 judges, we have to rent vehicles, you know, all of that. We
15 do repurpose and use staff for different reasons if they're
16 not out at these facilities.

17 It is an investment from a staff, from a technical
18 perspective and infrastructure, you know, so all those things
19 have to be figured out.

20 And we use some HAVA money for some of that, and the
21 County has paid a, picked up the rest of the burden on that.

22 MS. LYTTLE: What's the budget for it for this year,
23 this election season?

24 MS. MC REYNOLDS: For this year? The way we budget,
25 we don't necessarily cut it out per election.

1 We have a yearly fee for various, whether it's staff
2 or software or what have you, we don't really say, It's this
3 much per election because it sort of applies across the board.

4 But I could come up with an estimate for you for the
5 primary as an example.

6 MR. ZAKHEM: All right. Thank you, Amber.

7 (Applause.)

8 MR. ZAKHEM: The next presenter is Sheila Reiner.
9 She's going to be talking about some new legislation here in
10 Colorado.

11 MS. REINER: Thank you. I am Sheila Reiner, Mesa
12 County Clerk and Recorder from Mesa County. We're almost on
13 the Utah border in the state; fairly rural area.

14 We're the only county of our size on the western
15 slope. The majority of the counties on our side are pretty
16 small.

17 But the biggest thing I want to talk about today is
18 statewide, I think the election officials -- and I can speak
19 to this because I'm the President of the Colorado County
20 Clerks Association as well -- the election officials have
21 found it hard to maneuver between being in charge of the
22 integrity of our elections and the messages that we're sending
23 our voters during times when there's allegations that make our
24 voters fearful for what our election process does or does not
25 do.

1 And so we know, as Colorado county clerks, that our
2 ultimate customer is our voters. They're the ones that keep
3 us in office, if they choose to do so, and they're the ones
4 that we answer to.

5 With that in mind, we do our very best to keep our
6 system transparent and bright, even if there's some murky
7 times that we have moved through.

8 So one of the allegations that we had to address a
9 lot as county clerks at our home base was voters coming to us
10 and saying, What's this? Now we can register and vote with a
11 utility bill?

12 So it actually, the law stayed exactly the same as
13 it had been before. What changed is that you can now register
14 on the same day that you cast a ballot.

15 So a lot of our technical working groups took this
16 issue and decided that we would continue to do the process as
17 we had before. So just like it was handled before, if someone
18 showed up to register and they didn't have one of the IDs on
19 the green side of your screen, then we would mark them as ID
20 deficient or mark their mail ballot envelope as ID required,
21 and then the secondary list we've always depended upon would
22 come into play for the actual casting of the vote.

23 Our residency statute did change. So before it was
24 30 days in a precinct. And now it's 22 days in the state, so
25 that was very significant for us.

1 The change, even though it seems like it's just a
2 couple of little numbers in there and a few words, it really
3 allowed a big shift in philosophy in our state.

4 So before, under the old one, the voter had to sign
5 an affirmation that they moved into the specific precinct
6 30 days prior to the election in order to qualify for the new
7 ballot style.

8 When I say "ballot style," I mean the things that
9 you're eligible to vote on. That's determined by where you
10 live and what districts you're allowed to participate in.

11 Now you just have to say that you are 22 days in a
12 state, and you're automatically going to have residence and
13 get issued a new ballot style. So that brought some problems.

14 The complications that we saw in the coordinated
15 election just this last fall was complicated because, in
16 Colorado, special districts and municipalities can put
17 questions on our ballots in November.

18 And we had an issue because our state law said for
19 counties and state, the requirement to be a resident was same
20 day, but in our municipalities and our special districts, the
21 law was still at the old residency requirement and it could
22 have been 25 days, 30 days, or for a property owner in a
23 special district, it was the same day. So it was super
24 complicated.

25 The issue was litigated. And in both cases, the

1 judges presiding over the hearing said that the clerks did the
2 best they could with conflicting statutes, which was not new
3 to us. And we were in substantial compliance.

4 So this year, though, however, House Bill 1164
5 changed the situation for Colorado, and updated the local
6 district deadlines to be in line with the state deadlines. So
7 going forward, all voters will start voting on the issues and
8 candidates that represent them where they live now rather than
9 where they lived before.

10 So before this legislation we had a 30-day cutoff
11 for new registrations submitted on paper or on line. So we
12 would sort through the paperwork that we got in our offices.
13 And literally if it was a new registrant to us, we would put
14 it in the basket and defer it until after the election.

15 In-person voters, in-person registrations rather,
16 were handled one of two ways past the 30-day cutoff. They
17 were either emergency registrations or provisional voters.

18 So if the voter came to us and they indicated that
19 they attempted to register 30 days before the registration
20 deadline, they signed the affirmation and gave us adequate ID,
21 then we registered them and gave them a regular ballot.

22 If they had not attempted or they were ID deficient,
23 we would issue them a provisional ballot.

24 So now there's a 22-day cutoff for paper
25 registration. I think for obvious reasons we don't want the

1 voter registration drives or campaign putting extra pressure
2 on us in the last few days where we are so very busy.

3 There was an eight-day cutoff for on line because
4 there's some efficiencies in receiving online registration. A
5 lot of the data is already typed for us.

6 And then new registrations now today continue in
7 person all the way through election day if they moved into the
8 state 22 days prior. And just like before, if they're not
9 finding that they did live here 22 days prior within the state
10 or they're ID deficient, they get a provisional ballot.

11 Our process for address updates also changed with
12 this reform. Previously, address changes within the state
13 continued for the voter if they said that they moved 30 days
14 prior to the election.

15 If they said they moved 30 days prior, we would
16 update their voter registration and correct their ballot
17 style, and even mail them the correct ballot style if they
18 were a mail-in voter until eight days before the election.

19 But if they indicated to us that they moved in those
20 last 29 days, we would issue them the old ballot style, or ask
21 them to return to an old precinct to vote.

22 So again, it's not as if we had a hard cutoff
23 before. Voter registration activities were still happening.
24 I think that's somewhat of a misconception with what this law
25 did for us as administrators, and then ultimately what it does

1 for our voters.

2 We still are servicing them, so from the voters'
3 side they probably don't see any difference. The difference
4 is what kind of ballot style they get for them.

5 This is for the in-person address changes. And, you
6 know, I'm going to go back to the other slide because I missed
7 something I wanted to highlight.

8 If they did say that they moved 29 days or less
9 prior to the election, we would give them the old ballot
10 style, but we would have to mail it to the new address.
11 Sometimes that was a little challenging to train our election
12 judges on, and our temporary workers.

13 So in person, like I mentioned before, if they were
14 in a polling place and they didn't wish to return to their old
15 precinct, they became a provisional ballot voter. If they
16 were at a vote center though, where all the ballot styles of
17 the entire county were available, we would simply give them
18 their old ballot style.

19 That was different too. We had a lot of
20 conversation around that before this reform came into play
21 that we were treating voters differently depending on what
22 county they were in.

23 If they were in a polling place county, it was
24 handled a little bit differently than if you were at a vote
25 center county, because you wouldn't have to go anywhere else,

1 and you wouldn't be offered a provisional.

2 So the process now for me is greatly streamlined.

3 And I think that, like I said, our voters really aren't going
4 to feel too much of a difference when they show up in front of
5 us.

6 Address changes within the state will continue all
7 the way through election day without question of when they
8 moved. And if it's submitted eight days prior, we're going to
9 go ahead and mail them the ballot like we did before.

10 Within seven days of the election, they'll have to
11 come to us in person. We'll do address changes, and we're
12 going to process them just like we normally would. And then
13 they're always going to get their new ballot style.

14 So this is going to be a huge efficiency, I think,
15 for all involved because now, going forward, the ballot issue
16 that we issue a voter has no question surrounding the date
17 that they moved or didn't move.

18 There's also list maintenance efficiencies. There's
19 three main components to the things that we mail or notices
20 that we get.

21 So the need for the pre-election notification has
22 been eliminated because now we're in an all mail ballot
23 delivery system. So the information we would have been giving
24 them prior to an election is going to go in the mail ballot
25 packet.

1 The update to an address and a status used to take
2 multiple steps and multiple mailings, mail out a confirmation
3 card, get the confirmation card back, do the data entry, send
4 out another confirmation card, that has been reduced
5 significantly with this new reform.

6 And then the felon and death records, they were
7 downloaded monthly prior to this reform. And now we have some
8 efficiencies that we're going to gain.

9 The monthly NCOA file, which means that we're taking
10 information from the postal service and putting it directly
11 into our voter registration system, and then sending one card
12 to update somebody's address, has -- is going to change our
13 system because we are going to get that notice before we mail
14 a piece that's been undeliverable.

15 We're going to have cleaner voter registration lists
16 because of this, and more ballots are going to be sent to good
17 addresses rather than bad addresses.

18 The felon and death record notifications are
19 downloaded daily during an election cycle now. So this is
20 also going to help with cleaner voter registration lists for
21 the realtime eligibility checks that we need to do now with
22 the voter services polling center model.

23 That was one of the things too that came with this
24 reform is that all the clerks across the state of Colorado are
25 on line doing realtime eligibility checks same day voter

1 registration.

2 So the choices in conduct for an election, before we
3 had, for each type of election, two or three choices per
4 county. So it was pretty diverse.

5 So as you can imagine, when there was an election
6 that was in a district greater than a county, it caused a lot
7 of confusion for our voters and for our campaigns, and for
8 people who were trying to watch us from county to county.

9 This uniformity allows for us to put greater focus
10 on practices, best practices and procedures, and then
11 consistent procedures obviously as well so we won't be redoing
12 our training manuals in between every election.

13 So now what we have is all mail ballot delivery with
14 voting service and polling centers.

15 This is my last slide. One of the things that we
16 found during the first election that was conducted under this
17 new model is that no political party benefitted greater than
18 the other. So this was great data for us to see as
19 nonpartisan election officials, that we were bringing the same
20 service to everyone, that it was fairly well equally
21 disbursed.

22 And the other thing that I think will be good to see
23 going forward is what the overall budgetary impact will be of
24 this legislation because of the efficiencies that I just spoke
25 through. I don't think that we have a real good handle on

1 what the labor and postage and printing and that kind of thing
2 is going to bring.

3 That's it. I would welcome any questions.

4 MR. ZAKHEM: Questions?

5 DR. ATKESON: I was wondering about the felon
6 notification. I'm not familiar with how that works.

7 I think back to Catherine Harris and how she was
8 removing people off the polls because they had like names.

9 How do you confirm in the case of felons to keep
10 from disenfranchising them and ensuring they're really that
11 person?

12 MS. REINER: So in Colorado we have a minimum
13 matching criteria for anything that we do to a voter,
14 including removing them from the rolls.

15 That includes their name, date of birth, address
16 sometimes; there's like four things that we have to go through
17 to make sure that the voter is who we've determined they are
18 in the rolls. Then there's a confirmation mailing that goes
19 to them and says we have removed them.

20 In my county I know that I had a gentleman that we
21 had not done a good job with. And he came and he was quite
22 upset that he had been removed as a felon.

23 There was a felon with the same date of birth and
24 the same first and last name as he. We were able to sort that
25 out and get him reregistered and apologize profusely.

1 I've had it happen to me.

2 MS. LYTTLE: I'm not sure if you can answer this
3 question.

4 But were there, are there provisions in the voters
5 modernization legislation that are being rolled back in this
6 legislative session, or attempts to roll any of them back?

7 MS. REINER: There are attempts to roll it back.
8 And so far, they have not been successful.

9 MS. LYTTLE: Certain provisions, or the entire --

10 MS. REINER: One senate bill was for the entire
11 thing as far as we could tell. And there was an ID bill that
12 wanted to strike a couple of things off of our secondary list
13 that failed.

14 MR. CHOATE: Can I just interject?

15 The senate bill was delayed.

16 MS. REINER: Oh, you're right.

17 MR. CHOATE: So it wasn't to roll it back
18 completely, but to delay implementation. But it failed. It
19 never made it out of committee.

20 MR. ZAKHEM: All right. Thank you.

21 (Applause.)

22 MR. ZAKHEM: Before our next speaker, I would like
23 to take advantage of recognizing a few people in attendance.

24 We're lucky enough to have Martha Tierney and
25 Richard Westfall, the co-chairs of the Colorado Elections Task

1 Force, and kind of spearhead our efforts in fostering good
2 relations among the parties and the election officials.

3 For Republican and Democrats, they're sitting on the
4 wrong side, actually. They actually get along really well.

5 Another esteemed guest we have here is Ryan Call,
6 who's the state chairman for the state Republican party. He
7 probably needs some CLE credits to keep his law license.

8 All right. So now we're going to hear from another
9 county clerk, Matt Crane, who is the county clerk and recorder
10 for Arapahoe County. He previously ran elections in Arapahoe
11 County for six years, seven years.

12 And I know firsthand this guy has dealt with
13 election day litigation. And he's no stranger to the
14 trenches.

15 Thanks for coming.

16 MR. CRANE: Good afternoon, everybody. My name is
17 Matt Crane. I am the clerk and recorder for Arapahoe County.

18 I think that Sheila's done a fantastic job kind of
19 outlining what the new model of elections looks like in here
20 in Colorado, so I drilled down a little more what it's going
21 to mean specifically to Arapahoe County.

22 To do that I started back in 2010. That's where I
23 will start to provide some historical perspective on how it's
24 evolved, at least in Arapahoe County over the last few years.

25 So in Arapahoe County, the 2010 general election,

1 Arapahoe County conducted a traditional polling place
2 election. We had 198 locations.

3 In-person voters, and this includes provisional
4 voters as well, we had just over 42,000. The location setup
5 was done, the polling location setup was done on the morning
6 of the election by election judges.

7 We had 1,500 election judges. The average length of
8 a judge class was two hours. We had 200 paper poll books, or
9 198 I guess. Voting machines, we used 1,100 voting machines
10 at the 198 locations.

11 Provisional ballots cast in 2010 was just under
12 7,000, and then we had just over 5,800 of those that were
13 counted.

14 Mail ballots, we issued 206,000, almost 207-, and
15 then cast we had almost 160,000, so it was about 80 percent of
16 those who cast a ballot in 2010 did so by mail.

17 The cost of that election, our last polling place
18 election, was one thousand -- excuse me. One thousand? I
19 wish -- 1,500,000.

20 In 2012 we switched to a vote center model. We
21 thought that we would find operational and cost efficiencies
22 with this, which we did.

23 In-person votes, 65,000. The location setup changed
24 a little bit. We went to setting up the locations one week
25 before, and we hired setup teams to go out and do that for us

1 because of the technical nature of the setup.

2 We had 560 election judges, so that number dropped
3 significantly. Our average length of our judge class was
4 about three hours. We had 265 laptops out for the electronic
5 poll book.

6 Our provisional ballots -- this is something that
7 surprised us a little bit. Normally when you go to vote
8 centers you think your provisional ballot numbers are going to
9 decrease. In 2012 ours actually increased from where we were
10 in 2010. We had 7,000, and then ironically enough we counted
11 just about the same amount, 5,800.

12 Mail ballots issued, about 260,000, and cast we had
13 223,000, again, close to 80 percent. So in a lot of ways
14 before 1303 you could make the argument that Arapahoe County
15 was an all-mail ballot county anyway just based on the 80-20
16 split between mail and in person.

17 The cost of this election, we did see a decrease in
18 the cost. It went down to \$1,375,000.

19 Now, what does this look like for 2014? We are
20 going to have 25 election day voter service and polling
21 centers.

22 One thing I didn't note on the earlier slides, in
23 2010 and 2012 we had eight early voting locations. But
24 because of the language in 1303 we actually have to increase
25 that number to 11, go from eight to 11.

1 Location setup, we're going to do the same thing
2 where we set up one week before election day. Election judges
3 hired, we figure about 380. And the numbers this year are
4 still a little fluid as we still try to nail down what our
5 plans are going to be.

6 The average length of our judge class, if you look
7 at that, that jumps significantly up to 40 hours. That's
8 expressly because of same day registration.

9 The integrity of our voter registration list is so
10 very important, when we bring in temps to work on the
11 election, to do voter registration in our office, we don't let
12 them really go free and start working without supervision
13 until after that 40 hours.

14 So we don't know why the judges, out in these
15 facilities, these remote facilities, would be any different,
16 especially since we won't have full-time staff there with them
17 to look over their shoulders to make sure they're doing that
18 correctly.

19 Electronic poll books we'll cut back a little bit to
20 180. Voting machines, we're still going to put out 300 voting
21 machines. And then the provisional ballot cast obviously
22 that's to be determined.

23 Now, up top I have "election day" in quotations
24 because we no longer think of election day in terms of one
25 day. What we learned from our vote center experience in

1 2012 was really significant in terms of our election judges.

2 We figured in our 2012 "projectings" that our
3 election judges would need to turn over a voter every three
4 minutes on the computers. In our training classes that we
5 have for them, they were averaging between one and a half and
6 two minutes, so we thought we had it made in the shade.

7 Well, on election morning when they showed up to
8 Center Point, which was our busiest location, and before the
9 polls even opened at 7 o'clock there was a line going around
10 the block down the street, their first reaction was panic.

11 I don't blame the judges, right? This is a job they
12 do once every two years, and we're asking a lot of them.

13 So the reason we're, I have it in quotation like
14 that is we're going to open up the Saturday before. This will
15 allow our judges to have greater access and get more
16 comfortable in the voting locations and in the different
17 situations.

18 And then, of course, another positive, which isn't
19 to be taken lightly either, is greater access to the ballot.
20 So it's two reasons that we're doing that. But we feel it
21 will give our election judges a chance to get much more
22 comfortable before any rush they may see on election day.

23 Mail ballots. We are estimating that we are now
24 going to send out 350,000 mail ballots based on 1303, so
25 that's an increase of 100,000 ballots from 2012.

1 And the cost for this election -- now, this is
2 budgeted -- is over two million now. And the main drivers of
3 that are the expanded election judge training, the more time
4 that we're going to have judges out in the field, and the
5 printing costs of sending out 100,000 more ballots and the
6 postage and everything associated with that.

7 So that's what we're projecting at this point.

8 Now, I think it's fair to say that for counties that
9 have been vote center counties before where, as you saw in an
10 earlier slide you already saw a significant drop for us in the
11 cost of elections going from polling places to vote center.

12 So we already realized some of the savings that I
13 think other counties are looking at, but because of the items
14 I just mentioned, that's why it's shooting way back up for us.

15 Okay, 2013, this was the first election, the
16 coordinated election that we conducted under the new rules.
17 And I didn't move it up further because coordinated elections,
18 as we all know, the turnout is much smaller and the
19 requirements for the VSPCs are much smaller, so it's really
20 not a good litmus test for what we're looking at this year.

21 But what we did learn this year is, we have more
22 in-person voters than we first thought. When Arapahoe County
23 ran previous coordinated elections where the model is very
24 similar to what is called for under 1303, we never had one
25 person show up to vote on a voting machine. It was all mail

1 ballot. If they came in they would request a paper ballot,
2 replacement mail ballot, and be on their way.

3 In 2013 we had 560, 556 people show up to vote on a
4 voting machine, which in a jurisdiction of 350,000 active at
5 the time doesn't seem like a lot. But it was quite
6 significant for us to think that we may get more people
7 turning out in person in 2014 than we'd originally planned.

8 Also, the timing of the ballots cast. In the
9 2012 general election we had 16 percent of our mail ballots
10 come back on election day. In 2013 we had 40 percent of our
11 ballots come back on election day. It was a huge huge
12 increase for us on election day.

13 Going into election day in 2013 we were completely
14 caught up with our ballots; all the ballots that had been cast
15 had been gone through and counted. So we felt that on
16 election day we were doing pretty well. And the ballots kept
17 coming in and coming in and coming in.

18 So it was a great lesson learned for us that we have
19 to beef up our efforts on election day to make sure that we
20 can accommodate that. I think that's something that will be
21 very interesting to watch as people get used to the new rules
22 under 1303.

23 A lot of people like to hang on to their ballot and
24 wait till the last minute for that October surprise. And now
25 that, you know, all of the ballots are going to active voters

1 by mail, it makes sense that it will come late like that.

2 So that's something that jumped out at us, and we
3 will make sure that we are ready to address this year.

4 Okay, in terms of transparency efficiencies and
5 security of mail ballots, one of the big complaints that, at
6 least I heard in my county, was making everybody vote mail
7 ballot, and people had concerns about the mail ballot process.

8 So we're doing a couple of things in Arapahoe County
9 to help these people's concerns about that that makes the
10 process more efficient.

11 The first is ballot trace. It's a system that Amber
12 has run with in Denver before where it will allow people to
13 sign up. It's an optional sign-in where they can get text
14 messages or emails or voice calls about the status of their
15 ballot, when their ballot's printed, when it hits the post
16 office, when it gets back to us.

17 It will allow us to send text messages to people if
18 their ballot has some kind of deficiency to it; in other
19 words, if they forgot their signature or something like that.
20 So that's one thing that we're trying to do to make sure to
21 try to alleviate some of the concern.

22 The other piece that we're doing is purchasing a
23 mail ballot processing machine, which will create efficiencies
24 for us on how we process ballots.

25 In 2013 when we looked at our process we realized we

1 touched the ballot, each ballot got touched eight times
2 between when it was cast at a ballot box and when we put it
3 away to be stored for the election, which was entirely too
4 much for us.

5 I think we figured we touched ballots over two
6 million times for this election, which is completely insane
7 when you think about it. We think the new ballot processing
8 machine will cut that at least in half.

9 The other good part of it is it includes automatic
10 signature verification software, which we are looking forward
11 to using this year, which we think will be a far more accurate
12 look at the signatures on the ballot as opposed to judges,
13 especially on election day when they've been there 12, 14
14 hours, their eyes get a little blurry and some signatures that
15 maybe should not be accepted it will be a tougher look at
16 those signatures when they come through.

17 Finally, voter education and outreach. As I
18 mentioned at the beginning, this is, for the general election
19 now, for this election this will be the third straight general
20 election where we're introducing a different election model
21 for Arapahoe County. We have a lot of work to do in terms of
22 voter education and outreach.

23 So we're doing lots of mailings and community
24 events. We're going to try to be much more active with videos
25 and UTube videos.

1 I don't know if any of you are familiar with the
2 vote naked video that's been out there. When Illinois went
3 mail ballot they did this whole campaign about voting naked.
4 It was very creative. It went viral. What a great, creative
5 way to get the message out.

6 We're going to -- luckily for me the vote naked
7 thing's been done, so we're not going that route. So we'll
8 have to find some other creative way to do that.

9 We're also on social media, Facebook, Twitter,
10 LinkedIn, and UTube. As was mentioned earlier by one of the
11 other panelists we're always looking for more likes. So I
12 encourage you to visit our website, arapahoevotes.com.

13 We've got our social media icons, and we're doing a
14 great job of trying to get even better of notifying our
15 citizens about what we're doing and how to get where we're
16 going.

17 On our website, we have a lot of great tools. As I
18 mentioned, arapahoevotes.com, where we have a "find my
19 nearest" button where you can go and put in any address in the
20 county and it will give you the nearest voter service or
21 polling center, it will give you the nearest mail ballot
22 dropoff location, it'll give you the nearest clerk's office;
23 there's a whole host of information on there.

24 We also post our wait times for all of our vote
25 centers on line as well. So that's a great tool for our

1 citizens.

2 Of course sample ballots in advance. We try to let
3 people know it's not just a sample ballot with every question
4 on the county. You can pull up your specific information and
5 get only the issues that you're going to be voting on, which
6 we're going to encourage people to do to cut down the time to
7 vote on VSVP this year.

8 With that, any comments or questions? Yes, ma'am?

9 DR. ATKESON: Yes. I notice you have like
10 80 percent or more, 80 plus percent of your provisional
11 ballots counted. That seems high, seems like a high number
12 like something administratively is going wrong.

13 What are you doing to -- why are there so many
14 provisional ballots that are counted, and what is the reason?

15 MR. CRANE: That's a great question.

16 I think what we saw -- and this goes back to judge
17 issue and training issue -- I think when the judges were going
18 through and they saw the lines of people, and people waiting
19 in lines, when they're there a long time sometimes they get a
20 little upset.

21 So what I think the judges did -- well, I know this
22 is what they did, especially at Center Point where I was at,
23 they would try to look somebody up but if they didn't find
24 them on the first pass they would say, Okay, I don't see you.
25 You're going to have to vote provisional.

1 Instead of following their training where they
2 said -- I'm in the system as Matthew Crane, but if I come in
3 and sign as Matt Crane, the system wouldn't find me that way.

4 So you have to take more time and search, use a few
5 different search functions. So I think that was a lot of it.

6 It's definitely a training issue that we'll continue
7 to hammer home in the 40 hours we'll spend with them this
8 year.

9 MS. FELDMAN: I have a number of questions.

10 Thank you for your report. I mean, hearing both of
11 you makes me realize how very complex this is.

12 First of all, the poll workers, the people that work
13 at your polls, how much are they paid? And what is the
14 composition of that?

15 What we found in New Mexico was that our poll
16 workers were mostly senior citizens, are poorly paid until
17 about ten years ago when we increased their pay a little
18 bit -- they were paid about \$75 a day.

19 Is it any different in Colorado?

20 MR. CRANE: It is. Counties have a little bit of
21 leeway in what they pay. In 2012 we paid our judges \$225 and
22 \$250 for the day, and then \$250 for training.

23 But now going forward, because we're asking for such
24 a significant greater time thing, we're going to pay \$12 an
25 hour. So it will be strictly by hour, so it will work out a

1 little better for them in the long run.

2 MS. FELDMAN: Okay. Because we've tried to get more
3 younger people in this, and maybe do some sort of pilot
4 program with colleges and universities. But so far I don't
5 think it's --

6 MR. CRANE: We have a student judge program here in
7 Colorado where we can use high school kids 16 years and older.
8 We actively recruit our high schools for that because kids
9 aren't afraid of technology.

10 We've had some college kids show up. But in all
11 honesty, they're not as reliable as high school kids, right?
12 Because, you now, college they get up when they get up and
13 they do their things.

14 Whereas high school kids, their moms grab them by
15 the ear and say, You got to get there. We've had a lot of
16 luck with high school.

17 MS. FELDMAN: Interesting. Okay.

18 Another question. You mentioned that you had like
19 40 percent of the people show up, not vote by mail but
20 actually vote in person on election day.

21 MR. CRANE: No. We had 40 percent of the ballots
22 cast came back by election day, mail ballots cast.

23 MS. FELDMAN: I see. Well, one of the things that
24 we experienced in New Mexico in the legislature anyway was
25 county clerks being fairly reluctant to extend the hours or to

1 do more early voting or to do even more mail-in voting because
2 of the difficulty of counting them in time.

3 The concern was the speed of reporting the results
4 rather than the access of the voter. And I wonder how speedy
5 are you in reporting your results, and how important is that?

6 MR. CRANE: Well, there's always the age-old
7 argument, speed versus accuracy.

8 Prior to 2013 I thought we were pretty good. But in
9 2013 -- I still think our processes are good; we just got
10 significantly more turnout on the last day than we
11 anticipated.

12 In Arapahoe County we didn't get done counting
13 ballots until Wednesday night into Thursday morning, which is
14 completely unacceptable, especially going into a general
15 election year.

16 If we have a close election, and in Arapahoe County
17 and in the state of Colorado there's a couple of races that
18 look like they're going to be very very close.

19 We will make sure that we can get results out as
20 quickly as possible, and not have to go days to get the
21 results.

22 MS. LYTTLE: The changes in each election cycle, I'm
23 wondering how you publicize those to communities, and more
24 specifically whether or not you use community groups,
25 indigenous leaders to help publicize those changes in election

1 procedures.

2 MR. CRANE: I can say in the past in Arapahoe County
3 we've relied strictly -- actually not strictly, but mostly on
4 mailings and, you know, we would do some PSAs on our local
5 cable channels.

6 I'm going to be more aggressive this year in using
7 our stakeholders that way in helping us spread the word. And
8 every medium we can think of we're going to try to make sure
9 that we have a presence there so that we can get the word out.

10 Because, you know, again last year 1303 -- 2013 we
11 did it this way. We used the rules under House Bill 1303, but
12 we all know general elections get a much higher turnout.

13 There's a lot of people that don't start paying
14 attention until October or mid October of those years, so we
15 have to make sure that we're well out in front of them to let
16 them know that they're going to get a ballot in the mail, and
17 not completely disregard it, you know, if they don't want to;
18 I mean, to be on the lookout for it.

19 MS. LYTTLE: I'd really encourage you to use
20 those stakeholders. And specifically those indigenous leaders
21 do more than social media or, you know, some letter could ever
22 do, especially in places like where you are working.

23 MR. CHOATE: I'm curious. What percentage or amount
24 of the 2.1 million you budgeted this year do you anticipate as
25 a rollout cost? So, a first-time cost that you don't plan to

1 repeat in future elections?

2 MR. CRANE: Honestly, none. And the reason for that
3 is because we went to vote centers already, so a lot of the
4 technology costs that the other counties are going to have to
5 incur to go from a paper poll book system to an electronic
6 poll book system, we've already done that and have the
7 infrastructure in place.

8 We will look at judge training after this year, and
9 see if it was significant enough or if maybe we have overkill
10 in there and we can pull back a little bit. But we won't know
11 that until after this year.

12 So potentially maybe there. And then -- but I don't
13 know that I'll be inclined to cut back too much because as '13
14 wasn't a great litmus test for '14, '14 will be an okay test
15 for '16 but we always get dramatically higher turnouts in
16 presidential elections than we do in gubernatorial elections.

17 So to say that I would cut much back between '14 and
18 '16 is very unlikely.

19 MR. CHOATE: What did your commissioners say to the
20 \$800,000 increase? Do you think that they're going to be okay
21 with that budget going forward?

22 MR. CRANE: I think we did a good job of educating
23 our commissioners on what the bill entailed and what it was
24 looking like.

25 And in Arapahoe County in 2012 where we had Center

1 Point and some long lines that nobody wants to see happen
2 again, there was a good commitment from the entire county to
3 make sure that we invest properly in elections going forward.

4 THE FLOOR: On the election judges, will Arapahoe
5 take the route that all judges will be trained to do
6 registration at every access point? Or will you have separate
7 registration access points?

8 MR. CRANE: No. We're going to train all of our
9 computer judges, I guess is the best way to phrase it, all of
10 our computer judges will be trained on everything because we
11 want to be able to account for if somebody calls in sick one
12 day or something like that.

13 We'll train alternates as well. But our plan right
14 now is to train all of our computer judges on all of the
15 different applications and processes that they'll have to
16 know.

17 Our machine judges, they won't touch the computers;
18 we'll keep them separate. But our computer judges, we want to
19 make sure they can do everything.

20 THE FLOOR: So the 40 hours is just for computer
21 judges? That's some portion of the --

22 MR. CRANE: Right, right.

23 MS. MC REYNOLDS: I was going to ask do you
24 anticipate savings for mailings and the elimination of the --
25 is that factored in to that?

1 MR. CRANE: Yes.

2 MS. MC REYNOLDS: So that's already taking out all
3 of the savings on mailings?

4 MR. CRANE: Yes.

5 MS. MC REYNOLDS: And then for ballot trainings, so
6 we don't just use it, we created it.

7 I had to -- Matt's one of my oldest friends. I had
8 to make sure I mentioned that. That was a big deal.

9 MR. CRANE: We're very excited to use it, and we're
10 glad you guys piloted it and got all the bugs out.

11 MR. ZAKHEM: Anybody else? All right. Thanks,
12 Matt.

13 (Applause.)

14 MR. ZAKHEM: Okay. We're down to our last
15 presenter.

16 Roman Montoya is the deputy clerk of Bernalillo
17 County, New Mexico. He's going to talk about vote centers.

18 MR. MONTOYA: I think Matt covered most of it. So
19 if you have any questions?

20 I'm going to reiterate some of the things that Matt
21 said, but I'm going to put our own twist on it. You guys in
22 Colorado have had vote centers since about 2003. And the last
23 election cycle, 2012, was the first time they were allowed
24 statewide in New Mexico.

25 The presentation I'm going to give to you kind of is

1 what we gave to our stakeholders and to our groups when we
2 were implementing exactly what it is, letting people know what
3 the benefits were. This is more going towards 2014, what we
4 were talking about from the 2012 election to the 2014
5 election.

6 Some of the areas we're going to cover today are
7 what's the precinct versus VCC, education and marketing that
8 we did to our stakeholder groups, administering of the
9 election, the feedback, and the futures of VCC.

10 So the VCC obviously is consolidated polling
11 locations where you can vote at any location. That means you
12 can vote here or here, here or here if you see a location.

13 Precinct voting doesn't allow you to do that. You
14 can only go to your one location. And it does cause the
15 issues of provisional ballots. Nobody likes provisional
16 ballots. Here at the election sites that's a four letter word
17 with a lot more letters.

18 So what we're going to talk about is some of the
19 pros and cons of VCC directly up against precincts. The
20 precincts you can only go to their own precinct. The VCCs you
21 can go to any of our 69 locations that we have in Bernalillo
22 County.

23 So like everything in life, we keep score. And VCCs
24 1, precinct 0.

25 Precinct: Voters call upset not knowing where to

1 vote. With the VCC that greatly reduced the phone calls that
2 we get by upset voters.

3 And of course, that's 2-0.

4 Just to let everybody know, we do have a call center
5 staff that is on board election day. We always have about
6 20 people that just take phone calls.

7 The majority of the phone calls they're taking are
8 things such as, Where do I vote? I didn't vote here last
9 time. That's not where I voted at the school election.
10 That's not where I voted at the city election. You guys are
11 trying to disenfranchise me because you keep changing my
12 polling location.

13 We got that down by 10 o'clock in the morning down
14 to four people, and we got to reassign the other 16 people to
15 other election duties.

16 So it really really helped the voters, and it really
17 helped us not have to worry about answering those questions,
18 and put those resources into other aspects of our election.

19 The precinct, registered voters at the wrong
20 location get provisional ballots which may not have their
21 correct candidates. At VCC the voters cannot go to the wrong
22 location, so they always will get their correct ballots.

23 Again, 3-0.

24 One thing that we talked about, like what Matt had
25 talked about, we actually had more provisionals than we

1 thought we were going to have. It did increase from the
2 previous election.

3 But we figured if you give everybody the ballot that
4 they get, they can't go to the wrong location, so we should
5 cut down significantly on the amount of provisional ballots.
6 And that didn't happen.

7 A lot of it had to do with what Matt had talked
8 about, poll workers not looking up the correct name and not
9 finding somebody, and giving up too soon and issuing
10 provisional ballots.

11 A lot of those might've been data entry things. It
12 might've been what Matt was talking about, and instead of
13 putting Matthew they were putting Matt. Or could have been a
14 human error, transposed on our side when we entered the
15 registration in the first place.

16 And the last one we have are pre-printed ballots and
17 paper rosters. So we have to have a certain number of
18 pre-printed ballots no matter who shows up. So if people
19 don't show up to vote then we have to waste a lot of
20 pre-printed paper ballots and paper rosters.

21 We use ballot on demand systems, which you have to
22 use electronic poll books and electronic signature pads, which
23 helps us eliminating having to do any kind of paperwork other
24 than the ballots themselves.

25 So it looks like it was a clean sweep of 4-0.

1 Next area we're going to talk about is the education
2 and marketing. This is what we focused on to get buy-in from
3 all the stakeholders we have.

4 And who are stakeholders? Our stakeholders are the
5 voters, obviously, the county commissioners, the political
6 parties, the community activist groups, civic groups,
7 neighborhood associations, and our internal staff and our poll
8 workers.

9 Those are other people that we had to have buy in as
10 well because they're the ones who actually have to run it, and
11 you want those people to have buy-in. You want those people
12 to be the best representation of what you have introducing
13 something new out there in the public.

14 If they're putting on a smiley face and they're
15 saying they love it, then it's more acceptable by the actual
16 voter when they come in to vote.

17 Some of the groups we targeted were civic groups,
18 neighborhood associations, political parties, and any groups
19 we had that would ignite voter participation.

20 And we sent invitations out to everybody. Those who
21 accepted we did talk to those groups and gave those
22 presentations.

23 So some of the other things we did was we used
24 television advertisement. We used static and electronic
25 billboard advertisements, radio station advertisements, cinema

1 theaters, so prior to the movie they would see an
2 advertisement, print publications, and social media, and our
3 website.

4 We also sent a registered voter out -- a registered
5 letter out to everybody letting them know about the upcoming
6 locations. On the back it had all 69 locations and a map, and
7 then it let them know also where they can vote and the times,
8 and all the information that we had on there.

9 Our esteemed Professor Atkeson gave us a quote. We
10 have a good, great partnership with the University of New
11 Mexico. They go out and have an army of students and
12 professors and educated people.

13 And they go out there and they talk to the poll
14 workers, they talk to the voters when they come out, and they
15 get a lot of information which is extremely helpful for us.

16 And it's about two or three reports, each one about
17 that thick. They've been doing this for years. We get a lot
18 of feedback, and that helps us to know what works and what
19 doesn't work.

20 Sometimes when you run the election you get that
21 tunnel vision where you can't really see outside of what's
22 happening. So they're our eyes and ears out there that tell
23 us, No, this isn't working or, Yes, it is working, and then
24 you tweak it and help it.

25 What Professor Atkeson said, or what I made up she

1 said is, Overall, the County made a strong effort, did a good
2 job ensuring the voters knew about the changes and an
3 opportunity to vote absentee by mail, early in person, or on
4 election day.

5 This is supported by the fact that more than nine in
6 ten or 93 percent of the in-person voters knew before they
7 went to vote that they could vote at any center.

8 Like I said, in New Mexico it was a bigger deal for
9 us because this is the first time we'd ever gone to this
10 model. We'd always gone just the straight precinct voting.

11 So what we're going to talk about is some of the
12 features that we used. We have a mobile AP that was available
13 on the Android and it was available on the Apple also on
14 iPhones.

15 And what it does, this is a screen shot of what it
16 looks like on this side. You'll notice it has three tabs:
17 home, hours, and dates and locations. So this is the home
18 screen.

19 When you go to hours and dates it gives some general
20 information about the election, early voting time, general
21 election day.

22 On locations we actually had it tied up to Google
23 maps to where it would list all of them. And you can list
24 them by three separate things. You can list them by
25 alphabetically, you can list them by distance, and you can

1 list them by wait time as well.

2 So we had -- that was a great feature that we didn't
3 get to introduce until about two weeks before the election by
4 the time we got all the rights from Apple and Google to let us
5 do everything. We didn't get to use that as much as we could,
6 but that's going to be heavily pushed in our 2014 election.

7 We have another site called My Voter Information,
8 MVI. What that does is it allows the voter to see all the
9 polling locations at one point on your computer screen. You
10 see all 69 Goggle dots. Everybody's seen the Google maps with
11 the little placeholder.

12 And it has a wait time AP on that that shows if that
13 dot is colored green that means there's less than a 15 minute
14 wait. If it's colored yellow, that mean there's a 16 to 29
15 minute wait. If it's colored red that means 30 minutes or
16 more.

17 You can look up the whole city at one time at one
18 shot and kind of have an idea of where it is you want to vote
19 and where the best place to go vote is.

20 It also tells you when you get there all of the
21 districts that you're eligible for. It tells you your
22 information. It gives you a copy of your sample ballot as
23 well.

24 There's a link. We have about a little over
25 500 combinations of different types of ballots you can get so

1 it has yours specifically to where you're tied at. You can
2 click on your sample ballot and it gets you right there.

3 I feel like I'm at the Oscars. I'm waiting for the
4 music to start.

5 I've talked a little bit about the study that
6 Dr. Atkeson's group does. One of the things that we've got
7 some of the feedback on there was the overall experience for
8 the VCC models was positive, both from the voters and the poll
9 officials who are hired separately and were polled separately.

10 So 97 percent of the people liked VCC better than
11 precinct voting, and 81.8 percent say the voting at the VCC
12 was easy.

13 The 97 percent, that's a number that's going to be
14 hard to improve. If that ever goes higher I'll be surprised
15 because you just can't please everybody.

16 You could actually go knock on people's doors and
17 hand them the ballot, take it back from them, take it back and
18 actually count it, and they still wouldn't like it for
19 whatever reason.

20 But the 81.8 percent is a number that we are trying
21 to target. We believe that with all the help we got, the
22 feedback that we get, the first time running a VCC election on
23 the scale that we did we thought this was going to be -- I'm
24 really happy with the 81.8, but that's a number that I know we
25 can increase a lot. We will be increasing that number.

1 The poll workers, about 96 percent stated that they
2 liked the VCC model better than the precinct. That's one of
3 our biggest, and we had a buy-in.

4 Part of the problem we had was training. We did a
5 skills assessment test. Some of the people who were working
6 at the polling locations aren't familiar with using a mouse
7 and being able to see a screen with a small box in it.

8 We had about a 15 minute skills assessment exam for
9 every single poll worker who was going to be working on the
10 laptops. A lot of them didn't make it. A lot of people had
11 been working the polls for years with us. We got a little bit
12 of flack back from some of the people saying, I know what I'm
13 doing.

14 So we do love that experience with those people, so
15 we did move them to another position that didn't have the
16 responsibilities of using the computer.

17 This is my last screen. I wanted to show everybody
18 the pre-printed ballots we had to do in New Mexico before and
19 the amount that we had, we spent about \$2 million strictly on
20 the printing of the ballots; that's the only thing that cost
21 is for right there.

22 In 2012 that's what our cost was, \$900,000. We had
23 about a million dollar savings just on that by itself.

24 These are some of the achievements and recognitions
25 that we got. The Pew center for the state, the National

1 Conference of State Legislators, the Oversee the Vote
2 Foundation, and the Center for Excellence in Election
3 Administration all gave us recognition.

4 That's it for my time, but I have time for
5 questions.

6 THE FLOOR: I just wanted you to throw out there,
7 when we talk about counties, people don't really know when we
8 are talking about Bernalillo County, we have 33 counties in
9 New Mexico.

10 Make sure everybody knows how many people and what
11 percentage of the state you're talking about right there.

12 MR. MONTOYA: Our state's a fairly small state. We
13 have about 433,000 registered voters in Bernalillo County,
14 which makes up approximately a little bit less than half of
15 the entire state's population.

16 So we pretty much cover -- we're the only big
17 city -- big city. Not compared to Denver or anything like
18 that. But we're the only big city in New Mexico. So we kind
19 of, we have a lot of things -- our VCC model is a little
20 different than some of the other cities.

21 These present challenges for every single city out
22 there.

23 MS. BICKEL: We talked about this when I talked
24 about Dona Ana County had vote centers at the same time that
25 Otero County had precinct based voting.

1 Because under our statute counties can opt in to
2 vote centers but they're not mandated.

3 So how do you guys address the challenges of people
4 getting confused from other counties, and think they can vote
5 at a vote center when they can't?

6 MR. MONTOYA: This situation kind of came up in the
7 2012 election.

8 One of the counties directly to the north of us,
9 Sandoval County, had a lot of long lines. And it's only a
10 suburb of Albuquerque, so the separation is basically
11 nonexistent other than streets.

12 A lot of people in Sandoval County thought they
13 could vote in Bernalillo County. A lot of them came down and
14 cast ballots here.

15 We had to tell them we had to issue them provisional
16 ballots with the understanding, You're in Sandoval County. We
17 can give you a provisional ballot, but unfortunately it's
18 probably not going to count. It's not official until we do
19 the canvas.

20 We did have a lot of that happen. A lot of people
21 just wanted the fact that they voted out there because they
22 knew the fact that they weren't going to get their vote cast
23 in Sandoval County, but they did want to say they showed up to
24 vote so they did do that.

25 We had other people from other counties doing that

1 as well. Hopefully the education, that being the first time
2 for the voter having to do a VCC election, hopefully that'll
3 help increase the awareness for the next time we have
4 something like that.

5 MS. FELDMAN: You know, congratulations on all this.
6 I think you need to thank the academy.

7 But you've eliminated a lot of these precinct
8 polling places -- they were neighborhood polling places
9 earlier -- and consolidated them into several of them.

10 Feedback that I got was, or question I guess, how
11 did you select where those polling places were? Because the
12 location of a polling place in the past has been thought to be
13 rather important to the surrounding area.

14 And so if you don't locate polling places in a low
15 income area that's an Hispanic neighborhood, there's feelings
16 that, you know, maybe you're doing that on purpose.

17 And, you know, it's all tied in with who actually
18 makes the decision as to where these polling places should be
19 located. And is it somebody that's an elected official that
20 should be making that decision? And maybe it wasn't.

21 But when you have county clerks that are elected in
22 partisan elections making some of those decisions, I think the
23 question is, is it always unbiased?

24 MR. MONTTOYA: What we did, I can show you on the map
25 right here. All the ones in the stars are the voting

1 convenience centers. The ones in the green, which is hard to
2 see on the screen, are our early voting sites which turn into
3 voting centers on election day.

4 What we are mandated by our state New Mexico is you
5 have to have one voting convenience center for every ten
6 precincts. That would mean we have 440 precincts, that means
7 we'd have to have 44 locations.

8 The way we did it, we had 69 locations, so we had
9 "24" more locations than we actually needed.

10 Because we wanted to make sure we covered every
11 area, if you don't know Albuquerque very well, this is I-40
12 right here and I-25 coming down the middle so we had four
13 separate quadrants basically in Albuquerque.

14 We tried to distribute as evenly as possible with
15 all of the previous voter data that we had from prior
16 elections.

17 It's hard to say who's going to vote at a VCC
18 because we had never done a VCC election before so this was
19 the first time at that. So we decided based on past history
20 we knew where people turned out to vote.

21 We figured it was the northeast heights and the
22 southeast heights where we were going to have the most people
23 show up. You see more stars on the right-hand side. And
24 that's mostly because of the fact that that's where we have
25 higher turnout of voting.

1 You'll see some spaces over here. That's not
2 because that's not an area --

3 MS. FELDMAN: My district. My district I might want
4 to point out.

5 MR. MONTOYA: It is spread out a little more.

6 This area right here, the south valley area, there's
7 a lot of farming communities down there, there's a lot of
8 ranches down there. There's a lot of area that's spread out.
9 We don't have the consolidated urban area we do on this side
10 of town.

11 That's part of the reasons why we did it. Every
12 single site that we have is within or on a route for a bus
13 route or a major transit route or a major street so there's
14 nothing on the side streets, nothing hidden away; everything
15 -- you can see all of these from streets when you drive by.
16 They're very transparent for people.

17 What we found out was about 75 percent of the people
18 who vote, that live within a one mile radius of these stars,
19 vote at that place. That was for early voting.

20 On election day it was about the same thing as well.
21 A little bit less on election day. And the reason is, people
22 were going a little bit further out on election day -- not
23 election day, I'm sorry, early voting -- because they saw it
24 for the two and a half week process, the time that we have
25 them out there.

1 So they were driving by them all the time. They saw
2 them on their way to work, on the way to the mall, on their
3 way to pick up a child from childcare. They were seeing these
4 sites and they realized they could go to different locations.

5 So we had a lot of people vote further away on,
6 during the early voting process. On election day they got a
7 lot closer to their location.

8 MR. CHOATE: You have no excuse absentee?

9 MR. MONTOYA: Yes.

10 MR. CHOATE: What percentage do you have in your
11 county?

12 MR. MONTOYA: We're fighting the trend of everyone
13 else. We are actually going down in the absentee voting
14 because we found out, the reason is the political parties were
15 really pushing early voting. And they pushed it hard in the
16 2012 election. Because they did that, not as many people who
17 would normally absentee vote were absentee voting.

18 Ours went up and down. If you look at Bernalillo
19 County there's no trend of it going up. They trended it
20 spiking at 80,000, down to 40,000, up to 30,000, up to 50,000
21 and down again.

22 So it's hard for us to have a trend on what's going
23 to happen. A lot of it depends on how the political parties
24 decide to push their constituents to vote.

25 MR. CHOATE: Can you designate yourself permanently

1 absentee ballot? Or do you have to on each election?

2 MR. MONTOYA: Each election you have to ask for one.

3 MS. FELDMAN: Unless you're a senior citizen.

4 MR. MONTOYA: No, each election. You have to apply
5 for one at each election.

6 DR. ATKESON: I'd like to follow up on that.

7 There's quite a bit of evidence that people are much
8 more confident their ballot is counted correctly when they
9 actually put it in a machine.

10 From that perspective I actually think it's better
11 for in-person voting. Voters feel like, Look, I see it go in
12 the machine. I know it's counted.

13 If you don't have a ballot trace or anything like
14 that, if you mail it in, you just don't know. You hear
15 rumors it never was counted in a close race and all these
16 kinds of things.

17 MR. MONTOYA: Another sidenote to that, on Professor
18 Atkeson's website the report they did on the Bernalillo County
19 VCC election -- I don't know her website but anyway it's out
20 there and available.

21 We can always provide the link to anybody who needs
22 to see it. It's a great report. It tells a lot of
23 information.

24 MR. ZAKHEM: Anybody else? Thank you.

25 (Applause.)

1 MR. ZAKHEM: Okay. That is our last presenter, last
2 panelist. Thank you all.

3 We have moved on to the public comment section of
4 our program. And we have one person who has signed up for
5 comment, three minutes.

6 Mr. James Johnson, if you would come forward, and
7 please give us your comment.

8 MR. JOHNSON: I just want you to know that Chris was
9 very helpful in giving me the sheet of how to testify.

10 I'm not exactly sure, but under No. 4 it says,
11 Please let the volunteer know if you have time constraints.
12 Who is the volunteer? And I only need an hour and a half.

13 My name is James Johnson. I'm the chair of the
14 Colorado Montana Wyoming region of the NAACP. I'm the chair
15 of the political action committee, excuse me.

16 I come here today because I really experienced many
17 aspects of voting and voting rights, one from a voter, to a
18 candidate, to an elected official, and as an election judge.
19 And so I've done a little bit of all of it.

20 I really want you to know that the NAACP is the
21 nation's oldest and largest civil rights organization. And
22 since its founding in 1909, the NAACP has fought to ensure the
23 political rights of all people.

24 I want to thank the Commission for their efforts to
25 improve the voter access around the country and for taking the

1 time to come out and listen to us.

2 Your efforts are really of great importance now as
3 we see many of the gains that we've had in the past to expand
4 access to democracy actually being rolled back, from the
5 Supreme Court decision of Shelby County versus Holder to
6 secretaries of states purging voter rolls to quote unquote
7 poll watchers who are there to actually intimidate voters.

8 And our democracy is only as strong as the citizens'
9 faith in the electoral process. And efforts of voter
10 suppression shakes citizens' confidence in free and fair
11 elections.

12 I do want to applaud particularly the Colorado state
13 legislature and the independent county clerks in the state.
14 As a county commissioner, I know how independent they believe
15 that they are. And I will tell you that they take that very
16 seriously.

17 But here in Colorado, through legislation as well as
18 from what counties have done with experimentation as to how to
19 get out and reach to voters and give them greater access, it's
20 been a really wonderful thing.

21 We've seen many more people who have not been
22 willing to participate actually participating because it's
23 been easier for them to do that.

24 One of the things that I would urge people to look
25 at how is it that we expand that opportunity even further. I

1 know that when I was a young man, and even though the draft
2 was gone by the time I was eligible, as a young man when you
3 turn 18 you get a notice that says, You now need to register
4 for the draft.

5 And I don't know why states and the federal
6 government cannot send out notices to people when they turn
7 18 that, You are now eligible to actually register to vote.

8 Also with the clerks offices, one of the things that
9 people on the corporate side do, they know when you move into
10 a community. I mean, you immediately start getting post
11 cards, mailers letting you know there's a store right around
12 the corner.

13 If we could take that approach as well when people
14 move into our community to let them know, You may want to
15 change your voter registration, as opposed to them going out
16 and look for it.

17 There's another group of people that I do want to
18 thank here in Colorado, and that's the parole officers who
19 have taken the time to actually let felons know that they can
20 vote, and that their voting rights have been restored, and
21 letting them know how it is that they need to go through the
22 process.

23 My time is up. Thank you.

24 (Applause.)

25 MR. CHOATE: We're in something called the

1 electronic registration information central, which is called
2 ERIC.

3 In ERIC, we feed information from the DMV and our
4 voter registration rolls into ERIC, and so do a whole bunch of
5 other states. And what it does is it identifies people who
6 are likely eligible to vote but who are not currently
7 registered.

8 We did a huge mailing of 763,000 postcards last year
9 to all the people that we believed were eligible but were not
10 registered, and invited them to register. Ten percent of them
11 did.

12 We then in 2014 we collected all the names and
13 addresses of the people that over the last 18 months had
14 become eligible or we believed they had. And over the next
15 couple of months or probably around June or July, we're going
16 to do another mailing for all of those people.

17 So we're effectively doing what you were saying with
18 the selective service; we're just going to do it periodically
19 as elections approach.

20 MS. LYTLE: I just had a comment.

21 Today was my first day hearing the four words,
22 Colorado Elections Task Force. As a person who pays attention
23 to her world -- and I assure you that I do -- it troubles me
24 that I, representing this organization that I represent, did
25 not know such a thing existed, or that there's an opportunity

1 for some input into this process in this way.

2 I think it just really speaks to the theme of some
3 of my comments -- maybe I'm doing this prematurely, but I'm
4 piggybacking on James -- that the need for greater information
5 is persistent in Colorado and New Mexico, and I would say in
6 other places.

7 And the ability to use indigenous leadership is
8 there. All we have to do is have the will to do it.

9 MS. FIGUEREDO: So thank you again everyone for
10 coming out today.

11 I feel like I'm cursed because the first hearing was
12 snow, second hearing was snow. I'm hoping my next one in
13 April, when spring has technically started, there will not be
14 snow.

15 But I want to thank the commissioners again. I
16 think this is maybe the first hearing where there's been
17 audience interaction, which is just a lovely thing. I think
18 it reflects how important it is to Coloradoans and New
19 Mexicans about elections, and making sure that everyone has
20 equal participation and that we're improving elections.

21 Thank you to the audience for your thoughtful
22 questions as well. Thank you again to our witnesses for
23 staying here for four hours and staying through your wonderful
24 comments.

25 I think one of the things I've loved about these

1 hearings is, I'm a total voting nerd, but I learn something
2 new every single time. They say in your career, if you're not
3 learning something then you're doing something wrong.

4 Just a couple of final housekeeping items. To the
5 guest commissioners, if you could meet with me afterward for
6 final comments for a press release afterwards for your final
7 reflections.

8 If you do want to submit additional testimony you
9 can email NCBR at Lawyers' Committee dot org. You can also
10 find more information about the upcoming hearings. Like I
11 said, this is the ninth. We're doing a little over 20
12 hearings across the country so we got a couple more. March
13 and April are going to be very very busy months for us at the
14 Lawyers' Committee.

15 For the lawyers in the room, there is CLE credit for
16 this event. There are forms out front and a basket that you
17 can drop those forms in. If you have any questions about that
18 ask Lisa Prado from the Colorado's Lawyer Committee.

19 Also to the witnesses and the guest commissioners,
20 if you can turn in the photo release forms to me.

21 And thank you to our interpreters. Although we
22 didn't have turnout from the deaf community, we thought it was
23 incredibly important, when we're talking about access as one
24 of our panels, we wanted to make sure we provided sign
25 language interpretation.

1 (Applause.)

2 MS. FIGUEREDO: And then of course because the law
3 school has been so gracious, clean up after yourself. Throw
4 away your napkins and plates and things like that. We don't
5 want to leave a mess behind for someone who has been so very
6 gracious to us.

7 As Connie knows, at Lawyers' Committee we do a lot
8 of stuff in collaboration with the legal community, and we go
9 out to law firms. And we always are very cognizant of making
10 sure that we leave the space in the same way we entered it.

11 And then just finally, you know, this is the
12 beginning of an ongoing conversation that groups have already
13 been having here in Colorado and in New Mexico.

14 But we really want these hearings to not just end
15 today; that, you know, I make the commitment from the Lawyers'
16 Committee and I've already talked to Vickie about how, from
17 the testimony I heard from the Native American community, what
18 we can do for next steps to do some legislation to prevent
19 discrimination and deceptive practices.

20 Thank you guys again. There is a reception
21 afterwards, and we welcome all of you to attend. If you just
22 go outside the hallway and down there, there's food, there's
23 booze, and we can talk further and have a continued
24 conversation.

25 I look forward to working with all of you guys

1 again. Connie?

2 MS. TALMAGE: Chris, I know that this was being
3 recorded. Will the video or the transcript be available?

4 MS. FIGUEREDO: Absolutely.

5 MS. TALMAGE: What's the timing of the report? I
6 understand you're doing two reports.

7 MS. FIGUEREDO: Thank you. Good question.

8 We're already in the process of starting the first
9 report on voting discrimination based on the hearings that
10 have already happened. There's going to be a lot to digest.
11 We started to write that report. The goal is to release the
12 first report by the end of May, early June.

13 Then the second report that will be on election
14 administration and election reform will be later this fall;
15 hopefully ahead of the elections. And we'll make that
16 available to everybody as well.

17 Then for the transcript I think it takes two to
18 three weeks to do that. I'll ask the law school how long it
19 takes for the recording. We'll make sure to get that out.

20 MS. TALMAGE: Will those be posted on the national
21 registry website?

22 MS. FIGUEREDO: You know, we haven't discussed that.
23 We've been mostly just giving it to partners that have been
24 engaged. I'll talk about it.

25 MS. TALMAGE: I'd like to know. If it's not going

1 to be posted on your website I'd like to post it on ours, but
2 I need permission.

3 MS. FIGUEREDO: We'll talk about that.

4 Thank you guys again. Have a great time.

5 (Applause.)

6

7 (Whereupon the within proceedings adjourned at
8 5 PM, Friday, March 7, 2014.)

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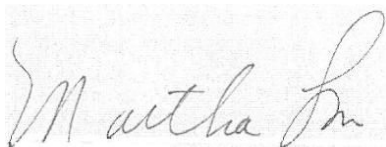
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C E R T I F I C A T I O N

I, Martha Loomis, Certified Shorthand Reporter,
appointed to take the within proceedings hereby
certify that the proceedings was taken by me, then reduced to
typewritten form by means of computer-aided transcription;
that the foregoing is a true transcript of the proceedings had
subject to my ability to hear and understand, and that I have
no interest in the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand.



Martha Loomis

Certified Shorthand Reporter

Proofread by E. Williams

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2
3 NATIONAL COMMISSION on VOTING RIGHTS

4
5 MIAMI, FLORIDA

6
7
8 Monday, March 31, 2014

9 3:00 - 6:40 P.M.

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11
12 University of Miami

13 School of Business Administration

14 Storer Auditorium

15
16 Hosted by:

17
18 LAWYERS' COMMITTEE

19 FOR CIVIL RIGHTS UNDER LAW

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22
23 JOB NO. 72334

24 Reported by: Michael J. D'Amato,

Registered Merit Reporter, Florida Professional Reporter

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GUEST COMMISSION

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LEON RUSSELL, Vice Chairman, NAACP Board of Directors

7

and National Commissioner

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9

Professor DANIEL SMITH, PhD.

10

University of Florida Research Foundation Professor

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DAN GELBER, Founding Partner,

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Gelber, Schachter & Greenberg,

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former Florida State Senator and Representative

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LIDA RODRIGUEZ-TASEFF, Partner, Duane Morris,

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2 (Proceedings commenced)

3 MS. ARNOLD: Good afternoon, everyone. Thank
4 you for joining us today as part of the National
5 Commission On Voting Rights. It's great to see so
6 many people here that are dedicated to insuring
7 fairness in the vote in Florida.

8 I'm Rebecca Kelly Arnold, and I am an attorney
9 with the Lawyers' Committee for Civil Rights Under
10 Law in Washington D.C. The Lawyers' Committee is a
11 nonprofit nonpartisan civil rights organization
12 founded at the request of President JFK 50 years
13 ago to engage the private bar in the fight for
14 racial justice and equality. We continue our work
15 today in a range of areas that impact racial and
16 ethnic minorities. Notably, our organization has
17 been at the forefront of a legal struggle to
18 protect advances in voting rights -- the reason
19 that we are all here today.

20 So on behalf of the Lawyers' Committee, we
21 thank you for your participation and your support
22 for this hearing. Today's hearing is the 12th in a
23 series of nationwide fact-finding hearings convened
24 by our National Commission On Voting Rights. As
25 many of you know, this summer the U.S. Supreme

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2 Court nullified a vital provision of the Voting
3 Rights Act that required federal review of voting
4 changes in states with a history of voting
5 discrimination, such as here in Florida.

6 This ruling compelled the Lawyers' Committee
7 to reconvene the National Commission to host
8 national hearings to review discrimination in
9 voting as well as the impact of the recent changes
10 in the election administration laws.

11 So again, it really is great to see you all
12 here because your voices need to be heard and your
13 input on these issues is vital for ongoing advocacy
14 and reform on a state, local and national level.

15 Following these hearings, two reports will be
16 issued: One on voting discrimination and the other
17 on election administration. It is our hope that
18 these reports will inform the public debate on the
19 state of voting discrimination, the impact of
20 recent election administration laws, and efforts
21 for reform across the country.

22 So now I would like to introduce our guest
23 commissioner panel for today's hearing. Presiding
24 over our events we have four Florida commissioners,
25 each with a deep commitment to protecting access to

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2 the ballot box on equal terms for all.

3 So we have Leon Russell, Vice Chairman NAACP
4 Board of Directors and one of our national
5 commissioners. We are thrilled to have him here
6 with us today. Professor Daniel A. Smith, Ph.D.,
7 University of Florida Research Foundation
8 Professor; the Honorable Dan Gelber, founding
9 partner of Gelber, Schachter & Greenberg and former
10 Florida state senator and state representative; and
11 Lida Rodriguez-Taseff, partner at Duane Morris,
12 LLP, and a former member of the Miami-Dade Election
13 Reform Coalition.

14 Our commissioners will preside over today's
15 events and receive testimony from several panels of
16 witnesses. They will ask follow-up questions to
17 insure a robust record about the state of voting in
18 Florida today.

19 Just a little bit of process. That's always
20 exciting before we start the program. If you have
21 been confirmed on a panel and you haven't already
22 checked in, please make sure that you do that at
23 the sign-in table just outside here. The guest
24 commissioners will call your name when it is time
25 to present your testimony. You can come to this

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2 panel and do that.

3 For those of you who would like to share your
4 voting experiences but you haven't been already
5 assigned to the panel as a preset witness, we would
6 love to hear from you too, so make sure that you
7 sign up on the witness list outside in the same
8 place I was just speaking about and you'll fill out
9 a card with your full name and generally what it is
10 that you'd like to speak about. You'll leave those
11 cards back there and someone will bring them up to
12 the guest commissioners and they will call your
13 name at the beginning of the open mic period and
14 you'll come up and testify at this podium at that
15 time.

16 A few other things. Our hearing is being
17 transcribed here to please speak clearly and state
18 your name before you begin your testimony. Please
19 be mindful of the timekeeper, and there are signs,
20 the timekeeper in the red hat. Each witness will
21 have five minutes so he'll give you the countdown.
22 So try to stay aware of that.

23 Finally, the thank-yous. In addition to the
24 University of Miami, who are fantastic folks, I
25 want to thank our amazing planning committee

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2 organization. That's the Advancement Project, the
3 American Civil Liberties Union of Florida and the
4 student chapter here, the Center for Independent
5 Living of South Florida, Common Cause, Disability
6 Rights Florida, Florida New Majority, Florida State
7 Conference of NAACP, Latino Justice, League of
8 Women voters of Florida, Mi Familia Vota, the
9 National Council of Jewish Women, SEIU Florida, the
10 National Lawyers Guild of Miami student chapter,
11 and the Voting Rights Coalition of Palm Beach
12 County.

13 Clearly, there are a lot of people working
14 together to make this happen and a big, big thank
15 you to all of them. Also, thank you to our
16 witnesses for preparing and presenting testimony.
17 And a great big thank you to, our guest
18 commissioners, for being with us today and for
19 presiding over the hearing.

20 Now I will turn it over to our commissioners
21 for their opening remarks and to call up the first
22 panel of witnesses. Thank you.

23 COMMISSIONER RUSSELL: Good afternoon. As
24 Rebecca indicated, I'm Leon Russell. I am the vice
25 chairman of the National Board of Directors of the

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2 NAACP. I'm also a former president of the Florida
3 State Conference of Branches of the NAACP. And
4 from the standpoint of voting and voting rights
5 issues I have been actively engaged in any number
6 of issues in the state including redistricting ad
7 infinitum -- Dan and I smile at each other for that
8 one -- seems it goes, every ten years comes around
9 real quick. Sometimes it never goes away.

10 For me, this hearing has basically one
11 essential function and I say that from my
12 perspective because I believe that we have to build
13 a platform of evidence that will support the new
14 amendments to the 1965 Voting Rights Act to undue
15 what the Supreme Court did in Shelby v. Holder.

16 It is important for us to understand,
17 particularly in the State of Florida, even though
18 we were covered under Section 5 by five counties,
19 there was an obligation for the State of Florida to
20 have any state action that impacted voting
21 precleared by the Justice Department because those
22 five counties were required under the Act to be
23 covered.

24 And with the Shelby decision that requirement
25 for preclearance has basically gone away. And even

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2 in the new act, where there are designated
3 jurisdictions that will continue to require
4 preclearance the State of Florida, our five
5 counties are not in that list.

6 What does that mean? It means essentially
7 that our state is open to any kind of shenanigans
8 that they believe that they can get away with in
9 terms of restricting the right to vote. And for
10 us, for me, the NAACP whom I represent, and I think
11 most of us who believe that the root of democracy
12 is the ability of every citizen to cast an
13 unfettered ballot, then it is necessary for us to
14 do all that we can to restore the ability of those
15 of us who need to watch the system to insure that
16 all voters have a fair chance, an equal chance,
17 open access to the ballot. It's up to us to lay
18 the groundwork in hearings like this that can be
19 presented to the Congress to justify the amendments
20 that are going forward at this time.

21 And so that for me is the purpose of this
22 hearing. Dan.

23 COMMISSIONER SMITH: Thank you, Mr. Russell.
24 Thank you, Rebecca, and it is an honor to be asked
25 by the Lawyers' Committee to serve as a guest

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2 commissioner.

3 As a political scientist at the University of
4 Florida I've had the great fortune to work with
5 many amazing organizations who are on the ground
6 here in the Sunshine State trying to insure that
7 every eligible Floridian has the right to vote.
8 Groups like the NAACP, the League of Women Voters,
9 Latino Justice, Mi Familia Vota, Advancement
10 Project, ACLU, SEIU, VAO, Florida Immigrant
11 Coalition, Puerto Rico Rights Committee, and
12 Florida New Majority and many others. My work,
13 unfortunately, tends to be as an expert in lawsuits
14 trying to hold the state accountable to make sure
15 that the rights of voters are not being suppressed.

16 I generally am using big data. I'm using the
17 1.4 million voter records in the Florida voter file
18 to be able to look at broad patterns here in the
19 state.

20 As a result I know each and every one of you
21 in intimate ways. I know your race, ethnicity; I
22 know where you live; I know if you have moved; I
23 know when you registered to vote; I know your age,
24 your real age; I know when you voted last, how
25 often you voted, whether it is a general election,

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2 midterm or a primary or an off-year municipal
3 election. I know how you voted, whether you voted
4 on Election Day, early, whether you cast an
5 absentee ballot.

6 All this information is public. It comes from
7 the Florida voter file. It takes some skill to be
8 able to utilize it in effective ways, to try to
9 diagnose whether or not any of the laws, any of the
10 administrative rules passed by the legislature or
11 enforced by the secretary of state or the
12 supervisor of election, have discriminatory
13 effects.

14 What I have been able to find along with my
15 collaborator Michael Heron, a professor at
16 Dartmouth College, is that many of the changes that
17 you and I have all experienced here in Florida have
18 had differential effects on voters, according to
19 the race or their ethnicity, along age as well as
20 party.

21 For example, we have shown that using the
22 voter file that the changes from 2008 to 2012 from
23 House Bill 1355 passed in 2011 that reduced early
24 voting from 14 days to eight days had differential
25 effects. It reduced the number of

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2 African-Americans and Hispanics who cast early
3 votes.

4 There is no question because we know who you
5 are, we know how you voted. We know if you voted
6 on the final Sunday of early voting and whether or
7 not you turned out to vote in 2012, and the rate
8 for Hispanics, for instance, is much less who voted
9 on that last day available on Sunday in 2008 who
10 did not turn out to vote in 2012.

11 Using the voter file we have been able to
12 determine whether lines, the length of lines in
13 2012 were long just in urban areas or as we find
14 that they were long in urban and more suburban
15 neighborhoods, but that the strong and very
16 distinct pattern was that they were longest on
17 Election Day in Hispanic predominant precincts and
18 they were long predominantly across counties in
19 early voting centers that were populated mostly by
20 African-Americans. It is not just an urban thing.
21 It had very distinct patterns along the racial and
22 ethnic composition of voters.

23 We have shown that certain voters who cast
24 absentee ballots are much more likely to have those
25 ballots rejected. The overall rate of rejection of

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2 absentee ballots in Florida is not that great -- it
3 is only about one percent in the 2012 general
4 election -- but it was less than nine-tenths of one
5 percent among whites; it was about 1.4 percent
6 among Hispanics and 1.5 percent among
7 African-Americans.

8 But what is really interesting is that those
9 patterns at the state-wide level had great
10 differentiation across the counties, where you
11 could have some counties that have over 6 percent
12 of the absentee ballots cast by African-Americans
13 being rejected, and others less than one-tenth of
14 one percent.

15 It's hard to understand how an
16 African-American can be more intelligent as a group
17 in one county and fill out their absentee ballots
18 properly and less likely to do so in another
19 county. And we can condition on your age, the
20 number of times you voted in the past and when you
21 registered to vote and other characteristics
22 because of the big data available.

23 Using the big data and working with many of
24 these groups that I mentioned we were able to stop
25 the purge of potential noncitizens, the 180,000

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2 that the secretary of state originally identified,
3 then the 2,625 including the 1600 potential
4 non-citizens here in Miami-Dade County. Through
5 legal action we were able to stop that purge, that
6 unwarranted purge. And just last week Secretary
7 Detzner announced that he would forego using the
8 voter file and Homeland Security data to purge more
9 voters prior to the 2014 election. That's what big
10 data does.

11 But what big data does not do, it doesn't
12 allow me to understand why. I can sift through and
13 identify patterns but I don't know why. I don't
14 know who among you decided to go home after waiting
15 for hours on end during early voting only to come
16 back to see other long lines or long lines on
17 election day and not cast the ballot.

18 I don't know who among you who were forced to
19 cast a provisional ballot because you didn't have,
20 supposedly, the right form of identification or
21 because you were asked about your address and it
22 didn't match up even though you lived in the same
23 county.

24 I don't know who among you had your voter
25 registration form tampered with by a group or not

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2 processed properly by a supervisor of election. I
3 don't know whether or not the scratchpad signature
4 that you signed at the DMV was used to
5 disenfranchise you by a canvassing board. I don't
6 know who among you had to pay to get your documents
7 in order to prove your citizenship back in the fall
8 of 2012 in order to stay on the voter rolls before
9 that unwarranted purge was stopped.

10 I don't know who among you may have been
11 registered to vote by the League of Women Voters
12 and other groups in 2011 and 2012 but weren't
13 because House Bill 1533 made it onerous for groups
14 like the League of Women Voters to go out and do
15 what they have been doing for nearly a century.

16 So there are many questions that that big data
17 can allow me to answer but I don't know the why.
18 And that's why I'm here today, to hear from you, to
19 better understand your experiences, your trials and
20 tribulations trying to exercise not only your civic
21 duty but your fundamental right to vote.

22 So your testimony that I hear today will make
23 me a better expert, it will make me a better
24 scholar, and they are essential for people like me
25 who use big data to put it all in the larger

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2 context. So I look forward to hearing from you
3 all.

4 COMMISSIONER GELBER: Thank you. I'm Dan
5 Gelber. And while Dr. Smith and Leon and Lida are
6 true experts in this area, I play one on TV only.
7 I'm really not the expert that they are. I have a
8 background in this area so I'll tell you what that
9 is. I was a federal prosecutor for sometime where
10 I was head of the Civil Rights Division where I did
11 voting cases as well as mostly civil rights police
12 beating cases.

13 After that I served in the legislature for a
14 decade, and that's really where I think learned
15 most about the assault on voting rights in Florida.
16 And, after that, when I returned to private
17 practice and not in public service. I have a small
18 law firm and I was counsel for the Fair Districts
19 Group that is promoting the fair districts
20 amendments and in fact seeking to vindicate them in
21 the courts. And my law firm is involved in that
22 litigation right now, which I probably won't speak
23 to at all because we are actually litigating it as
24 we speak.

25 But that all said, I want to focus most on

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2 what I think I can bring to this session and what I
3 hope to focus on which really, I have seen how in
4 Florida the legislature and the governor and the
5 governors have tried to keep people from voting.
6 They fiddle with the process because they want to
7 influence the outcome. And that's really what we
8 are talking about here.

9 I wanted to start, I brought two documents,
10 because in '08 and '12 I ran around the voting
11 polls. That's what I did. I checked what was
12 going on because I like to see how people vote on
13 Election Day. I love Election Day. I think it is
14 just a wonderful day and should be a wonderful day.
15 I take my kids to the polls with me. I let them in
16 although they are probably not supposed to be
17 there. And I love watching that process. I wish
18 more people did it.

19 I like early voting. I think it is great to
20 make it easier for people to vote, not harder. But
21 if you go to early voting in Florida over the last
22 two presidential elections, '08 and '12, you saw
23 what can only be viewed as a abomination. The idea
24 that the Florida legislature and governors would
25 make it harder to vote so that they would hope that

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2 a suppressed vote may lead to an outcome that they
3 would prefer is really nothing short of an
4 abomination.

5 I have with me from just the last election, if
6 you go online to Division of Elections in almost
7 any county you can find out how long it is to wait
8 on line before you vote. And actually every single
9 day a couple of times a day I would go online
10 during the early voting period and I would pull up
11 those sheets just to see where the waits were.

12 I'd already voted most of the time but I
13 wanted to know what my fellow citizens were
14 feeling. And I have with me the first day, October
15 27, of early voting in the last period and this is
16 from 12:15, around noon, and you can see that in
17 Aventura it was two and a half, and Coral Reef it
18 was three and a half hours. And it just goes on
19 and on. Four hours in the North Dade Regional
20 Library. Same thing was going on in Broward
21 County.

22 In the early voting location on the same day
23 the African-American Research Library at 9 a.m. in
24 the morning had a four-hour wait to vote. Then at
25 the end of the voting period in Dade County, and I

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2 pulled out and I have lots of these in my computer
3 because I just saved them, I never knew I'd come
4 here. But, you know, I got nothing better to do.

5 On 11:10 on November 3, the last day of early
6 voting, four hours and ten minutes, three hours,
7 four hours at Coral Reef, four hours at the Kennedy
8 Library, four and a half hours at the Kendall
9 branch. Northbound Miami Public Library, four
10 hours; South Dade Regional Library, five hours;
11 elections downtown five and a half hours; West
12 Dade, West Kendall, all four and a half hours.

13 Of course that was not nearly as bad as
14 Election Day. If you, as I did, visited polls, you
15 would have seen seven and eight-hour lines for
16 people to vote. And I think in a democracy, I
17 don't think we are supposed to force people to
18 leave their jobs, leave their children, and suffer,
19 really, that way. Some people are old, sometimes
20 it's hot, and make them go through that to vote.

21 So the question everybody has got to have is
22 how does that happen? How does it happen? Was it
23 just everybody was surprised that these lines were
24 so long nobody in this age of technology and data
25 was able to figure out that the way we were setting

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2 up these elections were going to create incredibly
3 long lines?

4 Professor Smith points out in mostly minority
5 communities or most pronounced in minority
6 communities nobody knew that was going to happen.
7 I can tell you that they knew exactly it was going
8 to happen. In '08 during that election it was an
9 historic election. A few years earlier the Florida
10 legislature had passed a law very precisely
11 limiting early voting, artificially, by the way,
12 under the guise -- and there is always a guise --
13 under the guise that well, it might cost money to
14 leave the polls open 12 hours so let's limit it to
15 eight. Let's get rid of that Sunday, not because
16 of the poll, not because of that, but we want to
17 save money.

18 Of course they don't pay for the elections.
19 That's paid for by local counties who most
20 assuredly would like their citizens to be able to
21 vote in an orderly way and not have to take an
22 entire day off from work. But the Florida
23 legislature did it anyway. And I was in the
24 legislature at the time, and my group was extremely
25 upset about this.

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2 I had a lot of African-Americans in my caucus.
3 I was the Democratic leader in those years. And
4 they all stood up and said exactly the same thing.
5 They said this is Jim Crow all over again. Except
6 instead of doing it in ways that you used to do it,
7 you're doing it with artificial explanations which
8 are clearly vote-suppression efforts.

9 And we saw in the early voting period horrible
10 lines. It was a hot weather election period as I
11 recall. People were fainting across my county here
12 in Miami-Dade. And I, fortunately, as the
13 Democratic leader I called up the governor at the
14 time who hadn't done the bill who had created this
15 problem but was the governor at the time, Charlie
16 Crist, and I called him up very directly in the
17 morning and explained to him that Jeb Bush had
18 expanded early voting once before because of a
19 dysfunctional machinery, maybe he'd do it now.

20 He said he would get back to me, and a few
21 hours later he expanded early voting through an
22 executive order that many people wondered whether
23 it was even legal, frankly. And at least he added
24 hours and hours for the rest of the voting period.
25 Even though it probably was not helpful to his own

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2 party. I credited him at the time and to this day
3 for acting on behalf of citizens and not just a
4 particular party.

5 In 2012 it was even worse, frankly. It was
6 even worse. And the difference was because we had
7 that experience in '08, everybody in the
8 legislature knew what was going to happen. They
9 knew precisely what was going to happen. So
10 amendments flew onto the bill trying to get the
11 legislature to create an ability to provide more
12 locations for early voting so that it couldn't just
13 be in certain types of places or more hours or
14 guaranteed lower wait times.

15 Those were all amendments that were thrown on
16 that many were trying to put on there but each time
17 the legislature rebuffed those amendments because I
18 believe, unquestionably, the legislature and the
19 governor absolutely wanted to have very, very long
20 lines and a disorderly process in the early voting
21 period and on Election Day. And of course they
22 wanted that because we now know that probably
23 hundreds of thousands of people didn't vote simply
24 because it's just not fair to tell somebody you got
25 to take a day off from work or leave a child home

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2 alone to vote.

3 So, for me, this is an incredibly important
4 process. And I really want to thank the National
5 Commission On Voting Rights and my colleagues and
6 those of you that speak. I don't think there is
7 anything more fundamental, obviously, to democracy
8 than the right to cast your franchise. People have
9 died for this democracy to exist and you got to
10 really fight every day to keep it. But I know
11 this, that there are people out there who would
12 love to control the process of voting so that they
13 can control the outcome.

14 There's no question about that and we have
15 seen it more acutely in Florida than any other
16 state, I suspect. But I also know that the only
17 way people are protected from those people are by
18 laws that protect them and courts that vindicate
19 those laws. That's why we are a nation of laws and
20 not of men. That's who this country is and will
21 always be.

22 So I thank you for coming here today. I thank
23 you for testifying no matter what side you take on
24 it. But I will tell you that I don't think there's
25 anything more important going on right now than

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2 this hearing because there's nothing more important
3 in a democracy than allowing its citizens to vote.
4 Thank you.

5 COMMISSIONER RODRIGUEZ: Good afternoon,
6 everybody. I'm Lida Rodriguez-Taseff. I'm a
7 lawyer with the law firm called Duane Morris. I'm
8 also a member of Latino justice, the National Board
9 of Latino Justice, and I also have a connection
10 deep to Miami-Dade County with the Miami-Dade
11 Election Reform Coalition, which we created in 2002
12 to address voting problems through looking at them
13 from the lens of election administration, and
14 that's really my focus.

15 The reason I'm here is I want to hear the
16 stories that impact on election administration. I
17 want to borrow something from what Professor Smith
18 said and that is, we oftentimes in analyzing
19 policies of election administration can actually
20 see things that we think are not going to work well
21 from an administrative point of view and we can see
22 how those are not going to work well. Sometimes we
23 can stop them and prevent them, other times we
24 cannot.

25 The early voting debacle that happened in the

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2 2012 election after the successes in prior
3 elections of early voting is just an example. We
4 knew that cutting down on early voting hours was a
5 drastic and damaging approach to whatever it was
6 the legislature was trying to accomplish. But we
7 saw it more acutely.

8 We saw the results of it and we were able to
9 change things when we hear from people who actually
10 experienced it who were witnesses who saw it
11 happen, who saw the impacts of it through their
12 work, through their advocacy, who can speak to us
13 so that we can uncover the patterns so that we can
14 fix some of these issues with regard to election
15 administration.

16 Election administration begins at the efforts
17 to register people to vote, and it goes all the way
18 through to casting a ballot and closing of the
19 polls on Election Day and counting the ballots.
20 Often times election administrations policy,
21 practices and procedures look facially neutral.

22 They are policies that say, gee, we are going
23 to accept certain forms of ID or we are going to
24 ask people their address at the polling place may
25 seem facially neutral, but it has incredible

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2 impacts that are disparate on different
3 communities. And we need to understand those
4 election administration policies, practices and
5 procedures and then understand the impact of them.

6 Let me give you an example. We are talking
7 about the long lines and how expected they were by
8 the Florida legislature because they created the
9 problem. But let's not let off the hook the
10 election administrators who locally made decisions
11 knowing full well that they were going to have a
12 problem.

13 Good example, Miami-Dade County. One of the
14 most important parts of sound election
15 administration on Election Day is reconciling the
16 number of people who signed in to vote with the
17 number of votes actually cast.

18 Most people think of overvotes and undervotes
19 and they think that's what I'm talking about. An
20 overvote and an undervote relate to an individual
21 person's casting of a ballot, i.e., whether they
22 vote for two candidates for president or choose to
23 vote for zero candidates for dog catcher. That's
24 an overvote and an undervote.

25 We want to talk about ghost votes and lost

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2 votes. What are ghost votes? Well, ghost votes
3 are where you have a certain number of people who
4 sign in to vote that day, who sign the precinct
5 register, but you have more votes in the machines
6 than you do people who signed in to vote. Lost
7 votes is the complete opposite set, where you have
8 more people signed in to vote on the register and
9 fewer votes actually cast on the machines.

10 Now, ghost votes and lost votes are probably
11 one of the best indicators of disenfranchisement at
12 the polling place. If you have people sign in to
13 vote but get on the line, fill out their ballot and
14 put that ballot through the machine, is so long
15 that they just can't wait. They walk away. They
16 give the ballot back. They leave it lying
17 somewhere, they just leave. Or people who sign in
18 to vote and then are told, you know what, we made a
19 mistake, you can't vote. They have already signed
20 in, they have signed the register, but their voting
21 right is taken away by somebody at that polling
22 place. We need the information of ghost votes and
23 lost votes at the end of the night in order to
24 determine what is happening at the polling place.

25 Obviously importantly, if you have more votes

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2 in the machine than you do voters, that's a
3 worrisome, worrisome problem. In fact we studied
4 prior to the 2012 election ghost votes and lost
5 votes in Miami-Dade County and determined that the
6 overwhelming percentage of precincts, over 80
7 percent of the precincts in Miami-Dade County, did
8 not reconcile, meaning they either had too many
9 ghost votes or they had too many lost votes.
10 That's what that meant.

11 What happened there nobody will know because
12 we don't have the ability to figure out what
13 happened to those voters, how that came to pass.
14 But even having the data in and of itself is
15 important because it is a way of trying to track
16 fraud. It's a way of trying to track
17 disenfranchisement. It's a way of trying to test
18 the soundness of an election administration
19 procedures.

20 So what happened in 2012 with regard to ghost
21 votes and lost votes -- and I'm picking this
22 particular election administration practice just as
23 an example. There are many election administration
24 practices and, hopefully, we will talk about some
25 of the ones coming up during the 2014 primaries and

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2 general elections that we need to address. But the
3 reason I'm picking this one is because what did
4 Miami-Dade do in 2012 regarding reconciling the
5 votes at the end of the night?

6 Well, Miami-Dade knew that the lines were
7 going to be miserably long. What they did was, and
8 they knew that if the poll workers had to stay
9 after closing the polls -- and Dr. Smith can talk
10 to about how late some of these polls closed -- if
11 the poll workers had had to, after how late those
12 polls closed, to stay another hour, two hours,
13 three hours trying to reconcile why they had
14 missing votes, they would not have gone home until
15 3, 4, 5, 6 in the morning.

16 Mind you, I've been a poll worker for many,
17 many years in Miami-Dade County and the reason I do
18 it is to test election administration procedures,
19 and I was shocked that Miami-Dade County would
20 actually eliminate the task of reconciling the
21 votes at the end of the night. But they did. And
22 when asked why they did it they said, well, we are
23 just trying to simplify life for the poll workers.

24 Well, the reality was they knew the lines were
25 going to be long and what they were trying to do

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2 was make it so that the poll workers could go home
3 a little earlier and not have to reconcile. And
4 they knew that if they reconciled in real time at
5 the polling place, at the end of the night you were
6 more likely to get a more accurate result than if
7 the votes are reconciled later, days later, weeks
8 later, a month later by elections officials and
9 elections personnel whose job depends on their boss
10 looking good.

11 So Miami-Dade County eliminated the procedure.
12 And, hopefully, we will hear some testimony about
13 other procedures that you guys are aware of that
14 you have learned about that we can discuss are
15 coming up in the 2014 election cycle that we can
16 nip in the bud, that we can address. Because for
17 me, these hearings are about my focus, election
18 administration, and how these facially neutral
19 procedures impact the lives of voters and the
20 outcomes of elections in ways that are racially,
21 ethically discriminatory, that impact poor people,
22 that impact students and young people.

23 We need to study election administration from
24 the bottom up, from the minutia up. Because when
25 we do, we will have an incredible tool to work with

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2 at the same time that people like Leon are working
3 on changing the minds of Congress to repair the
4 Shelby decision.

5 So I take that perspective, and I would love
6 to hear from anybody with regard to election
7 administration issues. Thank you.

8 COMMISSIONER RUSSELL: I want to thank the
9 panel for the opening presentations. We are
10 getting ready to call our first group. We have
11 what I'll call two flights, two panels that will be
12 interrupted by questions from the commission, and
13 then we will put in between some testimony from the
14 public that are not part of the panel.

15 A couple of reminders. For those of you who
16 are going to speak, we have a timekeeper with the
17 red hat, raise your hand, as well, so see the hat.
18 Pay attention to him. You will speak from this
19 podium. We also have a court reporter who is
20 recording the testimony. If you have written
21 testimony we ask that you turn that in as well so
22 that we have a complete record of what you say.

23 If you have a Power Point or some other type
24 of presentation, Abe is here from the law school,
25 student at the law school. He will handle that.

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2 If you give it to him long prior to your
3 opportunity to speak he will get it on the computer
4 so that we can show it on the screen.

5 With that we are going to begin panel number
6 1, and our first panelist is Desmond Meade
7 representing Florida Rights Restoration Coalition.

8 MR. MEADE: Good afternoon. My name is
9 Desmond Meade. I am president of the Florida
10 Rights Restoration Coalition. I'm also the state
11 director for the Life Lines and Healing Campaign,
12 which is part of Pico Florida which is part of the
13 Pico network.

14 Not too long ago, August of 2005, I remember
15 standings in front of the railroad tracks in Miami
16 waiting on a train to come so I could jump in front
17 of it to commit suicide because at that time I was
18 recently released from prison, I was addicted to
19 drugs and alcohol, I was homeless and I saw no
20 hope, no future.

21 But by the grace of God the train never came
22 and I crossed those tracks and I entered into the
23 substance abuse treatment facility and after
24 graduating there I went to Miami-Dade College while
25 I was living in a homeless shelter. I enrolled in

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2 Miami-Dade College and I was able to complete the
3 paralegal program there. One thing led to another
4 and today I am happy to announce that I am a month
5 away from graduating law school at Florida
6 International University.

7 While I appreciate the applause, my story does
8 not have a happy ending because I am among the over
9 1.54 million Floridians who cannot vote as a result
10 of Florida's policy on felony disenfranchisement.

11 As it stands today an individual will have to
12 wait five to seven years after completion of their
13 sentence before being able to apply to have their
14 rights restored. After they apply, there's an
15 application process in time of approximately six
16 years.

17 We recently heard of a story of a gentleman
18 who had been waiting ten years to find out the
19 status of his application. And, therefore, we have
20 a system or policy that would dictate that a person
21 wait anywhere between 11 to 13 years before they
22 see if they have a chance.

23 And the reason why I say "see if they have a
24 chance" is that prior to this administration in the
25 previous four years the average amount of 48,000

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2 people received their rights back. So far these
3 last three years less than a thousand people have
4 received their rights back. And you are going to
5 hear testimony about that 1.5 or 1.54 million
6 people in Florida who are disenfranchised. And I
7 want to stress to the audience, to the members of
8 the panel, that that number was determined back in
9 2010.

10 I can tell you that since 2010 there have been
11 over 575, felony convictions in the State of
12 Florida. So while there's a drastic reduction in
13 the amount of individuals whose rights are being
14 restored there is a growing amount of people in the
15 State of Florida who are being denied the right to
16 vote for things such as driving with a suspended
17 license, catching a lobster whose tail is too
18 short, burning a tire in public, releasing hot air
19 balloons.

20 These charges or these statutes that totally
21 strip away the right of citizenship to an
22 individual are not only detrimental to a society as
23 a whole but we know that it has an extraordinary
24 impact in minority communities due to the fact that
25 minority communities experience over-policing. So

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2 the chances, the average chance of an individual
3 such as myself, an African-American, being stopped
4 by the police, being arrested, being probably
5 charged and convicted of a felony is much higher
6 than in any other community.

7 The 1.54 million people who are
8 disenfranchised, shows that a little over 500,000
9 of them are African-Americans. And so while there
10 are a million other Americans, whether they are
11 white or Latinos who are disenfranchised in the
12 State of Florida, we cannot escape the fact that
13 these policies disproportionately impact minority
14 communities, therefore taking away their political
15 voice when the time comes for them to vote. Thank
16 you.

17 COMMISSIONER RUSSELL: Thank you.

18 COMMISSIONER SMITH: Mr. Meade, we have
19 questions, I'm sure, after we hear from the others.

20 COMMISSIONER RUSSELL: That means don't run
21 away.

22 The next speaker is Nancy Abudu, the Director
23 of Legal Operations for the ACLU of Florida.

24 MS. ABUDU: Thank you. Good afternoon. I do
25 have my prepared written testimony, which I'll make

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2 sure that you all get a copy of at the end of my
3 remarks. But I just want to thank you all again
4 and introduce myself. I'm Nancy Abudu, the
5 Director of Legal Operations for the ACLU of
6 Florida.

7 The ACLU through our national voting rights
8 project and our state affiliates around the country
9 represents voters before the courts and state
10 legislatures and at the local level in advocating
11 for greater voting rights protections so that
12 voters can make their voices heard and impact the
13 issues about which they care most.

14 As we all know, and as the Supreme Court has
15 reaffirmed, the right to vote is preservative of
16 all the other rights we enjoy and of the most for
17 forceful ways that we can protect those other basic
18 rights. The ACLU of Florida is really proud to be
19 a partner in this hearing today and again we
20 sincerely thank you all for giving Florida citizens
21 the opportunity to collectively gather information
22 and share ideas that will hopefully improve not
23 only our daily lives but those of the families and
24 communities we represent.

25 And so a lot of our recent work includes

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2 challenging the purge, which we were happy that the
3 secretary decided to rescind or roll back on
4 because of the problems that we identified along
5 with many other groups with the SAVE program, or
6 database, and we have also worked hard with Desmond
7 and others to really bring some international
8 attention to what's happening in Florida especially
9 when it comes to felon disenfranchisement.

10 But I'm here today to talk about redistricting
11 and why even in 2014, and admittedly with the
12 improved racial and ethnic political representation
13 at all levels of government, redistricting still
14 matters today.

15 As you all know, one of the primary ways that
16 the Voting Rights Act of 1965 was used was to
17 dismantle the very racially discriminatory voting
18 schemes that had been erected which made it almost
19 impossible for African-Americans, Hispanics and
20 other communities of color to elect their
21 candidates of choice. And these discriminatory
22 schemes really served as the primary means for
23 suppressing or repressing significant minority
24 populations again, thus rendering it difficult for
25 them to elect the minority-preferred candidates.

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2 Florida redistricting retains, continues to be
3 a very important issue as several cities and
4 counties are still undergoing the redistricting
5 process and boards of county commissions, city
6 councils, school boards are really grappling with
7 their own electoral schemes in light of the
8 changing racial demographic shifts that are
9 occurring in their regions, especially when it
10 comes to increased population of voters and, again,
11 more of the racial diversity that I think everyone
12 would want to embrace.

13 These places include Miami Shores which has an
14 at large election scheme and a growing minority
15 population, and yet if you look at its city council
16 makeup it is pretty much almost all white. We
17 worked in the northern part of the state with the
18 city, a small town called Sopchoppy, where the
19 black population is small but strong and is really
20 trying to hold on to some racial diversity at its
21 local government level.

22 And we have even looked at places like
23 Jacksonville, where you have a very growing city
24 with a sizable minority population but a mixed
25 election scheme with about 14 single-member

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2 districts and five at-large seats and questions
3 about whether or not this election scheme really
4 best represents the community's needs.

5 So we would propose that further research is
6 really needed to determine whether these current
7 political schemes are still necessary today,
8 whether they help to maintain or balance or enhance
9 political balance or if they really are today just
10 simply a mechanism for diluting minority voting
11 strength. And while the answer to those questions
12 might not be that easy in some places, the ACLU has
13 worked hard where it can to address this issue.

14 Hillsborough County, Florida is an example of
15 a place where the ACLU and several community
16 organizations tried unsuccessfully to encourage the
17 county commission to adopt a redistricting plan
18 that would allow for greater representation of the
19 Hispanic community.

20 The commission is currently made up of five
21 members, only one of its members is
22 African-American, and there is no Hispanic person
23 that's currently representing the Hispanic
24 community on that county commission. And with its
25 increased population of about 1.2 million people,

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2 over 900,000 of whom are eligible voters, and a
3 Hispanic voting age population of about 23 percent,
4 an African-American voting age population of over
5 15 percent, the commission was still resistant to
6 analyzing and possibly changing its electoral
7 scheme to better represent those changing numbers.

8 And we, the ACLU, actually proposed two plans
9 which we would be happy to share with this
10 commission as well.

11 I wanted to also highlight that we are working
12 in places like Jefferson County that is also going
13 through redistricting and not only looking at the
14 population but also the presence of a prison.

15 I think we talked about felony
16 disenfranchisement, but we also have to recognize
17 that prison gerrymandering is another way in which
18 communities or their voting strength is being
19 diluted and there is often overrepresentation of
20 certain populations if a prison is in their area.

21 We also wanted to mention, I think as one of
22 the commissioners made reference to, the
23 redistricting suit that has been filed involving
24 the fair district amendments. We realize that
25 reasonable minds might differ as to what the

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2 Congressional plan should look like, but we should
3 all agree that minority votes, in this case the
4 NAACP, really should have a seat at the table and
5 we are very happy to represent the NAACP so that
6 indeed their voice can be heard.

7 So, in conclusion, I just want to emphasize
8 that voting is not just about circling a name on a
9 piece of paper or pushing a button when you are in
10 the voting booth. It is really about influencing
11 those decision-makers who impact our daily lives.
12 We have communities that are dealing with low
13 economic opportunities, failing schools, and being
14 able to elect representatives who are going to
15 address those issues is really why we're here
16 today. Thank you very much.

17 COMMISSIONER RUSSELL: Thank you. Our next
18 speaker is Maribel Balbin, President of the League
19 of Women Voters of Miami-Dade.

20 MS. BALBIN: Good afternoon. My name is
21 Maribel Balbin, President of the League of Women
22 Voters of Miami-Dade County today representing the
23 League of Women Voters of Florida. Thank you,
24 commissioners, for being in Miami today to listen
25 to our stories.

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2 The League of Women Voters, absolutely, we
3 heard the stories of former Senator Gelber as to
4 the administration and other issues. Today we are
5 going to just talk about very specific issues and
6 we have also already submitted all our comments, so
7 I am going to comment on two of our points.

8 Our testimony will concentrate on the
9 following priority concerns: Improving voter
10 access, and online voter issue registration. The
11 additional comments regarding upgrades to voting
12 technology and continued studies of the vote
13 centers concept has been submitted in our written
14 statement.

15 First, voter access and the long lines on
16 Election Day. In Florida we witnessed extremely
17 long lines throughout the state including lines as
18 long as eight hours in Miami-Dade County and also
19 saw a three percent reduction in voter turnout
20 state wide. Voters in some precincts in Florida
21 were still standing in line waiting to vote after
22 midnight on Election Day.

23 We all remember the Brickell precinct, past
24 midnight, where the election had already been
25 called, people were still in line and stayed on

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2 line until they voted. Additionally, at the league
3 we received a large number of calls and emails from
4 disabled and elderly voters who were physically
5 unable to endure the long lines and the long waits.
6 Apparently the State of Florida has no requirement
7 that such voters are guaranteed an expedited
8 process. And citizens like 102-old Desiline Victor
9 were forced to wait in hours-long lines to vote.

10 The second issue we would like to highlight is
11 online voting registration. During the current
12 2014 legislative session the league has actively
13 supported efforts to move online voter
14 registration, O.V.R., forward in Florida. This is
15 needed, this is a needed, important step, which
16 could address many of the root causes such as long
17 lines and inaccurate voter data and Florida
18 election headaches.

19 The concept of O.V.R. has the support of our
20 Florida supervisor of elections. At the national
21 level the League of Women Voters of the United
22 States has enthusiastically supported this
23 recommendation as well. Nineteen states have
24 already passed bills that implement O.V.R. The
25 trend has been gaining momentum since 2002.

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2 In the majority of the states O.V.R. has been
3 implemented by connecting their voter registration
4 process to the DMV databases to authorize digital
5 signatures for application forms. Florida's
6 proposed legislation would go one step further by
7 allowing any voter to register online and then
8 requiring a signed postcard to capture their
9 signature for the voter file.

10 The summary report published by the bipartisan
11 President's Commission on Election Administration
12 in January highlights online voter registration as
13 the report's number one unanimous recommendation to
14 improve future election outcomes.

15 Furthermore, the commission's first-place
16 recommendation and ranking of O.V.R. stands as the
17 long-term solution to the root causes of voting
18 inconvenience experienced by so many Floridians in
19 2012.

20 As the report states: The improved management
21 at one stage of the process will yield benefits in
22 the later stages of process. Improving accuracy of
23 registration roles, for example, can expand access,
24 reduce administrative costs, prevent fraud and
25 irregularity and reduce polling place congestion

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2 leading to long lines.

3 The league support for secure online voter
4 registration is steadfast and here's why. O.V.R.
5 makes registration easy. Pew Charitable Trust
6 Found that 65 percent of the registered voters
7 support allowing online. It is simply convenient.
8 It is far less expensive than paper systems and
9 reduces the chances for errors.

10 Arizona, which implemented paperless
11 registration in 2002 now registers 70 percent of
12 all voters online.

13 O.V.R. encourages voters to keep their voter
14 information up-to-date and as accurate as possible,
15 to submit address changes as well as changes in
16 their name and medical status, and it allowed
17 voters to receive accurate polling presentation to
18 match their current address. All of these are
19 critical here in Florida since Floridians are very
20 mobile.

21 Implementing O.V.R. is the next logical step
22 in harnessing technological advances in our
23 electoral system. Most importantly, registration
24 rates increase among young voters with O.V.R. The
25 league of Women Voters of Florida has always fought

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2 to insure that our elections are fair, free and
3 accessible. We strongly believe that online voter
4 registration is a critical step in bringing the
5 Sunshine State into the 21st century. Thank you
6 very much.

7 COMMISSIONER RUSSELL: Thank you. Next we'll
8 have Carol Stachurski, Program Operations Manager
9 for Disability Rights Florida. Carol.

10 MS. STACHURSKI: Good afternoon. My name is
11 Carol Stachurski and I'm the Program Operations
12 Manager at Disability Rights Florida. Thank you
13 for the opportunity to submit these comments on
14 behalf of Disability Rights Florida.

15 Our agency is the designated protection and
16 advocacy system for individuals with disabilities
17 in the State of Florida. Disability Rights Florida
18 has authority and responsibility under eight
19 federal grants. One of these grants is under the
20 Help America Vote Act that authorizes protection
21 and advocacy systems to insure the full
22 participation in the electoral process for
23 individuals with disabilities including registering
24 to vote, casting a vote and accessing the polling
25 place.

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2 Section 7 of the National Voter Registration
3 Act was created to enhance voting opportunities and
4 to increase the historically lower voter
5 registration rates of minorities and persons with
6 disabilities. This section specifies that voter
7 registration opportunities must be offered through
8 all offices that provide state-funded programs,
9 engaged in providing services to persons with
10 disabilities.

11 At a minimum, an offer to assist individuals
12 with a disability to register to vote must be made
13 at the time of intake, recertification or change of
14 address. The National Voter Registration Act
15 requires agencies to specifically ask if you are
16 not registered to vote where you live now would you
17 like to vote here today.

18 In many states services were formerly
19 delivered to people with disabilities directly by
20 the state agencies. More commonly now these
21 services are contracted out by various state
22 agencies to numerous providers, most of which have
23 absolutely no knowledge of their obligation to
24 assist their clients with disabilities in
25 registering to vote.

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2 This is certainly the case in Florida, and in
3 looking at the information gathered by the federal
4 elections commission, it appears to be a national
5 shortcoming. In 2012 Florida reported 438 people
6 with disabilities registered through this process.
7 And in 2013, only 280. This is absolutely -- this
8 is an astoundingly low given the number of people
9 with disabilities in Florida who receive
10 state-funded services.

11 This month we arranged a meeting with
12 Department of Children and Families, the Division
13 of Elections, and national Voting Rights Act
14 coordinators and the managing entities regarding
15 obligations of providers to offer voter
16 registration. The requirements and how to obtain
17 technical assistance from the Division of
18 Elections, the managing entity staff, had excellent
19 questions and made good connections with the
20 division of election staff. We will be monitoring
21 the rollout of this process.

22 All but one of the calls we received through
23 the National Voter Protection Hotline during the
24 early voting and on Election Day in Florida were
25 related to long lines. Secondary to this was the

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2 lack of availability of disabled parking because,
3 as people were waiting a long time to vote, the
4 parking places for people with disabilities did not
5 turn over.

6 Some voters reported poll workers stationed
7 outside informing them of options as they
8 approached the lines, if they had signs of a
9 visible disability, for example, walkers, crutches,
10 portable oxygen, wheelchairs, scooters, et cetera.
11 Voters with hidden disabilities were far less
12 likely to hear any information from poll workers on
13 accommodations.

14 Based on what was reported to us we had have
15 the following recommendations for supervisors of
16 elections. Firstly, develop policies specific to
17 voters with disabilities or elders who you are
18 unable to stand in line to cast a ballot, publicize
19 these policies in advance of the time that absentee
20 ballots can be requested.

21 If voters know in advance what the
22 accommodations will be, they can make more informed
23 choices about voting in person or by mail.
24 Minimally this information can be easily posted on
25 election websites. Thirdly, post signage outside

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2 of the polling place telling voters who need an on-
3 site accommodation how to get them.

4 We are taking this message to the Florida
5 State Association of Supervisors of Elections. In
6 a recent meeting with the current president she
7 agreed to discuss this with her members. In
8 addition, we will be communicating this request
9 directly to the supervisor of elections.

10 During Florida's current legislative session
11 there has been discussion regarding the
12 implementation of online voter registration. While
13 it remains unclear if this will be enacted this
14 session, our work has focused on building
15 accessibility into the design of online voter
16 registration systems including verification of
17 accessibility of the system by an independent body.

18 Thank you.

19 COMMISSIONER RUSSELL: Thank you. The next
20 speaker is Carolyn Thompson, the Florida Protection
21 Advocate for the Advancement Project.

22 MS. THOMPSON: Thank you for inviting me here
23 today and thanks for that applause. Desmond and I
24 applaud you and all your hard work and for bringing
25 your testimony in Geneva. Many of you may not know

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2 this, but our brother Desmond Meade and members of
3 the ACLU went to Geneva to speak about the felon
4 disenfranchisement issues in our state.

5 My name is Carolyn Thompson. I work for
6 Advancement Project. Since 2000 Advancement
7 Project, a national nonpartisan civil rights and
8 racial justice organization, has worked closely on
9 the ground year round with Florida citizens,
10 community organizations, nonpartisan coalitions and
11 civic engagement groups to remove barriers to
12 voting.

13 We also engage in voter education and outreach
14 and provide our coalition partners with legal
15 position and communication support on voter
16 registration and election administration. We have
17 16 pages of detailed recommendations and I will
18 present those to you in writing. But today I
19 wanted to speak about the personal stories of some
20 of our voters.

21 One we know very well, which Nancy mentioned,
22 Desiline Victor. I want to begin by saying if we,
23 if the State of Florida were covered, completely
24 covered by the Voting Rights Act we would not have
25 to tell the story of Desiline Victor and so many

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2 like her who stood in line for hours and hours
3 simply to cast a ballot.

4 Ms. Victor, which Nancy mentioned, is a 102-
5 year-old woman who cast her first ballot in 2008.
6 That is, when we had 14 days of early voting and
7 the lines were four hours long, which was then
8 outrageous, the Florida legislature, as you know,
9 cut early voting by eight days. And so one plus
10 one is two; the lines doubled.

11 Ms. Victor went to vote early that morning at
12 North Miami Library in Miami-Dade County and at 102
13 years old stood in line for three hours. Other
14 voters noticed her shaking and thought well, maybe
15 we should alert poll workers, this woman could die
16 standing in line to cast a ballot.

17 Poll workers turned her away, told her they
18 couldn't assist her at that moment and that she
19 should come back. So now you have someone who is
20 102 years old, suffering from various disabilities,
21 none of them preventing her from standing, but at
22 102 you can imagine she takes medication and needs
23 assistance.

24 Ms. Victor didn't give up. She asked her
25 family members to return her to the same polling

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2 place where she was finally able to cast her ballot
3 after standing in line another two hours. Thanks
4 to a 102-year-old lady, national attention was
5 brought to this issue and we were able to provide
6 the President's Commission on Election
7 Administration with all our ideas. I'm told I have
8 one minute.

9 Well, I can tell you now that the North Miami
10 Library now has Ms. Victor's name on it.

11 (Applause)

12 I bring to you again the attention of Carla
13 Vanessa Arcia. She was one of almost a hundred
14 thousand people who the state said were alleged
15 noncitizen voters. These are naturalized citizens
16 who have cast ballots before but the state didn't
17 think that. And so she was sent a letter by
18 Miami-Dade County telling her she had 30 days to
19 prove her citizenship and residency.

20 The majority of these voters who receive these
21 letters are Latino, 82 percent of them were voters
22 of color, 98 percent of the 5862 people who
23 responded, because most of them didn't, were U.S.
24 citizens. So this is dangerous when we have no
25 protections here in Florida and people can be made

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2 to stand in line for unreasonable lengths of time,
3 removed from our voter rolls.

4 So I just want to add to what Lida said
5 earlier, that our fight is really about many of the
6 basic barriers, and so we need our state to be
7 covered by a stronger Voting Rights Act. Thank
8 you.

9 COMMISSIONER RUSSELL: Thank you. Next is
10 Linda Geller-Schwartz, National Council of Jewish
11 Women. While she is coming up I will tell you that
12 the commissioners will be offered an opportunity to
13 ask questions of the folks who have spoken during
14 this flight at the end of the session.

15 MS. GELBER-SCHWARTZ: Good afternoon,
16 Commissioners. My name is Linda Geller-Schwartz.
17 I'm very pleased to be able to address you on
18 behalf of the National Council of Jewish Women of
19 Florida. The national council is a volunteer
20 organization that has been advocating for the
21 rights and needs of women, children and families
22 for over a century. We fought for women's
23 suffrage, the historic Voting Rights Act of '65,
24 the Help America Vote in 1992 and more. We've
25 continue to believe that key to our democracy is

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2 that all eligible voters should be able to vote and
3 that every vote must be counted.

4 So it is fitting I should be here to talk to
5 you about the June 2013 decision of the Supreme
6 Court in Shelby County v. Holder which cut the
7 heart out of the Voting Rights Act of 1965. By
8 declaring the preclearance coverage formula in
9 Section 4B of the act unconstitutional, it removed
10 extremely important protection against voting
11 discrimination in large segments of this nation,
12 including Florida.

13 You have my written statement about the impact
14 of the Shelby decision on Florida and I won't go
15 over the detail. I just want to highlight a couple
16 of points and to answer those who might say that it
17 really wasn't that important to Florida.

18 We know that Florida was not one of the
19 original states that fell under the preclearance
20 formula, but after the amendment to Section 5 of
21 the Act in 1975, five counties, Henry, Hardee,
22 Hillsborough, Monroe and Collier, became subject to
23 preclearance. So only five of Florida's 67
24 counties were covered. Yet history shows us, as
25 Commissioner Russell indicated, that in many ways

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2 the preclearance provision of the V.R.A. ended up
3 protecting voting rights across the state.

4 In my submission I cite two recent examples to
5 illustrate this point. First there is the infamous
6 Florida House Bill HB 1335 which was introduced
7 into the 2012 session. It made about 80 changes to
8 existing voting provisions, some of which were
9 particularly egregious and clearly designed to
10 suppress the vote.

11 The Attorney General under Section 5 of the
12 V.R.A. was required to get preclearance for the
13 five counties so DOJ reviewed the bill. Although
14 in strict terms DOJ was only concerned about the
15 covered counties, in practical terms, since stating
16 voting laws apply throughout the state, the
17 spotlight was focused on the overall impact on the
18 state. And this resulted in, among other things, a
19 settlement with the state to remove the worst
20 aspects of the proposed changes to the voter
21 registration process. Floridians across the state
22 benefited.

23 Second, in April of 2012 the state began its
24 voter purge, which at one point seemed to target
25 180,000 voters. The actual list sent to the SOEs

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2 ended up having over 2600 names. And we know from
3 subsequent analysis that roughly 80 percent of the
4 names on the list were people of color; sixty-one
5 percent were Latino; 16 percent black; and five
6 percent Asian American. But the secretary of state
7 had neglected to seek preclearance for the five
8 covered counties, and this resulted in a suit by
9 the Lawyers' Committee, the ACLU and others.

10 Unfortunately, the case was ultimately
11 dismissed because of Shelby. But during that
12 period, when the case had been stayed, the public,
13 the press and the academic community and all those
14 who fight for voting and civil rights had the
15 opportunity to understand the ramifications of the
16 purge. We recognized its sloppiness and
17 discriminatory nature and it became a clear focus
18 for creating pressure on the government to stop the
19 purge.

20 In conclusion, we know that the preclearance
21 provision had a very important role to play in
22 Florida. Harmful and discriminatory laws and
23 procedures were stopped by the DOJ intervention or
24 the courts. We also know from the history of
25 Florida and its voting laws that there is a

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2 historic inclination to voter suppression. Even
3 with the V.R.A. and the lawsuits, it was estimated
4 that changes that did pass in 2012 discouraged some
5 200,000 Floridians from voting.

6 Studies have also estimated that many black
7 and Latino voters waited nearly twice as long in
8 voting lines as white voters, and we just heard how
9 serious it was for some people. We also know that
10 the attempted voter purge in 2012 was not the first
11 and, as we have seen this year, will not be the
12 last.

13 Finally, we know that minority populations are
14 growing rapidly in Florida. Between the 2000 and
15 2010 census the African-American population
16 increased by 26 percent in the state and the
17 Hispanic population by 64 percent, while the white
18 population grew by a mere four percent in the
19 state.

20 It is clear that these demographic changes
21 will continue to provide an incentive for those who
22 resist change to try to stop it through voter
23 suppression. Now that Shelby had rendered the
24 preclearance procedure moot, one of the most
25 important tools for correcting the historic and

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2 continued discrimination is gone, Florida is worse
3 for it. It increases the urgency for Congress to
4 find a new law, to approve a new formula and new
5 provisions, to make our voting process more
6 transparent and fair. We need the legal
7 protections. Thank you.

8 COMMISSIONER RUSSELL: Thank you. Next, Mone
9 Holder representing Florida New Majority.

10 MS. HOLDER: Good afternoon. My name is Mone
11 Holder. I'm the legislative and policy director
12 for Florida New Majority. Florida New Majority is
13 a statewide voter participation organization. We
14 work to empower women, African-Americans, Latinos,
15 new immigrant communities and young people to
16 participate in the political process and to expand
17 democracy in Florida. We train grass-root citizens
18 to be leaders, mobilize communities to vote,
19 educate the public to share our values and inspire
20 Floridians to take action.

21 In January and February of 2013 Florida New
22 Majority executed a robo survey to capture stories
23 of voters from the 2012 election to find out
24 exactly how long they waited in line to vote. As
25 part of the survey we asked voters to take an

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2 action, press one, and two actually record their
3 stories and have that provided as a testimony.
4 Those testimonies were actually used to inform FNM,
5 Florida New Majority, civic engagement, voter
6 participation and legislative strategy which
7 includes our advocating for legislation currently
8 that recognizes the fundamental rights to vote, and
9 also calling for the end of the voter purge, not
10 just temporarily as they are suggesting but
11 permanently.

12 Based on the recording, I submitted a
13 transcript of 20 testimonies from voters in
14 different parts of Miami-Dade County, predominately
15 from underrepresented communities. The statements
16 range from waiting on long lines, from people
17 having to return to voting locations on more than
18 one day, from being erroneously told that they were
19 not registered to vote or arriving at the polls and
20 being told that an absentee ballot was cast when it
21 actually had not been.

22 One thing that stood out among all the
23 testimonies were that voters was discouraged and
24 disappointed at their experiences at the poll.
25 Unfortunately, voters from historically under-

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2 represented groups are most likely to be dropoff
3 voters, meaning they will most likely not
4 participate in midterm elections, which we know are
5 equally important, especially here in Florida.

6 Limiting access to the polls, outrageously
7 long wait times, and the overall threat of ballots
8 not being cast or counted all contribute to the
9 dropoff rate in communities of color.

10 The Rising American Electorate, or as we refer
11 to it as the RAE, is comprised of unmarried women,
12 youth ages 19 to 29, African-Americans, Latinos and
13 other nonwhite races, and they now account for more
14 than half of voting-eligible population America.
15 That's around 53.5 percent, or 115 million.

16 The RAE turnout has increased in recent
17 elections, but they still do not vote in proportion
18 to their share of the population. In fact, of the
19 34 million Americans predicted to drop off from the
20 2012 race, roughly two-thirds will come from the
21 RAE. And remember, that's 53.5 percent of the
22 population that can vote.

23 Florida specifically will have a Rising
24 American Electorate dropoff rate of 35 percent, and
25 that's highly disproportionate to the non-RAE

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2 dropoff of 16.2 percent. Because RAE voters can be
3 a significant margin of difference in this year's
4 gubernatorial election, there will be significant
5 pressure to either increase the participation of
6 RAE voters or to suppress that participation.

7 Therefore this is not just a marginal matter,
8 but as Senator Gelber mentioned, it can determine
9 outcomes, and that's why the need to protect the
10 democracy for the RAE is superimportant and we need
11 to be vigilant about that.

12 With the 2014 midterm elections upcoming,
13 women of color will be a key focal point. They
14 make up a large percentage of the likely dropoff
15 voters from the presidential election and their
16 turnout or abstention will be a key factor in the
17 electoral outcomes. A direct example of that, of
18 the impact of women of color, is in the 2013
19 gubernatorial race in Virginia. Because
20 African-American, Latina and unmarried women turned
21 out in numbers close to Barack Obama's 2012
22 election, a Democratic candidate won women overall
23 and with them won the election.

24 So voting is actually the one time we are all
25 equal, whether you are young, old, rich, poor,

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2 black, white, Latino, Asian-American or Native
3 American. When we stop at the voting booth we all
4 have the same say. With groups on the ground, such
5 as Florida New Majority and our other coalition
6 partners, we are working hard to increase voter
7 participation on a mass scale through education,
8 leadership development, as well as building a
9 statewide women's participation network. It is
10 important that efforts to suppress votes are
11 eliminated.

12 We are looking to our policymakers to insure
13 that the fundamental right to vote is explicit and
14 protected, not only in the State of Florida but in
15 the country. As we are midway into the 2014
16 legislative session, there are no pieces of
17 legislation moving that provide real fixes that
18 constituencies have been asking for as far as
19 election administration.

20 We are hopeful that recommendations to
21 modernize our election administration system such
22 as online voter registration are implemented and
23 that election officials actually take the time to
24 expand voting days and voting hours. So we
25 appreciate the opportunity to address the

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2 commission with our concerns and stand alongside
3 our key stakeholders to make sure elections are
4 free, fair and accessible. Thank you.

5 COMMISSIONER RUSSELL: Thank you. The final
6 speaker in this flight is Ana Delarosa, State
7 Director Mi Familia Vota.

8 MS. DELAROSA: Thank you. On behalf of Mi
9 Familia Vota Educational Fund I would like to thank
10 you, the Lawyers' Committee, for the opportunity to
11 testify in front of this commission today. Mi
12 Familia Vota is a nonprofit organization dedicated
13 to empowering the Latino community in order to
14 increase civic participation. We do this through
15 partnering with allies in order to naturalize
16 citizens, voter registration and voter education.

17 In 2012 Mi Familia Vota along with the ACLU
18 and the Lawyers' Committee filed a lawsuit against
19 Florida's Secretary of State Ken Detzner regarding
20 Florida's implementation of the voter registration
21 procedures without obtaining the required
22 preclearance. Secretary Detzner's attempts at
23 purging the voter roles of potential noncitizens
24 led to the two plaintiffs in the case, Mira Lapage
25 and Pamela Gomez, being kicked off voter roles

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2 despite being naturalized U.S. citizens who were
3 legally registered to vote in Florida.

4 The secretary made claims that his procedure
5 identified over 185,000 people on the voter rolls
6 that were ineligible to vote. Of that number,
7 Homeland Security's cross-check of his list
8 identified less than 200 people who were registered
9 to vote and might not have been citizens. While
10 there are two plaintiffs in this case they stand
11 for the many who were denied access to vote in
12 2012.

13 They also stand for those who are allowed
14 access to the vote but encountered other tactics of
15 disenfranchisement on Election Day. Christopher
16 Cruz, a paid canvasser from Mi Familia Vota during
17 that election, was redirected to three different
18 polling places that day. He was asked to wait in
19 line each time, and when his name and voter
20 registration card were cross-checked at the polling
21 place he was redistricted to a subsequent location.

22 After the third polling place our lawyers
23 accompanied him to the front of the line at the
24 original polling place he had tried to cast his
25 ballot and all of a sudden his name was found. His

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2 name had been there all along. Christopher cast
3 his vote that date but he knew that he could call
4 on Mi Familia Vota to protect his right. But this
5 is a right that should be protected by the state,
6 and we shouldn't be working so hard against the
7 attempts to stop it.

8 When organizations like ours invest in the
9 civic participation of the Latino community and are
10 constantly met with ploys that undermine our very
11 effort we do not take this lightly. The Latino
12 community cannot be used as a scapegoat for voter
13 purges and other procedures that seek to suppress
14 voter turnout under the guise that there are
15 thousands of noncitizens attempting to vote.

16 There is not an epidemic of noncitizens
17 yearning to stand in long lines to cast votes in
18 Florida. Take it from an organization that
19 dedicates all of its resources trying to get
20 eligible Latinos to the polls. Voter fraud from
21 noncitizens is a nonissue. And the purging of the
22 voter polls which keep people who look like me with
23 names that sound like mine from casting a vote
24 simply proves that the integrity of the Democratic
25 process means as little to the secretary as it

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2 would to anyone trying to the cheat the system from
3 any other angle.

4 While the Supreme Court's Shelby decision led
5 to a dismissal of the case, this issue is far from
6 settled. Mi Familia Vota continues its efforts to
7 register eligible voters in the state and then see
8 that they are allowed to exercise their
9 constitutional right to do so.

10 We want this state to address actual flaws to
11 the voting process such as the lack of Spanish
12 bilingual poll workers and the long lines and chaos
13 at the polling places, instead of wasting the
14 state's resources on the suppression of the Latino
15 vote.

16 I speak for the communities Mi Familia Vota
17 empowers in asking for the end to voter purges, and
18 in trying to extend an invitation to the officials
19 of state to engage us in real dialogue on how to
20 improve access to voting. It is then that Florida
21 can insure that the integrity of the process seeks
22 never to discourage its voters but, rather, protect
23 all of them, including the Latinos. Thank you.

24 COMMISSIONER RUSSELL: Thank you. Mone, if
25 you will stay and Desmond, Nancy, Maribel, Carol,

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2 Carolyn, Linda, and Mone, if you would sort of
3 approach, the commissioners now have an opportunity
4 to ask questions that they have scribbled down
5 during your testimony. So we are going to take a
6 few minutes and go through that process at this
7 point.

8 COMMISSIONER SMITH: I'm going to throw some
9 questions out, some more directed some more
10 general. But for Desmond, for instance, with
11 respect to the work you are doing, we know that
12 some states like Vermont and Maine allow felons who
13 are currently doing time to vote. Other states
14 have some ban, but then are automatically having
15 your rights restored.

16 Florida is one of the worst with respect to
17 not a lifetime ban like in Kentucky but very
18 difficult. Yet we are seeing some movement on this
19 issue across the country, most notably in places
20 like Kentucky and Virginia, and I am wondering for
21 you to think about in responding why are we seeing
22 such obstacles here in the Sunshine State. I want
23 to hear your take on this in just a moment.

24 I also have just some general questions for
25 those of you who are pushing online voter

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2 registration. In the abstract I think that's a
3 wonderful idea. We know that more availability,
4 more access is probably going to get more people
5 who are not registered to do so.

6 That said, there is a digital divide in this
7 state. We know that some target populations do not
8 have access to online means as much as others. But
9 even if that could be overcome, my concern is one
10 with respect to the dual process in which we verify
11 your identity to vote. And I think this is very
12 serious and something that we don't think of in
13 terms of what the ultimate goal of registering is,
14 and that's to have not only your ability to cast a
15 ballot but to have that ballot counted.

16 And what we know here in Florida is that in
17 certain processes it is much easier to verify your
18 identity than in others. Florida, thank goodness,
19 has one of the least restrictive forms of
20 identification that are permitted to be able to
21 show who you are at the polls. You don't have to
22 have a state-issued voter ID. You can use your
23 retirement community card, you can use your student
24 ID. You can't use your state employee ID but you
25 can use your student ID still.

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2 When I go the first question I'm asked is, Do
3 you have your driver's license? And I say yes.
4 Second question, Could I see it? I say no. Why?
5 Because I'm going to show you my bank card. My
6 bank card has my picture, my bank card has my
7 signature, it is a perfectly acceptable form of ID,
8 and it is something that a lot of people have that
9 don't have an official driver's license or state ID
10 card.

11 So I try to find the least barrier to showing
12 my identification. And when I vote in person all I
13 have to do is turn that card over, show them my
14 signature, I can look at it, remind myself what my
15 signature looks like and sign it.

16 When you are voting through an electronic
17 process, say signing up at the DMV or at a social
18 service agency and you are scratching your
19 signature on a pad, you really don't think about
20 it. It is like going to Publix. You don't really
21 think about your signature that you are scratching
22 out. Yet that is the official record that the
23 state is using to verify your signature if you vote
24 by mail.

25 And I suspect in the future it is going to be

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2 used in person. Yet many of us don't know what
3 that signature looks like because we registered
4 when we came to Florida in 1983, or we registered
5 when we were 16, preregistered, and put a little
6 heart or smiley face at the end of our signature,
7 and yet that's our official signature.

8 And when you vote absentee and you sign your
9 normal, regular written signature on the back that
10 signature, which you use and you identify as yours,
11 has to match with that scratchpad signature that
12 you did at the DMV or when you were 16.

13 And what we know, using again big data, is
14 that the rejection rates differ widely across race
15 and ethnicity, they differ widely with respect to
16 age; and if you are disabled, and we have evidence
17 of this, and you have signed your registration form
18 but then subsequently had a stroke and you are
19 signing the back of your envelope that signature
20 can easily be rejected, in fact often is rejected
21 if it doesn't match.

22 I just want to hear some reflection about
23 moving in that direction, which again, I want to
24 register as many people as possible. I was hired
25 as an expert to try to stop the House Bill 1355's

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2 effort with the League of Women Voters registration
3 drive, and I know that it had a negative effect so
4 I am really concerned about that. But I am also
5 concerned at the final end of having your vote
6 count. And that's something that I think we really
7 need to be thinking about because there are other
8 states that are moving towards digital registration
9 that aren't really interested in disenfranchising
10 people, they are interested in making sure
11 that that vote doesn't count.

12 COMMISSIONER RUSSELL: So, Desmond, if you
13 remember the question that he asked you --

14 MR. MEADE: I remember. So the answer to your
15 question is not as complicated, and it really
16 didn't take me that long to think about the answer.
17 First, let me point out that Florida
18 disenfranchises more people than the entire
19 population of over 20 states and territories and
20 over 85 countries. So it is definitely the worst.

21 But when the discussion is held about why is
22 Florida disenfranchising so many people, you know
23 when you look at it, I guess when you just look at
24 the disenfranchisement policies the natural
25 reaction would be to suppress the votes. And

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2 there's no denying that there is some motivation
3 behind that because all you have to do is look at
4 the Bush-Gore elections.

5 But when you look at it holistically,
6 especially in 2011, what you are seeing is the very
7 first act of the cabinet was to roll back the
8 policies and make it harder in spite of experts'
9 testimony showing that the quicker you reintegrate
10 an individual back into their community the least
11 likely they are to be an offender.

12 Right after that we have seen the rollout of
13 House Bill 1355 and then we have seen tucked into
14 the appropriations bill measures that would allow
15 the privatization of prisons in the State of
16 Florida, and right after that was a passage of a
17 statute that allowed for the housing of juvenile
18 offenders in adult facilities.

19 So when you look at the campaign contributions
20 of the individuals that instituted these policies
21 it was very clear to see that not only may it have
22 been a voter suppression ploy, which they did not
23 need to roll back the policies in order to suppress
24 the vote because the decision to grant or to
25 restore a person's right is purely arbitrary.

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2 There is no clear standard to it.

3 So if I don't like the color of your purple
4 tie today I don't have to restore your rights, and
5 there is nothing that can prevent me from ruling in
6 that fashion.

7 And so, when you look at it holistically and
8 see the ties that private prisons have and you look
9 at the studies that showed that in 2009 individuals
10 who received their rights back, the recidivism rate
11 was reduced from 33.1 percent to 12.4 percent.

12 In 2010 the recidivism rate was reduced to 5.4
13 percent. So we knew, and even Governor Jeb Bush's
14 task force also reported, that when you restore a
15 person's rights you increase the likelihood of them
16 becoming productive citizens and contributing to
17 the tax base.

18 So the one question you have to ask is, who
19 would benefit from making it more difficult for a
20 person like me to be able to successfully
21 reintegrate back into the community? And the one
22 answer that kept popping up was private prisons,
23 because they make their money by making it
24 difficult for people who acclimate back into the
25 community, and then what happens is they increase

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2 the likelihood of recidivism, and their number one
3 goal is to fill beds.

4 COMMISSIONER RUSSELL: Thank you. Now,
5 Maribel. I just wondered if you remembered the
6 entirety of the question?

7 MS. BALBIN: Yes, Commissioner. The reason
8 why we are thoroughly advocating for this is,
9 obviously, because of what happened because of
10 1355. Still today with whatever the fixes were it
11 is still difficult. We need -- you have to be an
12 member of the league, you have to be registered,
13 you get a number. So to get volunteers to raise
14 the vote that we used to do before, we can't do it
15 anymore.

16 And the focus for us is young people. And
17 you'd be surprised. I sit at the malls and I'm
18 there with my voter registration forms. They come
19 up to the table, "I have to fill out the form?"
20 It's a foreign concept.

21 So we feel that with an online registration we
22 are going to get the young voters to register,
23 which are the ones we'd really like to see
24 increase, and we will continue to do the other
25 ones. We do believe the issue of the postcard,

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2 that Florida requires that you mail the postcard
3 with the signature, it will maybe address the issue
4 of the identifying.

5 COMMISSIONER RUSSELL: Do the other
6 commissioners have any questions at this point?

7 COMMISSIONER RODRIGUEZ: I did have a basic
8 one for Ana Delarosa. Ana, this relates to your
9 testimony regarding Christopher, the volunteer who
10 was unable, who was sent to three different
11 precincts only to return to his original precinct
12 only to have them find his name on the roster.
13 Were you able to determine how it was that they
14 missed it the first time around?

15 MS. DELAROSA: No. From what we were told
16 once the lawyer walked up with him his name was
17 just on the list and they said it was just a
18 misunderstanding. That's as far as the
19 explanations went.

20 COMMISSIONER RODRIGUEZ: And this is actually
21 an interesting point for election administration
22 because you would be shocked that that in fact
23 happens. I worked the polls and have been working
24 the polls for many, many years, not as a partisan
25 observer but as a real poll worker, and one of the

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2 most difficult things to watch is when you have
3 wonderful old people who volunteer to work the
4 polls but they are elderly, they learned on a
5 different alphabet.

6 For example, in Miami Beach there are many
7 Russians. They did not train on our alphabet and
8 finding people's names quickly is very, very
9 difficult for them. And we have had incidences of
10 that very thing, people being turned away because
11 somebody doesn't know the alphabet and was unable
12 to find the name quickly and therefore said you are
13 not here and sent them away just so that they
14 wouldn't be embarrassed or because they didn't
15 check right. And that happens routinely.

16 I think that a great solution from an
17 administration perspective for all of these groups
18 is that you encourage people who are activists, who
19 are caring members of the community to sign up to
20 be poll workers. The more people who are poll
21 workers who have computer knowledge and have an
22 understanding and a facility with written
23 directions and the written word is going to be key,
24 especially in the next election, because let me
25 scare you all.

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2 Last Friday I went to my training on the new
3 electronic poll books. The new electronic poll
4 books deal with two problems that have already been
5 addressed here. One of which Professor Smith was
6 talking about, and that is the electronic
7 signature. We need to train voters on how to sign
8 their signature electronically.

9 I as a poll worker have the ability to reject
10 your signature if it doesn't match the ID, if the
11 ID signature does not match the signature on the
12 electronic poll book.

13 Now we are trying to create all sorts of
14 checks to prevent poll workers from doing that, but
15 guess what, the training is very amorphous and it
16 will happen. It absolutely will happen. That's
17 the number one problem with the electronic poll
18 books.

19 The second problem or issue with them is
20 there's going to be very few of them in the polling
21 place. If you go to a polling place with regular
22 precinct registers, they break them up, break up
23 the alphabet into four, five, six books, in order
24 to sit many people down and give them different
25 parts of the alphabet.

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2 What is going to happen with electronic poll
3 books is you are lucky if you have two electronic
4 poll books in the polling place. That is going to
5 lead to long lines. And if the people who are
6 working the electronic poll books do not have a
7 facility with technology they are not going to be
8 able to find the people who do not come in with a
9 driver's license or the Professor Smiths of the
10 world who come in with their bank card and say
11 "find my name." There is no way of swiping the
12 bank card.

13 The poll worker has to type in your name and
14 has to use the typed-in information, find your name
15 that way. And if there are many Daniel Smiths it
16 may hit the wrong one at which one point he'll be
17 told you don't belong in this place and they will
18 print out a receipt and say you need to go to
19 another polling place.

20 These are all key technological changes that
21 are going to have severe impact and
22 disproportionate impact on communities of color.
23 And I can already tell because when I went to class
24 there were only two people who understood how to
25 use the electronic poll book, me and another lady.

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2 Both of us had been in the professional world.

3 Everybody else who were training had a really
4 difficult time getting the concept and they are
5 going to have a really difficult time typing in the
6 names, getting the right information and providing
7 the right data to that voter on Election Day. So
8 these are election administration things that are
9 going to really, really have an impact and we have
10 to prepare for them.

11 MS. BALBIN: Can I add one thing to that and I
12 did get trained and I agree totally with Lida. But
13 to the point of someone that goes to a precinct and
14 that's not your precinct, and even now when they
15 give you that receipt when you go to the other
16 precinct you have to stand in line again. So I
17 have been asking, why can that person not go to the
18 front of the line? Because the second time you are
19 not going to wait, you are going to go home and
20 that voter is lost.

21 COMMISSIONER RUSSELL: Just when we do the
22 second round of questions, when you come back to
23 the microphone if you would, for the scribe, repeat
24 your name it would be most helpful, I am sure.

25 Just for historical note, the issue of felon

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2 disenfranchisement is purely based on race and
3 racism. It is purely a post-Reconstruction concept
4 aimed at eliminating the effects of the 13th, 14th
5 and 15th amendments, and it was so stated in the
6 records of South Carolina, Virginia, and other
7 states that implemented felon disenfranchisement.
8 Its purpose was to keep ex-slaves from voting and
9 it continues to be so.

10 On that note, other questions from the panel?
11 Seeing none, Rebecca is very happy that we don't
12 have questions and she is asking me to move
13 speedily through the audience questions at this
14 point. I have cards or audience statements, and I
15 would remind each of you as I call you that you
16 have three minutes in this segment to make your
17 presentations. And be sure and watch the guy with
18 the red hat. If you have not submitted a card, I
19 don't have your name and you get your cards outside
20 at the table.

21 So our first speaker is going to be Reneta
22 Holmes, Response Leader. You tell me who you are.

23 MS. HOLMES: I am Madam Reneta Biggie Momma
24 Holmes. I'm the executive director and response
25 advocate for the Labor Education Advocacy in

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2 Support of Miami, Miami-Dade County. The acronym
3 is Women's Association and Alliance Against
4 Injustice and Violence for the Empowerment of the
5 same.

6 I'll be very quick because we have several
7 hearings this evening and we are enduring quite a
8 bit of violence as mothers and juveniles who are
9 facing incarceration and gun violence.

10 My concern today is regarding those persons,
11 not just women, who are incarcerated and have yet
12 to be found guilty, who have been incarcerated for
13 less than five years or nearly five years and still
14 have not been found guilty and even our outstanding
15 citizens, a majority who have been advocates and
16 deemed militant or rebellious because of our
17 knowledge or who have been retaliatory, arrested
18 because of their sexual orientation.

19 These have been documented complaints, my dear
20 commission, and I thank you for being here, but the
21 accessibility issue is mine, not just for those
22 also, but those persons with disability that are
23 incarcerated or in the hospital. There seems to be
24 a forgetfulness that we are innocent until proven
25 guilty. We have our rights unless they be stifled.

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2 I took the opportunity as a person with
3 disability, I won't state what it is, you guess,
4 because it is not my inability, and put a few
5 people on a truck. Some were convicted felons.
6 And when we got there, although I had done great
7 investigation, I apologize, they are waiting for
8 me, as an organizer that happens.

9 Siri off. Thank you. Thank you. She's very
10 hard-headed. She's an organizer also.

11 We found that ex-felons could actually vote,
12 and so they voted although it was not considered.
13 I'm concerned that that education does not get out.
14 I'm concerned that that service is not provided,
15 that accommodation is not provided and that we are
16 denied our rights not only to a fair trial but
17 denied our rights to vote.

18 Five years can make a big difference in policy
19 change. Those 25 on that truck might have been the
20 breaking vote and could you tell me how do we deal
21 with it? Is anyone actually taking care of the
22 voters rights? I want you to know that I've never
23 had a felony sentence, and although I was
24 threatened because of my rebelliousness or my
25 gender or just being a darn good organizer, as you

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2 can see that goes to the mark that my rights would
3 be taken away for seven years. I attempted to find
4 out why I was not getting my voter rights restored
5 or why they were even taken away. I registered,
6 and then when it started all over again, well that
7 didn't stop me.

8 I influenced a lot more votes than my one
9 because of that now and I just want to mention
10 that. I could imagine how much influence and how
11 much empowerment we are losing by not telling them
12 that they have to provide us that opportunity
13 during incarceration. Thank you so kindly. I
14 guess I got to go. It says to stop.

15 Can we do this again because some of us went
16 to 1311 Miller? Thank you.

17 COMMISSIONER RUSSELL: Thank you. Liza
18 McClenaghan, Collier County.

19 MS. McCLENAGHAN: Today I come before you to
20 share experiences in Collier County from the Voting
21 Rights Act in recent elections. Collier County has
22 been a covered jurisdiction under the Voting Rights
23 Act since 1976 and is currently covered under
24 Section 4F4 for Spanish speakers. Our county
25 enjoyed the preclearance under Section 5 because of

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2 that determination. Our coverage also aided the
3 state since all legislative changes for the state
4 had to be precleared.

5 We have a good working relationship with our
6 supervisor of elections. I have high regard for
7 her and her staff and the service that they provide
8 to citizens of our county. But that does not mean
9 that we have not had any problems.

10 Today I want to focus on four areas. First is
11 minority language assistance, which is an issue for
12 both the county and the state.

13 The Voter Guide, a document that provides
14 plain language explanations of the voting process,
15 is extremely helpful to voters especially in the
16 Spanish and Haitian Creole versions. The county
17 guides usually provide specific information about
18 polling sites and addresses needed for absentee
19 ballots and registration.

20 In 2002, a month before the August primary,
21 the supervisors who were covered forgot to publish
22 a Spanish version or Haitian Creole version of the
23 Voter Guide on their websites in Adobe pdf as they
24 had in English. They seemed unaware that the web
25 page translators that they had on their sites would

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2 not translate these documents automatically and
3 Collier County, once prompted, rushed to print
4 their version of the Spanish guide in a timely
5 fashion.

6 To this date there is no Spanish version of
7 the voter registration guide on the Division of
8 Elections website, and since October 2011 the whole
9 State of Florida has been covered under Section 203
10 for Spanish speakers. The only Spanish documents
11 you will find are in the posters for voter fraud or
12 for constitutional amendments.

13 It is very clear under the Code of Federal
14 Regulations, Part 55.1, that they are supposed to
15 provide the same information in English and the
16 designated language. We also have an ineligible
17 voter declared who was a citizen, but because she
18 was Haitian Creole information was provided in both
19 Spanish and English to assist her in the process of
20 correcting her provisional ballot. Without our
21 intervention she would not have had her vote
22 counted.

23 We also have a supervisor of election
24 consultation prior to the elimination of Section 4.
25 And that is clearly going away as the supervisor

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2 has made determinations as to what she thinks is
3 significant and insignificant in discussions with
4 the parties and with outside organizations.

5 And then, finally, on redistricting, we have a
6 growing Latino population in Collier County and
7 without the help of the Lawyers' Committee or some
8 other outside groups when we get to the 2020 census
9 and find that we need to have a minority-majority
10 district, we which we do not have in Collier
11 County, we will have to go to court rather than use
12 the preclearance process. Thank you for your time.

13 COMMISSIONER SMITH: Ms. McClenaghan, I have a
14 question. On the ground in Collier maybe you can
15 tell me whether or not the practice that was going
16 on in 2012 prior to the election where the
17 supervisor's office was contacting the county
18 courthouse and requesting the jury recusal forms
19 where citizens, shirking their civic duty, wanting
20 to shirk their civic duty of participating on a
21 jury, declared that they were not in fact a
22 citizen. Obviously that's not what they should
23 have been doing. There are penalties against that.

24 But in your opinion do you think those records
25 then should have been cross-checked with the voter

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2 file in Collier County and had those individuals
3 stripped of their voting rights for being a
4 noncitizen, which I heard allegations, there were
5 allegations of that going on in Collier County?

6 MS. McCLENAGHAN: To this day they are still
7 requesting the excusal forms from the clerk.

8 COMMISSIONER SMITH: So that practice is still
9 going on?

10 MS. McCLENAGHAN: Yes.

11 COMMISSIONER SMITH: Yet we know many of those
12 individuals are in fact citizens, and last I
13 checked because you put down some incorrect
14 information on a jury form it didn't mean you
15 denounced -- renounced your citizenship.

16 MS. McCLENAGHAN: The staff member at the time
17 who has since left that position was trained by the
18 clerk to use the appropriate databases to research
19 the status of those individuals and also had access
20 through the state to the Homeland Security devices
21 that were used at that time. So they felt they had
22 researched the information before they sent the
23 letters to the individuals telling them.

24 COMMISSIONER SMITH: So that would be the same
25 information that Secretary Detzner now is claiming

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2 is probably not as accurate in terms of Homeland
3 Security, they were using that to disenfranchise
4 people. That practice is still going on you said?

5 MS. McCLENAGHAN: Yes.

6 COMMISSIONER SMITH: Thank you.

7 COMMISSIONER RODRIGUEZ: Ms. McClenaghan, your
8 organization?

9 MS. McCLENAGHAN: I'm with the NAACP Unit 5117
10 political action committee.

11 COMMISSIONER RODRIGUEZ: Thank you.

12 COMMISSIONER RUSSELL: Next is H. Paul
13 Douglas, Hernando County NAACP.

14 MR. DOUGLAS: Good afternoon, commissioners.
15 As Mr. Russell said, I am Paul Douglas NAACP,
16 Hernando County, Branch 5012. I'm here today to
17 let you know that we have always in Hernando County
18 looked at the issue of voter suppression -- and
19 that's what we call it -- as a two-prong fix. One
20 being legal and one being troops on the ground. I
21 take the position as one of the troops on the
22 ground.

23 It appears we in Hernando County are not
24 experiencing long lines, at least in the last
25 election. We are experiencing a strong effort to

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2 keep and stop voters from ever getting to the
3 polls.

4 We are now experiencing closing of our
5 precincts. Our precincts of mostly
6 African-American communities, eight of them have
7 been closed and they are doing it in a very strange
8 way. They will close the precinct for the general
9 election and keep them open for the primaries,
10 which means when it comes to general election time
11 there will be much, much confusion.

12 They are closing these precincts. As an
13 example they closed a National Guard Armory with a
14 voter registration of 3,000 individuals, put it in
15 a 600 square foot homeowners' association precinct
16 that will be closed by the fire department because
17 it can only handle 300 people total.

18 We're finding out that Souls to the Polls is a
19 very, very tedious thing in Hernando County. And
20 how we're fighting that? They have closed Sundays.
21 We can't vote on Sundays. But they forgot to tell
22 us or we forgot to tell them that Wednesday is a
23 pretty important day. We go to church on
24 Wednesdays, and we do all of our choir singing and
25 everything and we now have moved Souls to the Polls

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2 on Wednesday, and they are now trying their
3 darnedest to do something about that.

4 We've received supervisory election. We are
5 now rejecting candidates' petitions. As you have
6 spoken of here before, those candidate petitions
7 are being rejected 25 percent for signatures. And
8 we have had signatures rejected because the "A" on
9 the end of the signature does not match what
10 somebody signed 15 years ago. We are now fighting
11 that.

12 I have on every occasion made sure that the
13 supervisor of elections or elections office up in
14 the state hears every word that's happening down
15 here.

16 On our redistricting, we did a redistricting
17 plan that was .0001 variance. We got it accepted
18 by the school board. Needless to say the board of
19 community commissioners rejected it. The school
20 board had accepted it for 20 minutes before they
21 had a special order and rejected it. But we had a
22 .0001 variance and the ones that were rejected were
23 as high as .1. And to be frank with you we are
24 still working on redistricting. And the last thing
25 is I got to stop. The young man with the red hat

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2 just looked at me.

3 COMMISSIONER SMITH: Finish the last thing.

4 MR. DOUGLAS: The last thing is we literally
5 challenge every decision by the supervisor of
6 elections. And the last insult we've had, every
7 candidate they had, there is a profile on the
8 supervisor of election's website, she has removed
9 them. And the ones that she wants on there are
10 still there.

11 We have taken this to the elections board up
12 in Tallahassee and we are expecting a resolution of
13 that now. We're tough little county. We are seven
14 percent of the total vote and with our partnerships
15 and our coalitions we carry a big stick. But
16 they're beating us down. Thank you very much.

17 COMMISSIONER RUSSELL: Paul Edwards,
18 disability related voting issues.

19 MR. EDWARDS: Commissioners, thank you very
20 much for the opportunity to testify. Let me begin
21 by telling you that I'm reliably informed that in
22 my 67 years I haven't signed in the same way twice.
23 So what that suggests is that I'm at serious risk
24 at the next election. So far I have not been
25 disenfranchised as a result of that.

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2 People with disabilities, particularly people
3 who are blind -- by the way I am president of the
4 Florida Council of the Blind, it has 28 chapters
5 and a thousand members throughout the State of
6 Florida -- were overjoyed when technology made it
7 possible for us to vote privately and
8 independently. For most of my life the only way
9 that I could vote was with assistance.

10 When it became possible for me to vote
11 privately and independently I felt like my
12 citizenship had been reaffirmed and my capacity to
13 function as an independent American had been
14 significantly improved.

15 As many of you know, a decision was taken in I
16 think 2007, though my ongoing senility makes the
17 date possibly wrong, a decision was taken by the
18 governor that the machines that had been adopted in
19 county after county were to be retired because they
20 needed a paper trail, and as a result the only
21 people who were required to vote on machines that
22 were declared unsafe and unreliable were people
23 with disabilities.

24 At that time a decision was taken that
25 indicated that by the year 2012 these machines

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2 would be replaced by available machines, and there
3 are some, three counties already have them, which
4 have a paper trail and also allow for accessible
5 voting.

6 Elections supervisors worked diligently two or
7 three years ago to have this deadline extended to
8 2016. The Florida Council of the Blind fought this
9 issue. I only found out two days ago that in an
10 act passed last year, 7013, that has now been
11 extended to 2020, machines that are not fit for
12 everyone else to vote on must be used by people
13 with disabilities. I have three other quick things
14 that I want to be sure that you understand.

15 The net results of this exercise have been
16 five-fold. One, people with disabilities
17 essentially do not receive training on machines.
18 Poll workers do not receive training on machines,
19 and essentially there's all kinds of anecdotal
20 evidence all over the state that time and time
21 again, when people with disabilities try to vote,
22 nobody knows how to operate the machine.
23 Consequently, they are either disenfranchised or
24 must use assistance.

25 My time is up and I'm not going to take too

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2 much longer, but we must do something to make it
3 possible for me to be sure that my vote counts, and
4 I'm not sure with the machines I use and the way
5 that they're handled when I've gone to vote. Thank
6 you.

7 COMMISSIONER RUSSELL: Thank you.

8 COMMISSIONER RODRIGUEZ: May I address your
9 comments, Mr. Edwards. I am Lida Rodriguez. I
10 wholly appreciate your comments because you are
11 absolutely a hundred percent right. And this was
12 an issue that arose from the time that we tried to
13 do away with direct recording electronic voting
14 devices because of the lack of simultaneously
15 created paper trail. And the decision of the State
16 of Florida was to essentially switch over to
17 precinct-counted optical scan technology which does
18 not provide the ability for people in the
19 disabilities community to vote unaided.

20 There is one solution and one solution only
21 which is for us to get together as activists
22 protecting each on other's interest and to force
23 the State of Florida to certify a machine, and
24 there are several out it there, that provide the
25 appropriate paper trail and provides the ability

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2 for people with disabilities to vote unaided. It
3 can be done.

4 MR. EDWARDS: Three counties already have
5 them.

6 COMMISSIONER RODRIGUEZ: Exactly. It can be
7 done and should be done. You are a hundred percent
8 correct that poll workers are not trained on the
9 existing technology. If you are a person with
10 disabilities in Miami-Dade County and you tried to
11 vote on the electronic, the only training that the
12 poll workers receive is "By the way, there's these
13 other machines, we discourage people from using
14 them. They are really onerous to use. So if you
15 want to listen to it you have to listen to the
16 entire ballot in three languages." Imagine what
17 that would have meant in the 2012 election.

18 MR. EDWARDS: I can because I did it.

19 COMMISSIONER RODRIGUEZ: It is a huge problem,
20 but it is a problem that's not being addressed and
21 it will not be addressed unless there is a ground
22 swell, and that's what it is going to take.
23 Because the alternative for people with
24 disabilities is an incredibly onerous technology
25 that has been rejected for everybody else, but

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2 somehow it is okay for people with disabilities to
3 spend hours listening to an entire ballot in three
4 different languages and you're not allowed to move
5 it forward, you can't rewind it or move forward,
6 you got to listen to the entire thing.

7 MR. EDWARDS: Me oui.

8 COMMISSIONER RUSSELL: The next speaker is
9 Damian Gregory, disability and early voting
10 procedures. Damian.

11 MR. GREGORY: Thank you. Good evening,
12 everyone. Thank you for the opportunity to come
13 before you to testify today. My name is Damian
14 Gregory. As you stated earlier, I wish to bring to
15 your attention a couple of issues related
16 specifically to early voting.

17 I had the opportunity to take my friend, who
18 has end stage renal disease, to an early voting
19 site. This site was at the Coral Reef Library. We
20 sat in line trying to get her to vote for four and
21 a half hours. In that time we were told about a
22 numbering system for people with disabilities that
23 was supposed to make it easier for her to vote
24 quickly: Get in, get out.

25 I must emphasize that my friend has end stage

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2 renal disease, so her ability to even walk to vote
3 at this point is inspiring to me and it should be
4 inspiring to all of you as well.

5 I will say to you that after four and a half
6 hours my friend did not vote. The numbering
7 system, which was the numbers that we were given,
8 were in no particular order. The poll workers that
9 were at this voting site were not at all sensitive
10 to her needs, let alone my needs. And in terms of
11 the end, we ended up, after going another day and
12 waiting three and a half hours she did not vote
13 early. She voted on Election Day because she was
14 determined that she was going to vote.

15 This should never ever happen. It shouldn't
16 happen to anybody, but it should not be something
17 that people feel that their right to vote should be
18 held up for seven, eight, whatever many hours until
19 a system is devised that accommodates their needs.

20 I also want to mention just as a side note
21 that Miami-Dade County has recently taken the
22 position that all people at most early voting sites
23 cannot use the bathrooms because they do not have
24 the mechanisms to make sure that bathrooms are
25 accessible to people who use wheelchairs.

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2 So as a matter of policy Miami-Dade County has
3 said that nobody will be able to vote -- I mean
4 nobody will be able to use the bathroom when they
5 vote early. That too is disenfranchisement to me.

6 It seems to me that if my friend had had renal
7 disease, was not given the opportunity to go
8 relieve herself after sitting in line for numerous
9 hours, this cannot be the way that anybody could
10 think that it was equitable for anybody to
11 function, for any system to function. We can and
12 we must do better.

13 I will say in closing that as my friend who I
14 spoke to last night and I asked her could you
15 provide some written comments, what she said was
16 "just tell them that sitting in line and being able
17 to vote with other people excites my soul and makes
18 me really, really, really feel like a part of the
19 system." So voting absentee is not and should not
20 be the only option for people with disabilities
21 Thank you very much.

22 COMMISSIONER RUSSELL: Thank you. I think we
23 have a question.

24 COMMISSIONER SMITH: Mr. Gregory, thank you
25 for that testimony. One of the things that is very

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2 frustrating is that we don't know how many people
3 like your friend were in that exact situation of
4 standing in line and then leaving, coming back
5 another day, leaving.

6 Your friend fortunately, because of her
7 persistence, because of her super-dedication did
8 end up casting a ballot. But we have no
9 information in the State of Florida on how many
10 people did what she did but then didn't cast a
11 ballot through no fault of his or her own but
12 because the resources were not sufficient to
13 process people in a way that every other society,
14 every other country, and I've been an election
15 monitor around the world, has figured out and that
16 we haven't figured out how to do in this country is
17 beyond me. But I applaud you and her.

18 But I think that we need to have better
19 systems in place in terms of not only preventing
20 that but understanding it. Because, as the studies
21 that Professor Heron and I did through Advancement
22 Project in 2012, we showed definitively that in
23 Florida this is not a problem that is spread evenly
24 across Florida voters but that it's highly
25 concentrated in areas during early voting and on

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2 Election Day in polling places that are populated
3 by racial and ethnic minorities.

4 MR. GREGORY: I will say to you that I took
5 other people to the polls on Election Day. I think
6 I took a total of six people. And from polling
7 station to polling station and from precinct to
8 precinct the policies vary widely depending on the
9 training of the individual, depending on the
10 compassion of the individual and depending, quite
11 frankly, on the common sense or lack thereof of the
12 individual. And they should not be.

13 COMMISSIONER SMITH: Thank you.

14 COMMISSIONER RUSSELL: Any other questions
15 from the panel? All right. We are going at this
16 point -- well, I think we are going to give our
17 scribe a break. I have learned one thing from
18 working in the courthouse. We'll take five minutes
19 and give him an opportunity to uncramp his fingers
20 and then come back and start with panel number two.

21 (Recess taken in the proceedings)

22

23

24

25

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2 (Proceedings reconvened)

3 COMMISSIONER RUSSELL: Our reporter is back in
4 place.5 Our next witness is going to be Cynthia
6 Slater, Civic Engagement Chair for the Florida
7 NAACP, Vice President state conference and
8 president of the Volusia County branch of the
9 NAACP. She will be followed by Brad Ashwell of
10 Common Cause of Florida.11 MS. SLATER: Good evening. To this
12 commission, I thank you for taking the time out of
13 your day to listen to the testimony of the freedom
14 fighters in this state. My name is Cynthia Slater
15 and I serve as second vice president of the Florida
16 State Conference NAACP. I also serve as the NAACP
17 civic engagement coordinator for the State of
18 Florida.19 I reside in Daytona Beach where I serve as
20 president of the Volusia County Daytona Beach
21 NAACP. The NAACP is the oldest and largest civil
22 rights organization in the country, and the mission
23 of the organization is to insure the political,
24 educational, social and economic quality of right
25 of all persons and to eliminate raced-based

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2 discrimination. It was very difficult to select a
3 topic to speak on regarding voting rights issues in
4 Florida because Florida voters were affected in
5 many ways by many discriminating voting laws that
6 have been put into place.

7 However, I'd like to speak on the need for the
8 implementation of the Voting Rights Act in Florida.
9 Let me just begin by quoting a statement from an
10 article written in the Huffington Post dated
11 January 24, 2013 with the headlines "Florida voting
12 lines discouraged 201,000 voters statewide." In
13 the article a most disturbing statement was, "At
14 least 201,000 Florida voters did not cast ballots
15 on Election Day 2012 because they were discouraged
16 by long lines at polling places, according to a
17 report released by the Orlando Sentinel."

18 The article went on to say that those voters
19 either waited for some time but left before voting,
20 or simply saw the long lines and turned away.
21 These words rang throughout the state on Election
22 Day and was most prevalent in communities of people
23 of color.

24 During and after the 2012 presidential
25 election these words were the main headlines of

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2 many newspapers throughout the country. Florida's
3 voters experienced many problems during the
4 election, but one of the worst, seen by millions,
5 related to long lines at polling sites. Because
6 the State of Florida cut the number of days for
7 early voting and did not consider increasing the
8 number of polling sites, these actions not only
9 suppressed voters, but it also created an unsafe
10 environment, especially to those voters with health
11 and age-related problems, as we heard earlier.

12 These limitations were very troubling to
13 voters who had to wait hours to vote in some
14 cities. Around the state voters waited up to eight
15 hours to cast ballots in the heat of the day.

16 In addition to the complaints of long lines
17 and limited polling sites, hundreds of complaints
18 were made to the NAACP related to equipment
19 breakdown and malfunctioning as well as limited
20 staff in many voting sites. So much so that
21 polling sites were temporarily closed in certain
22 Florida counties.

23 Other problems that occurred included voters
24 being unaware of precinct changes, they didn't know
25 where their precincts were located, limited

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2 assistance to voters who required election
3 assistance such as the elderly, people with
4 disabilities and people who do not speak English as
5 their primary language as well as voters with
6 literary issues and the threat to remove thousands
7 of voters from the voter roles, mostly people of
8 color.

9 It is without a doubt that these problems
10 occurred because of Florida's House Bill 1355,
11 which was passed in 2011 by the state legislature,
12 which made extensive discriminatory changes in
13 election laws which included restricting voter
14 registration drives.

15 As a result, some of the worst forms of voter
16 suppression occurred here in the state of that
17 Florida. The Florida State Conference NAACP
18 believes that limiting the number of days for early
19 voting as well as limiting polling sites was the
20 primary cause of Election Day problems in Florida
21 and with some of the harshest forms of voter
22 suppression that discouraged over 201,000 citizens
23 from voting in Florida.

24 So we fast forward to 2013. After the Supreme
25 Court's decision to change the federal Voting

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2 Rights Act, the governor of Florida wasted no time
3 reinstating the purging of voter rolls as a result
4 of the Shelby decision.

5 Because of the Voting Rights Act Florida's,
6 five counties were protected from the
7 discriminatory laws that the state legislature
8 attempted to pass. Although Congress introduced a
9 bill to update the Voting Rights Act that included
10 a new formula to determine protected states,
11 Florida was left out, which leaves the state
12 legislatures to run amok making it harder for
13 certain Floridians to vote. NAACP strongly
14 condemns the governor's decision and will
15 scrutinize this process to the end.

16 We believe deeply that voters and citizens of
17 Florida deserve better and must be protected from
18 these egregious laws by passing the Florida Voter
19 Rights Act and the Florida Right to Vote Act.

20 Let me end with an excerpt from an op ed piece
21 written by our Florida State Conference NAACP
22 President Adora Obi Nweze, and Judith Browne
23 Dianis, co-director of the Advancement Project that
24 was entitled "My View: Legislators Must Protect
25 Rights of Florida Voters. For more than a decade

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2 in the absence of such explicit protections,
3 officials have passed and pursued a kitchen sink of
4 voter suppression. These policies have targeted
5 nearly every aspect of the voting process: Who can
6 vote, where they can vote, when they can vote, and
7 how they can vote. The Florida Voter Rights Act as
8 well as the Florida Right to Vote Act fights back
9 with multi-faceted approaches to voter protection.
10 The first step toward realizing these protections
11 is putting these bills on the legislative agenda.
12 As the leading democracy in the world, our nation
13 should always work to keep our voting system free,
14 fair and accessible to all, and if Congress is
15 unable to protect Florida through the federal
16 Voting Rights Act, then Florida lawmakers must step
17 up and help to pass these bills now."

18 Thank you and have a good evening.

19 COMMISSIONER RUSSELL: Thank you. Brad
20 Ashwell Common Cause.

21 MR. ASHWELL: Thank you all for coming. I was
22 just looking at the panel thinking about how long
23 -- this sounds a little weird, I really admired all
24 of you for a very long time and watched your work.
25 I've been working on elections issues in one form

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2 or another for the past decade. I am working with
3 Common Cause and C3 Civic Engagement Group right
4 now and a number of other groups. And prior to
5 that worked I with Common Cause in the past so
6 that's a bookend to my career.

7 Common Cause is involved with a lot of things
8 people have already talked about. We are
9 supporting the V.R.A. amendment. We are working in
10 the legislature on the online voter registration
11 bills, supporting several other bills that people
12 talked about, the fundamental right to vote, the
13 state Voting Rights Act. I could go down a list,
14 and actually I might later, depending on how much
15 time I have.

16 But I think my role today is really just to
17 point out more of a top-down view on things and
18 just how hostile the state policymakers are towards
19 voters. There really is no other way to look at
20 it.

21 I think you kind of have to look at what's
22 behind that, and then I think you are probably best
23 looking at it from a realpolitik lens and power
24 politics seem to be at play. But just looking at
25 the effects, it's been one decision after another.

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2 And typically when bills move forward that would
3 benefit voters it is usually to mitigate or
4 eliminate embarrassment. So there's just a strong
5 pattern of decisions that make it harder for voters
6 to participate in the democratic process. There
7 have been consistent efforts to stifle third party
8 organizations like the ones I have worked for, that
9 help engage citizens through voter registration
10 drives, election protection efforts and numerous
11 other efforts.

12 I just want to synthesize some of the things
13 going on right now. If you look at our current
14 landscape we've got the governor and secretary
15 pushing for -- actually this was just cancelled or
16 postponed the other day, but moving forward on yet
17 voter purge. Despite opposition from almost every
18 supervisor in the state, voting rights groups, some
19 legislators, the use of the SAVE database is just
20 riddled with errors, and they haven't listened to
21 reason, but it looks like they have listened to
22 embarrassment. If that works for the session,
23 great, but we are very worried about what that
24 means for the next election cycle.

25 The secretary of state is blocking the use of

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2 student unions for early voting purposes. One of
3 the good things that passed in the legislation last
4 year was a pretty dramatic expansion of early
5 voting sites where supervisors can allow early
6 voting. Stadiums were explicitly allowed in that.
7 It wasn't explicitly allowed in university
8 settings. And it's just another example where the
9 state, the Division of Elections which is largely
10 an extension of the governor, is interpreting
11 policy so that it doesn't benefit voters and makes
12 it harder to vote.

13 The secretary also attempted to stop the use
14 of absentee dropoff boxes by supervisors, namely in
15 Pinellas and Volusia counties, and he backed down
16 from that largely due to embarrassment, but now the
17 legislature has incorporated into the chair of
18 ethics and elections bill and it's moving forward
19 there.

20 Just an example of where they have tried to
21 clean up their act and do some beneficial things
22 would be last session. The bill that passed last
23 session was pretty good. It did a lot of things.
24 It increased early voting, not back to the full
25 scale it was prior to 1355, but they expanded early

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2 voting sites, and did a number of other good
3 things. But it was largely due to embarrassment
4 from the long lines in 2012.

5 So I lay all these out just to point out that
6 you have to look at them together to see this
7 pattern of hostility, this pattern of decisions
8 happening at the state level to make it harder for
9 voters to vote.

10 I have a lot of other things I want to go
11 into. I think the biggest dynamic, most
12 unproductive dynamic that I've seen that just gets
13 worse and worse over the past decade, at the state
14 level is deep polarization around election issues
15 at the capitol. Members are largely at the whim of
16 leadership, the legislative leadership. In this
17 case it's the Republican party. I don't think it
18 is partisan to acknowledge that. It's just the
19 facts. Leadership and their party are working in
20 concert. We saw that clear as a bell through HB
21 1355. It came out later in a court challenge.

22 We knew it all along through conversations,
23 but it's part of the court record now, that the
24 Republican party produced that report through
25 Tidewater Consulting, Bucky Mitchell wrote the

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2 first draft, the same analyst who formerly was
3 working with the Division of Elections in 2000 who
4 instructed and moved forward on the voter purge
5 that led to, I think, 175,000 or 180,000 mostly
6 African-American people being removed from the
7 rolls.

8 And it is just very clear that the leadership
9 is working in concert with the party. The power is
10 being increased in the hands of leadership. They
11 are now able to legally use slush funds to win
12 favor with their local leadership funds and with
13 the other members, and the other members know to
14 keep in line because if they don't the next time
15 they run for re-election they will have a
16 competitor backed by leadership.

17 And it's leading to a place where it's really
18 a very unproductive place, where even when there is
19 common ground on an issue like online voter
20 registration, I've looked at the numbers and I
21 really don't see a partisan advantage on that
22 whatsoever. But even a pretty noncontroversial
23 issue like that can't move forward because it is
24 just a toxic environment around these issues and
25 voters really are impacted because of it, primarily

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2 minority voters.

3 COMMISSIONER RUSSELL: We are going to get
4 your written testimony, right? Or have you already
5 submitted?

6 MR. ASHWELL: I actually have submitted it. I
7 will fine tune it and submit it.

8 COMMISSIONER RUSSELL: Thank you. We are
9 going to move to Mark Dubin, Director of Advocacy
10 CIL of South Florida and former DOJ Civil Rights
11 Division attorney.

12 MR. DUBIN: Good afternoon, and thank you very
13 much for inviting me to speak with you today.
14 Again, my name is Marc Dubin. I work for the
15 Center for Independent Living in South Florida, a
16 nonprofit organization serving people with
17 disabilities in Miami-Dade County, and for 12 years
18 I served as a senior trial attorney of the Civil
19 Rights Division of the Justice Department in
20 Washington in the Disability Rights section
21 enforcing the Americans with Disabilities Act on
22 behalf of the United States nationwide.

23 I want to discuss with you today one
24 particularly troubling barrier to voters that has
25 come to our attention. It was mentioned earlier by

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2 an earlier speaker, the decision by Miami-Dade
3 County to close all restrooms at all polling places
4 throughout the county to all voters.

5 I wanted to share with you what precipitated
6 that decision and some concerns about how we might
7 have that become the model for other communities
8 that will suppress the vote particularly in
9 minority communities, and that's a concern that I'd
10 like you to consider.

11 First of all, this unusual and troubling new
12 policy appears to have come about as a result of
13 our inquiry to the county concerning whether the
14 county had assessed the accessibility of restrooms
15 at polling places. We raised the question because
16 we realized the lines in Miami-Dade County were
17 very, very long, up to eight hours, and we were
18 concerned about the ability of voters waiting in
19 those lines to be able to vote, particularly voters
20 with disabilities who may be on diuretics or be
21 elderly or have other reasons to need the restrooms
22 more frequently than other voters.

23 We recognize that Miami-Dade County like many
24 other communities use churches and other religious
25 sites as polling places, and that throughout the

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2 United States many religious sites are simply not
3 accessible to people with disabilities, mostly
4 because religious sites are exempt from the
5 Americans with Disabilities Act. They are
6 expressly exempt.

7 However, when they partner with state and
8 local governments to serve as polling places, they
9 must take whatever temporary measures are required
10 to insure that those polling places are usable and
11 accessible to voters with disabilities. This may
12 simply be portable restrooms or may be cones put
13 out to increase the number of accessible parking
14 spaces. But as long as a county chooses to partner
15 with one of these religious facilities, the ADA
16 applies.

17 When we asked the county whether they had
18 assessed the accessibility of restrooms and whether
19 they were going to take the steps necessary to
20 insure that voters with disabilities could access
21 them we were told instead that they were going to
22 close all the restrooms to voters. Assistant
23 director of elections John Mendez said state
24 statute, actually wrote "state statute does not
25 mandate that the restrooms in the polling location

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2 be ADA compliant." What he overlooked was that the
3 ADA does require it. Whether or not state law
4 requires it, federal civil rights laws do require
5 it. "In order to insure that people with
6 disabilities are not treated unfairly," he wrote,
7 the use of restrooms by the voters is not allowed
8 on Election Day."

9 We wrote to the county attorney and said to
10 please consider the results of this upon voters,
11 including voters with disabilities, please consider
12 the mandate of the ADA, federal civil rights laws
13 obligations that the county has along with its
14 partners, the cities which partner with the county
15 to provide these assigned polling place.

16 The county attorney wrote back and said, "City
17 clerks act as the de facto supervisor of elections.
18 The department's policy is not to permit access to
19 restrooms at polling places on election days. This
20 policy was implemented to avoid situations where
21 accessible restrooms would be available to some and
22 not all voters." I have submitted this in writing
23 to you in more detail.

24 If implemented, this undoubtedly will reduce
25 the number of voters being able to cast a vote, and

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2 in minority communities throughout Miami-Dade
3 County it is going to adversely impact voters in
4 the minority community even more than anyone else.

5 I want to just point out very briefly that the
6 Americans with Disabilities Act comes into play
7 here in two ways. One, it is unlawful for the
8 county to partner with anyone to engage in
9 discrimination. So they cannot say, well, we're
10 partnering with the city and it is up to the city
11 what to do.

12 Just as the Emergency Management Department is
13 not allowed to partner with the Red Cross unless
14 the Red Cross complies with the ADA, if the Red
15 Cross fails to comply the county is liable as well.
16 Here too, if they engage in partnerships with
17 cities, close the restrooms, these in my view would
18 constitute violations of the ADA as well.

19 In addition, the ADA requires reasonable
20 modifications of policy to avoid discrimination on
21 the basis of disability. Allowing a voter with a
22 disability to advance in line, allowing voters with
23 disabilities to have their place in line held so
24 they can use a restroom and providing an accessible
25 restroom so that they can exercise the right to

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2 vote in my view would be reasonable modifications
3 mandated by the Americans with Disabilities Act.
4 Failure to do so I think sets a very dangerous
5 precedent and will, in my view, go statewide if
6 this is not addressed.

7 It is the reason that the Department of
8 Justice had so much success with its oversight of
9 the Voting Rights Act and why Congress needs to
10 reconsider how states and counties and local
11 officials will continue to try to take advantage of
12 opportunities to suppress the vote, particularly of
13 minority voters. Thank you very much for inviting
14 me here today.

15 COMMISSIONER RUSSELL: So Marc, I want to be
16 clear, you and I agree that a denial of service
17 because of a request for accommodation is in fact a
18 violation of Title I and Title II of the ADA?

19 MR. DUBIN: We agree except for the titles.
20 Title I is the employment provision. Title II is
21 the program services and activities of the state
22 and local governments. Voting and polling places
23 are program, services and activities of state and
24 local governments.

25 In my view, it would violate the ADA. And in

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2 addition, because they receive federal financial
3 assistance, it would also violate Section 504 of
4 The Rehabilitation Act and put the county and the
5 cities' federal funding at risk of being suspended
6 or terminated.

7 COMMISSIONER RUSSELL: And probably that
8 violates Title VI as well?

9 MR. DUBIN: Yes, sir. I would also point out
10 that, because we do not have good information about
11 the number of voters with disability who are
12 disenfranchised, it is very important to try to
13 assess, particularly minority communities, how many
14 voters with disabilities will be impacted by this,
15 because I believe that will get the attention of
16 both the voting rights section of Civil Rights
17 Division and the disability rights section of the
18 Civil Rights Division of the Justice Department.

19 COMMISSIONER SMITH: Mr. Dubin, on that last
20 point there may be a way to get at that. Flawed as
21 the voting technology that we have already
22 discussed is, it does give an indication of people
23 who are using the electronic form of voting
24 machines as opposed to the scantrons in Miami-Dade
25 and you could do an analysis to see whether they

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2 are disproportionately in heavily minority
3 precincts.

4 I don't know whether there are enough, again
5 because that technology is problematic, that many
6 will issue it because there's no paper trail, but
7 there might be empirical ways of getting that
8 actual question.

9 MR. DUBIN: I would invite the NAACP to look
10 at the churches, particularly in minority
11 communities like Liberty City, and try to assess
12 whether those churches have accessible restrooms to
13 begin with with.

14 COMMISSIONER RODRIGUEZ: I think to add to
15 what Professor Smith is saying I would also say
16 that all we have to do is pull the data about the
17 number of IVOs that were used from the last
18 election, and also from the polls pull the data
19 from the people who requested assistance, because
20 every time somebody requests assistance at the
21 polls that information is logged. So we have that
22 data. And many of the people who are disabled do
23 not want to use the IVO so they request assistance
24 instead. Those are the two sources.

25 I can tell you this is devastating because I

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2 work in a majority, I've worked in a majority
3 elderly polling place and everybody in line uses
4 the bathroom. It's a rotating cycle of people
5 using that restroom. So this is impactful not just
6 with regard to the disabilities community but with
7 regard to the elderly, and it is going to cause
8 people to be turned away.

9 People who would otherwise be able-bodied, who
10 have to go to the restroom will be turned away
11 because if they can't go to the restroom and they
12 have kids or they are just in line they are going
13 to leave and they may never come back.

14 This is a huge problem. And dare I point out
15 that this is a example of a supervisor of elections
16 that is not -- allegedly -- not partisan in one way
17 or another, just plain lacking in common sense.
18 Decision after decision after decision from this
19 supervisor of elections just makes no common sense.

20 Nobody did a study of what it would cost to
21 rent port-a-potties in order to outfit the
22 locations that do not have accessible restrooms, if
23 somebody had at a minimum figured out another way
24 to accommodate this issue. But this is unstudied;
25 nobody in the community was informed because this

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2 is the first I hear of it. We haven't been trained
3 around it, but I can guarantee you that within the
4 next -- and we have to address it now because the
5 substitute training for clerks and poll workers are
6 going to begin within the next month and a half,
7 and once it is the manual that you are going to be
8 trained not to let people to use the bathroom that
9 is how people will be trained and there will be
10 mistakes made. This is incredibly unnecessary. It
11 is just down right silly.

12 COMMISSIONER RUSSELL: I would go back to the
13 issue of I do believe it will have a disparate
14 impact racially, but I would remind us all that
15 disability is in fact a cover. It's is a protected
16 area and that's a protected area as well while we
17 might not be able to say it.

18 In Pinellas County I can tell you there are
19 35,000 deaf individuals, there are 38,000 people
20 with sight impairment, there have got to be 60,000
21 people with mobility impairments. There's ways.
22 This is a tremendous community that is being
23 impacted in Dade County. If little old Pinellas
24 has that many folks, Dade is bound to have more.

25 MR. DUBIN: Absolutely. You should also be

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2 aware, if I may just point out, that in speaking to
3 city managers about this policy the response I have
4 gotten from some city managers is "don't be silly,
5 of course we will have our restrooms open." Yet
6 that absolutely flies in the face of the county
7 policy.

8 So this is potentially a wink/wink nod/nod
9 policy where we are not going to fix it, we are
10 also not going to enforce it but we are going to
11 have a community that is not going to have access
12 to restrooms. And, therefore, if that's the case,
13 it seems to me that we have potential legal
14 liability, but we also have an attitude about the
15 value of one's vote. And I think that I bring it
16 to your attention because it took us five months to
17 get an appointment with the department of elections
18 to even discuss it.

19 COMMISSIONER RUSSELL: I would suggest also
20 that for this particular community that, if the
21 disability community showed up at the county
22 commission and complained about this, they might
23 get a little action considering that the department
24 of elections here is an appointed position and
25 under the purview of the county administrator, not

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2 an independently elected supervisor of election
3 like the other 66.

4 COMMISSIONER GELBER: That's just the
5 disability committee. The folly and stupidity of
6 the policy is it affects the entire community, and
7 especially in a community with so many elderly. As
8 someone who is now over 50, I know everybody's got
9 different needs.

10 MR. DUBIN: It was truly a stunning response.
11 I was expecting "We can't afford it, we can't do it
12 right now," or some other excuse for not doing it.
13 But to say we're going to protect the disability
14 community by shutting it all down was a stunning
15 response. Thank you for your time.

16 COMMISSIONER RODRIGUEZ: Thank you for that
17 very valid information.

18 COMMISSIONER RUSSELL: Thank you. Mark
19 Schneider, Voting Rights Coalition of Palm Beach
20 County.

21 MR. SCHNEIDER: Members of the commission, my
22 name is Mark Schneider, and I represent the Voting
23 Rights Coalition of Palm Beach County. I have a
24 Power Point presentation, and when I asked if Power
25 Point was available I wasn't made aware that this

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2 might cause severe neck pain in the commission.

3 COMMISSIONER RUSSELL: We're working.

4 MR. SCHNEIDER: Today I want to go back to Mr.
5 Meade's topic of felon disenfranchisement in
6 Florida which my coalition believes undermines the
7 democracy this country and the state claimed to
8 cherish.

9 Slide 2. Currently 1.5 million Florida
10 citizens are barred from the voting booth by reason
11 of felony conviction, fully one-fourth of the U.S.
12 total. This represents one in ten Florida adults
13 of voting age, and in some minority communities one
14 in five citizens of voting age is prevented from
15 exercising the franchise, making those communities
16 that much less politically visible and, therefore,
17 viable.

18 Slide 3. Molest a stone crab trap, trespass
19 on posted horticultural property, alter a lottery
20 ticket, possess seven unprescribed hydrocodone
21 tablets, you've committed felony in Florida and
22 could be disenfranchised for life. This is the
23 result of a constitutional provision dating from
24 1868 which does, however, give the governor, with
25 the agreement of two members of his cabinet, the

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2 ability to restore voting rights to individuals who
3 petition him. The regulation of the petition
4 process, however, is entirely in the hands of the
5 governor and his cabinet acting as the clemency
6 board without either judicial or legislative
7 oversight.

8 Next slide. This has led to wild swings in
9 the number of felons who petition successfully,
10 depending upon whether the governor and cabinet
11 wish to allow or, rather, to suppress voting among
12 this segment of the population. To put this slide
13 in rough perspective, I estimate that since 1986
14 we've averaged more than 50,000 felony convictions
15 in Florida per year and have averaged around 11,000
16 successful petitions. This means we lose about
17 40,000 eligible voters per year to felony
18 disenfranchisement.

19 A period of liberalization first under
20 Governor Bush and more dramatically under Governor
21 Crist led to a yearly average of around 39,000
22 individuals having their rights restored. The
23 reversal of that liberalization under Governor
24 Scott has brought the average down to just 329 per
25 year. This reversal was explained as an aid to

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2 public order and an incentive to avoid
3 re-incarceration, but critics see it as an effort
4 to reduce the size of the electorate unlikely to
5 support Governor Scott or his policies.

6 Next slide. Currently nonviolent felons must
7 wait five years after completion of their sentence,
8 probation and, where required, financial
9 restitution before being allowed to petition.

10 These petitions are routinely granted without a
11 hearing. Violent felons must wait seven years to
12 petition for a hearing, and in each case must be
13 dealt with individually.

14 There are currently around 11,400 backlogged
15 cases of these violent felon cases awaiting such a
16 hearing. At the current rate of around 300 cases
17 per year this suggests that a felon applying for a
18 hearing today would have to wait 38 years to have
19 his or her case heard.

20 Data provided by the Florida Parole Commission
21 and referenced by Mr. Meade indicate that felons
22 whose rights have been restored recidivate at
23 around 11 percent of the time while those whose
24 rights have not been restored recidivate at around
25 33 percent of the time. This disparity was noted

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2 by Attorney General Eric Holder at a recent speech
3 at Georgetown University challenging the practice
4 of felon disenfranchisement and noting its
5 prevalence in Florida.

6 Now, it would be a mistake to infer causation
7 from the negative relationship between
8 enfranchisement and recidivism but the data
9 certainly favored enfranchisement. I note that if
10 I were a felon who had paid my debt to society it
11 would leave an extremely sour taste in my mouth to
12 be told to submit for an additional five to seven
13 years, and possibly 38 years, to being taxed
14 without representation just in order to show my
15 bona fides.

16 Next slide. In the face of this travesty of
17 democracy the Voting Rights Coalition supports a
18 Florida constitutional amendment to restore voting
19 rights to felons upon completion of sentence,
20 removing all the other current restrictions. A
21 bill to that effect, HJR 327, and the Senate
22 companion is currently before the legislative
23 committees but it's unlikely to be enacted.

24 The implementing bill that accompanies HJR,
25 327 which is HB 329, makes rights restoration

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2 automatic for most felons and applies
3 retroactively. Barring legislative action to place
4 an amendment on the ballot in 2014, we asked the
5 governor and cabinet, as the clemency board, to
6 restore rights automatically on the model of the
7 former administration and to aggressively pursue
8 informing individuals when their rights have been
9 restored. I believe there are about 325,000 now
10 whose rights have been restored and are not yet
11 informed of it.

12 Barring legislative or executive action,
13 however, we look forward to a citizen initiative
14 ballot amendment for 2016. To do less leaves
15 Florida's claim to be a Democratic polity badly
16 stained and deeply in doubt. Thank you very much
17 commissioners.

18 COMMISSIONER RUSSELL: Thank you.

19 COMMISSIONER RODRIGUEZ: Thank you.

20 COMMISSIONER RUSSELL: Questions?

21 COMMISSIONER SMITH: Mr. Schneider, I have a
22 quick question. Did I hear you right there are
23 about 325,000 Floridians through that automatic
24 process of nonviolent, or was that during the Bush
25 or Crist administration that have not yet been

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2 informed?

3 MR. SCHNEIDER: Yes, they have the
4 certificates on file and they are unaware that
5 those certificates are on file and the issue is how
6 possibly to contact them. This is a population
7 that is sometimes difficult to contact. Our Voting
8 Rights Coalition was kind of strategizing on the
9 way down here today about possible ways of doing
10 it. But to get out into our communities and alert
11 people that their rights have in fact been restored
12 is simply difficult to do.

13 COMMISSIONER SMITH: But it is public record,
14 there are electronic files of this?

15 MR. SCHNEIDER: Yes, there are electronic
16 files and you can get a copy of them and you can
17 take them to your church, for instance, and if
18 felons were willing to get up and identify
19 themselves they could go to a computer and see
20 whether their rights have been restored.

21 And we do have rights restoration fairs where
22 we try to attract people and alert them that there
23 are many whose rights have been restored. They
24 have petitioned, but in a sense they have been
25 forgotten. The process has gone on so long they

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2 have forgotten, so they are kind of a lost voting
3 population.

4 COMMISSIONER SMITH: One of the things that is
5 very frustrating here in Florida with respect to
6 the voter registration statewide database is that
7 those who have been convicted of felonies are
8 stripped out of the voter file. Other states leave
9 those individuals and make them inactive or some
10 other code saying that they don't have the rights
11 so that they can be identified once those rights
12 could be restored, including the voting right.

13 So you are absolutely right, I didn't realize
14 it was this large in terms of the likely number of
15 individuals who would be eligible to vote
16 notwithstanding that huge number of the 1.5 million
17 who are currently disenfranchised.

18 MR. SCHNEIDER: All they would need to do is
19 take the available certificate to the supervisor of
20 elections and they would be restored, I believe.

21 COMMISSIONER SMITH: Thank you.

22 COMMISSIONER RUSSELL: Thank you. Beverly
23 Rutherford, AFL-CIO Florida Coalition for Black
24 Civic Engagement.

25 MS. RUTHERFORD: Good evening. It is an honor

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2 to be here. I'm Beverly Rutherford and I do
3 represent the Florida AFL-CIO and also the Florida
4 Coalition of Black Civic Participation, and also
5 wear a hat of the A. Philip Randolph Institute, and
6 I also bring greetings from the Florida Coalition,
7 Florida Rights Restoration, where I do serve on the
8 steering committee.

9 Just to correct one little item that the
10 fellow before me just mentioned, as far as the
11 rights restoration piece of it, what we have been
12 able to accomplish is that if you go into -- we do
13 most of the grass roots work with the young folk
14 and we go into the communities, and basically you
15 can use your laptop to actually run a person's
16 information and you do find that they do have their
17 certificate.

18 We use our portable printers to print it out
19 and say, Hey, look, you have been restored. Now
20 can we register you to vote. So yes, we have been
21 able to accomplish that. Because I'm a
22 longshoreman, so we have done that a lot at the
23 longshoreman union hall and used our union hall as
24 a base for that. So a lot of people from the
25 community hear about us and they come in there and

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2 we run the check and see whether they have been
3 restored and we do give them their certificates so
4 they can have them in hand.

5 Basically what I was called here to talk about
6 is when I served as the Miami-Dade coordinator for
7 the election protection under the AFL-CIO, and our
8 experience was disturbing at the least, but
9 frustrating because I was one of the ones that
10 worked with the youngest group of young folks.

11 We had young folk in high school and college
12 and they were all poll protectors. And the first
13 day of the early voting while doing my rounds I got
14 a phone call from a couple of the young fellows
15 from North Miami screaming and hollering because
16 the lines were within two hours with two, three
17 miles long and the wait was eight to nine hours.
18 And that's where we discovered the now famous
19 Desoline Victor, the 102-year-old lady who was
20 standing in line. And even though the young folk
21 were trained to know that she should have been
22 moved to the front of the line or provided some
23 kind of services, you had the lack of training for
24 the election, by the election supervisors for their
25 people that work with them, they said that no, we

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2 cannot give her preference because that would be
3 violating other people's rights, which we all know
4 that our laws do protect the disabled and the
5 elderly.

6 So I had to go over there and try to explain
7 to them that no, you need to bring your supervisor
8 or your supervisors so we can discuss this because
9 this lady, there's no reason why she should have to
10 wait in line at 102 years old. Also, what they
11 were doing, by lack of training they were actually
12 getting these people's names, giving them a phone
13 number and telling them they could go home and call
14 and they would tell them when to come back, which
15 we know that's illegal by law. You cannot turn a
16 voter around and tell them to go home and you can
17 come back later and cast your vote because we all
18 know these people would go home and not come back.

19 The other issue was the lack of proper
20 facilities. Again, there was a library and most of
21 the places they weren't allowing the voters to use
22 their bathrooms because they said the bathroom was
23 for the people that were visiting the library or
24 the different facilities that the voting was taking
25 place.

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2 So with the collaboration of the Advancement
3 Project, and there was a group of us that were
4 under the election protection, we met with the
5 supervisor of elections who Crist moved in a couple
6 of days and they brought portable toilets and what
7 have you. But it wasn't until me myself went out
8 to Costco and bought cases of water till I think
9 the Democratic Party went out and, wow, that's
10 right, we need water. So everybody started
11 bringing water and stuff to help and to aid the
12 people in their voting process.

13 But the thing that crippled us the most is
14 that you have to understand, especially when you
15 have first-time voters, you want that experience to
16 be one of empowerment. But when you give these
17 people the idea or the feeling that, well, maybe it
18 is not necessary to come and vote, it is not
19 important to vote because it is so cumbersome, that
20 actually fails our Democratic process.

21 Our Democratic process should be much
22 smoother. They should be able to vote and
23 understand the voting without having to be forced
24 to go through the processes that they did at those
25 times.

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2 So I would implore this commission to look
3 into probably pressing the supervisors of election
4 for their preparedness for these election cycles
5 because they know it's coming. It is not like it
6 is something that's a surprise. They know it's
7 coming and they know, especially in the major
8 election, you are going to have an influx of people
9 going to vote. So the preparedness should be
10 there. And they should basically train their
11 people properly, dispense the proper information.
12 Because, again, the things that we're dispensing to
13 the voters, if we weren't there to say no, no, no,
14 that's not how it works, a lot of people would have
15 gone away believing that it was democracy at its
16 best and it was not. Thank you.

17 COMMISSIONER RUSSELL: Thank you. Next we
18 have Francesca Menes, Policy and Advocacy case
19 coordinator Florida Immigrant Coalition. No.
20 Okay, Katie Roberson-Young, Assistant General
21 Counsel SEIU.

22 COMMISSIONER RODRIGUEZ: While Katie is coming
23 up I think we need to talk a lot about this
24 preparedness idea that Beverly was talking about.
25 What are the different contingency plans of the

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2 different counties? I think it is time that we
3 start setting up meetings with elections
4 supervisors throughout the state to find out
5 exactly how they are going to deal with meltdowns,
6 whether they are small or large.

7 And I really encourage the various
8 organizations that are here from throughout the
9 state to set up those meetings and ask for that
10 information and do public records requests if
11 necessary. But this is a key, key issue that
12 Beverly raised.

13 MS. ROBERSON-YOUNG: Thank you for the
14 opportunity to testify today. My name is Katie
15 Roberson-Young. I'm an attorney with the Service
16 Employees International Union and I have
17 participated in voter protection with SEIU's
18 nonpartisan Voter Protection Program since 2008 in
19 Florida.

20 I'd like to focus on a problem that Creole-
21 speaking citizens encountered in South Florida
22 during the 2012 general election, which is the lack
23 of access to language and literacy assistance at
24 the polls. Lack of language assistance for voters
25 who cannot read the ballot or who do not speak or

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2 read the language in which the ballot is written
3 causes unnecessary delays and contributes to long
4 lines for all voters. Indeed many of the early
5 voting sites in South Florida had frequent reports
6 of inadequate language assistance also experienced
7 very long wait times.

8 During the first two days of early voting in
9 October 2012 Creole-speaking voters reported from
10 voting sites in Palm Beach, Broward and Miami-Dade
11 counties that they did not have adequate access
12 translation or literacy assistance. Lines were up
13 to eight hours long, and once Creole-speaking
14 voters who needed assistance finally got to the
15 front of the line they either had no translation
16 help, or they had to wait even longer than other
17 voters in a separate line until one of too few
18 Creole-speaking election workers became available.
19 Election workers were overwhelmed and unable to
20 meet the demand for translation assistance.

21 In Palm Beach County many Haitian-American
22 voters required help translating the English ballot
23 into Creole. For example, at Delray Beach's early
24 voting site there was only one Creole- speaking
25 election worker and that single translator left the

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2 voting site at 7 p.m. sharp, so voters still in
3 line at that time had no option for translation
4 assistance from election staff.

5 In Miami-Dade and Broward counties, many
6 Creole-speaking voters needed assistance reading
7 the ballot due to eyesight or literacy issues.
8 Without this assistance many voters became confused
9 and mistakenly filled in every circle on their
10 ballot in order to make sure they voted for their
11 chosen candidate.

12 When scanned, these ballots were rejected as
13 overvotes, triggering additional delays while
14 voters waited in line for replacement ballots,
15 filled out replacement ballots often without
16 understanding what they had done wrong in the first
17 place, and then scanned the ballots a second and
18 even a third time. Worse still, some voters were
19 disenfranchised. Without translation assistance
20 they did not understand that they were submitting
21 invalid ballots or that their ballots would not be
22 counted.

23 When the first few days of early voting
24 demonstrated this barrier to Creole-speaking voters
25 in South Florida, SEIU partnered with Florida New

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2 Majority, the Miami Workers Center, the AFL-CIO,
3 Advancement Project and other community partners to
4 recruit about 20 Creole speakers to offer
5 translation assistance at the polls for the last
6 five days of early voting and on Election Day.

7 On the whole the response from voters as well
8 as election staff was overwhelmingly positive. One
9 translator, Carleen Gellet, assisted 70 or more
10 voters each day of early voting, yet every night
11 she went home "feeling sick" because there were
12 still more voters asking for help and she couldn't
13 help them.

14 While not all of our translators could stay at
15 the polls from open to close, like Ms. Gellet, they
16 had significant impact. Translators responded to
17 requests from an average of 40 voters per day and
18 the 20 translators provided assistance to a
19 estimated minimum of 4,000 voters during early
20 voting.

21 I wanted to note to Lida's earlier point that
22 many of the requests for assistance, the poll
23 workers did not fill out the slips. Our
24 translators estimate that one in five of those for
25 assistance resulted in a slip being filled out, so

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2 it is hard to know how many people needed
3 assistance and didn't get it. I think the record
4 of how many people even got assistance is limited.

5 Even at polling places with volunteer
6 translators, some voters were still denied
7 translation assistance. In both Palm Beach County
8 and Miami-Dade County partisan poll observers
9 misinformed poll workers and voters claiming that
10 translators could assist only a limited number of
11 voters each hour or each day and insisting that
12 poll workers deny voters' requests. Voters also
13 reported that poll workers barred them from
14 receiving literacy or translation assistance from
15 family or friends.

16 This issue effects not only voters confronted
17 by language or literacy issues, but all of us,
18 because when voters are denied access to
19 translations assistance, all voters are harmed by
20 the subsequent delay in lines.

21 Moreover, if the right to vote is to mean
22 anything, voters who do not understand the ballot
23 in front of them must be able to request assistance
24 from a person of their choice. Although there are
25 troubling practical barriers this is at least a

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2 right that is currently guaranteed under Florida
3 law.

4 Last year, however, Florida's legislature
5 considered an amendment to its election code which
6 would have restricted voters' rights to request
7 assistance. That amendment failed to pass, but we
8 must guard against similar attempts to limit
9 translation assistance in the future which will
10 leave vulnerable voters with even fewer options.
11 Thank you.

12 COMMISSIONER RUSSELL: Thank you. I think we
13 have come to the end of panel number 2, and we are
14 going to now go back to the audience for questions
15 on this. Commissioners have questions of some of
16 the speakers who have already spoken. Mr. Gelber.

17 COMMISSIONER GELBER: Yes. I've been as quiet
18 as I can be.

19 I have a question of the folks that have
20 spoken and of anyone else. The legislature passed
21 constraints to early voting very wide-eyed about
22 what it would do because they were told, and there
23 were attempts to stop them from doing it. The
24 governor signed the bill, defended the bill in the
25 courts and refused to extend early voting when

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2 asked in the 2012 election even in light of some of
3 the longest lines that have ever been seen in
4 recent history anywhere. I never heard of somebody
5 waiting eight or nine or ten hours to vote
6 anywhere. Even in third world nations you don't
7 hear about that. But you heard it in Florida and
8 here in Miami-Dade.

9 Has anybody, because you all represent so many
10 groups of people that were so diminished as people
11 in that process, can any of you tell me or us that
12 either the leadership or the legislature or
13 Governor Scott himself has apologized to you or any
14 of the people you represent that they felt somewhat
15 sorry that --

16 AUDIENCE VOICE: No, no.

17 COMMISSIONER GELBER: I suspected that might
18 have been the answer because that would have made
19 some news.

20 Second thing I want to ask, and I'm not going
21 to give a closing even though it is in the agenda,
22 is, you know, while maybe some of the things we
23 talked about are bureaucrats acting
24 bureaucratically or stupidly, I don't believe that
25 some of the great voting suppression that has

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2 happened in Florida is the product of stupidity. I
3 think it's the product of craven behavior from
4 people in power who want to preserve their power.

5 And we've talked about it today as if it isn't
6 about that in some respects and really just about
7 people making bad decisions. It is not about
8 people making bad discussions. It's about people
9 trying to preserve the power they have.

10 And the fellow from Common Cause said,
11 actually used one of the political party's words
12 for the first time and I think the only time, We're
13 Republicans, we shouldn't do. This is a
14 nonpartisan hearing. And the truth is it is
15 nonpartisan and there may be states where the party
16 power is reversed. But here it should be pretty
17 clear that the party in power is trying to preserve
18 its power by suppressing the vote, and that is a
19 horrible excuse to do anything.

20 And if any of you want to comment on that I'd
21 be happy to hear about it. But I don't think it is
22 anything but that, and I feel like it does a
23 disservice to the discussion to not bring that out
24 very clearly.

25 Some of these things are not perhaps partisan.

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2 Some of them are bureaucratic. But we went through
3 some horrific election cycle in 2012, ironically,
4 after we went through a horrific election cycle in
5 2008, and yet it just seems to be over and over
6 again. And whether it is felon disenfranchisement
7 or just diminishing people who have physical
8 challenges to the polls there seems to be a real
9 effort to do that in this state. And I hope these
10 hearings make one very important point, and that is
11 when that happens, when the party in power decides
12 the best way to preserve power is to suppress the
13 vote of people they think tend to vote against
14 them, then you need laws to protect everybody.
15 Because they don't even care if 30 percent of the
16 people they are suppressing would have voted for
17 them. They are trying to stop everybody from
18 voting who come from that swathe of voters. So I
19 just want that to be on the record because this
20 needs to be said because so much of it is about
21 preservation of power and I believe in a very
22 unseemly and craven way.

23 COMMISSIONER RUSSELL: Not your final
24 statement because I have to go out to the audience
25 for questions now, but do you have questions for

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any of the people who just in that last panel?

COMMISSIONER SMITH: It's more of a reflection on what --

COMMISSIONER RUSSELL: Do you want to save your reflection?

COMMISSIONER SMITH: Yes, thank you, fellow commissioner.

COMMISSIONER RUSSELL: I have two cards and only two cards and I'll ask you to come to the microphone and make your statement or ask your question. I believe we have C.C. Reed.

MR. REED: I was requesting for testimony.

COMMISSIONER RUSSELL: This is it.

MR. REED: This is my three minutes.

COMMISSIONER RUSSELL: This is your three minutes, yes, sir. And if you'd tell us who you are.

MR. REED: My name is a Calvin Clarence Reed, now famously known as C.C. Reed. I'm the 2014 qualified gubernatorial candidate for governor for the State of Florida. I started my campaign in 1990, thank God. In 1994 I ran against Lawton Chiles as the write-in candidate. In the 1998 general election I ran against Jeb Bush. In the

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2 2002 general election I ran against Jeb Bush again
3 as a write-in candidate in all three elections,
4 1994, 1998 and 2002.

5 Then as a write-in candidate they never
6 considered our vote and that wasn't right. So what
7 I did, I put my name on the ballot against Charlie
8 Crist in 2006 as a qualified gubernatorial
9 candidate for governor State of Florida. The thing
10 is by me putting my name on the ballot that didn't
11 even matter because they still didn't count not
12 only my vote but the people that voted for C.C.
13 Reed to become governor State of Florida.

14 It wasn't fair because I received like over
15 800,000 emails from people that say, C.C. Reed, we
16 voted for you. And what I did is I filed a federal
17 lawsuit immediately after the election in the 2006
18 general election, and it got dismissed for some odd
19 reason.

20 So I came back and filed another federal
21 lawsuit. The first lawsuit was to put an
22 injunction on the race. And the second was to put
23 a recall of the race. And they said that you got
24 to be in a certain percentage in order to have a
25 recall of the governor's race.

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2 But that's no problem because still in 2010 my
3 name appeared on the ballot again. But this time
4 Charlie Crist was the first governor to not run for
5 re-election. And not only that, when they put Rick
6 Scott there, the money man, basically they blocked
7 me out from putting on my TV commercial. But thank
8 God I was able to get my commercial broadcast
9 within the State of Florida through Comcast, which
10 I had to file an appeal with the Voter Elections
11 Commission.

12 But the thing about that, there was a big
13 conspiracy to sabotage my campaign, my legal
14 campaign for governor State of Florida because they
15 said: Whitey is all right, black stay back. But
16 you know what? That's not fair to my people
17 because there was a conspiracy, and I know it for a
18 fact because not only Charlie Crist was the first
19 governor not to run for re-election, you had a
20 chief financial officer named Alex Sink, first time
21 a chief financial officer didn't run for her seat,
22 she ran against C.C. Reed. Then you have an
23 Attorney General, Bill McCollum, first time you had
24 an Attorney General State of Florida didn't run for
25 his position. He ran against C.C. Reed. But

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2 that's OK because right now currently we have a
3 federal case pending before the Honorable Frederico
4 Moreno, and the case number is
5 13-225158-CIV-MORENO.

6 The reason why I come here was to let you
7 know, and I thank you God for this National
8 Commission On Voting Rights because there are two
9 laws in the State of Florida, Florida Statute
10 944.292 and Florida Statute 944.293. The thing is,
11 about your rights, in the State of Florida, are
12 never taken away from you. Okay? Basically they
13 are suspended. Once you do your time in prison,
14 you do your time in jail, or you complete your
15 probation, your rights are automatically restored
16 back to you by the governor of the State of
17 Florida. Now, when he come and raise the right
18 hand and take that oath they are supposed to honor
19 the laws of the State of Florida and the laws of
20 the United States Constitution.

21 Thank you very much for giving me this
22 opportunity.

23 COMMISSIONER RUSSELL: Thank you. The next
24 speaker is Robin Foster.

25 MS. ARNOLD: She left.

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2 COMMISSIONER RUSSELL: That does in fact
3 conclude the public testimony. Lida?

4 COMMISSIONER RODRIGUEZ: I'll start out. A
5 couple of closing remarks, I think the most
6 important one of which is thank you all for your
7 time. Thank you all for your testimony. Thank you
8 all for the information that you have provided us
9 today. Thank you to the Lawyers' Committee. And
10 thank you very much, Rebecca, for your hard work
11 for putting this together and the commission on
12 voting rights.

13 What we need to do is, to successfully address
14 these issues, we need to take many different
15 approaches. One, we have to take the long view and
16 we have to take a lot of approaches.

17 I have to echo something that Dan Gelber said
18 and also Dan from Common Cause said is that you
19 need to look at the big-picture political reasons
20 why this is being done. And those need to be
21 addressed, and those need to be challenged, and
22 there are people who are very well equipped in this
23 room to take those challenges on and I urge you to
24 do so.

25 In addition, there are the minutia that also

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2 need to be addressed and they need to be addressed
3 and they need to be challenged and there are people
4 in this room who are very well equipped to do that
5 task. I think we all need to work together from
6 various perspectives, the big picture and the
7 minutia, to bring about changes in the way that
8 Florida disenfranchises people and prevents them
9 from voting.

10 This is not a problem that is going away soon.
11 This is a long-term problem, and we have to take
12 the long view in order to provide solutions. And I
13 really appreciate the time that you all have taken
14 and the testimony, because it's been incredibly
15 valuable.

16 Part of the problem with election
17 administration, and somebody pointed this out
18 already, is that you need to figure out how many
19 counties there are in the country and that is
20 exactly how many different methods of voting there
21 are. Every single county, every single precinct is
22 its own world. And the only solution to that is to
23 create clear and definable rules so that nobody can
24 change what happens at the polling place, what
25 happens on Election Day, what happens at early

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2 voting and how people are treated and how they are
3 permitted to vote. And that's key.

4 So, for example, when I was hearing Katie talk
5 about the lack the language assistance, one
6 suggestion is to meet with the supervisor and to
7 provide a training page for how the different poll
8 workers need to be trained on language assistance.
9 Actually that's an issue throughout the state, and
10 we're not providing sufficient training guidelines
11 for how the counties are supposed to train poll
12 workers to make sure that people who need language
13 assistance are getting it.

14 I'm not running away from what Dan is saying
15 because I think what Dan is saying is very
16 important. But my focus has always been election
17 administration, so that's where I can lend the most
18 help.

19 Obviously I'm here to provide assistance to
20 any of you and your groups, whoever need it, but I
21 really encourage those people who want to work on
22 election administration issues to focus on the
23 minutia because if you focus on the minutia it is
24 shocking how many people you are able to help and
25 how many rights and how many voters you are able to

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2 protect as a result. Thanks.

3 COMMISSIONER RUSSELL: Dan.

4 COMMISSIONER GELBER: Thank you all for what
5 you do. I know you are committed to this and I can
6 tell you that there are a lot of people who
7 appreciate what you do even though they have no
8 idea who you are, what you spend all your days
9 doing, and you've really made our democracy much
10 stronger so keep it up. Thank you.

11 COMMISSIONER SMITH: Again, thank you to the
12 Lawyers' Committee. Thank you, Rebecca, for
13 convening this here at the University of Miami.
14 But, most important, thank you to all of you for
15 coming and sharing your stories.

16 We do need, as Lida says, a mix of the micro-
17 personal anecdotal stories that all of you are
18 engaged in at the grass roots level to insure that
19 those people who are eligible can become registered
20 to vote to make sure that they have access to the
21 polls; that they can get to a convenient voting
22 location or vote by mail or vote on Election Day;
23 that they can have their vote protected and done so
24 in an efficient manner; that their vote ultimately
25 counts. That is all incredibly important.

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2 It's just as important as the macro-level game
3 of politics that's very partisan, that needs to be
4 challenged when it is so egregious in terms of
5 taking people's fundamental right to vote away.

6 I would just add that it is partisan. We know
7 it is. But it's not only partisan. States like
8 North Dakota, a heavily Republican state, still do
9 not require voters to register to vote. They don't
10 have requirements to show a state-issued voter ID.
11 In Wyoming there haven't been any battles over
12 voting rights. Utah, there haven't been any with
13 respect to voter ID. These are heavily, heavily
14 Republican parties. And the reason is they are not
15 battleground states.

16 It's the close elections that the gaming of
17 the system becomes the end as much as anything
18 else. The combination of the partisanship and the
19 competitiveness, and that's why we have to be
20 vigilant. That's why Congress needs to act to
21 restore the Voting Rights Act to extend the power
22 of the federal government and the Department of
23 Justice to make sure that we can be protected from
24 various levels of governance that may have ulterior
25 motives with respect to that fundamental right to

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2 vote. So, again, thank you all, and I thank you
3 again to the Lawyers' Committee.

4 COMMISSIONER RUSSELL: Just from my standpoint
5 I want to thank the other three commissioners for
6 being here and listening to the testimony, and at
7 some point we'll get a report that will be the
8 Florida report that does in fact provide some basis
9 on which to tell the Congress that things need to
10 change. But also I think that we have had great
11 testimony here that can be used in Tallahassee,
12 quite frankly, as we advocate for access free and
13 unfettered to the vote for Floridians.

14 There are at least two election bills in the
15 legislature this session that argue for open
16 access, and it is this kind of information that
17 needs to go to those folks to deal with that.

18 I think that we have heard testimony also
19 about election administration at the local level
20 that all of us who have come from around the state
21 today need to go back and sit down with our
22 supervisors of elections and make sure that, to the
23 degree that they will listen, that they understand
24 that there are people who are looking at them.

25 As far as recalcitrant bureaucrats who fail to

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2 carry out the law, I don't know what you folks in
3 Miami-Dade can do about that, but you definitely
4 ought not to be sitting on your hands. A bathroom
5 is a universal need and right. And it seems to me
6 it doesn't go away because you are getting ready to
7 cast a ballot. I leave you with that statement and
8 I turn it over to Rebecca. Thank you all for
9 coming. Rebecca has closing remarks.

10 MS. ARNOLD: Very brief. I want to echo the
11 guest commissioners and say thank you, all, for
12 coming out and sharing your stories. It's
13 disappointing there are so many stories about so
14 many barriers that we have to share. But the hope
15 is to turn all this information into action. And I
16 mentioned earlier, and as Mr. Russell mentioned, we
17 are going to have a report that includes the
18 information not only from this hearing but from all
19 across the country and you all can use that in your
20 advocacy. So thank you for coming out and thank
21 you to our wonderful guest commissioner panel and
22 thank you to all the organizations who helped
23 organize this. Thank you.

24 (Hearing concluded)

25

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CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA)

SS

COUNTY OF PALM BEACH)

I, MICHAEL J. D'AMATO, a Registered Merit Reporter,
do hereby certify I was authorized to and did
stenographically report the foregoing proceedings
and that the transcript constitutes a true record of my
stenographic notes.

Witness my hand dated this 10th day of April, 2014.

MICHAEL J. D'AMATO, Registered Merit Reporter

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6 NATIONAL COMMISSION ON VOTING RIGHTS

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9 ATLANTA, GEORGIA HEARING ON VOTING

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The Martin Luther King Jr Center

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449 Auburn Avenue, NE

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Atlanta, GA

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WEDNESDAY, NOVEMBER, 20, 2013

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3:09 P.M. - 7:23 P.M.

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Reported by:

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Judith Leitz Moran

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1 NCVR HEARING - ATLANTA, GA - 11/20/2013
 2 OPENING AND CLOSING REMARKS BY:
 3 MEREDITH HORTON
 4 Lawyers Committee for Civil Rights Under Law
 5
 6
 7 PANEL OF COMMISSIONERS:
 8 HELEN BUTLER
 9 Executive Director, Georgia Coalition for the
 10 Peoples' Agenda
 11
 12 DR. FRANCYS JOHNSON
 13 President, Georgia State Conference NAACP
 14
 15 LAUGHLIN MCDONALD
 16 Special Counsel and Director Emeritus, ACLU Voting
 17 Rights Project
 18
 19 RUBY MOORE
 20 Executive Director, Georgia Advocacy Office
 21
 22
 23
 24
 25

1 NCVR HEARING - ATLANTA, GA - 11/20/2013
 2 PANEL WITNESSES (CONT.):
 3 SHARON BLACKWOOD
 4 Board Member, League of Women Voters of Georgia
 5
 6 RICHARD BARRON
 7 Fulton County Director of Elections and
 8 Registration
 9
 10 EMMA DARNELL
 11 Fulton County Board of Commissioners
 12
 13 MELINDA SHELDON
 14 Deputy Director, Georgia Equality
 15
 16 SARITA MCCOY GREGORY
 17 Kennesaw State University
 18
 19 RONNIE MOSLEY
 20 Morehouse student
 21
 22 REVEREND ALBERT E. LOVE
 23 President & CEO, The Voter Empowerment
 24 Collaborative (VEC)
 25

1 NCVR HEARING - ATLANTA, GA - 11/20/
 2 PANEL WITNESSES:
 3 LAURA TORO
 4 Program Manager, Georgia Association of Latino
 5 Elected Officials
 6
 7 REVEREND HENRY FICKLIN
 8
 9 DR. NANCY DENNARD
 10
 11 REPRESENTATIVE VIRGIL FLUDD
 12 Georgia House of Representatives
 13
 14 REPRESENTATIVE TYRONE BROOKS
 15 Georgia Association of Black Elected Officials
 16
 17 EMMET J. BONDURANT
 18 Partner, Bondurant Mixson & Elmore LLP
 19
 20 HELEN KIM HO
 21 Executive Director, Asian American Legal Advocacy
 22 Center, Inc.
 23
 24 CHERI MITCHELL
 25 Georgia Advocacy Office, Inc.

1 NCVR HEARING - ATLANTA, GA - 11/20/2013
 2 OPEN MIC COMMENTS - FIRST SESSION:
 3
 4 JOE CARN
 5 REVEREND JEFFREY BENOIT
 6 KATHY HOLMES-BASS
 7 THOMAS AQUELL
 8 MINISTER KAREN REAGLE
 9
 10 OPEN MIC COMMENTS - SECOND SESSION:
 11
 12 PHYLLIS BAILEY
 13 MARGO WATERS
 14 GARRETT SCOTT
 15 MARTHA ALEXANDER
 16 RON SHAKIR
 17 JOHN BENSON
 18 MAMIE CHANCELLOR
 19 YOLANDA CHANCELLOR
 20 JOHN E. JONES
 21 DR. GRETCHEN C. LOCKETT
 22
 23
 24

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P R O C E E D I N G S

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against racial injustice and inequality.

MEREDITH HORTON: Good afternoon, everyone. It would be great if everyone can start by taking their seats.

We continue our work today in a variety of issue areas, fair housing, employment discrimination, education, and, of course, voting rights, the reason that we are all here today.

Welcome.

So today's hearing in Georgia is the first in a series of nationwide fact finding hearings convened by our National Commission on Voting Rights.

My name is Meredith Horton and I'm with the Lawyers' Committee for Civil Rights Under Law in Washington, D.C., and I want to welcome you to the inaugural hearing of the National Commission on Voting Rights.

I'm especially honored to get us started and really quick off this nationwide series right here in Georgia, such an important state in the voting rights landscape.

On behalf of the Lawyers' Committee, we want to thank you for your participation and support of this event this afternoon.

As many of you know, this summer the U.S. Supreme Court struck down a key protection of the Voting Rights Act, really stripped it away, one that protected Georgia voters in particular from discriminatory voting changes.

And right at the outset I want to thank the King Center for hosting us in such a beautiful and really fitting venue for a discussion about one of the most fundamental aspects of our democracy, the right to vote.

The Court released states like Georgia with a troubling history of discrimination and voting from a critical responsibility, and that was to show and demonstrate up front that voting changes would not disadvantage minority voters.

A little bit about the Lawyers' Committee. We're a nonprofit, nonpartisan civil rights organization. We were founded at the request of President Kennedy 50 years ago to engage private law firms and the private bar in the fight

Now, the Court found that this

NCVR HEARING - ATLANTA, GA - 11/20/2013 requirement was outdated and perhaps no more longer related to current needs. We believe the Court got it wrong.

NCVR HEARING - ATLANTA, GA - 11/20/2013 advocacy and reform at the local, state and national level.

So one of our main purposes to these national hearings is to identify the needs for strong protections against discrimination in voting, and looking at the current record in states across the country. Again, starting with Georgia.

The testimony that we receive today and after the hearing will be used by the National Commission to prepare two reports. One on voting discrimination, another on election administration and election reform matters.

So in addition today, we want to hear from you about election administration and election reform issues.

The reports and records from these hearings will be available to anyone seeking new reform or improve existing laws and systems. That includes policy makers, advocates, the voting public, your neighbor, whomever.

So across the country over the past few years we've seen a wave of restrictive voting laws. Those laws are even making it harder for eligible individuals to just cast a ballot. They've taken the form of strict photo ID laws in some states, proof of citizenship registration laws in others.

We expect the reports also to help inform Congress and educate the public regarding recent record of voting discrimination and also changes to look out for in your communities, you know, as time goes on.

Further, we've continued to see sort of similar election administration challenges cycle after cycle related to whole work or training, voter registration procedures, provisional ballot use.

So now I would like to introduce our Panel of Commissioners for today's hearing.

So your input on all of these issues in Georgia is critical for our ongoing efforts for

Presiding over our event are four Georgia Commissioners, each with a deep commitment to protecting access to the ballot for all on equal terms.

We have Helen Butler, Executive Director

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 2 of the Georgia Coalition for the Peoples' Agenda.
 3 Dr. Francys Johnson, President of the
 4 Georgia State Conference of the NAACP.
 5 Laughlin McDonald, Special Counsel and
 6 Director Emeritus of the ACLU Voting Rights
 7 Project.
 8 And Ruby Moore, Executive Director of the
 9 Georgia Advocacy Office.
 10 Our commissioners will preside over
 11 today's hearing and receive testimony from several
 12 panels of witnesses and ask follow-up questions, if
 13 they choose, just to ensure that we create a robust
 14 record about the state of voting in Georgia.
 15 Now, just a few housekeeping items for
 16 the afternoon. If you've been confirmed on a panel
 17 in advance, and you would know that because you've
 18 received an e-mail from me confirming you, then,
 19 please make sure you checked in at the sign-in
 20 table and our commissioners will call your name to
 21 have you come up to sit in one of the four chairs
 22 when it's time for your testimony.
 23 For the individuals who are here today
 24 and would like to share their voting experiences
 25 but have not yet been assigned to a panel, that's

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 2 language services towards the back, Maria and
 3 Gabriel can assist you there with headsets. And we
 4 also have signage interpreters here in front who
 5 can also provide some more assistance.
 6 Finally, I have been asked to say from
 7 our communications group that if you're a tweeter,
 8 and I am not yet, we have a hash tag. So our hash
 9 tag for the event is NCVR for National Commission
 10 on Voting Rights.
 11 My organization's handle is at
 12 lawyerscomm, L-A-W-Y-E-R-S-C-O-M-M.
 13 So I will get big kudos back home if
 14 there are like tweets going out. So feel free.
 15 And finally, before I turn it over to our
 16 commissioners, I just wanted to add a few huge
 17 thank yous.
 18 In addition to the King Center, our
 19 hosts, I want to thank our law firm sponsors, King
 20 & Spalding and Kilpatrick, Townsend & Stockton for
 21 helping us secure this beautiful venue and
 22 providing transcription services and translation
 23 services.
 24 I would also definitely like to thank our
 25 Panel of Commissioners for their time this

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 2 okay, too, we definitely want to hear from you.
 3 So please make sure that you sign in on
 4 the outside table on the witness sign-up sheet and
 5 follow the instructions given by one of the
 6 volunteers.
 7 We need you to put your name on one of
 8 the index cards, including the topic that you would
 9 like to testify on. I will make sure that those
 10 cards get to our commissioners who will call you up
 11 during one of the open mic sessions this afternoon.
 12 There is a microphone stand in the
 13 audience to my left that you may use to testify
 14 from.
 15 A few other items.
 16 Our hearing is being transcribed by a
 17 court reporter down in front. So please speak
 18 clearly, especially your name.
 19 In addition, please be mindful of the
 20 timekeepers who will also be down in front and
 21 their signs. Be kind to the timekeepers. We'd
 22 like to make sure we try to accommodate as many
 23 people as we can this afternoon.
 24 Third, we also have Spanish and sign
 25 language interpreters on site today. For Spanish

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 2 afternoon, all of our witnesses, and the numerous
 3 Georgia-based organizations that have been so
 4 helpful in the planning and promoting of this
 5 event. It has truly been a really fun effort and
 6 I'm finally excited to be on the ground meeting all
 7 of you.
 8 You'll hear from me again later, but for
 9 now I will turn it over to our witnesses -- I'm
 10 sorry, our commissioners, if they'd like to make
 11 any opening remarks, and they will call up the
 12 first panel of witnesses. Thank you.
 13 (APPLAUSE.)
 14 COMMISSIONER BUTLER: Good afternoon.
 15 I'm Helen Butler, Executive Director of
 16 the Coalition for the Peoples' Agenda and Advocacy
 17 Organization convened by Dr. Joseph Lowery.
 18 And of course, our primary mission is to
 19 improve governance through public policy reform.
 20 And of course, one of those issues is voting and
 21 voting rights. And definitely that is on the
 22 forefront.
 23 As you know, Dr. King and Dr. Lowery and
 24 Rita and others made sure we had the right to vote
 25 for communities of color, so we are so happy to be

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 2 here today. We want to hear your testimony, that
 3 is most important.
 4 COMMISSIONER JOHNSON: Thank you, Helen.
 5 My name is Francys Johnson, and I'm
 6 President of the Georgia NAACP. Professionally I
 7 am in private practice in southeast Georgia and
 8 practice before the state and federal courts here
 9 in Georgia.
 10 Additionally, I am a minister and pastor
 11 of the Mount Moriah Missionary Baptist Church in
 12 Pembroke, Georgia, and the Magnolia Missionary
 13 Baptist Church in Statesboro, Georgia.
 14 I come to this work after previously
 15 teaching at the university level, particularly
 16 courses on civil rights and race and the law.
 17 On behalf of the NAACP, I bring you
 18 greetings. On behalf of our interim president and
 19 CEO, Lorraine C. Miller, and chairwoman of our
 20 board of directors, Roslyn McCallister Brock, and
 21 the over 2200 units which make up the NAACP in all
 22 50 states in many places around the world.
 23 The NAACP's original mandate was to
 24 strengthen this nation's democracy and to guarantee
 25 provisions of the constitution. And of course,

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 2 And then, secondly, the Court expressly
 3 upheld another major provision of the Voting Rights
 4 Act, and that is Section 2. Section 2 protects the
 5 equal right of racial and language minorities to
 6 participate in the political process and elect
 7 candidates of their choice.
 8 So, you know, both before the Shelby
 9 County decision was handed down and after it was
 10 handed down, the civil rights community has held
 11 weekly and biweekly telephone conferences to
 12 determine how to respond to Shelby County. And
 13 there have been 25, 30, 40 people on these
 14 telephone calls. And there are a number of things
 15 which people have discussed that need to be done to
 16 rewrite the coverage formula.
 17 I think another thing that needs to be
 18 done is to strengthen the bail-in provision. There
 19 is a provision in the Voting Rights Act that says
 20 if a court finds that a jurisdiction committed a
 21 violation of the Fourteenth or Fifteenth
 22 Amendments, it can bail it into Section 5 coverage.
 23 And there have been two states that have
 24 been bailed in under the jurisdictions and about
 25 seven other states have been bailed in.

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 2 that remains the mainstay of our work today.
 3 104 years later the NAACP is still
 4 advocating and working to remove some of the
 5 hostile obstacles that remain and linger. And
 6 we're very happy to be here today and hear your
 7 testimony and add to the growing record of
 8 rollbacks in terms of the access to the ballot and
 9 the right to vote here in Georgia.
 10 COMMISSIONER McDONALD: Well, I'm
 11 Laughlin McDonald with the ACLU Voting Rights
 12 Project. I've been there since the early 1970s.
 13 We've done literally hundreds and hundreds of
 14 voting rights cases on behalf of racial minorities
 15 in the south and also on behalf of language
 16 minorities, including, Alaskan natives, American
 17 Indians in the west.
 18 I want to stress that in the Shelby
 19 County case, the Supreme Court did not invalidate
 20 Section 5 itself, it only struck down the coverage
 21 formula.
 22 And in writing the majority opinion, the
 23 Court said we understand that racial discrimination
 24 still exists and that it's up to Congress to
 25 redraft the coverage formula.

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 2 But the problem is, you have to find a
 3 constitutional violation. And I think that one of
 4 the ways to strengthen the bail in would be to
 5 include a violation of any federal statute that
 6 protects the voting rights of racial or language
 7 minorities. So and you don't have to prove
 8 discriminatory purpose, only that it has an adverse
 9 racial effect.
 10 There are other things that could be
 11 done. Section 2 could be strengthened.
 12 The problem with Section 2 is that it
 13 depends as far as enforcement on private plaintiffs
 14 of the United States bringing a lawsuit. And when
 15 you bring the lawsuit, you have the burden of
 16 proof.
 17 Under Section 5, the jurisdiction has the
 18 burden to show no retrogressive effect, but you
 19 have the burden to prove it.
 20 We've been involved in literally hundreds
 21 of these Section 2 cases and some of them can last
 22 for years. We've had a case in Wyoming that was
 23 resolved recently that was in the court like seven
 24 years before it was finally decided.
 25 We were involved in a case in South

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 2 Carolina, Lexington County, at-large members
 3 elected to the school board, and it went on for six
 4 years before we finally got the decision.
 5 And they can be very expensive. You have
 6 to have experts, demographers, statisticians, you
 7 might want historians, political scientists. So
 8 there should be some way to strengthen Section 2 so
 9 that it does not impose that kind of burden there.
 10 There's lots of ways people are talking about.
 11 Now, had this group of people come up
 12 with concrete, agreed upon ways to respond to
 13 Shelby County? Well, not exactly.
 14 But they are getting closer to coming up
 15 with things to propose to Congress. And there are
 16 members of Congress who have made a commitment to
 17 doing something to deal with the coverage formula
 18 and to respond to show the county. So we'll have
 19 to see what the Congress will do.
 20 But all of us, believe me, have to play a
 21 role in making Congress do the right thing and
 22 respond to the Shelby County decision.
 23 COMMISSIONER MOORE: Good afternoon.
 24 I'm Ruby Moore. I'm the Executive
 25 Director of the Georgia Advocacy Office. We are

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 2 the independent designated protection and advocacy
 3 system for people with disabilities in Georgia.
 4 As such, our primary mission is to
 5 prevent abuse and neglect and discrimination in its
 6 many forms. And in attempting to protect the
 7 rights of people with disabilities, that cuts
 8 across every demographic and every population and
 9 base of citizenry of Georgia.
 10 I'm very honored to be here to hear what
 11 people have to say. We are in a state where --
 12 well, our work every day, we're seeing
 13 discrimination every day, of all manner of things.
 14 And I'm very honored to be here to be
 15 able to hear what people have to say and to help
 16 with the process.
 17 Your testimony goes straight into the
 18 record. We have qualified people here to make sure
 19 that your voices are heard. And hopefully we can
 20 change the policies and practices and laws that are
 21 keeping people from exercising their citizenship
 22 right to vote.
 23 COMMISSIONER BUTLER: As everyone has
 24 said, the testimony that you give here today is
 25 critical to be on the record to ensure that we have

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 2 our voices heard because we must. The power is in
 3 the people and you are the people. And your voice
 4 and your vote counts and so we want to hear what
 5 you have to say with regards to what is going on in
 6 the state of Georgia with regards to voting rights
 7 and election administration.
 8 So our first panel will consist of Laura
 9 Toro, Program Manager, for the Georgia Association
 10 of Latino-Elected Officials.
 11 And we're going to ask that you come up
 12 and take the table to the left. The panel will sit
 13 to the table to the left.
 14 Reverend Henry Ficklin from Macon, City
 15 Councilman, will come up.
 16 And Laura will give a little information
 17 about Gainesville litigation under Section 2.
 18 Reverend Ficklin will talk about
 19 Macon-Bibb redistricting.
 20 And of course, we have with us Dr. Nancy
 21 Dennard from Quitman, Georgia, to talk about the
 22 Quitman 10 case and what happened down in her
 23 county.
 24 Representative Virgil Fludd from the
 25 Georgia house of representatives will be talking

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 2 about the at-large voting system in Fayette County.
 3 LAURA TORO: Good afternoon.
 4 AUDIENCE: Good Afternoon.
 5 LAURA TORO: Good afternoon, everybody.
 6 Thank you for inviting us -- inviting me
 7 here to speak today on behalf of GALEO.
 8 In 2003, the Georgia Association of
 9 Latino-Elected Officials, also known as GALEO, was
 10 created to promote the civic engagement and
 11 leadership development of the Latino community in
 12 Georgia.
 13 In 2004, the GALEO Latino Community
 14 Development Fund was created as the 501(c)(3)
 15 counterpart to GALEO.
 16 Through GALEO's work, Latino civic
 17 engagement and leadership development has
 18 noticeably increased in Georgia.
 19 To begin with, our organization was the
 20 main entity which led the 2010 census outreach
 21 efforts for the Latino community in the state of
 22 Georgia.
 23 Through our work and outreach to both
 24 urban and rural communities, the Latino population
 25 in Georgia nearly doubled and then counted 28

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 2 percent of Georgia's growth.
 3 In addition, through our ongoing Georgia
 4 Latino Vote Campaign efforts, the Latino electorate
 5 has grown from only 10,000 registered voters in
 6 2003 to well over 184,000 in 2012. That's 174,000
 7 people in nine years.
 8 Also, GALEO has been a leading advocate
 9 voice in Georgia for the most pressing issue within
 10 the Latino immigrant population, namely immigration
 11 reform.
 12 The city of Gainesville, Georgia, has an
 13 at-large voting process to elect all of its five
 14 city council members, and we claim that this system
 15 dilutes the voting power of a growing Latino
 16 electorate, in violation of Section 2 of the Voting
 17 Rights Act.
 18 The Latino community currently comprises
 19 45 percent of the city's population and has a
 20 majority population in three out of the five wards
 21 or districts.
 22 According to the 2012 census numbers used
 23 for the most recent redistricting effort by the
 24 city of Gainesville, Ward 3 has 54 percent Latino
 25 population, Ward 4 has 56 percent, Ward 5 has 61

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 2 percent Latino population.
 3 But despite these majority figures, the
 4 facts have shown that the voting of Latinos is
 5 depressed in the City of Gainesville with the
 6 Latino voter participation rate of nearly 30
 7 percent, which stands in stark contrast to national
 8 Latino voter participation rate of 48 percent
 9 during the last presidential election.
 10 We are currently in the process of filing
 11 a complaint against the City of Gainesville. And
 12 this case will be one of the first of its kind in
 13 the southeastern United States and will have far
 14 reaching impact well beyond the state of Georgia.
 15 There are many other at-large
 16 municipalities in the southern areas where the
 17 Latino community has grown tremendously and where
 18 there is also a hostile environment against Latinos
 19 due to the pending immigration reform debate in the
 20 U.S. Congress.
 21 For example, many voting practices have
 22 been implemented to discourage and disenfranchise
 23 Latino voters from fully exercising their right to
 24 vote, such as voter ID and citizen verification
 25 laws.

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 2 The at-large voting process further
 3 disenfranchises the Latino vote by creating real
 4 voter dilution situations which impede Latino
 5 citizens from being able to elect their candidates
 6 of choice.
 7 The population in the City of Gainesville
 8 is heavily comprised by Mexican immigrants who have
 9 come to work in the area's poultry industry. And
 10 poultry workers have made claims regarding
 11 significant abuse and mistreatment at the
 12 processing plants.
 13 The Latino population is of significantly
 14 lower economic class in comparison to other
 15 population segments in the city. And there are
 16 persistent racial tensions against the Latino
 17 community within the city and the power structure.
 18 In fact, Gainesville was the stage for an
 19 anti-Latino Klu Klux Klan activity in 1998, an
 20 anti-immigrant policy, such as the adoption by Hall
 21 County of Section 287(G) of the Immigration and
 22 Nationality Act, have further alienated the Latino
 23 and immigrant population within the city and
 24 surrounding the areas.
 25 The pervasiveness of discrimination and

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 2 abuse makes access to an elected official who
 3 represents the interests of the Latino community in
 4 Gainesville all the more pressing. Which is why
 5 GALEO has taken on the heavy task of confronting
 6 the city regarding its at-large voting process.
 7 The potential for the Latino electorate
 8 to have greater influence on elected candidates of
 9 choice would encourage the increase of Latino voter
 10 participation and engagement.
 11 In addition, the elimination of the
 12 at-large voting process in the City of Gainesville
 13 would set the stage for a similar outcome in
 14 another Georgia city with similar demographics, the
 15 City of Dalton.
 16 Furthermore, the state's most populace
 17 county, Gwinnett County, is home to the most Latino
 18 registered voters and all of the local
 19 municipalities in Gwinnett County currently have
 20 at-large voting process.
 21 Symbolically, should GALEO prevail in the
 22 case, it will send a powerful message across the
 23 state of Georgia and the southeastern United
 24 States.
 25 Thank you.

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 2 COMMISSIONER BUTLER: Okay. Thank you.
 3 And I'm going to tell the panel that our
 4 timekeeper is there with the red shirt so that you
 5 can be mindful of that.
 6 Laura, you worked very well.
 7 I know that you and Reverend Ficklin had
 8 to leave. Any of the panel have questions for
 9 Laura?
 10 COMMISSIONER McDONALD: Well, I guess
 11 just one question.
 12 You gave some registered voter figures at
 13 the end, but the initial figures you gave, was that
 14 total population or was it voting age population or
 15 citizen voting age population?
 16 LAURA TORO: The figures that I gave at
 17 first, is that what you're referring to, that we
 18 registered --
 19 COMMISSIONER McDONALD: Yes.
 20 LAURA TORO: -- 174,000 people in nine
 21 years?
 22 COMMISSIONER McDONALD: Well, you talked
 23 about the increase in the population. There's no
 24 question that there has been an increase in the
 25 Latino population. But are we satisfied that it's

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 2 voting age citizen population?
 3 LAURA TORO: In Ward 5, yes. And there
 4 are some other figures that will be coming out in
 5 January.
 6 COMMISSIONER McDONALD: All right.
 7 COMMISSIONER BUTLER: My question is, how
 8 many Latino candidates have run -- actually run at
 9 large?
 10 LAURA TORO: There was one person who ran
 11 in the mid-'90s. We don't -- and not enough --
 12 there was not enough voter turnout to really get
 13 figures for that. And there was also somebody who
 14 ran for mayor in the most recent election now in
 15 2013. He did not prevail.
 16 COMMISSIONER MOORE: So do you believe
 17 that the current practice actually discourages
 18 people from even running?
 19 LAURA TORO: It is our contention that
 20 the current at-large process discourages people
 21 from getting involved and getting involved in the
 22 civic process. Voting, running for office, being
 23 involved in their communities, yes.
 24 COMMISSIONER BUTLER: Our next witness is
 25 Reverend Henry Ficklin.

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 2 REVEREND FICKLIN: Thank you so much.
 3 Good afternoon.
 4 This testimony comes as a follow-up to a
 5 conversation with Attorney Anna Baldwin of the U.S.
 6 Justice Department Voting Rights Section 2 on June
 7 19th, 2013, at approximately 11:15 or thereabout,
 8 wherein we discussed the situation surrounding the
 9 consolidated governments of Macon and Bibb County
 10 and the situation that our legislative delegation
 11 caused for Payne City making them a people without
 12 representation, and that such a manner possibly
 13 would be more appropriately addressed by Section 2
 14 of the Voting Rights Act rather than Section 5.
 15 Upon further investigation into Section 2
 16 of the Voting Rights Act, it appears that my
 17 complaints regarding the above-stated references
 18 are indeed more appropriately addressed by Section
 19 2. Therefore, I now, under Section 2 of the Voting
 20 Rights Act, make a formal -- make formal my
 21 complaints concerning all of the aforementioned
 22 references upon the grounds that they were all
 23 developed in an invidious manner to set forth the
 24 following:
 25 1. The history of official

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 2 voting-related discrimination in Georgia and the
 3 City of Macon, Bibb County, are well-known and
 4 established by numerous news stories over the
 5 years.
 6 2. Voting in the elections of Macon,
 7 Bibb County, is racially polarized and is evidenced
 8 by the election statistics which will show that
 9 white voters overwhelmingly vote for white
 10 candidates, as in the recent 2011 mayoral race,
 11 while black citizens vote for both white and black
 12 candidates.
 13 3. The population shift has made black
 14 voters the majority in Bibb County when elections
 15 are partisan, as they have traditionally been in
 16 Bibb County for decades, therefore, black
 17 candidates experience the most success in partisan
 18 elections.
 19 4. The legislative delegation in Bibb
 20 County during the reapportionment seized an
 21 opportunity to change the government and draw new
 22 districts designed to defeat black candidates and
 23 current black-elected officials.
 24 5. The Republican-led delegation used
 25 voting practices and procedures that tend to

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 2 enhance the opportunity for discrimination against
 3 blacks, such as, a consolidated government, usually
 4 large by election districts within the consolidated
 5 government, unusually large election districts, the
 6 addition of a Republican legislator to the Bibb
 7 County delegation in order to ensure that the
 8 Republicans, who are all white, will control the
 9 delegation, and a prohibition against a partisan
 10 election which greatly enhances and decreases
 11 black-elected officials. Enhances a decrease in
 12 black-elected officials.

13 6. House Bill 514, which amends the
 14 original consolidation bill passed in 2003 Georgia
 15 General Assembly by the Republican-led delegation
 16 signed into law a Republican -- by Republican
 17 Governor, Nathan Deal, was expressly done to reduce
 18 minority participation in the voting process. It
 19 was passed in the last minutes of the legislative
 20 session without input from the community or the
 21 chair of the Bibb delegation, who was a black
 22 woman.

23 The movement of the election for a mayor
 24 and commissioners of the new consolidated
 25 government from November, which was in the original

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 2 bill, to July, when statistically black voters turn
 3 out in lower numbers, was specifically to increase
 4 the chances of electing a mostly white commission.

5 This was also the strategy used to pass
 6 the initial consolidation bill by scheduling the
 7 vote in July despite the plea from the minority
 8 community to have it in November when the
 9 presidential election was on the ballot.

10 7. Black voters in Bibb County bear the
 11 effects of discrimination in education, as the
 12 graduation rate for the minority populated public
 13 high schools is less than 40 percent; the
 14 unemployment rate for minorities in Bibb County is
 15 higher than the national average; the health for
 16 blacks in Bibb County is one of the most staggering
 17 statistics in the state, with more than 10 dialysis
 18 centers located in or near the minority community
 19 in Bibb County. And all of this tends to hinder
 20 the ability of blacks to participate effectively in
 21 the political process.

22 8. The wealthy Republican legislator who
 23 is mainly the driving force behind most of these
 24 actions, Representative Allen Peake, used a subtle
 25 racial threat that he would formulate a new city in

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 2 the north part of Bibb County, which is mostly
 3 white, if citizens didn't vote to consolidate. The
 4 consolidation bill overwhelmingly won in north Bibb
 5 County, while losing in every minority precinct.

6 There were other --
 7 LAURA TORO: Oh, sorry.
 8 REVEREND FICKLIN: I wasn't looking at
 9 the time.

10 COMMISSIONER BUTLER: Go ahead and finish
 11 your statement.

12 REVEREND FICKLIN: Okay.
 13 COMMISSIONER BUTLER: If it's quick.
 14 REVEREND FICKLIN: I will just skip to
 15 the first lines.

16 COMMISSIONER BUTLER: Okay.
 17 REVEREND FICKLIN: I have been elected to
 18 public service in the pre-consolidated jurisdiction
 19 for more than 30 years.

20 The precincts in the new district, 2, are
 21 Howard 4, a white Republican precinct with a 92
 22 percent voter turnout; East Macon 4, a white
 23 Republican precinct with 88 percent voter turnout;
 24 Godfrey 1, a minority precinct, with 31 percent
 25 turnout; and a portion of Godfrey 2, a minority

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 2 precinct, with 37 percent turnout; and a portion of
 3 Godfrey 4, a majority black precinct with 36
 4 percent turnout.

5 The Republican-controlled delegation
 6 added one more element to their consolidation bill,
 7 which proves the invidious nature of the entire
 8 plan. The bill calls for nine commissioners to be
 9 elected.

10 And, of course, the election was set for
 11 September the 17th, after a federal lawsuit to get
 12 it changed from the original July 16th after the
 13 Supreme Court had -- Justice Department had stopped
 14 it and Supreme Court ruled.

15 And therefore, some of the Republican
 16 candidates went back to court and had the election
 17 set at the next possible earliest date which was
 18 September the 17th.

19 There were many complaints of serious
 20 irregularities in the election and called for
 21 the --

22 COMMISSIONER BUTLER: Reverend. Reverend
 23 Ficklin, I'm going to have to ask --

24 REVEREND FICKLIN: Okay.

25 COMMISSIONER BUTLER: -- if you could

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 2 just sum one final sentence what it is, we're going
 3 to have to get the testimony of the other
 4 panelists.
 5 REVEREND FICKLIN: Okay, thank you so
 6 much. I apologize.
 7 And basically we are in court now
 8 fighting to get a new election because of some of
 9 the irregularities that occurred during this time.
 10 One of the main things was that voters
 11 were drawn outside of the district and allowed to
 12 vote in another district and not allowed to vote in
 13 their correct district, and we had that happening
 14 all over the county.
 15 COMMISSIONER BUTLER: Okay. Questions of
 16 the commissioners?
 17 COMMISSIONER McDONALD: Well, so then
 18 there was an election held under the new plan?
 19 REVEREND FICKLIN: Yes, there was on
 20 September 17th.
 21 COMMISSIONER McDONALD: And how did
 22 minorities do?
 23 REVEREND FICKLIN: Minorities in,
 24 basically, a minority district did pretty good.
 25 There were four of them drawn -- actually, there

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 2 sworn to secrecy.
 3 And after that, they came out with this
 4 plan and they went to Atlanta and next thing we
 5 know they had voted it in. We did not have any
 6 input in it.
 7 COMMISSIONER BUTLER: The Department of
 8 Justice actually had withheld that consolidation;
 9 is that correct?
 10 REVEREND FICKLIN: They, well, contested
 11 the date of the election because we had -- after
 12 the plan had been put in operation and our
 13 legislative delegation, minority legislative
 14 delegation offered apparently no, you know, nothing
 15 against it. So, DOJ went ahead with it.
 16 But then we, in the community, we had a
 17 wide campaign to write letters to the DOJ. And of
 18 course, they heard us and they stopped the election
 19 on July 16th based upon statistical evidence that
 20 minorities show up better in November. And they
 21 stopped it.
 22 But in the ensuing time, the Supreme
 23 Court ruled and struck down Section 5 of the Voting
 24 Rights Act. When that happened, the Republicans
 25 went back into court and got a federal judge to

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 2 were five minority districts drawn and -- but as I
 3 was pointing out, they added in heavy voting
 4 Republican districts to overshadow the low turnout
 5 in the minority districts. And District 2 was one
 6 of those districts.
 7 COMMISSIONER McDONALD: But how many
 8 minorities were actually elected?
 9 REVEREND FICKLIN: Actually, four
 10 minorities were actually elected. And of course,
 11 the contest between myself, who is minority, and
 12 another -- a gentleman who was white.
 13 COMMISSIONER JOHNSON: I'm concerned with
 14 what input the community had in the redistricting
 15 plans. Were they announced and advertised planning
 16 sessions? Did this come up through the planning
 17 commission? What was the development of the plan?
 18 REVEREND FICKLIN: The legislative
 19 delegation announced that they had sequestered
 20 themselves away from the community and that they
 21 would come forth with a plan when they got through
 22 with it. We tried to get in, find out what was
 23 going on.
 24 One legislator did come forth, but he
 25 couldn't say anything because he said he had been

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 2 issue an order to have the election at the next
 3 available date, which was September the 17th.
 4 COMMISSIONER BUTLER: Any other
 5 questions?
 6 Our next speaker is Dr. Nancy Dennard
 7 with the Quitman 10.
 8 DR. NANCY DENNARD: Hello. I'm Nancy.
 9 I represent a group of individuals from
 10 Quitman, Georgia, which is in southwest Georgia.
 11 It's probably 10 minutes short of the borderline.
 12 Our current population is probably 16,300
 13 and that's based on the 2009 census. 62.3 percent
 14 white, 35.8 percent black, and 1.9 percent other.
 15 Our voting population is estimated around
 16 36 percent black -- oh, I'm sorry. This is the
 17 voting population. 36 percent black, 59 percent
 18 white and 5 percent other.
 19 And the significance of our case is that
 20 in 2009 -- well, prior to that, 2006, I ran
 21 unsuccessfully for the school board and it was just
 22 getting to the line of always not having enough
 23 votes. That seems to be the typical thing when we
 24 have elections.
 25 And we ran -- even in Black districts,

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2 you just got right there and you would be winning
3 in the polls, but when you got down to the
4 courthouse and did the final tabulations,
5 miraculously we lost. You go to bed thinking you
6 had won, the next morning you realized you had
7 lost.

8 And so I started doing some research on
9 this and thinking of other ways that we've got to
10 get our community engaged. And make sure that when
11 we are engaged that what we're doing is being
12 recorded and it's able to go back and we're able to
13 -- I said count it and recount it. That was the
14 base that we used.

15 And so I ran in 2009 in special election
16 and I was successful in April of winning and that
17 was by the process of getting out and doing
18 tremendous door-to-door knocking and educating
19 people on the ways they can vote.

20 And like I said, this was after the state
21 changed the early voting -- absentee voting
22 regulations to where now you could -- at that time
23 you could vote by void or reason if you wanted to,
24 there wasn't the stipulation of age and out of the
25 district and things like that.

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2 superintendent allowed two of the candidates to
3 switch positions, they just happened to be at-large
4 and from that same district, switch positions. We
5 challenged them in court and we were -- and we were
6 overruled on that.

7 And so, subsequent we went back to the
8 polls in November and we won all three elections.
9 We were initially told election night that one of
10 the candidates had lost by 60 votes. She was
11 notified on Friday at 4:45 before the vote was sent
12 to the state to be certified that she had won by
13 nine votes. It was a challenge, we had a recount,
14 and she eventually ended up winning by 11 votes.

15 And then we are secure in our belief that
16 that was only because we did paper ballots.
17 Majority of the votes were on paper and they were
18 recounted and recounted.

19 Had that not have happened, I think the
20 initial results that were reported to us on that
21 Tuesday night would have stood.

22 But after that the community really got
23 involved and they saw that the power of their vote
24 and it was just this wave of enthusiasm went
25 through our community.

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2 And I educated people about that and said
3 how easy it was to do and then there's other ways
4 they can do it.

5 And we did the massive educational voting
6 campaign in our community. We went out and we just
7 really -- we had rallies in churches and we -- just
8 where we could find people we would stop and have a
9 conversation with them and stress how important it
10 was for them to get involved.

11 If you're that dissatisfied with your
12 government, you need to get involved by either
13 running or replacing those that are in office that
14 are being ineffective.

15 In 2010 -- I was successful in 2009 with
16 my election. In 2010, another group of individuals
17 got together and decided, you know, they want to
18 challenge some of the races that were occurring
19 that year. And so we had several run for the
20 school board and some were running for the county
21 commissioner, and they were all successful in the
22 July primary.

23 After the July primary, because of -- we
24 have an at-large system in our school system,
25 school board positions, the voter election

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2 This happened in November. And in
3 December 21st of that same year, 10 citizens,
4 myself included, were arrested and were charged
5 with -- of voter fraud, of things assisting voters
6 by -- illegally assisting voters, improper handling
7 of absentee ballots, and things of that nature.
8 That was in December of 2010.

9 It wasn't until November of 2011 that we
10 were indicted. By the time we were indicted, there
11 were two others added to the indictment. But it
12 went on and one thing led to another, but we
13 finally had a court date.

14 One of the persons had a court date this
15 past September, the 23rd, which ended in a mistrial
16 by the judge.

17 And during that time we found out some
18 nice information during the testimony that the
19 prosecution had, which the defense never had the
20 opportunity to have with witnesses, that do the
21 prosecution.

22 But we found out things like over 350
23 people that were interviewed by the GBI, 95 percent
24 of them were African-American. The GBI used
25 intimidations and threats of arrest to elicit

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 2 untruthful statements for some of the voters. The
 3 prosecutor never was able to produce documentation
 4 the DA supposedly used to elicit the GBI's
 5 involvement.

6 A postal worker testified that he kept
 7 logs of the absentee ballot mailings. He locked
 8 the returned absentee ballots in his cash drawer
 9 for retrieval at a later time and then he furnished
 10 all of this activity to a private investigator. He
 11 was not authorized by any legal means by the postal
 12 services to keep this data.

13 Also, we learned that the postal worker
 14 kept these logs at his house, which is why no one
 15 else had access to them. This is personal
 16 identifying information of citizens within our
 17 county.

18 We also learned that the board elections
 19 deputy registrar testified that she took returned
 20 absentee ballots home on several occasions so she
 21 could get them logged in because she was getting
 22 behind in her work.

23 With these type of irregularity that was
 24 going on, it just kind of justifies the reasons we
 25 had to do what we had to do. How we had to come

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 2 local postmaster and they're like, well, nothing's
 3 really happening here, but it'll get better.

4 And we had a recent election two weeks
 5 ago for our new mayor, which I'm glad to add it was
 6 our first ever elected black mayor in our city, and
 7 we had the same problems that came on, too. And we
 8 just decided, you know, we're -- well, to answer
 9 your question, we're still in the legal process of
 10 having some reports filed into that and
 11 investigations into that.

12 But not to be deterred in this last
 13 election, what we decided to do is notify people
 14 and walk them in. Bypass the post office, walk
 15 them in. If they're not there in a timely manner,
 16 come in and have counsel and vote anyway. Just do
 17 not deny your right to vote.

18 COMMISSIONER BUTLER: Is the election
 19 official that improperly took absentee ballots
 20 home, which is against the code and the process for
 21 administering absentee ballots in the voting
 22 process, was that person removed from office?

23 DR. NANCY DENNARD: She resigned. What
 24 happened -- we didn't have an election board. Our
 25 particular case brought about a lot of changes in

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 2 together. We had all of these agencies working
 3 against us.

4 Let me say that was in 2010. Obviously,
 5 the trial was in 2013, it ended in mistrial. We
 6 suspect that they'll come back again and try to
 7 bring some other things. But these are just some
 8 of the things that we went through in our ordeal,
 9 trying to have a fair election in Brooks County.

10 COMMISSIONER BUTLER: Questions?

11 COMMISSIONER MOORE: This sounds like it
 12 was made for movie.

13 What happened to the postal worker who --

14 DR. NANCY DENNARD: We're in the process
 15 now of -- well, prior to that, we've always
 16 suspected that was part of the problem, the postage
 17 handling. Because it was right after my first
 18 election 50 absentee ballots came in the day after
 19 election. That was the kind of trick that was
 20 going on.

21 And then the new board of elections would
 22 say, but we're mailing them out, we don't know why
 23 they're not getting back in.

24 And I filed complaints with the postal
 25 inspector's department. I had meetings with our

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 2 our local government.

3 They formulated an election board. And
 4 so at that time she was -- she no longer had
 5 anything to do. Her original job, which is a tax
 6 collector, assessor or something in the tax
 7 collector's office, so she was taking -- that
 8 responsibility was taken from her.

9 We're also in the process of pursuing
 10 that, too, because, you know, she violated the laws
 11 at the time, too.

12 We were just kind of curious that all of
 13 this came out in open court testimony, the court
 14 reports and all of that, and there was no mention
 15 of it later that that should have been evidence
 16 that the GBI should pursue if truly they were going
 17 after to see and protect the integrity of the
 18 voting right.

19 COMMISSIONER JOHNSON: Was the indictment
 20 brought in regular session of the grand jury or was
 21 it a special grand jury convened for this purpose?

22 DR. NANCY DENNARD: It was during the
 23 term of the grand jury that was convened, but it
 24 was a special session. They called them back.

25 They convened the grand jury, I think, in October,

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2 but they didn't have the -- our particular case
3 presented until November.

4 And this all played into the part -- the
5 part I didn't mention, too, it all played into a
6 part, that Governor Deal had enacted the new law
7 that took into effect in July of 2012 where you can
8 remove elected officials and all of that.

9 So this became effective, the three board
10 members -- and like I said, I was -- this is not
11 even my election. I was involved and it wasn't
12 even my election.

13 And we were removed by Governor Deal in
14 July -- excuse me, January of 2012 because the
15 prosecution neglected to do what they were supposed
16 to do in a timely manner, according to the statute
17 we were removed by. We were reinstated in October
18 of that year.

19 In November of that year, it was my turn
20 to run for re-election, and I have since ran for
21 re-election, I've been elected for another
22 four-year term. I was elected again school board
23 president.

24 And that was another thing, too, it was
25 the first time ever we had majority minority on the

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2 primary. We have in November an election and there
3 was nothing done. It wasn't until after that
4 November election where they were allowed to switch
5 candidates and their candidates were still
6 unsuccessful.

7 I guess the next point then was to see
8 what we can do to damage reputations or whatever.
9 And so we were arrested, like I said, four day --
10 one morning, 7:00 in the morning, they had the GBI,
11 the state trooper, the local police, the sheriff's
12 office, and GBI, the Secretary of State's office.
13 I mean, it was just covered. Our little town is
14 really small.

15 And I had like five cars come to my
16 house, wake me up out of the middle of the morning
17 and take me down, and we had mugshots put
18 everywhere.

19 And we're educators. You know, four of
20 the -- the four city board members,
21 African-Americans, are either retired educators or
22 a current educator. You know, we're all
23 professional people.

24 And to say -- all we wanted to do was
25 educate people on how to vote or how important it

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2 school board, and I became the school board
3 president. I am currently again school board
4 president.

5 COMMISSIONER McDONALD: So, as I
6 understand it, none of the Quitman 10 plus 2 have
7 been convicted of any offense?

8 DR. NANCY DENNARD: That's correct. Only
9 one is --

10 COMMISSIONER McDONALD: And all those who
11 have been removed have been returned to office?

12 DR. NANCY DENNARD: Yes.

13 COMMISSIONER McDONALD: And I know that
14 was a huge public outcry for Quitman.

15 DR. NANCY DENNARD: It was.

16 COMMISSIONER McDONALD: And do you think
17 that played a significant role in the fact that
18 there's been no conviction and everybody's been
19 returned to office?

20 DR. NANCY DENNARD: Yes, and I think --
21 another role, too, was the timing of it. We're
22 going into four years of this. This happened in
23 2010.

24 It took a year -- you know, the election
25 that was supposed to be in question was the July

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2 was. And this was a stem from President Obama's
3 election.

4 Okay. Did you know we -- we're all --
5 the committee was on that role. I'm just saying,
6 well, we can do that here, you know, we've got
7 elected officials that are not performing and we
8 need you to, you know, hold them accountable. So
9 here's some things that we can do and we just
10 got -- I'm sorry.

11 COMMISSIONER JOHNSON: Just one more
12 question, if I could.

13 What was the cost of defending this case,
14 your reputation and the right to participate in
15 government?

16 DR. NANCY DENNARD: I would even hate to
17 speculate if we had to put a cost because we're
18 going into four years of it. But we had wonderful
19 attorneys that got together and they sent out a
20 massive call to other attorneys throughout the
21 state of Georgia.

22 And we had a meeting in Macon and we had
23 over 30 people to volunteer, 30 attorneys to
24 volunteer pro bono for this case. And we had --

25 (APPLAUSE.)

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 2 DR. NANCY DENNARD: -- Chevene B. King in
 3 Albany, Georgia, Lori Copeland and Carl Parker in
 4 Valdosta and Tiffany Simmons in the Atlanta area.
 5 But even now, I mean, we get phone calls
 6 now for updates because we know this is not the
 7 end. There are still -- I guess to them it's that
 8 leverage that, you know, I'm sitting here with
 9 indictments, you know.
 10 COMMISSIONER JOHNSON: Oh, absolutely.
 11 DR. NANCY DENNARD: I'm a professional
 12 with indictments, yes.
 13 COMMISSIONER BUTLER: Okay, great.
 14 And that was an at-large voting system;
 15 is that correct?
 16 DR. NANCY DENNARD: Right.
 17 COMMISSIONER BUTLER: Okay.
 18 DR. NANCY DENNARD: The one with Diane
 19 Thomas, she ran at-large. And like I said, the
 20 numbers earlier, we only had 39 percent
 21 African-American at large and she won by over 500
 22 votes. Not once, but twice in the primary and in
 23 the general election. And it wasn't all
 24 African-American votes that put her in there and
 25 kept her there.

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 2 county was founded in 1821 and the county seat is
 3 Fayetteville and part of the ARC.
 4 Moving back to about 1980, the population
 5 of Fayette was just over 30,000 and over 92 percent
 6 of that population was white and just over 5
 7 percent black.
 8 Today the population is over 108,000 with
 9 68 percent white, 20 percent black, 6 percent
 10 Latino, and 4 percent Asian.
 11 The African-American population is
 12 largely concentrated in the northern half of the
 13 county. The City of Fayetteville is about 25
 14 percent black, and the City of Tyrone where I live
 15 was about one-third black.
 16 In 2012, President Obama got about 34
 17 percent of the vote. The poverty rate is
 18 5.5 percent compared to 15 percent for the rest of
 19 the state. High school graduation rate is over
 20 90 percent compared to 70 percent in the rest of
 21 the state.
 22 The median household income is \$79,600
 23 compared to \$46,400 in Georgia, and \$50,000 across
 24 the country.
 25 Interestingly, the median income for

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 2 COMMISSIONER BUTLER: Great. Thank you.
 3 DR. NANCY DENNARD: So it's a clear
 4 message that everyone wanted change.
 5 COMMISSIONER BUTLER: Thank you.
 6 COMMISSIONER JOHNSON: Very good.
 7 COMMISSIONER BUTLER: Our next witness
 8 will be Representative Virgil Fludd.
 9 REP. VIRGIL FLUDD: Good afternoon and
 10 thank you.
 11 My name is Virgil Fludd, I'm a state
 12 representative serving in my eleventh year in
 13 office and for that duration of my time I
 14 represented parts of Fayette and parts of Fulton
 15 County.
 16 Thank you for the -- Ms. Horton and the
 17 Commission for allowing me to bring testimony and
 18 give us some insight on what's going on in Fayette
 19 County.
 20 There are a number of people here from
 21 Fayette County. If you don't mind just standing,
 22 please.
 23 While they're standing, Fayette County is
 24 located just south of Atlanta, what is known as
 25 Spalding, Coweta, Fulton and Clayton counties. The

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 2 blacks is higher than that of whites. \$86,000 for
 3 blacks compared to \$78,000 for whites.
 4 In the history of the county, however, no
 5 black person has ever been elected to the County
 6 Commission or to the Board of Education. Over a
 7 dozen people have run, both Democrat and
 8 Republican, but none of them have been successful.
 9 In August of 2011, the NAACP and 11
 10 plaintiffs filed suit against the county for
 11 disenfranchising Black voters. The plaintiffs
 12 asserted that Fayette County's at-large method of
 13 electing members to these boards, given the racial
 14 -- levels of racially polarized voting, guarantees
 15 precisely this result. Elections in Fayette County
 16 show a clear pattern of racially polarized voting.
 17 Although, Black voters are politically cohesive,
 18 bloc voting by other members of the electorate
 19 consistently defeats black-preferred candidates.
 20 In his 81-page ruling on May 21st of this
 21 year, Judge Timothy Batten, a George W. Bush
 22 appointee, ruled that, quote: The Court is
 23 satisfied under the totality of the circumstances,
 24 African-Americans in Fayette County are denied
 25 meaningful access to the political process on

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2 account of race or color.

3 As you know, Georgia is legally required
4 to comply with the Voting Rights Act because of its
5 past racial discrimination. And the lawsuit
6 alleges that Fayette's at-large voting process
7 violates Section 2, which prohibits applying or
8 imposing any voting qualifications or prerequisite
9 to voting or standard, practice or procedure, that
10 is either the purpose or the result of denying or
11 abridging the right to vote on account of race.

12 David Bositis of the Joint Center for
13 Political and Economic Studies said that at-large
14 voting elections were historically instituted
15 specifically to keep African-Americans from voting
16 in this country.

17 Before the lawsuit, other remedies were
18 attempted. The Boards could have changed the
19 system on their own but chose not to do so after
20 repeated requests by its citizens.

21 In 2005, I introduced legislation to
22 redraw the district boundaries and eliminate the
23 at-large system. The legislation failed on a
24 partisan vote. I introduced legislation again in
25 2008 and the bill was defeated again along partisan

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2 As Mr. McDonald can tell you, that there
3 have been over a hundred cases of at-large voting
4 where the plaintiffs have won. The cost of
5 litigation of residents in this county now exceeds
6 \$300,000. The people of Fayette County deserve
7 better. The people of Georgia deserve better.

8 Thank you.

9 COMMISSIONER BUTLER: Questions of the
10 panel?

11 COMMISSIONER McDONALD: What's the
12 problem with the remedy? Why is the court not
13 acting a lot quicker than it is?

14 REP. VIRGIL FLUDD: That's a very good
15 question. I believe that the court has already
16 ruled that there's a remedy that will allow for a
17 district that would be of voting age -- black
18 voting age population in excess of 50 percent that
19 can be drawn.

20 He asked that the plaintiffs and the
21 defendants both provide different -- their versions
22 of the map as the remedy, but he has not selected
23 an alternative or an option at this point.

24 COMMISSIONER McDONALD: Well, the
25 plaintiffs I know have proposed a plan, but have

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2 lines.

3 Again, earlier this year, the federal
4 judge ruled that at-large voting in Fayette County
5 not only weakens the voting strength of Black
6 voters, but violates Section 2 of the Voting Rights
7 Act.

8 Most of the cases arising under Section
9 2, as you're probably aware, since its enactment,
10 it involves challenges to at-large elections, but
11 the section's prohibition against discriminating
12 and voting applies to any voting standard,
13 practice, or procedure that results in the denial
14 or abridgement of the right of any citizen to vote
15 on account of race.

16 The facts in this case are indisputable
17 and a federal court and the judge that was
18 appointed by George W. Bush has now ruled that the
19 at-large voting system in Fayette discriminates
20 against Black voters. Unfortunately, the remedy in
21 this case is still to be determined as Judge Batten
22 has not issued a final disposition as of this date.

23 Even still, I expect that the county will
24 appeal the case and waste even more scarce dollars
25 on a case that they cannot win.

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2 the defendants proposed a plan, too; and if so,
3 what does it look like?

4 REP. VIRGIL FLUDD: I don't know what it
5 looks like, but it can't be substantially different
6 than the one that the plaintiffs have submitted
7 because there aren't very many options to draw at
8 50 percent black history in Fayette County. But it
9 is clearly doable and it's defensible as Judge
10 Batten ruled.

11 COMMISSIONER MOORE: And both of those
12 plans are before the judge already or is there a
13 date certain when that will happen?

14 REP. VIRGIL FLUDD: They are before the
15 judge as we speak.

16 COMMISSIONER MOORE: Okay.

17 REP. VIRGIL FLUDD: He has asked for a
18 special adviser to give him some assistance, but
19 that's been at least 60 days, 30 days.

20 COMMISSIONER JOHNSON: What are the
21 residential housing patterns in Fayette County?

22 You noted that the median income for
23 African-American households exceeds that of white
24 households, so it would -- which is quite unusual
25 from a normal pattern --

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 2 REP. VIRGIL FLUDD: Yep.
 3 COMMISSIONER JOHNSON: -- in terms of the
 4 impact of residential discrimination as well in
 5 discriminatory housing patterns. So how does that
 6 play in Fayette?
 7 REP. VIRGIL FLUDD: So two things. One,
 8 the bulk of the African-Americans in Fayette County
 9 that live north, in the north end of the county,
 10 the population is heavily single family households.
 11 Interestingly enough, as the Black
 12 population has grown, not only has the income level
 13 grown, the education -- the high school graduation
 14 rate has grown. Housing prices have grown. And so
 15 as Black people have moved in, the quality of life
 16 has gotten better.
 17 COMMISSIONER BUTLER: We want to thank
 18 our witnesses here. Let's give them a round of
 19 applause for being able to be here.
 20 (APPLAUSE.)
 21 COMMISSIONER BUTLER: Our next panel,
 22 while we ask questions after each testimony, we
 23 won't do that in the next panel. We did that
 24 because some had to leave early. And so we thank
 25 you for providing your testimony.

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 2 We're going to get ready for our second
 3 panel. And we're going to ask them to move forward
 4 to the stage as well.
 5 Attorney Janice Mathis from Rainbow PUSH.
 6 Representative Tyrone Brooks from the
 7 Georgia Association of Black-Elected Officials.
 8 Attorney Emmet J. Bondurant, Partner with
 9 Bondurant, Mixson & Elmore, LLP.
 10 So if you all would make it to the stage,
 11 we would appreciate it.
 12 Thank the two distinguished gentleman for
 13 being on this panel.
 14 We're going to start with representative
 15 Tyrone Brooks for the Georgia Association of
 16 Black-Elected Officials.
 17 And your topics that you'll be discussing
 18 with regards to discrimination and election reform
 19 issues, I take it.
 20 So Representative Brooks.
 21 REP. TYRONE BROOKS: Well, thank you very
 22 much, Helen, and good evening, everyone.
 23 I am honored to be here today to talk
 24 about my lifelong experiences and voting rights
 25 starting in the Southern Christian Leadership

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 2 Conference where I was raised and trained and grew
 3 up. And talk in general about some of the
 4 important cases that I worked on throughout the
 5 south and throughout America.
 6 Happy to see my partner, Attorney
 7 Laughlin McDonald, ACLU Regional Director for many
 8 years who represented us in many of the challenges
 9 that we embattled.
 10 And just listening to Dr. Nancy Dennard,
 11 the President of the Brooks County Board of
 12 Education Quitman, I can tell you that has been one
 13 of the most challenging movements in my life.
 14 Going to Quitman with you, Helen,
 15 Representative David Lucas, Senator Robert -- the
 16 late Senator Robert Brown in May of '011.
 17 Then going down for the annual GABEO
 18 conference in February of '012 and having
 19 Dr. Joseph Lowery, and you, and Rita Samuels, and
 20 many others, and march with over a thousand people
 21 on the courthouse in February of '012.
 22 I think that was a defining moment as to
 23 where Quitman ended up being in terms of those
 24 elected officials who were indicted, removed from
 25 office, and are still serving, still serving today

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 2 even though they are under indictment, removed by
 3 the government, are reinstated, winning re-election
 4 in November of '012.
 5 I was there during the election of '012
 6 all day and African-Americans saying we're not
 7 going to let anybody turn us around.
 8 Keysville, Georgia. Laughlin McDonald
 9 and I worked in Keysville in the mid-'80s to revive
 10 the town and we had enormous challenges. We were
 11 sued numerous occasions by the county. And we were
 12 supported, of course, by the Attorney General of
 13 Georgia, Michael Bowers. We had Secretary of State
 14 Max Cleland with us. But every turn we made we
 15 were sued. We had to fight back, we had to fight
 16 back. My life was threatened many times. I had to
 17 be escorted in by the GBI and state troopers. It
 18 was an awesome, awesome experience.
 19 But we won that county, Burke County.
 20 City of Keysville was still functioning.
 21 African-American mayor and counsel Emma Gresham was
 22 the first mayor. Maggie Cartwright was the second
 23 mayor. We have a new mayor today.
 24 The most egregious case that I've ever
 25 worked on was Pickens County, Alabama, Adamsville,

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 2 Alabama, 1982.
 3 Maggie Bozeman and Julia Wilder were
 4 leading the voter registration educational efforts.
 5 Running candidates of public office. They were
 6 arrested by Alabama state officials, county
 7 officials, and they were prosecuted.
 8 I remember Joe Lowery was our president
 9 at SCLC and we marched from Adamsville, Alabama, to
 10 Washington, D.C., and demanded that the Reagan
 11 Justice Department intervene to give these women
 12 support. We also challenged President Reagan to
 13 sign an extension of the Voting Rights Act in 1982.
 14 So when I speak about voting changes and
 15 I think about the impediments that we face today as
 16 a matter of law in this state and across America
 17 and the Supreme Court suspending the implementation
 18 of the Voting Rights Act, Section 4 and 5, I think
 19 what we see is, as Dr. Lowery says, in so many
 20 words, everything has changed but nothing has
 21 changed.
 22 AUDIENCE MEMBER: That's right.
 23 REP. TYRONE BROOKS: The struggle to
 24 maintain our voting rights is as important today as
 25 it has ever been.

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 2 AUDIENCE MEMBER: That's right.
 3 REP. TYRONE BROOKS: I was on the voting
 4 rights march in Selma to Montgomery when Dr. King
 5 led us all the way. I was not in the first march
 6 with Hosea Williams and John Lewis and others, but
 7 I was in that last March, the third march actually.
 8 They went all the way to Montgomery.
 9 And I thought in 1965 that by now, just
 10 looking forward, we would have to fight these
 11 battles.
 12 But when you listen to Representative
 13 Virgil Fludd, who is an outstanding leader in the
 14 Democratic party and the House of Representatives,
 15 you listen to Dr. Dennard, you listen to all of
 16 these leaders who have spoken today, you can see
 17 that the struggle to keep our voting rights intact
 18 and maintain that constitutional promise is as
 19 important today as ever before.
 20 And I pray to God that we can get the
 21 United States Congress to respond to the Supreme
 22 Court challenge of creating a new formula so that
 23 we can have implementation of Section 4 and 5
 24 again.
 25 Because if we don't, we're going to lose

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 2 political positions, we're going to see more
 3 impediments created as a matter of law, we're going
 4 to see all kinds of schemes, at-large voting,
 5 dilution of minority votes, we're going to see
 6 everything under the sun.
 7 We're going to see more voter ID laws and
 8 voter verification laws and anything they can do to
 9 turn the clock back.
 10 And I'm just hoping from these hearings
 11 there can be some fire put under the members of
 12 Congress and the White House to begin to work
 13 toward an agreement where we can move legislation
 14 forward because, otherwise, we will have no
 15 enforcement.
 16 And Georgia, along with many other states
 17 outside of the south, are working every day to
 18 create more impediments as a matter of law.
 19 I remember in '011, the first -- January,
 20 the first day of the session, there was a bill
 21 introduced to cut out early voting days from 45 to
 22 21. We had fought hard to get, you know, early
 23 voting.
 24 And the leadership of the Republican
 25 party, unfortunately some Democrats, voted and

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 2 signed the bill, but the bill passed. It cut your
 3 early voting days from 45 to 21.
 4 And that was in response to President
 5 Obama winning in '08 across America. He didn't
 6 carry Georgia, but he got a huge vote out of
 7 Georgia because most of us had voted early.
 8 And so we know that there is a need to
 9 extend the Voting Rights Act. I just wonder if
 10 there's a will. And hopefully these hearings can
 11 create the kind of energy that will determine
 12 whether or not there's a will on the part of the
 13 Administration, the House and the Senate to move a
 14 bill forward so that we can have the implementation
 15 and coverage that we so deserve under the 1965
 16 Voting Rights Act, which is the most important law
 17 adopted since the emancipation proclamation.
 18 COMMISSIONER BUTLER: We have with us on
 19 this panel as well a distinguished attorney who
 20 fought a lot of the photo ID law, I know, and so
 21 Mr. Emmet Bondurant.
 22 EMMET BONDURANT: Thank you.
 23 William Faulkner once wrote The past is
 24 never dead, it's never even past. That could be
 25 not -- nothing could be more true of the struggle

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 2 to protect voting rights against discriminatory
 3 legislation to prevent people from voting,
 4 especially in the south, but also in other parts of
 5 the country.
 6 Ohio, Pennsylvania, a number of states
 7 have enacted restrictive legislation aimed at
 8 suppressing the votes predominantly of Democratic
 9 constituencies, predominantly Black people,
 10 Latinos, elderly people, poor people, and the
 11 disabled.
 12 There are a number of articles that have
 13 been recently written, one that appeared last week
 14 in Rolling Stones, a copy of which I happened to
 15 have brought. But has the appropriate title,
 16 essentially, voter suppression in Georgia, and
 17 gives a series of examples in counties around the
 18 state.
 19 For example, in the Peoples' Republic of
 20 Athens where I grew up someone proposed they reduce
 21 the number of voting places to two, both police
 22 stations. In other counties they have cut polling
 23 places down to make voting less accessible for
 24 voters.
 25 There are a number of other things that

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 2 have occurred. Tyrone referred to a reduction in
 3 early voting period.
 4 North Carolina thought to be one of the
 5 more aggressive states in the south has just
 6 enacted a whole series of voter suppression
 7 legislation. Photo ID, very strict, reducing voter
 8 days, eliminating early voting on Sundays,
 9 eliminating college registration automatically for
 10 voting, reductions in numbers of voting practices,
 11 all of which are now being challenged.
 12 The other big challenge, besides photo ID
 13 and these restricted legislation, of which there
 14 are many examples, are political gerrymanders.
 15 The New York Times recently wrote an
 16 extensive article that I commend to the
 17 Commission's consideration describing the strategy
 18 of which Georgia is a classic example of which the
 19 General Assembly reapportion Congressional
 20 districts to systematically eliminate white
 21 Democrats by pairing them against black Democrats
 22 and thus creating a -- depriving minority voters of
 23 their natural allies, reducing the number of
 24 Democrats in the General Assembly and creating an
 25 essentially all white legislative delegation in the

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 2 House and Senate.
 3 Of 125 House members, there is only one
 4 person of color who is a Republican -- out of 180
 5 there is only one Republican member of their 125
 6 members is a person of color.
 7 In the Senate in which they have more
 8 than a super majority, of the 56 members of the
 9 Senate, there are no people of color.
 10 In Atlanta and Fulton County, they
 11 deliberately paired white Democrats and black
 12 Democrats and since created ribbon districts to
 13 include white areas in the surrounding counties to
 14 prevent the Fulton County delegation from having a
 15 predominately black majority and enacting local
 16 legislation. And at the same time we segregate the
 17 political parties.
 18 If you look at statistics in Georgia of
 19 those who vote in Republican primaries, 98 percent
 20 are white. That's through the systematic effort of
 21 eliminating white representation in the Democratic
 22 party. The plan is to drive white voters into the
 23 Republican party, and guess what we will have
 24 created, the all white primaries that were held
 25 unconstitutional in 1948 when they were carried out

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 2 by guess who, the Democratic party.
 3 Let me talk about photo ID for a minute
 4 which is something I know something about. And
 5 let's talk about Georgia.
 6 Photo ID came not from any evidence of
 7 fraud, it came from the American Legislative
 8 Exchange Council, a group that operates in secret
 9 primarily financed by large corporations that bring
 10 Republican legislators and feeds them with model
 11 legislation to take back to the states.
 12 That's where the Georgia photo ID came
 13 from, that's where the Indiana photo ID came from
 14 and that's where all the others came from.
 15 When it was enacted in Georgia, a claim
 16 that it was to decide -- it was intended to prevent
 17 voter fraud. There was not a single example of
 18 fraud and in-person voting in Georgia that anybody
 19 could point to over the last 15 or 20 years.
 20 The effect of it was targeted to suppress
 21 predominantly Democratic constituencies, Black,
 22 Latino, poor, elderly and the disabled by making a
 23 Georgia driver's license the ticket to be allowed
 24 to vote in person in Georgia.
 25 You don't have to have a photo ID to

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 2 register to vote in Georgia, you can register to
 3 vote at a grocery store at a voter registration
 4 drive. You don't have to go to the courthouse.
 5 But to get a photo ID, you got to go to the
 6 courthouse.

7 Let me give you the statistics from the
 8 Georgia photo ID case that will demonstrate, I
 9 think, beyond any reasonable doubt that the effect
 10 of that is to suppress minority votes.

11 During the litigation, the state election
 12 board ran a database match between registered
 13 voters and the DDS database of people with driver's
 14 licenses.

15 What they found was that there were
 16 198,000 registered voters who had no match in the
 17 database. There were 91,000 more registered voters
 18 who had had Georgia driver's licenses but didn't
 19 have them in their possession because they had
 20 expired or revoked. That totals 289,000 voters or
 21 5 percent, almost 6 percent, of the registered
 22 voters in Georgia.

23 But there were another 216,000 voters who
 24 were registered to vote in Georgia who have never
 25 been in the DDS database for the last 40 years.

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 2 community survey of the census shows that of white
 3 households with no access to a car, ergo, no
 4 driver's license with their picture on it, 3.8
 5 percent were white households and black households
 6 were 13.1 percent. Four times as many.

7 Well, Georgia says we cured the problem
 8 by making photo IDs available at the courthouse or
 9 in Fulton County at the northern access, the
 10 southern annex, the southern thing, and down on
 11 Pryor Street.

12 Do you know how many photo IDs have been
 13 issued to that 505,000 people who didn't have
 14 Georgia driver's licenses in 2007? A total of
 15 26,000 as of February of 2012. 26,000.
 16 2,000 in 2006. 4,000 in 2007. 12,000 in
 17 2008. 2,500 in 2009. 2,600 in 2010. 2,000 in
 18 2011.

19 What does this mean? Photo ID suppresses
 20 votes. How does it suppress votes? What you have
 21 done is say to people who are the least mobile in
 22 the society because they don't have a car. In
 23 Georgia many live in counties that have no public
 24 transportation.

25 In order to exercise your privilege of

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 2 They had never owned a car, never driven a car,
 3 never had a driver's license of any kind.

4 The combined total is 505,000 voters.
 5 That's 10 percent of all registered voters in the
 6 2008 election.

7 If you looked at votes of merely the
 8 289,000 voters who didn't have matching records in
 9 the database, who had surrendered licenses, and,
 10 therefore, couldn't vote because they didn't have a
 11 photo ID in their possession, over 44,000 of them
 12 or 49 percent were African-American. Over half.

13 And if you looked at census data -- if
 14 you ever doubt that this was targeted as much as a
 15 missile can be targeted from a drone at Black
 16 voters, all you had to do was look at the census.

17 The 2000 census data, which we used,
 18 showed that there was 142,000 African-American
 19 households in Georgia who did not have access to a
 20 car. That compared to 89,000 white households.
 21 Even though African-Americans were only 27 percent
 22 of the population and whites were over 70 percent
 23 of the population.

24 If you brought that up-to-date to the
 25 current census, under the 2010 census, the American

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 2 voting as a citizen, even though you are duly
 3 registered and a lawful voter, you must make a
 4 special trip to the courthouse, that people with
 5 driver's licenses don't have to make, just for the
 6 sole purpose of getting your picture taken so that
 7 you may vote at the polls.

8 I have three recommendations for this
 9 Commission that I would urge that they consider
 10 nationally.

11 First is the obvious one, we've got to
 12 revitalize Section 5 of the Voting Rights Act and
 13 we should make it nationwide.

14 Why do I say that?

15 COMMISSIONER BUTLER: Amen.

16 AUDIENCE: Amen.

17 EMMET BONDURANT: Remember Ohio in 2004
 18 in which the Secretary of State said, God told him
 19 to deliver Ohio for George W. Bush.

20 There were vastly more voting machines
 21 available in white precincts than there were in
 22 black precincts. That was not an accident.

23 Pennsylvania has enacted restrictive
 24 photo ID. That's being litigated.

25 Indiana, enacted restrictive photo ID.

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2 And it was upheld by a split decision of the
3 Supreme Court of the United States.

4 Judge Posner, as you maybe have recently
5 read on the Seventh Circuit, who cast the deciding
6 two to one vote in that case to uphold it, has now
7 said he was wrong. He certainly was, but it's a
8 little late in recognizing it.

9 The second recommendation would be that
10 Congress should utilize its power granted by
11 Article 1, Section 4, of the Constitution to make
12 or alter regulations governing the time, place, and
13 manner of elections of federal officials to
14 prescribed uniform nationwide voting regulations
15 for federal elections.

16 A uniform kind of voting machine, a
17 uniform ballot design so you don't have butterfly
18 ballots and hanging chads and paper ballots used in
19 some place and voting machines with no paper trail
20 in another.

21 Uniform periods for early voting,
22 including voting on Sundays when it is convenient
23 for many church goers to go vote.

24 Uniform rules for identification of
25 voters.

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2 Anybody in another country thinks we are
3 stark raving mad that we have 50 states, 50 state
4 legislatures off on their own prescribing times,
5 places and manners of elections not of -- just of
6 state officials, but of members of the U.S. Senate,
7 members of Congress and members of the President.

8 If you had uniform rules, what is going
9 on in many of these places would not happen because
10 you would have taken away the principal motivation
11 which is to influence predominantly federal
12 elections. And state elections would conform
13 because it is impractical to operate two other
14 systems.

15 The third thing that needs to happen is
16 the federal courts need to pull up their robes and
17 do their job and declare political gerrymanders
18 unconstitutional.

19 The Court has ruled in no fewer than
20 three cases that it has jurisdiction to do that.
21 But the justices cannot agree on a standard.

22 AUDIENCE MEMBER: That's right.

23 EMMET BONDURANT: Justice Powell, Justice
24 Stevens and Justice Kennedy have suggested two
25 standards that are entirely workable.

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2 One, a first amendment standard that
3 would say you cannot discriminate against the voter
4 based on religion, you can't discriminate against a
5 voter based on race, and you can't discriminate
6 against a voter based on association, that is,
7 membership in the Democrat or Republican party. Or
8 based on how he or she has cast their vote. That
9 is voting history.

10 That is the essence of political
11 gerrymanders. You are discriminating against
12 voters, white or black, based on how they voted in
13 the past election.

14 In fact, Justice O'Connor invited that in
15 the North Carolina case, Shaw v. Reno, in which is
16 said under the voting rights you can't talk about
17 race, but you can talk about political affiliation,
18 because we did that when I was in the Arizona
19 legislature.

20 Well, you don't have to be a dummy to
21 realize that Black voters, Latino voters, poor
22 voters, minority voters of all kinds are the core
23 of the Democratic constituents. And if you want to
24 discriminate against Democrats, and we just used
25 that language, all you have to do is discriminate

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2 against Black voters. And that is what has been
3 done in political gerrymanders in Georgia and
4 throughout the country.

5 So those three reforms, redoing the
6 Voting Rights Act and making it effective and
7 making it nationwide to get Ohio, Indiana, and
8 Arizona and Alaska as well as Quitman, Georgia,
9 that is the first step.

10 Secondly, uniform nationwide standards
11 governing the elections of federal officials which
12 Congress has the power to enact. And there is no
13 states rights issue to back, as Justice Roberts
14 thought there was, in connection with the Voting
15 Rights Act.

16 An interesting little bit of information,
17 the Carter Center, right here in Atlanta, has
18 monitored over 100 elections throughout the world;
19 Napal, Egypt, the Palestinian election, a number of
20 others, South Sudan's independence election.

21 The Carter Center will not monitor an
22 election in the United States because there are no
23 uniform voting standards that can be enforced by
24 international standards. We should be embarrassed
25 as a nation that that is the case. We should be

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 2 embarrassed.
 3 And the courts, if they did their jobs as
 4 they did with reapportionment, outlawed political
 5 gerrymandering as a form of First Amendment
 6 discrimination on equal protection discrimination,
 7 violating the very fundamental principle in which
 8 everybody in this room and everybody in the Supreme
 9 Court can agree, governments do need us to be
 10 neutral when it comes to election.
 11 It is not the duty or the right of a
 12 political party in power to keep themselves in
 13 power by preventing the opposition from having a
 14 fair shot if they can get a majority of people to
 15 vote for them and improperly draw on districts.
 16 AUDIENCE MEMBERS: Amen.
 17 EMMET BONDURANT: Thank you.
 18 (APPLAUSE.)
 19 COMMISSIONER BUTLER: Thank you.
 20 All right. We have two passionate people
 21 here and I want to ask Tyrone a question about
 22 felony enfranchisement in Georgia.
 23 I know you've done a couple of bills with
 24 regards to that.
 25 REP. TYRONE BROOKS: Yes.

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 2 COMMISSIONER BUTLER: Tell us how that
 3 works in Georgia.
 4 REP. TYRONE BROOKS: Well, Representative
 5 Bob Holmes and I have been working to improve what
 6 Georgia started in the mid-'80s in terms of making
 7 sure that once you complete your sentence, you
 8 serve your time, you're not on probation or parole,
 9 that you can register to vote in this state.
 10 That's Georgia.
 11 Many other states, of course, put you
 12 through all kind of hoops so you have to go and
 13 petition the parole boards, to get governors to
 14 grant you clemency, but Georgia has a system where
 15 once you complete your sentence, you can register
 16 to vote.
 17 Several years ago Representative Holmes
 18 was no longer in the legislature. He was the chair
 19 for the Governmental Affairs Committee for many
 20 years. He served 32 years and left. But Bob and I
 21 were working to make sure that at some point, one
 22 of these days, those who have served their time,
 23 upon leaving the institution, at walking out the
 24 door, you could register to vote again, whether
 25 you're on parole or probation or whatever. That

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 2 takes it a step further.
 3 But in this state once you complete your
 4 sentence today, you can register to vote. We want
 5 to move it where in once you -- upon your release,
 6 no matter what the offense is, you can register to
 7 vote again. That's it. That's what we're working
 8 on now.
 9 (APPLAUSE.)
 10 COMMISSIONER McDONALD: I had two
 11 questions. One I'll ask Tyrone first.
 12 Tyrone, do you have any plans for
 13 redrafting Section 5, any suggestions about how
 14 that ought to be done?
 15 REP. TYRONE BROOKS: Yes, I do. And I'm
 16 going to need your help to fine-tune it.
 17 I do have a lot of ideas and I hope that
 18 we can get our Congressional delegation on board,
 19 particularly the Democrats.
 20 On November 2nd, some of you were down
 21 the street at Big Bethel AME church when I
 22 challenged those members of Congress who were there
 23 to, again, to make this a priority.
 24 Every issue before Congress is important.
 25 But I don't think there's any issue as important as

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 2 responding to the Supreme Court mandate in passing
 3 the formula so that we can have another Voting
 4 Rights Act, again, as we've had since 1965.
 5 Laughlin, you and I have been partners on
 6 a lot of things. We sued the state in 1988 to
 7 create more opportunities for African-Americans to
 8 become judges.
 9 We sued the State Board of Education to
 10 deal with at-large voting in judicial circuits, and
 11 our numbers went up tremendously. Now they're
 12 going down.
 13 We sued the state in 1989 to address the
 14 issue of second primaries, run-off elections, that
 15 were created in 1964 with the specific purpose of
 16 keeping Negroes and liberals from voting and
 17 winning.
 18 Now, those were the words of
 19 Representative Denmark Groover who has now gone
 20 onto glory. He introduced a bill and he said one
 21 way to stop the Negroes and liberals from winning,
 22 meaning labor unions, is to have a majority vote
 23 feature in our election code.
 24 We sued on that issue in 1989. We may
 25 have to sue again. The problem is finding a

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 2 friendly venue in the federal judiciary. Very
 3 difficult today.
 4 But I think, Laughlin, we have to come
 5 together to make sure we have something that we can
 6 get at least the Democratic members of Congress in
 7 this state to agree on to go forward with.
 8 I would love to see a bipartisan kind of
 9 coalition that we saw in '64-'65 of Hubert
 10 Humphrey, Everett Dirksen. We saw a huge vote from
 11 the Republican side to pass the Voting Rights Act
 12 and the Civil Rights Act.
 13 That's not going to happen in this
 14 political climate. But if we can just get the
 15 Democrats on board from this region and push it,
 16 maybe we can see some movement on the other side.
 17 COMMISSIONER McDONALD: Well, do you have
 18 any specific suggestions about what the redrafting
 19 should look like?
 20 REP. TYRONE BROOKS: I agree with some of
 21 what Attorney Bondurant has articulated as relates
 22 to a national scope.
 23 I do believe, in spite of the fact it's
 24 going to be difficult, many states will say, we
 25 don't have a history of discriminating against

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 2 African-Americans in voting, well, why should we be
 3 covered?
 4 But we're beginning to see more and more
 5 states create impediments. More and more states
 6 passing laws to do exactly what the southern states
 7 were doing for many years, and that's why they were
 8 included in the Section 5.
 9 So I agree with a lot that Emmet has
 10 proposed. I think we need to think it out clearly
 11 because there may be some legal challenges we might
 12 have to overcome as we talk about our national
 13 laws.
 14 We discussed that in '06, you know, as we
 15 were getting President Bush ready to sign the
 16 extension and holding hearings around the country.
 17 You and I testified before Congress, Laughlin, you
 18 and I testified in '06 before Congress.
 19 So I think the lawyers in the room and
 20 beyond have to help us get over those legal
 21 questions that may be there as we talk about a
 22 national law.
 23 I think we've got to be more considerate
 24 of other minority groups in other states. And I
 25 think we have to continue to work to make sure that

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 2 state legislatures are not allowed to turn the
 3 clock back with voting impediments and there must
 4 be consequences if they do.
 5 (APPLAUSE.)
 6 COMMISSIONER McDONALD: I have one last
 7 question --
 8 COMMISSIONER BUTLER: All right.
 9 COMMISSIONER McDONALD: -- for Emmet.
 10 And I want to preface it by saying that, as we all
 11 know, jurisdictions can bail out from Section 5.
 12 So if you're in a covered state, if you
 13 can show for the preceding 10 years you had no
 14 violations of voting rights and you've taken
 15 affirmative steps to increase political
 16 participation by minority groups, you can bail out.
 17 So I just want to ask Emmet if he would
 18 want to enlarge in some way or incorporate, you
 19 know, the bail-out provision in his universal or
 20 nationwide coverage formula?
 21 EMMET BONDURANT: The answer is yes.
 22 As you know, Laughlin, that I have
 23 written John Lewis a long letter in which I had
 24 suggested, and I think if this happens pretty easy
 25 to correct, that, in fact, you don't have to enact

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 2 any coverage formula.
 3 Because the result of Shelby County, if
 4 you take the Supreme Court at its word, which, of
 5 course, is a hazardous occupation, the result of
 6 Section 5 is to simply strike the limitation on the
 7 coverage formula.
 8 The limitation of Section 5 to the states
 9 defined by a formula that Justice Roberts said
 10 violated states rights provided for states equal
 11 protection of the law. Unprecedented ruling.
 12 The statute contains what is called a
 13 severability clause which Congress decided if any
 14 part of that statute is declared unconstitutional,
 15 it was the intent of Congress with the rest of the
 16 statute, including Section 5, remain in effect.
 17 And there's beaucoup Supreme Court cases
 18 that have so held, including Robert's own opinion
 19 upholding the constitutionality of the Affordable
 20 Care Act.
 21 If you did that, the legal effect should
 22 be that every jurisdiction is covered.
 23 Well, then, there are two provisions, one
 24 which Laughlin has referred to. Any jurisdiction
 25 that is totally innocent, has never discriminated,

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2 has no likelihood of discrimination can apply to
3 Justice to be exempted from the preclearance
4 requirements.

5 And the Department of Justice has the
6 authority to grant that simply by conceding the
7 point. Thus, the innocent can escape the burden of
8 preclearance if it is a burden.

9 The people who ain't so innocent, who
10 can't carry that burden, however, would have to
11 file for preclearance. And you have a plethora of
12 examples.

13 What's gone on in Georgia described by
14 the preceding panel in the last three months since
15 Shelby County, there is an enormous need for them
16 to have to bring those to light one by one to
17 Justice, ask for preclearance and get it.

18 Let me give you a bit of history. When
19 Georgia enacted its photo ID in 2005, it submitted
20 preclearance to the Justice Department. The career
21 staff of the Voting Rights section of the Justice
22 Department wrote a 50- or 75-page memorandum, a
23 copy of which I have that was supposed to be a
24 secret, which found, guess what, that it
25 discriminated against Black voters, that it was

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2 COMMISSIONER JOHNSON: I think it's
3 important to note that the Supreme Court did not
4 overrule the preclearance as a principle and I
5 think that's part of what you're saying.

6 However, let me also thank you on behalf
7 of the NAACP. You represented the NAACP in those
8 voter ID cases back in 2005 and '6.

9 EMMET BONDURANT: And I was proud to have
10 the opportunity to do so.

11 COMMISSIONER JOHNSON: That's right.
12 That's right.

13 Matter of fact, my grandfather was one of
14 the named plaintiffs in that action. He's in a
15 nursing home now at 98 years old without a photo ID
16 and is still facing those same challenges.

17 Let me tell you even under preclearance,
18 when you look at other impediments that were there,
19 for example, John Barrow's district in District 12,
20 which is pure political gerrymandering, as you have
21 defined it, and Brother Brooks has defined it as
22 well, written out of his own district each time, a
23 coalition of voters are choosing to send him back
24 to Congress at each session, electing the candidate
25 of their choice.

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2 retrogressive, made it more difficult for Black
3 voters to vote and ought to be denied preclearance.

4 The next day the political appointees,
5 Hans von Spakovsky particularly, who was a member
6 of the Fulton County Election Board and now is
7 employed by The Heritage and one of the right-wing
8 foundations, overruled that as a political
9 decision.

10 Photo ID would never survive preclearance
11 under Section 5 properly applied. And there is a
12 legal way to do it. But there is a need not to
13 confine this to the former confederate states.
14 Ohio was not a confederate state. Indiana was not
15 a confederate state.

16 Missouri was not a confederate state.
17 But its Supreme Court, unlike our Supreme Court,
18 declared photo ID unconstitutional under their
19 constitution that is very similar to ours.

20 So we ought not to give up that fight,
21 but we ought not to play small ball and shoot for
22 covering Quitman, Georgia, but not covering
23 Columbus, Ohio.

24 COMMISSIONER BUTLER: Thank you.
25 (APPLAUSE.)

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2 That went to the Justice Department under
3 Section 5, while it was still in effect, and it
4 passed muster.

5 EMMET BONDURANT: Well, it really didn't
6 past muster. What Justice has been doing since the
7 decision in the Texas Water District case, which
8 presaged the Shelby County case in which Roberts
9 ruled that Section 5 was really not intended to
10 cover little water districts, and that to avoid a
11 Constitutional issue, which it was later under
12 Section 5 when they ruled it wasn't covered.

13 After that Justice had no backbone, no
14 balls, to go after anything but the most egregious
15 and the clearest cases.

16 And second, Shelby County didn't come
17 about because Justice was too aggressive in forcing
18 Section 5. Shelby County filed that lawsuit
19 against the government without going through the
20 Section 5 process.

21 So Justice was afraid that the right-wing
22 of the Supreme Court was going to do what they did
23 in Shelby County, and, therefore, avoided at all
24 cost, including the sacrifice of principle and
25 backbone, any challenge that was even remotely

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 2 questionable.
 3 COMMISSIONER BUTLER: Thank you.
 4 EMMET BONDURANT: As you can tell, I am
 5 not a fan of the Justice in all circumstances.
 6 COMMISSIONER JOHNSON: Let me ask this
 7 question of Brother Brooks who has been there
 8 throughout these struggles.
 9 So you talked about the reauthorization
 10 in '82.
 11 REP. TYRONE BROOKS: Right.
 12 COMMISSIONER JOHNSON: Reauthorization in
 13 '06.
 14 REP. TYRONE BROOKS: Yes.
 15 COMMISSIONER JOHNSON: Republican
 16 presidents.
 17 REP. TYRONE BROOKS: Yes.
 18 COMMISSIONER JOHNSON: What's the role of
 19 the White House in pressing this claim and bringing
 20 the attention to this, particularly being the fact
 21 that a lot of these rollback provisions, both of
 22 your testimonies, are really a result of the 2008
 23 election?
 24 REP. TYRONE BROOKS: I think the White
 25 House should take aggressive leadership. If you

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 2 And I think we've got to say to the
 3 President, Mr. President, we love you, we voted for
 4 you, but you've got to make this a priority.
 5 Tell your leaders in the House and the
 6 Senate to push it and call on McConnell and Boehner
 7 to join with you, and Cantor, who says he's working
 8 with John Lewis. Eric Cantor says he's working
 9 with John Lewis.
 10 He came down to Selma with John Lewis on
 11 the memorial and the pilgrimage. He said he wanted
 12 to work with John Lewis. Now, let's see if he's
 13 real. Let's see if they really want to do
 14 something to move this issue forward.
 15 Because if we don't, we're just kind of
 16 frozen in time. There will be no enforcement.
 17 Impediments will continue to be codified as a
 18 matter of law and we'll continue to go backwards.
 19 So these elected official positions that
 20 we hold -- and by the way, Georgia is 30 percent
 21 African-American. 30 percent of the people of this
 22 state are Black folk. Only 6 percent are elected
 23 officials. Only six, S-I-X, are elected officials.
 24 And you think we haven't made it across
 25 the U.S.A. Less than 2 percent are black across

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 2 study history and you watch Lyndon Johnson's role,
 3 he didn't wait. He said, we're going to move
 4 legislation forward.
 5 After Father James Reeb had been beaten
 6 to death in Selma and the nation had seen his
 7 bloody body lying on the sidewalk in Selma,
 8 Alabama, President Johnson said, Now, it's time to
 9 pass the Voting Rights Act.
 10 I think we need the President to speak
 11 clearly and forcefully on a new formula being
 12 addressed by Congress.
 13 I think it's important to talk about
 14 immigration, budget deficit and all of those
 15 important issues, and affordable healthcare, but,
 16 ladies and gentlemen, if we don't have the
 17 protection of our voting rights, nothing else
 18 matters.
 19 AUDIENCE MEMBERS: That's right.
 20 REP. TYRONE BROOKS: And I think that the
 21 White House has got to make this a priority and we
 22 should accept no less of this President. We
 23 wouldn't accept it from Bush, we wouldn't accept it
 24 from Reagan, we wouldn't accept it from Johnson,
 25 Kennedy.

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 2 the United States of America. So we've made some
 3 progress but we have not arrived.
 4 Don't assume that just because you see a
 5 few of us here and there that we've made it over
 6 the hump. No, we have not.
 7 And the few numbers that we have in
 8 different states, particularly in the south, where
 9 we're strong, you're going to see those numbers
 10 drop tremendously.
 11 The other thing I would ask this
 12 Commission to do is to consider what I've seen in
 13 Brazil and Australia, making voting mandatory. How
 14 do we do that, lawyers? Do we need statutory law,
 15 do we need to amend the Constitution? Voting
 16 mandatory in the United States of America.
 17 COMMISSIONER BUTLER: Thank you very much
 18 to this panel, distinguished panel. Thank you very
 19 much.
 20 (APPLAUSE.)
 21 COMMISSIONER BUTLER: We're running
 22 behind and I'm going to catch us back up.
 23 We're going to have open mic and we're
 24 not going to question the open mic speakers unless
 25 there is something that really needs clarification.

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2 So we're going to start with -- if you
3 signed up outside, we have an open mic session and
4 we'll have a second open mic session a little later
5 on.

6 But the first person -- and we're going
7 to ask everyone to -- that I call your name, please
8 come towards the mic so we will all be in line and
9 be ready to give your testimony.

10 The first one will be Mr. Joe Carn,
11 Vice-Mayor of College Park. Reverend Jeffrey
12 Benoit for -- will be second. Mr. Thomas Aquell
13 will be third. And Ms. Karen Reagle will be
14 fourth. Minister Karen Reagle, I'm sorry.

15 JOE CARN: Are we ready?

16 COMMISSIONER BUTLER: Yes.

17 JOE CARN: All right. Good afternoon.

18 COMMISSIONER BUTLER: Good afternoon.

19 And we're going to ask you to watch the
20 timekeepers here. You'll have three minutes.

21 JOE CARN: Well, I'm glad to be here.
22 Good information. And I have to say, I guess, this
23 is advanced voting and situations involved in that.

24 The last election two weeks ago, it was
25 reported that Fulton County had 17 percent voter

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2 turnout of eligible registered voters. DeKalb was
3 18 percent. Clayton County was about 5 percent.

4 And my question is, you know, how do you
5 expect to have good government, on school boards on
6 up, when 80 percent of the public doesn't bother to
7 show up election day?

8 COMMISSIONER BUTLER: Is that your
9 testimony?

10 JOE CARN: Well, that's my testimony and
11 question as well. Because, you know, it's a
12 situation where --

13 COMMISSIONER BUTLER: Well, are you
14 recommending that certain things happen from an
15 election administration purpose, reform, is there
16 something that you think would make participation
17 greater?

18 JOE CARN: Well, I think we got to start
19 making participation relevant to younger folks. I
20 guess, I'm a little younger. I used to be really
21 young. I'm a little older than I used to be.

22 But, you know, I mean, there's hardly any
23 people in this audience under 25 years old. And if
24 they're not excited about voting and they're not
25 excited about elections, you know, you're going to

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2 have the same kind of turnouts that you had two
3 weeks ago.

4 And we've got to figure out a way to wake
5 up young folks and let them understand that, you
6 know, this process is about them.

7 When these folks under the Gold Dome are
8 talking and discussing issues, they're discussing
9 young folks nine times out of ten. They're talking
10 about people who can't even vote actually.

11 You know, but the ironic part about the
12 elections two weeks ago, they were smaller
13 elections. And most of your tax money goes towards
14 the school boards. Whereas, people will go out and
15 vote for president more so, but the majority of
16 your money and your funds go towards the small
17 elections, school boards, city councils, and the
18 like.

19 So I just think as a community we got to
20 figure out a way to get younger people
21 understanding how this process really affects them.

22 It seems like it doesn't hit people until
23 they're over 50 apparently, you know, so...

24 COMMISSIONER BUTLER: All right. Thank
25 you.

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2 JOE CARN: Thank you.

3 COMMISSIONER BUTLER: Reverend Benoit.

4 REVEREND JEFFREY BENOIT: Good afternoon.
5 Again, my name is Reverend Jeffrey Benoit
6 from Clayton County.

7 Although, the Board has spoke on a
8 plethora of issues and all of them are much bigger
9 than what I have and they said there's no issue to
10 big to be put on the Board.

11 And mine is that the information. The
12 Secretary of State is required to give information
13 down to the counties as to any changes that are
14 taking place or when the voting, particular
15 registration and deadlines, that type of thing is
16 going to be cut off.

17 As of yesterday, just as of yesterday,
18 going to my local elections office, they did not
19 have this information. And of course, I'm going to
20 continue to go back and back and back and try to
21 get this information.

22 But the problem is this. When that
23 information is released, will it be released in
24 time enough for us to respond and get that
25 information out to those who may or may not be wise

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2 to that, as to our seniors and into our senior
3 homes, things of that nature.

4 All too often if we don't get that
5 information on time, it will not get out to the
6 people in time. Therefore, I think there's a valid
7 problem here by holding that information to the
8 last minute so that we can't make good use of it.

9 And I think that the Secretary of State
10 has an ominous responsibility to get that out. If
11 not, then he should be held reliable or accountable
12 for that.

13 Oftentimes when contracts are written,
14 the consequences of the offer is never there. So I
15 want the author to have consequences as those
16 consequences would be to me.

17 If I don't get the information on time, I
18 can't vote in time and know what I'm voting for.
19 If he can't get it out in time, he should have some
20 kind of consequences as to law. A law as to what
21 he will suffer as to fail to do his job as he has
22 been elected to do.

23 Give that information to the people or
24 get out of office.

25 COMMISSIONER BUTLER: What kind of

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2 information are you talking about? The election
3 dates?

4 REVEREND JEFFERY BENOIT: As it applies
5 to all of the information that the Secretary of
6 State is supposed to get out to the county, it
7 doesn't matter what it is, by virtue of having a
8 deadline date to get that information out. They
9 are really dragging their feet as to when this
10 information is going to be released.

11 My election individual who I talked to
12 yesterday, heard counselors at the desk had no
13 information. She has some information, but it
14 wasn't put out to them to put out because it hadn't
15 came down through the channels.

16 And so I'm saying, what is the
17 deadline --

18 COMMISSIONER BUTLER: I'm trying to
19 understand what kind of information?

20 REVEREND JEFFREY BENOIT: Well, I was
21 asking as to what are the deadlines for individuals
22 to qualify, various things like that, the changes
23 that are being made in our particular county as it
24 relied -- as it relates to voter election and
25 location and shutting down precincts. Various

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2 different things like that.

3 Again, nobody no knows what's going on.
4 We go to the last precinct to find out that
5 precinct is no longer there.

6 This kind of information needs to be
7 given to us well before the day we need it. You
8 can't do anything with the information the day you
9 need it. You need it before the day as to having
10 an opportunity to respond to the changes. If we
11 don't know the changes, we can't respond.

12 COMMISSIONER BUTLER: Which county are
13 you?

14 REVEREND JEFFREY BENOIT: I'm in Clayton
15 County. But this is across the state, information
16 getting out in a timely manner.

17 COMMISSIONER BUTLER: Okay. Thank you.

18 This young lady has -- did you have a
19 question?

20 COMMISSIONER JOHNSON: I wanted to
21 provide a resource for that, Brother. If you
22 contact the Clayton County NAACP, they'll get you
23 those dates. Those are already available.

24 REVEREND JEFFREY BENOIT: Okay. Well,
25 again, I understand what you're saying. But there

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2 should be some information out there that we don't
3 have to go there, that they should have that. But
4 I gotcha. There's no consequences to getting
5 information out there at a delayed date.

6 COMMISSIONER BUTLER: This next person, I
7 know I'm calling her out of order, but I didn't
8 have her information, but she has to leave.

9 Ms. Kathy Holmes-Bass with Delta Sigma
10 Theta.

11 KATHY HOLMES-BASS: Hello, my name is
12 Kathy Holmes-Bass. And I just want to say
13 historically I am from Gulfport, Mississippi, and
14 I've been by voting process a lifetime member of
15 the NAACP under President Gilbert Mason, late
16 great.

17 And also, my grandfather was the first
18 black man of Biloxi, Mississippi, to vote because
19 he could pay poll taxes.

20 And I'm a bit nervous.

21 My concern is I am a visually impaired
22 voter and I became visually impaired on July 2nd,
23 1996, when I was in Mississippi. But I moved or
24 relocated to Atlanta, Georgia, in November of that
25 year so I could obtain services at the Center For

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2 the Visually Impaired because I had gone from 20/20
3 vision to total blindness in 45 minutes.

4 As a result of that, I carried a driver's
5 license at the time. But in 2000, I had to
6 reinstate, not a driver's license, but a
7 non-driving state ID, okay?

8 Well, I went to Georgia seven times to
9 get the Georgia ID because nobody there could even
10 say I needed a driving history, which I didn't have
11 at that point. So we had -- again, I had to
12 reinstate my non-driving ID in 2010, which expires
13 in 2020.

14 So there are two issues that I'm
15 concerned about, but I'll start with the first one.

16 First, voter suppression as it relates to
17 the use of ID. But I contacted the Secretary of
18 State Office in the last election just, what, two
19 weeks ago, two or three weeks ago, I was told that
20 my name was not on the list.

21 And I didn't understand why until the
22 gentleman explained to me that I might not have
23 been in their system. I thought they were wrong
24 and they were confused, okay?

25 I don't have a voter's ID, okay? And in

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2 workable for me. But the screen reading program
3 for the blind are very expensive. You have to be
4 trained on them and you have to go through voc
5 rehab to get the training.

6 So a person who is -- that has never been
7 trained, like, a rural carrier or someone on a
8 waiting list, will not be able to access the ballot
9 because they won't know how to use the equipment.
10 It's very sophisticated. You use keyboard
11 application and a numbers pad.

12 So when you're not trained, that's a
13 technical training, then you don't know how to
14 access this.

15 And then also at the poll, the poll
16 workers are so sweet to me there, but some of them
17 put me on the wrong machine because they're not
18 aware of that accessibility.

19 So blind people who have not been trained
20 on JAWS or MAGic are denied access. It's not a
21 reasonable accommodation.

22 COMMISSIONER JOHNSON: Let me ask you a
23 question as it relates to -- and this is to the
24 best of your knowledge.

25 Absentee ballots, are they available to

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2 2005, I guess, when it was legislated that I had to
3 have one, I had been voting at Thoreau High School.
4 I had registered to vote on May 1st, 1998, in the
5 city of Atlanta, but I built a house in 2000, so I
6 transferred. So at this point I went to Thoreau.
7 They have a screen reading program for the blind
8 there and they used my card.

9 That's No. 2. The issue of the screen
10 reading program for the blind requires technical
11 assistance and also training from the Center For
12 the Visually Impaired. Therefore, a lot of blind
13 people are not able to use it, it's laborious,
14 tedious.

15 And I catch a cab to the polls. So I
16 have to pay money to get a way to vote.

17 And so, I think we need to modify their
18 screen reading program so that we can -- that all
19 blinds can, blind people, can use the equipment at
20 the polls and acquire the technical assistance.

21 COMMISSIONER BUTLER: Are you saying the
22 ballots -- the audio ballot is not workable for
23 you?

24 KATHY HOLMES-BASS: No, I'm trained from
25 the Center For the Visually Impaired. It's

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2 the visually impaired in Braille?

3 KATHY HOLMES-BASS: Well, what happened
4 -- and that, I don't know, because I like to do
5 early voting. But right on the last day, I
6 couldn't get a ride to the cab -- from the cab
7 driver in time. I called the Secretary of State's
8 office -- the Fulton County Elections Board and I
9 requested an absentee ballot. And the lady told me
10 on that Friday that she couldn't mail it to me
11 because I wouldn't get it by Tuesday, so, I don't
12 know. I don't have the answer for that, sir.

13 COMMISSIONER JOHNSON: On the next
14 election, make sure you contact your local NAACP.
15 They'll give you a ride to the polls.

16 KATHY HOLMES-BASS: I would love it. It
17 would save me some money. Yes, sir.

18 COMMISSIONER MOORE: Or you can call the
19 Georgia Advocacy Office as well. We can give you
20 that information.

21 KATHY HOLMES-BASS: Okay. I would
22 appreciate that very much.

23 Thank you so very much.

24 COMMISSIONER BUTLER: Okay. Mr. Thomas
25 Aquell.

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 2 And the timekeeper is here.
 3 THOMAS AQUELL: Thank you very much.
 4 In the name of God first.
 5 I'm glad to be here. And I'm speaking on
 6 behalf of ex-felons or prisoners. I wish there
 7 were more here to be encouraged to register to
 8 vote.
 9 Now, myself personally, I was taken off
 10 the voter registration during the voting process of
 11 President Obama. But I was allowed to vote during
 12 the president -- canvassing of President Bill
 13 Clinton and George Bush.
 14 But when I got to the process of voting
 15 for President Obama, I got a notice in the mail
 16 that I've been stripped of my voting rights due to
 17 my past criminal record. And I had been out of
 18 prison 17 years and requested my citizenship back,
 19 made my life to God, and, you know, it just wasn't
 20 right. So I thank God that I didn't let it go
 21 before they never allowed me to vote.
 22 So I went -- and another brother went
 23 with me -- and I reinstated my voting rights. And
 24 I got the paperwork right here from the attorney
 25 that I've been stripped of my voting right. And I

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 2 got my voter registration card right here that I
 3 was blessed by God to get it back.
 4 So, you know, discrimination is still
 5 going, as we all know, not only because of the
 6 color of the skin, naturally it's still going, but
 7 because of your background, your criminal
 8 background.
 9 So I thank God that we are all here for
 10 this event and I thank God that it will be a
 11 success and don't let nobody just keep you from
 12 voting.
 13 And I appreciate the opportunity to say
 14 what I had to say.
 15 COMMISSIONER BUTLER: Okay. Thank you.
 16 (APPLAUSE.)
 17 COMMISSIONER BUTLER: Minister Karen
 18 Reagle. She's going to talk about the ballots and
 19 precinct -- provisional ballots and precinct
 20 designations.
 21 MINISTER KAREN REAGLE: I have served
 22 several years with election protection and I
 23 volunteered or was volunteered to help with
 24 supervising elections, kind of checking in with
 25 different precincts to find out how the voting was

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 2 going in early November of this year.
 3 I wound up spending all of my time in
 4 Atlanta at the Saint James Methodist Church.
 5 We anticipate -- the poll manager
 6 anticipated 1700 votes. By 8:00 in the evening, we
 7 had had 1,075 people voting. We had given out 25
 8 provisional ballots.
 9 The provisional ballots were primarily
 10 racially blind. They weren't black folks and they
 11 were predominantly white folks. But the range of
 12 why they were issued provisional ballots was all
 13 over the map. It was shocking to me.
 14 I've been involved in elections for a
 15 very long time. Started in Chicago, so I cut my
 16 teeth in a good place.
 17 One woman whose address is the same as
 18 her husband, he was told to vote at Saint James,
 19 she was told that she had to vote in Ridgeview.
 20 Ridgeview is in Sandy Springs. The ballots are
 21 very different and it didn't match.
 22 Another person recorded that -- they were
 23 elders, they were brought by their assisted living
 24 place, and they were told that they had requested
 25 absentee ballots and they both knew that they had

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 2 not, they had not received them, they had not
 3 requested them. They had to vote provisional
 4 because of that.
 5 Another one was told that she had already
 6 voted, which she had not. And this was another
 7 problem.
 8 Katie had voted in this particular
 9 precinct at this particular location since 1967,
 10 but there were no records of her for this
 11 particular precinct on that day.
 12 Two other people, man and wife, were sent
 13 to Sarah Smith, but his card said, his voter card,
 14 said that he should vote at Saint James. Go
 15 figure.
 16 Then Jane was sent to Ridgeview. She
 17 lives in Atlanta with her husband and he was able
 18 to vote a regular ballot. She, however, had to
 19 vote provisional.
 20 Jonathan and his wife both live in
 21 Atlanta, but they were assigned to Ridgeview in
 22 Sandy Springs. Again, not a ballot that they were
 23 interested in because it wouldn't represent them.
 24 Patricia couldn't find -- they couldn't
 25 find her in the system and she had been voting in

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2 this particular precinct for 20 years.

3 John said -- the system said John had
4 already voted in another precinct, which he had
5 not.

6 There were a lot of people, all were
7 given the orange flyer that told them how to make
8 sure that their vote was counted, but those that I
9 saw I can't tell you how angry they were. You
10 could see the smoke coming out of their ears and
11 their nostrils they were so upset.

12 I suggested to them that they write to
13 their senators and their representatives to
14 reinstate Section 4. They were confused, they were
15 angered and the changes that were made to their
16 voting records and their voting rights were very
17 nonsensical.

18 As I said, the provisional voting was
19 racially blind in that it was not all white or all
20 black. And the poll manager did a fantastic job of
21 meeting the needs of the pollers -- of the voters
22 in that particular precinct. But it's alarming.

23 COMMISSIONER BUTLER: Thank you.

24 And just for the records, in Georgia, if
25 they hadn't received their absentee ballot and

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2 hadn't voted an absentee ballot, there was a
3 cancellation process that they were entitled to
4 receipt and were entitled to vote a regular ballot
5 and not a provisional ballot.

6 MINISTER KAREN REAGLE: That was not
7 clear.

8 COMMISSIONER BUTLER: Okay. Thank you.
9 Thank you so much.

10 And we're going to go back now to our
11 next panel, then we'll have an open session a
12 little later on. But we're going to go now back to
13 our next panel.

14 We're going to have Helen Kim Ho,
15 Executive Director of the Asian-American Legal
16 Advocacy Center.

17 We're going to ask that you take the
18 stage to the left. My left, rather.

19 And then we're going to have Cheri
20 Mitchell for the Georgia Advocacy Office.

21 Sharon Blackwood is a Board Member from
22 the League of Women Voters.

23 And Richard Barron who is the Fulton
24 County Director of Elections and Registration.

25 Our timekeeper, once again, is down

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2 front. And we ask that you be mindful of the time
3 as we go.

4 The next open mic will be about 6:00 or
5 thereabout.

6 Helen Ho will talk about naturalized
7 citizen voting and registration.

8 And --

9 CHERI MITCHELL: Cheri.

10 COMMISSIONER BUTLER: Cheri, I'm sorry.

11 CHERI MITCHELL: No problem.

12 COMMISSIONER BUTLER: Cheri Mitchell will
13 be talking about HAVA. And topic, individuals with
14 disabilities.

15 Sharon Blackwood will be also talking
16 about naturalization, registration, and polling
17 place consolidation.

18 And then Mr. Barron will talk about
19 ElectioNet which is a new voter registration system
20 for Georgia.

21 We're going to hold our questions until
22 the end and then we'll ask the questions.

23 So we're going to ask Helen Ho to start
24 us off.

25 And for those people who are wishing to

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2 speak for open mic, you need to sign up outside.

3 HELEN KIM HO: Okay. Thanks so much for
4 the invitation to testify. I've provided some
5 written materials and some photos actually to help
6 along.

7 You know, just briefly, the Asian
8 American Legal Advocacy Center for the first
9 non-profit law center dedicated to promoting the
10 civil rights of Asians, Pacific Islanders and
11 Asian-ethnic refugees in Georgia and the Southeast.

12 Our goal and purpose is to increase the
13 civic participation of AAPIs. And so we do civic
14 engagement and voter engagement work all year
15 around.

16 I think I included a photo of our
17 billboard from last year that was very successful
18 and wanted to share with you on the second page
19 some voter statistics of Asian Americans and
20 Pacific islanders in our state.

21 Asian Americans have experienced the
22 second highest rate of voter registration, second
23 to Latinos, over the past several years. Even
24 though Latinos are double to us in number of
25 population size, we are pretty much the same in

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 2 terms of the make-up of percentage of voters
 3 according to the Secretary of State.
 4 And we have an especially high
 5 concentration in Gwinnett County, which is the
 6 second largest county in the state.
 7 And when you put Asians together with
 8 Latinos and African-Americans, Gwinnett County is a
 9 majority minority state -- county. Soon will be a
 10 majority minority state as well.
 11 Believe it.
 12 COMMISSIONER BUTLER: Wishful thinking.
 13 HELEN KIM HO: On the third page of --
 14 just a quick highlight -- I was going to talk about
 15 some of the problems we experienced last year in
 16 our voter registration work for the Presidential
 17 elections.
 18 But just quickly, we helped to register
 19 more than 1400 new voters. We ran 82 registration
 20 drives. At least two dozen of them were at
 21 naturalization ceremonies in partnership with the
 22 USCIS.
 23 That work spurred, you know, more
 24 naturalization work in partnership with the League
 25 and other groups that we partner with.

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 2 basically the issues we encountered, and I would
 3 like to put it more from a personal perspective.
 4 We started getting calls mostly from
 5 newly naturalized citizens we helped to register
 6 telling us, Well, you said that it would take about
 7 two weeks to get our voter registration card, but I
 8 haven't gotten it yet.
 9 So after we got about six or seven of
 10 those calls, we decided -- or I decided to ask my
 11 staff and interns to go back and look at every
 12 single form we had on file and check on the
 13 Secretary of State website to see whether these
 14 people had been registered or not.
 15 What we found was that 40 percent of
 16 those we had on file or exactly 574 voters we
 17 helped to register were either being challenged or
 18 were unprocessed a week before the Presidential
 19 election. So that's just people that we helped to
 20 register.
 21 And I think in the past just -- you know,
 22 all of our groups are very, you know, underfunded,
 23 not very resourced, so in the past we hadn't been
 24 as methodical or scientific about keeping track of
 25 everything, but we did that and the results were,

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 2 We did a ton of door-to-door canvassing.
 3 Basically, what we did was, if we got
 4 permission from the new applicant to hold on and
 5 mail their registration forms, we would input their
 6 data into a voter database and follow up with them
 7 directly through phone bank and multiple touches.
 8 Before I talk about the problems, it's so
 9 easy to talk about the problems, I do want to say
 10 our voter engagement work, I think, worked and made
 11 an impact. I'll just give an example of one of the
 12 precincts we worked in.
 13 While naturally there was a dip in voter
 14 rates, there was a 3.45 percent increase in this
 15 particular precinct in Gwinnett. And in fact, that
 16 precinct at the state house level had redistrict a
 17 Democratic incumbent into a majority Republican
 18 district. That district happened to be going up
 19 into New Koreatown in Duluth.
 20 So because of the numbers we did, our
 21 voter engagement work there and -- that Democratic
 22 incumbent won by the largest margin ever. Which
 23 shows, you know, it's about maybe the issues, but
 24 -- and the next page shows that specific race.
 25 So what I want to talk about are

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 2 of course, devastating.
 3 We tried to call the Secretary of State
 4 and we did, we spoke with Linda Ford, very nice
 5 woman, but didn't really get any answers as to why.
 6 So we sent a series of open letters which
 7 you can see. This was, again, a week before the
 8 elections. This led to reform coverage of what we
 9 found.
 10 Secretary of State didn't really respond.
 11 We asked them to please go ahead -- we actually
 12 sent them an Excel sheet of every one of those 575
 13 voters, last name, first name, date that they
 14 registered, what county, what Secretary of State
 15 website said. So there was no question, you know,
 16 they could easily track them.
 17 And said, Please, here's all the data
 18 that we have. We're not just one story, this is
 19 574 people. Please register, help clear these up
 20 and speed up the process.
 21 That didn't happen.
 22 In the interim in trying to work with
 23 them, we also found or was shared an informational
 24 memo that was given out to the different counties
 25 which we still believe creates more onerous

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 2 processing requirements for ID than what was
 3 precleared by the Department of Justice.
 4 And we also brought that up and I
 5 attached that memo to you.
 6 Really all that happened was it spurred a
 7 Department of Justice investigation, which I have
 8 no idea what happened to it.
 9 It also spurred a Secretary of State
 10 investigation into us, which is what can happen
 11 when you do things like this. And we were
 12 fortunate enough to have the support and the offer
 13 by Mr. Emmet Bondurant to represent us, and as soon
 14 as he stepped in, it kind of ended. Thankfully. I
 15 almost lost my cool when that happened to us.
 16 But I guess, you know, in closing, you
 17 know, the letters pretty much detailed what we saw
 18 and what the details of what we were identifying as
 19 the problems as to why these voters, especially
 20 newly naturalized voters, were not being
 21 registered.
 22 I think I will say from my experience
 23 there is an institutionalized deprioritization of
 24 new voters in Georgia. You know, when our
 25 elections are, it's no surprise to no person.

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 2 everyone. It is an honor to be here. And my name
 3 is Cheri Mitchell and I want to thank you for this
 4 opportunity.
 5 Justin Dart, the godfather of the
 6 Americans with Disabilities Act said this, he said,
 7 Vote as if your life depends on it, because it
 8 does.
 9 And I'm going to move real fast because
 10 ain't got but five minutes.
 11 I work for the Georgia Advocacy Office as
 12 their PAVA director. PAVA standing for Protection
 13 and Advocacy for Voting Access. I've been that
 14 person for the last six years.
 15 Voting discrimination against people with
 16 disabilities comes in many forms. People with
 17 disabilities, in my opinion, face the most barriers
 18 compared to any other voting population.
 19 And I'm going to start with the ABCs of
 20 discrimination. Attitude, building and
 21 communication.
 22 Attitude. People have to want people
 23 with disabilities to be a part of the voting
 24 process. And unfortunately that doesn't seem to be
 25 the story.

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 2 And it almost seems like from, again, the
 3 anecdotes and the stories and these 574 voters that
 4 it's almost a given that the first time you try and
 5 vote, you can't vote. That needs to change.
 6 And I just want to end with pictures of
 7 some of the people. I can't tell you, especially
 8 with the newly registered voters how excited they
 9 were to register to vote.
 10 We helped one Brazilian woman register to
 11 vote. And she said, The rest of my family's in
 12 Brazil, they're so excited I get to vote for the
 13 Presidential election. They're -- I feel like I'm
 14 voting not just for myself but my entire family.
 15 That's how excited she was. She was not
 16 allowed to vote.
 17 So, I guess my time is up. Thank you.
 18 COMMISSIONER BUTLER: Thank you.
 19 The timekeeper is down front. So if you
 20 would --
 21 HELEN KIM HO: Sorry.
 22 COMMISSIONER BUTLER: -- be aware. We're
 23 trying to stay on track.
 24 Cheri.
 25 CHERI MITCHELL: Okay. Good afternoon,

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 2 I've heard stories of poll workers
 3 refusing to assist people with disabilities,
 4 refusing to let the person of their choice assist
 5 them, making people with disabilities feel like
 6 second class citizens, or telling people that, You
 7 have a disability, so you're not competent.
 8 I've heard guardians, family members, and
 9 staff refusing to let a person with disabilities
 10 vote or refusing to support them to vote.
 11 I've been the director, like I said, for
 12 six years and I've reached out to the Secretary of
 13 State's office on several occasions and one day I
 14 hope to actually collaborate with them. I mean, we
 15 are the other HAVA, which is the Help America Vote
 16 Act funding recipients for the state of Georgia.
 17 You know, at one time I used to get all
 18 of my mail-in voter forms from them, I have -- at
 19 one point I was receiving to two to three thousand
 20 a year. They changed their policy. Now I have to
 21 go to the county election boards. And all the
 22 organizations that I'm working with, I'm having to
 23 send them to them because I can no longer get them
 24 from the Secretary of State's office.
 25 One of my best friends, her name is

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 2 Renita Bundrage and I have her permission to tell
 3 her story and her testimony. It's in the written
 4 testimony that I submitted a week or so ago.
 5 Renita is one of my best friends and
 6 she's one of the smartest people I know, and she
 7 has been president of People First of Atlanta three
 8 times and is the current vice president for People
 9 First of Georgia.
 10 Because of her disabilities, on several
 11 occasions poll workers have refused to let her
 12 vote. I was moved by her story and this is what
 13 she says. My first voting experience made me feel
 14 like a second class citizen. Even now poll workers
 15 act like I'm not capable. I am tired of being
 16 treated like a second class citizen. This is not a
 17 one-time happening. It happens almost all the
 18 time.
 19 She also said to me, she said, Stephen
 20 Hawking's proved that just because you're nonverbal
 21 don't mean that you aren't smart and aren't
 22 capable.
 23 And she said, And I am smart and I am
 24 capable and I can actually talk a little.
 25 Right? So I mean, it's ridiculous.

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 2 not the accessible entrance. It's like playing
 3 hide and seek, where is the entrance, where is the
 4 entrance.
 5 Voter education is very important. In an
 6 age where voter suppression is an issue, not just
 7 for people with disabilities, but for everybody,
 8 voter education is the issue.
 9 I think you were the one that said, Why
 10 aren't the young people turning out? Lack of voter
 11 education.
 12 Every year for I don't know how many
 13 years now, it's been going on so long, our voting
 14 funding through the HAVA Act has been decreased and
 15 decreased and decreased and is still decreasing.
 16 And that's a crying shame. Oh, man, that's a
 17 crying shame.
 18 Education is the key. Because when
 19 people understand their rights and understand why
 20 it's important to vote, they go vote.
 21 AUDIENCE MEMBER: That's right. That's
 22 right.
 23 (APPLAUSE.)
 24 CHERI MITCHELL: It is the key to solving
 25 all of these problems. So the funding at the

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 2 Buildings. Is the voting polling place
 3 accessible? Is the location convenient and can be
 4 reached? You know, they love to use us as the
 5 reason for condensing the polls. Well, all the
 6 polls weren't accessible and it's true. And the
 7 polls legally have to be accessible.
 8 But, you know, the biggest problem we
 9 have is getting to the polls. Not everybody has an
 10 accessible vehicle. So this becomes a real
 11 problem.
 12 Another problem is I spent 27 minutes at
 13 a poll one time waiting for them to unlock the
 14 accessible entrance. It took me five minutes just
 15 to get their attention. I was yelling from outside
 16 in the parking lot to them on the inside.
 17 Hello, I want to vote.
 18 Communication. This includes written
 19 communication in the form of the ballot itself.
 20 Some people need special technologies to either
 21 hear or see the ballots. Ballots in Braille a lot
 22 of time are not available. And that's a shame.
 23 Because it's not that big of a deal to make them.
 24 There's supposed to be signage indicating
 25 where the main entrance is if the main entrance is

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 2 Georgia Advocacy, like I said, has been reduced.
 3 We do a lot of train-the-trainer voting.
 4 Because I'm one person, I wished I could be all
 5 over the state at one time, but I can't.
 6 So we do a lot of train-the-trainers with
 7 self-advocacy organizations so that they can get
 8 the information out and the tools to teach their
 9 memberships about their voting -- their rights to
 10 vote and their community.
 11 We love to tell everybody, whether you
 12 got a disability or not that it's important to
 13 vote.
 14 COMMISSIONER BUTLER: All right.
 15 CHERI MITCHELL: The National Self
 16 Advocates -- am I out of time?
 17 Okay, well, I'm going to shut up now.
 18 But I just want to say to you education
 19 is the key. Poll workers need to be educated.
 20 (APPLAUSE.)
 21 CHERI MITCHELL: Seriously, they need to
 22 be educated. And until we commit to funding real
 23 voting education, it's always going to be a
 24 problem.
 25 COMMISSIONER BUTLER: Thank you.

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 2 (APPLAUSE.)
 3 COMMISSIONER BUTLER: Sharon Blackwood.
 4 SHARON BLACKWOOD: Thank you.
 5 I hope I can have a couple of extra
 6 minutes since I'm also testifying for someone else
 7 who is not here and I have several issues.
 8 I'm Sharon Blackwood. I'm on the State
 9 Board of League of Women Voters of Georgia.
 10 You ladies out there, you've only been
 11 able to vote for 93 years. So we came out of the
 12 suffrage movement and the League of Women Voters
 13 works for assess to voting, voter education, and
 14 will advocate for full voter participation.
 15 The first thing I want to talk about is
 16 something good. We are also working with GALEO,
 17 Pro Georgia, to register naturalized citizens at
 18 their naturalization ceremonies. We've got
 19 permission from the federal government to copy
 20 their naturalization papers with their permission,
 21 put them in the sleeve, and we hand deliver them to
 22 the Secretary of State's office. We are getting
 23 over 50 percent registered voters from these
 24 naturalization ceremonies.
 25 We have not yet had the time to process

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 2 all of the results from this last election so we
 3 will get that to you when we have it as far as how
 4 many of them were allowed to vote.
 5 Okay. Couple of anecdotes that I've
 6 witnessed myself.
 7 A young, lovely Asian woman came in to
 8 vote where I was poll watching. She was flagged
 9 with a purple check mark, was not allowed to vote,
 10 said she was not a citizen. We immediately got to
 11 work. After an hour and a half -- and her husband
 12 had to bring her naturalization papers to the poll
 13 -- she voted on a machine. Because if you vote a
 14 provisional ballot, you have to go back to the
 15 election board and certify that ballot. So you
 16 have to vote twice.
 17 Another young lady from the Caribbean
 18 Islands originally came in, was flagged as a
 19 noncitizen, had her valid U.S. passport, was not --
 20 was made to vote a challenge ballot.
 21 The spokesperson for the Secretary of
 22 State's office mother went to vote three weeks ago,
 23 was listed in the rolls as a felon and was not
 24 allowed to vote. This woman was horrified. She's
 25 been voting all of her life since she's been

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 2 eligible to vote. They worked all day to get her
 3 the right to vote, she finally got cleared to vote,
 4 but she refused to vote.
 5 These are just anecdotes that I have
 6 witnessed.
 7 I now am going to talk about
 8 consolidation of polling places in Carrollton,
 9 Georgia.
 10 There's been an effort to consolidate at
 11 least two polling places. Students at the
 12 University of West Georgia have found a location at
 13 the campus that allows students to vote officially.
 14 The proposal includes moving -- they are
 15 proposing to move this polling place to the
 16 Tabernacle Baptist Church. And it's 2.6 miles away
 17 from the campus. This place is a burden on
 18 students who live on campus and may not have the
 19 time or efficient transportation to able to vote.
 20 There are also studies that show polling
 21 places in churches have an influence on who shows
 22 up to vote at that polling place.
 23 Two other polling places were recommended
 24 to be combined that would greatly impact lower
 25 income and minority voters in the city of

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 2 Carrollton. These voters have been able to walk to
 3 their polling place and now they will have to walk
 4 two miles across a major thoroughfare in order to
 5 vote.
 6 An e-mail was sent out to council
 7 members, county commissioners, and four of the five
 8 members of their state delegation. One member did
 9 not receive this e-mail and we wonder if it's
 10 because he had objected to a closing of a polling
 11 place at Fairfield Plantation.
 12 In Athens, Georgia, there are concerns
 13 and I will discuss two of them. Local police
 14 stations -- this has been alluded -- spoken about
 15 before. Local police station and substations are
 16 being recommended as early voting sites.
 17 We feel that having to go to a police
 18 station to vote will be intimidating to voters,
 19 especially voters who vote early, thus
 20 disenfranchising many voters.
 21 I think it's totally inappropriate to
 22 have a voting place at a police station.
 23 Other polling places are proposed to be
 24 moved including the closing of the polling place on
 25 the campus of the University of Georgia.

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2 We're seeing this throughout the state of
3 Georgia where polling places for students to vote
4 are being closed.

5 The polling place near the arch downtown
6 is what they're saying that the students can use.
7 But it is above the north perimeter of the campus
8 that houses mostly administration and I think the
9 law school, and part of the business school. This
10 leaves the majority of the huge campus underserved.

11 Also, in Athens, polling places are being
12 moved that greatly impact low income and minority
13 voters, including the Cat Wood community in Athens.

14 Public transportation for these voters
15 will necessitate bus rides of one and a half hours
16 each way and changing of buses. If this change is
17 made, it will serve to suppress the vote in these
18 communities.

19 Now, in Carrollton and in Athens, these
20 have not been adopted yet, but became known by the
21 polling. There were objections. They will be
22 voted on, on Carrollton in January, Athens, I
23 believe, in January also.

24 I'm also -- I've got a proposed voting
25 map of Greene County, Georgia. It just so happens

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2 districted out of his district.

3 So I will give you this.

4 COMMISSIONER BUTLER: All right.

5 SHARON BLACKWOOD: Thank you very much.

6 COMMISSIONER BUTLER: Thank you.

7 Mr. Rick Barron who is the Fulton County
8 Director of Elections. Thank you for attending.

9 RICHARD BARRON: I'm very happy to be
10 here listening to everyone. It has given me a
11 whole bunch of ideas for other topics.

12 But I am going to talk about ElectioNet
13 which is the state's voter registration system and
14 our experience with it.

15 I mean, imagine if you have a document --
16 you've worked out a document, you've printed --
17 written one, you print it out, and when you look at
18 the printout it's different than what you see on
19 your monitor. There are some errors here and there
20 on it and every time you go to fix one of those
21 errors, another one pops up.

22 That is the way -- I guess, the
23 experience that we had with ElectioNet for this
24 November election.

25 It's so important to have an accurate and

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2 that's where I'm from and I was there this week.

3 Greene County is a county that is split
4 in two. You have Lake Oconee, which is very
5 wealthy, very white. You have the rest of the
6 county which is not very wealthy and white, and
7 African-American primarily.

8 I'm just going to give you this proposal
9 because this is outrageous. The City of
10 Greensboro, which is the county seat, has been
11 divided up into three, four, voting districts.

12 I will show you this. Here is one voting
13 district. It goes almost to Washington, Georgia,
14 which is on the Wilkes County line, goes all
15 around, it's on the west side of Greensboro, goes
16 all around the east side of Greensboro, all the way
17 up to the furthest point north to Oconee County,
18 and comes all the way down to the furthest point to
19 Putnam County.

20 So it will include the lake community.
21 The lake community is included in all of the three
22 out of the four districts for county commission.

23 They have -- there's a very popular, very
24 good commissioner who has been districted, a black
25 -- an African-American commissioner -- who has been

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2 well-designed voter registration system. We need
3 to have every voter in our county and actually
4 across the state to be able to vote and be
5 accurately represented in the system. They need to
6 be in the correct precincts.

7 And there was a lady here earlier that
8 was talking about a husband and wife that -- that
9 were -- one was in the correct precinct, one was in
10 the -- was told to vote in another precinct. That
11 is -- those were problems that we ran into as data
12 migrated from the old voter registration system to
13 this new one.

14 The state purchased ElectioNet to replace
15 Legacy which was the old one.

16 You know, given Fulton County's history
17 with elections we need to make sure that we have a
18 good system. And I want to advocate for the
19 counties in Georgia to be able to have their own
20 voter registration system do what other states do
21 where the state has an overall system but the
22 counties that want to can go offline, keep their
23 own data, keep their own servers and they aren't at
24 the mercy of the state servers, they aren't at the
25 mercy of being micro managed by the state.

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2 We were the last county to join
3 ElectionNet.

4 We had a backlog of 14,000 DDS
5 applications, which were those -- are the voters
6 that register to vote when they get their driver's
7 license.

8 We also had to deal with a long list of
9 exceptions. When the data migrated from Legacy,
10 the old system, to the new one it created all sorts
11 of problems in addresses, people's names, it would
12 put spaces in, dashes. So we had a lot of work to
13 do just from the data migration.

14 And once -- we had to then go ahead and
15 redistrict Atlanta, Milton, East Point and Sandy
16 Springs. And in all of those areas when we were
17 doing the redistricting, we would move a street
18 from one precinct to another, but the voters
19 wouldn't move. The street would move, the voters
20 would stay where they were.

21 So then we would have to go back in and
22 then move each voter individually. And sometimes
23 you're talking about hundreds of voters on a
24 street.

25 Some of these voters that were exception

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2 voters that had mistakes in their address or in
3 their -- you know, in their name maybe, an extra
4 space where the new system couldn't read it. We
5 would fix the street. And logically, you would
6 think once you fix the street the voter would move
7 with it. It didn't happen.

8 And I think one of the most concerning
9 aspects of this whole thing is that when you were
10 dealing at the street level, there's no audit
11 trail. So I have no way to go in and find out who
12 on my staff moved a street, when they moved a
13 street, because there isn't an audit trail at that
14 point. And that's just basic software design in my
15 mind.

16 We would have inaccurate reports. When
17 we would -- our Absentee Download Report File, the
18 apartment numbers would be listed with the voter.
19 But when you would go to send an absentee ballot by
20 mail, the apartment number would drop off or the
21 entire address would print on one line and run off
22 the envelope. So then we were having to copy and
23 paste all of the addresses to fix that.

24 Reports were untrustworthy. We were
25 unsure sometimes whether the reports that we would

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2 get out of ElectionNet were accurate.

3 Some of the positives -- there are some
4 positives with ElectionNet. It's easier to train
5 our staff in that system. Esthetically it looks
6 better.

7 Once a voter is assigned into a precinct
8 and we have it right, we can't override it, which
9 you could do in Legacy. And that is good. It's an
10 extra layer of security.

11 We can receive reports in PDF and Excel
12 instead of just a text file that we used to have to
13 manipulate.

14 And finally, we can update a voter record
15 to include a previous address, which is helpful for
16 searching.

17 But the negatives which I spoke about
18 earlier, the audit trail, we can't update a street
19 in that voter registration system in one day on the
20 same day. It's a three-day process. We have to
21 order reports overnight, so we can't look at the
22 work we've done on the same day.

23 The Poll Worker Module and the Petition
24 Module either have issues or they're
25 nonfunctioning.

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2 And I just think that in closing that
3 what we need to do in Georgia is follow some of the
4 models of many of the other states and allow the
5 counties to purchase their own voter registration
6 systems to protect the data and let us be the
7 stewards instead of being micro managed by the
8 state.

9 COMMISSIONER BUTLER: Thank you.

10 Before we go to our questions of this
11 panel, we have one person for the next panel that
12 needs to leave and we definitely want to get her
13 testimony before she leaves.

14 So I'm going to ask Fulton County
15 Commissioner Emma Darnell if she would come forward
16 and give her testimony and then we will come back
17 to questions for the rest of the panel, okay?

18 Up here.

19 COMMISSIONER DARNELL: Thank you very
20 much. I certainly don't want to hold up questions,
21 not for one minute.

22 And let me just say that we are extremely
23 pleased and honored and privileged to have the
24 National Commission on Voting Rights here.

25 AUDIENCE MEMBER: Right.

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2 COMMISSIONER DARNELL: It's always, of
3 course, a pleasure to be in the King Center.

4 We were blessed to be able to work on
5 this board for 25 years with Ms. Loretta Scott
6 King, who was extremely serious about freedom for
7 all people.

8 I have a written statement which I'm
9 going to leave with you. But I want to do a very
10 brief -- I think you said not longer than five
11 minutes. And a lot of folks don't believe me, but
12 I'm going to do it. It's going to be five minutes.

13 I'm deeply appreciative for the
14 opportunity to present facts that relate to a
15 historic and persistent record of discrimination
16 against minority voters in Fulton County because of
17 race.

18 The North Fulton Redistricting Plan, also
19 called the Fulton County Redistricting Plan, was
20 developed by a local delegation composed of
21 senators and representatives who reside outside
22 Fulton County in majority white districts.

23 That plan not only draws a line at
24 10th Street dividing Fulton County residents into
25 three majority white districts to the north, and

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2 unincorporated majority black North Fulton -- South
3 Fulton area voiced strong opposition but could not
4 vote because the legislation provided that only
5 residents of Sandy Springs, not the voters of the
6 entire county, were allowed to vote.

7 Another example. So-called Milton County
8 Movement proposed by several legislators from North
9 Fulton involves legislation to recreate a bankrupt
10 county, which would be majority white, and
11 encompass all of Fulton County north of the City of
12 Atlanta.

13 During the 2013 general session, which
14 created this redistricting plan, this group of
15 North Fulton legislators not only introduced and
16 adopted this redistricting plan without any input
17 from the Fulton County Board of Commissioners, more
18 than 15 local bills that adversely impacted the
19 operation of Fulton County were introduced and
20 adopted.

21 The state of minority voting rights in
22 Fulton County can be expressed best in the words of
23 William Faulkner, and I quote, The past is not
24 dead, it's not even past.

25 (APPLAUSE.)

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2 three majority black districts in the south, it
3 also creates a super black district in the south
4 that is 20 miles long and runs from Palmetto,
5 Georgia, to southwest Atlanta. Three minority
6 incumbents reside in the super black district.

7 A redistricting plan adopted by the Board
8 of Commissioners and submitted to the delegation in
9 2011 before the state redistricting plan changed
10 the delegation from majority black to majority
11 white was never considered by the General Assembly.

12 However, it must be emphasized that the
13 North Fulton plan, otherwise known as Fulton County
14 Redistricting Plan, cannot be understood without
15 placing it in the larger context of the concerted
16 efforts to take away the voting strength of
17 minorities in Fulton County for over 50 years.

18 Minority representation on the board of
19 commissioners in Fulton County was won by
20 litigation. Except for the intervention of the
21 federal courts, we would have never been on the
22 Board of Commissioners.

23 When Sandy Springs, the first of a series
24 of unincorporated areas in the majority white north
25 was incorporated in 2005, residents of the

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2 COMMISSIONER DARNELL: Thank you very
3 much.

4 COMMISSIONER BUTLER: Thank you.

5 COMMISSIONER DARNELL: I do have a longer
6 statement to fill in --

7 COMMISSIONER BUTLER: All right.

8 COMMISSIONER DARNELL: -- some of these
9 examples.

10 Thank you so much.

11 COMMISSIONER BUTLER: I'm going to ask
12 the panel if they have a question of Commissioner
13 Darnell before she leaves and then we'll go back to
14 the questioning of the rest of the panel.

15 Anyone have a question of Commissioner
16 Darnell?

17 COMMISSIONER McDONALD: Well, is there
18 any plan to challenge the plan, the Fulton County
19 plan in federal court?

20 COMMISSIONER DARNELL: How many times do
21 we have to challenge? We did send the plan to the
22 Justice Department immediately after the governor
23 signed it in May.

24 While the plan was at the Justice
25 Department, of course, the Shelby County decision

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 2 was signed by our chief justice, instructed us that
 3 conditions had changed here in the south.
 4 But in any case, as we know, once that
 5 Shelby County decision was made by the U.S. Supreme
 6 Court, the U.S. Justice Department could not move
 7 at all in terms of Section 5 preclearance.
 8 The Supreme Court stated in that decision
 9 that it would be necessary for the Congress of the
 10 United States to redefine the coverage formula.
 11 To my knowledge and based on information
 12 I have received from our county attorney, nothing
 13 has been done in Washington, nothing. Not one
 14 piece of legislation has been introduced by
 15 anybody, including our own representatives, to deal
 16 with redefining the coverage formula.
 17 Unless the coverage formula is redefined,
 18 of course, then voter preclearance formula was
 19 held, was not attacked, the Justice Department
 20 can't move.
 21 What we're looking at now in Section 2 of
 22 the act which allows either the attorney general or
 23 the voters to bring an action in federal court
 24 under Section 2.
 25 But it's extremely hard for hard working

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 2 people to develop the kinds of funds that are
 3 needed in order to go into federal court and prove
 4 discriminatory intent. I feel the courts --
 5 (APPLAUSE.)
 6 COMMISSIONER DARNELL: I feel the courts,
 7 you almost have to -- well, I won't say that.
 8 But discriminatory intent, our lawyers
 9 tell us, is extremely hard and expensive. You
 10 know, that's why we lack Section 5.
 11 But I will say this, that I am extremely
 12 frustrated that the Shelby County decision was made
 13 in June and not one piece of legislation has been
 14 introduced into Congress.
 15 And people kept saying, Well, what about
 16 the government shutdown? Congress people were
 17 taking care of their business during the shutdown.
 18 And when you have the largest county in the state
 19 where minority voters have been disenfranchised, we
 20 expect something to happen during the shutdown.
 21 (APPLAUSE.)
 22 COMMISSIONER DARNELL: I won't let my
 23 next answer be that long, I promise you.
 24 COMMISSIONER BUTLER: You said none of
 25 the citizens had input into the redistricting plan?

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 2 COMMISSIONER DARNELL: The Board of
 3 Commissioners of Fulton County was notified by our
 4 local delegation at the General Assembly early in
 5 2011. Senator Horace Tate was the chair. This is
 6 2011 now, before the redistricting of the state
 7 house.
 8 We were notified that the delegation
 9 would review our recommendations with respect to
 10 redistricting. We worked very, very hard, brought
 11 in outside counsel, developed a redistricting plan,
 12 which met the requirements of the equal protection
 13 law as well as Section 5 of the -- of the Voting
 14 Rights Act.
 15 We submitted that plan to our delegation,
 16 the General Assembly did nothing. It just sat
 17 there.
 18 They were waiting obviously for the
 19 redistricting of the legislation. Because by 2012,
 20 the composition of the delegation had changed from
 21 majority black to majority white.
 22 And the way it changed was they drew the
 23 lines so that persons could be members of the
 24 Fulton County delegation who didn't even live in
 25 Fulton County. And so by that time, of course,

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 2 they were ready to deal with redistricting.
 3 And what they did was certain North
 4 Fulton legislators, without notifying Democratic
 5 legislators, members of the delegation, black --
 6 majority black -- this is not a party issue. I
 7 realize a lot of redistricting has to do with
 8 party, but not this.
 9 You know, majority black members of the
 10 Senate delegation, majority black members of the
 11 House delegation to the Georgia General Assembly
 12 didn't even know when they were meeting.
 13 And certainly the Board of Commissioners
 14 did not have an opportunity to have input which
 15 happens in other states. You have an opportunity
 16 to have input. We did not.
 17 So this redistricting plan was conceived
 18 by certain North Fulton legislators, who have a
 19 history, this is nothing new, who have a history of
 20 attacking the minority voting strip of residents of
 21 Fulton County.
 22 So that's what happened.
 23 We did not have an opportunity to input
 24 and our lawyers indicated that that was somewhat
 25 serious. We knew they had the final decision, but

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 2 we thought they would at least look at our plan and
 3 let's talk about it. But they did not.
 4 We consider -- these 15 bills, including
 5 redistricting that they adopted in the 2013
 6 legislature, which includes, by the way, a bill
 7 that tells us who can be classified and who can be
 8 unclassified among the employees. It tells us who
 9 can be chairman of the elections board. It takes
 10 away from us the authority to appoint members to
 11 the board. That one got stalled a little bit, but
 12 it's coming up again.
 13 It's unbelievable the kind of legislation
 14 that was adopted by the 2013 Georgia General
 15 Assembly, signed by the governor, and the impact it
 16 has on a Board of Commissioners that is majority
 17 black.
 18 COMMISSIONER JOHNSON: What you describe
 19 is nothing less than the hollowing out of Fulton
 20 County. I know you're sounding the alarm through
 21 your testimony, but for the record, you have been a
 22 star worker on these issues.
 23 Can you forecast what this will mean in
 24 the everyday lives of citizens of Fulton County,
 25 particularly on the southern end?

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 2 COMMISSIONER DARNELL: Thank you for the
 3 question.
 4 What it means is that the steps that have
 5 been taken by this Commission to open up the
 6 government to establish a policy of inclusion
 7 rather than exclusion to -- in the allocation of
 8 resources, you know, in the allocation of
 9 resources, consider the assistance to senior
 10 adults, to low income families, to folks with
 11 developmental disabilities, human health,
 12 environmental health that have high priorities.
 13 The way we spend the money, I believe,
 14 incidentally, are motivations.
 15 We have heard over and over again you
 16 don't have but one responsibility and that's the
 17 courts and corrections and libraries, anything else
 18 that you do is extra.
 19 We've had North Fulton legislators to
 20 publicly state that providing services to senior
 21 citizens was not a mandated service, it was
 22 discretionary.
 23 So I think, you know, the impact upon
 24 people, frankly, is where I'm a little passionate.
 25 It's the impact upon people.

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 2 I believe, however, that it is
 3 appropriate where legislators disagree with our
 4 priorities, meet us at the polls. Don't go to the
 5 back room for goodness sake.
 6 (APPLAUSE.)
 7 COMMISSIONER DARNELL: Put somebody out
 8 there at the polls that expresses your view and let
 9 the people decide.
 10 AUDIENCE MEMBER: That's right.
 11 COMMISSIONER DARNELL: But, of course,
 12 you know, as you all know, being familiar with this
 13 whole area, that's not what happens with folks who
 14 decide the best way to get my policy enacted is to
 15 change the voting rules.
 16 COMMISSIONER BUTLER: Okay.
 17 COMMISSIONER DARNELL: We don't have poll
 18 taxes and we don't have literacy tests out here,
 19 but I want you to know voter ID and redistricting,
 20 they're doing just as good a job. Just as good a
 21 job.
 22 AUDIENCE MEMBERS: That's right.
 23 (APPLAUSE.)
 24 COMMISSIONER BUTLER: Thank you.
 25 Anymore questions?

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 2 COMMISSIONER DARNELL: I just had a
 3 member of my staff to check the numbers on the
 4 recent Mayor race here in Atlanta. We didn't have
 5 20 percent of the registered votes. We didn't have
 6 20 percent.
 7 Now, we can't look at the voting
 8 registration rules and explain that. I think
 9 you're beginning to see cynicism, disappointment,
 10 frustration, desperation.
 11 AUDIENCE MEMBERS: That's right.
 12 COMMISSIONER DARNELL: Withdrawal from
 13 the process.
 14 AUDIENCE MEMBERS: Yes. Yes.
 15 EMMA DARNELL: And all of us know, of
 16 course, that we withdraw from this process at our
 17 peril.
 18 AUDIENCE MEMBER: Amen.
 19 COMMISSIONER BUTLER: All right. Thank
 20 you very much.
 21 We'll go back to the rest of the panel.
 22 COMMISSIONER DARNELL: Thank you all very
 23 much.
 24 (APPLAUSE.)
 25 COMMISSIONER BUTLER: We're going to go

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 2 back -- if you'll leave your written testimony,
 3 that would be fine.
 4 Panel, do you have questions of the
 5 previous panel with Helen Ho from the Asian
 6 community, and Cheri Mitchell from the disabilities
 7 community, Sharon Blackwood from League of Women
 8 Voters, and Mr. Barron.
 9 I do have some questions myself for
 10 Mr. Barron.
 11 Any of you have questions to any of them?
 12 COMMISSIONER McDONALD: Well, I had one
 13 question for Mr. Barron.
 14 Are you confident that the problems with
 15 ElectionNet will be corrected?
 16 RICHARD BARRON: I'm not sure when. I
 17 mean, it will happen.
 18 I can use an example of the state of
 19 Texas, where I worked prior to coming here, spent
 20 \$13.9 million on their voter registration system.
 21 They ended up putting another \$5 million into it
 22 because things weren't working. And now they've
 23 gone out to bid again, because their voter
 24 registration state-wide system still doesn't work
 25 the way they want it.

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 2 are experiencing this problem, do you know?
 3 RICHARD BARRON: As far as I'm aware, all
 4 of the counties. I mean, I spoke with somebody
 5 from Banks County, which I guess is the smallest
 6 county, and she said she was having issues and she
 7 only had 9,000 registered voters, so she couldn't
 8 imagine what we were going through.
 9 COMMISSIONER BUTLER: Okay. You said you
 10 had a backlog of 14,000 DDS applications. What is
 11 the process for handling DDS applications?
 12 RICHARD BARRON: Those come in on a daily
 13 basis. That was a -- something that my department
 14 -- that was completely on us.
 15 I mean, when I came into my job in June,
 16 those were all there. They had not -- the staff
 17 hadn't been entering them for months.
 18 COMMISSIONER BUTLER: And you said your
 19 staff was trained. Who is training? How many of
 20 you got trained and who did the training on this
 21 new system?
 22 RICHARD BARRON: The state has done the
 23 training and the voter registration staff has been
 24 trained on the system.
 25 COMMISSIONER BUTLER: And how many people

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 2 And Georgia only spent \$2.6 million on
 3 theirs.
 4 There are a lot of -- I think the basic
 5 architecture has a lot of problems and we can't get
 6 a good explanation as to, you know, why things
 7 happen the way they happen. I think they -- when
 8 they fix a problem, they do it and they aren't sure
 9 whether it's systemic.
 10 So I think eventually -- I mean, it's
 11 getting better, you know, by the day and they're
 12 working to make it better.
 13 But I saw a lot of improvement when they
 14 brought somebody in from Kennesaw State about six
 15 weeks before the election, but now he's -- that
 16 gentleman is back in Kennesaw. So we'll see how it
 17 goes.
 18 We have to go back into redistricting to
 19 do the Commissioner precincts. So, you know, I'm
 20 hoping that we don't end up -- we don't have a lot
 21 of time to get that done before qualifying in March
 22 the primaries.
 23 COMMISSIONER BUTLER: I have a question.
 24 Mr. Barron, there were 159 counties in
 25 Georgia that are on the system. How many counties

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 2 is there?
 3 RICHARD BARRON: Well, we have, I think,
 4 like six full-time people over there. But I think
 5 about eight or nine have been trained. There's
 6 been a few on the election side that have gone over
 7 for some training.
 8 COMMISSIONER BUTLER: Do you not see any
 9 value in having a uniform state-wide voter
 10 registration system?
 11 RICHARD BARRON: Yes. And I know that
 12 the state-wide system is a good idea, but I think
 13 what these other states do is they allow the
 14 counties to go what is called off line, they have
 15 their own system, and then they upload them to the
 16 state on a daily basis.
 17 And the vendor -- the counties have
 18 direct contact with their own vendor. And then the
 19 vendor deals with the state and the technology
 20 because right now we can't contact the vendor. The
 21 state is the middleman and the counties aren't
 22 allowed to talk to the vendor.
 23 COMMISSIONER BUTLER: And who is this
 24 vendor?
 25 RICHARD BARRON: PCC.

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 2 COMMISSIONER BUTLER: And what does PCC
 3 stand for?
 4 RICHARD BARRON: I'm not sure.
 5 COMMISSIONER BUTLER: Anyone else have
 6 any questions?
 7 COMMISSIONER MOORE: For Ms. Ho. I
 8 really appreciate your testimony.
 9 I just had a question about, are you
 10 solely or primarily doing outreach to newly
 11 naturalized citizens or do you have a broader
 12 constituency?
 13 HELEN KIM HO: Yeah, we'll register
 14 anyone everywhere. Last year it just happened that
 15 as part of our voter engagement strategies we
 16 thought why not go to the naturalization
 17 ceremonies.
 18 And when we look back at the end of the
 19 year, I'd say about 40 percent of those we
 20 registered were Asian American or Pacific
 21 Islanders. 60 percent were not Asian. Of course,
 22 we were registering everyone.
 23 But for significant -- I'd say for a --
 24 it's hard to say, quite frankly. Clearly, the
 25 naturalized citizens were first-time voters. But

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 2 And I think because we kept track of
 3 everyone, it was awfully hard to say it was kind of
 4 this one off exception. So, you know, I hope so.
 5 You know, when I echo some of the things
 6 that other people said, I know that there's kind
 7 of, like, is it a racial discrimination issue or is
 8 it a processing issue? I think it's both. I
 9 really do think it's both.
 10 So there's kind of an intersection with
 11 the way the system is working or not working. And
 12 like I say, and a deprioritization of new voters
 13 which are often voters of color.
 14 COMMISSIONER MOORE: Thank you.
 15 COMMISSIONER JOHNSON: Just a few
 16 follow-up questions for the Director of Elections,
 17 Fulton County.
 18 You stated that there was a backlog of
 19 14,000 DDS applications. How many remain today, do
 20 you know?
 21 RICHARD BARRON: Zero. Yeah, we took
 22 care of that in August. That was just one of the
 23 -- when we went online in July, that was one of the
 24 challenges that we had. We had to clear all of
 25 those. So we were able to get that done in

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 2 even those in Gwinnett County, that was our focus,
 3 where we registered voters, many of them,
 4 especially the Asian Americans were also first-time
 5 voters.
 6 COMMISSIONER MOORE: So some of the
 7 problems that you identified were fairly stunning.
 8 Do you have any confidence that any of your
 9 strategies have succeeded in changing that
 10 situation for the next group of people that are
 11 newly voting?
 12 HELEN KIM HO: Well, I mean, it started a
 13 more about -- you know, more groups that we work
 14 with to also want to do voter registration
 15 naturalization ceremonies. It sparked a renewed
 16 conversation about what we can do at the state
 17 policy level.
 18 I think what our work did, at least my
 19 knowledge of the past, was our groups would get,
 20 you know, one individual story and we'd lift it up
 21 to the press and look at this.
 22 But it's really easy when you just --
 23 when you don't quantify and keep all the data for,
 24 you know, elections people to say, well, that was
 25 just one situation.

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 2 probably less than two weeks.
 3 COMMISSIONER JOHNSON: Is that typical or
 4 do you have to isolate the causation of the
 5 backlog?
 6 RICHARD BARRON: The backlog was caused
 7 -- I probably shouldn't -- the backlog was caused
 8 by some things going on in the office at the time,
 9 so...
 10 COMMISSIONER JOHNSON: Like what?
 11 RICHARD BARRON: Probably some things
 12 that I shouldn't talk about publicly.
 13 COMMISSIONER JOHNSON: Well, they weren't
 14 systemic?
 15 RICHARD BARRON: No, no, no. This was
 16 just those applications were coming in and they
 17 were being held to be processed at a later time and
 18 they should have been processed in a matter of
 19 days.
 20 COMMISSIONER JOHNSON: How many folks do
 21 you have working in your office?
 22 RICHARD BARRON: My regular staff
 23 including me, 19.
 24 COMMISSIONER JOHNSON: Do you know how
 25 many people work in the tag office of Fulton

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 2 County?
 3 RICHARD BARRON: The tag.
 4 COMMISSIONER JOHNSON: Processing tags,
 5 automobile tags for Fulton County?
 6 RICHARD BARRON: No.
 7 COMMISSIONER JOHNSON: Thank you.
 8 COMMISSIONER BUTLER: Any other
 9 questions?
 10 COMMISSIONER MOORE: I just have one
 11 more.
 12 COMMISSIONER BUTLER: I do, too.
 13 COMMISSIONER MOORE: Cheri, you made a
 14 very strong case for voter education and outreach.
 15 And I wondered if -- you were specifically talking
 16 about people with disabilities.
 17 Do you have any other recommendations
 18 that you think -- one or two recommendations that
 19 would really make a difference with people with
 20 disabilities across Georgia?
 21 CHERI MITCHELL: Well, I think, again,
 22 it's about knowing your rights, knowing who to go
 23 to when they're violate -- when you feel like
 24 they've been violated or you think there's a
 25 possibility.

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 2 doing this same type of consolidation that you are
 3 talking about in Greene County that specifically
 4 gerrymanders, consolidates precincts, and make it
 5 inconvenient for voters to get to their polling
 6 locations?
 7 SHARON BLACKWOOD: This was a fairly new
 8 topic for me so these were the only two counties
 9 that I looked at. Greene County, I took that over
 10 from another person who was going to be here to
 11 speak and he wasn't here specifically to Greene
 12 County.
 13 And since I'm from Greene County and I
 14 was there this week, I just decided I would do some
 15 research on that and report on that. So I am not
 16 familiar with any other.
 17 COMMISSIONER BUTLER: Okay. I believe
 18 there are some other consolidations going on
 19 throughout the state.
 20 Mr. Barron, a lot of the problems that
 21 were enumerated earlier from some of the testimony
 22 had to do with poll workers not knowing what to do
 23 and how to handle, especially with regards to
 24 provisional ballots, absentee voting, that kind of
 25 thing.

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 2 Which, you know, I want everybody to know
 3 that's our job at the Georgia Advocacy Office. You
 4 have a problem, call us. You know, that's what we
 5 do for people with disabilities. We are the HAVA
 6 recipient.
 7 And I think education is the key here.
 8 And I'm very concerned, and I didn't get
 9 the chance to talk about people in institutional
 10 settings like nursing homes. Like this gentleman
 11 talked about his grandfather not having an ID and
 12 he's in a nursing facility. He's 98 years old,
 13 yes, but he still has the right to vote, and he
 14 should be able to.
 15 And, you know, anything that impedes
 16 that --
 17 (APPLAUSE.)
 18 CHERI MITCHELL: -- needs to be dealt
 19 with. And if he has a problem with that, call us.
 20 COMMISSIONER BUTLER: I have one last
 21 question for -- and I know Sharon talked about
 22 consolidation, which is going on throughout the
 23 state in the precincts. Then I have a final
 24 question for Rick, I have to ask you this.
 25 Do you know of other counties that are

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 2 What kind of training standards do you
 3 have for your personnel and when do you do that
 4 work, when do you start your training process, and
 5 is it sufficient enough time to get them adequately
 6 trained?
 7 RICHARD BARRON: One thing that we need
 8 to do with regard to training, we have so many
 9 people that we have to train, we're going to have
 10 to, for these larger elections, rent a big facility
 11 and do it all in a few days closer to the election.
 12 Because we have so many that right now
 13 the way it is set up, we start training poll
 14 workers six weeks out, and we also have an online
 15 training component that is supplemental to that
 16 training.
 17 But when you're training somebody that
 18 many weeks out and then you have to rely on them to
 19 do the online training component and read through
 20 their manual over that time, you know -- and you
 21 have poll workers that will work, you know, once or
 22 maybe three times a year, they, you know, will
 23 sometimes forget all the procedures.
 24 Being a poll worker is really a difficult
 25 thing to do. There are so many -- so many things

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 2 that they have to know for that one day. And when
 3 they have voters all of a sudden coming in and
 4 they're facing the voters and voters are demanding
 5 things, I think, you know, it's easy for them to
 6 get overwhelmed and stressed out.

7 So what we have to do -- I mean, the one
 8 thing that I changed when I came in was that the
 9 online training component was the primary training.
 10 And so, like, we made the face-to-face training,
 11 more hands-on training, the priority at the time.
 12 And as we go forward, I want to compress the
 13 training and, you know, look at various aspects of
 14 it.

15 We did a lot of emphasis on provisional
 16 ballots this time. But, you know, we're always
 17 going to -- one thing that I learned in --
 18 Georgia's provisional ballot process is a little
 19 different than I'm used to as well.

20 And so it almost encourages people that
 21 are out of their precinct to vote the provisional
 22 ballot rather than going to their precinct, because
 23 races that are in common with another precinct
 24 still get counted.

25 Where in other states on the provisional,

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 2 Because you -- we have to get poll
 3 workers -- we have to get people in, you know, that
 4 are willing to take -- either take some time off of
 5 work to go to training and work that day. Or, you
 6 know, we need people that aren't working to step
 7 up.

8 So basically, you know, we meet the
 9 standards, they just have to be a registered voter
 10 and they have to pass a test at the end of the
 11 class.

12 COMMISSIONER BUTLER: Do you actively
 13 recruit? Since a lot of this is using technology,
 14 do you actively recruit in college campuses and
 15 other locations?

16 RICHARD BARRON: We have tried the
 17 college campuses. And in my experience in Texas,
 18 we actually had better luck with the high school
 19 students because we could recruit from 16 years old
 20 and up, and the high school kids were much more
 21 enthusiastic and actually showed up, whereas -- so
 22 we had a really hard time getting college students
 23 to work the polls all day compared to the high
 24 school students.

25 COMMISSIONER BUTLER: Okay. For the sake

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 2 you know, if you aren't in your precinct on
 3 election day, your ballot doesn't count.

4 So the provisional ballot -- if you're
 5 provisional ballot especially in -- you know, we
 6 tell our poll workers not to turn anyone away.

7 You know, once they're out in the field,
 8 you know, when you have 300 polling locations, it's
 9 a little hard to monitor what everyone's doing on
 10 that day. But we try to emphasize provisional
 11 ballots and we definitely can improve in that area.

12 COMMISSIONER BUTLER: Well, it's more
 13 than just the provisional ballot being processed.
 14 I was just trying to get at your standards for
 15 training.

16 How do you recruit the people that are
 17 working in your polling locations and where do you
 18 recruit them from?

19 RICHARD BARRON: They apply right on the
 20 -- they fill out applications. We get the general
 21 public in.

22 So, basically -- you know, what I've
 23 always said is that our -- the elections sometimes
 24 can only be as good as the public that's willing to
 25 step forward and volunteer.

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 2 of time, I'm not going to ask any more questions.
 3 We're not taking questions from the floor. We have
 4 to go to the next panel.

5 Thank you all very much for your time.
 6 You all were great. Let's give them a big round of
 7 applause.

8 (APPLAUSE.)

9 COMMISSIONER BUTLER: We have another
 10 panel that we're going to call after -- I'm going
 11 to have an open mic session, another open mic
 12 session now, and then we'll have our final panel.

13 I don't have any cards for the open mic,
 14 so if you'll bring those up.

15 While we're getting ready for the open
 16 mic, I'm going to call up the next panel to sit
 17 here so we'll be ready for them.

18 Melinda Sheldon, who is Deputy Director
 19 of Georgia Equality will be talking about voter ID
 20 challenges for transgendered and gender variant
 21 voters.

22 Sarita McCoy Gregory from Kennesaw State
 23 University with voter ID as Section 5 trigger and
 24 student voting.

25 Ronnie Mosley, Morehouse -- a former

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 2 Morehouse student, is now with a transit program,
 3 talking about the 2012 election problems for AUC
 4 students.
 5 Reverend Albert E. Love, President and
 6 CEO of the Voter Empowerment Collaborative.
 7 So we're going to ask them to come up to
 8 the stage and get ready.
 9 We said we would have open mic -- okay,
 10 we're going to go ahead with the panel before we go
 11 to the open mic.
 12 So at this time we're going to hear from
 13 Melinda.
 14 MELINDA SHELDON: Thank you for having
 15 me.
 16 I work for --
 17 COMMISSIONER BUTLER: Excuse me, just a
 18 minute. And the timekeeper is here. Please be
 19 mindful.
 20 MELINDA SHELDON: I've worked for Georgia
 21 Equality for the past nine years. We advocate on
 22 behalf of gay transgendered Georgians.
 23 First, I'd like to recognize that today
 24 is transgender day and in an effort to observe
 25 transgendered people around the globe who have been

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 2 provisional ballot until that eligibility is
 3 confirmed.
 4 And that could be the best case scenario
 5 for them.
 6 But just being challenged can have an
 7 emotional impact on any voter. When presenting ID,
 8 41 percent of transgender voters reported being
 9 harassed. 15 percent report being asked to leave
 10 the polling place. And 3 percent of transgender
 11 voters report actually being assaulted at a polling
 12 place. And this is a report by the Williams
 13 Institute.
 14 So imagine the embarrassment that a
 15 transgender person may feel when their ID and
 16 gender is challenged in front of their neighbors
 17 and their friends at a polling place. It probably
 18 makes them hesitant to go back and vote on the next
 19 election day.
 20 So all of these barriers ultimately lead
 21 to voter suppression and disenfranchisement of
 22 transgender citizens.
 23 Some potential solutions to these issues.
 24 Of course, less strict photo ID laws.
 25 One of the things that we're working on

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 2 murdered or committed suicide.
 3 So I'm here to present this information
 4 today on behalf of transgendered Georgians and
 5 nonconforming Georgians.
 6 Voting ID laws in Georgia present a
 7 unique obstacles for transgendered people.
 8 To be transgender, if you're not clear on
 9 that, is it means that the sex that someone was
 10 assigned at birth and their own internal gender
 11 identity do not match.
 12 So on election day the person who is
 13 presenting the required photo ID to the poll worker
 14 may present as a different gender than what is
 15 reflected on their picture ID. This creates,
 16 obviously, certain barriers at the polls.
 17 For many transgendered people, acquiring
 18 a photo ID that reflects their preferred name and
 19 gender identity can be difficult or even
 20 impossible.
 21 In Georgia, 39 percent of transgender
 22 voting eligible population have no photo ID that
 23 accurately reflects their gender identity.
 24 A transgender voter may be challenged by
 25 a poll worker and required to fill out a

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 2 at Georgia Equality is having more transgender --
 3 or identifying more transgender folks who will work
 4 at polling places in key locations around the
 5 state.
 6 Most importantly, I think is there needs
 7 to be training of poll workers regarding
 8 transgender voters and how to handle that. There
 9 are models that exist around this issue in other
 10 states. But there needs to be -- this training
 11 needs to be part of the required training that all
 12 poll workers in the state of Georgia receive.
 13 When we get a report of discrimination
 14 based on a person's ID and their gender at a
 15 polling place, it's difficult to identify recourse
 16 for that person because there is a lack of clear
 17 guidelines on how to handle this issue at the
 18 polling place.
 19 And there's more information on this
 20 issue at the National Center for Transgender Rights
 21 website.
 22 That's all I have tonight, but I
 23 appreciate you very much taking the time to allow
 24 me to bring this to your attention. I think it's
 25 very important for our community.

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 2 COMMISSIONER BUTLER: Thank you.
 3 Sarita McCoy Gregory, Kennesaw State
 4 University.
 5 SARITA McCOY GREGORY: Yes. Hi. Thank
 6 you so much for the invitation to come and give
 7 testimony.
 8 I would like to inform the discussion by
 9 providing a brief summary of what is known from the
 10 academic research on the impact of voter ID laws on
 11 college students and young voters.
 12 I am an assistant professor of political
 13 science at Kennesaw State University, a large state
 14 university in Georgia.
 15 I have founded and administered two
 16 college poll worker programs. One in Dutchess
 17 County, New York, and the other in Cobb County,
 18 Georgia, which brought over 500 college students
 19 into the election administration process by serving
 20 as poll workers on election day.
 21 The Dutchess County poll worker project
 22 that I founded was funded by two grants received
 23 from the U.S. Election Assistance Commission.
 24 I hope to share testimony that will
 25 contribute to a productive and sustained

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 2 training.
 3 My personal experience with residency
 4 actually occurred in 2010. I lived on a college
 5 campus as a faculty fellow at Vassar College, a
 6 highly selected liberal arts college in New York.
 7 I personally witnessed about 20 Vassar students who
 8 experienced intimidation and harassment by one poll
 9 watcher who was inside the polling location.
 10 This poll watcher who we learned was not
 11 from Dutchess County, waited for a student to enter
 12 and then demanded to ask -- or to know their
 13 address. When the student responded 123 Raymond
 14 Avenue, the mailing address for Vassar, the poll
 15 watcher would then challenge their residency and
 16 force them to vote by provisional ballot.
 17 The only reason that I was actually
 18 allowed to vote by machine was because I did not
 19 respond to the poll watcher. I knew the law
 20 regarding residency, I knew my rights. I simply
 21 made eye contact with the poll worker and pointed
 22 to my name and my signature that were located in
 23 the poll book. I was allowed to vote.
 24 But across Dutchess County more than 80
 25 students from Bard and Vassar College were actually

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 2 conversation about how best to move forward after
 3 Shelby County.
 4 My testimony is divided into three brief
 5 sections which, one, identified college students as
 6 a vulnerable population; two, identified which
 7 states have the most exacting and restrictive
 8 requirements for college students; and three,
 9 anticipate the impact that current voting ID laws
 10 have on student voter participation in 2014 and
 11 2016.
 12 Academic scholars have found that those
 13 populations most affected by voter ID requirements,
 14 either strict or non-strict, are racial and ethnic
 15 groups, senior citizens, the disabled, women,
 16 people living with low incomes, and high school and
 17 college students.
 18 According to the Fair Elections Legal
 19 Network, the main barriers to student registration
 20 and voting are residency laws, voter ID
 21 requirements, public versus private, registering by
 22 mail, myths and misinformation which come from
 23 schools, election officials and sometimes parents,
 24 inconvenient polling places, a lack of resources
 25 with too few voting machines and poll worker

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 2 collectively prevented from voting because their
 3 challenge -- because of the challenge to their
 4 residency and because of being uninformed about
 5 their legal rights.
 6 Several states which have had more
 7 relaxed requirements in terms of allowing college
 8 ID to count as ID have now proposed stricter
 9 standards that only allow students to -- only allow
 10 students attending state or public schools to use
 11 their IDs. Those attending private schools are now
 12 not allowed to show their ID as valid
 13 identification.
 14 Among the states who have already -- who
 15 already have strict requirements, and those who are
 16 moving to pass more restrictive laws, North
 17 Carolina has one of the most restrictive statutes
 18 that would disallow all college IDs as valid
 19 identification.
 20 Texas allows concealed handgun license to
 21 serve as a valid ID but does not allow college IDs
 22 to count.
 23 Ohio requires students to declare their
 24 intent to permanently reside in the state and only
 25 allows state-issued IDs with names, addresses, and

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2 signatures printed on the ID card. No student IDs
3 are allowed in Ohio.

4 Maine has a similar requirement. If a
5 student decides to register to vote, they have 30
6 days to obtain a Maine driver's license and to
7 register their vehicle in the state.

8 Washington, D.C. does not allow student
9 IDs, but students can show non-photo IDs, such as
10 housing assignments or tuition bills along with a
11 federally-issued ID.

12 Alaska and South Carolina allow students
13 to show non-photo voter registration cards, but
14 student IDs are not accepted.

15 In Georgia, Indiana, Tennessee and
16 Wyoming, only those students attending public state
17 institutions, like Kennesaw State, can use their
18 ID. Those attending private schools in the state
19 must use another form.

20 I will skip over.

21 There are several recommendations that I
22 would offer to encourage greater participation by
23 college students in the Democratic process of
24 voting.

25 One, we should know that young people do

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2 vote. According to a report from Tufts University,
3 persons aged 18 to 29 voted at a rate of 40 percent
4 in 2000, 49 percent in 2004, 51 percent in 2008 and
5 45 percent in 2012.

6 The number of young voters in general and
7 in college -- the college-age voters in particular
8 is rising. And the impact of voter ID laws in
9 several states will certainly diminish those voting
10 rates in 2014 and 2016.

11 We should replace bad information with
12 good information. Colleges and universities must
13 provide clear instructions to students about their
14 voting rights. And I argue that this should be
15 begin in freshman orientation.

16 Most students would like to vote where
17 they live, they should be informed about
18 registration requirements and how to advocate for
19 themselves should they be challenged in their
20 election location.

21 Secondly, I think it should be made
22 easier for students to vote. Election officials
23 can locate polling stations on college and
24 university campuses. Not only will this increase
25 access and opportunity for students to vote where

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2 they live, but it can also foster better town-gown
3 relations and encourage community members to fall
4 on college and university campuses.

5 COMMISSIONER BUTLER: Okay.

6 SARITA McCOY GREGORY: And then, finally,
7 I would like to say that I have seen college
8 students get involved, and I would say that
9 bringing students into the process early and
10 frequently is the best way to ensure that they stay
11 engaged for a lifetime.

12 Not only should poll workers receive
13 training that broadens their sensitivity to younger
14 voters and people living with disabilities or
15 people of color, but I also argue that the idea of
16 training college students to become poll workers
17 can help to facilitate smoother relations, they are
18 fluent in technology and the newer demands of
19 electronic voting machines, and they also can help
20 to break down stereotypes about college students
21 being apathetic or detached from politics.

22 Thank you.

23 (APPLAUSE.)

24 COMMISSIONER BUTLER: And now to one of
25 those students that actually participated in the

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2 election process, Ronnie Mosley.

3 RONNIE MOSLEY: Thank you all.

4 I'm here today and I just want to share
5 with you a bit about my experience.

6 In 2008, I could not vote in the
7 Presidential election because I was not of age.
8 Never did I expect to have any complications in
9 2012.

10 I arrived at the polling precinct on
11 Morehouse College Campus at 9 a.m., November 6th,
12 2012. And after waiting in a long line, I
13 presented my identification credentials and
14 completed forms only to be told I was not in the
15 system on the elector's list.

16 I knew this was not true because I had
17 checked my registration status day after day using
18 the Georgia Secretary of State's My Voter Page.

19 The poll manager, Ms. Robinson, advised
20 me to give a call to the Fulton County Government,
21 and after calling in three times, I finally got to
22 speak to a representative who told me to vote by a
23 provisional ballot.

24 Georgia's Secretary of State's website
25 states this about provisional ballots. If the

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 2 elector is a first-time registrant by mail who did
 3 not provide one of the acceptable forms of ID at
 4 the time of registration, this voter must show
 5 proper identification. If the elector is unable to
 6 show identification at the time of voting, they may
 7 vote by a provisional ballot, which will be counted
 8 only if the voter presents identification within
 9 the 2-day period following the election.
 10 I presented acceptable proof --
 11 acceptable identification and my information was in
 12 the Secretary of State's system, yet, my polling
 13 place still would not allow me to cast a vote.
 14 This seemed to be a recurring issue. At
 15 approximately 1 p.m., the polling precinct at
 16 Morehouse College had ran out of provisional
 17 ballots because so many students had been forced to
 18 cast provisional ballots. This lasted until 3 p.m.
 19 We were being denied our right to vote.
 20 I spoke with Erica Davis, the
 21 Communication Director of Fulton County Government,
 22 and she said herself she didn't know why I wasn't
 23 in the system and could not promise me that I would
 24 be in before polls close. Again, advising me to
 25 vote by a provisional ballot.

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 2 As a first-time presidential voter, I
 3 refused to accept anything less than a full vote
 4 when all should have been in order. I wanted my
 5 vote to count now, not later, for it was my voice.
 6 Unfortunately, I was not able to vote by
 7 regular method and at approximately 4:30 p.m. I
 8 voted by provisional ballot.
 9 By the end of that day, over 11,000
 10 Fulton County residents voted by provisional
 11 ballot. 669 ballots were casted at the Morehouse
 12 precinct. The total number of students that casted
 13 provisional ballots was 174, making up 25 percent
 14 of the Morehouse polling precinct, therefore, we
 15 requested that the county send officials to the
 16 campus in an effort to assure that students' votes
 17 would not be thrown out.
 18 It was not an easy effort and when we
 19 created a solution to help, Fulton County
 20 representatives showed up late.
 21 The news reported that all provisional
 22 ballots had to be counted by that Friday. Fulton
 23 County would wait until Friday to start counting.
 24 To date, I still don't know if my vote was counted
 25 or thrown out.

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 2 It wasn't until the following semester
 3 that I received a card from Fulton County informing
 4 me that my voting precinct was indeed in Morehouse
 5 College.
 6 Fulton County Commissioner, William
 7 Edwards, said that there were no expectations
 8 amongst the constituents that everything would be
 9 perfect. I ask Why not?
 10 Interim Elections Director, Sharon
 11 Mitchell, said that she believed things went rather
 12 smoothly and that they kept their promise.
 13 Ms. Robinson, the poll manager, never
 14 informed students that they -- what they needed to
 15 comply or about the volunteers that offered to take
 16 voters to their respective polling places.
 17 My question is, What type of message do
 18 we send when you have done everything right and are
 19 still denied the opportunity to be a part of
 20 democracy?
 21 COMMISSIONER BUTLER: Amen. Thank you,
 22 Ronnie. Give him a hand.
 23 (APPLAUSE.)
 24 COMMISSIONER BUTLER: He was there from
 25 9:00 a.m. to 4:00 p.m. That was awesome, Ronnie,

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 2 to stand there and have your voice heard.
 3 RONNIE MOSLEY: I think the most
 4 disappointing part of the citizens that came out
 5 that didn't stay till four or five, that just
 6 simply walked away. Whatever we can do to prevent
 7 that.
 8 MINISTER KAREN REAGLE: And took
 9 provisional ballots without being told what they
 10 could do?
 11 RONNIE MOSLEY: I agree. Yes, they did.
 12 COMMISSIONER BUTLER: And our next
 13 speaker is someone who really has been on the
 14 streets getting people educated and registered to
 15 vote, Reverend Albert E. Love, President and CEO of
 16 the Voter Empowerment Collaborative.
 17 REVEREND ALBERT LOVE: Thank you very
 18 kindly.
 19 First of all, thank you all for convening
 20 this. Let me just give you some idea of the
 21 climate, and that's what I want to talk more about,
 22 we've got a lot of anecdotal information, but the
 23 climate of the state that you are holding this in.
 24 We have an elections commission that's a
 25 little white and a little Negro. We have a state

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 2 where all of the constitutional offices is a little
 3 white and little Negro. So I'm just giving you a
 4 context of all of what everybody else is saying.
 5 This is a context of where you are and what we are
 6 up against.
 7 And so with that being said, the second
 8 point I want to make is this. We have heard from
 9 the county, we've heard from the state.
 10 Now, my -- this is Albert E. Love
 11 speaking. I don't know whether there's collusion
 12 between the two.
 13 AUDIENCE MEMBER: Good question.
 14 REVEREND ALBERT LOVE: But the net effect
 15 of it is that all is not right. And that some of
 16 us went to the Secretary of State and talked with
 17 Brother Kemp. Some of us went to the county. Each
 18 tends to blame the other.
 19 But the net effect of it is that it's
 20 disenfranchisement of voters.
 21 AUDIENCE MEMBER: That's right.
 22 REVEREND ALBERT LOVE: And so what I'm
 23 here to say is that, and I hope to communicate some
 24 of my testimony in my attire, and that is that we
 25 need to put a game face on this thing. This is

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 2 the end of the -- we're getting the short end of
 3 the stick on this thing.
 4 AUDIENCE MEMBER: Yep.
 5 (APPLAUSE.)
 6 REVEREND ALBERT LOVE: And as one person,
 7 I am not pleased. And so, I guess, my testimony is
 8 that we don't have to count the beans anymore, you
 9 know, the jelly beans, and we don't have to count
 10 the numbers of bubbles in a soap bar anymore, but
 11 there's some stuff going on with these computers.
 12 AUDIENCE MEMBER: That's right.
 13 AUDIENCE MEMBER: Thank you.
 14 REVEREND ALBERT LOVE: And it seems like
 15 there are some forces that's orchestrating this
 16 thing.
 17 And so, I don't know if I'm the only
 18 person to get caught up into, you know, whether the
 19 county's doing this or whether the state is doing
 20 this, but somebody might be having some meetings on
 21 the golf course and looking at this whole thing.
 22 So my testimony is that there's a lot
 23 that's not going on that's right that seem to be in
 24 high places, and that while we may not be able to
 25 put out frequently, but I think that most of us

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 2 serious.
 3 AUDIENCE MEMBER: Right.
 4 REVEREND ALBERT LOVE: And that we
 5 citizens need to be more proactive in a more
 6 aggressive way --
 7 (APPLAUSE.)
 8 REVEREND ALBERT LOVE: -- to deal with
 9 this thing.
 10 And so I hope that the information that
 11 we get, I personally as one person, you know, that
 12 leads with our current Justice Department and the
 13 way that it has handled some of the issues that is
 14 coming forth.
 15 AUDIENCE MEMBER: That's right.
 16 REVEREND ALBERT LOVE: So I'm sure
 17 there's enough blame to go around, even including
 18 me, because I'm sure there's more that I can do.
 19 But the bottom line is that I embrace
 20 technology and my learned sister here at Kennesaw
 21 State and all of that, but at this point I have a
 22 high degree of paranoia about all of these systems.
 23 AUDIENCE MEMBER: That's right.
 24 REVEREND ALBERT LOVE: Because at the end
 25 of the day, especially we black folk, we getting

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 2 believe it's not right.
 3 The redistricting in Fulton County, that
 4 play, I mean, that's sinister.
 5 AUDIENCE MEMBER: It is.
 6 REVEREND ALBERT LOVE: That's evil.
 7 And so that's it. And as one person, I'm
 8 not pleased and that I've got my game face on in
 9 terms of, as they say, handling some things.
 10 And I hope that you can communicate that
 11 to whomever you need to get to that in Georgia all
 12 is not well.
 13 AUDIENCE MEMBER: That's right.
 14 REVEREND ALBERT LOVE: And we are not
 15 pleased.
 16 (APPLAUSE.)
 17 COMMISSIONER BUTLER: Thank you,
 18 Reverend. And thank the panel.
 19 Any questions about solutions?
 20 Questions?
 21 COMMISSIONER McDONALD: Well, you did
 22 speak Reverend Love about, you know, what the
 23 problems are and so on. But are there specific
 24 solutions that you would recommend to, you know,
 25 state officials or, you know, congressional

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 2 officials about what they specifically should do?
 3 REVEREND ALBERT LOVE: Well, in terms of
 4 working with Kennesaw State or whoever it is
 5 specifically to try to work out this technology
 6 thing, you know, whatever that is that's causing
 7 these cards not to be printed correctly.
 8 If that's systemic, if it's the software
 9 or all of those technological terms, that needs to
 10 be worked out fast, quick, and in a hurry.
 11 RONNIE MOSLEY: I have a few solutions,
 12 if I may. I would offer online voter registration,
 13 and then also same day voter registration.
 14 AUDIENCE MEMBER: Exactly.
 15 (APPLAUSE.)
 16 COMMISSIONER BUTLER: Okay. Any other
 17 questions?
 18 COMMISSIONER JOHNSON: What were some of
 19 the civic engagement educational initiatives that
 20 were started by Morehouse in response to this?
 21 RONNIE MOSLEY: You know, I really can't
 22 say in response to it, but I can give you a picture
 23 of what we did leading up to election.
 24 At the Morehouse campus alone, we
 25 registered over a thousand new voters and we held

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 2 educational summits that day.
 3 The reason why I went at 9 a.m. is
 4 because we still had classes that day officially,
 5 but the students took it amongst themselves to skip
 6 class and go vote and go out to the community to
 7 bring others to their respective polling places to
 8 help as many folks that wanted to get out and vote
 9 to get out and vote.
 10 That's what I was talking about a bit
 11 when I made note of Ms. Robinson not letting other
 12 students know what they needed to do to make sure
 13 their vote counted.
 14 But also that there were folks on the
 15 college campus that were willing to take you
 16 wherever. We had one guy drive all the way to
 17 Decatur to ensure someone voted.
 18 So we took a lot of measures leading up
 19 to election day.
 20 COMMISSIONER BUTLER: I have a question
 21 for Ms. McCoy. I do appreciate the information on
 22 student voting. You talked about recommending
 23 freshman orientation to include the right to vote.
 24 Are the colleges actually implementing
 25 the law in Georgia that requires them to be a

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 2 deputy registrar where they are required to
 3 register -- offer registration to eligible voters,
 4 is that happening?
 5 SARITA McCOY GREGORY: I moved to Georgia
 6 two years ago, so I can only speak to my experience
 7 at Kennesaw State.
 8 I know that after I initiated the college
 9 Poll Worker Project on that campus, it was very
 10 close to the election when I was approached by
 11 someone from the Dean of Students' Success Office,
 12 and he informed me that he was the deputy registrar
 13 for our campus.
 14 But it was the first time I had heard
 15 from him and it was, again, maybe a week before the
 16 election and he wanted to know how college poll
 17 worker recruitment was going.
 18 COMMISSIONER BUTLER: But that's the poll
 19 worker. But the registration process.
 20 SARITA McCOY GREGORY: Right. My
 21 experience at Kennesaw State was that there were
 22 several voter registration drives held on campus,
 23 and so I can attest that that was happening. At
 24 other campuses, I don't know.
 25 COMMISSIONER BUTLER: That were

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 2 sanctioned by the president -- by this deputy
 3 registrar guy?
 4 SARITA McCOY GREGORY: Yes. Correct.
 5 COMMISSIONER BUTLER: Okay.
 6 Any other questions?
 7 We thank you all so much for your
 8 valuable testimony. And keep up the good work.
 9 (APPLAUSE.)
 10 COMMISSIONER BUTLER: At this time we're
 11 going to have open mic and I'm going to call you in
 12 the order that you're to speak.
 13 And we're going to limit it to three
 14 minutes. Timekeeper is here. And when -- I don't
 15 know when the stop is, so when it stops, just wave
 16 it up and down so I'll know that means stop so that
 17 we can do that.
 18 All right. I'm going to call you so make
 19 your way down as I call your name. Phyllis Bailey,
 20 who's talking about the voting rights as it affects
 21 Fulton County.
 22 Jimmy Cameron, voting rights.
 23 John Benson, expanding voting rights.
 24 Kevin Dow, electronic voting machines.
 25 Margo Waters, impediments to vote for the

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 2 handicap.
 3 Martha Alexander, voter rights and voter
 4 ID.
 5 Ron Shakir, the vote count.
 6 Steen Miles, the Voting Rights Act.
 7 And Yolanda Chancellor, voter ID
 8 requirements.
 9 And John E. Jones, the voting rights
 10 case.
 11 So in that order.
 12 Three minutes, please. And timekeeper is
 13 here and she's going to wave it up and down so I
 14 know that means to stop.
 15 PHYLLIS BAILEY: Good evening.
 16 My name is Phyllis Bailey and I'm a
 17 resident of Fulton County. I've been here for nine
 18 years, and believe me, what I seen today and what
 19 I've observed of my nine years here proves that
 20 Georgia has an institutional racist kind of
 21 mentality. And I find it most disturbing.
 22 It has affected our seniors in that the
 23 redistricting plan has caused our senior centers,
 24 senior services to be placed in jeopardy.
 25 The person who speaks most forcefully for

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 2 us, our Commissioner Darnell, is being moved from
 3 our community, our area, and our center is being
 4 placed in an area that will not receive the support
 5 that she's given us.
 6 Now, not only are seniors being affected,
 7 but children are being affected. Our schools are
 8 being put in a position of being -- the south side
 9 schools, which has, one, the learning center, and
 10 you have the north side schools. And they have
 11 decided what kinds of offerings they're giving
 12 them.
 13 You're emphasizing training and so forth
 14 in the south. And what the -- seemingly -- with
 15 the seemingly preclusion that only in the north
 16 will you find the bright students.
 17 Now, I realize my time's up, but the
 18 thing is we've been here since 3:35.
 19 And the voting rights of our people will
 20 be so ineffective under this new plan that even in
 21 a generation from now, these surly effects will
 22 still be felt. And of course, this seems to have
 23 been the plan all along.
 24 AUDIENCE MEMBER: That's right.
 25 PHYLLIS BAILEY: I'm very disturbed about

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 2 it and I hope that you will get this message to the
 3 people who need to hear it.
 4 Thank you.
 5 (APPLAUSE.)
 6 COMMISSIONER BUTLER: Jimmy Cameron.
 7 Jimmy Cameron is not here.
 8 Kevin Dow, electronic voting machine.
 9 Kevin Dow?
 10 Okay. Margo Waters, impediments to vote
 11 for the handicap.
 12 MARGO WATERS: No, that is not what I
 13 said. I used People First language and I said
 14 disabled. I did not say handicap.
 15 COMMISSIONER BUTLER: Okay, thank you.
 16 MARGO WATERS: So, yes, impediments,
 17 people with disabilities and primarily access to
 18 vote.
 19 One of the things that I want to say
 20 first is lots of times the impediment is being able
 21 to have access to the polling place.
 22 I live here in this district and I vote
 23 at Liberty Baptist Church. The sidewalk is
 24 horrible. Even coming to this meeting from the
 25 Decatur train station was horrible. I almost fell

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 2 out of my chair having to cross back and forth to
 3 find a decent sidewalk with a curb cut.
 4 So as that may stop -- not stop me, it
 5 will stop other people with disabilities from being
 6 active in the community.
 7 So if the people we vote for, Mayor Kasim
 8 Reed and his infrastructure, I haven't seen any
 9 repairs to the sidewalks since he's been the Mayor.
 10 And in fact, I went to a housing meeting
 11 the other day and complained about no curb cut at
 12 the King Memorial Station at the sidewalk that's
 13 been there like that forever, and there was a
 14 pothole that I mentioned. How about the next day,
 15 that pothole got fixed. That doesn't benefit me.
 16 That work that I did benefited all of you drivers
 17 who drive that street and have no respect for me
 18 when I'm in the crosswalk trying to cross it.
 19 So I think these impediments that bar us
 20 from being active in the community it also stops
 21 people from going to the polls.
 22 So wherever these polling places, I wish
 23 they would consider looking into them, into the
 24 accessibility, making sure there's curb cuts and
 25 the senior disabled population can get out and vote

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 2 freely without using other choices.
 3 So that's all I have to say.
 4 COMMISSIONER BUTLER: Thank you.
 5 (APPLAUSE.)
 6 COMMISSIONER BUTLER: Martha Alexander,
 7 voter rights and voter ID.
 8 GARRETT SCOTT: So, Madam Facilitator,
 9 I'm going to go on an assumption that your charge
 10 is to my head and not my heart.
 11 I actually did sign up prior to that
 12 lady, and I'm just going to go on the assumption
 13 that we spoke about tonight, and this is just one
 14 of those incidents where I was accidentally removed
 15 from the voting list just as some people spoke to.
 16 COMMISSIONER BUTLER: What's your name?
 17 GARRETT SCOTT: Garrett Scott.
 18 I don't expect --
 19 COMMISSIONER BUTLER: I don't have it,
 20 no.
 21 GARRETT SCOTT: Pardon me?
 22 COMMISSIONER BUTLER: I don't have that
 23 up here.
 24 MARGO WATERS: He signed in before I did.
 25 GARRETT SCOTT: I did.

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 2 attention that Georgia was the first state to
 3 actually have accessible voting booths in this
 4 country. That's something that we should be
 5 extremely proud of.
 6 But it really loses its luster when there
 7 aren't individuals who are actually trained to show
 8 someone here is the accessible voting booth, this
 9 is what you need.
 10 It should not be a process where someone
 11 says, I don't know, stick him over there in the
 12 corner, maybe someone will show up. You didn't
 13 bring someone with you to vote? Statements like
 14 that should never be made.
 15 And I have nothing more and nothing less
 16 than anyone else. I am an individual. I am a
 17 person who has rights in this state.
 18 (APPLAUSE.)
 19 GARRETT SCOTT: And when you take those
 20 opportunities to discount someone's rights as a
 21 human being, then we're doing much more than just
 22 not allowing them to vote, we're taking someone who
 23 has first class rights and making them a second
 24 class citizen.
 25 I am thoroughly offering myself and my

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 2 COMMISSIONER JOHNSON: We want to hear
 3 what you have to say.
 4 GARRETT SCOTT: Yes, sir. Thank you very
 5 much.
 6 So what I wanted to talk about very
 7 quickly is, with opportunity and to know that my
 8 grandparents told me never offer a problem if
 9 you're not going to work to be a part of the
 10 solution.
 11 With some of the effort that was spoken
 12 about and the way people felt that they were being
 13 treated at the polling booth, I think there needs
 14 to be much more of an effort of the individual that
 15 is volunteering, and, of course, they're
 16 volunteering, and there's some of those that work
 17 in the polls who are being paid, there needs to be
 18 much more of a diversity of training involved in
 19 the poll training process.
 20 Individuals who are blind are becoming
 21 disheartened about voting as most Americans do,
 22 going to the poll, waiting in line, because when
 23 they get there most of times there's no one who
 24 understands how the accessible voting booth works.
 25 I'm sure I don't have to bring it to your

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 2 organization. I actually have the pleasure of
 3 serving as President of the National Federation of
 4 the Blind in Georgia, the largest group of
 5 organized blind individuals in the state.
 6 And I will do exactly what I say. If you
 7 all call me, we will come and do training. We're
 8 not just for the blind community, but the
 9 disability community as a whole.
 10 Because terms like "handicap" should not
 11 be used. The word "handicap" was derived from the
 12 1930s when individuals were ashamed for having a
 13 child with a disability. They were putting them
 14 out of the house at age 16 and they would only give
 15 them a hat to wear. And they would stand on a
 16 corner with that hat in their hand hoping people
 17 will put money in it so that they can buy food.
 18 That's where the term "handicap" came from.
 19 (APPLAUSE.)
 20 GARRETT SCOTT: So we want to work not to
 21 allow terms like that to be used again.
 22 And I think some sort of diversity
 23 training is definitely needed.
 24 Thank you very much.
 25 (APPLAUSE.)

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 2 COMMISSIONER BUTLER: Okay. Thank you.
 3 Ron Shakir, vote count.
 4 Oh, Ms. Alexander is here.
 5 MARTHA ALEXANDER: Yes, I am.
 6 COMMISSIONER BUTLER: All right.
 7 MARTHA ALEXANDER: I'm a lady and I'm
 8 afraid I couldn't butt in front of him.
 9 COMMISSIONER BUTLER: That's okay.
 10 MARTHA ALEXANDER: I would like to speak
 11 on voters' rights. And the first thing I would
 12 like to do is piggyback on what Ms. Darnell said.
 13 I'm out of that district and it is
 14 ridiculous what they're trying to do to the people
 15 in District 5, but we want you to know we are not
 16 going back.
 17 AUDIENCE MEMBER: Right.
 18 MARTHA ALEXANDER: The first thing is I
 19 want to know why can't you put voting booths in the
 20 senior high-rises and in the senior centers.
 21 AUDIENCE MEMBER: That's right.
 22 MARTHA ALEXANDER: Because that's where
 23 most of the seniors are and they can get there and
 24 there will be people there that will help them to
 25 vote.

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 2 do it again if you give us the opportunity.
 3 All we are asking for is the same rights
 4 of everybody else. And when you get ready to cut,
 5 don't always want to cut the seniors. We would
 6 like to have our rights, too.
 7 And then most of the time what you're
 8 doing is you're saying you got to have a driver's
 9 license. After you get a certain age, they say you
 10 can't have a driver's license anymore.
 11 So, therefore, we should be able to vote
 12 if we can give you a letter that say I live at 2140
 13 Fern Valley Drive. That ought to identify me. Or
 14 if I have a checkbook that says I'm Martha
 15 Alexander and I live at 2140. Nobody else should
 16 be able to give you that type of information.
 17 Why is it so important that you have
 18 certain types of pain to be able to vote? And why
 19 is it that you got to set up certain guidelines to
 20 try to put us back to where we was in the '60s.
 21 AUDIENCE MEMBER: That's right.
 22 COMMISSIONER BUTLER: Thank you.
 23 (APPLAUSE.)
 24 COMMISSIONER BUTLER: Ron Shakir.
 25 RON SHAKIR: Yes, Ron Shakir. I want to

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 2 (APPLAUSE.)
 3 MARTHA ALEXANDER: Voting should be made
 4 more accessible to the seniors. This country was
 5 built on the back of the seniors.
 6 AUDIENCE MEMBER: That's right.
 7 MARTHA ALEXANDER: And then once we get
 8 up in the age, you want to cut us, you want to put
 9 us back and you want to discriminate against us and
 10 that is wrong.
 11 AUDIENCE MEMBER: That's right.
 12 MARTHA ALEXANDER: I have been in this
 13 county since 1955, I am 80 years old and I demand
 14 my rights. I feel that I have gone through some of
 15 everything. I was here when they -- when we used
 16 to have them sit in the back, but I have left the
 17 back, I'm to the front and going to speak for my
 18 rights and going to stand up for them as long as I
 19 can.
 20 And you're talking about peoples' that
 21 can work the polls. Most of the seniors are
 22 educated peoples'. If you would hire them, they
 23 would work. They wouldn't be like high school
 24 students or like the college student. We know the
 25 ropes, we've been there, we've done it, and we can

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 2 try to get to the point real fast.
 3 We're looking at the press, money, and
 4 elections, the lack of courage to the campaign and
 5 the candidates. The uncertainty in election
 6 results on election night. A lot of media
 7 advertise for weeks to tune in, we'll give you
 8 dependable coverage on election night.
 9 Education. Where you have the lack of
 10 forums, the lack of League of Women Voters, and
 11 other noncommercial parties that allow forums to be
 12 discussed where you have citizens to show up and
 13 reporters and the press reporting it. This is
 14 education.
 15 I was a candidate in the 11th district.
 16 The 11th district, I sat in. After the polls
 17 closed at 8:00 I went to a local restaurant and sat
 18 with some other candidates. And when the results
 19 started coming in, 3 out of 4, 4 out of 4, 4 of 13
 20 precincts had reported. And this is about the
 21 second report came forth in the city council
 22 election in the 11th district, Ron Shakir had 1309
 23 votes.
 24 At the end of the night when we left, and
 25 some of my friends the next morning woke up to

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 2 find, what I found at the end of the night, that I
 3 had 700 votes.
 4 We have had -- we have had what some
 5 people call 13 percent, 17 percent, less than 20
 6 percent. I heard a statistic saying that only 2
 7 out of 13 people voted in this election. Why?
 8 Because they are losing faith in the system.
 9 I heard the conversation about computer
 10 votes. The idea is that people in this country now
 11 is calling more and more for a paper trail.
 12 The idea that we could have votes that we
 13 not certain whether or not a person is getting or
 14 that is being counted is what is causing us to lose
 15 our faith.
 16 Should we wait for a Pearl Harbor moment
 17 that we stand up and fight for justice and freedom?
 18 Do we have to wait? How many Rosa Park
 19 descriptions, have to get on the back of the bus,
 20 and we had to find the right Rosa Park moment to
 21 stand up and fight. Every vote is precious and
 22 every vote ought to be counted.
 23 I just want to do what Sheriff Lankford
 24 has done four years ago, and that is to point and
 25 shed light on the irregularities that's taking

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 2 place on the secrecy of voting.
 3 The idea that we would have an election
 4 and we had statistics that show that early voting
 5 showed problems with the website. We need to call
 6 in right now, real fast, and real soon before
 7 people start going to the ballot to vote and just
 8 give up totally or takes on another type of
 9 reaction to not being denied their freedom and
 10 justice.
 11 COMMISSIONER BUTLER: Okay. Thank you,
 12 Ron. I do want to ask you a question, though.
 13 In terms of those statistical
 14 differences, were those actually -- you posted --
 15 election results are posted inside the precinct,
 16 the county precinct, so those precinct totals
 17 inside that precinct were, you said --
 18 RON SHAKIR: No, no, it was 4 out of 13
 19 precincts had been -- had closed.
 20 COMMISSIONER BUTLER: But this was posted
 21 in the precinct itself, these results?
 22 RON SHAKIR: These results was done like
 23 they have been done ever since I've been observing
 24 the elections since John F. Kennedy -- Lyndon
 25 Baines Johnson. They got it wrong. The city got

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 2 it from the government. It came from Fulton
 3 County.
 4 Now --
 5 COMMISSIONER BUTLER: But who got it from
 6 Fulton County?
 7 RON SHAKIR: This was -- the read that I
 8 have here came from Atlanta Journal Constitution.
 9 Now, this was --
 10 COMMISSIONER BUTLER: Okay. So it was
 11 not an election official that actually had
 12 official --
 13 RON SHAKIR: Exactly.
 14 COMMISSIONER BUTLER: We're trying to get
 15 to the actual administration of the election
 16 requires that it's done in -- you didn't get the
 17 data from Fulton County, you got this from someone
 18 else?
 19 RON SHAKIR: I got it from four major
 20 networks, and people had reported to me, but this
 21 came from -- which I took a photo from Atlanta
 22 Journal Constitution.
 23 And observing elections, I have never
 24 seen votes taken off the board what the media has
 25 reported. I mean, was it, did the dog eat the

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 2 homework? It could have been true. But we don't
 3 know.
 4 But the press is very important. Freedom
 5 of the press is very important and they ought to
 6 drill down and ask the questions where and how did
 7 the Atlanta Journal Constitution come up with these
 8 figures.
 9 COMMISSIONER BUTLER: Did the media tell
 10 you that they got that directly from the Fulton
 11 County and did they show you the actual piece of
 12 paper that -- which they posted the information?
 13 I'm trying to get to that.
 14 RON SHAKIR: Thanks for asking that
 15 question, and the answer is no. I was in the
 16 certification room and one person was on the Board
 17 of Elections, Commissioner of the board, whatever,
 18 who made that -- you know, the ones who certified
 19 the election, he stated that he saw the same
 20 results where Ron Shakir had a substantial lead
 21 late in the night.
 22 But what he stated is that that station
 23 he was looking at made a retraction. The station I
 24 was looking at, which is the Atlanta Journal
 25 Constitution, did not have a retraction and nobody

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 2 told me that they heard a retraction. But this is
 3 the job of the press to educate the people what
 4 actually took place that night.
 5 COMMISSIONER BUTLER: All right. Thank
 6 you.
 7 Steen Miles.
 8 JOHN BENSON: What about John Benson?
 9 AUDIENCE MEMBER: She stepped -- she's
 10 gone. Steen Miles left.
 11 COMMISSIONER BUTLER: She left. Okay.
 12 Hold on. I still got them here.
 13 I think I called you earlier. Did I call
 14 you earlier?
 15 JOHN BENSON: You called me earlier.
 16 COMMISSIONER BUTLER: Okay, go ahead.
 17 JOHN BENSON: Okay. My name is John
 18 Benson. I was the Socialist Worker's Party
 19 candidate for Mayor of Atlanta. I was a write-in
 20 candidate.
 21 Because there's another set of
 22 restrictions that we need to be aware of. The very
 23 high signature requirements and financial require
 24 -- filing fees to get on the ballot. Especially if
 25 you're someone -- especially a worker who does not

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 2 living for social security, affirmative action with
 3 quotas on the job.
 4 AUDIENCE MEMBER: Amen.
 5 JOHN BENSON: They're all under attack.
 6 Not just voting rights. Every single gain we have
 7 ever made is under attack, as this economic crisis,
 8 it's deeper and deeper and deeper.
 9 AUDIENCE MEMBER: That's right.
 10 AUDIENCE MEMBER: Yes.
 11 JOHN BENSON: And the only way to defend
 12 voting rights is to build a new movement in the
 13 streets. They were won not in Congress, they were
 14 won on the streets, they'll be won at rallies, at
 15 picket lines and protest rallies, strikes.
 16 AUDIENCE MEMBER: Right.
 17 JOHN BENSON: And we have to build a
 18 movement like that.
 19 It's only when the resistance grows so
 20 strong they cannot deny it that they will give in.
 21 And this is a bipartisan attack on us.
 22 AUDIENCE MEMBER: That's right.
 23 JOHN BENSON: Make no mistake about that.
 24 I also believe we should be talking about
 25 expanding voting rights. Especially I thought it

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 2 believe that the Republican or Democratic party
 3 represents them it's very hard for another party or
 4 independent to get on the ballot. And this denies
 5 voters' rights.
 6 Now, the attack on voters' rights just
 7 totally described here is very real and very deep
 8 and very important. But what we have to remember
 9 is the 13th, 14th and 15th Amendments and the
 10 Voting Rights Act itself were won as a result of
 11 massive struggles of millions and tens of millions
 12 of people, of working people.
 13 The Voting Rights Act didn't start in
 14 Congress, it started at Woolworths, it started at
 15 the Montgomery bus boycott, and it's under attack
 16 because that isn't happening anymore.
 17 AUDIENCE MEMBER: Amen.
 18 JOHN BENSON: That's what we have to do.
 19 AUDIENCE MEMBER: Exactly.
 20 JOHN BENSON: It took a war to abolish
 21 slavery.
 22 AUDIENCE MEMBER: That's right.
 23 JOHN BENSON: It wasn't done easily.
 24 There were a lot of other gains from the
 25 movement of the '50s and '60s, Medicare, cost of

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 2 was important to discuss the question of prisoners,
 3 former prisoners, especially since the majority of
 4 prisoners in this country have never ever been
 5 convicted of anything.
 6 COMMISSIONER BUTLER: All right.
 7 JOHN BENSON: It's plea bargaining.
 8 And I also believe that everyone who
 9 lives and works here should have the right to vote.
 10 AUDIENCE MEMBER: Yes.
 11 COMMISSIONER BUTLER: Thank you.
 12 (APPLAUSE.)
 13 COMMISSIONER BUTLER: Yolanda Chancellor,
 14 voting ID requirements. And ask Mr. John Jones to
 15 get ready.
 16 YOLANDA CHANCELLOR: Hi, my mom was also
 17 on the list, so I was going to let her go first, if
 18 it's okay with you, and then I'll go.
 19 MAMIE CHANCELLOR: Okay. I wanted to
 20 talk about the required --
 21 COMMISSIONER BUTLER: Speak into the mic
 22 so she can hear you, please, and state your name.
 23 MAMIE CHANCELLOR: My name is Mamie
 24 Chancellor. And I have concerns about the required
 25 identification pieces that we need.

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2 And I really just wanted to say to this
3 lady with the hat, she spoke about so much that is
4 so meaningful to me.

5 But what I want to really -- when I went
6 to get my driver's license, I had them for years,
7 the papers that I took weren't enough, so I got to
8 go get another birth certificate.

9 My birth certificate, I was born when
10 they were putting them in the Bible. And it was in
11 my granddaddy's Bible when I went to get my social
12 security.

13 So I feel they accepted that at the
14 social security office. You know, you really find
15 out who you are when you go there. They accepted
16 that little piece of paper out of the Bible, but it
17 wasn't acceptable for my driver's license for this
18 time for identification. So that's something that
19 I really had some concerns about.

20 And I feel that if you have social
21 security, you reach that stage, whatever
22 identification pieces you have, and if that's
23 accepted there, why not for the voting.

24 And the other part -- thing that I had
25 here was the -- I need to go get a birth

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2 certificate. Even though I had my license for
3 years, I've been all around different places, but
4 go downtown -- first, they give you a list of
5 things that you need. That takes forever. They
6 gave me a temporary driving permission.

7 But to get all of those -- it's only 3
8 out of about 8 or 10, but it costs more money. You
9 got to pay for that. It costs time and it's
10 inconvenient.

11 And because I'm in the, I'll say the
12 condition that I'm in, I can do my own calls. I
13 can do all of that. But I think for the other
14 people that aren't able to do that, they want to
15 vote, they want to participate, but it's awful.

16 So something, I don't know what can be
17 done, but something should be done about that.

18 And I also agree with part of the
19 machines going to the site of the homes and places.
20 That is a great idea.

21 And for me I think the whole -- I'm going
22 to call it this -- the whole voting system is being
23 reversed because -- I'm not 120, but I did go
24 through some of this stuff in terms of not being
25 able to vote, my momma did, being difficult or not

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2 finding your name and all of that kind of stuff,
3 that is just a ploy. That's what I call it.

4 So I think whatever we need to do, we
5 need to do. But especially for seniors.

6 Oh, yeah, I see stop.

7 We need -- we really need to make it more
8 convenient for us, period.

9 COMMISSIONER BUTLER: Okay. Thank you so
10 much.

11 (APPLAUSE.)

12 YOLANDA CHANCELLOR: Hi. Thanks for
13 letting my mom speak.

14 I'm Yolanda Chancellor, and as my mom
15 says, it's a challenge trying to get the IDs.

16 And my mother is a retired registered
17 nurse, psychiatric, substance abuse, obstetrics,
18 surgical nurse.

19 She has a nursing license. So that
20 should be admissible for people to vote. If you
21 have some type of license or professional license,
22 you should be able to utilize that to vote.

23 As for me, we've gone through this rodeo
24 before trying to get her a birth certificate.

25 We've been down -- well, when she moved here from

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2 Illinois, we had to go to the archives. I mean, I
3 had to make a tour of Georgia trying to obtain a
4 birth certificate for my mom, and she still doesn't
5 have one.

6 And she takes the Bible with -- you know,
7 you think Bible. No, it's a big -- you know, the
8 big Bibles that she's taken to validate herself.
9 Which I agree social security or, you know, a
10 nursing license should substantiate that she is a
11 citizen and she's receiving social security. So
12 that should validate that she's a citizen.

13 As for me, I had to pay for my birth
14 certificate when I was in Illinois. They had
15 trouble finding me. So when I went to Illinois, I
16 had to take time out of my trip to go to the birth
17 certificate office in Evanston, Illinois, to get my
18 birth certificate.

19 So I consider it a poll tax for me to
20 have to pay for my birth certificate, to get a
21 copy, in order to get a driver's license.

22 And lastly, I would like to say -- I got
23 three minutes, okay. I would like to say I would
24 like to get a receipt --

25 COMMISSIONER BUTLER: You don't have to

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 2 use them all, you know.
 3 YOLANDA CHANCELLOR: Okay.
 4 COMMISSIONER BUTLER: I can say that to
 5 you, Yolanda.
 6 YOLANDA CHANCELLOR: Yes, absolutely.
 7 I would like to get a receipt when I
 8 vote. Some type of paper trail of my vote. I
 9 think they should be cross-referenced with a paper
 10 vote and a computer to make sure it's accurate.
 11 I think that also they need to eliminate
 12 these malfunctioning machines. Some of my friends
 13 that I've spoken to when they're trying to punch
 14 one person, somebody else is coming up. I think
 15 those machines are -- any machine can be
 16 compromised, so we shouldn't allow that to
 17 determine who is elected and who isn't.
 18 AUDIENCE MEMBER: Right.
 19 YOLANDA CHANCELLOR: So that's what I
 20 would like to say.
 21 COMMISSIONER BUTLER: Thank you.
 22 (APPLAUSE.)
 23 COMMISSIONER BUTLER: John Jones, voter's
 24 rights case.
 25 JOHN E. JONES: My name is John E. Jones,

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 2 and I'm the President of the Fayette County Branch
 3 of the NAACP where we had a voter rights case that
 4 was -- decision came down earlier this year
 5 striking down at-large voting, yet, the judge has
 6 not finalized the order to make that happen.
 7 And I heard Frederick Douglass, heard
 8 that he said that power concedes nothing without a
 9 demand. And so in listening to references to get
 10 -- taking it to the streets, I think that's real.
 11 That needs to happen. Because power will not
 12 concede anything until we get into the streets
 13 again.
 14 I was asked also to ask about voting
 15 dates changing for the upcoming election, because I
 16 had heard something about the primaries were
 17 changing and they were moving them up or something,
 18 so if you could address that.
 19 The other thing I wanted to say was that
 20 because this judge has delayed his decision more
 21 than a reasonable amount of time, is it possible
 22 that this judge could be charged with obstruction
 23 of justice or a violation of civil rights?
 24 COMMISSIONER BUTLER: Okay. In terms of
 25 -- I can't answer about the judge, but I can tell

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 2 you in terms of the date, that the primary date has
 3 been moved up, that was due to a court decision and
 4 that's why that was made. So that --
 5 JOHN E. JONES: I'm doing some
 6 research --
 7 COMMISSIONER BUTLER: -- they're
 8 complying with the federal election rules. So that
 9 date of the primary has been changed and it should
 10 be on the Secretary of State's website in terms of
 11 what those dates will be.
 12 Thank you.
 13 JOHN E. JONES: Okay. And with the
 14 obstruction of justice, I've been doing some
 15 research about it and I just would like to know,
 16 are the judges -- can they be charged with
 17 obstruction of justice for delaying --
 18 COMMISSIONER BUTLER: I'm going to let
 19 Laughlin answer that one. He's the lawyer, I'm
 20 not.
 21 COMMISSIONER McDONALD: Well, what you
 22 can do is you can file what's called a petition for
 23 a writ of mandamus with the Court of Appeals and
 24 ask the Court of Appeals to require the district
 25 court judge to enter an order.

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 2 JOHN E. JONES: All right. Thank you,
 3 sir.
 4 COMMISSIONER BUTLER: And our final
 5 speaker, open mic speaker, will be Dr. Gretchen C.
 6 Lockett, who established Universal Criteria for
 7 Federal Elections.
 8 DR. GRETCHEN LOCKETT: Good evening.
 9 (APPLAUSE.)
 10 DR. GRETCHEN LOCKETT: I haven't
 11 established anything here. But I certainly would
 12 like to see some things established.
 13 COMMISSIONER BUTLER: Oh, okay. All
 14 right.
 15 DR. GRETCHEN LOCKETT: I'd like to thank
 16 the panel for coming here and holding these
 17 hearings, and I'm hoping that what is being
 18 recorded by a court reporter here that it gets to
 19 the Congress because they need to do some things.
 20 AUDIENCE MEMBER: Right.
 21 DR. GRETCHEN LOCKETT: In addition to our
 22 going into the street, but before we go into the
 23 street, we need to have done this kind of homework.
 24 AUDIENCE MEMBER: That's right.
 25 DR. GRETCHEN LOCKETT: In dealing with

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 2 elections for federal office, we could establish --
 3 we could get the Congress to pass a law to
 4 establish universal regulations, okay?
 5 And those regulations would cover such
 6 things as registration forms, hours, early voting
 7 hours and days. They could establish what kind of
 8 ID would be utilized. And they can have same day
 9 registration for federal elections, okay?
 10 So that's not -- I mean, that's not
 11 something that's impossible to do. That's
 12 something that could be done pretty soon and in
 13 preparation for 2014.
 14 I am a faculty member, an adjunct faculty
 15 member at Chattahoochee Technical College, and
 16 every semester I teach a course called Principles
 17 of American Government. And I give my students
 18 five points if they can prove to me that they are
 19 registered voter. I have been told by one of my
 20 colleagues that Georgia has passed a law that says
 21 that that is illegal.
 22 So I need to know if that's true or not
 23 because I'm told that the Georgia legislature in
 24 passing that law said that you were buying votes
 25 from students. So I want to know if I continue to

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 2 give those five points am illegal?
 3 And I want to caution or at least -- I
 4 mean, I'm sure you already know this, but I think
 5 it's a serious thing.
 6 We have the Georgia legislature and a lot
 7 of these other Republican legislatures coming
 8 together to try and change -- to install the
 9 legislative districts as the electoral college
 10 districts. And if that is done, then it's going to
 11 really disenfranchise those people who look like me
 12 or are some kind of kin to me or something.
 13 So I think we need to do something
 14 serious about that. It can be done, but -- and
 15 maybe what we need to do is to be about the
 16 business of wiping out the electoral college.
 17 That's a -- I mean, that's a long-term thing, but
 18 that would be a constitutional amendment that we
 19 might be able to get passed. Because I even think
 20 some of the Tea Party people might be in support of
 21 that.
 22 So that's my input. Thank you.
 23 COMMISSIONER BUTLER: All right. Thank
 24 you.
 25 There is a Georgia law that says if you

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 2 give anything of value to register to vote that is
 3 against Georgia's law. So giving five points I
 4 think would be -- to their grades -- is something
 5 of value to that person.
 6 Am I not right, Laughlin, in that
 7 interpretation, or Francys?
 8 COMMISSIONER JOHNSON: Depends on how
 9 valuable that course is.
 10 COMMISSIONER MOORE: How close to the
 11 edge they are.
 12 COMMISSIONER JOHNSON: Yeah, I think it's
 13 -- I think the value of that would be highly
 14 speculative at best.
 15 DR. GRETCHEN LOCKETT: So you're saying I
 16 should stop or I should continue?
 17 COMMISSIONER JOHNSON: I'm saying that
 18 you have a wide range of academic freedom in how
 19 you compose your classes.
 20 DR. GRETCHEN LOCKETT: Thank you.
 21 (APPLAUSE.)
 22 COMMISSIONER JOHNSON: But you shouldn't
 23 construe anything that I say as legal advice from
 24 this panel.
 25 DR. GRETCHEN LOCKETT: Okay.

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 2 COMMISSIONER BUTLER: We want to say
 3 thank you to everyone who participated and stayed
 4 and so we're going to turn it back over to
 5 Meredith.
 6 MEREDITH HORTON: Yes, thank you.
 7 And thank you to our Commissioners.
 8 Thanks for all of you who are here who stayed with
 9 us for the four hours.
 10 I will say that we -- you know, we have a
 11 lot of work to do as the folks on the stage and the
 12 audience testified to today.
 13 And we tried to get a lot done in a short
 14 period of time and hope that at the very least
 15 we've covered a bit of the diversity of issues we
 16 are facing in the realm of voting both in Georgia.
 17 And I promise you in our future hearings, we'll be
 18 hearing similar tales and similar stories, which is
 19 really cause for concern.
 20 So thank you for being here for the start
 21 of this conversation.
 22 For those of you here who didn't get to
 23 testify, who want to submit materials afterwards,
 24 who had friends and family members and others who
 25 weren't able to make it, this is just the beginning

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 2 of the conversation. The record is not closed.
 3 So the website for the hearing was
 4 gahearing.lawyerscommittee.org. It was on your
 5 materials in the flyer. You can check back to that
 6 page to, one, find my e-mail address. You can
 7 e-mail follow-up materials to me. You can also
 8 check back to that page for updates.
 9 As I said, this is just Stop 1 on what
 10 will be a series of at least 15 to 20 hearings
 11 across the country between now and the spring.
 12 So we'll have information about other
 13 states and also additional ways for you again to
 14 feed information into the process.
 15 In addition, there is a flyer in the back
 16 which tells you the types of voting changes that we
 17 need to look out for in our communities now,
 18 especially with the weakening in the Voting Rights
 19 Act.
 20 But really, everyday, we need to be
 21 looking out for these things, Voting Rights Act or
 22 not.
 23 So attend local election board meetings,
 24 follow up with -- you know, bring folks to the
 25 polls. If someone you talked to had a problem

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 2 getting an ID, finding them on the list, work with
 3 them, stay vigilant.
 4 You all are based here in Georgia and
 5 know both between our panel of commissioners,
 6 between our witnesses, and the tons of other
 7 fantastic groups doing work, we are on voter
 8 protection on the ground here of how to plug folks
 9 in.
 10 In addition, the Lawyers Committee always
 11 has the 866-OUR-VOTE hot line where we want to hear
 12 from voters relating to any problems relating to
 13 voting, so give us a call.
 14 I'm going to stop talking now.
 15 I do appreciate everyone's time. Thank
 16 you again. And gahearing.lawyerscommittee.org is
 17 where you can go to stay updated throughout the
 18 process.
 19 Thank you all.
 20 (APPLAUSE.)
 21 (Hearing concluded at 7:23 p.m.)
 22 * * *
 23
 24
 25

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 2 CERTIFICATE OF REPORTER
 3 I, JUDITH L. LEITZ MORAN, the officer before
 4 whom the foregoing Georgia Hearing on Voting was
 5 taken, do hereby certify that the witnesses whose
 6 testimony appears in the foregoing proceeding was
 7 taken by me; that the testimony of said witnesses
 8 were taken by me in stenotypy and thereafter
 9 reduced to typewriting under my direction; that
 10 said proceeding is a true record of the testimony
 11 given by said witnesses; that I am neither related
 12 to, nor employed by and of the parties to the
 13 action in which this proceeding was taken; and,
 14 further, that I am not a relative or employee of
 15 any parties hereto, nor financially or otherwise
 16 interested in the outcome of this proceeding.
 17 Date: 12/4/13
 18
 19
 20
 21 _____
 22 JUDITH L. LEITZ MORAN
 23 Registered Professional Reporter
 24 Georgia CCR-B-2312
 25

A				
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LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

DEPAUL UNIVERSITY

25 East Jackson Boulevard

Room 341

June 12, 2013

4:00 P.M.

PANEL:

MR. JON GREENBAUM

Chief Counsel Lawyers' Committee For
Civil Rights Under Law

MS. MARY SCHAAFSMA

Executive Director of League of
Women Voters, Illinois

MS. MARISSA LIEBLING

Staff Attorney at the Chicago Lawyers' Committee
For Civil Rights Under law

Reported by:

Gwen Bedford

Ref. No.: 9717

1 SPEAKERS:

2 MR. BRIAN GLADSTEIN

3 Common Cause Illinois

4

5 MR. JORGE SANCHEZ

6 Mexican-American Legal Defense and Educational Fund

7 (MALDEF)

8

9 MS. AMI GANDHI

10 Executive Director of South Asian

11 American Policy and Research Institute (SAAPRI)

12

13 MR. ANDY KANG

14 Legal Director of Asian Americans Advancing Justice,

15 formerly AAI

16

17 MS. MELISSA PICCIOLA

18 Equip for Equality

19

20 MS. MARYAM JUDAR

21 Citizens Advocacy Center

22

23

24

1 MR. GREENBAUM: We're going to get started in
2 the thirty seconds. Let's start. Good afternoon,
3 everybody. Thanks for coming out in this terrible
4 weather to talk about things of Illinois. My name is Jon
5 Greenbaum. I'm the Chief Counsel for Lawyers' Committee
6 For Civil Rights Under Law in Washington D.C. I want to
7 start out by thanking everybody here for taking the
8 time to come out today. And a special thanks to DePaul
9 College of Law for hosting this event. And of course
10 the National Lawyers Committee is doing this in
11 conjunction with the Chicago Lawyers' Committee for
12 Civil Rights, our affiliate, who we partnered with over
13 the years to run a extremely successful Election
14 Protection Program here in Illinois.

15 Also we would like to thank Kirkland &
16 Ellis and the Miner Barnhill and Galland for generously
17 sponsoring the hearing, including the videotaping and
18 the transcription and the food for today. Election
19 Protection which the National Lawyers' Committee is a
20 lead of is the country's largest non-partisan Voter
21 Protection Coalition. 2012, the Coalition enlisted the
22 pro-bono assistance of 8,000 attorney volunteers,
23 including here in Chicago. The national law firms of
24 Kirkland & Ellis, DePaul College of Law and a lot of

1 people we're going to be hearing from today in this
2 room.

3 We also partnered with over 100 national
4 state and local grassroots partners. The centerpiece of
5 Election Protection is a 1-866-Our-Vote hotline and the
6 Spanish language hotline 888-Ve-Y-Vota, which we do
7 along with NALEO. Any voter in the country can call
8 this hotline to receive voter assistance. Since its
9 inception, Election Protection has collected stories
10 from hundreds of thousands of voters who have called
11 the hotline. And this information has allowed us to
12 document recurrent problems from registration through
13 Election Day. Consistent themes continue to emerge
14 every election that plague voters such as voter
15 registration errors, long lines, polling place
16 confusion, machine breakdown, provisional ballot
17 problems and problems with receiving and casting
18 absentee ballots. I suspect we'll be hearing about
19 some of those types of issues today and probably issues
20 that fall outside of this category as well.

21 This is the first in a series of hearings that
22 we hope to have across the country and we thank you for
23 being trailblazers in terms of these hearings. We want
24 to hear from people. We want to hear from groups that

1 are involved and voter protection efforts and voter
2 registration efforts. We want to hear from election
3 officials and voters about their experiences. And
4 we're going to start by hearing from these experiences
5 in Illinois and we chose to start in Illinois because
6 there is such a strong program here as well as the fact
7 of having the Chicago Lawyers' Committee engaged in
8 this effort.

9 What we plan on doing is using this
10 information, continue to document issues related to
11 those that voters have. You may have heard of the
12 Presidential Commission that looked at election issues
13 and they are very interested in receiving information
14 from us. We have talked to them. We are going to be
15 sending a report to them. We are also going to be
16 sending them the transcript that comes out of this
17 hearing so they can hear about the sort of issues that
18 voters faced in Illinois in the 2012 elections.

19 So our panel of questioners are among
20 the leaders of the Illinois Election Protection Program
21 and they will be giving remarks as well. And then we
22 are going to be hearing from witnesses. A lot of you
23 are also leaders in Election Protection in Illinois as
24 well as advocates that are engaged with voters. You

1 are all experts in the field of voting rights and the
2 participation and we are interested in hearing from
3 your experience.

4 We're going to have two panels today. The
5 first is going to run until about 5:30. And the second
6 will run from about 5:30 to 7. And also after the
7 first panel and after the second panel we want to give
8 voters the opportunity to discuss their experiences as
9 well. And with that I would like to introduce the
10 other members of our panel questioners and allow them
11 to make opening remarks. Mary Schaafsma --

12 MS. SCHAAFSMA: Schaafsma.

13 MR. GREENBAUM: Schaafsma, sorry about that,
14 is the Executive Director of the Illinois League of
15 Women Voters. And Marissa Liebling is the staff
16 attorney at the Chicago Lawyers' Committee. so.

17 MS. LIEBLING: Good afternoon, everyone. My
18 name is Marissa Liebling. I help run the Voting Rights
19 project of the Chicago Lawyers' Committee for Civil
20 Rights Under Law. And with this project that we
21 recently revitalized, we have been focused on providing
22 community education and interaction with the Committee
23 to learn about problems. We have been engaged in
24 policy advocacy and pushing for reforms that will help

1 voters and pushing for modernization. And as Jon
2 mentioned, we have been helping to run the Election
3 Protection Program in conjunction with the National
4 Lawyers' Committee for Civil Rights Election Protection
5 Program here in Illinois to help Illinois voters.

6 In 2012 alone, we handled over 3,000
7 calls to the hotline and had around 100 attorneys out
8 in the field answering voters' questions and documented
9 common issues. And as Jon mentioned, it has been
10 helpful for us to begin to be able to see some of these
11 recurring issues, as well as things that were going
12 well as to what we like to see expanded throughout the
13 state.

14 We plan to use that information, as well
15 as the information that we are able to get here from
16 you guys today as community leaders and voters to go
17 ahead and inform us that we can do better on advocacy
18 and continuing to fight this fight. Thank you.

19 MS. SCHAAFSMA: I'm Mary Schaafsma. I'm the
20 Executive Director of the League of Women Voters of
21 Illinois and I thank you for the invitation to
22 participate this afternoon.

23 The League of Women Voters is by
24 definition an organization that supports an election

1 system that increases voter participation, protects the
2 rights of voters, ensures that all votes cast are
3 counted, free of fraud and political manipulation and
4 protect the integrity of the system. Our support
5 begins with encouraging and registering future voters,
6 offering educational programming so that voters are
7 aware of the issues and the candidates, recruiting
8 election judges and poll watchers, pushing back any
9 attempts to limit or lose the right of voters and
10 support legislation and maximize access for all voters.

11 We are looking for exploring ways in
12 which the League can gain experience, efforts to assist
13 some of the shortcomings of Election 2012. Thanks.

14 MS. LIEBLING: We will be getting testimony
15 from our panelists who are here today from various
16 community organizations. We will start with Brian
17 Gladstein.

18 MR. GLADSTEIN: Thank you. Common Cause Illinois
19 has been working for the last 18 months in Illinois to
20 build up an on the ground Election Protection Program
21 here in Illinois using the resources from the Lawyers'
22 Committee and the legal hotline. Through that work we
23 have been able to get a real sense of what's happening
24 at the ballot box and think about short and long-term

1 reforms. There are lot of things that we learned that
2 really demonstrate the need to improve on Election Day
3 administration and modernization. I know my colleagues
4 are going to mention and talk about that specifically.
5 I want to spend my time talking about the threats to
6 protecting their freedoms to vote that is increased by
7 organized efforts led by such groups as the Tea Party
8 affiliated to the vote and others.

9 Across the country and in Illinois we
10 have seen these groups challenge voter's eligibility at
11 the polls and through pre-election challenges.

12 In 2012, the goal True the Vote was to
13 train one million poll watchers to challenge and
14 confront other Americans as they go to the polls across
15 the nation. And in fact here in Illinois the
16 Eighth Congressional District, intercepted an e-mail
17 from the Walsh Campaign acting through to the vote a
18 coordinator True the Vote sent out an e-mail to a huge
19 amount of its members trying to get poll watchers for
20 the Walsh Campaign.

21 Although we did not experience any
22 problems firsthand, we do know that there has been
23 attempts across the country to suppress people
24 opportunities to vote such as calling people up on

1 Wednesdays -- I'm sorry. Calling telling people that
2 the election is on Wednesdays and also to tell people
3 that they don't need to go out to vote because the
4 election has already been decided.

5 On Election Day itself there is serious
6 problems that result in voter confusion suppression and
7 intimidation. And sometimes it's really hard to know
8 the difference between administration problems and
9 specific organized strategic attempts at intimidation
10 and voter suppression. So I want to give out some
11 examples of that that we have experienced.

12 Last November in Joliet during the first
13 few hours that we were out there, there was one poll
14 that -- one precinct that did not exist anymore. There
15 was no notification. There was no staff. There was no
16 real way for voters to know that that site no longer
17 was a site where people could cast a vote. We had to
18 send our poll watchers out there to tell people where
19 to go and put up our own signs. It just happened to be
20 also the same Election Day of where the Clerk was also
21 up for an election. So we don't know if that is just a
22 problem with administration or if that was a problem
23 with strategically trying to suppress voters and
24 confuse people.

1 We also saw other examples of
2 intimidation in Joliet, last November. Our partisan
3 poll watcher spent much of the morning challenging both
4 voters and our poll watchers as well as election judges
5 with their own poll book. And standing over and
6 telling people and shouting at people saying that you
7 are not registered here. You are not in a place where
8 you can vote. And I don't think that the judges were
9 well-equipped to handle that situation.

10 Another precinct was all Spanish
11 speaking, but there was no signage. There was no
12 translation. There was no materials. We had to send
13 our own poll watchers out there to translate the whole
14 day. So obviously there were no bilingual requirements
15 legally, but there still needs to be reform for those
16 kind of cases.

17 Later that same day, we were -- saw some
18 of the poll watchers being intimidated by a man from
19 the Clerk's office claiming he was an IT worker for the
20 Clerk. He went and harassed specifically our poll
21 workers. Said we couldn't use the app that the
22 Lawyers' Committee provided, that we could not talk to
23 voters even though all of the judges were working with
24 us throughout the day, and then he started to threaten

1 that he would call the Sheriff's office and then a lot
2 of poll workers just stopped working the way they were
3 all day because of this intimidation. Again it is some
4 random case of some man taking the liberty and thinking
5 he can control the outcome at a few precincts or was
6 this strategic by the administration dealing with this
7 election?

8 And then there is Cicero, Illinois. Oh,
9 Cicero, a whole different world. Let me put that out
10 there first. But we did see some things that were
11 really outlandish. The best example was that we saw a
12 poll worker who had a gun under his shirt. If that's
13 not intimidation, then I don't know what is.

14 I'm also concerned about -- and I talked
15 to the Cook County Clerk about this and he did not
16 think it was much of an issue. But I felt like
17 personally that it was an issue that there was a pizza
18 joint that was a poll location that was clearly in
19 Dominick, who is the town's President's turf. People
20 were walking into that precinct and voting while
21 knowing that everyone around them the previous months
22 was one candidate and not the other.

23 But not everything was not bad. We also
24 spent some time in Waukegan and actually saw some good

1 examples of what could happen on Election Day. The
2 poll workers seemed to be very well trained and
3 resourceful. We actually saw two workers at the
4 precinct that I was at that had laptops connected to
5 straight to the database of voters and they could look
6 up. Most of our poll watchers were spending much of
7 their time helping voters to know are they registered,
8 where they are supposed to go, what information is not
9 being given to them. And here the employees of the
10 Clerk's office were actually doing that work
11 themselves. And so it shows that if you have got the
12 right resources and the know how that that will help
13 voters on Election Day.

14 The solutions to these problems ranged
15 from the simple ones to the more complicated. Having
16 better trained judges and poll workers is essential.
17 Having poll workers with computers or apps to help
18 voters is important as was the case in Waukegan.

19 In addition, all modernization would
20 help such as having electronic poll books. Language
21 resources are still a concern as with the case in
22 Joliet.

23 As for intimidation tactics, I think
24 that is a whole other level that we need to address.

1 We need to find ways to investigate these cases and
2 prosecute them as criminal acts as they are. Until
3 this happens, people will be racially profiled and
4 their right to vote suppressed.

5 MS. LIEBLING: Thank you. And next we will
6 hear from Jorge Sanchez from the Mexican-American Legal
7 Defense and Educational Fund.

8 MR. SANCHEZ: Hi, my name is Jorge Sanchez.
9 I am affiliated with the Chicago Office of MALDEF. And
10 I will try not to repeat the things that Brian said.
11 We worked in the Coalition in doing voter protection
12 work and observed different things. I think just to
13 pick up on the thread that Brian said about voter
14 intimidation, I think that this was something that we
15 saw both in Cicero and also Waukegan.

16 In Cicero there were lots of rumors
17 prior to the election that there was city workers going
18 around -- and it wasn't clear what was being asked of
19 people, but it was election related. It may have been
20 related to casting absentee ballots as well. One of
21 the biggest barriers that we face as we sought to
22 identify people who were affected by these things,
23 people were very, very reluctant to talk to us, very
24 reluctant to go on the record about what had actually

1 happened. And obviously as a legal services
2 organization, it is impossible to do anything in the
3 legal sphere without a potential Complainant. And so
4 the type of intimidation that appears was so thorough
5 that even when people are, I think, blatantly breaking
6 the law, there is a very real reluctance of -- to come
7 out and complain about it for fear of retaliation of
8 some sort.

9 Along those lines, one of the things
10 that was observed in Cicero fairly repeatedly was
11 people showing up to vote and being told that they had
12 either cast an absentee ballot or requested an
13 absentee ballot. And because of this, they weren't
14 going to be allowed to vote. Normally, though, they
15 would have to vote provisionally. In several of the
16 circumstances, one of our attorneys, Alonzo Revas, was
17 actually able to speak to some of these individuals as
18 they were leaving. And many of them confirmed to him
19 that not only did they not request absentee ballots,
20 but that they had remembered someone coming to their
21 house to offer them -- one of them refusing it. And
22 explicitly saying they didn't want an absentee ballot.
23 They got to the polls and found out that this request
24 had been made on their behalf.

1 Another problem sort of related to that
2 was the way that the election judges treated our
3 presence in some of these locations. In that
4 particular location I know that they were making --
5 actually following people outside of the polling places
6 to talk to them. And clearly we weren't
7 electioneering. We showed our poll watching
8 credentials and gave them the forms, election judges,
9 as we entered different precincts. We were handing out
10 Election Protection flyers. So there was some measure
11 also of obstruction of trying to keep us from really
12 being able to communicate.

13 I experienced this myself. One of the
14 polling places that we saw -- there appeared to be
15 attempts to make people vote provisionally when they
16 were not -- when they didn't need to be, when they were
17 on the rolls and fully registered. And initially when
18 we go up and talk to people, you know, we were somewhat
19 met with hostility by election judges.

20 At one point we finally communicated
21 with one of the Cicero election judges and we said
22 okay, fine. When we have some issues, we'll direct our
23 comments to you, the judges, not the voters and we
24 understand that. But part of the issue of this is a

1 little bit cultural. When there is a mono-lingual
2 Spanish speaker who is going to vote and you are asking
3 the person are you registered, it is a little awkward
4 and maybe perhaps impolite to not talk to the person
5 directly. It is also not so clear that people would
6 feel quite comfortable answering or responding to us.
7 We told people quite clearly we just want to make sure
8 that people are eligible to vote. That if they are
9 eligible to vote, they are voting an actual ballot and
10 not a provisional ballot because the chances of
11 provisional ballots is quite small. It was a struggle
12 at times to communicate with people.

13 We saw someone getting the provisional
14 ballot material and we approached the table. Suddenly
15 they found their registration. There was a mother and
16 daughter voting. The daughter clearly for the first
17 time. The mother, clearly a dominant Spanish speaker,
18 it just made sense. And the places that we were that
19 day, might that seemed to be repeated.

20 I agree with Brian about Waukegan. I
21 was quite impressed that every polling place had a
22 laptop, had a working connection to the registrar to
23 the database of voters. So those issues -- when issues
24 like that came up in Cicero, they were very different

1 to deal with. We had to use the apps.

2 In one instance it was interesting
3 because I saw one of the election judges moving heaven
4 and earth to make this -- one voter came in and he
5 would get to vote. He was calling downtown and getting
6 loud. What he didn't do for every person. So it is
7 also you get the sense of election judges picking and
8 choosing among who they want to offer assistance to.

9 In Waukegan there was issues of judges
10 not being available. They did have -- I think they had
11 been communicating people by phone. And I can't think
12 of anything else.

13 I guess also in Waukegan there was some
14 pretty big community forums where the Latino community,
15 and who were working on the Latino candidates' campaign
16 were threatened and intimidated. In fact, there is a
17 woman who, as a result of her efforts, got arrested not
18 so long ago and sort of trumped of charges. And the
19 woman didn't like what she said and she was assaulted
20 and battered by this woman and her husband. And the
21 woman runs the (inaudible) Chapter in Waukegan. That
22 she would threaten and be violent was ridiculous.

23 But this person believed, and I have to
24 agree, that there is a sense of targeting the activists

1 in Waukegan, the outspoken people. It sort of sends a
2 message to the rest of the population. This is what
3 happens when you participate. Unfortunately, Waukegan
4 has a bit of history of using its police force in an
5 unofficial mechanism to suppress people.

6 MS. LIEBLING: Next we'll hear from Ami
7 Gandhi from the South Asian American Policy and
8 Research Institute.

9 MS. GANDHI: Thanks for an opportunity to
10 speak today. My name is Ami Gandhi. I'm an attorney
11 and I'm the Executive Director of SAAPRI which stands
12 for South Asian American Policy and Research
13 Institute. We were established in 2001 as a
14 non-profit, nonpartisan organization with the mission
15 to serve South Asian Americans in the Chicago area by
16 using research, policy, advocacy and the other tools to
17 raise the visibility of the issues especially of
18 vulnerable members of our community, who include people
19 of Indian, Pakistanian (inaudible) decent, one of the
20 most rapidly growing racial groups in the midwest and
21 in Illinois. And for many years problems of limited
22 English proficiency in our community. And about one in
23 four South Asian Americans are not comfortable in
24 English, but the rate of course being much higher in

1 certain neighborhoods and towns.

2 Section 203 of the Federal Voting Rights Act
3 provides specific sources to voters with community
4 limited proficiencies. We heard many other speakers
5 refer to that today. And certain jurisdictions are
6 required under that law to provide oral and written
7 language assistance at the poll. I wanted to point out
8 that Section 208 of the Voting Rights Act is very
9 important for our community to, allowing people to
10 bring a person of their choice to assist in persons
11 with voting.

12 And the bottom line is that the reason
13 that I mentioned those laws is that when voters with
14 limited English proficiencies have access to language
15 assistance, they are much more likely to vote. Because
16 of the high number of limited English proficient
17 Indian-Americans who are eligible to vote in the
18 Chicago area, the Department of Justice announced in
19 the fall of 2011 that Section 203 now legally requires
20 the City of Chicago and Cook County election boards to
21 provide language assistance to Indian-Americans in
22 addition to the resources that are available for
23 Spanish and Chinese and it's essential to those
24 communities.

1 There are over 12,000 Indian-Americans
2 in Cook County who are eligible to vote and who have
3 limited English proficiency. And since that new
4 Section 203 coverage, expanded coverage that was
5 announced back in the fall of 2011 local organizations
6 such as SAAPRI, such as Advancing Justice Chicago,
7 which you will hear from shortly, worked together with
8 others to advise the Chicago Board of Election
9 Commissioners and the Cook County Clerk's office as
10 they implemented this first ever language assistance to
11 Indian-American voters with limited English
12 proficiencies.

13 So what this historic assistance
14 happening is in 2012 in the Illinois election, voters
15 received written assistance in Hindi and oral
16 assistance in the languages of Hindi, Gujarati and
17 Urdu. It was an important start, but there are many
18 actions that we can collectively take so language
19 assistance is even more effective in the future.

20 One of the things that SAAPRI does is
21 conduct extensive research about our community. And on
22 our website, which is saapri.org, we recently released
23 reports, one being demographic profiles of South Asian
24 Americans. The second being community-based research

1 based on talking to hundreds of South Asian voters as
2 they came out of the polls in 2012. And what we
3 learned is that the vast majority of South Asian
4 American Respondents, these are all voters, the vast
5 majority of them are foreign born and stated that
6 English was not their first language. And over 20
7 percent reported that they understand English less than
8 very well. However, only about 7% reported using a
9 translated ballot or bilingual poll worker. So this
10 data definitely reflects the need for more assistance
11 and awareness about these available resources.

12 I wanted to share with you a few stories
13 demonstrating the community input and involvement that
14 is essential if we want to improve language access to
15 the polls. After hearing about the new legal
16 requirement for assistance to Indian-American voters,
17 one of our community members, Attorney (inaudible)
18 volunteered by helping with Gujarati translation in the
19 City of Chicago. She also worked at the polls as an
20 election judge in suburban Cook County. This was in
21 the 2012 election. One of the things she stated is
22 "Seeing the impact of Spanish language assistance, it
23 showed me how our community could also benefit from
24 language assistance in voting, from better

1 understanding the local referendum on the ballot to
2 help to using voting machines."

3 Another we heard from an active SAAPRI
4 volunteer and active community member, (inaudible), she
5 is an entrepreneur to help implement language
6 assistance. She explained that voter turnout is high
7 in many parts of India. And many Indian-Americans are
8 interested in voicing their opinions here in the United
9 States. Language assistance empowers these individuals
10 and is a great indication of progress for our
11 community. There is a lot of talent in the community
12 that could be leveraged and many multilingual community
13 members can help with interpretations and translations.
14 And she and other community members were really
15 instrumental in improving the quality of the
16 translations so that the materials said what they were
17 supposed to say was definitely a challenging process at
18 times that my colleague from Advancing Justice Chicago
19 will talk about more shortly.

20 I just wanted to wrap up by sharing with
21 you the story of a first time voter who immigrated from
22 the United States -- from India to the United States
23 22 years ago and she speaks the languages of Urdu and
24 Gujarati. She became a U.S. citizen about three years

1 ago and she started voting as soon as she became a
2 citizen despite her inability to communicate in English
3 and her difficulty standing in line at the polls
4 because of her age and her health condition. When we
5 asked her why did you take all that trouble to vote in
6 the 2012 election, she said, "I'm a citizen. I have a
7 duty to vote. I have the right to vote." And she
8 really strongly believes that community members should
9 participate in elections because voting could lead to
10 important resources such as bus passes and healthcare,
11 things that affect the daily lives of people in our
12 community and I'm sure in many other communities, too.

13 So we look forward to continue to work
14 together with the Election Board as fellow advocates.
15 We want to be part of the solution, but expanded access
16 at the polls is necessary. Thank you.

17 MS. LIEBLING: Thank you, Ami. Next we will
18 hear from Andy Kang, Asian Americans Advancing Justice.

19 MR. KANG: Hi, my name is Andy Kang. I'm the
20 Legal Director at Asian Americans Advancing Justice
21 Chicago, former Asian American Institute, which has
22 been in existence for over 20 years. We are a Pan
23 Asian advocacy organization. Our goal is to empower
24 the Asian American communities through, not only legal

1 advocacy, but also community organizing.

2 We work with over a dozen community
3 organizations that represent and serve the Asian
4 community. During the election year our community
5 organizer helped to get out the vote campaigns to
6 really energize and encourage people to vote.

7 My role as to voting rights is to ensure
8 that the voting rights of our communities are
9 protected, that our voters are informed of their
10 rights. I work in conjunction with our affiliates. We
11 have a national organization with those in Los Angeles,
12 San Francisco and D.C. in training volunteers to poll
13 monitor, poll watch, however you want to call it at the
14 precincts.

15 In the March primary of 2012 we poll
16 monitored over half of all precincts that were targeted
17 by both the Chicago Board of Election Commissioners and
18 the Cook County Clerk's office for language assistance
19 that I refer to for Asian Indian voters.

20 We found a number of very useful first
21 time mistakes and we brought that to the attention of
22 the election officials and they were more than willing
23 to resolve.

24 Namely, the largest one that was

1 identified was in suburban Cook. Translating materials
2 unfortunately did not make it to the designated
3 precincts. Our poll monitors was able to identify this
4 issue and notify the Clerk's office and they were able
5 to get those translated materials, including the
6 translated ballots to those precincts by the 5 o'clock
7 evening rush.

8 This November election we likewise poll
9 monitored over 70 precincts. We added in addition to
10 those targeted for language assistance was Asian Indian
11 a select group of precincts in the Chinatown community.
12 As some of you may be aware, the Chinese have roughly
13 over a decade been a Section 203 language in Cook
14 County.

15 We added a few other select sites based
16 largely on the concerns that have been shared already
17 by some of the panelists about certain groups looking
18 to insert poll monitors at precincts that they thought
19 immigrants or English voters might be so they could
20 discourage those folks from voting.

21 What we found, and I'll start with the
22 good news real quickly, is that the overwhelming number
23 of election judges were very cordial to voters as much
24 as they could be willing to help. We found that the

1 translated materials were present in most of the
2 precincts. There was a sliver of precincts that were
3 missing an item here and there.

4 And we also found that the
5 responsiveness on Election Day by the election
6 officials, both David Orr's office as well as the
7 Chicago Board of Election Commissioners was very good.
8 When we did see an issue, we were able to get someone
9 on the phone and get some kind of resolution or agreed
10 next step that would happen in that day.

11 Moving really quickly to the not so good
12 news. While a lot of the translated materials did
13 reach their designated precincts, election judges
14 seemed poorly equipped or not aware that these
15 translated materials should be made available and
16 should be displayed so that voters were aware of them.
17 From a personal antidote, when I came to a number of
18 precincts, I would ask them to show me the translated
19 materials for Asian American Language Assistance. They
20 would say "We have all the Hindi materials right here,"
21 and point to the back table. And I would say, "Could
22 we put those in the front table so that voters could
23 see them?" They said, "Well, if the voter asks for
24 them, we'll give them to them." So I think one of the

1 things we saw that was at issue is that election judges
2 did not seem trained to proactively make voters aware
3 of their language options. I understand that we don't
4 want to racially profile, but we do want to make voters
5 aware that even if they are able to register maybe with
6 their limited English and get past that phase of the
7 voting process, as has been mentioned, there may be a
8 valid referendum or very complicated issue on the
9 ballot that they would feel more comfortable voting in
10 their native tongue. So that is something that we are
11 going to be following up with election officials making
12 them aware that at each stage we should be making sure
13 that voters are aware of their language options.

14 The other major issue that we found was with
15 respect to training as well. With the bilingual
16 election judges that were available for Asian and
17 Indian, a lot of them didn't seem equipped to know how
18 best to provide language assistance. So many of them
19 were very passive. They did not believe they could
20 leave their designated role at the poll worker table.
21 And so we do think that the conversation we had that
22 election judges are made to feel empowered, to be very
23 proactive and assist the voters wherever they -- and
24 voting process they came out of.

1 We do have a national report coming out
2 at the end of this month with our affiliates. It will
3 have a lot more actual data and numbers and
4 percentages. But I think I wanted to highlight those
5 two issues. So thank you for having me.

6 MS. LIEBLING: We will hear from Melissa
7 Picciola from Equip for Equality.

8 MS. PICCIOLA: Good afternoon. My name is
9 Melissa Picciola. I'm a staff attorney at Equip for
10 Equality which is the Illinois statewide protection and
11 advocacy organization for People with Disabilities. We
12 have been working on voting issues since our founding
13 in 1985, and we do a variety of activities related to
14 voters and conducting polling place surveys where we
15 actually go into the polling places and determine if
16 they are accessible.

17 We run our own hotline for Voters With
18 Disabilities to call us if they have issues as well as
19 working with election authorities on issues in advance
20 of the election as well as Election Day.

21 The opportunity for a person with a
22 disability to exercise their right to vote like we have
23 heard about for language assistance is often more
24 difficult than for the average person. And these

1 particular issues come from a variety of areas. We
2 have submitted written testimony that expound upon
3 these ideas, but I do want to touch briefly on the main
4 problems that people experienced and that we continue
5 to hear about election after election.

6 One of the most important things that we
7 hear about are issues of what is known as the
8 electronic or the accessible machine. When the Help
9 America Vote Act was passed in 2002, many felt that the
10 requirements of having an electronic machine in every
11 precinct and every polling place, you could say, would
12 solve a lot of the problems that People with
13 Disabilities were facing when they went to vote.
14 Unfortunately this hasn't really been the case.

15 When we first started doing polling
16 place surveys following the passage of HAVA, what we
17 often saw was that the electronic machine was present
18 in the polling place but it was not set up. It was
19 often not plugged in. It was often put in a place
20 where one could not get to it that was behind boxes or
21 in a corner. That has been decreasing. Now election
22 judges are trained to set up the polling places and set
23 up the electronic machines at the beginning of the day.
24 Now we hear more and more issues about the electronic

1 machines not working properly or not being -- and the
2 judges not knowing how to properly work it or address
3 an issue.

4 When asking to troubleshoot a machine,
5 the most common response is to call the election
6 authority. This poses a number of problems, especially
7 if the election authority wasn't anticipating those
8 calls as often as the case of the City of Chicago is
9 dealing with many, many other calls.

10 So we sort of understand these problems
11 related to the next topic I would like to address which
12 is training of the election judges and basically
13 knowingly how to operate the machine. One of the most
14 common problems that we hear about is from voters with
15 the visual disabilities who need the electronic
16 machines to be operated in what's known as "audio
17 mode". This is not -- not understandable considering
18 that if you are operating the machine in audio mode and
19 you can no longer see the screen, it is difficult to
20 troubleshoot what's happening or if something is wrong.
21 However, an additional amount of training could
22 probably address some of these issues.

23 One of -- some of the other issues we
24 hear about with regard to election judges is just not

1 being willing to help a voter with disabilities or
2 outright rude or not knowledgeable about how to assist
3 them as my colleague was alluding to earlier. I just
4 heard a report this morning about a blind voter who
5 approached a polling place with a driver and there was
6 a greeter outside standing outside greeting voters and
7 directing them to the polling place. The driver
8 reported to the voter that when the greeter saw the
9 individual with the white cane, she straight up ran
10 away.

11 So the idea of not knowing proper
12 disability etiquette, how to guide someone who has a
13 visual disability, is an issue that we hear about
14 often. But just knowing how to deal with someone and
15 what kind of assistance is appropriate to offer, what
16 kind is assistance are they required to offer, are
17 issues that could be addressed with additional
18 training.

19 The other thing that I want to touch on
20 briefly was actual accessibility of polling places.
21 One of the most common misconceptions is that all
22 polling places are accessible. They are far from being
23 all accessible. Estimates run about a third of all
24 polling places being inaccessible.

1 Even if a polling place is accessible,
2 they are using a building that is accessible, one of
3 the issues that we hear about is the path of travel
4 from when one exits the vehicle or the entrance to the
5 actual polling place is not being accessible.

6 What is unfortunate about this report is that
7 we often hear because of a removable barrier. Someone
8 puts a table in the way on the way to how you get to a
9 polling place. There is also issues of inadequate
10 signage. A sign may be put up directing someone to an
11 accessible entrance or to the polling place, but they
12 don't have any words on them or they don't clearly mark
13 where to go. We've heard reports of people having to
14 circle a building repeatedly not being able to find the
15 accessible entrance or the polling place due to lack of
16 signage.

17 So in conclusion, I think that
18 additional election judge training regarding disability
19 etiquette and how to treat people with disabilities
20 would go far in eliminating some of the issues that we
21 hear about election after election. Thank you.

22 MS. LIEBLING: Thank you. And last we will
23 hear from Maryam Judar from the Citizen Advocacy
24 Center.

1 MS. JUDAR: Hi, I'm Maryam Judar and I'm a
2 community lawyer, Citizens Advocacy Center. And for
3 the record the center is a nonprofit, nonpartisan legal
4 organization of the mission to build democracy in the
5 21st Century and we do that through helping citizens to
6 navigate their civics problem with local government
7 bodies, monitoring local government advocating for
8 policies such as support, public participation in
9 policy making with the government. And we have a large
10 educational program and of course lawyers we have
11 litigation available if it is needed to go that far.

12 So I would like to present today a
13 couple of our -- the results of two of our projects
14 within the realm of election. One is within the realm
15 of election administration and the other one with
16 respect to ballot access.

17 So I'll start with election
18 administration. We conducted a verbal and written
19 questionnaire with six election authorities, the collar
20 counties and also the City of Chicago to basically get
21 a snapshot idea of how they administer elections in
22 four different arenas.

23 One, how did they go about drawing
24 precinct boundaries to -- are there polling place site

1 selection practices. Three, how did they go about
2 election judge training and then finally how they
3 handled provisional ballots.

4 With respect to drawing precinct
5 boundaries similar to redistricting requirements,
6 precincts have to be contiguous and compact. They have
7 a nesting principle that's desired. Each precinct is
8 only supposed to accommodate 500 voters if it is a
9 county. And if more than 800 votes are cast within a
10 precinct during the November election in any year, then
11 that County Board must redivide the precinct closer to
12 500 voters per precinct.

13 What we found was the results from the
14 verbal and written questionnaires, we found there was
15 great disparity in the number of voters at each
16 precinct. It ran the gambit from 305 voters to almost
17 3,000 voters in the counties. The City of Chicago was
18 much better. They reported that their precincts or
19 their polling places only had an average of 600 to 800
20 voters. And the standard for the city is that if they
21 have 600 voters at any place, they have to redistrict
22 down to accommodate closer to 400 voters.

23 In any event, it is still greater than
24 the standard, but closer than the counties. We --

1 placed by selection practices. Again this is just
2 their answers to how they collect, how they decide
3 where to situate polling places. I mean you just heard
4 about the practice of it and how that plays out and are
5 they indeed accessible for people with disabilities.
6 Are they ADA compliant.

7 All the different election authorities
8 had different answers, although they may have had
9 similarities in answers, it was very telling that the
10 practices for election administration aren't unified
11 throughout our election authority throughout the state.
12 We have 110 of them. So the question, what is
13 happening in the other 102 election authorities.

14 With respect to election judge training
15 there were varying practices. Some counties, while
16 they all trained election judges every two years and
17 had optional refresher courses, some were passive, you
18 know, power point presentations. Others included that
19 passive training with hands on simulation. And Lake
20 County actually seemed to have the most robust
21 training. They had different types of election judges.
22 They have a training for the table judges and they have
23 training for the ballot judges and training for the
24 laptop judges and they even have site manager training

1 who have to know about everything.

2 So the table judges, they're taught and
3 lectured in reading assignments. The ballot judges
4 have to be able to lift 35 pounds and they have to
5 complete a voting machine setup and closing procedures
6 without prompts. And the laptop judges use the
7 technology to ensure that they pose the proper
8 questions to provisional ballot voters and that they
9 receive the appropriate answer and response and that
10 they properly provide the required affidavit with the
11 correct instructions on how to educate it and I guess
12 they simulate this process too.

13 So Will County reported that they had field
14 tests where the field test visited like maybe ten sites
15 each multiple times per day and that they arrange for
16 the State's Attorney's office to also make visits to
17 polling places.

18 Generally speaking, you know, the
19 hands-on training it seemed to us to be the best
20 practices, and certainly where there is laptops it
21 facilitates the provisional ballot procedures, which
22 leads me to the discharge of a provisional ballot, the
23 number one reason, the greater reason why people's
24 provisional ballots weren't counted was because they

1 were not registered in the county in which they cast
2 their vote.

3 Interestingly enough, the only county
4 where we were able to get records as far back as 2004
5 because we were asking for records from 2004 and 2006
6 and 2008 and 2010 is they were the only one that had
7 records that went back that far.

8 McHenry said they had no records
9 available. And the only counties that gave us the
10 reasons for invalid ballots was Lake and Will. So in
11 any event, that is our election administration
12 snapshot.

13 Our ballot access survey that we did, we
14 looked at 20 years worth of challenges to nominations
15 for candidacy and for petitions for referendum in all
16 the municipalities in suburban Cook County from all the
17 electoral boards in those suburban Cook municipalities
18 and all the municipals in DuPage County as well as the
19 electoral board decisions out of the DuPage County
20 Election Commission. And what we found is number one,
21 retention issues are a huge problem. I think we
22 submitted 141 FOIA requests, and one third of those
23 municipalities had zero document responses to the FOIA
24 request. So they are just destroying their records.

1 Seven of them positively indicated that the records had
2 been destroyed.

3 What we're mostly concerned about is
4 that the decisions that are rendered at these electoral
5 boards, quasi judicial hearings, that they are not
6 being kept by these entities. There is no record kept
7 by these entities. There is no record. I know that
8 some entities put them online like the Chicago Board of
9 Commissioners, I believe they put their electoral board
10 decisions on line, but that is not a consistent
11 practice by any stretch of the imagination. We know
12 that most Electoral Board decisions don't get appealed.
13 So they have some kind of precedential value, you know,
14 especially with respect to the particular electoral
15 board, but they are not being paid any attention to it
16 seems.

17 And what else? Another thing, and again
18 kind of these are interrelated things, another thing
19 was to see that there were inconsistent decision
20 making. So that inconsistent decision making was not
21 only between electoral boards, but also within the same
22 electoral boards you would see two different outcomes
23 of the same fact pattern without any kind of gross
24 deviation from that fact pattern to justify that

1 difference.

2 You know, that is exacerbated by the
3 fact that there is no retention of records. And
4 another item that is related to inconsistent decision
5 making is that the composition of a electoral boards
6 only aggravates the problem of a decentralized system
7 because of the inherent bias that's created by
8 electoral boards being comprised of like the head of
9 the public body, the clerk of the public body and the
10 longest sitting member of that public body. You know,
11 the municipal arena. We were talking the Mayor, the
12 Clerk and then a Trustee or other board members. And
13 the only recusal rules in the election code is for when
14 someone is before the Board for a position that a
15 member of the Board is also running for. That is the
16 only mandatory recusal, but there should be other
17 situations of recusal. Not only did we do -- look at
18 the issue, but also the Chicago Tribune -- and others I
19 think looked into the issue of electoral boards. They
20 did a snapshot view at the 2012 election. They didn't
21 look 20 years back. So they didn't get the retention
22 issue, but they were also able to document the fact
23 that there is inherent bias in these electoral boards
24 in that inconsistent decisions arise because of that

1 bias.

2 And finally technical errors. This is
3 related to inconsistent decision making and technical
4 errors are common reasons why nominations for candidacy
5 and for referendum are struck down. And again, if they
6 are not challenged, then that decision lies and those
7 technical errors might be a three-page petition, had a
8 paper clip and it wasn't stapled or that the pages were
9 numbered, but one page they skipped a number by
10 accident when they were counting. And our
11 recommendation for that would be that those technical
12 errors should be able to be remedied to prevent people
13 from being on the ballot. Basically that is it.

14 MS. LIEBLING: Thank you. And now we'll have
15 a fifteen minutes for questions to conclude this
16 conversation and then we will take a break to have an
17 opportunity to hear from voters.

18 MR. GREENBAUM: The first question I have is
19 a general one which Andy, I think answered with respect
20 to his testimony. And we always ask, how responsive
21 when you were raising these issues with election
22 officials, how responsive were they? Anybody can
23 start.

24 MR. GLADSTEIN: I think it is a great

1 question. I think it is case by case. It seems to
2 depend on the county, and then depends on the
3 precincts. I think it depends on the type of training
4 some of the judges have and some of the workers have.

5 MR. GREENBAUM: I'm mostly concerned about
6 the people at the main election headquarters as opposed
7 to what is going on at the polls. I think we
8 actually -- in term of what was happening at the
9 polling places.

10 MR. GLADSTEIN: Got it. Some of the folks
11 may have more experience. What I can say quickly is
12 the folks at Cook County were great. David Orr's
13 office, we met with them prior with some of our leaders
14 in Cicero for example. We were in contact days up to
15 Election Day. On that day there were a couple of
16 instances. They talked about the individual with the
17 firearm. We were back and forth with people from their
18 office. And the Chief of Staff, their policy and
19 communication staff, the Senior Staff throughout the
20 day was responsive and calling us back and taking on
21 legal questions as well as our hotline, because they
22 have their own legal hotline as well.

23 The Cook County response was really
24 good. They really cared about what was happening in

1 Cicero. Joliet I'm not really sure. We need to do
2 some follow up about Joliet. I have some strong
3 concerns about what happened in Joliet, as I outlined
4 it and how much of that came from the Clerk's office
5 either lack of administration or purposeful voter
6 suppression. I'm not saying that that is what
7 happened, the latter, but it does bring up those kind
8 of questions.

9 And then Waukegan, I don't know if you
10 guys talked directly to the folks in Waukegan from the
11 main office. But the fact that these people we so
12 well-trained it was night and day in terms of what I
13 experienced in Cook County, which is not what I
14 expected in Waukegan and Joliet. Especially in -- we
15 mentioned the precincts that I have been talking about,
16 we were always targeting low income communities of
17 color in most cases. And so it seems like the worst
18 case scenarios were happening in those areas. And so
19 how much were the clerks and the administration really
20 concentrating on training judges in those areas is a
21 question that needs to be brought up.

22 MS. GANDHI: Our experience is kind of what
23 the language act says for members of the South Asian
24 Indian communities was that the election boards both in

1 Chicago and suburban Cook County were very responsive
2 and kind of improved the language access, but when it
3 comes down to it, if you don't have someone of that
4 culture or language ability on staff, there is a
5 limited amount that can be done. So this is a
6 suggestion made not only by SAAPRI, but also my
7 colleague said anything less than Chicago that a staff
8 member is really needed and the two examples of
9 concrete ways that kind of staff presence would help to
10 improve.

11 MR. GREENBAUM: Do we know how large the
12 staff -- take Cook County, how large the election board
13 staff is there?

14 MS. GANDHI: That's something I wouldn't be
15 able to answer. We were interacting with a handful of
16 employees. So I realize it would be small, but there
17 have been measures in place before for language groups
18 to have an part-time outreach coordinator or other
19 kinds of staff to help, even if it is on a contract
20 basis. And two of the ways that that would help would
21 be the quality of the language, the translation. We
22 had saw lots of grave errors in the initial set of
23 pamphlet materials. If I told you the details, you
24 would be horrified. And luckily a community member

1 stepped up and helped to fix the errors. But again, if
2 you someone on the staff even on a part-time or
3 contract basis to catch it, you wouldn't know if the
4 material says what it is suppose to say.

5 And another crucial function of a staff
6 member would be the outreach to let people in the
7 community know that those materials are there. Even
8 the very well-intentioned, extremely hard working
9 staff, when they go to our religious institutions, when
10 they go to our community centers, they are going to get
11 a different receptiveness compared from someone from
12 our own community who is out there and speaks the
13 language and familiar with the culture.

14 MR. GREENBAUM: What has the response been to
15 request to have someone on the staff who speaks the
16 languages?

17 MS. GANDHI: I'll let my colleague speak to
18 that. I know that part of the issue like for all of
19 our communities and all of the resource limitations,
20 but I'll turn it over to Andy to answer further.

21 MR. KANG: I'm going to make three really
22 quick points. Number one, this is the first time that
23 Asian and Indian languages has been added outside of
24 Queens County, New York, which I believe they didn't

1 get their translated ballots in time for the November
2 election. Nationwide Chicago and Cook County is not
3 the worse of rolling out Asian and Indian languages.

4 MR. GREENBAUM: I think I mentioned before
5 that in oral systems in all three languages -- because
6 two of the three languages there is no written language
7 or it's --

8 MR. KANG: No, the DOJ regulations require
9 only one written translation. And because there are
10 three that are very much commonly spoken, the election
11 officials chose Hindi because there is a common
12 denominator. A lot of Urdu and Gujarati speakers are
13 also familiar with Hindi. That being said, we would
14 love to have all three translated, but it is a resource
15 issue, same as the outreach coordinator.

16 I will say Chinese has been in place and
17 the Chicago Board of Election Commission do have a
18 Chinese speaking Outreach Program, who has been working
19 with us on the Asian Indian.

20 Just as a quick story of the benefit of
21 having a person like that with that cultural background
22 in place. On Election Day in the Chinatown community,
23 one of the newer precincts with language assistance in
24 the Bridgeport community was missing an election judge

1 and they did not have a reserve pool, which is an issue
2 regardless of what language you are talking about. We
3 were able to notify this outreach coordinator and she
4 was able to help by working -- just out of the blue get
5 them, you know, staffed up and get that volunteer to
6 that precinct within I believe by midday. And so that
7 is something that you won't be able to do unless you
8 had someone with a background from that culture and
9 familiarity with folks in the community.

10 MR. GREENBAUM: One of the problems was an
11 issue of the people were bilingual be integrated into
12 all the operations going on in the polling place. Have
13 you sort of shared that observation with the election
14 officials of what is the response. That is a problem
15 that we see in other places is that we have someone who
16 is designated as a translator. They are kind of stuck
17 off to the side and meanwhile people are having
18 problems in checking in the polling place because of
19 the language, difficulties and problems in terms of
20 trying to figure out how to vote.

21 MR. KANG: I mean we're hearing across the
22 board that there is a training issue in general with
23 the election judges, but for language assistance
24 because a lot of these judges are first time judges,

1 there is just relative inexperience of being a judge in
2 general.

3 We also do believe that the resource
4 issue with the outreach program, that particular person
5 would be able to walk these bilingual judges through
6 what is entailed to providing language assistance
7 rather than them all attending the -- election that's
8 training.

9 MS. PICCIOLA: I wanted to speak a little bit
10 about -- because we are statewide. So we deal with
11 election authorities throughout Illinois. And I think
12 that you were speaking about the size of the Cook
13 County staff. That would be four to 500 times the
14 amount of people who work in a rural community in
15 Illinois where you are talking about one or two people
16 who are responsible really, but running an election.
17 And their responsiveness of the election authority
18 actually depends on whether or not the County Clerk or
19 the election authority feel that there is a need to be
20 responsive to disability communities in particular.

21 A lot of times when you approach someone
22 about disability access or accessibility in general,
23 you will often get the response, "Well, we're done. We
24 have electronic machines. We're good." And once you

1 dig in you find the problems. But outside of Election
2 Day, I have found election authorities throughout this
3 day very responsive when we raise problems. There was
4 an issue in Central Illinois this past April where the
5 County Clerk had decided not to use the electronic
6 machines because it wasn't a federal election. So they
7 weren't required to use the machines. We made a call
8 and we said, "You know, it would be really helpful if
9 you would use the machine." And she said, "You're
10 right, okay, we'll use them."

11 As long as it is not on Election Day
12 when 4,000 other things are happening, election
13 authorities are responsive and want to work with the
14 community in order to solve problems. The issue is
15 often that there is so many other things going on,
16 especially in the City of Chicago when a machine breaks
17 down, it is very difficult to address it at that
18 moment.

19 MR. GREENBAUM: Melissa, one of the things
20 that you mentioned was just in terms of a polling place
21 siting. As long as terms of access and siting and
22 those sort of issues, one of the things I have seen in
23 other jurisdictions is a checklist that they're
24 supposed to go down to this polling place. To

1 essentially certify the polling place is effectively
2 accessible to others. Are you seeing that in Illinois?

3 MS. PICCIOLA: So every election authority
4 surveys all of the polling places that are going to be
5 used on Election Day to determine accessibility or
6 inaccessibility. Those that are designated must be
7 posted as such. The issue is that those accessibility
8 surveys are done by the election authorities
9 themselves, their own staff is going out and doing
10 them. The other issue is they are all done in July.
11 And one of the things I often say is a polling place
12 that is accessible in July is often not accessible in
13 November. Just for weather reasons or even when we
14 were doing a primary in February, it would be
15 completely inaccessible.

16 The other issue is they do it not on an
17 Election Day. Those issues of polling place setup
18 don't come into play when you are doing a survey of a
19 church that is completely accessible, has the
20 accessible entrance, but you didn't account for the
21 fact that a person, an election judge is going to be
22 setting up the polling place on Election Day and that
23 those things such as removable barriers or path of
24 travel or inadequate signage will practically make a

1 place inaccessible.

2 MR. GREENBAUM: And really quickly, how would
3 you propose to sort of -- how would you propose that
4 election officials kind of deal with that. Do surveys
5 on elections that may have less turn out, do you do
6 anything privately to --

7 MS. PICCIOLA: I completely think that a
8 survey that is not done on Election Day is relatively
9 useless in terms of accessibility. So we have worked
10 with election authorities both in Cook County and
11 Chicago to do polling place surveys on Election Day.
12 What we have done in the past is actually provided
13 technical assistance at that time. Hey, you have a
14 table here. Let's move this table. Or hey, your
15 electronic machine is in the wrong place. You should
16 move this.

17 So we do do that and I do strongly
18 advocate for doing election polling place surveys on
19 Election Day just to get things practically set up.

20 The other thing that would be
21 tremendously helpful that Lake County, Illinois does,
22 is to provide polling place judges a schematic of what
23 a polling place should look like in order to be
24 accessible. This is where the electronic machine

1 should be set up. This is where your signage should be
2 set up. So sort of a diagram for election judges to
3 follow so that some of that human error is taken out of
4 the equation.

5 MS. LIEBLING: I have some questions about
6 bilingual assistance. One of the things that we have
7 seen in some jurisdictions is the use of curbside
8 voting if the polling place is not accessible. Can you
9 talk a little bit in Illinois about if you think the
10 best action is an effective remedy or it is not being
11 implemented?

12 MS. PICCIOLA: Sure. So there are a couple
13 of issues with curbside voting. It does work,
14 especially if a person's designated polling place is
15 inaccessible. So in the City of Chicago if their
16 polling place is inaccessible, you can use that on
17 Election Day. The law says that you have to request
18 curbside voting in two days in advance of an election.
19 And this is both a burden that some people with
20 disabilities feel they should not have to bear, nor is
21 it one that they are familiar with. So a lot of times
22 when you think about the process, oh, yeah, it is
23 Election Day, I have to go to vote. You are not
24 thinking about it two days ahead of time. But if you

1 show up to a polling place to request curbside voting
2 or need curbside voting, most of the time you can be
3 accommodated.

4 The issue that we see most often is that
5 there is no way to notify the election judges inside
6 that you are at the curb wishing to utilize curbside
7 voting, unless you happen to have someone with you.
8 And so we see this issue a lot.

9 So one of the solutions is to call the
10 election authority at that time while you are outside
11 and say I'm outside and I would like to exercise curbside
12 voting. And then there is the issue that we often
13 see of getting through.

14 The other issue that we see is that
15 election judges are unfamiliar with the process. They
16 have never done it before. They don't know and they
17 are uncomfortable with the fact that two judges have to
18 take a ballot out to a person and deliver the ballot
19 while it's being voted.

20 The other thing that we have heard a
21 little bit from my other colleagues is election judges
22 say, "Well, I can't leave my post. I have to be inside
23 and there is only two of us here, so how do we both
24 leave the polling place and go help this person." I

1 think these are training issues about walking through
2 the process of curbside voting and telling a judge
3 what to do if there is only two of you. You have to
4 either use a third person who is the site administrator
5 or find a way to make it work to do curbside voting.

6 MR. GREENBAUM: Real quick. Is there someone
7 in the main election office who typically has the
8 responsibility of --

9 MS. PICCIOLA: So in the City of Chicago I
10 actually work the Chicago Board of Election Disability
11 hotline on Election Days.

12 MR. GREENBAUM: There is actually a specific
13 number for people.

14 MS. PICCIOLA: Yes, but often what the issue
15 is they don't know that they are supposed to call the
16 number. The other issue is that some of them are not
17 self-identified. They don't call and say I'm a person
18 with a disability. I have a problem. They say, "I
19 have a problem." That is perfectly normal. So
20 sometimes those calls are a little more, you know, it
21 is hard to get through as simple as it should be.

22 MS. LIEBLING: Thank you. And then I want to
23 go back a little bit to language assistance. We have
24 spent a little bit of time talking about the

1 jurisdictions covered by Section 203 and what has gone
2 well with implementation and why there is still
3 problems. My first question, though, is I noticed in a
4 lot of jurisdictions that there is a lack of bilingual
5 judges available. And sometimes the officials will
6 blame the availability of community members and the
7 people who can speak those languages to be able to
8 serve as election judges. Do you have any suggestions
9 for what the election officials should be doing to
10 better recruit election judges, and what you guys as
11 community members could do for it?

12 And my follow-up question is in those
13 jurisdictions that are not covered with language
14 requirement, is there anything that you are doing or
15 you think should be done to make sure that election
16 officials and voters in those jurisdictions are aware
17 of their other rights under Section 208 as you
18 mentioned, and are there any efforts to push for other
19 translations and resources in jurisdictions even if
20 there is not a legal requirement?

21 MS. GANDHI: I will try to speak to that
22 briefly and then pass it to my colleagues. We have
23 seen that there have been challenges in recruiting
24 people, especially for these newer covered language

1 groups and people who didn't know that those skills
2 were an asset. It is just a matter of matching the
3 eligible people who could help with this opportunity.
4 It takes some time. It takes resources even
5 considering staff time or other resource on the behalf
6 of community-based organizations like ours. Once we
7 make the pitch to people who are looking for jobs,
8 frankly, and who are happy to help, then it could be
9 successful. But it does take some time for something
10 that people who are new to the process can seem
11 political, can seem scary. They are not sure if that
12 is the way that they as multilingual legal community
13 members or immigrants really want to be identified. I
14 think it takes investment on the part of the election
15 boards as well as community-based organizations to have
16 resources to reach out to the community members.

17 As far as providing assistance in
18 various languages, there have been community
19 organizations who have done a great job like Advancing
20 Justice Chicago, the South Asian organization, others
21 who have tried to spread the word that even if you
22 don't -- just in Hindi or Spanish or Chinese or other
23 ways that you are allowed to get help, whether it is in
24 the form of translated materials or bringing a friend

1 or family member to the polls with you, but there is a
2 lot of work that needs to be done and a lot of people
3 don't know that that is an option for them and they are
4 not necessarily comfortable exercising that right.

5 MR. SANCHEZ: One of the issues in the past,
6 anyway, some years ago in the Kane County where they
7 first came under the jurisdiction of Section 203, we
8 went out and said here is a ballot, and you walked into
9 the office and there is absolutely no signage
10 whatsoever in Spanish. And so volunteers who might
11 want to volunteer wouldn't know that there is an
12 opportunity. That is another thing that sometimes we
13 focus a lot on Election Day ballots and those kinds of
14 materials. But the other materials that are used to
15 recruit, needs to translated.

16 There also has to be -- it is
17 interesting in Cicero I noticed this time around there
18 was a lot of younger people who were serving as
19 election judges. And a lot of them were bilingual
20 judges. And in a place like Cicero, it really felt
21 like an "Old Boys Club".

22 You go in there and one of the precincts
23 it seemed like there was one guy who was running the
24 polling place, although that certainly wasn't his

1 official role. And so when someone bilingual would go
2 to help somebody, he would want to go and see what was
3 going on. Well, you know, they want Spanish. They
4 don't want me. It was like, yes, they don't. You
5 don't need to be part of this process.

6 You have to wonder a little bit how much
7 younger people are coming into the process for the
8 first time are actually empowered enough to help people
9 and be able to say to someone else who looks like they
10 know what they are doing, this is the way it happens to
11 happen.

12 MS. GANDHI: In our community it has been
13 confusing for a variety of audience the fact that there
14 is written assistance in Hindi and oral assistance
15 in -- legally required in Gujarati and Urdu. And that
16 is confusing at times for some of the staff who we work
17 with and are very well-intentioned election board. A
18 form may show "Do you speak Hindi? Check a box." And
19 community members start seeing this and they don't know
20 about Section 203 that they should list also that they
21 can speak Urdu or Gujarati or even another language.
22 Many in our community are very linguistically diverse.
23 Many people speak more than one language and sometimes
24 some of the things that we have talked about like

1 having an outreach coordinator, changing the whole
2 resource system, these are difficult things to achieve.
3 Some are very simple. Have more boxes on the form.
4 List more languages. These are legal requirements.
5 And it's amazing that our community can get help in a
6 variety of languages, but it is important to let people
7 know that it is relevant for them to list out all the
8 languages that they know how to speak or read.

9 MR. KANG: And just really quickly about
10 Section 208. Along with our affiliates we did print a
11 variety of Asian languages, a double-sided flyer. One
12 side in English, hopefully for the children and friends
13 explaining 208 and what their rights are and they are
14 entitled to. And on the other side in their native
15 language so that they could take that in with them.
16 And even if the election judges aren't aware of Section
17 208, they could use that. A lot of the partners that
18 are not covered by 203 in Cook County opted for getting
19 out the vote by going to early voting. That way
20 volunteers interpreters could be available.

21 One group, Korean group, targeted one
22 site in Glenview with the goal of bringing 1,000 people
23 to vote on one particular Saturday. I do believe they
24 brought 1,000 people. Unfortunately it overran the

1 site and only about 600 or 700 voters actually got a
2 chance to vote. They had to start diverting people
3 just by virtue of people not willing to wait several
4 hours to vote.

5 On the resource issue, just quickly, I
6 know one of the issues of 203 covers the entire
7 jurisdiction of Cook County. But our voting is with,
8 as you know, between the City and suburban Cook, and so
9 with respect to hiring an Outreach Coordinator, finding
10 and funding for an Outreach Coordinator. One of the
11 things we look for is having conversation with the
12 Mayor and the Cook County President talked about
13 synergy and finding places where it makes sense to
14 co-fund a particular thing. I think this might be an
15 appropriate place to have that discussion, because it
16 just simply wouldn't make sense to have an Outreach
17 Coordinator that only really focuses on a really
18 smaller segment of that population that needs the help.

19 MS. SCHAAFSMA: I'm conscious of the time.
20 One of the things that I know we have all observed and
21 really tried to figure out is how to find resolutions
22 of election judge training. It is interesting to me
23 listening to you because we talked activities in
24 essentially three counties. We had Cicero, which is in

1 Cook County. We had Waukegan which is in Lake County
2 and we had Joliet which is in Will County. And I'm
3 wondering if Lake County comes out far better. I'm
4 sure there is a demographic issue there. There is less
5 tradition in Will County -- in Lake County than there
6 is in Cook County. And I think Will County, because of
7 its population gaining over the last census, may have
8 some challenges that way.

9 It does occur to me and if anybody wants
10 to comment on that to look at those three jurisdictions
11 and ask two questions, what is the substance of the
12 judges training there, how does -- how are election
13 judges chosen. So I think that in Cook County
14 particularly I'm wondering if the way in which the
15 election authority accepts how judges are chosen
16 impacts how they respond to training. And if there is
17 something about the training that is different across
18 jurisdictions.

19 I happen to think that we need to
20 look -- I know this is like going to be a very, very
21 difficult road to hoe, which is re-centralizing
22 election authority in Illinois. It used to be a
23 centralized authority under the aegis of the Secretary
24 of State. And I'm not in our lifetime probably going

1 to see that. I think the more we talk about what a
2 decentralized election authority means to the
3 administration of elections in Illinois, the further we
4 are going to be able to make some of these
5 recommendations for reform with individual election
6 jurisdictions. The threat of having centralized
7 authority means something to any of these.

8 And, Andy, I think you referenced the
9 early voting. I am wondering to what extent
10 encouraging early voting, particularly since when we
11 talk about precincts in places like Chicago and Cook
12 County, precincts are doubling and quadrupling up in a
13 single location, so I would imagine was that for some
14 of your folks that is a greater barrier to their
15 ability to vote is that they have to navigate really
16 tight spaces and what that means in terms of where
17 people vote and the provisional issues in all those
18 things.

19 Those are sort of observations that if
20 you have time to comment or at least think about in the
21 future, I have some bearing on how we take this reform.

22 MS. JUDAR: One thing I forgot to mention
23 about Chicago and Lake County anyway, in fact, those
24 two reported that they do some pretty intensive

1 tracking and maintaining data on the issues that arise
2 by voting equipment, questions by voters. So they
3 collect data based on their post election review. And
4 then they communicate with the judges to determine what
5 went well and what needs improvement. They actually
6 learn from their mistakes. We didn't hear that from
7 the other election authorities.

8 MR. GREENBAUM: We want to thank everybody
9 very much for testimony you have given today. And I
10 know that Melissa, she also gave us a written
11 submission. If anyone else has anything in writing,
12 please feel free to do that. And this was very
13 illuminating for all of us and it will be used for
14 information going forward. Thank you very much.

15 (Applause)

16
17 (WHEREUPON the meeting was
18 adjourned at 5:33 p.m.)
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23
24

1 STATE OF ILLINOIS)
2)
3 COUNTY OF C O O K)
4

5 C E R T I F I C A T E
6

7 The within and foregoing meeting was taken
8 before GWENDOLYN BEDFORD, Certified Shorthand Reporter
9 in the City of Chicago, County of Cook and State of
10 Illinois.

11 IN TESTIMONY WHEREOF, I have hereunto set my
12 hand this 27th day of June, 2013.
13

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15 _____
16 GWENDOLYN BEDFORD, C.S.R.
17 No. 084-003700
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LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

DEPAUL UNIVERSITY

25 East Jackson Boulevard

Room 341

June 12, 2013

5:30 P.M.

PANEL:

MR. JON GREENBAUM

Chief Counsel, Lawyers' Committee For
Civil Rights Under Law

MR. BEN BLUSTEIN

Partner, Miner Barnhill & Galland P.C.

MS. MARISSA LIEBLING

Staff Attorney at the Chicago Lawyers' Committee
For Civil Rights Under Law

Reported by:

Gwen Bedford

Ref. No.: 9717

1 SPEAKERS:

2 MR. NANA OFORI ATTA

3 VOTER

4

5 MR. DANIEL MADDEN

6 Legal Advisor to David Orr, Cook County Clerk's Office

7

8 MR. LANCE GOUGH

9 Executive Director of Board of Election Commissioners

10 for the City of Chicago

11

12 MR. JEFFREY CUMMINGS

13 Partner, Miner Barnhill & Galland P.C.

14

15 MS. EVE RIPS

16 Legal Fellow, Chicago Lawyers' Committee for Civil

17 Rights Under Law

18

19 MS. RUTH GREENWOOD

20 Chicago Lawyers' Committee For Civil Rights Under Law

21

22 MS. MARTHA TRAWINSKI

23 Voter

24

1 MR. GREENBAUM: We're going to start Part 2
2 of this hearing. And because some people weren't here
3 at the beginning, we're going to do a short
4 introduction and then we are going to hear from --
5 about his experiences. And I believe he was also
6 Election Protection volunteer and then we're going to
7 hear from our second set of panels.

8 Again for those who weren't here
9 earlier, my name is Jon Greenbaum, the Chief Counsel
10 for Lawyer's Committee for Civil Rights Under Law. We
11 are the national leaders of Election Protection which
12 is a national largest national nonpartisan effort
13 designed to protect the rights of voters, and also seek
14 methods for electoral reform along this line based on our
15 experiences. We have been working in Illinois for a
16 number of years and working closely with the Chicago
17 Lawyers' Committee for Civil Rights Under Law. And we
18 have worked together to come up with this hearing today
19 to just talk about some of the issues that have come up
20 in recent elections. And with the idea that we may be
21 doing this in other places as well. We chose Illinois,
22 because of the experience, positive experience that we
23 had in terms of Election Protection and us working
24 together.

1 We want to give special thanks again to
2 DePaul School of Law for providing this wonderful space
3 for us as well as to the firms of Kirkland & Ellis and
4 Miner Barnhill and Galland for providing the
5 transcription services and the refreshments that we
6 have all been enjoying this afternoon.

7 I'm going to have my fellow panelists
8 introduce themselves and then we'll start our panel.

9 MS. LIEBLING: Thank you all for being here
10 again. And so far this has proved to be a very
11 informative event and I look forward to hearing from
12 more of you. My name is Marissa Liebling and I am a
13 staff Attorney at the Chicago Lawyers' Committee for
14 Civil Rights where I head up our voting rights project.
15 It is a project that we've recently revitalized and
16 have been doing a lot of work with the Election
17 Protection. This has started to give us a lot of
18 information on areas that have been very successive in
19 Illinois in terms of making sure that every eligible
20 citizen can vote, as well as things we would like to
21 see further improvement. And we are using this
22 information, as well as the information we're gathering
23 from events like today, to go ahead and advocate for
24 further reforms and make sure that every eligible

1 citizen is able to exercise their right to vote.

2 MR. BLUSTEIN: Good afternoon. My name is
3 Ben Blustein. I'm an attorney with the Miner Barnhill
4 and Galland here in Chicago. I want to thank both the
5 national and the local Lawyers' Committees for hosting
6 this event and I want to thank the witnesses for coming
7 to the talk to us today.

8 Very briefly, I have worked with Jon at
9 the Lawyers' Committee for several years during voting
10 rights work before coming to Chicago. And since being
11 in Chicago, I have helped out with the Election
12 Protection efforts here, along with Marissa and with
13 others. So why don't we get started with the
14 witnesses.

15 MS. LIEBLING: First, we are going ahead and
16 hear from a voter who is also an Election Protection
17 volunteer. Nana Ofori Atta is going to speak for a few
18 minutes and then we will go ahead and begin speaking
19 with representatives from the Cook County and Chicago
20 election offices.

21 MR. ATTA: Thank you so much. You did an
22 excellent job. Again, I'm Nana Ofori Atta. I am the
23 Managing Director of Realtime Solutions. But more
24 importantly, I am proud as a volunteer with the

1 Lawyers' Committee for Civil Rights Under the Law and the
2 Chicago Lawyers' Committee during this it, you know,
3 2012 elections. I had the pleasure of really engaging
4 in the process. For me, I'm very much dedicated to
5 democracy in government. I feel that its a
6 responsibility that we, as citizens, have and should
7 not take lightly.

8 I thought that the past elections were
9 very important because they demanded that citizens and
10 voters stand up and, you know, stand up and really
11 speak for themselves, organize their neighbors and vote
12 their conscience. And I think that the excellent work
13 that the Lawyers' Committee does help that process
14 along.

15 I worked -- my background is law
16 education and policy. I work a lot with just voter
17 education and voter mobilization. One of the things
18 that I think is very important is that citizens don't
19 take for granted the rights that we have. There are a
20 lot of demographic shifts right now. Other people
21 focus on the increased power of the Latino community.
22 But there are also increased presence in terms of the
23 the Asian community that we heard from, the African and
24 immigrant and Caribbean communities as well as Middle

1 Eastern communities, and partnership with, you know,
2 with other mainstream communities, I think is very
3 important. What I saw out there in the field, I saw
4 people who were awake at five o'clock in the morning
5 lining up, you know, to vote. Because it, you know,
6 they had seen through the news and experienced,
7 experienced information they saw that perhaps there
8 would be some challenges to their ability to vote. So
9 you had people who were lined up. Who had their
10 brothers, who had their sisters, who had their
11 neighbors there.

12 You had election officials who also were
13 very much ready for, you know, ready for that process
14 and serving the process. Of course, there were some
15 problems in terms that there were some places where in
16 terms of election hearings needed to be -- there needed
17 to be signs of prohibiting electioneering within
18 100 feet.

19 There also needed to be -- there needed
20 to be kind of a more pairing and matching of some of
21 the poll workers. The more experienced election judges
22 matching them with newer ones.

23 Also I think it is very important that
24 we ensure that the voter roll data remains current by

1 hiring more data entry people, by, you know, taking
2 care of that, because in each precinct that I worked
3 from 32, 17, 18, 35, 36, 37, 38, 39, there were
4 instances where voters, you know, the voter rolls were
5 not updated. That definitely needed to be taken care
6 of.

7 We need to continue the strength and the
8 training of poll workers. But I think also something
9 that I think is very important is that I think that a
10 lot of these community-based organizations here, there
11 needs to be more investment in these community-based
12 organizations that focus on voter education, especially
13 in the case of the appellate judges. People need to
14 really understand the appellate judges, their
15 background, their histories. There needs to be more
16 focus on that, because people know the major
17 candidates. They are being told what they are going to
18 do and who they should vote for. But I think that in
19 terms of the appellate judges is one of the most
20 important positions that you can vote for in your
21 community. So I think that that is kind of like what I
22 would like to see more. Just more investment and more
23 mobilization, more voter education. And so I thank you
24 very much for your time and thank you.

1 MS. LIEBLING: Thank you very much. Thank
2 you for coming.

3 MR. GREENBAUM: So with this panel we'll
4 begin with the two local election officials here, City
5 of Chicago, Cook County. We very much appreciate you
6 taking the time to come out and listen to people and
7 provide some thoughts as well. We have been trying to
8 limit people to five minutes. We're not going to put
9 those limitations on you and we're going to have the
10 two of you go --

11 MR. MADDEN: Do you know how dangerous that
12 is?

13 MR. GREENBAUM: -- one after the other and if
14 someone has questions, we'll ask them and allow you to
15 go on with your -- thank you very much.

16 MR. MADDEN: Thank you. I'm Dan Madden I
17 serve as the Legal Advisor to David Orr, the County
18 Clerk of Cook County, more importantly, the election
19 authority for suburban Cook County. Let me say the
20 obvious thing, and I'm sure you all know, is that Cook
21 County is divided into two election jurisdictions. The
22 board of Election Commissioners, City of Chicago, and
23 the County Clerk for the remainder of the county.

24 I have been working with David since he

1 became County Clerk in 1990. And it would embarrass
2 him to hear me say this, but he has striven for all
3 those years to make voting easier for people to
4 accomplish, to provide more choices for voters, to
5 expand the pool of voters and to ease the burden of
6 getting registered to vote. These have motivated his
7 activity as the election authority since he first took
8 office.

9 I want to talk a little bit about the
10 recent changes in the election landscape, some of which
11 we are now pretty used to, but which will continue to
12 shape the way elections are held. The most important
13 one, and the dramatic one is the rise of early voting.
14 Early voting began in Illinois in 2006. March of 2006
15 was the first time we had it.

16 At the beginning it was a bit of a
17 novelty. It was fewer than five percent of the votes
18 passed by early voting in 2006. In the November 2012
19 Presidential election it was over 23 percent.
20 Quintupling the number of people who cast votes.

21 One of the secrets we think for having
22 an effective early voting program, one of the ways you
23 avoid long lines that you saw in many places in the
24 country, is to have a sufficient number of

1 well-positioned sites. When this law was passed, we
2 obtained election data services to in effect apportion
3 the county, to divide the county in to equal areas
4 that would have an early voting site. We have 43 sites
5 in the suburbs. There are 120 Chicago suburbs. And
6 what that works out to is that 70% of the suburban
7 population can cast an early vote without leaving the
8 town in which they live.

9 There is one more site which responds to
10 the curious fact that the Cook County Clerk does not
11 have jurisdiction over -- does not have jurisdiction
12 over its site where its office is located. We are down
13 here in the loop and we maintain an early voting site
14 down here for the many people who live in the suburbs,
15 but come down everyday to work so they can take the
16 opportunity to vote before they go to work and after
17 they finish work or at lunch.

18 The early voting -- the rise in early
19 voting has meshed with the coming of electronic poll
20 books. And we have a live voter registration system.
21 The previous speaker mentioned keeping the rolls up to
22 date. When you go into early vote in our jurisdiction,
23 we look you up electronically in a computer in your
24 early voting site that's linked to the central records

1 downtown. So even if you registered yesterday, which
2 would be hard to do, if you registered just two weeks
3 before, because there is a two-week gap between your
4 registration and voting, your registration can be
5 found, determined and you can vote. That sort of thing
6 would be expanded to all the precincts in the future
7 like at the moment it is early voting.

8 There was a shift, as you may know, in
9 the early voting period in Illinois last year, 2012.
10 And I think it was often misinterpreted. The old
11 system stopped on the Thursday before the election.
12 That was the last day of early vote. Under the new
13 regime, you can vote early up to the Saturday before
14 the election. As you might imagine, the interest of
15 the voting population tends to peak toward the election
16 in addition to the first day of the weekend, first day
17 of the week, Saturday, has made a big difference in
18 turn out.

19 The first -- the original scheme which
20 had a week -- two weeks ahead of the election, the
21 first day was always full, but the days after that were
22 fairly nondescript days. So what we have done is taken
23 four, five nondescript days and turned them into two
24 high turn out days at the end of the process. You can

1 easily foresee that the time will come when early
2 voting will extend up until the day before the election.

3 There are administrative challenges to
4 that, of course, but it is obvious that it is coming
5 around the bend. We support that. We think that the
6 more opportunities to vote that voters have the more
7 things are. As we look to the future and continuing
8 the increase of the number of early voters, we are
9 pondering the prospect of supersites.

10 What we do now is having relatively
11 small sites in many suburbs, village halls, village
12 community centers, things like that. The possibility
13 exists for leasing for a month, empty big box stores
14 and putting them close to expressway exits, which allow
15 people to drive in easily, have lots of parking, get
16 out and vote in a site that would have two dozen or
17 three dozen machines, and then drive on their way. One
18 of the -- even in its densely populated suburban areas
19 in Cook County, the vast majority of people drive.
20 They drive to work. They drive to the store. And they
21 drive on a daily basis. We can't quite have drive-thru
22 voting. But that's something that we're definitely
23 contemplating in the future just to make it that much
24 easier or more accessible.

1 Besides early voting, Illinois now has
2 mail voting on a universal basis. That came in 2009
3 for use in elections starting in 2010. Lots of
4 communities like mail voting. It allows for leisurely
5 voting and reflective voting. The previous speaker
6 mentioned voting for appellate court judges. When you
7 ask for a mail ballot, you have it in your home, go on
8 line and look up the qualifications of the candidates
9 while you are casting your ballot. The biggest
10 challenge with mail voting, universal mail voting is
11 getting the word out to the population that it is now
12 okay to do this. That you don't need an excuse to vote
13 by mail.

14 When this started in 2010 and again in
15 2012, we engaged in an extensive publicity campaign,
16 public service announcements on the radio, bus ads,
17 posters, that sort of thing. And then on the back end,
18 the increased in mail voting predates a need to process
19 the suddenly increased amount of paper. What we have
20 found is that thanks a lot to modern technology we are
21 able to purchase a high-tech mail sorter that would
22 allow us to process the ballot envelopes when they come
23 in without actually human sorting the ballots. That
24 image is used to vet the vote and determine whether it

1 is improperly cast and cast by the person who it
2 was assigned. That the certification has been properly
3 filled out. And then that eliminates 40 or 50% of the
4 paperwork involved in casting ballots.

5 In northeast Illinois, unlike New York
6 City, we are not afraid of high speed vote counters.
7 As, you know, New York City has proposed to using --
8 because they can't count paper ballots fast enough. We
9 can, thanks to the technology.

10 MR. GREENBAUM: Can I ask you quickly, is
11 part of that technology that compares signatures?

12 MR. MADDEN: Yeah, signature comparison. The
13 signature comparison, there is an electronic scan of
14 the signature on a return certification envelope. And
15 the -- the office worker has that, and then brings up
16 the registration records and makes sure, and brings up
17 the application signature and can make a reasonable
18 judgment whether those signatures match. If they
19 don't, you really show a minutia. The first line
20 worker doesn't have the right to reject a ballot, just
21 bring to the attention of a supervisor who then gathers
22 the original materials and examines them, senior
23 clerks, in correlation with if the vote isn't counted.

24 If the vote isn't counted then it comes

1 up to a higher person, sometimes resembles me, and make
2 a determination of that. And then even if the ballot
3 appears to be irregular, a letter goes out to the voter
4 saying there's a problem with your mail vote. Here is
5 the issue. Can you contact us and see if we could
6 resolve it.

7 Usually this issue is the voter simply
8 has forgotten to sign certification. We get blank
9 certification. You send out a letter and depending on
10 their choice, we can send them a new ballot, this one
11 of the new ballots, or they can come down and sign it.
12 It depends. If they are a distant mail voter, they
13 obviously want a chance to cast a ballot. They are not
14 going to be able to come up and sign it.

15 MR. GREENBAUM: Somewhat related question.
16 You mentioned before that 23 percent of people voted
17 early in 2012. What percent voted by mail?

18 MR. MADDEN: Eight. That is roughly between
19 2008 and 2012 it went up 33%.

20 MR. GREENBAUM: So it is almost a third of
21 people are not voting at the polling place. And what
22 effect did that have in terms of polling place
23 operations?

24 MR. MADDEN: Well, in our case it allowed us

1 to reduce the number of precincts from 2400 to 1600.
2 What that means is, we have fewer election officials,
3 fewer poll workers. And we can have better poll
4 workers because we have that many fewer slots for that
5 facility. That allows for better training of poll
6 workers.

7 There was an earlier conversation about
8 multi precinct polling sites, that there are two or
9 three or four precincts at a single site, which works
10 out well if you have something like a high school
11 gymnasium. It also has the advantage that judges can
12 share technical expertise. If you have three or four
13 precincts, you'll often have one very well-informed
14 person.

15 MR. GREENBAUM: Do you tend to have a leader
16 if you have three or four precincts together to make
17 sure --

18 MR. MADDEN: Some form of direction. You
19 don't -- when the only distinction between precincts is
20 one is 27, one is 42 and one is 56 and one is 58, you
21 need some way of being directed.

22 That sort of segues into electronic poll
23 books. One of the advantages of an electronic poll
24 book, other than simply the recentness of the record,

1 but ultimately the situation of the voter record, is
2 that the voter comes into the wrong precinct with an
3 electronic poll book, the election worker can enter
4 that voter's address and immediately be told what the
5 right precinct for that voter is so the voter can be
6 directed to the proper precinct.

7 There is a pending change in Illinois
8 law that will allow provisional voters who cast ballots
9 in the wrong precincts to have their votes counted. It
10 is better to be in the proper precinct. One reason is,
11 they will go to that proper place the next time and the
12 next time and the next time. They won't be coming to
13 the wrong voting place. It is very important.

14 In terms of online matters, there was
15 discussion earlier about learning from your mistakes.
16 And one of the features that we used is what we call
17 the Automated Call Forum. Whenever a voter, or an
18 election judge or a poll watcher or a candidate calls
19 in on Election Day to the Clerk with a complaint or
20 issue, an electronic record is created and numbered and
21 time and date stamped, so that that issue can be
22 tracked by anyone with access to the system. So if
23 someone calls the Legal Hotline, which I always see,
24 with an issue that it is really a machine issue, we

1 don't have to say to them, "call this other person", we
2 can make a record of that. And then it could be dealt
3 with by a central transferring authority. We'll send
4 it to the right person to dispatch relief. And it also
5 allows you to see the resolution of problems. Quite
6 frankly at noon or one in the afternoon you could sit
7 down at an ACF machine and go through all of the issues
8 that have been recorded in the particular area for
9 which you are responsible and see how many have been
10 resolved, how many are still open, what the resolution
11 was.

12 More and more -- the metaphor used to be
13 that elections were like amphibious landings. You set
14 the election workers up there and you gave them all the
15 equipment you could, and gave them all the resources
16 you could, but they went out there and they executed on
17 their own without a lot of communication back to you.
18 More and more it is not that anymore. More and more
19 you have a -- it's a cliché, but it is a good cliché.
20 It's a wired polling place. The results get wired back
21 to the election authority, judges, the electronic poll
22 books are connected by computer connection to the
23 central authority. And if you early vote now, that
24 process of applying for your early ballot is vetted

1 electronically.

2 More and more we're seeing this where
3 even though we both have very large jurisdictions, over
4 one million registered voters, less and less will you
5 have a problem of inconsistent election administration.

6 MR. GREENBAUM: How do you communicate
7 with -- and this will be a question both of you maybe
8 can address separately. How do you communicate with
9 your poll workers?

10 MR. MADDEN: Now, we use people. We use
11 roving attorneys and the people we call "rovers" who
12 simply are trained election folks that go from place to
13 place. We communicate by cell phone. Every election
14 judge has a team with two or three people on it with
15 cell phones.

16 MR. GREENBAUM: Are you able to text? Let's
17 say something needs to go out to all 1600 poll workers.

18 MR. MADDEN: You couldn't blast text people.
19 I don't think we are quite ready for that because that
20 requires more coordination than you have gotten
21 together. It's certainly doable. But rarely, oddly
22 enough, rarely, at least in the past decade, that we
23 had an issue with so large. The vast majority of
24 Election Day problems tend to be precinct specific.

1 Machine isn't working, the machine doesn't seem to be
2 working, the voters are in the wrong place, is that
3 voter registered or not. There is electioneering going
4 on. Would you send out a team to discipline the
5 rowdies? That is the sort of thing -- usually by
6 Election Day, the larger issues have been resolved. It
7 is the small issues of execution that make up the bulk
8 of what you are doing on Election Day.

9 MR. BLUSTEIN: Talk about what you see
10 projecting into the future. The percentages that you
11 gave us a few minutes ago as far as voting by mail and
12 early voting, do you have a projection of what those
13 percentages would be in five years or ten years?

14 MR. MADDEN: We anticipate half at least. I
15 mean it may take all ten years. If the present trend
16 continues, especially early voting, it doesn't seem to
17 be any reason -- any less than half the ballots would
18 be cast. I call it the smearing of Election Day.
19 Election day is sort of pushed backwards. And the
20 very locution itself "Election Day" is going to be an
21 anachronism. It will be "an election" and process that
22 occurs over a number of days. It is so ingrained in
23 the mythology of American political life, is the notion
24 of Election Day. It would take a while for the notion to be diluted.

1 I don't think that is a going to happen.

2 We have seen the sophisticated national
3 campaign putting emphasis on early voting because it
4 avoids the possibility of Election Day -- it avoids
5 surprises, there is Election Day difficulties that
6 may not have been accounted for.

7 Early voting is an ongoing dress
8 rehearsal. It used to be in the '90s I would receive
9 phone calls from people saying the ballot is wrong.
10 And there is not an office on ballot that should be on
11 there. There is an office on the ballot that shouldn't
12 be on it. Very rarely that was true. We don't hear
13 that anymore because the ballots are all in use for two
14 weeks before the election is started. So it is never a
15 ballot issue anymore. It is just allows us -- it is a
16 sort of ramping up for Election Day. So that instead
17 of doing this one day sprint, you do this rather longer
18 process, but you have to gear up to it. You know it is
19 coming, so you're geared up for it obviously. You get into it
20 and you see how it's going.

21 You know, an unexpectedly high early voting
22 turnout in a particular race. A lot of what you are
23 doing I know concentrates on senatorial races, federal
24 representatives and President races. But in local

1 races, we are able to get a distant early warning, as
2 it were, of a hot race because of the early voting turnout.
3 It is, you know, disproportionately high in a community
4 compared to its neighbors. That is a place we want to put
5 resources on Election Day because you can anticipate an
6 equivalently high turnout on Election Day. So you
7 allocate resources for that. Be ready to move on that
8 one.

9 MR. GREENBAUM: A question again for both of
10 you. How does it work from a cost perspective to have
11 additional costs related to voting by mail, an
12 additional cost related to early voting,
13 counterbalanced by less cost on Election Day? Have you
14 worked it out in terms of how that balances?

15 MR. MADDEN: We make it balance. You have a
16 limited number of resources and a limited number of
17 dollars quite frankly. And nowadays, even local governments have
18 this issue. Even if we don't have gridlock in
19 Washington we still have financial issues. And on the
20 whole it has been -- it has worked out very well.
21 There has been almost a fortunate interlocking of the
22 increases and decreases.

23 It is -- our ability to reduce the
24 number of precincts made a great deal of difference.

1 There are fewer Election Day deliveries so that
2 contract isn't what it used to be. There are fewer
3 election officials to pay quite frankly, so there is
4 less money there. You print fewer ballots because
5 early voting takes place on touchscreen and there is no
6 ballot printing. You rent fewer places. We pay a rent
7 for the polling places. Everything about it becomes
8 cheaper when you can reduce the Election Day part. And
9 in fact I believe studies show it is cheaper to cast
10 and count a mail vote than to cast and count a precinct vote. There
11 are expenses associated. We provide postage paid
12 return envelopes for our mail voters so there is never going to
13 be a vote that doesn't count without a stamp, or a big
14 ballot, two stamps. That is not going to be an issue.
15 Even doing that, it still works out to our financial
16 advantage.

17 I have gone beyond probably ten
18 minutes. I just want to talk about the changes we are
19 going to see. The new legislation is passing in
20 Springfield to allow 17-year-olds to vote in primaries
21 by which they will be 18. We are looking for enrolling
22 a bunch of people for that. And online absentee ballot
23 application has been authorized. It assumes the
24 Governor signs the bill to officially apply online for

1 a ballot. It may not seem much as a convenience, but
2 towards the end the deadline for mail voting is five
3 days before an election. If you wake up on that
4 Thursday and you want to vote by mail, under the
5 previous regime it wouldn't be possible. Now, you
6 would wake up, request a ballot and have it by Saturday
7 evening, have it by Monday, because the rule says it
8 has to be postmarked by midnight the day before the
9 election. So it is entirely possible on the very last
10 day and lodge an online application -- so that may push
11 mail ballot voting up higher.

12 We've had great success with mail
13 voting. We wish it was larger. It works so well. A
14 lot of the changes -- one of the issues of election
15 officials is they -- election judges is that they only
16 practice their craft two days a year. And for voters
17 too. They are only voters a couple of times a year at
18 the most. And the habitual behavior is difficult to
19 break. You don't have many opportunities to change.
20 People who aren't used to the idea that they could vote
21 by mail, just because they want to, have a difficult
22 time absorbing it. The new voters coming in they will
23 expect that. They expect to be able to apply, get a
24 ballot online. They expect to be registered on line,

1 which would be coming. They expect that we're going to
2 fit in the world that they have grown up with. And the
3 more we're able to do that, I think we could break the
4 tradition that younger people vote in a lower level
5 than older people. If the voting process looks to them
6 more like the world that they are accustomed to seeing,
7 the more they will fit into the voting parameters. And
8 it is a lifelong habit. People who vote when they are
9 young, tend to vote all their lives. They don't fall
10 out of the habit. So there is optimism on that scale.

11 I have to do a commercial, forgive me.
12 We are going to have workshops dealing with the changes
13 in the new law. If anyone is interested, they should
14 contact our office, voting for 17-year-olds, or online
15 applications for registration or mail ballot. Contact
16 Gail Siegal our Director of Communications at
17 312-603-0993 or her able assistant, Mark, at
18 312-603-0988. We're looking for input and feedback on
19 these. I thank you for your attention.

20 MR. GOUGH: Thank you, Dan Madden. I don't
21 have -- both jurisdictions have been working together
22 on a lot of these problems and we meet weekly. My name
23 is Lance Gough. I am the Executive Director of the
24 Chicago Board of Election. The City of Chicago has

1 1,400,000 registered voters, one of the largest voting
2 jurisdictions in the United States. I have been -- I
3 have been the day-to-day Operations Manager of the
4 Chicago Board of Election, their Executive Director.
5 And this year marks my 25th year of being Executive
6 Director at the Chicago Board of Election.

7 As Dan Madden said, there is a lot of
8 similarities in the City of Chicago and the County of
9 Cook. The issue is that in the City of Chicago, we are
10 divided up into 50 wards. And we have an early voting
11 site in all 50 wards. I have 51 early voting sites and
12 I have one at our office at 69 West Washington.

13 We had approximately, 38 of our
14 registered voters early vote. It has turned out to be
15 a big success. This last election since the turnout
16 was a lot larger, the problem is that money seems to be
17 an issue with elections nowadays. There are a lot of
18 sites that are public buildings that we use for free.
19 But in some like the Park District, we could not use a
20 gym because it was rented out for a function and money
21 talks and we don't pay for any of those in any public
22 buildings. So we would get the smallest area. We did
23 make do with what we got.

24 We have approximately 14,000 poll

1 workers that we have to train. Every poll worker gets
2 a three-hour training class. Just consider we have to
3 train 13,000 people in less than 30 days, and we do it
4 in class sizes of 75. What we would like to do is get
5 75 individuals so we can train and they get hands on
6 training. And this is something that we have been
7 working on very diligently for the last several years.

8 In 2006 we went from punch card voting
9 to optical scan and the touchscreen voting. What we
10 found out that some of our older poll workers were not
11 used to the new technology. So what we did is we put
12 together a program and with the County, we worked
13 together, and called them polling places administrators
14 where they would have a two-day training on the
15 equipment. So they would know the ins and outs of the
16 equipment. And we had one in every polling place.

17 Due to funding constraints, we had to
18 have them roving. So we would have them go, each
19 administrator would go to three or four different
20 polling places to cut back the amount of money that we
21 spent on that project.

22 Another item that I would like to report
23 on is our High School Student Judge Program. I think
24 we have one of the largest programs in the United

1 States. We have over 2,000. When we first started we
2 only had 100 students back in 2000 that took advantage
3 of the High School Student Judge Program. Now we had
4 over 2,000 in 2008. We went up to 2800 in 2012, which
5 turned out to be a big success. And what was really
6 good for these students is that they felt that they
7 were getting their education and hands-on training and
8 learning about democracy. I mean what's better than
9 doing it on Election Day.

10 So they went through the training like
11 the rest of the judges. They had the same rights and
12 the same responsibility, but we found out in the
13 beginning our older judges were a little upset about
14 it, but now they are always asking, do we have any
15 young kids coming, somebody to help set up the
16 equipment. So it's worked out very well.

17 A couple of other items that we have
18 looking ahead is online voter registration. This will
19 change the face of elections in Illinois. There are
20 several of our close states that have online voter
21 registration. I spoke to the folks in Phoenix,
22 Arizona. Processing registration went from about 50
23 cents a registration to receive paper and do the data
24 entry to now it is less than eight cents. And young

1 people are used to doing everything online. So we
2 think that this will be a big boost to getting young
3 people to vote. They can sit back in their dorm room
4 on their iPad and register to vote and get that
5 information to them. So this is something that we're
6 really looking forward to in the future.

7 Also with online absentee voting,
8 everybody does everything on line. Young people don't
9 like to wait in line. They don't like -- they are
10 saying why do I have to sign a registration form. I
11 don't sign anything else. So something that we are
12 going to start promoting. Something that we are going
13 to look into that is going to happen sooner or later is
14 same day registration. It's coming.

15 In the City of Chicago we had -- we have
16 grace period registration, that Saturday prior to the
17 election was the cut off for registration. I came into
18 the office at about 8 o'clock and pulled up in the car
19 and walked down from the garage and saw a line of
20 people outside 69 West Washington. I said, "Did the
21 elevators or something break?" They were all there to
22 register to vote in the last election.

23 MR. GREENBAUM: Can I ask a question? If you
24 register to vote, let's say you register to vote on

1 that Saturday, and I can't remember early voting, early
2 voting was --

3 MR. GOUGH: This is different. This is
4 "grace period registration". Once you register to
5 vote, you must register to vote right then and there.

6 MR. GREENBAUM: Okay.

7 MR. GOUGH: We had 1500 people lined up down
8 Madison Street waiting to stand in line. Your last
9 minute people we were doing five or 600 a day. That
10 last day we had 1500. If we had online registrations,
11 we wouldn't have that anymore. So these are the items
12 that we're hoping that will bring some change.

13 Just to let you know, and as I said, Dan
14 Madden, I have known him forever. I have been
15 Executive Director for 25 years. Elections aren't
16 getting any cheaper. They are getting very costly.
17 Cost of technology. We have eliminated polling places.
18 The problem is when you eliminate polling places, your
19 older voters want to know "why are you doing this to
20 me". And for this 2012 election, the census had just
21 passed, and the City Council took their time passing
22 new ward lines, and then in the middle of 2012, I had
23 the task of redistricting the whole City of Chicago and
24 had to do it within 48 days. This is something

1 redirecting by ward lines takes anywhere from a year to
2 a year and a half. We did it in 48 days.

3 We did do a mailing to every registered
4 voter letting them know where their early voting site
5 was, where their polling place was. We found out it
6 was amazing how many people didn't read their mailing,
7 but then we found out how many people did. We saw
8 people carrying that postcard into the polling place
9 with them. We saw them carrying it into the early
10 voting site with them.

11 So, you know, the voter has a
12 responsibility also. We do. And I take my job very
13 seriously. Like I said I have been there 25 years. I
14 live and breathe elections.

15 MR. BLUSTEIN: Working with Election
16 Protection I have had the pleasure of working with your
17 offices and cooperating and coordinating, you know.
18 For the past several election, Election Protection has
19 hosted a hotline where we have volunteers come in and
20 receive telephone calls from voters who are having
21 problems throughout the area of Illinois. And, you
22 know, the last election cycle there was a lot of calls
23 that we received about confusion about polling places.
24 And so I'm interested in the idea that your office

1 developed about addressing that problem, making sure
2 that voters are in the right polling places.

3 MR. GOUGH: Well, we did, we talked about,
4 Dan Madden spoke about the poll books. We are going to
5 put poll books in place. Also we are going to have
6 where we just are testing it out, but we found out so
7 many people are texting now, you could text your
8 address and find out where your polling place is.

9 We have redone the websites, so it has
10 made it a lot easier. These are the things that you
11 could do with technology that we had learned from some
12 issues that we are going to take care of it.

13 MR. GREENBAUM: I want to hear that again.
14 You said that a person can text their address and
15 find out where their polling place is?

16 MR. GOUGH: Yes.

17 MR. GREENBAUM: Is this statewide or is this
18 the City of Chicago?

19 MR. GOUGH: City of Chicago.

20 MR. MADDEN: And we both have, in addition to
21 that, a system where if you are online, you could enter
22 your address online and get your registration
23 confirmed, get your ballot and get your polling place.

24 MR. GREENBAUM: The powerful thing about

1 texting, somebody could do that while, if they go down
2 to the polling place and all of a sudden it has
3 changed.

4 MR. GOUGH: Same thing where you could go on
5 the website. Smartphones now almost everybody has
6 them. We are taking advantage of them. So we're
7 trying to make this easier for the folk.

8 MR. MADDEN: We mailed before every election
9 to each household, voter household, just a mailer
10 telling them when and where their polling site is, when
11 it will be open, which never changes and where they're
12 close to an early voting site in multiple languages.

13 MR. GOUGH: In several languages.

14 MR. MADDEN: As Mr. Gough says, some read it
15 and cling to it. Some people don't.

16 MR. GOUGH: And because we had redistricting
17 going on, we did a mailing to every person, every
18 registered voter. It is not a cheap thing to mail out
19 to every registered voter. So it is something that we
20 took very seriously with this redistricting.

21 MR. MADDEN: The City is at a big
22 disadvantage. No one can move our voters around. If
23 you live in Palatine township, that is where you live.
24 It isn't going to change. But people's wards are

1 changed and I think it is completely outside of the
2 election authority except to tell them.

3 MS. LIEBLING: Two quick follow up questions.
4 You both mentioned the use of electronic poll books --
5 a lot of the issues that we saw on the Election Day
6 with people being confused about where to go. Can you
7 talk a little bit about what you think your timeline is
8 to implement those on Election Day throughout the
9 jurisdiction.

10 And my other question is, I have seen as
11 an Election Protection worker, the use of being able to
12 text and receive location information being a very
13 valuable tool. And does that include the actual
14 precinct number. Because I know being able to tell the
15 election judges what precinct you are in, in addition
16 to address, sometimes we could get people to the right
17 place and then as you said the precinct consolidation
18 we want to make sure that they are getting to the right
19 table?

20 MR. GOUGH: When you text it, it gives you
21 your precinct, your ward, the address of the place,
22 what location and where is the pooling place located.
23 If it is in a gym or down the hallway. So that has
24 been very useful.

1 MR. MADDEN: As for electronic poll books, we
2 ran a pilot program in parts of two townships the last
3 time around. And will be expanding that in the general
4 primary to full townships we trust to see what works
5 and doesn't work. I would say the timeline would be,
6 if not 2014, certainly 2016.

7 MR. GOUGH: We are looking for the same
8 thing.

9 MR. MADDEN: You can talk.

10 MR. GREENBAUM: Do you mind saying your name?

11 MS. SIEGEL: My name is Gail Siegel. I'm the
12 Communications Director for the Cook County Clerk's office.
13 The mobile tool that we have that you can use with the
14 Smartphone will actually operate with the QR code.
15 That is on any of the public information materials and
16 you can go to the voter information tool and you can
17 look up not only the polling place, but it also links
18 to a map to your polling place and comes up with your
19 ballot, all the offices listed on the ballot. So it
20 not just simply telling you that you are going to a
21 particular church or school. It is exactly your
22 precinct number.

23 MR. GOUGH: And when you are online, you
24 could actually pull up your ballot and see which

1 candidate you are voting for.

2 MR. MADDEN: Like a rock concert. Anything
3 else from the panel?

4 MS. LIEBLING: Another thing that we have
5 heard frequently from today is to make sure that
6 provisional ballots are properly issued or language
7 assisted, disability and making sure there is properly
8 trained judges is really at the heart of many of these
9 matters, but limiting -- realizing that you obviously
10 have a lot of resource limitations, as you said with
11 having to train some many election judges in a short
12 period of time and making sure everyone is trained, if
13 you were able to send more resources that would go to
14 polling place management or election judge training,
15 what is an area that you think you could apply it to
16 that would make the difference. Is it as you said
17 before, having a polling place administrator who has
18 more training roving around, or are there other things
19 either within your jurisdiction or other jurisdictions
20 in Illinois that if you had these resources you would
21 make a big difference in polling place management?

22 MR. GOUGH: I'm glad you said that. I just a
23 couple of months ago I was invited to speak in South
24 Africa in their elections. And it is funny in South

1 Africa on Election Day the Election Department has
2 control of the whole country. They have control of the
3 police, the fire. The same with a lot of other
4 countries like India, Brazil. They have one judge who
5 is in charge of all the elections. So he can get
6 whatever polling place he wants. He can get the
7 largest room. They are not paying for it. So these
8 are the things that would be nice if we had actual
9 control of what we need to get for the election like
10 larger rooms to do early voting.

11 Where we right now in the City of
12 Chicago and the State of Illinois, our judges appointed
13 by the party system from a list that we receive from
14 both Democrat and Republican Party. We would like to
15 get one independent person out there that we could
16 train to make sure they have like your polling place
17 administrator that have all the tools to operate with
18 that have gone through two or three days of training.
19 That person right there if we had them in every
20 precinct would stop a lot of problems, especially when
21 coming up with poll books. Can you imagine I have an
22 82 -- year-old judge of election looking at laptops
23 saying "What do I do?" And when we have seen in other
24 jurisdictions that even though we give our poll workers

1 training and we have them go through a test, they can't
2 spell the names sometimes. So they are sitting there
3 trying to type out a name on a poll book that is
4 incorrect. And the State of Illinois, you do not need
5 to have any ID with you to go vote. Your name is in
6 the book or we have a record of it.

7 A lot of other jurisdictions around the
8 United States have their driver's license where they
9 could swipe it in. Once they swipe it in, it brings up
10 the voter registration. So that's the kind of thing
11 that we're looking at with our poll books where we can
12 actually have the voter control, here is my driver's
13 license, swipe it and bring my name up, or tell the
14 poll worker who they are.

15 MR. MADDEN: This raises the spectrum too
16 much voter ID to vote.

17 MR. GOUGH: We are very conscious on that.
18 We do not believe that you need an ID to vote. But
19 when you go to early vote, you must show a photo ID.
20 So these are things that you need to really look at.
21 If you have same day registration, that is going to be
22 an issue.

23 MR. MADDEN: I think Lance mentioned the
24 electronic poll books. There may be some difficulty

1 with some judges adapting to it. What our experience
2 was, the pilot program was judges managed rather
3 handily. We have a system where the data is entered. Because a
4 signature is required, a label is spit out of a laser printer
5 and put on a piece of paper and the voter signs it and they do the
6 signature comparison from that. So you have a record of the
7 signature in case of recount or election contest, and if any
8 additional affidavits are required. If you seek
9 assistance for the language or inabilities --
10 disabilities, there is a record made of that. And who
11 assisted -- if somebody assists too many people, it
12 leaves a paper trail. But the issue of lines is
13 primarily an issue of checking. And one of the things
14 you have to say about optical scan ballots is they fill
15 out rapidly. They are easy to fill out.

16 MR. GOUGH: The largest ballot in the United
17 States.

18 MR. MADDEN: Primarily because of that,
19 because this long list of retention judges, I don't
20 think anyone thinks that it is an unique feature.

21 MR. GOUGH: We have the largest unit of
22 government voted for in the United States.

23 MR. MADDEN: Lance mentioned high school
24 judges. There is also a parallel college and

1 university judge program as well. We've been getting
2 very good judges out of -- we have a great judge
3 coordinator for that. Obviously, they are -- if we
4 could put one in each precinct, we would have someone
5 that could work the computers for sure.

6 Election judge training, we, like the
7 City, have training in the suburbs in various places
8 during the period before election. The law requires
9 the judges to take training to be certified. Election
10 judges are a hybrid. They are nominated by the
11 governing authority and it is confirmed by the Court.
12 So technically election judges they are officers of the
13 court.

14 And training is an issue. Sometimes it
15 cost more to rent training facilities than it does to
16 rent polling places. So you do want to have Lance make
17 the 75 -- get a bigger -- just to get everyone trained.

18 One of the hidden factors in
19 administering elections, you never hear about it, is
20 election judge retention. Trying to make sure that
21 your election judges return. It requires experience.
22 Just so they become used to dealing with the voters on
23 Election Day. So much easier for a judge who has been
24 through three or four elections to deal with an

1 challenges of elections than someone who is new in
2 office. They have a sense of -- it is like a surgeon.
3 Ideally you want to be opened up by a surgeon who when
4 he or she sees something odd, never seen that before.
5 I remember that. I was back in med school. I remember
6 that one. That is a real advantage. You don't hear
7 election judge retention. In most places, poll worker
8 retention, skilled as it is important in election
9 machinery.

10 MR. GOUGH: One more comment before we stop.
11 I would like to introduce Mr. Jim Scanlon. He is my
12 attorney at the Chicago Board of Elections. On
13 Election Day he oversees a phone bank of 78 attorneys
14 that answer phones and we have a program that's called
15 Ask -- where we enter this information in the system so
16 we know if there is a problem.

17 We also have 300 off duty law officers
18 that we send out in roving vehicles, that we send out
19 to stop electioneering or any kind of problems that are
20 out there.

21 Somebody made a comment about voting
22 machines breaking down. The thing is in every precinct
23 we have a paper ballot. So if the machine breaks down,
24 you don't stop the voter from voting. The voter still

1 marks its ballot. We will get somebody out there to
2 fix that machine. We have an auxiliary ballot box.
3 They take that ballot off and then feed it back in.
4 Nobody stops voting. This is something that we would
5 like to let everybody know, that you do not stop
6 voting.

7 One last item because I'm hearing
8 another conversation, it is provisional ballots. In
9 this last election we had less provisional ballots than
10 we ever had. We had less than 20,000. Out of that
11 20,000 after reviewing them, we only counted 890. So
12 provisional ballots are way down.

13 MR. GREENBAUM: Why is that?

14 MR. GOUGH: Well, of the mailing that we are
15 doing. I think people have gotten the information that
16 either they are registered or not. And we look at a
17 lot of those people that they voted provisional because
18 A, they didn't register. And they figured, hey, what
19 is the -- I still want to vote. And instead of a judge
20 arguing with a voter, they give them a provisional
21 ballot.

22 In fact in Los Angeles County, they had
23 anywhere from 80 to 100 and something thousand
24 provisionals. And out of that it was about a third.

1 MR. MADDEN: I can't speak to LA County. The
2 act of a non-registered individual given a provisional
3 ballot application is not just to charade. If you are
4 not entitled to -- that application becomes -- you are
5 registered the next time. So data that is gathered is
6 used in registration.

7 MR. GREENBAUM: Thank you very much. And
8 actually as you may not have been here at the beginning
9 when I mentioned we would be sharing this information
10 with the Presidential Commission on Election
11 Administration. And I actually think they will find a
12 lot of what you say to be helpful.

13 MR. MADDEN: We did prepare written testimony
14 to redistribute to the members. We'll leave it. Thank
15 you again. Are you going to have further proceedings?

16 MR. GREENBAUM: Yes.

17 MR. MADDEN: We'll get out of the way.

18 MS. LIEBLING: We are going to start with
19 Jeff Cummings from Miner Barnhill and Galland.

20 MR. CUMMINGS: Good evening, everyone. The
21 top of my remarks will be a little bit change of pace
22 from what we have heard so far in this panel.

23 I would like to share a historical
24 perspective on the impact of the Voting Rights Act and

1 the impact that the Act has had on the electoral
2 opportunities of African-Americans and Latinos in
3 Illinois, as well as the current role that Section 2 of
4 the Voting Rights Act plays at the present in providing
5 equal opportunities for African-Americans and Latinos.

6 Here in the Illinois we have been
7 fortunate not to have some of the more extreme
8 impediments and abuses in voting systems that you have
9 seen elsewhere such as poll taxes or literacy tests.
10 And we've also seen in the history of Illinois some, I
11 guess I would say spectacular electoral success by
12 African-Americans and Latinos. We've had two elected
13 African-American senators. We had our first Latino
14 congressman in the midwest elected and other statewide
15 officials.

16 At the same time and it is equally true
17 that throughout the history of Illinois in various
18 places there has been racially polarized voting which
19 has worked to suppress and dilute the voting
20 opportunities for African-Americans and Latinos.

21 It may seem paradoxical in a way that
22 you could have, for example, in Cook County --
23 African-American County Board President, which you have
24 polarized voting that exist, as existed in the '80s

1 and '90s and perhaps even through the day, depending on
2 the election, that has worked to reduce electoral
3 opportunities.

4 In my testimony today, I would like to
5 briefly discuss a few of the more important cases where
6 the Voting Rights Act has come into play and it's
7 provided enhanced opportunities. Before I get to that,
8 just as a little bit of a background about the Voting
9 Rights Act itself.

10 Section 2 of the Voting Rights Act is
11 the section that applies all across the country and is
12 intended to make sure that electoral opportunities and
13 the electoral process provide the equal opportunity for
14 voters in that they are not held back because of race,
15 color or any discriminatory reasons.

16 Prior to 1982, Section 2 of the Voting
17 Rights Act required proof of intentional
18 discrimination. And that has, in voting matters,
19 usually very difficult to prove intent in designing a
20 voting system. But in 1982 Congress amended Section 2
21 of the Voting Rights Act to provide that you could
22 prove a violation based on the result that a particular
23 electoral system provided. So that you no longer had
24 to prove intent. And consequently Voting Rights Act

1 Plaintiffs are now required to show only that the
2 challenged system or practice in the context of all the
3 circumstances in the jurisdiction in question results
4 in minorities being denied equal access to the
5 political process.

6 So with that change the Voting Rights Act
7 really, Section 2 of the Voting Rights Act in some
8 sense came alive in the early 1980s and the effect of
9 that was seen in Illinois. One of the landmark cases
10 that we have here, a case that was captioned "Ketchum
11 vs. Byrne", Jane Byrne was our Mayor back at some point
12 during the 1980s in the City of Chicago, was a lawsuit
13 filed by African-American and Latino Plaintiffs against
14 the City of Chicago challenging the 1981 plan for the
15 redistricting of Chicago's 50 wards. The challenges
16 were brought under the Voting Rights Act as well as the
17 14th and 15th Amendments, which by the way still
18 requires proof of intentional discrimination.

19 In essence the Plaintiffs challenged two
20 main aspects of this City's ward map. One is referred
21 to as "packing". And packing takes place where you
22 have a geographically concentrated group of minority
23 voters who are placed into a district in numbers that
24 are in excess of what is needed to provide them with

1 equal opportunity to elect a candidate of their choice.
2 And here in Chicago we had some wards that have been
3 drawn where they have been 95, 98% African-Americans,
4 for example. Part of that is a function of the
5 residential segregation that we have here. We had here
6 in the '80s and '90s and still continues to the present
7 day in the City of Chicago so that in certain parts of
8 town we were creating a ward map and you are going to
9 naturally have majority of one group or the other
10 drawing lines. So packing is one of the elements of
11 it.

12 Another challenged tactic or challenged
13 mechanism is called "fracturing". What fracturing is
14 is again you have a geographically, concentrated
15 minority group and the boundary lines of the district
16 will slice off a number of voters and place them into a
17 majority white district in numbers where they do not
18 constitute an effective political voting group.

19 Now, proof of a Voting Rights Act
20 violation is always premised on the presence of
21 polarized voting. You must prove that. And that
22 typically has two components. One is a showing on
23 behalf of the Plaintiffs that the minority group voters
24 are cohesive. They tend to vote together. They tend

1 to have common candidates of choice inside the group
2 itself.

3 The second component of proving
4 polarized voting is that the votes of the majority
5 regularly defeat the candidates of choice of the
6 minority voters. Since you have a cohesive minority
7 vote taking place and then you have a majority vote
8 which works to feed the minorities' preference, and in
9 that situation you have a polarized vote.

10 Getting back to the Ketchum vs. Byrne
11 case, the Plaintiffs, African-Americans and Latinos
12 allege both this packing phenomenon of packing the
13 wards full of the minority groups and also the
14 fracturing, a splitting off groups into majority white
15 wards, the Plaintiffs prevailed in that case. And the
16 result of that case actually had a tremendous impact on
17 the political dynamics in the City of Chicago in the
18 1980s.

19 In 1983, the first African-American
20 Mayor was elected in the City of Chicago, the late
21 Harold Washington. And when he came into office and
22 his election itself was a polarized vote, racially
23 polarized vote where he was overwhelmingly favored by
24 African-American/Latino population, he had some white

1 support, and he had his opposition vote consisted
2 entirely of white voters in the city. It was a very
3 racially polarized vote.

4 Once he got into office, the aldermen
5 divided themselves into a group of 29 and a group of
6 21. The 21 aldermen who supported the Mayor were all
7 the African-American aldermen and some of the
8 progressive white aldermen. And the 29 aldermen were
9 28 white aldermen and one Latino who robotically
10 blocked whatever Harold Washington intended to put in
11 place.

12 When the Ketchum case is decided in a
13 special election ordered by the Court, additional
14 African-Americans and Latino aldermen were elected and
15 it shifted the balance in the City Council from 29-21,
16 to 25-25. The Mayor was able to cast the deciding
17 vote. So he was able to move his agenda forward. And
18 the city itself, the political process loosened up a
19 bit in the city itself, so initiatives and policies
20 were actually being enacted at that point in time. So
21 that decision really made a difference in the '80s in
22 Chicago.

23 The polarized voting that I discussed
24 was not limited to the City of Chicago itself, which is

1 another thing to keep in mind. Sometimes when people
2 think of Illinois, they just see Chicago, but there are
3 many other municipalities in other areas of the state.

4 In the mid 1980s, for example, there was
5 a case in Springfield, Illinois captioned McNeil vs.
6 City of Springfield. And in that case the City of
7 Springfield had an "at large system" of electing its
8 City Council members, which simply meant rather than
9 being divided into wards and districts, everyone in the
10 city could vote for the number of representatives that
11 they had.

12 When that system was put in place,
13 between 1911 when that system was put in place to the
14 mid 1980s when that system is challenged in court, they
15 never had an African-American City Council member
16 elected under that system. And so the Plaintiffs
17 challenged that "at large system" and said there is
18 racially polarized voting. African-Americans, who were
19 about 10 or 12% of Springfield's population at that
20 time, votes were being submerged and basically
21 neutralized. Because of the polarized voting, they
22 could not elect candidates of their choice.

23 The court ordered the City of
24 Springfield to be redistricted into single member

1 districts. And now at the present time two of the
2 district council members are African-Americans. So
3 that was actually a change of the system from "at
4 large" to single member district. And that's something
5 that took place in many areas across the country. You
6 saw at large districting schemes replace the single
7 member districts.

8 Section 2 has also played a major role
9 in the shaping of Illinois' Congressional Districts.
10 And in 1991 following the 1990 census and actually
11 following every census, the Congressional Districts
12 throughout the country had to be redistricted in order
13 to account for population shifts.

14 In the 1990s, as a consequence of the
15 1990 census, Illinois lost two of its congressional
16 seats. So it went from 22 down to 20. And the
17 Illinois legislature was given the task of redrawing
18 the congressional districts in part because they had to
19 choose to eliminate two congressmen. They couldn't get
20 the job done and they left the task to the federal
21 court. So you had the Democratic Party, the Republican
22 Party and also a group of African-American and Latino
23 Plaintiffs who joined together and argued that the
24 three majority African-American congressional districts

1 in and around the Chicago area should be retained, but
2 also that a new majority Latino district should be
3 created in the Cook County area. And the rationale for
4 that, the Plaintiffs argued that the Voting Rights Act
5 actually required maintenance of the three
6 African-Americans districts and the creation of the
7 Latino district because of if you did not create those
8 four districts you would have a violation.

9 And Plaintiffs presented evidence of the
10 polarized voting, the ability to create the new Latino
11 district and retain the African-American districts, and
12 they were able to prove that such a plan should be put
13 in place. And the federal, the three-judge panel of
14 the federal court agreed and created the first majority
15 Latino congressional district in the midwest.

16 One interesting element about that case
17 which was very important for the Plaintiffs to work
18 together is that you have in the City of Chicago Latino
19 population concentrated on the northwest side and on
20 the southwest side. So in order to connect those two
21 population groups in the one district, the simplest
22 thing to do has been to just run a little connection
23 just straight down the middle of the city. The trouble
24 with that is, that would have cut through the middle of

1 the 7th Congressional District, which is a majority
2 African-American district. So the compromise to
3 preserve the African-American districts and create the
4 Latino district are in connection and run around the
5 western edge of the African-American district to
6 connect it to the Latino population. So it kind of
7 looks like an earmuff placed on its side. And it
8 worked out. Everyone -- the Plaintiffs agreed to that
9 configuration. It was upheld in court and put in
10 place. But that was not the end of the story for that
11 congressional new Latino Congressional District.

12 In 1995, a voter challenged the creation
13 of the Latino majority district claiming that it was
14 drawn based on race and that that was a violation of
15 the Constitution's Equal Protection Clause. And so the
16 folks who had been the Plaintiffs to create the
17 district went on the defensive and now had to defend
18 that district against this constitutional challenge.

19 The case went to the Supreme Court two
20 times, went to a three-judge panel that ruled that the
21 district was constitutional because although it was
22 drawn based upon -- predominantly based upon race, it
23 was done to remedy what would have been a violation of
24 the Voting Rights Act, and that was a compelling state

1 interest to use race as a factor in creating the
2 district.

3 And ultimately on the second time the
4 Supreme Court affirmed that. And this was actually one
5 of the very few Congressional Districts across the
6 country, majority minority districts to survive that
7 kind of strict scrutiny that the Supreme Court held as
8 necessary to authorize one of those districts to be
9 drawn in that fashion. And so the Congressman, Luis
10 Gutierrez, still sits in that seat today and now it has
11 survived that constitutional attack and it is well
12 entrenched in Illinois.

13 The final case I would like to briefly
14 discuss is the challenge that took place in the city's
15 ward map again in the 1990s. So you have a violation
16 in the 1980s. The 1990s come around. This time the
17 City's map was put in place by a referendum so that you
18 didn't actually see a map on the ballot, but you saw a
19 list of aldermen who is supporting one map versus
20 another and it was put to the voters. The map was
21 adopted in a racially polarized vote, meaning that the
22 African-American voters overwhelmingly supported one
23 version and the white voters overwhelmingly supported
24 the version that was enacted.

1 Following enactment of that map,
2 African-American and Latino Plaintiffs again sued the
3 City of Chicago again alleging that the way that the
4 ward boundaries were drawn had the effect of diluting
5 the voting strength of the African-American/Latino
6 community.

7 This case was very hotly contested, to
8 say the least. The trial itself spanned 48 days in
9 court, 48 trial days, and I believe it is the longest
10 Voting Rights Act filed in the history of the Voting
11 Rights Act. We tried that case and then we had an
12 additional three days after an appeal. There actually
13 are were two appeals on the merits of the case and an
14 additional couple of appeals concerning mandamus
15 petition and attorneys fees.

16 At the end of the process in 1998, the
17 federal judge ruled that the map in fact violated the
18 voting rights of the City's African-American population
19 and ordered a new map to be put in place on the
20 southwest side of the city where it took place.

21 Perhaps the most notable thing about the
22 Barnett case is its ongoing -- it kind of set the
23 parameters for when you would find a Section 2
24 violation at least in the Seventh Circuit.

1 The Court of Appeals held that citizen
2 voting age was the appropriate measure to look at when
3 you are determining whether it is possible to create
4 additional majority/minority districts. And also
5 citizen voting age is to be considered when you look at
6 whether or not a particular minority group is
7 proportionally represented. Meaning does the
8 representation in the City Council mirror its share of
9 the population.

10 Now the Voting Rights Act does not
11 require proportional representation and proportional
12 representation is not an absolute bar to bringing a
13 successful Voting Rights case. But a map that provides
14 that by the citizen voting age measure will in most
15 circumstances provide a city or another jurisdiction
16 with a pretty strong defense to a Section 2 challenge.

17 So what you see in the 2000s, after the
18 2000s census and after the last census in 2010 there
19 has not been any serious Section 2 challenges to the
20 City of Chicago's ward maps, because the maps were
21 drawn in a way that seemed as complied with, roughly
22 compliance with what the rules were as it related in
23 the Barnett case.

24 Now, in the future, just very briefly,

1 one thing that occurs whenever there is a legislature
2 remap, redistricting, whether it's state legislative
3 districts or the congressional districts, the Voting
4 Rights Act, in compliance with the Voting Rights Act is
5 always a factor in determining whether whatever
6 districting map has been put in place is in compliance
7 with the law.

8 Sometimes the various parties will argue
9 well, our map complies with the Voting Rights Act and
10 the other does not, and each side will make these
11 arguments and the Courts who consider these maps,
12 always consider the Voting Rights Act and determine if
13 a map that they approve is in compliance.

14 And so at this point just in closing I
15 think that Section 2 of the Voting Rights Act provides
16 a protection that offers African-Americans and Latinos
17 in Illinois an equal opportunity to participate in
18 anything in a broader sense in the electoral process.

19 MR. GREENBAUM: First of all, let me say that
20 having litigated Section 2 cases and having tried to
21 explain them to people, you did an excellent job in
22 terms of trying to explain what are extremely --
23 Section 2 cases on their own are extremely difficult.
24 And certainly Section 2 cases in Illinois particularly,

1 the congressional cases and the one involving the City
2 of Chicago has been unusually complicated among the
3 Section 2 cases. First of all I want to say great job
4 in explaining the cases.

5 So essentially what you said in the
6 '80s and the '90s there was a lot of Section 2
7 litigation that resulted in African-Americans and
8 Latinos being able to have a choice and not so much
9 during the times since. If you didn't have Section 2,
10 what difference do you think it would make in terms of
11 the redistricting process?

12 MR. CUMMINGS: Well, I think there would be a
13 huge impact because my involvement since really the
14 early 2000s has actually been probably more in the
15 process of consulting with folks who are drawing the
16 maps. And they know, the office voters know that
17 Section 2 compliance is a must. In fact in the latest
18 county, redistricting in the County Board districts,
19 that was a first starting point that we had to comply
20 with the Voting Rights Act and every other
21 consideration that might come into redistricting had to
22 be shaped around that.

23 If you took Section 2 away or Section 2
24 weren't in the picture, then these other considerations

1 which control the drawing of district boundaries which
2 range in things that seem to make a lot of sense to
3 some things that don't make much sense except to the
4 office voters themselves, would rise to the top and I
5 believe there would be more dilution taking place here
6 within that Section.

7 MR. BLUSTEIN: You talked a little bit about
8 collaboration among different minority groups in terms
9 of congressional redistricting in the past. Looking
10 ahead in the future, do you see what kind of
11 collaboration do you see occurring, cooperation or
12 collaboration.

13 MR. CUMMINGS: I think its essential on a
14 couple of levels. Number one, just on a very practical
15 level in terms of resources, if you have more than one
16 minority group who are suing and challenging a map or
17 redistricting plan, you could work together and pool
18 your resources which we have done pretty much in every
19 Voting Rights case that I have been involved with. We
20 have always worked often with the Mexican-American
21 Legal Defense Fund and attorneys for other groups who
22 have also been suing. But it is also very important on
23 a strategic level, if you have areas of whatever
24 jurisdiction you are talking about where maps could be

1 drawn one way or the other, when you want to propose
2 alternative maps, it is very helpful to be working with
3 the other folks who are suing or the other groups that
4 may be impacted by a change in boundaries.

5 The other thing that is important is not
6 to have be divided in terms of various legal arguments
7 that could be made against -- by a jurisdiction that's
8 defending a map. For example, with the citizen voting
9 age population issue. In the City redistricting in the
10 Barnett case it was our position that total
11 population -- we represented African-Americans. We
12 worked with the Mexican-American Legal Defense Fund.
13 We argued the total population really should be the
14 measure, the relevant measure that you should use in
15 measuring proportionality. The City of course wanted
16 the citizen voting age population, ultimately adopted
17 by the Court, but it enhances the prospects I think for
18 all Plaintiffs to succeed if they work together and
19 coordinate their efforts whenever possible. It is
20 facilitated here in Illinois because of the residential
21 segregation patterns, often the areas where the Latino
22 vote voting stream is being diluted. In most instances
23 in a different area than the African-American voting
24 stream is being diluted. So that there is not a

1 conflict or a dispute over the same, redrawing the same
2 part of town for both Plaintiffs often, not always.

3 MR. GREENBAUM: Thanks, Jeff. Maybe we
4 should do a time check, because I want to make sure --
5 we may have some voters here. We have two more
6 panelists to testify, but I also want to see if we have
7 voters who want to have a chance to testify as well.
8 Thank you, ma'am. We're going to make sure we get you
9 in.

10 Anybody else? Okay. So we're going to
11 hear the two panelists and then the lady who just
12 walked in.

13 MS. TRAWINSKI: Thank you.

14 MS. LIEBLING: We will now hear from Eve
15 Rips who served as an Election Protection
16 volunteer here in Illinois in the 2012 election.

17 MS. RIPS: I'm Eve Rips. I'm here to talk
18 informally about my experiences as a volunteer of
19 Election Protection. I work for the Chicago Lawyers'
20 Committee for Civil Rights Under Law, but I do mostly
21 educational work. And have barely next to no
22 experience with election law before November of last
23 year. I think maybe as a result of that inexperience,
24 I thought that a lot of the stories I had been hearing

1 from people like Melissa about these voting
2 complications were really anomalies and that they were
3 certainly happening on occasional, but things were
4 pretty smooth sailing. That certainly was not my
5 experience last November at all.

6 I was assigned to five precincts. And I
7 should say that at three of them things were basically
8 reasonable. Lines were short and the voters had a
9 reasonable experience. At the other two, though, there
10 were some very serious problems.

11 One of those precincts was a library.
12 But for 20 some odd years before that, voters had been
13 voting at a fire house. And what was happening, a lot
14 of long time voters from the neighborhood were
15 instinctively going to the fire house. And there was
16 some well-meaning firemen who had put up a sign
17 directing voters to what they thought was the correct
18 location, but it actually sent them to quite a
19 substantial distance away. So voters were really
20 getting very aggravated and showing up and a second
21 location with no idea what to do next.

22 We heard from a couple of voters that
23 some of their acquaintances had given up. And the
24 election judges were not sure what to do about it at

1 the original precinct.

2 Fortunately that was the situation with
3 common sense. We went to the fire house and put up a
4 correct sign and directions back to the library and
5 included some information as well about our vote phone
6 number. So that was basically taking care of. But it
7 does show that even with some sort of notice sent out,
8 there is still really complicated situations for a lot
9 of voters.

10 The second precinct where we had
11 problems was really a mess. All of the election judges
12 were quite new to the experience. None of them seemed
13 to be aware of exactly what they should be doing.

14 One problem that we saw was there was a
15 Spanish language voter who requested a Spanish ballot
16 and it turned out they had actually run out a couple of
17 hours back before we got there and had been turning
18 away Spanish language voters. They didn't seem overly
19 concerned about rushing to get new ballots. We did put
20 in a request. The City had been backlogged by
21 requests, so wasn't able to get those things out very
22 quickly.

23 The election judges tried to use the
24 electronic voting machines with this voter, but they

1 hadn't been using it for Spanish voters at all during
2 the day, and weren't sure how to operate it. So they
3 absolutely weren't sure as to whom to submit it and
4 they asked to submit it again and at that point one of
5 the judges said well, that was like 100 zeros times
6 twice. So that clearly was not a great situation.

7 MR. GREENBAUM: Was the machine designed so
8 that it would give all the instructions on how to vote
9 in Spanish?

10 MS. RIPS: Yeah. It looked as if there were
11 instructions, and I don't speak any Spanish, but it
12 looked as if there were instructions to specified what
13 to do. And then there were poll workers sort of
14 hovering over him making sure things were going to
15 plan.

16 MR. GREENBAUM: Was this in an area of the
17 city where there was a large Latino population and
18 there should have been Spanish speaking poll workers?

19 MS. RIPS: It was. Even in Rogers Park, which is
20 one of the most diverse neighborhoods there is in the
21 city, there is a large Spanish-speaking population and
22 there is a large population of speaking a whole range
23 of languages in the neighborhood.

24 Another serious problem we ran into was

1 we had a voter who came in who asked a basic question
2 about one of the referendums on the ballot. The
3 election judge explained how she had voted and why she
4 voted that way, which seems like a serious problem. We
5 didn't see her do that again. It was definitely
6 something that really even basic training should have
7 been enough to make it clear that she couldn't do that.

8 You know the judges also sort of didn't
9 get along. There were these small factions that were
10 bickering quite loudly. And there were several
11 different voters who came up to the judges and
12 requested that they quiet down so they could focus on
13 voting. Something we talked about with them. And I
14 noticed they were incredibly furious. It was like
15 being trapped in a car with a couple that are arguing
16 with each other.

17 Eventually one of the judges got so
18 frustrated with the situation that she finally quit and
19 left early and they had to find another election judge
20 at the very last minute, which took a while. And they
21 were eventually were able to find someone and swear
22 them in at the last minute. But it certainly wasn't an
23 ideal situation.

24 And then finally, at the end of the day,

1 they weren't really sure how to pack things up. They
2 weren't sure how to get the memory card out of the
3 electronic voting machine. And it sort of like
4 watching my grandma with her laptop. They were not
5 sure what to do with the system. And it didn't feel
6 like something where there had been more comprehensive
7 training for these judges. A lot of these problems
8 could have been avoided. Obviously, this is all
9 anecdotal personal experience, but it certainly was
10 informative for me when I think back on what I think
11 democracy looks like on the ground in Chicago.

12 MS. LIEBLING: Now we'll hear from Ruth
13 Greenwood for the Chicago Lawyers' Committee for Civil
14 Rights Under Law.

15 MS. GREENWOOD: I'm Ruth Greenwood with the
16 Chicago Lawyers' Committee for Civil Rights Under Law.
17 And I'm going to give testimony today about the recent
18 bill that passed that the House and Senate is still
19 awaiting Governor approval HB 2418. The pretense of passing a
20 bill was not ideal in that it was originally introduced
21 as a very short bill to introduce online voter
22 registration which was excellent. It then had 170
23 page amendments thrown on on May 28th. On May 29th it passed the
24 Senate. On May 30th it passed the House. There was very

1 little time for an advocate, such as myself, to get involved
2 with the process.

3 Most of the bill is very good. There
4 are a few little things that don't seem as good and
5 I'll go through them. In terms of the things that are
6 good, though, we're going to stay vigilant with the
7 rule making and the implementation of things like
8 online voter registration. I'll go through the bill
9 and initially go through my concerns about the rule
10 making process.

11 So the bill included, as Mr. Madden
12 pointed out earlier today, online voter registration
13 and the ability to request an absentee ballot online.
14 It also included a change to grace period voting
15 whereby at the moment there is a practice that many
16 places will offer a ballot at the same time as we heard
17 earlier when somebody registers during the grace
18 period, and that's an excellent practice. It means
19 their vote is counted.

20 In certain locations - we had a report on
21 our hotline that in Champaign voters were allowed to register up
22 the three days before the election, but given a form by which they
23 could request an absentee ballot. Obviously that was
24 never going to go through in time. Something like that

1 is effectively disenfranchising. Even though it might
2 not be intentional, it may be that they just didn't
3 have ballots.

4 The change to grace period voting is
5 that if they have ballots, they have to offer them. As
6 you could imagine, this is a small loophole that they
7 would have to address along the rule making process.

8 The other changes from HB 2418 include
9 the fact that the State Board of Election, as well as
10 the County and City boards, can authorize poll
11 watchers which we think is a good innovation, it makes easier for
12 groups like ours to be able to get poll watchers authorized.

13 It also made an important change to the
14 counting of provisional ballots. We did previously
15 have the, as Ohio calls it, at the right church, wrong
16 pew problem here in Illinois whereby people would cast
17 a ballot at the correct polling place but an incorrect
18 precinct because there were too many tables and they
19 didn't know which one to go to.

20 As the panel has outlined earlier today, a fix to this
21 could also be things like electronic poll books. In this
22 case the provisional ballots will be counted for all of the
23 races for which that voter could have voted. That is
24 an excellent change.

1 It also introduces automatic tabulating
2 equipment, although there is not a huge amount of specification
3 in that. So that would be interesting to see how that
4 plays out.

5 It also continued a practice that was
6 introduced in 2012 as a one year only practice, which
7 was to require public university campuses to offer
8 early voting. And so I think it is excellent that that
9 is going to continue. And it changed early voting on
10 Sundays which was previously 9 to 12 a.m. to be 12 to 3
11 p.m., which means people could go to church and then go
12 to vote, which is a good change.

13 I have a little bit of a laundry list of
14 other things that have changed that I would be happy to
15 go through at another time, but given the comment that we
16 heard from the voter today, it also prohibited
17 electioneering at early voting sites, which previously
18 was not in there. It was just a general statement
19 about electioneering.

20 The particular thing that I found that
21 was frustrating about the bill was an increase in
22 signature requirements for aldermen in the City of
23 Chicago from two to four percent, which in an average
24 large turnout district would be from about 250 to 500

1 signatures. And it seems -- and I chatted with an
2 alderman about this. It is generally just a
3 anti-incumbent measure, which is not something that
4 we -- I'm sorry. It is a pro-incumbent. It is an
5 anti-challengers measure, which is not something that we
6 support. We think democracy should be more open.

7 Now in terms of the rule making process,
8 our potential concerns with the online system is
9 firstly that obviously it be offered in a number of
10 languages. And the good thing about that is that once
11 one jurisdiction is able to offer the online voter
12 registration in multiple languages, then everybody has
13 access to that. So hopefully it will not be such a big resource
14 lift.

15 Another potential complication is that
16 the online system will require a match of a driver's
17 license, the date of the issue of the driver's license
18 or state ID card and the last four digits of the Social
19 Security Number. We have seen from the Help American
20 Vote Act implementation through the Social Security
21 Administration that I just found this out recently in the week
22 of the close of registration in 2012 in Illinois 18% of
23 Social Security numbers were not matched, which means
24 those people in the case of HAVA would need to turn

1 up to the polls showing a piece of identification, not
2 necessarily a photo ID. And the types of
3 identification that HAVA offers are reasonably broad.
4 And so I can imagine that that it would be fair
5 to implement it in that way, but in this case if they tried
6 to register on line, they won't get registered at all.
7 I think that there will be some processes with the way
8 online registration is implemented to make sure it is not
9 that a fifth of people registering actually don't get registered.
10 Or if they don't, they at least get told that they didn't
11 get registered.

12 Also the bill includes updating
13 registration online. We want to make sure it is clear,
14 that it's updating as well as registering online. And
15 again that that's in multiple languages. But also that
16 the voter record is very secure online. That when somebody
17 goes in, I can't just go in find somebody else's
18 registration and change their address, for example.

19 The final issue -- I have two more issues for
20 other things. That is with the grace period voting, it
21 is clear that under the Move Act, all the counties and
22 City Board of Elections have to have ballots ready by
23 45 days before the election. So my thinking is, why
24 not make it that they have all of their ballots for

1 military overseas, and anybody who is likely to
2 register during the grace period. That will prevent
3 this problem of particular jurisdictions saying we
4 don't have any ballots so you can't have one. Hopefully
5 that will be a better way to ensure uniformity in the
6 application of the new language.

7 The final statement would be that there
8 is a lot of confusion when new laws come in. So in
9 terms of the new rule about provisional ballot, we know
10 that in plenty of other places outside of Cook County
11 and Chicago there are higher rates of provisional
12 balloting. It is important that people become aware of
13 what provisional ballots can be counted to make sure
14 that people will have the right to vote that they have
15 exercised actually count.

16 So overall actually I think it is a very
17 good sign with this new rule. It is just a matter of
18 being vigilant with respect to the implementation.

19 MR. GREENBAUM: I have a couple of questions.
20 And they are going to reflect my ignorance of Illinois
21 law, not being somebody from Illinois. So the two
22 questions are first, could you explain how the rule
23 making process actually works? And secondly, when you
24 were talking about implementation of the online, it

1 sounds like you were saying every election jurisdiction
2 is going to do it separately as opposed to there being
3 a kind of statewide process?

4 MS. GREENWOOD: So to deal with the second question
5 first, I don't think that is the case. I think that the State
6 Board of Election will manage the process. They don't have the legal
7 requirements to offer the online registration in different
8 languages under Section 203. But Cook County and some of the
9 other collar counties do have that requirement. So
10 even if it is that only Cook County prepares the Spanish language
11 version or the Hindi or the Gujarati language version, then the
12 rest of the state benefits. That was my point on that.

13 In terms of the rule making process, I'm
14 still a little unsure myself. I know that it is
15 through the State Board of Election and I am working
16 with some of other groups, such as the Illinois Center for
17 Political Reform to go through the rule making process.
18 But the State Board of Elections has limited power in
19 this respect. It is not able to issue advisory
20 opinions, for example. So it is definitely an issue
21 where centralization would make it a little easier for
22 us, but we're going to have to work with all the counties
23 probably.

24 MR. GREENBAUM: Thank you. We have a voter

1 who has come to testify. And I'm wondering if we could
2 get her some help to get her seated near the
3 microphone?

4 MS. TRAWINSKI: I love making a grand
5 entrance. I'm sorry I'm dashing in. This is not my
6 professional attire. I had a group of 30 middle-aged
7 impaired adults. We just came back through the
8 thunderstorms, but I'm here. My name is Martha
9 Trawinski. I got information about this event through
10 Equip For Equality. I assume you all know.
11 Somebody is here from Equip, right?

12 MS. LIEBLING: Earlier today.

13 MS. TRAWINSKI: As you can see, I'm visually
14 impaired and my issues have to do with accessibility
15 voting. I have voted in my lobby because I'm not
16 paying paratransit to take me somewhere else to vote.
17 This past November I came down to vote, they
18 realized -- first they thought I needed the machine
19 that would work with the picture. And I went, "No, I'm
20 visually impaired and need the headset." The judges
21 scratched their heads. And I am not exaggerating at
22 least 20 minutes trying to figure out how to get the
23 machine to work. They would say, "Is it talking now?"
24 And I would say, "No, I'll tell you when it is talking."

1 Is it talking now? No." And the card kept going in
2 and coming out and going in and coming out and all this
3 cartoon effects were going on.

4 They finally called around to the Cook
5 County, to the troubleshooters, couldn't get any
6 information. Did what they said, but it didn't work.
7 It is 25 minutes. It's 27 minutes now. And they
8 decided this isn't going to work. Lets do a regular
9 paper ballot, a regular print ballot. And they said,
10 "We are going to have somebody read it to you, but they
11 are going to have to sit next to the judges' table
12 because we don't have any extra judges". And I said,
13 so... now, you know I'm a real shy person. I said, "So
14 in other words, how is the secrecy of my ballot
15 protected?" And they went, "Oh!" And they said they
16 went back and rustled through the ledger and I don't
17 know maybe had an apparition, I'm not sure. And then
18 decided well, you could go into a booth and vote with
19 two judges. I said "Fine. Let's do it." He said,
20 "No, there is nothing available now. Go upstairs to
21 your apartment and come back down in 15 minutes."

22 I come back down and there is still no
23 one available. Finally they got a booth available.
24 They took me into the booth. They started a paper

1 ballot. Remember we've already done the -- in the
2 other machine. And they start doing it, and they are
3 not quite sure how to do this. I said well, the best
4 thing to do is have one of you read it and have the
5 other one mark it, so you're watching each other. And
6 they thought that was a good idea. So we started doing
7 that, except neither of them could pronounce the names.
8 And so I had to keep saying spell the name, because I
9 didn't know who they were talking about. And we got
10 about one-fifth of the way through the ballot and they
11 came and got me and said "Oh, no, we got the machine
12 working now. We brought someone else in and they got
13 the machine working." I said, "Well, what about this
14 ballot?" And the two judges, they weren't quite sure
15 what to do.

16 And then they got me to the next -- to
17 the appropriate machine and they did it the right way
18 and I could vote probably an hour from the time I
19 arrived at the polling place.

20 My concern is, we have election judges
21 who do not know how to work the equipment. They are
22 not even aware of basic election etiquette and law.
23 They did not know how to accommodate me. They did not
24 know how to take care of this issue. They were not

1 even aware of how to work the machine. And when I came
2 in and they tried to work the machine, they didn't know
3 how. They weren't sure who to call. It was -- if it
4 could have been a combo between The Three Stooges and
5 The Marx Brothers, that would not be under-estimating
6 it. It was incredibly frustrating. It was annoying,
7 and being a person with a disability, I rely on the
8 paratransit ride service which meant that I was going
9 to lose my trip because of their ineptitude and I
10 couldn't get out on time for my next appointment. I
11 guess I would rather let you ask me questions than me
12 go on and on.

13 MR. GREENBAUM: So what does it mean to you
14 to be able to vote?

15 MS. TRAWINSKI: It means everything to me.
16 We just celebrated the 100th anniversary of Illinois
17 passing the Women's Right to Vote. Yesterday I was at
18 a reception. This is important. People died to get us
19 to vote. I have every right to vote in a secret ballot
20 with the same rights as ever other citizen of this
21 country. And because I am in a situation, I have a
22 visual impairment and I need an adaptive piece of
23 equipment, should not surely jeopardize that right.

24 MR. GREENBAUM: And what is -- prior to this

1 election, what have your experiences been?

2 MS. TRAWINSKI: They have gone both ways.
3 The very first time we had the adaptive equipment
4 after -- was in place, we had several nightmares. I
5 filed all my stuff with Equip For Equality, with the
6 Board of Election. They didn't know how to work the
7 machine. They didn't know how to do it. They weren't
8 clear. We played these games and went round and round.
9 It was the same old mess.

10 Then in either '08 or '10, on the off
11 year election, we finally had a judge who knew what to
12 do and they plugged it on me. They were ready. I came
13 in. I went and I voted smoothly and I was all done in
14 the same amount of time. However, I will say, we have
15 an issue with the placement of a piece of voting
16 equipment that we use, because it is put immediately
17 adjacent to the judges' table and a place where the
18 votes are lodged in the box. And the problem is, I'm
19 trying to listen and then I have to hit a button and it
20 responds to me verbally confirming my vote. And I have
21 to crank it up so loud, because there is all these
22 conversations going on behind me, and that also
23 jeopardizes my privacy.

24 We have been asking through Equip For

1 Equality to please have that particular equipment moved
2 in a place that is more private so that we could hear
3 clearly and we can respond simply, and that has not yet
4 happened.

5 MR. GREENBAUM: What -- and after the 2012
6 experience, it sounds like you did raise it with the
7 election officials at Cook County, and what is their
8 response?

9 MS. TRAWINSKI: I haven't heard anything.

10 MR. GREENBAUM: Too bad the timing was a
11 little bit off, because we did have some of the -- we
12 had the attorney for Cook Country Board of Election.
13 And to a Clerk a little bit earlier. We will, though,
14 be sharing the transcript of this hearing with them and
15 I'm sure there is going to be some follow-up.

16 MS. TRAWINSKI: Our rule here in the city is
17 when we have an issue that is ADA related, there are
18 mandated agencies for ADA problems. So I immediately
19 called their election hotline. They were wonderful.
20 They took down the information. They told me their
21 best guesstimate of how to proceed. I agreed with them.
22 I went and followed all that and gave them a follow-up.
23 I spoke with them. They were very aware with it and
24 they were also aware that things were being lodged and

1 I did my lodging of my concerns and nothing has
2 happened. I have had concerns prior to this, prior to
3 HAVA and it went to the Board of Election and we filed
4 all kinds of paperwork and still never heard anything.

5 MR. GREENBAUM: When is the next election?

6 MS. TRAWINSKI: We have a primary in March or
7 February of '14. That will be our off year for
8 Congress and the Governor or maybe Senator maybe. I
9 can't think. February rather March, maybe.

10 MS. LIEBLING: I want to thank you for being
11 here. And we had Melissa from Equip for Equality
12 earlier today who outlined some of these common
13 problems as well as other advocates who were able to
14 tell us about the problems that face voters in their
15 community. It really is helpful for us and I think
16 it's extremely compelling to hear firsthand from the
17 voters that are impacted by some of these problems and
18 we're going to continue to work to address them.

19 MS. TRAWINSKI: You know I'm watching my
20 neighbors go in and cast their ballot and leave, go in
21 and cast their ballot and leave, and I'm being held up,
22 and held up, and held up, and held up, because the
23 judges literally do not know how to work the equipment.
24 I don't have any other explanation, but they don't know

1 how to work the equipment. I don't consider that
2 excusable. We were told there would be one judge in
3 each precinct or within two precincts or within one
4 polling place who would have the knowledge to work the
5 adaptive equipment. I don't know. Didn't happen.

6 This is nuts. We have been doing this
7 for how many years now with the equipment. You still
8 don't know how to use it? I have had friends who have
9 had the same kinds of problems. It is a real problem.
10 It not a fluke. It really happens. And just as an
11 aside, Judge Timothy Evans, who is the head of the
12 Appellate Court lives in my building and loves to hear
13 my stories. This is what's going on. I think it's
14 ironic. I'm standing in that lobby going "Oh, God.
15 This is insane and it goes on. And judges who are
16 totally inept have no idea who to call, no idea how to
17 resolve it. Resolving it in inappropriate ways. And
18 are totally flummoxed by the whole situation. As far
19 as I'm concerned, that is a travesty to my rights to
20 vote. I have the right to vote in a proper prompt
21 fashion and I have not gotten that. Anything else?
22 Amen.

23 MR. BLUSTEIN: Thank you for coming. Get
24 home before the next wave of storms.

1 MR. GREENBAUM: That is an appropriate way
2 for us to end. We want to thank all the panelists
3 today as well as DePaul School of Law, Kirkland and
4 Ellis and Miner Barnhill and Galland and this
5 informational was very helpful going forward in
6 Illinois as well as to national efforts to make voting
7 work better for all voters. Okay.

8 MS. LIEBLING: I think that actually sums it
9 up really well. We look forward to seeing this
10 information and working with all the groups that were
11 here to continue to improve the issues. Thank you.

12

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14 (WHEREUPON the meeting was
15 adjourned at 7:50 p.m.)

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STATE OF ILLINOIS)
)
COUNTY OF C O O K)

C E R T I F I C A T E

The within and foregoing meeting was taken
before GWENDOLYN BEDFORD, Certified Shorthand Reporter
in the City of Chicago, County of Cook and State of
Illinois.

IN TESTIMONY WHEREOF, I have hereunto set my
hand this 27th day of June, 2013.

GWENDOLYN BEDFORD, C.S.R.

No. 084-003700

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12. Kanas City Regional Hearing Transcript
13. Louisiana Hearing Transcript
14. Michigan Hearing Transcript
15. Minnesota & Wisconsin Hearing Transcript
16. Mississippi Hearing Transcript

1 LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
2 NATIONAL COMMISSION ON VOTER RIGHTS HEARING
3 APRIL 21st, 2014

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5 University of Missouri-Kansas City School of Law
6 500 East 52nd Street
7 Thompson Courtroom
8 Kansas City, MO

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20 Job No. 72955

21 Taken By: Lisa D. Ballalatak
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Guest Commissioners

Wendy Noran

Mary Ratliff

Marty Ramirez

William Rich

Marsha Ternus

1 (The hearing commenced at 1:03 p.m.)

2 MS. ZAMORA: Good afternoon. How are you
3 all doing today? My name is Erandi Zamora. I'm
4 with the Lawyers Committee for Civil Rights Under
5 Law, and it is my pleasure to welcome you to the
6 National Commission on Voting Rights, Kansas City
7 regional hearing. As you know, at the event today,
8 we will be discussing voting right issues, not only
9 in Kansas and Missouri, but also from Iowa and
10 Nebraska.

11 Before we get started, I want to thank the
12 UMKC School of Law for providing this beautiful
13 venue for us to have this important discussion, and
14 I also want to thank our steering committee and our
15 supporting organizations. The full list is on the
16 back page of the program, and I invite you all to
17 please take a look. These organizations have been
18 absolutely instrumental in the planning of this
19 event, and they all have demonstrated a commitment
20 to protecting equal accesses to the ballot on equal
21 terms for all, so please join me in thanking these
22 organizations. And I also want to thank our guest
23 commissioners here. I will be doing introductions
24 in a brief moment, but just to give you a little bit
25 of background, this event is part of a series of

1 public hearings that the National Commission on
2 Voting Rights is hosting throughout the United
3 States. The National Commission on Voting Rights is
4 a nonpartisan, independent panel, and it is tasked
5 with documenting the state of voting rights
6 throughout the United States. In recent years,
7 there have been a number of restricted voting laws
8 that have limited access to the ballot for eligible
9 voters, and so the commission is here to learn about
10 these barriers that have come up throughout the
11 country, learn what can be done to improve access to
12 the ballot for eligibility citizens, and also to
13 learn what challenges election administrators are
14 facing in implementing these laws, and ensuring that
15 the voting process works properly. So at the
16 conclusion of these hearings throughout the country,
17 the commission will be putting together two
18 comprehensive reports, and these reports will be
19 made available to the voting public, to the
20 legislatures, and to anybody who wants to improve
21 our voting process and protect voting rights. So
22 your participation here today is really crucial and
23 instrumental in this process, so thank you so much
24 for being here.

25 And before we get started, I also want to

1 go over a few housekeeping items. There will be
2 three formal panels of experts testifying today, and
3 there will also be three sessions for public
4 testimony. These will be taking place at 2:25,
5 4:10, and 6:10 p.m.; so if you're interested in
6 sharing your experiences, we really want to hear
7 from you, and we encourage you do that. Please sign
8 up at the registration table right outside.

9 Also, just so that you know, the hearing
10 will be transcribed -- so thank you to our court
11 reporter for being here -- so keeping that in mind,
12 please speak clearly, and state your name when
13 you're about to speak. Also, if you're testifying,
14 keep an eye on the timekeeper right over there. He
15 will be raising signs, and if you do not listen, the
16 floor below you might open up, and we are not
17 responsible for what might happen to you then.

18 Also, we're going to be here for a long
19 time, until 7:00 p.m., approximately, so there will
20 be some light sandwiches and snacks available for
21 you outside at 4:40, during that break, and we just
22 ask that you please do not bring that food in here.
23 And, lastly, if you're on Twitter, we ask you to
24 join the conversation, so Tweet away, and you can
25 use the hashtag "NCVR," and also "voting rights."

1 And now it's my honor to introduce our
2 distinguished panel of commissioners who will be
3 presiding over the hearing today. They will be
4 taking down the testimony, they will be asking
5 follow-up questions, where necessary, and each of
6 them has a remarkable commitment to quality and
7 civil, and we're really honored to have them here.

8 Our first commissioner is Wendy Noren, who
9 is a county clerk from Boone County, Missouri. She
10 was first elected in 1982, and has been re-elected
11 seven times. Ms. Noren has served also on the
12 advisory board for the U.S. Election Assistance
13 Commission, the EAC, and she has long been a pioneer
14 of using technology to improve access for voters.
15 She was the first election official to accept online
16 voter address changes in 2010, and just last year,
17 she also implemented the first local online voter
18 registration application system in the country. In
19 2012 -- these are her own words -- she survived the
20 ninth presidential election of her career.

21 We also have Dr. Marty Ramirez. Dr
22 Ramirez is a retired counseling psychologist from
23 the University of Nebraska, where he was for 38
24 years, and in addition to his work in mental health
25 throughout the country, he is also known for his

1 involvement in the community. Dr. Ramirez has
2 received many awards, including Nebraskaland Days
3 Hispanic Man of the Year, and National Hispanic Man
4 of the Year. Dr. Ramirez is also a Vietnam veteran,
5 and a recipient of the Purple Heart.

6 Our third commissioner is Mary Ratliff.
7 Mary Ratliff is the president of the Missouri State
8 Conference, and Columbia local of the National
9 Association for the Advancement of Colored People,
10 the NAACP. She has lead successful efforts that
11 resulted in record numbers of African American
12 turnout. Ms. Ratliff was elected to the NAACP
13 National Board of Directors, and served for 12 years
14 until the end of her tenure. She received numerous
15 awards, including the Chairman NAACP State
16 Conference Presidential Award, and you might
17 recognize her, because she's also the TV host of
18 Mary Raliff's round-table, which airs four times a
19 week on Mediacom. And if you haven't seen her
20 already, we encourage you to look her up. I don't
21 know what time her show comes on, but I'm sure we
22 can share that with you.

23 We also have Professor Bill Rich.
24 Professor Rich is at Washburn University School of
25 Law where he teaches Constitutional Law and Civil

1 Liberties, among other topics, and he was a
2 Rockefeller Fellow at the Yale Divinity School.
3 Prior to joining the Washburn faculty, he was a law
4 clerk for Chief Justice Donald Wright of the
5 California Supreme Court, and he also served as a
6 staff attorney of the Legal Aid Society of Wichita.

7 And last, but not least, we have Marcia
8 Ternus. Ms. Ternus is the former Chief Justice of
9 the Iowa Supreme Court. In May 2012, Ms. Ternus and
10 two of her colleagues in the court were honored with
11 the John F. Kennedy Profile and Courage Award for
12 their political courage and judicial independence.
13 Ms. Ternus has now returned to the private practice
14 of law, and she was recently appointed to serve as
15 the first director of the Harkin Institute for
16 Public Policy and Citizenship Engagement at Drake
17 University.

18 So as you can see, we're in really
19 distinguished company, so please join me in
20 welcoming our panel.

21 MS. TERNUS: I'm going to take the lead in
22 this part of our program, but before we start the
23 testimony, the Commission has given us the
24 opportunity for each the commissioners to make a
25 brief opening statement, so we will begin with that.

1 And, Mary, would you like to start, if you want to
2 say anything, and, of course, you don't have to.

3 MS. RATLIFF: Just that it's -- I think
4 it's wonderful that we are here giving this
5 hearing -- this testimony this evening. It
6 certainly is needed, and I'm just happy to be able
7 to be a part of hearing firsthand some of the
8 problems that exist in the many other states, so
9 that it can kind of help us in our particular areas
10 know which areas that we -- if there are some areas
11 that we can work on. So it is pleasure to be here
12 with you this evening. I look forward to hearing
13 your testimonies.

14 MS. TERNUS: Thank you, Mary.

15 Bill?

16 MR. RICH: Thank you, Marsha. I'm also
17 very pleased to be here this afternoon. This is now
18 my 37th year teaching at Washburn Law School, and in
19 that time, I've concentrated primarily on
20 constitutional law. I've seen lots of changes
21 affecting voting rights, affecting the process of
22 voting, affecting the way in which elections are
23 handled, and so forth, and what I'm particularly
24 interested in hearing from people this afternoon is
25 how all of those changes -- changes in the way in

1 which districts are portioned, changes in the way in
2 which elections are financed, and, particularly,
3 changes brought about because of burdens that are
4 placed on people who are exercising the right to
5 vote. How those things have actually affected not
6 just the individual registration, but, also, the
7 motivation to vote. I think it's one of those
8 underlying things that all of us need to pay a lot
9 of attention to, because we don't want to turn into
10 a society where people think it's not worth their
11 time and not worth their effort, and so to the
12 extent we can link our interests and our discussions
13 to the expertise of the panelists will bring to that
14 underlying motivation, I appreciate hearing about
15 that.

16 MS. TERNUS: Thank you, Bill. Wendy?

17 MS. NOREN: First of all, I want to thank
18 the Lawyers Committee on doing this Commission. I
19 have several interests. I started my career being
20 an 18 year old wanting to register to vote. Not
21 many people in my business, found barriers, and so I
22 started quite young doing registration and believing
23 that was a key to success in any political ideal. I
24 am the election official for the main campus for the
25 University of Missouri, and I take that very

1 seriously. I feel like it's my job. Most people
2 who come through my panel, their first interaction
3 with voting is how well I conduct an election, and I
4 believe that people's first interaction with voting
5 tends to color them for the rest of their life. So
6 if they have a bad interaction, they will probably
7 have a difficult time ever going back into the
8 political process, so that's why I'm always
9 interested to find out where the problems are. No
10 problems are unique. Problems that happened in
11 Florida, happened in my county 20 years before, you
12 know? In Ohio -- you know, it can happen in many
13 place, so the more we know about what problems
14 exist, the better prepared we can be as election
15 officials. And I also am spending most of my life
16 wanting to expand the rights of people to vote, and
17 extremely concerned about efforts to restrict access
18 to registration of elections that are going in many
19 states, including my own; so -- and I'll be
20 interested to see the impact in some of the
21 surrounding states with some of the restrictions
22 that are being implemented.

23 MS. TERNUS: Thank you, Wendy. Marty?

24 MS. RAMIREZ: Yes. I would like to take
25 time to thank the Commission on Voting Rights, which

1 was -- in my world, was unheard of. I'm still
2 trying to figure out what a guest commissioner is,
3 but, nevertheless, I'm from a set of immigrants born
4 and raised in Nebraska -- in the western part of
5 Nebraska. Been very involved since -- upon
6 returning from Vietnam, because at some point, I
7 realized that you get sent off to war to fight for
8 many things, and one is for the freedoms, and, in
9 particular, the vote for many. Over the last ten
10 years in my continued involvement, I began to
11 realize that this concept of voting is not only a
12 right, and often a privileged, but so complex with
13 the good, the bad, and the ugly. And,
14 unfortunately, I think we're going through a time in
15 America where the ugly is beginning to surface.
16 It's very complex, presenting many barriers, and
17 unfortunately, we have to deal with the empathy of
18 voting, especially with the minority, the Latino and
19 immigrant population. So somewhere and somehow, we
20 antithetics need to step up and step in and bridge
21 the gap so that this freedom called voting is not
22 being suppressed, and I think meetings like this are
23 truly significant, and it's going to be a learning
24 experience for all of us, and especially for me.
25 So, again, welcome, and be patient throughout the

1 day. Thank you.

2 MS. TERNUS: Thank you, Marty.

3 Again, my name is Marsha Ternus. I'm from
4 Des Moines, Iowa. I'm a native Iowan, growing up on
5 a farm in eastern Iowa. I practiced law in
6 Des Moines for 16 years before I was appointed to
7 the Iowa Supreme Court in 1993. I served on that
8 court for 17 years. I am pleased to see you here.
9 I am sure that you're all busy people, but this is
10 important. Public policy is only as good as the
11 information upon which is it based, and so if we
12 expect our government leaders to make good policy
13 choices, we must give them information that will
14 allow them to make those honest decisions. So,
15 today, we're here to focus on the facts, to learn
16 how -- what your experiences have been in voting,
17 what impact various rules and laws have had in your
18 efforts to register or to vote, and while I'm sure
19 we all have opinions about these issues, please
20 remember that we are here to find facts, so if you
21 spend your time on other matters, rather than giving
22 us the factual details of your experience, we'll
23 miss an opportunity to inform our congressional
24 leaders. So if you can, just keep that in mind as
25 you speak, and use your time wisely, that would be

1 very helpful. And, again, thank you for being here.
2 I think we're ready to start with our first panel,
3 if there's nothing from the commissioners at this
4 point?

5 We have three witnesses for the first
6 panel. One gentleman, unfortunately, at the last
7 minute was not able to be here, so if the three
8 panelists, Betty Andrews, Adolphus Pruitt, and
9 Delores Furtado -- I hope I haven't butchered any of
10 these -- if you'd come forward and take a seat. We
11 have some name tags here.

12 And somebody is running late, and I guess
13 that person isn't here yet either.

14 Our topic for the first panel is systemic
15 procedural barriers. Delores Furtado from Kansas,
16 the leader for the Voters of Kansas will be our
17 first witness, and she will discuss proof of
18 citizenship, and its impact on women and other
19 communities, such as the elderly and minorities.

20 MS. FURTADO: Thank you. Guest
21 commissioners, I am Delores Furtado, president of
22 the League of Women Voters of Kansas. I appreciate
23 this opportunity to testify on a 2013 requirement
24 that first-time applicants seeking to register to
25 vote in Kansas must provide documentary proof of

1 U.S. citizenship. I will describe the negligent
2 impact the law has had on the numbers of voters
3 registered by the League members. That confusion is
4 discouraging Kansans from registering, and there is
5 inconsistent treatment of people on the suspense
6 list.

7 Voter registration takes longer.

8 Registering voters at public events means that proof
9 documents actually are not in hand; however, League
10 members advise individuals to start the process by
11 filling out the application form that we, the League
12 members, will turn in. We advise about secure
13 copying of personal documents. We tell about the
14 suspense list, which I sometimes refer to as the
15 incomplete list -- the list of incomplete
16 applicants, and about not being a registered voter
17 in Kansas until proof is provided. The letter from
18 the election's official will reiterate what is
19 required. The number of people successfully
20 registering are down because of the requirement, and
21 because of the time it takes. Kansans are confused.
22 The Kansas form says to provide a copy, or show the
23 proof document to an official registrar. League
24 members are not official registrars. There is no
25 spot on the form to indicate "see," as opposed to

1 received -- attached copy.

2 Newly naturalized citizens are also
3 confused about registering to vote. Barriers
4 include the availability of copying equipment, and a
5 statement at the bottom of the certificate, which
6 says "Not to be copied, except for official
7 business." Our election commissioner offered an
8 office iPad to photograph the certificates, which is
9 to be returned with the application forms at the end
10 of the day. Leagues and other counties now use
11 government-issued devices to make copies of
12 naturalization certificates. This solution
13 registers voters. However, at a recent ceremony
14 held on a college campus, employees of the U.S.
15 Citizenship and Immigration Service prevented League
16 members from using the iPad. We turned in 85 forms
17 without copies of proof, adding 85 names to the
18 suspense list. For over a year, the return rate --
19 excuse me.

20 The third area will be management of the
21 suspense list, and the inconsistent processing. For
22 over a year, the return rate to the letter from the
23 election official has been very low. The suspense
24 list outraged to them has been variable. For
25 example, one county has stopped sending the letter

1 because of the cost of postage. Another county has
2 elected officeholders to write letters and pay for
3 the postage, and another uses volunteers, including
4 League members who go door-to-door canvassing for the
5 folks that should be applying proof. By
6 January 2014, the numbers on the suspense list
7 exceeded 22,500. At the state level, matching names
8 on the suspense list with the birth certificates in
9 the office of vital statistics removed over 7,700
10 names from the suspense list. These individuals,
11 mostly male, became registered voters without any
12 personal involvement. For whom a name change has
13 happened since birth, and they are mostly women,
14 they have to provide a birth certificate and
15 document the reason for the change. They do accept
16 an affidavit, but it is not easy to find that on the
17 Web site.

18 That leaves us with the out-of-state birth
19 certificate holders, for whom acquisition may be
20 costly. The suspense list and election day: voting
21 will depend on the form used to register. Users of
22 the Federal form, and it is estimated about a
23 hundred will be in that category, don't need to
24 provide the proof to become registered voters, the
25 Federal form does not require it. They will be

1 eligible to vote only in a Federal election. Users
2 of the Kansas forms on the suspense list are not
3 registered voters. Now, consideration of the
4 provisional ballot reveal existing statutes
5 conflict. That is, provisional ballot law gives the
6 voter days after the election day to rectify the
7 deficiency; however, the proof statute says proof
8 must be provided before election day. Using
9 provisional ballots with the intention of the
10 discarding them was declared disingenuous by the
11 rules and the oversight committee. Another
12 alternative that has been discussed it to say no to
13 the folks on the suspense list who show up to vote.
14 That would rely on consistent action by poll
15 workers.

16 In conclusion, the requirement to provide
17 proof of citizenship has curbed the League's ability
18 to register voters. Two, it has caused confusion
19 and resistance among those wanting to register to
20 vote. It has resulted in over 20,000 applicants
21 being placed on the suspense list. It is treating
22 people on that list inconsistently. It has raised
23 questions about discrimination, poll taxes,
24 resistance, and distrust all about exercising the
25 right to vote. Married women, minority citizens,

1 and the elderly are adversely affected. And,
2 finally, the retrieval of out-of-state records takes
3 time and money.

4 Thank you very much for this opportunity
5 to testify.

6 MS. TERNUS: Thank you. I'll sure we'll
7 have some questions for you, but I believe we'll do
8 the entire panel before we ask questions. Is that
9 correct?

10 Okay. Mr. Pruitt, would you like to give
11 us your testimony at this time.

12 MR. PRUITT: Sure. That's easy. Delores
13 has given you most of mine, so that makes it a
14 little bit easier for me.

15 MS. TERNUS: Let me first tell the
16 audience that you're from the NAACP of Missouri?

17 MR. PRUITT: Yes.

18 MS. TERNUS: That your issue is voter ID?

19 MR. PRUITT: Yes.

20 MS. TERNUS: Which, apparently, could be
21 on the 2014 ballot here?

22 MR. PRUITT: Absolutely.

23 My name is Adolphus Pruitt. I'm the first
24 vice-president and political action chair for the
25 NAACP Missouri State Conference of Rightists. As

1 chairman of the Political Action Committee, it is my
2 job to assist granters in working to ensure voter
3 empower and to provide training and programs
4 support, ensure registration education,
5 administration, and election protection.

6 You know, without question, elections
7 cannot be fair if fraud exists, and it is not
8 caught. On the other hand, nor can elections be
9 fair if eligible voters are not allowed to vote. In
10 Missouri, we seem to have a problem with our
11 legislature, who is in the process of trying to
12 elect voter-restricted voter registration
13 requirements, what we call voter IDs. As a matter
14 of fact, I think we can agree that a strict photo ID
15 requirement would not solve problems related to
16 inaccurate voting registration lists, or voter
17 malfeasance, like double voting, felony voting, or
18 vote buying. As a matter of fact, the only type of
19 voter malfeasance that photo ID can address is voter
20 impersonation. This is not to say that we have not
21 had election-related problems. Of course we've
22 have. Isolated problems, mainly related to
23 registration, and absentee ballots. According to
24 our research, as Missouri has had roughly 17 cases
25 of alleged election fraud since 2000. By category,

1 third-party organizations had a higher percentage
2 accused at 88 percent, or 15 cases, followed by
3 voter at 12 percent, or two cases. As a matter of
4 fact, those two cases stemmed out of a 2010 state
5 representative race here in the Kansas City area.
6 It was further unique that it was a group of
7 Somalian voters who showed up at the polling place
8 to vote, they spoke very little, or no English. The
9 voting personnel did their best to work overly
10 abundantly to ensure that they understood the ballot
11 and was able to vote. In some cases, they may have
12 went a little bit out of line in showing them where
13 to mark on the ballots, and things of that nature
14 resulted in a lawsuit. At the end of the day, the
15 lawsuit was thrown out. It was proven that no voter
16 regularities took place. There were some changes
17 done in the local election office to address that
18 matter. And then the most prevalent fraud was
19 registration fraud. Again, at 88 percent, 15 cases.

20 Here in Missouri, you know, there's a
21 saying that is a popular metaphor; a speech shouting
22 fire in a crowded theater. That is exactly what is
23 going on here in Missouri, at this point in time,
24 with respect to voter ID. A voter ID wants to pass
25 as many as 240 Missouri registered voters a

1 government-issued photo ID. That proposed
2 legislation would require to be presented at the
3 polls, and for many, it would be costly and time
4 consuming to secure the underlying documentation
5 needed to get a free ID from the state. This
6 problem has been well documented, and the law
7 currently is proposed in our legislative structure
8 is the same as the one before our Supreme Court in
9 2006, which found that it was unconstitutional. As
10 a matter of fact, one of the gestures of the Supreme
11 Court was at a point where he no longer could drive,
12 and let his driver's license expire. Had he showed
13 up at the polls, and they asked him for ID, being a
14 member of the highest court, he still would not have
15 been able to vote, because his ID would have been
16 expired -- his photo ID. But the thing that
17 troubles us the most about proposed voter ID
18 legislation -- and I would like to pull from a
19 September 2012 United States Government
20 Accountability Office study titled "Driver's License
21 Security" since driver's license are proposed to be
22 the No. 1 form of ID for voting, and what it found
23 is that obtaining a driver's license of another
24 identity can enable criminals to commit various
25 crimes. As a matter of fact, the 9/11 terrorists,

1 for example, possessed fraudulent license, because
2 driver's licenses have been become a widely accepted
3 form of identification. Identity thieves may try to
4 obtain a license of some other name with forged or
5 stolen Social Security cards, or other documents.
6 By one estimate in 2010, over 8 million people had
7 their identity stolen, many of them utilizing a fake
8 driver's license. According to the GAO report,
9 states reported successful events of driver license
10 fraud, but cross-state fraud and counterfeit birth
11 certificates remain a challenge. License fraud
12 across the state lines, and the use of counterfeit
13 birth certificates remain challenged. States remain
14 involved with cross-state license fraud, and states
15 have problems identifying 400 fraudulent birth
16 certificates.

17 I will read one thing in closing, which
18 speaks to this thing about driver's license being
19 the No. 1 form for voting. The GAO report said,
20 "Our investigator staff explored the vulnerabilities
21 discussed above to fraudulently obtain driver's
22 license in three states where we made such attempts.
23 In each state, investigative staff obtained genuine
24 licenses under fictitious identities, combinations
25 of names, date of birth, and SSN, Social Security

1 numbers, that do not correspond with any real
2 individuals. In two states, a staff member obtained
3 two licenses under two different names. In each
4 attempt, staff who visited local licenses issuing
5 and granting and submitting various counterfeit
6 documents to establish their identities, depending
7 on state requirements. In all cases, they submitted
8 a counterfeit driver's license and a counterfeit
9 birth certificate, both purportedly from other
10 states. In some cases, staff also submitted other
11 documents, including fake Social Security cards and
12 fake pay stubs. In most of these five attempts
13 across three states, we were issued permanent or
14 temporary licenses in about one hour or less. In
15 only one case, did a front counter clerk question
16 the validity of one of the counterfeit documents,
17 but this clerk did not stop the issuance process.
18 All three states check validity of applicants, SSN,
19 due to Social Security and online verification
20 system, and they also announced sufficiently the
21 detection of fraud. Now the ironic thing about it
22 is that behind the 9/11 government passed the --
23 with real IDs, and in the state of Missouri, there's
24 one thing that the Federal government put in place
25 to try to address this issue that has come up short,

1 but the very thing that they put in place, our
2 legislation passed a bill that prevents the state of
3 Missouri from signing up and using the real ID, and
4 right now, with all of this stuff occurring, they
5 had real ID, and these things still occurred, so you
6 can imagine if we pass a photo ID bill, and we're
7 not using real IDs, we suspect that Missouri will be
8 worse than three instances that I cited here.

9 So, again, I appreciate your time to hear
10 our testimony. We are extremely concerned about
11 this push to restrict voter privileges through
12 strict ID requirements in the state of Missouri, and
13 we would be happy -- I'll be happy to answer any
14 questions you may have.

15 MS. TERNUS: Thank you, Mr. Pruitt.

16 Erandi, do we have our third witness here?

17 MS. ZAMORA: She will be late, so we can
18 go ahead.

19 MS. TERNUS: Okay. All right.

20 Are there any questions for these two
21 witnesses from the panel, or from the commissioners?

22 MS. RATLIFF: I would like for Mr. Pruitt
23 to clarify something.

24 You talk about ID -- voter ID. Talk to us
25 about the difference -- and when we say "ID," what

1 voter ID -- what we are talking about, versus photo
2 ID. We're not saying that there need not be any
3 identifications. Explain that.

4 MR. PRUITT: Yeah. Well, right now,
5 there's -- in the state of Missouri, there's any
6 number of forms of identification you can use to
7 register to vote. Of course, a Social Security
8 card, a utility bill with your name and your address
9 on it, and any various other forms, including your
10 driver's license. Under the proposed photo ID bill,
11 it would simply be either a driver's license,
12 passport, government-issued ID, such as somebody in
13 the service -- military service with a photo on it,
14 and passport, but if any of those are expired, then
15 they would not be counted. The biggest problem --
16 another example would be is, if you live in Missouri
17 right now, and you drove -- worked for across the
18 state line in Illinois for a trucking company, per
19 se, in order to get a CDL license to drive for that
20 company, because they are based in Illinois, you
21 would have to get an Illinois CDL. Of course we
22 don't --

23 MS. TERNUS: A CDL being a commercial
24 driver's license?

25 MR. PRUITT: A commercial driver's

1 license.

2 And you can't have two licenses. You can
3 only have one license. So you would get the
4 commercial driver's license in the state of
5 Illinois, but if you live and reside in Missouri,
6 and you voted in Missouri, well, under that bill,
7 that Illinois -- that driver's license that is
8 valid, issued in Missouri, you could not use it to
9 vote at the place you reside, because it would be an
10 out-of-state driver's license.

11 MS. TERNUS: You also followed up on this
12 question. You referred a couple times, I thought,
13 to using real ID. What did you mean by that?

14 MR. PRUITT: After the 9/11 attack, the
15 government passed -- and I can't think of the name
16 of the bill, but a part of the bill is what they
17 call a real ID, where in order to -- before you
18 issue somebody an ID, you have to go online and use
19 the online Social Security number verification, and
20 there's some other things, because what they're
21 trying to do is have a common identification system
22 across all states, that no matter which state you
23 were in, they can track who that identity belongs
24 to, even if it's a driver's license. So that's what
25 we mean by real ID. I think there's only about 13

1 states in the union that have not signed on and
2 fully implemented real ID, Missouri being one of the
3 ones who has not, and currently under an extension
4 up until -- I think it's October of this year. But
5 those circumstances in which people got fake
6 driver's licenses, those states had real ID; so real
7 ID didn't even prevent fraud in those three
8 instances, but in a state that has not been using a
9 real ID, is where we suspect that the fraud would be
10 even more, and is that fraud that voter photo ID
11 restrictions are trying to eliminate, and that's why
12 we use the term shouting fire in a crowded theater,
13 because that's exactly what they doing.

14 MS. TERNUS: And if I can ask one more
15 question. You mentioned -- I believe you were
16 referring to this as a barrier to voter
17 registration, that it would be costly and time
18 consuming to get a free ID from the state.

19 MR. PRUITT: Yes. Because --

20 MS. TERNUS: And can you be more specific
21 on why it would be costly and time consuming?

22 MR. PRUITT: There's a couple of reasons.
23 Let's talk about the general bias. You're happily
24 married, and you got a divorce. You happen to want
25 back your main name, or you wish to. Your driver's

1 license says Mrs. Pruitt. Now you want to go back,
2 and you go to change your name, now you have to go
3 get all of the underlying documents, you have to go
4 through the courts, you have to do all of that just
5 to straighten your name out where it is consistent
6 on the identification and what you use now. That's
7 one of the barriers when we talk about underlying
8 documents, and heaven forbid, is that you were born
9 in another state. You got married, and you live
10 here, and you get divorced here, now you have to get
11 that birth certificate from another state to prove
12 that it is you, because up until this time, you have
13 been using Mrs. Pruitt versus whatever your maiden
14 name was before. That's one of the instances. In
15 some cases when we talk about immigrants and other
16 folks having a Social Security card. It is no
17 more -- it would be -- as hard as it is, if you're
18 in this country, and you're here illegally, you get
19 a green card, you've got your permanent residency
20 now, and now all of a sudden, you have to come up
21 with all sort of documentation, just in order to
22 register to vote, and then follow up on the ID in
23 order to actually vote.

24 So those are some of the instances that I
25 think -- there's one other that was unique, because

1 we had a young man that attends school in St. Louis.
2 His home is in Wisconsin, and he gave testimony
3 about how if that law passed, he couldn't use his
4 Wisconsin ID to vote in Missouri, and his state
5 representative accused him of fraud, and all sort of
6 things, because Missouri statute says that once
7 you're here for 30 days or longer, you have to get a
8 Missouri driver's license. Well, he'd been here for
9 three years going to school, and what the law
10 basically says is that -- in reality, that right now
11 he does have the right to vote in Missouri with a
12 Wisconsin driver's license, he just can't vote back
13 home too. He has to decide one place or another
14 where he wants to cast his vote, and especially in a
15 presidential election. So now, again, we have --
16 trying to have documentation and stuff in order to
17 vote in Missouri, when he only has a Wisconsin
18 driver's license. That's another instance.

19 MS. TERNUS: Okay. Any other questions?

20 MS. RATLIFF: Also, how expensive is it
21 for -- when we talk about getting a photo ID -- a
22 free photo ID for individuals who do not have it,
23 for people that come from states like Mississippi,
24 for instance? Is there a lot that goes into being
25 able to get the documentation in order to get the

1 photo ID in Missouri.

2 MR. PRUITT: Yeah. Not only that, but,
3 you know, since this issue came up a couple of years
4 ago, I carry my wallet, a photo -- a copy of my
5 grandfather's so-called birth certificate. He was
6 born in Arkansas, and it's actually a sheet of paper
7 where the doctor signed and said he was born this
8 day, and it was notarized, and that is his -- he's
9 no longer here now, but that is his birth
10 certificate. That would not be allowed as
11 documentation, and how would he now go back to
12 Arkansas, and go through the rigmarole of having
13 them issue him an official state birth certificate
14 with a seal on it would be somewhat of a task,
15 especially for somebody who does not have resources
16 or access to legal counsel.

17 MS. TERNUS: Just to confirm what I
18 learned from this exchange is that even though the
19 photo ID is issued by this state for free, there
20 would be a cost to obtain underlying documentation
21 from the original state?

22 MR. PRUITT: That's exactly -- you have to
23 have that birth certificate and other things in
24 order to take -- to get that free photo ID, and the
25 cost and the time of hunting down that documentation

1 to prove you are who you say you are, just to get
2 the photo ID, just to vote would be -- could be a
3 significant burden to some.

4 MS. TERNUS: Okay. Marty.

5 MS. RAMIREZ: As you both engage in your
6 issues, can you share what has worked?

7 A. I tell you what has worked better than
8 anything else -- and I was wondering how it would
9 work under the photo ID of the past, and that is, is
10 the elderly, who were put on the permanent absentee
11 lists -- see, right now, when election comes around,
12 they get a ballot in the mail, they vote, get it
13 notarized, and they send it back, and that has
14 worked. I mean, I have never heard of any instances
15 where a bunch of elderly people voter identification
16 has been used to vote at a poll. It works well, but
17 I wonder how that would work under photo ID, where
18 they now all of a sudden have to come out to nursing
19 homes and the senior buildings, and go somewhere and
20 get a photo ID to get back up on this permanent
21 list, and if they don't, and they're grandfathered
22 in, and the question is, going forward; that has
23 worked?

24 The other thing that has worked extremely
25 well is right now, Missouri, if you have no ID, and

1 you show up at the polls, and the poll worker knows
2 you, this poll worker has been working this poll
3 forever, and they identify the face, and they know
4 you by name, they know -- they're your neighbors,
5 and this is that, they can allow you to vote, and
6 that has worked.

7 MS. NOREN: It has to be two poll workers.

8 A. Yes. One for each side, yeah. But,
9 still, again, it's the poll worker who could be your
10 neighbor from down the street, around the corner,
11 that person has been coming there and voting and
12 identifying themselves voting year in and year out,
13 election in, election out, there should be no reason
14 why that person should be disallowed to vote, simply
15 because they showed up without their identification,
16 and everybody knows who they are. And one other
17 quick thing about that is this, the law they propose
18 says this: it say if I show up without ID, that I
19 can vote, and it can be counted as a provisional
20 ballot, and then that ballot goes to the election
21 board, and the election board, as long as they can
22 identify where I signed at the polling place, with
23 my signature on file, then that vote counts. Well,
24 in Missouri, when you go to vote, they have the book
25 over here, which has your signature in it, and they

1 cover it, because when you sign to get your ballot,
2 when you're there to vote, then that election worker
3 pulls back this paper to compare both of those
4 signatures. Even if you show ID, that poll worker
5 compares those signature, and then you're allowed to
6 vote, at least in St. Louis, that's how it works.
7 So I already have the election board verifying my ID
8 on the spot, but if they did that under the new law,
9 I would still be voting provisionally, versus my
10 vote counting.

11 MS. TERNUS: Ms. Furtado, could you define
12 two terms so that we are sure that the testimony you
13 gave is clear to somebody who might not be familiar
14 with the terminology you've used? Could you define
15 for the record what a "suspense list" is; and, also,
16 what is a suspense list outreach?

17 Sure. I'll try. The list of names --
18 people who have filled out the application form, and
19 in Kansas, it's predominantly the Kansas form --
20 state form for applying to register to vote. They
21 complete that form, but it is not accompanied by a
22 copy of your document that proves you're a U.S.
23 citizen. The outcome is that upon receipt at the
24 election office, your name, or the name of the
25 applicant, is placed on a list that was initially

1 designated by the secretary as a suspense list.
2 There has been some on objection to that, because it
3 can be interpreted -- has been interpreted recently
4 to mean -- that's the same terminology when we
5 suspense a criminal felony, and then allow to
6 reenter into the -- being able to vote, that
7 individual is in suspense for a time. And so it is
8 now, at least quietly, being referred to as a
9 "pending list." It really is a list of incomplete
10 applications missing the proof.

11 By in suspense outreach, what I mean is
12 that everybody -- every county official, all 105,
13 have been instructed to write a letter, and send it
14 by regular mail to individuals who are added to the
15 suspense list, and that has resulted in a very low
16 response. In fact --

17 MS. NOREN: And it's a letter just
18 notifying the individual that they are on this list,
19 and they still need to do something to be registered
20 to vote?

21 MS. FURTADO: Yes. And they list that you
22 must provide documentation -- there are 14 different
23 ways that can be used, the most common a birth
24 certificate; passport; naturalization certificates,
25 but there are all kinds of ways -- adoption paper,

1 so forth. And so what has happened is that the
2 response rating was so low that in our county, which
3 is the Johnson County, the most populated in the
4 state, I went to speak with the election
5 commissioner to ask who was responding, if anybody;
6 and it turns out that it is your newly naturalized
7 citizens who are responding, coming with their
8 certificate. In the past, prior to this law, we
9 were able to take the number on the certificate, and
10 enter that into the application form, and that
11 satisfied. That is no longer the case until the
12 national database is complete or verified or
13 however. And so with the very low response, budgets
14 being what they are, the course of action was, we're
15 not going to continue to mail in letters because
16 we're getting -- that's a burden on the budget, and
17 we're getting very low response. In Johnson County,
18 they do robot calls, but not everyone supplies a
19 telephone number, one that lasts, in the form, and
20 so that was a follow up in our county, and it was
21 out of that conversation that the idea of the
22 government-issued device to copy -- photographed, in
23 our case, the certificates were able to prevent
24 those names from going on. Other forms of outreach
25 have been to interact with elected officials in one

1 county who agreed to absorb the cost of the postage,
2 and they would send a letter to their constituent
3 saying it's important -- or potential constituent,
4 if they become registered voters, that you need to
5 do such and such to get it corrected.

6 MS. TERNUS: Since I'm not from Kansas,
7 let me ask a question to be sure I understand the
8 issue that you're addressing. They have to have
9 documentation, and it has to be physically attached
10 to the application to register; correct?

11 MS. FURTADO: Well, I will answer that in
12 the following way: In my conversations throughout
13 the state, I have learned that there is not a
14 consistent handling of the copy. They are --
15 there's one county where seeing by official
16 registrars -- and official registrars are presumed
17 to be the individuals who work in the driver's
18 license, because I was told that everyone in the
19 elections office is an elections official; and so
20 they don't want to be called official registrars,
21 and that is the group that is thought to be playing
22 that role. And we -- your question, again, I'm
23 sorry.

24 MS. TERNUS: Whether the law requires that
25 a physical copy be attached, the underlying

1 document.

2 MS. FURTADO: So we have one county that
3 is working on seeing only, just checking off, or
4 creating a checkmark. We have others who are
5 confused. They shred it immediately. They do not
6 want this personal document in the office for
7 personal identity theft and all of that, and so
8 that's one way that they have handled that.

9 MS. TERNUS: So they get the copy, they
10 register the person to vote, and then they destroy
11 it?

12 MS. FURTADO: They destroy it, right.
13 They shred it. Others hold on to it but they don't
14 know exactly for how long. They're saying once the
15 election has to occurred, they'll destroy them,
16 because they want to archive the applications
17 because of the signature and other information,
18 birth date, et cetera.

19 MS. TERNUS: So then the iPad testimony,
20 are situations where the person brings their
21 documentation, but it's the original, so you have to
22 have a way to make a copy of it to attach. Is that
23 what was happening in those circumstance where you
24 said you weren't allowed to make -- you were
25 prevented from using the iPad to copy documents?

1 MS. FURTADO: It is -- the photo ID --
2 excuse me -- the photo -- photography is being used
3 to for the newly naturalized citizens. They have
4 that certificate. It has been handed to them in the
5 ceremony. They come to the reception, and there at
6 the reception, the League has a table where we help
7 register to vote. And so that day, in addition to
8 forms, they were given the iPad, and then take it to
9 the courthouse, use it, and return it with a
10 photograph of the original document, and,
11 presumably, print it out.

12 Now, another one of the commissioners in a
13 district that holds naturalization ceremonies, he
14 purchased a digital camera, and the League resumed
15 its activity, but some of the people had difficulty
16 with the settings, and it was out of focus; so my
17 understand is he's going to purchase an iPad and use
18 that.

19 The third county in which we have
20 naturalization ceremonies, the election office has
21 sent people with a scanner -- an optical scanner, so
22 the election office is actually making the copies,
23 and, in my opinion, that's a good approach because
24 in Sedgwick County, which I'm speaking, they service
25 people from all over the western half of the state,

1 and so that they have to transmit two of the
2 election official in that in which the person
3 resides, and I presume, then, the up scan, they've
4 done that before, and they're comfortable with that.
5 And so we feel, as the League, that this has been
6 our way of, at least, curbing the birth of the
7 suspense list, pending applications.

8 MR. RICH: I have a number of questions
9 for Delores. I have found, over a period of time,
10 that the League of Women Voters of Kansas is really
11 the source of information about what's really
12 happening in that state. And let me just start by
13 noting, or asking, whether you have more
14 information, presumably, if this proof of
15 citizenship requirement is brought about by concerns
16 that there were noncitizens voting. Do you have any
17 knowledge of whether -- to what extent there are
18 actual records of noncitizens, either registering to
19 vote, or actually voting?

20 MS. FURTADO: We don't -- as the League,
21 itself, has not had those records. The only records
22 I've read in the reports, by way of the state, is
23 that there have been as many as eight elections, it
24 was described as, involving five people.
25 Apparently, one person who had a green card,

1 permanent resident, voted in several elections -- or
2 more than one, let's put it that way and really
3 thinking that this would enhance your chances to
4 become a citizen. So it was not malicious or
5 impersonation or any of that.

6 And so to answer that, the number of
7 noncitizen registered voters is extremely low. It
8 is far lower than the number of people on the
9 suspense list.

10 MR. RICH: And what's your best estimate
11 of the number of the people currently on the
12 suspense list?

13 MS. FURTADO: The number of -- the
14 suspense list, on a monthly basis now, is matched
15 with the office of vital statistics; so if we start
16 it at with 22, 500, eliminated 7,700, which brought
17 it back down to 14,000 and some-odd. It is now over
18 17,000. It has not been reported this month, what
19 the growth is, but I believe it's probably going to
20 be over a thousand, because the closer we get to
21 elections, the more likely it is that people are
22 going to attempt to register. And so it is,
23 overall, at this time, minus the matches made by the
24 Office of Vital Statistics, it's in the neighbor of
25 17 to 18,000 people. And the issue with the married

1 women, or name change, they do have a designation
2 that it is just unsatisfactory certification, and
3 you need it by way of marriage or gender change.
4 There's a document on the Web site, and the
5 explanation -- I counted the lines -- it's 11 lines,
6 and I -- that you could possibly fill out, and I
7 mean, it gives you no instruction. It doesn't say
8 if they want to know the date that you changed your
9 name or why or what happened. It isn't spelled out,
10 and, presumably, the affidavit that could be
11 supplied in that way is used in one of our counties,
12 but I went through mine, again, looking through the
13 information on it, and that form is not on our Web
14 site.

15 MR. RICH: You noted in your testimony
16 that the number of people actually registered is
17 down.

18 MS. FURTADO: Yes.

19 MR. RICH: Do we have any -- or do you
20 have access to any information about how the total
21 numbers registered, since this law went into effect,
22 compares to a comparable prior registration period?

23 MS. FURTADO: No. I have not looked that
24 up, but on the basis of the -- the group we're
25 talking about, 18,000, comprises about 25 percent of

1 the people who have applied this -- since
2 January 2013; so it's a little bit -- year and a
3 quarter, about. So -- and from the data locally
4 from nine leagues, solely nine counties, it is way
5 down, the numbers that are coming forth to register.
6 Events that did 300 have been zero this year, so
7 significant.

8 MR. RICH: Wow. You also indicated that
9 because of the method that is being used in Kansas
10 to compare voter registration with vital statistics,
11 that it is, disproportionately, a group of males who
12 are being in turn not successfully added to the
13 registration role. Do you know at all what the
14 portions are of male to female with -- that go into
15 that category, 7,700, who have been confirmed?

16 MS. FURTADO: I don't know. The
17 proportion wasn't revealed, and we do know, of
18 course, it has to include women born in Kansas who
19 did not have a name change.

20 MR. RICH: Yes.

21 MS. FURTADO: So not having a name
22 changed, born here, that's the match. But the data
23 has not been revealed with regard to specific
24 ratios.

25 MR. RICH: You've also indicated that

1 there is a group of about 100 people who use the
2 Federal form. Are those the only people who would
3 be protected by the National Voter Registration Act,
4 and for whom, as a result, there might be a dual
5 voting possibility?

6 MS. FURTADO: Yes. That is the current
7 billing, that those who have filled out the Federal
8 application form will be having a special ballot
9 with just the offices that are open for election in
10 the Federal level.

11 MR. RICH: So, in other words, the other
12 15,000 or some who use the state forms, but whose
13 registration was never completed will not be allowed
14 to vote in either the state or the Federal election?

15 MS. FURTADO: That is correct.

16 MR. RICH: And you -- I understand that
17 the League of Woman Voters has been involved in
18 going door to door registering and so forth, and I
19 know others in Kansas have also been engaged in
20 door-to-door registration. Have you seen any effect
21 on the number of people -- the number of groups,
22 even candidates who are going door to door
23 attempting to register voting; and whether or not
24 you have as many people engaged in door-to-door
25 registration activities, other kinds of voter

1 registration activities that have been previously
2 taken place, but are not now taking place, just
3 because the group is not really able to complete the
4 registration process.

5 MS. FURTADO: The door-to-door canvassing
6 has not be gratified. With League members that I've
7 talked to, they've dedicated a whole day of doing
8 this to come out not knowing what effect it had, so
9 that -- other than to advise, encourage, and urge
10 them to complete the process, including electronic
11 transmission, if they have a smart phone or
12 whatever, or texting. In our county, in Johnson
13 County, it is allowed to use electronic means.
14 There are others in other counties where -- we have
15 a combination of commissioners, and then we have
16 elected county clerks who either directly function
17 as the election official, or appoint someone under
18 them to be the election official, and I have been
19 told that in one county, the electronic transmission
20 is thought to be a slow process, and so they're
21 setting the deadline for -- in advance of the voting
22 registration deadline for doing electronic
23 transmission. I don't understand it; I only have
24 heard it, and it is why I refer to this process as
25 being very confusing. The ordinary citizen who is

1 coming to register to vote confuses the requirement
2 of the birth certificate for proof of U.S.
3 citizenship with having an ID -- a photo ID, which
4 we implemented the year before in Kansas in 2012,
5 and so then there -- they look at, and you say you
6 have to have proof of U.S. citizenship. Well, I've
7 got my driver's license, I have my photo ID, do you
8 want to see it? And I say, No, you have to keep
9 that to vote. You will use it then, but for this,
10 we need a copy -- some document, most commonly, the
11 birth certificate, which will prove who you are,
12 your name, birth date, and all of that. And that is
13 very questioned, and saying, Why? And so that's why
14 we have to get into a little bit about -- we are
15 concerned about fraud, so you've got to be careful
16 when you're duplicating a personal document and so
17 froth, because it's not so much that they're
18 fraudulent, but that there's belief that somebody
19 out there might be.

20 MR. RICH: Okay. I have one other
21 question. I know that there's been quite a lot of
22 talk about the difficulty surrounding driver's
23 licenses where the Natural Voter Registration Act
24 requires that voting registration be available, but
25 I haven't heard similar discussion about what might

1 be happening in welfare offices, or in offices
2 providing services to people with disabilities, both
3 of which are also required by national law to
4 provide for voter registration. Do you have any
5 knowledge about whether people in these other
6 offices are being trained, or how they are handling
7 voter registration efforts that are taking place
8 within those other offices? For example, is the
9 current government in Kansas training people in
10 their welfare offices to provide the necessary steps
11 to complete the registration to complete the
12 registration process?

13 MS. FURTADO: I do not know if they're
14 training any others. It is my understanding that
15 the issue where the driver's license bureau was that
16 new software, proprietary restrictions, were
17 interpreted by some who staff the office to mean
18 that you couldn't transmit a copy, so that they
19 satisfy the NDRA by asking if they want to register
20 to vote. They have seen it, but there's not
21 communicated, and that not necessarily acceptable in
22 each of the counties, and so they are not making
23 copies, and I was told that it was, in part, due to
24 the proprietary restrictions.

25 MR. RICH: Thank you.

1 MS. FURTADO: You're welcome.

2 MS. NOREN: Okay. You mentioned that
3 Kansas implemented ID requirements in 2012.

4 MS. FURTADO: Yes.

5 MS. NOREN: And so we have one that had
6 been in effect for the presidential election, and
7 another that's looking -- that's coming up. The
8 Kansas ID requirements that they put in, what
9 exactly did they put in? For example, could someone
10 vote with a Missouri driver's license, or was it
11 only Kansas?

12 MS. FURTADO: Could they vote with a
13 driver's license?

14 MS. NOREN: No. I mean, if they were
15 registered to vote, and showed up with their
16 Missouri -- I'm thinking of a student, or something
17 like that, yeah. Would they be able to vote under
18 Kansas law?

19 MS. FURTADO: Under Kansas law, it is a
20 government-issued driver's license from within the
21 state, as far as I understand it. I don't --

22 MS. NOREN: Okay. And I'd rather you not
23 say, if you don't know.

24 MS. FURTADO: I don't know. I don't know.

25 MS. NOREN: Okay. All right. And so you

1 aren't sure what those requirements were, so we --
2 but what issues did you-all see come from that? I
3 mean, were they election day problems? Were people
4 prevented from voting, or do you see that as --
5 there's a lot talk, so -- you have been through it,
6 and as he says, the League is often the first to
7 know about a lot of things, so I kind of want to
8 figure out what the experience was in Kansas.

9 MS. FURTADO: Kansans did not resist the
10 photo ID requirement, for reasons as numerous as
11 there are people. They just didn't resist.
12 Whereas, this particular implementation is being
13 more resisted. And, in part, I think it was the
14 availability of a photo ID free of charge, and so
15 people were able to get their -- go to the driver's
16 license, and just get a picture ID -- photo ID for
17 the purposes of voting.

18 MS. NOREN: Okay. They didn't have to get
19 their birth certificate from Michigan before they
20 got that, or their divorce decree and all that
21 before they got their driver's -- you know ...

22 MS. FURTADO: I don't know.

23 MS. NOREN: All right. I think that's
24 what makes a big difference in accepting. You know,
25 I'm not sure people accept, you know, ID

1 requirements. If you've got it in your pocket, they
2 accept it. You know, if your pures has been stolen,
3 and it's the day before the election, you're
4 probably not going to accept it. You know, if you
5 go in with the underlying document to get a
6 replacement license for it, but -- so you didn't see
7 problems with it?

8 MS. FURTADO: There was nothing that I
9 read or heard in conversation about problems in the
10 2012 election over failure to produce an ID.

11 MS. NOREN: Okay.

12 MS. FURTADO: If they didn't have it with
13 them, now, it was described -- instances in which an
14 individual appears without the photo ID, and is
15 given a provisional ballot, has the number of days
16 to -- following the election day until vote of
17 Kansas meets to produce that. And in those
18 instances in which they did not, the
19 interpretation -- and this is just an interpretation
20 by local folks -- is that the races that they were
21 voting on were so well decided before, that they
22 just didn't bother.

23 So it is not that they didn't have photo
24 ID, it is that they didn't carry it with them to the
25 polls, but that's that the only thing that I've

1 heard as a problem the photo ID.

2 MS. NOREN: Okay. Student IDs, were those
3 accepted as an acceptable form of ID.

4 MS. FURTADO: Yes.

5 MS. TERNUS: Okay. Mary.

6 MS. RATLIFF: Okay. I had a question --
7 Kansas had a photo ID requirement; is that correct?

8 MS. FURTADO: That is correct.

9 MS. RATLIFF: How long has that been in
10 effect?

11 MS. FURTADO: It was put in effect
12 January 1st, 2012.

13 MS. RATLIFF: And I noticed that you said
14 that the voting had fallen off, decreased the
15 number -- did I hear you to say that regulatory --

16 MS. FURTADO: Voter registration, as a
17 result of the proof the citizenship has decreased,
18 yes.

19 MS. RATLIFF: Okay. So we know that it's
20 the decrease in citizenship, and has nothing to do
21 with photo ID? Is that --

22 MS. FURTADO: I don't know what impact
23 photo ID ...

24 MS. RATLIFF: That's what I was wondering,
25 if we had any way to know if photo ID had any

1 impact.

2 MS. FURTADO: No. The photo ID is for
3 voting -- for actual voting in elections, or in the
4 advance balloting. It's not -- photo ID is not
5 required for registering the first applicants right
6 now for voting, no.

7 MS. RATLIFF: Okay. But it is
8 requirement for voting without -- I'm just wondering
9 if there was any impact -- there could possibly have
10 been some impact from, you know, not being able to
11 vote, even if registered, without an ID. I mean,
12 that you would not be able to vote.

13 MS. FURTADO: I haven't followed that. I
14 don't know.

15 MS. TERNUS: Was there a suspense list
16 prior to the requirement that there be proof of
17 citizenship to register to vote, or was that
18 something that just came to be with this new
19 requirement that citizenship be proved before you
20 erase it?

21 MS. FURTADO: I'm sorry, I going to ask
22 you to repeat the question.

23 MS. TERNUS: Sure. The suspense list that
24 we've been talking about.

25 MS. FURTADO: Right.

1 MS. TERNUS: The pending list.

2 MS. FURTADO: Yeah.

3 MS. TERNUS: Did that exist before the new
4 law came into effect that required proof of
5 citizenship?

6 MS. FURTADO: No; although, there are
7 always forms that people are incomplete in filling
8 out, and those did require a follow-up, but it was
9 not designated as any particular category, and it's
10 one of the reasons the League is encouraged to
11 register voters, is because the officials recognize
12 that we checked the form for completeness, not for
13 what they say, but the completeness to verify, just
14 to ascertain that this is a complete application
15 form, and it should be processed. So that is why,
16 with confidence now -- some of the people on that
17 list may be individuals who did not -- also did not
18 properly fill it out.

19 MS. TERNUS: Do you have any information
20 of how many applications were incomplete, prior to
21 the new law going into effect?

22 MS. FURTADO: No, I do not.

23 MR. PRUITT: One quick question for the
24 panel, and maybe -- you may be able to help me out.
25 We've been trying to track down -- if you go to do a

1 change of address online, through the postal
2 service, it will allow you to register, or change
3 your voter registration to your new address, but
4 when you do that, it asks you what party do you
5 claim, and for the life of us, we couldn't figure
6 out why we have to declare a party to change my
7 voter address.

8 MS. NOREN: Well, some states require
9 privy registration in order to vote. Missouri
10 doesn't, so ...

11 You're used to Missouri where you're never
12 asked that question; whereas, if you're in another
13 state, if you're going from one county to another,
14 you have to know that in order to vote in the
15 primary.

16 MS. TERNUS: In Iowa, we have to be
17 registered for a party to vote in that party's
18 primary, but, obviously -- well, I think it's a
19 third Democrat, a third Republican, a third
20 registered candidate, so you don't have to register
21 for a party.

22 MS. NOREN: Well, I have a question about
23 when you say you changed your address online with
24 the post office, you can do that for voter
25 registration. Why am I not seeing those?

1 MR. PRUITT: I don't know.

2 MS. TERNUS: I don't get them from the
3 post office.

4 MR. PRUITT: If you do a change of address
5 online using the U.S. Postal Service Web site, it
6 will give you the option to also do the change of
7 address for your voter registration.

8 MS. TERNUS: I, interestingly enough, have
9 never seen a change of address come from the post
10 office, except when I proactively submitted my file
11 to NCOA of Denver, National Change of Address
12 Denver; so I don't know. I'll have to find out
13 where they're going, because they certainly aren't
14 getting back to the election officials.

15 MS. NOREN: I think we're just about out
16 of time, but I do want to ask if our witness from
17 Iowa is here?

18 MS. ZAMORA: She's not here yet, so we can
19 go ahead with public testimony.

20 MS. TERNUS: Okay. I think we're going to
21 handle this over to Mary, who is going to handle the
22 public testimony part of this panel.

23 MS. RATLIFF: Thank you.

24 We have -- for our public testimony, we
25 want to thank you all for coming here today.

1 Janet McMillan.

2 MS. TERNUS: Let me interrupt first. We
3 will let the witnesses go back to the audience.
4 Thank you very, very much for helping us today.

5 MS. RATLIFF: I'm going to ask these three
6 individuals that will be giving public testimony if
7 they would come to the tables here.

8 Menorah Rowe and Linda Smith. Thank
9 you-all so much. Because you're going to give
10 public testimony, and we don't have written
11 testimony here to look over, we're going to ask you
12 to be as specific as you can, because, of course,
13 this is going to be all a part of it, and so if you
14 can give us your name, and we will start with Linda
15 Smith.

16 So, Linda, if you would start telling us
17 what you --

18 MS. SMITH: I'm Linda Smith. I'm the
19 president of the League of Women Voters of Kansas
20 City, Jackson, Clay, and Platte Counties. I do want
21 to say, because of an apparent miscommunication, the
22 Missouri League did not learn of this event until
23 last Friday, so I'm going to just take the
24 opportunity to speak on one aspect of this picture
25 of democracy, or voting system, being broken, and

1 that's the exceedingly low turnout, and -- for
2 example, in the Kansas City Board of Election
3 Commissioners in a report that it issued about two
4 weeks ago, reported we have over 200,000 registered
5 voters, but, guess what? We only have 10 to
6 14 percent of them turn out for an election. So as
7 I have been -- lived my life in this area, I talk to
8 people to find out if they vote; and if they don't
9 vote, why they don't vote, because it is stunning
10 that so few people show up at the polls, and part of
11 it is, it's a lot of trouble for some of them
12 because of hours and juggling children and work and
13 getting the groceries to -- soccer practice, and,
14 you know, getting the time to do it. And some of it
15 has to do with the chilling effect of what's been
16 going on, and -- because in Missouri we are having
17 an onslaught against voter's rights, and there are a
18 lot of issues, and voters -- people who are eligible
19 to vote are saying that they don't believe their
20 vote counts for anything, and that doesn't mean
21 that. They don't think it counts because they
22 believe that the big money people are the ones who
23 are making the decisions, and who are controlling
24 the flow of information upon which they can make a
25 judgment about what they will do, how they will vote

1 when they get to the polls. These aren't
2 obstructions to getting there, per se. I mean,
3 they're obstructions to people exercising their
4 voting right. If they do not feel they have
5 information, or that the information is skewed by
6 one interest versus another.

7 I think I'll stop there.

8 MS. RATLIFF: Okay. All right. Thank you
9 so very much. Are we going to wait until afterwards
10 for questions?

11 MS. ZAMORA: That's okay. You can go
12 ahead.

13 MS. RATLIFF: Okay. So we have the low
14 turnout vote that we had in -- are there any -- do
15 you have any suggestions of how we can turn that
16 around? What is it -- do we have any idea of what
17 the controlling factors are that are causing folks
18 not to?

19 MS. SMTH: Yeah. In looking at the
20 election commission's report, one of the -- it costs
21 to operate the election anywhere from 10 to \$13 per
22 vote cast. That's a lot of money for each vote
23 cast. And some people have I spoken to have said
24 they really didn't realize that this was the day
25 they were supposed to go vote. A lot of people

1 don't read the newspaper. In fact, frankly, our
2 newspaper is wonderful at having a lot of
3 information, but if you don't read the newspaper,
4 you may not know; and so maybe some of that -- there
5 should be recommendations to election commissions
6 that control the money that's available, some of it
7 be spent for advising people, whether it's
8 billboards or robot calls, or whatever, that it is
9 election day, and that their vote counts, and,
10 perhaps, they're doing that already, but it is a
11 serious issue when -- for example, in the most
12 recent election for Kansas City, Missouri, 5,000
13 votes decided the scoreboard, yet, education is a
14 really major issue in this city, but 5,000 votes out
15 of 200,000-some registered voters decided that
16 election.

17 So I believe that -- I would hope that the
18 report that comes out of your efforts would include
19 some that could be directed toward election boards,
20 in terms of encouraging the vote on actually --
21 because, I mean -- you know, there are -- and,
22 frankly, because we didn't have time to do -- get
23 together a report for Missouri, and I do want to
24 commend Delores Furtado. She did a superb report,
25 and I think we ought to be doing the same kind of

1 thing for our own use, but ...

2 So getting people registered is one thing;
3 getting them to the polls is quite another.

4 MS. NOREN: I have a question on this real
5 quick. You're throwing out some numbers 10 to
6 15 percent of the votes. Now, you're talking about
7 local election; right?

8 MS. SMTH: Yes.

9 MS. NOREN: Because the presidential
10 election, I know this metro area -- actually,
11 75 percent --

12 MS. SMTH: Yeah, I don't have the numbers,
13 and, frankly, you know, when I learned about this
14 meeting on Friday afternoon, I didn't have time to
15 get -- you know, I went to my most recent report,
16 but you're right. Of course, for our presidential
17 election, you're going to have a lot bigger turn
18 out, but we've had -- you know, we're talking about
19 very important local issues we do have, you know,
20 state legislatures coming up for.

21 MS. NOREN: I totally agree. You know,
22 when I talk with young kids, I tell them, you know,
23 who cares? When your sewer backs up, you aren't
24 calling the White House, you know? Your school
25 bus -- everything they do in life, is going to --

1 these April elections, these smaller elections. And
2 I didn't want to think -- I don't want to have
3 people going away from here thinking, you know, a
4 presidential election or a big general election the
5 Kansas City metro has 10 to 15 percent turnout,
6 because they don't. Across the county, local
7 elections have very low turnout. There's no
8 question about that.

9 MS. RATLIFF: And I know that that
10 election may be very disappointing in Kansas City
11 with all of the issues that are going on with the
12 schools. Certainly, you would hope for a much
13 better turn out for our -- because our kids are
14 worth it.

15 MS. SMTH: Absolutely.

16 MS. RATLIFF: And I do know that there
17 are -- we have significant problems with the school
18 systems in Kansas City.

19 But thank you so very, very much.

20 MR. RICH: Is this a downward trend that
21 you have seen over time? Is it significantly
22 different now, for example, in a comparable election
23 than it was five years ago or ten years ago?

24 MS. SMTH: I'm sorry, I can't answer that
25 question, and my colleague, Peg Pendergrass can.

1 I've just been affiliated with this League for the
2 last five years, and having been a Federal
3 government employee before that, I was hatched.

4 MS. RATLIFF: Yes.

5 MS. SMTH: My sense is that it may be kind
6 of par for the course, to be honest, and there may
7 be some areas of, say, Jackson County, like
8 Independence, where you may get a bigger turnout.
9 And, frankly, what this says to me is there are some
10 studies that we need to do as the League of Women
11 Voters to get a better understanding and a public
12 conversation going on this.

13 MS. TERNUS: In your conversations where
14 individuals have indicated that they don't believe
15 that their votes count for anything, I am gathering
16 from that that they feel maybe cynical, and maybe
17 manipulated by what you've termed "big money
18 interests."

19 MS. SMTH: Yes.

20 MS. TERNUS: That control the information
21 they're getting. Do these U.S. Supreme Court's
22 decision -- or does the U.S. Supreme Court decision
23 in Citizens United ever come up in those
24 conversation that a lot of the corporate ...

25 MS. SMTH: Actually, yes. I was surprised

1 that my manicurist knew all about this, and he had
2 been taking some courses, and -- yeah -- studying,
3 as it may be, you know, and an awareness, and the
4 feeling that, you know, that certain interests from
5 central Kansas were in effect buying the election.
6 That makes a difference to people in terms of, do
7 they feel that their vote counts.

8 MS. TERNUS: So why spend the time if the
9 outcome is kind of destined by the people who
10 decided ahead of time how they're going to spend the
11 money.

12 MS. SMTH: Yeah. I think that this is --
13 and that's part of what I alluded to, is the
14 chilling effect that it does, indeed, have that.

15 Thank you.

16 MS. RATLIFF: Thank you so much.

17 And, Ms. Rowe.

18 MS. ROWE: I'm Lenora Rowe, and I'm a
19 member of the League of Women Voters of Kansas. I
20 live in Johnson County. I have participated in many
21 voter registrations over the last 50 years that I've
22 been a member of the League, and I most recently, in
23 some of the naturalization ceremonies, where when
24 people came to register to vote, we would say to --
25 we would have them sign, and we would have them fill

1 out the form, but -- and we would say to them, make
2 sure that you get -- you're not registered until you
3 get your card from the election office, and that is
4 what we always emphasize to people, that they were
5 not registered, but it was easy at that point. It
6 really was. This has been much more difficult,
7 especially in Kansas, but I think across the nation,
8 this is happening.

9 I am 80 years old, and I am somebody who
10 actually paid a poll tax for the 1956 election. I
11 was a graduate student at the University of
12 Michigan. My parents had moved from Virginia to
13 Jersey City, so that was not my home address at any
14 point. My husband's parents had moved to England in
15 the -- being in the navy. We had no home address to
16 vote from, so we went to Virginia. We paid a poll
17 tax, we went -- paid it at one building, we then had
18 to walk to another building to actually register to
19 vote, and ask for absentee ballots when -- the
20 absentee ballots came to Michigan, we had to have
21 them notarized. My husband remembers somebody --
22 the banker who was the notary watching him vote.
23 You know, these things can be very difficult. And,
24 actually, I'm fairly affluent. I have a passport.
25 I can vote -- if I had moved to Kansas right now, I

1 would be able to vote, but I was married, I was born
2 in the District of Columbia, where I would -- where
3 my birth certificate would be. If -- I was married
4 in Virginia, where my marriage certificate would
5 have been. You know, it really is difficult. And I
6 really I do think that what we are instituting now
7 is new poll taxes, and making it very difficult for
8 people to vote, and especially women.

9 MS. RATLIFF: Absolutely.

10 Thank you all so very much. Do we have
11 any questions for these witnesses here?

12 MS. NOREN: We want to thank, League of
13 Women Voters, as always on the job. They always
14 have good information for us, so thank you all so
15 very, very much.

16 At this time are, we are ready for a
17 break.

18 (A recess was taken.)

19 MS. NOREN: At this time, we have Betty
20 Andrews, who was part of the first panel, but was
21 delayed in arriving, and we will take her testimony,
22 which is five minutes, and we'll spend about five
23 minutes on questions, and then we'll get started
24 with the second panel.

25 So, Betty, if you would be so kind as to

1 give us your testimony, we're ready for you.

2 I guess I didn't do a full introduction.
3 Betty Andrews is with the NAACP. She is from Iowa,
4 and she will address the disenfranchisement of
5 people with criminal convictions, and the
6 disproportionate impact of that on voters.

7 Ms. Andrews.

8 MS. ANDREWS: Greetings distinguished
9 commissioners. I'm Betty Andrews, the president of
10 the Iowa/Nebraska NAACP, and state area conference
11 of branches. Today, I sit before you to address
12 Iowa's felony disenfranchisement, the practice of
13 stripping citizens of their right to vote. My
14 testimony will include a number of excerpts from a
15 document called, "Silence: Citizens Without a Vote,"
16 which was produced by the National office of the
17 NAACP's Voter's Rights Initiative.

18 In Iowa, in 2005, then sitting governor,
19 Tom Vilsack, issued Executive Order 42; an order
20 that automatically granted citizens with felony
21 convictions the right to vote upon completion of
22 their sentences. This action was lotted amongst a
23 voter rights advocate, and it was in line with
24 national trends that work towards making it easier
25 for people with felony convictions to regain the

1 right to vote. Despite the advances made under
2 Executive Order 42, which allowed 80,000 citizens to
3 vote, Iowa has now fallen back to a permanent -- to
4 permanent felony disenfranchisement once again.

5 In 2011 the current sitting governor
6 revoked Executive Order 42 on the very day he took
7 office. This affects the lives of thousands of
8 individuals and families, denying citizens of their
9 fundamental rights to exercise their voice and their
10 vote, and to exercise that opportunity at the local,
11 state, and national levels. Iowa is now one of only
12 three or four states that strips United States
13 citizens of their voting rights for a lifetime upon
14 a conviction of a felony. Iowa is noted as having
15 one of the toughest application processes for those
16 who wish to seek restoration. A process instituted
17 by the current governor on the very day, as I said
18 before, he took office in 2011. The application
19 includes 31 questions, and obligates the applicant
20 to include a copy of his or her credit history
21 report, as well as the current address of the judge
22 that convicted them however many years ago. Cases
23 have also been reported documenting people seeking
24 restoration, and spending hundreds of dollars on
25 attorneys, and taking well over a year to apply for

1 this fundamental right, yet those applications were
2 denied.

3 I'd like to make a few quick points to
4 help you understand how this affects African
5 Americans in Iowa, keeping in mind that the
6 disparate numbers are also prevalent in other
7 minority communities.

8 Point 1: According to the data the
9 Iowa/Nebraska state NAACP received in 2012, Iowa
10 disenfranchises more than 1 in 14 African-Americans,
11 amounting to more than 7 percent of the
12 African-American voting age population being denied
13 the right to vote.

14 Point 2: Other 2012 data shows that 8,000
15 former offenders have returned to the community
16 since Executive Order 42 was rescinded. Less than
17 12 of these individuals as of 2012 had their rights
18 restored. So they went through that application
19 process, but since 2012, that number has now risen
20 to, get this, 20. Twenty people who were
21 re-enfranchised. I ask you to measure these
22 findings with the fact that the state of Iowa is
23 number one in the nation for incarcerating
24 African-Americans, and does so at a rate of 13 to
25 one. That means that a black person in my home

1 state is 13 times more likely to be caught up in the
2 criminal justice system than their white
3 counterparts. That is more than double the national
4 average of six to one. African-Americans are
5 3 percent of the population, and over 25 percent of
6 the prison population and over 30 percent of the
7 state's felony convictions. Given this information,
8 you can see how taking the right to vote away in
9 Iowa disproportionately, and profoundly affects
10 African-Americans, and rises to the level of a red
11 alert.

12 Iowa's rapid return to permanent
13 disenfranchisement, and the inevitable growing body
14 of the disenfranchised minorities that will follow,
15 as a result of the role of race and incarceration
16 rates, is congruent with the nation's -- it is
17 incongruence, actually, with the nation's belief
18 that voting is the essence of a Democratic society.
19 The NAACP has been meeting regularly with Governor
20 Branstad and his staff, working directly with him
21 to -- and we work directly with them, and help
22 streamline the voting process application in 2013,
23 which dropped the requirement for a credit report,
24 and, also, researching the location of judges, many
25 of whom have passed on, or retired from the bench.

1 We are also working on a -- looking at a
2 constitutional amendment. We're addressing these in
3 a number of platforms across the state, one of which
4 is the Iowa Summit on Justice and Disparities, and
5 we continue to work with our governor on a solution
6 for this.

7 One thing -- I would like to end with just
8 a brief description of a situation that is happening
9 in Black Hawk County, that's the branch in Waterloo,
10 Iowa, and this has also been submitted in
11 Dr. Blackwell's written testimony, but just so that
12 the audience kind of has an understanding of what is
13 going on, a number of people with conviction
14 histories were unaware whether or not they could
15 vote in the 2012 elections. Some believed that they
16 could vote; others did not even know that they could
17 not vote. Still, others consciously sought to find
18 out whether they could vote by asking elected
19 officials. Civil rights leaders, door knockers,
20 solicitors -- and these door knockers were, like,
21 soliciting their campaign and soliciting votes, as
22 well as retrieving absentee ballots, and they also
23 checked with employees of the county auditor's
24 office, and in addition, the persons who were
25 working at the polls. Invariably, these persons

1 were told and encouraged to go ahead and vote.
2 Rather than providing a provisional ballot that they
3 could check later, they were told that it was okay
4 for them to vote.

5 And I also want to mention that,
6 disproportionately, these citizens were
7 African-Americans. Those who voted because they
8 were told they could vote were -- are now being
9 charged with voter fraud, despite the fact that none
10 of them ever intended to defraud the state
11 government, or to taint the election process.
12 Nevertheless, Iowa's Secretary of State pursued
13 them, and placed them in the hands of county
14 attorneys to file charges against these citizens.
15 Some have now pled out in fear of additional jail
16 time, and some are fighting the charges, because
17 pleading, or conviction can result in, of all
18 things, an additional felony conviction, and the
19 cycle continues.

20 Thank you.

21 MS. NOREN: Thank you.

22 Could you time us for five minutes of
23 questions as well?

24 You mentioned that you were working with
25 Governor Branstad. Was Governor Terry Branstad the

1 governor who rescinded the executive order of
2 governor Vilsack that reinstated the governor's
3 control over what felons would be allowed to vote?

4 MS. ANDREWS: It was the first thing he
5 did upon being in office.

6 MS. TERNUS: The record just wasn't clear
7 who the governor was, but ...

8 MS. ANDREWS: Governor Branstad.

9 MS. TERNUS: Let me ask you this. Is one
10 of the requirements for a felon to be restored
11 voting rights that the sentence -- that his or her
12 sentence be completed?

13 MS. ANDREWS: Yes. And our communication
14 in working on this issue, we are addressing people
15 with felony convictions who have completed their
16 sentences.

17 MS. TERNUS: And is Governor Branstad
18 interpreting that law to require that the
19 restitution order as part of that sentence be paid,
20 and all fines or fees be paid as well?

21 MS. ANDREWS: I believe so.

22 MS. TERNUS: So does have a
23 disproportionate impact on --

24 MS. ANDREWS: It absolutely --

25 MS. TERNUS: -- individuals without

1 economic means?

2 MS. ANDREWS: It absolutely does, and,
3 quite frankly, the African-American community
4 definitely is impacted by poverty; and so this,
5 again, affects us, even at greater levels.

6 MS. TERNUS: So it would be true that some
7 individuals are being denied the right to vote, not
8 simply by their status as felons, but by the fact
9 that they don't have money to pay a fine or a fee?

10 MS. RAMIREZ: Well, actually, all people
11 with felony convictions are being denied the right
12 to vote, unless they seek restoration. They may be
13 denied on a number of reasons. As I mentioned,
14 there was a gentleman who was denied, even after
15 enlisting the services of an attorney, and it could
16 be anything as simple as -- well, it could be things
17 like -- say if you don't have that judge's -- or if
18 you didn't have that judge's address, or something
19 like that, so there could be very minor things.

20 MS. TERNUS: Okay.

21 MS. RATLIFF: So there would be many
22 prisons and people -- minority -- a large majority
23 of those who would be adversely affected, because of
24 the reimbursement that they have -- the lack of
25 funding which they now find themselves in, and that

1 would be true for minority and for prisoners also,
2 right, reentering into ...

3 MS. ANDREWS: The issue that we're working
4 on with the governor is to clarify that into making
5 sure that if there are any fines, or anything like
6 that, that they that are up to date, as opposed
7 to -- just because there is a fine, because,
8 obviously, if you think about Return to Citizens,
9 who have had a background in the criminal justice
10 system, it is quite difficult to get started and
11 begin paying those fines, fees, or what have you.

12 MS. TERNUS: Anything else?

13 Thank you so much for coming to testify.
14 We appreciate your assistance.

15 THE WITNESS: Glad to be here. Thank you.

16 MR. RAMIREZ: Okay. We'll go ahead and
17 continue with Panel No. 2. Equal Access to the
18 ballot, and problems observed on the election day.

19 Again, welcome to everybody, and to our
20 panels Kip Elliott, with the Disability Rights
21 Center of Kansas; Louis Goseland, Sunflower
22 Community Action. Lazaro Spindola from the Nebraska
23 Latino American Commission. Keely Bassett
24 Winnebago Nation, and Christie Gerken, Disability
25 Rights, Iowa.

1 We'll start with Kip, who is going to
2 address the issue of accessibility for voters with
3 disabilities, curbside voting, and difficulty
4 getting proper voter ID for individuals in nursing
5 facilities. Kip.

6 MR. ELLIOTT: Thank you.

7 Good afternoon, commissioners. On behalf
8 of myself and the Disability Rights Center of
9 Kansas, we appreciate all who are here.

10 Looking through the agenda, I'm kind of at
11 a point that people are able to get registered to
12 vote, and actually going to a polling place, I'm
13 here to talk about accessibility, and those issues.
14 As part of our grant system and what we do, is we do
15 attempt to monitor polling places on election day.
16 Although we serve the entire state of Kansas,
17 generally, on election days, we try to spread out
18 from Topeka, and to as many close counties as we can
19 get. So we focus quite a bit on rural counties. As
20 you all know, Kansas has a lot of rural counties,
21 and if any have you been to a rural county,
22 oftentimes where they vote are one-room schoolhouses
23 that still exist. The counties and townships, as
24 they call them, are very proud of that, and -- but
25 those do have their limits and their issues, so we

1 try to work through that. We've tried really hard
2 over the last several years. We -- one county --
3 and I can speak to it better than any county,
4 because I live there, is Jefferson County, which is
5 just north of Lawrence, and the county clerk there
6 has been very receptive to asking us to come in
7 during election training, and help with some of
8 these issues; however, we are still seeing problems
9 in Jefferson County; as well as even in the rural
10 areas of Shawnee County, which is where Topeka is,
11 the capital. Shawnee County is very large, and
12 there are a lot of rural areas within Shawnee
13 County, so we try to focus on from the time somebody
14 arrives, we've seen issues with accessible parking,
15 as far as a lot of the parking lots are gravel, and
16 can be very difficult to maneuver. Some counties
17 have put down plywood to help folks. We've
18 encouraged them to make sure that they are marking
19 accessible spots for people to park, and if it is
20 gravel, to come up with a way that somebody can
21 actually -- who might be in a wheelchair, even
22 somebody that's not in a wheelchair, but has
23 difficulty walking, gravel can be very dangerous; so
24 we would try to address those issues. Entrance into
25 the building is often an issue not only with some

1 type of a ramp system, but in some small towns, what
2 we've noticed is they have their voting at kind of a
3 rural community center, and a lot of times it's
4 downtown, and there's absolutely no accessibility
5 into the building so we're trying to address those
6 issues. The maneuvering inside of the buildings can
7 be -- because they're small. I was at one facility
8 this last year that was a little, tiny community
9 center for folks, and they also did lunch for senior
10 citizens at noon, and I asked them, you know, are
11 you guys having lunch somewhere else today, and they
12 were like, No, and they had all of these tables set
13 up for lunch, and absolutely no room to maneuver.

14 And so that's a big issue that we're
15 seeing in small counties, and we've tried to address
16 those with the rural counties issues that we see.
17 Most of the people, we get no response; so we go
18 back, and we see if we can help educate. Curbside
19 voting has been another big issue. I think we all
20 know as well, is that our rural community is aging,
21 and so we not only have people with disabilities
22 that may have trouble going into a facility, but
23 also an aging population. I have a neighbor who is
24 80-some, and he was at the point where he really did
25 need to curbside vote, and at his particular

1 facility, and one other facility that I asked the
2 poll workers, So what do you do, if somebody wants
3 to curbside vote, and twice I was told, Well,
4 they'll come in and tell us, and, you know, there's
5 usually three or four poll workers, and even one
6 said -- fortunately, the other two were just kind of
7 like, Oh, wait, stop, don't say that, but,
8 literally, they'll say things like that. They say,
9 Well, we'll keep an eye out the window, or we know
10 who's coming that might need curbside voting, but
11 they'll come in and tell us. Twice last year I was
12 told that. And so we did address that two years
13 ago, actually, in Jefferson County, and they now
14 have -- not only do they have their areas marked for
15 curbside voting, but they have buzzers, and we're
16 trying to address that with other counties, and see
17 if they will go along with that. There has to be a
18 way to have accessibility to your voting place, if
19 you ever get registered, is important.

20 Kansas does not have restrictions on
21 qualifications to vote for person's with
22 disabilities; however, as the P&A, we do get calls
23 for people in nursing homes and people in our
24 facilities that are nursing homes for people with
25 mental illness, and I think somebody else is going

1 to address this, and I think this is probably -- a
2 lot of these issues cover different states, by all
3 means, and I'm not going to step on toes, but with
4 guardians not being willing to help that person get
5 registered to vote, and we ran into that in the
6 rural nursing facilities, several residents who
7 wanted to vote, having a lot of difficulty getting
8 the documents that they needed to get to vote -- to
9 be able to register, and I know others are talking
10 about that. So -- but accessibility is important,
11 and we're going to continue to monitor during every
12 election day, and offer our assistance to the county
13 clerks and the training poll workers, which, I
14 think, is something I think we can do. Thank you
15 for hearing me out.

16 MR. RAMIREZ: Thank you, Kip.

17 Louis will address access and others
18 issues observed on the election day in Wichita,
19 Kansas. Louis.

20 MR. GOSELAND: Good afternoon, and thank
21 you for inviting me to speak on behalf of Sunflower
22 Community Action, and the work that we've done in
23 trying to guarantee voter rights in Kansas through
24 our Can Vote Campaign. Our campaign was started in
25 response to new voter restrictions that threaten the

1 ability to up grass roots voter registration
2 agencies to register people in the community. New
3 proof of citizenship requirements makes registration
4 very difficult, and virtually impossible to complete
5 for grass roots organizations, such as Sunflower, so
6 we started our voter effort that we call "Can Vote"
7 in response to our Secretary of State's attempts to
8 expedite implementation of this restriction into the
9 2012 election cycle, and in doing that, we started
10 monitoring every step of this new process around
11 these voting restrictions, from the week that it
12 went into effect, the first week of January 2012,
13 with new photo ID requirements, up until today where
14 we're monitoring the mass suspension of voting
15 rights for people across the state of Kansas, and so
16 that's taken us everywhere from the election
17 offices, where in the first week of 2012, we sent
18 volunteers to attempt to apply for a new state voter
19 ID -- a free ID, only to find out at that time that
20 the affidavit necessary to obtain one of those IDs
21 had not yet been published by the secretary of
22 State's office, and wasn't published until later
23 that week. The following week, we went to the DMV
24 with people who needed a free and people who had
25 questions as to whether or not their current ID was

1 valid because of address changes and expirations,
2 and so on. We stepped in line to conduct business
3 like every other person who was in the building that
4 day. Each of us had our own individual needs to be
5 addresses, and so we thought it would be most
6 efficient to address the clerks one at a time, just
7 like any other customer would. We were isolated
8 from the rest of the line, and told that the only
9 person who, at that time, could answer our questions
10 regarding accessing of a free ID was the supervisor
11 at the DMV, and only to find out that she didn't
12 have the information that she needed. The only
13 thing she could tell us is that you would need a
14 birth certificate. And so from that point, we
15 contacted the Secretary of State's office. This was
16 in mid-January of 2012, and we were told that free
17 birth certificates wouldn't be made available until
18 the beginning of 2013, when the proof of citizenship
19 requirement for voter registration went into effect,
20 and so we exposed what seemed to be a de facto poll
21 tax, where you would have to buy a birth
22 certificate, if you didn't have one, in order to get
23 a free ID.

24 So from the early onset of the
25 implementation of the Kansas Safe Act, we found that

1 the provisions that are in place within that act to
2 make the requirements manageable to voters were the
3 things that went neglected, but when it came time
4 for election day to come around, they were
5 overzealous in upholding the provisions that keep
6 someone from voting, and so in 2012, we saw 700
7 Kansans turned away from the polls. Their votes
8 were not counted as a result of lack of photo ID.
9 But what we found throughout that experience, and
10 myself included, I showed up to vote early. I
11 brought my ID, and the election worker wanted to
12 scrutinize the way that my signature appeared on the
13 ID, as it compared to this electronic stylists that
14 I was using for the polling booth. She attempted to
15 give me a provisional ballot until I asked to speak
16 with the election judge, and reminded her that the
17 only thing she should be looking for is my name and
18 my face, that's -- and whether or not I was on the
19 polling book. And so additional things that we saw
20 throughout the primaries -- there are a lot of
21 administrative blunders that happen, but in terms of
22 what was specifically related to the voter ID
23 requirement, for instance, was, you know, voter's
24 being turned away, instead of being given a
25 provisional ballot, and in some instances, we had

1 voters who were requesting a paper ballot, and we
2 observed election workers putting them in
3 provisional ballot envelopes, and so there's,
4 seemingly, throughout this entire process, a lack of
5 training and knowledge with election workers, as
6 well as state agencies, as to what they should be
7 doing in order to make sure that voters can actually
8 vote.

9 Another issue that came up that's been
10 consistent throughout this, and actually has landed
11 in court, both in Arizona and in Kansas, is NPRA
12 compliance. One of the things that we raised, that
13 has yet to be answered, as far as we're concerned,
14 is what our state welfare agency is doing to comply
15 with both the state requirements under the state
16 fact, and the voter registration requirements under
17 NPRA. The reason we have a question around that is
18 because the state welfare office often only requires
19 a Social Security number in order to obtain
20 services, whereas the department of motor vehicles,
21 under the Real ID Act requires proof of citizenship
22 in order to get a state ID. And so for those who
23 are registering to vote at DCF, the state welfare
24 agency -- well, whether or not they're actually
25 being successfully processed, or if they're all

1 ending up on the suspended list is anyone's guess.
2 And so the DMV, which does require these proof of
3 citizenship documents failed in implementing a
4 portal that would transfer the proof of citizenship
5 verification, along with their registration
6 information to the election office in what has been
7 the result of that has been tens of thousands of
8 Kansans -- right now, the number a little over
9 20,000 Kansas who have had their right to vote
10 suspended, and unless our state legislature in the
11 last hour decides to do something before the 2014
12 elections, these people will likely be cut out from
13 being able to vote. Now, we contacted a list of 700
14 who we have phone numbers for in the Sedgwick County
15 area, I talked to 300 of them, and around 80 percent
16 of which didn't realize that they were in suspended
17 status, so some people may show up to vote in 2014,
18 and not even be aware that they're not eligible.

19 But in terms of accessibility and
20 language, because I know that's one thing that I
21 needed to address, we went out in 2014 to four
22 low-income communities, predominantly communities of
23 color within the Wichita, Kansas area, and found
24 that at the Evergreen polling station, which is
25 in -- north Wichita, a majority of the Latino

1 population, there were no Spanish speaking election
2 workers, and in addition to that, we called some of
3 our members to come and support people and assist
4 them in translating, which is allowed, but the
5 election judge was turning our volunteers away. It
6 wasn't until we called the election commissioner and
7 started to push back that we were actually able to
8 get our volunteers through.

9 And so the -- I guess just to wrap things
10 up, because making more details, and much of what we
11 observed throughout this entire process is included
12 in the written testimony that was provided. What it
13 seems is that in Kansas, where these new
14 restrictions have been implemented, the provisions
15 that actually keep people from voting have been very
16 enthusiastically enforced, whereas free IDs or
17 access to birth certificates, or informing voters
18 that they had been suspended, or educating the
19 general population about what these new
20 requirements. These are the things that have gone
21 neglected, and that's why in 2014, as of today,
22 there is 20,000 Kansans who may not be able to vote,
23 and that number grows every day.

24 MR. RAMIREZ: Thank you.

25 Lazaro will address the general language

1 access issues, and focus on rural Nebraska.

2 MR. SPINDOLA: Well, good afternoon,
3 commissioners. Thank you for receiving me today --
4 this afternoon, and I would like to thank the
5 National Commission on Voting Rights for inviting me
6 to this hearing today.

7 For the record, my name is Lazaro
8 Spindola, that's L-a-z-a-r-o S-p-i-n-d-o-l-a. I am
9 the executor of the Nebraska Commission on
10 Latino-American Affairs, also known as the Nebraska
11 Latino-American Commission. This commission was
12 create by legislation in 1972. It is the oldest
13 commission that exists in the country, and we are
14 the only one that exists by statute, so we do not
15 report to the governor or the executives, we report
16 to the legislation directive.

17 I would like to begin with some factual
18 information. This year on May 13th, Nebraska will
19 hold primary elections to determine the parties and
20 candidates that will accomplish the election. The
21 elections will decide one Nebraska US Senate; three
22 Congress representative, the government, the
23 Secretary of State, the state commissioner, attorney
24 general, 24 state senators -- I don't know if you're
25 aware that we only have senators -- and many other

1 authorities both within the state and local
2 governments. This is a big election year.

3 Now, on October of 2011, the Bureau of the
4 Central Directors determined that there are three
5 political subdivisions in Nebraska that are subject
6 to American Language Assistance Provision of the
7 Voting Rights Act. The three subdivisions are
8 Colfax County, Dakota County, and Dawson Butte
9 County. All contain significant Hispanic
10 minorities. Now, the question is in Section 203, is
11 we ask for assistance in being Spanish in the
12 aforementioned counties. What is being done and
13 how? In your handouts, you have a page full that
14 says Dawson County, and right after that is a page 5
15 that will take you to a capture of the Dawson County
16 clerks' Web site. The web page from the Dawson
17 County's election commission is not educative page.
18 It is a general county clerk page, and if you scroll
19 down to election office, you can see a release of
20 election forms. The only bilingual form right there
21 is the voter application form, page 6 of your
22 handout. This form lacks a very important piece of
23 information, which refers to the ability of known
24 products on borders, and request a partisan ballot
25 for either Democratic or Republican parties to be

1 able to vote for senate or house of representative
2 parties and candidates. All other links link to
3 forms in English only. No other voter registration
4 election notice, other than Latino, is available at
5 the Web site, speaking Spanish to Dawson County
6 residents.

7 The Dakota County election Web site, which
8 is page 7 of your handout offers a better choice.
9 The notes of primary election, which is page 9 of
10 the handout is printed in both languages. Kind of
11 difficult to understand, but I think English
12 speakers would have a hard time understanding it
13 too. The candidate filing for both the parties and
14 candidates are in both languages. The statement of
15 financial interest -- which I don't quite
16 understand, because if you're going to be a
17 candidate for office, you should be able to speak
18 English to fill out the form in Spanish, but, any
19 ways ...

20 Unfortunately, the early voter
21 registration, which is page 8 of your handout.
22 Fails to provide the information regarding the
23 nonpartisan voter needed to register as parties to
24 be able to vote senator. It does have a very long
25 list of bilingual notice of candidates for the

1 primary election.

2 The Colfax County Election Commissioner's
3 Web site, which is page 10 of your handout, on page
4 11 provides a link to the Nebraska Secretary of
5 State Web site, and that's all it provides. And
6 there you will find election information, which
7 leads to several pages, all done in English,
8 detailing the election results, and election forms
9 and voter registration forms, both available in
10 Spanish. It is unfortunate that none of the
11 different elections commission site links provides
12 accesses to the Secretary of State's 2014 election
13 information site where there is important notice to
14 voters regarding ballot changes, sample ballots for
15 the 2014 primary election, both in English and
16 Spanish. Many of these folks are being translated
17 by us, by me. Now, there are five initial
18 petitions, including a border ID initiative petition
19 that is not in Spanish.

20 So, as you can see, these three counties
21 do not have a standard compliance procedure, some
22 rely heavily on the Secretary of State's Web site,
23 but they do not provides links to the sites that
24 have the forms in Spanish. The registration forms
25 regarding the individuals to request partisan notes.

1 A limited English-speaking voter with limited
2 education would need Internet access, the ability to
3 navigate the Internet, and full command in English,
4 and navigate through the Nebraska Secretary of
5 State's Web site in order to fully access election
6 information. In that sense, we do rely heavily on
7 technology as you seem to be an advocate of
8 technology. The problem is the need for someone to
9 guide this individual through this process. So we
10 happy to have a bilingual person working on this
11 different election commission. But then there is
12 somebody that works in the morning, another --
13 somebody that works one to three, and in the other
14 one, there is a person that works after three in the
15 afternoon; so if you have a work schedule that does
16 not satisfy the requirements of the work schedule of
17 the bilingual person at the election offices, then
18 you're lost, there's no way that you can do it.
19 Now, I understand what the counties might have
20 limited funding. I understand that it is
21 unreasonable to expect individuals for some
22 divisions to follow the same practice, but there is
23 a cheaper alternative, which is being able to access
24 the links for secretary of the states's information
25 site, and there is one, which is not so cheap, which

1 is to have full-time bilingual staff, at least
2 during the election year. It would be good for city
3 participation in the election process for
4 individuals with limited command over the English
5 language. I do see a number of barriers that have
6 to do with voter ID, with language access, with
7 accessibility for individuals for disabilities that
8 all add up to a multitude of diminished and
9 multinational that a voter might have to go answer
10 basic rights. I don't know. As I said, I have some
11 conspiracy theories, but something needs to change.

12 MR. RAMIREZ: Thank you, Lazaro.

13 Keely Bassett on voting issues on tribal
14 life. Keely.

15 MS. BASSETT: Good afternoon. My name a
16 is Keely Basset, and I'm an enrolled member of the
17 Winnebago tribe of Nebraska, and I live on the
18 Winnebago reservation in eastern Nebraska. I'm here
19 to speak to you about using tribal enrollment cards
20 for voting identification. In 1934, under the
21 Indian Reorganization Act, tribes across the nation
22 formally established guidelines for enrollment in a
23 tribe. Those rules for enrollment are specific to
24 each tribe. For example, my tribe requires a
25 specific elect one. The Cherokee nation requires

1 Cherokee descendance, and the Meskwaki Nation of
2 Iowa enrolls only through paternal ancestry. So as
3 you can see, each set of guidelines is unique to
4 that tribe. Now multiply that by the 560
5 Federally-recognized tribes in the United States.
6 The one thing that is standard for enrollment in a
7 tribe is a family tree. Each potential enrollee
8 must fill out a family tree that can date back three
9 generations or further to prove that we meet the
10 criteria for enrollment in a tribe. It is very hard
11 to receive a tribal enrollment card. It's much
12 harder, actually, than getting a state
13 identification. Along with the required paperwork,
14 you and your family must be vetted, first by a
15 clerk, then by a committee, then by the full tribal
16 counsel, and for some tribes, this can take well
17 over six months. We all know that after 9/11, the
18 rules for identification became for more stringent
19 to meet the requirements of Homeland Security for
20 the safety of the nation. At least two Nebraska
21 tribes rose up and met that challenge, and have
22 changed the way that our enrollment cards look, and
23 have included an expiration date for the card, per
24 the suggestion of the Federal officials.

25 American Indians across the nation can

1 vote in local, state, and national elections, and
2 the use of tribal enrollment cards for
3 identification should be an acceptable form of Id.
4 While counties near reservations in Nebraska do
5 accept tribal IDs, this is not the case for American
6 Indians residing in urban areas. Recently, I spoke
7 with the former chairman of the Ponca Tribe, Larry
8 Wright, who resides in Lincoln, Nebraska. Chairman
9 Wright told me that he will always use his tribal
10 enrollment card first for identification, and that
11 it's actually hit or miss whether it's accepted or
12 not.

13 Another problem for some state or local
14 municipalities is some choose or not choose to
15 accept the tribal ID if you're enrolled in the tribe
16 from a different state, which is what happened to me
17 when I lived in South Dakota. My Nebraska Winnebago
18 tribe ID was not accepted. What needs to happen is
19 poll workers need to be educated on the acceptance
20 of the j enrollment card for voter identification.
21 In addition, tribal enrollment cards from any tribe
22 across the United States must be accepted in every
23 state, regardless of where that tribe is located.

24 Thank you.

25 MR. RAMIREZ: Thank you. Christie will

1 address guardianship issues, guardian deciding for
2 an individual that they don't want to vote, when the
3 law gives the individual in guardianship the choice.

4 MS. GERKEN: On behalf of Disability
5 Rights Iowa, or DRI, I want to thank the National
6 Commission on Voting Rights, the Lawyers Committee
7 for Civil Rights Under Law, and the guest
8 commissioners present today for holding this
9 important hearing.

10 In light of challenges and restrictions on
11 voting, it is important to see the election
12 commission's efforts to increase public awareness of
13 discrimination. I apologize, I don't have time to
14 read this entire statement, and will give you the
15 highlights.

16 My name is Christie Gerken, and I am the
17 protection and advocacy for voting access, or PAVA
18 coordinator with DRI. Disability Rights Iowa is a
19 nonpartisan, private, nonprofit legal advocacy
20 organization, whose mission is to defend and promote
21 the human and legal rights of Iowans with
22 disabilities.

23 Prior to joining DRI, I worked for 26
24 years in the acute mental health field. The PAVA
25 program was created through the Help America Voting

1 Act, PAVA, and Section 291 of PAVA provides that
2 funds be made available to the P&A system of each
3 state. PAVA plays an active role in full
4 participation in the electoral process for voters
5 with disabilities, which includes development of
6 materials, education and training of election
7 officials, poll workers, and volunteers regarding
8 the right to voters with disabilities, and best
9 practices in working with people with disabilities.
10 This testimony is intended to identify the Iowa
11 lives that individuals whose rights to vote have not
12 be removed by a court, are still restricted from
13 voting by their guardians. It is implied that
14 individuals under guardianships in Iowa keep rights
15 not otherwise taken by the court. If an Iowa court
16 appoints a guardian, it must make a separate
17 determination as to the competency to vote. We are
18 unable to provide you with statistics on the total
19 number of guardianships in Iowa, but we know in
20 2013, only 62 had separate determinations for
21 incompetency to vote. As a P&A system, DRI conducts
22 monitoring of public and private facilities in the
23 state of Iowa with respect to rights and safety.
24 Our monitoring and outreach has found that service
25 providers are restricted access to voting because

1 they are uninformed about where it's right under
2 guardianship law. It is our experience that
3 guardians interpret their responsibilities as giving
4 them the right to make all decisions for the ward,
5 including whether they can vote. Guardians justify
6 this decision insisting that due to a disability,
7 their wards do not understand the issues, and the
8 condition the wards access to voting on their own
9 assessment of the ward's voting capacity.

10 Generally, providers are hesitant to go against a
11 guardian's decision despite training, due to
12 misconceptions of liability. The possibility of
13 poll workers restricting access to voting for
14 persons under guardianship may also result from lack
15 of available training and understanding of the
16 guardianship laws. Based on outreach with county
17 auditors, there's a need for current training for
18 mental competency under guardianship and poll
19 accessibility laws.

20 Lastly, the failure of enforcement of the
21 National Voting Rights Act contributes to lack of
22 information regarding the right to vote for
23 individuals with disabilities. Specifically,
24 Section 7 of the MDRA is designed to increase the
25 number of registered voters on the rolls by

1 providing voter registration opportunities for
2 individuals who access services at public assistant
3 agencies. This is due to lack of awareness of the
4 responsibility by public agencies to adhere to
5 Section 7, and the public agency registration
6 requirements.

7 A final concern DRI wishes to address is,
8 unfortunately, individuals with disabilities are
9 disenfranchised more than other populations, due to
10 lack of understanding that they can question whether
11 a guardian's decisions are in their best interest,
12 and these individuals may not know their rights to
13 have a court review terms of their guardianship,
14 including the need for continued restriction on
15 voting. DRI has several recommendations on how to
16 address these barriers of individuals under
17 guardianship and their right to vote. State
18 statutes should explicitly preserve the right to
19 vote, unless certain criteria are met in a court
20 order, specifically addresses the individual's right
21 to vote. Appropriate due process protections are
22 needed, if an individual's right to vote is
23 restricted. State statute should have a definitive
24 test for competency, which would eliminate each
25 district court having different criteria based upon

1 their training and experience of persons with
2 disabilities. State election officials need to
3 understand the law, educate, and assist individuals
4 with disabilities with voter registration and
5 voting. The P&A PAVA coordinators can address
6 accessibility and voter rights at every state
7 auditor meeting for training on the current rights
8 for disabled voters. And, lastly, states should
9 have mandatory training as part of the prerequisites
10 for guardianship; including understanding which
11 rights a ward keeps, such as voting.

12 In conclusion, voting is a fundamental
13 right. Rather than focusing on disenfranchising
14 individuals with disabilities under guardianship,
15 Federal and state laws should focus on expanding and
16 protecting access to, and assistance voting for all
17 individuals capable of voting.

18 Thank you for allowing me to speak to you
19 on this issue.

20 MR. RAMIREZ: Thank you. We'll now open
21 it up for questioning.

22 MS. RATLIFF: You mentioned that you, or
23 someone observed regular ballots being placed in
24 provisional ballot envelopes. Can you explain that
25 a little bit?

1 A. Yeah. So there were mix-ups between the
2 paper ballot and provisional ballots of people who
3 should have been receiving -- well, people who were
4 submitting paper ballots were having them put into
5 the same receptacles as the provisional ballots, and
6 so how exactly that affects the way that they're
7 counted, I'm not sure, because, to my knowledge,
8 each of the provisional ballots have until a set
9 deadline, as it relates to the canvas state, to come
10 in and make up for whatever it was, and so how they
11 mitigated that, I don't know. There were all kinds
12 of mishaps when it came to giving out their right
13 ballots. For instance, there was a polling place
14 that received ballots for the wrong district. There
15 were mail-in ballots that were sent out to the wrong
16 district, and then they had to take those, and send
17 out the appropriate ballots, and so throughout
18 the -- one thing worth mentioning is that in 2012,
19 we had an election commissioner that was appointed
20 after a longstanding commissioner in Sedgwick had
21 stepped down, and so whether or not these things
22 will reoccur again in 2014 is anyone's guess. That
23 being said, there were recurring mishaps between a
24 special election around a tax issue, the primary
25 elections, and then the general elections, and so --

1 yeah. One of the things that we tried to look into
2 in that is what was our Secretary of State doing
3 during that time to intervene between the mishaps
4 that are in the written material provided to you in
5 the primary elections and the general election,
6 since it seemed that there are consistent mistakes
7 made. What we found in doing open record requests
8 in this calendar was that there was at no time any
9 entry of him having met with anyone from the
10 Sedgwick County office, and so it's our hope that
11 you know, we can continue to surface these issues,
12 and try to get someone to hold our Secretary of
13 State accountable to make sure that elections run
14 smoothly, and not just block voters.

15 MS. RATLIFF: Right. And I know our Boone
16 County clerk is here, and I guess I had questions
17 with the ballots going into the provisional
18 envelopes, and so you-all made inquiry into that,
19 and you didn't get any definitive answers back,
20 because I know when I get my ballot, I take it over
21 and put it in the machine myself, and I guess I'm
22 just wondering -- the ballots are handed back to the
23 clerks, and then -- I mean, I understand the
24 provisional ballots, but -- they're handed back to
25 the clerks, and then the clerks put them in an

1 envelope?

2 MR. GOSELAND: Yeah. So like I said, we
3 had four locations where our servers were present,
4 and at that particular location, they had recorded
5 that that mix-up had happened, that, basically, the
6 paper ballot was being confused with the provisional
7 ballot, and that was the issue at that particular
8 site. And at each of these sites, we contact -- any
9 time we saw any kind of discrepancy, we contacted
10 the county commissioner's office, and, you know, the
11 issues were corrected, but it just seems like 2012,
12 what we observed were, you know, ill-equipped
13 election workers, whether it was confusion around
14 the new requirements that they are having to impose
15 or what, I'm not sure, but each of them had received
16 training. We talked to each of the election judges,
17 and everything was very open, so it was easy to
18 observe some of these issues. The county
19 commission -- or the election commissioner in
20 Sedgwick County was very open to our back and forth
21 issues, and these issues were corrected from within
22 that office, but they still occurred.

23 MS. RATLIFF: They occurred.

24 MR. RICH: Let me start with Kip. Do you
25 know of any steps that have been taken by the

1 Secretary of State's office to address the problem
2 of access to voting places, and to what effect?

3 MR. ELLIOTT: I think that -- I do know
4 that we worked with the Secretary of State's office,
5 and helped put a brochure out to discuss
6 accessibility and voting issues with people with
7 disabilities, but I'm not sure -- unless somebody
8 picks those up -- that anything is being done.

9 MR. RICH: So you don't know about either
10 the distribution of the brochure, or training that's
11 going on?

12 MR. ELLIOTT: Right. And the training, I
13 think, is the key point that -- there needs be
14 training on accessibility issues.

15 MR. RICH: And for either Kip or Louis, we
16 heard some -- and I asked this question at the last
17 panel. We heard some about problems in the context
18 of the driver's licenses, with simply handling voter
19 registration and forwarding the necessary
20 information and so forth, and that the Voter
21 Registration Act, obviously, requires that people
22 being able to register either at public assistance
23 agencies, or at agencies that are serving people
24 with disabilities. Do you know anything about what
25 the Secretary of State's office has done both to be

1 sure that the law is being followed at those
2 agencies, and the training so that they end up
3 complying effectively with the new proof of
4 citizenship requirements?

5 MR. GOSELAND: Yeah. So there are a
6 couple of things that came up in the past couple of
7 years that we've observed since the Safe Act went
8 into compliance -- or went into effect. So the
9 initial hang-up, as you mentioned, was the portal
10 between DMVs and election offices. And, you know,
11 there was a back and forth in trying to fix that so
12 that they could be in compliance, and they could be
13 a streamline process. To my knowledge, the last
14 that I've heard was that the DMV is basically
15 notifying people who wish to register to vote that
16 they'll have to follow up with their election
17 officer to get their proof of citizenship document.
18 Whether or not that meets compliance under NDRA, I
19 don't know, but, basically, saying that we've
20 submitted your application, but the rest is on you.

21 MR. RICH: My real question, though, is
22 while that's what's happening in the DMV -- and that
23 has received a fair amount of attention in the press
24 and so forth. I'm concerned about the portal
25 between public citizens agencies and agencies that

1 are serving people with disabilities.

2 MR. GOSELAND: Yeah. So within DCF, in --
3 a couple of years back, we were calling to find out,
4 okay, so as all of this news about the DMV's tech
5 upgrade compliance is surfacing, what's happening
6 within this agency. At that time, there was
7 nothing. As of October of 2013, there was nothing,
8 and in addition to them not -- well, first of all,
9 any of their services, they don't require proof of
10 citizenship information, it's a Social Security
11 number, but in addition to that, one NDRA complaint
12 that we submitted to the U.S. Attorney's Office,
13 Barry Grissom's office, was a DCF worker out of the
14 Sedgwick County office had come to us in 2012 with a
15 stack of voter registration applications that were
16 dated six months, eight months back, when there's a
17 requirement that they be turned within five days of
18 being submitted to that agency, and so there are a
19 number of concerns, not only with the implications
20 of the Safe Act, but also just in standard
21 compliance around turning in the paper documents
22 that are submitted in the various drop boxes around
23 of the agency.

24 MR. RICH: Thank you.

25 MR. RAMIREZ: Lazaro in these three

1 counties, could you give us some insight on the
2 compliance of the law.

3 MR. SPINDOLA: Yeah. They will have the
4 early voter registration form in both languages.
5 Hopefully, they will request the senator of the
6 state to send printed voter registration forms in
7 both languages. There should be sample ballots by
8 the time the election time comes. I don't know if
9 there will be anybody available explaining to them
10 what that means, or what that is for -- well, yeah
11 there will be on a certain scale, yeah.

12 MR. RAMIREZ: Keely, could you give us
13 your sense of citing the issue that you experienced
14 and describe -- the attitude of Native-Americans in
15 Winnebago to voting?

16 MS. BASSETT: Actually, the Winnebago
17 Tribe is very, very active in voting. In Thurston
18 County, native people comprise the majority of the
19 people, and so we're really close to holding the
20 majority votes for the county commission, and that
21 kind of thing, and we did really well. I was
22 involved in the Native Get Out to Vote and different
23 things like that, and because it's a small
24 community, and like I said, everybody's family, and
25 we know everybody, we will knock on your door, and

1 say, Hey, I know your grandma, can you come over
2 here, you need to register? And so we're really
3 good about getting people registered to vote, but
4 you can't force people to get to the polls. We do
5 really well, actually. On our reservation. I
6 cannot speak for the other ones.

7 MR. RAMIREZ: Okay. Again, thank you,
8 panel members.

9 MS. TERNUS: Ms. Gerken, the issues that
10 you've identified with the guardianships in Iowa, is
11 that something that has changed recently, or are
12 those problems longstanding?

13 MS. GERKEN: You know, I can't answer
14 that, because I'm a transplanted resident. I've
15 only lived there a year, but I'm going to assume
16 that it has been going on for some time. Disability
17 rights, when I was hired at this position, it was
18 discussed with me that there has been a lot of
19 issues during our monitoring. I would like to
20 address the issue about NDRA certificates. It is
21 something that I've been researching now for almost
22 a year, and I have gone to Project Vote concerning
23 this, because I found, during all of my outreaches
24 to agencies, as well as doing outreach to homes, et
25 cetera, that every facility that I've asked about

1 the registering date, do not know about it. Some
2 have been -- maybe to prove to them that there is
3 such an NDRA, and that they didn't know about it.
4 And I discovered last week, in fact, that from -- an
5 auditor, they started counting back how many years
6 it's been since they sort of stopping the
7 registrations, and they figured it was between 2007,
8 2008, and that was when health and human services
9 department was changed. And the records that I have
10 received for two years, 2010 to 2012, there was a
11 total of maybe 500 people registered for the whole
12 state in public agencies.

13 So it is an issue that DRI is going to
14 look at very soon, we just have to get statistics,
15 and find out where the problems are and what needs
16 to be done. We need to find a solution of how to
17 help everybody get this -- the NDRA to have more
18 spine.

19 MR. RICH: Thank you.

20 MS. NOREN: Okay. Kip, first of all, do
21 you know if Kansas has any laws that allow some
22 flexibility, and where a voter may go to vote, or do
23 they have to be assigned a polling place.

24 MR. ELLIOTT: That's a really good
25 question, and I'm not sure. I don't think that -- I

1 think they do have to go to their assigned voting
2 place, but that's a great question to ask.

3 MS. NOREN: It's very -- I think it's one
4 of the best things for my disabled votes, is --
5 because you can't find a perfect polling place for
6 everyone, and you might fit the little diagrams of
7 how wide the doors might be, but it -- you can't
8 find a perfect polling place for every single
9 disability, and so being able to move them -- they
10 can pick which poll they want to be assigned to,
11 what meets their needs, and things like that is very
12 helpful.

13 All right. Louis, you mentioned -- I
14 asked earlier, the prior panel, about any problems
15 with Kansas implementation of their version of photo
16 ID, and I think you mentioned in your testimony
17 there were 700 people who did not get to vote.

18 MR. GOSELAND: Yeah a little over 730.

19 MS. NOREN: Okay. Because they didn't
20 have appropriate identification? Is that --

21 MR. GOSELAND: Right. Those were just
22 cited, as you know, provisional ballots that were --
23 they were not followed up with voter ID.

24 MS. NOREN: Okay.

25 MR. GOSELAND: That doesn't account for

1 people who just turned away when they saw the sign,
2 or didn't show up at all, so ...

3 MS. NOREN: Okay. So there were probably
4 more than that, because the person here earlier said
5 there weren't any problems with it, and I found
6 that -- and I -- are you familiar be what IDs are
7 required in Kansas? It seems like it's not one of
8 the stricter ones, because she said a student ID was
9 acceptable.

10 MR. GOSELAND: Well, from a
11 state-accredited university. Basically, any
12 state-issued ID -- photo ID.

13 MS. NOREN: All right. Because some of
14 the other laws we're seeing developed would not take
15 a student ID, would not take, you know, anything but
16 a in-state Department of Revenue ID.

17 Okay thank you.

18 MR. RAMIREZ: Again if there's no
19 questions, thank you very much, panelists for
20 sharing your information.

21 (A recess was taken.)

22 MS. NOREN: I think we're going to go
23 ahead and get started. We are on panel three on
24 election administration and we're altering the
25 agenda a little bit on this one. Eva Schulte is

1 going to go first, because she's going to need to
2 leave right after that, and, normally, we have the
3 panel ask questions after everybody gets done, but
4 I'll give a couple of minutes to quick ask you some
5 questions, so I'm going to turn over to Eva Schulte
6 President and CCO on early voting initiative in
7 Missouri.

8 MS. SCHULTE: Wonderful. Thank you so
9 much. Actually, I have until 5:20, but I appreciate
10 your flexibility.

11 Yeah, so I come to the work of faith-based
12 community organizing with a deep conviction that we
13 need to make our democracy work for everyone, and,
14 of course, that's not just my only conviction, but a
15 conviction of the thousands of people we're engaging
16 on a regular basis; communities creating
17 opportunity, and our faith-based organizations in
18 Missouri and the state of Kansas, Faith Voices for
19 Missouri; Faith Voices for Kansas, are committed to
20 engage people along the long haul of citizen
21 engagement and electoral engagement that brings a
22 value into public life. Our vision is to move
23 dignity into the center of public life. And just a
24 few things about our experience. So we have engaged
25 around voting very intentionally over the last four

1 years. We've registered 2,500 people to vote.
2 We've directly engaged 80,000 voters in 2012. Just
3 this last month we -- or the last few months, we've
4 been engaging around the early voting initiative
5 petition.

6 So today I really do want to thank you for
7 the opportunity to give testimony. There's three
8 key areas that I want to focus, and it's great to
9 see familiar faces on this commission, and
10 appreciate your service. So voting is a fundamental
11 matter, as you know, where we are able to exercise
12 our democracy, and the election administration is
13 critical in how community members participate. So I
14 have direct experience from 2012 in being a voting
15 witness to disenfranchisement, because, simply, the
16 election day was overwhelmed. I was standing with
17 two to three -- three people who were turned away
18 several times after being in the polls at St. James
19 United Methodist, and you'll see in the writing
20 that -- the written statement that I've provided,
21 that I stood with Chauncie and Letrise and Reverend
22 Cleaver, as Chauncie had been waiting for five hours
23 total. Three different times he had attempted to
24 vote, but was turned away, even though he had voted
25 in the previous primary. He didn't give up, and

1 ended up casting his vote at 9:23 p.m. I was there
2 with him, and saw that last part of the process as a
3 witness. And then Ms. Lewis left feeling disgusted,
4 like her vote didn't even count after she and others
5 were turned away, and she saw other turned away
6 without even being able to vote. So she said to me
7 in tearful words that she felt like her little
8 sticker didn't even matter anymore, "I Voted." And,
9 finally, Reverend Cleaver, who was actually is a
10 pastor at St. James United Methodist had a co-worker
11 ask him, after seeing his photo ID, even, if he was
12 really who he said he was. So these instances --
13 I -- didn't happen to me at my polling location. So
14 I want to really lift up a disparity of how we're
15 seeing election administration happen at different
16 polling locations, and a need to examine those
17 further. And in the written testimony, you'll see
18 that you have a video link where you can see
19 Chauncie and Letrise and Reverend Cleaver's
20 testimony firsthand. We captured that because it
21 seemed so significant after their experience that
22 day.

23 The second focus that is related to
24 election administration, and the reality that,
25 despite great poll workers and volunteers, it's just

1 taxing to be there that long, is that we believe we
2 need to create -- to move election day from one day
3 to six weeks, and that's why just Communities
4 Creating Opportunity alone, we've gathered 20,000
5 signatures, and are participating a volunteer effort
6 to gather 60,000 signatures to advance early voting
7 with great partners across the state, including
8 NAACP, and we recognize that increased polling hours
9 on weekends, increased polling hours in election
10 locations in rural areas are critical to people who
11 are low income, to families that may have the right
12 to take off an hour to vote, or three hours, as
13 we've heard, but won't get paid for that hour, and
14 that's just too big on a family budget where we get
15 to minimum wages. So those are some of the reasons
16 we think electoral reform needs to have an expanding
17 voting from one day to six weeks. And we really
18 want to caution against legislation that we're
19 seeing in the state of Missouri right now that's
20 actually a sham legislative bill attaching early
21 voting, which sounds great, to photo ID, and it
22 requires that early voting would actually have an
23 appropriation before advancing. So it really is a
24 disguise to move forward photo ID and voter
25 suppression.

1 Happy to tell you more about what that
2 legislation looks like leads me to my third point,
3 which is about voting discrimination and
4 suppression. So you heard a few of the examples.
5 What Communities Creating Opportunity and our faith
6 voice is mostly attuned to a systematic suppression
7 of voters in ways that are targeting through voting
8 rights, through incarceration, through felony
9 penalties, whole populations of people from having
10 the right to vote. I know how important that is for
11 me, because, as a woman, whose grandmother was both
12 the year after women won the right to vote, it
13 matters to be born into a community where your voice
14 counts. So we're going door to door to let people
15 know their voice matters, and to encourage them to
16 step forward in their communities, and are highly
17 concerned that in Kansas -- you know, nearly 20,000
18 people, as you've heard throughout the day, are in
19 the legal limbo, totally disenfranchised from the
20 rights of Democracy. We've created a two-tier
21 voting system that requires proof of citizenship and
22 photo ID, and, really, we see that as a hatchet
23 strike at the ankles of democracy. In Missouri, if
24 we see photo ID go forward, we would likely
25 disenfranchise as many as 220,000 Missouri voters

1 who lack specific forms of identification required
2 by this law.

3 So I invite you to consider those racial
4 barriers, consider those economic barriers, consider
5 those physical barriers, and geographic barriers to
6 voting that can help advance our administration, to
7 consider the policies that promote better voting,
8 and engagement within the Democratic process through
9 electoral reform, and then, finally, we as a
10 community need to stand up, and confront the lie
11 that everyone has access to vote, when, really,
12 there are policies in place, and practices that are
13 intentionally, or unintentionally suppressing their
14 right to vote.

15 Thank you very much. Happy to take any
16 questions.

17 MS. TERNUS: What's the practice or policy
18 that results in your polling place having no wait
19 time, and the church polling place having a
20 five-hour wait time.

21 MS. SCHULTE: Yeah, I think that's a
22 really great question for us all to examine, so I
23 don't name that I have the definitive answer to
24 that, but what I have seen is racialized barriers to
25 voting. So at my polling place, it just happens to

1 be that it's majority white, and at the polling
2 place where St. James was, it was majority
3 African-American. Now, I don't recognize -- that's
4 just visual, it's present, and I think we all need
5 to study why that's taking place. It's related to
6 the frequency of voting, it's related to who's on
7 the voting polls, but it's also related to the
8 suppression that we're seeing at an intentional
9 level.

10 MS. TERNUS: Are there any guidelines for
11 how many poll places are required per registered
12 voter, or is it something that's discretionary, so
13 we can say, Well, it's --

14 MS. NOREN: Discretionary. Totally.

15 MS. SCHULTE: And then if it's based off
16 of previous election, unfortunately --

17 MS. NOREN: No. No polling place
18 assignment.

19 MS. SCHULTE: It's not?

20 MS. NOREN: No. That's number of ballots
21 ordered. The polling place assignment is totally
22 discretionary.

23 MS. SCHULTE: So that might be the
24 contradiction. I wasn't even planning on stopping.
25 You know, we were doing some -- just transporting

1 people that didn't have the ability to get to the
2 polls, and that's what I was participating, is
3 helping the individuals from the congregations and
4 the communities get to the polls that day, and then
5 I was told that there were some real challenges at a
6 number of the congregations at the polling places,
7 and asked to drive by, and in driving by several, I
8 saw just lines outside of the doors, and, again,
9 when I stopped, people were leaving infuriated
10 because that was the second or third time that they
11 had gone back, and at -- you know, this was about
12 6:00 p.m. At 6:00 p.m., I can say, Well, you can
13 call this number and figure out -- but, again, one
14 day isn't enough, and -- we also need to examine why
15 is it that our recordkeeping or how we're equipping
16 overtaxed volunteers nonsufficient.

17 MS. TERNUS: Was there any questioning
18 done with the individual responsible for assigning
19 polling places as to why? I mean, it would be an
20 administrative issue, again, if the fact that it
21 apparently had a discriminatory impact. Was that
22 person, if not held accountable, at least
23 questioned; and if so, what was the response as to
24 why that happened?

25 MS. SCHULTE: We brought the stories to

1 the forefront, and we actually did work really
2 closely with the election boards, but it was around
3 the ballot initiative petition process, so not
4 around these particular instances.

5 MS. RATLIFF: And I was going to ask,
6 because I think that that's a county clerk sitting
7 over there -- our county clerk, but they decide on
8 the number of polling places, is that not correct?
9 So is there a possibility that the fact that the
10 lines are so long and the waiting times are so long
11 and different -- depends upon how your county clerk,
12 or -- I call it county clerk because that's what
13 we -- how they make the assignment for the polling
14 places.

15 MS. SCHULTE: Right. And then I would
16 say, let's look at the bigger issue. The bigger
17 issue is, one day isn't enough, so let's extend
18 voting to six weeks, that then allows, just like 20
19 other states have -- in fact, the state of Kansas
20 does have early voting, and the state of Missouri
21 doesn't; so then that helps to remediate those
22 challenges of very long lines, overtaxed
23 individuals, people sending them to the wrong voting
24 location, or people making mistakes, and going to
25 the wrong polling location, and not having time to

1 readdress, because they waited in line for two
2 hours.

3 MS. NOREN: Okay. I have a question --
4 kind of a follow up to that. You talked about, you
5 know, six weeks is better than one day, but I notice
6 you mentioned that you didn't think they should
7 appropriate money for this. I mean -- so you take
8 the one day, which costs 15 million, and then you
9 multiply it times 42, but you have no more money to
10 pay for it? I'm not sure I understand. I mean, it
11 costs a lot of money to be an early voting site, and
12 so I just want to make sure you're on record saying
13 this needs to be paid for.

14 MS. SCHULTE: Yes. In fact, that is what
15 I said, that the reality of early voting is, it
16 would require extended hours, especially weekend
17 hours in locations that are harder to reach, and
18 then in our urban communities as well, and that does
19 require extra staffing and money. And there's an
20 initiative petition, which is a citizen petition
21 process that's gathered the hundreds of thousands of
22 signatures to qualify for the ballot in November,
23 and what the state legislature in Missouri is doing
24 right now is moving forward a counter-legislative
25 proposal that says it's early voting, but really is

1 just a shell of what the initiative petition is.
2 They're calling it early voting, and if they refer
3 it to the ballot, they're connecting it to photo ID;
4 so it's a shell to basically drive forward photo ID,
5 because early voting would not happen pending
6 appropriation. So that is where I was just
7 clarifying that it would likely -- early voting
8 would likely not happen Without appropriation in
9 this legislative run -- a ballot process right now,
10 whereas in the initiative petition, citizen-led,
11 voter-led process. We recommend that there is a
12 fiscal note. It would require extended hours, and
13 we think it's part of making our democracy work for
14 everyone.

15 MS. NOREN: Okay. Any other questions?

16 MR. RICH: Just a couple of quick
17 questions. First, are these problems that you've
18 noticed in Missouri, but not in Kansas, the problems
19 of long lines, and so forth?

20 MS. SCHULTE: We are newer to Kansas, so I
21 don't have that direct testimony in Kansas. What we
22 hear over and over and over again is less about the
23 lines, because early voting exists, and more about
24 the suppression of vote. I can't even vote at all
25 because I'm caught in limbo, and -- 20,000 people,

1 that's a lot of people, and we have many of them
2 that are a part of our efforts that gave their
3 testimony.

4 MR. RICH: But you do know that on the
5 other side of the 20,000, there are probably five
6 people who voted improperly in the last eight years?

7 MS. SCHULTE: What are you suggesting?

8 MR. RICH: There are probably five people
9 who voted --

10 MS. SCHULTE: That's right. .003
11 percent -- it's nothing -- it's just nothing. It's
12 a false argument that there is any kind of voter
13 improper engagement. There's -- yeah, exactly what
14 you said. .003 percent.

15 MR. RICH: For the two voting districts
16 that you just described, one with the long line, and
17 one without, do you know whether they were both
18 subject to the same elections board?

19 MS. SCHULTE: Correct.

20 MR. RICH: So they were both within --
21 being supervised by the same --

22 MS. SCHULTE: That's right.

23 MR. RICH: -- person?

24 Thank you.

25 MS. NOREN: Was that in 2012?

1 MS. SCHULTE: Correct.

2 MS. NOREN: Okay. Any other questions?

3 All right. So let's move on to Gary Brunk
4 from the ACLU of Kansas, and he's going to discuss
5 the voter registration system that would separate
6 Federal and state voter files.

7 MR. BRUNK: Thank you.

8 MS. NOREN: Thank you.

9 MR. BRUNK: And thank you for THIS
10 opportunity to testify on behalf our 3,000-plus
11 members in the state of Kansas.

12 I want to stay that I'm really not the
13 ideal person for the ACLU to be here. Originally,
14 we planned for our legal director to be here. We
15 happen to be litigating this in state court, and he
16 and the powers to be in the ACLU nationally decided
17 that it was probably inappropriate for the lawyer
18 representing this case to be here and testifying. I
19 say that as an excuse for not being able to answer
20 your questions very well when this over, and, also,
21 because I know that I'm treading ground that's been
22 treaded earlier today, including by Delores Furtado,
23 whom is very knowledgeable, and so I'm guessing that
24 the hard questions have been already been answered
25 by Delores. Nevertheless, I submitted written

1 testimony, as you know, that focused on the
2 two-tiered election system in Kansas, and I will try
3 to summarize it briefly. This is a system that we
4 believe divides voters into separate and unequal
5 classes with different rights and privileges, and
6 for that reason, it's un-American, it's
7 un-Democratic.

8 As you know, the National Voter
9 Registration Act, the NVRA, require that states
10 adopt procedures that allow people to register
11 basically three ways: whether applying for or
12 renewing your driver's license, by mail using
13 mailing forms developed by the election assistance
14 commission; and, third, by application at a state
15 office that provides public assistance. Soon after
16 Kansas passed the NVRA, the Kansas legislature
17 enacted bills that implemented it, and the Secretary
18 of State promulgated rules and regulations to that
19 effect, and until 2012, those rules actually worked
20 quiet well, and it was a pretty simple process to
21 register to vote in Kansas. It was a very
22 straightforward application. You used the Federal
23 form, and it's accepted if you use the state form
24 developed by the Secretary of State, and it was
25 accepted.

1 In 2011, the Kansas legislature passed an
2 act that they called the Secure and Fairer Elections
3 Act, the S.A.F.E. Act. One of the provisions of the
4 S.A.F.E. Act -- one of the provisions, and I think
5 Delores probably addressed this as the required
6 photo ID, but the other provision is a requirement
7 that people have to provide documentary proof of
8 citizenship to be able to register to vote, and that
9 would include a birth certificate or passport. I
10 think the legislation -- not the legislation, but I
11 think the regulations detail something like 13
12 acceptable forms of documentation that would be
13 accepted by the Secretary of State. That
14 requirement -- the citizenship documentation
15 requirement went into effect at the beginning --
16 January 1st of 2013. While the Secretary of State
17 premised his support for requiring documentary proof
18 of citizenship as a way of protecting against
19 fraudulent registration by noncitizens, actually,
20 there's been no single piece of evidence pointing to
21 one voter who used the Federal form in Kansas where
22 there was a fraudulent attempt in voting for -- in
23 registering to vote in this, and as just has been
24 alluded to here -- I mean, if you look more
25 generally at fraudulent votes in Kansas, it's

1 virtually nonexistent. Because of S.A.F.E., and the
2 way the Secretary of State has implemented Safe, we
3 now have an entirely new rule system of
4 registration, where voters are separate -- are
5 divided into separate and unequal classes.

6 Electors are classified according to the
7 method and/or the date of their registration, so on
8 one hand, those who registered to vote prior to
9 January 1, 2013 using any of the options available
10 to them to register at the time, are able to change
11 their address and update other voter registration
12 information without providing documentation of
13 citizenship. Likewise, despite the fact that one
14 does not need to be a U.S. citizen in order to serve
15 in the U.S. Armed Forces, person's in the Federal
16 service also do not need to provide documentary
17 evidence of citizenship in order to be able to
18 register in Kansas. On the other hand, persons who
19 are new registrants who use the Federal form will be
20 able to vote in national elections, and not in state
21 and local elections, and those who use the state
22 form developed by the Secretary of State, but do not
23 provide one of the approved forms of citizenship
24 documentation, would not be able to vote in any
25 elections. The result of this system is that there

1 are currently something like 16,000, and I gather
2 that you've been talking about 20,000 people on a
3 suspense list representing approximately one-third
4 of all the people that we know who have tried to
5 register, or who have registered since January 1 of
6 2013.

7 So what can fix that problem, and I think
8 that at the state level, there's two potential
9 remedies. One is really the preferred one, it's the
10 one that we would prefer, and that is that the
11 Kansas legislature repeal the requirement of
12 documentary evidence of citizenship, given the
13 complete lack of evidence of fraudulent voting by
14 noncitizens, the fact that 16,000 people or more are
15 currently not able to vote, even though they've
16 tried to register, and the cost of a dual
17 registration system. And I should note, if it
18 hasn't been noted before, that the secretary does
19 have county clerks maintain two separate lists of
20 voters; one for the voters using the Federal form,
21 of which there are very few, and the other for the
22 voters who are using the standard form. So despite
23 all the evidence that this is not a needed program,
24 repealing seems to us the Democratic and the
25 fiscally prudent thing to do. Unfortunately, the

1 Kansas legislature is not likely to take that
2 action, at least in the near future.

3 So the issue Kansas is pursuing in the
4 second avenue, is that, which is that we're
5 challenging the actions of the Secretary of State in
6 state court. Our lawsuits seeks to enjoy
7 enforcement of the dual registration system on
8 grounds that one, it's a violation of the Kansas
9 constitution's guarantee of equal protection; two,
10 it is beyond the scope of the secretary's authority;
11 and, three, it is a violation of the Kansas rules
12 and regulations following the acts requirement that
13 prior to implementation of new administrative rules
14 or regulations, there must be public process that
15 includes notice, publication, and opportunity for
16 comment, which did not happen.

17 MS. NOREN: Okay. We're going to need to
18 break here and move on to the next one, our
19 timekeeper is telling me, so ...

20 MR. BRUNK: I can finish it in 30 seconds.
21 We can't predict the pace in which the lawsuit will
22 proceed, and we do not know the outcome. What we do
23 know is that state and national elections are
24 looming in the very close future, and that 16,000
25 people or more want to register in Kansas, and will

1 not have the opportunity to engage in the most
2 fundamental Democratic act, that of voting.

3 Thank you for your attention.

4 MS. NOREN: Okay. Thank you.

5 Now we have Bonnie Pitz with the League of
6 Women Voters of Iowa, who will be discussing the use
7 of HAVA money to fund a criminal investigation on
8 voter fraud.

9 MS. PITZ: Thank you. I want to thank the
10 National Commission on Voting Rights, and Erandi and
11 Miles for their hard work.

12 The League of Women Voter of Iowa
13 appreciates the opportunity to submit testimony for
14 this voting rights hearing in regard to using HAVA
15 money to fund a criminal investigation of voter
16 fraud. I am Bonnie Pitz, president of the League of
17 Women Voters of Iowa. I've served as president the
18 last two years, and attended hearings where this
19 information came to light. I testified for nearly
20 four hearings in Iowa in 2012 through 2013. The
21 League of Women Voters U.S. is 130,000-strong
22 organization that does all it can to make sure every
23 eligible voter is able to vote. The League believes
24 that every citizen should be protected in the right
25 to vote, and that no person or group should suffer

1 legal, economic, or administrative discrimination.
2 When the 2000 election exposed the many problems
3 facing the election system, the League began to work
4 relentlessly on election reform, and bringing its
5 importance to national attention. The League of
6 Women Voters U.S. helped draft and pass the Help
7 America Vote Act of 2002, HAVA. Working closely
8 with civil rights coalition in developing a balance
9 for key provisions.

10 This testimony will focus on our
11 experience in Iowa with the League, and the hearings
12 we attended and participated in. On August 27th,
13 2012, the League of Women Voters of Iowa was asked
14 to sign on with the ACLU League of Latin American
15 Citizens, Interfaith Alliance, American Friends
16 Services Committee, and the Iowa chapter of the
17 National Association of Social Workers, and
18 requested a hearing with the Iowa legislative rules
19 review committee concerning the actions of Secretary
20 of State Matt Schultz, and his activities to remove
21 registered voters from the rolls. The League of
22 Women Voters of Iowa joined the request for a
23 hearing that was September 11th, 2012 at the
24 cabinet. Rita Bettis of the ACLU wrote the request
25 that included affidavits from Latino citizens that

1 would be affected by Secretary of State Schultz's
2 actions. The hearing was held on a Tuesday with
3 myself present, Don Suiter, Rebecca Rider, League
4 members, and we learned that Secretary of State
5 Schultz attended a national convention of Secretary
6 of States where he gained some ideas on funding
7 voter fraud -- on finding voter fraud. Schultz
8 examined the Department of Transportation list for
9 names that were identified as aliens. He
10 crossed-check this list with voter votes, and came
11 out with a list of 3,584 names. He did not find out
12 how many of these individuals subsequently became
13 citizens. Checking those names against registered
14 voters, Schultz claims 3,582 people marked as
15 noncitizens are registered to vote in Iowa, but a
16 driver's license is good for five years. What
17 Schultz didn't say, and maybe did not know, is that
18 in the five years ending September 30th, 2011, over
19 11,000 people -- Iowans became U.S. citizens. We
20 had 11,000 newly naturalized citizens joining the
21 U.S. citizenry. Schultz pursued efforts to getting
22 safe, systematically verification form entitlement
23 list, a Federal list documenting new citizens by
24 state. This list at intended for Federal agencies
25 to determine if immigrants are eligible to benefits,

1 such as food stamps. Instead of waiting for the
2 list, Schultz turned the list over to the Iowa
3 Department of Criminal Investigation using HAVA
4 funds, Help America Vote Act funds, to pay for the
5 expense. Up to 280,000 for two years of work. HAVA
6 funds were designed to decrease access to voting
7 after people were wrongly disqualified in 2000. In
8 September 2012, this hearing was the first time we
9 had heard of these efforts by Schultz. We were all
10 quite surprised by this effort. He was using
11 multiple efforts to find voter fraud in Iowa. It
12 turns out Schultz had struck a deal with the DCI in
13 July of 2012, and an agent immediately went to work
14 looking for voter fraud. Using the list from
15 Schultz, the DCI began to interview possible
16 suspects. On September 21, 2010, the Des Moines
17 Register reported three were charged with election
18 misconduct. Two Canadian citizens not being allowed
19 to vote in all, but presidential elections, but they
20 were legal, permanent residents. The third was also
21 mistaken in her belief she was eligible to vote.

22 Another complication to voters was the
23 action of Governor Terry Branstad. We heard about
24 this a little bit earlier this afternoon. When
25 Branstad took office, his first day in office,

1 January 20th, 2011, he immediately rescinded the
2 efforts of former Governor Tom Vilsack to give
3 felons, who had served their time, to have their
4 voting rights restored. From January 2005 through
5 2010, felons who had been released had their voting
6 rights restored, and were able to participate in the
7 Democratic process. For many prisoners who were
8 released after January 2011, they did not get that
9 information about a change in the governor's order.
10 After the DCI went to court, nine felons were
11 charged with voter fraud because they believed they
12 were eligible to register and to vote. The
13 necessary education on changes for this policy was
14 not widely known in the state of Iowa. One of the
15 first acts of the League was to contact Senator
16 Harkin and apprise him about all the money being
17 used for voter fraud. We sent a letter September 25
18 to Senators Harkin and Grassley. It was Dan
19 Goldberg, a lawyer who specialized in election law,
20 who followed up. He reported that they were
21 following up with the senate rules committee and the
22 election assistance commission. He said inspector
23 Curtis Pryer was aware of this use of HAVA funds.
24 What we did not realize at this time is that the
25 election assistance commission was not operational,

1 because the commissioner quit in December of 2011.
2 The commission typically has four members nominated
3 by the president, and approved by congress.
4 Congress has not approved any nominees, and without
5 three voting members, the agency cannot advise
6 states on the use of voting act funds. On
7 January 3rd, 2013, a hearing was held to get public
8 input on the Secretary of State Schultz's actions.
9 There were 40 speakers who expressed frustrations
10 with these actions. Iowa Senator Thomas Courtney
11 asked the state auditor in October 2013 to review
12 Schultz's use of money. The report released on
13 December 19th, 2013 by chief deputy included that
14 the Federal programs do not specifically address
15 whether the investigation of complaints and
16 potential criminal activity is an allowable
17 expenditure; however, that Schultz should be
18 prepared to repay the money, if the election
19 assistance commission determines the funds weren't
20 properly used. Iowa Senator Tom Courtney asked a US
21 Senator to confirm the appointees to a Federal
22 election commission, so a decision could be made
23 about whether Secretary of State Schultz is properly
24 using money for voter fraud investigations.
25 Courtney questioned whether the use of the money by

1 Schultz was legal. The funds are intended for
2 education, and about voting procedures, voter
3 rights, and technology. Courtney reportedly sent a
4 letter to U.S. Senators Charles Sumner and Pat
5 Roberts, the chairman and ranking member,
6 respectfully, of the Senate Rules and Administration
7 Committee. The Committee oversees nominations for a
8 variety of Federal votes, and held a hearing on
9 December 2013 on nominees for the Election
10 Assistance Commission. One of President Barack
11 Obama's nominees had been waiting two years to act
12 on her appointment. The other appointee has been
13 waiting three years. The GOP leadership has not put
14 forth any names to serve on a bipartisan panel.

15 The DCI entered on February 13, 2014,
16 about 20 months after the investigation started.
17 They found 25 cases of possible voter problems. Of
18 these, nine involved felons. And as you heard
19 earlier, it was many times because they didn't
20 realize that they were accidentally registering to
21 vote, or -- there were five individuals whose
22 charges were dismissed, two are waiting trial, one
23 was found not guilty in a jury trial, a mistake is
24 not a crime. Two Canadians who believed they were
25 eligible to vote returned to Canada, one who double

1 voted for her daughter plead guilty. Four of the
2 felons pled guilty because they did not want to risk
3 a jury trial and possible ten-years prison sentence.
4 In Iowa there are 2.1 million registered voters.
5 Voter misconduct is statistically insignificant, and
6 is generally the result of misunderstanding, rather
7 than fraud. In three of the cases involving felons,
8 they thought their rights had been restored. They
9 pled guilty because the deals offered by the
10 prosecutors were safer bets than going to trial, and
11 risking prison time. The instances of real,
12 intentional voter fraud are exceedingly rare,
13 experts say, because of penalties that are so high,
14 and the payoff is so low.

15 MS. NOREN: Are you ready to rap up?

16 MS. PITZ: Yeah.

17 MS. NOREN: Okay.

18 MS. PITZ: And the only thing I do want to
19 say is, is that we need to make the Federal
20 Elections Administration Commission operational, and
21 there just needs to be a ton of voter education.
22 That's what needs to happen.

23 MS. NOREN: Thank you.

24 And our final panelist for the day, and
25 I -- first of all, I want to thank everybody on my

1 panel for doing such a great job, and also having
2 very simple names so I can get through them.

3 So our final one is Joe Henry, and he will
4 be talking about the Iowa Secretary of State voter
5 purge using the saved database and the suppression
6 impact upon the Latinos, new U.S. citizens, and
7 other minorities.

8 Thank you.

9 MR. HENRY: Thank you executive
10 commissioners and the National Commission on Voting
11 Rights.

12 Hello. My name is Joe Henry, and I'm the
13 state director of League of United Latin American
14 Citizens of Iowa. The League of United Latin
15 American Citizens is the nation's largest and oldest
16 civil rights volunteer-based organization what
17 empowers Hispanic Americans, and builds strong
18 Latino communities. Headquartered in Washington DC
19 with 10 million members and counsel around the
20 states and Puerto Rico.

21 One of LULAC's initiatives is to promote
22 active participation of all eligible Latinos in the
23 Democratic process by registering to vote, having
24 access to voting locations, and voting in elections.
25 We encourage all legislative, judicial, and

1 education efforts to promote voter participation in
2 an advocacy. In 2012, we let Iowa join with the
3 state ACLU to stop the implementation of voter rolls
4 that were proposed by Iowa Secretary of State Matt
5 Schultz. The unilateral move made by the Iowa
6 Secretary of State in 2012 did not promote voter
7 participation. The voter rolls proposed by the Iowa
8 Secretary of State would have dramatically altered
9 the way in which elections were run, how voters are
10 challenged, and the legislative authority needed
11 before the secretary of the state can promote. In
12 addition, we felt that the Secretary of State should
13 have conferred with county auditors and voter
14 registration commission before attempting to enact
15 such rules. We also believe the Secretary of State
16 acted outside of his legislative authority when
17 changing how voters could be stripped of their
18 voting rights. Iowa law provides six reasons for
19 allowing cancellation of voter registration. One, a
20 voter dies; two, registers in another jurisdiction;
21 three, requests a cancelation in writing; four, is
22 convicted of a felony; five, is declared
23 incompetent; six, or has been inactive for two
24 successive general elections. Schultz argued that
25 his roles changes would have identified and removed

1 noncitizens from the voter rolls by scanning
2 registered voters against state and national lists
3 of noncitizens, and then running suspected foreign
4 nationals through a Federal database called the
5 Systematic Alien Verification for Entitlements
6 Program, as you had noted, but it has been noted
7 that the database is known to have faulty
8 information. We strongly believe that the Iowa
9 Secretary of State was targeting one section of the
10 population, specifically Latinos, and that this
11 action amounted to intimidation. The secretary of
12 the state used agents from the Iowa Department of
13 Criminal Investigation, an agency whose main role is
14 to investigate serious crimes to investigate
15 allegation cases of voter fraud, and to question
16 individuals suspected of not proven guilty of such
17 actions. Imagine the confusion and fear you would
18 feel if an agent from the Iowa Department of
19 Criminal Investigation contacted you, or if you
20 received a letter from the State of Iowa stating
21 that you were not legally eligible to vote. Sending
22 out what deemed to threatening letters to those he
23 believed were noncitizens was part of the new voter
24 rolls the secretary state attempted to implement.

25 Many immigrants come from countries where

1 they were previously repressed by their government.
2 Such actions by Iowa Secretary of State would have
3 further intimidated them from making the chilling
4 effect, and could have scared them into giving up
5 their constitutional right to vote for those who
6 were, in fact, eligible voters.

7 We were also concerned about the window of
8 time in which an individual had to respond to the
9 threatening letters that were supposedly sent out by
10 the Secretary of State. This could have been very
11 problematic for Latinos and other immigrants,
12 because, sometimes, it could take months or up to a
13 year to receive proper documentation from the
14 Federal government to verify citizenship. We did
15 not agree with the use with Help America Vote Act,
16 HAVA, money to pursue Schultz voter rolls. That
17 money should have been used to improve the voting
18 process in Iowa. As noted by several media reports
19 on election night in 2012, the Secretary of State's
20 office had difficulty reporting voting results in a
21 timely manner, had other issues with the voting
22 process. Federal funds should have gone towards
23 those improvement, not to pay for DCI intentional
24 investigator fraud that did not exist. The
25 Secretary of State claimed in 2012 that he

1 identified thousands of people who were registered
2 to vote, despite being noncitizens. The likelihood
3 that this data was correct was extremely low. The
4 analysis of 2,068 reported fraud cases by the News
5 21, a Kearney United Investigative Reporting
6 Project, found ten cases of alleged in-person voter
7 impersonation since 2000. With 146,000,000
8 registered voters in the United States, those
9 represent about one for over 15 million perspective
10 voters. The low numbers of voter fraud makes sense.
11 There are already laws in Iowa that provide criminal
12 penalties for voter impersonation fraud. We believe
13 that it is very unlikely that an individual,
14 regardless of how much they wanted to vote for their
15 favorite politician, would risk going to prison to
16 give that candidate one vote. This was all the more
17 reason why Schultz rolls were necessary. We also
18 believe that there were too many ways a voter's
19 identity could mistaken, or information used to
20 verify a voters eligibility could be inaccurate or
21 outdated. Schultz used Iowa Department of
22 Transportation data, which meant people could have
23 been swept up in the process that had gotten their
24 driver's license when they were legal immigrants,
25 but not yet citizens, and then later became a legal

1 citizen. Iowa driver's licenses are only renewed
2 every five years, so the DOT's data is not up to
3 date, nor was it ever intended to be used in this
4 manner. The Iowa Secretary of State voter rolls
5 also were too vague, and did afford enough
6 opportunity to ensure a accurate and fair result.
7 The rolls were also major changes to Iowa voting
8 law, and the Secretary of State that had an
9 administrative agency as part of the executive
10 branch did not have the power to change or undermine
11 existing eyes of the law. Protecting access to
12 voting for qualified, eligible Iowans, including new
13 U.S. citizens is important; however, these rules are
14 a threat to that rule, and should have never been
15 allowed to be enacted.

16 This year marked a huge success in our
17 almost two-year court battle. In March, Judge Scott
18 Rosenberg, the District Court Judge for the Fifth
19 Judicial District of Iowa ruled that Schultz
20 exceeded his authority in adopting new voter rolls
21 that created a process for identifying and removing
22 voters by screening them against a Federal database.
23 Rosenberg's decision invalidated the rule, which
24 identified and removed noncitizens from the voter
25 roll that screened the registered voters against

1 state and national list of noncitizens. And, of
2 course, as I said before, the database was known to
3 have faulty information.

4 And that sums up my testimony.

5 MS. NOREN: Thank you very much.

6 I have couple of quick questions. You're
7 both from Iowa, bringing up this use of HAVA funds.
8 Are you familiar with the state plan requirement
9 under the Help America Vote Act that states how to
10 spend money according to a plan developed by a group
11 of people appointed by the Secretary of State?

12 MR. HENRY: No.

13 MS. NOREN: I don't -- you know, that was
14 part of the thing that the states had put together a
15 state plan committee to develop how this money was
16 to be spent, and they were the ones who determined
17 that this was to hopefully deter situations that you
18 are bringing up, so ...

19 MR. HENRY: And I think that we did bring
20 that up in 2012 at the hearings.

21 MS. NOREN: Yeah.

22 MR. HENRY: And Mr. Schultz didn't state
23 anything to me.

24 MS. NOREN: Okay. Any questions?

25 MR. RICH: I have one quick question to

1 Gary, and this is just whether you happen to know if
2 in Kansas, through the litigation process so far,
3 particularly from the order from the judge, whether
4 they have addressed the issue of that small group of
5 voters who used the Federal voter registration form
6 at a time when that form did not require proof of
7 citizenship, whether those voters will have a right
8 to vote in the fall election.

9 MR. BRUNK: So, no, we're not involved in
10 the court case with the League, and some other
11 groups that are involved, and the Federal court
12 system certainly has not come up, obviously, in a
13 state system yet, so -- I'm not aware of it, though.

14 MR. RICH: So they have not yet.

15 MR. BRUNK: Not that I know of.

16 MR. RICH: As far as the rights of that
17 group.

18 MR. BRUNK: Right.

19 MR. RICH: Okay. Thanks.

20 MS. TERNUS: Has Judge Rosenberg decision
21 been appealed?

22 MR. HENRY: Yes. Yes, it has.

23 MS. NOREN: Okay.

24 Any other questions from the panel?

25 All right. So I am going to throw this

1 back to Mary Ratliff, and see if we have any public
2 testimony.

3 MS. RATLIFF: Yes, we do. We're going to
4 ask -- and I'll probably step on this last name.
5 Brad Murenz and Marvin S. Robinson II, if you would
6 come up.

7 And just give us your -- of course, your
8 name, and what organization, if any, are you
9 representing yourself, or an organization.

10 MR. MURENZ: Good evening, commissioners.
11 For the record, my name is Brad Murenz, and I am the
12 public policy specialist for Disability Right of
13 Nebraska, the designated protection and advocacy
14 organization for Nebraskans with disabilities.

15 I am pleased to be here today -- this
16 evening with you to give you a brief highlight of
17 some of the activities regarding voting rights for
18 Nebraskans with disabilities that we've been
19 involved with. Disability Rights of Nebraska has
20 focused our voting activities primarily on
21 legislative work, education and awareness raising,
22 polling place accessibility, surveying those
23 accessibility, and voting demonstrations and voter
24 registration. We maintain a generalized intake
25 process whereby people with disabilities can call

1 our office to report an incident, a problem, an
2 issue, and we can -- in a position that we can
3 handle. Additionally, we've opened a special
4 call-in line on election day to receive any calls
5 from voters with disabilities on election day to
6 report any issues that might arise at the moment.
7 We receive a minimal number of calls to our office
8 regarding voting problems for persons with
9 disabilities, either daily, on the generalize intake
10 line, or on election clay. We work collaboratively
11 with other voter rights organizations to communicate
12 issues that cross-apply, and to expand the reach of
13 our advocacy. We continue to have a very positive
14 working relationship with the Secretary of State,
15 and our elected officials. The Secretary of State
16 and state election officials have been and continue
17 to be very supportive of our education efforts.
18 They have asked us to be involved in making sure
19 that barriers in voting for Nebraskans with
20 disabilities are minimized, and have responded
21 quickly and effectively to issues that we have
22 raised in this regard. Even the polling place
23 workers have been very helpful in assisting us to
24 address issues that occur at a specific polling
25 place. We feel we have significant support from the

1 top, all the way down.

2 Education. One barrier for Nebraska
3 voters with disabilities is misconceptions about
4 their voting rights. We have conducted many
5 presentations on the voting rights of persons with
6 disabilities in Nebraska. We also conduct voter
7 registration drives and voting machine
8 demonstrations, making individuals aware, not only
9 of their rights, but also that they can use the auto
10 mark voting machines, and how to use those voting
11 machines. Through these presentations, we have
12 learned that a majority of the audiences believe
13 that a person with disabilities was barred from
14 voting for the following reasons. One, that person,
15 or a person, has been through a mental health board
16 committee; two, that person, or persons, have been
17 convicted of a felony; and, three, that individual,
18 or individuals, have a guardian. All of which do
19 not deny a person with disabilities their right to
20 vote.

21 Accessibly surveys. Through our
22 Protection Advocacy for Voting Access program, or
23 PAVA, as we like to call it, we have conducted at
24 least 50 polling place accessibility surveys, to
25 make sure that the polling place is accessible for

1 persons who need an accessible polling place. Even
2 though those surveys show most of polling places
3 were accessible, there were some sites that had
4 problems. Considering that Nebraska has around
5 1,180 polling sites, these 50 surveys that we have
6 conducted, is, by all means, a small sample. We
7 continue to conduct polling place accessibility
8 surveys to assess accessibility. The largest
9 problems that we found in our accessibility surveys
10 were the auto mark machine was not positioned so a
11 voter could vote privately. Voters with
12 disabilities lack knowledge of the auto mark
13 machine, how to use it. We have found that people
14 are not aware that there is a voting machine
15 available at the polling place, or they have no idea
16 how to use the machine. And the ramp to the
17 entrance of a polling place did not fit properly,
18 and/or did not have a ramp at all.

19 Legislative efforts. Disability Rights of
20 Nebraska also focuses its work on legislative bills
21 that will affect Nebraskan voters. We are pleased
22 that our unicameral legislature has taken a somewhat
23 cautiously balanced approach to reform voting rights
24 and processes in Nebraska. We have a very positive
25 working relationship with the legislature as well,

1 and have worked to influence the legislature to
2 enact positive legislation for Nebraskans with
3 disabilities regarding voting. For example, LB661
4 Legislative Bill 661 created an online voter
5 registration system so that the information from the
6 Department of Motor Vehicles and the Secretary of
7 State's office can be transmitted and submitted
8 electronically, decreased the lag time in getting
9 results and information between those two offices.
10 We have been involved in opposing the voter ID bill
11 that has been brought up in the Nebraska legislature
12 for several years now. We have been very successful
13 in staving off that legislation requiring voter ID,
14 and I would like to also lastly add the Legislative
15 Bill 271. That bill suggested reducing the number
16 of early voting -- any person's early voting days,
17 which, at that time, stood at 35 days. The proposal
18 was decreased back to 25 days, for a reduction of
19 ten days. In response to our opposition and working
20 with legislatures, we were successful in getting
21 that 35 days to 25 days reduction changed to a
22 35-day to a 30-day reduction. Not optimal in our
23 eyes, but certainly better than the alternative.

24 So the kind of gives you a snapshot of
25 where we stand with voters with disabilities in

1 Nebraska. Now, it's not ideal, everything is not
2 perfect, but I think with continued vigilance and
3 advocacy and education, we can certainly achieve
4 something close to the ideal.

5 And that would all that I have for you.
6 If you have any questions, I'd be happy to answer
7 them as we as I could.

8 MS. RATLIFF: Okay. anybody have any
9 questions?

10 Thank you.

11 THE WITNESS: You're welcome.

12 MS. RATLIFF: We will now hear from
13 Marvin.

14 MR. ROBINSON: Good afternoon -- or good
15 evening. My name is Marvin Robinson. First, I
16 would like to say how much this is appreciated, and
17 with a deep gratitude for the National Commission on
18 Voting Rights, and the Lawyers' Committee for Civil
19 Rights under the law, and the UMKC Law School for
20 hosting such an incredible and important listening
21 session on voting rights here in Kansas City.

22 HUD, Housing and Urban Development, in
23 approximately October 2013, reported there are more
24 homeless African-Americans than other demographics
25 nationwide currently -- occurring currently. As an

1 advocate for, and with the environmental and energy
2 justice issues, as well as the historic heritage
3 preservation of the Underground Railroad exercise
4 2014 -- in a couple of weeks, it'll be 27 years of
5 independent volunteer research with that, as well as
6 an advocate for veterans who endure severe barriers
7 through the VA. Myself, a Navy veteran, and a
8 committee man for quite some time now.

9 Today's National Commission on Voting
10 Rights is important, because 50 percent of
11 African-American veterans are homeless. In 2014 a
12 national news media report from Washington DC,
13 Oregon, up to Detroit continued to disseminate
14 articles about rejuvenation of urban centers. In
15 Kansas City -- correction in Kansas, Wyandotte
16 County, of which I'm a resident there, many of us
17 are silently mortified, because we are being thrown
18 out of what we had; our neighborhoods, our homes,
19 our communities from overexaggerated personal
20 property real estate taxes, and every time this
21 place -- Kansas City, Missouri does something
22 phenomenal and fabulous like the Kansas City Power &
23 Light District, and rebuilds their downtown area,
24 and God forbid the new trolley system that's getting
25 ready to start operations, because our community

1 promotes Kansas City, Wyandotte County being 2 miles
2 from the Power & Light District, which means we're
3 basically sort of like a hotbed patio, back door to
4 a plethora metro of a city like Kansas City,
5 Missouri. So they keep going up on our taxes,
6 because Kansas City, Missouri keeps doing such
7 fabulous things, if that makes any sense.

8 There is not enough time to discuss the
9 atrocities that we endure with being residents in
10 Kansas when it comes to elections, the right to
11 vote. Maybe there exists a format for the homeless
12 to vote -- or the near homeless that I, or some of
13 the others, we're unaware of. In reality, a
14 significant portion of African-American residents
15 are displaced. At a conference that the EPA just
16 had last month, there was a discussion about root
17 shock where Professor Dr. Mindy Love discussed
18 Hurricane Katrina, Super Storm Sandy, and other
19 struggling areas. When you go in to do upgrades in
20 your urban centers, and you displace -- the
21 secondary impact has a root shock, and so my focus
22 of trying to be here today, was by trying to
23 encourage whatever this group is supposed to be, the
24 National Commission on Voting Rights to reconsider a
25 higher priority for the homeless, the unemployed,

1 the transit population; such as 50 percent of blacks
2 who are currently reportedly homeless right now
3 because more will be coming home from Afghanistan --
4 this is both men and women in our area. We have so
5 much toxic waste in the air, the ground, and water,
6 we could -- we are identified as an environmental
7 justice community for our simple sacrifice, take
8 your pick. Combined the aforementioned with the
9 highest rates of -- the highest rates of
10 underemployment or unemployment among extreme
11 poverty of African-American residents. Right now
12 it's at Wyandotte County, Kansas City, Kansas, the
13 Center for Disease Control, since probably 2009,
14 2010, we have the highest rate of death and
15 mortality rate in the entire country, structured
16 violence, and I'm just about through. Structured
17 violence is -- with the Internet search engine cause
18 these problems.

19 So I'm just basically here to encourage
20 you to consider doing more with the people that are
21 being displaced in the -- sustaining their right to
22 vote. In summary, those massive jobs are being
23 created with livable wages, more and more veterans
24 and homeless populations will expand and increase,
25 and this wouldn't just be for black people, but

1 Americans, and there's some other little things I
2 wanted to say, but we are as American as anybody
3 else. I felt like it's important to continue to try
4 to complain, because that is what our whole fiber of
5 this great nation is, and I'm a nervous wreck, and I
6 just want to say thank you so much, and I appreciate
7 you out there.

8 MS. RATLIFF: Thank you so much, and let
9 me ask you a couple questions.

10 You said that 50 percent of the homeless
11 are veteran.

12 MR. ROBINSON: Black veterans are
13 homeless.

14 MS. RATLIFF: So what address that's
15 impacting.

16 MR. ROBINSON: Just the right to be able
17 to participate.

18 MS. RATLIFF: To participate in the
19 election process?

20 MR. ROBINSON: Yes.

21 MS. RATLIFF: Okay. Do you know if any of
22 those -- what's happening when they're being turned
23 away? Are they trying to vote, or ...

24 MR. ROBINSON: It varies. And this isn't
25 50 percent Wyandotte County, this is a VA statistic,

1 even though they have the new HUD, it is just a
2 really awful thing. And even when I went to the EP
3 national conference, I had to throw out there --
4 they were talking about the new EPA guidelines. I
5 had to throw out what is in our immediate corridor,
6 and --

7 MS. RATLIFF: Okay. And I have to keep it
8 short, because we got about --

9 MR. ROBINSON: I could not thank you all
10 enough.

11 MS. RATLIFF: We have -- I was just
12 wondering if some of the other may have some
13 questions, but I was just wondering with that you
14 know, 50 percent of the homeless, if you have any
15 complaints that -- about the voting process, the
16 fact that they were not able to vote?

17 MR. ROBINSON: Oh, my God, yeah. I've
18 been in Wyandotte County -- I served as an observer
19 for the Obama reelection in 2012, and the people
20 that were -- I'm a precinct committee man, and they
21 kept moving our precinct around, and the only reason
22 why I knew that they had this moved it around is
23 because I'm a precinct committeeman, so I was having
24 to steer people to the new location, and one of the
25 ladies that volunteers at our church's food pantry,

1 she offered me some fried chicken around
2 eleven o'clock, and I said, No, I didn't want any,
3 and then she offered some again around one o'clock,
4 and the guy was getting ready to call the police
5 because I was getting a piece of fried chicken, and
6 I was just like, Oh, my God, I'm told old -- you
7 know, I'm too old to get in trouble. I said, What
8 is the issue? Well, you can't offer anybody that's
9 observing -- you can't even exchange food, because
10 they offered me a piece of chicken, I didn't know it
11 was a crime, but if I had presented the chicken,
12 then it would have been a crime. And I was like --
13 well, he said he was going to call the main office.
14 I said, you call the main office, and I'm call
15 Washington, so who's going to dial first? So --
16 yeah. And then are other veterans who did not even
17 bother to go vote, because they used to live in that
18 area, they have no address, and they don't want to
19 get in trouble later on, to answer your questions,
20 so ...

21 I had to throw out the fried chicken
22 story, because I think it's just unbelievable, the
23 degradation of the way people treat veterans and act
24 like a piece of chicken would be something you could
25 get a ticket for, and I'm one of the foolish people

1 that would take the time to go and volunteer and
2 campaign. Just think about how many other people
3 that might just trigger a whole another reaction.

4 So thank you so much.

5 MR. RICH: One quick question. Do you
6 have a sense of how many people who are homeless in
7 Kansas who carry around proof of citizenship?

8 MR. ROBINSON: When you say -- like a
9 birth certificate and --

10 MR. RICH: Birth certificate or passport.

11 MR. ROBINSON: You ask an interesting
12 question. They've told us that you have to have you
13 ID; otherwise, they could -- and that was one of the
14 reasons I started growing my beard, is because every
15 time I went somewhere, the police were saying I fit
16 a description. I was like, My God.

17 So I don't know -- I don't know the answer
18 to that.

19 Thank you.

20 MR. RICH: Thank you.

21 MS. RATLIFF: Thank you both.

22 MR. RICH: I have been asked to now bring
23 this hearing to a close. Let me begin by thanking
24 all of the people who have been here today, people
25 who have not testified, particularly those who have.

1 It has been a terrific, educational experience for
2 me, and I'm sure this stands true for other members
3 of other guest commissioners who are here. I'm also
4 sure that we've heard evidence that's going to be
5 helpful to advise our Commission on Voting Rights as
6 they study this problem. It would be very tempting
7 to try to summarize in some way all that we have
8 heard over the course of the day, but I'm not going
9 to try to summarize it all. There are just a few
10 highlights that I want to identify.

11 We have heard, for example, that there are
12 restrictions on voting that simply cannot be
13 rationally defended as anything other than efforts
14 to suppress voting. We have heard evidence from a
15 number of people that there are racial, economic,
16 physical, and geographic barriers to voting that,
17 again, demonstrate systematic voter suppression.
18 We've heard -- and, again, this seems to be a
19 comment that applied in very broad terms
20 enthusiastic effort to enforce voter restrictions,
21 and complete neglect of provisions to protect voting
22 rights, and it seems to me, in many ways, that that
23 sort of summarized that testimony that we heard
24 throughout the afternoon.

25 I came here knowing something about the

1 problems that we have in Kansas, because that's
2 where I have been located, and I certainly heard
3 that the problems in Kansas are serious. When you
4 have 15,000 people who are -- whose right to vote is
5 held in suspension, or whose voting registration is
6 incomplete, and who probably will not be able to
7 vote the next time that opportunity arises, and when
8 you're suspending those 15,000 because of evidence
9 that five people over the last eight years may have
10 voted who weren't supposed to vote. It turns,
11 however, that Kansas is not the only place that has
12 problems, and that was part of what was eye opening
13 for me. To discover, for example, that in Missouri,
14 you may have to wait for five hours to vote, while
15 in the same district, another group of voters who
16 happen to be majority white wait five minutes
17 instead.

18 We heard from people in Iowa evidence of a
19 kind of race discrimination, both in the context of
20 people who felony records, and also in the context
21 of what appeared to be systematic efforts to deprive
22 people of Latino background from being able to vote,
23 that is appalling. We've heard from people in
24 Nebraska about problems -- what appear to be a
25 systematic neglect of national voting laws, failure

1 to provide the kind of bilingual or language --
2 bilingual information about voting that is required
3 by national law, not able to identify
4 Native-American in that type of entity in the same
5 way that you do other persons, and so forth. What
6 all this adds up to for me is a sense that if these
7 four states all have such serious problem, what we
8 really are talking about is a national problem, not
9 one that is merely local, not one that is merely
10 regional. We know, and the United States Supreme
11 Court has said that it is the National Government
12 that has some responsibility for establishment of
13 procedures that will establish, in turn, fair voting
14 throughout the United States, and what we have to
15 report to the National Commission now, I think, is
16 more evidence that national action is necessary in
17 order to properly restore the democracy that we hope
18 this nation stands for.

19 With that, let me turn it over to Erandi
20 and to the national committee.

21 Miles.

22 MR. FERNANDEZ: So just on behalf of the
23 National Commission on Voting Rights, we wanted to
24 thank a few people. First and foremost, we want to
25 thank our panel committee. This hearing would not

1 have been possible without the hard work of the
2 coalition that we were able to bring from the four
3 states. You know, it is a very important and
4 difficult task to bring four states together to do
5 one hearing. I've had experience doing one, and
6 that was hard enough, but four definitely was a
7 difficult task, but, you know, we had wonderful
8 supporters, and we want to thank them personally,
9 everyone that is especially pointed out in the back
10 of our program.

11 I also -- we also wanted to thank the
12 witnesses for their personal and powerful testimony
13 to really draw the personal and factual information
14 that we are looking for to hopefully, you know, make
15 a real change in voting rights in this nation, as
16 well as just, you know, everyone that's been here
17 throughout the day. It has been a long hearing, but
18 we do appreciate everyone's participation, whether
19 you were just hear to listen, or be more involved,
20 and really bringing the importance of the state of
21 voting in this country, especially for this specific
22 region.

23 And, lastly we want to thank our esteemed
24 panel of commissioners who really engaged our
25 witness, and really delve deeper into their

1 testimony, and we are very grateful for their
2 participation as well. Thank you.

3 (The hearing concluded at 5:57 p.m.)
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C E R T I F I C A T E

I, Lisa D. Ballalatak, a Notary Public for the State of Missouri, do hereby certify that I appeared at the time and place first hereinbefore set forth, that I took down in shorthand the entire proceedings had at said time and place, and that the foregoing constitutes a true, correct, and complete transcript of my said shorthand notes.

Witness my hand and seal this 2nd day of May, 2014.

Lisa D. Ballalatak
Notary Public
State of Missouri

1 NATIONAL COMMISSION ON VOTING RIGHTS
2 LOUISIANA HEARING SCHEDULE

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7 Meeting taken commencing at 3:09 p.m., on the
8 7th day of April 2014, at Delgado Community
9 College Student Life Center, 615 Navarre Street,
10 Second Floor, New Orleans, Louisiana 70119.

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17
18 REPORTED BY:

19 Denise E. D'Arcourt,
20 Certified Court Reporter

21 No. 94078

22 State of Louisiana

23
24 OPENING REMARKS - Meredith Horton, Esquire

25 Job No. 72441

1 COMMISSIONERS:

2 Marcia Johnson-Blanco, Co-Director Voting Rts. Project

3 Dr. Raphael Cassimere, Jr., Seraphia D. Leyda Prof-

4 Emeritus of History, UNO

5 Erika McConduit, Pres/CEO Urban League, N.O.

6 Rev. Chipps Taylor, LA State Conference of NAACP

7 Tracie Washington, Pres/CEO, LA Justice Institute

8 PANEL #1:

9 Dr. Silas Lee, Pollster/Professor

10 Vanessa Gueringer, Community Voice

11 Stephanie Patrick, Advocacy Center

12 PANEL #2:

13 Rev. Jay Augustine

14 Ron Wilson, Esquire

15 Cedric Floyd, Demographer

16 Linda Johnson

17 PANEL #3:

18 Carolina Hernandez, Executive Dir., Puentes N.O.

19 Minh Thanh, Executive Dir., VAYLA N.O.

20 Norris Henderson, Executive Dir., Voice of Ex-Offender

21 Bruce Reilly, Voice of Ex-Offender

22 PANEL #4

23 Trupania Bonner, Black Men and Boys Initiative

24 Charmel Gaulden, Attorney

25 Jennifer Coco, Southern Poverty Law Center

1 MEREDITH HORTON:

2 All right. We're going to get started.
3 Welcome to the Louisiana Hearing for the National
4 Commission on Voting Rights. My name is
5 Meredith Horton. I'm an attorney with the
6 Lawyers' Committee for Civil Rights Under Law in
7 Washington, D.C. The Lawyers' Committee is a non-
8 profit, non-partisan civil rights organization
9 that was founded fifty years ago at the request of
10 President Kennedy to engage the private bar --
11 private law firms in the fight for racial justice
12 and equality. Today, we continue that work in the
13 areas of fair housing, community development,
14 employment discrimination, education, and voting
15 rights, the reason that we're all here today.

16 So, today's hearing is the fifteenth in a
17 series of nationwide fact-finding events that are
18 convened by your National Commission on Voting
19 Rights. The charge of the commission is to gather
20 information about the current landscape of voting
21 rights and election administration across the
22 country. And so, today we will focus on
23 Louisiana. So, as many of you know, last summer
24 the U.S. Supreme Court effectively gutted a key
25 protection of the Voting Rights Act. And this

1 protection is crucial to states like Louisiana to
2 protect Louisiana voters from discriminatory
3 changes in voting. The court released states like
4 Louisiana with a real troubling history of voting
5 discrimination from a critical responsibility to
6 demonstrate up front that changes in voting,
7 whether it's moving a polling place or
8 redistricting, don't impact minority voters. So
9 the court said that this requirement was outdated
10 and no longer needed, and we think they got it
11 wrong. So, today, we want to hear from you
12 about -- to identify the needs for strong
13 protections against race discrimination in voting.

14 In addition, today, we also want to hear
15 about election administration challenges as well.
16 Across the country over the past few years, we've
17 seen a wave of restricted voting laws. Some
18 taking the form of strict photo ID laws or proof
19 of citizenship, registration requirements. And,
20 further, we've also seen cycle after cycle of
21 election administration problems, so problems with
22 poll worker training or voter registration
23 procedures. Your input on these issues in this
24 state is really critical to our National
25 Commissions work, and so I thank every one for

1 joining us today. So, with the testimony you
2 receive today and after the hearing, the
3 commission will prepare two reports; one on voting
4 rights and voting discrimination and another on
5 election administration. And those reports will
6 be widely available for anyone seeking to reform
7 the system, so, advocates, policy makers, the
8 voting public.

9 So, now I'd like to introduce you to our
10 commissioner panel for today's hearing. Presiding
11 over our event are our commissioners. Each have a
12 deep commitment to civil rights and protecting
13 access to the ballot on equal terms for everyone.
14 To start, Marcia Johnson-Blanco, Co-Director of
15 the Voting Rights Project at the Lawyers'
16 Committee for Civil Rights. Marcia oversees the
17 project's programmatic and advocacy portfolios
18 which include the National Commission on Voting
19 Rights as well as election protection, which is
20 the nation's largest non-partisan voter protection
21 program. Marcia is also the deputy director for
22 the National Commission on the Voting Rights Act
23 in 2005. And the findings of that commission were
24 a significant part of the record considered by
25 Congress when it re-authorized the Voting Rights

1 Act in 2006. Lastly, Marcia also receives the
2 Lawyers' Committee work monitoring U.S. compliance
3 of various human right treaties.

4 Next, we have Dr. Raphael Cassimere.

5 Dr. Cassimere is a native of New Orleans and a
6 product of its public schools. He received his
7 bachelor's and master's degrees in --

8 DR. RAPHAEL CASSIMERE, JR:

9 Go Bulldogs (ph).

10 MEREDITH HORTON:

11 He received his bachelor's and master's in
12 history from the University of New Orleans and a
13 Ph.D. from Lehigh University in Bethlehem,
14 Pennsylvania. Dr. Cassimere was a member of the
15 History Department at University of New Orleans
16 from 1971 to 2007, and retired with the rank of
17 Seraphia D. Leyda University teaching professor.
18 He has been actively involved with the NAACP since
19 1960 and has held numerous offices in the
20 organization. And he's also served on a number of
21 governmental boards and commissions, including as
22 chairman of the Vieux Carre Commission for three
23 terms as well as a founding member of the
24 Louisiana Black Culture Commission.

25 Next, we have Erika McConduit. Ms.

1 McConduit's an attorney and was selected as the
2 President and CEO of The Urban League of Greater
3 New Orleans in November 2013. And she's only the
4 second female to serve in a position of President
5 and CEO in the organization's seventy-five year
6 history. Erika is a native of New Orleans and
7 began her professional career with The Urban
8 League nearly five years ago as VP of Programs and
9 later as executive vice president. And, in these
10 roles, she's known for her work to expand the
11 education focus of the organization.

12 Next, we have Elder Edward Chipps Taylor.
13 Elder Edward Taylor serves as elder at The Morning
14 Star Full Gospel Baptist Church under the
15 leadership of Regional Bishop Gregory Cooper, Sr.
16 Edward is also state director of evangelism and
17 director of reaching on the international level of
18 the FGBCFI. He also serves as a regional affairs
19 director for the Louisiana State Conference of the
20 NAACP in Region VI, NAACP. He's delivered
21 numerous messages throughout NAACP conferences on
22 the local, regional, and national level. And
23 Elder Taylor has been a driving force in all
24 elections since 2000 in the State of Louisiana to
25 really get all people out to vote.

1 And, lastly, we have Tracie Washington.
2 Tracie is a native New Orleanian and an attorney
3 and holds her master's in public administration.
4 For twenty-five years, she's maintained a general
5 civil practice, concentrating on education laws,
6 civil rights, and labor and employment law. Post
7 hurricanes Katrina and Rita, Tracie's practice has
8 focused on protecting civil rights of individuals
9 affected by these national -- national
10 catastrophes. And she's President and CEO of The
11 Louisiana Justice Institute, a non-profit human
12 rights organization and law firm devoted to
13 fostering social change campaigns across
14 Louisiana. She is also the principle consultant
15 of Higher Ground Consultants, LLC, which works
16 with education non-profits, community-based
17 organizations, foundations, intermediaries,
18 government agencies, and private corporations to
19 make possible community change and growth, to
20 facilitate in communications, strategic planning
21 organizational development, research, and
22 evaluation.

23 And now I feel like I'm slacking. So we have
24 a very illustrious panel today. So our
25 commissioners will preside over today's events and

1 receive testimony from several panels of witnesses
2 and ask follow-up questions as they desire to
3 ensure we create a robust record -- as robust a
4 record as possible, excuse me, about the state of
5 voting in Louisiana today.

6 So, a few housekeeping items before we start
7 the program. If you've been confirmed on a panel
8 in advance, please make sure you sign in at the --
9 the registration table out front. And, if you're
10 here today but haven't signed up in advance, we
11 would still like to hear from you as well. Also,
12 sign up at the registration table, fill out an
13 index card. And we have an open testimony session
14 starting -- scheduled to start at 6:10, so we'd
15 like to hear from you then.

16 A few other items. Our hearing is being
17 transcribed by a court reporter. Please speak
18 clearly, especially your name. And we're also
19 being videotaped, in case you missed it. And
20 there might be individuals taking photos as well,
21 so please sign a media release which is at our
22 registration table. If you have questions about
23 the release, I'm happy to answer them. If you are
24 a tweeter we have a hashtag for our commission
25 hearings, and that's hashtag is n-c-v-r. And our

1 organization is @lawyerscomm, two m's.

2 And, finally, if you know folks who could not
3 attend today or you would like to supplement
4 testimony that you provide today, we definitely
5 want to hear from you. And you can submit
6 materials to ncvr@lawyerscommittee.org. That
7 email address is on a number of the documents as
8 well. And so, before I wrap and stop talking, as
9 we really do want to hear from you all, I just
10 wanted to extend a round of thank you's, first to
11 Delgado Community College and Laura Lindstrom (ph)
12 for being such wonderful hosts and so easy to work
13 with. I am highly recommending Delgado for folks'
14 events in the future.

15 I'd also like to thank two of our board
16 members, Judge Gene Thibodeaux, Chief Judge of the
17 Third Circuit Court of Appeal Louisiana and Kim
18 Boyle is a partner of Phelps Dunbar in -- in New
19 Orleans. Both have provided valuable guidance and
20 support for this event today. And I want to thank
21 the numerous organizations that have helped with
22 the planning and promoting of this event over the
23 past few months, as I've done it largely from
24 Washington, D.C. So, I'm going to run through
25 these names. It's going to be quick. I'm sorry,

1 court reporter. But, The Advocacy Center, Gulf
2 Coast Center for Law and Policy, Louisiana Justice
3 Institute and Tracie Washington, Puentes New
4 Orleans, Urban League of Greater New Orleans, the
5 ACLU of Louisiana, and Southern Property Loss
6 Center, NAACP of Louisiana, Jacques Morial, Bill
7 Quigley, John Pierre from Southern University Law
8 Center, Buford Brumfield from One Voice Louisiana
9 and Flozell Daniels from The Foundation for
10 Louisiana. And anyone else that I might have
11 missed, I truly apologize. But it's been a great
12 experience working with you all. And we're here
13 today and ready to hear about the state of voting
14 rights in Louisiana. So, with that, I'm going to
15 turn it over to our commissioners for brief
16 opening remarks, starting with Marcia.

17 MARCIA JOHNSON-BLANCO:

18 Good afternoon everyone. Thank you,
19 Meredith. As Meredith mentioned, I am the Co-
20 Director of the Voting Rights Project at The
21 Lawyers' Committee for Civil Rights Under Law, and
22 I'm really honored to be here today for this
23 hearing. I'll be doing hearings across the
24 country, and I really wanted to attend one of
25 them, and I chose the Louisiana hearing because

1 you have a rich history of having to fight against
2 voting discrimination continuously and being an
3 example for the country in doing so. We are here
4 today to talk about the right to vote, which in
5 its essence, means having a voice in our democracy
6 and how that voice is -- having that voice is
7 continuously being challenged, most recently, of
8 course, by the Supreme Court last June in the
9 "Shelby versus Holder" decision. And what that
10 court did was ignore the vast record that Congress
11 had amassed showing that a provision of Section 5
12 was still vital. The court that, yes, it's not
13 speaking to Section 5, but struck down the means
14 to enforce it. And we -- what Congress did in
15 2006 was said that Louisiana should still be
16 subject to federal review, having looked at the
17 record of the state then. And so, we're here
18 today because we want to, again, raise up that
19 record -- excuse me -- not only -- one moment.
20 (Clearing throat) sorry about that. We want to
21 raise up that record not only of the
22 discrimination and election administration
23 hardships that minorities and others have faced in
24 the state, but also of the fight against that. We
25 want to show how we can nationally -- I'm using

1 specific examples from Louisiana -- fight against
2 voting discrimination moving forward.

3 When the Supreme Court struck down the
4 formula that governed Section 5 of the Voting
5 Rights Act in which states and jurisdictions are
6 subject to federal review, it invoked a new
7 doctrine called equality of the states. And that
8 is what we are going to be confronting moving
9 forward as we lift up not just the record of
10 discrimination in Louisiana, but across the
11 country. The national commission is a
12 reconstitution of the National Commission under
13 the Voting Rights Act from 2005, which amassed a
14 significant portion of the record that Congress
15 used to support reorganization in 2006. And I
16 mention that because I just wanted to uphold how
17 important having this record is and to express my
18 appreciation of all of you who have worked to make
19 this hearing a reality and to provide the record
20 that one day will -- we hope Supreme Court will
21 look at and recognize that there is indeed a need
22 to have a robust Voting Rights Act. And with that
23 I will pass it on to Dr. Cassimere.

24 DR. RAPHAEL CASSIMERE, JR:

25 Thank you. Can you hear me? When I first

1 joined the NAACP Youth Council in 1960, I was
2 attracted by the scene that was sweeping across
3 the country at that time. But, ironically, the
4 first involvement I had with the youth council was
5 a voter registration drive in advance of the
6 presidential election in 1960 between John Kennedy
7 and Richard Nixon. I didn't realize then as much
8 as I now realize how elusive the right to vote is.
9 We taught voter registration to older people.
10 Some of them were those who had very little formal
11 education because of discrimination that had
12 prevented them from going very far. And the one
13 thing that I was so pleased about the passage of
14 the Voting Rights Act of 1965 was something that
15 people don't talk much -- much about today, the
16 so-called morals questions that were on the voter
17 registration forms. There were four morals
18 questions: "Have you lived with another in common
19 law marriage within the last five years?", "Have
20 you fathered or given birth to an illegitimate
21 child within the last five years?", "Have you been
22 convicted of a felony within the last five years?"
23 Of course, we had to ask those questions of people
24 when we taught. I told them I don't know what
25 common law marriage is, so you can answer that any

1 way you want to. And, as far as I was concerned,
2 there are no illegitimate children. But, of
3 course, there were people who'd say, "Well, I
4 just had a child and I wasn't married, and I won't
5 be able to register." That right to vote
6 continues to be elusive even today, with all the
7 gains that we thought we had made. I served five
8 years on the Louisiana Elections Revisions
9 Commission during the 1970s, served as secretary.
10 And I thought that we had gotten over those
11 hurdles, only to discover that those persons who
12 want to limit the number of votes to certain
13 people will go to any length to prevent people
14 from voting. I know what it's like in New
15 Orleans. I do not know what it's like in
16 different parts of Louisiana. And so, we are
17 anxious to hear from you what problems that you
18 all are encountering in not only in getting
19 registered to vote, but in trying to vote.

20 In 1960, the voting hours were from 6:00 to
21 9:00. They've shaved two hours off. Voting now
22 is from 7:00 to 8:00. There was a proposal to
23 increase the early voting, I understand, to
24 include Sundays. That was voted down. So, while
25 the constitution guarantees the right to vote, we

1 know that it is not a perfect right. It is one
2 that we have to be ever vigilant in trying to
3 maintain. And we would like to hear from you not
4 only some of the problems that you have, but maybe
5 some of the remedies that you can propose to
6 eliminate all of the obstacles that are being
7 placed on the right to vote.

8 ERIKA MCCONDUIT:

9 Thank you. Can you guys hear me? Good
10 afternoon. My name is Erika McConduit. As was
11 stated, I am the President and CEO of The Urban
12 League of Greater New Orleans. At The Urban
13 League, our mission is to empower communities and
14 change lives. In New Orleans, we have been here
15 in this community working to meet that mission for
16 over seventy-five years. Currently, we operate in
17 the space of education and youth development from
18 early childhood, all the way through college and
19 career. We do workforce development,
20 entrepreneurship, and economic development, and
21 policy and social justice. And, quite frankly,
22 the Urban League has always been committed to
23 making sure that policies are in place that
24 support the progress of our people. We know that
25 success could not be obtained without the proper

1 policies in place. And policies only get put in
2 place by people who we elect, which is why voting
3 is so critical. And we recognize that the right
4 to vote is the most important fundamental civil
5 right, that you cannot have a conversation about
6 anything else without first rooting it in the
7 right to vote.

8 I just was in D.C., and I had the privilege
9 of hearing from the Honorable Representative
10 Elijah Cummings. And he spoke to us about the
11 right to vote. And -- and I just want to make
12 sure that I quote him properly. He said, "The
13 only way to affirm our values is to vote," that
14 you cannot discuss affordable healthcare, you
15 cannot discuss education, you cannot discuss
16 raising the minimum wage without discussing the
17 right to vote. In a democracy, we send people to
18 be our voice with their vote. It is our vote that
19 gives voice to our values. And so, certainly,
20 when the "Shelby versus Holder" decision came out
21 that was a huge blow to the country. And then,
22 just last week we had another Supreme Court
23 decision that was decided, "McCutcheon versus
24 Federal Election Commission" that further
25 eviscerated our -- our people's right to vote.

1 Essentially, that court case struck down
2 contribution limits on campaign -- federal
3 campaign finance. And what that inherently does
4 is allow the votes to be purchased, and that can
5 only hurt the people. Campaign finance laws were
6 established to protect the integrity of our votes.
7 Economics should not determine the value of our
8 vote. The constitution, as was stated, made clear
9 that everyone's vote should be equally weighted.
10 And so, seeing decisions like that come down
11 further challenges that protected right. So it is
12 important that organizations like The Urban League
13 and NAACP and many others, Louisiana Justice
14 Institute and -- and others that are on the ground
15 and national organizations continue to work every
16 day to ensure that we protect our people's right
17 to vote. Thank you.

18 ELDER CHIPPS TAYLOR, III:

19 Thank you. I'm Elder Chipps Taylor, III. I
20 am a member of the NAACP for over thirty years
21 now. And the mission of the NAACP, National
22 Association for the Advancement of Colored People,
23 is to ensure political, educational, social, and
24 economic equality of rights of all persons, to
25 eliminate racial hatred and racial discrimination.

1 And as you heard in my bio, I speak a lot of my
2 clergy experience. And I have found that as a
3 clergy, the whole man is what's the most important
4 thing in life. We can talk about spirituality.
5 We can talk about what we got to do to get to
6 heaven. However, if you catching hell down here,
7 it's kind of hard to focus on what's going on up
8 there. So we have to be real about this. And,
9 yes, I am a preacher and very proud of it.
10 However, I believe that civil rights is what it's
11 all about. We must fight for our civil rights.
12 The NAACP is kind of -- has been put like -- we're
13 like a washing machine. If you have a washing
14 machine and you put clothes in there, if it's not
15 agitating those clothes, those clothes will not be
16 clean. Well, that's what we do; we agitate. We
17 agitate and we agitate, because it's very
18 important that people realize what's going on with
19 life. The voting -- you know, we talk about the
20 right to vote. They said at the NAACP conference,
21 what the Supreme Court did was they left us the
22 car, but they took out the engine, basically.
23 Okay, we got a beautiful car. People will tell
24 you, "Oh, man, you can vote. You can register to
25 vote." Yeah, you can if you live in a certain

1 place, if you look a certain -- if you look a
2 certain way, if you, you know, have certain
3 things, yeah, you can register to vote.

4 However, if you happen to be handicapped, if
5 you happen to not have the proper identification,
6 if you happen not to live in the right area, then
7 this seems to be a little bit harder for you to
8 vote. You know, and to vote is the most important
9 right that we have as citizens in this great
10 country. If you don't vote, you cannot change
11 anything; you do not have a voice. When we talk
12 about affordable healthcare, how can you talk
13 about it if you can't vote about it? When we talk
14 about the health -- not only our healthcare, we
15 talk about the money, how much money we're going
16 to make, what the dollar should be. You know, if
17 you don't have the right to vote, then how can you
18 discuss your wages, you know. And people who will
19 tell you that, oh, it's -- it's not really about
20 racism, it's not really about economic, that's
21 hogwash, okay. Racism is alive and well in the
22 United States. Now, we must accept this and we
23 must deal with it. You have discrimination that
24 is alive and well, whether it's economic
25 discrimination or whether it's because of your

1 color of your skin or where you live. Now, how we
2 deal with this discrimination is the most
3 important thing. A lot of times, people want to
4 sweep it under the rug. They want -- yeah, you
5 can sweep it under the rug, and all you get is a
6 big pile of dirt, period.

7 So we must be real and deal with it. You
8 mu -- and I have no problem dealing with these
9 problems from the pulpit, from beyond the pulpit.
10 You must get in the streets. You must be involved
11 with people. And, you know, we were -- I was
12 blessed to be the director of the Gulf Coast
13 Advocacy Center after I followed Ms. Tracie. And
14 she set the bar so high, that I had no choice but
15 to get a stepladder and -- and keep -- continue
16 the climb. Because it -- and we have to be aware
17 of the fact that you have so many problems,
18 whether it's health, whether it's voting, whether
19 it's jobs. And all of it stemmed from the fact of
20 the disparities that we -- that exists. So,
21 again, like Dr. Cassimere has said I am honored to
22 be here, and I really want to hear what you have
23 to say because, you know, it's not about so much
24 what we have to say. It's about what you have to
25 say because we experience it on a daily basis.

1 Thank you very much. And being a preacher, all I
2 can say is God bless each and every one of you.

3 TRACIE WASHINGTON:

4 Why I am following a preacher? Can you all
5 hear me without the mic? I'm going to try without
6 it, so.

7 DR. RAPHAEL CASSIMERE, JR:

8 We always hear you, Tracie.

9 TRACIE WASHINGTON:

10 Normally, I don't -- you need it? You got to
11 have it? Now it's going to be really loud. All
12 right. I always start my talks on voting rights
13 with this quote. And it's mine, so I'm quoting
14 myself. The fight. "Never in the history of man
15 has a group relinquished their property under
16 force and not schemed, fought, or connived at some
17 point later to regain what they perceive is
18 rightfully theirs." And, black folks, for most of
19 your history you've been property. Now, the only
20 way, the only way we stop the tide of the evil
21 ones trying to put us back under is by voting. My
22 biggest problem today, 2014, is not so much this
23 right to vote, not so much the right to vote, but
24 the desire of folks to continue to vote. See, I
25 teach college students. I teach millennials. I'm

1 not going to give a lecture on millennials. But,
2 what I hear a lot from our young folk is "Why?"
3 "Why should I vote? They're just going to screw
4 us over like BESE." I'm looking at Linda Johnson.
5 "They're just going to mess us over in the
6 criminal justice system." I'm looking at Norris
7 Henderson. "What the heck are we supposed to do
8 in the Lower Nine? They don't care about us."
9 I'm looking at Vanessa Gueringer. "So, why should
10 I vote?" And what I want to hear from you all,
11 aside from your phenomenal testimony that I know
12 is coming, I need to hear how we get people
13 understanding not only the importance, but
14 understanding there's a beauty, there should be a
15 love, there's got to be a continued desire to
16 exercise this suffrage because what is at risk is
17 not simply whether we're going to have Common Core
18 next year or whether we're going to raise the
19 minimum raise, but indeed whether we can remain
20 free.

21 I laughed two years ago when the women in
22 Virginia were up in arms about the fact that they
23 might get this vaginal probe. Good, God, this man
24 is going to make us have a vaginal probe if we
25 want to have an abortion. I'm like, "Ladies, you

1 were once their property. They want you back."
2 Vote. So, I look forward to the testimony today.
3 And I look forward to being able like Meredith, to
4 take what I hear, to take it back out in the
5 streets and infuse this desire again -- this
6 desire that was imbued in me by Dr. Louis
7 Washington and Geraldine Washington that you will
8 vote. You want to live here, you vote. You want
9 us to continue paying your tuition, you vote. You
10 want that car, you vote. You want the shoes and
11 the matching bag, you vote. You want to eat, you
12 vote. So let's see if we can get that done. I'm
13 not a preacher, but I play one on TV.

14 MARCIA JOHNSON-BLANCO:

15 With that, we would like to invite the first
16 panel up to hear -- to receive their testimony.
17 This would be Dr. Silas Lee, Pollster & Professor
18 of Sociology, Xavier University; Vanessa Gueringer
19 from A Community Voice, and Stephanie Patrick from
20 The Advocacy Center. Each of you will have five
21 minutes of testimony. I am also being the
22 timekeeper over here. And after you've all given
23 your testimony, the commissioners will have
24 questions for you. Thank you. Dr. Lee, whenever
25 you're ready, please begin.

1 DR. SILAS LEE:

2 First, good afternoon. Thank you for
3 inviting me. All right, that works. First, of
4 all, good afternoon and thank you for inviting me.
5 I would like to start off with a brief overview in
6 reference to the psychology of voting and some
7 reflections on my years of polling. First, for
8 the past twenty years that I've been conducting
9 polls and focus groups domestically,
10 internationally for institutions and elected
11 officials, I've noticed a significant decline in
12 terms of voter participation that started in the
13 mid 1990s. We used to have about fifty percent
14 voter registration and voting participation in
15 terms of people coming to the polls and voting.
16 However, there's been significant drop in -- for
17 the past several years, especially post Katrina.

18 However, we noticed some deterioration prior
19 to Katrina. 2010, thirty percent voted in
20 municipal elections. And 2014, about thirty-six
21 percent. We've had some episodic spikes in terms
22 of voter participation with the Edwin Edwards and
23 David Duke election in '91 and The McCain/Obama
24 election in 2012. However, for our purposes, I
25 think it's important to concentrate on what's

1 happening in New Orleans. So, in order to
2 deconstruct something, we must first know the
3 circumstances contributing to the obstacles of the
4 problem. And there's a convenient tendency to
5 view voting as a singular independent act,
6 isolated from a social nexus in which people live.
7 And I think we ought to have a comprehensive
8 discussion about voting behavior in New Orleans.
9 I think it's fairly essential to explore the
10 intersection of all parts of life that construct
11 experiences and the perceptions of residents.
12 Although, we have observed an improvement for some
13 in the quality of the life indicators in New
14 Orleans, the dominant theme for the census data is
15 that New Orleans remains a city divided by race,
16 economics, education, and opportunity.

17 So, what does this have to do with voting?
18 Let's not forget New Orleans, like most cities, is
19 a mosaic of interdependent neighborhoods. And
20 neighborhoods serve as a buffer to helping people
21 cope with the societal institutions. It gives
22 them a social capital network for resources and
23 assistance in times of peril and, more than
24 likely, in meeting the challenges of daily living.
25 However, these social networks offer a familiar

1 and trusted resources that residents rely on. One
2 of the most significant observations made since
3 Hurricane Katrina in the rebuilding process is the
4 role that neighborhood organizations play in -- in
5 invigorating and conceptualizing the rebuilding of
6 the city. As citizens and government strive to
7 rebuild the city they cannot ignore the role that
8 space and culture played in helping the
9 psychological and composition of this community
10 revive. The neighborhoods have emerged not just
11 as a place where people live, but a conservatory
12 of social and political networks. And that's very
13 important in a city like New Orleans that relies
14 on relationships. Neighborhood organizations have
15 emerged as supplemental governing groups informing
16 residents, influencing policy, and most
17 importantly, mobilizing voters.

18 So, when people speak of barriers to voting,
19 they often overlook the stress of living factors
20 impacting the lives of residents in this city.
21 Whenever citizens begin to underperform in their
22 civic engagement, quite often it's a reflection of
23 the fact that it doesn't have a lot to do with the
24 present, but, in reality, it has a lot of to do
25 with the persistent barriers of exclusion from the

1 past.

2 For example, it's not by accident that, in
3 2005, we observed thousands of people trapped at
4 the Superdome as Hurricane Katrina approached.
5 This was due to the fact that thirty-five percent
6 of the African American population lacked private
7 transportation compared to fifteen percent of the
8 whites. In 2010, it's down to ten percent of the
9 population lacking private transportation and an
10 estimated twenty percent for African Americans.
11 In reference to voting behavior, this impacts how
12 people perceive their role as a voter.

13 What citizens do is view things in a cost
14 benefit analysis when it pertains to voter
15 participation. They factor in registration
16 requirements, accessibility, convenience, and
17 distance, as well as the waiting time in
18 calculating their decision to vote. Add to this
19 the confusion caused by hearing about the
20 restrictive voting laws being implemented in
21 Florida, Ohio, Pennsylvania, and other states,
22 many residents of New Orleans in the 2012
23 presidential election were not inclined to vote.
24 They cited this as the main reason why they were
25 not encouraged to vote in that election and

1 others.

2 Therefore, for people overwhelmed by the
3 anxiety of survival, restrictive voting laws
4 become another psychological and physical hurdle
5 for them to cross. In today's multimedia
6 optional-run society, voters are accustomed to
7 having choices. We have options for cell phone
8 providers, airlines, and places to shop. Why
9 place restrictions on our ability to vote? At a
10 time when democracy is threatened by a decline in
11 voter participation and manipulation of a
12 controlling elitist oligarchy trying to buy
13 elections and candidates, we need to ensure that
14 expansion, not constriction of opportunities to
15 vote for all citizens. Thank you.

16 VANESSA GUERINGER:

17 Good afternoon. My name is Vanessa
18 Gueringer. I'm the Vice President of A Community
19 Voice. I'm with A Community Voice's President,
20 Emeritus Beulah Labostrie. A Community Voice is a
21 community organization of low to moderate income
22 people that has for the last four years organized
23 neighborhood chapters in Baton Rouge, Lake Charles
24 and New Orleans, Louisiana. For over thirty years
25 prior to them, we were ACORN. The mission of A

1 Community Voice is to provide a vehicle for
2 working and poor people to be able to make changes
3 in the issues that affect our everyday lives. I
4 asked Mrs. Labostrie, whose family extends back in
5 New Orleans history for nearly three hundred
6 years, to attend this hearing because even at the
7 age of ninety-three, she is a fighter for voting,
8 civil rights, and for justice. Mrs. Beulah
9 Labostrie is also a victim of the photo I.D. laws
10 that were passed in Louisiana. Mrs. Labostrie
11 went to vote on a regular election day, and she
12 had a ride to the polls because she has never
13 driven a car. After they arrived at the polls,
14 she was denied her right to vote, even though the
15 commissioners all knew her, knew that she had
16 voted there for decades and knew that she was a
17 registered voter. They misinterpreted the law.
18 And this is common because it is so difficult to
19 interpret. Voters all over our state are denied
20 the right to vote when they are wrongly demanded
21 to have a photo I.D. to vote. And
22 disproportionately, they are African American and
23 senior citizens.

24 The same thing happened to Louisiana's former
25 attorney general's father. We asked Louisiana

1 Attorney General Charles Foti to put the
2 information in a press release because his own
3 father was so livid that he was denied the right
4 to vote, that he refused to get an I.D. and try to
5 vote again. Our elderly are distastefully
6 disenfranchised because they are most likely to
7 not use a photo I.D. or carry one. Being
8 forced -- being forced to have and carry
9 identification was a factor of discrimination in
10 South Africa during apartheid, and it's one now in
11 Louisiana. People also are likely to forget their
12 I.D.s or to misplace them, as are working,
13 stressed out parents and others who are part of
14 everyday modern life. No one should be denied the
15 right to vote due to the lack of a photo I.D., and
16 these laws need to be thrown out.

17 There never was voter fraud in Louisiana that
18 made photo I.D. a great idea for yet another law,
19 but there was an increasing minority population in
20 a conservative-led white majority state. Limiting
21 the voting strength of the elderly and the working
22 people also more greatly affects the minority
23 people. Mrs. Labostrie and ACORN sued the State
24 of Louisiana, but to no avail. The Louisiana
25 voter I.D. law is frequently misunderstood by

1 almost everyone because it is written in such a
2 way to form of a legal factor that you can vote
3 without a photo I.D. and you must sign an
4 affidavit. The election commissioners are trained
5 that they must ask for a photo I.D., but they
6 don't really learn that after they ask or actually
7 demand an I.D., that they should allow the voter
8 to use an affidavit to vote if they are without a
9 voter I.D. Consequently, election commissioners
10 throughout the state demand photo I.D.s and forbid
11 registered voters their rights to vote if they
12 don't show a photo I.D. Voters are turned away
13 all over the state. This has a terminal impact
14 and discourages people from ever returning to the
15 polls again. The chain effect of this is
16 especially hurtful in a state that has such a bad
17 history and current practices regarding voting
18 rights. The abuses of the past are alive today in
19 the way that this law is carried out. To even
20 more extraordinarily complicate the Louisiana
21 Voter I.D. laws, if you vote early you are
22 actually required to show an I.D., and you aren't
23 allowed to sign an affidavit. The person who is
24 over early voting is the registrar of voters, who
25 works under different rules, but is whom the

1 election commissioners must call with questions on
2 election day. So, the election commissioners who
3 work under rules that state that voters are
4 allowed to use an affidavit must call the
5 registrar, who works under rules that state they
6 must require photo I.D. for early voting.

7 Consequently, the registrar will then tell the
8 election commissioners that a voter photo I.D. is
9 actually required to vote because those are the
10 rules that the registrar use for early voting.

11 Very confusing, and this is where the errors are
12 compounded. The majority white Louisiana
13 legislature continues to reduce our voting rights,
14 and that adversely affects the African Americans
15 and other minorities in the state.

16 In 2013, the Louisiana legislature reduced
17 the hours of voting in the state by one hour for
18 state and local elections, opening at 7:00 a.m.
19 rather than 6:00 a.m. They admitted that they
20 were going to shut out the right to vote for those
21 who usually voted during that time period by at
22 least several hundred voters. They knew that
23 these workers would be African Americans going to
24 work in blue collar jobs that required them to be
25 on the job at 6:30 or 7:00 a.m. It is a leap of

1 faith for us to believe how much concern the
2 legislature had instead for part-time election
3 workers. The same legislature who voted against
4 raising the minimum wage or even allowing the
5 voters to raise the minimum wage would confer that
6 the election commissioners who work a few days
7 each year actually needed one hour less each day.

8 So, therefore, to disenfranchise voters was
9 okay with them because they were more sympathetic
10 to these three to five days of work each year,
11 very part-time workers. If they were so concerned
12 with these long work hours, the legislature could
13 have instead suggested that the commissioners have
14 a lunch hour, something that they had had and
15 taken away from them. Instead, it took a very
16 important voting hour away from the hard working
17 and overburdened Louisiana voters.

18 New Orleans' number one industry is tour --
19 number one industry is tourism. During the
20 election held in February 2 -- held on February 2,
21 2002, New Orleans hosted the Super Bowl that same
22 weekend and Mardi Gras Saturday. The day before
23 the Bowl game was also election day. Service
24 industry employees worked through two and three
25 shifts before they could get off work. The

1 service economy is a job for thousands of African
2 Americans and other minorities who were adversely
3 impacted by working long hours and who have a
4 narrow window of time, if that, in which they can
5 exercise their rights to vote as citizens. Small
6 businesses and vendors work long hours, too. It
7 is very hard for them to vote on many elections.
8 We have a growing number of festivals and
9 conventions, and almost all of them are over the
10 weekends, so we need a longer voting day for the
11 working people.

12 Statistics show that workers across America
13 are working longer hours each week. That includes
14 Louisiana. We need a longer work voting day.
15 Please help restore the voting rights of those in
16 the service economy and others who simply can't
17 make it to the polls on these busy workdays.

18 Thank you.

19 STEPHANIE PATRICK:

20 Good afternoon. My name is Stephanie
21 Patrick, and I work at The Advocacy Center. We
22 provide legal advocacy to people with disabilities
23 across the state. Over five hundred and fifty
24 thousand Louisianians with disabilities are
25 eligible to vote. Unfortunately, The Advocacy

1 Center regularly meets people with disabilities
2 who are not registered to vote, are not aware of
3 the importance of this civic duty, or face
4 barriers which serve to discourage them from
5 exercising this important right. Despite these
6 barriers, many persevere and comprise a key
7 constituency that deserves the ability to exercise
8 their voting rights like Louisianians without
9 disabilities. Voters with disabilities in
10 Louisiana face many of the same barriers as voters
11 with disabilities across the United States.

12 Physical accessibility of polling places, access
13 to information about voting rights, and a lack of
14 understanding by election officials and poll
15 workers. Details of these problems are provided
16 in my written testimony.

17 Today, I will focus on two election issues
18 that are unique to Louisiana voters with
19 disabilities and are related, voter registration
20 barriers and access to employment as poll workers.
21 Louisiana's laws regarding assistance in voting
22 are onerous. People with physical disabilities
23 who require an individual to accompany them into
24 the polling booth are required to provide proof of
25 disability. While the list of documents accepted

1 as proof was expanded several years ago, it is
2 still difficult for people with disabilities to
3 obtain the required documents, for example, a note
4 from a doctor, eligibility letters, or other
5 official documents. People with the most
6 significant disabilities are those most likely to
7 encounter problems in obtaining these documents.
8 They face barriers in transportation. Some of
9 them deal with communication barriers, others have
10 mobility barriers. Still others find it difficult
11 to understand long and complicated instructions.
12 Louisiana's voting regulations appear to be in
13 conflict with the Americans With Disabilities Act
14 which does not require proof of disability in many
15 situations. In addition, this is a huge barrier
16 for people with temporary disabilities. The
17 Advocacy Center assisted a voter who was
18 temporarily blinded after surgery less than a week
19 before a major election. He asked to vote with
20 assistance from a friend when he went to the polls
21 and encountered significant resistance from poll
22 workers, as he did not have the required
23 documentation. He actually didn't even know if he
24 needed anything like that. With strong self
25 advocacy, he was eventually allowed to vote with

1 assistance. But, it is easy to imagine a voter
2 missing an opportunity with less perseverance.
3 This requirement seems unnecessary. People who
4 are illiterate in Louisiana can request assistance
5 without providing documentation. We would ask for
6 the same consideration for people with
7 disabilities.

8 In addition, there is a third category of
9 individuals with disabilities not covered at all
10 by the laws of assistance in voting. Those who
11 can read, but have neurological or cognitive
12 disabilities, for example, short-term memory loss
13 that make assistance necessary. A final problem
14 our constituents have encountered is an at-the-
15 poll restriction on who can provide assistance,
16 even though these restrictions are not permitted
17 by law. For example, early voters in North
18 Louisiana are not permitted to use their direct
19 care worker with whom they daily interact and whom
20 they trusted for assistance. Instead, the
21 registrar's employee insisted that he would
22 provide the assistance required. We believe that
23 the genesis of these restrictions relates to
24 concerns about voter fraud. But, to our knowledge
25 there have been few, if any, cases of voter fraud

1 in the state related to these issues.

2 The second problem involves people with
3 disabilities serving as poll workers. People with
4 disabilities are a valuable part of the Louisiana
5 workforce, and they want to serve as poll workers.
6 In many parishes, elective officials struggle to
7 recruit and train sufficient poll workers for each
8 election, and people with disabilities could help
9 meet this need. In Louisiana, voters with
10 disabilities who receive assistance in voting are
11 prohibited from serving as poll workers
12 unilaterally without any assessment as to whether
13 they can perform the duties of the job. The
14 Americans With Disabilities Act provides clear
15 guidance to employers as to assessments and
16 accommodations for employees. It is disturbing
17 that people with disabilities in Louisiana are not
18 afforded these considerations. This is a loss of
19 a valuable resource and a violation of their
20 rights. As I noted at the start of my testimony,
21 these are two particularly unique examples of
22 barriers for voters with disabilities in
23 Louisiana, not an exhaustive list. More details
24 about the other problems are in my written
25 testimony. I believe the commissioners have a

1 copy. And I also have extra if people here in the
2 audience are interested. On behalf of the over
3 five hundred and fifty thousand adults with
4 disabilities in Louisiana, thank you for your
5 attention to this matter. The Advocacy Center is
6 committed to protecting the rights of people with
7 disabilities and ensuring these individuals with
8 disabilities can exercise their voting rights. We
9 look forward to continued collaboration as
10 Louisiana civil rights organizations and elected
11 officials work together to address these barriers.
12 Thank you.

13 MARCIA JOHNSON-BLANCO:

14 Would any of the commissioners like to start
15 the questioning?

16 DR. RAPHAEL CASSIMERE, JR:

17 Yeah. I'd like to start with Dr. Lee. The
18 percentage of voters that you mentioned who voted
19 in the last election, was that percentage of
20 registered voters, or did it include the
21 percentage of eligible voters?

22 DR. SILAS LEE:

23 Registered.

24 DR. RAPHAEL CASSIMERE, JR:

25 Okay.

1 TRACIE WASHINGTON:

2 I have a question. I'm sorry.

3 STEPHANIE PATRICK:

4 That's fine.

5 TRACIE WASHINGTON:

6 A couple of questions. I'll just read them
7 out, and then however you all want to answer them
8 in order. One for Dr. Lee has to do with your
9 perception of who's benefitted from this breakdown
10 in the networks, social and political networks
11 when it comes to our voting and this cost benefit
12 calculus in elections. Then, for Ms. Gueringer,
13 Vanessa, what advocacy is going on by your
14 organization? And, are you resourced to perform
15 this advocacy on behalf of our elderly citizens
16 for having such difficulty with the voter I.D.?
17 And then, finally, Ms. Patrick, is there a way for
18 us to join advocacy efforts? When I first came
19 back after Hurricane Katrina, we had problems with
20 students being able to get in school,
21 notwithstanding McKinney-Vento. So, what we did
22 because there is a constitutional right of our
23 disabled and special needs students to receive
24 education unlike regular education, we filed a
25 lawsuit using them as the main plaintiff so that

1 we could get all schools opened. And I'm
2 wondering if we are cross-pollinizing in our
3 advocacy efforts so that, you know, we use each
4 other in litigation. So, I -- I leave this to you
5 guys.

6 DR. SILAS LEE:

7 All right, in reference to the question of
8 who's benefitting, those who want to maintain the
9 status quo. And, essentially, this is a new form
10 of making sure or ensuring the status quo. They
11 know that a psychological obstacle will always
12 exist when people feel that it is too cumbersome
13 and they recognize the fact that when people are
14 burdened with the challenges and the anxieties of
15 daily life, voting is not a priority for them. So
16 the more obstacles, psychological as well as real,
17 it is easier to create new walls of
18 disenfranchisement as well as eliminate the old
19 structure. So we have eliminated the old
20 structures and replaced them with new legal
21 structures to disenfranchise people not only
22 psychologically, but legislatively. And that's --
23 that's what benefits those who want to maintain
24 the existence of the status quo.

25 Now, people may ask, "What's a status quo?"

1 Well, inequality -- any form of inequality. It
2 could be ensuring that new forms of access to
3 opportunities, businesses, housing, education,
4 progressive policies are not implemented because
5 people who oppose such policies will get -- will
6 get elected. And I would like to include with,
7 we've been through several revolutions in this
8 country, the gender revolution, the civil rights
9 revolution, the ecology revolution, now we are in
10 the revolution to take it back. And that's who is
11 benefitting, those who want to take back any type
12 of progress we've achieved in the past fifty
13 years.

14 VANESSA GUERINGER:

15 Okay. I will speak to our regaining a
16 resource to the elderly in the various chapters we
17 have across the city. Since Hurricane Katrina,
18 our organization has been about fighting to come
19 back to those neighborhoods that have been
20 disenfranchised and pretty much red-lined for
21 decades. So, prior to Katrina, we had a huge
22 elderly population in the community where I still
23 reside, the Lower Ninth Ward. So it is very
24 important to us to make sure that our elderly, you
25 know, have the necessary information to make sure

1 that they -- if it's a situation of I.D.s or, you
2 know, polling places or whatever, that they have
3 the information that they need to move forward and
4 to vote. We have been sharing with them that they
5 can vote by mail as well, you know, because
6 there's a lot of elderly folks that are not
7 mobile. They don't have, you know, someone to
8 actually get them out to the polls. And it's very
9 important that, you know, these people -- these
10 folks, especially, this population is always
11 voted, that they continue to vote and they
12 continue to be present at these polling places,
13 involved in the community, and sending the message
14 to our younger voters how important it is to vote.
15 You know that without voting you have no voice.
16 We know that without policy change nothing in the
17 way of anything that effects our quality of life
18 to make it better will happen. So, we have --
19 you're a great resource to many communities across
20 the city. We have been collaborating with other
21 groups across the city as well around registering
22 folks to vote. We have monthly meetings and we
23 have voter registration cards on hand at those
24 meetings. And we make it known that we normally
25 can, we're able to register you to vote.

1 STEPHANIE PATRICK:

2 Thank you. In terms of your question about
3 collaboration, I want to first say that The
4 Advocacy Center would welcome opportunities to
5 collaborate on disability-related voting issues
6 whenever we can. We often struggle because, as
7 you can probably imagine, voting isn't often a
8 priority for people who are dealing with
9 healthcare and transportation and employment and
10 other barriers to get, you know, just their basic
11 needs met. So, we do -- we struggle to put the
12 word out right before the elections to make sure
13 that people know. We also often struggle to find
14 the individuals who are impacted. We have staff
15 who are -- spend a lot of time, you know,
16 accessing and then analyzing the policies and
17 projecting how they'll impact people with
18 disabilities and trying to convince elected
19 officials, you know, sometimes successfully,
20 sometimes not, that this is a barrier for people
21 with disabilities, this potential change in the
22 law. But, if they don't listen, then you often
23 have to have that individual with the disability
24 who's actually impacted to be able to push them
25 further, and we do struggle to find those people

1 who are -- who are good to be able to be that
2 push. But, we would welcome opportunities to
3 collaborate.

4 ERIKA MCCONDUIT:

5 I have some questions for the panel. And I,
6 like Tracie, I have one probably for each. Dr.
7 Lee, this question is perhaps two-fold,
8 retrospective and prospective. You gave some data
9 regarding some of the stress of social factors
10 like transportation and access to cars and, you
11 know, these "persistent barriers of exclusion."
12 And I wrote that down because I thought it was a
13 very interesting quote. When you overlay that
14 from the past, right, from the '90s to now, and we
15 know that we have generational poverty here like
16 what's -- what's the change, right, that there's
17 been such a -- a stark decline all the way, you
18 know, you're talking upwards of twenty percent
19 decline in voter participation. So, I just wonder
20 is it just, you know, the legal -- the additional
21 legal challenges that are kind of overlaid on top
22 of these social factors? But, if you can speak to
23 that from a prospective standpoint, I would say
24 you gave the option -- you gave the statement that
25 if we had additional voting options. And I just

1 wonder if there's any kind of brainstorm about
2 what some of those additional voting options would
3 be, because I think that's a very interesting
4 point.

5 For Ms. Gueringer, I would say you just
6 raised a very good point I think about an
7 intergenerational aspect of voting. And Tracie,
8 Ms. Washington mentioned earlier about the apathy
9 particularly among younger -- the younger
10 generation, the millennials. And I know from my
11 polling place, it's primarily seniors that were at
12 the polling place. And so, I just wonder if your
13 organization has done anything to really marry a
14 little bit more of the intergenerational approach.

15 The last one I would say for Ms. Patrick,
16 your question I guess it was similar to the last
17 one in that when I hear you speak specifically to
18 prohibitions of -- of adults with disabilities
19 working at poll places, to me, that sounds like
20 class action. Right, and so I just -- I don't
21 know. I'm asking you if that's something that has
22 been explored.

23 DR. SILAS LEE:

24 Okay. In reference to the options we've been
25 fairly -- I would say we've been very inconsistent

1 in our ideals and practices. We've talked about
2 modernizing and the use of technology, but we
3 haven't put any resources behind it. And the
4 hypocrisy is the fact that elected officials and
5 institutions talk a lot about improving the voting
6 process, making it more convenient and more
7 accessible, but they never put any resources to
8 make it a reality. And that's the biggest
9 challenge; they haven't put the resources. You
10 know, this is 2014 and we're still using
11 technology. Yes, it's more advanced, but it could
12 be even more advanced than what it is if they put
13 the resources behind it. The use of technology.
14 There's dedicated resources. Tying that to the
15 potential of democracy. You know voting is the
16 only opportunity where people are equal at that
17 point in time. One vote for one person. And it
18 doesn't become a reality if people don't have
19 access to it. And by denying them access, think
20 about what you're doing. You're psychologically
21 reinforcing that some people are not equal. So
22 it's -- it's a way of manipulating the process.
23 But, the greater harm is done by the psychological
24 disenfranchisement of people. Then the question
25 about the -- what was I saying?

1 ERIKA MCCONDUIT:

2 It was just the retrospective. You said the
3 persistent barriers of exclusion, and it was
4 really just, you know, from the '90s till now that
5 twenty percent that have, you know, have less
6 excess to vehicles. I think you mentioned that as
7 one key statistic that you pointed out. But, just
8 wondering, that's a very steep decline in a very
9 short time span.

10 DR. SILAS LEE:

11 When we look at voting behavior, we have to
12 take into context the social and economic
13 demographics of this community. And several years
14 ago, one of the first studies I did or the second
15 one was called a haunted city, where this city did
16 a very good job in terms of masking inequality,
17 masking the disparities.

18 DR. RAPHAEL CASSIMERE, JR:

19 Like Mardi Gras.

20 DR. SILAS LEE:

21 Well, yes, among other things now. And we
22 have several festivals and we have a lot of things
23 that portray the image of inclusion, but we have
24 institutionalized practices of exclusion and
25 oppression. So, what's happened is the fact that

1 voting and politics happens to be one leg of the
2 stool. The other two legs relate to economics and
3 opportunity. And that is where you continue to
4 have I'm would say a lot of inequality, a lot of
5 lack of access. And now with intergenerational
6 poverty, intergenerational inequality as it
7 relates to disparities in income, education,
8 health status, and other quality of life factors,
9 all that is contributing to people losing
10 confidence in the process. So, voting happens to
11 be one aspect of it.

12 The other aspect is when people look around
13 and they say, "Well, what's changed? How will my
14 vote make a difference?" And the other reality is
15 that elected officials, the government and
16 governmental institutions, people involved in the
17 process, not just elected officials and
18 bureaucrats. So, we have to do a better job that
19 is consistent at keeping people informed about
20 policy and civic engagement. Really, right now,
21 we sort of treat pol -- I would say civic
22 engagement somewhat like a mistress. Every four
23 years we call upon. And voters feel disrespected
24 by that, so they tend not to look at this as a
25 cyclical activity. It's something where we have

1 to keep citizens engaged in a very creative way.
2 And we have to customize our messaging because not
3 everyone will have the same interest, not everyone
4 will be motivated by the same types of
5 information. So, we have to look at different
6 ways of engaging them. So, we do need policy
7 entrepreneurs that are creative and entrepreneurial
8 and can reconnect the people to the democratic
9 process.

10 VANESSA GUERINGER:

11 Wow. Dr. Lee's a hard act to follow. He's
12 absolutely right. My take away from this forum
13 will be actually to go back to my community and
14 try to integrate that, you know, that movement in
15 younger people to vote. Maybe we need to do some
16 role play. Maybe we need to bring civics back to
17 the education process, because it's not there
18 anymore. And maybe we need to do some role
19 playing, you know, in our schools and where we
20 meet in our communities because, unfortunately,
21 our young people are not getting it. And he's
22 absolutely right; every four years you have a
23 cycle of voting, you know, and everybody is worked
24 up and actually votes and actually stays engaged.
25 But, those young folk that are just living their

1 lives and, you know, day to day don't think that
2 politics actually plays a part of every aspect of
3 your life is -- is a real sad, sad thing, you
4 know.

5 And, as we as a city move forward, if we
6 don't start taking hold of trying to, you know,
7 integrate our young people into making sure that
8 they know people died for your right to vote. It
9 is so important that voting affects everything in
10 your life. If you go to buy a home, you have to
11 pay taxes, you know. And you pay all these taxes
12 and then you're not represented. You know, it's a
13 constant uphill battle to get those things that
14 are rightfully -- that should just be rightfully
15 happening to your community or happening for you.
16 So, it is important that we go back and engage our
17 community and use our elderly folk who really know
18 the story of how our ancestors and our descendants
19 fought for the right to vote. It's just so
20 important.

21 STEPHANIE PATRICK:

22 Thank you. In terms of your question about
23 people with disabilities as poll workers, I think
24 there's a lot of opportunity for advocacy there
25 and people with disabilities are actually

1 empowered to know that they can serve as poll
2 workers to realize that they can perform these
3 jobs. It could be class action. It could be
4 just, you know, more education of election
5 officials. You know, there's a lot -- there's a
6 lot of opportunities. I think that, you know, in
7 terms of the other two speakers who made some
8 wonderful points, I think there's a lot of
9 similarities for people with disabilities in these
10 situations. You know, historically, people have
11 had very low expectations of people with
12 disabilities, both physical disabilities and
13 cognitive disabilities. So, the idea that a
14 person with a disability could have an opinion and
15 express that opinion through voting is a new
16 thing. I mean, that, you know, forty years ago
17 nobody would even think a person with a disability
18 would want to vote. So, we've kind of gradually
19 been trying to educate people and empower them and
20 empower their parents and the direct support staff
21 who often work with them in low wage jobs who
22 perhaps themselves are not even empowered about
23 voting to feel empowered and to serve as an
24 example for people with disabilities. So, I do
25 think it's a cycle, and there's a whole lot of

1 similarities between the different groups.

2 REV. CHIPPS TAYLOR:

3 Oh, okay. Thank you. I like the trend that
4 was set up where you ask three questions and get
5 it over with. Dr. Lee, you mentioned that
6 technology and no resources was one of the reasons
7 of why things were not getting any better, to make
8 it plain. I'm curious as to -- because, again,
9 you explained very well the major decline. What
10 can be done besides above and beyond the
11 technology aspect of it to reverse this decline?
12 That's my question to you.

13 Madame -- Ms. Vanessa; is it correct? Okay.
14 You made the statement that, you know, you talked
15 about the elderly. Do you have any numbers that
16 could kind of back up what you stated? Because,
17 again, I believe exactly what you're saying, but
18 what type of numbers are we looking at when it
19 comes to the disenfranchisement of the elderly?
20 And my third question is, you know, you stated
21 very -- very -- the fact that to get people out to
22 testify was a problem that -- and again, I've
23 worked -- I've been involved in a lawsuit recently
24 where there was a major complaint about voting,
25 you know, not registering voters in certain areas.

1 And then, when the attorneys went out to get
2 people's statements to testify, it seemed that
3 they ran into a lot of the same problems you have.
4 So, do you have any ideas on what can be done to
5 get more people to come forward who have the
6 problems to testify?

7 MARCIA JOHNSON-BLANCO:

8 And, Dr. Lee, before our panelists answer can
9 you please keep your answers to about a minute?
10 We are over for this panel, and I just want to be
11 considerate of the others who are waiting.

12 DR. SILAS LEE:

13 Okay.

14 MARCIA JOHNSON-BLANCO:

15 Thank you.

16 DR. SILAS LEE:

17 Sure. To answer your question in terms of
18 what else can be done, you know, technology is a
19 process. It facilitates the participatory part of
20 it. However, to get people enthused and
21 motivated, it requires the presence, the direct
22 and consistent presence of elected officials and
23 people involved in the institutions. Regardless
24 of how much technology we have, the bottom line is
25 that the people want to see, touch, interact, and

1 talk with individuals in positions of authority
2 who they have elected to represent their
3 interests, protect their interests. They want to
4 see, touch, and hear from those people. Nothing,
5 technology cannot replace dialogue and face-to-
6 face interaction, and that's the bottom line.

7 REV. CHIPPS TAYLOR:

8 I agree.

9 DR. SILAS LEE:

10 So, one part is a process. The other part
11 relates to the -- the humanity of the process;
12 reaching out and talking to people, communicating
13 with them. And with that, that instills
14 confidence. That nourishes the process of voting.
15 And we can't have one without the other. So, one
16 part is, like I said handling the mechanical part.
17 The other one relates to the aspect of humanity.
18 Thank you.

19 VANESSA GUERINGER:

20 Okay. I can only speak to the percentages
21 probably in my own community. We were about
22 fifteen thousand families pre-Katrina. We're
23 about six thousand families post-Katrina. Of
24 those six thousand families, probably maybe ten
25 percent might be elderly folk that returned to the

1 neighborhood. But, we have a pretty robust
2 elderly senior citizen center in the Lower Nine.
3 And we are doing our best to make sure that the
4 elderly know that they can vote by mail, know that
5 they can call on organizations such as ours and
6 others for rides to the polls, know that, you
7 know, where they can go to get a photo I.D., know
8 that all of the current laws around voting, voting
9 times, times of voting.

10 We had issue with one of our polling places
11 being in the Upper Nine. Before, I think maybe
12 two elections ago, it was at Nicholls School. And
13 we always had a problem with getting the coast
14 guard to make sure that the St. Claude Bridge --
15 the bridges were in the down position. Because a
16 lot of folks waited until like 7:00 to go and
17 vote, because that was an issue. The issue maybe
18 about a year or the last election was that the
19 election place that was outside of Lower Nine was
20 not handicap accessible. So, our organization
21 actually challenged the Registrar of Voters'
22 Office to move that voting place back down to the
23 Lower Nine, so we all vote in the community now.
24 So, again, we're doing our best to make sure that
25 the elderly are always abreast of any changes in

1 any laws. And, like I said, my takeaway is to go
2 back and make sure that we integrate the elderly
3 with the young folk around, making sure that they
4 get out to vote and how important it is.

5 STEPHANIE PATRICK:

6 Thank you. I would just say that in terms of
7 getting people out to testify, I think one of the
8 most important things is to continue the dialogues
9 that we're starting today. I think that the more
10 we stay in contact with each other, even if it's
11 just an email every, you know, before every
12 election and say, "Don't forget that The Advocacy
13 Center wants to know and what's to help with
14 disability issues." Who's on the ground if
15 there's issues that they don't -- that we don't
16 cover that have to do with poll worker
17 intimidation or, you know, any -- any kind of, you
18 know, bridge is closed, things like that, who can
19 help us with those so that we all know that we
20 have resources for each other.

21 And then, in terms of individual -- getting
22 individuals empowered, I think that what Dr. Lee
23 mentioned in terms of humanity and those
24 individual conversations are really the way that
25 we've had the most success. We've had a number of

1 successes educating individuals with disabilities
2 who are in institutions like group homes and
3 psychiatric hospitals, and that's really because
4 we've had the boots on the ground. We've had the
5 people to go there and talk about voting for a
6 long time before the election comes to make sure
7 that the people have the information they need,
8 that they're empowered, and that they're ready and
9 registered to go vote on election day.

10 MARCIA JOHNSON-BLANCO:

11 Thank you very much. We'd like to thank this
12 panel for getting the hearing off to a fantastic
13 start. Okay. We're going to get right onto the
14 second panel. Reverend Jay Augustine, Attorney
15 Ron Wilson, Demographer Cedric Floyd, and
16 Ms. Linda Johnson. As our panelists are coming
17 up, just to help with the timekeeping I am going
18 to also employ a bit of technology. I have found
19 an app here which I'll have with the time
20 countdown so you can keep an eye on where you are
21 with the time so we don't fall too far behind.
22 Thank you.

23 So, we'll start with Reverend Augustine and
24 then just move along to Attorney Wilson, Mr.
25 Floyd, and then Ms. Johnson.

1 REV. JAY AUGUSTINE:

2 Thank you so much. Please allow me to begin
3 my remarks by saying thank you. Thank you to the
4 Lawyers' Committee for Civil Rights Under Law for
5 obviously convening fact-finding sessions around
6 the country. And thank you to you all in
7 particular here in the Southern Region, here in
8 Louisiana, as members of the National Commission
9 on Voting Rights for hearing testimony as offered.

10 By way of background, I want to share with
11 you a little bit about myself and about my
12 experience in working in the area of voting
13 rights. I am what I consider to be a bivocational
14 minister and advocate for social justice. I have
15 the proud pleasure of serving as the senior pastor
16 of St. Paul African Methodist Episcopal Church in
17 Uptown New Orleans and I also serve as an adjunct
18 professor of law at the Southern University Law
19 Center in Baton Rouge. Some of my research-based
20 publications have appeared in journals including
21 "The University of Louisville Law Review," "The
22 University of San Francisco Law Review," "The
23 Southern California Interdisciplinary Law
24 Journal," "Louisiana Law Review," and the
25 "Southern California Review of Law and Social

1 Justice" among others. I am also the author of a
2 forthcoming book, "The Keys Are Being Passed,
3 Race, Law, Religion and the Legacy of the Civil
4 Rights Movement." Having grown up here in New
5 Orleans, I was fortunate to earn a B.A. in
6 Economics from Howard University, along with an
7 active duty commission as an infantry officer in
8 the United States Army. I returned here to my
9 native New Orleans to earn a J.D. from Tulane
10 University and served as law clerk to now Chief
11 Justice, then Associate Justice Bernette Joshua
12 Johnson in Louisiana Supreme Court. I also had
13 the good fortune of serving as election law
14 counsel to U.S. Senator Mary Landrieu and later
15 earned my Master of Divinity Degree from United
16 Theological Seminary in Dayton, Ohio.

17 The remarks I want to focus on today with the
18 balance of my time deal specifically with election
19 administration following Hurricane Katrina. You
20 all are obviously aware that Hurricane Katrina
21 ravished the Gulf Coast on August 29th, 2005. In
22 the wake of the hurricane's destruction, hundreds
23 of thousands of New Orleanians were displaced to
24 cities, particularly, Baton Rouge, Louisiana,
25 Houston, Texas, Atlanta, Georgia, and Jackson,

1 Mississippi. As a result of their displacement
2 and total economic loss, in most cases, most
3 individuals applied from assistance from the
4 Federal Emergency Management Agency, more commonly
5 known as FEMA. I was personally aware that public
6 tax -- that the public tax funded entity FEMA kept
7 records of the temporary addresses of the
8 individuals who applied for and, in most cases,
9 received assistance. This registry was shared as
10 a matter of public record with the Louisiana
11 Secretary of State after an official request to
12 assist with the administration of New Orleans'
13 then scheduled municipal elections. At the time
14 the hurricane hit, the elections were scheduled
15 for February 4th, 2006. Because of mass
16 destruction, however, and in many cases the
17 destruction of polling places, the elections were
18 rescheduled -- and this was amid litigation -- the
19 elections were rescheduled for April the 22nd,
20 2006. I was active at that time in litigation,
21 representing the public interest of U.S.
22 Congressman Cedric Richmond, then serving as a
23 member of the Louisiana House of Representatives,
24 and his then colleague House Representative --
25 Louisiana Representative Charmaine Marchand. The

1 two public office holders sought public
2 information. They sought the addresses of
3 individuals who were displaced in the registry as
4 tendered to Louisiana state officials only to
5 communicate with those individuals regarding the
6 upcoming election. I want to underscore that the
7 information as requested had nothing to do with
8 financial benefits, had nothing to do with what
9 benefits were received by individual applicants,
10 but only with their location so that they could
11 communicate with potential voters.

12 FEMA, again, provided an original registry of
13 displaced New Orleanians to the Secretary of State
14 as the official administrator of elections. We
15 requested -- in doing an official public records
16 request, we requested that information
17 unsuccessfully. Litigation ensued. We sought a
18 writ of mandamus by filing suit against the
19 Louisiana Secretary of State and the Attorney
20 General to get the information, again from a
21 public entity which we considered to be a public
22 record. After a vigorous defense, the lawsuit was
23 ultimately unsuccessful with a single district
24 court judge in Baton Rouge in the nineteenth
25 judicial district court indicating that there was

1 no cause of action to be found and that the
2 information should not be shared with public
3 office holders.

4 As you all are aware Louisiana is a covered
5 jurisdiction under the Voting Rights Act. Because
6 it is a covered jurisdiction under Section 5, it
7 was then required at least to receive certain pre-
8 clearance procedures whenever there would be a
9 change in election administration. I can't think
10 of anything more egregious or any change more
11 evident, I should say, than the way the election
12 was administered in the wake of Hurricane Katrina.
13 At the time, any -- any pre-clearance that was
14 issued -- and I was aware that administrative pre-
15 clearance was issued by the U.S. Department of
16 Justice -- it is my personal opinion that that
17 pre-clearance was issued as a perfunctory measure
18 at best. In addition to ensuring equal access at
19 the ballot place, you all are aware that the
20 Voting Rights Act has key aims, including the
21 elimination of vote dilution. In other words, the
22 act is supposed to prevent voters who are
23 registered to vote from experiencing electoral
24 devices and/or difficulties that would dilute
25 their votes and prevent them from electing

1 candidates of their choice.

2 It is my opinion that the lack of information
3 shared and the lack of information made available
4 to individuals to vote, particularly considering
5 the demographic of Orleans Parish and the
6 overwhelming displacement of those individuals
7 were African American, it is my professional
8 opinion that that was vote dilution. I believe
9 that, although this lack of information shared by
10 public entities is not necessarily discrimination
11 on its face, I believe it is in fact
12 discrimination as applied. In other words, with
13 respect to vote dilution, I believe it has the
14 same effect as what we would consider to be
15 neutral test -- neutral tests, rather, that
16 adversely affect minorities, including literacy
17 tests of the past, polling taxes, and grandfather
18 clauses. This concludes my prepared remarks.

19 RON WILSON:

20 I also would like to thank the committee for
21 inviting me to participate in this important
22 meeting. I guess, a little bit about myself.

23 (Dr. Cassimere makes an inaudible comment.)

24 I'm a -- I've known Dr. Cassimere for --

25 DR. RAPHAEL CASSIMERE, JR:

1 Ever.

2 RON WILSON:

3 Forever. I won't say how many years. But,
4 I'm a graduate of the University of New Orleans;
5 attended law school at the University of Iowa and
6 Tulane University. My practice has been foremost
7 in the area of civil rights and public interest
8 litigation. I've done a lot of work with the
9 Legal Defense Fund out of New York. As a matter
10 of fact, with the legal defense fund and the
11 person to my left, Cedric Floyd, that brought the
12 famous Chisom case, which was a case that for the
13 first time said that judgeships are subject to the
14 Voting Rights Act. In the process, I've been
15 involved in approximately thirteen voting rights
16 cases across the state of Louisiana. I was
17 recently involved in a voting rights case with
18 Reverend Taylor in which he was one of the
19 plaintiffs, a Motor Vehicle Registration Act case,
20 which we were successful. With the Legal Defense
21 Fund, we recently filed a lawsuit in Terrebonne
22 Parish. The judiciary in Terrebonne Parish had
23 never had a black person on the judiciary in its
24 history. It had another sordid history because
25 the judge who's about to retire, Judge Ellender --

1 Judge Ellender thought it was funny to appear at a
2 Halloween party dressed up in convict uniform
3 black face. And his wife was along with him as a
4 police officer sheriff deputy. He found it
5 amusing. And apparently, the people in that town
6 also found it amusing because they re-elected him.
7 And this is what we talk about -- I think about,
8 in terms of this, I think about reconstruction.
9 And I think like Yogi Bear had the saying, "Deja
10 vu all over again." And I think Yogi was right
11 because we see the same disenfranchisement that
12 happened in post reconstruction as happening here,
13 but the methods -- methods were different. In
14 one, they used the bullet, the lynchings. In this
15 way, they are using the legislatures. But, the
16 result -- results are the same. We are
17 disenfranchising minority people, Blacks,
18 Hispanics, Native Americans. And the devices that
19 they're using -- on the surface, nobody can be
20 opposed to preventing voter fraud. You know, it's
21 one of these very neutral-sounding, very noble
22 goals. But, as the courts have determined in some
23 of these cases, there's no such thing as voter
24 fraud.

25 The head of the Republican party in

1 Pennsylvania said, "Hey, look, if we prevail in
2 this case, it will -- it will mean that we will
3 disenfranchise enough people such that Republicans
4 will get the State of Pennsylvania." So it wasn't
5 about clearing or doing away with voting fraud.
6 It's about stealing elections. And this is what
7 we have to be cognizant of. Section 2 of Section
8 5, the important thing about -- both are effective
9 remedies for preventing the disenfranchisement of
10 the voters. But, the second part is extremely
11 crucial due to the fact that you go and get
12 instant relief. If the justice department said
13 that a change did not pass muster, it could be
14 enjoined at that point in time; you could stop it.
15 The only problem with Section 2, and I think
16 Cedric will echo this, is some of the cases that
17 were litigated, Section 2 cases, have lasted five,
18 six, seven years. And then judges will somewhat
19 want to -- you may go in and ask for an injunction
20 to enjoin an election from happening, but judges
21 say, "Well, I can give you relief at the end of
22 the day, so, therefore, I'm not going to enjoin
23 the election." So what you may end up with is
24 some candidate sitting illegally for five, six,
25 seven years before you finally get the relief that

1 you need. That's why Section -- Section 4 or
2 Section 5 were very important remedies to address
3 this voter disenfranchisement. And I think what
4 we have to look at is the purpose of the ballot.

5 If you pick up a newspaper today, they talk
6 about this landmark occasion in Afghanistan where
7 people are going out to vote. This is the only
8 democracy that they thrive on discouraging people
9 from voting. And if you look at the methods they
10 use, for instance, in Florida, if they're
11 concerned about voter fraud, in Florida you have
12 something called balloteros. And these are people
13 who can go around and cast absentee ballots for
14 you. Now, what they've done with that is they
15 made a misdemeanor if you cast more than one
16 absentee ballot or you fraud somebody's name on an
17 absentee ballot. That's only a misdemeanor and
18 nobody goes to jail for that because they found
19 that in Florida, and primarily in the Cuban
20 American community -- in the Cuban-American
21 community, more often than not, prior to the most
22 recent election, they voted Republican. They
23 tended to insulate themselves. And if you're
24 concerned about voter fraud, that would be a good
25 case right there where we could stamp down or

1 clamp down on it.

2 Look at in Alaska, for instance. They've
3 made it so impossible for people to vote in some
4 cases. The only way you can register to vote or
5 to get to a voting poll itself is either by boat
6 or airplane. And this is designed to prevent the
7 native community from going out to vote. Now,
8 there are many devices and artifices that are
9 being used to disenfranchise people, and this is
10 why we have to be vigilant in this regard. I'm
11 primarily involved in Section 2 litigation. And I
12 do a lot of Section 2 litigation for the legal
13 defense fund. But, again, the downside of that --
14 you may get the relief that you want, but it may
15 be five, six, seven, eight years down the line.
16 And those individuals will have sat illegally and,
17 in the process, will continue to pass illegal
18 legislation.

19 But, I think another we have to be careful
20 about is that they're very shrewd and they're very
21 smart. And what they have done, they've pitted
22 African Americans against Democrats, white
23 Democrats. And making changes to legislative
24 districts, councilmanic districts, it will give us
25 African-Americans one or two more additional

1 seats. But, in the process, they will restrict
2 the number the seats that were formerly held by
3 Democrats.

4 REV. JAY AUGUSTINE:

5 Right.

6 RON WILSON:

7 And, in some cases, we've fallen for that.
8 You know, we have to think in terms of more than
9 just having one extra seat. We may get one extra
10 African-American seat, but we'll lose three or
11 four or five seats that were historically normally
12 Democratic seats. So, we have to be very vigilant
13 about that. And, again, I want to thank the
14 committee for inviting me to speak. At this
15 point, I impress upon, you know, everyone here the
16 importance of the ballot. You know, when you
17 think of the ballot, you think of us wanting to a
18 change we can live with. You know, whenever I'm
19 driving through Mississippi, I'm always thinking
20 of those individuals who gave their lives, you
21 know, for people to vote. And there's no reason
22 only having a twelve percent turnout in the
23 elections. The vote is important. And we as
24 ministers, litigators, community leaders, we have
25 to impress upon the people, particularly young

1 people, the significance of voting. Thank you.

2 REV. CHIPPS TAYLOR:

3 Would you give your name to those who do not
4 know you?

5 RON WILSON:

6 Oh, I'm Ron Wilson.

7 REV. CHIPPS TAYLOR:

8 Thank you.

9 MARCIA JOHNSON-BLANCO:

10 Before we move on to Mr. Floyd, I just wanted
11 to mention that the hearings, we want to keep a
12 non-partisan approach to our discussion. And
13 while what Attorney Wilson talked about, he didn't
14 do that, and I just want to make sure that we keep
15 it in a non-partisan discussion. Thank you.

16 CEDRIC FLOYD:

17 I'm Cedric Floyd, President of Data Center.
18 I've been blessed with work in the Section 2 and
19 Section 5 areas for over thirty years. I started
20 off with Mr. Wilson in 1983 when it came down to
21 Section 2 cases, and I've been a part of thirteen.
22 I'm the only person, when it comes down to
23 creating districting plans, that's certified as an
24 expert witness in the Western, Middle, and Eastern
25 Districts of Federal Court here in Louisiana.

1 After the landmark decision, Jingles, in
2 1986, I went to my drawing board once that
3 blueprint was done and started the Chisom case.
4 It was a multimember district in St. Bernard,
5 Plaquemines, Jefferson, Orleans. I was able to do
6 that and thus -- the judges come under Section 2.
7 And during that time, I worked on the Carr case
8 that was lead by the Lawyers' Committee. And
9 today, Louisiana has more black judges than any
10 state, seventy-seven black judges.

11 The reason why or one of the reasons why I
12 got into voting rights is because back in 1980
13 when I got back from college, I lived in Jefferson
14 Parish. There was only two black elective
15 officials; one appointed and one black majority
16 district. And over the last thirty years,
17 Jefferson Parish has been more part of Section 2
18 voting rights cases than any other county or
19 parish in the country. It's been part of eight
20 Section 2 voting rights cases. And after these
21 elections in 2014, we'll have twenty-one black
22 elected officials in Jefferson Parish. It started
23 off with two in 1981, and that's significant.

24 My Section 5 activity over the last thirty
25 years, I've worked for thirty-five different

1 governmental entities, parish school boards,
2 police juries. And I've had at least forty-five
3 Section 5 submissions, all pre-cleared. And also,
4 I've worked on four Section 5 objections, two
5 plans that were retrogressive. The votes section
6 of the Voting Rights Act serves as a
7 clearinghouse, keeping a status quo, keeping it,
8 when it comes down to the benchmark plan, the
9 number of black majority districts. And also, the
10 strength of the plan, the percent of black, you
11 have the ability of redistricting plans. So, if
12 one section, if the Section 5 pre-clearance is
13 knocked out, then it's going to be a free fall in
14 terms of the reduction in the number of black
15 majority districts and the potency of the district
16 will be reduced also.

17 Presently, right now, most redistricting
18 plans based on the 2010 census has been pre-
19 cleared by the time Shelby happened last June
20 2013. So, I'm hoping between now and 2020, a
21 formula for coverage will be back in place so it
22 could be as the yardstick used after the 2020
23 census. Thank you very much.

24 LINDA JOHNSON:

25 Thank you very much. Thank you for inviting

1 me. My name is Linda Johnson, and I'm from
2 Iberville Parish. I'm going to give you a little
3 history of Iberville Parish first, and then tell
4 you what we are trying to do in terms of the
5 voter -- the dilution of black votes in that
6 particular parish. Iberville Parish is a -- is in
7 the chemical corridor, so it is one of the richest
8 parishes in the State of Louisiana. It is also
9 the twenty -- the seventh highest in poverty. It
10 has forty-nine percent minority black people. It
11 has forty-eight percent whites, and we have no
12 parish-wide elected officials. We have three
13 mayors in the smaller towns, White Castle, St.
14 Gabriel and Maringouin. But, in the parish seat,
15 which is Plaquemines, we have no real -- no mayor,
16 no police chief, none of those elected seats.
17 What I have seen -- and I have been around
18 redistricting since we redistricted the parish
19 council back about twenty-five years ago. And
20 when we did that, it was to create the potential
21 of having blacks elected to the council, and it
22 did. However, when we went to court, we went to
23 that particular battle because we were trying to
24 go to the eleven-member council, and they insisted
25 we go to a -- the majority white population

1 insisted that we go to a thirteen-member. Well,
2 we ended up with thirteen, a thirteen-member.
3 Very recently, Rob Marionneaux, who was the
4 senator in Iberville -- from Iberville Parish,
5 passed Senate Bill 420, which created the nine-
6 member school board district, one at large. And I
7 don't like at-large districts, because I think at
8 large -- I personally don't like them because I
9 think at large tends to further dilute the black
10 vote and eight single-member districts. We have a
11 fifteen-member school board, and he passed a law
12 to get it down to nine.

13 Originally, the Iberville Parish School
14 Board, which is the group we are suing, decided
15 that they would reduce themselves to thirteen.
16 And they got it in prior to the Supreme Court
17 making its ruling, so it was pre-cleared, the
18 thirteen. But then, because Marionneaux had a
19 bill that had become law, the thirteen was
20 ineffective and they had to really go back to
21 nine. In December of 2013, they presented their
22 nine-member plan. Now, they actually presented in
23 November seven different plans. But, in December,
24 they decided that they would look at really three
25 different plans, and they were -- all three of

1 them were nine-member plans. The one that they
2 selected has four white districts and supposedly
3 four black districts. But, when you look at the
4 numbers there's no reality to that. What we
5 really have are four white districts, two
6 additional white districts, and one at-large white
7 district. So, we are truly being diluted. This
8 is my -- you can look at the numbers. You know,
9 and I always say, because it is extremely true,
10 figures don't lie, but liars do figure. That is a
11 very true statement. So, you can look at the
12 numbers and you will say, "Oh, well, it's four
13 black districts." But, then if you live in the
14 parish and if you understand the demographics, you
15 will know that is not true. And if you look at
16 how they have -- and I considered (inaudible) --
17 by the way, I served on the redistricting when we
18 did the BESE Board. It was a true fight from hell
19 to maintain two minority districts in BESE. I
20 have never seen a fight like I was in just trying
21 to maintain something that we was supposed to
22 have, and I was the only one who was there the
23 entire time. So, I understand something about
24 redistricting. I also understand something about
25 protecting incumbency which, is what I think the

1 Iberville Parish School District is trying to do,
2 is to protect those who they would like to have
3 protected. And, in doing so, you're leaving us
4 out. The unique thing about this to -- in my
5 opinion is that the district is eighty-three
6 percent -- the school district's eighty-three
7 percent minority. So, we are going to end up with
8 a school board, and most of the people have more
9 white hair on their heads than I have, which means
10 they don't have children in the system. So, we're
11 going to end up with a white school board that is
12 dictating the policies for the eighty-three
13 percent minority district. And I just think that
14 is a very unfair situation. I would like not to
15 be engaged in a lawsuit. And I especially would
16 like not to be engaged in one that lasts three or
17 four or five years, but I am willing to take that
18 fight, no matter how long it takes because of what
19 they have done to us.

20 And also, this does something else. Someone
21 asked earlier why I think -- Ms. Washington why
22 young people don't do this. There's nothing in it
23 for them.

24 TRACIE WASHINGTON:

25 That's right.

1 LINDA JOHNSON:

2 They don't see any -- they don't see any
3 value in it. What do they get out of it? We get
4 seven white people serving on the school board.
5 They didn't get anything out of that. So, they
6 don't see any value in it, in going to the poll.
7 And Plaquemines, for those of you who may know
8 your history -- James Farmer came to Plaquemines
9 in 1963. And in 1963, was also the year of the
10 March on Washington. And we had a tremendous
11 fight. I belong to the church where the horses
12 went in. So, we're used to fighting, and we don't
13 mind taking up this particular fight at this time.
14 And, again, thank you all for inviting me.

15 TRACIE WASHINGTON:

16 Well, it is in fact a fight, isn't it?

17 LINDA JOHNSON:

18 Huh?

19 TRACIE WASHINGTON:

20 It is in fact a fight?

21 LINDA JOHNSON:

22 Oh, it's a major fight.

23 MARCIA JOHNSON-BLANCO:

24 Well, thank you for the panel. I'd like to
25 open it up for questions from the commission.

1 But, before I do, Attorney Wilson, I just wanted
2 to check and see whether you have submitted to the
3 commission the list of Section 2 cases that you've
4 done because we would definitely love to have that
5 for our records.

6 RON WILSON:

7 We have, ma'am. Yes.

8 MARCIA JOHNSON-BLANCO:

9 Thank you.

10 TRACIE WASHINGTON:

11 I have a very quick question, and maybe it's
12 more comment than it is question. And I go back
13 to Ms. Johnson, this whole issue about the fight.
14 And I look around this room as you all were
15 testifying, and I know everybody on this panel.
16 And as a point of reference, in 2006 when we were
17 engaged in that fight about whether black folk,
18 principally, I think black folk, were really going
19 to be completely disenfranchised in the mayoral
20 election, not only was that lawsuit going on, but
21 the NAACP held their advancement project, filed
22 suit in February 2006. I was privileged to be
23 involved with that with the (inaudible)
24 advancement project and Bill Quigley. Ultimately,
25 we succeeded in having Judge Lemelle sign an order

1 forcing Kimberly Williamson Butler to hand over
2 the FEMA list in-camera. And then, ultimately,
3 after some of the sunshine went away, we got
4 copies so that we could get satellite voting.
5 But, it was still a fight. And here's what
6 concerns me, Linda, -- Ms. Johnson I call "Linda"
7 because she's Linda to me -- is that when I look
8 around this room, with the exception of -- of the
9 women here who are engaging in a Little Miss
10 Clairol, most of the people involved in this fight
11 got a lot of gray hair --

12 CEDRIC FLOYD:

13 Or no hair.

14 TRACIE WASHINGTON:

15 I wasn't looking at you, Cedric, but that's
16 all right. A lot of gray hair and are doing this
17 out of their own pocket. It's now the resource --
18 resource fight and it's getting to be a really old
19 people fight. And so, twenty years from now, --
20 shoot, ten years from now, how we going to
21 continue this? Eventually, Ron's going to want to
22 retire. Cedric's been doing this for thirty
23 years -- you don't have any gray. I'm making some
24 jokes, but it's a serious comment in question.
25 And if any of you all want to take it on very

1 quickly, because I know everybody's got real
2 questions, I am concerned that we're not growing
3 fighters.

4 LINDA JOHNSON:

5 I'll take that on for you because -- because
6 you know, having gone to BESE, a lot of the people
7 who came in the red jackets, whoever those women
8 are -- have no children, okay. So they're the
9 people driving the educational issues.

10 TRACIE WASHINGTON:

11 Right.

12 LINDA JOHNSON:

13 And I think that's a disgrace.

14 DR. RAPHAEL CASSIMERE, JR:

15 I have no questions.

16 ERIKA MCCONDUIT:

17 I have a question. I don't know if I'm on or
18 not. Maybe not. I don't know. It's not coming
19 on. Well, I'll talk really loud. It's fine. I
20 have two quick questions. The first is for Jay.
21 Just, I'm curious about whether or not there was a
22 appeal on the case that you specifically mentioned
23 regarding the request for addresses and the like.

24 But, just the second question I have is -- it
25 is really for Mr. Wilson and Mr. Floyd. Just, you

1 both mention injunctive relief and then a formula
2 for pre-clearance. I'm actually just wondering
3 your thoughts on the new voting rights amendment
4 act, just what's being proposed in terms of the
5 act of 2014.

6 RON WILSON:

7 So, very briefly, in response to Ms.
8 McConduit. There was not an appeal. I made
9 reference that there was a one-judge decision.

10 ERIKA MCCONDUIT:

11 Yeah.

12 RON WILSON:

13 And Ms. Washington referenced that there is a
14 certain amount of resources that go into things.
15 Those that were providing the resources decided to
16 pull the plug, so the decision stood as it was and
17 we were obviously tied up with some litigation
18 going on in the Eastern District. So, no, it was
19 not appealed to the First Circuit Court of Appeal.

20 CEDRIC FLOYD:

21 Yeah, it's not -- it's not what we want, but
22 it's the best that we can get because it will
23 still incorporate some of the pre-clearance
24 provision --

25 ERIKA MCCONDUIT:

1 Right.

2 CEDRIC FLOYD:

3 That's if you've had a Section 5 violation --

4 ERIKA MCCONDUIT:

5 Right.

6 CEDRIC FLOYD:

7 -- within a certain period of time. And the only
8 way we're able to get this, of course, is because
9 of compromise with the --

10 You see the southern legislators are very
11 happy -- congressmen are very happy because
12 they're saying "Ah-ha, now we're bringing the
13 entire nation under this umbrella and you can no
14 longer single us out." So, if they're happy for
15 it, it's an indication that it's not everything
16 that we want.

17 ERIKA MCCONDUIT:

18 Right. Right.

19 DR. RAPHAEL CASSIMERE, JR:

20 Alabama is left out, isn't it?

21 CEDRIC FLOYD:

22 Alabama is, right.

23 ERIKA MCCONDUIT:

24 Alabama's left out.

25 CEDRIC FLOYD:

1 Yes, uh-huh.

2 REV. CHIPPS TAYLOR:

3 Question, Reverend.

4 REV. JAY AUGUSTINE:

5 Yes.

6 REV. CHIPPS TAYLOR:

7 How do -- you said you did not appeal because
8 of course, the financial burden that went with it.
9 How do you fix a situation like this? What do
10 you -- you know, going back to Ms. Washington's,
11 you know, comment dealing with our youth and our
12 young people, you know, the lack of involvement
13 because they're not interested? Then when you see
14 something like this that happens, how do we fix
15 it?

16 REV. JAY AUGUSTINE:

17 I, again, consider myself bivocational. That
18 means I've been called twice. Certainly, I -- I
19 appreciate the calling I've had as a lawyer in
20 trying to fight for social rights, but I take very
21 seriously the calling I have toward the ministry
22 and to the pulpit. In that regard, I try to bring
23 the two together in what I call the social
24 gospels. If I can preach a gospel that focuses
25 not just on -- I'm using the image of the cross --

1 not just on the salvific relationship with God and
2 salvation in the kingdom to come, but if I can
3 also preach a gospel of social equality, doing
4 unto others as you would have them do unto you and
5 one that focuses on inequality in the kingdom at
6 hand. And to go back to Ms. Johnson's comments,
7 young people need to realize that there is
8 something in it for them. So --

9 REV. CHIPPS TAYLOR:

10 A lot

11 REV. JAY AUGUSTINE:

12 -- if I can -- if I can preach a social gospel
13 again that deals with providing jobs, it deals
14 with job skills training, re-entry and so forth
15 and all those things can come through the church,
16 if the church is seen as a one-stop shop for
17 social engagement, hopefully, we can get people
18 interested in civic participation and obviously in
19 voting.

20 TRACIE WASHINGTON:

21 Can I get just Mr. Wilson and Mr. Floyd to
22 give the audience and -- and for this commission,
23 for the record, some idea about how much it costs
24 and also, you, Reverend Augustine, how much it
25 costs to bring this type of litigation, be it

1 Section 5, Section 2, whatever. I think folks
2 really need to hear that.

3 RON WILSON:

4 Well, The costs -- The costs are exorbitant.
5 You can't -- that's why we end up partnering with
6 the Legal Defense Fund, the Lawyers' Committee, a
7 network of organizations that do have the funds
8 and wherewithal to help finance this litigation.

9 For instance, I'm saying, if I had a Section
10 2 case, it would be as a motor vehicle -- voting
11 rights act case, MRVA case. And it costs -- we
12 submitted an attorney's fee bill after the case
13 just for the attorneys themselves of over a
14 million dollars. Just for attorney work in this
15 case. That's not including expert witnesses and
16 all the other costs involved. So, these cases are
17 very, very, very expensive. And the local
18 communities, unfortunately, don't have the
19 wherewithal, you know, to -- to take on these
20 cases. And, oftentimes, we'd have to go and, when
21 Reverend Alexander was alive, in one of our
22 Jefferson Parish cases, we had to go to the church
23 one night and pass a hat, you know, the eve of an
24 election because we didn't have enough money. So,
25 Reverend Alexander did a great job, and we

1 collected the money and we won the case. But,
2 litigation has gotten much more expensive since
3 then.

4 CEDRIC FLOYD:

5 Let me say this, that every time there's been
6 a Section 2 case, the governmental entity always
7 appeals. And even the City of Westwego with ten
8 thousand people, we went up to U.S. Fifth Circuit
9 three times. And it was no big deal because they
10 were in-office there the whole time and then went
11 up to the United States Supreme Court. Everybody
12 does that. When you win on a district court, you
13 go to the Court of Appeals, then you go to Supreme
14 Court because they're staying in the office and
15 it's out of their pocket -- out of the
16 governmental entity's pocket. So it takes a long
17 time and it costs a whole lot.

18 A VOICE:

19 But, we won.

20 CEDRIC FLOYD:

21 We have won all cases, all cases.

22 MARCIA JOHNSON-BLANCO:

23 I did have one final quick question.
24 Reverend Augustine mentioned that there is
25 neutral-seeming laws or administrative procedures

1 that have a disproportionate impact on minority
2 voters that are being passed now. What do we need
3 to show, how do we best address that when we know
4 that these laws that seem neutral on their face
5 have a disproportionate impact on minority voters?

6 CEDRIC FLOYD:

7 Anecdotally, I think panels like this and
8 fact-finding commissions like this that could
9 induce evidence to be submitted to congress and
10 the decision-makers I think are very, very
11 critical in that process. I regret that my
12 research was not able to show -- it was only able
13 to speak from an anecdotal perspective and not
14 from an empirical perspective to show how fewer
15 people voted in the elections then opposed to how
16 many people may have voted in some other higher
17 profile elections and the like. But, I think
18 really fact-finding commissions like this. And
19 this is my way of complimenting you all for taking
20 the time in doing this and the Lawyers' Committee
21 for Civil Rights Under Law for convening these
22 forums around the country. These are critically
23 important because this is how you build a record
24 to put before Congress or put before state
25 legislators or decision-makers to say it is

1 absolutely imperative that these -- these
2 procedures which have a discriminatory impact are
3 done away with.

4 RON WILSON:

5 But, in fact, if we look, these changes don't
6 operate in a vacuum. They just aren't -- they
7 just don't happen. They're well thought out. And
8 a good example would be the changes in Texas,
9 where in Texas they can use a state I.D. to vote,
10 except you can't use your student I.D., but you
11 can use your hunting permit, you know. Because
12 they --

13 DR. RAPHAEL CASSIMERE, JR:

14 And they know who hunts in Texas.

15 RON WILSON:

16 Exactly. That's it. They know -- they know
17 who the hunters are. So, you know, these measures
18 just don't operate, just don't happen on their
19 own. They are well thought out. So, a commission
20 like this looking to this -- looking into these
21 practices can see this impact or effect it has on
22 minority voters. And these procedures are well
23 thought out.

24 MARCIA JOHNSON-BLANCO:

25 Thank you very much for your testimony. We

1 greatly appreciate it.

2 (Applause.)

3 We are going to take a five-minute break
4 before moving to the next panel. Thank you.

5 (A break was taken from 5:05 p.m. to 5:14 p.m.)

6 MARCIA JOHNSON-BLANCO:

7 We'll call up the next panel. Let's get back
8 to work. Ms. Carolina Hernandez, Mr. Nguyen, Mr.
9 Henderson, and Mr. Reilly. While we're waiting
10 for all of the commissioners to join us, for the
11 panelists, we have the timer here so you can see
12 how much time you have. We are going to go ahead
13 and get started with Panel #3. And we'll have you
14 present in the order you appear on the agenda. So
15 first is Ms. Hernandez, then Mr. Nguyen, Mr.
16 Norris, and Mr. Reilly.

17 CAROLINA HERNANDEZ:

18 Hello? Should we wait for Tracie to come
19 back?

20 MARCIA JOHNSON-BLANCO:

21 Oh, no. She isn't coming back.

22 CAROLINA HERNANDEZ:

23 Oh, she had to leave, okay. Well, thank you
24 for having me here today. My name is Carolina
25 Hernandez. I'm the Executive Director of Puentes

1 New Orleans. Puentes New Orleans is an
2 organization -- organization that was established
3 in 2007 as a non-profit Latino community
4 development organization in the Greater New
5 Orleans Area. Puentes was created to address the
6 needs of Latinos in the aftermath of
7 Hurricane Katrina and has since been working to
8 promote social change. Puentes is the only Latino
9 advocacy organization in New Orleans that aims to
10 address the barriers posed to the Latino community
11 as a whole. The New Orleans Latino community
12 describes themselves as invisible. With an
13 increase of twenty-two percent in the Latino
14 population of Orleans Parish since 2000, it would
15 serve our city and neighbors to make services and
16 outreach efforts more inclusive. While the
17 Greater New Orleans area since the 1950s maintains
18 a sizeable established bilingual Latino --
19 bilingual Latino community, the post-Katrina
20 influx of new arrivals means to better serve all
21 community residents, city government services,
22 healthcare services, neighborhood groups must
23 account for the needs of limited English
24 proficient populations.

25 The primary challenge faced by Puentes from

1 an advocacy prospective is a lack of power. The
2 state legislature includes only one Latina
3 representative who does not act as a champion for
4 her community. Accordingly, legislative activity
5 in Baton Rouge is largely dependent upon the black
6 and Democratic caucuses to carry a Latino agenda.
7 Both groups, however, are outweighed by a white
8 Republican majority on every house and senate
9 committee. In short, the politics of race are
10 very salient in Louisiana and we have not yet been
11 able to turn them to our advantage. At the local
12 level, the primary challenge is a very strong
13 mayor and a relatively weak city council. While
14 Puentes has consistently developed allies on the
15 council side, we have grown increasingly distant
16 from the administration, but we're hoping to
17 improve that relationship locally. Our primary
18 response to this marginalization has been
19 participating in diverse coalitions.

20 Puentes has many members of our organization,
21 and I loosely call them members. They are people
22 that use part of our services, come through our
23 organization. And the same issue is faced by a
24 majority of these members, and that is that they
25 don't have a strong knowledge of the English

1 language. So, it really limits their ability to
2 participate at any civic level and because the
3 government and civic organizations do not
4 accommodate for their needs as limited English
5 proficient community members. So, I want this
6 panel just to take away that when you can't even
7 pay for a parking ticket because you don't know
8 the language, you can't -- certainly, you cannot
9 go and register to vote in any easy fashion and
10 you can't vote. I have been -- I was born and
11 raised in Louisiana, and I have been voting in
12 this state ever since. I am blessed and fortunate
13 to speak perfect English, and I see the challenges
14 if I was to not be able to speak English as well
15 as I do. And I can only imagine what those people
16 face every day.

17 As an organization, we started off in 2008
18 registering folks to vote. That was our intent.
19 And we gave ourselves a challenge of registering a
20 hundred Latinos, which is a small challenge, but
21 we were a new organization. At that time, I was
22 just a volunteer, and we were barely able to
23 register fifty people. And a lot of it was
24 because they just don't see their place within the
25 civic organization in this state. And they don't

1 see it because they can't navigate it. They don't
2 think it's for them. And so, I hope that this --
3 I'm assuming this problem is not just in New
4 Orleans. And I'm assuming it's not just in the
5 state of Louisiana. It is more profound here
6 maybe because our representation is so small,
7 which is why I opened up with those comments.

8 As much as Puentes pushes for issues, it's
9 very difficult to get those issues addressed, and
10 that's because our power is so limited. We can't
11 demonstrate power by votes. And you certainly
12 can't demonstrate power by votes if the system
13 makes it very hard for non-English speakers to
14 participate in that system of voting. So, to even
15 get them to register, they didn't even think if
16 they were U.S. citizens or they became U.S.
17 citizens, they just didn't think that was for
18 them. And, if we can demonstrate as an
19 organization that the system does address their
20 needs as simple as having documentations in
21 another language other than English, I think we
22 could increase the number of registered Latino
23 U.S. citizens just in the Orleans area and
24 potentially in the state. And so, that's where I
25 will leave my last comment.

1 MINH NGUYEN:

2 Hello. My name is Minh Nguyen. I am the
3 Executive Director of VAYLA New Orleans. VAYLA is
4 a progressive multiracial community-based
5 organization in New Orleans that empowers youth
6 and families through support services and
7 organizing for cultural enrichment and positive
8 social change. To give you a little background of
9 VAYLA, we started off after Hurricane Katrina in
10 2006 due to a landfill that was placed in our
11 community called the Chef Menteur Landfill. The
12 reason why we were formed is because, you know,
13 they were saying that because -- "The reason why
14 they could put it in your neighborhood is because
15 you guys don't have any power, you have a lack of
16 voice." So, obviously, for us, because we were
17 one of the firsts communities to come back after
18 Hurricane Katrina, we knew that we -- we had to do
19 something about it. So, our organization we went
20 ahead and registered folks to vote, because that
21 was the main thing. They were talking about you
22 guys have no power, we have no voice. So, what we
23 did was we began to register folks to vote, not
24 only individuals in the community, but just
25 everybody in Village D'Lest community in New

1 Orleans East.

2 Since then, we have a really good
3 relationship with the registrar of voters' office.
4 We registered -- we could claim fifteen hundred
5 people that we have registered to vote. We have a
6 voter base we have updated. We also went through
7 the advanced system to learn how to navigate
8 the -- the voters and just focus in New Orleans
9 East. And so, today, you know, we continue to
10 fight for New Orleans East because of the lack of
11 infrastructure, lack of hospitals, lack of just
12 basic needs. Yes, it's been what, almost nine
13 years. We're coming up on our tenth year, and we
14 have made progress. Folks have been voting, all
15 right. But, I do want to say that there is a lack
16 of trust within our government. And, because we
17 are a multiracial organization, we do serve not
18 only the Vietnamese community, but we also serve
19 the Latino and African-American community. So, we
20 hear all of the issues that we face within our
21 community.

22 Just to piggyback on what Carolina was saying
23 earlier, is that yes, you know, there's a lot of
24 barriers that we face for folks to vote. I mean,
25 there's folks who -- who came over as refugees in

1 1975. And there's -- there's a lot of them who
2 became nationalized and now are citizens, right?
3 But the ballots, again, are only in English. Some
4 folks who, I mean, perfect -- you know, we went to
5 school can't even understand what's on the ballot
6 even though it's in English. So, just imagine how
7 hard it is for -- for a person who -- who are
8 limited English proficient. So, I know that's one
9 of the things that we have been training for, is
10 to have -- to get the ballot to be translated, all
11 right. Not only on Vietnamese, but also in
12 Spanish as well. Just so we can actually get the
13 community to be more -- more engaged. That's the
14 highest. We also conduct (coughing) polling, and
15 that's been one of the things that have been
16 preventing folks to come, all right. We need more
17 voter education out there. I think that that's
18 not being done enough. A lot of folks we
19 registered, the fifteen hundred I'm talking about,
20 only -- I believe only thirty percent actually
21 vote. And the reason they say that they don't
22 vote is because they don't know how to, all right.
23 And I believe that's one of the things that we
24 need to do a better job doing, all right. The
25 young folks, they get -- we could go into the

1 classroom and register them to vote, but they
2 never have voted, so the machine is not there for
3 them to actually know how to vote. So that's one
4 of the other things that I do want to address.
5 The second thing, the other thing that I wanted to
6 talk about is candidates, the information that is
7 going to the citizens, the people, the residents.
8 They -- a lot of it is going out in English as
9 well. It's not going out in their specific
10 language that they understand. I believe that we
11 do need to do more of these education forums. We
12 try to -- we're hosting these forums in our
13 community, and we try to have -- we do have
14 interpretation sets for us to get our community to
15 understand what's happening, but I think we need
16 to continue to do more of that. A lot of this we
17 have to raise our own funds to do as well. I
18 believe that if we could get more support on -- on
19 the state level, local level, federal level, that
20 would definitely help us as well.

21 I know earlier we were talking about young
22 people voting. That's -- that's been something
23 that we've been pushing to do. We really want
24 that to happen. One of the things that I do want
25 to address -- I'm pretty sure we may have talked

1 about this, is that a lot of them have been in the
2 criminal justice system. A lot of our young --
3 young men of color. That is what prevents them
4 from voting. Although, a lot of it -- a lot of
5 the policies, the issues that they are affected by
6 are made -- are decided without their vote. So,
7 what do we do about that moving forward? And I
8 know that a lot of young people do want to vote.
9 We just need to give the opportunity to.

10 NORRIS HENDERSON:

11 Good afternoon. My name is Norris Henderson.
12 I'm the Executive Director of VOTE, which is an
13 acronym for Voice of the Ex-Offender. I've been
14 engaged in one way or another in fighting for the
15 full restoration of voting rights for folks for
16 over forty years, inside and out. And I'm honored
17 to have an opportunity to comment and present, and
18 I'd like to start with Minh left off at. One of
19 the things our organization do is organize and
20 register formerly incarcerated people around their
21 right to vote. Here in Louisiana, who are not on
22 probation and parole have the right to vote. But,
23 this concern of ours has become huge in the sense
24 that we are questioning whether or not -- is this
25 just a state right, or we as citizens of this

1 country. Because we have in our membership,
2 matter of the fact, one of the presenters we'll
3 speak on in a minute, who traveled from another
4 state to go to school here and he lost his right
5 to vote when he crossed the state line. And so,
6 we are kindly questioning the fact about how does
7 a felony disenfranchise when attached to people,
8 what rights do we actually have as formerly
9 incarcerated people in this country.

10 This country was founded on that no taxation
11 without representation. So, if we can't vote, why
12 do we pay taxes? And so, I think some of the
13 concerns that I hear the panel reiterate over and
14 again, people trying to bring in what they
15 consider the crowning voting population. Well,
16 we have a standing of over seven million people in
17 this country who want to vote and just don't have
18 an opportunity. And so, the biggest concern --
19 one of my concerns is that, here in New Orleans
20 especially, that a lot of the things that appears
21 upon the ballot as ballot initiatives, not in the
22 primary elections, but always in the run-off
23 elections. It's almost like this is being done
24 systemically when people don't turn out for run-
25 off elections, a new ballot initiative is put on

1 there because they figure it's going to be a very,
2 very low turnout and their success of getting this
3 particular initiative passed is even more great.
4 It's almost like, you know, bait and switch. I
5 want you to come vote for something, but I ain't
6 going to tell you about it until the eleventh
7 hour. And so, this is something that we are
8 really, really concerned about because, in the
9 last two elections, two crucial things were on the
10 ballot about taxes. And, you know, when we hear
11 about how our people have this apathy about
12 turning out to vote, even more so when they have
13 to go and revisit it to go to a run-off election
14 when their candidate may have already won.
15 "There's no reason for me to turn out." And then
16 people quietly put these initiatives on the
17 ballot. And then we wake up the next day,
18 something is passed that may cost us for the next
19 fifty years. And so, that's something of grave
20 concern.

21 The jail-based registration. We have a lot
22 of issues with jail-based voter registration.
23 Matter of fact, one of our -- he was then in the
24 state legislative now is a senate congressman,
25 Steve Scalise, thought it was illegal to do pre-

1 trial voter registration with detainees. I know
2 it's not, but the thing is that this was the
3 mindset of people who are making decisions every
4 day about our life and don't even understand what
5 our constitution says. And so, you know, how do
6 we -- what runs against that -- for the last three
7 years we've had and have a bill pending now in our
8 state legislature to give the right to vote to
9 over seventy-thousand people that's on probation
10 and parole. And, if they don't want to give the
11 right to vote to people on probation and parole,
12 why should formerly incarcerated people have to
13 pay taxes? Because they're written out a system
14 to the extent that the only thing that citizenship
15 really gives us is this right to vote, and it's
16 being restrictive or taken away. Why should I pay
17 taxes in a country that was founded on no taxation
18 without representation?

19 BRUCE REILLY:

20 Thank you. My name is Bruce Reilly. I'm a
21 board member of the Voice the Ex-Offender. I'm
22 also a founding member of the National Formerly
23 Incarcerated and Convicted People's Movement. And
24 I am someone who worked for the group of people in
25 Rhode Island in 2006 to restore voting rights to

1 the people on probation and parole through the
2 ballot. And we did a popular ballot initiative,
3 and we got fifty-one percent of the vote and did a
4 lot of work on it. Some years later, I came down
5 here to go to school and I lost my right to vote.
6 So, I actually wrote my own right to vote in Rhode
7 Island and then lost it to go to law school, of
8 all ironies, of all things. So then, I started
9 doing a little research because that's the kind of
10 thing I do, and I wanted to look into well what is
11 the law in Louisiana and where does it come from.

12 Many of you in this room I'm sure are
13 familiar with the Farrakhan case in the ninth
14 circuit, who felt that, you know, the criminal
15 justice system has a disparate impact. And they
16 agreed with that. And then they ended up
17 reversing themselves and said, "Well, even though
18 as a disparate impact, it wasn't with a
19 discriminatory intent." And so, then I would say
20 to some voting rights attorneys, you know, "Well,
21 what do you think if that case? Was it in a
22 covered jurisdiction?" You know, how would that
23 under Section 5, how -- you know, how would that
24 go down a little differently, perhaps. And, you
25 know, of course, a few eyebrows get raised.

1 So people in this room might also be familiar
2 with "Hunter v. Underwood," a 1985 Supreme Court
3 case, which found that in Alabama, that people who
4 are convicted of crimes of moral turpitude who
5 lost their voting rights should lose their voting
6 rights because that crime was created to target
7 black people. And they had the historical record
8 to back that up. And so, that proved that felon
9 disenfranchisement is not without oversight. And
10 it proved that if you take what seems to be a
11 neutral policy, criminal conviction, but then you
12 look at the criminal conviction and was that
13 neutrally created, and then you're going to find
14 some relief. So, I started looking at the
15 Louisiana historical record, and there's eleven
16 constitutions since 1812, and I read them all.
17 And it was quite an adventure. So, in 1812, you
18 know, there was felon disenfranchisement, but it
19 was "the privilege of free suffrage shall be
20 supported by laws regulating elections and
21 inhibiting all undue influence thereupon from
22 power of bribery to multiple other improper
23 practices." So they wanted to have clean
24 elections. And so they said that if you have a
25 perjury, bribery, forgery, or other high crimes

1 and misdemeanors conviction, which as we know
2 applies to public officials, not to just regular
3 folks. I can't have a high crimes misdemeanor
4 conviction. So those people couldn't vote.
5 That's a rational relationship. That makes no
6 sense. Okay, there's a substantial government
7 interest in folks that have perhaps a voter fraud
8 conviction from voting again, but it doesn't apply
9 to just regular folks. Now, keep in mind, of
10 course, only white people could vote back then.

11 A VOICE:

12 (Inaudible response.)

13 BRUCE REILLY:

14 Yes. So, you know, there are other -- other
15 ways to restrict to, you know, the proper voters
16 as, you know, the powers saw fit. So then, in
17 1845, they added "under conviction of any crime
18 punishable with hard labor." So there's a few
19 things in it. "Under," which is a temporary
20 status which can end in hard labor. So then, in
21 1868, as we know, in the meantime, they repealed
22 all the constitutions, succeeded from the union.
23 So 1868 was kind of the first new state
24 constitution, the carpetbagger constitution. So,
25 in that one they have, you know, those convicted

1 of treason, perjury, bribery, forgery, or other
2 crime punishable in the penitentiary. So, we kind
3 of know what that means, right? You're in the
4 penitentiary.

5 Now, then things started to get a little
6 funny. So, in 1870, the legislature decides that
7 people who participated in the rebellion can
8 regain their voting rights back. And, at the same
9 time, they slipped in "punished by imprisonment."
10 This was a slight little prepositional change.
11 And it kind of opens up a few different
12 interpretations, not necessarily to people who are
13 in prison. And I'm sorry if I'm getting really
14 nerdy and boring here, but this is just the way
15 these things have to go down.

16 So, the key is, you know, -- then they got --
17 people know about the convict police program. And
18 so, they're using penitentiary as a way to get
19 folks to work. And we know what kind of folks are
20 being rounded up to work. We know the crimes that
21 were created. So, very similar to the moral
22 turpitude situation you've got in Alabama.

23 Now the master stroke came in 1896 when they
24 decided that, in two years, we're going to have a
25 constitutional convention. And that

1 constitutional convention is going to have full
2 power to do anything without going to the voters.
3 So, the problem they had at the time in 1897,
4 there are two hundred ninety-four thousand
5 registered voters; a hundred sixty-four thousand
6 were white, a hundred thirty thousand were
7 "colored." Now, that was like, you know, a little
8 bit of an advantage but nothing, you know, big
9 time. But, among those who write their names, it
10 was a hundred thirty three thousand to thirty-
11 three thousand. So, all they had to do was come
12 up with a literacy test and they could change it
13 big time.

14 So, one year later, they cut the voting,
15 registered voters by two-thirds down to eighty-
16 seven thousand, but also increased the -- the
17 impact of whites, who now controlled eighty-seven
18 percent of the vote. So, now they dictated who
19 those members of the delegation were going to be,
20 and we know who they were. And they went in there
21 and they said things, opening statements. But for
22 the existence of that one question, the assemblage
23 would not be sitting here today. We know that
24 this convention has been called together by the
25 state to eliminate from the electorate the mass of

1 corrupt and illiterate voters who have during the
2 last quarter of a century degraded our politics.
3 This is in 1898. So, they wanted created the
4 everlasting foundation of right and justice. And
5 the convention's work may be left to the verdict
6 of history. We're here now.

7 Now, keep in mind every time that in that
8 convention, in those remarks, they mentioned
9 disenfranchisement of "negros," there was a
10 standing ovation. Now, if you read the stuff I
11 read, the notes of the constitution convention it
12 says right in there "applause" every time they
13 talk about taking away the black vote, applause.
14 And they talk about collateral damage. I'm one of
15 those collateral damage people. They're like,
16 okay, if we disenfranchise all these people under
17 different ways, we can't use the words race, we're
18 going to knock out some white folks, but, overall,
19 we're going to control the percentages.

20 So, going back to what Norris said, there
21 were six million people, over six -- about seven
22 million people who were disenfranchised. A
23 hundred and ten thousand in Louisiana. Seventy
24 thousand of those are black folks, okay. And
25 among the voting age population, about seven

1 percent are disenfranchised. These are getting
2 into real numbers, right? This isn't just like .5
3 percent. Now, across Louisiana, three percent.
4 Some in the three percent. Other folks that I
5 know are in the seven percent. And so, these are
6 real numbers. And I think that people need to
7 really take a close look at the rules and the laws
8 and where they come from. Even the law now says
9 you may -- you may be disenfranchise. Or the
10 legislature came up with some -- some
11 interpretation of the details that makes it
12 mandatory. I'm not in a "may" position. I can't
13 just possibly go and vote. No. It's guaranteed.

14 So, I'll just I guess cut my remarks short by
15 letting you know that in the "U.S. v. Blewett"
16 case, which was the crack cocaine disparity case
17 recently in the past year, what the judge there
18 said was basically, if you know something has a
19 disparate impact and you continue to do it, you
20 have discriminatory intent. And I think, on felon
21 disenfranchisement, we've known for a good -- at
22 least a good thirty years or forty years, about
23 the disparate impact. And it just so happens that
24 the law has really changed perfectly with the --
25 the drug war, which was launched in 1971. And

1 we've seen these numbers grow and grow and grow.
2 And if we think about the drug war and if we think
3 about other things and just ask yourself, if those
4 teenaged to young twenties folks that live in
5 predominantly communities of color, if they're
6 being policed at the same rate as those kids who
7 are smoking pot and doing other things on college
8 campuses, if we think those policing rates are the
9 same, then maybe we can say the conviction rates
10 might be a little bit similar. If we think those
11 conviction rates are a little bit similar, then
12 maybe the disenfranchisement's similar. But, we
13 know dang well that the policing is a choice and
14 it's done in certain communities at a very high
15 rate and thus, we end up with disenfranchisement
16 at a very high rate.

17 So, we know that the criminal justice system
18 has a disparate impact. We can debate the
19 discriminatory intent, but we also know that we've
20 known that, and then we can refute the
21 discriminatory intent. You know that in Maine or
22 Vermont, they allow universal suffrage, prisoners
23 vote. I've never heard of a problem. Many states
24 have a much more permissive voting structure than
25 Louisiana. We don't hear problems about formerly

1 incarcerated people voting and people on probation
2 voting. I'll pay taxes for another twenty-five
3 years if I stay in Louisiana and never get the
4 right to vote. I lost my citizenship. I can have
5 a law degree in this country and I'm going to lose
6 my citizenship. People say it's my own fault and
7 I say, "Well, look at your democracy and decide if
8 this is in fact democracy that you might have."
9 Thank you.

10 DR. RAPHAEL CASSIMERE, JR:

11 I have a question for Ms. Hernandez. You --
12 you mention about the invisibility of the Latino
13 community. Is part of that by choice?

14 CAROLINA HERNANDEZ:

15 Yes, I believe part of that is by choice.
16 And I think that the system makes it really easy
17 for them to make that choice.

18 DR. RAPHAEL CASSIMERE, JR:

19 So how do you define "Latino"?

20 CAROLINA HERNANDEZ:

21 How do I define Latino?

22 DR. RAPHAEL CASSIMERE, JR:

23 Yeah. Who's included and who's not?

24 CAROLINA HERNANDEZ:

25 So, in our organization we use the word

1 "Latino" with intent. And the reason we use
2 "Latino" and not "Hispanic" is because the word
3 Hispanic actually does not include Brazilians and
4 other not Spanish-speaking --

5 DR. RAPHAEL CASSIMERE, JR:

6 So it could the Hait -- you include Haitians
7 and Brazilians?

8 CAROLINA HERNANDEZ:

9 Yes. Yeah.

10 DR. RAPHAEL CASSIMERE, JR:

11 Okay. Thank you.

12 ERIKA MCCONDUIT:

13 Do you mind if I use that? This thing is
14 broken. Bruce, I would say thank you for your
15 offer of history. I think that's always a very
16 sobering activity, if you will. Towards the end
17 of your comments you mentioned something that I
18 was going to state, which is that across the
19 United States we have such varying degrees in
20 terms of the way we treat ex-offenders respective
21 to their right to vote, from the most liberal to
22 allowing them to vote while incarcerated to the
23 most extreme, which says if you were ever
24 convicted of a crime you can never vote. And so,
25 I -- I overlay that with Norris's comment that

1 there is a pending bill out in this legislative
2 session that would you said increase the -- the by
3 seventy thousand people?

4 NORRIS HENDERSON:

5 Easy. And that was guesstimation, is seventy
6 thousand. But, that's based upon the fact that
7 fifteen thousand people are released from
8 corrections every year since 1975. And our
9 constitution -- our latest constitution came out
10 that would give us those numbers. The thing about
11 the probationary population, it's transient
12 because probation lasts for just five years.
13 Parole -- you can be on parole for twenty, thirty
14 years.

15 I mean, we have one involving members, a
16 Vietnam vet, who testified at the last hearing
17 that he stayed in prison twenty years, but he has
18 been home for twenty-one. So, for the last -- he
19 come straight out of Vietnam and went to prison.
20 So, for the last forty years he's been
21 disenfranchised. And, you know, the legislature
22 took the comments from one victim advocate group
23 and just shut it down. It was almost like we
24 didn't even exist. It disenfranchised -- it was
25 something that was a consequence of this

1 particular action, the actions of those not
2 looking at the legislative history about how
3 disenfranchise statutes actually impact.

4 ERIKA MCCONDUIT:

5 So I wonder just -- and this is just opinion,
6 and I want you to hypothesize for me just about or
7 explain to us some of the -- what you've heard
8 regarding that particular bill that's currently
9 being proposed.

10 NORRIS HENDERSON:

11 One of the things was, the guy gave asked me
12 to give him a visual. The only visual I could
13 kind of like come up with I said well it could
14 fill the Superdome. And the visual was you just
15 had to see the expression on their faces. And
16 this was a panel, a governmental affairs panel
17 that was predominantly white. They had two
18 African-Americans on the panel. And when they
19 took a vote, the only two votes we got were from
20 the two African-Americans that were on the panel.

21 And so, I'm always reminded of the fact that
22 Steve Scalise at the time in 2003 when we was
23 doing the voter registration drive in the local
24 jail, that he was complaining that this has to be
25 illegal. And so, just the mindset behind somebody

1 who is sitting in legislative office who had not
2 read the state constitution and allow people, pre-
3 trial detainees, to register and vote was almost
4 like accusing the sheriff of coercion and says
5 that -- collusion, and it says that she was doing
6 something illegal also.

7 DR. RAPHAEL CASSIMERE, JR:

8 All people who have been convicted of
9 misdemeanors don't lose the right to vote.

10 NORRIS HENDERSON:

11 Exactly. Exactly. But, the fact of it is is
12 that this is the mindset of people, particularly
13 in this state, because we've been pushing every
14 year for the last three years consistently.
15 We're trying to get this piece of legislation
16 done. And early on, -- the bill was supposed to
17 have come up two weeks ago. But because of the
18 attitude of the committee, the, you know, the
19 legislative just, you know, put it off, "Let's go
20 back and revisit it another day" as we kind of
21 like make our way through the committee. So,
22 hopefully, this time next week it'll come back up
23 maybe with a different result, hopefully.

24 But, the thing about this is that -- what's
25 so striking about this is that we're for fighting

1 for the rights of folks in other countries to vote
2 and the right of folks that were in Iraq voting in
3 jail. Our congress, you know, when those people
4 held up their purple thumbs showing that they had
5 voted in solidarity -- this was under George
6 Bush's administration, you know, the people in
7 congress held up their purple thumbs showing that
8 it's solidarity. Why we don't have that same
9 solidarity for all the Vietnam, all our Iraqi,
10 all the World War II veterans who have fought in
11 wars to protect the right to vote for people in
12 this country and they don't even have the right to
13 vote themselves.

14 And so, we have to ask our -- ourselves
15 what's, you know, what citizenship is worth. I
16 mean, when we stand up and our pledge allegiance
17 to the flag, which flag, that flag or that flag?
18 You know, which one's the most important in the
19 sense that Bruce left from Rhode Island where he
20 had the franchise, moved to Louisiana and he lose
21 it. You know, what part of America are we from?
22 I mean, we could live in Maine or Vermont where
23 the population don't looks like me, but more
24 favors Bruce, they have the right to vote inside
25 of a prison cell.

1 ERIKA MCCONDUIT:

2 Right.

3 NORRIS HENDERSON:

4 So, something is wrong with this question
5 that -- someone needs to raise the question about
6 I can't find the disenfranchiser, but give me
7 something that every time I go to purchase
8 something I'm like a non-profit, a walking non-
9 profit; I don't have to pay taxes.

10 ERIKA MCCONDUIT:

11 So, I have another question. Oh, I'm sorry.
12 You gave me the mic, now I'm going to --

13 So this is really for Carolina and Minh. You
14 both mention the limited access to language
15 materials in both languages, Vietnamese and
16 Spanish. Have you guys worked in terms with the
17 registrar's office or have you seen any movement
18 in terms of being able to have that come on board
19 for future election cycles?

20 MINH NGUYEN:

21 For us, we had to -- in order to get the
22 folks to register to vote, back in 2008, we -- we
23 translated the ballot -- the registration form to
24 Vietnamese. But, only -- but we had to do like
25 almost exactly like it so they could actually use

1 it. But, the barrier that happened afterwards
2 when we registered almost a thousand people during
3 2008, I guess something happened. And I'm glad
4 you brought this up, because what happened was
5 that I guess they were cracking down or whatever
6 they did. And they -- they -- we used to register
7 from an office or like in neighborhoods at
8 churches, at temples, and at businesses. Then
9 what happened was they -- they were actually
10 accepting these registration forms. They were
11 cool with it. And then, in 2012, they said that
12 actually, now you actually have to bring your
13 naturalization paper to city hall, all right, or
14 their passport to city hall. But, before we made
15 copies and we sent them in, and that was fine. In
16 2012, they didn't allow us anymore. So they --
17 they told (inaudible) -- they said this is a law;
18 we have to follow this. This is not me saying
19 that. That's people from above. Now that created
20 another huge barrier for us, for them to actually
21 register to vote, right? So, what's the point of
22 us putting our resources to register to vote --
23 for folks to vote, but now they have to actually
24 end up having to go to city hall to show proof
25 that they're a citizen anyway. So, that's like

1 defeating the purpose of doing that.

2 So, now we just -- we just -- we don't do
3 register -- we don't registration drive anymore
4 because it's not worth it anymore because they
5 have to actually go up to city hall to show their
6 proof that they're a citizen. So that's a big
7 issue that, you know -- that's a big issue that we
8 are trying -- we've been trying to fight for a
9 while now. And that alone, like the Latino
10 community, that's the exact same thing. If you're
11 a naturalized, you have to bring it to city hall
12 to show -- show them proof. You can't give a copy
13 or fax it in or something. We've been saying
14 like, this a government. You can tell if
15 you're -- while you're talking to each other, tell
16 each other that, "Hey, I am a citizen. Why don't
17 you check your records?" Right?

18 So, that's something that I believe that is
19 not being done on the -- on the government level
20 that we definitely need to address. And
21 transportation is a huge issue. To get people
22 to -- that's the reason why they register in their
23 own community, right? They don't have
24 transportation to get to city hall, right? Let
25 alone going -- getting transportation to get to

1 the voting booth. I mean, a lot of them have to
2 walk or whatever or we just have to drive them.
3 So that's something that, you know, I definitely
4 want to address.

5 You know, I went to the Bahamas not too long
6 ago to understand the voting system over there.
7 They have a ninety-nine percent voting rate in the
8 Bahamas because they provide all the necessary
9 translation, transportation. They made it -- they
10 made it readily available for every citizen to
11 actually vote. Why can't we do that here in the
12 United States?

13 MARCIA JOHNSON-BLANCO:

14 Can I just clarify? Is there a state law
15 that has proof of citizenship, or is this just the
16 administrative procedure?

17 MINH NGUYEN:

18 This is the administrative procedure.

19 CAROLINA HERNANDEZ:

20 When we were registering we also stopped
21 register to vote for the same reason. It just got
22 complicated. And only once, maybe twice, if I can
23 remember, the registrar's office actually, because
24 we complained that this was such a complication,
25 they actually agreed to come out to a registration

1 event with a copier. And that way, they knew they
2 were copying an official document. So, there was
3 obviously this administrative concern that we were
4 presenting false documentations. And we, the
5 organization, the non-profit. And I remember they
6 came out once, maybe twice. But they don't make
7 it very easy, and so we just stopped doing it.

8 ERIKA MCCONDUIT:

9 And so, no progress with translation?

10 MINH NGUYEN:

11 I mean, we -- we -- I mean, we sent our legal
12 advisors to talk to, you know, Ann Duplecin (ph)
13 and folks at -- in the registrar of voters'
14 office, and they said, "This is something that we
15 just can't do. It has to happen on the state
16 level to change that." And, again, like, you
17 know, on the registering form it tells you are you
18 a citizen, yes or no. It means that you already
19 asked them the question. And if they lie, I mean,
20 that's --

21 DR. RAPHAEL CASSIMERE, JR:

22 Under penalty of perjury.

23 NORRIS HENDERSON:

24 Right.

25 MINH NGUYEN:

1 Yeah, exactly. So -- so, if they're
2 providing the legal documents to the registrar of
3 voters' office, then you can cross check that if
4 you really need to, right? So, why -- why make
5 it -- why create another barrier by having to go
6 to city hall to provide the -- the original copy,
7 so.

8 NORRIS HENDERSON:

9 One of the things, in keeping with that --
10 one of the same challenges for formerly
11 incarcerated people is discharge. You know, they
12 show up in the voter registrar's office, and the
13 first thing asked, "Can I have proof of your
14 discharge?" So, one of the things that we're
15 saying that -- well, we have a bill pending to
16 change that, too -- that the Department of
17 Corrections notifies the Secretary of State that
18 this person is discharged so it'll already be in
19 the database. Because what happens, when the guy
20 goes there who is kind of like gung-ho to go and
21 register to vote, when you tell him now you've got
22 to go and find another document and bring it back
23 to me, well, you've discouraged him from
24 participating. Dr. Wilson's office has been
25 really -- has really worked with us on this so we

1 can be in that office, call probation and parole
2 on the phone, they'll fax it right over. But,
3 just like when you get convicted of a crime, they
4 automatically notifying the clerk's office, the
5 clerk notifies the Secretary of State, bingo,
6 you're off the system. Well, what's good for the
7 goose is good for the gander. Just like you took
8 me out, you should be able to kind of like tickle
9 me right back in. And so, this is one of the
10 things that, again, we have a bill pending that
11 mandates that the Department of Corrections
12 notifies the Secretary of State where it would be
13 already in the system that if John Doe shows up
14 and he's flagged, well, you can see the form that
15 corresponds with, okay, he was released six months
16 ago, a year ago, whatever.

17 And so, I think that one of the things that
18 you're hearing from these three people of color is
19 that this is something that's systemic across all
20 populations however it shows up. It shows up the
21 very same in the language access here,
22 documentation there, and the same thing about, you
23 know, the proof is -- the burden is always back on
24 us in the sense of trying to do a government
25 document. Because these are government documents,

1 and the basic is the responsibility. If I put my
2 John Hancock on this document, I -- the ownness is
3 on me that I told the truth. If I didn't, okay,
4 well, I violated the law.

5 BRUCE REILLY:

6 I just want to say one more thing.
7 Meanwhile, you know, when you're plea bargaining
8 for a contract for, you know, when you get
9 probation or prison or whatever, nowhere in there
10 does it say you're going to lose your voting
11 rights. Nobody tells you that that's part of the
12 bargain. And then, when you get convicted, you
13 know, whether you went to trial or not, ninety-
14 eight percent of crimes all get plea bargained,
15 but you know, no one says you're going to lose
16 your voting rights. You go to jail, no one says
17 you're going to lose your voting rights. You get
18 out, no one says you've lost your voting rights.
19 You find out you've lost your voting rights maybe
20 through the network and, you know, through people.
21 But, if you didn't, you're going to go to try and
22 vote and, like Norris said, you're going to get
23 discouraged and you're going to find out no. And
24 then for a lot of people, that's the end of it for
25 the rest of their life. We've had a campaign to

1 make people aware that if you're off probation,
2 you get your voting rights back. And we know that
3 voting is a community thing. We know it's a
4 intergenerational thing. We know that we raise
5 children to vote like we voted or at least to
6 vote. And so, when you knock out generations of
7 people -- in the drug war, that's three
8 generations into it. And so, when you take out
9 people like that and then don't even, you know,
10 let them know that's some kind of automated thing,
11 "By the way, your voting rights are restored or et
12 cetera," then people will never know and we're
13 taking on entire communities who don't have
14 structured voting rights.

15 REV. CHIPPS TAYLOR:

16 Well, one thing I'd like to say. And again I
17 hear exactly what you're saying. One thing we
18 have found with the NAACP, that, with voting, it's
19 three-pronged. You have to register them, you
20 have to educate them, then you have to motivate
21 them to get them to the polls. What I'm hearing
22 is that they are throwing up all kind of
23 roadblocks to you to prevent you. My daddy'd
24 always tell me when you give up, they win.
25 Regardless of what the situation is, when you give

1 up, they win. So, what I've always been
2 hardheaded enough to figure out is a way around
3 what they are doing. Look, I refuse to give up.
4 In your situation, you brought up a good point
5 about you got to register to come out and take
6 copies of the registration at that point, that
7 information. So, therefore, those people were
8 able to be registered. Okay, so my suggestion
9 would be is, again, until we can figure out a way
10 to get the law changed, okay, because you know
11 what you're fighting up against, then figure out a
12 way to beat them at their own game. If that means
13 you've got to make twenty-five calls to the
14 registrar's office to make sure you get twenty-
15 five registrars out to your different locations or
16 whatever you have to do, then you need to do it.

17 DR. RAPHAEL CASSIMERE, JR:

18 Don't give up.

19 REVEREND CHIPPS TAYLOR:

20 But, when you give up, when you throw up that
21 white flag and say, "Okay y'all win," they sit
22 back and say, "Yep we ain't got to worry about
23 them. Now let's move on to something else." So,
24 that's just -- that's the preacher in me. Don't
25 ever give up. I don't care if you -- if you've

1 got a thousand voters, okay, you give up, that
2 means you didn't get none last time. If you go at
3 it again and you don't get but a hundred, that's a
4 hundred more than you had before by giving up.
5 Because, when you give up on them they --
6 you're -- you're their lifeline. You know, if
7 they can't depend on you to do whatever it takes,
8 then yeah they're going to give up. They're going
9 to say just like he says, it's a generational
10 thing.

11 So, my suggestion is figure out a way, follow
12 a blueprint, figure out a way to get them to come
13 out to you. And make sure, just like the
14 gentleman was saying with the, you know, with your
15 convicted felons and what have you, they have a
16 pipeline directly to it where to they can call and
17 get this information. Build a pipeline.

18 That's -- that's -- that's my suggestion.

19 MARCIA JOHNSON-BLANCO:

20 Okay. Thank you. I'd like to thank this
21 panel for your testimony. Okay, we are going to
22 move into the last panel of the day, Ms. Bonner,
23 Attorney Gaulden, Attorney Coco. And we'd also
24 like to call up Michelle Delima with this panel.
25 Thank you. Okay. Thank you. And thank you so

1 much for hanging in there. This will be the last
2 panel of the day. I look forward to your
3 testimony. We're going to start with Ms. Bonner,
4 then Mr. Gaulden, Ms. Coco, and Ms. Delima.

5 TRUPANIA BONNER:

6 Mr. Bonner.

7 MARCIA JOHNSON-BLANCO:

8 Mr. Bonner. I'm so sorry. Mr. Bonner.

9 TRUPANIA BONNER:

10 Yes. Trupania Bonner, native of New Orleans,
11 former Executive Director of Moving Forward Gulf
12 Coast and founder of The Crescent City Media
13 Group. And, what I want to discuss or share is
14 sort of a testimonial analysis around voter
15 suppression and the rise of the Republican super
16 majority. And I may not get to the last --

17 MARCIA JOHNSON-BLANCO:

18 Let's just keep it non-partisan.

19 TRUPANIA BONNER:

20 I'm sorry?

21 MARCIA JOHNSON-BLANCO:

22 If you'd keep it non-partisan.

23 TRUPANIA BONNER:

24 Oh, I'll take the word out.

25 MARCIA JOHNSON-BLANCO:

1 Thank you.

2 TRUPANIA BONNER:

3 Can I ask a question about that comment?

4 MARCIA JOHNSON-BLANCO:

5 Sure.

6 TRUPANIA BONNER:

7 Bi-partisan? Should I eliminate "Republican"
8 from my statement or --

9 DR. RAPHAEL CASSIMERE, JR:

10 Well, I don't know if anybody -- they don't
11 have any in Louisiana, so.

12 TRUPANIA BONNER:

13 Okay. What I may not get to is -- in depth
14 is the difficulty that voter suppression and the
15 effects that the super majority have on community-
16 based organizations for concerned citizens and
17 litigators trying to protect the right to vote for
18 all citizens. So, I'll begin my statement.

19 Tonight, I'll share with you testimonial about my
20 work in Louisiana, including voter suppression by
21 purge, super majorities at work, and some
22 encouraging news, the rise of the minority vote.
23 I do recognize I have only five minutes to speak,
24 so let me simplify things by focusing on two
25 moments in time, opportune times to disenfranchise

1 during post Katrina and the post Scotus decision
2 fallout in Louisiana.

3 Now, you know the extreme loss of population
4 in the metro area post Katrina presented
5 significant opportunity for some politicians to
6 engage in discriminatory actions and behaviors
7 after the nation's worst disaster -- natural
8 disaster where we lost a hundred and forty
9 thousand people over the metro area of New
10 Orleans. And having a hundred and eighteen
11 thousand of those folks African-American, we saw
12 our Secretary of State initiate a voter purge
13 before mayoral elections in '06, presidential
14 election in '08, and again, before the mayoral
15 election in 2010. We lost over one hundred voters
16 statewide, with New Orleans taking the hardest
17 hit, erasing forty-five thousand residents from
18 the polls.

19 Now, ideally, we do purge every two years in
20 Louisiana. Now, this is not in regards to the
21 Voting Rights Act or pre-clearance because of the
22 way we situated the voter purge law in Louisiana.
23 Ideally, after a major disaster such as Katrina,
24 we would have or we could have postponed the voter
25 purge until 2010, all right, giving us five years

1 to retain or recover most of our hundred eighty
2 thousand citizens -- a hundred eighteen thousand
3 citizens. It's my belief that this practice of
4 voter purging resulted in a racial political
5 paradigm shift within local government in New
6 Orleans. In short, NOLA went from majority
7 minority leadership to a majority white
8 leadership. This is an example of the seismic
9 political shifts that occur as a result of voter
10 suppression and coupled with retrogression --
11 retrogressing from five majority minority
12 districts in New Orleans to three majority
13 minority districts. And I believe this process is
14 coined unavoidable retrogression.

15 But, you know, so losing a forty thousand
16 people, a hundred eighteen thousand of those
17 people are African American and retrogressing from
18 five majority minority districts to three makes
19 way for the creation of Republican super
20 majorities -- majority legislatures across the Old
21 Confederate South. And so, we see the example of
22 voter suppression -- voter suppression fallout in
23 New Orleans post Katrina. If you couple that with
24 the discriminatory redistricting process, and you
25 get seismic racial political paradigm shift that

1 we saw in New Orleans and that we saw across the
2 south, the Old Confederate South. Since the
3 Scotus decision occurred, Louisiana would no
4 longer need pre-clearance to redraw political
5 lines a/k/a redistricting, nor would they need
6 pre-clearance on voter purge actions. We are
7 already bearing witness to the effect -- to the
8 after-effect of the Shelby case in Louisiana while
9 legislatures with unwillingness to acknowledge or
10 honor legitimate census and redistricting changes,
11 a/k/a "Who cares about PL 94-171."

12 Three examples of voting rights apathy in
13 Louisiana occurred in Baton Rouge, in Terrebonne
14 Parish, and also recently in the legislature
15 when -- I'm calling this a type of antivoter
16 suppression bill presented by Representative Jared
17 Brossett for early voting. This is sort of the
18 effects of the fallout of the Scotus decision in
19 terms of fair representation among city court
20 judges in Baton Rouge. And I'll read verbatim.
21 "Last October Baton Rouge residents, Kenneth Hall
22 and Brian Sharp, sued the state for failing to
23 produce new district lines for Baton Rouge City
24 Court elections after the 2000 census showed that
25 Baton Rouge had become a predominantly African-

1 American city or parish. Three of the current
2 judges are white and two are black, but that court
3 composition is a reflection of a time when the
4 city had a white majority. Blacks now make up
5 fifty-five percent. Louisiana legislature has
6 failed to act on census numbers that increasingly
7 show election -- election boundaries for city
8 judges may need to be redrawn because black
9 residents now make up the majority of the city's
10 population. Chief U.S. District Judge Brian
11 Jackson said he repeatedly asked in hearings since
12 October 2012 -- 2013 why nothing has been done on
13 redistricting when approximately fifty-five
14 percent of Baton Rouge's population is black. The
15 court has given the legislature every opportunity
16 to correct the situation and has failed to do so."
17 The attorney general on this case stated that
18 there were no obvious voter -- there was no
19 obvious reflection of voter discrimination via
20 representation here.

21 Now, all of these examples really lead to one
22 thing. They do not have to play ball with us. We
23 do not represent the majority of the legislature
24 to make decisions about our community, right?
25 We're seeing this in this Baton Rouge case where

1 they just -- the census number did dictate that we
2 should have additional districts drawn for
3 African-Americans -- excuse me. But, time and
4 time again, we see the courts not reflect that
5 decision, right?

6 For nearly two centuries, Terrebonne Parish
7 has used an at-large voting to maintain racial
8 segregated -- a racially segregated thirty-second
9 judicial district. That system for electing
10 judges has guaranteed black voters -- that black
11 voters, despite having tried in election after
12 election, cannot elect their judge -- elect a
13 judge of their choice. This lawsuit seeks to
14 bring greater inclusion and democratic legitimacy
15 to Terrebonne Parish's political process through
16 district-based voting.

17 And, on another note a local judge in
18 Terrebonne as an act of foolishness dressed up as
19 a pimp with a wigged afro. Later, he added
20 blackface. And this is a judge in Terrebonne
21 Parish behaving this way in front of black
22 residents, voters and people that he is supposed
23 to serve, right? So, not only are we dealing with
24 a super majority that would not listen to our --
25 our issues or honor the law. We're watching them

1 blatantly make fun of us, characterize us in
2 minstrel type of behavior.

3 Another note, another example is what I'm
4 calling "Kill Bill Super Majority."
5 Jared Brossett -- House Representative Jared
6 Brossett's early voting bill HB 203 is a type of
7 antivoter suppression offense that we need to see
8 more of in our statement and across the country.
9 The bill was recently defeated by a five/two vote,
10 four Republicans along with one Democrat. And
11 that one Democrat represents the district where
12 whites are seventy-one percent and blacks make up
13 some twenty-five percent. So, it doesn't matter
14 that he's a Democrat; he's still pretty much votes
15 with the white majority in his district. A
16 five/two vote is another example of what we're
17 going to have to deal with moving forward over the
18 next two years, right? Coupled with opportunity
19 or the potential opportunity to have a republican
20 president in the White House makes for a recipe
21 for disaster and may be the end of civil liberties
22 in this country as we know it, based on the
23 examples we've seen.

24 But, I am encouraged to say that in 2012 we
25 did see the rise in minority vote in spite of

1 voter suppression efforts across thirty-nine
2 states in America. We saw community-based
3 organizations, individuals, and litigators respond
4 to the propaganda, voter suppression and outright
5 racial acts, attacks on African-Americans and
6 minorities across this country. And that couldn't
7 be more representative in the smoking gun video
8 that basically put on display Mitt Romney's attack
9 on the forty-seven percent, which really helped
10 initiate or add fuel to this rising majority of
11 the minority vote.

12 Also, in New Orleans, we've also seen a shift
13 as a result of organizers, citizens, and elected
14 officials responding to depleted minority seats
15 across the state. In one case, recently, in our
16 elections we had in New Orleans, we've seen our
17 city council shift back to a majority black city
18 council, right? And so, I'm encouraged by these
19 types of examples, although I'm discouraged by
20 what's happening in Baton Rouge as well as
21 Terrebonne Parish. We have a long way to go in
22 order to protect the voting rights of citizens in
23 New Orleans and across the state, but I'm
24 encouraged by what folks are doing across the
25 country, litigators as well as elected officials

1 in trying to turn back this effort by the rising
2 Confederacy and turn back the hands of time and
3 send us back to pre-reconstruction. And so, I
4 yield with that statement. Thank you.

5 CHARMEL GAULDEN:

6 Hi, my name is Charmel Gauden. I'm an
7 attorney who, for the last decade, has worked to
8 increase equity for African-Americans, women, and
9 the poor, through analysis of barriers restricting
10 equity, including housing choice and evolving
11 strategies with targeted litigation and increasing
12 voter participation. A core part of my purpose is
13 to increase equities involving the people most
14 impacted by discriminatory policies and the public
15 participation part of making law, which means it
16 includes policy analysis, voter registration, and
17 voter education. I'd like to thank you for
18 providing me with the opportunity to present both
19 oral and written testimony for the National
20 Commission on Voting Rights Hearing to address the
21 Voting Rights Act following the Supreme Court's
22 decision in Shelby County. I want to especially
23 thank the Lawyers' Committee for its leadership
24 and consistent engagement with local leaders to
25 shape a national strategy to both document the

1 ongoing problem -- problems facing voters in the
2 South, but also to create solutions.

3 So I want to talk to you a little bit -- Trap
4 kind of and the other panelists he levied right
5 into some of the things I wanted to talk about,
6 especially what's going on in Baton Rouge and
7 Terrebonne Parish. In my capacity as a strategist
8 and a consultant to philanthropy, I've been really
9 fortunate to engage in public education campaigns.
10 In my current work, includes educating the public
11 about their role in electing the judiciary. So,
12 I'm a part of the relaunch of Project Justice
13 NOLA, a website that will serve as a source of
14 information for voters in the 2014 election cycle.
15 This website intends to help improve the criminal
16 justice system by assuring access to justice
17 through information, promoting the use of
18 evidence-based best practices, and aiding the
19 public in holding elected and appointed justice
20 officials accountable for the system's performance
21 and outcomes.

22 In addition to the launch of the website,
23 we're also working to develop print materials for
24 distribution to voters during the year. A key
25 part of that work is our support of Law Day

1 activities. As you may know, May 1 is the ADA --
2 the ADA hosts Law Day celebrations across the
3 country. And this year's theme is especially
4 appropriate, and it's American Democracy and the
5 Rule of Law, Why Every Vote Matters.

6 In light of the Supreme Court's decision in
7 Shelby and the most recent decision, the
8 importance of the individual vote is ever more
9 important. With that framework in mind, I'd like
10 to discuss two assets of critical parts of voting
11 which will require increased vigilance from
12 Congress; access to electoral process and access
13 to information. So, as many of the other
14 panelists have delved into much greater detail
15 than I will about the Voting Rights Act and its
16 instrumental role as a piece of civil rights
17 legislation, I just want to point out that the
18 Voting Rights Act along with the Civil Rights Act
19 of '64, which is now fifty years old, and the
20 Civil Rights Act of '68, which is commonly known
21 as the Fair Housing Act, all work together to
22 create greater economic and political power for
23 minority groups including, but not limited to
24 African-Americans. And Section 5 is an incredibly
25 powerful piece of legislation that we lost, but it

1 creates an opportunity.

2 And one of the things that Trap was talking
3 about what was happening in Baton Rouge, we -- we
4 get to test two things out here in Louisiana. So,
5 kind of an examination of "Hall versus the State
6 of Louisiana" versus the Terrebonne Parish NAACP
7 case. And, specifically because Hall started off
8 both litigating Section 2 and Section 5 of Voting
9 Rights Act which was later struck down, we are
10 able to see it go from pleading stage to what
11 happens in the middle of litigation. And
12 particularly because Hall had retroactive effect,
13 that is a huge question that congress then can
14 answer when formulating how to protect the voting
15 rights, right? So, the Supreme Court may have
16 intended to draw the line right there. No more
17 moving forward with, you know, protections under
18 Section 5. But, the recent application looked
19 back all the way to offenses that happened in 1982
20 in the Hall case that can never seek redress under
21 Section 5. So there's an opportunity there when
22 thinking through reauthorization and reformulation
23 to strike down the retroactive aspect.

24 What also is really interesting from the
25 Terrebonne Parish litigation is we get to watch

1 present day litigation of Section 2 in Louisiana.
2 And I take to heart the earlier comments about how
3 we're getting younger people in the work, right?
4 And thinking through what that looks like because
5 I also echo Tracie's concern about who we're
6 training up in the work, right? So, I am what
7 they would call a baby lawyer, right? It is
8 important for me to be involved in this litigation
9 to understand. And I'm excited to see this moving
10 forward and to have the opportunity to interact
11 with folks who are really doing this work.

12 Key to both of these cases are the
13 unsuccessful attempts to have state legislatures
14 to reform discriminatory policies with no effect.
15 So, this wasn't a litigation that just popped out,
16 right? So they -- especially the Terrebonne
17 Parish NAACP really worked hard with legislature
18 to bring forth, time and time again, a change in
19 the law that would allow them to be able to have
20 representative voting to no avail we saw it in
21 both instances.

22 Judicial elections are incredibly important
23 in Louisiana. As a state with the highest rate of
24 incarceration, one of the most troubling
25 consequences of incarceration and the subsequent

1 collateral consequences that happen later is that
2 loss of the right to vote. So, when we think of
3 the judiciary as an archer of fairness, it becomes
4 incredibly important that we have the component of
5 electoral equity. You know, the judge determines
6 if bond is set. And, if so, in what amount. And
7 this often determines how long someone stays in
8 jail and if they will decide to take a plea
9 bargain just to escape. As you may know,
10 completion, including terms of probation and
11 parole are required in order for voting rights for
12 formerly incarcerated person to be restored. And
13 so, it's incredibly important that we have access
14 to electing judges who understand our experiences,
15 our historical legacy, and just comply with the
16 law.

17 So, my work is providing the community with
18 access to information about voting in judicial
19 elections. And it's created from the
20 understanding that many of the roles judges have
21 in affecting outcomes for our community are
22 impacted with a larger criminal justice system.
23 And since the 1950s, there's been a kind of
24 internal social science debate about who votes and
25 why. And many of those theories develop outside

1 the debates involving discrimination, how there
2 were strands of stereotypes about African-
3 Americans' core of women voters that are reflected
4 in some of the original theories.

5 When asked a question of why someone votes
6 and who votes, the typical answer is people who
7 generally care about politics, they have the
8 resources to participate and are asked to be
9 involved. And I am hoping to also test out some
10 theories around voter motivation with this
11 campaign. So, we saw people found a way to vote
12 in incredible ways after Katrina. They voted.
13 They drove in. They had buses. They were
14 fighting for their place through voting. And that
15 underlies voter mobilization as opposed to issue
16 area voting, all right? And so, a real study in
17 understanding that may address some of the issues
18 earlier folks raised about why young people are or
19 are not voting, what's in it for them, and how we
20 move people into action.

21 And I know I'm over time, but just a few
22 quick points about some recommendations moving
23 forward. So, as I stated, eliminating that
24 retroactive effect is incredibly important if
25 we're moving forward, even if Section 5's gutted.

1 But, we also should think through developing some
2 non-geographic standards for pre-clearance. So,
3 using existing data of racial discrimination
4 collected from HUD, EOC, the EPA, and the Consumer
5 Finance Protection Bureau to develop a framework
6 of inequality not tied to geography, but instead
7 tied to lack of opportunity that the VRA sought to
8 address would be my recommendation in thinking
9 through a new standard of pre-clearance.

10 And also the money question of how you fund
11 this type of litigation. I think it calls for an
12 increased public and private partnership and
13 enforcement between codified and law. So,
14 instrumental and the success of the implementation
15 of the VRA has been centralized oversight from the
16 government. And there are scholars hypothesizing
17 that the void created by Shelby will be filled by
18 NGOs and similar community groups. But, as we've
19 heard from the testimony of the panelists, the
20 funding isn't there, the time isn't there, and
21 sometimes the capacity. So, simply the folks on
22 the ground who know the law well enough to be able
23 to navigate it isn't there.

24 This moving it towards NGOs ignores the
25 challenge of funding this type of litigation from

1 either the private markets of philanthropy or just
2 from the community itself. So, if Congress
3 doesn't act to combat the court's ruling in Shelby
4 by creating pre-clearance jurisdiction, then
5 developing a funding stream in the federal budget
6 to ensure private litigants have resources to
7 litigate these cases becomes instrumental. And,
8 as a fair housing advocate, I would recommend
9 looking at the Fair Housing Act and the programs
10 that fund fair housing centers. And perhaps there
11 is an idea there for the Department of Justice to
12 set aside funds for groups like the Lawyers'
13 Committee, NAACP Legal Defense Fund, and other
14 community groups to really tackle this. Instead
15 of a piecemeal approach, a larger systemic and
16 national approach.

17 JENNIFER COCO:

18 Good evening. My name is Jennifer Coco. I
19 am an attorney here in Louisiana, and I work with
20 the Southern Poverty Law Center. But, I'm here
21 today in my capacity as the volunteer statewide
22 coordinator for the Election Protection Program in
23 Louisiana for the November 2012 election. And,
24 for those not familiar with Election Protection,
25 it is a national, non-partisan coalition of

1 volunteer attorneys and legal professionals
2 working to ensure that all voters have an equal
3 opportunity to participate in the electoral
4 process. And the touch tone of Election
5 Protection is the operation of a national hotline
6 that any voter may use to lodge a complaint or ask
7 questions about their voting rights or local
8 election law. And so, my testimony today will
9 summarize the issues and concerns raised by
10 Louisiana voters in the November 2012 election as
11 were recorded in our Election Protection database
12 that I was able to review and get some summary.
13 So, just to give you a sense of the total call
14 volume, before I get to issues that I was able to
15 identify from reviewing records, in advance of the
16 November 2012 election, the Louisiana hotline
17 received calls from eight hundred and ten voters.
18 Of those eight hundred and ten, five hundred and
19 twenty-eight calls came in on election day. And
20 some of the major issues, two hundred and seventy-
21 nine callers had questions or confusion or the
22 need for information about their polling place.
23 And I think it's really quite interesting that
24 despite the thing of we have Geaux Vote in
25 Louisiana, that voters are still using Election

1 Protection and not whatever resources are
2 available to them. And an additional three
3 hundred and nine calls came in with people
4 reporting questions, confusion, and the need for
5 information about voter registration. And we've
6 already heard testimony about people calling with
7 confusion about their rights as former ex-
8 offenders. And so, a lot of those calls included
9 issues like that as well as absentee voters.

10 So, the first major issue that I would like
11 to raise -- as someone who is not native to
12 Louisiana I found this issue completely baffling
13 and confusing -- is that Louisiana does have on
14 the law a law that says that voters only have
15 three minutes once they enter the voting booth to
16 finish. And this is a law that is vigorously
17 enforced, as I learned from calls on election day.
18 It's codified at Louisiana Revised Statute 18,
19 Section 563, and then for early voting at 18,
20 Section 309. And so, the calls that I received
21 didn't just come from Orleans Parish; they came
22 from Baton Rouge, they came from St. Tammany. And
23 one particular complaint that resonated with me is
24 that, in Orleans Parish, a poll worker was
25 allegedly timing voters on her iPhone and was

1 banging on the voting machine to tell people they
2 needed to leave. And so, we were getting calls
3 from people who either were personally affected by
4 it or were reporting that they saw people having
5 to leave without finishing their ballots. And I
6 also want to point out that for the November 2012
7 election, there weren't just federal races or
8 local races. There were also three extremely
9 complicated lengthy proposed state constitutional
10 amendments that as an attorney, I barely finished
11 in three minutes because I didn't have a chance to
12 review the ballot before I went in and I was
13 overwhelmed by them. So, I would like to, you
14 know, record that the state law is very
15 problematic for many voters, particularly voters
16 who may have low literacy skills for any number of
17 reasons, poverty, disability. And that, you know,
18 the ability to quickly read and vote on all
19 measures, it compromises their ability to
20 meaningfully engage. And I think it also
21 compromises many people's ability to even finish
22 their ballots. Particularly, when it got to the
23 end of the ballot was three very complicated
24 constitutional amendments that had -- were really
25 important key issues for all Louisianians.

1 So, the second major issue I want to
2 summarize is what appeared to me to be the
3 inconsistent administration of elections and
4 polling places throughout the state. And so, I'll
5 go into some of specific issues that I was able to
6 see from all the calls that came in. But, what it
7 appears is that there are inconsistencies with the
8 way that elections in polling places are being
9 administered. And I was personally quite
10 frustrated in my ability to either contact parish
11 boards of elections or even a state board of
12 election to address my complaints coming in that
13 for me, sitting in New Orleans were happening
14 across the state, that, as the statewide
15 coordinator, I was powerless to get in my car and
16 go fix and was unable to contact the state board
17 of elections to fix it.

18 So, for instance we received seventy-eight
19 calls from people reporting that their voter
20 registration efforts had been futile. So, for
21 example, there were calls from St. Landry and
22 Iberia Parishes where callers had said that they
23 went to the DMV and did the motor voter
24 registration and their registrations were never
25 processed and as of election day, they found out

1 they weren't registered to vote. Several other
2 callers complained that they had tried to register
3 at their local Medicaid offices and that whatever
4 paperwork they filled out was never processed and
5 somehow got lost. And lastly, one caller
6 complained on behalf of allegedly hundreds of
7 students at the Southern Louisiana Community
8 College which serves Southwestern Louisiana that
9 there had been a massive voting registration drive
10 and, yet, for those hundreds of students, their
11 voter registration materials were never processed.

12 There were also calls reporting problems with
13 voting equipment. Fifteen such calls covering
14 Orleans, Jefferson, St. Tammany, St. James,
15 St. Landry, and Calcasieu Parishes. And various
16 individuals, volunteers with the program who tried
17 to call the state board of elections and local
18 board of elections, they weren't able to get
19 through and get it resolved. We've already heard
20 about issues with language access. Particularly,
21 that in New Orleans East, there were no Vietnamese
22 poll workers to assist Vietnamese speakers. And
23 what I want to follow up on my colleagues'
24 testimony is that calls to the local board of
25 elections to get assistance on that issue were

1 unsuccessful. At the time that I received the
2 complaint, we weren't able to get through to
3 anybody.

4 And then I want to end with what I've lumped
5 together as inappropriate conduct of various
6 statewide polling places that I think really
7 illustrates that different parishes are taking it
8 upon themselves to administer their elections in
9 whatever local way they choose. So, specifically,
10 in Calcasieu and Terrebonne Parishes, we received
11 several complaints that local election officials
12 have just chosen to shorten the hours of their
13 polling places. In Terrebonne Parish, there was a
14 complaint that one polling place chose not to open
15 till 11 a.m. and then decided to close at 7:00.
16 And, again, I personally tried to reach the state
17 board of elections to lodge a complaint and seek
18 assistance, only to discover that the phone lines
19 were down and I had no way to get in touch with
20 somebody.

21 In another Terrebonne Parish polling place,
22 election officials were asking voters to line up
23 by political party. In St. Bernard Parish, we
24 received a number of complaints that a polling
25 place location that had served the community for

1 years had been changed with no notice and
2 people -- there was one particular family, a
3 mother, a father, and a son somehow were all sent
4 to three different polling places despite living
5 at the same address and had no transportation to
6 get there and were just generally baffled at what
7 had happened to their community polling center.
8 In Iberia Parish, a poll worker was overheard
9 making derogatory comments about President Obama
10 to voters, and I guess efforts to lodge a
11 complaint about that were unsuccessful. In Caddo
12 Parish, there was an electioneering. There were
13 signs for Romney displayed within twenty-five feet
14 of the polling place, and calls to Caddo Parish
15 board of elections was unsuccessful, as their line
16 was busy. And lastly, in East Baton Rouge Parish,
17 local police in Baker, Louisiana -- I received a
18 call from a voter who said that local police had
19 set up a police blockade one block from a polling
20 place that served predominantly African-American
21 residents in Baker, Louisiana. And all voters had
22 to cross the police blockade to enter the polling
23 place. And so many people were either turning
24 around or felt uncomfortable doing that. And this
25 caller specifically received a citation for

1 smoking a cigarette in his car in front of a minor
2 inside of the vehicle, which I later learned is
3 actually illegal in Louisiana. But, that the
4 caller did not know that at the time and felt very
5 uncomfortable, and efforts to kind of resolve that
6 were unsuccessful.

7 So, you know, based on the totality of this
8 it was -- it was alarming. And, frankly, I felt a
9 little powerless that day because, again, I was
10 one person in New Orleans with a bunch of really
11 fantastic eager law students working as
12 volunteers. But, you know, together we were
13 unable to go out and fix these things throughout
14 the state and really left me a little discouraged
15 and concerned about the way and the manner in
16 which the state board of elections was, you know,
17 ensuring that we have a fair administration of
18 elections throughout the state. Thank you.

19 DR. MICHELLE DELIMA:

20 Good evening. My name is Dr. Michelle
21 DeLima. I am an assistant professor here at
22 Delgado Community College.

23 DR. RAPHAEL CASSIMERE, JR:

24 How do you spell your last name?

25 MICHELLE DELIMA:

1 D-e-L-I--a. And I didn't intend to speak
2 today, but I was offered to speak because I have
3 worked as poll commissioner in Jefferson Parish.
4 I was newly commissioned for the November 2012
5 election because I felt that election was pivotal.
6 It needed to be -- it needed witnesses. It
7 needed -- it was an important election. So, my
8 concerns are about the logistics of the voting
9 process, mainly. Some observations I met as poll
10 commissioner -- we were told as commissioners to
11 not vote on election day. We were instructed to
12 come in in advance and participate in early
13 voting. Well, I think the early voting process is
14 only one week in duration, and it's the week
15 before the election is held, which I believe is
16 too short because the day I went, the lines were
17 extraordinarily long. There was a large police
18 presence, and I voted at the Eastbank Jefferson
19 Parish. And we had to snake around the building
20 and up several floors. They escorted us up like
21 five at a time, and there were police presence all
22 over at different points along the way. I think
23 that's unacceptable. It's extremely intimidating.
24 It took me three hours to vote. I also witnessed,
25 once I got up to the commission place where the

1 clerk of court's office is, when I walked in, I
2 saw people being rushed through. And most of
3 these people I witnessed were minorities. They
4 were being told "Oh, just vote for president and
5 leave." They weren't given the adequate time to
6 vote for all of the -- the constitutional
7 amendments and the other elections on there. I
8 felt that that was an injustice, you know, that
9 it -- poll workers at the -- at that place were
10 very impatient with people, and I thought that was
11 unacceptable.

12 On election day, at that time the polls still
13 opened at 6:00 a.m. At 6:00 a.m. -- we got there
14 at 5:30 to set up and the lines were massive
15 between 6:00 and 7:00. There's so many people in
16 line to come vote before they go to work. I think
17 that's a travesty for it to be -- that hour to be
18 eliminated. They really should go back to that
19 6:00 a.m.

20 Yes, Louisiana requires a voter I.D. But, if
21 you do not bring the voter I.D. -- and I apologize
22 I don't know the law and statute -- you can sign
23 an affidavit. Well, the affidavit process is very
24 cumbersome. And if someone comes without an I.D.,
25 it takes us at least ten minutes to sit there and

1 go through, fill out the form and everything.
2 It's very cumbersome for this affidavit process.
3 Perhaps, this is how the State of Louisiana gets
4 by -- gets through with the voter rights in which
5 the incidents that have been going on in Texas and
6 what not that you have to have an I.D. But,
7 still, the process is unacceptable.

8 Another problem in Jefferson Parish is they
9 change polling places very often and people are
10 not being notified. We had several incidences of
11 very -- people who are very frustrated not having
12 their proper place to vote. Another thing about
13 the polling place itself. Previously, I had a
14 neighborhood polling place. Well, that was
15 combined with four to six precincts in one place.
16 And the way that we -- we had no guidance as to
17 how to set up the flow of traffic coming in. It
18 was very confusing to the people who were voting.
19 There was nothing, no guidance. It's like we kind
20 of had to fend for ourselves and figure out the
21 best way to help people vote in the process.

22 I really think there needs to be a better
23 process for vetting poll workers. The poll
24 workers that I encountered, I think there was
25 probably maybe thirty to thirty-five at that

1 combined precinct, extremely slow, not well-
2 versed, really kind of goofing off. That, and to
3 only have a meet up with a poll worker once every
4 two years is insufficient. They need to be
5 encountered more frequently than that.

6 And I would like to finish with, as an
7 educator, I think education is crucial in
8 motivating and evolving people, especially young
9 people in the voting process. It starts with the
10 schools. It starts in the high school. It starts
11 in the colleges. Why not with Common Core make a
12 voting sensitivity or a voting module to help
13 people? And then it would be nationwide. Is
14 there -- is there a place, is there a discussion
15 to maybe make the voting rights a nationwide,
16 instead of relegating it to the states making all
17 these decisions? That would be helpful.

18 And another thing, lastly, young people use
19 this (holding up phone). Why can't we go to
20 electronic voting? Young people are going to be
21 engaged in online and Smartphones and iPads. Why
22 can't we go to being able to register them to vote
23 electronically? They can vote via email. That
24 could free up a lot of the people who are present
25 at the polling stations and make that a more

1 streamline process. Thank you for your time.

2 MARCIA JOHNSON-BLANCO:

3 Thank you. We're going to start with
4 Commissioner Taylor this time. Do you have any --

5 REV. CHIPPS TAYLOR:

6 Oh, well, thank you so much. I have a couple
7 of questions. First of all, is it Charmel?

8 CHARMEL GAULDEN:

9 Yes.

10 REV. CHIPPS TAYLOR:

11 You spoke about, you know, the fact -- you
12 made a very good point about why every vote
13 counts. What's going on in Terrebonne? We're
14 familiar, the NAACP, with the situation with the
15 judges. Where are you at right now with that
16 case? What is --

17 CHARMEL GAULDEN:

18 So, it's not my case, but --

19 REV. CHIPPS TAYLOR:

20 Right. I understand.

21 CHARMEL GAULDEN:

22 -- so the complaint has been filed. All of y'all
23 did a great job of bringing a lot of publicity --
24 oh, I'm sorry -- a lot of publicity about what's
25 happening there. And so, I think there has

1 been -- the answered, but there haven't been any
2 motions for summary judgement, so it's still
3 progressive.

4 REV. CHIPPS TAYLOR:

5 Okay. So it's still in progress? Okay.

6 Thank you. Ms. Jennifer?

7 JENNIFER COCO:

8 Uh-huh.

9 REV. CHIPPS TAYLOR:

10 Before the election, you know, you spoke
11 about -- and I'm not a lawyer, so I guess this is,
12 you know, my -- my dumbness here. When there is a
13 rule on the books that says you have three minutes
14 to vote, what can be done to change some of the
15 laws that exists that we know should be changed?

16 JENNIFER COCO:

17 Well, I mean, brainstorming with my lawyer
18 that on, the first thing you could try is to go to
19 the legislature and tell them that is not a good
20 idea, given the, you know, the extremely high
21 rates of poverty throughout the state -- that is,
22 you know, not a black or white issue. That's
23 affecting everybody -- that maybe that's just not
24 a good idea. But, you know, I think there is
25 certainly a compelling case for thinking through

1 litigation that, you know, it's a modern day
2 literacy test in a way that is certainly impacting
3 people. But, one thing that I -- that I did see,
4 and again, that wasn't part of our training when
5 we were training volunteers and it was something I
6 only sort of came across on election day, which we
7 really confused me about what was going on, and
8 one thing I did see jurisdictions doing is that I
9 could tell they were trying to urge people -- at
10 least I that election, I chose to early vote and
11 at city hall in New Orleans because I knew I
12 wasn't going to have time to go on election day.
13 And I did see that they had giant posters up, so
14 they were trying to encourage people to read
15 through everything and make their decisions before
16 they entered the polling place.

17 So, I see their arguments that, you know, it
18 helps with efficiency and that people don't stay
19 in there for too long. But, you know, I just --
20 there's something about being in there by yourself
21 with the curtain around you and it's quiet and
22 you're getting a chance to really think through
23 it, especially if maybe it's on a -- you know an
24 ancillary issue you haven't thought too much
25 about. I just -- I think the -- the ability to

1 let somebody take their time in there outweighs
2 concerns about efficiency. But, I think, you
3 know, there are certainly different things that we
4 could try to do to, you know, to convince
5 lawmakers it's not a good idea.

6 REV. CHIPPS TAYLOR:

7 Those of us involved in elections know about
8 election protection. We know the importance of
9 it. There's a whole lot of folks who vote that
10 don't. So, what ideas do you have to make this
11 something that more people -- I always say you can
12 have the best ice cream in the world, but if no
13 one knows about it all, it's going to do is melt.
14 So, what can you do -- what can you do to get that
15 word out I guess better or --

16 JENNIFER COCO:

17 Absolutely. I -- I think that, certainly for
18 me, at the point in time at which I became a
19 volunteer statewide coordinator, I was actually
20 fairly new to New Orleans. And I look forward to
21 getting to do that job again so I can do it much
22 better and ensure that more people are aware of
23 it. You know, I know Marcia and the National
24 Lawyers' Committee does a great job making sure
25 people are aware. But, I think, particularly in

1 Louisiana, what did concern me is we still got
2 eight hundred and ten calls with very little
3 personal outreach by myself to advertise it. So,
4 what really scares me is the stuff that's going on
5 that the people without the information aren't
6 reporting. So, I think it would be great
7 something I personally would like to do next time,
8 is to make, you know, better effort of contacting
9 folks in the major cities in Shreveport and
10 Bossier Parish and Lafayette and Baton Rouge to
11 make sure that I have a coordinated effort that's
12 not just in New Orleans. And I think probably
13 better outreach with radio stations, local radio
14 stations that we know people that are maybe at a
15 higher likelihood of getting disenfranchised might
16 also be listening to to make sure that they know
17 what the phone number is. And again, I think
18 better recruitment and more aggressive recruitment
19 of volunteers and really working -- starting to
20 work in the summertime to get ready instead of,
21 you know -- I joined the game very late. I had a
22 few weeks to put something together. And so,
23 working for months to make sure that more people
24 are engaged and that we do a better -- a better
25 job making sure people across the state are aware

1 of it.

2 REV. CHIPPS TAYLOR:

3 Thank you. I just have one last question
4 because it might not come down this way again.
5 Doc, you made the statement that the ten-minute
6 process of filling out the affidavit --

7 MICHELLE DELIMA:

8 Yes, sir.

9 REV. CHIPPS TAYLOR:

10 -- if they don't have the proper information --

11 MICHELLE DELIMA:

12 Yes.

13 REVEREND CHIPPS TAYLOR:

14 -- is somewhat tedious or shouldn't be done that
15 way. What suggestion do you have of a better way
16 to do it?

17 MICHELLE DELIMA:

18 I think that they would still need to sign a
19 form, but I think it would need to be streamlined.
20 It would just need to be one or two statements and
21 "I attest that this is my name, this is my
22 address, I live here," thank you, goodbye, sign,
23 vote. It just seemed like it was -- and it
24 happened more so than I thought it would during
25 the day. And I live, unfortunately, in a very

1 Republican precinct. Sorry, I apologize. And so,
2 I thought that I wouldn't see it as much as I did
3 in say a more impoverished area, but I think it
4 needs to be streamlined, especially for people who
5 are disenfranchised for -- who don't have the I.D.
6 that they need to vote. So, I just think it needs
7 to be streamlined.

8 REV. CHIPPS TAYLOR:

9 Thank you.

10 MICHELLE DELIMA:

11 Yes.

12 ERIKA MCCONDUIT:

13 Sounds like something as simple as getting a
14 form notarized. But, anyway, I want to thank you
15 guys. Particularly, you, Charmel. I think you
16 gave some interesting suggestions in terms of
17 funding set-asides from the DOJ and looking at
18 some kind of non-traditional items for how we set
19 pre-clearance standards and things like that. So,
20 I think that gives us a lot to take home.

21 But, Trap, it's good to see you again it's
22 been a while. But, I want to go to something that
23 you mentioned and this may be just open for the
24 panel, but you mentioned the voter purging post
25 Katrina that led to a racial paradigm shift. And

1 I just -- and we all know that certainly those in
2 New Orleans, in particular, as you gave certain
3 statistics around our city council and other
4 positions, we know that to be the case. How
5 important is it then that, not to just at a local
6 level, but even statewide we have more minority
7 representation? Because I heard all you guys talk
8 to different bills -- not the last one -- but
9 getting killed in the legislature, right? We
10 can't get voting -- early voting on Sunday with
11 representative Brossett's bill. We can't, you
12 know -- so many efforts that seem to fail. We
13 heard Norris on a previous panel talk about his
14 continual attempts around, you know, expanding it
15 for ex-offenders and things like that. How do we
16 start to get to change the tide, if you will?

17 TRUPANIA BONNER:

18 You know, one thing is this, you know. In
19 times past, African-Americans in this past
20 cultivated political power by participating in the
21 census and redistricting process. If you
22 remember, after slavery ended, before that,
23 understanding that political power in America is a
24 numbers game, right, a population numbers game,
25 with slaves heavily concentrated in the South with

1 us having the right to be counted in the census,
2 be counted as citizens, be counted in the census
3 and having the ability to vote literally created
4 political power overnight in the South for
5 African-Americans, at least for African-American
6 males we had the right to vote.

7 And so -- so part of it is, one, us making
8 political civic engagement a part of our
9 lifestyle, right, as opposed to engaging in or --
10 civic engagement versus civic participation is
11 where I'm at, right? We participate on voting
12 day. Engagement is about participating in the
13 advocacy process, going on the offensive in terms
14 of drafting bills such as Representative Brossett
15 did, because his voting bill is a type of
16 antivoter suppression bill, right? And we need
17 more of that in our state and across the South.
18 But, in order to replenish political seats that
19 we've lost in the South over the past twenty years
20 -- and there's some research on this. Dr. David
21 Bosisis (ph) at the Joint Center for Political and
22 Economic Studies did extensive research on this,
23 how we've literally -- how we've basically
24 resegregated the south politically, right? And
25 so, in order to replenish those political seats

1 we've lost, we actually have to get out there,
2 educate our voters about the importance of voting
3 to them, right? 2008 was a moment where everyone
4 was galvanized to support one candidate, right,
5 because they felt that candidate was connected to
6 them in some way. And, on a regular basis,
7 concerned citizens don't feel that way. They
8 don't feel that connection to their
9 representatives, right, because we don't elect
10 candidates of our choice based on our
11 relationships. We show up and we vote for the
12 black person or the white person. And that's the
13 truth, right?

14 So one, making political civic engagement as
15 a part of our lifestyle, but engaging in the
16 census and redistricting process. We organize
17 community campaigns from New Orleans to Dothan,
18 Alabama, across the coast to get folks out to be
19 counted in an area where we felt like we just got
20 duped by the federal government post Katrina,
21 right? Now we're asking them to engage in a
22 federally mandated process, right? Which is a
23 paradox there. But, through heavy voter -- heavy
24 engagement with residents post Katrina, educating
25 them about the census process, passing out the

1 forms letting them know that it's ten questions,
2 not thirty anymore and sort of easing the pain
3 about that process, once we get our folks counted
4 now federal dollars flow within our districts as
5 opposed to outside of our districts and our
6 districts don't shrink. So, we don't lose the
7 ability to elect the candidate of our choice when
8 we participate in that process.

9 Another thing we did was we went out and
10 bought the redistricting software that legislators
11 use. We learned how to draw by hand by Hollis in
12 Mississippi, and then we bought the software and
13 we began to educate residents on how to use it.
14 When I mention that we lost about four -- five --
15 five majority -- majority minority districts and
16 retrogressed to three, we actually drew a map that
17 had us only lose one district as opposed to three,
18 right? And so, that map was not pre-cleared by
19 the Department of Justice. Here's why. Just like
20 the one democrat that voted against Brossett's
21 bill, we had the Democrat that actually drew a bad
22 map. And so, with the Democrat drawing the bad
23 map, Democratic white house in the presidential
24 election year, we're not going to win. And we
25 need to money to litigate because of that, right?

1 And so, when budget cuts happened -- I'm
2 digressing now. But, yes, making it a part of our
3 lifestyle is sort of the movement.

4 ERIKA MCCONDUIT:

5 I could appreciate that. I think that we
6 don't talk enough about the census and
7 redistricting as part of this process.

8 DR. RAPHAEL CASSIMERE, JR:

9 My question is more of a rhetorical question.
10 I was young one time, if anybody's seen me. But,
11 my question is why have we -- what has happened to
12 young people over the last fifty years that they
13 don't understand the importance of voting? I knew
14 if white people didn't want me to vote, I should
15 vote. I mean, we make excuses. We didn't have
16 Internet. We didn't have the kinds of
17 communication that we have which makes it very
18 easy for us to communicate. What has happened to
19 young people that they don't value these things
20 anymore?

21 TRUPANIA BONNER:

22 A part of it is your fault. You know, here's
23 the thing. There's an intergenerational divide,
24 right, in terms of participants and beneficiaries
25 of the civil rights movement, right? There's been

1 a disconnect in the transfer of information and
2 education in terms of the struggle to obtain
3 citizenship and rights in this country. We have
4 lost touch with that, all right? So, I think in
5 terms of engaging young folks, other than actually
6 meeting them where they, we have to begin a
7 process of transferring our history to those young
8 folks.

9 DR. RAPHAEL CASSIMERE, JR:

10 But we said that thirty years ago, forty
11 years ago, you know, the young people are going to
12 take over and they're going to be leaders of
13 tomorrow and we've got to prepare them, but I hear
14 the same old excuses.

15 TRUPANIA BONNER:

16 Yeah. In 2008, young folks turned out.

17 DR. RAPHAEL CASSIMERE, JR:

18 But they didn't turn out. Sixty-nine percent
19 voted.

20 TRUPANIA BONNER:

21 2012, even more.

22 DR. RAPHAEL CASSIMERE, JR:

23 No. Fewer than sixty-nine percent voted in
24 2012.

25 TRUPANIA BONNER:

1 Well, I'll say this. What's been encouraging
2 in New Orleans and other parts of this state is
3 the young folks on a collegiate level, of
4 students, college students, getting more involved
5 and organizing on college campuses to get folks
6 out to vote. And, you know, it really begins with
7 making the connection with traditional civil
8 rights organizations, current community-based
9 organizations, and attorneys, advocates to
10 actually form a collective to actually ramp up
11 education across our state and across our
12 districts. But, I'll let Charmel speak to that.

13 CHARMEL GAULDEN:

14 So, I think that that is a valid point and
15 something that I heard kind of consistently from
16 the panel and the panelists. But a couple of
17 things, right? I was having this discussion with
18 my mother, who in her own right, is a professor
19 and, you know, she's one of those people who ran
20 for school superintendent in rural Georgia and
21 dead people voted. So, she experienced voter
22 fraud, right? And we were trying to think through
23 why some people are activated and some people
24 weren't. And a lot of it was, as she explained,
25 the conversation that continued later in our

1 homes. So, she made a conscious point to have
2 certain conversations with us about the importance
3 of voting and why it mattered. Other people,
4 based on what their struggle was, couldn't relive
5 those memories, right? So, when Travis talked
6 about Hollis is, yeah, a legendary Mississippi
7 civil rights leader, so I knew that Hollis has a
8 constant conversation. But, other people who may
9 have had a similar struggle can't relive that
10 pain, right? So that's one thing.

11 The other thing is we don't have the same
12 name on the enemy, right? So, it is much easier
13 for people of a past generation to say, well,
14 this -- this was something racist that happened
15 because racism was so much more oppressively out.
16 There were hoses, there were dogs, you couldn't
17 drink here. Versus now we have systemic racism,
18 right? So, unless you have a certain level of
19 knowledge, you may not understand that these
20 systems are put in place and are oppressing you
21 and, yes, they are based on race. And people
22 haven't taken the time to really explain that.
23 That's also why I am excited about thinking
24 through some of this voter motivation piece,
25 because you have the opportunity to explain what

1 those systems are. And it is especially
2 troubling -- in this Supreme Court, it is
3 especially troubling when we think through tearing
4 down systemic things, right? So, like they keep
5 revisiting disparate impact in the Fair Housing
6 Act. We see the striking down of Section 5. We
7 are constantly under the attack for people to
8 understand what those larger systems are.

9 And then the third thing I would point to is
10 we have an opportunity with what you said with the
11 web, right? So, I was thinking about Erika's
12 point about how do we get more people involved,
13 how do we get people in to kind of participate in
14 voting for the legislators who are making the laws
15 that are impacting us. And Trap made a great
16 point about not just having people show up on one
17 day to make it a part of the everyday life. And I
18 was a at a second line on, Sunday and that's a
19 part of my everyday life here, right? So, I know
20 where to look. I know where to go. I know, you
21 know, I know how to, you know, work the route and
22 come back home, right? But, that's a part of what
23 I expect to happen during festival season and to
24 lead up into the fall. I'm not sure if we engage
25 the public in that large debate around "This is

1 your role and this is what is expected." And then
2 we don't have people getting back a benefit.
3 Like, they're not seeing themselves reflected, and
4 then there's that question of benefit.

5 So, what do we do about it, right? So I
6 think one of the things that's really exciting
7 about Project Justice NOLA is we get to test out a
8 sneaky way of involving web and voting and
9 thinking about justice in people's everyday lives.
10 So, not just in the website, but the things that I
11 know people of my generation, how we get news,
12 Twitter, our social circle, Facebook. And people
13 may resist it, but we're learning news much more
14 from the people we are around versus what's
15 supposed to be an objective standard. And I say
16 "supposed to be" thinking through our two
17 newspapers. So, there are a lot of things that
18 are different barriers for us, but we also haven't
19 been equipped with some of the same tools that you
20 all received.

21 So, in a separate hat I am working with a
22 foundation to develop kind of a tool kit for
23 emerging leaders, which I will be classified as,
24 to try and engage people more in the process. And
25 what is exciting to me about that is it's being

1 involving people like Hollis who are being our
2 elders to show us how to move through, right? So,
3 we need to understand what the stories are in
4 order for us to be engaged in a different way.

5 DR. RAPHAEL CASSIMERE, JR:

6 I have one final comment. The elephant in
7 the room that everybody wants ignored is the
8 fearful white majority, that either we're going to
9 have to lay their fears that there's nothing to
10 fear because they're not going to be the majority
11 any longer, but we're still going to have the
12 power. But, wait until 2035 when they are no
13 longer the majority and then the minority will be
14 majority. That is the problem that we have. We
15 didn't have that fear in 1960 when whites were
16 eighty-seven percent of the population. Until we
17 get that message over to those who somehow or
18 another fear that we are losing power because
19 we're not having as many children for whatever
20 reason, that there's nothing to fear. So, that is
21 the elephant in the room. I'm sorry.

22 CHARMELE GAULDEN:

23 So -- and I want to toss this over to Trap
24 because that's why I think the census piece is so
25 important, right? So thinking through the

1 changing definitions of whiteness and what has
2 happened to expand what that means, and the
3 contrast around whether -- whether you can relay
4 the fear without a real conversation about race,
5 right? And to really think through why
6 protections have to be in place, what they mean,
7 and for everyone to own what their role is, both
8 black and white. And that's a difficult
9 conversation most people are not interested in
10 having. And until we start to force some of those
11 conversations, we're going to see an increasing
12 definition of whiteness to hold on to that power.

13 DR. RAPHAEL CASSIMERE, JR:

14 That's right. That's right.

15 REV. CHIPPS TAYLOR:

16 Before you pass it to Trap, I want to make
17 one comment, though, for him since he's going to
18 handle it. I had the pleasure of working for the
19 census department for 2010. I started work
20 December of 2008. It was supposed to be a three-
21 month job. I did not end up my tenure until April
22 of 2010. So, I worked many different facets of
23 it. One of the most interesting points I saw was,
24 again, like we showed, it wasn't a thirty
25 question. The questionnaire had ten questions.

1 You got out the house, brother, ten cars parked in
2 the parking lot -- in the driveway, you knock on
3 the door, "I'm with the census. I come to find
4 out how many people live here, you know, get the
5 names," whatever. "We've got two people."

6 "Excuse me?" "We got two people." And we found
7 out that the reason, again, the logic is is that
8 they felt that if they gave us the correct
9 information that either their food stamps was
10 going to be affected, their income, unemployment
11 or something was going to be affected. But,
12 again, they didn't understand and we let them know
13 we could not share any of the information that we
14 got from the Census Bureau with any other agency,
15 period. But, to convince them of that, you know,
16 is like the mindset, so I think education is -- is
17 key.

18 And going back to what, you know, you said to
19 Doc, it's a two way street, my brother. We have
20 the knowledge and we share the knowledge. But, as
21 young people -- my wife is NAACP College and Youth
22 Chapter, the advisor. We had sixteen college
23 chapters in the state, two of them were in
24 compliance. My wife now has probably close to ten
25 in compliance by trying to educate. But, you know

1 how many young folks felt, "Why should we be
2 involved?" So, we have to give them a reason to
3 be involved. And we can't just share on, you
4 know, the fact that yeah we died -- many people
5 died to vote. Because young people look at me and
6 say, "Hey, that's your problem. Okay, what's in
7 it for me?" So it has to be a two-way dialogue
8 to -- to get people involved.

9 TRUPANIA BONNER:

10 And in terms of that message around the
11 census, it has to be a culturally competent
12 message, right? You know, one thing we did and we
13 worked with Urban League other folks in this
14 partnership in producing media, you know, around
15 the importance of the census. We got a New
16 Orleans Saints player to come in and speak the
17 rhetoric. But, the point was, you know, one of
18 the videos had depicted a census agent knocking on
19 a door, and the people on the inside thought they
20 were the feds, right? And, you know, the guy at
21 the door had to explain, "I'm not the feds." We
22 didn't get "X" amount of people counted last time
23 we had the census and this is how much federal
24 money we lost, right? We go straight to the
25 money. It's not going to put money in your

1 pocket, but it's going to put money in your
2 community for infrastructure, right?

3 But, again, it's that message, it's how you
4 convey it to the young folks, and we use media in
5 that way. And it looks like for 2020, we're going
6 to have to create Vine videos in six seconds.

7 That was a thirty-second spot. I think we're down
8 to six seconds on this one.

9 ERIKA MCCONDUIT:

10 Sound bytes.

11 TRUPANIA BONNER:

12 You know, the other piece in leading in, I
13 wanted to say, and this is how I was going to
14 open. What I wanted to do when I walked in this
15 room was set myself on fire, but I'm not sure if
16 folks would have got the gesture, all right. In
17 regard to the super Republican -- the super
18 majorities across the South and the potential with
19 having a Republican president in 2016 is -- is
20 civil rights leaders, our elders, they should be
21 shaking in their bones when we saw the civil
22 right -- the Voting Rights Act get struck down.
23 It should have been a beacon, it should have been
24 a bell, it should have been a horn to get moving,
25 right? And, you know, I'll offend some folks when

1 I said I know you're thinking you're working, but
2 we've got to work a little harder, we've got to
3 ramp it up across the board, right? And, in 2021
4 if we don't have any money to sue for
5 redistricting, forget about it. We needed a
6 mill -- over a million dollars just to get into
7 the game. And then the timeline to actually file
8 suit, present matters, we have no idea. So, there
9 needs to be some levels of reform not only in
10 census, but for redistricting and voter
11 suppression. You know, actually we need --
12 someone, I think it was (inaudible) or someone
13 else said we actually need to make voter
14 suppression somehow a way -- some kind of a way
15 connected to the constitution as opposed to a
16 federal mandated process, right, or whatever.
17 But, yeah, it is the elephant in the room the one
18 no one wants to talk about it. You saw the
19 Confederate flag get added to the Georgia license
20 plate; you saw these young kids get shot in
21 Florida and not get any justice because people are
22 not in the right positions to make decisions,
23 culturally competent decisions about what's going
24 on in our communities, right? And so, I know
25 having a majority black -- majority minority -- a

1 majority majority minority right here in New
2 Orleans doesn't mean that we're going to always
3 have access to everything, right? But, what does
4 it look like in New Orleans currently where
5 African-Americans are majority population but the
6 establishment is majority white? What do we call
7 that in Africa, right? And so, let's get ready.
8 And meaning getting ready means we have to go to
9 the offensive. We have to write bills. We have
10 to draft bills. We have to support bills, right?
11 And so, I'll yield with that.

12 REV. CHIPPS TAYLOR:

13 And you also have to join the civil rights
14 organizations such as The Urban League and the
15 NAACP and become part of it to make a difference.

16 TRUPANIA BONNER:

17 I'll tell you what. If the NAACP will make
18 available to community-based advocates tools we
19 needed -- tools we need to better engage, I don't
20 care if it's the mobile thing or just having all
21 the data on precincts, et cetera, I think we could
22 ramp up education, right? It's just that the
23 folks on the ground, we don't have the tools.

24 ERIKA MCCONDUIT:

25 I take that as a -- I take that as a

1 personal challenge, but I'll make sure that I
2 actually go and look into that because it's always
3 great to have take-a-ways across the board. The
4 only thing I'll say as to your last comment, Trap.
5 I think that more than just civil rights leaders
6 from the past should be shaking in their boots.
7 You know, I think this goes to the Doctor's point
8 that we are not teaching. People -- we didn't
9 know what happened to us with the Shelby decision.
10 That's the reality. Our kids, the younger
11 generation, the millennials even, you know, I'm
12 caught in between, right, but people didn't
13 realize what actually happened in the Shelby case
14 because we don't educate them about certain things
15 like The Voting Rights Act. And so, we do need to
16 do a better job. And maybe it is a rightful
17 suggestion around Common Core to develop a
18 standard that speaks to that. But, we need to do
19 a better job across the board in engaging all of
20 the sectors of the community. Certainly, we
21 cannot only lay it on young people. We cannot
22 only lay it on the elderly. We can't only lay it
23 on certain, you know, certain other minority
24 groups to hold their own in terms of Hispanic
25 rights and Vietnamese rights and even the rights

1 of the ex-offender. So, we have to be, I think,
2 much more intentional about collaborating and
3 sharing resources because we know that our
4 resources are scarce. And so, I just wanted to
5 close out. I know that our time is -- has come to
6 an end, and I actually have to run. I have the
7 kids that must be picked up. But, I want to thank
8 you all for your -- your testimony and for
9 allowing us to be here. The Urban League is
10 strongly committed to this issue. We have been
11 and we are taking it on as an organizational
12 challenge to be much more engaged moving forward.

13 And so, please call on me. As much as I can
14 extend my networks, we have ninety-five affiliates
15 across the United States. We have a vast network
16 of active people on the ground. And so, I want us
17 to figure out how to have more of a national
18 agenda and be better partners to all of the
19 advocacy groups doing work around the country.
20 So, certainly, call on me and I can help touch my
21 colleagues across the country. Thanks.

22 REV. CHIPPS TAYLOR:

23 And, in my closing statements, again, I want to
24 echo what was said at the NAACP at the national
25 level has many of the techniques that you speak

1 of. We just had a major in the fifth district
2 election, we had a major role in that and we used
3 all the modern technology from the tweeting. We
4 tweeted out the message to the individuals. We
5 have a van system that's in place that gives
6 exactly who, what, and where as far as the
7 voting's concerned. So, the information is there.
8 However, we need young individuals to join us so
9 that we can all make it happen. Just like the
10 lady said, we need to work with The Urban League,
11 which we do, but we also need to work with all the
12 different organizations, bring them all together.
13 I'm a firm believer in the church that we work
14 together and we can all be successful. No one is
15 at fault. We all are, okay. But, the only way
16 we're going to make a difference is for all of us
17 to get together and work at it and change what the
18 inevitable is.

19 Just like you said, we as seniors should have
20 been appalled about what happened with the Voting
21 Rights Act, and many of us were and we -- we did
22 what we could do, but we, again, going back to the
23 education piece, a lot of young folks didn't
24 understand what the voting rights meant, you know,
25 what -- what do you mean Section 5? You've still

1 got the voting rights what's the difference? But,
2 it's up the lawyers, it's up to the educators to
3 educate to let folks know what they lost. I
4 started off my statement by saying that we at the
5 NAACP feel that with the voting rights like it is,
6 they left us the car, they just took out the
7 engine.

8 MARCIA JOHNSON-BLANCO:

9 Well, I want to thank you for hanging in
10 there and providing this very important testimony.
11 You certainly embodied that the last is not least.
12 I learned a lot here today, not just about the
13 problems in Louisiana, but you've also shared with
14 us very great creative suggestions that we take to
15 heart. We started today with Dr. Lee talking
16 about approaching voting as a singular act. And,
17 Mr. Bonner, you brought it full circle with
18 talking about civic engagement and how we do that
19 and how -- what a great role education could play
20 in that.

21 And when we started, when we constituted the
22 National Commission on Voting Rights, one of our
23 key goals was to provide that education to start
24 talking about what the Shelby decision meant, to
25 develop that record of discrimination in voting

1 and what's really happening with voting. And
2 then, also, we are going to issue reports of what
3 we hear and make sure that we spread that widely
4 out to all of our networks and so that you can use
5 that information as well in what the work you do.

6 And to that end, I just want to mention
7 before Meredith comes up to officially close
8 things out, that we see this as the beginning of
9 our conversation engagement with you. This is not
10 the end. And we definitely are committed to using
11 the resources that we have on a national level to
12 continue working with you and sharing what we have
13 in building that community. And not just the
14 Lawyers' Committee, I know the NAACP, LDF and
15 Advancement Project and other national civil
16 rights litigation groups who are involved in this
17 fight. The fight is huge, more than all of us.
18 And we definitely need to come together and to
19 work together to push back and fight back. And
20 so, that's -- I wanted to end with that commitment
21 from us, that we plan to continue our engagement.
22 And to that end, we are developing a tool kit to
23 provide information about the Shelby decision and
24 also how national civil rights groups can work
25 with you to train the community and, more

1 importantly, to become the eyes and ears for all
2 the voting changes that we know are coming down
3 the pike, that we can catch them as soon as
4 possible and to do something about it. So, I
5 thank you once again for your time and coming here
6 and sharing your information.

7 MEREDITH HORTON:

8 Thanks, Marcia. So, actually, Marcia
9 captured much of what I wanted to say in closing.
10 Of course, thank you and thank everyone who is
11 here and who participated today. This has been
12 just a fantastic hearing. This is my third, but
13 our fifteenth out of twenty-four, I believe. So,
14 we're somewhere south of the middle. But, in
15 every state, you know, we've heard just a wide
16 variety of challenges and problems. There are
17 definitely, you know, themes that emerge.

18 I was in Massachusetts last week and, you
19 know, there are some things that were discussed
20 there that also made it here today. So, there's
21 clearly a lot of work for all of us to do. But,
22 as Marcia mentioned it's also really encouraging
23 to hear that there is a great community in
24 Louisiana that is committed and has been committed
25 to fighting and really putting the energy behind

1 making sure that you can secure the right to vote.

2 And lastly, I'll just say on Marcia's point
3 about us as a resource. There's been a lot of
4 talk today which I always love as a former
5 organizer now, a lawyer about, you know, making
6 these connections, building these relationships,
7 figuring out how to work together. And, as Marcia
8 mentioned The Lawyers' Committee is definitely
9 committed to doing that as well in Louisiana. So,
10 to the extent that you have questions or there's
11 way that we can be a resource, please feel free to
12 reach out to me, and I can help kind of plug you
13 in or brainstorm ways that we can possibly work
14 together, as we're very interested in that as
15 well.

16 I, again, just want to thank Delgado
17 University and this wonderful video crew who has
18 stuck it out the whole time. I appreciate that.
19 You all have been wonderful hosts, and I really
20 appreciate just all of your support for the event.
21 And, finally, if you have testimony that you want
22 to leave with us today, I'm happy to take it. If
23 you want to submit remarks to support what you've
24 said today, you can email either me if we've been
25 in touch or ncvr@lawyerscommittee.org. And the

1 hearing record for Louisiana will stay open until
2 April 21st. So thank you all, and thank you to
3 our commissioners, Marcia Johnson-Blanco and Elder
4 Taylor. I really appreciate your time and
5 contributions.

6 MEETING CONCLUDED AT 7:10 P.M.

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CERTIFICATE

1
2 This certification is valid only for a transcript
3 accompanied by my raised seal stamped on this page.

4 I, Denise E. D'Arcourt, Certified Court Reporter
5 in and for the State of Louisiana did transcribe the
6 meeting of the NATIONAL COMMISSION ON VOTING RIGHTS,
7 taken April 7, 2014, at Delgado Community College in
8 New Orleans, Louisiana, hereinbefore set forth in the
9 foregoing 190 pages, and is true and correct to the
10 best of my ability and understanding; that I am not
11 related to any party, I am in no manner associated
12 with any of the interested parties to this matter, and
13 I am in no way concerned with the outcome thereof.

14 This 24th day of April 2014, New Orleans,
15 Louisiana.

16
17 _____
18 Denise E. D'Arcourt, #94078
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1 NATIONAL COMMISSION ON VOTING RIGHTS

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MICHIGAN HEARING

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Taken at 471 West Palmer Street,

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Wayne State University Law School

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Detroit, Michigan,

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Commencing at 4:07 p.m.,

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Thursday, January 9, 2014,

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Before Alison C. Matthes, CSR-6266, RPR.

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Job No.: 69622

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1 APPEARANCES:

2

3 ALAN MARTINSON

4 Lawyers' Committee for Civil Rights Under Law

5 1401 New York Avenue, N.W.

6 Washington, D.C. 20005

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10 Guest Commissioners:

11 Dean Jocelyn Benson

12 Judge Harold Hood

13 Professor Ellen Katz

14 Justice Marilyn Kelly

15

16 Panel 1 - Voting Rights in Michigan (Part 1)

17 Rachid Elabed - ACCESS Michigan

18 Dan Korobkin - ACLU of Michigan

19

20 Panel 2 - Election Administration: Challenges, Success &

21 Moving Forward (Part 1)

22 Todd Schmitz - Macomb County Deputy Clerk

23 Gloria Mills - National Action Network

24 Rich Robinson - Michigan Campaign Finance Network

25 Jan BenDor - Michigan Election Reform Alliance

1 Public Testimony - Part 1

2 Tijuana Morris

3 D. Etta Wilcoxon

4 Anita Belle

5 Jean Vortkamp

6 Matt Robb

7 Richard Hairston

8 Valerie Glenn

9

10 Panel 3 - Election Administration: Challenges, Successes &

11 Moving Forward (Part 2)

12 Jesse Buchsbaum - Voice your Vote

13 (University of Michigan student)

14 Melanie McElroy - Common Cause Michigan

15 Sharon Dolente - Michigan Election Coalition

16

17 Panel 4 - Voting Rights in Michigan (Part 2)

18 Chris Rodriguez - Michigan Protection & Advocacy Service

19 Eva Packard - League of Women Voters Michigan

20 Khalilah Spencer - Michigan State Conference NAACP

21 Theresa Tran - APIAVote-Michigan

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1 Public Testimony - Part 2

2 Monique McCormick

3 Michael-David BenDor

4 Catherine Montgomery

5 Melissa Brown

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7 Various men and women, also present

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1 NATIONAL COMMISSION ON VOTING RIGHTS

2 Detroit, Michigan

3 Thursday, January 9, 2014

4 4:07 p.m.

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6 MR. MARTINSON: Good afternoon. Welcome to
7 the Michigan Hearing of the National Commission on
8 Voting Rights. I am Alan Martinson. I am an attorney
9 with the Lawyers Committee for Civil Rights in
10 Washington, D.C.

11 On behalf of Lawyers, good evening. Thank
12 you for your participation and support this afternoon.

13 Right at the outset, I want to thank Wayne
14 State Law School and Dean Benson for hosting us for
15 discussion about one of the most fundamental aspects
16 of our society, the right to vote.

17 The Lawyers Committee is a nonprofit,
18 nonpartisan civil rights organization founded at the
19 request of President Kennedy in 1963 to engage the
20 private Bar in fighting for racial justice and
21 equality. We continue our work today in a range of
22 areas, including as one of the foremost Act Lawyers
23 organizations on voting rights.

24 Today's hearing in Michigan is the third in
25 a series of Nationwide fact-finding hearings convened

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2 by our National Commission on Voting Rights.

3 As many of you know, this summer, the U.S.
4 Supreme Court struck down a key protection of the
5 Voting Rights Act. We expect that Congress will soon
6 be considering legislation to strengthen voting
7 protection to help repair some of what was lost.

8 So, one of our main purposes through these
9 national hearings is to identify the need for strong
10 protections against discrimination in voting by
11 looking at current records -- the current record in
12 states across the country.

13 In addition, we want -- we also want to
14 hear from you about election, administration and
15 election reform. Your input on these issues in
16 Michigan is critical for ongoing advocacy and reform
17 efforts at the local, State and national level.

18 With the testimony we receive today, after
19 the hearing, the National Commission will prepare two
20 reports: One on limiting discrimination and one on
21 election administration and electoral reform.

22 The reports and the records from the
23 hearings will be available in a few months to anyone
24 seeking to reform or approve existing voting laws.

25 Commissioners -- I wanted to introduce the

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2 commissioners to you presiding over our event today,
3 and going to be running the proceedings, are four
4 Michigan commissioners each with a deep commitment to
5 protecting our civil rights and the ACCESS to the
6 ballot on equal terms.

7 First of all, Dean Benson, I want to think
8 her, again, for arranging this event to take place at
9 the law school and for her participation.

10 Dean Benson has not been on the scene in
11 Michigan elections all that long, but she's already a
12 giant, and it's really an honor to have her here.

13 Judge Harold Hood is a retired Michigan
14 Court of Appeals judge who's been an extremely active
15 and well-respected participant in civil and legal
16 activities in Michigan, and we're really lucky to have
17 his wisdom and experience here on the Panel.

18 Justice Marilyn Kelly recently retired from
19 the Michigan Supreme Court, and Justice Kelly is an
20 extremely well-respected judge and recently joined the
21 faculty here, where I'm confident she has been a
22 fantastic addition.

23 Finally, at some point in this evening,
24 Professor Ellen Katz of the Michigan Law School will
25 be joining, as well, as a guest Commissioner, and it's

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2 a particular pleasure for me to have her here as I was
3 a student of hers at University of Michigan, and she
4 also helped me get my current job. And Professor Katz
5 is one of the most respected voting rights scholars in
6 the United States and her work has been extremely
7 influential in that area. We're fortunate to have
8 her.

9 Our commissioners will preside over today's
10 event and receive testimony from several panels of
11 witnesses and ask all questions as they desire to
12 ensure that we create as robust a record as possible
13 about voting rights in Michigan.

14 A few housekeeping items. If you've been
15 confirmed at a panel event, please check in at the
16 sign-in table.

17 For individuals today who would like to
18 share their voting experience and who have not been
19 assigned to a panel, we would like to hear from you,
20 too. If you look at your program, there are several
21 time periods when we are accepting public testimony.
22 Please make sure that you sign up in the foyer area as
23 a witness, and you can work with our volunteer, Carly,
24 who is helping to -- who will help you organize your
25 testimony. A Commissioner will call your name during

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2 the open mic. session as we get that testimony.

3 A few other items, our hearing is being
4 transcribed. Please speak clearly, especially your
5 name. Whether I'm doing that, I'm not sure. Please
6 be mindful of the timekeeper and her signs, and if
7 you're -- if you're on Twitter, we've set up a hash
8 tag for the hearings. It's hash tag NCVR, and my
9 organization is Act Lawyers Comm.

10 And, finally, as a thank you -- I've
11 already thanked Wayne State and Dean Benson. I also
12 want to thank our law firm sponsor, Jaffe, Raitt,
13 Heuer & Weiss, and, particularly, Harold Pope, for
14 helping to pay for the transcription services. I also
15 want to thank the planning committee of Mary Ellen
16 Gurewitz, Harold Pope, Melanie McElroy, and Reggie
17 Turner, and thanks to Brianna Fritz of Wayne State for
18 assistance with logistics and set-up.

19 Finally, I want to thank our commissioners
20 and witnesses and the various Michigan organizations
21 that have helped with planning and promoting this
22 event, including our great co-sponsoring organizations
23 listed in our program and our great volunteers for the
24 National Action Network, and a particular shot out to
25 Reverend Williams in the National Action Network for

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2 providing those volunteers.

3 For more information about the hearings, go
4 to NCVR.lawyerscommittee.org. And if you want to
5 submit additional testimony after the hearing, you can
6 email me at Amartinson@Lawyerscommittee.org.

7 I know that Dean Benson has some brief
8 opening remarks, so I'll turn it over to her first,
9 before we turn it over to commissioners to call the
10 first panel of witnesses. Thanks.

11 DEAN BENSON: Thank you, Alan, and the
12 Lawyers Committee and the organizing committee for --
13 including Wayne State Law School as a part of this
14 important hearing.

15 My name is Jocelyn Benson, and I'm the dean
16 here at Wayne State Law School, but, also, throughout
17 the course of my career, have developed an expertise
18 and focus on what I think is a most important issue
19 facing our democracy, which is protecting access to
20 the right to vote and ensuring everyone's voices are
21 heard.

22 So, I'm thrilled that we can host such an
23 important dialogue here today. And, in particular,
24 our Damon J. Keith Center for Civil Rights has been
25 working, in addition to this particular event, to

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2 advance learning and enhance programming on voting
3 rights and civil rights more broadly throughout our
4 region.

5 But we're all here today because we have a
6 stake in elections in Michigan. And in recognizing
7 the work that we all need to do together as a state
8 and as a citizenry to bring our democracy here in
9 Michigan a little bit closer to the vision of those
10 who founded our democracy centuries ago.

11 Of course, we're very far from those ideals
12 of a perfect democracy where less than half of our
13 citizens, our eligible citizens, vote regularly. And,
14 in fact, for the November 2012 election, more than
15 62 million Americans did not vote. That's 29 percent
16 or a third of our population who's eligible to vote,
17 did not participate. And that includes more than
18 1.6 million Michiganders, or 22 percent. These
19 citizens were not even registered to vote, according
20 to the U.S. Census Bureau. And then we have many
21 other citizens who are registered to vote and didn't
22 participate.

23 All of that is a concern, but when we look
24 at the demographics, of course, the concern
25 exacerbates. It shows that we have a democracy in

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2 which certain voices are heard, but not all voices are
3 heard.

4 Data shows that younger Americans and those
5 with lower family incomes are the least likely to be
6 registered. And I believe, as I know many of you
7 believe, as well, Michigan residents of all ages and
8 background should have equal access to the vote. And,
9 indeed, that's the only way that we can ensure that
10 our Government is making policies that are in line
11 with what's best for everyone, not just a select few.

12 And voting is, of course, important, not
13 only for this current election year, but can impact
14 the direction of our cities and states for years to
15 come. And when we have things like corporate spending
16 on elections at an all-time high and an increasing
17 flow of money to influence our politicians and our
18 elections, now, more than ever, we need to ensure that
19 we're doing everything we can to protect and amplify
20 citizen voices in our democratic process.

21 So, we have many important issues to
22 discuss today. I am very much looking forward to all
23 of the experts who have gathered here, and thank them
24 all for coming out in this wintry weather to speak on
25 behalf of the organizations you represent and the

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2 people you work for and talk about your experiences
3 here today.

4 And, certainly, we want to make time for
5 anyone who's not on a panel that has a story to tell,
6 be it good or bad, about your experience with
7 elections in Michigan, please come forward and speak
8 and share them with us today so that we can build a
9 strong record for the National Commission on Voting
10 Rights demonstrating what is necessary here in
11 Michigan and nationally to improve our democracy.

12 So, with that, I thank you again for being
13 here, and I'll turn it back over to Alan to introduce
14 our first panel. Or I'll introduce our first panel.

15 And our first panel, actually, is two great
16 individuals who have worked on these issues for a
17 number of years: Rachid Elabed, who works with ACCESS
18 Michigan, and Dan Korobkin of ACLU of Michigan.

19 And I also want just want to, again, thank
20 and recognize my fellow commissioners: Professor
21 Ellen Katz from the University of Michigan; Supreme
22 Court Justice Marilyn Kelly, also a distinguished
23 member of our -- a distinguished jurist member of our
24 faculty; and, of course, Judge Harold Hood, all of
25 whom have -- have work that is ground breaking and

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2 significant to improve and focus on these issues. So,
3 we look forward together to hearing the remarks and
4 talking with you all today.

5 And, again, we have Rachid Elabed of ACCESS
6 Michigan, Dan Korobkin of ACLU of Michigan, who will
7 speak on this first panel on voting rights in
8 Michigan.

9 Who would like to go first? Rachid.

10 MR. ELABED: Thank you, Jocelyn.

11 I would like to thank the National
12 Commission on Voting Rights for giving us this
13 opportunity to testify.

14 My name is Rachid Elabed, and I am here to
15 provide testimony on behalf of the Arab Community
16 Center For Economic and Social Services, known as
17 ACCESS, the largest Arab-American -- it is the largest
18 Arab-American human service organization in the U.S.,
19 located in Dearborn, Michigan.

20 I serve as advocacy and civic engagement
21 specialist within ACCESS, and I am their Latin staff
22 person, a nonpartisan voter, engaged in campaign and
23 voting rights issues.

24 ACCESS is a rooted -- is rooted in the
25 grass roots, is dedicated in empowering our community.

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2 For the past several years, voting rights has been a
3 key priority for ACCESS, as we want to ensure that our
4 community is empowered to cast their vote without fear
5 and easy access to the polls. In particular, there
6 are several issues which we are most concerned about.

7 To begin, many polling locations do not
8 provide bilingual poll workers. With the majority of
9 Arab-Americans at many Dearborn precincts, and a
10 number of those citizens for whom English is their
11 second language, there is a strong need to have poll
12 workers who speak Arabic. Having bilingual poll
13 workers increases access to the polls as people feel
14 more comfortable and confident when casting their
15 ballot.

16 Many people who may have been intimidated
17 to vote because they do not have a strong commanding
18 of English language, are more likely to vote if they
19 know someone who speaks their native language is there
20 to assist them.

21 ACCESS recognized this problem and met with
22 the Dearborn City clerk to discuss this matter. As a
23 result, the clerk agreed to hire more bilingual poll
24 workers and asked that we help to recruit them.

25 ACCESS recruited over 30 bilingual poll

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2 workers to work at the different polling locations
3 in -- around the Dearborn area for the first time in
4 2012. We have received a lot of positive feedback
5 from the city clerk's office, as well as the
6 community -- as well as the community members.

7 The voting process has become more
8 efficient, effective with the greater Arab-American
9 turnout. While this is an important step in the right
10 direction, there continues to be a need of increased
11 bilingual poll workers.

12 Also, as well, bilingual materials at the
13 polling locations, including instructions --
14 instruction signs in Arabic. Often -- often, they
15 say, you know, there's a lack of funds for the reason
16 for not having these things in place.

17 Another important issue facing our
18 community is the issue of people being turned away
19 from the polls because of -- their names cannot be
20 found on the poll -- on the voting rolls. In many
21 cases, poll workers cannot locate their names because
22 of misspellings or various English spellings of Arabic
23 names. For example, a person may use a hyphen in
24 their name, but on the voting roll there's no hyphen,
25 and, therefore, their name cannot be found.

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2 In past years, when someone has discovered
3 a misspelling of their name and corrected it with the
4 poll worker, they find that this is a permanent --
5 they find that this is not a permanent solution, as
6 the next time they go to vote, they encounter the same
7 misspelling problem. This causes a lot of people to
8 be -- to be unable to cast their ballot.

9 Finally, another large issue in our
10 community in southwest Detroit is the polling
11 locations themselves. Polling locations are often
12 being repositioned without notice, therefore, when a
13 person goes to their assigned polling location, they
14 find that the location has been shut down or moved
15 with no proper signage or instructions on where they
16 should go cast their ballot.

17 As a temporary solution, ACCESS has sent
18 staff members to previous polling locations and given
19 out information on where the new location is to voters
20 who arrive expecting to cast their ballot and
21 created -- and created and hung up our own signs with
22 information on the new location. But this isn't
23 (inaudible). The community needs proper notice and
24 instructions on where to find the new polling
25 locations to ensure that they actually vote on

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2 election day.

3 So, I want to really thank -- thank you for
4 your time and attention. It's important that we work
5 together to ensure full participation in our
6 democratic process. Thank you.

7 MR. KOROBKIN: Good afternoon, and thank
8 you for your attention to one of the most important
9 civil rights and civil liberties issues of our time,
10 the right to vote.

11 My name is Daniel Korobkin, and I am the
12 deputy legal director of the American Civil Liberties
13 Union of Michigan.

14 The ACLU is the nation's largest and oldest
15 civil rights organization dedicated to protecting and
16 preserving our most important constitutional rights,
17 including the right to vote.

18 The ACLU works in Michigan and around the
19 country to protect and expand the freedom to vote
20 through litigation, legislative advocacy and voter
21 education. The overarching goals of the ACLU's work
22 on voting rights are to ensure that all eligible
23 voters have an opportunity to cast a ballot that will
24 be counted, to make voting as easy and as accessible
25 as possible, and to make sure that all votes are

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2 counted equally.

3 So, three principles guide our work. One:
4 All Americans should be able to vote. Two: Voting
5 should be free and easy. And, three: All votes
6 should count equally.

7 I'd like to begin by speaking about some of
8 what the ACLU has been doing in recent years to defend
9 voting rights in Michigan, and then I would like to
10 offer some suggestions about what steps we, as a
11 community, should take to protect the right to vote
12 over the next few years.

13 The ACLU has worked with coalition partners
14 for many years, such as the NAACP, the Lawyer's
15 Committee for Civil Rights, Dean Jocelyn Benson in her
16 capacity as a voting rights attorney and advocate, and
17 other civil rights groups and leaders to identify
18 imminent threats to voting rights and take action
19 where needed.

20 In light of the recent U.S. Supreme Court
21 decision that struck down part of the Voting Rights
22 Act, I want to draw your attention to one example of
23 action we took, which, unfortunately, we would not be
24 able to take now.

25 In 2007, the Secretary of State announced

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2 that her branch office in Buena Vista Township would
3 be closing. Now, the Secretary of State branch
4 offices throughout Michigan are locations where
5 citizens register to vote, update their voter
6 registration, and obtain the photo ID that is now
7 required at the polling locations.

8 A majority of Buena Vista Township's
9 residents are African-Americans, and the next closest
10 Secretary of State branch office is more than 90 miles
11 away, and that's assuming no major traffic delays with
12 public transportation and so forth.

13 Well, because Buena Vista Township was a
14 covered jurisdiction under Section 5 of the Voting
15 Rights Act, the ACLU and its coalition partners took
16 action to notify the Department of Justice that the
17 closure of a voter registration office could have a
18 retrogressive effect on minority voter participation,
19 and, after receiving our letter, the Department of
20 Justice denied pre-clearance for the branch office
21 closure under Section 5 of the Voting Rights Act,
22 which maintained a vital location for voter
23 registration in a majority minority community.

24 Unfortunately, due to the U.S. Supreme
25 Court's recent decision, this would not be possible

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2 today.

3 The ACLU also helps spearhead a major
4 voting rights case in 2008, joining with the
5 Advancement Project to challenge the Secretary of
6 State's practice of prematurely purging registered
7 voters from the list of eligible voters in violation
8 of the National Voter Registration Act.

9 Voters were being illegally purged from the
10 list in two circumstances: One, when the voter
11 registered -- voter identification cards that are sent
12 to everyone's address before the election were
13 returned by the post office as undeliverable, and,
14 two, when a Michigan voter obtained a driver's license
15 in another state.

16 U.S. District Judge Stephen Murphy agreed
17 with the ACLU that there were many legitimate reasons
18 why a voter ID card might be returned as
19 undeliverable, and that person may be a resident of
20 Michigan for voting purposes, yet have an out-of-state
21 driver's license. Judge Murphy ordered the State to
22 restore the purged voters to the rolls, and the
23 6th Circuit Court of Appeals affirmed his decision
24 just before election day.

25 And then, finally, prior to the 2012

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2 election, the ACLU joined another coalition consisting
3 of labor unions and civil rights organizations to
4 challenge the citizen checkbox requirement. You'll
5 probably hear more about this case from others, but,
6 in essence, the Secretary of State defied
7 Governor Snyder's veto of the law and ordered all
8 election officials to place a citizen checkbox on the
9 forms that voters are required to fill out at the
10 polls.

11 We had serious concerns that the checkbox
12 could be used as a vehicle for racial profiling, and,
13 of course, the citizen checkbox is completely
14 redundant because everyone knows you have to be a
15 citizen to register to vote in the first place.

16 Well, U.S. District Judge Paul Borman
17 agreed that the citizen checkbox could violate equal
18 protection by causing certain voters to be singled out
19 and stigmatized, so he issued a preliminary injunction
20 prohibiting the use of the checkbox for the 2012
21 election.

22 Now I'd like to return -- now I'd like to
23 turn to a few of the significant problems currently
24 impairing the right to vote and what should be done to
25 alleviate them.

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2 Over the past several election cycles, the
3 ACLU has monitored a disturbing trend of incredibly
4 long lines at the polls. In some cases, creating
5 waiting times of four hours or more. Most troubling
6 is that these lines are overwhelmingly more likely to
7 plague low-income areas and communities of color.
8 Long lines mean that people don't vote. Ordinary,
9 hardworking Americans have jobs to get to, kids at
10 home, many other day-to-day obligations that prevent
11 them from spending an entire morning or afternoon
12 waiting in line.

13 But there are relatively simple things we
14 could do to fix this serious problem in our democracy.
15 First, election laws should allow absentee voting by
16 registered voters for any reason at all or no reason
17 at all.

18 And, in fact, some of you may have seen
19 that Detroit Free Press has an editorial in today's
20 newspaper calling for just that change in policy.
21 Many other states allow mail-in or absentee voting for
22 all voters as a matter of course, and ours should,
23 too.

24 Another issue is that many -- in many
25 cases, the long lines are caused by there not being

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2 enough voting booths at the polling location. Well,
3 in our state, it's very easy. A voting booth can be a
4 cardboard box that is folded to create a writing
5 surface and privacy panels. They're incredibly cheap
6 and there's no excuse for not having them.

7 And, finally, centralized training needs to
8 be provided to poll workers so that each precinct
9 captain can learn tried and true methods of keeping a
10 polling location running smoothly and the line moving
11 fast.

12 The second and final serious voting rights
13 problem I'd like to talk to you about in Michigan is
14 the nature of confusion that students face when they
15 wish to vote.

16 TIMEKEEPER: One minute.

17 MR. KOROBKIN: Thank you.

18 Students are often first-time voters. They
19 go to college in a town that is not reflected on their
20 driver's license. There are many needlessly
21 complicated voting rules that might prevent them from
22 being able to cast their ballot on election day.

23 We created a Web by -- a Web-based tool at
24 the ACLU called Student Voting Made Easy, the purpose
25 of which was to guide students through the process so

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2 they could decide where to vote, how, and what special
3 measures they would need to take in advance.

4 But I've got to tell you, despite the name
5 of our Web page, student voting is not easy, and we
6 need to work in Michigan to fix it. Removing
7 impediments should be a priority for legislative and
8 administrative reform.

9 I'd like to conclude by thanking you for
10 holding this hearing and documenting threats to our
11 most important and cherished freedom, the right to
12 vote. I encourage everyone here to contact the ACLU
13 about voting problems so that we can continue to
14 protect voting rights wherever and whenever possible.
15 Remember, all Americans should be able to vote.
16 Voting should be free and easy, and all votes should
17 count equally. Thank you.

18 DEAN BENSON: Thank you very much, Dan and
19 Rachid. Before we proceed to the next panel, I'd like
20 to ask my fellow Commissioners if they have any
21 questions for our current panelists.

22 Professor Katz?

23 PROFESSOR KATZ: Yes, just a quick
24 question. Rachid, you mentioned cost as -- when you
25 were talked about the poll workers in Dearborn -- as

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2 an obstacle to getting more valuable poll workers.

3 And, Daniel, you also made several
4 references to things that could be fixed by cost. Do
5 you -- to what extent would it be useful to the
6 meeting here to the extent to which you could probably
7 describe, are problems of funding that can be solved
8 through better funding or whether they're distinct
9 obstacles to the policy changes you see.

10 MR. ELABED: Well, the -- poll workers
11 wasn't the issue, it's the volume of material. They
12 say they don't have printing -- money for printing and
13 everything. ACCESS has offered to translate
14 everything, you know, for free, and everything, but
15 the printing costs and everything has been an issue.

16 So, you're asking if it -- if funding was
17 there, would it -- yes, definitely. It would be a lot
18 easier, you know -- they would be making it more
19 easier for the communities to get out to vote if there
20 was more funding for volume of materials. Especially,
21 communities like Dearborn, where the Arab-American
22 community is growing by the minute. So, I think it
23 calls -- more funds would be beneficial, more
24 efficient.

25 MR. KOROBKIN: Yeah. I mean, I agree, but

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2 our experience has also been that fixes can be cheap,
3 and they just need to be -- they just need to be
4 implemented. A perfect example is -- is where the
5 long lines are created not by there not being enough
6 poll workers, but by there not being enough spaces in
7 the polling locations for people to stand and mark
8 their ballot.

9 Well, you don't need a computer, in
10 Michigan, to do that, you just need a surface with
11 privacy panels, and that can be made out of a
12 cardboard box. So, it's a matter of having a
13 cardboard box at the polling locations. As things go,
14 relatively speaking, that's an easy fix, and it
15 would -- it would prevent a lot of people from being
16 frustrated and giving up and going home because they
17 couldn't wait in line four hours to cast their vote.

18 MR. ELABED: So, I want to bring something
19 up that Dan mentioned. So, in 2012, there was long
20 lines. ACCESS brought tables to the polling locations
21 and made -- like he said, made boxes and helped them
22 out. We brought three tables to one precinct and
23 brought chairs, and everything, and the process was a
24 lot faster.

25 So, it's, like, a little easy fix that

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2 we -- you know, if the city clerks come to, you know,
3 organizations and ask, you know, we need help with
4 this, you know, we can -- if we share our resources
5 and work together, I think it will make a difference.

6 DEAN BENSON: Okay. Thank you.

7 I'd like to thank Rachid and Dan for
8 joining us today and for this very informative
9 testimony. Thank you.

10 Our next panel focuses -- or continues this
11 conversation on voting rights with the specific focus
12 on election and administration, including the
13 challenges, successes and what we can do to move
14 forward. We have a number of experts and -- from
15 various different corners of the state here to share
16 their perspectives on challenges and opportunities in
17 the administration of elections themselves.

18 And as we're getting set up, I'll just
19 begin describing our panelists. Todd Schmitz, who is
20 a very well-known election administrator in
21 Michigan -- one of the most innovative election
22 administrators in the state of Michigan. He currently
23 serves as the Macomb County deputy clerk with Macomb
24 County clerk Carmella Sabaugh and is going to be
25 talking a little bit about his experiences from the

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2 perspective of a clerk and election administrator.

3 We then have Gloria Mills of the National
4 Action Network. Gloria has also done a great deal of
5 work on election administration, and is going to be
6 talking about some of the challenges and problems that
7 she and her organization have observed and documented
8 in recent election cycles.

9 We then have Rich Robinson, who is the
10 Michigan Campaign Finance Network chair or executive
11 director. Rich is the voice for transparency in
12 politics in Michigan, single-handedly providing
13 everyone else who follows this, and all of our
14 citizens, with information about the influence of
15 money and special interests in Michigan politics
16 today.

17 And, then, finally, we have Jan BenDor, who
18 is the founder and chair of the Michigan Election
19 Reform Alliance, an organization that's focused a
20 great deal on the integrity -- particularly, of the
21 integrity of counting ballots, and will be talking
22 about, I'm sure, a lot of the data-driven analysis and
23 research that her organization has done on that
24 subject.

25 So, I'll ask each Commissioner to keep

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2 their remarks to --

3 Ten?

4 TIMEKEEPER: Eight.

5 DEAN BENSON: Eight?

6 Eight minutes, and then we'll follow up
7 with questions. We'll start with Macomb County Deputy
8 Clerk Todd Schmitz.

9 MR. SCHMITZ: Thank you, Dean Benson.

10 It's an honor to be here. I graduated from
11 Wayne State University, so it's an honor to be back,
12 and, also, to be joining the distinguished panel and
13 all of you here, as well, on this very important
14 topic.

15 I also want to thank Macomb County Clerk,
16 Register of Deeds Carmella Sabaugh, for allowing me to
17 be here testifying today. She has been a champion of
18 voting rights throughout her career as County clerk in
19 Macomb County, and it's an honor to be here.

20 A little bit about Macomb County, and then
21 what I'll also talk about is some of the things that
22 Macomb County Clerk Register of Deeds Carmella Sabaugh
23 has done that might be helpful if other election
24 officials would like to do these things, as well, and
25 we're more than happy to help and show how we've done

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2 it and how it might be done in other areas.

3 And then, finally, I'll close with an
4 innovation that we're really excited about and we are
5 hoping that there can be some action on, which is
6 online voter registration.

7 Macomb County is a county of 840,000
8 people. Of that population, 95 percent of our voting
9 age population is registered to vote. So, we have
10 just over 600,000 registered voters. We have
11 337,000 -- 337 precincts in our county, and in the
12 last presidential election, our voter turnout was
13 66 percent. The last governor election, that turnout
14 fell to 45 percent. So, the difference between the
15 last presidential election and the last governor
16 election in Macomb County was 136,000 votes. 136,000
17 people sat home on that election.

18 The County Clerk doesn't directly
19 administer elections. In Michigan, that's done
20 through the Township and local clerks. But the County
21 Clerk does administer some school elections. But,
22 generally, it's municipal and local clerks that
23 administer the election (inaudible).

24 Some of the things that we have done in our
25 office is, Macomb County Clerk Carmella Sabaugh posts

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2 online the names of the candidate committees that
3 violate campaign finance rules. And once she started
4 posting their names and the amounts they owe online
5 and making it searchable by name for the violations,
6 we were pleasantly surprised that some of the
7 violations went down and decreased, and some of the
8 people came forward to pay the fines that they owed
9 for failing to properly disclose their campaign
10 contributions. That's something that takes a
11 relatively small amount of technology but can shed
12 some light and sunlight on campaign finance.

13 We also post all County and local campaign
14 finance reports online, and Ms. Sabaugh has taken it a
15 step further. We make it so that it's searchable by
16 donor name and by dollar amount. So, if you want to
17 know if a particular vendor to the County has made
18 campaign contributions to particular officials in
19 Macomb County, you can find that out.

20 And we're very proud that -- Rich Robinson
21 took a look at that system a few years ago and called
22 it a model for the state, and that's high praise given
23 the work that Rich has done in this area.

24 We also staffed our polling places with
25 student election inspectors, so the few elections that

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2 we do oversee directly are, mainly, school elections.
3 Election law allows you to place students in a polling
4 place as long as they're supervised by an adult
5 election worker. And, so, in our situation, we're
6 able to put two students in the polling places, a half
7 a day each. We're training a whole new generation of
8 poll workers.

9 We're also putting a generation of poll
10 workers who have some technology smarts in the polling
11 places. And, so, that's a win-win all the way around.
12 That's something that could be duplicated in a serious
13 role throughout the state, as well.

14 And, finally, when it comes to some of the
15 innovations in our elections department, our chief
16 elections clerk is Roger Cardamone, and we are very
17 proud of the way we post our results online. We are
18 very transparent about the way we post results online.
19 We make it very easy for voters to tell who on their
20 ballot has one or is winning, throughout election
21 night.

22 Most people don't know their County
23 commission number. Most people don't know what their
24 State representative number -- district number is.
25 All those people want to know when they log in is, of

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2 the people I can vote for, how did it turn out? We
3 make that very easy.

4 We will also text election results to you
5 throughout the night, and we'll even text you as the
6 lead changes as results come in, if you want to do
7 that. So, those are just some of the areas for
8 technology.

9 Some nontechnical areas, we're very proud
10 that we publicly bid all of our election supplies.
11 That was not a common practice before Macomb County
12 clerk Carmella Sabaugh came into office. The printing
13 of the ballots, the programming of these cards. That
14 is important to have transparent how those contracts
15 are awarded and who's doing it, and the public bid
16 process can be very helpful on that.

17 One final point, and one of the most
18 important, because this is a room where we can have
19 some change, and this topic is online voter
20 registration. Online voter registration will reduce
21 the risk of fraud, save money, and reduce barriers to
22 voting.

23 In Michigan, you can register for the
24 selective service draft online. You can register for
25 the selective service system or the draft online. In

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2 Michigan, you can pay your taxes online. But as a new
3 voter, you cannot register to vote online. And, so,
4 Carmella Sabaugh believes it's time to end online
5 taxation without online representation. If the
6 Government will take your taxes online, they should be
7 able to take your voter registrations online.

8 And there are several problems that online
9 voter registration would solve. The main one is
10 illegible forms. One of the biggest problems we have
11 in getting voter registrations is, you can't read them
12 because they're not filled out completely, the
13 printing is illegible. With online voter
14 registration, by definition, it would be legible and
15 it would be corrected for certain areas of common
16 misspellings.

17 With paper voter registrations, if somebody
18 submits duplicate registrations, there's no way to
19 tell where that's coming from. With paper voter
20 registrations, if somebody is committing fraud or
21 going through the phone book and sending in
22 registrations, it's very difficult to detect because
23 it's after the fact when that paper comes into the
24 clerk's office.

25 With the paper voter registration, the

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2 forms can be signed before the registration deadline,
3 but not dropped off to the Clerk's office until after
4 the registration deadline, and that means those people
5 who thought they registered to vote on time, are
6 disqualified for the upcoming election.

7 Also, when a person registers on paper and
8 mails that in, the person doesn't have a receipt
9 unless they happen to have a photocopier in their
10 house, and most people don't have that.

11 And with paper voter registration forms,
12 there's very little accountability for third parties
13 who conduct voter registration fraud. Online voter
14 registration would reduce the risk for all of those.

15 Forms can be transmitted immediately to
16 election officials with an audit trail making it very
17 clear when an application was submitted and whether it
18 was done on time. IP addresses can be tracked so you
19 can tell, are multiple submissions coming from the
20 same place.

21 We can make sure the forms are legible, are
22 complete, and we even have contact information to
23 follow up with the voters.

24 The Uniform Electronic Transactions Act
25 coupled with the existing Michigan law, we believe,

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2 provides all the authority one would need in order to
3 launch online voter registration today until the
4 legislature or the Secretary can act.

5 Thank you very much for your time. It's an
6 honor to be here. And thank you, Dean Benson, as
7 well.

8 MS. MILLS: I'd like to thank the
9 Commission for, first of all, having this hearing,
10 and, secondly, for asking us to participate.

11 I'm Gloria Mills, and I am a member of
12 National Action Network and several other community
13 groups that have dedicated time and energy to voter
14 registration. So, I'm strictly going to talk about
15 the voter registration process in terms of the city of
16 Detroit, state of Michigan, and the Federal
17 Government.

18 The first thing we were asked to talk about
19 are things that worked and the things that didn't
20 work. In the city of Detroit, in terms of voter
21 registration, we -- those of us in the community, we
22 had a lot of support coming from the City Clerk's
23 office. She personally eased the process for voter
24 registration drives for community-based organizations.

25 And I highlight this because I was involved

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2 with other groups from around the state and their
3 process was much more difficult. So, the City Clerk
4 made the paperwork readily available, there were
5 applications -- registration applications, absentee
6 ballot registrations -- forms -- absentee ballot
7 forms, newsletters, and lots of materials. So, we
8 didn't feel -- we weren't stressed over that, and we
9 got a lot of support that way.

10 We even got assigned staff out of the
11 Clerk's office to help us with the process so that we
12 can continue to work, and that was -- that was very
13 good because, in a city like Detroit, there are people
14 without access. They don't necessarily -- don't
15 necessarily have a way to get to the City Clerk's
16 office or to a Secretary of State's office, so we were
17 able to cover the city quite readily because of the
18 City Clerk facilitating the process.

19 And she also spent time thanking the
20 volunteers and making it an easy situation. So, that
21 was very good. And she also -- the City Clerk's
22 office, we felt, was very good in terms of encouraging
23 the registration of what we call nontraditional
24 voters. We have people at homeless shelters doing
25 registration, transient people. We spent a lot of

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2 time with people who are returning from the prison
3 system.

4 And that's a particular problem. There are
5 enough states in the union who are ex-offenders,
6 ex-felons, whatever they're called, people who just
7 got out of jail, don't think they have a right to
8 vote. So, we spent lots of time with this particular
9 population because they had heard -- and we do so much
10 talking without a basis in fact. These people thought
11 they were not eligible to vote. So, we spent lots of
12 time and got lots of support with this particular
13 group. That's a large group of people who think they
14 don't have the right to vote. So, that was very good.

15 The absentee voting was -- was encouraged
16 because volunteers were allowed to take some of the
17 application forms to people who needed them, so we
18 felt that was very good. The only problem we really
19 had was that there were times when we weren't able to
20 tell people when their voter registration card would
21 be coming. But we were also able to assure them that
22 they would still be able to vote without a card as
23 long as they had the ID. And the ID takes me into
24 another issue, but those were the City Clerk issues.

25 I didn't appreciate some of our voting laws

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2 in Michigan until I spent time looking at applications
3 from other states. Like I said, there are several
4 states that don't allow people who have served their
5 time in -- in jail or prison to vote. There are lots
6 of those.

7 I actually saw an application, I think it
8 was from the state of Alabama -- I have a whole stack
9 of them, I started collecting them -- where they ask
10 people questions like, have you ever been judged to be
11 mentally incompetent? Okay? They ask questions
12 like -- about race and ethnicity. All of those things
13 has nothing to do with the citizen's right to vote.
14 So, we don't have those kinds of questions. So -- on
15 our ballot, our application, it's much better in that
16 sense. Okay?

17 And we also allow people with no permanent
18 address to register. And if you look at the form, it
19 will actually ask you to describe where you live if
20 you don't have an address. Of course, we discourage
21 that, we told people to put an address down because
22 the mailman would have a hard time looking under the
23 bridge of a freeway to give someone their card, but
24 there was lots of -- lots of leeway there.

25 And we found, also, that homeless shelters,

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2 soup kitchens, and so forth, those people would take
3 the mail and would allow those people to have an
4 address. And it's a very heartening thing to actually
5 register someone who is homeless, because it makes
6 them feel a part of -- of the city, the state,
7 whatever. It is very, very -- those are some of the
8 most heartening things that we were able to do because
9 of the leniency on that particular point on the
10 state -- the State law and the ballot.

11 Now, of course, we've ran into all kinds of
12 problems with the voter ID. The minute that started,
13 people would say, oh, I can't register, I don't have
14 ID. So, we have to explain to them, we, as the people
15 taking the registration, did not need the ID. They
16 would need the ID when they went to vote.

17 So, then, that caused us to have to -- we
18 have to find places where people with no money -- and
19 there are some people who don't have any money -- we
20 had to find places where they could do -- get free ID.
21 Secretary of State's office had a -- you know,
22 checking the laws, there's a small part that says, the
23 Secretary of State, for people on Social Services, and
24 so forth, to get a free ID. But every time we sent
25 someone, we did not get good results there. So,

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2 that -- that's a sticking point, of course, that --
3 that free ID -- the voter ID situation.

4 Now, on the Federal level, it's very, very
5 interesting. The first thing that we would ask is
6 some uniformity in rules and laws because the minute
7 you talk to someone from out of state, they would tell
8 you about the rules where they came from, so we have
9 to spend time convincing them that the laws were
10 different in Michigan.

11 I actually had some of the volunteers that
12 I worked with, carry a copy of the law that stated
13 that ex-felons or offenders could vote. They did not
14 believe us. So, we literally made a copy and handed
15 it to them saying, right here, it shows that you are
16 eligible. Because they wouldn't register because they
17 just knew in their heads that they were not eligible
18 to vote.

19 So, it would be nice to have some national
20 laws so that people who travel from state to state --
21 and, in this economy, they're going to continue to be
22 transient. It would be very nice to have people know
23 that there's some standardization for the laws.

24 And as I say all of that, one of the
25 solutions to this problem -- and since we're

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2 testifying, I can say this -- why does a citizen have
3 to register to vote in the first place? Okay? I just
4 want to say that. Why do we have to vote? I never
5 registered for IRS and lots of other places that know
6 me very, very well.

7 If you're a citizen of this country and
8 you're guaranteed the right to vote, why do we have to
9 spend hours and days having people fill out a form if
10 they're already citizens of this country? And people
11 who are naturalized, as soon as their process is --
12 has taken place, they should be eligible to vote. So,
13 that's the kind of thing that would override all of
14 these kinds of problems that we're having.

15 And you mentioned the electronic. We track
16 everybody. We know where everyone is, so there
17 wouldn't be a problem. Okay? And that's one of the
18 things I would like to see, the fact that a citizen is
19 eligible to vote without us running around getting
20 them to fill out all of these papers, whether it's
21 electronic or whether it's paper.

22 If you're a citizen, you have a right to
23 vote, then that should be it. There are plenty of
24 ways to track someone. Okay? There are states that
25 have same day registration. There are all kinds of

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2 different things that you can track a person when they
3 come in to vote.

4 You can -- you know whether they were
5 eligible, and you also have the electronic way of
6 making sure they're not voting more than once. And we
7 have very little problems about people doing multiple
8 voting. We spend enough energy making sure people are
9 eligible to vote the first time.

10 So, basically, I'd like to thank the
11 commission, and those are the things we encountered,
12 and some of us were in the streets about three years,
13 all over the place, doing voter registration.

14 MR. ROBINSON: My name is Rich Robinson. I
15 am the executive director of the Michigan Campaign
16 Finance Network. I am grateful to the Lawyers
17 Committee for bringing this hearing to Wayne State and
18 grateful to the distinguished Commissioners for being
19 here.

20 I have left a copy of my testimony on the
21 table outside and a couple reports, publications, from
22 my organization, so I'll try to be brief and summarize
23 my comments.

24 Michigan is unique and, in my mind, the
25 dark money capital of American politics for the

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2 extensive degree of undisclosed, untraceable spending
3 in our elections.

4 Since 2000, I have been able to
5 document \$88,000,000 of television advertisements in
6 Michigan campaigns and elections that have not been
7 disclosed to the State of Michigan through the
8 Campaign Finance Reporting System. To the State of
9 Michigan, those advertisements are issue advocacy.

10 Nondisclosure reached its worst in the 2012
11 Michigan Supreme Court campaign when \$5 million of
12 spending was disclosed, and I was able to
13 document \$14 million of undisclosed television
14 advertising about the candidates, 13 million of which
15 was paid for by the political parties.

16 In response to this situation, the State
17 Bar of Michigan requested the Department of State to
18 review an interpretation of the Michigan Campaign
19 Finance Act as to what was or was not a reportable
20 campaign expenditure. The Secretary of State
21 responded that she would not make a special rule for
22 judicial campaigns, but she agreed with the point
23 that, in view of contemporary United States Supreme
24 Court campaign finance opinions, that a new
25 administrative rulemaking process was in order to

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2 break this vast amount of spending under the
3 disclosure system.

4 The morning she published her intentions,
5 there was a committee meeting of the Michigan Senate
6 Elections Committee considering a bill to double
7 limits on contributions to state and local candidates.

8 My testimony to that committee was,
9 99.99 percent of Michiganders don't bump their heads
10 on the current limits. That was a provision for one
11 in 10,000 Michiganders who would like to give more
12 than what the current limits allowed.

13 After my testimony, an hour long recess was
14 called, an amendment was made to the Michigan Campaign
15 Finance Act changing the definition of what a campaign
16 expenditure would be to assure that all this
17 undisclosed, quote, unquote, issue advocacy would be
18 excluded from any mandatory disclosure. That
19 revision/amendment to the Campaign Finance Act passed
20 both chambers of the Michigan legislature with only
21 Republican votes, and it will be two weeks tomorrow
22 afternoon that the bill was signed into law by
23 Governor Snyder.

24 Now, mind you, this -- we're talking about
25 the Friday afternoon between Christmas and New Year

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2 when thousands of Michiganders were without power in
3 this state, including me. This was the most cynical
4 and, I believe, sinister sequence of events in the
5 political realm that I have seen in 15 years of
6 watching Michigan politics as a close observer. This
7 is confounding the public's right to know who is
8 spending the money in our campaigns and elections.

9 Now, the Citizens United decision has
10 gotten a lot of attention for the fact that it opened
11 campaign spending to corporations to say explicitly to
12 vote for or against a candidate, but part 4 of the
13 Citizens United decision was a question about
14 disclosure, and the opinion of the Court said the
15 First Amendment protects political speech. Disclosure
16 allows citizens and voters to interpret the messages
17 they're hearing in a proper way to know whose speech
18 they are hearing.

19 There's another aspect of this. People who
20 write large checks in political campaigns are
21 investors. They're seeking a policy return for their
22 political investment, and transparency is our
23 inoculation against corruption.

24 We've taken a major step back in the last
25 two weeks as far as what can be known about whose

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2 money is paying for campaigns and elections in
3 Michigan. It's an extremely bad development. We were
4 already way worse than federal campaigns and elections
5 and most states. So, I'm not sure exactly what course
6 of action I'm recommending, at this point. I would
7 love to see a citizens referendum to repeal this
8 repugnant act, but I'm not sure if the people of power
9 can be mobilized to do that.

10 So, those are my comments. I thank the
11 Commission for this hearing and for allowing me to
12 participate.

13 MS. BENDOR: Thank you, Rich, and my fellow
14 panelists and Commissioners. I really value the work
15 that all of you do. If it weren't for our team work,
16 we wouldn't be as far as we are.

17 And I especially want to thank Alan
18 Martinson, who has not only really worked hard to put
19 this event together, but Alan has been a tremendous
20 help to us in Michigan from his office in Washington
21 as we have struggled mightily.

22 I'm Jan BenDor. I am the state coordinator
23 for the Michigan Election Reform Alliance.org, and
24 that is our name and, also, our Web site, and I
25 welcome you to go on that Web site where you'll see

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2 quite a bit of our work, our testimony in front of the
3 legislature, our report on the 2006 Michigan voter
4 purge in which the Secretary of State, in advance of
5 the 2008 election, attempted to purge about 800,000
6 voters not following the MVRA regulations.

7 Our nonprofit and nonpartisan organization
8 formed in 2005, and we had a very broad agenda for
9 voting rights and election integrity. And election
10 integrity, for us, includes a lot of things. Such as,
11 if you're going to register voters, you better keep
12 those data really, really carefully.

13 I have served as an election inspector, a
14 State-accredited election administrator and a
15 certified election worker/trainer for 15 years, and I
16 currently work as an appointed deputy clerk in
17 Washtenaw County.

18 Our most immediate concern focuses on a
19 very, very serious threat to your right to vote, and
20 it's a crisis, our failing vote tabulators in the
21 state of Michigan.

22 The November 2012 general election saw
23 widespread machine breakdowns in Michigan, and I am
24 quoting the director of the Bureau of Elections Chris
25 Thomas, who testified to this problem in front of the

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2 U.S. Election Assistance Commission in early 2013.

3 "To date, there's been no public discussion of the
4 need to address this coming election cliff, which is
5 the certain breakdown of about 8,000 aging vote
6 tabulators."

7 This is like, we have an 11-year-old car,
8 folks, and we can't keep it going much longer. It's
9 gonna break. We have written an extensive report
10 about this problem, and you'll find it on our Web
11 site. We have detailed the costs and consequences of
12 failing to plan for replacing the current machines and
13 to consider what a new and much more reliable and
14 transparent system might entail. Right now, we're
15 paying very high costs, monetary, human and political
16 by relying on these deteriorating vote tabulators.

17 Vendors, on November 6th, 2012, received at
18 least 200 tabulator service calls. In the run-up to
19 the election, there were at least 783 documented
20 service requests. In Ingham County, the home of our
21 state capital, fully one-third of local jurisdictions
22 reported tabulator malfunctions.

23 According to our friends at the Lawyers
24 Committee for Civil Rights, who run the hotline on
25 election day, they saw -- they were describing in

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2 their -- in their general election report on Michigan,
3 quote, "Voting machine failures around the state and
4 poll workers inadequate responses to those failures
5 contributed to long lines."

6 Now, for many years, voters in some
7 Michigan precincts have waited hours to vote. We know
8 that our average wait time in Michigan is in the top
9 five longest in the country. We are among 12 states
10 that have a wait time of over 20 minutes. That's not
11 good.

12 The Pew 2012 election snapshot for Michigan
13 put our average at 22 minutes, but this can be
14 misleading. There are a lot of factors that can
15 affect the statistic, but the failure of a single
16 tabulator can shut down a precinct for hours. And the
17 research by the folks out of Ohio state showed that
18 when a voter has to wait over an hour -- usually, the
19 wait's a lot longer, it's two or three. So, we're
20 getting up to the point where people are going to walk
21 away and not vote. And that happened in the 2008, as
22 well, and the NAACP reported many instances of that.

23 So, we've concluded that our tabulators
24 that we're using, which were bought in 2003 and 2004
25 with Federal Help America Vote Act money, they're

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2 inaccurate. And we've done some very sensitive
3 studies to show that they can be as much as 2 percent
4 off. The first congressional district in 2012 was
5 decided by .46 percent. So, it -- you can't trust
6 them with a close election.

7 These are prone to malfunction, they jam,
8 they're not secure, they're easily compromised, and
9 we've been able to demonstrate how easy it is to hack
10 them. And they're already beyond their recommended
11 service life. We need to retire them as soon as
12 possible. Let's -- let's get out of this old car.

13 Now, replacing them with more of the same
14 would be foolhardy. There are two remaining vendors
15 in Michigan, Dominion and ES&S. They've combined into
16 one foreign-based company. So, they're, effectively,
17 a monopoly, and this monopoly operates proprietary
18 election software, it's counting our votes in secret,
19 and the software, by Michigan election laws, is exempt
20 from disclosure, so you can't know what it's doing.
21 You can't read the code. Is two plus two four? We
22 don't know.

23 Much of Europe, India, Canada, and some
24 U.S. states like New Hampshire, have been hand
25 counting votes, and they've been showing that that's

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2 reliable, very -- very transparent because everybody
3 can watch it, and the United Nations considered hand
4 counting the gold standard for counting votes. That's
5 a world standard. So, while we're phasing out the old
6 tabulators, we can also, maybe, hand count audits,
7 which would be an important tool to ensure that the
8 results produced by the tabulators are correct, and
9 these would be random audits designed to assure that
10 we have a confidence level in the outcome.

11 MERA is recommending that the Michigan
12 legislature establish a blue ribbon commission to hold
13 public hearings, receive testimony, develop a
14 comprehensive plan for a transition to a more
15 transparent, accurate, verifiable vote counting
16 system, and we want them to prepare legislation for
17 implementation. We already have been looking for
18 sponsors, and we think we have some, and that's
19 wonderful. We need more.

20 By the way, the state of Colorado is doing
21 this right now, and California has already gone
22 through it. So, we're not the first ones.

23 The costs of doing nothing are very high.
24 The costs of addressing the problem are very small, in
25 comparison. It would be an investment that would pay

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2 us very soon. Instead of spending all that money on
3 new questionable equipment, we -- we could actually be
4 employing 20,000 Michigan voters in every election to
5 hand count votes the votes, specially trained
6 counters. Why not keep the money here?

7 So, I would encourage you to read our
8 report. It's at
9 www.michiganelectionreformalliance.org. You can get
10 our previous report on the voter purge, as well.

11 This is our new report showing, vote here,
12 and a trash can, which is what a lot of voters feel
13 like these days.

14 And I want to thank the Commission for your
15 attention to our remarks.

16 DEAN BENSON: Thank you to our panel, Todd,
17 Gloria, Rich, and Jan, for your very informative
18 testimony.

19 Before we move on to the public testimony
20 period of our hearing, I will ask my fellow
21 Commissioners if they have any questions for our
22 current panel.

23 Justice Kelly?

24 JUSTICE KELLY: Yes. Ms. BenDor, I found
25 your testimony very interesting. The idea that we

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2 would go back to hand counting seems like a step
3 backwards, in truth. Wouldn't it take a terribly long
4 time to calculate election returns going back like
5 that?

6 MS. BENDOR: I'm really glad you asked
7 that. That has been the PR for the voting machine
8 companies, and the media are partly to blame for this,
9 also, because they're always pressing, we've got to
10 have results. But what happens in a precinct when the
11 machines jam and the numbers can't be balanced, is
12 these people often end up staying until 2 or 3 in the
13 morning have to rerun all the ballots, anyway. So, we
14 might as well just do it once and get it right.

15 And we've done a lot of experimentation
16 with hand counting, and trained counters are
17 incredibly fast. We have seen trained counters go
18 through 1200 ballots, which is what you might have in
19 a precinct, in two and a half to three hours. But you
20 have to be trained. You can't just sit down and
21 figure it out on the spot.

22 And, you know, when you think about it,
23 what is the need for speed? Is -- is that going to be
24 for the integrity of the vote? Is that what the
25 voters really want? Can't we get the results at

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2 midnight? Do we have to have them at 9? Let's get it
3 right, and then we can have confidence in our
4 democracy and know that the right people won or the
5 right ballot question won.

6 JUSTICE KELLY: I have one more question.

7 Mr. Robinson, you talked a lot about the
8 use of dark money and the effect that this new
9 legislation will have on Michigan elections. Is that
10 true in elections that are both partisan and
11 nonpartisan?

12 MR. ROBINSON: It is. In fact, the
13 greatest percentage of undisclosed money in election
14 campaigns that we've observed so far have been in
15 nonpartisan judicial campaigns, although undisclosed
16 money is endemic to our gubernatorial campaigns and it
17 has recently become a feature of Attorney General and
18 Secretary of State campaigns, as well. So, it's
19 everywhere.

20 JUSTICE KELLY: Do you think that, in the
21 next election, the public will be interested in
22 discussing this issue and the votes taken on this
23 legislation?

24 MR. ROBINSON: Well, I hope so, because
25 there is a trend. Migrating away from the candidates

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2 to third-party independent groups or the political
3 parties as the vehicles for running a campaign. In
4 effect, turning the candidates into bystanders at
5 their own election, in some cases, as far as the money
6 goes, at least.

7 When you don't know whose money it is, when
8 you have some innocuous committee name like Committee
9 For God and Country or The Common Sense Advocates, it
10 leaves the voter with no knowledge of who is really
11 advocating and supporting and propelling the
12 candidates.

13 JUSTICE KELLY: So, you don't find
14 convincing the argument that this is a matter of
15 freedom of speech, and that those who wish to conceal
16 their identity when they buy large -- large amounts of
17 time on public media to influence an election, to be
18 protected from retaliation?

19 MR. ROBINSON: Well, I would concede that
20 my opinion is a small one, and I would defer to the
21 United States Supreme Court on that, who has addressed
22 those questions directly, that the First Amendment is
23 well served by disclosure in campaign finance, and
24 part 4 of Citizens United has questioned about whether
25 disclosure was appropriate.

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2 In that particular case, justice Thomas
3 took the position that, yes, we open ourselves to
4 danger of intimidation. Well, he lost that vote eight
5 to one, and I, frankly, don't find much reason to fear
6 that the most powerful persons and interest groups in
7 this state will be intimidated.

8 DEAN BENSON: Thank you.

9 Any other questions?

10 Judge Hood.

11 JUDGE HOOD: Excuse me. I just had a
12 couple of Ms. Mills. When you said every -- every --
13 I'm sorry.

14 Let me go back to, the first one I wanted
15 to ask is: What were the obstacles to getting an ID
16 that you -- that you have seen people encounter?

17 MS. MILLS: Okay. The first obstacle is
18 that -- the cost of State ID. Working with all of the
19 populations that we were trying to get registered,
20 people -- unemployed people, homeless people, and so
21 forth, they don't have money to get to the Secretary
22 of State's office and they don't have the fee to
23 actually pay for the State ID. That was the first
24 obstacle.

25 Second obstacle, they -- they told me that

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2 when they did go and they did have the money, they
3 needed two and three pieces of identification to
4 verify that that was -- that they truly were that
5 person. So, everything would snowball from there.
6 Once they got there, they would still be turned down
7 because they didn't have any government IDs or utility
8 bills or the kinds of things that those of us
9 homeowners have automatically. They didn't have
10 those. So, that began to be another set of obstacles.

11 JUDGE HOOD: I assume this is your opinion
12 that that's a deliberate attempt to make it harder?

13 MS. MILLS: I didn't say that. I said
14 that's why --

15 JUDGE HOOD: I said, your opinion.

16 MS. MILLS: Oh, in my opinion?

17 JUDGE HOOD: Yes.

18 MS. MILLS: Yes, it was an attempt. The
19 requiring of an ID is an attempt, in the first place.
20 I have voted in several election cycles over a long
21 period of years -- without going too much into how
22 many years -- and we didn't need ID. The election
23 workers would match signatures and tell you to go
24 ahead. So, why, suddenly, do we need to identify
25 ourselves when that was sufficient before? So, yes, I

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2 would call it a deliberate attempt to disenfranchise
3 certain elements of the population.

4 JUDGE HOOD: You've answered my question.

5 MS. MILLS: Oh, okay.

6 JUSTICE KELLY: I had one more. I was
7 intrigued, Mr. Schmitz, when you talked about online
8 voter registration, because it occurred to me that
9 this comparing of signatures is -- is a very big part
10 of identifying voters when they come to the polls.
11 How is that handled in online registration?

12 MR. SCHMITZ: With online voter
13 registration, you can capture a signature online, as
14 well. So, just like anybody who has made a purchase
15 at Target or signed for a Federal Express or UPS
16 package, you sign your signature, that can be done
17 with comparison.

18 In addition, for things like challenged
19 ballots, for example, or where other information is
20 needed, we not only have the signature with online
21 voter registration, we have the date and time that it
22 occurred, where it went, we have email address and
23 complete address information of the applicant. And
24 people who apply to vote online or who apply to vote
25 by mail still must show a photo ID when they go to the

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2 polls.

3 And the last point I would make is, the
4 State-qualified voter file and the elections process
5 already have a mechanism in place when a signature
6 doesn't exist at all. What happens when a voter goes
7 into the poll is, the clerk or the poll worker -- it
8 will come up on the screen and it flags, verify
9 signature.

10 So, it's not unusual to get an application
11 in without a signature, and in the paper world, what
12 happens is, that's flagged, the person is asked to
13 sign right at the polling place, show ID, and then
14 they can vote. So, it should be no different with
15 online voter registration.

16 DEAN BENSON: Thank you, Commissioners.

17 Thank you, Panel, for a very informative
18 collection of testimony and remarks. Thank you.

19 We are now entering the first segment of
20 our hearing that is open for public testimony. We
21 will call those individuals who have signed up
22 throughout the course of the hearing to give public
23 testimony. If you have not signed up, but you would
24 like to, and if you have testimony to give and stories
25 to share, please see Carly at the registration booth

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2 right outside and Carly will add you to our list so
3 that you will be called to testify. And, again,
4 anyone present is able to give testimony simply by
5 signing up.

6 We have two public testimony periods, so if
7 you do not get a chance during this period -- this
8 period will run until about 5:45. If you don't have
9 an opportunity, over the next 30 minutes, to speak,
10 you will have a second opportunity to give public
11 testimony beginning around 7:30. So, please speak
12 into the mic. over to the left when your name is
13 called, and I am going to begin by calling on Tijuana
14 Morris.

15 Ms. Morris?

16 MS. MORRIS: Hello.

17 DEAN BENSON: Hi. You can speak right
18 there at the microphone on the left.

19 MS. MORRIS: Oh, okay. Thank you.

20 DEAN BENSON: And if you could limit your
21 remarks to five --

22 TIMEKEEPER: Four.

23 DEAN BENSON: -- four minutes.

24 MS. MORRIS: Hello, Everyone. My name is
25 Tijuana Morris. I'm an investigating (inaudible) and

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2 retired police officer. I'm also a candidate -- I was
3 a candidate in this past election for the Detroit
4 Police Commissioner Board. And my question -- I had
5 two. One -- well, not questions, comments.

6 One was, when I went in to put my ballot
7 in, there was supposed to have been a ticket -- a
8 piece of ticket, or something, that was supposed to be
9 torn off the ballot before I entered it into the
10 computer, into the machine box, and there was no
11 ticket torn off. And we were having a round table
12 discussion and some said, oh, my ticket was torn off,
13 and I said, well, didn't nobody tear anything off of
14 my ticket. So, did my vote count? Is what I'd like
15 to know.

16 And the -- the number of the ticket that
17 you have and the number that's on the voting box,
18 should they match? What would -- my question: What
19 would constitute a stolen ballot? I don't know if my
20 ballot counted or not.

21 And the second and last issue was
22 concerning the same signatures. I did witness,
23 through videotape, same signatures. And I -- of
24 course, my campaigning, I found out that, some
25 institutions, one person can sign -- this is what was

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2 explained to me, that, in some institutions the -- one
3 person can sign for the residents in the institution.

4 Is that legal?

5 The last of this is, we need to have a
6 system that's safe and once you put your ticket in
7 that box, you know that your vote counted. That's --
8 that's -- that's it, basically. Did my vote count?
9 And what can we do to perfect it? To make sure that
10 once your ticket is -- the green light, you go out and
11 say, yeah, your ticket counted. Thank you.

12 DEAN BENSON: Thank you.

13 Do our Commissioners have any comments or
14 responses?

15 Thank you very much for your -- your
16 testimony.

17 MS. MORRIS: Okay. Thank you.

18 DEAN BENSON: I'll next call Ms. D. Etta
19 Wilcoxon.

20 MS. WILCOXON: The City of Detroit has a
21 reputation of having corrupt elections, and in the
22 process of going through our last election cycle in
23 2013, I decided to take a look at some research and
24 look backwards. I did.

25 I found an article that was written by Curt

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2 Diaz (ph), and, in that article, he said, "No count
3 recount." He was referring to the election of 2005.
4 In that article, he said that you could not determine,
5 in the city of Detroit, the validity of ballots
6 because ballot stub numbers did not match the numbers
7 on the cannisters. And as a result of that, they were
8 not counted under State law.

9 Fast forward eight years, 2013, we had the
10 same thing occurring. We have been asking in this
11 city for clean elections for decades now, and we have
12 had no one even listen to us, let alone fix the
13 problem. Not at the county level and not at the state
14 level.

15 We paid for two recounts in 2013, a primary
16 and a general. The primary was sent, at our pleading
17 with the Wayne County Board of Canvassers, to the
18 Attorney General's office. The Attorney General wrote
19 a two-page assessment and said that the residents of
20 the city of Detroit did not get a full and complete
21 investigation, which is required by statute. No one
22 has addressed the fact that we did not get a recount.
23 No one has addressed the fact that we paid for one.
24 No one has addressed the fact that we are entitled to
25 one.

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2 For the general election, we also paid for
3 a recount, and we braved subzero temperatures, and we
4 went day after day after day for a recount. The Wayne
5 County Board of Canvassers, one of their members
6 declared before the recount was completed -- and I'm
7 going to paraphrase, but it's pretty close to a quote.
8 He said, there is no fraud in elections in the state
9 of Michigan, period. No fraud in elections in the
10 state of Michigan.

11 He said, I have been doing this for a very
12 long time, and the only fraud that I've ever come
13 across was poor people getting too many welfare
14 checks. He said, Ms. Wilcoxon, it is people like you
15 who waste the taxpayer's money and time asking for a
16 recount. There is no fraud. They're not going to
17 find any fraud. This is the mindset that we had going
18 into the recount process. This was not at the
19 conclusion of the process. This was before the
20 process was concluded.

21 When the Wayne County Board of Canvassers
22 did take testimony, they told us that we had already
23 given them testimony prior to the completion of the
24 recount process. We asked them how that was possible.
25 And they said, we took your testimony days ago,

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2 despite the fact that the process had not completed
3 itself. They, also, went further to say, "We are not
4 going to take testimony. Bring us your best witness."
5 And that's a quote.

6 How you get to the bottom of finding
7 evidence that substantiates fraud or impropriety is a
8 mystery to me. Now, I had received my law degree in
9 1986, and when I was in law school, I was taught that
10 the facts take you wherever they take you. That
11 evidence is supposed to be assessed and weighted. We
12 did not get that in the city of Detroit.

13 The City of Detroit has approximately
14 50,000 test ballots. And the word "test" is not
15 stamped anywhere on those ballots. In the city of
16 Romulus, we had testimony which indicated that the
17 word "test" is stamped on the face of the ballot in
18 red. It cannot be used for any other purpose.

19 When we asked the director of elections for
20 the City of Detroit on the record, under oath, where
21 the word "test" or any other designation which would
22 distinguish those ballots from any other ballot, was
23 on the ballot, and he said that they were on the stub,
24 the entire stub in the city of Detroit is torn off the
25 ballot.

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2 He was asked on the record where are the
3 stubs? He said, we threw them in a blue tub. We
4 said, where are those blue tubs with the stubs in
5 them? They're in the blue tubs, he said. And that
6 was satisfactory to the Wayne County Board of
7 Canvassers.

8 The City of Detroit did not account for a
9 single open blank ballot that was used in the process.
10 Not one was accounted for. We recounted 125 AV
11 counting boards. There was not a single black ballot
12 leftover from any packet of ballots in any of those
13 precincts. Ballots in the city of Detroit are
14 purchased in denominations of 100 in cellophane
15 packets that are sealed. If a person votes in a
16 precinct and they are person number 405, that means a
17 minimum of 95 ballots should be somewhere.

18 We asked, in the recount process, to see
19 those ballots, to see a tally of those ballots. We
20 asked how many ballots were purchased in the city of
21 Detroit. None of that information was forthcoming.
22 The Wayne County Board of Canvassers refused to do --
23 or, I should say, perform their statutory duty.

24 So, the question for this Commission
25 becomes: As it relates to the city of Detroit, when

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2 will the residents of the city of Detroit be able to
3 attach the word "integrity" to the process? When?

4 I think the residents of the city of
5 Detroit deserve fair, honest, and open elections like
6 every other place in the state of Michigan does. And
7 until we have someone who comes in here and who will
8 legitimize the process by conducting an investigation,
9 then you're going to continue having the residents of
10 the city of Detroit say, almost down to a person, that
11 I did not elect the people downtown supposedly
12 representing me. They were selected, not elected.
13 There is no faith in this process in the city of
14 Detroit.

15 And I want this Board to note, on the
16 record, that I am not coming to you as a resident of
17 the city of Detroit complaining over an election that
18 I, quote, unquote, lost, I am complaining about a
19 process that we have been saying for decades now is
20 not fair, is not transparent, and is not above board.
21 That's why I'm here. We collected the empirical
22 evidence to substantiate the claims that we are
23 making, and no one would even look at them.

24 So, as a resident of the city of Detroit, I
25 have to tell you that I was reluctant to come here. I

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2 was persuaded by brighter minds than mine, to come. I
3 came because they said that this organization is an
4 organization that has integrity and is underpinning.

5 I would trust -- I would trust that someone
6 would take it upon themselves to recognize the fact
7 that democracy has been highjacked in the city of
8 Detroit. And when it comes to our elections, there is
9 no difference. Democracy does not prevail in this
10 city and -- and in the words -- to paraphrase a quote
11 of Dr. Martin Luther King, injustice is a threat to
12 justice anywhere. Anti-democratic policies are a
13 threat to democratic policies anywhere in this
14 country.

15 And until we Americans rally around the
16 fact that we are all Americans to be treated in
17 similar fashion, then we are not going to get to the
18 root of the problem here. We had unrecountable (sic)
19 precincts totaling over 10,000 votes in the city of
20 Detroit. In our 2009 mayoral election, there were
21 60,000 that could not be recounted.

22 Thank you.

23 DEAN BENSON: Thank you very much for your
24 testimony.

25 Do you have any comments, Commissioners?

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2 MS. WILCOXON: I'm sorry. If I could share
3 with this Board a documented portion of evidence that
4 we have substantiated.

5 DEAN BENSON: Yes.

6 MS. WILCOXON: Thank you.

7 DEAN BENSON: Thank you.

8 Next in our public testimony, Ms. Anita
9 Belle.

10 And I'll remind our speakers, you have --
11 please limit your testimony to four minutes.

12 Thank you.

13 MS. BELLE: Hello. My name is Anita Bell,
14 and I was a Michigan Democratic party challenger for
15 the 2012 -- I'm sorry, the 2013 mayoral general
16 election in Detroit. I was also an absentee voter for
17 that election, and I had submitted a -- an affidavit
18 that was to Mr. Martinson, and maybe the Board got a
19 copy of it. In that affidavit, I described what
20 happened to several challengers. We were thrown out
21 of the absentee ballot counting that took place in
22 Cobo Hall in the Macomb room.

23 So, to briefly describe what's in that
24 affidavit, what happened was, I was going around to
25 various voting machines, and I had written down the

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2 actual number that was displayed on the voting
3 machines. And I think it was Ms. BenDor who described
4 that the voting machines are not very secure, they
5 break down frequently. That is exactly what I
6 noticed.

7 So, I wrote down the number that was
8 displayed on the voting machines and, at one
9 particular voting machine, 800, the election workers
10 kept opening it and had to put the ballots in again
11 because, supposedly, the machine had jammed. And I
12 wrote down the time that they did this. And, so, it
13 was somewhere around 3 p.m. on November 5th that this
14 was happening at AV counting board 80. But I wrote
15 down as many counting boards as I could.

16 At about, oh, I'd say, 5:30, I was writing
17 down some counting boards, starting with counting
18 board 1 and going up to number 12, and I was told,
19 also check the number of ballot stubs and the number
20 of signatures in the book. Make sure that there
21 aren't more or less. So, I get to voting board
22 number 8. The time was around 5:30. There's
23 supposedly -- 366 is the display on the voting
24 machine. And, so, there were only 352 ballot stubs.
25 My question was: How could there be more ballots in

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2 the machine than there were stubs for that ballot?

3 So, I go to voting board number 9. It
4 says, on the machine, 348 ballots. However, it says
5 the number of voters -- according to the poll booth,
6 it says, voters, 375; ballots, 375; spoiled, 3;
7 returned 330. First thing I noticed is, they mailed
8 out 375 and 330 were returned, that is a voter return
9 rate of close to 80 percent. More than 80 percent.
10 And, yet, we were told that the voter turnout for the
11 election in November was 25 percent.

12 We were told, also, that -- Janice Winfrey
13 had testified to a judge -- Judge Patricia Fresard,
14 that she sent out 30,000 absentee ballots. However,
15 over 44,000 absentee ballots were counted on election
16 day. So, my concern is, that's a voter turnout -- oh,
17 one minute. That's a voter turnout of about
18 141 percent.

19 So, that means every one that was mailed
20 out was returned, plus a few thousand people walked in
21 and voted absentee at a few centers. And that, to me,
22 is a problem that alerted me to ballot stuffing. And
23 because there is that potential for ballot stuffing,
24 I'm just wondering if there's some vacant lots that
25 have home -- I don't say those are homeless people

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2 because nobody lives on these vacant lots, and if
3 somebody is using those addresses to vote in the city
4 of Detroit.

5 Thank you very much.

6 DEAN BENSON: Thank you.

7 Any questions from Our commissioners?

8 Up next, we have Jean Vortkamp.

9 MS. VORTKAMP: Hi. My name is Jean
10 Vortkamp. I ran for mayor in the 2013 fraudulent
11 election. This was my first time running for public
12 office. Once I had realized what was wrong, I had
13 called, among other groups, the League of Women Voters
14 National Group, the ACLU of Detroit, and the National
15 Lawyers Committee for Civil Rights Under Law, and
16 received no help.

17 The participants in the recount contacted
18 every authority multiple times, only to hear crickets
19 chirping back. Nothing. Passing the buck. Detroit
20 is the graveyard of democracy. We have an emergency
21 manager leading us to a pre-planned bankruptcy, a
22 fraudulent election system.

23 When I look at the impoverished children of
24 Detroit that I work with day by day, I used to wonder,
25 what else can you take from them? You can take their

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2 voting rights, can't you? That's all they have left.

3 At the recount, I observed many ballots
4 across precincts and at absentee counting boards in
5 similar handwriting. The investigation -- and I use
6 that word very loosely -- done by the Wayne County
7 Board of Canvassers was ridiculously unjust. They had
8 Tom Barrell (ph), Mr. Cole, and I choose ballots at
9 random to be sent to the handwriting expert.

10 Those 19 that you heard of in the
11 newspaper, were chosen by them opening a box, putting
12 them on a table about this long (indicating), however
13 many would fit, and told us to go pick the ones that
14 we thought were fraudulent. Now, this is something
15 that the FBI would probably take months to figure out,
16 and they just think we are going to pick the
17 fraudulent ballots off of the table for them. This is
18 why, whenever fraud is something that people think
19 happened, it should be done by law enforcement
20 officers, not by a volunteer Board that doesn't know
21 what they're doing.

22 They looked at 19 out of 40,000 ballots.
23 That's not even 1 percent. That is not any kind of
24 sample. The methodology that they used
25 circumnavigated the truth. It did not try to find the

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2 truth. The most telling ballot is the one with two
3 different styles of writing on the same ballot. And
4 then the writing on that ballot with the two different
5 writing styles matches ballots in other precincts.
6 Children can match these ballots, and I'm unsure why
7 this election -- why the general election continued on
8 and why we have -- okay.

9 Other recount commissioners took it to
10 court, only to get a judge who was openly a donor to
11 the write-in. They lost. There is details in my
12 testimony that explain much more in detail what I
13 experienced.

14 I am here because I want my voting rights
15 back. I want the last year of my life back when I ran
16 for mayor in what was just a farce. I don't
17 appreciate that, and I don't think that anybody in
18 Detroit appreciates being used in a farce.

19 And what this opened up to me is that,
20 through my whole life living in Detroit and people
21 always putting down Detroit and asking me why do we
22 elect who we elected? We didn't. And whoever is
23 putting these people in, however they are doing it,
24 they need to be punished. Everything they've taken
25 from us needs to be returned.

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2 So, I'm just hoping that you will take my
3 comments to heart; that you will read my full
4 testimony, which explains, in detail, everything that
5 I saw go on at that recount, which includes a lawyer
6 from Wayne County running -- whenever they -- whenever
7 the -- this is the word -- okay. When they -- when
8 the candidates told them that they were taking them to
9 court, a lawyer from the County ran out of the room
10 with a lawyer from the write-in candidate. What's
11 that? And that's just a piece.

12 So, I hope you all think about it, and I
13 hope that you all take to heart what's going on in
14 Detroit, because we know. We know now.

15 DEAN BENSON: Thank you.

16 Any questions from the commissioners?

17 We have, next, Matt Robb.

18 MR. ROBB: Hi. Good evening, everybody.
19 My name is Matt Robb. I'd just like to thank you guys
20 for all being here this morning and advocating for
21 this very important, if under discussed, issue, and
22 thank you to Wayne State and Dean Jocelyn Benson for
23 providing this forum.

24 I'd like to speak to you today as a
25 lifelong Michigander, a proud Detroiter, and about my

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2 experiences with voting as a college student, and
3 later as my experience as an Obama campaign organizer
4 and a college campus activist trying to get people
5 registered to vote. So, specifically, I want to
6 discuss the voter registration policies in the state
7 of Michigan.

8 The current policy is that, if you are
9 going to register to vote, you need to do so 30 days
10 prior to the election in order to be able to cast that
11 vote. If it is your first time casting a ballot, then
12 you may not absentee vote.

13 So, I have tried to vote in the 2004
14 election. I wanted to vote in the Democratic primary.
15 I arrived at the Secretary of State's office three
16 weeks prior to the primary date. And I fill out my
17 form, proudly take it up, you know, 18 years old,
18 excited to vote for the first time, and they say,
19 well, I'm sorry, but you're going to have to wait
20 until the general election because there's a 30-day
21 waiting period, and we're 21 days out right now. So,
22 I was unable to have my voice heard in the 2004
23 election.

24 Later on -- here, if I may slip this out of
25 here. I'm a little taller than the last speaker. I'm

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2 sorry.

3 And later on, in the general election,
4 someone who lived down the hall from me -- her name
5 was Jenny -- she didn't get the urge to vote until
6 Monday night before the election. Right? We were,
7 you know, sitting around in the dorm talking about it,
8 and she goes, you know, this is important. I want to
9 do this. Right?

10 We go to Ferris State University in Grand
11 Rapids, Michigan. She lives and grew up in Berkley.
12 This absentee voter policy made it so that she had to
13 drive all the way to Berkley, Michigan, which is a
14 three, three-and-a-half-hour drive, depending on
15 conditions, and cast her vote.

16 Now, I'm real proud of her that she did it,
17 but I'll just pose the question to the audience here,
18 how many 18- to 22-year-olds do you think are going to
19 leave their college dorm room on a Monday and drive
20 all the way three, four hours back home in order to
21 cast a single vote? That -- that number is not large;
22 right? And that's not happening.

23 And this policy is creating an active voter
24 suppression of youth, low-income and transient
25 populations throughout the state of Michigan. And if

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2 we don't change this policy, that's going to continue.
3 And if we do, I guarantee that you will see an
4 immediate result in young voter turnout, in low-income
5 turnout, in transient population turnout, people who
6 have to move very often. All right?

7 And, then, in the 2008 election, I was a
8 paid organizer for the campaign up in northern
9 Michigan, did some work in Detroit, and through voter
10 registration, we had to either mail or personally
11 deliver any voter registrations that we had to collect
12 by hand. So, we're sending in, you know, hundreds of
13 voter registrations, and the method of getting it
14 there was so long and arduous, and we couldn't
15 guarantee that the people then received them at the
16 correct address.

17 And there were multiple occasions where we
18 just ran across voters up in northern Michigan -- I
19 ran across four, five people. I said, did you get
20 your voter registration materials back? And they
21 said, no, no. I'm just waiting for it. I don't know
22 where to vote, I don't know if I can vote, I don't
23 know if I'm registered. And all this trying to beat
24 the 30-day waiting period. You know, we're talking,
25 you know, hundreds of thousands of people that are

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2 getting disenfranchised by this policy.

3 So, I just would like you to look at that,
4 and thank you so much for your time.

5 DEAN BENSON: Thank you very much, Matt.

6 Do our commissioners have any questions?

7 Okay. We'll take two more individuals in
8 this public testimony period. And as far as anyone
9 else who hasn't signed up, just sign up for our next
10 public testimony period beginning at 7:00.

11 We next have Richard Hairston.

12 MR. HAIRSTON: Thank you very much.

13 Ms. BenDor -- and I do want to thank Ms. BenDor for
14 the great work that you've done. I had an opportunity
15 to sit in on your class, even, which was very
16 informative, and I do appreciate the work that you've
17 done.

18 Ms. BenDor mentioned -- you want me to pick
19 it up? Ms. BenDor mentioned that there were only two
20 computer companies in the state of Michigan -- folks
21 that know me, know I'm inclined to eat these things,
22 microphones. I have one in front of me every day.

23 Thank you.

24 Ms. BenDor testified that there were only
25 two computer companies in the state of Michigan, one

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2 of which is ES&S, and that's serving our election of
3 the Detroit City Clerk. Our Clerk -- and it was upon
4 Daniel Baxter leaving in the midst of -- of moving
5 from a primary to a general election, and she hires
6 someone from one of the computer companies to take
7 Daniel Baxter's place, and that appeared to be a
8 direct and flagrant conflict of interest.

9 I guess the other thing that sort of
10 circulates quietly, I remember, approaching the
11 election of Mike Duggan -- who was going to be a great
12 mayor, I might add -- they said he was going to need
13 about 20,000 votes in order to get on the ballot.
14 After watching and being a part of the group that
15 we're monitoring and auditing the recount and saw so
16 many curious signatures and extraordinary penmanship,
17 and it really didn't look like there was a Midwestern
18 way of writing, and witnessed these Roman Gs that were
19 so similar, I thought that since they had said that
20 Mike Duggan needed at least 20,000 votes, that someone
21 put 20,000 votes in their hip pocket, and Detroiters
22 voted 20,000 votes, and we came up with this
23 extraordinary number of 40,000 write-in votes for Mike
24 Duggan.

25 Thank you.

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2 DEAN BENSON: Thank you.

3 Do our Commissioners have any questions for
4 Mr. Hairston?

5 Thank you, Richard.

6 And, finally, Ms. Valerie Glenn.

7 MS. GLENN: Thank you. I want to ditto
8 everything that everyone has said so far. This has
9 been extremely stressful for Detroiters. And I -- I
10 have not missed voting since 1968, and I can tell you,
11 a lot of people have become dissatisfied because of
12 it.

13 I am a member of the Michigan Democratic
14 party, 13th Congressional District, a precinct
15 delegate, precinct 166, and a part of state central.

16 I'm extremely disturbed that our state of
17 Michigan Democratic party leader has been silent, the
18 Michigan Democratic party has been silent. The
19 national Democratic party has been silent, and I am
20 kind of pissed off at the president because I think,
21 by now, since he's elected and can't run for another
22 term, he should start speaking up.

23 However, I want to talk about this election
24 process. My -- one of the organizations -- I'm a
25 member of NAN, but I'm also one of the founding

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2 members of the Free Detroit Voting Center, and we went
3 in to challenge both Bernard Parker and Andre Spivey's
4 selection in the process of running in the 4th
5 District for City Council.

6 Based upon our findings, neither of them
7 had the necessary signatures. However, I was
8 responsible for Bernard Parker, and I did a thorough
9 job of investigating him. And Mr. Baxter, the one
10 that mysteriously left right after the primary, who
11 was the director of elections, changed all of the
12 rules.

13 For instance, he said that the signatures
14 on a single sheet did not have to be in sequential
15 order. I went back, I showed him the law. He said,
16 no, they didn't follow that. There aren't -- the
17 voting records have not been purged in Detroit. The
18 signatures -- many of the people don't have
19 signatures. People that had signatures on file and
20 just signed a zero, he said that was cool. It didn't
21 matter. It was okay.

22 So, I am -- I am convinced that this
23 select -- that people are selected to run. Neither of
24 them should have been running in the 4th District.
25 And when I saw the Clerk send someone in from the

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2 League of Women Voters to challenge the (inaudible).
3 That is when we decided, enough is enough, that we
4 would just step back. But the City Clerk's office
5 sent for someone to come in to look at her ballot. I
6 think it was Ms. Robinson. I can't think of her name
7 now. Thank you.

8 DEAN BENSON: Thank you, Valerie.

9 Any questions from our Commissioners?

10 Okay.

11 So, that concludes our public testimony
12 period, or first public testimony period. And, now,
13 moving in to our next panel on election administration
14 challenges and successes, we have three very notable
15 experts in the state of Michigan coming up to share
16 their -- their experiences.

17 First, we have Jesse Buchsbaum from Voice
18 your Vote from the University of Michigan; Melanie
19 McElroy of Common Cause Michigan; and representing
20 Mary Ellen Gurewitz of Sachs Waltman, we have Sharon
21 Dolente.

22 Come on up, all three of you.

23 And we'll begin with Jesse.

24 I'll remind all of our panelists that they
25 have eight minutes to present their testimony, and

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2 then we'll move on to Q and A with our commissioners.

3 So, we'll start with you Jesse.

4 MR. BUCHSBAUM: Hi, everybody. I'm Jesse
5 Buchsbaum. I'm the chair of the University of
6 Michigan's Voice Your Vote commission. Voice Your
7 Vote is a nonpartisan student group whose mission is
8 to get students involved in the political process.
9 Specifically, through voter registration and
10 education. We have no political affiliation. Our
11 only goal is to get more students to be active and
12 participate in the voting process.

13 As the main chair of Voice Your Vote, I,
14 obviously, have a unique perspective to view student
15 voting and the challenges that student voters face
16 each year. Before discussing specific challenges that
17 student voters face, I want to stress the importance
18 of easing the voting process for students.

19 The 18- to 24-year-old age group
20 consistently are the worst voter turnout in the
21 election process. Eighteen- to twenty-four-year-olds
22 are, typically, between 20 and 30 percent less likely
23 to vote than anyone 25 and older. The majority of
24 college students are within this age range, and the
25 University of Michigan student body is no exception to

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2 low turnout for young voters.

3 In order to increase turnout among college
4 students, we must ease the voting process for them.
5 There are three main challenges that I, along with
6 other members of Voice Your Vote, have identified that
7 students face in voting.

8 The first challenge is related to absentee
9 voting for students who aren't voting in their
10 hometowns. Matt, actually, touched on it during the
11 public testimony. For many first-time voters in
12 Michigan, and many other states, it's not possible to
13 both register to vote and -- I'm sorry, to register to
14 vote through the mail and vote via absentee ballot.
15 First-time voters have to either vote in person or
16 register to vote in person.

17 This policy provides a challenge for many
18 college students who don't think about voting until
19 they reach college, but don't have the chance to visit
20 home between the beginning of school and voter
21 registration deadline, which is in early October.
22 These students often lose the opportunity to vote at
23 their permanent addresses, which are their parents'
24 house, or are often discouraged from voting in
25 general.

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2 It's also important to note that some
3 students further view that registering to vote in
4 their new place, will change their dependency status
5 or somehow change the legal and financial relationship
6 between them and their parents. While our student
7 group has tried to alleviate these worries, many
8 students are still very nervous about registering to
9 vote in a new city or state.

10 The second challenge I want to talk about
11 is that, in Michigan, and any other states, any
12 citizen must re-register to vote any time he or she
13 changes addresses. For most, it makes perfect sense
14 as moving is fairly rare, but when they do occur, they
15 send people to different precincts and wards to vote
16 on different issues.

17 For students, however, many students'
18 addresses change each and every year. In order to
19 vote, they have to reregister each new election. This
20 might not be an issue for most politically interested
21 students, but, for your average student, it
22 discourages them to vote very much so if they are not
23 as motivated as registering each year requires much
24 more of them.

25 So, there is a cost to voting that, in some

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2 ways, is unique to college students. Most graduates
3 and working adults don't move every year or two and
4 don't need to register each election, other students
5 do.

6 The policy that the moving -- the necessity
7 to re-register to vote for students moving within a
8 single precinct or ward, would remove this barrier
9 from registering many students and would increase
10 turnout for 18- to 24-year-olds.

11 The third challenge I want to touch on
12 actually occurs on election day for students.
13 Students who are registered to vote at the campus
14 address instead of their permanent residence may be
15 required to fill out a change of address form when
16 they attempt to vote.

17 For example, if a student is from New York
18 and has a driver's license from New York but attends
19 the University of Michigan, this student may register
20 to vote at his campus address in Michigan, as you are
21 allowed to do so, as either New York or Michigan
22 qualifies as a legal residence. When he goes to his
23 polling place in Ann Arbor on election day, he'll need
24 to fill out a change of address form, which takes
25 approximately five minutes.

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2 Now, five minutes may seem inconsequential
3 for most. However, it can increase the amount of time
4 it takes for students to vote by a large magnitude.
5 Especially in popular campus voting places, where
6 voters already face longer lines than other citizens.

7 As I have seen personally, students who
8 need to fill out additional forms or wait in longer
9 lines, they are discouraged from voting in future
10 elections. Further, the consequence of completing the
11 change of address form are not explained -- the
12 consequences are not explained to students. They're
13 simply told that they need to complete it in order to
14 vote. This can lead to more confusion for students on
15 the nature of legal and financial relationship with
16 their parents.

17 Students fear that switching their address,
18 they may no longer be able to list themselves as
19 dependents of their parents. Others are afraid that
20 they are forfeiting their citizenship in other states.
21 These imaginary consequences can prevent students from
22 voting, such as they mistakenly think that they must
23 choose between voting and being dependents.

24 The change of address form that many
25 students most complete on election day, therefore,

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2 presents a challenge because it lengthens voting times
3 and because its effects are not fully explained to
4 students.

5 So, there are a number of challenges that
6 students face throughout the voting process.
7 Hopefully, with raised awareness regarding this
8 important issue, we will be able to ease the voting
9 process for students.

10 I want to thank this Commission for
11 providing a forum to hear our challenges faced by
12 college students. Voice Your Vote will be happy to
13 provide assistance to the Commission in identifying
14 other challenges and working toward potential
15 conclusions. If you have any questions, feel free to
16 ask me.

17 DEAN BENSON: Thank you.

18 Melanie McElroy of Common Cause Michigan.

19 MS. McELROY: I apologize for my cough. I
20 am no longer contagious, but I'm still catching my
21 breath after a few weeks.

22 My name is Melanie McElroy, and I am the
23 executive director of Common Cause Michigan.

24 Thank you to the Lawyers Committee and to
25 our Commissioners for the opportunity to submit

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2 testimony for today's National Commission on Voting
3 Rights Hearing here in Detroit.

4 Common Cause is a nonpartisan, nonprofit
5 organization that is dedicated to restoring the core
6 values of American democracy. We envision an open,
7 honest and accountable Government that serves the
8 public interest by empowering ordinary people to make
9 their voices heard in the political process.

10 Protecting the right to vote has been a long-time
11 priority for Common Cause nationally and here in
12 Michigan.

13 In my capacity as chair of the Michigan
14 Election Coalition, a project of the Michigan Voice
15 Table, I have had the opportunity to participate in
16 election protection efforts with many of the
17 organizations and community leaders submitting
18 testimony today.

19 In 2012, Michigan was one of many states
20 targeted by a restricted voting bill straight from the
21 playbook of ALEC, the American Legislative Exchange
22 Counsel. This practice of unfair policies, which
23 passed in our legislature, called for photo ID
24 requirements, restrictions on third-party voter
25 registration, and redundant, unnecessary reaffirmation

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2 of citizenship.

3 Governor Snyder vetoed most of these bills,
4 but not before they caused widespread confusion among
5 voters and election administrators across our state.
6 Voter education is a crucial element of our
7 coordinated election protection efforts. New ballots
8 in public foreign forums served as platforms to teach
9 voters about their rights and the changes that were
10 made and not made to Michigan's election laws.

11 In close collaboration with the Lawyers
12 Committee for Civil Rights Under Law, we promoted the
13 866-OUR-VOTE hotline, also available in Spanish,
14 888-VE-Y-VOTA. Their call center was open leading up
15 to election day to help voters verify their
16 registration status and answer questions about
17 required documents at polling locations.

18 In collaboration with organizations like
19 the League of Women Voters, the Michigan Co-Organized
20 Collaborative -- Collective, the (inaudible) Lynhoff
21 (ph) Institute and other Michigan voting partners, we
22 recruited and trained poll monitors in target cities
23 across the state. These locations were targeted based
24 on past incidents on election day, lack of funding,
25 emergency manager status, university campuses, and

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2 more.

3 Election officials in some cities expressed
4 the need for more bilingual poll workers, as we heard
5 today, so we encouraged qualified people to apply for
6 those paid positions. We trained graduate volunteers
7 to look for evidence of voter suppression on election
8 day. In many cases, we anticipated that our greatest
9 problem would be battling misinformation by poll
10 workers and long lines at the polls.

11 These volunteers served as our eyes and
12 ears on the ground, monitoring activity at the polls
13 on election day across our state. Volunteers and
14 voters were instructed to call the 866-OUR-VOTE
15 hotline to report incidents. The call center then
16 answered questions over the phone, and also routed
17 calls to our local effort where volunteer attorneys
18 were deployed when necessary. Poll challenger
19 credentials were issued for purposes of intervening at
20 the polls where needed.

21 Election day 2012, most of our incident
22 reports cited long lines at the polls, machine
23 failures and confusion about voter identification
24 requirements. Some poll workers misinterpreted
25 requirements and unintentionally sent voters home.

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2 Traditional ballots were mistaken for affidavits,
3 which, as you know, can serve as a voter
4 identification requirement if a person does not have a
5 driver's license. I wanted to state that. I know
6 some other people had talked about voter ID
7 requirements earlier today.

8 All of the calls in to the hotline of our
9 nonpartisan command center, were addressed and solved
10 by someone in our network. A few cities of Michigan
11 implemented in-person absentee voting during the days
12 leading up to election day.

13 In the city of Detroit, for example,
14 because the ballot was several pages long, as you
15 remember, it was especially helpful for voters to come
16 in and, at their leisure, carefully read through the
17 ballot and vote before election day. Increasing
18 awareness about this opportunity and ensuring that
19 more voters have the opportunity to take advantage of
20 early in-person absentee voting would only continue to
21 decrease long lines on election day.

22 In 2013, we held a smaller scale election
23 protection effort for the municipal elections in the
24 city of Detroit, Michigan, as we prepare for 2014.
25 While election protection efforts like ours have

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2 helped out -- helped to put out fires, there are many
3 reforms needed in Michigan. Modernization of our
4 voter registration process by allowing voters to
5 register online and register closer to election day
6 would cause less confusion about registration status
7 near election day, which is causing long lines and
8 disenfranchisement.

9 Long lines can be addressed by explaining
10 access to the ballot. This means not only early
11 voting objections, but, also, no reason for absentee
12 voting in Michigan. Instead of supporting bills that
13 make voting more complicated and burden our
14 hardworking election officials, our lawmakers should
15 make it a priority to make it easier to vote and
16 harder to cheat in our state.

17 Voting in the state of Michigan should not
18 be an endurance sport. Common Cause and our partners
19 continue to defend the bedrock freedom of our
20 democracy, casting a ballot and having it counted
21 fairly.

22 Thank you very much.

23 MS. DOLENTE: My name is Sharon Dolente,
24 and I am the director of the Michigan Election
25 Coalition.

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2 Thank you, Lawyers Committee, and members
3 of the Commission for having me here today. I'm
4 really honored to be here. I'm actually standing in
5 for Mary Ellen Gurewitz of Sachs Waldman, who was
6 required to be in New York City on the Detroit
7 bankruptcy case today, so she's dealing with another
8 very important piece of what's going on here for us in
9 Detroit.

10 Mary Ellen and I have been working closely
11 together for almost ten years on voter protection
12 activities, most recently, on the 2012 Obama campaign.
13 Mary Ellen has decades of experience on voting and
14 election law here in Michigan. She was asked to
15 discuss the citizen checkbox issue from 2012, and,
16 also, the threat in 2008, as voters were getting to be
17 challenged based on foreclosure lists.

18 So, I'm going to go through those two
19 issues so we can make sure to have it in the record,
20 these examples of efforts to disenfranchise voters in
21 Michigan.

22 So, as many of you may remember -- there
23 was a couple of references to it earlier today -- in
24 October of 2011, Secretary of State Ruth Johnson
25 announced a package of bills proposing amendments to

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2 Michigan election laws. Melanie just mentioned those,
3 as well.

4 Senate Bill 803 proposed amending the
5 application to vote to require an affirmative
6 statement by the elector indicating that he or she is
7 a citizen of the United States. It further provided
8 that if the elector does not affirmatively state on
9 that application that he or she is a citizen, that
10 elector should be challenged by a poll worker. If the
11 elector fails to state, under oath, that he or she is
12 a citizen of the United States, that elector shall not
13 be issued a ballot.

14 Senate Bill 803 also proposed amending the
15 absent voter ballot application to include the
16 question: "Are you a United States citizen?" With
17 check boxes for a yes or no response. The proposed
18 amendment would also require the following warning:
19 "If you answer that you are not a citizen of the
20 United States, you will not be issued an absent voter
21 ballot. If you do not answer the citizenship
22 question, an absent voter ballot will be issued to
23 you, but the ballot will not be counted unless you
24 answer the citizenship question in writing to the
25 clerk before the polls close on election day."

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2 Shortly after the introduction of the bill,
3 Secretary Johnson issued a notice to all county and
4 local clerks directing them to add this question:
5 "Are you a United States citizen?" To all
6 applications to vote and applications for absent voter
7 ballots, with check boxes for the voter to answer yes
8 or no. The notice that she sent out required that
9 this question be added to the forms for the
10 February 2012 presidential primary.

11 Secretary Johnson issued a subsequent
12 notice in which she provided, quote, guidance in the
13 form of answers to questions posed by County and local
14 election officials because they had been instructed to
15 ask this question, but there had been very little
16 other guidance or direction.

17 This, quote, guidance stated that if a
18 voter did not respond to the citizenship question on
19 the application for an absent voter ballot, that he or
20 she should be given the ballot. However, if a person
21 did not respond to the question on the application to
22 vote, the one you fill out when you come in person to
23 vote, he or she should be asked to respond. And if
24 the request was refused, the voter should be sworn in,
25 as with the challenge procedure, asked whether he or

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2 she is a citizen, and if he or she refused to apply, a
3 ballot should not be given.

4 In June 2012, Senate Bill 803 was passed by
5 both houses of the Michigan legislature. It was then
6 vetoed by Governor Rick Snyder on July 3rd, 2012,
7 because, in his statement, he was concerned that the
8 bill could not -- I'm sorry. He was concerned that
9 the bill could create voter confusion among absentee
10 voters.

11 So, despite the Governor's veto,
12 Defendant Johnson continued to require the citizenship
13 checkbox on both applications to vote. The
14 citizenship checkbox created serious controversy and
15 delay during the August 2012 primary election when a
16 number of voters refused to answer the question
17 because they were aware of the Governor's veto and/or
18 because they found it redundant, duplicating what
19 someone had mentioned earlier, the fact that you
20 affirm you are a citizen when you register to vote.

21 Poll workers and local clerks were also
22 confused and were inconsistent in their responses to
23 voters who refused to answer the question. A number
24 of voters were not given ballots because they reused
25 to check either yes or no on the citizenship checkbox.

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2 Delays were common as a result of all of this
3 confusion.

4 In response to many calls and complaints to
5 local clerks, County clerks and the Bureau of
6 Elections, Defendant Johnson -- I'm sorry, defendant
7 because she was subsequently a defendant in the case.
8 Secretary Johnson issued a, quote, clarification, in
9 the middle of primary day.

10 The clarification changed the procedures
11 and directed that any voters that refused to fill out
12 the citizen checkbox, they were to be read a statement
13 reminding them that you must be a citizen to vote, and
14 then voters were to be given a ballot. Despite this,
15 quote, clarification, the confusion and chaos
16 continued throughout the day.

17 On September 4th, 2012, the Michigan
18 Election Coalition, a group of nonprofit organizations
19 supporting access to the ballot, wrote to
20 Secretary Johnson pointing out the lack of legal
21 authority for her actions instituting the citizenship
22 checkboxes and pointing out the confusion the checkbox
23 had created at the August primary.

24 The letter asked her to immediately remove
25 the citizenship checkbox question from the application

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2 to be used in the upcoming presidential election, the
3 general election in November of 2012.

4 Secretary Johnson responded to the media by
5 declaring her intention to continue directing clerks
6 to include the citizenship checkbox pursuant to her,
7 quote, general authority to prescribe the use of forms

8 Many of Michigan's County clerks order
9 supplies from local, City, Township and Village clerks
10 in their counties, and because the citizenship
11 affirmation requirement had been vetoed by the
12 Governor, and because it's unauthorized imposition, in
13 the primary had created confusion and delay, a number
14 of County clerks decided they would not include the
15 question on their forms that they were ordering for
16 the November 2012 election. Some clerks who ordered
17 their own supplies, similarly decided that they would
18 not include the question on their forms.

19 A number of individuals and organizations
20 joined together to file suit against Secretary Johnson
21 to challenge this citizenship checkbox. The case,
22 which was entitled Bryanton, et al, v. Ruth Johnson,
23 was filed in September of 2012, in United States
24 District Court and assigned to Honorable Judge Paul
25 Borman.

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2 The lawsuit alleged that the citizenship
3 checkbox threatened to deprive Michigan citizens of
4 equal protection in violation of the 14th Amendment to
5 the United States Constitution and other violations of
6 State law.

7 A hearing on the plaintiff's motion for
8 preliminary injunction was held on October 5th, and
9 the court issued an injunction that day, following up
10 with a written decision on October 20 of 2012.

11 The Court concluded that the changes
12 directed by the Secretary of State in the Application
13 to Vote Form did not comply with the Michigan statute
14 or with the State Administrative Procedures Act, but,
15 most importantly, the court concluded that the
16 citizenship checkbox requirement, as implemented and
17 inconsistently administered by the Secretary of State,
18 unjustifiably burdened the fundamental right to vote
19 of Michigan citizens.

20 The Court summed its conclusion up as
21 follows: "The Defendant Secretary of State's
22 guidelines unjustifiably burdens the right to vote by
23 creating election day time and consuming public
24 confrontations between voters who refuse to fill in
25 the citizenship checkbox and the elections officials

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2 who, after confronting the voter in public, was still
3 issued the ballot without the voter's compliance.

4 The Court finds that the Defendant
5 Secretary of State ordered the rules for carrying it
6 out classified voters disparately in many ways,
7 absentee and poll voters, and even within poll voters.

8 Those who check the box and those who
9 don't, it has burdened the right to vote and further
10 has not been sufficiently justified. Likely confusion
11 at the polls interferes with the right of all voters."

12 The Court considered and rejected the
13 Secretary's claim that it was important to educate
14 non-citizens that they could not vote and to prevent
15 the vote of citizens from being diluted by noncitizen
16 voters.

17 The Court rejected these arguments because
18 the Secretary established only two incidences of
19 noncitizen voting.

20 In sum, as widely observed at the time, the
21 citizenship checkbox was a solution in search of a
22 problem. The citizenship checkbox threatened to
23 create substantial chaos and delays during the 2012
24 general primary. Such delays are the greatest, if not
25 the greatest threat to voting in Michigan.

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2 A survey by the Michigan Election Coalition
3 of more than 10,000 voters in Michigan urban areas
4 found that more than 2 percent of those 10,000
5 surveyed left the polls without voting in the
6 November 2012 election. So, 2 percent of the 10,000
7 voters did not cast their vote, were disenfranchised
8 due to long lines.

9 Thank you.

10 DEAN BENSON: Thank you very much to our
11 panelists.

12 Commissioners, any questions for our panel?
13 Professor Katz?

14 PROFESSOR KATZ: I just want to thank all
15 three of you for your testimony and your comments.
16 There was -- there was a theme from this panel. It
17 struck me that it would be confusion and that voters
18 are suffering from confusion.

19 And, Melanie, you spoke of all the work
20 your organization has done in helping voters, and it
21 struck me that you could help Jesse on campus with a
22 hotline for students, and Karen, as well, with the
23 (inaudible) check boxes is large amounts of turnout,
24 but yet you can imagine it.

25 I was wondering whether any of you might

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2 want to speak to the question of whether private
3 organizations can fill this roll effectively or
4 whether you really seek legislative or judicial help
5 in navigating confusion as an obstacle to our vote.
6 Can we just invest more in Melanie and get her out
7 there? Would that be a complete solution? And to the
8 extent it's not, what do you see happening?

9 MS. McELROY: That's a really good point,
10 and I think that that is where the work of my
11 organization and our coalition has been born from the
12 fact that our legislature did not pledge on these
13 issues at this time.

14 And, so, nonprofit organizations have taken
15 it upon themselves, and, in many cases, we have
16 actually partnered with election officials and offered
17 to help them. I know Rachid mentioned, earlier, the
18 fact that they donated privacy screens to allow their
19 precinct to have more voting booths. Things like
20 that.

21 In many cases where we're able, which we're
22 all very strapped for cash ourselves, where we're able
23 to, we're more than willing to put ourselves out there
24 and fill that gap, which, in any many cases,
25 unfortunately, is not being filled by the Government.

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2 One other thing I'll say, to the effect of
3 the early voting options, our City clerk here in
4 Detroit did a great job of providing that
5 infrastructure, but, unfortunately, I don't think that
6 she has the resources to promote it enough for it to
7 be useful to its greatest potential.

8 And if they don't get a great turnout,
9 they're not going to do it again in the next year,
10 even though we saw a great impact, and, so, it's
11 lessening of one line from her effort. So, I guess
12 there's really no answer to your question, but we'll
13 continue to be there to try to fill in that gap and,
14 hopefully, we can partner with as many law structures
15 as possible.

16 I don't know if you have anything to add,
17 Sharon.

18 MS. DOLENTE: So, I guess I would say, I
19 think that there's a role for both; right? I mean,
20 I'm a big fan of civic organizations, private
21 organizations being able to (inaudible) and provide
22 important input and support where possible, but my
23 take-away from 2012 is that it is fundamentally a
24 responsibility of Government. As Melanie said, voting
25 should not be an endurance test.

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2 It should -- information should be
3 plentifully available, easily accessible through
4 multiple means that meet the variety and diversity of
5 citizens where they're at, and I believe that that's
6 an obligation of election officials who are
7 administering and writing elections all up and down.
8 You have -- from the highest election officials in our
9 state, to the local election officials.

10 And, so, you know, I think that I now
11 represent a lot of organizations, and it's great for
12 them to have a role, but it can't be as a replacement
13 for -- for government serving that role. And to the
14 degree that, you know, more funding and more support
15 needs to happen to make those election officials be
16 able to do it, then some of our organizations can
17 help, you know, encourage that and then bring that
18 voice to be heard so that, hopefully, happens.

19 MR. BUCHSBAUM: I would tend to agree with
20 both of you. I think that, coming from the University
21 of Michigan, where a student group is trying to
22 educate voters and deal with that confusion and -- we
23 are successful in many cases, but it's not as widely
24 spread as it needs to be. And, so, I think it does
25 need to come from somewhere greater. And we would

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2 love for the University to do that, but it's unlikely
3 that's going to happen without a push from State
4 government. And, so, I do think that it's something
5 that the Government should address.

6 DEAN BENSON: Any other questions from our
7 Commissioners?

8 I, actually, have a question about -- a
9 follow-up on the citizen checkbox issue. My
10 understanding is that there was a law passed in
11 December of 2012 -- after the 2012 election, signed
12 into law, reinstating the citizenship checkbox in some
13 form. I was wondering if you could address that.

14 And, also, in addressing that, given the
15 case law, assess whether or not you feel that law
16 could similarly be challenged, and, if so, why or why
17 not?

18 MS. DOLENTE: Jocelyn, you know more about
19 this than I do. Unfortunately, I was not -- after the
20 election, I was not paying attention to that, so I
21 don't know. And I think there is still a capacity --
22 sorry. I believe there still is the capacity to
23 challenge it because, if it is anything like its prior
24 version, it had a lot of confusion and chaos and
25 inconsistencies that created the opportunity for

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2 voters to be treated differently.

3 It's my understanding that the court made
4 its conclusion and struck the provision down based on
5 that, based on the fact that there were so many
6 inconsistencies and confusion that voters were going
7 to be treated differently, and, therefore, it's
8 unequal.

9 DEAN BENSON: If there are no other
10 questions, I would like to thank our panelists for
11 your on the ground, very detailed analysis of past
12 problems in the 2012 elections, and what can be done
13 moving forward.

14 We're now moving on to our last panel on
15 voting rights in Michigan, and we have four panelists
16 joining us for this -- for this last conversation, and
17 I'll invite them up now. We have Chris Rodriguez from
18 the Michigan Protection and Advocacy Service; we have
19 Eva Packard from the League of Women Voters of
20 Michigan; Khalilah Spencer, who I believe will be
21 joining us shortly, from the Michigan State Conference
22 NAACP; and Theresa Tran of APIAVote-Michigan.

23 So, as we gather all of our panelists -- I
24 think we'll start with Chris Rodriguez from the
25 Michigan Protection and Advocacy Service.

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2 And I'll remind our panelists that you each
3 have eight minutes for your testimony. And, also,
4 remind the public out here that we do, following this
5 panel, have another opening for public testimony. So,
6 those of you who weren't able to provide public
7 testimony earlier, if you still have testimony to
8 provide, you'll have that opportunity after this
9 panel, before the hearing adjourns.

10 And, so, as our panel is speaking, if you
11 would like to sign up to deliver public testimony
12 during our next session beginning around -- about
13 quarter after, 20 after 7, I invite you to sign up
14 with Carly at the registration table, and we will take
15 your testimony after this panel.

16 So, with that, we'll turn to Mr. Rodriguez
17 from the Michigan Protection and Advocacy Service.

18 MR. RODRIGUEZ: Great. Well, let me begin
19 by expressing our very sincere appreciate to the
20 National Commission on Voting Rights and to all the
21 supporting organizations for taking up this nationwide
22 examination in surrounding the ever so important issue
23 of voting.

24 At this time, I would also like to say, on
25 behalf of Michigan Protection and Advocacy, thank you

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2 very much for inviting us to be a part of the
3 discussion today. I hope that my testimony will be
4 helpful and will be worth some merit.

5 My name is Chris Rodriguez. I'm the
6 director of governmental affairs and media relations
7 at Michigan Protection and Advocacy. We are a
8 private, nonprofit Federally mandated to protect the
9 rights of folks with disabilities. So, this is going
10 to include protecting the rights of folks who have
11 intellectual and developmental disabilities, such as
12 Down Syndrome or autism, cerebral palsy, things of
13 that nature. We also represent the rights of folks
14 with mental illness, and we also protect the rights of
15 folks with physical disabilities.

16 While we perform a wide array of different
17 services in order to fulfill our responsibility in
18 protecting the rights of folks with disabilities and
19 to help place -- equipment place progressive policies
20 for independence among this population, one of my
21 specific responsibilities is to oversee our protection
22 and advocacy of protection access program or PAPA
23 program.

24 This program has worked through the
25 establishment of the Help America Vote Act, HAVA. I

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2 believe it was passed in two thousand and, I want to
3 say, two or three, which recognized, among other
4 things, the unique challenges that, all too often,
5 prohibit or hinder individuals with disabilities from
6 participating in electoral process in a fair and just
7 manner.

8 This unfortunate circumstance is readily
9 observed when taking into account the extremely low
10 voter turnout at this population, a population that
11 makes up this country's largest minority group.

12 The angle of the remainder of this
13 testimony is to briefly take you through our PAPA
14 program and its activities and projects under this
15 program, and to describe what we have observed over
16 the last few years as we go through these different
17 programs and kind of try to mix and things up and see
18 what we're finding.

19 Through our PAPA program, we have
20 established a few different projects aimed at
21 increasing the participation of individuals with
22 disabilities in the electoral process. We have spent
23 a significant amount of time and resources ensuring
24 that polling locations across the state of Michigan
25 are meeting their obligations under the law to be --

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2 to ensure accessible voting locations for people with
3 disabilities.

4 We have conducted a number of candidate
5 forums so that people with disabilities can interact
6 with the candidates running for offices within their
7 district, and we have also performed numerous
8 trainings in an effort to help people with
9 disabilities understand the voting process and better
10 understand their rights with respect to voting.

11 As a quick aside, I think it's important to
12 mention that, at no time, are any of these projects or
13 activities done from a place of partisanship. These
14 are nonpartisan activities for the strict purpose of
15 improving voter education and participation among
16 people with disabilities.

17 Going into further detail concerning our
18 polling accessibility project, this project is a
19 statewide effort to ensure that all polling places in
20 the state of Michigan are in compliance with State and
21 Federal laws concerning accessibility, most notably,
22 the Americans with Disabilities Act, or the ADA, and
23 Section 504 of the Rehabilitation Act.

24 When we go through the process of assessing
25 the polling locations, there's over 3600 polling

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2 locations across the state, and we survey -- we try
3 and get around to each of those every few years, at
4 least, and survey them for compliance issues.

5 Among the circumstances that we find at
6 polling locations to be in noncompliance with State or
7 Federal law, a letter is issued to both the City Clerk
8 and the Secretary of State's office, notifying them of
9 the infringement, along with information on how they
10 may procure grant funds to remedy the issue.

11 In 2010, we were able to survey,
12 approximately, 95 percent of all polling locations,
13 and found that, of those locations that we're able to
14 survey, 25 of them had compliance issues that were
15 non-compliant with Federal or State law.

16 Since then, we believe that the
17 non-compliant locations have gone down to somewhere
18 around 10 percent. Hopefully, due to some of our
19 efforts. Having made what we feel is a significant
20 difference statewide, we have changed our focus now to
21 a more targeted approach, concentrating on areas in
22 the state in which we feel have the most numerous and
23 egregious violations, and those are going to be in the
24 city of Detroit and the city of Flint.

25 Changing gears to our efforts with respect

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2 to candidate forms, these are nonpartisan events in
3 which we invite candidates running for a wide array of
4 different offices to come and listen to the needs of
5 people with disabilities. The candidates are offered
6 the opportunity to introduce themselves and the
7 particular office in which they are running for, and
8 then they are invited to take questions from the
9 audience.

10 These events have proved to be extremely
11 informative, not only for the people in attendance
12 with disabilities, but for the candidates themselves
13 and their understanding of issues facing people with
14 disabilities. In addition, these events help our
15 population feel more engaged, and, therefore, more
16 likely to participate on the day of the election.

17 Lastly, we hold a number of voting
18 trainings -- voter trainings. These trainings are
19 attended by people with disabilities and are held in
20 several different venues across the state. These
21 trainings give us the opportunity to make people with
22 disabilities aware of their rights with respect to
23 voting and help educate them on the voting process.
24 Things such as, how to register to vote, finding
25 information on candidates and finding polling

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2 locations, et cetera.

3 In conclusion, I understand the purpose of
4 this hearing is to better understand what new policies
5 might be put into place in order to improve
6 participation in the electoral process. But with
7 respect to people with disabilities -- and, again,
8 this is the largest, most under represented minority
9 in terms of voter participation, it isn't so much the
10 establishment of new laws in policies, as much as it
11 is guaranteeing that the ones that currently exist are
12 actually being followed.

13 Too often, our clerks are ignoring their
14 responsibilities under the law to make their polling
15 locations accessible. Too often are voters with
16 disabilities being turned away because they can't
17 physically enter the building in a wheelchair. Too
18 often is this historically disenfranchised population
19 not adequately educated as to their rights surrounding
20 this ever important civic duty.

21 In conclusion, if I had to make some
22 recommendations, I would recommend stricter oversight
23 on accessibility compliance, continued dedicated
24 appropriations for grants to assist clerks in
25 retrofitting their polling locations so that they are

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2 in compliance with Federal and State laws, their
3 continued dedicated funds geared at educating people
4 with disabilities about the electoral process, and
5 that they, too, have the right for their voices to be
6 heard.

7 Again, thank you so much for allowing me to
8 speak today, and if anybody has any questions, I would
9 be more than happy to elaborate on any of the items
10 that the organization participates in or any of the
11 things that I've spoken with. Thank you.

12 DEAN BENSON: Thank you.

13 We'll move on to Ms. Packard.

14 MS. PACKARD: My name is Eva Packard, and I
15 am the voter service chairman for the League of Women
16 Voters in Michigan, and I'm sitting in today for our
17 president, Sue Smith, who had to unexpectedly go out
18 of town. And thank you for inviting the League.

19 The League of Women Voters has been in the
20 forefront of advocating for voter rights for all
21 citizens since it was formed in 1920. 1920 is the
22 year that women had finally received the right to vote
23 by passage of the 19th amendment to the U.S.
24 Constitution.

25 Recent examples of positive legislation for

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2 voter rights in which the League played a major role,
3 helping to get past, including the 1993 National Voter
4 Registration Act, or also called Voter Motor, and the
5 2002 Help America Vote or HAVA Act.

6 Motor Voter broadened the locations where
7 citizens could register to vote to include driver's
8 license bureaus and locations such as the Department
9 of Human Services, Department of Community Health, and
10 the workforce development agency, as well as military
11 recruitment centers, and also provided for mail-in
12 registration.

13 The league is constantly fighting the
14 addition of laws that do the opposite and suppress
15 voting. Michigan has several laws which implemented
16 voting. One example, registration must be done 30
17 days before an election. That's not true of all the
18 states in the United States. In fact, other states
19 have same day registrations. Other states have fewer
20 than 30 days, like 15 days or something like that.

21 Another example of more recent vintage, is
22 requiring that your address for voter registration is
23 the same as your driver's license. This can
24 particularly impact students who are away at college.

25 And another one would be having to show a

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2 photo ID when you go to the polling places to vote.
3 That's a more recent example of voter suppression.

4 While a person without photo ID who has
5 registered to vote and is in the polling booth can
6 sign an affidavit and be allowed to vote, sometimes
7 poll workers don't suggest that or don't remember the
8 option of the affidavit depriving the voter of the
9 right to vote. This requirement has been declared
10 constitutional by the Michigan Supreme Court.

11 Now, let's talk about three pieces of voter
12 suppression legislation that the legislature passed in
13 2012. The League testified before the legislature and
14 urged voters to advocate against the bill. First is a
15 new photo ID requirement. House Bill 5061, in 2012,
16 expanded coverage of the photo ID requirement to those
17 voting absentee at the Clerk's office.

18 The League of Women Voters opposed the bill
19 on the basis that it would disproportionately affect
20 minorities, seniors, low-income groups and young
21 adults. The League representatives met with the
22 governor's staff to ask the Governor to veto the bill.
23 On July 4th, 2012, Governor Snyder vetoed the bill,
24 which would have expanded photo ID to absentee voting.

25 In December of 2012, the legislature

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2 adopted another bill with the new -- with the photo ID
3 requirement for absentee voters and the Governor did
4 sign that bill, and I'll talk more about that in a
5 moment.

6 A second item was restrictions on third
7 parties of voter registration. Senate Bill 754, in
8 2012, required third-party organizations, such as the
9 League of Women Voters, to register with the Secretary
10 of State's office and to participate in training in
11 order to be certified. There were onerous penalties
12 on the head of any organization if a member of the
13 organization did not strictly observe the new rules
14 for registered voters. The League opposed the bill on
15 the basis that restricting third-party registration
16 would limit opportunities for people to register.

17 Again, League representatives met the
18 governor's staff asking the Governor to veto the bill,
19 and, on July 4th of 2012, Governor Snyder vetoed that
20 bill. That veto held.

21 And then I'm going to talk about one I
22 heard about earlier, the citizens declaration
23 requirement to vote. That was Senate Bill 803, which
24 required voters to check off a separate box stating
25 that they were citizens in order to receive a ballot.

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2 The League was one of the organizations which opposed
3 it on the basis it was not necessary and it would
4 restrict voter participation by citizens.

5 The League met with the Governor's staff
6 asking them to veto the bill, and, on July 4th, the
7 governor vetoed the bill, but he did one more thing.
8 He suggested how the bill could be revised: Eliminate
9 the separate box and add words about citizenship to
10 the statement that the voter is already signing, to
11 attest to other items.

12 During the end of the year, a flurry of
13 legislation in 2012 where bills did not receive
14 hearings, but were pushed through and passed, text was
15 added to another bill to add the citizenship
16 requirement. That bill was Senate Bill 810, a Village
17 Election Bill to change the date of village elections.
18 A totally different topic.

19 The new text added a citizenship statement
20 in the format that the Governor had recommended, so
21 that no additional mark is required on the form by the
22 voter to receive a ballot. And it used to say
23 statements -- it used to say, "I certify that the
24 statements in this Absent Voter Ballot Application are
25 true." Now it says, "I certify that I am a United

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2 States citizen, and that the statements in the
3 absentee ballot application are true," but you only
4 have to sign once. The Governor signed the bill and
5 it took effect on March 28th, 2013.

6 Now, let know go back to the photo ID
7 requirement to vote absentee at the Clerk's office.
8 The text from House Bill 5061, which the Governor
9 vetoed in July, was also added to Senate Bill 810, the
10 Village Election Bill, but without any changes. When
11 the Governor signed Senate Bill 810, the photo ID
12 requirement also took effect on March 28th of 2013.

13 It meant that an absentee voter who went to
14 the Clerk's office to get an absentee ballot, had to
15 show photo ID, although those who mailed in their
16 absentee ballot applications did not. If no photo ID,
17 the voter could sign an affidavit and get a ballot and
18 vote on it, but the ballot would be put in an envelope
19 and marked as challenged, and the voter would have to
20 bring in photo ID within six days to have the
21 provisional ballot voted. Hard to do if you didn't
22 have ID, and inconvenient if you do but did not bring
23 it with you when you voted.

24 The absentee voter without voter ID would
25 be treated harsher than the person at the polls who

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2 had no photo ID. And while that person had to sign an
3 affidavit, that person's ballot was not considered
4 provisional and was processed normally, like
5 ballots -- ballots of other voters.

6 And, in summary, the League of Women Voters
7 would like to see easier access to registration and
8 less stringent requirements for voter identification.
9 Recent State legislation on elections has been going
10 in the wrong direction. And I would like to add one
11 more thing. The League has, also, submitted written
12 testimony dealing with improved -- election
13 administration ways to allow voters -- more voters to
14 vote on things such as early voting and no -- no
15 reason absentee ballots.

16 DEAN BENSON: Thank you.

17 MS. TRAN: Good evening, members of the
18 Commission. Thank you for the opportunity to give
19 testimony -- or the opportunity for me to testify. My
20 name is Theresa Tran, and I am the Board president of
21 Asian and Pacific Islander American Vote Michigan.

22 Asian and Pacific Islander American Vote
23 Michigan is a nonpartisan, nonprofit organization that
24 serves the Asian and Pacific Islander American, or
25 APIA community, through civic participation, advocacy

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2 and education.

3 At 2.97 percent of Michigan's total
4 population, our state's 293,766 APIAs are the fastest
5 growing population, while other populations are
6 declining. Between 2000 and 2010, our community grew
7 at 34.9 percent. In our organization's relatively
8 short history, we have registered, approximately,
9 1,500 individuals to vote, the vast majority of the
10 APIA community.

11 The APIA community faces many challenges to
12 participating in our country's democracy, including
13 language barriers, lack of familiarity with the
14 political process and, sometimes, distrust of
15 government due to the history of the home country's
16 political corruption.

17 For that reason, national APIA community
18 voter registration rates tend to hover around 50 to 60
19 percent, which is significantly lower than that of any
20 other community. However, once registered, APIA
21 voters do turn out to vote at high rates. Nationally,
22 we see Asian-American eligible voters voting at
23 79 percent in 2012.

24 So, it's clear that the assistance that
25 APIAVote-Michigan and other nonprofit organizations

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2 provide to the to potential voters in taking the first
3 steps to completing the voter registration form, and,
4 also, providing information about the election process
5 and voting rights is critical.

6 As such, APIAVote-Michigan has consistently
7 opposed the addition of burdensome requirements for
8 third-party voter registration groups that limit our
9 functionality and (inaudible).

10 So, in a similar manner, stricter voter ID
11 laws are particularly harmful to the APIA voters since
12 older female and low-income APIAs are less likely to
13 have photo ID due to cultural norms. In the
14 current -- or in the 2004 current population survey,
15 nationally registered Asian American voters were
16 8.5 percent less likely to say that they voted in
17 states that required a form of identification to vote
18 compared to those states where only a name was
19 required. APIAVote-Michigan opposes stricter voter ID
20 laws that disproportionately burden vulnerable
21 segments of the APIA community.

22 Another barrier that was alluded to for
23 APIAs are particularly sensitive to, is the proof of
24 citizenship box on ballots. According to the
25 Asian-American Legal Defense and Education Fund's

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2 nonpartisan multilingual exit polls of 693 Asians and
3 the Arab-American voters of Michigan. This passage
4 permits conscious and unconscious profiling of the
5 APIA community, a form of voter intimidation.

6 For this reason, APIAVote-Michigan has
7 advocated for prohibiting any proof of citizenship
8 question.

9 APIAs continued to face barriers to voting
10 even at the polling station, including the lack of
11 language assistance. Racist and poorly trained poll
12 workers, incomplete voter lists and denial of
13 provisional ballots, improper identification checks
14 and poll site confusion, are all problems that are
15 faced by our community.

16 The Federal response to this
17 disenfranchisement has been the instrumental language
18 assistance provision, or Section 203 of the Federal
19 Voting Rights Act.

20 In October of 2011, Hamtramck, Michigan,
21 became the first city in the United States to apply
22 Section 203 to Bengali voters.

23 In 2012, APIAVote-Michigan worked with
24 members of the Hamtramck community, including the City
25 clerk, to check compliance with Section 203, and noted

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2 some of the following issues: Many poll sites failed
3 to provide Bengali ballots, make translated materials
4 available, or provide interpreters, as is required
5 under Section 203.

6 In one case, in particular, the workers --
7 the translated sign displayed next to the Voter Bill
8 of Rights had nothing to do with voter -- voter rights
9 at all. Poll workers also complained that voting
10 machine scanners would not read the translated Bengali
11 ballots because duplicated ballot numbers on the
12 English and the Bengali ballots made it seem as though
13 Bengali voters had already cast votes, causing
14 confusion at the polls.

15 I bring this to your attention, not to say
16 that Section 203 is a failure, but, rather, to say
17 that Section 203 is integral to providing the
18 framework for organizations like ours to apply
19 pressure on City officials to meet the voting rights
20 of all citizens. Therefore, APIAVote-Michigan
21 recommends directly more resources to assist the
22 compliance, not weaken or eliminate this critical
23 safeguard.

24 It's time that we address these issues and
25 create an environment that reflects the nature of

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2 democracy in our country for all of our communities.
3 APIAVote-Michigan stands strongly in its opposition of
4 restrictive laws that limit the practice of democracy
5 and will continue to work to create engaged
6 transparent communities.

7 Thank you, again, for the opportunity to
8 testify, and I hope this committee will take our
9 concerns into consideration. Thank you.

10 DEAN BENSON: And, finally, Ms. Spencer.

11 MS. SPENCER: Good evening. My name is
12 Khalilah Spencer. I'm appearing on behalf of the
13 Michigan State Conference NAACP. I currently serve as
14 the chair of the legal redress committee, and today I
15 wanted to speak, in particular, about some of the
16 challenges that we've been seeing in the
17 African-American community with regard to voting
18 rights access, and also some litigation that Michigan
19 State has been involved in in the past four or five
20 years.

21 First, let me start by saying, the NAACP,
22 founded February 12th, 1909, is the nation's oldest,
23 largest, and most widely recognized rights -- civil
24 rights organization. The mission of the NAACP is to
25 ensure the political, educational, social, and

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2 economic equality of rights of all persons, and to
3 eliminate racial hatred and racial discrimination.

4 In pursuit of this mission, the NAACP is
5 dedicated to, one, and most importantly, protecting
6 the rights of all of the citizens, and most precious
7 of these rights is the right to vote.

8 Since 2011, the NAACP has seen an
9 unprecedented and coordinated attack on access to the
10 ballot box and an attack on attempting to dampen the
11 voter participation among, particularly,
12 African-Americans, among other minorities, younger
13 voters and the elderly. This has been the greatest
14 coordinated legislative attack on voting rights since
15 the dawn of Jim Crowe, more than 100 years ago,
16 clearly in response to the record turnout among
17 minority voters in the 2008 elections.

18 More specifically, we have seen over 30
19 state legislatures -- legislatures introduce voter
20 suppression legislation, laws passing in 14 of those
21 states, and laws pending in another 8.

22 New state laws have been attacking voting
23 rights on forefronts, requiring voters to present
24 unnecessary Government-issued photo identification in
25 order to vote, cutting early voting opportunities in

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2 half and ending Sunday voting, ending same-day voter
3 registration and voting, constricting ex-criminal
4 offenders of their right to vote.

5 The NAACP stands against these efforts to
6 suppress the voting rights, and we stand, with our
7 coalition members, and we certainly oppose those. In
8 particular, 2012, we saw an attack in the Michigan
9 State legislature, and we submitted written testimony
10 and in-person testimony to those bills, and we were
11 glad to see that Governor Snyder vetoed those, and I
12 believe Ms. Smith spoke to those, specifically.

13 In the recent four years, NAACP,
14 particularly in Michigan, has been involved in
15 significant litigation and other legal efforts to
16 attack those who are attacking our right to vote.

17 In 2008, Dean Benson was involved in an
18 effort to submit to the DOJ -- there was an issue with
19 Buena Vista Township regarding the closure of
20 Secretary of State offices. We advocated to the DOJ,
21 and they made it clear they were violating what is now
22 no longer Section 5 and pre-clearance. And, so, our
23 new efforts in 2013 are strictly geared toward making
24 sure that Congress does, in fact, bring up a
25 substitute to the section for the Voting Rights Act.

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2 And we urge everyone, during this time
3 period where the legislatures are at home, and not in
4 Washington, to advocate for those changes. At this
5 point in time, it's our understanding that there is
6 no -- there is nothing on the agenda, in terms of
7 Congress, in addressing Shelby versus Holder.

8 In particular, in addition to that effort
9 in 2008, there was an effort in 2010 by the then
10 Secretary of State to purge voter rolls in violation
11 of the MVRA. We were involved in litigation with the
12 ACLU of Michigan and the Advancement Project in
13 submitting a lawsuit. The judge was Judge Murphy, and
14 we entered into a settlement with the Secretary of
15 State to make sure that she complies with MVRA, and
16 that she did not purge people off QVF without due
17 cause and without following proper procedures.

18 In the latest election in 2012, we have
19 some instances where we perceive complaints with those
20 people who thought they were, in fact, registered to
21 vote, got to the polls, and, you know, they were not
22 on the QVF. We've been in cooperation with the new
23 Secretary of State to sort of discuss those issues and
24 make sure that she is still in compliance with the
25 still pending consent order, and we have been involved

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2 in those efforts.

3 Those of you also have been aware that we
4 are also involved in other litigation involving the
5 emergency manager where we feel that that is, also, a
6 violation of voting rights. And, so, there are
7 certain efforts that we have taken, litigation-wise,
8 with respect to making sure that voting rights are
9 preserved in Michigan for African-American voters.

10 In addition to that, we have made a
11 concerted effort in Michigan -- and, particularly, in
12 Detroit -- to increase our GOTV efforts to sort of
13 curb against those people who would suppress the vote.
14 I think the biggest thing that we can do is educate
15 our constituency on what their rights are. It's a lot
16 easier for someone to enforce their own right at the
17 polls than to come back after the fact and ask for
18 litigation.

19 So, what we've been involved in is, we've
20 been involved in significant voter education, making
21 sure that we have forums in cooperation with our City
22 and County clerks to make sure that people are aware
23 of their rights with respect to voting. We've also
24 made sure that we have people in the polls -- poll
25 monitors. Before, we used to concentrate on people

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2 just being present in the polls to see what's going
3 on. Lately, we've been involved in more aggressive
4 challenger training.

5 In particular, at the Detroit branch, we
6 have volunteers that are trained and credentialed as
7 challengers. Well, not to be confused, we certainly
8 don't challenge anyone's right to vote, but we do
9 think it's important to know what the challenger's
10 responsibilities and duties are, and then we want to
11 make sure that we have every right that a challenger
12 does when we are calling in complaints and what have
13 you.

14 So, we've made a concerted effort to make
15 sure that we have our volunteers informed, and that,
16 in conjunction with our voter protection effort, to
17 have hotlines available nationally and locally where
18 people can call in. We will look up where they are
19 registered to vote. We will address any concerns that
20 are at the voting poll. If there is back-ups,
21 machines down, we have made an effort to work with our
22 City and County clerks to make sure that we have their
23 numbers to their bureau elections, and that they're
24 aware of issues that are going on in the various
25 precincts.

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2 So, I think it's an important fact that we
3 need to look on all fronts, litigation, legislative
4 advocacy, and, also, voter protection and voter
5 education.

6 Thank you for letting me testify on behalf
7 of Michigan State Conference NAACP.

8 DEAN BENSON: Thank you to all of our
9 panelists for your very rich testimony, and I am
10 personally grateful for all of the information that
11 you have brought to bear based on your unique
12 experiences and the unique experiences of the
13 organizations you represent.

14 Commissioners, questions for our panelists?

15 MS. KATZ: So, I'll ask one. Thank you
16 all. It's really very interesting.

17 I've heard all four of you say something to
18 the effect of identifying policies -- voting policies
19 that we could change for the voting -- lesser voter ID
20 requirements and a host of things that we have been
21 hearing all evening about, and I think there's some
22 sense of whether there's a political -- the political
23 process can yield those outcomes at this time.

24 But both Chris and Theresa mentioned, to
25 some extent, that existing law was actually sufficient

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2 to get a long way -- a long way to some of the ends
3 you were seeking, and that the question is one of
4 better enforcement rather than new provisions. So,
5 I'm wondering if any of you have some thoughts about--
6 going forward, about the appropriate balance between
7 fighting legislatively or judicially for certain
8 policies, or whether we might achieve more consensus
9 in seeking better enforcement of the provisions we
10 have.

11 And I just -- just to compound the question
12 further, the extent to which the existing law might
13 serve (inaudible) some better than others and how you
14 understand that moving forward.

15 MR. RODRIGUEZ: I think, based on -- from
16 our experience, we had, probably, a two- or three-year
17 kind of campaign on educating the Clerk's office here
18 in the city of Detroit trying to make sure that their
19 polling places were in compliance with State and
20 Federal laws. We came and did a specific survey just
21 of Detroit. We found that there was noncompliance
22 situations in around 92 percent of those.

23 It's worth noting that, when I say
24 noncompliance, that can be something as simple as, you
25 know, the handicapped sign was at 3'3" feet and it

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2 should be at 4 feet. And those did exist, but there
3 are also some more grievous violations, such as, I
4 mean, places where, literally, if you are in a
5 wheelchair, you will not enter the building. And we
6 went back and forth, back and forth, back and forth,
7 saying, you know, you've got to get your stuff
8 together.

9 There are certain funds that are specific
10 for clerks to take advantage of so that they can
11 remedy those situations that weren't being taken
12 advantage of. So, basically, it came down to us,
13 basically, threatening the Secretary of State's office
14 in the city of Detroit with litigation. At that
15 point, we -- I think that speaks a little louder,
16 unfortunately. I don't think litigation is ever a
17 resourceful avenue towards systemic change, but, at
18 times, I think it is necessary.

19 Luckily, we didn't have to go down that
20 path, but using those types of pressures and tools
21 yielded some significant changes, and now we have a
22 specific person dedicated at the Secretary of State's
23 office who only deals with the city of Detroit
24 remedying those particular non-compliant locations.

25 So, I think, you know -- I think -- and I

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2 think it was mentioned, previously, having a robust
3 and comprehensive arsenal of different tools and
4 approaches to some of these issues is certainly
5 beneficial. Making sure -- as far as making sure
6 things are in compliance with current laws.

7 One of the unique things that we're
8 finding -- and we, certainly, stand by a lot of the
9 things that were mentioned previously about voter
10 registration hurdles and identification and things of
11 that nature. Some of the stuff, you know, when we
12 pose, you know, you should be in compliance with
13 accessibility. And they say, well, let's do this, you
14 know -- it's called -- I forgot what it's called.
15 Basically, you can pull up, somebody will come out and
16 take you, blah, blah, blah, and that's all fine and
17 good. We're not saying that that might not be our
18 remedy, but it's certainly not a substitute to pull
19 participation in the electoral process.

20 So, those are some of the -- the remedies
21 that are being proposed, that we still aren't
22 comfortable with, but I think people are trying to
23 move in the right direction, at least in that
24 particular instance.

25 MS. TRAN: So, in regard to our experiences

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2 with monitoring Section 203 compliance, absolutely
3 it's a good policy for our community. However, it's
4 also a Federally mandated policy that has no funding
5 behind it. So, City clerks who have told us, time and
6 time again, that they are, you know, really strained
7 on their budget and trying to comply and do everything
8 that they can, are trying to work with communities,
9 but, oftentimes, in the case of the City of Hamtramck,
10 in the period of just two years, we saw four different
11 City clerks. And as a community based organization
12 that's completely volunteer run, if you're not able to
13 be on the backs of the City clerk all the time, it
14 makes it very difficult.

15 So, yes, I think that there is more that we
16 could do collectively in terms of implementation of
17 some of these policies, but, at the same time, we also
18 have to -- you know, we need to hold our City clerks
19 more accountable to -- and those who are also -- at
20 the Federal level, as well, that are responsible to
21 support them in making those things possible.

22 MS. PACKARD: I'd like to comment on that.
23 The League, in 2012, five of our local leagues did a
24 project, an observer project, working with the County
25 clerks to identify and solve -- help in solving

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2 problems. Those were the Ann Arbor, Benton Harbor,
3 Flint, Holland, and Saginaw -- at least as to cover
4 those cities -- and there were a lot of problems that
5 they identified and solutions, but one particular
6 problem that they would address in the community that
7 Chris is talking about, for example, and some of the
8 problems identified.

9 AutoMARK machines are intended for use by
10 those with disabilities, doesn't get much use, is
11 perceived to be unreliable and is bulky. And in one
12 particular county, the training of election workers
13 was inadequate and inconsistent in use of AutoMARK
14 voting equipment for those with disabilities was
15 discouraged due to lack of training and unreliability.
16 Those are facility problems.

17 DEAN BENSON: And I, actually, have a
18 question for Theresa on Section 203. Notably, only
19 one part of Michigan is currently covered by
20 Section 203, Hamtramck, which you've talked about.
21 I'm wondering, given your experience, would you --
22 and, other states, there are State laws that expand
23 Section 203 requirements to other areas with a
24 lesser -- or with lower coverage requirement.

25 Would you -- do you think there's any need

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2 or relevance for any type of additional State
3 requirements here in Michigan for English learning
4 communities who are not -- you know, all the problems
5 with 203, notwithstanding, who are not covered by the
6 basic requirements of 203?

7 MS. TRAIN: Yeah, absolutely. Especially
8 as we're seeing the -- the changes in population that
9 are happening. As I mentioned, our community, in
10 particular, is growing quite quickly, and other
11 communities of color, as well, where English isn't the
12 first language spoken in the home.

13 We see that, with certain City clerks there
14 are provisions of ballots because the City clerks are
15 understanding that there are population changes. So,
16 in places like Dearborn, where there's a high
17 Arab-American population, those City clerks have made
18 the adjustments to provide translated materials,
19 et cetera, on election day.

20 And, so, I think that, yes, because we do
21 need some sort of State law that helps support better
22 access to democracy -- because what we know in the
23 Asian-American community, even though two-thirds of
24 our community is born here in Michigan, or they become
25 citizens, they are excited about voting. Some of them

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2 just don't understand the process of how to register
3 to vote and, oftentimes, it takes people who look like
4 them to help get them registered and people who can
5 speak their language to get them registered.

6 So, absolutely, more provision of access,
7 language access, in the different polling locations
8 would make it easier and more exciting for our
9 community to be involved in the democratic process.

10 DEAN BENSON: If there are no further
11 questions for our panelists --

12 Thank you very much for your rich
13 testimony, and we appreciate you being here tonight.
14 Thank you.

15 That concludes our final panel of experts
16 for the evening, and now we have -- we'll have a
17 period of public comment and testimony, as well,
18 before we adjourn for the evening. So, I'll ask those
19 of you who, again, are interested in signing up to
20 give public testimony, if you have not already signed
21 up, but would like to do so, please see Carly at the
22 registration table, and we -- we encourage those who
23 are going to be delivering public testimony, to speak
24 into the microphone to the left, and please limit your
25 remarks to four minutes.

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2 I will first call Monique Baker-McCormick
3 to deliver your testimony to the Commissioners. And,
4 again, I'll remind you to keep your testimony to four
5 minutes.

6 MS. BAKER-McCORMICK: Good evening. I am
7 Monique Baker-McCormick. I am a citizen of Detroit.
8 I, as a homeowner, business owner and a registered
9 voter in the city of Detroit, have received three
10 absentee ballots at my home address with three
11 different names of people that no longer live at my
12 address. And I think that that's a major problem,
13 because I could have simply sent in -- mailed in the
14 absentee ballots, and I think that that is happening a
15 lot in the city of Detroit.

16 Secondly, because of all of the
17 irregularities in the past elections, especially in
18 the -- the last mayoral election where we have had
19 three different recounts with three different results,
20 we know that something is majorly wrong with that.
21 There needs to be legislation changed and passed to
22 address the issue of a recount.

23 If you have a recount, you should be able
24 to recount the ballots no matter what the issue is.
25 Because if you can't recount them, what's the use of

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2 having a recount? So, we have to change that
3 legislation, and we also have to empower the board of
4 commissioners to actually use their powers. In a lot
5 of the cases, they won't address the issues that we
6 have with problems in the recount or in an election.

7 The Secretary of State, I think they lack
8 the power to enforce the powers that they have. I
9 think that's a major issue, as well. And we know that
10 there is fraud in the election process. And, you
11 know, as a citizen, as a voter, as an American, as a
12 veteran, I want my vote to count. I expect for my
13 vote to count. And that's why we need reform.

14 Thank you.

15 DEAN BENSON: Thank you.

16 Any questions from our Commissioners?

17 Thank you very much.

18 Next, Michael-David BenDor.

19 MR. BENDOR: Hi. I have four minutes. I
20 wanted to start with the issue of law enforcement.
21 It's a very straightforward thing. If we're going to
22 have rights and we're going to have a law, they have
23 to be enforced. In 1980, I was involved in an
24 election in which we were told by a co-worker that
25 five ballots were thrown in the trash, and one of the

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2 parties lost the election because of five votes.

3 We discovered, at that time, that there
4 were only three people in Michigan who did any kind of
5 law enforcement. They were the State police. Now,
6 there's only one. State police have been cut
7 considerably.

8 We discovered that -- when we went to
9 court, they wanted us to prove fraud. We couldn't get
10 to the ballots because we had a lawsuit. The ballots
11 were locked up tight. We couldn't get the evidence
12 because we had a lawsuit. If we didn't have a
13 lawsuit, maybe we could have gotten the ballots. I
14 don't know. But that was 1980. This is a long time
15 since.

16 We have the Detroit election going on. I
17 was involved in training some people to be
18 challengers. The law is very clear. It's a felony in
19 Michigan to interfere with the performance of a
20 challenger. The legal performance. They're not
21 allowed to obstruct the election, and so on, but there
22 is a law on the books that says that.

23 The Detroit police, I'm told, escorted 13
24 challengers out of the building. The Detroit police.
25 They are supposed to be the law enforcement. They

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2 broke the law. And if any reasonable person reads
3 it -- now, I'm told by my son, who's a law student,
4 that you don't know what the law is until a judge
5 tells you, and even then, it might be appealed. But
6 I'm a reasonable person, and I can read the law, and
7 that's what it says. There is no way that there is
8 law enforcement.

9 Now, I know I only have a couple more
10 minutes, so I want to go on to the issue about why is
11 this important? Well, I want to live in a civilized
12 society. I don't want to have to carry a gun to
13 defend myself. I want to live in a civilized society.
14 When the game is played that violates our rights --
15 and that's what's happening, our rights are being
16 violated.

17 There's a TV show called "Hard Ball," and
18 they treat politics as a game. That's what -- that's
19 what it's become. And the money that goes into it --
20 if you look at the Detroit election, how is it that
21 something more than two and a half million dollars was
22 spent on the mayoral primary? Two and a half million
23 dollars. This is reported by the Detroit Free Press.

24 Now, I worked very hard on the election
25 Cliff report for MERA, and I really, really hope

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2 you'll take the time to read it. I spent a lot of
3 time making sure all of the footnotes were right. And
4 one of the things that happened while I was doing that
5 was, I was looking at Dominion. That's an interesting
6 name, Dominion.

7 Dominion is the name of the company that
8 now owns Diebold, or what was Diebold and became
9 Premier, and now it's Dominion, and it owns ES&S, and
10 it's a foreign corporation, and I could find nothing
11 about who owns it. They are not sworn election
12 officials when they count the vote, and they count all
13 the votes in the state of Michigan, and that's wrong.
14 It makes the system very easy to be gamed. We don't
15 know who is elected. And as that continues to happen,
16 we are going to lose our civilization.

17 We have very little respect for the law
18 now, generally, and I'm very sorry if that continues.
19 We really need to be able to respect the outcome of
20 elections. We need to know, for certain, that
21 they're -- who you voted for. And just as the person
22 ahead of me said, you know, I have a -- I should have
23 a right to vote. I'd like to live in a democratic
24 society.

25 DEAN BENSON: Thank you very much for your

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2 testimony.

3 Questions from the Commissioners?

4 Next, Catherine Montgomery.

5 MS. MONTGOMERY: My name is Catherine
6 Montgomery. I'm a resident of the city of Detroit,
7 I'm a voter in Detroit, and I am sadly disappointed
8 with the way our election was handled this year -- or
9 in 2012.

10 I was a challenger on the general election
11 night, and although I was working at a location in
12 northwest Detroit, I was informed by the challengers
13 that were working in Cobo Hall that the persons that
14 wanted to go in the room where they were opening up
15 the absentee ballots so that the signatures on the
16 ballots could be compared with the signatures that are
17 on file, the challengers were not allowed into that
18 room. This opens the door wide open for fraud.

19 I also am concerned that there is no
20 purging going on of our voter rolls; that people who
21 have died, people who are over 100 years old, are
22 still on the rolls and being counted as voters, and
23 their names are being used to stuff the ballot, and I
24 believe that's what happened in our election this
25 year.

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2 I'm sure I have other things to say.

3 I'm -- my mind isn't -- it's not coming to me right
4 now, but I'm just -- I'm very concerned. I was
5 involved in the recount both in the primary and in the
6 general election. I saw, personally, myself,
7 handwriting that was identical on the write-in
8 ballots. There was more than one person, but there
9 was several handwriting that was identical.

10 The Wayne County Board of Canvassers should
11 have done a thorough investigation of this, they did
12 not. They dropped the ball. They picked 17 or 19
13 ballots out of all the handwritten signatures to
14 compare -- have a handwriting expert investigate. We
15 picked out thousands -- thousands of ballots that had
16 similar handwriting. And this -- nothing was done by
17 the Board of Canvassers to investigate that.

18 Thank you, Council.

19 DEAN BENSON: Thank you very much.

20 From the Commissioners, any questions?

21 All right. Our final member of the public
22 to testify tonight, Melissa Brown.

23 MS. BROWN: Good evening, Commissioners,
24 Dean Benson. Thank you for allowing me to testify
25 tonight.

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2 My testimony is more of a personal story.
3 In 2012, on election night, I watched the polls in the
4 morning, and then I went to class -- I'm a student
5 here -- and then I went and watched the polls again
6 later that night, because, apparently, I don't know
7 how to relax on election day, ever.

8 But, in the morning, I saw some interesting
9 things in polls in Detroit -- and I know, Dean Benson,
10 I was in contact with you -- there weren't enough
11 polling booths, so people were holding their ballots
12 up on the wall and writing in their votes on the -- in
13 the bubbles on the wall because there weren't enough
14 privacy booths.

15 Lines were long, but they were moving
16 smoothly, but they were just -- there was such an
17 overwhelming response in the morning that there wasn't
18 enough to have that line move smoothly without
19 compromising privacy.

20 But the most concerning thing I saw that
21 night was, later, I went to Dearborn and I watched a
22 poll there, and I discovered that the poll workers
23 weren't adequately educated in how to administer the
24 affidavit and the oath when someone doesn't have their
25 voter ID -- when they don't have their driver's

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2 license or some form of ID. I was told that they were
3 sending people home to go get things like water bills
4 and other utility bills to prove that they were who
5 they said that they were, in order to match that with
6 what was on the registration rolls.

7 And that was definitely a little bit
8 concerning that I was there at 7:00 -- 6:30, 7:00 at
9 night. How many people had they turned away because
10 they hadn't been adequately educated as to what to do
11 when somebody forgets their driver's license? And if
12 you multiply that by every precinct across this entire
13 state, how many people didn't get to vote at all
14 because people weren't adequately trained?

15 Now, I know this is a national commission
16 and this is a very Michigan specific issue, but when
17 you go back and you talk with other people that may
18 have influence on the subject, I think that, maybe, we
19 should have a definite focus on what we can do to make
20 training uniform and to give the correct information
21 to the people who hold the -- who, basically, open the
22 gate to whether or not you can get a ballot. Because
23 without that, I hate to think how many people aren't
24 being able to vote simply because people don't know
25 what they're doing.

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2 So, thank you.

3 DEAN BENSON: Thank you.

4 Commissioners, any questions for Melissa?

5 All right.

6 Thank you very much.

7 And I thank all of you -- in particular,
8 our expert panelists -- for providing such detailed
9 information to us tonight. I think I speak on behalf
10 of all of the Commissioners in communicating our
11 thanks for those of you who shared such detailed
12 research, knowledge and stories of voting in Michigan.

13 So, with that, I'll turn it over to Lawyers
14 Committee.

15 MR. MARTINSON: Thanks, Dean Benson. Just
16 briefly, before we conclude, I want to thank Wayne
17 State, again, our Commissioners, our panelists, and
18 the members of the public who came here to provide
19 testimony. I think we covered a lot of issues today.
20 I'm sure there are issues that we didn't cover, and
21 I'm happy to accept additional testimony from anyone
22 here or anyone that you talk to after this event in
23 the form of written testimony regarding voting issues
24 that are occurring and have occurred in Michigan.

25 This is just the beginning of the process.

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2 This is only the third hearing held by the National
3 Commission on Voting Rights. We're going to have 24
4 more, so we're just getting started in the process of
5 creating a record for Congress for a Shelby County
6 Supreme Court fix, and to put together information and
7 facts for activists and legislatures to use to help
8 reform elections in Michigan and throughout the United
9 States, and I expect that a lot of these issues will
10 be covered in other forums around the country, and,
11 obviously, we want to hear from all of you if you have
12 additional things to say.

13 Ms. Spencer mentioned the lack of
14 legislation in Congress regarding the Shelby County
15 Supreme Court decision, and we expect that to change
16 soon, and, so, you should expect, in the next, you
17 know, probably month, to see some legislation coming
18 out of Congress. At least, that's what we're
19 expecting, at this point.

20 As I mentioned, if you want to submit
21 written testimony, please email me,
22 Amartinson@lawyerscommittee.org, or you can go online
23 to MIhearing.lawyerscommittee.org.

24 So, good night, everyone. I'll give any of
25 the commissioners a chance to say any closing remarks

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2 that they would like. Otherwise, we can -- can get
3 going.

4 PROFESSOR KATZ: I'll just say quickly that
5 Alan did a superb job organizing all of this, and I
6 really wanted to thank him.

7 Alan was my student longer ago than either
8 of us will admit. I'm just wasting time for a few
9 more minutes -- or a few more seconds. I will add
10 that, not only was he spectacular as a student, it's
11 one of the pleasures of teaching to see your students
12 go on and do good work in the world and learn from
13 them. So, it's a particular treat for me to be here.

14 Again, thank you, Alan.

15 DEAN BENSON: Thank you.

16 MR. MARTINSON: All right. Thank you,
17 everyone.

18 (Proceedings concluded at 7:12 p.m.)
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1 NATIONAL COMMISSION ON VOTING RIGHTS
2 CERTIFICATE OF REPORTER
3

4 STATE OF MICHIGAN)
5) SS
6 COUNTY OF OAKLAND)
7

8 I hereby certify that I reported
9 stenographically the foregoing proceedings and
10 testimony under oath at the time and place
11 hereinbefore set forth; that thereafter the same was
12 reduced to computer transcription under my
13 supervision; and that this is a full, true, complete
14 and correct transcription of said proceedings.

15 Date: 1/22/2014
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21 _____
22 Alison C. Matthes, CSR-6266,
23 Notary Public
24 Oakland County, Michigan

25 My Commission expires: May 1, 2017

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National Commission on Voting Rights

MINNESOTA & WISCONSIN HEARING

Tuesday, February 25, 2014

4:00 p.m. to 8:00 p.m.

University of Minnesota Law School

Walter F. Mondale Hall, Room 25

229 - 19th Avenue South

Minneapolis, Minnesota 55455

Reported by: Dana Anderson-Linnell

Paradigm Reporting and Captioning

1 INTRODUCTION: Alan Martinson

2

3 APPEARING AS THE GUEST COMMISSIONERS:

4 Biko Baker, Lawrence R. Jacobs, Wenda Weekes Moore

5 Mark Ritchie and Warren Spannaus

6

7 PANEL 1:

8 Jeff Martin

9 Blong Yang

10 Abdirizak Said

11 Pamela Hoopes

12 PANEL 2:

13 Grace Wachlarowicz

14 Analiese Eicher

15 Nolan Schmidt

16 PANEL 3:

17 John Shaw

18 Alicia Boehme

19 Neil Albrecht

20 Andrea Kaminski

21 PANEL 4:

22 Mark Halvorson

23 Kathy Tomsich

24 Jerry Franck

25 Mike Griffin

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P R O C E E D I N G S :

MR. MARTINSON: Good afternoon. Welcome to the Minneapolis hearing of the National Commission on Voting Rights. I'm Alan Martinson, an attorney with the Lawyers' Committee for Civil Rights in Washington, D.C. On behalf of the Lawyers' Committee, we thank you for your participation and support this afternoon. And at the outset, I'd like to thank the University of Minnesota Law School for hosting us for a discussion about one of the most fundamental aspects of our society, the right to vote.

The Lawyers' Committee is a nonprofit, nonpartisan civil rights organization founded at the request of President John Kennedy 50 years ago to engage the private bar in the fight for racial justice and equality. We continue our work today in a range of areas, including as one of the foremost national organizations on voting rights.

Today's hearing in Minneapolis in the eighth in a series of nationwide

1 fact-finding hearings convened by our National
2 Commission on Voting Rights.

3 As many of you know, this summer --
4 this past summer the U.S. Supreme Court struck
5 down a key protection of the Voting Rights
6 Act, and legislation was recently introduced
7 in Congress to strengthen voting protections
8 to repair some of what was lost.

9 So one of our main purposes through
10 these national hearings is to identify the
11 need for strong protections against
12 discrimination in voting by looking at the
13 current record in states throughout the
14 country.

15 In addition, today we also want to
16 hear from you about election administration
17 and election reform. Across the country over
18 the past few years we have seen a wave of
19 restrictive voting laws, those making it
20 harder for many eligible voters to cast a
21 ballot. I've seen some of these next door in
22 Wisconsin. Further we've also continued to
23 see election administration challenges cycle
24 after cycle related to poll worker training,
25 voter registration, provisional ballots,

1 voting machine problems. Here in Minnesota
2 you've seen some very positive reforms, some
3 of which may serve as models for the rest of
4 the country. And your input on these issues
5 is critical for ongoing efforts at a state,
6 local and national level.

7 With the testimony we receive today
8 and after the hearing, the National Commission
9 will prepare two reports; one on voting
10 discrimination and another on election
11 administration and electoral reform. The
12 reports and records from the hearings will be
13 available this year to anyone seeking to
14 reform or improve existing voting laws. We
15 expect the reports to inform Congress and
16 educate the public regarding recent record of
17 voting discrimination and what to look out for
18 moving forward.

19 Presiding over the event today are
20 five commissioners, each with a strong
21 commitment to protecting the access to ballot.

22 Biko Baker is the Executive
23 Director of the League of Young Voters and is
24 a nationally recognized leader. He's based in
25 Milwaukee. He's a pioneer in writing

1 city-level, data-driven voter turnout
2 campaigns that dramatically increase voter
3 participation of young urban citizens, in
4 particular, African-Americans. Biko has
5 appeared on numerous national news programs as
6 well as at many conferences and other events
7 to discuss these issues. We're also pleased
8 that he's a national commissioner for the
9 National Commission on Voting Rights.

10 Professor Lawrence Jacobs, who is
11 not here yet today, is the Walter and Joan
12 Mondale Chair for Political Studies at the
13 Herbert Humphrey School here at the University
14 of Minnesota. He's published 14 books and
15 edited volumes on dozens of articles on
16 elections, legislation and presidential
17 politics.

18 Wenda Weekes Moore served as a
19 trustee of the W. K. Kellogg Foundation in
20 Battle Creek, Michigan for 26 years and is
21 currently a member of the Kellogg Trust.
22 She's the Regent Emeritus at the University of
23 Minnesota having served for 16 years, six of
24 these years as the chair of the board. And
25 she's the first one and person of color to

1 serve in that capacity.

2 Mark Ritchie, who will be here
3 shortly, is Minnesota Secretary of State.
4 He's a long-time leader in the realm of voting
5 rights beginning well before his current stint
6 in state government. He was a participant
7 in -- at the Minneapolis hearing of the
8 previous incarnation of the National
9 Commission on Voting Rights back in 2005.
10 We're thrilled to have him join us for a
11 couple of hours today.

12 And finally, Warren Spannaus who
13 was the Attorney General of the State of
14 Minnesota from 1971 to 1983 winning the
15 reelection two times. He's a partner in the
16 law firm of Dorsey and Whitney LLP from 1983
17 to 2000, and we're honored to have him here
18 today.

19 Our commissioners will preside over
20 today's event and receive testimony from
21 several panels of witnesses and ask follow-up
22 questions as they desire to ensure that we
23 create as robust a record as possible about
24 the state of voting in Minnesota and Wisconsin
25 today.

1 Now just a few housekeeping items
2 before we start. If you've been confirmed on
3 a panel in advance, please check in at the
4 sign-in table. There's also been two changes
5 in the program. First, Maribeth Witzel-Behl,
6 the Madison City Clerk is sick, so she's
7 unable to make it here today. If you're
8 interested in her testimony, I can provide her
9 written testimony to you by email.

10 Second, Richard Saks from the
11 Milwaukee NAACP was held up in a Wisconsin
12 Supreme Court hearing in Madison related to
13 voter photo ID, and so he won't be able to
14 make it today. So please let me know if
15 you're interested in his written testimony,
16 and I can provide that by email.

17 For any individuals here today who
18 would like to share their voting experiences
19 and who have not been assigned to a panel, we
20 would like to hear from you as well. Please
21 make sure that you sign up at the witness list
22 out in front of the door to the room and speak
23 to our designated volunteers for instructions.
24 The commissioner will call your name during
25 the open mic period. We have several

1 volunteer attorneys who will help craft your
2 testimony to make sure you convey your key
3 points in the limited time period that we have
4 for each person, which is three minutes.

5 A few other items, our hearing is
6 being transcribed, so please speak clearly,
7 especially your name. It's also being
8 videotaped. Please be mindful of the
9 time-keepers and their signs. And if you are
10 on Twitter, we have it set up with hash tags
11 for hearing. They're on the screen there,
12 #NCVR, #votingrights and you can see
13 @lawyerscommittee.

14 Finally, thank you. I want to
15 thank our law firm sponsors of Dorsey and
16 Whitney LLP and Perkins Coie LLP for their
17 financial support and planning assistance. I
18 also want to thank the planning committee of
19 Katherine Arnold, Kelly Beedle, Alicia Boehme,
20 Analiese Eicher, Shannon Heim Ann Jacobs,
21 Chandra Kilgriff, Rhett Martin, Mike Pignato,
22 Eric Rauch and John Skilton.

23 Finally, I want to thank all of our
24 commissioners and witnesses and the numerous
25 Minnesota and Wisconsin organizations that

1 have helped with the planning and promoting of
2 the event, including our great co-sponsoring
3 organizations listed in the program and our
4 great volunteers. If you want more
5 information, you can go to
6 NCVR.lawyerscommittee.org and you can submit
7 additional information or testimony at
8 Minneapolishearing.lawyerscommittee.org or by
9 emailing me at
10 amartinson@lawyerscommittee.org.

11 I'll now turn it over to our
12 commissioners to call our first panel of
13 witnesses. Thank you.

14 MR. SPANNAUS: Thank you very much,
15 Alan. Just want to say that the three
16 commissioners here -- that are here so far,
17 I'm sure the four are delighted to have you in
18 Minnesota. You're a pleasure, and we are all
19 looking forward to your testimony. I would
20 like to add one thing. The original
21 commissioner was scheduled to be
22 Walter Mondale, but as you know, he's been --
23 he just had some serious heart surgery and
24 triple bypass and presently rehabbing down in
25 Rochester, Minnesota. And I talked to him

1 this morning, and he said he regrets he can't
2 be here, but he would like to send his regards
3 to all of you and best wishes for a successful
4 hearing.

5 And so we'll call the first
6 witness, and that's Mr. Jeff Martin of the
7 St. Paul branch of the NAACP.

8 MR. MARTIN: Thank you. I won't
9 have to worry about speaking loud. The
10 testimony I would like to offer today is to
11 have Minnesota consider expanding the right to
12 vote. Restoring the right to vote for those
13 living in the community will make the law more
14 clear and equitable, save government resources
15 and encourage positive participation. This is
16 the problem. Minnesotans lose the right to
17 vote until they have been released from
18 supervision for any felon, including while
19 they are living in the community, even if they
20 have spent any time in prison or only served a
21 shorter jail sentence. In 2011, of the 63,000
22 Minnesotans who were unable to vote due to a
23 past criminal conviction, only about 16,000
24 were behind bars, in prison or jail. In other
25 words, 75 percent of those who have been

1 denied the right to vote under Minnesota law
2 are living in the community, working to earn a
3 wage and support their families and paying
4 taxes. The number of people disenfranchised
5 has greatly increased in recent years because
6 felony convictions and sentencing, especially
7 for drug offenses, has exploded.

8 Since 1974, the percentage of
9 voting-age Minnesota disenfranchised as a
10 result of criminal convictions has increased
11 over 400 percent. Felony disenfranchisement
12 prevents Minnesotans with criminal convictions
13 from having a stake in their communities and a
14 voice in decisions that affect all aspects of
15 their lives. Although felony
16 disenfranchisement impacts a growing number of
17 all Minnesotans, as a result of
18 disproportionate contact with criminal justice
19 system, African-Americans and American Indians
20 are disproportionately affected.

21 In 2011, nearly 16,000
22 African-Americans or roughly 8 percent of
23 African-Americans who were old enough to vote
24 were disenfranchised. Although
25 African-Americans make up roughly 5 percent of

1 the Minnesota population, they represent over
2 a quarter of the total number of those
3 disenfranchised. American Indians make up
4 less than 2 percent of the population;
5 however, in 2011 American Indians comprised
6 more than 6 percent of those disenfranchised.

7 This has long-lasting repercussions
8 for the community. Research has shown that
9 children are more likely to vote as adults if
10 they are raised by parents who are engaged in
11 the voting process. By disenfranchising
12 people who are not behind bars, we lose not
13 only the voice of those directly impacted by
14 disenfranchisement, we also discourage the
15 participation of future generations.

16 The solution, Minnesota should pass
17 legislation to allow people who have served
18 their time and are living in their community
19 the right to vote. By moving to this model,
20 Minnesota will join 13 states that
21 disenfranchise only those persons who are
22 incarcerated for felony convictions. Those
23 states are Hawaii, Illinois, Indiana,
24 Massachusetts, Michigan, Montana, New
25 Hampshire, North Dakota, Ohio, Oregon,

1 Pennsylvania, Rhode Island and Utah. This
2 reform will promote successful reintegration
3 into the community as voting can be a
4 powerful, concrete and symbolic way to
5 contribute to one's community and to feel
6 invested and empowered to play a positive
7 role. Research has shown that persons with
8 criminal convictions in their past are less
9 likely to be arrested again in states that
10 restore voting rights after release from
11 incarceration than in the states where they
12 face permanent disenfranchisement.

13 Law enforcement and corrections
14 professionals therefore agree that encouraging
15 individuals to take on this important
16 responsibility makes sense. Additionally, the
17 policy that permits all individuals who have
18 served their time in jail or prison to vote
19 reduces confusion among voters and election
20 officials about who can vote, thereby easing
21 election administration and reducing
22 government costs.

23 Restoring the right to vote to
24 those living in the community will positively
25 engage more people in a democratic process,

1 make the law clear and saving resources and
2 ultimately make all Minnesota communities
3 safer and more gest. Thank you.

4 MR. SPANNAUS: Thank you. Any
5 questions for Mr. Martin?

6 (No response.)

7 MR. SPANNAUS: Next, Mr. Blong Yang
8 of the Minneapolis City Council.

9 MR. YANG: Thank you. Thank you
10 for this opportunity to testify here today.
11 My name is Blong Yang. I am Hmong-American.
12 I want to thank the Asian American Organizing
13 Project for encouraging me to testify here
14 today.

15 In 2012, I ran unsuccessfully for
16 the Hennepin County Commissioner in District 2
17 race. In 2013, I was elected to the
18 Minneapolis City Council. I represent Ward 5.
19 I offer a candidate's perspective on voting as
20 a first Hmong-American to run for office in
21 Hennepin County/Minneapolis.

22 The first question that I am going
23 to address is the challenges facing
24 Asian-American voters in Minnesota such as
25 language issues or other systemic problems.

1 And you know, one of the first issues is a
2 lack of interpretation/translation services at
3 the polls. You can imagine for
4 Asian-Americans there are a lot of language
5 minorities within that group such as Hmong,
6 Lao, Vietnamese, Karen, Burmese. That just
7 presents a huge challenge at the polls for any
8 number of the election judges that are there
9 on that day.

10 The second piece is the lack of
11 outreach or voter education. And even if
12 there is outreach or voter education,
13 sometimes it misses the mark. I'll use an
14 example. City of Minneapolis had a video
15 campaign on Ranked-Choice Voting in a few
16 different languages. And the videos were on
17 YouTube. Unfortunately, these videos didn't
18 necessarily meet the people where they were
19 at. Additionally, at least for the Hmong one,
20 there was a glaring misinterpretation and the
21 video was altogether confusing.

22 Three, lack of voter contact/
23 outreach from candidates, political parties
24 and other campaigns. The example here is the
25 focus of campaigns, generally speaking, is to

1 focus on traditional voters who tend to be
2 older and whiter. It takes extra time and
3 effort to reach out to nontraditional voters
4 and it tends to cost more to reach out to
5 nontraditional voters, and the return
6 sometimes may not be measurable which means
7 that outreach to nontraditional voters tends
8 to be an afterthought.

9 Four is that our voting processes,
10 including the caucuses, conventions and
11 elections favor those who speak English and
12 those who have engaged in the process for a
13 long time. And the example here is caucuses
14 and conventions require an understanding of
15 parliamentary procedures which favor
16 traditional voters over new voters.

17 The second issue that I wanted to
18 address is this question of are there any
19 voting laws or circumstances in Minnesota
20 that, although they have general
21 applicability, tend to affect Asian-American
22 voters more substantially or in different ways
23 than other voters. And let me give some
24 backdrop to this. The ward that I represent,
25 Ward 5, is a majority minority ward. Roughly

1 70 percent of the population are people of
2 color with about 15 percent being
3 Asian-American, primarily Hmong. In the past,
4 the black-and-white paradigm tended to exclude
5 other groups such as the Hmong from fully
6 participating in the electoral process. Or
7 said in another way, the Hmong in North
8 Minneapolis have been treated although they
9 are invisible.

10 Many Hmong voters are limited
11 English proficient or LEP. They need an
12 interpreter to help them to vote. Many times
13 at the polling places there are no
14 interpreters. Thus, if an LEP Hmong voter
15 wanted to vote, he or she would have to bring
16 his or her own interpreter.

17 There are times sometimes, and this
18 is somewhat rare, but I mean it does happen
19 when there is an election judge who is Hmong.
20 However, the Hmong election judge can only
21 help when the polling place isn't busy. When
22 the polling place is busy, the Hmong election
23 judge has to help all voters meaning that the
24 wait for a Hmong voter to be helped could be
25 much longer before the election judge is

1 available.

2 Minnesota Statute Section 204C.15,
3 Subdivision 1 spells out how an LEP voter can
4 receive assistance. The relevant parts read
5 as such, quote: A voter in need of
6 assistance, and this is -- in this case, the
7 inability to speak English or read English, a
8 voter in need of assistance may obtain the
9 assistance of an individual the voter chooses.
10 Only the following persons may not provide
11 assistance to a voter; the voter's employer,
12 and agent of the voter's employer, an officer
13 or agent of the voter's union or a candidate
14 for election. No person who assists another
15 voter shall mark the ballots of more than
16 three voters at one election, end quote.

17 In my view, this law is arbitrary
18 in limiting an interpreter to only helping no
19 more than three voters at one election. In an
20 area where there is a high concentration of
21 LEP persons and few interpreters, there may be
22 a time when no interpreter can help, meaning
23 the voter just does not get to vote or has to
24 just do so on their own.

25 Additionally, this law isn't

1 applied consistently. In Ward 5, there are
2 eight precincts or polling places. For each
3 one, the law was applied differently with
4 respect to the limits placed on the number of
5 voters an interpreter could help. Some
6 polling places strictly followed the law, and
7 the election judges made no exceptions even in
8 times when no interpreters were present to
9 help an LEP voter. Other polling places did
10 not follow the law in that the election judges
11 decided that the need for interpreters to
12 avoid disenfranchisement outweighed violating
13 the law.

14 With the law such as this that
15 prescribes how an LEP person can exercise his
16 or her right to vote, it limits the right to
17 vote by placing barriers in front of a voter.
18 The voter has a responsibility to provide an
19 interpreter for him or herself which may
20 violate the law as being national origin
21 discrimination. The LEP voter would not
22 understand any instructions, usually only in
23 English, on how to obtain an interpreter, even
24 if a free interpreter could be provided, nor
25 would the LEP voter be able to request an

1 interpreter, because requesting an interpreter
2 requires speaking and writing in English.
3 Essentially the law is written in such a way
4 that it's the fault of the voter if he or she
5 can't vote. In other words,
6 disenfranchisement is favored over
7 accommodating voters.

8 With all of this being said, I do
9 want to say that I believe the City of
10 Minneapolis, I believe Hennepin County and I
11 believe the State of Minnesota have made
12 significant improvements to the electoral
13 process for minorities, including language
14 minorities and Asian-Americans. However, I
15 believe there is still a long way to go.
16 Thank you.

17 MR. SPANNAUS: Any questions from
18 the panel or anyone in the audience?

19 (No response.)

20 MR. SPANNAUS: Thank you very much.
21 Next we have Mr. Abdirizak Said of the
22 Minneapolis Highrise Representative Council.

23 MR. SAID: Good morning. Good
24 afternoon, Commissioners. My name is
25 Abdirizak Said. I'm the community organizer

1 of Minneapolis Highrise Representative
2 Council. It's the independent citywide public
3 housing high-rise tenant organization
4 representing the interests of some 5,000
5 low-income residents living in Minneapolis.
6 Forty-two public housing high-rises. About
7 one-third of those are Somali refugees who
8 left war in cities striving for their safety
9 and a better life in America. The vast
10 majority of high-rise Somali residents live in
11 south Minneapolis. Although the
12 Cedar-Riverside neighborhood is the center for
13 the Somali community in the Minnesota area, it
14 is home of the largest Somali population in
15 the country, my remark would be -- will
16 directly address the experiences of the Somali
17 residents living in public housing. However,
18 there are similarities with the Somali elders
19 throughout the metro area. I wanted to talk
20 to you about some of the challenges and
21 successes and opportunities for the
22 improvements.

23 Somali has -- just as a Somali
24 population in Minnesota continues to grow, so
25 does Somali eagerness to becoming citizens and

1 to participate in democracy and elections.
2 Just last fall, the first Somali-American was
3 elected in Minneapolis City Council. The two
4 main challenges facing the high-rise Somali
5 voters are the large -- are the language
6 barrier and the unfortunate -- and unfamiliar
7 with the U.S. political and election system.

8 As Somali voting has increased in
9 Minneapolis, so is it necessary for the
10 Somalian-speaking election judges. The need
11 often outpaces the supply. Many times
12 Somali-speaking volunteers step up to fill the
13 gap, sometimes with unfortunate outcomes.
14 Here are a few examples. In Elliot Park
15 neighborhood precinct during 2012 election
16 where there were no Somali election judges, a
17 bilingual Somali resident leaders was
18 initiate [sic] to help some of the Somali
19 elders who need help, but the polling -- the
20 polling judge who was there denied them the
21 opportunity to allow him to help him. They
22 did not help him after discussion with the
23 judge, and he was allowed to issue by reading
24 ballot for -- and the elders.

25 During 2012 election, the south

1 Minneapolis high-rise that is polling site,
2 Somali resident council president who had been
3 assessed -- assisting fellow Somali
4 non-English-speaking resident with voting for
5 several hours was asked to leave. At first
6 she refused to leave saying that the elders
7 had asked to me -- asked me for the help and
8 that she had tried to be there. She was --
9 she was then told that there were already have
10 Somali interpreter. So she was told to leave,
11 otherwise we call the police. At the point --
12 so at the end, this incident was being avoid
13 by if we have -- if there is a lot of judges
14 that can speak the language of Somali
15 language.

16 Some Somali elders report that they
17 don't vote or hesitant to vote at their
18 precinct on election day because they don't
19 speak and read English. One solution has been
20 Somali elders to vote early through the
21 absentee ballot at City Hall. Residents have
22 reported that this experience was more
23 comfortable. There was less pressure due to
24 the long voting lines, city workers were very
25 helpful and they could not [sic] bring someone

1 to help them -- to help them with the language
2 issue without being challenged.

3 Being relatively new citizens,
4 there is this issue that learn about American
5 policy system for the Somalis to full
6 participation. Excellent election information
7 is provided by both Secretary of State and
8 Minneapolis election offices, including board
9 registration material, maps, election
10 timelines and candidates, polling place
11 locations and similar sample ballots; much of
12 it is translated into Somali. Creating
13 materials and presentations of the
14 Ranked-Choice Voting system using in the 2013
15 city election provided by city election
16 officers and other voting advocate groups were
17 very helpful. Maintaining same-day voting
18 registration is also important for the
19 increasing voting.

20 Somalis take their citizenship
21 responsibility very seriously. Recruiting and
22 training more Somali-speaking election judges
23 and voting and the reminding returning
24 election judges of a citizen's right to have
25 the language assistance into the polling booth

1 are steps that would be taken to make what is
2 in most regards a very good and welcome
3 process even better. Thank you.

4 MR. SPANNAUS: Thank you. Any of
5 the commissioners have any questions of our
6 witnesses? The next witness and the last
7 witness for the -- this panel 1 here is Pamela
8 Hoopes who is with the Mid-Minnesota Legal
9 Aid, Minnesota Disability Law Center. Thank
10 you for coming.

11 MS. HOOPEES: Thank you. Good
12 afternoon, Commissioners. My name is
13 Pamela Hoopes, and I'm the legal director and
14 deputy director of Mid-Minnesota Legal Aid,
15 Minnesota Disability Law Center. And that
16 office is designated by the governor as a
17 protection and advocacy system for people with
18 disabilities statewide in Minnesota for the
19 purpose of protecting the rights of
20 individuals with disabilities. We provide
21 free civil legal assistance to people with all
22 kinds of disabilities on legal issues related
23 to their disabilities, including disability
24 discrimination and voting rights in a
25 nonpartisan fashion.

1 Some background information to give
2 a factual context regarding voting rights of
3 individuals with disabilities; approximately
4 20 percent of Minnesota's 5.379 million people
5 have some kind of disability according to the
6 Centers For Disease Control. Minnesotans of
7 voting age have disabilities at approximately
8 the following rates: Ages 18 to 44, about
9 11.7 percent; ages 45 to 64, about 22 percent;
10 and age 65 and older, about 36.6 percent.

11 While Minnesota-specific statistics
12 on voting rates of people with disabilities
13 are not available, a national 2011 Rutgers
14 University study on disability voter turnout
15 and polling place accessibility found that
16 nationally voter turnout is 4 to 21 percentage
17 points lower among people with disabilities
18 than among people without disabilities. Our
19 experience with voting rights in Minnesota
20 confirms that voters with disabilities in this
21 state continue to experience barriers to
22 voting and resistance to their full inclusion
23 in the electoral process.

24 I'd like to sketch out briefly a
25 legal framework for voting rights of people

1 with disabilities. Both Minnesota and federal
2 law establish that voting is a fundamental
3 right, and like other citizens, individuals
4 with disabilities have the right to vote.
5 Federal statutes protect the right of people
6 with disabilities to vote prohibiting
7 discrimination and requiring accommodations
8 such as physical assistance when needed.
9 Statutes that provide such legal protections
10 in voting include the Americans with
11 Disabilities Act, the Voting Rights Act, which
12 grants voters with disabilities the
13 affirmative right to receive necessary
14 assistance to vote from a person of the
15 voter's choice; the Accessibility for the
16 Elderly and Handicapped Act requires states to
17 assure that all polling places or federal
18 elections are accessible to handicapped and
19 elderly voters; the Help America Vote Act,
20 which requires states to make polling places
21 more accessible to voters with disabilities
22 and to have accessible voting machines in
23 every polling place to assure privacy and
24 independence in voting for folks with
25 disabilities.

1 Minnesota law also protects the
2 right of individuals with disabilities to
3 vote. This includes those under legal
4 guardianship absent a specific determination
5 by a court that the individual lacks capacity.
6 However, as recently as 2012, that right came
7 under attack, both legislatively and in a
8 federal lawsuit. It took a federal court
9 decision in which Minnesota Disability Law
10 Center wrote an amicus brief on this issue
11 which was then affirmed on appeal by the
12 Eighth Circuit to clarify that although
13 Minnesota's State Constitution contains an
14 archaic categorical ban that purports to limit
15 the right to vote of individuals under
16 guardianship who are insane or who may be
17 non compos mentis. Subjecting an individual
18 to guardianship under Minnesota law does not
19 automatically implicate the individual's right
20 to vote. The federal court confirmed that
21 pursuant to Minnesota statute and federal
22 constitutional law, persons under guardianship
23 in Minnesota are presumed to retain the right
24 to vote unless otherwise ordered by a court.

25 So what are some barriers that

1 continue to face individuals with disabilities
2 to voting in Minnesota? Barriers to
3 registration do continue. Under Minnesota
4 law, people with disabilities who live in
5 residential facilities may have a staff person
6 vouch for them to register on election day if
7 an employer sends a letter with the staff's
8 names listed 20 days before election day.
9 There is a reasonable statutory backup of the
10 employer providing a statement on facility
11 letterhead to meet the rule's requirements if
12 a staff person is left off the list or is
13 hired within the 20-day period. But if an
14 employer fails to take those steps and a
15 person with disabilities arrives at the polls
16 planning to register on election day, the
17 person with disability often then is simply
18 unable to vote because there isn't anyone else
19 there who can vouch for them.

20 Also, the current voter confusion
21 about what forms of ID are acceptable for
22 election day registration adversely affects
23 people with disabilities. Many people with
24 disabilities share housing with another
25 tenant, with their parents or another family

1 member, and the utility bill is not under
2 their own name. Accordingly they frequently
3 will lack utility bills or other accepted
4 forms of proof of residence. In addition, in
5 terms of proving identity, many young people
6 with disabilities who are 18 and older do not
7 drive, and so they don't have a driver's
8 license for an ID. They continue to attend
9 high school in special education through age
10 21, so often their only form of ID is their
11 high school ID. This is currently a barrier
12 to registration.

13 In addition, Minnesota does not at
14 present have online voter registration which
15 the recent Presidential Commission on Election
16 Administration report stated increases voter
17 registration and removes barriers in
18 particular to participation by voters with
19 disabilities.

20 Another area of continuing problems
21 for voters with disabilities are physical
22 access issues in the polling places. Examples
23 of problems that our staff found when we
24 surveyed 12 polling places around the metro
25 area during the last primary election included

1 the following problems in at least 11 of
2 those. Polling place in the basement of a
3 church with steps and no working elevator,
4 steps up into the building entrances with no
5 ramps, narrow and blocked paths to the polling
6 places, insufficient disability parking, heavy
7 doors, lack of curb-cuts in streets leading to
8 the polling places entry to polling places
9 with only revolving doors too narrow for
10 wheelchairs, and once inside, confusing
11 layouts with insufficient signage.

12 Transportation is an issue. Many
13 people with disabilities don't drive and may
14 need special accessible transportation. Lack
15 of ability to get to the polling site is a big
16 barrier, particularly in rural Minnesota where
17 both public transportation and accessible
18 transportation are in scant supply. Although
19 private, nonprofit organizations including
20 ours have organized with some corporate
21 financial support, nonpartisan rides to the
22 polls in the metro area for recent elections,
23 supply of rides falls far short from demands.

24 Voting machines. In Minnesota, the
25 accessible voting machine is the Automark.

1 And the Automarks frequently do not function
2 properly or are placed in a position where
3 privacy is not assured or the election judges
4 are not sufficiently well trained to assist
5 persons using the machine.

6 Attitudinal barriers continue,
7 especially for people with persons who have
8 visible disabilities and are challenged in
9 their right to vote at polling places. If a
10 voter has difficulty talking, poll watchers,
11 other voters and at times election judges
12 question their competency to vote. In
13 addition, people with disabilities who need
14 assistance are sometimes made to feel
15 disrespected by the response of other voters
16 or election judges who question that right.
17 These experiences are a strong deterrent to
18 voting and are shared within the disability
19 community to further discouragement.

20 As noted above, there are
21 continuing legal barriers and Minnesotans must
22 be vigilant to preserve the provisions that
23 now are in the law and as others that support
24 voting of people with disabilities.

25 I'm out of time, so I'll stop. But

1 I will submit my remarks in a written form.

2 Thank you for this opportunity.

3 MR. SPANNAUS: Thank you, Pamela.
4 Thank you. As you know, Mark Ritchie, our
5 outstanding Secretary of State has just joined
6 us. He's been Secretary for eight or
7 12 years?

8 MR. RITCHIE: Eight.

9 MR. SPANNAUS: Eight years. And
10 unfortunately, in my opinion, he's not seeking
11 reelection. And I think many Minnesotans feel
12 the same way. Mark has been one of the
13 leaders in the nation in the election process
14 throughout the country. And so you're leaving
15 the state in very good shape.

16 MR. JACOBS: He's getting a degree
17 from the Humphrey School, so that's good.

18 MR. SPANNAUS: That's good. That's
19 good. That's good. Now, we've had all four
20 of our panel 1 witnesses testify. And do any
21 of you commissioners have any questions?

22 MR. JACOBS: I have a question.
23 I'd be curious from any of the witnesses your
24 help in assessing the perhaps inflated pride
25 in Minnesota. We feel so proud of the fact

1 that we have among the highest and often the
2 highest turnout in the country. And I find
3 that when I talk to Minnesotans, that this
4 pride sometimes is in itself a barrier to
5 appreciating the barriers to voting.

6 Could you give some concrete
7 examples that you've seen where you could
8 explain or help to puncture this idea of
9 Minnesota being better than the rest when it
10 comes to some of the specific areas where
11 you're seeing problems? Compare Minnesota to
12 other states that we would feel are comparable
13 or that we would maybe compare ourselves to
14 and expect to be superior in terms of our
15 voting patterns and turnout here in Minnesota.

16 MR. MARTIN: I'd like to go first
17 when you talk about punching holes in things,
18 that would be great. I know that we do have a
19 high turnout rate in the presidential
20 elections, mainly in the '70s, and that has
21 been a point of pride as you very eloquently
22 stated. However, I'll bring a recent race to
23 your attention, one in Ward 1 in St. Paul
24 where prior to ranked voting, okay, so prior
25 to this last election there were upwards of

1 21,000 people eligible to vote in Ward 1.
2 Less than 3,000 showed up to vote. And once
3 you've got the abnormalities with the ballot
4 out of the way, you are talking about a very,
5 very small number of folks who had the -- a
6 lot of folks had the opportunity but took
7 advantage of the opportunity to vote in a very
8 crucial, very tight election that was decided
9 by less than a hundred votes before ranked
10 voting came into the picture.

11 So you have a section of the state
12 of a -- section of the community and a section
13 of the populous that aren't engaged in the
14 system despite your high percentages who don't
15 feel like their vote counts, who feels like
16 they are under observation if they go to a
17 voting booth in their own area, if they go to
18 their polling place, that someone is going to
19 ask them for their IDs and they'll ask at the
20 polls to -- that someone's going to question
21 their utility bill because of who they are and
22 the color of their skin.

23 So I think we have a long way to go
24 in making people feel welcome at their polling
25 places and to make them feel that they are

1 part of the democratic process every day on
2 every election in that their vote will forever
3 mean that they're a member of this society and
4 therefore have a voice.

5 But we are very good at our own
6 propaganda and we pump ourselves up very well.
7 But however, Minnesota has a long way to go to
8 include everyone into the process.

9 MR. YANG: I wanted to share some
10 comments too. Professor Jacobs, you and a
11 colleague of yours had a [unintelligible]
12 piece that there was a counterpoint to
13 regarding the issue of whether turnouts
14 increased because of Ranked-Choice Voting.
15 And I will say the counterpoint to your piece
16 was that -- you know, they use Ward 5 as an
17 example. I will tell you that Ranked-Choice
18 Voting, in my view, did not increase voter
19 turnout in Ward 5. I feel like, you know,
20 what increased turnout was actually candidates
21 who worked really hard to get folks to turn
22 out. And you know, compared to the number in
23 2009 when the number of people who turned out
24 in 2009 in Ward 5 was 2,300 for a city council
25 race, and in 2013 the number increased by

1 about 1,300 to about 3,600 votes. And the
2 good thing about Ward 5 is that we were not
3 the last in terms of turnouts. We were second
4 to the last. Number 12 is better than 13, how
5 about that.

6 But you know, I think the important
7 part to this is just that, you know, I think
8 -- I mean, in terms of viewing voting in terms
9 of race, I mean, I think to some extent you
10 were correct in the sense that, you know,
11 folks who tend to show up to vote are
12 wealthier, whiter, and maybe a little bit
13 older as well. You know, and when we look at
14 numbers in terms of people of color, I mean,
15 those numbers don't increase by all that that
16 much. And you know, using ward
17 [unintelligible] in St. Paul, Ward 5 in
18 Minneapolis, you kind of just could predict
19 that the numbers would be fairly low. And in
20 this case that was the case. And I don't
21 necessarily think that the argument that
22 Ranked-Choice Voting created voter turnout or
23 increased voter turnout, I don't think that
24 was the case. I think that what was the case
25 was that -- you know, in our situation, I

1 mean, one of my guesses is that there was a
2 Hmong candidate, myself, that helped to
3 increase Hmong voters in Ward 5. And you
4 know, we increased it by a large chunk
5 compared to 2009 or any time beforehand. And
6 so I think those are the things that folks
7 have to consider in -- the context is really
8 important in understanding how voters show up.

9 But, I mean, with that being said,
10 though, I do have to say maybe the good thing
11 about Minnesota is that Minnesota does turn
12 out to vote as a whole, I mean, much more than
13 other places. And that's something to be
14 proud of. I mean, I don't know if it's a
15 superiority complex or that. I certainly
16 think that it is something to be proud of.

17 MR. BAKER: My question relates
18 about young people, young voters. You talked
19 about obstacles being -- to voter
20 registration. You talked a little bit more
21 about ways that young people, especially young
22 people of color are being disenfranchised. In
23 what ways are your organizations working to
24 make sure that their engaged in the process?

25 MS. HOOPEES: If I can jump in. We

1 work with people of all disability types. And
2 a lot of our clients also are people of color,
3 and we're statewide. And I think the --
4 generally with voters with disabilities and
5 then what we found is voters with disabilities
6 who are also people of color have multiple
7 barriers to voting. And with especially young
8 people, I think we found that outreach in
9 various ways to talk about civic engagement
10 and why it's important is really key. And I
11 think what has been most effective with young
12 voters, especially young voters who are also
13 recent immigrants or people of color, is to
14 talk about historical disenfranchisement and
15 how in both -- under -- in many other parts of
16 the world, the right to vote is actually still
17 a life-and-death matter. And that has a huge
18 effect on their own lives in terms of who gets
19 into office, what public policies are. Most
20 people with disabilities have a greater need
21 for specialized healthcare services, social
22 supports. And Minnesota, as you all know,
23 most people with disabilities live in some
24 kind of a community-based setting, and the
25 trend is increasingly toward that.

1 If the public policies of the state
2 and the nation don't support that, that's a
3 big problem for a lot of people with
4 disabilities. And the younger people with
5 disabilities have -- because of special
6 education law, have been much more integrated
7 throughout their youth in most cases than say
8 the older generation of people with
9 disabilities who are more accustomed to being
10 segregated off from mainstream society.

11 So I think for the population of
12 people with disabilities, and particularly
13 people of color with disabilities, the youth
14 are very open and receptive and I think
15 responsive to a message of the need for civic
16 engagement and how it has an absolutely direct
17 effect on their lives and that they're lucky
18 they don't have to fight and die for it, but
19 they might have to fight for it some because
20 there is continuous pushback unfortunately
21 even in Minnesota, which has some really
22 excellent state laws and procedures to support
23 voting engagement of people with disabilities.
24 As I mentioned, the attitudinal barriers are
25 still quite real, and our office and others

1 spend a lot of effort monitoring and pushing
2 back for efforts to curtail some of the very
3 hard one rights.

4 MR. SPANNAUS: Any other questions,
5 Wenda, Mark?

6 (No response.)

7 MR. SPANNAUS: Say, one of the
8 things that bothers me, and now that the
9 legislators or legislatures are all going back
10 in session for this new session, not here but
11 throughout the country, these states back east
12 and of course the southern states that always
13 initiate more restrictions that are obviously
14 very questionable, now the fact of the matter
15 is one of the allegations they make in order
16 to pass that legislation is there's been a lot
17 of voter fraud. Well, we all know that the
18 facts are totally opposite to that; fraction
19 of one percent basically.

20 Now, my question to you is that do
21 you have any experience or any knowledge or
22 any comments on that allegation or know of any
23 potential voter frauds in your areas?

24 MR. MARTIN: Yes, I would like to
25 comment on that. Voter fraud is a fraud, I

1 think that whole argument about voter fraud
2 being the issue. The few people that you
3 would see that find themselves being
4 prosecuted for that are trying -- are confused
5 about whether or not their rights have been
6 restored. You have someone who is off
7 probation in the state of Minnesota and has
8 their civil rights restored here, but they had
9 another case in another state that they
10 weren't off probation yet. It's not someone
11 coming in saying, "I'm John Doe," and "I'm not
12 John Doe." They're trying to assert their
13 right in the state that they live, pay taxes,
14 work in and will eventually die if they stay
15 here. They're going in, they're casting their
16 vote under their name. They're confused about
17 their particular status.

18 Now, with the support of the County
19 Attorney Association and most law enforcement
20 agencies, we would like to clear up that law.
21 We would like to say if you're in the
22 community, you can vote. If you're not behind
23 bars in a cell, you can vote. I think that
24 clears it up for not only for the person who's
25 casting the vote, it clears it up for the

1 election officials, it clears it up -- and it
2 definitely will alleviate the headache that
3 the prosecution office has, because they are
4 given the duty to prosecute these things. And
5 not one county attorney I've had the
6 opportunity to talk to supports that. They
7 just are forced to.

8 So I think that there is -- there
9 is -- the case of over-prosecution, waste of
10 money and resources. We should make it easier
11 to vote, to expand the ability of people to
12 vote instead of trying to restrict it.

13 MR. SPANNAUS: Thank you.

14 MR. YANG: I wanted to second that.
15 I think in a lot of situations with regards to
16 limited English proficiency of voters, the --
17 there's no intent to defraud. There's no
18 willful act of defrauding. I mean, sometimes
19 people just don't understand what the laws
20 are, they don't understand what the
21 restrictions are, them voting or not voting.
22 So sometimes they get caught up in the hype
23 of, you know, I want to vote for President
24 Obama, things like that not knowing, you know,
25 what requirements they need to have to be able

1 to vote, whether they need to have, you know,
2 a naturalization, those kinds of things. But
3 I mean, it's nothing willful at all.

4 MR. SPANNAUS: Thank you. You
5 know, one of the ironies of that whole
6 question, as I was -- as Attorney General, I
7 was on the Pardon Board in Minnesota law with
8 the Governor and the Chief Justice. And every
9 three months we would have meetings and people
10 would come and ask for computation of
11 sentences or pardons, pardon extraordinary. I
12 always loved it when people who had had some
13 problems and they would say they want to be
14 given back their voting rights, which means
15 basically they want to be constructive,
16 productive citizens again. That's good news.

17 The other one that -- second to
18 that, maybe first request they make is one I
19 didn't like. They wanted back their gun
20 rights. And I'm obviously very pro gun
21 control, and I was always troubled. At least
22 half of what they wanted was something I did
23 approve.

24 Any other questions by the
25 commissioners?

1 (No response.)

2 MR. SPANNAUS: Well, thank you very
3 much for your testimony. We appreciate it.
4 Very, very good, very interesting. We're
5 going to get to panel 2, I understand, now, is
6 that correct? So the panel will be assessing
7 the state of election administration in
8 Minnesota and Wisconsin. And the four
9 panelists, I believe, are Grace Wachlarowicz,
10 Maribeth Witzel-Behl, Analiese Eicher and
11 Nolan Schmidt.

12 (Off the record.)

13 Thank you very much for coming. I
14 appreciate it. On the program here, Grace is
15 going to be our first witness, is that
16 correct?

17 Would you identify yourself for the
18 reporter.

19 MS. WACHLAROWICZ: My name is
20 Grace Wachlarowicz, Director of Elections and
21 Voter Services for the City of Minneapolis in
22 Minnesota. I want to thank the National
23 Commission on Voting Rights and the Lawyers'
24 Committee for Civil Rights Center Law for
25 convening today's panel to testify on the

1 problems, solutions and opportunities for
2 voters in Minneapolis.

3 Election administration in
4 Minnesota uses a three-tiered model with
5 different roles and responsibilities at the
6 state, county and local or municipal level.
7 Minneapolis is the third largest electoral
8 jurisdiction in Minnesota; larger than every
9 Minnesota county except Hennepin and Ramsey.
10 Under this model, the City's Elections and
11 Voter Services Divisions is responsible for
12 the administration of absentee balloting, both
13 in person and by mail, recruitment, training
14 and deployment of election judges and poll
15 workers, poll management and compiling the
16 results and other documentation for the
17 election.

18 Today I would like to present my
19 testimony in three sections. First, I will
20 detail the challenges we faced administering
21 the 2012 election and also provide a summary
22 of the steps we took to ensure a more positive
23 voting experience in a 2012 municipal
24 election. And finally, if I have time, I will
25 touch on some of the larger policy issues that

1 we believe would have a large impact on the
2 ability of the citizens of Minneapolis to
3 vote.

4 I will begin discussing the 2012
5 election. On November 6th of that year,
6 126 million Americans exercised their
7 constitutionally-protected right to vote.
8 Minnesota led that nation turnout achieving 76
9 participation rate among its voters. In
10 Minneapolis we also achieved a record turnout
11 with 81 percent participation. This is the
12 highest turnout since the enactment of the
13 26th Amendment of the U.S. Constitution in
14 1971 which lowered the voting age to 18 and
15 extended the rights and responsibilities of
16 citizenship to a whole new generation. In
17 total, the city served 215,806 voters.

18 Our preparations for the 2012
19 election included a 30 percent increase in
20 election judges. This was the largest
21 deployment of judges ever committed by the
22 City. We were confident that we would be able
23 to handle the turnout. However, Minneapolis
24 did experience long lines to vote that led to
25 voter frustration.

1 So despite all these increased
2 staffing, the obvious question is: What
3 happened, and what do we need to do to solve
4 the problem? We have identified three primary
5 factors that may answer the question. First,
6 the number and capacity of polling locations;
7 second, the impact of election day
8 registrations; and third, technical problems
9 and the capacity to respond.

10 To start with, the City completed
11 its redistricting and assignment of polling
12 places in March of 2012. The number of
13 polling locations was reduced from 131 to 117
14 for an average precinct size of 1,900
15 registered voters. This number is above the
16 ideal sized precinct based on national trends.
17 We anticipated, however, that the voters would
18 be adequately served due to a statutory change
19 in 2010 that allowed us to process and count
20 absentee ballots centrally at City Hall rather
21 than in the polls. Unfortunately, the
22 capacity to serve the voters was further
23 reduced by the record turnout of election day
24 registrations.

25 Minneapolis processed the 50,668

1 election day registrations. In Minneapolis,
2 that means one of every four voters on
3 election day registered at the polls.
4 Thirty-five of our 117 precincts processed
5 more than 500 election day registrations. It
6 is our opinion that this record number of
7 election day registration was a primary factor
8 that led to the long lines and the wait times
9 across the city.

10 Finally, and not as important to
11 our discussion today, there were some
12 technical problems on election day. The most
13 significant of these problems related to
14 equipment malfunction and ballot printing
15 errors, which made some precinct's ballots
16 unreadable by the ballot counter. These
17 technical problems compounded the other issues
18 mentioned earlier.

19 Clearly steps needed to be taken to
20 fix many of the issues experienced in 2012.
21 We identified four key categories of
22 improvement; precincts and polling places,
23 voter outreach and education, election judge
24 recruitment and training and expanded
25 resources.

1 Our first step was to undergo a
2 thorough analysis of the challenges in all of
3 the City's 117 polling places. Based on
4 direct voter feedback and input from poll
5 workers, staff identified an initial list of
6 polling places that experienced some level of
7 difficulty on election day and prioritized 11
8 sites that, due to limitations of the polling
9 place, including location, capacity,
10 accessibility, parking and other related
11 matters, required some type of corrective
12 action by the City.

13 A key process improvement was
14 initiated with an annual site visit and
15 assessment of every polling location. A
16 variety of factors were evaluated, including
17 size and capacity of the selected facility to
18 accommodate the multiple types of elections,
19 accessibility compliance, sufficient parking,
20 proximity to public transit and community
21 impact and acceptance. Staff then developed
22 room layout options, which included indoor
23 queuing space.

24 Another key initiative was the
25 creation of a robust outreach effort. We

1 connected with voter interest groups to
2 disseminate timely, accurate information about
3 voting, electioneering, election day
4 registration and vouching and similar
5 information.

6 For the 2013 municipal election,
7 which was also our second Ranked-Choice Voting
8 or RCV election, we initiated a plan to expand
9 upon that effort of outreach and education
10 campaign.

11 I am almost out of time. So
12 briefly I want to explain that we overhauled
13 our election website that had information in
14 multiple languages, use of materials and a
15 voter outreach plan that included ambassadors
16 who would be able to work within the community
17 to train and explain the voting processes to
18 others.

19 At this point I'm out of time, so I
20 will submit my written testimony and respond
21 to any questions later. Thank you for this
22 opportunity.

23 MR. SPANNAUS: Thank you, Grace.
24 Any questions from the commissioners?

25 (No response.)

1 MR. SPANNAUS: Thank you.

2 Next will be Analiese Eicher from
3 One Wisconsin Now, is that correct?

4 MS. EICHER: Correct.

5 MR. SPANNAUS: Thank you for
6 coming.

7 MS. EICHER: Thank you for having
8 me. And I will say I'm disappointed that
9 Maribeth is not here. She is one of the
10 finest city clerks, I would say, in the entire
11 country. She does an amazing job. I hope she
12 has a chance to submit some written testimony,
13 because she's incredibly valuable.

14 So again, thank you. My name is
15 Analiese Eicher, I'm the programs and
16 development director One Wisconsin Now and One
17 Wisconsin Institute in Madison, Wisconsin. I
18 have been observing elections since I was
19 legally allowed to and have worked extensively
20 with the Wisconsin Election Protection, that
21 took me a second to get out, particularly in
22 the last election.

23 I'd like to start with something
24 positive that has happened in Wisconsin in
25 regards to voter rights in the last couple of

1 years, and that is the issue of electronic
2 documentation for proof of residence. So in
3 2012, in August of 2012 One Wisconsin
4 Institute successfully petitioned our state
5 government accountability board that
6 administers our elections to formally and
7 unanimously approve the use of smartphones,
8 computers or tablets as proof of residency for
9 Wisconsin voters. The ability of young -- of
10 voters such as young voters on university
11 campuses to use utility bills, bank statements
12 or other approved documents on their
13 smartphones to meet the residency requirements
14 of Wisconsin's voting laws was a historic move
15 towards fully harnessing the power of our
16 technology to expand access to the polls. Our
17 work made Wisconsin the first state in the
18 nation to formally adopt this as a policy for
19 proof of residency.

20 The fall 2012 Presidential Election
21 was the first election where this electronic
22 documentation was permitted. There were a few
23 instances where our poll workers were not
24 fully aware of the changes, however, the -- it
25 was noted that it was of tremendous assistance

1 in the voting process and actually made the
2 process faster for many people registering to
3 vote on election day. It was also noted in
4 some post-election reports that some poll
5 workers went so far as to provide electronic
6 devices of their own to assist voters in
7 finding appropriate proof of residence when
8 they came to register.

9 Given the success of electronic
10 documentation for proof of residence in
11 Wisconsin, we would absolutely recommend and
12 highly encourage other states to adopt similar
13 measures to assist in voter registration.

14 Now on to some more of the
15 not-so-positive things that have impacted
16 Wisconsin's election in the last few years.
17 In 2011, the State Legislature passed a number
18 of measures that placed unprecedented
19 restrictions on proving residence when
20 registering to vote. The first being the
21 repeal of Wisconsin's corroboration law. It
22 was included as part of the voter ID law
23 passed in 2011. This law had been in place
24 since 1975 and allowed voters registering on
25 election day to prove their residence by

1 having another voter corroborate where they
2 lived. This was particularly helpful for
3 student voters, homeless voters, poor voters,
4 transient voters and other marginalized voters
5 who often lacked one of the documents
6 permitted for proving residence when
7 registering to vote on election day.

8 Before 2011, students who
9 registered to vote on election day were able
10 to use university-supplied dormitory lists at
11 the polls along with their student IDs to
12 prove their residence. In response to an
13 unfounded concern over noncitizen students
14 voting, legislators enacted a change that
15 required university administrators to certify
16 citizenship status of students on the dorm
17 list. This new requirement is difficult to
18 implement due to restrictions on the
19 disclosure of citizenship information under
20 the Federal Family Educational Rights and
21 Privacy Act and dorm lists were no longer
22 permitted.

23 So in response to the repeal of
24 corroboration and the discontinued use of dorm
25 lists, some colleges and universities in

1 Wisconsin responded positively to assisting
2 students' ability to access permissible
3 documentation. For some students, accessing
4 your standard document for proof of residence
5 such as a bank statement or your utility bill
6 was not an issue. But for others -- you know,
7 you were still allowed to use your student ID,
8 but you also had to use an official university
9 document to go along with it.

10 So helping to ease this additional
11 burden on students who used to be able to use
12 their student ID and the dorm list but now
13 needing an additional document, the University
14 of Wisconsin system implemented an online
15 system that allowed students to access
16 documentation online to either show
17 electronically at the polls or print out.
18 Some universities notified all students of
19 this option via email and some actually placed
20 computers and printers at campus polling
21 locations to ensure students could register
22 and vote.

23 While the public colleges and
24 universities were fairly successful in
25 addressing the repeal of corroboration and the

1 dorm lists, the only documents students at
2 private colleges and universities could use
3 with their student IDs was a fee receipt. You
4 pay your tuition, you get a fee receipt. With
5 most students receiving tuition bills at home
6 addresses, their fee receipt without the
7 student's campus address would be
8 impermissible. Most private colleges and
9 universities addressed this by including the
10 campus address and allowing students to use
11 their ID to register, however, some students,
12 some private colleges and universities were
13 not able to provide this. And particularly at
14 Viterbo College in LaCrosse, there were a
15 number of students who were not allowed to
16 vote on election day due to the inability to
17 prove their residence at the polls.

18 Actions taken by university
19 officials, while those address student voters,
20 they do not address the voters who are
21 otherwise marginalized. We would highly
22 recommend restoring corroboration and the use
23 of the dorm lists. I know that the clerks
24 were in favor of keeping the dorm lists but
25 were not allowed to overrule the legislature

1 in that aspect. We are actually currently
2 facing additional restrictions on proof of
3 residence in our 2013 legislative session in
4 Wisconsin. Senate Bill 267 recently passed
5 the Wisconsin State Assembly and it would
6 require proof of residence regardless of when
7 a voter registers. So under current law, a
8 voter can register to vote 20 or more days
9 before an election with the city clerk or
10 special registration deputy, and their
11 residence is then confirmed by a voter
12 registration postcard mailed to the address
13 they provided.

14 Under this new bill, they would be
15 required to have registration -- or proof of
16 residence at any time, you know, this placing
17 yet another hurdle on marginalized voters with
18 corroboration already eliminated. This would
19 also significantly complicate voter
20 registration drives by training special
21 registration deputies as voters would be
22 required to again provide that additional
23 piece of information.

24 And I would like to note that voter
25 registration drives often take place on

1 college campuses and minority communities thus
2 negatively impact the ability of these
3 populations from accessing the right to vote
4 and to register to vote.

5 We -- another issue in Wisconsin
6 is, given my time here, I will skip to that,
7 is our restrictions on early voting that we
8 are facing. We -- in November 2012, nearly
9 665,000 Wisconsin residents took advantage of
10 in-person absentee voting and roughly one in
11 four ballots cast in 2008 were cast early.
12 Several municipal clerks, including Madison
13 and Milwaukee, responsible for administering
14 those elections offered extended hours for
15 voting to allow working people to participate
16 and cast their vote after work or on weekends.

17 Even with extended hours, we still
18 saw long lines on election days. And I know
19 that there have been a number of
20 recommendations made to address those long
21 lines. But one of the recommendations was
22 definitely not limiting in-person absentee
23 voting hours. Assembly Bill 54 and Senate
24 Bill 324 in our current legislative session
25 would eliminate any weekend hours for

1 in-person absentee voting and would not allow
2 municipal clerks to offer hours later than
3 6:00 p.m. during the week. This bill has
4 actually passed the Wisconsin State Assembly,
5 and it is expected to pass the State Senate at
6 the end of our legislative session. We
7 believe the passage of this bill would
8 absolutely devastate the ability of many
9 voters marginalized in other ways to access
10 their right to vote and it would have
11 detrimental impact on voters in large
12 municipalities, while voters in smaller
13 communities would still be allowed to call
14 their local clerk to make an appointment to
15 vote. Basically a bill meant to standardize
16 early voting opportunities in Wisconsin will
17 do the exact opposite.

18 And as some of you might know, a
19 number of lawsuits have been filed against the
20 Wisconsin Voter ID Law and two of them were
21 heard this morning. There are two others in
22 federal court. And while those -- that law is
23 currently enjoying -- they are -- they're --
24 there has been another voter rights law
25 proposed in this current legislative session

1 and leadership in the Wisconsin State Senate
2 and Wisconsin State Assembly have indicated
3 that they will be pushing for that, if not in
4 this legislative session, then the next.

5 I'm happy to answer any questions.
6 And I have written testimony here that I will
7 make sure that you guys all get ahold of.

8 MR. SPANNAUS: Any questions here?
9 There hasn't been any downside to early
10 voting, has there been, as far as you know?

11 MS. EICHER: As far as I know, no.
12 And you know, the -- while the clerks have, I
13 think -- actually it was reported -- and this
14 is why I was hoping that Maribeth would be
15 here, but I know Madison and Milwaukee and
16 some other large municipalities opened their
17 -- you know, opened up on weekends. And so
18 lines on weekends -- and they were able to get
19 those voters processed and through their vote,
20 you know, during the day, during the week, you
21 know, after work hours. And yet -- and then
22 that allowed them to better administer
23 elections on election day, because they
24 weren't seeing, you know, those extra long
25 lines, you know, in addition to the long lines

1 that were -- you know, that already existed.

2 We've had in-person absentee --
3 no-excuse in-person absentee voting or
4 absentee voting in Wisconsin for years. And
5 it has not -- there have not been any
6 reported, you know, major problems with it.
7 So this restriction I think, in my opinion,
8 came from -- came as a response to the high
9 turnout that we saw in our 2011 recall
10 elections, the 2012 recall election and the
11 2012 fall general election.

12 MR. SPANNAUS: Yeah, there's
13 nothing worse than waiting in a voting line
14 for a couple of hours. There's nothing else
15 you can do is just stand there. You get tired
16 of talking about the weather with the people
17 around you. But some states are trying to cut
18 it back now obviously. We read about that in
19 the paper. And it's unfortunate that when
20 they go to court, they usually always go to
21 court, that some of the judges don't see
22 through what's going on and take judicial
23 notice of that, but they don't.

24 Any other questions?

25 (No response.)

1 Well, thanks very much, Analiese,
2 for that.

3 MS. EICHER: Thank you.

4 MR. SPANNAUS: Now the next is
5 Nolan Schmidt. Now, you're with what we used
6 to call MPIRG, right? Minnesota PIRG?

7 MR. SCHMIDT: We still call it
8 MPIRG around community groups. So I'll be
9 referring to it as MPIRG.

10 MR. SPANNAUS: Thank you for
11 coming.

12 MR. SCHMIDT: Hello, commission
13 members. My name is Nolan Schmidt. I am from
14 the small city of Marshfield, Wisconsin. I am
15 currently a student studying political science
16 and history at the University of Minnesota
17 Twin Cities. At the University I've gotten
18 involved with the Minnesota Public Interest
19 Research Group, MPIRG. MPIRG is an
20 organization that represents the students of
21 seven different campuses in Minnesota and the
22 interests that the students hold dear. I also
23 am an intern with FairVote Minnesota. During
24 my time with MPIRG last semester, I
25 participated in the get-out-the-vote campaign

1 for the Minneapolis city-wide election.

2 As an out-of-state student and
3 someone who is interested in government
4 affairs, I have a unique perspective on voting
5 in Minnesota and Wisconsin. One of the most
6 troubling aspects of voting over recent years
7 has been the implementation of restrictions
8 such as the 2011 voter ID law in Wisconsin and
9 the 2012 proposed voter ID amendment in
10 Minnesota. I was happy to see both defeated.
11 The reason for this is very simple. Voter ID
12 laws, A, directly disenfranchise students, and
13 B, act like a poll tax upon students. They
14 disenfranchise students because we don't have
15 IDs with our current address, because we live
16 on campus for nine months out of the year and
17 our parents' home for the rest of the year.
18 And because -- when we get our driver's
19 license, we have -- we get our driver's
20 license in the address that our parents live
21 at, therefore our driver's license is that
22 address. So I myself don't have an ID with my
23 current dorm address. I do however have an ID
24 with my Wisconsin address on it and I have a
25 valid U of M student ID which allowed me to

1 register.

2 If Minnesota would have had a voter
3 ID law in place for the Minneapolis elections,
4 I would have had to taken a bus down to City
5 Hall with proof of residency in hand and stood
6 in line for most likely an excessive amount of
7 time to get a valid Minnesota ID; just so I
8 could get approved for this one election.
9 Now, this situation would have been similar
10 for almost all students and we frankly don't
11 have the time for that. And if we would have
12 had to done [sic] that, the students voting in
13 this area would have plummeted.

14 Furthermore, the student population
15 is a highly transient population. Thus, when
16 we move each year, we would have to go back to
17 City Hall and pay a fee to get a new ID. The
18 24th Amendment restricts the use of poll taxes
19 to make voting more equal. However, voter ID
20 laws place a very similar burden on students
21 as a poll tax would. Because for most
22 students, essentials like food and
23 transportation transcend the need for a new ID
24 each year with their current address, further
25 suppressing students' right to vote by placing

1 an unfair monetary burden upon them.

2 So far I've told you how student
3 voting has been suppressed, but now I will
4 tell you how it can be encouraged. There are
5 very easy ways to make this happen. One of
6 the best options is to use online
7 registration. For the get-out-to-vote
8 campaign this fall, MPIRG actively worked to
9 get students to register to vote, however, a
10 lot of the time students that passed by our
11 tables gave the answer that they were too late
12 for class to stop and take just three minutes
13 to register.

14 Now, what can you do to make that
15 easier? Basically the only way is to take the
16 registration off the paper medium and put it
17 onto the digital. By making online
18 registration a more commonplace practice,
19 students will be able to register to vote from
20 behind their computer screens. This is the
21 21st Century. How about we update this
22 archaic system and bring it into digital age.
23 Plus, by increasing the accessibility of
24 registering, a system is created where more
25 students will register and subsequently vote.

1 Furthermore, online registration allows for
2 out-of-state students to have easier access to
3 voting.

4 This upcoming election cycle is a
5 very important one for me. Both Governor
6 Dayton and Governor Walker will be up for
7 reelection, and I have an opportunity to vote
8 in either state. Currently I don't know which
9 state I want my ballot to be cast. So if I
10 was able to register online for both
11 elections, it would save me a trip back to
12 Wisconsin just to register. And this will be
13 the same story for many other students. So
14 why not make it easier for someone to vote.
15 The technology is out there. Why not use it?

16 A very large problem in modern
17 society is not that there is voter suppression
18 within the student community, but that there
19 is a lack of passion for participating in
20 government. A majority of students just don't
21 care. This is because students feel like
22 their system doesn't care about what they have
23 to say. Their voice is being ignored, thus
24 students tend to ignore the politicians and
25 not vote. And that is awful, because students

1 make up the largest percentage demographically
2 who have the right to vote, but for some
3 reason my peers would rather not participate.
4 Something needs to be done about that.

5 Politicians have to realize that students are
6 a large untapped resource of votes. And if a
7 politician can get a student following, they
8 can greatly sway the election results. Look
9 at President Obama's 2008 campaign. He was
10 able to light the fire under the student
11 population and in key areas swayed the vote
12 enough to give him the victory. This strategy
13 of using students is highly effective, because
14 we are at the age where we're trying to find
15 out who we are, thus our minds are easily
16 moldable, if a solid argument can be made.

17 A politician and maybe party can
18 gain many life-long voters if they push their
19 materials to students. However, right now no
20 politician is doing that. Students need to
21 see this practice change. If we see a change
22 in the involvement by politicians, I believe
23 that student voting will rise.

24 Overall student involvement in
25 voting is already down because of a lack of

1 interest from candidates in student
2 communities. Furthermore, because students
3 are already hard-pressed to find time to go
4 out and vote, placing further restrictions on
5 students would greatly suppress their voting
6 rights. Instead, let's stop silencing
7 students' voices and start encouraging the
8 next generation to speak up and vote.

9 Thank you.

10 MR. SPANNAUS: Thank you. Thank
11 you, Nolan.

12 Any questions, people? Do you have
13 a question.

14 MR. BAKER: I know that Minnesota
15 and Wisconsin are always neck and neck for
16 youth turnout, but in both states non-college
17 voting is down. In what ways are your
18 organizations partnering with non-college
19 youth to make sure that they are turning out
20 to the polls on election day?

21 MR. SCHMIDT: Well, we do go around
22 and we make sure that in areas where the youth
23 are highly present such as around college
24 campuses, we go out and door-knock and we will
25 go and say: There is an election coming up.

1 Register to vote. This is how to register.
2 We go -- and we actively go to younger
3 communities and make sure that people are
4 getting out to register to vote.

5 MS. EICHER: I know that in
6 Wisconsin, the Wisconsin -- the state voices
7 table has targeted the Rising American
8 Electorate as the group that they're looking
9 to turn out. And that does include, you know,
10 voters who are that 18 to 35 range, which
11 includes college students but also includes
12 those that have -- either not in college or
13 beyond college.

14 I know that the League of Young
15 Voters does good work in Wisconsin in getting
16 that -- reaching that demographic. You know,
17 could we be doing more? Absolutely. But
18 there are limited resources. You know, in a
19 perfect world we would be knocking on every
20 single door in our state, you know,
21 registering voters. But given the resources,
22 you know, that targeted Rising American
23 Electorate, we are using their resources
24 strategically to reach out to those groups.

25 MS. WACHLAROWICZ: I have to say in

1 the city of Minneapolis, we are trying to
2 reach the younger voter by modern technology
3 as well. In 2013, we initiated our Facebook
4 and Twitter, which is common to the younger
5 generation as another mode to reach them and
6 to get them involved as well. And it has
7 become successful. It's a start to get that
8 engagement.

9 MR. SPANNAUS: Thank you, Grace.
10 Wenda, do you have questions?

11 MS. WEEKES MOORE: No, I don't.

12 MR. SPANNAUS: Larry?

13 MR. JACOBS: I have a question, but
14 let's get our Secretary of State first.

15 MR. RITCHIE: I just wanted to ask,
16 some voters don't face the barrier of
17 registration, like in North Dakota they don't
18 have voter registration. We used to not have
19 voter registration except in some limited
20 parts. What do you think about that more
21 modern system of no voter registration?

22 MS. WACHLAROWICZ: I think that
23 voter registration is key, both online and in
24 same-day registration. I think the use of
25 technology such as e-poll books to enhance and

1 facilitate that process as well as just the
2 organization in the polls, specifically going
3 towards the goal of Minneapolis of having
4 election judges reflect the community with
5 election judges that can speak the language
6 spoken, that individuals can come in and feel
7 comfortable registering to vote as well as
8 voting. Those I think are the key factors in
9 election registration.

10 MS. EICHER: I know up until a few
11 years ago there were some communities in
12 Wisconsin where you did not have to register
13 to vote, whereas you -- your rural, smaller
14 communities, but your larger communities did
15 require that voter registration. I think --
16 you know, either way, I think that you should
17 have a system that applies to every single
18 voter so that you're not saying to folks in a
19 smaller community that: No, no, you don't
20 need to go register to vote, you can just show
21 up and vote on election day, whereas if you
22 live in that large municipality, you have to
23 take extra steps to make sure that you're
24 registered so that you can access that same
25 right that that person in the smaller

1 community has.

2 I don't know the answer to your
3 question. I would have to look more closely
4 at -- you know -- was it North Dakota that you
5 mentioned?

6 MR. RITCHIE: Yeah. They don't
7 have registration. They have a much more
8 modern system, much better system in a way.

9 MS. EICHER: And if it's, you know,
10 better and modern --

11 MR. RITCHIE: Definitely.

12 MS. EICHER: -- I would be in
13 support of that.

14 MR. RITCHIE: Definitely.

15 MS. EICHER: Would have to look at
16 details first.

17 MR. RITCHIE: Voter registration
18 was invented as a barrier to voting, it --
19 period. And when you don't have voter
20 registration, you eliminate that barrier to
21 voting.

22 MR. SPANNAUS: Well, what happens
23 when people come in, they have to identify
24 that they are residents?

25 MR. RITCHIE: Secretary of State is

1 responsible for creating the list of eligible
2 voters in the state, and they have a very
3 complete system. It's a very advanced system,
4 and it uses a lot of data and technology.
5 It's specified in law the sources that it's
6 drawn from.

7 But in any case, the process of
8 voter registration is invented to be a
9 barrier. So some states don't use it. Some
10 states do.

11 MR. SPANNAUS: Larry, you had a
12 question?

13 MS. EICHER: To follow-up on that,
14 would that have to go under the Secretary of
15 State? Our Secretary of State of Wisconsin
16 does not -- does not oversee our elections.
17 That position was stripped of those powers and
18 it's now under our Government Accountability
19 Board.

20 MR. RITCHIE: I think states can
21 decide how they want to do anything, I mean,
22 but the responsibility -- it's not so much who
23 has it, it's the notion that if you make each
24 individual person have to do this registration
25 process versus something that is done and

1 created; we have a third system in the country
2 which is for young men, mandatory registration
3 for the draft. So you have another system
4 that is out there that has a different kind
5 of -- we have different systems that operate.

6 But for some citizens, they don't
7 face the barrier of voter registration. For
8 some of us who are taxpayers and citizens, we
9 are paying for a very expensive system, very
10 expensive system designed to be a barrier to
11 voting. And some states, citizens aren't
12 paying for that, that system and aren't
13 creating that barrier. So you have different
14 systems in different states.

15 MR. JACOBS: Grace, I had a
16 question I'm hoping you could help me with.
17 The panel before this one, we had several
18 witnesses who discussed barriers in
19 Minneapolis in terms of cultural sensitivity,
20 in terms of language, in terms of outreach.
21 Your presentation talked about the overall --
22 the web page, the voter ambassadors. Can you
23 help me reconcile what sounds like a brave new
24 world that you're representing versus kind of
25 a world I'm more familiar with which is the

1 barriers.

2 MS. WACHLAROWICZ: We are
3 developing that foundation, and that is our
4 goal to have that engagement. Yes, in 2012 we
5 had a lot of difficulties with those type of
6 barriers.

7 Because of those barriers, lessons
8 learned, we tried to improve that in 2013.
9 Are we there completely? No. It's going to
10 be a long process. But it is the commitment
11 of the City to get to that point to engage all
12 voters regardless of where they're -- what
13 community they are from. I think that one
14 panelist said that they enjoyed the
15 opportunity of absentee voting in City Hall.
16 That concerted effort to assist individuals
17 with that second language barrier with
18 assisting them there, the time. We also
19 provided visual requirements to register to
20 reduce that barrier because people not knowing
21 how to read is a start. And we were naive. I
22 had to chuckle at a council member's comment
23 about the translation. We did seek
24 translation, but unfortunately it was a
25 literal translation; lessons learned.

1 Our next series of translations
2 will be more conversational and will be
3 understand [sic] by the common voter. Here we
4 thought we did something good, but we didn't
5 do it as perfect as we wanted to.

6 MR. SPANNAUS: I think it's time
7 for public testimony now. Is Alan around
8 here?

9 MR. MARTINSON: Yeah, we don't have
10 anyone who has signed up yet. So if you are
11 interested in giving public testimony, we'll
12 have a second public testimony period after
13 the next two panels. So right now we
14 can -- unless the commissioners were holding
15 back some extra questions for the current
16 panelists, we can allow that, otherwise we can
17 get started on our break. If we can -- it's
18 scheduled from 6:00 to 6:10, but if we can
19 come back at 6:00, maybe we can get started a
20 little bit early and give us a little bit more
21 time.

22 So take a break and be back in
23 about 20 minutes.

24 (Recess.)

25 MR. SPANNAUS: The title of this

1 panel is Voting Rights in Wisconsin. We have
2 the counterpart of Jeff Martin here. We
3 have -- Jeff Martin is the St. Paul branch of
4 the NAACP. Richard Saks is the Milwaukee
5 branch of the NAACP.

6 MS. BOEHME: But he's not here.

7 MR. SPANNAUS: Oh, he's not here?

8 MS. BOEHME: No.

9 MR. SPANNAUS: Oh, I'm sorry.

10 Okay. Who is -- is anybody filling in for
11 him?

12 MS. BOEHME: No.

13 MR. SPANNAUS: Okay. So Alicia
14 Boehme, Disability Rights of Wisconsin.

15 MS. BOEHME: Yeah.

16 MR. SPANNAUS: Alicia, thank you
17 for coming.

18 MS. BOEHME: Yeah. Thank you for
19 having me.

20 My name is Alicia Boehme, and I'm
21 here with John Shaw. I work at Disability
22 Rights Wisconsin, which is the federally
23 designated Protection and Advocacy Agency for
24 People with Disabilities in Wisconsin. And
25 John Shaw is from the Board for People with

1 Developmental Disabilities, which is the
2 designated State Developmental Disability
3 Council in Wisconsin. We're here to talk
4 about people with disabilities and voting
5 rights.

6 Historically, people with
7 disabilities have been disenfranchised from
8 the community. Until the last several
9 decades, people with disabilities were
10 routinely warehoused in segregated
11 institutions, often resulting in lost contact
12 with family members and community friends.
13 Although many institutions still exist, the
14 deinstitutionalization movement gave large
15 numbers of people with disabilities the
16 opportunity to live, work and recreate in the
17 community. This integration has been a great
18 benefit to all people with disabilities and to
19 our society as a whole. There is still a lot
20 of work to be done to ensure that people with
21 disabilities have equal and meaningful access
22 to their communities. And we believe that
23 voting is, at the very most basic level, a
24 symbol demonstrating full community
25 participation and integration. And that is

1 why we think it is so important for people
2 with disabilities to vote.

3 Our two agencies have spent the
4 last ten years on voting education and
5 advocacy related to voters with disabilities
6 in our state. Our nonpartisan voting work
7 includes educating voters with disabilities on
8 their rights, GOTV, ensuring that people with
9 disabilities know that they have the right to
10 get out and vote, reminding them that
11 elections are on their way. We do candidate
12 forums. We also do research, which we'll talk
13 about later in the testimony. And we do
14 outreach and we work on accessibility for
15 people with disabilities.

16 Much of our work falls within our
17 joint project, called the Wisconsin Disability
18 Vote Coalition. And over the past decade, we
19 have had the pleasure of talking with voters
20 with disabilities all over the state to better
21 understand how well our voting system is
22 working for people with disabilities.

23 There are over 544,000 people with
24 disabilities over the age of 18 years old in
25 the state of Wisconsin. There is a notable

1 gap between the voting rates of voters with
2 and without disabilities. Nationally, as
3 identified in the 2012 general election,
4 eligible voters with disabilities voted at a
5 rate of about 5.7 percent below that of the
6 eligible non-disabled voting population.
7 Unfortunately, that gap is larger in
8 Wisconsin. It's 8.2 percent. Wisconsin has
9 one of the highest voter turnout rates in our
10 country, which makes this gap very
11 interesting. And when this data is broken
12 down by type of disability, we know that
13 people with cognitive disabilities and
14 physical disabilities are the least likely to
15 exercise their right to vote.

16 Researchers have studied why this
17 gap exists, and have found that 30 percent of
18 voters with disabilities reported difficulty
19 voting at the polls compared to only 8 percent
20 of voters without disabilities. According to
21 their report, the gap includes problems such
22 as transportation problems, problems finding
23 the polling place, the physical accessibility
24 of the polling place and problems using the
25 accessible voting machine.

1 In 2008, the Wisconsin Disability
2 Vote Coalition conducted our own poll and we
3 found that lack of transportation was a huge
4 issue, lack of knowledge about where
5 candidates stand on issues, lack of knowledge
6 about important issues. And questions about
7 eligibility and lack of accessibility were
8 kind of the core problems that -- and barriers
9 that people with disabilities faced. We have
10 attempted to address these concerns through
11 our work. For example, we have held a number
12 of nonpartisan candidate forums on disability
13 issues. Many of these forums are videotaped
14 and transcribed for voters with disabilities
15 to access around the state if they can't
16 attend the forums. And we also hold trainings
17 around the state and have created educational
18 materials, including a brochure on Competency,
19 Guardianship and Voting.

20 We know that physical accessibility
21 to polling sites remains a significant problem
22 for many voters. The Government
23 Accountability Office, GAO, found that
24 72 percent of the polling sites that they
25 surveyed had accessibility barriers.

1 72 percent. That's huge.

2 Significant barriers still exist in
3 Wisconsin as well; however, we are hopeful
4 about the great work that is being done in our
5 state to eradicate these barriers. Our State
6 of Wisconsin Government Accountability Board
7 issued a report in June of 2013, and they
8 found that -- they identified 10,488
9 accessibility barriers at polling sites across
10 the state since 2011. That's a large number,
11 right? We believe that the GAB survey is
12 important. And it's important because we
13 can't -- we have to identify the problems in
14 order to eradicate them. And that's one thing
15 that the State of Wisconsin and the GAB is
16 doing. They have been kind of nationally
17 recognized by the Presidential Commission on
18 Election Administration for their work on this
19 specific project. Other states aren't
20 identifying the problems. They are
21 identifying them. And that's, we believe, the
22 first step to being able to eradicate the
23 barriers.

24 Some common problems that our
25 Government Accountability Board has found is

1 lack of signage, lack of accessible parking
2 for people with disabilities, having doors --
3 inability to get in the front door, the voting
4 equipment not being set up properly, and no
5 place for people with mobility disabilities to
6 kind of roll up and be able to vote on
7 accessible equipment. So those are some of
8 the main problems that they found.

9 Transportation is another
10 significant barrier. The Center for Disease
11 Control and Prevention found that adults with
12 disabilities are more than twice as likely
13 than those without disabilities to have
14 inadequate transportation; 31 percent versus
15 13 percent. In Wisconsin, we have expansive
16 rural areas and it makes it particularly
17 difficult for people with disabilities to get
18 to the polling place. Public transportation
19 and paratransit, accessible taxis or private
20 accessible vehicles are often not available in
21 these rural areas. Even in locations where
22 accessible taxi services are available, they
23 are typically very much cost-prohibitive for
24 voters with disabilities, who are often
25 low-income.

1 So over the past decade we've
2 talked to a number of voters with disabilities
3 and we've kind of distilled down to two very
4 important basic principles relevant to voting
5 policies in Wisconsin. First, accessibility
6 matters. We know that if a person can't get
7 in the front door, they're not likely to come
8 back and vote. They're just not. They're not
9 likely to. If there are many barriers, people
10 with disabilities are turned off from voting.
11 And voters who are unable to cast a ballot
12 because of the barriers are less likely to
13 return. Second, options matter. We know that
14 options matter, okay? And let me finish this
15 point. This means that voting laws that allow
16 flexibilities are important to voters with
17 disabilities; if provided, they are more
18 likely to get out to vote and continue to
19 vote.

20 Thank you very much.

21 MR. SPANNAUS: Thank you very much
22 for coming.

23 Anybody have any questions, Biko or
24 Wenda or Larry?

25 (No response.)

1 MR. SPANNAUS: Incidentally, Mark
2 Ritchie could not stay for the rest of the
3 hearing. He teaches a class at the Humphrey
4 Institute, and so he's over there doing his
5 job right now. So taking Larry's place...

6 Thank you very much again for your
7 enlightening testimony.

8 Next is Neil Albrecht.

9 Your Neil, right?

10 MR. ALBRECHT: I am.

11 MR. SPANNAUS: Thank you.

12 MR. ALBRECHT: Good evening and
13 thank you for this opportunity to provide
14 testimony at the National Commission on Voting
15 Rights Hearing. My name is Neil Albrecht and
16 I am the Executive Director for the City of
17 Milwaukee Election Commission. Unlike many
18 other states, Wisconsin embraces a unique
19 model of election administration on a local
20 municipal level and I have the responsibility
21 of oversight of all aspects -- all aspects of
22 election administration in the city of
23 Milwaukee.

24 As I prepared my testimony for
25 today, I took pause to reflect on the issue of

1 voting rights and the topic -- and as this
2 topic relates to the state of Wisconsin and
3 the city of Milwaukee's voting-eligible
4 population. After all, Wisconsin celebrates
5 one of the highest voter participation rates
6 in the nation in presidential elections,
7 second only to Minnesota. An examination of
8 the registration and voting opportunities in
9 these two states, in comparison to other
10 states, demonstrates that diverse points of
11 access to voting is critical to strong and
12 consistent rates of voter participation.
13 Examples of these include same-day
14 registration, registration through the DMV and
15 social service agencies, active special
16 registration deputies conducting registration
17 drives, early voting or in-person absentee
18 voting, no-excuse absentee and permanent
19 absentee voting.

20 While each of these voter access
21 strategies is sometimes referred to as voting
22 privileges, they are, in fact, voting rights.
23 True fairness in elections often requires a
24 concerted effort to balance access with
25 safeguards to ensure elections that are

1 accurate and are not compromised by fraud.
2 With a current emphasis on allegations of
3 voter fraud, and a more restrictive voter
4 access policy, Wisconsin stands at a pivotal
5 moment of time when this critical balance
6 could be lost and voting rights subsequently
7 compromised.

8 In the last presidential election,
9 87 percent of the city's registered voters
10 cast ballots, which correlated to just over
11 60 percent of all eligible voters. I believe
12 this to be a significant accomplishment that
13 participation rates in the city of Milwaukee
14 largely mirror those of the rest of the state,
15 particularly given some of the unique
16 challenges facing many city of Milwaukee
17 voters. These challenges include:
18 29.9 percent or nearly one-third of the city's
19 population was living in poverty at the time
20 of the 2012 presidential election. Milwaukee
21 has the highest concentration of
22 African-American, 40 percent; and Hispanic,
23 17.3 percent residents compared to 6.3 percent
24 and 5.9 percent in the balance of the state.
25 Both represent populations that have

1 historically been disenfranchised from voting.
2 Wisconsin has the highest rate of
3 incarceration of African-American men in the
4 country, leading to a noteworthy percentage of
5 otherwise qualified voters that are either
6 incarcerated or serving probation, parole or
7 extended supervision at the time of an
8 election and not qualified to vote in
9 Wisconsin. Milwaukee also has a large student
10 population with many students living away from
11 home in on-campus or off-campus housing.

12 When considering the aspects of
13 election laws that make voting accessible to
14 all populations, particularly same-day voter
15 registration and early in-person absentee
16 voting, it is important to note that these
17 populations referenced, people in poverty,
18 students and people of color, are the same
19 populations that access these voting options
20 at rates considerably higher than other voting
21 populations. For example, 53,518 of the
22 city's 288,459 voters in the 2012 presidential
23 election registered to vote on election day.
24 This number represents 20 percent or one in
25 five voters. Of the 53,518 same-day

1 registrations, 21 percent resided in areas of
2 the city with the highest student populations,
3 and an additional 20 percent resided in areas
4 of the city with the highest rates of poverty.

5 Comparable percentages apply to
6 residents voting early through in-person
7 absentee voting. The aldermanic districts
8 with the highest percentage of residents
9 voting early were also those districts with
10 populations often identified as the working
11 poor. To accommodate the complex and often
12 unpredictable schedules of Milwaukee's working
13 poor, the Election Commission has offered
14 extended hours to include evening hours during
15 the two weeks in-person absentee voting is
16 available, as well as weekend hours. To give
17 you some example of utilization, these
18 extended hours were heavily utilized with
19 nearly 5,000 residents voting early in one
20 weekend.

21 Sharing the landscape with the
22 success of high turnout elections in Milwaukee
23 are unfounded allegations of voter fraud. I
24 do say unfounded without bias because despite
25 the unparalleled scrutiny of registration

1 data, voters, voting processes and elections,
2 very few cases of intentional fraud have been
3 prosecuted. Nonetheless, in Wisconsin, there
4 is a current movement for review and change.

5 In Wisconsin's last two legislative
6 sessions, proposed changes to election law
7 have included a voter ID bill that would
8 require a person unable to pay for an ID to
9 sign a waiver stating that they are too poor
10 to purchase an ID. The elimination of
11 same-day registration has also been proposed,
12 reductions to the hours of operation for
13 in-person absentee voting and requiring a
14 proof of residence document during open
15 registration.

16 Each of these would have a profound
17 impact on voter registration in the city of
18 Milwaukee, particularly on some of the most
19 vulnerable populations that have historically
20 been disenfranchised from voting. As
21 Wisconsin's legislature considers changes to
22 Wisconsin's election law, I have encouraged a
23 consideration of these voting populations and
24 the critical balance between laws that boost
25 public confidence in the integrity of

1 elections and laws that could reduce voter
2 access and compromise voting.

3 MR. SPANNAUS: Thank you very much,
4 Neil. That was very interesting.

5 Larry or Wenda, any questions?

6 MR. BAKER: Not at this time.

7 MS. WEEKES MOORE: No.

8 MR. SPANNAUS: Thank you again for
9 coming, Neil.

10 MR. ALBRECHT: Sure.

11 MR. SPANNAUS: And it's Andrea's
12 turn, Andrea Kaminski. Thank you for coming.

13 MS. KAMINSKI: And thank you for
14 this opportunity to speak on behalf of the
15 League of Women Voters of Wisconsin. I'm
16 Andrea Kaminski, the Executive Director of the
17 State League. And I just want to mention that
18 the League is now in its 95th year in
19 Wisconsin and nationally.

20 Wisconsin has a tradition of clean,
21 fair and open elections. Our state is a
22 consistent leader in national rankings of
23 election systems, including the 2013 study by
24 Pew Center on the States, which based its
25 ratings on 17 statistical measures, including

1 voter wait times, availability of online voter
2 information, percentage of voters with
3 registration or absentee ballot problems,
4 number of military and overseas ballots
5 rejected, voter turnout, a big one, and the
6 accuracy of voting technologies.

7 The strengths of Wisconsin's
8 election system start with the fundamentals.
9 Our right to vote is expressly guaranteed in
10 clear language in our state constitution, and
11 our high citizen participation reflects an
12 engaged citizenry. Our elections are
13 administered by local election officials, with
14 almost 2,000 municipal and county clerks who
15 are generally professional, friendly,
16 competent and committed to helping people
17 register and vote in their communities.
18 Observers are welcome at the polls under
19 Wisconsin's open meetings laws, as long as
20 they respect the need for a safe and orderly
21 voting process. In November 2012, the League
22 of Women Voters trained and placed more than
23 300 observers in the polls in cities, towns
24 and villages across the state and we draw from
25 their written reports for our advocacy.

1 In the nonpartisan Wisconsin
2 Government Accountability Board, we have a
3 state agency with a competent staff to provide
4 training and guidance to our local officials.
5 A model for the nation, the Government
6 Accountability Board is composed of six former
7 judges who are nonpartisan officials in
8 Wisconsin. They work to balance the often
9 conflicting interests of diverse groups and
10 individuals who care about our elections and
11 wish to make them better but see different
12 ways to accomplish that.

13 Over several decades our state has
14 adopted a number of policies designed to
15 encourage people to participate in elections,
16 including election day registration and
17 no-excuse absentee voting.

18 According to Kevin Kennedy,
19 director of the Government Accountability
20 Board, total absentee voting in the state has
21 increased from about five percent in
22 November 2000 to about 25 percent in 2012.
23 Eight out of ten of those absentee ballots in
24 2012 were cast in person at the clerk's
25 office, or in the case of Milwaukee, at the

1 election commission. This in-person absentee
2 voting, as you've heard, is what constitutes
3 early voting in Wisconsin.

4 In November 2012, more than 514,000
5 ballots or almost 17 percent of total ballots
6 cast were cast in-person absentees. Very few
7 problems have been identified as a result of
8 Wisconsin's voter-friendly policies, and the
9 problems that we have seen have generally been
10 isolated incidents and not systemic failures.
11 We have no doubt that because of these
12 policies, Wisconsin consistently ranks among
13 the top two or three states for voter turnout.

14 With so much to be proud of, we
15 must ensure that any future reforms will build
16 on the strengths of our election system.
17 Reform should address real documented
18 problems, or they should take advantage of new
19 technologies or other opportunities to improve
20 elections. Reforms should never set the clock
21 back on the strengths of Wisconsin's
22 elections.

23 A proposal currently before the
24 Wisconsin legislature does just that.
25 Assembly Bill 54 limits the opportunity for

1 students to cast an in-person absentee ballot
2 and also the ability of municipal clerks, many
3 of whom are elected officials themselves, to
4 serve their constituents. This legislation
5 would add a number of restrictions -- add to a
6 number of restrictions that were enacted just
7 a couple of years ago in 2011.

8 One law enacted that year reduced
9 the time when clerks may hold in-person
10 absentee voting to a two-week period ending at
11 5:00 p.m. the Friday before the election.
12 Before that, some municipalities offered early
13 voting hours, as you've heard, over the final
14 weekend and even the Monday before the
15 election. In 2011 -- another 2011 law allows
16 each municipality to have only one site for
17 early voting regardless of the population.
18 Local officials in larger communities such as
19 Milwaukee have worked to make up for that
20 handicap by holding evening and weekend hours
21 during that early voting period.

22 By banning evening and weekend
23 hours for early voting, AB 54 does not uphold
24 that tradition of public service for which
25 Wisconsin's election officials are known.

1 Rather than setting a minimum level of
2 service, it sets a maximum level. This
3 proposal would reduce the opportunities for
4 voters who have to juggle daytime jobs with
5 child or care or elder care or commitments or
6 who travel frequently.

7 In addition, AB 54 does not achieve
8 the stated goal of its authors of creating
9 uniformity around the state, which is the only
10 rationale they've given for that. They
11 haven't said that there have been problems.
12 By treating all municipalities equally, it
13 doesn't treat all voters equally. And the
14 legislation therefore favors those who live in
15 small communities where a clerk may serve a
16 couple of hundred citizens rather than
17 hundreds of thousands. It seeks to impose a
18 statewide cookie-cutter solution to an
19 nonexistent problem. It's been passed by the
20 state assembly and could be voted on in the
21 senate soon. We hope the lawmakers will
22 reject this.

23 If lawmakers really want to improve
24 Wisconsin elections, which are good, they'll
25 support more and better training and resources

1 for local election officials. After all, most
2 of the problems that we have seen in our
3 elections have been the result of poll worker
4 error or, in a few cases, mismanagement.
5 Other positive reforms would be the
6 establishment of a secure online voter
7 registration system. Registration should be
8 permanent and portable. Early voting should
9 be expanded and not restricted. Such reforms
10 would improve polling place management, boost
11 the integrity of our statewide voter
12 registration database and reduce lines at the
13 polls. Ultimately these reforms would
14 encourage voting and increase citizen
15 participation in our government. Thank you.

16 MR. SPANNAUS: Thank you very much.
17 Sir, do you want to add anything
18 to --

19 MR. SHAW: Actually, no. Alicia
20 pretty much said most of the --

21 MR. SPANNAUS: Okay. Well, you
22 certainly -- Wisconsin had a lot of election
23 activity in the past couple years.

24 MS. KAMINSKI: We've had a lot of
25 practice, yes.

1 MR. SHAW: Yes. That was how we
2 found 10,000 accessibility flaws.

3 MR. SPANNAUS: Well, you've all
4 survived. That's a plus anyhow.

5 MR. SHAW: Yes.

6 MR. SPANNAUS: I hope the state has
7 too. But anyhow, we appreciate you coming
8 here. We're glad that Alan put us in --
9 Minnesota and Wisconsin together. And
10 appreciate you coming here and look forward to
11 working with you in the future.

12 Larry?

13 MR. JACOBS: I had a question for
14 the panel, those of you who would like to
15 address it. President Obama appointed a
16 commission on election administration. There
17 was glowing response nationally. Just about
18 every expert who was asked about it lauded the
19 report as providing common sense consensual
20 sort of recommendations. I'd like your take
21 on whether these ostensibly consensual
22 recommendations have traction and are being
23 adopted in Wisconsin. My impression listening
24 to you is that the national perspective from
25 50,000 feet up does not correspond with the

1 reality in Wisconsin. And I want to just list
2 a few of the items that the President's
3 commission that was bipartisan, and as far as
4 I can tell, nonpartisan, identified.

5 One is in terms of making voter --
6 voting easier. Online registration, early
7 balloting, updating voting equipment to make
8 it more efficient and reliable and sharing
9 voter registration records across state lines.
10 Those are four of a number of recommendations.
11 They were some of the recommendations that the
12 talking heads, you know, embraced and lauded
13 as this pool of easily acceptable nonpartisan
14 recommendations.

15 Is this what's happening in
16 Wisconsin? Could you give us a sense of
17 whether the President's commission has hit pay
18 dirt?

19 MS. KAMINSKI: Okay. There are
20 some -- thank you for that question. There
21 are some efforts to get online registration in
22 our legislature. They won't pass this time, I
23 don't think. And that would be an
24 improvement. For early voting, we're kind of
25 in more of a defensive mode right now. As for

1 updating equipment, I think Neil probably is
2 the best to talk about that and sharing data
3 between states.

4 MR. ALBRECHT: I would just say
5 that many of the items -- and perhaps this is
6 the landscape. Many of the items you
7 reference are about addressing long-standing
8 issues with access to voting and improving
9 access to voting. I don't see any of that on
10 the radar in -- on anyone's radar in the state
11 of Wisconsin to -- you know, to -- I think
12 there is a balance certainly around steps that
13 need to occur around voter laws that encourage
14 public confidence in elections. But the
15 balance is not taking that to such an extreme
16 that you end up restricting voter access. And
17 I would say that right now Wisconsin is very
18 heavy on the side of the restrictions to voter
19 access. And the consequence to that will be
20 populations that have historically been
21 disenfranchised from voting will move further
22 on that continuum toward again being
23 disenfranchised.

24 So it was sort of a long-winded
25 response to your question. But no, I don't

1 think -- I think the intent of those items was
2 really to encourage voter participation. You
3 know, we celebrate the fact that Wisconsin
4 ranks number 2, which is -- but that still
5 only represents 60 percent of the voting
6 eligible population in the state of Wisconsin.
7 There's an entire 40 percent that is not
8 voting, even in presidential elections. And
9 we see nothing that would address some of the
10 long-standing barriers that have kept that
11 40 percent from voting. Instead, the emphasis
12 really seems to be on that 60 percent and what
13 can we do to restrict their access under the
14 guise of preventing voter fraud.

15 MS. BOEHME: Yeah. And one thing
16 that we're really interested in seeing what
17 happens -- I mean, we've had a series of bills
18 that have made voting more restrictive. They
19 take -- took away corroboration, which was
20 really great for our citizens with
21 disabilities who needed someone to corroborate
22 their residency. And, you know, I think over
23 the next number of years as these -- we'll
24 learn the effects of these bills and how they
25 kind of together are going to make an impact

1 on our state, how they affect populations that
2 are least likely to vote, how they affect
3 rural versus urban areas and whether or not
4 Wisconsin is going to stay kind of on the top
5 of the tier when it comes to voter turnout
6 rates.

7 So I think we -- we're seeing these
8 bills coming through and we have a concern
9 about in tandem how all of them together are
10 going to impact folks with disabilities.

11 MS. WEEKES MOORE: Do you have
12 champions in the legislature who are
13 interested in supporting legislation that
14 would address the 40 percent who are unheard
15 and unseen?

16 MR. ALBRECHT: We have champions in
17 the legislature who I think are very dedicated
18 to issues of voter access. Unfortunately, I
19 believe they represent a minority in the
20 legislature.

21 MS. KAMINSKI: They don't have much
22 power right now. And there are a couple of
23 legislators who have introduced legislation to
24 address voter intimidation or giving voters
25 wrong information and that sort of thing.

1 It's not going to move in this climate right
2 now probably.

3 MR. SHAW: On the positive side,
4 the Government Accountability Board is working
5 at trying to get machinery that is more
6 accessible. There will be a pilot project in
7 Wisconsin to test the Prime III voting system,
8 which was developed by -- what was -- the
9 doctor from Clemson University. And so we see
10 that as very positive as far as individuals
11 with disabilities.

12 One of our board members, his prime
13 goal is to try and get picture ballots.
14 Because individuals with disabilities,
15 oftentimes they know the person and it's
16 easier for them to actually see the person and
17 vote who they know for rather than read the
18 person's name. And so we see that that -- if
19 we are able to do that, that could be
20 something that could be very good for the
21 disability community.

22 MS. KAMINSKI: I think the
23 Government Accountability Board is really one
24 of the strengths in Wisconsin and I think it's
25 really helped us to survive the couple of

1 years where we had, what was it, 12 elections
2 in two years. They are a nonpartisan board.
3 They do get criticized from both ends of the
4 political spectrum. But they really do listen
5 and they work very hard to lead, you know, a
6 very good election workforce in the state. We
7 have local officials who are very dedicated to
8 following the law and making -- and minimizing
9 the effects of some of these laws on people in
10 their communities.

11 MS. BOEHME: And to that end, like
12 I mentioned in the testimony, the GAB does
13 have this wonderful project on accessibility,
14 which is unique in the states, which we think
15 is an absolute star of Wisconsin to try and
16 have the state take responsibility for the
17 accessibility of polling sites and to go out
18 and individually on election day survey every
19 single site, polling site in Wisconsin and
20 collate that data, report back to the
21 municipalities what problems were found,
22 follow up with the municipalities to ensure
23 that the changes are made so that those
24 barriers don't exist for voters with
25 disabilities.

1 So we do think that that did come
2 out of the presidential commission and it --
3 and that is a star, we think.

4 MR. SHAW: Yeah, that's one of the
5 advantages of having 12 elections, you have
6 the opportunity to get out --

7 (Laughter.)

8 MR. SHAW: -- on election day to
9 poll sites and you can find 10,000
10 accessibility issues.

11 MR. SPANNAUS: Yeah, you've had a
12 lot of experience in that presumably.

13 MR. SHAW: Yes.

14 MR. ALBRECHT: If I could just
15 share with you one comment regarding voting
16 equipment since that came up in the EAC
17 question, is that while the EAC does call for
18 a state certification of voting equipment,
19 because of the model used in the state of
20 Wisconsin where municipalities are afforded
21 the autonomy to operate their elections, every
22 one of the 18 -- 1,850 municipalities in
23 Wisconsin gets to choose their own voting
24 equipment as long as it's been certified in
25 the state of Wisconsin. What that's caused is

1 a mess because you have municipalities side by
2 side all over the state using different voting
3 equipment and there's just a real lack of
4 uniformity in terms of voting experiences.

5 MR. SPANNAUS: Well, again, thank
6 you very much. Your testimony was very
7 interesting, enlightening and substantive. We
8 appreciate the time you put in and the way you
9 delivered it. So thank you very much again
10 for coming.

11 MS. KAMINSKI: Thank you very much.

12 MR. SPANNAUS: And again, now we
13 have panel number 4. And it's called
14 Perspectives in Elective Administration, Mark
15 Halvorson, Kathy Tomsich, Jerry Franck and
16 Mike Griffin from -- all of them from
17 Minnesota it looks like. Well, thank you -- I
18 was just going to say thanks for coming to
19 Minnesota, but of course you're from
20 Minnesota. So I -- thanks for coming to
21 Mondale Hall. And as I said, sorry Mark can't
22 be with you tonight. But I appreciate your
23 testifying. And Mark is listed here first,
24 but we'll start with -- Kathy, does it make
25 any difference what order you speak in?

1 MS. TOMSICH: Not to me.

2 MR. SPANNAUS: Well, why don't you
3 start out then, Kathy.

4 MS. TOMSICH: Okay. My name is
5 Kathy Tomsich and I'm a member of the League
6 of Women Voters of Minnesota and have been an
7 election judge for over 12 years. I have
8 participated in many voter registration drives
9 at high schools, colleges and assisted living
10 facilities and also at naturalization
11 ceremonies. Last year, League of Women Voters
12 of Minnesota registered over 8,500 new
13 citizens at these ceremonies. And this was
14 just one year. We've done this for many
15 years.

16 Today I'd like to focus on three
17 issues; online voter registration, early
18 voting and restoration of voting rights.

19 From my experience registering
20 voters and also as an election judge, I
21 believe that solidifying online voter
22 registration in Minnesota law is one of the
23 most significant steps that Minnesota can take
24 to improve both election administration and
25 access to voting. I don't know if people have

1 testified about the cost savings, the
2 efficiency and improvements in accuracy over
3 paper and pen voter registration. But I think
4 it's pretty obvious that this would be a
5 benefit to administration.

6 But there are other benefits. And
7 that was mentioned by Nolan Schmidt in the
8 second panel. States that implemented online
9 voter registration saw an increase in the
10 number of registrations. And we would expect
11 to see an increase in the number of students
12 who register. We would also hope that that
13 would then lead to an increase in the number
14 of people who vote, which is a goal that we
15 all share.

16 But I also expect to see a decrease
17 in the number of election day registrations.
18 And again, this would relate to students here.
19 On election day it is not unusual to have long
20 lines at registration tables, especially in
21 precincts close to college campuses. Election
22 day registration while important and
23 necessary, it does require more work for
24 judges and more time for the voter to complete
25 forms and cast a ballot. So fewer election

1 day registrations will mean less pressure on
2 election judges and allow the poll sites to
3 run more smoothly. The Secretary of State,
4 Mark Ritchie, recently implemented online
5 voter registration. And there is a bill in
6 the state legislature that was introduced this
7 last January that would put this into statute.
8 And the League of Women Voters supports this
9 bill.

10 Early voting. Starting in 2014,
11 Minnesota will offer no-excuse absentee
12 ballots; absentee voting for the first time.
13 And basically for most citizens in Minnesota,
14 this is really the only type of early voting
15 that's allowed. However, absentee ballots are
16 complicated for the voter and costly to
17 process. I have worked on the absentee ballot
18 board for my city and I can testify to how
19 labor-intensive it is to process this type of
20 ballot, some of which are ultimately rejected.

21 The League of Women Voters supports
22 expanding the early voting option to allow a
23 voter to go to an election office prior to
24 election day, sign the roster, fill out the
25 ballot and then drop it into the ballot box so

1 it's processed immediately or, in other words,
2 counted right away. This would be less
3 complicated for the voter and easier to
4 process. And I believe that many people who
5 now vote absentee would prefer this simpler
6 form of early voting. And we could expect to
7 see a reduction in absentee ballots and thus a
8 reduction in rejected ballots.

9 Lastly, restoring the vote --
10 restoring the right to vote. Currently under
11 Minnesota law individuals convicted of a
12 felony are prohibited from voting until they
13 have completed their sentence, including
14 probation or parole. This system is confusing
15 for felons who are living in the community and
16 also for election judges and administrators.

17 I'd like to relate an experience
18 that I had when I was registering students at
19 Century College. A young student came up to
20 me and told me that she had just completed her
21 felony probation but was reluctant to
22 register. She feared that the database would
23 not reflect her recent completion of sentence
24 and she would end up being charged with
25 another felony. So I immediately contacted

1 the Ramsey County Elections office and they
2 assured me that her registration application
3 would receive a complete and thorough
4 examination. She did decide to vote that day.
5 And I advised her to bring her papers
6 indicating completion of sentence to the poll
7 site in case she had difficulty on election
8 day. This experience made me wonder how many
9 other individuals like her who are eligible to
10 vote are either reluctant to participate or
11 decide not to participate because of fear or
12 confusion.

13 The bipartisan Task Force on
14 Election Integrity established by Governor
15 Dayton issued a report in January 2012. The
16 report said, and I would like to quote from
17 the report: No database exists that can
18 accurately identify when a felon regains the
19 eligibility to vote, and that the question of
20 disenfranchisement creates significant
21 confusion among the public election judges,
22 election administrators and the individual
23 convicted of a felony. There are currently no
24 notification procedures consistently followed
25 in the Minnesota criminal justice system in

1 and among the different agencies involved with
2 felonies before, during and after either
3 conviction or incarceration. Accordingly, the
4 Task Force is of the opinion that current
5 Minnesota law frustrates the ability of all
6 citizens to clearly understand eligibility
7 rules and frustrates election officials and
8 county prosecutors in the administration of
9 those rules.

10 The Task Force report went on to
11 give a list of recommendations for the
12 legislature to consider. And the League of
13 Women Voters supports what is referred to as
14 the North Dakota Model. In North Dakota,
15 felons are ineligible to vote while
16 incarcerated and automatically become eligible
17 to vote once they leave prison. This model
18 creates a bright clear line that is easy to
19 understand and administer. It avoids costs,
20 the cost of ongoing administrative work and
21 the work of a prosecutor, the cost of
22 implementing a new data system and mailing
23 written notifications. There has been some
24 research that indicates that restoration of
25 voting rights for felons living in our

1 community is one way to help them reintegrate
2 into society. Actually, this research is --
3 was done by Christopher Uggen, who is a member
4 of the University of Minnesota sociology
5 department. Just one last thing. It also
6 allows these individuals to be role models for
7 their children so that they can learn the
8 value of civic participation.

9 MR. SPANNAUS: Thank you very much
10 Kathy. Very interesting.

11 Wenda or Larry, any questions?

12 MR. JACOBS: Not at this time.

13 MR. SPANNAUS: Okay. Next we
14 have -- well, I see Mark is here.

15 So Mark you can give your testimony
16 here.

17 MR. HALVORSON: Good evening. My
18 name is Mark Halvorson. I am with Citizens
19 for Election Integrity Minnesota. I am here
20 to discuss recounts this evening, which serve
21 an important function in our democracy.
22 Foremost, a properly conducted recount can
23 assure candidates and the public that in a
24 close election there has been a fair
25 examination of the procedures and an accurate

1 count of all legally cast votes. Recounts can
2 also help improve election systems. Any
3 shortcomings in our voting equipment, ballot
4 design and ballot processing are revealed by
5 the scrutiny of a recount.

6 Statewide recounts are rare, but we
7 should be concerned about how they are
8 conducted all across the country because they
9 can impact any one of us. Out of the nearly
10 3,000 recounts that occurred between 2000 and
11 2009, there were only 18 statewide recounts,
12 lucky us in Minnesota, we've had two in the
13 last four years -- actually three; however,
14 two of those -- these recounts, Florida in
15 2000 and, of course, Ohio in 2004, played
16 pivotal roles in the outcome of the
17 presidential race. And, of course, our
18 recount in 2008, senate recount, which
19 resulted in a 60-vote majority vote in the
20 senate.

21 Let me first discuss the successes,
22 challenges and lessons learned from the
23 Minnesota 2008 recount, then I'll focus on the
24 challenges posed by inadequate state recount
25 laws and I'll finish with some

1 recommendations.

2 In 2009, a citizens jury was
3 organized by two nonpartisan organizations.
4 These were 24 randomly chosen citizens around
5 Minnesota. They were charged with making
6 recommendations for how to improve the recount
7 process. After hearing testimony, the jury
8 developed a list of what went well that
9 included: One, paper ballot recount by hand
10 was very accurate and effective. Number 2,
11 the voting machines were accurate. Number 3,
12 having a paper trail was key to the success of
13 the process. And four, the process was
14 transparent and there was widespread trust and
15 confidence in the recount.

16 As far as challenges and lessons
17 learned, the jury identified several items
18 that needed further study. Here are just
19 three: Number 1, the complexity of absentee
20 ballots. The jury recommended simplifying the
21 application and the ballot. Number 2, the
22 processing of absentee ballots. The
23 recommendation was to centralize the
24 processing at the county level. And number 3,
25 the recount trigger threshold. The jury

1 recommended lowering the recount threshold.

2 The first two of these absentee
3 ballot recommendations were implemented prior
4 to the 2010 election. And in the third,
5 lowering the recount trigger, didn't occur
6 until last year, 2013.

7 Nationally there are some issues
8 and potential problems with state recount
9 laws. For example, there are two states, Ohio
10 and Mississippi, that have no recount laws
11 whatsoever. In the 2012 election, about
12 25 percent of the votes cast around the
13 country were cast on paperless voting
14 machines, also known as paperless DREs,
15 direct-recording electronic. Two key states,
16 Pennsylvania and Virginia, most of the votes
17 were cast on these paperless voting machines
18 without a paper record. None of these votes
19 could be recounted since there is no way to
20 independently verify that the digitally stored
21 voter choices were accurately recorded. Only
22 five states require that all ballots are
23 counted by hand in a recount. Minnesota is
24 one of those five. In Florida, although most
25 votes are cast on paper ballots, drastic

1 changes to state election code severely
2 restrict how many ballots are recounted by
3 hand. So it is essentially impossible to
4 conduct a ballot statewide recount in the
5 state of Florida. In the majority of states
6 recounts are conducted by a machine
7 retabulation, simply refeeding the ballot
8 through the optical scanner again. This poses
9 a challenge for determining voter intent.

10 Bottom line, the combination of
11 paperless voting machines and some inadequate
12 state laws -- recount laws could result in an
13 election meltdown with national implications.

14 Citizens for Election Integrity
15 Minnesota recently announced a new document,
16 Recount Principles and Best Practices, the
17 blueprint for improving state recount laws.
18 This is the first of its kind and was a result
19 of a year-long collaboration with election
20 officials. Secretary Mark Ritchie was one of
21 the coauthors along with myself, former
22 secretary Sam Reed from Washington and Jane
23 Platten from Cuyahoga County, Ohio.

24 Here are some of the
25 recommendations that we came up with to

1 prepare states for recounts. Number 1, that
2 every vote is cast on a paper ballot or
3 results in a voter-verified paper record.
4 This ensures that election officials have an
5 independent record to confirm that the results
6 produced by the voting system accurately
7 reflect the actual votes cast and the
8 intention of the voters.

9 Two, that all election contests be
10 eligible for taxpayer-funded recounts when the
11 margin of victory is very, very close. We
12 refer to this as a close-vote margin recount
13 and provide guidance how to structure these.

14 Three, that close-vote-margin
15 recounts be counted by hand. Although, some
16 states conduct recounts by simply running the
17 ballots through the voting machines, as I
18 mentioned. The visual inspection of a hand
19 count is the most effective method to make a
20 determination of voter intent and is
21 critical -- a critical part of the recount
22 process. We learned that lesson well in 2008.

23 Four, whenever a taxpayer-funded
24 recount is not available, candidates and
25 voters should have the option of requesting

1 that a recount be conducted at their own
2 expense. The costs of the recount should be
3 refunded if initial outcome changed as a
4 result of the recount.

5 Five, every effort should be made
6 to accurately count all valid votes. A vote
7 must not be rejected if it is possible to
8 determine voter intent. These determinations
9 should be applied consistently throughout the
10 state.

11 Six, transparency is key to
12 creating public confidence in the process and
13 outcome of the recount. The importance of
14 transparency should be conveyed to all
15 election officials and staff conducting the
16 recount.

17 Seven, to the extent possible, the
18 canvassing boards, review authorities and
19 judicial panels with the authority to rule on
20 disputed issues during the recount should be
21 formed with a balance of political party
22 affiliations.

23 And eight, for the sake of
24 transparency, observers should be accommodated
25 in whatever way possible without interfering

1 in the process.

2 Let me end with a few comments
3 about post-election audits. Audits, like
4 recounts, can improve voting systems, but they
5 differ from recounts. Audits provide routine
6 checks on voting system performance regardless
7 of how close the margin of victory. Recounts,
8 repeat ballot counting in special
9 circumstances such as close-vote margin.
10 Audits that detect errors can lead to a full
11 recount.

12 Voting systems have produced
13 result-changing errors through problems with
14 hardware, software and programming errors.
15 Well-designed and properly performed
16 post-election audits can significantly
17 mitigate the threat of error and should be
18 considered integral to any vote-counting
19 system. Unfortunately, only half of the
20 states conduct recounts. All states should
21 adopt robust audit laws.

22 Thank you for your time.

23 MR. SPANNAUS: Thanks, Neil [sic].
24 Say, you just said the 50 vote recount and in
25 the senate race, that was the closest

1 full-state recount in the history of the
2 state. The other one that was a popular -- I
3 don't know if it was popular, but it was very,
4 very -- a lot of attention, was the 1962
5 gubernatorial election --

6 MR. HALVORSON: Right.

7 MR. SPANNAUS: -- when Karl Rolvaag
8 won by 91 votes.

9 MR. HALVORSON: Right. The actual
10 closest statewide recount that I'm aware of
11 was the 2004 gubernatorial recount in Ohio --
12 I'm sorry, in Washington State. And the
13 initial margin of victory was about 134 votes,
14 about half of the recount here in Minnesota.
15 Minnesota was close. It wasn't the closest
16 one on record.

17 MR. SPANNAUS: Oh, I see.

18 MR. HALVORSON: Yeah. But out of
19 close to 4 million votes cast, it certainly
20 was very, very close, which underscores the
21 importance of being -- having a paper record
22 that can be visually inspected for determining
23 voter intent, which was one of several reasons
24 why the vote count changed. There were other
25 reasons too, but -- inconsistent processing of

1 absentee ballots. But voter intent was
2 essential in our 2008 recount. Without paper
3 ballots, we wouldn't have been able to make
4 that determination.

5 MR. SPANNAUS: Well, the 2000
6 presidential election, that was not a total
7 recount, that was just a recount of one or two
8 states, is that correct?

9 MR. HALVORSON: So the 2000 Florida
10 recount?

11 MR. SPANNAUS: 2000 -- the
12 Bush-Cheney -- I think it was Bush-Cheney.

13 MR. HALVORSON: Bush. That was
14 just Florida. And, in fact, Gore did not
15 request a full statewide recount. He only
16 requested a partial recount of -- I'm not sure
17 how many counties. Somebody here might know
18 that answer.

19 But Florida in 2000 as a
20 whole -- Florida -- and what's interesting,
21 Florida in 2000 and then Ohio in 2004, those
22 were two high, high profile recounts back to
23 back that were utter messes, that were utter
24 meltdowns. Fast-forward to 2008, Minnesota,
25 which was the next high-profile recount in the

1 country. And what's fascinating when I go
2 around to national conferences, a lot of
3 people in the election community were
4 wondering what's going to happen. I --
5 personally, I knew better. I knew we were
6 going to do just fine. But people outside of
7 Minnesota were wondering was there going to be
8 another meltdown like we had in 2000 and 2004
9 or what's going to happen. We showed the rest
10 of the country how it is possible to conduct a
11 recount. People say it took so long. It took
12 eight months. No. That is not correct. The
13 recount in Minnesota took three weeks to hand
14 count. It was the election contest that took
15 so long. It wasn't the recount itself. Three
16 weeks -- no. Four million ballots counting by
17 hand it took a while. Fast-forward to 2010,
18 it didn't take us -- it took us less than a
19 week to count about 3.2 million ballots.

20 MR. SPANNAUS: But what about 1960,
21 there was no recount then, that was a very
22 close presidential election, correct? That
23 was next --

24 MR. HALVORSON: I was five at the
25 time.

1 (Laughter.)

2 MR. HALVORSON: Maybe somebody else
3 would know that. Presidential, there's never
4 been a nationwide presidential recount. But,
5 of course, we had the recount here in
6 Minnesota in 1960.

7 MR. SPANNAUS: Any -- Wenda or
8 Larry, any questions?

9 MR. JACOBS: Not at this time.

10 MR. SPANNAUS: Thank you. That was
11 very interesting.

12 Next is Jerry Franck from Common
13 Cause Minnesota.

14 MR. FRANCK: I would just like to
15 thank the commissioners for providing this
16 opportunity to speak today. My name is Jerry
17 Franck and I'm chair of Common Cause
18 Minnesota. Common Cause is a nonprofit,
19 nonpartisan citizen's lobby dedicated to
20 improving government and holding it
21 accountable.

22 The bulk of this testimony comes
23 from Empowering Voters: A Report by the
24 Minnesota Election Protection Team of 2012.

25 In 2012, we had to help overcome a

1 reduced state budget for elections. Our
2 contribution was an increased election
3 protection effort.

4 The team had 315 volunteers, a call
5 center that covered 75 precincts and handled
6 over 1,500 calls.

7 Impediments to fair, free and
8 accessible elections in Minnesota are
9 numerous. For example, statistical analysis
10 shows media bias and overstatement of support
11 to the voter ID amendment. Some media
12 supported ID -- ID amendment by converting
13 ad-buys into news stories. Redistricting
14 caused voter confidence -- I'm sorry, voter
15 confusion over changes in polling places. And
16 high turnout precinct consolidation increased
17 same-day registration in those precincts.
18 Some election judges caused delay with
19 same-day registration by not following proper
20 procedures. This resulted in waits of up to
21 two hours, sometimes in the rain, including
22 people with disabilities and small children.
23 Seventeen percent of voters registered on
24 election day, 21 percent in Hennepin County.
25 Voter intimidation resulted when

1 Election Integrity Watch placed "Voter fraud
2 is a felony" signs 18 months prior to the
3 election in mobile, minority and low-income
4 neighborhoods. They also put up billboards
5 offering \$500 for information to help convict
6 organizers of voter fraud. Their website
7 instructed volunteers to photograph or record
8 buses at polling places, multiple voters who
9 were vouched for by the same voter and voters
10 being assisted and assisted living residents
11 voting.

12 Voter and volunteer and harassment
13 happens in Minnesota. Two field teams were
14 threatened in St. Louis Park. An election
15 judge at a Minneapolis school verbally
16 accosted volunteers. A voter sought election
17 protection assistance after an election judge
18 lost her driver's license after being
19 improperly asked for it when she came to vouch
20 for a family member after voting in a pre --
21 I'm sorry, voting as a preregistered voter.
22 Election judges in Golden Valley asked
23 African-American and Latino voters for proof
24 of citizenship, but not Caucasian voters. At
25 least ten different precincts reportedly had

1 voters turned away by election judges for not
2 providing a state-issued driver's license or
3 other photo ID with current address for
4 same-day registration. Election judges at
5 East Side Boys and Girls Club in St. Paul
6 would deny voters language assistance and
7 threatened to call the police on volunteers
8 attempting to assist Hmong voters. Some
9 non-English speaking voters were forced to
10 throw away ballots and complete new ones.

11 As we move forward we must
12 question, evaluate and challenge changes to
13 the election system to safeguard vulnerable
14 voters' rights. We need to reform language
15 assistance statutes. It's unclear on what
16 constitutes language assistance and
17 limitations on assistants.

18 Examples of cost-effective,
19 low-threshold reforms with broad coalition
20 support are implementing no-excuse absentee
21 voting, allowing early voting, dealing with
22 high immobile voters, assisting voters
23 requesting assistance and a system for online
24 voter registration.

25 Additional programs that Common

1 Cause supports is felon re-enfranchisement,
2 Ranked-Choice Voting, Approval Voting is
3 interesting also, and the National Popular
4 Vote.

5 Thank you.

6 MR. SPANNAUS: Thanks, Jerry.

7 Any questions?

8 MR. JACOBS: Not at this time.

9 MR. SPANNAUS: Okay. Well, one
10 more witness.

11 And you're Mike Griffin of FairVote
12 Minnesota?

13 MR. GRIFFIN: Absolutely.

14 MR. SPANNAUS: Thanks for coming.

15 MR. GRIFFIN: Thank you so much.

16 Again, I'm Mike Griffin. I'm here
17 with FairVote Minnesota. I'm the campaign
18 director. And I'm here to talk about the 2013
19 election that we had in Minneapolis and
20 St. Paul. Back in 2013, I was a field
21 director with FairVote Minnesota and we ran
22 the regular vote campaign where it was our job
23 to go out and educate and inform as many
24 people to get involved and to be educated to
25 rank their ballots successfully on election

1 day.

2 Ranked-Choice Voting is a system
3 that's used all across America, from Portland,
4 Maine to the Bay Area, San Francisco and
5 Oakland also use Ranked-Choice Voting, to
6 countries all around the world. Here in
7 Minneapolis it was first adopted in 2006 where
8 voters overwhelmingly voted to change our
9 election laws. It was first used in 2009. In
10 St. Paul, it was first adopted in 2009 and
11 then used in 2011. So 2013 was the second
12 time that the voters in Minneapolis and
13 St. Paul used Ranked-Choice Voting.

14 So in Minneapolis it was a big
15 test. It was a big mayoral test of offering
16 this new system. So under Ranked-Choice
17 Voting, voters rank their preferences, right?
18 They rank their choices. Their first choice,
19 their second choice and their third choice.
20 To win, a candidate must receive a certain
21 threshold. In a normal -- in a single-seat
22 election there's only one winner, that
23 candidate must receive 50 percent plus one.
24 If no candidate reaches this threshold among
25 first-choice votes, candidates with the fewest

1 first-choice votes are eliminated. Those
2 ballots are redistributed to those voters'
3 second preferences. This process continues
4 until one candidate receives the majority of
5 ballots still remaining.

6 Now, why did we make this switch?
7 Why did we make this switch to Ranked-Choice
8 Voting? Now I'm going to talk about four big
9 issues and touch on them very briefly. One,
10 and I think what's near and dear to my heart
11 is that Ranked-Choice Voting eliminates the
12 high-cost, low-turnout, unrepresentative
13 primary. It eliminates the high-cost,
14 low-turnout unrepresentative primary and that
15 opens up the door for communities of color.
16 We used to have two elections in Minneapolis.
17 One election that happened in November that a
18 lot of people participated in, communities of
19 color, young people, transient communities;
20 and another election, a smaller election
21 called the primary, it happened earlier,
22 right, that election was a small sliver of
23 people participating. That small sliver of
24 people were very unrepresentative to the
25 voters of Minneapolis. That small sliver of

1 people looked opposite of me. They were
2 typically older, typically white and richer.
3 They had the privilege, they had the privilege
4 to prematurely narrow the field down to two
5 candidates and everybody else who showed up in
6 November got to choose from that whittled
7 field. Those days are over in Minneapolis and
8 St. Paul.

9 Ranked-Choice Voting gives voters
10 more choices in the high-turnout and diverse
11 election in November. What our data shows is
12 that communities of color participated in
13 primaries at a very dismally low rate. They
14 participated in a general election at an
15 extremely high rate. So it narrows the
16 playing field for communities of color.

17 Second point is that Ranked-Choice
18 Voting compels candidates to campaign
19 positively. Instead of just attacking their
20 opponents, candidates must earn support from
21 all voters. They no longer can tear down
22 opponents as they need to gain second- and
23 third-place votes. Instead of just
24 campaigning to a small sliver of the
25 electorate to win a primary election, they

1 must build a campaign to try to win a
2 majority.

3 Third, Ranked-Choice Voting
4 mitigates the influence of money in elections.
5 Under Ranked-Choice Voting, having the biggest
6 war chest always doesn't matter. And I'm
7 going to talk about that in a second with the
8 municipal election we had in Minneapolis.

9 And finally, Ranked-Choice Voting
10 fosters more choices and can demand more
11 accountability leadership. Extremism. Again,
12 one more time, instead of just appealing to a
13 small sliver of your base, you must appeal to
14 the general population.

15 Just look at the big picture. What
16 did we accomplish here in Minneapolis and
17 St. Paul last year? Without that high-cost,
18 low-turnout unrepresentative primary, we had a
19 wide open election. And for the first time in
20 decades, the Minneapolis mayoral race, voters
21 were given the option of different political
22 persuasions.

23 Let's talk about some numbers, some
24 data. While Ranked-Choice Voting doesn't
25 necessarily drive turnout, 80,000 people,

1 80,000 people, the highest turnout in 12 years
2 participated last year. And that put to doubt
3 any rumors that Ranked-Choice Voting might
4 deter voters from turning out. More
5 importantly, Ranked-Choice Voting ensured that
6 winners were decided in a single high-turnout
7 election in November.

8 Now, how did they understand
9 Ranked-Choice Voting? Eighty-eight percent
10 ranked two choices. Seventy-eight percent
11 ranked all three choices available in the
12 mayoral race. This was true across all income
13 levels, education levels, ages and races;
14 strong majorities of voters in the
15 lower-income and highly diverse wards, 5
16 and 9, ranked at least candidates.

17 Eighty-five percent of all voters
18 found Ranked-Choice Voting simple to use,
19 including 82 percent of voters of color and 81
20 percent of voters without an education --
21 college education. This puts to rest any
22 concerns that communities of color and those
23 less educated will find Ranked-Choice Voting
24 difficult.

25 In addition to understanding it,

1 voters like it. A solid majority of voters,
2 including more than two-thirds of voters earn
3 less than \$50,000, want to continue using
4 Ranked-Choice Voting.

5 By all measures, the Minneapolis
6 mayoral race was the most civil this city has
7 ever seen. All reports that are coming out
8 call this the most civil election.

9 Now, we -- finally, we saw that
10 grassroots coalition politics trumped money as
11 I said I was going to mention. In
12 Minneapolis, the winner of the 2013 mayoral
13 race was Betsy Hodges. She was outspent two
14 to one by her closest rival.

15 Now, some detractors of
16 Ranked-Choice Voting may claim that a high
17 number of candidates in a Minneapolis recent
18 mayoral election was an inherent flaw of
19 Ranked-Choice Voting. This is untrue. The
20 City of Minneapolis has already begun to work
21 to increase the filing threshold for future
22 elections, to ensure that a reasonably sized
23 slate of serious candidates who can mount an
24 organized campaign; and FairVote Minnesota
25 supports that.

1 I began with FairVote Minnesota
2 after being on several campaigns, including
3 serving as the campus director with
4 Minnesotans United and organizing -- I started
5 organizing for Barack Obama in Milwaukee,
6 Wisconsin. What I have always organized
7 around is greater access to the democratic
8 process and getting new, young and communities
9 of color organized and registered and fired up
10 and ready to vote. While the old system in
11 Minneapolis in effect limited the voices of
12 these communities, Ranked-Choice Voting seeks
13 to amplify them. Ranked-Choice Voting seeks
14 to amplify them. Now, Ranked-Choice Voting
15 doesn't remove all the ongoing barriers to
16 political participation faced by poor voters,
17 student voters and voters of color. It's a
18 step in the right direction. While the old
19 municipal primary system left the culling of
20 candidates to a tiny majority, Ranked-Choice
21 Voting opens it up.

22 Thank you so much for your time,
23 Commission. I'll be here to answer some
24 questions.

25 MR. SPANNAUS: Thank you very much,

1 Mike. That was very interesting. In
2 Minneapolis, so you say that was -- some
3 people still say they didn't like it. But
4 overall does -- do you feel that most people
5 were satisfied with the Ranked-Choice Voting?

6 MR. GRIFFIN: Yeah. Yeah, the
7 people who don't like it are a small minority
8 of people. The reports that are coming out
9 after the election said that voters, people
10 who used the system like it. Usually the
11 people who don't like it are people who aren't
12 the majority of people.

13 MR. SPANNAUS: Well, I've heard
14 some people say the Democrats felt that it
15 gives the Republicans advantage. Is there any
16 truth to that?

17 MR. GRIFFIN: Gave the Republicans
18 advantage?

19 MR. SPANNAUS: Republicans have an
20 advantage in it. But I was interested in what
21 you said about the primary. The primary
22 basically brings out all the againers [ph.],
23 generally speaking, against the proponents,
24 the proponents dedicated to vote as the people
25 who are against it, whether it's gun control

1 or anything else.

2 MR. GRIFFIN: Uh-huh.

3 MR. SPANNAUS: So that was an
4 interesting point you made there.

5 MR. GRIFFIN: But those voters who
6 voted in the primary represented a small
7 sliver of the election. What we do is combine
8 two elections into one. Have one big election
9 where voters who look like me are able to
10 participate at a much higher rate and have
11 their voice heard more often.

12 MR. SPANNAUS: Saves money, right?

13 MR. GRIFFIN: Absolutely it saves
14 money.

15 MR. JACOBS: I wanted to ask the
16 panel a question that was really raised by the
17 first panel that was talking about Wisconsin.
18 The issue raised by the first panel was really
19 one of: What do we do about the intensity of
20 the partisan anger and division when it comes
21 to our elections? We're going to have
22 partisanship. Let's have it on the policy
23 stuff, but not when it comes to who gets to
24 vote and how hard or easy it is. And the
25 point that was made by the Wisconsin panel was

1 that it was very helpful to have this
2 nonpartisan Government Accountability Board.

3 In Minnesota, we have, as do other
4 states, an elected secretary of state. And
5 this is with no disrespect to our current
6 secretary of state or the past secretary of
7 state. But in both cases the secretary of
8 state of Minnesota became lightning rods for
9 partisan disputes. And as I look into
10 legislature now, the issue, for instance,
11 online registration where you would think
12 there would be some broad agreement and there
13 is some agreement, it's clearly being
14 influenced by the parties locking in on
15 different sides. The issue of no-excuse early
16 balloting, it's hard to have a conversation, I
17 find, on that issue with Republicans because
18 they take such a partisan view of it.

19 And so my question to you is: Do
20 you think Minnesota can learn something from
21 the nonpartisan election administration that
22 is now going on in Wisconsin?

23 MR. FRANCK: It doesn't seem to be
24 interested in a progressive movement. When I
25 asked the Wisconsin people or I asked about

1 all these progressive ventures right now,
2 Wisconsin was not interested.

3 MR. JACOBS: I think the key thing
4 is it's not progressive, but it's also not
5 conservative. My understanding is what's
6 going on in Wisconsin is it's a check to the
7 conservative majority that's now in office
8 just as no doubt at some point in our future
9 in Minnesota we're going to have not a
10 democratic progressive majority but a
11 Republican conservative.

12 So the question I'm asking is:
13 Does it make sense to add the ballast of a
14 nonpartisan administrator of the election
15 rules that is not seen as kind of pushing one
16 way or another? And I thought the last panel
17 was very -- they were quite negative on what
18 the legislature were up to. In fact, that's
19 been the theme tonight. But in terms of this
20 accountability board, they consistently across
21 both panels praised the fact that there was
22 kind of an impartial arbiter. Everybody had a
23 bit of a problem with it, but they respect it.
24 And so could we just go down here -- starting
25 with Mr. Halvorson. Can we just go down and

1 tell me do you think it makes sense for
2 Minnesota to consider a nonpartisan office
3 that would administer elections?

4 MR. HALVORSON: I think it's
5 certainly worth looking into. I have to say I
6 haven't studied it closely. When -- Larry,
7 you asked a minute ago are there lessons
8 learned. I'd like this to be very clear for
9 the record. And I'm not implying you're
10 implying this. But I just want to be clear.
11 I think that Minnesota election officials in
12 the 2008 and 2010 elections I think did a
13 great job of administering those recounts in a
14 nonpartisan manner. So I just want to make
15 sure --

16 MR. JACOBS: We agree on that
17 100 percent.

18 MR. HALVORSON: Excellent. I just
19 want to make sure we get that.

20 MR. JACOBS: But my question was
21 very specific.

22 MR. HALVORSON: Yeah.

23 MR. JACOBS: It's about -- about
24 whether we should have -- rather than an
25 elected secretary of state, whether we should

1 have this appointed -- you know, it's like the
2 Congressional Budget Office or in Minnesota we
3 have a legislative auditor who is respected by
4 both parties.

5 MR. HALVORSON: Yeah.

6 MR. JACOBS: Should we go for some
7 kind of model along those lines? We have it
8 in other states and right next door here in
9 Wisconsin.

10 MR. HALVORSON: Again, I think it's
11 worth looking into. I haven't studied it
12 fully enough to be able to come up with a
13 definitive position. But we'd be happy to
14 take a look at it since our organization is
15 nonpartisan.

16 MR. SPANNAUS: So what are you
17 saying, Larry, that we would do away with
18 the constitution office -- we've done away
19 with one constitution office already, the
20 treasurer. So we'd do away --

21 MR. JACOBS: This is something
22 that's being talked about around the country.
23 And, you know, Wisconsin has taken a different
24 path. And, you know, the Republicans who feel
25 as passionately as some of the other panelists

1 about what's going on in Minnesota, they're
2 very concerned. We've seen both Republican
3 Governor Pawlenty and now Democratic Governor
4 Dayton saying they won't sign election
5 administration law that doesn't have
6 bipartisan support. So I take that as a
7 signal that the governors recognize that we
8 don't want our election rules and how they're
9 administered, at least the perception of them
10 to be, you know, invaded by this partisan bug.

11 Does the League of Women Voters
12 have thoughts on this, or not?

13 MS. TOMSICH: Well, I'm not
14 familiar with really what happens in Wisconsin
15 in terms of their board. And in terms -- we
16 have administrative judges that handles rules
17 and regulations and it's a very transparent
18 process as I understand it. So I'm not sure
19 if -- in Wisconsin how it works out in terms
20 of they -- this board, as I understand it,
21 implements the legislation that was passed.
22 So I don't know if we have a problem in
23 Minnesota in terms of implementing legislation
24 that was passed.

25 MR. JACOBS: I'm using this as an

1 example to bring in. But if you look around
2 the country, there's certainly nonelected
3 secretaries of states.

4 MS. TOMSICH: Yes. Okay.

5 MR. JACOBS: And one of the
6 questions that's been raised --

7 MS. TOMSICH: Yes.

8 MR. JACOBS: And I think it's
9 important to be fair about this. Republicans
10 are angry right now because they don't see the
11 secretary of state's office as being
12 evenhanded and nonpartisan. We had the same
13 view regarding the last secretary of state who
14 was republican.

15 MS. TOMSICH: Yes.

16 MR. JACOBS: And so do we just bury
17 our head in the sand and say we're going to
18 leave this up to, you know, the politics of
19 elections, or is there another path that we've
20 seen in other states, and I'm taking it that
21 you don't have a view about that?

22 MS. TOMSICH: We haven't discussed
23 it. But I think it's a very interesting idea.
24 But it seems it would require a constitutional
25 change.

1 MR. JACOBS: Yes, absolutely.

2 MS. TOMSICH: And we have a little
3 bit of fatigue dealing with constitutional
4 proposals.

5 MR. SPANNAUS: The other part of
6 the secretary of state's office basically is
7 corporate registration, corporate records,
8 where it's very easy to appoint somebody.

9 MR. FRANCK: I guess I'll say
10 Common Cause does not have a position on this.
11 But I'd still -- personally I'll say that it
12 isn't obvious to me why it's an elected
13 position.

14 MR. JACOBS: What?

15 MR. FRANCK: It isn't obvious to me
16 why it's an elected position.

17 MR. JACOBS: Thank you.

18 MR. SPANNAUS: Well, again, thank
19 you very much, Mike and Jerry, Kathy and
20 Neil [sic] for coming. You're here, of
21 course. But I appreciate you coming out on a
22 cold night anyway.

23 So now we're going to have some
24 public testimony. And we have two persons
25 that have signed up already.

1 And so Cathy Dorr. Is Cathy Dorr
2 here? Cathy, do you want to -- Cathy, you're
3 going to talk about election judges. And tell
4 us about yourself, your background. Okay. Go
5 ahead, Cathy.

6 MS. DORR: All right. Thank you.
7 My name is Catherine Dorr, C-a-t-h-e-r-i-n-e,
8 D-o-r-r. And I'm here representing myself.
9 But I also should say I'm a member of Citizens
10 for Election Integrity of Minnesota. And I
11 have been an Minneapolis election judge since
12 2006.

13 Thank you all for coming out in
14 midwinter here in Minnesnowta and for the time
15 today and for allowing public testimony. As
16 an election judge in Minneapolis, I have
17 worked in a polling place near the campus. We
18 did experience those long wait times, crowded
19 polling places and extremely long lines and
20 frustration on the part of the voters and the
21 election judges with the one- to two-hour
22 waits.

23 So as an election judge and in
24 talking with my fellow judges, anything that
25 the state or the election administration

1 people can do to implement speeding up the
2 lines, digitizing the process, making it more
3 efficient, we would totally welcome. And I
4 want to say a thank you to Grace because as
5 part of the polling place workgroup, we did
6 study those problems and put in some wonderful
7 solutions that worked quite well in our city
8 elections in 2013.

9 But I'd like to talk mostly about
10 what happens in those back-office things. We
11 are the people. I'm the person in CIEM as
12 well. We are the ones that look behind that
13 curtain to who is running the mechanics of the
14 elections. And there are three issues I want
15 to address. Audits and recounts, which are
16 the test of the reliability of the machines.
17 And I personally think that a voter-verified
18 paper-audited ballot is the thing to have, and
19 that those electronic machines are just --
20 they have had their time and they should go to
21 the junk pile. And with close elections being
22 more common, audits and recounts will be more
23 important. And I would reference you to our
24 CEI database on the searchable databases for
25 recounts and audits and the recently released

1 reports on best practices for recounts and
2 audits.

3 Number 2, ballot reconciliation.
4 These laws are often antiquated and outdated.
5 I looked at the Minnesota law. We are looking
6 at the national -- the other states on this
7 topic, and they are often inadequate. And in
8 Minnesota the current electronic poll pilot
9 project in 2013 and the pending legislation in
10 2014 on this we hope will greatly solve the
11 problem of people voting in the wrong
12 precinct. This was the root of the problem up
13 in Alexandria that caused us to consider this
14 issue.

15 Thirdly, the restoration of felon
16 voting rights and the league member, Kathy,
17 spoke to this eloquently, but again, there is
18 a nonstandard procedure by the judges and the
19 courts to notify or not notify the felon of
20 their restored rights. There is confusion on
21 the part of felons and the system, inefficient
22 databases with information or lack of
23 information and just general mishmash of that
24 whole supporting information that you need to
25 tell a felon that their rights have been

1 restored.

2 So again, as an election judge, I
3 am urging the voting rights people to look not
4 only at the common topics of eligibility of
5 registration of persons of color of access,
6 but some of these behind-the-scenes
7 administrative things that can preserve the
8 voting right before and after election day.

9 Thank you.

10 MR. SPANNAUS: Thank you very much,
11 Cathy.

12 Anyone have any questions for --
13 (No response.)

14 MR. SPANNAUS: Okay. Thank you.
15 Thank you for coming.

16 John Hottinger, please.

17 MR. HOTTINGER: Warren, good seeing
18 you. I appreciate the chance to talk with the
19 panel.

20 MR. SPANNAUS: John is a very
21 distinguished former majority of the Minnesota
22 State Senate -- from Mankato or Nicollet?

23 MR. HOTTINGER: Mankato. Well,
24 Nicollet County also.

25 MR. SPANNAUS: Good to see you

1 again. Thank you for coming.

2 MR. HOTTINGER: Thank you. It's
3 good to see you all. And Catherine helped
4 shorten my discussion, because I was going to
5 talk about felon voters and the challenges
6 that they face, because they really don't have
7 an official notice-giver of when they are off
8 paper. And I struggled with that a lot when I
9 was in the legislature a number of years ago.
10 So I will suppress or compress my discussion.

11 Thank you. Members of the
12 commission, I'm here on behalf of the North
13 Start Chapter of the Sierra Club. The Sierra
14 Club was a partner in something called the
15 Democracy Initiative started last year, a
16 coalition with the Communication Workers of
17 America, Greenpeace USA and the NAACP in
18 response to the Citizens United Election and
19 from the Sierra Club's perspective to confront
20 the reality of big coal and big oil dominating
21 our politics.

22 The initiative's premise is, and
23 I'll quote: Our democracy is under siege.
24 Money is not speech, and corporations are not
25 people. Yet the money and power and influence

1 of ideologically driven money in politics and
2 corporate influence is unprecedented.
3 Simultaneously, our fundamental democratic
4 value of one-person, one-vote is under attack
5 by a barrage of aggressive attempts to
6 restrict access to the ballot box and
7 undermine voting rights.

8 When I was in the Senate, I had the
9 chance to be in the election committee for
10 five years. For two years I was the chair of
11 that committee. And during that time we had
12 testimony that was remarkable and dramatic
13 even in this good state of Minnesota of
14 literally thugs attacking voters in Duluth to
15 try and prevent them from voting. Often they
16 were tribal members. We also had in my own
17 experience in my district, which included a
18 variety of public and private higher education
19 institutions, strong efforts to put barriers
20 in front of those students in order to
21 suppress their vote. Ironically the students
22 were probably divided politically, so whoever
23 may have been initiating those efforts may
24 have hurt their own voters. In any case,
25 students were facing that kind of challenge.

1 On the elections committee we had
2 some success in dealing with that. And the
3 students have also moved forward in their
4 ability to register and vote where they chose,
5 either their home or where they are students.
6 But it's still one of the most fundamental
7 important rights we have as voting. As I'm
8 sure you on the panel know, John Dingell
9 indicated yesterday that he was not going to
10 run for reelection. He's going to retire as
11 the longest-serving member of the United
12 States Congress. And when he was asked: What
13 was the most important vote you cast in your
14 60 years in the United States Congress? He
15 said: The 1964 Civil Rights Act; in part
16 because it provided equal voter registration
17 opportunities for the country.

18 That was 50 years ago. And
19 John Dingell who has lived through a lot, and
20 I had the privilege of working for him for a
21 little while is saying that's the most
22 important vote he cast. So Representative
23 Dingell understands the importance of our
24 democracy on every issue, on voting.

25 I want to salute I guess some of

1 the decisions Minnesota has made that can be
2 guidelines for other states. Certainly what
3 we've done, and I look back at the last
4 election, of course, and the voter ID issue.
5 The voter ID issue, when that started as a
6 Constitutional amendment, first of all, the
7 testimony of Secretary of State Ritchie, now
8 taken as partisan, but I believe from a belief
9 on election administration and a spokesperson,
10 Beth Fraser that really kind of set the stage
11 for the debate that took place during the
12 campaign. And a proposal in the Constitution
13 that I believe would have suppressed people's
14 right to vote was overwhelmingly favored at
15 the beginning of that debate. But with the
16 help of city officials, with the help of
17 election officials, we have a great group of
18 county election officials in the state. I've
19 learned that over the years. We had a good
20 debate and the people of Minnesota, to the
21 surprise of many, voted that down. And that I
22 think is a tribute to the people in Minnesota.
23 In addition, election we've passed
24 in the last couple of years have advanced
25 some of the issues I saw in the election

1 committee. With the help of a
2 [unintelligible] republican legislator,
3 frankly, we passed legislation to make it very
4 difficult for out of state observers to come
5 into the state election day and act as frankly
6 thugs to intimidate voters. That took a lot
7 of guts -- I'm not going to name them for a
8 variety of reasons, not the least of which is
9 he's still a competitive member of the
10 Republican Party. But he took a courageous
11 vote that no people -- very few people don't
12 know about that fostered that in the
13 conference committee.

14 The Secretary of State Ritchie's
15 agenda has been to help veterans get their
16 voting -- vote counted better than it was
17 before, putting it online will be an issue in
18 this session. But was a progress towards
19 making sure people had the right to vote. And
20 tribal members can now vote by using their
21 tribal IDs. Students' opportunities to vote
22 are better protected. Early voting and
23 no-excuse absentee balloting, although still
24 part of the political discussion have become
25 part of our tradition. And as an aside, based

1 on the earlier discussion on the nonpartisan
2 Secretary of State position, actually said
3 that -- Governor Pawlenty in his last term did
4 sign a bill that didn't have a lot of
5 republican support in the house as a result of
6 things done as you are very familiar with,
7 Professor Jacobs.

8 But there does remain one thing on
9 the agenda that really needs attention to it,
10 and I am going to just cut my language short.
11 It sounds like the League of Women Voters'
12 testimony and Catherine's support of that
13 testimony would have been similar to mine.

14 The State has an obligation to make
15 sure people who have served their time after
16 being charged and served their punishment as
17 felons should at least know whether they have
18 the right to vote or not. Most of the, quote,
19 fraudulent, unquote, voting was done by felons
20 who didn't realize they couldn't vote. The
21 bigger challenge, however, is there are folks
22 who have served their time, who are off paper
23 and don't realize they have a right to vote.

24 So thank you for this hearing. I'm
25 sorry I missed all the other testimony. But

1 thank you. And thank you for the opportunity
2 to talk with you.

3 MR. SPANNAUS: Thank you for
4 coming, John. Thank you for your testimony.
5 I think that everybody agrees that this whole
6 suppression of voting that's going on in the
7 east and Pennsylvania and all of these, it's
8 really despicable. I mean, we're trying to
9 encourage more people to vote, instead these
10 people are trying to discourage and hinder
11 people. So I'm glad you came to testify.

12 MR. HOTTINGER: And thank you for
13 that. I certainly agree with you. And too
14 often it's targeted, not only on political
15 positioning but targeted in other areas that
16 are not consistent with our fundamental
17 beliefs.

18 MR. SPANNAUS: Thanks again.

19 MR. HOTTINGER: Thank you.

20 MR. MARTINSON: All right. Just
21 briefly, before we conclude, I want to thank
22 the U of M, our commissioners who asked some
23 fantastic questions, our panelists and the
24 members of the public who testified. I think
25 we covered a lot of issues today. I'm sure

1 there are some issues that we didn't cover,
2 and I hope that folks have a chance to discuss
3 these -- those issues in the coming weeks and
4 months.

5 This is just the beginning of a
6 process and the beginning of a discussion.
7 And I expect that what has been discussed here
8 today will be the basis of a further
9 conversation and actions in the coming months
10 as we work on a nonpartisan basis to try to
11 improve voting rights and election
12 administration in Minnesota and Wisconsin and
13 the entire country.

14 If you didn't have a chance to
15 submit testimony today or want to submit
16 something in writing, please either email that
17 testimony to me,
18 amartinson@lawyerscommittee.org, or you can go
19 online to
20 minneapolishearing.lawyerscommittee.org.

21 So I want to say good night to
22 everyone. I want to give the commissioners a
23 chance to give some brief concluding remarks
24 on their thoughts on the hearing, so I will
25 turn it over to them.

1 MR. SPANNAUS: Wenda, did you want
2 to say a few words?

3 MS. WEEKES MOORE: Oh, let me just
4 say thank you to everyone who came this
5 evening. I think we ought to get extra
6 special credit because of the weather. I know
7 there are a lot of other things you could have
8 been doing this evening.

9 But the right to vote is precious.
10 And it's precious because it's the foundation
11 of our democracy. So I thank all of you for
12 the work that you do and for bringing the
13 voices of the disenfranchised to the attention
14 of this Commission.

15 Have a good evening.

16 MR. JACOBS: I wanted to make two
17 points in closing. One is we've had a long,
18 painful and remarkably successful history of
19 transforming our democracy towards equality.
20 And this is something I think that has now
21 achieved iconic status in America to the point
22 that it's considered to be a given. But I
23 think the testimony here today not only
24 highlights but really documents some very
25 significant, very serious and worrisome

1 backsliding that really raises the question
2 of: Are we getting to the point where we need
3 a new civil rights movement?

4 I'm particularly cognizant of the
5 fact that America, as it was about a century
6 or more ago, is going through an enormous
7 transformation. We are going to see in the
8 coming decades about a 50 percent or more
9 increase in the proportion of voters of people
10 of color, an equally large growth in citizens
11 who are born in other countries. And the
12 question we now face in America is: What will
13 be our response? Will it be following and
14 rejoining the arc of -- towards equality, or
15 will it be backsliding? And I'm very worried
16 by what we've heard tonight that the evidence
17 is building that the doors are closing on
18 equality, and that's something that is quite
19 worrisome.

20 My second point is that I'm also
21 alarmed that many of these discussions about
22 elections and how they are carried out has
23 become poisoned by the partisanship that
24 colors everything we seem to be talking about
25 in the public realm. And I think that's a

1 real challenge.

2 I do take the story in Wisconsin as
3 well as the experience of nonelected
4 secretaries of states and other states to be
5 something that's really worth looking at. If
6 it can leach out some of the polarization over
7 election issues, because clearly America is
8 facing a whole new set of challenges, and we
9 need to find bridges to build to take on those
10 challenges to resume the march towards
11 equality.

12 MR. SPANNAUS: Thanks very much,
13 Larry. I just want to say thank you again for
14 all of you for coming and also thank
15 Alan Martinson and his crew, nice lady doing
16 all the hard work here (indicating) and the
17 timekeeper and the lady over here (indicating)
18 for coming here. I hope you enjoyed being in
19 Minnesota with our lovely weather. And I hope
20 you come back again to better weather.

21 But I'd also like to thank the
22 people from Wisconsin for coming and giving us
23 this interesting and substantive testimony and
24 of course the people on the Minnesota panel.
25 So again, thank you for coming and hope to see

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you soon and good evening.

(Hearing concluded at 7:42 p.m.)

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STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I hereby certify that I reported the foregoing proceedings on Tuesday, February 25, 2014 in Minneapolis, Minnesota;

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WITNESS MY HAND AND SEAL THIS 4th day of March, 2014.



Dana S. Anderson-Linnell
Notary Public, Hennepin County, MN
My commission expires 1/31/2015

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VOTING RIGHTS OF MISSISSIPPI HEARING

Taken at Mississippi College School of Law, 151 E
Griffith Street, Jackson, Mississippi, on Thursday,
May 29, 2014, beginning at 11:30 p.m.

1 MR. JOHNSON: Thank you, Melissia. First
2 of all, welcome to this hearing in Mississippi. We
3 want to make sure that as we gather information
4 across the country, Mississippi is present. The
5 Voting Rights Act is a significant monument for the
6 State of Mississippi as a result of the act and the
7 work of individuals like Henry Kirksey and Carroll
8 Rhodes, who's on the panel.

9 We have appreciated a strong engagement of
10 our voters and their duty to elect members of their
11 choice. And that's due in part because we have the
12 protection of federal government to ensure that all
13 citizens could exercise their franchise.

14 Joining us on our panel today as
15 commissioners, to my far left is Reilly Morse, who
16 is the new executive director of the Mississippi
17 Center for Justice. Reilly Morse resides from the
18 Mississippi Gulf Coast, Biloxi. He's a second or
19 third generation lawyer. Reilly Morse as many of
20 may know for his work after Katrina. He was one of
21 the biggest advocates, both community advocates
22 and legal advocates to ensure a complete recovery
23 from Katrina.

24 Next up here is Carroll Rhodes. Carroll
25 Rhodes has been in practice for about three years.

1 Served as NAACP counsel for about 30 years. Me
2 along with Senator Kirksey have been on the front
3 end of many of our voting rights battles, both in
4 terms of analysis and legal advocacy. We've
5 litigated cases before the US Supreme Court. It was
6 one of his cases that made sure that judicial
7 redistricting was also covered under the Section 5
8 of the Voting Rights Act. He is nationally known
9 for his work, so let's welcome him.

10 Seated next to him is an attorney
11 practicing out of Natchez, Mississippi, but from the
12 big city of Fayette, Mississippi, Deborah McDonald.
13 Often times when you see Carroll doing advocacy on
14 voting rights cases, Deborah is there. Truth be
15 told, Deborah really do the work, Carroll get
16 credit.

17 Deborah has volunteered many, many, many
18 hours to ensure that all citizens of the states have
19 the right to cast an effective ballot, and that
20 individuals have the ability to get elected from
21 districts that are drawn fair and equitable.

22 And to my immediate left is Mr. Leon
23 Russell from Florida. He's the vice chair of the
24 NAACP national board of directors. One of the
25 longest serving members of the board. He is very

1 astute on the issue of process and voting rights
2 issues. Many of the ballots in Florida, he and
3 several others were on the front line of those
4 ballots. He is internationally known. He formerly
5 was the chair of the International Human Relations
6 Board. He is a task master, bar none, and he's very
7 astute around these issues.

8 At this time, we now want to ask our
9 commissioners to come forward -- I'm sorry, our
10 guest witnesses to come forward. Dr. D'Andra Orey
11 who is recently married and now celebrating his
12 birthday. He's about 68 years old. Lost all his
13 hair as you can see. Let's give him a hand.

14 MR. OREY: I'm so old, I don't know if I
15 can make this jump.

16 MR. JOHNSON: Next we have Mr. Claude
17 McInnis. Mr. McInnis recently retired from Hemmi
18 Young Detention Center. He also has served many
19 years as the chair of Hinds County Diplomatic Party,
20 and vice chair of the State Democratic Party.

21 Finally, Mike Sarey. Mike, if you will
22 come forward. Mike is co-director at Southern Echo.
23 It is an community organizing organization. Mike,
24 often times you will see emails dealing with
25 education, voting rights. Mike is a brain trust all

1 to himself. He is one who have a deep analysis of
2 where we are as a community, the historical
3 significance, and he's a big thinker on how we
4 should move forward. Let's give all of our guest
5 witnesses a hand.

6 So, at this time we're going to ask each
7 one of our commissioners if they would give a
8 five-minute opening statement starting with Attorney
9 Reilly Morse.

10 MR. MORSE: Hello everybody. Thank you
11 all for coming out. I want to thank the Lawyers
12 Committee for convening this and taking this
13 important initiative and gathering information.
14 Actually, voting rights is at the essence of what
15 makes our nation functional and responsive.

16 I also want to thank the state conference
17 NAACP and my fellow commissioners, and Mr. Russell
18 for joining us who has been on other of these
19 events. I want to keep my remarks short so we can
20 hear from our witnesses. I appreciate all of your
21 interest in this topic. I look forward to testimony
22 and hopefully some good questions.

23 Thank you very much.

24 MR. RHODES: Good morning everyone. I'm
25 Carroll Rhodes as Derrick has told you. And I am a

1 member of the board of trustees of Lawyers
2 Committee, former member of the board of directors
3 of the Lawyers Committee. And on behalf of the
4 Lawyers Committee, I would like to welcome each one
5 of you to this hearing today. And I hope it's
6 informative both ways so that we can get information
7 from you as much as you can get information from the
8 panel.

9 We were supposed to give you sort of an
10 overview of where we think we are with voting rights
11 in Mississippi and where we think we've been. All
12 of you know the history of voting discrimination in
13 Mississippi, and the things did begin to turn around
14 after the Voting Rights Act, Section 5 of the Voting
15 Rights Act was passed in 1965.

16 There has been a struggle to get the first
17 phase of voting rights enforcement after the Voting
18 Rights Act was really passed, was to get people
19 registered to vote, people of color. The white
20 power structure in Mississippi had presented black
21 from voting ever since the late 1880s, and
22 especially by 1890. And they did it through
23 intimidation, threats, violence, and economic
24 reprisal. That's why one of the reasons Voting
25 Rights Act was passed, there was quite a bit of

1 testimony before congress to make that record for
2 Section 5. And the first thing they did was get
3 black people registered to vote because they thought
4 that would make a difference.

5 But after finding that black people could
6 register to vote in Mississippi in the 1960s and
7 1970s, and blacks began to register in overwhelming
8 numbers and voting in record numbers after they
9 became registered to vote. But the same people were
10 being elected into office. And that was because the
11 power structure saw that they were about to lose the
12 battle on getting blacks registered to vote, so they
13 came up with another ingenious event trying to keep
14 blacks from power, and through such things as at
15 large elections, large election districts starting
16 to make different things required, making sure that
17 the majority vote was acquired to be elected -- to
18 get party nominations.

19 And at that time, most of the people being
20 elected into office in Mississippi were democrats,
21 and the blacks, when they first got registered in
22 the 1960s, were running primarily as independents.
23 That's why they wanted to make sure it would be hard
24 for blacks to be nominated as democratic candidates,
25 it was hard for them to will the elections.

1 After that phase went through, it took a
2 second struggle to get congress to come up and amend
3 the section to the Voting Rights Act in 1982, to
4 make it easier to prove that blacks were being
5 discriminated against even after they were voting.

6 And now we moved into another phase in the
7 1970s, 1980s and the 1990s where we began to elect a
8 record number of blacks to legislative offices. We
9 started with one black legislature in '67, now we
10 have over 50 out of 174 legislatures. We have black
11 judges, and we have black elected officials. Now
12 we're moving back into what I would consider the
13 next reconstruction era because blacks had the right
14 to vote after the civil war.

15 The first reconstruction came, gave blacks
16 the right to vote, whites figured out a way to stop
17 that. They came up with the Mississippi
18 Constitution of 1890. Now blacks are starting to
19 vote and elect people to office. Now we're looking
20 at the next reconstruction starting with voter ID.
21 That is voter suppression that's going on in
22 Mississippi. That's going to be to suppress the
23 affect on black voters, so eventually we'll be back
24 to where we were prior to the civil war.

25 MR. JOHNSON: Thank you, Mr. Rhodes.

1 MS. MCDONALD: You know, I echo Carroll's
2 sentiments. I was on a phone call yesterday with
3 doing -- I represent the City of Port Gibson. We're
4 doing some redistricting down there as we speak.
5 And I had these two gentlemen on yesterday, and they
6 were talking. And one of them said, "Well, we're
7 going to have to submit this to the Justice
8 Department for pre-clearance." And the other
9 gentleman said, "Oh, no, we don't. Oh, no, we
10 don't." And they were pretty happy about it. And I
11 don't have to tell you which side they were on.

12 So, with that said, I have, like Carroll,
13 been in this fight in the areas of employment
14 discrimination, voting rights and so forth and so
15 on. And I think this is the bleakest that I have
16 seen it in the last -- I've been a lawyer a little
17 longer than three years. And as a matter of fact,
18 32 years. And I think this is the bleakest that I
19 have ever seen it.

20 Carroll and I just got a decision.
21 Derrick was involved in it, too. The NAACP versus
22 several Mississippi counties recently from the Fifth
23 Circuit on May 16th. And in that decision, what
24 they did is, we sought pre-election relief to try to
25 get the districts changed. They didn't give us the

1 pre-election relief. They argued that we had a
2 standing problem, that our plaintiffs weren't right.

3 The plaintiffs went to the Fifth Circuit,
4 wasted time, came back, they vacated, won that case.
5 They vacated the judgment. Came back to the
6 District Court, and then the district judge said it
7 was moot. Well, it was moot because they kept -- we
8 sought pre-election relief, we didn't get that. So,
9 now it's moot. So, we got that decision here
10 recently.

11 So, what I'm saying is, you've got the
12 judiciary that is starchily against the Voting
13 Rights Act, especially in Mississippi. There's no
14 question in my mind. In addition to that, you've
15 got the national, I believe, judiciary that also
16 doesn't believe in the Voting Rights Act.

17 So, with that said, I think we're in a
18 position right now where we're going to have to
19 continue to fight. The fight might be on different
20 fronts. You know, I think it's going to take some
21 grass roots efforts. I think it's going to take
22 some working hard. You know, we've got our
23 Secretary of State on television talking about voter
24 ID and talking about just a long list of
25 identification material that you can have when you

1 present.

2 But, unfortunately, some people don't have
3 that, but they still are American citizens, and they
4 still should be able to vote. So, with that said,
5 I'm going to hand it off to Mr. Russell.

6 MR. RUSSELL: Why have a national voting
7 rights hearing process? Why did the Lawyers
8 Committee and all of the partners who have joined
9 the Lawyers Committee for these 25 hearings across
10 the country find it necessary to come to together to
11 do this?

12 If you study the Voting Rights Act, then
13 obviously, my fellow panelists have a litany of
14 historical facts that they can tell you. One of the
15 things that was most important in the original
16 adoption of the Voting Rights Act and in each of the
17 opportunities to have the Voting Rights Act
18 reauthorized was the creation of a public record, an
19 evidence-based record of what was actually happening
20 to people who had the right to vote, but who were
21 being denied the ability to use that right.

22 We find ourselves today back in that
23 position. It's about enforcement, folks. It's
24 about the ability -- yes, there's a constitutional
25 right to vote. We got it, 13th, 14th, 15th

1 amendments to the constitution. But somewhere there
2 has to be an enforcement mechanism.

3 And what the Shelby case did was to
4 essentially gut that enforcement process. Believe
5 me, it is far better to have a review of what your
6 government wants to do to you in terms of your
7 ability to exercise your franchise before rather
8 than after the fact. It's better to be able to
9 challenge a law before it's had the ability to
10 disenfranchise folks rather than try to prove on an
11 individual basis in counties and cities and states
12 across this nation that Joe Smith faced
13 discrimination individually when he went to cast his
14 ballot.

15 So, what we want to do in this set of
16 hearings is have you to explain what's happening in
17 Mississippi today, what's impacting the ability of
18 folks to actually cast an unfeathered ballot. We
19 want to document that, and we want to be able to
20 present that evidence to the United States Congress
21 as we lobby for what right now Derrick and I agree
22 is an imperfect amendment to try to correct Shelby.

23 But in order to move forward, we've got to
24 create a record that allows us to justify creating
25 the best remedy for Shelby that we can. That's why

1 you're here. That's what we want to hear from you
2 today. We know what happened in 1890. We know what
3 happened in 1960. But what we need to know is
4 what's happening in 2014 to folks in Mississippi as
5 they attempt to exercise their franchise. How are
6 people impacted by Shelby and what do we need to
7 tell congress in order to get them to fix the law.

8 So, that's why we're here. And I
9 appreciate your being here to give us testimony and
10 to witness other folks giving us testimony so that
11 we can build that record.

12 Thank you for coming.

13 MR. JOHNSON: Thank you, Mr. Russell. At
14 this time, for our guest witnesses, we're going to
15 ask them to each give testimony for five minutes.
16 And once they conclude their testimony, the
17 commissioners will then ask questions.

18 So, I want to first start with Mr. Claude
19 McInnis. You will begin, please.

20 MR. RUSSELL: And we have a clock over
21 here, and also, I have signs. That's the important
22 one.

23 MR. MCINNIS: Thank you. Good morning --
24 good afternoon, in fact. And thank you for inviting
25 me. I feel so honored. I don't know whether or not

1 I deserve to sit here amongst all these folks that I
2 see that I have admired all my life.

3 I am -- I come from a family of
4 sharecroppers. My folks are sharecroppers. I was a
5 field hand. I knew absolutely nobody who voted.
6 Nobody who voted. Absolutely nobody. And it was up
7 into the 1955s, I knew nobody who voted. I remember
8 there was a governor's election, and my father was
9 pacing the floor. And it was talking about free
10 books for the public schools.

11 One of the person running for governor at
12 the time, and all of them were so-called democrats,
13 was for books in public schools. And my father kept
14 saying that if we could only vote, if we could only
15 vote, we could pass this thing. He wanted this.
16 Actually, my father did not get a chance to vote,
17 actually register until 1967.

18 But voting then came such an important
19 thing to me because of my father's passion about
20 this then. In 1962, I joined the movement. And we
21 joined two organizations, actually, in fact. We all
22 joined the NAACP, everybody did. But actually --
23 and I went to jail many times, mostly for going out,
24 handing out leaflets, telling people they need to go
25 vote. But this was in '62. And you all know about

1 the beans and all of that stuff. It was just almost
2 impossible for folks to vote.

3 I joined the Army, as every male in my
4 family did, in 1964. After I got out of the Army, I
5 joined the movement and the protest at school. I
6 went back on the very same things as I always did,
7 was get people to come to these polls and vote.

8 In '72 was the very first time I worked at
9 the polls. And the lines was -- down the street
10 around the corner for the voter. Not so much now.
11 The last election we had for the mayor's race, we
12 only voted 43 percent.

13 Now, let me tell you this with my last
14 minute. I want to try to ask you -- five minutes is
15 not very much time. I want to ask you to dispel
16 this myth that we have going on in this country.
17 One is that we're a post-racial thing because of the
18 election of Barack Obama. It's worse than ever, and
19 we all know that. More than 60 percent of our folks
20 in this country did not vote for Barack Obama.

21 The other thing is, in this country -- I
22 want to make sure that we dispel this myth, is that
23 in the southern states, especially the State of
24 Mississippi, no state has done anything on its own
25 to do anything about offering rights to minorities

1 to vote in this state. Not one state has. They
2 came dragging, we drug them kicking and screaming to
3 this thing. They did nothing. And as soon as the
4 Voters Right Act of '64, '65 was governed, they went
5 right back to their old stuff.

6 Of course, we got voter ID. The most
7 destructive thing I see so far was this movement of
8 precincts. Without notice, without any claim. I
9 know there was several election lost because
10 precincts simply moved without notice.

11 The other thing is, we got voter ID. We
12 all know what this is for, it's to further diminish
13 people's rights to vote. We all understand that
14 correctly. But let me say this to you about voting:
15 I think the most dangerous things to voting,
16 frankly, is one, absentee voting. The other one is,
17 that people truly do feel that they're not getting
18 anything from their people they're going to vote
19 for.

20 I think we need to talk about that. There
21 are people here that their lives are not changing,
22 not improving because of all the folks that they
23 elected. I think we should talk about that as much
24 as anything. We know about the Voting Rights Act.
25 We know how it got there. We understand the

1 implications of that. We also understand the
2 implications of folks looking at people who they
3 have elected. And it has not positively affected
4 their lives.

5 MR. JOHNSON: Thank you, Mr. McInnis.

6 Mr. Sayer.

7 MR. SAYER: I want to thank the Lawyers
8 Committee for including me in this process. It's a
9 special honor to be here with my teachers and
10 mentors, Carroll Rhodes and Deborah McDonald, who
11 guided my feet through this process when I first
12 became involved in 1989. I work in 10 counties in
13 the delta, and counties in the east central and
14 southwest around redistricting over the past 25
15 years.

16 Five minutes is a short time to deal with
17 all of this, so let me hone in in this way. The
18 battleground was fierce, hostile, contentious, and
19 always about race. The single most important
20 feature of the Voting Rights Act in terms of work
21 underground was the preclearance procedure.
22 Preclearance gave us a mechanism for holding public
23 officials accountable. It gave us an independent
24 review before the federal government in terms of the
25 Justice Department, and it was intimidating to

1 public officials when they had to choose between
2 doing the right thing and expensive litigation that
3 would come if they didn't do the right thing.

4 It also gave community folks a lot of hope
5 because they knew that they couldn't simply be
6 imposed upon. And it gave -- preclearance gives
7 people the opportunity to take ownership of the
8 process.

9 Because there's a public hearing process,
10 because there's a right to submit alternative plans,
11 it was meaningful for community people to learn how
12 to do redistricting on their own, how to draw
13 districts that are fair and in compliance with the
14 Voting Rights Act, and submit those to the
15 independent reviewing agency, namely the Justice
16 Department, for them to consider when they are
17 evaluating whether or not the plans submitted by the
18 public officials were in compliance with the Voting
19 Rights Act. That gave a meaningful role for
20 community. And in addition, the opportunity to
21 testify at these public hearings.

22 There's an organizing basis. We're
23 bringing people together to form organizations
24 around the voting rights work, and it has enormous
25 impact. One of the things we can talk about is the

1 successes that we had that we couldn't have had
2 without it.

3 In 1992 we held a special election after
4 18 months of bitter struggle, and doubled the size
5 of the legislative black caucus in one election,
6 from 21 to 42. And in 1995, increased the size of
7 the black caucus to 45 out of 174. In 1995, for the
8 first time, the Mississippi Legislature ratified the
9 13th amendment abolishing slavery.

10 Now, while that may have been only
11 symbolic, it did two things: One, we have a culture
12 of symbolism, and symbolism is important. Secondly,
13 it demonstrated the strength of the legislative
14 black caucus.

15 And in 1997, for the first time, the
16 biggest education appropriation in history of the
17 state in terms of the money was the Mississippi
18 adequate education program, which authorized the
19 appropriation of \$650 million over five years, which
20 was going to be vetoed by Governor Kirk Fordice, who
21 said putting money in public education was throwing
22 good money out to bad.

23 But the legislative black caucus, under
24 Senator Benny Turner, was the chair at the time, led
25 the fight to override the veto. The white

1 legislative vote to compromise the (inaudible) and
2 the caucus said no. The override won in the Senate
3 by one vote and in the house by three votes, that
4 every one of those majority black districts make a
5 difference. As they say in the law, "Hell yeah."

6 Now, two years later, they passed the
7 large teacher pay raise. Overall, that increase in
8 education funding was over a billion dollars. Now,
9 as the legislature systematically underfunded MAEP
10 since, for the most part, except in 2007, '8 and '9.
11 We have a fight on our hands.

12 But this preclearance feature, without it,
13 we don't have the handle to compel compliance. The
14 opportunity to sue under Section 2 is expensive, is
15 prohibitive in most cases, and there aren't all the
16 attorneys in the world like Carroll, Deborah and so
17 on who can handle all of the cases that arise, and
18 they arise all over, not only at the legislative
19 level, but at your county, municipal, school board,
20 judicial elections.

21 And the other side, when it knows it has
22 grown economically in terms of money available, you
23 know, to fund litigation, they have no
24 compunction about -- can I finish the sentence --
25 about doing what they do, which is not what they

1 should be doing.

2 MR. JOHNSON: Thank you, Mr. Sayer.

3 Dr. Orey.

4 MR. OREY: Thank you all for having me
5 here. When I looked down and saw Mr. Lewis Armstrong
6 in the audience, it reminded me that I've actually
7 been doing this stuff for 21 years. We met at the
8 southern regional counsel expert witness training.
9 I was trained under the direction of Burney Coleman,
10 James McLowan, Al Ligman and one more that I'm
11 forgetting. Oh, Dick (inaudible) for dissertation
12 and final.

13 So, I was in good company and I got good
14 training. I want to talk real briefly about --
15 first of all, my shortest lecture at Jackson State
16 was 50 minutes, so I don't know how I'm going to do
17 five minutes here.

18 The Voting Rights Act, I'm going to talk
19 about just briefly the Voting Rights Act and its
20 impact. The Voting Rights Act has been the most
21 transformative law passed on behalf of
22 African-Americans in the State of Mississippi. Pre
23 1965, there were roughly 6 percent of
24 African-Americans registered to vote, and post
25 Voting Rights Act in 1967, there were 50 percent

1 African-Americans registered to vote.

2 Immediately following the pass of the
3 Voting Rights Act, we saw district in the
4 Mississippi Delta that Benny Thompson now hold, it
5 cracked up because gerrymander, being an
6 African-American, were not able to elect the
7 candidate of their choice. In '66, Cortex was
8 filed, Conn versus Johnson. And Conn versus Johnson
9 was filed because it wanted to eradicate the
10 multi-member districts that were being used for both
11 obvolution.

12 Chandler Davidson defines obvolution as,
13 when electoral structures like at-large elections,
14 multi-member districts, in tandem, racially
15 polarized voting; meaning blacks vote black and
16 whites vote white, and feed the opportunity of
17 blacks to elect the candidate of their choice.

18 In 1967 the Mississippi freedom democratic
19 party ran a Robert Clark as well as some others for
20 local elections. Robert Clark was the only one to
21 emerge victorious, so we had our first
22 African-American in the State Legislature.

23 Fast forward to 1979, it took 14 years for
24 Congressman Johnson to actually pass, if you will,
25 get a favorable response from the courts. Overnight

1 we went from four black legislatures to 17,
2 overnight.

3 And then in the post '80s, James was the
4 pre-form test that actually gave us some definitive
5 prones that we could actually file these lawsuits
6 on. Triple and quantitative but now seems the other
7 one was looking at the compactness of how districts
8 were drawn. It actually said that the studies
9 actually mattered, you know, the way a district
10 looks was a problem. Which it hadn't been a
11 problem. In fact, Sandra Day O'Connor said it was
12 comparable to a parte.

13 So, in terms of implications of the Voting
14 Rights Act, a lot of people suggest that
15 African-Americans do not have power. And I want to
16 challenge that as it relates to the black
17 legislatures. In fact, in terms of black power, we
18 can look back, say, for example, education reform.
19 Robert Clark pushed this and pushed this until it
20 finally got through.

21 And then we can actually look at more
22 recently the Jackson Convention Center. The issue
23 with the Jackson Convention Center, where Lee
24 Perkins was the chair -- let me just jump back real
25 quick.

1 When they increase the African-American
2 legislative force, most recently we saw there was a
3 61/61 tie for the election of the speaker of the
4 house. And then we saw the power of the purse; the
5 power of the purse is a woman. So, there was a
6 female that actually cast the deciding vote which
7 gave the caucus the person that they wanted as the
8 speaker of the house.

9 That actually is good because it increased
10 the number of black chairs and vice chairs to 40.
11 And the purpose of the black chairs are, for
12 example, with the Jackson Convention Center, there
13 were four people on -- there were four people on the
14 committee on, I think. Willie Perkins was the
15 chair. There are five or six. Either way, there
16 were three democrats and three republicans.

17 One of the democrats voted against the
18 Jackson Convention Center in the subcommittee -- or
19 in committee. Willie Perkins, you know, going
20 against tradition, decided to take that bill out of
21 the committee, take it to the floor, and the Senate
22 actually knocked it down. Well, at the same time,
23 the Senate tourism chair actually had a bill on the
24 floor. And this is where the power of the chair
25 actually mattered.

1 Percy Watson was the chair when they
2 convened. He actually did not put that particular
3 senator's bill on the floor. After that senator
4 learned that, he actually went back and rescinded,
5 and actually ended up -- they ended passing the
6 tourism bill, which is the Jackson Convention
7 Center. That's just one or two examples of
8 substantive representation on behalf of blacks.

9 MR. JOHNSON: Thank you, Dr. Orey. Let's
10 give our guest witnesses a hand.

11 At this time we're going to take -- allow
12 our commissioners to ask questions of our witnesses.
13 We're going to do this for about 20 minutes or so,
14 so we can go deeper into what are some of the
15 current voting issues that we see presently.

16 MR. RUSSELL: I'd like to begin the
17 questioning. If the panel could speak, one of you
18 indicated that you saw as a major issue the problem
19 of absentee voting. I'd like an explanation of
20 that, and a further explanation of why or what the
21 burden of individual litigation, ala Section 2, is
22 when it relates to the preclearance, if there could
23 be a better explanation of that.

24 MR. MCINNIS: I mentioned absentee voting.
25 I wouldn't vote absentee. I would rather not.

1 Absentee voting, you submit yourself to a subjective
2 interpretation. There are about nine things you
3 have to cross before your vote count. So, absentee
4 voting can be used to wash out anybody you want to
5 wash out, actually.

6 You can say that signature is not across
7 the line, they didn't check the precinct, they did
8 not check -- the primary of this thing often is.
9 The seals are not properly sealed on this absentee
10 ballot. So, you can lose your absentee voting in
11 nine different ways.

12 I tell you, I'd like to move to early
13 voting, which is much more simple and much less
14 complex and really is less expensive. So, it is --
15 absentee voting is a real problem to people having a
16 right to cast their vote because it can be so
17 interpreted. And I know for a fact, in places
18 outside of Hinds County, people who know each other,
19 they know how they vote in these places. They
20 simply use one of these nine categories to wash
21 people out. They do it all the time. I've seen it.

22 So, absentee voting can be a very
23 dangerous thing for people who are not at the
24 polling place. The Section 2 thing I'm sure
25 (inaudible) is much more adapt in this as I am, but

1 it cost a lot of money. Voting for civil rights --
2 voting for the governor, it was really pretty clear
3 and simple what was happening. You could see it.
4 You could see the progress of it, from no voting
5 that my father could do, to the lies around the
6 corner in 1970.

7 Now there are things put in place, you can
8 move a precinct in just about any old time you want.
9 You can pass restrictive IDs. You can pass all
10 kinds of things. How many folks can be in line at a
11 certain precincts, what have you.

12 So, that Voting Rights Act was a real
13 protection for everyday voters. It was clear, easy.
14 And most folks noticed how clear it was, so most
15 folks didn't want to challenge it. So, I think if
16 you try to do something about this, that we ought to
17 make sure that some way we need to get this thing
18 reimplanted.

19 That's the reason we have votes in the --
20 that's the reason we have black folks in the
21 legislatures. It's not because of the goodwill of
22 this state, it is not. It is because of the
23 vigorous implication and rehabilitation of the
24 Voters Right Act. And that's all this is about.

25 MR. JOHNSON: Thank you, Mr. McInnis. Any

1 other questions?

2 So, the follow-up I have with the absentee
3 voting is Mr. Sayer. It's my understanding that
4 vote fraud in the State of Mississippi has been
5 found in the casting of absentee ballots. However,
6 there has been no evidence of vote fraud where voter
7 ID would have prevented.

8 MR. MCINNIS: Absolutely none.

9 MR. JOHNSON: Mike Sayer, how do you
10 reconcile the requirement that the state is not
11 placing on individuals who show up in person to have
12 to have voter identification, although there is no
13 requirement for voter identification when you cast
14 an absentee ballot? How would you reconcile that?

15 MR. SAYER: You're asking me to explain
16 the inner workings of their thinking when they goof?

17 MR. JOHNSON: Explain the government.

18 MR. SAYER: Can we go off record?

19 MR. JOHNSON: We're here to make a record.

20 MR. SAYER: I'm not sure we want to make
21 this record.

22 I think the logic is that they really have
23 no way to effectively enforce voter ID when people
24 are voting at home. Because if you were voting
25 absentee ballot at the circuit clerk's office, you

1 have to show voter ID. So, it's in the nursing home
2 or it's at home where someone is disabled or of age
3 to be eligible to vote absentee, they don't want to
4 deputize anybody in doing that. The logic is, it
5 really doesn't matter whether you're at the polling
6 place or at home. There isn't an historic problem
7 with people pretending to be someone other than who
8 they are.

9 So, if you're asking me to define
10 consistency where I think it doesn't exist, I'm
11 probably not the right person. If that answers your
12 question.

13 MR. JOHNSON: You brought out the fact
14 that there is inconsistency in our law. Do you have
15 any knowledge what impact it would have on minority
16 voters, the inconsistency compared to white voters?
17 Are there any known impacts?

18 MR. MCINNIS: Yes, there are. We all know
19 that minorities have a tendency to vote earlier.
20 There is a man whose name escape me right now who
21 stated that we're not going to go to early voting
22 because it helps minorities. Also, there are many
23 churches across the south would organize Saturday
24 and Sunday voting, that they could go early to vote.
25 There's a name for it. I'm sure somebody could come

1 up with it.

2 So, when you have early voting, you could
3 really organize folks to go down and vote early. If
4 you don't -- if you keep absentee voting in though,
5 that's much harder to do. So, frankly, folks, it's
6 just based purely on racism. That's all. That we
7 keep this thing at a (inaudible) the corruption --
8 form of corruption in our voting process. And we
9 keep it in place, but we implement a thing that has
10 no evidence of having anything to do with
11 corruption.

12 So, we can see that you can be washed out
13 with absentee vote. People in small places and
14 small counties know how you vote. They can find one
15 of those reasons not to allow you to vote. The
16 seals are not proper. This is not a form that we
17 recognize, what have you. But early voting, you see
18 is just no different than you walking into those
19 voting places.

20 So, actually, it's still implemented in
21 Mississippi because of racial reasons. Let's just
22 talk earnest about it, that early voting has a
23 tendency to help minority voting. Absentee voters
24 has a tendency to help those in power to keep folks
25 from voting that they don't want to vote, especially

1 in small isolated communities.

2 MR. OREY: Can I go back to the previous
3 question that was asked in terms of Section 2? So,
4 this is my understanding. Brother Rhodes, you might
5 have to help me out here. Beer versus Burger, 1975
6 I believe it was.

7 MR. RHODES: '76. US.

8 MR. OREY: Beer suggested that you cannot
9 have retrogression. So, retrogression means that
10 you don't have these legislatures in place, and so
11 you cannot go about changing those districts to
12 actually dilute the black vote by gerrymandering
13 those districts, if I'm correct on that.

14 In terms of Section 2, as it relates to
15 Section 4 being struck down, and how much can
16 Section 2 I guess counter that. Section 2 was
17 passed in 1982 as a response to Mobile versus Bolden
18 where they indicated that, you know, you had to show
19 intent that the legislatures or governing body who
20 did redistricting intentionally discriminated
21 against the minority group.

22 Obviously, you cannot understand what
23 these folks were thinking when they did what they
24 did. We know what they were thinking, but we
25 cannot, you know, provide -- unless you do

1 historical. So, I think that there's still an
2 opportunity other than the court -- the Congress
3 came back and passed the law to -- or amended
4 Section 2 where they said, No, you only have to show
5 that it result in impeding African-Americans to
6 elect the candidate of their choice.

7 So, in my opinion, Section 2 still can be
8 applied if, in fact, we find that there is some
9 discrimination that takes place in impeding
10 minorities to elect the candidate of their choice.
11 You all might need to clear that up for me.

12 MR. SAYER: Can I respond to that?

13 MR. JOHNSON: Sure.

14 MR. SAYER: If I understood the question
15 correctly, you're asking about sort of this
16 relationship between preclearance and Section 2.
17 So, in our experience there's a real dilemma that
18 comes with litigation, which is what you have under
19 Section 2.

20 The dilemma is, No. 1, the attorneys take
21 center stage. No. 2, it takes a long time. No. 3,
22 community people tend to lay back when it becomes a
23 lawsuit, and wait to see the outcome of the lawsuit.
24 No. 4, in terms of taking ownership of the process
25 and being active on the playing field, and

1 developing the skills and tools of policy formation,
2 and organizing strategies; being able to stay on the
3 playing field during that whole period is what the
4 preclearance fight offers as the opportunity.

5 And so, we always accomplish more in terms
6 of building local organization and community unity,
7 and an understanding of what the struggle is really
8 about legally and otherwise, when we had a
9 preclearance fight over what ought to happen as
10 opposed to a lawsuit about what did happen.

11 And so, from that point of view, I see
12 that dilemma is one that always plagued us in terms
13 of the relationship between the two.

14 MR. RHODES: I have a follow-up to what
15 you just said, Mike. I had a previous question --
16 earlier question I was going to ask. I'll go back
17 to that one if I have time.

18 But the follow-up is, have you noticed, I
19 guess for Section 2 type litigation, the
20 difficult -- or any difficulty engaging witnesses in
21 the community to come forward and testify because
22 they might fear economic or any other reprisals?

23 Section 2 cases --

24 MR. SAYER: In A lot of these cases,
25 you're talking about small communities, small towns,

1 rural areas, everybody knows everybody. There are
2 only a handful of primary employers, whether it's a
3 school district, a prison, you know, or a small
4 local industry, or city hall, or the county
5 administration, right. So, that's five I've named
6 that -- where there are people in power in the
7 establishment, in a position to use the broadest
8 umbrella possible, to retaliate for participation.

9 So, yes, there's tension, there's anxiety
10 there's fear. There are so many courageous people
11 who have come forward and so many who are just not
12 certain that they want to put their family at risk
13 in any situation. Because the risk is not only for
14 the witness, the risk is for other family members,
15 for their who are children in school. We have
16 experienced retaliation in all of these different
17 kinds of formats. So, there is a problem.

18 MR. RHODES: I want to ask, in comparison
19 of that, under Section 5, the attorney general, US
20 attorney general, there are regulations in place
21 that allow people to make confidential comment on
22 any municipal plan for -- if government officials
23 can't find out who made those comments, did you find
24 out you had people more willing to make confidential
25 comments whenever there was a submission under

1 Section 5 as opposed to them coming forward and
2 testifying in front of a court in the public under
3 Section 5?

4 MR. SAYER: The answer is an unqualified
5 yes. When there was protection and there is safety,
6 people are much more willing, it wouldn't be an
7 issue if there weren't such risks. The risks come
8 from the tensions that are still here today around
9 race.

10 MR. OREY: I think you also know that
11 there's no secrets in this society. There are no
12 publicly challenges to get along in this society.
13 We can say that you have confidentiality, that you
14 have intention, but we know that's a lie.

15 The difference between those -- Section 4
16 is just there. Before you get anything, you had to
17 go submit. Now, you have to -- you can do what you
18 want. You can move this precinct all day to the
19 poll in an election, and you can carry it out. If
20 people don't know where to go to the polls because
21 you didn't announce it for the election -- you have
22 to submit first. Nobody had to go and submit -- you
23 had to go submit.

24 So, it's stated the county has to submit
25 first. And now you don't. You simply say, I'm

1 moving that precinct. Now, go sue me. Go fight for
2 the way to sue me. If you go before this, you had
3 to submit first before we did the --. That's a very
4 different thing.

5 MR. RHODES: This is my famous question,
6 and it goes to the change in precincts and change in
7 polling places, and combining precincts.

8 Have you noticed anything about how the
9 communities are structured, like precincts where
10 there's primarily black members, combined black and
11 white, or moved from black communities or white
12 communities -- or polling places moved from familiar
13 places, black folks are familiar with to a place
14 that more white folks are? Have you noticed
15 anything?

16 MR. OREY: Yes. Here's the thing about
17 precincts. Precincts are like a home. They're like
18 home. There are precincts in the neighborhood is
19 like home. People come into these precincts and
20 they know each other, they love each other and all
21 that kind of stuff. When all of a sudden you can
22 just move these precincts. It's like moving
23 somebody's home.

24 They moved a precinct from a school called
25 Lake School here in Jackson to a -- sectional home.

1 People called in, and they said, I'm just not -- I'm
2 not going to vote up there. I want to vote where I
3 voted all my life.

4 There's a precinct in Jackson called
5 Casey, it's precinct 33. Folks know those
6 precincts, and they were proud that they voted in
7 that precinct for more than 35 years. Voted in that
8 precinct and they was going to school there.

9 Those folks would be dismayed if you just
10 move their precinct. So, people understand these
11 kind of things just like I understand them. Yes,
12 I'm seeing diminishing voting simply because you're
13 moving a precinct, because people have attachments
14 to their precincts, they love them, and they right
15 where they are. And if Jackson State, you figure
16 that out, these folks who finished Ole Miss sure
17 can. So, they are figuring it out, and that's what
18 they do -- vote time. We lost an election in
19 Madison County because three days -- it was a
20 four-day election. They moved that precinct to
21 almost anyplace they could go (inaudible). We lost
22 part of the election.

23 MR. RHODES: One of those agreement
24 states (inaudible) about two weeks ago, where
25 someone said that they moved the precinct to a gated

1 community. So, I do want to make a point in
2 relation to the witness and this issue of precincts.
3 So, the census comes out with, you know, the
4 precincts and the black only population, white only
5 population, whatnot. (Inaudible) district plans.

6 This raises a big problem for social
7 scientists who do these quantitative analyses. You
8 can have a precinct that was in place during the
9 census, but then if they move that precinct or
10 change those precincts where after the election or
11 before the election they change those precincts,
12 then you can have -- on paper, you can have 50
13 voters -- you can have -- let's say you can have 50
14 votes, but only 25 people.

15 So, because they've combined precincts in
16 some cases, take A, B and C and put them together,
17 the census still has A with 10 voters, B with 20
18 voters, and then C with the remaining. So, that's
19 really, really problematic.

20 MR. JOHNSON: Any more questions from our
21 commissioners?

22 MR. MCINNIS: Do you take questions from
23 the audience?

24 MR. JOHNSON: Once we finish.

25 MS. MCDONALD: I just have one question I

1 wanted to ask. I heard one of the panelists, and
2 either one can answer this or several. But, you
3 know, we have remigration in education, voting and
4 employment right now. So, it really expands the
5 whole forum. I guess one of my questions, I heard
6 one of the panelists say, life is not improving for
7 just regular people.

8 How do we motivate the people of this
9 state to become interested in trying to restore the
10 preclearance issue? How do we do that?

11 MR. SAYER: I think that, in my
12 experience, one of the key things in doing work
13 around census and voting rights is to enable people
14 to see the inherent connection between the right to
15 vote, participation of political process, and the
16 formation and implementation of public policy. When
17 people see that connectivity, then they see that the
18 issue of right to vote is not merely a distraction,
19 now the theory of democracy, but rather it impacts
20 them on a day-to-day basis in terms of who is
21 getting to make these decisions.

22 The right to vote is really about the
23 distribution of power in the community. And the
24 fight about the shape of districts is about who gets
25 to serve in these positions in order to be able to

1 have power over policy formation and implementation.
2 In our experience, when we started back in 1989,
3 1990, we found that people have greater willingness
4 to take the risk of becoming involved when they
5 understood -- came to understand the connection
6 between all of the problems they saw in employment,
7 in housing, in social services, in the treatment of
8 them by police, you know, and you can go on and on
9 down the list of things, health care and so on, are
10 all about public policy and the implementation or
11 the failure to implement public policy.

12 And that goes back to who gets to make
13 these decisions. In Mississippi, for the most part,
14 the people who make these decisions are people who
15 get elected to office. And who gets to elect them
16 makes all the difference.

17 MR. MCINNIS: When I was starting in the
18 movement back in the late '60s and '70s, we made it
19 a point to campaign everywhere. We didn't care
20 where it was. I hear people say now, we don't
21 campaign in these projects because they don't vote.
22 You see, but we didn't care.

23 I put on my sneakers and we went to those
24 projects and we campaigned. We said, look, this
25 makes a difference in your life. You need to come

1 out here and vote. How many times I go to these
2 projects and elections, and I never even see
3 campaign signs up around these apartment complexes.
4 I never see candidates walking up and down these
5 streets, up and down these roads, inside of these
6 apartment complexes, asking people to go vote for
7 them. I do not see that.

8 So, we have to take these elections back
9 to the people, back to where these people are
10 staying, then they can start to feel that they have
11 somebody who is trying to make a difference in their
12 life. We have become homogenous in our communities.
13 I grew up in the Edwards community where I had
14 everything from pipe fitters to lawyers to doctors
15 to nurses to guys who were laborers. So, I saw all
16 of these people.

17 Now we have homogenous communities where
18 you only see one kind of person. But the real deal
19 is, I do not see the kind of campaigning that I used
20 to see. I just don't see it. In depressed
21 neighborhoods, people just don't go and campaign in
22 those neighborhoods. So, I think it's a notion of
23 those folks thinking that those folks are not
24 important, they may not vote for me. So, they don't
25 go out and campaign. You're supposed to go and

1 campaign to everybody in your district, your ward,
2 or your state. We don't do that very well.

3 MR. SAYER: We have to come to appreciate
4 at this point the degree to which class
5 consciousness has become an issue in this battle
6 over race. That's the intension that we are
7 describing, and it is an issue, and it is dividing
8 our communities where they have been together
9 before. So that, you know, that's an issue. We
10 don't have time, obviously, to go into that now.

11 MR. OREY: Eight seconds. At some point
12 we're going to have to address these super majority
13 districts that African-Americans hold. That's just
14 an issue that we're going to have to address. It
15 used to be 65 percent rule that Frank Parker and
16 that that gang used from Lawyers Committee. We're
17 going to have to address those 80 percent, 90
18 percent super black. But we don't need that many.
19 But I'm not the legislature.

20 MR. JOHNSON: At this time we're going to
21 transition and take questions from the audience or
22 any testimony. Three minutes -- two minutes. And
23 our timekeeper, Mr. Leon Russell, as much as
24 possible, try to focus your comment so that it can
25 be placed on the record. Please state your name and

1 where you're from so the reporter can properly
2 report.

3 MR. SPENSON: My name is Jim Car Spenson.
4 I'm vice president of the Hinds County Democratic
5 Executive Committee, and I just worked with
6 Mr. McInnis on working with the polls.

7 And one of the things that we found out --
8 and I realize the city and the county have different
9 jurisdictions, but one of the things that happened
10 is that, if you vote in one precinct in the city,
11 you may not necessarily vote in that same precinct
12 in a county. And that has rendered confusion not
13 only to the voter, but even to those of us who are
14 trying to get whole managers and people who manage
15 the polls -- because poll managers who have managed
16 at the city, well, they also manage for the county.

17 And one of the things that happened with
18 us is that we had down number 17, and we thought,
19 well, we've got to get pollers -- we've got to get
20 poll managers for precinct 17. We found out that
21 when we went and worked on that, poll 17 doesn't
22 exist anymore. So, it did in January, but it
23 doesn't now in June, so they've switched that
24 around.

25 So, Claude, that's just one of those

1 things that I wanted to -- to reinforce what
2 happened to us while we were working together.

3 MR. MCINNIS: 61 and 60.

4 SPEAKER: Yeah, we didn't know anything
5 about them. It was strange to us, and we're trying
6 to get poll managers for all the precincts within
7 Hinds County.

8 Now, as long as you gave me the floor for
9 questions, and Dr. Russell -- or Mr. Russell,
10 Dr. Orey, Mr. Rhodes, y'all all kind of illuded to
11 it in one way or another. And that is that, you're
12 going to make a report from what you're finding in
13 all of the states to Congress of the United States.

14 One of the things that happens in I
15 believe just about every state you're going to find,
16 and that is the super majority districts, the
17 gerrymandering, which I believe comes from the
18 legislature.

19 Would there be any possibility of having
20 the congress have a law or enacting something, where
21 rather than having legislatures determine the
22 districts, if the legislature, if the Congress of
23 the United States would have a committee of
24 nonpartisan people which could oversee every state,
25 every state have a nonpartisan group of people that

1 could figure out how we want to put the districts
2 rather than having the legislatures do it, because
3 they have too much at stake in the gerrymandering of
4 these districts?

5 Thank you.

6 MR. JOHNSON: Any other questions?

7 Representative --

8 MR. OREY: It's a state issue.

9 MR. RUSSELL: One response, and I think
10 Derrick made it. When you ask the question, can you
11 create a nonpartisan commission?

12 SPEAKER: Can the Congress --

13 MR. RUSSELL: Can the commission get
14 appointed by somebody? In the system that we have
15 today, they get appointed by somebody who is
16 partisan, which means that the commission ultimately
17 will be partisan.

18 So, the nonpartisan commission's kind of
19 idea, although it gets floated, and I guess in
20 places like California where they've done
21 restricting by commission, and Iowa, where it was
22 very easy for them to cut cookie cutter squares, you
23 might be able to claim that they are fairer, more
24 fair, but it's unlikely that congress would ever
25 create something that will end up being nonpartisan.

1 MR. RHODES: And a follow-up to that. You
2 have a look at state and local elections versus just
3 elections to congress, not elections to the US
4 Senate. But there's a constitutional provision
5 requiring pre-apportionment of congressional
6 districts, maybe congress could have some
7 nonpartisan commissions there.

8 But the courts have said -- the US Supreme
9 Court have said, elections are a State Legislature
10 now. So, that means if you get a nonpartisan
11 commission in Mississippi, it's going to be the
12 State Legislature, maybe they could set it up and it
13 might be governor appointed commission or
14 legislature appointed commission, so you don't
15 wind -- you won't have any different change because
16 of the people who are going to be deciding what's
17 nonpartisan.

18 MR. HINDS: Good afternoon. My name is
19 John Hinds. I'm the state representative from
20 Washington County, District 50. My statement is
21 about engaging people back into the process.

22 Part of the problem in Mississippi is that
23 we took civics and governing classes out of the
24 school system, and children don't have any
25 interaction in the process until they become 18 or

1 older. And by that time you are formed by your
2 ideas around your dinner table. If momma or daddy
3 was one way, you are subject to be that way unless
4 you're a rebel. But the best way to have a
5 nonpartisan process to educate people would be in
6 the educational system. And we moved away from the
7 government classes eighth, ninth, tenth grade. You
8 knew what the governing system was and how it was
9 established. We've gotten away from that,
10 especially in Mississippi.

11 I believe part of the reason was, that too
12 many minorities were becoming educated on how the
13 process works and how to engage in it. This is
14 about the voting -- putting voter ID in places is to
15 force people to disengage at many venues as
16 possible.

17 I don't have this, so I won't participate.

18 I'm a felon, so I'm not going to participate in
19 this. The lady at the polling place don't like me,
20 is going to harass me. So, I won't participate.
21 Had many opportunities to force people to disengage.
22 And so, what we have to do is find nontraditional
23 ways to encourage people to reengage.

24 I like the early voting process,
25 Mr. McInnis. I think that's something that we need

1 to move forward to. My colleague, Representative
2 Scott and I, we've always talked about putting stuff
3 in place in educational systems that would allow us
4 to force people to reengage.

5 So, I think that's a big part of how we
6 reestablish the engagement of young people as well
7 as their parents, because whatever they chose,
8 you're going to follow your kids most of the time.
9 So, if your kids are reengaged, the adults will come
10 back.

11 MR. JOHNSON: Thank you, Representative
12 Hinds.

13 MS. FERAN: Senator Kirksey always quoting
14 one of our former -- who said that the State of
15 Mississippi would make it as difficult for
16 African-Americans, at the time it was the "N" word,
17 to survive in Mississippi, make the quality of life
18 as difficult as it is to dip the Atlantic Ocean dry
19 with a spoon. Now, that's pretty tough.

20 So, the struggle in Mississippi has always
21 been a moral issue. We agree that Mississippians
22 are, especially black Mississippians, are very
23 special people. During the '60s the fight was a
24 people's fight. Respectfully, it was a people's
25 fight. A human rights fight. A civil rights fight.

1 Respectfully, it has now -- there was ah-hah moment,
2 it became a dollar sign fight. A moment that -- at
3 that moment, the struggle became for profit. It was
4 taken from the people. Not to be disrespectful.
5 Give it back to the people, find a way to give it
6 back to the people.

7 MR. JOHNSON: Please identify yourself.

8 MS. FERAN: My name is Georgia Feran. I
9 am the director of Arts Classical. It's a local
10 west Jackson organization, and the sole purpose of
11 giving our young people an alternative to violence
12 through the arts. And, yes, I do have a collection
13 tray when you leave.

14 MR. JOHNSON: Any other questions?

15 MR. MCDANIEL: Thank you. Wayne McDaniel,
16 Jackson NAACP. I don't have a question, but I do
17 have some quick highlights of things that I've
18 experienced -- that we've experienced here in Hinds
19 County. One is, we've had poll managers sending
20 people out to voter's cars to see what kind of tag
21 they have on their car. And if a person is voting
22 in Hinds County riding in a Rankin County car, they
23 won't let them vote.

24 Another thing is, our Hinds County
25 election commissioners merging voter precincts in

1 four districts, but the chairman's district is not
2 being -- none of her precincts are being merged.
3 That's wrong.

4 And my last statement is, recently we had
5 a city election for a new mayor, and about two weeks
6 before the mayor's election, the Hinds County
7 election commissioner purged the voter roles without
8 the permission from the city election commissioners,
9 without the permission from the mayor, without the
10 permission of the city council.

11 And then when the city election
12 commissioner started complaining, and they called
13 me, the NAACP, mysteriously those people that was
14 purged two weeks before the election were
15 mysteriously put back on the voter roll two or three
16 days after the election. And those are the problems
17 we're having in Hinds County, which is supposed to
18 be the most progressive county in the State of
19 Mississippi.

20 Thank you.

21 MR. MCINNIS: I think -- Mr. President, I
22 think y'all had mentioned that there are four
23 democrats on that committee. I think we ought to
24 say that, to be in all fairness. And I'm still
25 shocked and continue to be dismayed that that

1 committee with one republican only was still
2 operated and controlled by the republicans. But we
3 have four democrats in that committee. Two of them
4 we fought tooth and nail and bled to get on it. So,
5 I think that it ought to be noted that there's a
6 four to one majority on that committee.

7 THE WITNESS: And she controls that
8 committee with an iron fist, and they vote in her
9 favor.

10 MS. NELL: Good afternoon. My name is Ray
11 Nell, I'm a member of the Mississippi band of
12 Choctaw Indians. I wanted to share a comment with
13 the panelists, and thank you so much for having this
14 forum for all of us voters in the State of
15 Mississippi.

16 As a registered voter at the age of 18, I
17 went to a polling place called Saphron(phonetic)
18 Hill in the Neshoba County area. We walked in and
19 there was a table set, and there they were, four or
20 five white people sitting there. I was given a
21 ballot. I was sent to an area and I voted. Now,
22 here I am 50 years old, and we now have a polling
23 place on the reservation that gives us more access
24 to vote.

25 One of the issues I wanted to bring to

1 your attention is the language assessability. We've
2 been fortunate to have here on staff with the
3 attorney general's office for the State of
4 Mississippi a liaison, which is a -- she serves as a
5 Section 203 coordinator, regional Section 203
6 compliance coordinator. She's also a tribal member.
7 We're fortunate to have in our polling machines --
8 our ballot machines the native Choctaw language.
9 And so, for those of us who need to have the ability
10 to hear who we're voting for in our language, we
11 have that assessability.

12 Of course, there needs to be more work
13 done in regards to being more involved in state
14 elections and national elections. I think we have
15 the same issues of historical trauma that keeps some
16 of our tribal members away from the polls. And
17 that, I think, is a continuing work that we all must
18 do.

19 But I wanted to share those things with
20 you, that that's one of the positive things that we
21 have going on there. And thank you so much for
22 giving us this opportunity to speak to you.

23 MR. JOHNSON: Thank you. Are there any
24 other comments or questions?

25 MS. SCOTT: My name is Andrea Scott. I'm

1 a state representative from Laurel. I wanted to
2 talk about a few things, voter ID and how it was
3 rolled down in Mississippi, and the fact that none
4 of the traditional political machines were utilized
5 for black people to raise the consciousness of black
6 folks so they would know the importance of making
7 sure they had IDs. The churches, all the
8 traditional places where we would go to get the word
9 out for our folks in my opinion was not used. And
10 John can tell you that when the secretary came to
11 us, that was expressed to him, but we still have not
12 been able to see that.

13 In Laurel, about a month ago, there was
14 not one person that even got an ID. And we all know
15 that there are people down there that needs them.

16 The other thing is this whole notion of
17 precinct movement. In these majority black cities,
18 what you're seeing on precinct movement is the
19 precincts are being moved to away from the
20 neighborhoods. And so, I wanted to say that to you.

21 And then on redistricting from the
22 legislature, where we're told that you can -- as
23 long as you keep the number of districts that you
24 have -- in Lauderdale County we had a district that
25 had traditionally moved to a majority district. It

1 was only like 51 or 52 percent, but, you know, it
2 was. And what happened in the redistricting, that
3 district was collapsed and moved further north in a
4 new area where there -- we're certain may not even
5 have a chance. So, if there's a way that -- I don't
6 know, I'm not a lawyer, I'm just a person. But when
7 you have these districts that are trending black and
8 then, you know, other people getting control, and it
9 is a black district, but you under this thing that
10 says as long as you -- yes, sir. I'm sorry.

11 MR. RUSSELL: You don't have to stop
12 immediately.

13 MS. SCOTT: That is important because that
14 particular district in Meridian, we only lost by
15 about 400 votes, and it was a 51 percent black
16 district. If it could have been challenged -- if it
17 could have remained, we probably would have won that
18 district.

19 And then early voting is the last thing.
20 Early voting is critically needed in the south, all
21 over the south for minorities.

22 Thank you.

23 MR. MCINNIS: Madam Scott, may I touch on
24 what you just said and put some meat on what you
25 just said?

1 I was astonished who was doing the voter
2 ID for Hinds County, had been a rabid republican who
3 had absolutely nothing for democrats. And she
4 called me up --

5 MR. JOHNSON: Mr. McInnis, this is
6 non-partisan hearing. So, party identification for
7 the purpose of this hearing is not something that
8 we're promoting. We are talking about how do state
9 and local policies, practices and procedures
10 suppress or discriminate against minority votes.

11 MR. MCINNIS: Mr. President, I apologize.
12 Just to put some meat on this, this person called me
13 up and said, "Claude, what do I do and how can I
14 reach these folks?" And I said, "Have you been to
15 the beauty parlors? Have you been to the barber
16 shops? Have you been to the barbecue places located
17 on Bailey Avenue?"

18 "No."

19 And that's exactly the point you're
20 making, that the folks that they put in charge of
21 this have actually no notion about how to reach the
22 folks in particular kinds of communities. And the
23 vast majority of those folks were not reached
24 because they did not know and understand the
25 mechanism of how to get -- I was just shocked there

1 was no minorities during that kind of outreach from
2 the Secretary of State's office, especially in Hinds
3 County.

4 MR. OREY: Representative Scott's point
5 with respect to the ID and educating vote. I'm at
6 the university, and so you would expect students who
7 actually have college experience relative to the
8 rest of the population, students are extremely naive
9 about voter ID. They think that you should have a
10 an ID when you go vote. And they don't know that it
11 would have more of an impact on the elderly as well
12 as African-American Committee.

13 So, this is an issue that, you know, on
14 the face of it, they could -- I see how they could
15 think that. Well, what's the problem? You need to
16 be able to show them your ID. And they have no
17 clue. And so, these are the things you have to
18 teach them at the university level, and that makes
19 it even more difficult if folks in the community --
20 if people in college don't know it or don't
21 understand it. Clearly some of the folk in the
22 community don't.

23 MR. JOHNSON: Thank you.

24 MR. BARBER: My name is Rims Barber. I
25 have been an activist here in Mississippi for a

1 while. My concern with the absence of Section 5
2 preclearance is that often it's going to be one
3 person making a decision, the devil will be in the
4 details, and there will be no way to challenge it
5 until it's too late. For example, if the voter ID,
6 the question is, what is the definition of an
7 acceptable photo identification? My understanding
8 is that for this election coming up next week, if I
9 have a drivers license from another state, like
10 Illinois or California, and shows an address in
11 Chicago or San Francisco, that's my picture, that's
12 still acceptable even though I'm registered in
13 Jackson, Mississippi.

14 Now, in November, will those rules be the
15 same?

16 MR. MCINNIS: As far as I know.

17 MR. BARBER: We don't know. And it's only
18 after one person, the Secretary of State, who will
19 make that decision as to what is acceptable or not.
20 Without preclearance, there's no way for us to
21 challenge it until it's over and done with.

22 I think that that's important that we know
23 what the rules are, and the devil is in the details
24 of what are the definitions. And that's why I'm
25 very concerned with the lack of preclearance is

1 going to be in the end make something happen that
2 will hurt us.

3 MR. JOHNSON: Thank you, Reverend Barber.

4 MR. RHODES: I just want to do a follow-up
5 comment to what Rims has said. The problem you have
6 legally between Section 5 and Section 2, Section 5
7 requires a preclearance before anything is put into
8 place and people have a chance to comment on it.
9 But under Section 2, you can bring a challenge until
10 after it has gone in place, but you cannot get the
11 remedy because the law require you to get a remedy
12 before the discrimination occurs.

13 If the election is hailed with voter ID,
14 people are denied the right to vote, that election
15 can be set aside because it's moot at that point.
16 So, that means you have to file a suit based upon
17 what might happen at the next election, and the
18 election officials going to say, We're going to make
19 that change so it will not happen again. So, you
20 don't get any relief.

21 And then it's going to take four years to
22 litigate it, and you're going to have another
23 election in that four years. And then that same old
24 practice will still be there. So, that's a big
25 problem you have between Section 5 and Section 2 and

1 4.

2 MS. POWELL: I just wanted to add an
3 example to the first comment, a case example of the
4 first comment about confusion of polling places when
5 the city and the county aren't the same.

6 I was working with the League of Woman
7 Voters election day hotline in the last city
8 election. And we knew a few of the polling places
9 were different in city and county, or we had heard,
10 and we never were able to find a list of which ones
11 were different.

12 We had a simpler way to tell people where
13 their polling place was if it was the same as the
14 county. I went to both the city and county election
15 officials and would just get kind of helming and
16 hawing, and never was able to find it. So, it's got
17 to be a problem for the voter if even we couldn't
18 find it.

19 MR. JOHNSON: Can you identify yourself
20 for the record?

21 MS. POWELL: Barbara Powell, I'm a member
22 of the League of Woman Voters.

23 MR. JOHNSON: Ms. Green.

24 MS. GREEN: Thank you very much. I am
25 Addie Green, and former city council of Bolton,

1 Mississippi, a small town of 600. I have been very
2 involved with the civil rights movement and with the
3 NAACP, SCLC. And that was back in the '60s with
4 Dr. King and the civil rights movement.

5 I'd like to say that it's a new day with
6 those of us who set at the table now. We failed to
7 help educate and take people along with us for
8 educational purposes. And when we set at the table,
9 we only concerned about Mr. Green and power. And
10 so, you leave the folk who you represent out.

11 And when those who are setting at the
12 table decide that they want to make sure that they
13 carry folks with them, then they political destroy
14 them. So, I'm basically saying that we need to go
15 back to the table of organizing that brought us to
16 the table so that we can better have civil rights
17 voting involving everybody for educational purpose.

18 MR. JOHNSON: Thank you, Ms. Green.

19 MS. HAYES: My name is Leyser Hayes, and I
20 am the international --

21 MR. JOHNSON: Ms. Hayes, can you please
22 stand up? Thank you.

23 MS. HAYES: My name is Leyser Hayes, and I
24 am the international connection chairman for Alpha
25 Kappa Alpha sororities. And I just have a comment.

1 Mr. Barber raised an issue about the definitions for
2 what would be an acceptable ID. I just want for the
3 record, because this is crucial, if you're going to
4 determine the definitions, legislation that passed
5 the voter ID, the rules are supposed to define what
6 an acceptable ID is or how you go get your ID. And
7 people don't know where to find that. You need to
8 go to the Secretary of State's office. They're on
9 his website.

10 So, you need to pull that so you can
11 educate people in your community, because right now
12 it's crucial that people be educated. You can
13 change the rules later, but now you have to know
14 what the new rules are. And the only way you're
15 going to find that is to pull the administrative
16 rules that go with the voter ID legislation. That's
17 my comment.

18 MR. JOHNSON: Thank you, Ms. Hayes. At
19 this time we're going to begin the transition. So,
20 let's give our first witness panel a hand.

21 We're going to ask our panelist for panel
22 two to begin to make your way up front.

23 MR. MCINNIS: Thank y'all so much.

24 MR. JOHNSON: So, we're going to go ahead
25 and get started. If you would allow me to introduce

1 our second panel. First we have Mr. Brad Pigott,
2 former US attorney and Pigott and Johnson, formerly
3 Pigott Reeves and Johnson. Next we have Mr. Anton
4 McKay, a recent graduate of the Tougaloo College,
5 and youth activist from Tunica, Mississippi.
6 Mr. Leroy Johnson, co-director of Southern Echos.
7 And Mr. Charles Irvin representing ACLU. Let's give
8 our panel a hand.

9 At this time we're going to ask our
10 witness to have opening comments, five minutes.
11 Mr. Leon Russell will be timing you and let you know
12 when you are reaching your five minutes. We're
13 going to start with my far left, Mr. Charles Irvin.

14 MR. IRVIN: Good afternoon.

15 MR. JOHNSON: Coming up now is Senator
16 David Blount.

17 MR. IRVIN: Charles Irvin, I'm going to
18 deter to Senator Blount.

19 MR. JOHNSON: Senator Blount, five
20 minutes.

21 MR. BLOUNT: My name is David Blount. I
22 have the honor of representing District 29, which is
23 part of Hinds County in the State Senate. I am also
24 chairman of the elections -- vice chairman of the
25 Senate Elections Committee.

1 Prior to being elected to the State Senate
2 in 2007, I worked for 13 years for the Secretary of
3 State as Mississippi's chief elections officer. I'm
4 also a member of the democratic party of the
5 Municipal Executive Committee. So, I've been
6 involved from the state administrative standpoint --
7 party standpoint and policy standpoint in
8 legislature. I was happy to be invited to be here
9 today and offer five minutes of comments about
10 action and where we need to go in Mississippi.

11 MR. RUSSELL: Now you've got four minutes.

12 MR. BLOUNT: First, all this comes from a
13 fundamental belief that our you government is
14 stronger the more people who participate in it. And
15 a lot of the public conversation about elections the
16 last few years in Mississippi has been based on
17 fraud. We're all concerned about fraud. We also
18 need to remember that we need to be concerned about
19 access, that we need to be just as concerned about a
20 person in which who had a constitutional right to
21 vote and exercise that right.

22 We ought to have early voting in
23 Mississippi. Most states have early voting, we out
24 to have it in Mississippi. We ought to be able to
25 have -- because voter ID is now the law of the land,

1 we ought to have same-day voter registration in
2 Mississippi. The law requires in the State of
3 Mississippi to show your ID in order to vote.
4 There's no reason you can't have same-day voter
5 registration -- same-day voting.

6 And thirdly, we ought to have on line
7 voter registration. I'm not talking about on line
8 voting, I'm talking about on line voter
9 registration. We've had mail-in voter registration
10 where you mail a piece of paper and an envelop with
11 a stamp on it for more than 20 years, you ought to
12 be able to register to vote online in Mississippi.
13 We had a bill this past session which would allowed
14 this.

15 I'll quickly mention one more thing that
16 was not in my bill that I hope that we can all think
17 about, we being the legislature and the policy
18 makers in this state. If a person loses his or her
19 right to vote as a result of disenfranchising,
20 currently that person can only get his or her right
21 to vote back by a specific act of the legislature
22 naming that person. That, in my opinion, is not the
23 way we ought do it.

24 If you lose your right to vote because of
25 a crime laid out in the constitution, there ought to

1 be a period of time after which that person has paid
2 his or her debt to society, after that person has
3 stayed out of trouble for a certain period of time
4 where that right to vote is automatically restored.
5 It ought to be automatically restored after a
6 certain period of time.

7 So, I know we have a distinguished panel,
8 and I appreciate the opportunity to kind of breeze
9 in here and talk quickly. Mail-in voter
10 registration is the 20th century alternative to on
11 line voter registration. We ought to have on line
12 voter registration in Mississippi. We ought to have
13 early voting. We ought to have same-day voter
14 registration. And we out to have the means by which
15 a person who has lost his or her right to vote after
16 they have paid their debt to society gets that right
17 to vote back without having the legislature pass a
18 bill with your name on it.

19 Those are the things that I will suggest
20 to you would involve more people in the process and
21 we all recognize as a good thing. So, I appreciate
22 the opportunity to be here with this panel and share
23 my thoughts as one member out of 174. I saw
24 Representative Scott, representative of Hinds, here.
25 My friends in the house, but on behalf of at least.

1 But it's my small part of the State Senate to be
2 here. I'm happy to answer questions and do whatever
3 y'all would like me to do.

4 MR. RUSSELL: At this point, we'll move to
5 Mr. Irvin, I believe.

6 MR. IRVIN: My name is Charles Irvin. I'm
7 the legal director at the ACLU of Mississippi. We
8 appreciate the opportunity to come and testify
9 before you. It's my understanding that we will be
10 talking to you about some of the ramifications of
11 the Shelby decision and how that decision strips
12 preclearance from Section 5 of the Voting Rights
13 Act.

14 It seems from listening to the earlier
15 panel, we have some of that covered. So, what I
16 wanted to do is talk about -- we can still talk
17 about Shelby, but I wanted to talk about the fact
18 that at the ACLU we are about protecting rights.
19 And what the Secretary of State has put in place in
20 the form of voter ID, we have to arm ourselves to
21 prepare for the election at hand and then go back to
22 the fight.

23 So, we have to go in two prongs. And a
24 part of that is just basic education. I think it
25 was stated earlier by a member of the audience that

1 the requirements for ID are located on the Secretary
2 of State's website. I think we should start there.
3 I know on June 3rd we will be having the hotline
4 available to answer questions related to potential
5 problems. And I think that goes hand-in-hand with
6 education. If you don't know who to contact, the
7 problems are usually voiced in silence. So, as a
8 community, it's up to us to talk to each other, and
9 I appreciate the fact that this testimony is going
10 forward.

11 So, with that in mind, let's talk about a
12 few of the things that were taken away that are key.
13 And three things stand out to me. In Section 5
14 under preclearance, Mississippi was included without
15 it. That is how we ended up with the voter ID that
16 we have. Immediate action was taken to put that in
17 place.

18 So, let's start with the notice
19 requirement. Without preclearance, there is no set
20 notice requirement. With that in mind, as local
21 communities, it is imperative that if you hear
22 anything related to changes in -- I heard a lot of
23 talk about changes in precinct. There may be
24 changes brought to the table for potential
25 redistricting.

1 Anything along those lines, whether big or
2 small, let us know about it so then we can formulate
3 a challenge. Specifically at the ACLU, you can let
4 us know about it going on line, or you can call us,
5 or you can print out a complaint and mail it in, or
6 you can walk in and fill out a complaint.

7 Why am I talking about complaint process?
8 Simply because a lot of times we will voice our
9 frustration in our civic organizations, and we won't
10 step outside of that to actually fight. And I know
11 just from my knowledge of Carroll, we've had our
12 tangles. And so, the ability go to work and fight,
13 while it may involve attorneys, there is a way to
14 engage the citizenry while fighting in court.

15 So, we have to make sure we build that
16 bridge. And at the ACLU of Mississippi, we want to
17 make ourselves available to help fight that fight
18 along with the other important organizations.

19 And so, I talk about notice. And then
20 there is the fact that, without notice, no one
21 knows. AG Holder doesn't know. Attorney General
22 Holder certainly doesn't know, so the Department of
23 Justice can't join in. And I heard Carroll ask the
24 question about the cost of litigation under Section
25 2. Well, the cost of litigation under Section 2 is

1 going to go higher because we're preclearance. The
2 burden of proof is on the State or the
3 jurisdictions. Where the plaintiff having to bear
4 the burden of proof, that automatically is going to
5 raise up the price.

6 So, I'll stop here and defer to Mr. McKay,
7 and we can talk more about it as we go along.

8 MR. MCKAY: Anton McKay, Upgrade
9 Mississippi. I'd like to just start off by saying
10 something that I say to a lot of my peers a lot; the
11 energy is neither lost nor destroyed, simply
12 transferred from one vessel to the next.

13 In saying that, I challenge -- I've been
14 at the table, I've been able to sit down, and I've
15 been part of the grass root movement all of my life.
16 And the thing that I challenge a lot of the older
17 people to do or my elders to do is to be able to
18 transfer the language down to our level; because
19 often times the natural human intent is when you
20 pull us, for us to pull back.

21 And we say that we're not interested in
22 what's going on, but I challenge you to all look at
23 it like the new world which we do live in, which is
24 technology. And we have like, such as Instagram,
25 Twitter, Facebook, in ways that we can reach the

1 masses without having to ever leave our cell phones.
2 Seriously.

3 So, we talk about the voting and things
4 like that. It's up to who has passed down the twist
5 to make it important to the next generation, that
6 this is where we need to be and this is where our
7 voice has been heard, and this is a vital part of
8 the future of what we hold dear to ourselves.
9 Because, not to sound rude, but the energy has been
10 transferred. And we have the energy, but it's not
11 focused energy. And you see a lot of stuff that's
12 going on, like what is wrong with the youth today.
13 But at the end of the day, all actions and all
14 experience are pretty much learned experience about
15 what we see or what we are allowed to do.

16 We live in a world that we came into this
17 already embedded by somebody the built this world
18 for us. So, when we talk about the voting -- and I
19 tell people how your voice is being heard or whether
20 they can see are you willing to leave behind, or
21 what trees are you planting so the next generation
22 will be able to have shade.

23 When we talk about the voting -- and the
24 thing that got me into -- real serious into it --
25 I'm a recent graduate. But the thing that moved me

1 the most was, last December I had a chance to meet
2 with a legal attorney, attorney from DC. And she
3 just asked me clearly to -- we had to do like -- we
4 had to clean out a house. And she was like, you
5 want to bring some people with you, okay, that will
6 be fine. So, I brought like nine of my peers with
7 me to come clean out the house. And we got to
8 talking about a lot of things that was going on.
9 And I come from an environment where if you don't
10 like something, you do something about it. Fight
11 for what you believe in.

12 So, the next thing that she said to me,
13 she mailed me a letter from the Huffington Post
14 about the new ID law that has been passed, and how
15 it's like a new poll tax, and it's a new need for
16 freedom (inaudible) to help people register to vote,
17 and also to see the disparities in the numbers of
18 disenfranchising that is done when you tell people
19 they need a new ID to vote.

20 So, when I read it, it touched me in a way
21 like, if this is our God given right, it's not a
22 privilege, it's a right, at what point do we have
23 to -- if it's been challenged and already been
24 passed, I just say we don't cry over spilled milk,
25 we just have to come up with a solution to the

1 problem that has already been stated.

2 So, the thing that we said that be the
3 most influenced thing is, we put together a plan of
4 action, myself along with a lot of my colleagues,
5 like 34 counties that we had, and targeted mainly to
6 the delta area, because it's like, from my research,
7 it's a hard to reach area and get people registered
8 to vote. And we've set up with youth groups and
9 youth organizers, and also with ourselves, to go get
10 people registered to vote and to reach out to the
11 people to let them know that the new voter ID law
12 has been in place, and it's up to us to make sure
13 that our voice been heard. Because who is better to
14 help move the people than the people themselves,
15 especially the youth.

16 Thank you.

17 MR. RUSSELL: Mr. Pigott.

18 MR. PIGOTT: Some of y'all may have heard,
19 if you haven't, you will now, the great old line to
20 the effect that if people in charge are trying to
21 get something passed for themselves or changed for
22 themselves or their own kind, and they keep telling
23 us it's not about the money, it's not about the
24 money, it's not about the money; you can be sure
25 pretty much of one thing, it's about the money.

1 In Mississippi, sadly, when proponents of
2 something like suppressing the vote tell us during
3 the years of efforts that it took them to pass this
4 statute, it's not about race, it's not about race,
5 it's not about race; we can be pretty sure of one
6 thing, it's about race. And they've been telling us
7 for years that this is not a problem, there's no
8 racial differences in ownership of drivers license,
9 everybody has a drivers license. And if you don't
10 believe that, would you believe that we're going to
11 make it easy.

12 Well, a little over a year ago, some of us
13 who are perhaps less trusting in life, I don't know,
14 we just decided to get the states on data and put
15 that to the test. What is the distribution between
16 the two principle races in Mississippi of drivers
17 licenses? We asked -- we tried to invoke the
18 statutes under public records sites, and they said
19 no at the Department of Public Safety. So, we filed
20 a lawsuit against them and got the data.

21 And I have -- I have a single page table
22 if all y'all want to see the particulars of it. I'm
23 just not going to burden you with more than three or
24 four of the facts. But you look at this, it is
25 about race. We compare -- Mississippi does not

1 collect in the voter registration forms or in its
2 voter data, chooses not to collect it on the basis
3 of racial identification. But we compared it to
4 potential voters, which is voter age population.

5 Just over 90 percent of white
6 Mississippians do have a drivers license, but only
7 71.54 percent of African-Americans in Mississippi
8 have drivers license. So, you flip those two facts
9 around, almost 10 percent of white Mississippians do
10 not have a drivers license, but almost 29 percent of
11 African-Americans lack a drivers license.

12 Now, if you look at that, some things are
13 predictable, but there's a category in there that's
14 really poignant to me and sad, and maybe maddening
15 even, the one group within Mississippi that it is
16 most disadvantaged now by their presumptive
17 requirement of photo ID or drivers license. That is
18 the thing that most of us carry. Where we've
19 forgotten is the group of African-American
20 Mississippians who are 75 and over.

21 And I say it's poignant because, think of
22 these, those are the folks who are old enough to
23 have been discriminated against in voting matters in
24 this state according to the official law of this
25 state in the years before the 1965. Voting rights

1 was passed 49 years ago. And sure enough, this is
2 the group, an actual majority of those folks do not
3 have a drivers license. And actual majority.

4 Here we go again. White Mississippians 75
5 and over have a drivers license to the extent of
6 72 percent, but only 46 percent of African-Americans
7 who have -- so, it is about race. We have all the
8 figures here. So, now we're going to have to trust
9 with respect to what we're told are free and easy
10 uses of these voter ID cards. We're going to have
11 trust the same folks as to whether or not the
12 distribution of those or the ease of those is or is
13 not about race.

14 I've looked over -- as some of you all
15 have, the new round of -- I thought these folks, the
16 very folks who are proponents of this voter ID, I
17 thought they were the ones against big government,
18 against new bureaucracy, against new regulations.
19 And worst of all, I thought they were the ones who
20 drove all these lines in the sand against giving
21 discretion to people in the name of the government
22 to deprive you of things.

23 Even those of us who do have drivers
24 license are going to be at the mercy for the first
25 time beginning next week, for those of y'all who

1 want to vote in those primaries, of decisions made
2 at the polls about whether our photograph on our
3 drivers license fairly depicts us.

4 Now, I'm worried. I don't plan to vote in
5 any of those primaries next week, but I'm a little
6 worried about, since my wife talked me into shaving
7 my head, I may not be fairly depicted on the drivers
8 license. But there's a lot to worry about, and
9 these folks cannot by history be trusted very well.
10 And we're just going to have to work hard to expose
11 the same kind of differences that we see in the
12 drivers license.

13 MR. RUSSELL: Mr. Johnson, and then the
14 committee will ask questions.

15 MR. MORSE: May we ask for a copy of that
16 and add it to the record that the court reporter is
17 making?

18 MR. PIGOTT: Yes.

19 MR. JOHNSON: Mr. Johnson.

20 (Exhibit 1 - Data sheet marked for the
21 record.)

22 MR. JOHNSON: Good afternoon. Thanks for
23 this opportunity to be chosen as a witness. I wrote
24 a wonderful piece that's lawyerly, since we have a
25 panel of lawyers, so I wrote a wonderful piece

1 that's lawyerly. Now, I want to talk.

2 Winston Churchill says that the farther we
3 can look back, the farther we can see forward. The
4 farther we can look back, the more we can see
5 forward. On the same level as Winston Churchill is
6 my grandfather. My grandfather said, "Boy,
7 everybody got a forehead. The question is, do you
8 have a forethought." So, part of this is trying to
9 recognize whether or not the folks who make the
10 decisions has a forethought. I know they got a
11 forehead. The question is, do they have a
12 forethought.

13 Race in America is still prevalent. So,
14 let me go back. My mom is one of those folks who is
15 over 75 years old and doesn't have a drivers
16 license. So, it hits home. It's not about what
17 other folks are talking about, it's about what is
18 right at home for me. My mom was one of those folks
19 who were registered by federal registrar, because
20 the local circuit clerk's office and city clerk's
21 wouldn't register black folks.

22 So, we had to have folks coming from away
23 from the federal government to register. So, my mom
24 was registered by the federal registry. My grand
25 mom was one of those folks who had to go to the

1 circuit clerk's office to be registered. And here's
2 what happened, they had taught them how to interpret
3 the constitution, but when they got there, the
4 question they asked her was, "How many bubbles in a
5 bar of soap?"

6 She said, "Well, Baby, you know, we use
7 lye soap, ain't no bubbles." They got flustered,
8 they turned red, didn't know what to do. So, they
9 gave her her registration card. So, I believe the
10 lye soap because there ain't no bubbles, but I
11 believe that the bubbles that we're seeing today are
12 a bunch of lies.

13 When the process works, then the process
14 is no good. So, when you -- in the State of
15 Mississippi, when we got to be 37 percent of the
16 population and 31 percent of voting age population,
17 then we got to be 28 percent of the State
18 Legislature, and 32 percent of municipal government
19 seats, and 35 percent of county level seats, and
20 25 percent of the congressional house, and
21 17 percent of the congressional deligation; and they
22 said, Oh, it's working, we got to stop this, this
23 ain't good for us.

24 Because the more they can get together
25 with folks and build a coalition, the more you have

1 an opportunity that powers may change. And then,
2 when powers change, who the money goes to change.

3 So, these questions about precinct changes
4 and -- we have a community down in Green County last
5 night, the first thing they said was about precinct
6 changes, we want to make it comfortable again for
7 white folks to vote. We want to make it
8 comfortable, so we need to change the precinct so it
9 can be comfortable. We got to have a place where
10 they feel comfortable at. And even though this is
11 the only black majority district in the county, we
12 still want the white folk to feel comfortable. So,
13 we're going to change the precinct where we got to
14 vote at.

15 So, part of that answer to you tonight,
16 this evening is, we got to get boots on the ground,
17 whether they're sneakers, shoes, gym shoes, I don't
18 care. Whether they sandals, I don't care. What we
19 going to need is communities getting together,
20 understanding what the rules are, and playing by
21 those rules as we change those rules. We have to go
22 back to a place where voting isn't an entitlement,
23 but voting is a right of citizenship.

24 MR. JOHNSON: Thank you. Now, at this
25 time we're going allow the commissioners to ask the

1 witnesses questions for 20 minutes. Once we exhaust
2 that, then we're going to open it up for questions
3 and comments from you all.

4 At this time, are there any questions?

5 MR. MORSE: I would ask this panel, first
6 of all, if you have any thoughts about the effect on
7 voter ID, of having district enforcement misdemeanor
8 laws that result in the loss of your drivers
9 license. And I ask that question based on having
10 been a city prosecutor and judge in Gulfport for a
11 number of years and seen disparate racial
12 enforcement of traffic laws where I would see -- I
13 would look out in a room like this from the bench
14 and see 70 percent or more African-American people
15 in the audience in a town that was 35 to 37 percent
16 African-American.

17 And a lot of those folks hold Louisiana
18 licenses, wondering what do you see as an
19 aggravating effect of this sort of enforcement, and
20 not as a disenfranchise level, but at the very
21 bottom level that effects a whole lot of people.
22 Any thoughts on that?

23 MR. JOHNSON: I'm concerned two ways.
24 One, they say if you have a drivers license, you
25 don't need a voter ID. But if you lose your drivers

1 license temporarily, which is a lot that happens --
2 you think it happens a lot down there where you are,
3 you ought to go to rural Mississippi and go to the
4 rural --

5 MR. MORSE: Don't doubt it.

6 MR. JOHNSON: I'm telling you, it's a
7 whole kind of story. You go into Traffic Court at
8 municipal levels and you go to Traffic Court at the
9 county level, and you see who's there and who's
10 losing their license temporarily for six months and
11 for 90 days. And then if you've got five speeding
12 tickets, you lose it for a year.

13 And so, all of these type of things become
14 part of the problem. And so, if you lost it for a
15 period of time where you don't have it, then do you
16 have to have a voter ID during that time -- if the
17 election is going to happen during that time, do you
18 have to have a voter ID? And if you do have to have
19 a voters ID, how do you then move the process to
20 make that happen?

21 Part of this is, we've got voter IDs being
22 handled and being pressed in Georgia rather than
23 being pressed at the circuit clerk's level inside of
24 our community. So, you've already got a place where
25 stuff can drop through the cracks. And in

1 Mississippi, we've got huge cracks. We ain't just
2 got no small cracks, we got stuff that just drop
3 through, a person can drop through it.

4 So, we've got a lot of laws in Mississippi
5 that I think don't have a problem with this part of
6 the process because I see this constantly when I'm
7 in communities across the rural delta and north
8 Mississippi and the same.

9 MR. RHODES: Let me make a comment on
10 that. Back to the state law on voter ID comes into
11 play. That one is, acceptable form of ID, including
12 a valid and current drivers license, if your license
13 have been suspended, it's not valid.

14 MR. JOHNSON: Right.

15 MR. RHODES: There's another part of the
16 statute that says if you have a Mississippi drivers
17 license, then you cannot get a state issued ID.

18 MR. JOHNSON: That's exactly what I'm
19 talking about.

20 MR. RHODES: So, the way our statute
21 reads, if you have a drivers license, it's just been
22 suspended, you still have a drivers license, so you
23 can't go get a state issued ID.

24 MR. MORSE: It's catch 22.

25 MR. PIGOTT: It gets worse, Carroll. Two

1 things about that. If you're applying for an ID
2 card at the circuit clerk's office, and you're
3 either confused or they're confused of whether your
4 drivers license is valid, it's a crime if you
5 indicate you do not have -- it's a new crime -- it's
6 not just new bureaucracy, this is new crimes that
7 they have enacted in all this voter ID stuff. It's
8 a crime to affirm that you do not have a photo ID of
9 another sort accepted by the statute.

10 So, you know, that's -- it gets worse.
11 The Secretary of State has a different view of valid
12 than the legislature does. And this is another --
13 this is an example of the bureaucratic nightmare
14 that may be unavoidable in all of this. I mean, we
15 try to suppress the vote. It's tough on bureaucrats
16 to implement all of that. There are all kind of new
17 rules.

18 The Secretary of State -- and it may be an
19 intension to some from the point of validity
20 coming -- invalidity coming from expired or
21 suspended. Because who among the poll workers is
22 going to have that list? But the Secretary of State
23 interprets valid in their proposed regulations a
24 different way than the highway patrol does, I tell
25 you what.

1 They say that a valid -- a valid drivers
2 license, it's valid if it's authentic. If it is
3 what it purports to be, it's not fake or forgery.
4 So, I think he's trying to soften this issue. In
5 fact, on this and a number of instances, it's
6 creating a new opportunity for conflict, different
7 interpretations, more discretion, and more
8 discrimination in the exercise of discretion.

9 So, if the Secretary of State wins out,
10 the problem you raise is not a problem because
11 suspended and expired won't deprive you of voting.
12 But who knows as to which -- whether an individual
13 poll worker is going to follow the statute or follow
14 the Secretary of State.

15 MR. MCKAY: Like I say, we call a spade a
16 spade. In hearing Leroy talking a couple times, if
17 he walk like a duck, quack like a duck and it looks
18 like a duck, you can best believe it's a duck. I
19 guess it's like when you say voter disenfranchise.

20 Like, if you want to put it -- because we
21 did the numbers, in the early 1960s, a young black
22 man was three times more likely of getting pulled
23 over than a Caucasian male. But in the early 2000s
24 and all up to 2014, you're six times more likely to
25 get pulled over.

1 So, if you look at those numbers, you're
2 six times more likely -- you're six times more
3 likely to get a traffic violation. And, you know,
4 we said driving while black still sometimes stands
5 with me, because you tend to know the areas that you
6 feel accepted by the way that you're looked at when
7 you walk in a certain place, by the way when you
8 pass police officers, you've got to double check
9 yourself.

10 But they're supposed to protect and to
11 serve, but who are they really protecting and
12 serving. And if you look at the voter ID law, since
13 when did my right to come in and vote for who I
14 think should have the betterment of the country or
15 the county or the city that I live in should be
16 challenged by a photo ID when this is something that
17 my ancestors or people who died for just to get the
18 right to do.

19 So, I'm not the one to cry over spilled
20 milk. Well, we still looking at the fact of that we
21 do still -- we don't live in a post racial society.
22 But at this time, we can't cry over spilled milk,
23 and it's going to be us as the youth, us as the
24 people coming up to make sure that we come up with
25 solutions rather than a result to the problem that

1 has just been stated before that takes place next
2 Tuesday.

3 MR. RHODES: Brad, I just want to make a
4 further comment on that problem you're talking
5 about. In some traffic offenses, when people are
6 stopped, their drivers license is taken, they're
7 given a ticket to drive on until they show up in
8 court. But if the election happens and somebody is
9 suspended now, their court date is not until July,
10 they don't have an ID to show when they go to the
11 polls.

12 MR. PIGOTT: What are they going to say
13 when they go try to get -- if they're diligent
14 enough during that interim to go to the circuit
15 clerk and say, I need a voter ID card, and what are
16 they going to say under oath when they're asked do
17 you have -- well, I don't have it on me, but the
18 Justice Court clerk does.

19 Again, query whether all of this
20 bureaucracy is intended or not. Some of it is
21 just -- some of these folks may be trying to
22 implement this nightmare in a conscientious way, but
23 whether they are or not, it's still a nightmare.

24 MR. JOHNSON: Brad, one follow-up on that,
25 then I have a question for Ms. McDonald. What

1 happens if this individual who lives in a rural area
2 and can't get to the courthouse to get an ID? How
3 are they supposed to -- what happens in that case?

4 MR. PIGOTT: That depends on whether you
5 believe our Secretary of State's website.

6 Apparently part of the new tax payer money is going
7 not only into photographic equipment -- supposedly
8 all of the registrars -- which I wouldn't want to
9 pay that bill, but the taxpayers have to pay that
10 bill. Apparently you can get a free ride all over
11 the county whenever you want it and say you're going
12 at somebody's expense. I don't know who's. And
13 supposedly a free and easy ride to the circuit
14 clerk's office.

15 I don't believe it. I don't believe that
16 if you go to the outskirts of Washington County
17 or -- that you're going to get a free ride to the
18 polls that the government offers you. Since when --
19 again, since when was this crowd really in favor of
20 offering free rides to anywhere to anybody.

21 But if -- on paper, there is an elaborate
22 effort right now to make it look easy to get a
23 voter. But the more you look at the regulations,
24 and the more you realize the demographics of the
25 State, and the more you realize the fact that people

1 work for a living during the hours that the circuit
2 clerk is open, the more you realize that not only is
3 this a new layer of intense bureaucracy, intensely
4 inflicted on people as a prerequisite to vote.

5 But it is totally unpredictable. It will
6 differ greatly from community to community. And
7 everybody is at the mercy of the circuit clerk's
8 office or poll workers. And who knows what the most
9 conscientious poll worker will do with an issue like
10 what does valid mean on your drivers license.

11 MR. JOHNSON: Mr. Rhodes, you mentioned a
12 scenario about a community action agency and whether
13 or not they could provide the rides. Do you --

14 MR. RHODES: I wanted to ask the panel if
15 you had heard anyone in the community, because NAACP
16 had checked on whether or not there could be free
17 rides, and the Secretary of State's office said that
18 community action agencies would take people to the
19 poll.

20 And we contacted some of those community
21 action agencies. First, your answer is going to be
22 no. Because in order to ride in a community action
23 agency's van, you have to be of a certain income.
24 And if you're above that income, but you're still
25 too poor to afford a ride to the poll, community

1 action agency won't pick you up.

2 So, I was wondering if any of y'all have
3 heard any instances of people not being able to get
4 those so-called free rides.

5 MR. MCKAY: Part of our training that we
6 renew on the upgrade of the city is, we challenged
7 all the youth to call the hotline and see can we get
8 that free ride. If I'm not mistaken, but I think
9 it's Ms. Gabriel, Joshua Jamen, a couple of
10 ourselves, we called that line. And just because
11 we're going to be in the field and we happen to come
12 across a person, we wanted to show you how to get
13 your free ID, and you have to talk to this monotone
14 voice that's going to take eight minutes for you to
15 actually give them your information before he gives
16 you the number to call to really give you
17 information.

18 Like, it's really like a circle. But you
19 have to realize that, if we're talking about the
20 common people which we are trying to help, as we
21 say, the everyday person that wants to go vote, that
22 wants their voice to be heard, we're still waiting
23 on that free ride.

24 MR. PIGOTT: Healthcare.gov is starting to
25 sound a lot easier.

1 MR. MCKAY: Do have you a passport? Do
2 you have a drivers license? Do you have a Medicaid
3 card, a Medicare card? Have you ever been issued a
4 state issued ID? Who do you work for? Is this an
5 interrogation or can I just get my ride to go get my
6 ID? I'm just trying to vote. And to the everyday
7 working class people, it's kind of hard for you to
8 have to go to an everyday struggle trying to live
9 paycheck to paycheck to take the time out of your
10 day to talk to somebody about going to vote.

11 That's really going to make you feel
12 inferior to the person that you're talking to and
13 feel like your rights aren't really your rights
14 anymore.

15 MR. JOHNSON: Ms. McDonald.

16 MS. MCDONALD: This is the kind of
17 testimony that we need in order to kind of, I guess,
18 submit to the Congress in Washington. It's very
19 specific.

20 And one of my questions is, and maybe I'm
21 asking myself as well as any of the lawyers in this
22 room and anyone else, is there a legal challenge
23 that we can mount? And I know there have been some
24 legal challenges mounted in other states. And where
25 are we on that?

1 And I guess I'm asking myself that, too,
2 because as an activist, it's something that I've
3 been thinking about. Carroll and I have been
4 talking about it, I've been talking about it with
5 Derrick, and I would just like someone to comment on
6 that.

7 MR. IRVIN: Here's what I would say to the
8 legal challenge. Because of the missing crater of
9 preclearance, any challenge is going to come after
10 the fact. That's the bottom line, it comes after
11 the fact. So, that means the election has passed,
12 that means any remedy that you would potentially
13 receive is moot. So --

14 MS. MCDONALD: I guess I was speaking to
15 the validity of the -- I guess this will be the
16 first election cycle that we've had to go through,
17 and so I -- your point is well taken.

18 MR. IRVIN: So, the second step of that
19 though is, when you asked about drivers license,
20 when ask you about free rides, the Section 2 states
21 that if you can document instances with the standard
22 being a results standard, then if you set it up that
23 way where you're documenting systematic
24 disenfranchising, you have a better chance of
25 getting, you know -- your remedy that you would ask

1 for obviously would be under 3c, you would ask for
2 the State of Mississippi as a whole to be bailed
3 back in so that everything can be looked at.

4 MS. MCDONALD: I guess I'm going further
5 and saying that we've got to make a record in these
6 elections in order to get some change.

7 MR. PIGOTT: My view is just exactly what
8 Charles was saying. And it also goes back to what
9 Commissioner Rhodes -- you're commissioner for about
10 another three hours. Commissioner Rhodes was saying
11 before this panel started, which is that the more
12 you know about the debacle of Section 5 being taken
13 away from the Voting Rights Act, the more you
14 realize how much of a difference it's going to make.

15 There's some folks are going to have to
16 fall off the cliff before we can prevent people from
17 falling off the cliff. And it's going to have to be
18 one, and maybe two elections. We're all going to
19 have to work really hard. That's the difference
20 between having experts in Washington and
21 preclearance stage of Section 5 review knowing what
22 will happen and having to prove that it has already
23 happened.

24 But we're going to all do our homework, I
25 trust, but we've -- it's going to take that. It is

1 going to take a lot of work, because now the State
2 has their websites which are promising the moon.
3 And I didn't know, Carroll, about your thing about
4 that they're claiming that the free and easy ride is
5 from CAP agencies.

6 That's because I think they just assume
7 those people are getting free stuff to everybody all
8 the time anyway, and they don't have any rules.
9 They think that. So, that's what we mean. It's got
10 to be easy. Why don't y'all just go do it? I think
11 that's the whole -- that must be the whole policy
12 behind it.

13 MR. RHODES: I would like to add, Brad,
14 Deborah, and the other lawyers in the room, that
15 back when we were doing these type fights in the
16 '70s, '60s, '70s and '80s and '90s, the legal
17 climate was a lot different than what the legal
18 climate -- the judicial climate. Let me correct
19 that.

20 The judges on the bench, it depended on
21 the who was on the bench deciding -- the Voting
22 Rights Act was upheld in 1966, South Carolina versus
23 Castenback. And for a series of cases after then,
24 you had the US Supreme Court that understood the
25 history of discrimination in this country, and the

1 Supreme Court did not hesitate decisions, I think
2 9/0 to say the Congress had that right to enforce
3 the 14th and 15th amendments, making sure black
4 folks and everybody else had access to the right to
5 vote.

6 The current Supreme Court does not -- is
7 not that friendly, does not have that view. Getting
8 back Shelby County, Alabama versus Hoseman. The
9 current Supreme Court said we are now free at last,
10 free at last. Y'all are electing black folks all
11 over the south, black folks are registered, and
12 record numbers, higher than whites.

13 And the current Supreme Court forgot to
14 recognize that that was because primarily Section 5,
15 because these folks who had a history of
16 discriminating couldn't really do it before they got
17 preclearance. They got the preclearance. One thing
18 about the elected officials in Mississippi I've
19 noticed over the years, I call it white power
20 structure, is that they fought black folks getting
21 the right to vote. They fought all of the Section 5
22 submissions, they did not want to get anything
23 precleared.

24 They took courts -- they took cases to the
25 DC District Court and challenged it. But the minute

1 black folks started voting and started getting
2 elected, they run around the country saying, We've
3 changed Mississippi, there's no more racial problems
4 because we have more black elected officials than
5 anywhere else. They the main ones trying to keep
6 black elected officials from being elected. They're
7 now trying to keep black folks from voting with
8 these new laws.

9 MR. PIGOTT: Y'all may think of a better
10 analogy. I try to think of analogy of the cruel
11 irony of the Shelby County decision and the language
12 that they use. I mean, they don't make any bones
13 about it. I'm looking at what can only be called a
14 party line vote of five to four that decided the
15 Shelby County decision.

16 The chief justice said there is no doubt
17 that these improvements, meaning the improvements in
18 eliminating surface (inaudible) in voting are in
19 large part the cost of the Voting Rights Act. I've
20 tried to think of analogy, maybe y'all can think of
21 a better one.

22 Here's mine: If there was time in the
23 past where you were about 60 pounds overweight and
24 your heart condition was suffering and your energy
25 level was low and your life expectancy was low and

1 you went on a diet, and you lost 50 pounds, and your
2 heart got better and everything, does that prove you
3 never needed to be on a diet? Does that prove you
4 don't need to stay on the diet?

5 Does anybody really -- would a doctor tell
6 you that. Well, this just proves to me you don't
7 need a diet. The last thing you need to worry about
8 is that diet.

9 MR. BLOUNT: I think the analogy that
10 Justice Lindberg used that opinion, if I'm not
11 mistaken, it's as if -- if you had been walking in
12 the rain with an umbrella and you were dry, and you
13 were walking in the rain and you're dry, you're not
14 getting wet, it would be as if saying you don't need
15 the umbrella. You don't need the umbrella because
16 you have been dry, you haven't gotten wet.

17 And, of course, what happens was, when you
18 take the umbrella away, you're going to get soaking
19 wet. I'd like to -- I do have to slip out early.
20 There are two primarily elections next Tuesday, not
21 just the one you're reading about in the newspaper
22 all the time. The other party is having a primarily
23 election, too. So, I would encourage you to vote in
24 the primarily of your choice on Tuesday. I think
25 that came up. I'm going vote in the other primary.

1 The notion of preclearance is sort of like
2 the motion, you're much less likely to speed if you
3 know there might a policeman around the corner with
4 a radar gun. And public notice is something that I
5 should have mentioned. I think it may have been
6 Mr. Irvin that mentioned the need for public notice.
7 There ought to be -- until there is some sort of
8 preclearance requirement -- and I think preclearance
9 has been a good thing for Mississippi, and I think
10 preclearance will be a good thing for any state
11 where the possibility of discrimination exists.

12 So, ask yourself, how many states is that?
13 Are there any states for the possibility for where
14 discrimination does not exist?

15 Preclearance has been a good thing. Until
16 we have preclearance restored by the Congress, there
17 are some fundamental things regarding notice that
18 are easily done that the legislature ought to
19 require of any movements of precincts.

20 I think Mr. Johnson mentioned the precinct
21 changes. Any movement of precincts, anything
22 regarding redistricting, it's very easy to provide
23 notice for that. That provides notice not only to
24 the people living in that community, it provides
25 notice to groups like this who are going to be

1 keeping an eye out for any backward movement out
2 there at the local level. That's easily done and
3 something that we need to be aware of.

4 MR. RHODES: I'd just like one quick
5 follow-up to what Senator Blount just said. It is
6 important to vote in one of the two primaries.
7 Historically, Mississippi republican primaries has
8 been white folks voting in those primaries. And
9 they might not encounter the same type of problems.
10 Historically, black voters have voted in democratic
11 primaries.

12 If there's going to be a record made of
13 the problems with voter ID, you need to have people
14 going to the polls so we can know, how are these
15 election officials implementing these new voter ID
16 rules. So, people still need to go vote. They
17 don't need to sit at home and say this is not -- we
18 don't have a reason to go vote now. Because we
19 still need to make a record during this election
20 cycle because it will come up again in November.

21 MR. BLOUNT: The policies regarding the
22 implementation part handle the saying is in regards
23 to what kind of voters you are regardless of the
24 primary they voted in.

25 MR. JOHNSON: Senator Blount, this past

1 session that you've done in the past, you've
2 introduced legislation to try to enact early voting.
3 What has been the response from your colleagues from
4 that legislation?

5 MR. BLOUNT: Well, obviously I'm going to
6 start focusing here today on voter ID. And I had
7 the opportunity for many years to vote against that
8 before it was put into law. And I asked myself,
9 given that it was law, what opportunities might that
10 create for us to enlarge the lack of increased
11 participation.

12 So, early voting is one. And same day
13 registration -- if you have go to the polls and show
14 your ID, then there's no fraud. We've been hearing
15 for years about fraud. There's no fraud if you're
16 showing an ID. Did the bill that I've introduced
17 the last two years since we've had voter ID in
18 Mississippi, did that come up in the committee? It
19 did not.

20 I am the vice chair of the Senate
21 Elections Committee. The chairman of the Senate
22 Elections Committee is Senator McDaniel, who's
23 currently running for the US Senate. And I don't
24 think that our committee got any legislation
25 referred to it this year, probably part of that is

1 because the political season that we're in.

2 But there are things -- I mean, the party
3 that I belong to is not the majority party. I think
4 there are things that we can possibly get done. I
5 think that there are many other states across the
6 country where the Secretary of State implemented on
7 line voter registration. This is not going to solve
8 a lot of the very real problems that the panel is
9 talking about today, but I'm always looking for -- I
10 don't like to just get beat all the time. I'm
11 looking for some positive problematic things that we
12 can do. And you have to -- given that we have voter
13 ID, we have to look for opportunities to use that
14 since we've heard about fraud all these years, and
15 we've moved beyond that, and we can try to let
16 people vote early in the courthouse, register to
17 vote on line.

18 I hope that's an answer to your question
19 that I'm going to try to --

20 MR. JOHNSON: Thank you. Final question
21 from Commissioner Morse.

22 MR. MORSE: We may pick this up in a later
23 meeting since I see the lunch is here. I wonder
24 whether this panel had any short thoughts about
25 people examining whether there's going to be

1 differential enforcement of voter ID in one primary
2 versus another. Any thoughts on that?

3 MR. BLOUNT: I want that record. I want
4 to know if people who want to go vote in the
5 democratic primary in Tallahatchie County are being
6 treated the same as people who are voting in the
7 republican primary in Desoto County. And one of the
8 procedures out there that that grand momma out there
9 who doesn't have a drivers license or left it at
10 home who caught a ride, is that grandmother in
11 Desoto County going to be treated the same as the
12 grandmother in Tallahatchie County.

13 MR. JOHNSON: Well, I've had a
14 conversation with the Secretary of State
15 specifically about that. And his argument was to me
16 was that the training is the same for all. That was
17 his wonderful answer, is that the training is the
18 same for all.

19 He doesn't -- he's going to be sending
20 folks to make sure to check. All right. But the
21 answer is, the training is the same for all. And if
22 some folk take their training and do wrong things,
23 it wasn't because they didn't get the same training.

24 I said, "Okay. The training the same for
25 all." And the good folks from the other side was

1 saying wasn't this supposed to help us stop some of
2 these folks from voting? That was what they said in
3 the meeting at the training. And he said, "No. No.
4 That wasn't what happened." And then one of the
5 little old wonderful white woman, elderly, she said,
6 "That is what you said."

7 And, you know, he quickly said, "Well,
8 we'll have this discussion afterwards." But the
9 person was still the same, and he left there. So,
10 he left before the afterwards. And he left his
11 chief of staff, Davis, to answer that person. And
12 Davis gave us the answer of saying, I don't know
13 what the Secretary of State would do, but we're
14 going to make sure that we have folk at every
15 precinct.

16 And I said, "That's a lot of people.
17 There's a lot of precincts in the State of
18 Mississippi." That was part of the process. And he
19 said, "Well, the legislature gave us money, and
20 we're going to see what we can do to make sure that
21 that's not part of the problem." And my question to
22 him was --

23 MR. PIGOTT: In the republican primary?

24 MR. JOHNSON: Yeah. So, my question was,
25 "Is it going to be selected? Is it going to be

1 selected?" And the answer was, no, they were going
2 to try to make sure it's done everywhere. But the
3 question becomes, you don't have the money to do
4 that, to put folks on the ground everywhere, every
5 precinct. So, will it be selected? And he left
6 with a critical look on his face, and he never
7 answered the question.

8 So, your question is very valid. I don't
9 know what they're going to do. His answer is, is
10 that it's the same training, therefore, folks should
11 be doing the same thing in every location. But he
12 recognized that folks take training differently, and
13 some folks get it right and some folks get it wrong,
14 but that's okay. And if you're in one of the places
15 where they get it wrong and one of them are there,
16 they're going to fix it. But if you're at a place
17 where they are not there, it's just going to happen.

18 So, the idea of us needing to -- making
19 sure that we put down that we take stock is very,
20 very important. So, we're going to have folks at
21 every precinct in my county to make sure that we
22 understand what's going on, who's doing it, and
23 who's not doing it. So, Holmes County is going to
24 do that. But I'm not sure whether or not we've done
25 enough work to make sure that's going to happen in

1 every county in the state every part of the process.

2 MR. RHODES: Final question, the final
3 comment, is that it's the different who runs the
4 primary and general election. Primaries are ran by
5 the political parties. There's two primaries run by
6 the political parties. General elections are run by
7 election commissioners. Election commissioners
8 decide who the poll workers are in November. But
9 the parties decide who the poll workers are in June.
10 But you might have some of the same folks who might
11 run the republican primary, democratic primary than
12 the poll workers during the November election.

13 The question is going to become, how is
14 that enforced in November? Is it just going to be
15 the same type interpretation as, of course, as it
16 was during the primaries when people still need to
17 go vote in November so we can still make a record?

18 November election is going to be the
19 first -- the general election people need to vote if
20 see there are any problems or kinks. The November
21 election is really important to see how it affects
22 minority voters.

23 MR. JOHNSON: So, let's give our witnesses
24 a hand.

25 At this time we're going to take a break.

1 As you can smell, Sugars Chicken is in the back.

2 After the break we're going to bring up our final
3 panel, and then take questions from the audience.

4 MR. SAYER: Question for this panel.

5 MR. JOHNSON: We got the public
6 questioning, and then -- I need some direction here,
7 because I smell food and we got public questions.

8 MR. SPENCE: We're going to eliminate for
9 the first public testimony and questions, but
10 immediately after lunch, we're going to bring
11 everybody back and finish with the questions for
12 this panel. So, it's going to be limited to three
13 people this round, but as soon as we finish with
14 lunch, we'll have another session for public
15 testimony.

16 MR. JOHNSON: Just two questions now.
17 We're going to break for lunch.

18 MR. SAYER: This is Mike Sayer with
19 Southern Echo, Jackson, Mississippi. Here's my
20 question.

21 Brad and others have identified the series
22 of confusions and uncertainties in the
23 interpretation of the statute and the statute in
24 relation to the administrative rules. Is this an
25 appropriate circumstance with persons who need a

1 voter ID and certain friendly circuit clerks to
2 bring an action for declaratory judgment that the
3 statute and rules taken together are void for
4 vagueness under the search -- this situation are
5 subject to selective enforcement, and request an
6 injunction against implementation of the voter ID
7 until these declaratory questions are resolved?

8 And that's in distillatory of the election
9 rather than subsequent to the election. You're kind
10 of with me. Very clearly, this confusion and
11 uncertainty leading to very valid but ultimate and
12 conflicting interpretations by well-meaning people.
13 Don't even have to allege malice.

14 You said which one applies? And that's a
15 good question for a person even with legal training,
16 which applies. The court ultimately decides that,
17 right, when there's a conflict of that? That's why
18 you have declaratory judgments and why you have
19 injunctions in anticipation of a problem. That's
20 the purpose of declaratory judgment. Is that
21 possible?

22 MR. RHODES: Mike, I think maybe that
23 could be the friendly circuit clerk most definitely
24 could finds someone without an ID to be a part of
25 that lawsuit. The State Attorney General will

1 defend -- one thing it might be saying, the circuit
2 clerks don't have standing to sue the state. But
3 you need somebody who might be effected by the
4 statute and the Secretary of State's regulations
5 being interpreted differently.

6 And maybe the circuit clerk could say, I
7 don't know how to interpret it, and I need some
8 clarification. So, it might be a good idea to bring
9 a declaratory judgment action. But finding a
10 friendly court is going to be the next thing.

11 MR. PIGOTT: I think that's going to be
12 State Court system --

13 MR. RUSSELL: I think the confusion having
14 been put on the record is the most important part of
15 this discussion. The second part of the question
16 might be when you and Derrick and Brad and Carroll
17 get together in another meeting, not this one, to
18 decide if a lawsuit is appropriate.

19 MR. SAYER: One thing, what do you think a
20 lawsuit would do? It would put everybody in the
21 State on notice as to these confusion and the
22 necessity for a valid interpretations.

23 MR. JOHNSON: Next question.

24 MS. ROSEMARY: I'm Rosemary, and I work
25 with a small group of political people who discuss a

1 lot of issues. My concern is that I know in my
2 precinct, we have a lot of elderly poll workers.
3 Some of those poll workers I think don't quite see
4 things that's on the paper and on my ID or whatever.

5 My question is, if you have a discrepancy
6 and the poll worker says this doesn't quite look
7 like you, but you know it's you and you've been
8 voting there forever, what recourse do I have, and
9 will I be able to vote at that time even if I do
10 absentee voting, even though you tell me that my
11 ID -- like, what we get it in Mississippi, every
12 five, six years? I forgot. Whatever.

13 I know mine has changed somewhat. But if
14 I don't look like on my ID, but I know that's my ID,
15 what is my recourse if you tell me that does not
16 really look like you and you can't vote? How do
17 I -- what is my procedure and recourse at that
18 particular time as far as voice -- voting?

19 MR. JOHNSON: Deborah, Carroll or Brad,
20 y'all want to?

21 MS. MCDONALD: The law states you vote
22 affidavit. It's in the law. You vote an affidavit
23 ballot.

24 MR. PIGOTT: Folks need to know the second
25 step on that, and it's bad stuff. In order for your

1 affidavit ballot to count now, you're going to have
2 to vote twice. You're going to have to go down to
3 the circuit clerk's office and go to that different
4 bureaucracy where a different group of people work
5 town vote within five days.

6 So, if you got somebody who thinks that
7 you don't look substantially like your drivers
8 license, you're going to have to vote twice, and
9 you're going to have to go through a lot of hurdles
10 in order for your vote to count at all.

11 So, affidavit ballots sound great until
12 you realize you've got to go through that other
13 group of hoops.

14 MS. EVANS: What if you're married and you
15 have a maiden name on your drivers license, but
16 you're Mrs. So and So on voting roles, can they
17 challenge you and not question the vote?

18 MR. JOHNSON: Can you state your name and
19 repeat your question? State your name and repeat
20 your question.

21 MS. EVANS: I'm Lynn Evans. And my
22 question is, if what you have on your drivers
23 license, which is what most women have, is their
24 maiden name and their married name, Lynn Evans, but
25 on your voting registration you have Mrs. OB Evans,

1 for example, are they going to let you vote?

2 MR. PIGOTT: I'm looking at the full page
3 of regulations that pertains to that issue. And
4 that's the problem. I mean, it's -- it depends
5 on -- if it's substantially similar name -- now,
6 that can mean a lot of different things to a lot of
7 different people. And I realize time is expiring,
8 but if your elector middle or last name on the photo
9 to identification is different from his or middle or
10 last name as it appears on the poll book due to
11 marriage, divorce or hyphenation, the elector shall
12 be entitled to cast his or his ballot if a part of
13 the name, the address or the date of birth matches
14 the poll book.

15 So, I mean, bless their hearts, who wants
16 to be the poll watchers in this thing. And you're
17 at the mercy of a convoluted decision, convoluted
18 regulation and a complete discretion. And that's
19 the problem. This is not just about confusion and
20 difficulty. These things are going to be
21 implemented differently against different people in
22 this state for the rest of our lives as long as this
23 kind of thing is a detriment to voting. It's going
24 to be applied differently.

25 MR. JOHNSON: So, we want to thank you

1 all. We'll take the break for lunch. And then
2 right after lunch, we'll have the panel come back up
3 and we'll take additional questions.

4 (A lunch break was taken.)

5 (Exhibit 2 - Leroy Johnson's written
6 testimony marked for the record).

7 MR. SPENCE: Now, the floor is open for
8 public questioning. Before you testify, please
9 offer your name for the record and your representing
10 organization. Please let us know what organization
11 you represent. Or if you're not representing an
12 organization, just say where you're from.

13 MS. YOUNG: Good evening. My name is Mary
14 Caskel Young for the Center for Educational
15 Awareness. And I'd just like to add No. 4 to the
16 affidavit to vote. There are people who are going
17 to the poll, cast a vote affidavit. And I work
18 there. And there are many of those people that do
19 not want to fill out paper ballots.

20 But the four parts of the affidavit ballot
21 is, once you vote and you go back to the courthouse
22 with your ID, your commissioner is supposed to send
23 you a notice whether or not your voting counted. I
24 found out in my community that people was not
25 receiving this letter from their commission. So,

1 even after you go through that process, you are
2 supposed to receive a letter from your commissioner
3 letting you know whether your vote counted or not.

4 So, that's another follow-up you need to
5 take a look into after the election.

6 MS. MCDONALD: You say for affidavit
7 votes?

8 MS. YOUNG: Affidavit votes.

9 MS. MCDONALD: How is that possible? I
10 witness the county's affidavit ballots, and they
11 take them out and you really don't know. It's like
12 a secret ballot. You know, you really don't know
13 who's ballot is being counted, which one and who's
14 getting thrown out.

15 MS. YOUNG: On your affidavit, you have a
16 name --

17 MS. MCDONALD: I'm talking about absentee
18 ballot --

19 MS. YOUNG: One that you have to fill out
20 if you do not have an ID. You're going to have to
21 do it again for this election as well, and the
22 affidavit has always been on the table. But this is
23 where your name and information is filled out on a
24 separate envelop, you also have your name on a
25 separate sheet.

1 Now, when you vote affidavit, you need to
2 look for a letter from your commissioner, whether or
3 not your vote counted. If not, you call your
4 commissioner.

5 MR. RUSSELL: So, the balance is, if you
6 have a challenged vote and you have to use the
7 affidavit ballot, you need to have some indication
8 that your ballot was cast, and that's required by
9 the law is what you're saying?

10 MS. YOUNG: Right. You can call your
11 commissioner if they do not send a letter out. They
12 are supposed to send you a letter.

13 MR. RUSSELL: Yes, ma'am, in the middle
14 isle.

15 MS. WEAVER: Marcia Weaver, Jackson,
16 Mississippi. I wanted to ask -- as we've heard from
17 you and as we've been studying how difficult it's
18 going to be for people to have the right to vote and
19 have it counted. How do you think this compares
20 with back in the '60s?

21 MR. RUSSELL: Who wants to take that?

22 MR. MCKAY: I think we line it up. We
23 have a PowerPoint -- it's ironic that you say it.
24 We have a PowerPoint that we line up that says have
25 times really changed. We have a picture pretty much

1 from the 1960s, and pretty much to now to see how
2 things have changed.

3 I say things have changed. If you say the
4 we have changed, the market have grown bigger
5 between people. The rich are getting richer and the
6 poor are getting poorer because it's not -- like
7 they say, follow the money. And if you look at the
8 numbers -- they say numbers never lie and
9 percentages. They're creating a system to work
10 exactly the way that they want it to work so they
11 can make their money and progress there, because
12 it's definitely not helping. The people just ain't
13 in the design to help. And it's slavery by another
14 name.

15 MR. RHODES: Ms. Weaver, if I can make a
16 comment, too. It might be a misunderstanding about
17 voter ID, for one, that it's the first tool out of
18 the tool box. It will not deny everybody the right
19 to vote. But is a long process. It's a voter
20 suppression process. That might be the first law.
21 You might have other laws coming along that will
22 drop the number of people voting.

23 In the '60s, you probably got to really
24 compare it to the 1880s, 1890s, African-American
25 were voting. They put the state constitution and

1 new restrictive voting laws in place, and the lines
2 started going down gradually overtime until you get
3 to the point where you almost have virtually no
4 African-Americans voting.

5 By the time the Voting Rights Act was
6 passed in 1965, only 6.7 percent of the eligible
7 African-Americans voting in Mississippi were
8 registered to vote and voting. It's up high now.
9 Over time you're going to see that number start
10 dwindling, dwindling, dwindling, until it might be
11 30, 40 years from now, that number would be down
12 again. But it's not going to be overnight. And
13 it's not going to deny everybody the right to vote.
14 But it's designed to suppress a certain percentage
15 of vote, only if there is a dropoff of 2 to
16 3 percent, that makes a difference in a lot of close
17 elections in Mississippi.

18 So, if they use voter ID to keep 3 or 4 or
19 5 percent -- and the reason I'm saying that's
20 important, the studies that ran -- in the gates for
21 the Secretary of State is saying. He is saying only
22 1 percent of eligible voters do not have an ID to
23 vote. That's -- that is not correct.

24 There's a great disparity between the
25 number of whites who are not eligible and the number

1 of African-Americans who are not eligible. One of
2 the statistics that Brad gave was that, for
3 African-Americans over the age of 75, it's less than
4 50 percent have valid and current ID. That and the
5 status of statisticians have shown that historically
6 older voters vote in higher numbers than younger
7 voters.

8 So, with older voters not having valid ID,
9 older African-American voters, those numbers are
10 going to drop, drop, drop, drop. So, that over time
11 is designed to suppress the vote and depress the
12 vote.

13 MR. JOHNSON: I want to say that my mom
14 puts it this way, as one of those who got federal
15 registration. She said up until they started
16 messing with it -- and she said monkeying around
17 with it. I use the word "messing with it" to try
18 to make it better in here. But my mom said
19 monkeying around with it. She had a forever vote by
20 being in federal -- by being one of those who were
21 registered by the federal government.

22 Then the state decided that this idea of
23 forever registration was ballooning the number of
24 people who were registered to vote in these
25 counties. And it asked for a purge. And it states

1 what the process and got this ability to purge those
2 folks who have got federal registration.

3 So, to her, it's like, now it's starting
4 all over again. I don't have a drivers license,
5 right, and now I've got to go and figure out how to
6 get a voter ID, right. What is it? Now -- I had to
7 pay for it, what's the deal. And so, all these
8 things were free. Now, my mom lives 22 miles from
9 the circuit clerk's office, right.

10 Now, the idea is we took it because this
11 call-in number. And she said, well, like when she
12 first tried to get on food stamps, that after so
13 many questions, made her feel so bad, that the
14 answer was, it wasn't worth it. So, the whole idea
15 was, it wasn't worth it. So, she said, "Boy, come
16 and take me up there to the circuit court." And
17 being a dutiful son, I did as a part of that
18 process.

19 So, this whole idea of reoccurrence of
20 what was, in Mississippi, what was is often what is.
21 And so, there's this question of coming back to the
22 same. In a lot of ways, this is a (inaudible) of
23 the confederacy. And it's like, you know, we didn't
24 lose the war, y'all wanted to skirmish. The war is
25 yet going on. And with the war yet going on,

1 whatever means they can do to shrink the electorate,
2 the better off they are.

3 And so, it is for all of us of good
4 conscious. Doesn't make any difference what color
5 you are; of good conscious. We've got a non-threat
6 echo that says it has to be, is it right? These are
7 the questions we ask us. Is it right? Is it moral?
8 Is it just?

9 It can't just be one of those, it has to
10 be all three of those. Is it right? Is it moral?
11 Is it just? And this whole idea of shrinking the
12 vote isn't right, isn't moral, and it sure the hell
13 ain't just.

14 MR. RUSSELL: Other questions?

15 MS. SYKES: I have a question about
16 absentee voting.

17 MR. RUSSELL: State your name, please.

18 MS. SYKES: My name is Cathy Sykes from
19 Jackson, Mississippi. Jackson branch NAACP. I have
20 a question about absentee voting.

21 I was told that if someone voted by
22 absentee, they would not have to show ID. And I'm
23 just trying to get some clarity on that because I
24 heard more than one answer.

25 MR. MCKAY: You don't have to show it, but

1 you have to get it notarized.

2 MS. SYKES: You have to get the request
3 for an absentee ballot notarized?

4 MR. MCKAY: No. You have to get the
5 ballot notarized.

6 MS. SYKES: So, if go into the courthouse
7 and request an absentee ballot, do you have to show
8 your ID at that time?

9 MR. MCKAY: Yes.

10 MS. SYKES: If you request an absentee
11 ballot from your home --

12 MR. JOHNSON: No.

13 MS. SYKES: Okay. You don't have to Xerox
14 your ID and mail it in with your ballot?

15 MR. JOHNSON: No. That's part of the
16 confusion, and that was part of the training that we
17 took that we had with the Secretary of State's
18 office, right. The training that was in the
19 Mississippi delta, the delta-wide training, and they
20 had to like -- they have like five areas where they
21 do training for both the democratic party officials
22 and the republican party officials. They give us
23 joint training.

24 And in that joint training, it was very,
25 very clear that part of the process was that they

1 were going to be having to make sure that folks did
2 picture ID for absentee voting. And he said -- and
3 it was very, very clear -- the only time you have to
4 use you picture ID for absentee voting is when you
5 come to the circuit clerk's office and vote absentee
6 in the office. You still have to be IDed.

7 But if it's those group of folks who get
8 theirs through the mail, there will not be a
9 requirement of a picture ID or photo or
10 identification.

11 MS. SYKES: They don't have to xerox their
12 ID and mail it in with the ballot?

13 MR. JOHNSON: No.

14 MR. RUSSELL: One more question, and then
15 we're going to go back to the --

16 MR. TOLDEN: Verify that. Someone voted
17 in Canton last week at the courthouse just like you
18 said. She chose the drivers license.

19 MR. RUSSELL: Any other questions? We're
20 going to take one, and then we're going to move to
21 the next panel.

22 MR. TOLDEN: I'm Father Jeremy Tolden,
23 resident of Raymond and member of the NAACP.

24 MR. RHODES: Mr. Russell, I did want to
25 make one additional statement. And this follows up

1 what Ms. Marcia Weaver had asked a question earlier,
2 and that's the Common Cause of Mississippi. And
3 Ms. Lynn Evans is here for Common Cause. Did have a
4 statement that would like to make a part of the
5 record which talks about the disparity that this new
6 voter ID law will have on minority voters, the poor,
7 young, and the aging. And I'd like for Ms. Lynn
8 Evans to make sure that we can get this in the
9 record if she would just state her name, and her
10 reports we're going to make part of the record.

11 MS. EVANS: Thank you.

12 MR. RUSSELL: The request is that you
13 state your name and say that (inaudible.)

14 MS. EVANS: I'm Lynn Evans, I'm here
15 representing Common Cause. And I am happy to have
16 this statement submitted as part of the record.

17 (Exhibit 3 marked for the record.)

18 MR. JOHNSON: We thank this panel. Let's
19 give them a hand. And we're going to have panel
20 three now. And that includes Ms. Lynn Evans, Ms.
21 Yasmin Gabriel, Ashley Wicks, Marcia Weaver, and
22 Ashley McKay.

23 As the panel comes, just as an
24 introduction, this panel is going to be talking
25 about election administration, which is to some

1 degree what we've just been discussing, but this is
2 how will the election be conducted by the election
3 officials. That's what this panel is to discuss.

4 Again, members of the panel, you have five
5 minutes each for your presentation, but in as much
6 as I don't have the one sentence introduction of
7 each of you, I'm going to give you an extra minute
8 to introduce yourselves, and then go into your
9 five-minute presentation. And our first panelist is
10 Ms. Lynn Evans.

11 MS. EVANS: Thank you. I'm Lynn Evans,
12 and I'm here speaking on behalf of Common Cause
13 Mississippi. We have been active in this state for
14 over 30 years promoting good government issues such
15 as open meetings, access to public records, campaign
16 finance reform, and campaign finance disclosure
17 bearing non-partisan redistricting, government
18 accountability, fair elections, and open access to
19 the voting booth.

20 We believe that voting under the US
21 Constitution is a right and a responsibility and not
22 a privilege. And therefore, no unnecessary
23 restriction should be erected between the qualified
24 voter and the voting booth. For these reasons,
25 Common Cause Mississippi opposed the State's recent

1 voter ID law.

2 No state public public official has yet
3 been able to show that any voter fraud that would be
4 rectified by voter ID has occurred at the polls in
5 Mississippi. There have been no reported incidences
6 of voters voting under other names, voting more than
7 one ballot at a polling place, or multiple polling
8 places, voters misrepresenting themselves at the
9 polling place, or voters in any other way attempting
10 to vote fraudulently in a manner that would be
11 prevented by voter ID.

12 Moreover, there is every indication that
13 implementation of the 2012 voter ID law will
14 disproportionately affect minorities, the poor, the
15 young, and the aging.

16 As we have noted, Mississippi has a
17 history over racial discrimination. Thanks to Brad
18 Pigott, we know that a majority of African-Americans
19 75 years old and older do not have a drivers
20 license.

21 About one-third of elementary students in
22 Jackson Public Schools are known to change schools
23 during the school year because their parents moved.
24 This very mobile population of young parents would
25 be very likely to have a drivers license that must

1 be renewed every four years that does not show their
2 current address. They could be barred from voting
3 for this reason.

4 In fact, from what we have heard today,
5 the 2012 voter ID act appears to be an attack on the
6 fundamental essence of a democracy, the right of
7 people to select a governmental official to
8 represent them through free and open election.

9 Therefore, Common Cause Mississippi
10 continues to object to a law whose result will be
11 qualified voters turned away at the polls or
12 reluctant to try to vote when no compelling and
13 factual reason has been demonstrated for that wrong.

14 The underlying assumption of voter ID,
15 that a significant number of people trying to vote
16 are not who they say they are is disturbing, and in
17 democracy, when we should be encouraging more people
18 to vote, not discouraging some people from voting.
19 Whether or not it is true that politics is
20 responsible for voter ID laws because one party
21 actually wants to keep certain people from voting,
22 some will feel excluded from the political process
23 and resentful about their exclusion.

24 The reason we want people to vote is that
25 engagement in the political process makes people

1 feel a shared sense of community and a
2 responsibility. Seeing that their votes affects
3 what government does gives voters a visceral state
4 in self-government. In this way democracy is
5 strengthened and will make more vibrant and
6 successful city/state nation.

7 If we really care about getting people to
8 pull together to make their communities better,
9 define (inaudible) laws and policies to increase
10 voter participation. As Senator Blount has
11 suggested, we support early voting, on line voter
12 registration, and same-day voter registration.

13 In conclusion, it should be a proud
14 measure of civic responsibility for all of us to
15 vote. Restricting the right to vote alienates
16 citizens from the government weakening our
17 democracy. It is contrary to our own history and
18 the ideals of our founding documents.

19 Thank you for having me.

20 MR. RUSSELL: Thank you. We will now move
21 to our next panelist, Yasmin Gabriel. And since I
22 don't know you, I might be bouncing around the
23 table.

24 MS. GABRIEL: It's okay. Good afternoon.
25 My name is Yasmin Gabriel. I am the new special

1 assistant to President Hogan at Tougaloo College,
2 but before then I was a director of CNBACLU. And as
3 my mentor and sister would say, I'm obsessive with
4 voting rights. As a young person, when I first
5 heard about initiative 27 back in 2011, I reached
6 out to one of my friends and was like, "What's going
7 on in Mississippi? Are they really going to have a
8 voter ID?" He's like, "Oh, it won't pass. We have
9 Shelby, right?"

10 And there was this whole notion about
11 Shelby was going to save us all in Mississippi.
12 When I got here on the ground in Mississippi in
13 2012, I was kind of told that we didn't need -- we
14 didn't need y'all's help because it wasn't going to
15 happen. Shelby was going to be intact, we were all
16 be fine, right?

17 And so, I wanted to submit to the record a
18 user friendly material that Upgrade Mississippi made
19 in 2011 to educate people about the law that was
20 coming up, right? Hadn't been implemented yet, but
21 we were just really concerned. And I was just a
22 little more cynical than some of my friends about
23 Shelby and about the Supreme Court at that time.
24 So, I just wanted to put that out there.

25 My testimony comes today as a new resident

1 of Mississippi, as a person who just wants to get
2 their free ID, right, and their free ride. So, I
3 saw this little commercial that had the Secretary of
4 State on it saying how easy the process was, and
5 everything was free, right? So, I started digging a
6 little bit more trying to figure out, well, how --
7 what makes it free for one person and not free for
8 another person.

9 And so, when I called that 1-844
10 Mississippi MS voter number, I got this really
11 monotone person who answered the phone. I'm not
12 easily intimidated. Last time I've checked, I've
13 been told I'm kind of scary. So, I'm not easily
14 intimidated. But there was this guy on the other
15 end who I could hear who didn't look like me, and he
16 was asking me very forward questions: Do you have a
17 passport? Do you have a college ID? Have you ever
18 had a Mississippi drivers -- everything for me was
19 no because I had never lived in Mississippi, right?

20 So, I get to the very end of our call, and
21 he says, Let me give you this number -- and I said,
22 "So, wait. You don't give me the free ride? So,
23 why was all of that?" I just started thinking about
24 some of my friends in the community who would have
25 probably hung up on the phone on him probably five

1 minutes on into it, right?

2 So, once he gave me the number, I noticed
3 that -- I called that number, right? And they told
4 me I had to have the exact -- I had to have the
5 exact identification that I gave him that I told him
6 that I was going to have, right? So, I started
7 playing devils advocate. I said, "If my purse got
8 stolen and my Social Security card was in my purse,
9 you're telling me I couldn't get on the bus for my
10 free ride if I didn't have my Social Security card?"

11 "Yes. Yes. Yes. Yes."

12 So, to make a long story short, I do have
13 my own car. So, I ended up -- I think I talked -- I
14 talked to a few of my coworkers at the time about me
15 trying to figure out how to use this free ride
16 thing. As we got further and further into it, it
17 seemed like it was very confusing, whether or not
18 you were eligible for the free ride, whether or not
19 you were eligible for the free ID.

20 I just learned today, you know, if you
21 have an old ID, you check yes on there, that could
22 be considered a crime, right? So, as a community
23 personnel out in the community, I wanted to make
24 sure that we had the exact law. So, I went and I
25 filed this PowerPoint, because I'm an on line

1 person, at the Secretary of State that I created
2 that was supposed to be this quote, unquote,
3 training, right, around voter ID.

4 And it still asked me a lot of questions.
5 It still didn't really answer everything for me.
6 So, I was thinking, if I was a poll worker or a poll
7 manager, I'm still confused about what fairly
8 depicts someone's identification, you know. If
9 Reilly decides to chop all his hair off right now
10 and take off his beard, he looks like a totally
11 different person. And if I'm not trained properly,
12 I might turn him away. So, I just started thinking
13 about all this different stuff --

14 MR. MORSE: I would think you're Joe Plum.

15 MS. GABRIEL: I would think he's Joe the
16 plumber, he's not even from Mississippi. So, it
17 just seemed to be confusing to me on the
18 administrative side, how are these volunteers and
19 these folks who are going to actually administer
20 these changes, how they were getting trained.

21 And so, we called the office and we asked
22 for the voter application, the voter ID application.
23 That's on line. It's only a sample. You can't even
24 write on it. So, if I want to practice and deal
25 with some individuals who have a hard time writing

1 or maybe they're illiterate and they want someone to
2 help them with that form, you can't get the form
3 unless you go to the clerk's office, right?

4 So, I have to take a second ride. And
5 Derrick was talking about it. I live far away from
6 the clerk's office. I had to drive there, get it as
7 an organizer, you know, make photo copies of it I
8 guess, right? Ashley and I were talking about that.
9 And then taking it back into our communities to
10 actually have people fill them out. That's another
11 tax on my time.

12 At the time, where I worked, I worked in
13 the environment where you could not do personal
14 business at work. So, I was whispering on the phone
15 trying to get -- I was just thinking about other
16 people and them not having the same kind of job I
17 had and working at Popeye's and trying to make that
18 call, right?

19 I was just like, this is not cool. This
20 is not really helping the average person who is a
21 hard working American who wants to exercise their
22 right to vote.

23 And so, I just wanted to testify today
24 about us making sure we watch for those things,
25 making sure that we have this consorted effort to

1 ensure that people who live in nursing homes
2 understand if they register to vote within that
3 address of where they live in the nursing home and
4 not their old house, they don't need an ID because
5 they're exempt from that, right?

6 And so, I'm trying to make sure we do this
7 user friendly campaign to make sure that we all
8 understand the law and are able to comply with it.

9 Thank you.

10 MR. JOHNSON: Ashley Wicks.

11 MS. WICKS: Wow, I get to follow her.

12 MR. RUSSELL: Have as much drama.

13 MS. WICKS: I'm not a drama girl. I am
14 Ashley Wicks. I am now the immediate past president
15 of the Magnolia Bar Association. And my testimony
16 involves our participation in the election
17 protection process.

18 For the last few election cycles, we have
19 partnered with the NAACP and One Voice in the
20 election protection effort. The way election
21 protection works is the Magnolia Bar Association, we
22 provide lawyers for the effort. So, you have
23 lawyers working the phone, lawyers in the field.
24 There are volunteers from other organizations that
25 participate in the process.

1 We start early in the morning, and --
2 yeah, we start early in the morning, and -- I was
3 going to make a joke about me not being on time.

4 We start early in the morning. And once
5 the calls start coming in, we try to serve as a
6 resource for the voter. That might be -- this last
7 particular time that we imputed their information
8 into the computer system, we cataloged the types of
9 calls that we received. If it was something we
10 could fix, like if we could make a phone call or if
11 we could send somebody or call somebody to go to
12 that polling place to assist the person, we did
13 that.

14 This last -- there were certain persons
15 designated as expert, Carroll Rhodes, and I was his
16 executive assistant. And some of the issues that we
17 gathered at the last election protection was that
18 there was purging of the rolls. There were several
19 voter registrations that had not been processed.
20 People didn't know their correct voting precincts or
21 their voter precinct had moved and they had were not
22 aware that their voter precinct had moved.

23 Some people had issues with how they were
24 being treated or talked to at the polls. There were
25 incorrect ballots. We received reports that the

1 president was not on the ballot. And with that
2 particular call, we did place calls to the
3 Department of Justice on long line, voting machines.
4 And if you work the early shift, which is the shift
5 that I worked, that's probably the biggest things,
6 that the machines are not up and running when the
7 polls open, because a lot of people want to go ahead
8 and vote before they go to work.

9 And then the other issue is broken
10 machines. And then, you know, most people want to
11 go vote on the machine. They don't want to -- even
12 if your only advice to them is to fill out a paper
13 ballot, they don't want to vote a paper ballot, they
14 want to vote on the machines. We were trying to
15 figure out what we could do to facilitate that
16 process for them.

17 We called circuit clerks, we called
18 election commissioners, we just tried to serve as a
19 resource for those individuals that called us.

20 That's it.

21 MR. RUSSELL: Thank you.

22 Marcia Weaver.

23 MS. WEAVER: Marcia Weaver is what my
24 momma said.

25 MR. RUSSELL: I'm from Florida.

1 MS. WEAVER: That's okay. Lots of folks
2 have lots of names that they call me. But today I'm
3 representing the Legal Women Voters of the Jackson
4 area. We have members that are from five various
5 counties around the central area.

6 Voter service has been a great interest
7 for the League of Women Voters for over 90 years.
8 And in Mississippi for nearly 50 years, 60 years
9 with the League of Women Voters of the Jackson area.

10 You might know the League is neutral
11 regarding parties and candidates, but is vocal on
12 issues that we've studied and developed position
13 statements. The administration of elections is
14 about -- is an issue about which the League has a
15 historic demonstrated expertise. Today we want to
16 present four issues we believe are important for
17 election administration.

18 One, there has been inadequate education
19 of voters about regulation of voter ID.

20 Two, grass roots organizations must
21 increase emphasis on informing, educating and
22 advising voters and potential voters about current
23 laws.

24 Number 3, the Secretary of State's website
25 is not user friendly for individuals seeking voting

1 information.

2 Number 4, officials training election
3 workers must work to identify and discourage sources
4 of intimidation, including loudly identifying voters
5 and their addresses.

6 Because of inadequate education about the
7 law, as we've heard a lot about today, some people
8 don't know that a photo ID will be required to vote.
9 Others are confused about what constitutes an
10 acceptable form of ID or how to attain a Mississippi
11 voter identification card.

12 Today, in the Clarion Ledger, writer Jimmy
13 Gates reported, to date, no ID cards have been
14 issued in Claiborne and Tunica Counties. I'm not
15 sure what that means, but that's a significant point
16 that we need to follow through on. Some uninformed
17 about voter ID might be intimidated to vote or live
18 in areas where voter education is limited. Remedies
19 must be found for addressing the needs of the
20 uninformed voter.

21 Grass roots organizations, schools and
22 religious groups should continue their voter
23 education efforts. The Secretary of State's website
24 devotes 27 pages to explain voter ID. Some poll
25 workers, as we've heard today, do not understand the

1 photo ID rules as listed in the Mississippi Election
2 Code and the current 2014 Mississippi poll workers
3 manual.

4 The Secretary of State's website has 10
5 acceptable photo IDs, including the Mississippi
6 photo ID card. I hold a higher education degree and
7 it's all very confusing to me. Grass roots
8 organizations, including the political parties, must
9 increase their emphasis to fully inform, advise and
10 educate voters by making sure all methods of
11 providing information relating to current voter
12 laws, especially the new voter ID law, are more
13 easily understandable and accessible. It's
14 important for voters to understand this new law.

15 The Secretary of State's office should
16 clarify voting information. One issue that the
17 website offers is an on line site polling place
18 locator, but it doesn't include voters addresses. I
19 checked addresses in six counties on this past
20 Friday, and it gave no polling place information
21 about any of the addresses that I searched.

22 This site could be very helpful if it only
23 worked. Training for election personnel from county
24 officials to election day workers must include the
25 education to discourage all intimidation. While we

1 understand our friends and family and neighbors hold
2 these election workers positions, it's vital to
3 allow all voters to have personal time and privacy
4 to cast their votes. It's intimidating to have
5 one's name and address announced in loud voice.
6 When verifying the voter's identity, poll workers
7 should speak only to the voter.

8 Finally, they must have no negative
9 attitude shown toward any voter who chooses to have
10 someone assist him or her in the voting booth. The
11 League of Women Voters of the Jackson area agrees to
12 protect in everyone's right to vote is very
13 important. And thank you for hosting this hearing
14 today.

15 MR. RUSSELL: Thank you.

16 Ashley McKay.

17 MS. MCKAY: Good evening. I'm Ashley
18 McKay. And I serve as the Executive Director of
19 Tunica Teens Action, a non-profit based in Tunica,
20 Mississippi. A member of the Mississippi Delta
21 Catalyst Round Table under the great leadership and
22 partnership with Southern Echo, and also a board
23 member for the Mississippi ACLU.

24 And I think I came behind the right person
25 because she talked about Tunica County not giving

1 out voter IDs. And I think one thing about Tunica
2 is that we're a little bit unique in a form of our
3 voter education and the historic concept of our
4 people pushing forward in a manner that folks are
5 trying to be as inclusive as possible inside the
6 voting process.

7 I think we have one of the only places
8 that on Saturday where we have a community pride
9 fair, and they'll be giving out free IDs at the
10 community pride fair for people who want them on
11 site. And we have about 200 young people that will
12 be employed through the county this summer that will
13 get county IDs as a mechanism for future tests to be
14 able to use those inside of the voting process.

15 Now, one thing that I have seen throughout
16 the Mississippi delta is when we talk about the
17 election process and how elections will take place.
18 Nine times out of 10 we talk about election
19 commissioners. We're talking about older white --
20 old white women who are the wives of farmers. Those
21 are traditionally positions that have been passed
22 down through generations.

23 And no one really knows those positions.
24 No one really knows the power that those positions
25 hold inside of our communities, inside of our

1 elections. A lot of times we'll win the election
2 one night, get up the next morning, the results are
3 on the way.

4 So, just starting to educate people on the
5 power of election commissioners, the power of the
6 folks who are running these different primaries and
7 things of that sort is even another step of
8 education that we have to do inside of our own
9 places and inside of the Mississippi delta.

10 But I do think that one of the things that
11 we really haven't really looked at is that reverse
12 effect that this is going to have on the white power
13 structure inside of the State of Mississippi,
14 especially inside of the Mississippi delta.

15 We have a problem where a lot of times the
16 white farmer children do not live in the county
17 where they vote. We know of some that will travel
18 as far as Wisconsin to come home and vote in state
19 elections and in local elections. And those votes
20 change the outcomes of our elections normally
21 locally. So, people may not be challenging on the
22 voter ID, but it does give some residency some
23 challenges that are going to be faced.

24 So, you're probably going to hear the flip
25 side where you have not just minority folks

1 complaining that they couldn't vote that day, you're
2 going to have a lot of young white folks saying I
3 couldn't vote at my daddy's address where that's
4 where I've been voting all of my life. But they
5 have IDs that say they live in other places.

6 So, it's also unique in the fact of the
7 matter that we have a trans of population with the
8 casinos being there. We have a huge casino
9 industry, and a lot of people don't have Mississippi
10 IDs, but we have information to say that you can use
11 your gaming badge in order to vote.

12 So, trying to demystify a lot of those
13 different things that are happening inside of our
14 communities about voting, but also changing the
15 structure of what poll managers and poll watchers
16 look like. Not so much as our older people aren't
17 needed inside of these fields. They are. You know,
18 they've done it for a while.

19 But getting those faces of young people to
20 say, Hey, there is no age limit on a poll worker,
21 there is no age limit on a poll watcher. So, why
22 not have some of these young students who are taking
23 American government, who are taking Mississippi
24 studies, who are taking US history, serve as poll
25 watchers, serve as poll managers inside these

1 places?

2 So, bringing in a generation of young
3 people who can make \$80, that really think that
4 that's a lot of money for a whole day's work, to be
5 inside of these processes, and to be able to help
6 their grandparents, their parents who may not want
7 the help from someone else knowing that they can't
8 read inside of these places, but will feel
9 comfortable with another younger person bringing
10 them into this place and say, I can help you, this
11 is how this machine works and this is how we're
12 supposed do things.

13 So, I really think that we have to look at
14 a whole spectrum of not just this particular
15 election, but for future elections to come, how do
16 we start to change the face of what it should look
17 like, and how do we play a part in making it better.
18 Because like the young man said earlier, we can't
19 cry over spilled milk, but we can most definitely
20 wipe it up and figure out how to use it to our
21 advantage under that system.

22 Because let's face it, the other side
23 never admits to loss. They just figure out a new
24 rule with a new play book, and we just continue to
25 try to come back and stand -- which we don't have a

1 rule for, we don't have a play book as to how to
2 combat the craziness. We will think, okay, they
3 can't come up with anything crazier than a poll tax.
4 And then they come up with voter ID. How do we come
5 back crazy? We just continuously fight this battle
6 and say, we're going to continue to fight, we're
7 going to continue to grow.

8 And it is a new poll tax. It is something
9 that our generation has to deal with. But looking
10 at the whole system of how voting happens inside of
11 the state and how people are disenfranchising,
12 because not only by the election commissioners and
13 poll officers don't understand it, our circuit
14 clerks also don't understand it either.

15 And then there's also the problem with
16 people not really trusting government to go inside
17 of these buildings to say, I want my voice heard.
18 The same system that is (inaudible), then we're
19 going to now told to stand up and start really
20 thinking. We're going to have to look at the
21 entirety of the situation.

22 MR. RUSSELL: Question from the
23 commission. Carroll.

24 MR. RHODES: Not necessarily a question,
25 Ms. Gabriel and Ms. Weaver. I noticed y'all also

1 have prepared a text as well as your testimony. I'm
2 just going to ask if we can make the prepared text
3 an exhibit to this record.

4 MS. GABRIEL: Yes. Certainly. I passed
5 it on to you all to make an exhibit to the record.

6 MS. WEAVER: I think you have mine, but I
7 would keep this one because I have sent mine.

8 (Exhibit 4 marked for the record.)

9 MR. RUSSELL: Do either of you have
10 questions for the panel?

11 MR. RHODES: Ms. Gabriel, the reason I
12 asked because I noticed you didn't get to the part
13 about the new poll tax, that was part of your
14 prepared text. And I want to ask you all, how do
15 you y'all see voter ID as being a sort of a poll
16 tax? A lot of people who proposed and are in
17 support of voter ID do not see the poll tax aspect.
18 So, how do you?

19 MS. MCKAY: As a young person who
20 unfortunately had my license suspended up until
21 recently for tickets in college that I conveniently
22 forgot, right, I just went through the process of
23 getting my license reinstated because I didn't know
24 that my license was suspended up until they expired.

25 So, going to go get a new license, luckily

1 I didn't drive over there that day, I found out,
2 okay, you have tickets in three different places.
3 But I was fortunate enough to have family to say,
4 well, it came out to almost 900 bucks, trying to get
5 these license reinstated. But when you look at
6 other folks who aren't as fortunate to say, we can't
7 pay this particular amount to get this thing
8 reinstated so that you are valid, how does that play
9 a part?

10 We have young men who are afraid to go in
11 to the DMV because they don't know if they have
12 warrants, whether it be for something criminal or it
13 be for child support. So, how do you say you are
14 not allowed to vote because you have warrants for
15 child support and you have the possibility of going
16 to jail because of something personal you may have
17 done, right?

18 And even looking at the notion of having
19 go to these different places, having to take off
20 work, the criminal aspects of it. So, looking at
21 all of these different things that play a part in
22 people having to get that ID, or the notion that I'm
23 not -- I don't -- I can't even ask a young person to
24 say, sign this affidavit to say that you don't have
25 ID.

1 Because they ask for that, right? You
2 have to sign a written affidavit to say that you
3 don't have an ID. When young people -- their
4 affidavit, you immediately think jail. No, I don't
5 want to go to jail for voting, right? I think that
6 we thought that we were past that point in our
7 society where folks were being jailed asking for the
8 right of vote. And it's almost if we were right
9 back in that same space.

10 So, how do we push forward inside of this
11 situation to say these are things that are
12 happening, and these are reasons why a lot of young
13 folks are saying, I don't want to try that right
14 now. And we as organizers on the floor and on the
15 ground have to really take those things into
16 considerations when we go to asking young people
17 about do they have proper identification.

18 MS. GABRIEL: I just want to add to what
19 Ashley was saying. Also, in my experience in the
20 field when I talk with some of these women who work
21 at chicken plants, where you can't take your phone
22 inside, you pretty much have a locker, you leave all
23 your stuff in your locker; how are you going to do
24 business from 8:00 to 5:00 if everyday you work 8:00
25 to 5:00 and the clerk's office only open from 8:00

1 to 5:00?

2 So, if counties are not doing like Tunica
3 has been doing on Saturday, I'm never going to be
4 able to even try to do the poll tax. So, it's
5 almost like the bubble question that Mr. Johnson
6 said earlier; how many bubbles are in a bar of soap?
7 Well, how is a woman who works at a chicken plant
8 get an ID from 8:00 to 5:00 when she works everyday
9 from 8:00 to 5:00? It doesn't happen. It's almost
10 impossible.

11 So, the poll tax have changed. It's not
12 the same as asking the same questions, but I call it
13 Colbert things right now, I call it propaganda,
14 right, where you put this propaganda out and you get
15 this free ride, this free ID really easily, but they
16 don't tell you the requirements to get that free
17 ride and ID, right?

18 A friend of mine who's not here, I wish he
19 could have stayed, he's created -- he made about
20 10,000 push cards they call it with his own money
21 saying if you need a free ride, call this number. I
22 said, "You look like the Secretary of State. This
23 is not even what's accurate in your community." I
24 said, "Have you called the number?" He said, "I
25 haven't."

1 So, once he called the number, he said, "I
2 got to change that." I said, "Exactly, because it's
3 not just a free ride, it's not whole heartedly."
4 So, on paper these things look one way, but in
5 reality, it's so very different. So, I'm in the
6 middle, and I'm in Coahoma County, right, and this
7 poll worker knows who I am, has known me all of my
8 life, and now they're asking for me to have an ID.
9 Well, how do you vote absentee, right?

10 They don't even answer that question for
11 you if you don't have an ID, how you vote absentee.
12 So, we look at the notary law, and found that if
13 you -- if the notary -- let's say Ms. Weaver is a
14 notary, Ashley and Ashley know who I am, and I can
15 go to this notary with their IDs, by law, that
16 notary can satisfy my identity.

17 That's not even anywhere in the Secretary
18 of State's information. I had to go to another
19 place to find that out. When people are asking me
20 that on the ground, she said, Well, I'm a notary, I
21 didn't even know that, right? So, it's just
22 confusion. It's a tax on the people, on your time.
23 So, it's not the same humiliation that maybe you
24 have to ask how many bubbles in a soap, but it's
25 still impossible. It's still a large hurdle for us

1 to overcome for the average, everyday worker.

2 MR. RUSSELL: Mr. Morse.

3 MR. MORSE: I have a question for Ashley,
4 because about six years ago or so I participated in
5 protective vote, and probably talked to you and
6 probably ended up talking to you Carroll before it
7 was over.

8 My topic is about a topic that hasn't yet
9 not been brought, which is presence of law
10 enforcement in polling places. In particular, the
11 occasion that I had to deal with was, I was able to
12 deal with because I knew the chief of police and
13 could tell him to back up. Lighten up polling
14 places with police cars and flashing lights, and
15 basically scaring off people, not only folks who
16 might be unwilling to go and walk past law
17 enforcement, but also the older folks who were
18 afraid to walk into a place where maybe there was
19 some violence.

20 What kind of experience have y'all had
21 called in on that kind of topic?

22 MS. WICKS: I know that we had at least
23 one young man that went to a polling place, and
24 threatened to call the police on him. I don't
25 recall any specific incident of the police being

1 called or outside with their lights on. But I know
2 that we had an incident where there was a young man
3 at a polling place, and they threatened to call the
4 police on him if he didn't leave.

5 One of the good things that one of the
6 Voices have been working on is not only are we
7 taking in information when they call in, but we
8 catalog that, and they're developing a way to follow
9 up on these calls.

10 So, let's say if that was a complaint that
11 there's a police presence, then not only -- you just
12 don't have that complaint made that day, they're
13 developing a process that we can follow up in the
14 interim between elections.

15 MR. MORSE: The other question that I have
16 related to this notion of losing drivers license as
17 being like a poll tax, because what strikes me about
18 it is it's different than lots of other debts that
19 people end up owing the government. There's a lot
20 of other debts where the consequence of not paying
21 it doesn't mean you lose your license.

22 Failure to pay payroll tax, you get a lien
23 against your property. You don't pay your state
24 property taxes, your local property taxes -- there's
25 a whole lot of other things that related to property

1 ownership where, you know what, they're not going to
2 yank your license, they're just going to attach a
3 debt to your property.

4 But with this particular area -- with
5 misdemeanor criminal stuff as well as felony stuff,
6 particularly misdemeanors and failure to pay these
7 traffic debts, you see that I think
8 disproportionately weigh upon communities of color.
9 And I'd like any of the panel's thoughts about that,
10 whether I'm on track or not.

11 MS. MCKAY: That is extremely true,
12 because like the young man said earlier, black
13 people are six times more likely to get stopped by
14 the police, so you're six times more likely to
15 actually end up inside of the system.

16 To your point earlier when you talk about
17 the police presence at the precinct, I think we have
18 to look at it even as a step farther that we're not
19 bringing a police presence inside your home when you
20 go to call for this particular ride for women of
21 color who may be on governmental assistance.

22 I don't want to be answering these types
23 of questions to a government agent on the telephone
24 about who may be in my house, what types of IDs I
25 have, where I'm living, where is my address, all of

1 these different questions when I know that this
2 could possibly transfer up to my food stamps case or
3 my WIC case or my Medicaid case, right?

4 So, there's this whole notion of
5 confidentiality, but do I trust the government
6 enough to give them all of this information in order
7 to be able to vote? So, the police are now inside
8 of the process where you wouldn't even think they
9 would be because of sitting over here now having to
10 think, did I tell the whole truth when I filled out
11 all of this paperwork? Has anything changed since I
12 filled out this paperwork? Do I have to go back and
13 look at all of these different things? Do I want
14 these people inside of my home and inside of my
15 business when it comes to me just wanting to go and
16 cast a ballot?

17 Those are questions that should be arising
18 inside of our community, but those are questions
19 that people are having to deal with.

20 You know, you asked me to talk about the
21 mother who works 8:00 to 5:00. Where is she
22 supposed to find child care for her children on a
23 Saturday to be able to go and get this particular ID
24 if it's even offered on a Saturday. Day cares
25 aren't open. There may be family, there may not be.

1 So, looking at all these different way to
2 say that this is a poll tax, this is something that
3 creates an unnecessary burden on families, on
4 individuals and on community that should not be put
5 in place inside of our different precincts and
6 inside of our different everyday lives. These are
7 questions that, like I said, we thought we passed,
8 but these are questions that are still arising
9 everyday.

10 And I don't think a lot of times they are
11 brought to the forefront to say that these are going
12 to be some issues inside of our communities. And we
13 have to address those on the ground and inside of
14 these spaces where people have those questions.
15 When we talk about what is a valid ID, and there is
16 a clause in it that say as long as it's not expired
17 10 years. So, how is it valid if it's expired,
18 right?

19 So, looking at all of these different
20 questions and the confusion, but also looking at the
21 everyday person not wanting to put themselves out
22 there just to go vote.

23 MR. JOHNSON: At this point we're going to
24 begin to transition and take questions from the
25 audience. Before we do that, I want to ask

1 Ms. Wicks who has to get back to the office, do you
2 have any final comments or are there any questions
3 for her?

4 Ms. Wicks, do you have any final comments?

5 MS. WICKS: Well, no. I think
6 the election -- no earth shattering comments. I
7 just want to stress the importance of not only the
8 importance of election protection, not only that one
9 day, but the follow-up after it, to make sure that
10 the voting process is fair and that people have
11 information. Sometimes just being able to call and
12 ask makes the voter feel better and more empowered.
13 It doesn't make them feel bitter about the whole
14 process.

15 MR. JOHNSON: Thank you. Let's give her a
16 hand.

17 Questions or comments from the audience.
18 Mike Sayer.

19 MR. SAYER: Mike Sayer, Southern Echo,
20 Jackson, Mississippi. I'm going to try to make two
21 points in three minutes.

22 So, here's my question for us to consider:
23 What is the essential ingredient or element in poll
24 taxes, literacy tests, constitutional
25 interpretations, and voter ID? What's the unifying

1 element or the similar element in each one?

2 It's not money. Money may be involved in
3 poll taxes and voter ID. The essential quality of
4 each of those four devices, three of which came out
5 of the 1890 constitution, and voter ID which came
6 out of the referendum a couple of years ago. Is
7 that it was designed to create and undo burden on
8 the voter to depress voter participation? That's
9 the unifying quality. That's the historical
10 connection.

11 Second thing I wanted to say is, even more
12 than ever, having trained, strong, effective poll
13 workers is going to be critical if we're going to
14 monitor how the voter ID is implemented. That means
15 they have to be willing to get up close and personal
16 near the table. The state handbook from the
17 Secretary of State says very clearly that you have a
18 right to be within hearing distance and within sight
19 distance.

20 And if you're a poll watcher sitting 25
21 feet away or 50 feet away just watching the
22 proceedings, you're not going to be able to hear
23 what's going on, see what's going on, see what the
24 attitude or questioning is, see what the denial is
25 or what the grand is. And training is essential to

1 that process. And when we're training poll workers,
2 we also can reach out to the -- poll watchers,
3 training poll watchers, we can also reach out to
4 poll workers and the poll managers. Many of who
5 voluntarily come to the training and participate.

6 It's really critical. I've been in so
7 many situations where I walked into a polling place
8 and seen our poll watchers talking to each other,
9 you know, passing the time of day, they don't have a
10 clue as to what's going on. My point is not to be
11 critical, but to be alert to what it really takes to
12 do an effective poll watching job.

13 MR. RUSSELL: Other questions? Yes, sir.
14 Please give us your name.

15 MR. GARNER: I've got some handouts, or a
16 handout to give everybody.

17 MR. JOHNSON: State your name for the
18 record.

19 MR. GARNER: I'm John Garner. I must say
20 that I'm proud to say that I have a grandson who's
21 poll watching -- I mean poll working because he
22 registered to vote on June 3rd. He won't be 18 yet.
23 He won't be 18 until June 4th, so we're trying to
24 get some really young folks involved in the process.

25 I'm interested in trying to see what the

1 impact of voter ID is. And you'll see from this
2 handout that I think we -- one thing that I hope you
3 folks can do is get people to come to the polls and
4 collect this information. That will help us tell
5 how impact -- what the impact is.

6 You'll see the first thing is the number
7 of people who voted without an ID, and then the
8 number of people who voted an affidavit ballot, and
9 then the number who had no voter ID, but just left
10 without voting. The number of people who had and ID
11 and voted using a machine, the regular way, or paper
12 ballots, whatever. The number of challenged
13 ballots. The number who left without voting for
14 another reason.

15 And then we need to look at affidavit
16 ballots, I think. I'm going to try, if somebody
17 gets to vote that affidavit ballot, to record their
18 name and contact information. And then they have
19 to, in order for that -- to vote, they have to go
20 get an ID within a week. So, by June 10th. I want
21 to try and keep up with -- actually go down to the
22 election commission and find out how many people
23 actually qualified of those people whose names I
24 get, and then, even though they have an affidavit
25 ballot and qualified, to get that vote actually get

1 counted.

2 So, I think these are things that we might
3 want to look at and see what the impact of voter ID
4 is. I hear that in the rural counties where people
5 know -- everybody knows everybody, they may just
6 kind of ignore voter ID. I know who you are, I'm
7 not going to require a voter ID.

8 End of comment.

9 MR. JOHNSON: Thank you. Any other
10 questions or comments?

11 MS. EVANS: Lynn Evans. May I make one
12 other comment? You know in Afghanistan where we've
13 been trying to promote democracy? All you have to
14 do to be able to vote is hold up your hand. And if
15 you have purple ink on your finger, you can't vote,
16 but there's not another reason to turn you away. We
17 could try that here.

18 MR. JOHNSON: Any other comments?

19 MS. ROSE: I have a question. In order to
20 get a voter ID, do you not have to present your
21 birth certificate?

22 MS. GABRIEL: No, ma'am, you don't have to
23 present your birth certificate. There are several
24 things that you can present to the clerk's office.
25 So, there's something that was written that said the

1 Secretary of State had discretion, and he added six
2 different things.

3 So, your birth certificate is one thing.
4 You can have your Social Security card, your
5 Medicaid card, your Medicare card, utility bill, IRS
6 W2 statement, a bank statement that's not six months
7 older. So, all those things that I listed is six
8 that the secretary has. We can get you a user
9 friendly, and I can write it all down for you on a
10 sheet of paper so you can take it back to your
11 community.

12 But that's the one thing that they have
13 done. But it's kind of hard to find on their
14 website, right, where all this stuff is. So,
15 there's six additional things that the Secretary of
16 State will allow, so that the house bill that passed
17 gave him discretion to add a couple of things, and
18 those couple of things are things that we have
19 readily available, light bill. So, I say light
20 bill, water bill, and then application. But the
21 application you have to go get from there, you
22 cannot get it on line, unless we go get it ourselves
23 and start Xeroxing it --

24 MS. ROSE: On the light bill, does your
25 address on the light bill have to match on the voter

1 role?

2 MS. GABRIEL: That's what they're saying.

3 MS. ROSE: So, now when you talk about the
4 question was asked about poll tax, then that's where
5 if you're not there -- like in my situation, my
6 light bill -- if I had that problem, I don't have
7 that problem. But my light bill is under my
8 mother's name, but I pay the bills.

9 So, when you talk about poll tax, you're
10 still talking about it's just a new name for it.
11 You still got to go and pay to get something --

12 MS. GABRIEL: Yes, ma'am. You're
13 certainly right.

14 MS. ROSE: -- to identify yourself. So,
15 that's how the poll is. It constitutes poll tax
16 even though it's not called poll tax. We know now
17 everything has a new name. When you talk about
18 charter schools, we know what that is. Like charter
19 schools, that's a new name. Everything 50 years
20 later has come to get renamed.

21 MS. GABRIEL: Yes, ma'am. You're right.

22 MS. ROSE: But we as civil right workers
23 know that it's the same thing, because a lot of
24 people in this room have not been through what we
25 have to understand that.

1 MS. GABRIEL: I was told today -- I'm not
2 from here, but this is a reunion of all of y'all,
3 it's like a family reunion of everybody in the room.
4 Y'all knew each other just about, for the most part.
5 So, still today we haven't reached the masses with
6 our information. What you're saying, you and I both
7 know it, when you say we're here together, because
8 with both know what that looks like, right? And if
9 you're not eligible for this free ID, how much does
10 it cost? You put that out there. There's no cost
11 for it, right, it's a propaganda.

12 MS. ROSE: But that was in the detail.
13 The voter ID might be free --

14 MR. JOHNSON: We going to have to begin to
15 bring this panel to a close. We'll let Attorney
16 Rhodes make a final comment, then we want to
17 transition to next panel before we adjourn at 5:00.

18 MR. RHODES: And my comment goes to
19 questions ask and answer given, and Mike's question
20 earlier about the difference between the Secretary
21 of State's regulations and the statute.

22 The statute -- and I just want everybody
23 to know that statute controls under Mississippi law
24 Section 23-15, 563. It's a voter identification
25 requirement law in Mississippi under Section 2.

1 Identification required includes: A, current valid
2 drivers license. B, current and valid
3 identification card issued by any branch or
4 department of the State of Mississippi. C, current
5 and valid United States passport.

6 D, current and valid employee
7 identification card containing a photo ID. E, a
8 current and valid Mississippi license to carry a
9 pistol or revolver. F, a valid tribal
10 identification card containing a photograph of
11 elector. G, a current and valid United States
12 military identification card. H, a current and
13 valid student identification card containing
14 photograph. And I, an official Mississippi voter
15 identification card containing a photograph.

16 That's it. Secretary of State has
17 expanded that.

18 MS. GABRIEL: Yes. In that law, if you
19 turn to the next page, you're going to see that they
20 gave him permission to do so.

21 MR. RHODES: Not in the current statute.
22 Regulation, yes. But not in the current statute.

23 MR. JOHNSON: Which goes to what Mike
24 raised earlier.

25 So, we're going to go ahead at this point

1 and begin the transition of panel. If you would,
2 reserve any questions you may have after we
3 transition. Let's give this panel a hand.

4 At this time we're going to ask our fourth
5 and final panel to come up. Ms. Lexi Elmore, Dr.
6 Scott Crawford, Ms. Shirley Walker, Mr. Mike Sayer,
7 and Mrs. Jean Everett, come forward, please.

8 As we transition, we're going to ask that
9 our panelists give a five-minute opening comment.
10 We're going to start with Dr. Walker. If you would
11 start us off and go from there -- I'm sorry,
12 Dr. Crawford.

13 DR. CRAWFORD: Scott Crawford. I
14 appreciate the opportunity to be here. My name is
15 Dr. Scott Crawford. I am a retired clinical
16 psychologist. If you're wondering why I'm speaking
17 this way, my vocal cords are paralyzed. I have a
18 progressive form of multiple sclerosis. Actually,
19 I'm yelling right now.

20 So, I volunteer for several advocacy
21 organizations in the area, Mississippi Collision for
22 Citizens with Disabilities, Living Independence For
23 Everyone, and Disability Rights Mississippi. I'd
24 like to read my prepared comments.

25 In 2008, a friend who was blind attempted

1 to vote at her precinct in Ridgeland. The
2 accessible machine was not assembled and the poll
3 workers were not trained in its use. There was no
4 operation manual on site. The poll workers wanted
5 her to let someone fill out the ballot for her. She
6 declined, got a chair, and sat in front of the poll
7 worker table while calling Shirley Walker at
8 Disability Rights Mississippi to report the problem.
9 She sat there for a few hours until the machine was
10 assembled. They figured out how to operate it. But
11 eventually, she got to vote privately.

12 In 2011, after moving to West Point, Clay
13 County, she informed county election officials that
14 she would need an acceptable voting machine. The
15 officials were unfamiliar with the technology and
16 thought it was a Braille machine. My friend had to
17 explain that it functions using audio and a key pad.

18 By the following election in 2012, they
19 acquired the accessible voting machine, but it
20 malfunctioned. She was sent home because a
21 technician had to be called from Starkville. Five
22 hours later, they called her back and she was able
23 to return to the precinct to vote. She filed a
24 complaint with the Secretary of State's office.
25 This was 2012.

1 Now, about a decade ago the Secretary of
2 State's office asked the Mississippi Collision for
3 Citizens with Disabilities to survey Mississippi's
4 polling placings. Among the problems encountered
5 were precincts that were totally inaccessible to
6 people with disabilities. Make shift ramps that
7 were unstable or unsafe. Precincts too small to
8 accommodate wheelchair users. No privacy for people
9 using wheelchairs. No signage for "accessible
10 entrances" or entrances that were locked.

11 Parking designated as "accessible," but
12 was not, either because it was not on an accessible
13 route, it was too small, it was gravel, or it was
14 unlevel, or an insufficient number of accessible
15 parking spaces. In some instances, polls were
16 relocated to a small storage building on private
17 property. They were found full of personal items,
18 and the surveyor was told that they were removed
19 during the election.

20 Even here in the Capitol of Mississippi,
21 as late as a few weeks ago, election officials were
22 reluctant to place accessible voting machines at all
23 of the polling sites. There's nothing more sacred
24 than an individual's right to vote. A recent study
25 by the Research Alliance for Accessible Voting in

1 2012 showed that, like most others, people with
2 disabilities prefer to cast their ballot in person
3 at their polling place.

4 Of those that do vote absentee, 40 percent
5 do so because they expect difficulties either
6 getting to or accessing the polls. Indeed, in the
7 2012 voting cycle, 30 percent of people with
8 disabilities actually experience polling place
9 problems, three times the rate of non-disabled
10 voters. Whereas curbside and absentee voting is a
11 valuable option upon request, it is not equivalent
12 to being welcomed into the polling place like
13 everyone else and casting a vote in person privately
14 and independently as guaranteed by the help of
15 American Vote Act.

16 To this end, we ask that people with
17 disabilities be included in the Voting Rights Act,
18 providing remedies for historic exclusion of the
19 voting process. Doing so will go a long way to
20 address the failure to make polling places
21 accessible by providing a fast track to court and
22 lowering the standard of proof to an action or
23 policy that has discriminatory effect, not proof of
24 intent to discriminate as it is now.

25 It is 2014, and we should have learned by

1 now that separate has never ever equated to equal.
2 Our job will be done when people with disabilities
3 expect their precinct and the voting process to be
4 readily accessible and usually friendly.

5 That concludes my comments.

6 MR. JOHNSON: Thank you, Dr. Crawford.

7 Next we will have Ms. Shirley Walker.

8 MS. WALKER: Good afternoon. I'm Shirley
9 Walker, and I'm the voting outreach coordinator for
10 Disability Rights Mississippi. I'd like to thank
11 y'all for your efforts today in hearing what
12 everybody has to say.

13 Disability Rights Mississippi is the
14 federally funded governor designated private,
15 non-private agency mandated to protect and advocate
16 for the rights of individuals with disabilities
17 statewide.

18 In addition to our own mission, we aim for
19 the collective purpose of the non-profit sector
20 which ultimately is supposed be to help create and
21 sustain stronger communities, but how strong is a
22 community that is not also inclusive of all of its
23 members, and how inclusive is a community that does
24 not make it a priority to consider the needs of all
25 voters in regards to access to the ballot?

1 The most fundamental right of citizenship
2 is being able to cast a ballot privately,
3 independently, in the setting of one's own
4 community, and is the primary means in which one is
5 able to have their voice heard. Disability Rights
6 Mississippi is bipartisan, but we strongly believe
7 anything other than fully inclusive and accessible
8 voting sites and practices can only be viewed as
9 voter suppression and discrimination.

10 DRMS provides advocacy for voting rights
11 and accessibility in addition to all of our other
12 programs and services with the ultimate goal being
13 to promote and increase participation of voters with
14 disabilities in the electoral process. We have
15 endeavored to make a difference in the voting
16 experience for the individuals we serve as well as
17 any other person who benefits from learning more
18 about how to take part in (inaudible).

19 I highlighted some of the continuing
20 issues we have found to be problematic includes, a
21 lack of consistency. We have thousands of precincts
22 in Mississippi that have their own way of doing
23 things. There is no clear-cut and consistent rule
24 that each county and city handles it the same way.
25 And this creates confusion, especially when it comes

1 to education of election officials, circuit clerks
2 and poll workers concerning sensitivity, etiquette,
3 and the rights of the voter with visible and
4 non-visible disabilities.

5 Curbside voting. We have found that when
6 we bring a barrier or accessibility issue to a
7 polling site bailiff or election commissioner or
8 poll worker, their standard response is, we have
9 curbside voting, so it's not an issue. It's a
10 blanket statement, and it's provided many election
11 workers with a false sense of being accessible.

12 When we conducted polling site surveys
13 with each staff member taking on an average of
14 eight sites, each one came back with deficits and
15 accessibility concerns. And curbside voting was the
16 answer when they raised the concern on site.
17 Curbside voting at its best still creates a
18 disconnect, but ultimately it segregates voters with
19 disabilities from their neighbors.

20 Physical deficits. We have consistently
21 witnessed issues with improper signage, doors that
22 are too heavy, no curb cuts, no ramp to address a
23 step into a building, lacking accessible parking and
24 gravel pathways, impossible to maneuver in a
25 scooter, wheelchair or walker. And all too

1 frequently, the lack of an accessible machine or
2 problems with poll worker knowledge on how to
3 properly operate the accessible equipment when it is
4 present.

5 Attitudinal barriers. Unfortunately, we
6 have experienced situations with voter
7 discrimination and intimidation that have occurred
8 just in the past couple of years. In one rural
9 community, a radio personality publicly mocked
10 individuals from a facility and condemned the staff
11 members that had assisted them in casting their
12 ballots.

13 Then a group that called itself Committee
14 for Change sent a letter to the same facility's
15 director, basically threatening her, claiming and
16 making the judgment that the individuals that were
17 being brought to vote were not mentally competent,
18 and the assistance being provided to them was
19 illegal.

20 Another example of this barrier was an
21 incident where a community had an election
22 commissioner meeting, and one of the trainers was
23 stating that any resident from a facility brought to
24 vote in groups by van or by bus would be turned away
25 and told that they couldn't vote on an upcoming

1 primary election.

2 Voter ID. We don't yet know how voter ID
3 is ultimately going to impact voters with
4 disabilities, but already, as we've heard today,
5 we've experienced confusion and fear. In general,
6 there are some good state and federal laws for
7 people with disability, but implementation, making
8 accessibility a priority, lack of knowledge, and
9 preconceived attitudes create continuing problems.

10 In conclusion, while it is true that
11 indelible strides have been made when it comes to
12 voting rights, it is also just as clear that there
13 are still miles to go, and it starts with education.
14 The most challenging barriers are attitudinal based
15 on ignorance and fear. These attitudes lead to
16 disrespect and its empowerment of voters
17 disabilities.

18 Changes in knowledgeable and attitude can
19 be achieved through education of election officials
20 and poll workers, and by including voters with
21 disabilities in the electoral process. Every poll
22 worker must understand and buy into the belief that
23 their primary role is to help create stronger
24 communities, and that only then is the process just
25 an equal.

1 MR. JOHNSON: Thank you, Ms. Walker. Next
2 we have Ms. Lexi Elmore.

3 MS. ELMORE: Let me say, good afternoon.
4 My name is Lexi Elmore, and I am the president of
5 NAACP in McComb, Pike County area. I am here to say
6 that voter apathy has actually set in because of the
7 distance the voter have to travel to vote.
8 Approximately 18 to 20 miles some of our voters have
9 to travel to vote. And in some instances, as we all
10 know, that can be very discouraging, especially when
11 there is no transportation. And we believe that
12 this is a major problem, and one of the reason the
13 voter turn out is so low.

14 Another area that I would like to talk
15 about is, before the redistricting took place in
16 McComb, Pike County, the voters, we would all vote
17 at the same polling place during election. That's
18 the city election and the county election. Now, the
19 city board in McComb, Mississippi decided to change
20 the polling locations. We in the City of McComb
21 vote in one location, the people in the county would
22 vote in another location. And this has caused a
23 ball of confusion.

24 Another area that I would like to touch on
25 quickly is switching polling places that was

1 predominately a black polling place. The city and
2 the county decided that they will switch those
3 polling places to a predominately white church in
4 the Pike County, McComb area. For instance, we had
5 one candidate who was very popular. He had an
6 excellent chance of winning, and he did win. And we
7 feel because of that, the people in that area
8 decided to switch that polling place, which was in a
9 predominately black location, to a white church.
10 And those are some of the reasons that I think that
11 caused a lot of voter apathy, and also voter
12 suppression in the Pike County, McComb area.

13 MR. JOHNSON: Thank you, Ms. Elmore. And
14 finally, we have Ms. Jean Everett.

15 MS. PAINE: I am not Jean Everett. I am
16 Deidra Paine speaking on behalf of Jean Everett, who
17 is President of the League of Women Voters of
18 Mississippi. And I have given the recorder our
19 statement.

20 First of all, we want to thank you for
21 allowing us to speak to the panel. The League of
22 Women Voters of Mississippi exists to encourage,
23 inform an active participation of citizens in
24 government, and strive through education and
25 advocacies to influence public policy.

1 The League of Women Voters began in 1920
2 as women gained their right to vote. And we
3 expanded our ranks and opened them to men in 1970.
4 So, we urge all of you gentlemen to join us. And we
5 have information on joining the League with us
6 today.

7 Voters are the heart of the League's work.
8 Our position on voting rights is, the League
9 believes voting is a fundamental citizen's right
10 that must be guaranteed. Making democracy work is a
11 trademark phrase that sums up what the League of
12 Women Voters is. Hand-in-hand with voting is the
13 issue of apportionment. Voters need to know their
14 votes will count for something. Our National and
15 State League's have positions that reflect this
16 value.

17 In the most recent redistricting cycle of
18 2011, our Mississippi League sent a letter to the
19 state committee on reapportionment. Our then
20 President Fran Leber, who is with us today, wrote
21 urging the committee in her words to adhere to all
22 constitutional and Voting Rights Act requirements to
23 promote competitiveness and partisan fairness, and
24 respect political subdivisions and communities
25 interests and geographical compactness.

1 She reminded them that to achieve
2 representative democracy, redistricting plans must
3 be drawn in a manner that allows elective bodies to
4 reflect with the diversity of populous. The League
5 called for redistricting to be transparent and open
6 for public participation through the entire process.
7 As the redistricting plans unfolded, we saw there
8 would be no transparency. Changes in the house
9 districts that included loss of exceed in the delta,
10 adding new districts and the spectra of future
11 face-offs for present representatives with others of
12 their own party, and other results unforeseen seemed
13 motivated by partisanship and racial gerrymandering.

14 On a more positive note, however, the
15 Senate plan seemed influenced much less by those
16 forces of partisanship. As the National League
17 considers future redistricting cycles, we have
18 released a paper entitled "Shining the light,
19 redistricting lessons learned in 2011."

20 It is available on our website,
21 www.lwv.org. The National League intends to
22 advocate for formalized transparency and public
23 participation, and to pursue binding partisan
24 neutral criteria that reflect the diversity of each
25 state, including racial and ethnic diversity, as

1 well as communities of interest.

2 That paper further states that now, more
3 than ever, the League and similar organizations need
4 to collaborate and partner to meet the challenges of
5 redistricting reform. We therefore ask that
6 everyone make it your work to contact your
7 representatives, to write letters to your editors,
8 to take part in on line forums to protect our right
9 to vote.

10 MR. JOHNSON: Thank you, Ms. Paine. Now
11 we have Mr. Michael Sayer.

12 MR. SAYER: Who is the best looking guy on
13 the panel. Also the worst looking guy on the panel.

14 I was asked to talk about rural areas.
15 I'd like to try to tell a story to illustrate the
16 point that I want to make -- the points that I want
17 to make.

18 Drew, Mississippi, that's D-R-E-W, is in
19 northern Sunflower County in the heart of the delta.
20 Drew is 30 miles north of Indianola, the county
21 seat, which is where the citizens councils were
22 created, white citizens councils were created in
23 1955 in opposition to Brown versus Board of
24 Education.

25 Drew is 10 miles north of where Senator

1 Eastland -- infamous Senator Eastland had his
2 massive plantation in Doddsville. And it's
3 seven miles south of where the infamous Parchman
4 penitentiary still exists. About 12 years ago, Drew
5 had what turned out to be a transformation election.
6 The Municipal Board of Alderman -- let me back up a
7 step.

8 Sunflower County was 68 percent black at
9 the time. And the little Town of Drew was a very
10 small town, was majority black. Never had a
11 majority black municipal board. And at the time, 20
12 years ago, they had three whites and two blacks.
13 And one of the whites left the board for reasons
14 that I do not now remember.

15 Johnnie Johnson, who was head of the local
16 Grass Roots Organization, was running for Municipal
17 Board, and had a good chance of winning because they
18 were doing a hell of an organizing job. So, they
19 had the election. And I wasn't there in Drew, but I
20 got a call at home that night about 7:00 p.m. when
21 the polls were closing. Johnnie was on the phone
22 frantically saying, You have to talk to the police
23 chief, he's right here.

24 I said, "Why?" She said, Because he's
25 lifted me up off the ground and is about to throw me

1 out of the polling place. I said, "Why?" She said,
2 Because they've ordered all of the poll workers and
3 poll watchers out of the building before they seal
4 the boxes. Before they seal the election boxes.
5 Before. They didn't want anybody present. So, I
6 said, "Okay. I'll talk to him." The police chief,
7 of course, wouldn't talk to me. Why should he,
8 right?

9 Make that part of the story short, of
10 course, she lost the election, brought a suit to
11 overturn the election on several grounds on election
12 misconduct by the officials, not to mention sealing
13 the boxes after everybody was pushed out of the
14 building. So, they had a reelection, a new
15 election.

16 I was -- I became a poll watcher for that
17 election. It was expected in the morning from about
18 7:00 to 11:00 the white community would vote, which
19 they did in large numbers. It was expected that the
20 black community wouldn't turn out until the
21 afternoon when there was a shift change at Parchman
22 penitentiary. People coming to work would vote
23 first before they went to work, people leaving work
24 would come afterwards.

25 Well, some time between 1:30 and 2:00, the

1 poll manager, elderly blue-haired white lady who
2 happened to be the grandmother of Payton Manning,
3 and what's his brother's name, Eli Manning, and
4 mother to Archy Manning. I should know my Mannings
5 by now, right? She fought all day long about where
6 I was going to stand. I told her she wasn't going
7 to move me one inch. So, she threatened to have me
8 arrested. I said, "Go ahead. There are two federal
9 observers right over there taking it all down.

10 Between 1:30 and 2:00, she approached the
11 back of the three poll workers and said, Place your
12 voting rolls under your seats, which they did. And
13 she then proceeded to pull out a new voter list to
14 be used in the afternoon by each of the poll
15 workers.

16 Now, think about that. Two voting lists
17 with the same election on the same day for the two
18 different communities. Don't you think that the
19 second polling list was somewhat disadvantaged to
20 the black community, right? Well, make a long story
21 short, I raised wholly hell, and they did not use
22 the separate polling list. That's what I was
23 talking before about having a well-trained, strong
24 and effective poll watcher to fight right then and
25 there.

1 But the point is, this is a tiny town, a
2 really tiny town. These are the kinds of things
3 that can go on if you're talking about what is the
4 impact of clearing out the protections that people
5 expect to have. I mean, I invoke the Voting Rights
6 Act up one side, down the other for things that were
7 never in the Voting Rights Act, but she didn't know.
8 And I sounded very authoritative, if I may say so
9 myself.

10 Are you an attorney? Yes, I am. That
11 kind of thing. The point is that we are going to
12 have going to be so vigilant as voter ID, which is
13 maybe the second generation, right, but we don't
14 know what the third generation yet holds, you know,
15 what other devices are going to be added to this.
16 And we're going to have to be vigilant at the policy
17 level, at the implementation level, and especially
18 in small towns where people do not have ready access
19 to a pool of attorneys, you know, who can jump, you
20 know, across the street to your downtown and help
21 out.

22 Do I have time?

23 MR. RUSSELL: No, but go ahead.

24 MR. SAYER: About the same time in --

25 MR. RHODES: Who won the election?

1 MR. SAYER: In the second election,
2 Johnnie won far and away, no question about it. I
3 guess I forgot to tell you.

4 In Kilmichael, which is an even smaller
5 town in eastern Montgomery County, and Mary Young
6 was elected mayor in that election. She is sitting
7 in the middle. That was also transformation. That
8 was the first time that we won a majority of -- it
9 was the first woman mayor and first black mayor of
10 Kilmichael, also the first majority city board in
11 that history of that town.

12 This was strange. I have been a poll
13 watcher in that election, and I got real close when
14 they were counting the ballots. And I tried to help
15 them throw out the ballots that were bad ballots. I
16 wanted to make sure that they weren't accepting
17 where the checkmark wasn't anywhere near the box and
18 that sort of thing. I mean, I was kibitz -- I had
19 no right to, but I was kibitz.

20 So, as it turned out, Mary won. And one
21 of the three elections actually ended in a tie.
22 Okay. And they flipped a coin to see who won that
23 one. But then, the white community was outraged and
24 thought that I had done something to tilt -- you
25 know, the hand on the pinball machine, and I had

1 tilted it. They demanded a recount, which is not
2 provided for under Mississippi law.

3 And I argued that and they didn't care.
4 They went and held the recount. And we had Carl
5 Reeves ready to come down and file an injunction.
6 And I tried to represent my clients in that room.
7 And the police chief took me under one arm and the
8 sheriff took me under the other arm, lifted me up
9 and removed me from the room so that I couldn't
10 participate in the recount processes.

11 So, I waited patiently outside. And at
12 the end of the recount Mary's margin went up, and
13 the three black alderman, their margin went up. All
14 the votes that they put back in were our votes.
15 They put them all back.

16 But, again, that's just small down
17 politics. The poll manager was so outraged at my
18 aggressive participation that they called the
19 Secretary of State to send down an assistant
20 attorney general to monitor the election. So, the
21 gentleman came down, and I introduced myself to him.
22 I figured if I could have (inaudible) and meet him
23 and whatever. So, what kind of work do you do at
24 the attorney general's office?

25 It's securities and tax. I said, "Have

1 you ever worked on a voting case?" He said, No. I
2 said, "What are you doing here?" He said, Hell if I
3 know. Right? But the point is, this is small town
4 situation. Nobody knew. Nobody really had an idea.

5 So, the definition of an expert is
6 somebody that knows a little bit more than anybody
7 else in the room, right? We need our folks to be
8 the experts. They need to know what the law is,
9 they need to know what the rules are, they need to
10 know what it says in the Secretary of State's
11 manual, and they need to have one under their arm so
12 they can open it up and show people it's 13.3 right
13 here, which, of course, they learned in the training
14 if you provide the training.

15 That confidence cannot be underestimated.
16 The importance of community feeling that it knows
17 that it has the power to do this, it just transforms
18 the center of gravity politically in the situation.
19 I probably took too much time. I'm sorry.

20 MR. JOHNSON: Thank you, Mr. Sayer.

21 Now, at this time I'm going to ask if any
22 commissioners have any questions of our panelists.

23 MR. RHODES: When was this incident in
24 Drew, and when did it occur in Kilmichael?

25 THE WITNESS: They were in early 2000s.

1 MR. RHODES: Recent.

2 MR. SAYER: Early 2000s. I can't remember
3 which one was in 2001, which one was 2002. Mary
4 might remember.

5 MS. YOUNG: 2003 for Kilmichael.

6 MR. SAYER: 2003?

7 MS. YOUNG: Yes.

8 MR. JOHNSON: What about Drew? It had to
9 be earlier, right?

10 MR. SAYER: No. It was about 2002.

11 MR. JOHNSON: We're not talking about this
12 civil rights time, we're talking about yesterday?

13 MR. SAYER: Yeah. Different stories in
14 the '60s. We would have been killed in the '60s.

15 Let me tell you along those lines. One of
16 the things that I learned outside, after the
17 election was over in Kilmichael, somebody had been
18 in the grocery store across the street. This was
19 chilling. Overheard the grocery store owner talking
20 to one of the other white folks in the community,
21 and said, You got to take the ponytail guy and put a
22 millstone around his neck and dump him in the river.

23 Now, that was 2003. That wasn't 1963.
24 So, you still have that -- if they can talk about me
25 that way, and I was from out of town, imagine the

1 impact that has on somebody who lives in town, sees
2 that, reports that, and says, that's the atmosphere.

3 MR. JOHNSON: Any other questions?

4 MR. RHODES: Another question. Lexi, you
5 talked about election officials of Pike County,
6 moving and changing polling places?

7 MS. ELMORE: Yes.

8 MR. RHODES: And from accessible black
9 community to the white community, timeline.

10 MS. ELMORE: Yes.

11 MR. RHODES: When did that happen?

12 MS. ELMORE: This happened -- the election
13 was in May.

14 MR. RHODES: Of this year?

15 MS. ELMORE: Yes. Because we had one in
16 the Apple Center (inaudible) and Pike County. And
17 also one in the Algiers community. And both of
18 those communities are predominately black, and they
19 moved them to a white church in Pike County in
20 McComb.

21 MR. RHODES: I just want the record to be
22 clear that this was May of 2014 --

23 MS. ELMORE: 2014.

24 MR. RHODES: -- after the Shelby County
25 decision?

1 MS. ELMORE: Yes.

2 MR. RHODES: And they didn't know how to
3 get preclearance?

4 MS. ELMORE: No, they did not.

5 MR. RUSSELL: The same is true of the
6 disability issues that were described as well, they
7 were recent issues that you noted.

8 MS. WALKER: And they were 2011 and 2010.

9 DR. CRAWFORD: I just want to point
10 something out. Help America Vote Act 2002
11 guaranties non-discriminatory voting. And that
12 means people with disabilities are entitled to vote
13 independently and privately in the polling place.

14 It is 2014, and this is a school of law,
15 and someone with a wheelchair can't get on the
16 stage. Okay. What does the -- what are the chances
17 that someone with a disability in rural Mississippi
18 can actually show up and cast their vote
19 independently and privately like everyone else?
20 That's the question we need to ask.

21 MR. JOHNSON: Dr. Crawford, before you
22 hand the pick back, were you aware that under the
23 Help America Vote Act, the Secretary of State's
24 office received resources to make all precincts 80A
25 compliant?

1 DR. CRAWFORD: Yes, sir, I am aware. And
2 I also am aware that the Mississippi Coalition for
3 Citizens with Disabilities was tasked with doing a
4 survey. I asked last week for the results of that
5 survey from the Secretary of State's office. I got
6 no response. I asked again via email again this
7 week, and received no response.

8 So, I do not know if any of those
9 precincts that were found to be inaccessible were
10 made accessible. I do not know if there was any
11 follow-up at all done.

12 MR. JOHNSON: So, do you know -- when was
13 the most recent incident of a precinct not being
14 accessible?

15 DR. CRAWFORD: Months ago. And I tried to
16 vote at my precinct 16 in Jackson, and they did not
17 have the accessible voting machines, what we call an
18 Automark, that uses -- it's for people who are blind
19 and need audio, or people who are -- perhaps can't
20 read, or people with limited manual dexterity.
21 Those machines were not being deployed by the City
22 of Jackson.

23 MR. JOHNSON: So, you're talking about
24 special municipal election this year, 2014?

25 DR. CRAWFORD: It took a great deal of

1 effort on my part to get the machines deployed last
2 month for the mayoral special election. I can say
3 that at my precinct, it was there, but only after an
4 argument with the election officials.

5 MR. JOHNSON: Do you know when the
6 Secretary of State received the funds to ensure that
7 all precincts were 80A compliant?

8 DR. CRAWFORD: It was in the early 2000s,
9 maybe 2004 through 2008, in that range.

10 MR. JOHNSON: So, since 2008, to your
11 knowledge, all precincts have not been --

12 DR. CRAWFORD: I have no data on that. I
13 have no knowledge of that at all.

14 MS. PAINE: I'm a poll manager of Madison
15 County, and I became involved in 2006, the end of
16 2006. The Secretary of State had funds then. We
17 have two voters in our precinct, which is Ridgeland
18 111. We have the VIBS machine, which is video
19 impaired ballot station. It's accessible and
20 usable. But if you are in a wheelchair, you cannot
21 get in the precinct. You cannot get up on the curb,
22 and you cannot get through the door of the building.
23 There are two issues here. The laws
24 exist, but as Mississippi has always done, willful
25 and neglect exist. The laws are on the books. The

1 funds may be available, but law enforcement
2 administration refuses to do anything about it. And
3 if you make a complaint, if you file a lawsuit,
4 there is intimidation, which takes us to something
5 else that has been a threat throughout today.

6 There is voter intimidation. We know
7 there's a voter problem. There are various access
8 issues, but throughout all of this, there is voter
9 intimidation. Even when you've got educated poll
10 workers. And I've had to work with some of them in
11 Madison County. You've got educated poll workers
12 who have a plantation mentality that prevents them
13 from taking hold of the right to be the election
14 official. And this is 2014.

15 So, how do we address that?

16 MR. RHODES: Mike, I have one follow-up
17 question I was going to ask you about. Are you
18 familiar, I guess within the last 15 years, election
19 officials canceled an election?

20 MR. SAYER: I can't hear you.

21 MR. RHODES: Are you familiar within the
22 last 15 years when an election official canceled an
23 election in Kilmichael and they hadn't obtained
24 preclearance?

25 MR. SAYER: I don't remember that.

1 MR. RHODES: I might ask Ms. Young. I'm
2 trying to get stuff on the record about Kilmichael.
3 If Ms. Young could tell us about what happened when
4 they canceled an election without obtaining
5 preclearance.

6 MS. YOUNG: Approximately two weeks --
7 approximately two weeks prior to the election, the
8 chief of police came to our house and wanted us to
9 actually -- we had a meeting downtown that we had to
10 attend. And after getting to the meeting, that's
11 when they announced to us that the election has been
12 canceled. And that opened up a lot of cans of worms
13 because we asked the question what, why.

14 And we was working with Southern Echo,
15 Mike Sayer, who was working with us, teaching us the
16 organizing skill. And we called in other
17 assistants. And from there, we ended up in a
18 lawsuit because of the accusation that they was
19 planning while they canceled the election. But the
20 election -- the cancellation actually happened after
21 everyone had qualified.

22 I qualified on the very last day based on
23 when everybody was out of Kilmichael, when everybody
24 was out of Kilmichael coming to Jackson for
25 the (inaudible) you suddenly have no one in town. I

1 did that like an undercover thing because I was
2 aware where I was. I know that I was not in a
3 pleasant place to be running first time black female
4 mayor.

5 So, I waited until the last day to
6 qualify. And the cancellation of the election, post
7 of the election, took place after everyone
8 qualified.

9 MR. RHODES: And the reason I wanted to
10 make sure that testimony got into the record,
11 because there are two bills pending in Congress, HR
12 House Resolution 3899 and Senate bill 1945, to
13 reauthorize Section 4 of the Voting Rights Act which
14 the Supreme Court struck down in Shelby County case.

15 And part of the proof that Congress was
16 considering was the last Section 5 of Jackson, I
17 guess by the United States Attorney General against
18 anyplace in Mississippi was that election that was
19 canceled in Kilmichael, Mississippi. And that that
20 election -- if that Section 5 objection was not
21 included in the record, Mississippi might not be
22 covered under the new congressional laws.

23 I just wanted to make sure that's --
24 that's important testimony.

25 MR. JOHNSON: At this time we want to

1 begin the transition to receive comments or
2 questions from the audience.

3 Please state your name.

4 MS. LEBER: I am Fran Leber. And I'm
5 really concerned because we won't have the
6 preclearance anymore. I think -- I worked as a
7 legislature for the League of Women Voters, and
8 there's lots of bills that would make it very
9 difficult, especially for people with disabilities
10 is what I'm talking about today. And I think a lot
11 of those didn't go any further because they were
12 concerned that they would get through the
13 preclearance, and now that's going to be easier.

14 For some examples of things that did go
15 through that still make it very difficult for people
16 with disabilities. I had hip surgery
17 the presidential -- the first presidential election
18 for Obama. And I had a walker. I went to my
19 precinct, and it was in a church. And I had to go
20 up two sets of stairs to get in to vote. There was
21 no way I could do it.

22 So, somebody that was going in, I said,
23 "Would you please tell them I have no way of getting
24 in here?" So, somebody came in down and said, Oh,
25 well, there's a ramp around the side. Well, it was

1 behind bushes, and I didn't know it was there. So,
2 of course, I took it. And the person went back
3 inside. And I got up and the door was locked to get
4 into the room. So, that was one problem.

5 And then I told them, I said, "Well, you
6 don't have any information that you're supposed to
7 have listed for people with disabilities."

8 Oh, it's here on the wall.

9 Well, the door was -- that was when --
10 another time I went, and I had pain at the time.
11 And I could get up the steps all right, but they
12 still didn't have the sign out for the people that
13 needed to go in in a wheelchair. So, once again, I
14 told them they didn't have their signs out.

15 So, even though they're supposed to by
16 law, we're having trouble even getting them to
17 follow the law that they do pass, and it's going to
18 be so much more difficult because there's going to
19 be more laws that are going to be passed just
20 because they don't have that preclearance I'm
21 afraid.

22 MR. JOHNSON: Ms. Leber, before you sit
23 down. How long have you been tracking legislation
24 on at the Capitol on behalf of the League of Women
25 Voters?

1 MS. LEBER: I would say probably 38 years.
2 And thank you for Derrick Johnson sitting in some of
3 the rushing to minute meetings. And something has
4 really happened. I called him one time and said,
5 "You've got to get down to the next meeting." And
6 thank heavens he gets in there and pulls them to the
7 wire.

8 MR. JOHNSON: So, in your following
9 legislative process in sitting in on election
10 committee meetings, how often is it that legislation
11 will come before that committee and they decide not
12 to advance it because of the Section 5 preclearance
13 requirement? Have you seen it happen?

14 MS. LEBER: Well, the bills are there, and
15 they have them in both houses. But it ends up they
16 don't rule any further. And I think that's the
17 reason, because they think maybe it won't make
18 preclearance.

19 And, for example, the bills that passed in
20 Florida that year, you know, that great big law,
21 that 36-page thing? That whole thing came out,
22 remember, and we did repeat that, and they start
23 taking little sections of it. So, every year they
24 enter more. I think one reason they didn't this
25 year was because it's election year coming up.

1 MR. JOHNSON: So, is it your concern
2 without preclearance, Mississippi election policy
3 landscape will change drastically?

4 MS. LEBER: I'm sure there's going to be
5 more bills passed than if we had it. I don't think
6 there's any doubt about that.

7 MR. JOHNSON: Would it be bills to open up
8 elections to make sure more people had opportunities
9 to vote?

10 MS. LEBER: Did we have any luck getting
11 those through? We keep trying. We have to wait
12 until each election year to getting anything
13 through.

14 MR. JOHNSON: Any other questions? Jed
15 Oppenheim.

16 MR. OPPENHEIM: My name is Jed Oppenheim.
17 I'm here as a citizen of Jackson and as of
18 Mississippi. I wanted to quickly make a couple of
19 points that maybe haven't yet really been made about
20 accessibility to the vote, especially around people
21 with felony convictions or presumed convictions of
22 any kind.

23 I know that often times registering
24 voters, there's a lot of confusion about whether
25 they could register depending on if they've been

1 convicted of crimes, if they're waiting for their
2 court hearing, if they have a misdemeanor. Often
3 times I've encountered people who think they can't
4 vote because of misdemeanors.

5 I will say there's a list of 22 felony
6 disenfranchising crimes out on the table over here.
7 I could read them if you want me to. But, for
8 example, one of the things that's not on here that
9 people always think they can't vote, if they have a
10 convention around particular drug crimes or drug
11 offenses. And that is not one of the
12 disenfranchising crimes.

13 I wanted to make another -- a couple other
14 points. Only two people in the last 10 years,
15 right, we believe, that we know of have actually
16 been convicted of voter fraud in the State. One was
17 for registering to vote with a felony, and the other
18 one was for one person who voted with a felony
19 conviction. So, how they would have still been on
20 the roll probably wasn't their mistake, but probably
21 somebody else's.

22 So, there's a lot of misinformation about
23 who can vote and with what convictions, or even
24 sometimes when the -- you know, the charge is strung
25 out, you know, and the confusion as to what that

1 still means, that one can still vote.

2 And then the other thing I wanted to make
3 note of, especially being in a rural state, by going
4 back to I think both federal elections and statewide
5 elections is, how the voting for, how to say, like
6 around the census in the realm of where votes are
7 counted, too, in terms of individuals who might be
8 incarcerated and where their votes are counted
9 versus the town that they come from versus the town
10 where the prison is.

11 And we have a good example of a number of
12 prisons in our state, especially like Walnut Grove,
13 which was built in a very rural, rural, rural
14 district where there is more people who are
15 incarcerated there than are in the actual town of
16 Walnut Grove living there. That was one of those,
17 you know, relating back to focus census and a number
18 of other things.

19 So, I'll just leave it out there. I'm not
20 an expert in all these things, of course, but I did
21 want to at least bring that forward as part of the
22 testimony.

23 MR. JOHNSON: Any other questions?

24 MS. CLARIDY: I'm Cheryl Claridy. I'm a
25 citizen here in Jackson. In answer to a question

1 that you posed, Mr. Johnson, to Dr. Crawford about
2 accessibility with the machines that are supposedly
3 supplied by the Secretary of State. I was a poll
4 watcher in the first mayoral election last month.
5 And the poll manager told me that she had tried very
6 hard to get a machine in her precinct for somebody
7 that she knew would be coming to vote who was blind.
8 And she was -- they were unable to give her the
9 machine for the precinct.

10 And the man did come to vote and came with
11 somebody else, and he did not have a machine that
12 allowed him to vote privately. That was Precinct 56
13 here in Jackson last month.

14 MR. JOHNSON: Last month, 2014?

15 MS. CLARIDY: Yes, sir.

16 MS. EVERETT: Hi, Jean Everett. I want to
17 thank Deidra for reading our statement, doing that
18 so well. And I just wanted to reiterate something
19 from the League of Women Voters of the United
20 States.

21 When I spoke to one of them letting them
22 know we were participating today, they just
23 mentioned that the most pressing need right now
24 around all this big issue that we've talked about is
25 the modernization of the Voting Rights Act, which is

1 what I think you were speaking of a little while
2 ago, Mr. Rhodes.

3 So, if we can all just take that action
4 and contact our representatives, that would be I
5 think a very good thing. And we offer the US League
6 of Women Voters website, it's a very convenient way
7 for you to do that.

8 DR. CRAWFORD: I'm going to repeat myself
9 here and include people with disabilities in the
10 Voting Rights Act for lots of good reasons.

11 UNIDENTIFIED SPEAKER: I have been very
12 enlightened by your comments about what happens in
13 rural areas. At voting times, I get a terrible
14 feeling that I'm not the only one. I vote one way,
15 and I don't know of anybody else who would vote the
16 other way, but the results are always dumbing down
17 Mississippi citizens, especially the black
18 community, like we just don't know what's going on.

19 And if all the things that you just said,
20 someone is tampering the results. So, we don't --
21 we're not nearly as bad as they say we are when it's
22 time to vote. We can vote and we do vote
23 intelligently, but someone is messing with the
24 numbers.

25 Thank you so much.

1 MR. TOLLMAN: My name is Father Jerry
2 Tollman. I'm a priest here in the Jackson Diocese,
3 (inaudible) in Raymond. I am part of several
4 organizations, and also -- listing, but that's not
5 important. I just want to say that this whole voter
6 ID thing, these voter suppression laws as we know,
7 this is not something Mississippi invented. This is
8 has been organized, calculated, planned effort for
9 the last -- well, I came in '98, I think it was
10 going on probably back in the '80s they were
11 planning this stuff. And now we've got the Tea
12 Party, we've got this whole visible stuff you see on
13 television.

14 But this, what is it, American Legislative
15 Exchange Counsel, crashed these bills. This is a
16 well oiled machine they got to roll back everything
17 we fought for in the last 50 or 60 years.

18 So, my reason I mention that is, we have
19 other organizations, like Reverend Barber up there
20 in North Carolina. Every night on TV, the most of
21 the most -- the worst voter repression law in the
22 country. Well, you know, hey, listen, it's going to
23 get worse. We've got organizing -- not realizing
24 alone doing this, there are other organizations,
25 other groups like us fighting the same cause. We

1 need to connect with them, network with them, and
2 build a national movement like our ancestors did and
3 keep the right to vote.

4 MR. JOHNSON: John Garner.

5 MR. GARNER: Thank you again. My name is
6 John Garner. A request for Southern Echo and other
7 organizations here. Take this -- get some folks out
8 to these polls who will look at some of these
9 numbers and help us analyze what the effect of voter
10 ID is. And then my other comment is, how do we get
11 a transcript of these proceedings?

12 MR. JOHNSON: I will provide my contact
13 information to anyone who would like a transcript of
14 the proceedings. I will provide a copy to you.

15 MS. YOUNG: I would just like to say --
16 add to what had already been said, to some of the
17 questions and comments. Because in our opinion,
18 it's not just one little thing, but a cluster of
19 small things that make a difference in our election.
20 And some of the things, such as the voter ID, which
21 we are facing in the first election here in June for
22 voter ID, name not on the poll book, these are some
23 of the things they're facing that is affecting our
24 election in local places. And, in turn, it affects
25 our state election, our crowdness at the polls,

1 changing of address on the day of the election with
2 citizens moving into town.

3 And we know that some move in and vote and
4 they move out. And on top of that, they change
5 their address on the same day. And the poll book
6 being purged the night before the election, people
7 coming to the poll and they are lost, even the
8 workers. I look for names, names not on the book.
9 Even their names not on the book.

10 So, these small things equal to be a big
11 thing. And if we don't face some of these things
12 and deal with some of these things, we're going to
13 lose a lot of important elections. People who can
14 make a positive difference. I'm not talking about
15 someone getting into office, but we need positive
16 change.

17 So, there are other things. And one word
18 I heard stated here today, "intimidation". And
19 there's another word go beyond that. There is a way
20 that you can be threatened and warned. So, we need
21 some kind of help -- I don't know what you call it,
22 what you might say we need, but there are some
23 serious issues that's going on in these small towns.

24 Someone needs to attend to some of these
25 issues because some people are not speaking out

1 because of intimidation. And we need that can of
2 worms opened up where they can feel safe, because
3 that's why you're not getting some of the reports
4 because they feel intimidated. And beyond that,
5 words some use is "warned".

6 I can tell you some stories, just a tip of
7 the bush what Mike said. Mike just started you off.
8 So, there is more. It has not stopped. There are
9 things that have never been told to some. So,
10 listen to the panels, listen to the comments and
11 questions. I'm just adding some more. We still
12 have a lot of work to do, because the word
13 "intimidation" is still a lot stronger. And we need
14 to do something to encourage people that your vote
15 and voice is safe.

16 And the other thing I'd just like to
17 say -- I had just wrote down a little quote on
18 Section 4 and 5, because of my experience in the big
19 Town of Kilmichael. And this is a quote, I think
20 I'm going to write it down and remember it myself.
21 Without the preclearance section, it leads a weak
22 shadow on justice. So, removing Section 5, changing
23 these laws as some had done, it leads us with a weak
24 form of justice. So, we need to work to improve and
25 strengthen justice, not weaken it.

1 MR. JOHNSON: State your name for the
2 record.

3 MS. YOUNG: I'm sorry. Mary McCaskell
4 Young from Kilmichael, Mississippi.

5 MR. JOHNSON: Let's give all of our
6 panelists and witnesses a hand.

7 MR. SAYER: It's a question for
8 clarification. If I understand it correctly,
9 there's a state statute which restricts or precludes
10 purging of rolls within a certain number of days of
11 the election. I just thought it would be helpful to
12 everybody since that's been discussed so much.

13 If one of you could, who is certain of
14 your recollection of it, specify the number of days
15 so that our people knowing that can then fight back
16 against it. I think it was 30, but I'm not sure.

17 MR. RHODES: I think, Mike, there is a
18 statute that said you're not supposed to do it
19 within 60 days of the election. But with all laws,
20 it comes down to enforcement.

21 MR. SAYER: Right.

22 MR. RHODES: It's on the books.

23 MR. SAYER: You can't fight back against
24 the wrongful implementation unless we know what the
25 law requires. And I just wanted to clarify that for

1 everyone. It's not a free ride for the public
2 officials to be purging the roll.

3 MS. PAINE: But in Mississippi, it almost
4 is because, here again, we know what the law may be,
5 but once the record has been purged, then you've got
6 to recover and election day has already passed.

7 So, one thing I'd like to say, and I know
8 we're beyond our time, Mr. Chairman, and I
9 apologize. I feel that we have been negligent. The
10 saying is, The cost of peace is constant vigilance.
11 And we have had 50 years of being free. And we
12 acknowledge in our freedom. And we have not taken
13 care of the vote.

14 When the election officials are preparing
15 for an election, we -- and this is a nonpartisan
16 gathering so I won't name names -- we don't go to
17 the courthouse and watch them prepare the machines.
18 We don't check to see if the legalized purge is
19 done, and then come back to see if there are
20 additional purges.

21 We're working in the courthouse. Why
22 don't we know what's going on? We have failed to
23 take care of our own. That's the correction that
24 needs to be made.

25 MR. JOHNSON: All right. Again, I would

1 like to thank everybody for coming out. Closing
2 remarks from Dorian Spence.

3 MR. SPENCE: I wanted to put this on the
4 record. My name is Dorian Spence, I'm representing
5 the National Commission for Voting Rights by way of
6 the Lawyers Committee for Civil Rights out of
7 Washington, DC. And I'm the person that has been on
8 the conference calls with many of you throughout the
9 playing process. But I want to just say thank you
10 all for coming out. I truly appreciate you all's
11 energy, as well as all of you all's testimony and
12 your presence. But I just want to say a special
13 thank you to all of your organizations, the
14 Mississippi State Conference of the NAACP, all of
15 our guest commissioners, Mr. Leon Russell, Mr.
16 Carroll Rhodes, Mr. Reilly Morse, as well as Ms.
17 Deborah McDonald, all of our testifying witnesses,
18 Upgrade Mississippi, Common Cause, League of Women
19 Voters, the League of Women Voters Jackson area, as
20 well as Southern Echo, and to who it contains.

21 But this hearing honestly would not have
22 been possible without some of these suggestions and
23 people like Mike Sayer, Mr. Sham Lambright, and
24 Mr. Jed Oppenheim, because they were so instrumental
25 in putting this thing together on such short notice.

1 I think we started planning this, what, two weeks
2 ago.

3 And without their efforts, seriously, on
4 the ground and reaching out to their network of
5 people, I don't think anyone down here would have
6 known about it. I would have been in this room by
7 myself with the court reporter trying to kill time.
8 In any event, as well as Dr. Scott Crawford, who was
9 on a lot of our phone calls and exchanged a lot of
10 emails with myself.

11 If I've forgotten anyone that I've talked
12 to -- I truly appreciate you all's presence. My
13 contact information is as follows:
14 Dspence@lawyerscommittee.org. Feel free to reach
15 out to me directly.

16 With that being said, we thank you for
17 your presence once again. And we look forward to
18 working with you in the very near future. Thanks
19 again.

20 (Off record at 5:14 p.m.)

21

22

23

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25

1 **CERTIFICATE OF COURT REPORTER**
2 I, Robin G. Burwell, Court Reporter and
3 Notary Public, in and for the State of Mississippi,
4 hereby certify that the foregoing contains a true
5 and correct transcript of the proceedings, as taken
6 by me in the aforementioned matter at the time and
7 place heretofore stated, as taken by stenotype and
8 later reduced to typewritten form under my
9 supervision by means of computer-aided
10 transcription.

11 I further certify that under the authority
12 vested in me by the State of Mississippi that the
13 witness was placed under oath by me to truthfully
14 answer all questions in the matter.

15 I further certify that I am not in the
16 employ of or related to any counsel or party in this
17 matter and have no interest, monetary or otherwise,
18 in the final outcome of this matter.

19 Witness my signature and seal this the
20 10th day of June, 2014

21

22

Robin G. Burwell, CCR
CCR #1651.

23

24

My Commission Expires

25

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NATIONAL COMMISSION ON VOTING RIGHTS
NASHVILLE, TENNESSEE, REGIONAL HEARING

Thursday, May 8, 2014

4:00 PM - 8:00 PM

GREATER BETHEL AME CHURCH

1300 SOUTH STREET

NASHVILLE, TN 37212

REPORTER: GARY SCHNEIDER

JOB NO: 73960A

PROCEEDINGS

1
2 MS. PERALTA: Good afternoon,
3 everyone. I hope everyone is having a beautiful
4 day. We're having some gorgeous weather.

5 I want to welcome you to our
6 Nashville Regional National Commission on Voting
7 Rights hearing. My name is Maria Peralta, and I
8 am the national coordinator for the National
9 Commission on Voting Rights.

10 The Commission is an initiative of
11 the Lawyers' Committee for Civil Rights Under Law,
12 which is a nonprofit, nonpartisan organization
13 created 50 years ago to engage the private bar in
14 the fight for social justice and civil rights.
15 And we continue our work today in many areas,
16 including community development, education, and
17 voting, which is the reason that we're all here
18 today.

19 Today's hearing is actually the 23rd
20 that we've been holding, the 23rd hearing. We've
21 been holding hearings across the country to gather
22 information on voting rights and election
23 administration, and to really get a detailed
24 landscape of what's going on on the ground.

25 The information that we are compiling

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1
2 during these hearings and in the state reports
3 that we're compiling will be distributed to
4 members of Congress and to state and local
5 advocates that are working on the issue of voting
6 rights. So your presence here today and your
7 participation in this hearing is really essential
8 to informing that process.

9 I do want to thank our distinguished
10 panelists and our distinguished panel of guest
11 commissioners for being here with us today and
12 presiding over the hearings. I want to thank our
13 planning committee. And I'll just quickly list
14 off the organizations. And my colleague, Aunna
15 Dennis, can go in more detail in a minute.

16 But the ACLU of Tennessee, Black
17 Women's Round Table, Kentuckians for the
18 Commonwealth, League of Women Voters of Tennessee,
19 League of Women Voters of Nashville, Nashville
20 Alumnae Chapter of Delta Sigma Theta Sorority,
21 Tennessee Citizen Action, Tennessee State
22 Conference NAACP, and the Urban League of Middle
23 Tennessee. If I left anything out, my apologies.
24 I'm sure Aunna can fill some in.

25 So without further ado, I'm going to

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2 pass it to Aunna Dennis, who is another
3 coordinator at the Lawyers' Committee, and she
4 will go through in more detail what our afternoon
5 and evening is going to look like, and we can
6 begin. Thank you.

7 MS. DENNIS: My arms are kind of
8 short. Hi, ya'll. I'm Aunna Dennis. I'm the
9 national coordinator for the Legal Mobilization
10 Project with the Lawyers' Committee, so I am very
11 thrilled that you all are here today.

12 So up here on our stage, we have our
13 guest commissioners. We have Monroe Woods. He's
14 the Bolivar -- please correct me if I mispronounce
15 it. I am a Georgia girl. It's the
16 Bolivar-Hardeman County Branch, National
17 Association for the Advancement of Color People,
18 NAACP.

19 And we have also Lottie Shackelford.
20 She's with the Black Women's Roundtable of
21 National Coalition of Black Civic Participation.

22 And then we also have Austin Porter.
23 He's a civil rights attorney in Little Rock,
24 Arkansas.

25 And at the far end here, we have

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1
2 Raoul Cunningham. He's the National Association
3 for the Advancement of Color Peoples State
4 Conference President of Kentucky.

5 So those are the overview of our day.
6 So we're going to start off -- I know it's after
7 4:00, but we're doing our welcome and our
8 introduction, and then we're going to have our
9 first panel. And then we'll move right into our
10 second panel, which I'll go over, dilution of
11 minority power and redistricting. And then we'll
12 have a break, and we'll have refreshments and food
13 provided. It is first come, first served, so
14 let's be mindful that other people would like to
15 eat too. And that will be around the corner in
16 the Fellowship Hall. And then we'll go into our
17 third panel, which is disenfranchisement of
18 incarcerated and formerly incarcerated
19 individuals. And then we'll go into our first
20 public testimony time. And if you are doing a
21 public testimony, if you already haven't
22 preregistered, which I know your names, who you
23 are, please register at the table, the
24 registration table. Then we'll go into our fourth
25 panel, which is equal access to the political

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1
2 process. And then our fifth panel and final
3 panel, which is the impact of voter ID on diverse
4 communities. And then we'll have our last public
5 testimony period as well.

6 So the first public testimony period
7 is a little bit longer than the first one. So if
8 you do want to speak, I would say definitely go
9 ahead and get it done in the first public
10 testimony time. And then we'll have closing
11 remarks.

12 And, again, I just want to thank you
13 all for coming. What we're doing is really great
14 work with you-all's knowledge and what you're
15 bringing to the table with what's going on in
16 voting rights. And I definitely want to thank our
17 planning committee because it's definitely been a
18 collaborative effort.

19 So we're just going to go ahead and
20 get started.

21 MS. DENNIS: So we're going to start
22 off with our first panel, and our commissioners
23 will preside over that.

24 COMMISSIONER SHACKLEFORD: Thank you,
25 Aunna and Maria.

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2 And, again, I say thanks to each of
3 you for letting us cover part of your day.

4 I'm Lottie Shackelford, as was
5 mentioned, and I hail from Little Rock, Arkansas,
6 and have spent quite a bit of time, some 20-plus
7 years, in Washington, D.C. And I've been
8 interested in the whole issue of access to voting
9 and being able to vote since a child when I went
10 with my dad to sell poll tax receipts in Little
11 Rock, Arkansas, and surrounding areas, because he
12 believed, and he taught each of his children to
13 believe, that each and everyone should have an
14 opportunity to cast that vote. And basically
15 that's why we are here today.

16 Our role as commissioners, of course,
17 is -- I sort of live by this -- that every day I
18 feel that a good portion of that day I'm going to
19 be a sponge and just soak in information. So our
20 role as commissioners today is to be this sponge
21 and to listen to what you have to share with us,
22 particularly in the areas that have been so
23 identified by Aunna.

24 With that, again, I thank you all for
25 coming and being willing to participate. Thank

PROCEEDINGS

1
2 you.

3 COMMISSIONER WOODS: Good afternoon.
4 I'm pleased to be here. But more than that, I'm
5 delighted that you are here. For those of you in
6 the audience, I'm Monroe Woods. I'm the branch
7 president of Bolivar-Hardeman County Branch of the
8 NAACP, and I serve as well in various capacities
9 within the state of Tennessee under the umbrella
10 of the state conference, Tennessee State
11 Conference NAACP.

12 I had a career in -- as a seat
13 executive service representative with the public
14 government. I had an opportunity to work in
15 various capacities and spent some time actually in
16 each state in the country doing some things,
17 participated in a lot of listening sessions
18 similar to this, one hearing what people have to
19 say about government, what was happening, how it
20 was working, the functions of it. Gained a lot of
21 respect for government. At the same time, you
22 realize that citizens really need to have a voice,
23 and they need to have an opportunity to express
24 their views and thoughts and share what's going on
25 at their level and what's important to them.

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2 We have an issue that we're working
3 with and listening for today. We're looking
4 forward to hearing from you. And for those of you
5 in the audience, whether you're going to be
6 speaking during the public time or just being a
7 part of another sponge, we're delighted that
8 you're here.

9 For the panelists, we are especially
10 delighted that you're here. We look forward to
11 hearing from you, hope that you will share with us
12 some information that you prepared and brought
13 with you so that we jointly can get a good feel
14 for what's happening in your area, especially in
15 the area where you're involved. Thank you for
16 being here.

17 COMMISSIONER PORTER: Good afternoon.
18 My name is Austin Porter, Junior, and I'm a lawyer
19 out of Little Rock, Arkansas, and been practicing
20 law for the past 27, 28 years. My primary area of
21 practice, I do a lot of civil rights litigation,
22 and I have handled voting rights cases on behalf
23 of my clients.

24 I'm used to suing municipalities,
25 which is what I do as far as dealing with cases

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1
2 involving civil rights. Typically I'm used to
3 being a litigator and taking on cases in court,
4 but this is kind of a different role for me. I'm
5 glad that you're here today. I will be interested
6 in hearing what you have to say because we know
7 that the vote is very important. And this is
8 something that came out of the Civil Rights
9 Movement, what we've had people who fought for and
10 died for. And so we want to make sure that we do
11 everything we can to preserve the right to vote.
12 And we're just very glad you're here and
13 interested in knowing what you have to say. Thank
14 you.

15 COMMISSIONER CUNNINGHAM: Hello. I'm
16 Raoul Cunningham, state president of the NAACP
17 Conference of Kentucky. I'm glad to be here and
18 would like to take this opportunity, along with my
19 colleagues on the panel, to welcome you.

20 I became involved in voting as a
21 child going with my parents to vote. When I was a
22 senior in high school, we began demonstrating in
23 Louisville, Kentucky, to end segregation and was
24 arrested. But the principal of my high school was
25 running for mayor, and he would not support open

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1
2 accommodations or public accommodations ordinance.
3 And so I really became involved in working to
4 defeat him. And it carried on throughout my
5 career as a student at Howard when we demonstrated
6 for voting, whether it was for DC, who did not
7 have the right to vote, Lottie, or whether it was
8 for the Voting Rights Act. And as a staffer on
9 the United States Senate, senators, staff, worked
10 twice on behalf of reauthorization of the voting
11 rights reauthorization amendments. So it has
12 followed me. And also served as the deputy
13 director of voter empowerment for the National
14 NAACP.

15 So I'm glad to be here, and we look
16 forward to your presentations because it would
17 definitely be worth our listening to, as well as
18 the presentation that will be made to the members
19 of Congress and others who should hear what you
20 have to say.

21 Thank you.

22 COMMISSIONER SHACKLEFORD: Again, and
23 thanks to each of you. In order to maximize your
24 participation and to give equal time -- after all,
25 we're talking about equal access here. In order

1 PROCEEDINGS

2 to do that, there are a few little housekeeping
3 rules I would like to share with you. I'm fairly
4 certain they've been explained to you before, but
5 I will just state them again.

6 For the panelists who are serving as
7 our witnesses today, each of you will be given
8 five minutes to present your prepared testimony.
9 There will be a timekeeper. The timekeeper which
10 you -- oh, there's the timekeeper. There is a
11 timekeeper. And the timekeeper will signal when
12 three minutes are left, then will signal again
13 when one minute is left, and when the five minutes
14 have ended. So I'd just like for you to be
15 cognizant that the timekeeper is over there. So
16 if you're focusing on looking at us, make sure you
17 glance at the timekeeper from time to time.

18 The commissioners may have some
19 questions to ask. But they, too, are to be
20 cognizant of the time, and they will not be giving
21 dissertations when they ask questions.

22 Now, with that said, any questions of
23 the panel, the first panelists?

24 (No response.)

25 COMMISSIONER SHACKLEFORD: Well,

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2 then, we would like to start. Of course our first
3 panel, again, is on election administration, and
4 our first witness will be Ms. Patricia Heim.

5 MS. HEIM: Thank you. Good
6 afternoon. It's my pleasure to participate in
7 this assembly and share my election administration
8 experiences from the past 20 years here in
9 Davidson County, Tennessee. Let's think about it
10 for a moment. If I'm a voter, I just complete a
11 voter registration form telling the election
12 department who I am and where I live. Once I'm
13 registered, I take any required ID and head to the
14 polling location to cast my ballot.

15 If I'm a thoughtful voter, I remember
16 to tell the election department if I move so I can
17 easily repeat the process whenever there's another
18 election.

19 But since many voters cast a ballot
20 only once every four years, election
21 administration must be a part-time job, right?
22 Well, not at all. The task is anything but part
23 time, no matter the election cycle. In fact, more
24 has changed for the best, I think, in the last 20
25 years in the field of election administration than

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2 during any comparable period in voting history.
3 The start of these significant changes was the
4 Federal National Voter Registration Act of 1993,
5 more commonly referred to as Motor Voter. Then in
6 1994, Tennesseans first experienced personal
7 appearance early voting as a means to increase
8 voter turnout.

9 The Help America Vote Act of 2002,
10 HAVA, required nearly every Tennessee county to
11 purchase new voting equipment and to offer
12 provisional ballots to those who claimed to have
13 timely registered to vote with a designated
14 government office but whose names do not appear on
15 the list of eligible voters.

16 Add to the above changes, the photo
17 IDs laws recently enacted, election administrators
18 and voters alike begin to wonder how can there be
19 anything left to change. Well, we just smile and
20 remind them that redistricting will begin anew in
21 2021, just to keep them and us on our collective
22 toes.

23 So let's talk the good, the bad, and
24 the ugly. How have all these changes impacted
25 voters and election administrators?

PROCEEDINGS

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2 The good: The NVRA has made it
3 easier to register to vote either in person or by
4 mail; voter databases are now computerized in
5 every state, making it easier to conduct certain
6 list maintenance functions required by the NVRA;
7 voters are no longer automatically purged from
8 registration lists by reason of a name change due
9 to marriage or divorce or a move within their
10 county of registration; personal appearance early
11 voting provides increased flexibility and
12 convenience to voters; voting machines now provide
13 greater flexibility to serve those with visual,
14 mobility, or dexterity challenges; HAVA allows
15 voters mistakenly left off the voter list to cast
16 a provisional ballot; an absentee by-mail ballot
17 can be requested three ways: by e-mail, by fax, or
18 written request by US mail; using photo ID as a
19 means of voter verification is more reliable than
20 our old signature comparisons. They become less
21 reliable as voters age or experience ailments like
22 arthritis or the effects of a stroke.

23 A photo ID is not required for
24 residents of nursing homes, by-mail absentee
25 voters, voters hospitalized on election day,

PROCEEDINGS

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2 voters with religious objections, or indigent
3 voters.

4 Numerous churches and civic groups
5 have helped voters obtain photo IDs, enabling them
6 access to a myriad of other services that do
7 require such photo IDs. For example, opening a
8 bank account; getting food, rent, or utility
9 assistance; obtaining medical care; access to some
10 government buildings; and, yes, even obtaining a
11 library card right here in Nashville, Tennessee.

12 The bad: Keeping voters educated
13 about the constant changes in election law is a
14 lot more difficult. Voters who fail to notify
15 election offices of a change in address are
16 unaware of important information about upcoming
17 elections and then face longer wait times to vote.
18 Voter rolls have increased in size, but,
19 unfortunately, voter turnout is usually below
20 50 percent for all elections other than
21 presidential elections.

22 More complexity in election
23 administration process has reduced a willingness
24 of numerous voters to participate as election day
25 officials.

PROCEEDINGS

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2 Technology is both a blessing and a
3 curse. It improves efficiency in some areas, but
4 it leads to skepticism by others over the loss of
5 paper documents. Those are some of the bad
6 points.

7 What about the ugly? Well,
8 unfortunately, civic and political groups conduct
9 voter registration drives and sometimes turn in
10 those registration forms after the deadline or not
11 even at all, depriving those citizens of their
12 right to vote in an upcoming election.

13 Election administrators who fail to
14 perform regular list maintenance, or timely notify
15 other jurisdictions when a voter registers in a
16 new location, leaves those voters registered in
17 multiple jurisdictions that can lead to a voter
18 casting more than one ballot in the same election
19 contest.

20 University students are often
21 encouraged by others to register to vote in the
22 jurisdiction where they attend college for
23 convenience sake. Some have lost scholarships
24 based on a change of their residency.

25 Thank you. And I've run out of time.

PROCEEDINGS

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2 COMMISSIONER SHACKLEFORD: I'd like
3 to thank you, Ms. Heim.

4 Any questions from the commission as
5 to Ms. Heim?

6 (No response.)

7 COMMISSIONER SHACKLEFORD: Ms.
8 Williams.

9 MS. WILLIAMS: Good afternoon. Thank
10 you for the opportunity to speak before you. My
11 name is Lynn Williams, and I'm a long-time League
12 of Women Voters member and volunteer, a former
13 member of Nashville's Metro Council, and current
14 government relations professional for a national
15 patient advocacy organization. I value the power
16 of the vote.

17 In 2006, the Nashville League of
18 Women Voters conducted a voter integrity study to
19 exam aspects of the election process in Davidson
20 County. That was two years before passage of the
21 Tennessee Voter Confidence Act, requiring use of
22 voter-verified paper ballots in elections across
23 the state, and the resulting legislation that
24 undid mandatory requirements of that statute, and
25 five years before photo voter ID became the law of

PROCEEDINGS

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2 the state in May 2011. I participated in that
3 study by conducting a poll-watchers project that
4 has continued through the implementation of the
5 photo voter ID law and adoption of new iVotronic
6 touchscreen voting technology purchased by the
7 Davidson County Election Commission.

8 I have submitted for the record the
9 reports from poll-watching projects conducted
10 during the August 2011 election when voter ID was
11 first required, and the March 2012 presidential
12 primary election when precincts were redefined and
13 new technology installed.

14 Metro Nashville Davidson County
15 covers over 500 square miles, requiring
16 administration of hundreds of staffed precincts
17 located primarily in schools, churches, and
18 community centers. It is a large and daunting
19 task, and Davidson County's Election
20 Administration has been challenged by top
21 leadership changes on the administrative and
22 commission level in recent years, while facing the
23 need to upgrade equipment and respond to
24 redistricting requirements.

25 For the purpose of this hearing, I

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1
2 will focus on one aspect of a fair and open
3 election, accessibility in the broadest sense, and
4 the League of Women Voters' observations of
5 practices that affect its voters' abilities to
6 participate in elections in Metropolitan Nashville
7 and Davidson County.

8 During the periods under League
9 observation, most polling places were easily
10 identifiable or marked with signs and entrances,
11 and most polling places were accessible to persons
12 with disabilities, but not without exception.

13 Cases were noted where there was no automatic door
14 opener or where stairs were required for voters to
15 enter the polling place without posting
16 directional signage to alternative entrances.

17 Overall, poll watchers observed
18 voting by individuals with vision, hearing, or
19 cognitive impairments or physical disabilities,
20 and proper assistance was offered. Individuals
21 seeking assistance were able to privately and
22 independently cast their ballots in all cases, but
23 not so in every case where able-bodied people
24 voted. More than one observer noted the precinct
25 voting machine arrangement required voters to walk

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2 in such a path that they could see the screens of
3 those already engaged in voting, or were located
4 so close together that it was difficult to
5 maneuver around them.

6 In some cases, precincts had other
7 activities like roller-skating or basketball
8 occurring in close proximity during early voting
9 and on election day, making parking and hearing
10 difficult.

11 Sometimes paths to voting machines
12 were difficult to manage and littered with
13 electrical cords. The Davidson County Election
14 Administration made good efforts to address these
15 issues as they were reported, yet continued
16 challenges have occurred as precinct locations are
17 shifted and voters reoriented to their voting
18 sites.

19 As photo ID became standard and new
20 sites coupled with new regulations, some voters
21 have been sent away to vote at a different
22 location or without ID, find the election main
23 site, and vote within two working days even if it
24 requires the voter to miss work.

25 There occurred one more accessibility

PROCEEDINGS

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2 issue I want to note. This past year,
3 Nashville/Davidson County Administration moved its
4 election administration main office from a
5 centrally located campus of city services to a
6 suburban site near the International Airport. As
7 a result of concerns expressed by this
8 organization and others, a satellite site for
9 voter services is maintained on the original
10 campus.

11 Without vigilance and determination
12 to fair and accessible elections, this and other
13 barriers to voting, such as mandating voter photo
14 IDs and reducing the number of operating days at
15 early voting sites, will continue to be noted as
16 setbacks if they prohibit any registered voter
17 from participating in elections.

18 The League of Women Voters
19 continuances to monitor election integrity in
20 Davidson County and encourage voters to report
21 incidents of concern, and, like incidents of
22 actual voter fraud, they have been relatively few.
23 Thank you.

24 COMMISSIONER SHACKLEFORD: Do you
25 have any questions?

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2 COMMISSIONER PORTER: Ms. Williams, I
3 have a question here. As it relates to the voter
4 precincts, have you noticed any areas, let's say,
5 for instance, in economically disadvantaged areas
6 or even in African-American communities where
7 voting precincts have been closed that would cause
8 any type of impediment to allow people to vote?

9 MS. WILLIAMS: Under the study and
10 the observations of the poll watchers, there were
11 occasions when polls were temporarily closed, open
12 late. They really weren't necessarily in areas
13 that were heavily minority. One in particular was
14 out in a suburb that isn't considered, you know,
15 to be an urban area. There have been occasions of
16 long lines and lines at the close of the poll, as
17 historically happens. But not really. Not as
18 much as one might expect.

19 COMMISSIONER SHACKLEFORD: Any other
20 questions by anyone?

21 (No response.)

22 COMMISSIONER SHACKLEFORD: Thank you,
23 Ms. Williams.

24 Next is Ms. Tricia Herzfeld.

25 MS. HERZFELD: Thank you so much for

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2 having me. I'm sorry that I don't think anything
3 formally prepared. We just had an election on
4 Tuesday, so I have been a little bit busy.

5 So my name is Tricia Herzfeld. I am
6 currently a member of the Davidson County Election
7 Commission. I am one of the newly installed
8 members. I've been serving on the commission
9 since April of this past year where four of the
10 five commissioners are new. The new administrator
11 of elections just took office in November, so we
12 are kind of almost primarily new blood.

13 Prior to my time on the election
14 commission, I was the legal director for the ECLU
15 of Tennessee and have filed multiple
16 election-related lawsuits. Also served as a poll
17 watcher and have run a variety of voting day
18 election hotlines.

19 So it was my experience in monitoring
20 the elections in Tennessee that got me on the
21 commission now. It's a totally different
22 experience being on the inside from being on the
23 outside. And I can tell you that when I joined
24 the commission, we were quite distressed by what
25 we found. I don't know if you all are familiar at

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2 all with the state report on the state of the
3 Davidson County Election Commission, but I think
4 it's fair to say that it was nothing short of
5 scathing. And that was a republican-led
6 administration issuing that report on a
7 republican-led election commission, so I don't
8 think anybody would say that it was partisan.

9 The major issues that I've seen since
10 I've been on the commission are that there seems
11 to be -- even before my time on the commission,
12 there seems to be too much focus in the public and
13 within politics on keeping people from voting
14 instead of encouraging people to vote. And as I
15 thought about my remarks last night, I kept
16 thinking, my goodness, wouldn't it be wonderful if
17 everyone spent as much time encouraging people to
18 vote as they do trying to keep people from it,
19 issues with voter ID, felon voting. You know, I'm
20 sure you're all familiar with the statistics, I
21 know there's a panel dedicated to that later, how
22 many people have been disenfranchised through our
23 horrible felon disenfranchisement law here in
24 Tennessee.

25 The fact that people have a difficult

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2 time getting to the polls; the fact that we are
3 constantly changing the law, as Ms. Heim has said;
4 that you can change addresses and not realize that
5 you needed to do that, and suddenly you're stuck
6 at a polling location and it's five to 7:00 and
7 you're confused and you don't know what to do.

8 Those days all keep people from voting,
9 challenging people on the basis of their perceived
10 citizenship whether they're naturalized citizens
11 or not. All those things, there seems to be a lot
12 of effort at that.

13 And then I thought about all the
14 public relations regarding Obamacare, for example,
15 who have so many people that have been out there.
16 You've got celebrities, you've got, you know,
17 apps, you've got commercials and all these things
18 trying to get people to sign up for Obamacare.
19 You don't see a whole lot of people doing that to
20 get out the vote.

21 When I was younger, there was a whole
22 Get Out the Vote campaign, and it made people want
23 to go vote. And now it seems like all you see is
24 people trying to keep others from voting, and I
25 think that's got us a little bit lopsided,

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2 specifically in Davidson County, I think a lot of
3 our issues have developed from some neglect and
4 some complacency. I think generally the public,
5 and I think probably politicians as well, seem to
6 think that elections just happen, and they take it
7 for granted because they happen and they always
8 happen, and there are people in an office, and
9 they make that happen. But the truth of the
10 matter is, they don't. The budget at the Davidson
11 County Election Commission has been cut by nearly
12 40 percent since the last presidential election.

13 Now, I realize that we are in the
14 midst of a recession, maybe we're coming out. But
15 we have a constitutional obligation to ensure that
16 this happens, and this happens right. And cutting
17 budgets of election commissions is certainly not a
18 way to help anybody, specifically those
19 politicians that are trying to get elected.

20 I don't know why this is doing this.

21 The other issues, the outsourcing of
22 various election issues, I think we've eroded a
23 bit of voter confidence by letting a lot of stuff
24 be outsourced, doing a lot of electronic stuff
25 without having paper ballot backup. If there's

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2 ever a question about elections, it certainly
3 erodes confidence that there's no way to
4 double-check that, and that's a concern as well
5 for recounts and that type of thing.

6 And, finally, one of the things that
7 was brought up in the state report was the lack of
8 poll workers that we had in Davidson County, which
9 has been a huge problem, which goes with an aging
10 population and difficulty in getting people to
11 volunteer their time, which brings me back to the
12 issue of getting people excited by voting as
13 opposed to having to fight for it. Thank you very
14 much.

15 COMMISSIONER SHACKLEFORD: Thank you,
16 Ms. Herzfeld.

17 Any questions?

18 COMMISSIONER CUNNINGHAM: Yes.

19 COMMISSIONER WOODS: Go ahead.

20 COMMISSIONER SHACKLEFORD: He's
21 yielding to you. That's a first for --

22 COMMISSIONER CUNNINGHAM: How about
23 it?

24 I'd like to go back to, is it,
25 Ms. Heim? Did you say that Tennessee instituted

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2 voter ID in 2011?

3 MS. HEIM: 2012 was the first
4 election we used voter IDs in the state of
5 Tennessee.

6 COMMISSIONER CUNNINGHAM: Okay. What
7 was the effect of voter ID in terms of turnout?
8 Was there a noticeable difference prior to voter
9 photo ID as to after photo ID?

10 MS. HEIM: The November 2012 election
11 was one of our largest ever. We had a 66 percent
12 voter turnout, so it was truly one of our best
13 ever.

14 The one prior to that, in November
15 '08, it was done a little bit. But I think when
16 you have an incumbent, sometimes that happens for
17 the presidential election.

18 In 2008, the first election for
19 President Obama, we had a 70 percent turnout. It
20 dropped to 66 percent.

21 But we did not see a serious number
22 of voters turned away because of lack of photo ID.
23 We offered always the opportunity to file an
24 exemption for indigency or religious objections.

25 COMMISSIONER CUNNINGHAM: What is the

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2 criteria for your photo ID?

3 MS. HEIM: For obtaining a photo ID
4 or for casting an exception?

5 COMMISSIONER CUNNINGHAM: For
6 obtaining one.

7 MS. HEIM: The Department of Safety,
8 I believe, requires the same documentation that's
9 required by the National Safe ID, or whatever it's
10 called. It's national documentation. I believe
11 you have to provide proof of citizenship to get a
12 state ID driver's license or voting ID, photo ID,
13 proof of citizenship, proof of residency. Those
14 are the two documents I believe that are required.

15 COMMISSIONER SHACKLEFORD: And I
16 think Tennessee is the only state thus far where
17 the law has been ruled constitutional.

18 MS. HEIM: That is my understanding.

19 COMMISSIONER SHACKLEFORD: That's my
20 understanding.

21 MS. HEIM: I don't know that Georgia
22 has lost. Forgive me. I don't pay attention to
23 every other jurisdiction, but I'll defer to our
24 Georgia residents. Does Georgia not have a photo
25 ID as well?

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2 COMMISSIONER SHACKLEFORD: They do.
3 It's just like Arkansas. Arkansas presently has a
4 voter ID law. This election cycle will be the
5 first one to be implemented under that law, while
6 a judge has ruled the law unconstitutional, but
7 has stayed the implementation of his latest
8 ruling, and I think somebody will probably speak
9 to that later in the afternoon. But a judge
10 has -- while the judge has ruled it
11 unconstitutional, he is staying his decision, as I
12 understand it, because of the timing.

13 MS. HEIM: I see.

14 COMMISSIONER SHACKLEFORD: Early
15 voting starts May 20th. I don't mean May 20th.
16 May -- what is Monday? May...

17 MS. HEIM: 12th.

18 COMMISSIONER SHACKLEFORD: It
19 started. Two weeks. I'm getting my Mondays
20 confused. It just started. And so he ruled that
21 it was just too -- there wasn't enough time.

22 MS. HEIM: I was the officer of
23 election at Davidson County's largest precinct
24 yesterday, nearly 6,000 voters. We had one person
25 who cast a provisional ballot, and she said she

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2 just forgot her photo ID because she works at the
3 sheriff's office, and she said, "I will gladly
4 come back and present my photo ID." But we had no
5 other people turned away for lack of a photo ID
6 yesterday at my precinct. I can only speak to
7 what happened at my own location.

8 COMMISSIONER WOODS: One brief
9 question for Ms. Herzfeld.

10 MS. HERZFELD: Yes.

11 COMMISSIONER WOODS: Now that you are
12 commissioner on the inside, what are some of the
13 priorities that you hope to work on to correct
14 some of the things that you noted when you were on
15 the outside?

16 MS. HERZFELD: Yes. The list is
17 long, and it's much more overwhelming than I ever
18 anticipated. It's totally different being on the
19 inside than being on the outside.

20 We have had a change in leadership.
21 That's the very first thing that we did. And
22 that, unfortunately, was necessary, but I think a
23 good step.

24 The current commission seems to not
25 be divided by politics, which is something that I

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2 am very proud to say. I was a little bit
3 concerned that when you have, you know, three
4 republicans and two democrats, that that could
5 turn into a catfight pretty quickly. And I really
6 am proud by how much we all work together and seem
7 to really, truly just want to fix things.

8 We have some things we need to fix,
9 clearly. We are fortunate enough to have a report
10 laying them all out in great detail from the state
11 administrator. But the first thing we need to
12 work on is getting an adequate budget. You know,
13 the staffing numbers and the monetary value of the
14 office has been a significant hinderance in our
15 ability to do our jobs.

16 I believe it was also mentioned that
17 our office was moved kind of involuntarily to a
18 location really, literally in the middle of
19 nowhere. There is one bus line that goes to it,
20 and it's quite preposterous that anybody would
21 think that that's an appropriate place to put an
22 election commission. But trying to work with that
23 is certainly a thing we need to work on.

24 We're working very hard and trying to
25 let people know more about us and make ourselves a

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2 little bit more accessible, whether that be for
3 poll workers, poll watchers, or potential voters.

4 We have a lot of PR work to do and a
5 lot of real work to do. Unfortunately, I think
6 it's going to take a little bit longer than any of
7 us had hoped. But Tuesday's election seemed to go
8 okay. You know, a few hitches. But, you know,
9 all in all, you know, it's a growth project.

10 COMMISSIONER SHACKLEFORD: As it
11 relates to getting poll workers in to work, the
12 complaint sometimes is the age of the poll worker,
13 this kind of thing. But then I also hear
14 sometimes complaint about the pay that we give.
15 Have you all approached that concern, of pay?

16 MS. HERZFELD: Oh, yes. We've spent
17 an extraordinary amount of time trying to
18 brainstorm about ways to really try to encourage
19 more people, and more of a variety of people, to
20 be poll workers. And not to say that we are not
21 at all grateful for the poll workers that we have.
22 They do an extraordinary service. And they are
23 paid very little money, on their feet for, you
24 know, 12, 14 hours a day. And most people aren't
25 so thankful to the poll workers when they're in

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2 there.

3 However, there is an issue with
4 recruiting younger people, you know, trying to
5 bring in some new blood. I think specifically
6 when you're dealing with technology updates,
7 sometimes you want a mix of generations at the
8 polls in order to be able to deal with those
9 issues kind of one on one.

10 We've reached out. We've recently
11 hired a person in charge specifically of poll
12 recruiting and -- or poll worker recruiting who
13 has been reaching out to civic organizations,
14 churches, you know, high school students, you name
15 it, trying to get people to sign up.

16 We've also done our requested budget
17 to the mayor's office, which is now going in front
18 of Metro Council, asking to raise the rate for
19 poll workers from, I believe it's \$120 a day to
20 \$150 a day; still a pittance for the hard work
21 that these people do, but anything we can to get
22 qualified people motivated to come out and work
23 the polls.

24 COMMISSIONER PORTER: In Arkansas, we
25 have a provision, if a person has been convicted

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2 of a felon, once they have completed their term of
3 sentence and whatever probation, they can regain
4 their right to vote. Is there a similar provision
5 here for Tennessee?

6 MS. HERZFELD: There is. I think
7 there's a panel that will be discussing it later
8 with the ACLU of Tennessee. But I was fortunate
9 enough to litigate some of those cases, so I have
10 some familiarity. It's a very complicated law
11 here in Tennessee. It has changed from year to
12 year. So it depends on which year you had which
13 felony conviction and whether that felony
14 conviction renders you infamous. It's a very
15 complicated formula. Not only that, but you have
16 to get certification that you don't owe any
17 restitution on that crime after you've completed
18 your parole or probation, and, to add one more to
19 it, you also have to get certification that you do
20 not owe any child support. And I believe Tom
21 Castelli at the ACLU will be discussing that
22 later. But it was challenged all the way through
23 the Sixth Circuit, and I believe there was a cert
24 petition filed with the supreme court. It's been
25 upheld. It's unfortunate. I don't know what

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2 child support has to do with being convicted of a
3 felony. But, functionally, it has made it
4 incredibly difficult for people to regain their
5 franchise, and I think you all don't need to hear
6 me talk about what it means for society to not be
7 able to reintegrate people as full citizens.

8 COMMISSIONER SHACKLEFORD: We want to
9 thank you all for excellent testimony. And
10 because of the importance of your subject area, we
11 could really use the entire time because I think
12 everybody has more questions. We want to thank
13 you so very, very much for giving of your time and
14 services for the panel.

15 So as you all depart, I would like to
16 ask the second group of witnesses, Atiba Ellis,
17 Kermit Moore, Joe Rowe, and Sekou Franklin, to
18 come. If all four of you are here, if two will
19 get at each table, that may help a little bit this
20 time.

21 Again, I would like to welcome you
22 all to the witness table. I would like to also go
23 over again a few little housekeeping rules. Each
24 of you will be given five minutes to present your
25 prepared testimony. There is a timekeeper. She

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2 will signal when you have three minutes left, then
3 again when you have one minute left, and then she
4 will signal when the five minutes have ended. So
5 we would respectfully ask that you try and adhere
6 to that time frame.

7 The commissioners may have some
8 questions to ask, but we will do that -- I think
9 I'll just wait until the end this time of
10 you-all's presentations, and then we will ask
11 questions. Thank you.

12 We will start with Mr. Atiba Ellis.

13 MR. ELLIS: Good afternoon, and thank
14 you for the opportunity. Thank you for the
15 opportunity to testify here today. The topic is
16 redistricting and -- but I will spend my last
17 minute also talking about voter ID, at least the
18 specter of voter ID in West Virginia. But I want
19 to dedicate most of my time to the case of Tennant
20 versus the Commission of Jefferson County and the
21 redistricting litigation that took place in West
22 Virginia after the latest census.

23 What West Virginia has gone through
24 of late has been a bit of demographic change. The
25 state did not increase in population. It's still

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2 about 1.8 million people, and, thus, entitled to
3 three federal congressional districts. But the
4 population has shifted more towards the Eastern
5 Panhandle, which has, in effect, become a suburb
6 of Washington, D.C.

7 With that, the West Virginia
8 legislature engaged in its every-decade
9 redistricting. And after several proposals had
10 been made, the ultimate proposal that was created
11 complied with certain rules. First of all, it
12 complied with the federal "one person, one vote"
13 rule, a doctrine we're all familiar with inasmuch
14 as it guarantees that every vote will be valued in
15 comparison to every other vote cast.

16 The state legislature also had to
17 comply with a court of West Virginia state
18 constitutional law, which is that the legislature
19 is forbidden from breaking up counties and, as
20 much as possible, precincts within the same
21 municipality. So the legislature was constrained
22 by those rules and ultimately came up with a plan
23 that sought to avoid those problems, as well as
24 prevent incumbent competition.

25 What was interesting about the plan,

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2 though, was that there was a 0.79 percent variance
3 between the largest district of the three
4 congressional districts and the smallest. So, in
5 other words, about five -- there was a 5,000
6 person difference between the largest district and
7 the smallest district. And so there was a lawsuit
8 filed alleging that the state had violated the one
9 person, one vote rule inasmuch as for each vote to
10 be equal, each district had to be equal in size.

11 The Supreme Court of the United
12 States ultimately ruled on this issue and held
13 that such a small variance was acceptable inasmuch
14 as it was connected to the policy issues that I
15 mentioned, trying to make sure that incumbents did
16 not compete against each other, trying to follow
17 through West Virginia constitutional law issues in
18 terms of not breaking up counties.

19 And as one Con law scholar, who was a
20 colleague and friend, mentioned, anyone who lives
21 in West Virginia realizes the importance of
22 counties as sort of the markers of where one is in
23 a state.

24 So given that ruling, and in the
25 context of other rulings that the supreme court

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2 had recently provided in terms of redistricting,
3 in particular the Texas litigation, it signals a
4 change that the supreme court is allowing more
5 flexibility to state and local legislatures in
6 order to affect their constitutional
7 responsibilities to redistrict, which sounds
8 innocuous in and of itself. But in the context of
9 Shelby County and the worries that this
10 flexibility might be abused, it does offer the
11 specter of potential harm.

12 And now that I'm on my last minute,
13 I'm going to also mention one other act in the
14 Virginia legislature, which was a proposed voter
15 ID initiative. The republican party offered a
16 voter ID initiative that would have required
17 typical showing of a federal or a government
18 issued photo ID and certain other qualifications
19 in order to possess the ID and for it to be
20 presented while voting.

21 Now, this failed because the
22 democrats control both houses of the West Virginia
23 state legislature, but it signals a strong intent
24 to push more towards heightened regulation of the
25 vote. And depending on what happens in the next

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2 election, that initiative might be taken further.

3 Thank you for your time.

4 COMMISSIONER SHACKLEFORD: Thank you.
5 Thank you, Mr. Ellis.

6 Mr. Kermit Moore.

7 MR. MOORE: Good afternoon, and
8 thanks for having me as a part of this panel. I'm
9 Kermit Moore, Southern Region Director of the
10 A. Philip Randolph Institute. I'm here to talk
11 about redistricting in the state of Tennessee.

12 In the battle for voting rights,
13 Tennessee has been overlooked, but we have been
14 struggling. We are experiencing voter
15 suppression, gerrymandering challenges, just as
16 those seen in other states such as Texas and North
17 Carolina, which are getting all the attention.

18 On January 4, 2011, Speaker of the
19 House of Representative Beth Harwell announced a
20 new redistricting plan for Tennessee House of
21 Representatives. The redistricting plan was
22 developed through closed-door negotiations and
23 received no substantive input from democratic
24 legislatures or civic and community based
25 organizations. This process weakens democratic

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2 participation and erodes the integrity of
3 Tennessee's representative bodies, a plan that
4 also undermine the spirit of the Voting Rights Act
5 of 1965 and other voting rights protection.

6 The plan reduced black political
7 representation in Memphis and Shelby County, and
8 also Chattanooga and Hamilton County. It has been
9 indicated that the speaker could have retained or
10 created another black district in Memphis and
11 Shelby County.

12 Rather than complying with the
13 state's constitution and keeping Shelby County,
14 which is where Memphis is located, hold the
15 legislature, following the 2010 census, split
16 Shelby County in the State Senate Redistricting
17 Plan, attaching part of the county to a
18 predominantly white conservative senate district
19 in Fayette County. This negatively impacted local
20 legislature affecting Shelby County, meaning our
21 representatives aren't able to pass local bills
22 that will help residence in Shelby County,
23 particularly when it comes to public education.
24 Memphis and Shebly County lost one senate seat and
25 two house seats during the redistricting. We are

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2 challenging the redistricting plan in state court
3 right now asking the Supreme Court of the State of
4 Tennessee to hear an appeal.

5 This is not a voting rights case.
6 But if we are successful, that will be additional
7 African-American citizens from Shelby County. All
8 of these efforts, in light of Tennessee's
9 struggling economy, struggling schools,
10 worker-unfriendly laws and more, makes it harder
11 than ever for low-income voters and voters of
12 color to participate in the political process.
13 Thank you.

14 COMMISSIONER SHACKLEFORD: Thank you,
15 Mr. Moore.

16 Mr. Rowe.

17 MR. ROWE: Good afternoon. I
18 appreciate the opportunity to be here. I am a
19 member of the Chattanooga Hamilton County NAACA,
20 and I have worked at the local and at the state
21 level. I have also in the past served as a member
22 of the Hamilton County Election Commission. Thank
23 you.

24 In June of 2011, the Chattanooga
25 Hamilton County branch of the NAACP appointed me

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2 to work with the community and political leaders
3 at the city, county, and state level to help
4 ensure that minority voters of Chattanooga and
5 Hamilton County have an equal opportunity to
6 participate in all levels of the redistricting
7 process.

8 The process to redistrict the
9 Hamilton County nine districts went well. We were
10 able to achieve our goal of approximately
11 60 percent minority in each of those districts.

12 The state redistricting process fell
13 short of our goal to maintain the two seats
14 occupied by minority representatives, as was
15 mentioned earlier. Only one of the seats,
16 District 28, is protected by the Voting Rights Act
17 of 1965. The other district seat, District 29,
18 was held by a minority and was a majority white
19 district with a large number of minority voters,
20 about 30 percent. The state redistricting
21 committee placed the two minorities in the same
22 district and forced them to compete for District
23 28. The District 29 seat, formerly held by a
24 minority legislature, was redrawn with a
25 significant reduction in the number of minorities

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2 in their district.

3 The redrawn District 29 seat was won
4 in the next election, believe it or not, by the
5 cousin of the former Hamilton County mayor who had
6 recently resigned his seat to become an assistant
7 to the governor of Tennessee. That's kind of
8 interesting. Since state redistricting laws allow
9 state districts to cross a third of the 95
10 counties in Tennessee, that particular
11 redistricting process could have gone either way.
12 It wasn't necessary to make a major change in
13 District 29.

14 The real key issue that we're dealing
15 with in Chattanooga is the fact that on
16 November 12th the 1987, black plaintiffs signed to
17 file a federal lawsuit against the city of
18 Chattanooga for failing to honor the Voter Rights
19 Act of 1965. It took them 20 years to the point
20 of accepting the federal law as the prevailing
21 law.

22 On August 8th, 1989, the federal
23 judge ruled in favor of the plaintiffs to put in
24 place and eliminate the at-large district process
25 and put in place a mayor and city council form of

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2 government with four majority minority districts.

3 And in 2000, the redistricting
4 process remained unchanged with only a slight
5 shift for population changes.

6 However in 2010, the city of
7 Chattanooga announced before the redistricting
8 process that there would only be three districts,
9 not the four that we had been accustomed to in the
10 past, based on The Voting Rights Act. I
11 challenged that personally before the city council
12 and asked them to abide by The Voting Rights of
13 1965.

14 The council refused to budge on their
15 position of three majority districts. And the
16 attorney for the city advised the city council
17 incorrectly that Voting Rights Act of 1965
18 specifically said race cannot come into play. It
19 cannot be the only thing, but it cannot come into
20 play.

21 Also within that discussion, one of
22 the city council members of Hispanic dissent made
23 some real negative comments about the black
24 community. And all of this is your package. He
25 said that, "White people have been more fair to me

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2 than anyone else," and he's sick and tired and
3 resentful of the racial suggestions that are being
4 made.

5 His district was the one that we
6 worked in the process of converting to a black
7 majority district. The only reason why he held
8 that seat was because of those plaintiffs who
9 filed federal lawsuits to allow him to hold that
10 seat, and then he was challenging those of us who
11 opened the door for him.

12 Early in the redistricting process,
13 it appeared that the deck was stacked against us.
14 We reached out to the ACLU in Atlanta Georgia, and
15 Katie O'Connor, an ACLU staff attorney, was
16 assigned to our team to provide support.

17 We were able to draw districts to
18 support the four district concept, but it was
19 rejected by the city council because they said it
20 appeared to be racial gerrymandering, so they
21 turned it down.

22 We believe the Chattanooga City
23 Council is in violation of The Voting Rights Act
24 of 1965 by splitting communities of interest,
25 stacking minority voters into District 6 that

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2 could have been used in District 7 to make another
3 black majority district. This would have enabled
4 the city of Chattanooga to have the four majority
5 districts that we feel that we should have.

6 COMMISSIONER SHACKLEFORD: Thank you,
7 Mr. Rowe.

8 Mr. Franklin.

9 MR. FRANKLIN: Greetings. My name is
10 Sekou Franklin. I'm a professor at Middle State
11 Tennessee University, and I also conduct racially
12 polarized voting analyses for voting rights cases.
13 And what I'll talk about briefly today is
14 persistent patterns of racially polarized voting
15 in Tennessee and the subsequent need for majority
16 minority districts. And I'll spend my last one or
17 two minutes looking at racial priming in
18 Tennessee, which is a strategy used to activate
19 racial resentment amongst white voters.

20 Racially polarized voting is
21 typically used in voting rights analyses. I think
22 most of you probably heard of that. If you can
23 show that racially polarized voting exists
24 particularly between if you have a black candidate
25 and a white candidate in a, for example, majority

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2 white district, then you can perhaps show that
3 voters tend to vote based upon maybe the
4 preferences, the racial preferences of their
5 particular candidate. So a lot of people who look
6 at voting rights analysis make the argument that
7 if you have persistent patterns of racially
8 polarized voting, it may be difficult for African
9 Americans to win over white voters. And, thus, if
10 you take a case like Shelby County in West
11 Tennessee, you need an African-American district
12 so that African Americans can essentially vote for
13 their preferred candidate.

14 Here in Tennessee, we have a long
15 history of racially polarized voting. In the
16 paper that I submitted to you, I looked at five or
17 six elections using a technique called ecological
18 inference analysis, which is an estimation
19 procedure that's commonly used in voting rights
20 analyses. And we see in Tennessee, for example,
21 in the last four or five presidential races, that
22 the gap in racially polarized voting has actually
23 increased. There was a 46 percent gap between the
24 black and white preferred candidate in the last
25 presidential election. That number has increased

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2 by 25 percent in the last 12 years. In other
3 words, if you looked at the 2000 presidential
4 election, would you find that black and white
5 voters were more similar in their voting patterns.
6 But if you looked at 2012, you would find that
7 black and white voters were far, far different in
8 their voting patterns.

9 I also looked at the mayoral election
10 of 2007 in Nashville/Davidson County, as well as
11 several elections in Memphis, and also found
12 persistent patterns of racially polarized voting.

13 As mentioned earlier, racially
14 polarized voting is a good indicator for examining
15 the likelihood that African-Americans can win
16 competitive biracial elections, especially
17 elections that have a high voter turnout. And
18 this it particularly important considering the
19 recent demographics shifts in Tennessee, in which,
20 between 2000 and 2010, the African American and
21 Latino voting age population, that's 18 and above,
22 has grown at a much faster rate than the white
23 voting age population, but at least the state
24 legislative districts political representation
25 amongst African-Americans has gone down.

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2 Racial priming is another technique
3 that's used in campaigns particularly targeting
4 African-American candidates, as well as white
5 candidates who have large constituencies of
6 African-American voters. Racial priming is a use
7 of subtle racial appeals that's primarily used to
8 stimulate white racial resentment particularly
9 when it comes to African-American candidates or
10 white candidates with larger African-American
11 support.

12 We see examples of racial priming in
13 Tennessee, for example, in 1994 in which Jim
14 Sasser ran against Bill Frist. We saw racial
15 priming used in terms of some of the pamphlets
16 that were distributed in East Tennessee. And in
17 2008, we saw a controversial mailer that was
18 distributed through the Second District of
19 Tennessee that targeted Representative Nathan
20 Vaughn, called the blackbird mailer, which also
21 was used and designed to activate white racial
22 resentment. And in 2006, we also saw that being
23 used in the election with Harold Ford, Junior, and
24 Bob Corker. I conducted additional statistical
25 analyses that showed that there was a racial

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2 difference in that particular election? Whites
3 typically voted against Harold Ford, Junior some
4 would argue because of the use of racial priming
5 techniques such as the a Playboy Bunny add that
6 gained a lot of national recognition, as well as
7 other tactics that were used that received less
8 recollection.

9 Why is a discussion about racial
10 priming important for Tennessee and the Voting
11 Rights Act? Tennessee is a Section 2 case, voting
12 rights Section 2 state. Most of Tennessee is
13 covered by Section 2.

14 In 1982, when Congress amended the
15 Voting Rights Act, it assessed what's called the
16 "senate factors," or also called the "totality of
17 circumstances test." In that test, Congress
18 identified the use of overt and subtle racial
19 appeals in political campaigns as problematic and
20 perhaps as diminishing the affluence of the black
21 vote.

22 So if you look at the use of racial
23 appeals -- I'm sorry, racial priming and subtle
24 appeals primarily used to activate white racial
25 resentment, I would argue that that also should be

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2 covered by voting rights protections.

3 Racial priming is a persistent --
4 racial priming is not incidental or anecdotal to
5 Tennessee. It is persistent. It is enduring. It
6 is constitutive of elections and political
7 campaigns, primarily political campaigns that's
8 used to defeat African-American candidates or
9 white candidates with significant numbers of black
10 support.

11 COMMISSIONER SHACKLEFORD: Thank you,
12 Mr. Franklin.

13 Panelists, questions.

14 COMMISSIONER PORTER: Mr. Moore, it
15 was kind of interesting, you indicated that in
16 Shelby County, African Americans lost two senate
17 seats; is that correct?

18 MR. MOORE: One senate seat and two
19 house of representative seats.

20 COMMISSIONER PORTER: Okay. And
21 that's because of the area was redistrict?

22 MR. MOORE: Yes. Part of Shelby
23 County was redistricted to be in Fayette County,
24 and they took other representatives, as they did
25 in Hamilton County, and put them together.

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2 COMMISSIONER PORTER: Has there been
3 any current legal challenge to that?

4 MR. MOORE: No.

5 COMMISSIONER PORTER: Okay.

6 MR. MOORE: Well, yes.

7 COMMISSIONER PORTER: Okay.

8 MR. MOORE: The redistricting plan is
9 before -- the briefs have been sent to the supreme
10 court, and we're waiting on a decision to see if
11 they will hear our challenging of the
12 redistricting plan.

13 COMMISSIONER PORTER: What was the
14 makeup, I guess? Do you know the makeup of the
15 state redistricting committee? I guess these
16 folks who met behind closed doors, were there any
17 African-American representation?

18 MR. MOORE: All republicans.

19 COMMISSIONER PORTER: And all white?

20 MR. MOORE: All white, closed door.
21 The other state representative and senators didn't
22 know about the meetings. No transparency at all.

23 COMMISSIONER PORTER: All right.

24 Thank you.

25 COMMISSIONER SHACKLEFORD: Any other

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2 questions?

3 COMMISSIONER CUNNINGHAM: Not a
4 question, just a comment. In the state of
5 Kentucky, it was democratic control that used the
6 same tactic of going behind closed doors and
7 coming up with the redistricting plans of the
8 legislature. So it does cross party lines.

9 COMMISSIONER SHACKLEFORD: Any
10 questions and/or comments?

11 It seems as though the commissioners
12 are low with the questioning.

13 I think, Mr. Ellis, time ran out
14 before you were able to finish your presentation.
15 Is there something burning that you would like to
16 share?

17 MR. ELLIS: Well, one thing I wanted
18 to add to my comments, since you're allowing me
19 the moment, and I appreciate that, is that when
20 looking -- in a way, West Virginia is a different
21 case inasmuch as it's a state with a relatively,
22 very small minority population, and a lot of my
23 comments were not necessarily directed at that
24 sort of practice. But one thing I do want to add
25 is that where there is diversity in the

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2 legislature, it has often been because of
3 multimember districts. Often we think about
4 districts in terms of single member, i.e., there's
5 one district and one representative. But West
6 Virginia has a mix of single and multimember
7 districts.

8 And these comments -- reflecting on
9 my testimony, I realized I did not add -- because
10 of time, I did not add this point. But in looking
11 at the redistricting litigation, especially the
12 state supreme court litigation, there were a
13 number of parties who were very interested in
14 eliminating the multimember districts where there
15 were more women and minorities being elected. And
16 in the litigation, they point the opponents of the
17 multimember districts and the -- ultimately the
18 plan that the legislature put together pointed to
19 the efficiencies that could be gained from
20 single-member districts, so 100 house of delegate
21 districts. And they argued to the supreme court
22 that that should be the plan that should be
23 implemented.

24 The court resisted that temptation
25 basically saying, well, that's a political

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2 question, it's up to the legislature to choose how
3 it wants to do. And the nature of that choice is
4 a political question in the sense of that's what
5 the politicians are elected to decide, and the
6 courts aren't in a position to deal with that.

7 I raise that because if one looks at
8 the briefs and looks at those who were supporting
9 the elimination of these multimember districts
10 where several of the women and people of color in
11 the West Virginia legislature come from, it is the
12 chamber of commerce and certain other right wing
13 political groups that are sort of championing the
14 move towards single-member districts in West
15 Virginia.

16 So it's a very different type of
17 political shift, but in its own way targeting
18 people of color.

19 COMMISSIONER SHACKLEFORD: Are you
20 suggesting that the multimember districts would be
21 more helpful for diversification as opposed to
22 single-member districts?

23 MR. ELLIS: Depending on the context,
24 they can be. There are some scholars who have
25 written about the advantages of multimember

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2 districts and have said that, given the
3 opportunity to vote for, say, five different
4 representatives for a county as opposed to one
5 representative in one district, that voters across
6 different races will vote for the person they
7 might prefer and then give their other votes to
8 other people and, thus, helping folks who
9 otherwise wouldn't get those votes to get them.
10 So there is some scholarly evidence towards that.

11 On the other hand, I do want to point
12 out that there are folks who have pointed out that
13 a lot of the historical litigation around voting
14 rights and redistricting has been because of
15 multimember districts, and they're being used to
16 shut out minorities.

17 COMMISSIONER SHACKLEFORD: I'm sorry.
18 Go ahead. I was just asking --

19 MR. ELLIS: Oh, no. I had -- I mean,
20 the point, very simply, is that there is
21 historical evidence that multimember districts
22 have been used to shut out minorities. But there
23 is also evidence that -- and if one looks at the
24 West Virginia case, it's an opportunity to involve
25 more women and minorities in voting as well. So

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2 the answer depends on the context.

3 COMMISSIONER SHACKLEFORD: Okay.

4 COMMISSIONER WOODS: Professor
5 Franklin, you were speaking of the priming, racial
6 priming, et cetera. My question to you is this:
7 What action do you feel could be taken to deal
8 with that issue and by what entity?

9 MR. FRANKLIN: Well, there's a
10 political action that could be taken, and then
11 there's just basic legal action. And the legal
12 action or the legal response would be that priming
13 should be considered within a broader frame of
14 Voting Rights Act coverage because if you look at
15 those -- the 1982 amendment to the Voting Rights
16 Act, those seven factors, they explicitly say that
17 if subtle racial appeals are used along with a
18 variety of other factors together which -- seven
19 or eight other factors together, that itself
20 should constitute voting rights coverage.

21 But oftentimes when we talk about
22 priming, it's seen as incidental or anecdotal,
23 just politics as usual. And I'm making an
24 argument that racial priming should be
25 considered a lot -- at this -- combined with these

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2 other factors as constitute above voting rights --
3 politically, there is a political response to
4 racial priming which just -- the academic
5 literature shows that if a candidate is being
6 primed, like a Harold Ford, Junior, the best thing
7 that you should do is just tell the general public
8 that you're being primed.

9 But typically black candidates,
10 particularly, or white candidates who have large
11 black constituencies, they're being primed,
12 they're so afraid of racializing a race, they're
13 afraid of racializing a campaign, they run away
14 from it, they joke from it, they don't talk about
15 it, they're afraid of scaring off white voters.
16 But all the research says that if you're being
17 primed politically, the best thing to do is to
18 tell voters this is what's being done to you, you
19 need to pay attention to it, and let's offer a
20 response. So that's the political part, but then
21 there's also a legal part.

22 COMMISSIONER PORTER: I was just kind
23 of curious about your judicial races. I noted you
24 mention in your report there were four candidates
25 who ran for a particular judgeship. And I think

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2 the white candidate, there were, what, three or
3 four African Americans who ran for that particular
4 judgeship, and I guess the white candidate won
5 that particular election. Do you have minority
6 judicial subdistricts, for instance, like in
7 Shelby County?

8 MR. FRANKLIN: I was basically asked
9 to author -- to provide an analysis for a legal
10 team. So in terms of offering -- in terms of
11 answering that question about subdistricts, I
12 can't really answer that particular question. I
13 was just given a list of candidates to analyze,
14 and that's what I did, look to see if racially
15 polarized voting took place in the particular
16 districts.

17 COMMISSIONER PORTER: We had an
18 interesting situation in Pine Bluff. Pine Bluff
19 is an area that's roughly about 65 percent African
20 American, and you had several candidates who ran
21 for mayor. Probably about seven of the candidates
22 were African Americans, and there was one white
23 person who ran. And I guess when you have the
24 candidates bumping up against then, that almost
25 acts as a voter delusion within itself.

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2 MR. FRANKLIN: Oh, absolutely. No
3 question. And the study I did of Memphis, really
4 what happened ultimately is you had several black
5 candidates running in a race with one white
6 candidate. And black vote was split, but the
7 white vote was consolidated. And that can work
8 the other way too. You could also have in a city
9 that's majority white, several white candidates
10 running and one black candidate, and the black
11 vote could be so consolidated and the white vote
12 could be split.

13 So typically when we do RPV, or
14 racially polarized voting, we try to look at broad
15 patterns over a period of time that give us a
16 larger frame or picture of whether or not it
17 exists, notwithstanding of what I just described
18 about multiple candidates running.

19 COMMISSIONER SHACKLEFORD: Thank you.
20 My fellow commissioner just shared
21 with me that we are right on time too.

22 But I did want to give -- Mr. Rowe, I
23 think time was called on you as well --

24 MR. ROWE: Yes.

25 COMMISSIONER SHACKLEFORD: -- and to

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2 see if there was one burning point that you didn't
3 get to give that you would like to give.

4 MR. ROWE: Yes. There are a couple
5 of points.

6 COMMISSIONER SHACKLEFORD: Just don't
7 put us over time.

8 MR. ROWE: Okay. Redirecting is a
9 forward-looking process.

10 COMMISSIONER SHACKLEFORD: I'm sorry?

11 MR. ROWE: It's a forward-looking
12 process, not looking at today's time or looking
13 backwards. We spent a lot of time trying to
14 understand the Voting Rights Act of 1965 in order
15 to advance redistricting. But the key components,
16 key elements, never in play. One is the role that
17 chamber of commerce plays because they're the ones
18 who are -- the direction of the city. That's a
19 huge issue. Annexation, what's going on with
20 annexation. HUD plays a significant role as well
21 because in cities like mine, there is a huge
22 number of public housing units. As HUD begins to
23 shrink those down, it shakes up the whole
24 redistricting process. And the way that it's done
25 is at the end of the process, before you know the

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2 true impact, and by then it's too late, that is
3 they begin closing those units down before they
4 formally announce that they're being taken off the
5 market. So four or five years out when you feel
6 the impact of it, you've already been impacted the
7 three or four years in front of that.

8 So we have to look at all of these
9 other agencies and organizations that provide and
10 fuel this information into redistricting. People
11 like me, part time, we're focused on the Voter
12 Rights Act of '65. We don't have access to all
13 this other information.

14 COMMISSIONER SHACKLEFORD: Thank you.

15 I'd like to thank you all for such
16 extraordinarily good testimony. So thank you so
17 very, very much, and thanks for sharing with us.

18 With that, I will ask that -- for the
19 second panel, I just -- not for you to come now,
20 but I want to just give an assessment to see --
21 the third panel, I'm sorry, to see if they are
22 here. We're going to take a break here. But is
23 Ms. Tonya Fogel and Mr. Tom Castelli, are they
24 here?

25 COMMISSIONER CUNNINGHAM: Tonya Fogel

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2 is here.

3 COMMISSIONER SHACKLEFORD: Oh, great.
4 Okay. I just wanted to make certain just for
5 logistical purposes.

6 What we will do now...

7 MS. PERALTA: Do you want to do the
8 third panel and then break since your witnesses
9 are here?

10 COMMISSIONER SHACKLEFORD: If it's
11 okay with you, with the witnesses. Oh, great.
12 Well, thank you.

13 Mr. Castelli and Ms. Fogel, if you
14 all will come to the witness stand.

15 I gather from the audience -- did you
16 all need to take a stretch break? I was hearing a
17 lot of chatter. And I'm going to ask if you do
18 it, do it quietly. Just stand up and stretch a
19 second, and that's okay. But just stand up and
20 stretch a second, and then we're going to begin
21 with the panel.

22 Okay. Thank you all again. I'm
23 charged with sharing a few little housekeeping
24 rules with you.

25 Your testimony should be no more than

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2 five minutes. There is a timekeeper. At the end
3 of -- when you have three minutes left, she will
4 give you a sign. When you have one minute left,
5 she will give you a sign. And when the five
6 minutes have ended, I think she has something that
7 says "stop." So if you all will be respectful of
8 the time.

9 Ms. Fogel, you may begin.

10 For this session, I probably should
11 remind the audience again that this panel is on
12 disenfranchisement of incarcerated and formerly
13 incarcerated individuals. Thank you.

14 MS. FOGEL: First of all, allow me to
15 give honor to God, who is truly the head of my
16 life. Without him, I could do nothing.

17 I'm honored to be perceived as an
18 expert witness. And at the end, if you have any
19 questions and I stumble, I will defer to
20 Mr. Cunningham.

21 But I'm here to talk about Kentucky
22 and the right to vote. I'm going to give you some
23 statistics, because I know you all have the
24 packet, but the people in the audience may not.

25 What I talk about Kentucky and being

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2 here in Tennessee, that's a great honor. I used
3 to play ball for the University of Kentucky, and
4 back then Tennessee won everything.

5 So, you know, we have a
6 disenfranchisement of a lot of people, and I'd
7 like to tell you right now that I'm one of those
8 people. I'm a graduate of the University of
9 Kentucky with a BA degree in therapeutic
10 recreation. Tomorrow night I will receive an
11 associate degree in business management. And so
12 there's a lot of people like me in Kentucky.

13 I would like for you to keep this in
14 mind: Over a quarter-of-a-million people are
15 disenfranchised in Kentucky and has taken the
16 right to vote away, the right to vote. Did I
17 commit the crime? Yes. Did I pay my time? Yes.
18 And I came back into my community to be received
19 as a returning citizen. So I'm a voice of the
20 voiceless.

21 I work hard and volunteer for the
22 Kentuckians for the Commonwealth, which is a group
23 that acts on disenfranchisement of people in
24 Kentucky. We have been at the table for about
25 nine years how trying to get a bill, House Bill

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2 70, passed through our legislation. This year was
3 the closest year. We thought we were going to get
4 it through, get it passed. But just like I heard
5 before from some panelists, the things that I see
6 in Kentucky, down in Frankfort, some of those
7 people ought to be arrested and locked up, the
8 people that we have voted to represent us.

9 In Subsection 145 of the Kentucky
10 Constitution that was passed in 1891 and amended
11 in 1955, the Section 145 states that every citizen
12 of the US who is 18 years old and living in our
13 state is entitled to vote except for the convicted
14 of treason or felony or bribery in an election.
15 It says that persons hereby excluded may be
16 restored their civil rights by executive party.

17 The same section bars people from
18 voting who are incarcerated at the time of
19 election. Even if they have not been convicted of
20 a felony, it includes the awful language that
21 idiots and insane persons may not vote. That's in
22 our constitution in Kentucky.

23 So as we work really hard to try to
24 restore peoples' right to vote, our governor has
25 say-so as to who gets their rights back and who

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2 don't. So we -- I'll take myself. What has
3 happened is, I'm the poster child for Kentucky. I
4 was granted my right to vote by Governor Paul
5 Patton, and he missed an indictment number. So
6 the board of elections contacted me and said, "You
7 are no longer eligible to vote. You're still
8 falling under the felony category."

9 By that time, we had this governor by
10 the name of Ernie Fletcher that was sitting as the
11 governor. His process was that I had to write an
12 essay, get three character references, and then
13 pay a fee. Well, we already know all that Jim
14 Crow stuff, and I fell right in it.

15 It's just that my mom and my granny
16 taught me how to vote. My granny died at 102, my
17 mom died at 80, and they came through the
18 struggle. I mean, we're still in the struggle,
19 but, I mean, they were the water hose people,
20 people that I sit here and represent.

21 We've got a lot of people working.
22 Here's what we've said: The people that are
23 working in Kentucky, and remember that quarter of
24 a million that I'm talking about, they've paid
25 their debt to society, they served out their time,

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2 and now they cannot vote.

3 And so what we're asking our
4 constitution to do is to pass House Bill 70,
5 that's the name of it. And that states that
6 anyone that is nonviolent that has paid their debt
7 to society, that has returned, paying tax and paid
8 all restitutions, that they be given their right
9 to vote. That's that quarter of a million people
10 that I'm talking about. And so I want to keep on
11 pushing that, that number. We are so
12 disenfranchised.

13 We had Senator Paul Patton come down
14 to the legislation this year, and he said some
15 words about supporting House Bill 70. Our
16 governor even stood up at the Martin Luther King
17 March and said how it was a travesty that the bill
18 has not passed in the senate. Well, I'm here to
19 tell you that he didn't give a pardon, a blanket
20 pardon, since he's so attune to --

21 Is that my bell? Okay. I'm going to
22 be obedient.

23 COMMISSIONER SHACKLEFORD: We'll let
24 you finish --

25 MS. FOGEL: Thank you, Lord.

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2 COMMISSIONER SHACKLEFORD: -- your
3 sentence. We'll allow you to finish your
4 sentence.

5 MS. FOGEL: Well, all I would like to
6 tell the panel is that there's so many statistics
7 here, I didn't even touch on them. There's a
8 group of people who are working for the cause of
9 the people who do not have a voice.

10 The last thing I want to say is there
11 is one gentleman who has been fighting his right
12 to vote. He served our country. He was busted
13 for a sack of marijuana. He served our country,
14 he served in three wars, and he came back, and he
15 still cannot vote, and that's it.

16 COMMISSIONER SHACKLEFORD: Thank you.

17 MS. FOGEL: There's still some more
18 stuff, but I'm fine. Thank you for allowing me to
19 speak.

20 COMMISSIONER SHACKLEFORD: Thank you.

21 MS. FOGEL: That timer has got me --

22 COMMISSIONER SHACKLEFORD: Thank you.

23 MS. FOGEL: -- tore up.

24 COMMISSIONER SHACKLEFORD: Thank you
25 so much.

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2 Mr. Castelli.

3 MR. CASTELLI: Thank you. Thank you
4 for having me. Am I -- can you hear me?

5 COMMISSIONER SHACKLEFORD: I don't
6 think your mic is on. I can hear you, but I
7 don't --

8 MR. CASTELLI: Well, I don't know how
9 to turn it on, so --

10 COMMISSIONER SHACKLEFORD: It's on
11 now.

12 MR. CASTELLI: Okay. Great.

13 I'm Tom Castelli. I'm the legal
14 director of the ACLU of Tennessee.

15 We've been involved with this issue
16 for quite a while. As Ms. Herzfeld, who was my
17 predecessor who was up here earlier talking about
18 election commission work, told you, the voter
19 disenfranchisement statute in Tennessee is
20 horribly, horribly convoluted and very harsh. It
21 depends on what felony you committed at what point
22 in time, it depends on whether you need a judicial
23 proceeding to get your voting rights restored, or
24 whether you can file paperwork with the
25 commission.

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2 We made an attempt -- well, first of
3 all, right now the disenfranchisement statute is
4 if you've committed a felony crime. If it's on a
5 particular list, you can never have your voting
6 rights restored, or you can only have them
7 restored with a pardon from the governor. And
8 that list continues to grow. It was violent
9 crimes, and now it's beginning to add nonviolent
10 crimes like voter fraud, bribery charges, and
11 certain charges for interference with government
12 operations.

13 COMMISSIONER PORTER: Mr. Castelli,
14 would you turn that mic away. I think it's
15 getting --

16 MR. CASTELLI: Okay. Is that better?

17 COMMISSIONER PORTER: It might. I'm
18 not sure.

19 MR. CASTELLI: Okay. So you have to
20 pay all fines, fees, and restitution in full. And
21 then we have this very unique requirement that all
22 child custody payments be paid in full before
23 restoration of voter rights. And I don't know of
24 any other state that has this, this requirement.

25 We challenged that in a case that

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2 came down from the Sixth Circuit in 2010. It was
3 called Johnson v. Bredesen. We challenged that.
4 Mr. Johnson was one of the plaintiffs in that
5 case. He had served a sentence, paid all his
6 fines, paid his restitution, had a child support
7 arrearage, actually had custody of that child at
8 the time that he was seeking restoration, but that
9 did not matter because there is nothing in the law
10 that says there is an exception if you can show an
11 inability to pay or if you're actually currently
12 in -- have custody of a child. It's kind of a
13 hard-and-fast rule. If you owe, you're not
14 eligible.

15 We failed in our challenge in the
16 Sixth Circuit. We challenged it on equal
17 protection grounds saying that there was a
18 disparate treatment between people of means and
19 people without means because you were essentially
20 saying -- essentially creating a pay-to-vote
21 scheme. If you had money, you didn't a problem.
22 If, like many people coming out of the corrections
23 system with a felony conviction, might struggle to
24 get a job, might struggle with being able to pay,
25 those people were not able to vote. And the

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2 message that we felt that the Tennessee General
3 Assembly was sending and the Sixth Circuit was
4 sending is that if you weren't able to pay, then
5 you weren't worthy enough to vote.

6 Probably the most striking thing
7 about this child support payment is it has nothing
8 to do with the underlying felony. There's no
9 requirement that you be put in jail because of
10 your inability to pay child support, which is a
11 misdemeanor in the state of Tennessee, and
12 requires a showing that you wilfully did not pay
13 your child support.

14 So, essentially, we've just allowed
15 the state, and the Sixth Circuit has allowed any
16 state in their jurisdiction, to just tack on a
17 financial requirement to the restoration
18 requirements to vote, which was -- their other
19 argument in that case was this is essentially an
20 unlawful or constitutional poll tax which would
21 violate the 24th Amendment. And, again, the Six
22 Circuit disagreed with us.

23 One judge did dissent and agreed that
24 this disparity between basically wealth created a
25 situation where there was no legitimate government

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2 interest being served and, therefore, the statute
3 should have failed. But, unfortunately, that
4 single judge was just one voice on the panel.

5 As Tricia indicated, we did take that
6 up to full hearing of the Sixth Circuit and
7 petitioned for the supreme court for a hearing,
8 and that was denied.

9 But in Tennessee -- I see I got about
10 a minute left.

11 In Tennessee, this is a fallout of
12 this, is we've got about 340,000 disenfranchised
13 citizens. Only two percent of -- the stats show
14 only two percent are able to get their voting
15 rights back. This has a huge disproportionate
16 impact on the African-American community. I think
17 nationwide the stats are 1 in 13 African-American
18 adults are disenfranchised. In Tennessee, it's 1
19 in 5-and-a-quarter.

20 So that being said, ACLU of Tennessee
21 are continuing to look for ways to not only
22 challenge or change this law, but to -- or to find
23 other ways to restore the voting rights to our
24 citizens with felony convictions. Thank you for
25 having me.

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2 COMMISSIONER SHACKLEFORD: Thank you,
3 Mr. Castelli.

4 Before the commissioners begin with
5 their questions, partly because I was trying to go
6 by this -- the format that we -- the schedule we
7 had been given.

8 So now for the timekeeper, I would
9 ask if you would help me, we'll have 15 minutes
10 for questions. So if you will help me to adhere
11 to that time frame, 15 minutes of questions.

12 Now, commissioners, you all may ask
13 questions. But I just wanted you all to know what
14 the time frame was because we were using our
15 schedule before, and now we're doing something
16 different.

17 COMMISSIONER PORTER: Mr. Castelli,
18 I'm just kind of curious, as far as the lawsuit
19 that was -- that challenge, was there a challenge
20 to a different impact as far as on
21 African-American voters?

22 MR. CASTELLI: I'm not -- I don't
23 think there was -- first of all, no, there was not
24 because we were thrown into a rational basis
25 analysis by the Sixth Circuit. Even though we're

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2 dealing with the right to vote, the Sixth Circuit
3 determined that since the right to vote had been
4 stripped, we weren't dealing with the fundamental
5 rights. So, therefore, we -- the only thing the
6 state had to show was rational basis. I wasn't on
7 this lawsuit. But that tells me that there was
8 not a challenge based on the disparate impact on
9 African-American voters, which might provide us
10 with a possible future challenge if we can show
11 that impact. And I think the -- you know,
12 that's -- I'm not a social scientist, I'm an
13 attorney. But that -- you know, the stats that
14 I've seen is starting to bear that out, not only
15 voter disenfranchising, but in over-incarceration
16 issues and other criminal justice issues.

17 COMMISSIONER PORTER: Do you know
18 whether or not there has been any type of studies
19 that would indicate, let's say, for instance, the
20 percentage of whites who have been able to get
21 their right to vote returned versus the percent of
22 African Americans who have been able to get their
23 right to vote returned? Do you know whether or
24 not there have been any kind of studies that talk
25 about those numbers?

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2 MR. CASTELLI: The only studies I'm
3 aware of would be kind of like a total -- totality
4 of the circumstance to you here, the raw numbers.
5 They don't actually get in depth into a -- you
6 know, whether there's an advantage beyond to --
7 given to white persons with felony convictions as
8 opposed to African Americans or other minorities.
9 It's more of just a "here's the raw numbers." And
10 if we look at the raw numbers, we have a
11 disproportionate amount, based on our population,
12 of -- we have a disproportionate amount of
13 American-American adults, or men in particular, in
14 our criminal justice system, which is a problem.
15 And then that -- these studies are kind of coming
16 off of that. Those adults are being
17 disenfranchised because of their entry into the
18 criminal justice system and the felony conviction
19 rate. That's the only stake we have.

20 What I'd be interesting in seeing is
21 I think what you're talking about, which is what's
22 the access like for the African-American adults
23 coming out of the system to get the right
24 restored, and is the statute, because of, say,
25 this child support requirement and the other

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2 financial requirements, raising a bar that is
3 particular to people within the minority
4 community.

5 COMMISSIONER SHACKLEFORD: As we take
6 a look at that, this whole issue, have -- do you
7 have any suggestions in the sense of what will be
8 some of the most effective forms of outreach to
9 individuals who may be subject to
10 disenfranchisement because of their criminal
11 records or those -- particularly those with
12 misdemeanors? Do you have any examples or...

13 MS. FOGEL: I know in the state of
14 Kentucky, we do have statistics showing that
15 people who come out of incarceration, they are
16 less likely to be repeat offenders because once
17 you come back and you are a returning citizen and
18 you no longer take from the community and you
19 become part of the community, you do everything to
20 protect that right.

21 Just like he stated, according to the
22 2013 report from the League of Women Voters in
23 Kentucky, Kentucky has the third highest rate of
24 disenfranchisement in the nation. One out of
25 every 14 residents is disenfranchised, almost

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2 three times the national rate we have in the
3 country. More than one out of every five African
4 Americans over the age of 18 is ineligible to
5 vote.

6 Our process is that the person coming
7 out of incarceration first has to appeal to the
8 DOC, department of corrections. Once they give
9 their okay, then it goes to the prosecutor, and
10 then the prosecutor weighs in on it, and then it
11 goes to the governor.

12 And I ask you, if you prosecuted me,
13 what likelihood are you going to give me my right
14 to vote back because I'm able to out of office? I
15 don't know what the reasons are down in Frankfort,
16 Kentucky. They seem to think that everyone that's
17 incarcerated is either black or they're democrat.
18 And so -- that has been said. I mean, we went
19 around and took some polls. And so that is --
20 that's ludicrous.

21 What I'm sitting here to say is
22 Stevie Wonder can see the writing on the wall.
23 Then I've heard that states are taking child
24 support. That may trickle down to Kentucky. I
25 know one of our senators attached a lot of

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2 amendments to House Bill 70 that was ludicrous.
3 They wanted voter ID, and they wanted to wait five
4 years after the sentence. When a person is on
5 parole, that is the waiting period. I don't know
6 why we have to continue to prove that we're okay
7 in this community when we're paying taxes. Either
8 take away the taxes since we can't vote, or give
9 us our voting rights and we'll continue to pay the
10 taxes. I mean, they should be split some kind of
11 way. We need y'all's help in Kentucky.

12 COMMISSIONER WOODS: I have a
13 question for Mr. Castelli.

14 MR. CASTELLI: Castelli, yes, sir.

15 COMMISSIONER WOODS: Castelli.

16 In looking at those 340,000
17 disenfranchised persons in the state of Tennessee,
18 is there any way of determining how many of those
19 could have had their records expunged at the end
20 of their sentence if it had been asked for at the
21 time of prosecution?

22 MR. CASTELLI: As far as
23 expungement --

24 COMMISSIONER WOODS: Yes.

25 MR. CASTELLI: -- of the crime? I

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2 really don't know.

3 COMMISSIONER WOODS: What happens, of
4 course, is that frequently there's plea
5 bargaining. But in that plea bargaining process,
6 for African Americans, quite often, it's not a
7 part of the plea bargain. And, therefore, when
8 their sentence is up, it remains on their record.
9 And in other instances when the plea bargain is
10 underway, it becomes a part of the plea bargaining
11 process for a lot of persons who were convicted.
12 And, therefore, when their sentence is up, they
13 can vote.

14 MR. CASTELLI: Yes. We have -- in
15 Tennessee, we have what's called a judicial
16 diversion, which sounds kind of like what you're
17 talking about.

18 COMMISSIONER WOODS: Okay.

19 MR. CASTELLI: In that situation, the
20 guilty conviction isn't actually entered, and then
21 expungement happens and, you know, there is --
22 there is some -- and, again, I don't have access
23 to a study, but I think some concern on whether or
24 not that option is not being given to
25 African-American defendants is the same -- at a

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2 same rate as white defendants. But that wouldn't
3 affect disenfranchisement. Tennessee's
4 expungement statutes aren't necessarily dependent
5 on the plea bargain process for felony
6 convictions. There's only certain situations
7 where you can -- if you don't get this pretrial
8 diversion, which is where they hold the guilty
9 plea, in that situation there wouldn't be any jail
10 time involved as well.

11 I mean, probably one of the problems,
12 kind of going back to addressing one of the
13 questions, is I think there's a lack of
14 information to those coming out of prison of what
15 their rights are because if you've paid all the
16 monetary obligations, it actually is a terribly
17 complex process, assuming that your crime was
18 committed after a certain date. You fill out of
19 form. You have your probation officer certify
20 you've completed probation and paid everything,
21 you turn it into the election commission, you get
22 registered to vote. That's part of that 2006 law
23 that we have actually been trying to work to make
24 better, and then we got kind of hijacked with the
25 custody requirement.

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2 But that's not -- you know, I don't
3 think that's common knowledge to someone walking
4 out after serving their prison sentence or getting
5 off probation. And, actually, that's -- my
6 organization and partner organizations, that's
7 something we're trying to do, is get that word out
8 to people with felony convictions, that you can
9 get your voting rights restored. Not all 341,000
10 of those folks have child support arrearages.
11 Some of them just don't know how to do it. And as
12 they trickle into our organizations, we try help
13 them and assist them.

14 But I'm not sure that there's really
15 a mechanism in Tennessee where expungement in
16 particular is being used to disenfranchise
17 African-Americans voters at a greater rate than
18 white voters. I think there may are other
19 mechanics certainly that may be being used in a
20 disparate way that is affecting African-American
21 defendants more than white defendants. And, of
22 course, the consequence of that is they lose their
23 right to vote.

24 COMMISSIONER SHACKLEFORD: Do you
25 have some suggestions then on some outreach

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2 methods that could be used to get this
3 information?

4 MR. CASTELLI: I mean, you know, I'd
5 like to see -- you know, I'd like to see that this
6 be -- you know, when you have a probation officer,
7 your probation officer, part of their job is to
8 help you get into compliance. If you miss a
9 probation officer payment, you know, probation
10 payment, or if you don't report, you know, the
11 idea behind probation is that they're there to
12 kind of govern you back to the straight and
13 narrow.

14 I don't think it would be so
15 farfetched to add to that idea of -- since we are
16 personalizing you by taking away your right to
17 vote, that part of that role would be to guide you
18 back to restoring your right to vote after you've
19 completed your sentence.

20 We, of course, kind of think that
21 waiting until the end of a probation period is too
22 long; that if you were sentenced to, say, ten full
23 years, you served five, and then you're on parole
24 or probation for five years, you shouldn't have to
25 wait the whole time to have your rights restored.

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2 Of course, you know, that's our opinion that might
3 have been shared by some others. But, you know,
4 that's one way that the legislative action could
5 help.

6 Otherwise, I think it's just a matter
7 of education, and I don't really have a suggestion
8 other than continuing to talk to the people out
9 there who are coming back into our communities.
10 And, you know, the organizations that do try to
11 help people returning from corrections facilities
12 back into communities, let them know about this,
13 let them know about the process, try to understand
14 the process. And then, you know, we'll continue
15 to try to get kind of know-your-rights-type
16 materials out to those who need it. Obviously we
17 can't reach every single last person.

18 COMMISSIONER SHACKLEFORD: One of the
19 things you were saying is having this be a part of
20 the process that the probation officers would
21 share with the inmate once they're being released.
22 Am I understanding --

23 MR. CASTELLI: I mean, that's -- and
24 that's kind of an off-the-top-of-my-head thought,
25 but, yeah. I mean, I think what we're talking

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2 about is a rehabilitative corrections system,
3 supposedly. And I think -- I mean, we may -- we
4 may say that and know that that's not necessarily
5 what our justice system does, but that's what it's
6 supposed to do.

7 COMMISSIONER PORTER: I know in
8 Arkansas we have a commission that's been put
9 together by the governor where they're -- they
10 have in place -- they're trying to create a
11 situation where there they put a seamless reentry
12 into society --

13 MR. CASTELLI: Yes.

14 COMMISSIONER PORTER: -- to remove
15 such things, barriers, for people who are coming
16 out of incarceration such as, one of the ideas
17 that's been tossed around, if a person has been
18 incarcerated, then, obviously, the child support
19 obligations should be basically reduced to a -- I
20 mean, a very low amount. I mean, how is a person
21 going to be able to pay child support if they're
22 incarcerated?

23 There are other things that are being
24 put in place, and the commission is supposed to
25 come together with a report during the fall to

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2 allow those persons who are coming out of the
3 correctional facilities to have basically a
4 seamless reentry into society. That may be
5 something that in Kentucky that could be put
6 together.

7 MS. FOGEL: Yeah, in Kentucky --
8 Kentuckians for the Commonwealth is a 31-year-old
9 organization, and we have a coalition of a lot of
10 organizations and agencies that work around this
11 issue. It's just simply not enough, what we have
12 in Kentucky. Every person coming out of
13 incarceration who has paid their debt to society
14 should automatically be restored as you're coming
15 in as a returning citizen. I mean, all we want to
16 do is just get back to our dreams. We want to be
17 a part of the community. And so what the
18 government does, this sitting governor, he has
19 done an okay job. But what will happen when the
20 next governor takes office? He will have a right
21 to make the process easier or more difficult than
22 what it is right now. And so we do have a website
23 where people -- the probation parole can help
24 individuals coming back.

25 I want to make a statement on Senate

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2 Bill 4 and House Bill 463 in the state of
3 Kentucky. They came up with a bill because a lot
4 of judges and a lot legislative kids was getting
5 felonies, and so they didn't introduce a bill
6 where a person can have this diversion. And if
7 they complete like a treatment program, then their
8 charge just disappears. But that's not good
9 enough because all of us don't have a lawyer.

10 COMMISSIONER CUNNINGHAM: I wanted to
11 answer one question. Kentucky does not have
12 expungement. The only ones that can be expunged
13 in Kentucky are for misdemeanors and Class D
14 felonies.

15 MS. FOGEL: And it cost \$100 for --

16 COMMISSIONER CUNNINGHAM: So,
17 therefore, Kentucky does not have that. In
18 terms -- Kentucky also has an awkward system of
19 how you apply. And I realize my role as a
20 commissioner, and was trying to stay out of it.
21 But I do think it needs further explanation that
22 an individual who applies can get their rights
23 back. It is a cumbersome process. And as we have
24 seen with governors changing, by executive orders,
25 it changes, and it can change from governor to

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2 governor. Therefore, the bill that Tonya has been
3 referring to, HB70, has passed the Kentucky House
4 of Representatives by overwhelming majorities for
5 the last seven years -- last year, 82 to 12 --
6 only to be denied by the republican leader. The
7 majority floor leader refuses to call the bill up.
8 Even though Senator Rand Paul from his own party
9 came to testify in favor of the bill, he still has
10 refused to call it up. So that's where it stands
11 now.

12 We are working with the governor.
13 Now, this governor has made the process more
14 progressive, and it is easier. But it's still a
15 cumbersome process, especially if you've been out
16 for a while.

17 COMMISSIONER SHACKLEFORD: And
18 depending upon the whims of who the governor --

19 COMMISSIONER CUNNINGHAM: Depending
20 on the whims of the governor. And that is what
21 we're trying desperately to change with HB70.

22 COMMISSIONER SHACKLEFORD: Thank you.

23 Again, I want to thank you, the
24 panelists, for a wonderful, wonderful job. Well
25 will done.

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2 Now I'm going to ask the
3 representative, would you give them directions as
4 to what they're supposed to do. Were going to
5 take a break. But, I mean, where do they go? Is
6 this the food break? What's why I wanted you to
7 give them particulars.

8 MS. PERALTA: Absolutely. We have a
9 light dinner for folks. If you could exit and
10 just make a right, we'll be in the Fellowship
11 Hall.

12 COMMISSIONER SHACKLEFORD: How much
13 time should they have?

14 MS. PERALTA: We're taking a
15 20-minute break. We'll be back at 6:10.

16 (Brief recess observed.)

17 MS. DENNIS: So the first person is
18 Honey Dozer. Remember, I said I was Georgian.
19 How do you pronounce it?

20 MS. DOAGHER: Honey Doagher
21 (phonetic).

22 MS. DENNIS: Dozer. There we go.

23 MS. DOAGHER: Hello. My public
24 testimony is going to highlight the felony
25 disenfranchisement, and its going to focus in on

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2 the cumbersome process that was mentioned earlier.

3 My personal story, when I was
4 released from parole, my parole officer handed me
5 the papers that showed me this is what you need to
6 do to get your right to vote back. And I thought,
7 "Oh, that's fantastic." And I read it, and it
8 said that I had to have three character
9 references, and he made mention how these needed
10 to be civil servants. And being a person who had
11 aged out of a group home who was not from
12 Kentucky, I had no references. I didn't know
13 anyone to create those references. So I looked at
14 it as I was now put under pressure to create a
15 fraudulent relationship in order to gain my rights
16 back. But I was just charged as a fraudulent
17 person. That's why I went to jail. And so to
18 have to create a fraudulent relationship with
19 civil servants in order to get my right to vote
20 back made me feel like the system was very
21 tainted. There was something very, very wrong
22 with that process, and I thought that that was
23 just personal to me.

24 And as time has moved on, there's a
25 lot of children who age out of group homes who

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2 have no idea what they're looking -- what their
3 future has for them. And they may not have the
4 relationships that I had. And throughout the
5 process, I am now a full-time student who is an
6 activist, and I am majoring in political science.
7 And, yes, at this time, I have an abundance of
8 references that I could use to gain my right to
9 vote back.

10 However, there are one in four
11 Kentuckians who don't have that privilege, and so
12 I will maintain my solidarity with those
13 individuals until we get House Bill 70 passed.

14 So that is my highlight of voter
15 disenfranchisement. Thank you.

16 COMMISSIONER CUNNINGHAM: Can I ask
17 her one quick question?

18 MS. DENNIS: Yes, two minutes for
19 questions.

20 COMMISSIONER CUNNINGHAM: You said
21 when you were released from the Kentucky
22 institution --

23 MS. DOAGHER: Yes.

24 COMMISSIONER CUNNINGHAM: -- and you
25 were given the application to file for your rights

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2 back --

3 MS. DOAGHER: Yes.

4 COMMISSIONER CUNNINGHAM: -- you were
5 told who you had to get?

6 MS. DOAGHER: I was told that I had
7 to have civil servants as my three character
8 references.

9 COMMISSIONER CUNNINGHAM: Civil
10 servants?

11 MS. DOAGHER: Clergy members.

12 COMMISSIONER CUNNINGHAM: That was
13 under the Fletcher administration?

14 MS. DOAGHER: That was.

15 COMMISSIONER CUNNINGHAM: Okay.

16 MS. DENNIS: All right. Thank you.
17 Can I have Flaco Aleman? Is Flaco
18 here? Okay.

19 MR. ALEMAN: I'd like to thank the
20 commission for the opportunity to come speak today
21 and testify on behalf of voting rights.

22 My story is similar to many people
23 across the country. At 18 years old, I went to
24 prison and spent 11 years of my life in prison.
25 And at 35 years of age, I've never had the

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2 opportunity to vote. I'm not a drug addict or an
3 alcoholic. And I, you know, would like to think
4 that I'm good at the work that I do.

5 But there's a lot of irony in my not
6 being able to vote. That irony comes in the work
7 that I do both personally and professionally. Not
8 only am I a member of Kentuckians for the
9 Commonwealth, who has been working on the
10 restoration of voting rights for close to a
11 decade, but I also am executive director for
12 Kentucky Jobs with Justice. And one of the things
13 that we've done, along with Kentuckians for the
14 Commonwealth and several other folks in our
15 coalition, is to not just look at the
16 disenfranchisement of voter power the returning
17 citizens face, but also the disenfranchisement of
18 other parts of civic engagement from employment
19 being one of those focuses. And what we found is
20 that in Jefferson County, Kentucky, approximately
21 one in four African Americans have either a felony
22 or a misdemeanor. And recidivism speaks a lot,
23 plays a big role when we talk about felony
24 disenfranchisement and voter disenfranchisement.

25 And one of the things that I'm proud

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2 to say that we've looked at expanding the public
3 conversation about returning citizens far well
4 beyond the rights to vote, particularly around Ban
5 the Box legislation. Ban the Box legislation,
6 which we were able, through a strong collation
7 with Kentuckians for the Commonwealth, Kentucky
8 Jobs with Justice, the ACLU of Kentucky, the
9 Kentucky FLCIL, several labor organizations and
10 social justice and racial justice organizations
11 were able to pass this legislation with the
12 unanimous vote in Jefferson County. And what this
13 says is that now in Jefferson County, Kentucky,
14 metro government and their vendors can no longer
15 ask on an employment application have you been
16 convicted of a crime or inquire about that
17 question. We see that very critical to the life
18 of returning citizens, and I can speak personally
19 to that as well.

20 But the irony in that work, in voter
21 empowerment, and turning out the vote each
22 election year in a nonpartisan manner speaks
23 volumes because one of the things we tell people
24 when people ask me the question why should I vote,
25 why should I care about the civic engagement

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2 process, is I tell people that's where our power
3 lies. Our power lies in solidarity and our power
4 lies in the ability to cast a vote and cast a
5 ballot for our elected officials.

6 So my life is full of that irony
7 while I preach that power and I preach that
8 solidarity. I myself still cannot partake of that
9 solidarity. And so it is only through the work
10 that I do professionally and personally that we
11 continually strive to organize the unorganized or
12 organize the disenfranchised until we are able to
13 pass House Bill 70.

14 And from a personal level, you know,
15 I have a lot of conversations, and I have caused a
16 lot of people in the coalition a lot of ruffled
17 feathers. You know, personally, I believe that
18 ever person should have the right to vote, no
19 matter what the crime, maybe outside of treason.
20 But, you know, I move forward with renewed
21 strength knowing that there are organizations like
22 Jobs with Justice, like Kentuckians for the
23 Commonwealth, like the Fairness Campaign who push
24 forward for the registration of voting rights.
25 And I challenge everyone to push that conversation

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2 further as we look to what returning citizens need
3 not just the right vote, but the right to full and
4 fair employment, healthcare, and things of that
5 nature. Thank you.

6 COMMISSIONER WOODS: Thank you.

7 MS. DENNIS: Did you all have any
8 questions or anything?

9 COMMISSIONER WOODS: No.

10 MS. DENNIS: Okay.

11 All right. Next we have Teddy Smith
12 Rogalar (phonetic). Remember, Georgian. You will
13 have to correct me.

14 MS. ROGLAR: Excuse my shoes. My
15 74-year-old feet decided what shoe I would have on
16 right now.

17 But, anyway, my first sign is to God,
18 my creator, and to Christ, my keeper.

19 I have to tell you briefly, I
20 didn't -- I'm a former felon. I didn't wake up
21 one morning, as I've been trying to tell people in
22 Frankfort, and decide I would commit a crime.

23 When I came to Kentucky at 11 years
24 of age, I was repeatedly raped over the summer,
25 and I kind of lived in hell in my mind for years

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2 and years and years. And when I turned 18, I
3 started drinking alcohol so I could escape from my
4 misery. So I did binge drinking, and it got worse
5 and worse. I would get arrested. I finally went
6 to Pewee Valley, went to prison a couple of times.

7 And when I did get myself together
8 and go through treatment and got my mind squared
9 away, I went to school with my daughter, and I
10 earned three associate degrees in three years, and
11 I worked for a United States Congressman. And I
12 thought until I started being on the council with
13 Protection & Advocacy from Frankfort, I thought my
14 record was sealed, and I thought I was no longer a
15 felon. But in working with them when they put
16 together the 120-county resources manual, I found
17 that my record was sealed to an extent. They
18 couldn't find it, the department of corrections.
19 But I told them what my number was, and they were
20 able to find it. And I'd never voted in Kentucky,
21 and I'm glad I didn't because I could have been
22 arrested for voting with a felony record.

23 I get so angry and upset with the
24 legislatures. If you lie to people in law
25 enforcement, you can go to jail, and they lie all

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2 the time. But it's really weird.

3 This -- I started to say Kentucky is
4 a racist state, but everywhere I've been in
5 America is racist, including when I lived in
6 Harlem, New York, and I lived in San Diego,
7 California. So racism is alive and well all over
8 this country. And every facet of our lives is
9 based on how someone else feels about the color of
10 our skin.

11 For example, heroine is real popular
12 again. Here in Kentucky, it's being cut with a
13 drug that's supposed to put you to sleep. And of
14 all the overdoses in Kentucky, or in my area of
15 Kentucky, all of the ODs were of white people and
16 only one black person. So the powers that be in
17 Frankfort are trying to rush through Senate Bill 5
18 so white folks can -- if they complete everything
19 that's ordered by the court, they can do treatment
20 and everything, they throw their records out. And
21 I'm -- I'm trying to get someone down there to
22 give me a sensible answer than if -- if you do
23 this, well, then retro back to the crack -- people
24 that are in jail for crack and clean up
25 everybody's record. I don't know what needs to be

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2 done. I feel we need to go back to the -- like
3 the era of Civil Rights. We need to take to the
4 street because people aren't -- they're not
5 listening. The way the racial composition is
6 going now, white males are already out numbered.
7 But I'm finding here in Kentucky especially, they
8 are trying to make sure that they stay in control.
9 Thank you.

10 COMMISSIONER PORTER: Thank you.

11 MS. DENNIS: All right. Next we have
12 Michael Fogel. Okay. We'll come back to him.

13 Next we have Carol Westlake.

14 MS. WESTLAKE: Thank you. I'd like
15 to thank the commission for being here. Welcome
16 to Nashville. We're very can glad that you're
17 here. It's an important thing that you're doing.
18 So thank you very much.

19 I'm Carol Westlake. I'm a proud
20 member of the League of Women Voters of Nashville
21 and Davidson County, who are helping to sponsor
22 this hearing. I'm also the executive director of
23 the Tennessee Disability Coalition, and I'd like
24 to talk a little bit about disability rights and
25 voting and the participation.

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2 The coalition is in alliance with
3 about 47 different disability groups across the
4 state of Tennessee. All of us are committed to
5 independence inclusion and the full and equal
6 participation of people with disabilities in all
7 aspects of community life. Obviously, voting is
8 fundamental to that.

9 For the last 14 years, the coalition
10 has had a specific campaign designed to increase
11 the specific participation of people with
12 disabilities in Tennessee. We've worked a lot on
13 poll accessibility, voter registration, Get Out
14 The Vote, and accessible voting systems. There
15 was a real need to do that. Data from the 2000
16 election showed us that we had a 12 percent gap in
17 voting between people with and without
18 disabilities. We just weren't showing up at the
19 polls. We set about to do something about that.

20 Working with our member agencies, we
21 established local vote committees, we worked with
22 election officials, we trained people how to vote
23 and how to get out the vote, did a lot of good
24 work. The passage of HAVA, the Help America Vote
25 Act, really strengthened our efforts. Our

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2 secretary of state and our election commissioner
3 worked hard to improve accessible voting in
4 Tennessee, and we were really able to make
5 strides.

6 In 2008, Rutgers University
7 researchers surveyed voters nationwide with and
8 without disabilities postelection, including
9 Tennessee. They reported that in Tennessee, the
10 voting gap had shrunk to six-and-a-half percent
11 instead of 12 percent. We were very proud our of
12 ourselves. We felt like we were making real
13 progress. We decreased that gap by almost half.

14 Well, for the last three years, the
15 coalition has been partner in the Research
16 Alliance for Accessible Voting. We call it RAAV.
17 This three-year grant from the US Election
18 Assistance Commission was part of two contracts
19 that the EAC put out in response to a
20 congressional mandate to look at ways to make
21 voting more accessible and to identify successful
22 approaches to addressing barriers to voting.
23 Clemson University was a project manager, and
24 Nancy Ward, who is going to be on your forth
25 panel, I think, was a part of that team as well.

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2 So I'm really anxious to see my friend from
3 Oklahoma.

4 One of the things that we -- you
5 know, as Nancy will tell you, is that independent
6 voting, confidential voting is something that
7 people with disabilities often don't have.
8 Ensuring that citizens can vote with little or no
9 difficulty is fundamental to a democracy, and it
10 is an important topic in public debates and policy
11 initiatives. Ensuring that people with
12 disabilities can vote prevents distinct
13 challenges. And Lynn William talked about a few
14 of those on your first panel today.

15 The unique needs of people with
16 disabilities, though, I'm here to tell you, are
17 becoming less unique. They're becoming more
18 mainstream. The Census Bureau reports that in
19 1998, there were 80 million people in America who
20 were age 45 and older. And in that same group in
21 2012, 120 million. We're the baby boomers. We're
22 on our way.

23 You know, if you add extended life
24 expectancy to that, an average to 15 to 30 years
25 longer than we're used to, you're looking at a

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2 huge cohort of people who are likely to experience
3 disability and have accessibility needs related to
4 voting, among other kinds of things.

5 There are estimated to be 5 million
6 people with disabilities in Tennessee, making us
7 one of the largest minority groups in our state.

8 Statistically, roughly 75 percent of
9 us are of voting age. That's a lot of people, and
10 it's growing.

11 Our work with the RAAV project was
12 focused on how to improve the voting experience at
13 the polls for voters with disabilities. I want to
14 share just a little bit of baseline research that
15 the RAAV team found. Nationally, almost
16 30 percent of voters with disabilities had
17 difficulty voting at the polls, compared with only
18 eight percent of people without disabilities. The
19 top three problems that people had with voting are
20 seeing the ballot, understanding how to vote,
21 using the machine to mark the ballot, and having
22 to wait in line, and being able to physically be
23 able to do that. Those are the things that we
24 really wanted to be able to take a look at and to
25 work out.

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2 I want to tell you about some of the
3 things that did work as we did our research.
4 Early voting works. Forty -- sorry. Oh, I'm on
5 the stop.

6 COMMISSIONER WOODS: I'm sorry.

7 MS. WESTLAKE: Okay. I'm going to
8 stop.

9 COMMISSIONER WOODS: Yes.

10 MS. WESTLAKE: I apologize.

11 Well, I will tell you that -- one
12 thing, which is the photo ID issue that was raised
13 earlier. When we looked at our data from the 2012
14 election, our gap is back up to nine-and-a-half
15 percent. I think a lot of that has to do with
16 photo ID and people with disabilities having
17 trouble with that.

18 I apologize. Thank you.

19 COMMISSIONER WOODS: Thank you.

20 MS. DENNIS: Whatever extra
21 information you all have, you can always give that
22 to me, and I will put it into the record.

23 So now we have Michael Fogel.

24 UNIDENTIFIED SPEAKER: He's nervous.

25 MS. DENNIS: Oh, okay. So you can

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2 send in your written testimony. That's perfectly
3 fine.

4 COMMISSIONER PORTER: I just have a
5 question, if I can. I noticed that there have
6 been several people talking about, you know,
7 obviously, felon conviction and voter
8 disenfranchisement. Is there a concerted effort
9 to join other groups, other civic organizations to
10 try to, I guess, have a bigger political push in
11 order to try to eliminate the disenfranchisement
12 that we have -- that so many of our people have as
13 a result of felony conviction? I'm thinking about
14 the Women League of Voters, you know, when you're
15 talking about have a felony conviction, that is
16 sort of a form of disability that people have
17 because of that. And so I was just kind of
18 curious as to whether or not what other
19 organizations have you joined with or tried to
20 solicit in order to assist you in your endeavor.

21 COMMISSIONER CUNNINGHAM: I think I
22 can answer that for you.

23 COMMISSIONER PORTER: Okay.

24 COMMISSIONER CUNNINGHAM: If I may.

25 COMMISSIONER PORTER: Thank you.

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2 COMMISSIONER CUNNINGHAM: In
3 Kentucky, this year we had the 50th anniversary
4 for the March on Frankfort. Sixty-three
5 organizations joined in with that, and the focal
6 point was HB70. Those groups included Kentuckians
7 for the Commonwealth, Jobs for Justice, NAACP,
8 Urban League, 63 YMCAs, Kentucky Commission on
9 Human Rights were all a part, fairness. It was
10 the broadest-based coalition that we could have
11 across the state, and they all joined in and all
12 are committed to working this next session.

13 As a matter of fact, the principal
14 sponsor of the bill is retiring from the
15 legislature. We've already met, and that
16 person -- the next legislature who is going to
17 take the point has already been selected, and we
18 are ready to keep that coalition together.

19 COMMISSIONER STOKES: I do have a
20 follow-up, because I heard from earlier testimony
21 and comments that you made that the reason HB70 --
22 am I correct --

23 COMMISSIONER CUNNINGHAM: Yes.

24 COMMISSIONER STOKES: -- has not been
25 considered at this point is because it has not

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2 been introduced.

3 COMMISSIONER CUNNINGHAM: Oh, no.

4 COMMISSIONER STOKES: I may have
5 gotten that wrong.

6 COMMISSIONER CUNNINGHAM: Okay. The
7 bill has been introduced.

8 COMMISSIONER STOKES: Right.

9 COMMISSIONER CUNNINGHAM: For the
10 last seven sessions, it has passed the house of
11 representatives by overwhelming majorities. This
12 year is the first year it had a hearing in the
13 senate. We did get it that far. But the senate
14 let it die. Well, let me put it -- we had the
15 hearing. The majority floor leader tacked on
16 quite a few amendments. And when the house then
17 would not concur with his amendments, he let it
18 die in the senate.

19 COMMISSIONER STOKES: An intentional
20 strategy to --

21 COMMISSIONER CUNNINGHAM: It's the
22 same -- it's the same senator who introduced photo
23 ID, and that is -- he is the biggest outlook
24 supporter we have in the state senate, I do
25 believe.

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2 MS. DENNIS: Thank you.

3 And I failed to mention that we have
4 another guest commissioner who has joined us. Her
5 name is Patricia Stokes, and she's the president
6 of the Urban League of Middle Tennessee. So
7 please excuse my lapse of giving you all
8 information. So sorry about that.

9 All right. So we're going to keep
10 going. So next we have Pastor Kelvin Walker.

11 MR. WALKER: How is everybody doing?
12 I only have a few minutes to speak. I guess my
13 question would be why. I mean, what's the logic
14 behind taking somebody's voting rights? What
15 would be -- I mean, what would be the purpose of
16 it? I mean, can you ask anybody that question and
17 really get a logical answer to that particular
18 question? You know, because when you consider the
19 fact that if a person commits a crime, especially
20 here in the state of Tennessee, and then you're
21 properly adjudicated through the system, you go
22 in, the purpose of going through the system, the
23 person being in incarceration, is for
24 rehabilitation and punishment. So if I go through
25 the system, I'm rehabilitated, I'm properly

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2 punished, I meet a parole board, I'm paroled out
3 into -- back into free-world society, that should
4 send a signal to somebody with some sense that
5 says this individual is ready to come out and
6 should be able to participate in society and their
7 life.

8 I was incarcerated in a state prison
9 system in the state of Tennessee back in the '70s.
10 I actually cast my first ballot, my first voting
11 ballot while incarcerated in the state prison
12 system, and I've been voting ever since.

13 Some of my crimes were violent
14 crimes, so I don't understand the logic behind
15 these manipulative tactics in restructuring and
16 pretending to mold and shape these voter
17 registration laws and different things like that.
18 And, you know, you make people jump all kind of
19 hoops. What if you got a violent crime, then you
20 can't vote. If the crime was committed during a
21 certain period of time, then you can't get your
22 voting rights and stuff like that. But here it
23 is, the last time I committed a crime was 31 years
24 ago. And I've been voting in all of the
25 elections, just went and voted, and did some early

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2 voting this last election here.

3 My mindset is not the same mindset
4 that I had, although the system didn't let me out
5 because I got out through the federal court
6 system. But at the same time, I'm an individual.
7 I have a right to feed my children and to live
8 where I need to live and to work and own
9 businesses and do whatever I need to do. So why
10 is it that I -- after all this time, why is it
11 that I should not have the same rights of any
12 other citizen in this country that have not
13 committed a crime when you consider the fact that
14 I'm no longer a criminal.

15 And let me say this: When I went to
16 prison, I should have been in prison. They should
17 have locked me up, and they did lock me up. But
18 once I got out of prison and I'm no longer in
19 possession of that mindset or that criminal
20 thought -- that criminal thinking, then I should
21 not be treated as if I still possess that same
22 mindset. Something ought to be changed. And
23 somebody ought to implement some laws instead of
24 trying to play with these laws. Why don't we put
25 something on the table that says let's get rid of

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2 this stuff because to say, well, you got to do
3 this and then you pay all child support. Who in
4 prison that's been locked up for 5, 10, 15 years
5 whose got a child whose parent that took him to --
6 whose significant other then took him to court for
7 child support is not going to have child support.
8 Then you get out, you got to jump a hoop, you're
9 disenfranchised, you can't get a job, you can't
10 interview, you can't be -- then you're expecting
11 to be able to pay this stuff? Man, that's
12 ridiculous. So my question again is why. Why?
13 Where is the logic in it all? That's the
14 question.

15 MS. DENNIS: Do you all have any
16 questions?

17 COMMISSIONER WOODS: No.

18 MS. DENNIS: All right. Next we
19 have -- I'm probably going to butcher your name.
20 But I've said I'm a Georgian. Drost? Can you
21 just say it for me?

22 MS. KOKOYE: Yes.

23 MS. DENNIS: Thank you.

24 MS. KOKOYE: Good evening, everybody.
25 My name is Drost Kokoye. You'll never hear the

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2 name again, so it's fine.

3 I'm just going to speak a little bit
4 about language equity and language access when it
5 comes to voting and polling locations and the
6 application that has to do with people who have
7 difficulty communicating in English or just would
8 rather have somebody that are with them while
9 they're using the computer or don't really feel
10 comfortable using that kind of thing.

11 I was a poll watcher at Paragon Mills
12 Elementary School in 2012 for the national
13 elections. During my eight hours there, I
14 witnessed a lot of people from the community there
15 be turned away because, after sitting in line or
16 standing in line for about 20, 30 minutes to get
17 to the front to be told, oh, well, we don't really
18 have that application right now, just wait another
19 ten minutes and I'll get to you in just a little
20 while. These hurdles that are put in front of our
21 community members who have already made the strive
22 to come and make their voices heard, but then
23 you're telling them that they're still not going
24 to be allowed that space.

25 And so I feel like if the application

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2 is there, then the poll workers need to be aware
3 that this is something that everybody, regardless
4 of how comfortable -- if they wanted to have
5 access to this application, then they're allowed
6 that. And just that educational part of it itself
7 would help protect the voting rights of a lot of
8 people, especially in the minority communities.
9 Thank you.

10 COMMISSIONER WOODS: Before you
11 leave --

12 MS. KOKOYE: Yes.

13 COMMISSIONER WOODS: -- one question.
14 Are you saying that people stand in line, they go
15 to the poll to vote, and then when it's time for
16 them to vote, they don't have something in their
17 language so that they can understand how to vote?

18 MS. KOKOYE: So all of the voting,
19 so, like, the machines and everything, they're all
20 in English. But if I -- my native language is
21 Kurdish. So if I go up there and I decide I'd
22 rather have somebody else come and help me, then
23 there's an application that I fill out that says
24 this person has now become my helper --

25 COMMISSIONER WOODS: Right.

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2 MS. KOKOYE: -- and we both agreed to
3 this, and somebody from the poll workers has also
4 signed on and seen this happen.

5 COMMISSIONER WOODS: Sure.

6 MS. KOKOYE: But that takes
7 oversight. And if the people who are running the
8 polls decide that's just extra for us and we'd
9 rather not do that, which is often what happens,
10 then those people who have already been waiting
11 the 20, 30 minutes who brought the extra person so
12 that they can have full understanding of the
13 positions that they're voting for, the correct
14 name that they're looking for, then don't get to
15 vote.

16 COMMISSIONER WOODS: Okay. All
17 right.

18 COMMISSIONER STOKES: Another
19 question or a point of clarification, Drost,
20 because I think it's important to put your
21 comments in context. So in Metro Nashville, the
22 area that you talked about, Paragon Mills, is
23 probably one of the more diverse communities. And
24 I don't know the statistics, but I know within the
25 Metro school system, we have 140 languages. So

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2 that's the context that you are speaking of.

3 Are you associated with a particular
4 group that is advancing strategies that could be
5 productive in sort of helping get out the
6 information about the applications or make suring
7 that people have those in place? I know being
8 able to offer it at the polls, but making sure
9 that people have that information in place before
10 they get to the polls.

11 MS. KOKOYE: Absolutely. With a
12 couple of the communities that I work with, what
13 we try to do is, first of all, this engagement
14 process and why voting in the first place is
15 important and significant, and then taking the
16 ballot examples to the community and showing it,
17 whether it's at the mosque or the weekend school
18 or something, to where the community becomes
19 familiar with it and they're not scared of it.
20 But the names and kind of being able to pick it
21 out, or even a machine, it's kind of intimidating
22 for somebody who either hasn't done it before or
23 isn't on computers regularly. And so usually
24 parents will take one of their older siblings or
25 something like that to where they can help them go

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2 through that process.

3 COMMISSIONER STOKES: Thank you.

4 MS. KOKOYE: Thank you.

5 MS. DENNIS: All right. Now we have
6 Cheryl Allen.

7 MS. ALLEN: Hello. I was an officer
8 on the election this year, and I worked with
9 Whites Creek 201, very heartbroken. First of all,
10 the first thing I want to say is, starting March
11 the 1st, I did a voters' drive for people to come
12 in and register to vote. We had 30 days before
13 the election to be able to vote.

14 On this form, this document right
15 here, it says, "Have you ever been convicted of a
16 felony in this state or any other state?" That's
17 the only question that's asked on this card. It
18 said if you falsify a question, you will be
19 punished. So the only question that was asked is
20 have you ever been convicted of a felony, so a
21 person says yes.

22 When I turn those cards in, every
23 last one of them that checked, yes, that they were
24 convicted of a felony was thrown away or given
25 back to me to take back to them because they were

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2 not allowed to vote. On these forms, it did not
3 say have you been restored or have nothing. The
4 only thing it says is "have you ever." So that's
5 one thing.

6 The second thing is, all of the
7 people that came in to vote, the line was so long,
8 and they waited so long, that they were turned
9 away; they didn't want to stay anymore. So I had
10 to call -- I'm getting nervous. I had to call to
11 get another machine to come out. It took about
12 35, 40 minutes to bring another machine out, so
13 the line was, like, coming on out the door. And
14 people were driving up, seeing the line, and
15 leaving. I was waving them down, had to stop and
16 ask them if they could come back.

17 I have a case that I'm working on
18 right now that a young man was convicted of a
19 crime -- no, he wasn't convicted. He was accused,
20 so he was arrested, spent two years in jail until
21 he was able to get in court. He went to court 19
22 times but never been inside the courtroom. While
23 he was in jail waiting to go into court, they sent
24 him a letter saying his voter rights was taken
25 away. Never been convicted, anything. But he

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2 waited two years. He's out of jail, never been
3 charged, but his rights was taken away already.
4 Something needs to be done about that.

5 The machines, we have the EPB
6 machines. They were -- I had two. They had to
7 bring another one because that line also was
8 getting long. The machine kept stopping in the
9 middle of me printing the ballot so they can go
10 and vote. It kept stopping, so I had to start
11 over. When I start over, then the machine said
12 that this person has already been issued a ballot.
13 So I called and said this man said hadn't voted,
14 he has not received a ballot or anything, but he
15 still couldn't vote. He had to do a provisional
16 vote. He said he wasn't going to do one because
17 he knew he had not voted or anything. He was a
18 junior; his father was a senior. His father died
19 30 years ago. So he was able to vote. I called
20 to the station when I was able to get into them.
21 I could not get to the numbers. Every number was
22 either busy or the answer machining picks up. So
23 I had to keep waiting, keep waiting. Finally got
24 in touch with somebody that said nothing we could
25 do, he just has to do a provision. He didn't want

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2 to do a provision. It's a lot. Those machines,
3 they need to get rid of them, stay with the paper,
4 and let's keep it going that way.

5 COMMISSIONER STOKES: I just want to
6 make sure that I heard all of your concerns. So
7 the first related to the ballot. And the question
8 about the conviction, but not a follow-up question
9 about restoration.

10 MS. ALLEN: Right.

11 COMMISSIONER STOKES: If rights have
12 been restored -- voter application, the
13 application process.

14 MS. ALLEN: Right.

15 COMMISSIONER STOKES: The second had
16 to do with the actual polling site not being
17 adequately equipped --

18 MS. ALLEN: Right --

19 COMMISSIONER STOKES: -- with enough
20 machines.

21 MS. ALLEN: Right.

22 COMMISSIONER STOKES: And then some
23 of the machines not functioning properly.

24 MS. ALLEN: Right.

25 COMMISSIONER STOKES: Is that

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correct?

MS. ALLEN: That's correct.

COMMISSIONER STOKES: And not the right amount of support --

MS. ALLEN: Right.

COMMISSIONER STOKES: -- for the offices at the poll.

MS. ALLEN: Right.

COMMISSIONER STOKES: And that was at Whites Creek.

MS. ALLEN: At Whites Creek.

We had over 800 voters came out to vote, but the machines were not functioning right, so one of them I just had to completely turn that machine off. I don't know if those votes were counted, but we had to turn that one off. Inside of the machine, we had seven people came in to vote, but it kept saying that they had no -- they've already been issued a ballot, and it was seven that said they've already been issued a ballot. But then the man that I talked to, he said, "Well, have everybody --" the first person that said that he's already been issued then, since he had to do a provision, everybody else had

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2 to do a provision. But they had a solution, but
3 they wouldn't give it to me because that one
4 person had already voted.

5 COMMISSIONER PORTER: Let me ask you
6 this: Whenever there's an election at a
7 particular precinct, there's always a number of
8 people who at least showed up to vote. You
9 indicated that there were approximately 800 people
10 who showed up to vote at, was it Whites Creek?

11 MS. ALLEN: Whites Creek, yes.

12 COMMISSIONER PORTER: Whites Creek,
13 about 800 people. Did you actually see the number
14 of people who actually cast votes at that
15 particular precinct? Did it sort of match up?

16 MS. ALLEN: Yes --

17 COMMISSIONER PORTER: Okay.

18 MS. ALLEN: -- it matched up because
19 the count that was on the EPB machine and the
20 count that was on a voter's machine, they all had
21 to equal up to the same, and it did.

22 COMMISSIONER PORTER: Now, in
23 previous elections, had you had that many people
24 turn out for that particular precinct to vote?

25 MS. ALLEN: Well, most of the time --

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2 the majority of the people in Whites Creek that I
3 was told -- this is my first year of doing it.
4 But they usually do the early voting. But this
5 time, they all was coming in on May 6th. But a
6 lot of them was doing redirect because they were
7 told to go to Haynes Middle School, then they was
8 told to come back to Whites Creek, and they kept
9 going back and forth, and they said they're just
10 not going to vote, which is ridiculous because
11 they need to have it one voting place and let
12 everybody able to vote there instead of going back
13 and forth.

14 COMMISSIONER STOKES: So was there a
15 way to track the numbers that did not actually
16 vote? I know you said there were 800 that voted
17 and matched up with the machines. But is there --
18 was there any way to document the numbers that did
19 not vote because of difficulties or the confusion
20 about polling sites?

21 MS. ALLEN: When they came in to do
22 the redirect, they -- when I pulled their name up
23 in the EPB, which is these machines that we should
24 not have, they had on there that you not able to
25 vote here, you have to go to Haynes Manor or

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2 Outlook Baptist Church. Well, I had to pull out
3 one receipt and have them to sign, which is my
4 receipt I keep, to say that they did come here,
5 and then give them another receipt so they can
6 take to the other person. And so that's how we
7 kept up with that vote.

8 But the ones that got tired of
9 sitting in the line left. The ones that drove up
10 that wouldn't -- didn't want to come in because
11 the lines was so long, they left. So there was no
12 way to count them. It could have been more.

13 COMMISSIONER CUNNINGHAM: What were
14 the reasons that they had to go from precinct to
15 precinct?

16 MS. ALLEN: I guess because they
17 changed the direction or changed something
18 wherever they used to vote. When they do a
19 primary, they come to one station when they do
20 primary voting. And then the general election,
21 they go somewhere else. So now all of these
22 people that used to come to Whites Creek was told
23 they had to go to either Outlook Baptist Church or
24 go to the school to vote, and they were upset.
25 And a lot of them -- one lady, she and her mother

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2 voted at Whites Creek. But when we pulled her
3 name up, it said she had to go to the middle
4 school. And she said, "Well, can you let me know,
5 because I have to go and pick up my mother. I'm
6 just getting off work. I ran over here so I can
7 vote," but now she had to go somewhere. And we
8 pulled her mother's name up, and her mother had to
9 go somewhere else. She said, "Just forget it.
10 I'm not voting." So it's a shame.

11 COMMISSIONER CUNNINGHAM: Was it due
12 to redistricting?

13 MS. ALLEN: I don't know what it is.

14 COMMISSIONER CUNNINGHAM: Okay.

15 MS. ALLEN: But they need to have one
16 location where everybody votes where they know
17 where to go to, and they don't.

18 COMMISSIONER WOODS: Thank you.

19 COMMISSIONER PORTER: Thank you very
20 much.

21 MS. DENNIS: All right. Thank you.

22 And we have now Eleanor Woods.

23 MS. WOODS: Good evening. Thank you
24 for the opportunity to come. I'm Eleanor Woods
25 from Chattanooga, Tennessee, and I'm the chair of

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2 housing for the local branch there of the NAACP.

3 I have with me a voters' roster of
4 active registered voters in Hamilton County
5 District, City District 7, which is considered a
6 heavily African-American district for that city.
7 In fact, probably has the most African-American
8 people in this district.

9 I'm here because the citizens of
10 District 7 made a major complaint because they
11 were involved in a recall of their city
12 councilmen. And the Hamilton County Election
13 Commission Office gave them this list to get
14 signatures from. This is 10,672 supposedly active
15 registered voters. And when the citizens went out
16 to get the signatures, which they were required to
17 get 15 percent of the signatures to recall their
18 councilmen, the citizens went out and knocked on
19 the doors. And what they discovered was that the
20 majority of the people on this list does not
21 exist. Either the housing project was completely
22 closed or halfway closed and most of the citizens
23 had been moved from those housing projects, or
24 streets were completely gone, or houses were
25 boarded up and the people were not there, and

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2 several things. Some of them were dead and had
3 been dead for more than 10 or 20 years in some
4 cases. And then, also, some of the people that
5 were supposed to be on this list had not voted for
6 more than 10, and in some cases 15 years, and some
7 of them had never voted.

8 So as you know, what the outcome was
9 probably for these people who were seeking to use
10 the democratic process using the voters' active
11 list to recall their councilmen. They were
12 required to have 1600 signatures, but they fell
13 short 421 because over 2,000-some-odd signatures
14 were rejected.

15 So when we looked closer to the list,
16 we discovered that because these people had moved,
17 and it's a very poor district, new people had
18 occupied some of the houses who were registered
19 voters, but the database had not caught up with
20 the people who were in these existing houses. And
21 the signatures were from valid registered voters,
22 but the database did not support it; they were not
23 at these houses. In fact, the people that on this
24 list that's supposed to be at these houses cannot
25 not be found, the majority. I will say there was

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2 some. So this group of people we feel have been
3 disenfranchised in the voting process.

4 And, also, when people are showing up
5 to vote -- because of the redistricting process
6 and the fact that this district, South
7 Chattanooga, is the number one gentrified
8 community in the country. If you all kept up with
9 the news, it is the number one gentrified
10 community in the country. Then a huge number of
11 African Americans that once existed on this roster
12 have been moved out this community. And there's
13 no way to keep up with this other than either the
14 census -- of the census track, the people that
15 come out of the census studies, or the election,
16 which is supposed to be accurate.

17 So the local branch of the NAACP has
18 asked that the last election, which was May 6th,
19 at least the verification of those ballots be held
20 until there's an internal audit of the Hamilton
21 County Election Commission there locally, at least
22 in this district. And we're now studying to see
23 whether other zip codes or other communities are
24 experiencing the same discrepancy in their voting
25 districts.

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2 We did compare it to one voting
3 district, which was a predominantly white
4 district, and that district's margin of error was
5 maybe only one to two percent marginal error. And
6 this error here is a great margin of error, and at
7 least needs to be, at least in our case we feel,
8 investigated minimally, questions asked. Because
9 if people show up to vote and they have -- get an
10 address change and it's not found in the database
11 because they're not keeping up with it, then they
12 won't be allowed to vote when they show up, and
13 they won't know where they are because this is not
14 right.

15 So on behalf of the citizens of
16 Hamilton County and City District 7, we are asking
17 that this be at least investigated because, if you
18 know, when federal funds are requested for a
19 district, and particularly a poor district, the
20 statistics are used to get those governmental
21 funds. And we feel that this district, because
22 it's been heavy gentrified, and we do know because
23 I do serve as the executive director of a CDC,
24 that the city of Chattanooga is using the 2000
25 census data as opposed to 2010 census data. And

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2 the 2000 census data was when the majority of the
3 African Americans were in this community. And now
4 it's been gentrified heavily, so they're not
5 there.

6 So we want all of these things to be
7 looked at closely as we go forward so that African
8 Americans will not be disenfranchised, and that
9 when funding is awarded to a city or a community,
10 that it goes to the people it's supposed to go to.
11 Thank you.

12 MS. DENNIS: Questions.

13 COMMISSIONER CUNNINGHAM: Ms. Woods,
14 I'm just kind of curious. You indicated this is
15 City District 7?

16 MS. WOODS: Yes, that's correct.

17 COMMISSIONER CUNNINGHAM: And do you
18 know what the population change was, I guess,
19 between the 2010 census versus the 2000 census?

20 MS. WOODS: I don't know the exact
21 percentage, but I can get that for you. But I
22 know it's a big shift.

23 COMMISSIONER CUNNINGHAM: A big
24 shift.

25 MS. WOODS: It's such a big shift,

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2 that it's the number one gentrified community in
3 the country.

4 COMMISSIONER CUNNINGHAM: Now, the --
5 I guess your city council members, are they
6 elected by wards?

7 MS. WOODS: Yes.

8 COMMISSIONER CUNNINGHAM: Okay.
9 Thank you. And you to cause it the one in Direct
10 7?

11 MS. WOODS: That's correct.

12 COMMISSIONER CUNNINGHAM: Question:
13 You said that 2000 names where rejected when you
14 turned your petition in?

15 MS. WOODS: Yes. Out of 3,700,
16 2,000 -- it was over 2,000, maybe -- I've got the
17 exact number written down, but it's over 2,000
18 that were rejected.

19 COMMISSIONER CUNNINGHAM: Why?

20 MS. WOODS: They said the signatures
21 were not valid. But when we went to the doors and
22 got the signatures from the people that lived in
23 the homes, they had valid voter IDs at that
24 particular address.

25 But what we found, for example, we

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2 went to one house, and this person had moved and
3 hadn't been there for ten years. Then the person
4 who was now in that home, we took their signature
5 because they were there, and the data does not
6 reflect that person in that home.

7 COMMISSIONER CUNNINGHAM: But they
8 were a registered voter?

9 MS. WOODS: Yes, this is correct.

10 Oh, and some of them, also, the
11 signatures, they have did not have a signature
12 expert, but they rejected a lot of them because
13 they said the signature did not match the
14 database. Some of these people are older now than
15 what they were in 1960 or 1940. And I know my
16 signature has kind of went downhill as I've gotten
17 older. So we did have a signature expert, but a
18 lot of them were denied because they said the
19 signatures did not match.

20 COMMISSIONER STOKES: Were they able
21 to say with what frequency they update?

22 MS. WOODS: The Hamilton County
23 Election Commission stated that they had purged
24 the list in 2009, and then again in 2011, yet I
25 have relatives that have moved from one place and

PROCEEDINGS

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2 to another place, and it has not been purged, and
3 in 10 or 20 years because it's still showing them
4 at the old address.

5 COMMISSIONER CUNNINGHAM: They still
6 do purging?

7 MS. WOODS: That means if you have
8 not voted --

9 COMMISSIONER CUNNINGHAM: I know what
10 purging means.

11 MS. WOODS: Yes.

12 COMMISSIONER CUNNINGHAM: But some
13 areas you can no longer do purging; am I correct?

14 MS. WOODS: Yes. But they made a
15 statement that they --

16 COMMISSIONER CUNNINGHAM: As a result
17 of federal legislation, you can't always purge.

18 MS. WOODS: Yes, sir.

19 COMMISSIONER CUNNINGHAM: Okay.

20 COMMISSIONER WOODS: Okay. Thank
21 you.

22 COMMISSIONER CUNNINGHAM: Thank you,
23 Ms. Woods.

24 MS. WOODS: Thank you.

25 MS. DENNIS: All right. We're going

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2 to move back into our panel, so we're going to go
3 to panel four, which is equal access to the
4 political process.

5 COMMISSIONER WOODS: And that panel
6 is it Eben Cathey, Beth Metzger/Leslie Jones,
7 Nancy Ward, and Angela Webster.

8 Okay. Now we're all in place; is
9 that right?

10 Okay. Thank you for coming, and
11 welcome. Equal access to the political process.

12 And one of our commissioners just
13 stepped out, but we will go forward and start with
14 Eban Cathey.

15 MR. CATHEY: Yes. I'm Eban Cathey.
16 What, about five minutes? Is that what...

17 COMMISSIONER WOODS: Yes. The rules
18 are that you each have five minutes. And there's
19 a timekeeper over here that has a whistle, have
20 some signs that will let you know when you have
21 one minute to go and when your time is up.

22 MR. CATHEY: All right. I've got a
23 lot to say. I'm going to speak fast.

24 COMMISSIONER WOODS: Okay.

25 MR. CATHEY: So my name is Eban

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2 Cathey. I'm the communication coordinator at the
3 Tennessee Immigrant & Refugee Rights Coalition.
4 We are a grass-roots advocacy organization made up
5 of immigrants, refugees, and allies that works to
6 make Tennessee a more welcoming state for new
7 Tennesseans.

8 The purpose of engagement work aims
9 to educate and engage immigrant communities in the
10 civic process to become effective advocates for
11 their communities. We think this is really
12 important because over the last decade, there have
13 been numerous attacks coming from state government
14 and municipal government on immigrant communities,
15 which makes of the utmost importance that eligible
16 immigrant voters are able to hold our legislatures
17 accountable.

18 We have one of the fastest growing
19 immigrant populations in America, Tennessee does.
20 And we all know how diverse Nashville is with
21 about 11 percent of our population foreign born.

22 So I'm going to start at the state
23 level. So as the immigrant population has grown
24 in Tennessee, you know, our state legislature
25 responded with some anti-immigrant legislature

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2 that, you know, has worked to marginalize foreign
3 born communities and create various participation.

4 We oppose that voter ID law that
5 passed in Tennessee because of the
6 disproportionate impact it will have on low-income
7 communities and communities of color. We also
8 oppose the subsequent anti-immigrant legislation
9 that sponsors claim was necessary to protect the
10 sanctity of the voting booth, including an attempt
11 to deny driver licenses to undocumented youth who
12 have been granted Deferred Action for Childhood
13 Arrivals, DACA. I mean, what happened there was,
14 some legislatures found out that some undocumented
15 youth were going to soon be able get driver
16 licenses. They didn't want them to get it because
17 they thought they'd try to vote with it, right.
18 So -- and that was a federal program the Obama
19 administration created in 2012 which has got
20 yearly 5,000 undocumented youth driver licenses
21 and work permits.

22 On the municipal level, Davidson
23 County had attempted to implement county-wide
24 policies that would create barriers for immigrant
25 voters. Back in 2012, the election commission

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2 voted for a review of recently registered voters
3 who were born outside of the US. Similar efforts
4 in Florida and elsewhere led to large numbers of
5 US citizens being improperly purged from the voter
6 rolls. Former Commissioner Abernathy, who had
7 introduced the measure, had claimed that there
8 were likely 3- to 10,000 immigrants who had
9 registered to vote though they weren't citizens.
10 So because of community advocacy and a lot of
11 public outcry and some very serious legal
12 concerns, the election commission voted to rescind
13 their vote in March of 2003. A subsequent review
14 was done by the state that determined that 14
15 noncitizens were improperly registered to vote,
16 and of those only one had voted. So that's a far
17 cry from the 3- to 10,000 that were suspected.
18 Only one had voted improperly.

19 Also, in late 2012, a training was
20 given to poll workers, I gave you all a copy of
21 the slide up here. It's got the gate on it. It's
22 a poll worker training. The slide was telling
23 poll workers to act as a gatekeeper. They said if
24 somebody comes up, you know, to vote and you think
25 they don't have a very good command of the English

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2 language, you should challenge their right to
3 vote, okay? So that's not the job of a poll
4 worker, right? That's done when you register to
5 vote. That's where citizenship is determine. So
6 this is just acting as a deterrent or intimidation
7 for folks who maybe don't have a strong command of
8 the English language who are going to exercise
9 their right to vote. It also leads to unwarranted
10 profiling and, you know, wrongfully challenging
11 voters based how they look or how they sound.

12 So we witnessed several, several
13 problems on election day in November of 2012, and
14 I'll just give a couple anecdotes of those really
15 quickly. Many states and counties have ballots
16 translated for their voters to ensure equal access
17 to the ballot box, though Tennessee does not offer
18 ballots in languages, as Drost Kokaye was talking
19 to us about earlier.

20 Voters are able to bring someone into
21 the voting booth with them to provide
22 interpretation. I was with Drost that day. I was
23 actually a poll watcher at the same place she was,
24 at Paragon Mills, which is in the middle of a very
25 dense immigrant neighborhood, and, you know, just

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2 echo what she said. They didn't have the forms
3 available, right? I saw a man with an
4 intellectual disability turned away early in the
5 morning when they realized he didn't have the
6 forms that he had to sign and his mom would sign
7 to where they could both go in the booth. So I
8 saw that happen personally. She saw a lot of
9 folks who maybe didn't have a strong command of
10 the English language turned away on the same day.

11 So, you know, for a place that has a
12 huge immigrant population, you'd figure you want
13 to have a big stack of those forms, right? It's
14 only way they can get somebody to help in the
15 booth with them. They didn't have any of the
16 forms. They went and searched in their car; they
17 couldn't find them.

18 Just give me thirty more seconds.

19 Also, I wanted to say that I was a
20 poll watcher at GlenCliff High School as well,
21 which is also a very heavy immigrant neighborhood.
22 And the number one barrier to voting, it was the
23 lines. There were 300 people waiting outside in
24 the rain and in the cold, and the cars are driving
25 in, and they'd see the line, they'd circle out.

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2 You can't put a number on that.

3 COMMISSIONER WOODS: We'll give an
4 opportunity to you later on.

5 MR. CATHEY: All right. Thank you.

6 COMMISSIONER WOODS: Beth Metzger and
7 Leslie Jones.

8 MS. JONES: Good evening. My name is
9 Leslie Jones, and this is my colleague Beth
10 Metzger. We're with the Kentucky Protection &
11 Advocacy, and we're part of the federally mandated
12 systems across the United States and United States
13 territories that protect the rights of individuals
14 with disabilities.

15 Because we submitted written
16 comments, we just want to give you some
17 highlights. Kentucky is unique in many, many
18 ways. But one thing about Kentucky that is unique
19 is our percentage of disabled population is
20 greater than the national average. Kentucky is a
21 small state. We have about 4,400,000 people.
22 Twenty percent of our population is
23 self-identified with disabilities. So it's an
24 important thing in Kentucky. That's, in fact, our
25 largest minority population in Kentucky.

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2 When the Help America Act was
3 enacted, P&A has been involved for the last
4 decade, and it started with office of secretary of
5 state in the election board, they created a
6 statewide HAVA --

7 COMMISSIONER WOODS: I'm sorry.
8 Mr. Cathey, will you move your microphone away,
9 please. A little further away. Thank you.

10 MS. JONES: They created a statewide
11 advisory committee which Beth serves on, and she
12 gets to serve on with Commissioner Cunningham. So
13 that's been quite successful.

14 Impediments in Kentucky before the
15 Help America Voting Act, most -- Kentucky has got
16 120 counties with many, many polling places. Most
17 of those places were not accessible, and they did
18 not have voting machines. Now, because of the
19 Help America Act, people have voting machines.
20 And to go through time, I'll just turn it over to
21 Beth.

22 MS. METZGER: Some of the things that
23 have been reported to us, even after the polling
24 place accessibility surveys were done and the
25 accessible machines were put in, were that folks

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2 still experienced physical barriers like with an
3 inaccessible route to the polling place, the
4 polling place at the -- I'm sorry, the accessible
5 machine at the polling place wasn't set up on
6 time, and the precinct election officers had no
7 clue on how to use it. Those machines that were
8 set up were only being offered to people with
9 visible disabilities. So there goes -- the
10 independent and private vote goes out the window.

11 Also, other barriers were machines
12 not being lowered, not appropriate signage for
13 accessible entrances. We also encountered some
14 people who experienced attitudinal barriers. One
15 young lady reported to me that a precinct election
16 officer actually laughed at her when she came in
17 to sign in to vote.

18 Another issue that we hear quite
19 frequently is about those people who had their
20 voting rights removed in a guardianship
21 proceeding. Before 2009, Kentucky had a blanket
22 ban on voting rights for folks who obtained a
23 legal guardian. That has since changed, and now
24 the judge has to make a separate decision.

25 You all have been provided a copy of

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2 our voting booklet, as well as a precinct election
3 officer training video that our office created in
4 response to all of these things, and more, that we
5 have heard about. And all of these videos were
6 distributed to the local election boards to use in
7 their precinct election officer training.

8 Thank you for the opportunity to us
9 to present to you today.

10 COMMISSIONER CUNNINGHAM: Thank you.

11 COMMISSIONER WOODS: Nancy Ward.

12 MS. WARD: Hello. My name is Nancy
13 Ward, and I am the co-director for the
14 Self-Advocates Becoming Empowered, SABE, National
15 Technical Assistance Center for Voting and
16 Cognitive Access. I live in Oklahoma City, and my
17 office is with the Oklahoma Disability Law Center.
18 I am much honored to have this opportunity to
19 testify before you today.

20 People with disabilities, like me,
21 have not always felt confident and comfortable
22 about voting. However, having a disability isn't
23 the problem with voting. It is having accessible
24 equipment, accessible locations, and the respect
25 to vote.

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2 In August of 2012, I used a new type
3 of voting equipment developed by Clemson
4 University called the Prime III. By using this
5 equipment, I was able for the first time to cast
6 my own private and independent vote. Now that is
7 power that I have never felt before.

8 For the 2012 election, Project Vote
9 used the personal interview checklist in six
10 states to collect the voting experiences of people
11 with disabilities. We wanted to see if people
12 were able to cast a private and independent ballot
13 and if their voting location was accessible. What
14 we learned was that some voters had good
15 experiences and others not so good.

16 Here are two examples: When the
17 lines to vote became so long, some polling
18 locations used the zigzag amusement park/airport
19 line approach to keep voters in line. This was a
20 great idea. But it would have even been better if
21 the line spaces were wide enough for people using
22 a wheelchair to get through. Easy fix.

23 A poll worker told a voter that she
24 cannot have an assistant help her to vote because
25 she didn't look like she had a disability.

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2 Clearly, poll workers need more
3 training. I ask you then, why can't self-advocacy
4 groups and P&As teach poll workers how to use the
5 accessible equipment and polling locations and how
6 to make voting a positive experience?

7 In closing, even though voters had
8 some negative experiences, the vast majority
9 reported the polling places more welcoming than in
10 years past. However, even with this improvement,
11 we still have a long way to go for many voters to
12 have a positive experience in casting a private
13 and independent vote.

14 You can find the complete report on
15 our website, www.govoter.org. For the 2014
16 election, we will be working with more
17 self-advocacy groups and P&As across the country
18 to collect even more information about voting
19 experiences as reported by voters with
20 developmental disabilities.

21 And then I was asked to put in some
22 information about our curriculum. People -- well,
23 you were given a copy of my testimony, and it's in
24 that. And I'm sorry I do not have it on mine, but
25 I'll give you a brief description of it. Is what

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2 we took is our curriculum on voting, and we have
3 made it accessible for people who don't know how
4 to read by using pictures.

5 Thank you.

6 COMMISSIONER WOODS: Thank you. We
7 have that. Very good. Thank you very much.

8 Angela Webster.

9 MS. WEBSTER: I'm Angela Webster.
10 I'm the public policy advisor for Disability Law &
11 Advocacy Center of Tennessee, which is also a
12 protection and advocacy agency. And I won't
13 explain that system since my colleagues did such a
14 fine job of that.

15 I would encourage you, when it comes
16 to your time for questioning, to ask Nancy about
17 her curriculum. It is an amazing set of training
18 materials that we have had the pleasure in
19 Tennessee of being able to participate in their
20 training and be one of their great recipients, and
21 later we developed that into a Tennessee state
22 specific curriculum called Vote TN, and that's one
23 of the things that we do in Tennessee to educate
24 voters across the state. So I would encourage you
25 to ask her about that since she ran out of time.

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2 So Disability Law & Advocacy Center
3 of Tennessee -- and I won't say our full name
4 again because it will take up all my time, saying
5 DLAC. So DLAC is our acronym.

6 We, as our colleagues do, are charged
7 with ensuring protection of people with
8 disabilities for all types of issues, including
9 voting access. Through those activities, we also
10 do many things similar to some of the things that
11 have been talked about. Nancy may not have seen
12 our co-worker guide, which I did not bring. I
13 thought I had four. I have three copies. But I'd
14 like to share that with you. We have created a
15 tool that we do train poll workers about about
16 disability specific issues. These are in every
17 polling location in the state. So as you go
18 out -- and those that are poll watchers, I would
19 encourage you to see if they're available and out.
20 These guides talk about how to assist voters with
21 disabilities, but they talk about being an
22 accessible poll worker in general.

23 And while I could talk about many
24 things facing Tennesseans with disabilities when
25 they go to cast their ballot, probably the thing

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2 that we have most control of changing in Tennessee
3 is helping poll workers develop accessible
4 attitudes and become accessible people. And
5 that's one of the things that we do along with our
6 partners. One of our partners, Carol Westlake,
7 spoke very eloquently earlier about issues facing
8 Tennesseans with disabilities. We are one of the
9 member agencies of the Tennessee Disability
10 Coalition and work with that group. We have
11 discussed all kinds of ideas to further train poll
12 workers.

13 DLAC also does site accessibility
14 surveys. The reason that you -- and I must
15 apologize you don't have written comments from me.
16 And the reason for that is, I oversee our
17 statewide voting program, and part of what we do
18 is poll site accessibility surveys, so we were
19 deploying people across the state in order to do
20 poll site accessibility surveys.

21 We find a broad range in Tennessee
22 from no issues to issues with physical access,
23 physical barriers, to poll workers, as has been
24 explained before, who don't seem to understand how
25 to utilize the equipment.

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2 But in our poll site access surveys,
3 one of the things that we do note is that the
4 majority of the time, poll workers are interested
5 in understanding how to further assist voters.
6 And one of the things that we have done to address
7 that issue is partner with the secretary of state
8 and his office and the coordinator of elections
9 and the state HAVA attorney Mark Billing and Cara
10 Harr in order to address some of those issues.
11 And we have ongoing developing relationships with
12 county election officials across the state in
13 order to address that.

14 I have some visuals about some issues
15 we have identified. One of the largest issues
16 that we've identified as of late is, like, across
17 the country. People who are deaf are not -- do
18 not tend to be active voters, and so we have
19 recently secured funding to do an effective
20 communication campaign, and we will be doing that
21 in the coming months to try and engage people who
22 are deaf in the voting process.

23 We also, like many states, have an
24 election day hotline. And the things we most hear
25 about are things around transportation and around

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2 misunderstanding of poll workers and what the
3 voter needs.

4 I'm devastated to hear that a person
5 with an intellectual disability did not get the
6 chance to vote because of the lack of the form.
7 And I would love to know where that happened
8 because I did not know that.

9 Thank you for your time, and I'm
10 happy to answer any questions.

11 COMMISSIONER WOODS: Thank you.

12 Fellow commissioners, if you would,
13 let's start with Mr. Cathey on the end over here,
14 and then we'll all -- whatever questions we have
15 for him, we'll ask him, and then we'll work our
16 way across.

17 Any questions?

18 COMMISSIONER STOKES: I think it
19 would be helpful to sort of repeat some of the
20 experiences in the polling locations where you
21 experienced that. I think you mentioned Paragon
22 Mills and Glencliff.

23 MR. CATHEY: Right. So it's -- yeah,
24 so I was at Paragon Mills in Glencliff, which is
25 in South Nashville. You know, those are probably

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2 the densest immigrant neighborhoods in our city.
3 And, yeah, so at Paragon Mills, they didn't have
4 those forms. And, you know, I'll say it again, in
5 a place where you can be sure with so many Kurdish
6 and Somali and Latino voters, you need to have
7 those forms in abundance. It's also the same form
8 that you would use to bring in someone to the
9 booth with you. And they didn't have any of the
10 forms. So there's no telling how many people were
11 turned away that day. You know, I saw one at
12 7:01 A.M. turned away. I think he was one the
13 first voters there with his mom. And I think
14 Drost saw several others through the day.

15 I left there -- and the lines got
16 pretty long there as well. There was a poll
17 worker that was improperly trained. She was very
18 young, and she just didn't have a mastery of the
19 equipment, and she wasn't able to answer
20 questions, and the lines grew to be pretty long.
21 But not like they were at Glencliff High School.

22 At Glencliff High School, it was kind
23 of like the stories you hear on the news. It was
24 like a three- or four-hour line, and people were
25 outside in the rain, in the cold, it was dark.

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2 And the worst part about it was there was an
3 auditorium beside them. They could have just move
4 them all into the auditorium, right? It was a
5 completely empty auditorium, and they made the
6 people stand outside.

7 And, you know, I know it's important
8 to measure, you know, how many people are
9 disenfranchised, but there's no way to put a
10 number on how many people left from the line or
11 how many people drove into the parking lot and saw
12 the line and just turned right around. It was
13 kind of a joke while you were standing in line how
14 many people were doing that. You know, I would
15 say that there's lots of problems, but the line
16 probably disenfranchised hundreds of people that
17 day at that Glencliff High School voting precinct.

18 COMMISSIONER WOODS: One question I
19 would have, was that one election, or is that a
20 pattern that happens repeatedly, election after
21 election after election?

22 MR. CATHEY: I'm not sure. That was
23 the first time I had ever been a poll watcher at
24 that location. But it was -- I guess I wonder how
25 much of a consequence it was that -- you know,

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2 I -- the city did not invest the proper resources
3 in those locations that were predominantly people
4 of color. I can't answer your question. But I
5 know that it was really bad at both those
6 locations that day.

7 COMMISSIONER WOODS: Okay. Thank
8 you.

9 Questions for Ms. Jones or Metzger?

10 COMMISSIONER CUNNINGHAM: Beth, is
11 this the same video that was shown to us at the
12 last HAVA meeting?

13 MS. METZGER: Yes it was.

14 COMMISSIONER CUNNINGHAM: Okay.

15 MS. METZGER: Yes, it is. That
16 video, the script, I actually wrote it. And it
17 stars both individuals a variety of disabilities
18 and a variety of nationalities and actual precinct
19 election officers. And it was very interesting
20 because our actors on both sides learned a lot.
21 And so we're very, very excited about this, and it
22 would not have been made fully possible if we
23 didn't have a good working relationship with our
24 secretary of state and our state board of
25 elections.

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2 COMMISSIONER CUNNINGHAM: I'm going
3 to leave that alone.

4 MS. METZGER: One other thing. One
5 thing I didn't get to mention is that we do a lot
6 of training. We co-train with self-advocates.
7 Self-advocates are folks with disabilities.
8 Leslie and I have created an interactive training
9 and have taken it on the road, and we've -- this
10 is our third year of doing it, and we have
11 educated more than a thousand individuals.

12 MS. JONES: The one thing I would add
13 is we take our training to places historically
14 people don't go: Into nursing home, personal care
15 homes, supported living communities, which I'm
16 sure the sister P&A does.

17 COMMISSIONER WOODS: Okay.

18 Commissioners, are there any
19 questions for Ms. Nancy Ward?

20 COMMISSIONER STOKES: Yes.

21 I'd like to give Ms. Ward an
22 opportunity to speak more about, I think it's the
23 teach the Project Vote toolkit. Is that the
24 curriculum that --

25 MS. WARD: Yes.

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2 COMMISSIONER STOKES: You wanted to
3 share that.

4 MS. WARD: Okay. The first project
5 vote training was done in 2004, and it was done so
6 that the pictures couldn't be changed. And now
7 it's up on the website, and you can make it state
8 specific. And we had last February our first
9 training with Maine, South Carolina, and
10 Wisconsin, with one state who has done the
11 training that Angela is talking about, and then
12 two states that haven't done the training before.
13 And it was interesting to see the interaction
14 between the two because you can now make, you
15 know, the information state specific.

16 COMMISSIONER WOODS: Great.

17 Okay. Any questions for Ms. Angela
18 Webster?

19 COMMISSIONER STOKES: I know that you
20 pay particular attention to the local polling
21 sites and expressed some concerns. Is your office
22 a good resource for some of the advocates that we
23 have present today to address some of the poll
24 site concerns that they have?

25 MS. WEBSTER: Yes, we would be a good

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2 resource for that. We do follow up any time we
3 have concerns, and we send staff. In the audience
4 with me is Jamie Stuart. We divide the state, so
5 she basically takes from Nashville east, and I
6 take Nashville west, and we go out to each of the
7 counties where there are concerns and follow up.

8 When we do poll site surveys, we send
9 a follow-up letter to the county, and a copy goes
10 to the state as well, to demonstrate our findings.
11 And then, again, we follow up with those counties
12 and talk about the concerns. And we offer to walk
13 the poll sites and provide suggestions for
14 improving things, including ensuring that forms
15 are out on election day.

16 When we're out on election day, if we
17 identify problems, we call the county election
18 administrators at that moment and we talk about
19 the concerns that we have seen thus far and ask
20 that they be corrected during the going election
21 day, and we have not yet had a county refuse to do
22 that. So not that that couldn't happen, but so
23 far we have found that, by and large, the county
24 election officials seem to want to provide full
25 access, especially to voters with disabilities.

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2 And the other thing I didn't mention
3 is our -- well, Jamie, our staff, has redeveloped
4 the accessibility tool that's used to see if poll
5 sites are accessible for voters with disabilities,
6 and that is being tested and resubmitted, and it
7 includes suggestions for if you have -- if you
8 identify this issue, what's the fix. So we would
9 welcome calls.

10 COMMISSIONER STOKES: Thank you.

11 COMMISSIONER WOODS: Panel, thank you
12 very much. You have been very helpful. Thank
13 you.

14 And we're asking going to ask the
15 next panel to get prepared to come. And this
16 panel is the impact of voter ID on diverse
17 communities.

18 Brady Henderson, are you here?

19 Julian Fisher? Thank you.

20 Justin Jones? Justin Jones? Okay.

21 George Barrett? George Barrett?

22 Okay. And Brenda Gilmore? Yes, he's
23 here.

24 First let me thank this panel for
25 waiting. You've been here for a while, so we're

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2 delighted that you were able to stay with us. And
3 we begin this last series of discussions for our
4 panel.

5 And if we may, we will start with --
6 well, you know about the time clock, right? And
7 they will hold up a sign when you have a minute
8 left, and then when it's time to stop.

9 And so if we may, we'll start with
10 Brady Henderson.

11 MR. HENDERSON: Thank you. And it's
12 an honor to be here in such good company. My name
13 is Brady Henderson, and I'm legal director at ACLU
14 of Oklahoma. Pardon my voice. I'm losing it,
15 unfortunately, after a couple of weeks of bad
16 allergies and of talking until I've been blue in
17 the face about one of two things which everyone in
18 Oklahoma is talking about right now, one being why
19 did we just torture a man to death last week; the
20 second being why is the Thunder's defense so bad
21 during the playoffs. And those are very opposite
22 ends of the seriousness spectrum. But it is also
23 a great opportunity to come talk about something
24 different.

25 In Oklahoma, because we have a litany

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2 of civil rights issues, frankly, voting rights can
3 sometimes get pushed to the back burner. And, in
4 fact, I think it's almost something that can be
5 somewhat like a latent disease, if you will, for a
6 community. It can fester. You can have the type
7 of disenfranchisement you don't see, you don't
8 necessarily have signs of it that are on the
9 surface, and before you know it, suddenly you
10 realize that it's affected everything and it's
11 affected policy.

12 I want to talk briefly about one of
13 the things going on in Oklahoma. We certainly
14 have the same problems, similar problems to many
15 states in terms of things like felon
16 disenfranchisement. I included some written
17 materials on that. However, I want to talk about
18 voter ID.

19 Oklahoma, like many states, has gone
20 through the voter ID movement. Now, in addition
21 to being a civil rights lawyer, I'm also a former
22 prosecutor. And in that, I share a commonality
23 with every prosecutor, former, retired or active,
24 in Oklahoma who is alive today; that is, that I
25 have never, ever prosecuted a case of voter fraud,

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2 and that is because they don't exist, frankly, in
3 our state, at least not in-person voter fraud.

4 And, yet, luckily our legislature,
5 being out ahead of things just in case one did
6 exist, managed to get this bill passed to put it
7 to a vote to the people back in 2009. It was
8 actually enacted in 2010. 74 percent of
9 Oklahomans said that we should have voter ID, and
10 they said it under this proviso that there was
11 this rampant in-person voter fraud, which, again,
12 nobody has ever been able to find one example of,
13 but supposedly it's there. Point being, we now
14 have a voter ID law, and we've had one election
15 cycle to figure out how it's going to work.

16 A couple of lessons have been
17 learned. First of all, some background.
18 Oklahoma's voter ID law is less restrictive, for
19 instance, than the state of Wisconsin's, which was
20 just invalidated in the Frank case. It allows
21 more forms of ID. And, importantly, one of its
22 saving graces, if you will, that does make it a
23 bit better than some of these laws, it allows a
24 thing called your voter ID card, which is freely
25 issued to anyone who registers to vote, to be used

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2 in lieu of your photo ID.

3 Now, the problem is, of course, this
4 also completely defeats the anti-fraud purpose
5 because a voter ID card is printed on plain card
6 stock, has no photo, and can be incredibly easily
7 counterfeited. So there is a problem there.

8 In any case, like many states, the
9 challenge is how do we challenge it. We know that
10 the impact is something that is not good for the
11 electorates. What we see is a type of
12 disenfranchisement that I think affects small
13 numbers relative to the whole, but that doesn't
14 mean it's insignificant.

15 One of the things when we're talking
16 about voting rights that we have to remember is,
17 because this is such a fundamental right, if I'm
18 the one disenfranchised, it doesn't matter whether
19 I'm part of the class of ten voters, of a
20 thousand, of 10,000, I have had a fundamental
21 right taken away from me.

22 In Oklahoma, we have documented cases
23 where people were unable to cast a ballot because
24 of the law. So far, those cases arising from the
25 2012 election have all been from where the law was

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2 not enforced consistently or correctly, which is
3 one of the problems inherent in this kind of
4 legislation. But we also think there are other
5 things going on under the radar. And, in fact,
6 what Mr. Cathey testified about I think is very
7 apropos because that's one of the things you can't
8 put a number on, and we see it in Oklahoma as
9 well.

10 Now that we have voter ID, our lines
11 are longer at every polling place. We have more
12 opportunities for people to leave, to not get to
13 vote, and that's something that doesn't merely go
14 away. It's something that's real, but we cannot
15 quantify it easily.

16 What we also know is that many
17 people, because of the hype surrounding the
18 legislation and the state question, even though
19 they could have voted with this free voter ID
20 card, they presumed, and perhaps were made to
21 presume, that they had to have a particular
22 driver's license or state issued photo ID when
23 they didn't. And from what we can tell, that --
24 those people were disproportionately out of
25 communities of color, they were out of communities

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2 with limited English proficiency, and they were
3 out of poor communities. That's the problem we're
4 seeing in Oklahoma with voter ID. But like other
5 states, we've had difficulty challenging it.

6 There's a new case that might suggest
7 a different response from the one in Wisconsin.
8 In a case called Gentges, which is a rather odd
9 name, a gentleman in Tulsa named James Thomas, a
10 one full lawyer, law professor, has filled an
11 incredibly aggressive challenge to Oklahoma's law.
12 It doesn't look at disparate impact on any one
13 race. It doesn't look at one particular impact on
14 a protected class. It simply says our state
15 constitution -- oh, I just have a stop. I thought
16 I still had a minute. All right. Gentges, I will
17 simply say, is an aggressive challenge that might
18 give us some creative ways to challenge voter ID,
19 and I'm happy to take questions on it later.

20 COMMISSIONER WOODS: Okay. Very
21 good.

22 Jillian Fisher.

23 MS. FISHER: Thank you for having me.
24 I'm Jillian Fisher of the ACLU of Arkansas, and
25 I'm very happy to represent -- I think I'm the

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2 only panel to represent Arkansas in the voting
3 rights.

4 The Arkansas legislation always
5 provides some challenges and opportunities
6 regarding our effort to protect voting rights.
7 However, until '13, it was particularly
8 challenging mainly for the sheer number of voter
9 restrictions or voter regulations bills that were
10 introduced. And we believe this is partially due
11 to the fact this was the first time in over a
12 hundred years that the republican party was the
13 control of the state legislation.

14 Although we -- there was problems
15 with multiple bills, we chose to focus our
16 litigation efforts on the law that was most
17 detrimental to Arkansas citizens, and that was Act
18 595 of 2013, better known as a voter ID law. We
19 believe this law not only creates unnecessary
20 obstacles and barriers to voters without
21 addressing any real problems, like Brady kind of
22 explained, but also burdens the least amount of
23 resources, and this proportionally affects certain
24 groups because of color, the poor, those who are
25 disabled, women, ethnic, and its minorities.

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2 The law was first implemented on
3 January 1st, and it requires all voters to show
4 proof of identity each and every time they cast a
5 ballot, and this includes absentee voters, which I
6 know some state do not. So even absentee voters
7 must provide some form of ID.

8 The general assembly budgeted zero
9 dollars for voter education. I have -- in the
10 question, I do have a list of states and what they
11 allocated. Some are in the millions. Arkansas
12 budgeted zero; they said it was not necessary.
13 However, as somebody who is specifically -- my
14 main duty is to education and do outreach for
15 voter education. And I assure you Arkansas voters
16 are not aware of this law, are not aware of the
17 changes, especially the groups that are affected
18 by this law.

19 We've seen numerous problems and --
20 already, so it's only been implemented for five
21 months. But -- and we have not had our primarily
22 election yet, but we've had special elections. In
23 Craighead County, there's 54 percent of the
24 absentee ballots were not counted because they
25 failed to provide the necessary documentation.

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2 Fifty-four percent.

3 Two lawsuits have been filed against
4 the voter ID law, and both have rule the voter ID
5 law is unconstitutional. The first was filed by
6 the Pulaski County Election Commission, and they
7 filed it regarding absentee voters and guidance
8 over a cure period.

9 The rules in question, the mercy
10 rules, and a statute that were based upon a
11 violation, they ruled that they were in violation
12 of the Arkansas Constitution and ordered that the
13 voter ID law be enjoined. However, it was
14 immediately appealed, and it was stayed by the
15 Arkansas Supreme Court.

16 A few weeks before this, we at ACLU
17 had also filed a separate case. We filed suit on
18 behalf of our clients charging that the law
19 violated the Arkansas Constitution by legally
20 adding voting qualifications and
21 unconstitutionally violated our Arkansas voters'
22 rights.

23 On Friday, May 2nd, the court granted
24 our injunction but stayed their own decision,
25 waiting on the Arkansas Supreme Court's ruling on

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2 the case. We are very optimistic about our
3 outcome of our case, especially since it's
4 already been ruled in Arkansas twice. However, we
5 are also prepared for a very long, drawn-out
6 fight.

7 Generally, I do also -- kind of going
8 away from that, I do want to -- the landscape of
9 voter restrictions in Arkansas in general,
10 although we have seen a lot of setbacks,
11 especially recently in legislation, we have also
12 identified some opportunities. And, of course,
13 assuming our capacity can still be at what is, we
14 would like to continue with those opportunities.

15 I can personally attest, being out in
16 a -- public and being out in education, that
17 voting rights and civil rights groups are actually
18 solidifying for once around this issue, and we are
19 trying to take positive steps to not only voter
20 education, but also voter access for free and fair
21 elections. Thank you.

22 COMMISSIONER WOODS: Thank you.

23 Justin Jones.

24 MR. JONES: Hi. Good evening. My
25 name is Justin Jones, and I serve as chairman of

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2 the Nashville Student Organized Committee, and I'm
3 also a student Fisk University.

4 Today we, as students, are, once
5 again, picking up the torch waged almost 50 years
6 ago by our parents and grandparents in the civil
7 rights movement for the most basic and fundamental
8 right to vote. Today our fight is against James
9 Crow, Esquire, a much more subtle and
10 sophisticated form of voter suppression to voter
11 ID.

12 Now, if we look at 2008, we saw the
13 highest youth student voter turnout since Vietnam.
14 Therefore, it's no coincidence that in 2011,
15 legislature across this nation began enacting
16 voter ID law, a law which disproportionately
17 affects as students. If we look at national
18 statistics, 15 percent of college students are
19 disenfranchised by this law.

20 I would like to direct the
21 committee's attention to a supreme court case from
22 the '60s known as Symm v. United States. This
23 supreme court case gives college students a right
24 to vote where they go to college. However,
25 because of voter ID laws, many college students

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2 around this nation are disenfranchised not being
3 able to access the right form of identification
4 where they go to college even though we do have a
5 right. Therefore, this right is being taken away
6 from us.

7 I brought a copy of my own voter
8 registration here in Davidson County and my
9 student ID. In many states across this nation,
10 this is enough to vote. However, in Tennessee, I
11 was denied the right to vote because I cannot
12 access a Tennessee ID.

13 If we look at the requirements to
14 access a Tennessee ID, you need two forms of
15 residency. Living in a dorm, you don't have a
16 utility bill, you don't have a water bill, you do
17 not have an electricity bill. Therefore, we do
18 not -- it's impossible to get these two residency
19 requirements. Therefore, so many students are
20 disenfranchised by this law. At my own school
21 alone, we took statistics, and 9 out of 10
22 students do not have a Tennessee ID because
23 out-of-state IDs are excluded. And Tennessee law
24 explicitly excludes student IDs.

25 Now, one thing that's really

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2 interesting and hypocritical, we can argue, about
3 this law is that IDs for faculty are accepted to
4 vote from public institutions, but student IDs
5 from the same institutions are denied. It makes
6 no sense.

7 And so, you know, we actually had the
8 rare opportunity to actually testify and to debate
9 with some of the members of the house of
10 representatives on the local government
11 subcommittee in regards to HB2373, which we
12 presented this session.

13 The last session we had, one of the
14 members, when asked why are we making it harder
15 for people to vote, respond that we want the right
16 people to vote. Our question is who are the right
17 people.

18 If we continue looking at the -- if I
19 could just use an example of Fisk University.
20 Fisk University is located at 1000 17 Avenue
21 North. The nearest TDOT center, which is the
22 Tennessee Department of Transportation, is 30
23 minutes away, and it's only open until 5:00 P.M.,
24 Monday through Friday. Students who are -- you
25 know, full-time students don't have time,

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2 especially if you don't have a car, to go down to
3 the center to, you know, wait in line to get their
4 ID. A lot of us don't have the right
5 identification already, you know, the residency
6 requirements. And so, again, this creates another
7 barrier.

8 And if we look at students, students
9 are already, you know, especially susceptible to
10 this law because, you know, they're new to the
11 process. And so this law does not -- it creates
12 confusion for everyone, of course. But students
13 particularly are, you know, affected by this
14 because they are, you know, newcomers to this
15 voting, you know, process. And so that's one
16 point I would just like to make.

17 And so another point that, you know,
18 some people told us, well, you know, you need an
19 ID to -- you need your ID to ride an airplane.
20 And, yes, you do. But, however, what
21 distinguishes those from voting is that those are
22 luxuries. Driving and getting -- you know,
23 traveling internationally with a passport, those
24 are luxuries. Voting is a right guaranteed to
25 everyone regardless of social economics,

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2 regardless of, you know, status, and regardless of
3 race. And so that's the point.

4 And I think that's all the testimony.

5 And if we look at Indiana's law,
6 which Tennessee based their law off of, even
7 Indiana's law allows students to use their voter
8 IDs from public institutions. Tennessee has one
9 of the five strictest voter ID laws in the nation.

10 In 2010, Tennessee, in fact, had the
11 second lowest voter turnout in the nation. We
12 should be making it easier for people to vote. We
13 should be appealing to people to vote, not making
14 it harder through, you know, the type of
15 identification.

16 And if we do want to go after voter
17 fraud, because there is the issue, you know,
18 problems with voting, let's go after voter
19 suppression through, you know, faulty voting
20 machines, let's go after, you know, the voter, you
21 know, suppression committed through making lines
22 longer or poll -- let's not make it harder for
23 people through the identification that they use,
24 because when this case was brought before the
25 Tennessee Supreme Court, they admitted there's no,

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2 you know, cases of in-person voter fraud. And so
3 we're creating an issue to stop a nonissue.

4 And so with that, I would like to
5 conclude my testimony.

6 COMMISSIONER WOODS: Thank you very
7 much.

8 George Barrett.

9 MR. BARRETT: Thank you, sir. We
10 appreciate you being here and affording us an
11 opportunity to talk about the basic pressing
12 problems in a democratic society.

13 By way of introduction, I am George
14 Barrett, a practicing attorney, licensed by the
15 state of Tennessee and practice law in Nashville.

16 I have been practicing law for a
17 little over 50 years, and I have had a number of
18 cases involving elections, irregularities, and
19 fraud.

20 And I might say as an aside, that on
21 June the 21st, 1963, I was sitting in the East
22 Wing of the White House when President John
23 Kennedy created the Lawyers' Committee for Civil
24 Rights Under Law. I was perhaps the youngest
25 person there, and I might even say I had hair at

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2 that time. I'm, therefore, intimately familiar
3 with election laws in Tennessee.

4 In the 2010 election, another party,
5 one that I don't belong to, captured the
6 governor's office and both houses of the
7 legislature. Since we're nonpartisan, I wish them
8 to remain anonymous.

9 Effective January 1, 2012, Tennessee
10 adopted a voter ID requirement for voters to be
11 eligible to vote, and listed a series of state and
12 federal documents that could be used for voting as
13 long as it had the person identified by name and
14 photograph. Those identifications specifically
15 excluded state issued ID cards to students of
16 institutions of higher education. The law was
17 subsequently amended in 2013, which limited the
18 identification to cards issued by either the state
19 of Tennessee or the United States Government with
20 an appropriate identification and photo. Again,
21 specifically excluded were students in
22 institutions of public higher education.
23 Therefore, Tennessee State University, which is
24 historically a black college university, students
25 are excluded, as are students in any institution

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2 of public higher education, University of
3 Tennessee, et cetera.

4 As a result of the passage of the
5 original law, my law firm was employed by the city
6 of Memphis to test the constitutionality of the
7 statute. Among the plaintiffs were two elderly
8 black women in Memphis, Ms. Stephanie Daphne
9 Turner-Golden and Ms. Sullistine Bell, both
10 citizens and residents in Memphis. The city in
11 response to the statute, which says that ID cards
12 issued by any governmental agency, state or local
13 in any state of the union, at the behest of the
14 mayor, convinced the library board to issued ID
15 cards to citizens with their photos on it. These
16 two citizens secured those ID cards and attempted
17 to vote since they had no other state ID.

18 Tennessee has a rich history of voter
19 participation dating back to the 1870, the
20 Constitution adopted after the Civil War in
21 reaction to suppression of voters in elections
22 during that period. This constitution was one of
23 the most probative and least restrictive ones in
24 the country of any state in the United States.
25 Under Article I, Section 5, it says the elections

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2 shall be free and equal, and the right of
3 suffrage, as hereinafter declared, shall never be
4 denied to any person entitled thereto, except upon
5 conviction by a jury of some infamous crime,
6 previously ascertained and declared by law, and
7 judgment thereon by court of competent
8 jurisdiction.

9 And Article IV, Section 1, says, a
10 right to vote, every person, every person being
11 eighteen years of age, being a citizen of the
12 United States, being a resident of the state for a
13 period of time as prescribed by the legislature,
14 and being duly registered in the county of
15 residence for a period of whatever they should
16 establish to have the right to vote. All such
17 requirements will be equal and uniform across the
18 state, and therefore shall be no other
19 qualification attached to the right of suffrage.
20 That's about as clear as the constitution could be
21 in guaranteeing the equal right of access to the
22 ballot.

23 I'm going to run out of time.

24 Our application for preliminary
25 injunction was denied by the court, so we set a

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2 hearing. And during the course of the hearing, we
3 took certain depositions, including Mark Goins,
4 the Director of Elections for Tennessee, who, in
5 the course of his testimony, could not identify
6 one single vote of voter ID fraud out of over a
7 million votes cast in Tennessee in the 2008
8 election.

9 Without boring you with the redundant
10 trial and appeal process, I'll go directly to the
11 actions of the supreme court. The chancery court
12 dismissed the case, and the court of appeals
13 reinstated the case and affirmed the authority of
14 the city of Memphis to issue library cards.

15 Upon appeal to the state supreme
16 court, the supreme court mooted the court of
17 appeals and upheld the constitutionality of the
18 statute in a unanimous decision despite that clear
19 language. The reversal of the library card ruling
20 was the fact that the mooted by the change in the
21 statute. We attempted to raise issue in federal
22 court without success.

23 This action by the supreme court is
24 directly contrary to Tennessee jurisprudence. The
25 fraud in the instance is the creation of a problem

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2 of a solution to a problem that does not exist,
3 voter ID fraud.

4 Thank you.

5 COMMISSIONER WOODS: Thank you.

6 Okay. And our next...

7 MR. BARRETT: My representative.

8 COMMISSIONER WOODS: The Honorable
9 Brenda Gilmore.

10 MS. GILMORE: Thank you. My name is
11 Brenda Gilmore, and I'm a state representative
12 representing the Nashville area. I'm also a
13 member of a number of community organizations. To
14 my dismay, it was during my watch in the Tennessee
15 General Assembly that we passed a terribly
16 obtrusive law requiring voter ID in order to vote.
17 Although the sponsors could not give specific
18 examples of fraud, this law was pushed through and
19 erects barriers to the poor, the elderly, women,
20 and minorities.

21 As a member of National Council of
22 Negro Women and NAACP, we partnered to help
23 seniors acquire their voter ID. Some of the
24 specific challenges we faced during this time
25 included the following: Mr. Clifford Glass, and I

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2 brought a picture of him, who is now deceased, was
3 a veteran. He had his VA card with him when we
4 took him to the driver's license center. But he
5 was told that he needed his DD214, which was his
6 discharge papers. He was also required to pay an
7 additional \$8 for a state issued ID. We had to
8 take Mr. Glass home and bring him back on another
9 day to present this documentation, which was not
10 needed. However, had we not been available, this
11 treatment may have deterred a senior from voting.
12 I was going to show...

13 We have a youtube of Mr. Clifford
14 Glass. And, again, I want to illustrate that he
15 is now deceased.

16 (Video played.)

17 My name is Clifford R. Glass. I
18 served in the Air Force from July 1954 to January
19 of 1958. I have been voting since 1960. Due to
20 an automobile accident, I lost my license
21 approximately 12 years ago. I was going to get my
22 voter ID card because they said you have to have
23 it in order to be able to vote. When I got there,
24 I approached a gentleman at the counter and told
25 him what I wanted. I showed him my veterans card.

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2 He said that was no good. He said you have to
3 have a state-issued ID card in order to be able to
4 vote. And he told me when you come back, be sure
5 and bring \$8 to pay for this ID card. And I told
6 him, I said, no. And I did not go back.

7 Well, it's a forum for poor tax.

8 John Lewis had an editorial in the New York Times
9 several months ago, this is reinstatement of the
10 poor tax, is all it is. We fought against that
11 forever, and there's a constitution amendment
12 against it. It's just a clever way to institute
13 poor tax to discriminate against the poor, the
14 elderly, students, and people like that.

15 I have a shirt that was given to me
16 by one of my friends, and on this shirt it says,
17 'If you don't vote, you don't count.' So this is
18 a privilege and a right for a person to vote.
19 People have been killed for what I'm trying to do.
20 And like I said, you need to speak up, speak out,
21 and be heard.

22 (Video ends.)

23 The second example I wanted to share
24 with you had to do with 96-year-old Ms. Dorothy
25 Cooper of Chattanooga. Ms. Cooper was a married

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2 woman who, at 96 years old, had been voting for
3 over for 60 years. She worked domestic and had
4 never learned to drive because she did not have a
5 driver's license. Ms. Cooper showed up with a
6 driver's license, a voter's registration card,
7 utility bills. And because her married name of
8 Cooper did not match her birth name of Dorothy
9 Alexander, she was denied a voter ID card.

10 Ms. Cooper was eventually told that she could vote
11 by absentee, as a voter ID would not be required.

12 However, she was born before women
13 had the right to vote, so voting meant a lot to
14 her, and she actually enjoyed going to the
15 precinct to vote. This was denied to her.

16 And the last example has to do with a
17 TSU student who was adopted. We tried to help
18 this TSU student who did not have a birth
19 certificate, and he could not obtain his voter ID.

20 Some of the other barriers that
21 prevented these elderly people to receive their
22 voter ID included transportation. Most of the
23 driver's license centers are located on the
24 outskirts of town. A majority of these seniors
25 live in the urban core and are concentrated in

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2 high-rises. The bus systems do not go to these
3 locations or involve a maneuvering a bus system
4 that requires them to change bus lines to get to
5 their final destination.

6 Some of the rural areas do not have
7 driver's license centers at all and require people
8 to take a day off from work to travel to a nearby
9 city where a center is located.

10 And free does not always mean free.
11 The cost of the voter ID is \$8. Although money
12 was allocated in the Tennessee General Assembly
13 for the indigent, most seniors were asked for the
14 \$8 fee. Members of NCNW and NAACP paid for a
15 number of seniors to obtain their voter ID.

16 And, lastly, use of computers.
17 Finally, the seniors have to use a computer to
18 request their voter ID. Many of these seniors do
19 not know how to use a computer or were not agile
20 enough to use a computer.

21 Although voter fraud is almost never
22 heard of in Tennessee, this law continues to
23 disenfranchise classes of people such as women,
24 minorities, and the elderly, and poor people. It
25 was and it still is a solution looking for a

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2 problem.

3 COMMISSIONER WOODS: Thank you. I
4 want to thank each of you for your comments.

5 And now we'll ask the commissioners
6 to ask their questions. And, again, we'll start
7 on this end over here with Mr. Brady Henderson.
8 Any questions for Henderson?

9 COMMISSIONER STOKES: Mr. Henderson,
10 I think I remember that there was an additional
11 point that you wanted to make with regard to some
12 cases that you were --

13 MR. HENDERSON: I'll just be very
14 brief in describing what's going on right now in
15 Oklahoma, that we have a case that may take a
16 different tack from many others around the
17 country, then, again, it's about looking to an
18 individual voter and trying to see if we can --
19 when we have constitutional language that even
20 rises to the level of, for instance, what
21 Mr. Barrett was describing, can we actually get
22 appellate courts to say this is such a fundamental
23 right, that even if the level of burden on an
24 individual voter is relatively low, in other
25 words, even if I have an alternative, if I have a

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2 means to go get an ID, can I still claim this
3 burden is too much.

4 And, in fact, there is a case now in
5 the Oklahoma Supreme Court that suggests that
6 might be the case. There's a wonderful line out
7 of it in which a person's ability to have access
8 to something like their driver's license or voter
9 ID card as compared to a person's ability or
10 financial means to pay a poll tax. And the court
11 says just because somebody could have afforded a
12 poll tax doesn't make a poll tax constitutional.
13 So I think it gives us hope that maybe there's
14 something else out there that might help put these
15 laws in a different perspective, and I think
16 that's good for people in a variety of states at
17 the end of the day.

18 COMMISSIONER STOKES: And that's
19 Gentes.

20 MR. HENDERSON: Gentes, that's right.
21 And I --

22 COMMISSIONER STOKES: G-E-N-G-H?

23 MR. HENDERSON: It is actually
24 G-E-N-T-E-S. And I've put a copy in the written
25 materials that each of the commissioners have,

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2 just of the current supreme court opinion. It
3 will in many months head back up to the supreme
4 court on the merits, and we'll see what happens.
5 It's an aggressive case, and so nobody can make
6 too many bets as to where it's going to go at this
7 point. But I think, at minimum, it will define a
8 lot about Oklahoma voter ID law in terms of what
9 can and can't be done. We similar provisions, for
10 instance, excluding student IDs, things like that
11 as well. And so I think that there's a lot there
12 the court is going to consider on the merits.

13 COMMISSIONER PORTER: Mr. Henderson,
14 there my be some situation where an individual's
15 driver's license may be suspended, maybe a DWI or
16 something like that.

17 MR. HENDERSON: And, in fact, that's
18 relatively common in Oklahoma. We're one of the
19 states that puts people into spirals of
20 suspensions and revocations, where very often
21 somebody's license gets suspended and, because we
22 don't have good mass transit in much of state,
23 they keep driving, and they get caught, and the
24 driving under suspension ticket resuspends the
25 license. And, of course, you can just essentially

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2 splay that out ad nauseam. It goes on forever.
3 And so it is actually a problem.

4 And one of the things that makes this
5 case intriguing is really the benefit for people
6 in that kind of situation because now you can say,
7 okay, it's not just a matter about whether you
8 have some other way to access this, it's a matter
9 of whether you ought to be challenged to have to
10 make sure you have a particular kind of ID out
11 there simply to exercise the franchise.

12 COMMISSIONER WOODS: Okay.

13 Ms. Fisher, was there a point you
14 needed to make?

15 MS. FISHER: I guess after I heard
16 everybody else's testimony, I do -- I want to go
17 through the voter ID law in Arkansas. So for
18 those who are present at the polls, you must show
19 a photo ID that is issued by the state of Arkansas
20 or the federal government, it must have your name,
21 your picture, and cannot be expired for more than
22 four years. So driver's license, ID cards,
23 passports. We do also take accredited post
24 secondary college or university IDs in Arkansas.
25 So I do want to make that point, but that's --

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2 actually, Arkansas does allow that.

3 And absentee voters -- which I also
4 learned by being here a lot of states don't
5 require that. But in Arkansas, absentee voters,
6 again, every voter must prove their identity each
7 and every ballot. So absentee voters must provide
8 a copy and use a photo ID, state or federal
9 government, or they can provide something with
10 their name and their address, such as a utility
11 bill or a bank statement that was issued within
12 the last 60 days.

13 However, people are still having
14 problems just because they can -- you know, you
15 don't have a house, you don't have a residence.
16 Or if you -- and there's one woman that I spoke to
17 who her husband was deceased and all of the bills
18 were in his name, so she had nothing with her name
19 and her address, and she did not have an ID.

20 So I guess I just kind of want to
21 make that clarification.

22 COMMISSIONER WOODS: Okay. Thank
23 you.

24 COMMISSIONER PORTER: I know in
25 Arkansas, I guess if you do not have your ID when

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2 you show up at the ballot, there is a
3 provisional --

4 MS. FISHER: Correct.

5 COMMISSIONER PORTER: -- ballot.

6 MS. FISHER: So there is provisional
7 ballots that you are given. So you have to now go
8 to the county clerk's office on Monday at noon,
9 and you can sign saying that you have a religious
10 objection to having your picture taken, or that
11 you're too poor to afford one, or show your ID.
12 And those are the only -- and that's it. And our
13 argument is, who is going to go to, two days later
14 or wherever, and admit that they're too poor to
15 provide an ID. And, again, a poll tax of, you
16 know, getting transportation to the county clerk
17 and so forth.

18 COMMISSIONER WOODS: Okay. Thank
19 you.

20 Justin Jones, any questions?

21 COMMISSIONER STOKES: Justin, have
22 you met Attorney Barrett before? Okay. So you
23 all know each other.

24 MR. JONES: Yes, ma'am.

25 MR. BARRETT: It wasn't in all my

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1 cases. He's filed his lawsuit.

2
3 COMMISSIONER STOKES: So is there a
4 group that's organized at Fisk, or are you in
5 community with other students and other
6 universities?

7 MR. JONES: Yes, ma'am. It's a
8 coalition of students from Fisk, TSU, Vanderbilt,
9 and American Baptist College.

10 And can I make one point that I
11 forgot to mention in my testimony?

12 COMMISSIONER WOODS: Yes.

13 MR. JONES: One thing that I just
14 really wanted to make a point of pointing out that
15 really can kind of reveal the intention behind
16 this law is that, again, student IDs are not
17 accept, but gun permits are accepted in Tennessee.
18 And I think that really can verify, you know, what
19 the true intention of this law is.

20 COMMISSIONER WOODS: Thank you.

21 Mr. Barrett, any questions?

22 COMMISSIONER CUNNINGHAM: My question
23 could be for Mr. Barrett, Mr. Jones, or
24 Representative Gilmore. In the first panel that
25 dealt with administration, and when voter ID came

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2 up, I came up with the impression from an election
3 official that there may not have been a problem
4 with voter ID in Tennessee. Now, for those of us
5 who are here, I asked that specific question, and
6 I was told basically there wasn't a problem. And
7 then when I talked to someone else, they said,
8 well, that person was from Davidson County as if
9 there were not a problem in Nashville. But in
10 hearing the three testimonies, I get the distinct
11 impression that there are problems. And I just
12 want to make that analysis and get some comments
13 on it for those of us who were here. And maybe
14 I'm the only one that got that impression.

15 COMMISSIONER PORTER: Two of us got
16 that impression, we know.

17 MS. GILMORE: I think if I may
18 address it, and I'm sure others have a different
19 perspective, but I think the issue may be that
20 those election officials when somebody comes in to
21 vote, that their perception is that there's not a
22 problem because they show up with the voter ID.
23 But there are literally hundreds and many even
24 thousands of people who cannot obtain that voter
25 ID who actually is staying at home because of

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2 that.

3 And in some cases, to get your birth
4 certificate, it requires you to go to the social
5 security office, and it's more than just the \$8
6 that it costs to get the voter ID. And in one
7 case, I think it was \$140 for them to do the
8 research, to go back and actually do the research
9 to prove that they had actually been born and what
10 date, some of these elderly people. So their
11 perception is it may not be a problem. But they
12 just don't know how many dead bodies that they had to
13 step over before they got to the election day.

14 COMMISSIONER CUNNINGHAM: I was
15 looking for that type of information --

16 MS. GILMORE: Um-hmm.

17 COMMISSIONER CUNNINGHAM: -- but
18 didn't get it from that first panel that we had.

19 MR. BARRETT: I must say that there
20 seems to be the coordinative election is appointed
21 by the state election commission which is partisan
22 and reflects the party that controls the
23 legislature. With the change in 2010, we had a
24 whole turnover of state coordinative election and
25 county directors of election, and that made the

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2 election a nightmare. And there seemed to be some
3 of those officials dedicated to keeping people
4 from voting. It's a phaenomenon that I hadn't
5 experienced since the early '60s when we had the
6 last great voters' scandal and six people went to
7 prison in a lawsuit I was involved in, not
8 (unintelligible) where we rewrote our election
9 laws. We had a pretty smooth running election
10 machinery, in the best sense of the word, with
11 access to the polls and people getting the right
12 to vote and exercising that right. It absolutely
13 was disruptive and an utter chase in 2010.

14 COMMISSIONER WOODS: Concerning the
15 first panel, let me just make one observation, and
16 that is that one of -- Commissioner Tricia
17 Herzfeld said that there were tons of problems,
18 and that they were working on them, and they had a
19 lot of things to work on. Before she was a
20 commissioner, she was on the other side looking at
21 checking on things. And now she's on the inside,
22 and it's her job now to come up with answers,
23 solutions to those issues that have to be fixed.

24 I don't know if you recall or not,
25 but she was sitting where Jones is sitting when

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2 she testified about what are the things that
3 needed to be fixed and done, and that they needed
4 money, they needed this, they needed that. But
5 she did say that there were some issues and
6 problems that she knew about before she became a
7 commissioner, and now that she is, it's her job to
8 come up with a fix.

9 COMMISSIONER PORTER: We do have a
10 court reporter here.

11 And, court reporter, thank you so
12 much for taking the record.

13 And we'll just have to review the
14 record.

15 COMMISSIONER WOODS: Okay. Thank you
16 very much, panel. You've been informative, and we
17 appreciate you very much for being here tonight
18 and sharing with us. Thank you.

19 Before Aunna speaks, I want to, as
20 one of the commissioners, thank her and Maria for
21 all of the work that they're doing to put together
22 these various hearings and tell them how delighted
23 we are to be a part of what you put together.

24 Thank you very much.

25 MS. DENNIS: We're going to go ahead

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2 and close. I definitely want to thank our guest
3 commissioners and, of course, Ms. Shackelford, who
4 was here earlier. They've been great with
5 facilitating or panels tonight and today, so thank
6 you all.

7 I also want to thank the witnesses
8 and our audience. Some of you all have stayed
9 since, like, 3:30. I don't even know what time it
10 is. But we definitely want to thank you all for
11 that, for your participation, for all the
12 information that you've given to us and to the
13 lawyers' committee. With your information that
14 you're giving, it's just going to go for this
15 public record, and what we've got from this
16 regional, because it includes five states, which
17 are Arkansas, Kentucky, Oklahoma, West Virginia,
18 and, of course, Tennessee. It's been just
19 absolutely amazing. There hasn't been a hole that
20 wasn't filled, so I definitely thank you all.

21 And I also want to thank our
22 volunteers and our planning committee. Without
23 our volunteers and our planning committee, this
24 would have not been a success. And everybody who
25 has done outreach to get others here to be

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2 witnesses, just thank you all. I'm just so happy.
3 Maria as well.

4 So this basically closes out our
5 hearing. I thank you all for coming. There will
6 be next steps, and we'll contact you all what will
7 be the follow-up. So I know there's some people I
8 got that card from.

9 But definitely thank you all, and you all
10 have a great night.

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C E R T I F I C A T E

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

I, Gary Schneider, a Shorthand
Reporter, do hereby certify that the foregoing
proceedings were taken down and transcribed to the
best of my knowledge, skill and ability.

Dated: May 20, 2014

Gary Schneider

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National Commission on Voting Rights

March 28, 2014

Introductions

Job No: 72361

1 DORIEN L. SPENCE: Good morning, good
2 morning. Can everyone hear me in the back? Good
3 morning. Welcome, welcome to the National
4 Commission on Voting Rights here in beautiful
5 Rocky Mount, North Carolina. My name is Dorien L.
6 Spence and I am a staff attorney with the Lawyers
7 Committee for Civil Rights under Law in
8 Washington, D.C. And on behalf of the Lawyers
9 Committee, we sincerely thank you for your
10 participation, we thank you for your time, and we
11 thank you for your support.

12 And right at the outset I would also
13 like to thank the OIC of Rocky Mount, North
14 Carolina first for their service to the
15 community, and second, for hosting us today for
16 such an important event in such a fitting space
17 for a discussion about one of the most
18 fundamental aspects in our society, the right to
19 vote.

20 This center, the OIC, pushes its
21 students to prepare for the future. And in the
22 sake of preparation they stress the importance of
23 a solid foundation. And as I look out onto the
24 crowd today it is abundantly clear that the
25 foundation in our fight for the right to vote is

1 strong. The Lawyers Committee is a nonprofit,
2 nonpartisan civil rights organization founded at
3 the request of President John F. Kennedy over 50
4 years ago to engage lawyers in the never-ending
5 fight for racial justice and equality.

6 The work of the Lawyers Committee
7 continues today in a range of areas--fair
8 housing, employment discrimination, education,
9 community development and, of course, voting
10 rights--access to the ballot, the reason why we
11 are all here today. Today's hearing is a part of
12 a series of nationwide hearings convened by our
13 National Commission on Voting Rights and I am
14 deeply honored to be here today in the State of
15 North Carolina. It's such an important state in
16 the fight for voting rights. A state that is near
17 and dear to my heart and it is where I earned my
18 law degree.

19 As many of you know, last summer, the
20 United States Supreme Court struck down a key
21 protection of the Voting Rights Act, one that
22 protected you, North Carolina voters, from
23 discriminatory voting changes. The court released
24 states with a long history of discrimination and
25 discriminatory practices from a critical

1 responsibility to show upfront, first and
2 foremost that the voting changes that they sought
3 to implement would not disadvantage minority
4 voters. And once the states were released, what
5 happened next? In the aftermath, we immediately
6 saw these same states revert to their own ways.
7 States like North Carolina immediately moved
8 towards suppressing the minority vote, creating
9 hurdles to the ballot, restricting access to the
10 polls.

11 We believe that the court was wrong,
12 dead wrong in the decision of the Shelby County
13 case. But what is clear is that the fight must
14 continue on. So, one of our main purposes through
15 these national hearings is to identify the need
16 for strong protections against discrimination in
17 voting by looking at current records in states
18 across the country. So, we are here to listen to
19 the people of North Carolina. With the testimony
20 we receive today and after the hearing, the
21 National Commission will prepare two reports: one
22 on voting discrimination, and another on election
23 administration and electoral reform. The reports
24 in the records from the hearing will be available
25 to you next year, to anyone seeking to reform or

1 improve existing voting laws such as
2 policymakers, advocates, and voting citizens such
3 as yourselves. It has been made abundantly clear
4 that the right to vote is a fundamental political
5 right because it is the right which is
6 preservative of all rights.

7 Now, to get us started with our hearing
8 this morning, I would like to welcome to the
9 microphone a man who needs no introduction and we
10 are deeply honored to have him here today, North
11 Carolina's own Reverend Dr. William J. Barber.

12 [APPLAUSE]

13 BARBARA ARNWINE: All right. Yay!

14 WILLIAM J. BARBER: Good morning to you
15 all and good morning to all of those who are
16 watching us by streaming. Today we are streaming
17 this across the nation, this morning, this
18 tremendous hearing. Let me thank God for the
19 privilege of our being here today. And on behalf
20 of Jamie Phillips, attorney Jamie Phillips Cole,
21 who all of us are looking one day to call her
22 Judge Jamie Phillips Cole, our chief organizer on
23 the ground, and to attorney Sonia Gill, who have
24 done tremendous cooperative work, working
25 together to bring together this hearing. The

1 North Carolina NAACP, the Forward Together Moral
2 Movement, the HKONJ People's Assembly--we want to
3 welcome, first of all, our leader and tremendous
4 "shero", attorney Barbara Arnwine, who leads the
5 lawyers' committee. Let's give it up.

6 [APPLAUSE]

7 And on behalf of the UNC Center for
8 Civil Rights, the Advancement Project, the
9 Southern Coalition for Social Justice, all of
10 those persons, those organizations led by
11 tremendous individuals. Where is Mark Dorison and
12 Penda Hair and Attorney Earls? The ACLU Blueprint
13 of North Carolina, Democracy of North Carolina.
14 We welcome all of those who have been a part of
15 pulling this commission together. We give a
16 special recognition to attorney Kim Keenan, the
17 general counsel for the National NAACP, and our
18 own national leader, Lorraine Miller, as well as
19 Hilary Shelton, who were all instrumental in
20 organizing this tremendous partnership between
21 the NAACP and the lawyer's committee with all of
22 our partners here on the ground.

23 There is no better time to take a
24 serious look at North Carolina's voting record.
25 And we say that to this panel of commissioners.

1 David Harris, our former leader in the General
2 Assembly, Miss Canard, and Dean Pierce, and our
3 very own Eva Clayton, whose living room floor I
4 used to sleep on every now and then when my
5 father was organizing way back in the day. But
6 there's no time to take a serious look at North
7 Carolina's voting record. Nine months or so after
8 the Supreme Court gutted Section 5 of the Voting
9 Rights Act and seven months after extremists in
10 North Carolina passed the worst voter suppression
11 bill we've seen since Jim Crow.

12 As we come here today, the truth is
13 that here in North Carolina we are the canaries
14 in the coalmine of a [UNINTEL] rollback of voting
15 rights. This is the testing ground. This is
16 today's Selma. This is what people would like, if
17 they pass and get away here, what some would like
18 to see around the country. The voter suppression
19 law we've seen here passed--first introduced
20 before Shelby, and then passed immediately in the
21 aftermath of Shelby when the leader who passed
22 it, led the effort, said, "Now that the headache
23 has been removed..."--passed after renown Mickey
24 Michaux stood on the floor and tried to quote
25 what the Constitution of North Carolina said, and

1 he was ruled out of order for bringing history up
2 in a debate about voting rights.

3 This new law hurts all people. All
4 people. And this week's hearing will make a
5 powerful case for restoring full voting rights
6 and protections in North Carolina. We welcome you
7 here, where in 1868 blacks and whites came
8 together and wrote this in Article 1 of our state
9 constitution. "For the redress and grievances and
10 for amending and strengthening laws, elections
11 shall be held often." Section 10: "All elections
12 shall be free." Section 19: "No one shall be
13 denied equal protection under the law based on
14 race, color, religion, or national origin." 146
15 years ago, blacks and whites wrote that.

16 We welcome you here where 146 years
17 ago, Article 6 of that same constitution written
18 trying to overcome the vestige of slavery--
19 Article 1, Section 19 says, "No person shall be
20 denied or subjected to discrimination," where
21 Article 6, Section 1 said, "The right of citizens
22 to vote in North Carolina shall not in any way be
23 undermined."

24 Here we are after in 1870, 144 years
25 ago, when this nation said in the 15th Amendment,

1 "The right of citizens of the United States shall
2 not be denied or abridged by the United States or
3 any other state on account of race, color, or
4 previous condition of servitude." Abridged means
5 to shorten, to leave out some parts of, to lessen
6 the strength of or the effect or, or to reduce in
7 scope.

8 So, 144 years ago, we said in this
9 country that nobody not only could not deny but
10 could not abridge. We welcome you here to this
11 state where in 1898 there was a terrorist riot
12 that turned back and tried to undo all of these
13 reconstruction efforts. We welcome you here to
14 this place whereby 1900 in North Carolina, people
15 rewrote our state constitution and reintroduced
16 white supremacy, particularly in voting laws.

17 We welcome you, Barbara, right here to
18 Rocky Mount, where George White, who was elected
19 by fusion politics, Lincoln Republicans, and
20 blacks working together, and he was elected but
21 in 1900, he was run out of office. The last
22 African-American that would serve in Congress
23 until Oscar DePriest was elected in 1928. And no
24 African-American was elected to Congress from
25 North Carolina until 1992. And yet, George

1 Wright, who lived right in this area in Rocky
2 Mount, in this area, declared that like the
3 phoenix, we would rise from the ashes. We welcome
4 you to this auditorium where on November 27th,
5 when this was Booker T. Washington High School--
6 November 27, 1962, almost a year before the march
7 on Washington, Dr. King stood right here where
8 this hearing is taking place. And Dr. King in
9 this room with nearly 1,800 people listening to
10 him, did the first rendition of "I Have a Dream".
11 And he said in this room, "I have a dream that
12 one day right here in Rocky Mount, the sons of
13 former slaves and the sons of former slave owners
14 will meet at the table of brotherhood, knowing
15 that one God brought man to the face of the
16 earth."

17 We welcome you here where the Voting
18 Rights Act that was signed in 1965 created this
19 area as a cover district. 40 counties in North
20 Carolina, even though all 100 had discrimination.
21 We welcome you here to a place where it took even
22 after the Voting Rights Act, 25 years before
23 North Carolina had another Congressperson in the
24 United States Congress. And it was from this area
25 that that woman named Eva Clayton became...

1 [APPLAUSE]

2 BARBARA ARNWINE: Yes!

3 WILLIAM J. BARBER: We welcome you to
4 North Carolina where in 1968, the Southern
5 strategy was put in full force and politicians in
6 this state began to say that the Voting Rights
7 Act was a violation of states' rights. And now we
8 welcome you here where we find ourselves in a
9 place where extremists are trying to undermine
10 progress in voting rights. The empirical data
11 tells us that they're engaged in voter
12 suppression, and we're in the middle of a time
13 where there's even attempts at the federal level
14 to weaken federal protection at the very time new
15 demographics and electorates are emerging.

16 But we also welcome you here where just
17 yesterday, Judge Peak in a victory in our case
18 ruled that legislators' privilege is not
19 absolute. And actually, what she said yesterday--
20 because legislators in this state that passed
21 this voter suppression bill wanted to argue
22 legislative immunity. But she said, "The Court
23 concludes that while the judicially created
24 doctrine of legislative immunity provides
25 individual legislators with absolute immunity

1 from liability for their legislative act, that
2 immunity does not preclude all discovery in the
3 context of this case. Instead, claims of
4 legislative immunity or privilege in this
5 discovery context must be evaluated under a
6 flexible approach." In other words, you've got to
7 turn over the records. [CHUCKLES] In other words,
8 you can't engage in legislation that hurts
9 people's federal protections and then claim
10 legislative immunity. In other words, turn over
11 the records.

12 BARBARA ARNWINE: That's right!

13 WILLIAM J. BARBER: And so, we welcome
14 you here today where we are fighting on the
15 ground. We welcome you here where we've seen a
16 mighty coalition develop. We welcome you here to
17 get the facts at this hearing and to carry those
18 facts all the way back to the Congress. We
19 welcome you here to go back and tell those in
20 D.C. we need voting rights protection, we need a
21 strong preclearance for these Southern states. We
22 cannot go backwards, because today we sit in the
23 room where Dr. King preached the hope before he
24 ever got to the mall in Washington, that this
25 would be a place where the sons of former slave

1 owners and the sons of former slaves would be
2 able to sit down at the table of brotherhood
3 together. Without voting rights that table is
4 destroyed. And so, we welcome you to set the
5 record straight and to declare the truth in the
6 highest places of power so that we might go
7 forward together and not one step back. God bless
8 you.

9 [APPLAUSE]

10 BARBARA ARNWINE: All right. Awesome.

11 JAMIE PHILLIPS COLE: Good morning. My
12 name is Jamie Phillips Cole. I am the Public
13 Policy and Legal Redress Coordinator for the
14 North Carolina NAACP, and I would like to
15 introduce our wonderful guest commissioners.
16 First, we have Barbara Arnwine. For the last 25
17 years Barbara Arnwine has served as President and
18 Executive Director of the National Lawyers
19 Committee for Civil Rights Under the Law. She is
20 nationally and internationally renowned for major
21 contributions to critical justice issues,
22 including the passage of the landmark Civil
23 Rights Act of 1991 and Voting Rights Act
24 reauthorization. A graduate of Scripps College
25 and Duke University School of Law, she has been a

1 fearless champion of civil rights and racial
2 justice issues, national and internationally, in
3 the areas of fair housing and fair lending,
4 employment, education, and of course, voting
5 rights. Ms. Arnwine's work also includes
6 immigrant rights, judicial diversity, criminal
7 justice reform, racial profiling, and healthcare
8 disparities. A prominent leader in the civil
9 rights and human rights community, she continues
10 to fight for the preservation of affirmative
11 action and diversity programs.

12 She has served in numerous other
13 prestigious capacities including international,
14 civil, human, and women's rights matters. She is
15 a prominent leader of Election Protection, the
16 nation's largest nonpartisan voter protection
17 coalition launched in 2004 to assist historically
18 disenfranchised persons to exercise the
19 fundamental right to vote.

20 A frequent conference orator, she has
21 also penned numerous articles and is regularly
22 quoted and featured by national media outlets,
23 including MSNBC's "The Melissa Harris-Perry Show"
24 and "Politics Nation with Al Sharpton." Ms.
25 Arnwine is a member of the ABA section of

1 Individual Rights and Responsibilities. She is a
2 Vice-Chair of the National Coalition to Abolish
3 the Death Penalty and an Equal Justice Works
4 board member. She also serves as co-chair of
5 Rainbow PUSH Sports board of directors. Please
6 join me in welcoming Ms. Barbara Arnwine.

7 [APPLAUSE]

8 BARBARA ARNWINE: Thank you, thank you.

9 JAMIE PHILLIPS COLE: Former
10 Congresswoman Evan Clayton. Congresswoman Eva
11 Clayton was the first African-American woman to
12 represent North Carolina in Congress. Elected in
13 1992, Ms. Clayton became the state's first black
14 representative since 1901. From her post on the
15 House Agricultural Committee, Ms. Clayton
16 advanced the interest of her rural district in
17 the northeastern part of her state and called
18 attention to the economic inequalities that
19 affected African-Americans nationally. Born and
20 raised in Savannah, Georgia, Ms. Clayton moved to
21 North Carolina to pursue her studies, where she
22 received a bachelor of science degree in biology
23 from Johnson C. Smith University in Charlotte,
24 North Carolina in 1955.

25 In 1962, she earned a master's in

1 biology and general science from North Carolina
2 Central University in Durham. The civil rights
3 movement mobilized Ms. Clayton to become active
4 in civic and political affairs even at one point
5 picketing her husband's law office to protect
6 ownership of its office building that contained a
7 segregated restaurant. As early as 1968, Eva
8 Clayton was recruited by civil rights activist
9 Vernon Jordan to seek election to Congress in a
10 North Central North Carolina district. Though
11 Clayton won 31 percent of the vote in the
12 democratic primary, incumbent Lawrence Fountain
13 prevailed. However, Clayton's campaign had the
14 intended effect of spiking black voter
15 registration.

16 In 1974, she cofounded and served as
17 the Executive Director of Soul City Foundation, a
18 housing organization that renovated dilapidated
19 buildings for use as homeless shelters and
20 daycare centers. Two years later, she worked on
21 the successful gubernatorial campaign of Jim
22 Hunt, who later appointed Clayton as Assistant
23 Secretary of North Carolina Department of Natural
24 Resources and Community Development. Clayton
25 served in that capacity from 1977 until 1981.

1 After leaving state government, she founded an
2 economic development consulting firm. In 1982,
3 she won election to the Warren County Board of
4 Commissioners, which she carried until 1990.
5 During her five terms serving in Congress, Ms.
6 Clayton served as a member of the Agricultural,
7 Small Business and Budget Committees. During her
8 time in office, she was a staunch defender of
9 rural and agricultural interest in North Carolina
10 and also created a high profile for herself as an
11 advocate for programs to help economically
12 disadvantaged African-Americans and served as
13 Chair of the Congressional Black Caucus
14 Foundation. We are honored to have Ms. Clayton
15 serve as a guest commissioner today.

16 [APPLAUSE]

17 BARBARA ARNWINE: That's for sure. Yes!

18 JAMIE PHILLIPS COLE: Next we have
19 attorney Raymond Pierce, who was actually my dean
20 when I was at North Carolina Central University
21 School of Law, so I'm happy to have him here.
22 Raymond Pierce is a corporate practice partner
23 with the law firm of Nelson Mullins Riley and
24 Scarborough, LLP and is the former dean of North
25 Carolina Central University School of Law. A

1 well-recognized attorney in North Carolina, Mr.
2 Pierce served in the administration of President
3 Bill Clinton as Deputy Assistant Secretary at the
4 U.S. Department of Education Office for Civil
5 Rights. Pierce's career includes an appointment
6 as special counsel by the Ohio Attorney General,
7 a partner with the law firm of BakerHostetler,
8 LLP, and in-house counsel in the Corporate Law
9 Department of the LTV Corporation, a Fortune 50
10 aerospace defense steel and energy company.

11 Pierce began his career as a civil
12 rights attorney with the John W. Walker Law Firm
13 in Little Rock, Arkansas, where he worked on
14 class action employment discrimination cases.
15 Pierce is also a member of the board of directors
16 of Mechanics and Farmers Bank, the oldest
17 African-American bank in North Carolina. He also
18 serves on the board of governors of the North
19 Carolina Bar Association and the Executive
20 Committee of the American Association Council on
21 Legal Education. Please join me in welcoming
22 attorney Raymond Pierce.

23 [APPLAUSE]

24 Next we have former state Senator Ellie
25 Kinnaird. Ellie Kinnaird has been involved in

1 civic and community activities since 1962, when
2 she joined the League of Women Voters in Alabama.
3 She has devoted her political life to issues of
4 election expansion and campaign financing, social
5 justice, including the elimination and mitigation
6 of the death penalty, human trafficking, juvenile
7 justice, and the environment. In 1987, Ellie
8 Kinnaird was elected Mayor of Carrboro, NC,
9 serving four terms. In 1996, she was elected to
10 the North Carolina State Senate, serving for nine
11 terms before resigning to work on voter and
12 election issues.

13 She has represented over her 17 years
14 Moore, Lee, Randolph, Chatham, Person and Orange
15 Counties. She served as Chair of the
16 Appropriation for Justice and Public Safety,
17 Chair of Mental Health and Youth, and Vice Chair
18 of Environment and Natural Resources. She also
19 served on the Health and Judiciary Committees.

20 Ellie holds a BA from Carleton College,
21 an MAN 2: from UNC Chapel Hill, and a JD from
22 North Carolina Central University School of Law.
23 Yes, awesome. She practiced law in private
24 practice and with North Carolina Prisoner Legal
25 Services. Ellie is the mother of three sons and a

1 grandmother of two granddaughters and a grandson.
2 Ellie is the recipient of numerous awards
3 including the ACLU Delta Sigma Theta Sorority,
4 North Carolina Council of Churches, People of
5 Faith Against the Death Penalty, and the Academy
6 of Trial Lawyers, North Carolina Association of
7 Women Attorneys, and the North Carolina
8 Conservation Council on the Sierra Club.

9 [APPLAUSE]

10 And last but not least, we have
11 attorney David Harris. David Harris is an
12 attorney in private practice in Durham. His 33-
13 year career has included work with legal services
14 in Goldsboro and Wilson, where he represented
15 plaintiffs and communities in several voting
16 rights cases, including Green v. City of Rocky
17 Mount. Mr. Harris also filed an amicus curiae
18 brief with the Supreme Court on behalf of Legal
19 Services of North Carolina and Thornburg v.
20 Gingles. Mr. Harris also served as a trial
21 attorney in the Voting Rights section of the
22 Civil Rights Division of the United States
23 Department of Justice. At the DOJ Mr. Harris was
24 part of the team of attorneys responsible for
25 enforcing Section 5 of the Voting Rights Act.

1 While Executive Director of the Lawyers Committee
2 for Civil Rights in Boston, Mr. Harris was part
3 of the team of attorneys who successfully
4 litigated Black Political Task Force v. Galvin,
5 which challenged the Massachusetts House of
6 Representatives' redistricting plan which diluted
7 the voting power of African-American voters in
8 violation of Section 2 of the Voting Rights Act.

9 During 2011, Mr. Harris worked for the
10 North Carolina Legislative Black Caucus to help
11 formulate alternative House, Senate, and
12 Congressional redistricting plans. Those plans
13 were unfortunately rejected by the General
14 Assembly in favor of plans that packed black
15 voters to a limited number of districts and
16 diluted minority voting strength and influence in
17 most districts. Mr. Harris has also represented
18 candidates before local and state election
19 boards. Finally, Mr. Harris has published
20 multiple articles on the Voting Rights Act.
21 Please join me in welcoming attorney David
22 Harris.

23 [APPLAUSE]

24 Thank you to all of our guest
25 commissioners, witnesses, and all of the public

1 for being here today.

2 [APPLAUSE]

3 All right, and now I'll welcome all of
4 our guest commissioners to give their
5 introductory statements.

6 BARBARA ARNWINE: Thank you so much,
7 Jamie, for that introduction and for your
8 remarks, and thank you, Reverend Barber, for just
9 those amazing, wonderful, inspiring introductory
10 remarks. And thank you, Dorien, for kicking us
11 all of today.

12 I wanted to start by thanking Brenda
13 Ford Harding for picking me up at the airport
14 yesterday and driving me here and for her great
15 hospitality. I wanted to thank Dorien, Sonia,
16 Jamie for your great heart and unyielding work in
17 putting together this event. And we know it takes
18 a lot to get things like this--making it happen.

19 [APPLAUSE]

20 I want to thank the audience and
21 everyone for being here today. So many people did
22 such important work over the last six months to
23 make this event happen and we need to acknowledge
24 them first. First, thank you to OIC Rocky Mount
25 for hosting us in this historical and sacred and

1 wonderful facility. And thank you for having us
2 here.

3 [APPLAUSE]

4 It is great to continue that tradition.
5 We also must acknowledge the tireless efforts of
6 our Planning Committee, members from the ACLU of
7 North Carolina, Democracy North Carolina, North
8 Carolina NAACP, the Southern Coalition for Social
9 Justice, and the UNC Center for Civil Rights.
10 Thank you for bringing us here.

11 I want to particularly thank from those
12 organizations Chris Brook, Jeremy Collins,
13 Elizabeth Haddick, Mark Dorson, Jennifer March,
14 Bob Hall, Jamie Phillips Cole, Irv Joyner, and
15 Reverend Barber. All of you have done a great job
16 of pulling this event together. None of this
17 would be possible without your efforts. I'm also
18 very grateful for the leadership of all of our
19 guest commissioners--David Harris, Ellie
20 Kinnaird, Raymond Pierce and, of course, Eva
21 Clayton.

22 But I also have to say a word clearly
23 that when I say Eva Clayton's name, I rapidly
24 remember that this wonderful Congresswoman--she
25 and Mickey Michaux, and so many others showed us

1 how to do it. It was their example. That's why
2 we're here today--because they taught us how to
3 stand up and speak truth to power. They taught us
4 how to organize and how to build unity despite so
5 many different focuses. I want to just say to
6 both Eva Clayton and to Mickey Michaux thank you,
7 because you are special to every one of us. Thank
8 you.

9 [APPLAUSE]

10 And Ellie Kinnaird, you've been showing
11 the world and the nation how it's done, too, so
12 thank you. And, finally, we need to thank the
13 witnesses who will come to tell their stories
14 today. Thank you for taking time out of your life
15 to tell these personal stories that are so vital
16 to building the record that we need to document
17 the need for change. You know I'm happy to be
18 here in North Carolina. As many of you know, I
19 attended and graduated from Duke Law School, my
20 bar membership is here in North Carolina, this is
21 where I got my career start, and I was blessed to
22 practice law in this great state for over seven
23 years. I am deeply connected to North Carolina
24 not only by profession and practice and living
25 here but I'm connected by my family, such as the

1 Hardings and so many others who I come and have
2 to be with constantly. So, it is a pleasure to be
3 home again.

4 North Carolina is such an important
5 state in this conversation of voting rights
6 because you made for so many years such great
7 progress--50 years that you showed us how we
8 could make voting better. And now we stand here
9 today where those gains are in serious danger,
10 where there's an effort to reverse all of the
11 hopes and aspirations of the people of this
12 state. The recent experience in North Carolina
13 vividly illustrates why we so desperately need to
14 continue fighting to protect the right to vote.

15 Prior to the passage of the Voting
16 Rights Act in 1965, North Carolina was a terrible
17 place to be a minority voter. Through the use of
18 poll taxes and literacy tests, the state
19 suppressed the voting rights of most African-
20 Americans. In fact, in 1962, only 36 percent of
21 African-Americans were registered to vote in this
22 state. However courageous and dedicated North
23 Carolinians like Ms. Rosanell Eaton were
24 determined to exercise their fundamental right.
25 She knew that her father had been banned from

1 voting but she was determined to vote. And at the
2 age of 21, Ms. Eaton became one of the first
3 African-Americans in her county to successfully
4 register to vote, but she didn't just
5 successfully register to vote, she only was able
6 to do that because she passed a literacy test
7 where she had to recite verbatim the Preamble of
8 the United States Constitution.

9 This is the story. This is the legacy
10 that brings us to this place today. All that
11 changed with the passage of the Voting Rights
12 Act. Half of the jurisdictions of North Carolina
13 were covered by Section 5 of the Voting Rights
14 Act and the watchful eyes of both the Department
15 of Justice and advocates played an important role
16 in ensuring that the state did not return to the
17 days in which the right to vote was far from
18 guaranteed. But not only did North Carolina make
19 this progress, over the years the legislature
20 prodded by powerful forces in this state, took
21 affirmative steps to increase access to the
22 polls. Through these efforts and members of the
23 North Carolina Legislature like Ellie Kinnaird,
24 the state created one of the most admirable
25 voting processes in the country, and that

1 included a lengthy early voting period and same-
2 day voter registration that registered thousands
3 of people to vote, and that opened up the voting
4 process.

5 The result was an unprecedented 2012
6 presidential election where North Carolina had
7 very few problems and it was astonishing what it
8 showed us. And it was illustrated by the numbers
9 because in a country where we consider a turnout
10 of 63-65 percent of our voting population a great
11 number, your state had 80 percent African-
12 American turnout. That is the culmination of the
13 beautiful work that has been done here.

14 But instead of celebrating these
15 remarkable achievements, the North Carolina
16 Legislature began dismantling. Following the
17 Shelby decision, it gutted the protections of the
18 Voting Rights Act through what is called the
19 Monster voting Bill, which attacked the right to
20 vote. As long as God gives me breath, I will
21 always keep my eyes on this state. And it is
22 important that this hearing is being held so that
23 we can focus on this mighty record and what's
24 happening. You, in North Carolina--you are
25 inspiring our nation right now, through the

1 efforts and leadership of Reverend Barber and so
2 many. You are inspiring our nation through your
3 Moral Mondays and you have inspired other states
4 to stand up. So, Arkansas now has what they call
5 Truthful Tuesdays, and there is organizing going
6 on in Georgia that successfully just last Friday
7 defeated an effort to cut early voting in
8 Georgia. This is the inspiration that grows when
9 your state is growing in Florida--and it
10 continues to grow throughout the nation. We are
11 grateful to you because in the fight against
12 oppression the only way you can respond to
13 oppression is by uniting and fighting.

14 The NAACP, the Lawyers Committee, the
15 United States Human Rights Network, and 80-plus
16 U.S. representatives of NGOs two weeks ago
17 testified in Geneva, Switzerland before the
18 United Nations, and yesterday they released the
19 concluding observations. I recommend them to you
20 because they have in there, very specific
21 findings around the United States noncompliance
22 with international law regarding voting rights,
23 voter suppression, felon disenfranchisement. So
24 utilize that vital tool. Everyone, let's have a
25 great hearing today. I am looking forward to

1 hearing from our esteemed experts and advocates
2 on how we can keep moving forward with this
3 important work. Thank you.

4 [APPLAUSE]

5 EVA CLAYTON: Should I say amen? Amen. I
6 also want to acknowledge attorney Barbara
7 Arnwine. I want you all to help me acknowledge
8 that this is her birthday today and can we say
9 happy birthday?

10 [APPLAUSE]

11 Happy birthday... I don't sing. Whoever
12 sings. We want you to know we are delighted that
13 you're sharing this with us.

14 BARBARA ARNWINE: Thank you.

15 EVA CLAYTON: Reverend Barber, I knew
16 you when you were yet a young man, right?

17 WILLIAM J. BARBER: My, my.

18 EVA CLAYTON: Oh, my lord. Well, I am
19 delighted. I was about to say, Representative
20 Michaux, one of the honors of getting old--they
21 remember us, right? [CHUCKLES] I am delighted to
22 be a guest commissioner of this North Carolina
23 hearing for the National Commission on Voting
24 Rights. Thanks to the North Carolina Conference
25 NAACP, and the Coalition of North Carolina Civic

1 Organization for their leadership in organizing
2 this opportunity for citizens to speak out and to
3 share. Hopefully, we will hear from witnesses and
4 you in the audience your observation, concerns,
5 and expectation for fair and just election laws
6 in North Carolina. Your presence here today
7 signifies that there is much concern about North
8 Carolina's current and future election laws and
9 how they will affect you, the citizens of North
10 Carolina. Again, our narrative will become a
11 significant and factual part of a National
12 Commission report on voters rights, for which
13 North Carolina is very grateful. Thank you for
14 that.

15 The right to vote is one of the
16 defining characteristics of our American
17 democracy, which is governed by the people, all
18 the people they elect. However, African-Americans
19 or blacks and other minorities have had a bumpy
20 road to full participation to elect the people
21 who govern America. Although black men were
22 granted the right to vote early through the
23 ratification of the 15th Amendment and several
24 outstanding black men were elected to Congress
25 and to the State General Assembly during

1 reconstruction. However, full participation was
2 not enjoyed.

3 I have been engaged in voter
4 registration efforts and an advocate for equality
5 of election laws for more than 50 years. The
6 Voters Right Act of 1965 is generally recognized
7 as a landmark legislation of this century that
8 removed barriers due to race and ethnicity to
9 full voter participation in local, state, and
10 federal elections. This most important
11 legislation, though not perfect, was in direct
12 response to the citizens' protest and advocacy
13 for equality for voting rights. Hundreds of men,
14 women, and youth paid the dear price of being
15 attacked by local officials when they marched
16 from Selma to Montgomery. John Louis, now a
17 Congressman, was severely beaten.

18 Given the implementation of the 1965
19 Voting Rights Act in America as well as in North
20 Carolina, we witnessed greater participation of
21 minorities in the election process. This included
22 registration, actual voting, and blacks and
23 minorities elected to local, state, and national
24 positions. It is recorded, as you've heard
25 earlier, that only 36 percent of blacks were

1 registered in North Carolina in 1962 and one year
2 after the 1965 Voting Rights Act, the percentage
3 had increased to 50 percent.

4 Upon coming to Warren County in 1963,
5 my husband and I organized a voter registration
6 project through the American Friends Service
7 committee and found the registration for blacks
8 in Warren County to be less than 20 percent,
9 although blacks in the population was recorded to
10 be at 65 percent. The passage of the Voting
11 Rights Act made it possible for minorities to be
12 elected to political offices. In 1968 Henry Frye
13 became the first African-American elected to the
14 North Carolina House of Representatives in the
15 20th Century. That was an active political year
16 of 1968. Dr. Reginald Hawkins of Charlotte ran
17 for governor, and a young mother, Eva Clayton
18 from Warren County, ran for Congress in the 2nd
19 Congressional District. Both of us were royally
20 defeated. However, black registration increased
21 significantly.

22 Several American presidents since the
23 1965 Voting Rights Act, both Republicans and
24 Democrats, have amended or extended the Voting
25 Rights Act to ensure that all Americans had the

1 opportunity to vote. North Carolina generally
2 followed the Voting Rights Act and witnessed
3 greater participation in the election process. As
4 a result of this greater participation, blacks
5 were elected to local positions across the State
6 of North Carolina as either sheriff, county
7 commission, board of education, mayor, and many
8 other positions.

9 Currently, the North Carolina General
10 Assembly has the highest percentage of blacks
11 they have had in history. The irony,
12 unfortunately, is that blacks themselves have
13 less power because of a lopsided political
14 representation. The redistricting passed by the
15 General Assembly has locked in this political
16 disadvantage and has further disadvantaged black
17 representatives from the state, both at the state
18 level and at the Congressional level.

19 American voters elected President
20 Barack Obama, the first African-American
21 President twice, using the current electoral
22 system based on the election laws authorized and
23 amended under the 1965 Voting Rights Act.
24 However, the sense of fairness and justice
25 experienced during greater participation of

1 voters has changed fast to a sense of suspicion
2 of fraud and disenfranchisement. The right to
3 vote should be encouraged in America through
4 appropriate laws and regulations and not used as
5 a stumbling block or a deterrent to full
6 citizenship.

7 It was apparent that the North Carolina
8 General Assembly and other southern states felt
9 free to move forward with their possibly
10 discriminatory and limiting voters' rights after
11 the decision from the Supreme Court that Part D
12 of the Voting Rights Act where they had to ensure
13 and secure prior approval before changing
14 election law was no longer required. North
15 Carolina immediately was one of the first states
16 to act after the court's decision. However, I
17 believe the state has overplayed its hand. It is
18 not difficult to discern that this law is
19 designed to fix a self-imposed problem of fraud,
20 but this law creates barriers, roadblocks, and
21 unnecessary requirements to make it difficult for
22 thousands of blacks, Hispanics, and seniors--the
23 protected class under the Voting Rights Law from
24 voting.

25 I am pleased that Reverend Barber of

1 the NAACP and other leaders of our state indeed
2 have filed their lawsuit. I was pleased by the
3 federal judge's action yesterday. I know we will
4 hear more details about that today. You witnesses
5 bring unique experiences and observations and
6 knowledge that I hope you will share with us so
7 that the factual record can reflect what the
8 actual situation is in North Carolina. I thank
9 you for your attention.

10 BARBARA ARNWINE: Thank you.

11 [APPLAUSE]

12 RAYMOND PIERCE: Thank you,
13 Congresswoman. I want to thank Barbara Arnwine
14 for inviting me to come out here. I would say
15 that during my seven years as Dean of the Law
16 School at North Carolina Central University,
17 clearly one of the hallmarks was having Barbara
18 Arnwine speak at that law school. And I think I
19 would've counted it as a failure of mine if I did
20 not have Barbara come and speak at that law
21 school. And Jamie, I think she proudly said that
22 I was her dean but I can say even more proudly
23 that she was my student. And not only was she one
24 of my students, she was one of the better
25 students at that law school. If you preside over

1 an institution, over time, over the years you
2 begin to learn and see who the serious-minded
3 young people are--the people who take education
4 and the study of law for its more serious
5 purpose, that is, to bring about change. That's
6 why Thurgood Marshall and so many people went to
7 law school--they knew that this Constitution
8 meant something. And so, I'm not surprised to see
9 Jamie here doing what she's doing. So, I'm so
10 glad to see you doing this, Jamie. You all give
11 that young lady a hand.

12 [APPLAUSE]

13 Voter suppression is a serious charge
14 for any government that constitutes itself as a
15 democracy, because it is the collective
16 conscience of a nation that directs it, and that
17 collective conscience is best measured by the
18 democratic process that our country has in place.
19 And I would argue, perhaps now even more so, that
20 the importance of a democratic process to gauge
21 the collective conscience of the nation is as
22 important now if not more important than any
23 other time in our nation. If you just look around
24 this world, whether it's in Crimea, or the
25 Ukraine, or Russia, or Southeast Africa, or

1 Central Africa, or Asia, wherever--North Korea,
2 how our country responds to these issues must be
3 governed by the collective conscience of the
4 people. And even domestically, with issues of
5 healthcare, education, and our banking systems,
6 it is very, very important that the collective
7 conscience as gauged by the democratic process
8 direct our government's response and, thus, the
9 policies that govern our nation. So, voter
10 suppression that would impede that, obstruct
11 that, cannot be tolerated.

12 So, I believe it is very, very
13 important for those of you who have come to speak
14 that you speak earnestly. This is for the record.
15 And if we do push you a little bit more in your
16 responses and your testimony, don't take it the
17 wrong way. That's what judges and commissioners
18 do. So, thank you.

19 [APPLAUSE]

20 ELLIE KINNAIRD: Good morning. I want to
21 thank the National Commission on Voting Rights
22 and the NAACP and those who have brought this
23 important subject to the attention of the nation.
24 We, of course, have suffered with it for the last
25 two years and it is needing a broader audience,

1 and we are very pleased that we are given that
2 opportunity for a broader audience by this group
3 that has brought us together.

4 I have a long history in the North
5 Carolina legislature with voting and election
6 laws. I was elected to the North Carolina Senate
7 in 1996 on a campaign financing reform platform.
8 That was the beginning of the era of big money
9 taking such a large part in elections. Many of us
10 were alarmed at the corrosive effect that money
11 from special interests was having on campaigns
12 for office and we feared on legislation. We saw
13 public financing as the way to democratize the
14 election process and we had help from people like
15 Bob Hall, and Bob Phillips, and these others who
16 saw that this was the beginning of a very
17 difficult challenge to our democracy.

18 My first action as a newly-elected
19 Senator was to amend the president pro tem Senate
20 Bill 1 to require the reporting of a
21 contributor's employer or employment when
22 donating to a campaign. It has been one of the
23 most important changes in campaign financing
24 transparency. Subsequently, I worked with then
25 Senator Wib Gulley on public financing. For

1 several terms we were able to create public
2 financing for some of the Council of State
3 offices' elections. The Council of State is a
4 little known elected body such as the treasurer,
5 insurance commissioner, auditor, etc., that does
6 not campaign heavily and, unfortunately, gets
7 much of its financing from those they regulate, a
8 potentially corrupting influence. Subsequently,
9 after we were able to get public financing for
10 the Council of State, we were able to extend it
11 to Appellate Court judges. Interestingly, when
12 this last legislature was proposing to repeal
13 public financing, 12 Appeals Court judges wrote
14 to the legislature to ask them to keep public
15 financing that they felt protected them from
16 political change.

17 Until the Republicans took control of
18 the legislature, we had hoped to extend public
19 financing to all Council of State offices and
20 perhaps to the legislature and governor. Now all
21 public financing has been repealed by the last
22 legislature in this last session and the money
23 grab is on at an even more intense scale, thanks
24 to Citizens United--and I think that a similar
25 release of the limitations on individual

1 contributions will be decided by the court this
2 year.

3 One of my first bills was at the
4 request of University of North Carolina students
5 to find a single polling place on campus for
6 elections. Many students live off-campus in
7 apartments and often do not know where they vote.
8 While the bill didn't lead to a remedy for the
9 UNC Chapel Hill students, the late Senator Martin
10 Nesbitt, then a House member, approached me about
11 turning the bill into early voting for the entire
12 state. As we know, it was expanded over the years
13 and has become the most preferred method of
14 voting and as we will hear, African-Americans use
15 this at a very high rate. And such, when we
16 reduce it, it makes a difference. So, it is
17 especially dismaying that early voting has been
18 shortened by one week.

19 An important introduction to
20 citizenship was preregistration for 16 and 17-
21 year olds. Civic classes used preregistration to
22 teach students about becoming active members of
23 our democracy and they were ready to vote when
24 they turned 18. And this was the first change in
25 our voting act, and that is very sad.

1 Finally, we passed same-day
2 registration in voting, which was very helpful to
3 student who are often distracted by a busy
4 schedule of classes, exams, and papers, and too
5 late realize they have not registered to vote 25
6 days before the election. People moving from out
7 of town also often found this convenient. This
8 expansion of access to the ballot and others were
9 nurtured by Democracy North Carolina Common Cause
10 and the Center for Voter Education that helped
11 with every step along the way.

12 The new election laws passed last
13 session by the legislature has rolled back those
14 progressive accesses to the ballot. The
15 ostensible reason was to prevent voter fraud,
16 even though there is no evidence of voter fraud.
17 In the debate I asked the sponsors why there were
18 three pages dealing with photo ID and all the
19 rest with all of this other...

20 Another sad loss was that early voting
21 has been shortened by one week. Projects such as
22 Souls to the Polls which carried people on buses
23 after church to polling places was highly
24 successful. With shortened early voting that is
25 no longer widely available. Losing a week of

1 voting will cut down the number of people who
2 will vote. 43 counties have requested waivers for
3 extending the hours as being too burdensome.
4 Straight ticket party voting was repealed. There
5 are many offices that do not advertise heavily
6 before an election, as do the presidential and
7 gubernatorial offices, the Council of State and
8 judges--so there is little opportunity to learn
9 about the candidates.

10 So, if you voted for your party, you
11 knew that you were voting for the same values and
12 goals, even though you didn't know the number--
13 the actual person you are voting for's history.
14 And in a severe limitation of the franchise, a
15 person voting in the wrong precinct will not have
16 their vote counted.

17 Finally, another real impairment to
18 voting is the requirement in 2016 of a photo ID.
19 This would not be such an impediment if the list
20 were expansive, but on the contrary, it is a very
21 narrow list resulting in difficulties to obtain
22 the required IDs. It is great sadness to see
23 North Carolina retreating from the most expansive
24 access to the ballot to the most obstructionist.
25 It is also, to me and the many who worked on that

1 access, a personal loss. Thank you.

2 [APPLAUSE]

3 DAVID HARRIS: Thank you, Senator. Good
4 morning, everybody, and good morning members of
5 the panel, the commission, and as well as members
6 of the initial panel. First of all, I'd like to
7 say thank you to the National Commission on the
8 Voting Rights Act for their kind invitation for
9 me to serve as one of the guest commissioners.
10 It's good to see so many faces that I have known
11 over the years--emphasis on years--partners in
12 justice. I will not say partners in crime because
13 what we're talking about is a crime--so I'm
14 talking about partners in justice.

15 I'll try to keep my remarks really
16 short this time. [CHUCKLES] Imagine yourself--a
17 high school education, served your country in the
18 military, went to war, went to Europe, come back,
19 you decide to register and vote. You go to
20 register and vote and the person gives you
21 something to read. It's called a literacy test.
22 And, of course, you read it and the person tries
23 to prevent you from registering to vote anyway
24 and you have to raise a little you know what to
25 be able to register to vote. And you actually

1 were able to register to vote. That was my
2 father, rest in peace. He told me that story many
3 times and from a personal perspective, that's the
4 beginnings of my interest in voting rights.

5 It was Sam Irving, III who wrote, "The
6 State of North Carolina officially and
7 effectively discriminated against black citizens
8 in matters touching their exercise of the voting
9 franchise." Those were his words from the Gingles
10 case at the three judge district court level. Oh,
11 I'm down to two minutes already. And it's
12 particularly nice to be back in Rocky Mount. I
13 see Susan Perry Cole here and Brenda Harding.
14 There was a mention of Green v. City of Rocky
15 Mount. That was a case in which Brenda and I were
16 lead counsel on. Sue was our boss. And those of
17 you who know Sue know what that mean to have her
18 as your boss. We did several all-nighters to get
19 that case filed in court. Well, that was very
20 necessary because Rocky Mount, out of seven city
21 council members, only had one black--even though
22 the city was pretty much 50/50 black and white
23 even back then. And Rocky Mount had an annex, an
24 additional area to further [DILUTE?] black voting
25 participation, and was going to allow them to

1 vote in the next election even though the
2 Department of Justice had not pre-cleared the
3 annexation.

4 So, we head off to Wilmington--Brenda
5 and I and our clients--and take it before Judge
6 Fox. And Judge Fox is shaking his head. "I can't
7 block these folks from voting." And Brenda says
8 repeatedly, "You have no choice." That was the
9 power of Section 5. And the judge ruled that
10 those people in those annexed areas could not
11 vote in the next election. As a result of that
12 litigation, Rocky Mount's city council is now
13 majority black, reflecting the population of this
14 town. That is the way it's supposed to be. It's
15 about representation. I'll move a little more
16 quickly.

17 During my time in Boston, and mind you,
18 Massachusetts is not Section 5 covered but it is
19 Section 2 covered. The Massachusetts State House
20 actually passed a plan that packed blacks in
21 districts so that they could not be more majority
22 or minority districts. We fought that and won and
23 they had to redraw the districts.

24 The 2006 report of the National
25 Commission on the Voting Rights Act documented

1 all the reasons why Section 5 needed to be
2 renewed and Congress used that report for its
3 renewal. The Supreme Court last year by
4 invalidating Section 4, which is the trigger for
5 Section 5, basically makes Section 5 useless.
6 Now, there is a bill pending in both chambers of
7 Congress to fix that but the Voting Rights
8 Amendment Act of 2014, your testimony today on
9 the current problems in exercising the right to
10 vote and the problems that will be caused by
11 House Bill 589 helps to create the record that
12 the commission needs to present to Congress that
13 is considering this new legislation to fix and
14 renew Section 4 of the Voting Rights Act. We look
15 forward to hearing from the panelists and from
16 everybody in the audience today. Thank you.

17 [APPLAUSE]

18 BARBARA ARNWINE: Thank you so much,
19 everyone, for your introduction statements and we
20 appreciate that.
21
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25

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National Commission on Voting Rights

March 28, 2014

Panel 1

Job No: 72361

1 BARBARA ARNWINE: And at this point
2 we're going to turn to our witness panel. We are
3 so blessed to have an absolutely outstanding
4 panel of witnesses. And I'm going to, because we
5 are running a little bit behind our schedule--I'm
6 going to do these introductions a little bit
7 shorter than I would like. But let me start with
8 Representative Mickey Michaux, who is an attorney
9 and businessman. Representative Michaux is a
10 native of Durham, North Carolina, and an alumni
11 of Durham North Carolina Central University. He
12 has led a school of law, as I'm being reminded by
13 the dean [CHUCKLES] and he has led a life of
14 public service, servicing in the United States
15 Army Medical Corps and the Army Reserves. He was
16 an assistant district attorney before being
17 elected to the North Carolina Legislature in
18 1972. And your campaign is what taught me about
19 voting rights. You know, working on your
20 campaigns, watching what occurred, learning about
21 racially polarized voting from those experiences
22 was amazing.

23 You have also--you became the first in
24 1977--Mr. Michaux became the first black United
25 States Attorney in the South since

1 reconstruction, when he was appointed to head the
2 office in the middle district of North Carolina.
3 He is currently a member of the North Carolina
4 General Assembly and has represented the state's
5 31st House District since 1983. As of 2008,
6 Representative Michaux is the longest-serving
7 African American member of the North Carolina
8 General Assembly. He serves on very important
9 committees. Will everyone join me in welcoming
10 Representative Mickey Michaux.

11 [APPLAUSE]

12 Next we have Bob Hall. Bob Hall is the
13 Executive Director of Democracy North Carolina, a
14 nationally renowned nonpartisan social justice
15 organization based in Durham. Mr. Hall has worked
16 with grassroots groups across the South since
17 1970, collaborating on a variety of economic and
18 social justice projects. Mr. Hall is a veteran
19 leader of the election protection activities in
20 North Carolina and has assisted thousands of
21 voters at every step of the election process from
22 registration through early voting, to Election
23 Day.

24 He has tirelessly worked to combat
25 voter suppression efforts in North Carolina. He

1 has served on numerous nonprofit boards and
2 governmental commissions, provided expert
3 testimony in court cases, and consulted with
4 officials in dozens of states on voting rights
5 and campaign finance reform. He was the founding
6 editor of Southern Exposure, the magazine of the
7 Institute for Southern Studies where he worked
8 for 25 years. His honors include the prestigious
9 internationally recognized MacArthur Fellow
10 Award, the North Carolina Press Association's
11 First Amendment Award, NCARP's Advocacy Friend of
12 the Year Award and so many others. He holds a
13 master's degree from Columbia University. Will
14 everyone join me in welcoming Bob Hall.

15 [APPLAUSE]

16 Sitting next to Bob Hall is
17 Representative Evelyn Terry. Representative
18 Evelyn Terry is a member of the North Carolina
19 House of Representatives representing District 71
20 of Forsythe County. She was first elected
21 recently and Representative Terry earned her
22 bachelor's degree from Johnson C. Smith
23 University, and she later earned a master's
24 degree at Appalachian State University, which
25 just last year made national news due to voter

1 restrictions adopted by the Watauga County Board
2 of Elections. Prior to her service in the North
3 Carolina General Assembly, Representative Terry
4 was the Chair of the Forsythe County Department
5 of Social Services board of directors. She serves
6 on the House Elections Committee and has been an
7 outspoken and fearless champion for voting rights
8 for her constituencies and for voters across the
9 state of North Carolina. Let's welcome
10 Representative Evelyn Terry.

11 [APPLAUSE]

12 As the song goes, it's getting hot in
13 here. Some great, great panelists. I am very
14 pleased to introduce Anita Earls. Attorney Earls
15 is a civil rights lawyer of great esteem with 25
16 years' experience and serves as the Executive
17 Director of the Southern Coalition for Social
18 Justice. Prior to founding the Southern Coalition
19 for Social Justice, she was Director of Advocacy
20 at the U.N. Center for Civil Rights and Director
21 of the Voting Rights Project at the Lawyers'
22 Committee for Civil Rights of the Law, where we
23 worked together. In the Clinton Administration
24 Miss Earls was a Deputy Assistant Attorney
25 General in the Civil Rights Division of the

1 United States Department of Justice, where she
2 had responsibility for the division's voting
3 educational opportunities, disability rights and
4 coordination and review sections. For the first
5 ten years of her career, Ms. Earls litigated
6 civil rights cases as a partner with Ferguson
7 Stein Wallas Adkins Gresham and Sumter in
8 Charlotte, North Carolina. And in her private
9 practice she did a variety of incredible civil
10 rights matters and civil liberties matters.

11 Ms. Earls was appointed by the
12 government of North Carolina to the State Board
13 of Elections in 2009 and she currently serves on
14 the North Carolina Equal Access to Justice
15 Commission and she is making huge national impact
16 every single day. Will you please welcome Anita
17 Earls.

18 [APPLAUSE]

19 Outstanding. Outstanding. Bob Phillips
20 is our next witness. Bob Phillips has served as
21 Executive Director of Common Cause, North
22 Carolina since 2001. His work includes both
23 lobbying the legislature and building statewide
24 grassroots campaigns for a variety of good
25 government reforms. Most recently Bob helped put

1 together a broad and diverse coalition that
2 pushed comprehensive lobbying and effort reforms
3 through the North Carolina Legislature. Dedicated
4 to the idea of equal justice at the polls, Bob
5 fought tirelessly against House Bill 589. Bob is
6 a native North Carolinian, a graduate of UNC
7 Chapel Hill and has worked as a broadcast
8 journalist in Raleigh. Prior to his service at
9 Common Cause, Bob served as press secretary for
10 former Lieutenant-Governor Dennis Wicker. Please
11 join us in welcoming Bob Phillips to the panel.

12 [APPLAUSE]

13 With us today in present--last but not
14 least is Professor Irving L. Joyner. He is a
15 professor at North Carolina Central University
16 School of Law where he teaches courses in
17 criminal law, criminal procedure, civil rights,
18 race and the law, professional responsibility and
19 trial practice. Professor Joyner also provides
20 pro bono legal counsel to several political
21 religious and community organizations and to
22 needy individuals in civil rights and criminal
23 appeals cases. In other words, people, he is a
24 great tactician. A great legal tactician. And he
25 also serves on several state study commissions

1 and agencies and in leadership roles with a
2 variety of community groups and organizations. He
3 served a five-year term as the Vice Chairperson
4 of the Wilmington Race Riot Commission; he is
5 also a regular legal commentator for local state
6 and national media, primarily in areas of law,
7 politics, civil rights, and racial justice. And
8 for the past ten years he has cohosted the
9 highly-acclaimed Legal Eagle Review. Please join
10 me in welcoming Professor Irving Joyner.

11 [APPLAUSE]

12 All right, now, here's where the tech
13 comes in. We're praying that it's going to work
14 but we hope to have by Skype Doctor Sandra
15 Thompson, a shareholder at Buchalter Nemer in
16 Irving, California, and a member of the firm's
17 Intellectual Property Group. Dr. Thompson is a
18 native North Carolinian--and her Ph.D. in
19 analytical chemistry at North Carolina State
20 University.

21 She is a board member of the Lawyers
22 Committee for Civil Rights Under Law and has
23 volunteered for the National Election Protection
24 since the 2004 election. And in 2012, she
25 volunteered for election protection in North

1 Carolina, where she helped to set up a field
2 program for legal volunteers. She has undertaken
3 extensive research on North Carolina election
4 administration, voting [MISSIONS?] and voting
5 rights cases litigated in the state. Please
6 welcome by Skype at some point [CHUCKLES] we
7 pray, Dr. Sandra Thompson. Thank you.

8 [APPLAUSE]

9 With that, I turn it over to our first witness.
10 Mr. Michaux.

11 MICKEY MICHAUX: Thank you so much. I'm
12 pleased to be here. Everybody's welcoming
13 Reverend Barber. I saw him in the back. I'm the
14 only one can call him Billy. I knew him when he
15 was a student at North Carolina Central. But I
16 shall be very brief and give you basically--which
17 is what my mantra is.

18 First of all, let me let you understand
19 that in the early '90s, North Carolina ranked
20 about 46 in voter turnout. And we started a
21 series of introducing legislation that would try
22 to increase that voter turnout. We did early
23 voting during that period of time, we did one-
24 stop registration, we did same-day registration.
25 We put in several through the years, at that

1 time, in order to encourage folks to vote. By the
2 time we had passed all of those in the early
3 2000s and whatnot, we had risen from 46th to 11th
4 in voter turnout in the country. So, you can see
5 that the very pieces of legislation that we
6 passed in order to increase that voter turnout,
7 those were the same pieces of legislation that
8 were in House Bill 589 that were repealed. So,
9 it's very clear to me, and it should be to
10 everybody else, what the purpose of 589 was.

11 Those folks who passed 589 and wrote it called it
12 Voter Intelligence and Verification Act, VIVA.

13 That was the synonym. We attach another meaning
14 to that word, VIVA. It's the Voter Intimidation
15 and Vilification Act. And that's really what it
16 is.

17 The second thing I want to call to your
18 attention is that in crafting Section 4, the new
19 Section 4 of the Civil Rights Act there should be
20 an emphasis on voter suppression. That was not a
21 part of what--one of the reasons that Section 4
22 got kicked out and made Section 5 inapplicable.
23 It's very key that you look at that. And here in
24 North Carolina, there's no question in my mind
25 that voter suppression is the very nature of 589.

1 For instance, when those of us who were
2 in the majority at one time had all the voting
3 bills passed, who had redistricting done, it's
4 very odd that we had 13 Congress people, seven of
5 whom were Democrats, six were Republicans. Now,
6 how much fairer could you get? When they came
7 back and redistricted in 2010, after the 2010
8 elections, it went nine to four in favor of them.
9 What happened also as a result of what we passed
10 in terms of voter turnout to bring it up to
11 where we're getting that, was the fact that they
12 got in--those people who are now putting these
13 horrendous bills in, they were the ones who
14 benefited from what we put in in the '90s.

15 But it's very clear that now what they
16 want to do is to suppress what helped them get
17 into office. In other words, they don't want to
18 be bothered with the racial block that turns out
19 as a result of what we did. I think what I'm
20 really trying to tell you is that the suppression
21 is geared toward the minority vote, the African-
22 American vote, and the Hispanic vote. Because if
23 you can suppress that vote, then you don't have
24 to worry about losing the power that you have
25 gained as a result of what we put in some time

1 ago. It's just that simple.

2 The third thing is--and it always
3 bothered me. I know I've got a minute but I'm
4 going to finish this anyway. The third thing is
5 that they said that they needed photo ID because
6 photo ID is required for everything like getting
7 on airplane, buying drugs, doing first one thing
8 and then the other. But none of those things that
9 they mention are a Constitutional right.

10 BARBARA ARNWINE: That's right.

11 MICKEY MICHAUX: And what you have with
12 that is you're going to penalize people who can't
13 get voter ID or even structure it. So, for
14 instance, they won't let a student use their
15 student identification as identification to go
16 vote. So, those who don't have a driver's license
17 have to find a way to get some type of
18 identification. And if they're going to give it
19 to them free, then it's going to cost the state
20 more money than they have allotted for things
21 like that happening. So, why would you put
22 infringements on a Constitutional right? And if
23 you're going to put infringements on
24 Constitutional rights, I don't know of any other
25 Constitutional right that requires a photo ID to

1 exercise.

2 BARBARA ARNWINE: That's right.

3 MICKEY MICHAUX: For instance, the
4 Second Amendment rights that they claim. The
5 right to bear arms. Why don't you require photo
6 IDs in situations like that? I mean, it's a
7 Constitutional right. So, these are basically
8 some of the things that I wanted to bring to your
9 attention. And the fact that irrespective of how
10 much progress we have made, I have always said
11 that what we have done with the passage of House
12 Bill 589 is we have morphed from the 19th Century
13 to the 21st Century, forgetting all of the
14 progress that was made during the 20th Century.

15 BARBARA ARNWINE: Yes.

16 MICKEY MICHAUX: And that's exactly what
17 has happened. We are going back to post-
18 reconstruction days when things like that
19 happened. And to give you a primary example, in
20 1971, we wrote a new Constitution for the state
21 of North Carolina which eliminated all of the
22 things in terms of voting that had been declared
23 unconstitutional. But because some folks wanted
24 to, I guess, keep some semblance of that there,
25 when we pulled out the literacy test in the new

1 Constitution, some folks put it on the ballot
2 anyway. So, North Carolina right now has a
3 literacy test problem facing them right now.
4 We're trying to get rid of it. I think it's going
5 to be on the ballot this fall. But North Carolina
6 still has a literacy test there, even though they
7 can't enforce it. And this was in 1970. So, you
8 can see how things sort of go.

9 So, it's one of these situations where
10 we've got to be very, very careful. And I would
11 suggest that what you do is when recommendations
12 are made by you, that particularly those things
13 involving voter suppression be handled. I think
14 that's about it. One other thing, too. I do want
15 to recognize somebody in the audience who's been
16 a great help to me particularly in the General
17 Assembly. Gary Bartlett is out there, who is the
18 Executive Director of the State Board of
19 Elections. And Gary did a great job in helping us
20 fathom through a lot of these things.

21 [APPLAUSE]

22 I didn't want Gary to go unnoticed.

23 BARBARA ARNWINE: Thank you.

24 BOB HALL: I'd likewise like to
25 recognize Gary Bartlett, who really embodies

1 fair, accessible, honest elections. And a lot of
2 the progress was made with him overseeing it to
3 make sure that the integrity of the process was
4 preserved. The vote is the great equalizer. Such
5 a powerful concept. Rich or poor, black or white,
6 we all stand as equals before the ballot box. We
7 all have a voice, an equal voice in choosing our
8 representatives. In a Democratic republic,
9 nothing could be more conservative or radical
10 than this commitment to make real the promise of
11 one person, one vote. One person, one vote. That
12 bedrock principle calls us to recognize our
13 neighbors as equal partners. It should be the
14 basis of treating each other with respect as
15 fundamentally equal. But, unfortunately, North
16 Carolina, as many of you have now said, has a
17 long history of those in power manipulating the
18 rules of voting for their own advantage.

19 The Democrats in North Carolina did it
20 over 100 years ago after forcefully ousting the
21 fusion government of African-American Lincoln
22 Republicans and white populists through the
23 Wilmington Massacre. Before that coups, voter
24 turnout rates in North Carolina routinely hit 80
25 percent of eligible voters throughout the 1870s

1 and 1880s. 80 percent of eligible voters. But
2 then the Democrats manipulated the voting rules
3 through a series of Jim Crow laws, including the
4 poll tax, the literacy test, the grandfather
5 clause, through intimidation, through racist
6 propaganda, through restrictions that affected
7 blacks and poor whites. They sent the message
8 that politics and voting is just for the boss
9 man. Voting participation dropped down to the 40
10 percent--under 40 percent. North Carolina
11 throughout the entire 20th Century was among the
12 worst 12 states for voter turnout. As
13 Representative Michaux mentioned, 46th in the
14 '90s still. Even after the Voting Rights Act. It
15 was really only after the beginning of early
16 voting--after Sunday and weekend voting during
17 early voting, same-day registration, out of
18 precinct voting--after these reforms that we
19 started to climb higher.

20 We had the biggest increase from '04 to
21 '08 in the nation. We then did hit in the top 12
22 states. In 2012, we were ranked 11th in voter
23 turnout. And then in 2013, bam, with the
24 Republicans in charge and the General Assembly in
25 the governor's mansion, we had this new voter

1 suppression law that had tremendous and harsh
2 impact. They had already put in redistricting--a
3 gerrymandering system that was to block the
4 reemergence of any kind of fusion politics at the
5 polls. They systematically packed African-
6 Americans in fewer districts, they split more
7 precincts than the Democrats had ever done.
8 African-Americans were 50 percent more likely to
9 live in a split precinct than whites. This is
10 computerized apartheid. That is what the new
11 redistricting plan was put in place--computerized
12 apartheid.

13 Then the monster law. Early voting cut
14 by a week. African-Americans are 22 percent of
15 registered voters but they were 36 percent of
16 those who used the first week of early voting.
17 They were 43 percent of those who voted on that
18 first Sunday. Cut. Same day registration.
19 African-Americans, again, 22 percent of
20 registered voters--they were 34 percent who used
21 same day registration. Young people ages 18-25,
22 12 percent of the registered voters but 33
23 percent of those who use same day registration.
24 Go after the young people. Don't let their IDs in
25 colleges by used for IDs. The government ID

1 system, 34 percent of the voters without an ID
2 are African-Americans, even though they were 22
3 percent of registered voters. Again,
4 disproportionately.

5 Out of precinct voting eliminated, pre-
6 registration eliminated, straight ticket voting
7 eliminated. All of them were used
8 disproportionately by African-Americans and
9 that's what the system is about. It's voter
10 suppression. The telling sign is that the only
11 system, the only method of voting that was
12 encouraged by this new law is mail-in balloting.
13 Voting absentee. Mail-in balloting. Every expert
14 knows that the preferred method of cheating in
15 voting is through the mail, absentee voting. That
16 puts to lie the whole concept that this monster
17 law was passed in order to address fraud. It does
18 not.

19 The truth is that African-Americans--
20 200 percent of registered voters, there are only
21 7 percent of those who use the mail-in ballot.
22 Republicans in North Carolina use it more. And
23 then opportunities to challenge voters were
24 increased by this law.

25 Bringing up today, bringing it up to

1 this week--last night, in the Buncombe County,
2 the Republican majority I Buncombe County decided
3 that they were going to summon 95 voters who had
4 been challenged by the Tea Party as not being
5 living at their address. These were inactive
6 voters, already known to maybe not live at their
7 address--but they were going to send a summons
8 out to them into the neighborhood. They chose the
9 poorest blackest precinct in Ashville to
10 challenge voters. The Republican voter--to speed
11 up the process--we already got a process under
12 the National Voter Registration Act to deal with
13 folks when they move but don't tell us. Buncombe
14 County is now--not covered by the Voting Rights
15 Act, but it's an illustration of why the Voting
16 Rights Act needs to go beyond just these covered
17 counties.

18 Similarly, in Watauga County, nearby,
19 the majority Republican board has taken the early
20 voting site off the Appalachian State University
21 Campus--the early voting site, which had been
22 there for years. It's in the center of 70 percent
23 of the voters in that county. But, no, they're
24 going to eliminate it. Again, this is the reason
25 why we need to have that Voting Rights Act expand

1 beyond to include youth.

2 These are crimes against democracy.
3 When you go after people's right to vote, you are
4 committing a crime against democracy that must be
5 addressed. Thank you.

6 [APPLAUSE]

7 BARBARA ARNWINE: Thank you, thank you.
8 Yes, Ms. Terry.

9 EVELYN TERRY: Good morning. And I'd
10 also like to say thank you for this opportunity.
11 I'm going to take a different twist from the very
12 specifics regarding this dragon that we're
13 battling. And pardon me if I make it very
14 personal, but it is very personal with me because
15 of my background and what I witnessed growing up.
16 I cast my first vote the year that I graduated
17 high school. This act was as significant as my
18 graduation because it was my duty and pathway to
19 an education, and then a job. It also meant
20 opportunity to give back. After all, my mirror
21 images of early childhood included struggles of
22 my grandfather, an illiterate but brilliant man,
23 trying to become a registered voter.

24 He achieved that milestone in the late
25 1950s and registered finally as a Republican. He

1 died in 1980 at the age of 101.

2 BARBARA ARNWINE: Wow.

3 EVELYN TERRY: But I'll tell you, I
4 can't count the number of times my mother, who
5 was his daughter, sashayed him to a precinct
6 place in a trailer park area there at Forsythe
7 County that continued to require of him to do--
8 they wouldn't let him make a mark. And my mama
9 was feisty and fiery and she kept going back.
10 That's the only thing they knew to do. But she
11 then decided, "Ah-ha, this literacy thing, I'm
12 going to beat it." Papa learned the Preamble to
13 the Constitution and she really had him going on
14 to start memorizing other stuff. Because she
15 said, "We're going to do this!" and he wanted to
16 do it.

17 So, why am I here today? I'm here
18 because I believe deeply in the principles of
19 liberty and justice for all. This includes the
20 privilege granted to every citizen in America to
21 register and vote. No one should have to be put
22 through the degradation, the threat of loss of
23 security, Jim Crowism, and intimidation that I
24 witnessed as a child against my grandfather.

25 BARBARA ARNWINE: My, my.

1 EVELYN TERRY: Incidentally, that same
2 old fine gentleman was invited to the White House
3 by the President of the United States of America
4 in the 1970s because of the contributions that he
5 had made in our community. Now, I just have to
6 say that in the 1970s you know who was in the
7 White House, but this old man registered as a
8 Republican and we couldn't make him change it.
9 Okay.

10 Today I regret to inform you that my
11 grandpa--that this privilege taught me and my
12 family was a precious gift is now under siege in
13 North Carolina, no matter what political party
14 you choose. My story is no different than far too
15 many hardworking responsible citizens in the
16 state from the days before the passage of the
17 Voting Rights Act. What is different today is
18 we're going backwards.

19 BARBARA ARNWINE: My, my.

20 EVELYN TERRY: North Carolina is growing
21 backwards with a legislative agenda akin to the
22 days of Jim Crow. House Bill 589 is rife with
23 stupidity and is totally unnecessary. Period.
24 Moreover, it is an insult to the dignity of
25 humanity of all people. As a proud black woman

1 and as a direct descendent of a proud African-
2 American legacy that contributed significantly to
3 the state of North Carolina, I will fight with
4 every breath left in my body against this
5 draconian legislation designed only to keep
6 people of color from voting. It is wrong, it is a
7 very misuse of history to satisfy an agenda of
8 structurally racist and sexist public policy.

9 [APPLAUSE]

10 ANITA EARLS: Thank you very much. Hard
11 to follow. [CHUCKLES] Thank you very much for the
12 opportunity to be here today. And in my very
13 brief time I have just a couple of points I want
14 to make. First, an overarching point. As you
15 review the evidence, remember the distinction
16 between discrimination as evidenced by
17 participation rates and the success of black
18 candidates and discrimination as evidenced by
19 policies, procedures, structures, practices that
20 make it harder for African-American voters to
21 participate in the political process. Because
22 what we see in this state right now in 2014 is a
23 situation where our past successes and the past
24 work that we've done over the past 25, past 50
25 years, has led to increased participation and

1 increased success of African-American candidates.

2 And that is exactly what's led to the

3 extraordinary challenges we face today--the

4 backlash, if you will, and the repressive

5 policies. So, you can't simply look at that

6 measure of progress and say we no longer need the

7 Voting Rights Act. We need it more than ever

8 because that progress has led to a backlash.

9 My written testimony summarizes the

10 evidence that we've presented in the

11 redistricting case. I want to highlight just two

12 points. I don't know if people are aware of this

13 or not but when the legislature drew these maps,

14 the Congressional maps and the legislative maps,

15 they started with a proportionality quota.

16 Without any data on racially polarized voting,

17 without any past election results they set out to

18 draw 25 majority black House districts and ten

19 majority black Senate districts, even though in

20 the previous plan we had zero majority black

21 Senate districts and only nine majority black

22 House districts. So, they vastly increased the

23 number of districts.

24 And the court in dealing with this--so,

25 it's a quota. It's racial gerrymandering at its

1 worst. And it was designed to minimize the
2 influence of black voters but also progressive
3 white voters who voted with them. In the face of
4 this, the trial court said, "There's plenty of
5 evidence. The legislature looked at a lot of
6 evidence." They didn't analyze it but they said
7 the legislature looked at a lot of evidence, so
8 all three jingles factors are found in this
9 state. The legislature was justified in drawing
10 these districts.

11 I can tell you there is no Section 2
12 voting rights case in this country where a court
13 has said that the jurisdiction has to go from
14 zero to nine majority black districts and has to
15 go from nine to 24 majority black House
16 districts. That has just never happened. But we
17 have a legislature that apparently proved to the
18 satisfaction of a court that the racism in this
19 state was so bad that they had to do that in
20 2011. And yet, two years later in 2013, they
21 completely ignore the impact of House Bill 589 on
22 black voters. The evidence in the record--before
23 the legislature showing that these measures would
24 disproportionately make it harder for black
25 voters to vote in this state. They could ignore

1 all that evidence and constitutionally pass that
2 law. I submit to you that those realities don't
3 coexist, right? And the question is going to be
4 whether our court system will resolve that
5 fairly.

6 The second point I want to make about
7 the litigation is that we've demonstrated that
8 voters were disenfranchised by the way precincts
9 were split. That thousands of voters were
10 misassigned and got the wrong ballots in both the
11 primary and the general elections. And this is
12 because so many precincts were split. And we went
13 and looked at each of those wrongly assigned
14 voters--they were right on the lines where the
15 precinct splits happened. And so, this is not a
16 criticism of our local election officials who
17 were doing their best to assign voters properly--
18 this is a point that if the General Assembly is
19 so concerned about voter fraud, how can they
20 justify splitting so many precincts and
21 essentially disenfranchising--giving people
22 ballots, allowing them to vote in offices that
23 they technically aren't qualified to vote in
24 because they don't live in that district. How can
25 they justify thousands of people getting the

1 wrong ballot in the name of achieving essentially
2 an extreme racial gerrymander.

3 So, I think that there's a real
4 disconnect there and a real problem with how the
5 redistricting plan was drawn. So we will see
6 whether the courts will say that--just as they
7 said racial gerrymandering when Democrats did it
8 is unconstitutional, well, they say that racial
9 gerrymandering when Republicans do it is
10 unconstitutional. We'll see whether our state our
11 federal courts do that.

12 But ultimately I think it comes down to
13 the public. And what the polling right now in
14 North Carolina shows is that amongst the general
15 public, voting rights is not an issue that they
16 see as a big problem. You know, they're concerned
17 about teacher pay, they're concerned about jobs,
18 they're concerned about the economy, they're
19 concerned about healthcare. Voting rights is not
20 on our list. Amongst the rising American
21 electorate in this state it is an issue, and they
22 do recognize that there are threats to our voting
23 rights. So, we have a lot of work to do to
24 educate the general public, and I hope that this
25 commission's work can help in that regard.

1 I also request permission to supplement
2 my remarks--we will have expert reports produced-
3 -filed next Tuesday that deal with the history of
4 discrimination in voting in North Carolina and
5 we'll provide those to the commission. Thank you.

6 BARBARA ARNWINE: Thank you.

7 [APPLAUSE]

8 BOB PHILLIPS: Good morning. My name,
9 again, is Bob Phillips and it's a real honor to
10 be around so many icons whom I consider in the
11 fight for voting rights in North Carolina. I'm a
12 lobbyist at the North Carolina General Assembly
13 and I've had the pleasure to visit Representative
14 Terry in her legislative office and I can tell
15 you, I've seen that photo--and I think you're in
16 it--with you, and your grandfather, and that
17 President. It's quite a picture.

18 Common Cause--we believe voting should
19 be easy and accessible for everyone. It's as
20 simple as that, which is why we've worked in
21 coalitions for the past decade to improve voter
22 access in North Carolina. Improvements that
23 include same day voter registration,
24 preregistration of 16 and 17-year olds, and
25 enhancing early voting by having more polling

1 sites with longer hours and weekend voting. I
2 will add that Common Cause is a plaintiff in one
3 of the lawsuits challenging House Bill 589. And I
4 want to focus on three areas. The manner in which
5 the legislation was passed in the North Carolina
6 General Assembly, the impact we fear the new law
7 will have on voter education, and the prospect
8 the new law may have on fostering voter
9 intimidation at polling sites.

10 As I mentioned, one of the hats I wear
11 for Common Cause is that of a lobbyist. For the
12 better part of the 2013 legislative session I
13 spent time seeking to stop, slow down, and/or
14 weaken the effort to make voting harder for North
15 Carolinians. As you may know, the path for House
16 Bill 589 was rather long and dramatic. The House
17 adopted its version in late April but the Senate
18 took no action for nearly three months. Then in
19 late July, after the U.S. Supreme Court gutted
20 the National Voting Rights Act, the 15-page House
21 bill that primarily focused on photo voter ID,
22 ballooned into a 50-page behemoth with 60
23 different sections, comprehensively repealing
24 and/or weakening the raft of election laws that
25 had been put in place to make voting easier and

1 accessible.

2 In less than three days, the Senate ran
3 through one of the most comprehensive election
4 law bills ever considered in North Carolina, with
5 limited public input and limited legislative
6 debate. There was no time to thoughtfully look at
7 what had been proposed, no time to thoughtfully
8 respond, no time to effectively educate the
9 constituencies we work with, especially those
10 voters in underserved communities. And from my
11 perspective, it was clear that was the point.
12 Voting, a fundamental right for all, was a victim
13 of the worst display of partisan politics.

14 So, now we are faced with the
15 consequences of these new laws. Common Cause
16 believes the cornerstone of our democracy is the
17 right and ability to vote in free elections. And
18 for the last decade we've invested some time
19 providing nonpartisan voter education to
20 underserved communities. In some of the state's
21 key cities specifically our work has involved
22 canvassing neighborhoods, talking face-to-face
23 with voters. We know firsthand how important that
24 is. In underserved communities particularly we've
25 found that many voters did not know about same-

1 day voter registration. We found that voters
2 weren't always aware of the expansive early
3 voting period providing up to two Sundays and
4 three Saturdays in many areas to be able to cast
5 a ballot.

6 When you're an infrequent voter or
7 someone new to the community, or someone who
8 slipped through the cracks and never registered
9 to vote--and we have nearly a million folks like
10 that in North Carolina--these laws that we've now
11 lost, had been important in helping this
12 constituency exercise their right. Our presence,
13 our door-to-door canvassing and constituency in
14 doing this work--I should say consistency in
15 doing this work in each election cycle we believe
16 had an impact in helping more voters living in
17 underserved communities be able to vote.

18 And now, with these wholesale changes,
19 with no state funding for public education, we
20 wonder how many voters will be disenfranchised
21 because they do not realize that there is a 25-
22 day voter registration deadline now back on the
23 books. Or they may not realize that the early
24 voting time period has been cut almost in half.
25 And for the thousands of young people who come to

1 North Carolina for college, many of them enrolled
2 at our historic black colleges and universities,
3 many of the first-time voters, and all of them
4 with a legal right to vote in North Carolina, we
5 worry about how they will understand the new
6 laws, how they will be properly registered on
7 time, and how they will know what to do to obtain
8 the free ID if they must have it to vote. There
9 is no education to speak of, other than what the
10 good government organizations are doing. People
11 who don't receive the outreach we're all
12 collectively trying to provide stand to be
13 disenfranchised.

14 Another danger of the new law is the
15 prospects of voter intimidation at the polls. The
16 new law makes it easier for voters to be
17 challenged. No longer must the accuser live in
18 the same precinct as the accused, and that has
19 the potential to literally open up a voter fraud
20 vigilantism campaign. I've seen firsthand at high
21 volume precincts in minority communities,
22 outsiders come in to ask inappropriate questions
23 of voters outside the polls.

24 BARBARA ARNWINE: Right.

25 BOB PHILLIPS: This was nothing more

1 than intimidation, but the law allowed us to have
2 them removed because they indeed were from the
3 outside. Now the new law gives them standing to
4 come to a precinct and observe from the outside,
5 and if moved to, challenge a voter. We already
6 know there are organizations that are dedicated
7 to their own, quote, "poll monitoring" campaigns.
8 We fear this new law opens the door for them to
9 potentially intimidate voters.

10 So, in conclusion, North Carolina has a
11 new election law that will make it harder for
12 people to vote. A new law that was not
13 thoughtfully debated. A law producing dramatic
14 changes that many people are not aware of or will
15 understand. We believe North Carolina has the
16 most unfriendly suppressive voting laws in the
17 land.

18 [APPLAUSE]

19 BARBARA ARNWINE: Thank you.

20 IRVING L. JOYNER: I want to thank the
21 National Commission for this opportunity to make
22 some points. Many of the points that I plan to
23 make have already been made. I want to see if I
24 can tie some of it together. We live in a
25 participatory democracy where people choose to

1 participate in this franchise. And, indeed, that
2 was the case in 1865, after the Civil War, when
3 newly-freed African-Americans and those free
4 African-Americans joined with the Republican
5 Party, farmers, and poor whites to develop a
6 coalition to eagerly engage in the democratic
7 franchise. They participated at a very high rate--
8 -I'll talk about that--to the tune of some 80
9 percent turnout. And that turnout was what it was
10 because there was hope that the democracy was
11 going to mean something to them. And, indeed, it
12 did mean something because during that period of
13 time from 1868 up through 1898, you had more than
14 100 African-Americans elected to serve in the
15 state legislature, both the House and the Senate.
16 You had four African-Americans who served in the
17 U.S. Congress because of that enthusiasm
18 exhibited and the hope that the individuals had
19 that the democracy meant something to them.

20 On the other side of the picture you
21 had the Democratic Party that was intent on
22 blocking the ability of African-Americans to
23 participate in that franchise. And, in fact,
24 under the guidance of Furnifold Simmons, Josephus
25 Daniels, the owner of the Raleigh News and

1 Observer, Charles Aycock, from Wayne County, who
2 would subsequently be elected as governor--they
3 began a demonization of the African-American
4 campaign, to convince whites that they should not
5 consort with African-Americans and join in these
6 multiracial coalitions for the advancement of the
7 state, which led to the 1898 Wilmington
8 rebellion--which basically represented the only
9 coup d'etat that has occurred in the United
10 States history.

11 But following that coup d'etat in
12 Wilmington, participation by African-Americans in
13 the electoral franchise died. And from 1898
14 until 1968, no African-American was elected to
15 serve in the North Carolina House of
16 Representatives. And from 1898 up through--
17 actually, the 1900s up to 1992, no African-
18 American was elected to serve in the U.S.
19 Congress from North Carolina. And that
20 demonization and suppression of the vote led by
21 the Democratic Party was accompanied by physical
22 intimidation...

23 BARBARA ARNWINE: Exactly.

24 IRVING L. JOYNER: ...by the Klan and
25 the Red Shirts, and other supporting groups and

1 organizations that effectively stifled the vote
2 of African-Americans during that time. And up
3 until 1959, when we had the case of Lassiter v.
4 Northampton County, challenging the literacy
5 test, there was little enthusiasm in African-
6 American communities for exercising the right to
7 vote.

8 1965, the Voting Rights Act came along
9 and our leadership decided--and we talk about it
10 in piecemeal--but there was a conscious decision
11 made in 1968 to go out and run people for
12 political office for the purpose of increasing
13 the voter registration role among African-
14 Americans. And you had an Eva Clayton running,
15 you had a Mickey Michaux running, you had a
16 Reginald Hawkins running, you had people running
17 all over the state to encourage people, African-
18 Americans, to take advantage of the 1965 Voting
19 Rights Act.

20 Mickey lost. Representative Clayton
21 lost. Other--Reggie Hawkins lost. But what
22 resulted from that was an increase in the
23 registration of African-Americans. Henry Frye won
24 and was the first African-American to be elected
25 to the House since 1898. And the history is that

1 not until 1982 did more than four African-
2 Americans serve in the North Carolina General
3 Assembly at the same time. All right? So, from
4 1968 to 1982, only four served at the same time.
5 So, this is recent history. But it's recent
6 history because it resulted from voter
7 suppression. It resulted from voter intimidation,
8 which was going strong. Because when Mickey ran,
9 when Representative Clayton ran, when Reggie ran,
10 they knew that they were subject to being
11 attacked by people around them who did not want
12 them to exhibit the ideal that African-Americans
13 should participate in the franchise.

14 And I say all of that to say that what
15 we have today, we've seen it before. We've seen
16 it in 1890, in 1892, 1898, and all the way up,
17 where you have laws that are designed to promote
18 voter suppression, where you have an attitude
19 that African-Americans ought not be able to vote.
20 A demonization of African-Americans as a whole,
21 and that their participation in the process is
22 somehow evil and destructive to the democratic
23 franchise.

24 So this history bodes us well in terms
25 of understanding what the goal is now. This

1 notion of being able to challenge people at the
2 polls does no more than harken back to the
3 intimidation that we have already experienced. So
4 we know where this is going and that is why we
5 need to fight hard to counter the efforts that
6 are going on.

7 One finally point and that has to do
8 with the effort to enact a new Voting Rights Act.
9 Representative Michaux makes the point that the
10 Voting Rights Act was created to prevent voter
11 suppression. That's what we have today. And if
12 the new Voting Rights Act does not address voter
13 suppression in places like North Carolina, where
14 it's hot and heavy, then it will have absolutely
15 no meaning in the real world.

16 [APPLAUSE]

17 BARBARA ARNWINE: Thank you. Thank you
18 so much. All right, are we able to go to Skype?
19 Okay? Are we...? Can somebody let me know? If
20 not... Okay, and what we're going to do, as soon
21 as we go to Skype and briefly do this
22 presentation, then we're going to have people
23 come to the mics who want to testify for--we're
24 going to just do a really brief public testimony
25 and the panel's going to skip our Q&A but we have

1 sent two questions over that we would like
2 answered for the record. Okay, let's go to the
3 Skype. All right, Sandra, we have you and we're
4 waiting for you to go ahead and start. She is
5 speaking--I can't hear her. Hold on, Sandra, just
6 one minute while we get your volume right. She
7 can't hear us. Sandra, can you hear me? There we
8 go.

9 SANDRA THOMPSON: Good. [UNINTEL PHRASE]
10 something about it. [UNINTEL PHRASE] advocacy. I
11 started my work [UNINTEL PHRASE] in California,
12 but it is clear that North Carolina [UNINTEL
13 PHRASE]. I grew up with [UNINTEL PHRASE] so it is
14 still [UNINTEL PHRASE]. First [UNINTEL PHRASE]
15 voters [UNINTEL PHRASE] especially [UNINTEL
16 PHRASE] it is important to have [UNINTEL PHRASE]
17 longer hours for voting. [UNINTEL PHRASE]
18 election process. As background, North Carolina
19 has [UNINTEL PHRASE] so five largest counties are
20 [UNINTEL PHRASE] and Cumberland. The five largest
21 cities are Charlotte, Raleigh, Greensborough,
22 Winston-Salem, and Durham. The 2010 [UNINTEL
23 PHRASE] 80 counties are rural, having an average
24 population density of 250 people per square mile
25 or less. According to the Census Bureau website,

1 North Carolina [UNINTEL PHRASE]...

2 BARBARA ARNWINE: Okay, thank you. We're
3 going to stop right now. And what we'll do is
4 we'll get this statement in writing and thanks
5 very much. If we can end the Skype at this moment
6 because, unfortunately, it wasn't working--which
7 I feared. But anyway, you know, tech--that's the
8 world we live in.

9 Why don't we have people start coming
10 to the mics--and there are two mics set up here
11 in the front of the room. And while you're
12 coming, if we could turn to have our questions
13 answered that we have presented. Representative
14 Michaux.

15 MICKEY MICHAUX: Yes, ma'am.

16 BARBARA ARNWINE: There's a new one,
17 unfortunately, also for you.

18 MICKEY MICHAUX: Oh, are you going to
19 ask me the question or do you want me to...

20 BARBARA ARNWINE: Yes, you can just go
21 ahead and answer those questions.

22 MICKEY MICHAUX: The first question is,
23 "Is there any legislative effort in the North
24 Carolina General Assembly to reverse House Bill
25 589?" There will not be in this short session

1 because we are limited to what can be introduced
2 and whatnot. What we are basically interested in
3 now is getting a vote turnout so that in the
4 session coming up in 2014, that session--we will
5 have at least reduced the super majority that is
6 there and can create some dialogue. Certainly
7 there will be efforts to repeal it but what will
8 happen there--if the conscious of some folks
9 work, then we should be able to do it, but it's
10 not going to work that way. So what we're going
11 to have to do is rely on the courts and make a
12 real push. We hope to make some progress in 2014.
13 The real push really has to be 2016 when voter ID
14 comes into session, and when we can really make a
15 bigger push. We've got to gear up in order to
16 make some changes in faces in order to get
17 something done.

18 The second question here is that
19 "During the two-three years prior to the
20 enactment of these new voter laws, were you aware
21 of any significant concerns expressed in the
22 General Assembly regarding voter fraud?" Now, let
23 me tell you folks, that's the biggest farce that
24 has ever been played on the people of the state
25 of North Carolina. Even they have now admitted

1 that there was no significant fraud involved in
2 voting in the state. We've had some of the
3 cleanest elections of any state in the union. And
4 this idea about we want to attack voter fraud, we
5 want to prevent voter fraud--it was all in the
6 minds of those folks who were doing it. I don't
7 see how they could imagine anything like that
8 ever happening in terms of voter fraud. Had it
9 happened, I'm certain that the Board of Elections
10 would've found out.

11 The fact of the matter is there are
12 instances where reports of voter fraud were
13 reported, investigated by the Board of Elections
14 and there was no basis for it at all. And that's
15 why I'm glad that Mr. Bartlett is here. I can
16 remember some testimony given before a committee
17 where a lady came in and said that voter fraud
18 had been committed in Durham because a dead
19 person had voted. And she happened to call the
20 name of the person that she was talking about--
21 and, fortunately, I was sitting there and heard
22 it. I knew the person that she was talking about.
23 The person who voted was Junior who lived in the
24 same house as Senior. Senior was dead, but Junior
25 voted, and they never differentiated between

1 Senior or Junior.

2 BARBARA ARNWINE: Right.

3 MICKEY MICHAUX: So, that was one that
4 they brought up and everybody said--in Buncombe
5 County again, somebody mentioned Buncombe County.
6 There were instances of fraud mentioned there. I
7 personally talked to the folks in Buncombe County
8 at the Board of Elections there and said there
9 were complaints made but there was no evidence of
10 any fraud--in those specific instances was there.
11 So, fraud was just a big farce.

12 BARBARA ARNWINE: Thank you so much.
13 Anita?

14 ANITA EARLS: So, one question is "How
15 do you suggest challenging the redistricting of
16 North Carolina in the courts?" And I can tell you
17 there are two cases pending right now. One in
18 State Court challenging both the Legislative and
19 Congressional districts--that has been appealed
20 to the State Supreme Court. We're waiting for an
21 opinion. We have also in that case filed a
22 motion--we asked Justice Newby on our State
23 Supreme Court to recuse himself because his
24 campaign was fueled with millions of dollars from
25 the same entity that paid consultants who drew

1 the redistricting maps. He declined to recuse
2 himself. But if we don't get a favorable opinion
3 from the State Supreme Court, we could certainly
4 use help trying to convince the United States
5 Supreme Court to take the case.

6 The other case that's pending is in
7 Federal Court in the middle district, challenging
8 just the Congressional districts on racial
9 gerrymandering grounds.

10 BARBARA ARNWINE: Thank you so much. If
11 everybody will help me thank this panel.

12 [APPLAUSE]

13 And while the wonderful, incredible,
14 great testimony--you're going to see this in the
15 report for sure. Excellent job. Outstanding job.
16 While we're transferring, we invite the next
17 panel to please come up. And while that panel is
18 coming to participate, Mr. Gilbert, Ms. Caudill,
19 Gilkeson, and Mr. Lofton, while you're coming up,
20 we also invite people to come to the mics for any
21 public testimony, which we're going to limit to
22 just a few minutes. And we will do more public
23 testimony as we keep on going during the day. I
24 understand Miss Perry has some...

25 [TAPE SKIPS]

1 REVEREND BARBER: ...North Carolina is
2 that not just say civil rights traditional NAACP,
3 but we have this fusion coalition of litigation
4 because the laws are so bad affecting everybody.
5 And so, right out of the bat, we filed against
6 redistricting. The NAACP, and other groups I
7 heard Anita mention--right out of the bat we
8 filed against the voter suppression deal, which
9 is why we're so adamant--that we are seeing the
10 kind of litigation we will be forced into without
11 any clear preclearance protection.

12 And so what it would, in essence, do--
13 we're battling. And what we don't need the
14 Congress to do is to further assist those who are
15 engaging in voter suppression by disabling
16 methods that we have, i.e. preclearance, and
17 forcing us to have to do even more extreme
18 litigation from our side. And the danger of that
19 litigation is they would be able to enact
20 suppressive laws that would, in fact, go into
21 effect, be utilized--we would have to sue. And
22 then on the backend, if those laws were proved
23 discriminatory, the laws may be rendered
24 unconstitutional, but for two, three, four, five
25 years we would've been actually operating a

1 voting system utilizing those unconstitutional
2 laws. And like a sunrise, you may get another one
3 but you never get the one you have this day. And
4 so it is with a vote. Once you've lost that, you
5 can never get it back again. That is what's so
6 important about why we are so adamant about
7 having this federal protection. Because we're
8 getting ready to be set up in a situation where
9 laws could be put in place, very discriminatory,
10 and be utilized in the electoral process, and we
11 would only be able to amend those after the
12 impact and the damage has been done.

13 BARBARA ARNWINE: Thank you so much. Any
14 other public statements before we move to our
15 panel? After this one we're going to move
16 directly to the panel. Okay, please state your
17 name and then we can get started.

18 CLARENCE ALBERT, JR.: Sure. My name is
19 Clarence Albert, Junior...

20 BARBARA ARNWINE: We can barely hear
21 you, Mister...

22 MAN: Speak into the mic.

23 BARBARA ARNWINE: Directly into the mic.
24 I know we can't...

25 CLARENCE ALBERT, JR.: Okay, how is

1 that?

2 MAN: Good.

3 CLARENCE ALBERT, JR.: My name is
4 Clarence Albert, Junior, I'm a retired chief
5 petty officer of the United States Navy. I just
6 want to say thank you guys for what you've done
7 and continue to do. Stay geared up, stay on the
8 battlefield because this struggle continues. This
9 is spontaneous--this just came out of my mind
10 since I've been sitting here. The first question
11 is, how do we reintroduce voter registration back
12 into the school system? You know, that was taken
13 out. Propaganda is very effective no matter if
14 it's positive or negative...

15 BARBARA ARNWINE: You might want to hold
16 the mic. We really can't hear you well. There you
17 go.

18 CLARENCE ALBERT, JR: I did that in the
19 Navy a lot. Okay, I find myself alone in the
20 trenches with you guys but I'm seeking
21 illumination. This is where I am in my head right
22 now. I remain in a continuous state of rage
23 because of relative consciousness. That's my best
24 James Baldwin. I want to know how do I prick the
25 consciousness of my peers? What does the flame

1 burn so bright but no one seeks the comfort of
2 its light? Tell me and I will go.

3 I sometimes feel limited in my ability
4 to organize and articulate words to speak and
5 awaken my slumbering people. Tell me and I will
6 go. I've read many books. George G.M. James,
7 Stolen Legacy, Na'im Akbar, Vision of a Black
8 Man, Marvin X, This Crazy House, America. These
9 books have made a significant contribution in my
10 quest for who I am. Tell me and I will go.

11 Also, I want to know from you guys--
12 tell me where to light the fuse to move,
13 motivate, excite the spirit of my people. These
14 are the areas that I'm dealing with right now.
15 And in listening to you guys, I'm going to make
16 this last statement. I am not sure at this moment
17 in my life if this country has the right name--or
18 has it been named correctly? Because when I hear
19 it, I hear--the first word is United. United
20 States of America. And we're having these
21 struggles and these battles at this time in day?
22 Thank you.

23 BARBARA ARNWINE: Thank you.
24
25

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National Commission on Voting Rights

March 28, 2014

Panel 2

Job No: 72361

1 BARBARA ARNWINE: At this point, we're
2 going to turn to our next panel. We are really
3 blessed, everyone, to have a great panel of some
4 of the foremost election administration experts
5 in the State of North Carolina and our country.
6 We are blessed to start it off with Mr. George
7 Gilbert. Mr. Gilbert recently retired after 25
8 years of service as the Director of Elections for
9 Guilford County. Prior to serving as Elections
10 Director for Guilford County, Mr. Gilbert worked
11 for the Congressional Research Service in
12 Washington, D.C., and then six years for two U.S.
13 Senators. Mr. Gilbert earned economic degrees at
14 the University of Florida and Florida State
15 University. Mr. Gilbert has spent his career
16 serving the voters of Guilford County and his
17 expertise on the subject of today's hearing is of
18 tremendous value to this discussion. Thank you
19 and welcome, Mr. Gilbert.

20 GEORGE GILBERT: Thank you.

21 [APPLAUSE]

22 Judy Caudill is a retired Director of
23 Elections for Lincoln County, North Carolina. She
24 served in this capacity for 43 years. Prior to
25 becoming the director, she served as a poll

1 worker for three years. She graduated from King's
2 Business College. Ms. Caudill was certified as an
3 election administrator by the elections center in
4 the North Carolina State Board of Elections. She
5 was awarded a Certificate of Excellence by the
6 State Board of Elections in 2011. She also was
7 the recipient of the Long Leaf Pine Award issued
8 by the governor in 2011. She was also the
9 recipient of the 2012 Spectrum of Democracy Award
10 for Outstanding Public Servant, presented by the
11 North Carolina Center for Voter Education. We are
12 eager to learn from her almost half-century
13 career as an elections worker. Thank you. We
14 welcome you, Ms. Caudill.

15 [APPLAUSE]

16 Bill Gilkeson is the state's leading
17 expert on election law and redistricting with
18 over 25 years of experience on the legal staff of
19 the North Carolina General Assembly. During his
20 tenure, he advised legislators on employment law
21 and First Amendment law. Mr. Gilkeson
22 participated in redrawing State House, State
23 Senate and Congressional seats. He also worked on
24 legislative efforts to redistricting local
25 governmental boards in several North Carolina

1 counties. His work included preparing county
2 precinct lines for inclusion and census
3 geography, preparing submissions for preclearance
4 under Section 5 of the Voting Rights Act, and
5 providing evidence in landmark redistricting
6 litigation such as Shaw v. Reno. A 1985 graduate
7 of the UNC School of Law, Mr. Gilkeson has
8 dedicated his legal career to serving the State
9 of North Carolina. Please welcome Mr. Gilkeson to
10 this panel.

11 [APPLAUSE]

12 Ah, and last but not least, Mr. Joseph
13 Lofton is a retired professional who has had
14 prior experiences ranging from everything from
15 food to corrections and the Wake County board of
16 elections. His election experience began in 2005
17 as a member of the Elections Board, with later
18 experiences as chairman of the board until 2013.
19 Mr. Lofton was appointed by the State Board of
20 Elections to chair a three-county hearing panel
21 focusing on residency challenges--issues of a
22 candidate. Mr. Lofton has a BS degree in science
23 from Cameron University, Lawton, Oklahoma, and an
24 MA, master's degree in public administration from
25 Central Michigan University through the Seymour

1 Johnson Air Force Base campus.

2 Mr. Lofton is currently a member of the
3 American Correctional Association, State Employee
4 Association of North Carolina, Minority Pioneers,
5 Wayne County Democratic Party, local branch of
6 the NAACP, and Alpha Phi Alpha Fraternity.

7 Alrighty. [CHUCKLES] He was awarded the Bronze
8 Star, First Oak Leaf Cluster for services in the
9 Republic of Viet Nam and presented with Order of
10 the Long Leaf Pine signed by then Governor Mike
11 Easley. Mr. Lofton has visited the Republic of
12 China as a member of an international delegation
13 to the People Ambassador Program focusing on the
14 area of elections. We are thrilled this morning
15 to have this stellar panel. And with that said,
16 everybody, welcome this great panel and Mr.
17 Gilkeson.

18 [APPLAUSE]

19 All right, thank you so, so much. This
20 is the meat of so much of our discussion today,
21 and we really look forward to your testimony. Mr.
22 Gilbert.

23 GEORGE GILBERT: Thank you very much. I
24 really appreciate the commission holding this
25 series of hearings and I appreciate the

1 opportunity and the honor of being invested to
2 testify before this commission. Fortunately, I
3 wrote my written testimony last fall when this
4 hearing was originally scheduled. I say
5 fortunately because my activities since that time
6 have been far removed from the elections arena
7 and I've probably forgotten many of the details
8 that I hope I remembered correctly then.

9 I've been general contracting a
10 renovation of a house that's as old as I am and
11 trying to get moved in. So, I haven't been able
12 to keep up with elections very much, but I will
13 let me my written testimony stand. And in that I
14 included a lot of the details of the impact on
15 election administration. Today I would like to
16 focus my oral presentation on what was almost a
17 parenthetical statement with which I ended my
18 written testimony, and that was that House Bill
19 589 will have the same disenfranchising effect on
20 voting opportunities of many voters who are not
21 members of protected classes but whose rights to
22 vote it is our duty to preserve.

23 As I considered these issues in the
24 intervening months, I thought back to the mission
25 statement that was written by myself and my

1 former staff over 20 years ago, and that
2 statement served as the guiding principle of the
3 Guilford County Board of Elections throughout my
4 tenure there and beyond. And it states, quote,
5 "Our mission is to provide all qualified citizens
6 with the opportunity to vote in fair, accurate,
7 open elections according to constitutional and
8 statutory rights and requirements." Foremost in
9 our minds when that mission statement was written
10 was the integrity of elections. We did not then,
11 nor can we now restrict the definition of
12 election integrity to a matter of simply
13 conducting elections by the book. The question of
14 enfranchising eligible citizens is at the heart
15 of the integrity of elections. Enabling all
16 citizens the opportunity to vote if they choose
17 to do so is the most compelling element of the
18 integrity of our elections. It encompasses both
19 ensuring that ineligible persons do not cast
20 ballots and ensuring that every eligible citizen
21 has the opportunity to cast a ballot.

22 I'm not a lawyer but my understanding
23 of restrictions on constitutional rights is that
24 there should be a compelling public interest
25 served by such restrictions. As elections

1 administrator for Guilford County for 25 years, I
2 never found a compelling public interest that
3 justified the voter ID requirements of House Bill
4 589 nor any of the other rollbacks of voting
5 opportunities that had been granted voters during
6 the past 20 years. As my written testimony
7 documents, voter participation increased
8 dramatically during that period.

9 If enhancing the integrity of elections
10 was the primary motivation of House Bill 589, my
11 experience leads me to the conclusion that the
12 exact opposite will be the result. Talk of
13 election integrity seems to have lost sight of
14 the fact that the denial of one qualified vote
15 has the exact same impact on the election
16 integrity as does casting one unqualified vote.
17 The changes enacted in House Bill 589 will result
18 in far more legitimate votes being denied than it
19 will unqualified votes prevented. The bill is a
20 major setback to the election integrity and to
21 claim otherwise is itself election fraud. Thank
22 you.

23 BARBARA ARNWINE: Thank you very much.

24 [APPLAUSE]

25 Powerful. I've also been remiss in not

1 pointing out that we are blessed to have a young
2 lady here who is holding up signs to remind us of
3 our time. So, thank you so much and we will
4 definitely be paying attention to your signage as
5 we move forward. Yes.

6 JUDY CAUDILL: I also want to thank the
7 Lawyers Committee for inviting me to participate.
8 As an election official for 46 years, I have seen
9 a mass of changes in the electoral process. From
10 the beginning of the Loose-leaf Permanent
11 Registration System to the present statewide
12 computerization system voters had very few places
13 to register to vote. Limited age requirements,
14 literacy and residency requirements, the limited
15 ability to vote by an absentee ballot without a
16 valid reason. All of this limited a person's
17 right to be eligible to register and vote on
18 Election Day, especially the elderly, minority
19 persons, and young potential voters. Now, under
20 current law and the General Assembly saw to enact
21 laws that prevented all these things from
22 happening--in the current law, modern technology--
23 -those restrictions have been removed and these
24 people have easier access to all aspects of the
25 elections process.

1 We had come a long way and I'm appalled
2 at some of the requirements in House Bill 589. In
3 my opinion, we are taking two steps backwards in
4 doing what is best for the voter and how the
5 electoral process is managed. The impact of voter
6 ID on voters will prohibit some voters from
7 voting because of the limited forms of acceptable
8 ID. Even persons with photo ID may have problems.
9 Appearances do change as we all age. Women change
10 the color of their hair. Some elderly people may
11 have a problem with transportation to obtain one
12 of the proper IDs.

13 Poll workers and elections
14 administrators will be expected to take the time
15 to determine reasonable resemblance causing
16 longer lines. If poll workers question the
17 resemblance, which may cause confrontations with
18 the voters, even though the voter will be told
19 they may vote by provisional ballot, officials
20 will have to spend more time explaining the law
21 to the voter which, again, will cause longer
22 lines and discourage others from voting.

23 Shortening of the early voting period
24 and the requirement of having to maintain the
25 same number of hours in previous similar

1 elections will be a tremendous challenge for
2 rural counties. Funds to operate additional sites
3 will be hard to justify to county commissioners
4 who are already asking departments to cut
5 expenses and they're not funding money for
6 additional sites. If funds are not provided for
7 additional sites, then poll works for the funded
8 sites and the county election staff workers will
9 have to work longer hours, causing them to be
10 more fatigued and not as alert to the other
11 aspects of their duties.

12 The elimination of out of precinct
13 provisional ballots will cause a tremendous
14 number of voters their right to cast a vote on
15 Election Day. Had they appeared at a one-stop
16 site and got to change their address, they would
17 have been allowed to change their address and
18 given a ballot and they could've voted, and that
19 vote be counted. Something is wrong with this.
20 The general public does not always know current
21 laws. Voters do not intentionally go to an
22 incorrect precinct to vote. For various reasons,
23 some voters will not have the time or
24 transportation not go to their correct precinct.

25 It appears that House Bill 589 has

1 different sets of rules for certain people.
2 Elimination of preregistration occurred about the
3 time of my retirement but, in my opinion, this is
4 clearly going to cause a hardship for our younger
5 generation. I can't speak for other rural
6 counties, but in my county the Board of Education
7 did not feel the need to participate in the voter
8 registration process for their eligible age
9 students, much less the preregistration of 16-
10 year olds. They feared being accused of
11 participating in political activity. Therefore,
12 most 16-year olds were informed at the DMV when
13 they applied for the driver's license that they
14 could preregister. Preregistration allowed the
15 younger generation to be eligible to vote when
16 they became qualified. After all, they are the
17 future leaders of our country.

18 I believe that some of the requirements
19 in House Bill 589 will deny some voters their
20 right to vote. Voting is supposed to be our right
21 and not a privilege.

22 BARBARA ARNWINE: Thank you so, so much.
23 That was powerful. Powerful. Yes.

24 [APPLAUSE]

25 BILL GILKESON: My name is Bill Gilkeson

1 and I'm honored to be here. I thought that one of
2 the reasons that I was invited to be here was not
3 just that I was an attorney who drafted election
4 bills at the General Assembly but also because
5 for 15 years I was a precinct official starting
6 out as the chief judge in my own precinct,
7 ironically at Josephus Daniels Middle School,
8 given his background in all this--and then I was
9 a coordinator of several precincts.

10 I was called the chief judge of my
11 precinct and that was a name that at one point
12 was called the registrar, because the registrar
13 was the person who registered people to vote. You
14 had to register to vote before every election and
15 you had to go before the precinct registrar and
16 he was the guy who determined whether you had
17 properly read and interpreted the Constitution.

18 Fortunately, by the time I got there,
19 the precinct official's job was not to try to
20 keep people from voting but to make sure that
21 everybody who was eligible to vote could vote and
22 vote in an efficient matter--that the polls were
23 operated in an efficient matter. I worked on the
24 early voting legislation while I was at the
25 General Assembly working with the late Senator

1 Martin Nesbitt, who died recently, and it took
2 him several sessions of the legislature to get
3 the early voting as we know it enacted. The first
4 bill that he introduced was titled A Bill to
5 Eliminate Long Lines at the Polls. And he called
6 it that because he understand that long lines at
7 polls, inefficient polling places have the effect
8 of disenfranchising working people--single
9 mothers who are working two or three jobs.

10 And I was honored to be a precinct
11 official and I miss it sometimes. I'm kind of
12 conflicted out of it now. But I'm not sure I
13 would want to do it under the current legal
14 regime after the House Bill 589. I certainly
15 think it would be particularly hard if I were a
16 precinct official in a minority precinct. For one
17 thing, the legislature has enacted redistricting
18 plans with an unprecedented number of split
19 precincts. That means that on Election Day, the
20 officials have more different kinds of ballots in
21 the same precinct and they have to make sure that
22 the right ballot gets to the right voters.

23 In the 2012 Presidential election, the
24 stress of all that was relieved by early voting.
25 Early voting sites are better set up to handle

1 split precincts. And because so many people voted
2 early, the polling places weren't mobbed on
3 Election Day. But now, a week has been cut out of
4 early voting and, theoretically, the same number
5 of hours are to be crammed into the remaining
6 time at different sites. I think this may mean
7 that more people will vote on Election Day--there
8 will be longer lines on Election Day, and there
9 probably will be longer lines at the early voting
10 sites.

11 Another thing is that the bill has
12 eliminated straight ticket voting. This may be
13 one of the sleepers of this bill as far as its
14 effect, particularly in African-American
15 precincts, the African-American voters. There are
16 statistics showing that they disproportionately
17 use the straight ticket--so, what will happen is
18 that when the ballot is long, voters who were
19 accustomed to voting a straight ticket will
20 either have to skip the down ballot races or they
21 will spend a longer time in the voting booth. If
22 they do the latter, that is, fully exercising
23 their right to vote, the lines will back up both
24 at polling places on Election Day and at early
25 voting sites.

1 Then another thing a precinct official
2 may have to face is the possibility of
3 challenges. The bill now allows voters from
4 anywhere in the county to challenge voters on
5 Election Day. It used to be that only a voter in
6 the same precinct could challenge an Election Day
7 voter. In addition, the bill allows political
8 parties to appoint at-large observers who can go
9 to any precinct in the county.

10 I and some of my colleagues have
11 petitioned the State Board of Elections to adopt
12 a rule which we think is justified, that would
13 say that observers cannot challenge voters. It's
14 just inconsistent with their statutory role. And
15 the Board of Elections has agreed to consider
16 that. But in the meantime, I went to a State
17 Board of Elections training session at the
18 beginning of this week, and the election
19 officials there were being told that observers
20 can file challenges. A challenge will result in a
21 mini-trial at the precinct, conducted by the
22 precinct officials while the line backs up.

23 BARBARA ARNWINE: Oh, come on.

24 BILL GILKESON: I never had to do that
25 as a precinct official. I don't want to have to

1 do that. And on top of that, in 2016, they've
2 added the voter ID, which presents its own
3 potential mini-trial that voters--its own
4 controversies that the precinct officials will be
5 expected to deal with. And if somebody says that
6 the photo on the ID doesn't resemble the voter,
7 there has to be a mini-trial while the line backs
8 up at that time, while the three judges of the
9 precinct decide that issue. So, I think it would
10 be very hard to be a precinct official these days
11 and do the job that precinct officials are
12 supposed to do.

13 BARBARA ARNWINE: Thank you very much.

14 [APPLAUSE]

15 JOSEPH LOFTON: My name is Joseph
16 Lofton. It's a pleasure to be here and thank you
17 for inviting me. First of all, I'd like to thank
18 Mr. Bartlett. When I served as Chairman of the
19 Wayne County Board of Elections, he was
20 available, he was accessible, and he always
21 responded to our requests so it made the job
22 easier for us. And I thank him for that.

23 I was asked to talk about the impact of
24 no Sunday voting, which is near and dear. And I
25 want to say right up front about Sunday voting--

1 my father and grandfather were ministers. So, as
2 far as being engaged in the religious process, I
3 have certainly been engaged in the religious
4 process from a very small kid to the current day.
5 But Sunday voting provides a brief period of
6 availability to the polls for anyone but
7 especially to those with certain issues that go
8 beyond the norm. The debate has been basically on
9 religious grounds. While we know in modern times
10 that people go to church and yet find time to
11 engage in many recreational activities and other
12 things today, i.e., ballgames, movies, beach
13 outings, just pure relaxation, which is good. But
14 also, there is time to go vote if you make that
15 choice. And what I'm saying is the choice should
16 be there for someone to be able to vote on the
17 weekends if they desire to do so.

18 Churches and other groups find it
19 convenient to assist others on Sunday while work
20 and other tasks might make it difficult during
21 the workweek. People can utilize absentee voting
22 but many find it to be extraordinary to show
23 their pride by expressing their constitutional
24 right in person. The trip to the polls for
25 handicapped and others with special needs makes

1 this process personal. There are many elderly
2 that are handicapped and live alone absent of
3 many of our present day communication tools. In
4 fact, many may not have loved ones who can come
5 and provide the information and transportation
6 needed. Consequently, the presence of Sunday
7 voting can be an enhancement to the practice of
8 an activity that is available to all that are
9 qualified to participate in, rather than a
10 deterrence.

11 On one occasion as Chairman of the
12 Election Board, I even found myself in a quandary
13 where there was a disagreement about Sunday
14 voting, had to have a public hearing to get the
15 public input, and at the end of that had to
16 appeal to the State Board of Elections and we won
17 on Sunday voting. But I'm saying that was the
18 kind of challenge that we have been faced with at
19 times.

20 My other discussion is on the challenge
21 to the minority community--and that's a wide
22 range discussion. And I'd like to say, first of
23 all, in my public work I used to use what I call
24 the three C's, and became pretty well known for
25 the three C's. One was communication, the second

1 one was coordination, and the third was--and
2 sometimes more importantly, cooperation. And as
3 we talk about this particular subject, challenges
4 to the minority community, it's important that
5 all the different entities in the minority
6 community come together and practice those three
7 C's so they come out as a single unit as opposed
8 to three or four divided units. Because sometimes
9 that frustrates the people involved in the
10 process and it also kicks you back in terms of
11 your ability to move forward to prepare people to
12 vote. It's going to require some reeducation on
13 some folks about voting--this photo ID that
14 someone has already spoken about, and about other
15 issues that when they are presented to the
16 people, the people accept them not as something
17 that they need to do but they accept it as a
18 challenge and as something that's designed to
19 keep them from voting. That's the way they
20 perceive it.

21 Providing transportation requires a
22 coordinated effort--to get people to the polls
23 who are not able to get there on their own. And
24 if we're going to get as many folks as we can out
25 to vote, we have got to work on these specific

1 issues. Reduction in polling sites, change in
2 polling hours serve to confuse those who have
3 voted for years and not feel that their
4 activities are directed at them. The possible
5 threat of having more observers at the polls can
6 provide a threatening atmosphere. And there's
7 been some discussion about having more observers
8 in there--that can not only be confusing to the
9 voter, but it can be confusing to the people that
10 work in the polling site. Particularly when these
11 folks are challenging and doing things that
12 sometimes they're not required to do or
13 authorized to do. Thank you.

14 [APPLAUSE]

15 BARBARA ARNWINE: Thank you so much. At
16 this time, the panel is going to ask questions
17 and we're going to do this for a little bit under
18 ten minutes, and then we're going to turn to the
19 public testimony again. All right, yes, go ahead,
20 Raymond Pierce. Here you go.

21 RAYMOND PIERCE: Okay, thank you. I
22 mean, clearly, you all are knowledgeable, and
23 proficient, and experienced with respect to the
24 voting laws and voting processes of the state. My
25 question is, were any of you ever called or are

1 you aware of any of your colleagues that were
2 called to testify before the General Assembly of
3 the state during the deliberations of this House
4 bill--to inform their decision making and the law
5 making process? Were the professional bodies,
6 people such as yourselves, who manage and run and
7 direct elections for the state and have done so
8 for many years, were you called or were you aware
9 of any of your colleagues that were called to
10 testify and help inform the legislation when they
11 were deliberating on this House bill?

12 BILL GILKESON: I spoke at a public
13 hearing. I signed up and spoke at a public
14 hearing for three minutes, I guess.

15 GEORGE GILBERT: By the time this bill
16 was enacted, I was retired. But I was not aware
17 either in the early stages of consideration of
18 this bill, and I've communicated with some of my
19 colleagues since--not aware of any of them being
20 consulted regarding the impact of the bill.

21 RAYMOND PIERCE: And then one follow-up
22 question. Again, were any of you all aware
23 firsthand or secondhand--and when I say
24 secondhand, through your professional colleagues
25 in the election direction processes throughout

1 the state--were you aware of any significant
2 calls of concern with regard to voter fraud in
3 advance of this?

4 GEORGE GILBERT: Well, I didn't serve
5 nearly as long as Judy here did but--we never had
6 any evidence of voter fraud in my 25 years of
7 service. I had conversations with members of the
8 General Assembly over the past ten years about
9 this issue, and those who support this bill
10 always claim that, "Well, yeah, it's going on,
11 you just can't see it." And my position on that
12 is that you cannot disprove something for which
13 there is no evidence. Thank you.

14 [APPLAUSE]

15 JUDY CAUDILL: In the 46 years or the 43
16 that I worked in the Elections Office, we never
17 had a hearing on voter fraud.

18 ELLIE KINNAIRD: Madame Chair, I have a
19 question for Bill Gilkeson.

20 BARBARA ARNWINE: Yes, please.

21 ELLIE KINNAIRD: Because he was the
22 drafter of many of these, both when we were
23 expanding the voting access and then--

24 BILL GILKESON: I didn't draft this
25 bill. I didn't do this bill at all. It was gone

1 by the--

2 ELLIE KINNAIRD: Were you gone by then?

3 I hadn't realized that. Okay, well, perhaps you
4 can then just comment on what would have
5 happened, since you were not there when this
6 latest bill was... I was wondering if anybody
7 used statistics in drafting the bill--the impact
8 on cohorts of voters because I do know that
9 during the floor debate in the Senate, Angela
10 Bryant, who, by the way, is a Senator from this
11 area, was able to demonstrate--and by that time
12 we had iPads rather than paper. I still have
13 paper, but we had iPads. And they were able to
14 show on every single screen--Angela Bryant had
15 charts that showed the impact of each of these,
16 particularly early voting and voting in the wrong
17 precinct, of the severe impact because of the
18 numbers of people who had used early voting and
19 whatnot.

20 So, those statistics--that information
21 was available to the people who were drafting the
22 bill. Would that have had any effect on that
23 drafting of that bill to show the negative impact
24 on cohorts of voters?

25 BILL GILKESON: Well, as you say, I

1 think some of this information was available and
2 the bill was enacted anyway. There is one theory
3 that says we don't care about disparate impact. I
4 think as long as everybody is affected, as long
5 as all voters are affected by the same rule, then
6 that's--to some minds that translates to
7 nondiscrimination. I think Chief Justice John
8 Roberts once said--I think he said in the oral
9 argument about the case--

10 BARBARA ARNWINE: Shelby.

11 BILL GILKESON: In the Shelby County
12 case about Section 5, he said something to the
13 effect of "The way to avoid discrimination on the
14 basis of race is not to discriminate on the basis
15 of race."

16 BARBARA ARNWINE: Thank you.

17 EVA CLAYTON: I have a question.

18 BARBARA ARNWINE: Yes, right here?

19 EVA CLAYTON: I also want to ask... Did
20 you find during your experience that Section 5
21 was easy or difficult to enforce?

22 GEORGE GILBERT: I found that complying
23 with Section 5, which we were subject to
24 throughout my tenure there, was a relatively
25 simple process. The Justice Department was always

1 easy to work with, they were always responsive,
2 they never demanded more information than we
3 could provide. 99 percent of the time we knew
4 exactly what information they wanted and were
5 able to provide it, and with no follow-up they
6 were approved. We never had a Section 5
7 preclearance request denied. I'm not saying that
8 there weren't things suggested sometimes that
9 might've been denied, but we avoided those
10 because of Section 5 preclearance. So, it was
11 very much an active part of our considerations in
12 making the decisions at Guilford County.

13 JOE LOFTON: And I concur with that.

14 BARBARA ARNWINE: Thank you. Yes, David?

15 DAVID HARRIS: Quick question to Bill
16 Gilkeson. Good to see you again. Bill, you've
17 been a little bit modest here. You also worked
18 with the [UNINTEL] Legislative Black Caucus
19 during the 2011--

20 BILL GILKESON: Yes, indeed, with you.

21 DAVID HARRIS: You were the map guru and
22 you flagged to the caucus and to the rest of us
23 initially all of the split precincts that were in
24 the maps that were ultimately adopted. And the
25 number of split precincts was unprecedented in

1 number. I notice also that House Bill 589 states
2 that if someone files a provisional ballot in the
3 wrong precinct, that ballot is not counted, even
4 if it's in the same county. You alluded to it
5 earlier, but can you kind of expand on what is
6 the probable impact of the combination of the
7 split precincts and this new provision in House
8 Bill 589?

9 BILL GILKESON: Well, what the precinct
10 officials would have to do is, if a precinct is
11 split, they're going to have--every precinct has
12 all the ballot styles, all the different kinds of
13 ballots that every voter in that precinct is
14 eligible to vote, and they have to give that
15 ballot to the right voter. Now, if the voter is
16 assigned to a precinct and they go to that
17 precinct and vote, they should be able to vote a
18 regular ballot. The problem is they may not--it
19 becomes difficult for the precinct officials to
20 determine what the right one is to give them.

21 So, it's entirely possible that people
22 will be given the wrong ballot and will vote the
23 wrong ballot, not as a provisional ballot but
24 just as a regulator ballot that cannot be
25 retrieved.

1 BARBARA ARNWINE: All right. In
2 following up on David's question, is there any
3 requirement by law or by regulation that people
4 are informed that they are at the wrong precinct
5 and what their correct precinct is?

6 BILL GILKESON: I don't believe it's
7 stated in the statutes. I went to a training
8 session earlier this week of the Board of
9 Elections, and they were talking somewhat about
10 this problem. What they said was that--I'm pretty
11 sure they expect the precinct officials to tell
12 the voter whether they're in the right precinct
13 or not and if they're not, what the right
14 precinct is. But some voters will want to vote a
15 provisional ballot anyway because that precinct
16 is all the way across town and it's 7:15.

17 The instruction that was given to
18 people--and it was orally--was that the precinct
19 official can tell people when they give them the
20 provisional ballot "This ballot will only count
21 if you're in the right precinct."

22 Apparently the staff of the Board of
23 Elections has decided that the prohibition on
24 counting out of precinct provisional votes will
25 not apply to a voter who has an unreported move.

1 It will apply to a person who goes to the wrong
2 precinct as a result of convenience--just for
3 purposes of convenience.

4 BARBARA ARNWINE: That's terrible. Thank
5 you. Will everyone join us in thanking this
6 incredibly wonderful amazing panel.

7 [APPLAUSE]

8 I think I can say on behalf of everyone
9 here that we are grateful to you for your
10 service. You've done a great job for the people
11 of North Carolina and for our nation--and for our
12 democracy. Thank you so much.

13 [APPLAUSE]

14 We invite the next panel to please
15 assemble and while that...

16 [TAPE SKIPS]

17 Go ahead.

18 JENNY CATORLICH: My name is Jenny
19 Catorlich. I'm from Apex and I have been a worker
20 at the polling place for the last seven years.
21 I'm very much opposed to this law for all of the
22 reasons that have been stated before, but I just
23 wanted to add my experience as a poll worker.

24 BARBARA ARNWINE: Good.

25 JENNY CATORLICH: In addition, I can

1 definitely imagine with the loss of early voting
2 and the voter IDS with the split ballots, it
3 definitely will make for very long lines,
4 particularly in primary elections where--our
5 polling place had nine ballots already before the
6 redistricting. I can imagine there being many
7 more afterwards. And in a Presidential election
8 when you've got long lines to begin with, if
9 we've lost a week of early voting we're going to
10 have longer lines already, which discourages
11 voters to begin with. And if we have to cut lines
12 off at 7:30, you're sending people away. It's
13 unconscionable.

14 What concerns me almost more than that
15 is that it's poisoning an experience for people.
16 Our polling place--and I believe this is true
17 from my experience in election training for other
18 works in Wake County--but our polling place has
19 been a place where it's almost a celebration of
20 democracy. People come together, and it's the one
21 time you're with your neighbors and you're
22 voting, and you set aside parties--even though
23 you're voting in a partisan election, and you're
24 working with other people to make an election, to
25 encourage people to vote--and that's all we were

1 there for was to encourage everyone to have the
2 chance to vote. But these laws with three judges
3 having to decide if you look like your ID and
4 having to rule on challenges and the chance that
5 you've got a line held up with that kind of
6 thing, and people in the lines starting to choose
7 sides when the country is already divided enough,
8 I think it's going to make matters worse. And
9 it's an impact that I hate to see happen. It's
10 just another bad impact of this already bad law.

11 BARBARA ARNWINE: And as a poll worker,
12 how do you think this mini-trial procedure is
13 going to affect the administration of the vote?

14 JENNY CATORLICH: I can't even imagine
15 it. I would think the only way you could manage
16 it would be to pull the person out of line but
17 that's going to take three poll workers
18 automatically out of commission. So, that's going
19 to slow down. So, you're going to need more
20 workers. But as was stated earlier, I can imagine
21 that a lot of workers are going to refuse to work
22 once we see what these laws are.

23 BARBARA ARNWINE: Oh, my goodness.

24 JENNY CATORLICH: Which then makes you
25 wonder about the people who are going to be

1 willing to work under these conditions. I am very
2 concerned about elections in North Carolina as I
3 haven't been in the 25 years I've lived here.

4 BARBARA ARNWINE: Thank you so much.
5 That was great.

6 JENNY CATORLICH: Thank you for the
7 chance to speak.

8 [APPLAUSE]

9 BARBARA ARNWINE: Thank you so much.
10 Yes, the young lady right here? Hold on--your
11 mic, we're going to turn it on.

12 MADISON GIMMERY: Hello? I'm Madison
13 Gimmery. I'm concerned about the elimination of
14 the opportunity for 16 and 17-year olds to
15 preregister to vote and be automatically added to
16 the voter rules when they turn 18--which was one
17 of the first parts of the new voting law to go
18 into effect. The opportunity was granted by a
19 bill that passed with overwhelming bipartisan
20 support and went into effect in 2010. There were
21 no reports of anyone casting a ballot before
22 turning 18.

23 The program was essentially cost-free
24 and information on the pending applications was
25 not available to the public. Over 160,000

1 teenagers preregistered here in North Carolina
2 when they went to the DMV to get a driver's
3 license or through programs in their high
4 schools. In 2012, 30 percent registered as
5 Democrats, 30 percent as Republicans, and 40
6 percent as Independents. 18-24 year olds have the
7 lowest voter registration rate out of any group
8 in North Carolina and a much lower rate of voter
9 turnout. The Commission on Youth Voting and Civic
10 Knowledge recently issued a report in which they
11 looked at how to increase civic engagement among
12 youth. One of their recommendations was voting
13 reforms that allowed preregistration and tying
14 this with civics lessons in schools. This is what
15 North Carolina was doing before September 1st of
16 this year.

17 Voters who become engaged at an early
18 age are much more likely to stay engaged. A study
19 conducted at NYU showed that in Florida,
20 teenagers who preregistered turned out in higher
21 numbers than those who registered after turning
22 18.

23 BARBARA ARNWINE: Wow.

24 MADISON GIMMERY: I feel very strongly
25 that our state needs to invest in its future and

1 we should be encouraging our young people to take
2 an active role in shaping the policies that
3 affect our state and our nation. Thanks for
4 listening.

5 [APPLAUSE]

6 BARBARA ARNWINE: Thank you.
7 Outstanding. Thank you, thank you, Madison. Yes?

8 NEHEMIAH SMITH: That's hard to follow.

9 BARBARA ARNWINE: I know. She's
10 outstanding.

11 NEHEMIAH SMITH: My name is Nehemiah
12 Smith. I own the Weekly Defender, which is an
13 African-American weekly that covers 27 counties
14 in eastern North Carolina. I get an opportunity
15 to interact with a lot of people in my coverage
16 area, and my coverage area is mainly rural. And
17 what I have found is that the people are so
18 intimidated by this new law in the rural areas--
19 and it has a lot to do with their history, the
20 history of getting the opportunity to vote and
21 fighting for that, and now it seems as though
22 that's being taken from them.

23 For instance, one lady came to me and
24 she said, "Well, Mr. Smith, I just don't know
25 what to do. I went to the polls and the man said

1 that he was going to arrest the folk if they
2 didn't stay 50 feet back from the polls." Well,
3 she didn't understand that he was talking about
4 those people who were working with the campaigns.
5 And so she turned around and left because she
6 wasn't 50 feet away. She felt intimidated. And he
7 came out screaming and hollering. Well, she
8 didn't understand that thing.

9 There was even an instance I think in
10 [SKYLAR NET?] where one of the poll workers said
11 something about voter ID and the lady said,
12 "Well, I don't have my ID" so she left.

13 BARBARA ARNWINE: Oh, my goodness.

14 NEHEMIAH SMITH: And this kind of thing
15 is going to continue to go on in these rural
16 areas. In a metropolitan area you have people
17 that are going to be there and say, "No, wait a
18 minute, this is not going to happen." But in a
19 rural area it's going to be very difficult if
20 there's not some intensive education about what
21 the law is and when it goes into effect. There
22 are going to be some major problems in these
23 rural areas and you're going to see that the
24 numbers of people that are voting drops. And I
25 think it's going to drop precipitously.

1 So, this law is foolish. The Word says,
2 "Forsake foolishness that you may live" and I
3 just don't understand how the people in the rural
4 areas are really going to get the opportunity to
5 express their right if they already feel
6 intimidated.

7 BARBARA ARNWINE: Okay.

8 NEHEMIAH SMITH: I come from a family
9 that--my maternal great grandfather voted--three
10 years later he died, okay? But the thing is we
11 have made a pledge in our family that no matter
12 what, when you turn a certain age, you register
13 to vote.

14 BARBARA ARNWINE: Yes.

15 NEHEMIAH SMITH: So, when I go into the
16 voting booth, it is an exercise of respect for a
17 man that just got the right and died a couple of
18 years later. Please don't take this away from
19 those people that may have had the same
20 experiences in their families. Thank you.

21 [APPLAUSE]

22 BARBARA ARNWINE: Thank you. And this is
23 going to be our last public testimony. Go ahead.

24 EVELYN PAUL: My name is Evelyn Paul and
25 I felt motivated to speak from this gentleman

1 here. I'm from Craven County, which is about two
2 hours southeast of here. Our claim to fame is we
3 are the county were the gentleman in 2008 brought
4 a coffin with Barack Obama inside of it for his
5 freed of expression. And so I can tell you that
6 these new laws with poll watchers scare me half
7 to death for the same reason--because of the
8 added possibilities of intimidation with these
9 new poll watchers. I was telling Mr. Joyner and
10 some other people I've already looked at the new
11 election judges and most of the election judges
12 that are assigned--we have 23 precincts--most of
13 the election judges are assigned from the two
14 primary precincts that are 98 and 97 percent
15 white Republicans and have been assigned to most
16 of the precincts as the primary election judges.

17 Almost all of our precincts are split
18 and I work the polls every year and I have seen
19 some of the same things that this gentleman
20 reported. People get scared because all they hear
21 is "You're 50 feet from there, you shouldn't be
22 there. Where is your ID?" And they're low
23 information voters, they haven't voted
24 frequently, and they don't understand that this
25 person has no business telling them that, and

1 they get in their car or they walk. They leave
2 and they don't vote. And they don't realize that
3 they've just been disenfranchised and they don't
4 come back again. And they don't know who to call-
5 -and they don't vote. And it just scares me how
6 many people will not vote just based on scare
7 tactics. And this is just a terrible law and I
8 just pray that it does not go through because
9 people--everybody has the right to vote and it's
10 wrong to deny anyone this right to vote. Thank
11 you.

12 [APPLAUSE]

13 BARBARA ARNWINE: Thank you. Thank you
14 so much. Thank you.

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National Commission on Voting Rights

March 28, 2014

Panel 3

Job No: 72361

1 BARBARA ARNWINE: At this point we're
2 going to turn to our next panel that's going to
3 focus on accessibility... [TAPE SKIPS] ...really
4 honored that you're here to talk about a very
5 critical issue about access to the ballot. And I
6 just--you know, we're indebted to you for your
7 advocacy and for your work.

8 I want everyone to know that what we're
9 going to do is we're going to have this panel and
10 after this panel, we're going to again have
11 questions from the commissioners and we're going
12 to go to an open mic, and at one o'clock we're
13 going to break for lunch. And because I have to
14 step out for a few minutes after the
15 introductions and the beginning of your
16 testimony, we're going to have David--I
17 understand David Harris has been requested to see
18 this panel through until the lunch break. I hope
19 to rejoin during lunch.

20 The first person who has graciously
21 agreed to come and share the important testimony
22 about accessibility at the polls is Ms. Mercedes
23 Restucha?

24 MERCEDES RESTUCHA-KLEM: Restucha.

25 BARBARA ARNWINE: Restucha-Klem. She is

1 a staff attorney with Disability Rights North
2 Carolina, which is a federally mandated nonprofit
3 law firm that protects and advocates for the
4 rights of people with disabilities. Ms. Klem
5 advocates for employment programs and
6 agricultural architectural assets and voting
7 rights. She works tirelessly to remove any
8 barrier, physical or otherwise, which prevents
9 people with disabilities from exercising their
10 right to vote. Before joining Disabilities Rights
11 North Carolina in 2011, Mercedes practiced in
12 criminal defense and immigration law. She is a
13 graduate of North Carolina's Central School of
14 Law where she was editor on the Law Review, and
15 the University of North Carolina Chapel Hill.

16 Currently, Mercedes serves on the 10th
17 Judicial District Wade County Bar Association
18 Communities and Technologies Commission, she is
19 also on the board of United North Carolina.

20 Please welcome Ms. Klem to the panel.

21 [APPLAUSE]

22 Ms. Mary Bethel. Bethel?

23 MARY BETHEL: Bethel.

24 BARBARA ARNWINE: There we go. Ms. Mary
25 Bethel is Associates State Director for Advocacy

1 with AARP North Carolina, where she works to
2 develop and implement AARP's advocacy activities
3 initiatives in North Carolina. This includes
4 efforts which are state-focused as well as those
5 pertaining to national initiatives and campaigns.
6 Prior to joining AARP in October of 2005, she
7 worked for almost 30 years with the North
8 Carolina Division of Aging and Adult Services
9 where she served in a variety of administrative,
10 supervisory, and program capacities.

11 For the last 11 years of her tenure
12 with the division she was special assistant to
13 the director. While at the division she served as
14 lead staff person for external and legislative
15 affairs and for matters related to health,
16 consumer advocacy, and special population groups.
17 Thank you for your service and think you for
18 joining us today.

19 [APPLAUSE]

20 Ms. Erika Hagensen is the Director of
21 Public Policy and Advocacy at the Arc of North
22 Carolina. Prior to moving to North Carolina,
23 Erika served as the Executive Director of the
24 Joseph P. Kennedy Junior Foundation in Washington
25 D.C. Erika later became the director of

1 disability rights, family and technology policy
2 for the Arc of the United States and United
3 Cerebral Palsy's Disability Policy Collaboration,
4 DPC. During her tenure at the DPC, Erika
5 successfully lobbied with the larger disability
6 community to restore the Americans With
7 Disabilities Act to Congress's original intent
8 through the passage of the ADA Amendments Act of
9 2008. That same year, Erika received the OMB
10 Watch Public Interest Rising Star Award for her
11 pursuit of governmental accountability, citizen
12 participation, and social justice. Thank you,
13 Erika, for joining us today. And ladies and
14 gentlemen, another star panel. So, we start.

15 MERCEDES RESTUCHA-KLEM: Thank you. In
16 North Carolina, individuals with disabilities
17 vote at a rate that is 14 percent below the rate
18 of the general population. This voting gap is
19 consistently doubled that of the gap at the
20 national level. People with disabilities in North
21 Carolina have long faced...

22 BARBARA ARNWINE: Uh-oh, bring the mic
23 up. Oh, is it on? Okay, speak louder.

24 MERCEDES RESTUCHA-KLEM: People with
25 disabilities in North Carolina have long faced

1 substantial challenges with voting well prior to
2 recent legislation. Barriers include not being
3 able to access the polling site because it's not
4 physical accessible, and not being able to cast a
5 private and independent vote. We also routinely
6 hear of complaints to local boards of election
7 that people who arrive at the polls in a van or a
8 bus from a facility do not appear to be eligible
9 to vote and are presumed to be incapable of
10 voting and subject to coercion by facility staff
11 or others.

12 Those who live in residential
13 facilities or who may need assistance or other
14 accommodations to cast a ballot have to navigate
15 burdensome processes to exercise a fundamental
16 right. And even when these legal and physical
17 barriers are removed, attitudinal barriers based
18 on generalizations, stereotypes, and biases
19 continue to prevent individuals from casting a
20 ballot.

21 Individuals under guardianship and
22 individuals who live in nursing homes, state or
23 county-run institutions, community-based
24 residential facilities or other private
25 institutions face a host of barriers to voting.

1 Our state statute makes it a felony for a care
2 facility staff to assist a voter in requesting,
3 casting, or witnessing an absentee ballot. In
4 light of the isolation experienced by many
5 facility residents from anyone other than
6 facility staff, this limitation has effectively
7 disenfranchised voters living in facilities.

8 Although state law provides that local
9 boards of elections must organize multi-partisan
10 assistance teams to assist voters in facilities
11 with absentee ballots, few counties are in
12 compliance. VIVA directed the State Board of
13 Elections to develop rules and procedures to
14 guide the local boards of elections regarding
15 these multi-partisan assistant teams, and
16 Disability Rights North Carolina is closely going
17 to be monitoring those efforts.

18 VIVA also requires that any newly-
19 purchased voting machines produce a paper ballot,
20 and while this is a good move, in any new
21 technology purchases full accessibility and
22 universal design need to be a primary factor. As
23 a result of the Help America Vote Act, each
24 polling site now has an accessible voting machine
25 but they're generally found stashed in a corner

1 of the room. Local election staff frequently do
2 not have proper training on operating the
3 machines and are often completely unfamiliar with
4 the technology. Comprehensive training must be
5 provided when acquiring and using any new
6 technologies.

7 The most discussed change as a result
8 of VIVA is the photo identification requirement.
9 During the last election, our experiences with
10 voters living in facilities demonstrated that
11 over 10 percent of those registered voters who
12 attempted to vote by absentee ballot did not have
13 their ballot counted due to failure to provide
14 proper identification or proof of residence. And
15 this was prior to the passage of VIVA and the
16 photo ID requirement.

17 People with disabilities will be
18 disproportionately affected by the photo
19 identification requirement in two key ways:
20 Compared to the general population, they're less
21 likely to have access to the necessary documents
22 to obtain identification. People struggling with
23 maintaining their physical and their mental
24 health, living on low incomes, and who already
25 have a difficult time meeting their daily needs

1 will find it difficult to prioritize obtaining
2 the identification in order to vote. Many
3 individuals with disabilities do not currently
4 have a driver's license or a photo identification
5 card. They don't receive bills or other
6 documentation and they may often move or are
7 homeless and do not have the required
8 documentation to verify their residence.

9 The second limitation is that photo
10 identifications are currently only available
11 through the Division of Motor Vehicles. The DMV
12 is not well-positioned or equipped to meet the
13 access needs of people with disabilities, many of
14 whom do not drive, and rely on public
15 transportation.

16 Another change created by VIVA was the
17 elimination of the same-day registration and
18 shortening of the early voting period, and we've
19 discussed this. But depending on the nature of an
20 individual's disability, the flexibility
21 available to vote at any time during the weeks
22 leading up to an election make it more likely
23 that the person will be able to vote, depending
24 on the nature of their illness or the medication
25 that they're taking. Long lines on election days

1 discourage individuals with mobility impairments,
2 medication management concerns, or others who
3 just fatigue easily from participating in the
4 process. Any further limits on early voting will
5 pose challenges to voters with disabilities and
6 will further contribute to the existing gap that
7 is present in this population.

8 Lastly, during the most recent
9 legislative session, a bill was introduced to
10 eliminate the right of people under guardianship
11 to vote.

12 BARBARA ARNWINE: What?

13 MERCEDES RESTUCHA-KLEM: While it was
14 not adopted, there were still many out there who
15 would like to curtail the voting rights of people
16 who need help managing their finances or help
17 making healthcare decisions. Some believe that
18 people with disabilities are more vulnerable to
19 have their vote influenced or exploited. The fear
20 of fraud cannot trump the right to vote.

21 Our guardianship laws in our procedures
22 bear no relationship to what is required in
23 determining the capacity to vote and any attempt
24 to conflate the two would likely be
25 unconstitutional. If there are any questions

1 about exploitation, the focus should remain on
2 addressing the acts of the wrongdoers and
3 promoting accessible opportunities for all
4 eligible voters to vote. And I'll be happy to
5 answer any questions at the end of the panel.

6 BARBARA ARNWINE: Thank you so much.
7 Thank you. Please.

8 [APPLAUSE]

9 MARY BETHEL: Hi. Again, I'm Mary
10 Bethel, I'm with AARP North Carolina. We have our
11 state office in Raleigh. We have 1.1 million
12 members for AARP in North Carolina and our
13 membership is 50-plus. I want to commend the
14 previous speaker for all she said and just offer
15 a big amen for the comments that she made. Now,
16 my comments are going to focus specifically on
17 issues related to accessibility for older adults.
18 As we know, voting is a birth right of all
19 Americans and the most basic of political rights.
20 Older voters, many of whom have lived through
21 several wars and times when they had to fight for
22 voting rights, vote in disproportionately greater
23 numbers than other age groups in elections in our
24 state and across the country. We are concerned
25 about any rules or requirements that impose

1 unfair hardships on a person's effort to
2 participate in the electoral process.

3 In the debate about photo ID that took
4 place in the last legislative session, we
5 expressed our concern along with many other
6 groups that have talked today, that the basic
7 right to vote could be compromised by a voter ID
8 requirement. Now, older voters are significantly
9 less likely to have a photo ID compared to
10 members of other age groups. The Brennan Center
11 for Justice estimates that approximately 18
12 percent of older adults do not have a photo ID.
13 In North Carolina we have over 1.3 million people
14 over the age of 65, and if you take 18 percent of
15 1.3 million people, that's 234,000 individuals.

16 We know that most people prove their
17 eligibility to vote with a driver's license and
18 House Bill 589 does contain a provision that an
19 expired license or a passport can be used, and if
20 it was current when someone turned 70 it may be
21 used for life. There are, however, we know, many
22 older adults, particularly the 85-year olds, the
23 old-old, who have never had a driver's license in
24 our state. Now, House Bill 589 provides for the
25 issuance of a special ID card, that was mentioned

1 previously, by the Division of Motor Vehicles for
2 a person who does not have a driver's license.
3 There is no fee for this card if certain criteria
4 are met, including if a person's blind, over age
5 70, or homeless. Another criteria for obtaining a
6 special ID card without a fee is not having an
7 acceptable photo ID.

8 Now, the bill also spells out
9 provisions for issuing a certified copy of a
10 birth certificate or a marriage certificate to a
11 person over the age of 62 for the purpose of
12 obtaining a photo ID. Now, all this is well and
13 good, however, coming up with the documentation
14 for that birth or marriage certificate can pose a
15 problem for many folks if they do not have these
16 in their possession.

17 Older adults are more likely not to
18 have a birth certificate because many of them
19 were born before the recording of births was
20 required in a standardized procedure. If you do
21 not or cannot find your birth certificate, it may
22 not be possible to get one depending on where you
23 were born. Also, if you happened to be born out
24 of state, that can impose an additional barrier
25 for someone trying to do this. Going through the

1 process of gathering information to prove your
2 identity may prove to be a real challenge,
3 particularly for someone of advanced years and
4 someone who also may have significant health
5 problems.

6 In addition, the issue of getting
7 transportation, particularly in rural areas where
8 we have a lack of transportation resources or
9 less options available, may provide an additional
10 obstacle for older drivers being able to gather
11 this information to get their ID but also to get
12 to the Division of Motor Vehicles to actually
13 have an ID picture taken if they are able to do
14 that.

15 We also know that there was a provision
16 in House Bill 589 that stipulates that you do not
17 need a photo ID if you use a mail-in ballot or
18 you qualify for curbside voting. This will be an
19 aid to many folks but there will also be some
20 folks who fall through the cracks. We anticipate
21 there will be more people who are going to be
22 using curbside voting, and this is certainly
23 going to be an issue that local boards of
24 election are going to need to take into
25 consideration--because they're probably going to

1 have to have more individuals that are there to
2 assist people with curbside voting and possibly
3 also have more space available for curbside
4 voting, too.

5 We have concerns that changes may occur
6 to our voting laws--due to the legislation that
7 was passed--resulting in there being longer lines
8 at the polls. Many seniors and people with
9 physical disabilities, as already been noted, may
10 find it difficult to stand for long periods of
11 time, and they actually may give up on the
12 process of voting. We know the longer the lines,
13 the more likely the person is to be deterred from
14 waiting and to become frustrated with the whole
15 election process.

16 As the previous speaker noted and we
17 concur, there are special challenges to voting
18 for people in long-term care facilities. The
19 American Bar Association recently urged state,
20 federal, and local governments to improve the
21 access of residents in long-term care facilities
22 by establishing mobile polling stations.
23 Evaluation of mobile polling stations in the
24 State of Vermont found that the facility staff as
25 well as election officials reported mobile

1 stations made voting more convenient and
2 accessible for residents, it reduced the workload
3 for election officials, and it minimized the
4 threat of fraud or coercion.

5 We also think that there could be
6 issues with older adults not realizing that on
7 Election Day they have to go to the precinct poll
8 where they live. Now, older adults sometimes move
9 in on a temporary basis with family members or
10 reside for a short term in a place other than
11 their home, and this takes the away from their
12 precinct polling place. So, some folks could be
13 disenfranchised that way.

14 In closing, I just want to say that
15 AARP certainly realizes there is a great need for
16 education of older adults regarding the new
17 voting law in North Carolina, and that we plan to
18 engage in a voter education process, and we also
19 want to work with many of the partners in this
20 room that we've worked with on many things over
21 the years. Thank you again.

22 [APPLAUSE]

23 ERIKA HAGENSEN: Thank you for the
24 opportunity to provide testimony regarding voting
25 accessibility concerns for North Carolinians with

1 intellectual and development disabilities or IDD.
2 My name is Erika Hagensen and I'm with the Arc of
3 North Carolina. The Arc has provided advocacy and
4 services to people with IDD and their families
5 since 1953. We believe that people with
6 intellectual and developmental disabilities have
7 strengths, abilities, and inherent value, that
8 they are equal before the law and must be treated
9 with dignity and respect.

10 With the time allotted I'd like to
11 highlight some of the concerns we have with some
12 of the most recent changes with the passage of
13 House Bill 589. With regard to photo ID, as my
14 panelists have so very eloquently articulated, to
15 obtain a valid photo ID a voter must use a
16 variety of supporting documents. Many of those
17 documents are unavailable to individuals with
18 IDD, or they have an expense to secure them. And
19 if you live poverty and extreme poverty, any
20 expense is a high expense. While H-Bill 589
21 directs the state to assist a person born in
22 North Carolina with a free birth certificate,
23 someone born outside the state lacks that
24 support.

25 The DMV is the gateway for this valid

1 ID process for many individuals. The law lacks
2 clear rules on how DMV employees will be trained
3 to effectively assist this population, a
4 population they don't work with on a daily basis.
5 Similarly, while the law states that
6 identification cards will have no fee, the rules
7 and regulations governing this process have yet
8 to be issued. We find that concerning.

9 With regard to the physical
10 accessibility of the DMV offices, again, the
11 gateway for these free IDs, many counties don't
12 have a DMV office itself but a mobile DMV
13 station. Similarly, the location of DMVs are
14 designed with drivers in mind, many are off major
15 transportation lines, and this really curtails
16 the access for people who require transportation
17 assistance.

18 Regarding the reduced list of
19 acceptable forms of ID, there's any number of
20 concerns. I'll highlight that state college IDs
21 are no longer acceptable proof of identity. This
22 restriction really impacts students with IDD in
23 our state who participate in vocational programs
24 in our community colleges and through programs at
25 state colleges. Students are very proud of their

1 student IDs. They carry it with them every day.
2 It seems reasonable that they could use this in
3 the voting process.

4 With regard to the elimination of same-
5 day registration, early voting, and
6 preregistration of 16 and 17-year olds--same-day
7 registration, we worked tirelessly to create this
8 as an opportunity for North Carolinians in
9 general. It's an opportunity for all people to
10 exercise their right to vote. When you take this
11 away, it creates, as Mercedes noted, multiple
12 steps that are required to make that voting
13 process possible. You have to know when the
14 registration deadline is, you have to get your
15 documentation together, you have to perhaps
16 secure transportation support, physical support
17 in and out of the building, or to negotiate in a
18 non-disabled world. That's many steps which could
19 really curtail the opportunity for people to
20 exercise their right to vote.

21 By reducing early voting by a week,
22 again, those same processes are in place. You
23 often require assistance in the voting process
24 and it's difficult to align your schedule with
25 the person who supports you to make that

1 possible. There's also decreased access for
2 individuals who are employed and trying to manage
3 the voting opportunity with their employment
4 responsibilities.

5 Finally, as it was so eloquently
6 articulated earlier, the elimination of
7 preregistration for 16 and 17-year olds in public
8 schools--we think this is a universally bad
9 choice. We should be encouraging the opportunity,
10 the rights and responsibilities of voting for all
11 people and doing so at an early age. By
12 eliminating this opportunity it particularly
13 impacts people who included voter registration as
14 a tangible component of their individual
15 education program or IEP plan. It coordinates
16 with civics classes, transition goals, and many
17 other post-high school preparation opportunities.

18 And with my last minute I'd like to
19 talk about the massive increase to the
20 opportunity to challenge voters and how that will
21 impact individuals with disabilities. We know
22 that individuals with identifiable markers for
23 minority groups are more likely to be challenged,
24 and voters with disabilities will surely be
25 subjected to increased scrutiny. This is a

1 population that undergoes regular bullying, this
2 is a population that sometimes has a decreased
3 ability to navigate new and uncertain situations
4 and certainly stressful situations, and we see
5 this as a particularly concerning situation.

6 Of particular note, we find it odd that
7 while IDs aren't required until 2016, someone can
8 challenge a voter prior to that time and ask to
9 see their voter ID. We think it's absolutely
10 inconceivable that you could be challenged on
11 something that is not yet legally required. The
12 Arc will work tirelessly with our partners to
13 educate our community, to educate lawmakers, and
14 to ensure that the right to vote for individuals
15 with intellectual disabilities and all North
16 Carolinians are protected. Thank you.

17 [APPLAUSE]

18 DAVID HARRIS: Thank you to each of the
19 witnesses. The information you provided is
20 extremely insightful. Right now I'll ask if any
21 commissioners have any questions.

22 WOMAN: You presented--or somebody from
23 your organization presented before the
24 Legislative Committee?

25 MARY BETHEL: Yes.

1 WOMAN: I know that Mary did, but I'm
2 just wondering... When you presented these facts
3 that you have just listed here to the committee
4 members, what was their reaction to these facts,
5 that this will greatly diminish the ability of
6 these cohorts of voters to vote?

7 MARY BETHEL: I would say that not only
8 did we present to the committees that were
9 hearing the discussion on the bills, but many of
10 us, including Disability Rights, AARP North
11 Carolina, and others actually met a lot with the
12 leadership of the General Assembly that was
13 putting together the legislation. Regarding voter
14 ID, now, we really didn't have a whole lot of
15 input into the rest of the bill--but the voter
16 ID, there were numerous meetings that we did have
17 with the leadership. And I do think that some of
18 the accommodations, if you want to call them
19 that, that were put into the bill--for instance,
20 like allowing a person, if they have an ID, a
21 driver's license at the age of 70, that's still
22 good for life. Those types of things--and some of
23 the things with curbside voting, things like that
24 were things that were added from the original
25 provisions that were proposed.

1 WOMAN: I just want to say they really
2 didn't want the AARP down on them. That's why
3 they allowed 70-year olds to keep that.

4 WOMAN: Did I misunderstand that
5 oldsters who live in resident areas can or cannot
6 have a guardian to help them with their voting?

7 MERCEDES RESTUCHA-KLEM: Individuals
8 living in facilities can have their guardian or a
9 near relative assist them to vote but the
10 facility care staff can't help them vote.

11 WOMAN: I'm glad you're making the
12 distinction. If my mother lives in a place, I can
13 help her...

14 MERCEDES RESTUCHA-KLEM: Yes, ma'am.

15 WOMAN: But the people in the rest home
16 or retirement can't help them?

17 MERCEDES RESTUCHA-KLEM: Exactly, right.

18 WOMAN: So, what happens to people who
19 don't have any guardians outside? What happens to
20 them.

21 MERCEDES RESTUCHA-KLEM: That's the
22 major concern is that most people don't have
23 their guardian... Or often times it's the county
24 that's their guardian, or their family doesn't
25 live nearby and consider taking them to vote. And

1 so what the state has in place are called multi-
2 partisan assistance teams that are organized by
3 the local boards of elections. When we called in
4 the last election the counties that had the most
5 residential state facilities for people with
6 disabilities, they didn't even know what we were
7 talking about. And so, the new legislation has
8 kind of beefed up their requirements to
9 promulgate those rules and to provide training to
10 the local boards, but what we found is that very
11 few counties are in compliance or prepared to do
12 what needs to be done to help these individuals
13 vote.

14 WOMAN: Okay.

15 MAN: Mercedes, you said that the
16 Department of Motor Vehicles--you don't believe
17 that they're prepared for this.

18 MERCEDES RESTUCHA-KLEM: No.

19 MAN: Can you talk a little bit about
20 that? I want to push that.

21 MERCEDES RESTUCHA-KLEM: Erika, you
22 mentioned the fact that most DMV offices--many
23 are not on public transportation lines. And so
24 that's one thing. You're assuming that somebody
25 is going to be able to drive up. That's one thing

1 that people with disabilities--many do not drive.
2 And that's the first barrier. And then just the
3 attitudinal barriers of working with individuals
4 with intellectual disabilities, visual
5 impairments, accessible technologies, hearing
6 impairments--just the cultural competence that it
7 takes to navigate and communicate effectively
8 with individuals, the DMV does not have it.

9 MAN: Okay, and a follow-up. Irma? Is it
10 Irma?

11 ERIKA HAGENSEN: Erika.

12 MAN: Erika, I'm sorry. You were talking
13 about the elimination of student IDs and its
14 impact on IDD students.

15 ERIKA HAGENSEN: The preregistration
16 process?

17 MAN: Yes.

18 ERIKA HAGENSEN: Oh, the student IDs,
19 yes.

20 MAN: The student IDs. I want you to
21 talk a little bit more about that, also.

22 ERIKA HAGENSEN: Well, it was previously
23 an acceptable form of ID. It's one that students
24 have and they're proud of. They keep them--they
25 show them to everybody, they have them every day,

1 and they're proud to be part of that system. It's
2 just terribly unfortunate that they can't use
3 that and be prepared in the next piece of living
4 as an adult in their community. Yeah.

5 WOMAN: I just wanted to make an
6 observation between that they did between
7 students and AARP--people like me who they know
8 vote, we can tell--what, our Social Security? But
9 a student who's in college and registered to
10 vote, they can't use their ID. Do you understand
11 the difference?

12 ERIKA HAGENSEN: And this is a
13 population that we should be engaging in every
14 way to participate in this process.

15 WOMAN: Absolutely. Absolutely.

16 ERIKA HAGENSEN: The young lady made an
17 excellent point earlier--you get individuals
18 engaged, the more likely they're going to be
19 engaged and continue to be engaged. So that was
20 an excellent point that you made earlier and it's
21 likewise with every population.

22 DAVID HARRIS: We'll continue this
23 discussion but I wanted to go ahead and mention
24 if anyone wished to address the commission during
25 this time, before we break at one o'clock, come

1 on down and line up at the mics. Thank you.

2 MARY BETHEL: One of the provisions of
3 the new statute is that for people who have some
4 impairment and cannot get out of a building, for
5 instance--they're in some sort of a nursing home
6 or group home and can't get out--they now have to
7 have a team of two people to come in while they
8 are voting and monitor the voting. This is going
9 to be an obstacle, I would think, that is going
10 to be very great.

11 MERCEDES RESTUCHA-KLEM: Yes, those are
12 the multi-partisan assistance teams that are just
13 not going to work. As I mentioned, the main
14 counties that house the main state-run
15 facilities--you know, Granville County--did not
16 have an idea of what a multi-partisan assistance
17 team was two years ago. And so to be able to rush
18 to get it done now prior to the primaries...

19 JULIANA CABRALES: Good afternoon. My
20 name is Juliana Cabrales and I'm here with NALEO,
21 the National Association of Latino Elected and
22 Appointed Officials. The National Association of
23 Latino Elected and Appointed Officials' NALEO
24 Educational Fund is pleased to have the
25 opportunity to provide the National Commission on

1 Voting Rights with recommendations to improve
2 Latinos' voting experience in North Carolina.
3 NALEO Educational Fund is the leading nonprofit,
4 nonpartisan organization that facilitates full
5 Latino participation in the American political
6 process, from citizenship to public service. Our
7 current voter education and outreach efforts
8 expand in California, Florida, New York, Texas
9 and most recently North Carolina.

10 One of our key efforts is the operation
11 of the National Bilingual Hotline for Voter
12 Education and Protection, 888-VEIGOTA. In 2012,
13 the hotline received over 21,000 calls for
14 general information incident reports. Through the
15 hotline and field poll observation reports we
16 have identified several barriers that impede
17 Latino political participation and effective
18 election administration.

19 First, the lack of effective language
20 assistance at polling places. Second, unnecessary
21 and cumbersome requirements for voter
22 registration and casting ballots that produce
23 administrative complications during elections.
24 And, third, lack of basic information about and
25 understanding of the process of voting.

1 The Latino population in North Carolina
2 comprises 9 percent of the statewide population.
3 From the overall Latino population, 81 percent
4 speak another language at home. Latino
5 participation is significantly enhanced by the
6 access to translated materials and availability
7 of bilingual poll workers at convenient voting
8 locations on Election Day who are readily
9 available to provide comprehensive in-person
10 assistance.

11 A polling place or election
12 administration office that lacks accessible
13 translated materials, bilingual staffing, and
14 awareness of voter rights to assistance to third
15 parties will predictively impair the ability of
16 Spanish-dominant voters to obtain service and
17 subsequently cast a ballot.

18 In 2012, more than 12 percent of the
19 calls to our National Voter Information Hotline
20 came from voters who reported inadequate language
21 assistance or lack of translated materials at
22 their polling site. Similar issues were reported
23 throughout North Carolina.

24 Unnecessary requirements to vote. From
25 state cutbacks on early voting and limits on

1 same-day and third-party voter registration to
2 identification and proof of citizenship
3 requirements marked a new breaking point of
4 obstacles for Latino participation. Findings from
5 the hotline demonstrate numerous voters encounter
6 challenges with government agencies and agencies
7 administering public benefits, including the
8 Department of Motor Vehicles, which in some cases
9 failed to provide voter registration cards or
10 properly process registration applications. The
11 election administration landscape also
12 contributed to confusion for Latino voters.

13 Unnecessary requirements and increasing
14 complexity disproportionately affects
15 underrepresented voters. As such, we strongly
16 recommend that election officials and
17 policymakers advocate procedures that are
18 streamlined, transparent, and easily understood.
19 Thoughtful and easily understood messaging about
20 newly adopted changes goes hand in hand with a
21 thoughtful and deliberative process.

22 Most fundamentally, Latino voters
23 continue to lack basic information about the
24 understanding of the process of voting. More than
25 13,000 callers sought basic information about the

1 voter registration policies, including where and
2 how to register, when registration deadlines
3 were, and whether the caller was validly
4 registered. Over 6,700 calls sought basic
5 information about casting a ballot, inquiring
6 about issues such as the location of the caller's
7 polling place and procedures for casting early or
8 absentee ballots. 20 percent of calls reported
9 problems with availability of provisional
10 ballots, and 27 percent of voters attempting to
11 cast a ballot were registered but not found in
12 poll books. We encourage the use of user-friendly
13 tools and procedures to inform citizens of their
14 status as voters.

15 In conclusion, there are over 250,000
16 eligible Latino voters with nearly 96,000 to be
17 registered here in North Carolina. The Latino
18 electorate in North Carolina increased 27 percent
19 from November 2012 to 2013 alone--more than any
20 other group statewide. A combination of
21 education, training, and mobilization are
22 recommended as key strategies for effectively
23 engaging the Latino community. Focused attention
24 to outreach strategies targeting voters,
25 potential voters, poll monitors, and poll workers

1 remains essential to protecting the Latino vote.

2 Thank you.

3 [APPLAUSE]

4 DAVID HARRIS: Do any of the
5 commissioners have questions or a statement?

6 MAN: One follow-up question. 250,000
7 registered?

8 JULIANA CABRALES: No, the potential--
9 Latino elective, yes.

10 MAN: What was that number you gave
11 after that?

12 JULIANA CABRALES: 96,000, which is what
13 we believe is the Latinos that are yet to be
14 registered but are eligible and could potentially
15 become voters.

16 MAN: And can you speak to, or do you
17 have any information on what the voting trend has
18 been in terms of increase of that percentage that
19 is registered?

20 JULIANA CABRALES: So, the numbers I
21 stated from 2012 to 2013, there was an increase
22 in 27 percent in the Latino electorate in the
23 state. Larger than any other group statewide.

24 WOMAN: Was that increase in voting or
25 in registration?

1 JULIANA CABRALES: In registration.

2 WOMAN: In registration. So, what
3 percentage of those who registered--are they
4 voting?

5 JULIANA CABRALES: I don't have those
6 numbers with me but I'd be glad to share them for
7 the record.

8 WOMAN: Okay, that'd be helpful. Because
9 we're finding that that is also increasing--at
10 least in the statistics that are in here--showing
11 that of the registration, those who are
12 registered are also voting more. I think in 2012,
13 it was up to 80 percent of blacks--and that's a
14 record because we haven't voted... In fact, more
15 blacks voted in 2012 than 2008. My question is,
16 given that, why didn't we do better with the
17 Presidential election in 2012? But the facts show
18 there is an increase in minorities, and hopefully
19 that's also for Latin Americans, too.

20 JULIANA CABRALES: Yes. And I also know
21 that statewide, of all minority voters, Latinos
22 are the ones that vote at lowest percentages. So,
23 if there has been an increase, it's definitely a
24 smaller portion of the population than in other
25 minority groups.

1 WOMAN: Okay, okay.

2 MAN: And participation in early voting-
3 -did you talk anything about that?

4 JULIANA CABRALES: No, I did not touch
5 on that.

6 MAN: Okay, thank you.

7 DAVID HARRIS: Any additional questions
8 that the commissioners have for our witnesses?

9 MAN: I want to thank them.

10 DAVID HARRIS: Anyone else from the
11 floor wish to speak before we break for lunch?
12 Hold on a second. Do we break for lunch? Do you
13 wish to speak? Go ahead.

14 SUSAN PERRY-COLE: Good morning--or
15 maybe it's afternoon. My name is Susan Perry-
16 Cole, I'm a resident of Edgecombe County, and I
17 want to thank the National Commission on Voting
18 Rights and the Planning Committee for coming to
19 Edgecombe County. This is my home county and I
20 wanted to offer just a few brief remarks from the
21 point of view of this county and rural counties
22 in Eastern North Carolina.

23 I would like to begin by associating
24 myself with some of the remarks that Irv Joyner
25 and Bob Hall made concerning the state's long

1 history of placing race front and center as an
2 effective tool for raising the specter of--I'm
3 going to say in quotes, "negro domination". Irv
4 called it demonization and suppression of the
5 vote, but this is a part of the culture and
6 history, unfortunately, of our state. And as we
7 come forward today looking on that long history
8 of voter intimidation and suppression, it's not
9 hard to predict what might happen here.

10 I would like to say that in the
11 Thornburg v. Gingles decision they did refer to a
12 pattern of racial block voting in North Carolina,
13 and this pattern, again, is deeply rooted in this
14 earlier history of white supremacy campaigns that
15 date back to the late 1800s. And racial block
16 voting is still in existence, still alive and
17 well today, and it's a part of the fabric--
18 particularly in rural Eastern North Carolina.

19 I would also like the panel to be aware
20 that here in Edgecombe County, there is an
21 extensive record of widespread voting abuses and
22 discrimination against black voters, which
23 reached a fever pitch in the '80s when there was
24 a proliferation of viable black candidates who
25 were motivated to run and in many instances win

1 elective office. Voting complaints were so
2 widespread in our area that the U.S. Department
3 of Justice's Civil Rights Division did find that
4 the likelihood existed that minority voters would
5 not be allowed to cast a ballot without
6 interference in particular polling places on
7 Election Day and, therefore, federal observers
8 were appointed here in Edgecombe County. At that
9 period in time, Edgecombe County was the only
10 county in North Carolina where federal observers
11 were ever assigned. I don't know if that has
12 changed up until the present day.

13 So, again, speaking from the point of
14 view of this rural region that we're in, I'd like
15 to point out that Edgecombe County is one of 12
16 rural counties that is still experiencing double-
17 digit unemployment. And in my community, which is
18 a predominantly black community, this county, we
19 have a high poverty rate and where we have a
20 growing number of elderly residents. And,
21 therefore, we believe that the law that you're
22 looking at, this voter suppression law, would
23 have a devastating impact on our region.

24 Voting statistics show that many of
25 North Carolina's low-income elderly and blacks

1 tend to vote for Democrats, and this is the
2 population that I believe that this law was
3 intended to disproportionately impact. Democracy
4 South, which testified today, has documented that
5 blacks constitute 29 percent of early voters, 34
6 percent of same-day registration voters--that was
7 in 2012. We also are 34 percent of the voters in
8 the state without driver's licenses. A recent
9 study found, in fact, that 318,000 North Carolina
10 voters have no driver's license and no state ID.

11 Given the history of voter intimidation
12 in our area, I'd like to mention just a couple of
13 factors that I think might surface going forward
14 in the atmosphere we're in now. First of all, in
15 the absence of federal preclearance requirement,
16 it is impossible to know when local election
17 officials are moving precincts or making other
18 voting-related changes that might have a
19 discriminatory impact on black voters. There's
20 some evidence now that some early voting
21 locations are being moved. So, really, at the
22 local level we're at a disadvantage in a state
23 with 100 counties, trying to follow all this
24 stuff without preclearance requirements. Also,
25 there's enormous power at the local county level

1 to adopt discriminatory voting strategies without
2 these preclearance protections. And, again, it's
3 difficult to monitor in a timely fashion just
4 what is going on. With respect to oversight,
5 oversight by state and local officials now
6 increasingly is drawn from the ranks of ultra-
7 conservative forces, and I'm not sure that will
8 provide an adequate protection for those of us at
9 the local level.

10 There's been some discussion earlier
11 this morning about voter intimidation and I just
12 want to mention that my understanding is, under
13 this new law there will be the ability to appoint
14 more monitors inside of the polls. And I think
15 people talked about these little mini-trials that
16 you'd have to go through if someone challenges
17 your right to vote. And I know here in this area,
18 many of the elderly would be very much at a
19 disadvantage to assert themselves in the face of
20 being challenged under those circumstances.

21 So, I just want to conclude and say
22 that, you know, five or six years ago, I never
23 thought I'd be standing here talking about things
24 that we thought we took care of 30 years ago--but
25 here we are now, we're back--sort of back to the

1 future, back where we were 30 years ago. And I'm
2 just really grateful--and I know this has been
3 hard sitting on the panel and listening to all of
4 us rattle on, but I'm ever so thankful for all of
5 you taking time out to listen to us and to show
6 that this is an important right that we must
7 protect. Thank you.

8 [APPLAUSE]

9 DAVID HARRIS: Any questions? We'll
10 break for an hour. Be back at 2 o'clock. Thank
11 you.

12 WOMAN: Thank you, everyone. Our
13 commissioners, we have lunch waiting for you
14 around the corner in this building, but go to
15 your left and then make another left.

16 [TAPE SKIPS]

17 BARBARA ARNWINE: --and OIC again for
18 being magnificent hosts. Thank you so, so much.
19 And, yes, I'm hearing extra praise for the
20 chicken. Okay. And the beef. All right. So,
21 everybody's having a ball, so that was great.

22

23

24

25

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National Commission on Voting Rights

March 28, 2014

Panel 4

Job No: 72361

1 BARBARA ARNWINE: Moving on with our
2 agenda to keep us on time, we're happy to
3 introduce panel 4 which will discuss the impact
4 of new voting rules on minority voters.

5 This is a panel that is, once again as
6 we have been hearing, a panel of just amazing
7 star leaders. We are so appreciative of your
8 taking your time to lend to this compilation of
9 great evidence and information regarding barriers
10 to voting, both electoral and based on
11 discrimination. This has been fabulous.

12 It is my pleasure to start this
13 afternoon by introducing somebody who really,
14 truly needs no introduction because he is one of
15 the national leaders of Great Report, a true
16 citizen of North Carolina and a native son of
17 great, great leadership. Rev. Dr. Barber
18 graduated Cum Laude from North Carolina Central
19 University in Durham, North Carolina, receiving
20 his BA in political science. He received a
21 masters divinity degree from Duke University
22 where he was a Benjamin Mays fellow and a dean's
23 scholar.

24 Rev. Dr. Barber has a doctoral degree
25 from Drew University in Madison, New Jersey with

1 a concentration in Public Policy and Pastoral
2 Care and he has received an honorary doctorate of
3 humane letters from NCCU.

4 The honorable Governor Beverly Purdue
5 presented Rev. Dr. Barber with the Order of the
6 Long Leaf Pine, North Carolina's highest
7 citizenship award presented to outstanding North
8 Carolinians who have a proven record of service
9 to the state.

10 Rev. Dr. Barber II is the President of
11 the North Carolina State Conference of the NAACP
12 since 2005 and was reelected to the national
13 board of the NAACP in 2011 and was appointed as
14 the national NAACP chair on the Legislative
15 Political Action Committee.

16 Under his leadership the NAACP
17 developed a new 21 century voter registration,
18 voter participation system. In North Carolina
19 this system registered more than 442,000 new
20 voters.

21 REV. DR. WILLIAM BARBER: In the nation.

22 BARBARA ARNWINE: Oh, nationally. Okay,
23 thank you. Nationally--I'd say that was going to
24 be real good for North Carolina. Okay. Nationally
25 this system registered more than 442,000 new

1 voters and provided access to 1.5 million voters.

2 Since Rev. Dr. Barber became president,
3 he led the North Carolina NAACP state conference
4 to national recognition when he accepted the 2006
5 Juanita Jackson Mitchell Esq. Award for legal
6 activism, the highest award in the NAACP for
7 Legal Redress for Advocacy. In addition, in 2008
8 the NAACP of North Carolina became the recipient
9 of the Thalheimer Award for most programmatic
10 NAACP State Conference and in 2010 Rev. Dr.
11 Barber won the National NAACP Kelly Alexander
12 Award. But he's also gone viral on the internet
13 because when you say Rev. Dr. Barber's name,
14 everybody says and if you haven't voted yet, if
15 you ever need the vote you need the vote now and
16 he has been such a leader of Moral Monday and so
17 many other things and an inspiration to the
18 nation.

19 It is my pleasure to welcome Dr. Rev.
20 William J. Barber again to our proceedings.

21 [APPLAUSE]

22 BARBARA ARNWINE: My next honor is to
23 introduce Miss Penda D. Hair, co-founder of the
24 Advancement Project in 1999. She is an innovative
25 racial justice organization that works alongside

1 community and grassroots groups to eradicate
2 structural inequities and create a just
3 democracy.

4 Ms. Hair has spearheaded litigation
5 against voter restrictions, discriminatory
6 electoral provisions and other civil rights
7 violations across the nation. Ms. Hair currently
8 serves on the team of lawyers representing North
9 Carolina NAACP in a federal voting rights lawsuit
10 filed in August of 2013 challenging the state's
11 recent voter suppression law.

12 She also is counsel in cases
13 challenging onerous photo ID requirements in
14 Pennsylvania and Wisconsin. Under her leadership,
15 Advancement Project has produced groundbreaking
16 reports on voting rights including In Pursuit of
17 an Affirmative Right to Vote in 2008 and What's
18 Wrong with this Picture?: New Photo ID Proposals
19 Part of National Push to Turn Back the Clock on
20 Voting Rights in 2011.

21 Ms. Hair is the former director of the
22 Washington DC office of the NAACP Legal Defense
23 and Education Fund and the author of the
24 Rockefeller Foundation's report on innovative
25 civil rights strategies, Louder Than Words:

1 Lawyers, Communities, and the Struggle for
2 Justice in 2001.

3 She is a graduate of Harvard Law School
4 and the University of Tennessee. She clerked for
5 Federal Appellate Judge Wilfred Feinberg and U.S.
6 Supreme Court Justice Harry Blackmun. She is a
7 frequent TV and radio commentator on issues of
8 race and democracy and, as she told me in the
9 hall, Penda said, "It's good to be in North
10 Carolina." Welcome Penda Hair.

11 [APPLAUSE]

12 BARBARA ARNWINE: Miss Allison Riggs is
13 a staff attorney for the Southern Coalition for
14 Social Justice. Her work focuses on voting rights
15 and environmental justice. She has been with the
16 Southern Coalition since 2009 and her voting
17 rights work over the last five years has been
18 focused on redistricting and combating voter
19 suppression. She has litigated redistricting
20 cases in Texas, Florida, Tennessee and North
21 Carolina.

22 She has been a dedicated advocate in
23 defense of the constitutionality of Section 5 of
24 the Voting Rights Act. Attorney Allison Riggs
25 received her undergraduate, Master's Degree and

1 J.D. from the University of Florida in
2 Gainesville, Florida.

3 During law school, she was the student
4 coordinator for the Restoration of Civil Rights
5 Project--a student organization that provided
6 assistance to applicants seeking to have the
7 State of Florida restore to them their right to
8 vote following a felony conviction.

9 Welcome Allison Riggs.

10 [APPLAUSE]

11 BARBARA ARNWINE: And rounding up this
12 illustrious panel, Chris Brook. Mr. Brook
13 currently serves as the Legal Director of the
14 American Civil Liberties Union of North Carolina.
15 He received both Bachelor of Arts and his law
16 degree from the University of North Carolina at
17 Chapel Hill. After graduating from law school in
18 2005, he worked as an associate at the Raleigh
19 law firm of Cranfill, Sumner & Hartzog for three
20 years before joining the newly formed Southern
21 Coalition for Social Justice in 2008 as a Staff
22 Attorney.

23 From 2007 to 2011, Mr. Brook also
24 taught in the Legal Research/Writing Program at
25 the UNC School of Law as an adjunct professor.

1 Mr. Brooks has worked with grassroots community
2 partners, coalition partners and the legal
3 community while serving the State of North
4 Carolina. Thank you for your service. It's a
5 welcome and an honor for you to be here today.

6 Ladies and gentlemen, that is our panel
7 and we will start with Rev. Dr. Barber. Thank
8 you.

9 REV. DR. WILLIAM BARBER: Thank you so
10 much attorney Arnwine.

11 On behalf of the NAACP, our vice
12 presidents across the state, especially our first
13 vice president and national board member Ms.
14 Caroline Q. Coleman, more than 100 branches, more
15 than 200 partners in our Forward Together Moral
16 Movement, 945 arrestees and after 114 Moral
17 Monday events since April of last year more than
18 100,000 people gathering to stand against voter
19 suppression and other issues on February the 8th.
20 And on behalf of our Plaintiffs, Rosanell Eaton,
21 Mary Perry and Caroline Q. Coleman, I wanted to
22 come today and to give this testimony and submit
23 fuller records to you as well.

24 Last June the Supreme Court decided
25 Shelby County v. Holder which granted the voting

1 rights--guttled the Voting Rights Act. In his
2 ruling for the majority last June, Chief Justice
3 John Roberts argued that there is no longer need
4 for the federal government to actively ensure
5 voting rights. But he and five who joined him
6 were terribly wrong and we know that here in
7 North Carolina.

8 Justice Ruth Ginsberg, in a brave and
9 blistering dissent to the majority, stated the
10 patently obvious: the reason things have changed
11 since 1965 because of the Voting Rights Act,
12 because the Voting Rights Act has been in place
13 since then.

14 She wrote: Throwing out preclearance
15 when it has worked and is continuing to work is
16 like throwing away your umbrella in a rainstorm
17 because you are not getting wet.

18 Prior to Shelby, only 40 counties in
19 North Carolina were considered, even though we
20 believe historically many more should have been
21 considered to be covered jurisdictions. After
22 Shelby--none in some sense under the new Shelby.

23 Over the past 30 years the Department
24 of Justice has logged more than 40 objections to
25 changes in voting laws in North Carolina many of

1 which were based on same or similar changes that
2 were ultimately passed as a part of this extreme
3 voter suppression law and we are clear to never
4 call it a Voter ID Law. It is a voter suppression
5 law.

6 But it did not start with that. The
7 first thing the extremists in our Legislature did
8 was they passed the worst voter redistricting
9 plan since the 19th century, stacked and packed
10 52 percent of black voters into 27 house
11 districts and 49 percent of black voters into 19
12 of 50 senate districts. And then after Shelby or
13 prior to Shelby, the General Assembly had been
14 considering a more narrow voter suppression law.
15 But after the Supreme Court's decision the
16 extremists realized that they were not as free,
17 but they were going to go as far as they could.

18 As one legislator put it immediately
19 after Shelby, "Now we can go with the full bill."
20 Another legislator actually said after Shelby,
21 the day it was passed, "Now that the headache has
22 been removed.

23 This person was the leader of promoting
24 in the bill--now that the headache has been
25 removed. It went on to pass the most regressive

1 voter suppression bill since Jim Crow. This voter
2 suppression law rolls back popular early voting
3 including Souls to the Polls on Sunday that
4 thousands of North Carolina citizens have used
5 and more than 70 percent of black voters use
6 during early voting in 2008-2012.

7 One of the things about this voter
8 suppression bill is it does not deny people
9 certain voting rights--we are actually rolling
10 back rights that people have already used in more
11 than two elections. In a state that has had the
12 highest increase of voters in the last two
13 presidential elections and African-American votes
14 in 2012 was higher than any other demographic.
15 This Legislature chose to end same-day
16 registration though African-Americans cast 34
17 percent of same-day registration ballots.

18 It refuses to allow counties to count
19 provisional ballots mistakenly cast in the wrong
20 precinct. African-Americans cast 30 percent of
21 out of precinct ballots, even though they are
22 only 22 percent of the electorate. It limits
23 early registration and ends entirely for 16 and
24 17 year olds, bars counties from keeping polls
25 open to accommodate long lines and gives

1 vigilante poll watchers more power to challenge
2 voters.

3 Now this bill also requires all voters
4 to show specific forms of voter ID, but bans
5 student IDs, non-North Carolina driver's license
6 making it the worst Voter ID Bill, worse than
7 South Carolina and Alabama. 318,000 registered
8 North Carolina voters do not have a DMV-issued
9 driver's license or state ID. 67 percent of them
10 are black, white and Hispanic women.

11 They claim that it was because of in-
12 person voter fraud, but the speaker of the house
13 went on MSNBC and actually admitted that it was
14 not because of fraud and one of their operatives
15 when asked on TV about this particular voter
16 suppression said this, "If it affects a bunch of
17 lazy blacks who want to get free things from the
18 government so be it."

19 The North Carolina State Conference and
20 the NAACP in 47 minutes after they signed this
21 particular voter suppression and other plaintiffs
22 were the first to bring a lawsuit in Federal
23 Court in North Carolina claiming that HB59 passed
24 the General Assembly on July 25th violates
25 Section 2 of the Voting Rights Act and the

1 Constitution.

2 Finally, not only must we litigate
3 under Section 2, but we need bipartisan effort to
4 strengthen and amend the current proposed VRA
5 Section 4 fix that is before the Congress. We
6 need all of our allies to stand with us. We do
7 not need a Washington Beltway fix. We need a fix
8 that will deal with the continuing reality of
9 voter suppression and racialized voter
10 suppression bills.

11 The bill has been started, but we can't
12 stop until the fix guarantees preclearance,
13 especially for North Carolina, Alabama, South
14 Carolina and Virginia. To suggest that there is
15 not enough racism in North Carolina, there's not
16 enough racism in voting in Alabama, there's not
17 enough racism in South Carolina where the
18 Confederate flag still flies, to have a bill that
19 guarantees preclearance when it is initiated is
20 just wrong.

21 Anyone who tries to pass a law that
22 leaves these southern states out--I want you to
23 hear me on this--anyone, democrat, republican, in
24 the civil rights community, any organization
25 purporting to stand for the civil rights

1 community that does not fight to strengthen and
2 amend, does not say these states must be covered
3 are enemies to voting rights--no matter what
4 color, no matter what kind. To suggest that we
5 can accept the Voting Rights Act fix that gives
6 us less than we won on the Edmund Pettus Bridge
7 is wrong.

8 To suggest that the Tea Party is
9 greater than white supremacists of the 1950s and
10 that we are more afraid of the Tea Party than we
11 are of slave masters in the 1800s is just wrong.
12 And anybody who in the back room, front room or
13 out in public signs on and pushes this without it
14 being strengthened in an amendment becomes an
15 accessory to the crime of future voter
16 suppression throughout the state, throughout this
17 country.

18 I have heard some say this is the best
19 we can get. My word, especially to black people
20 who are in those rooms, is thank god Harriet
21 Tubman didn't negotiate for three days of freedom
22 and four days of slavery. Thank god that Rosa
23 Parks didn't negotiate for a little fairer
24 treatment of segregation. Thank god that
25 Frederick Douglass didn't negotiate for just a

1 better, more humane system of slavery and thank
2 god that Ms. Boynton, who I met last week on the
3 Edmund Pettus Bridge, is over 100 years old--was
4 the woman that was beaten. Her picture is an
5 iconic picture of being beaten on that bridge.
6 Thanks god those marches 49 years ago did not
7 simply ask for just what they could get.

8 Remember, finally, President Linden
9 Banes Johnson told Dr. King, he said, "We can't
10 do the Voting Rights Act." Dr. King picked up his
11 hat. He said, "Where are you going?" He said,
12 "I'm going out to create the condition to make
13 this possible."

14 You never negotiate before you fight
15 and anybody, democrat, republican, black, white
16 that is negotiating a fix that does not help the
17 people fight is participating in our future
18 demise and we must stand against it.

19 [APPLAUSE]

20 BARBARA ARNWINE: Let me just say one
21 thing for the record that's very important. I
22 just want to, because this is being videotaped
23 and it will be part of the official record, I
24 just want to remind and say that this is a non-
25 partisan hearing, that we are not--this hearing

1 is not meant not designed to influence any
2 pending legislation before Congress because we
3 can't do that as a 501(c)(3) org in this context.
4 So I just want to be very clear that we welcome
5 everyone's comments, but the official purpose of
6 this hearing is not designed to influence
7 specific pending legislation. Thank you.

8 REV. DR. WILLIAM BARBER: And I did
9 check with my lawyers before I came here to make
10 sure that my statement was democrat, republican,
11 black or white--

12 BARBARA ARNWINE: I heard that. It
13 doesn't matter.

14 REV. DR. WILLIAM BARBER: Right. And
15 that we could do that. Because we're on the same
16 page, but we're in a war down here in the south.

17 BARBARA ARNWINE: Penda.

18 PENDA D. HAIR: Thank you and thank you
19 to the Commission for the opportunity to present
20 testimony today on the impact of new voting rules
21 in North Carolina on people of color.

22 In the wake of the Supreme Court's
23 ruling last year gutting Section 4 and 5 of the
24 Voting Rights Act, there is no greater example of
25 the impact of new rules on voters of color than

1 here in North Carolina.

2 This state following the Supreme
3 Court's ruling removing it and others from
4 federal review of voting practices passed the
5 nation's most wide-sweeping voter suppression law
6 in 50 years and this law stands to turn back the
7 clock for voters of color. So, I'm happy to
8 submit my testimony here today and I will give
9 you written testimony for the record in my
10 capacity as co-director of Advancement Project, a
11 national civil rights organization that advances
12 universal opportunity and just democracy.

13 I have been a voting rights lawyer for
14 three decades litigating many cases under the
15 Voting Rights Act and the Constitution and I have
16 to say that during this time I have not seen such
17 widespread attempts to disenfranchise voters of
18 color as we have seen here in North Carolina in
19 this past year.

20 North Carolina is a stark example of
21 the continued need for the Voting Rights Act and
22 for why we need the system that was eliminated by
23 the United States Supreme Court under which
24 changes in voting practices had to be preapproved
25 by the United States Department of Justice in

1 states that had a history of voting
2 discrimination, including North Carolina which
3 had 40 counties that were covered by the Voting
4 Rights Act immediately prior to the Supreme
5 Court's decision in Shelby.

6 One month after the Shelby decision,
7 the North Carolina General Assembly moved to
8 enact sweeping new limitation on the franchise,
9 as was eloquently described by Reverend Barber. A
10 law known as the Voter Identification
11 Verification Act the Legislature not only for the
12 first time required voters in North Carolina to
13 show one of a very few forms of photo ID that are
14 difficult to obtain if you don't have the
15 documents that are required, but it also took
16 away a week of early voting including a day of
17 Sunday voting and it eliminated same-day
18 registration and it eliminated preregistration of
19 16 and 17 year olds and it enacted other sweeping
20 changes.

21 If you look at this bill, both its
22 individual provisions and collectively, what you
23 see and what our cases will show when we present
24 our evidence in court is that this law was
25 drafted with surgical precision to go after the

1 votes of people of color. So this panel on the
2 impact on people of color is just so important.

3 I'm just going to cite a couple of
4 statistics that show how carefully this was
5 drafted to really target and suppress the votes
6 of people of color. So just taking one of the
7 provisions, which is elimination of a week of
8 early voting and a day of Sunday voting and we
9 know that in the African-American community in
10 particular, and it's been mentioned here already
11 today, Sunday voting is a tradition called Souls
12 to the Polls. The early voting period in North
13 Carolina has been cut almost in half by this
14 bill.

15 Just let me give you one fact about
16 voting in North Carolina in 2012 to illustrate
17 the impact of this. 70 percent of all African-
18 Americans who voted in North Carolina in 2012
19 voted early--70 percent voted early and that's
20 what the Legislature goes after.

21 I can't go through all of the different
22 provisions and illustrate, but in each one of
23 them there is an adverse impact on African-
24 Americans or Latinos or both. So, as Reverend
25 Barber said, the North Carolina NAACP and several

1 individual plaintiffs, some of whom he named, and
2 also six churches filed a lawsuit in Federal
3 Court the day that the governor signed this bill.
4 My co-panelist here filed a lawsuit also on the
5 same-day on behalf of the League of Women Voters
6 and other plaintiffs and then a month or so later
7 on September 30th 2013 the United States
8 Department of Justice also found this law to be
9 discriminatory under the Voting Rights Act and it
10 filed a third lawsuit. Those lawsuits have been
11 consolidated and we are all working together and
12 we are going to prove that this law not only
13 violates the Voting Rights Act because of
14 disparate impact, but is intentionally
15 discriminatory.

16 I would just second what Reverend
17 Barber said, that the Voting Rights Act
18 amendments need to cover North Carolina and other
19 states that have a history that continues today
20 of discriminating against voters of color. Thank
21 you.

22 [APPLAUSE]

23 BARBARA ARNWINE: Thank you.

24 ALLISON RIGGS: Good afternoon. Thank
25 you for the opportunity to speak to the

1 commission and to everyone in the audience.

2 Again, my name is Allison Riggs and I'm
3 an attorney at the Southern Coalition for Social
4 Justice focusing on voting rights. For the last
5 five years I've spent a considerable amount of
6 time fighting these fights across the state.

7 During the legislative process last year, I was
8 present during most of the committee hearings,
9 the public hearings, the floor debates. What Ms.
10 Hair and Reverend Barber have mentioned is true
11 and in the record--that there was evidence of
12 disparate usage rates of almost all of the
13 provisions in House Bill 589.

14 So the Legislature knew that voters of
15 color were disproportionately using out of
16 precinct voting, disproportionately using early
17 voting, disproportionately using same-day
18 registration. That's undisputed and was in the
19 record.

20 Also in the record was the fact that in
21 other states we've seen that those disparate
22 usage rates translate into a real harm. So, if
23 you take away early voting in Florida we saw
24 voters of color feeling the hurt. It's a direct
25 connection. There were academic studies that we

1 introduced into the record in front of the
2 General Assembly.

3 But some of the provisions of the law
4 aren't necessarily as easy to document, but this
5 was still a discussion that we were having. So,
6 for example, in 2012 a group in Wake County
7 started recruiting poll observers to be present
8 in heavily minority precincts on Election Day and
9 inspired the Department of Justice to send some
10 folks down to watch Wake County in the November
11 2012 elections.

12 We found that list. We said hey, wait a
13 second. What's going on here in these precincts?
14 Oh wait, let's look at the population. So this is
15 something that's happening across the state
16 already and this was under the old observer laws.
17 So this is why we absolutely believe that there
18 may not be as clean cut data as with same-day
19 registration and early voting, but this is a hurt
20 that's going to be felt by people of color.

21 On a bigger scale I think that what the
22 Legislature failed to do, and why we need to be
23 talking about the Voting Rights Act applying in
24 North Carolina now, is recognize that the long
25 and sad history of voting discrimination--any

1 discrimination, but especially voting
2 discrimination in North Carolina has left scars.
3 The effects of that, the effects of
4 discrimination in voting, the effects of
5 discrimination in housing, education, employment-
6 -all of that now is still being felt by a huge
7 percentage of our population in the state and
8 each of those ramifications affects ability to
9 participate in the political process.

10 You can't condemn a man to poor job
11 conditions, poor employment opportunities such
12 that he doesn't have a vehicle or access to
13 public transportation and then make it harder for
14 him to get to the polling place. But that's
15 exactly what we're seeing. That's exactly what
16 we're demonstrating in this litigation--that the
17 operation of these new laws in the reality that
18 we feel here today in this state and how we've
19 treated voters of color in this state, the two
20 are related and that will lead to a very harmful
21 effect for voters if this law isn't kept from
22 being put in place in November of 2014 and if
23 federal preclearance isn't required again in
24 North Carolina.

25 There are numerous ways in which the

1 House Bill 589 is being implemented too in a way
2 that's going to affect voters of color in a
3 negative way. Governor McCrory promised that the
4 number of early voting hours that we would have
5 wouldn't change--that it would just be a
6 compressed election schedule and not fewer hours.
7 That's patently false. Over 40 percent of North
8 Carolina's counties already have gotten an
9 exemption from having to offer the same number of
10 hours--counties in which hundreds of thousands of
11 voters--well over a million and closer to two--
12 but hundreds of thousands of voters, hundreds of
13 thousands of black voters will face an election
14 setting in November in which they have less
15 opportunity to participate in the political
16 process.

17 So this is a bill that no one with a
18 straight face can say is not going to hurt voters
19 of color in this state and it's being implemented
20 in a deceptive and discriminatory fashion. We'll
21 continue to do what we can to fight it in court
22 and fight it on the ground too and organize folks
23 to turn out to register to vote and to make their
24 voices heard. Thank you.

25 BARBARA ARNWINE: Thank you, Allison.

1 [APPLAUSE]

2 CHRIS BROOK: Thank you so much for the
3 opportunity to speak on this panel. I greatly
4 appreciate it. It's a real privilege to speak
5 with these esteemed panelists. My name is Chris
6 Brook. I'm Legal Director at the ACLU of North
7 Carolina. They've covered a lot of the high
8 points so I just want to underline some of the
9 key points that they've made and tell a couple of
10 stories related to those because I think those
11 are exceptionally important to consider as we
12 weigh the impact that House Bill 589 is going to
13 have on the right to vote, particularly in
14 communities of color in North Carolina.

15 The statistics don't lie. 589 is going
16 to make it harder for every North Carolinian to
17 vote, but those burdens are going to be
18 disproportionately borne in communities of color.
19 As Reverend Barber referenced in his comments, 70
20 percent of African-Americans voted early in 2012
21 compared to only 51 percent of whites in our
22 state.

23 Same-day registration, African-
24 Americans, despite being only around 22 percent
25 of North Carolina's population, were 34 percent

1 of same-day registrants who were new into the
2 system. They were 45 percent of same-day
3 registrants who were changing their address via
4 same-day registration.

5 We see similar impacts in the photo ID
6 provisions that are in the Bill. As Reverend
7 Barber referenced, hundreds of thousands of North
8 Carolinians don't have matches between the ID
9 that they have and the voting data that is held
10 by the State Board of Elections. But 34 percent
11 of those non-matches are African-American
12 compared to, again, only 22 percent of North
13 Carolinians.

14 So, the numbers don't lie here. It's
15 very plain that the disproportionate impact is
16 going to be felt from these changes in
17 communities of color. But let me stay with the
18 photo ID example for a moment because proponents
19 of these voter suppression measures want to focus
20 all of the time on photo ID and want to say it's
21 no big challenge to get a photo ID. Anybody who
22 has been to the Division of Motor Vehicles, where
23 most of us will end up trying to get a photo ID,
24 knows that that's not necessarily the case. But
25 again, that is a burden that is going to be

1 disproportionately felt in African-American
2 communities in our state.

3 For example, the highest percentage of
4 African-American county in the state is Bertie
5 County down here in eastern North Carolina.
6 Bertie County is 61 percent African-American. Do
7 you know how many hours the DVM is open each
8 month? Six hours a month in Bertie County. Six
9 hours a month. It's open every second Tuesday of
10 the month from 9:30 to 3:30 p.m.

11 So, you're talking about asking people
12 to potentially drive 50 miles round trip from
13 Colerain in North Carolina to Windsor, North
14 Carolina, the county seat in Bertie County to be
15 able to get an ID and hopefully working class
16 folks have time during that six-hour window. We
17 all know that that's not necessarily the case.

18 The other thing that I want to focus on
19 is everyone has done a wonderful job of
20 documenting the real poisonous atmosphere that
21 this bill has established. One of the ways it has
22 done that is what Allison spoke about, by
23 authorizing sort of roving groups that can go
24 throughout a county and file a challenge anywhere
25 to any voter within that county whether they know

1 anything about that polling precinct. But that
2 poisonous atmosphere is not just within the four
3 corners of HB589. It also establishes a culture
4 where we do not respect the vote and we
5 especially do not respect the vote in communities
6 of color.

7 Since the governor signed House Bill
8 589 what have we seen? We've seen boards of
9 election attempt to stop an African-American
10 voter at Elizabeth City State University from
11 running to be on the city council in Elizabeth
12 City. We've seen county boards of election in
13 Watauga County and Forsyth County discuss or
14 actually move polling places away from university
15 communities making it harder for students to
16 vote.

17 Just last night in Buncombe County
18 Voter Integrity Project challenged over 180
19 voters on the voter rolls in Buncombe County. All
20 of those voters came from--there are 80 precincts
21 in Buncombe County. All of those challenges were
22 to voters living in 11 precincts in the city
23 center of Asheville, which is the only place in
24 Buncombe County that has a sizable African-
25 American population.

1 So, there are damages that are within
2 the bill and we need to talk about those, but we
3 also need to talk about the environment that
4 House Bill 589 has established in our State.

5 BARBARA ARNWINE: Excellent. Very, very
6 impressive. Thank you.

7 [APPLAUSE]

8 BARBARA ARNWINE: At this moment I turn
9 to the panel for questions. Yes, David, kick us
10 off.

11 DAVID HARRIS: Thank you everyone. It's
12 good to see all of you again. Particularly Penda,
13 I haven't seen you in a couple of years actually
14 I guess.

15 Each of your organizations have, not
16 just in North Carolina but in other states, filed
17 Section 2 actions. Now, the practical impact of
18 the Shelby decision is to eliminate the
19 preclearance process, as you know, under Section
20 5 and force the only remedy as an action under
21 Section 2 and the Constitution. This is a little
22 bit of background. But, for the record, and this
23 is to all of you, either one of you can answer or
24 a combination, please explain for the record as
25 well as to the audience two things. One, the

1 difference in the burden of proof with respect to
2 Section 5 compared to Section 2. Secondly, and
3 this is probably the most important, the cost,
4 the financial cost related to litigating a
5 Section 2 action.

6 REV. DR. WILLIAM BARBER: Thanks David.
7 Let me take a stab as the non-lawyer and then all
8 the other lawyers can engage in the technical.

9 When I think about what the Shelby
10 decision has done in moral terms, it forces those
11 who are abused and violated in terms of this
12 franchise of voting in this democracy to then
13 bear the burden of challenging the violator while
14 the violator's violations go into effect and then
15 if you are successful on the backend of proving
16 that the violator violated your rights you cannot
17 go back and undo the power that the violator
18 gained during that period of time or the
19 policies. So, in essence, you can catch them in
20 discrimination later and have to live with the
21 impact of it.

22 Where there is preclearance, because
23 the courts and the law in this country recognize
24 that voting rights is like a fresh sunshine rise-
25 -you can't get the same one again. You never can

1 get a vote lost again. So, Section 5 said you
2 have to be precleared. We have to check this out
3 on the front end. We have to examine the
4 rationale, the reason and the reality that will
5 exist if this is placed into law.

6 If we lose that down here in the south
7 and North Carolina is the canary in the mine, we
8 see, we don't have to guess what people will do
9 without Section 5 preclearance. We see what
10 people will do because immediately upon the
11 Shelby decision the statement was made by the
12 leader of this voter suppression bill, "Now that
13 the headache" and I want that to go on the record
14 and I'll stop here. Talking about the atmosphere,
15 my friend, and the insensitivity, to describe the
16 Voting Rights Act and Section 4 and 5 as a
17 headache is to say Medgar Evers being shot
18 through the back in front of his wife was a
19 headache. People being beat going across the
20 bridge for something that had already been
21 promised to them 100 years early in 1870 was a
22 headache. Dr. King being shot through the throat
23 was a headache.

24 The leadership of our State Legislature
25 says, "Now that the headache has been removed

1 let's show people what we will do." So, North
2 Carolina is the test, it's the modern day Shelby.
3 If they get away with it here it becomes the
4 example of what will happen around the country.
5 And we see right now what will happen if anything
6 is decided that does not insure that these
7 changes have to be examined on the front end, on
8 the front end and the cost would be incredible
9 because right now if we didn't have friends and
10 the ability to litigate we couldn't litigate now-
11 -it's just too overwhelming.

12 And so it is in fact to rig the game
13 and it is to reverse lastly the real purpose of
14 the Constitution which is to protect the minority
15 from the tyranny of a majority. Without
16 preclearance we reverse that logic and we protect
17 the majority from the criticism and the challenge
18 of the minority which would be a reversal of
19 jurisprudence at the very time that we don't need
20 it in history.

21 PENNA D. HAIR: That was a fantastic
22 explanation of the impact of Shelby. I'll just
23 address a couple of more technical issues about
24 your question. You asked what the difference is
25 in the standard of proof under Section 5 of the

1 Voting Rights Act, which is the preclearance
2 system, and Section two, which is the primary
3 part of the Voting Rights Act that we as private
4 plaintiffs rely on when we have to affirmatively
5 prove voting discrimination.

6 In both of those intentional
7 discrimination is illegal, but the standard is
8 different in other respects. Under Section 5, if
9 the practice or policy makes things worse for a
10 protected group, which includes African-Americans
11 and Latinos and other minorities, if it makes it
12 worse, then it is retrogressive--that's the
13 technical term--and it will be barred, it will
14 not be precleared. So, that is a pretty clear
15 standard. All you have to do is look. Are voters
16 of color going to better or worse under this
17 change?

18 Under Section 2 it is a "totality of
19 circumstances test" where the ultimate question
20 is, is the protected group of voters of color--
21 have a discriminatory result in terms of access
22 to be able to vote for and elect candidates of
23 choice. So, a totality of the circumstances test
24 is very labor-intensive to prove.

25 You asked about the cost. I just want

1 to talk a little bit about the three cases that
2 we lawyers here, all four of our organizations,
3 are working on. I haven't counted them, but in
4 terms of number of lawyers, I think it's
5 somewhere between 30 and 40 and that may be
6 undercounting. We are all working around the
7 clock and we've divided up the work and we're
8 efficient. It takes that many lawyers because
9 there are so many issues. There are so many
10 documents to go through and so many witnesses to
11 find and prepare. So, it is a big undertaking
12 that is very, very expensive.

13 I would say it costs hundreds of
14 thousands of dollars to do a big case like this.
15 We haven't added it up yet in this case, but from
16 other cases I know in Wisconsin and Pennsylvania,
17 hundreds of thousands of dollars and those were
18 just one issue. The other cost that is always an
19 impact is you have to have expert witnesses to
20 prove this totality of circumstances. In this
21 case, the Advancement Project and the NAACP case
22 along, are looking at something like four expert
23 witnesses and expert witnesses typically don't do
24 this without being paid by the hour so it is as
25 very expensive undertaking.

1 The last thing I would say is high
2 profile cases like this you can raise funds for,
3 you can maybe get law firms to do pro bono work,
4 but when you're talking about Asheville and
5 Elizabeth City and things popping out here and
6 things popping out here and over there and trying
7 to keep track of that and then send a lawyer to
8 every one of those places and that's where
9 there's less funding and less support to do that
10 work, that is one of the real harms that come
11 from removing the preclearance system because all
12 those little things that are popping out, first,
13 the jurisdictions would have known and they
14 wouldn't do those things. But if they did, DOJ
15 would be on it. They couldn't do it without
16 getting it precleared.

17 So, it's not just the big, high-profile
18 cases, it's every election board in every state
19 now has to be monitored by us and by groups like
20 us.

21 ALLISON RIGGS: I won't be repetitive,
22 Mr. Harris, but I wanted to unpack one piece of
23 the cost difference and that's the cost of time.
24 As Reverend Barber has mentioned, you can't undo
25 a discriminatory election. But when the burden of

1 proof is on plaintiffs and we are the ones who
2 have to gather the evidence to prove our case and
3 defendants are the ones, the state is the one
4 holding the evidence, they will and have engaged
5 us in a war of attrition. They will at every turn
6 fight disclosure of information that we are
7 legally entitled to. They will fight every
8 motion. They will engage every resource and they
9 have unlimited resources. Aside from the
10 Department of Justice lawsuit, every plaintiff is
11 a grassroots organization or an individual
12 activist, each of which is doing this because
13 this is what they believe in and what their work
14 is about. They don't have deep pocketbooks.

15 That cost of time makes a huge
16 difference about why Section 2 isn't sufficient.

17 BARBARA ARNWINE: Thank you.

18 CONGRESSWOMAN EVA M. CLAYTON: Cost of
19 time also is borne out by the citizens too. Cost
20 of time for you as well as not able to go back
21 and correct what has been done. Is there any
22 appreciation--I almost know the answer to this,
23 but I'm asking it--any appreciation of resolution
24 in time wise of this? As we look at the impact of
25 this bill, we have an election coming up, right?

1 And then part of the bill is that it goes into
2 effect 2016, at least the ID part. But much of
3 the damage or the impact that you have projected
4 will indeed occur. So you almost find yourself
5 proving the case by denying the people, I mean
6 those of us who are out there.

7 So, is there any interim part? The
8 lawsuit will be the final resolution, we know
9 that. But is there any way that we can mitigate
10 the full impact, the intentions of this program?
11 I guess that's the education program, the
12 advocacy program. It seems like knowing what we
13 know now there has to be another strategy in
14 addition to the legal case. If we're not going to
15 prove we're dying in order to say we didn't get
16 the right medicine. We've got to find an
17 alternate until we get the real cure. I don't
18 know if I'm making myself clear.

19 REV. DR. WILLIAM BARBER: Congresswoman
20 Clayton, one of the things that--that's an
21 interesting question because again it places you
22 in a quandary which is the point of this stuff.
23 On the one hand you are arguing, for instance,
24 that voter ID is illegal. If you position
25 yourself then to go out and push it, in one sense

1 of another you actually become complicit in the
2 very thing you're fighting.

3 So, what we're chosen to do, because
4 that part doesn't go into existence until two
5 years later, is to put all of our efforts in the
6 NAACP and number one, getting an injunction this
7 year. That's why we're in the federal courts.
8 That's why we were so moved yesterday when the
9 courts said to the Legislature you don't have
10 immunity. You don't have the right to go in and
11 hide why you did what you did in something that
12 the Congress has the ability to examine and said
13 must be open to examination.

14 We feel good about that. We feel great
15 about the possibility of this injunction because
16 there are so many Constitutional questions at
17 stake here. We believe the courts will ultimately
18 say we at least have to hear it before we allow
19 these things to go into effect. But that's always
20 a risk.

21 There's another piece that comes in.
22 See, talking about atmosphere, at the polls they
23 can begin to ask you whether or not you have
24 voter ID. Last year Governor McCrory asked all of
25 the people voting for him to present their ID. I

1 was in line and watched his supporters do that
2 and other people say, "Well I can't vote" and I
3 had to stop them.

4 BARBARA ARNWINE: That was the purpose.
5 That was the design.

6 REV. DR. WILLIAM BARBER: That was the
7 design. There's one other cost factor that we've
8 not talked about and we're looking at it. Kick
9 me, Allison. But, you know, we've not had a
10 conversation in this country around the 24th
11 Amendment. The fact of the matter that when you
12 force voters to have to use extra gas and time
13 and time off of work and if they don't have a
14 license in-state to buy a license, are you in
15 fact creating a poll tax?

16 Many of us in the advocacy world are
17 talking and saying to lawyers that needs to be
18 examined because a poll tax is still illegal
19 under any guise. It's a cost and it's illegal.

20 Then finally, it was interesting on the
21 floor, and Allison was there, when Mickey Michaux
22 said the Article 6 of our Constitution gives
23 clear description as to who can vote and it says
24 nothing about the things that this legislation
25 has tried to attach on to qualification. So, in

1 essence, we believe this law is not only a
2 violation of federal law, but it is a violation
3 of our very own State Constitution.

4 And remember for the record, when he
5 was giving the history, you can pull the
6 transcript, a legislator said, "Point of order",
7 and Barbara you'd love this one, she said,
8 "History that Mr. Michaux" and this is not
9 verbatim, "is bringing to the floor is not
10 germane to this discussion about voting" and
11 Mickey said, "I'm bringing up the history of our
12 Constitution" and the speaker said, "You're out
13 of order. I support the point of order" and he
14 had to sit down. He was literally sat down as he
15 was trying to tell the Legislature about the very
16 Constitution that they have sworn to uphold.

17 So we're in a quandary in some ways.
18 Our angle has been to fight it legally since the
19 other part doesn't go into two and to do a lot of
20 educating that somebody can ask you this year for
21 your ID, but you don't have to give it and you
22 can still vote. Because otherwise it looks as
23 though you're actually succumbing and saying that
24 it's all right when you go out to get something
25 that you're litigating to say it's not all right.

1 So, it's really a trick which is,
2 again, we wouldn't be doing this, we wouldn't
3 have to do this. We wouldn't have to go through
4 this kind of, what do they call it when you twist
5 yourself all up, contortions--social contortions
6 if preclearance was in place.

7 CHRIS BROOK: Just to add just a little
8 bit to that and tie Congresswoman Clayton's
9 question back to the previous question from Mr.
10 Harris and I think the sort of theme of the
11 burden being pushed onto voters in an
12 unbelievable fashion across the board, both in
13 this litigation, but on the ground throughout
14 North Carolina is something that we should
15 appreciate.

16 Shelby County moves the legal burden to
17 us and now that we've filed these lawsuits we
18 apparently are going to have the burden to fight
19 every day to get any documents from our elected
20 officials about what motivated them to make these
21 Draconian changes to our laws.

22 But also, who has run into any voter
23 education that the State of North Carolina is
24 doing to prepare people in 2014 for the changes
25 that are coming? You run into people--I don't see

1 any.

2 BARBARA ARNWINE: I don't see it either.

3 CHRIS BROOK: So you run into people on
4 a daily basis who have no clue that they can not
5 register same-day anymore, no clue that a week of
6 early voting has just been wiped off the books.
7 So again, the state is shirking what really
8 should be its burden and moving it over to the
9 Plaintiff groups, groups like our groups, to do
10 voter education so people know about what is in
11 589 and how the voting experience is going to be
12 very, very different in 2014 and then even
13 increasingly different in 2016 should these
14 measures remain in place.

15 PENDA D. HAIR: I want to follow up on
16 that. A letter writer to the editor of the N&O
17 last week, or maybe it was this week, said well,
18 if you want to vote the Legislature out, all you
19 do is vote straight democratic ticket--and of
20 course that's not true. There's no straight party
21 voting. I did write a letter correcting that to
22 the editor. I was glad they did put that in.

23 But that really speaks to the ignorance
24 people have of the profound changes and how we're
25 going to get it to people I don't know because it

1 is a matter of profound significance with a lack
2 of ability to get to the voters so that they
3 understand all these things. Like you will be
4 asked in '14 if you have a photo ID, but you do
5 not need one and, as you say, the person at the
6 end of the line might hear photo ID and turn
7 around and go.

8 So, how we get this information to the
9 voters is, I think, absolutely crucial at this
10 point.

11 REV. DR. WILLIAM BARBER: Madam Chair.

12 BARBARA ARNWINE: Yes.

13 REV. DR. WILLIAM BARBER: I wanted just
14 to mention because, again, cost. You know, the
15 NAACP are all volunteers. We're loosing our
16 volunteers in the street. But again, as Penda and
17 Allison have, we don't have the deep pockets of
18 say an Art Pope that can put \$50 million into
19 elections over 10 years. \$50 million, one person,
20 and who was in the room when the redistricting
21 maps were drawn and then turned around and funded
22 20 of the very districts that he was sitting in
23 the room drawing. We don't have that kind of
24 money.

25 Radio costs. We are hiring 50

1 organizers for Freedom Summer, young people. But
2 even that is limited. We're doing those things
3 all because, again, this is allowed to pass
4 without preclearance. So we're at max, over max,
5 and working. I think that's important for the
6 record that many of the groups that fight these
7 things, the people on the ground are volunteers.
8 As a State Conference president I'm a volunteer.
9 All of our State Conference presidents are
10 volunteers. So we put 30 hours or 40 hours a
11 week, that's in addition to the jobs that sustain
12 us, trying to protect a franchise that we thought
13 was protected and was signed in blood.

14 When we think about this finally, 22
15 percent of African-Americans are active voters,
16 but we represent 31 percent of the registered
17 voters who do not have a government issued photo
18 ID in the State of North Carolina.

19 The last thing I want to mention for
20 the day is that Chris brought up something when
21 you all talked about cost. As a preacher I
22 measure cost not only in terms of money, but in
23 terms of the soul of the state. When I was making
24 this testimony before the Legislature, and mind
25 you they tried to stop me twice during the

1 hearing for talking about history. I just kept
2 talking. You all don't know nothing about that,
3 you know, because you can't do anything but
4 arrest me and you get kind of used to that.

5 [LAUGHTER]

6 REV. DR. WILLIAM BARBER: But at the end
7 of it I said this, Barbara, finally let me say--I
8 wanted to talk about the cost of what they're
9 doing to the state and people in the state. They
10 finally let me say that the misinformation you
11 are feeding the public by leading our state down
12 this path is dangerous, literally dangerous. The
13 constant false assertions by legislatures and
14 others that elections have been filled with fraud
15 creates and feeds a crazy conspiracy theory.

16 And then, and I want to introduce this
17 in the record, I read to them the blog. Because
18 the real cost to the soul of the state is not the
19 headlines in the news--it's the blogs. It's when
20 you read underneath an article that says the
21 NAACP sued. Here is an example of what this
22 craziness is feeding. One comment in the blog
23 after we challenged this voter suppression.

24 "This man and his terrorist group, the
25 NAACP is why we need voter ID. We need laws to

1 keep people like Barber and his people from
2 letting people vote who are not registered or
3 legal residents." The next one. "If the NAACP had
4 its way all felons could vote and all you need is
5 just your name and sign on the line as long as
6 you vote for their guy."

7 Next line. "This is how we got in the
8 mess with Obama." This is in actual print. Next
9 one. "Use your logic. How dumb does one have to
10 be to vote?" Next one. "Why don't you get a real
11 job and stop spewing your vile and hatred among
12 simple-minded people? It's self-appointed groups
13 like the NAACP that are the major contributors to
14 civil and moral breakdown in our black
15 communities. Go Legislature, go."

16 Last one. "Hard word, what dumb shits
17 you all are. No one said voting is just for
18 blacks. The NAACP is the most racist, terrorist
19 organization that ever existed and somebody ought
20 to do something."

21 There is a cost deeper than money when
22 you feed this kind of crazy conspiracy theory and
23 when things are not proven on the front end as
24 being wrong because it lends people thinking that
25 it's okay. It feeds this kind of craziness and it

1 can get people hurt.

2 CHRIS BROOK: One other point I wanted
3 to make, Senator Kinnaird, about the lack of
4 knowledge around the bill. That started and can
5 be traced back directly to the very atypical
6 legislative debate that occurred in our House and
7 in our State Senate.

8 The bill that was completely
9 unnecessary, but a much different version of
10 photo Id only, that passed the House was
11 considered for four weeks in April of 2013. The
12 Senate and House passed what was then a 57-page
13 bill from introduction to passage was less than
14 48 hours. How can you have a real debate about
15 its provisions? How can you educate North
16 Carolinians about what's in the fine print when
17 you're doing it under the cover of darkness?

18 REV. DR. WILLIAM BARBER: That's right.

19 BARBARA ARNWINE: Yes?

20 MAN 2: Two questions. One real quickly,
21 whose court is it in right now, the lawsuit?
22 Whose court is it in?

23 CHRIS BROOK: The Middle District
24 Federal Court in Winston-Salem.

25 ALLISON RIGGS: And there's a State

1 Court action on the voter ID provision in state
2 court.

3 MAN 2: Has a judge been assigned for
4 the first?

5 ALLISON RIGGS: Yes, it's Judge Thomas
6 Schroeder in Winston-Salem, federal judge and
7 Judge Michael Morgan in Wake County.

8 MAN 2: Judge Morgan. Okay, thank you.
9 The second, Reverend Barber, in your travels
10 around the state, and maybe even around the
11 country--let me preface this by saying this. It
12 is not uncommon for me in the role I'm in now to
13 come across fairly prominent folks in our
14 business community who are really concerned about
15 this tide. They see it as really damaging the
16 state in terms of its image around the country if
17 not around the world, particularly with respect
18 to economic development, attracting business and
19 so forth and so on. I hear that fairly regularly.

20 My question is do you hear that,
21 Reverend Barber, and are these people even
22 contemplating anteing up and getting involved? Do
23 you hear any of that?

24 REV. DR. WILLIAM BARBER: Indeed. What
25 we see happening, what you see, for instance,

1 with our Fusion Movement, and by the way, people
2 talk about the Moral Monday Movement as just this
3 year. The Forward Together Movement has been in
4 existence seven years. We started in 2006. Mr.
5 Gatewood is out there in the audience, one of the
6 key organizers. And because we organized and came
7 together in 2007, we were the ones that pushed
8 through same-day registration and early bird.
9 Remember [SENATOR GANNARD?]? It had been stuck.
10 We were operating in silos, but when we all got
11 together, from Southern to ACLU to democracy, we
12 were able to push through--not to talk politics,
13 but to talk history, some say President Obama won
14 North Carolina in 2008. No he didn't. He lost on
15 Election Day. He won during the same-day
16 registration, early voting period because of the
17 new--He actually lost on Election Day. He won
18 because of the advocacy of blacks and whites and
19 republicans and democrats and others who want to
20 see a more progressive North Carolina.

21 Now, what we're seeing now, when
22 100,000 people showed up February the 8th and the
23 thousands of people, nearly 1,000 have gone to
24 jail because of all of this avalanche of
25 regressive laws from denying Medicaid, denying

1 unemployment, denying earned income tax credit,
2 cutting public education and then after they did
3 all of that, trying to deny the right to vote.
4 Those people have been black, white, Asian,
5 Latino, republicans, democrats, millionaire
6 businessmen, unemployed workers, doctors,
7 uninsured people, lawyers, gay, straight--it's
8 not partisan.

9 One of the group, I think Civitas, did
10 a study of the Moral Monday people to try to
11 scare us off, because they wanted to prove that
12 we were just democrats, and found that 11 to 16
13 percent of the people were republicans and
14 independents. Because there is, even some of the
15 polling, that people are deeply bothered by any
16 politician of any party getting an office, voting
17 in a way and then using their power to try to
18 undermine people's only place to examine them and
19 give them a report card and that is at the polls.

20 Last two stories. We were in Airedale
21 County this past Monday. Now Airedale County is
22 no bastion of liberalism. All four legislators
23 made a zero on our report card. All of them
24 supported this voter suppression. The governor
25 was there. But in the middle of a cold night

1 hundreds of people showed up.

2 I was speaking and a miracle occurred.
3 An old 81 year old white lady--

4 WOMAN 1: 84.

5 REV. DR. WILLIAM BARBER: 84 year old
6 white lady interrupted the sermon and took it
7 over. And this was the point she interrupted. I
8 was talking about republicans who had supported
9 the Voting Rights Act and progressive legislation
10 down through the years and how it was not about
11 party, it was about democracy. I was speaking and
12 I hadn't had this to happen to me recently. She
13 said, "Excuse me, Reverend Barber, let me say
14 something." I said, "Amen." She said, "My family
15 is nine generations deep in North Carolina. My
16 great-great granddaddy was a republican
17 legislator and a judge and he stood at the
18 polling places to make sure Jim Crow people
19 didn't stop black people to vote. And I'm sick
20 and tired of seeing folk that have hijacked my
21 granddaddy's party." That's what she said.

22 She said, "I went to jail because I'm
23 well off enough to do it and I'm retired and
24 there's a whole lot of us out here that are
25 seeing these policies as Constitutionally

1 inconsistent, morally indefensible and
2 economically insane."

3 The answer to your question is yes,
4 yes there are many people who are disgusted when
5 any group of politicians use their power to
6 undermine the fundamental right of voting. There
7 are some who believe the most important amendment
8 to the Constitution is the Second--guns. But
9 there is a whole other group that believes there
10 some amendments more important than that--freedom
11 of speech, equal protection under the law and the
12 15th Amendment that protects the right to vote.

13 BARBARA ARNWINE: Before we finish this
14 panel I just have one question. I believe,
15 Reverend Barber, it was in your testimony that
16 you mentioned the impact on women of color. I
17 wanted to just hear more about how this
18 legislation impacts on women of color and also
19 any other unique barriers in election
20 administration, election operations, racial
21 discrimination in voting that impacts on women of
22 color.

23 REV. DR. WILLIAM BARBER: Well Barbara,
24 it's interesting you raise that. Last night I was
25 speaking at the Planned Parenthood gala in

1 Washington DC and I said to them there's no way
2 in the world you can be concerned about women's
3 rights, feminism and the protection of women and
4 not be concerned about the Voting Rights Act
5 formula Section 4 protecting the southern states
6 and what's happening because at every instance
7 women receive a double whammy and black women
8 receive a triple whammy.

9 You see, first of all this voter
10 suppression law has a disparity impact on race,
11 so black women get hit there. Then secondly, it
12 has a disparity impact on the poor, so poor black
13 women get hit there. Then thirdly, it has a
14 negative impact because 67 percent of the people
15 without voter ID that they're currently calling
16 for are women, so women get hit there. Then god
17 forbid a woman gets married and the guy she
18 marries doesn't want to love who she is and she
19 has to let him go and she shows up at the poll
20 with the ID but the ID has another name on it,
21 she gets hit there. And lord knows hopefully the
22 sister doesn't show up and she's changed her 'do.

23 I'm being real. That's practical stuff.
24 You know, doesn't have the same hair that she had
25 on the license when she took it. Then whoever is

1 examining that ID, since it's photo, can call it
2 into question. So women, in a very practical and
3 I'll let them get on the legal, get hit in
4 essence over and over and over and over again.

5 BARBARA ARNWINE: We haven't had a lot
6 of testimony today about language and barriers
7 that Latino voters and other voters for which
8 English is not their first language, we haven't
9 talked about Section 203 related issues. I would
10 like to just impose upon this panel a little to
11 give us some of those perspectives because that's
12 something we're very much documenting in these
13 series of hearings.

14 ALLISON RIGGS: The question in North
15 Carolina is what is the population going to look
16 like in 2020?

17 BARBARA ARNWINE: Right.

18 ALLISON RIGGS: The Latino population in
19 the state right now is fairly low compared to a
20 lot of other states. That doesn't mean that
21 Latino voters in this state aren't going to feel
22 the hurt of this bill just as much as black
23 voters. But in 2020 we expect the Hispanic
24 population in North Carolina to have exploded and
25 we'll start seeing the ability to draw Hispanic

1 districts in different counties and possibly even
2 on the state level.

3 So, this is the Legislature acting--I
4 mean, very similar to what the Legislature has
5 done in Texas, but seeing an exploding population
6 to which they don't want to be accountable and
7 then acting to injure those. If you look at the
8 poverty statistics in North Carolina, Hispanic
9 residents have it about as bad as you can
10 imagine. Native American residents of the state
11 also huge, huge disparities, socio-economic
12 status, access to vehicles, in education
13 attainment, healthcare outcomes. Across the board
14 there are statistically significant, and to the
15 non-statistician, to the layman's eyeballs, huge
16 disparities between the conditions facing white
17 residents and the conditions facing residents of
18 color.

19 So, absolutely there are going to be
20 huge negative impacts on Latino and Native
21 American groups in this state.

22 BARBARA ARNWINE: Okay. Thank you. All
23 right, any other questions from the panel? At
24 this point we've been doing better on time, but
25 it is time for us to open up the mics again for

1 public testimony. While we are waiting for people
2 to come to the mics will you join me in thanking
3 this outstanding panel?

4 [APPLAUSE]

5 BARBARA ARNWINE: Keep fighting. Keep
6 fighting. Keep litigating. Keep doing what you're
7 doing. Thank you. Thank you. We need you. We need
8 you. Thank you. Yes?

9 HERNANDO RAMIREZ SANTOS: Good
10 afternoon.

11 BARBARA ARNWINE: Just one minute. I
12 also want to invite the next panelists to please
13 come up and take your places. Thank you so much.
14 Thank you.

15 HERNANDO RAMIREZ SANTOS: My name is
16 Hernando Ramirez Santos. I am an editor of Que
17 Pasa newspaper here in North Carolina. Just a
18 question.

19 BARBARA ARNWINE: Thank you.

20 HERNANDO RAMIREZ SANTOS: There are
21 119,000 Latino voters registered in North
22 Carolina right now.

23 BARBARA ARNWINE: Say that number again.

24 HERNANDO RAMIREZ SANTOS: 119,000.

25 BARBARA ARNWINE: Okay.

1 HERNANDO RAMIREZ SANTOS: Latino voters
2 registered right now in North Carolina. We have a
3 population of 800,000 Hispanics living in North
4 Carolina. We have a big population, young
5 population between 16 years old to 18 years old
6 that are U.S. citizens. They are right now in the
7 problem that they cannot register to vote.
8 Starting in 2016 they will not have the chance to
9 register for voting.

10 Also, higher up in these problems is
11 the language barrier that is big for the Latino
12 voters. For the Latino community the language
13 barrier is great. It's terrible. What we need is
14 more education. What we need is more information
15 for the Latinos in the community because actually
16 what I hear is what is happening more in the
17 African-American community, but I think that we
18 need to hear more in the panels about what is
19 happening with the Latino community and the
20 Latino voters that really are very forgotten.
21 They don't have many choices and there is an
22 important issue of lack of information that they
23 have.

24 It's important to have more information
25 for the Latinos in these kinds of panels.

1 BARBARA ARNWINE: I am so glad that
2 you've stood up and testified. I wish we had
3 included more of this testimony in the panels
4 because it's so, so critical. If you have an
5 opportunity to submit in writing some more to us
6 we really would be appreciative because in every
7 state where we've been doing the hearings we're
8 hearing a lot about Section 203 barriers and
9 people refusing to provide language assistance,
10 people's intimidation of Latino voters, not to
11 mention Native American voters and Asian voters.

12 We really would love to hear more.

13 HERNANDO RAMIREZ SANTOS: And we'd love
14 to send something.

15 BARBARA ARNWINE: Thank you very much.

16 HERNANDO RAMIREZ SANTOS: Thank you.

17 BARBARA ARNWINE: Thank you. It's very
18 much appreciated. Yes?

19 MELANIE GOFF BRADLEY: [OFF MIC AND
20 UNINTEL]. So, I'm married and when I introduce
21 myself, as I just said, I'm Melanie Goff Bradley.
22 I had my name changed when I got married at the
23 driver's license bureau and they offered to take
24 care of my other name change with the Board of
25 Elections because we have Motor Voter here in

1 North Carolina and so I figured that was well
2 taken care of. My social security card says
3 Melanie Joy Goff Bradley. My driver's license
4 says Melanie Joy Goff Bradley.

5 In 2012 when I stood in line and said
6 my name is spelled G-O-F-F space B-R-A-D-L-E-Y
7 they said, "No it isn't." And they had me in the
8 Bs and I said, "Well, that's wrong. We have one
9 stop registration. Will you please fix it? And
10 they said, "Whoops, we've printed your ballot.
11 Let's go ahead and let you go down to the Board
12 of Elections and change your registration some
13 other time."

14 I eventually did go to the Board of
15 Elections and offered them the explanation that
16 my registration was wrong and it did take me
17 quite a while to convince them that they could
18 type my name incorrectly.

19 I thought this had been taken care of
20 15 year ago, and I'm not the only woman whose
21 name is entered incorrectly. I'm not the only
22 woman whose driver's license might not match. I'm
23 worried about the fact that small, in my opinion,
24 mistakes of other people will impact my ability
25 to vote. I've taken a lot of time to make sure

1 that all my records are together, but I'm blessed
2 and there are a lot of people who are not quite
3 as blessed as I am who are going to experience
4 some difficulties taking the time and the money
5 to get this done.

6 I know people who have responded to my
7 question, "Oh yes, my ID and my registration
8 match perfectly." But they appear on lists drawn
9 up from voter registration van computer programs
10 by Democracy North Carolina for example and they
11 appear on lists that they do not have a North
12 Carolina driver's license matching the name that
13 they're registered under. That is a fact.

14 The fact that a free ID can be
15 available to these people is of no use if they
16 don't realize they need one. I didn't realize
17 until that one day when somebody said my name was
18 registered incorrectly. It's going to be of no
19 use to them when they show up to vote and they're
20 not allowed to vote and a free ID is not going to
21 be free if they don't have the proper
22 identification papers, birth certificate which
23 may not be available to them, especially the
24 elderly and especially people who have come to
25 North Carolina from other states to retire who

1 may not have all of the original documents that
2 are going to be required.

3 I also feel that one of the changes in
4 this voting law, that Reverend Barber calls the
5 voter suppression law, is taking away some of the
6 power of the vote and adding it to the power of
7 the dollar because the individual contribution is
8 raised in North Carolina from \$4,000 to \$5,000.
9 It was hard enough for me to come up here and say
10 well I don't even have \$4,000 much less \$5,000,
11 either one. But there will be more people who
12 will not be able to participate at that level and
13 that's on top of other things that have occurred
14 with the power of the dollar in funding the
15 campaigns. So that's just one other section of
16 the Voting Rights law that I'd like to address.
17 Thank you.

18 BARBARA ARNWINE: Thank you for sharing
19 your personal story and thank you for being so
20 persistent in your right to vote. That was very
21 much appreciated.

22 [APPLAUSE]

23 BARBARA ARNWINE: And thank you. Yes
24 ma'am.

25 OPHELIA GOULD-FAISON: Good afternoon to

1 the commission and the panelists and those who
2 are here.

3 BARBARA ARNWINE: Your mic is low. Let's
4 see if we can get it up or speak directly into
5 it.

6 OPHELIA GOULD-FAISON: My name is
7 Ophelia Gould-Faison. I'm a resident of Halifax
8 County. At this time I am actively--I don't have
9 statistics because I'm actively working in my
10 community with a group of volunteers. We are
11 going throughout our county. Voter education and
12 voter registration is our purpose. That's not an
13 easy task. We've tried to get directions from the
14 Board of Elections. I think because the law is so
15 new and broad it really can be deciphered into
16 the eye of the beholder.

17 For example, if you're baking a cake,
18 you know, your milk, butter, water, whatever--
19 someone may say, "Well, don't use butter. Use
20 oil." So, I mean, it's in the eye of the beholder
21 as to interpretation of the law. Even for myself
22 to understand or for my team members to get a
23 clear understanding of what the law states is not
24 an easy task at all.

25 For an example, in 2010 I took a young

1 man, he was able to go and vote himself. In 2012
2 he was diagnosed with throat cancer. We were
3 busing or taking people to the polls. However, in
4 2012 I took him separately and he could talk a
5 little bit. Since then he has a trach and he
6 can't talk. He's in a facility now. He did tell
7 me that he wanted me to help with his acquiring
8 whatever he needed to vote in this election.

9 I have the statement from the North
10 Carolina Board of Elections which states, and
11 I've heard it before today, is that, "This
12 information will be used to confirm your voter
13 registration. In addition, this form must be
14 signed by the voter or the voter's near relative
15 or qualified legal guardian." I think we
16 addressed that earlier. Some of them don't have--
17 I'm not his girlfriend, but a childhood friend.
18 We all grew up together. So, I don't qualify for
19 that. But he did call yesterday and requested an
20 absentee ballot. But he had the trach in and that
21 person on the other end would not have been able
22 to understand what he was saying.

23 The same thing with his hands. He can
24 write. Also the photo ID, we live in a rural area
25 and the young lady was talking about the cost.

1 First of all, a lot of our residents don't have
2 cars. We don't have public transportation. We
3 don't have taxi cabs. For them to get to the DMV-
4 -I live in Littleton specifically and in our
5 county it's about 25 to 30 miles. They would have
6 to get someone to take them there and if they
7 don't have what they need then they have to go to
8 Halifax to get the birth certificate. It's free
9 to get the documents maybe, but for them to
10 travel is not going to be free.

11 BARBARA ARNWINE: That's a good point.

12 OPHELIA GOULD-FAISON: About the photo
13 ID, we're not concentrating on the photo ID
14 because we know that's 2016. However, we are
15 trying to educate our voters about not getting
16 discouraged if they hear the request from a poll
17 worker do you have a photo ID. I think that can
18 be discouraging if someone in line just would
19 hear that. They said it's to find out if they
20 don't have one they can help them to get one. I
21 doubt if that's true.

22 But at this time it is difficult to get
23 the information out, the correct information out.
24 The 16 and 17 year olds, they struck it out about
25 the 16 and 17 year olds however, 17 year olds can

1 register to vote if they are going to be 18 by
2 the time of the general election in November and
3 they can vote. But that is not anything that is
4 broadly known.

5 BARBARA ARNWINE: There's confusion.

6 OPHELIA GOULD-FAISON: Yes, there is
7 confusion in that. So again, thank you all. Thank
8 you for your time and any assistance that local
9 communities can be given. Thank you.

10 BARBARA ARNWINE: We're grateful for
11 your testimony. Thank you so, so much.

12 [APPLAUSE]

13 BARBARA ARNWINE: Thank you. Thank you
14 for coming. All right, thanks again for the
15 statements from the public. It's really enriching
16 this record and making it stronger.

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National Commission on Voting Rights

March 28, 2014

Panel 5

Job No: 72361

1 BARBARA ARNWINE: We are now going to
2 turn our attention to the impact of new voting
3 rules and other election administration barriers
4 on students in North Carolina. And we have,
5 again, a wonderful star panel. What we're going
6 to do with this panel is a little bit different.
7 For the next two panels we're going to use a
8 different process of introductions. [TAPE SKIPS]
9 And I am sorry if you had not heard that in
10 advance but I want to make sure that we give you
11 that opportunity.

12 After your statements, we are going to
13 then have questions from the commissioners; and
14 then after the commissioners' questions we will
15 open the mics again. I just want to say it means
16 a lot to us that you're here. There were to have
17 been two other participants who have not shown at
18 this time for the panel. So, we welcome you and
19 we look forward to your testimony. Thank you. So,
20 we'll start with you, Ms. Ali.

21 LAILA ALI: Hello, everyone. My name is
22 Laila Ali, and I would first like to thank all of
23 you for giving me the time to share my
24 experiences. And I'm currently at North Carolina
25 State University and I'm also interning with

1 Ignite North Carolina. This is my second
2 semester. And we've been working with a project
3 called North Carolina Vote Defenders, where we
4 recruited students from different campuses to be
5 poll monitored and attend the polls and actually
6 inform people about their rights to vote. And
7 that experience really showed me three things. It
8 taught me the importance of voting and the
9 privilege of having the right to vote.

10 The second thing is that it made me
11 witness what happens at the polls and what kind
12 of challenges voters can encounter. And the third
13 thing is that it allowed me to communicate with
14 students on campus about their perspectives on
15 the new law and what they see are the challenges
16 that could arise from it. And I noticed a few
17 things--that the students are either misinformed
18 or are uninformed. And it kind of gave me the
19 time to kind of clarify their confusion. And the
20 most thing is that they're very confused about
21 the law. For example, they don't know what
22 sections of the law are going to be implemented
23 either in 2014 or 2016. They don't understand
24 what kind of IDs are going to be asked for when
25 they get there in 2014 or 2016. Also, some of the

1 students are out of state residents, so in 2016
2 they won't be able to have a professional ballot.
3 So, what are going to be the circumstances then?
4 They don't understand that.

5 So, the major thing is that they're
6 confused about what to do next. And also, another
7 thing that I noticed is when I asked these people
8 what do you think about the law and stuff, we all
9 agree that--you know, we're balancing our college
10 lives and juggling all the classes and stuff--we
11 don't have time to go to the DMV and get a North
12 Carolina issued ID. And it just creates barriers
13 for students to get involved and get engaged in
14 the political stage and actually practice their
15 right to vote. So, that's really what I noticed
16 and experienced. I think that's all. Thank you so
17 much.

18 [APPLAUSE]

19 BARBARA ARNWINE: Well, thank you. That
20 was great. Before we move on, can you just tell
21 us a little bit more about the North Carolina
22 Vote Defenders? What the organization is like,
23 and its membership, and its locations?

24 LAILA ALI: Well, the office is in
25 Durham, North Carolina and we have interns from

1 different parts of North Carolina, all across
2 North Carolina. And these interns go to their
3 campuses and they do outreach, and they recruit
4 students from the campuses. And then we have a
5 two-hour training to welcome those volunteers,
6 and we get trained about the voter ID law and
7 like the changes that are going to happen and
8 what to expect when we arrive at the polls. And
9 once at the polls, we stand, we have our vests
10 on--it's like orange--we're out there. And we
11 pass out cards from Democracy NC really
12 summarizing the laws and what our rights are, and
13 we speak to the people, and we're at the buffer
14 zone. And we actually hand out...

15 And I'll tell you the kind of
16 experience I had at the polls in Wade County. I
17 didn't see problems with students probably
18 because it was a municipal election and there
19 wasn't a huge turnout. But I did see curbside
20 voters had problems. I was at an elementary
21 school and for some reason that elementary school
22 did not have any windows. So they couldn't see
23 the curbside voters.

24 BARBARA ARNWINE: Wow. Wow.

25 LAILA ALI: So, we were kind of there to

1 assist. This lady came up and she couldn't go in
2 and we assisted her, and we told the officials to
3 come out and help her, and they did.

4 BARBARA ARNWINE: Excellent, excellent.
5 Thank you. To impressive.

6 LAILA ALI: Thank you.

7 BARBARA ARNWINE: Thank you so much.
8 Yes? Mr. Perlmutter.

9 BRYAN PERLMUTTER: Hi. My name is Bryan
10 Perlmutter, I am the Director of Ignite North
11 Carolina and the North Carolina Vote Defenders
12 Project. I am a North Carolina native, I grew up
13 in Charlotte, and I now live in Durham, North
14 Carolina. I graduated from North Carolina State
15 University in May of 2013. And during my time at
16 NC State I was a community organizer with the
17 North Carolina Student Power Union and have
18 continued advocacy work. I work on two main
19 projects: One is called the Youth Organizing
20 Institute that works with high school students,
21 and the other is the North Carolina Vote Defender
22 Project.

23 And so, first, I think it's really
24 important to acknowledge that students are widely
25 underrepresented in our political system, and

1 that's in terms of voting, in terms of actual
2 representation in office. And in this kind of
3 critical juncture that we're in, it's really
4 important that students and young people are able
5 to participate in the democratic process. And the
6 new law that was being passed and being
7 implemented is creating a vast range of barriers.
8 And so, the past week I spent time in Boone,
9 North Carolina, and in Greensboro and Charlotte
10 on university campuses talking to students. And
11 there are a couple of things that I just want to,
12 like from those conversations, point out.

13 Just having conversations with students
14 on campus about what they need to vote and doing
15 voter education--I had two students say that they
16 were not going to register where they were on
17 campus because their parents would receive a tax
18 penalty. And this was a provision that was not
19 passed but had a lot of media attention around
20 it.

21 BARBARA ARNWINE: It was proposed.

22 BRYAN PERLMUTTER: And so it just kind
23 of creates this sentiment that whatever the media
24 narrative puts out, whatever folks are hearing,
25 that is what they go with. And so, this creates

1 this tension on campus--that students are unaware
2 and don't know how to react. There are lots of
3 different confusing messages and different
4 messages coming from different types of people.

5 And another really important component
6 that students use--I know I have used--is early
7 voting. And, specifically, same-day registration.
8 Students often times move dorm addresses or move
9 apartments on a yearly basis and so this means
10 that folks have to reregister continuously. And
11 before, students used to know--they could go to
12 the campus polling site and change their address
13 and vote at the same time. So, the removal of
14 same-day registration creates this huge barrier
15 that students are going to have to register and
16 need that infrastructure on campus to be able to
17 do that, which is often times inadequate.

18 And within that component we've seen
19 this backlash and this changing of moving voting
20 locations. So, not only are students not able to
21 change their address and register to vote at the
22 same time, the physical polling locations are
23 moving around as well, and that is just adding to
24 the confusion that folks are having.

25 In 2013, this is even before the new

1 law went into effect, we saw in Boone, North
2 Carolina a precinct move off of campus. Then
3 through appeal, the State Board of Elections
4 moved it closer to campus at this bar called
5 Legends. And so what had happened was students
6 who were coming to vote--the campus was split
7 into two. So, half the students were voting at
8 one precinct and half the students were voting at
9 the other precinct. And in that process there
10 were over 50 provisional ballots cast at one of
11 the precincts, and students having to walk two
12 miles from one precinct to the other precinct.

13 And so, with inadequate public
14 transportation and inadequate education about
15 where folks need to go and what folks need, these
16 are creating huge barriers for students. And this
17 is just in 2013.

18 And so moving forward, just through our
19 time on campus doing this voter education, seeing
20 that folks are confused and that they want to
21 participate in the democratic process. They want
22 to have their voices heard, they want to be
23 represented. And through this mass confusion that
24 this bill is creating, it's targeting young
25 people to create this confusion and keep then

1 further underrepresented. And so--thank you.

2 [APPLAUSE]

3 BARBARA ARNWINE: No, the thanks is to
4 you. Thank you for your advocacy and your work.
5 Mr. Hall?

6 MR. HALL: Good afternoon and good
7 afternoon to the commissioners and my fellow
8 panelists. My main purpose on this panel is to
9 bring some age balance here to increase the
10 average...

11 BARBARA ARNWINE: Oh, come on. We can't
12 believe that. [CHUCKLES]

13 MR. HALL: To raise the average age
14 here. But I'm very happy to be here because I
15 think this is a critical issue for our time. I am
16 a professor of political science at North
17 Carolina Central University. I also direct the
18 Institute for Civic Engagement and Social Change.
19 At North Carolina Central University we work with
20 different people on campus, especially at the law
21 school, sponsoring events that would educate
22 people, students as well as the community, about
23 the political process. I also chaired the
24 Political Action Committee for the North Carolina
25 NAACP from 2006 to 2008 and I am the convener and

1 founder of the very new Student Engagement and
2 Empowerment Network, which is an effort to build
3 a civic capacity of students at North Carolina's
4 HPCUs.

5 When you look at this monster voter
6 suppression bill--because that's what it is--you
7 look at several provisions and the
8 disproportionate impact that these provisions
9 would have on youth and student voting and
10 participation in the process. And I mention
11 participation in the process because it's not
12 just voting--because we want students as well as
13 people in the community to be fully engaged
14 within the process and to understand the
15 different methods that can be used in order to
16 influence what goes on in the political system
17 along with voting.

18 When you look at the provisions of the
19 monster voter suppression bill--when you look at
20 compressing the early voting period, it will have
21 a disproportionate impact on youth. For example,
22 I have some data from--it's a little bit dated
23 but it tells how young people have used
24 especially early voting and same-day
25 registration.

1 In terms of early voting, this is in
2 2008--in Durham County, 23.5 percent of young
3 black voters between the ages of 18 and 29 voted
4 during the early voting period. So, around 24
5 percent. That compares to around 19 percent
6 statewide. So, in other words, young people were
7 using the early voting period more frequently
8 than were those in other age cohorts.

9 In Durham County 75 percent of the
10 votes, again--this is in 2008--were from the
11 early voting ballots. 78 percent of the votes on
12 North Carolina Central's campus were from early
13 voting. In fact, just as Reverend Barber
14 mentioned, Barack Obama lost on Election Day but
15 he won during the early voting period. And I can
16 remember on that day, a lot of people were
17 concerned on Election Day itself because they
18 didn't see a lot of people at the central voting
19 site. You know, and I was a little concerned too
20 because I was getting calls from people from
21 around the community. But I knew also that the
22 vast majority of students had already voted
23 during the early voting period. And, in fact, we
24 used the early voting period to mobilize students
25 quite a bit. It's become a tradition on our

1 campus, in fact, to get students to participate
2 in a march to the early voting site.

3 In 2004, we had about 1,200 to
4 participate in the march. In 2008, we had about
5 2,000 people to participate in the march. And the
6 turnout for students on campus now who had
7 registered in the campus precinct for 2008 was
8 right at 90 percent, and much of that was because
9 of participation during the early voting period.

10 In terms of same-day registration, the
11 rate of use of same-day registration for the
12 state and the county in 2008 was around 6 percent
13 and 8 percent, respectively. In the central
14 precinct it was close to 14 percent. So, again,
15 disproportionately, young people--and especially
16 North Carolina Central students in this
17 particular instance were using same-day
18 registration. It was a way to get students more
19 involved in the process.

20 And one concern I have other than
21 voting is what is the message that is being sent
22 to young people and to people in general when
23 they have people who are supposed to be
24 representing their best interest, creating more
25 barriers to voting? It sends a message. It

1 becomes very confusing. It sends the message that
2 they don't really want us to be a part of the
3 process when we should be opening up the process,
4 making it easier for people to participate.

5 And I have some survey data that shows
6 that at the peak of the use of all of the
7 provisions that made North Carolina stand out as
8 being fairly progressive in terms of voting laws
9 that have been changed, that students had more of
10 a sense of being a part of the process. They were
11 less alienated. They were more involved in
12 political activities outside of voting.

13 So, I think that with these changes it
14 will lead students and other people to go back to
15 a higher sense of alienation from the political
16 process. Thank you.

17 [APPLAUSE]

18 BARBARA ARNWINE: Excellent, excellent.
19 Thank you, thank you. All right, that was
20 excellent. To the panel. Ms. Clayton, yes?

21 EVA CLAYTON: Did I understand that you
22 currently now have on the campuses precincts
23 where students register and vote--or nearby?

24 MR. HALL: I'm sorry?

25 EVA CLAYTON: Is your voting precinct on

1 campus or nearby the campus?

2 MR. HALL: It's on campus.

3 EVA CLAYTON: It's on campus. Is there a
4 threat of that precinct being closed?

5 MR. HALL: There has been some talk of
6 it but it has not been closed yet. We have very
7 good turnout during Presidential elections and
8 especially for some reason the last two
9 Presidential elections.

10 EVA CLAYTON: [CHUCKLES] I wonder why.

11 MR. HALL: But we experience significant
12 challenges for municipal elections. Those are
13 still challenges. Even though during the last
14 mid-term election, our turnout rate for the on-
15 campus precinct was actually higher than Durham
16 County and Florida State. So, we are experiencing
17 some progress there but still, that is always a
18 challenge. But turnout for municipal elections
19 can be as low as 3-6 percent, especially for
20 primaries.

21 EVA CLAYTON: There was some question
22 during the discussion of the legislation--rather,
23 they were going to continue having--I think the
24 college that was identified was the University of
25 Ashville, Appalachia? I think they might've had a

1 precinct on campus and had one nearby and they
2 were making the choice to close the one on campus
3 and have the young people go to the closest
4 precincts to them. I'm not sure...

5 [OFF-MIC COMMENT]

6 EVA CLAYTON: Appalachia? I knew that
7 was a possibility so I wonder if that was...
8 That's not true in your case, I gather?

9 MR. HALL: Correct.

10 WOMAN: Thank you for what you're doing.
11 And if we can reach as many students as possible
12 we need to not only inform them about all of this
13 but perhaps to encourage them to use absentee
14 ballots if they've been registered. This is a
15 question for Bryan. Are you statewide working on
16 students or just in certain areas?

17 BRYAN PERLMUTTER: We have folks in
18 seven counties in North Carolina and we're
19 working to expand that in our capacity.

20 WOMAN: What's your email address?
21 Because I'm working with some students and I
22 think we need to get everybody working together.
23 What's your email address?

24 BRYAN PERLMUTTER: I can give you my
25 card afterwards.

1 WOMAN: That'd be great.

2 BARBARA ARNWINE: Go ahead.

3 MAN: Given all of your efforts--the
4 students here--given all of your efforts--by the
5 way, it's good to see you, Dr. Hall. It's like an
6 NCSU reunion here. [CHUCKLES] The Eagles are in
7 this house. I don't see any A&T folks in here.

8 [CHUCKLES]

9 DR. HALL: I'm a proud graduate of North
10 Carolina A&T so...

11 MAN: Oh, okay, all right. I'll leave it
12 alone. For the students here, given all your
13 efforts, could you offer any projections with
14 regard to student participation and/or turnout
15 for this November?

16 BRYAN PERLMUTTER: Could you maybe
17 repeat that or reframe that?

18 MAN: I'm sorry?

19 BRYAN PERLMUTTER: Could you repeat the
20 question?

21 MAN: Given all of your efforts in
22 response to these changes in the voting laws here
23 in North Carolina--your efforts obviously to
24 ensure that--it sounds like, in particular, the
25 student ID issue, is addressed, would you all be

1 willing or could you offer any projections in
2 terms of what do you think is going to happen
3 based on all your efforts or not--what do you
4 think is going to happen here in November in
5 terms of either participation of students,
6 turnout...? Do you have any projections.

7 BRYAN PERLMUTTER: So, I think it's hard
8 to project that, and I think that what we're
9 going to continue to see is people be very
10 confused about this law and this legislation and
11 what they need. I think that there's constant
12 different news articles and different people on
13 their campus telling them different things. And
14 that as much as I would hope that there's a large
15 student turnout and that everything goes
16 flawlessly based on conversations and what we
17 have seen just in the past year, it is very
18 troublesome and I think that there are prospects
19 for students being very confused at the polls and
20 there being lots of problems.

21 MR. HALL: Yeah, it's hard to give a
22 number or even a range of numbers, really. But I
23 think because of the possibility--or the
24 certainty, really, of confusion, quite frankly,
25 we want to make the process as open as possible

1 because when I look at the electorate--and for
2 those who have done this work for a while, you
3 know that you divide the electorate into three
4 groups. Those people who always vote, so you
5 don't have to spend your limited resources on
6 them--your resources are time, people, and money.
7 Those people who will never vote regardless of
8 what you do. But most of the people are in the
9 middle. And so you have to engage people five to
10 seven times in order to get them to vote.

11 So, because of this, it may create more
12 of those in the middle, so you may have more
13 people that you really have to work with. So,
14 again, it's hard to pinpoint a number or a range
15 but what we can--I think all of us can project is
16 that we will redouble our efforts to make sure
17 that people are informed about the law, that
18 there is as less confusion as possible. But at
19 the same time I think that it should be used as a
20 way to mobilize students--you know, to say that
21 this is a direct attack on your voting rights.
22 What are you going to do about it? And I think
23 the thing to do is to come out in larger and
24 larger numbers.

25 BARBARA ARNWINE: Yes, go ahead, David.

1 DAVID HARRIS: This is actually not a
2 question but a comment--an encouragement. Back
3 in--I will not say which year--when I was a poli-
4 sci major at NCCU undergrad, I had an opportunity
5 to work with student organizations across the
6 state, especially within the university system
7 campus, and to the school, whether it was
8 Appalachia State at East Carolina, the students
9 had the same issues with respect to being able to
10 vote locally. And we're talking about a pretty
11 long time ago.

12 These issues continue, as you have
13 probably noticed from the history and the
14 discussion today--a lot of these issues continue.
15 It's like you think you have it solved, and then
16 it flares up again. It's like a Hydra. And it
17 keeps flaring up. This too will be defeated. You
18 will be the instruments of that defeat. And you
19 will prevail. It is important that you continue
20 to not only organize your folks, the students on
21 your campus, on Central's campus, but also on
22 other campuses so that they simply work around
23 the system, flood the polls, and basically send a
24 message to those who want to block the franchise
25 or make it more difficult to exercise the

1 franchise, that it simply will not be successful.
2 That's the encouragement. Keep doing what you're
3 doing.

4 BARBARA ARNWINE: Excellent. Before we
5 end this panel, I believe I've gotten all the
6 questions from the panel--do you have any ending
7 statements that you just want to make before we
8 stop this particular panel? Yes, please.

9 LAILA ALI: I just think that it's
10 really important to keep educating and informing
11 students about the law. And I also feel like the
12 State Board of Elections should also, you know,
13 outreach to people more and make sure that
14 information is out to students. Because I feel
15 that that information isn't as accessible to
16 students as it should be. And I think that this
17 country's worked hard for voting rights and some
18 countries around the world are still fighting for
19 that right, and we don't want that being
20 deprived.

21 And I'm not a U.S. citizen and I can't
22 vote but I really would love to have the
23 privilege to. But what I can do--I can help. And
24 I just feel like students should not be deprived
25 from their right to vote no matter what happens.

1 Thank you.

2 BRYAN PERLMUTTER: I think these voting
3 laws are so critical to how we are able to
4 participate, and students need to be able to
5 participate in the democratic process. It is
6 urgent and essential that not only the state make
7 arrangements to create mass education campaigns,
8 but also at the federal level there needs to be
9 legislation that addresses and allows for
10 participation of all people.

11 MR. HALL: I'm going to go off track a
12 little bit, because I'm going to go beyond this
13 voting law--because we know it's a bad thing and
14 we know that there are several things that need
15 to be fixed or eliminated about it, and open up
16 the process. What I'm concerned about--because
17 when I look at voting rights, there's a National
18 Commission on Voting Rights--I hope that the
19 scope of your work would expand to deal with the
20 issues of civic education. That's what we call it
21 now anyway. Because the quality of civic
22 education is very abysmal in this country right
23 now.

24 BARBARA ARNWINE: Yes. Yes.

25 MR. HALL: When we get the students on

1 campus, they come in very alienated, very
2 apolitical, very unconcerned about the process.
3 We need to reach down into the high schools and
4 into elementary schools to make sure that
5 students are learning the role that they can play
6 in the political process. We have to counter all
7 of the forces that are convincing them to look at
8 things just as an individual to be alienated from
9 their communities, to not believe in collective
10 action.

11 We have to do something to make sure
12 that the generations several years down the road,
13 as they become eligible voters, that when they
14 reach that age, they are ready to vote and
15 understand the process, and demystify the beast
16 that is called the American political system so
17 that they can understand how they can become real
18 change agents.

19 BARBARA ARNWINE: Thank you. And I think
20 it's fair to say that we all are very troubled by
21 the cutbacks in public education regarding civic
22 participation, civic education. That there are so
23 many people graduating who have no idea what our
24 government looks like because they're not taught,
25 they're not told about the separation of powers.

1 That's why they don't quite understand. They
2 don't understand the Constitution, the different
3 Bill of Rights. So, this is, I think, just
4 another threat to democracy. And your point is
5 well-taken.

6 I would just say to Ms. Ali, to Mr.
7 Perlmutter, students have always been the
8 vanguard of every movement and students born in
9 the United States and students who have come to
10 the United States have been instrumental in
11 moving our country and compelling us forward in a
12 progressive way. So, I just want to thank you for
13 your incredible advocacy. Your being here today
14 is inspiring, enlightening, and we look forward
15 to your enjoying reading the reports as they are
16 issued on these hearings that are being held
17 around the country. Thank you so much.

18 [APPLAUSE]

19 At this time we're going to call for
20 any public testimony, and let's see if there's
21 anyone who wants to give public testimony right
22 now. Yes?

23 MARK DOROSIN: Good afternoon. My name
24 is Mark Dorosin, I'm an Orange County
25 Commissioner and I just wanted to add a few

1 comments to this particular panel. Two points to
2 really highlight: One is our universities have a
3 huge role to play in ensuring that our students
4 are enfranchised. Ms. Ali talked about the need
5 for students to get accurate information, and
6 what we found is that the students are often
7 getting inaccurate information from the
8 universities themselves. And, in addition, while
9 some universities are very accommodating for
10 creating access for student voting, other
11 universities do not want to have polling places
12 on campus for a variety of reasons. They don't
13 want to have the campuses be opened as those
14 public places or to share those valuable spaces.

15 At the University of North Carolina,
16 for example, we had a polling place on campus
17 last election cycle, it was very successful. This
18 year the university has said that they can't
19 accommodate that. And so, I think in the struggle
20 for empowering students we really need to get the
21 universities and their leadership on our side.

22 The other key point about having the
23 universities involved is that we know students
24 are a highly transitory population, they move
25 sometimes every year. And so, what we've already

1 seen in North Carolina is students are vulnerable
2 targets for the kind of vote challenging that was
3 described in some of the earlier panels. And as
4 we see new opportunities for challengers to be at
5 the polling place, we know that those targets are
6 going to be students and we know that they're
7 likely going to be students of color. So it's
8 critical that we engage around those issues.
9 Thank you.

10 BARBARA ARNWINE: Great, Mark. That was
11 excellent. Thank you. Any other public testimony?
12 Oh, yes, sir.

13 KEITH RIVERS: Good afternoon.

14 BARBARA ARNWINE: Yes, good afternoon.

15 KEITH RIVERS: My name is Keith
16 Rivers...

17 BARBARA ARNWINE: Yes, Keith.

18 KEITH RIVERS: And I'm from Elizabeth
19 City, North Carolina and one thing--with the
20 declawing of Section 5, it is allowing the local
21 board of elections to have a free reign. And most
22 people are aware of what went on in Elizabeth
23 City with Motravias King--excuse me, Councilman
24 King now. However, this started seven years ago
25 in 2007 with the intimidation of college

1 students.

2 BARBARA ARNWINE: Yes.

3 KEITH RIVERS: And in many of these
4 isolated small rural areas, the local papers are
5 many times the only media source that we have.
6 And what happens--in 2008, 18 students were
7 subpoenaed and put on the front page of the
8 paper. In 2010, they actually had to come in to
9 the hearing and Democracy North Carolina along
10 with the Southern Coalition and the NAACP came
11 forth. Now, what that does is that sends a
12 message out to the students "I'm not going to
13 vote in Elizabeth City." And a lot of it is
14 because on the national level, to many of these
15 local communities, it's okay, but many of these
16 smaller colleges can change municipal elections.
17 And even prior to Mr. King filing for election,
18 in April of 2013, 50-some students were removed
19 from the voter [ROLLS?], simply because the same
20 person who challenged Mr. King went in and said
21 that these students no longer lived here and the
22 board upheld that.

23 And so this is something that we have
24 to look at, that this commission has to look at
25 when it comes to these students--and in the

1 smaller rural areas they're not going to get the
2 same publicity they would at a North Carolina
3 Central, at a Winston-Salem. Thank you.

4 [APPLAUSE]

5 BARBARA ARNWINE: Thank you so, so much.
6 Thank you. At this time we're going to take a
7 short break. We're going to reconvene as closely
8 to 4:10 as we can, and we encourage everyone
9 right now who's on the next panel to please...

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National Commission on Voting Rights

March 28, 2014

Panel 6

Job No: 72361

1 BARBARA ARNWINE: Okay, good afternoon
2 everyone. Good afternoon. We are in the home
3 stretch and we have yet another illustrious
4 panel. This panel is going to address the needs
5 of rural voters and the impact of HB589 in rural
6 counties across North Carolina and of course to
7 talk about any other specific and strong barriers
8 to rural voters that affect the area of either
9 discrimination in voting or electoral
10 administration in voting.

11 We are lucky to have four of our
12 panelists to participate. Once again, using this
13 new procedure, we're going to ask you to open
14 with a one-minute introduction and then you can
15 continue with your five-minute statement. After
16 that we will, of course, have questions and
17 answers from the commissioners.

18 I just want to once again thank you.
19 It's really been amazing the testimony we've
20 heard today and you're just going to bring it
21 home and put the icing on the cake and to make
22 this just a wonderful amazing day.

23 So, we're going to hear from Keith
24 Rivers, Elizabeth Haddix, Mark Hess--is that
25 right?

1 MARCUS THOMPSON: Yes, Marcus.

2 BARBARA ARNWINE: Marcus Thompson,
3 Estelle "Bunny" Sanders. Please, Mr. Rivers.

4 KEITH RIVERS: Good afternoon.

5 BARBARA ARNWINE: Good afternoon.

6 KEITH RIVERS: As stated, I am Keith
7 Rivers and I currently serve as an Executive
8 Committee Member of the North Carolina State
9 NAACP as well as the branch president in
10 Pasquotank County.

11 It's saddening and disheartening. I
12 served my country for 21 years in the United
13 States Navy and to have to undergo and go through
14 this type of just ordeal and painful evolution to
15 fight and continue to fight for rights that
16 people have already signed for in blood. House
17 Bill 589 is a bad, bad bill.

18 I live in the first congressional
19 district which is the 4th congressional district
20 in the nation. Now, it's very important that we
21 understand some things. The North Carolina
22 Department of Commerce ranks the state's 100
23 counties based on economic well-being and assigns
24 each a tier group. The 40 most distressed
25 counties are designated as tier one counties. The

1 eastern part of North Carolina is comprised of 41
2 counties with nearly 21 percent of the population
3 living in poverty and also has the highest
4 concentration of African-Americans. Many of these
5 counties are considered rural counties.

6 As I stated earlier, I also serve as
7 the District 12 director of the North Carolina
8 NAACP. Five of the six counties in my district
9 are tier one counties. It's very important that
10 we understand the economic state of these
11 counties because when you couple the economic
12 state with the logistics of many of the voting
13 polls which already is an issue--just getting to
14 the polls and many persons living in these
15 counties are without transportation. Many of them
16 have to travel upward to 30 miles, some 60 miles
17 just to get to the voting polls under the
18 conditions now.

19 As stated earlier, 70 percent of
20 African-Americans voted during early voting. Now,
21 when you shorten that from 17 days to 10 days
22 think about the nightmare. Think about what
23 you've just done. Think about the economic state
24 of this rural area.

25 Photo ID, which we know this has not

1 been implemented in the State of North Carolina,
2 however, and I think it was stated earlier also
3 about the Division of Motor Vehicles. Many of
4 these counties do not have DMVs. Some have a
5 mobile unit. For example, Gates County has a
6 mobile unit that comes one day a month and it
7 comes during the hours in which most people are
8 at work.

9 BARBARA ARNWINE: You said how many of
10 the counties don't have a DMV?

11 KEITH RIVERS: In my district Pasquotank
12 County out of six there are four without.

13 BARBARA ARNWINE: Wow, okay. Sorry.

14 KEITH RIVERS: No, you're fine. If you
15 go on the state's DMV website, many of the
16 counties that do not have DMVs, they don't even
17 post when the mobile unit will be in their
18 county. Again, we are in a rural area so many of
19 the persons do not even have internet services.

20 The elimination of preregistration of
21 16 to 17 year olds is going to be--I lose just my
22 track how disenfranchising this will be because
23 right now a lot of the voter registration is
24 being done at the high schools for 16 and 17 year
25 olds, the preregistration, where once you

1 eliminate this you add this to the rural area
2 where transportation is already an issue, how are
3 we, again, going to register or continue to push
4 forward the democratic process of voting and
5 being engaged in our civic duties?

6 Elderly persons in this area.
7 Transportation becomes another issue, which we've
8 already talked about. But elderly persons, how do
9 they get to and from the voting polls? Remember,
10 we are talking about 30 to 60 miles. In
11 Pasquotank County our Weeksville voting district
12 has the heaviest African-American population and
13 the lowest turnout because in many of these
14 counties there's only one early voting site--one
15 during early vote. In Weeksville you have to
16 travel 32 miles just to early vote, but yet we
17 know that's being cut down to 10 days.

18 BARBARA ARNWINE: What county is that?

19 KEITH RIVERS: That's in Pasquotank.
20 Hyde County, most of your counties there are only
21 going to have the one early voting site and
22 usually that's going to be at the Board of
23 Elections. So wherever you live in the county
24 you're going to have to travel that distance.

25 BARBARA ARNWINE: Most of that's going

1 to be over 30 minutes.

2 KEITH RIVERS: Once again, the elderly--
3 we know even with photo ID many of these persons
4 were birthed at home so there is no birth
5 certificate. Then you only have the DMV who comes
6 around once a month. So they've got to find
7 transportation to get there and then they have to
8 have the credentials, the two forms. Many of
9 these persons don't have birth certificates.

10 So, I just want to make a last note
11 that the House Bill 589 only adds more obstacles
12 to rural North Carolina and it is a bill that has
13 already been singled out to prevent and
14 discourage Americans living in North Carolina
15 from their right to vote. It has been targeted at
16 African-American and other minorities, the poor
17 and the elderly will be hardest hit by this bill.
18 Thank you.

19 BARBARA ARNWINE: Thank you. That was
20 riveting. Thank you.

21 [APPLAUSE]

22 MARCUS THOMPSON: Thank you. My name is
23 Marcus Thompson. I'm on this panel basically as a
24 representative of a rural voter. I'm native to
25 rural North Carolina. I lived in Martin County

1 most of my life. I've served in many capacities
2 as an organizer or as a volunteer for campaigns
3 and for various outreaches throughout my
4 community. As a person who has lived through
5 being a citizen that was wanting to vote in a
6 rural community I can speak from that standpoint
7 and also from the standpoint of someone who
8 registers people to vote, someone who tries to
9 get the vote out and that kind of thing.

10 From both of those perspectives, first
11 of all, as a rural voter I'd like to speak. Of
12 course you're going to hear the same problems
13 reiterated over again, but the problem of getting
14 to the polls if one works out of town. He spoke
15 of the poverty in many of these rural
16 communities. So that being the case that means
17 that there's no jobs in that area so if you are
18 working, if you are employed you're generally
19 employed outside of where you live.

20 I've typically always had to commute 30
21 to 40 minutes for any type of employment outside
22 of my community because I lived in a rural
23 community. That means that if you work a typical
24 job from 9:00 to 5:00 you've got to add time onto
25 that just to get home. Rural voters typically,

1 like myself, I didn't go to college. I just
2 worked at a factory job for many years and so
3 that's very hard work. It's very laborious. So
4 whatever you do, you commute home, you're very
5 tired. These are obstacles that people feel they
6 are not actively engaged in the political
7 process. That fatigue alone is a barrier to them
8 voting. You say, you know, I just worked a hard
9 day's work. It's hard for me to get back and
10 forth to work. It presents problems right out of
11 the gate.

12 The problem with information being
13 available is also something that you find in a
14 rural area. Rural areas receive very little media
15 attention, as you might imagine, and rural areas
16 suffer from inadequate news media period. So that
17 really minimizes the effect that they get little
18 coverage and then there's no real big media
19 outlets there to start with. When you think about
20 why people are voting, they vote over issues.
21 They vote over concerns in their community. If we
22 don't have media there that informs people of
23 what's going on in the community there is another
24 reason why people might have the thought process
25 that I don't need to vote or they don't

1 understand the importance of their vote.

2 A lot of times we see that poor people,
3 we lament the fact that poor people have little
4 representation in our government so to speak. We
5 say that money is taking over politics or
6 whatever. Well it's because rural people a lot of
7 times feel that their vote doesn't count. They
8 feel like rich people control that, you know, and
9 I'm just trying to struggle just to make a
10 living. This is a thought process that as an
11 organizer I've run into and that you have to
12 fight with. People say, "I'm doing all I can do
13 just to put food on the table and to live and
14 rich people have the government controlled
15 anyway, so what does my vote count?"

16 Therefore they don't vote and therefore
17 the cycle kind of precipitates itself where they
18 don't vote and therefore their voice isn't heard
19 and therefore politicians kind of say hey, well
20 never mind poor people, never mind rural voters,
21 we'll focus on other matters. It's a cycle that
22 we see just continuing on forever.

23 Fighting the long distance that people
24 must travel, that's something. Fighting the
25 prevalent attitude that elections don't really

1 matter, that politicians are all untrustworthy.
2 Then just to top it all off you get
3 misunderstandings, misinformation and incomplete
4 information oftentimes. So, if you were a rural
5 voter, you do watch the news or whatever, any
6 kind of lie, any kind of misinformation that's
7 presented there--again, you don't have many media
8 sources so you might go on the one or two little
9 bits of information that may be false and
10 incomplete.

11 Again, as an organizer you run into
12 people having misconceptions that, again, you
13 have to kind of counter and have to teach. So,
14 it's very important the more time that these
15 people have, myself included, to vote, the more
16 time that we have to be involved in the political
17 process, that's just going to make things better.
18 So, why in the world if you care about democracy,
19 if you care about people in this country, why
20 would you be trying to limit the voting rights of
21 a whole segment of the population? Especially the
22 ones that really need the assistance of
23 government, that really need their voices heard.
24 Because the more affluent, they've got the
25 avenues to make their voices heard. It's those in

1 rural communities, it's those that are the less
2 fortunate of us that are hit the hardest when we
3 mess with voting rights and when we mess with the
4 availability of early voting and these things.

5 The last thing I'll say is just a few
6 bright spots. The election of President Obama has
7 created excitement in some of these communities
8 that we've seen. As all things come to an end
9 this too must pass. That's coming to an end so we
10 see that there's an emphasis that needs to be
11 placed on helping people in rural communities to
12 stay excited, to stay in the political process
13 and to be engaged.

14 High profile actions of the governor
15 and the Legislature hopefully will cause people
16 to say hey, this affects me. Thank you guys for
17 coming and doing what you do to help put a
18 spotlight on what's going on in these
19 communities. Of course, things like the
20 Affordable Care Act has made politics seem more
21 relevant because people know that something has
22 happened, something big has happened and it
23 affects me and I need to do something about it.

24 So, thank you so much for what you're
25 doing today.

1 BARBARA ARNWINE: Powerful testimony.
2 Thank you. Thank you.

3 [APPLAUSE]

4 ESTELLE SANDERS: Thank you so much for
5 the opportunity to address this commission.

6 BARBARA ARNWINE: Mic closer.

7 ESTELLE SANDERS: Thank you so much for
8 the opportunity to address this commission. My
9 name is Bunny Sanders. I'm mayor of the small
10 town, Roper, that's located in northeastern North
11 Carolina, population 613.

12 I'd really like to share in opening a
13 short story that makes this whole vote
14 suppression--I take it to heart. My grandfather
15 all his life his dream was to vote. He would go
16 to the polls every single time there was an
17 opportunity to register and every time he was
18 told over and over, "Ain't nothing changed, Tom."
19 He was supposed to understand that.

20 That is what my grandfather would hear
21 every single year. He wanted to vote before he
22 died. He finally got the chance to vote before he
23 died in 1957. But according to the Federal Bureau
24 of Investigation and the Department of Justice
25 records located at the National Archives and

1 Records Administration in DC, the modern Civil
2 Rights Movement might well have begun in Roper.

3 According to research done by [YAHIV
4 ISA?] PhD at Elizabeth City State University, in
5 the 1940s African-Americans living in Roper
6 challenged the authoritarian democratic run one-
7 party system that had denied them the right to
8 vote for several decades.

9 [ISA?] says FBI records indicated that
10 the movement that allowed the FBI and the
11 Department of Justice to investigate and
12 successful prosecute several white electoral
13 officials for violating the federal Civil Rights
14 Law was led by two railroad workers. One of them
15 was my grandfather. The other was a Mr. Milton
16 Cox. They actually showed me the documents where
17 Herbert Hoover notes and my grandfather's name
18 was there.

19 I am so proud that he was able to be in
20 the forefront of getting the vote in that town. I
21 also remember part of the conversation was that
22 they came back and they allowed in the county
23 maybe five or six people to vote. They offered
24 that. But my grandfather and Mr. Cox refused to
25 vote until everybody was given the right to vote.

1 So, it's just a story that makes this
2 very dear to my heart. My father served as mayor.
3 This is interesting. My grandfather never got to
4 know this, but my father served as mayor for 20
5 years and I have been serving now for 18 years.
6 So, my grandfather's work was not in vain.

7 The other part of this whole idea of
8 what's happened in eastern North Carolina, we
9 live in the fifth poorest county in the state,
10 Washington County. But eastern North Carolina has
11 been the poorest region in the state for three
12 decades and that despite the fact that we had the
13 most powerful voice in the State of North
14 Carolina representing us.

15 So, if you can imagine where we are
16 with this kind of poverty, with the most powerful
17 voice in the state representing us, where we are
18 going to be if our voice is limited by vote
19 suppression. I am concerned about what the effect
20 of this is going to be on us. Already we are
21 seeing--what has happened in eastern North
22 Carolina over the years has been that we tend in
23 our poverty to fight each other for just a small
24 piece of already a quarter of a pie. Now it's
25 drilling down to our towns and our counties.

1 I just finished a big battle with my
2 county over the fact that for years and years the
3 libraries in the counties have been located in
4 the county seats. That means that the kids who
5 live in other towns in those counties don't have
6 access to libraries. That was important 10 years
7 ago, but it's even more important now because
8 there are counties in North Carolina, remote
9 rural areas, that have less access to the
10 internet than some third-world countries. That is
11 something that nobody in this state should be
12 accepting of. That is a very serious problem and
13 it's not being addressed.

14 The problem I have with the libraries
15 is that because the only place for those kids who
16 live in those remote areas to access it or the
17 only place that they can even hope to get access
18 is if they did have internet service in their
19 communities. Well, they're not able to respond to
20 homework assignments that require it and so
21 forth. But anyway, that's one of the really
22 serious issues that have affected us.

23 The other thing is things like
24 recreation. In a number of communities in eastern
25 North Carolina kids have to pay to play. Kids

1 have to pay a fee to play basketball and
2 football. They pay the county to participate
3 which means that that's discriminating against
4 poor kids. But that's the kind of inter-fighting
5 that we do when we're in poverty. So, this is
6 just going to exacerbate all of what we're
7 already experiencing.

8 We are finding now that there are
9 grants coming through that are supposedly being
10 made available from the state, but they require
11 dollar for dollar matches. Well, when you do that
12 you eliminate a town the size of Roper. I can't
13 afford to match anything. So, that automatically
14 means that when it comes to infrastructure grants
15 and other economic development grants, we are out
16 of the ballgame.

17 I'm sorry my time is up, but there is
18 much more to be said about the difficulties of
19 being a poor community who is not going to lose
20 its voice.

21 BARBARA ARNWINE: Enlightening.
22 Excellent. Thank you. Thank you.

23 [APPLAUSE]

24 ELIZABETH HADDIX: Good afternoon. I'm
25 Elizabeth Haddix. I'm a senior staff attorney at

1 the UNC Center for Civil Rights in Chapel Hill.

2 The UNC Center for Civil Rights is part
3 of the UNC Law School. It was founded by
4 legendary Julius Chambers along with Jack Boger
5 and has since 2001 concerned itself with
6 structural racism in the area of education and
7 also in 2006 our work sort of expanded to include
8 representing communities that were excluded from
9 municipal services and political representation.

10 We've already talked, other panelists
11 have talked about the fact that--oh, and I wanted
12 to say before I began, I noticed that there was a
13 court reporter here before and I'm relieved to
14 know that this is being recorded and will be
15 transcribed for all of this witness testimony to
16 be submitted to the U.S. Congress. We don't
17 forget, none of us here today, and certainly
18 appreciate your participation in this as the
19 commissioners, how important this testimony is.
20 As we say, from our lips to Congress' ears.

21 So, prior to the Shelby decision, which
22 has been talked about a little bit already, 40 of
23 North Carolina's 100 counties were covered under
24 the Section 5 preclearance regulations and that
25 made a huge difference for us, especially in

1 rural counties. The application of Section 5
2 acknowledged that because of the lingering
3 vestiges of Jim Crow's segregation and exclusion
4 for economic and educational opportunities, the
5 significant African-American populations in these
6 mostly rural counties were particularly
7 vulnerable to political isolation and electoral
8 powerlessness.

9 The elimination of the voting rights
10 coverage formula together with the 2013 changes
11 in North Carolina's voting legislation and
12 electoral procedures that we've all been talking
13 about today will only deepen that isolation and
14 powerlessness.

15 The UNC Center for Civil Rights multi-
16 faceted Inclusion Project began with the data-
17 driven state of exclusion report, which is
18 available online and we can make hard copies
19 available to you as well, which looked at
20 minority communities across North Carolina. That
21 being defined as over 75 percent or over
22 communities of color. We measured a variety of
23 factors impacting the quality of life for
24 residents in those communities.

25 The data with regard to political

1 representation was telling and emphasizes the
2 need for expanding rather than eliminating
3 effective policy measures to address the
4 continuing legacy of discrimination in elections
5 and in voting rights. We want to emphasize, as a
6 former witness did, that this exclusion happens
7 not in a vacuum and the changes that were made to
8 our electoral procedures in North Carolina also
9 happen not in a vacuum, but in the context of
10 rollbacks in housing, protecting people from
11 discrimination in housing, in the location of
12 unwanted land uses, in access to equitable
13 educational resources--it's all part of a
14 movement in this country that needs to be
15 addressed immediately and vigorously by us all.

16 In evaluating the impact of residential
17 segregation on political engagement, our state of
18 exclusion report analyzed the gap between the
19 racial demographics of the general population of
20 the county and that of its Board of
21 Commissioners. In every one of the 10 counties
22 that showed the greatest racial disparity in
23 representation, county commissioners were either
24 all elected at large, which is the electoral
25 process that most significantly dilutes minority

1 voting strength, or through a mixture of at large
2 and residency districts where candidates must
3 live in a designated district, but are still
4 elected county-wide.

5 Both of these methods similarly
6 disadvantage minority votes and rural votes. Hyde
7 and Jones Counties are each almost 40 percent
8 people of color, but have all white Boards of
9 County commissioners. Both elect commissioners at
10 large, but Hyde has residency districts. Neither
11 county was subject to Section 5, nor were five of
12 the other 10 counties with the greatest
13 disparities.

14 Political exclusion persisted even in
15 counties subject to Section 5 however, suggesting
16 that some excluded communities were never able to
17 take full advantage of its power. Greene, Onslow,
18 Pasquotank--all Section 5 counties had a racial
19 differential of more than 30 percent. Notably,
20 all have either at large or residency districts.

21 The second phase of the Center's
22 Inclusion Project probes more deeply into the
23 data from particular counties evidencing racial
24 exclusion. Most recently we released our report
25 on Lenoir County, a rural eastern county whose

1 population is 40 percent black. I have submitted
2 a copy of our Lenoir report with our written
3 comments for consideration in the congressional
4 record. Lenoir County was subject to the
5 stringent provisions of Section 5 of the Voting
6 Rights Act and the local and municipal voting
7 districts in place were adopted and adapted under
8 its protection.

9 The 2010 redistricting by the North
10 Carolina General Assembly also "relied" on the
11 Voting Rights Act, but in a perverse way that
12 actual disenfranchised African-American voters in
13 this rural county. Under the North Carolina
14 Constitution, voting districts are not supposed
15 to cross county lines unless necessarily under
16 federal law, such as the Voting Rights Act.
17 Ostensibly acting to comply with the Voting
18 Rights Act, the Legislature drew districts that
19 packed African-American voters into super-
20 majority districts significantly reducing the
21 voting power of minorities in other districts.

22 I see that my time is up. I'm not
23 finished with my comments. I have submitted them.
24 We have submitted them in writing though and if
25 you would like me to continue I'm happy to.

1 BARBARA ARNWINE: Thank you very much.
2 Thank you. Thank you.

3 [APPLAUSE]

4 BARBARA ARNWINE: Thank you. All of
5 these submissions that have been turned into us
6 will become part of the record and we appreciate
7 that. At this time I'm going to turn it over to
8 the panel, to the guest commissioners for your
9 questions so that we can get into this. I'm so
10 happy we're doing this panel. This is really,
11 really important because it is telling a story
12 that is so key to understanding the impact of
13 losing Section 5 and the impact of 589 in a
14 different way.

15 So, anyone want to kick us off?

16 EVA CLAYTON: I wanted to say a couple
17 of things. I'm not sure this is a question, but
18 it just reinforces what you said. A couple of
19 things. Those of us who live in rural areas know
20 that we pay a price for living in rural areas.
21 Whether we go to the doctor, whether we go
22 shopping, we don't have the infrastructure and
23 the services there. Then if you compound the fact
24 that election laws, which are supposed to be kind
25 of fundamental of our basic rights, when that is

1 compounded with having to travel longer distances
2 for early voting--if you live where I live, I
3 live on the extreme end of Warren County, almost
4 to Halifax. But my voting precinct is in the
5 County Seat. So if I'm not able to do that,
6 combined with me being poor, I have to travel 20
7 miles. Some of these counties are even larger
8 than that.

9 We travel anyhow, those of us in rural
10 areas. If you don't have a car and then if you
11 are rural and actually an elderly person who is
12 not driving, you have to wait for that person.
13 So, now the law has impounded whether that person
14 is able to--I just think the rural aspect of this
15 adds to the severity of an already punitive law.

16 Many of us don't have housing. Many of
17 us don't have other things and then you combine
18 the right to interact and say to your government
19 we need good education, we need other things, you
20 made it even more extreme. So, I guess that's
21 just my way of saying amen to what you already
22 said.

23 ESTELLE SANDERS: What's so very cruel
24 about this law is, and particularly to the
25 elderly, is that this is their second time going

1 through this. You know? I see people who are
2 getting ready to have to deal with this a second
3 time and it is so cruel to watch that happen.
4 Their votes are actually being suppressed. There
5 are elderly people who cannot get a birth
6 certificate and the kinds of problems you talked
7 about--them getting to where they can get the ID
8 and so forth, it's just impossible.

9 ELLIE KINNAIRD: The only concession
10 that we were able to get in this whole voting
11 bill was that while they cut the voting by one
12 week, the early voting by one week, we said that
13 they had to keep the same hours as the 2012
14 election. However, I have understood that 43
15 counties have gotten a waiver so they don't have
16 to do that. So, our rural counties are going to
17 be punished and I assume these in the south--have
18 they done the same thing? Have they gotten the
19 waivers?

20 The beauty of keeping the same hours
21 was that they would have to stay open later for
22 early voting, maybe till 7:30 which would allow a
23 lot of working people to get to early voting. But
24 if they're not going to do that and have this
25 early voting shortened by one week that double

1 penalizes. Did all of your counties then get a
2 waiver so that you're not going to have the extra
3 hours or the extra sites?

4 ESTELLE SANDERS: I don't know about any
5 waivers.

6 BARBARA ARNWINE: I have a question. I
7 see Raymond has the map up of the state. I have a
8 question. How many counties in eastern North
9 Carolina are rural counties that were covered
10 under Section 5 prior to the Shelby decision in
11 North Carolina?

12 ELIZABETH HADDIX: I should know the
13 answer to that, but I don't. I know I have 10
14 here that were--and I would just ask my
15 colleagues from the Center down in the audience
16 if they have that information.

17 MAN 1: [OFF MIC AND UNINTEL].

18 BARBARA ARNWINE: And I was just trying
19 to get a sense of how many of those were rural--
20 would be classified as rural. It would be helpful
21 for us to break that information down as we
22 prepare this report.

23 EVA CLAYTON: One of the things, I knew
24 that eastern North Carolina, the First
25 Congressional District, had a substantial number

1 of those because of prior discrimination in that.
2 I'm not sure whether Pitt was in there or not.
3 But I know Edgecombe was in then, part of Nash,
4 Rocky Mount, Pasquotank County was in there. I'm
5 not sure of--anybody have those? Somebody may
6 have that.

7 ELLIE KINNAIRD: It's online.

8 ELIZABETH HADDIX: Pitt was certainly--
9 Pitt was a Section 5 county.

10 EVA CLAYTON: It was? Okay.

11 BARBARA ARNWINE: We'll get that.

12 ELIZABETH HADDIX: I think Halifax as
13 well. Pitt, Halifax, Greene--

14 RAYMOND PIERCE: I think Gilbert was the
15 only non-rural county that is covered.

16 BARBARA ARNWINE: Oh really? Okay. All
17 right. That's helpful.

18 ELLIE KINNAIRD: It's online if you want
19 to look it up.

20 BARBARA ARNWINE: Any other questions
21 from the panel?

22 RAYMOND PIERCE: Sorry, I'm going to ask
23 you to repeat something you said earlier, the
24 gentleman from the Elizabeth City area. The
25 number of DMV operations, can you tell us about

1 that again in your area?

2 KEITH RIVERS: I'm the District Director
3 of District 12 which is six counties.

4 RAYMOND PIERCE: And what are those
5 counties?

6 KEITH RIVERS: Pasquotank, Camden
7 County, Currituck County, Perquimans County,
8 Chowan County and Gates County. Currituck,
9 Camden, Gates--four out of those six are without
10 DMVs.

11 RAYMOND PIERCE: Four out of those six
12 what?

13 KEITH RIVERS: Are without DMVs, without
14 stationary Division of Motor Vehicle Departments.
15 Pasquotank County has one. In Gates County they
16 have a mobile unit that comes. I pulled this
17 information right off of the state DMV's website.
18 What I found when you pull up the DMV's website,
19 it will say that it actually has a DMV, but when
20 you go to the location it comes up DMV and you
21 almost have to read to realize that there is no
22 DMV. Then you'll see Greenville.

23 In Gates when I pulled it up it gave
24 all the dates, which was one day a month, and it
25 was from 10:00 o'clock in the morning till 4:00

1 o'clock in the afternoon. That's a person's work
2 time.

3 BARBARA ARNWINE: Right.

4 KEITH RIVERS: When I pulled up Camden
5 County it gave no times. It just pulled up the
6 screen. So I'm like, okay when can I go and get a
7 valid ID card?

8 RAYMOND PIERCE: And you were saying the
9 percentage of African-Americans who voted in that
10 district who did not--

11 BARBARA ARNWINE: You need the mic.

12 RAYMOND PIERCE: I think you were saying
13 the percentage of African-Americans who vote in
14 your district who do not have driver's license--
15 did you talk about that?

16 KEITH RIVERS: Who do not?

17 RAYMOND PIERCE: Who do not have
18 driver's license.

19 BARBARA ARNWINE: What's the percentage?

20 KEITH RIVERS: Okay. Well, in Pasquotank
21 County you have, and this is prior to the last
22 election, but there were about 2,300 persons who
23 were registered voters without North Carolina
24 identification cards which would be--if you have
25 about 20,000 people in the county, you have to do

1 the math, but that's the number that are without.

2 RAYMOND PIERCE: That right there is an
3 example. So, you've got a county there,
4 Pasquotank County, where you have at least, to
5 your knowledge, 2,300 registered voters who do
6 not have driver's licenses, North Carolina ID and
7 it is also a county where there is no DMV.

8 KEITH RIVERS: No, there is a DMV in
9 Pasquotank County.

10 RAYMOND PIERCE: In Pasquotank.

11 KEITH RIVERS: There is a DMV in
12 Pasquotank County.

13 RAYMOND PIERCE: Okay.

14 BARBARA ARNWINE: What about in Gates?

15 KEITH RIVERS: In Gates County there is
16 no DMV.

17 BARBARA ARNWINE: Right. Do we have any
18 sense of the numbers?

19 KEITH RIVERS: In Gates?

20 RAYMOND PIERCE: I get the picture.
21 Thank you.

22 ELIZABETH HADDIX: I just have the
23 answer to your question about how many of the 40
24 counties in North Carolina that were covered
25 under section five are rural. All but one.

1 Guilford appears to be the only one that's not.

2 BARBARA ARNWINE: That's what David
3 said.

4 ELIZABETH HADDIX: I was going to say
5 all but two.

6 BARBARA ARNWINE: Thank you.

7 ELIZABETH HADDIX: It's actually in our
8 report.

9 BARBARA ARNWINE: Thank you for putting
10 that on the record. That's very helpful.

11 EVA CLAYTON: Could you also identify
12 how many of those are in the 1st Congressional
13 District?

14 ELIZABETH HADDIX: I'm sorry?

15 EVA CLAYTON: Can you from your data
16 tell how many of the 40 are in the 1st
17 Congressional District? Guilford is in the 12th,
18 but where is the other?

19 ELIZABETH HADDIX: I'm happy to read
20 into the record which counties.

21 EVA CLAYTON: Okay.

22 ELIZABETH HADDIX: So, it's Anson,
23 Beaufort, Bertie, Bladen, Camden, Caswell,
24 Chowan, Cleveland, Craven, Cumberland, Edgecombe,
25 Franklin, Gaston, Gates, Granville, Greene,

1 Guilford, Halifax, Harnett, Hertford, Hoke,
2 Jackson, Lee, Lenoir, Martin, Nash, Northampton,
3 Onslow, Pasquotank, Perquimans, Person, Pitt,
4 Robeson, Rockingham, Scotland, Union, Vance,
5 Washington, Wayne and Wilson.

6 EVA CLAYTON: The majority are in the
7 1st. Some are up in the west, Union and others in
8 that area.

9 BARBARA ARNWINE: That's awesome. Thank
10 you. That was very, very helpful. Any other
11 questions from the panel? Okay. Well, once again
12 thank you. This was vital testimony. In putting
13 together the record it's so important to make
14 sure that we have this evidence tight so that
15 when we're presenting this report it's very clear
16 what's going on with voter suppression, what's
17 going on with voter exclusion, what's going on
18 with these kinds of laws in the different states
19 so that we really do present what the challenges
20 are and what the realities are and what it's
21 going to really take to restore the kind of
22 protections that we lost when Section 4 was
23 invalidated and therefore nullifying Section 5.

24 Thank you so much. You're powerful.
25 You're wonderful. Keep doing the great advocacy

1 you're doing and we are indebted to you. Thank
2 you.

3 [APPLAUSE]

4 BARBARA ARNWINE: Ladies and gentlemen,
5 at this point we call upon any people who would
6 like to make final testimony from the floor. This
7 is the last opportunity for any open mic
8 presentations.

9 [LIAMIA?] SMITH: My name is [LIAMIA?]
10 Smith. I came up earlier.

11 BARBARA ARNWINE: Yes.

12 [LIAMIA?] SMITH: But I wanted to give
13 an example of just how voter suppression will
14 hurt these rural counties.

15 BARBARA ARNWINE: Please do.

16 [LIAMIA?] SMITH: In Halifax County,
17 which is one of the counties in my coverage area,
18 they have three different school systems in that
19 one county. In a way they haven't desegregated
20 since Brown, since 1954. So, what they did was
21 they redrew the districts. So I know of a child
22 that can stand here and can look across the
23 street and see a school, but can't go to that
24 school and has to go 30 miles away to another
25 school in the county.

1 So, now those people that went and
2 redrew those school districts are trying to make
3 sure that the vote is suppressed in Halifax
4 County so that they won't have to change their
5 way of living. They started using language like,
6 "This candidate, this candidate, this candidate
7 is one of us" or "We don't want to change our way
8 of life. We don't want to change our schools. We
9 don't want to raise our taxes."

10 So, it's so very important that voter
11 suppression is stopped at all levels because it's
12 not just at the poll level. It's stratified. It
13 comes all the way down until it gets down to your
14 street. In Scotland Neck, North Carolina they
15 made it such that the town did not send in their
16 application for preclearance for a whole section
17 of town that is right in the town, but those
18 people can't vote in the local election. They can
19 only vote in the general election.

20 So, those types of things are the types
21 of suppression that you don't see and this stuff
22 has been with the DOJ since about 1976-'77 and
23 they haven't done anything about it yet. So those
24 are the types of things that are going on.

25 BARBARA ARNWINE: And that's the precise

1 testimony we want. That's powerful. That's
2 precisely why we're here today. Thank you so much
3 for entering that into the record.

4 [APPLAUSE]

5 REV. CURTIS GATEWOOD: I would like to
6 first of all thank you all for being here. It is
7 great to have the National Commission on Voting
8 Rights come to our town.

9 BARBARA ARNWINE: Introduce yourself to
10 us.

11 REV. CURTIS GATEWOOD: I am Reverend
12 Curtis Gatewood. I am the HKonJ coalition
13 coordinator for the North Carolina NAACP. I just
14 want to reiterate the point that this is not a
15 voter ID bill. People like to reduce it to voter
16 ID.

17 BARBARA ARNWINE: Exactly.

18 REV. CURTIS GATEWOOD: And we say well,
19 we could use ID to get on a plane, ID to get
20 Sudafed and all that. First of all, we challenge
21 that notion. Number one, voter ID is just one
22 suppressive component of the voter suppression
23 bill. Not only will it have been 237 years before
24 we even had to talk about voter ID, and we all
25 know why we're now talking about voter ID, but

1 what does voter ID have to do with cutting a week
2 out of early voting? What does voter ID have to
3 do with taking out Sunday voting?

4 We all know many ministers, which I am
5 a minister, use Sunday voting to get the
6 congregations out to vote. What would voter ID
7 have to do with eliminating Sunday voting? What
8 would voter ID have to do with stopping teens
9 from voting, preregistering to vote? What does
10 voter ID have to do with stopping straight ticket
11 voting?

12 So, we're here to say first of all we
13 do not want our commission or others to be fooled
14 by the title Voter ID Bill that we hear a lot via
15 the media. But this is a bill that cuts through
16 the heart of people's right to vote across
17 boundaries, especially those of us in the church.

18 One of the people who were working on
19 the bill during the hearings he talked about
20 well, Sunday people don't have to vote. That's a
21 day of the lord. Those types of ways how the
22 Bible has been manipulated in addition to what we
23 are seeing going on with the right to vote, we
24 are here to say we are thankful for those who are
25 now coming out, ministers who are now saying that

1 the Bible actually gives us things to do other
2 than give offerings and sing on the choir. We
3 believe that participating through the electoral
4 process is a part of doing what the lord would
5 have us to do in serving humanity.

6 So, we would like to just say what this
7 bill does to the church and Sunday voting and so
8 many other aspects really should be right away an
9 indicator that this is not a voter ID bill.

10 Lastly, I would just like to say
11 another reason we really have to watch what is
12 going on, there are people who even ask why do we
13 need NAACP or commissions such as yours. When you
14 look at what has happened between the
15 Emancipation Proclamation and the 100 years
16 leading up to it, there are so many African-
17 Americans who came right out of the slave
18 plantations and started rebuilding and actually
19 started being elected to office.

20 Since that time there was a need for a
21 Civil Rights Bill then during the 1800s. After
22 that, the creation of a white backlash caused all
23 of that progress to be destroyed. So, we're here
24 to say not only do we need commissions and a
25 monitoring of our rights to vote to protect us

1 and make sure that we gain the rights, but we
2 also need you here to protect our rights whilst
3 we achieve progress. Thank you very much. We love
4 you.

5 BARBARA ARNWINE: Thank you. Thank you.

6 [APPLAUSE]

7 BARBARA ARNWINE: Thank you.

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National Commission on Voting Rights

March 28, 2014

Closing Remarks

Job No: 72361

1 BARBARA ARNWINE: Thank you. Thank you
2 everyone. What a great audience you've been. As
3 we close I'm going to turn to each guest
4 commissioner for a one-minute closing and then I
5 will just end with some thanks and we will be
6 concluded. Yes, please.

7 EVA CLAYTON: Well, I want to end like I
8 started, by thanking the National Commission for
9 holding these hearings around the country and
10 what an extraordinary opportunity that we have
11 here in North Carolina to be a part of that
12 factual compilation that will be presented to
13 American people.

14 For us who are in North Carolina, I
15 hope we do take seriously that the advocacy for
16 voting is the advocacy for life because indeed
17 that's where we are talking about rather how the
18 education we have, the housing we live, even the
19 income and environment we have. The right to vote
20 is indeed a part of the system that allows us to
21 have a decent life. Those of us who call
22 ourselves leaders must educate others and
23 advocate for others. Thank you.

24 BARBARA ARNWINE: Thank you.

25 [APPLAUSE]

1 BARBARA ARNWINE: Thank you for serving,
2 Commissioner Clayton.

3 RAYMOND PIERCE: Thank you, Barbara, for
4 inviting us. Reverend Gatewood, good seeing you
5 again. As I said earlier when we first started
6 out, voter suppression is a very serious charge
7 in any democracy, any government that constitutes
8 itself as a democracy. It's important that we
9 hold these hearings and it's clear to me from the
10 passion of the commentary here today that there
11 is a strong legitimacy and merit to this charge.

12 So, I hope that our conduct here today,
13 this commission, have pushed and prompted the
14 types of questions, follow up questions to the
15 people that have come here to present. Clearly
16 the Commission on Voting Rights has brought some
17 high-quality individuals, people who are
18 connected to the issue, the voting election
19 officials here, the people who have actually been
20 impacted by this, the young and the old.

21 We've got some work to do here. It's in
22 the record now and I just think this should be
23 continued on across, not just the state, but
24 across the country. Thank you.

25 BARBARA ARNWINE: Absolutely. Thank you.

1 [APPLAUSE]

2 BARBARA ARNWINE: Thank you,
3 Commissioner Pierce.

4 ELLIE KINNAIRD: I wanted to thank the
5 National Commission on Voting Rights for holding
6 this hearing that shines a spotlight on the
7 egregious disenfranchisement of many of our areas
8 that we've heard from today. We heard facts, we
9 heard statistics, we heard direct impacts. You
10 have gathered a record that can no longer be
11 denied of what the intent of that bill was and I
12 thank you. We all need to get that word out and
13 let people know that in spite of this we're going
14 to make sure that we get everybody registered to
15 vote and out to vote. Thank you.

16 BARBARA ARNWINE: Thank you.

17 [APPLAUSE]

18 DAVID HARRIS: I also would like to
19 thank the National Commission on Voting Rights
20 for the opportunity to serve as a guest
21 commissioner. It's good to see you again,
22 Barbara. It's been a while.

23 BARBARA ARNWINE: It's a pleasure.

24 DAVID HARRIS: It's been a while for
25 several people in here actually and it's good to

1 see you.

2 Particularly during the last panel I
3 was reminded of something that all of us know and
4 something that certainly I've seen going back
5 during the early days of doing this type of work,
6 voting rights work, and that is the connectedness
7 between voting had civic participation and
8 poverty and the subtext of education and
9 opportunity. It's all interconnected.

10 If 589 is not flipped, the end result
11 will be even worse issues of poverty than was
12 described with respect to the Tier 1 counties.
13 This has to be reversed. It must be.

14 BARBARA ARNWINE: Thank you,
15 Commissioner David Harris. Thank you so much.

16 [APPLAUSE]

17 BARBARA ARNWINE: Again, thanks to
18 everyone who organized. Come on, put up your
19 hands if you were part of the planning committee.
20 Put up your hands all of those great planning
21 committee members. Fabulous job. Congratulations.
22 We are finished.

23 I want to just remind everyone that the
24 outcome of this hearing today is that there will
25 be two reports produced. Well, three actually.

1 There will be a report that will be out at the
2 end of May on what's called discrimination in
3 voting in the United States of America. That
4 report will cover all the states that we have
5 been talking about.

6 We're also going to produce, as we can,
7 state-specific reports that will be dedicated to
8 different states. We already have some drafts of
9 those done from the hearings we've already
10 conducted. We also will do a report, another
11 conglomeration compendium report in September and
12 that will be called the report on barriers and
13 problems in electoral administration. So, that
14 report will also come out.

15 Those reports as they come out we will
16 do everything we can to publicize them. We'll
17 call upon all of you, your groups, everyone to
18 get the word out. We're going to make it
19 ubiquitous so that everybody has access to the
20 reports and we are hoping that they will have
21 major impact upon people in this dialog and in
22 practical responses.

23 We also look forward to testimony that
24 may be called upon in different chambers to
25 explain these great reports. With that said, my

1 heartfelt thanks to everyone. I look forward to
2 being back home in North Carolina again soon. I
3 just want to thank everybody, this great
4 audience. You were fabulous. This is the hard
5 work, but this is what fighting is about. This is
6 what true democracy looks like and I just want to
7 thank again you remarkable guest commissioners
8 and the extraordinary witnesses. Thank you so
9 much.

10 [APPLAUSE]

11 BARBARA ARNWINE: We are finished--and
12 early.

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2 NATIONAL COMMISSION ON VOTING RIGHTS
3 NEVADA-UTAH REGIONAL HEARING
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6 Taken at 500 South Grand Central Parkway
7 Las Vegas, Nevada 89101

8 On Saturday, April 26, 2014

9 at 10:00 a.m.
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1 APPEARANCES:
2 Jeanetta Williams,
ID-NV-UT NAACP President

3
4 Carmen Berkley,
Director, AFL-CIO Civil Rights Division
5 Gregory Cendana,
Executive Director, Asian Pacific
6 American Labor Alliance
7 Hon. Karen Bennett-Haron,
Chief judge, Las Vegas
8 Township Justice Court
9

10 Witnesses:

11 Lonnie Feemster,
NV State Director, NAACP National Voter Fund
12 Rachel Anderson,
Professor of Law at the UNLV
13 William S. Boyd School of Law and
President of the Las Vegas National
14 Bar Association
15 Kevin E. Hooks,
Las Vegas Urban League
16

17 Dan McCool,
Professor, University of Utah
18 Mark Maryboy,
Former San Juan County Commissioner (Utah)
19

20 Jenn Gonnolly,
Co-President, League of Women Voters of Utah
21 Morgan Lyon Cotti,
Program Manager, Hinckley
22 Institute of Politics, University of Utah
23 Donald Rust,
President, League of Women Voters of Nevada
24

25 Andres Ramirez,
Consultant, Mi Familia Vota

1 APPEARANCES, (continued.)

2 Ross Miller,

Nevada Secretary of State

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1 LAS VEGAS, NEVADA;

2 Saturday, April 26, 2014; 10:00 A.M.

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4 MS. PERALTA: Welcome, everyone, to the
5 Nevada-Utah regional hearing of the National
6 Commission on Voting Rights.

7 Before I say a few words about the
8 commission and the lawyers' committee, I want to
9 take a moment to thank our distinguished panel of
10 guest commissioners for being here today to help us
11 preside over the event.

12 I would also like to thank our partnering
13 organizations that helped to make this event
14 possible. And they are: The ACLU of Utah; Las
15 Vegas Urban League; Lawyers' Committee for Civil
16 Rights, that's us; League of Women Voters of Nevada;
17 Mi Familia Vota; the NAACP; NAACP National Voter
18 Fund; and the Utah League of Women Voters.

19 And finally, I just wanted to say a
20 special thanks to Sean Dugar who is the western
21 regional director from the NAACP. Sean, raise your
22 hand. Sean was really the lead organizer for
23 putting this event together, and we want to thank
24 him and the leadership of the NAACP. I don't see
25 Sue Casiaga (Phonetic), but both of you and

1 leadership of the NAACP have really been
2 indispensable partners in helping us make sure these
3 hearings are a success all across the country. So
4 thank you for all your efforts.

5 The commission on voting rights is an
6 initiative of the Lawyers' Committee for Civil
7 Rights Under Law. And just really briefly, the
8 lawyers' committee is a nonprofit, nonpartisan
9 organization founded 50 years ago to engage the
10 private bar in the fight for civil rights and racial
11 justice. Today we continue our work in areas
12 including the housing, employment, community
13 development, education, and voting rights, which is
14 the reason why we're all here today.

15 Today's hearing, covering both Nevada and
16 Utah, is the 18th in a series of nationwide hearings
17 that we're holding across the country to gather
18 information about the landscape of voting rights and
19 election administration across the country.

20 As many of you know, last summer the
21 Supreme Court effectively gutted a key provision of
22 the Voting Rights Act, one that protected voters
23 from the effects of discriminatory changes in voting
24 laws.

25 The court released states with some of

1 the most troubling histories of racial
2 discrimination in voting from a critical
3 responsibility to demonstrate upfront that voting
4 changes such as moving a voting place would not
5 disadvantage minority voters. In the Supreme
6 Court's view, this requirement was outdated and no
7 longer related to current needs. We believe they
8 got this wrong. So one of the main purpose through
9 these hearings is to identify the needs for stronger
10 protections against discrimination and voting by
11 looking at the current record in states across the
12 country.

13 And we also want to hear about election
14 administration issues as well as opportunities for
15 reform and best practices. Across the country, over
16 the past few years, we've seen a wave of restrictive
17 voting laws making it harder for many eligible
18 voters to cast a ballot. Some of these have taken
19 the form of strict voter ID laws, proof of
20 citizenship, registration laws and others.

21 Further, we continue to see similar
22 election administration challenges cycle after cycle
23 related to poll worker training, voter registration
24 and the like.

25 So your input today is really critical

1 for ongoing advocacy and reform at the state,
2 local -- excuse me -- at the local, state and
3 national levels.

4 With the testimony that we receive today,
5 the lawyers' committee and the national commission
6 will be producing two reports, one on voting
7 discrimination and the other on election
8 administration issues. And both of these reports
9 and the records from the hearing will be made
10 available to the public and advocates and anyone
11 really interested in expanding voting rights in
12 their states.

13 So right now, I would like to ask Sean to
14 come on up. And he's going to give you an overview
15 of the program today, introduce our guest
16 commissioners and kick off the hearing. Thank you.

17 MR. DUGAR: Thank you, Maria. As Maria
18 said, my name is Sean Dugar, and I'm the western
19 regional field director for the NAACP, overseeing
20 all our operations west of the Rocky Mountains.

21 Today we are honored to have a great
22 panel pulled together, a great commission, as well
23 as a number of organizations and individuals who
24 will be testifying.

25 Hopefully, you all got a copy of the

1 program when you came in. It goes over the basic --
2 or it includes the coverage of our basic format for
3 this process.

4 The guest commissioners will each bring
5 greetings. Following those greetings, we will bring
6 forth the first panel. Each panelist has five
7 minutes to give their presentation. As they're
8 giving their presentation, our timekeeper over there
9 will show cards, showing -- telling when they have
10 one minute and 30 seconds and when it's time for
11 them to stop.

12 Again, our commissioners will kind of
13 help to preside over those sessions and make sure
14 that our folks -- our witnesses stay on time.

15 So without any further ado, I would like
16 to introduce our wonderful, wonderful guest
17 commission for the day.

18 First, we have Jeanetta Williams,
19 president of the Idaho-Nevada-Utah state area
20 conference for the NAACP.

21 We have Ms. Carmen Berkley, the director
22 of the AFL-CIO civil rights division.

23 We have Mr. Gregory Cendana -- did I say
24 that right? Okay. Executive director of the Asian
25 Pacific American Labor Alliance.

1 And Honorable Judge Karen Bennett-Haron
2 of the Las Vegas Township Justice Court.

3 So I will pass it off to you-all to give
4 your introduction and then call the first panel.

5 MS. WILLIAMS: Good morning. Good
6 morning. I am, as Sean said, Jeanetta Williams,
7 president of the Idaho-Nevada-Utah, and I'm very,
8 very happy that everyone took the time out of their
9 busy Saturday to be here today.

10 And we all know the importance of voting,
11 at least the ones in this room know, and then we
12 know that we have folks outside that know the
13 importance of voting. Not only being able to
14 register to vote, but then being able to participate
15 and help others to be able to vote. It is a right
16 that we should all be aware of and not take voting
17 for granted. It's also a privilege because we have
18 some of the folks in different states, if they have
19 a felony, they're not able to vote, and they would
20 like to have that privilege back.

21 But we all know that because it is kind
22 of an attack on voting and voting rights, that we
23 should make voting mandatory for everyone that if
24 you're a citizen, you should go out and make sure
25 that you vote in every election.

1 That's one of the reasons why the NAACP,
2 in our Salt Lake branch, last year in October when
3 we had our president and CEO Benjamin Jealous as our
4 speaker, we gave awards out to three of our
5 partners. We have a lot of other partners, but the
6 three that we worked with in the past year, the year
7 before to help register voters in Utah with the
8 Human Rights Campaign, the League of Women Voters of
9 Utah and then the AKA Sorority. And they all
10 received the outstanding partnership award from our
11 branch, and we want to continue that effort in a way
12 that people will know that voting, to the NAACP and
13 our partners group, are very important. And again,
14 thank you.

15 MS. BERKLEY: Good morning. My name is
16 Carmen Berkley, and I serve as the director of
17 Civil, Human and Women's Rights for the AFL-CIO.
18 The American Federation of Labor and Congress of
19 Industrial Organization is a federation of 56 labor
20 unions that work together to ensure that workers can
21 bargain collectively. We work to ensure that all
22 people are treated fairly with decent paychecks and
23 benefits, safe jobs and respect for equal
24 opportunity.

25 It is great to be here in Nevada where

1 169,000 wage and salary workers are union members,
2 many of which work in Las Vegas as service workers,
3 culinary workers, taxi workers, and healthcare
4 providers.

5 Nevada is a highly diverse state and with
6 a union density of over 14 percent, it is important
7 for us to ensure that community of color and
8 underrepresented communities are able to vote and
9 that their voting rights are protected.

10 My role at the AFL-CIO is to ensure that
11 workers of color, women and other communities of key
12 workers are properly represented in the workplace,
13 and that includes voting rights. Far too many of
14 our communities have faced barriers at the ballot
15 box over the past few election cycles in an effort
16 to suppress the rights of citizens to vote and many
17 community members.

18 At the AFL-CIO, we proudly stand for the
19 rights of all citizens to vote, including those who
20 have been previously incarcerated. We believe that
21 individuals who have served their time have the
22 right to give back to their community through the
23 electoral process.

24 So I'm excited to be here in Las Vegas to
25 listen to the testimony and take this information

1 back to Washington, D.C. to ensure that all eligible
2 voters are able to participate.

3 MR. CENDANA: Good morning. My name is
4 Gregory Cendana, and I serve as the executive
5 director of the Asian Pacific American Labor
6 Alliance and the Institute for Asian Pacific
7 American Leadership & Advancement. We are the
8 country's first and only organization of Asian
9 American Pacific Island union members and workers
10 that advance with workers and organize civil right.

11 I also have the pleasure of serving as
12 the chair of National Council of Asian Pacific
13 Americans, a coalition of more than 30 national
14 Asian American, Native Hawaiian and Pacific Islander
15 serving organizations. And I think it's
16 particularly fitting for me to be here because of
17 growth of the Asian American and Pacific Islander
18 community.

19 According to the U.S. Census in 2010,
20 Utah saw a growth of -- from 2000 to 2010 of 60
21 percent in the Asian American Pacific Islander
22 community. And in Nevada, which has seen the
23 largest growth of any state across the country, a
24 increase of 116 percent. And I think it's
25 particularly fitting that we're actually in this --

1 in Clark County because the Asian American Pacific
2 Islander population actually grew 130 percent.

3 And protecting voting rights is a
4 fundamental issue for our Asian American and Pacific
5 Islander community so that we can ensure that we
6 have the power to be heard and we have a say in what
7 happens in our local communities and across the
8 country. We are the fastest growing racial and
9 ethnic in the country, and this growth can result in
10 discrimination, especially in places where there's a
11 history of voter discrimination.

12 For immigrant communities, there are many
13 challenges that language minority voters face when
14 we're at the polls. It's important that we
15 strengthen the enforcement of existing federal laws
16 for voters with limited English proficiency, provide
17 better poll -- poll worker recruitment and training,
18 and share the formation of community advisory groups
19 at the local level.

20 I am honored to be here today as a guest
21 commissioner for this Nevada-Utah regional hearing,
22 and look forward to hearing from the witness and
23 stories of how they're impacted by discrimination,
24 election administration problems, voter registration
25 procedure, and other challenges.

1 Thank you all for joining us today, and
2 thank you for the invite of being a part of this
3 hearing.

4 MS. BENNETT-HARON: Good morning,
5 everybody. My name is Karen Bennett-Haron, and I
6 currently serve as the chief judge of the Las Vegas
7 Township Justice Court, which essentially serves all
8 of Clark County.

9 It is indeed an honor to serve as a part
10 of the panel that so distinguished themselves and
11 explained their position with regard to protection
12 of voting rights, and I think it's essential that we
13 all acknowledge that commitment.

14 I am especially proud to preside today
15 over the first panel which will represent the
16 concerns that have been voiced primarily in Nevada
17 with respect to challenges to minority voters and
18 poll workers, the disenfranchisement of our felony
19 community that has now served their time and we want
20 them back in our voting polls, and of course, the
21 representation of the communities of color,
22 primarily minority communities.

23 And so I don't want to talk a whole lot
24 about myself other than to say that I, too, am very
25 adamant about the protection of voting rights. I

1 think it's essential that we communicate, that we
2 not take that right for granted. Too many died in
3 the struggle and fought for us to have that right,
4 and so it's imperative that we preserve that legacy.

5 So without further ado, unless there is
6 something else, I think we can probably get started
7 with the first panel. Yes.

8 Okay. So I'd like to invite Lonnie
9 Feemster, the esteemed Professor Rachel Anderson
10 and Mr. Kevin Hooks to the DS.

11 MS. BERKLEY: And we also just wanted to
12 let folks know that this event is being recorded.

13 MS. BENNETT-HERON: Recorded and
14 reported, right? Okay.

15 MS. BENNETT-HERON: So is everybody
16 situated just about? If you all wouldn't mind, a
17 few introductory comments and then we can get on
18 with your actual testimony. So we'll start
19 with Mr. Feemster.

20 MR. FEEMSTER: Is the microphone on?

21 MS. BENNETT-HERON: If you press where
22 the talking face or outline is. Right there. Then
23 you can --

24 MR. FEEMSTER: Oh. Thank you. All
25 right.

1 I'm sorry. You said introduce
2 yourselves. I didn't catch everything that you
3 said.

4 MS. BENNETT-HERON: Just a few
5 introductory comments about what you're here to do
6 today. And then you can -- for all the panel, then
7 we'll start with your particular testimony.

8 MR. FEEMSTER: Okay. I have worked as
9 the NAACP National Voter Fund, the Nevada state
10 director for the last five election cycles, and my
11 involvement is a love for civic engagement in a
12 state that has a low level of civic engagement, at
13 least by the social signs that I've read over the
14 years and my own experience.

15 So I've voted since I was 18, when they
16 changed the law and allowed us to vote, and I was
17 told never talk about politics or religion. Those
18 are the things that pretty much fill my life now.
19 So I don't know why everyone is so afraid of it, but
20 it's such importance -- but hopefully, we won't get
21 into religion today.

22 MS. BENNETT-HERON: And Professor
23 Anderson.

24 MS. ANDERSON: I'm Rachel Anderson. I am
25 a tenured professor of law at the William S. Boyd

1 School of Law at the University of Nevada, Las
2 Vegas. I am also the president of the Las Vegas
3 chapter of the National Bar Association. I am a
4 director and vice president of the American Civil
5 Liberties Union of Nevada, and a director of the
6 American Society of Comparative Law. And my
7 scholarship includes work in the areas of civil
8 rights and human rights, including specifically
9 voting rights and elections in Nevada as well as a
10 particular focus on race.

11 MS. BENNETT-HERON: And Mr. Hooks.

12 MR. HOOKS: Good morning. I -- you
13 want --

14 MS. BENNETT-HERON: Good morning. Yes.
15 Outline that looks as though they're talking. Press
16 that.

17 MR. HOOKS: Forgive me for being
18 technologically challenged.

19 MS. BENNETT-HERON: That's okay. Just
20 speak loud.

21 MS. PERALTA: Yeah. Sorry about that.
22 We're going to get that fixed. We're going to get
23 that fixed.

24 MR. HOOKS: Fair enough.

25 Good morning. I am Kevin Hooks, the

1 president and CEO of the Las Vegas, Clark County
2 Urban League. I am primarily here because as a
3 national organization that participated in all of
4 the work that led to the establishment of the voting
5 rights that we enjoy today in this democracy, it's
6 important to us, as an organization, to make sure
7 that we participate in the restoration and
8 protection of those rights. There's no fundamental
9 right greater to our democracy than that of the
10 right to vote, and that's why we are here today to
11 speak on something that is so important. So the Las
12 Vegas, Clark County Urban League is proud to
13 participate in this discussion today.

14 Thank you.

15 MS. BENNETT-HERON: Okay. Then we'll
16 begin with the testimony of Mr. Feemster.

17 MR. FEEMSTER: Can you hear me?

18 MR. DUGAR: Your light's off.

19 MR. FEEMSTER: Okay.

20 MR. DUGAR: Give us one moment. We're
21 having technical difficulties.

22 MS. BENNETT-HERON: Oh, wow. Everybody's
23 light is blinking. Okay.

24 (Pause in proceedings.)

25 MR. FEEMSTER: All right. I think my mic

1 is on now.

2 MS. BENNETT-HERON: Okay. Very good.

3 MR. FEEMSTER: Okay. Maybe everyone can
4 change seats.

5 Again, I'm Lonnie Feemster with the NAAC
6 National Voter Fund. I have been involved with
7 the --

8 MS. BENNETT-HERON: Are you still not
9 able to hear? Is that the --

10 UNIDENTIFIED SPEAKER: No, I can hear.
11 I'm just now listening to the thump coming from the
12 jazz festival.

13 MS. BENNETT-HERON: Right. Because
14 they're going to be getting set up, so we're just
15 going to have to all blend in today. Okay? All
16 right. I'm sorry.

17 MR. FEEMSTER: I've been involved with
18 registration, education and participation for the
19 NAAC National Voter Fund. A part of that involves
20 poll watching, making sure that the policies and
21 practices are fair in a state. I would say E
22 pluribus unum, if my Latin is correct, from many
23 opinions I think you come with -- with one clear
24 direction for where we need to go on voter rights.

25 I don't know everything about voting in

1 the state. I've talked to a lot of people. I've
2 talked to people who worked polls for 50 years in
3 our branch, and my concern is that everything isn't
4 perfect, but they -- we -- I haven't seen recently a
5 high level of voter discrimination.

6 However, there are isolated incidents
7 that I hear about from people that work at the
8 polls, and my experience. I was challenged on my
9 signature in the last election, which I became a
10 little indignant about because I signed it there and
11 I'm signing it here. And I don't get what is your
12 problem. Well, I always carry an ID. So I think we
13 have a problem with explicit bias and some
14 individual errors that we hear anecdotal stories.

15 And so I think what is important is that
16 you take from everyone and you probably get a clear
17 picture. I think in -- so I don't have anything
18 specific under voter discrimination particularly.
19 As far as the election administration, obviously,
20 there are some things that I mentioned in my written
21 testimony is that young adults have some problems in
22 voting at a higher and higher rate, according to my
23 research at the U.S. Census Bureau. And a lot of
24 times the student populations don't understand the
25 rules. They're not voting where they grew up.

1 They're in a different city.

2 I think most of the kids at UNR come from
3 Las Vegas, and my son came down here to go to
4 school. I think they just want to get out of town,
5 but I think we have to recognize they're
6 communicating differently. A lot of the money that
7 goes into television is what motivates people to get
8 out and vote. They say that's an idiot. I'm going
9 to go out and vote. I'm going to go and vote
10 against that idiot.

11 Well, young people aren't getting the
12 information because they don't get their information
13 that way. It's much of the older population that
14 votes at a high rate. So I think it's important
15 that we recognize this growing, rising electorate
16 and that we also adjust our efforts to make sure
17 that they are informed of the rules of voting so
18 that they have that opportunity and use the digital
19 marketing platform that they use through the various
20 online resources and mobile things that are
21 available like texting, Twitter and Instagram, all
22 the things that I don't use.

23 As far as reform, one of the things I
24 advocate that I think is -- worked out well, I've
25 tried watching polls and I've gone around poll to

1 poll. In fact, I had the opportunity to actually be
2 hired by Edison Research to do exit polling. I
3 said, "Oh, boy. Now I get to find out who are these
4 crazy people that come up with these exit polls."
5 But I was on call, and I didn't get called.

6 So I said, "Well, I'm going. I got my
7 mobile phone. They can call me." I went around the
8 polls and there were people walking out and we got
9 to walk down to the other polling place. And the
10 end result was, I said, "Look, you need a ride," I'd
11 take them down there, and then I'd get there and I'd
12 talk to a couple poll workers I know. And I'd pick
13 up someone else, take them to another polling
14 location, and apparently, a lot of people do not
15 understand the rules and they are going to the wrong
16 polling locations and many times, have to vote on
17 provisional ballots.

18 You can see, quite simply, maybe it needs
19 to be in big block letters, bigger than anything,
20 "This is where you go to vote" on the front of the
21 sample ballot and the address because if you vote on
22 election day, it's a problem. But we are moving
23 close to -- well, we're over -- 50 percent of the
24 voting is done early for our off presidential
25 election, and 69 percent, I think, in Nevada for our

1 presidential elections.

2 So we are pushing for early voting. And
3 on that issue, one of the things that came up, as
4 far as election reform, they were going to eliminate
5 Sundays in Washoe County for voting. And we had a
6 group of nonpartisan organizations petition our
7 county commission, and they changed the rules
8 immediately. So they are going to include Sundays
9 for voting. And we -- we immediately organized 50
10 churches to a souls to the polls effort. So I think
11 everything else is in writing on my testimony,
12 though. Thank you.

13 MS. BENNETT-HERON: Thank you.

14 MR. FEEMSTER: I'm sorry. I didn't see
15 the timekeeper. He should have stood behind you,
16 Judge.

17 MS. BENNETT-HERON: May I ask, you want
18 to come closer? All right. Okay. Thank you so
19 much, Mr. Feemster.

20 And now, none other than our Professor
21 Anderson.

22 MS. ANDERSON: Thank you. So I should
23 start out by noting that I'm speaking in my
24 individual capacity and not on behalf of the
25 organizations to which I belong. And I'll also note

1 that in 2012, I did voter protection, which you
2 would think would have informed what I'm going to
3 tell you, and in a moment I'll tell you why it
4 didn't.

5 So Nevada has streamlined online voter
6 registration and status checking for a voter's
7 registration status, which means for many voters, it
8 is very easy to register to vote and to know if they
9 are registered to vote. And so we might think that
10 for the average voter, it is quick and easy to
11 register or update your status. And we'll just
12 start with that assumption.

13 We know in January, Attorney General
14 Holder gave testimony at the end of the month of
15 January where he highlighted nationally and brought
16 additional attention to an issue that people have
17 been talking about for a long time, found voter
18 disenfranchisement or as we might say, the taking
19 away of voting rights for people who have been in
20 prison at some period -- during some period of time
21 and have been convicted for something that was a
22 felony, at least at that time that they were
23 convicted, whether or not it is later or the laws
24 change.

25 And in bringing attention to this issue,

1 he highlighted the large number of people who are
2 imprisoned because of the combination of the
3 workings of the criminal justice system or of the
4 justice system where a felony may be at issue and
5 our system of voting rights. And we see this
6 playing out in Nevada, and he mentioned Nevada as
7 one of the key states.

8 In Nevada, we have a significant portion
9 of people who are disenfranchised because of having
10 their rights taken away. I'm going to use the
11 felony disenfranchisement, although I really object
12 to that terminology because it brands people later
13 for something that, arguably, they have now paid for
14 in the past.

15 And so Nevada has approximately or close
16 to 5 percent of its population who have lost their
17 right to vote, which puts the number somewhere
18 around, let's say, 90,000 people who don't have the
19 right to vote in this state because of the loss of
20 their rights. That is exacerbating the communities
21 of color. I'll take the African-American community
22 where the numbers are highest, but this also applies
23 in differential numbers to the Latino community or
24 the African-American community.

25 The numbers are estimated as high as 25

1 percent, which means we're talking up to over 50,000
2 African-Americans in this state, which is one in
3 four African-Americans in the state of Nevada who
4 may have lost their voting rights or don't have the
5 right to vote because of the felony
6 disenfranchisement laws.

7 If we ask the question of how many people
8 get their rights reinstated, because the
9 conversation in Nevada generally turns to changes in
10 the voting laws in 2003 and in 2005 that allowed
11 people to actually get their rights reinstated, then
12 the data that comes out for, I want to say, 2010 is
13 less than 1 percent, so approximately 0.17 percent.
14 So it's only a tiny fraction of people are applying
15 and only a tiny fraction are having their rights
16 reinstated. And this can have to do with not
17 knowing that they can have their rights reinstated,
18 not having the right paperwork at the right time,
19 not submitting it in the right way or other reasons.

20 So the voter protection work that I did
21 in 2012 should have helped me when I spent my spring
22 break trying to research this information for a
23 program that was done with the Las Vegas Chapter of
24 the National Bar Association, the NAACP, and the
25 Urban League. It took me a week to get the

1 information that you have in the back of your
2 packets on voter registration and reenfranchisement
3 in Nevada. And I'm a law professor with a lot of
4 resources at my disposal and time spent working on
5 these issues.

6 I found the one person in the state,
7 arguably, who has that information. There's almost
8 no information provided online, at the state level,
9 none. There is one document provided at the county
10 level that is a paper document. And we have a
11 significant portion of people, specifically in Clark
12 County, who are low income and, therefore, have no
13 access to Internet at home, and their only access
14 may either be through their children at school or --
15 I'm at stop.

16 MS. BENNETT-HERON: Can she just finish
17 that last sentence.

18 MS. ANDERSON: Or at the library where
19 the time is limited.

20 MS. BENNETT-HERON: Okay. Thank you very
21 much.

22 And Mr. Hooks.

23 MR. HOOKS: Thank you, once again. I
24 would like to state for the record -- I'd like to
25 state for the record, I am Kevin Hooks. I live at

1 353 East Bonneville Avenue in Las Vegas, Nevada, ZIP
2 code is 89101.

3 I state that for a couple reasons. First
4 and foremost, it is not only am I the proud
5 president and leader of a historic civil rights
6 organization, I'm also a proud resident of Clark
7 County. And in doing so, I'm reminded of Fannie Lou
8 Hamer's statement once about being a first-class
9 citizen. I am proud of being a first-class citizen,
10 and I will fight to continue to maintain that
11 position.

12 There is no right more fundamental to
13 democracy than the right to vote. Our efforts
14 should continually be focussed on expanding and
15 enhancing our democratic process. The Supreme
16 Court's recent rulings are a direct blow to 50 years
17 of progress towards voter equality and to the dream
18 that Dr. Martin Luther King so passionately and
19 purposely shared with the nation in 1963. And that
20 remains so five decades later.

21 While the Clark County registrar's office
22 do not currently note any particular discrimination
23 complaints from the most recent election cycle, we
24 must remain as diligent as ever in defending and
25 protecting the rights that were so hard fought and

1 died for during the civil rights movement of the
2 '50s and '60s.

3 We encourage our leaders to abandon party
4 lines and partisanship and act in the best interest
5 of our nation and our democracy by restoring voting
6 rights. We cannot focus on celebration of progress
7 until we ensure a continuation of the very equality
8 and opportunity that are at the core of this country
9 and our democracy. In the words of Mary McLeod
10 Bethune, "We have always fought for America in spite
11 of its imperfections. Now we fight for a new
12 America."

13 Thank you.

14 MS. BENNETT-HERON: Questions from the
15 panel?

16 MS. WILLIAMS: Yes, I -- I do have one.
17 And one of my questions, I guess I might want to ask
18 is that what -- can you just kind of give us a
19 couple examples of what you've done with the Urban
20 League as far as getting people registered to vote,
21 and then also making sure that they get to the
22 polls.

23 MR. HOOKS: Thank you. The Las Vegas
24 Urban League and the Urban League, at a national
25 level, we work diligently through our national Urban

1 League Young Professionals and the Las Vegas Urban
2 League Young Professionals doing registration to
3 voter events, encouraging people to vote, and when
4 necessary, even organizing and coordinating rides to
5 the polls.

6 As you know, we are a 501(c)(3), so we do
7 not pick sides. We're not completely nonpartisan,
8 but it's important for us to make sure that we
9 provide opportunities for all of those that we serve
10 to participate fully in democracy.

11 MS. WILLIAMS: Thank you.

12 MS. BERKLEY: Professor Anderson.

13 MS. ANDERSON: Yes.

14 MS. BERKLEY: In your opinion, what could
15 be done to help educate returning citizens about
16 their ability to get their rights reinstated?

17 MS. ANDERSON: I think the first thing is
18 that they could be provided with a clear document
19 that tells them for their specific situation exactly
20 which steps they need to take. And more useful --
21 so -- that would be the information that could be
22 provided to them.

23 I think that the legislation that should
24 be passed would be to automatically reinstate
25 people's voting rights rather than placing the

1 burden on those that are psychologically,
2 economically, and resource-wise, in general, least
3 able to pursue their rights.

4 MS. BENNETT-HERON: Any other questions?

5 I have a general question for all three
6 of you, and this is just something that has plagued
7 me over the last few years. I'm a native Las Vegan,
8 and I've seen quite a difference in -- oh, sorry.
9 I've been telling y'all to cut your mics on and I
10 didn't cut mine on. Thank you.

11 And I think -- I'm a native of Las Vegas.
12 I was born in 1961, so -- and I've seen almost a
13 decline in terms of the interest that communities of
14 color have in participating in what we are now
15 calling our voting rights process. And so I don't
16 know if that's been y'all's experience, particularly
17 I know Mr. Feemster brought up the young folks and
18 we commun- -- young people communicate differently
19 now. They don't rely upon television commercials to
20 inform them.

21 But the level of interest and the level
22 of, you know, why should I participate, you know, I
23 don't get anything out of it. Folks are all -- you
24 know, everybody's got a scam. Everybody's --
25 nobody's authentic anymore. There is a lack of

1 distrust in what -- in even some of the
2 organizations that we grew up trusting, whether it
3 be the NAACP or the Urban League or, you know, any
4 number of organizations. Even institutions like the
5 church in our community are now kind of seen as
6 being a bit distrustful.

7 So how can we make voting rights and,
8 more importantly, engagement in -- civic engagement,
9 as Mr. Feemster says, relevant amongst our young
10 folks now? How do we make this relevant? How do we
11 make them even engage? Because I think some of what
12 we are talking about, Professor Anderson, there's
13 just the lack of interest on the part of -- because
14 we have many brilliant returning citizens, but some
15 don't really care too much about participating in a
16 mainstream system that is seen as ostracizing it.
17 So how can we make this a relevant piece again?

18 Rachel?

19 MS. ANDERSON: So I taught a human rights
20 class a few years ago, and I used a game from the
21 1970s called Blacks & Whites, which was about the
22 psychology of race. It's like Monopoly, but the
23 players are black or they're white. They -- and I
24 had the students draw them randomly. And the
25 students who drew black players had completely

1 different rules for them and had very little access
2 and started with very little. Right. So
3 paralleling a particular aspect of society. And the
4 game was created by the psychology department.

5 Within about five minutes, maybe ten of
6 the game, these students who were playing black
7 players become apathetic. And that persists
8 throughout the game. They can play for an hour, it
9 doesn't matter, even if there are opportunity cards
10 or other small things that allow them an
11 opportunity.

12 And when I asked the students, you know,
13 "What happened? You didn't seem very interested.
14 You started talking on the side" -- to the students
15 who were normally engaged -- they said, "I knew
16 there was no way I could win." They didn't see any
17 way out, you know, the options were so low, I was
18 apathetic. And they said it themselves.

19 And so I think that the conversation
20 about this administrative hurdle, which is why I
21 talked about them, even though they're not that
22 visible, they're significant in affecting whether or
23 not people want to engage, whether or not they
24 believe that engaging is relevant. I was
25 disheartened.

1 In the week it took me to gather the
2 information that I put into a flowchart, I was --
3 and I had -- I mean, I had a lot of people that I
4 was able to call, and I was calling them. I would
5 have to stop each day because I was depressed. And
6 I wasn't even trying to get my own rights, and would
7 say that -- that, you know, that's the desolation of
8 disenfranchisement is trying to go through these
9 hurdles.

10 And as I spoke with the different
11 officials, each of them said, "Well, it's on the Web
12 site." But I would say, "Well, I've gone through
13 the Web site and I see this, this and this." But I
14 had the credibility of my title of law, of the
15 university, of being, you know, an employee of the
16 state to even say that and have them listen to me,
17 and even then, they didn't have the answer. So it
18 was only frustrating for them in that context, and I
19 think that they were making an effort. I think they
20 were -- they were actually trying to provide the
21 information.

22 So if we don't actually walk through each
23 step that citizens have to go through in the same
24 way we walk through each step as we want a customer
25 to go efficiently through a casino or through some

1 type of economically beneficial context, then we're
2 not able to remove those hurdles and we are in
3 effect saying to people, "You are going to have to
4 work so hard that maybe it isn't worth it to
5 actually make that effort because you're going to
6 spend your entire life just focussing on that one
7 thing. And by the time you get that right to vote
8 or otherwise, you know, maybe -- maybe it doesn't
9 feel as important."

10 And if they've already been
11 disenfranchised through the time that they are in
12 prison, they've already moved away from the system.
13 So they're now decoupled from the system all
14 together and they're in a system that is not
15 treating them as human beings in a way that we
16 generally understand human and civil rights. And so
17 if we don't automatically reinstate people's rights
18 and if we don't automatically or in ways that are
19 immediate and valid allow people to exercise their
20 rights, then we are completely undermining the
21 legitimacy of both beliefs of -- beliefs in our --
22 well, legitimacy and beliefs in democracy and the
23 justice system. So I think automatic reinstatement,
24 direct access and actually walking through it the
25 same way we would in a consumer context.

1 MS. BENNETT-HERON: Anything else?

2 MR. FEEMSTER: Yes, I hope my written
3 testimony is entered into the record also because I
4 did not read from it. But the issue of poll workers
5 is very important. We need to have diversity that
6 reflects our community. The registrar voters told
7 me that their -- their poll worker pool is pretty
8 much filled by experienced people who worked the
9 last polls. Well, they didn't reflect the community
10 back then, so that's part of it. All of our
11 organizations need to get our members civically
12 engaged in the process.

13 One individual recommended that we have
14 our young people be required to work as poll
15 workers. That would be a great way. I know I had
16 kids as young as five at the polls with picket signs
17 saying "early vote" in front of the early voting
18 location, and I got them involved at five all the
19 way up to 16. And they said, "Well, we can't even
20 vote. Why are we doing this?" One young lady put
21 it best, she said, "I couldn't wait to vote. I was
22 involved ever since I was a little kid."

23 I think what we have to learn from
24 history, and if you don't know your history, you
25 will repeat its mistakes. The gilded era gave the

1 power in this country to the extremely wealthy,
2 people much more -- wealthier than Bill Gates and
3 the Koch brothers and George Soros and whoever.
4 These people had a lot more money, ten times as much
5 money. They own the government. And the
6 progressive era came in and changed things and gave
7 the low income, got the children out of factories,
8 they outvoted the big money. Big votes can outvote
9 big money, so civic engagement is critical.

10 When you read The Vanishing Voter, I
11 think it was Mr. Patterson who wrote the book. The
12 voting rate has been declining over 50 years and
13 18-year-olds went down like a rock. As soon as we
14 gave them the right to vote, except for me, I didn't
15 know this was going on. But the trend has changed
16 for young Americans. And what's happening is they
17 are not being influenced as much by big money
18 because a lot of -- a lot of it's going into the
19 television media that is influencing the older
20 voters who watch television at much higher rates.
21 So we're seeing the shift, the millennials are going
22 to take over our country, as long as they don't mess
23 with social security.

24 The felony law is a Jim Crow law. It was
25 Jim Crow when it started and it's Jim Crow now. It

1 should be one sentence, and I'm conservative. It
2 should say if you're not in jail, you can vote.
3 That means if you have on handcuffs, you can vote.
4 Although, I'd question how you got them on, but
5 that's not the point.

6 It is so complicated. I have never seen
7 anyone in Nevada be able to explain the law to me,
8 including the legislators that wrote it. They start
9 talking and you cannot explain to a person the
10 felony disenfranchisement law. And if they're
11 registered, they commit another felony if they don't
12 have their civil rights.

13 And so that law should not be several
14 pages, it should be one sentence. And there are
15 places where you can vote in jail, as you're aware
16 of. I think the -- the young people should be
17 engaged, but I think the most important thing is we
18 are moving through a second progressive era where we
19 will outvote the big money because once people
20 realize that is just brainwashing, they did it with
21 radio and newspapers 120 years ago and now they are
22 using the television and cable channels.

23 And so I think that is the most important
24 thing is to reverse this trend of downward voting,
25 and it seems like the 18 to 24-year-olds since 2000.

1 And then there was a few less in 2012, but the
2 Census Bureau analysis kind of goes into why there
3 is some light differences. Young people are voting
4 at higher and higher rates. And now it's the 18 and
5 34-year-olds that -- really that block of voters.
6 And so to me, we are moving there, but we have to
7 continue to engage our young adults.

8 MR. HOOKS: Let me just say directly to
9 answer your question, the challenge that we face in
10 engaging the youth of today is one that is simply
11 the fact that they have no personal experience with
12 the civil rights movement that caused the young
13 people in the '60s to act.

14 As a result of that, we continue to try
15 to solve those problems and get them engaged by
16 using methods from the past. It's essentially
17 trying to solve digital problems with analog
18 solutions.

19 And I would submit that one of the things
20 that we have been doing at the Urban League, and we
21 founded the Urban League's -- the National Urban
22 League of Young Professionals, which I'm a proud
23 founder of. It was an idea that I took to Hugh
24 Price, who was the CEO at the time, and along with
25 two other members of the national board.

1 And it was for that explicit purpose to
2 get more people in our -- in our generation to
3 participate in the movement and cater. And, you
4 know, ten years later, we're -- more than ten years
5 later, we've got 67 chapters around the country,
6 tens of thousands of people participating in that
7 movement.

8 The challenge that we're facing is most
9 of them are seasoned professionals that have college
10 education. So it's just like any scenario. It's
11 easier to get that group of people motivated to
12 participate because they can feel the cause. An
13 example, the recession, which the recession, they
14 felt it. They wanted something done about it.

15 The people in the lower rungs of the
16 economic ladder and the people in the higher rungs
17 of the economic ladder, they had no need to
18 participate in the recession, therefore, they
19 weren't involved.

20 The same thing with fighting for civil
21 rights and being engaged, and so until we come up
22 with solutions, and we're trying with the National
23 League of Professionals, we're sharing best
24 practices with our colleagues at the NAACP. We're
25 learning from one another and we're going to

1 continue to do that. But again, until we figure out
2 particular solutions to the problems of the today,
3 we're not going to get those people engaged.

4 MS. BENNETT-HERON: Are there any
5 questions or comments from the audience? Time.

6 All right. Okay. Well, thank you all
7 very much for participating in our first panel. We
8 really appreciate your hard work and effort and
9 solute you in all that you do.

10 MS. WILLIAMS: Thank you. Thank you.
11 We're going to ask our second panel if they would
12 come forward. And that would be Dan McCool, Mark
13 Maryboy, Jenn Gonnolly and Morgan Cotti.

14 And what we'll do is in the order of
15 introduction, we'll go in that order. And so our
16 first panelist be will be Dan McCool. He's a
17 professor, political science at the University of
18 Utah. And his topic will be on native voting issues
19 in Utah.

20 Our second panelist will be Mark Maryboy,
21 and he's the former San Juan County commissioner in
22 Utah, and San Juan apportionment and native seats.
23 He will be addressing that issue.

24 Jenn Gonnolly, co-president of the League
25 of Women Voters of Utah, and she will address

1 same-day registration pilot; low turnout issues.
2 And our problem with -- related to the voters of
3 Utah turnout.

4 Morgan Cotti will speak on -- she's the
5 program manager at the Hinckley Institute of
6 Politics at the University of Utah, and she will
7 speak on the caucus to primary systems; turnout
8 issues. And so we'll turn the time over to our
9 first presenting, Dan McCool.

10 MR. MCCOOL: Thank you. Do I need to
11 turn this on?

12 MS. WILLIAMS: Yes. It's the --

13 MR. MCCOOL: Thank you. My name is Dan
14 McCool. And I'm a professor of political science at
15 the University of Utah. I co-authored a book called
16 Native Vote in 2007. Much of my discussion today
17 will come from that book.

18 In 2012, I edited a book called The Most
19 Fundamental Right: Contrasting Perspectives on the
20 Voting Rights Act. When the Voting Rights Act was
21 being considered for renewal in 2006, Congressman
22 James Sensenbrenner, who is a conservative
23 Republican, made this statement: "History reveals
24 that certain states and localities have not always
25 been faithful to the rights and protections

1 guaranteed by the constitution. And some have tried
2 to disenfranchise African-Americans and other
3 minority voters through means ranging from violence
4 and intimidation to subtle changes in voting rules."
5 I believe that's why we are here today.

6 Now, the Voting Rights Act has played a
7 critical role in Indian country, in all sections of
8 the act, Section 2, which prevents racial
9 gerrymandering; Section 5, when it was in effect,
10 before Shelby County; and Section 203, the language
11 assistance provisions. We've seen lawsuits in
12 Indian country on all three of those sections.

13 Now, the struggle for equal voting rights
14 in Indian country is a long one. It's been going on
15 a long time. The states have been quite creative in
16 coming up with ingenious ways to try to prevent
17 American Indians from voting. Some state
18 constitutional provisions actually outlawed Indian
19 voting. They've come up with these residency
20 requirements claiming that Indians were not actually
21 residents of the counties and states in which they
22 live.

23 They have come -- they've come up with
24 what I call self-termination. American Indians are
25 the only group in America where the law said the

1 only way you can vote is if you give up your
2 language and your culture and your identity and give
3 up your home and your homeland and become just
4 exactly like white people before you'd be allowed to
5 vote. That's actually written into many laws in
6 western states, trying to deprive Indians of the
7 right to vote because they don't pay some taxes, as
8 though it was some kind of privilege rather than a
9 fundamental right.

10 There were claims that Indians were mere
11 guardians of the state and, therefore, not deserving
12 of the right to vote. And literacy tests have also
13 been applied to American Indians.

14 In our book Native Vote, we analyzed 75
15 cases in Indian country. The Indian plaintiffs won
16 71 of those 75 cases. That clearly indicates
17 there's a consistent problem and there's a long-term
18 pattern of discrimination against American Indians.
19 Eight of those cases involve Section 203. Nine
20 involved preclearance. So you can see that the
21 Shelby County case is going to have a significant
22 impact in Indian country, and the rest of them were
23 a Section 2 case.

24 Let me just speak briefly about the
25 impact of the Shelby County case. We're going to

1 see a loss of what's called the prophylactic effect.
2 We don't now how many bad laws were stopped before
3 they were ever enacted because they knew there would
4 be preclearance. But we know there was an effect
5 there.

6 What's going to happen, I think, is those
7 laws are going to be passed. They're going to go
8 into effect and then these jurisdictions will be
9 sued under Section 2. So enforcing the Voting
10 Rights Act just got a lot more complicated and lot
11 more expensive. And the laws have to go into effect
12 now, before they can be challenged. When Section 5
13 was operative, they could stop -- they stopped
14 before they went into effect.

15 So it's going to cost a lot, these
16 cases -- Section 2 cases are very expensive, but I
17 think we've seen a lot of them in Indian country,
18 and I think we're going to see a lot more.

19 Let me just conclude by saying the Voting
20 Rights Act has had a tremendously powerful impact on
21 the ability of American Indians to participate in
22 the political process and have an equal opportunity
23 to elect candidates of their choice.

24 And there have been two cases in Nevada
25 and Utah. Humboldt County was sued in 1978, and

1 they agreed to actually change their election
2 procedures because it was disadvantaging American
3 Indian voters.

4 And San Juan County was sued in 1983.
5 They settled in 1984, and that was a Section 2 case.
6 So -- and that case is actually now being
7 relitigated. So we can see a direct impact of the
8 Voting Rights Act in Indian country. Thank you.

9 MS. WILLIAMS: Thank you. Our next
10 panelist will be Mark Maryboy.

11 MR. MARYBOY: Good morning, ladies and
12 gentlemen. Today I will talk to you about my
13 experience as a county commissioner in San Juan
14 County, Utah. I was elected as a county
15 commissioner in 1985, the first Native American ever
16 elected to the public office in the city of Utah. I
17 served for 16 years and retired in 2004. I've never
18 lost an election when I ran for the county
19 commissioner seat.

20 My experience is it was the hardest job I
21 have ever had. From the day I was elected to the
22 day I retired, I was challenged by the commissioners
23 that I served with. It was interesting when I was
24 elected, one of the county commissioners told me
25 that they didn't need to be sued. They didn't need

1 federal government to tell them to create a new
2 district. Out of the goodness of their heart, they
3 could have easily reapportioned and created a new
4 district. That was what I heard. But I really
5 think that it would have never happened.

6 A seat on the county commission is very,
7 very important for the Navajo people in San Juan
8 County because as a county commissioner, you are a
9 voice for the people. When I first got elected,
10 over 90 percent of the people had no water, no
11 electricity in their homes. And as a county
12 commissioner, I was a voice for the people and lives
13 were improved.

14 Today a lot of people have running water
15 and electricity in their homes, better roads, and we
16 were also able to create a hospital and also a
17 public health service for the Native Americans of
18 San Juan County. And we were also able to improve a
19 lot of roads and also able to talk about public
20 lands for Native Americans.

21 So in my conclusion, I can tell you that
22 voting rights for Native Americans, minorities,
23 everybody, is very good as far as social and
24 economic involvement is concerned.

25 Thank you very much.

1 MS. WILLIAMS: Thank you very much.

2 Jenn Gonnolly is going to make some --

3 MS. GONNOLLY: Good morning. Thank you
4 for giving me the opportunity to speak to this
5 commission. The League of Women Voters of Utah is
6 very concerned about the consistent and ongoing
7 decline of voter participation in Utah. In 1960,
8 78.3 percent of Utahns who were eligible to vote
9 turned out to the polls. But in the 2008 election,
10 that had fallen to less than 50 percent. And that's
11 contrary to the national trend because in 2008, the
12 national -- nationally, we saw more voters turn out
13 than since 1976. So Utah is turning in a direction.

14 We feel that there are three causes for
15 this trending. First, gerrymandering to create
16 noncompetitive districts.

17 The second problem would be access to
18 candidate selection process.

19 And the third is voter registers,
20 confusion around how to register to vote. I would
21 like to talk about voter registration today. Voter
22 registration is required because there are two sets
23 of schools of thought about the vote. One school of
24 thought, which the League of Women Voters supports,
25 is this is a right, that every citizen should go to

1 the polls.

2 And the other school of thought is that
3 this a privilege that requires a personal -- a set
4 of personal responsibility in order to enact that
5 privilege. That leads to things like registering to
6 vote and deadlines for registering to vote.

7 In Utah, there was a law passed during
8 the 2013 election that had caused great confusion
9 based on how you register to vote and what your
10 deadline is.

11 For instance, if you register online, you
12 can register 15 days prior to the election and vote
13 in the early election time. But if you register
14 online seven days prior to the election, you can
15 only vote on election day. Now, if you vote -- if
16 you register to vote in person, that can be done up
17 to the day before, possibly. But there's confusion
18 on different county clerks whether that is true.

19 This sort of confusion in this day and
20 age -- we talked about the millennials, and
21 millennials do things instantaneously. They decide
22 to vote and they expect to be able to vote.

23 So the good news in Utah is, we also
24 passed a bill in the 2013 session that will allow a
25 pilot project for counties to choose. If the county

1 chooses, they can participate in this pilot project
2 that will allow them to accept same-day voter
3 registration. This should be very easy in this day
4 and age.

5 Right now, if you go to the polls and you
6 are not on the list in that polling place, you can
7 vote by a provisional ballot. And then after the
8 election, the county person will through that
9 provisional ballot. They will check to see if
10 you're registered anywhere in the state of Utah. If
11 you are, they will change your registration and they
12 will count your vote. If you are not registered
13 anywhere in the state of Utah currently, they will
14 consider that a voter registration and they will not
15 count your vote.

16 We believe that counting those votes is
17 appropriate, and with this pilot project counties
18 can choose to count that vote. I spoke to our
19 lieutenant governor's office on -- or day before
20 yesterday. One county has already applied to
21 participate in this pilot project. Five others, all
22 counties of the first class, which would be the
23 largest counties in the state of Utah, have said
24 that they will do it. And there are five others of
25 the second and third class that are considering the

1 project.

2 We firmly believe that this project will
3 allow more people to go to the polls by eliminating
4 the confusion over the dates and how to register to
5 vote.

6 And I appreciate your time. Thank you.

7 MS. WILLIAMS: Thank you.

8 Now Morgan.

9 MS. GONNOLLY: Thank you.

10 MS. COTTI: Yes. Morgan Lyon Cotti.

11 Thank you. I'm also going to build onto what Jenn
12 was saying and address Utah's declining voter
13 turnout. And one of the culprits people have really
14 pointed to is Utah has a really unique way of
15 nominating candidates for primaries or even general
16 elections.

17 Utah has still been using a caucus and
18 convention system to do this that most states did
19 away with a century ago. During each general
20 election year, there are some neighborhood caucus
21 meetings held throughout the state that have been
22 certainly really poorly attended. However, they're
23 very important because at these caucus meetings,
24 they're electing the county delegates and the state
25 delegates that will meet at party conventions, and

1 these delegates have a lot of power. They are the
2 ones that determine which two candidates will be on
3 the ballot for every primary election.

4 However, Utah is especially unique
5 because if you get enough delegate votes, you don't
6 have to have primaries. You get to be the party's
7 nominee in the general election.

8 So, for instance, Orrin Hatch, who has
9 been a senator in Utah since 1976, has already had
10 two primaries. This is problematic for a number of
11 reasons.

12 First, it's confusing and adds an extra
13 barrier to the voters. If you can't show up this
14 one night every two years to your neighborhood
15 caucus meeting, you're shut out. And there has been
16 no mechanism to have any sort of absentee voting.

17 Second, those delegates who are elected,
18 it makes it so just a few thousand people are going
19 to be determining who our elected officials are,
20 especially because we do have so many uncompetitive
21 elections in Utah. So if you are your party's
22 nominee, you're pretty much a shoe-in for a lot of
23 races.

24 And these delegates have been shown to be
25 very -- not very representative of the average Utah

1 voter or even of their party members. Surveys have
2 shown that they have very different opinions and
3 very different priorities.

4 For instance, in 2010, surveys showed
5 that every -- members of each party and voters in
6 general, they highly valued education, and that was
7 one of their top priorities. But for republican
8 delegates, it wasn't even a top ten priority. And
9 they often vote in ways that the general population
10 doesn't agree with either.

11 In 2002, delegates unseated a very
12 popular governor. She was not even able to run for
13 reelection for her own seat because she did not meet
14 the threshold.

15 And the same thing happened in 2010 to
16 U.S. Senator Bob Bennett. He did not get to run for
17 reelection either because he got ousted in the
18 convention.

19 So not surprisingly, there has been a
20 move to change this system. And a group -- a group
21 called Count My Vote started a ballot initiative to
22 try to make it so that this issue is on this
23 November's election so that people -- the people of
24 Utah can vote on whether they want to keep the
25 caucus and convention system. And in Utah, you need

1 about just over 100,000 signatures to get an
2 initiative on the ballot, and they were almost at
3 that threshold when the legislature actually decided
4 to get involved. And some legislation was proposed
5 to change the convention system and to also change
6 the primary system.

7 However, this wasn't the Count My Vote
8 people, and it was really interesting to see the
9 compromise and some of the conversations that they
10 had. And I should note that the leaders of Count My
11 Vote are very well-known people in Utah. They have
12 former governors, some of the most prestigious
13 business owners in Utah and very well-known leaders
14 in higher education as well.

15 In the end, they did come to a
16 compromise, and Senate Bill 54 was passed by both
17 houses of the legislature and signed by the
18 governor, and it will go into effect in 2016. And
19 what this bill does, it does keep Utah's caucus and
20 convention system. However, it creates an
21 alternative path to the ballot, to the primary
22 ballot.

23 Now, just instead of worrying about
24 delegate votes, if you get enough signatures from
25 your constituents, you can also be in the primary.

1 And it basically opened up Utah's primaries so that
2 if you were a nonaffiliated voter, you could vote,
3 and vote in the republican or democratic primaries
4 now as well.

5 We're hoping that this Count My Vote
6 movement will have a few positive effects on Utah's
7 turnout. First of all, open primaries have been
8 shown to increase turnout to wherever they occur.
9 And it's also nice that even if you cannot attend
10 your neighborhood caucus meeting anymore, since,
11 hopefully, there will be more primaries, you can
12 still have a say who your party's nominees are and
13 who your elected officials are.

14 And finally, there have been a lot of
15 complaints that elected officials are too beholden
16 to these delegates who are not representatives of
17 the state's voters as a whole. So now there is the
18 hope that elected officials will be more accountable
19 to voters as well as to their delegates.

20 Thank you.

21 MS. WILLIAMS: Thank you, Morgan. I
22 appreciate everyone's testimony, and I'm going to
23 open it -- the time up now to our commissioners.

24 Are there any questions from the
25 commissioners?

1 MS. BERKLEY: So -- and, you know, I feel
2 like in Washington and in the media oftentimes when
3 we talk about voting rights, it's always geared
4 toward African-Americans and Latinos. So Professor
5 McCool or Commissioner Maryboy, how can those of us
6 that work at national organizations promote the
7 issues that are happening within the Native
8 community, and what can we do to highlight some of
9 these issues in Washington and to the media?

10 MR. MCCOOL: Mark, you want to go first?

11 MR. MARYBOY: I just want to say that
12 during my tenure as county commissioner, we had poll
13 watchers during the election. Native Americans in
14 San Juan County are indigenous people, somewhat
15 resentful to the encroachment of the white
16 population for the last 130 years. And for that
17 reason, election has not been very important to the
18 people for that reason. Navajos have not bothered
19 to learn how to vote, learn the democratic process
20 of participating in elections until recently.

21 So their education on the election
22 process is not very good, and it has been very
23 helpful to have the poll watchers from the federal
24 government at every election. I would recommend
25 that that be continued because over half of the

1 population is comprised of Native Americans, and
2 it's extremely important that the Navajos
3 participate and learn and get assistance from the
4 poll watchers on these election processes.

5 Thank you.

6 MR. MCCOOL: I think the heart and soul
7 of the Voting Rights Act is that we have an equal
8 opportunity vote for everyone regardless of your
9 race or ethnicity, everyone is included, and that
10 also includes American Indians. And I think there
11 has been some very unique efforts to try to prevent
12 American Indians from voting and -- and it's taken a
13 great deal of litigation.

14 I think the next step, and Mark alluded
15 to this, is education, making sure that everyone not
16 only understands the importance of voting, but they
17 also understand that they have a right to vote and
18 it really does make a difference. Mark Maryboy was
19 elected because the U.S. Justice Department forced
20 San Juan County, it dragged them kicking and
21 screaming, into a three-person election district
22 system in San Juan County. And Mark changed the
23 politics in San Juan County forever.

24 So that there is a beautiful illustration
25 of the power of the vote if we just have an equal

1 opportunity to vote, that it really does make a
2 difference and it's significant.

3 MS. WILLIAMS: Thank you. Any other
4 questions from the commission?

5 Let me just ask one question, and
6 everybody can maybe answer something very short.
7 You know, because all of the changes that we see in
8 Utah and sometimes I think people get discouraged
9 and not go out to vote. Has that been the
10 experience that you've seen, each one of you, in the
11 capacity that you're working in?

12 MS. COTTI: I'll go ahead and start. I
13 do think that all of the changes are presenting
14 confusion. When's the primary, the primaries are
15 moving, what is the deadline for voter registration,
16 how do we get involved. I think the confusion is
17 causing that apathy as well as some of the other
18 problems, the noncompetitive district and the access
19 to candidate selection process.

20 MS. WILLIAMS: Thank you.

21 MR. MCCOOL: It's really a problem of
22 noncompetitive elections, a sense -- and I think
23 Morgan alluded to this very clearly -- a sense that
24 the party caucus is where all the power is, and
25 people feel frustrated that they just don't have an

1 impact in that kind of system, so it needs to
2 change.

3 MS. WILLIAMS: Thank you.

4 MS. COTTI: Yes. And I've also done
5 research on how these noncompetitive elections have
6 affected turnout. And we see that in those years
7 where candidates are winning by really large margins
8 or where they didn't even have someone to run
9 against, those are some of the years that Utah had
10 their lowest voter turnout.

11 And Utah's legislature has been
12 controlled by a super majority really since the
13 '80s. So unfortunately, there doesn't seem to,
14 like, really be an easy fix for this. We're hoping
15 that with the Count My Vote reforms that some of
16 these races can be more competitive, there will be
17 less confusion with the primary system. Somewhat
18 coincidentally, Utah's conventions, party
19 conventions are today, so it will be interesting.
20 There's going to be news stories and Twitter updates
21 about people who will be your candidate, who is
22 going to be on the general election. But this,
23 hopefully, is the last year that will be happening.
24 People will be able to choose who their nominees and
25 candidates are from here on out.

1 MS. WILLIAMS: Thank you.

2 Mark, did you have a comment on that?

3 MR. MARYBOY: The situation on the
4 reservation is very remote. It's very difficult for
5 some of these new processes like online
6 registration. So for that reason, there seems to be
7 a demand for more education in that sense, so people
8 can -- Navajos can participate in the voting
9 process.

10 MS. WILLIAMS: Thank you very much.

11 I'm going to go back to the commissioners
12 to see if there's another question that anybody may
13 want to ask before we open it up to public. There
14 being none, any questions from the public?

15 Being none, I want to thank all of our
16 panelists for outlining the voting procedure in Utah
17 and the importance of changing processes. And we
18 want to let you know that we appreciate your time
19 that you've shared with everyone today. And it's
20 good seeing everybody today. Thank you.

21 MR. MARYBOY: Thank you.

22 MS. WILLIAMS: Public comments? Being
23 none -- I turned myself off and wasn't supposed to.

24 We're going to break for lunch, and then
25 we'll come back in to resume the remainder of the

1 panel discussions. Thank you.

2 (Lunch recess.)

3 MR. CENDANA: Hello, everybody. I hope
4 you enjoyed your break and the lunch that you had.
5 I know there are some new people in the room today,
6 so if we can do a quick -- a quick round of the
7 guest commissioners that are here.

8 My name is Gregory Cendana. I serve as
9 the executive director of the Asian Pacific American
10 Labor Alliance.

11 MS. BENNETT-HERON: And my name is Karen
12 Bennett-Heron, I'm the chief judge of the Las Vegas
13 Justice Court.

14 MS. BERKLEY: My name is Carmen Berkley,
15 and I'm the director of Civil, Human and Women's
16 Rights for the -- for the AFL-CIO. I forgot where I
17 worked.

18 MS. WILLIAMS: I'm Jeanetta Williams,
19 president of the NAACP tri-state conference of
20 Idaho, Nevada and Utah.

21 MR. CENDANA: And I want to just give
22 greetings or say hi to our guest host commissioner,
23 Commissioner Lawrence Weekly who is in the audience
24 with us today. So thank you for joining us and for
25 hosting us.

1 So before we go into our next panel, we
2 actually do have some public testimony. So first
3 up, I would like to call up Jeff Beardsley, who will
4 share concerns in the deaf population.

5 UNIDENTIFIED SPEAKER: He wants to be
6 able to make sure that the interpreter can see him.

7 MR. CENDANA: Okay.

8 (Interpreting.)

9 MR. BEARDSLEY: Hello, everyone,
10 commissioners, my name is Jeff. I am representing
11 the Nevada Disability Efficacy Law Center. It's an
12 organization, a nonprofit organization, and we're
13 governor appointed and we're also federally and
14 state funded. We have two issues that we would like
15 to address, the first being the polling places.

16 A few deaf people have been frustrated
17 with their experiences, so we would like to throw
18 out to you that the poll workers need to be fully
19 trained on how to approach and be -- in a sensitive
20 way, and to have an understanding of those people
21 who are in a wheelchair or blind, deaf or hard of
22 hearing, that they need full training.

23 The second issue would be there are
24 various levels of education who are deaf. There are
25 many who can read English, then there are other

1 levels below that, and then those individuals who
2 have American sign language as their primary
3 language and those who look at the terminology and
4 the English that is in the polling places or
5 available to the citizens are unknown or foreign to
6 them because it's all in English and they feel
7 overwhelmed by the English.

8 So something needs to be developed to
9 perhaps have sign language available to them so that
10 they could see that in the polling booth as they're
11 voting, and that should be something nationwide for
12 all 50 states to help satisfy the needs of the deaf
13 and hard of hearing accessibility. This is
14 something that I would like to point out.

15 I think that's all I would like to say.
16 Thank you.

17 MR. CENDANA: Thank you for your
18 comments, Jeff.

19 I'd like to say -- I now would like to
20 call up James Ohrenschall, who is a Nevada
21 assemblyman, and he will be discussing Assembly Bill
22 440, and 441.

23 MR. OHRENSCHALL: Good afternoon -- good
24 afternoon, commissioners. I wasn't sure if this was
25 working.

1 Thank very much for taking the time to
2 hear my testimony. My name is James Ohrenschall.
3 I'm a resident of Las Vegas, Nevada, and I'm an
4 elected member of the state assembly. I represent
5 Assembly District 12, which is here in Clark County,
6 Nevada, which -- Las Vegas, North Las Vegas,
7 Henderson. Although, the district I represent
8 encompasses unincorporated Clark County and parts of
9 the city of Henderson.

10 During the last session of the
11 legislature in 2013, I was fortunate enough to chair
12 the assembly committee on legislative operations and
13 elections. And when I was given that assignment by
14 the Speaker Kirkpatrick of the assembly, one of the
15 things we looked at was what we could do policy-wise
16 to try to increase voter participation here in
17 Nevada.

18 I've been involved in many elections as a
19 candidate or as a campaign worker, as a volunteer as
20 a campaign manager and invariably, during the
21 election cycles here in Nevada, I will meet people
22 who are very interested in participating in voting,
23 but they missed the deadline. They didn't register
24 in time by the deadline in order to be able to vote
25 in that election.

1 Oftentimes, I will meet citizens who are
2 qualified electors, qualified to vote, and they're
3 very busy. They might be working one job, two jobs
4 three jobs, they might be taking care of a sick
5 relative, going through a lot of like circumstances,
6 and they got excited about the election closer to
7 election day than a lot of other people who aren't
8 even registered. They became interested, got
9 excited, learned about the candidates as the
10 election became close and decided they wanted to
11 register and wanted to participate, but because of
12 the deadline we have, were unable to.

13 The committee sponsored Assembly Bill
14 440, which originally would have provided for voter
15 registration in Nevada up to and including election
16 day, the same-day voter registration. There were
17 many concerns, assembly members of the legislature
18 felt this would leave the process open to potential
19 fraud, to abuse. So we tried to address those
20 concerns in the assembly, and we amended the bill to
21 move back a few days and to allow people to register
22 to vote all the way to the end of our early voting
23 period in Nevada, which ends the Friday before that
24 next election, whether it was the primary or the
25 general.

1 And we had testimony on the record from
2 the different registrars of voters that they felt
3 that that would be satisfactory, that there wouldn't
4 be problems in terms of them having a roll of voters
5 for election day or terms of potential fraud. They
6 did not feel that there would be any greater chance
7 allowing extended voter registration through the end
8 of early voting.

9 That bill did pass both houses of the
10 legislature and unfortunately, it got -- it was
11 vetoed by the governor. I hope that the next
12 session, we'll either look at a similar idea or
13 perhaps look at that same bill because I do think
14 that if it had become law, more people who do get
15 excited near the end, near election day would be
16 able to participate and would not be precluded by an
17 artificial deadline.

18 The second bill that came out of the
19 committee, I chaired in the assembly, Assembly Bill
20 441, had to do with an idea, I'm sure you're very
21 familiar with, called voting centers. During our
22 early voting period in Nevada -- well, here in Clark
23 County specifically, registered voters can go and
24 vote anywhere in the county they want to. They can
25 vote at early voting sites near their home or if

1 they happen to work on the other side of town or
2 going to a doctor's appointment on the other side of
3 town, they can vote at early voting sites there.
4 There's no geographical restrictions about where
5 someone can vote.

6 However, in Nevada on election day, there
7 are geographical restrictions. Registered voters
8 can only vote at their assigned polling place. And
9 again, through my experience, I will often get calls
10 on election night at 5:30, an hour or so to a poll
11 close from a voter who says, "I'm at my polling
12 place. I've been voting here for the last 15 years.
13 They told me I can't vote here. They've reassigned
14 me. I'm not going to make it to be able to vote in
15 time." Voting centers would try to help end that
16 problem.

17 And that bill, again, passed the
18 legislature in both houses, was vetoed by the
19 governor. I do hope that the next legislature will
20 be able take a look at that idea. I'm happy to
21 answer your questions, and I appreciate your taking
22 time to hear my testimony.

23 MR. CENDANA: Thank you so much.

24 MR. OHRENSCHALL: Thank you.

25 MR. CENDANA: I would now like to call up

1 panel 3, which will include the following witnesses:
2 Donald Rust, who is the president of the League of
3 Women Voters of Nevada. He will talk about voter
4 intimidation and voter ID proposals as well as
5 Andres Ramirez with Vota -- Mi Familia Vota, and
6 will discuss voting challenges within the Hispanic
7 community. So if I could please have Donald and
8 Andres please come up.

9 So why don't we start with you, Mr. Rust,
10 if that's okay.

11 MR. RUST: Fine. I would like to thank
12 Sean Dugar and the commission for inviting me to
13 testify. I'm from Pahrump, Nevada, and as you've
14 notice, ironically, I'm president of the League of
15 Women Voters of Nevada, which is a little unusual.

16 My experience in my county, which is
17 where my wife and I have lived for 19 years, is in
18 the last voter cycles, we've had a variety of voter
19 intimidation by groups within the community at
20 polling centers and in effect, also at town voter
21 meetings. I was once a member of the town board in
22 Pahrump, and I think about a year ago a group came
23 and tried to do a citizen's arrest of an elected
24 town board for trying to do away with an ordinance
25 that they didn't want lifted. So that kind of

1 intimidation keeps people from going to town board
2 meetings.

3 Another intimidation issue involves at
4 voting sites where a group handed out a list of
5 people you should not vote for. They were outside
6 the limit just barely of that kind of activity at a
7 polling site. Nevertheless, they did intimidate
8 voters, and I know from experience, since I was one
9 of the candidates, I didn't get voted in because
10 those lists included my name at the top. So that
11 kind of intimidation is something we need to work
12 on, and I'm sure that Pahrump isn't unique in that
13 respect. But we need to vote -- work nationally on
14 such an issue so that people aren't intimidated to
15 go to a polling place and vote based on what they
16 know before they got there.

17 So nevertheless, as state president of
18 the League of Women Voters, our primary focus with
19 the league is voter registration and voter rights.
20 And our national convention this June in Dallas will
21 be focussing on those issues independently.

22 At least I think that one of the big
23 pushers in the United States to have voter ID laws
24 changed so that it makes it more difficult to
25 register is because of voter fraud. I've seen and

1 read and heard of no significant evidence presented
2 anywhere about such fraud, but it's used as the
3 excuse to change the ID laws so that you have to
4 have an ID to register.

5 In Nevada, it's not difficult to
6 register. And so far, they have not changed the
7 registration laws and -- even though I believe there
8 was an attempt, but it wasn't followed through.
9 Right now in Nevada, it's not that difficult to
10 register. And when you go to vote, they have a
11 register of people who have registered to vote, you
12 show them an identification, but that hadn't
13 changed. You've always had to show it. It didn't
14 have to be anything other than a driver's license or
15 a voter card, which you got when you registered.

16 And so you sign a register that they have
17 with your name on it. You know where you're going
18 to vote. In our county, even though it's big,
19 18,000 square miles, the population is relatively
20 sparse except in Pahrump where we have the biggest
21 population. But they have a booklet there that you
22 sign with your name right next to your printed name.
23 So so far, there hasn't been any problem, that I'm
24 aware of, in our county and, for that matter, in
25 Nevada regarding voting rights.

1 But we don't have large populations of
2 minorities, however, as you can see with the recent
3 Cliven Bundy, bigotry is not dead in Nevada. And I
4 hope that one of the things that the commission can
5 do is focus on changes to the system that minimize
6 bigotry when it comes to voting rights and voting
7 issues. Thank you.

8 MR. CENDANA: My first question for you,
9 Mr. Rust, is, you talked a little bit about some
10 examples around voter intimidation. What are the
11 things that you think we should keep in mind in
12 terms of potential --

13 UNIDENTIFIED SPEAKER: Microphone.

14 MR. CENDANA: Testing. Everyone. I'll
15 say it again.

16 So thank you for your testimony. In your
17 remarks, you talked about some of the voter
18 intimidation. You shared some voter intimidation
19 examples.

20 MR. RUST: Well, I believe in the right
21 of free speech. However, I think that should be
22 limited, at least in terms of voting places. The
23 closeness of anything that happens at a voter -- at
24 a voting place -- polling place should be farther
25 away. Right now, I think in Nevada it's 120 feet.

1 Well, nobody needs to be that close if they want to
2 hand out literature. If they want to hand out a
3 list that says "don't vote for these people," fine.
4 But do it 200 or 300 feet away, not virtually right
5 outside the door.

6 And the citizen's arrest of an elected
7 board, I think that people should be able to somehow
8 not allow such things to happen. In this case,
9 those people weren't arrested, not the town board,
10 but I mean the people who attempted the citizen's
11 arrest. Nothing happened to them except they got
12 their headlines in the paper.

13 So I'm not sure what the national
14 commission can do, but those kinds of things
15 shouldn't be allowed inasmuch as you can control
16 them.

17 MR. CENDANA: Thank you. Are there any
18 other questions from the other commissioners
19 for Mr. Rust? Okay. Thank you.

20 Now we'll go to Mr. Ramirez. Thank you.

21 MR. RAMIREZ: Members of the commission,
22 thank you for allowing me the opportunity to share
23 my thoughts on these important issues and for
24 including such a diverse and competent panel of
25 experts.

1 I've been involved in voter registration
2 efforts here in Nevada since 1996, and as such, have
3 witnessed the progress that has been made along the
4 way, and I'm also up for whatever challenges we
5 still face.

6 I want to focus my testimony on a few
7 specific issues with regards to voter registration
8 and voter participation, specifically here in Clark
9 County.

10 In the past decade, we have seen more
11 resources invested into registering Hispanic voters
12 in Clark County than ever before. Hispanic voter
13 participation has shown a dramatic increase,
14 according to election polls conducted by the
15 national election poll which shows an effective
16 increase in their share of the electorate in Nevada,
17 from 10 percent in 2004 to 19 percent in 2012.
18 That's an increase of 9 percent in the share of the
19 electorate in the span of just two presidential
20 election cycles.

21 This growth is significant and as a
22 result of the increased efforts to educate, enroll
23 and engage Hispanics in the electoral process. The
24 Clark County election department here is one of the
25 best in the country, and their proactive approach to

1 increase voter participation should be replicated in
2 other jurisdictions. They've actively recruited
3 bilingual poll workers. They've provided ample
4 information in Spanish and other languages and work
5 with Hispanic and other community service
6 organizations on identifying the best locations to
7 conduct early voting. This approach has led to a
8 very healthy and productive relationship with the
9 Clark County election department and the various
10 organizations that conduct civic engagement
11 activities in the Hispanic community and other
12 language communities.

13 However, with this growth, there has also
14 been growing pains. Due to the increasing numbers
15 of Hispanic participation in elections and voter
16 registration, there is an increased need to hire
17 additional bilingual poll workers and voter
18 registrars. This is a good problem to have, but
19 it's still a problem that needs to be solved. As
20 groups such as Mi Familia Vota continues to increase
21 their operations in registering Hispanic voters, the
22 need to assess how to best collaborate with the
23 election department to prepare them to recruit and
24 train the appropriate number of people needed for
25 each election cycle. This is not only a problem,

1 again, with the Spanish-speaking community. It has
2 also become an increasing problem with the Filipino
3 community who speaks Tagalog here in Clark County.
4 They're currently experiencing dramatic population
5 growth in Clark County as is the Hispanic community.

6 Solving these issues are not complex, but
7 we need to continue these collaborations between
8 government agencies and community service providers
9 so that -- so that they don't get worse and can be
10 solved in a reasonable manner. Sometimes it's
11 better for these community service organizations to
12 conduct the recruitment and outreach efforts to
13 train bilingual workers and registrars instead of
14 the election department.

15 And so we need to figure out a better
16 arrangement for how that can be done so that the
17 trust that exists with these community service
18 providers can be leveraged who have the partnerships
19 and have the networks in the community as opposed to
20 the election department who doesn't, and, therefore,
21 they can provide a pipeline of trained and skilled
22 workers more seamlessly into the process. So that's
23 one of the things that I need to be happening.

24 But, you know, among the variety of
25 issues that you've heard, whether they're from IDs

1 or voter intimidation, to me solving this problem of
2 having educated, trained cultural workers, whether
3 it's a language issue or other cultural
4 sensitivities in the election department, is one of
5 the most important areas we need to solve to ensure
6 that more minorities and other cultural populations
7 have an easier access once we get to the ballot box
8 and to voter registration.

9 And so, again, developing those
10 partnerships and relationships will increase the
11 participation of these minorities.

12 So thank you for your time and
13 consideration.

14 MR. CENDANA: Thank you. I have a couple
15 follow-up questions for you, Mr. Ramirez. You
16 shared with us about how you feel that Clark County
17 particularly has done a great job of some of the
18 outreach to ensure different issues are addressed.

19 Can you share some specific examples of
20 how that's the case so we can make sure we have that
21 on record and we can be able to also use this as a
22 positive example because I think we're hearing a lot
23 of some of the challenges and issues, but I think
24 it's good to also uplift some of the positive
25 examples.

1 MR. RAMIREZ: Absolutely. So for
2 example, the Clark County election department has a
3 committee of community organization that they work
4 with. They use this to help identify what are the
5 best locations to have early vote locations and in
6 some cases, in polling locations. They work with us
7 on loading out their specific, what is their Spanish
8 language promotion material they're going to have,
9 for us to review it in advance and make sure there
10 are no cultural things or errors in the process.
11 And so there's a lot of collaboration.

12 Here in Clark County, something that
13 should be on the record that hasn't been placed
14 there is that an overwhelming majority of people
15 vote prior to election day. So that is in excess of
16 60 percent, closer to 70 percent of people already
17 voting early voting.

18 So these establishment of early voting
19 locations is an extremely important process for us.
20 So having them in places, in shopping centers such
21 as Cardenas or having them at the East Las Vegas
22 Community Center, which reach a large number of
23 Spanish-speaking in the Hispanic community, is
24 extremely important. And we changed some of these
25 locations where they used to have them at

1 Albertson's, and now they have it Cardenas, which we
2 thought it was a better location to reach our
3 community. That collaboration, that communication
4 has helped us to make sure that they have better
5 training processes for those early vote locations.

6 MR. CENDANA: Those are great examples.
7 And then my second follow-up question, I think this
8 is something that I'm also very curious about,
9 especially, you know, you talked about some of the
10 growth of the Hispanic community not only population
11 but also the electorate.

12 Can you talk a little bit about if you
13 have been able -- done work to kind of talk more
14 about the broad and multiracial ways to kind of
15 build across, and if there was -- I know, you talked
16 about the Filipino community, but is there examples
17 of ways in which you've been able to talk about
18 voting rights more collectively to be able to
19 connect across communities? If you can share some
20 of those experiences, that would be great.

21 MR. RAMIREZ: Absolutely. So from the
22 standpoint of Mia Familia Vota, we are openly
23 engaged in communications with Filipino
24 organizations and increasingly with some of the
25 African-American organizations to talk about how we

1 can share best practices from some of the things
2 that we have done to help mobilize and educate the
3 Hispanic community to see where we might be able to
4 collaborate with the Filipino community and help
5 them, and how we can also partner with some of the
6 other minorities, such as the African-American
7 community, so that we share resources and share
8 experiences and we can all be successful in this
9 process.

10 MR. CENDANA: Thank you. I want to open
11 it up to the other commissioners, if you all have
12 any other questions for Mr. Ramirez.

13 MS. BENNETT-HARON: I have a question,
14 and it's --

15 UNIDENTIFIED SPEAKER: Your mic.

16 MS. BENNETT-HARON: Sorry. I always
17 forget this. All right. I do have a question.

18 With regard to voting education and the
19 community engagement vote from a cultural
20 perspective as well as collaborative efforts, it
21 always seems to me that it is around the time of
22 election. Is there some ongoing effort to do this,
23 for lack of a better description, during the down
24 time period so that when the election comes, we're
25 not, you know, trying to hurry up and get everybody

1 on board, people are ongoing -- are engaged on an
2 ongoing basis?

3 MR. RAMIREZ: Absolutely. So the Mi
4 Familia Vota motto is a year-round, consistent
5 motto. And so ours is a process of teaching people
6 about civic participation and not just electoral
7 participation.

8 So we conduct a variety of activities,
9 and that is from people who aren't citizens. We
10 conduct citizenship drives and citizenship classes
11 to train them how to become citizens.

12 Those that are citizens, we conduct voter
13 registration activities throughout the year to get
14 them registered to vote. Those that are already
15 registered to vote, we get them involved in how to
16 participate in townhall meetings, how to contact
17 their elected officials and when the legislature is
18 in session, how to go testify to the legislature on
19 behalf of issues. So we try to do a comprehensive
20 curriculum to keep people engaged so that voting
21 isn't the only thing they identify with civic
22 engagement.

23 MS. BENNETT-HARON: Very good. Thank
24 you.

25 MR. RUST: Your Honor, may I also comment

1 on that?

2 MS. BENNETT-HARON: Yes. Sure.

3 MR. RUST: One of the things that we
4 would like to see more of is the -- especially for
5 young people, and that is teaching civics again
6 because a lot of young people have no concept of how
7 their government operates. Why it has three
8 separate divisions and things like that. So the
9 concept of voting to them is almost alien because
10 they have no idea what it relates to and how their
11 government operates and how it affects them.

12 So we would like to see our school
13 systems teach that again. Because when I went
14 through school 50 years ago, we learned civics from
15 the time I was in junior high school through high
16 school, and every year it got more comprehensive.
17 And I think students need to learn that so they can
18 see the relevance to what they're doing or what
19 they're being asked to do.

20 Thank you.

21 MS. BENNETT-HARON: Thank you.

22 MR. CENDANA: A quick follow-up question.
23 You talked about the need for civics.

24 MR. RUST: Yes.

25 MR. CENDANA: Are there school systems in

1 places where you know that that -- that happens
2 already that can be looked to as models or places
3 that we can go to for curricula or kind of
4 implementation?

5 MR. RUST: Well, I was born and raised in
6 Iowa, and, you know, they were still teaching it in
7 Iowa. But in Nevada, to my knowledge, civics as a
8 subject is -- now, I could be wrong, but at least in
9 my county, it's not taught.

10 MR. CENDANA: Thank you.

11 MR. RUST: Thank you.

12 MR. CENDANA: Any other questions?

13 MS. WILLIAMS: Yes, I do have one. My
14 mine is directed is, is there a La Raza in Nevada?
15 And if there is, do you do any outreach for the
16 getting together on voter registration and being at
17 the poll?

18 MR. RAMIREZ: So there used to be an
19 official National Council of La Raza office here in
20 Nevada. They closed down last year. We do have
21 several National Council of La Raza affiliates who
22 exist in Nevada, and we do collaborate with them as
23 well as other organizations on voter registration
24 and so forth.

25 We actually recently, within a year and a

1 half, we established what we call the Latino
2 Leadership Council, and we gathered the heads of all
3 the Latino organizations or groups engaging in
4 Latino outreach or community service and we host
5 regular meetings to discuss a variety of issues
6 about how we work together for everyone to achieve
7 their goals and objectives.

8 MS. WILLIAMS: Thank you.

9 MR. CENDANA: Any other questions for the
10 commissioners? All right. Well, thank you,
11 Mr. Rust and thank you, Mr. Ramirez, for your
12 testimony today.

13 MR. RUST: Thank you.

14 MR. RAMIREZ: Thank you.

15 MR. CENDANA: Alrighty. So we now open
16 up to see if there are any other people who would
17 like to give public testimony.

18 MR. PORTER: Yes, I would like to
19 comment.

20 MR. CENDANA: Okay. Mr. Beardsley? Oh.

21 MR. PORTER: Good afternoon. I'm a
22 60-year resident of Las Vegas. My name is Alex X.
23 Porter. Now, looking at these voting right bills,
24 going back to shortly after the Civil War, how many
25 bills have you had passed to give blacks, in

1 particular, a right vote? At a certain time, we all
2 end up the same way.

3 A man said something in the '60s in the
4 civil rights movement that he who have the power and
5 authority to grant you your freedom on a piece of
6 paper has the power and authority to revoke that
7 freedom.

8 We see a few months ago what they've
9 gutted the civil rights bill -- I mean the voting
10 rights bill. We see a few days ago they gutted
11 different direction. What they are saying to
12 states, you have the right. Now, we know what
13 happened to states' rights.

14 What we are looking at now, if we're not
15 careful, 50 years from today we'll be carrying
16 picket signs again because we want to vote. Keep
17 this in mind. Isn't it strange that after the Iron
18 Curtain fell, all those people came here from
19 Lithuania, from Poland, from Russia and from
20 Yugoslavia, they didn't need no special voters
21 rights bill. When they have to give us a special
22 bill, there's something wrong with that. Keep that
23 in mind. Otherwise, we will be here again.

24 Thank you.

25 MR. CENDANA: Thank you. Any other --

1 yes.

2 (Interpreting.)

3 MR. BEARDSLEY: This is Jeff, again,
4 Beardsley. Two comments. Hooks -- or Kevin E.
5 Hooks and especially in -- with the deaf population
6 is one of my main concerns from 30 years ago, we in
7 a deaf school or schools for the deaf, we were
8 taught and we learned how to work with being voters.
9 But now we're here in the 21st century and people
10 think oh, it's not so important and they really
11 don't care. And so how can we change this back to a
12 positive encouragement, especially with our deaf
13 youth, to give them the input to work and to help
14 motivate them? This is something I would like to
15 throw out to the commissioners.

16 MR. CENDANA: Thank you.

17 MS. GAINS: My name is Ida Gains, and I
18 rise in support of the bills that the assemblyman
19 talked about, especially the one about same-day
20 registration and voting. I think that legislation
21 has value, and I would like to see us build
22 momentum, so when the next session of the
23 legislature legislation comes up, that we will have
24 a community base that will go and testify in favor
25 of that legislation. And if it's passed by the

1 legislators, hopefully, the governor will not veto
2 it.

3 Thank you.

4 MR. CENDANA: Thank you.

5 Are there any other folks who would like
6 to get in public comment, testimony?

7 UNIDENTIFIED SPEAKER: Let's take a
8 break.

9 MR. CENDANA: Okay. So since there is no
10 other public comment, we're going to take a quick
11 break until 1:15, and we'll be back at 1:15 for the
12 final panel. Thank you.

13 (Recess taken.)

14 MS. BERKLEY: Thank you so much for being
15 back again. My name is Carmen Berkley. I'm the
16 director of Civil, Human and Women's Rights for the
17 AFL-CIO. Today for our last panel, we actually have
18 the Nevada Secretary of State, Mr. Ross Miller, who
19 will be giving testimony.

20 MR. MILLER: Thank you for the invitation
21 to testify today. For the record, I'm Nevada
22 Secretary of State -- is it off? Now, can you hear
23 me?

24 MS. BERKLEY: Okay.

25 MR. MILLER: Thank you for the invitation

1 to testify today. For the record, I'm Nevada
2 Secretary of State, Ross Miller.

3 As is the case with most secretaries of
4 state around the country, I'm the state's chief
5 elections officer. While the office of the
6 secretary of state has a broad range of duties in
7 Nevada, there is no duty that takes a higher
8 priority in my office than maintaining the security,
9 integrity and accessibility of our election system.

10 There are those who believe that security
11 and integrity require some sacrifice of
12 accessibility. I'm not among them. Every policy
13 consideration we make regarding elections gives full
14 weight to maintaining access to registration and
15 voting.

16 I've been asked to testify today about
17 three broad issues; online voter registration, voter
18 ID laws, and the addition of a foreign language
19 ballot. I'd like to start by addressing our online
20 registration on our early, which by virtually in any
21 standard would be considered a success.

22 In 2010, we had a pilot program in Clark
23 County and became one of just ten states to offer
24 online voter registration providing a quick and easy
25 option for Nevada residents looking to register to

1 vote. 2012 was the first cycle during which all the
2 17 Nevada counties had access to online voter
3 registration.

4 The Nevada Secretary of State's office
5 now offers the option to register to vote online
6 through my office's Web site or at
7 www.registertovotenv.gov or through our voter
8 registration Facebook app. We were the second state
9 in the country to develop such an app.

10 Prior to the 2012 elections, through
11 online registration available throughout the state,
12 my office launched an aggressive voter registration
13 campaign. With funding from the Help America Vote
14 Act, we conducted a well-organized multimedia
15 education campaign, including television, radio,
16 print, outdoor and social media reaching into every
17 part of the state both geographically and
18 demographically. Starting in urban and rural areas
19 as well as a broad demographic spectrum through our
20 paid and earned media outreach. I should also point
21 out that our campaign won multiple awards from the
22 public relations community.

23 Online registration was so heavy during
24 that period that it briefly threatened to overwhelm
25 our system, but it did not. We averaged 470

1 registration transactions per day in the two weeks
2 preceding our educational campaign. In the final
3 three weeks of online registration, the same period
4 as our campaign, we averaged nearly 2400
5 transactions per day, an increase of more than 500
6 percent of daily activity. Total registered voters
7 for the 2012 election cycle totaled approximately
8 1.5 million Nevadans with more than 70,000 new
9 registrations occurring during the period of our
10 outreach efforts in the final six weeks of the
11 registration period.

12 The total number of voters in the 2012
13 election was 4 percent higher than during the
14 immensely popular 2008 election, which also in
15 itself set a record turnout. From 2008 to 2010, we
16 had a slight drop-off, but in 2012, we intensified
17 our efforts. We experienced -- we experienced an
18 increase of 9.5 percent over 2010 registrations. I
19 think it's reasonable to conclude, based on those
20 results, that our online voter registration and
21 voter registration efforts in general can be
22 characterize as robust.

23 So, too, I believe is our early voting
24 program. When telling people from outside of Nevada
25 about our early voting locations, I often joke that

1 Nevada is the only state where you can be grocery
2 shopping and hear an announcement over the loud
3 speakers calling for wet mop at voting booth No. 6.

4 The fact that since I took office in
5 2006, we've been able to expand early voting
6 opportunities, thanks in large part to our
7 commitment from our county registrars and clerks
8 throughout the state.

9 One of the best ways to avoid any
10 disparity in terms of physical accessibility is to
11 have enough polling locations. Since I became
12 secretary of state in 2007, my office has purchased
13 four voting trailers in Clark County. The mobility
14 of the units during early voting gives us and the
15 county the flexibility to change locations during
16 early voting to maximize voter access, each trailer
17 having a capacity of anywhere to 10 to 24 voting
18 machines.

19 During the early voting period of the
20 2012 elections, these four trailers served 46,434
21 voters. That is an average of more than 11,600
22 voters per trailer. It's also been a support --
23 I've also been in support of extending or increasing
24 the number of days on which early voting is
25 available. And I testified in the legislation in

1 2009 in favor of the same-day registration bill.

2 And in 2011, the legislature passed our
3 bill to require that early voting be open on a
4 Nevada day holiday, which is usually the Friday just
5 prior to the election. Our commitment to
6 accessibility of early voting has resulted in an
7 encouraging trend.

8 In the 2000 election, 33.6 percent of the
9 votes cast were by early voters. By 2006, that
10 number had increased nearly 42 percent. In 2012, we
11 had more than 60 percent of the voters cast by early
12 vote. And when you add in the absentee ballots from
13 2012, 7 out of 10 Nevadans cast their ballots before
14 election day on a day and time that was convenient
15 for them.

16 Of course, on the other side of
17 accessibility are the proposals to enact voter ID
18 laws. Beginning with the 2007 session, there have
19 been nine bills seeking to implement some type of
20 voter ID. Philosophically, I think I've made clear
21 about where my administration stands on
22 accessibility. I have consistently opposed these
23 type of voter ID laws. And from a purely pragmatic
24 perspective, restricting access to the polls can be
25 expensive.

1 The fiscal notes on those nine bills
2 generally range somewhere between half a million to
3 two and a half million dollars, and those estimates
4 are on the low end because some counties didn't
5 forecast any cost at all because there were too many
6 unknown factors in the proposals. And in one bill,
7 proposed in 2009, had a projected cost of \$15
8 million. But the bottom line of voter ID laws isn't
9 the fiscal bottom line, it's the accessibility
10 issue.

11 We know from the state voter registration
12 list that somewhere between 85 and 95 percent of
13 registered voters have a driver's license. In other
14 words, somewhere between 5 and 15 percent
15 potentially don't have a driver's license. The
16 concept that they should have to go out and get
17 additional identification in order to exercise a
18 constitutional right is just unacceptable.

19 Finally, regarding our addition of
20 Tagalog to the ballot, there are a couple of points
21 I'd like to make. I saw an article recently about
22 English language learners in the educational system.
23 The headline spoke volumes and applies not just to
24 education, but to our policy regarding language on
25 the ballots. The headline said, English language

1 learners need help, not an inflexible state mandate.
2 A difference in language should not be used as a
3 barrier or as a tool for exclusion.

4 There's a requirement for citizenship to
5 be able to read, write and speak relatively simple,
6 basic English. The key word there is "simple." And
7 there is some citizenship exceptions for some older
8 and long-time residents and for some disabled
9 permanent residents. But it takes more than simple
10 language to understand ballot questions that are
11 difficult for even a college-educated, native
12 English speaker to understand.

13 So if we're going to accept citizens with
14 limited English-speaking capabilities or even none
15 at all in some cases, then it is incumbent on us to
16 ensure that those citizens can take part in the
17 democratic process.

18 One of the great advantages of being a
19 citizen of this country is the ability to vote in
20 elections that are fair and accessible. The 2010
21 U.S. Census made it clear that Nevada had reached
22 the Voting Rights Act threshold for including
23 Tagalog on our ballots. And Clark County did a
24 commendable job with creating Tagalog-speaking poll
25 workers to assist with that new voting population.

1 The only real cost to add Tagalog was in
2 the translation for the ballots, simple ballots and
3 registration materials. We need to remain aware of
4 demographic trends so we'll be prepared to meet the
5 needs of other new voters in the future. It's not
6 unusual to see Southern Nevada follow trends of
7 Southern California. With that in mind, we can look
8 to Southern California and see that in 2010, various
9 counties added Chinese to ballots that already
10 included Spanish, Vietnamese, Cambodian, Asian
11 Indian and a half a dozen other languages.

12 A news article about the inclusion of
13 Tagalog on the Nevada ballot summed up not only the
14 language issue, but also many of the access issues
15 that you're addressing today. It quoted a Filipino
16 voter who said he had stopped voting because he
17 couldn't understand everything on the English ballot
18 and didn't want to cast a ballot on something he
19 didn't understand.

20 I think anyone would agree that democracy
21 becomes stronger and more effective when we're able
22 to include more voters who take that kind of
23 responsible attitude no matter what language they
24 speak. And that should also apply to their ethnic
25 or racial heritage or their physical capabilities.

1 Thank you for the opportunity to testify
2 today. I'll be happy to answer any questions you
3 may have.

4 MS. BERKLEY: Thank you so much,
5 Secretary Miller. I just have a quick question.
6 I'm sure our guest commissioners do as well.

7 So, you know, I sat in a ton of meetings
8 about online registration, and there are definitely
9 people that say that it's not safe and it's not
10 effective, but you clearly shattered that myth.

11 What would you say to, you know,
12 adversaries or people that feel -- you know, people
13 that have a lot of fears around registering people
14 to vote online rather than face-to-face voter
15 registration?

16 MR. MILLER: Well, it's also, I think,
17 important to understand the current existing
18 process, which is a paper-based form which provides
19 basic identifiers that we then implement in order to
20 provide safeguards to make sure that we're able to
21 identify that the voter is, in fact, eligible.
22 Those exact same safeguards exist in the digital
23 realm.

24 And as we head towards the new digital
25 era, people just expect to be able to do this

1 online, especially younger voters. As I mentioned,
2 we had a very successful outreach campaign, and we
3 literally chose spokespeople that would appeal to
4 the younger demographic for that campaign, knowing
5 that we should encourage them to register online and
6 let them know that this was a simple process that
7 they could pull up even on their Smartphone. And
8 with that campaign, we saw an enormous success. And
9 so I think it's important to realize that with new
10 technology, we're able to implement the same
11 safeguards that exist with the paper-based system.

12 MS. BERKLEY: Great. Thank you.

13 Any questions?

14 MS. WILLIAMS: Thank you. How are you
15 doing?

16 MR. MILLER: Good to see you.

17 MS. WILLIAMS: Good to see you too. I
18 would like to commend you and your office on all the
19 work that you're doing in order to not block folks
20 from getting out there and registering to vote.

21 And my question is, do you think this
22 will be something that's ongoing or have you had any
23 other groups that have tried to stop this practice
24 since you've been in office?

25 MR. MILLER: The online voter

1 registration or just more broadly make it more
2 accessible?

3 MS. WILLIAMS: Online voting.

4 MR. MILLER: No. The online voter
5 registration program was a little bit unique in
6 Nevada in that we really didn't face much opposition
7 legislatively in implementing it. You know, we
8 pointed out that, you know, that it had been
9 implemented in a few other states, some other
10 western states, and we were able to make the case
11 successfully to the legislature and, you know, this
12 had a nonpartisan impact. There were equal parts,
13 republican and democrats alike, that were using the
14 system, so it didn't favor one party over another.
15 And we were fortunate that the legislature saw the
16 wisdom of that and allowed us to go forward.

17 The National secretary of State's
18 Association, where I was president of that
19 association last year, I know from talking to my
20 colleagues that this has been somewhat of a
21 sensitive issue, and there's secretaries of state
22 across the country that work very aggressively to
23 try to implement online voter registration for
24 whatever reason the legislature -- their
25 legislatures won't pass.

1 But, you know, this is clearly the wave
2 of the future. I think it's inevitable that all 50
3 states, at some point, will have online voter
4 registration. I'm just proud that Nevada took some
5 of the leading roles it's, benefitted our citizens
6 substantially.

7 MS. WILLIAMS: Thank you.

8 MR. CENDANA: Thank you, Secretary
9 Miller. And my name is Gregory Cendana. I work as
10 the executive director of the Asian Pacific American
11 Labor Alliance.

12 And I think you mentioned as the
13 demographic threshold, especially in the Filipino
14 community that meant that providing Tagalog
15 (Unintelligible) ballots and materials.

16 Can you share a little bit about your
17 experience with what it was like to kind of have
18 those ballots, how you worked with the commission
19 and to ensure those were provided and if there would
20 be any best practice that you think we should know
21 about or learn as -- you know, as we continue to see
22 increases in different populations in other parts of
23 the country as well.

24 MR. MILLER: You know, when I was in
25 office -- when I took office in 2007, we only had

1 the obligation to print the ballots in Spanish and
2 English in both of our larger counties. And so when
3 we faced the 2012 elections, which was the first
4 election where we mandated to print ballots in
5 Tagalog, I'll confess to a little bit of hesitancy,
6 you know, I thought it was going to be very
7 difficult to implement. In fact, it turned out to
8 be pretty easy. One of our major concerns was the
9 fact that Tagalog has so many different dialects.
10 So I would settle on, you know, one that would
11 appeal to the broadest sector in the community.

12 But in working with the community, you
13 know, we just opened up dialogue and really came to
14 somewhat of a consensus as to the language that
15 ultimately should be printed. It wasn't that
16 difficult, and we were able to look to other
17 jurisdictions that, you know, had faced this issue
18 before and adopt some of their best practices in how
19 to do it.

20 And certainly there's somewhat of an
21 added cost to it, but, you know, we're proud that
22 Nevada is growing demographically and becoming more
23 diverse. And so certainly this is something that we
24 embrace and want to make sure that we do it in as
25 responsible a manner as possible.

1 MR. CENDANA: And one follow-up question.
2 Are there recommendations or examples of how you
3 particularly engage with the Filipino community and
4 that you would recommend or you would kind of point
5 out on the record for other folks to think about,
6 especially as they're having to do more translated
7 material and things of that nature.

8 MR. MILLER: Well, here is where I really
9 give credit to Larry Lomax, who is the retired
10 registrar in Clark County, who was one of the most
11 talented election officials that I ever encountered.
12 He did a very good job of sitting down with the
13 community and reaching out to them and trying to get
14 as broad a perspective as he could on what issues he
15 need to confront when he was dealing with this issue
16 and ultimately, I think, one that was successful.

17 MR. CENDANA: Thank you.

18 MS. BERKLEY: My last question is, it's
19 my understanding that your office introduced a voter
20 ID bill -- sorry about that. My computer just
21 turned off. Your office introduced legislation that
22 would introduce voter ID to Nevada. Can you share
23 with us a little about that bill?

24 MR. MILLER: Yes. Thank you.

25 It was labeled a voter ID bills, which I

1 think is unfortunate, because that really
2 mischaracterized the spirit and intent of what we
3 were trying to accomplish.

4 Our proposal was quite different than a
5 traditional voter ID proposals that had been
6 surfaced across the country. As I said in my
7 testimony, I've always been adamantly opposed to any
8 requirement that a voter show to a polling place and
9 produce -- would have to produce a piece of plastic
10 or a driver's license before they're allowed to
11 vote.

12 As I mentioned in my testimony, somewhere
13 between 85 to 95 percent of Nevadans have --
14 registered voters have a driver's license in Nevada.
15 That means that anywhere between 5 and 15 percent
16 may not have one. There's a problem.

17 But our current system in Nevada is a
18 signature verification. So when you show up at the
19 polling location, we still have a paper-based poll
20 book that the individual voter is required to sign.
21 And then the poll worker is then obligated to
22 compare the signature that the voter has provided
23 with the signature that is on file.

24 If those signatures do not match in the
25 sometimes subjective opinion of the volunteer poll

1 worker, they are then required to produce a form of
2 identification. The list of forms of identification
3 at that poll that the voter is then required to
4 produce is very onerous and very restrictive. We
5 saw in the last election a tremendous rise in the
6 number of voters that were required to produce a
7 piece of identification. You know, these poll
8 workers, I'll tell you, they do an outstanding job,
9 but we'd be naive to think that some of them don't
10 approach these polling places with some bias. They
11 know the rules.

12 My wife was asked at the last election to
13 show her ID because the poll worker, in his
14 estimation, said that the signature did not match.
15 She believes firmly that that was just a farce and
16 that poll worker was asking everybody in line for a
17 form of identification as a way as to avert the
18 existing law.

19 And so what we proposed would have
20 eliminated this problem, and it would have provided
21 the exact same safeguard that proponents of voter ID
22 argue as essential in the election. In providing
23 visual verification, make sure that the voter that's
24 in front of them is the same one that's registered
25 to vote, which incidentally, I don't think there's

1 much evidence of that type of fraud occurring at the
2 polling place, but the public believes strongly that
3 this is something that they need to have in place.

4 So what we would have done is to
5 eliminate the paper-based poll books and instead
6 implement an electronic poll book. So at every
7 polling location, instead of a paper roster, you
8 would have had a laptop. And on those laptops, we
9 would import photographs for anybody that had a
10 driver's license on file with the DMV.

11 And so when they show up at the polling
12 location, nothing would have changed. The poll
13 worker would have simply compared the photograph
14 that they have in their laptop with the individual
15 in front of them. If there was any question about
16 the appearance, they would simply sign an affidavit
17 saying that they are who they say -- sign an
18 affidavit saying that they are who they say they are
19 and be allowed to vote.

20 For those individuals who do not have a
21 driver's license, they would have simply taken their
22 photo and imported it into the laptop. And any
23 individual that didn't want to have their photograph
24 taken, would have been able to sign an affidavit and
25 vote with or without any delay.

1 This was a proposal that was written by
2 the Brennan Center. It was an idea, I should say,
3 as an alternative to voter ID laws. Because this
4 proposal wouldn't in any way disenfranchise even a
5 single vote. Certainly there's a cost to it, but
6 eventually, you're going to want to use technology
7 in a responsible way to administer the election. We
8 thought this was a positive step. It would have
9 reduced, in our estimation, substantial problems
10 that we have with provisional ballots when people
11 are unable to produce the form of ID that they're
12 required to or if their signature doesn't match or
13 if they're at the wrong polling location.
14 Ultimately, the legislature did not pass it. But I
15 think it's an idea that is worth revisiting at some
16 point.

17 MS. BERKLEY: Thank you. Thank you so
18 much, Secretary Miller, for your testimony.

19 MR. MILLER: Thank you.

20 MS. BERKLEY: All right. Well, I think
21 that, you know, we have -- are -- is there anything
22 from any of the NAACP or lawyers' committee?

23 All right. Well, I think that we want to
24 thank all of you for being here. Thank all of you
25 for your testimony. I know on behalf of the NAACP

1 and the lawyers' committee, we're doing hearings all
2 across the country. This information does not go --
3 you know, it's not going to go nowhere.

4 I'm sure that they're going to be working
5 very hard to make sure this testimony ends up in the
6 hands of decision-makers, certainly within the hands
7 of people who are trying to vote. And I know on
8 behalf of myself and Ms. Williams for the NAACP and
9 Mr. Cendana from the Asian Pacific American Labor
10 Alliance and myself from the AFL-CIO, we are going
11 to work very hard this next cycle to make sure that
12 all voters who are eligible to vote are able to turn
13 out to the polls.

14 Thank you so much for being here.

15 (Thereupon, the taking of the proceedings
16 concluded at 1:26 p.m.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

I, JUALITTA STEWART, do hereby attest that I took down in shorthand all of the proceedings had in the before-entitled matter at the time and place indicated; and thereafter said shorthand notes were transcribed into computer-aided transcription; and that the foregoing transcript constitutes a full, true, and accurate record of the proceedings had to the best of my skill and ability.

Executed this 8th day of May 2014.

JUALITTA STEWART, RPR, CCR NO. 807

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NATIONAL COMMISSION ON VOTING RIGHTS - NEW YORK CITY

New York, New York

Friday, April 11, 2014

1:06 p.m.

Fordham Law

McNally Auditorium

Hosted by:

LAWYERS' COMMITTEE

FOR CIVIL RIGHTS UNDER LAW

Reported by:

ROBIN NUNEZ

JOB NO. 72716

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GUEST COMMISSION

JOHN FEERICK, former Fordham Law School Dean.

JUAN CARTAGENA, President & General Counsel,
LatinoJustice PRLDEF.

JOHN DUNNE, former Assistant Attorney General
for Civil Rights.

DR. HAZEL DUKES, President, NAACP New York
State Conference.

RON CHEN, Acting Dean, Rutgers Law
School-Newark, former New Jersey Public
Advocate

MARGARET FUNG, Executive Director, AALDEF

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2 MS. FOSTER: So good afternoon. As
3 everyone gets settled, I just want to say a
4 couple of words of welcome. I'm Sheila
5 Foster, I'm vice dean of the law school,
6 I'm also on the faculty here. And on behalf
7 of the dean I wanted to welcome you to the
8 law school. We are very pleased to be
9 hosting the New York City regional hearing
10 for the National Commission on Voting
11 Rights today, and we are pleased to stand
12 with the Lawyers' Committee For Civil
13 Rights Under Law, an incredible
14 organization that has done very important
15 work to secure equal justice through the
16 rule of law. We are pleased to stand with
17 the organization today to combat all forms
18 of inequality and discrimination, and in
19 particular to advance voting rights today.

20 We are particularly proud today that
21 among the commissioners for the hearing is
22 our own John Feerick, who is a living
23 legend here at Fordham. John has really
24 devoted his 50-plus year legal career to
25 advancing social justice inequality. In

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2 fact, during the law school centennial year
3 in 2006, we created the Feerick Center for
4 Social Justice to honor John's lifetime of
5 selfless achievement in his almost 20-year
6 tenure of dean of the law school, and it
7 really is we are so thrilled that he
8 continues to use his skills and his public
9 service commitment to honor the work of the
10 committee and the commission today.

11 I also wanted to note how involved
12 our students are in the work of the
13 commission, and the committee. Among our
14 more than two dozen student groups is
15 Fordham Law Advocates for Voter Rights.
16 This nonpartisan group is dedicated to
17 promoting political empowerment through
18 election monitoring, voting rights
19 restoration, community outreach and
20 election process education. It is just
21 really one example of the commitment that
22 our students have to serve in the public
23 interest, and to be dedicated to the
24 service of others, which is one of the ways
25 in which we live out our Jesuit mission as

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2 a law school.

3 So the entire community, the
4 students, the faculty, and the
5 administration is pleased again to have you
6 here today. We hope that the hearing bears
7 fruit. After all, the future of our
8 democracy ultimately depends on initiatives
9 like the National Commission on Voting
10 Rights and the work of the Lawyers'
11 Committee For Civil Rights Under Law. Thank
12 you so much for being here. Our very best
13 wishes for a successful hearing, and I'm
14 going to turn is over to Chris.

15 MS. SHIELDS: Thank you so much,
16 Dean Foster. And the thank you guys so much
17 for being here today. Buenas tarde. On
18 behalf of the Lawyers' Committee For Civil
19 Rights Under Law, I want to welcome you and
20 thank you so much for coming out to the
21 tri-state hearing.

22 I was joking with my commissioners
23 the other day when we did our briefing call
24 that I had a bit of bad luck with my
25 hearings. First of all, the president is in

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1
2 town so certainly there is a little bit of
3 a draw there for him being in town at the
4 National Action Network conference, but my
5 two colleagues happened to join me and help
6 me put things together this morning, but
7 their bus broke down on the way to New
8 York, so I have come to think I'm cursed.
9 But this is my final hearing of the
10 commission, so I don't have very much more
11 to go and hopefully I don't have anymore
12 bad luck moving forward. My name is Chris
13 Melody Fields Figueredo, I'm the manager of
14 legal mobilization and strategic campaigns
15 at the Lawyers' Committee. Go ahead and try
16 to say that three times fast.

17 I want to thank Fordham Law School
18 for hosting us today so we can have this
19 really incredibly important conversation
20 about the foundation of one of the most
21 fundamental rights that we have in this
22 country, the right to vote. Today's hearing
23 in New York is the 16th in a nationwide
24 series of hearings that we are having all
25 across the country. We have ten more to go

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2 in the month of April, so we have a very,
3 very, very busy month ahead of us.

4 For someone like me, who I consider
5 myself a bit of a voting nerd, I've been
6 doing this for, or working around democracy
7 issues for almost ten years now. It has
8 been truly an eye opening and sort of
9 breathtaking experience. I feel like I know
10 a lot of about voting, but I think I
11 definitely encountered, at every hearing,
12 I've learned something new. I've learned a
13 new perspective. I've learned quite a bit
14 and I always think if you are not learning
15 in your job, then you are not doing
16 something right. It has been a truly
17 remarkable experience for myself, as well.

18 So I am just going to do a couple of
19 housekeeping items before we get to the
20 program and to our commissioners and the
21 panels today. For those of you that are
22 wishing to do public testimony, we'll have
23 two periods of public testimony. One at
24 3:25, and one at 5:45. If you haven't
25 already indicated at the front that you

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2 want to give public testimony, go to the
3 registration table, fill out a note card
4 with your name and the topic that you want
5 to speak about, and when we come to that,
6 the commissioners will call your name and
7 we'll have mikes at the front.

8 A couple of other items, our hearing
9 today is being transcribed by our wonderful
10 court reporter, so especially for
11 witnesses, speak clearly and loudly.

12 Enunciate so he can hear you and make sure
13 that he records your testimony correctly.

14 The event is also being recorded and
15 will be made available to the public later.
16 If you are speaking, we are going to have a
17 timekeeper in the front so please be
18 mindful of the timekeeper, former witnesses
19 have five minutes to speak. It's up to the
20 discretion of our chairman John Feerick to
21 allow you to go over that time, but please
22 be mindful of the timekeepers.

23 We also have sign language
24 interpreters today. If you are a member of
25 the deaf and hard of hearing community,

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2 please just let us know so we can make sure
3 that you can see the sign language
4 interpreters.

5 If you are on social media, if you
6 are on twitter or Facebook, as you can see
7 behind the commissioners we are using the
8 #NCVR to keep the conversation going online
9 for those that can't be here today, and you
10 are more than welcome to tweet at the
11 Lawyers' Committee, our handle on twitter
12 is @LawyersComm.

13 And then finally, thank you. I
14 certainly did not put this hearing together
15 by myself. We had a wonderful, fantastic
16 planning committee of organizations and law
17 firms that we met almost weekly for the
18 last month and a half to put this hearing
19 together. So I want to thank the Latino
20 Justice, PRLDEF; AALDEF; Common Cause New
21 York; ACLU of New Jersey; Demos; Brennan
22 Center; MinKwon Center; NALEO Education
23 Fund; the NAACP and the NAACP Legal Defense
24 Fund; and the Center for Law and Justice at
25 Medgar Evers College; and the law firms of

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2 Davis, Polk, Wardwell; and Kirkland &
3 Ellis. Thank you guys so much. Thank you
4 for being on calls or taking my e-mails in
5 the lead up to this hearing. I certainly
6 really could have not done this without you
7 guys.

8 And then of course I would love to
9 thank our commissioners. They are all
10 incredibly prestigious people who have been
11 fighting for voting rights and civil rights
12 for a long time and I'm certainly honored
13 to have them oversee the hearing today. And
14 then our witnesses today, thank you so much
15 for making yourselves available. You also
16 have been tireless advocates for voting
17 rights and we are really looking forward to
18 your testimony.

19 So, with that, I want to introduce
20 Kim Keenan who is the general counsel of
21 the NAACP. She's been an incredible friend
22 to the Lawyers' Committee, and the NAACP
23 has been a fabulous partner with these
24 hearings across the country, and we are
25 very grateful to everything they have done

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2 to make these hearings possible as well.

3 So I will turn it over to Kim.

4 MS. KEENAN: Thank you, Good
5 Afternoon.

6 So this past summer the U.S. Supreme
7 Court struck down a key provision of the
8 voting rights act in Shelby. One that
9 protected many voters in particular from
10 discriminatory changes in voting. The court
11 released states with a troubling history of
12 race discrimination voting from a critical
13 responsibility to show, up front, that
14 voting changes would not disadvantage
15 minority voters. The court found that this
16 requirement was outdated and no longer
17 related to current needs.

18 Let me be clear, they got it wrong.
19 And that's what we are here today to prove
20 that all around this nation there are
21 rules, there are practices, there are
22 procedures that make it very difficult for
23 every American citizen who is entitled to
24 cast a ballot to be able to cast that
25 ballot freely.

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2 I'm reminded of the rule in Florida
3 where if you had to leave the line to go to
4 the bathroom, you weren't allowed to go to
5 the bathroom, and one wonders how one
6 creates such a rule.

7 Well, not all of the three states
8 here today are fully covered under the
9 previous coverage formula. We felt it was
10 critical to include voices from the entire
11 nation and reflect the current record on
12 voter discrimination. Less the court be
13 confused that voter discrimination is only
14 happening in some places, we want to make
15 sure they have the record of the whole
16 country to review.

17 In addition, today, we also want to
18 hear from you about election administration
19 and election reform. Across the country,
20 over these past few years, we've seen a
21 wave of restrictive voting laws. Those
22 making it harder for eligible voters to
23 cast a ballot. These have taken the form of
24 strict Photo ID laws and proof of
25 citizenship registration laws and others.

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2 The fact of the matter is we don't have
3 voter fraud in America. What we have is
4 suppressive voting regulations that make it
5 hard for people to vote.

6 Further, we have continued to see
7 similar election challenges in the cycle
8 related to poll worker training, voter
9 registration, and the use of provisional
10 ballots. Your input on these issues in
11 Connecticut, New Jersey and New York is
12 critical for ongoing advocacy and reform
13 effort at the local state and national
14 level. We also look forward to how we can
15 improve elections and increase access to
16 the ballot box. With the testimony we
17 receive today and after the hearing, the
18 National Commission will prepare two
19 reports, one on voting discrimination and
20 another on election administration and
21 electoral reform. The reports and the
22 records from the hearings will be available
23 later this year to anyone seeking reform or
24 to improve existing voting laws, including
25 policymakers, advocates, of course

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1 students, and the voting public.

2 So now I'd like to introduce our
3 commissioner panel for today's hearing.
4 Presiding over our event today are
5 commissioners each with a deep commitment
6 and a demonstrated record to protecting
7 access to the ballot box for all eligible
8 voters.
9

10 We have a national commissioner here
11 today, John Dunne, who is the former
12 attorney general for civil rights. He's
13 right there, if you can let everybody know.
14 And right next to me is Margaret Fung who
15 is the executive director of AALDEF. And
16 then next to her we have Ron Chen, the
17 acting dean of Rutgers School of Law and
18 former New Jersey public advocate. And next
19 to him we have Dr. Hazel Dukes, the
20 formidable president of the New York State
21 conference of the NAACP and the national
22 board of directors. And then next to her we
23 have Juan Cartegana, President Cartagena,
24 president and general counsel of the Latino
25 Justice PRLDEF. And then next to him we

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2 have John Feerick, who we heard is the
3 former Fordham Law School dean.

4 So our commissioners will preside
5 over today's event and will receive
6 testimony from several panels of witnesses
7 and ask follow-up questions as they desire
8 to ensure that we create as robust a record
9 as possible about the state of voting in
10 the tri-state region today.

11 Today's hearing is the 16th in the
12 series of nationwide fact-finding hearings
13 convened by the National Commission on
14 Voting Rights. I'd like to thank our
15 commissioners and witnesses.

16 And now I'll turn it over to the
17 commissioners for their opening remarks and
18 then the first panel of witnesses. Thank
19 you so much.

20 COMMISSIONER FEERICK: Thank you
21 very much. Why don't we start with Margaret
22 and just go down the panel of
23 commissioners.

24 COMMISSIONER FUNG: My name is
25 Margaret Fung and I'm the director of Asian

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2 American Legal Defense Education Fund, and
3 I want to thank the Lawyers' Committee for
4 inviting me to be a guest commissioner
5 today.

6 As you may know, Asian Americans are
7 now the fastest growing Asian group in the
8 nation. As the number of Asian American
9 voters has increased, our organization has
10 also observed more problems on election day
11 and incidents of discrimination.

12 Historically, many Asian Americans
13 were denied the right to vote because of
14 discriminatory laws that prevented Asian
15 immigrants from becoming naturalized
16 citizens, and today, Asians American have
17 become actively involved in all aspects of
18 the political process. The Voting Rights
19 Act has been critical for enforcing the
20 rights of Asian New Yorkers.

21 In 1994, we used the preclearance
22 provision, Section 5 of the Voting Rights
23 Act, to get the first fully translated
24 Chinese language ballots in the nation. So
25 we look forward to hearing testimony today,

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2 ways to strengthen the enforcement of the
3 Voting Rights Act, and also to ensure equal
4 access to the vote for all Americans.

5 COMMISSIONER CHEN: I want to thank
6 the Lawyers' Committee and the National
7 Commission for the honor of serving as a
8 guest commissioner. The issue of voting
9 rights is something that I have been doing
10 a lot of work in my career, especially
11 recently as public advocate and when I
12 returned to Rutgers Law School. And the
13 issue of access to the franchise is one
14 that we here, especially in the tri-state
15 area, have to be aware of the nuanced ways
16 in which access by voters to the franchise
17 can be suppressed. Perhaps not in as an
18 egregious or noticeable ways, as in some
19 other parts of the country, but perhaps
20 because of that lack of obviousness, even
21 more insidious in some ways. I very much
22 look forward to hearing the testimony and
23 receiving the evidence of how we can make
24 sure that the franchise is available
25 equally to all.

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2 COMMISSIONER DUKES: I'm pleased to
3 join with commissioners today, and I have
4 to thank the Lawyers' Committee for
5 inviting us. We, the NAACP, are 105 years
6 old celebrating this year, and for me, I
7 was saying to Margaret, I think we've been
8 on this battle for about 30 years, and when
9 I think about when I was asked to serve as
10 the commissioner, I had to go deep down and
11 hear from Senator Dunn, who you'll hear
12 from, in Nassau County. And when you think
13 of voter suppression in the tri-state area,
14 you are right, professor. People kind of
15 say what are you all talking about? Well,
16 we are talking about voter suppression in a
17 way in the tri-state area that is more
18 complicated than in those areas that its
19 covered by.

20 So I am looking forward, too, to
21 hear from people who have experienced what
22 I know is true, and I've experienced, to
23 come forth today. So again, we can go to
24 those persons in our legislative at the
25 federal level, and say to them enough is

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2 enough. Let's not piecemeal this anymore.
3 Let's get it right so all Americans can
4 participate to the fullest. This is
5 democracy. Thank you much.

6 COMMISSIONER DUNNE: I'm John Dunne.
7 During the first Bush Administration I had
8 the privilege as serving as the assistant
9 attorney general in charge of the civil
10 rights division and spend at least half of
11 my time reviewing applications from the
12 current states seeking approval for their
13 changes in election procedures under
14 Sections 4 and 5 of the Voting Rights Act.
15 A truly daunting, challenging, and very
16 satisfying experience.

17 Hazel, I think you're wrong on one
18 thing, we were neighbors, not in the old
19 days in Nassau county when I was a member
20 of the state senate. Voter suppression is
21 where republicans have two times the number
22 of enrolled voters than the Democrats. I
23 think that's what that was all about.

24 I had a very good experience serving
25 in the state senate chairing a variety of

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2 committees, but most recently I joined with
3 my colleague, Dan Kolb, to chair --
4 co-chair a special commission for the New
5 York State Bar Association on the subject
6 of voter participation. I'm looking forward
7 to this hearing. A hearing two weeks ago in
8 Boston was very rewarding and insightful,
9 and I thank Fordham Law School for making
10 it possible for us to meet here today.

11 COMMISSIONER CARTAGENA: Good
12 afternoon, my name is Juan Caratgena, I am
13 the president of and counsel for Latino
14 Justice, PERLDEF. I had the privilege of
15 serving on this commission in 2005. Last
16 time we discussed the reorganization of the
17 Voting Rights Act, so I thank the Lawyers'
18 Committee and the National Commission of
19 Voting Rights Act for inviting me back to
20 serve on this panel.

21 In all the years that have gone by
22 that I have been doing voting rights work,
23 since 1981, the issues and the obstacles
24 really revolve around two themes, in my
25 opinion. The first one is that we

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2 consistently treat citizens in this country
3 as if they have to earn and re-earn their
4 right to vote. We don't treat it as a
5 right. We actually, in many jurisdictions,
6 treat it as a privilege. That in large part
7 explains why so many of us who are eligible
8 to vote are excluded from the franchise. It
9 explains why so many of us who are eligible
10 to vote and have registered to vote have to
11 re-approve that we are eligible to vote
12 again, and again. It explains voter ID
13 laws. It explains purges. It explains
14 everything. So it is time that we treat the
15 vote as a right in a democracy.

16 The second theme is that we still
17 have to integrate the halls of our
18 legislative bodies, and that's actually the
19 work that we do collectively. We increase
20 the number of black, Latino, Asian, Native
21 American voices along with white voices
22 within the halls of this particular power
23 powered by this business. And it is that
24 lack of integration that still exists
25 today. The number of people elected in this

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2 country are really over-represented. We are
3 only one race in this country, and as a
4 result we have to continue to fight to make
5 sure that all voices are heard.

6 So I'll end with this, the Voter
7 Rights Act in Shelby when Shelby was
8 decided about a week before, I stood in
9 front of a press conference, and Dr. Dukes
10 was there with me I recall, and we were
11 celebrating the action of a New York City
12 council who had just voted to override a
13 veto by the mayor of the City of New York
14 to make sure the Community Safety Act, the
15 ability of the Community Safety Act to
16 redress the issues of stop and frisk
17 policing in New York City, that it was
18 going to be overwritten. And I remarked
19 then what I'll remark to you now, the
20 success of that initiative is directly a
21 product of the Voting Rights Act. We would
22 not have had such an integrated, such a
23 progressive, such a responsive legislation
24 in New York City council had it not been
25 for the Voter Rights Act of 1965, in

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2 Section 5, as it applies to the counties
3 here.

4 I applauded the council then, and I
5 applaud the council every time it takes
6 actions that are responsive to the needs of
7 its voters. I look forward to this year.

8 COMMISSIONER FEERICK: Thank you very
9 much. My name is John Feerick. I'm a full
10 time professor here at Fordham Law School,
11 and it's a real honor from me to serve with
12 the commissioners you just heard from. I
13 realized as I thought about today that I've
14 been a lawyer for 52 years, and in the
15 1960s was a very exciting time for a young
16 lawyer because the things that hadn't
17 happened in American and history before
18 were happening. President had a voting
19 rights commission, and the laws came on the
20 books. The Voting Rights Act was a memorial
21 to a fallen president, and it was very
22 exciting from the standpoint of a young
23 lawyer at that time, and I think it was
24 representative of a lot of people who were
25 involved in the life in the bar to see what

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2 was happening in America.

3 I had the honor to chair a
4 subcommittee of the city bar that I was
5 asked to testify before the constitutional
6 rights subcommittee of the judiciary
7 committee about whether the voting rights
8 amendments that were then proposed to
9 extend the Voting Rights Act another five
10 years. Actually, the first five-year
11 extension, myself, and a New York lawyer
12 named Shelly Elson appeared before the
13 committee, and we expressed the view of the
14 oldest bar association in the history of
15 New York State, then called the Association
16 Bar City of New York, and now the City Bar
17 Association, and we sat with who chaired
18 the hearings the day we testified in 1970,
19 how important it was that the voting rights
20 amendments be adopted because America
21 called out for that kind of remedy to deal
22 with the kind of problem that we were faced
23 with throughout the history of our country.

24 Some years later, I had the fortune
25 to serve on the special committee of the

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1
2 American Bar Association, a very special
3 committee, to deal with the election law
4 issues and voter participation. And I
5 served on that committee for seven years,
6 as I recall. I became the second chair of
7 that committee. The first chair became the
8 president of the American Bar Association,
9 and so for, I would say, all of my years
10 from the 60s and 70s, there was no subject
11 more important to me than this kind of
12 subject. I also was an adjunct at Fordham,
13 teaching a course in employment
14 discrimination.

15 I saw the move from when I became
16 dean of Fordham Law School in 1982. I no
17 longer had the luxury as being immersed
18 from a technical standpoint and a
19 substantive standpoint where I can write
20 bar association reports, articles, and
21 testified many times before Congress on
22 election kind of issues. Electoral college
23 reform was another area, but I made a
24 central part of my administration in the
25 law school was be very supportive of

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2 students and student groups, and faculty
3 who wanted to become involved in these kind
4 of issues, and it's really been an honor
5 for me to see the evolution of Fordham Law
6 School, because of the incredible students,
7 incredible faculty responding to these kind
8 of subjects.

9 What I was asked by Dan Kolb and
10 John Dunne to serve on the state bar
11 special committee, I hesitated because I
12 felt my life had gone in a different
13 direction. I also founded the Social
14 Justice Center here at Fordham Law School
15 and the Law School of Social Justice, and
16 it deals with poverty issues. We don't deal
17 with voting rights, that's not where we
18 are. We try to work with community groups,
19 with legal service organizations with the
20 courts, with government, on poverty issues.
21 Try to make a difference by getting the
22 students involved and getting the volunteer
23 lawyers involved. So it is really an honor
24 to come back to where the first 20 years of
25 my life really were spent in this area.

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2 I teached a course, at the law
3 school, on creation of the federal
4 constitution, and I spent a lot of time on
5 the creation of the constitution itself,
6 which had a terrible defect in terms of how
7 to address the issue of slavery, but I also
8 talk about the history that followed from
9 the creation of the constitution, and there
10 is no area that expresses the importance of
11 the right to vote than the amendments of
12 the constitution.

13 Amendment after amendment, every
14 amendment has had a struggle associated
15 with it, and we can lose our liberty, we
16 can lose our momentum if we don't stay
17 engaged in this kind of area. And so I
18 applaud the witnesses who are going to
19 testify. The panelist who are going to
20 speak to you. And just consider myself an
21 honor to be in the room with so many
22 wonderful people.

23 The format of our hearing today is
24 as follows: We are going to have two
25 panels, each panelist is asked to bring, if

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2 they can, to bring their remarks within
3 five minutes. Each panelist will have five
4 minutes, but I'm not heavy on the time
5 clock. I don't want that to be interpreted
6 because otherwise we won't go home today.
7 So I'm going to try to do a pretty good job
8 of keeping the panel within five minutes,
9 and then when each of the panelists are
10 finished, unless the commissioners want to
11 ask a question when a particular speaker is
12 speaking on the subject, when the panel is
13 finished, we will ask questions of the
14 panel, whether as an individual or the
15 panel at large. That's our program. We are
16 going to have two panels, and at 3:30 we'll
17 deal with the question of those who might
18 be interested in giving testimony in the
19 public part of this hearing. And we are
20 going to start with -- I saw a microphone
21 out there. Am I correct, Chris, that the
22 panel will speak -- are they going to speak
23 from the podium?

24 MS. FIELDS: Yes.

25 COMMISSIONER FEERICK: Okay. So let

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2 me start. On the first panel we have five
3 panelists, and I'm taking it a little bit
4 out of order. I was told that there was
5 some here and one or two yet to come. It's
6 possible everybody might be here right now.
7 My mindset is who is here when we started,
8 and I was told that Dr. Divine Pryor,
9 Center for NuLeadership on Urban Solutions
10 is here. Would you give us the honor of
11 getting us started.

12 DR. PRYOR: Good Afternoon. First I
13 want to thank the commission for extending
14 this opportunity to have me come and
15 testify before you today.

16 My name is Dr. Divine Pryor. I am
17 executive director of the Center for
18 NuLeadership on Urban Solutions. Which is a
19 very unique center. It is the nation's
20 first and only criminal justice public
21 policy research and training center
22 created, developed, and run by formerly
23 incarcerated professionals, representing
24 every discipline from law to medicine. And
25 so on that note you should be aware that

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2 the issue of voter suppression and felony
3 disenfranchisement is something near and
4 dear to us.

5 I just wanted to say just a few
6 things, and five minutes is not a lot of
7 time, but I think it is enough time for me
8 to remind everyone here that the issue of
9 voter suppression and felony
10 disenfranchisement, meaning keeping people
11 away from participating in what is, I
12 think, the principled democratic activity
13 in this country, and that is voting has
14 been something that has been historic, that
15 for individuals who are the descendants of
16 slaves know that if you go back to the
17 founding of America, efforts to suppress
18 the vote and to keep slaves and descendants
19 of slaves out of that particular system has
20 been relentless. And so I think that
21 everyone should understand that this is not
22 accidental. That this is something that is
23 intentional, and it's purposeful.

24 I just want to remind everyone that
25 slaves didn't have the right to vote, and

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2 even if there was discussion of a slave
3 participating in the process, they were
4 calculated as three-fifths of the vote, so
5 they couldn't even have the weight of an
6 entire vote. And then we also know that
7 throughout that entire period, particularly
8 focussing on Abraham Lincoln's Emancipation
9 Proclamation, that it took a civil war
10 before that emancipation could even be
11 recognized, and then even subsequent to the
12 civil war there was yet another effort to
13 suppress the vote.

14 So we had many different types of
15 laws that was designed exclusively and
16 specifically to deny the vote to former
17 slaves, and so when we had all types of
18 incidents where individuals were required
19 to pass a literacy test in order to vote,
20 what we have to recognize is that the
21 literacy test was designed specifically to
22 exclude individuals from voting in the
23 process because if, in fact, an individual
24 is a former slave, then their ability to
25 read and to pass the literacy test, of

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2 course, we know, would not be possible. And
3 we also know of cases where individuals who
4 did pass the literacy test, we know that
5 those individuals were arrested because the
6 cost of an individual just leaving slavery
7 to be able to pass the test meant they had
8 to know how to read, and of course that was
9 against the law.

10 So we have an Ex Post Facto
11 application of voter suppression laws, and
12 we know that even today, and many of us
13 have now heard of Michelle Alexander's book
14 on the new Jim Crow, but she continues to
15 talk about how the legal system is used to
16 deny individuals the vote. And so, you
17 know, once a person is convicted
18 particularly of a felony in most states,
19 they are denied the right to vote. There
20 are only two states who allow individuals
21 to vote while in prison and the rest of the
22 states deny those individual. And then we
23 have dozens of states who continue to deny
24 individuals their right to vote even after
25 they have served their time. And so these

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2 efforts and these activities, they actually
3 contradict the very principle of fairness
4 and decency.

5 The whole foundation of democracy is
6 undermined by this continuous assault of
7 individuals and denying them the right to
8 participate in the process. And so we have
9 sort of a contradiction. We have a quandary
10 here because we want to promote to the rest
11 of the world that we, you know, should be
12 the leader in democracy, and we want to
13 promote to the world we have laid down the
14 principles of the quality and the fairness
15 and of decency, and in fact, we have
16 practices that go back from the founding of
17 America and up until today that actually
18 contradict that notion. And so until we
19 understand the intentionality of these
20 activities, that this is purposeful.

21 We all recall what happened in
22 Florida, during the Bush elections, and we
23 know what continues to happen around the
24 country. Various ID requirements and so
25 forth for individuals to vote. These are

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2 intentional attempts. These are not
3 accidental. These are not administrative
4 quirks. These are not bureaucratic
5 oversights. But these are individuals who
6 are designing the systems to exclude
7 individuals from the voting polls.

8 Thank you so much.

9 COMMISSIONER FEERICK: Thank you
10 very much. That's about the best five
11 minutes I've heard in a long time. You're
12 100 percent. Thank you. Our next speaker is
13 Joan Gibbs.

14 MS. GIBBS: Good Afternoon.

15 I first want to thank the National
16 Commission and also the Lawyers' Committee
17 for Civils Right Under Law for these
18 hearings and extending an invitation for
19 us. My name is Joan Gibbs, and I'm the
20 general counsel for the Center for Law and
21 Social Justice at Medgar Evers College,
22 which is part of the City University of New
23 York. I've submitted written testimony, so
24 I'm going to summarize it briefly in order
25 to stay within time.

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2 I'm going to be talking about
3 several issues that are currently facing
4 black and other voters of color in New
5 York. The first is the Governor's failure
6 to call a special election. There are
7 currently 12 vacant seats in the state
8 legislature, 2 in the senate and 10 in the
9 state assembly. As a result of these
10 vacancies, nearly 2 million New Yorkers are
11 without representation in the state
12 legislature. Moreover, nearly 800,000 of
13 those without representation are people of
14 color, most of whom reside within the City
15 of New York. In the two vacant senate
16 seats, one, in the 20th, is in Brooklyn,
17 and six of the assembly districts are
18 majority minority districts within the City
19 of New York.

20 The 20th was vacated by the election
21 of Eric Adams to the borough president.
22 Most of these vacancies occurred because
23 either the incumbent was elected to another
24 office in the November 2013 general
25 election, or because the incumbent was

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2 automatically moved because following a
3 felony conviction. Pursuant to state law,
4 in particular public offices law section
5 42.4, the government has the discretion as
6 to whether and when to call a special
7 election to fulfill these vacancies. In
8 particular, when vacancies occur before
9 April 1st, the governor is empowered either
10 to call a special election or leave the
11 seat or seats vacant until the next general
12 election.

13 Historically, however, contrary to
14 the current practice, special elections to
15 fill vacant seats that have occurred after
16 the general election have been scheduled
17 for the March of next year. The reasons for
18 this is not hard to fathom, and that is, as
19 New York Court of Appeals has said, when a
20 vacancy occurs, the vacancy must be filled
21 by an election of the shortest space of the
22 time that's reasonably possible.

23 The need for expeditious special
24 elections rest on two very real and germane
25 premises in a representative democracy.

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2 One, basic voting rights of a district's
3 constituents to elect and have
4 representatives in the state legislative
5 bodies, and two, equal protection rights of
6 the district resident, constituent services
7 which are provided locally to district
8 offices of state representatives.

9 Now, notwithstanding calls for
10 various groups and individuals, including
11 the speaker of this assembly, members of
12 Congress, members of the state legislature,
13 the New York City council, public interest
14 groups and others, Governor Cuomo has
15 refused to call a special election. In
16 January, when asked about this, he remarked
17 that the problem -- He dismissed the idea
18 of calling a special election, referencing
19 of the recent conviction of assemblyman
20 Dennis Eric Stevenson from the Bronx,
21 possibility of other members being
22 convicted. And then, the fact is special
23 election is very expensive.

24 We are not unaware of the fact that
25 elections cost money. Of course they do. We

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2 are also aware that the board of elections
3 in the City of New York is unfunded, and
4 that because the 2009 Military and Overseas
5 Voter Empowerment Act and the subsequent
6 federal court decision, New York State will
7 be holding two primary elections in 2014. A
8 Congressional primary, and another primary
9 election September, and thereafter a
10 general election in November; however, the
11 additional expense of holding a special
12 election does not constitute a waiver of
13 any sort of a state's duty to its voters of
14 their right to vote.

15 Elections in a democracy should not
16 be optional. The large number of
17 unrepresented New York State residents
18 makes a sham of representative democracy in
19 the state of New York, and also sets a
20 horrible precedent for the future.

21 Another issue that I want to address
22 briefly and that is the practice of the New
23 York State Senate and overpopulated
24 downstate districts, particularly districts
25 within the City Of New York. As a result of

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2 those, the city is without a representative
3 in the state senate, and that
4 representative, if the maps are fairly
5 drawn, would be a person of color, possibly
6 a Latino. In the 2002 redistricting cycle,
7 this practice was challenged in Rodriguez
8 versus Pataki, and is being challenged
9 again in this redistricting cycle in Favors
10 versus Cuomo.

11 In both incidents are being
12 challenged -- in both cases, it has been
13 challenged as one of violation of the one
14 person, one vote requirement of the 14th
15 amendment, and this time is also being
16 challenged as a violation of the 14th
17 amendment's prohibition based on
18 discrimination on the basis of race
19 because, in fact, the majority of people
20 who are in these overpopulated districts
21 are black, Latinos and Asians.

22 I want to make a note, a special
23 note and then I'm going to stop, about the
24 argument that the senate is making in this
25 case. Their argument is that the districts

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2 downstate are not overpopulated, but rather
3 they are underpopulated because allegedly,
4 New York City has so many immigrants, or
5 people who are not citizens or whatever.
6 That's their general argument. The fact of
7 the matter is the constitution requires, in
8 our opinion, that the total population be
9 counted. Certainly in the New York State
10 constitution requires that. And that the
11 senate is making this argument is very
12 dangerous. It is a very dangerous precedent
13 for the future, and it seems to me sort of
14 opening way to challenge the growing
15 minority -- fact that the population of the
16 United States is slated to become majority
17 minority in the future.

18 So with that, I want to stop, but I
19 just wanted to say about another thing as a
20 result of the Shelby case. There has been
21 practices that have been changed in the
22 last voting cycle. The old machines were
23 brought back, and then polling places were
24 changed at the last minute without proper
25 notice. These changes would not have been

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2 tolerated before Shelby, and hopefully that
3 decision would be changed with subsequent
4 laws.

5 Thank you very much and I look
6 forward to any questions you may have.

7 COMMISSIONER FEERICK: Thank you very
8 much.

9 Professor Randy McLaughlin, Pace Law
10 School.

11 MR. MCLAUGHLIN: Thank you for
12 having me. I'll try and be brief. There are
13 two matters I'd like to bring to your
14 attention. One deals with the Shelby case
15 and how that's going to play out in the
16 future.

17 The notion is that private lawyers,
18 lawyers in civil rights organizations will
19 pick up these cases and sue the
20 municipalities and governments across
21 country. I want to talk about two cases,
22 one is the case entitled New Rochelle
23 Voter Rights Fund versus City of New
24 Rochelle, and the other case is the United
25 States versus Portchester.

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2 In the first case, the first case
3 was filed by myself as a private lawyer on
4 behalf of the voters in the City of New
5 Rochelle following the 2000 census, when
6 the City of New Rochelle was
7 underpopulating a predominantly minority
8 district and essentially gutting that
9 district that we helped to create in the
10 1988 lawsuit. So we filed the lawsuit. We
11 filed for a temporary restraining order, a
12 preliminary injunction. And we had to
13 fundraise, we didn't have any civil rights
14 organizations backing the case, and it was
15 extremely expensive to hire three experts
16 at sometimes up to \$10,000 a piece.

17 We were successful in that case, but
18 again we did that not from a full trial,
19 but we expedited it in a preliminary
20 injunction way and won the case. The U.S.
21 v. Portchester, the United States
22 government sued the Village of Portchester
23 to change the at large election system
24 there. We intervened on behalf of an
25 Hispanic voter and challenged the system

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2 along with the justice department. The
3 justice department threw, I want to say, 50
4 to \$100,000 worth of resources behind that
5 case. Hired experts, maps, color-coded. You
6 name it, they have it. And we kind of
7 piggybacked. We piggybacked, essentially,
8 on that case, and as a result of that case,
9 and the justice department's work, we were
10 able to change the way the at large
11 election system worked in the village of
12 Portchester, and interestingly the remedy
13 we got in that case was not districts,
14 which we saw as plaintiffs, the justice
15 department and myself, but the village
16 asked for cumulative voting, which we
17 though was an interesting remedy, and one
18 chosen to work.

19 But, in fact, cumulative voting was
20 enacted in the Village of Portchester. We
21 believe it is the first case of its kind,
22 certainly in New York State, and maybe in
23 the country where cumulative voting was
24 ordered in by a municipality as a result of
25 federal voting rights case. And as a result

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2 of that cumulative voting process, for two
3 election cycles now we've had a Latino
4 elected to that board, first time in the
5 history of Portchester, and we think it
6 serves as a moral.

7 The caution we would like to point
8 is unless Section 5 is reenacted, unless
9 Section 5 is reinvigorated, these kind of
10 problems and the problems that Ms. Gibbs
11 has talked and the others will talk about,
12 will become legendary. The reason why they
13 enacted Section 5 back in 1965 was for the
14 very nature that these cases were so
15 expensive and so many putting the burden on
16 the voting rights community and the
17 communities themselves to bring these cases
18 would mean that millions of individuals
19 would be losing the right to vote and
20 losing the right to equal representation.
21 That is what is going to happen. That is
22 clearly what's going to happen, and I know
23 Attorney General Holder is trying his best
24 at a state level to try and beat back some
25 of these challenges. But the fight is not

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2 only at the state level, it is at the
3 county, the local, and municipal level. And
4 without Section 5, I think we'll have a
5 return to the 19th century.

6 Thank you.

7 COMMISSIONER FEERICK: Thank you very
8 much.

9 The next speaker is Kristen Clarke,
10 New York Attorney General's office.

11 MS. CLARKE: Good Afternoon, my name
12 is Kristen Clarke, chief of the civil
13 rights bureau of the New York State
14 Attorney General's office, and I want to
15 start off by thanking the National
16 Commission on Voting Rights for holding
17 this very important and timely hearing, and
18 thank the esteemed guest commissioners,
19 many whom have made enormous contributions
20 to the field of voting rights. I'm pleased
21 to be here today on behalf of Attorney
22 General Eric Schniederman.

23 As the chief law enforcement agent
24 of the State of New York, our office is
25 deeply committed to ensuring that all

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2 eligible voters across our state have free
3 and unfettered access to the ballot box.
4 Our work is shaped and informed by a
5 recognition that the right to vote stands
6 as one of the most important rights in our
7 democracy. Our work is particularly
8 important now in the wake of the Supreme
9 Court's recent ruling in Shelby County,
10 Alabama versus Holder, which has suspended
11 the important protections which long have
12 been provided by the Section 5 preclearance
13 provision of the Voting Rights Act.

14 Our office submitted a multistate
15 brief, that was joined by the states of
16 Mississippi, North Carolina and California,
17 and in that brief we underscored the
18 important role Section 5 displayed in
19 deterring and combatting discrimination
20 here in this state and across the current
21 states in our nation.

22 As congress now works to restore the
23 protections afforded by the preclearance
24 provision, we recognize its important that
25 states remain visual and to help fill the

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2 void that was left in the wake of the
3 Shelby County ruling. And to that end, the
4 New York State Attorney General's office
5 works to combat discrimination and barriers
6 that stand as obstacles to the ballot box
7 through aggressive enforcement of our
8 nation's civil rights laws, and I want to
9 speak briefly about some of the problems
10 that we have observed and the problems that
11 we seek to address.

12 First, we note that the State of New
13 York has consistently had one of the lowest
14 voter turnout rates in the country, and
15 this fact did not change in the recent 2012
16 general election. A recent report reveals
17 that during the 2012 general election,
18 voter participation stood at a rate of
19 46.3 percent. Decline of more than 12
20 percentage points when compared to 2008.
21 The turnout rate among New Yorkers in that
22 election fell behind only Hawaii and West
23 Virginia. Many attribute the low
24 participation rate in our state to our
25 state's paper-based registration system,

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2 the early voter registration deadline and
3 other outdated voter registration policies
4 and practices.

5 Indeed, New York is one of about a
6 dozen states across the nation that does
7 not allow in-person voting and also places
8 restrictions on those who can cast absentee
9 ballots. We also know that language
10 barriers and barriers for persons with
11 disabilities persist and also contribute to
12 low participation and turnout in our state.

13 During the most recent election
14 cycles, our office has operated a statewide
15 election day hotline where we have fielded
16 and troubleshooted problems that voters
17 have faced at the ballot box. And those
18 problems have ranged from request for photo
19 identification, though no such requirement
20 exists under New York State law. Barriers
21 faced by voters with disabilities including
22 blocked access ramps and other
23 obstructions. Language barriers faced by
24 minority language voters. Inaccurate
25 translated ballots and voter intimidation

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2 resulting from aggressive challengers
3 stationed inside the polls on election day.
4 The high volume of calls to our hotline and
5 range of problems that we were able to
6 troubleshoot and resolve underscore the
7 important safeguards provided by election
8 monitoring efforts. Our office believes
9 that language should not stand as a barrier
10 of responsibility to participate in the
11 process.

12 According to census data,
13 approximately 5.5 million New Yorkers do
14 not speak English as their primary
15 language, of whom 45 percent speak English
16 less than very well. These numbers include
17 2.7 million New Yorkers who primarily speak
18 Spanish at home, of whom 46 percent speak
19 English less than very well. To address
20 these needs, our office launched a
21 statewide language access initiative to
22 address the barriers, and as a result of
23 our work we secured agreements in Rockland,
24 Dutchess, Montgomery, Sullivan, Putnam,
25 Schenectady, Ulster and Chautauqua counties

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2 here in New York, and many of these areas
3 for the very first time assessed those who
4 are limited -- the numbers of limited
5 English proficient voters in their
6 community and translated everything from
7 the voter registration form up through the
8 ballot offered on election day, engaged in
9 the identification and recruitment of
10 bilingual poll workers, among other steps.

11 Our experience shows that language
12 access can help increase voter turnout and
13 participation, and most importantly help
14 ensure that every eligible voter has
15 meaningful access to the ballot box.

16 We have also been working to address
17 the barriers faced by persons with
18 disabilities, and last year achieved a
19 path-setting agreement with Allegany
20 County. We required that they redesignate
21 new polling sites where accessibility
22 barriers will not be corrected, and work to
23 eliminate architectural barriers at sites
24 that were inaccessible and require that
25 they undertake new training and put in

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2 place new policies to ensure all voters,
3 regardless of their disability status,
4 enjoy full access to the ballot box.

5 The republican commissioner in that
6 county, Commissioner Richard Hollis,
7 observed that making their poll sites
8 accessible is "not a negative thing to do,"
9 and commented on the substantial strides
10 made in partnerships with towns and
11 municipalities within the county to ensure
12 every polling site was made fully
13 accessible to voters regardless of their
14 disabilities.

15 Finally, in closing, I observe that
16 next year marks the 50th anniversary of the
17 voter rights act of 1965, one of our
18 nations federal civil rights law. We
19 observe while that great progress has been
20 made, that significant barriers remain, and
21 we know that the future of our nation's
22 democracy remains tied to our ability to
23 resolve the barriers that exclude or make
24 it difficult for all eligible voters to
25 participate in our political process.

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2 Thank you.

3 COMMISSIONER FEERICK: Thank you very
4 much.

5 Our final speaker on the first
6 panel, and then we'll be open to the
7 commissioners to ask panelist who spoke any
8 questions they would like to put to them.
9 Fred Brewington, Law offices of Frederick
10 K. Brewington.

11 MR. BREWINGTON: Good afternoon, and
12 I want to thank the National Commission on
13 Voting Rights and the esteemed
14 commissioners for the opportunity to come
15 and speak with you; however, I want to say
16 that I am in awe with my colleagues that
17 are here who I know have been battling
18 mightily in this issue and I see that I'm
19 not alone in the struggles, so it is good
20 to be amongst individuals that are in this
21 room.

22 I wanted to first start out by
23 outlining some things and I bring you some
24 information concerning the area in which I
25 find myself litigating most, which is in

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2 the Long Island area. Particularly, I
3 wanted to start out with some facts. The
4 political and governmental system of Long
5 Island is extremely fragmented. With over
6 1,000 separate governmental units in
7 1,199 square miles. Highly fragmented
8 regions perpetuate structural racism, and
9 in the laws and in the policies that are
10 facially neutral produce racially and
11 economic inequities.

12 For example, fragmentation of zoning
13 authority allows communities to effectively
14 exclude affordable housing. Fragmentation
15 of property taxing authority allows
16 businesses to use the entire region to be
17 taxed, but be taxed by only a few
18 communities. And fragmentation of school
19 districts isolates children in racially
20 segregated, high poverty schools. I utilize
21 that as a start for us as we go through
22 this because Long Island has issues of
23 poverty, race, income family structure, and
24 school quality that are closely linked to
25 the issue of race, which then lead us into

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2 a number of questions that tell us that
3 there are ten, high-need districts in Long
4 Island, particularly school districts, and
5 I'm focussing on the smaller governmental
6 entities first so that we have some
7 backdrop. Hempstead, Roosevelt, Freeport,
8 Westbury, Amityville, Wyandanch, William
9 Floyd, Brentwood, Central Islip and
10 Copiague are the ten highest need districts
11 on Long Island. On Long Island, African
12 Americans make up 8.6 percent of the Long
13 Island population, which is up from the
14 2000 census which was 8 percent. Almost
15 every town in Long Island saw an absolute
16 decline in the number of non-Hispanic
17 whites, with Hempstead leading the way,
18 Hempstead being Hempstead Town and
19 Hempstead Village, with a 12.7 percent
20 decline in non-Hispanic whites. The top
21 three communities in Nassau County with the
22 highest rates of foreclosure and at-risk
23 housing are Hempstead, Freeport, and
24 Elmont, all areas that are concentrated and
25 oftentimes referred to in Nassau County as

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2 the corridor.

3 We know that the Voting Rights Act
4 of 1965 and its attack of most recently in
5 particularly in the loss of Section 5
6 raises a number of questions for us all.
7 And the question that I come to you to
8 impose as I go through the information is
9 that while we must continue and vigilantly
10 fight to have Section 5 reinstated, we also
11 must be clear that right now we have tools
12 left available to us which Professor
13 McLaughlin spoke about briefly.

14 As a private attorney litigating
15 these cases, I know well how difficult it
16 is to litigate Section 2 cases, but while
17 we are in the process of seeking to
18 reinstate or have Section 5 reinstated or
19 reinvigorated depending on the term that
20 you want to use, my suggestion is that we
21 start to ask all of our friends in the
22 areas that are not covered now by
23 preclearance to start collecting the
24 information that we are going to need come
25 the next cycle. In order to meet the

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2 Gingles standard and the senate factors, it
3 is going to be necessary that we collect
4 information that deals with the fabric of
5 what's going on in those communities.

6 For instance, in Long Island, rather
7 than redistrict in 2013, the Nassau County
8 legislature sought to try and short-circuit
9 the process and redistrict early, therefore
10 stopping the ability of the community to
11 both organize and be fully informed about
12 what was going on with regard to
13 redistricting. We did, on Long Island, file
14 a lawsuit called Boone versus the County of
15 Nassau in an attempt to try and thwart that
16 along with other litigation that ended up
17 going to the court of appeals of New York
18 State, finding that the county of Nassau
19 had violated its own rules and regulations
20 regarding how it should and when it should
21 redistrict.

22 But in that case, we had prepared
23 and were prepared to go forward with a
24 number of things that which would show that
25 not only the actions of the Nassau county

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2 legislature were inappropriate with regard
3 to the Voting Rights Act, but they had done
4 -- taken steps which would intentionally
5 intend to infringe upon the rights or
6 voting rights of a growing and burgeoning
7 minority community, particularly African
8 American and Hispanic.

9 So what happened in that case, and
10 most importantly, is a clear indication
11 that those individual that would want to
12 thwart and take away the voting rights of
13 individuals that are growing, particularly
14 in Nassau County where there is a growth
15 coming from the New York City lines coming
16 all eastward in the areas of Elmont, North
17 Valley Stream, Floral Park, and the like,
18 that the need is for us in all of our
19 jurisdictions to start collecting
20 information that will allow us to litigate
21 successfully under Section 2, just in case
22 Section 5 itself is not available to us.
23 Even though it is more expensive and it is
24 more difficult in a lot of different ways,
25 it most certainly start to raise a number

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2 of questions that as we learn in the case
3 of Goosby versus The Town of Hempstead,
4 basically had the opportunity to air a lot
5 of laundry that a lot of people knew
6 existed that needed to be spoken about in
7 order that the fabric of the government
8 might change.

9 COMMISSIONER FEERICK: Thank you
10 very much. It is going to be an opportunity
11 now for the commissioners to ask questions.
12 I think we'll move the microphone to the
13 panelist that a questioned might be
14 directed to or to the whole panel, whoever
15 raises their hand first.

16 COMMISSIONER DUKES: Dr. Pryor, I am
17 very interested in the felony
18 disenfranchisement. I didn't hear directly,
19 what would you have as one of the main
20 points that you would like for the
21 commission to be a recommendation?

22 DR. PRYOR: Well, overall my
23 recommendation should be that a person's
24 criminal past shouldn't be used used as a
25 factor to exclude them from voting. I think

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2 that once an individual has served their
3 times, in all fairness and decency that
4 they should automatically have the right to
5 vote. I think that the second thing I would
6 do is ensure those individuals who can vote
7 who are no longer under any kind of
8 community supervision and they are made
9 aware they can actually can go and register
10 to vote. They don't need to bring any kind
11 of paperwork with them as has been alluded
12 to in several sectors.

13 And then the last thing would be
14 that not only are individuals allowed to
15 vote, but those individuals also should be
16 allowed to fully participate in the
17 democratic process. They should be serving
18 on juries. They should be doing everything
19 every other citizen is allowed to do. So
20 obviously we ask that people be treated
21 fairly and in accordance with the
22 principles that we promote.

23 COMMISSIONER DUKES: Have you looked
24 at the challenges and the roadblocks that's
25 put up that if a young Africa American has

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2 committed a crime in North Carolina, and
3 they have been in New York 20 or 25 years,
4 served their time, no supervision, they are
5 asked to go back to Carolina to get their
6 paperwork.

7 DR. PRYOR: Yes, that's true. There
8 are some remedies in place. I mean, we can
9 apply for an individual to have a
10 certificate of good conduct if they have
11 one ore more felonies in New York State in
12 regardless to what state he actually
13 committed the crime in. The only thing that
14 would be required would be access to
15 disposition from those states. And yes, it
16 is true some of those states require that
17 the individual come in personally. Won't
18 allow them to do it by mail. There are some
19 obstacles that I think there are some
20 remedies we can sort of propose to mitigate
21 against that.

22 COMMISSIONER DUKES: Thank you.

23 COMMISSIONER FEERICK: Just for the
24 record, the questions were put by
25 commissioner Hazel Dukes.

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2 Commissioner Cartagena.

3 COMMISSIONER CARTAGENA: So I just
4 want to follow-up on one piece. The fact of
5 the matter is that a lot of the discussion
6 in Washington, D.C. about the Voting Rights
7 Act stops dead on arrival when start
8 talking about felonies disenfranchisement.
9 It stops because people start thinking
10 about what the political wings or victories
11 or discussions or negotiations would be,
12 and everybody assumes that you can't talk
13 about this because it is DOA. And I think,
14 and I'd like to hear from you directly, but
15 since people who are convicted of crimes
16 can still vote from the their prison cells
17 in Canada, Puerto Rico, South Africa,
18 Israel, Maine and Vermont, tell me, in your
19 own words, what would you tell us to tell
20 our negotiators and politicians in
21 Washington where we should start and end
22 this negotiation.

23 DR. PRYOR: Well, that's a loaded
24 question. What I will say is I'm going to
25 continue to say that we rely on the system

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2 of juris prudence to mete out justice. And
3 I think that justice is defined in a number
4 of different ways. I think unless a
5 conviction is equivalent to a person losing
6 their citizenship, there should be a way
7 that a person's right to citizenship is not
8 only democratic, but it's immoral and it's
9 unethical. I think we have to begin to
10 appeal to a higher order. I know that we
11 practice the law, rely sometimes
12 exclusively on the law. I think we need to
13 go outside that sphere and we need to
14 appeal to the a consciousness of America.
15 We need to start talking about fairness and
16 decency and all the principles that
17 comprise what we call democracy, and I
18 think that we need to put people on notice
19 and begin to appeal at another level.

20 COMMISSIONER CARTAGENA: Thank you.

21 COMMISSIONER CHEN: I want to ask
22 Professor Gibbs some follow-up questions
23 about the vacancies, the special election
24 vacancies, which I will admit is an issue I
25 was not aware of. Coming from New Jersey,

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2 we deal with it in a different way. As with
3 many things, but that will take long here.
4 I think you said this, but I want to make
5 sure the record is clear, now the current
6 vacancies, I think you said there were 12.

7 MS. GIBBS: Yes.

8 COMMISSIONER CHEN: That they are --
9 those districts, are they all majority
10 minority districts?

11 MS. GIBBS: No, they are not all,
12 but of the -- I said there of the 2 senate
13 seats, one is in a majority minority
14 districts and six of the assembly seats are
15 majority minority districts. And those
16 districts are all within the City of New
17 York.

18 COMMISSIONER CHEN: And the others
19 are more --

20 MS. GIBBS: There is one in Long
21 Island and there is one upstate.

22 COMMISSIONER CHEN: Do you have any
23 concrete recommendations other than trying
24 to be more persuasive with Governor Cuomo
25 that he should call for a special election

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2 with mechanisms that can address this
3 problem?

4 MS. GIBBS: Well, I think I have two
5 recommendations, one at the federal level,
6 I think that there could be, if there is a
7 new voting law that's ultimately enacted,
8 that there be a provision requiring the
9 special elections be held in a certain
10 period of time. I think that's going to be
11 possible. I'd have to think about that. But
12 the state law, Governor Cuomo's power is
13 pursuant to a state law. That state law
14 could be changed, and I think, I mean, at
15 this point this issue might be moot. We
16 were hoping that he would do it for the
17 June Primary, and which is rapidly
18 approaching, but I think, as I said, it
19 sets a very dangerous precedent for the
20 future.

21 COMMISSIONER CHEN: I also wanted to
22 share with you what New Jersey does, which
23 is if there is a vacancy in the
24 legislature, the political party of the
25 departing incumbent chooses a replacement,

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2 so the vacancy is filled very, very
3 quickly. There are some issues of whether a
4 political party should have that authority
5 or not, and so I do not necessarily
6 recommend it, but I suppose that's another
7 way to make sure that the people are
8 represented.

9 MS. GIBBS: That's similar to what
10 happens here when the special elections
11 here at the county committees. I guess the
12 county committees nominates a person but
13 also independents can also run. So that's
14 an issue that people debate back and forth.
15 Special elections result on, you know --
16 there are so many people in the legislature
17 are there by virtue of special election.

18 COMMISSIONER CHEN: Just to be
19 clear, in New Jersey there is no election.
20 The political party just fills the seat.

21 MS. GIBBS: Oh, okay.

22 COMMISSIONER DUKES: But as
23 Ms. Gibbs said, it is power of the
24 governor, but we do not have this. He has
25 set a precedent. We have had special

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2 elections. He has put the media here, if
3 you will. The media have played up the low
4 turnout in voting even in the election that
5 we had for mayor and public advocate. And
6 so the governor used that as a shield for
7 himself because this is the first time that
8 I can remember that we have not had a
9 special election. With that many seats, we
10 got almost 1.8 million people, African
11 Americans and Latinos, that was without
12 representation during the budget cycle and
13 the NAACP called for and it was on record
14 to the governor along with the local branch
15 of Brooklyn, calling for it. I think that
16 your point, the recommendation, as a danger
17 in that precedent.

18 Now, I'm not sure that I want a
19 party to appoint. I think the people should
20 speak, and that's what I'm looking for. We
21 have some lawyers looking at that now. With
22 a coalition we have with Brennan Center, we
23 have been working on it. I don't know
24 whether they are here yet, but we have been
25 looking at it, Attorney Gibbs.

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2 MS. GIBBS: Thank you.

3 COMMISSIONER FEERICK: Were there
4 any other questions the commission might
5 want to ask?

6 (No Response)

7 COMMISSIONER FEERICK: If I can just
8 ask a question of Kristen Clarke. I heard a
9 lot of important subjects on the attorney
10 general's list of election law proposals.
11 Is there one or more, at this time, that
12 has sufficient strength if you are in a
13 position to comment on that to have a
14 chance of passage in the legislature so
15 that if the Bar of the state, that
16 certainly Dan Kolb and John Dunne's
17 committee is an ongoing committee, that
18 should be weighing in on because there is a
19 momentum of some kind that could take place
20 on a particular issue?

21 MS. CLARKE: One of the issues that
22 I did not get to touch on during my remarks
23 concerns intimidation faced by voters who
24 are challenged at the polls on election
25 day. Challenged by people who argue that

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2 they are not eligible or qualified to cast
3 a ballot. And this is an area of deep
4 concern to our office. And just last month
5 the attorney general, along with assembly
6 member Karim Camara, introduced the Voter
7 Intimidation Prevention Act to control this
8 problem -- to eliminate this problem, and
9 conceptually would require that before a
10 challenger can step up and argue that
11 somebody is not entitled to cast their
12 ballot, that they have a good faith basis
13 for making that challenge, and that they
14 turn over whatever evidence they believe
15 they are in possession of that establishes
16 that somebody is not qualified to cast
17 their ballot. So that's one vehicle that we
18 think is viable. It has been presented to
19 the assembly and would help cure a real
20 problem that we think exists in polls
21 across our state.

22 COMMISSIONER FEERICK: Is there
23 anything in your communication that
24 indicates how pervasive it is? That
25 particular issue.

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2 MS. CLARKE: It is a problem that we
3 have heard about during the course of
4 monitoring elections by way of our election
5 day outline. We know it is a real issue. We
6 know it is a problem that has been
7 particularly targeted at African Americans
8 and Latino voters, students as well.

9 COMMISSIONER FEERICK: Is there
10 problems throughout the state?

11 MS. CLARKE: Hard to say whether it
12 is a problem across the state, but it is
13 certainly a problem that's pervasive and
14 that warrants attention from the assembly.

15 COMMISSIONER FEERICK: Thank you.

16 COMMISSIONER CARTAGENA: Kristen
17 Clarke, can you repeat for us, please, the
18 Attorney General Schneiderman's position in
19 response to complaints from other attorneys
20 general throughout the country that
21 preclearance, when it was in existence in
22 Section 5, was such a burden, you all
23 wanted to get a rid of it for that very
24 reason. What was this attorney general's
25 position in that matter?

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2 MS. CLARKE: We submitted a brief to
3 the Supreme Court, the Shelby County
4 Alabama versus Holder case, presenting the
5 views and position of New York, and
6 speaking about our experience in New York.
7 And our experience has shown that
8 compliance with the preclearance process
9 has not been burdensome, has not been
10 costly, has not been difficult, and that
11 it's a process that has helped ensure more
12 access and that without it, we would have
13 seen more discrimination faced by voters,
14 and that was a brief that was joined by the
15 states of Mississippi and North Carolina
16 and California, and we think presenting
17 very powerful evidence about why we need
18 the protections of the preclearance
19 provision.

20 COMMISSIONER CARTAGENA: Thank you.

21 COMMISSIONER FEERICK: Senator
22 Dunne, I saw you poised. You're on.

23 MR. DUNNE: Just some followup on
24 the Shelby case. I too filed an amicus
25 brief along with former attorney general

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2 Thornberg and Drew Days and those who had
3 been deeply involved in the issue.
4 Unfortunately we were unsuccessful in that.
5 It gives me more energy to fight further.
6 Speaking of energy, if you have any left,
7 Ms. Gibbs, I wanted to ask you about just
8 one item. You talked about overpopulated
9 districts, could you tell me just how that
10 happens? They are depending upon the most
11 recent Census, but there has been an
12 enormous increase in the communities.

13 MS. GIBBS: As you know -- I don't
14 know whether you know it or not, but
15 basically the legislature has a practice
16 that the majority party in each of the
17 houses draws the map. So the assembly draws
18 --

19 MR. DUNNE: I've been there 3 or 4
20 times, personally.

21 MS. GIBBS: So senate drew the maps
22 and they were all most in the districts and
23 downstate New York, in New York City and
24 surrounding areas, Long Island,
25 Westchester, are overpopulated in

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2 comparison to the ones upstate, and we are
3 litigating this and my office along with
4 some other people here are challenging them
5 in violation of the 14th amendments ban
6 against race discrimination. In response to
7 that argument, the senate majority,
8 everybody that's currently in the
9 Republican party, has argued that these
10 districts are, in fact, not overpopulated,
11 but they are underpopulated because of the
12 presence of, allegedly, of so many
13 non-citizens in New York City. Now I just
14 want to note that the census form in the
15 last cycle did not ask whether somebody was
16 a citizen or not. So there is no way of
17 knowing how many non-citizens are in New
18 York, and so in its essence it is the old
19 argument that they are making is an
20 argument based on pure speculation.

21 I guess, I don't know, maybe they
22 had somebody walk the streets of New York
23 City and do an eyeball count of how many
24 people were not citizens. But in any event,
25 is it contrary to our reading of the

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2 history concerning the interpretation --
3 court cases concerning what is the
4 appropriate population for your district.
5 We read them to say it is the total
6 population, and New York State's law
7 requires that it be the total population.

8 COMMISSIONER DUKES: Senator Dunne
9 was in the senate here in New York, we go
10 back some 30 years ago, this was done
11 really to give the Republican party a seat.
12 Another seat. Remember in the redistricting
13 we added another seat to the senate of the
14 State of New York, which is
15 unconstitutional, and that's where our
16 fight really should be. The old population
17 was a fraud, just for them to get another a
18 seat in upstate, and Attorney Brewington
19 was apart of that argument when they added
20 the seat.

21 MR. DUNNE: But we should point out
22 that that seat was won by a democrat, and
23 it wasn't intended to happen that way.

24 COMMISSIONER DUKES: That's right.
25 By a mere slight margin, she worked like

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2 you couldn't believe it.

3 COMMISSIONER FEERICK: Dean Chen.

4 COMMISSIONER CHEN: Well, since
5 several of our panelist have spoken on the
6 issue of redistricting, maybe I can ask a
7 general question to all panelists, which is
8 what do you think about the mention of
9 drawing up the maps? Are there better ways
10 to do it? I take it here in New York it's
11 legislature that does it as opposed to,
12 like in New Jersey, we have so called
13 bipartisan commissions that draw the map. I
14 was counsel to the chairman of the
15 commission that did the last congressional
16 redistricting and I can say that that
17 methodology has some problems as well. Do
18 you have any thoughts on what an ideal
19 method for redistricting would be to
20 minimize politics or gerrymandering?

21 MR. MCLAUGHLIN: Well, I think it is
22 probably going to be impossible to
23 eliminate politics altogether from the
24 process. I think, however, that we can
25 certainly build a better mousetrap than the

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2 one we currently have. So with the senate
3 is choosing the voters who they want to
4 vote for them. So theoretically,
5 republicans will continue to dominate that
6 body. I'm not in favor of pure bipartisan
7 commission without some control over that,
8 because then the question comes off who
9 appoints that body. I do think this is a
10 serious question that needs to be looked
11 at. And the reason why I think that is that
12 every redistricting cycle, the minority
13 voters, minority organizations, civil
14 rights organizations have to sue once again
15 to change the way things are done. The last
16 cycle, Joan and I were involved in the
17 cases as well as Ms. Fung and others here,
18 and of course Mr. Cartagena. The
19 legislature refused to even draw lines for
20 Congress. So the lines that were drawn were
21 drawn not by the legislature but by the
22 court.

23 Maybe that's the way we should do
24 it. We should let the courts draw the line.
25 We have to look at the line and if they

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2 were drawn by an expert, but obviously
3 that's not the best way either.

4 COMMISSIONER FEERICK: Let me ask,
5 Margaret, do you -- okay. Does any on the
6 panel -- any of the commissioners have any
7 additional questions? Did you have one
8 Juan?

9 COMMISSIONER CARTAGENA: Actually, I
10 wanted to talk about Long Island.
11 Mr. Brewington, good afternoon.

12 MR. BREWINGTON: Good afternoon.

13 COMMISSIONER CARTAGENA: I
14 definitely am aware of the difficulties of
15 engaging the political process in parts of
16 Long Island, especially Suffolk County, to
17 address the needs of Latino residents
18 there, but I was completely unaware of that
19 huge portrait of something about over a
20 thousand governmental units in a very short
21 relatively compact -- how would you again
22 describe what that poses for difficulties
23 of having responsive governments.

24 MR. BREWINGTON: It poses enormous
25 problems for the electoral process and

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2 having good representative government. The
3 reason is because you have all of these,
4 and I refer to them as Thieftans, not to be
5 derogatory but to be regal. And one of
6 things that happens is because of the
7 control that you have with disability in
8 town or another subcomponent of the
9 government, they would not let it go, and
10 because they would not let it go it means
11 that persons that have been -- who continue
12 to be in power, because of the subjugation
13 of voting minority, continue to maintain
14 power and authority in that jurisdiction.

15 When it comes down for change,
16 change is basically the insanity of doing
17 the same thing over and over again. In
18 places such as Nassau County and Suffolk
19 County, we have legislatures, and I just
20 want to repeat something that Professor
21 McLaughlin said, Suffolk County in the
22 last, not 2010, but in the 2000 cycle, that
23 the Suffolk County legislature refused to
24 redistrict. We had to bring the case
25 Montano against the County of Suffolk in

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2 order to force them to redistrict because
3 they couldn't figure out a way to keep the
4 growth in the Brentwood area, which was a
5 largely Hispanic community that has grown
6 and burgeoned and prospered, from having
7 access through an elected official, and it
8 was not until we went before Judge Spatt in
9 that case and forced that legislature to do
10 their duty. The question that was asked was
11 does it pose a problem, yes it does. Going
12 back to the question that was raised by
13 Professor Chen is that in this situation,
14 the responsibility for government to
15 redistrict at the local level is as
16 important as it is at the senate and the
17 assembly level, and even more so important
18 because of the rundown of what comes from
19 the state and comes from the federal
20 government and the localities. And when
21 those governments have a choke hold on the
22 rights of the electorate that is in that
23 jurisdiction, it poses a serious concern,
24 and I think that one way of doing it is to
25 take it initially out of the hands of the

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2 legislature, put it into a commission
3 overseen by a court and then give them
4 choices from which they can start to look
5 at and then place it before the
6 legislatures.

7 COMMISSIONER FEERICK: Thank you
8 very much.

9 I'm going say that I thought the
10 panels did wonderful in answering questions
11 and your presentations, and obviously you
12 abbreviated your presentations. I know that
13 the record will have your full statement if
14 you provide us with that full statement, so
15 that your five minutes will be more than
16 five minutes in terms of the depth of what
17 you have to say to us. I want to thank you
18 very much and it's now my opportunity to
19 convene the second panel, and please remain
20 if you are able to.

21 The first member of the second panel
22 is Dorothy Hsu, the Asian American Legal
23 Defense and Education Fund, and I'll be
24 working down a list that's in the program.
25 I think everyone is here.

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2 MS. HSU: Good Afternoon, my name is
3 Dorothy Hsu, and I am a legal fellow in the
4 democracy program at the Asian American
5 Legal Defense and Education Fund. Also
6 known as AALDEF. On July 2nd, 2013, AALDEF
7 representing South Asian voters in Queens
8 sued the New York City Board of Elections
9 for failing to provide translated Bengali
10 ballots in Queens County. We are forced to
11 sue the board because four consecutive
12 elections had passed and the board never
13 fully complied with the Federal Voting
14 Rights Acts language assistance provision
15 section 203, under which the board was
16 required to provide Asian Indian language
17 assistance in Queens.

18 The board proposed a compliance plan
19 with interpreters and other translator
20 materials for elections; however, AALDEF's
21 pool monitoring during these election
22 revealed ongoing failures, including too
23 few interpreters at poll sites, and signs
24 identifying interpreters were often
25 missing, relegating Bengali speaking

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2 interpreters to sit in front of Chinese
3 interpreter and available signs. The board
4 also refused to formally confirm that
5 Bengali ballots would be available for the
6 upcoming elections, and unfairly treated
7 Bengali language assistants differently
8 from Chinese and Korean language assistants
9 by failing to provide section 203
10 compliance plans and refusing to meet with
11 the Asian Indian language advisory group.

12 In the election immediately
13 following the lawsuit, the board for the
14 very first time provided Bengali ballots
15 and has done so in each election since. The
16 board has since formally adopted a written
17 compliance plan and settled a lawsuit with
18 AALDEF.

19 In the 2013 New York City mayoral
20 election, we again observed many barriers
21 for Asian American voters including
22 interpreters shortages, poll worker
23 confusion, improper voter identification
24 requirements and mistranslated ballot
25 propositions, and the instance of the

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2 mistranslated ballot proposition, Chinese
3 speaking voters did not have a realistic
4 opportunity to vote on one of the statewide
5 ballot items because it was not properly
6 translated, and in fact was just a repeated
7 text of an earlier ballot item.

8 In the 2013 New Jersey gubernatorial
9 election, we observed interpreter shortages
10 in Bergen County, which is covered for
11 mandatory Korean language assistance, and
12 we observed hostile co-workers in Middlesex
13 County.

14 In the 2012 presidential elections,
15 AALDEF polled over 9,000 Asian American
16 voters in 11 Asian Languages across 14
17 states. In New York specifically, we polled
18 4,089 Asian American voters, and many of
19 them faced barriers to voting. We observed
20 many Asian American voters displaced by
21 Hurrican Sandy were turned away by poll
22 workers who were unaware of Governor
23 Cuomo's executive order allowing their
24 ballots to be counted wherever they were
25 cast. They were again no Bengali ballots

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2 available for the fourth election in a row.

3 706 Asian American voters were
4 required to show identification but were
5 not first time voters. 120 voters were
6 required to prove their U.S. citizenship,
7 and 211 voters complained that their names
8 were missing or had errors in the list of
9 voters at poll sites.

10 Nationally, AALDEF monitors received
11 more than 300 complaints of voting problems
12 during the 2012 presidential election.

13 Among these complaints we found Asian
14 American voters were unlawfully required to
15 provide proof of citizenship, which is
16 obviously not required at any poll site in
17 any jurisdiction in the country. They were
18 required to provide identification to vote.
19 They were mistreated by hostile or poorly
20 trained poll workers, were denied Asian
21 language assistance, and had their names
22 missing from or misspelled in the poll
23 books. And Asian American voters also faced
24 long lines, machine breakdowns,
25 misdirection to poll sites and inadequate

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2 notification of poll site assignments or
3 changes.

4 We also observed many egregious
5 violations including Korean American voters
6 segregated into a separate Korean lines in
7 Annandale, Virginia. This is shockingly not
8 the first time that this has happened. This
9 also happened in the 2004 presidential
10 election, Boston's Chinatown with the
11 Chinese American voters. There is obviously
12 so much to do on language access in New
13 York, New Jersey and the rest of the
14 country. We will continue to monitor the
15 elections and protect the rights of limited
16 English proficient voters.

17 Thank you.

18 COMMISSIONER FEERICK: Thank you very
19 much. I must say I have your statements, 17
20 pages, single spaced, with charts. Very
21 impressive. For anybody that wants detail
22 and sources. Thank you.

23 Our next speaker is James Hong from
24 the Asian American Community Coalition on
25 Redistricting and Democracy.

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2 MR. HONG: Good Afternoon,
3 commissioners. My name is James Hong and I
4 will be speaking on behalf of the Asian
5 American Community Coalition on
6 Redistricting and Democracy, or AACCORD for
7 short.

8 First of all, thank you everyone and
9 to the Lawyers' Committee and to organizers
10 of this event for your service and for
11 convening this great hearing. I'd like to
12 speak about our coalitions experience and
13 how important the protections and oversight
14 of the Voting Rights Act are for Asian
15 Americans in New York, especially in
16 regards to redistricting.

17 In 2011, a number of legal advocacy
18 social services, community-based and
19 organizations came together around the
20 issue of redistricting and its impact on
21 Asian Americans in New York City. Together
22 we created a pan-Asian, nonpartisan
23 coalition that collaborated closely and
24 advocated forcefully at the federal, state
25 and city levels for redistricting plans

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2 that would not divide and dilute the Asian
3 American communities in New York. We were
4 very fortunate to have AALDEF here in this
5 panel all bring their expertise to their
6 coalition, and our member organizations
7 worked closely with them in making
8 recommendations regarding Asian American
9 neighborhoods, which would result
10 ultimately in what came to be known as the
11 Unity Maps, which we supported throughout
12 the process.

13 Now we are here in the wake of the
14 Shelby decision, and this affected the
15 Section 5 coverage, but of course Section 2
16 also applies to redistricting, and we saw
17 this in play very much during the process,
18 and what the results -- some of the biggest
19 results of this process was that at the
20 state level, state senate and state
21 assembly redistricting, we went from one
22 majority minority district to four majority
23 minority districts within that process.
24 From one assembly district to three, and
25 from zero senate districts to one senate

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2 district. And while there is no rationale
3 given to the state task forces
4 redistricting plans, we saw what seemed
5 like an anticipation of Section 2-based
6 criticism in the assembly's creation of the
7 two additional Asian majority minority
8 districts, and the senate's creation of the
9 first Asian majority minority district. And
10 we consider these great steps for the
11 state.

12 At the same time, Richmond Hill in
13 Queens remains one of the most fragmented
14 areas of New York City, currently in the
15 sixth assembly district, Bayside, Queens
16 another established and growing Asian
17 American population was divided even more
18 deeply in the city council plan. And there
19 are other examples, but those were the most
20 egregious. And before Shelby, in New York
21 City, Section 5 preclearance was in effect
22 for only three of the five boroughs or
23 counties, Bronx, Brooklyn, and Manhattan,
24 and in many senses this coalition's work
25 yielded -- we feel like it yielded

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2 victories for us. And while our organizing
3 and mobilizing was powerful, we believe
4 that our words fell on the ears of
5 Statesmen and commissioners with the weight
6 made possible only by history of federal
7 protection against race-based
8 discrimination in the electoral process.

9 We cannot know how much worse it
10 would have been had preclearance not been
11 in place for those counties. But even when
12 Section 5 preclearance was in effect, we
13 did witness the state task force exacerbate
14 an already egregious gerrymander that
15 divided the Asian American population in
16 south and southwest Brooklyn. Where we saw
17 the percentages of Asians in the state
18 senate districts there actually decrease in
19 the same area because it was divided from
20 four districts to five districts.

21 Nevertheless, Section 5 oversights
22 of redistricting of minority communities
23 remains essential, and we hope to see that
24 reinstituted as much as possible.

25 In our review, the Voting Rights Act

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1
2 not only should be applied again, its
3 application to redistricting should be
4 restrengthened, expanded and enhanced. The
5 Voting Rights Amendment Act currently being
6 considered would be a first step. It seems
7 necessary. For example, it seems necessary
8 that a borough such as Queens, which is
9 itself a majority minority area to be
10 covered for future formulas and future
11 formulas for coverage, and we saw there may
12 be parts of process that we think federal
13 oversight might be appropriate, such as the
14 2-year -- there's simply a 2-year
15 moratorium on legislators being able to
16 participate in the redistricting commission
17 at the city level, and we saw that may not
18 have been enough. And also we saw the
19 process at the city council level being
20 just sort of made up as it went along
21 because of a scandal, and the city council
22 speaker kind of weighed in to change the
23 process, ad hoc. And so while these aren't
24 policy recommendations per se, these are
25 particular concerns that we have.

1 PROCEEDINGS

2 So in the future we hope that the
3 federal voting rights laws apply greater
4 scrutiny, expanded coverage, and higher
5 standards to redistricting plans and
6 processes as this is becoming a potent but
7 almost always legal vehicle for those with
8 vested interest to disenfranchise emerging
9 communities and communities of color.

10 Thank you.

11 COMMISSIONER FEERICK: Thank you very
12 much.

13 Lucia Gomez.

14 MS. GOMEZ: Good afternoon. My name
15 Lucia Gomez. I am the executive director
16 for La Fuente. We are tri-state worker and
17 community fund that engages communities in
18 base building throughout New York City and
19 Long Island as well as New Jersey now. We
20 typically participate throughout the entire
21 year registering new citizens along with
22 MinKwon, The New York Immigration
23 Coalition, and a couple of other partners
24 both in Brooklyn and Central Islip, Long
25 Island, at the the federal houses

1 PROCEEDINGS

2 registering well over 300 new citizens
3 every single week through the entire year.

4 Contrary to what some folks might
5 think in terms of the immigrant population,
6 only, and I would say only, even though it
7 is a large number, well over 3 million
8 immigrants live in New York City. 4 million
9 in the entire state, and approximately we
10 would probably venture to say 600 to
11 700,000 are actually undocumented
12 immigrants. With a larger number of
13 increased citizenship rates going up very
14 high, well over 10 percent in the last ten
15 years in terms of the citizenship rate, the
16 rate in which individuals are becoming
17 citizens. And so both in New York and New
18 Jersey we see an increase number of
19 citizenship ceremonies Monday through
20 Friday in the Newark Federal courthouse and
21 more and more people are becoming citizens.

22 As we see this, there are many
23 boroughs in New York city that have not
24 quite adjusted to the idea of language
25 minorities, and in particular what we've

PROCEEDINGS

1
2 notice is that in places like the Bronx,
3 which for a very long time has largely seen
4 a very large Latino community, it hasn't
5 necessarily been a traditional non-English
6 speaking Latino community. But with a
7 growing number of new immigrants coming
8 into the areas of the Bronx, I was able to
9 witness last year and two years prior to
10 that, was the fact that there were no
11 bilingual poll workers in three of the
12 sites that I was touring and dropping off
13 materials and participating as one of the
14 watchers in some of these areas, and that
15 was extremely troublesome. Especially in a
16 place like the Bronx where the diversity in
17 terms of mostly black, mostly Latino, in
18 terms of the demographics in many of these
19 areas I was in and polling locations, and
20 yet we saw no bilingual poll workers. One
21 location had a bilingual poll worker that
22 was actually manning the machine, and
23 obviously no one knew he was bilingual, and
24 I actually had to assist some of these
25 voters who were kind of lost in the middle

PROCEEDINGS

1
2 of that.

3 So we do see a large growing number
4 and we saw it during the congressional
5 redistricting. The district that was drawn
6 in upper Manhattan to the Bronx
7 demonstrated and actually saw shift over
8 the Latino community has actually gone from
9 upper Manhattan over to the Bronx and
10 followed that shift and drew that district
11 accordingly, but in that shift we also
12 haven't seen the way in which New York City
13 functions in their elections is way too
14 politically intertwined, thus causing a
15 major heightened races like we saw two
16 years ago, and will see again.

17 They are not taking the diligent
18 care to ensure there is a separation
19 between partisan politics and the
20 candidates, and that kind of thing with the
21 electoral, the actual process on election
22 day. So we continue to see that and flag it
23 as a major problem, especially when there
24 were reports that staff, key staff with the
25 New York City Board of Elections were

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1
2 actually meeting directly with political
3 candidates and their campaigns only days
4 before an actual election. Thus causing, in
5 many cases, in Washington Heights in
6 particular, a rapid change in poll workers.

7 Two days before the actual election,
8 and in many scenarios folks were accustomed
9 to going to a polling location and seeing
10 their poll worker, having that kind of
11 assistance, that rapid change only two days
12 beforehand really raised some major alarms
13 at the way in which New York City conducts
14 its election.

15 This is not different in places like
16 Long Island, where, in fact, we are going
17 to see a major school board election take
18 place this year in Hempstead and we are
19 raising the alarm now that there happens to
20 be, for the first time, a Latino running
21 for the Hempstead school board, and its
22 already causing major racial divide amongst
23 black and Latino voters in the Village of
24 Hempstead. So that is going to be a huge
25 opportunity for us.

PROCEEDINGS

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2 We've already contacted the Ve y
3 Vota Hotline to ensure that Spanish
4 language voters are not discriminated
5 against at the polling location. One of the
6 things that we found was that they used the
7 lack of bicultural competence aside from
8 not being bilingual, is the fact because
9 they don't understand the name, they ask
10 folks for ID, and so they ask people for ID
11 just to make sure they have the correct
12 spelling and can actually find you on the
13 rolls. And I've seen that happen in New
14 Jersey, and I see it happen in New York
15 City, and that's inexcusable. So no need to
16 ask for ID just for a simple process.

17 And then the last thing I want to
18 add is redistricting. I just had to go
19 there because everyone has been talking
20 about it. Two major things that I think
21 would change the way in which districts
22 could potentially be drawn or handled is
23 the fact that there is -- you have to wait
24 an entire year in order for your party
25 affiliation change to take effect in the

PROCEEDINGS

1
2 State of New York. That's a big deal
3 because people plan ahead of time, right,
4 to run, sure. But when there is a vacancy
5 or when there is an opportunity that
6 arises, someone retires, you know, in the
7 Latino community in particular, you don't
8 know that you have to change -- elections
9 are won in New York City in primaries, so
10 the inability to actually change your party
11 registration closer to an election or at
12 any given point. I know in Rhode Island you
13 can affiliate when you walk in through the
14 door on election day and you can walk out
15 and unaffiliate immediately. So this is a
16 major problem because in redistricting they
17 know this. They know that this is a major
18 issue. They draw everything based on party
19 politics, and it becomes a major concern.

20 Obviously drawing congressional
21 districts by the courts was an amazing win
22 for immigrant communities in particular
23 because they were able, for the first time,
24 to galvanize together in Congressman King's
25 district in Long Island to push on an issue

PROCEEDINGS

1
2 such as immigration reform with a path to
3 citizenship.

4 How does the district continue to be
5 divided and not see collective drawing in
6 all those communities in the areas on
7 Central Islip and Brentwood. King wouldn't
8 see the light of day and be able to
9 understand that he has to be with the
10 individuals that he best represents. So
11 that's a clear example.

12 And the last thing I would say about
13 New Jersey is that I actually use New
14 Jersey's redistricting process as an
15 example now when we are trying to change
16 Nassau County's charter. In order to revise
17 the charter, because currently they had a
18 make believe commission that's chaired by a
19 Republican -- there is an independent
20 person who has no vote, but it is evenly
21 split and they never decide, or they didn't
22 decide that the majority party is
23 republican so they went with whatever they
24 want and they are going to have control of
25 the entire legislature by five seats for

1 PROCEEDINGS

2 the next ten years, and it was really bad
3 and crazy. And this was after they were
4 already slapped in the hand and forced to
5 redo it because they jumped the gun and did
6 it really discriminatory.

7 But in Nassau county we want to
8 change the process to be a little bit
9 similar to New Jersey, and I only say a
10 little bit. I'm a Jersey girl, and I say it
11 because one of the things that I love is
12 the idea of there being that the commission
13 actually, those plans that they vote on and
14 that they pass, even though they do it by
15 that one member, this is one guy that
16 always decides. There is this one guy that
17 always decided and he's the independent
18 member that's chosen off this, typically it
19 is a list that if the name is on the same
20 list for the democrats and the Republicans,
21 then that one member, in this case was
22 Allen Rosenthal, I think for both
23 processes, their person.

24 COMMISSIONER DUNNE: John Farmer.

25 MS. GOMEZ: John Farmer. That person

1 PROCEEDINGS

2 was a deciding factor. He listened to both
3 sides. They never sat in the same room
4 together other than in the public hearings,
5 and it was interesting to see how they
6 managed themselves throughout the entire
7 process. But we are recommending that
8 person to be the deciding vote actually
9 implements these plans.

10 In New York, you don't see that. The
11 legislature decides what they want. In New
12 Jersey it is different so I think a
13 combination, not necessarily all gung-ho
14 about their process, but a combination of a
15 citizen type of commission, politics has to
16 be engaged and involved, but a real process
17 where the plans that are decided upon are
18 the ones enacted without legislative vote
19 on it. Without voting them down and then
20 have the entire court take the process. So
21 that's my recommendation with that.

22 Thank you.

23 COMMISSIONER FEERICK: Thank you very
24 much.

25 Our final panelist on this

1 PROCEEDINGS

2 particular panel is Ingrid Alvarez,
3 Hispanic Federation.

4 MS. ALVAREZ: Good Afternoon.

5 Members of the National Commission
6 on Voting Rights, thank you for the
7 opportunity to share the Hispanic
8 Federation's perspective on voting rights
9 in the tri-state region. My name is Ingrid
10 Alvarez-DiMarzo and I proudly serve the
11 Federation as their Connecticut State
12 director.

13 Hispanic Federation is a national
14 Latino service oriented membership and
15 Advocacy organization dedicated to
16 promoting the social, political, and
17 economic wellbeing of the Hispanic
18 community. We represent over 100 local
19 community-based organizations that empower
20 and advance the interest and aspirations of
21 Hispanic Americans by improving educational
22 achievement, increasing financial
23 stability, strengthening Latino
24 non-profits, promoting healthy communities
25 in giving voice to our community.

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2 The basis and foundation for our
3 democratic form of government is the right
4 to vote. Hispanic Federation is committed
5 to the principle that every citizen has the
6 right to equally and fully participate in
7 the electoral process.

8 In the last 50 years, we have made
9 significant process on voting rights, yet
10 actions, or in some cases inaction by
11 certain localities and individual
12 government bodies continue to deny or
13 suppress the right to vote of Latinos,
14 limited English proficient individuals and
15 other Americans.

16 I would like to share with you two
17 recent examples in my home state of
18 Connecticut that illustrate ongoing voting
19 rights issues and concerns and the need for
20 greater vigilance of those of us committed
21 to strengthening our democracy.

22 During the 2010 elections, the City
23 of Bridgeport had widespread shortages of
24 ballots at the polling sites. Bridgeport is
25 Connecticut's most populated city. It has a

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2 population of 126,425 residents. Latinos
3 making up the largest group at about
4 42.1 percent followed by African Americans
5 at 46,152 residents, 31.7 percent. The
6 consequences in the city of 68,000
7 registered voters, Bridgeport registrars
8 only ordered 21,000 ballots. The
9 consequences of that decision were deeply
10 felt.

11 COMMISSIONER DUKES: Outrageous.

12 MS. ALVAREZ: Yes, outrageous. I
13 agree.

14 Thousands of voters were
15 disenfranchised, standing in lines for
16 hours awaiting for a judges order to extend
17 the hours at our polling sites and to
18 provide photocopy ballots. Out of
19 confusion, frustration, many individuals
20 left the polling places without voting.
21 Those who bore the chaotic process that day
22 learned two days later of an undisclosed
23 bag of 335 uncounted ballots that was
24 found. That bag ultimately decided who our
25 next governor was going to be.

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2 In 2013, election officials in
3 Danbury, Connecticut proposed to move the
4 Park Avenue school, a predominantly Latino
5 neighborhood, in a practice that is
6 happening with prevalence in many Latino
7 communities. The proposal not only raised
8 concerns regarding the effect of the
9 polling site change can have on minority
10 working class voters, but has brought out
11 allegations of voter suppression. The
12 proposal would have moved the polling
13 location from an easily accessible school
14 where residents have voted for more than 40
15 years, to a location two miles away with
16 limited transportation access. The proposal
17 comes after Hispanic voters accused poll
18 site workers of language discrimination by
19 encouraging non-English speaking voters to
20 get off voting lines and return once they
21 had s translator during the 2010 elections.

22 As the commission considers the
23 voting rights of language minorities, the
24 Hispanic Federation recommends it focusses
25 on advancing the following actions:

1 PROCEEDINGS

2 Increase bilingual assistance at polls.
3 Hispanic Federation recommends that both
4 Connecticut and New York's board of
5 elections work to ensure that the rights of
6 Latinos and limited English proficient are
7 upheld during the voting process by
8 drastically increasing the number of
9 bilingual poll workers and improving poll
10 worker training to properly assess select
11 voters.

12 The federal voting rights act
13 mandates that a state or political
14 subdivision must provide assistance to
15 voters if more than five percent of voting
16 age citizens are members of a single
17 language minority group and do not speak or
18 understand English adequately enough to
19 participate in the electoral process. Under
20 this provision, 9 state municipalities in
21 Connecticut are required to provide Spanish
22 language ballots in voting materials.
23 Bridgeport, East Hartford, Hartford,
24 Meriden, New Britain, New Haven, New
25 London, Waterbury and Windham. We must

1 PROCEEDINGS

2 ensure that this, in fact, happens in every
3 election in each of these municipalities.

4 In Fairfield county, the City of
5 Danbury with a population of 82,087
6 residents in a growing population of over
7 22,000 Latinos is noticeably absent from
8 this list, and should be added to ensure
9 full compliance with the spirit of the
10 Voting Rights Act.

11 Section 203 of the Voting Rights Act
12 states that bilingual assistance for
13 Spanish speaking voters must be provided in
14 New York, Bronx, Kings, Queens, Nassau,
15 Suffolk and Westchester counties. New York
16 has the most foreign born voters than any
17 other big city. In 2012, thirty percent of
18 all New York City voters were foreign born.
19 This was twice as many immigrant voters
20 than Los Angeles, Chicago and Miami.

21 Not only does New York and
22 Connecticut have a legal obligation to
23 provide these services, but a moral
24 obligation as well. It is a responsibility
25 of the board of elections to ensure that

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1
2 all U.S. citizens have the opportunity to
3 cast their vote and choose their
4 legislative body.

5 The need for early voting -- the
6 implementation of early voting in New York
7 would provide an opportunity -- I'm sorry,
8 an important avenue to increase voter
9 turnout and work to eradicate common issues
10 at poll sites. About 53.6 percent of
11 registered voters casted ballots during the
12 2012 presidential election, leaving New
13 York 44th among 50 states in the district
14 of Columbia for voter participation. The
15 implementation of early voting would
16 provide New Yorkers an accessible and
17 reliable means to cast their ballot during
18 weekdays and weekends before election day,
19 allowing for flexibility with individual's
20 schedules to vote.

21 To date, 33 states in the District
22 of Columbia have implemented a form of
23 early voting. In fact, 30 percent of voters
24 in the United States cast their ballots
25 before election day. Research has shown

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1
2 that the implementation of early voting
3 improves poll worker performance, reduces
4 stress on the voting system on election
5 day, increases access to voting, shortens
6 lines on election day, and leads to
7 increased voter satisfaction. As states
8 across the country are passing voter
9 suppression laws, New York has the
10 opportunity to expand access to voting by
11 implementing early voting.

12 Hispanic Federation is pleased to
13 offer our assistance by serving as a
14 resource for voting rights advocacy.

15 Thank you for your time.

16 COMMISSIONER FEERICK: Thank you
17 very much.

18 I'd would ask the panelist, when you
19 respond to questions, if you could identify
20 yourselves. That way we have a record of
21 who says what. It would be very important.
22 Maybe I'll start it off. Of the last
23 speaker, how early should we have a system
24 of early voting? Do you have a view on how
25 early?

PROCEEDINGS

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2 MS. ALVAREZ: I don't have an exact
3 time frame. I think that opening that up
4 for consideration and taking a look at who
5 early voters are and what inclinations and
6 what leads them to choose that process is
7 important in being able to determine and to
8 answer that question, but it does reduce
9 the amount of time that people spend on
10 polling sites. It does reduce the stress of
11 poll workers. It minimizes, and
12 specifically with the example of the case
13 in Bridgeport, it would afforded it, those
14 who choose to, in that election the
15 opportunity to cast a vote. Many people
16 went home without casting a vote alone.

17 COMMISSIONER FEERICK: Thank you.
18 Dean Chen --

19 MS. GOMEZ: I just want to the
20 answer that quickly as well.

21 COMMISSIONER FEERICK: Please.

22 MS. GOMEZ: I would say a minimum
23 of one week at a minimum. Like a week
24 before the actual election. Because all
25 your campaign operations, your field, I

1 PROCEEDINGS

2 mean, all their GOTB operations pretty much
3 starts about a week before the election,
4 and I think going hand in hand with that
5 process would be amazing.

6 COMMISSIONER FEERICK: Thank you.

7 Anybody else want to comment on that.

8 (No response.)

9 COMMISSIONER FEERICK: Thank you.

10 COMMISSIONER CHEN: First of all,
11 several panelists have raised the issue of
12 majority minority districts particularly
13 with regard to Asian Americans voters.
14 Again, just to try to develop a record, and
15 to fill in my own lack of knowledge, has
16 the issue of Section 2 of the Voting Rights
17 Act of the majority minority and Asian
18 American district ever been litigated? And
19 if it were to be litigated, let's say the
20 answer to that is no, if it were to be
21 litigated, do you think that a record
22 exists that the factual requirements that I
23 believe are laid out by the Supreme Court
24 in order to establish a majority minority
25 district, the Gingles test that the group E

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1
2 act politically cohesively, that they be
3 sufficiently large and concentrated and
4 that normally the white majority voters
5 would vote to defeat the candidates of the
6 minority, do you think that a record exists
7 or could easily be established that Asian
8 American majority districts, at least in
9 the tri-state, area would meet those tasks?

10 MR. HONG: Within a coalition we
11 didn't discuss actually very much in depth.
12 Maybe, I don't know if Margaret wants to
13 weigh in on this, I don't know if there is
14 sufficient record, but that I think it is
15 because there is a cycle within the
16 community, that there is a cycle, sort of a
17 chicken and egg, where if you have a
18 candidate then that spurs people to go out
19 and vote much more than before. From a
20 particular community, particularly racial
21 or ethnic communities, and that may show a
22 pattern, but the way that the districts
23 were set up, there was so many of the
24 districts were not viable for Asian
25 American candidates, so they never ran. So

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2 there was never any record established. So
3 I think that is one of the problems with
4 looking for that record. And also just in
5 my personal opinion it seems like the
6 standards that have been put down in
7 Gingles, these have made the voting rights
8 more onerous for advocates to go after
9 Section 2 claims. To me, it would be great
10 if it was expanded. If it wasn't so
11 difficult to bring a Section 2 claim.

12 COMMISSIONER CHEN: If I can
13 follow-up just briefly, the second Gingles
14 test required the showing that the group
15 acted cohesively. I've heard it suggested
16 again from my New Jersey experience that it
17 is not necessarily a foregone conclusion
18 that Asian voters, which includes a fair
19 number of distinct cultures, necessarily
20 vote cohesively, and so I guess to me this
21 is just food for thought, how would you
22 develop a record for that if the time came
23 when such an issue arose that Asian
24 American voters voting cohesively because
25 they started subdividing among South

1 PROCEEDINGS

2 Asians, Chinese Americans, Japanese
3 Americans, Philippino Americans, and the
4 likelihood it might not have a sufficiently
5 large group to meet the first Gingles task?

6 MS. GOMEZ: I'm going to answer this
7 because we listen to this stuff, the Latino
8 community like all the time wether or not
9 Latinos are cohesive. We have Mexicans and
10 Puerto Ricans and Dominicans. And I don't
11 think at all that that is a valid argument
12 until you are able to see the actual
13 election take place and then find the
14 candidate that's able to galvanize all
15 those communities. And it is really
16 identity politics at its best, right? I
17 mean, at the end of the day, New Jersey is
18 not like New York in a very specific sense
19 because of the reality in which people are
20 actually elected and how strong the party
21 politics play into it. They want a Latino
22 in that seat, they pick the Latino. That's
23 exactly why we got two new Latinos in the
24 state assembly and that's why we got a
25 Latina State Senator because they decided,

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1
2 you know, they weren't the majority
3 minority numbers weren't exactly there.
4 They made the political decision to make it
5 happen, and it was very, very deliberate to
6 make it happen. And they do it because they
7 want to dilute the argument that you need
8 majority minority districts in order to at
9 least catapult the vote.

10 That was a huge argument during the
11 redistricting process in 2011. The fact
12 that there was an argument being made by
13 minority groups saying we need the majority
14 minority seats in order to catapult and
15 make the first jump without needing the
16 blessing of the party because that is a
17 major problem, and so I think in
18 municipalities you are able to see where
19 there are Asians. You see a Philippino in
20 Jersey city, when he was able to galvanize
21 the ambiance and the environment of being
22 Philippino and that community, you know, on
23 top of everyone else in Jersey city who
24 voted for him because it is an at large
25 seat. He didn't need the majority minority,

1 PROCEEDINGS

2 but ethnic and the identity politics truly
3 played into it in order to ensure that he
4 got elected. So I think there is a lot more
5 involved here than Gingles, which has
6 really been horrible in the last couple of
7 years in order to really make us really
8 challenge Section 2 challenge, for the
9 Latinos and Asians, and I'm assuming it is
10 only going to get worse.

11 COMMISSIONER CARTAGENA: May I just
12 add to that, there is no question that the
13 Philippino population of Jersey City
14 supported the Philippino candidate at
15 large. I think the questions on the Gingles
16 for the Asian community because of the
17 dispersals are, to what extent do you
18 overcome Gingles even when you have Asians
19 who are running? It is not impossible to
20 satisfy cohesion when the Asian community
21 does select a preference in the voter
22 booth, and even if that preference is not
23 for a candidate in the Asian Community
24 directly.

25 Secondly, I do remember, Margaret

1 PROCEEDINGS

2 knows this very well, that in New York in
3 the old challenge to Nydia Velasquez's 12th
4 congressional district, Shaw versus Reno
5 challenge, there was significant language
6 in that opinion demonstrating cohesion
7 among Asian voters here in New York city.

8 COMMISSIONER FUNG: Specifically the
9 Manhattan and Brooklyn Chinese American
10 populations would be cohesive and they were
11 properly apart of the 12th congressional
12 district.

13 COMMISSIONER CARTAGENA: Definitely.
14 So in many ways what Lucia Gomez is
15 recognizing in the Latino community in its
16 differentiation between natural origin
17 groups is part and parcel of the larger
18 discussion of the Voting Rights Act and
19 requirements in the hoops we have to show.
20 As voting rights attorneys we have to get
21 these districts fair, but ultimately
22 speaking, the test should never really be
23 whether Dominicans and Puerto Ricans and
24 Mexicans eat the same food, dance the same
25 music, or like the same TV shows. The real

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1
2 question is when they go behind a voting
3 booth in the privacy of that particular
4 right, do they select similar candidates,
5 and the answer to that question is usually
6 yes.

7 COMMISSIONER DUKES: Ms. Gomez, you
8 talked about the poll watchers in
9 districts. We see that in all of the
10 districts, they are not trained enough. In
11 New York City, I testified before the city
12 council. I would propose that we look at a
13 different ways of poll watchers being
14 selected as well as trained. I think to ask
15 people to get up at 4:00 in the morning to
16 open up polling sites and stay 'til 9 or
17 10:00 at night or 9 to 11, those persons
18 lose everything. We find that more seniors
19 are beginning to take it because of the
20 salary that is paid to be a poll watcher. I
21 would recommend that we look at a different
22 kind of make up of poll watchers.

23 Certainly we should have the
24 language speakers, but I also think we
25 should also have a shift like they have in

1 PROCEEDINGS

2 the retail stores. They are part-timers. We
3 have people that come in at 9 and work 'til
4 2, or come in at 2 and work 'til 4, and
5 from 4 'til closing time. I think that we
6 need to look at different models for that.

7 Now how are your poll watchers
8 selected? Are they selected from the
9 political clubhouse.

10 MS. GOMEZ: My --

11 COMMISSIONER DUKES: The problem you
12 having or not having Hispanic or Asian poll
13 watchers.

14 MS. GOMEZ: So, the way in which the
15 New York City Board of Elections is set up
16 is that the appointments are made county
17 wide and so that county board of elections
18 through the party structure identifies the
19 poll watchers. It's been traditional.
20 That's pretty much the way they do it. New
21 York City voters, and their campaign,
22 they've actually started to recruit new
23 poll workers and they do that when there
24 aren't a sufficient amount of poll workers
25 at a particular location that has been

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1
2 designated, and they maybe able to plug 1
3 or 2 in a given region, but they themselves
4 have indicated that they had trouble based
5 on the timing. The fact that someone has to
6 take the entire day off or that they don't
7 have a pool large enough in terms of
8 minority poll workers. Always coming to us
9 asking us to find minority poll workers.

10 Interestingly enough, a majority of
11 the members of my institution are
12 monolingual Spanish speaking so they
13 wouldn't be helpful at a polling locations.
14 But I think at the end of day, something
15 else to look at is their salary. What else
16 are they getting throughout the entire day,
17 and whether or not the political parties,
18 these are individuals they cultivate in
19 terms of their clubs, whether or not all
20 the clubs in the city are being cultivated,
21 or is it just a particular assembly person
22 or senate person who controls the party
23 politics within that county is actually
24 being drawn into it.

25 COMMISSIONER DUKES: Last question

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2 is on Hempstead. In the school board
3 election, it has been 20 years since we've
4 been out there, the parties used to play a
5 great part in school board elections.

6 Senator Dunne and I came from Nassau
7 County. What is the politics of the school
8 boards now especially in Hempstead?

9 MS. GOMEZ: So the politics were the
10 same as they were 30 years ago, and the
11 school board president of the Hempstead
12 school board is still the person running
13 30 years later, and the school board has
14 not changed much considering the population
15 in Hempstead right now is 50 percent
16 Latino, 50 percent Africa American, and
17 children's population is over 60 percent
18 Latino in the schools, and so the school
19 board does not reflect at all what the
20 actual school population looks like. They
21 are both at large.

22 COMMISSIONER FEERICK: I think I saw
23 a hand at the very end of the panel.
24 Commissioner Fung.

25 COMMISSIONER FUNG: I just wanted to

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2 comment on Professor Chen's comment. I
3 think part of the reason that -- first of
4 all, Asian American participation in
5 elections is still fairly recent although
6 if you look at some of the recent city
7 council elections in which Asian Americans
8 were elected, the support from the Chinese
9 and Korean American population, you would
10 see that there is cohesiveness, and through
11 AALDEF's exit polls you see there is a lot
12 of Pan-Asian support especially for Asian
13 Americans candidates, for other candidates.
14 But I guess I would say that because of the
15 difficulties of doing a Section 2 case,
16 that makes it especially important for
17 Congress to figure out how it will make the
18 preclearance provisions, which have been
19 very useful for the Asian American
20 community and other communities, how to
21 revive those provisions so that there is an
22 actual review of discriminatory actions,
23 and hopefully an opportunity to stop those
24 actions before they occur.

25 COMMISSIONER FEERICK: Are there

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2 other questions from the panel?

3 COMMISSIONER CARTAGENA: Yes,
4 particularly Ms. Alvarez, I do a lot of
5 voting rights work. I don't think I've ever
6 heard a story as ridiculous as ordering one
7 third of what they need. Tell me what they
8 were telling the press as the reason --
9 were they basing it on previous years
10 turnouts, where you had low turnout in
11 previous years and that's why you ordered a
12 lower number of election ballots? Tell me
13 some more.

14 MS. ALVAREZ: So the city of
15 Bridgeport has 60 registered vote -- I'm
16 sorry, there were 68,000 registered voters,
17 so regardless you don't order 21,000
18 ballots. As you can imagine this playing
19 out, so you had candidate polls released,
20 so it was a manifestation, I think, of the
21 ugliest that would happen on election day.
22 You had individuals wanting to vote and
23 committing to standing on those lines as
24 long as they could, but at some point you
25 give up because it was so chaotic, there

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1 was just information missing.

2 Misinformation back and forth. Some of the
3 polling sites received the photocopy
4 ballots delivered by police. Other places
5 were still waiting for that to happen. Then
6 there was misinformation, miscommunication
7 as to which polls had extended hours that
8 night past the regular polling site, and to
9 me, that will forever be, in Fairfield
10 County Connecticut, the biggest blackout.

11 And then two days later for those
12 who did cast that day to find out there was
13 a missing bag of ballots found somewhere
14 that ultimately decided the governor's
15 race. It is, I think, that is our worse.
16 And here not too long ago, we are actually
17 up for another governors' race, ran at our
18 heels, that will be an interesting
19 scenario.

20 But if I can add to what Lucia had
21 contributed due to the question about the
22 training of poll workers and the diversity
23 within that pool, for example, in
24 Connecticut, in the city of Danbury,
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2 through federation member organizations
3 nonpartisan, through the office of the
4 registrar, voters both democratic and
5 Republican offering assistance asked where
6 do you sign up to work at the polls.

7 Bilingual individuals, English and Spanish
8 speaking, and primarily young emerging
9 people in the community, the median age of
10 a Latino in the state of Connecticut is
11 27 years old, so these are young people
12 civically engaging, wanting to contribute
13 bilingual skills to provide, and they were
14 turned down. Yet still they have people
15 being asked to return with a translator.

16 And when those poll workers who provided
17 that information at that polling site were
18 addressed and informed that that was
19 misinformation they were giving, they were
20 like take it up with, you know, the
21 supervisor, and the supervisor was nowhere
22 to be found when we went out looking to
23 address the issue.

24 We were able to get at least three
25 of the individual to file grievances, but

1 PROCEEDINGS

2 that's also an education process for first
3 time voters, and intimidating, I think,
4 also sometimes, for them to say we'll file
5 this grievance. We'll follow through with
6 this. And so folks just either got off the
7 line or had a child who did translating for
8 them.

9 COMMISSIONER FEERICK: Thank you.

10 I'd like go back to the first speaker,
11 Dorothy. A long time ago I chaired a state
12 commission that had a lot of
13 recommendations, and the person I reported
14 to said to me, "if there is one thing you
15 would like to see happen, what is it?" And
16 I would like to ask you, who gave us such
17 an outstanding paper with a lot of
18 different reflections in there, is there
19 one thing, if you had the opportunity to
20 make one thing happen, what would that be
21 in your case?

22 MS. HSU: It is hard to think of
23 just one thing. Well, we do appreciate the
24 DOJ's vigorous enforcement of section 203,
25 but we do think even more forcefully and --

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2 forcefully investigate and enforce section
3 208, which allows voters to bring in a
4 person of their choice to help them vote.
5 So that would be perhaps a person wanting
6 to bring a family member instead of using
7 an interpreters. And in cases where perhaps
8 there weren't enough interpreters, we also
9 would like more forceful enforcement of the
10 help America vote act, which in the
11 implementation of identification
12 requirements, because we see that as a huge
13 problem as well as the administration of
14 provisional ballots echoing Dr. Hazel
15 Dukes. We also have issue with poll
16 workers. There are a lot of poll workers
17 who did not know the language assistance
18 requirements. So a lot of the poll sites
19 didn't hang the necessary translated
20 materiel, or, you know, poll workers would
21 say he didn't understand, they couldn't
22 read the materials so they just kind of put
23 it aside or hung it upside down. Things
24 like that. Sometimes they were hostile.
25 Sometimes they just ignored issues that

1 PROCEEDINGS

2 were ongoing.

3 We also saw issues finding bilingual
4 poll workers to sign up. We too find that
5 it was difficult to get people to sign up
6 from 4:00 a.m. to 9:00 p.m., so we actually
7 did suggest to the board of elections wait,
8 and they agreed to do that for at least
9 Korean interpreters because they were
10 having difficulty hiring them. And lastly
11 we actually strongly encourage the
12 promotion of volunteer language assistance.
13 Asian Americans are the largest growing
14 minority group, oftentimes even though we
15 don't meet the coverage under section 203,
16 there is a great need for language
17 assistance whether through the
18 interpreters. Sometimes the community is
19 growing faster than the census can report.
20 Even the last election we found that there
21 was a need for Asian Indian language
22 assistance in Brooklyn and Bronx.

23 We hadn't reached that point yet in
24 the Census. Maybe we'll see that in the
25 next one. I mean, these are problems that

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2 the board of election should understand and
3 should not be surprised by.

4 COMMISSIONER FEERICK: Thank you
5 very much. Is there any other questions?

6 COMMISSIONER DUKES: I'm not an
7 attorney, may I ask you bring people in
8 with them to vote, don't we allow that in
9 certain categories?

10 COMMISSIONER CARTAGENA: Yes, the
11 Voter Rights Act allows any voter who needs
12 assistance to bring somebody to help them
13 in the voting booth. I think the only
14 exceptions are union members, believe it or
15 not.

16 MS. HSU: Union members and
17 employers.

18 COMMISSIONER CARTAGENA: And
19 employers.

20 MS. HSU: The issues that a lot of
21 poll workers don't know that rule so they
22 steer people away.

23 COMMISSIONER DUKES: Lest there be
24 recommendation in training.

25 MS. HSU: Yeah.

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2 COMMISSIONER CHEN: The issue of
3 early voting, which you mentioned
4 Ms. Alvarez, the governor of my state has
5 expressed a disinclination to go that route
6 and his justification is that New Jersey
7 has no explanation needed absentee mail
8 balloting, so that covers -- that addresses
9 the problem. I don't know if you have any
10 reaction to that?

11 MS. ALVAREZ: We shared Bridgeport's
12 experience and Connecticut's with him,
13 right, so we follow the process, right, and
14 it can go broke. So where is the harm? And
15 what I'm talking about citizens, we are
16 talking about saying civic engagement,
17 there should be no obstacle to how and when
18 you cast your vote. So we can agree to a
19 time frame and a procedure and policy and
20 train an individual to understand that. Why
21 would we deny someone's ability to
22 civically engage. To cast their right to
23 vote. And so whether --

24 COMMISSIONER CHEN: On the machine
25 you mean?

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2 MS. ALVAREZ: Yeah.

3 COMMISSIONER CHEN: On the machine
4 for early voting as opposed to --

5 MS. ALVAREZ: For early voting.

6 COMMISSIONER CHEN: And absentee
7 ballot.8 MS. ALVAREZ: We live in a very busy
9 world. Most households you have where there
10 is two, there are two people that are
11 working, there are children in school, and
12 again, when we can facilitate the act when
13 we can create the opportunity, most
14 recently in Connecticut, this time around
15 for the next governors race, there will be
16 online voting. I'll check back with guys
17 and let you know how that happens. We live
18 in the era of technology and the way we
19 receive and live, technology is a part of
20 that. And I think that it is just as
21 crucial as training to constantly take a
22 look at how our communities are changing.
23 How we can facilitate civic engagement. How
24 we can ensure our voters rights. If it
25 means going to cast your vote in a machine

1 PROCEEDINGS

2 week before the election.

3 COMMISSIONER FEERICK: Thank you
4 very much. I think we've arrived at a point
5 where we should be sure anyone who wants to
6 give public testimony has an opportunity do
7 so. On behalf of the commissioners I want
8 to thank all the panelists who participated
9 and contributions you made. If there is
10 anybody else who has a question, and the
11 only reason I try to move to the next point
12 is the keep the schedule we set out. Which
13 contemplates going into the evening. Thank
14 you very much.

15 So the question is is there anyone
16 here that would like to offer public
17 testimony? If so, I would ask that you put
18 your name on a sheet of paper and if you
19 wouldn't mind give it to Chris Fields, who
20 is to my left. She's the person that's been
21 helping put together the program today.

22 The first person I have Eric Merin.
23 Please. Are you a lawyer at Kirkland &
24 Ellis.

25 MR. MERIN: Yes.

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2 COMMISSIONER FEERICK: Thank you for
3 being here. And I have here the topic Super
4 Storm Sandy election protection.

5 MR. MERIN: I know I believe we will
6 be hearing more about this later today, but
7 as you said my name is Eric Merin, I'm with
8 the Law firm of Kirland & Ellis, and for
9 many years now, with the Lawyers'
10 Committee, we hosted an election protection
11 hotline. Where voters can call and voice
12 their concerns and problems on election
13 day, and we wanted today to just convey
14 some of the experiences we had specifically
15 during the 2012 election, which was in the
16 wake of Super Storm Sandy.

17 That year, specifically, our call
18 volume was incredibly high. We had
19 volunteers that basically could not get off
20 the phones. They were answering so many
21 calls, and notably many of these calls came
22 in the day before the election. Voters who
23 either could not get to their polling place
24 because of damage from the hurricane or
25 they just didn't know where their polling

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2 place would be. I wanted to provide for the
3 commission this public testimony to two
4 specific examples of incidents that
5 occurred on the election day that kind of
6 really highlight the need for contingency
7 planning on election day for these types of
8 situations. The first one involved a
9 situation in Rockaway, Queens. For those of
10 you from the area know Rockaway, Queens is
11 home to actually many nursing homes in the
12 area, and it was also an area that was hit
13 very hard by Super Storm Sandy. Now many of
14 these nursing homes normally have
15 arrangements with their local election
16 officials, where they'll receive absentee
17 ballots for the residents so that their
18 residents are able to vote, since many of
19 these residents cannot leave their room and
20 actually go to the polling place on
21 election day. Now, due to Super Storm Sandy
22 and obviously the havoc that it reeked,
23 many of those nursing homes never received
24 those absentee ballots on election day,
25 unfortunately, too late.

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2 We received many call from people
3 such as activities directors and nurses in
4 these nursing homes saying that their
5 residents wanted to vote but unfortunately
6 could not leave the home and the ballots
7 had never arrived. Now, that day we weren't
8 able to help them. But with proper planning
9 in the future, these local municipalities
10 can create plans for situations. Hopefully
11 something like that would not be replicated
12 in the future.

13 The other problem that I'm sure
14 you'll hear more about later today when
15 panelists speak about Super Storm Sandy was
16 that we had tremendous ballot shortages in
17 New York City. As many of you know, the
18 governor issued an emergency order that
19 allowed any individuals to vote at any
20 polling place in New York City. Because
21 many people were displaced. Despite
22 tremendous efforts of many of these
23 election officials, we received many, many
24 voter calls, especially during rush hour,
25 that their polling places did not have

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2 ballots and could not vote. Again, we were
3 able to work with election officials to try
4 and work with the city to get ballots to
5 these polling places so voters were able to
6 vote. But as the polls started closing,
7 many voters called us because they were
8 uncertain on what to do because their
9 polling location did not have enough
10 ballots.

11 We helped them communicate with city
12 officials, but many of these voters you've
13 heard time and time again today just became
14 frustrated and decided that it wasn't worth
15 voting that day.

16 Now just I guess, in conclusion, the
17 election protection hotline, every year and
18 every election, receives tons of call
19 volume and lots of calls from people trying
20 to just exercise their right to vote, but I
21 guess today, the one thing if I can convey
22 is that Super Storm Sandy really
23 highlighted that these types of emergency
24 can cause unique issues for local
25 officials. That in the future, if we plan

1 PROCEEDINGS

2 properly, we can avoid it.

3 Thank you.

4 COMMISSIONER FEERICK: Thank you very
5 much. As I would just mention as a very
6 active member of the bar, obviously, that
7 they have Dan Kolb and Senator Dunne here,
8 co-chair of the state bar committee. If
9 there is something you want to put in
10 writing and send to them, I'm sure that
11 they would be interested in receiving it.

12 The next speaker I have, is it David
13 Stoneshill?

14 MR. STONEHILL: Stonehill.

15 COMMISSIONER FEERICK: Thank you.

16 I don't want to speculate, are you a
17 lawyer?

18 MR. STONEHILL: Yes. How'd you
19 guess?

20 COMMISSIONER FEERICK: Just that you
21 are so well-dressed at this hour in the
22 afternoon.

23 MR. STONEHILL: I suppose.

24 Good Afternoon, my name is David H.
25 Stonehill. I'm an attorney civic activist

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2 from Merrick, New York as well as the
3 communications committee co-chair of Voting
4 Rights Forward. Voting Rights Forward is a
5 nonpartisan civil rights organization
6 committed to protecting the rights of all
7 eligible voters. The organization was
8 formed in January of this year by a group
9 of voter protection attorneys alarmed by
10 the U.S. Supreme Court decision in Shelby
11 County v. Holder. Through advocacy and
12 public education, we seek to restore the
13 Voting Rights Act and therefore strengthen
14 voting rights for all Americans.

15 My brief remarks today are not about
16 politics, but about democracy. I've
17 personally been involved with election
18 protection since 2001. Both as a field
19 election monitor for the democratic party
20 in Nassau County, New York, and as an
21 administrator setting up election
22 monitoring programs in New York City and
23 Nassau County and Suffolk County. I've also
24 consulted with campaigns in New Jersey,
25 Illinois and Alabama regarding voter

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2 protection issues.

3 I have found election monitoring to
4 be a very satisfying part of my life. It is
5 a very great feeling to help individuals
6 vote, yet attempts are made even in this
7 day and age to try and prevent some people
8 from exercising their right to vote. In the
9 world of voter suppression and voter
10 intimidation, no place in the United States
11 is immune. New York may not be Alabama and
12 New Jersey may not be Georgia, but we do
13 get our share of election incidents.
14 Preelection robot calls with misleading
15 information about candidates; caging
16 incidents involving fraudulent challenges
17 to registered voters; discrimination
18 against non-English speakers at the polling
19 place, etcetera, are very real in and
20 around New York City.

21 Disturbingly, there are people who
22 feel they must win by any means necessary.
23 Yet at a time when voting rights still
24 needs legal protection, the Shelby decision
25 shockingly weakened the federal

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2 government's ability to enforce the 1965
3 Voting Rights Act. A major casualty was the
4 ability of the justice department to
5 preclear voting changes such as the
6 redistricting of the voting procedures in
7 jurisdictions throughout the country with a
8 history of voting discrimination.

9 Protecting our cherished right to
10 the vote has been a bipartisan effort since
11 the 1960s. That is why the recent
12 introduction of the Voting Rights Amendment
13 Act in Congress by republicans and
14 democrats are so important. Instead of the
15 same old political gridlock we see in
16 Washington and have seen in New York State
17 as well, ideological and personal
18 differences have been overcome in this bill
19 by common determination and understanding
20 that our democracy is built upon the right
21 to vote. Take away someone's ability to
22 vote, and you are on a slippery slope to
23 elimination to freedom itself.

24 Voting Rights Forward joins other
25 civil rights organizations in supporting

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2 swift passage of the Voting Rights
3 Amendment Act. The Voting Rights Act will
4 be modernized for the 21st century while
5 restoring the justice department's ability
6 to protect voters from current
7 discrimination at the polls.

8 It is not perfect legislation, but
9 it goes a long way toward giving us a
10 voting process to be proud of, and not one
11 to be embarrassed about.

12 Thank you for giving me the
13 opportunity to speak today. I should also
14 note that some other members of my
15 organization will be speaking today.

16 COMMISSIONER FEERICK: Thank you
17 very much. Senator Dunne has a question.

18 MR. DUNNE: Since you admitted to
19 being a lawyer, let me get some free legal
20 advice from you.

21 Mr. Stonehill, very seriously, thank
22 for this. Have you and your organization
23 looked at the Shelby County decision and
24 figured out what the Congress can do to
25 right that wrong and try to restore some of

1 PROCEEDINGS

2 the Sections 4 and 5.

3 MR. STONEHILL: Well, basically, we
4 are supporting, as well as other
5 organizations, the Voting Rights Amendment
6 Act, which has already been -- it was
7 submitted in January.

8 MR. DUNNE: Is that the
9 Sensenbrenner bill?

10 MR. STONEHILL: Yes. So we are 100
11 percent behind it, and we are trying to, as
12 well as with other organizations, of
13 course, we will be trying to mobilize
14 public opinion to support it as well.

15 MR. DUNNE: Thank you.

16 MR. STONEHILL: Thank you.

17 COMMISSIONER FEERICK: Thank you
18 very much.

19 The next person, I'm not sure I can
20 read the writing, though it is much better
21 than mine, is it Mark Turner.

22 (No response)

23 COMMISSIONER FEERICK: We'll just
24 hold this if the person comes.

25 Natalie Victoria.

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2 (No response)

3 COMMISSIONER FEERICK: These were
4 cards I received from people that wanted to
5 speak. They appear not to be here right
6 now.

7 Is there anybody else here who would
8 like to add some comments to the public
9 record? If so we would be happy to receive
10 your testimony.

11 (Ms. Scottie Coads walks up to
12 stage)

13 COMMISSIONER FEERICK: Welcome, I
14 would hope that the witness would also
15 identify the young man who is here with
16 here.

17 MS. COADS: Good Afternoon everyone.
18 The young man, Parker, is my Grandson, and
19 I didn't sign up today because I wasn't
20 sure I would be able to make it. I'll try
21 to go through this without my glasses.

22 COMMISSIONER FEERICK: Could you give
23 your name for the record.

24 MS. COADS: My name is Hazel Scottie
25 Coads, and I'm the chair of the civil

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2 engagement for NAACP New York State
3 conference. Good Afternoon everyone, and
4 thank you for this opportunity to speak. It
5 was with deep sadness that in 2014 we must
6 remain more diligent and in such fighting
7 way in such fighting mode for the -- I'm
8 not able to see until I get my glasses, I'm
9 sorry.

10 COMMISSIONER FEERICK: Take your
11 time.

12 (Glasses are brought up)

13 MS. COADS: Okay. That's better. It
14 is with deep sadness that in 2014 we must
15 remain more diligent and in such fighting
16 mode for our citizens concerning our right
17 to vote and the need to demand that our
18 rights are protected.

19 Throughout the State of New York, we
20 have had some difficult times during the
21 2010 redistricting from Albany and the
22 Boroughs and even on Long Island. On Long
23 Island we have not -- we have struggled
24 like you wouldn't believe to address the
25 redistricting issue. We were slandered, we

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2 were mistreated at every legislative
3 session. It is important that we continue
4 to remind our communities of the negatives
5 that we endured during the difficult years
6 and times, and there are plenty. We must
7 continue to fight the monster that I'm
8 calling it, with the fervor as we never did
9 before.

10 I would like to coin this "looking
11 back and looking forward," with the
12 comprehensive vote watch program to include
13 some of the following, and there are many
14 things that we have to include continued
15 voter registration and then get out to
16 vote. Continue to fight for the Section 4
17 amendment by the Congress and the senate.
18 Expand our vote to include ex-felons. New
19 York has it already in place, but we have
20 to fight for it at other places. Mobilizing
21 to include like-minded organizations to
22 come together for the national rights.
23 Holding hearings on the Voting Rights Act
24 Amendment. Holding forums to hear from
25 potential elected officials.

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2 Do not support those that are not
3 supporting the NAACP in its progressive
4 platform. Continue to fight against voter
5 ID in New York, that many people who are
6 still promoting voter ID, and won't stand
7 for it in the state of New York. Supporting
8 the Democracy Restoration Act. Restoring
9 voting rights in the federal elections to
10 to nearly 4.4 million Americans with
11 criminal convictions in their past. There
12 is much work to be done. The NAACP New York
13 State conference will continue to defend
14 democracy at the ballot by any means
15 necessary.

16 Thank you for hearing me.

17 COMMISSIONER FEERICK: Thank you very
18 much. Are there any questions on the
19 commission by the witness?

20 (No response)

21 COMMISSIONER FEERICK: Can I ask you
22 one question, I have a question. Maybe
23 Chris you could -- I was not clear at
24 something you said, you spoke about
25 mistreatment in legislative sessions, were

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2 you speaking of something very general or
3 mistreatment that reached you?

4 MS. COADS: No, in general. I
5 testified at least eight times in Nassau
6 County during the redistricting process,
7 and each of those times, I along with the
8 400-plus people we put in the room to have
9 their voices heard were mistreated by their
10 legislative body and the majority in the
11 legislature.

12 COMMISSIONER FEERICK: How were you
13 mistreated? Give me an example.

14 MS. COADS: We were ignored. We were
15 -- actually at one point they had to close
16 everything down because it really got out
17 of hand. They refused to answer questions.
18 We were insulted. We were really mistreated
19 collectively. Everyone who attended all of
20 those sessions remember. This is what
21 happens, sir, when the majority are not
22 progressive and they grab for power and
23 position. They cut the lines so terribly
24 that minorities don't have a chance of
25 being elected to the senate in Albany.

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2 It is a fight that we must continue,
3 and I don't see any way out except for us
4 to join coalitions and to be strong about
5 what we need to do, and that is to fight to
6 get progressive people elected in Albany.

7 COMMISSIONER FEERICK: Thank you.
8 Commissioner Cartagena.

9 COMMISSIONER CARTAGENA: May I add,
10 thank you Ms. Scottie Coads. My
11 organization on Latino Justice is part of
12 that coalition you are talking about. That
13 we're part of that effort right there in
14 Nassau and I commend you and I thank you
15 for bringing that to our attention. It's a
16 very important issue and you're right, the
17 dominant party basically ignored the the
18 needs of the wider community. If it wasn't
19 for a coalition, even a small improvement
20 that happened would have never happened. So
21 thank you for your leadership on that.

22 MS. COADS: Thank you so much. And
23 not only in Nassau, representing the NAACP
24 on a state level, I testified for that, and
25 it was unfortunate to see that there were

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2 no minorities on the commission, no women,
3 and all of the hearings were held during
4 the day when you couldn't have the majority
5 to appear to testify. I mean, it has just
6 been a long, hard road, and in Nassau
7 County we have nine senators, not just
8 Nassau but in all of Long Island. Nassau
9 and Suffolk. We have nine senators, but we
10 don't have a chance in 40 years to elect a
11 minority in Long Island the way the
12 districts have been drawn. And so we've
13 been fighting diligently, the fight is
14 going to continue.

15 You don't hear much about it from
16 Nassau's perspective because they are all
17 conservatives. To get some progressives in
18 office, we have to stay diligent, and we
19 have to continue to fight.

20 COMMISSIONER FEERICK: Thank you
21 very much.

22 We've reached the point for a short
23 break in the proceedings. So we'll recess
24 for about 15 minutes and return for two
25 more panels, and another opportunity for

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2 people to give public testimony. Thank you
3 very much.

4 (A recess is taken. 3:50 p.m.)

5 (Reconvened for panel 3. 4:11 p.m.)

6 COMMISSIONER FEERICK: The next panel
7 is called Elections in New Jersey. It is a
8 three-member panel, and we have three
9 speakers, three panelists, and I'll call
10 the first, Catherine Weiss of The
11 Lowenstein Center for the Public Interest &
12 Election Protection.

13 MS. WEISS: So I'm Catherine Weiss
14 and I am chair of public interest at The
15 Lowenstein Center for the Public Interest
16 at Lowenstein Sandler, which is a law firm
17 with offices in New York, New Jersey and
18 California. And we ran the election
19 protection voter hotline for the 2012
20 presidential election in New Jersey.
21 Election protection, as I think most of you
22 know, is a nonpartisan nationwide voter
23 protection coalition of which the firm has
24 long been part. We did this in
25 collaboration with the Lawyers' Committee

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2 for Civil Rights. And I am therefore going
3 to address election issues surrounding
4 emergency preparedness having had a direct
5 experience of emergency unpreparedness.

6 So the 2012 election occurred one
7 week after Hurricane Sandy made landfall in
8 New Jersey. Some of you I think will
9 remember this caused an unimaginable
10 destruction. Transportation,
11 communications, electricity, water supply,
12 housing, everything was out of service for
13 a very, very long time indeed, and in the
14 face of this level of destruction, our
15 election officials made heroic efforts,
16 truly heroic efforts to put on the
17 presidential election one week later, which
18 they succeeded in doing. I'm going to talk
19 about both what worked in that process and
20 what failed in that process, and then I
21 will talk about recommendations for having
22 a more thoughtful and intentional emergency
23 preparation for elections.

24 So let's start with what they did
25 really incredibly well, given what was

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2 happening in New Jersey. They relocated
3 polling places in every election district
4 in the state and have them up and running
5 for election day. You can't imagine what
6 that meant. The polling places they had
7 been intending to use, many of them were
8 without electricity, meaning they couldn't
9 run the voting machines, and others were
10 being used for shelter for people homeless
11 as a result of the storm, and nevertheless
12 they had polls up and running in every
13 district. They also put voting machines in
14 buses and ran them from shelter to shelter
15 so that people can vote. In advance of the
16 election, the secretary of state issued a
17 series of directives under the emergency
18 declaration that the governor had made. And
19 one of those directives allowed for
20 provisional voting, voting by provisional
21 ballot by displaced voters in any location
22 in the state where they found themselves.
23 So people who could not be home and instead
24 were staying elsewhere could vote wherever
25 they were.

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2 That made an enormous difference to
3 thousands of voters. The rate of
4 provisional voting was up in New Jersey.
5 There was also an ad hoc early in-person
6 voting system that resulted from a
7 directive that required the county clerk's
8 offices to remain open everyday between
9 midweek the week before and the election,
10 including all weekend which meant that many
11 people lined up at the county clerk's
12 offices, applied there for mail-in ballots,
13 and cast them all in one fell swoop in sort
14 of makeshift early voting system that
15 relieved some of the pressure on election
16 day itself. Also the director of our
17 division of elections maintained open
18 communication with the advocates who were
19 working to protect the right to vote with
20 all the advocates, meaning that we spoke to
21 him everyday leading up to the election,
22 and countless times on election day itself.
23 Mary Ciccone, who is in the audience, was
24 among us that day.

25 Now I'm just going to talk about

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2 some of what did not work that day. What
3 mainly failed was technology. And here is
4 what did not work. Polling place hookups,
5 right? So there were 13,000 calls into
6 election protection on the day before
7 election day, and election day itself. A
8 little more than 13,000 calls fielded from
9 New Jersey residents, which is an
10 extraordinary volume of calls, and many of
11 them, most of them asked the question
12 "where do I vote. My regular voting place,
13 I went there, it is closed. There is no
14 electricity. I don't have a car. Where do I
15 vote?" And the normal way of answering that
16 is you look it up on the states' database.
17 Well, the state's database repeatedly
18 crashed on election day, and when it
19 crashed, everything that was derivative of
20 that database, there was a text system
21 where you can text the word "where" to a
22 certain number in order to find where you
23 polling place was. That depended on the
24 state database. It failed when the state
25 database failed. And Google searches and

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1
2 all general search engines also were
3 derivative of the state database, so we had
4 blackout periods throughout the day, but we
5 had people saying where do I vote, and we
6 could not answer the question because they
7 were not in their normal polling places.

8 The second technological step that
9 was really a shocking disaster was that in
10 an effort to ensure that as many people as
11 possible could vote, the secretary of state
12 issued a directive that allowed displaced
13 voters to apply for mail-in ballots,
14 absentee ballots by fax or e-mail to the
15 county clerk's office, and thousands,
16 thousands and thousands of people tried to
17 make that application. And the fax servers
18 and the e-mail servers in all the county
19 clerk's offices went down. And in fact,
20 when we were calling because we got
21 hundreds of calls from people who were
22 waiting for their ballots after having made
23 e-mail or fax request or attempts at e-mail
24 or fax request, so we were constantly in
25 touch with the county clerk's office, and

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2 two of them, two of the county clerks burst
3 into tears on the phone that day on
4 election day and said if you sent me every
5 volunteer you have -- we had a hundred
6 volunteers over each day, over the course
7 of each day in different shifts -- if you
8 sent me all your volunteers I still
9 couldn't respond to all of the requests
10 that have come in today. They just could
11 not. They were completely unprepared to
12 manage the volume they received, so that
13 system fail very dramatically.

14 In response to the failure of that
15 system, the secretary of state extended the
16 deadline for voting, and here is a little
17 puzzle because there is a question about
18 whether federal law allows her to extend
19 the deadline for voting, which I'll come
20 back to.

21 But more than that, she extended it
22 three days after the election. People who
23 applied on time were supposed to be able to
24 cast ballots at any time up to November
25 9th, 3 days after election day in 2012. So

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2 guess how many people want to vote after
3 the election has been called by the media?
4 Not too many. So that system also really
5 did not work. Then there was the problem of
6 emergency first responders. So on the
7 Monday before the Tuesday election day, we
8 got a call from a guy named Matt who early
9 on Monday morning said "I got 10,000 guys
10 working for me, I'm the dispatcher, and
11 they all have to vote." What he actually
12 said, I took this call, what he actually
13 said was they are union, and they have to
14 vote, and the shop stewards are going to
15 send them back if you don't find me a way
16 to allow them to vote. And they were
17 repairing the roads and putting the
18 electricity back in order. Like they could
19 not go home. My electricity was out, they
20 were not leaving the state of New Jersey,
21 in my opinion.

22 So, there are 2,000 of these 10,000
23 workers were New Jersey residents, and he
24 built time off in the shift for each of
25 them to vote by provisional ballot wherever

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2 they were located, and that worked well.

3 There is a problem with provisional
4 voting, which is that you are voting on
5 ballots that aren't your local district
6 ballots. So the down ballot races for local
7 candidates are wrong. You have to know who
8 you are voting for and write it in, or lose
9 your local votes, but at least the top of
10 the races, statewide and federal races are
11 often correct.

12 Anyway, they voted by provisional
13 ballot if they were from New Jersey, but
14 there were 8,000 out-of-state workers who
15 come from all over the country to help put
16 New Jersey back together, and we referred
17 them to the Lawyers' Committee, but really
18 no-go for the vast majority of them. There
19 is simply no way to allow them to vote.

20 All right, so here's some of the
21 recommendations that came out of that
22 experience. First, there should be written
23 emergency plans by all election officials
24 in the country. It was a huge problem to
25 try to put this together in six days.

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2 Second, there should be laws and
3 rules that make it easier to cast ballots
4 in an emergency, including laws and rules
5 that allow provisional balloting in any
6 state polling place by people displaced by
7 emergency, and extended use of absentee
8 ballots, extended hours for voting, and
9 early in-person voting to relieve the
10 pressure of one day voting systems. There
11 should be a plan for educating voters about
12 changes that plan should include both high
13 and low tech systems of communications. Bus
14 signs, physical signs at polling places.
15 Paper posting as well as e-mail, texting,
16 things like that. There has to be a
17 relocation and resupply plan.

18 If the machines fail, what are we
19 going to use instead? How do we get enough
20 paper to all of the districts? In Jersey,
21 incredibly, the paper supply did run out,
22 but it did run out continually that day in
23 New York. What's going to happen if our
24 headquarters is displaced by an emergency?
25 Do we have an alternative place for the

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2 command center of our election officials to
3 be, as happened also in New York. There has
4 to be a plan for recruiting and training
5 poll workers on emergency preparedness.

6 There were many hundreds of poll workers
7 who could not get to work on election day.
8 There were gas shortages, and people's car
9 had been destroyed as well. And they had to
10 recruit at the last minute. There needs to
11 be a plan for emergency recruitment for
12 poll workers. They should collect and
13 publish data on what works and doesn't in
14 emergency elections. There has to be
15 legislation to preserve the right to vote
16 for emergency first responders.

17 There are now, by my count, seven or
18 eight states that have passed such laws,
19 but state laws are inherently insufficient
20 because so many workers are from out of
21 state, and no state can allow voter from
22 another state to vote. That doesn't work.
23 So I think that what needs to happen is
24 there needs to be federal legislation
25 possibly based on the Uniform and Overseas

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2 Citizens Absentee Voting Act, which would
3 allow first responders to vote by the same
4 means that military voters and overseas
5 voters are now committed to vote.

6 And finally there needs to be
7 further study on the problem of what
8 happens if you can't get there. Supposedly
9 Hurricane Sandy had hit the day before the
10 election, I am confident that the election
11 couldn't have then happened at all. What
12 then? Particularly in a presidential
13 election where if the election proceeds in
14 the rest of the country, an entire state
15 can be effectively disenfranchised because
16 the media will call the outcome of that
17 election without the states having cast
18 their votes unless those votes are
19 determined unless the votes from the
20 electoral college are determinative, so
21 there is a problem to work out about how
22 effectively to deal with elections that
23 might need to be postponed.

24 So those are some of the lessons we
25 learned in Hurricane Sandy. And I'm happy

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2 to take questions. Thank you.

3 COMMISSIONER FEERICK: Thank you
4 very much. I know there would be some
5 questions from the panel, but I would just
6 like to ask whether your statement is an
7 abbreviated version of a larger statement
8 on the subject, and if so, that would be
9 very valuable to have as part of the record
10 in these proceedings because of the nature
11 what you've addressed.

12 MS. WEISS: Thank you. I submitted
13 written testimony that's a much longer
14 version of what I just said.

15 COMMISSIONER FEERICK: Thank you.

16 MS. WEISS: And it has citations and
17 everything. Footnotes you'll love.

18 COMMISSIONER FEERICK: Thank you
19 very much. We'll come back with questions.

20 The next is Mary Ciccone. Disability
21 Rights New Jersey.

22 MS. CICCONE: Good afternoon. My
23 name is Mary Ciccone, I'm the managing
24 attorney for disability rights New Jersey
25 and I'm also the project coordinator for

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2 the protection advocacy for voter acces
3 program in New Jersey. I would like to
4 thank you for the opportunity to speak with
5 you today about voter issues with people
6 with disabilities.

7 Disability Rights New Jersey is a
8 federally funded non-profit organization
9 that has been designated as the protection
10 and advocacy system for people with
11 disabilities in the state of New Jersey.
12 DRNJ provides legal representation
13 advocacy, technical assistance, education
14 and training, and information referral for
15 people with disabilities, their families
16 and professionals who serve them. One of
17 the DRNJ's major priorities is voting, with
18 respect to people with disabilities. It has
19 been well documented that people with
20 disabilities vote at a much lower
21 percentage than people without
22 disabilities. The numbers are, like, only
23 20 percent of people with disabilities will
24 vote. That's about the average.

25 For people with disabilities, there

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2 are many barriers. First, one of the most
3 common barriers and one of the most
4 difficult to address is lack of
5 transportation. In New Jersey, New Jersey
6 is lucky to have a very big public
7 transportation system, at least in the
8 northern part of the state, but there are
9 many areas in the state that have a lack of
10 public transportation. Especially in South
11 Jersey, Jersey Shore Communities, and the
12 western part state. There is very little
13 transportation for people, and for people
14 with disabilities it can be very difficult
15 to get to a polling place if they have no
16 transportation to get there.

17 Another barrier is the lack of
18 polling place accessibility. New Jersey has
19 actually made significant strides in having
20 accessible polling places; however, there
21 are, on election day, many times a lot of
22 issues arise because there is not proper
23 signage to the accessible entrance.

24 Accessible doors may be locked so people
25 who use a wheelchair can't get to the door

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2 to get to the polling place, or the door
3 may not be open, or may be too heavy to
4 open so a person may not get through the
5 door to get to the polling place. Also one
6 of the big barriers with people with
7 disabilities are people who live in
8 institutions. People who reside in
9 institutions.

10 In New Jersey with development
11 centers and psychiatric hospitals, which
12 there are quite of number of state run
13 institutions, although they are competent
14 to vote and would be eligible to vote, they
15 have to rely on staff to either get them on
16 an absentee ballot or to take them to the
17 polling place. So some institutions do not
18 take people to the polling place so they
19 have to make sure they rely solely on the
20 staff to get them an absentee ballot. Help
21 them fill it out and make sure it is sent
22 in. And depending on when they may be
23 admitted, they may not have the opportunity
24 to do that.

25 Another issue is for people with

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2 mental illness. Many people with mental
3 illness are in residing transitory
4 situations so they move around a lot. They
5 may be homeless, they may be in a group
6 home or a boarding home and they move
7 around. So they don't really reside in one
8 location long enough to become eligible to
9 vote.

10 Then another issue is on election
11 day, we have issues with respect to the
12 audio accessible machines. All machines in
13 New Jersey are required to have an audio
14 component, so the person with visual
15 impairment can go in and vote on the audio
16 machine, and they can vote independently.
17 Unfortunately because of technology, many
18 poll workers do not understand it, do not
19 know how to operate it, are scared to death
20 that they don't know what they are doing so
21 they don't have a lot of people using them.
22 They just don't know how to do it. So they
23 just sit there and go "I don't know how to
24 do it, it is not working." So people who
25 have visual impairments, they have the

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2 right to vote independently, but they wind
3 up having to take someone to the polling
4 place because the machine is not working or
5 the person operating it does doesn't know
6 how it works.

7 New Jersey has taken big steps to
8 reduce these barriers. As I said before,
9 they greatly reduced the number of
10 inaccessible polling places. In the past
11 many number of years ago, the division of
12 elections would regularly grant waivers to
13 county boards of elections to have their
14 polling places in accessible locations.
15 Those would be routinely granted and there
16 was no end date. Now they have a rule that
17 they will only grant waivers in exceptional
18 circumstances, and it is only a one year,
19 one time only exception. So that has
20 significantly reduced the number of
21 inaccessible polling places.

22 When Super Storm Sandy hit, one of
23 the big issues that we raised with the
24 director of divisions of elections was when
25 you move polling places, how are you going

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2 to address accessibility. Recognizing that
3 many of the polling places could be
4 inaccessible, and they said that no matter
5 what happens, they will make sure that
6 they'll make plans for people -- to make
7 sure that there are in accessible
8 locations. New Jersey also has a vigorous
9 vote by mail system. Which does help people
10 with disabilities. Persons can request a
11 vote by mail ballot, without any reason
12 given. They just request it. So it doesn't
13 necessarily mean they don't have to
14 identify themselves as a person with a
15 disability, they can just request as anyone
16 else can. And for people with disabilities,
17 they don't always want to be identified as
18 having disabilities. They just want to be
19 able to vote like everybody else does. So
20 the idea that there is no reason that you
21 have to give, gives people a lot more
22 confidence in actually requesting a vote by
23 mail ballot.

24 You also can request a vote by mail
25 ballot to be for the general election. You

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2 can mark the box of the ballot application
3 and say, I want a general election ballot
4 for every year until I stop saying I want
5 one. That reduces one of the annoyances of
6 having to request a vote by mail-in ballot.
7 Because you have to formally request it
8 every year, but this, for general election,
9 you can request it and it can keep coming
10 in the future.

11 You can also mark on there, if you
12 want, you can mark a box that allows you to
13 request -- they will automatically send you
14 a vote by mail ballot for every election in
15 that particular year. So if you request one
16 for the April school board election or
17 whatever little election you have because
18 New Jersey has lots of them, then they will
19 send you a ballot for every single election
20 that year. So that reduces, once again, the
21 efforts that you have to take to request
22 the vote by mail.

23 So those are some things that have
24 been helpful, but there are still a lot of
25 issues, and barriers still remain. As I

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2 said many times, even if the polling place
3 is accessible, there is a lot of -- signage
4 is not put up to the accessible entrance.
5 You see this a lot with respect to schools.
6 New Jersey uses schools for elections in
7 many cases. Well, the accessible entrance
8 is usually the main entrance to the school
9 building; however, the polling place may
10 actually be the gym, so at the schools in
11 an effort to try and prevent a lot of
12 people from coming in and out of the school
13 building, they tell you go to the entrance
14 where the gym is, which is fine, but that
15 may be an inaccessible location, so all the
16 signage says go that way, but there is
17 nothing to indicate to a person with a
18 disability that they got to go to the main
19 entrance which is accessible when they go
20 through the school building, and many
21 times, as I say, it becomes very difficult
22 because they say the school does not want
23 people wandering through the hallways. So
24 there really needs to be signage to let
25 people know where they are supposed to go.

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2 With respect to, although I'm very
3 happy with the vote by mail system, the one
4 problem with vote by mail is that there is
5 a strict requirement that the ballots and
6 envelopes be filled out 100 percent
7 correct. You can't make a mistake on them.
8 This is one of the biggest complaints with
9 respect to vote by mail. For someone with a
10 cognitive impairment that can be very
11 tricky, because you have to sign the
12 outside of the ballot, there is an envelope
13 that you have to sign, that's your
14 signature, and you have the inside ballot
15 which you fill out. There is a lot of steps
16 you have to take for. Most people it is
17 pretty easy, but many times the ballots
18 will be thrown out because you didn't
19 follow the steps 100 percent correctly. And
20 as they said, there is a strict requirement
21 if you didn't follow -- if everything is
22 not perfectly, all your i's are crossed --
23 all you t's are not crossed, it will be
24 thrown out. And I say for people with
25 cognitive impairments, there is a strong

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2 likelihood that they will not follow all
3 the proper -- they will not dot all the i's
4 and cross all the Ts, and their ballots are
5 less likely to be counted.

6 Another thing is identification in
7 New Jersey as done through the signatures.
8 For people with disabilities their
9 signatures tend to change, or they have
10 very poor signatures or some people don't
11 have signatures at all other than maybe x.
12 And some people who have had their arms
13 that they can't write at all, they have
14 actually formally gotten their signature or
15 stamp for purposes of banking, legal
16 documents, everything. They use a stamp.
17 The division of elections will not
18 recognize that stamp signature as their
19 signature, and they will throw out the
20 ballot if they use a stamp signature. And
21 people may not realize that because they
22 use that stamp signature for all their
23 other legal documents, why wouldn't it work
24 for the voting? But they won't.

25 Finally one of the big areas for

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2 poll worker training, and this goes back to
3 putting out signage, operating of audio
4 components on machines, things that
5 actually happen on election day, usually
6 when we get calls on election day for
7 problems with respect to voting, it's
8 usually someone didn't do something. They
9 didn't allow someone to take in -- they
10 brought someone to assist them in the
11 polling place and they didn't allow them.
12 They didn't put signage at the proper
13 entrance. They didn't unlock the door. They
14 didn't know how to operate the machines.
15 Those are things that are solely in the
16 realm of poll worker training, and that
17 tends to be a problem.

18 Every election, the biggest issue
19 that we see are actual on election day
20 problems with people with disabilities that
21 tend to result from lack of poll worker
22 training.

23 So, in conclusion, as I've said
24 before, there are many barriers to people
25 with disabilities voting. Some of them are

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2 very hard to address. Transportation,
3 that's going to require a lot. Those aren't
4 easily solved. It involves long term for
5 many groups to try and improve
6 transportation so that people have the
7 ability to get to the polls on election
8 day, but something such as poll worker
9 training, that is something that should be
10 addressed. We hear it in all kinds of areas
11 with respect to voting that better poll
12 worker training people will help people
13 vote better and easier if that's
14 implemented.

15 Thank you.

16 COMMISSIONER FEERICK: Thank you
17 very much. Just a question I would like to
18 ask, you made reference to the percentage
19 of people with disabilities of voters is 20
20 percent, I thought you said; my question is
21 how many of those in the category being
22 disabled registered to vote?

23 MS. CICCONE: Honestly, I'm not
24 really sure. The registration numbers are
25 low and those who actually vote are even

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2 lower. So I don't have percentage. I don't
3 know the actually percentage.

4 COMMISSIONER FEERICK: Because we
5 are going to have a speaker after you who
6 is going to point out that there is
7 tremendous voting participation for those
8 who register to vote, and that leads me to
9 be curious as to whether there needs to be
10 a greater effort in the country with
11 reference to registration by those who are
12 disabled.

13 MS. CICCONE: I know that the
14 disability community does a lot of effort
15 to registration, and I know our agency was
16 involved, a number of years ago, in making
17 sure that the National Voter Registration
18 Act, the NVRA, was applied in state
19 hospitals, and the state was actually
20 ensuring that when people came into the
21 hospital or development centers, they were
22 registered to vote, gave them an
23 opportunity to register to vote. That was
24 not being done for many years. It's now
25 being done in all state hospitals and the

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2 developmental centers. It's also being done
3 in other locations that would deal
4 regularly with people with disabilities.

5 COMMISSIONER FEERICK: Thank you very
6 much.

7 My fellow commissioners will
8 probably have some questions when everybody
9 -- we just have one -- we had a, I was told
10 that the -- it is Anthony Curcio. Our
11 speaker is not who is listed on the
12 program, which is Richard Smith, but
13 Anthony Curcio; is that correct.

14 MR. CURETON: Cureton.

15 COMMISSIONER FEERICK: Thank you.
16 Thank you for being with us.

17 MR. CURETON: Good Afternoon,
18 everyone.

19 Please bear with me, I'm the pinch
20 hitter. I'm going to do the best I can.
21 This young lady about three to my left, I'm
22 pretty sure she will correct me later on if
23 I do not serve the NAACP well.

24 My name is Anthony Cureton and on
25 behalf of Richard Smith, who is president

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2 of the New Jersey State conference, I stand
3 before you to talk about the issues
4 affecting Africa Americans, specifically in
5 the state of New Jersey. In my capacity, I
6 serve as the president of Bergen County
7 NAACP, and I serve as northern Jersey
8 regional rep. The NAACP is dedicated to
9 protecting an expanding the voting rights
10 of all citizens, especially low income and
11 communities of color who are
12 disproportionately impacted by traditional
13 voting hours.

14 Through the efforts of the New
15 Jersey State Conference, our organization
16 will afford to expand opportunities to
17 early in-person voting. We are highly
18 disappointed in Governor Christie for
19 vetoing senate bill S2364 that would have
20 added New Jersey to the other 32 states
21 that have some form of early voting. Senate
22 bill S2364 would have created a two-week
23 window for all voters to cast ballots at
24 designated polling places before the
25 election day.

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2 In addition, senate bill 2364 will
3 have allowed voting in 3 to 7 locations a
4 few weeks prior to the election. Polling
5 places that would have been open all week,
6 and allow Saturday and Sunday voting. By
7 vetoing senate bill 2364, Governor Christie
8 has joined the ranks of conservative
9 governors who have sought to limit access
10 to the polls and stifle votes. A solution
11 for these communities include ensuring
12 enough time in appropriate locations before
13 election day to cast a ballot.

14 Unfortunately, the New Jersey state
15 legislature did not garner enough support
16 to override Governor Christie's veto.

17 There are many benefits to early
18 voting. For starters, early voting has
19 proven to reduce wait time on election day.
20 In the 2012 election across the country we
21 witnessed waiting time in excess of an
22 hour. By allowing early voting over a
23 longer period of time, we can dramatically
24 reduce early -- the burden of long lines
25 and wait times for election day.

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2 In 9 states they allow early
3 in-person voting, 30 percent of the
4 electorate use early voting, proving its
5 popularity with voters. Another key benefit
6 of early in-person voting is to the
7 potential to increase turnout and expand
8 the electorate. This is especially true for
9 minority voters.

10 Although having a historical low
11 record of voter turnout in these
12 communities, in recent election we have
13 witnessed African American usage of early
14 in-person voting exceeding that of white
15 voters thanks to programs like the NAACP
16 Souls to the Polls. By vetoing senate bill
17 S2364, Governor Christie made it
18 increasingly difficult for African
19 Americans and other communities to reverse
20 their historical low record turnout to cast
21 a ballot. In vetoing the bill last year,
22 Governor Christie noted a major reason
23 being cost; however, the governor
24 instituted a \$26 million special election
25 four weeks prior to the existing statewide

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2 election. Those \$26 million could have
3 covered the cost of instituting early
4 in-person voting as well as an additional
5 two years of the process.

6 If you are familiar, we had New
7 Jersey State Senator Corey Booker run for
8 senator Laughtenberg's Senatorial spot. And
9 with that, Governor Christy decided to have
10 a special election. I would also like to
11 list that New Jersey is one of the more
12 than dozen states that continue to bar
13 those who are on probation or parole from
14 the ballot box. This is a policy that's
15 hard to justify. The fact that you've
16 committed a crime shouldn't have anything
17 to do with your right to vote. After all,
18 it doesn't alter the other fundamental
19 rights you have as a citizen.

20 We give felons their rights to
21 drive, right to own property, so why not
22 their right to vote. It is one thing to
23 have a stake in society. It is not just in
24 their interest to vote, it is also our
25 interest to fully integrate them back into

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2 society. It is reported that in New Jersey
3 alone there are 100,000 African Americans
4 men, who are disenfranchised because they
5 are currently on parole or probation. The
6 problem will only get worse because while
7 African Americans only make up 13.7 percent
8 of the population in our state, African
9 Americans make up 62 percent of those
10 currently incarcerated by the state. This
11 is why we strongly advocate for our
12 government and legislature to consider
13 lifting the voter restrictions for parolees
14 and probationers. It will not only
15 complement, but also strengthen the entire
16 reentry process.

17 The world we live in and the needs
18 of families today are different and more
19 complicated than when the laws currently on
20 the books were written. The lesson learned
21 from the tragedy of Hurricane Sandy gives
22 further credence to the need for early
23 in-person voting opportunities. Today,
24 there are more demands on citizen and we
25 need to ensure all communities have every

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2 opportunity to vote, not just on a random
3 Tuesday, but everyday throughout week. The
4 weekends, And yes, even Sunday after church
5 leading up to election day.

6 The right to vote is just that, a
7 right. When we take that right away from
8 the people, we have taken a piece of our
9 democracy and we further restrict the very
10 freedom in which our country was founded.

11 Thank you very much.

12 COMMISSIONER FEERICK: Thank you
13 very much. So I'll open to commissioners to
14 ask the panelists any questions they have.

15 COMMISSIONER CARTAGENA: Mr. Cureton.

16 MR. CURETON: Yes, sir.

17 COMMISSIONER CARTAGENA: Thank you
18 for your remarks. I'm especially glad that
19 you mentioned the way that felon
20 disenfranchisement works in New Jersey.
21 Because it is worse in New Jersey than it
22 is in New York, because even people on
23 probation aren't allowed to vote during
24 their probationary period. You superimposed
25 that with the fact that apparently New

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2 Jersey still probably has the highest
3 proportion in prison, in New Jersey prison
4 of persons with nonviolent drug offenses.
5 And then you really are devastating the
6 political power within both black and
7 Latino communities within the state. So I
8 really have one question for you, in two
9 different way, one is New Jersey is also
10 unique in that it is assembly, the state
11 senate gets elected from the very same
12 district. There is only 40 districts in the
13 entire state. Every districts elects 3
14 people. Effectively what we call
15 multimember fix. And therefore the reliance
16 on fair redistricting every ten years in a
17 place like New Jersey, color is everything
18 with respect to multimember districts. In
19 many ways, the slating process from what I
20 understand in New Jersey, the ability of
21 local parties to decide who is going to run
22 for which office, who is going vie for
23 which office, in particular the legislative
24 district because, again, you have one
25 senator, two assemblymen, for a total of

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2 three, dictates a lot of the politics
3 there, and I'm wondering if you think,
4 generally speaking, that the election of
5 African American candidates to either the
6 state senate or the state assembly is
7 commensurate with the number of voters of
8 African American descent in the state, and
9 can it be part and parcel of the way
10 election systems are structured.

11 MR. CURETON: I do believe, it is
12 primarily a the way the election system is
13 structured. You look at Bergen County,
14 which I speak for specifically, how they
15 redistrict in Bergen county, African
16 Americans have been down to three
17 communities, and those three communities
18 essentially may have allowed for the
19 election of those minorities. Outside of
20 that, there are limits to maybe less than
21 four percent of minority representation in
22 any of the electoral process, not just in
23 Bergen County. And I'm pretty sure that
24 exceeds beyond the state as well. That you
25 very well know.

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2 COMMISSIONER CARTAGENA: Thank you.

3 COMMISSIONER CHEN: I'll first ask a
4 general question for the entire panel. I
5 should tell you, at the severance of my
6 commissioners, I've been injecting this is
7 how we do it in New Jersey before you got
8 here, so I should give that time back.

9 I have a general question that I
10 think cuts across all the specific subject
11 matters you talk about, and it picks up on
12 what Dean Feerick was asking about, which
13 is the rate of registration and the way in
14 which New Jersey's voting system either
15 promotes or perhaps inhibits voter
16 participation in the way it administers its
17 voter registration period process.

18 In my experience, when I've done
19 voter protection work on election day, the
20 number one reason why someone is turned
21 away at the polls is they don't appear on
22 the poll books, so if I can ask a general
23 question and maybe each of you can address
24 it from the perspective of the
25 constituencies you came here to speak

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2 about, whether you find that the New Jersey
3 system of requiring 21-day advanced
4 registration is creating barriers --
5 unnecessary barriers? Are there solutions?
6 And a loaded question, I suppose, is New
7 Jersey even complying with existing
8 requirements on making voter registration
9 relatively pain free?

10 COMMISSIONER FEERICK: Take any one
11 of the questions.

12 MS. CICCONE: The 21 days is
13 actually fairly new. It was 28 days up
14 until 5 years ago, 6 years ago. I'm not
15 exactly sure, but I knew it used to be 28
16 days so they were all "wow, we are only
17 making it 21 days." People with with
18 disabilities, the 21 days can be very
19 problematic because, as they say, many
20 people, especially those with mental health
21 issues, they are transitory. They're moving
22 all over the place. So the idea that they
23 have to be in their place 21 days before
24 the ballot or before the election, register
25 within that time can be very challenging

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2 for people with disabilities. I know other
3 states can manage to do same day
4 registration.

5 I don't know why New Jersey can't,
6 other than it is institutional -- I mean,
7 I've talked to many county boards of
8 election people, "oh, we can't do that, How
9 will we know?" Well, other states do same
10 day registration. But it is institutional,
11 and I don't know if there is any lobbying
12 that's been to try to shorten the time or
13 get it to the point where it's only
14 same day registration

15 COMMISSIONER FEERICK: Thank you.

16 Kim.

17 MS. KEENAN: I did have a question
18 about the use of technology during the
19 campaign because my understanding is that
20 because of Hurricane Sandy, techniques were
21 used that had never been used before, and I
22 was hoping that you can elaborate on that
23 because I am always concerned when people
24 say we don't know where people are and we
25 can't find them and they have to be in this

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2 polling place that's right across the
3 street with my social security number. I'm
4 sure the IRS can find me right now with no
5 picture. Right? Pin point me at this very
6 second if they'd like. So I'd you to talk
7 some more about, you know, you talked about
8 the things that worked and the things that
9 didn't work, but certainly with the
10 hindsight of time, what things we might do
11 more of because I understand there were
12 some faxing, I understand there was some --
13 people could vote at any poll. It just
14 seems to me that we are making this harder
15 than it is, and the wheels have already
16 been made, at least in some other
17 jurisdictions. What expansive
18 recommendations would you make to make it
19 easier, a novel idea, easier for people to
20 vote?

21 MS. WEISS: Yeah. The problem with
22 the technology, honestly I think, is that
23 we are talking about government entities
24 here that don't have the budgets to have
25 the capacity, the electronic capacity, to

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2 deal the the thousands of people who would
3 use electronic means to vote if it were
4 permitted. So what Hurricane Sandy
5 demonstrated was that if you -- say the
6 mistake of tens of thousands of displaced
7 voters, I mean tens of thousands, anyone
8 who is displaced can vote by e-mail or fax,
9 but you haven't done anything to upgrade
10 infrastructure to enable people to vote,
11 everything will crash and it will crash at
12 8 in the morning. And that's what happened
13 and they could not get back up and running.
14 They just lacked the literal technological
15 capacity to work a system that they
16 implemented, and when you go to them and
17 they fix that, they say it takes money,
18 there is no money, right? You get into it
19 about that. And I think realistically
20 speaking we have to think about whether we
21 want to invest in voting systems that are
22 21st century voting systems, or whether we
23 are prepared to live with voting systems
24 that are 19th century voting systems, when
25 we have to. That's sort of where the

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2 technology is.

3 As to making it easier, I agree with
4 all of the proposals. I think if there were
5 early voting, you don't have as many people
6 trying to get through a narrow key hole on
7 election day. You can let them vote on
8 other days. It makes no sense not to have
9 early voting in my view. What you need is
10 to enfranchise people. I think the
11 registration system is also profoundly
12 problematic.

13 Dean Chen knows from the time that
14 we were at the Public advocate together
15 that the level of compliance with existing
16 voter registration requirement that you'd
17 be given an opportunity for voter vehicle.
18 You should be given an opportunity of
19 medicaid offices, that is extremely spotty.
20 And so there are countries in the world
21 that on your eighteenth birthday, they
22 register you. That's all. It's done. You
23 turn eighteen, you're registered. It isn't
24 clear to me why we have built that in the
25 systems that we have. They know who was

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2 born here, at least. They know who was
3 naturalized here. This is all information
4 that resides already in some government
5 office. Theoretically, if it were a
6 national will, there would be automatic
7 registration, right? So that's sort of an
8 ongoing conversation, I think, about what
9 we need? What are we doing? What is this
10 system? What's it for?

11 MS. KEENAN: Is it fair to say that
12 in you findings, both pro and con and
13 everything, that voter ID was not a problem
14 of getting people to vote after Hurricane
15 Sandy? In other words, nobody is worried
16 that when people did vote by these ulterior
17 means, that they weren't, in fact, who they
18 say they were.

19 MS. WEISS: There were spotty
20 requests for voter identification, but
21 there is no voter identification law in New
22 Jersey, and so let me repeat that because
23 some poll workers are unaware of it, there
24 is no voter identification law in New
25 Jersey. So what came up as people called in

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2 we said they are not allowed to ask you.
3 Because of course, people had walked out of
4 their homes leaving everything behind, they
5 weren't carrying their papers. So that
6 problem was a small problem during that
7 period. Not in an immense way.

8 MS. KEENAN: I just have another
9 question for Mr. Cureton, you talked about
10 how the governor's veto of the bill has
11 really hindered voting. And I was hoping
12 you can just give us a contrast of what it
13 looked like before and what it looks like
14 now.

15 MR. CURETON: Please, don't take
16 this personally, much hasn't changed.

17 MS. KEENAN: Right.

18 MR. CURETON: Again, this is another
19 step by the governor to disenfranchise
20 voters. Vetoing that bill to eliminate all
21 possibilities where there can be an
22 increased number of minority voting. And
23 was it intentional? I would say yes. My
24 philosophy I will speak about is the one
25 thing people don't want to have is what you

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2 have to chase after. In this particular
3 case he doesn't want to have early voting
4 because the numbers will, hopefully --
5 well, it has proven that the numbers have
6 increased, and there was sufficient
7 minority voter turnout. So I guess -- I
8 hope I'm answering your question.

9 MS. KEENAN: Yes.

10 MR. CURETON: We have to go for what
11 people want to happen. And that's something
12 that's been stemming for how many years.
13 You're preaching to the choir right now,
14 and I think the government recognizes that
15 and they approved that with special
16 elections.

17 COMMISSIONER FEERICK: Commissioner
18 Cartagena.

19 COMMISSIONER CARTAGENA: Just one
20 more question. Ms. Weiss, how are you?

21 MS. WEISS: Fine, how are you?

22 COMMISSIONER CARTAGENA: Good. I
23 know that the hurricane affected all people
24 in New Jersey equally. But by any chance,
25 did anybody analyze whether or not the

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2 problems that you just raised in voter
3 administration affect the people based on
4 either race, national origin, or income in
5 the numbers?

6 MS. WEISS: That's a very good
7 question. I have not seen any analysis that
8 broke down -- let me start with this, the
9 New Jerseyians incredibly voted at higher
10 than the national average in the 2012
11 election. So one week after the hurricane,
12 they are still beating the national
13 average. The voting rate in New Jersey
14 dropped slightly prior to elections, but it
15 was still higher than the national average,
16 even though thousands of people were living
17 in shelters and with relatives.

18 I haven't seen any breakdown of the
19 turnout data that compares the race
20 breakdown from 2012 with earlier
21 presidential elections. Someone may have
22 done it. If so, I haven't seen it, but I'm
23 going to guess, because I know what housing
24 data look like. Housing data showed that
25 poor people disproportionately lost their

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2 house, right? And that's because there are
3 pockets of the shore in Atlantic City,
4 Seaside Heights, there are various parts of
5 the shore where there are very high density
6 rental properties, and renters were the
7 last people to get help. And so I'm going
8 to guess, because so many were displaced,
9 that it would show more depression of low
10 income voting because of the higher levels
11 of displacement, but haven't seen any yet.

12 COMMISSIONER CARTAGENA: Thanks.

13 COMMISSIONER FEERICK: I'm going to
14 just -- I think we'll probably, unless the
15 commissioners wants to get a final
16 question, we probably have to go to the
17 next panel, but I want to thank members of
18 this panel very much for your
19 participation, and stay around if time
20 permits for you. Thank you.

21 The fourth panel is going to deal
22 with elections in New York. It is a
23 four-member panel. We'll start with DeNora
24 Getachew. Front and center.

25 MS. GETACHEW: Good Afternoon,

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2 commissioners and members of the audience.
3 Thank you on behalf of the Brennan Center
4 for the opportunity to present testimony to
5 the commission today.

6 The Brennan Center is a nonpartisan
7 law and policy institute that focuses on
8 issues of democracy and justice. Among
9 other things, we work to ensure fair and
10 accurate voting procedures and systems and
11 that every eligible American can
12 participate in elections. I am DeNora
13 Getachew, campaign manager legislative
14 counsel at the Brennan Center. In that
15 capacity, I lead our legislative and
16 advocacy campaigns in the states. This is
17 actually a new position for us as we work
18 to find ways, nationwide, to modernize our
19 voter registration system and to reduce the
20 influence of money in politics. The Brennan
21 Center works nationally, including here in
22 New York, to advance these rules.

23 As a Fordham law school alumni, I'm
24 incredibly honored to be testifying today
25 about a subject that I love while here at

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2 Fordham Law School. In my testimony today I
3 will present to the commission certain
4 problems experienced by New York voters and
5 offer commonsense solutions that have been
6 tested for how we can bring New York's
7 voting practices into the 21st century.

8 Specifically, I will address the
9 state's problems with long lines on
10 election day, it is an unreliable and
11 antiquated voter registration system. And
12 it's unnecessarily confusing ballots. The
13 commission's conversation today is
14 especially timely since New Yorkers no
15 longer enjoy any protections under Section
16 5 of the Voting Rights Act of 1965. The
17 overarching problem that New York faces is
18 that we suffer from very low voter turnout.
19 Any discussion of electoral problems must
20 be evaluated in the context of this.

21 In 2010, according to the United
22 States election project at George Mason
23 University, New York was the lowest ranked
24 state with respect to voter turnout in the
25 general election. An embarrassingly low

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2 36.3 percent of our voting eligible
3 population showed up to vote. In the 2012
4 general election, an election that we heard
5 had record turnout, New York ranked 46.
6 Looking back over the last decade, New York
7 consistently ranks towards the bottom of
8 the list when it comes to voter turnout.
9 Ranking 41st in 2008 presidential election
10 year, and 45th in 2004, also a presidential
11 election year. The first problem is New
12 Yorkers had to wait too long to cast their
13 ballots. New Yorkers are used to waiting in
14 lines especially during the presidential
15 election years when turnout may be higher.

16 As was noted in the past, other
17 jurisdictions lines were as long as an hour
18 on election day during the presidential
19 election in 2012. This can be attributable
20 to various causes ranging from shortages
21 provoked by a national disaster, to broken
22 down machines, to poorly trained poll
23 workers. There is simply not enough
24 flexibility in New York's voting system to
25 absorb such problems before major delays

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2 occur.

3 Early in-person voting relieved some
4 election day pressures. Early in person is
5 a voting solution that others have talked
6 about. It is one that allows for more
7 direct voter engagement, and allows voters
8 to visit an election officials office or in
9 some states satellite voting locations to
10 cast their ballots, without excuse, prior
11 to election day.

12 New York, unfortunately does not
13 allow early in-person voting. Instead,
14 state workers are required to provide an
15 accepted excuse before they can cast a
16 ballot in the absentee ballot, which places
17 another hurdle on busy complex lives that
18 we now face. Early in-person voting is
19 presently available in two-thirds of the
20 state. When it is implemented, it is hugely
21 popular and successful. And as the
22 presidential commission on election
23 administration recently noted, is that
24 reform that states should embrace because
25 no voter should have to wait in line for

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2 more than 30 minutes to cast their ballot.

3 The Brennan Center hopes lawmakers will
4 continue to prioritize instituting early
5 in-person voting in the remainder of this
6 legislative session.

7 The second problem I'd like to
8 discuss is that New York's Voter
9 Registration system is unreliable and
10 antiquated. Again, New York rates are a
11 dismal 47th in the nation in regards to
12 voter registration, with less than
13 64 percent of eligible New Yorkers actually
14 registered to vote.

15 Our system urgently needs reform to
16 get away from the paper-based system where
17 election clerks deal with mounds of paper
18 forms, submitted by voter up until the
19 registration deadline while also preparing
20 for election day. These forms often, even
21 when filled out or lost, not timely
22 entered, and are set aside to be dealt with
23 later and ultimately not dealt with.

24 Inaccuracies with voter registration
25 problems are problematic in their own

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2 right. What makes the system truly
3 unacceptable is that they contribute to
4 election day problems.

5 Every time a poll worker struggles
6 to look up a voter's record, we lose
7 election day efficiency. There is a
8 commonsense solution, New York needs to
9 modernize its voter registration systems. I
10 would like to highlight two ways that they
11 can do that. First, by implementing
12 electronic voter registration at designated
13 agencies, and second by implementing online
14 registration. Again, reforms of the
15 presidential election commission recently
16 noted as the way that we should going. We
17 should be making our election systems
18 reflect the way that voters interact with
19 the system in their everyday lives.

20 New York deserves partial credit, at
21 least I will give them, for doing some of
22 that. So today, New York first has
23 implemented a partial online system through
24 the state department of motor vehicles
25 website, so if a voter goes on that

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2 website, and they have a driver's license
3 or permit or state issued ID, they can
4 register to vote online and update there
5 voter registration record.

6 Second, New York again, as I said,
7 presently has some component of electronic
8 registration at DMVs. So that, practically
9 speaking, if I am someone who is
10 interacting a transaction business at the
11 department of motor vehicles, I can update
12 my voter registration record while they are
13 doing so when prompted by the employee. So
14 this is, again, a positive step they have
15 taken to update and modernize our election
16 systems, but they need to go further. In
17 particular, to think about how to allow
18 electronic registration at all public
19 service agencies around the state to
20 technology that is already in place at the
21 DMV, and also to extend online registration
22 with those with other forms of ID besides a
23 state issued ID.

24 Finally, the third problem I want to
25 talk about very briefly is that New York's

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2 ballots are confusing and disenfranchise
3 voters. New York, and I feel so negative
4 talking about New York's problems, sorry,
5 New York, has notoriously confusing
6 ballots, which is due in part to the states
7 full face ballot requirement. In order to
8 comply with the statutory requirement,
9 election officials have to substantially
10 minimize the ballots font size to be able
11 to put all the candidates and questions
12 that might be on the ballot on any given
13 year on the same page. This can create
14 major headaches for voters, especially
15 older voters, those within impaired vision,
16 and low income citizens who may have
17 trouble reading small text on the ballot.

18 Another result of an ill constructed
19 ballot is that voters may improperly
20 complete their ballots, including by
21 overvoting. An overvote occurs when a voter
22 selects too many candidates for an office
23 and none of their votes end up counting.
24 Overvotes can happen when ballots are
25 improperly designed, and present the voter

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2 with a confusing choice about the
3 permissible number of candidates they
4 should select for a particular office.

5 I would note that when an election
6 is run effectively and efficiently,
7 overvotes should be very close to zero.
8 Just to give you a snapshot of what that
9 means, in 2010 the overvote rate approached
10 .4 percent for the governors race which was
11 about 20,000 votes being lost in that
12 contest alone. That number was closer to
13 50,000 or 60,000 overvotes. Again, that
14 could be attributable to poor ballot
15 design, which again can affect a crucial
16 election. If we look here at the New York
17 City experience, there were over 6500
18 overvotes cast in the 2010 gubernatorial
19 election. Worse in last years general
20 election, here in New York City, there were
21 approximately 7900 overvotes. There is
22 another simple and commonsense solution for
23 this problem. As the presidential
24 commission noted earlier this year in its
25 report, ballots should be well-designed and

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2 simple to read and understand. The New York
3 State legislature should heed this
4 recommendation and reconcile all of the
5 statutory ballot requirements to make
6 ballots more user friendly, easier to read,
7 and reduce the incidents of overvotes. This
8 would avoid voter confusion on election
9 day, reduce lines at the polls, and ease
10 the burden on poll workers.

11 I would just note there is currently
12 a bill pending in the New York State
13 Assembly, the voter friendly ballot act of
14 2013, which would accomplish this. And so
15 we hope that the state legislature would
16 take steps to implement that bill.

17 In conclusion, New York suffers from
18 abysmally low voter turnout, and this
19 problem exacerbated by -- again with the
20 negative words -- antiquated and confusing
21 voter registration and election systems,
22 which are in desperate need of reform. But
23 there are commonsense and proven ways to
24 bring our states election systems into the
25 digital age, which will also hopefully

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2 increase voter turnout and engagement.

3 Implementing early voting in person would
4 help aid in election day congestion at the
5 polls. The state should eliminate its use
6 of paper when registering at the DMVs or
7 other public service agencies, and finally
8 the state must prevent overvotes and other
9 problems with ballot usability. The
10 problems are known, the solutions are
11 within reach. Now we need elected leaders
12 to embrace and prioritize modernization.

13 I thank the commission for the
14 opportunity to testify, and considering our
15 findings and recommendations, I look
16 forward to answering any questions you may
17 have.

18 COMMISSIONER FEERICK: Thank you very
19 much. It's very nice to see a former
20 Fordham student doing such important work.
21 I'll allow the next speaker.

22 Susan, are you ready.

23 COMMISSIONER DUKES: Yes.

24 COMMISSIONER FEERICK: Susan Lerner.
25 Common Cause. The most distinguished

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2 citizen of this state.

3 MS. LERNER: Thank you, but no. And
4 I apologize for not being sufficiently on
5 top of things to have gotten in my
6 testimony in advance.

7 But really, my testimony is
8 encapsulated with one basic idea and that
9 is that while we are all acutely aware of
10 the very overt voter suppression that we
11 are seeing in so many states around the
12 country, states like North Carolina and
13 Ohio, that are rolling back the kind of
14 reforms that DeNora was just talking about,
15 that we don't have this rollback in New
16 York.

17 I think we are overlooking an
18 important aspect that of election
19 administration that ends up being what I
20 call soft voter suppression, and that is
21 the result of an incompetent or very
22 disorganized election administration,
23 particularly in our large cities. We see
24 this very frequently at polling place in
25 Brooklyn with large minority populations.

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2 We see this frequently in polling places on
3 Long Island, in Suffolk and in Nassau,
4 where you have a great density of minority
5 voters. And the elections are just run in a
6 very inefficient slipshod fashion. It has a
7 result of creating long lines for
8 presidential elections. It has the result
9 of placing obstacles in the way of voters,
10 non-English language voters, voters who
11 need assistance or just everyday voters on
12 your less congested election cycles, and it
13 ultimately has a chilling a effect on the
14 publics desire to participate as the overt
15 attempts to discourage entire populations
16 from voting. That comes from efforts like
17 rolling back early voting or setting up
18 voter ID, because nothing is more
19 discouraging to a person who is not heavily
20 invested in participating in our system.
21 But for one reason or another, deciding
22 that they are going to take the time to
23 vote in between their two jobs, where they
24 know that they have to pick up their
25 children in half an hour or 45 minutes, and

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2 they get to the polling place and the line
3 is out the door, or they get to the polling
4 place and nobody seems to be able to find
5 their name, and they get sent to the wrong
6 table, and they get the runaround, and they
7 run out of time. The impression that's
8 creating in the minds of that voter is that
9 it is not worth investing the time in the
10 future, and I believe that this has an
11 suppressing effect in many urban districts
12 just as much as if there were a malfeasant
13 desire to discourage people from voting.

14 So while we focus on the very overt
15 actions, which are designed to discriminate
16 against voters which are designed to
17 discourage voting, I think we also have to
18 commit ourselves to working for a better,
19 more efficient election administration,
20 well-funded and professional, in our
21 cities, where we have large concentrations
22 of minority voters, non-English voters, and
23 just ordinary working people who are
24 discouraged from voting because of a very
25 inefficient, underfunded system, and that's

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2 basically the message that I have in my
3 written testimony and the point that I
4 wanted to make today.

5 COMMISSIONER FEERICK: I want to
6 thank you very much and let you know once
7 the panel is finished, the commissioners
8 will have some questions to ask the panel
9 so if can stay around for a while, you'll
10 get some questions.

11 MS. LERNER: Delighted to stay
12 around. Thanks.

13 COMMISSIONER FEERICK: Thank you.

14 Dan Kolb, co-chair to the state the
15 state bar committee to which we made
16 reference and a distinguished member of the
17 Davis Polk law firm and many other titles.

18 MR. KOLB: Obviously, I'm very
19 pleased to be able to appear before the
20 state bar's special committee on voter
21 participation. If I may, Mr. Chairman, can
22 I ask that I have the opportunity to
23 follow-up on another witness, Catherine
24 Weiss, you asked whether there was a more
25 detailed report that was available with

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2 respect to disaster relief, and having
3 participated with her in that effort, I
4 would like to hand it up, make it part of
5 the record.

6 COMMISSIONER FEERICK: Please.

7 MR. KOLB: Thank you. The state bar
8 special committee on voter participation
9 was formed by a year and a half ago because
10 state board president Seymour James
11 recognized the appalling voter
12 participation rate in New York, which has
13 been the subject of comment several times
14 by witnesses here, it seems like we all
15 have a slightly different perception of how
16 bad that percentage of voter participation
17 is. Our figures were 47th and 48th among
18 the states. It appears that some have us as
19 high as 45. Whichever one of those you use,
20 what's been happening over the last
21 15 years is New York has fallen back
22 consistently as compared to the other
23 states, dropping below the national
24 average.

25 At the same time, it's notable that

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2 the others state that have been adopting
3 changes in their voting laws, modifications
4 such as early voting, improvements in their
5 registration systems such as using online
6 registration. They've been making changes
7 and New York has not, and to just echo a
8 couple of the previous speakers, you don't
9 necessarily have to go out and do negative
10 things to suppress the vote or reduce the
11 vote. You can also do nothing. And I'm not
12 suggesting there is an overall campaign to
13 do nothing in order to discriminate, but
14 nothing has produced the low voter turnout
15 that was the reason for formation of the
16 committee.

17 Now, very briefly, you've already
18 heard the committee head on it John Dunne,
19 who was one of the national commissioners
20 and who was presiding here. I'm not sure it
21 came through clearly that John Feerick was
22 also on our committee. I would insert it
23 was a great pleasure for me to serve with
24 both of them, and it is important that the
25 committee was a very balanced committee.

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2 President James set out to select ten
3 republicans, ten democrats, and one
4 independent, John Feerick. Two co-chairs,
5 John Dunne and myself, were from opposite
6 parties, and unlike our Congress, our
7 committee was able cooperate and function
8 and reach conclusions, do it to the extent
9 that all of our recommendations were
10 unanimous, save one, where we had one
11 dissent, and I certainly thought, as we all
12 did, that dissent was very responsible. So
13 our view was that if you are going to
14 increase voter participation, the way to do
15 it was, number one, and most important,
16 increase registration. And as John Feerick
17 mentioned earlier, I'm a the speaker who's
18 come along and talk a little bit about that
19 difference.

20 In New York, the best percentage of
21 total population voting in the last several
22 elections has been about 57 percent. Of the
23 registered voters almost 90 percent, 89
24 point something percent have voted in a
25 number of major elections, and if we follow

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2 conventional wisdom, increasing
3 registration will certainly increase voter
4 participation. Those statistics suggest
5 that's the case in New York, and so we put
6 our primary emphasis on increasing
7 registration.

8 The first recommendation for
9 increasing registration was to do what the
10 Brennan Center speaker has just articulated
11 which is to see to it that there is online
12 registration available, and second to
13 permit voters when they interact with any
14 state or federal agency to be able to
15 register electronically. The success at the
16 DMV is already evidence, as you've already
17 heard, that was a major step forward. But a
18 lot of people in New York don't even have a
19 driver's license because they don't go to
20 the DMV, and they don't know about the
21 online registration itself. So we highly
22 recommend again, it was unanimous, that
23 there be registration available online, and
24 any time you interact with an agency to be
25 able to register there electronically.

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2 Experience in other states suggest
3 that will drive up registration
4 immaterially, and by the way, specifically
5 will drive up registration among younger
6 voters, the lowest registration rate is
7 between people between 18 and 24 years old,
8 and obviously younger voters tend to find
9 themselves comfortable with
10 online-anything. And records in other
11 states have suggested that registration in
12 that population would jump very
13 substantially.

14 Two other principle recommendations,
15 register, pre-register, people 16 and
16 17 years old. There is really no objection
17 that I've heard to that, but that is our
18 recommendation. And then we know from the
19 record in other states that it will
20 substantially increase voting participation
21 and registration first, if one is allowed
22 to register either on election day or in
23 same day registration where there is early
24 voting.

25 In New York, our antiquated system

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2 requires that there be a constitutional
3 amendment to achieve that, and our
4 committee recommends that although it is a
5 long process, that an effort be made to
6 permit registration both on election day
7 and on early voting days. Now the second
8 emphasis we place with the second major
9 point we focussed on was improving the
10 voting experience for voters. So that has
11 been already mentioned by prior speakers,
12 the voters will feel comfortable coming
13 back. They'll vote. They'll have a good
14 experience. They will come again. They
15 won't suffer through a trial, which
16 unfortunately has been the case.

17 We have recommended early voting.
18 It's the one issue where we had dissent. We
19 have done it recognizing that it is hugely
20 popular in other states, that it is a great
21 convenience for many voters, but we did not
22 recommend that a voting period is long, as
23 is typical in other states, be used. We
24 very specifically recommended that no more
25 than one week should be the period, and we

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2 got there in discussion because in our
3 committee, because the people who objected
4 to early voting, stressed cost, stressed
5 the fact that you couldn't mobilize voters
6 as efficiently, and you would lose if you
7 had a very long period, the sense of
8 community spirit that would come normally
9 on election day, it would shorten the
10 period. We made sure we were recommending
11 that there would be at least the
12 opportunity for any voter who was off on
13 any day to be able to vote, and certainly
14 weekend voting, but we stuck to one week,
15 which would limit cost, would probably
16 permit a better selection of polling
17 places, and we have not really heard any
18 reason why that wouldn't be an excellent
19 compromise between those who don't want
20 early voting at all and those who do.

21 As already has been mentioned, the
22 improvement of the professionalism of poll
23 workers would be a huge advance. We've
24 heard now from how many speakers, I think
25 maybe poll workers training and poll worker

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2 funding has been mentioned by more speakers
3 than any other points, and there are
4 numerous changes to improving the shifts,
5 improving the education, improving the
6 amount of money they are paid. The
7 selection of state workers, not people who
8 are not state workers. Including more
9 students. Great many things that can be
10 done to professionalize that force and
11 should be done. Ballot design is well on
12 its way, I think, largely thanks to the
13 Brennan center because they have been
14 leading the band on that and done a great
15 job in ballot. Anybody who tried to read
16 the ballot on the last election in New York
17 will know why it is important to have that
18 change.

19 And, finally we recommended a change
20 in the law with respect to deceptive acts
21 in New York. There is a pretty good statute
22 with respect to the deceptive acts in New
23 York. There is one notable problem though:
24 It only applies to primaries. Now nobody
25 has explained to me, I'm sure there was

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2 some reason why it wouldn't apply to
3 elections, but we've recommended that that
4 change be made. So now, overall, there is
5 one more point, to change these laws to do
6 things like direct there be changes to the
7 poll worker training and so forth, and not
8 funded is not going work. Unfunded mandates
9 don't work, and so a very strong
10 recommendation of our committee is that the
11 funding be there so that this can be
12 accomplished.

13 And Mr. Chairman, we ask that our
14 report be received as part of the record.

15 COMMISSIONER FEERICK: Received. And
16 thank you.

17 MR. KOLB: And for anybody
18 interested in our report, it is on the
19 tables out there. Thank you very much.

20 COMMISSIONER FEERICK: Thank you very
21 much. And I just would note that you and
22 Senator Dunne at the end of the work, the
23 admiration of the whole committee. There
24 was no dissent. What a great job you both
25 did.

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2 MR. KOLB: Thank you very much.

3 COMMISSIONER FEERICK: A final
4 panelist is Jeff Wice, Jaeckle Center at
5 SUNY Buffalo Law School and Sandler Reiff,
6 Young & Lamb, and after that final
7 panelist, I will go to the commissioners as
8 to whether they have any questions and
9 there will be an opportunity for public
10 testimony if there is anybody who would
11 like offer some public testimony.

12 MR. WICE: Thank you. My name is
13 Jeff Wice and I am a fellow at the SUNY
14 Buffalo Law School, I'll touch on my role
15 there before I close my comments.

16 I've also been a practicing
17 redistricting lawyer for many years, mostly
18 in New York State, and I'll use my
19 remaining time here to talk about the
20 redistricting Section 5 experience in New
21 York State and why the Section 5 Voting
22 Rights Act was a very key tool here in New
23 York.

24 In preparing my comments for today,
25 I took a look back at a 2006 report that

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2 Juan Cartagena put together on the history
3 of the VRA in New York from the 1960s to
4 2006, when the VRA was last reauthorized.
5 I'm going to try to use my time to pick up
6 on what's happening since then. That I
7 refer you to Juan's report because it is
8 still very relevant today in that
9 redistricting that ended last year relied a
10 lot on the history of the last ten years,
11 which was quite well covered in that 2006
12 report.

13 After the Shelby decisions and the
14 introduction of the Sensenbrenner bill, it
15 is noted that only four states will still
16 be covered under the formula under the
17 methodology in the congressional
18 legislation. And people always wonder,
19 well, why is New York covered. It is not
20 Alabama. It is not Mississippi. The fact is
21 that the Voting Rights Act in Section 5 has
22 been a key tool in New York to protect
23 minority voting rights and that even today
24 in 2014, minority vote dilution is still
25 very relevant throughout New York and most

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2 parts of New York City. I know our first
3 panel touched on part of that earlier this
4 afternoon. I'll try to use some data to
5 show you the numbers that were developed
6 last year during the New York City
7 councilmanic redistricting.

8 Before I do that, just a few
9 instances of where Section 5 is important
10 in New York. In 2010, the New York
11 legislature enacted a law that required the
12 reallocation of state prison populations to
13 inmate homes of record prior to
14 incarceration. That essentially
15 reallocated, I think it was about 50,000
16 inmates, mostly in upstate prisons, back to
17 their known identifiable homes of record,
18 and usually in cities in downstate. After
19 that bill was signed by then Governor
20 Paterson, it had to go to the justice
21 department for preclearance, which happened
22 rather quickly. But that when the
23 legislature itself, the Latfor task force
24 that works for the legislature to develop
25 redistricting plans, dragged its feet,

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2 especially the part of the state senate, a
3 majority, there was fear that the
4 reallocated prison data wouldn't be used.
5 That the senate would not, in fact, use the
6 reallocated data to draw the 2012
7 redistricting plan. Had it not been for the
8 concern that the justice department would
9 reject the senate lines and the assembly
10 for failure to use the readjusted data, I
11 don't think the law would've been
12 implemented.

13 Section 5 was there in place to
14 ensure that a law that was precleared by
15 the federal government cannot be undone
16 simply because the senate republicans
17 challenged it in court and lost. They
18 thought it was unconstitutional, but they
19 realize the bigger ball game creating the
20 63-member senate plan, that's in place now,
21 would have never have been precleared. So
22 that was a very important reason that
23 Section 5 was needed in New York.

24 Last year, I offered service counsel
25 to the assembly and the senate over four

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2 different cycles of redistricting. So I was
3 part of that have process on the inside.

4 Last year, I was counsel to the New York
5 City councilmanic districting process, and
6 I'm going to read to you some of the
7 results that our research demonstrated as
8 we drew the 51 council districts.

9 Essentially, we retained a nationally known
10 expert, Dr. Lisa Handley, to conduct the
11 traditional Thornberg versus Gingles voting
12 anylysis where you look at minority vote
13 dilution, district by district, ED by ED,
14 and found that of the 19 districts in the
15 benchmark, in the 2003 city council plan,
16 that those districts had to be maintained,
17 that there was still significant levels of
18 racially polarized voting throughout New
19 York City, and it required these districts
20 to be redrawn. We found that black voters
21 usually supported the same candidates.

22 Hispanic voters often supported the same
23 candidates. And Asian American Voters often
24 supported the same candidate. But in
25 different ways over different times.

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2 Analyses were done in of the 2008
3 presidential primary when Barack Obama and
4 Hillary Clinton faced off. We looked at the
5 mayoral election in 2005, where an Hispanic
6 candidate ran. In 2009, we had Mayor
7 Bloomberg running again, to see what the
8 voting patterns required, so that the
9 analysis that was run show that you still
10 do have significantly higher levels of
11 polarized voting to require that those
12 districts be maintained in Section 5.

13 In redrawing the plan in Brooklyn,
14 we also found that we can create what we
15 called an opportunity district in South
16 Brooklyn, where a minority candidate wasn't
17 guaranteed of winning but could win. I
18 think I recall a minority candidate
19 actually did win that race, but the numbers
20 show that President Obama did not carry
21 that district in the primary in 2008, so
22 the numbers still count. They are still
23 relevant to show that polarized voting is
24 still alive in New York City and that needs
25 to be faced. Without Section 5, I fear if

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2 its left to the politicians alone, most of
3 whom I worked for, we'll find out in 2020,
4 unless we have the kinds of protections
5 that the VRA provided.

6 I was also involved as Fred
7 Brewington and Randy McLaughlin referred to
8 earlier in some suburban lawsuits under
9 Section 2 of the Voting Rights Act. And
10 what do you do in the post-Shelby world? As
11 part of the Favors case, challenging the
12 State Senate which is still before the
13 Eastern District Federal Court, there were
14 two parts, two intervention motions that
15 had been dropped. One in the Bronx for the
16 failure to create an Hispanic district, and
17 one in Nassau County for the Failure to
18 create, the essential corridor, a minority
19 district where the African American and the
20 Hispanic population was divided into five
21 separate districts, but because of the
22 failure to have the kind of sufficient
23 data, especially for the growing Hispanic
24 population in Nassau, those two -- the
25 Senate challenge was withdrawn. The Bronx

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2 challenge was withdrawn, and the case that
3 I brought against the Town of Hempstead
4 last year for the failure to create a
5 second minority town council district was
6 withdrawn for failure to have good data.

7 So I'm going close by saying that my
8 role at Buffalo Law School, we are creating
9 what we are calling the New York State
10 Democracy Clearinghouse, which is an effort
11 to gather, catalog, have available for the
12 public by internet-means every
13 redistricting plan, law and tenure voting
14 history for New York's counties, towns and
15 cities, hoping that kind of information,
16 and which the courts look to when you have
17 redistricting and the other kinds of
18 election law challenges will have access
19 to.

20 One of the hardest things to do in a
21 costly federal court challenge is to scurry
22 for the data at the last minute to see do
23 you have a case or not. So this effort is
24 just getting underway. We hope we'll be
25 successful. You are one of the first to

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2 hear of it here. With that, I'll close and
3 thank you very much.

4 COMMISSIONER FEERICK: Thank you
5 very much, and I would just note that that
6 particular effort is worthy of recognition
7 by the bar of the state. It is really
8 terrific.

9 MR. WICE: We are finalizing our
10 plans and moving forward and we'll be in
11 touch.

12 COMMISSIONER FEERICK: Thank you
13 very much. It is now an opportunity for the
14 commissioners to put questions, if they
15 have, to the distinguished panelist.

16 COMMISSIONER DUKES: Hazel Dukes,
17 just let me express my gratitude being here
18 in New York to all of you. Susan, you
19 weren't here early when many others gave
20 their testimony about the special election.
21 Raised really some opera house from our
22 friends across the river, New Jersey. They
23 had not heard of that, one --

24 COMMISSIONER CHEN: We have other
25 problems.

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2 COMMISSIONER DUKES: I want to
3 express my gratitude. I was telling my
4 general counsel here the kind of work we've
5 able to do here in New York throughout the
6 state is because of the collaboration and
7 service that you all have given us, and I
8 think it has been expressed to this
9 commission and to you that it is right that
10 all citizens should vote and have that
11 right.

12 We have a lot of work to do here to
13 see that some of these bills are passed in
14 the city and in the state, and I think the
15 commission, when I spoke to Melanie, doing
16 some of this preparation, I said to her
17 that a lot of people think that because we
18 are in New York, New Jersey, Connecticut,
19 we don't have problems, I hope today that
20 the recording will show while we don't have
21 what Ohio and the voter suppression, we do
22 have voter suppression here when we got
23 1.8 million people without representation
24 because the governor would not call a
25 special election.

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2 Governor Christy called it because
3 he didn't want African Americans and
4 Latinos to come out during his election, so
5 he was smart enough to do it. There is no
6 reason here. Susan and I stood together on
7 the steps of City Hall. There was no reason
8 for us not to have a special election and
9 those people be disenfranchised. So I think
10 that this hearing, when they go back, the
11 Lawyers' Committee will see that, yes, the
12 Northeast region should still need prodding
13 the will to make voting a right for all its
14 people.

15 COMMISSIONER FEERICK: Dean.

16 COMMISSIONER CHEN: Let me thank all
17 the members of this panel, and of course
18 the previous panelist, for their testimony.
19 I found this today to be extremely
20 enlightening. If I can, maybe I can get
21 away with two questions generally that is
22 posed to anyone who would care to answer.
23 The first is we've heard it from a number
24 of you and previous panelists that the
25 problems imposed by antiquated registration

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2 systems, and I can, again, lend some
3 credence to that from experience across the
4 Hudson. In 2006, under HAVA, every state
5 was required to create a statewide voter
6 registration system, and I am interpreting
7 your comments, but I do not want to put
8 words in your mouth if you have to
9 follow-up, that this does not solve the
10 problem. I can say in New Jersey that is
11 certainly not the case. In some measure,
12 because there are frankly turf wars between
13 the chief elections official and county
14 clerks and commissioners of election as to
15 who gets to put what into the statewide
16 voter system. That has maybe rendered it
17 not the model of efficiency we were hoping
18 for.

19 The second general question, and I
20 hope this does not seem like a rhetorical
21 one, but which I think has been the
22 undercurrent of much of the discussion
23 here, is in light of the fact that Shelby
24 County has effectively deprived us of the
25 protections of Section 4 and Section 5, all

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2 of us are asking what can we still get out
3 of Section 2. Again, not to put words in
4 your mouth, the undercurrent I am hearing
5 is that Section 2, if it is all we got,
6 we'll make the best of it, is insufficient
7 given the burden it places on voting
8 advocates to make the cases as opposed to
9 the Section 5 process which obviously the
10 burden was flipped the other way.

11 So if anyone has any reflections on
12 that very general comment, that would be
13 very grateful.

14 MS. GETACHEW: So speaking to your
15 first question, I think that we all thought
16 that the Help America Vote Act would be the
17 promise, and having the statewide voter
18 registration database would solve some of
19 our problems. But unfortunately, as I'm
20 sure Susan can attest to this, at the time
21 I had been working at the state and
22 local -- good government work -- and New
23 York was drag, kicking its feet in order to
24 comply with the requirements of HAVA, and
25 while we have made progress as it relates

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2 to having such a database, to the extent
3 that our voter registrations systems are
4 not modernized and are not consistent with
5 voters being able to access that system, and
6 make sure that information is current and
7 accurate in that system, we still have the
8 same problems we had in the past.

9 COMMISSIONER CHEN: Can I ask a very
10 specific question. In New Jersey today, if
11 a voter wants to see whether he's
12 registered in the SVRS and what the
13 informations is, can the voter do that
14 online?

15 MS. LERNER: Yes, here in New York
16 you can. You can check the registration
17 database through the state board of
18 elections website and for the larger
19 jurisdictions like New York City. You also
20 can access that information online, but the
21 sort of turf war that you were talking
22 about in New Jersey, I'm sorry, we are past
23 masters of that in New York. It got nothing
24 on us. And basically it is a fight between
25 the counties, with New York City always

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2 saying that why should we listen to anybody
3 telling us that people moved out of New
4 York City. We should go first. And so the
5 communications back and forth between the
6 counties have not been productive in
7 ensuring that the database is accurate. In
8 major part, I believe, because of the
9 problems with the New York City board of
10 elections.

11 Some of the other counties do a much
12 better job of communicating among
13 themselves, and removing duplicates or
14 people who are deceased. New York City is
15 sui generis, but not in a good way.

16 MR. KOLB: It is the case that the
17 statewide database doesn't solve all the
18 problems, but I think it is important to
19 recognize that it does hold an advantage if
20 we register online, that it would be much
21 easier to then have a voter move, register
22 for the next election. That's something
23 they move between counties or within the
24 state, too far because it doesn't serve it.
25 But with the statewide database, it could

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2 be done if we are registered online all
3 over the state.

4 MR. WICE: Two quick comments, one
5 problem in New York, I found working in so
6 many county boards of election here in New
7 York, every county board has one
8 democratic, one republican commissioner
9 outside of New York City where it is
10 larger, but that is designed to fail
11 because unless the democratic and
12 Republican commissioners both agree on the
13 simplest things as to where to put the
14 paper clips, you are not going to see any
15 forward movement. On the post-Shelby
16 decision, what can be done, on my effort to
17 create a clearinghouse is one part of it,
18 but in the Sensenbrenner bill there is a
19 one point mandate, it is a good one, that
20 states what the localities can do. Whenever
21 any change to a voting law is enacted, it
22 has got to be made public so that people
23 know about it. That's a very key point and
24 one of the best things I've seen in the
25 bill that is otherwise not one of my

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2 favorite mandates. It is a pretty good one.

3 COMMISSIONER CARTAGENA: I have to
4 apologize to my commissioners, my fellow
5 commissioners here, Dean Feerick, that I
6 will have to leave very soon. I have a
7 commitment across the river. We have been
8 talking about across the river for a while.
9 And unfortunately I won't be able to stay,
10 but let me just add this, this was an
11 excellent panel. Ms. Getachew, your
12 analysis of where we stand vis-à-vis the
13 rest of the states was even eye opening to
14 me. I had no idea that we're nearly last or
15 nearly last on virtually every indicator,
16 and that's a sad state of affairs for New
17 York.

18 Mr. Kolb, the fact that the bar
19 association and the association of lawyers
20 is taking on tradition of the wonderful
21 work that the lawyers will have to play for
22 the respect and protection of civil rights,
23 and human rights and constitutional rights.
24 It is embodied in all of the work that you
25 have done in this particular report and I

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2 thank you.

3 Susan, your clear enunciation, of
4 the professionalism that's required of the
5 New York City board of elections could not
6 have been stated any clearer. And I thank
7 you for all that work.

8 And Jeff, I really thank you as
9 well, and not because you cited my report
10 from so many years ago, you put on the
11 record something that we hardly ever talk
12 about enough, and that's basically
13 polarized voting. We forget that
14 unfortunate reality of the United States is
15 that individuals often use race as a cue to
16 decide who to vote for, and it is often a
17 feature how structures are to deny and
18 suppress minority voter rights. I'm glad
19 you put that on the record. That is a very
20 important.

21 Thank you Mr. Chair, and I thank all
22 of you.

23 COMMISSIONER FEERICK: Thank you very
24 much. Great to have you serve with all of
25 us.

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2 Any other questions to the panel,
3 Commissioner Margaret?

4 COMMISSIONER FUNG: Yeah, actually,
5 it was mentioned earlier by Catherine
6 Weiss, the notion of automatic
7 registration, is that you turn 18 or
8 perhaps you can preregister at 16 or 17.
9 Why isn't -- would you support automatic
10 registration to avoid many of the problems
11 that otherwise have come up in terms of
12 promoting.

13 MR. KOLB: I'm sorry, I didn't hear
14 the question. I'm sorry.

15 COMMISSIONER FUNG: Whether you
16 would support automatic registration, when
17 someone turned 18, they are registered to
18 vote.

19 MR. KOLB: That would be a natural
20 follow-up to having them register at 16.
21 That would be the idea. They already
22 preregistered and obviously many young
23 people are seeking their driver's license
24 in that period. You register them right
25 there. Then they are registered for good,

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2 and frankly that's the place where the
3 greatest fault lies in terms for total
4 registration, and they did the same thing
5 for the online registration, obviously
6 young people -- Arizona there is an
7 astronomical increase once they went online
8 among the younger voters registering.

9 MS. LERNER: I think ultimately
10 universal automatic registration is where
11 we are going to end up. As we transition
12 further and further away from the
13 historical roots of voter registration as
14 such an effective suppression tool. It is
15 not something that we talk about frequently
16 because here in New York, we are so far
17 away from any modernization that it feels
18 like we would be putting the cart before
19 the horse to be arguing for automatic
20 universal registration, but I know that one
21 of the democratic appointees to the state
22 board of elections, Doug Kellner, speaks
23 when he has an opportunity to speak about
24 registrations as the ultimate goal is that
25 we should should just stop with this

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2 halfway measures modernizing this or
3 modernizing that and go straight to
4 automatic universal registration. Which I
5 certainly support.

6 MR. KOLB: If I can just add so that
7 the record is clear that it is much less
8 costly to register voters that way and much
9 more accurate. It is just undeniable that
10 those advantages exist.

11 MS. GETACHEW: And that it makes it
12 easier to track voters when they move. The
13 portability component is already built into
14 that. I think part of what we don't
15 remember in a state like New York where the
16 population is so transient, New Yorkers,
17 and especially New York City residents move
18 all the time, and to the extent that they
19 are not interacting with government
20 agencies when they do that, when they move,
21 we often lose those voters and have no
22 records that Susan talks about that are out
23 of date and may reflect either dead voters
24 or voters who are no longer residents of
25 the district, and so having a system that

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2 already has in place all the qualified
3 registered voters only simplifies that
4 aspect.

5 COMMISSIONER FEERICK: Any other
6 questions?

7 (No response)

8 COMMISSIONER FEERICK: I want to
9 thank the panel very, very much for your
10 participation. We reached the point in the
11 program where if there is anyone here who
12 would like to offer public testimony, you
13 have the opportunity to do so. I have one
14 card, Julissa, please come join us.
15 Gutierrez. If I read the writing correctly.
16 Come on down. I'll give you an opportunity
17 up on the stage. Take your time.

18 In addition to your name, your
19 organization, I want to be sure I have -- I
20 couldn't READ one letter on the card.

21 MS. GUTIERREZ: Good afternoon.
22 Julissa Gutierrez with NALEO Education
23 Fund, and based here in New York City.
24 NALEO Educational Fund is the National
25 Association of Latino Elected and Appointed

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2 Officials. We are a national nonprofit
3 dedicated to nonpartisan civic engagement
4 from citizenship to public service. And it
5 is a pleasure to be here to be able to
6 speak during this time, and really to
7 address some of the not only
8 recommendations, but resources and
9 highlight them in which we've been able to
10 provide to the community here in New York
11 and the tri-state area, but across the
12 country in which is something that I would
13 recommend that we also highlight the lack
14 of and the need of that.

15 Since 2008, we have invested
16 significant commitment and energy in the
17 NALEO Educational Fund and partners to
18 reach Latino voters and provide them with
19 the information to navigate the voting
20 process at the state, local and national
21 level. We have been, and are once again
22 intimately involved in efforts to
23 reauthorize and strengthen federal civil
24 rights perceptions and elections as well.
25 Our experiences in research findings from

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1
2 the field reinforce our concerns about
3 three primary barriers that impede Latino
4 political participation and effective
5 election administration, one of which has
6 already been addressed.

7 One, the lack of effective language
8 assistance at polling places.

9 Two, unnecessary and cumbersome
10 requirements for voter registration and
11 casting ballots that produce administrative
12 complications during elections.

13 And three, which I'll focus on, the
14 lack of basic understanding and
15 informational of the process for Latinos
16 when voting.

17 And to address this challenge, we
18 have a national bilingual hotline that's
19 open year round, and it is operated by the
20 NALEO Educational Fund, and it is also
21 promoted through national media
22 partnership, Univision, Entravision, and
23 Permedia, and also leveraged by nonpartisan
24 nonprofit national partners and local
25 partner. Some of which who have spoken

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2 actually earlier today like La Fuente and
3 Hispanic Federation.

4 As the only effort of its kind of
5 serving Latinos, it has become a very
6 trusted and central resource for the
7 community, and, for example, in 2012, on
8 the election year, there were over 21,000
9 calls that were fielded, and through our
10 experiences, the hotline confirmed that the
11 two primary issues for Latino voters was a
12 lack of understanding about the process of
13 voting and lack of provisional ballots.

14 Regionally, in 2013, over 4,000
15 calls were fielded 4,021, and 2013, less
16 than that, 317 calls. Just to give you a
17 background and context of the number of
18 calls that are received, you know, in
19 anticipation of increased call volume on
20 election days, we staffed up and built up
21 remote call centers. We have done so in
22 Pennsylvania, in Connecticut and have
23 worked also with Lawyers' Committee and
24 also wit Davis Polk, particularly last year
25 as well. And more than half of the callers

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2 locally are seeking basic information about
3 the voter registration process, including
4 where and how to register, when
5 registration deadlines were, and where the
6 caller is validly registered. They also
7 seek basic information about casting a
8 ballot.

9 You know, a lot of voter education
10 has to happen much more than it already is,
11 inquiring about issues such as location of
12 polling place, procedures for casting
13 absentee ballots. So we encourage the user
14 friendly tools and procedures to inform
15 citizens of their status as voters, and a
16 quarter of calls also come in about, which
17 we label problem calls, about provisional
18 ballots, includes that the ballots were not
19 available, were not offered by the poll
20 workers, or refused voters who requested
21 them. And the other quarter of the problem
22 calls that we get from voters are about the
23 same situation as those who attempted to
24 cast provisional ballots. These callers
25 believe that they had registered, but their

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2 names were not found in poll books.

3 The same issues where discovered
4 when we did a poll monitoring effort last
5 year, including in New York. A combination
6 of ultimately what we're seeing is that a
7 combination of education, training and
8 mobilization are required and recommended
9 as key strategies for engaging the Latino
10 community. Both the Spanish speaking and
11 English speaking community. As we are a
12 bicultural community, and that there is
13 also, I would highlight, investments both
14 in-kind and paid media to do this, which we
15 work tirelessly on. And there is focused
16 outreach attention to targeting voters,
17 potential voters, poll monitors, as we have
18 discussed.

19 So thank you so much.

20 COMMISSIONER FEERICK: Thank you very
21 much. Let me ask the commissioners if they
22 have any questions they'd like to ask you
23 anyone. Anyone?

24 (No response)

25 COMMISSIONER FEERICK: Thank you so

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2 much, and just one detail, your statement
3 is perhaps more extensive than the remarks
4 you gave. If I'm correct on that, I hope
5 you will file your statement with the
6 reporter so we have everything that you
7 wanted to say. Thank you.

8 Chris, come on up. Chris Fields who
9 has really been so key to all these,
10 certainly our program today, and I know we
11 are at the point where if there is no one
12 else who wants to offer public testimony,
13 the final step is have reflections from the
14 commissioners who are here, and yourself
15 obviously.

16 MS. FIELDS: So nobody else wants to
17 give public testimony -- oh, we got one
18 more. Come on up.

19 COMMISSIONER FEERICK: Feel no
20 pressure. We are ahead of ourselves. Our
21 invoices will show that we were here 'til
22 6:30 at least.

23 Introduce yourself please.

24 MR. SEMMEL: Yes, my name is Russel
25 Semmel and I'm with a group called Voting

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2 Rights Forward. Good evening, my name is
3 Russel Semmel and I'm an attorney in
4 private practice, residing and registered
5 to vote here in New York County. During the
6 2012 presidential election season I served
7 on a leadership team for a group called
8 Lawyers 44, a New York City based
9 organization of young lawyers responsible
10 for recruiting, training and mobilizing
11 voter protection volunteers in support of
12 President Obama's campaign. Our group saw
13 first hand many of the challenges that
14 voters and election administrators faced;
15 the effort the we and partner organizations
16 had to expend that year to ensure that we
17 had the number of people necessary to
18 monitor the polls equipped with the skills
19 necessary to protect voters rights was
20 staggering. Hundreds of volunteers were
21 deployed, and tens of thousands of dollars
22 of man hours were spent simply to guarantee
23 that everyone could exercised the
24 fundamental right to choose their political
25 leaders.

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2 In practice, it was clear that
3 without these resources, millions of
4 people, especially within been minority
5 communities and among students and the
6 elderly, would have been effectively denied
7 this most basic opportunity. For instance,
8 in neighboring states to which we provided
9 support, this is Pennsylvania where I spent
10 election day locked in boiler room in 2012.
11 The breadth of misinformation intentionally
12 disseminated regarding everything from the
13 mundane, such as the location of polling
14 sites, to the extraordinary such as the
15 fluid status of the states voter ID laws,
16 was enormous. We had a specific term for
17 this subtle, but no less passive form voter
18 suppression, we called it voter confusion.
19 And that was in the context of the nation
20 protected by the Voting Rights Act before
21 Shelby County v. Holder.

22 During that election cycle, a large
23 number of problematic regions around the
24 United States, including the very county
25 where we now sit, plus the Bronx and

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2 Brooklyn, were legally presumed to be
3 creating obstacles to vote or at the very
4 least be indifferent to difficulties that
5 voters faced. Since June of last year, when
6 the Supreme Court struck down the
7 preclearance provisions, those
8 jurisdictions are free to enact any
9 suppressive measure they can justify as
10 protecting the integrity of the vote, even
11 though the object effect is to undercut the
12 confidence thereof.

13 Now there is much to be said about
14 the many dimensions of the missions charge,
15 which is to survey the current landscape of
16 voting rights and election administration
17 nationwide, but the first step to
18 ameliorate these threats to our basic
19 right, let alone stop the bleeding, is to
20 prevent the progressing to state where even
21 fewer can vote easily, if at all, is to
22 pass the Voting Rights Amendment Act. For
23 this reason alongside fellow veteran voter
24 protection attorneys of the 2012 election,
25 I now serve on the leadership for Voting

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2 Rights Forward, which is the new,
3 nonpartisan civil rights organization
4 committed to voter protection and
5 expansion, beginning with the passage of
6 the VRA.

7 We encourage this commission and
8 those who listen to throw your entire
9 capital behind this bill, based on your
10 findings, and we will do whatever we must
11 to support you in the effort. Stories I
12 have observed personally ranged from the
13 outrageous to the absurd. First the absurd,
14 I grew up in Palm Beach County Florida, and
15 when I was in high school my aunt, among
16 many of my friends parent unwittingly voted
17 for Pat Buchanan; and then the outrageous,
18 in 2008 I watched unidentified men in suits
19 approached minority voters in line at the
20 poll where I was assigned to monitor in
21 North Philadelphia to persuade them away
22 from the booths. But the lesson from both
23 is the same, that in a political
24 environment where so many feel they can't
25 win on the merits, they are justified to

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2 change the rules of the game, and every
3 measure of protection is essential.

4 The amount of resources we had to
5 dedicate to voter protection instead of
6 policy discussion and something
7 substantive, as great as it was, is nothing
8 compared to the cost of a democracy without
9 the VRAs protection in some form. VRA must
10 be restored through the Voting Rights
11 Amendment Act and from then we can continue
12 to protect and expand voting rights
13 nationwide.

14 Thank you.

15 COMMISSIONER FEERICK: Thank you
16 very much. Are you a member of the New York
17 bar?

18 MR. SEMMEL: Yes.

19 COMMISSIONER FEERICK: I hope you
20 bring in your youth, your enthusiasm, your
21 energy to the election committees of the
22 bar of the state. When I was growing up
23 there weren't many of us, but there is a
24 constant need. Dan Kolb and others are
25 really leading the pack and we can use a

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2 lot of younger lawyers.

3 MR. SEMMEL: Our organization is
4 committed to doing whatever we can to help.

5 COMMISSIONER FEERICK: Thank you.

6 MR. SEMMEL: Thank you.

7 COMMISSIONER FEERICK: Is there
8 anyone else that wanted to offer public
9 testimony?

10 (Ms. Sammy walks to podium).

11 COMMISSIONER FEERICK: Yes, please.

12 MS. SAMMY: Good Afternoon, my name
13 is Nicole Sammy. I'm a resident of New York
14 City and registered voter in New York
15 County, I'm also co-chair of the Field and
16 Program Committee for Voting Rights
17 Forward, along with my colleague Russel who
18 just came before me.

19 I'll remind you all that last year
20 the U.S. Supreme Court declared that
21 Section 5 of the voting rights of 1965 to
22 be unconstitutional, and as a result,
23 voters around the country have been left
24 defenseless against racial voting
25 discrimination. In addition, states and

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2 districts around the country have been left
3 without guidance and ways to amend voting
4 laws and redraw voting districts. On
5 January 16th, a bipartisan group of
6 congressman introduced the Voting Rights
7 Amendment Act of 2014, the VRAA. If passes
8 it -- the VRAA would update crucial
9 protections against discrimination,
10 previously addressed by the VRA. Most New
11 Yorkers are probably unaware that parts of
12 the city became covered jurisdictions under
13 the VRA in 1971. New York, Bronx, and Kings
14 county became covered after New York State
15 passed English literacy laws in the late
16 1960s. The literacy laws disenfranchised
17 voters with limited English proficiency,
18 particularly voters originally from Puerto
19 Rico. The literacy laws coupled with low
20 voter turnout in these three counties meant
21 the counties would be covered by the VRA.
22 As such, the counties required preclearance
23 by the justice department or district court
24 before they were permitted to change voter
25 laws.

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2 Since 1971, New York City has
3 precleared with the justice department over
4 2000 changes in voting laws and
5 regulations. These changes have included
6 redistricting efforts, the addition of new
7 languages on the ballot, and changes to
8 polling sites. As recently as last year,
9 the federal government ordered that some
10 jurisdictions in Queens must provide
11 ballots in Bengali that comply with the
12 language assistance requirement of the VRA.
13 For decades, the VRA has informed election
14 legislation in New York City. The VRA has
15 been effective in resolving ambiguity and
16 aligning expectations. City officials have
17 turned to the VRA to prevent voter
18 discrimination. They have also turned to
19 the VRA to positively address the needs of
20 voters by expanding access to the ballot
21 box. Particularly where English is not the
22 dominant language.

23 As we have heard from testimony of
24 others today, racial discrimination and
25 language discrimination and barriers for

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2 entry continue to plague voting in the
3 city. So we asked Congress to pass the
4 Voting Rights Act Amendment to restore
5 protections previously provided under the
6 1965 Voting Rights Act. And to restore
7 guidelines that have effectively and
8 encouraged positive election legislation in
9 New York City.

10 COMMISSIONER FEERICK: Thank you very
11 much.

12 MS. SAMMY: Thank you.

13 COMMISSIONER FEERICK: Are there any
14 questions from the commissioners?

15 (No response)

16 COMMISSIONER FEERICK: Thank you. Is
17 there anyone else? Last chance. With us
18 anyway.

19 (No response)

20 COMMISSIONER FEERICK: Okay. Thank
21 you very much.

22 Chris, I think you were up as before
23 we had the additional witnesses.

24 MS. FIELDS: I promised my
25 commissioners when we spoke earlier this

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2 week that we would end early and I think we
3 are going to end early. So I just want to
4 thank everyone again for coming out today,
5 especially members of the NAACP who have
6 been here all day. Thank you so much for
7 coming out. I think it has been a really
8 great day. A lot of great information. A
9 lot.

10 As I mentioned earlier today in my
11 opening remarks, as I've been going around
12 the country doing these hearings, it has
13 been truly an eye opening experience, and
14 today was yet another eye opening
15 experience.

16 You know, as Dan Kolb mentioned
17 earlier, I think one of the definite
18 takeaways from today is poll worker
19 recruitment and training. I think we heard
20 it almost from every single panelist, that
21 at some point it has, and it is definitely
22 not a just theme here today, but it is
23 something that I heard across the country.
24 It is something that we really need to
25 think and evaluate because often that is

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2 the first person so many of our voters
3 encounter when they come to the polls. And
4 if you give them a bad experience from the
5 offset, you know often they won't come back
6 and vote. And we know I have been doing
7 this for almost ten years, and I see as my
8 role in this community, and working as
9 providing a great experience for voters,
10 and if you make that first experience a
11 great experience, you've made a lifetime
12 voter. And it is so incredibly important to
13 ensure that happens.

14 I think especially today and
15 throughout the entire testimony we've heard
16 today, it has absolutely been critical, and
17 what we've heard is that we still need the
18 Voting Rights Act. We have come a long way,
19 but we still have a long way to go, and I
20 know that the members of our commission and
21 certainly a lot of our speakers earlier
22 today, we are committed to making sure that
23 we use whatever tool we have in the tool
24 box to protect the right to vote.

25 There is a large community through

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2 the Lawyers' Committee and the election
3 protection program, out there fighting
4 every single day for you, and we will
5 continue to fight for you, no matter what.
6 So no one who has the right to vote is
7 turned away from the ballot box.

8 So with that, thank you again. Thank
9 you Fordham Law School. Thank you the
10 students who have volunteered throughout
11 the day. Thank you our volunteers for the
12 NAACP. Thank you to our court reporter who
13 has been diligently taking notes and will
14 have a good, robust record of what has
15 happened today, and with that I will turn
16 it over the guest commissioner for final
17 comments.

18 COMMISSIONER FEERICK: Thank you
19 very much. Why don't I kick it off and
20 I'll ask my colleagues just to supplement
21 that with there own comments.

22 First, I want to add my own thanks
23 to my colleagues serving as commissioners,
24 and also to the all the panelists and the
25 people who gave public testimony and all of

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2 those who stayed or left a little earlier
3 who were here today. I guess I have just a
4 few, three substantive reflections. First
5 of all, what really brings us here today is
6 the constitution of the United States. It
7 is the constitution that created a civil
8 society. It gave us three branches of
9 government. It acknowledged that we have a
10 federal state system, and it wasn't
11 perfect, it is not perfect, but it has done
12 a pretty good job. It is the longest
13 serving, written constitution in the
14 history of the world, and it had a
15 mechanism for amendments to the
16 constitution. And you can't read the
17 amendments of the constitution, you should
18 know there is 27 of them, without
19 appreciating the importance of the right to
20 vote. It is all over the amendments of the
21 constitution. And I think it is important
22 to take a count that the right to vote in
23 many ways is the anchor. Without the right
24 to vote, how do you anticipate in the
25 governance of our country and the

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2 representative right that gets expressed in
3 the legislative branch both federal and
4 state was a very, very important liberty,
5 and it only works if those who are to be
6 governed have an opportunity to express
7 themselves.

8 And I know politics is there, has
9 always been there, but if we want to
10 continue to have a robust democracy, it
11 seems to me all these kinds of issues need
12 to be seriously dealt with by those who
13 serve in the public office, and I've spent
14 50 years working on these kind of issues. I
15 guess it started for me in 1961, '62, and
16 there has been a lot of change, and there
17 has been a lot of progress that I see, but
18 it is something that will never end, and as
19 people like all those here doing the great
20 work that you're doing, it keeps it out
21 there.

22 As Cy Vance used to say to me, Cy
23 Vance Senior, he said "you got to keep
24 putting out there what you think is right,
25 what you think ought to happen, even if

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2 there is no chance that anyone is going to
3 take it right now, because when good people
4 keep putting it out there, and it stays out
5 there, in the fullness of time, people will
6 grab hold of different parts of what's
7 right to do." So my reflection is, those
8 who are on all the panels in the leadership
9 roles have done a fabulous job of keeping
10 it out, and you are going to have
11 successes. We saw that. Some younger people
12 here, and they are going keep it going, and
13 when reform happens, as Cy Vance would say
14 to me and others when we worked together,
15 he said "we won't be around, John, but the
16 parents of reform of all those who
17 participated, every step of the way."
18 That's really my reflection.

19 Kim.

20 MS. KEENAN: As the newest
21 commissioner for this commission panel.

22 COMMISSIONER FEERICK: John Dunne
23 said you were going to be terrific.

24 MS. KEENAN: The first thing I want
25 to is thank the commissioners here today. I

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2 want to thank the Lawyers' Committee and I
3 want to thank the NAACP who gives me the
4 wonderful opportunity to, as my job, fight
5 for justice. You get up in the morning and
6 that's what you get to do everyday, so I
7 want to thank all of them for that.

8 Second, I want to say, and I was
9 struck by this today, I was very struck by
10 the number of lawyers, and I want to say
11 because we don't say it enough, how proud I
12 am of the profession today. I'm from
13 Buffalo, New York and I know they were
14 working at SUNY Buffalo at some of these
15 changes, and a number of the young lawyers
16 are here and certainly many decades ago in
17 my career, one of the first things I did
18 was election protection, and it is like a
19 window to the world because it's an
20 opportunity to really see what it looks
21 like. Its another thing to learn it in a
22 book. It's another thing to hear it from
23 somebody else, but when you get that call
24 from some real person somewhere in America
25 and they tell you they can't vote, you just

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2 start thinking to yourself "where am I? How
3 could this be?" If you keep your nose to
4 that grindstone for a while, you get to see
5 a bigger picture of a disconnect. So I'm
6 really proud of the bar president too, and
7 I'm really proud to see so many lawyers
8 engaged in this work.

9 And so finally I want to say this,
10 every panel has made essentially the same
11 point, we have to do better by this, right?
12 Our constitution demands that we do better
13 than this, and certainly we must do better
14 than this for people who have jobs and
15 focus, and lifestyles that they can't do
16 this without our help, because it is
17 difficult for me to accept on any level
18 that we would live in a country where every
19 time I turn on the TV and I'm looking at
20 something in another country, we are
21 talking about our fabulous right to vote,
22 and how all of you should have this right
23 to vote, and we're televising the elections
24 where the South Africans are standing in
25 miles long lines and we're saying "isn't

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2 that great, they have democracy," but yet
3 we only have one voting machine or yet we
4 have a line -- or yet, in Florida, if you
5 take a bathroom break you lose your spot
6 line. I mean, when did we become that
7 America.

8 For me, to invalidate the coverage
9 formula in Section 5, and literally put the
10 burden on individual citizens to fix
11 something that is broken when this formula
12 has been the thread that has been holding
13 that process together, says that we need to
14 perk it up and we need to be vigilant and
15 we need to be focused to make sure that we
16 do everything we can to fix this, not just
17 for people of color in communities that are
18 urban and don't have the money for more
19 machines, not just for people who are
20 disabled and have a harder barrier to even
21 get in to the polling place, but we need to
22 fix this for everybody, because this is for
23 us. This is a system that we believe is the
24 greatest system in the world and when we
25 don't make ourselves live up to it, we do

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2 ourselves and we do everyone else a
3 disservice.

4 So thank you. I'm proud to be here,
5 and I'm just happy to note that I'm
6 fighting for justice with such great people
7 from all over the country.

8 COMMISSIONER DUKES: I would like
9 to, again, express my gratitude to the
10 National Commission on Voter Rights and the
11 Lawyers' Committee for not bypassing the
12 northeast area. People think that we live,
13 when they fly over, and they are going to
14 land, they think they're going to land into
15 the land of honey and milk until, they get
16 off at JFK or Laguardia. And when you come
17 into Brooklyn, Brooklyn.

18 COMMISSIONER CHEN: Or Newark.

19 COMMISSIONER DUKES: Or Newark. Come
20 into Brooklyn and to the Bronx and to Far
21 Rockaway and to Staten Island, these are
22 people that I have here today who live this
23 at each election. As I said today, for real
24 partners we can collaborate. All of the
25 people who have been coming before us today

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2 had some interaction with them because of
3 our branches here in New York State. We go
4 from Buffalo to Eastern Long Island, and so
5 I have interacted with Long Island. I lived
6 on Long Island for 30 years. I know the
7 voter suppression that one party has had
8 there for 50 years. It took 50 years before
9 a democrat could be elected county
10 executive in the county. So I know about
11 voter suppression. When I lived in Nassau
12 county, I really thought I was in
13 Burmingham, Alabama. So you've done a great
14 service today to the northeast area. To my
15 -- we said today why are we here. I think
16 we've been here like 30 years, long time,
17 longer than I have testified to federal, to
18 state, to city.

19 Susan and I were standing on the
20 steps of City Hall where 1.8 million
21 African Americans and Latinos and Asians
22 are denied to have people at a table to
23 talk about their interest for budget, so it
24 is important that we go into this. As
25 General Counsel Keenan said, how are we

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2 going to tell the other part of the world
3 how great we are in this country, yet we
4 deny people the fundamental right to vote.
5 Shame on us. And I think that the fight
6 will have to continue. Our voices must be
7 heard.

8 And I want to express my gratitude
9 for the volunteers that came from the NAACP
10 and others because we've been out everyday
11 this week advocating for the rights of
12 people. Yesterday we were with parents and
13 students. Last week we walked in the rain
14 ten miles with workers for minimum wage,
15 raised the wage, all the issues are here
16 and it stems from voter suppression. When
17 people see that people persons are
18 interested in everyday living. They will go
19 to polls, but when they see people just
20 continue to take liberties and rights away
21 from then, it's discouraging for them to
22 get there, and that poll watcher who has
23 been sitting there since 4:00 in the
24 morning, and say you should have a nap or
25 he should have a nap somewhere, between --

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2 don't get up at four anyway, they get up at
3 ten. So they've had a full day work from
4 that. We cannot continue to treat those
5 persons like that and we think we are going
6 to have democracy.

7 COMMISSIONER CHEN: Well, this has
8 been an extremely fulfilling afternoon for
9 me, and I want to thank the Lawyers'
10 Committee and the National Commission for
11 giving me the honor for serving as a guest
12 commissioner today. What I heard and what I
13 hope the permanent record will reflect is a
14 very powerful testimony by all of our
15 panelists who gave testimony on some very
16 fundamental issues, and for me, just
17 speaking for myself personally, first, I
18 think I can say personally what I probably
19 did not need much convincing of which this
20 afternoon has reinforced is that the
21 aftermath of Shelby County has been very
22 unfortunate thus far. Advocates for voter
23 enfranchisement are working with one hand
24 tied behind their back.

25 We will, yes, as advocates we will

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2 do our best with the tools that remain to
3 us whether it be Section 2 or some other
4 legal provision, but it is absolutely
5 essential that there be some legislative
6 remedy to the disabling effect of that case
7 and the ability to protect voters' rights
8 and particularly we're more sophisticated,
9 more frankly now a bit of bravado in the
10 less sophisticated techniques at voter
11 suppression, which are now possible in
12 light that case.

13 Second, I think we received a lot of
14 powerful, fact-based, empirical testimony
15 that the mechanisms that we used to
16 administer the voting system need to keep
17 up with the times. We've heard a lot of
18 testimony about how the voter registration
19 system needlessly, without purpose, without
20 really any meaningful goal, offsetting
21 goal, are disenfranchising people for no
22 good reason. And I will say this, this is
23 not really a partisan issue, this is a
24 bipartisan problem.

25 My experience, frankly, has been

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1
2 that the politicians or political
3 operatives of any or at least any of the
4 major political parties dislike about
5 voters is the opportunity for voters to
6 surprise them, and therefore the most
7 effective way to prevent that unwelcome
8 surprise is to do things like make it
9 difficult to register to vote so you know
10 now who exactly is voting, so your computer
11 analyst that have this mapped house to
12 house to house can tell you with confidence
13 how a certain redistricting map is going to
14 turn out with modern technology.

15 And third, I guess the third
16 observation I will make with the testimony
17 this afternoon has showing me, Dr. Dukes
18 and I have jokingly gone back and forth on
19 across the river. I can talk back, and New
20 York and New Jersey and the winner of that
21 contest is not exactly covering themselves
22 in glory, but I think there is universal
23 observation you can make. For reasons that
24 I can't figure out, I perhaps was not aware
25 of how the discretion whether or not to

1 PROCEEDINGS

2 call a special election, which for various
3 technical issues is not too much an issue
4 in New Jersey, was such an issue in New
5 York.

6 The governor of New York's decision
7 not to call special election clearly is
8 having a disenfranchising effect,
9 apparently, perhaps a disproportionate
10 effect on communities of color. In New
11 Jersey, the one time we did have a special
12 election, the governor called a special
13 election two and a half weeks before the
14 general election was going to happen
15 anyway. Arguably, I question his motives,
16 but the effect of disenfranchising voters
17 is simply did not have a wherewithal to
18 participate in the process, so frequently
19 and so intensively in such a short period
20 of time.

21 I think what it goes to show is that
22 when a system allows for political
23 discretion, they will find a way for that
24 discretion to be abused in the voting
25 system, and therefore I think it is very

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2 important, for whatever mechanisms we
3 develop, as the testimony this afternoon
4 shows, gives us clear rules. Understandable
5 rules. And as open rules as possible as far
6 as who gets to vote, how they vote, and
7 when they vote.

8 COMMISSIONER FUNG: Again, thank you
9 to the Lawyers' Committee and to Barbara
10 Arnwine who is here, for this project, and
11 for the extensive hearings that you all
12 have organized.

13 Of all the people that say we are
14 here in a post-racial society, I think the
15 testimony today, as many other incidents
16 throughout our lives shows, much more work
17 needs to be done. And I think the fact that
18 racial and language minority voters here in
19 New York, New Jersey and Connecticut are
20 still facing the kinds of problem described
21 today. In the case that we do have a lot
22 work ahead and I hope that -- many of our
23 groups have worked together on a number of
24 these kinds of issues.

25 In a strong multiracial coalition of

1 PROCEEDINGS

2 civil rights advocates and election reform
3 advocates and government groups, we really
4 do need to put as much pressure as we can
5 on Congress to fix voting right as well as
6 to make changes in the New York State
7 legislature to make sure some of the
8 problems of discrimination that we continue
9 to see not continue in the future. So
10 thanks very much.

11 MS. FIELDS: And we have a very
12 welcome surprise, my boss, the leader of
13 the Lawyers' Committee For Civil Rights
14 Under Law and advocate where I don't know
15 where she draws her energy from, but if
16 you're falling asleep you are about to get
17 fired up. Ms. Barbara Arnwine, president
18 and executive director of the Lawyers'
19 Committee.

20 MS. ARNWINE: Hi, Good Afternoon.
21 Good evening everyone. Thank you so much
22 for today's hearing. I just can't begin to
23 tell you how much it means to have this
24 tri-state hearing on voting rights. I'm
25 glad I was able to make it. It was

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2 debatable because of all of the security.

3 When the secret service lays down the
4 security, well, it is serious and, it
5 wasn't clear we were going to be able to
6 get out in to be here. And I am just
7 delighted to be able to join you.

8 I just want to start off, having
9 served as a chair of one of these hearings
10 and having been a commissioner, I know what
11 it takes to do it, and you are to be
12 commended. I want to commend all of our
13 great commissioners because this is heavy
14 and hard work and thank you for serving and
15 being there.

16 Dr. Hazel Dukes, one of our nation's
17 national treasures, one of the leading
18 advocates for racial justice and social
19 justice in our country, what an honor that
20 you were able to be with us today.

21 To our chairman John Feerick. To Ron
22 Chen, the amazing Kim Keenan, and of course
23 to the incomparable Margaret Fung. Thank
24 you, everyone, for these great, wonderful
25 commissioners.

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2 I also want to thank all the
3 witnesses because it takes a lot to come
4 out on a workday and to testify and
5 participate in this process. I want to
6 thank our mini partner organizations that
7 joined, and making this possible. I want to
8 thank my board members here in New York
9 City. Before we even got into the building
10 somebody came up to us and said, "we are
11 here because of John Nonna, who is one of
12 our board members. And also sitting on the
13 front row is Dan Kolb who has been co-chair
14 of the Lawyers' Committee, and one of my
15 really esteemed board members, and just a
16 role model in every respect for all of us.
17 So Dan, it is great you are here holding up
18 the board role.

19 I also just wanted to say that there
20 is no way you can underestimate the
21 importance of this record. When we passed
22 the Voting Rights Act in 2006, many people
23 knew that the minute that that act was
24 enacted that there would be a concerted
25 push to have it declared unconstitutional.

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2 And the reason why the act was not declared
3 unconstitutional was because people saw the
4 great record of voting discrimination that
5 had been compiled before that. These
6 hearings are important because they allow
7 for the public to find out about racial
8 discrimination in voting, the needs for
9 electoral reform. They're important because
10 they allow people to have an opportunity to
11 bring their voices to this movement, to
12 preserve our democracy, and they are
13 important because without them, how would
14 public policymakers, how will legislators,
15 how will anyone have any ability to really
16 know what the facts are throughout the
17 country regarding discrimination in voting.
18 And I know possibly the media might get a
19 hold of it, oh my goodness. So it is my
20 hope that this hearing and the compiled
21 record will be absolutely influential in
22 the days to come.

23 I just left the President's speech
24 at the National Action Network where he
25 spoke passionately, strongly -- in fact, he

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1
2 was just on fire, about voting rights, and
3 it was great to hear him raise his voice in
4 defense of our democracy. It was great to
5 hear him speak so strongly after having
6 been at the LBJ library yesterday, where he
7 spoke on the 50th anniversary of the Civil
8 Rights Act, and he gave a presidential
9 address.

10 Today, he was Mr. On-fire, and he
11 talked about the importance of voting
12 rights. He talked about the voter
13 suppression. He talked about the brokenness
14 of long lines and the horrendous hurdles
15 that Americans have to go through just to
16 cast their most fundamental vote. It was
17 moving, and he spoke about the daily heroes
18 and sheros who make our democracy work. And
19 when he spoke about those people, he didn't
20 call out, you know, big names of every
21 person that people would see in the media.
22 He talked about the average voter and their
23 role in fighting for our democracy by doing
24 that most important thing in the world, and
25 that's by voting despite the obstacles.

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2 Voting despite the effort to keep you.
3 Voting despite the discouragement. Voting
4 no matter what, and this hearing today
5 gives credence voice and once again affirms
6 that important principle that nothing is
7 more secure or important to a democracy
8 than the right to vote.

9 Thank you so much.

10 COMMISSIONER FEERICK: Thank you
11 very much. We have one final witness who
12 asked to provide public testimony. We are
13 still within the time period. We would be
14 delighted to receive that testimony.

15 MS. WALKER: Good afternoon
16 everyone. My name is Latrice Walker. I'm an
17 attorney in the office of Congresswoman
18 Yvette Clark, and I got caught up in the
19 Obama traffic shutdown so I apologize for
20 my tardiness. I should've know to take the
21 West Side Highway than the FDR. That being
22 said, I'm sure this is the choir we are
23 preaching to here. There has been extensive
24 testimony about all of the downfalls and
25 atrocities that took place November, in

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2 2013 in New York City where I remember when
3 I went to go vote, if the levers weren't
4 really squared off next to the person whose
5 name I wanted to vote for, so I had to
6 figure out and cross my fingers and hope
7 that the lever was connected to the person
8 I indeed wanted to vote for. A number of
9 telephone calls, I see Susan Lerner here,
10 and I was on her phone, Susan I'm getting
11 calls for people who weren't able to vote
12 for the mayor as well as the public
13 advocate.

14 So that being said, I did want to
15 read a letter to you on behalf of the
16 central Brooklyn Black Legislators
17 Coalition, and I can read to you the name
18 of all of the black elected officials from
19 central Brooklyn who signed on to this
20 letter. It is a short letter to Governor
21 Cuomo, and it reads we:

22 "Dear Governor Cuomo, we write to
23 you as the Coalition of Black Brooklyn
24 Legislators, which includes elected
25 officials on the federal, state, and city

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1
2 levels of government, to express our
3 collective concern that the delay in
4 schedule in special elections for several
5 state assembly and state senate seats has
6 effectively disenfranchised approximately
7 1.5 million New Yorkers.

8 The issues represented in this
9 letter affect nine assembly districts and
10 two senate districts across the state of
11 New York. To deny these communities
12 adequate government representation
13 constitutes an unfair administration of
14 justice, a violation of their
15 constitutional rights, and taxation without
16 representation. In Brooklyn, in particular,
17 hundreds of thousands of residents are
18 affected by the vacancies that were created
19 in three assembly districts, and one senate
20 district. In November 2013, New York State
21 assembly member Inez Barron of the 60th
22 district, Raphael Espinal of the 54th
23 district, and Alan Maisel of the 59th
24 district were elected to the New York City
25 council. A member of the state senate, Eric

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1
2 Adams of the 20th senatorial district was
3 elected borough president of Brooklyn. As
4 of January 2014, the respective state
5 governments seats that they previously
6 represented were left vacant. In the case
7 of the assembly seats, their offices have
8 been closed. Under the present political
9 calendar where the general election is not
10 held until November 2014, these vacancies
11 can last for essentially one year through
12 January 2015.

13 These districts are majority
14 minority districts, and as a result are
15 subject to protections of the Voting Rights
16 Act of 1965. Each member of the state
17 assembly represents approximately 128,000
18 people. Each member of the state senate
19 represents approximately 300,000 people. As
20 a result, there are today, in Brooklyn
21 alone, approximately 700,000 New Yorkers
22 that lack representation in either the New
23 York State Assembly or the New York State
24 Senate.

25 The 54th and 60th assembly districts

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2 are presently comprised of at least 95
3 percent Black, Latino and Asian voting age
4 population and constituency. The 59th
5 assembly districts presently comprises of a
6 66 present Black, Latino and Asian voting
7 age population constituency. The 20th
8 senatorial district presently comprises of
9 a 55 percent of black, Latino and Asian
10 voting age population constituency. These
11 facts support the contention that the
12 affected districts are predominantly
13 communities of color.

14 Today, the people of Brooklyn pay
15 their taxes, income taxes on their wages,
16 federal taxes on products and services,
17 capital gains taxes, property taxes, and
18 the various fees required to obtain
19 driver's licenses and/or operate a
20 business. Yet, hundreds of thousands of
21 these men and women are not represented in
22 the state legislature and are therefore
23 without a voice in the debates,
24 deliberations, conversations and votes that
25 determine the future of our communities.

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2 We believe, again, that this is
3 tantamount to taxation without
4 representation. As the New York State
5 legislative calendar typically ends in
6 June, the delay in schedule in special
7 elections until June or September will, in
8 effect, prevent those affected from
9 participating in the form of representative
10 self-government known to us as democracy.

11 Over the course of your tenure as
12 governor, you have prided your
13 administration on securing on-time annual
14 state budgets. We anticipate that this
15 years budget will be completed timely;
16 however, a fundamental difference will be
17 that decisions regarding funding for major
18 social programs, public housing, public
19 education, health initiatives, business
20 incentives, state agencies, programs and
21 budgets and taxes and fees, would be
22 ultimately determined without the interest
23 of these communities being served by their
24 duly elected representatives.

25 Not having representation at this

1 PROCEEDINGS

2 stage renders these communities vulnerable,
3 defenseless, disadvantaged, and ultimately
4 underserved with respect to the state
5 budgetary process.

6 We understand that the decision to
7 call for a special election remains within
8 the discretionary powers of your office;
9 however, this power is not unfettered. We
10 reject the notion that the decision to hold
11 special elections would be unduly
12 burdensome and not cost effective.

13 We believe that the cost of leaving
14 the seats vacant and the offices closed in
15 some of the most vulnerable communities in
16 our state is too high a price to pay and
17 sets bad precedent in the state of your
18 democracy.

19 When state action or inaction
20 contradicts that of federal law, a
21 balancing test should be conducted to
22 determine whether the states interest in
23 saving money substantially outweighs the
24 depravation of representation in the state
25 legislature.

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2 We whole heartily support our
3 colleagues, councilwoman Inez Barron, and
4 Senator Kevin Parker in their pleas to you
5 to fill these legislative vacancies in the
6 shortest space of time as reasonably
7 possible as mandated in the New York State
8 court of appeals in the decision of Roher
9 versus Dinkins.

10 We respectfully urge you to promptly
11 schedule special elections for the vacant
12 seats that currently remain in the New York
13 State assembly and the New York State
14 Senate in accordance with the laws of the
15 State of New York and with the voting
16 rights of act of 1965."

17 This letter was signed by none other
18 than Congresswoman Yvette Clark, Congress
19 member Hakeem Jeffries, New York City
20 Public Advocate Letitia James, Senator
21 Velmanette Montgomery, senator John Samson,
22 Assembly Member Nick Perry, Assembly Women
23 Annette M. Robinson, Assemblyman Karim
24 Camara, Assembly Member Walter Mosely,
25 council member Mathieu Eugene, council

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2 member Jumaane Williams, Council Member
3 Laurie Cumbo, and Council Member Robert
4 Cornigy.

5 So thank you again for giving me the
6 time to share that. I also have copies of
7 it for your record as well as copies of
8 Senator Parker's letter, and a copy of the
9 resolution that was introduced by
10 Councilwomen Inez Barron.

11 Thank you.

12 COMMISSIONER FEERICK: Thank you
13 very much.

14 Are there any questions of the
15 witness?

16 (No response)

17 COMMISSIONER FEERICK: Seeing no
18 hands, I'm going to declare these
19 proceedings adjourned.

20 (Time noted: 6:37 p.m.)
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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, ROBIN NUNEZ, a Notary
Public within and for the State of New York, do
hereby certify that the within is a true and
accurate transcript, to the best of my
abilities, of the proceedings held on, 2014.

That I am not related to any of the
parties to this action by blood or
marriage; and that I am in no way
interested in the outcome of this matter.

I have hereunto set my hand this 23rd
day of April, 2014.

ROBIN NUNEZ

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NATIONAL COMMISSION OF VOTING RIGHTS
PENNSYLVANIA STATE HEARING
February 6, 2014
National Constitution Center
525 Arch Street
Philadelphia, Pennsylvania 19106
4:01 p.m.

COMMISSIONERS:

- Honorable Pedro A. Cortes
- Honorable Nelson A. Diaz
- J. "Jerry" Whyatt Mondesire
- Regine Metellus

Hearing transcribed by: Susan Endt

Love Court Reporting, Inc.
1500 Market Street
East Tower, 12th Floor
Philadelphia, Pennsylvania 19102
(215) 568-5599

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<p style="text-align: right;">Page 3</p> <p>1 MS. FIGUEREDO: Good</p> <p>2 afternoon, everyone. How are you</p> <p>3 doing today? So we are going to go</p> <p>4 ahead and get started. We have really</p> <p>5 bad traffic outside. A lot of people</p> <p>6 are still without power. So we are</p> <p>7 going to go ahead and have a great</p> <p>8 event.</p> <p>9 I just want to thank you</p> <p>10 guys so much for coming out today.</p> <p>11 Welcome to the Pennsylvania hearing</p> <p>12 for the National Commission on Voting</p> <p>13 Rights.</p> <p>14 My name is Chris Melody</p> <p>15 Fields Figueredo. I'm the manager of</p> <p>16 legal mobilization and strategic</p> <p>17 campaigns at the Lawyers' Committee</p> <p>18 for Civil Rights Under Law, based in</p> <p>19 Washington, D.C. And what that means</p> <p>20 is, besides having an incredibly long</p> <p>21 title, I'm an organizer that tries to</p> <p>22 get lawyers to think outside of the</p> <p>23 box every day, which is not an easy</p> <p>24 thing to do.</p>	<p style="text-align: right;">Page 5</p> <p>1 private bar in the civil rights</p> <p>2 struggle.</p> <p>3 Today, we continue our work</p> <p>4 on a range of issues from fair</p> <p>5 housing, employment discrimination,</p> <p>6 education opportunity, community</p> <p>7 development and, of course, voting</p> <p>8 rights, the reason why we are all here</p> <p>9 today.</p> <p>10 Today's hearing is the</p> <p>11 fifth -- actually, the sixth of</p> <p>12 hearings that we are having across the</p> <p>13 country, convened by the National</p> <p>14 Commission on Voting Rights.</p> <p>15 This past summer, as many of</p> <p>16 you may know, the Supreme Court handed</p> <p>17 us a wonderful present with their</p> <p>18 decision on a key provision on the</p> <p>19 Voting Rights Act. One -- one --</p> <p>20 fundamental civil rights on pieces of</p> <p>21 legislation that has protected many</p> <p>22 voters from voting discrimination in</p> <p>23 certain jurisdictions.</p> <p>24 The Court's belief upon</p>																																																																								

<p style="text-align: right;">Page 6</p> <p>1 certain states with a troubling 2 history of race discrimination in 3 voting from critical responsibility to 4 show up front the voting changes would 5 not disadvantage minority voters. The 6 Court found that this requirement was 7 outdated and no longer related to the 8 current needs. Well, I think they got 9 that wrong.</p> <p>10 While Pennsylvania did not 11 fall under the coverage formula, we 12 wanted to include voices from all 13 around the country to reflect the 14 current record of voting 15 discrimination.</p> <p>16 In addition, today, the 17 testimony that's going to be formally 18 presented, any of those that are going 19 to do public testimony will be 20 collected and will range from a lot of 21 topics. We are also including 22 election administration and reform. 23 We also want to look forward to the 24 future.</p>	<p style="text-align: right;">Page 8</p> <p>1 today, after the hearing, the National 2 Commission will be issuing two reports 3 later -- later, this spring and, 4 another one, later this fall. One 5 will focus on voting discrimination 6 and the second will focus on election 7 administration and electoral reform. 8 The reports and the records from 9 today's hearing will be available 10 later this year for anyone who wants 11 to be a part of that change and the 12 work that we want to do and here, in 13 Pennsylvania, to push policymakers, 14 advocates and anyone else that wants 15 to be informed.</p> <p>16 We hope that the records -- 17 the reports will inform Congress and 18 educate the public regarding the 19 recent voting record discrimination 20 and what to look out for when they are 21 considering things in Congress.</p> <p>22 Now, I would love to 23 introduce -- and I see that Judge Diaz 24 has joined us.</p>
<p style="text-align: right;">Page 7</p> <p>1 Across the country, over the 2 past several years -- and Pennsylvania 3 knows this very well -- we have seen a 4 range of restrictive voting laws 5 passed, making it harder for eligible 6 voters to cast a ballot. They come 7 from strict forms of photo 8 identification laws to proof of 9 citizenship, registration laws and 10 much, much more.</p> <p>11 Further, we've also 12 continued to see election 13 administration issues that continue to 14 plague the way elections are run in 15 every locality across the country.</p> <p>16 Your input today is going to 17 be really helpful to help inform what 18 we need to do to fix voting across the 19 country, what are the new things that 20 are happening out there, so we can 21 make sure that no person who's 22 eligible and wants to cast a ballot is 23 prevented from that opportunity.</p> <p>24 With the testimony given</p>	<p style="text-align: right;">Page 9</p> <p>1 You just slipped in there, 2 didn't you?</p> <p>3 COMMISSIONER DIAZ: Oh, I 4 was here before you got here. They 5 put me in the (inaudible).</p> <p>6 MS. FIGUEREDO: Did you get 7 a cookie or something beforehand?</p> <p>8 COMMISSIONER DIAZ: Did I 9 get what?</p> <p>10 MS. FIGUEREDO: Did you get 11 a cookie or something beforehand?</p> <p>12 COMMISSIONER DIAZ: No, 13 nothing. Nothing but your speech.</p> <p>14 MS. FIGUEREDO: And I want 15 to now introduce our very illustrious, 16 fantastic panel of commissioners that 17 will be presiding over the hearing 18 today.</p> <p>19 First, the Honorable Cortes, 20 former Pennsylvania secretary of 21 state. Next, we have Regine --</p> <p>22 COMMISSIONER METELLUS: 23 Metellus.</p> <p>24 MS. FIGUEREDO: -- Metellus,</p>

<p style="text-align: right;">Page 10</p> <p>1 who is the senior vice president chief 2 operations officer at The Urban League 3 of Philadelphia. 4 Next, we have the Honorable 5 Nelson Diaz. He's a former judge of 6 the Philadelphia Court of Common 7 Pleas, a former Philadelphia City 8 Solicitor, a former general counselor 9 to the Department of Housing and Urban 10 Development. So he's done a couple 11 things. And, finally, we also have J. 12 or Jerry Whyatt Mondesire, who is the 13 president of the NAACP state 14 conference. 15 So the commissioners, as I 16 said, will preside over the hearing. 17 They will take the information that's 18 given to us by our formal witnesses 19 and ask any follow-up questions so we 20 have as robust of a record as possible 21 about the state of voting in 22 Pennsylvania today. 23 So a couple of housekeeping 24 items before we get started. For</p>	<p style="text-align: right;">Page 12</p> <p>1 name down and make sure we get it 2 correctly. Also, like I said before, 3 be mindful of the timekeeper and their 4 signs. 5 We also have sign language 6 interpreters for any of those that -- 7 we wanted to make sure that the 8 disability rights of the community was 9 represented as well. 10 Now, for those of you that 11 are social media savvy, as you can see 12 back here, we are using social media 13 to keep this conversation going. So 14 if you do use social media, we are 15 using the hashtag NCVR and, also, the 16 hashtag voting rights to keep going 17 this conversation going. We want to 18 make sure that folks all across the 19 country are keeping abreast what is 20 going on. 21 And then, finally, I have 22 some people to thank. I certainly did 23 not put this together myself. Again, 24 thank you, again, to the National</p>
<p style="text-align: right;">Page 11</p> <p>1 those that do want to give public 2 testimony, a volunteer up front should 3 have told you to fill out an index 4 card with the topic that you will be 5 speaking about. When we call the 6 public testimony, you'll have the 7 opportunity to speak into one of the 8 microphones. You know, just -- you 9 have three minutes to speak. 10 There will be a timekeeper 11 that will count you down and, you 12 know, we want to make sure we hear 13 from the public. We have formal 14 witnesses and experts that really know 15 what is going on in voting today in 16 Pennsylvania, but you guys are the 17 people that are going to the polls and 18 carrying a lot of issues and we want 19 to hear from you as well. 20 A few other items, the 21 hearing is being transcribed so we 22 will have a physical record. If you 23 are giving public testimony, please 24 speak clearly so Susan can write your</p>	<p style="text-align: right;">Page 13</p> <p>1 Constitution Center, our host. I also 2 want to thank our law firm sponsors 3 who provided financial support to make 4 sure that we could have this hearing, 5 Ballard Spahr, Fox Rothschild, 6 McKeever & Mitchell, Schnader, 7 Harrison & Segal. 8 They secured this space, got 9 us the interpreters and provided the 10 transcription as well and, of course, 11 I want to thank our commissioners and 12 witnesses and, of course, I want to 13 personally and publicly thank our 14 fantastic Pennsylvania-based partners 15 that have helped through the process 16 in promoting this event. I could read 17 all your names and I won't go through 18 every organization, but they are on 19 the posters outside and also inside 20 your program. I certainly want to 21 thank them. In the last couple days, 22 I've sent a couple of frantic emails 23 and phone calls and we have had the 24 change to program a couple of times.</p>

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1 So thank you guys so much
2 for your support and I look forward to
3 continue to work with you. So on that
4 note, I will turn it over to the
5 commissioners.
6 COMMISSIONER CORTES: Thank
7 you, Chris. And my thanks, as well,
8 to the Lawyers' Committee for Civil
9 Rights Under Law for convening this
10 Pennsylvania statewide hearing on
11 voting rights for The National
12 Commission of Voting Rights and thank
13 you, Chris, as well for organizing the
14 hearing and for bringing us together.
15 I want to thank also my
16 fellow commissioners, the witnesses
17 and everyone that's here and even
18 those that are not in attendance but
19 care about voting rights, for helping
20 us out.
21 We are going to be talking
22 today about voting rights, as well as
23 election administration and access to
24 the ballot and for those who care

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1 about those issues, I thank you
2 deeply.
3 I had the privilege of
4 serving as Pennsylvania Secretary of
5 State -- or Secretary of the
6 Commonwealth from 2003 until 2010. In
7 that capacity, I also served as the
8 State's Chief Election Official.
9 In the seven-and-a-half
10 years I was in office, the Department
11 of State administered 15 -- 1-5 -- 15
12 primary and general elections in which
13 we were charged with implementing the
14 Help America Vote Act of 2002, where
15 we were required to work with the
16 counties to replace punch cards and
17 letter machines with modern voting
18 technology. We were also responsible
19 for improving the physical and
20 language accessibility of our citizens
21 through the Help America Vote Act or
22 HAVA.
23 We were charged with
24 developing and implementing a new

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1 statewide voter registration and
2 management registration database,
3 known in Pennsylvania as the Statewide
4 Uniform Registry of Electors or SURE.
5 During my tenure, as well, I
6 was able to and had the privilege of
7 chairing, in 2005, the Pennsylvania
8 Election Reform Task Force that was
9 convened by, then-Governor Ed Rendell.
10 This was a thirteen-member task force
11 that included Barry Kauffman from
12 Common Cause, Dr. Laura Lavin (ph)
13 from The League of Women Voters, Doug
14 Hill from the County Commissioners
15 Association of Pennsylvania, local
16 election administrators, state and
17 county-elected officials, former
18 judges and other individuals with
19 profound experience in elections.
20 We heard testimony from many
21 groups and individuals saying we have
22 dozens of -- we had dozens of sessions
23 to gather our -- the -- the areas that
24 we were looking into for potential

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1 reform in Pennsylvania. I was -- we
2 issued a final report in 2005. We
3 issued a dozen of recommendations,
4 most of which were adopted
5 unanimously. Unfortunately, most of
6 those recommendations have not been
7 implemented, which brings me to the
8 point that most of the state and local
9 administrators and officials that I
10 know care deeply about elections and
11 they are decent people and work hard
12 for the voters and their constituents,
13 but there is still much more work that
14 needs to be done.
15 There is need for
16 legislative changes, including
17 constitutional amendments, as well as
18 changing the practices and procedures
19 to ensure that our voters have the
20 ample right to vote that they so
21 deserve.
22 Pennsylvania, in my opinion,
23 is not keeping up with fellow states
24 when it comes to potential election

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1 and administration improvements and
2 when I was secretary of state, I was
3 actively involved in the Association
4 of Secretaries of State and was -- we
5 met many times when I sat through the
6 discussions on voting issues, I was
7 amazed at what other states were
8 doing, but embarrassed as to what we
9 were not doing here in Pennsylvania.
10 So this hearing is much
11 needed and I'm glad to be a part of
12 it. Again, I thank you for being here
13 and for the opportunity to listen from
14 your experience and your ideas.
15 COMMISSIONER METELLUS: Good
16 afternoon. I, too, would also like to
17 add my notes to my fellow
18 commissioners, to Chris Fields, to all
19 of you participating this evening. I
20 am very much interested and very much
21 eager to participate and I'm looking
22 forward to some great dialogue.
23 Again, my name is Regine Metellus. I
24 am a senior vice president and chief

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1 operating officer for The Urban League
2 of Philadelphia.
3 Again, it is a pleasure for
4 me to be here this evening or this
5 afternoon and I say that both from a
6 professional perspective, as well as
7 from a personal perspective. When I
8 say professional, meaning The Urban
9 League of Philadelphia because from
10 The Urban League of Philadelphia's
11 perspective, this topic goes to the
12 core of what we do to empower
13 communities.
14 As one of the oldest civil
15 rights organizations in Philadelphia,
16 serving the African-American community
17 in Philadelphia since 1973, we are
18 engaged in encouraging the community
19 to get engaged in the voting process.
20 During the last presidential election
21 cycle, we, along with other affiliates
22 across the country, participated in
23 The National Urban League initiative
24 called Occupy the Vote and as part of

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1 that initiative, we were really tasked
2 with getting them informed about
3 registration, as well as getting them
4 informed and educated on the process.
5 Since then, we continue to work on
6 voting education primarily on two
7 fronts. First, by promoting the
8 message that every election is
9 important. There is an election every
10 year, twice a year. Not just the
11 election that happens every four years
12 on the presidential level. Secondly,
13 by supporting legislation and policies
14 that protect the right to vote for our
15 underserved and underrepresented
16 communities.
17 In the past few years, the
18 voting climate has changed, not just
19 in Pennsylvania, but really across the
20 land, across the country. Our work in
21 protecting the vote -- right to vote
22 and educating those on the importance
23 of voting has never been more
24 imperative and necessary. So

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1 today's -- today's discussion is
2 critically important and necessary.
3 On a personal note, I'm also
4 the daughter of two immigrant parents
5 who came to this country over fifty
6 years ago and I remember, very much --
7 when I was little, I remember my
8 parents being active and very much
9 engaged in political conversations and
10 discussions. And for my father,
11 his -- for him to vote was very
12 important. He made sure every single
13 election, primary and general and he
14 went out to vote and so I sort of grew
15 up with that -- grew up with that.
16 It's really -- a lot of immigrants
17 come here for that. For many reasons,
18 but for that reason as well, which is
19 the freedom of expression we enjoy in
20 that country. It's not something that
21 happens every place.
22 So, again, it's something
23 that was very important.
24 Unfortunately, my father actually --

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1 twenty-three years ago, he actually
 2 passed away very suddenly of a heart
 3 attack and, for me, it's sort of the
 4 strange coincidence of that day was
 5 that, on the morning that he passed
 6 away was the same morning that my
 7 mother had her appointment to become a
 8 U.S. citizen because she wanted to
 9 also have the right to vote. So in my
 10 mind, it was this very sad day, but I
 11 think, looking back -- years later,
 12 looking back on that event, and the
 13 way -- sort of the timing of how that
 14 worked out sort of, to me, felt like
 15 my father passing the baton to my
 16 mother.
 17 So for those reasons, from a
 18 personal standpoint, today's
 19 conversation is very important and I
 20 feel a very personal connection to it.
 21 So all that said, I'm
 22 extremely excited to be a part of this
 23 hearing and, in listening to the
 24 testimony that you will offer to us.

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1 I, as well as The Urban League,
 2 strongly believe that our vote is our
 3 voice and that this hearing offers the
 4 opportunity or all people to not only
 5 be heard, but for them to be inspired
 6 to action. In the work that we do
 7 every day, there is nothing more
 8 important.
 9 COMMISSIONER DIAZ: All the
 10 remarks, I guess, are for the record.
 11 I was the person in 1973 who filed the
 12 lawsuit that made bilingual education
 13 possible in Pennsylvania. I held
 14 hearings throughout the country, both
 15 for the D.M.C. and for the A.V.A.
 16 This was related to voting and voting
 17 rights.
 18 In 1975, I was the head
 19 legal counsel for the Philadelphia
 20 Party, which ran Charles Bowser for
 21 mayor and I handled all legal issues
 22 including lawsuits that were filed
 23 across the state. For twenty-five
 24 years, I was on the Board of the

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1 United States Hispanic Leadership
 2 Institute that registered over one
 3 million Latino voters throughout this
 4 country, throughout the Midwest. I
 5 was the chairman of the Election
 6 Commission of Philadelphia in 2008.
 7 I'm a committeeman of the 9th ward
 8 and, in 1997, I was the attorney that
 9 forced Pedro Cortes to make sure that
 10 all the registrations were filed
 11 correctly. Ed Rendell was the
 12 then-governor and I represented the
 13 Puerto Rico Federal Affairs Office,
 14 not only here in Pennsylvania, but in
 15 Illinois in relation to a fraud
 16 issues. So I've been involved in the
 17 elections a little bit.
 18 COMMISSIONER MONDESIRE:
 19 Good afternoon. Let me also salute my
 20 fellow commissioners and to the
 21 National Commission of Voting Rights.
 22 I'm Jerry Mondesire. I run
 23 the NAACP here in the state of
 24 Pennsylvania and, for the last sixteen

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1 years, I've also been the president of
 2 the NAACP in Philadelphia. The
 3 Right to vote for all
 4 Americans has never been under such
 5 assault since the end of
 6 reconstruction almost 150 years ago.
 7 In the Northeast, the Midwest, of
 8 course, in the states of the old
 9 confederacy, attempts to limit and/or
 10 tightly dimension the number of
 11 citizens who are allowed to use the
 12 franchise have been running amok for
 13 the past half-dozen years. Attempts
 14 to pose restrictive so called voter ID
 15 laws have been seen in nearly two
 16 dozen states.
 17 In other places, politicians
 18 have curtailed early voting, stopped
 19 same-day registration, imposed
 20 penalties and/or fines against
 21 volunteer organizations who conduct
 22 registration drives and voter outreach
 23 programs. The overall impact of these
 24 efforts would be against the backdrop

<p style="text-align: right;">Page 26</p> <p>1 of the U.S. Supreme Court's decision 2 last year to emasculate the Voters' 3 Rights Act of 1965. It's to ensure 4 the poor and eligible voters, 5 especially in states that have 6 progressive voting histories, while 7 also discourage voting among people of 8 color, the young, the elderly and new 9 immigrants. That's why these series 10 of hearings by the National Commission 11 of Voting Rights are so important and 12 I thank you everyone in the audience 13 for taking your time out of your busy 14 schedules to be here today. 15 Today's mainstream news 16 media no longer devotes much space or 17 time to the great social and 18 philosophical issues of the day. So 19 it is only in public discussions like 20 the one being held here today, that we 21 can fully examine the strengths and 22 the weaknesses of the American 23 democracy, which after all is what we 24 have come to rely on to protect our</p>	<p style="text-align: right;">Page 28</p> <p>1 information that you give us, 2 especially those of us who actively, 3 like the NAACP, protect the right to 4 vote for every citizen in 5 Pennsylvania. Thank you. 6 COMMISSIONER CORTES: Thank 7 you, Jerry, and thank you, Nelson, and 8 Regine. 9 The format of our hearing 10 today is going to be such in that we 11 are going to call one -- we are going 12 to have four panels vary in time 13 between half-an-hour to forty minutes 14 and I will call the panel and 15 introduce, by name, and titles and 16 witnesses, participants of the various 17 panels. We are -- we have asked the 18 panels, our witnesses, to speak for 19 five minutes. We are going to have 20 someone keeping time that will be on 21 this side. 22 So I ask, at least, the 23 panelists, in order to keep the 24 hearing going as planned, please keep</p>
<p style="text-align: right;">Page 27</p> <p>1 collective freedom. 2 The conversation we are 3 holding here today is part of that 4 discussion. It will be part of the 5 record that all of us will take from 6 this room when we leave it and prepare 7 for the next election. As my fellow 8 commissioner just pointed out to you, 9 there is an election in Pennsylvania 10 every six months. 11 There's a lot at stake. The 12 voter ID lawsuit is currently being 13 considered for appeal by the governor. 14 I personally hope he does because we 15 want to use it against him in the 16 upcoming election. I'm very positive 17 because Tom Corbett and the voter ID, 18 I think it is an outrageous attempt to 19 suppress the vote of citizens all 20 across the commonwealth. 21 So I'm glad to be here. I'm 22 looking forward to the conversation of 23 those of you who are scheduled to 24 testify and I hope to use the</p>	<p style="text-align: right;">Page 29</p> <p>1 an eye out on our friend here to the 2 left of the panelists, the right side 3 of the stage -- your left side -- for 4 keeping time. They'll, very politely, 5 let you know you're going over your 6 allotted time. There is also -- the 7 witnesses that are presenting in the 8 panel have also provided written 9 testimony that will be part of the 10 record. 11 So with that, I'm going to 12 call the first panel. Panel number 13 one is the panel on discriminatory 14 impact of voting changes on 15 communities. This panel will cover 16 racial discrimination and issues that 17 impact communities of colors. And as 18 I said, each panelist will present for 19 five minutes. Then, we will have -- 20 which will cover about twenty minutes 21 of the allotted forty minutes of time 22 for that panel and then, after each 23 panel has presented, there will be an 24 opportunity for the commissioners up</p>

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1 here to ask some follow-up questions
 2 and engage in continuous dialogue.
 3 And with that, I'd like to
 4 call the first four members of panel
 5 number one. And they are Marian
 6 Schneider, who is a senior attorney,
 7 Advancement Project, Robert Meek, who
 8 is a managing attorney for the
 9 Disability Rights Network of
 10 Pennsylvania, Jerry Vattamala, who is
 11 the staff attorney with the Asian
 12 American Legal Defense and Education
 13 Fund and last, but not least, Ana
 14 Sostre-Ramos, a private citizen.
 15 We will start with the
 16 panelists that are here at the moment
 17 and, again, panelists, we thank you
 18 for being here. We thank you for your
 19 time and your testimony, which is
 20 vitally important to the purpose of
 21 this hearing.
 22 So with that, Ms. Schneider,
 23 the floor is yours.
 24 MS. SCHNEIDER: Thank you,

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1 Secretary Cortes, Ms. Metellus, Judge
 2 Diaz and Mr. Mondesire. It's my
 3 pleasure to be here today and I
 4 appreciate having the opportunity to
 5 speak.
 6 As Secretary Cortes
 7 mentioned, I am the senior attorney at
 8 Advancement Project, a national civil
 9 rights and racial justice organization
 10 in Washington, D.C. I work in the
 11 voter protection program and we work
 12 with our partners in legal,
 13 legislative and communication
 14 strategies to remove barriers to
 15 voting for voters of color. I've been
 16 working on election-related matters
 17 since 2006. I'm also one of those who
 18 sued Secretary Cortes in the Banfield
 19 case.
 20 COMMISSIONER DIAZ: Welcome
 21 to the club.
 22 MS. SCHNEIDER: I've been
 23 trial counsel in the Applewhite
 24 against the Commonwealth, a voter ID

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1 case, but I've been asked to talk
 2 about a case involving Lincoln
 3 University in which I was pro bono
 4 counsel and I just preface my remark
 5 by saying it's fitting that we are
 6 here at the American Constitution
 7 Center that created our liberty.
 8 We, as Americans, take a lot
 9 of things for granted. We are -- some
 10 of us are acutely aware of how much we
 11 take electricity, hot water, our -- as
 12 simple as phone service for granted.
 13 And many of us take for granted that
 14 when we go to the polls for Election
 15 Day, that we can vote quickly and
 16 easily without fuss, but that's not
 17 the case for all our fellow citizens
 18 and voting discrimination on account
 19 of race exists and it's present, even
 20 if it's more subtle and nuanced and
 21 masked by seemingly neutral
 22 regulations.
 23 The troubling images of our
 24 fellow citizens of the South engaged

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1 in a life-or-death struggle for civic
 2 equality at the height of the civil
 3 rights movement is emblazoned on our
 4 national consciousness and that
 5 spawned the Voting Rights Act and
 6 that's why we are here today.
 7 Pennsylvania doesn't have a
 8 spotless record. Individuals have
 9 used the Voting Rights Act to
 10 challenge voting practices that have
 11 an impact on voters of color and
 12 that's one of the cases that I'm going
 13 to talk to you about.
 14 English against Chester
 15 County was a case that arose out of
 16 refusal of the Chester County Board of
 17 Elections to move the polling place
 18 that serves the Lincoln University
 19 community to larger quarters. This is
 20 the kind of local practice and local
 21 change that has an enormous impact
 22 and, yet, can fly under the radar.
 23 The suit was brought on behalf of
 24 individual African-American voters who

<p style="text-align: right;">Page 34</p> <p>1 didn't get a chance to vote or waited 2 up to eight hours to vote that day. 3 In 2008, the local election officials 4 predicted that this would happen 5 because there were long lines during 6 the primary election and they 7 petitioned the Chester County Board of 8 Elections to move the polling place. 9 Lincoln University offered one of its 10 gymnasiums. The Board refused to move 11 the polling place and ignored the 12 testimony about the lack of parking, 13 the small space inside and that it is 14 located next to an active railroad 15 line. Instead, they cited the 16 erroneous perception that the 17 gymnasium lacked accessibility for 18 voters with disabilities. 19 On Election Day 2008, the 20 long lines that were predicted 21 actually occurred and there was a 22 series of events that coalesced that 23 caused these long lines. First of 24 all, the voting place was too small to</p>	<p style="text-align: right;">Page 36</p> <p>1 percentage of any precinct in Chester 2 County and has the highest black 3 voting age population in the county. 4 After the elections, hundreds of 5 voters petitioned the board to move 6 the polling place. Instead of moving 7 it to the campus, they moved it 8 farther away to -- even farther from 9 campus, not walking distance, at a 10 location that already has a precinct. 11 As a result of that, a suit was filed. 12 I was honored to be pro bono counsel 13 and represent voters who were denied 14 their right to vote. Their stories 15 were compelling. 16 Golden English, the main 17 plaintiff, went two or three times on 18 the day of election, trying to vote, 19 but couldn't wait and left. One of 20 the other petitioners who lived next 21 door, she is the wife of a pastor, and 22 she watched all day for lines to 23 dissipate. They never dissipated, so 24 she never voted. I know I've run out</p>
<p style="text-align: right;">Page 35</p> <p>1 accommodate additional privacy booths 2 or additional scanners for their over 3 two thousand registered voters in that 4 precinct. There were no space for 5 voters to write or fill out 6 provisional ballots. 7 There was every -- there 8 were poll watchers inside the polling 9 place. Every Lincoln University 10 student was challenged on grounds of 11 identity, even when they had their 12 voter registration card or their 13 driver's license in hand. 14 The County failed to include 15 the most up-to-date poll book with the 16 judge of election's materials and that 17 meant many voters were not in the poll 18 books, which required calls to the 19 County and then hand writing names on 20 the back of the poll book. All of 21 these caused these long lines. 22 The Lower Oxford East 23 precinct, which is home to Lincoln 24 University, had the lowest turnout</p>	<p style="text-align: right;">Page 37</p> <p>1 of time. 2 The Lincoln suit settled 3 almost immediately after it was filed. 4 The polling place was moved to the 5 campus. It's housed in a brand new 6 building, the International Cultural 7 Center, and it's convenient to the 8 community and to the students, but we, 9 as a nation -- we used Section 2, but 10 it was after the fact. That's not 11 good enough. We, as a nation, have to 12 prevent these from occurring before 13 Election Day and that's what I hope 14 this commission can recommend to 15 Congress. Thank you. 16 COMMISSIONER CORTES: Thank 17 you. 18 We are going to now receive 19 the testimony of Mr. Robert Meek. 20 MR MEEK: Good afternoon. 21 It's a pleasure to be here. Thank you 22 very much for inviting me, Secretary 23 Cortes, Ms. Metellus, Mr. Nelson and 24 Mr. Mondesire.</p>

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1 My name is Robert Meek, I'm
2 the managing attorney with the
3 Disability Rights Network of
4 Pennsylvania, which is the
5 federally-designated protection and
6 adequacy system for people with
7 disabilities in Pennsylvania.
8 One of the many things that
9 we do is address problems of voting
10 for people with disabilities. I'm
11 going to highlight a couple of things
12 that we attempted to do to improve
13 access to the polls for people with
14 disabilities, unfortunately and often,
15 a group often relegated to the
16 sidelines in any of these debates.
17 One thing I'd like to bring
18 to your attention and Secretary
19 Cortes, unfortunately, probably
20 remembers this because we were forced
21 to bring him into a case, in current
22 litigation and we brought an action
23 against the City of Philadelphia Board
24 of Elections for failing to provide

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1 accessible polling locations for
2 people with disabilities, especially
3 mobility impairments and that the --
4 that -- interestingly enough, the
5 Department of Justice investigating
6 the same issue and, eventually, after
7 much raving and gnashing our teeth, we
8 reached a settlement agreement with
9 the City in which we had a partnership
10 with the Department of Justice to help
11 us implement the settlement, which was
12 to inspect and evaluate all of the
13 polling locations in Pennsylvania --
14 I'm sorry -- in Philadelphia to ensure
15 that they were either accessible or
16 could be made accessible. If they
17 could not be accessible, we made
18 recommendations to moving those
19 polling locations to acceptable
20 locations -- to acceptable locations
21 where those locations could be made
22 accessible. And because the city of
23 Philadelphia is huge and has 1,680
24 voting divisions, that was a

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1 monumental task.
2 It was around 1,200 polling
3 actual locations because some of the
4 locations were unusual polling
5 locations, but it was a monumental
6 undertaking and I think that it's safe
7 to say, after about four years of
8 monitoring, the City has come to have
9 a very, very, very high percentage of
10 accessible locations, which is a great
11 thing.
12 What I would want the
13 Commission to recommend to Congress is
14 to ensure that that same kind of
15 accessibility is accomplished across
16 the state.
17 Pennsylvania has, obviously,
18 many, many municipalities that have
19 voting divisions that are not
20 accessible. The current provisions in
21 the state law that are propagated
22 by -- through the Secretary of the
23 Commonwealth's office just aren't
24 enough to ensure that that access

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1 happens. Those things were in place
2 when we brought this litigation and
3 the problem is that the way the system
4 operated, just did not ensure
5 accessibility.
6 It's very easy for
7 municipalities to say that their
8 locations were accessible or there was
9 an alternative way to passing the
10 vote. Our concern was those
11 alternatives were far more burdensome
12 on people with disabilities than they
13 might be on an the ordinary citizen
14 because they required all kinds of
15 pre-notice, revealing of private
16 physical and mental health information
17 and were just extremely, extremely
18 personally invasive.
19 Those alternatives, we
20 determined, were not appropriate and,
21 fortunately for us, the Court agreed
22 with us that -- and so I'm pleased to
23 the Commission as to make
24 recommendations that those sorts of

<p style="text-align: right;">Page 42</p> <p>1 things, the alternative ballot kind 2 of -- out. That this -- the 3 municipalities stop, that -- that that 4 loophole is closed because that's 5 really a very grave, grave problem for 6 people with disabilities. 7 Another thing I wanted to 8 touch on, again, for persons with 9 disabilities is that -- and this is 10 certainly a usual wrinkle is -- and 11 I'm glad we have sign language 12 interpreters here, that makes me 13 happy -- is exactly for people who use 14 ASL as their primary language. 15 The Voting Rights Act 16 requires, I guess, jurisdictions to 17 provide all kinds of information in 18 native languages to people that are 19 not English speakers and our 20 contention is that persons who utilize 21 ASL, in fact, are a minority-language 22 group and that there should be some 23 recommendations to improve how those 24 kind of -- that kind of information is</p>	<p style="text-align: right;">Page 44</p> <p>1 and should not be subject to any kind 2 of challenge based on their status as 3 a person with a disability. 4 Thank you much. Appreciate 5 it. 6 COMMISSIONER CORTES: Thank 7 you, Mr. Meek. 8 As a reminder, we will, 9 first, take the testimony of witnesses 10 and then we will have time for 11 questions. I want to encourage my 12 colleagues to take from here and 13 continue dialogue. 14 Next, we have with us Ms. 15 Ana Sostre-Ramos, a private citizen 16 who will testify. Thank you, Ms. 17 Ramos. 18 MS. SOSTRE-RAMOS: Hi. 19 Thank you. Thank you for inviting me, 20 the whole committee. 21 Actually, I'm coming from 22 Puerto Rico since 1981. I am involved 23 with Latino Vote. We are very 24 involved with voter registration and</p>
<p style="text-align: right;">Page 43</p> <p>1 transferred or transmitted, I should 2 say, to persons who do use ASL. 3 One other thing I wanted to 4 mention, which is, fortunately, 5 Pennsylvania is actually a good 6 example of this, is that I would 7 encourage that Congress be advised 8 that this is something that needs to 9 be -- have a greater spread and that 10 is the lack -- Pennsylvania, 11 unfortunately, does not have any 12 competency barriers to persons to 13 vote, for people at the elections 14 (inaudible) and that's a good thing. 15 I would hope that the Commission would 16 recommend to Congress that there 17 should be no barriers for people with 18 mental illness or disabilities because 19 it just bars people based on a status, 20 rather than actual abilities and our 21 concern is that people who are -- who 22 can make decisions, who can decide who 23 to vote for and then understand what 24 is going on should be allowed to vote</p>	<p style="text-align: right;">Page 45</p> <p>1 getting everybody to vote 100 percent, 2 9.9 vote. As soon as I come to 3 Philadelphia, I'm like we have to 4 vote. We have got to get involved and 5 I guess -- 6 COMMISSIONER CORTES: I'm 7 sorry. Could you come closer? 8 MS. SORTE-RAMOS: Sure. 9 Thank you. 10 COMMISSIONER CORTES: Thank 11 you. 12 MS. SORTE-RAMOS: I'm 13 pleased to get involved with a group 14 called Latino Vote and, as a member of 15 that group, we started to go out and 16 register people to vote, going door to 17 door, all the Latino, door to door, to 18 make sure that everybody had the right 19 paper and not register -- just all day 20 on Spring Garden and bring the card 21 back to them, make sure they have it 22 in their hand and ready to vote, but, 23 unfortunately, we're having a big 24 problem.</p>

<p style="text-align: right;">Page 46</p> <p>1 Our situation is more or 2 less like the other two people who 3 speak before about the polling places 4 and we had a major problem with the 5 Latino, just because of the way we 6 look or the way we talk, but we have a 7 situation where we have to help more 8 than -- it's getting a little hard to 9 vote. 10 They are changing polling 11 places to the location where they are 12 going to vote and, also, they are 13 discriminating without translation. 14 We need -- all the documentation 15 should be in Spanish and English as 16 well, so everybody can understand what 17 they're are going to do. They should 18 be more translated -- people 19 professionally translating in the 20 voting place and let the people vote. 21 And some of the places here, 22 especially in Philadelphia, the voting 23 places have been changing locations, 24 like I heard before a couple of times.</p>	<p style="text-align: right;">Page 48</p> <p>1 you cannot come inside. I said, oh, 2 really, they cannot come in here, 3 let's -- let's call some of the police 4 officer and everything and make sure 5 this place is going to change because 6 this place is supposed to be open to 7 the public and, you know, make sure 8 the people vote. 9 We -- with this law that 10 they tried to -- thank God that it is 11 already stopped right away. I was 12 going, as a Latino, to go in 13 Harrisburg and testify with all the 14 situation that happened with this 15 picture ID. And thank God that it 16 happened, but even though with that, 17 even though that's past and now they 18 don't have to use it, they are still 19 asking the people, you need ID. And 20 not just an ID for voting, it's a 21 picture ID, license, that type of 22 thing. 23 If you don't have a license 24 or you don't have the ID, you cannot</p>
<p style="text-align: right;">Page 47</p> <p>1 They change location. They just don't 2 change location, they don't even put 3 where exactly the people have to go 4 and then as soon as they go -- you 5 don't allow here -- we had a couple of 6 people that we had to just go there 7 and I go personally with them and I 8 wait and I see people, they should not 9 be going places and no houses, no 10 residence. 11 I have voting places in a 12 house that is a residence of people 13 living. I don't think that's right. 14 They don't allow people, exactly 15 whoever they want to get into their 16 property and I believe that if you 17 open your property for voting places, 18 that's no longer a residence. That's 19 a public place. It's where everybody 20 can come in and out to vote. 21 So they don't -- some that 22 they don't allow the Latino to go 23 inside and vote. You're not allowed 24 in here or we don't have interpreter,</p>	<p style="text-align: right;">Page 49</p> <p>1 vote. So that's still going on, that 2 situation, even though I'm sure it 3 passed. I believe that we should have 4 permission also here in Philadelphia 5 to dealing with this situation in 6 Philadelphia and, also, in 7 Pennsylvania, and not just here, to 8 helping more the Latino as well. 9 Last election, we have 6,646 10 voter registrations and just 3,340 11 Latinos vote. So it's a big 12 difference from all the changes. 13 COMMISSIONER CORTES: Thank 14 you. Thank you, Ms. Sostre-Ramos. I 15 appreciate your testimony and input. 16 Is Mr. Jerry Vattamala here 17 in the room? If not, we will proceed 18 with the follow-up questions and we 19 will ask Mr. Vattamala to join the 20 next panel, panel number two. 21 So I open the floor for my 22 fellow commissioners to ask questions 23 if they have any. 24 COMMISSIONER MONDESIRE:</p>

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1 Mr. Meek, tell us -- if you can, give
2 us a sense of the numbers of people
3 who you would consider disabled who
4 are voting in the city of Philadelphia
5 and if you have the ability to us tell
6 us how extensive it is across the
7 country.
8 MR MEEK: I don't think I
9 can give you a number of persons who
10 are eligible to vote who have a
11 disability. And, again, recall that
12 our lawsuit was about people with
13 mobility disability. So there is
14 going to be plenty of other people
15 with sensory and other kinds of
16 disabilities.
17 The general consensus is
18 that, in Pennsylvania, where we have
19 twelve million people, you know, the
20 guess work would be maybe ten, fifteen
21 percent people have disabilities, but
22 that's guess work. It's not an
23 insignificant number. It's not a
24 majority certainly, but it's not an

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1 insignificant number. Urban areas
2 tend to have probably a higher
3 concentration of people because
4 services here are more accessible for
5 people who live in the city than they
6 may be in more rural area and, of
7 course, that's where more people live
8 naturally.
9 Anyway, so it's --
10 Philadelphia has a significant
11 disability population. I cannot tell
12 you the number though. Sorry.
13 COMMISSIONER MONDESIRE: The
14 group homes where a lot of folks live,
15 do they take people to vote on given
16 Tuesdays?
17 MR MEEK: They do. Many do.
18 They should and -- but that doesn't
19 necessarily mean it happens. It
20 should.
21 So, again, I can't tell you
22 whether they do or they don't because
23 I'm not monitoring that.
24 Unfortunately, I wish I could, but I

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1 can't.
2 COMMISSIONER MONDESIRE: No
3 one is, I presume.
4 MR MEEK: I doubt anyone
5 does.
6 COMMISSIONER MONDESIRE:
7 Thank you.
8 COMMISSIONER DIAZ:
9 Ms. Schneider, how long -- have you
10 looked at this stuff on a national
11 basis and I was wondering whether or
12 not you looked at some of the western
13 states where there is voting by mail
14 and whether or not there is a
15 possibility of instituting either
16 electronic or voting-by-mail process
17 in terms on nationally.
18 MS. SCHNEIDER: Well, we
19 have looked at national voting reforms
20 and when you say vote by mail, we kind
21 of put that into an early voting
22 category, either in-person or early
23 voting a no-excuse absentee voting.
24 Advancement Project, we

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1 recommend a significant early voting
2 period about, you know, ten days to
3 two weeks before the election,
4 including two weekends before the
5 election. We also recommend same-day
6 voter registration during the early
7 voting period because those reforms,
8 taken together, have been demonstrated
9 to increase turnout, which is the goal
10 of some of these election reforms.
11 So Pennsylvania has a
12 constitutional provision regarding
13 absentee voting and there is some
14 controversy over whether you would
15 need an amendment or whether you can
16 do it legislatively. So that would be
17 the legal issue about whether absentee
18 voting can be, I guess, relaxed in
19 Pennsylvania.
20 As far as -- Advancement
21 Project, it doesn't take it that --
22 just electronic voting -- voting --
23 having voted ballots transmitted over
24 the internet is not -- to date, is not

<p style="text-align: right;">Page 54</p> <p>1 secure. And until it becomes secure 2 and Secretary Cortes and I could 3 debate about whether the electronic 4 voting machines in the Commonwealth 5 are secure, but we would not recommend 6 that at this time and there's actually 7 a project that's being undertaken as 8 we speak by the Election Verification 9 Network and computer scientists who 10 are doing a study of whether it is 11 feasible to have an electronic voting 12 system secure, that could be a secure 13 transmission. At this moment, it 14 doesn't exist. 15 COMMISSIONER DIAZ: I want 16 to also qualify something that 17 Ms. Ramos talked about. The reason 18 bilingual education is available in 19 this country is because of the unique 20 status of the Puerto Rican community, 21 where Puerto Rico's language is 22 Spanish, but they're citizens, by 23 birthright. So when they come here, 24 as a result, they don't have to take</p>	<p style="text-align: right;">Page 56</p> <p>1 the Northeast. 2 MS. SCHNEIDER: If I could 3 address that, in Section 4(e) under 4 the Voting Rights Act has been a 5 utilized tool for exactly that reason 6 but we -- in New York, they were able 7 to get language -- bilingual materials 8 and I don't know if it was a dozen 9 counties based on the Puerto Rican 10 population and the secretary of the 11 board of elections in New York agreed 12 to have bilingual materials in those 13 counties and that is something 14 Advancement Project very much is 15 interested in trying to do with the 16 Puerto Rican population in 17 Pennsylvania because it's increasing. 18 COMMISSIONER CORTES: The 19 Section 4(e) of the Voting Rights Act 20 is the one provision that was used, as 21 most of you know, in the case of Berks 22 County and it's the one that speaks -- 23 as Judge Diaz mentioned -- speaks to 24 the voting rights of those individuals</p>
<p style="text-align: right;">Page 55</p> <p>1 an immigration test in any language, 2 so they are citizens by birthright. 3 So that opened the door for bilingual 4 education for all people. 5 So I just want to give 6 credit to that community who opened 7 that door of bilingualism in this city 8 for all people, but it's really 9 because of the unique status. Most 10 immigrants have to take a test in 11 English and, thereby, there's a 12 requirement, but because of that 13 issue, I think one of the reasons -- 14 and so they are disfranchised, period, 15 as a result of the language issue and 16 it's taken forever to get that into 17 fruition in the Northeast 18 particularly. Although, it's worked 19 very well in Orlando and maybe because 20 of the nature of the economic status 21 of the difference between the Orlando 22 community and the communities in the 23 Northeast and it's a problem that we 24 have not been able to tackle well in</p>	<p style="text-align: right;">Page 57</p> <p>1 who are U.S. citizens by birth for who 2 are, you know, born under the U.S. 3 flag, but whose primary language is 4 structured in Spanish and that happens 5 to be in Puerto Rico. So thank you. 6 COMMISSIONER METELLUS: My 7 question is primarily for 8 Ms. Schneider, but I invite any of the 9 panelists to respond. 10 There was the case -- the 11 Chester County case that there was a 12 discussion about the length of time 13 that it took people to vote and the 14 size of the room. I'm wondering if 15 you can speak to any efforts -- and 16 I'll just focus on Pennsylvania -- 17 nationwide would be ridiculous -- but 18 efforts within Pennsylvania to talk 19 about what those benchmarks should be. 20 I mean, clearly, seven hours is way 21 too long, but is there discussion or 22 efforts to sort of identify what 23 benchmarks we should be targeting and 24 working towards those?</p>

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1 MS. SCHNEIDER: Well, I
2 think The Presidential Commission that
3 released -- the Presidential
4 Commission on Election Administration
5 released a report in the past two
6 weeks and they have recommended that
7 no one should wait more than thirty
8 minutes to vote and they recommended a
9 standard formula that would allow --
10 that should be applied in all polling
11 places, so that thirty minutes is the
12 maximum.
13 I would certainly urge --
14 there was actually a regional hearing
15 that the PCEA conducted here in
16 Philadelphia in September and there
17 was a lot of testimony regarding
18 actually voters with disabilities
19 especially, but there was a very
20 interesting section on this exact
21 issue, how long it takes and how
22 people are served in the polling
23 place.
24 So how you figure out those

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1 times is -- I think what you have to
2 do is, first of all, you have to look
3 at the voting age population in the
4 precinct, the number of registered
5 voters in the precinct, how long it
6 takes to get to the line and the
7 equipment. It depends on what kind of
8 equipment you have. And then you need
9 a space -- and I said that at Lincoln
10 University -- some people were saying,
11 oh, well, it's only the presidential
12 that has a lot of people, it doesn't
13 matter, you need a scalable space.
14 You have two thousand voters
15 registered in this precinct. You got
16 to -- if you're going to have an
17 eighty percent turnout, you have to be
18 ready for an eighty percent turnout.
19 You need a place that's scalable. If
20 you have a lower turnout, then you can
21 deal with that.
22 So it has to be based on the
23 election year, the number of voters
24 and using that thirty-minute

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1 benchmark, I think, is a good one and
2 Pennsylvania should definitely adopt
3 that, but I'm hoping that Congress
4 will take the Commission's
5 recommendations to heart as well.
6 COMMISSIONER CORTES:
7 Following up on the questions about
8 the polling place location and moving
9 of the poll locations, which Ms.
10 Schneider, as well Ms. Sostre
11 referenced, the question I have is:
12 So we heard about a case in Chester
13 County with Lincoln University, how
14 pervasive or how big of a problem is
15 the change in polling locations to
16 locations that would be considered
17 inconvenienced by distance, by the
18 issue of just simply not enough
19 parking spaces. Is that pervasive?
20 Is that something that happens
21 frequently throughout the state?
22 MS. SCHNEIDER: Well, I
23 don't know the statistics of how
24 frequently it happens, but this is

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1 exactly the kind of practice that the
2 Voting Rights Act, in Section 5, the
3 preclear provision was meant to
4 address, because there is -- these
5 kind of local changes fly under the
6 radar and I will say that, at this
7 year alone, that Kutztown University
8 wanted to move its polling place off
9 campus, making it harder for those
10 students to vote and there was another
11 university that also --
12 Shippensburg -- Shippensburg
13 University wanted to move its polling
14 place off the campus, making it harder
15 for their students to vote. As
16 Ms. Sostre-Ramos mentioned, in
17 Pennsylvania -- and part of it is to
18 move polling places so they are
19 accessible for voters with
20 disabilities, but so the -- I think
21 that without a standard formula to
22 use, to address what should be an
23 active polling place, that those
24 things happen and they fly under the

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1 radar and that's why we don't have the
2 statistics that you're looking for as
3 to how pervasive it is, but if there
4 is no notice and no disclosure, it's
5 hard to prevent voter disenfranchise
6 before the election and then, after
7 the election, it's irreparable harm.
8 COMMISSIONER CORTES: This
9 follow-up question is asked to
10 Mr. Meek, but anyone of the group can
11 answer as well.
12 During the 2005 Election
13 Reform Task Force, there was
14 significant discussion on ways to
15 address access and accessibility for
16 voters with disabilities. One of the
17 discussions that generally takes
18 place, not just here, in Pennsylvania,
19 but nationally, is the adoption of
20 accessible regional voting centers or
21 megacenters, where there is plenty of
22 locations with plenty of parking
23 spaces, ramps, the locations are, in
24 an ideal world, an ideal location for

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1 voters with disabilities to vote.
2 I know what the discussion
3 was when we discussed this during the
4 task force, but I wondered what is the
5 position of the Disability Rights
6 Network of Pennsylvania when it comes
7 to the adoption of regional centers or
8 megacenters that may be farther away
9 from the traditional center, but may
10 provide increased access.
11 MR MEEK: Thank you for the
12 question. Interestingly, one of the
13 main, major thrusts of our lawsuit was
14 that we wanted the ability of people
15 with disabilities to vote like
16 everyone else, which was vote at their
17 local polling location, where they
18 could vote with their neighbors,
19 engage with election officials and,
20 essentially, have the same voting
21 experience as anyone else.
22 So our concern would be if
23 you created these hubs, that would
24 move people away from that kind of

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1 experience and might even end up with
2 a kind of segregated environment. So
3 I have to say I oppose that notion,
4 given our history with the lawsuit,
5 and just what I think might become a
6 default segregated kind of system.
7 COMMISSIONER CORTES: Thank
8 you, Mr. Meek.
9 For the benefit of the
10 group, that was the conclusion of the
11 task force. We were thirteen members
12 and unanimously voted down a
13 suggestion or recommendation to create
14 centers for the very reason that you
15 stated. We need to make sure that all
16 voters, independent of any particular
17 condition are able to vote like
18 anybody else with the same rights and
19 the same access.
20 MR MEEK: I just want to
21 address one thing that the previous
22 question -- the movement of places
23 because I know, in Philadelphia, there
24 is a whole process, a judicial

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1 process -- quasi-judicial process.
2 In order to move a location,
3 there has been hearing in front of
4 commissioners and people can offer
5 testimony and the commissioners rule
6 after that determination and taking a
7 number of considerations, but there
8 are limits that are already
9 established about movement of
10 locations have to be in an adjacent
11 division and there are some that can't
12 more than five blocks away from the
13 current location.
14 So there are constraints on
15 movement of -- and the process by
16 which -- it's a transfer process by
17 which that happens. So I'd be
18 concerned if that process was somehow
19 undermined and not continued to carry
20 out the way it is and so that's...
21 COMMISSIONER DIAZ: In my
22 experience, the only people who
23 complain, they do happen to be ward
24 leaders.

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1 MR MEEK: Absolutely. Judge
2 Diaz, you hit the nail on the head.
3 That's where we had most of
4 the grief about movement, was from the
5 ward leaders who somehow their
6 brother-in-law's house was the voting
7 place, so that's where they wanted it.
8 So Ms. Sostre-Ramos
9 mentioned the whole idea -- we also
10 were opposed to having voting
11 locations in private residences. We
12 think that's a very negative kind of
13 message to people and it is difficult
14 in Philadelphia. Philadelphia is a
15 very old city with a lot of old stock
16 in public buildings. However, we
17 think public buildings and commercial
18 buildings are the places to go and
19 they are probably more easily made
20 accessible than private residences
21 ever could be.
22 COMMISSIONER CORTES: Thank
23 you. We are almost out of time for
24 this panel.

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1 If you happen to have our
2 schedule, we are actually running a
3 little bit behind schedule because we
4 have three panels as opposed to four,
5 but there is a law in Pennsylvania
6 dating back 2005, 2006 -- 2006, that
7 limited where you could have some of
8 the polling places. You couldn't have
9 it in bars, you couldn't have it in
10 some of the restrictive locations that
11 are membership driven.
12 It's interestingly enough to
13 see that was one of those that was the
14 right statute of legislation, but then
15 you have the other backlash, people
16 are saying that place may be a private
17 residence, it may be a bar, but it's
18 convenient, it's right next to my
19 house and, now, I have to go somewhere
20 else, but it's a point well taken and
21 at least we have some of those laws
22 already.
23 With that, I don't know if
24 any of the other panelists has a

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1 pressing question, if not, I would --
2 MS. SOSTRE-RAMOS: I would
3 just like to add something that you
4 just said about the convenience.
5 In that situation,
6 particular situation that I was
7 telling you about, the property and
8 residence, that would be good if they
9 allowed everybody, as well, to go in,
10 but in that particular situation,
11 believe me, we find a place. It could
12 be even a supermarket that they have a
13 big place to do and, also, school,
14 hospital, whatever, but not in a
15 property. Not in the property.
16 COMMISSIONER CORTES: We
17 agree.
18 MS. SOSTRE-RAMOS: We did
19 that. We did that. We make sure --
20 at the last minute you change the
21 voter's place, let's change it right
22 now. And I have a place where people
23 can vote without nobody that don't
24 allow certain people and everybody.

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1 COMMISSIONER CORTES: And
2 that's is an excellent point. The
3 group may already know that there are
4 some groups, some represented here
5 like Advancement Project, Committee of
6 Seventy, Common Cause and others --
7 The League of Women Voters -- they
8 have hotlines, so that Election Day,
9 if you see any irregularity, you can
10 report that. We also have an
11 800-number, the Department of State,
12 and we are very quick to call the
13 local officials to make sure that none
14 of that was taking place, but you know
15 the --
16 MS. SOSTRE-RAMOS: Yes.
17 That happened. Yes. Now, I do
18 remember, yes, the seventy, the group
19 of seventy. Yes, we called them and
20 they came. Very good. Thanks again
21 for that. They helped us.
22 COMMISSIONER CORTES: With
23 that, again, we thank the panelists
24 for their testimony and we thank you

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1 kindly for everything that you're
2 doing on a daily basis to protect the
3 voting rights of all citizens. Thank
4 you.
5 COMMISSIONER MONDESIRE:
6 Thank you.
7 MS. SOSTRE-RAMOS: Thank
8 you.
9 COMMISSIONER DIAZ: Thank
10 you.
11 COMMISSIONER CORTES: This
12 is the second panel and this is a
13 panel on election administration
14 issues.
15 In fact, we are going to
16 have two panels on election
17 administration issues. We are going
18 to hear from the first set of
19 panelists. Then, after that, we are
20 going to have what we're deeming open
21 mic for the public and, as Chris
22 Fields mentioned, this is where if you
23 are member of the public at this time,
24 if you're not scheduled to be a

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1 panelists, you could please stand up
2 and we will make sure you have three
3 minutes to present your views and be
4 heard.
5 The second panel is a panel
6 that will cover disability issues.
7 It's going to -- the topic is going to
8 have -- we are going to talk about
9 elderly voters, that's going to lead
10 to Election Day problems, there's
11 going to be issues that we discuss
12 related to some specific counties. We
13 are going to also hear about voter
14 registration, provisional ballot
15 problems and et cetera.
16 Our panelists for the -- for
17 the second panel are Joe Certaine.
18 Joe is the former operations director
19 for the Pennsylvania Voter ID
20 Coalition. We also invite Ms. Mary
21 Catherine Roper, senior staff attorney
22 with the ACLU of Pennsylvania,
23 Mr. Jamaal Craig, who is the Civil and
24 Human Rights Technician for the United

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1 Steelworkers and last, but not least,
2 we would like to invite Mr. Jerry
3 Vattamala. He's here with us. He is
4 the staff attorney with the Asian
5 American Legal Defense and Education
6 Fund.
7 So if we could have Mr.
8 Certaine, Ms. Roper, Mr. Craig and Mr.
9 Vattamala join us.
10 Is Mary Catherine Roper with
11 us? Hopefully she will join us in the
12 next few minutes.
13 Thank you, again, Panelists,
14 for being with us. We appreciate your
15 time and your hard work in voting
16 rights.
17 We will start, first, with
18 Mr. Jerry Vattamala, who, again, is
19 the staff attorney with the Asian
20 American Legal Defense and Education
21 Fund. And by the way, you have -- we
22 have traversed the panel on the
23 discriminatory impact of voting
24 changes on communities and I think

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1 that's your topic. So let's start
2 with you and then let's talk about
3 election administration.
4 MR. VATTAMALA: Sure. I
5 apologize. I was stuck in traffic
6 coming from New York.
7 My name is Jerry Vattamala.
8 I'm an attorney for the Asian American
9 Defense and Education Fund, AADEF.
10 AADEF is a forty-year old national
11 civil rights organization that works
12 to defend the civil rights of Asian
13 Americans through litigation advocacy
14 and community education.
15 Since 1988, every major
16 election, AADEF has monitored. For
17 example, in 2012, we had close to nine
18 hundred volunteers in fourteen states
19 and Washington, D.C. -- including here
20 in Pennsylvania -- monitoring the
21 elections at different locations.
22 Some of the issues that we observed on
23 Election Day -- two of the main
24 problems here in Pennsylvania and

<p style="text-align: right;">Page 74</p> <p>1 nationally was lack of language 2 assistance. And, two, the 3 discriminatory and uneven applying of 4 voter ID laws and request for proof of 5 citizenship of Asia-American voters. 6 So with the lack of language 7 access, the City of Philadelphia, 8 after 2006, the U.S. v. Philadelphia 9 had agreed to voluntarily provide 10 English-language assistance in 11 Chinese, Vietnamese, Korean and Khmer. 12 Since that time, they have 13 significantly backslid each successive 14 election, until the point in 2012 15 where there were only four Asian 16 language interpreters for the entire 17 city. Wholly inadequate. 18 Some of the major 19 neighborhoods where there is a 20 significant population of 21 Asia-American voters that need 22 language assistance, for example, 23 South Philly -- South Philadelphia. 24 The South Philadelphia branch library</p>	<p style="text-align: right;">Page 76</p> <p>1 English less than very well. 2 First-time voters. More than three 3 times the national average are 4 first-time voters and they have often 5 will be accompanied to the poll site 6 by someone that's there to assist 7 them, a child, a niece, a nephew, a 8 family friend. 9 Many poll workers are not 10 aware of Section 208 of the Voting 11 Rights Act which allows a person of 12 their choice to accompany the voter 13 inside the voting booth and assist 14 them. There were numerous -- numerous 15 incidences where the poll workers 16 said, no, you can't do that, only one 17 person allowed in the voting booth. 18 So there is a lack of training there 19 as well. 20 Unfortunately, you know, we 21 met with the city solicitor and some 22 of the commissioners. They've refused 23 to provide Asian-language assistance. 24 They put the onus on us, as an</p>
<p style="text-align: right;">Page 75</p> <p>1 poll site, we had our volunteers 2 there. There was long lines of 3 Vietnamese-American voters that needed 4 language assistance, but there was no 5 interpreter there. 6 Philadelphia has something 7 called Language Line. It's a line -- 8 hotline that limited-English 9 proficient voters can call and receive 10 assistance in their language. That 11 blue sheet was not displayed at any of 12 the poll sites that we were in on 13 Election Day. Our volunteers asked 14 the poll workers if they can explain 15 how to use Language Line. They were 16 not aware of Language Line. They did 17 not know how to use it. So what was 18 the end result? Well, the voters were 19 not able to vote. They had to go back 20 home. 21 The Asia-American electorate 22 is very unique in certain ways. Very 23 high rates of literacy insufficiency, 24 meaning they speak and understand</p>	<p style="text-align: right;">Page 77</p> <p>1 organization that works for the 2 community, to provide the 3 interpreters. We don't have the 4 resources. Quite frankly, it's very 5 disappointing because, at one point, 6 they did provide the interpreters. 7 They've come to a point now where they 8 say they're not required to do it, 9 they are not going to do it and, 10 actually, all voters suffer then 11 because the lines get longer and the 12 people get frustrated. 13 In terms of voter ID, as you 14 know in Philadelphia, Pennsylvania, 15 there is soft roll-out with the voter 16 ID law. The poll workers were allowed 17 to request ID, but it was not 18 required. What we noticed and what 19 our volunteers noticed was the 20 selective implementation of that and 21 the improper implementation. 22 For example, we had, at 23 certain poll sites, where poll workers 24 would only ask -- only ask</p>

<p style="text-align: right;">Page 78</p> <p>1 Asian-American voters for their ID and 2 make it a requirement. We've seen 3 that across the country, whether there 4 is a voter ID law or not, poll workers 5 use that as an opportunity to 6 selectively disfranchise certain 7 voters. We have tried to work with 8 the Board of Elections here and the 9 city solicitor and commissioners and 10 we sort of have come to an end road. 11 They're refusing to provide 12 interpreters. We are trying our best 13 to work with them, but it's a real 14 issue. 15 The Asia-American community 16 needs interpreters and language 17 assistance and, often times, not to 18 mention, these are elderly, first-time 19 voters. This is -- they are not 20 familiar with the voting process. 21 They get to the poll site, there is no 22 language assistance and sometimes they 23 are faced with poll workers that are 24 coming up with new requirements.</p>	<p style="text-align: right;">Page 80</p> <p>1 part of a large coalition of groups 2 that, each election, gets together to 3 do election protection work, centered 4 around the 866-OUR-VOTE hotline, which 5 is advertised all across Pennsylvania. 6 In terms of the Election Day 7 response, the Committee of Seventy 8 takes primary responsibility for 9 organizing the response for 10 Philadelphia and, in 2012, it was 11 officially a five-county day in 12 Philadelphia. 13 ACLU of Pennsylvania 14 organizes the response for essentially 15 the rest of Pennsylvania. What we do 16 is we line up volunteer attorneys and 17 potential observers and so on in as 18 many counties as we can and then we 19 field the complaints coming in. 20 On Election Day in 2012, we 21 heard a lot of the same complaints 22 that we hear year after year, in 23 addition to, of course, a great deal 24 of confusion, the confusing signs and</p>
<p style="text-align: right;">Page 79</p> <p>1 And lastly, I want to end 2 with this. Asian-American naming 3 conventions is also something that is 4 very unique. Their names are often 5 inverted and poll workers will not 6 look to see if the last name was his 7 first name or vice versa and 8 Asia-American voters, then, are not 9 provided with provisional ballots and 10 often are turned away from polls. 11 COMMISSIONER CORTES: Thank 12 you, Mr. Vattamala. I appreciate it. 13 Ms. Roper, you're here. We 14 thank you. We are going to ask you to 15 speak next. And Ms. Mary Catherine 16 Roper is senior staff attorney with 17 the ACLU of Pennsylvania. Thank you 18 for being here. 19 MS. ROPER: Well, thank you 20 very much for your patience with me. 21 I was just in court until a couple 22 minutes ago. I apologize for being 23 late. 24 The ACLU of Pennsylvania is</p>	<p style="text-align: right;">Page 81</p> <p>1 so on about voter ID, but I have to 2 say that the overwhelming problem, 3 both in and very-much outside of 4 Philadelphia, has to do with 5 registrations, lost registrations, 6 names not in the book, people holding 7 their voter registration cards in 8 their hand were not able to vote. 9 These problems were, I'll 10 say, far-more prevalent in areas where 11 there is a large student population, 12 as well as a few other select areas, 13 Wilkes-Barre, turned out -- which does 14 have a university and it has a couple 15 universities around there -- that 16 turned out to be an area of great 17 concern. 18 So every election, there are 19 some problems, right? There are 20 always some -- some judges of 21 elections who are being incredibly 22 aggressive about challenging voters. 23 There are always complaints about 24 constables and their sort of</p>

<p style="text-align: right;">Page 82</p> <p>1 threatening presence outside of 2 polling places. That's a constant 3 complaint. And uncooperative voting 4 officials and always, of course, there 5 are problems with voting places that 6 are simply too small. 7 In 2008, the most noticeable 8 example of that was at Lincoln -- 9 outside Lincoln University in Chester 10 County. In 2012, there were a lot of 11 problems in North Hampton County, in 12 particular, with the polling places. 13 They were just not adequate for the 14 numbers of people there. There were 15 also, just frankly, problems that had 16 to do with acts of God, a storm and so 17 on. 18 So -- but I will say that 19 the one, obviously, addressable 20 problem that we saw, just in huge 21 numbers of complaints, was the 22 registration problems. Didn't see 23 those kinds of problems in 2008. Have 24 not seen them, of course, in the</p>	<p style="text-align: right;">Page 84</p> <p>1 Mr. Jamaal Craig, with the United 2 Steelworkers, to present his 3 testimony. 4 MR. CRAIG: Thank you. 5 I, in 2012, according to the 6 AFL-CIO statewide programs, My Vote, 7 My Right, election protection program 8 here in Pennsylvania and, as Ms. Roper 9 stated, some of these problems that we 10 see -- well, let me just say we had 11 hundreds of activists out at the 12 polling locations throughout the 13 state, monitoring Election Day 14 activity to complain -- in regards to 15 those complaints and assisting voters. 16 We were part of the 17 coalition that she spoke to as well. 18 As she stated, one of the big problems 19 was registration and something that I 20 want to speak on with regards to that 21 problem was the fact that people -- 22 the poll workers, there seemed like 23 there was a lack of understanding on 24 their part.</p>
<p style="text-align: right;">Page 83</p> <p>1 smaller elections which we also 2 staffed, but in 2012, that was 3 overwhelming. That was something that 4 we, unfortunately, could not really 5 remedy and that wasn't something that 6 we could go to court over or 7 something. The only thing we could do 8 was pressure local officials into 9 allowing people to file provisional 10 ballots. I think that proved to be 11 largest story of this election. 12 COMMISSIONER CORTES: Thank 13 you, Ms. Roper. 14 For the benefit of all the 15 panelists, the form is we have given 16 each of you at least five minutes to 17 speak or five minutes and then after 18 that, we will have about an equal 19 amount of time in this case -- about 20 twenty minutes -- for questions that 21 will come from my fellow commissioners 22 and then we also have discussions that 23 will take place. 24 Next, I'd like to invite</p>	<p style="text-align: right;">Page 85</p> <p>1 So training is something 2 that -- that could be really 3 beneficial in my eyes. Again, lots of 4 problems in terms of the access and 5 she mentioned it as polling locations 6 being too small, but there's some 7 polling locations that I saw that had 8 a number of problems reported, where 9 there were different activities taking 10 place in the polling locations and it 11 just caused lots of confusion and 12 people interfering with the election 13 process that had nothing to do with 14 it. 15 A couple of other things I 16 wanted to notate was, in some areas in 17 the predominantly African-American 18 communities -- the smaller 19 African-American communities in 20 Western Pennsylvania, there were 21 issues of -- where we had State 22 constables on site, brandishing -- 23 well, in their daily uniform with 24 weapons and people had problems and</p>

<p style="text-align: right;">Page 86</p> <p>1 there were reports of poll workers 2 reporting different situations to 3 these constables that had nothing to 4 do with the role of election -- you 5 know, administering the election. 6 So when we address these 7 things, they kind of cleared up a 8 little, but moving forward throughout 9 the day, they resurfaced. So some 10 clarity in terms of law enforcement 11 personnel being on site, who is 12 responsible for those types of things, 13 you know, signage explaining these 14 types of things. I mean, I think the 15 hotline that we talked about was 16 beneficial in reporting that and 17 having some assistance to explain 18 that, but that's a hotline, it worked, 19 but it would be beneficial to have 20 somebody from the Election Commission 21 administering that type of -- answers 22 to those types of questions on the 23 site because it is more official in 24 that capacity.</p>	<p style="text-align: right;">Page 88</p> <p>1 focused on the need for the 2 empowerment for individual voters by 3 making nonpartisan voter education a 4 cornerstone of any attempts to 5 introduce reform in the election 6 process in the commonwealth of 7 Pennsylvania. 8 Too often, voters, on 9 Election Day, are offered a phone 10 number and I've heard it mentioned 11 here twice already. They are offered 12 a phone number to call after-the-fact 13 when some voting irregularity is 14 observed or experienced, rather than 15 an opportunity to learn what their 16 rights are as voters, once they 17 register and vote and well before they 18 go to the polls. 19 Well-meaning voter advocacy 20 organizations are awarded grants based 21 upon what they claim they can do to 22 document violations of the voters' 23 rights on Election Day, rather than 24 arranging for nonpartisan voter</p>
<p style="text-align: right;">Page 87</p> <p>1 COMMISSIONER CORTES: Thank 2 you. Thank you, Mr. Craig. 3 Now, I'll ask Joe Certaine, 4 who, for the record, is a personal and 5 professional friend and colleague of 6 mine, to present his testimony and 7 Mr. -- 8 COMMISSIONER DIAZ: We won't 9 hold it against him. 10 COMMISSIONER CORTES: 11 Absolutely, we won't hold it against 12 Joe. Never. Joe is here with the 13 Pennsylvania Voter ID Coalition. 14 MR. CERTAINE: Well, I'm 15 formerly. 16 COMMISSIONER CORTES: 17 Formerly. That's how I introduced you 18 before. He's former operation 19 director. 20 MR. CERTAINE: What I have 21 to say today -- and thank you for 22 allowing me the opportunity to present 23 this -- this testimony. 24 What I have to say is really</p>	<p style="text-align: right;">Page 89</p> <p>1 education and training for registered 2 voters long before they go to the 3 polls to vote. They pride themselves 4 on so-called election protection 5 programs that force voters to become 6 dependent upon their largesse on 7 Election Day. 8 Most of these programs seem 9 to prefer publicizing their efforts to 10 react to voter victimization, rather 11 than educating and training voters to 12 help themselves. More needs to be 13 done to allow voter empowerment to 14 become a reality in Pennsylvania, 15 providing access to current, accurate 16 and nonpartisan information and 17 showing voters how to use the tools 18 available, for nonpartisan voter 19 education training is the only real 20 way to ensure informed long-term voter 21 participation in Pennsylvania. 22 During the lead up to the 23 2013 general election, I received an 24 urgent message from community leaders</p>

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1 in nearby Chester County, PA. Now,
 2 you would think that they had learned
 3 something, but they explained that,
 4 even though Pennsylvania Commonwealth
 5 Court had stopped the Commonwealth
 6 from enforcing PA Act 18, the
 7 Pennsylvania voter ID law, on Election
 8 Day, November 5th, partisan political
 9 operatives at the neighborhood level
 10 were telling voters that they would
 11 have to produce and show an ID card on
 12 Election Day to be allowed to vote.
 13 The leaders asked for
 14 assistance in educating voters in the
 15 neighborhood that the PA Court has
 16 said voters didn't need to show an ID.
 17 Dissemination of false or misleading
 18 information is routinely done in
 19 economically-disadvantaged voter
 20 precincts and in communities of color.
 21 Only comprehensive,
 22 nonpartisan voter education
 23 opportunities at the neighborhood
 24 level can ensure availability of

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1 law, heading off what surely would
 2 have truly been a disastrous Election
 3 Day in Pennsylvania. And I mean
 4 disastrous.
 5 The numbers that were given
 6 to people to call for election
 7 protection didn't work. Most people
 8 couldn't get through. When you did
 9 get through, there was no response.
 10 People felt intimidated about going
 11 into inner-city areas. There's a
 12 whole raft of problems associated with
 13 this whole election protection
 14 nonsense.
 15 As a grass-roots organizer
 16 and voting rights field operator for
 17 decades, I've seen the variety of ways
 18 used by political machines to
 19 manipulate the potential registrants
 20 and voters who are entirely unfamiliar
 21 with the voting process and procedures
 22 on Election Day.
 23 In Philadelphia County,
 24 Pennsylvania, there have been

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1 current and accurate information about
 2 the election process for voters.
 3 The recent ongoing attempt
 4 to impose requirements for photo voter
 5 ID cards in Pennsylvania was itself a
 6 very intimidating experience for
 7 Pennsylvania African-American voters
 8 especially.
 9 The restrictions built into
 10 the law harkened back fifty years to
 11 the suppressive election tactics like
 12 the poll tax or the required
 13 recitation of parts of the U.S.
 14 Constitution in order to qualify to
 15 vote. In Pennsylvania, during the
 16 2012 general election, a daring
 17 attempt was made to disenfranchise
 18 enough presidential voters to ensure a
 19 defeat for the incumbent.
 20 African-American voters
 21 realized that, once again, attempts
 22 were being made to stop them from
 23 voting. There was great relief when
 24 the Court stopped enforcement of the

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1 innumerable examples of political
 2 parties discouraging voter
 3 registration efforts by anyone other
 4 than a dominant political apparatus in
 5 a certain area.
 6 On many occasions, the party
 7 officials of the dominant political
 8 party in the neighborhood will
 9 actively discourage independent,
 10 nonpartisan voter registration
 11 activities in order to maintain that
 12 political dominance. They do not
 13 offer, nor will they support any
 14 nonpartisan voter-education efforts at
 15 the neighborhood and grassroots level.
 16 As I recall, during my years
 17 of activism, I can only remember two
 18 -- two different Philadelphia County
 19 commissioners who actively encouraged
 20 and participated in nonpartisan voter
 21 registration and education activities
 22 at the neighborhood level. The result
 23 of this abdication of responsibility
 24 by election officials, coupled with

<p style="text-align: right;">Page 94</p> <p>1 the lack of even basic civics lessons 2 in the school system contribute to the 3 apathy and lack of information about 4 voting rights in general, in 5 Philadelphia and throughout 6 Pennsylvania. 7 This has given rise to 8 numerous organizations whose announce 9 goal is to protect voters' rights on 10 Election Day. If individual voters 11 were to have meaningful access to 12 opportunities for nonpartisan voter 13 education and Election Day training by 14 credible, nonpartisan instructors, 15 voter empowerment would sharply 16 increase and participation on Election 17 Day would greatly improve. 18 There are other obstacles 19 traditionally contributing to 20 confusion and voters suppression. 21 They include the lack of advertising 22 of upcoming elections. There is 23 like -- you know, there's a notice in 24 the newspaper an election is coming</p>	<p style="text-align: right;">Page 96</p> <p>1 actually there was a couple of minutes 2 from each -- 3 COMMISSIONER CORTES: We are 4 still sticking to the five. 5 MR. CERTAINE: So you're 6 telling me to shut up? 7 COMMISSIONER CORTES: No. 8 COMMISSIONER METELLUS: We 9 didn't say that. 10 MR. CERTAINE: Yes? 11 COMMISSIONER METELLUS: We 12 have the opportunity to explore -- 13 MR. CERTAINE: Mary told me 14 yes, so... 15 COMMISSIONER METELLUS: -- 16 some of the other points during the 17 question-and-answer period. 18 MR. CERTAINE: Anyway, 19 that's -- there's more, but I -- it's 20 submitted so... 21 COMMISSIONER CORTES: We 22 thank you, Mr. Certaine. 23 And we will proceed with 24 questions from the commissioners.</p>
<p style="text-align: right;">Page 95</p> <p>1 and then there's another one a little 2 bit later that talks about polling 3 places and who is running and that's 4 it. You might get an editorial insert 5 at some point to talk about the 6 candidates and their qualifications, 7 but that's it. 8 So there's no real 9 opportunity for voters -- voters, not 10 these organizations -- voters to learn 11 what it is they must do in order to be 12 able to vote and vote for the 13 candidate that they choose on Election 14 Day. 15 Revising regulations and 16 formulas for placement of voting 17 machines, that's already been gone 18 over here. 19 COMMISSIONER METELLUS: We 20 definitely value your testimony, but 21 we are trying to keep to a timetable. 22 MR. CERTAINE: Oh, am I over 23 time? 24 THE TIMEKEEPER: Well,</p>	<p style="text-align: right;">Page 97</p> <p>1 COMMISSIONER MONDESIRE: 2 Thank you, Mr. Chairman. Let me ask 3 the young man, Mr. Vattamala? 4 MR. VATTAMALA: Vattamala. 5 COMMISSIONER MONDESIRE: 6 Vattamala. Is that Spanish? 7 MR. VATTAMALA: That's 8 Indian. 9 COMMISSIONER MONDESIRE: We 10 have lot of ballot questions in 11 Pennsylvania. It didn't always 12 happen. Like forty years ago, they 13 were rare, but they are far more -- we 14 see a lot more ballot questions now. 15 It's a referendum kind of system, but 16 you didn't mention that and that 17 concerns me because that as Joe has 18 just said -- and I know Joe very 19 well -- there is no public discussion 20 about ballot questions among English 21 speakers at all -- print, news media, 22 radio, television. 23 So in your community, how do 24 you even know what's going on with the</p>

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1 spending of the bond issue money and
 2 certain regulations that are taking
 3 place? I mean, that's a whole dark
 4 secret that's somewhere in the next
 5 universe.
 6 MR. VATTAMALA: In a ways,
 7 yes. I mean, we try and crawl before
 8 we can walk. Just getting them to the
 9 poll site, knowing when the election
 10 is. Voting on the non-ballot issues
 11 is a victory for us.
 12 So it's a challenge getting
 13 citizens -- immigrants to naturalize
 14 and to register to vote and to
 15 actually make it to the poll site and
 16 be able to actually -- to vote is
 17 really what we try and do.
 18 There are concerns sometimes
 19 when those ballot initiatives are hard
 20 to understand when they are in
 21 English. When they are translated, it
 22 makes it even that much tougher.
 23 In New York, where there was
 24 about six ballot initiatives and

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1 number four and number five were
 2 exactly the same in the Chinese
 3 version that was translated. They
 4 just copied and pasted it. Nobody
 5 caught it until one of our people
 6 caught it, one of our volunteers and
 7 we, then, we had to report that to the
 8 Board, but if there are interpreters
 9 there, interpreters could point out
 10 that, well, on the back of the ballot,
 11 there is some initiatives that you can
 12 vote on and can explain what those
 13 mean.
 14 So we really need -- the
 15 interpreters are the most integral
 16 part of the voting process for someone
 17 that's limited-English proficient.
 18 COMMISSIONER MONDESIRE: Is
 19 that a matter of money? Is that
 20 what's blocking the interpreters?
 21 MR. VATTAMALA: No, it's not
 22 a matter of money.
 23 Since Asian languages are
 24 not covered under 203 in

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1 Philadelphia -- Spanish is covered so
 2 they have Spanish interpreters because
 3 they are required to do so under
 4 federal law -- but since they don't
 5 have the same requirement for Asian
 6 languages, they're saying, hey, we're
 7 not required to do that, we're not
 8 going to do that, but everybody
 9 suffers as the result.
 10 And, also, the poll workers,
 11 not knowing, you know, that Section
 12 203 allows these voters to be assisted
 13 by any person of their choice, as long
 14 as it's not their boss or union rep.
 15 They don't know that. So someone that
 16 could assist them, usually a family
 17 member, is prevented from going into
 18 the voting booth with them, with the
 19 voter and the voter, ultimately, is
 20 not able to vote.
 21 COMMISSIONER DIAZ: You
 22 mentioned a city solicitor. Do you
 23 remember who it was?
 24 MR. VATTAMALA: Yes, it

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1 was -- we met with Bob Aversa.
 2 COMMISSIONER DIAZ: Bob
 3 Aversa, he worked for the -- for the
 4 Election Commission.
 5 COMMISSIONER SINGER: No.
 6 He worked for the City Solicitor's
 7 office.
 8 COMMISSIONER DIAZ: City
 9 Solicitor's office?
 10 COMMISSIONER SINGER: Yes.
 11 COMMISSIONER DIAZ: So he
 12 was an assistant. You never got to go
 13 to the boss?
 14 MR. VATTAMALA: No. We also
 15 met with Al Schmidt.
 16 COMMISSIONER DIAZ: Al
 17 Schmidt is the chairman, right?
 18 MS. SINGER: No. He's vice
 19 chair.
 20 COMMISSIONER DIAZ: Vice
 21 chair?
 22 MS. SINGER: Yes.
 23 COMMISSIONER DIAZ: Okay.
 24 MR. VATTAMALA: We brought

<p style="text-align: right;">Page 102</p> <p>1 our observations from the past 2 elections. 3 After every election, we 4 follow-up the jurisdiction and detail 5 our results. We have an exit poll 6 survey that asks the voters questions 7 about when they became a citizen, what 8 language they speak, if interpreter 9 services were available, if 10 translations were available, if they 11 encountered any problems, were they 12 required to show ID, were they 13 required to show proof of citizenship. 14 In the last 2012 election, 15 we had 246 Asia-American voters that 16 were required to prove their 17 citizenship at the poll sites on 18 Election Day. It's really 19 unbelievable. 20 COMMISSIONER DIAZ: The 21 Asian community contributes a lot of 22 money to the politics of Philadelphia. 23 Particularly, the Korean community. 24 And I'm wondering what kind of</p>	<p style="text-align: right;">Page 104</p> <p>1 English only, that said the poll site 2 has been moved. We called the city 3 solicitor and the commissioner's 4 office the day of the election because 5 once we sent our observers there, they 6 saw the sign. 7 There are numerous 8 Chinese-American voters that use that 9 poll site, that use interpreter 10 services. That's one of the poll 11 sites where they did have an 12 interpreter. 13 None of them -- none of 14 those voters would know that the poll 15 site moved because all there was, was 16 just one sign in English. So that's 17 very important for us and for our 18 voters in our community, something 19 like a poll site change really needs 20 to be displayed in different 21 languages. 22 COMMISSIONER DIAZ: 23 Mr. Certaine, you've had some powerful 24 positions in your life after you were</p>
<p style="text-align: right;">Page 103</p> <p>1 influence they have been asserting, if 2 any, on some of those issues. 3 MR. VATTAMALA: Well, I 4 can't necessarily speak to that, but 5 in terms of interpreter services and 6 language assistance, there is none 7 available right now. It is very 8 limited. What we have so far, in 9 2012, is four -- four interpreters. 10 At one point, there was many more than 11 that after the U.S. v. Philadelphia 12 settlement. 13 At this point, the city 14 solicitor says, well, you know, we'll 15 voluntarily arrange, in 2006, to 16 provide Asian language assistance. 17 Now, their stance is, well, what 18 agreement, we didn't have any 19 agreement with you. 20 One last point, the Benjamin 21 Franklin House was a poll site that we 22 observed for many years. It was moved 23 a couple years ago for compliance with 24 the ADA. There was one sign, in</p>	<p style="text-align: right;">Page 105</p> <p>1 an activist and I've known you all 2 that long. 3 I'm trying to figure out, 4 from what you said in your testimony, 5 why wasn't -- why aren't you able to 6 impose civic lessons somehow in our 7 educational programs or otherwise? 8 MR. CERTAINE: Well, because 9 it wasn't under my jurisdiction, 10 Judge, because if it had been -- 11 COMMISSIONER DIAZ: You were 12 the managing director of the City of 13 Philadelphia. 14 MR. CERTAINE: But managing 15 director doesn't have any jurisdiction 16 over the school system at all, but had 17 there been that kind of jurisdiction, 18 we wouldn't have the situation we have 19 now. 20 COMMISSIONER DIAZ: Let me 21 tell you what we did in the Midwest, 22 was we had an educational program 23 funded by the -- some of the 24 foundations to come into the schools</p>

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1 with voting machines and give a
 2 leadership development training on the
 3 voting process and that elevated, not
 4 only the opportunities for voter
 5 participation, but elevated the
 6 candidates that came out when they
 7 left high school to participate in the
 8 electoral process.
 9 MR. CERTAINE: Judge, if you
 10 remember during the time of the
 11 Philadelphia Urban Coalition, not this
 12 new hybrid --
 13 COMMISSIONER DIAZ: The real
 14 one.
 15 MR. CERTAINE: The real one.
 16 COMMISSIONER DIAZ: When you
 17 and I were kids.
 18 MR. CERTAINE: When we were
 19 children, yes. We used to, through
 20 the Voter Education Project through
 21 the Coalition, we used to go into
 22 schools to help history teachers and
 23 other teachers provide information to
 24 students about the election process.

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1 We used to take small
 2 machines, sample machines provided by
 3 the county commission's office, but
 4 that was during the time -- well, that
 5 was during another era. It doesn't
 6 seem to be that important now.
 7 COMMISSIONER DIAZ: Well,
 8 you know, I'm with you on the -- as
 9 you know -- on the civic issue because
 10 it used to be part of the school
 11 curriculums when most of the schools
 12 were white. Now that most of the
 13 public schools happen to be
 14 African-American or Latino, I don't
 15 see any civic lessons promoted in most
 16 of those institutions and I'm not
 17 saying it's discrimination, but I'm
 18 saying there is an apparent impact, in
 19 terms of the priority, thereby, in
 20 terms of educating people on how you
 21 become a voter or how you participate
 22 in a democratic country, but that's
 23 another argument.
 24 COMMISSIONER METELLUS: Just

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1 a point of the clarification for
 2 Mr. Vattamala.
 3 Is it your organization's
 4 position that you prefer to have the
 5 City provide the interpreters or is it
 6 your position that you would prefer to
 7 really provide more information and
 8 more training for the people who are
 9 working at the poll places to let them
 10 have, so that the voter is comfortable
 11 with coming to the poll. It doesn't
 12 necessarily have to be either or. I'm
 13 just curious if there is a preference
 14 for your organization.
 15 MR. VATTAMALA: I wouldn't
 16 say they are mutually exclusive. We
 17 definitely want both. I mean, for a
 18 poll worker to know that they have to
 19 follow federal law -- I mean, they
 20 should know that and that's something
 21 that is -- unfortunately, we shouldn't
 22 have to advocate for it. That's a
 23 federal right that every voter has in
 24 every poll site across the country.

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1 You know, 203 only applies to certain
 2 jurisdictions, certain languages.
 3 You know, 208, the provision
 4 that allows a person to be accompanied
 5 by a person of their choice applies
 6 everywhere. And, unfortunately, too
 7 many poll workers don't know that.
 8 So they definitely need to
 9 be educated about that, but that is
 10 not something that's on the table.
 11 They have to follow that.
 12 In terms of supplying
 13 interpreters, we are happy to assist
 14 and that's what we have done in the
 15 past. Their position, at this point,
 16 is provide interpreters to us or there
 17 will be no interpreters and that is
 18 not acceptable. There needs to be a
 19 partnership there, where we are
 20 willing to work with them to provide
 21 as many interpreters where it's
 22 needed. Some places, it's not needed.
 23 We are not saying that every poll site
 24 should have interpreters in every

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1 language, but there are certain poll
 2 sites that we know there are a large
 3 number of limited-English proficient
 4 immigrant communities that are
 5 naturalizing, that they are coming out
 6 to vote and there is a real problem
 7 there, in everyone's eyes.

8 COMMISSIONER CORTES: I have
 9 a comment and a question as well, just
 10 going back to Mr. Certaine's testimony
 11 and his very strong opinions about the
 12 role of the voter protection groups
 13 and one of the thoughts -- and,
 14 actually, an experience I had with
 15 those working closely with some of the
 16 groups that are represented here today
 17 is that I took a little bit of
 18 issue -- and I appreciate the work of
 19 all of the voter protection groups. I
 20 took a little bit of issue with the
 21 information on the voting
 22 irregularities will be taken on
 23 Election Day, but will not be shared
 24 with the Department of State until

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1 after the election because, after the
 2 election, that person already was
 3 disfranchised, but as part of the
 4 ongoing battle, one of the things that
 5 we did is ask the county -- ask any of
 6 the groups that learn about anything,
 7 to call us so that we can try to
 8 remedy it. It was not perfect. We
 9 didn't reach everybody. Sometimes we
 10 couldn't even just get the local
 11 person to answer the phone so they
 12 could be corrected, but just a general
 13 thought and I think, Joe, that it got
 14 much better once we were able to get
 15 information almost real time but,
 16 sometimes, it was very difficult.

17 So for my part, I do
 18 appreciate the work of all the voting
 19 protection groups, but I do recognize
 20 that if the information doesn't come
 21 in a timely fashion, it can be very,
 22 very challenging.

23 Ms. Roper, do you want to
 24 comment on that? I have a question,

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1 but I will certainly give you time to
 2 express your thoughts.

3 MS. ROPER: Thank you very
 4 much. I would like to comment on that
 5 and say that, in 2008, we had an open
 6 line to the Department of State and
 7 the Department of State helped us
 8 resolve a number of problems around
 9 the commonwealth. That was not
 10 repeated in 2012. We did not have
 11 that same kind of cooperation and some
 12 counties are -- always, our first call
 13 is to the county or to the county
 14 solicitor, to whoever we can reach.
 15 Sometimes, it's one or the other and,
 16 sometimes, it's neither.

17 And so in trying -- we are
 18 not simply collecting complaints. We
 19 are trying to resolve issues on the
 20 spot, so that voters can vote. That
 21 is the whole goal.

22 In addition, we do create
 23 voter education ahead of time,
 24 distributing thousands and thousands

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1 of pieces of literature about voting
 2 rights, which we, in fact, had to
 3 revise over and over again as things
 4 changed with respect to the voter ID
 5 case, but I completely agree that the
 6 way to address this is to have the
 7 ability to reach the government
 8 officials who can actually make a
 9 difference on that day. That is by no
 10 means uniformly available in the
 11 commonwealth.

12 COMMISSIONER CORTES: I
 13 appreciate it.

14 COMMISSIONER DIAZ: Let
 15 me -- let me add, if I may, the state
 16 law obligates the secretary of state
 17 to be the official supervisor of the
 18 elections. The big problem that I've
 19 had in my litigation is that they
 20 always delegate their authority to the
 21 county and, thereby, having difficulty
 22 getting the secretary of state -- I'm
 23 talking about secretary of state
 24 position -- the secretary of state

<p style="text-align: right;">Page 114</p> <p>1 implementation of the issue, the 2 county commissioners, they just don't 3 want to get into the political fight 4 between the commissioner and the 5 secretary of state and so that the 6 lack of the secretary of state taking 7 authority over their legal authority, 8 is one of the difficulties I have had 9 in my litigation working between them. 10 And I don't know how to resolve that, 11 outside of getting rid of the 12 commissioners, you know. 13 MS. ROPER: Your Honor, I 14 think one of the things that is just 15 simply a reality is that a lot of 16 these issues have to be dealt with at 17 the county level. 18 I mean, we -- and you know, 19 open a phone line to the secretary of 20 state's office. I don't mean the 21 secretary of state themselves, but 22 since the secretary of state's office 23 can be tremendously helpful if that 24 person will, then, turn around and</p>	<p style="text-align: right;">Page 116</p> <p>1 been there forever. 2 So if you're a first-time 3 voter because you're a new voter or 4 you happen to change voting locations, 5 the poll books are flagged to ask you 6 for a form of ID. It's not a photo 7 ID. It's rather expansive. It could 8 be a phone bill. It could be 9 anything. However, it is very 10 challenging for certain -- our voters 11 and citizens to come up with even 12 that, but anyhow -- so be that as it 13 may, but if you happen to come into 14 the polling place and you're a 15 first-time voter and don't have the 16 proper ID, if you happen to not be in 17 the poll book, but you attest and you 18 say, yes, I registered on time or if 19 your vote is challenged, you're 20 supposed to get a provisional ballot, 21 but there is challenges with that as a 22 form to vote. 23 So sound bite, thirty 24 seconds, if you can, for the benefit</p>
<p style="text-align: right;">Page 115</p> <p>1 call county offices, but the fact is 2 that these things have to be handled 3 on the county level and I -- it would 4 be terrific if we had leadership from 5 the secretary of state to require 6 counties and make counties accountable 7 for their availability and their 8 response on Election Day. 9 COMMISSIONER CORTES: We 10 have less than five minutes to 11 conclude this panel and I was going to 12 throw out there a thought-provoking 13 comment and question, so I want to 14 challenge everyone to maybe sound 15 bites of thirty seconds tops, but it 16 goes to the issue of provisional 17 ballots because when someone is unable 18 to vote, in Pennsylvania, they use a 19 provisional ballot, as required by 20 HAVA and other laws, is that if you 21 happen to come to the polling place -- 22 and by the way, there is voter ID 23 requirements in Pennsylvania for 24 first-time voters and that's always</p>	<p style="text-align: right;">Page 117</p> <p>1 of the Commission and for the record, 2 issues with provisional ballots and, 3 more so, what would be solutions that 4 you see based on the current law and 5 anyone can take the lead on that. 6 MS. ROPER: I'll take a 7 start. Thank you. The ability to 8 file a -- to fill out a provisional 9 ballot is always a start for a remedy, 10 because what that does is provide the 11 voter basically a placeholder and an 12 opportunity to come back and 13 demonstrate his or her right to vote, 14 which is incredible for -- frankly, 15 just most people are not going to be 16 able to meet to follow that up with 17 the county officials and so on. 18 I will tell that you, in 19 Philadelphia at least, there were a 20 number of polling sites running out of 21 the provisional ballots because of the 22 number of registration issues that 23 were going on. Provisional ballots 24 are, I would say, really not a</p>

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1 practical solution. They are,
 2 perhaps, more a way of registering the
 3 number of problems, than actually
 4 getting people to vote.
 5 COMMISSIONER CORTES:
 6 Mr. Vattamala?
 7 MR. VATTAMALA: Provisional
 8 ballots come up a lot in our work
 9 because, as I mentioned,
 10 Asian-American naming conventions,
 11 often times, are outstanding by any
 12 convention, so there are numerous
 13 issues that pop up on Election Day.
 14 One thing that we try to do
 15 is educate the voters to know that
 16 there is no circumstance in which you
 17 should walk away from the poll site
 18 and say I just couldn't vote. It is a
 19 mandate. It's a temporary measure
 20 that -- at the very least, it's a good
 21 thing that there's that emergency
 22 measure in place. Too many poll
 23 workers don't even know about that and
 24 not enough voters know about that.

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1 So I think there needs to be
 2 a lot more education on it and what we
 3 try and do on Election Day, we have --
 4 all of our volunteers are given a
 5 phone number to call on Election Day.
 6 It's usually the local
 7 jurisdiction's number to report
 8 problems, but our volunteers outside
 9 of the poll site are also informed --
 10 well, wait a second, they are supposed
 11 to get a provisional ballot, go back
 12 inside and demand a provisional ballot
 13 so that you can vote.
 14 We keep track that
 15 provisional ballots are being filled
 16 out by our survey. It's a troubling
 17 trend that the number increases, but
 18 there is just too many that are not
 19 even offered the provisional ballot.
 20 COMMISSIONER CORTES: Thank
 21 you, Mr. Vattamala.
 22 Mr. Craig?
 23 MR. CRAIG: As it's been
 24 stated about provisional ballots, it's

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1 a Band-Aid and I think some serious --
 2 some serious thought and efforts
 3 should go into looking at the areas
 4 where the concentration -- the highest
 5 concentration of these provisional
 6 ballots is coming from and I think
 7 that will shed some light in terms of
 8 how we deal with some of the other
 9 problems that we have in our election
 10 system and the practices.
 11 COMMISSIONER CORTES: Thank
 12 you.
 13 Mr. Certaine, do you have a
 14 comment?
 15 MR. CERTAINE: In 2012, in
 16 the 11th ward of the city of
 17 Philadelphia, there was a drastic
 18 shortage of provisional ballots and
 19 they were needed because the -- the
 20 books with the voters' names in them
 21 were so messed up, that people who had
 22 voted for years were not able to vote
 23 that day because their names were not
 24 in the books. They ran out of

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1 provisional ballots and they really
 2 couldn't get anymore, so all those
 3 people were disfranchised.
 4 The other thing is that
 5 the -- under the voter ID law, you had
 6 six days to -- if you didn't have ID,
 7 under this law, you had six days to
 8 present formal identification to the
 9 County Commissioner's office. Two of
 10 those days were holidays -- were
 11 weekend days. You know, so the
 12 reality of a lot of this maneuvering
 13 with provisional ballots would be not
 14 necessary, first of all, if election
 15 workers were trained and there was
 16 synchronization between the
 17 Commonwealth and the County and voting
 18 precinct on who is eligible to vote.
 19 And, secondly, if voters
 20 were better educated about what the
 21 process is and what their rights are,
 22 they wouldn't need as many provisional
 23 ballots either.
 24 COMMISSIONER CORTES: Thank

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1 you, Mr. Certaine.
 2 And I want to thank all the
 3 panelists for their testimony and,
 4 also, as I said to the first panel,
 5 for all the things you do on a daily
 6 basis to protect the rights of voters.
 7 Thank you.
 8 At this time, we are going
 9 to move on to the section or the part
 10 of the program in which we have an
 11 open mic for public testimony, but we
 12 do have or -- we ask that you, please,
 13 let us know that you want to speak.
 14 We will do that now.
 15 As a reminder, the speakers
 16 will have three minutes and I kindly
 17 ask, just as we've done for the
 18 private speakers, to please keep an
 19 eye, if you can on -- I would invite
 20 my friend who was here at the end to
 21 come back and show us the time. So
 22 you have three minutes, if you could,
 23 please, to present your testimony.
 24 I have, already, some names

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1 that I'm going to call and then we
 2 will hear your thoughts. You have
 3 three minutes, please.
 4 And the first person that
 5 I'd like to invite up is Mr. Rahat
 6 Babar, please, with the APABA
 7 Pennsylvania, he is the president.
 8 And I understand you want to
 9 talk about issues for Asian-American
 10 voters. If would you, please, come
 11 up. I guess we have microphones at
 12 that end as well. Go ahead. You can
 13 use that microphone as well. Thank
 14 you, sir.
 15 MR. BABAR: Thank you very
 16 much. As you know, my name is Rahat
 17 Babar. I'm the president of Asian
 18 Pacific American Bar Association of
 19 Pennsylvania. This year, APABA
 20 celebrates our 30th anniversary as an
 21 organization dedicated to advancing
 22 its members and promoting justice and
 23 equality and legal access for all
 24 Asian-Pacific communities.

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1 For years, the APABA-PA, in
 2 partnership with several
 3 organizations -- including all of them
 4 here -- worked to meet the challenges
 5 facing our constituencies in
 6 exercising their voting rights. Our
 7 work included, for example,
 8 registration drives and poll
 9 monitoring to protect the fundamental
 10 right to vote.
 11 Our efforts, however, rose
 12 to another level upon the enactment of
 13 Pennsylvania's voter ID law. In March
 14 2012, the beginning of a presidential
 15 election year, the Pennsylvania
 16 legislature passed, and the Governor
 17 of Pennsylvania signed, Act 18 of
 18 2012. The law required that every
 19 voter that appeared at the polls to
 20 show acceptable proof of photo
 21 identification as a prerequisite to
 22 voting. The law specified the form
 23 that the photo identification must
 24 take in order to pass muster.

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1 Moreover, the name on the
 2 identification must be substantially
 3 conforming to the name listed on the
 4 voter's registration record.
 5 Even when the law was
 6 subject to a partial preliminary
 7 injunction during the 2012 elections,
 8 we discovered that poll workers
 9 applied the voter ID law in a
 10 discriminatory way against Asian
 11 Americans and other persons of color.
 12 Some Asian-American voters were
 13 subject to excessive requests to
 14 present identification and, in other
 15 instances, required to prove
 16 citizenship. We observed that the
 17 Commonwealth failed to adequately
 18 provide Asian-American voters of
 19 limited-English proficiency with
 20 information about the requirements of
 21 the law.
 22 In addition, the voter ID
 23 law imposed a disproportionate burden
 24 for the naturalized citizens to obtain

<p style="text-align: right;">Page 126</p> <p>1 valid photo identification since those 2 who did not have a naturalization 3 certificate would be deterred from 4 voting given the lengthy time and 5 expense to obtain a replacement 6 certificate. 7 Very quickly, we realized 8 that the voter ID law would impose 9 unconstitutional obstacles, in 10 addition to the existing barriers that 11 Asian Americans already face at the 12 polls. For voters to obtain a 13 compliant form of identification, they 14 would be required to submit vigorous 15 supporting documentation. Considering 16 that many Asian Americans, as we heard 17 earlier today, have different naming 18 conventions, voter roll errors were 19 bound to occur. 20 As a result, poll workers -- 21 who often are unfamiliar with the 22 cultural norms of the community -- 23 would have to make a determination on 24 whether the name on the identification</p>	<p style="text-align: right;">Page 128</p> <p>1 and the Asian American Legal Defense 2 and Education Fund submitted an amicus 3 brief in the litigation that 4 challenged constitutionality of the 5 voter ID law. Thankfully, the 6 Commonwealth Court has recently issued 7 a permanent injunction barring the 8 enforcement of the voter ID law and, 9 while a post-trial motion is pending, 10 the injunction remains in place. 11 As this commission travels 12 the country to hear stories and 13 testimony about the challenges to 14 voting rights and election 15 administration, I trust that the 16 lessons learned here in Pennsylvania 17 provide insight to the harm that 18 restrictive voter ID requirements have 19 on the franchise. 20 As the Commonwealth Court 21 recognized in its decision, the right 22 to vote, fundamentally in 23 Pennsylvania, is irreplaceable, 24 necessitating its protection before</p>
<p style="text-align: right;">Page 127</p> <p>1 is substantially conforming. 2 These concerns, among 3 others, raised significant 4 consternation that the requirements of 5 the voter ID law would -- as a recent 6 court decision recognized -- weigh 7 most heavily on members of the 8 society. 9 In response, the APABA-PA 10 has engaged in numerous outreach 11 efforts in educating the community on 12 the requirements of the voter ID law. 13 We joined the Pennsylvania Voter ID 14 Coalition, where organizations of all 15 stripes banded together to collaborate 16 and share resources to educate voters 17 on the requirements of the voter ID 18 law. 19 I see that my time is 20 expired. Can I have thirty seconds? 21 COMMISSIONER CORTES: Thirty 22 seconds. 23 MR. BABAR: Thank you. 24 On the legal front, APABA-PA</p>	<p style="text-align: right;">Page 129</p> <p>1 any deprivation occurs. So many 2 before us have sacrificed so much that 3 we must continue to preserve and 4 ensure every citizen's right to vote. 5 Thank you very much. 6 COMMISSIONER CORTES: Thank 7 you. We appreciate your testimony. 8 At this time, I invite 9 Mr. Sam Hawk to present testimony. 10 MR. HAWK: Hello, my point 11 in being here -- okay -- I have like 12 four things just quickly to say. One 13 is the absentee. I would like to 14 cooperate, in general, with voting and 15 in forming the procedures. 16 Availability in different 17 languages, especially ASL, is 18 something. Like for me, if I go in, 19 there is a procedure -- wait -- should 20 I go on -- okay -- cooperate with us. 21 There should be some 22 practices associated with deaf and 23 hard of hearing voters. Like, I'll 24 give you an example. A voter -- I</p>

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1 come in, I'm eligible to vote, but
 2 they are challenging that eligibility
 3 in the voting place and when that
 4 happens, the poll place becomes -- the
 5 judge of elections comes up and it
 6 should be just quickly. It should be
 7 quickly, but if a deaf person comes in
 8 and they can challenge them, you know,
 9 what is the procedures for me? How am
 10 I going to be accommodated? That's
 11 just one thing I'm asking about.
 12 In general, there is
 13 different voting procedures. I don't
 14 have any idea what your best practices
 15 are for communicating -- communication
 16 accessibility.
 17 Now, deaf-blind --
 18 accommodations for deaf-blind. If
 19 people who come in, they are deaf,
 20 they can't hear, then they can't see
 21 and ASL is their language, they can't
 22 see and, now, they bring someone with
 23 them. I am -- 70,000 people that have
 24 both hearing and -- deaf and blind

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1 around here. And, for them, they tend
 2 to be collecting absentee ballots.
 3 Now, if we get them to
 4 accommodate them, deaf-blind tend to
 5 bring somebody with them and then they
 6 show them what to do. The voters,
 7 they bring someone with them and we're
 8 supposed to be able to do that if we
 9 don't have the absentee ballot card,
 10 but that second person doesn't get to
 11 come in with them.
 12 Now, why not solve that
 13 problem? It's better if a deaf-blind
 14 person needs to bring someone that
 15 backs up themselves. Maybe they pay
 16 someone or have they right -- maybe
 17 they have the right to vote and make
 18 some changes. We need to make some
 19 changes, predominantly in the way they
 20 can vote.
 21 And, lastly, the
 22 interpreter. Hearings need
 23 interpreters, yes, but ASL's position
 24 in the polling place is a little

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1 challenging -- okay -- but please --
 2 did you hold up -- oh, I have to stop.
 3 She said stop. So I guess I'll stop.
 4 COMMISSIONER CORTES: Well,
 5 thank you. Thank you, Mr. -- Mr.
 6 Hawk, anything else that you wanted to
 7 present very briefly?
 8 MR. HAWK: Yes.
 9 COMMISSIONER CORTES: And I
 10 want to thank our timekeeper because
 11 she is doing her job. I do appreciate
 12 it.
 13 THE TIMEKEEPER: Just thirty
 14 seconds.
 15 MR. HAWK: Okay. The
 16 interpreter needs to be in the
 17 appropriate place. You see, like, if
 18 there is a deaf person and if you tend
 19 to use some sign language, yeah, I
 20 tend to use -- I have low proficiency
 21 maybe and, yes, maybe there needs to
 22 be the same directions given to low
 23 proficiency.
 24 Now, if I'm still trying to

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1 tend to voice, it doesn't help the
 2 deaf or hard of hearing person. Okay.
 3 The last part on here is the
 4 advertising. Okay. Advertising,
 5 radio, TV, you know, should have each
 6 that's closed-captioned. These things
 7 need to be closed-captioned and online
 8 or -- maybe online, too, so we can use
 9 that, too. I'm just trying to say the
 10 interpreter is like -- we would like
 11 interpreters to help us. Thank you.
 12 COMMISSIONER CORTES: Thank
 13 you, Mr. Hawk. We greatly appreciate
 14 your testimony.
 15 Next, I invite Mr. Philip PJ
 16 Mattiacci.
 17 COMMISSIONER DIAZ: Can I
 18 ask a question?
 19 COMMISSIONER CORTES: Sure.
 20 COMMISSIONER DIAZ: Can I
 21 ask a question, does --
 22 MR. HAWK: Yes, I hope so.
 23 COMMISSIONER DIAZ: Does the
 24 process of using interpreters cause

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1 longer time periods in delay in the
2 voting process?
3 For example, we heard
4 testimony that there should be at
5 least no more than a thirty-minute
6 wait and that is the average with
7 regards to voting and I just wondered
8 if you have a large number of
9 individuals who need interpreters,
10 whether that would cause the issue of
11 needing more time?
12 MR. HAWK: Okay. Let me --
13 interpreters, they tend to cooperate
14 and they are skilled, so they tend --
15 more experienced interpreters, they
16 have a strategy. Just maybe a
17 two-second delay.
18 INTERPRETER: No, the
19 question was if -- can you repeat the
20 question about if there is no
21 interpreters, does it cause a delay.
22 COMMISSIONER DIAZ: Yeah.
23 The question that I have is
24 the use of interpreters at the polling

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1 places, does that essentially require
2 the opportunity to have the
3 thirty-minute time issue that they
4 spoke about earlier in the testimony.
5 I don't know if you heard that. And
6 so I just don't know if that clogs up
7 the process and, therefore --
8 INTERPRETER: Wait a minute.
9 He wasn't here for that part. He just
10 says, sorry, I just got in here a
11 little late but, see, what he's
12 talking about is -- I'm interpreting
13 for him.
14 MR. HAWK: Thirty minutes,
15 can you answer that, please, okay.
16 I'm going to go into this.
17 Let me say, the interpreter,
18 maybe thirty minutes might not be
19 enough because a person that's deaf is
20 like -- for example, with ASL, they
21 come in and say what's your name and
22 they don't match their face up, you
23 know, they have -- the interpreter --
24 if the interpreter comes in and

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1 they're cultured -- you know, they
2 come in, they got to make a point,
3 they have to understand clearly. They
4 have to get a picture and it has to
5 match up.
6 So some of them might take a
7 few more minutes, five minutes. You
8 know, they're deaf. You know, it
9 might -- it might be thirty minutes,
10 it might make it forty minutes. You
11 know, but, for example, the deaf-blind
12 interpreters -- the deaf-blind, they
13 have to do tactile on their hands and
14 that might take a little longer. It
15 might use a little more time, a little
16 more.
17 COMMISSIONER CORTES: Thank
18 you very much.
19 At this time, I invite
20 Mr. Philip PJ Mattiacci.
21 MR. MATTIACCI: Oh, that's
22 me. I was already up. That's me.
23 Thank you, Gentlemen --
24 Ladies and Gentlemen. I just want to

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1 say that two or three weeks ago I went
2 through the voting process and I'm
3 deaf and there are deaf around and we
4 are enthusiastic to be going to the
5 polls. It's great. It's positive.
6 And I arrive and I signed it and what
7 do I do, they open it up -- I am
8 overwhelmed. All these things.
9 Buttons.
10 I'm just overwhelmed and I
11 said, could someone help me and, no,
12 you are on your own, go on in there.
13 And I'm limited now. So what did I
14 do, I was working with a civic
15 committee person and I brought them in
16 and said show me a demonstration of
17 the voting machine and do you have
18 provisions for the deaf. Voting, you
19 know, show me what these things are so
20 I feel comfortable when I go in.
21 And then there was black
22 deaf advocates and some other things
23 and they need that. People need that.
24 They need support all the process all

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1 along so they become more comfortable
2 with what happens when they go in.
3 Communicate, you know, with
4 committee people. It's not clear.
5 These things aren't clear. For
6 example, the deaf, we are here today
7 and we just found out this week. I
8 mean, I didn't have time to tell
9 people to, come on, oh, we got to go
10 here. I just found out about this.
11 So I'm just saying that we need -- you
12 all need to work on that. Okay.
13 And, second, for -- I don't
14 know if there was deaf-blind there and
15 I'm just telling you -- and,
16 generally, we were close to -- we're
17 close to SEPTA. We don't mind opening
18 up topics and maybe City Hall should
19 have some meetings that are for the
20 hard of hearing.
21 You know, you would be
22 surprised how many deaf people would
23 just come there and would be
24 comfortable to come, you know, and

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1 give you all these questions. People
2 are nervous about coming here. I'm
3 not nervous. He's fine. We're not
4 nervous. We're brave, but there's a
5 lot of people that grow up and are
6 they really brave? No, I don't know
7 if they are brave to come here to
8 talk. So you should have more deaf
9 people involved. It would benefit
10 everybody in the long run.
11 COMMISSIONER CORTES: Thank
12 you very much, Mr. Mattiacci.
13 For purposes of --
14 COMMISSIONER MONDESIRE: I
15 have a question.
16 COMMISSIONER CORTES: Mr.
17 Mondesire, please.
18 COMMISSIONER MONDESIRE:
19 Thank you, Mr. Chairman.
20 I want to ask both
21 gentlemen. We have, in our TV
22 universe today, we have hundreds of
23 channels dedicated to losing weight,
24 buying sneakers, pots and pans and all

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1 other kinds of stuff.
2 Would it be helpful to have
3 a channel on the internet system that
4 spoke to this community, the deaf
5 community?
6 MR. MATTIACCI: Well, let's
7 see. Now, me, I have an idea, yes.
8 Let's work on it. We work for DHCC,
9 the Deaf-Hearing Communication Center.
10 And we cooperate with people. We have
11 to make some videotapes and some
12 things in sign, closed-caption. We
13 have it going along and maybe we
14 should talk. It would be great.
15 Maybe we could do something like that.
16 I mean, maybe we could make it bigger.
17 Expose to more people. And we need
18 equipment, of course, and stuff so...
19 COMMISSIONER MONDESIRE: All
20 right. Thank you.
21 COMMISSIONER CORTES: Thank
22 you, Mr. Mondesire.
23 MR. MATTIACCI: Wait, wait,
24 wait, wait. Hold on, please.

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1 Are you familiar with the
2 state law interpreter, Act 57?
3 COMMISSIONER MONDESIRE: No.
4 MR. MATTIACCI: I suggest
5 you take time to look through that
6 law. I believe it passed in 2004 and
7 it provides interpreters -- the rule
8 of the state that required -- a rule
9 with the state through the Office of
10 Deaf and Hard of Hearing
11 responsible -- a whole list of rules.
12 Like certified, qualified and I think
13 you should learn more about that law.
14 COMMISSIONER DIAZ: That's a
15 high requirement that they have for
16 other languages that qualify. Many of
17 the Hispanic interpreters are not
18 qualified.
19 I remember when I became a
20 judge, it was all Spanglish. So I
21 instituted a high school exam. That's
22 all. High school Spanish and high
23 school English, just to get people who
24 were qualified.

<p style="text-align: right;">Page 142</p> <p>1 And that may be an issue 2 related to all the other languages 3 that we use interpreters is to get 4 some kind of qualifications. So 5 that's a good suggestion that didn't 6 come in the Act 57, which should also 7 apply to many interpreters. You speak 8 well. 9 MR. MATTIACCI: But be 10 careful how you use that word qualify. 11 My parents are hearing and they sign 12 real good. They sign wonderfully, but 13 could they be an interpreter for me? 14 No, because they are not certified. 15 And when an office, they sent me 16 people, but my mother can keep 17 interpreting, you know, but she's 18 proficient, but I mean certified and 19 qualified people. Both certified and 20 qualified people. 21 COMMISSIONER CORTES: For 22 purpose of logistics, so everybody 23 knows, we are coming to the time where 24 we are supposed to end the public</p>	<p style="text-align: right;">Page 144</p> <p>1 Charles McGowen and I'm president of 2 the large -- the Philadelphia Chapter 3 of the Philadelphia Deaf Society for 4 the Advancement of the Deaf. And let 5 me get -- like PJ said, advertising. 6 Monday, I'm looking and I see. Oh, I 7 have to come here, this was 8 advertised, oh, come here, we have to 9 go. More people -- more deaf people 10 will come but, yeah, we try and expose 11 them to this, but it's a small -- 12 small town hall thing, get exposure. 13 I'm trying to get people to come. 14 Now, I'm looking at all the different 15 topics. I'm trying to see its about 16 voting. I'm so strong about that, but 17 sign language, he's ready to come, we 18 need more exposure, we need to get 19 ready and have more exposure. 20 You got all these different 21 topics but, like PJ, said just trying 22 to think about what we are going to 23 say about the laws here, we are going 24 to go, we want to go vote and then you</p>
<p style="text-align: right;">Page 143</p> <p>1 session. I still have, in my hands, 2 three other speakers. I can extend 3 the time for another nine minutes but, 4 otherwise, we will have to stop here 5 and go to panel three. 6 We have program -- the 7 program calls for other open mic 8 public testimony session at the end of 9 the fourth panel. That will be around 10 7:25. 11 If we don't have anymore 12 public testimony, I don't want to 13 necessarily keep us to that time, but 14 I have three more speakers. If we can 15 have folks stick to their three 16 minutes, I think we can make it. 17 I will call Mr. Charles 18 McGuire (sic), who also -- 19 COMMISSIONER DIAZ: McGowen. 20 INTERPRETER: McGowen. 21 COMMISSIONER CORTES: -- 22 McGowen, to present testimony as well. 23 MR. MCGOWEN: Hello. Hello. 24 Let me try to say this -- my name is</p>	<p style="text-align: right;">Page 145</p> <p>1 drop in and you need a voice. You go 2 in, where is my -- I have my right to 3 vote, but there's a small target. We 4 have the target. Deaf people, we have 5 a target. Round them up. You know, 6 get them ready to vote. They are all 7 spread out all over the place. 8 Maybe if we can target more 9 deaf people to get more people and 10 teach them about their rights to vote 11 and more and more empower them people 12 to come and help you and help learn 13 about voting and get more deaf people 14 involved and the politicians will get 15 more involved and then, if they are 16 staying in Harrisburg, then thank God 17 for having the interpreter today. 18 That's a very good thing today. 19 COMMISSIONER CORTES: Thank 20 you. Thank you very much, Mr. 21 McGowen. We appreciate your 22 testimony. 23 Next, I invite Bishop Daniel 24 Laurent to present, please.</p>

<p style="text-align: right;">Page 146</p> <p>1 BISHOP LAURENT: My name is 2 Bishop Daniel Laurent. I am a 3 full-time interpreter and talking 4 about interpreter and I've been 5 watching. I work for the Court of 6 Philadelphia. Also, I am certified 7 for medical/legal technology and, 8 also, I am an official (inaudible) and 9 I am from Millbourne, Pennsylvania. 10 I have seen many people at 11 the polls and I observe that we don't 12 have an interpreter. And then we have 13 about thirty percent of Asian people 14 and then we have Pakistan. We have 15 people from Bangladesh and we have 16 Asian people like Chinese and also 17 people from India. And in Millbourne, 18 we have more Asian people than any 19 other category, but we don't have an 20 interpreter and I have seen friends 21 helping others and I have seen the 22 families helping others, but it's not 23 legal. 24 So I think it's good to have</p>	<p style="text-align: right;">Page 148</p> <p>1 living services with Liberty 2 Resources, Incorporated. We are the 3 center for independent living in 4 Philadelphia. We provide a variety of 5 services for people with cross 6 disabilities, including a very 7 extensive voter education information 8 program. 9 We provide nonpartisan voter 10 education classes which are called 11 Voter Education 101 -- and candidate 12 forums to our consumers. The purpose, 13 of course, is to provide our consumers 14 with the information they need to make 15 an informed decision when they go to 16 the polls. And I do think that goes 17 along, you know, with what we were 18 talking about, having materials in 19 accessible formats, whether it be in a 20 different language or ASL, 21 close-captioning. 22 It's really very, very 23 important that our people learn how to 24 use the voting booths. We have folks</p>
<p style="text-align: right;">Page 147</p> <p>1 an interpreter to have helpers and can 2 train more people to be at the poll. 3 Poll watchers can do the job better if 4 they are trained. And, also, judge of 5 elections can do better. And myself, 6 as a speaker, I went to media. I get 7 trained. I know how to run the 8 machine and I know how to control the 9 system and I spend time doing that. 10 So I believe that if more 11 people get trained, it would be better 12 for people to come and vote easily and 13 then people would feel safer and then 14 people will enjoy coming to the poll. 15 COMMISSIONER CORTES: Thank 16 you, Bishop Laurent. We appreciate 17 your testimony. 18 The last person I have to 19 speak in this portion of the public 20 testimony is Mr. Fran Fulton or Ms. 21 Fran Fulton. 22 MS. FULTON: Talk about 23 accessible. My name is Fran Fulton 24 and I'm a manager of independent</p>	<p style="text-align: right;">Page 149</p> <p>1 from Spring Garden, Delaware Avenue 2 down prior to each election with a 3 couple of voting booths so that people 4 can learn how to use them. We have a 5 very strong deaf advocacy group and 6 they do the same thing. 7 Aside from that, we have 8 been very active in the community, 9 fighting for the rights of people with 10 disabilities. 11 In the year 2000, the City 12 of Philadelphia spent \$20 million on 13 new voting machines. As it turns out, 14 those machines were not accessible to 15 people who were blind and visually 16 impaired. And, you know, the late 17 '90s, we all know was -- the 18 technology services were rapidly 19 growing and we couldn't understand why 20 this wasn't considered. So we went to 21 court. 22 A lawsuit was filed, N.O.G. 23 versus Tartaglione. Liberty 24 Resources, National Organization of</p>

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1 Disabilities, American Counsel for the
 2 Blind and National Federation for the
 3 Blind and individuals including
 4 myself. We sued the City alleging
 5 that they violated the Americans with
 6 Disabilities Act by not providing
 7 equipment that was accessible for
 8 people who are blind and visually
 9 impaired. We won the suit, if you
 10 want to say that, but it cost the City
 11 even more money because they had to go
 12 back and retrofit the machines.
 13 Being a user of the voice
 14 technology, I will tell you it takes
 15 me much longer to vote with the
 16 assistive technology, but I would much
 17 rather -- my time in that polling
 18 booth is my time and I would much
 19 rather do that than have to have
 20 someone assist me, where I actually
 21 feel rushed, I don't think they are
 22 reading questions to me properly,
 23 sometimes I feel I'm being influenced.
 24 I waited forty years before I could

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1 vote privately and I cherish that.
 2 So the only other thing I
 3 wanted to mention -- Bob Meek spoke
 4 quite a bit about -- is the voting
 5 machines. Our suit -- the polling
 6 places -- our suit also had to do with
 7 there were only forty-three accessible
 8 polling places at that time and the
 9 City had to modify and/or, if
 10 possible, change the locations. So we
 11 were successful with that, too.
 12 There is one other battle.
 13 We battled the machines. We battled
 14 the polling site. There is one more
 15 battle that not all of the politicians
 16 in the world can control or win and
 17 that is the weather. People with
 18 disabilities cannot travel well in bad
 19 weather. I had a horrible time coming
 20 here today. There was a curb path
 21 that was so narrow, I really didn't
 22 think I would even make it through
 23 there, but cleaning of the streets is
 24 a different story. People who have

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1 disabilities are often affected by the
 2 weather. Many of them travel by
 3 their -- using their wheelchairs or,
 4 you know, I walk with a cane. When
 5 the weather is bad, they stay home.
 6 That's it.
 7 So I'm here to endorse early
 8 voting. Early voting will allow
 9 people to come out on a day when they
 10 feel good and when the weather is
 11 good. So I hope you take that under
 12 advisement and encourage the State of
 13 Pennsylvania to endorse early voting.
 14 Thank you.
 15 COMMISSIONER CORTES: Thank
 16 you, Ms. Fulton. And we will take --
 17 keep that in mind and we thank you for
 18 your recommendation of early voting,
 19 which I know is shared by many.
 20 I will call one last public
 21 speaker and then, after that, we will
 22 proceed with our third panel. And
 23 that is Mr. Howard Bilofsky and I hope
 24 I pronounced your last name correctly.

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1 MR. BILOFSKY: Thank you so
 2 much. It's an honor to speak to you,
 3 you're doing great work. I'm vice
 4 president of the Board of the
 5 Pennsylvania Voting Rights Coalition,
 6 though I'm speaking here as a public
 7 citizen.
 8 The Voting Rights Coalition
 9 goes back to -- our roots go back to
 10 the early fight on Act 18, the voter
 11 ID law and our work is to reach out to
 12 the public for advocacy, for
 13 education, for training the trainers.
 14 Education is really the key.
 15 What we really do is we
 16 inform the public and information is
 17 the essential word and information is
 18 power, of course, and sharing the
 19 power, providing information in the
 20 transparent way is critical to, not
 21 only the sorts of things that Joe
 22 Certaine was talking about but, also,
 23 those election protection groups as
 24 well.

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1 The Commonwealth has done a
 2 very poor job of providing information
 3 that's timely and reliable for those
 4 of us who are trying to keep track of
 5 what is going on. So I urge you to
 6 make transparency both a process and
 7 information a key point in your
 8 deliberations. So thank you.
 9 COMMISSIONER CORTES: Thank
 10 you, Mr. Bilofsky. You're absolutely
 11 right. Transparency is paramount to
 12 the work that all election
 13 administrators perform.
 14 At this point in time -- and
 15 I want to thank, again, on behalf of
 16 the Commission, all the public
 17 speakers for their testimony.
 18 At this time, we are going
 19 to move right to the third panel,
 20 which is a continuation of issues on
 21 election administration and I would
 22 like to call to join us here at the
 23 table, Ms. Ellen Kaplan, vice
 24 president and policy director of The

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1 Committee of Seventy -- forgive me,
 2 forgive me -- yes -- as well as
 3 Mr. Chance Toland-Wilson, who is a
 4 student at Temple University and
 5 Benjamin Geffen, staff attorney with
 6 the Public Interest Law Center of
 7 Philadelphia.
 8 I welcome you, Ms. Kaplan,
 9 Mr. Toland-Wilson and Mr. Geffen.
 10 We will start with you,
 11 Ms. Kaplan.
 12 MS. KAPLAN: Thank you. I'm
 13 very pleased to be here and I'm happy
 14 to see my -- my own committee person
 15 up here on the stage.
 16 So I'm Ellen Madeline
 17 Kaplan. I'm the vice president and
 18 the policy director of the Committee
 19 of Seventy, which is a nonpartisan,
 20 not-for-profit watchdog organization
 21 that fights for honest and effective
 22 government, fair elections and
 23 better-informed citizens and I'm
 24 really happy to be here today.

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1 And as I understand it, the
 2 goal of this National Commission on
 3 Voting Rights is to gather testimony
 4 in support of two reports. One, on
 5 voting discrimination and a second on
 6 election administration and electoral
 7 reform. I'm going to focus my
 8 comments on the latter. Although, I
 9 do want to note the Committee of
 10 Seventy's concern about the problems
 11 faced by the growing number of voters
 12 in the city of Philadelphia who do not
 13 speak English as their primary
 14 language.
 15 I think in the presidential
 16 election, we had an enormous problem
 17 faced by Spanish-speaking voters who
 18 felt that they did not have enough
 19 interpretation services at polling
 20 places and there was an article in
 21 today's Daily News that said that 47
 22 percent of Asian Americans in
 23 Philadelphia -- and that's 43,000
 24 people -- have limited proficiency in

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1 English and the City has to ensure
 2 that all people who are eligible to
 3 vote, of all constituencies, know
 4 what's on the ballot, know where they
 5 need to go to vote and know that help
 6 is available when they go into a
 7 polling place. And I would urge this
 8 group to talk about that because it's
 9 a real problem and I think it's
 10 something that will grow.
 11 On the issue of election
 12 reforms, which to me is really
 13 synonymous with making it easier to
 14 participate in the voting process to
 15 make sure the voters have a good
 16 experience when they do vote, I think
 17 Pennsylvania and Philadelphia have a
 18 long way to go and, with all due
 19 respect to the former secretary -- who
 20 I think favored many of the reforms
 21 that, unfortunately, have not moved in
 22 the General Assembly -- I think all
 23 that all of us have to do is look at
 24 the Presidential Commission's report

<p style="text-align: right;">Page 158</p> <p>1 and it paints a pretty dismal picture 2 of how difficult it can be to vote in 3 Pennsylvania. We don't have online 4 voter registration. The bill is 5 idling in the State House, I believe. 6 At the moment, we don't have 7 early voting options and we just heard 8 about the difficulty of voting on one 9 day, particularly for disabled people, 10 and we don't have no-excuse absentee 11 ballots, we don't have electronic poll 12 booths and the list could go on and 13 on. And Pennsylvania's voting 14 procedures really are more consistent 15 with the way people lived decades ago, 16 rather than how people live today and 17 I really hope that the members of the 18 State Legislature will take those 19 recommendations to heart and any 20 advice you can give on how we can do 21 that would be enormously appreciated 22 but, sadly, here in Philadelphia, a 23 lot of those reforms really would be 24 like adding a GPS to a broken-down</p>	<p style="text-align: right;">Page 160</p> <p>1 happened here on that day. 2 It was enormously 3 frustrating for the thousands of 4 people that needed to vote by 5 provisional ballots, who should have 6 been able to vote on the voting 7 machines. People whose voter 8 registration applications were not 9 processed. We do it manually. 10 It's -- it's -- it just blows me away 11 that we still process voter 12 registration applications that way in 13 2014. 14 There were problems with 15 minority voting inspectors, a whole 16 host of problems. And I know I talked 17 about this with Commissioner Singer, 18 who is sitting behind me. We need to 19 tell voters in Philadelphia that these 20 problems are going to be fixed when we 21 have a high turnout election in the 22 governor's race this year, the mayor's 23 race the year after and the 24 presidential race the year after that</p>
<p style="text-align: right;">Page 159</p> <p>1 Model-T Ford because it is really what 2 happens on the local level that really 3 determines whether people have a good 4 or bad experience at the polls. 5 And with all -- again, my 6 committee person, I always have an 7 excellent voting experience at your 8 polling place, but that's not true for 9 a lot of people who vote here and we 10 know this because the Committee of 11 Seventy, for over a hundred years has 12 been running a program where we put 13 field volunteers all over polling 14 places in Philadelphia to answer 15 voter's questions and to report 16 problems at the polls. 17 So we get -- we have heard 18 an enormous amount from voters who are 19 highly frustrated with some 20 experiences in Philadelphia. Most 21 notably, in the November 2012 22 Presidential election. And I could 23 give you chapter and verse on that. 24 There were five probes of what</p>	<p style="text-align: right;">Page 161</p> <p>1 because I think we are going to turn 2 voters off to going to polling places 3 if there is a repeat of the 4 experiences that they had -- too many 5 of them had in November 2012. 6 So, again, I urge this group 7 to echo the Commission's call for some 8 of the reforms that would make it 9 easier to vote on the local level. 10 We need mandatory training 11 of poll workers. It can't just be 12 when they first -- when they get 13 elected to be a poll workers, because, 14 for a number of poll workers, that 15 could have happened decades ago and 16 there was a huge amount of 17 misinformation around the voter ID law 18 and that's just one. So we need 19 mandatory training. We need adequate 20 compensation for poll workers, if we 21 want people to work a thirteen-hour 22 day. We need to tell voters the 23 status of their voter registration 24 application, so they don't go to</p>

<p style="text-align: right;">Page 162</p> <p>1 polling places and find out they can't 2 vote on the voting machines and they 3 have to vote by provisional ballot, 4 which to people, this handout was not 5 having their vote count. 6 I think my time is probably 7 up, so I'll stop, but it's a herculean 8 task and any assistance the Committee 9 of Seventy can lend to your efforts, 10 we'd be delighted. Thank you. 11 COMMISSIONER CORTES: Thank 12 you, Ms. Kaplan and thank you to the 13 Committee of Seventy. 14 Next, testimony from 15 Mr. Chance Toland-Wilson from Temple 16 University. 17 MR. TOLAND-WILSON: Hi. 18 Thank you very much for allowing me to 19 speak. It's an honor and a privilege 20 to speak in front of you. 21 As Ms. Kaplan just told you, 22 there are enormous amounts of issues 23 faced by voters in Philadelphia. I 24 don't want to bore you with things</p>	<p style="text-align: right;">Page 164</p> <p>1 would show this to poll workers and 2 they would say, I'm sorry, it's not 3 that I don't believe you, it's just 4 there's nothing I can do. That phrase 5 was used over and over again. A lot 6 of these people don't seem like 7 they're trying to inhibit the 8 democratic process but, as she 9 mentioned, they aren't up to date with 10 what's going on. 11 She also mentioned about 12 voters who had to provisionally vote 13 because their voter registration 14 wasn't fully processed yet. I was one 15 of those voters. I had made sure, 16 long before November, that I was able 17 to vote and I would be able to vote in 18 the normal fashion. I was still 19 denied. 20 I went to vote with a group 21 of about thirty-five to forty students 22 who were all in my class that day. We 23 were all let out early to make sure we 24 got to the polling place on time. I</p>
<p style="text-align: right;">Page 163</p> <p>1 that you've already heard, but I want 2 to color my testimony with how this 3 affects first-time voters. 4 Not to continually harp on 5 what happened in the 2012 presidential 6 election, but it was an absolute 7 disaster, especially for many 8 first-time voters. 9 At Temple University, there 10 are two different polling locations 11 within two square blocks of each 12 other, so we have a lot of access to 13 polling machines. I was shuffled back 14 and forth between those two polling 15 locations three times in the 2012 16 presidential election. 17 Each time, when I went and 18 gave my initial address so they could 19 process me, I was told you have been 20 given the wrong information. I took 21 my phone. I believe the president 22 of -- someone had installed an 23 official website that allowed you to 24 check where you're supposed to go. I</p>	<p style="text-align: right;">Page 165</p> <p>1 think, out of that group, if fifteen 2 of us voted, that might be a high 3 estimate. 4 It's a travesty when 5 first-time voters -- many of whom have 6 been looking forward to this 7 experience for years -- have to go to 8 polling places and be consistently 9 told I'm sorry, I want to help you, 10 but I can't. 11 As an 18-year-old at the 12 time, I had been used to being told by 13 adults what to do and when to do it. 14 Quite frankly, I've become fed up with 15 that. This completely and totally 16 eroded, personally and for a majority 17 of my age group, our trust in this 18 process. I have always considered 19 myself a citizen first and foremost 20 and I truly am passionate about these 21 types of issues, but when we are not 22 allowed to have a voice, you take away 23 that ability. And it -- I mean, to 24 say frustrating is really not the word</p>

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1 for it. It was -- I really can't put
 2 into words the frustration that I felt
 3 on that day and thank you very much
 4 for allowing me to speak today and I
 5 hope we can do something to reform
 6 these issues because, honestly, if my
 7 experience in 2012 was the same I had
 8 in the 2013 general election, I
 9 wouldn't vote anymore.

10 I always considered that the
 11 highest civic duty one could have.
 12 And after one election, I considered
 13 not voting in future elections. I
 14 think that shows what the average 18
 15 to 21-year-old faced, especially
 16 during the 2012 presidential election.

17 Thank you very much for
 18 allowing me to speak.

19 COMMISSIONER CORTES: Thank
 20 you, Mr. Toland-Wilson. I hope that
 21 you will not be dissuaded or so
 22 disenchanted with your experience that
 23 you will not vote again and -- but
 24 it's very important to hear the

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1 experiences of the first-time voters,
 2 young voters, college students.

3 Pennsylvania, I think, is
 4 well known for having some of the
 5 finest institutions of higher learning
 6 in the state. So we have many, many
 7 first-time voters that if their
 8 experience is just like yours, it's
 9 tragic. So we will certainly do what
 10 we can to make sure that that's
 11 improved in the future.

12 And last but certainly
 13 last -- last but not least,
 14 Mr. Benjamin Geffen with the Public
 15 Interest Law Center of Philadelphia.

16 We appreciate you being
 17 here, sir, and we welcome your
 18 testimony.

19 MR. GEFFEN: Thank you for
 20 the opportunity to speak today. The
 21 Public Interest Law Center of
 22 Philadelphia is a civil rights
 23 organization. We have been in
 24 Philadelphia since 1969 and, over the

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1 last year-and-a-half, we have had the
 2 privilege of working with some other
 3 groups including, Advancement Project,
 4 ACLU of Pennsylvania and the Firm of
 5 Arnold & Porter to seek a permanent
 6 injunction to block enforcement of Act
 7 18, Pennsylvania's voter ID law.

8 Through litigating that case
 9 and through watching officials and
 10 ordinary citizens struggle to adapt to
 11 the statute, we learned some lessons
 12 about the effect of the voter ID law.
 13 And one of the lessons I want to talk
 14 about today is that the voter ID law
 15 causes a lot of confusion. Confusion
 16 among voters, confusion among state
 17 employees who are charged with
 18 implementing the law, and confusion
 19 among poll workers who are on the
 20 front lines of voting.

21 I will give a few examples
 22 of voter confusion that we heard about
 23 in the trials in that case. One of
 24 the plaintiffs is an elderly voter who

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1 lives on the outskirts of Pittsburgh.
 2 Her name is Nadine Marsh. Mrs. Marsh
 3 doesn't drive and doesn't have a
 4 driver's license. She had to ask her
 5 daughter to take off work to drive her
 6 a long distance to a PennDOT location
 7 to get a photo ID for voting purposes.

8 The whole trip, driving
 9 there, waiting in line, coming home,
 10 took about a half a day and it took
 11 Mrs. Marsh and her daughter three
 12 trips before she got an ID.

13 The first time she went, the
 14 polling -- sorry -- the PennDOT
 15 location was open. It was a Monday,
 16 but it turned out, that location
 17 doesn't actually give out the kind of
 18 IDs you need to vote on Mondays. The
 19 second time they went, an employee at
 20 the center told her she didn't know
 21 what she meant when she asked for a
 22 free voter's ID, so she went home
 23 empty-handed.

24 It was only on the third

<p style="text-align: right;">Page 170</p> <p>1 trip that she was able to get an ID to 2 vote. She was lucky enough that she 3 had a daughter who could take time off 4 of work to do this repeatedly. Not 5 everyone is as fortunate. 6 The second example of voter 7 confusion is a disabled grandmother 8 named Mary Baker. She was once an 9 elected republican committeeperson in 10 her home city of Reading. 11 Even though the state was 12 preliminarily enjoined from enforcing 13 the law in the November 2012 election, 14 a poll worker told Mrs. Baker on 15 Election Day that she wouldn't be able 16 to vote in the next election if she 17 still didn't have an ID card. Sadly, 18 Mrs. Baker stayed home from the poll 19 in the May 2013 primary election 20 because of the inaccurate information 21 that she heard from the poll worker. 22 A final example of voter 23 confusion is a woman named Carol 24 Aichele, who is Pennsylvania secretary</p>	<p style="text-align: right;">Page 172</p> <p>1 exhibited by or caused by state 2 employees. First, PennDOT was meant 3 to provide free IDs, under the 4 statute, to people who would need them 5 to vote. At the trial, we heard 6 testimony from a long-time voter named 7 Patricia Norton, who lives in 8 Womelsdorf, Pennsylvania in Berks 9 County. 10 Mrs. Norton testified that 11 she was turned away when she went to 12 PennDOT and asked for a voter ID 13 because she asked for an ID and they 14 said it cost \$13.50. She offered 15 \$13.50 in cash and they told her, no, 16 it's got to be check or money order, 17 so she went home empty-handed. 18 Herbert Janenski (ph), 19 another voter, tried to renew a 20 license and received a letter back 21 from PennDOT saying that they couldn't 22 process his application because he had 23 a balance due of \$0.00. 24 Then, the final lesson I</p>
<p style="text-align: right;">Page 171</p> <p>1 of state. After the voter ID law was 2 passed, Secretary Aichele visited the 3 editorial board of the Erie Times News 4 and showed her State employee ID to 5 the members of the editorial board to 6 demonstrate how simple it is to come 7 up with ID that can be used to vote 8 under Act 18, told that, as her 9 employee ID lacked an expiration date, 10 and was, therefore, unacceptable for 11 voting. This, apparently, was 12 something that even the secretary of 13 the commonwealth had been unaware of 14 at the time. 15 So the overall lesson about 16 voter confusion is that complicated 17 bureaucracy in election administration 18 deters many voters from bothering to 19 show up at the polling place and it 20 can trip up even those who do persist 21 in trying to exercise their right to 22 vote. 23 So, next, I'd like to give 24 some examples of confusion either</p>	<p style="text-align: right;">Page 173</p> <p>1 want to give is that the law is 2 confusing enough to trip up poll 3 workers as well. After the law was 4 preliminarily enjoined, stories rolled 5 in from across Pennsylvania of 6 inconsistent practices at balloting 7 sites. At some places, poll workers 8 didn't ask for an ID at all, even 9 though they were supposed to ask for 10 one under the preliminary injunction. 11 In other places, there were 12 outdated signs that suggested that ID 13 was still sine qua non for voting and 14 we heard trial testimony from a woman 15 named Nina Prifty (ph), who doesn't 16 have an ID and she was a poll worker. 17 She wasn't required to show ID to get 18 a position as a poll worker, but she 19 could not be trusted to vote without 20 an ID and she was confused about the 21 discrepancy as well. 22 So the overall lesson there 23 is that poll workers may not be 24 receiving adequate training and</p>

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1 supervision to accurately administer
2 the voter ID law. Thank you.
3 COMMISSIONER CORTES: Thank
4 you, Mr. Geffen.
5 And I now provide the
6 Members of the Commission to ask
7 questions.
8 COMMISSIONER MONDESIRE:
9 Mr. Chance Toland-Wilson, what did
10 your friends who were rejected do?
11 Tell us the personal side of how they
12 felt and the conversations that took
13 place. You said thirty-five went to
14 vote and, roughly, thirteen were
15 allowed to vote, if I got the numbers
16 correct.
17 MR. TOLAND-WILSON: Yes.
18 COMMISSIONER MONDESIRE:
19 What did those who had been rejected
20 do? Give us a sense of how they
21 walked away.
22 MR. TOLAND-WILSON: Well,
23 the two polling locations are a local
24 community center and an elementary

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1 school, which --
2 COMMISSIONER MONDESIRE:
3 Move a little closer.
4 MR. TOLAND-WILSON: Yes. So
5 they are very literally across the
6 street from each other. When we went,
7 depending on where you lived, that
8 group of thirty-five broke in about
9 two equal, separate groups. Both
10 groups ended up seeing each other when
11 they were shuffled between polling
12 stations.
13 I know a couple of people
14 that automatically, once they were
15 denied, were just like, honestly?
16 You know, some people don't
17 feel this is a truly important issue
18 and they just went home automatically.
19 Some were more bullish about wanting
20 to make sure that their voice was
21 heard and went to the second station,
22 politely stating that the only other
23 station within -- I'm going to say
24 within close to mile, you know, there

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1 is no other station in the area -- had
2 already rejected them, so logic tells
3 you that we are voting here.
4 They were, then, given the
5 same thing that I was told more than
6 once: I'm sorry, I want to help you,
7 but I simply can't. At that point, a
8 large majority of them, once again,
9 said, all right, we tried and we are
10 going to go home.
11 Of the group of about ten to
12 fifteen that ended up voting, I'm
13 going to say that the average person
14 spent about an hour -- not even --
15 this doesn't include waiting in
16 line -- but just trying to figure out
17 where they would be allowed to vote.
18 I'm saying, of that group, seven or
19 eight were forced to provisionally
20 vote, which the administration of
21 which I, personally, found
22 disrespectful and rushed, but you
23 know, that's almost a whole different
24 story.

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1 Honestly, I don't think a
2 single person that I went to vote with
3 that day left the poll satisfied,
4 whether or not they actually were
5 given the chance to vote.
6 COMMISSIONER MONDESIRE:
7 Thank you very much.
8 COMMISSIONER DIAZ: I was
9 wondering whether or not you had an
10 opinion on the issue that was asked
11 before related to mail voting and/or
12 internet voting, with regard to a
13 breach or limits.
14 MR. GEFFEN: I can speak a
15 little bit to that and how it connects
16 to the voter ID situation and that
17 laws like Act 18 have been passed in a
18 lot of states in the last few years
19 but, one of the reasons that
20 Pennsylvania's law is among the very
21 strictest in the country, is that
22 Pennsylvania lacks any safety net in
23 the form of no-fault absentee voting
24 or other alternative means of voting

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1 that don't require somebody to show up
2 in person, on Election Day, at a
3 specific polling place.
4 And the significance is that
5 in states that permit absentee voting,
6 people who are unable to acquire one
7 of the types of photo IDs they would
8 need to vote aren't disfranchised,
9 because they can still cast an
10 absentee ballot.
11 So one of the many reasons
12 that literalize absentee or other
13 balloting sanctions in Pennsylvania
14 would be helpful, is that it would
15 assist people who are unable to get a
16 photo ID or people who have trouble
17 physically traveling to the polling
18 place, especially in rural areas or if
19 we're dealing with elderly voters or
20 voters with disabilities, it would
21 give them more options for how to make
22 their voice heard on Election Day.
23 MS. KAPLAN: I think a
24 number of states do already have

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1 mail-in voting, including right across
2 the river in New Jersey and I think it
3 would really behoove Pennsylvania to
4 do a real analysis of the early voting
5 options that other states use and --
6 with the idea of adopting a mail-in
7 voting system here.
8 As for internet voting, to
9 my knowledge, I don't know of
10 instances where internet voting is --
11 has -- maybe you can address this, you
12 would know -- that a secure system for
13 voting by internet is working anywhere
14 in the United States. I believe that
15 there are some places overseas that do
16 allow internet voting, but I am not
17 aware, unless it's a private program
18 in a small place of internet voting
19 around the country.
20 I think we will probably get
21 there, but reports that I have read
22 are -- in fact, still have some major
23 security concerns.
24 COMMISSIONER CORTES:

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1 Internet voting was first, at least in
2 Pennsylvania, was first considered --
3 there was a certain program back in
4 2002 that was studied and I was a
5 supporter of that as a way to create
6 additional opportunities to vote. The
7 program was shut down for some
8 security concerns.
9 There are states that are
10 rather progressive. Washington, you
11 may have know is now -- vote by mail,
12 has been instituted. You don't have
13 the online voting as much as you have
14 online voting registration, which has
15 been adopted, I believe, at last
16 count, by seventeen states and it's a
17 good way to be sure that we overcome
18 some of the challenges that Mr.
19 Toland-Wilson had experienced.
20 I believe that --
21 personally, that the technology is
22 available. There's -- and you can,
23 you know, split hairs and go on for
24 weeks on end to talk about the -- that

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1 one side believes you never can make
2 technology safe enough. Others will
3 argue we already employ sophisticated
4 technology in banking and other
5 transactions, but all that becomes --
6 you can put pros and cons of each side
7 of the equation and probably never
8 reach a consensus.
9 I do think that, as a
10 country, we are not taking advantage
11 of technology. Australia, Estonia,
12 even countries nearby, Mexico, have
13 experimented successfully with
14 internet voting.
15 I believe the technology is
16 available, but we haven't even gotten
17 to the point of passing a law to talk
18 about no-excuse or no-reason absentee
19 voting, which was one of the
20 accommodations that came out of the
21 2005 Pennsylvania Election Reform Task
22 Force.
23 So that was a measure that
24 we agreed on as a group and,

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1 unfortunately, even that has not
 2 passed. So we have a long way to go
 3 in Pennsylvania. With that, I would
 4 agree.
 5 Do you have a question? I
 6 have some thoughts as well.
 7 Well, I just wanted to --
 8 well, I'll stop here because, again,
 9 the issue of no-excuse -- I prefer to
 10 call it no-reason absentee voting --
 11 it's so paramount and I would
 12 encourage everyone to start at that
 13 point and talk to your legislators and
 14 others. And you're right, there is --
 15 at the moment still stalling in the
 16 House State Government Committee, the
 17 bill that was passed -- the bill that
 18 would have been passed unanimously in
 19 the Senate for online voter
 20 registration.
 21 It passed unanimously in the
 22 one house and -- where you have both
 23 republicans and democrats and not
 24 being able to move it an inch in the

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1 House, I believe, is something that
 2 should be addressed at this time.
 3 COMMISSIONER METELLUS: I
 4 actually have a two-part question.
 5 One is -- the first part is: Clearly,
 6 in the testimony that we just heard
 7 and the training is sort of a common
 8 thing needed. In the prior panels, we
 9 heard that.
 10 So what do you see is the
 11 challenge to this training issue that
 12 keeps coming up? And part two is:
 13 Are there any jurisdictions, in
 14 Pennsylvania or elsewhere in the
 15 country, that you would you point to
 16 as good examples that we can look to
 17 as we, at least, try to address this
 18 issue of training?
 19 MR. GEFFEN: One of the
 20 things I think is that if you don't
 21 make the system needlessly
 22 complicated, you can get away with
 23 imperfect training more easily than if
 24 you throw up a lot of extra red tape.

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1 And so to the extent that
 2 our voting system already works -- for
 3 example -- in the example of Act 18,
 4 that was a law that was purported to
 5 be addressing an issue of impostor
 6 fraud. People showing up at the
 7 polling place and saying they are
 8 someone -- saying they are someone
 9 they weren't and casting a fraudulent
 10 ballot.
 11 That state trial actually
 12 said, in writing, we know of no
 13 examples of any time this has happened
 14 in Pennsylvania or anywhere else in
 15 the country. So I guess one answer to
 16 this question, maybe, is a little
 17 glib. It's don't create extra work
 18 and extra complications when there is
 19 not actually a problem to be solved,
 20 but as for the training of poll
 21 workers, I agree with the suggestion
 22 that Ms. Kaplan made -- I believe it
 23 was Ms. Kaplan -- to pay to better
 24 professionalize and to attract

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1 additional people into the ranks of
 2 poll workers and also the judge of
 3 elections to train these workers.
 4 MS. KAPLAN: I think there
 5 are ways to do the trainings so that
 6 more poll workers can participate.
 7 You can do webinars you can get -- and
 8 I know there are continuing legal
 9 education. There are lots of classes
 10 you can take online and you don't have
 11 to go someplace to do it.
 12 Personally, I would like
 13 them to say that you can't work at a
 14 polling place unless you get trained
 15 annually. The voter ID is just one
 16 example, but I could sit here for an
 17 hour and tell you stories that we
 18 heard from voters, through our
 19 volunteers or voters calling the
 20 office and saying the poll worker told
 21 me to do this and that wasn't right
 22 and I -- and it was -- it's enormously
 23 frustrating for voters to get
 24 misinformation from the very people

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1 who are supposed to be in charge of
2 polling places.
3 So I would really love to
4 see mandatory training and, to tell
5 you the truth, we shouldn't have to
6 pay people that much extra to get
7 training for their jobs. If they want
8 these jobs, I think we ought to
9 increase the pay for performing on
10 Election Day, but it's -- people need
11 continuing training when they are in a
12 job where there are different legal
13 requirements sometimes from election
14 to election.
15 MR. TOLAND-WILSON: I'm not
16 nearly as qualified to talk about this
17 as my two guests with me, but as a
18 current college student -- and I'm not
19 sure what requirements there are to be
20 a polling attendant and such -- but
21 the fact that I don't see any young
22 people whatsoever, socially, can be a
23 little concerning but, also, I'm a
24 pre-law student who would jump at an

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1 opportunity to take part in the civic
2 process part.
3 The fact that we don't start
4 involving college students and young
5 people in all parts of the voting
6 process, it alienates us and I'm not
7 going to harp on, you know, the
8 differences between generations, but
9 if I, in the 2012 elections, would
10 have seen one person that I could
11 personally identify with and ask
12 questions, whether they were right or
13 wrong, I would feel more comfortable
14 with the process.
15 When I'm dealing with people
16 that we don't truly -- we are unable
17 to communicate on the same level, it
18 makes it less transparent and more of
19 a process. Anything, in my opinion,
20 that does that, I don't think is
21 right.
22 COMMISSIONER DIAZ: I'd like
23 to talk to Chance about my generation.
24 At fifteen, I got involved

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1 in the election process because we
2 were denied the right. My children --
3 when I was working for the
4 (inaudible), all of them worked with
5 me on the polling places.
6 And so the problem, more
7 than anything else, was that my
8 generation is totally satisfied and
9 has not been able to pass down that
10 whole great generation that was
11 involved in the civil rights movement.
12 So the educational process really
13 hasn't filtered down. We've basically
14 been satisfied.
15 So the reason we have high
16 turnouts in the election of the
17 president because of voter ID,
18 because -- I know there were high
19 turnouts when John Street ran because
20 Bush was trying to put a bug in
21 somebody's -- so when people realize
22 that their rights are sort of being
23 infringed, all of the sudden, we rise
24 up. And unfortunately -- I have never

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1 missed an election since my first
2 election, I was 21 years old. It's 18
3 years now. It was 21 at my first
4 election.
5 So I have to tell you that
6 it is a problem of us not passing that
7 torch down and we have to do something
8 about that before our rights are taken
9 away, as we saw what you had to say.
10 When that happens, then, all of the
11 sudden, people rise up and that's the
12 wrong time to do it. You have to
13 built in all the time. And a leader
14 like you -- you're obviously a
15 leader -- like you can stimulate many
16 others to do that.
17 It was one student who took
18 over the Temple University Law School,
19 back in 1971 and that person is still
20 around and became a judge.
21 So, you know, it's important
22 to provide the leadership that you
23 have and I'm very happy that you have
24 provided and that you're here and,

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1 like you see, how many young people
 2 are here. It's a task that we have to
 3 work on and I hope that we can pass
 4 that torch down, which I asked the
 5 question about civic education, you
 6 know, nobody gets it.
 7 MS. KAPLAN: If I might
 8 state, the Pennsylvania election code
 9 does allow for exemplary high school
 10 students to work in polling places and
 11 I know that Pittsburgh has a robust
 12 program where they do recruit high
 13 school students. What better way to
 14 get young people, who are about to be
 15 voters, interested in the voting
 16 process become lifelong voters by
 17 having high school workers work in
 18 polling places?
 19 COMMISSIONER CORTES:
 20 Absolutely.
 21 We are out of time for this
 22 panel, but I certainly concur with
 23 Judge Diaz and the comments that have
 24 been presented.

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1 I'm just going to close with
 2 a couple thoughts here for the group
 3 for everyone's benefit. We have a
 4 significant problem in Pennsylvania,
 5 as has been stated, in terms of
 6 getting more young people and others
 7 to engage and become poll workers.
 8 I don't know if everybody
 9 knows, but there was a change, in the
 10 time I was in office, where the new
 11 voter registration form has a box that
 12 asks if you -- if that person
 13 registered and most of the registerers
 14 are younger voters -- whether you want
 15 to be a poll worker and, if you
 16 checked that off, the county that
 17 received that application is supposed
 18 to contact you to engage you in that
 19 possibility.
 20 Training is always a problem
 21 and we do not have mandatory laws for
 22 training, which is -- is incredible.
 23 One of the things that we did, back in
 24 the day when I was in office, was to

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1 create CDs. You know, there's a
 2 reason we hear from the counties why
 3 they cannot force or, otherwise, make
 4 the poll workers train, so we tried to
 5 make it easier and we created that to
 6 be -- that I know of, one was on
 7 general instructions for opening the
 8 polling place and how to go about
 9 answering basic questions and what to
 10 do with the -- if the equipment didn't
 11 quite work. All the things like that.
 12 And I thought it was well done and not
 13 overly complicated.
 14 The second video was on how
 15 to properly provide services to voters
 16 with disabilities, how to make sure,
 17 not only the -- a sensitivity to the
 18 needs of voters with disabilities, but
 19 to do it right and to be comfortable
 20 as a poll worker. I thought those
 21 were tremendously helpful CDs. We
 22 distributed them to every -- every
 23 county. I just don't know how much
 24 they were used, but and if I may --

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1 I'll close with that and I -- thanks,
 2 again, to the panel for your
 3 testimony -- testimony we have in
 4 writing as well and the transcript and
 5 we certainly take to heart -- and I
 6 know that The National Commission of
 7 Voting Rights does -- for the
 8 experiences and the suggestions that
 9 you present. So thank you so much.
 10 We will proceed immediately
 11 to seat the last panel, panel number
 12 four. And this is a panel on
 13 strengthening elections in
 14 Pennsylvania.
 15 We have -- our three
 16 presenters are Susan Carty, the
 17 president of The League of Women
 18 Voters of Pennsylvania. Second, Mr.
 19 Barry Kauffman, who is the executive
 20 director of Common Cause of
 21 Pennsylvania and our third presenter
 22 is Stephanie Singer, who is a
 23 Philadelphia city commissioner.
 24 Commissioner, if you're

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1 ready, we'll start with you. If not,
 2 we can start with Ms. Carter. We have
 3 no problem switching from one side to
 4 the other. So I'll let you decide who
 5 wants to go first.
 6 MS. CARTER: Are you ready?
 7 COMMISSIONER SINGER: Well,
 8 I'm ready and also since I'm speaking
 9 about poll workers, it's relevant to
 10 what we have heard before. I'm
 11 Stephanie Singer. I'm one of three
 12 city commissioners in the city of
 13 Philadelphia and I'm sure you can
 14 imagine that I have a lot of things to
 15 say about all the topics we've heard
 16 about.
 17 COMMISSIONER CORTES: And
 18 only five minutes to do it.
 19 COMMISSIONER SINGER: Well,
 20 I'm going to stick to improving poll
 21 worker training, but before talking
 22 about poll worker training, let's talk
 23 about poll worker recruitment and
 24 retention.

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1 In many Pennsylvania
 2 counties, including Philadelphia, the
 3 fear of losing poll workers hampers
 4 improvements in election
 5 administration.
 6 Let me give you one example.
 7 We discovered, last year, a problem
 8 with write-in votes and there's no
 9 redundancy at the polls in
 10 Philadelphia. So if one piece of
 11 paper goes missing, you can lose all
 12 of the write-in votes.
 13 And this is real problem and
 14 it makes sense to introduce
 15 redundancy, so that there are two
 16 pieces of paper, right, that go
 17 separate ways, so that these things
 18 cannot be lost and this kind of
 19 redundancy is in all elections
 20 procedures that I know of, except for
 21 this one, but any redundancy, any way
 22 to fix this issue, requires us to ask
 23 something more of poll workers in
 24 addition to what they are doing and

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1 the internal discussion goes like
 2 this: Well, we can't ask them to do
 3 more because if we ask them to do
 4 more, they are going to quit and we
 5 are going to have even more trouble
 6 recruiting.
 7 So I wanted to give a few
 8 concrete ideas for improving the
 9 recruitment and the retention of poll
 10 workers. One is to pay poll workers
 11 more. This is expensive. So, for
 12 example, in Philadelphia, this would
 13 cost an extra one million dollars
 14 every year. That's about a ten
 15 percent increase in our budget and I'm
 16 all for it because that's easy for me
 17 to say, right?
 18 So another thing that we can
 19 do that's much less expensive is
 20 simply to honor poll workers.
 21 Congress could do this. State or
 22 local governments could do this.
 23 Create a poll worker appreciation day.
 24 Poll workers are simply not

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1 appreciated and this is a relatively
 2 inexpensive thing to do.
 3 Another thing that we could
 4 do is encourage the business community
 5 to step up, on a volunteer basis, say
 6 by allowing -- just as there is jury
 7 duty, many companies offer jury duty
 8 leave, which is paid.
 9 If companies were to offer
 10 poll worker leave, which is paid, that
 11 would be terrific. And then, as has
 12 been mentioned, education outreach,
 13 especially to the Millennials to
 14 advertise -- you know, I would have
 15 loved to have had the young man
 16 working behind a desk. So how do
 17 we -- how do we make that connection,
 18 so when people like him are
 19 interested, to know what the
 20 opportunities are?
 21 So to move on to poll worker
 22 training, we have some variety of
 23 training modes, which is good. As
 24 Secretary Cortes said, the videos --

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1 actually, those videos are not just
 2 CDs. They are online.
 3 COMMISSIONER CORTES: Right.
 4 COMMISSIONER SINGER: And
 5 people can just go look at them and --
 6 and I recommend that to all of the
 7 poll workers I come in contact with.
 8 Counties hold in-person
 9 trainings. My office is experimenting
 10 with pushing information out in small
 11 chunks like emails and we've addressed
 12 or started to address the very real
 13 issue of getting those telephone
 14 interpretation blue sheets on every
 15 polling place table and it is a
 16 struggle. It -- it is something that
 17 we need to do much, much better at.
 18 And the way I think about it
 19 is that different persons -- different
 20 people learn in different ways. So we
 21 need to create an ecosystem for poll
 22 worker learning. We need to have poll
 23 workers teaching poll workers. We
 24 need good information out there, but

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1 this kind of experimentation needs
 2 money and not that much, but Congress
 3 or private foundations could provide
 4 small grants to encourage
 5 interpretation -- sorry -- to
 6 encourage experimentation.
 7 And, finally, one critical
 8 thing that is missing is the
 9 evaluation of the effectiveness of
 10 training. So if we did get some
 11 grants for experimenting with
 12 different kinds of poll worker
 13 training, they have to include a
 14 requirement -- a requirement that the
 15 effectiveness of the education is
 16 measured.
 17 Finally, I would like to say
 18 that the poll workers really are on
 19 the frontline and it is a logistical
 20 issue. I know of no other logistical
 21 issue like it, wherever you work, you
 22 run a business, whatever you do,
 23 imagine running a thousand of those
 24 businesses that you had to get up an

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1 running for one day and then not again
 2 for another six months.
 3 So I am so grateful to the
 4 people who work the polls and I'm
 5 grateful to you for the work that
 6 you're doing. Thank you for giving me
 7 the opportunity to testify.
 8 COMMISSIONER CORTES: Thank
 9 you, Madame Commissioner, and thank
 10 you for -- for your testimony and
 11 keeping the time. That's great. We
 12 do appreciate that. Thank you. And
 13 we will have time to elaborate on some
 14 of these topics as well.
 15 Next, I'll ask Mr. Barry
 16 Kauffman of Common Cause of
 17 Pennsylvania to present his testimony.
 18 MR. KAUFFMAN: Thank you.
 19 Good evening, Commissioner Cortes and
 20 Diaz, Metellus and Mondesire, and also
 21 the voters of Pennsylvania who showed
 22 up today.
 23 I'm Barry Kauffman, the
 24 executive director of Common Cause of

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1 Pennsylvania, and protecting voting
 2 rights and integrity questions have
 3 all been core issues of Common Cause.
 4 We fought to secure protecting the
 5 voter law, the passage of the SURE Act
 6 and the HAVA implementation
 7 legislation. We created the
 8 Pennsylvania Voters' Coalition which
 9 quickly grew to have over seventy
 10 members -- organizational members and
 11 issue experts.
 12 Over recent presidential
 13 election cycles, Common Cause has
 14 assembled teams of hall monitors to
 15 watch election proceedings around the
 16 Keystone State, partly with a large
 17 statewide coalition of election
 18 protection organizations.
 19 Common Cause and its
 20 partners observed a wide array of
 21 problems on the last Election Day.
 22 And prior Election Days which we
 23 monitored. For the purposes of
 24 today's hearing, we are going to focus

<p style="text-align: right;">Page 202</p> <p>1 on one remedy to one of the problems, 2 the need to modernize Pennsylvania's 3 voter registration system. 4 It has become glaringly 5 evident that Pennsylvania's voter 6 registration system is not meeting the 7 commonwealth's voters needs. 8 Fortunately, modern technology is 9 providing means to remedy many of the 10 problems. And right now, according to 11 the Q Research Center, eleven states 12 now offer online voter registration 13 and an additional six others have 14 passed legislation enabling electronic 15 registration. 16 Pennsylvania voters deserve 17 the same kind of opportunities and 18 conveniences which are now being 19 experienced in other states. Online 20 voter registration is, in fact, a 21 four-way win. If Pennsylvania becomes 22 the eighteenth state to adopt online 23 voter registration, you can expect to 24 see the following: First, saving</p>	<p style="text-align: right;">Page 204</p> <p>1 registration systems, some states who 2 use it indicated -- (inaudible) 3 counted as much as forty percent of 4 voter registrations. 5 So by allowing people to 6 register online any time of day, at 7 home or at work and right up to thirty 8 minutes before the thirty-day cutoff 9 for registration, we are better 10 serving -- we would better serve the 11 public. 12 And in fact, Arizona 13 registration rates have, among 18 to 14 24 years olds, have risen from 29 15 percent to 53 percent with online 16 voter registration. And, furthermore, 17 it appears that there was partisan 18 parity among those who register 19 online. 20 We also see improvement in 21 the speed and accuracy of voter 22 registration rolls. Paper 23 registration can be as much as five 24 times more error-prone than online</p>
<p style="text-align: right;">Page 203</p> <p>1 money for state and local government 2 and taxpayers because online voter 3 registration has proved to lower 4 administrative costs for state and 5 local government elections. 6 In fact, Arizona counties 7 say they spend now half the time 8 processing online -- processing online 9 registrations compared to what they do 10 with manual registrations, dropping 11 their cost of processing to 83 cents 12 per registration. 13 We also see an increase in 14 citizen convenience and satisfaction. 15 Online voter registration eliminates 16 the need for voters to go out and get 17 the forms or to travel to county 18 offices to submit their registrations. 19 Voters can make -- address party 20 affiliation changes to their 21 registrations more easily online. 22 While online voter 23 registration does not completely 24 replace the traditional paper</p>	<p style="text-align: right;">Page 205</p> <p>1 registration because online 2 registration allows voters to enter 3 their information correctly, 4 increasing the accuracy of the 5 registration data and the speed with 6 of which entries get into the system. 7 This increases the accuracy of voter 8 registration records and poll books 9 and further saves money by reducing 10 the number of provisional ballots 11 needed on Election Day. 12 Finally, tightening the 13 security of voter opportunities from 14 abuse is another factor. Public 15 officials who have concerns about 16 election fraud should be running to 17 embrace online voter registration. 18 When voters register online, there are 19 fewer opportunities for voter 20 registration problems such as failure 21 to deliver a valid registration 22 (inaudible) or misuse or manipulation 23 of registration information and 24 permits problems to be discovered and</p>

<p style="text-align: right;">Page 206</p> <p>1 amended much more easily than in the 2 past. 3 Finally, no state that has 4 adopted online voter registration has 5 ever turned back. In fact, they 6 recommend it to their sister states. 7 And, finally, just last month, online 8 voter registration received another 9 strong endorsement. When the 10 President's Commission on Election 11 Administration issued its report, this 12 report is encouraging because leaders 13 of the Democratic and Republican 14 parties were able to put aside their 15 partisan differences and agree on 16 common-sense suggestions for approving 17 and modifying our election systems. 18 Common Cause of PA and it's 19 allies, The Election Modernization 20 Coalition, urge Pennsylvania state and 21 local officials to heed PCA's 22 recommendations and the successful 23 experiences of our sister states by 24 implementing online registration now.</p>	<p style="text-align: right;">Page 208</p> <p>1 system -- online system called Smart 2 Voter and it's a system that is being 3 used in Pennsylvania, but not all 4 across Pennsylvania, but The League is 5 certainly encouraging our other 6 chapters to use this system, which 7 allows voters to go online for months. 8 It's on all of the time. 9 It provides education for 10 new voters. It provides history. It 11 provides demonstrations and as you 12 come close to the elections, it 13 provides all the candidates and the 14 candidates have the opportunity to go 15 online and expand their personal 16 information for their own following. 17 And that encourages others to come to 18 this system. 19 It's a great system, but we 20 have a long way to go expanding that 21 across the state. That's my sales 22 pitch. Okay. 23 The League of Women Voters 24 believes, as you know, that every</p>
<p style="text-align: right;">Page 207</p> <p>1 We thank you for this 2 opportunity and we appreciate your 3 work and we hope that Pennsylvania 4 will -- this side of the panel today 5 will help Pennsylvania modernize its 6 election systems and better serve its 7 citizens of the Keystone State. 8 COMMISSIONER CORTES: Thank 9 you, Mr. Kauffman. We greatly 10 appreciate your testimony. 11 The last presenter of the 12 panel of witnesses that we have 13 scheduled for this afternoon -- 14 evening is Susan Carty, who is the 15 president of The League of Women 16 Voters of Pennsylvania. 17 MS. CARTY: Hi. Being last 18 is rather tricky, isn't it? I could 19 just end right here. There's been so 20 many -- 21 COMMISSIONER CORTES: But we 22 don't want you to. 23 MS. CARTY: Before I begin, 24 I'd just like to put in a plug for a</p>	<p style="text-align: right;">Page 209</p> <p>1 citizen should be protected in the 2 right to vote. It is our mission that 3 all voters have the fundamental right 4 to free and fair access to voting. We 5 know that voting is the crucial 6 bedrock of a healthy democracy and we 7 also know that right here in 8 Philadelphia, democracy was born and 9 it's no accident that tonight we meet 10 in this magnificent 11 historically-significant building, The 12 Constitution Center, a powerfully 13 impressive place that reminds us to 14 take pause and to consider who we are, 15 how we came about and, most 16 importantly, reminds us of what we 17 must protect. 18 There could not be a more 19 fitting place to have this 20 conversation. Today's session falls 21 on the heels of the landmark judicial 22 voter ID law. I think I will skip any 23 further discussion of the voter ID 24 law. We've heard it all and know it</p>

<p style="text-align: right;">Page 210</p> <p>1 definitely was a problem. 2 Today's voter faces the 3 following conditions, as we have 4 heard, one day to vote, no 5 opportunities for early voting, highly 6 restrictive absentee ballot provisions 7 and no opportunity for online voter 8 registration and, as we said, as of 9 April, Senate Bill 37, providing for 10 online registration, passed 11 unanimously. And today we ask why has 12 the chairman of the State Government 13 Committee not brought this modern, 14 cost-saving, voter-supportive bill out 15 of the house. 16 The League supports secure 17 online voter registration. We need to 18 ensure that the program would be 19 designed to be available to all 20 eligible citizens. And now with the 21 report that we have from the 22 Presidential Commission of Election 23 Reform, the results indicate that 24 voters expect major improvements to</p>	<p style="text-align: right;">Page 212</p> <p>1 from the report -- and transcend 2 differences of party and political 3 perspective. The elector seeks, above 4 all, modern, efficient, responsive 5 administrative performance in conduct 6 of elections. 7 The League of Women Voters 8 of Pennsylvania encourages this state 9 to modernize its image and become 10 recognized as a voter-supported state. 11 COMMISSIONER CORTES: Thank 12 you, Ms. Carty. Thank you. I 13 appreciate your testimony. 14 Fellow commissioners, if you 15 have questions for the panel, please. 16 COMMISSIONER METELLUS: 17 Actually, I don't necessarily have a 18 question. It's really more of a 19 comment. It's also sort of feeling 20 conflicted because, on one hand, I'm 21 just encouraged by the possibility 22 of -- you basically can do anything 23 online, go shopping -- there are so 24 many different things you can do you</p>
<p style="text-align: right;">Page 211</p> <p>1 the voting experience. Our history 2 and detailed efforts from The League 3 have also been submitted to the 4 Commission. 5 The time has come for 6 Pennsylvania's election system to join 7 the 21st century by providing voters 8 with ample opportunities to vote. 9 In-person early voting recognizes the 10 needs of working families, changing 11 demographics and increasing number of 12 caregivers, as well as employers. 13 Early voting provides us all with an 14 additional opportunity to act upon our 15 fundamental right to vote. 16 No-excuse absentee voting 17 signals to the citizens that the 18 democratic system is alive and well. 19 The League's experience working with 20 voters has shown that voters continue 21 to expect choices, when and how they 22 vote. 23 Voters expectations are 24 remarkably uniform -- this is a quote</p>	<p style="text-align: right;">Page 213</p> <p>1 online, but then on the flip side, 2 it's just a sad fact that it's taking 3 so long to transfer all this modern 4 technology into the whole electoral 5 process. 6 So, again, it's not so much 7 a question. It's just hearing all the 8 things from the panel that are 9 possible versus where we are and, you 10 know. The feeling is that just the 11 (inaudible). It's a very sad state of 12 affairs. 13 COMMISSIONER CORTES: Well, 14 Commissioner -- 15 COMMISSIONER SINGER: I 16 think that there is a very really 17 reason for that. What separates 18 elections from pretty much everything 19 else is that there is no single money 20 interest or single powerful -- 21 concentrated powerful interest entity 22 with an interest in elections. The 23 interest in elections and fair 24 elections is distributed to all of the</p>

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1 people.
2 So when you -- so it's hard
3 to -- to make things change, you need
4 an entity or you need a group or you
5 need a leader to really lead the
6 charge and there -- there's no natural
7 confluence of power or leadership and
8 of resources, really, to lead that
9 charge.
10 And so it really is up to
11 the people -- the people -- to demand
12 this, but that's a very different
13 process from the kind of process that
14 brings us change in banking or in --
15 in almost anything else you can name.
16 MR. KAUFFMAN: Can I just
17 add something to that?
18 COMMISSIONER CORTES: Sure.
19 MR. KAUFFMAN: I think we
20 are seeing a change of attitude,
21 particularly in some of the voter
22 rights groups. Whereas, before, we
23 did get somewhat confrontational with
24 election officials, I think we are

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1 moving more to a situation unseen,
2 such as Just Vote Colorado. I think
3 we are going to be seeing more and
4 more cooperative efforts.
5 We have, at Common Cause,
6 with some of our colleague
7 organizations, the Advisory Counsel of
8 Election Officials, to help guide us
9 as we work through reforms. We may
10 have great ideas, sometimes we don't
11 fully comprehend what the implications
12 are at the ground.
13 So we have a group of
14 election officials we are working with
15 to make sure that the reforms we that
16 we propose will actually work. We can
17 cooperate to help them when they need
18 help.
19 For instance, Commissioner
20 Singer talked about the need to
21 recruit poll workers. We have an
22 organization in the Lehigh County, and
23 some other counties, who saw over this
24 job at the last minute, who were able

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1 to help increase the votes.
2 So I think we need to have a
3 smart collaborative effort and not
4 seeing each other as adversaries and
5 say we are all in this together and
6 let's make this work.
7 COMMISSIONER DIAZ: I have a
8 quandary. The right to vote is a
9 constitutional mandate, which should
10 be a federal right and a federal
11 consent. Somehow, every county in
12 Pennsylvania has a different process.
13 Every state in the union has a
14 different process and I remember the
15 chad voting.
16 What is it about us that we
17 can't have uniform voting, so that --
18 we are free to move from state to
19 state, we are free to commerce and
20 other things. What is it about us --
21 I have such respect for Common Cause
22 and The League and I don't -- you
23 know, you guys do the debates and
24 you're sort of looked upon as the

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1 clean window of impartiality.
2 Common Cause, you took some
3 money out of the election process, but
4 still the thing is, if I went to New
5 York City, I'm going to vote
6 differently a hundred miles away then
7 I would -- let's go to Camden, I'll
8 vote definitely than I'll vote and
9 it's only a bridge away.
10 What is it about us
11 Americans that we can't have a uniform
12 system?
13 MS. CARTY: I would just
14 offer, just for conversation, I think
15 it's a problem of human nature wanting
16 to hold onto their identity. Whether
17 it's a township, a school district, a
18 county, they identify with who they
19 are and they don't want to feel that,
20 by having a uniform system, that they
21 will lose their identity or,
22 politically, it's harder to throw, I
23 would say, darts at particular areas
24 or communities.

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1 If they are all uniform,
2 it's difficult to say -- use trigger
3 words like fraud or trigger words like
4 integrity. Well, our community is
5 full of integrity, but yours might not
6 be and I don't want to be like yours
7 and we are better than yours.
8 So we have this endless
9 competition that becomes so powerful,
10 it impedes what you're referring to.
11 This is a fundamental right. This
12 isn't a right to be tampered with or
13 to be manipulated and our organization
14 has what I call a collective memory,
15 which we could be losing because we
16 need young people.
17 The women before us had an
18 unbelievable history, what they had to
19 accomplish and overcome. That's never
20 going away. It just pops up in
21 another -- in another custom. We have
22 to be alert and I don't think -- I
23 just don't think humans -- humanity is
24 ready to give up their identity, which

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1 is change.
2 MR. KAUFFMAN: I concur with
3 what Susan just said. I think we
4 have, in answer to your question, a
5 problem with constitutional inertia.
6 I think it was Article 2 of
7 the constitution which reserves the
8 right to run elections in the states
9 and there's also the states' rights
10 amendment, which is, I guess, the
11 tenth amendment.
12 We have to get past that. I
13 mean, it took a civil war a hundred
14 years ago for us to get from being
15 these united states to being The
16 United States of America. We have to
17 start thinking more of ourselves as
18 The United States of America because
19 we are all -- like I said earlier, we
20 are all in this together and people
21 who have voter rights in Colorado --
22 Pennsylvania's voters' rights
23 shouldn't be any different from theirs
24 or Arizona or Florida. Hopefully, we

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1 are a little better than Florida.
2 You know, we have to start
3 thinking of ourselves as The United
4 States and start acting like that.
5 Otherwise, we are still the thirteen
6 little colonies -- fifty colonies now.
7 And, I guess, just as a nation, we
8 have grow up a little bit.
9 COMMISSIONER CORTES: And I
10 have to say that, Judge, that you're
11 very learned in all these matters.
12 I think we both would agree
13 with both Susan and Barry and I have
14 to tell you when the Department of
15 State was charged with implementing
16 this Statewide Uniform Registry of
17 Elections -- the SURE System -- it was
18 an uphill battle and the arguments we
19 heard -- even though it was a legal
20 mandate federal state -- the
21 challenges that we need to -- to
22 respect our local sovereignty, whether
23 it's county or otherwise. And the
24 people kept reminding me and saying

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1 you have Philadelphia, which is the
2 fifth most populous city in the United
3 States and then you have -- you have
4 Perry County and I think it's Forest
5 County that don't even have a single
6 traffic light in the entire county and
7 the experiences and the cultures of
8 those communities are very different.
9 So you have to allow for a certain
10 measure of individuality.
11 That being said, I agree
12 that we should have some uniformity
13 and I think we should continue to push
14 for that uniformity, despite, you
15 know, the challenges and I think there
16 are ways to balance it in the interest
17 of respecting the individuality of
18 communities with protecting the
19 voters' rights and I certainly agree
20 with that, but we are running short on
21 time.
22 We probably have two minutes
23 of this panel, but any -- any final
24 thoughts on the part of the

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1 commissioners or the panelists?
2 COMMISSIONER MONDESIRE: No.
3 COMMISSIONER METELLUS: No.
4 COMMISSIONER CORTES: Well,
5 let me -- let me put this out there.
6 I think that -- I think I'm going to
7 just go with general comments, if I
8 may. There was talk about the voter
9 registration -- online voter
10 registration experience in some states
11 like Arizona, where you saw a
12 significant increase in the amount of
13 young voters who registered private
14 and were more engaged because it's
15 electronic and people don't want to
16 bother with paper anymore. It's not
17 part of the culture of the younger
18 voters, but also I would -- I would
19 suggest that, even for older voters,
20 online voter registration might be
21 helpful.
22 People sometimes don't give
23 enough credit to our senior citizens
24 and others say if it's too modern,

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1 they won't adapt. I can tell you my
2 uncle godfather is seventy-something
3 for the first time he touched a
4 computer and, now, he's an expert in
5 Skype. So he knows it better than I
6 do.
7 So I think there is
8 certainly room for lots of benefits
9 that can come about from modernizing
10 our voting systems and our procedures.
11 So with that, I thank you
12 very much, our distinguished panelists
13 on our panel on strengthening
14 elections, for your testimony.
15 It is my understanding that
16 we don't have any other members of the
17 public that want to present testimony.
18 So if that is the case, I'm going to
19 move to close the program and, for
20 that, I will ask Chris Melody Fields
21 Figueredo with the Lawyers' Committee
22 for Civil Rights Under Law to present
23 the parting remarks.
24 MS. FIGUEREDO: Well, thank

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1 you guys so much for coming. I know
2 it's been a really hard week in the
3 state of Pennsylvania but, certainly,
4 here locally with the weather
5 conditions and folks being without
6 power and thanks for trooping it out
7 and coming out and I know it's already
8 cold again outside, but I thank you
9 guys so much for coming out and,
10 again, thank you to our -- our
11 partners and our supporting
12 organizations.
13 You know, Barry is still
14 here and he was on a lot of the calls
15 with me and, certainly, I couldn't
16 have done this and put this great
17 event together and I certainly want to
18 also thank our commissioners.
19 I want to say I have been
20 quite in awe of you guys throughout
21 the evening. You just had really
22 thoughtful comments and questions and
23 I think you've drawn out some really
24 great testimony from our witnesses.

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1 You know, I -- some
2 observations that I have had this
3 evening, clearly, throughout the
4 testimony and, certainly, in the
5 early -- earlier panels, there is
6 still a need for the Voting Rights Act
7 and, certainly, you know, even though
8 Pennsylvania is not one of those
9 covered jurisdictions, there have
10 definitely been issues that have
11 disproportionately impacted
12 communities of color, persons with
13 disability and others from
14 participating in the franchise.
15 And, you know, we have come
16 a long way, but we still got a lot way
17 to -- a way to go and, you know,
18 coming from someone who is the child
19 of an immigrant and, you know, I
20 remember the first time, after my
21 mother became a citizen and taking her
22 to vote for the first time and what an
23 amazing experience that was for her
24 and I always speak, when I do the

<p style="text-align: right;">Page 226</p> <p>1 trainings or talks to folks, if you 2 make that first experience a great 3 experience, you're going to make a 4 lifelong voter. 5 And, Chance, you know, I 6 certainly encourage you to talk to 7 your friends, but if we don't make 8 that first experience for voters a 9 good experience, you might turn them 10 away for life and I certainly -- I'm 11 from the Lawyers' Committee for Civil 12 Rights Under Law and our work with 13 doing voter protection here in this 14 state and many of the other groups 15 here, you know, make that commitment 16 to continue to do that voter education 17 before Election Day to make sure 18 people know what their rights are and 19 what resources and tools are out there 20 but, as Joe said earlier, we have to 21 empower the community. 22 You can't certainly just 23 leave it on others to do the work for 24 you and we have to empower the</p>	<p style="text-align: right;">Page 228</p> <p>1 know Barry and Susan and others will 2 continue to be working together to 3 make sure that happens. 4 So with that, I will turn it 5 over to our commissioners for their 6 final thoughts and then we will end 7 the program. 8 COMMISSIONER CORTES: Thank 9 you. Thank you, Chris. I want to 10 thank you personally for bringing us 11 together. 12 Events like this always 13 remind me of weddings. It takes 14 months of preparation in bringing 15 everyone together and it happens so 16 quickly. Sometimes, it's tough to 17 think about the hard work that goes 18 behind it. So my thanks to you and to 19 The Lawyers' Committee for this 20 important forum and the hearing. 21 I want to thank my fellow 22 commissioners there to -- to -- beyond 23 for what we have done here in the last 24 three hours plus, I thank you for</p>
<p style="text-align: right;">Page 227</p> <p>1 community to take a part and bring, 2 you know, people -- more people into 3 the process. 4 And I actually want to say a 5 special thank you to the deaf 6 community for tuning out. Certainly, 7 you said that if you give them more 8 notice, that you'll bring -- bring 9 more people there and I certainly look 10 forward to further conversations of 11 how we can improve the process and 12 increase access for your community. 13 And I think one of the 14 things I have really gotten out of 15 today's hearing and I think it sort 16 of -- the good thing about this, you 17 know, not being a formally-covered 18 jurisdiction, we can really talk about 19 looking forward and how we can improve 20 the process and increase access and, 21 you know, I think the -- the last two 22 panels really spoke to that. 23 You know, we have a lot of 24 work to do here in Pennsylvania and I</p>	<p style="text-align: right;">Page 229</p> <p>1 that, but I thank you much more 2 importantly for what you've been doing 3 for years and what you will continue 4 to do to protect voters' rights and to 5 see that Pennsylvania moves forward in 6 the quest to become modern, but I 7 would like to see it as a model for 8 our states to follow. 9 I'd like to put a word of 10 thanks and appreciation to the 11 election administrators throughout the 12 state. I know there was a lot of 13 talk, and rightly so very accurate, 14 about the deficiencies and 15 irregularities and the shortcomings. 16 I work closely with those election 17 officials and I can tell you that 18 most -- most are very dedicated and 19 hardworking. There is need for more 20 training. There is need to further 21 encourage others to join the ranks of 22 the poll workers, but those that do 23 the work, for the most part, mean 24 well. It doesn't mean perfect, but it</p>

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1 means they do try. I do want to make
2 sure that we acknowledge their work.
3 And, finally, I'd like to
4 close with the words of Barry Kauffman
5 when he says we are all in it
6 together. It's true. We are in it
7 together and I think we share a common
8 goal of seeing that elections are
9 transparent, that are fair, that are
10 accessible and I thank all of you for
11 what you do to ensure that that goal
12 is accomplished. Thank you so much.
13 COMMISSIONER METELLUS: I'm
14 going to keep my comments brief so
15 that -- I feel like I'm at the end of
16 my mileage with my throat. I also
17 wanted to thank Chris Fields for her
18 work in bringing us together as well
19 as anyone here and, again, my fellow
20 commissioners.
21 For me, this evening, that
22 would be my point. I found it to be
23 very interesting, to be informative,
24 to be an education. Hearing all of

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1 the perspectives, hearing all the
2 different experiences and different
3 concepts and ideas that I haven't even
4 considered, it was interesting. And I
5 think it really pushes us, as an
6 organization, to really find ways that
7 we can contribute to make a difference
8 in this area.
9 I would be -- excuse me -- I
10 would be curious to find out what
11 other ways -- I know this is going to
12 be a public document, yes, but I'd be
13 curious to find out other ways the
14 conversation goes onto the public and
15 in forums that have wide access.
16 I think tonight's
17 conversations are very important. I
18 think it's something that affects all
19 of us whether we are aware of it or
20 not, and, thus, being able to
21 communicate this in a wide format, I
22 think, is important.
23 So, again, thank you to all
24 of you who came out this evening and I

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1 appreciate the opportunity for being
2 here.
3 COMMISSIONER DIAZ: I
4 appreciate the invitation, the
5 Secretary and Regine and Mondesire,
6 all of whom I have a great respect for
7 and appreciate their public service.
8 One of the problems of life
9 is the lack of equity and fairness for
10 all. And I can't give you the remedy
11 for a simple thing like voting.
12 Imagine what happens in the school
13 system, where blacks and Latinos don't
14 get the benefit. Imagine what happens
15 in the economic setting. Imagine what
16 happens in the university setting, all
17 of which I have served on boards or
18 commissions and have been the outlier
19 looked upon because all I ask for is
20 equity and opportunity.
21 And, just like this, why
22 can't we get it? We can all get some
23 uniformity. Everybody votes the same
24 way, registers the same way. And

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1 somehow this identity issue is
2 ridiculous. If the federal government
3 says you do it, you do it.
4 So I continue to grapple
5 with the fact that we are all God's
6 children, but somehow God loves poor
7 people more than rich people. That's
8 all.
9 COMMISSIONER MONDESIRE: Let
10 me also thank the Lawyers' Committee
11 for Civil Rights for having this
12 session and the other ones being held
13 around the country.
14 First, the thing I got out
15 this most was hope because I agree
16 with my fellow commissioners,
17 especially my ad-hoc chairman, Mr.
18 Cortes, in that our voting process in
19 Pennsylvania and many states
20 throughout the country are in serious
21 chaos and I was particularly touched
22 by the deaf community, who had the
23 good sense to show up here tonight and
24 teach a lot of us, especially me,

<p style="text-align: right;">Page 234</p> <p>1 about the special needs that you have 2 that I will take to heart when I go 3 back to work with the NAACP. 4 The most -- the reason I say 5 I leave with hope is because at least 6 we are talking about it and we are 7 talking about it at a very high level 8 in a very important place and there 9 will be some public discussion about 10 it, but I was disappointed because I 11 think some of you (inaudible) the 12 newspapers here in town and I saw a 13 reporter from one of the mainstream 14 newspapers, but I didn't see him take 15 one single note, not one time did he 16 pull out a pen and write. 17 It's tragic that Channel 6, 18 10, 3 and 29 are not here. If I shot 19 Judge Diaz, it would be all over the 20 place. It is funny, but it's not 21 funny, or the -- it's tragic. 22 As I said in my opening 23 remarks -- some of you were here, some 24 of you weren't -- that the public</p>	<p style="text-align: right;">Page 236</p> <p>1 it's called Bill 1945 and on the House 2 side, it's 3899. They are two bills 3 that will reform the Voting Rights Act 4 and put back what's been taken out by 5 the Supreme Court. And the reason I 6 say I still have hope is that, in 7 1999, when I first took over the NACCP 8 of Pennsylvania, we never thought we'd 9 be able to restore the right of 10 ex-felons to vote, but we did. 11 One vote -- a republican on 12 the Commonwealth Court voted with us 13 in the case called Mixon versus 14 Commonwealth. Mixon was an ex-felon. 15 He joined with the NAACP and we 16 restored the rights for all ex-felons 17 who come out of prison so they can 18 have the right to vote. 19 So things can change, but 20 they don't happen easily and they 21 don't happen quickly. So I thank you 22 for joining us and I hope you stay 23 around for the rest of the struggle 24 because that's what it takes to make</p>
<p style="text-align: right;">Page 235</p> <p>1 conversation, the mainstream media, 2 does not take into account some of the 3 very serious ideas and philosophical 4 conversations that were held here. To 5 have the head of The League of Women 6 Voters and the head of Common Cause 7 and the City Commissioner and all of 8 the other people talk about these 9 issues that should be carried out and 10 carried forth by the public media. 11 So I join my fellow 12 commissioner, Ms. Metallus, when she 13 says we have to get the word out. 14 If there is anything that we 15 can do with our 350,000 members, 16 Chris, we'll do, once the public 17 document is made available to the 18 NAACP. 19 Then, finally, before I shut 20 up, there is hope again because the 21 bill to reform the Voting Rights 22 Act -- you haven't read about in 23 papers or heard it on TV -- but it's 24 been introduced. On the Senate side,</p>	<p style="text-align: right;">Page 237</p> <p>1 the kind of change that the League and 2 Common Cause and all of the other 3 groups who testified here today. It 4 takes a lot of work. Thank you. 5 COMMISSIONER CORTES: Thank 6 you so much. I really appreciate it. 7 Have a great evening. 8 (Hearing concluded at 7:40 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

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NATIONAL COMMISSION ON VOTING RIGHTS
PACIFIC NORTHWEST REGIONAL HEARING
SEATTLE, WASHINGTON
Monday, April 28, 2014
4:06 p.m.

University of Washington, School of Law
William H. Gates Hall, Room 138
4293 Memorial Way
Seattle, Washington

Hosted by:

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Reported by:

Monna J. Nickeson, CCR, CLR, RPR, CRR

JOB NO. 72984

1 GUEST COMMISSION

2

3 Rex Burkholder, Center for Intercultural Organizing

4

5 Dolores Huerta, Dolores Huerta Foundation

6

7 Dean Foster, Washington State Redistricting Commission

8

9 Hon. Charles Johnson (ret.) - NAACP

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1 MR. MARTINSON: Good afternoon. Welcome to
2 the Seattle hearing of the National Commission on
3 Voting Rights. I am Alan Martinson, an attorney at the
4 Lawyers' Committee for Civil Rights Under the Law in
5 Washington, DC. On behalf of the Lawyers' Committee,
6 we thank you for your participation and support this
7 afternoon.

8 And right at the outset I'd like to thank
9 the University of Washington School of Law for hosting
10 us for a discussion about one of the most fundamental
11 aspects of our society: The right to vote.

12 It's a particular pleasure for me to be here
13 today, as I am a Pacific Northwest native, having lived
14 my first 18 years just outside Portland. It's always a
15 joy to come back, even if it makes me question my
16 choice to live and work in the other Washington.

17 The Lawyers' Committee is a non-profit,
18 non-partisan civil rights organization founded at the
19 request of President John F. Kennedy 50 years ago to
20 engage the private bar in the fight for racial justice
21 and equality. We continue our work today in a range of
22 areas, including as one of the foremost national
23 organizations on voting rights.

24 Today's hearing in Seattle is the nineteenth
25 in a series of nationwide fact-finding hearings

1 convened by our National Commission on Voting Rights.
2 As many of you know, last summer, the US Supreme Court
3 struck down a key protection of the Voting Rights Act,
4 and legislation was recently introduced earlier this
5 year in Congress to strengthen voting protections to
6 help repair what was lost.

7 So one of our main purposes through these
8 national hearings is to identify the needs for strong
9 protections against discrimination in voting by looking
10 at the current record in states across the country.
11 In addition, today, we want also want to hear from you
12 about election administration and electoral reform.

13 Across the country over the past few years,
14 we have seen a wave of restrictive voting laws making
15 it harder for many eligible voters to cast their
16 ballot. We have continued to see similar election
17 administration challenges cycle after cycle related to
18 poll worker training, voter registration, use of
19 provisional ballots, voting machine problems. Your
20 input on these issues in the Pacific Northwest is
21 critical for our ongoing effort.

22 With the testimony we receive today and
23 after the hearing, the National Commission will prepare
24 two reports. One on voting discrimination, and another
25 on election administration and electoral reform. The

1 reports and the records from the hearings will be
2 available this year to anyone seeking to reform or
3 improve existing voting laws including policymakers,
4 advocates, and the voting public. We expect the
5 reports to inform Congress and educate public regarding
6 recent record of voting discrimination and what to look
7 out for moving forward.

8 Commissioners: Presiding over our event
9 today are four commissioners, each with a strong
10 commitment to protecting access to the ballot on equal
11 terms for all.

12 Dolores Huerta, president of the Dolores
13 Huerta Foundation, is a living legend, and I cannot
14 possibly do justice to her extraordinary background and
15 career in a short introduction. Ms. Huerta is
16 best-known for her role in co-founding the National
17 Farm Workers' Association with Cesar Chavez, which
18 later became the United Farm Workers. She has remained
19 an activist for social justice throughout her career,
20 and she has been recognized numerous times for her
21 service, including receiving the Presidential Medal of
22 Freedom, the highest civilian award in the United
23 States, in 2012.

24 We are delighted that she is a national
25 commissioner for the National Commission on Voting

1 Rights.

2 (Applause)

3 Rex Burkholder, who has come up from
4 Portland to be here today, has a distinguished career
5 as an activist and community leader, dedicated to
6 creating livable communities. He founded the Bicycle
7 Transportation Alliance and co-founded the Coalition
8 for a Livable Future, bringing together over 100
9 diverse organizations in the greater Portland region.
10 He served on the Portland area's Metro Council for 12
11 years, until 2012. It is a pleasure to have Rex here
12 today.

13 Dean Foster has been involved in election
14 issues since he was high school, I believe, when he
15 worked on redistricting issues for the Washington State
16 Senate. After serving as a Captain in the U.S. Air
17 Force, he has continued to be involved in election
18 issues, including as a senior staffer for former
19 Governor Booth Gardner. Dean has served on numerous
20 commissions, including most recently on the Washington
21 State Redistricting Commission. Welcome.

22 Last but not least, Judge Charles Johnson
23 has had an illustrious career. Judge Johnson moved to
24 Seattle in 1954 to attend law school here at U-Dub.
25 Upon graduation, he went to work for the NAACP, serving

1 as president of the Seattle chapter and later the
2 Northwest Area Conference, as well is the national
3 NAACP Board of Directors. He spent 22 years as a
4 Municipal Court judge, and 18 more years as a Superior
5 Court judge. It is a pleasure to have him here today.

6 And now for a few housekeeping items:

7 If you've been confirmed on a panel in advance, please
8 check in at the sign-in table.

9 We have one change in the schedule Theresa
10 Keavney from the Montana Conservation Voters was sick
11 and she wasn't able to travel here so we will not have
12 her testimony here today.

13 For individuals here today who would like to
14 share their voting experiences, and who have not signed
15 up for a panel, we'd like to hear from you, as well.
16 Please make sure you sign up on the witness list out in
17 front of the room and speak to our designated
18 volunteers for instructions. A commissioner will call
19 your name during our open mic sessions.

20 A few other items, our hearing is being
21 transcribed. So please, our witnesses and
22 commissioners and anyone giving public testimony, make
23 sure you speak up and speak clearly, especially your
24 name. Please be mindful of the timekeepers and their
25 signs.

1 And If you're a Tweeter, we've set up
2 hashtags for our hearings: #NCVR and #votingrights,
3 and my organization is @lawyerscomm. So I'd like
4 company from the Twitter birds.

5 Finally, thank you. I want to thank our
6 planning committee of Cara Bilodeau, Sean Dugar, Emily
7 Jameson, Jacob Matilsky, Michele Radosevich, and my
8 Lawyers' Committee colleague Miles Fernandez. We
9 couldn't have done this without all of them, so thank
10 you.

11 (Applause)

12 Finally, I'd like to thank our commissioners
13 and witnesses and the numerous Idaho, Montana, Oregon,
14 and Washington organizations that have helped with
15 planning and promoting this event, including the great
16 co-sponsoring organizations listed in your program and
17 our great volunteers, the League of Women Voters who
18 are out front.

19 You can get More info on hearings at
20 ncvr.lawyerscommittee.org. Thank you.

21 MR. BURKHOLDER: Thank you very much, Alan,
22 for all of this and thanks for the invitation. My name
23 is Rex Burkholder, as Alan introduced us. I agreed to
24 be the chair today, so when they hold up those signs
25 that says times up, I get to be the one that will

1 either hit a gravel or water bottle, but we have plenty
2 of time to hear stories, and I think it's a critical
3 thing.

4 Before we start I wanted to offer the
5 commissioners a chance, if they had something they
6 wanted to say to start with, I believe Ms. Huerta had a
7 statement she'd like to make in the record to begin
8 with.

9 MS. HUERTA: First of all, I just want to
10 thank everyone that came here to testify today to be
11 able to share with us your stories of how our voting
12 rights need to be protected and improved, if necessary.

13 We know that the basis of our democracy, I
14 don't have to tell people in the room this, but we know
15 the basis of our democracy here in the United States is
16 voting. And yet at the same time, we know that there's
17 many attempts not to -- to try to do diminish the right
18 of voters to be able to vote; and especially for young
19 people, students, people of color and in some cases
20 even women, as has been happening lately in the State
21 of Texas.

22 So just know that what we're doing here is
23 very, very crucial and so very important for us as
24 Americans. We're the model for the world, but we have
25 to make sure that our model actually does work and that

1 it does include every citizen in the United States who
2 will be able to have access to voting and they can make
3 their voices heard without any kind of impediments.

4 So again, I want to thank you very much.
5 This has been a great year. I've been working on the
6 issues -- my first activist moment was knocking on a
7 door to get someone to register to vote. That moment
8 really changed my entire life and that's when I decided
9 to become an organizer. And I actually quit being a
10 schoolteacher to become a community organizer and that
11 was my first activist role.

12 And I always like to say to people, when I'm
13 trying to encourage them to vote, that this is the
14 first experience to become a leader, a leadership --
15 the best leadership experience is to go out there and
16 knock on someone's door and talk to them about the
17 importance of voting. So thank you again for being
18 here.

19 MR. BURKHOLDER: Thank you very much.

20 Commissioners, any opening statements?

21 MR. JOHNSON: I'd like to thank each of you
22 who have appeared here today to participate in this
23 hearing. It's critical for all of us to be involved in
24 voting rights. I go back to the early '60's when I was
25 campaigning for the 1969 Voting Rights Act all the way

1 up until now, one way or the other I've been involved
2 in trying to see to it that voting rights are paramount
3 and it is something that we cannot afford to have
4 chipped away as has been happening in the last several
5 years.

6 So it's a pleasure to be here, participate
7 in this hearing, and I thank you and each of the
8 panelists for participating.

9 MR. FOSTER: I, too, would like to thank
10 you. We have been provided an outline of some of the
11 testimony and what I would like to say to the people in
12 the audience and those who are testifying not only is
13 it important to give us a history of what's happened,
14 but if you have solutions, I think it's very important
15 to get on the record even though we might know what the
16 solutions are, let's make sure that we get those kinds
17 of solutions on the record so that you know assume, so
18 you know what assume means, so let's get everything on
19 the record. Thank you very much.

20 MR. BURKHOLDER: Thank you very much,
21 Commissioners, for joining me up to here to hear this
22 testimony. And basically, the process is we have
23 received some testimony ahead of time if you have
24 additional testimony make sure that you get it in the
25 record, as well.

1 I have been directed that Alan will be
2 gathering any further information that you have if you
3 didn't send it in already. If you want to tweet it
4 into him, I bet he will take it that way too.

5 Let's just get started. I have Mary Flowers
6 with the Seattle NAACP as our first witness.

7 MS. FLOWERS: Thank you. Again, my name is
8 Mary Flowers. I have served on the Executive Committee
9 of the Seattle/King County the National Association for
10 the Advancement of Colored People, the NAACP, for the
11 past ten years in the capacity of Prison Committee
12 Chairperson. Our committee works in cooperation with
13 organizations that include the Black Prisoners Caucus,
14 which is a prisoner founded and led organization based
15 in two prisons in Washington State; also the People's
16 Institute and a network of community based
17 organizations operating with an analysis of racism and
18 institutional power.

19 My testimony speaks to the
20 disenfranchisement and opportunities as well for people
21 impacted by the criminal justice system, in particular
22 Black and Brown people and also people living in or
23 experiencing poverty.

24 The political system operates in tandem with
25 all other systems and institutions, all of which were

1 constructed and rooted in the oppression of people of
2 color and also impoverished white people. Black and
3 Brown people have experienced unrelenting institutional
4 explosion and maltreatment that has resulted in the
5 racial disparities that we see in virtually every
6 institution in this country.

7 Voting rights have been experienced very
8 differently depending upon race, income and gender
9 since the founding of this country. Political outcomes
10 have always reflected the systemic racial bias that is
11 woven into the political tapestry. The fact that
12 America is a world leader in the over-incarceration of
13 its people is a direct result of legislation and the
14 fact that 60% of incarcerated people are of color is a
15 reflection of a systemic racial bias and inequity.

16 According to the Sentencing Project, 1 in 17
17 white men are likely to go to prison. That statistic
18 alone is appalling and alarming. However the reality
19 that 1 in 6 Latino men and 1 and 3 Black men are likely
20 to go to prison or be involved in the criminal justice
21 system speaks to a catastrophic disparity. The
22 statistics are dismal for women of color as well.

23 In addition to the many incarceration
24 hardships that people and their families and
25 communities impacted by these statistics endure, felony

1 voting laws add to the political disenfranchisement of
2 Black, Brown and poor communities.

3 States across the country, including the
4 western states that we are focused on in this hearing,
5 have a range of felony voting laws. In 11 states
6 people with felony convictions may be facing permanent
7 loss of their right to vote for various reasons. The
8 bulk of states restore voting rights after serving time
9 in either parole or probation, but for the most part,
10 those states' reinstatement of voting rights include
11 the payment of fines, which also causes hardship to
12 those people in poverty.

13 But there are two states in this country,
14 Maine and Vermont, they allow people convicted of
15 felonies to vote while they are in prison. They do not
16 take away their vote, they are not disenfranchised from
17 voting rights. The precedence in this country is that
18 only two states allow this at this point.

19 If the goal of corrections is to indeed
20 correct or improve behavior, encouraging civic
21 responsibility through voting seems a more reasonable
22 and logical means to that end rather than withdrawing
23 people's voting rights.

24 How, when and why states have approached
25 this issue is very varied and is an interesting thing

1 to research and really speaks to power, control and
2 oppression that people experience. So the NAACP
3 advocates that people maintain their voting rights
4 before, during and after incarceration.

5 Now that's the problem. We also want to
6 say, through our work we are trying to address the
7 process of multigenerational disempowerment that so
8 many, in spite of being able to vote, there's been a
9 long history of our people being disenfranchised and
10 not allowed to vote. We were not allowed to vote at
11 the beginning of this country, Black people. And the
12 Native Americans were not even counted. And so there
13 was a long history that. And as I said early, that was
14 true in every single institution in terms of our
15 status.

16 The education system not only serves as a
17 pipeline to prison, which I'm sure many of you are
18 familiar with that term of people who are able to live
19 more productive lives, enter the education system in
20 the prison pipeline. The present pipeline in the
21 education system also adds to the political
22 disempowerment process by revoking people's right to
23 vote once they're incarcerated.

24 So in our organizing, we are striving to
25 demystify and expand the political vision in

1 communities of color who may not only be
2 disenfranchised because they cannot vote or
3 historically have had difficulty voting, but we are
4 trying to demystify the process in terms of developing
5 legislation that really speaks to the reality and begin
6 to give hope to communities of color.

7 Many people are not voting because they are
8 hopeless and I think beyond just the right to vote we
9 need to address the long-term disparity and equity that
10 people are experiencing. Some more has to be done to
11 educate our children, educate our families and to
12 engage in the political process. That's the
13 opportunity that I think we all have and to do it in
14 creative ways that really engage people, not just get
15 their feedback, but truly fully have them
16 participating.

17 Some of the younger organizers in the NAACP
18 and other organizations are bringing relevance and
19 vision that goes beyond just voting. They're working
20 to help our people understand both the power and the
21 process of developing legislation that's authored by
22 the people most impacted and therefore relevant to the
23 people most impacted.

24 There is great opportunity in this area as
25 our network in this region grows. As we help our

1 communities understand how we have been disenfranchised
2 we are developing leaders who have experienced the
3 oppression and are using their brilliance, creativity
4 and vitality to develop and implement strategies that
5 will usher in economic, political, physical and
6 emotional well-being to our communities.

7 The protection and restoration of voting
8 rights is essential, particularly as those rights
9 impact people so disproportionately impacted by the
10 criminal justice system.

11 Thank you.

12 MR. BURKHOLDER: Thank you very much for
13 your testimony.

14 Any questions from the commission?

15 MR. JOHNSON: I'd like to ask a question,
16 Ms. Flowers, is there any proposed legislation now
17 moving its way up to the state legislation beyond what
18 happened in 2009 when there was a partial restoration
19 of voting rights for those who had been incarcerated?

20 MS. FLOWERS: There is a restoration in
21 Washington state for people who have been incarcerated.
22 I think, again, even that process is confusing for
23 people because it is tied to the payment of fines. And
24 so if people have the support to understand that
25 process, then, you know, they don't have a problem

1 restoring their voting rights.

2 The problem is, as we talk to people, either
3 they don't know about that law or they're confused,
4 they think that if they vote without satisfying all the
5 regulations they could be again charged with another
6 crime. So people simply find it easier not to vote.
7 And that's what we want to avoid. So I think the real
8 process, as you said, is in organizing, organizing to
9 help people understand the law as it exists in this
10 state, but also nationally as laws that need to be
11 changed.

12 MR. JOHNSON: As it relates to strengthening
13 the voting rights of former prisoners, is there
14 anything now that is going on with your organization or
15 that you know of that's proceeding in the legislature
16 to enlarge the voting rights changes made in 2009?

17 MS. FLOWERS: Well, I'm not certain that
18 right now at this moment about the legislature but this
19 is an ongoing battle, ongoing struggle that we're
20 engaged in.

21 MR. JOHNSON: The last question, is there
22 anything -- is the NAACP having any problems with its
23 voting rights -- not voting rights -- registration, get
24 out the vote that occurs in the fall of each year?

25 MS. FLOWERS: I think here especially in

1 this region we have been accustomed for many years to
2 going into the poll to vote. For communities that have
3 been disenfranchised, it's been like a right of passage
4 to go to the polls that are involved. So I think the
5 ballot has impacted our ability to vote.

6 There again, we're doing some very creative
7 things such as ballot parties where we bring people
8 together, bring your ballot and get that vote out,
9 calling people, having conversation, having forums,
10 because it's a different process.

11 So I think with every change we have to take
12 the extra step to make sure our communities understand
13 the process and are supported in actually being able to
14 vote.

15 MR. BURKHOLDER: Thank you very much.

16 MR. FOSTER: I was intrigued about the
17 Vermont and Maine situation. I guess two questions,
18 first, incarcerated prisoners, are they registered to
19 vote where they're incarcerated or at their home or do
20 you know the answer to that question?

21 MS. FLOWERS: Are you talking about Maine
22 and Vermont?

23 MR. FOSTER: Yes.

24 MS. FLOWERS: Yes, they would be registered
25 in their state and they can vote by absentee ballot in

1 both of those states.

2 MR. FOSTER: For local issues, would they
3 vote in where the prison is or --

4 MS. FLOWERS: Not where the prison residence
5 is, but where their original residence was.

6 MR. FOSTER: And you have any information
7 about how well that works in those states? How do
8 people react to it? I think what I've heard all along
9 is that there is a big scare tactic that if
10 incarcerated people are voting, something bad is going
11 to happen. And is there research about the local
12 attitude?

13 MS. FLOWERS: So it's been that way for a
14 long time. And so in many of the other states, you
15 know, states have legislated our way out of people
16 being able to vote, so it's a matter of course. I
17 haven't heard of any big catastrophes because of the
18 voting in Maine and Vermont.

19 MS. HUERTA: In terms of the fines that
20 people are supposed to pay, what are the fines
21 connected to and how big -- what size are the fines?

22 MS. FLOWERS: So those are associated with
23 legal financial obligations, court fines. And many
24 cases for people who are incarcerated, they have to pay
25 the interest on those fines. And so there are people

1 who come out of prison owing thousands -- tens of
2 thousands of dollars is not unusual that people will
3 come out of incarceration facing that reality.

4 And then they're faced with the triple
5 reality of having a felony on their record, having
6 difficulty getting employment, difficulty getting
7 housing and of course difficulty paying those fines.
8 So they may be disenfranchised forever if they're
9 unable to pay those fines. And that exists in many
10 states.

11 MS. HUERTA: Does it mean they cannot vote
12 until they pay all the fines?

13 MS. FLOWERS: That's correct. In Washington
14 state, you have to demonstrate that you have made a
15 good faith effort to begin paying your fines. So
16 there's been a lot of work around that over the last
17 several years. But if you miss two or three payments
18 and you do not have cause, then your voting rights can
19 be revoked here in Washington state.

20 MS. HUERTA: Does this apply to people who
21 are on probation or people on parole like someone who
22 committed a felony?

23 MS. FLOWERS: Yes, it does. In many states,
24 once you're released, you still have to be on probation
25 or parole and have to have satisfied your court fines

1 or your -- the fees.

2 MS. HUERTA: In terms of the community,
3 let's say in the state of Washington, what is the
4 percentage of people that actually vote? Because I
5 know many areas you have your highest vote turnout in
6 the African American community.

7 MS. FLOWERS: I don't have that statistic.

8 MR. MURRAY: 80% turnout. Better than 80%.

9 MR. BURKHOLDER: Thank you very much for
10 your testimony. You can address that when you speak so
11 we can keep the thing going.

12 MR. WANG: I was going to suggest that the
13 timekeeper move over so we can see it.

14 MR. BURKHOLDER: Great. I'm watching it but
15 you're doing fine.

16 Mr. Mack Murray is the next on our list.

17 MR. MURRAY: I'm Mack Murray on the staff at
18 the Urban League of Metropolitan Seattle and I
19 supplemented the record, I wanted to give to each of
20 the commissioners a copy of the interest on fines that
21 Ms. Flowers spoke of so that you'd have a copy of that.
22 And then I also supplemented the record and I gave you
23 each a copy of the new voting statute under Chapter 29A
24 of our Revised Code in Washington.

25 Now, the point I want to open up with is

1 this, first things first, and that is this, there's a
2 couple new words in our vocabulary that I want you to
3 take back to the Congress to let the Congress know that
4 there's several things out here and that's called
5 felony voter. A felony voter, most people never think
6 about the felony voter. Most people omit the felony
7 voter.

8 Felony voting is a process that is not
9 regulated by the Congress. Congress has the
10 constitutional power to enforce all voting under the --
11 in federal elections and Congress has not done any
12 regulation when it comes to felony voters. Felony
13 voters are left to these poll taxes that Ms. Flowers is
14 addressing here.

15 Mr. Flowers spoke about these poll taxes.
16 She spoke about these fines. And any, any fee paid in
17 connection with voting is a poll tax. It's a poll tax.
18 If we go back to the top, we go back to the top and we
19 recognize, and there a couple things, so we're saying
20 the constitution comes in to provide for the democracy
21 and the essence of a democracy is voting. And if
22 anything addresses the voting or limits the voting,
23 then it's a tax on voting.

24 And the taxes that we're facing here are
25 taxes that have a basis -- they originated -- they

1 originated back in the Jim Crow era. It was a tax to
2 limit the voting for the African Americans at that
3 time. And it has gone haywire. And it's gone haywire
4 because the Congress has failed to regulate it.
5 Congress is the proper body to regulate this in federal
6 elections.

7 So let me say this on the record too,
8 because I want it to be known, and that is the state of
9 Washington is in the forefront. The state of
10 Washington has come forward, they've passed some new
11 voting laws. They joined the neighbors. The state of
12 Washington passed a law in 2009. They joined Oregon,
13 they joined Idaho, they joined Montana and they provide
14 for what's called provisional voting.

15 That means that a person could be released
16 from prison, could be released from the Department of
17 Corrections and automatically allowed to vote without
18 paying any fines and that person then could be placed
19 in a position to have these voting rights taken away.

20 So let's talk about a couple things because
21 I'm going to -- I don't want to read this, but I showed
22 it to you, you've read it and you have seen it before,
23 but the Washington statute was a great statute. State
24 of Washington's come out and done some things. Former
25 Governor Gregoire's legislature had done some great

1 things in passing the statute, but this statute doesn't
2 go far enough and it doesn't go far enough because it
3 doesn't address the problem.

4 And the problem is simply this, in King
5 County we have basically -- we have, basically, a
6 million voters. And in King County, we have more than
7 300,000 disenfranchised people. We have over 300,000
8 disenfranchised people. King County election office
9 will report, and their totals change from day-to-day,
10 but they report over 300,000 disenfranchised people.

11 What does that mean for these people? It
12 means that the Washington laws -- the Washington laws
13 simply don't go far enough. Okay.

14 Now, the second thing about the Washington
15 laws is that the Washington laws create what's called a
16 Washington quagmire. The Washington quagmire is simply
17 a circle and that circle, as Ms. Flowers spoke of, is a
18 circle that says this person gets released, they have
19 to pay their fines.

20 But look at the statute I gave you. The
21 statute I gave you talks about -- there's a chapter 29A
22 and that statute says once this person registers to
23 vote, as soon as they register to vote, there are
24 duties imposed upon the -- duties imposed upon the
25 Secretary of State and the county elections office.

1 They have to file reports. They have to check year
2 after year and they check each year and they check
3 twice during the year to make sure that these people
4 have, in fact, paid their fines.

5 And if people haven't paid their fines, they
6 can be removed from the voting rolls. And we have
7 attempted to enroll a number of people -- register a
8 number of people, is a better expression, and these
9 persons said these things, listen, I don't want to
10 register to vote because I don't have a job yet. I
11 don't want to register to vote because I can't make a
12 payment plan. Okay.

13 So this is a barrier and this is one of the
14 barriers that the Congress needs to be informed of.
15 The Congress needs to know there is a barrier with
16 regard to this law.

17 Now, this law that Washington just passed
18 placed Washington in a group with 20 other states. Now
19 these other 20 states that Washington has just joined
20 have a similar law. They're all tied to fines. And
21 any tie, any connection to fines is a poll tax.

22 And the Constitution -- and with respect to
23 the Constitution, the 24th Amendment, to be more
24 specific, says that it shall be unabridged, it shall be
25 unabridged; and for some reason, for some reason, for

1 some reason, if you go back in history, and the reason
2 I've identified is the Jim Crow laws, but I'm sure
3 there's other reasons.

4 But if you go back and take a look, you'll
5 find that these laws allow for people to come in --
6 allow for people to come in and to take a look. And he
7 cut me off. Go ahead.

8 MR. BURKHOLDER: Finish up.

9 MR. MURRAY: I was going to say, basically,
10 the law is part of -- the thing I would end with is
11 that these laws we do have in Washington are laws that
12 simply don't go far enough and needs to be regulated by
13 the Congress.

14 MR. BURKHOLDER: Thank you very much. I'm
15 sorry that disrupted your thought, but I just want --
16 our job, we're not a public agency. You're not going
17 to get in trouble if you go over time. We want to make
18 sure that things get in the record.

19 I want to leave time for the commissioners
20 to ask questions about this.

21 MR. FOSTER: The 300,000, you said 300,000
22 disenfranchised voters.

23 MR. MURRAY: Yes, over 300 disenfranchised
24 voters in King County.

25 MR. FOSTER: I'm interested in how you got

1 to that number. Is that the number of felons or former
2 felons who now reside in King County or is that --

3 MR. MURRAY: That's the number of
4 individuals, according to the King County election
5 office, that's the number of persons who lost their
6 right to vote by court order, by order of the Superior
7 Court have lost their right to vote.

8 MR. FOSTER: Thank you.

9 MR. JOHNSON: You indicated that Congress
10 needs to pass legislation. Are you suggesting that
11 Congress can pass legislation giving felonies the right
12 to vote in states where there are restrictions?

13 MR. MURRAY: Yes, I'm suggesting that the
14 Congress has done nothing to regulate voting in federal
15 elections in any of the states. The Congress has the
16 power to regulate voting in all 50 states.

17 MR. JOHNSON: So you're suggesting Congress
18 can pass legislation that says felons in the state of
19 Washington have the right to vote even though, in this
20 state, we have legislation that said they cannot?

21 MR. MURRAY: Yes. I'm asking that Congress
22 recognizes that finally somebody says, listen, let's
23 recognize here that we have a poll tax here. Let's
24 recognize that the Constitution prohibits this. Let's
25 recognize here that the 24th Amendment to the

1 Constitution allows for these people to come in and
2 vote.

3 Vermont and Maine are the two only states
4 that have followed that constitutional mandate. You
5 have a couple of other states that don't allow it at
6 all. And even worse, there's other states that take
7 away the right to vote permanently.

8 MR. JOHNSON: In the state of Washington in
9 2009, when they enlarged the Constitution saying under
10 certain circumstances giving them the right to vote,
11 you indicated it doesn't go far enough.

12 MR. MURRAY: Yes.

13 MR. JOHNSON: What my question is, is the
14 Urban League or any other organization that you know of
15 pushing legislation now to enlarge, to go further? You
16 said it doesn't go far enough.

17 Is there legislation before the state
18 legislature now that will enlarge the statute that give
19 felons partial rights to vote?

20 MR. MURRAY: Not the right to vote. There
21 was legislation that just failed -- I think it failed
22 in the committee in the legislature. The legislature,
23 just a few months ago, the Urban League and a lot of
24 other nonprofit partners that were part of that that
25 supported that, and it related to the idea that a

1 person could get a card, a clean slate card and start
2 over and that was a way around the fines, but we could
3 come back and address the fines directly.

4 Now, what the Urban League does do, it
5 provides voter services, notwithstanding the quagmire
6 presented by the statute, it distinctly provides the
7 voter services and goes out and does voter
8 registration. So we continually try to help all our
9 citizens, both the felons and non-felons as well.

10 MR. BURKHOLDER: I'm getting a signal to
11 keep the thing on schedule here. But Ms. Huerta.

12 MS. HUERTA: My question will be really
13 short. So we have talked about the state legislature.
14 Have you approached any of the Congress people in this
15 area about maybe taking up this issue to the
16 congressional level?

17 MR. MURRAY: No, I haven't done that.

18 MS. HUERTA: I guess the other question is,
19 are we aware of any lawsuits that have been filed on
20 this issue with regard to the fines?

21 MR. MURRAY: No, I'm not aware of any.

22 MS. HUERTA: Thank you.

23 MR. BURKHOLDER: Well, thanks very much.
24 It's great to have that input there. Thank you.

25 MS. HUERTA: Thank you.

1 MR. BURKHOLDER: Mr. Art Wang with the
2 APACE.

3 MR. WANG: Thank you. I'll explain to you
4 in a second here. My name is Art Wang. It's W-A-N-G,
5 for the benefit of the court reporter. But APACE is
6 the Asian Pacific Islanders for Civic Empowerment.
7 We're a C4 organization. We also have a related C3
8 nonprofit foundation and a PAC doing work with
9 candidates and things.

10 But we're a C4 organization that works for
11 social and economic justice by transforming our
12 democracy through the political empowerment of a
13 broad-based API community and by holding ourselves and
14 our leaders ourselves to APACE's values.

15 Let me introduce myself a little bit. I'm
16 on the board of APACE. I'm also a retired judge and
17 also a former state legislature. I've been through
18 nine elections and have won seven of them, lost two.
19 So elections matter and voting rights matter a great
20 deal to me from personal experience.

21 I also represented the 27th district in
22 Tacoma. And it was significant because, for one
23 reason, was that the Chinese were driven out by city
24 leaders back in 1885. So historically, it was an irony
25 that that was an area that I represented in the

1 legislature.

2 Because the previous testimony has been
3 largely about incarcerated voters and felons with
4 felony convictions, I just wanted to note that Senator
5 Jeannie Darneille was the person from the 27th district
6 who was the major proponent and advocate of the 2009
7 law, which I think was remarkable in changing some of
8 those things in Washington state.

9 What I wanted to talk about today though
10 was, basically, voting by mail as an alternative to
11 some of the voter I.D. laws that we've had over the
12 country, some the voter registrations that's done here,
13 especially about written ballots in other languages.

14 So starting with the voting by mail,
15 Washington's experience there, I think, has had many
16 positives, including that the biggest one, in my mind,
17 is that no voter I.D. is required because you have
18 signature verification and you do it that way instead
19 of having to do -- show up at the ballot -- at the
20 polling place with the voting booth with your
21 identification and different things of that sort.

22 It also allows -- voting by mail also allows
23 for explanation and discussion at home, not necessarily
24 at the voting booth; and essentially for limited
25 English speakers, that's a useful function.

1 Voting by mail does have some negatives.
2 You've got a prolonged period of voting from a campaign
3 perspective, the voting -- the election process seems
4 to go on forever, weeks before the election day and
5 ballot chasing afterwards.

6 You've also got -- in many respects that
7 again may be beneficial for Asian Pacific voters
8 because just giving the time and ability to do that,
9 but there are some negatives involved with that. You
10 do have a loss of the social contact of voting at a
11 polling place, as you mentioned, but you can do some
12 things with ballot parties and other things.

13 Voter registration, I should note, is much,
14 much easier now than it was decades ago when I started
15 doing voter registration, and that's much to our
16 credit, I think. The Washington Secretary of State
17 website, My Vote online, you can register in English,
18 Spanish, Chinese and Vietnamese. Online registration
19 requires a driver's license or a state I.D. card. And
20 the state I.D. cards are relatively easy to get in this
21 state, so it's less of an impediment.

22 Registering by mail, you can do the forms in
23 English, Spanish, Chinese, Vietnamese, Cambodian,
24 Korean, Laos and Russian. And mail registration
25 requires a driver's license, a state I.D. card or a

1 Social Security number. So there's another alternative
2 there which makes it easier too and that's desirable.

3 Section 203 of the Voting Rights Act talks
4 about providing written ballots in other languages, but
5 the basic requirements are 5% or 10,000 voting age
6 citizens of a single language minority who have limited
7 English and literacy rates higher than the national
8 average.

9 The effect of that in Washington state, the
10 way it's been interpreted, the way it's been applied in
11 King County, Chinese and Vietnamese are required as an
12 option for written ballots. In Adams, Franklin and
13 Yakima counties, Spanish is. So it's pretty limited in
14 terms of the number of counties and the numbers of
15 languages involved when you think that King County, for
16 example, does not include Spanish, when only three
17 eastern Washington counties require Spanish.

18 In King County, there are -- there were 843
19 signed up for ballots in Vietnamese. That's only 2% of
20 the total Vietnamese population. That's not just the
21 voters but the total Vietnamese population. You have
22 to -- again, it's an option to sign up. There are
23 2,217 who signed up for Chinese, about 3% of the total
24 population.

25 In comparison, Orange County in California,

1 section 203 requires English, Spanish, Chinese, Korean
2 and Vietnamese. 17% of the Vietnamese and 4% of the
3 Chinese signed up. Also compared it to San Francisco
4 County where all ballots are trilingual without a
5 signup, without having to go through the exercise of
6 getting people to sign up for them.

7 The key to the broader registration in
8 Orange County in San Francisco appears -- one of the
9 key things appears to be to build a network of
10 community groups to ensure that materials get out to
11 the community so there's community education going on
12 to do so.

13 Here there's been an Immigrant Rights Task
14 Force that is a voting rights task force that's
15 concerned about the effectiveness of the outreach. And
16 King County put in a proviso for analysis of the voting
17 rights materials for groups not required under section
18 203 to see if it can be broadened and what can happen
19 there with this.

20 One of the things that APACE did in 2012 was
21 a series of outreach efforts. One was to try to
22 identify the voters who preferred to speak and get
23 their information in other languages, but not
24 necessarily correlate with the signup for the written
25 ballots, but to seek people who spoke other languages.

1 And another aspect was to hold ballot
2 parties in other languages to provide information about
3 the elections to people and again one of the -- our C3
4 did that. One of the things that's necessary to do
5 this is to work with messengers who have to have
6 contact with community groups and community groups that
7 have to be trusted to be able to hold ballot parties,
8 but those are the things that can be done. Thank you.

9 MR. BURKHOLDER: Thank you. Excuse me for
10 mispronouncing your name.

11 MR. WANG: That's okay. It's not the first
12 time.

13 MR. BURKHOLDER: Any questions from the
14 commissioners?

15 MR. FOSTER: With regard to adding ballots
16 in different languages, what's the process that is
17 used? Does the county auditor have the authority to
18 add ballots of different languages? Can it be
19 petitioned? I heard you give the numbers, but what's
20 the process beyond there?

21 MR. WANG: Two things, on section 203 of the
22 Federal Act, there are certain requirements that apply
23 and so for those things there is the process for
24 signing up. However, there's nothing to prevent county
25 auditors from going beyond that and you can have more

1 languages, you can have a trilingual ballot. So there
2 are various things you can do.

3 MR. FOSTER: The county auditor, to make a
4 decision to add different ballots with different
5 languages.

6 MR. WANG: Yes, there's nothing to prevent
7 that.

8 MR. FOSTER: Do they do it? It doesn't
9 appear to from what you said.

10 MR. WANG: Not that I'm aware of in
11 Washington state.

12 MS. HUERTA: What are the percentages of the
13 Spanish language people in King County?

14 MR. WANG: I don't have that information.

15 MS. HUERTA: It would be interesting to see,
16 to find out.

17 MR. WANG: Yes.

18 MR. BURKHOLDER: We do have somebody from
19 the Washington Secretary of State later. If you're out
20 there, you're warned. No other questions from this
21 panel. I want to thank you very much. Great
22 information both as to your charge with both the ideas
23 of what's wrong, but also what can be done to be
24 corrected. Thank you.

25 I'd like to call the next panel up: Esther

1 Harlow with Disability Rights Oregon, David Lord with
2 Disabilities Rights Washington, Scott Crichton with
3 ACLU of Montana and Rhonda Whiting, The Western Voice.

4 I think we're ready to go. Mrs. Harlow.

5 MS. HARLOW: Thank you, Commissioner.

6 My name is Esther Harlow. I am an advocate at
7 Disability Rights Oregon. We are a federally funded
8 Protection and Advocacy service for people with
9 disabilities in the state of Oregon. We work to ensure
10 independence, integration and access. We are
11 authorized by The Help America Vote Act, HAVA, to
12 ensure full participation in the electoral process for
13 people with disabilities. HAVA requires that people
14 with disabilities have the same opportunity to vote
15 privately and independently, as afforded by the voting
16 systems available to other voters.

17 Nationwide, Oregon has one of the lowest rates
18 of voters not returning a ballot due to an illness or
19 disability: 1 in 8 voters did not return a ballot
20 2012. Yet that represented a 20% increase from 2008.
21 27% of Oregonians have a disability. They face
22 disproportionate barriers in civic engagement and
23 community integration. Yet they are diverse and are
24 represented across every segment of society. Voting
25 procedures and outreach must reflect that diversity,

1 and must be proactive and responsive. Oregon has many
2 successes, which has been a model to other states, but
3 we still do have large barriers to voting for people
4 with disabilities.

5 Our successes are around to four key factors:
6 Minimally restrictive registration procedures; vote by
7 mail; innovative accommodations and technology; an
8 engaged and proactive Secretary of State and Elections
9 officials.

10 Voters can register using alternate forms of
11 ID. Online registration allows voters to use their own
12 assistive technology if they can't fill out a paper
13 form, for instance blind voters using a screen reader
14 on their own computer. Statutorily, registration in
15 Oregon has never been prohibited by guardianship,
16 conservatorship, mental health commitment, or previous
17 incarceration due to felony conviction, which can be
18 the case in other states. And These prohibitions can
19 disproportionately affect people with disabilities, and
20 limit rehabilitation and community integration.

21 Vote by mail, voters in Oregon have two and a
22 half weeks to complete their ballot in the time and
23 place that they choose. This minimizes some of the
24 challenges seen in other states that affect people with
25 disabilities, such as long wait lines, inaccessible

1 polling places, inclement weather and lack of
2 transportation to polling places. The extended period
3 to vote can also help people who have disabilities that
4 affect decision-making and memory.

5 For accommodations, Oregon has pioneered the
6 use of touchscreen tablets or the Secretary of State
7 website to fill out ballots electronically, which are
8 then printed. The portable touchscreen technology
9 allows many physical accommodations, including text
10 magnification, audio, and the use of alternate plug-in
11 controllers such as joy sticks for people who don't
12 have the ability to type on a screen. The website can
13 be used by people who have their own accessible
14 technology at home including a computer and printer.

15 Oregon is also unique in that if voters can't
16 leave their home or access to the Elections office in
17 their county due to a disability, the County will send
18 a Voter Assistance Team to their home to allow them to
19 vote.

20 Oregon's Secretary of State Elections staff
21 have shown a willingness to work towards innovative
22 solutions such as these. They partnered with
23 organizations like the League of Women Voters to
24 produce a nonpartisan Easy Voters Guide, which uses
25 visual icons in accessible language and formatting.

1 They're also continually working to improve access to
2 registration through legislative efforts.

3 Local Elections officials in Multnomah County,
4 which is our most populous county, do targeted outreach
5 and send Voter's Assistance Teams to assisted living
6 facilities prior to every election.

7 Despite these successes, challenges remain.
8 These include spotty National Voter Right Act
9 compliance; lack of awareness about available
10 accommodations; technology barriers; and lack of
11 support or outright hostility or partisanship from
12 family and providers of potential voters.

13 As Emily from Oregon Voice will speak to later,
14 National Voter Registration Act compliance can be
15 erratic in many health and public assistance agencies.
16 For many people with disabilities, frequent interaction
17 with state services can be a full-time job that
18 provides income, health care, medication, and
19 treatment. At a recent meeting, young adult advocates
20 told me that they had primarily been asked to register
21 in school, but not in the course of receiving two years
22 of state-funded mental health services.

23 As the technology has advanced, public
24 awareness of accommodations has not necessarily
25 followed. I recently met with the National Federation

1 of the Blind and only two out of nine members in that
2 meeting knew even about accommodations. One local
3 administrator told me only one person in the county
4 consistently came in the office to use the technology
5 that was available in the office.

6 This information should be integrated in all
7 election get out the vote work, including that of voter
8 engagement nonprofits and all counties should be
9 looking at outreach opportunities.

10 There are often bugs that can come up since the
11 technology is unique to Oregon and operating systems
12 and programs are frequently changing, such as an audio
13 issue identified on my last visit to a local elections
14 office due to the OS used, the changes, it was having
15 problems reading the audio, so we are working on that,
16 but election's officials must still diligently identify
17 and address any issues that can prevent accurate
18 private voting.

19 MR. BURKHOLDER: I just want to make sure we
20 get -- the word you used OS.

21 MS. HARLOW: Operating system.

22 MR. FOSTER: The word after that, OS
23 something operating system or --

24 MS. HARLOW: I'm sorry.

25 MR. FOSTER: The new OS used.

1 MS. HARLOW: New operating systems must have
2 any problems with them identified. I'm sorry, I went
3 off script a little bit.

4 MR. BURKHOLDER: I want to make sure that
5 acronyms get transcribed properly.

6 MS. HARLOW: Thank you.

7 And as to the final and perhaps largest
8 barrier: Voting is a civil right. It is an activity
9 of daily living, just like other community activities
10 like going to church, shopping, caring for pets, or
11 raising children. It requires a choice. For voters
12 who live in facilities or institutions, or have family
13 members or caregivers that help them, their staff or
14 care providers can have an undue influence on their
15 choice. I have had guardians tell me they won't help
16 their family member to vote because they don't believe
17 the person can make an informed choice. Registration
18 and voting are not consistently included as goals in
19 state-funded adulthood transition planning or
20 rehabilitation services. Voting is an objective in
21 itself, but the act of voting is a means to
22 independence and community integration. It is an
23 achievable goal, a practice that helps develop decision
24 making and builds self-advocacy skills, a chance to
25 invest in the government that provides you direct

1 services, and an opportunity for empowerment.
2 Recognition of this will take a cultural conversation
3 and shift and will require buy-in from state funded
4 programs for delivery.

5 Thank you for your time.

6 MR. BURKHOLDER: Thank you very much. Any
7 questions or comments?

8 MR. FOSTER: When you sent a voter
9 assistance team to an individual's house where they
10 live, how many people are on that team?

11 MS. HARLOW: At least two people from
12 different parties.

13 MR. JOHNSON: You mentioned challenges that
14 exist and you used technology barriers. Would you
15 further explain technology barriers?

16 MS. HARLOW: Well, like I said, they're
17 using -- Oregon uses unique technology. We're the
18 first state to use the tablet technology. It's been
19 successful, but as operating systems are updated bugs
20 can emerge that did not exist previously. So I believe
21 the elections official -- administration officials are
22 trying to stay on top of that.

23 MR. BURKHOLDER: Which is bad news if you're
24 from Oregon, unique to Oregon. It's a bad story.

25 MS. HUERTA: So what do you account for the

1 fact, as you mentioned at the beginning, that you still
2 don't have enough people that are voting? And it seems
3 like there's a lot of assistance to help people vote
4 and the technology to make it easier for them to vote.
5 So what do you think accounts for the fact that we
6 still don't have that many voting?

7 MS. HARLOW: I think there's a lack of
8 public awareness. I've spoken with a lot of different
9 advocates and people and disabilities. I tell them
10 about this technology and they don't know that they're
11 there. So they're relying on their family member or
12 friend to help them vote. So I think part of it is not
13 only on the elections administrators but on community
14 groups that are involved in efforts who do not
15 necessarily know about these types of accommodations
16 and they're developing quickly, some of this technology
17 is very new, so that's part of it.

18 MS. HUERTA: Thank you very much.

19 MR. BURKHOLDER: Mr. Lord with Disability
20 Rights of Washington.

21 MR. LORD: This is I'm David Lord. I work
22 for Disability Rights Washington and we are an
23 organization that was created by the same federal law
24 that you just heard about from Esther with Oregon.
25 There is a law that authorizes our activities and

1 provides funding for our activities as part of the
2 disability rights network. We're a nonprofit and we're
3 the designated protection advocacy for Washington
4 state.

5 For the last ten years we have been working
6 to improve accessibility of voting in Washington state,
7 as has Esther, as part of -- in the wake of The Help
8 America Vote Act and what happened in Florida back in
9 2000, we've all been involved in doing what we could to
10 make elections more accessible for people with
11 disabilities.

12 As you may know, The Help America Vote Act
13 requires that every polling place have an accessible
14 voting unit and that's terrific for people where
15 there's no polling places. In Washington state,
16 there's typically one polling place per county. As a
17 result of that, if somebody wants to use that
18 accessible voting unit, they're going to have to travel
19 to the county seat or at least to a polling place where
20 there's one of the wandering -- I think in King County
21 we have generally three voting centers where people can
22 vote using the accessible voting technology.

23 So in some sense, Washington is more
24 accessible, as is Oregon, for people with disabilities
25 for voting because you don't have to ask for an

1 absenteeism ballot to vote. You automatically get this
2 ballot in the mail. That's terrific.

3 But if you're a person that can't read or
4 mark a printed ballot because of your disability,
5 you're at a disadvantage. You won't be able to use one
6 of those accessible voting units like you would in
7 other states as conveniently, won't be in the polling
8 place just down the street, in the school down the
9 street. Instead, it will be located in that one
10 location.

11 So that's a big difference and that's a
12 challenge in both of our states for the use of the
13 accessible voting units. And as result in Washington
14 state, we've had very low participation in those
15 accessible voting units. Most people don't use them,
16 as Esther said, because people don't know about them
17 despite -- we've done a fair amount of outreach. And
18 in counties, it varies how much outreach is done but
19 also because there's a transportation barrier that's
20 difficult to overcome. There are some means of
21 mitigating that. And you will hear testimony later on
22 online ballots, which is something they do in Kittitas
23 county, and I'll let them describe that for you, but
24 that is something we recommend more use of that as a
25 mechanism for allowing people to vote independently

1 using their own computer technology at their own home.
2 So with that, I submitted some written testimony and
3 I'm obviously not reading it because Esther has laid
4 out a great foundation for what we do.

5 But I want to make a few points about
6 Washington state that I think are some good things and
7 some things also that need to be addressed. The first
8 thing that I think that our Secretary of State, sounds
9 like this is true in Oregon as well, has recognized a
10 need for improving the accessibility of voting for
11 people with disabilities.

12 The Secretary of State both past one and the
13 current one have recognized the need to have voters
14 with disabilities involved in some of the
15 decision-making around how the elections are
16 administered. And there are several places where I
17 would recommend that this happen elsewhere. One of
18 them is that there is a state advisory committee on
19 disability access that the Secretary of State convened.
20 And then in addition to that, in 2005, with the help of
21 the disability -- well, with the variety of different
22 people with disability advocacy community supported,
23 legislation was passed which required every county to
24 have an advisory committee made up of people with
25 disabilities with expertise in election access to

1 assist in making their election more accessible and to
2 provide a plan for that.

3 Now, that has been -- the good news is that
4 in the counties where that's really been taken to heart
5 there has been some substantial increases in the
6 accessibility of their elections, things like when you
7 go into the Thurston county, you'll find that the place
8 is completely wheelchair accessible, there's all kinds
9 of welcoming messages that are sent to you on the way
10 about where -- there's a lot of good signage. So it's
11 a good environment for people who go to vote or to
12 register to vote. And it's a good accessible
13 environment.

14 In other counties it's not so good. So
15 we've had trouble with both just -- even with just
16 basic physical access. Disability Rights of Washington
17 has gone around and done surveys every two years. As a
18 result of that, we found many problems with voting
19 different places. And again, the good news is that the
20 Secretary of State's office has responded to our
21 surveys by providing some funding for counties to
22 improve their accessibility. And I think that's been a
23 really good thing.

24 On the other hand, we still have some
25 counties that are lacking in that regard. And I'm

1 talking now about the physical accessibility of the
2 place where the voting takes place. And then also the
3 announcement that it's an early voting period when you
4 can vote and other aspects of making the voting as
5 accessible as possible.

6 So we have -- I guess I want to point out
7 some of the recommendations that we would have based on
8 what we have seen as we've gone around in the minute
9 and a half that I have remaining.

10 Fortunately, I have written testimony which
11 I've submitted, so you'll be able to take a look at
12 that.

13 First of all, I guess importantly, I would
14 recommend that website accessibility be a priority both
15 for counties and for the Secretary of State. That is a
16 place where we all get information. Those websites
17 should be accessible to all people, including all
18 people with disabilities.

19 I'd also -- I think that we need to maintain
20 access to the accessible voting where there's been some
21 lagging of that as a result of the fact that there is
22 low usage, I think that there's still a lot of
23 people -- excuse me -- there's still some people that
24 use those accessible voting units and the law requires
25 that they be available and they should be available.

1 I think there's also, as I said, online
2 ballots, I think are a helpful thing and you'll hear
3 more about that later.

4 And then there are also, just quickly, I
5 wanted to -- one of the things that we noted in
6 going -- in Washington, we have done some work where we
7 actually look on-site to see what kinds of access --
8 excuse me -- what kind of support is being provided for
9 people with disabilities in voting by in-home people.

10 And what we found is that there is a real
11 lack of information about voting and even a lack of
12 information about the right of a person with a
13 disability to vote, even a person with a guardianship
14 to vote; and that's very distressing and I'll also
15 provide you with more information about that. Thank
16 you.

17 MR. BURKHOLDER: Thank you very much. Any
18 questions from the commission? No. Okay. Well, thank
19 you very much.

20 That's fascinating. This is not my issue
21 area. I'm learning so much today already. It's great.
22 So Mr. Crichton with ACLU of Montana.

23 MR. CRICHTON: Mr. Chairman, Members of the
24 commission, my name is Scott Crichton. Since 1988,
25 August, I've been privileged to serve as the executive

1 director of the American Civil Liberties Union in
2 Montana. We work on a variety of issues relating to
3 our mission of defending the constitution and bill of
4 rights. One of our top priorities is racial justice
5 and core to that is voting rights.

6 I have submitted to you electronically a
7 historical treatise written by Laughlin McDonald of the
8 National ACLU's voting rights project and I encourage
9 you to read it. People who don't have that, I hope
10 Alan will be able to put it on the web page or you can
11 find it on our web page at ALCUMontana.org, but it
12 really goes into the voting rights in Montana and I
13 it's fascinating history. And I'm fortunate to be a
14 participant for a good part of that of that.

15 Dating back to 1983, the first real
16 challenge in the state came about in Big Horn County in
17 Windy Boys versus Big Horn County. It was clear that
18 41% of the population was Native American and yet there
19 was no political power because of at-large voting
20 districts. And a challenge was brought on behalf of
21 members of the northern Cheyenne and Crow tribes or the
22 relatives that brought about, three years later, a
23 decision from the court that ruled in their favor and
24 created single member districts. And for the first
25 time Native Americans won at the polls. For the first

1 time locally, they had a reason to participate in the
2 political process outside of tribal politics. It was a
3 huge first step.

4 That was followed in 1989 in a case in
5 Blaine County, Fort Belknap, this case was actually
6 1999, it was brought by the Department of Justice. And
7 so the federal government engaged in a similar county
8 challenge, again, 45% of the population was Native
9 American and they created single member districts and
10 Delores Plumage was the first woman to be elected as a
11 county commissioner in Blaine County.

12 From that other challenges in Rosebud
13 County, which borders northern Cheyenne territory,
14 Roosevelt County where Fort Peck is up in the northeast
15 corner of the state where the Assiniboine and Sioux are
16 situated, those cases -- challenges got settled because
17 of the precedent of the other litigation.

18 There's more to say about that, but in the
19 time that we have, let me jump forward to the political
20 process because not everything gets resolved in courts,
21 as we know.

22 Montana has a history of racism that's clear
23 and demonstrative. And going back to the 1965, the
24 federal court actually had to come in and overturn a
25 redistricting plan that the legislature had come up

1 with.

2 In 1972, Montana created a new state
3 constitution. And in that constitution they had the
4 wisdom to create an independent redistricting
5 commission and that commission is made up of two
6 members appointed by the majority, minority leaders of
7 both the house and senate. Those four people are
8 supposed to pick a fifth person, if they can agree on
9 one, to be the chair of the commission. I've watched
10 them deliberate through three censuses now.

11 And in some instances, they've not been able
12 to arrive at a chairman, so in the 2000 census, they
13 appointed Janine Windy Boy as the chair. So our
14 plaintiff from the Crow case was now the chair of the
15 redistricting commission.

16 But I stepped past the 1980 census and the
17 '83 plan where it was clear that Native Americans were
18 a significant portion of the population, but the way
19 the districts were drawn, it diluted their voting power
20 so that there was virtually no reason for Indians to
21 participate in state politics.

22 That plan, the record is clear, the
23 commissioners were civil in public, they were
24 outrageous in private and gratefully the process has
25 now proceeded to the point where the last two

1 redistricting commissions, actually, it was clear that
2 they did not want to mess with the Voting Rights Act
3 and the proportional representation that had been
4 established through challenges to previous
5 redistricting commissions.

6 Let just say, it's not all legislative, it's
7 not all judicial. We -- we do have -- we just won a
8 voting rights challenge in Wolf Point, which is again
9 up in Fort Peck country, and that was on a school board
10 election. The disproportionate representation there
11 was outrageous, something like 143 people per white
12 representative on the school board and 849 per Indian
13 represented on the school board. We won the case just
14 recently. It's going to be finally settled in federal
15 court in the next couple of weeks.

16 We're hoping that we can build on that and
17 maybe in Q and A, I can talk about that a little bit
18 more. I'd also like to say that there is, in every
19 legislature in the last several sessions that I've
20 lobbied, we have seen efforts to limit voting
21 participation. And we have fought those at every turn
22 with coalitions in most parts. Sometimes we stand
23 alone. There's clearly intent to restrict who can
24 participate.

25 And it's not just a racially motivated.

1 It's also party motivated and the restrictions that
2 have been named on third-party candidates are a real
3 issue, and those are things that we're challenging.

4 And with that, I'll just say that it's an
5 honor to be here and I appreciate you all taking the
6 time and energy that you're taking to examine the
7 issues and bring forth great recommendations.

8 MR. BURKHOLDER: Thank you very much. First
9 report from Montana tonight.

10 Any questions?

11 MR. FOSTER: With regard to your
12 redistricting commission, as I understand it, the last
13 two times the supreme court has appointed the chair?

14 MR. CRICHTON: Yes. That's the fallback, if
15 the four commissioners can't arrive at a decision on
16 their own.

17 MR. FOSTER: When that happened, when they
18 concluded, was the vote three to two or was it five to
19 nothing?

20 MR. CRICHTON: When Janine Pease was
21 appointed, it became immediately divisive and the
22 opponents to creating statewide fair representation
23 were hostile, I think, because she was a woman and
24 because she was an Indian. And they said, no, it's
25 because you're a democrat. So it was three/two across

1 the board on almost all of those votes. There was very
2 little consensus.

3 I will say that that commission -- I omitted
4 saying anything about the Old Person case which was a
5 challenge that we brought to statewide redistricting
6 from 1990 redistricting and that case was before the
7 commission that Janine was chairing and the case has
8 not yet been decided by the courts, but the attorney
9 general, who is now the chief justice, recommended that
10 they create the districts that needed to be created,
11 putting together two House districts so there would
12 actually be Senate representation for Native American
13 Indians.

14 And based on the strength of our case, the
15 Attorney General said I recommend that you adopt these
16 plans as proposed and are being litigated. And it was
17 the first thing that they did with that redistricting
18 commission. And the result from that was then there
19 were ten Native Americans out of 150 in the state
20 legislature, which is very close to what is
21 proportional to the population.

22 The most recent commission, they appointed a
23 former justice of the Supreme Court, Jim Renier
24 (phonetic) and I think his experience as a justice
25 allowed him to navigate the waters more judicially and

1 a lot of votes did not come down on partisan lines.

2 MR. BURKHOLDER: Any others questions.

3 MS. HUERTA: I think the redistricting issue
4 is still alive and well in many areas. We see that a
5 lot where we have Latino populations and in the rural
6 area in California, there are many areas taking on that
7 fight. So thank you very much for being there.

8 MR. CRICHTON: Thank you. If I might just
9 make one additional comment as it relates to the voting
10 rights and school districts. Just as there was no
11 incentive for Native Americans to participate in state
12 elections when they never thought they had a chance for
13 winning, the same holds true in school districts. And
14 we're hoping this victory in Wolf Point will be a
15 stepping stone for us in reaching out to other schools
16 that are recipients of Judge O'Malley money because
17 that money is supposed to follow Native Americans
18 students to the school districts and it's supposed to
19 include engaged parent committees that help advise
20 where that money is going to be spent and how.

21 And unfortunately, the plan doesn't meet the
22 reality. We're hoping we can do some organizing and
23 some outreach and try to help people understand what
24 their rights and responsibilities are and help them
25 becoming empowered in the process and hopefully that

1 will get them engaged in local elections and school
2 politics on a different level than they've had reason
3 to believe they should be empowered so far.

4 MR. BURKHOLDER: Thank you very much.

5 MS. HUERTA: So that's one of the main
6 issues that my organization is focusing on, is
7 engagement, parent engagement.

8 MR. BURKHOLDER: Thank you. Next is Rhonda
9 Whiting with the Western Native Voice.

10 MS. WHITING: Thank you, Mr. Chairman.
11 First of all, I appreciate Scott's information. We
12 talked about he was going to go through the cases and
13 I'm going to tell you why I'm here. I'm a member of
14 Confederated Salish and Kootenai tribes and I'm
15 chairman of the Western Native Voice which is a
16 nonprofit Native American voting engagement project.
17 It has five members. One of our original members was
18 Janine Wind Boy, Gale Small, myself, Jen Cole and I'm
19 trying to think the last one, Lisa Evers was the last
20 one. It was all women on the committee. We have all
21 been politically involved.

22 I'm going to walk you through being a Native
23 American or Indian, I'm going to call, most of us don't
24 really care whether we're called Indian or Native
25 American, but I'm going to walk you through what I've

1 seen and where we've come and hopefully what we can do.

2 In the 1960's, most tribes in Montana were
3 thrilled with the Kennedy's. If you went into a house,
4 you saw crucifix and usually a picture of John Kennedy
5 because Indians originally were -- different churches
6 were given different tribes so they could civilize
7 them. And so I always thought that all Indians were
8 probably Indian religion, but they also were Catholics,
9 it turn out that wasn't true. They divided the United
10 States out that way which is an interesting
11 perspective. Tribes did not become citizens of the
12 United States until 1924.

13 My family are kind of political passionate
14 about politics and about being involved in the
15 political process. So I was real lucky in some ways to
16 come from a family like that. In fact, to the point
17 where in the 1960's in Montana Arnold Olsen was running
18 for Congress. I had my little sister out, who was
19 eight, doing leafletting and things like that which was
20 a little nuts at times, but we're a family who was
21 always involved.

22 My uncle, Thomas McDonald, ran against Mike
23 Mansfield in 1972 and I should have brought one of
24 those posters, they're interesting. So we truly wanted
25 to participate.

1 My mom was good at -- I'm going to have to
2 go really fast -- my mom was good at protesting
3 different things that happened with the Bureau of
4 Indian Affairs, the health service and we were always
5 participating in that.

6 So the way I see that things came about for
7 me in particular, I was on the -- on the executive
8 board for the democratic party. And tribes were kind
9 of noticed but not a lot, and I remember Lloyd Benson
10 who was running for vice-president came to Great Falls
11 and I was telling people, well, is there going to be
12 Indian participation? He said, well, yeah, you can
13 have one person on the stage. And on the stage was
14 about 50 people and there was a flag and that was
15 wrapped up and we actually have seven reservations in
16 Montana. And then that was a start.

17 In 1988, during the Jackson campaign,
18 Montana's goal was to put red in the Rainbow, and that
19 was a real major step for tribes in Montana. People
20 there had not participated, you had to drag them bodily
21 a lot of times to the polls, to polling and give them a
22 reason to vote, they didn't see any reason to do that.
23 They really, truly could not connect the dots and see
24 how things would impact them.

25 When they went back to D.C. many times, it

1 was a big honor to be able to go in and see the
2 congressional people if you got by the desk. And so,
3 you know, a lot of people had not participated. This
4 was new to them.

5 With the Jackson campaign, I know there was
6 a lady at Flat Head who was in her 90's, it was her
7 first time she voted. A 9-year-old girl came up to me
8 and gave me 12 cents for the Jackson campaign. I was
9 stopped in the airport in Minneapolis with a young man,
10 not Indian, that came to an event that we had at Arlee
11 Powwow Grounds, and that was a place where there was
12 400 people. We ended up with 2,000 people there. And
13 at the Arlee school, the motto was dress, dressy for
14 Jessie. A college student who was at Notre Dame
15 stopped and he came down in a bus to attend that. So
16 that was a stepping stone, as far as I can see it.

17 From that point, a lot of tribes throughout
18 the United States decided it was time that we did get
19 involved. One of the real things that came up in
20 Montana was Pat Williams and Pat Williams was a true
21 friend to tribal people. Marlin Lay (phonetic) was
22 running against him and he was truly not -- he said
23 things that were outrageous, very racist.

24 So the tribes got together and put together
25 the first Montana voter education project and put money

1 into our tribal community colleges. Pat Williams was
2 the one that had those colleges funded. We have now
3 seven in Montana and have done a tremendous job and is
4 a tremendous tool to do voter registration and voter
5 process.

6 In that election in 1992 in some districts
7 there was a 98% turnout. Interestingly enough, it was
8 always a little odd some of the things that went on.
9 For instance, Janine Windy Boy tells the story about
10 tribal people that were in a sweat where they were
11 praying and it was getting time for the polls to close.
12 Her and her aunt, who ended up being a legislature,
13 bodily drug some of the guys out there and said you
14 guys go vote. And the car windows were all steamed up
15 but they did vote.

16 And Pat Williams went in and talked to the
17 president and he had mentioned to him he had been in
18 Billings in '92 and he saw a lot of signs that said
19 don't forget the Indian vote. And Pat explained to him
20 about the 98% turnout in some of those districts. And
21 the president didn't forget that. He went on to make
22 sure his goal was to get people in different positions
23 federally, which he did across the board.

24 And in 1996, I was lucky enough to be the
25 first Indian at the Democratic National Committee. We

1 ended up with 500 and some tribal leaders at the White
2 House for a briefing. And we also put together -- I'm
3 going to pass this around -- this is called the three
4 little girls in their traditional dress and its three
5 good reasons to vote. And it said the president's
6 judgment of history will be that the president of the
7 United States and leaders of sovereign Indian nations
8 met together and lifted our great nation to a new and
9 better place, President Bill Clinton. And these little
10 girls were able to go to the briefing and give those to
11 the first lady.

12 And I'm over. Okay. But what I'd like to
13 say is that with the Schweitzer administration moving
14 on, when Governor Schweitzer got into the governorship,
15 he appointed more Indians -- 240 Indians were appointed
16 to different boards and committees. That was huge to
17 where we had never participated. He appointed three
18 American Native Americans to be in his cabinet. He had
19 a group called GAIN which was the Governors American
20 Indian Nation, they came up with over 240 agreements
21 between the tribes.

22 And my take is that once the doors are open,
23 whether it's with a president or a governor, those
24 doors don't close. And so things like what Scott
25 talked about with the voter suppression things in hand,

1 we don't -- we know that there are more tribal people
2 involved and we're doing everything that we can to make
3 sure that that doesn't happen and I know we're doing it
4 with the Native Voice Project and that's why we had that
5 going for the first time, not just during the election
6 year, but also throughout and the mentoring of the
7 people to go into leadership positions. And I'm done.

8 MR. BURKHOLDER: Thank you very much for
9 your testimony.

10 Any questions from the commission.

11 MR. JOHNSON: Did I understand you to say
12 there are no restrictions as it relates to Native
13 Americans registering to vote or actually voting?

14 MS. WHITING: There's no restrictions, no.
15 It's -- well, one restriction, and what happened in
16 this last election was that we don't have satellite
17 voting. And that's what we wanted to get. And there's
18 a case in Montana where they're looking at that right
19 now. In Browning --

20 MR. BURKHOLDER: Can you define satellite
21 voting?

22 MS. WHITING: Where it's not in a county
23 seat, that they're actually on the reservation. And
24 there was a point in the last election where they
25 didn't have any ballots for four hours in Browning,

1 Montana. And the reality was why so many people wanted
2 to vote was that for the first time in a statewide
3 election, I think across the United States, Denise Juno
4 was Blackfeet and from North Dakota, three affiliated
5 tribes was running for the second time for the
6 superintendent of schools and so that race was really,
7 really tight. We think that because it was less than a
8 thousand votes, a little more, was because of those
9 votes were held up. And they wanted to do a recount.
10 It was very expensive and it took a long time for that
11 election to become official.

12 MR. BURKHOLDER: Would you like to do a
13 followup, Mr. Johnson?

14 MR. JOHNSON: That's fine.

15 MR. FOSTER: I'd like to ask about that
16 satellite voting that you just said. Are you saying
17 that in Montana you have to go to the county seat to
18 vote?

19 MS. WHITING: Yeah.

20 MR. CRICHTON: The case is called Wandering
21 Medicine versus McCullough, McCullough is the Secretary
22 of State. Federal Judge Donald Lloyd just recently
23 ruled that the case needs to go forward. The ACLU
24 filed an amicus brief that's being litigated by the
25 parties on behalf of Native people on three different

1 reservations, some of whom had to travel over 100 miles
2 to get to the county seat. And so there's a challenge
3 in federal court to say, why doesn't the Secretary of
4 State create satellite voting opportunities for people
5 on the reservations that don't have the burden of
6 having to travel that distance.

7 MR. JOHNSON: Are there any restrictions on
8 the Secretary of State that prevents the Secretary of
9 State from creating satellite voting?

10 MR. CRICHTON: The Secretary of State
11 believes there are and the federal judge says there is
12 not.

13 MS. WHITING: One of the problems is that
14 she says she can't control it, it costs money and she
15 can't control the budgets. But we were also part of
16 that case, and we believe that with a directive we're
17 going to encourage her to settle that case beforehand
18 because it is important.

19 When I worked in the Harlem school, I used
20 to teach, there was no voting place on the reservation
21 whatsoever and the school district had 90% Indian kids
22 and no Indian teachers, no Indians on the school board.
23 And I did the first Native American studies program for
24 that district. And it was a tough job.

25 MR. BURKHOLDER: A question.

1 MS. HUERTA: Yes. Do you have voting by
2 mail? Can they vote by mail?

3 MS. WHITING: Yes, we do. That's new.
4 Voting has been, you know, hard to -- and some of the
5 people even getting to their mailboxes and stuff,
6 they're not always registered. We don't -- it's very,
7 very rural areas.

8 MR. BURKHOLDER: Just in the interest of
9 time, there's a lot of interesting stories but we have
10 to move on.

11 What we have now is time for some public
12 testimony before we take a break and I have four people
13 signed up for public testimony. If you would just come
14 up and join us at the front table. Thank you very much
15 to the panel here.

16 And so Cindy Van Winkle with the Council of
17 the Blind, Delores Gilmore with Kittitas County,
18 Washington, Marjorie Easley with the League of Women
19 Voters of Oregon and Mary Carpenter -- Mary Carpenter
20 with the National Federation of the Blind, if you would
21 join us at the front table.

22 We'll start with Ms. Van Winkel being the
23 first.

24 MS. VAN WINKLE: Thank you very much.
25 Should I bring this closer? Hello, my name is Cindy

1 Van Winkel, two words, van, space, Winkle. And I am
2 president of the Washington Council of the Blind, a
3 statewide organization. We have approximately 450
4 members in the state of Washington serving 14 counties
5 and 15 affiliated chapters in the state. I am also
6 employed in Kittitas School District as a para
7 educator. I teach blind students, I teach braille and
8 other skills related to blindness.

9 I have the distinct pleasure of serving on
10 the Voting Access Advisory committee for Kittitas
11 county and have been on that committee since its
12 inception.

13 I wanted to share the perspective of a
14 disabled voter who is blind and cannot use the
15 traditional means of voting. In 1980, I was 18 years
16 old and very excited to be able to vote in my first
17 election and it was the presidential one. When I went
18 to the voting polls, the polling station, I was
19 accompanied by two polling staff people and taken back
20 to the booth where there was a punch card and I used a
21 little stylus and somebody had to read to me what I was
22 going to vote on. They had to -- I had to make sure
23 that where I was going to press the stylus through was
24 the right spot on my ballot.

25 And when I was done, I really couldn't be

1 sure, one, that I voted the way I wanted to and, two,
2 that my vote was actually given to the appropriate
3 place. Many times I did it that way and then in time I
4 was able to use vote by mail or absentee ballot with
5 the assistance of a family member in my home. Again,
6 although it was in the privacy of my home and typically
7 was with a family member assisting me by reading to me,
8 I still could not verify my voting, my ballot, make
9 corrections if I needed to, and so on. So none of
10 these were private or independently verifiable.

11 Then came The Help America Vote Act and it
12 required the assisted -- excuse me -- assistive voting
13 units, accessible voting units, excuse me. And with
14 the AVU in 2006, I was able to go down to our county
15 seat and vote independently for the first time. It was
16 a remarkable experience for me, to be able to listen to
17 all of the selections and make the choice that I wanted
18 to and know that nobody else knew what I was doing,
19 even though most of the time it really didn't matter,
20 but you don't realize how much it matters until you're
21 in that position. It was pretty incredible. I'm
22 sorry. It was pretty incredible.

23 I didn't realize how much time I had. Can I
24 finish another thought really quick?

25 MR. BURKHOLDER: Please finish up. This is

1 shorter time. I didn't know that. Okay.

2 MS. VAN WINKLE: The AVU has some barriers
3 in that they are technology that people aren't
4 necessarily familiar with. And so now in Kittitas
5 county, we have online ballots which also include an
6 online voter guide and it is fully accessible. And
7 last year we were able to have several blind people in
8 my home using technology off of the computer to be able
9 to vote independently and privately and verifying our
10 votes which was pretty incredible for us to be able to
11 do that.

12 And I know Delores is going to share more
13 about how it works. It has some flaws in it in that we
14 still have to print out our ballot and I can't see to
15 verify that the print has come out and we still have to
16 sign the envelope to send it back, but overall it's
17 been a great thing.

18 And listening to Oregon makes me excited to
19 know there's hope on the horizon where we might be able
20 to use their technology and our technology to make it
21 really work.

22 I think the key is that technology is in the
23 future and I think we can do whatever we can to have
24 the powers that be embrace it.

25 Thank you very much.

1 MR. BURKHOLDER: Thank you very much.

2 Any questions from the commission? Okay.

3 So Ms. Gilmore.

4 MS. GILMORE: My name is Delores Gilmore.

5 I've been Kittitas Elections manager for almost 20
6 years. Kittitas county became a vote by mail county in
7 2005. In 2009, we applied for a federal grant to
8 provide accessible online voter guide for the candidate
9 information for voters with disabilities. With the
10 Move Act in 2010 that required counties to provide
11 ballots to military and overseas voters, we combined
12 those two technologies into our current online ballot
13 guide which provides a specific ballot for any voter
14 that's registered to vote in our county and also
15 provides candidate information, their statement, photo
16 and a video if they wish to provide that.

17 This software modification has data uploaded
18 to it. So it's not that complicated for programming
19 purposes. It doesn't -- it's not like you're redoing
20 it from scratch so it doesn't take that much resources
21 from county staff. We currently have 1,100 voters that
22 vote regularly using the online ballot. And the
23 Kittitas voter's accessibility community and our
24 committee was very, very great at helping us pilot test
25 that.

1 We -- I think the end result is real good.
2 We know that it's, you know, nothing's perfect and so
3 we'll continue to improve that and look to see where we
4 can provide the ballot accessible to anyone, voters
5 military overseas or anyone that can't make it to a
6 polling location because we have the technology to do
7 that.

8 And I think working with our community
9 together, they -- it makes us able to provide the best
10 voting solutions and options for people.

11 MR. BURKHOLDER: Great. Any questions? No.
12 My one comment is that I'm really interested in how
13 that gets universalized in the sense that anyone can
14 use it for voting. So I think it really would be a
15 step forward in terms of getting greater participation
16 if you had the ability to go online and get your
17 information.

18 MS. GILMORE: Currently there's more than
19 one software. We have one through Democracy Live. And
20 there's other that they're doing it in other counties
21 and states right now. So it is available.

22 MR. BURKHOLDER: Especially in Oregon, we
23 get a voter packet that's this thick. So it would be
24 great to save the trees.

25 So Marge Easley.

1 MS. EASLEY: Yes, I'm Marge Easley. I'm
2 past president of the Women of League Voters of Oregon.
3 The League as you know believes that assistive right to
4 vote is a core tenant. I'm hear to talk about an issue
5 that has been previously talked about, and I wanted to
6 echo the testimony of Mary Flowers in Seattle and the
7 NAACP person that was here talking about the voting
8 rights issue that impacts nearly six million citizens
9 across the country.

10 And that I'm referring to ex-felons who live
11 in states that exclude them from voting, in some cases
12 for the rest of their lives. This denial of a basic
13 democratic right makes no sense if we accept the idea
14 that those who have paid their debt to society should
15 be encouraged to become fully engaged citizens.

16 I'd like to briefly explain my own connection
17 to this issue. This past year I helped to teach a
18 series of classes on civic engagement to a group of
19 women inmates at Coffee Creek Correctional Facility in
20 Wilsonville, Oregon. These women all had less than two
21 years to complete on their sentences and were working
22 to gain the skills necessary to enter the work force
23 and integrate into the community upon their release.
24 They learned that, thankfully, Oregon is one of 14
25 states that restores the right to vote immediately upon

1 release from prison. However, they were shocked to
2 find out that 24 states disenfranchise those on parole
3 and/or probation, while 11 others permanently
4 disenfranchise some or all ex-felons.

5 These women were my inspiration to do research
6 and to get involved in this issue. They were excited
7 to exercise their right to vote, they were excited to
8 be a part of the community, and thus I have organized a
9 caucus and submitted a resolution to present at the
10 League of Women Voters National Convention in Dallas in
11 June on this issue.

12 Now, while states hold the power to mandate
13 state voting laws, it follows that the federal
14 government should be empowered to determine who can be
15 vote in federal elections. This was brought up
16 previously. The Democracy Restoration Act, originally
17 introduced in the U.S. Senate in 2010, was again
18 introduced on April 10th of this year. This
19 legislation would not only restore voting rights in
20 federal elections to those released from prison and
21 living in the community, it would ensure the
22 dissemination of clear, accurate information about
23 these rights. It is my hope that if rights are granted
24 in federal elections that more state will begin to move
25 in the right direction.

1 So the League urges this Commission to provide
2 as much support as possible to restore voting rights to
3 ex-felons upon release from prison. And we believe
4 that through litigation, public pressure and
5 legislative leadership that maybe we can make progress
6 on this issue.

7 MR. BURKHOLDER: Thank you.

8 MR. JOHNSON: One question, when a person is
9 released from the institution in Oregon, is it an
10 automatic restoration of rights or does that person
11 have to go to court to obtain the voting rights.

12 MS. EASLEY: It is automatic and parole and
13 probation are not involved in that. This is automatic
14 upon release.

15 MR. FOSTER: How about fines?

16 MS. EASLEY: Fines are not part of that
17 either.

18 MR. BURKHOLDER: Thank you very much for
19 your work.

20 Marcie Carpenter.

21 MS. CARPENTER: Thank you and thank you to
22 those of you who are here today to listen to the panels
23 and to our testimony. My experiences as a blind
24 citizen mirror those of Ms. Van Winkle's, so I won't
25 repeat that issue.

1 I want to speak quickly to two specific
2 issues here in King County. And those are serious
3 barriers for blind people participating in elections.
4 We have, as you know, mail-in ballots which are a very
5 good thing in many ways. So everyone gets their ballot
6 about three weeks before the election. Sighted people
7 have that period of time to fill out and cast an
8 independent and secret ballot.

9 For a blind person, in King County to do
10 that, there is one accessible voting machine in the
11 entire county. That machine is at the county elections
12 headquarters in a suburb of Seattle in Renton. If you
13 live in this neighborhood and want to go out and vote
14 at that location, you would have to go during the
15 daytime, business hours, a problem if you work, and the
16 bus trip would take about an hour and a half each way.

17 We have a high level of awareness of our
18 voting options in our organization. And, in fact, last
19 week at the special election here we paid for some
20 blind people to go to Union Station, which was the only
21 place on election day you could cast a ballot after
22 working hours. And we had some people who work late.

23 So the other issue has to do with
24 information, and I was dismayed in the last couple of
25 weeks at the communications I had with our county

1 elections office. One of my members called me and
2 said, I called the elections office to ask about my
3 options for voting, they told me I could vote online,
4 but that I would have to have two witnesses, presumably
5 sighted people, testify to the accuracy of my vote and
6 I'll have to make sure that one of them showed me the
7 right place to sign because if my signature wasn't on
8 the exact right place on the line, it could be
9 disputed.

10 I have been called and spoke with the
11 director of elections for King County. She provided me
12 initially with misinformation. She told me that the
13 King Street station polling place would be available on
14 a Saturday. I said, really? I didn't have that
15 information. And then I got an e-mail later from one
16 of her staff people stating, of course, it wasn't open
17 on a Saturday.

18 I was then told -- I asked her about the
19 online voting and signing issue. She said, no, you
20 don't have to have two witnesses but they have to have
21 someone to make sure they can sign on the line. This
22 is a deplorable and unacceptable situation in King
23 County, and we believe that accessible voting machines,
24 at least one, needs to be provided in the library or
25 some public place that is open after business hours so

1 that blind people can cast ballots before election day
2 just like everyone else, and we are contemplating what
3 other actions to take.

4 I appreciate the time.

5 MR. BURKHOLDER: I very much appreciate your
6 testimony, as well. Thank you.

7 Any questions from the members of the
8 commission? Okay. Thank you, panel.

9 We actually have one more public person who
10 came in, Allison Eisinger who is with the Seattle
11 Coalition on Homelessness.

12 MS. EISINGER: Thank you very much. I am
13 very grateful for the opportunity to share some of the
14 details about barriers to registering in voting for
15 people who are homeless. They are in some cases very
16 much similar to or identical to the concerns that
17 people with disabilities experience in terms of getting
18 misinformation and access to accessible voting units.

19 I want to just start by giving you a little
20 bit of context. I'm the director of the Seattle/King
21 County Coalition on Homelessness. We conduct the one
22 night count in our community each January. This past
23 January in three hours from 2:00 to 5:00 a.m., we
24 counted 3,123 people outside overnight. We expect that
25 there will be between 9,500 and 10,000 in our total

1 count in shelters and transitional housing. For most
2 of those people, not only do they have the challenges
3 of frequently not having government valid issued I.D.
4 or having them stolen from them, they don't have
5 mailing addresses.

6 Even here in Seattle where we have one
7 organization, Income Housing Alliance, which provides
8 an extraordinary mailing service for 4,000 people a
9 month, there are limits to how people who are homeless
10 can use that address to vote -- to register and to
11 vote.

12 So, for example, we worked very, very hard,
13 we've conducted homeless voter registration drives for
14 each of the last seven years. And for the first two of
15 those years in 2007 and 2008, we frequently encountered
16 people who, because of their past felony convictions,
17 were not able to register and vote. We certainly, now
18 that the law has changed in Washington state in 2009,
19 are able to give people a better answer now, but most
20 people don't know that the law has changed.

21 But we worked very hard to register people
22 at that particular address at 77 South Washington
23 Street in Seattle. And what we found, among other
24 things, those people would not then get a precinct
25 specific voters guide mailed to them. We worked with

1 the King County Elections staff and they said, well, we
2 can get you the general information guide, but we are
3 just not able to get a precinct specific guide. We
4 asked if it would be possible to please go back to the
5 previous system in which people who were homeless could
6 use the King County courthouse as their de facto
7 address, and we were told that that was not possible.

8 I did learn, however, that the main King
9 County Elections address in Renton is what is called,
10 apparently, the dummy precinct address for people who
11 are providing military service overseas.

12 So we think that there are some ways to
13 creatively make sure that people who are homeless not
14 only get to register and it vote, but get precinct
15 specific information to do so.

16 I want to just touch on one last issue which
17 is use of the general delivery at the post office. We
18 routinely find that the post office is giving out
19 incorrect information. People who are homeless are
20 told that the general delivery address is only to be
21 used for 30 days at a time, that it cannot be used on
22 an ongoing basis. That is not true, but they are told
23 that.

24 And it is -- also there is an access problem
25 that only the main post office in any city provides

1 general delivery service, and that is usually in very
2 limited hours.

3 MR. BURKHOLDER: Thank you. A whole other
4 area to look at.

5 Any questions from the commissioners?

6 MR. FOSTER: The precinct specific issue
7 that you were talking about, is that because the voter
8 pamphlet might have eight or ten legislative districts
9 at the same time? Is that what you're talking about?
10 What precinct specific information does a potential
11 voter need?

12 MS. EISINGER: We have a voter's guide that
13 does have information for several districts at a time,
14 but we were told that because this particular site is
15 the location for so many people to get their mail, it
16 clearly is not their actual residential address.

17 And so they -- I don't completely understand
18 it, honestly, to explain it to you, but people,
19 although they received their ballots at that address,
20 did not receive the voter guide that I receive at my
21 home address. I think it is because it is not a
22 residential address.

23 MR. FOSTER: Okay.

24 MS. EISINGER: And I brought a copy of our
25 voter -- homeless voter guide that highlights some of

1 the issue with you. And I thank you for the work that
2 you're doing very much.

3 MR. BURKHOLDER: If any of the public who
4 did testify, if you have written testimony, or any
5 other supporting evidence, please deliver it to the
6 staff of the Voting Rights Commission. Thank you very
7 much.

8 So we're going to take, I guess, 15 -- less
9 than 15 minute break. We'll start at five after.
10 We'll be a little late given the commission needs a
11 chance to walk around, get something to drink.

12 (A recess was taken.)

13 MR. BURKHOLDER: We have the next panel
14 which is on voting rights in Latino community. We have
15 Matt Barreto with David Perez, Graciela Villanueva and
16 then also Abha Khanna.

17 And also for the rest of you, it turns out
18 that there's to be a little extra food, they ordered
19 too much food, in 117. And after you give your
20 testimony, you can't leave yet, after you give your
21 testimony, there's sandwiches there, but no food is
22 allowed in this room. So if you want to get a bite to
23 eat, you can have some food over there.

24 Mr. Barreto.

25 MR. BARRETO: Thank you for inviting me to

1 participate in this session. Happy to be speaking on
2 issues affecting Latinos here in Washington state.
3 Latinos are the largest racial ethnic in Washington
4 state currently comprising 12% of the entire
5 population, and about 300,000 Latinos are eligible to
6 vote in Washington state.

7 The census estimates that as of the 2012
8 election, that 172,000 Latinos are, in fact, registered
9 to vote and that approximately 139,000 Latinos
10 participated in the 2012 election. I use this as a bit
11 of an overview because our governor election in 2012
12 was decided by less than 100,000 votes, about 95,000
13 votes, suggesting that the Latino voting bloc is
14 increasing and growing and is sizeable enough to be
15 taken seriously as an influential voting bloc in our
16 state.

17 Among these 300,000 Latinos who are eligible
18 to vote in Washington state, 42% are estimated to not
19 be registered to vote, approximately 128,000 Latinos
20 who are eligible to be on the voting polls are not.
21 This is a significant concern and issue that we should
22 pay close attention to. We need to increase the
23 outreach and education on voter registration to see
24 more Latinos registered.

25 But we also need a political system that is

1 responsive to the Latino community and Latino issues
2 and that these two factors are interrelated; that is,
3 it will be very difficult to encourage Latinos to
4 register and vote in elections if they do not feel that
5 their vote is effective and can have an effective
6 influence on elections.

7 During the 2012 election, the local National
8 Public Radio affiliates in the northwest did a study
9 looking at Oregon, Washington and Idaho. And they
10 counted more than 8,000 elected officials across these
11 three states, from members of Congress to county
12 commissions and school boards. And they found that
13 across these 8,000 elected officials, only 2% of all
14 people holding office were Latino, despite representing
15 about 12% of the combined population across the states.

16 But this disparity was not just statewide.
17 In fact, it was unevenly felt. Here in Washington
18 state, there are ten counties that we consider to be
19 heavily Latino, which are 17% or higher Latino. This
20 starts with Adams County in central Washington, which
21 is approximately 60% Hispanic or Latino.

22 As of 2012, there were only five Latino
23 officeholders representing only about 4% of all
24 officeholders in Adams County despite being 60% of the
25 county population, only representing 4% of the elected

1 officials. In nearby Franklin County, which is 51%
2 Latino, only 3% of officeholders are Latino, despite
3 being 51% Latino.

4 We know this continues in Yakima County,
5 Grant County, Douglas County, Chelan County and more,
6 all these counties between 25, 35 or 45 Hispanic and
7 being around 4, 3 or 2% of the elected officials.

8 What could possibly explain a system that
9 has so little representation for Latinos in the state?
10 The research that I've conducted, along with David
11 Perez who you'll hear from next, as well as others, has
12 identified the at-large electoral system as something
13 of a problem. We've known for many years in the field
14 of voting rights and representation that at-large
15 electoral systems inhibit and discourage minority
16 representation.

17 In fact, these have been the source of many
18 Section 2 federal lawsuits in the south as at-large
19 electoral systems were converted to and designed to
20 prevent African Americans from attaining district
21 representation.

22 We find that in these ten heavily Latino
23 populated across Washington that 98% employ an at-large
24 electoral system which makes it exceedingly difficult
25 for Latinos to get elected. In fact, across these ten

1 counties, there are 446 total city council positions in
2 at-large electoral systems and only 35 Hispanics are
3 elected out of those 446 at-large electoral systems.

4 What explains these low levels of
5 representations? The electoral system alone must
6 certainly not be to blame. There are certainly places
7 where at-large electoral systems have yielded minority
8 representation.

9 In a comprehensive analysis of counties and
10 states across eastern and central Washington, I have
11 documented extensive patterns of racial bloc voting,
12 not dissimilar from what I found in other work in
13 southern states in the United States where Hispanics
14 are voting very frequently in the 70 or 80% range for
15 Hispanic candidates running for office; and that
16 non-Hispanic populations in central and eastern
17 Washington are voting in the 10 or 15% range for those
18 candidates.

19 There's a very, very large disparity in the
20 vote preferences in these communities and coupled with
21 the city or county-wide/jurisdiction-wide at-large
22 system, it makes it almost impossible for minorities,
23 in this case Latinos, to gain election in these areas.

24 What we already have and continue to have,
25 the Section 2 protections of the federal Voting Rights

1 Act of 1965, but I would argue that a new Section 4B
2 formula should consider practice-based coverage which
3 is likely to then include parts of central and eastern
4 Washington for pre-clearance and closer monitoring by
5 the Department of Justice. There are a handful of
6 these ten counties, possibly four or five, in which the
7 voter registration and voter participation rates of
8 Hispanics are so low that they would have triggered,
9 under the old Section 4B coverage formula, had they
10 been considered in the 1960's.

11 We have one other final model that we can
12 consider and that is the California State Voting Rights
13 Act, which has added additional protections to the
14 State of California. And currently efforts are
15 underway in Washington state to consider increased
16 opportunities to prove the dilution against an at-large
17 system and offers an easy path toward settlement to
18 minority representation. Thank you.

19 MR. BURKHOLDER: Thank you. Any comments by
20 the commission? Thank you very much.

21 Mr. Perez.

22 MR. PEREZ: My name is David Perez, I'm an
23 attorney at Perkins Coie, and the author of the
24 Washington Voting Rights Act.

25 I want to talk a bit more about the State

1 Supreme Court race between Steve González and Bruce
2 Danielson, that we saw play out in 2012 and why that
3 race shows that we have a problem here in Washington,
4 and what we should do to fix it.

5 On the face of it, that election didn't seem
6 like one González would have to worry about very much.
7 González was a decorated prosecutor, having
8 successfully prosecuted Ahmed Ressam, the Millennium
9 Bomber, as an Assistant U.S. Attorney. He was also a
10 well-known judge, having served ten years on the King
11 County Superior Court, earning a reputation as the
12 hardest working and most intellectual judge on the
13 bench.

14 Based on this stellar resume, Governor
15 Gregoire appointed González to fill a vacancy on the
16 State Supreme Court. Full disclosure: I helped
17 coordinate Justice González's appointment campaign and
18 worked on his election campaign.

19 With that said, as González was gearing up
20 to run for retainment, it did not seem like anyone
21 would challenge him. He was racking up endorsements.
22 He was racking up contributions. But then, at the very
23 last minute, literally, the final hour before the
24 filing deadline, Bruce Danielson threw his hat into the
25 ring. Danielson, a relatively unknown and

1 unaccomplished lawyer, would square off against a
2 sitting State Supreme Court Justice. Now we had a
3 race.

4 González raised a record amount of money for
5 a primary race, secured endorsements from both parties,
6 including Rob McKenna, Jay Inslee, Reagan Dunn, and Bob
7 Ferguson, and zipped across the state campaigning.

8 González had every possible advantage over Danielson,
9 who didn't campaign or even raise a dime. Well, he had
10 every advantage except one. His last name.

11 Which brings me to a larger issue that
12 Danielson's unfortunately strong showing in this
13 contest raises: Racially polarized voting in Central
14 Washington. Professor Barreto just touched upon this
15 and showed us the stark numbers.

16 But let's put a face to this problem because
17 here in Washington State, outdated electoral systems
18 have eroded our democratic principles by failing to
19 keep pace with our state's rapidly changing
20 demographics.

21 As a result, large segments of our state's
22 population, particularly African Americans, Asian
23 American and Pacific Islanders, Native Americans, and
24 Latinos have been virtually shut out of the political
25 process.

1 Sometimes numbers don't lie. This is one of
2 those times. For example, in nine counties across
3 Central Washington, Latinos constitute over 33% of the
4 total population, yet hold less than 4% of the local
5 elected offices. Combined, these ten counties elect 69
6 port commissioners, 66 county officers, 51 judges, and
7 30 county commissioners. Not a single one is Latino.
8 Rarely has our state been faced with a challenge not to
9 its fiscal health or its economic growth but to the
10 values that form the basis for our democracy.

11 So what's to blame? Election data collected
12 and analyzed by folks like Matt Barreto, and the
13 students at Whitman College, shows that the main
14 culprit is the combination of at-large elections and
15 racially polarized voting.

16 In an at-large election, there are no
17 neighborhood or local districts and therefore no
18 electoral contests in which only voters in a
19 neighborhood or local district may vote for a candidate
20 to represent that particular district. All the
21 candidates must run citywide or countywide.
22 At-large elections that exhibit racially polarized
23 voting allow voting blocs with slim majorities to
24 dominate local elections. In fact, in the nine
25 counties listed above, 99% of all local elections are

1 at-large.

2 The importance of these local races cannot
3 be overstated. It is in these local races for city
4 council, for school board, or for fire district that
5 new candidates first enter the leadership pipeline.
6 Once they've gained local experience, they might later
7 try for some higher office. But the pipeline's closed
8 off to racial minorities because nearly all of these
9 local elections are conducted at-large.

10 For those of us who have been aware of this
11 phenomenon, that is, racially polarized voting in
12 Central Washington, the González race wasn't a
13 surprise. If anything, it was a surprise that González
14 did as well as he did in Central Washington. That
15 González lost each of these counties by a large margin
16 is entirely consistent with the pattern of racially
17 polarized voting that's been occurring throughout
18 Central Washington for over thirty years.

19 And you can't blame it on partisanship
20 because even Inslee got more votes than González in
21 most of these counties. In fact, Gonzalez's lesser
22 known opponent outpolled Rob McKenna and even the GOP's
23 Senate candidate Mike Baumgartner. This was a
24 bipartisan racially polarized voting.

25 While the final result in a statewide race

1 is different because large Western Washington counties
2 went heavily for González, in Eastern and Central
3 Washington, Latino candidates running for local elected
4 office run into the exact same problem without the
5 benefit of having King, Snohomish and Pierce County to
6 bail them out.

7 Fortunately, there's a way out: It's called
8 the Washington Voting Rights Act. Lawmakers in Olympia
9 considered the bill the past three years, and the past
10 two years it's passed the House of Representatives.
11 But it's stalled in the State Senate.

12 This landmark bill would allow voters to
13 challenge those at-large voting systems that, combined
14 with racially polarized voting, function as an obstacle
15 to minority representation in local government. If
16 successful, the challenges would result in remedies,
17 often but not always district-based election systems.

18 This idea has worked in the past. After
19 encountering similar problems in their state,
20 California legislators adopted the California Voting
21 Rights Act of 2002. The Washington Voting Rights Act
22 is modeled after the California version.

23 The González race is a sobering reminder
24 that our country's first principle that all persons are
25 created equal may be self-evident, but it certainly

1 isn't self-enforcing.

2 The federal Voting Rights Act was written
3 almost fifty years ago in 1965. Since then, it's
4 gotten watered down and diluted by an increasingly
5 conservative U.S. Supreme Court. In part because of
6 those Supreme Court decisions we find ourselves here
7 today. I know that the purpose of this hearing is to
8 create a record to improve the federal Voting Rights
9 Act. And that's a noble goal.

10 But what I suggest to each of you is that
11 instead of looking to D.C. to solve Washington State's
12 democratic erosion, we can look to our own state
13 capital and state legislators. We can solve this
14 ourselves.

15 What we're witnessing throughout Washington
16 is not a Latino problem, nor is it a Black problem, an
17 Asian American problem, or a Native American problem.
18 It is a Washington State problem.

19 Fortunately, there is a way out and
20 unfortunately for you, I don't think it's going to
21 emanate from Washington D.C., I think it's going to
22 emanate from Washington state and it's called the
23 Washington Voting Rights Act. Lawmakers in Olympia
24 have considered a bill for the past three years. The
25 past two years the House of Representatives has passed

1 it, but it stalled in the Senate. Full disclosure, I
2 helped write the bill, so take what I say with a grain
3 of salt, but I think it's a landmark bill.

4 It would allow voters to challenge at-large
5 elections that when combined with racially polarized
6 voting produce these skewed results. It's an analog
7 that Section 2 of the Voting Rights Act, without the
8 obstacles grafted by conservatives of the Supreme
9 Court.

10 And you know what, the idea has worked in
11 the past. In 2002, after experiencing similar
12 problems, California passed the California Voting Act
13 of 2002 and after that act passed we saw a lot more
14 minority candidates in local elected offices run in.
15 So what we're witnessing throughout Washington is not a
16 Latino problem or Black problem and it's not a
17 Washington D.C. problem. It's our state problem and we
18 can fix it with the our state voting rights. And I
19 think I just ran out of time.

20 MR. BURKHOLDER: You did. Very good
21 testimony.

22 Any questions from the panel?

23 MR. FOSTER: The way the law works now
24 setting up districts, is a school board -- would a
25 school board be into districts by the legislature

1 ordering that or by the county?

2 MR. PEREZ: Here in Washington now, that's a
3 really good question, what we found in races are
4 at-large because of state law that mandates they're
5 at-large; and so even if they wanted to, they couldn't
6 opt out of that at-large system.

7 However, what the Washington Voting Rights
8 Act does, quintessentially enough, is build in a
9 provision to allow them to opt out of at-large
10 elections if that jurisdiction concludes, whether it's
11 a school board or county commission or if it's not a
12 first class city, because certain cities, because of
13 their population threshold, must also be at-large, if
14 they conclude that they're at-large system excludes
15 certain communities, then they can switch to a district
16 based election or some other remedy but often it will
17 lead to district-based elections, but not always, in
18 order to provide an equal opportunity for candidates,
19 for communities to elect candidates of their choice.

20 MR. JOHNSON: You mentioned that in several
21 counties in eastern Washington that the level of voting
22 by Hispanics was very low. Are there any restrictions
23 that prevent the registration of the Hispanics from
24 registering to vote and are there any restrictions
25 there in those counties that prevent them from voting.

1 MR. PEREZ: We haven't found expletive
2 restrictions. We interviewed, and we should send you
3 some of testimonials, it turns out that when you go to
4 voting booth year after year and you never really see a
5 result, that is of your community being represented,
6 voting gets old after a while when you realize your
7 ballot doesn't really count because it is subsumed and
8 diluted within this at-large system. And so it's
9 almost the chicken and the egg. It's not just that
10 Latinos aren't voting and that's why they're not
11 getting elected. It's that they know, even if they
12 vote within the at-large system, their candidate still
13 won't win, so why take Tuesday off.

14 So it's a de facto discouragement. It's not
15 really de facto. It's explicit discouragement to even
16 go to the voting booth.

17 MS. HUERTA: You say that the laws right now
18 are stalled in the Senate, the Washington Voting Rights
19 Act, that it is stalled right now. Is it going to
20 pass?

21 MR. PEREZ: So in this past sessions -- the
22 session ended about a month and a half ago or so and it
23 stalled in the State Senate. It passed the House in
24 fact it passed the house pretty summarily. The House
25 was very supportive of the bill and it passed last year

1 in the House, as well. It didn't come up for a vote in
2 the Senate. It made it to the final rules committee
3 and it lost on a party line vote.

4 So should the Senate flip at some point, or
5 should certain officials change their mind, we were
6 about one vote short in the State Senate of passing.
7 The governor has said he will sign this bill.

8 MS. HUERTA: And so it's sounds like a dumb
9 question, so the representatives from eastern
10 Washington, are they supporting the bill or not
11 supporting it?

12 MR. PEREZ: The representatives of eastern
13 Washington have not supported the bill, even though
14 their constituents would benefit from it.

15 MS. HUERTA: Absolutely.

16 MR. PEREZ: And I think this is a short-term
17 mindset of theirs because the demographics, just to
18 give one statistic, which is mind boggling, the
19 demographics in Washington is changing drastically. In
20 2009, in these ten counties that we examined, the
21 median age of the Hispanic population, which was 33% of
22 the all ten counties, the median age was 17. You're
23 talking about an entirely new generation of voters
24 coming to the voting booth.

25 And if you don't bring them in now, you're

1 going to alienate them for two generations. And so
2 this is, you know, obstructing the Washington Voting
3 Rights Act is a short-term crutch to stay in office,
4 but it's going to lead to a long-term limp.

5 MS. HUERTA: I guess also which party was
6 it?

7 MR. PEREZ: This might surprise you. It's
8 been the republican party opposing the Washington
9 Voting Rights Act. And I say this surprises you
10 because the republican party was so critical in passing
11 and enacting the federal Voting Rights Act in 1965, but
12 now they've been somewhat obstructive in the State
13 Senate in refusing to pass a very sensible reform in
14 the State Senate.

15 But we are very optimistic that we can
16 change their mind because it's the right thing to do.

17 MS. HUERTA: Thank you.

18 MR. BURKHOLDER: Thank you very.

19 Ms. Graciela Villanueva.

20 MS. VILLANUEVA: Good afternoon. It's an
21 honor to be here.

22 I'm here today to tell you about my recent
23 experience with the political process in Yakima. I
24 think you will find my experience demonstrates the
25 issues Mr. Barreto and Perez are talking about today.

1 Hi, my name is Graciela Villanueva. I was born and
2 raised in Yakima Valley in Central Washington. My
3 parents were migrant farm workers until they settled in
4 the Yakima Valley. I went through the public school
5 system beginning with Head Start and graduating from
6 Toppenish High School. I have a doctorate degree from
7 Heritage University in Toppenish, WA and master's
8 degree in business administration from Washington State
9 University. I currently work as an administrator for a
10 large community health center.

11 My parents taught us to work with our
12 communities to make things better. My father set an
13 example for us as a lifelong union organizer with
14 farmworkers. I've always tried to do my part to help
15 my community, working with local groups to make things
16 better.

17 I deeply care about the future of our Valley
18 and especially of our children, and so I was honored
19 when three years ago, I was appointed to the Board of
20 Directors of the Yakima School District. During my
21 time on the School Board, the other School Board
22 members and I worked hard together to make our
23 community strong and to build a better future for our
24 children. We built three new schools and implemented
25 innovative teaching practices that dramatically

1 increased test scores for all students and especially
2 for one of our schools in a neighborhood with the
3 highest poverty rates in Yakima. The school went from
4 only 30% of kids reading at grade level to over 60% of
5 kids reading at grade level in only three years. It
6 was a wonderful experience. I was proud to be part of
7 an organization where everyone had the same goal.
8 After serving for two years as an appointed member of
9 the Yakima School Board, this last November I faced a
10 contested election for my seat on the Yakima School
11 Board. I took the election very seriously, and ran a
12 full campaign. I raised money, knocked on doors,
13 distributed signs across the City of Yakima, and
14 received endorsements from each of my fellow school
15 board members, a local state legislator, and many other
16 individuals and organizations.

17 A few months before the election, my
18 opponent announced that she was dropping out of the
19 race. However, because my opponent's announcement
20 happened after the deadline for removing a name from
21 the ballot, her name remained on the ballot. Local
22 media reported on this several times. Although my
23 opponent publicly dropped out of the race and did not
24 campaign, she won the election by nearly 2/3 of the
25 votes, and defeated me with 61% of the vote.

1 There have been many attempts to answer how
2 she won. There may be multiple reasons but it's clear
3 that one of those reasons was my Spanish surname.
4 Voters admitted this in online comments to the local
5 newspaper's online edition. "My decision to vote for
6 my opponent was racially motivated."

7 Another commenter said he voted for my
8 opponent after looking into each candidate's resume
9 but my opponent had no information published.
10 Several commenters talked about playing the race
11 card. My opponent is not a known personality in
12 Yakima. She had no public profile, she had very
13 limited community involvement, if any. Nobody knew
14 who my opponent was.

15 It's disgusting, appalling, infuriating, that
16 a committed and passionate candidate would lose
17 because their last name isn't the right last name.

18 MR. BURKHOLDER: Thank you. Any comments or
19 questions?

20 MR. JOHNSON: Do you have any
21 recommendations as to how you resolve that problem?

22 MS. VILLANUEVA: I think one of the things
23 that I echo what Mr. Perez says, I think the Washington
24 state Voting Rights Act would make a huge difference.
25 An at-large district poses its problems for candidates

1 with Hispanic surnames and I think that would be one
2 solution.

3 MR. FOSTER: Is your experience parallel
4 experiences in the city of Yakima?

5 MS. VILLANUEVA: Yes.

6 MR. FOSTER: City government.

7 MS. VILLANUEVA: Yes, there are those -- a
8 couple examples of Latino candidates who have not won
9 because of that.

10 MR. BURKHOLDER: I guess my question is, the
11 solution that you're suggesting is the type of
12 enforcement that would come in sort of after the fact,
13 if it appeared there was a discriminatory or some sort
14 of misuse of the electoral system so it's kind of after
15 the fact versus trying to change the structure from the
16 at-large to district elections which is not a voting
17 issue -- well, I guess it is a voting issue, but it's a
18 structural issue.

19 And I don't understand -- I don't understand
20 even Oregon law well even to understand where the
21 charters come from in terms of how you set up
22 governments because each government is slightly
23 different and some have at-home rules, some other have
24 districts and other have at-large.

25 I guess the question is, is the strategic

1 choice of making -- creating a legal framework to come
2 and address an issue like this seems more difficult
3 than, saying, let's just go to district elections in
4 every community. But I don't know. Politics -- I'm
5 just trying to understand how this -- what you're
6 thinking is in terms of the political strategy to
7 approach it in a certain way. But --

8 MS. HUERTA: Well, I would ask the question
9 about that because we've had the same issue across the
10 United States of America and in some instances and I
11 think previous testimony said that the reason they have
12 at-large elections in Washington state is because it's
13 a state law.

14 Now, in California, there have been lawsuits
15 that have been filed to make sure that we have district
16 elections. And if we did not have district elections,
17 I'm sure that a lot of the Latino representatives that
18 we have, the different level school boards, councils,
19 et cetera, including we wouldn't have that kind of
20 representation and so I guess my question is, is there
21 some way that's going to be fixed with laws or just
22 have to wait until the law is changed that allows for
23 district elections?

24 I mean, we've had many successful
25 opportunities in California where we filed lawsuits and

1 made different municipalities and school districts, et
2 cetera, change the law.

3 MR. BURKHOLDER: What I'm going to do is say
4 that's a good rhetorical question that talks about
5 strategy around the issue, but again, it's good to get
6 a report from you all about what the challenges are and
7 how that systematic challenge or barriers are there
8 because of the structural issues in how we set up our
9 governments and how they do appear causing
10 disenfranchisement of minority voters and discouraging
11 people from participating. Otherwise it's a political
12 strategy session.

13 And what we're trying to do is trying to
14 gather testimony from you about what the issues are so
15 we can pass this onto the national effort. And thank
16 you very much for that.

17 We have one more person on the panel. Abha
18 Khanna.

19 MS. KHANNA: My name is Abha Khanna. I'm an
20 attorney at Perkins Coie. Along with ACLU of
21 Washington, we are representing plaintiffs in a Section
22 2 lawsuit against the city of Yakima that's currently
23 scheduled for trial in September of this year. Let me
24 start talking about what the city of Yakima government
25 structure is like. The city of Yakima is governed by

1 seven member city council and every single position,
2 each position on that city council is elected at-large,
3 four of them are nominated -- four of those candidates
4 are nominated in top two primaries in residential
5 districts, but ultimately elected at-large in general
6 election and the three other are purely on an at-large
7 basis. So for each civil position, the entire city
8 votes at-large for that position.

9 In 2012, Perkins Coie, as cooperating
10 counsel with the ACLU of Washington, filed suit on
11 behalf of two Latino voters against their city alleging
12 that the city council at-large election system violates
13 Section 2 of the Voting Rights Act because it
14 impermissibly dilutes the Latino vote.

15 Essentially, our claim is that the city's
16 election system does not allow Latino residents to
17 participate equally in the political process. Any
18 Section 2 lawsuit has two primary components. The
19 first component is an analysis of what's called the
20 Gingles factor. I'll go through those in a second.
21 But that's basically the expert component, the expert
22 component about what our -- how does race play out in
23 elections in the city.

24 And the second component is totality of the
25 circumstances, which is more of a fact-based inquiry

1 into the history and the reality of race relations in
2 the jurisdiction.

3 Now, in the Gingles factor, as I'm sure
4 you're aware, there are three Gingles preconditions
5 that we have satisfy to establish our claim. The first
6 conditions asks: Are Latino's geographically compact
7 and sufficiently numerous in order to comprise a
8 majority of eligible voters in a single member
9 district? Our expert evidence demonstrates that the
10 answer is unequivocally yes, over 41% of Yakima's total
11 population is Latino and over 22% of the citizen voting
12 age population in Yakima is Latino. Over 70% of the
13 Latinos live on the east side of the Yakima in an area
14 east of 16th Avenue, which is the dividing line that
15 encompasses less than ten square miles.

16 And our expert -- demographic expert has
17 drawn several demonstrations districts that include not
18 only a majority of Latino citizen voting age population
19 ranging from just over 50% to over 57% Latino citizens
20 voting age population, but also included a majority of
21 Latino registered voters.

22 The second and third Gingles preconditions
23 look at, essentially, racially polarized voting in the
24 jurisdiction. They ask are Latinos politically
25 cohesive and does the white majority vote sufficiently

1 vote in a bloc to usually defeat the Latino candidate
2 of choice? And our expert testimony shows yes. Our
3 expert examined several election contests between
4 Latino and Anglos over the course of the last few years
5 and in almost all of them Latinos vote for the Latino
6 candidate.

7 When it comes to the general election in
8 which there is a single Latino candidate is pitted
9 against a single white candidate, over 90% of Latinos
10 were voting for the Latino candidate. At the same
11 time, majority of white voters in every single election
12 analyzed voted against the Latino candidate with
13 crossover voting averaging in the 30% across multiple
14 elections.

15 Mr. Perez mentioned the González election.
16 And as an example, we analyzed -- our experts analyzed
17 almost identical elections, both endogenous and
18 exogenous in the city of Yakima and one was Justice
19 González's election. Over 63% of Latinos in Yakima
20 voted for Justice González in the primary election.
21 Just 36% of whites voted for him. While Justice
22 González did win statewide, had the election been held
23 in Yakima in the city itself, he would have lost having
24 received only 39% of the vote.

25 As a result of this racially polarized

1 voting, no Latino candidate has ever won a seat on the
2 city council. Not a single Latino in any of the
3 elections that we analyzed won their election. The
4 sole Latino appointed to serve on the city council
5 whose name is Sonia Rodriguez lost her seat in the next
6 at-large election, even with the advantage of
7 incumbency.

8 The second component is the totality of the
9 circumstances involved a whole number of questions, a
10 number of factors called the Senate factors that look
11 at things like racial appeals, local campaigns to the
12 extent which the minority group bears the effect of
13 discrimination in other areas like education, health
14 care, that might affect political participation, the
15 extent of any public discrimination in the area of
16 voting and our discovery in the case is ongoing, and I
17 can provide you just a few high level points.

18 In 2004, Yakima County, which administers
19 elections in the city of Yakima, signed a consent
20 decree alleging violation of Section 203 of the Voting
21 Rights Act for failure to provide election-related
22 materials in Spanish.

23 The poverty rate for Latinos in the city of
24 Yakima is three times higher than it is for whites in
25 Yakima. The median income for whites is three times

1 higher -- I'm sorry -- the mean income is three times
2 higher for Whites than it is for Latinos in Yakima.
3 While I think 13% of Whites in Yakima do not have
4 health insurance, that number is 5% for Latinos in the
5 city of Yakima. And as I mentioned before, not a
6 single Latino has ever been elected to city council.

7 There's a host of data and host of witnesses
8 who we plan on putting forward at trial to talk about
9 their experiences with private discrimination, public
10 discriminations and discrimination in various elections
11 and Ms. Villanueva has agreed to participate as a
12 witness in our case, and you have heard her testimony
13 and we certainly believe she will be a valuable
14 addition to our case, as well.

15 Discovery in our case is ongoing and set to
16 close later in June. And I mentioned the trial is set
17 for September in the eastern district of Washington.
18 It's going to take place in Yakima itself.

19 MR. BURKHOLDER: Any questions from the
20 commission?

21 MR. FOSTER: Didn't Seattle just go to a
22 district system?

23 MS. KHANNA: It did.

24 MR. FOSTER: Was that done by initiative or
25 did the city council authorize it?

1 MS. KHANNA: That was a voter initiative
2 that was voted on.

3 MR. FOSTER: Is that available in Yakima?

4 MS. KHANNA: Actually, the 2011 proposition
5 was made on the ballot, there was a voter initiative to
6 do just what we are asking for: To change from an
7 at-large system to a districting system. And that, in
8 fact, was one of the elections that our experts
9 analyzed and have found dramatic racial polarization,
10 the vast majority of the Latino population voting in
11 favor of the proposition and the vast majority of
12 whites voting against it and the proposition was
13 defeated.

14 MR. BURKHOLDER: Which shouldn't be
15 surprising, I guess. The question I have, because of
16 this -- we're trying to gather information for looking
17 at voting rights and challenges to that, is the relief
18 offered through a Section 2 -- I'm talking outside my
19 expertise for sure -- Section 2 lawsuit, is that
20 sufficient -- is the law written in such a way that you
21 can actually be successful by doing this challenge and
22 making the kind of changes that you would like to see
23 happen in the city of Yakima or throughout the country,
24 actually, so that these kind of things do not continue?

25 MS. KHANNA: Well, certainly we believe that

1 that if we win our Section 2 lawsuit that the
2 appropriate remedy would be to impose a district-based
3 system and we think that Section 2 authorizes us to get
4 that remedy and that we, you know, if successful we
5 should get the result that we want within the city of
6 Yakima.

7 Whether -- if your question is this
8 sufficient with respect to the state Voting Rights Act
9 or anything else, I'm not sure I can speak to that.
10 Certainly within our case, we think our suit should win
11 and get the remedy that we're asking for.

12 MR. BURKHOLDER: I don't know how strong the
13 law is.

14 MR. BARRETO: The thing I would add, as Mrs.
15 Khanna can attest, there's a lot of resources and
16 effort that need to be brought together for a
17 successful Section 2 lawsuit today, it's very
18 difficult. Many of these cities that Dave and I are
19 talking about are very small and they're not a lot of
20 large advocacy groups there or folks with resources to
21 bring those forward.

22 And so there are a number, I think, of ways
23 to improve Section 2 litigation through amendment to
24 the Voting Rights Act, as well as what I noted earlier,
25 you know, expanding the scope of Section 4B would

1 certainly bring a lot of relief, if there was federal
2 monitoring in some of these counties: Central, eastern
3 Washington, the issues there are no different than some
4 of the counties in the south in the 1960s.

5 But none of the counties in Washington state
6 were ever covered under Section 4B and so it never had
7 the protection of Section 5 of the Voting Rights Act.
8 So in addition to the state level changes, I think
9 there's plenty of opportunities.

10 I believe Ms. Khanna can correct me, this is
11 the first Section 2 lawsuit ever in Washington state
12 despite these challenges being present for decades.

13 MR. BURKHOLDER: Great. That's the kind of
14 feedback I'm trying to get to the commission here to
15 make sure that that kind of very specific suggestions
16 get heard and passed along. So thank you very much.

17 So the next panel, walk on down, Kim Able
18 with the League of Women Voters of Washington, Tami
19 Davis with the office of Washington Secretary of State,
20 Emillio Garza with the Washington Bus Project, and
21 Julie Wise with the King County Board of Elections, if
22 you would join us up front.

23 Ms. Able, if you're here and ready to start,
24 that would be great.

25 MS. ABLE: I appreciate that. Good

1 afternoon. I want to thank you. I'm Kim Able, the
2 president of the state of Washington League of Women
3 Voters.

4 I just want to -- a couple questions that
5 you've asked today, things like, has there been
6 legislation on that, what -- are you working with any
7 groups, I want you to know that by having the hearing
8 here, there will be those kinds of things happening
9 more because, obviously, issues are being raised, so I
10 thank you very deeply for having this hearing because
11 it will connect us and allow us to do that I typed of
12 thing. It's all Alan's fault. Thank you, Alan.

13 So I want to start, the League as our friend
14 in Oregon said, recognize access to the ballot
15 fundamental right, we believe voting procedures should
16 serve the voter with maximum of convenience, simplicity
17 and efficiency while insuring that the requirements of
18 secrecy, accuracy and impartiality are maintained.

19 And we get to that position by long study
20 and long consensus in our organization. And we're
21 proud that we have been working as a League since 1920
22 when woman got the right to vote, and even more proud
23 in Washington state that we have ten extra years of
24 women having the right to vote. So because of that
25 we've been leaders in implementation of full

1 implementation of voting rights. In Washington state,
2 we have an excellent bipartisan history and culture
3 voter access, not voter suppression, except for the
4 issue you just heard about which we've been happy to be
5 part of that coalition working on that issue in our
6 state legislature which my remarks won't speak to since
7 we have already heard that issue.

8 And I do want to talk about our
9 modernization efforts and you've heard a little bit
10 about that with earlier speakers. They're recognized
11 as a model by the rest of the country.

12 And that leads me into those successes.
13 Online registration is one of the key examples we have
14 here in Washington. It's convenient for voters. It
15 saves government expense of reentering data. It avoids
16 errors in handwritten data. And this convenience
17 extends to change of address, especially important to
18 younger voters and transient voters and some of the
19 most underrepresented voters that are out in our
20 communities.

21 Another success story is our vote by mail,
22 although there are challenges, as you heard earlier,
23 but it does allow accessibility for folks because
24 everybody gets a ballot that is registered. It
25 allows -- you don't have to find a way to get to the

1 polling place because your ballot comes to you, which
2 means you don't need to find a bus line or the parking
3 or child care or scheduling around work.

4 In essence, it acts as early voting where
5 you have seen that being challenged in other states
6 across the nation. We get those ballots three weeks
7 before to election day and we get them right up to
8 election day, which I hope never changes because it
9 make a big difference to folks because ads go right up
10 to election day and your vote may be changed if, as you
11 listen to those things and talk to your neighbors,
12 right up to election day.

13 So it also allows us to be better informed,
14 using our state-wide voter guide, which we also happen
15 to be very proud of in the general election. In most
16 cases, everyone gets one in their door if they're a
17 registered voter. And also the League is very proud in
18 Washington state to be part of a state national --
19 nationwide League effort called Vote 411.

20 So anyone in Washington state that has a
21 candidate that we have tune the role of making sure
22 they're all offered the opportunity to ask extra
23 questions through Vote 411, answering an earlier
24 question you had.

25 So the other piece that's kind of

1 interesting and came to us today while sitting in the
2 audience is that one of the other things that having
3 ballots come to your house does it that doesn't it mean
4 that someone's going to save up their best ammunition
5 to try to get the voters who are going to go to the
6 polls to the very last day. So we get, you know, all
7 those that mudslinging the whole time the campaign is
8 going on rather than just saving up to the last minute,
9 we all get a chance to respond to it.

10 In many cases, you see about a third, a
11 third, a third of the voters over those three weeks
12 ballots come in. Different counties are different, but
13 in my county it tends to be that way.

14 But with that, there are still challenges
15 that leagues recognize. And I take it these challenges
16 run in two areas. One is getting everyone eligible to
17 vote, registered to vote, that's like the first thing,
18 because if you're not registered you don't get the
19 ballot in your mailbox.

20 And the other one is once you are
21 registered, how can you easily cast your ballot. And
22 we have heard a few things about that. In terms of
23 folks to get registered, easily registered, I'd say
24 that the registration deadline is the biggest hurdle
25 there.

1 In Washington, we're getting better but we
2 still have a ways to go because there's lots of other
3 ways to do it across the nation. There are
4 registration by election day where you can register
5 right up to election day. There are also permanent
6 portable registration, is another innovation; and eight
7 other states in the nation have that and we do not yet
8 have that in Washington state. This allows folks to
9 make sure if they're already registered in a state,
10 they can update their address by election day and vote.
11 They don't have to try to remember if they're
12 registered a few -- up to two weeks -- I think it's 29
13 days at this point where you have to remember if you
14 just happen to change your address within less than
15 that timeframe.

16 The other one is pre-registration for 16 and
17 17-year-olds. There's a few states that have tried
18 this, not just 16 -- more in 17-year-olds, but in
19 Washington we think that we've been working on that
20 bill. One thing, if you start voting earlier, you
21 become a lifelong voter. And in Washington state, we
22 have worked hard to get a civics requirement adopted in
23 the state. And so you marry those things together
24 while our kids in high school, they get their civics
25 education, they get preregistered so the day they reach

1 18, you start getting that lifelong need to vote.

2 And the other thing that we are focusing on
3 in our state with the Affordable Care Act, there is
4 still work to do to bring folks into compliance with
5 Section 7 of the National Voting Rights Act. Tools are
6 available to get folks to register online, but for
7 those folks who are not registering for the Affordable
8 Care Act that way, either they're doing it in person or
9 through an agency or on the phone, there are still
10 needs to fix that in Washington state and we're working
11 hard to try to make that happen.

12 And finally -- I see the stop sign, but I
13 would like to just to end with, in supporting
14 registration for all eligible voters and getting their
15 ballots returned, we recognize that trust in government
16 is the key that makes the difference to bringing all
17 voices into the process. And the flood of money in
18 politics, combined with the lack of disclosure,
19 presents not only a direct threat to democracy, but
20 also a threat to citizens confident in their own power
21 and relevance.

22 And you heard a little bit about that in the
23 last panel. And we think that it's not just a flood of
24 money, people have to believe they make a difference
25 when they vote. And if they're -- in our state, we

1 played a major role in our public disclosure commission
2 and we feel it's important that that is strengthened
3 and that campaign finance -- the flood of money somehow
4 is combatted because that is the only way people will
5 feel they make a difference. So thank you.

6 MR. BURKHOLDER: Thank you.

7 MS. ABLE: That eight minutes go quick.

8 MR. FOSTER: Is there voter registration in
9 high schools?

10 MS. ABLE: For kids that turn 18 or going to
11 be 18 by the next election, they may register prior to
12 that, but it's not required. Each school district does
13 it differently. In my county, we have five school
14 districts and we try to get in each one and each one
15 has different rules, whether they can do that and
16 whether they say we do it when they reach their 18th
17 birthday, it needs work on that.

18 MS. HUERTA: I have a question on your
19 civics lessons. Would that be part of the high school
20 level?

21 MS. ABLE: It's required as a graduation
22 credit now, a portion of your credits -- your 24
23 credits for graduation is required to be civics
24 education.

25 MS. HUERTA: Throughout the state of

1 Washington?

2 MS. ABLE: It will be adopted by the
3 graduating class of 2016, is the first class that has
4 to meet that standard.

5 MS. HUERTA: I'm shocked when you think
6 about it.

7 MS. ABLE: I'm sure some schools they've cut
8 it out, but this is now required for those that have
9 cut it out for some reason.

10 MR. BURKHOLDER: I want to thank you for
11 bringing up the youth issue. Have you ever considered
12 lowering the voting age?

13 MS. ABLE: I've seen that recently. I
14 should do research. I've seen that. It's something
15 that other states are looking at and I think some
16 cities across the nation have taken that step.

17 MR. BURKHOLDER: The civics is fantastic
18 because I know having children engaged -- youth engaged
19 more closely.

20 MS. ABLE: The one thing I didn't say, in
21 Washington state, our motor voter law has been very
22 successful, about 40% of all voters are registered
23 through the DMV as they get their license or change
24 their address. So you think about all those 16 and
25 17-year-olds who go and are offered that opportunity,

1 and they don't go back to get their driver's license
2 until they're 21 because in our state we do this cute
3 flippy thing that you get your license vertically until
4 you're 21 and at 21 they turn it horizontally. It's to
5 help places make sure you're not faking your I.D. They
6 don't have to come back until they're 21. There's no
7 reason at 18 or something to come -- it's a really
8 important thing for the League to think -- we're
9 thinking strongly about that.

10 MR. BURKHOLDER: Thank you. Tami Davis with
11 the Washington Secretary of State.

12 MS. DAVIS: My name is Tami Davis. I work
13 in the Elections Division of the Washington Secretary
14 of State and I want to thank you first and foremost for
15 including us in this. This has been a great learning
16 opportunity for sure, for all of us I think.

17 And just as an aside, our office has a
18 pretty extensive outreach program, including a free
19 curriculum K through 12 and we do reach out to
20 16-year-olds or people who turn 18 that did get a
21 driver's license. So anyone interested in learning
22 more about that can contact me. I do have business
23 cards.

24 Mr. Wang, in an earlier testimony, had given
25 some of the information that I am going to provide, so

1 I'll try not to rehash a lot of that. He mentioned
2 section 203 of the federal Voting Rights Act that
3 requires right now four of our counties to provide
4 information in the covered languages. Anything that we
5 would provide in English to voters would need to be
6 translated into the languages, for example, in King
7 County, they would have to translate that information
8 into Vietnamese, Chinese, as he mentioned, and then in
9 the three county, Adams, Franklin and Yakima, they're
10 required to translate into Spanish. And that, again,
11 is calculated by a formula by the census Bureau and we
12 are notified by the Department of Justice.

13 Some of those -- in that notification, some
14 of the -- some of what is asked of us is pretty vague.
15 And so before the last census information was released,
16 we did decide in our office to hire a minority language
17 coordinator, someone who could ahead of time work to
18 try to provide what we expected to be new counties
19 coming on board, with lessons learned from what those
20 counties had experienced previously, as well as
21 coordinate our outreach and translations to those
22 communities.

23 As I mentioned, those counties are required
24 by -- the state is also required to do that in those
25 counties. So we work very closely with those counties.

1 We let them take the lead in how they want that
2 implemented, for example -- the example in King County,
3 it's by subscription. And in Adams, Franklin and
4 Yakima, they provide bilingual in Spanish and English
5 together.

6 To insure accuracy of translation, we have a
7 community review process and then we also work with
8 those counties to insure a glossary so there's
9 consistent information in those communities, that
10 information is portrayed consistently.

11 And in the state, obviously, our largest
12 piece of voter information that goes out to every
13 single household in the state is our state voters
14 pamphlet for the general election. Now, with the
15 Chinese and Vietnamese, as I mentioned, those are
16 supplied directly to King County subscription lists.
17 And we also do some outreach in addition to King
18 County's outreach to try to buffer those lists. And in
19 the bilingual editions are mailed, as I mentioned, to
20 Adams, Franklin and Yakima voters.

21 In addition to that, because so many
22 counties are on the cusp of -- we're very, very close
23 to having the Spanish language requirement, we also
24 produce a printed statewide Spanish edition. And any
25 county, any person is able to call our office and have

1 us mail that directly to whoever is requesting that.

2 And actually, we've got quite a subscription
3 list going for that. And as I mentioned, the counties,
4 we've made aware of the availability of that.

5 Mr. Wang also mentioned our website. Our
6 voter page is -- everything on our voter page is
7 translated. There's a Chinese edition to that page,
8 Vietnamese edition and also a Spanish version of that
9 page, as well. And the same goes for our online voter
10 registration and personalized voter information page,
11 My Vote, that's also translated into those three
12 languages, in addition to English.

13 And of course, as he also mentioned, our
14 voter registration forms are translated into more
15 languages to accommodate the agencies that have been
16 identified as voter registration agencies above and
17 beyond our licensing department, they were identified
18 by the governor to be voter registration agencies.

19 And so what good are these translations
20 without outreach, without people actually knowing that
21 it's available. So at the state level, we do try to
22 focus our efforts on state organizations. We provide
23 voter registration drive training to state and local
24 organizations hoping that when they go out and do voter
25 registration drives, they're more educated about what

1 it is, what the laws are, and what it is the state
2 offers.

3 We participate in a citizenship celebration
4 in collaboration with Pierce County. We attend
5 naturalization ceremonies. And we do -- I'm going to
6 focus on our Hispanic relations, we do an ongoing radio
7 outreach with the commissioner of Hispanic Affairs. We
8 present at Latino Legislative Day. We provide
9 presentations on Univision, the Spanish TV station.

10 And of course, we're always looking for ways
11 to improve what we do. We're open to input from any
12 community. And we've done focused groups in
13 collaboration with the Latino Community Fund to
14 identify why some registered Latino vote while others
15 don't and we hope to use that as a pilot project to
16 move forward and maybe do the same with our other
17 covered language communities.

18 And recently we did an outreach mailing to
19 potentially eligible but unregistered voters. This
20 wasn't specific to minority language voters, but we did
21 get some lessons learned in there. And even though on
22 the voter registration form, we're a very populous
23 state, we don't ask questions about what is -- what,
24 you know, are you Hispanic, are you Black, Caucasian,
25 whatever, we can run the Spanish surname to try to

1 identify some information.

2 And what we did glean from that mailing was
3 that as a result of the bilingual postcard version of
4 this mailing to those three counties, Hispanic
5 people -- people with Hispanic surnames were five times
6 more likely to even register to vote. So that is
7 definitely information that we'll move forward and try
8 to glean even more information as we move forward on
9 our minority language programs.

10 MR. BURKHOLDER: Thank you very much.

11 Any questions or comments?

12 MR. FOSTER: I have two questions. You said
13 that many of the counties are on the cusp. And we take
14 the census every ten years. Do you get up-to-date or
15 do you have to use the census that we had in 2010 or is
16 there an up-to-date population because things are
17 changing fast?

18 MS. DAVIS: Well, we had, up until recently
19 had a minority language coordinator who did find
20 additional resources to try to find more up-to-date
21 information. Our office of financial management has
22 some good information on their website. We also go to
23 the Office of Superintendent of Public Instructions'
24 website to get up-to-date information from them about
25 the nationality of school children within certain

1 jurisdictions, that's useful.

2 But moving forward, we aren't going to have
3 to wait every ten years. The American Community Survey
4 is going to be released more frequently than that, so
5 we expect that our minority language requirements will
6 actually be updated a lot more frequently as a result.

7 MR. FOSTER: Second question, I don't know
8 if you were here earlier, but on the first panel I
9 think we talked quite a bit about people who had been
10 incarcerated and lost their voting rights.

11 Is there an effort with the Secretary of
12 State's office or county auditors to get that recent
13 legislation that passed, get that information out to
14 people who might be in that situation?

15 MS. DAVIS: You know, I'm not aware of an
16 effort on behalf of the auditors to do that. I do know
17 that we've definitely updated information on our
18 website. We get information out to the correctional
19 facilities. We get information out to the
20 administrative office of the courts. So there are
21 avenues that we try to educate, you know, the
22 overarching institutions on information to be able to
23 provide to people that are being released from jail.

24 And hopefully, eventually, that will trickle
25 down, but we do get a lot of calls to our hot lines

1 from people who we give them the proper answers. But
2 in this state, the fact remains, if you're released and
3 you're not on community custody, you do have to
4 actually reregister to vote. So, you know, we try to
5 walk them through the process very clearly and outline
6 it for them.

7 MS. HUERTA: On the same issue, would there
8 be a possibility of teaming up with the Department of
9 Corrections so when people are released they can be
10 given that information when they leave jail?

11 MS. DAVIS: Already done.

12 MS. HUERTA: That happens?

13 MS. DAVIS: Yes.

14 MR. BURKHOLDER: Thank you for your
15 testimony. Emillio Garza with the Washington Bus
16 Project, I assume.

17 MR. GARZA: The Washington Bus Federation.

18 So to the Members of the National Commission
19 on Voting Rights, my name is Emilio and I am the
20 Engagement Coordinator with the Washington Bus. I am
21 appearing before you on behalf of the Pacific Northwest
22 affiliates of the Bus Federation: Forward Montana, the
23 Oregon Bus Project, and the Washington Bus. We are a
24 family of organizations run of, by, and for young
25 people. Our primary purpose is to engage young people

1 in democracy, as activists, as leaders, and as voters.
2 It is because of our work shepherding young people's
3 early experiences as voters that we appear before you
4 today. America has a tremendous gift in the Millennial
5 Generation, with is not only the largest and most
6 diverse in American history, but a recent Pew study
7 also found us the most optimistic American generation,
8 while a recent Universum survey showed young Americans
9 to be unusually predisposed to public service. We are
10 95 million strong, and eager to make our mark on the
11 world's greatest democracy.

12 However, when we eagerly dash to the ballot
13 box, we find a national voting system that seems more
14 designed for white landowning male farmers of the 18th
15 century than for our diverse, vibrant, wired generation
16 that's rapidly approaching one third of the eligible
17 voting populace.

18 Like many other traditionally
19 under-represented communities, we encounter barriers to
20 participation at every stage of the process, from
21 getting registered, to staying registered, to casting
22 our ballots in a timely, convenient, and secure manner.
23 As voter registration is generally the largest barrier
24 to youth participation, that is where we will focus our
25 testimony. It is no secret that young voters

1 consistently turn out at lower rates than their older
2 counterparts. However, a deeper dive into the evidence
3 suggests that this is far more a registration than a
4 turnout problem. Based on census data, in 2012,
5 eligible American voters age 18-to-24 turned out at an
6 approximately 20% lower rate than eligible citizens age
7 25-and-up. Registered young voters, however, only
8 lagged in turnout by 10 percentage points.

9 In the northwest, the difference in
10 registered voter turnout between young voters and older
11 voters is even narrower. 86% of registered Oregon
12 voters age 18-to-24 voted in 2012, versus 92% of voters
13 25-and-older. This difference is slight enough to
14 largely erase the myth that young people simply do not
15 vote.

16 Now, this begs the question as to why young
17 voters are so under-registered as a demographic.
18 Though we're not social scientists, despite the
19 appearances that might be suggested by our confident
20 and nerdy presentation, we would hazard several
21 explanations.

22 First, young people are a highly mobile
23 population. The census consistently finds young
24 Americans to be the most likely populations to change
25 homes, with Americans age 18-to-24 being the mostly

1 likely to move, and their age 25-to-29 neighbors the
2 second most likely by several percentage points. Even
3 with 2012-to-2013 being the lowest youth mobility year
4 in half a century, nearly one-fourth of young people
5 move every year. Spread that movement out over the
6 years between Congressional or Presidential elections,
7 and you'll find a tremendous proportion, and likely a
8 majority, of young voters no longer live at their
9 registered addresses. Because most states consider
10 voter registrations lapsed after a change of address,
11 this puts us at a significant disadvantage.

12 Second, civic education has largely been
13 gutted at our public schools. Many young citizens are
14 never taught how, where, or when to register to vote.
15 Some of us are privileged enough to be raised in
16 households that teach us those skills, but many of us
17 are not. Since these processes are generally not
18 intuitive, countless Millennials are left not knowing
19 how to register, or even that they have to. We have
20 heard some place the blame on us for this fact, but
21 that strikes us as tantamount to think you should have
22 known my name before you met me this is simply not
23 universal information, and to think otherwise is silly.
24 Third, we would like to posit a reason that catches
25 some people by surprise: Motor-Voter registration at

1 the DMV does not reach a gigantic share of young
2 voters. Due to the success of the Motor Voter
3 provisions of the National Voter Registration Act, 40%
4 of Americans register to vote at the DMV. However, the
5 18-to-24-year-old demographic is largely missing the
6 boat. 54% of young people get their drivers licenses
7 before they turn 18. Drivers licenses generally do not
8 need to be renewed for five to eight years, which means
9 huge proportions of young people are not visiting the
10 DMV as eligible voters until they turn 24. We do not
11 think that gap and the low registration rates of
12 18-to-24-year-olds are mere coincidence.

13 Through large-scale, youth-focused voter
14 registration drives, our organizations do our best to
15 counteract these structural impediments. However, we
16 are largely in the interest of putting ourselves out of
17 the voter registration business. Sound public policy
18 is a dramatically better solution than even the best
19 voter registration drive.

20 A few humble suggestions to create a voter
21 registration system that will address some of the above
22 impediments:

23 Voter pre-registration at 16-years-old.
24 Many states use this policy well, and it fully
25 leverages the power of Motor Voter.

1 Strictly enforce the Section 7 public
2 assistance agency requirements of the National Voter
3 Registration Act, to reach and register the many
4 low-and-middle income youth who use state services.

5 Expand the National Voter Registration Act
6 to apply to state universities, community colleges, and
7 Departments of Revenue. This expansion would reach a
8 massive number of young voters for first-time
9 registration and perhaps more importantly, because we
10 file taxes once a year, and register for classes
11 multiple times a year, it will keep our voter
12 registration addresses far more up-to-date.

13 Strong online voter registration systems,
14 particularly those that integrate with the online tools
15 of non-governmental organizations, have proven
16 extraordinarily effective in reaching young voters as
17 it meets us on a platform that's extremely familiar to
18 us.

19 Make voter registration fully portable, and
20 no-longer require re-registration upon changing
21 addresses. This is largely accomplishable through a
22 combination of better enforcement of the NVRA and
23 purchasing National Change of Address data from the
24 Postal Service.

25 Eliminate, or at least reduce voter

1 registration deadlines. Much of the voter information
2 problem facing young voters reduces as Election Day
3 approaches particularly in the last days of elections.
4 Eliminating these deadlines effectively removes the
5 need to pre-register, and even contracting the
6 deadlines offers young voters the time and opportunity
7 to learn how to register and to do so.

8 Ideally, we should fully eliminate the
9 barrier of voter registration. American citizens
10 already regularly provide state governments with all
11 the information needed to register to vote their name,
12 their age, their address, and their citizenship
13 information many state agencies from Departments of
14 Revenue, to higher education, to public assistance
15 agencies, to the DMV already require this information.
16 Simply using this information to register all eligible
17 citizens to vote while providing them with an
18 opportunity to opt out would remove the negative
19 externalities of our antiquated voter registration
20 system, and streamline state government to boot.

21 These are simple, inexpensive, and
22 common-sense reforms that would counteract what is in
23 many ways a backward system.

24 MR. BURKHOLDER: I think we're done here,
25 aren't we? That's a joke. This is very nice,

1 comprehensive testimony.

2 Any questions or comments from the
3 committee? Great.

4 MS. HUERTA: I think it is a great
5 foundation. We just have to make it happen. I want to
6 go back a little because we're talking about the
7 outreach of the curriculum that they do to young
8 voters.

9 Could the commission be provided a copy of
10 curriculum for the state?

11 MS. DAVIS: Yes, I'll send that to Alan.

12 MR. BURKHOLDER: Great. Okay. Great. So
13 now Julie Wise with King County Board of Elections.

14 MS. WISE: My name is Julie Wise. I'm the
15 voter services manager for King County. Thank you for
16 allowing me this opportunity to share our successes and
17 challenges as an election administrator.

18 As the largest vote by mail jurisdiction in
19 the country, King County has both unique opportunities
20 and challenges in election administration. We have
21 nearly 1.2 million registered voters and administer
22 elections for over 140 jurisdictions, including cities,
23 school districts, fire districts and more. With a vote
24 by mail system, we rely on the United States Postal
25 Service to deliver ballots to our voters and return

1 voted ballots back to us in a timely manner.

2 However, as we get closer to election day
3 mailing a replacement ballot to a voter who did not
4 receive his or her ballot who has for various reasons
5 requested a replacement ballot can present a timing
6 challenge. Ballots mailed out to a voter the Friday or
7 Monday before election day may not make it to their
8 mailbox in time to allow them to vote and return their
9 ballot before the deadline.

10 In the past, voters who needed last minute
11 replacement ballot, they had one option and that's to
12 vote at one of our three voting centers in King County.
13 This sometimes led to long lines at our accessible
14 voting centers which are primarily intended to allow
15 voters with disabilities to vote privately and
16 independently.

17 When these vote centers are overwhelmed by
18 voters in need of a replacement ballot, they are less
19 able to serve the population that they were intended
20 for. We have taken two steps to mitigate this. First,
21 we have made our online ballot marking program
22 available to all King County voters. This program
23 allows our voters the opportunity to access and mark
24 their ballot electronically, and provides voters with
25 instructions on how to print and prepare their ballot

1 packet and return to it King County Elections for
2 counting.

3 While military and overseas voters have had
4 this option for several years, in preparation for
5 increased voter turnout for the presidential 2012
6 election cycle King County Elections made the decision
7 to let any voter register in the county, including
8 inactive voters, access to the system.

9 Now instead of having to wait by the mailbox
10 or show up at one of our accessible voting centers,
11 voters would access to the Internet and a printer had
12 immediate access to a website where they can download a
13 replacement ballot. This has greatly reduced the
14 number of people visiting accessible voting centers for
15 a replacement ballot.

16 Voter response to this option has been
17 overwhelmingly positive. And many of the voters want
18 to be able to not only access and print their ballot
19 this way, they want to be able to vote online. This
20 program has extended access for all voters including
21 voters with disabilities.

22 The second step that we have taken to insure
23 that last minute voters are not waiting in long lines
24 at our accessible voting centers was the development
25 and use of a line management program. We created

1 interactive PDF flow charts for staff to use to
2 determine how to best assist a voter. Election staff
3 were able to walk the line using this flow chart on
4 their iPad, sort voters into categories based on their
5 needs. Voters coming in to drop off ballots were taken
6 out of line and directed to a ballot drop box. Other
7 voters were pre-sorted, given color coded cards based
8 on their status and what type of ballot that they
9 needed: Active, inactive, provisionals; and then were
10 directed to staff members that were especially trained
11 to assist them. These procedures insured that we had
12 minimal lines on election day and that no voter waited
13 longer than ten minutes.

14 There was also a reduction in provisional
15 ballots, from 32,000 in the 2008 presidential election
16 to nearly 500 in the 2012 presidential election. As
17 technology evolves, and information becoming instantly
18 available, one of the greatest challenges facing an
19 election official is meeting voter demand for new,
20 better technology and of course candidates' and
21 campaigns' and the media's demand for even faster
22 results reporting. This is a particularly challenging
23 task for election administrators in vote by mail
24 states. Returned ballot envelopes must be processed,
25 signatures verified, and ballots scanned and tabulated

1 before results are ever even posted. These processes
2 take time and many voters wait until just before
3 election day to return their ballot, which has an
4 impact on processing times.

5 King County Elections has conducted three
6 lean events designed to increase productivity, reduce
7 processing times and eliminate waste. Staff members
8 from many different departments of Elections came
9 together to evaluate signature verification, ballot
10 opening, processes and identify improvements that could
11 be made in each of those areas.

12 Through these events we were able to reduce
13 the time it takes to verify a signature by 36% and
14 implement a redesign of a security envelope that
15 reduced ballot processing time by 30%.

16 In our five-year strategic plan, we have an
17 ambitious goal to reduce ballot time to an average of
18 one day, which will make results available to voters
19 that much sooner.

20 As mentioned earlier, we're dealing with a
21 very mobile voter population and registrations that
22 don't move with them presents a challenge. So we
23 update our voter records constantly. Every single
24 election we're getting data from the United States
25 Postal Service, if a voter has submitted a change of

1 address. Also through a project called ERIC that I
2 believe another eight states are involved with as well,
3 which is communicating where voters are registered on
4 more of a national level. And then of course, from the
5 Department of Licensing where King County alone gets
6 approximately 80% of registrations and notifications
7 from the Department of Licensing.

8 Elections office also connected to another
9 lean event to evaluate and improve the voter
10 registration paper form process because we still do
11 have approximately 11% of our voters that submit
12 information in a paper form. Over the course of a
13 week, we're able to reduce the turnaround time of
14 processing those paper registrations by 43% and the
15 processing time by nearly 45%.

16 To further inform the public and engage them
17 in the election process, we also designed an ad
18 campaign, The Informed Voter campaign; and we focused
19 on key messages. We partnered with local northwest
20 celebrities, including Olympic Gold Medalist Nathan
21 Adrian, Chef Tom Douglas, Novelist JA Jance. We have
22 been able to make 15 million contacts in 2013 alone
23 with that ad campaign and signature problems and late
24 ballots are on the decline.

25 As you can see, there are challenges facing

1 officials, but if we choose to deal with them through
2 innovation and technology, we'll be better off. I
3 stress the technology piece.

4 Thank you very much.

5 MR. BURKHOLDER: Thank you.

6 Any questions or comments from the panel?

7 MR. FOSTER: I have a question about
8 military voters. Are military voters had problems with
9 getting ballots to Afghanistan, places like that, are
10 they dealt with differently than the voter who asks for
11 a new ballot?

12 MS. WISE: Yes.

13 MR. FOSTER: Why, why are they dealt with
14 differently.

15 MS. WISE: The federal law says that we have
16 to. So they are provided their ballot by paper 45 days
17 prior to an election. And if they have signed up to
18 receive their ballot electronically, they're also
19 e-mailed notification that their ballot is now online
20 and ready for them to access. And that e-mail
21 notification, and there are several e-mail
22 notifications that we send out, that starts 45 days
23 before an election.

24 And then they also have the time after the
25 election, which we call our certification period. It

1 differs between elections. For a general election, it
2 is 21 days in which they have to actually return that
3 ballot packet material back to our office.

4 MR. FOSTER: Should that system be used for
5 all voters?

6 MS. WISE: I think that something similar to
7 that could and should be. But remember that the point
8 is still they have to print out all their materials
9 even if they're in Afghanistan. They still have to
10 print out all materials and mail it back to the
11 elections office. That's how the law is currently. So
12 they can't submit anything online. They're not voting
13 online. They're accessing their ballot online.

14 MR. BURKHOLDER: I have one question for
15 you. It sounds like you guys have taken on the, you
16 know, King County, taken on the task personally or as
17 an organization to implement efficiency measures, to be
18 looking at how you make your process work better.

19 How would you recommend that that become the
20 norm? There are problems in voting. Sometimes it's
21 because there's not interest in becoming more efficient
22 and more customer oriented.

23 And so the question for you is that that
24 seems like the way your agency is going, I'd say the
25 Secretary of State of Washington, as well, how -- what

1 are your recommendations that might come to this
2 commission to say, this is how you get this to become
3 the norm with all of your election offices throughout
4 the country?

5 MS. WISE: I see a lot more in government
6 offices about these kinds of buzzwords lean, agile and
7 these are real, true processes and ideas to evaluate
8 how you're doing your process: You lean it out and
9 make it streamline. I would encourage -- King County
10 Elections, I don't know for how many years, have used
11 the Six Sigma footprint and I would say government and
12 probably many arenas in government, we need to apply
13 that same. So I would suggest, we have an actual lean
14 invitation office for King County alone. So I think
15 that that's something that other government entities
16 should have.

17 And just to add on to that, I brought a
18 folder with some different things that King County
19 election has done and currently doing and there's a
20 page -- two sided page that is dedicated just to talk
21 about lean and lean events. So I've left some of those
22 in the back of the room and I have a packet. But I
23 think we should make it part of offices in the
24 government.

25 MS. DAVIS: Can I spin-off of that a little

1 bit? In Washington, we have legally mandated
2 Certification and Training Program. And King County
3 through that program and the training that's offered
4 through our office has really become an inspiration
5 with the lean process to other counties and including
6 the state. We're looking forward to doing a lean event
7 ourselves for the upcoming initiative check process.

8 And so fortunately, with our Certification
9 and Training Program we do -- we are able to
10 disseminate information and share information and
11 counties are able to share best practices with each
12 other and that's really -- it's really a benefit to
13 everyone.

14 MR. JOHNSON: Is information shared with
15 other states?

16 MS. DAVIS: Sure. I mean, there's the
17 National Association of Secretaries of State and then
18 the State Elections Directors Conferences; and, yeah,
19 that information is often shared.

20 MS. WISE: I just got back from Denver from
21 the Election Center and discussed it there with some of
22 my peers from Florida and Alabama and across the
23 nation, so it's picking up steam.

24 MR. BURKHOLDER: Great.

25 MS. HUERTA: In terms of the sign up for the

1 Affordable Care Act, in the state of Washington were
2 you able to combine that with voter registration? When
3 people signed up for the Affordable Act, were you able
4 to --

5 MS. ABLE: Part of the online system in the
6 Affordable Care Act does give people a connection to
7 register online, but they haven't been able to solve
8 that problem with in person or on phone registrations
9 in all cases. And so that's an area that -- and to
10 follow up with.

11 MS. HUERTA: But online process you were
12 able to do that?

13 MS. ABLE: Yes. It's a link within the --
14 on the website for signing up.

15 MS. DAVIS: They're directed to My Vote
16 page.

17 MS. ABLE: To the Secretary of State My Vote
18 page.

19 MR. BURKHOLDER: I neglected to say if you
20 have any materials that you did not submit to Alan or
21 if you have additional materials that you want to
22 submit, make sure that the Voting Rights Project gets
23 it, make sure you give them to Alan. Great.

24 So we have one more panel and that is Josh
25 Goldberg with the office of Oregon Secretary of State,

1 Kappy Eaton with the League of Women Voters of Oregon,
2 and with the Oregon Voice, Emily Jameson.

3 Also we have opportunity at the very end of
4 the night to give public testimony for anyone who
5 didn't sign up to give public testimony.

6 I have you first.

7 MR. GOLDBERG: My name is Josh Goldberg.
8 I'm policy adviser for Secretary of State Kate Brown.
9 I'm really excited that you can hold a hearing in the
10 Pacific northwest. We often joke with Washington that
11 Oregon and Washington constantly compete and have a
12 friendly rivalry to see who is going to implement the
13 next innovation in the next election.

14 They were the first to adopt vote by mail.
15 We were the first in the United States, if not the
16 world, to adopt vote by tablet, some of tools of
17 technology that Esther was talking about earlier.

18 I hope to keep my remarks fairly short. I
19 would like to talk about three Oregon innovations,
20 three things that originated with Oregon that we think
21 could be modeled to other states and jurisdictions
22 looking to provide more secure, more accessible voting
23 and hopefully recommendations to consider.

24 We first did vote by mail. Oregon held its
25 last polling place election in 1996. It's worked

1 really well. We've talked about the convenience and
2 accessibility for voters at-large and voters with
3 disability.

4 I just want to make one point a finer point;
5 and that is talking about a 2006 case in Tillamook
6 County. In Tillamook, days before the presidential
7 election, days before the general election, there was a
8 massive flood that wiped out most of the city. Still,
9 despite the sort of unfortunate tragedy that happened
10 in that city, we saw a turnout at 72%. We believe that
11 the resiliency of vote by mail correlated with the
12 positive turnout in Tillamook County can be a model for
13 other jurisdictions undergoing emergency management.
14 So that was my one finer point of vote by mail, is that
15 it is extremely resilient.

16 The second point I want to make is about the
17 National Registration Act. Oregon has been working to
18 improve its relationship with public assistance
19 agencies to provide more Oregonians the opportunity to
20 register to vote when they apply for public assistance,
21 but I want to put a different spin on this.

22 We have been partnering with Oregon Voice
23 that Emily's associated with, as well as a number of
24 organizations, including the League, to unofficially
25 designate our United States Citizen and Immigration

1 Services Office in Portland as an NVRA agency.

2 Basically, at the tail-end of every single
3 naturalization ceremony, we have volunteers who speak
4 many different languages taking the opportunity, it's
5 built into the ceremony, to not only educate these new
6 citizens on how we vote in Oregon and Washington by
7 mail, but also register them to vote. And we've seen a
8 testimony success. We've seen nearly 90% of new
9 Americans registered to vote. We think this system is
10 truly remarkable, given both the geographic diversity
11 of the citizens going through the Citizen and
12 Immigration Office.

13 But we also think it puts together a really
14 important point between citizenship and voting, but now
15 that they're Americans, they have the right and they
16 are empowered and will receive a ballot.

17 And I think the fact that Secretary Brown
18 will be calling on the White House administration to
19 see if there's ways the federal agencies can,
20 nationwide, step up and take the responsibility as
21 state agencies, have to comply with the National Voter
22 Registration Act and register new Americans as they
23 gain their citizenship.

24 Thirdly, I want to talk about a widespread
25 problem in Oregon, that's voter registration. Oregon

1 has a provision in its constitution that requires
2 voters to register 20 days in advance of elections. So
3 in the 2012 election, we had 16,000 Oregonians who were
4 eligible to vote, who registered to vote, but were
5 unable to receive a ballot because they registered
6 during that 20-day window when most voters are getting
7 more educated and more excited and have more
8 opportunities to vote in the upcoming election over the
9 last three election cycles, we've seen 40,000
10 Oregonians disenfranchised in being unable to vote
11 because they registered to vote in this 20-day window.

12 Secretary Brown saw this was a problem and
13 offered a solution. While it would be difficult to
14 revise Oregon's constitution, she proposed legislation
15 that would, simply put, modernize the voter
16 registration process.

17 As other commenters have mentioned, DMV
18 captures three important pieces of information that
19 determine a voter's eligibility: Citizenship,
20 residency and date of birth. And we also have a
21 mailing address that's important to register the
22 ballot. The legislation said wherever the DMV collects
23 this information, they forward it to our office to
24 register those individuals to vote. We send them a
25 mailing card where they'll have the opportunity to

1 choose a political party or opt out of the system
2 altogether. We were successful in winning bipartisan
3 support out of the House and lost by one vote in the
4 Senate. We will be reintroducing this legislation in
5 2015 and encourage more states to think creatively they
6 can use data to reduce barriers and insure every
7 eligible voter has a meaningful opportunity to cast a
8 ballot.

9 Using both the DMV data where citizens are
10 required to update every 30 days upon a new address and
11 USPS data, as well as data from national databases like
12 ERIC, which has been mentioned in the last panel, we
13 believe we have the strongest and most vibrant voter
14 registration system in the country.

15 And so by taking the lead, Oregon has
16 provided three opportunities for states to model its
17 successes.

18 Vote by mail, while some people are
19 nostalgic for waiting in line, we would strongly
20 recommend federal legislation that says no state can
21 require an excuse to vote absentee, to make no excuse
22 absentee the law of the land everywhere.

23 Secondly, sort of calling on sort of key
24 federal agencies, including the U.S. citizenship and
25 immigration service to provide integrated voter

1 registration and education into their core service and
2 core mission.

3 And thirdly to think creatively about how
4 you can use technology, new sources of data to make
5 sure that every voter has the opportunity to cast their
6 ballot on election day. Thank you.

7 MR. BURKHOLDER: Thank you very much. Any
8 questions?

9 MR. FOSTER: I want to make sure I got that
10 third point right. In that -- well, maybe it's any
11 time. You're taking the position that if you have the
12 information, you'll send out to the person a validation
13 that they're registered to vote?

14 MR. GOLDBERG: Yes.

15 MR. FOSTER: It's opposite; the person
16 doesn't have to take the initiative; you do it and they
17 then go from there.

18 MR. NATHANSON: Yes.

19 MS. HUERTA: That's automatic registration.

20 MR. GOLDBERG: Yes.

21 MS. HUERTA: Wow.

22 MR. BURKHOLDER: It hasn't passed yet.

23 MS. HUERTA: I understand that. I
24 understand that. But it's wonderful. That would be a
25 model.

1 MR. BURKHOLDER: Sounds like the Bus Project
2 or the Washington Bus's dream: Automatic registration
3 in Washington.

4 Next speaker, Ms. Kappa Eaton.

5 MS. EATON: I'm Kappy Eaton. I'm the
6 coordinator for the League of Women Voters of Oregon.
7 I'd like to look at the history a little bit in Oregon.
8 300,000 people came over the Oregon Trail and one of
9 the first things that they did, with that many people
10 in 1846, was that they got a territorial government and
11 required people to vote. They had to vote for their
12 territorial government and governor and so we started
13 right there. We've been continuing ever since.

14 Particularly in the last two decades since
15 1991, we have made some significant progress in our
16 elections. We created the first voter -- motor voter
17 law in 1991 before the federal law was enacted. We
18 knew it was coming and we decided to get on board
19 before it came. And as Josh pointed out, it's been
20 very successful.

21 We also, with the advent of HAVA, we use the
22 funds to create a centralized voter registration system
23 which we didn't have before. Voters were registered in
24 the counties, but there wasn't a centralized system
25 which now makes it a lot more easier for access and for

1 counties to talk to each other and to make sure that no
2 person is registered more than once, which people have
3 complained about.

4 We also established what we know as the OR
5 star system. And that's an online idea and system
6 where you can go in and find out where the money is
7 coming from in campaign finance, who is sponsoring who,
8 how their contributions were made and who is making the
9 expenses. And that's been a very critical point in
10 getting people involved with campaigns and knowing
11 what's going on and who is doing what and how they
12 could themselves participate.

13 We also would have created a system of
14 easy-to-read Spanish votes -- voting information and
15 the League of Women Voters has been involved with the
16 Secretary of State's office and the election division
17 in printing those easy-to-read voter cards which we try
18 to do at about the fourth grade level so it makes it
19 easier for a number of people who really couldn't
20 access information about elections to have that in a
21 more readable form.

22 And during a legislative session in 2013,
23 there was a proposal that the Secretary of State, in
24 fact, be required to publish all education voter
25 education materials in the language in every county

1 across the state where at a certain population levels,
2 if it reached that population level, whether it was
3 Chinese or Spanish or whatever, the information for the
4 ballot would all have to be printed in those languages.
5 That was a cost factor which the legislature was not
6 willing to take, but they, in fact, did enact a study
7 commission which the Secretary of State has to look at
8 the issue of providing voter education materials for
9 people with other languages, other than Spanish, that's
10 where we made the biggest -- the biggest hit.

11 In Multnomah county, they published their
12 voter registration at about 10 or 12 different
13 languages, but they're the only county that does that.
14 And Josh has outlined for you the modernization bill
15 that was introduced in 2013 and we expect, as a League,
16 to have support of that modernization through the
17 legislature.

18 I also want to talk a little bit about the
19 military vote that you asked a question about. We
20 initiated, after 2009, a program by which we can
21 electronically send the ballot to members of the
22 military along with residents of Oregon who live
23 overseas over a long period of time. They can do their
24 ballot. They have to fax it back because we need the
25 signature. And along with that, they have to agree

1 that their vote is not private because the election
2 district has to see that signature. And so they also
3 affirm that they're willing to have that take place.
4 But that's been very successful and it's a good way to
5 insure that those in military service overseas do have
6 an opportunity to participate in our votes.

7 We had some interesting things come up every
8 legislative session from a cadre of people who don't
9 like vote by mail. And so they continue to say that we
10 have a lot of fraud in our election system because of
11 vote by mail and, therefore, they want to require more
12 and more and more local boards and groups of people who
13 will be in the elections offices during elections.

14 The latest one was to have a defective
15 ballot board. Now we have lots of processes and
16 procedures in the law as to how to handle ballots that
17 are spoiled or in some way not usable, but they want
18 one more. There was a hearing on that bill, but it did
19 not pass. We expect them to come back in 2015, but
20 there's a more important issue that is in line with
21 what's going on across the country; and that is the
22 challenges to people actually voting.

23 So there was a bill brought up in our short
24 session in 2014 that would, in trying to give more --
25 how shall I say it. It would require more information

1 about residency because they wanted to challenge more
2 people as to whether they really were living where they
3 said they were living. But the major piece of that
4 that was disturbing was it required a Secretary of
5 State to do research in a study on every voter who was
6 registered in Oregon as to the reliability and the
7 validity of their registration.

8 Obviously, that did not pass. However, we
9 expect that it will be brought up again in 2015 and
10 that poses a tremendous problem and it also brings
11 forth the idea of things being so suspect that you
12 can't believe what we now require as a residency proof
13 as being somehow not correct or invalid. Those are the
14 kinds of challenges we're having to our system because
15 people don't believe that vote by mail is very good.
16 They want to go to the polls.

17 And one thing that we found rather amusing
18 in the League, when people complained, they liked to go
19 to their polling place, they like to meet their friends
20 in their polling place. And our answer to them is, you
21 mean you only want to go see your friends and neighbors
22 every two years at an election? Come on. So we find
23 that in Oregon, we want fair elections, we want easy,
24 accessible registration procedures, which we believe we
25 have.

1 And so we will continue to work with the
2 Secretary of State to prevent those people who are
3 trying to manipulate the system and will try to make it
4 better.

5 MR. BURKHOLDER: As an Oregonian, I'll thank
6 you for that now.

7 Any questions or comments?

8 MR. JOHNSON: Have you had any fraud in
9 Oregon that's been sustained, voter fraud?

10 MS. EATON: Excuse me?

11 MR. JOHNSON: Have you had any cases of
12 voter fraud in Oregon?

13 MS. EATON: We have found no voter fraud,
14 there have been two complaints, what, in the 15 years,
15 no. There isn't any voter fraud and that's -- if you
16 look across the country, that's the evidence they're
17 trying to find to put in all of the new restrictions on
18 voting that are going on right now, is they challenge
19 voters, voter fraud. We don't have that.

20 MR. FOSTER: That's a good answer. In the
21 military or overseas, I didn't know if it was both, you
22 have to fax the ballot back and then you said you had
23 to agree that it wouldn't be private?

24 MS. EATON: They have to agree because their
25 signature appears on the ballot.

1 MR. FOSTER: How public is it? Is it public
2 record?

3 MS. EATON: No. There's a secure fax
4 machine that sends that back. So no, it's not a public
5 record.

6 MR. FOSTER: So a couple people on staff
7 verify it's the signature.

8 MS. EATON: The election office to which
9 they send that, they have to say that that's a okay.

10 MR. BURKHOLDER: Thank you very much. And
11 Emily Jamison.

12 MS. JAMESON: Thank you. I work at Oregon
13 Voice and Oregon Voice is an affiliate of the national
14 State Voices network. We are committed to bolstering
15 democratic participation in the state by registering
16 eligible Oregonians to vote, and by encouraging those
17 registered to follow through with the act of voting.
18 We focus on engaging the Rising American Electorate, a
19 segment of the population who historically turn out to
20 vote at lower numbers than the general population.
21 This group includes young people under 30, unmarried
22 women, and people of color. We also work to engage
23 other under-represented groups including low-income
24 people, individuals with disabilities, and rural
25 Oregonians.

1 So I'm going to talk a little bit more about
2 the NVRA, which you've heard from many of my colleagues
3 on the other panels already.

4 So it is widely known as the Motor-Voter Law
5 for integrating voter registration and driver's license
6 applications, NVRA set out to fix weaknesses in the
7 democracy by addressing the fact that certain eligible
8 citizens were not voting due to difficulties they
9 encountered in becoming registered to vote. In passing
10 the bill, the House intended Congress to assist in
11 reducing barriers, particularly government-imposed
12 barriers, to applying for registration wherever
13 possible. The NVRA's intent was that people would
14 receive the opportunity to register to vote at any
15 designated public-assistance agency in a state that
16 receives federal funding. And that is under Section 7.
17 So the public assistance agencies are like Medicaid
18 SNAP, WIC, you could go to the DHS where you would try
19 to get those services.

20 Public assistance agencies play a unique
21 role in our democracy. Those they serve often include
22 low-income citizens and people with disabilities.
23 These individuals also happen to be less likely to go
24 to the DMV for a driver's license or to register a car.
25 Recent census data shows that lower income voters

1 trailed higher-income voters by more than 20 points.
2 Young people voted at half the rate of older voters,
3 with similar patterns emerging among Latino voters and
4 recent immigrant voters, but when well-trained, front
5 line service providers, such as intake workers,
6 community navigators, and enrollment specialists, can
7 be some of the most trusted folks, can be some of most
8 trusted culturally competent messengers given their
9 unique position and the way that they have access to
10 these clients to be able to invite them to be
11 participate in the democracy by registering to vote.

12 In 2012, Oregon Voice began to work with
13 health care and housing service providers throughout
14 the state as part of a national research project to
15 register their clients to vote. While many of the
16 organizations engaged agreed that registering their
17 clients to vote was a good idea, when it came to
18 implementing best voter registration practices the
19 amount of resistance we experienced was striking. More
20 often there was either complete ignorance or just plain
21 confusion about the law. What our Civic Engagement
22 Coordinator found was that many viewed this law as a
23 very low priority.

24 At the same time, over the past four years,
25 our Secretary of State's office - a true champion of

1 voting rights -- has been working hard to coach and
2 support public assistance agencies throughout the state
3 to implement voter-registration at the time eligibility
4 of services is determined. The changes they have set
5 forth are significant strides forward for Oregon.

6 A few of their efforts are especially worth
7 noting: They have developed new tools for agencies to
8 manage the NVRA process, including identifying
9 low-performing DHS offices. They have created an
10 online training module that all new employees must
11 take. A new documentation process was set in place
12 making it easier to report completed voter registration
13 forms. One standout is the new NVRA training manual
14 that our Secretary of State's office has created to
15 reflect the most recent understanding of the law.
16 Last, and perhaps most important to actual
17 implementation, they have been working to ensure that
18 DHS and OHA, Oregon Health Authority, have enough staff
19 to coordinate and manage NVRA activities and that their
20 staff have some direction on how to manage the process.
21 We are optimistic that with our SOS's leadership, NVRA
22 compliance in Oregon will continue to improve over
23 time.

24 One group of underrepresented voters who
25 rarely receive much attention but would benefit

1 tremendously from better NVRA compliance are rural
2 Oregonians who as the data suggests, are an
3 increasingly racially diverse group. One out of every
4 four voting age Oregonians, 711,087 people, are
5 considered rural.

6 Rural Americans, and specifically
7 Oregonians, are provided with fewer opportunities to
8 register to vote than those who reside in larger
9 metropolitan areas where voter registration canvasses
10 are likely to happen. Again, government agencies
11 that serve the public could be the first-responders
12 here since they are uniquely positioned to engage
13 eligible rural voters. Consistent compliance with
14 NVRA in rural areas would mean another very important
15 step in the right direction.

16 As a non-partisan, civic engagement
17 organization dedicated to strengthening our democracy
18 through full voter enfranchisement, we believe the
19 National Voter Registration Act can truly champion
20 democratic participation among those of us least
21 likely to be invited to participate in our democracy.
22 We see an important role for federal, state and local
23 government, along with designated service providers
24 to play in making the NVRA work. Yet, we would argue
25 that government and local service agencies do not

1 have to do this work alone. Rather, when it comes to
2 promoting full democratic participation for all
3 eligible voters -- in words and in action -- there is
4 an entire community of nonpartisan, civic engagements
5 organizations, like Oregon Voice and many others
6 represented in this room today, who stand at the
7 ready to assist and to see that the NVRA does fulfill
8 its promise.

9 MR. BURKHOLDER: Thank you. Any questions?

10 MR. FOSTER: You use an interesting
11 demographic of women unmarried, women under 30.

12 MS. JAMESON: Those are separate and it's
13 like a Zin diagram, some unmarried women are under 30,
14 unmarried women as a group tend to vote at lower rates
15 than married women, so we look at some of these
16 segments of the population and recognize that there's a
17 lot of potential there to engage those voters and help
18 them to also be representing their communities and
19 their interests.

20 MR. FOSTER: Have you come to a conclusion
21 why?

22 MS. JAMESON: You know, we haven't really,
23 but that's one of the areas that Oregon Voice along
24 with some of our partner groups in Oregon wants to
25 start doing some testing and see kind of -- what these

1 people respond to from a married women group and then
2 unmarried women.

3 And our initial just looking into that
4 initially we were surprised to see that many of the
5 issues we thought just would be appealing to single
6 women were actually just across the board. There were
7 more women's issues rather than one group or another.

8 MS. EATON: I have one other thing I'd like
9 to add. We did pass a bill in the short session that
10 would requires the universities and colleges to
11 cooperate more vigorously with student associations in
12 their voter registration activities. And we think
13 that's a very good idea because lots of times
14 administration has not really wanted to cooperate with
15 those and includes even using class time to talk about
16 the importance of voting.

17 And we tried to get the 16-year-old
18 registration law passed but we didn't. We do have
19 registrations for 17-year-olds who will be 18 by the
20 time they vote -- but the 16 didn't play.

21 MR. BURKHOLDER: Okay. So we have one
22 member of the public who has come in and would like to
23 speak to the commission and that was Sharon Maeda with
24 the Seattle Voting Rights Task Force. As they say last
25 but not least.

1 MS. HUERTA: Thank you. That was very
2 encouraging.

3 MS. MAEDA: I'll be very short. I know you
4 need to have dinner.

5 I'm here on behalf of the Seattle Immigrant
6 Voting Rights Task Force that was created last year by
7 former mayor Mike McGinn and is being continued by
8 current mayor Ed Murray. On behalf of Luis Fraga, who
9 happens to be the vice provost of this university in
10 political science with an expertise on elections, I'm
11 happy to just let you know that we are in the process
12 of developing our recommendations. We have to give
13 them to the mayor first. So we will be sending you a
14 copy of those as soon as they are available.

15 We have been looking at programs throughout
16 the country, and although we've have been studying for
17 quite some months, I learned many new things today and
18 have taken notes for my colleague.

19 We have looked at everything from
20 pre-registration for 16 and 17-year-olds with -- when
21 they get their driver's license, the language issue
22 that several other people have testified to, is one
23 that we know is a serious problem. In Martin Luther
24 King County that we are in, we have this distinction of
25 having the most diverse zip code in the entire country,

1 which means many, many languages. And so there are
2 communities where there are single digits in terms of
3 the overall population but who clearly need voter
4 information in their languages.

5 For example, we have just exceeded the state
6 of Minnesota in terms of the Somali population, we have
7 the largest Somali population in the country now and
8 they are at low single digit numbers but they are avid
9 voters and it's very difficult for them, you know how
10 the voter pamphlets are, if English is your first
11 language, you still have problems sometimes
12 understanding it.

13 So those are some of the issues that we're
14 looking at. All the way to minute issues such as where
15 the drop boxes are located for voters to drop off their
16 ballots.

17 But we thank you very much for being here in
18 Seattle and the information learned today will
19 certainly inform the final version of our
20 recommendations and we will pass them on to you as soon
21 as we have them available. Thank you very much.

22 MR. BURKHOLDER: Thank you very. Does any
23 member of the commission have any statements they'd
24 like to make at the end of the night after hearing all
25 we've heard?

1 MR. FOSTER: What I heard tonight was
2 litigate, legislate and lobby; and all of us are going
3 to walk out of here with a lot of new information and I
4 think it's incumbent upon us to take that information
5 out to a broader group. We had probably 150 people
6 here in and out tonight. But I hope that a group that
7 hears this as it goes on to the commission will know
8 that every one of these people will be passing on a lot
9 of this information. Thanks for letting us
10 participate.

11 MR. BURKHOLDER: Mr. Johnson? Mrs. Huerta?

12 MS. HUERTA: I want to thank the folks at
13 Oregon and Washington state. And we'll be happy to
14 share a lot of the work that you're doing to make voter
15 registration and voter effectiveness a lot better and
16 also the fact that everything that you said here today
17 is going to be in the national record which will then
18 also be available to people of other states throughout
19 the United States of America.

20 So anyway, congratulations for being ahead
21 of the game and making democracy work. Thank you.

22 MR. BURKHOLDER: I want to say thank you for
23 the opportunity to participate. I learned a lot of new
24 things. I think the key thing here is that governments
25 that see their citizens voting as a key to legitimacy

1 is the difference. And obviously some people see
2 getting people voting as a way they can lose power
3 instead of empower people. I think on the whole,
4 though, I heard much more positive ideas tonight than I
5 thought. I thought I would hear a lot of problems with
6 the system, but I still heard a lot of positive
7 approaches to try to use new technology, new ways of
8 understanding new ways of educating to try to get
9 people to vote.

10 I have one pet peeve, because I certainly am
11 in a non-partisan position, and Judge, I think you,
12 too, is no one addressed the issue of how the
13 parties -- there's two -- well, the only parties we
14 ever talk about control access to the ballots so much.
15 Now I know in Washington state you have the top two
16 vote getters get to go forward regardless of party.
17 That's pretty unusual. Even in progressive Oregon, if
18 you're not registered in one party or another, you
19 don't get to vote. You don't get to choose who gets to
20 go on the ballot in the long run. So to me that's an
21 issue that I think we need to be addressing when we
22 talk about voting reform that we have certain ideas
23 that don't even get on the table because of the system
24 that we have.

25 But that's the only thing I that I would

1 have raised up that was different, but I'm not an
2 expert like you guys are. Thank you very much. Thank
3 you for the work.

4 Do you have a final comment that you need to
5 make?

6 MS. HUERTA: That's true. In California we
7 do have a ballot system, but regardless of party, they
8 can be democrats or republican, but I think it's a big
9 issue. It's almost impossible in states in America for
10 third-parties to be able to reform because the numbers
11 of voters they have to acquire to be on the ballot. In
12 California, we have the Wing party and that's the
13 freedom on the ballot in California.

14 MR. FOSTER: I would say while we do have
15 that here, it was done over the top of political
16 parties, not in conjunction with them.

17 MR. MARTINSON: Before we evolve into a
18 partisan discussion of any sort, just briefly before we
19 conclude, I want to thank the law school, our
20 commissioners, our panelists and the members of the
21 public who provided testimony here today.

22 We covered a lot of issues today and I think
23 we probably could have been here for a couple more
24 hours hearing about other issues and flushing out some
25 of the testimony. But this is just the beginning of a

1 process and beginning of a discussion that I hope that
2 many of you here continue to have with each other and
3 with others in this region and with those working
4 nationally.

5 And I expect, you know, that what's
6 discussed here will be the basis of further discussions
7 as we work on a non-partisan basis to improve voting
8 rights and election administration here in the Pacific
9 Northwest and throughout the country.

10 If you didn't get a chance to present
11 testimony or you want to submit something written, you
12 can send it to me, AMartison@lawyerscommittee.org or go
13 online to Seattlehearings.lawyerscommittee.org.

14 So that's a wrap. Good night everyone and
15 thank you.

16 (Thereupon, the hearing concluded at 8:13
17 p.m.)

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
 COUNTY OF BENTON)

This is to certify that I, Monna J. Nickeson, Certified Court Reporter in and for the State of Washington, residing at Richland, reported the within and foregoing proceedings; said proceedings being taken before me on the date herein set forth; that said proceedings was taken by me in shorthand and thereafter under my supervision transcribed, and that same is a full, true and correct record of the testimony of said witnesses.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I financially interested in the outcome of the cause.

IN WITNESS WHEREOF I have set my hand this 8th day of May, 2014

Monna J. Nickeson
 CCR NO. 3322

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NATIONAL COMMISSION ON VOTING RIGHTS

REGIONAL HEARING

May 1, 2014
3:16 p.m. - 7:48 p.m.

The Journey Museum
222 New York Street
Rapid City, SD 57701

BEFORE COMMISSIONERS:

Patty Ferguson-Bohnee
Michaelynn Hawk
Richard Braunstein
A. Gay Kingman

MODERATOR:

Eileen O'Connor

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1 MS. O'CONNOR: Good afternoon and welcome.
2 Thank you all for coming. This is the 22nd, I
3 believe, hearing on the -- hosted by the
4 National Commission on Voting Rights, which was
5 convened by the Lawyers Committee last year
6 after the decision in Shelby County.

7 For those of you who don't know about the
8 Lawyers Committee, it's a national nonprofit,
9 nonpartisan civil rights organization founded in
10 1963 at the request of President John F.
11 Kennedy. We work in a variety of areas,
12 including fair housing and community
13 development, education, employment, public
14 policy and, of course, the reason we're here
15 today, voting.

16 So today's hearing, as I said, is one in a
17 series of hearings that are being held across
18 the country. We'll hear from several panels of
19 witnesses, and there will be opportunity for
20 public testimony as well. For anyone who's
21 interested in testifying who hasn't yet signed
22 up, see me over here, please.

23 And presiding over our hearing today are
24 five guest Commissioners who I'll introduce in a
25 moment. But the guest Commissioners will

1 receive the testimony from the witnesses and
2 then ask follow-up questions to further develop
3 the record.

4 The hearing is being transcribed. So for
5 everyone who's speaking, please speak into the
6 microphone and clearly. The record from this
7 hearing and from the other hearings that are
8 happening across the country will be used as the
9 basis for two reports that the National
10 Commission on Voting Rights will release later
11 this year: One report on voting discrimination,
12 and one report on election administration.

13 I don't think I mentioned before, but those
14 are the two areas, very broad areas, obviously,
15 that are covered in these hearings.

16 Some of the hearings are based just in one
17 state, some of them are regional. This is a
18 regional hearing. So this hearing will cover
19 North Dakota, South Dakota, Montana, and
20 Wyoming.

21 Now, I will -- well, first, I'd like to
22 thank all of the organizations that worked very,
23 very hard to help put this together. As I
24 mentioned, I'm with the Lawyers Committee, but I
25 reached out and got a great response from lots

1 of organizations and individuals in this area to
2 help put this together.

3 So, I don't forget anyone, I want to thank
4 the ACLU of Montana, the ACLU of North Dakota,
5 the ACLU of South Dakota, and the ACLU of
6 Wyoming, Four Directions, Montana Voice, North
7 Dakota Protection and Advocacy Project, North
8 Dakota Women's Network, and Western Native
9 Voice.

10 So those -- that group of organizations and
11 some individuals really helped, were
12 instrumental in putting this together. So a
13 great big thank you to you, and also to our
14 witnesses and our Commissioners.

15 I'll now just briefly introduce our
16 Commissioners. Gay Kingman, Richard Braunstein,
17 Patty Ferguson-Bohnee, and Michaelynn Hawk are
18 here, and President Bryan Brewer will be here a
19 little bit later.

20 So now I'd like to turn it over to Steve
21 Emery for a prayer.

22 MR. EMERY: I want to pray in my Lakota
23 language, but I ask you to pray with me. Mainly
24 we're going to pray for good health, long lives,
25 happiness, and for the right for people to vote

1 fairly.

2 (Prayer was given in Lakota language.)

3 Grandfather, Great Spirit, the Four
4 Directions, and Grandmother Earth, again today a
5 humble man stands before you. I send my voice
6 forth, I send it to you. I'm no one and I'm
7 nothing, but my relatives call me Chief
8 Whirlwind. I ask that you recognize me and hear
9 me.

10 Grandfather, today our relatives have come
11 together so that we all may have the right to
12 vote as nonIndians do. And Grandfather, we ask
13 your help in this. Grandfather, today here in
14 the Rapid City, all over Indian Country, across
15 the world, Grandfather, we remember those who
16 are in mourning, those who have been struck by
17 tragedy. We remember the orphans, the elderly,
18 the children, those who are incarcerated, and
19 those who are hospitalized or shut in.

20 And Grandfather, over the seas, we remember
21 our soldiers and all our military personnel, and
22 we ask that they -- we pray that they return
23 home safely. All these things we pray only to
24 you, all my relations. So be it.

25 Thank you.

1 MS. O'CONNOR: Thank you. I'll turn it over
2 to our guest Commissioners to get the testimony
3 started.

4 MS. BOHNEE: Thank you very much, Mr. Emery,
5 for that -- for offering that prayer so we can
6 start in a good way. Really appreciate that.

7 Thank you very much, panelists, for being
8 here. We look forward to receiving your
9 testimony. Each of you will have five minutes,
10 and Professor Braunstein is going to be keeping
11 time. And at the end of your testimony, we'll
12 ask questions. So we'll start with Mr. Duffy.

13 MR. DUFFY: I don't know what I'm going to
14 say. My name is Patrick Duffy. I did that
15 voting rights work for about ten years in
16 South Dakota. I tried -- I tried the Bone Shirt
17 and the Cottier case, both of which were the
18 longest voting rights cases tried in U.S.
19 history, separated by about six weeks.

20 The comments that I'll leave you about
21 voting rights in South Dakota should probably
22 begin with the call that I got from Lachlan
23 McDonald about representing Indian voters in
24 South Dakota.

25 I just had left my law firm that I had been

1 a partner at for over a decade, and I had done a
2 lot of interesting legal work in South Dakota,
3 did a lot of environmental work, did a lot of
4 work involving paleontology.

5 I was in my office and Lachlan called. And
6 those of you who know Lachlan know he's a
7 courtly gentleman from South Carolina who speaks
8 a little bit like this. And he said, Mr. Duffy,
9 he said, We desperately need your help. He
10 said, We can't get another lawyer in
11 South Dakota to help us with these cases.

12 And I said, Look, I've done so damn much
13 good work in this state, I need an armored car
14 to get around a lot of small towns. I don't
15 think I'm that interested in more.

16 He remonstrated with me a bit, and I said,
17 Look, I don't know anything about voting rights
18 other than it's driven by demographers,
19 statisticians, anthropologists, and historians.
20 And so call me back in a couple of weeks and
21 tell me something objective.

22 And he called me back in a couple weeks and
23 he said -- now, Lachlan went down in 1964 right
24 away to the Deep South. By this point the ACLU
25 had been deconstructing South Dakota to some

1 degree. By deconstructing I mean looking at
2 city councils, county commissions, school
3 boards, the legislature itself.

4 And he said, Mr. Duffy, he said, At an
5 objective level, what we see in South Dakota is
6 far worse than anything I saw in the Deep South
7 in the middle '60s.

8 Well, I said, I guess wouldn't be much of a
9 lawyer if I said no.

10 So I did it for about 10, 11 years. Cost me
11 about half a million bucks, literally. Had a
12 good banker. At one point I had to write a
13 check back to the State of South Dakota for
14 about 95,000 bucks.

15 What was voting rights work like in
16 South Dakota? It was really brutal, in my
17 opinion. The Cottier case, for example, I
18 thought was a slam dunk. It involved the City
19 of Martin. They hadn't redistricted in 55
20 years.

21 I just thought -- I mean, we picked off a
22 lot of the low-hanging fruit, school boards and
23 things like that. I thought this was going to
24 be one of those, but it wasn't. Went up to the
25 Eighth Circuit three times, ended up costing

1 every -- damn near broke poor Bryan Sells, the
2 ACLU lawyer that was with me. Cost the ACLU
3 about \$900,000 in lost fees to survive that.

4 There was just never -- I guess what I would
5 say about voting rights in South Dakota, there's
6 just never any quarter given. Unless the --
7 unless it was just so bad that you couldn't keep
8 a straight face looking at it, you were going to
9 get a fight.

10 And I think I can say that the fight you
11 were going to get, when compared to fights all
12 across the United States of America, going back
13 to the middle '60s, was as fierce a fight as you
14 were going to find anywhere.

15 Now, we had one case -- but I can't remember
16 the name of the plaintiff -- it involved Bill
17 Janklow's refusal to submit South Dakota laws
18 for preclearance. And he quoted -- with some
19 pride, he quoted George Wallace. He didn't see
20 why we should have to be dictated to by the
21 federal government. Crazy talk. And so we had
22 about 680 laws that he had refused to preclear
23 that we went through.

24 Now, that's not -- there is nothing like
25 that in the history of the United States

1 anyplace else. Decades of just basically a
2 go-to-hell attitude when it came to something as
3 simple and as mandatory as preclearance.

4 Two little vignettes, because I know I don't
5 have a lot of time, first of all, you know --
6 and you're going to get to hear from him. Two
7 guys here, Bret Healy and O.J. Semans, some of
8 the greatest organizers of Get Out The Vote
9 anywhere in Indian Country. And that's a little
10 bit off my track, but I want to come to it here
11 in a minute.

12 When I first started working, of course, you
13 know, you hear about everything. So I got some
14 calls from some -- am I down to 17 seconds? All
15 right. I'm dang near done. That's about all I
16 got. Thanks.

17 MR. BRAUNSTEIN: Share your one last story,
18 would you?

19 MR. DUFFY: Which --

20 MR. BRAUNSTEIN: Sorry to interrupt you.

21 MR. DUFFY: Which one?

22 MR. BRAUNSTEIN: The one you were just on.

23 MR. DUFFY: The one I was just on was a
24 shadowy kind of guy, about 60 years old, 61, was
25 haunting polling places. And I got this call

1 from white women. This -- he -- how obtrusive
2 he was. Oh, man, it was shrewd.

3 Turned out he was a former staffer for Hatch
4 from Utah. He had a law degree. But he was
5 shadowy. So I go with him and found out what
6 had he done. Oh, it was so smart, you'd just
7 wriggle as you see how oppressive and
8 intelligent the right to keep the right to vote
9 down can be.

10 He'd wait until an old Indian woman had
11 finished voting, and he would say, Hey. He
12 would say, Hey, hey, hey, come here for a
13 second. She'd stop for a second, and he'd say,
14 You know, the Democrats are paying you 20 bucks
15 to vote and Daschle is paying you 10.

16 Really?

17 Yeah, it's for traveling money.

18 No kidding? Where do we go to get that?

19 Well, he'd point over to the Republican
20 office in Pine Ridge, and go over there and
21 there was a very naive and nice woman waiting
22 there for her. And she said, Where's the money
23 the Democrats are paying? She said, What?

24 Well, there's the next link to the story.
25 So she calls a journalist up here and reports

1 that she's getting inquiries like that. Next
2 thing we know that's the story up here in the
3 newspaper.

4 I guess what I would say about voting rights
5 work in South Dakota, I find it to be very
6 oppressive. I understand the game. It's all
7 across the nation. Let's be honest about it.
8 Doesn't matter where you are, in Michigan with
9 Affirmative Action or anything else, the
10 squelching of the right to vote is part of the
11 machine that makes the other side work.

12 And I guess the only thing I would say is A,
13 they are very good at it; way better than we
14 think they are. And B, at least in terms of my
15 experience in South Dakota, they will spend
16 untold amounts of money to win.

17 The law firm that was on the other side of
18 me in Cottier and Bone Shirt ended up walking
19 away -- she made -- the woman who represented
20 those opposed to us put to shame all of the
21 insurance defense lawyers in that firm. She was
22 paid over \$2.4 million by the time she was done.

23 So it's a tough -- it's really tough, it's
24 really real, and it's really quite oppressive,
25 more so than perhaps even the commissioners

1 might think. Thank you.

2 MS. BOHNEE: Thank you very much. Next
3 we'll hear from Mr. Steve Emery.

4 MR. EMERY: Going to start with a
5 traditional song, assuming I can stand up.

6 (Song was given in Lakota language.)

7 My uncle Oliver Red Cloud died last July the
8 4th, but if he was here, he would want me to do
9 this.

10 (Statement given in Lakota language.)

11 My relatives and friends, I'm happy to see
12 all of you and I shake your hands. I'm going to
13 say something, and if I make a mistake, please
14 tell me about it. Back in '91 when South Dakota
15 redistricted according to the constitution, my
16 younger brother, Mark Van Norman, who was the
17 first member of our tribe to graduate from
18 Harvard Law School -- I just happened to be the
19 second -- ran for office with my cousin Rocky
20 LeCompte.

21 And you know my brother actually, he got
22 whipped in the primary, and that's okay. He had
23 the chance to run, I guess. And that's in
24 District 28A and 28B. And then in 1996, the
25 South Dakota legislature said, you know, we

1 don't like this two district or split district
2 stuff so we're going to reunite them. And they
3 reunified them.

4 And in the process, I just happened to
5 notify -- notice that they were violating not
6 only their state constitution but I thought they
7 were violating our rights under the '65 voting
8 rights act.

9 So I did two things. I wrote a letter to
10 the Justice Department asking them to do some
11 enforcement, and I started writing to the ACLU.
12 Don't be surprised by, hey, the ACLU responded
13 long before justice did. And my good friends
14 Lachlan McDonald and Bryan Sells and Patrick
15 Duffy, they came and they helped us.

16 And the very interesting thing happened
17 while they were in the federal district court.
18 The South Dakota Attorneys General's Office
19 said, Hey, wait a minute, this is an issue of
20 state law, Judge, Federal Judge. We want this
21 certified to the South Dakota Supreme Court.

22 And so we all talked about it. Okay. It's
23 a state law issue, let them certify it. And we
24 all were absolutely convinced that there was no
25 possibility that the Supreme Court would get it

1 right.

2 We were wrong. The South Dakota Supreme
3 Court got it right. They said no redistricting
4 except in the year following the decennial
5 census, and that year was not 1996. Since the
6 decennial censuses are done in the years with
7 the aught, that is 1990, 2000, 2010, so on, you
8 couldn't redistrict in '96.

9 Well, that was all well and good and
10 everything. And just before -- after the ACLU
11 had filed, but just before the 6 years and 90
12 days had run out on the United States, because
13 under 28 USC Section 2415, once the United
14 States has notice of a claim, they have 6 years
15 and 90 days to file on it.

16 The United States came in. And it's
17 interesting because, in point of fact, it was
18 the ACLU that won everything. The argument that
19 the United States wanted to make about Section
20 5, and other folks will get there, the Court
21 never reached because the South Dakota Supreme
22 Court said very clearly -- with one dissent,
23 Justice Saber. And I guess his dissent is its
24 own reward, so you folks should read it
25 sometime.

1 At any rate, we got a split district back,
2 28A and 28B. Accordingly, my youngest brother,
3 Thomas Van Norman, became the very first Indian
4 ever elected from Cheyenne River to the state
5 house.

6 And I want to say, there were some wonderful
7 people that helped along the way. My cousin
8 Rocky LeCompte was one of my co-plaintiffs, and
9 he's now gone. But I want to say, when my
10 brother ran for the state house, my cousin Rocky
11 ran for the senate. And of course Cousin Rocky
12 didn't stand a chance and we knew it.

13 But we got up there to Isabel before every
14 -- on Saturday morning at 9:00 in Isabel the
15 Democratic party was supposed to meet. Well,
16 the word was they didn't really -- yeah, you
17 gave him time to finish so I'm going to go ahead
18 on and finish because I think it's fair. Do
19 you? Okay.

20 MR. BRAUNSTEIN: Sure.

21 MR. EMERY: Do you think it's fair or should
22 I shut up?

23 MS. BOHNEE: Please continue.

24 MR. EMERY: Okay. Well, it went like this.
25 We beat them, and we opened up because we had a

1 quorum. And my brother and Rocky were nominated
2 by acclamation. Ultimately, with my brother Tom
3 in the legislature, we got a bill through. It's
4 called the Dangling Objects Bill.

5 I got tired of getting stopped for DWI. You
6 know, Driving While Indian. I like to have an
7 eagle feather in my car. It happened this
8 particular time I was on the bottom down in
9 Reeder on the Yankton reservation following some
10 nuns to a wake.

11 The nuns had a rosary hanging from their
12 mirror, St. Christopher and Jesus on the
13 dashboard, so they were well accompanied. Now
14 it's true that the rosary was the only dangling
15 object. But apparently the trooper couldn't see
16 that one, but he really saw my eagle feather.

17 And so I want to say that one really nice
18 thing that happened out of this is, Indians now
19 get to have eagle feathers on their mirrors
20 because my brother Tom introduced this
21 legislation to help fix the situation I
22 described.

23 I want to thank you for listening. I hope
24 we get justice.

25 Oh, one last final comment. Dewey and

1 Ziebach Counties, from 1975 until the last
2 election, never had any bilingual voting
3 materials. Starting when I returned in 1989
4 from Harvard Law School, I offered regularly to
5 translate free of charge for either county any
6 voting materials that they wanted and was never
7 taken up on the offer.

8 In closing, after my brother won his
9 election, a fellow by the name of Ted Klautt
10 came over to the state house and said, Hey, by
11 the way, I'm jumping on this legislation that
12 Eric Bogue just sponsored -- and that's the
13 fellow that beat my brother, by the way -- and
14 we're going to take your district away.

15 So that's sort of how things go. And Eric
16 is a friend of mine now, and we worked
17 everything out, and it's nice. But to have
18 fundamental fairness continue, we need the
19 Voting Rights Act reauthorized. Thank you very
20 kindly.

21 MS. BOHNEE: Thank you. Just a
22 clarification, Mr. Emery, you mentioned that
23 until the last election, Dewey and one other
24 county?

25 MR. EMERY: Ziebach. Z-I-E-B-A-C-H.

1 MS. BOHNEE: Thank you. Okay. Next we have
2 Mr. Gary Collins.

3 MR. COLLINS: Thank you. It's a pleasure to
4 be here to represent all of Indian nations with
5 regards to voting and voting rights concerns.
6 And being from Wyoming where there's only one
7 tribe -- one reservation with two tribes, we
8 seem to be suppressed in many other ways than
9 South Dakota, Montana, or New Mexico.

10 A little bit of history, I ran for county
11 commissioner several years ago and I didn't know
12 that I wouldn't -- I didn't think I'd have a
13 chance, and I didn't. But as time went on,
14 there was seven or eight other individuals that
15 ran for county commission and we started
16 analyzing what's going on here.

17 It turned out that the county was that
18 large. All five commissioners could be living
19 on the same one-half mile. And so we raised
20 that concern with Lachlan in about 2009 and
21 2010. We filed a lawsuit about that issue of
22 at-large voting districts. We wanted to have
23 districts that were applicable to the population
24 base.

25 So what we did is, we filed this lawsuit

1 there were five plaintiffs, tribal members,
2 against the county commission and some of their
3 staff. And when we did that, we very clearly
4 identified the Voting Rights Act of 1965 and
5 1973.

6 After a bench trial which generated 112
7 pages from Alan Johnson, the judge at that time,
8 it was very clear that, based on that testimony,
9 his decision was that the county was directed to
10 go ahead and move forward in a districting plan
11 that he could approve.

12 Well, that didn't happen. They -- they
13 appealed that decision and it went to back to
14 the judge. And he reviewed their rebuttal, and
15 again, it was denied. And so then the county
16 then went to the Tenth Circuit Court in Denver.
17 And it was reviewed and they upheld Judge
18 Johnson's position.

19 And this all happened from the year 2009 and
20 finally culminated on March the 15th, 2012. But
21 during that process, the Wyoming state
22 legislature was meeting in the early part of
23 2012, and a bill was submitted to the
24 legislature regarding that they were opposed as
25 a state to districting of counties for voting

1 concerns.

2 The issue is, we weren't being represented
3 and our population is 20 percent of the county.
4 We do now have a Native American on the county
5 commission. I'm proud to say that we have three
6 people -- actually, two people running for state
7 legislature -- they just made those
8 announcements this week -- because we've gained
9 some momentum in this voting rights concern.

10 And when we got out the vote for our last
11 election with Patrick Goggles as our state
12 representative, who has now resigned and let
13 others step forward, we started the voting
14 rights effort as a grassroots concern within our
15 community.

16 And it wasn't just for that candidate. It's
17 the beginning from now on. We're going to
18 expand that and develop that as we move forward
19 so that there's more participation. And the
20 issue is, our population is growing. There's
21 25,000 people in the county, 15,000 of those are
22 Native American.

23 So I think the Wasichu and the others there,
24 the nonIndians, they see the intimidation of
25 them being a minority in the county, and they

1 are fearful of that. They are fearful of those
2 things.

3 We have racial profiling all the time. One
4 lady got stopped and she asked why. She said,
5 Well, the ball on your bumper is covering a
6 number on your license plate on your pickup
7 truck. That's just absurd, the kind of things
8 that goes on.

9 But anyway, the historical premise of the
10 reservation and the Native American people, the
11 Arapahoe and Shoshone, we've been suppressed for
12 so long, but we still established our social and
13 historical conditions.

14 But we never -- my parents didn't really
15 know how to address all these things in a bigger
16 manner. So they protected themselves as Indian
17 people and then they protected myself and my
18 family, my brothers, for us.

19 So we didn't learn a lot of the culture. We
20 didn't learn a lot of the language. So we were
21 always suppressed in that environment in the
22 '40s and '50s, if not before that, even before
23 that when we were not even citizens yet.

24 So it's been a long journey, and I've been
25 able to step up and make a difference for the

1 voting opportunities and the established
2 recognition of our tribal people.

3 There's so much more that I could go
4 through. I've got all the documents here that I
5 can leave for other information, or I can
6 electronically send these to you. Because I
7 think the first opinion by Judge Johnson of 100
8 pages is pretty profound.

9 There's very testing documents, and
10 testimony in the documents that makes it very
11 clear of the racism. Makes it very clear of the
12 kinds of things that we address every day. So
13 thank you. I'm open for questions.

14 MS. BOHNEE: Thank you. And if you do have
15 documents, we can accept that for the record. I
16 think that would be very helpful.

17 MR. COLLINS: Okay. I will do that.

18 MS. BOHNEE: Okay. Our next speaker is
19 Mr. William Snuffy Main.

20 MR. MAIN: Good afternoon. Thank you for
21 having me. I wrote -- I just got here late
22 because I was typing. I have a hard time
23 condensing stuff into five minutes. I made some
24 notes here. And my opening remarks may not seem
25 relevant at first, but they will be relevant at

1 the end of my talk.

2 We have two tribes living on Fort Belknap
3 now, the Gros Ventre, which I'm a member of, and
4 the Assiniboine. Prior to being confined to the
5 reservation, they lived free nomadic lives in
6 vast territories. Before they were invaded by
7 white settlers, these tribes had a democratic
8 system of determining who was best suited to be
9 their leaders and were in control of their own
10 destiny.

11 With the encroachment of white settlers and
12 the quest for more of what we had, there became
13 what is now called government appointed chiefs.
14 These so-called chiefs were not recognized as
15 leaders by their own people, but were simply
16 individuals that were willing to say or agree to
17 whatever government officials asked of them.

18 Our original territory outlined in 1855
19 encompassed over half of what is now the state
20 of Montana. Millions of acres. With the
21 discovery of gold in Montana, many settlers
22 quickly moved in to our traditional lands. The
23 newly established white residents of Montana
24 wanted to destroy tribes, including the Gros
25 Ventre.

1 In an attempt to exterminate us, we were
2 intentionally infected with small pox several
3 times, and by 1978 -- excuse me, 1871, this once
4 powerful nation was reduced to less than 300
5 souls.

6 After the extermination failed, a series of
7 questionable treaties and agreements up to the
8 1888 pushed by settlers through the United
9 States government, reduced our millions of acres
10 to a small reservation now known as Fort
11 Belknap, which is primarily located in Blaine
12 County, with a small portion in Phillips County,
13 Montana.

14 The original Fort Belknap Agency, which is
15 now off the reservation, was established in
16 1874. And to the nonIndian residents, it is
17 called Paradise Valley. My dad said that the
18 Gros Ventres had a broken hearted dance when
19 they had to leave that area.

20 The current boundary of the Fort Belknap
21 Indian reservation was established around 1888,
22 the same time the state of Montana was
23 organizing. After the state of Montana was
24 established, the anti-Indian mentality of the
25 settlers controlled the legislature. The

1 mentality trickled down to county government as
2 they organized.

3 Counties with large concentrations of
4 Indians historically have discriminated against
5 Indians, particularly in Blaine County. This
6 mentality has evolved over the years and today
7 is not as open as it once was, and it now tries
8 to hide in secrecy, similar to the Masons.

9 However, it is alive and well in Blaine
10 County. Despite having a large Indian voting
11 population in Blaine County, no Indian had ever
12 been elected to the county commission under the
13 at-large voting system.

14 Although having three district seats, the
15 commissioners were elected at-large by all
16 Blaine County voters. The United States
17 identified this situation as a violation of
18 Section 2 of the Voting Rights Act.

19 Attorneys for the U.S. Department of Justice
20 Civil Rights Division filed suit in federal
21 court stating that the at-large voting system
22 was a violation of Section 2. Basically because
23 the creation of the system itself may not have
24 intentionally violated the Voting Rights Act,
25 Indians were unable to elect candidates of their

1 choice given the totality of circumstances.

2 The system was examined by a number of
3 experts with several different ideas in mind.
4 One was official discrimination against American
5 Indians, racially polarized voting, voting
6 procedures that enhanced the opportunities for
7 discrimination against American Indians,
8 depressed socioeconomic conditions for American
9 Indians, a tenuous justification for at-large
10 voting system.

11 While Blaine County argued that none of this
12 existed in their voting system, the record was
13 clear to the contrary. The most important test
14 to prove discrimination in my opinion was
15 official discrimination against the Indians,
16 which started shortly after Montana became a
17 state in 1889.

18 In 1897 reservation residents could not vote
19 unless they were government employees and owned
20 a home elsewhere in the state. In 1899,
21 Montana -- the Montana legislature called for
22 federal legislation prohibiting Indians from
23 leaving the reservation. In 1912, an individual
24 who takes part in tribal affairs and receives
25 tribal funds may not vote in general or school

1 elections. In 1919, the state legislature
2 prohibited the creation of an election office
3 within the boundaries of Indian reservations.
4 1903 to 1953 Indians were prohibited from
5 carrying guns or ammunition outside the
6 reservation. Indians became Blaine County
7 citizens in 1921 and the majority of Blaine
8 County residents opposed that action.

9 This list goes on and on and on, all the way
10 up to today. The federal district court in the
11 U.S. versus Blaine County case I talked about
12 ruled that discrimination did exist and ordered
13 a new voting system.

14 Blaine County appealed to the Ninth Circuit
15 who upheld the district court's decision. One
16 Indian was elected to the Blaine County
17 Commission at the first election under the new
18 system and still occupies that seat today.

19 However, we're still being fooled, I guess,
20 because there's one seat that is primarily
21 nonIndian, they elect a nonIndian. There's a
22 seat that's primarily Indian, we elect an
23 Indian.

24 The one that's split, the person we support
25 oftentimes changes their position on a number of

1 issues after they get elected and is the
2 deciding factor in many important issues.

3 Just like today, you'll hear about the
4 Wandering Medicine case. Blaine County is also
5 involved in that. And the deciding vote whether
6 or not to fight satellite offices on
7 reservations was decided by this one nonIndian
8 who is married to an Indian. He changed his
9 vote after he got elected.

10 There was a special election going on at the
11 time he was -- the Wandering Medicine case
12 started. He promised to allow the vote to allow
13 satellite offices on the reservation. After he
14 got elected, carrying a huge number of Indian
15 votes, he changed his vote.

16 In closing, I guess, the mentality of the
17 early settlers has become institutionalized in
18 Blaine County. I recently attended a water
19 rights meeting in Chinook, Montana, the
20 county -- Blaine County seat. And the
21 discussion centered around Fort Belknap
22 reservation having first priority to water
23 rights.

24 And an old man stood up, I could tell he was
25 pretty close to being an old homesteader

1 himself, but he stood up and said, Why don't we
2 just take the water like we took everything
3 else. That's the mentality that's still out
4 there in Indian Country, in Blaine County,
5 probably other Indian places.

6 But my grandfather was heavily involved in
7 voting rights in the early days. He -- he only
8 had a 6th grade education but he recognized the
9 importance of the Indian vote. And he wrote a
10 proclamation in 1951 for the Montana -- excuse
11 me, the Montana Intertribal Policy Board.

12 And in his proclamation he said that if
13 Indians would all vote as a block, they could
14 control the power in the state of Montana. I
15 think that's what these people are afraid of is
16 Indians gaining any type of control of our
17 destiny again. Thank you.

18 MS. BOHNEE: Thank you. And finally on the
19 panel we have Mr. Bill White Head.

20 MR. WHITE HEAD: I guess, yeah, Bill White
21 Head. I'm from the Fort Peck reservation,
22 Assiniboine, Sioux, Northeastern Montana. I'm
23 very grateful to have been invited to -- with
24 this forum with such distinguished gentlemen and
25 people who are really in the trenches, who make

1 the changes that are necessary. Sometimes when
2 you're out there, you really feel alone, but
3 it's encouraging being with these gentlemen
4 here.

5 I have been on tribal council a couple
6 times. I've been a former state legislator. I
7 guess from growing up, just playing ball, as an
8 underdog, we've always felt, you know, cheated
9 in many ways. And as time has evolved, you
10 know, in terms of decision making, we
11 understand, you know.

12 I guess today I want to let you know about
13 the case which we just won a couple weeks ago,
14 which was the Jackson versus the Wolf Point
15 School Board. It's ironic that my -- Ron
16 Jackson has taken a lead. He's my nephew, and I
17 guess I tried -- I guess I influenced him.

18 Later on he asked me to join them when there
19 was a little rough road ahead, so I -- because
20 I've been a plaintiff against the state that
21 enabled us to get every reservation a
22 representative in the state legislature, whereby
23 now every reservation is represented by a person
24 from that particular area.

25 I've also been a plaintiff against the

1 county to deal with at-large voting. And we,
2 just before they moved to Blaine County, the
3 civil rights, I guess the wisdom of the county
4 commissioner saw that they were going to lose,
5 so they yielded to us so they wouldn't have to
6 spend the money. So they did agree to have
7 district representation. We have since had an
8 Indian elected. We have also had a county
9 sheriff, county attorney elected, all of Native
10 American heritage.

11 My winning of the legislature sure in 1996, I
12 served in 1997, '98, it was a -- it was a good
13 time in our history in the state of Montana.
14 For the first time we -- that I can recall, and
15 maybe somebody can correct me if I'm wrong. But
16 in 1996, Bill Clinton ran, and we were trying to
17 get an Indian to run for the congress when
18 Congressman Pat Williams was a friend of Indians
19 all over the nation, decided not to run.

20 And we had -- they were trying to recruit
21 Bill Yellowtail to run. And in the state they
22 had a meeting and they had signs up in the
23 audience saying, Run, Bill, Run.

24 So in my campaign, my tribal chairman, Caleb
25 Shields, some of you may know, was my campaign

1 manager. The president of the community college
2 was Jim Shanley, which gave -- he was my
3 campaign treasurer. And we organized around the
4 theme of Run, Bill, Run. Clinton for president,
5 Yellowtail for Congress, and White Head for
6 legislature. And we beat the son of the former
7 governor, Governor Ted Schwinden, and who was
8 being groomed for the next congressman and
9 senator.

10 So we have made some progress, although at
11 different times it doesn't seem so because, as
12 you know, you know, we have this -- also this
13 problem within our own communities. The degree
14 to which our individual leadership assimilates,
15 forget who they are. Elected officials who are
16 representing Native American people have more
17 than just representing someone like running for
18 representing some corporation.

19 The elected officials in our communities run
20 and, even in the tribal council, they have a
21 responsibility to look out for their respective
22 nations, their land base, their language, their
23 culture, our whole identity.

24 We have a tough job to hold. At the same we
25 are seized by the capital system that tells us

1 to look out for Number One. We have a tough
2 road to go. I'm glad Montana People's Action
3 is here, because over half the population we
4 always knew live in an urban area. But in the
5 state of Montana now, over half live in the
6 urban areas in the state of Montana. You can
7 sure tell by the number of inmates in Deer
8 Lodge, our state prison, the degree of
9 discrimination there.

10 But I also have to hope that our
11 representatives from People's Action have to get
12 across to those people who would want to run for
13 office from urban areas who are Indian to not
14 forget where they come from, because they have a
15 responsibility to maintain our sovereignty and
16 jurisdiction. As they represent those people in
17 urban areas, they must always become aware of
18 that.

19 One other thing you have to understand in
20 terms of the tactics that are happening to us
21 all the time is this move towards -- towards
22 at-large voting, even after or -- no, not the
23 at-large but my point here is nonpartisan
24 elections like we have in Roosevelt County.

25 See, generally you'll have some progressive

1 wasichus who will vote with us, and -- but when
2 you have nonpartisanship, it's straight Indians
3 against whites. So we must, if they are trying
4 to do that in your community, we have to get to
5 those county meetings and participate in your
6 respective meetings on a local level, to not
7 allow that to happen.

8 Because that's what happened to us now in
9 Fort Peck on the county level, even though we --
10 they probably did it because we elected a county
11 commissioner and a county attorney.

12 But we got a long way to go and I'm glad
13 that you're all here as supporters. Or even if
14 you're from the other side, you know, we need to
15 know who your enemies are as well, because
16 that's happened. We've had people stopping in
17 telling us what we're doing. But that's okay,
18 because we're coming on and I'm glad to be here
19 with all my partners. Thank you.

20 MS. BOHNEE: Thank you.

21 MR. WHITE HEAD: I have a handout. It's
22 from our mutual friend, Lachlan McDonald, that
23 gives a history of all the Indian situations in
24 the state of Montana. Historical from the Witty
25 Boy versus Bighorn County.

1 MR. BRAUNSTEIN: Did Bill Yellowtail win his
2 congressional bid?

3 MR. WHITE HEAD: No, he lost, but --

4 MR. BRAUNSTEIN: But the other two Bills
5 won, right?

6 MR. WHITE HEAD: Yeah.

7 MR. BRAUNSTEIN: To quote Meat Loaf, "Two
8 out of three ain't bad."

9 MS. BOHNEE: Thank you very much for your
10 testimony. I'd like to commend all of you for
11 the work that you've done on behalf of Indian
12 people to assist in getting Indians on the
13 ballot, getting people elected, and insuring
14 that Indian people have equal access to the
15 poles.

16 At this time I want to open it up to the
17 guest Commissioners to ask questions.

18 MS. HAWK: From the ones from Montana, Bill
19 and Snuffy, and including Gary with a lot of the
20 voting rights issues going on throughout all the
21 states, I guess it would be an inclusion of
22 Steve even, too, and Pat, but you know, this
23 continuous voters suppression, you know, we see
24 it within the states and also the border towns
25 of the counties.

1 And you know, do you feel that there's
2 extreme -- is it subtle, has it gotten better as
3 far as the border town racism and the local
4 counties where Natives do have a say-so within
5 the voting system?

6 MR. COLLINS: I might take a first
7 opportunity. Even after our case, had Judge
8 Johnson expressed his opinion to have the county
9 go back and figure out how they wanted to
10 segment the county for districts, they came back
11 and said, Well, we'll set the Indian people in
12 communities over here in this voting area, but
13 we'll still have the rest of the county, the
14 other four candidates for county commission, at
15 large. Flew right in defiance of the judge's
16 opinion. They still tried to get it back to
17 where it was at-large voting.

18 And there is today currently some very
19 strong animosities. I'll just touch base here,
20 because it affects all of us. The Northern
21 Arapahoe Nation and Shoshone tribes applied to
22 EPA five years ago to get recognition as tribes
23 as states in air quality monitoring.

24 And in December that decision was made in
25 favor of the tribes to have air quality mon --

1 air quality monitoring status, the same as
2 states do. The State of Wyoming filed suit
3 against us. The Wyoming Farm Bureau filed suit
4 against us. The county commissioners filed suit
5 against us. And the City of Riverton, Wyoming
6 filed suit against that decision.

7 And all we're saying is, we wanted to
8 monitor the air, safe. Safe air for everybody.
9 But they just -- no matter how pervasive that
10 our opinion is to protect the environment,
11 protect Mother Earth, our heritage and our
12 culture, we were being refused to recognize that
13 at the city, county, and state levels.

14 Today, we're in lawsuit today because of
15 that. What that has created is a significant
16 amount of animosity that's always there. And we
17 as tribal members have established what's called
18 our young people, a Wind River Equality
19 Commission.

20 And we've had several public meetings to
21 include the nonIndians, to come to the table and
22 talk to us about these issues that are dear to
23 both of our camps. But historically it's always
24 been against, Indian versus white. And they
25 just can't seem to get over that.

1 And at some point, we'll have 90 percent of
2 the population in the county, and they might
3 best get over that. Because right now, the
4 Arapahoe tribe is the largest employer in the
5 county. We have over 700 employees.

6 So it's like, You Indians do something but
7 don't do it that good. And when we do that,
8 then it's the mindset that's been there for 100
9 years.

10 In fact, in this air quality lawsuit -- and
11 it's gotten national media attention, and it's
12 erroneous from the media. But it says, well,
13 100 years of history and tradition, you just
14 can't throw that out the window. Well if it was
15 wrong in the beginning, if it was illegal from
16 day one, why is it anymore legal today? And
17 that's our position.

18 But the tribes have gotten more educated
19 with our colleagues from Montana, South Dakota,
20 North Dakota. We've got more assertive in our
21 positions to step up and say what we need to do
22 as all of us have here today. And there are
23 others, too, including the commission.

24 So the answer to your question is a long one
25 but the short answer is, yeah, it's still there.

1 Racism is there. Bias is there. Last week the
2 Shoshone/Arapahoe tribes received \$150 million
3 in a settlement that was predicated on the
4 miscalculation or no calculation of tribal
5 mineral resources over the last 50 years.

6 My parents and grandparents could have used
7 those dollars back then to seek a window of
8 opportunity that might have had their lives
9 longer. Might have had a better life when they
10 were raising families.

11 So there's parts there that we'll never
12 recover, that loss in dollars and cents. But
13 our lives aren't dollars and cents. It's from
14 our heart. So that \$150 million -- of course,
15 the towns all opened up. One dealer sold 70
16 cars in one day.

17 So many of our people decided to go
18 somewhere else with their money and save it
19 because of the animosity in the community. And
20 the difficulty is, we as Indian people don't
21 have a place to spend our money, so we don't
22 turn it over in the community. We don't have
23 quote, unquote an Indian Walmart. Our Walmart
24 was the buffalo, and that was taken away.

25 So there's -- giving up is not an option in

1 our camp. We just continue to keep striving
2 forward and doing within the system, the Voting
3 Rights Act itself, the law that's established
4 for everybody to follow even though we find out
5 that it's biased when they make the
6 interpretation.

7 But the fact is very clear that we have to
8 have a challenge with whatever we do. Takes us
9 twice as long and twice the effort of anybody
10 else. But I think all of us here are for, and I
11 think all of you are, too, are for the people
12 who aren't even born yet. Our young ones.
13 Thank you.

14 MS. BOHNEE: Go ahead.

15 MR. MAIN: To answer your question briefly,
16 yes, I believe racism is alive and well. My
17 experience is at Fort Belknap, I think it's
18 gotten a number of ways to pound us down. I'll
19 give you a couple examples.

20 There was a huge heap leach gold mine in one
21 of our towns above our communities that was
22 poisoning the water and land. They allowed that
23 to stay, allowed that to continue. At the same
24 time they were citing our communities for having
25 open pit dumps for their garbage. They cited us

1 and fined us for that, but yet they let that
2 mining go on.

3 Our buffalo, we have buffalo pasture. We
4 tried to increase our herd with the Yellowstone
5 buffalo. There was a big scare of Brucellosis
6 which, you know, we have never had a confirmed
7 case of Brucellosis in our buffalo.

8 The surrounding ranchers to our buffalo
9 pasture which borders the reservation, feed
10 their cows right outside of the buffalo pasture
11 in the wintertime. When the buffalo get out,
12 they shoot them with no consequences. If we
13 shot one of their cows for trespassing, we'd be
14 charged.

15 When our Indian teens playing basketball,
16 highway patrol is out in full force pulling
17 Indians over, citing them. When Indian
18 candidates sometimes file for public office,
19 they are bird-dogged and pulled over, harassed,
20 taken in.

21 But yes, it's alive and well. Myself, I
22 grew up in my younger years in Butte, Montana
23 and I didn't see -- I saw very little
24 discrimination because we were all of the same
25 economic standing, most of us. We were all

1 families of minors. We all learned from a young
2 age the importance of voting because of the
3 unions. And getting back to the reservation in
4 1972, it was a total cultural shock for me to
5 see how Indians were treated. It was bad and it
6 hasn't changed much.

7 MS. BOHNEE: If I follow up on one thing
8 that you mentioned with regards to Native
9 candidates being pulled over.

10 MR. MAIN: Yes.

11 MS. BOHNEE: Is that something recent, do
12 you? You know, is there something more that you
13 can share with us for the record?

14 MR. MAIN: We haven't had any recent Indian
15 candidates off -- for seats off the reservation.
16 But prior to that, yes. Probably -- I would say
17 probably the last election where that happened
18 was 2010, I believe it was.

19 MS. BOHNEE: Okay.

20 MR. MAIN: Then I'd like to clarify one
21 thing also. I think I kind of missed part of my
22 talk here, was that the district court ruled in
23 favor that there was voting discrimination in
24 Blaine County.

25 Blaine County appealed that to the Ninth

1 Circuit and lost on almost every point except
2 some minor technicalities in the expert
3 witnesses' testimony.

4 MS. BOHNEE: And what year was that?

5 MR. MAIN: That was in '04.

6 MR. BRAUNSTEIN: Did you want to say
7 something?

8 MR. WHITE HEAD: And for some of you who
9 know who the Red Neck Allies are, is Mountain
10 States Foundation is alive and well. They were
11 the ones helping in that appeal and they are
12 back again trying to help again over there in
13 recent situations.

14 And even as we resolve the case against the
15 school, in last week's paper, the consent decree
16 is what I handed out, as well as a history of
17 the Montana case, the Witty Boy. But even last
18 week's paper -- we have a school board election
19 coming up on Tuesday.

20 What the school board is saying is that they
21 are going to have to cut back Head Start because
22 of this lawsuit. If they wouldn't have
23 appealed -- they admit they knew they were
24 wrong. If they wouldn't have used that money to
25 appeal, we wouldn't have to be cutting back. So

1 it was their -- they are trying to blame us now
2 for them breaking the law, you know.

3 And then I happen to be chairman of the
4 Assiniboine Water Project using our treaty
5 rights. Let's not forget that using our treaty
6 rights and our water compact to give the -- to
7 enable the approximately 30,000 people in four
8 counties, our reservation -- Fort Peck
9 reservation, Roosevelt County, Valley County,
10 Daniels County, and Sheridan County.

11 Have 3,200 miles of pipe. And the cities,
12 like the border towns somebody mentioned
13 earlier, Glasgow and even within the town of
14 Wolf Point, who we just dealt with, don't want
15 us to get the water system.

16 So we are prepared to go around them and
17 until the city people and their citizens riled
18 up against their leadership there, and now they
19 are going to -- they just signed a letter of
20 intent to deal with our water project.

21 So racism is still alive and well, and some
22 of the people -- there's a particular senator up
23 there in Scobey, which is well-known for racism,
24 he's been against the buffalo, he's introduced
25 legislation.

1 I said, Gee, when we get our water project
2 going around, it's going in his area, we're
3 going to go around his house. The heck with
4 him. Thanks.

5 MS. BOHNEE: Thank you. Mr. Emery?

6 MR. EMERY: I guess I'd like to give a more
7 concrete example in the legislature itself. A
8 friend of mine, when we're not in court against
9 each other, Mark Barnett was the attorney
10 general when my brother Tom and some other good
11 folks sponsored a bill.

12 Every year when there's election, the
13 South Dakota Secretary of State's Office calls
14 the Cheyenne River Sioux Tribe and says, We need
15 building space to have our elections in.

16 And yet, for our tribal members who have
17 tribal election the same day, they have to go to
18 two different places to vote, which I thought
19 was ridiculous. And so I knew that the state
20 would raise the jurisdictional issue, and my
21 brother, Tom Van Norman, who was our house
22 representative from 28A agreed.

23 So we introduced legislation which would
24 have put the State Superintendent of Election in
25 charge of the building where the state election

1 was. But on the other side of the building,
2 we'd run our tribal election. If there was any
3 disputes, we would empower the State
4 Superintendent of Election, whoever that person
5 was, to go ahead and have our tribal members
6 arrested if they misbehaved under tribal law.

7 When they had the hearing scheduled, it was
8 scheduled at 7:00 in the morning Central
9 Standard Time. Of course in Eagle Butte, we're
10 on Mountain Standard Time; therefore, it's 6:00
11 our time.

12 So we got up about 3:00 in the morning and
13 went down for the hearing. Testified on the
14 hearing that we'd been doing this as long as
15 they had been having elections that allowed
16 Indians to vote.

17 And by the way, I didn't hear it mentioned,
18 but South Dakota has a history of, up until the
19 1960s, Indians were not allowed to sit on state
20 juries. I don't know if you folks know that,
21 but I think that's a relevant aspect of this
22 discussion that was not addressed.

23 At any rate, my good friend Mark Barnett
24 came in and testified that, Oh, no, there's no
25 jurisdictional problem. The state, you know,

1 they can -- we don't need any tribal authority.
2 If we have a state problem, we'll take care of
3 it under state law.

4 There's only one minor problem. On a
5 federal Indian reservation, the state has no
6 jurisdiction over American Indians and the
7 attorney general knew it. But of course the
8 State Affairs Committee takes their legal advice
9 from the South Dakota Attorney General, and he's
10 a constitutional officer of the state and can
11 sue any other constitutional officer or the
12 legislature itself, for that matter, if he
13 doesn't like what's been done.

14 And I say "he" because there's never been a
15 female attorney general in South Dakota. We
16 hope there will be some day.

17 At any rate, imagine that we're providing
18 the buildings, the electricity, and every other
19 thing, but we can't on the other side of the
20 building run a concurrent tribal election.

21 I think that shows exactly where we are and
22 that South Dakota in many ways is like
23 Birmingham, Alabama about 1930. Thank you.

24 MS. BOHNEE: I just have one follow-up
25 question on that point, too. But with regards

1 to the time frame, when was this meeting or the
2 hearing?

3 MR. EMERY: Oh, shucks. We started this,
4 let's see, my brother was sworn in in 2001. So
5 we did this in 2001, 2002, and I think they did
6 it a couple times since then. I at that time
7 had left Cheyenne River and become a vice
8 president at the Sinte Gleska University on the
9 Rosebud, and general counsel to the University.

10 So I was a lobbyist at that point for the
11 Rosebud Sioux Tribe and not the Cheyenne River
12 Sioux Tribe and was no longer intimately
13 involved in trying to get election places. And
14 in Rosebud, to be quite honest, folks weren't
15 all that interested in having a state election
16 in the same place as the tribal election. But,
17 nevertheless, it's a really good idea.

18 And assuming, for the sake of argument, that
19 the United States Supreme Court is correct, that
20 we really are citizens of the state, it's
21 difficult to imagine a set of circumstances in
22 which a local election could not be carried on
23 in the same building as a state election when
24 the very government that offers the state the
25 facility to hold the state election in wishes to

1 hold a local election at the same time.

2 And you understand that this isn't something
3 new. This is something old. And yet there's a
4 very clear disclaimer to jurisdiction on Indian
5 lands in the South Dakota Constitution.

6 Moreover, in the gerrymandering that took
7 place in 1996, there's language in the bill that
8 says excluding Indians not taxed, which of
9 course is the language from the United States
10 Constitution. And it's also repeated again in
11 the 14th Amendment.

12 And if those things mean what they say and
13 the tribes are sovereign, then under the joint
14 powers agreement or under the joint power
15 section of the South Dakota Codified Laws, we
16 ought to have been able to work out a joint
17 powers agreement because, for example, we have
18 adopted elements of the South Dakota Uniform
19 Commercial Code so if you want to perfect a
20 security interest on the Cheyenne River
21 reservation, you can go to the tribal
22 secretary's office, pay your fee, they enter it
23 in a computer, and you perfect it and never have
24 to leave the reservation.

25 If we could work stuff like that out, if we

1 could get the gravel so that the county roads
2 are safe for their kids and our kids to travel,
3 it's difficult to imagine why we can't work it
4 out so that everyone can vote.

5 And the at-large voting thing, yeah, that's
6 our problem with the Moreau Grand Electric Coop
7 at home. And our chairman, Kevin Keckler, has
8 been working diligently on that, because his
9 father who is a nonIndian has been on that
10 Moreau Grand Electric Cooperative board for many
11 years.

12 And yet, it's very, very difficult to change
13 the elements of that board. And I frankly
14 believe that if there were an investigation,
15 that they could not hold their position under
16 the existing law. Thank you.

17 MS. BOHNEE: Thank you.

18 MS. KINGMAN: I guess I'm first. I'd like
19 to applaud all of you for staying with the
20 battle, for all that you've been through. And I
21 know how hard it is with the air quality lawsuit
22 that you're in over there. We were watching
23 that closely here, and I've sent out the
24 information all over because we really are
25 appreciative of what the tribe took -- the stand

1 that you took on that.

2 We have the responsibility of putting
3 together two reports out of this. And while we
4 have you here with your expertise, I'm going to
5 ask you if you could give me how you would fix
6 this.

7 Because we know that the voting rights
8 problem we have is stemming directly from
9 discrimination and trying to oppress the Indian
10 vote. And I would like to start with Mr. Duffy.
11 And if we're going to either work on legislation
12 or -- I mean, get some -- try to get something,
13 some fix in the legislation or whatever, what
14 solution or what fix could we recommend to fix
15 this?

16 I know it's really hard to -- you can't fix
17 discrimination. But what can we do? Mr. Duffy?

18 MR. DUFFY: I don't know. I'm about
19 two-thirds, maybe three-quarters of the way
20 through the United States Supreme Court decision
21 on affirmative action in Michigan. Boy, if you
22 read very many affirmative action cases and you
23 read voting rights cases, the handwriting is on
24 the wall.

25 Some of the statements made, particularly by

1 Thomas and Scalia, I mean, they don't really
2 understand the Voting Rights Act. It just seems
3 to me like, one, you're -- you know, it's --
4 you're swimming uphill. We're all swimming
5 uphill.

6 Two, in the Eighth Circuit you have only
7 to -- let's be honest about these cases, what
8 kind of cases they are. They fall under the
9 same rubric as would voting rights, abortion
10 rights, affirmative action cases, are all
11 red-hot political cases.

12 And the judges of the Eighth Circuit, like
13 the judges anyplace else, they are going to put
14 a hitch in the step of a federal district court
15 judge who tries to advance that ball very much.

16 All right, that's the first thing I'd say.
17 The state of the law doesn't look very good to
18 me. The second thing I guess I would say is an
19 old saw -- and Healy will be able -- Healy and
20 Semans will be able to talk about this way more
21 than I will.

22 What's the key? Same key that we found with
23 Four Directions. Organize, organize, organize.
24 What difference did it make? I'll tell you what
25 difference it makes. When Tim Johnson beat John

1 Thune, where did the last 500 votes, 527 votes
2 come from that sounded that victory? Right out
3 of Oglala Country.

4 MS. KINGMAN: Shannon County.

5 MR. DUFFY: So who put him in? They know
6 who put him in. I am a little disappointed, I
7 will say, in this sense. Over and over and over
8 again, as it went from county to county, I kept
9 thinking what I'm doing -- and it cost me a lot
10 of money. I mean, real money. Money out of my
11 own pocket at times.

12 I kept thinking, I'm going to see a ground
13 swell of organization come out of Indian
14 Country. I was down at Crazy Horse School, I
15 said -- they said, Well -- I said to all the
16 students there, What am I waiting for? I'm
17 waiting for Crazy Horse and Sitting Bull to show
18 up in Rapid City with law degrees. We got work
19 to do.

20 What's the key? We know what the key is.
21 On one hand, voting rights and affirmative
22 action have probably seen their better days. At
23 least with this court.

24 And the second thing we know for sure is,
25 that the oppression of minority voters has

1 become a business. What we didn't used to talk
2 about, is now openly boasted about. Whether
3 you're listening to Scott Walker or Ryan, any of
4 these guys, they know at the margin that if they
5 can oppress minority people, they will not vote.

6 Now what did we do, Bret? Probably tripled,
7 maybe quadrupled the people registered to vote
8 down there? Got everybody -- got everybody
9 moving. What's the answer? The answer is going
10 to be the same as it's always been:
11 Organization, organization, organization.

12 I don't think -- I don't think that if you
13 were a betting man or woman you'd look down the
14 road, and between the present state of K Street
15 and the present state of the law of both voting
16 rights and affirmative action that you want to
17 make big bets on this area of the law.

18 So what's that leave us with? It leaves us
19 with what we all know what we've got to do.
20 We've got to get to the poles. Indians have got
21 to start voting. When we get Indians organized
22 in this state and they vote, they make a huge
23 difference.

24 And yet, that doesn't seem to be enough to
25 sustain it. Look I'm no -- I'm -- I've got

1 three cousins who are tribal members over at
2 Crow Creek, and I've got a daughter-in-law who's
3 a tribal member down at Oglala Country, and I've
4 got five grandkids who, at least by blood
5 quantum, are Oglala.

6 I don't know how oppressive it is. I know
7 from listening to my cousins how oppressive it
8 is. Followed around a store, make sure you
9 don't steal something, that kind of stuff all
10 your life. But nonetheless, what's the key?
11 What's the answer? Let's get organized. That's
12 always going to be the answer.

13 And I think really, if you read Supreme
14 Court cases, like I think you probably all do,
15 that's what the answer is.

16 MR. EMERY: Want to apologize because I've
17 got older relatives here, and I apologize for
18 talking in front of them. But I want to correct
19 the record on one point, or I just want to
20 elucidate it.

21 My relative here was talking about the
22 future. You know, in our Lakol Woecun Kin we
23 talk about the coming generations in terms of
24 seven generations, and starting with my
25 children, that's my great-great-grandchildren's

1 great-grandchildren.

2 I knew my great-grandmother very well. She
3 thought I was my uncle. But that was perfectly
4 fine with me, because she knew exactly who I was
5 in terms of, you know, me helping her, and
6 getting her what she wanted, because she spoke
7 Lakota to me. And I can't say I knew her
8 great-grandmother but she did.

9 And you know, we're descended from the
10 people that were at the Custer fight. My
11 grandfather's grandmother was both at the Custer
12 fight and at the massacre at Wounded Knee
13 December 29, 1890, as was my grandmother's
14 grandfather, Martin Charger.

15 And I just want to say that in terms of
16 things that can be done, I'm tired of going to
17 an election and handing them my tribal election
18 [sic] and they say, Oh, no we want your driver's
19 license. I'm tired of that.

20 I saw a federal judge the other day struck
21 down the -- in the east, struck down the
22 requirement, the state requirements of you had
23 to have this, that, or the other ID.

24 In our tribe, in order to get a tribal ID,
25 you have to have your Social Security card. Not

1 sure long ago it was easy everybody could get a
2 Social Security card, you could get probably as
3 many as you wanted, but this is no longer so.

4 Today if you don't have a valid Social
5 Security card, which is a front and a back, you
6 can't get a tribal ID.

7 And so given that restriction, it seems
8 nonsensical to me that it's not accepted as a
9 form of identification for the election. It not
10 only seems nonsensical, it seems discriminatory.
11 In fact, I'll be honest, it doesn't seem
12 discriminatory, it just flat out is.

13 And it's interesting to me because, of
14 course, most of the folks I see that run
15 elections in and around Eagle Butte are from
16 good old pioneer families, and I don't have any
17 problem with anybody being from a pioneer
18 family.

19 My favorite South Dakota senator right now
20 is Tim Johnson. His wife was one of my
21 professors at the University of South Dakota,
22 and he used to serve in the legislature with my
23 Uncle Jim. And I think -- and by the way, Jim
24 wasn't elected from a reservation. He was
25 elected out of Custer. Just want to make that

1 clear.

2 At any rate, I think that the ID thing needs
3 to be addressed. And I think also tribal
4 governments themselves, and Cheyenne River
5 usually does this, but when I was a candidate
6 from Corson County for the senate, if I had won,
7 two things would have happened.

8 I would have lost my job for the Standing
9 Rock Sioux Tribe because they don't allow anyone
10 to work for the tribe that is a sitting member
11 of a state government in any capacity.

12 The other thing that would have happened is,
13 I would have been the first Indian ever elected
14 from Corson County, but of course that didn't
15 happen. And that's okay.

16 At that time, in whatever infinite wisdom
17 there was, they decided not to give the tribal
18 employees an hour off to go vote in the state
19 election. Generally, at Cheyenne River we give
20 the tribal employees an hour off to go vote in
21 the tribal election. As long as they bring back
22 that little sticker that says, I voted, it's all
23 good.

24 We need to do that. We need to, as tribal
25 governments -- we shouldn't care at all how our

1 people vote. What we should care about is that
2 they vote.

3 And I've heard that said, and I guess one of
4 the things that sort of bothers me is that it's
5 a tradition among our people that, when there's
6 any event, we feed. Feeding after people vote?
7 After they vote? I don't understand how that's
8 a problem.

9 And yet South Dakota wants to make it like
10 that's some sort of crime. Oh, well, they went
11 and voted because they wanted a bowl of soup.
12 Really? We feed every day in Eagle Butte. If
13 you're hungry, there's the food pantry and
14 there's a soup kitchen, you know.

15 Because we like -- you know, the first two
16 Lakota traditions are song and prayer, and after
17 that, it's sharing food and drink. And so we do
18 these things, and I cannot imagine a set of
19 circumstances under which after someone has
20 already voted, that it would be a wrong thing.
21 Because we don't say, Did you vote Democrat, did
22 you vote Republican? It's just, there's a feed
23 and anybody -- if they didn't vote, anybody
24 could come eat. Why is that wrong?

25 During the campaigns, the candidates surely

1 have barbeques, and they have meet-and-greets,
2 and coffee klatches, and whatever it is that
3 they have. But there's food.

4 So when the Indians bring the food out,
5 where is it a problem? Because I don't
6 understand. I'm missed that day in law school
7 apparently. Thank you.

8 MS. BOHNEE: I have one additional question,
9 and I just wanted to see if we had any people
10 who have signed up for public -- okay. So we're
11 okay.

12 I just made an observation that a few of
13 you, or almost all of you, have mentioned cases
14 that involve Section 2 litigation which, based
15 on the comments from Mr. Duffy, is very
16 expensive, and based on some of the other
17 comments, it takes a lot of time. One of you
18 mentioned that one case lasted three years.

19 And in response to Section 5 concerns, the
20 Supreme Court said that Section 2 in an
21 alternative to have minorities, or Native
22 Americans in this case, elect candidates of
23 their choice.

24 And I just -- you know, you don't have to go
25 on a long time about it, but do you agree that

1 Section 2 is a viable alternative? Mr. Duffy
2 mentioned that he's had to spend a lot of money
3 out of his own pocket, and I'm sure other people
4 have spent a lot of emotional time and money
5 fighting these lawsuits.

6 MR. EMERY: Excuse me. You're talking about
7 bilingual materials?

8 MS. BOHNEE: I'm talking about Section 2,
9 the at-large district.

10 MR. EMERY: Oh. Oh, I'm sorry. Okay.

11 MS. BOHNEE: Versus single member districts.
12 And there's other Section 2 cases. I think
13 Blaine County was a Section 2 case.

14 MR. DUFFY: You know what the answer to the
15 question is already.

16 MS. BOHNEE: But I need you to answer the
17 question for the record.

18 MR. DUFFY: The answer is -- the answer is,
19 sure. It's a hell of a deal as long as you've
20 got -- excuse me. As long as you've got three
21 or four lawyers who are willing to just throw in
22 like they are witless when they are talking to
23 either their wives or their bankers.

24 Yep, you get somebody -- sure, you get
25 somebody like me, throw in, I'll, \$200,000,

1 \$300,000, \$400,000, let's roll the bones. How
2 often is that -- seriously?

3 MS. BOHNEE: Right.

4 MR. DUFFY: How often is that going to
5 happen? Even for the ACLU, much less a guy like
6 me. It's so expensive. The litigation
7 necessary to get to the end, I thought -- I did
8 a lot of securities work at one time, did a lot
9 of antitrust work. I thought that was the
10 pinnacle of complexity. It's not. It's voting
11 rights work.

12 Voting rights work is the most complex work
13 I've ever done. There's no -- no easy shortcuts
14 to a victory in a Section 2 case. The amount of
15 money it costs is just absolutely stupifying
16 once you go through it a few times.

17 MR. COLLINS: I have a question or
18 statement. You know, it is expensive. It is
19 expensive, and what we did at Wind River was, we
20 knew we were up against a very difficult
21 obstacle with the county commission being in the
22 racist view that they've had for 100 years, ever
23 since they've been a county.

24 So we knew the difficulty was there. So as
25 we moved forward in this court case, they were

1 lamenting to the general public that they didn't
2 have enough money to keep the libraries open
3 past 5:00. They were lamenting that they
4 couldn't fix the bridges and the roads in the
5 county because they didn't have enough money.
6 But they were still willing to spend a million
7 dollars in this lawsuit.

8 And they thought they were somewhat immune
9 to the expense because there's a municipal pool
10 in the state of Wyoming that allows different
11 municipalities and government to participate in
12 that pool of funding for litigation efforts.

13 Well, it turned out that pool was no longer
14 available. So I think they stopped appealing
15 after the Tenth Circuit because they just
16 couldn't afford it.

17 But it was very clear that we were in
18 Section 2 of the Voting Rights Act, it was very
19 paramount in our favor to have people able to be
20 voting.

21 So there was a little different twist than
22 what was just outlined, but we knew the county
23 commission didn't think they had the deep
24 pockets that they thought they had.

25 MR. DUFFY: Gary, we would have won -- we

1 would have won a lot of these -- we would have
2 won Cottier. In South Dakota what we ended up
3 with was exactly the opposite of what you talked
4 about. The pools were able to support them, and
5 yeah, Martin, Bennett County, they would have
6 had to succumb at some point well before a
7 couple million bucks. No, the whole state
8 pitched in and paid for that.

9 MR. COLLINS: Well, when they -- when they
10 lost the case and then Lachlan submitted his
11 expenses, they thought that was way too
12 expensive. But I think his cost withstood the
13 test and they got paid.

14 The other part of it is, and I mentioned
15 this earlier and I think we've all had a couple
16 stabs at this, you know. The organization for
17 voting is, we've just begun in the last few
18 years to just be continually getting people to
19 the polls.

20 When we had a rally at the last election for
21 our state representative, we had vans available,
22 we had food available. When you got done
23 voting, you got a T-shirt that said, I Voted.

24 I mean, there were some really things good
25 things that we had to do, but I knew we were

1 against the wall. So I helped orchestrate that
2 organization and get it done. And we need to do
3 it every time we can.

4 But that's the only -- the numbers are the
5 ones that's going to make the difference.
6 Because in Montana they have seven people in the
7 legislature, and they have seven tribes, and
8 those people in the legislature are of Native
9 American descent. So they -- Montana has made a
10 difference in many, many things in their
11 legislation.

12 But like I said, in Wyoming we have one
13 reservation and two tribes. So we're not as
14 significant but we're getting there. We're
15 making a difference.

16 And you know, some of the other bias I was
17 going to mention. I mentioned last week we had
18 a \$150 million, well those checks showed up in
19 an envelope that looks just like your IRS
20 refund. So the mentality of the community was,
21 I wished I was an Indian, I'd get me some free
22 money.

23 They don't understand it's dividend. They
24 don't understand it's part of the earth that we
25 revere that's where that comes from. We'd

1 rather take fish and good clean water and good
2 clean air than dollars and cents. But it's a
3 different economy.

4 So we're planning on doing more voter
5 organization. We've already started. We're
6 going to continue to do that. But I would say,
7 even though the Supreme Court makes the laws at
8 the upper level, it's actually when it gets down
9 to the county level, the local level of that
10 interpretation that needs to be stressed the
11 hardest.

12 Because when you go to D.C., you go other
13 places away from your reservation, you think
14 everything is good, based on what you hear and
15 read. But when it gets down to interpretation
16 at the grassroots level, it doesn't happen.

17 And I'll say, they wiggle it out to where
18 it's maybe, sort of, kind of, maybe. You know,
19 that's just -- and of course our resilience in
20 some cases, when you're talking to an issue with
21 a 70-year-old man and woman, they don't have the
22 resources to come back to town and do it over
23 and over. If you miss that car in the morning,
24 you're done for the day, because we don't have
25 multiple transportation. It's just day-to-day

1 life experience.

2 MS. BOHNEE: Thank you.

3 MR. MAIN: I'd just like to say that the two
4 Section 2 cases that Fort Belknap or tribal
5 council or individuals are -- were involved in
6 and currently involved in, isn't costing Fort
7 Belknap a whole lot of money because the
8 Department of Justice is providing the
9 attorneys, the experts. We also have a couple
10 of grassroots organization, voting rights
11 organizations that are chipping in.

12 MS. BOHNEE: But these are recent cases?

13 MR. MAIN: Yes, they are recent. One is
14 happening now, in fact. And both of the -- both
15 of these cases involve the one person that I
16 talked about.

17 The United States versus Blaine County case,
18 there was a college professor that taught school
19 at a community college, and so he was very well
20 liked by a lot of the students. And he was fine
21 until he got elected county commissioner. Then
22 he switched to the other side and kept -- he'd
23 come -- I was on council at the time and he'd
24 come and tell us, Well, we have to build a
25 bridge. And I told him, I agree, Victor, but

1 that bridge has to be built both ways in order
2 to be effective, you know. Can't be built from
3 our side to yours.

4 And the other case is, again, the one guy
5 that Indians helped get elected, turns his views
6 right after the election and decided to fight
7 against us.

8 As far as what can be done, I -- aside from
9 changing, you know, a lot of these people's
10 mentality, you know, I think that we as Indians
11 can do a lot more ourselves by educating our
12 people on the importance of voting.

13 A lot of the county during elections, they
14 boast about the large percentage of voter
15 turnout on the reservation and they have
16 hand-picked Indians that are working with
17 nonIndians to make it look like a glamorous
18 situation, when it's actually not.

19 These people put out statistics saying that
20 anywhere from 72 to 80 percent, there was 72
21 to -- 72 to 80 percent voter turnout on the
22 reservation. Everybody thinks, Holy man, that's
23 a lot. You know, why even vote, you know? My
24 vote ain't going to matter, because it's a huge
25 turnout.

1 What they are not telling people is that's
2 of the registered voters only. They are only
3 registering about one-third of the eligible
4 voters on the reservation. So if they are
5 getting 70 percent of a third, you know, they
6 are not even -- 70 percent people not voting.
7 So they just don't want us to make a difference,
8 I guess, basically. It's hard to change their
9 mind.

10 MR. WHITE HEAD: The other guy he was
11 talking about, Jeff Miller, he was a college
12 professor, and then he became the mayor of --
13 and an elected county commissioner. He had a
14 band, he was a nonIndian. He played in his
15 band. They played up and down the highway, you
16 know, when I was running for office. He was
17 always on that, Get out the vote for Bill White
18 Head for state legislature. But he turned
19 around.

20 Now, in terms of a couple things that has to
21 be done. You know, appreciate, you know, people
22 and maybe it was just because Barack Obama was a
23 community organizer that you see, that
24 profession that makes things happen is community
25 organizing.

1 And yet within -- I used to be on the
2 community board for the community college.
3 Doesn't have a curriculum for community
4 involvement, community organizing. This was a
5 couple years back when I served there.

6 But we need to influence these community
7 colleges to develop a curriculum around
8 community organizing, because that's where the
9 key is and, in some instances, constitutional
10 reform.

11 I think the biggest thing for tribes and all
12 our nonIndian friends is to do the necessary
13 research that I think the NCAI used to do. They
14 had sort of a judicial watch on when these
15 vacancies in terms of judges were vacant.

16 In 2008, when Barack Obama was campaigning,
17 you know, he had an outfit right in our
18 community. So when his representatives came in
19 2008 in October, we recommended not only local
20 judges, but that whoever got in, it was up to
21 them, you know, to nominate an Indian for the
22 Supreme Court.

23 If they are better able to understand all
24 the things we've talked about in terms of
25 jurisdictions, sovereignty, and all these cases,

1 history. Know our history and the white
2 relation. Read that handout I gave to you. It
3 gives a history. You'll hit on a lot of that.

4 I think we need to do that. All of us get
5 together. And Barack has got a couple years
6 left. We need to encourage someone to get an
7 Indian on the Supreme Court, and it's time to do
8 that right now. So we need to band together and
9 our supporters.

10 We passed that in 2008. We sent a letter to
11 Barack when he was a senator then, and address
12 this office. And when I get back to the
13 reservation at Fort Peck, I'm going to have our
14 tribe reaffirm that motion, and take an action
15 again and move that forward.

16 I hope those of you who are involved this
17 tribal council will do the same thing all over
18 this nation. I think that's one of the ways we
19 can deal with the situation.

20 MS. BOHNEE: Thank you very much. At this
21 time I want to thank the panel for your words,
22 and we're going to take the materials that you
23 have offered into evidence, as well as your
24 testimony.

25 And before we break we have one person who's

1 going to offer public testimony. I'd like to
2 invite him forward. Mr. Mark Lone Hill.

3 MR. LONE HILL: I just want to say something
4 about voter intimidation in this town.

5 MS. KINGMAN: Can you go to the mic? We
6 have a mic for you.

7 MR. LONE HILL: I vote up here at Bethel
8 Assembly up here in North Rapid. Here in the
9 last presidential election between Barack Obama
10 and Mitt Romney, I voted, you know, and filled
11 out my ballot, you know, everything. Was all --
12 made sure everything was checked out.

13 And I'm taking it up to the ballot, and I'm
14 putting it in the box, getting ready to put it
15 in there. This lady comes up says, Oh, hold on.
16 I want to make sure you're putting it in right.

17 And I know I had it in right. But she pulls
18 it out, and pulls out my ballot, looks at my
19 ballot, up and down. And then turns it over,
20 looks it up and down to see who I'm voting for.

21 You know, and then she goes, Oh, okay.

22 Then she puts it in for me.

23 I just wanted to put it in for you.

24 I go, I had it right. I know what I was
25 doing, you know. And anyway, I went out in the

1 parking lot, called the county office and made a
2 complaint down there. And they said they were
3 going to take care of it.

4 So, that night my father wanted to go vote.
5 So I -- you know, I told him what happened and I
6 said, I'm going to go with you, make sure that
7 doesn't happen to you.

8 And I know that what she did was wrong
9 because I used to be a voting judge in Alaska.
10 I lived in Bethel, Alaska for ten years. And I
11 was a voting judge up there when I lived up
12 there. So I know what she did was wrong.

13 So my dad, he voted, and I made sure, you
14 know, he -- everything was right for him. And
15 here comes that lady. She was coming up and I
16 said, He's putting it in right. So she wouldn't
17 look at his ballot. And anyway, he put it in.

18 And anyway, he was sitting there waiting for
19 his, like, little sticker that they give you,
20 the I Voted sticker. Because she's, like,
21 passing them out, running out to everyone,
22 passing them out to everyone.

23 And he's waiting there right in front of
24 her. She looks at him, turns away and walks
25 away. And he's just like, Well, I guess you

1 don't give those out to Indians, do you? And he
2 just walks off.

3 And anyway -- so anyway, we're going out in
4 the parking lot, here comes one of the
5 councilmen from town here. And it's Councilman
6 Roberts. And he says, I heard what you said in
7 there. And he goes, I want to apologize. He
8 goes, That's not the way it is here. And he
9 goes -- he gave us both an I Voted sticker. And
10 we thanked him and we said, we told him that
11 wasn't necessary. My dad said, Well, that
12 happens all the time here.

13 And it does happen all the time here in
14 Rapid, you know. There's some kind of an
15 intimidation thing going on here. You know,
16 it's just part of the racial mentality in this
17 town, you know. It's in the media, it's
18 everywhere, in the stores.

19 In the media, you know, they ignore Native
20 American athletes. Like, they had this article
21 about the greatest Central athletes, you know.
22 And they mentioned a lot of them. They
23 mentioned a couple Indians but, you know, they
24 mentioned a boxer. And I used to box quite a
25 bit, and I used to box with the guy they

1 mentioned. His name is Pat Jefferson.

2 And Pat was a good fighter, but there were
3 better fighters than him. Chuck Richards, Pat
4 went to national once. I mean, he made the
5 finals, he made it to the finals once at
6 nationals.

7 And in this newspaper, they ignored the
8 Indian athletes, because Chuck Richards made it
9 twice to nationals, to the finals in nationals,
10 and Bradley Martinez won nationals twice.

11 And they just refused to put those guys in
12 the paper, and I thought that was wrong. That's
13 part of the stuff we have that goes on here, you
14 know, being ignored in this town. So that's
15 about all I've got to say.

16 MS. BOHNEE: Thank you. Do any of the
17 Commissioners have questions for Mr. Lone Hill?

18 (None were presented.)

19 MR. EMERY: I'd like to note for the record
20 that his father is a full blood member of the
21 Oglala Sioux Tribe as is Mr. Lone Hill here.

22 MS. BOHNEE: Thank you.

23 MR. LONE HILL: Thank you.

24 MS. BOHNEE: Thank you very much. At this
25 time we're going to take a five-minute break.

1 So, we'll try to get back on schedule but I do
2 appreciate the time that you all spent with us,
3 and I thought it was important to ask questions
4 and allow you all to answer them, so thank you.

5 (Brief recess was taken.)

6 MS. BOHNEE: Okay. We're going to go ahead
7 and get started with our second panel. I would
8 just like to remind the public that if you want
9 to offer a public comment, that you can go see
10 Ms. Eileen O'Connor and fill out a -- give her
11 your name and we'll make sure you have an
12 opportunity to make a statement.

13 And at the break we were able to clarify,
14 Mr. Duffy was discussing one of the cases he was
15 working on, Bone Shirt versus Hazeltine. And
16 for the record, we wanted to clarify the time
17 period, it was 2001 to 2005.

18 MR. BRAUNSTEIN: The last case was 2005.

19 MR. HEALY: Actually it became Bone Shirt
20 versus Nelson, so it would have been after Chris
21 Nelson was Secretary of State. It bled over.

22 MS. BOHNEE: So I'd like to thank our panel
23 for being here and making themselves available.
24 I'd just like to remind you that we have the
25 five minute time frame.

1 MR. HEALY: Wait a second, I saw how that
2 worked.

3 MR. BRAUNSTEIN: We're getting better all
4 the time.

5 MS. BOHNEE: And we will have time for
6 questions as well. So we'd like to start with
7 Mr. Mark Wandering Medicine.

8 MR. WANDERING MEDICINE: I want to thank
9 everybody for giving me this opportunity to be
10 here. I'm the lead plaintiff for Northern
11 Cheyenne, I guess, Rosebud County. And as I was
12 reading this here, and I want to touch on the
13 intimidation faced by plaintiffs in voting
14 rights cases.

15 The intimidation that I faced as that lead
16 plaintiff, I wouldn't want to wish it on
17 anybody. Because not too long ago, my youngest
18 daughter -- who's never been involved in -- with
19 the law at all, a young mother, has got four
20 kids.

21 She was just visiting her friend. She had
22 just completed her AA degree and they were --
23 they went out and kind of celebrated in a way
24 where they just wanted to socialize. And both
25 of these young ladies got arrested by Rosebud

1 County sheriff -- a sheriff -- a deputy that's
2 been intimidating Northern Cheyennes in the town
3 of Ashland, which is located off the
4 reservation.

5 And when they both got arrested, they were
6 taken to Forsyth. And my daughter got really
7 beat up by the deputy sheriff at the jail for no
8 reason at all. Just about three weeks before
9 that, we almost lost her, she had Influenza 1
10 and 2 and pneumonia. Both of her lungs
11 collapsed.

12 And when she got beat up by this county
13 deputy, he even Maced her just a few inches from
14 her face, where she inhaled a lot of that Mace.
15 And it took a little while for her to try to
16 come out of what had happened. She was really
17 traumatized by the whole thing because she's
18 never been treated that way.

19 And he told -- she told the jailers that she
20 had just gotten out of the hospital, being Maced
21 was making her breathing difficult, and she
22 wanted to go to the clinic or the hospital in
23 Forsyth.

24 So she went over there, they took her over
25 there. And for some reason the doctor gave her

1 six different pills, and one of them is a pill
2 that you give to people that have to take that
3 kind of medication because they end up in places
4 like a psychiatric ward.

5 She didn't know that, but she had overheard
6 the doctor tell the deputies, I won't have to
7 cover you guys up on this thing, what you guys
8 did. So they gave her those pills, and she felt
9 like she was losing her mind and -- because
10 she's not a violent person. I don't know if
11 they were trying to make her be a violent person
12 by giving her that medicine.

13 And they kept her in there for a few days.
14 We didn't find out for about four days what her
15 bond was. The deputy sheriff had charged her
16 with two felonies and five other misdemeanor,
17 high misdemeanor charges. And her bond was
18 \$26,000, and they knew that we can't afford that
19 kind of a bond.

20 So after she had been in there, I was
21 thankful that the people that are helping in our
22 case supported me again, and they helped me get
23 my daughter out of the jail. And then when she
24 came home, she told me that when my wife and my
25 two other daughters went to visit her -- she

1 wanted to see her kids and we talked about it.
2 And we said okay, we'll go ahead and bring your
3 kids, because she loves her kids a lot.

4 Your kids miss you, they don't know -- they
5 know what she went through when she got sick,
6 but they got to see her in the hospital. But
7 when they got over there, her youngest is the
8 only boy. She's got three daughters and a son.
9 The youngest son really loves her most.

10 He's only four years old. When he seen his
11 mom behind this glass, he got so angry, he
12 started banging on that glass. He said, I'm
13 going to break this. I want you home. I want
14 you to come home. And that just made my wife
15 and my daughters just cry to see that.

16 You talk about intimidation when you go into
17 the store and they -- they tail you in Forsyth
18 saying, Gotta make sure you guys don't take
19 nothing, don't pick anything up, don't steal. I
20 mean, people actually hear that.

21 But I also know Rosebud County is a very
22 dangerous place. A woman, when they used to
23 have Rosebud County Fair back in the '50s, they
24 used to camp in the city park, the Cheyennes.
25 And this lady got up, she went to use the

1 restroom. The deputy sheriff was deliberately
2 driving around there, kind of intimidating,
3 harassing the campers.

4 She seen this person come out of the
5 restroom and he -- he shot and killed that lady.
6 Now when they found out, he said, I thought it
7 was some kind of animal coming to there.
8 Nothing was never done about that. Nothing.
9 They didn't do any kind of investigation, no
10 autopsy, nothing. They just said it was just an
11 error. It was just a mistake, you know. That
12 was it.

13 The second one, a young boy was going to
14 St. Labre school, and the nun was forcing
15 spinach that he didn't want down his throat. He
16 jumped up and hit the nun. He ended up in the
17 Pine Hills State Boys School in Miles City, and
18 he just walked off of there. He ended up in the
19 town of Ashland at 5:00 in the morning. He was
20 shot in the back by a deputy and that also was
21 never even investigated.

22 MS. BOHNEE: When was that?

23 MR. WANDERING MEDICINE: This was in, I
24 would say, mid '60s. And we all know there's
25 such strong possibility that these people in

1 Rosebud County will not hesitate to shoot
2 Indians and kill them because they know they can
3 get away with it.

4 And then when I became the lead plaintiff, I
5 thought that nothing would ever happen. But
6 when my daughter got arrested for no reason at
7 all, normally they have Indians being arrested
8 because it's alcohol related. There was no
9 alcohol-related charges at all against my
10 daughter.

11 When the deputy arrested her friend, my
12 daughter said, Jaw, you're getting arrested.
13 And she laughed. The deputy came back in there
14 and said, You're coming with me, too. Come on.

15 Didn't even say, You're under arrest for
16 this, or nothing. Took her out there, put the
17 handcuffs on her. By the time she got down
18 there, got beat up and everything else, the
19 deputy sheriff said, I'm charging you for
20 attacking me and injuring me.

21 She said, I didn't even do nothing. And her
22 friend told the deputy sheriff, when the deputy
23 sheriff jerked her out of the police car onto
24 the concrete floor in the garage of the jail,
25 her friend said, I don't think you're supposed

1 to do that. That deputy sheriff turned on her
2 and kneed her in the thigh for saying that and
3 gave her a big bruise.

4 All this, you know, occurred after they
5 found -- after they know that I'm the lead
6 plaintiff in the case over there. So you know,
7 you talk about intimidation, this is beyond
8 intimidation. This is out to deliberately hurt
9 my family member so I can back off.

10 And to make things worse, the lady that's
11 representing Rosebud County, her last name is
12 Frankenstein. She wants to do these
13 interrogatories at Rosebud County courthouse.

14 And I told her, I said, you know, It was
15 difficult for me to come over here. I said,
16 Just 100 yards from here my daughter got beat
17 up. Now I'm sitting here and my daughter is
18 going to appear here because she's got two
19 felonies, and you want me to answer questions in
20 this setting? I said, I'll try to do the best I
21 can, but it's really impossible.

22 And then after that, I just walked out after
23 I answered some questions because I couldn't
24 handle that. Right after that, she had her
25 arrangement with the JP, her court-appointed

1 attorney didn't even show up. She was the only
2 one there. The judge was there, and a county
3 attorney that's representing -- that was
4 representing Rosebud County is also the
5 prosecuting attorney, he didn't come in there.
6 There was just the JP and my daughter.

7 And then after that, she had to go to
8 district court and enter pleas on the felonies,
9 and she entered her pleas and they got a
10 different attorney from the attorney general's
11 office in Helena to take over the case.

12 I don't know what that was all about. He
13 appeared on a screen like this in the court when
14 she was there to make her plea. And he said
15 that those charges were ridiculous. I mean,
16 that's what he said.

17 MR. BRAUNSTEIN: Her attorney was on the
18 screen?

19 MR. WANDERING MEDICINE: The prosecuting
20 attorney. The judge said that my daughter was a
21 nice-looking lady. I mean, was kind of hard to
22 take that she would be that kind of a person. I
23 mean, that came from the judge.

24 But still that same judge said to have her
25 preliminary hearing on May 5th, when they all

1 knew that's my daughter's birthday. I mean,
2 putting battery acid in the wound, I would call
3 that.

4 I mean, this is -- this is what they've
5 done. You know, to try to make me back off.
6 And I just wanted to, you know, relate some of
7 the things that happened. I mean, it's
8 something that you hear about happening to the
9 African Americans back in the day, but this
10 actually happened in 2014 to my daughter.

11 But I realized one thing. My people have a
12 problem, you know, just voting. They are poor
13 and we raised those issues that it's a long
14 ways. Like myself, I live in the smallest
15 community on the reservation, the most isolated
16 community. And it takes two hours for me to get
17 from my place to Forsyth. I mean, that's just
18 one way. That's how far it is.

19 MS. BOHNEE: Is Forsyth the county seat?

20 MR. WANDERING MEDICINE: Yeah. And you
21 know, if we could have this satellite
22 opportunity to do late voting and registrations
23 and stuff like that, it would definitely
24 encourage my people to really actively
25 participate and exercise their voting rights.

1 So I just wanted to bring that out at this
2 time since, you know, I've been given this
3 opportunity. And my daughter is still trying to
4 recover from that real traumatic experience. I
5 mean, it's -- it really devastated her and her
6 kids, seeing her there. My little grandson is
7 four years old, he was willing to break the
8 glass, get his mother out of there. I mean,
9 that's how far he wanted to go. So I just
10 wanted to touch on that intimidation.

11 MS. BOHNEE: Well, thank you for your
12 testimony. I know that it's not easy to --

13 MR. WANDERING MEDICINE: Yes.

14 MS. BOHNEE: -- go through this sort of
15 situation. But we thank you for sharing this
16 with us.

17 MR. WANDERING MEDICINE: I just wanted to
18 say that much. And I was telling O.J. and Bret
19 that I made it over here just to give a little
20 testimony on intimidation that, you know, that's
21 there.

22 And I have to get back on the road now.
23 I've got some things in the morning over there
24 and I've got to go back to Montana, so. My
25 wife, she has rheumatoid arthritis, 95 percent

1 of her body is affected by this thing. I take
2 care of her, I cook for her in the morning, I
3 clean for her. A lot of times, you know, she's
4 all right and she does whatever she can. And
5 she goes where I go, because I have to take care
6 of her 24/7.

7 So she's out there in the car, in the truck
8 resting. So I'm -- you know, I don't want to
9 seem like I just made a hit and run here in this
10 thing, so.

11 MS. BOHNEE: Well, before you leave I just
12 want to see if any of the Commissioners have a
13 question for you. Anybody have any questions?

14 MR. BRAUNSTEIN: I just have perhaps a point
15 of clarification. So the litigation you were a
16 plaintiff in, what was the nature of that case?
17 When was it started?

18 MR. WANDERING MEDICINE: I think Bret is or
19 O.J.

20 MR. BRAUNSTEIN: So, just what year was it?

21 MR. HEALY: The complaint was filed
22 October 10, 2012, went for a preliminary
23 injunction hearing in front of a racist judge,
24 Richard Cebull, on October 29 and 30 of 2012.
25 Was appealed to the Ninth Circuit. Ninth

1 Circuit agreed in February 2013 to hear it.

2 The case was argued October 10, 2013 in
3 front of the Ninth Circuit. They ruled 30 of
4 October, kicked it back down to the district
5 court, and Judge Molloy scheduled -- on the
6 scheduling order was in late November 2013, with
7 a June 30, 2014 bench trial. Discovery just
8 ended on April 11th. And actually the motions
9 and briefing deadline just concluded April 28th.

10 MR. BRAUNSTEIN: 2014?

11 MR. HEALY: Yes.

12 MR. BRAUNSTEIN: When exactly was this
13 incident with your daughter? It was in 2014 but
14 what month was it?

15 MR. HEALY: March, last half of March.

16 MR. BRAUNSTEIN: I just want to make it
17 clear for the record that this occurred during
18 the ongoing litigation. I know you mentioned
19 that, but I want to make it very clear.

20 MR. WANDERING MEDICINE: Yeah.

21 MR. BRAUNSTEIN: I thank you so much for
22 your time and driving down, and thank your wife,
23 too, for coming along and making the trip.

24 MR. WANDERING MEDICINE: Yeah.

25 MR. BRAUNSTEIN: It's almost unbelievable to

1 me. I just wanted to be clear for the record
2 that this occurred in the process of litigation
3 you were a plaintiff in. I find it --

4 MR. HEALY: Richard, he -- this incident
5 happened prior to his deposition. They forced
6 his deposition in that same community of
7 Forsyth.

8 MR. BRAUNSTEIN: Yes, I caught that. I
9 mean, I don't want to repeat your entire
10 testimony here, but the entire thing is almost
11 unimaginable to me. I apologize for your
12 experience.

13 MR. SEMANS: The county attorney that
14 charged his daughter sat in the deposition
15 because she represents the county. The county
16 commissioners and the clerk reporter.

17 MR. WANDERING MEDICINE: Yeah, I don't want
18 to make it sound like I'm ditching my thing on
19 these two, but --

20 MR. BRAUNSTEIN: No. We appreciate it.

21 MR. WANDERING MEDICINE: I'm still trying to
22 recover as best I could of what happened to my
23 daughter. And otherwise, you know, I'm always
24 open to freely answer anybody myself.

25 MR. BRAUNSTEIN: Is she out on bond now?

1 MR. WANDERING MEDICINE: Yes. Yes. And
2 they have already proposed to drop those
3 felonies. The state proposed that, not the
4 defense counsel. The state proposed that. And
5 they are only going to charge her, I think, with
6 one high misdemeanor, which is attempt to injure
7 the deputy, which means that they want to save
8 face for that action.

9 But it's up to her legal counsel on how they
10 are going to handle this thing. And to me, I
11 think they should drop all the charges because
12 she never done nothing.

13 MR. BRAUNSTEIN: Maybe you should initiate a
14 few charges of your own, sir. But I'm not the
15 man to advise you on that.

16 MR. WANDERING MEDICINE: I think there's
17 some things that are in the process of being
18 considered at this point. But my daughter still
19 is going to the IHS clinic from that effect with
20 the Mace. It really -- she also has eczema ever
21 since she was little. That Mace really
22 activated her, and Forsyth knows that.

23 And she went and asked that doctor in
24 Forsyth if she could have a copy of what
25 happened with her, the examination. They

1 dragged their response, and just the other day,
2 we finally got those records. So I don't know
3 what's in there, I don't know, but she retained
4 all those pills that she got over there,
5 including that one that is highly questionable.

6 You know, they -- them doctors from IHS said
7 it was illegal, what they did over there.
8 That's how far they went, you know. My daughter
9 is not a -- is the most friendliest. If she
10 came in here, you wouldn't -- you would be
11 totally surprised. She is really nice, she's a
12 good mother.

13 All the people on the reservation, they
14 always tell her how cute her kids look. She
15 really has a lot of interest in her kids.
16 That's her main life, that's the only thing she
17 knows. She doesn't have a biased feeling in her
18 heart at all to anybody or anything. She don't
19 even go that far.

20 When she was little, we went to Arizona and
21 there was this little white boy that got
22 something wrong with his pigment. Looked like
23 he was an albino. All them other little kids at
24 the swimming pool didn't want to play with him.
25 My daughter didn't know the difference. All she

1 knew, there was a little boy.

2 She went over and played with that little
3 boy, and she had a real fun day. And it
4 actually made the little boy's father cry
5 because he said, All the kids don't want to ever
6 play with my little son. Your daughter played
7 with him like there was nothing wrong.

8 That's the kind of person my daughter is.
9 Because you know, I just want to say that, so.
10 I wish I could stay here, you know. I'm kind
11 of -- I'm 66 years old. I'm a
12 great-grandfather, I'm a grandfather, I'm a
13 ceremonial man, I'm a Vietnam Veteran, and
14 everything else.

15 And being a grandfather, I probably could
16 stay here and talk for the next five hours or
17 when you get done. Oh, you want to talk, talk,
18 talk, you know. I've got some things going back
19 home.

20 One of my cousins just passed away. They
21 had her funeral when I was leaving and, you
22 know, it's just, my people depend on me, on the
23 performance of certain funeral rights and stuff
24 like that.

25 But still, I'm not going to give up until my

1 people can really exercise their right to vote.
2 That's what I'm here for, you know. And I'm
3 taking quite a hit on this thing. I understand
4 that even my family is, you know. But that's
5 not going to stop me. This is for my people.

6 So, I just wanted to say that. And like I
7 said, I want to thank the panel and stuff like
8 that, so. I want to get back on the road and I
9 know -- I know my wife is tired and stuff like
10 that, but we're going to make this trip. We'll
11 make a trip anywhere.

12 Just to make things better for my people,
13 we'll do that. Just like my ancestors, the
14 federal government forced them to go to
15 Oklahoma. They went against the federal
16 government, they came back to Montana. You
17 know, they went against great odds. Part of my
18 people got helped, just like I'm getting help
19 from Rosebud Sioux.

20 Over here when they were incarcerated in
21 Fort Robinson, the Sioux helped them out. They
22 gave them food, they gave them blankets, dead of
23 winter. So we're still working together,
24 Cheyenne and their allies, the Sioux. We're
25 still together.

1 And just wanted to, you know, say thank you
2 to O.J. and Bret for all their support and, you
3 know, their -- they are good people. And so I
4 just wanted to say that.

5 MS. BOHNEE: Yes. Well, thank you and thank
6 you for your dedication to fighting for voting
7 rights. And we hope that you have very safe
8 travels back to Montana.

9 MR. WANDERING MEDICINE: Okay. All right.

10 MS. BOHNEE: Thank you. I'd like to ask our
11 next panelist to present her testimony. Julie
12 Garreau.

13 MS. GARREAU: Garreau.

14 MS. BOHNEE: Garreau. Sorry about that.

15 MS. GARREAU: That's okay. Happens all the
16 time, so.

17 Good evening. My name is Julie Garreau, an
18 enrolled member of the Cheyenne River Sioux
19 Tribe. I'm from Eagle Butte, South Dakota. In
20 2010 I ran for a seat in the South Dakota State
21 Senate, and I lost that race.

22 But as it turns out, it was one of the most
23 rewarding and winning experiences I could have
24 imagined. After that race, I was shocked to
25 find out that of the 2,000 eligible Native

1 voters on the Cheyenne River reservation, only
2 876 are registered to vote. And of those
3 registered voters, only 30 percent turned out to
4 vote.

5 Apathy was often a term I had heard during
6 my campaign. But when the dust settled and the
7 campaign was over, I realized it wasn't about
8 that. It was more about relevance.

9 I realized in speaking with the Native
10 constituents of District 28, that many felt that
11 state and federal elector -- federal -- the
12 state and federal electoral process wasn't
13 theirs.

14 The feeling is that tribal government
15 impacts our daily lives, therefore voter turnout
16 for tribal elections is much higher. But I also
17 learned that it isn't necessarily encouraged for
18 Native people to participate as well.

19 As a result of the election and those
20 statistics, I realized that the work that needed
21 to be done wasn't Julie Garreau running for an
22 office, but rather working towards changing
23 those dire statistics and engaging more Native
24 members in the electoral process, voting,
25 running for office, and organizing.

1 Engagement meant more than just registering
2 voters, but included educating people about how
3 federal and state legislative decisions impact
4 our lives as well as policy change.

5 Throughout my campaign, we noted that one
6 obstacle was voter access in state and federal
7 elections, highlighting location and access
8 issues. But our optimism helped us believe we
9 can overcome that hurdle if we used a
10 collaborative approach.

11 And so I began working with my colleague,
12 Michelle Dubray, to push for change. And I am
13 pleased to be here today to share the story of
14 how we were able to acquire early voting
15 stations on Cheyenne River.

16 Prior to this year, our inquiries to
17 establish early voting stations were met with
18 such feedback as: I don't have to; I don't have
19 a boss; We don't have the manpower; It can't be
20 done; It's too expensive.

21 And when we suggested the insane idea of
22 shared voting stations, we were told that it
23 would be too confusing. There is still much to
24 do at home on the home front. But success was
25 achieved in 2012 when the Cheyenne River Sioux

1 Tribe and Dewey County Commissioners agreed to
2 establish an early voting station in Eagle
3 Butte.

4 It was encouraging to our cause when we
5 approached both entities and found that neither
6 party required convincing as they both
7 understood the obstacles the citizens of our
8 county faced.

9 Each entity played a critical role. The
10 Dewey County Commission voted to allow the
11 county auditor to work with the Cheyenne River
12 Sioux Tribe to identify a person to serve as the
13 deputy county auditor.

14 The county auditor provided the training,
15 ballots, and collected the ballots during the
16 early voting process. The Cheyenne River Sioux
17 Tribe appointed a tribal employee to serve as
18 the deputy auditor, absorbing all the expense,
19 provided office space and security to hold the
20 ballots.

21 The Dewey County auditor and the deputy
22 auditor developed a close and cooperative
23 relationship which allowed for them to run an
24 efficient early voting program. Dewey County is
25 over 2,400 square miles, and over 60 percent of

1 its population lives in Eagle Butte, which is
2 more than 40 miles from the county seat in
3 Timber Lake.

4 Additionally, more than 30 percent of its
5 population is below the poverty line. Many
6 voters reside a long distance from the county
7 seat in Timber Lake, and do not own reliable
8 vehicles, or do not have the financial resources
9 to make a trip to early vote.

10 Although tribal elections are synced with
11 state and federal elections, polling locations
12 are typically located in different communities.
13 So for many tribal members, voting in both
14 tribal elections and state and federal elections
15 means traveling to two different communities to
16 vote.

17 More justification for having an early
18 voting station in Eagle Butte, our reservation's
19 governmental headquarters, where many travel to
20 do business.

21 Of course, there's absentee voting
22 available, but it's not as convenient as you
23 might believe. In rural communities, mailboxes
24 are often not located next to the homes, and
25 mail service is not delivered every day of the

1 week.

2 With regard to absentee voting, in
3 South Dakota it requires not only several trips
4 to the post office, but also access to a notary
5 public and a photocopier, which is not easily
6 accessible to many tribal members, particularly
7 those living in smaller communities.

8 Although some people we spoke with liked
9 voting via the postal system, most enjoyed the
10 privilege of voting in person. With the
11 satellite voting site open several weeks prior
12 to the election, voting was made more
13 convenient.

14 It allowed the voter the privilege of
15 casting their ballot on any day of the week,
16 which is why I believe we saw an increase in
17 voter turnout in Dewey County. Voter turnout
18 increased from 54.5 percent in 2008 to 62.1
19 percent in 2012, an increase of 7.6 percent.

20 Thank you. And that's it. Thank you for
21 your time.

22 MS. BOHNEE: I just have one follow-up
23 question for the record. Because we have four
24 different states here and just to clarify,
25 Cheyenne River is in Dewey County, South Dakota.

1 MS. GARREAU: Yes, that's correct.

2 MS. BOHNEE: Okay. I wanted to verify that
3 for the record. Thank you very much for your
4 testimony. We're going to hold questions until
5 the end of the panel. Next we have Mr. O.J.
6 Semans.

7 MR. SEMANS: (Statement given in Lakota.)
8 First of all, I'd like to wish everybody here --
9 Sure. Sure.

10 We sit on the HAVA board together, so I knew
11 he was going to do that.

12 It's great to see people, you know, from
13 many tribes, many states here today. What I
14 want to first of all do is thank Patty. We
15 talked about this last night. I've known her
16 since probably 2008, 2009 when she filed amicus
17 for me in the Northwest Austin Municipality
18 Utility District case that went to the Supreme
19 Court.

20 And then she turned around and filed an
21 amicus for me back on the Shelby versus Holder
22 case, which was really strange because the
23 Supreme Court came out with a decision on
24 June 25th, and it was exactly 137 years from
25 Custer's demise.

1 So I don't think the Supreme Court really
2 thought of it that way, but basically I always
3 said, Well, they will never get over Custer, and
4 137 years later, he showed it. And for that, I
5 thank Patty. We were able to participate in
6 that.

7 If you want to talk about, you know, Native
8 vote, one of the things that you have to look
9 at, even in the Shelby case, National Congress
10 American Indians filed, tribes from all over the
11 United States filed in the Shelby case. Not one
12 mention was made of Native Americans in the
13 Shelby case.

14 You know, South Dakota has preclearance in
15 Shannon County and Todd County. And it was just
16 amazing to me that they decided that they
17 wouldn't even mention tribes.

18 But I'm here basically to talk about
19 discrimination, or the history of discrimination
20 of Native Americans trying to participate in the
21 electoral process. We've been involved, my wife
22 who is the co-sponsor, Barbara, for --
23 co-director of Four Directions, and been
24 involved in Getting Out The Vote now since 2002.

25 She actually worked for Tim Johnson, the

1 Indian senator, that was fraudulently elected
2 back in 2002. And we helped that fraud.

3 You know, after Senator Johnson was elected
4 back in 2002, the first thing they didn't say is
5 well -- well, they did say, Wow, the Indians
6 turned out. Or, Where did they come from? It
7 was all signs of different things.

8 But what happened was, sitting that quietly
9 was the first thing that happens when Indians
10 actually take and participate in, Ah, they stole
11 that election. They fraudulently did this or
12 fraudulently did that.

13 And as I was talking to Mr. White Head this
14 morning is, you know, every election, federal
15 election, we Indians, we get together, we go,
16 You know what we need to do is, we need to stuff
17 that ballot box. We need to break the law for
18 that white guy. I mean, that's what we need to
19 do as Indians. I mean, that's how much sense it
20 makes for us to be able to try to steal an
21 election or a -- you know, for somebody that
22 basically isn't Indian to begin with.

23 But anyway, after that happened, what they
24 did, I live in Todd County on Rosebud Sioux
25 Indian reservation. They changed our time zone.

1 We went in certain parts of the area, it was --
2 they are supposed to open at 7:00 to 7:00.
3 Well, some of them decided that, you know, they
4 didn't open like -- they didn't open at 7:00,
5 they opened at 8:00 and they thought they -- you
6 know, didn't -- didn't follow the exact hours.
7 So instead of getting 12 hours, they were
8 getting 11.

9 The pole watchers who were there, saw that
10 the polling places weren't open early enough and
11 so they filed a complaint and then went to the
12 courts and the courts ruled they had to give us
13 an extra hour during that election in 2002.

14 And my wife, like I said, worked for Senator
15 Johnson, and it was confirmed by all of the
16 Republican and Democratic constituents that were
17 watching the polls, there was over 530 votes
18 turned in in the Rosebud reservation within that
19 last hour.

20 And so after that, what they decided they'd
21 do is teach us a lesson and just change our time
22 zone. And then they decided, because there were
23 so many people that turned out during that time,
24 that it required us -- because a person would
25 come in and say I'm, you know, I'm O.J. Semans,

1 and they'd look and they'd go, But we have you
2 down as O.J. Wright.

3 I said, Well, that's because, you know, we
4 got the Bureau of Indian Affairs, we got the
5 tribe, and we have all of these other
6 individuals that keep track of our names. And
7 so sometimes there's a mixup.

8 Well, the person that's the judge knows who
9 I am. I know who I am. And so they said, okay,
10 here you go, they cross it out give me my
11 ballot. Well, all of the people sitting out
12 there are going, Did you see those Indians just
13 let him vote for somebody else?

14 And so what they decided to do was create a
15 system where we would now have to have IDs.

16 Now we fought that but one of the things --
17 and we even contacted the Department of Justice,
18 but they still passed it. But one of the things
19 we were able to do was at least to make sure
20 there was tribal IDs included, and we were able
21 to make sure that we were -- had an affidavit
22 that people could sign that say, I am who I am.

23 I'm done. It's 00.

24 MR. BRAUNSTEIN: I am who I am, if you don't
25 have any identification?

1 MR. SEMANS: Right. If you don't have
2 identification, you have an affidavit that says,
3 I am who I am. Bret is going to take up more
4 time so, I've got one more thing.

5 2005, after the 2004 Daschle election, it
6 used to be that you could hire individuals for
7 performance and pay them to go out and work and
8 come in -- if they performed good, you could pay
9 them for the performance.

10 Because, again, the Native American vote
11 increased, they changed pay for performance by
12 paying by the hour. That was the law. And then
13 finally --

14 MS. BOHNEE: Can you just clarify what that
15 means? Is that voter registration?

16 MR. SEMANS: Well, voter --

17 MR. HEALY: And Get Out The Vote.

18 MR. SEMANS: Get Out The Vote. If you want
19 to, you know, have a voter registration drive
20 where you tell this individual, You know what,
21 here's five registrations, go out and do them
22 correctly, bring them back, and we'll pay you \$5
23 for each one. Okay?

24 What they said is, No, you can't do that no
25 more. You give them five registration cards and

1 you have to pay them, you know, by the minimum
2 wage per hour in order to do that.

3 So what they basically said is you can hire
4 them for eight hours and if they don't do
5 anything, you still get to pay them. And that
6 was basically because during the Daschle races,
7 we were paying individuals to haul voters in
8 and, you know, voter registration card by
9 performance, not by hours.

10 And so, honest to say, since 2003, Four
11 Directions has had the state legislature active
12 every year in changing voter law. Finally in
13 2013 -- real quick, I will get done -- we
14 established satellite offices back in 2004. The
15 only reason they were established is because we
16 approached them and we said you know -- and they
17 said, We don't have the money. We'll give you
18 the money. We don't have a space. We will rent
19 the space. Every excuse they had, we said we
20 would take care of it financially.

21 And so that started the deal of setting up
22 the satellite offices. Well we actually started
23 getting real successful. Where counties said,
24 You know what, we don't have a problem with
25 Indians voting and having access if we -- you

1 know, if we have the funding to do it. So we
2 turned around and started, you know, giving
3 funding to different counties for these
4 satellite offices.

5 And what happened was, the secretary of
6 state said, You know, we haven't did a log in of
7 Four Directions in a few years, so we're going
8 to pass a law that basically asks -- or that
9 says that counties -- county election officials
10 can no longer take donations from private
11 organizations.

12 And their reasoning was, is Bill Gates or
13 some rich person from New York will come to
14 Rapid City and put up, you know, satellite
15 offices all over Rapid City and, you know, elect
16 a different sheriff.

17 MR. BRAUNSTEIN: That would be George
18 Sorenson.

19 MR. SEMANS: Yeah. Yeah. Well, they said
20 an elephant in the room. It was really a
21 donkey, so, I mean.

22 And so we have -- I know we have been
23 effective in our advocacy for establishing
24 equality. Because when you can get a state
25 legislature to every year get together to change

1 a law because you took advantage of it and you
2 used it, used -- created it so that more Natives
3 could vote, then you know you're doing your job.

4 And as far as Julie, I call what they did in
5 Dewey County the gold standard of South Dakota.
6 Thank you.

7 MS. BOHNEE: Thank you.

8 MR. BRAUNSTEIN: Can I ask a clarification
9 question?

10 MS. BOHNEE: Yes.

11 MR. BRAUNSTEIN: You mentioned a law where
12 in the state of South Dakota, county election
13 officials couldn't accept resources to
14 administer elections from private interests.

15 MR. SEMANS: Yes.

16 MR. BRAUNSTEIN: Is that on the books right
17 now?

18 MR. SEMANS: It's SB 33. We defeated it.

19 MR. BRAUNSTEIN: Yes. It was defeated.

20 MR. SEMANS: Yes.

21 MR. BRAUNSTEIN: But your point in making
22 that was that for every bit of progress, there's
23 a little bit of opposition hurled at the effort.
24 Even though this individual one wasn't
25 successful, won't stop future efforts. Kind of

1 like keeping your finger in the dike a little
2 bit.

3 MR. SEMANS: Exactly. Every step you --
4 that song, Every step you take, every thing you
5 make, there's somebody else making it harder for
6 you to take that step.

7 MR. BRAUNSTEIN: Thank you.

8 MS. BOHNEE: Thank you. All right.
9 Mr. Healy.

10 MR. HEALY: Thank you. My name is Bret
11 Healy. I'm a consultant for Four Directions,
12 for Barb and O.J. Semans. We've been working on
13 these kinds of issues for now over ten years.

14 I want to speak a bit about intimidation and
15 retaliation of plaintiffs in these voting rights
16 cases. And Mr. Wandering Medicine talked at
17 length about his daughter, and I'm going to add
18 to that in a minute or so.

19 Folks, there are some morally bankrupt
20 players on the voting rights playing field on
21 the other side, and they are using tactics that
22 are beyond the pale.

23 In South Dakota, for example, in the Brooks
24 versus Gant case, even after the Defendants,
25 Shannon County, Fall River County, and the State

1 of South Dakota, provided the relief asked for
2 by the plaintiffs, that is a satellite office in
3 Pine Ridge on the Pine Ridge Indian reservation,
4 they declared themselves the victor because the
5 federal judge said the harm is far enough out in
6 the future, she dismissed the case, they said,
7 We won, and we're going to go after the Oglala
8 plaintiffs for \$6,000 in court costs.

9 No matter how objectionable that tactic was,
10 it was designed to go after the next set of
11 plaintiffs. If you Native plaintiffs, if you
12 decide to get in a case, be careful because they
13 might come after you for money.

14 And the way this works is that, if that
15 happens and the judge let's that motion go on,
16 those plaintiffs have to go to court and prove
17 they are too poor to pay those costs, which
18 means they have to reveal their financial lives
19 to the court. It's an intimidation tactic.

20 That morally bankrupt firm here is one in
21 South Dakota. Other folks have been reluctant
22 to name names. I won't be. It's Gunderson,
23 Palmer law firm right here in Rapid City,
24 South Dakota that has made millions of dollars
25 fighting anti-Indian side of these voting rights

1 cases.

2 Yes?

3 MS. BOHNEE: I just wanted to clarify for
4 the record when that took place.

5 MR. HEALY: Brooks v. Gant case was filed
6 going into the 2012 election year. It was filed
7 in January of 2012. Preliminary injunction
8 hearing was in early March 2012. And rather
9 than have a federal injunction, the defendant
10 said, We give up. We're going to give the
11 plaintiffs everything they asked for for 2012.

12 And then they fought on the longer terrain
13 for the elections after that. And they said,
14 We'll give you what you want for '14, '16, and
15 '18, and then we don't know what can be done
16 then. Then they used HAVA funds -- Help America
17 Vote -- funds to pay for those next three
18 elections.

19 Declared themselves victors, went after the
20 plaintiffs. Thank goodness the federal judge
21 said, That's ridiculous. They -- she knocked
22 them upside the head and did that. But the
23 tactic still stood.

24 Then going over into the Wandering Medicine
25 case. Again that was, in South Dakota,

1 intimidation, sanctioned by the state. Pure and
2 simple.

3 In the Montana case, the thing got filed in
4 early October 2012, and we won't go into all the
5 back and forth of what Four Directions did, what
6 O.J. Semans did to advance that cause. The
7 counties said, No. The secretary of state said,
8 No. October 12th, the plaintiffs filed a case.

9 Shortly after that, one of the first motions
10 from the defendants was asking the court to
11 force the plaintiffs to come up with \$90,000, in
12 case the defendants lost the preliminary
13 injunction. Again, an intimidation tactic.

14 The lawyer filed an opposition to that, and
15 then they came back and said O.J. and Barb had
16 to pay, that Four Directions should pay because
17 they were involved in helping bring the case.

18 MR. SEMANS: I asked if they'd take a check.

19 MR. HEALY: They run in to a racist judge,
20 Judge Richard, Cebull, who, when one Googles,
21 you'll find he's been forced to resign in
22 disgrace. And the reason he was, hundreds of
23 anti-African American, anti-Hispanic,
24 anti-Native American, anti-Gay, Lesbian,
25 Transgender community, and misogynistic e-mails

1 from a federal judge from his official account.

2 No surprise, Mark Wandering Medicine and his
3 fellow plaintiffs were defeated in that
4 preliminary injunction in front of Judge Cebull.
5 Immediately after that defeat, the plaintiffs
6 filed to take it to the Ninth Circuit.

7 The defendants filed for costs for bothering
8 the defendants with the preliminary injunction.
9 So they asked for attorneys' fees and expenses
10 associated with plaintiffs' motion for
11 preliminary injunction.

12 The same day they filed their motion for
13 mootness in the Ninth Circuit, appeal, this
14 court should dismiss plaintiffs' appeal as moot
15 and award just damages and double costs to the
16 defendants from the Indian plaintiffs.

17 Again, intimidation, retaliation: You
18 Indians better be careful, you're going to have
19 to pay money if you're willing to stand up for
20 equal rights.

21 Then we get to the interrogatories of the
22 discovery phase of the Wandering Medicine trial.
23 They wanted to know how Mark Wandering Medicine
24 and his fellow plaintiffs were able to get to
25 high school activities. In Indian Country, that

1 means basketball. How were you able to go to
2 basketball games if you can't afford to go to
3 Forsyth, you can't afford to go to Chinook, you
4 can't afford to go to Hardin. And they also
5 asked, How did you spend your Cobell money?
6 Again, not much of a nexus to voting rights.

7 Then moving on, if intimidation on dollars,
8 and trying to intimidate you in interrogatories
9 isn't enough, let's soften you up by going after
10 your family. Dusty Wandering Medicine, folks,
11 spent 16 days in a Forsyth jail, ripped away
12 from her young family; four kids, eight, seven,
13 six, and four.

14 And you talked -- heard about the
15 four-year-old son trying to bust his mom out of
16 the jail, not knowing what was going on; \$26,000
17 bond. Mark is a very wise and very traditional
18 man and leader.

19 Folks, this should shock the conscience of a
20 nation. His daughter was targeted because he
21 was a lead plaintiff willing to stand up and
22 fight for rights. She was tortured, folks. He
23 didn't talk about it. They injured her wrist.
24 They had her wrists behind her back that whole
25 ride from Ashland to Forsyth, too tight, and she

1 complained and continued to complain about how
2 tight they were.

3 My friend O.J. talks about how that kind of
4 pain is almost intolerable. Then they
5 pepper-spray her. And then they drugged her
6 while she was in custody. Left the bond at
7 \$26,000, well beyond the range of economic
8 circumstances for any Indian family to be able
9 to bond their child out of jail. We were able
10 to help and pay the bondsman. The bondsman told
11 me that stuff happens all the time. But they
12 targeted, they knew who that girl was.

13 And then they demanded, and the plaintiffs'
14 attorneys resisted, and said we should not do
15 that deposition in Forsyth. They insisted upon
16 it. And just for the record, that community of
17 Forsyth was named for Commander James Forsyth,
18 the 7th Calvary, was a commanding officer at the
19 Wounded Knee Massacre. There are echoes of
20 history here that have not changed.

21 It's time for the conscience of a nation to
22 not forget about Indian Country. And to that
23 end, we're helping, and we're going to demand
24 and ask that the Department of Justice, Civil
25 Rights shop investigate Rosebud County Montana

1 law enforcement.

2 We're working, O.J. is working with a
3 councilwoman at Northern Cheyenne. This is an
4 outrage, folks. All that's necessary for evil
5 to rule in this world, as they say, is for good
6 men and women to stand silent. We're not going
7 to do that, we hope you won't either. And I've
8 gone over my time, so I will conclude with that.

9 MS. BOHNEE: Well, I'd just like to thank
10 the panel for their powerful testimony. I think
11 it's very important to highlight current issues
12 with voting. At this time I'm going to turn it
13 over to the Commissioners for questions.

14 MR. BRAUNSTEIN: I'm up? Well, I wanted to
15 make some comments at the time the first panel
16 gave its testimony and it's related here. My
17 question for everyone who has come forward today
18 is basically the same.

19 In all this talk about litigation,
20 litigation that takes money away from Head Start
21 programs in Montana to advanced defense and
22 advocacy of Native voting rights, is there any
23 room for mediation? Is there any room to get a
24 group of right-minded individuals together to
25 work out agreements in advance?

1 Or is it the case, as I've heard from a
2 number of panelists today, that the opposition
3 is too pernicious, the roots of animosity too
4 deep, to even find a group of right-minded
5 individuals capable of facilitating an agreement
6 about how to work together, move forward
7 together, to support American rights?

8 Not American Indian rights or nonAmerican
9 Indian rights, everyone's rights. It's a simple
10 formula, you know. What else can be done
11 besides the record of litigation?

12 Just one more comment about this. Pat Duffy
13 said that it may be the end of history for the
14 Voting Rights Act and for affirmative action
15 through the law. And he offered organize,
16 organize, organize. Is this part of the
17 potential organization effort, or is it going to
18 be only adversarial, meaning we have to do it
19 internally to fight the external?

20 Is there anyway to kind of cross these lines
21 a little bit and plan and agree for the future
22 in the area of Native voting rights?

23 MS. GARREAU: Well, I mean, I think that at
24 home it was -- you know, what I presented today
25 was, you know, just a really positive outcome.

1 And it was -- it was a good thing, what happened
2 at home.

3 I have to add that it wasn't exactly easy
4 for us to participate in the process. We were
5 greeted with a lot of different attitudes and
6 ideas and surprises that I didn't expect.

7 But you know, I think when O.J. approached
8 our Dewey County Commissioners, he had already
9 gone through -- where had you been working, down
10 in Rosebud and Shannon County?

11 MR. SEMANS: Shannon County and Rosebud.

12 MS. GARREAU: Shannon County and Rosebud.
13 So he had already gone through that and kind of
14 had his war wounds. So we knew when we
15 approached the Dewey County Commissioners, the
16 letter had to kind of be with a little bit of a
17 threat blended in there.

18 So when we went to meet with the Dewey
19 County Commissioners, they said, We noticed that
20 and we're going to work with you. And I think
21 that was -- it was -- I think it's what had to
22 happen because everything we had been doing,
23 when I was running for office and all the work
24 that followed, you know, we really were greeted
25 with, No, we can't do any of it.

1 Nothing we suggested could be done. It was
2 impossible, it was ridiculous, it's too
3 expensive. There were so many reasons. So you
4 know, we kind of felt like that was the -- what
5 we had to do and what had to happen.

6 Fortunately, they didn't require much
7 convincing at home, and so it worked out really
8 well for us. Unfortunately, I don't think
9 that's happening everywhere else.

10 But I think that with time, and I think with
11 organizing, and with people like myself and O.J.
12 and Bret and everybody who is doing this work, I
13 think we can get to that place. I really do.
14 Because I think what we see in Cheyenne River is
15 that it can happen.

16 But again, it had it's -- it had its
17 challenges and its obstacles that we had to kind
18 of go through in order to participate and to get
19 to, you know, to bring early voting to Eagle
20 Butte. And where to me, it just doesn't make
21 sense, it just seems so easy.

22 And in the end, it really was kind of easy
23 compared to what other counties had to do, go
24 through. But it just doesn't have to be like
25 that. But I think it's going to take some time,

1 and it can be done.

2 And I think that once those counties who
3 resist, once they realize that there are people
4 who are concerned and they are standing up, and
5 they are not going to just sit back and be
6 passive about it, I think that will change. It
7 will. I do believe that.

8 MR. BRAUNSTEIN: All right. I want to just
9 give a couple follow-up comments and maybe hear
10 from the other two gentlemen. First off, I
11 agree that it's going to be difficult. The fact
12 you had a success story in Dewey County does not
13 obviate the concerns you have for how difficult
14 that was.

15 And I agree it's likely going to have to
16 come along -- the motivation for participating
17 in a dialogue, even formal mediation with a
18 hired third-party facilitator, will have to
19 have -- you used the word "threat." I'd like to
20 think of it as the discussion of WATNA, right,
21 from Fisher and Ury, who wrote about negotiation
22 principles and getting to "yes." Every party
23 needs to consider their worst alternative to
24 negotiated agreements.

25 That would be a lawsuit that would take

1 money out of the county, disable some programs
2 that Indian and nonIndian folks rely on in the
3 county and so on. So I agree that that thing
4 kind of has to happen. But also I'd like to see
5 it maybe paired up with an agreement where I'm
6 asking whether it's possible to facilitate it
7 with an agreement to work together to avoid
8 those WATNAs on all sides. All right?

9 So I do think you have to present those
10 WATNAs, those harsh realities which could
11 include the devastating effects on a community
12 of more adversarial contact, more lost
13 resources, you know, more bad court decisions
14 for both sides. So it's a realistic thing.

15 But I'm thinking formal efforts, not just a
16 cultural shift that will occur over a
17 generation. I'm talking about 2016,
18 facilitating mediation efforts or working group
19 efforts throughout at least a portion of Indian
20 Country still struggling with this, that could
21 then maybe be shared as positive stories for the
22 rest. So, O.J. and Bret, could we hear from you
23 guys on this?

24 MR. SEMANS: Well, you know, when we first
25 started, we actually started looking at

1 satellite offices in 2003. And our goal was to
2 negotiate, you know. We didn't want six weeks,
3 we wanted one day, we wanted two days, three
4 days. We just wanted to be able to set the --
5 set the ground work.

6 And when we started working with -- we
7 understood that, first of all, they didn't --
8 they didn't want to not be -- well, just put it
9 this way, they gave us every excuse that you
10 could think of: money, buildings, time, people.

11 When we took care of all of those excuses,
12 then it came down to, Now I need to know those
13 people. And when you're an Indian and somebody
14 says that, that means that, We can't trust the
15 Indians, so we need to find a white person out
16 there.

17 And so I understand what you're talking
18 about, you know, mediation and stuff. But to
19 kind of give you another history of what
20 happened, it is a fact that -- thank God for
21 Google, because as we started getting better at
22 this, and as we started meeting with different
23 county commissioners, and what we would do
24 first, we would send them a letter saying O.J.
25 or Bret, we're going to come to visit the

1 commissioners.

2 And 2004 wasn't no big deal. But 2006, when
3 they started seeing our names come up, that was
4 our threat because they knew that after we got
5 done with what we did in Shannon County and what
6 we did in Todd County and over in Buffalo County
7 and even a little bit over in Dewey County is
8 that we were persistent.

9 But I can tell you from my experience that
10 the individuals that we have encountered
11 throughout this whole process, you cannot
12 mediate if they are going to say we'll give you
13 a satellite station one day and -- you know,
14 instead of 30 days.

15 How can you mediate a situation where all
16 you're asking for is equality but they won't do
17 it? You know, it was talked about earlier, you
18 know, about, you know, Section 4 and Section 5.
19 And like I said, I was part of that because of
20 Patty.

21 But Section 2 is literally breaking us.
22 Because of the fact -- and this is one thing
23 about Wandering Medicine case. I mean, you
24 heard the cases up here before about voter
25 dilution. Wandering Medicine is about voter

1 denial.

2 And what we're saying is, it's not a fact
3 that, you know, you're taking all of the Indians
4 and you're splitting the -- you know, splitting
5 the lines. What Wandering Medicine is about is
6 saying that you as an individual, a protected
7 class living, you know, off 80 miles from the
8 county seat, you shouldn't have -- if everybody
9 has six ways to vote, it's not equal that they
10 are giving you five. And that's, you know,
11 that's the key to this.

12 So what I'm saying is, I don't think
13 mediation is going to work when it comes to
14 equality. You just -- the county officials --
15 and I always look at the -- the way the
16 constitution in, you know, the United States has
17 written up and the state is written up. The
18 county officials are the first line of defense
19 for Native American Indians. We have to fight
20 through them before we can get to the state. We
21 have to fight through them before we can get to
22 the federal government.

23 And when you have that many tiers, you have
24 the county, then you have the state, then you
25 have the federal, you're not going to find

1 enough mediators, you know -- and again, this is
2 my opinion -- that are going to be able to sit
3 down and come out with a plan.

4 The only time I seen it come close is when
5 you, sir, was on the HAVA force where we were
6 able to get that formula going for four
7 satellite offices. That I can see but I, you
8 know that was the conscience of a lot of good
9 people in one room. If that can happen, fine.
10 But I just don't see mediation, even paid
11 mediation working.

12 MR. HEALY: As with most things,
13 Mr. Braunstein, it depends. And unfortunately,
14 it depends on how dug in that particular local
15 border town, community is in their views of
16 Native people.

17 For example, Todd County, South Dakota, they
18 were smart. They saw that Shannon County was
19 being litigated against, and they by resolution,
20 when O.J. made the request said, Yep, we're
21 going to do it for every election moving
22 forward. They did the smart thing.

23 Dewey County who used to be some -- that
24 used to be some of the toughest territory in
25 South Dakota on voting rights in the '90s and in

1 the early 2000s. Now may be the most
2 cooperative place anywhere in Indian Country.

3 Shannon and Fall River County, unfortunately
4 still dug in. And even with the likely use of
5 HAVA funds, we've made a couple of visits to
6 Jackson County, South Dakota, the old Washabaugh
7 County of course, and the other part of the
8 Pine Ridge Indian reservation.

9 And when I went to them in early April with
10 the recommendation that they pass a resolution,
11 a county resolution, contingent on HAVA funding
12 to have a satellite office this fall, they said,
13 No, we're going to wait and see if that money is
14 actually there.

15 But the discussion that day, folks, was a
16 whole lot of what O.J. and I have heard time and
17 again about, well, it was unpaid -- all those
18 acres that aren't taxed and that still, the
19 county has to pay for the roads, and we'd have
20 to have somebody from the office go down to
21 Wanblee.

22 And which I brought up the Dewey County
23 Cheyenne River case and said, Look, hire
24 somebody from there. Well, they'd have to know
25 them, of course.

1 And it's an unfortunate hard lack of trust
2 by some nonIndian officials that they simply
3 aren't going to cooperate in the way that Dewey
4 County and Cheyenne River have of that trust
5 that that Native person will run a fair election
6 under the supervision of the county.

7 It is unfortunate that, the counties that
8 that kind of mediation might work, Commissioner
9 Braunstein, are the ones that probably don't
10 need mediation. And the ones that it probably
11 won't work at, it's going to be nothing but the
12 threat of a two-by-four upside the head
13 litigation-wise.

14 And too often they are willing to defund
15 those other programs, blame the Indians, and
16 fight as much and as long as they can. And
17 particularly in South Dakota, the great weakness
18 has been they've got the wealthy jurisdictions
19 of Sioux Falls and Minnehaha County and
20 Rapid City and other jurisdictions funding the
21 municipal insurance pool, the South Dakota
22 Public Assurance Alliance.

23 And so they've got big checkbooks to fight
24 these ideological wars in these smaller
25 jurisdictions that those taxpayers could never

1 front and pay for the long, drawn-out
2 litigation.

3 But they are able to pool those resources
4 from other communities that aren't invested
5 enough and going, Hey, that's silly and that's
6 an unwise use of our taxpayer resources.
7 They've got the access to those big checkbooks.

8 So again, things are changing, somewhat.
9 But it has to be with that -- the worst
10 analysis. It has to almost be with that kind of
11 a threat. But the problem is, the only credible
12 threat depends on somebody putting real money
13 in, and that is the great weakness of Section 2
14 as opposed to Section 5, in which the burden is
15 on the other side.

16 MR. SEMANS: May I add just one more thing.
17 You know, we were talking about negotiations --
18 and Commissioner Kingman also knows this -- is
19 that when we first started back in 2010 trying
20 to negotiate with Shannon County to establish a
21 satellite office, the election officials quit
22 three months before the election. They turned
23 in their resignation and said, We are no longer
24 going to handle the election on the Pine Ridge
25 reservation in Shannon County.

1 Have you ever heard of that in the history
2 of the United States, where the election
3 officials quit? Then the secretary of state
4 goes, Eh, we can't do nothing about it.

5 You know, it was -- that was a deal where,
6 we met with the state's attorney. He says, If
7 you ask me for satellite offices, we're going to
8 resign. And you know, I believed him but I
9 really didn't believe him.

10 So we asked, and right at the meeting
11 they -- I was at the meeting and so was my wife.
12 The state's attorney goes, Mr. Semans, before
13 you go any further, he says, I need to hand this
14 out to the commissioners. And it was a
15 resignation of the county auditor that held the
16 election and all the election officials
17 resigning their position as contracting with
18 Shannon County. They literally shut down the
19 federal election.

20 And so when we talk about, you know,
21 mediation, the only mediation that worked there
22 was, like I said, we got a big two-by-four and
23 we hit them alongside the head as many times as
24 it took for them to understand it.

25 They were still able to succeed in shutting

1 down the amount of days we had. But they still
2 had to provide, when we got done with them,
3 early voting and actually voting on election
4 day. So you know, I wish mediation was there.
5 I just don't see it.

6 MR. BRAUNSTEIN: Is the risk of litigation
7 right now so great on the part of the defendants
8 that the threat and the uncertainty is great
9 enough to engage in dialogue, especially when we
10 have the success stories of Dewey County and
11 elsewhere through the HAVA task force that
12 materialized in Shannon and other counties? Is
13 it to that point or do you need more
14 two-by-fours? Have we broken enough
15 two-by-fours is my question.

16 MR. HEALY: We might have in South Dakota,
17 at least as long as that HAVA funding is there,
18 and will be for a few cycles. O.J., of course,
19 had filed a civil rights complaint on behalf of
20 the Oglala, Cheyenne River, and Crow Creek Sioux
21 Tribes in early August based on the rejection by
22 the state board of elections to provide HAVA
23 funding for those other satellite offices. Then
24 we went through that HAVA task force process.
25 So there is some upside there.

1 Frankly, these Montana counties, it is
2 literally going to have to be a federal judge
3 putting things in play and putting on the
4 precedent that for this vote out kind of a case,
5 sketching out the Wandering Medicine case
6 probably as a precedent-setting case, that
7 provides the tools, frankly, at least in the
8 rest of the Ninth Circuit to go after that.

9 We think there's a good reason in the Brooks
10 v. Gant case, the county and state defendants
11 just kind of put that off for a few years. They
12 didn't want to lose on voting rights grounds, so
13 they decided to use a little bit of money and
14 just put off the issue for a few more cycles,
15 rather than litigate it on VRA and
16 constitutional grounds in the Eighth Circuit.

17 MS. BOHNEE: So I think we're running out of
18 time. Do you have any questions?

19 MS. KINGMAN: I just have a comment.

20 MS. BOHNEE: Quick question.

21 MS. KINGMAN: You mentioned the Shannon
22 County, and I don't want to go into it now, but
23 for the record could you furnish something into
24 the record on that? Because that involved a
25 good strategy, and it also brought in the

1 Department of Justice, and that's a player here
2 that we need to, I think, keep involved, because
3 they were very supportive.

4 And so between now and, I don't know when
5 her deadline is, but if you could just write
6 something for the record --

7 MR. HEALY: Sure. Of course.

8 MS. KINGMAN: -- on that Shannon County?

9 MR. SEMANS: Of course. Bret will.

10 MS. BOHNEE: One other thing just to clarify
11 for the record, the satellite voting office or
12 satellite offices are for voter registration and
13 for in-person early voting?

14 MR. SEMANS: It's really important in this
15 aspect, is that it's -- the in-person absentee
16 satellite, early voting, late registration
17 voting is what it comes to, is because in
18 South Dakota, for instance, you got that
19 six-week period, or I say 30 days, in which
20 you -- 30 days prior to the actual election,
21 registration is shut off. You can't register
22 anymore.

23 But they've made it so that if you have a
24 county building during that 30 days, you can go
25 in there, register, and vote prior to the

1 election. And so what it is is that the late
2 registration has to be a part of it, because
3 you're going to be able to increase the Native
4 vote, or any vote really, because that's why
5 they've developed it for the counties is to
6 increase the nonIndian vote within that. So
7 it's late registration and early voting.

8 MS. BOHNEE: Okay.

9 MS. KINGMAN: And distance. Distance.

10 MR. HEALY: That would be in Montana in
11 terms of late registration. In South Dakota,
12 there's a 46-day absentee balloting period, of
13 which the first four and a half weeks are voter
14 registration and an in-person absentee ballot.
15 Not technically early voting because it's still
16 an absentee ballot that's cast.

17 But the importance of organizing and actual,
18 on-the-ground Get Out The Vote operations, it is
19 a one-trip of that voter to that office in which
20 they can register to vote if they are
21 unregistered and cast -- request and cast an
22 absentee ballot all in one trip, rather than
23 having multiple trips to the post office, rather
24 than having multiple contacts with that voter.

25 MR. SEMANS: One more thing in regards to

1 that, and I'll make this quick. When we met
2 with HAVA task force, what we did is we
3 recommended a part of the formula for
4 establishing satellite offices. And it was a
5 race-friendly formula. What they would look at
6 is a 50 percent poverty rate and 50 percent
7 distance. And that neutralized, you know,
8 whether you're black, Hispanic, Native American,
9 that that would include basically every United
10 States citizen to be able to try to establish a
11 satellite office within their community if it
12 was too far.

13 That's, I guess that's one of the things I
14 would like the committee to really consider as
15 far as submitting something, is to utilize the
16 formula. And I think we sent it to you, that we
17 submitted to the State of South Dakota, and the
18 communities. Commissioner Braunstein could
19 actually, you know, touch on it a little bit.

20 But I think if we were able to establish
21 this in federal law, we would take away a lot, a
22 lot of litigation.

23 MR. BRAUNSTEIN: Absolutely.

24 MS. BOHNEE: Well, if we don't have that
25 yet, if you all could submit that for the

1 record, that would be helpful.

2 MR. HEALY: Actually to that end, the
3 South Dakota Board of Elections is to meet on
4 the 5th or 6th of May and take formal action on
5 that HAVA task force plat, pass a state HAVA
6 plan, and then submit it to the Federal
7 Register.

8 So once that happens next week, we can
9 certainly provide that HAVA plan -- assuming
10 they don't do something weird and not pass it --
11 but to the committee for their record.

12 MS. BOHNEE: Wonderful. Well, thank you
13 very much. We're going to change panels right
14 now.

15 (Brief recess was taken.)

16 MS. BOHNEE: We're going to go ahead and get
17 started with our last, our third panel. And I
18 just want to thank everyone for their patience.
19 These are very important issues, and I think
20 it's important that everyone have a voice in
21 this process. I just appreciate you taking the
22 time, and I apologize for us running a little
23 bit late, or a lot late, so.

24 And I apologize, Mr. Siyo, I didn't see you
25 walk in to add you to the last panel. But we're

1 going to start with Mr. Siyo first. So you can
2 go ahead.

3 MR. SIYO: Okay. My name is Mel Siyo, and
4 I'm's an enrolled member of the Oglala Sioux
5 Tribe. And I used to have the name Prairie
6 Chicken but I shortened it down to Siyo because
7 in Lakota, that's what it means.

8 Anyway, I'm also part of the Rapid City
9 Human Relations Commission. I'm chairman of
10 that commission. And the Mayor asked that I be
11 here and also to welcome you. I don't know if
12 he has but, welcome and glad you're here. I'm
13 glad this is being sought out and talked about.

14 What it says on here, it says, example of
15 how it's done right, Rapid City's advances in
16 voting rights. Well, I think we're struggling,
17 too. That isn't all true, and everything isn't
18 right.

19 We also have our issues and problems, maybe
20 intimidation sometimes locally here. I was just
21 listening to one person at our last election,
22 they -- the worker there had taken -- when
23 you're done voting, it's in that little thing,
24 anyway whatever you call it, and then you put it
25 in to the box.

1 Well, anyway this worker came and took the
2 sheet out and was looking at it up and down and
3 she said, You're a Democrat.

4 Anyway that goes on here, too. What I want
5 to talk about is the Human Relations Commission,
6 and back in the early -- well, yeah, early '70s,
7 that was the time of social unrest. The Vietnam
8 War was going on, the hippy movement was here,
9 also the American Indian Movement was here.

10 And they were, of course, were fighting
11 injustices and problems with the federal
12 government at the time, because the tribes were
13 suffering quite a bit.

14 And anyway, Wounded Knee happened over here,
15 just right around there, '72, '71, somewheres in
16 there. And then they came over here to
17 Rapid City, and they were wanting to talk to the
18 police because of police brutality. And that is
19 how the Human Relations Commission had its first
20 being.

21 And that was established back in the, I
22 believe probably it was in the 1970s, and it was
23 to do with some of the brutality and stuff. And
24 I think it was under Mayor Barnett's time at the
25 time.

1 And it was on the books, it was legal and it
2 was going for a while there, and all of a
3 sudden, it just went and gone. I mean, it was
4 dead and gone. We didn't hear about it. So
5 back in two -- I think it was like 2006, under
6 Mayor Hanks' administration, he revived this
7 thing, the human relations. It was laying there
8 dormant.

9 So what he did was, he took it and with his
10 city attorney staff, they practically gutted the
11 whole thing and they took out the subpoena and
12 the enforcement part of the ordinance. So when
13 we got on there, that's -- we were trying to get
14 that back, and they were -- we were talking
15 about it, and we were preparing to revise the
16 ordinance. Anyways, it was a long struggle and
17 a lot of stops along the way with our city
18 council.

19 And some from the business community didn't
20 want us there because they had the idea that if
21 we had that subpoena power, all of a sudden
22 everything would be rampant, there would be a
23 lot of complaints. And they just didn't want
24 nothing to do with it.

25 Anyway, what has happened now, I'll go

1 shortly to it, is that the ordinance passed its
2 first reading at the November 4, 2013 city
3 council meeting and was continued to the
4 February 12, 2014 legal and finance committee
5 meeting agenda for a second reading.

6 The ordinance was continued at the
7 February 12, 2014 legal and finance committee
8 meeting, again to the February 28, 2014 meeting.
9 It was approved and sent to city council without
10 recommendation.

11 The second reading of the ordinance was
12 continued for two weeks at the March 3 meeting
13 and was on the agenda again for the March 17,
14 2014 meeting. The city council approved the
15 second and final reading of the ordinance on
16 March 17, 2014 city council meeting. The
17 ordinance would go into effect on Friday,
18 February 11th. So it's already in effect.

19 But in review, there's a lot of space in
20 between those dates. What had been happening,
21 of course, was there was hearings on it, and the
22 public got ahold of it, and they were telling
23 the city council how bad it was and don't vote
24 for it. Anyway, we had ten council members and
25 the final reading was seven were for it and

1 three were against it.

2 So that's kind of what the ordinance is
3 about. And of course the ordinance is all about
4 discrimination, too. And out of the -- since we
5 got going some 2006 to the present, there were
6 55 complaints that were registered. And then
7 out of that, two were probable cause and let's
8 see, that would be 53 -- 53 were dismissed, only
9 two there was probable cause.

10 But because we did not have the enforcement
11 or the subpoena power, we couldn't do nothing
12 with those two that were probable cause. And so
13 that made us more -- to be on our best and try
14 to go forward and get that back. And of course
15 that all -- the result was that we did get it
16 back.

17 The last census, Rapid City said we had
18 68,000. And I read in the paper the other day
19 where it was like, now it's 70,000. So out of
20 that population, Rapid City has Native American
21 people at 12.4 percent. So you figure that out,
22 it's about 8,600 people that, Native Americans
23 that are here, and I don't know how many are
24 voting. And that's just kind of an interesting
25 statistic there for you.

1 The other thing is that the Mayor does make
2 the appointments. And so on this present
3 commission, there's seven of us and we had two
4 Native Americans, myself and Tim Standing
5 Soldier. Then we had three attorneys at one
6 point in time, one resigned. Well, two now
7 resigned. We have only one. And we just -- the
8 major just made another appointment to the
9 seventh seat, so that was good.

10 Then the good thing of all of this is that
11 under Mayor Kooiker's term, he did establish a
12 polling place out in North Rapid there, out at
13 Lakota Homes. So that's been like about two,
14 three years now. So that's where the majority
15 of our people live and go, and that's where
16 they -- they vote, because they never had that
17 before. And some of them, of course, don't have
18 transportation. So that kind of worked out good
19 for them.

20 And in Rapid City's history, of course, we
21 had Native American mayor, and that was Art
22 LaCroix. And then of course that would have
23 been his nephew, I believe, he was on the city
24 council for a while there.

25 And also the Mayor did establish some town

1 hall meetings at Lakota Homes, and he invited
2 the state and federal people to be there, and
3 that was something that they really appreciated.

4 I accompanied the Mayor to, let's see, three
5 different reservations. We visited Cheyenne
6 River, Oglala Sioux Tribe, and Rosebud Sioux
7 Tribe, and that was because the Mayor wanted to
8 go there.

9 And he has a great interest in the Native
10 American people, because he knew that they were
11 having problems of discrimination and prejudice.
12 And he knew -- he understood that because
13 himself, he's a handicapped person in that he
14 had polio. So it's very hard for him, and he
15 experienced the prejudices and discrimination
16 also. So he worked very well for the Native
17 American people.

18 So presently, as of April 11th, we have --
19 we have a full staff, we have -- the big change
20 that's going on, we were doing all of the
21 investigation, we were doing all the paperwork
22 and the letters and so forth.

23 But under this present system now, the city
24 attorney's staff are going to handle all of that
25 and we're still going to be there as a

1 commission to hear whatever may need to be heard
2 and then make some decisions on them, too. So
3 all that kind of relieved us a little bit of the
4 work that had to be done.

5 I think I'm going to stop there because I
6 don't know how many minutes I've gone.

7 MS. BOHNEE: Well, thank you very much for
8 your testimony, and you have --

9 MR. SIYO: One more thing, I do have --
10 we're proud of this. It's coming, too, but the
11 sculpture garden that went through a little
12 process of where they had an uphill battle, too,
13 to establish a sculpture garden down at Haley
14 Museum there, in that place there. And of
15 course I forget her name now...

16 MS. KINGMAN: Elizabeth Cook.

17 MR. SIYO: Yeah. Yeah, Elizabeth Cook
18 was -- spearheading that one, and I -- some of
19 the poor people that, they are going to put the
20 statues up for is Charles Eastman and he was a
21 Santee medicine man and a doctor. Well,
22 medicine man. And then Vine Deloria, and he was
23 an Umpapa and he's known for his law.

24 MR. BRAUNSTEIN: What's the technical term
25 there? What is that?

1 MR. SIYO: Umpapa.

2 MR. BRAUNSTEIN: What does that mean?

3 MR. SIYO: That's the tribe, the name of the
4 tribe. Like Oglala or Rosebud.

5 MR. BRAUNSTEIN: Thank you. I didn't know
6 that.

7 MR. SIYO: Then Oscar Howe, he's from
8 Yankton, he is noted for his artwork. And of
9 course Nicholas Black Elk, he was an Oglala.
10 And of course there's a lot of books out on him,
11 and he's known for his philosophy. So that is
12 it.

13 MS. BOHNEE: Well, thank you very much. We
14 appreciate your testimony. Thank you. Now I'm
15 going to turn it over to Libby Skarin.

16 MS. SKARIN: Yes. Perfect. Actually, I
17 think have ten minutes today. I'm going to be
18 talking about voting rights and language access
19 in both South and North Dakota. I'll try very
20 hard to keep myself under the time limit.

21 My name is Libby Skarin, and I'm the policy
22 director for the American Civil Liberties Union
23 of South Dakota. The ACLU of South Dakota is a
24 nonprofit, nonpartisan organization dedicated to
25 working in the courts, legislatures, and in the

1 communities to defend the rights guaranteed
2 under the constitution.

3 Like I said, the majority of my testimony
4 today is going to be about language minorities,
5 and I'm going to talk a little bit about recent
6 changes in voting rights law on the federal
7 level that have really sort of changed the game
8 for language minorities in North and
9 South Dakota.

10 Generally the legal protections I'll talk
11 about today all arise out of the Voting Rights
12 Act originally passed in 1965. The act has
13 several provisions that apply directly to
14 language minorities. One of the major ones that
15 we've talked about earlier today, Section 2,
16 which prohibits the use of any voting practice
17 or procedure that results in a denial of the
18 right to vote on account of race or membership
19 in a language minority.

20 American Indians and those of Spanish
21 heritage are both defined as members of the
22 language minorities under the act. The three
23 major sections of the act that I'll talk about
24 today are Section 2, Section 5, and Section 203.

25 Section 5 is the one I'll start out with.

1 And Section 5 requires jurisdictions that have
2 shown a history of discrimination in voting
3 practices to submit any proposed changes in
4 election laws to the United States Department of
5 Justice for approval.

6 That kind of provision was known as
7 preclearance, and in 1975 the government added
8 preclearance to apply to two counties in
9 South Dakota that have been mentioned quite a
10 few times today, Shannon and Todd Counties.

11 The preclearance requirement essentially
12 directed attention to the discriminatory
13 election history in both of those counties and
14 singled them out as some of the worst offenders
15 of voting discrimination in the state.

16 The presence of preclearance puts counties
17 on notice that the federal government was aware
18 of the issues happening in the area. I know
19 someone mentioned earlier that there were a lot
20 of issues with the state basically saying, We're
21 not going to preclear things. And obviously
22 that was a huge issue. But Section 5's
23 existence at least brought attention to the
24 issues that were happening in those counties.

25 Then fast forward to June 2013 when the

1 Supreme Court heard a case challenging
2 preclearance. In that case, Shelby County
3 versus Holder, the Supreme Court struck down the
4 coverage formula used to determine which
5 jurisdictions would be subject to preclearance.

6 The practical effects of that is that in
7 South Dakota, Shannon and Todd Counties are no
8 longer required to preclear any of the voting
9 changes they make in the law.

10 The elimination of that preclearance
11 requirement has had the practical effect of
12 removing a safeguard against discrimination in
13 those counties, counties that we know have a
14 long history of discrimination of trying to
15 prevent people from voting.

16 On a going-forward basis, if those counties
17 pass regulations that have the effect of
18 limiting voter participation of language
19 minorities or others, those regulations won't
20 need to be reviewed, cleared, or accepted by the
21 Department of Justice.

22 I'll turn now to a provision of the Voting
23 Rights Act that was created specifically to
24 protect members of language minorities, and
25 that's Section 203. That provision requires

1 that voting notices, forms, ballots, and any
2 other materials or assistance in voting be
3 translated in to the language of the applicable
4 minority group.

5 The purpose there is that all election
6 information should be available to voters so
7 that all citizens will have the effective
8 opportunity to cast a ballot.

9 Section 203 only applies in certain counties
10 and jurisdictions, and the coverage for any
11 given jurisdiction is determined based upon a
12 formula.

13 It's a little complex but basically the
14 formula states that in a given population of
15 voters, language minorities have to have at
16 least 10,000 members or be 5 percent of the
17 group who speak primarily the minority language.

18 There's a special provision that applies to
19 reservations, and if we're talking about
20 citizens living on a reservation, 5 percent of
21 all reservation residents must speak a minority
22 language for Section 203 to apply.

23 After the census in the year 2000, two
24 counties in North Dakota were covered by Section
25 203, and also at that time there were 18

1 South Dakota counties that were covered.

2 Fast forward to the census in 2010, at that
3 time the Census Bureau determined no counties in
4 either South Dakota or North Dakota met the
5 requirements of Section 203. So essentially we
6 went from having 20 counties covered in the
7 region to 0.

8 And actually, when I was researching this, I
9 had to confirm that several times, like, Is this
10 right? Because it just seemed shocking that
11 over that ten years so much would change that
12 you'd drop 20 counties from language protection.

13 So obviously this was a huge change in the
14 legal landscape. And this change, coupled with
15 the elimination of preclearance by the Supreme
16 Court in 2003, has really resulted in the
17 disappearance of crucial protections under the
18 law that had previously been given to language
19 minorities.

20 So through the loss of both Section 203
21 coverage and preclearance, the loss of language
22 coverage under Section 203 in all of North and
23 South Dakota, arguably has more of a direct
24 impact on language minorities in the region and
25 is therefore potentially more troubling.

1 The reality is that today, federal law does
2 not require the translation of voting
3 instructions, notices, or ballots in either
4 state. So I think it's worthwhile to talk a
5 little bit about what caused this complete loss
6 of language coverage in the Dakotas.

7 Really, it's a product of several things.
8 First is that some of the counties that were
9 covered after the 2007 census just barely met
10 the population percentage requirements.

11 And because a lot of counties at that time
12 were essentially just at that 5 percent
13 threshold, the loss of even a few language,
14 Native language speakers, could have resulted in
15 the loss of coverage in the jurisdiction.

16 Obviously, it's difficult to pinpoint the
17 exact reason of this decline because it could be
18 attributable to several things. But most likely
19 it's a result of the death of older tribal
20 members who primarily spoke a language other
21 than English.

22 One of the second major reasons of the loss
23 of language coverage that some experts have
24 attributed to is, the use of the American
25 Community Survey estimates used by the Census

1 Bureau. The American Community Survey, or ACS,
2 is an ongoing survey that provides data every
3 year. And Section 203 determinations are made
4 by the Census Bureau based on that rolling ACS
5 data.

6 These estimates are fairly accurate in
7 capturing demographic changes in populated or
8 more urban areas. However, they tend to fall
9 short in sparsely populated and rural areas.

10 This happens partially just because of the
11 way it's administered. Fewer people receive the
12 ACS survey as opposed to the number who used to
13 receive the census long form.

14 And the result is that there's a smaller
15 sample size, which prevents the Census Bureau
16 from providing reliable estimates in rural
17 areas. Of course, these rural and sparsely
18 populated areas are present in both North and
19 South Dakota and they tend to exist on or around
20 reservations.

21 Unfortunately, there's currently no real fix
22 for the shortfalls in the ACS data because the
23 current form of Section 203 explicitly requires
24 the use of that data to determine where the
25 section applies.

1 I should note that just because federal law
2 no longer requires jurisdictions in the Dakotas
3 to provide language assistance in elections,
4 states or individual counties could opt to
5 provide translations on their own.

6 It's really difficult to get a reliable
7 overall picture of which counties may and which
8 ones may not provide that sort of help in an
9 election.

10 The reality is that the resources provided
11 at the county level will need to be investigated
12 on a piece-meal basis. Voters are probably
13 going to have to contact their county auditor in
14 the county where they live to find out if any
15 language resources are available, and if they
16 are, what those resources are.

17 There's obviously a large potential that
18 this uncertainty may in and of itself discourage
19 people who were limited-english-proficient from
20 voting.

21 So with preclearance gone and with Section
22 203 gone in the Dakotas, citizens of these
23 states are without any significant preemptive
24 tool to fight discrimination in voting.

25 And our remaining major section of the

1 Voting Rights Act is found in Section 2, which
2 several people have talked about today.
3 Generally, Section 2 prohibits any voting
4 practice that results in discrimination against
5 minorities.

6 However, this section historically has been
7 used in vote dilution cases, which argue the way
8 that election districts are drawn are unfair and
9 that results in discrimination.

10 It can be used as a basis to bring cases as
11 a result of a practice that actually does
12 prevent minority voters from casting a ballot,
13 but those cases are far more rare. And to
14 succeed in a claim under Section 2, a plaintiff
15 really does have to meet a pretty high burden.

16 In somewhat hopeful news, there was a
17 federal court in Wisconsin that struck down a
18 voter ID law under Section 2 just this Tuesday.
19 And this is actually pretty significant, because
20 the type of claim brought would historically
21 have been done under Section 5.

22 This could be a signal that Section 2 can be
23 effective in fighting discrimination. We're
24 just kind of going to have to see how the law
25 develops.

1 So with all these changes that have
2 happened, kind of where are we and what happens
3 next? The loss of Section 203 and preclearance
4 have resulted in a precarious legal landscape in
5 both North and South Dakota.

6 The major tools that we had to fight
7 discrimination in voting have disappeared,
8 leaving us only with Section 2 as a way to
9 remedy voter discrimination.

10 I think it's really important to note
11 Section 2 can only really be used after the
12 discrimination happens, as opposed to the
13 preventative measures the law once contained.

14 The reality here is that the situation is
15 new and it's largely untested. You know, we're
16 not exactly sure what voting rights for language
17 minorities is going to look like on the ground
18 in the next few years. What we do know is the
19 situation is very prone to abuse and to
20 discrimination.

21 And because of that, we need to undertake
22 stringent monitoring of local elections. You
23 know, it's crucial that when barriers to voting
24 either become known or are created, that they
25 are communicated to community leaders, elected

1 officials, people on, you know, the local state,
2 and the national level.

3 Identifying where these problems exist or
4 where they are being created I think is going to
5 be our first step of probably many in remedying
6 voter discrimination and vote suppression.

7 In conclusion, you know, the right to vote
8 is one of the most fundamental in our society.
9 The ACLU strongly believes that voting should be
10 free and it should be accessible for all
11 eligible Americans. It's not something that
12 should just be a privilege for some.

13 We really think that with careful monitoring
14 in local elections in North and South Dakota
15 that we hope that we can identify and then work
16 to eliminate barriers to voting for language
17 minorities and for everyone. That's it. Thank
18 you.

19 MS. BOHNEE: Thank you so much. You were
20 right on time.

21 MS. SKARIN: I practiced.

22 MS. BOHNEE: I appreciate that.

23 MR. BRAUNSTEIN: Real quickly, you said that
24 the problems with ACS related to their absence
25 of accuracy in rural areas, are there citations

1 for that, are there studies that have been done?
2 Are there citations in what you submitted for
3 the record?

4 MS. SKARIN: I believe so, yes. I'll
5 double-check.

6 MR. BRAUNSTEIN: If not, will you share
7 them?

8 MS. SKARIN: Yes.

9 MS. BOHNEE: Thank you. Now we're going to
10 turn over to Mr. Garth Massey for his testimony.

11 MR. BRAUNSTEIN: You have 20 seconds.

12 MR. MASSEY: I have to tell you, I'm pretty
13 humbled by the other people who have been on
14 these panels. They have a lot for you to hear,
15 and I'm not sure what I have to say has that
16 much value. But I'll give it a shot. Eileen
17 has actually told me I only have five minutes,
18 so I'll try to go fairly rapidly.

19 My specialty is sociology. I'm a
20 comparative sociologist, but I've done a lot of
21 work on ethnic conflict around the world, and
22 was asked to submit an expert witness report for
23 the Wandering Medicine case.

24 Earlier I had worked with Gary Collins on a
25 large case in Wyoming, and I'm working on a case

1 for the Navajo Nation. So I'm kind of new to
2 this.

3 And my -- basically what I'm asked to do is
4 to explain how the socioeconomic conditions
5 impact voter participation. And that's what I'm
6 going to just talk about for just a minute or
7 two.

8 The socioeconomic conditions in the three
9 reservations in the Wandering Medicine case,
10 including economic resources, employment status,
11 health, availability of transportation
12 contribute significantly to the isolation of the
13 reservation communities. The poverty, web of
14 obligations and dependencies, the history of
15 discrimination Indians have endured, and the
16 perceptions and behaviors of nonIndians with
17 whom they must engage in exercising their
18 political rights have to be recognized to gain
19 an appreciation of the unique difficulties
20 Indians encounter in being politically engaged.

21 These limiting factors unequivocally
22 recommend that satellite offices, as allowed by
23 the State of Montana, on each of the three
24 reservations be set up in order to provide
25 equity in access to voting.

1 I think everybody recognizes that Indian
2 reservations nationally are among the most
3 isolated and chronically poor areas in the
4 United States. Only one indicator is needed to
5 show this, although I usually give several, in
6 the case of Blaine, Rosebud, and Big Horn
7 Counties of Montana.

8 Montana, like the nation as a whole, saw a
9 sharp increase in children qualifying for the
10 free and reduced school lunch, the FRSL,
11 participation, from 33 percent in Montana in
12 2002 to 41 percent in 2009.

13 Figures for the state as a whole pale in
14 comparison to those for the three Indian
15 reservations cited earlier. On the Northern
16 Cheyenne reservation and on Crow Indian
17 Community, 90.5 percent of the children qualify
18 for FRSL participation. And at Fort Belknap
19 reservation, the figure is 80 percent.

20 Poverty is linked to a dearth of economic
21 opportunities and contributes to lower
22 educational attainment, poorer health and life
23 expectancy, violence, alcohol, and drug abuse,
24 and so forth.

25 I think everybody recognizes the unique

1 difficulties Indians have had historically and
2 continue to encounter in their relations with
3 nonIndians in border towns, and often beyond at
4 the county and the state level, involving
5 stereotyping, prejudice, animosity, and both
6 institutional -- or, intentional and structural
7 discrimination.

8 Then last, in the few minutes I have, I want
9 to talk about how these factors contribute to
10 suppressed political participation despite the
11 fact that Indians are anything but apathetic or
12 disinterested about their rights and the need to
13 be fairly represented in the political process.

14 As a comparative sociologist, I divide the
15 factors impinging on political participation
16 into three categories, what social scientists
17 call units of analysis. And I want to give a
18 couple of examples to show how they are
19 interrelated or linked.

20 And this is in an effort to try to meet my
21 obligations to clarify a whole lot of data
22 sometimes in ways that people can understand.
23 So this is sort of how I approach it.

24 The first level of a unit of analysis is
25 structural, which includes geographic isolation,

1 low economic -- or, low income, and lack of
2 jobs, distant or inferior schools, disabilities
3 and other health-related issues, poor or
4 nonexistent public transportation, and
5 difficulties with reliable private
6 transportation, high-priority relations of
7 interdependence, including caring for the
8 elderly, the disabled, and children. That's
9 what I call structural level.

10 The second unit of analysis is the
11 institutional, including the educational,
12 health, social service, administration of
13 justice, and other organizations that link the
14 county and state agencies and offices.

15 These often operate in ways that disfavor
16 people living on the Indian reservations.
17 Included, of course, are the elected offices and
18 agencies which reflect voter participation and
19 political power, including county commissioners,
20 school boards, sheriff offices, and so forth.

21 The third unit of analysis is what I'll just
22 roughly call the social-psychological. This
23 unit includes perceptions, motivations,
24 attitudes, values, emotions, memories, and so
25 forth. And I also include here cultural and

1 subcultural practices that provide identity,
2 preferred patterns of behavior,
3 self-presentation, ways of addressing personal
4 and interpersonal problems.

5 In deciding cases in which Indians and
6 especially Indians living on reservations
7 contend they are unable to fairly exercise their
8 political will, these remedies sought are at the
9 institutional level, the second level of
10 analysis of political -- political practice and
11 governmental affairs.

12 Let me give you a couple examples of why
13 it's important to distinguish between these
14 levels, and how I hopefully am clarifying how
15 analysis works.

16 In most cases such as the Wandering Medicine
17 lawsuit, the institutional practices are
18 obstructive because they conflict with the
19 structural conditions reservation Indians face.
20 Being required to drive or get a ride to the
21 county seat, often scores of miles away, in
22 order to register to vote, or, cast an absentee
23 ballot recognizes none of the realities of being
24 poor, without reliable transportation, enmeshed
25 in a web of dependent relations, in uncertain

1 health, and so forth.

2 Changes at the institutional level can
3 mitigate structural liabilities. For example,
4 living in an isolated area is one structural
5 liability. Institutional changes can also
6 positively affect the structural conditions
7 faced by reservation Indians by electing
8 officeholders who more readily and effectively
9 seek to use the power of the county and state to
10 improve the conditions of life on the Indian
11 reservation.

12 For example, coordination between law
13 enforcement on the reservation. This is a
14 little bit like what O.J. was talking about
15 earlier. Between law enforcement on the
16 reservation and that of the counties can replace
17 distrust and conflict if the sheriff's office is
18 represented by and feels responsible to everyone
19 in the county and not just the nonIndian people.

20 On what I've called the social-psychological
21 level, positive institutional changes can have a
22 ripple effect, changing the way Indians see
23 themselves as less marginalized, stigmatized,
24 and without power.

25 The case in Wyoming that Gary Collins was

1 involved in, Large versus Freemont County, it
2 was evident to me from many of my conversations
3 that having one of the three county commissioner
4 districts represented by -- or one of the county
5 districts represented by someone from the Wind
6 River Indian reservation was a strong motivation
7 for people to become more engaged in who would
8 be elected and what they would try to do on the
9 county commission.

10 This really gave them a sense of
11 empowerment. So I'm going to stop there, but
12 essentially what I'm trying to say is that it's
13 important to try to distinguish between what I
14 consider the structural, the institutional, the
15 social-psychological, and then try to show
16 people by -- through -- who are trying to work
17 through the data and the empirical work, and
18 most of mine is qualitative, though I do a lot
19 of quantitative work, that these -- how these
20 work together so that you can either improve
21 people's opportunities or to show how people's
22 political opportunities are being thwarted and
23 obstructed.

24 MS. BOHNEE: Thank you very much for your
25 testimony, and we have a written copy of your

1 testimony and two of your expert reports, one
2 from Wandering Medicine and one from Large
3 versus Freemont County that we're putting in the
4 record. So thank you very much.

5 Our next and final panelist is Ms. Jean
6 Schroedel.

7 MS. SCHROEDEL: Thank you. I want to thank
8 the committee for inviting me here today. I
9 have to say --

10 (Brief interruption.)

11 MS. SCHROEDEL: I really want to say how
12 much I appreciate and thank the panel and people
13 of the committee for inviting me here today. I
14 am quite frankly in awe of some of the things
15 that I've heard today and that I've heard over
16 the last couple of days.

17 I really strongly believe that it is
18 extraordinarily important for the rest of
19 America to know what is going on in Indian
20 Country today.

21 I'm one of the expert witnesses in the
22 Wandering Medicine case. But I believe a lot of
23 other people have spoken very eloquently about
24 that today, so I'm going to talk about some of
25 the other research that I've done.

1 More broadly, looking at the question of
2 voting rights litigation and its impact on the
3 ability of Native Americans to be elected to
4 political office. The underlying assumption in
5 the Shelby decision, the 2003 -- 2013 Supreme
6 Court decision, is it racially motivated abuses
7 of voting rights is no longer a significant
8 problem. And the court pointed to substantial
9 increases in the African American elected
10 officials as evidence of this change.

11 This, of course, ignores the importance of
12 Section 5 preclearance in making those very
13 increases possible, a point that's been made
14 repeatedly by academics who study voting rights.

15 What the court as well as academics have
16 failed to examine, however, is the relationship
17 between voting rights litigation and the
18 representation of Native Americans in elected
19 political office. In fact, no one has even
20 compiled a comprehensive listing of such
21 officials in the United States. So it's a first
22 step towards this.

23 I've done a case study of South Dakota which
24 is arguably, and I'm sorry to those of you from
25 South Dakota, but it is an extreme case. And I

1 say that because there has been more voting
2 rights litigation involving Native Americans in
3 the State of South Dakota than any other state
4 by a considerable length.

5 My research assistant -- that's what you
6 have graduate students for, I'll talk about him
7 in a minute -- we've examined the impact -- the
8 impact on the numbers of Native Americans
9 elected to the state legislature and county
10 council seats in South Dakota.

11 What I'm going to describe, I call it the
12 good, the bad, and the ugly. So let's start
13 with the good. The good is that voting rights
14 litigation has indeed had a positive impact on
15 the ability of indigenous peoples in this state
16 to be represented in political office.

17 According to data provided, and I have to
18 thank them, the archivists in the state library,
19 we discovered that there had not been a single
20 Native American elected to the 105-member state
21 legislature prior to voting rights litigation in
22 the 1980s.

23 Now, accurate historical data to a racial
24 make-up of members of county councils was
25 impossible to obtain. What we did -- and I have

1 to say, I've got to give credit to my research
2 assistant who, on the material you have, is my
3 coauthor. He contacted every single county
4 council, there's 66 of them, in South Dakota.

5 And what he found was we were -- he was not
6 able to find any evidence that anyone who he
7 contacted showing that Native Americans had been
8 elected to any of these county council seats
9 prior to voting rights litigation.

10 A little side note, one of the more amusing
11 points. When he asked about minorities serving
12 county council seats, quite a few times he was
13 told things such as, Well, at some point in the
14 past we had a woman.

15 I don't understand how woman and minority
16 are the same, given women were 51 or 52 percent
17 of the population. But that was just my little
18 side note there. So that was the good. There
19 has been some increase.

20 Let me tell you about the bad. The bad is
21 numbers are still horribly low both in state
22 legislature and in county council seats. Native
23 Americans continue to be massively
24 underrepresented.

25 In the entire history of the state, at least

1 according to the archivists in the state
2 library, there have been a grand total of 12
3 Native Americans elected to the state
4 legislature. Right now, out of that 105
5 members, 3 are Native Americans.

6 Now, a commonly accepted way of measuring
7 the representation -- representativeness of a
8 political body is to divide the percentage of
9 the group in that political body by their
10 percentage in the population.

11 Perfect representation would be 1.0;
12 overrepresentation is a number greater than 1;
13 under, a fraction below 1. This is called a
14 racial parity ratio. It's fancy title for
15 something that's not that fancy.

16 But right now the racial parity ratio for
17 Native Americans in the state legislature in
18 South Dakota is 0.32. And I might note it has
19 never been greater than 0.57.

20 If we turn now to the county councils,
21 remember there are 66 counties, there are 322
22 members serving on these county councils.
23 Perfect representation would be 29 Native
24 Americans serving in these bodies. Instead, we
25 found there are 12, which is again, a racial

1 parity ratio well below 1; in this case, 0.42.

2 So that was the bad.

3 Now, turning to the ugly, as I work my way
4 down. The ugly is that Native Americans in the
5 state, as best we can tell, cannot seem to be
6 elected in any political jurisdiction, at least
7 of the ones we looked at, where they comprise
8 less than a majority in the electoral district.

9 Now please note, I want to make it clear,
10 that doesn't mean in the county, because some of
11 the counties have single member districts. But
12 if you're not a majority Native American, at
13 least as far as we've been able to see, you
14 aren't going to get elected.

15 For example, right now all of the 12 Native
16 American council members are from majority
17 Indian counties. Moreover, 4 out of the 9
18 majority Native American counties do not even
19 have a single Native American person serving on
20 their county councils. And all of these
21 counties have racial parity ratios well below
22 the percentage needed to be representative.

23 But let me get even uglier. The fact is,
24 that almost every time political jurisdictions
25 are forced by litigation to adopt changes, and I

1 think this is some of the things several people
2 talked about earlier today, including Bret, is,
3 every time they are forced through litigation to
4 make changes that make it easier for Native
5 Americans to be elected, those jurisdictions
6 then look for opportunities to reverse those
7 gains.

8 To conclude, rather than finding that
9 conditions have changed so dramatically as the
10 court suggested in Shelby, that the Voting
11 Rights Act is no longer essential, the opposite,
12 at least in South Dakota, appears to be the
13 case.

14 If anything, I would encourage the Justice
15 Department to heighten its scrutiny of electoral
16 procedures in South Dakota. Thank you.

17 MS. BOHNEE: Thank you very much. We
18 appreciate your testimony and your statistics.
19 I'm going to turn it over to the Commissioners
20 for questions.

21 MR. BRAUNSTEIN: I had the last one. I'm
22 the statistician on the board so I'll ask this.
23 With the sociologist and the good research from
24 California here, would we expect this racial
25 parity ratio to actually be meaningful in the

1 context of, well, our expectations, given all
2 the things that we learned about suppressed
3 participation in the political process, is there
4 a more sophisticated measure that would allow us
5 to really nail down what we should reasonably
6 expect as opposed to parody?

7 MS. SCHROEDEL: Okay. I mean, this is one
8 of the ironies. I'm a social scientist, right?
9 I mean, when we started collecting this data, I
10 thought I was going to do a nice statistical
11 model, something sophisticated that brought in
12 poverty ratios and all kinds of things.

13 No. I mean, the numbers are so small you
14 can't do any of those things. I mean,
15 initially -- and I mean, this is my own naivety.
16 Excuse me, I'm -- well, I'm originally from the
17 Seattle area but I've lived in California, so
18 this is different territory for me. Okay.

19 MR. BRAUNSTEIN: Yes. Rare events.

20 MS. SCHROEDEL: Yeah. I mean, initially
21 when we were looking at the counties, I thought,
22 you know what, Native Americans in South Dakota
23 comprise 8.9 percent of the population,
24 according to the 2010 census.

25 So let me say, let's start by looking at

1 counties that have at least 7 percent Native.
2 Okay. Because we -- you know, where I come
3 from, people do get elected in places where they
4 are a relatively small minority. So we thought
5 7 percent.

6 No. I mean, I thought it would be some
7 combination, a certain percent, 7 percent, 10
8 percent, 15 percent, coupled with some other
9 variables, and we can do this nice, cool
10 statistical model. You don't -- you can't do a
11 model. I mean, we got 105 people in the state
12 legislature, and you've got 3, we can't do a
13 model with that.

14 I mean, Garth, you want to take a whack at a
15 model with that?

16 MR. MASSEY: Well, it's because we always
17 work on probability, and probability doesn't
18 work when you have such small numbers. You have
19 too big of a margin of error.

20 MR. BRAUNSTEIN: I guess I'm not -- I don't
21 want to drag this out, and perhaps we can talk
22 after. I guess, I wasn't thinking about using
23 the cases of elected Indians as a way to kind of
24 forge more detail.

25 I'm suggesting that the parity value, all

1 things being equal, right, it's a giant
2 assumption, that we would see a minority group,
3 particularly one that struggles against so many
4 barriers, as we've heard today and we all know
5 before today, wouldn't necessarily expect to see
6 parity. We would have some slightly marginal
7 value that would be, I don't know, the barest
8 minimum expectation, and then to use that number
9 as a way to -- I mean, I think what you are
10 saying is compelling but I think what I'm saying
11 is, it's worse than that.

12 MS. SCHROEDEL: Can I say one more thing,
13 Garth, because there's a group called -- there's
14 the Gender and Multicultural Leadership Project.
15 I don't know, are you familiar with this?

16 Okay. This is a group of academics who
17 spent a number of years compiling what they
18 believe to be the most comprehensive listing of
19 every racial and ethnic minority in the United
20 States serving in elected office. Okay.

21 And they have this marvelous interactive
22 website and you can -- you can push on a state
23 and find exactly how many Asian Americans are
24 serving, where they are serving, and their
25 names, every single -- there are no Native

1 Americans on it. They didn't even try.

2 And what I got here with the racial parity
3 ratios just for South Dakota are well below any
4 of those parity ratios that were showing up on
5 the Gender and Multicultural Leadership Project
6 website.

7 MR. BRAUNSTEIN: I understand.

8 MR. MASSEY: I would only say, Richard, that
9 in all things being equal, one tries to have
10 structural solutions -- or, institutional
11 solutions to structural problems. So that if
12 you have an elderly population, then you create
13 ways in which they can get access to buildings
14 and so forth. Right?

15 You try to bring them up to equity. And
16 equity is really the key. Not everybody stands
17 on the same platform. Platform is different
18 sizes. So you try to bring people up to that.

19 And what we're seeing, of course, is just
20 the opposite. And if you -- in the perfect
21 world, if all of the kinds of things that impede
22 people's ability to politically participate, you
23 could bring that up to -- you could bring that
24 up to equity. What we're seeing is just the
25 opposite. So I think that's as good as it gets.

1 MR. BRAUNSTEIN: Thank you.

2 MS. BOHNEE: I have a question for
3 Ms. Skarin. And mine is, one, do you know
4 whether language translations will continue even
5 though there is no Section 203 coverage? That's
6 my first question.

7 And my second comment is, a lot of Native
8 organizations have complained that the census
9 undercounts Indians. And the ACS, as you
10 indicated in your paper, is even a smaller
11 portion of that, and it's not part of the census
12 door-to-door where they even pay people. It's
13 like you get in your mailbox. And how many
14 limited English proficient people, so Native
15 language speakers, are actually going to be
16 filling out that ACS survey?

17 And have the -- has the language population
18 dropped, like, to an extent where a request
19 could be made for some -- for the census to do
20 something else, or is that even possible?

21 MS. SKARIN: I'M not -- well, okay. So the
22 first question is, we don't know and that's part
23 of the problem. You know, it seems like it's
24 going to depend on what county you're in. And
25 if the county was previously required to provide

1 coverage and now isn't, like, my guess without
2 really knowing, is that in a lot of cases they
3 are not going to.

4 I think kind of what we've seen is sort of
5 excuses that could be accurate, but also could
6 be kind of a guise for something else. You
7 know, the idea that, Well, we provide
8 translators when we can, but we haven't been
9 able to find any that can translate into Lakota.

10 And it's one of those things where you're,
11 like, can you really not find them or are you
12 just not really trying? So I suspect that,
13 without being required to provide translation,
14 that it's not going to happen, at least not
15 widespread.

16 There is also something I mentioned in my
17 written testimony that I didn't bring up today
18 just because of the time limits, is that
19 South Dakota actually does have a common
20 language law that requires all public documents
21 and all public meeting minutes be in English.

22 It's unclear how that's going to apply,
23 especially when you've got elections where
24 there's a federal component, but when we're
25 talking about completely local elections, I

1 suspect that could be used to justify not
2 translating or not providing language
3 assistance.

4 What was your second question? I'm sorry.
5 Oh, the ACS stuff. It seems like to me that the
6 change would really have to come in Section 2.
7 That when the Voting Rights Act was
8 reauthorized, that there be something requiring
9 more data collection, better data collection.
10 Because right now the requirement is that the
11 ACS data is used.

12 So I think -- whether it be, like,
13 rulemaking through the Census Bureau when they
14 propose rules. Other than that, I think it's
15 going to have to come through the
16 reauthorization of the Voting Rights Act.

17 MS. BOHNEE: That reauthorization is in
18 2025.

19 MS. SKARIN: Yeah, so.

20 MS. BOHNEE: Okay. Let's see if they have
21 anymore.

22 MS. KINGMAN: I would like to follow up with
23 her and you, Libby. You laid out some really
24 good things in your paper. Could you go one
25 step further for us and put those down in a

1 recommendation? I mean, like you just stated
2 here.

3 MS. SKARIN: Yeah. Yeah.

4 MS. KINGMAN: That would be have to be laid
5 out in the Voting Rights Act. Because every
6 time we have a problem with the Supreme Court
7 and their bad action, we go to Congress to fix
8 it. So what would be that fix?

9 And if we're doing a report and a
10 recommendation, what could we bring out on how
11 to fix that?

12 MS. SKARIN: Uh-huh.

13 MS. KINGMAN: And the same thing I would
14 also say for you, Jean, how would we get this
15 inequity, you know, fixed? And I don't have an
16 answer. I don't know if you do.

17 But if we could kind of come up with some
18 sort of -- some recommendations or whatever, I
19 don't know. Because in this, these reports, you
20 know, we want to push for something. We don't
21 want them to have take out what they want, you
22 know. We want actual solutions here.

23 MS. SCHROEDEL: Okay. A couple thoughts,
24 and some of this is in the longer report or
25 paper that I gave you.

1 MS. BOHNEE: I just -- I have two from you.
2 *The, Native American Vote Suppression; and, An*
3 *Evaluation of Factors Affecting Indian Voting in*
4 *Three Montana Counties.*

5 MS. SCHROEDEL: Okay. In the second one,
6 and I can pull it out if you want me to quote
7 it.

8 MS. BOHNEE: That's okay. You have --

9 MS. SCHROEDEL: One of the things that I
10 found -- and I'm sure people in this state who
11 do this know much better than me. But the way
12 that reservations have been sliced and diced,
13 yeah, you go, you slice and you dice and you
14 throw them in different not just counties or
15 different legislative districts, all of which
16 means that you end up not having enough people
17 to actually be able to be successful.

18 MS. KINGMAN: Because we don't have the
19 people in those positions to control that --

20 MS. SCHROEDEL: Yeah. Right.

21 MS. KINGMAN: -- district, whatever is
22 happening. Then we're victims of what they want
23 to do.

24 MS. SCHROEDEL: And the other piece I would
25 add, and this is to build off of, oh, the early

1 gentleman who had been the lawyer. Come on,
2 help me.

3 MS. KINGMAN: Steve? Steve Emery?

4 MR. MASSEY: Pat Duffy.

5 MS. SCHROEDEL: Pat. Which was organize,
6 organize, organize. Nationwide registration
7 among Native peoples, and that's both Alaska
8 Native and American Indian, is less than 40
9 percent.

10 If you have the population but people aren't
11 registering and they are not voting, hence the
12 data that we found in terms of those counties
13 that have majority Native populations and still
14 don't have a single person on the county
15 councils.

16 MS. KINGMAN: For the reasons Garth brought
17 out because like when we -- we fought that
18 battle in Shannon County, we have people that
19 live 100 miles from the polls.

20 MS. SCHROEDEL: Yeah. Yeah.

21 MS. KINGMAN: And they can't go to
22 Hot Springs to vote.

23 MS. SCHROEDEL: Yeah. Yeah.

24 MS. KINGMAN: Let alone serve on a county
25 commission. We do have -- we did have one

1 Indian person on the county commission. But if
2 the Department of Justice hadn't come in, you
3 know, we wouldn't have even one what we did.

4 MS. SCHROEDEL: Yeah. Yeah.

5 MR. MASSEY: May I just interject. Doesn't
6 California now have an independent commission --

7 MS. SCHROEDEL: Yes. Yes.

8 MR. MASSEY: -- that does redistricting and
9 readjust. And that seems to obviate what the
10 problem you just mentioned, they are not
11 represented so they can't control the process.

12 MS. KINGMAN: Right.

13 MR. MASSEY: So one would be certainly to
14 recommend --

15 MR. BRAUNSTEIN: Was that California board
16 created before or after the state legislature
17 removed competition from the majority of
18 California districts for a period of about 40
19 years? Is that done in response to that?
20 Because as I understand it, California has had a
21 tremendous difficulty with political
22 gerrymandering for safe districts. The
23 commission is a response to that, or was the
24 commission existing all along?

25 MS. SCHROEDEL: No. It's new. It's new.

1 MR. MASSEY: It's brand new.

2 MR. BRAUNSTEIN: That is great news. I
3 appreciate hearing that because I understand
4 California had a problem, and it's good to hear
5 that they are getting after it.

6 MR. MASSEY: And it's now under an
7 independent commission. So that would be one
8 recommendation, particularly in Indian Country.

9 MR. BRAUNSTEIN: What's the name of that
10 commission?

11 MS. BOHNEE: It's a redistricting
12 commission. Arizona has one, too.

13 MS. SCHROEDEL: There's a man named Angelo
14 Archete who has worked with some of the people,
15 the lawyers -- the Lawyers Committee for Civil
16 Rights Under the Law. This group. So they
17 should -- Angelo is someone, if people are
18 interested, would be a good person to contact.

19 MR. BRAUNSTEIN: What's Angelo's last name,
20 please.

21 MS. SCHROEDEL: Archete. A-R-C-H-E-T-E.
22 He's a lawyer. He's also a student of mine.

23 MS. BOHNEE: We have one other question.

24 MS. HAWK: This question is for Libby. You
25 were talking about the census. Were they

1 running into problems in 2010 or -- your -- your
2 research, where did you do it, just for
3 South Dakota and North Dakota?

4 MS. SKARIN: Well, the census -- the loss of
5 the Section 203 coverage came after the census
6 in 2010. So, I mean, yeah, the census data and
7 ACS data that was used to make those Section 203
8 determinations basically, it seems like, wasn't
9 complete or wasn't representative enough and
10 that in part led to the dropping of Section 203.

11 MS. HAWK: Because that's what happened in
12 Montana. I mean, even though they tried hiring,
13 you know, Natives to go into the reservation
14 boundaries, they were not doing their jobs.

15 Because of the fact there were certain
16 housings in these reservations, because we have
17 like six districts on our reservation, and
18 they'd be calling me and saying, Hey, they never
19 came to our house.

20 MS. SKARIN: Interesting.

21 MS. HAWK: So it was actually -- you know,
22 because there's a lot of people on my
23 reservation that still speak our language. I
24 still speak my language.

25 MS. SKARIN: Uh-huh.

1 MS. HAWK: And you know, as far as Montana
2 goes and the census goes, you know, there is a
3 problem.

4 MS. SKARIN: Yeah.

5 MS. HAWK: So that needs to be fixed in
6 order for, you know, some of this stuff to come
7 out on a positive note for the Indian
8 communities.

9 MS. BOHNEE: One last question and then we
10 will go.

11 MS. KINGMAN: Jean, I wanted to get the name
12 again of that national committee that you
13 mentioned.

14 MS. SCHROEDEL: Well, it's the group, this
15 group. It's this group.

16 MS. KINGMAN: Oh, it is. Oh the Gender and
17 Multicultural --

18 MS. SCHROEDEL: Yeah, the Gender and
19 Multicultural Leadership. That's in the paper,
20 too. The Gender and Multicultural Leadership
21 Project, GMLC.

22 Bill White Head asked me something that I
23 think you want me to say, just -- so, I'm
24 speaking for Bill. Okay?

25 MS. BOHNEE: Okay.

1 MS. SCHROEDEL: He pointed out that the
2 Montana state legislature, that he was the -- he
3 was elected in '97, '98 as the first Native
4 American since the early 1960s from Fort Peck,
5 and there's a 100-member house, 50-member
6 senate, so 150 and there's four Natives.

7 MR. WHITE HEAD: At that time, four of them.
8 There were four of them. Because she mentioned
9 racial in South Dakota of 107. There was four
10 out of those 150 and one was Republican.

11 MS. BOHNEE: Do you know what it is now?

12 MR. WHITE HEAD: Huh?

13 MS. BOHNEE: Do you know what it is now?

14 MR. WHITE HEAD: Yeah. We have nine --
15 well, eight.

16 MR. BRAUNSTEIN: Because you have seven
17 seats.

18 MR. WHITE HEAD: Should have nine. We
19 should have nine.

20 MS. BOHNEE: Now you have eight. Eight out
21 of 150.

22 MR. WHITE HEAD: Every reservation is
23 represented.

24 MS. BOHNEE: But no senator?

25 MR. WHITE HEAD: Three senators.

1 MS. BOHNEE: Three senators.

2 MR. WHITEHEAD: I'm not including eight --
3 three senators and five in the house are Indian.
4 So there should be six to be properly
5 represented.

6 MS. BOHNEE: I see. Okay.

7 MR. WHITE HEAD: Out of 150.

8 MS. BOHNEE: Okay. I think one other person
9 from the public. When you stand up, can you say
10 your name for the court reporter.

11 MR. COLLINS: My name is Gary Collins from
12 Wind River reservation. A comment I wanted to
13 make, and it was brought up a couple times here.
14 That the Census Bureau, we have found out very
15 much undercounts our people. In fact, I know a
16 gentleman who today is still waiting for his
17 1990 census enumerator to come back.

18 So what we did, when we would explain to the
19 people our numbers -- because Indian Health
20 Service counts us, Bureau of Indian Affairs
21 counts us, the United States government counts
22 us, and our tribe, we count ourselves. So we
23 are counted all the way across. So, we know the
24 numbers are way out of line. There's something
25 wrong there.

1 So at the time I was a chairman of the
2 tribe, and to exemplify and strengthen my
3 dialogue about 70 percent unemployment and 50
4 percent poverty level income, we developed
5 what's called the WINDS, Wyoming Indian Needs
6 Determination Survey. And Garth was part of
7 that.

8 So we authenticated our numbers by doing our
9 own survey on our reservation to compare that
10 with the U.S. Census. We've done three of them
11 now, 1990, 2000, and 2010. The last one is 200
12 pages in length.

13 But it goes in to the specific demographics
14 of our community: Like how many dogs do you
15 think are too many? Where would you need a bike
16 path? How many cell phones in your house?

17 But the thing is, with two tribes, we have
18 percentages for each tribe and then collective.
19 But what we found that we use this data for the
20 kinds of planning that we need to do in the area
21 of voting, in the area of infrastructure
22 development.

23 But it was spurred on by the fact that the
24 Census Bureau did not have the right numbers.
25 Now I will say, since that time until now,

1 they've gotten better, but they still have not
2 quite got it.

3 And when we first started, the thought was,
4 well, how much will it cost. The thought was,
5 well, \$60,000, or \$70,000 or \$80,000. Let's
6 take half the households and extrapolate the
7 rest.

8 My thoughts as chairman, I said, No, we'll
9 do 100 percent of the houses. We'll find the
10 money somewhere. I didn't want anybody to shoot
11 holes in the data we developed, saying, Well,
12 you were at least 50 percent right because
13 that's how many houses you went to.

14 No. We want to do 100 percent of the
15 houses. We had, like, 94 percent respondents.
16 Of those houses on the reservation that didn't
17 respond were nonIndian.

18 So it was -- and we use it a lot in
19 substantiating our position about population and
20 roads and those kinds of things. So we can
21 guarantee the data we put into an application is
22 valid. We did that in 1990, post that, and then
23 from then until now. But the real key is that
24 the Census Bureau does not do the right kind of
25 counting.

1 And another thing that I thought might be of
2 a reflection of some of the voting issues. In
3 Wyoming we have large counties. There's only 22
4 in the whole state. In Texas there's 250. I
5 don't know how many there are in North Dakota,
6 South Dakota, 66 or something.

7 So it's easy to take -- it's just like the
8 Alottment Act. It's really hard to get a slam
9 dunk opinion or a position with a large land
10 base. But if you cut it down to 40- or 60-acre
11 tracts like the Dawes Act did with the
12 alottments, then you can start picking this
13 apart.

14 So it's easy, I think -- well, it is easy,
15 because we get gerrymandered all the time. We
16 might base our district boundaries for a voting
17 district or for a school district by the
18 numbers, but we might skew and have most of our
19 affluent people or more educated or more
20 opportunistic people in one segment and then
21 none in the other.

22 So you really don't get a true
23 representation because you just count the
24 numbers, you don't count the level of
25 understanding of the system.

1 And I don't want to go into the world of
2 intelligence and ignorance and all of that. But
3 I'm just saying, we have young people who can't
4 necessarily pass an SAT test in a very good way
5 but they can survive out on a mountain for a
6 month and don't see nobody. So who's got the
7 intelligence here? Just a different way of
8 screening and talking about who your people are.

9 But the census is a tool, but it has to be
10 recognized that it's not always valid. And our
11 most recent survey, the one I mentioned of 200
12 pages, we haven't distributed that for public
13 information because one or two pages taken out
14 of context will skew that thinking of that
15 discussion or that direction.

16 But if we take it as a whole as tribal
17 governments are doing, then it makes sense to us
18 to decide how we're going to do some of those
19 things. So it's a journey in progress.

20 MR. BRAUNSTEIN: Can you tell us again what
21 the acronym WINS stands for.

22 MR. COLLINS: WINDS. W-I-N-D-S.

23 MR. BRAUNSTEIN: Oh, D-S.

24 MR. COLLINS: Wyoming Indian --

25 MR. BRAUNSTEIN: Sorry. Start again.

1 MR. COLLINS: Wyoming Indian Needs
2 Determination Survey. And that's that Wind
3 River reservation.

4 MS. BOHNEE: Thank you very much. At this
5 time we are going to ask -- or, we're going to
6 thank our final panel. Thank you. And thank
7 the audience and the public for being here, and
8 if any of the commissioners have some very short
9 closing remarks, if you have anything to say.

10 MR. BRAUNSTEIN: Nothing short.

11 MS. BOHNEE: Nothing short. Well, I will
12 saying something. I just want to say thank you
13 very much to our reporter right here, who I know
14 is probably very tired, and we'll allow you to
15 go soon.

16 And I want to thank the Lawyers Committee
17 for putting this together, Eileen and the
18 planning group. I think it's very important to
19 have the Native voice heard.

20 And I think there was testimony today, and
21 it's true in many circumstances that, you know,
22 the situation of Native peoples aren't
23 considered. We're so statistically
24 insignificant that we're not included.

25 And I think it's very important that the

1 Lawyers Committee dedicated a whole hearing just
2 to Native voting issues, and I think that speaks
3 volumes. Hopefully everyone's testimony here
4 will be able to paint the real picture of what's
5 going on in Indian Country, coupled with some of
6 the testimony that was received from Arizona.

7 I think that those two locations -- well,
8 this location was solely on Native voting
9 rights, and then with Arizona, I think will be
10 very important to letting people have an
11 understanding of what's going on in Indian
12 Country.

13 I just want to say, Mr. Massey, thank you so
14 much for your written testimony. I was at an
15 election law town hall on Saturday, and I was
16 trying to, you know, explain to people who live
17 in urban areas. They don't understand, you
18 know, that there could be people who don't have
19 access to a vehicle or Internet. You know, and
20 they think, Well, why can't you just vote?
21 Like, why -- just vote by mail. They don't
22 understand that, you know, people -- you may not
23 be receiving mail at your homes.

24 So to have written reports from you all, I
25 think, is very helpful, everyone who submitted

1 written comments. Because people living in the
2 city don't understand what's happening with
3 regards to the inequities on the reservations
4 and how that impacts the voter turnout, and the
5 voter participation, and the participation of
6 Native voters, and how do we empower Native
7 people. There are so many forces against us.

8 So we have made strides with the Voting
9 Rights Act, but of course we also have had some
10 challenges. I want to thank all the people who
11 worked on those challenges and haven't given up,
12 all the people in this room.

13 I think it's very important that we work
14 together, and I'm glad that I met everyone here
15 because I think that's a very strong community
16 and we have to continue to work together to
17 overcome and to move forward, even in the face
18 of adversity. So just, thank you.

19 MR. COLLINS: Can I make a comment? It's
20 not necessarily personal but it's specific to
21 our reservation in terms of the initial
22 onslaught. Recently the Wind River tribes
23 received a treatment as states authority from
24 the EPA for air quality conditions.

25 So we are wanting to move forward in

1 collecting data on our air quality, because
2 we're surrounded by huge oil and gas operations.
3 In fact, our air quality sometimes in the dead
4 of winter with ozone levels the same as you
5 would see in Los Angeles on a hot day.

6 So we have moved forward over the last five
7 years to receive tribes as states authority to
8 measure the air quality, and the state has sued
9 us, the county has sued us, the city has sued
10 us, and there's a state organization that has
11 sued us.

12 And we're in that situation right now.
13 There's a stay until everybody can sort what's
14 going on. But in the meantime our two senators,
15 Senator Barrasso and Senator Enzi, are drafting
16 some legislation to go to congress to change the
17 boundary of the reservation.

18 And when you do that, that affects some of
19 the things we have here on voting rights. So my
20 plea to all of you is, somehow, if you can get
21 your tribes to understand more about what the
22 threat is about changing boundaries of
23 reservations, whether it's a 35-acre rancheria
24 in Northern California, whether it's the Navajo
25 Nation with the Hopis in the middle, or Standing

1 Rock or Cheyenne River, whether you change those
2 boundaries. I mean, those -- we don't want to
3 let this be the deciding factor of what's coming
4 down the road.

5 So I'm making that plea that we really pay
6 attention to our national legislation and have
7 all the tribes, if we can -- I'm trying to -- I
8 shouldn't say trying, why don't I just do it.

9 I'm doing some things to let people know in
10 the tribes where they can get behind this
11 effort. Now, we haven't formally done so yet
12 because we're still trying to see what the
13 language looks like. But it's important to all
14 of us.

15 And the same thing that I see in suppression
16 of voting, is it creates opportunities for
17 everybody else, and then we lose opportunities.
18 So this is 2014. So, thank you.

19 MS. BOHNEE: Thank you.

20 MS. O'CONNOR: I think that's it unless the
21 guest Commissioners have anything else. So
22 thanks so much to everyone. Thank you to our
23 court reporter for sharing her time and
24 expertise, and have a good night.

25 (The hearing was concluded at 7:48 p.m.)

C E R T I F I C A T E

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STATE OF SOUTH DAKOTA }
 } ss:
COUNTY OF PENNINGTON }

I, Jacqueline K. Perli, Court Reporter, do hereby certify that the said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 8th day of May, 2014.

JACQUELINE K. PERLI
Shorthand Reporter
Notary Public
My commission expires:
May 9, 2019

1 STATE OF SOUTH CAROLINA)
)
2 COUNTY OF RICHLAND)
3

4 - - -

5 THE NATIONAL COMMISSION ON VOTING RIGHTS
6 TRANSCRIPT OF PUBLIC HEARING
7

8 - - -

8 BEFORE: GUEST COMMISSIONERS:
 PROFESSOR DUNCAN BUELL, (SECOND SESSION)
9 NANCY BLOODGOOD, ESQ.
 JUSTICE ERNEST A. FINNEY, JR., RETIRED
10 (FIRST SESSION)
 JAMES T. MCLAWHORN, JR.
11 DR. LONNIE RANDOLPH, JR.
12 ALSO: REBECCA ARNOLD, ASSOCIATE COUNSEL
 Lawyers Committee for Civil Rights Under Law
13 1401 New York Avenue, N.W.
 Washington, D.C. 20005
14
15

16 DATE: February 6, 2014
17 TIME: 3:06 P.M.
 LOCATION: Richland County Council Chambers
18 2020 Hampton Street
 Columbia, SC

19 REPORTED BY: LORI S. MORTGE,
 Certified Court Reporter
20

21 JOB NO: 70467
22
23
24
25

1 REBECCA ARNOLD

2 MS. ARNOLD: Good afternoon to everyone.
3 Can you all hear me? Okay. Thank you so much for
4 coming out to this South Carolina Voting Rights
5 hearing as part of the National Commission on Voting
6 Rights. It is really fantastic to see so many
7 people here who are dedicated to fairness in the
8 voting process.

9 My name is Rebecca Kelly Arnold and I'm
10 an attorney with the Lawyers' Committee for Civil
11 Rights Under Law. The Lawyers' Committee is a
12 nonprofit nonpartisan civil rights organization
13 founded at the request of President John F. Kennedy
14 50 years ago to engage the private bar in the fight
15 for racial justice and equality. We continue our
16 work today in a range of areas that impact racial
17 and ethnic minorities. Notably, our organization
18 has been at the forefront of a legal struggle to
19 protect advances in voting rights. On behalf of the
20 Lawyers' Committee, we thank you for your
21 participation in and support for this hearing.

22 So today's hearing in South Carolina is
23 the fifth in a series of nationwide fact finding
24 hearings convened by our National Commission on
25 Voting Rights. As many of you know, this summer the

1 REBECCA ARNOLD

2 U.S. Supreme Court nullified a vital provision of
3 the Voting Rights Act that required federal review
4 of voting changes in states with a history of voting
5 discrimination. I know most of you are quite
6 familiar with that.

7 Now, this ruling compelled the Lawyers'
8 Committee to reconvene the National Commission to
9 host hearings across the country and to review
10 discrimination in voting as well as the impact of
11 recent changes in election administration law. So,
12 again, it is encouraging to see so many people here
13 because your voices need to be heard, your stories
14 are vital for the ongoing advocacy and report
15 efforts at the local state and national level.

16 Using the testimonies from the hearings
17 we're going to be compiling two reports. One on
18 voting discrimination and one on election
19 administration. It's our hope that these reports
20 will inform the public debate on voting
21 discrimination, the impact of recent election
22 administration laws and efforts to reform across the
23 country.

24 So now I'd like to introduce our guest
25 commissioners for this evening. Presiding over our

1 REBECCA ARNOLD

2 event today are five South Carolina Commissioners,
3 each with a deep commitment to protecting access to
4 the ballot on equal terms. So their extended bio is
5 in your program but, first, we have Nancy Bloodgood,
6 partner in the Foster Law Firm in the Charleston
7 office.

8 Then we have the Honorable Ernest A.
9 Finney, Jr. who, among other accomplishments, is the
10 first African-American Supreme Court Justice
11 appointed to the South Carolina Supreme Court since
12 reconstruction.

13 Dr. Lonnie Randolph, Jr., President of
14 the South Carolina State Conference of the NAACP.

15 And James T. McLawhorn, Jr., President
16 and Chief Executive Officer of the Columbia Urban
17 League.

18 And for our second panel we'll be joined
19 by our fifth guest commissioner, Professor Duncan
20 Buell, Chair of the Department of Computer Science
21 and Engineering at the University of South Carolina.

22 So our commissioners will preside over
23 today's events and receive testimonies from two
24 panels of witnesses and ask follow-up questions just
25 to ensure for a robust conversation about the state

1 REBECCA ARNOLD

2 of voting rights in South Carolina.

3 So just a little bit of process before
4 we get things going. If you've been confirmed on a
5 panel in advance and you haven't already checked in,
6 please just be sure to do that at the sign-in table.
7 I think most of you have. For those of you who want
8 to share your voting experiences but you didn't sign
9 up ahead of time to do that it would be really,
10 really fantastic to hear from you. We'd love to
11 hear your stories. So, also, if you're interested,
12 just go over there and let her know that you'd like
13 to testify. You know, you'll write your name on the
14 card, the general topic that you'd like, and then
15 the commissioners will call you when we're ready.

16 So a few other things. Our hearing is
17 being transcribed, so please be clearly (sic) and
18 state your name before you begin your testimony so
19 that we make sure that we have that. And please be
20 mindful of our timekeeper and her signs here. She's
21 going to keep you committed to five minutes of your
22 testimony.

23 If you're on Twitter, we've set up a
24 hash tag for our hearing and that's hash tag NCVR.
25 And my organization, the Lawyers' Committee for

1 REBECCA ARNOLD

2 Civil Rights, is at lawyerscomm with two M's, so
3 L-A-W-Y-E-R-S-C-O-M-M.

4 Finally, the thank you's. In addition
5 to thanking our host here, the Richland County
6 Council Chambers, I really want to thank our
7 amazing, amazing planning committee organizations
8 because this could absolutely not have happened
9 without them. That's the American Civil Liberties
10 Union of South Carolina, the Columbia Urban League,
11 the Family Unit, League of Women Voters of South
12 Carolina, NAACP Legal Defense Fund, National Action
13 Network, Protection and Advo -- Advocacy for People
14 with Disabilities, the South Carolina Progressive
15 Network and South Carolina State Conference of the
16 NAACP.

17 (Applause.)

18 MS. ARNOLD: Also, a thank you to our
19 witnesses, Peggy Denver for preparing and presenting
20 testimony today, and a really big thank you to our
21 commissioners for coming and presiding over this
22 evening's/afternoon event.

23 So I will now turn it over to our
24 commissioners for their opening remarks should they
25 choose to make any and to call up the first panel of

1 CHIEF JUSTICE ERNEST FINNEY

2 witnesses.

3 CHIEF JUSTICE FINNEY: Ladies and
4 gentlemen, it is my pleasure to share this occasion
5 with you on this what we hope will be a historic
6 event and which will lay the foundation for South
7 Carolina to reassert itself as the area where voting
8 rights will be given their appropriate consideration
9 by the people of this state and by the legislative
10 leaders or the leaders of this state, those who set
11 the barometers.

12 Because it is important that we not only
13 occupy our place in the historical perspective of
14 voting rights in the United States of America and
15 that we accommodate ourself and our citizens to the
16 needs and accommodate their needs and practice to
17 provide the kind of atmosphere which will reinstate
18 South Carolina to its prerogative and to its
19 rightful place in the history of the voting rights
20 of its citizens. It is important that we not forget
21 from whence we have come and the contributions we
22 have made to give full voting rights to the
23 prerogatives of our citizens.

24 It is important that we understand and
25 appreciate how important voting rights are to make

1 CHIEF JUSTICE ERNEST FINNEY

2 the American dream of full citizenship to everybody.
3 It is going to take the full and best efforts of
4 this community and this, the citizens of this state,
5 to where we stand and what we need to know and what
6 we need to do to make sure that voting rights are
7 fully protected and that we are in the vanguard of
8 making full citizenship a reality and not a dream
9 and not a hope. It is going to take everybody in
10 this state working together, arm in arm, to make
11 this a reality.

12 We must recognize that what the United
13 States Supreme Court did to the Voting Rights Acts
14 and what it must be done -- what we must do to make
15 sure that this is not the setback that everybody
16 thinks it is. We can change it. It will be up to
17 you and I and to all the citizens of this state,
18 including the legislative and judicial and whatever
19 authority there is, we need to make this -- give it
20 its original meaning and interpretation.

21 I'm delighted to share this moment with
22 you. I feel totally inadequate to share it because
23 I am no longer a justice on the Supreme Court. I am
24 now a retired justice. But, together, we can do
25 what we want to do and, hopefully, this will be the

1 NANCY BLOODGOOD, ESQUIRE

2 beginning of a long struggle to reinstate this
3 meaning of the Voting Rights Act.

4 With that, I thank you for allowing me
5 to share this moment with you and I hope you will
6 pray for me that I will make it through this new
7 venture which is a new venture for me. I do want
8 you to know that I have a couple of guardians
9 outside in the audience who are designed and
10 designated to be my guardians and to keep me on the
11 headlines and keep me on the -- what we're about. I
12 thank you for the right to let me share this moment
13 with you and I look forward to being beneficial to
14 the meaning of this meeting. Thank you very much.

15 (Applause.)

16 CHIEF JUSTICE FINNEY: All right. Now,
17 I don't know who's in charge.

18 DR. RANDOLPH: Do you want me to --

19 MS. BLOODGOOD: All right. Thank you.
20 I am not an important person like the rest of my
21 commissioners on this panel, but for about 40 years
22 I have been involved in elections mostly on the
23 street level. And so I want to just take a few
24 minutes to thank you, first of all, for your passion
25 and your time being here. It's an important piece

1 NANCY BLOODGOOD, ESQUIRE

2 of our democracy.

3 I used to teach civics before I went to
4 law school. I feel very strongly that voting should
5 be made easier and simpler and there should not be
6 obstacles put in people's way. Voting is a fragile
7 system. It requires constant vigilance. If you let
8 down your guard, bad things happen even when the law
9 is clear. It is my personal experience that people
10 with bad motives or questionable motives can take
11 advantage and twist the system.

12 For instance, and I just wanted to tell
13 you a few little stories. I once was challenging
14 the qualifications of Citadel cadets who were paying
15 out-of-state tuition, had out-of-state driver's
16 licenses, lived in dorms, went home on vacation and
17 summer because they weren't residents. And the law
18 is pretty clear that you have to be a resident to
19 vote in a local election. They should have been
20 voting in Connecticut. I certainly didn't want to
21 disenfranchise them, but they should not have been
22 voting in Charleston.

23 That was an extremely unpopular position
24 at the time. In fact, it's probably -- I think it
25 is the only time not only was I called names but I

1 NANCY BLOODGOOD, ESQUIRE

2 was pushed by a gentleman a little bit larger than
3 me. And I had to demand and I got a retraction in
4 the newspaper for -- for standing up for what was
5 clearly the law.

6 I've also arrived at polling -- a
7 polling place once where there were cheerleaders out
8 on a busy highway campaigning for the school board,
9 but the problem was they were half a mile from the
10 polling place. The polling place was inside the
11 State park, and when I told the girls to get off the
12 road they said no, we were told by the poll manager
13 we have to be 200 feet from the entrance of the
14 property. So I drove in and, of course, we didn't
15 get anywhere. The police came, we made a phone call
16 to the Attorney General who at -- sometimes lawyers
17 have to do this, they read the law and the law says
18 200 feet from the entrance to the polling place, not
19 200 feet from the entrance to the property.

20 These are -- this is clear law and these
21 are the kinds of problems that we have when the law
22 is clear at elections. So when we complicate the
23 law with new definitions and new requirements, we
24 are putting an impediment in the process.

25 We -- I have observed, as a poll

1 J.T. MCLAWHORN

2 manager, problems with split precinct votings that
3 have overturned elections. I've also served on an
4 election commission as a commissioner and have
5 overturned elections because of irregularities, and
6 actually had to run a paper election once because
7 the county election commission perceived the city as
8 a different political persuasion and would not let
9 us use the voting machines. So running a paper
10 election is a very difficult process, but we did it.

11 And I just tell you all of these things
12 and there are, of course, all of you who have worked
13 the polls and have participated in elections know
14 how quickly the process can turn south. And so I
15 just would like you -- to thank you for coming and
16 appreciate the fact that our process is fragile and
17 it needs protection. Thank you.

18 MR. MCLAWHORN: Good afternoon. I'm
19 J.T. McLawhorn. I'm with the Columbia Urban League.
20 I recall -- I think it was in the early '80s when we
21 had this march, and many of you all participated in
22 this march, to protect the extension of the Voting
23 Rights Act. Reverend Jesse Jackson led the effort
24 and we marched around the Strom Thurmond Building
25 and went to Fairfield County -- went to Edgefield

1 J.T. MCLAWHORN

2 County to march at the courthouse because we wanted
3 to convince Senator Thurmond that we needed to
4 extend the Voting Rights Act

5 And we think about the Voting Rights
6 Act -- voting rights. Why is it that people put so
7 many impediments to try to keep people from voting?
8 When you think about it, it has something to do with
9 economics. A lot of times people look at voting in
10 isolation, but voting is going to enhance our
11 economic welfare. It's very obvious. It's going to
12 help us to -- to ensure a fair system for us.

13 Judge Finney is a -- is a testimony to
14 the significant impact of the Voting Rights Act.
15 And when we have more judges, those judges in the
16 General Assembly, because of -- voting for members
17 of the General Assembly and those members have been
18 advocates for judges. And when we think about at
19 the local levels, in school boards and city council,
20 it makes a difference when you've got people there
21 who understand our needs and the needs of the
22 broader community and are able to enact legislation
23 and to direct resource -- we talk about allocation
24 of resources, because I think sometimes we look at
25 voting in isolation. It's -- it's a civic duty but

1 J.T. MCLAWHORN

2 it's also an economic development transformation.

3 Why do people spend so much money
4 getting elected? You've asked the question, why do
5 you spend so much money getting elected? Because
6 when you get elected through the voting process you
7 have the ability to transfer resources, in essence.
8 And so we must continue to vote to empower
9 ourselves.

10 I think one of the greatest challenges
11 we have with voting is this electronic technology.
12 I haven't heard anyone talk about this, but if
13 people are able to go into companies like Target, if
14 they're able to go into financial institutions and
15 manipulate money, I think we've got to be very
16 concerned about protecting the right of our votes
17 through technology. And, certainly, I would like to
18 do a little more investigation and research to see
19 how can we put in safeguards so that our votes would
20 be accurately counted. And I think we have to be
21 conscious and cognizant of this fact that with the
22 tent of technology we still may have erosion of the
23 impact of our votes.

24 I want to really express my appreciation
25 to the Commission for providing this opportunity for

1 DR. RONNIE RANDOLPH, JR.

2 us to engage in South Carolina. You know, I
3 consider South Carolina as a -- as a significant
4 community, significant state for the Voting Rights
5 Act, because I think South Carolina -- what happened
6 to South Carolina is going to have an overarching
7 impact around the country because we have weathered
8 a lot of disenfranchisement over the years. And I
9 think when we're able to ensure the right to vote
10 for all citizens of South Carolina that it's going
11 to have a positive impact around the country.

12 DR. RANDOLPH: Good afternoon. I am
13 Lonnie Randolph, Jr., President of the South
14 Carolina Conference of the Branch of the NAACP and I
15 want to wel -- welcome and thank each and every one
16 of you for your attendance here today for this
17 utmost important event. Many of you I know, I'm
18 happy to be on the panel with such distinguished
19 individuals.

20 In my brief remarks that I want to make,
21 I first want to shout out a black history fact
22 regarding an organization that I proudly represent.
23 The NAACP, the nation's oldest and most respective
24 civil rights organization. Next week this
25 organization will turn 105 years old. 105 years

1 DR. RONNIE RANDOLPH, JR.

2 old. I've lived 64 of those years, and it is my
3 hope and my dream and my just desire that I will
4 live long enough to see that the things that this
5 organization has fought, the persons who were
6 members, like Mr. Harry T. Moore, Medgar Evers and
7 others who died for, will actually become a reality.

8 I like the comments that I heard the
9 previous speakers address. Judge Finney, I asked
10 the question earlier because I could not remember
11 the exact year that Judge Finney was elected to the
12 Supreme Court here in South Carolina. But another
13 black history fact, on February 1st, 1870 Jonathan
14 Jasper Wright became a member of the South Carolina
15 Supreme Court. Now, I wonder what in the world --
16 we didn't stop producing lawyers, but wonder why we
17 couldn't find any lawyers of color between 1870 and
18 199-what, Judge?

19 CHIEF JUSTICE FINNEY: About 1965,
20 somewhere along in there.

21 DR. RANDOLPH: And I say that because at
22 some point South Carolina and America is going to
23 have to look in the mirror and have a true
24 conversation about race in this country and race in
25 this state. With all of these new laws that have

1 DR. RONNIE RANDOLPH, JR.

2 been nothing more than lies regarding things that
3 have not happened, just like the 953 dead people
4 that are still dead that we claim voted in South
5 Carolina. The best way to be a great bigot is to
6 throw out things in the community to frighten
7 people, make people fearful.

8 This is a simple process. Another black
9 history fact, February 3rd, just three days ago, the
10 15th Amendment to the United States Constitution was
11 ratified. February 3rd. Why in the world are we
12 still going through this mess of identifying
13 citizens?

14 So at some point, y'all, you're going to
15 have to ask your elected officials -- you're going
16 to have to ask yourself, America -- out of the 172
17 countries with democracies of governments like ours,
18 America votes 149 out of 172. You don't hear that
19 stat. They brag about all the other things that
20 they're doing right, but when you mistreat the
21 citizens of your own country and then go out and
22 talk about what other people are doing wrong in
23 their countries, America needs to take a look at
24 itself and so does South Carolina. And posing all
25 of these restrictions on the right for citizens to

1 DR. RONNIE RANDOLPH, JR.

2 vote, why is it we have this obsession with the
3 bottom? Why is it South Carolina likes to be a
4 cellar dweller, the catfish, the carp of the ocean?
5 47th in voting already, y'all. 47th. This will not
6 take place by people who serve in public office.
7 This is an issue that must be addressed by the 4.7
8 million people who are not in elected office.

9 It is my hope that each and every one of
10 you will take the responsibility of a citizen very
11 seriously. I'll end with a short quote from Thomas
12 Payne, the great revolutionary philosopher who in
13 1795 fought for the right of women, black and white,
14 the right of Native Americans to vote, the right of
15 people to vote in this country. Thomas Payne. And
16 he said that the right to vote for representatives
17 is the primary right by which all other rights are
18 protected.

19 That's why Mr. McLawhorn talked about it
20 being an economic issue, it's bigger than economics.
21 It's a human rights issue. You deny people the
22 opportunity to be a human being and you deny them
23 every other opportunity there is.

24 So those of you who are here today to
25 testify, those of you who are here today just to

1 DR. BRENDA WILLIAMS

2 find out what's going on, those of you who are here
3 to report what's going on, let's spread the word
4 about this wrong that's taking place in this
5 country. We get counseling for everybody else that
6 has a problem, let's counsel South Carolina and
7 America by doing right for all people. Thank you.

8 MR. MCLAWHORN: Amen.

9 (Applause.)

10 MR. MCLAWHORN: Okay. Ms. Brenda
11 Williams from the Family Unit.

12 DR. WILLIAMS: Good afternoon. Do I sit
13 in this chair?

14 MS. BLOODGOOD: That's fine.

15 DR. WILLIAMS: Okay. Good afternoon,
16 everyone. I'll make my presentation brief and to
17 the point. We appreciate having the opportunity to
18 travel from Sumter, South Carolina. The Family Unit
19 is a 501(c)(3) organization designed to improve the
20 living conditions of people living in poverty and
21 despair. I brought -- I'm a physician, as a matter
22 of fact. My husband and I own and operate the
23 Excelsior Medical Clinic in Sumter, South Carolina.

24 (Applause.)

25 DR. WILLIAMS: Thank you very kindly.

1 DR. BRENDA WILLIAMS

2 And we're so honored to have one of our patients
3 sitting here, Judge Finney, and another patient,
4 Mrs. Finney, and another patient, Nikky Finney, are
5 patients of many years. I brought several wonderful
6 patients with me today.

7 If I can veer away from your schedule,
8 how you all are going to talk to me, I want to
9 introduce very quickly some patients who have been
10 adversely affected and disenfranchised by the South
11 Carolina Voter ID law. And I want to point out
12 something very, very important that just came into
13 fruition a week ago.

14 I have Mr. George Gathers, who is a
15 23-year veteran of the Marines. If you could raise
16 your hand, Mr. Gathers, who's with us today, Family
17 Unit member. Ms. Debbie Saunders who is my
18 executive assistant. Mrs. Bernice Kennedy -- Bernie
19 Smith, I'm sorry. Her son, James Kennedy.
20 Mrs. Donna DuBose -- you might recognize her face.
21 January 2012 she was on the front page of the AARP
22 magazine, talking about voter disenfranchisement in
23 South Carolina. And her wonderful husband,
24 Mr. James DuBose, who's sitting on the end.

25 Just a week ago we realized that the

1 DR. BRENDA WILLIAMS

2 South Carolina Election Commission now has a dress
3 code for people wanting and needing photo IDs in the
4 State of South Carolina. According to Mr. Chris
5 Whitmire, the Director of Education for the South
6 Carolina State Election Commission, this law that
7 tells folks how to dress when they come to get photo
8 IDs was supposed to have been in implementation --
9 where it was supposed to have been implemented
10 January 1st, 2013 when the voter ID law came into
11 being. However, that's not true basically because
12 the Family Unit has spent at least \$3,000 out of our
13 pockets, we have no government loans, but we spent
14 in just making fliers trying to educate people about
15 what they need to do in order to get a photo ID come
16 January 1st, 2013.

17 The three things, according to the
18 Election Commission, you had to give your date of
19 birth, your name and the last four digits of your
20 Social. That was all. That wasn't true. Now you
21 have to wear if you -- if you folks can stand with
22 the -- y'all come here a minute, please. You have
23 to wear a certain kind of attire. No hats are
24 allowed, no scarves. African-American women
25 oftentimes adorn ourselves in scarves and turbans.

1 DR. BRENDA WILLIAMS

2 It's a part of our culture. White people sure
3 enough use scarves and hats, but we particularly
4 like adornments -- if you could turn around, please,
5 to the audience.

6 These three wonderful people here are
7 patients of ours, Excelsior Medical Clinic. And not
8 only can you not wear a hat, you can't wear stage
9 makeup, whatever stage makeup is. You cannot adorn
10 yourself with too much makeup or the poll -- excuse
11 me, the voter registration office people have the
12 authority to stop and not take your picture if you
13 don't fit their attire guidelines.

14 I took these three wonderful people,
15 Mr. James Kennedy, his mother Mrs. Bernice Smith,
16 and Mrs. Donna DuBose to the voter registration
17 office of Sumter County a week ago with these head
18 garments that I bought from Dollar General on the
19 way to the voter registration office. And each of
20 them were asked to take off their head attire to
21 take the picture and they refused to remove the head
22 attire. As you see, you can very clearly see their
23 faces. Can y'all turn around to the commissioners?
24 The faces are not disguised and they were turned
25 away. They were denied voter ID because of their

1 DR. BRENDA WILLIAMS

2 refusal to remove their head garments. Thank you
3 all, you can have a seat.

4 MS. DUBOSE: Can I take this off now?

5 DR. WILLIAMS: Yeah, you can take that
6 hat off. Thank you. I love my patients, they do
7 all kinds of things like wear those hats from Dollar
8 General. Okay. Check this out. And I'm going to
9 be seated and I didn't plan to mention this, but
10 this just came into being -- my time is up. Okay.

11 And so if you were to Google Council on
12 American Islamic Relations, CAIR, you'll see cases
13 wherein Sikhs that wear the turbans have gone to
14 court fighting for their right to keep their turban
15 on at the DMV. Matter of fact, y'all, and I'm going
16 to say this and I'm going to hush. One of my
17 patients, she doesn't mind me mentioning her name,
18 Mrs. Wiwino Medyson, (phonetic), she lives here in
19 Columbia, took a picture from the South Carolina DMV
20 with an African Kente cloth wrap in the year 2006
21 and it expires in 2016. So when the Election
22 Commission says that they're following the dictates
23 and the rules of the DMV, they're wrong. The DMV
24 does not even follow those rules. Thank you very
25 kindly.

1 DR. JOHN RUOFF

2 (Applause.)

3 MR. MCLAWHORN: Dr. John Ruoff.

4 DR. RUOFF: Thank you, Commissioners.

5 And, thank you, Dr. Williams, for establishing a
6 precedent that we don't need to sit down and be
7 right formal.

8 My name is John Ruoff, I'm the principal
9 of The Ruoff Group which is a research and policy
10 analysis firm. And for the last 25 years I've
11 engaged in research on voting and voting rights,
12 appearing as an expert witness and -- in a number of
13 voting rights cases as well as traveling this state
14 assisting NAACP branches and local African-American
15 elected officials on redistricting. And I also am
16 the author of a report with Attorney Herb Buhl on
17 voting rights in South Carolina in the period from
18 1982 to 2006, which the Commission has -- has copies
19 of.

20 Now, the reality is that we have had
21 numerous objections over the last 30 years under
22 Section 5 of the Voting Rights Act. Those
23 objections have -- have covered every part of the
24 state and every aspect of the participation of
25 minority citizens in this state in the electoral

1 DR. JOHN RUOFF

2 process, particularly redistricting.

3 Now, it's important to recognize we have
4 come a long way since the Voting Rights Act was
5 passed. But it's also important to recognize that
6 that progress has been forged by South Carolina's
7 African-American and other citizens of color on the
8 anvil of Section 2 and Section 5 of the Voting
9 Rights Act.

10 Now, we have only had two objections by
11 the Department of Justice since the 2006, 2008 --
12 whatever year it was -- renewal of the Voting Rights
13 Act. One was the voter ID bill which then the --
14 you know, the Court and the District of Columbia
15 pre-cleared. But if you read that order what the
16 Court says, among other things, was, well, this
17 isn't the bill that they actually passed that we're
18 pre-clearing, there have been evolving
19 interpretations. First through the -- through the
20 Section 5 process at DOJ and then in the Court as a
21 scramble to get pre-clearance.

22 A big problem, though, is that even that
23 expansive interpretation, the way the Court says how
24 are you going to enforce this? Because we recognize
25 at local -- at Sumter County Board of Elections, at

1 DR. JOHN RUOFF

2 polling places where, you know, we have some
3 managers who are kind of tin-pot dictators and think
4 that their rules are more important than the actual
5 written rules, we -- you do a Section 5 process on
6 them. Well, if there's no Section 5 how, then, do
7 you enforce those evolving interpretations?

8 Now, even where there have not been
9 objections, there is almost no change in voting in
10 South Carolina in the last many years that has not
11 been framed in the context of Section 5 of the
12 Voting Rights Act. If you read the testimony of
13 legislative leaders, we did what we did because we
14 were afraid of Section 5 pre-clearance refusal.

15 In town councils, school boards, city
16 councils, county councils, time after time
17 African-American citizens have had to say to bodies
18 that were determining voting practices or
19 redistricting, you know, y'all don't do the right
20 thing we're going to the Department of Justice. I
21 don't know an NAACP chapter president who does not
22 have DOJ on speed dial. And so a lot of the
23 progress has been as a result of having that tool
24 there to protect the rights of citizens.

25 I had a couple of cases in this last

1 DR. JOHN RUOFF

2 go-around in Florence School District 1 where they
3 had only had single member districts because of a
4 Section 2 suit in the '90s where you've got a white
5 incumbent in a district that is almost
6 African-American majority, so what do they want to
7 do? Let's whiten that up a bit. Drop it from 46
8 percent to 36 percent. In Lee County, where
9 African-Americans have not proven capable of winning
10 elections with less than 70 percent African-American
11 districts and, you know, that's another issue,
12 district that was 66 percent black -- oh, let's drop
13 it down to 56 percent black.

14 It says stop, and the commissioners are
15 telling me to keep going. I'm getting conflicting
16 signals. I'll be brief.

17 MR. MCLAWHORN: She's overruled.

18 CHIEF JUSTICE FINNEY: 41.

19 MR. RUOFF: The reality is without the
20 tool of Section 5, so much of the progress that has
21 been made in this state is very much at risk in the
22 whole area of the photo -- photo voter ID bill and I
23 think Susan is going to talk about some of the
24 realities of the photo voter ID bill. In
25 redistricting at the state level and the local level

1 BARBARA ZIA

2 without that protection things are very, very likely
3 to get worse. And while some of this stuff can be
4 remedied with Section 2 suits, go ask the folks in
5 Charleston County about the \$2 million they spent to
6 defend what sure looked to me like a slam dunk case
7 from -- from day one. Go talk to the folks in -- in
8 Batesburg-Leesville -- and they won, but they still
9 spent over a million dollars in a piss ant little
10 school district to avoid single member districts.

11 You know, this is something our nation
12 cannot afford. It's something our state can't
13 afford. Thank you.

14 (Applause.)

15 MR. MCLAWHORN: Ms. Barbara Zia.

16 MS. ZIA: Thank you. I think I'll use
17 the microphone, I don't have as strong a voice as
18 my -- the witnesses who preceded me. Is this on?
19 Rebecca, is this on?

20 MS. ARNOLD: Yeah.

21 MS. ZIA: Okay. Thank you. I'm Barbara
22 Zia and I am speaking for the League of Women Voters
23 of South Carolina.

24 The League of Women Voters of South
25 Carolina is committed to ensuring fair and

1 BARBARA ZIA

2 accessible elections for all qualified voters and to
3 informing and engaging citizens in our state's
4 democracy with particular emphasis on low income and
5 minority communities. The League monitors
6 implementation of current election laws and
7 practices as well as proposed changes at both local
8 and state levels.

9 However, the largely rural nature of
10 much of our state makes it a great challenge for
11 voting advocates to comprehensibly observe county
12 councils or election commissions for changes, like
13 in closing and consolidating polling places. At the
14 state legislative and election administration
15 levels, we oppose discriminatory voting practices
16 and support those that would expand voting access
17 while protecting election integrity.

18 From our firsthand knowledge of the
19 electoral process in our state, we can say
20 confidently that South Carolina voters would benefit
21 from legislation to -- to permit early voting. We
22 encourage an early voting period of at least ten
23 days. We also support provision of more than one
24 early voting location in counties where distances
25 are great. The record number of mail-in absentee

1 BARBARA ZIA

2 ballots and unprecedented numbers of in-person
3 absentee voters are the electorate's way of telling
4 us that the current system is woefully inadequate.

5 For the November 2012 election, South
6 Carolina had the fourth longest wait time to vote in
7 the nation. By not providing enough time and more
8 convenient locations, our system disenfranchises
9 untold numbers of voters.

10 The League opposes bills currently filed
11 in the legislature that would have a negative impact
12 on the rights of voters, especially those who are
13 low income, minority, student or disabled. House
14 Bill 3176 would dramatically reduce excuses from
15 mail-in absentee voting. Workers out of town or
16 voters away to care for an ill family member for
17 several weeks could find themselves unable to vote.

18 The requirement of a physician
19 certificate for the disabled to vote absentee is
20 another burden. And given that many physicians
21 charge a fee to fill out medical forms, this
22 requirement could amount to a poll tax.

23 The omission of provisions for
24 caretakers for persons who are elderly or disabled
25 present another problem, since these caretakers may

1 BARBARA ZIA

2 find themselves unable to be absent from their
3 duties in order to vote.

4 Senate Bill 227 would impose a barrier
5 to voter registration by requiring documentary proof
6 of citizenship when registering. We believe this
7 bill is an unnecessary obstacle for citizens who
8 want to participate in our democracy and is not
9 needed to maintain the integrity of our elections.
10 It would discriminate against minority and low
11 income citizens who are less likely than other
12 voters to have access to such forms of
13 identification. And we're concerned that such a
14 requirement would discriminate against women. Many
15 lack proof of citizenship and their current names,
16 since nearly 90 percent of women change their names
17 when they marry or divorce.

18 For those who can obtain the required
19 documents, birth certificates or other listed
20 documents represent a cost to voters and, thus, are
21 a poll tax.

22 Finally, but very importantly, this bill
23 violates the National Voter Registration Act. The
24 League vigorously opposed Act R54, South Carolina's
25 photo ID law for voters, through the long arduous

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2 processes of legislation and litigation. Since its
3 implementation, the League and our voting rights
4 partners have acted as watch dogs to ensure that the
5 voter ID law is carried out according to the Court
6 ruling. Our observation show that the law is
7 misunderstood by some voters and local election
8 officials.

9 Those who argue the Voting Rights Act is
10 no longer necessary need look no further than South
11 Carolina. Using Section 5, the League and our
12 partners battled back and overturned discriminatory
13 provisions of the voter ID law. This successful
14 application of Section 5 demonstrated the law's
15 potency in protecting minority voters. The League
16 urges Congress to modernize and repair the Voting
17 Rights Act by acting quickly on the bipartisan
18 Voting Rights Amendment Act of 2014. This
19 legislation responds directly and responsively to
20 the Supreme Court's decision in Shelby v. Holder by
21 upholding the coverage formula for pre-clearance to
22 ensure it's based on recent acts of discrimination
23 and by providing a narrow mechanism to prevent
24 discrimination in voting nationwide.

25 Thank you very much for this opportunity

1 BRETT BURSEY

2 to present our testimony.

3 (Appause.)

4 MR. MCLAWHORN: Mr. Brett Bursey.

5 MR. BURSEY: I'm Executive Director of
6 the South Carolina Progressive Network. It's an 18
7 year old coalition of organizations that was formed.
8 Grass roots groups, advocacy groups, women's groups,
9 gay groups, environmental groups. It was in 1994
10 when we realized that what we had in common was
11 we're all losing. And we have been good voting
12 rights advocates since then and prior to that and
13 we're tending to some of the specifics about the
14 mechanics of voting, but I want to talk about the
15 bigger picture in a minute.

16 But the mechanics of voting in terms of
17 access to the ballot and equal access to the ballot
18 is something that if you worked in the legislature
19 as we do, we've had probably ten bills introduced in
20 the last decade. I saw Representative Neal stick
21 his head in here a minute ago, he's been one of our
22 sponsors of bills to make it easier to vote in South
23 Carolina, bills to make voting more transparent and
24 the voting process more accountable.

25 They've all died. All of our bills have

BRETT BURSEY

1
2 died. And it's because the majority controls what
3 happens in the House and the Senate and the
4 legislature. And while we're trying to make it
5 easier to vote, the majority is trying to make it
6 harder to vote. Seeming -- seemingly to be intent
7 on a permanent majority, apparently not happy to be
8 the majority.

9 A for instance of our efforts of making
10 it easier to vote would be to have a felon
11 re-enfranchisement statute. We have a felon
12 disenfranchisement statute that when someone is
13 arrested for a felony or certain misdemeanors the
14 Clerk of Court notifies the county voting
15 registration office to remove that person from the
16 list. So when someone finishes their sentence, no
17 one lets them know they can vote again. And in 2006
18 with the ACLU we did a statewide survey, called all
19 46 county offices and asked them, well, we're
20 just -- you know, we're an ex-felon, what do we do
21 to vote? Out of 46 counties, six counties got it
22 right. Richland County was one of them. Most of
23 the counties said, you've got to bring something in
24 to prove that you've finished your sentence. A few
25 of the counties said, well, you can't vote. I think

1 BRETT BURSEY

2 it was Williamsburg.

3 But that disparity of enforcement of the
4 laws that are on the records is one of South
5 Carolina's big problems, and those disparities go
6 back to our Constitution of 1896 that was authored
7 in part -- large by pitchfork Ben Tillman, one of
8 South Carolina's most outstanding racists. To
9 prevent black people from having any power in South
10 Carolina, they evolved the power to the senators to
11 appoint independent voter registration election
12 boards. So we have 46 independent bodies
13 determining what the rules are and the State
14 Election Commission can only advise them. That's
15 something that's got to be fixed and I'm pleased to
16 say that our main nemesis in voting rights in the
17 House of Representatives Representative Alan
18 Clemmons, Republican from Myrtle Beach, is actually
19 supporting -- giving the Election Commission
20 authority over the 46 counties this year. So we're
21 hopeful that we can actually have a bipartisan bill
22 in that.

23 But the thing that -- the thing that the
24 Progressive Network does is work in the education
25 level at grass roots. I don't think we can change

1 BRETT BURSEY

2 the minds of some of these legislators, we've got to
3 change the hearts and will of the people to be able
4 to make an effect. We have a missing voter project
5 that we started in 2006 that goes into high schools
6 and talks to kids about voting in democracy. The
7 missing voters, by the way, in South Carolina are a
8 majority of people of voting age that don't vote in
9 the four-year cycle. A majority of our citizens
10 don't vote in the four-year cycle.

11 In the voting record in terms of
12 turnout, it's directly tied to income level. If you
13 make \$25,000 or less, you're about 25 percent likely
14 to vote. If you make over 75 grand, about 75
15 percent of those people vote. We ask the kids, you
16 know, what kind of system we have and they say
17 democracy. Well, where do you think we stand in
18 practicing democracy? And they say, we're Number 1.
19 And that's really -- it's really a heartbreaker to
20 tell them, we're not Number 1, we didn't make the
21 top ten, we didn't break the top 100. The United
22 States is about 138th in the world in terms of
23 citizen participation.

24 And the reason for that, and this is
25 where -- this is our takeaway here. The reason that

1 BRETT BURSEY

2 people aren't voting is they have a very realistic
3 and practical sense that it doesn't do any good. It
4 really doesn't make any difference who wins. If
5 you're the average South Carolinian and works an
6 average job, you're going -- you're going to get
7 screwed no matter who wins because money is what the
8 issue is here. Money is what the problem is with
9 voting. Money is what's corrupted our democracy.
10 The way we practice elections and democracy in the
11 United States of America, you would go to jail in
12 most countries for taking money for doing the things
13 that our state legislators do.

14 The Citizens United case that says that
15 there's no limits on contributions you can make,
16 there's more corruption and pollution to the system.
17 Our policies -- our policies on everything, from
18 education to incarceration, are determined not by
19 the need we have but by the best lobbyist, by the
20 people that have the most money.

21 If you're in the legislature -- we have
22 170 seats in the legislature. We have the least
23 competitive elections in the nation. Most of our
24 legislators, pushing 70 percent of them, didn't have
25 any opposition in the general. And this is a

1 BRETT BURSEY

2 problem that goes back to the old Section 5/Section
3 2 issues that I've had trouble with Justice. And
4 the Civil Rights Act and the Voting Rights Act of
5 1965 allowed partisan decisions to be part of
6 redistricting discussions or part of consideration
7 on whether something is a Section 5 violation or
8 not. So you can be partisan as long as it doesn't
9 have a retro aggressive effect on people of color.

10 So what -- what's happened is that we
11 have band two (phonetic) stands now where black
12 people are over here and everybody gets to vote, but
13 you can only vote for one person and that's the guy
14 that won the primary. So the system is eroding, our
15 democracy is corroding, and part of it is money.
16 The other part is letting partisanship determine the
17 way the game is played. We need an independent
18 redistricting commission of some sort rather than
19 letting the majority party decide where the lines
20 are to protect their electability.

21 When we had the last go-around with the
22 election for the redistricting in 2010, the plans
23 that came out -- everybody had a plan. NAACP had a
24 plan and ACLU had a plan and the Republicans had
25 plans and the Democrats had plans. And -- but there

1 BRETT BURSEY

2 was only one plan that did not have a majority black
3 district and that was the plan that we worked with
4 and it was a plan that Gilda Cobb-Hunter wrote. All
5 the other plans had -- basically ended up, well,
6 pack everybody into Jim Clyburn's district, let them
7 vote for a black guy. And so the 7th district is
8 only 20-something percent black and Clyburn's
9 district is over 60 percent black. Gilda's
10 suggestion was let's even it out and give people a
11 chance. And so that's the type of thing that we've
12 got to do, but I do believe it's got to be up to us
13 to make the leaders do it.

14 And so I would encourage you to get
15 involved on an ongoing basis, a regular basis -- the
16 NAACP, the Progressive Network, the South Carolina
17 Voter Education Project, and let's work on a regular
18 basis to educate our neighbors to the fact that our
19 democracy isn't working, it's an absolute hoax.
20 Ninety-eight percent of the people that spend the
21 most money win.

22 We don't have elections, we've got
23 auctions. We've got really serious, profound,
24 systemic problems that's going to take all of us
25 working for a long time to address. Thank you.

1 REP. GILDA COBB-HUNTER

2 (Applause.)

3 MR. MCLAWHORN: Representative Gilda
4 Cobb-Hunter.

5 REP. COBB-HUNTER: Honorable Justice.
6 I'm not sure -- I'm Gilda Cobb-Hunter and I am a
7 member of the South Carolina House and I am here
8 representing myself and my views only. I'm not here
9 speaking for the South Carolina Democratic Party,
10 House Democratic Caucus, the South Carolina
11 Legislative Black Caucus and anybody else. And I
12 appreciate the opportunity and I want to say to the
13 timekeeper I'm going to try real hard to be
14 compliant with you so you don't have to do what
15 you've been doing.

16 Let me just say that I think Mr. Brett
17 Bursey just gave an excellent segue to the comments
18 that I'd like to share with this panel and that is
19 this notion of redistricting and the impact it has
20 on public policy, particularly justice, the
21 judiciary. And I guess it is so appropriate to have
22 that conversation now, this week, today, after
23 yesterday's elections here in South Carolina and
24 members of the General Assembly.

25 And, quite frankly, what I want to

1 REP. GILDA COBB-HUNTER

2 leave with the panel is this notion of power or
3 influence -- numbers or influence. And I am
4 talking, quite frankly, about redistricting and how
5 one weighs the notion of communities of color having
6 representation, by having the ability to elect
7 someone who they believe shares their views and
8 their interests, and whether or not that in the long
9 run is the best goal to achieve what we are looking
10 at as good for people.

11 Bottom line is, making it real plain, I
12 have been in the General Assembly long enough to
13 know that the push for single member districts for
14 increasing the number of people of color has
15 resulted in a lack of influence by members of the
16 Legislative Black Caucus. It has resulted in a lack
17 of influence by members who represent communities of
18 color.

19 As Brett pointed out what we have done,
20 through gerrymandering and bleaching of districts,
21 is winding up with a lot of people who look like me,
22 but a lot of people who look like me who are not
23 having a lot of impact on the process. And I want
24 to focus on the judiciary because I think it's
25 important for this panel to know that last year, in

1 REP. GILDA COBB-HUNTER

2 the South Carolina General Assembly, we created nine
3 new judgeships. Of those nine new judgeships not
4 one -- not one went to a person of color.

5 The last thing -- oh, I'm doing better.
6 The last thing, what I also want to say on that
7 point and why I want to focus on the judiciary is
8 because when you consider the role that the
9 judiciary plays in our communities, when you think
10 about who appears before the bench, we ought not
11 have to go through what we go through in South
12 Carolina to simply get adequate representation so
13 that those who appear before the bench can even
14 expect to have someone who understands,
15 empathizes -- whatever word you want to use -- about
16 their sense of and their environment or whatever.

17 I just kind of want to close my comments
18 by suggesting to you that the notion for me -- and
19 let me emphasize I'm speaking for Gilda Cobb-Hunter.
20 In South Carolina, for conditions to improve in
21 communities of color, I strongly support the
22 redistricting process being handled by an
23 independent commission that's outside of the
24 legislature because we will never, in my view, get
25 any kind of adequate representation when we don't.

1 REP. GILDA COBB-HUNTER

2 And I know there are a lot of people who don't share
3 that view and that is the beauty of living in the
4 this country, we can all agree to disagree.

5 We have got to understand -- and I was a
6 part of a group that testified before the U.S.
7 Senate on the whole Voting Rights Extension Act,
8 testified before the three-judge panel as well on
9 the case and as has been described here, that
10 decision had absolutely no -- no relation to the
11 legislation that passed.

12 Bottom line, we could talk here and
13 y'all can go all around this country. But I'm
14 telling you here in South Carolina you can hold as
15 many hearings as you want, nothing will change until
16 you change the faces of the men and women who serve
17 in the South Carolina legislature and those faces
18 will not change until you change how they run.
19 Bleaching districts and having black folk just to
20 say you've got a member of a legislature is not
21 going to do it. Thank you so very much.

22 (Applause.)

23 MR. MCLAWHORN: Ms. Susan Dunn.

24 MS. ARNOLD: She's going to go at the
25 end. If you all have any questions for anyone who

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1
2 has already testified. If not, we can move on to
3 public testimony. So at this time if you have any
4 questions for the current witnesses who just spoke,
5 you can feel free to ask those and, if not, we'll
6 move on to the public testimony before taking a
7 short break for the second panel.

8 DR. RUDOLPH: Representative Gilda
9 Cobb-Hunter?

10 REP. COBB-HUNTER: Yes, sir.

11 DR. RANDOLPH: I appreciate your -- your
12 comments. What -- and I'm not familiar with one
13 that is present and successful that has an
14 independent -- in fact, I agree with all of your
15 comments and everything you touched on as part of
16 that backwards move that this state continues to
17 want to be in. Confederate mindset.

18 What state can you identify that has
19 chosen the route of an independent body? I don't
20 know of one in the South.

21 REP. COBB-HUNTER: Mr. President, you
22 may be right on that and I, quite frankly, didn't do
23 the research so I'm not prepared to say to you a
24 particular state in the South that has done it. And
25 I would agree with you, I doubt very seriously if

COLLOQUY

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2 there is one. There are states out West that have
3 adopted that concept. There's legislation pending
4 in the South Carolina General Assembly introduced in
5 the House by Laurie Funderburk from Kershaw County
6 and Walt McLeod from Newberry County, I'm joining
7 onto that legislation, which will create a merit
8 panel which will -- an independent panel to draw
9 lines.

10 And I really feel very strongly it
11 probably will not pass because politicians don't
12 want to give up power and what we wind up doing is
13 getting people who don't really understand the
14 process to agitate, agitate, agitate for single
15 member districts. And while that has its purpose
16 and is well at some point, I just know the reality
17 of what happens when you pack people into a district
18 as Brett pointed out during the Congressional
19 redistricting.

20 South Carolina, because of our increase
21 in population, we are one of the fifth largest
22 growing -- fifth fastest growing states in terms of
23 population which gave us an additional congressional
24 seat. I felt very strongly that we needed to look
25 at making that 7th district one that would be

1 influenced by working families, struggling
2 families -- people who work every day for a living
3 have an opportunity to elect somebody who would
4 think about working people and working people's
5 issues.

6 I'm here to tell you that in my own
7 caucus, legislative black caucus, House Democratic
8 Caucus, there was no support for an amendment that I
9 drew that created a 7th district -- 7th
10 congressional district with a population that was
11 about 44 percent Democratic influence. And I'm just
12 amazed that people who have been in office for
13 20-plus years are threatened by running in a
14 district that is not at least 50 percent. I may be
15 naive, but I just believe that if you've been in
16 office or you're doing a great job that people will
17 return you. And I don't believe in 2014, and I
18 would yield to Justice Finney and I know he's
19 probably saying, yeah, you naive, but I just believe
20 that it is possible, Dr. Randolph, for somebody who
21 looks like me to be elected in a district that
22 doesn't have to be 60, 70 and 80 percent black. It
23 is such a waste of communities of color in this
24 state for us to have allowed that to occur and let
25 me just close by saying allowing it to occur is too

COLLOQUY

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2 strong a word because, quite frankly, it's a simple
3 matter of arithmetic. And you can't allow what you
4 can't control and there's not enough of us to do
5 that. Does that answer your question?

6 DR. RUDOLPH: You know what? It was
7 such a good answer I don't know what I asked.
8 Again, I agree with everything you said --

9 REP. COBB-HUNTER: Thank you.

10 DR. RANDOLPH: -- and not some of what
11 you said.

12 REP. COBB-HUNTER: And just remember,
13 I'm speaking for me, not for anybody else.

14 DR. RUDOLPH: And I said I agree.

15 REP. COBB-HUNTER: Okay.

16 DR. RANDOLPH: And this is a Lonnie
17 answer.

18 REP. COBB-HUNTER: Yes, sir. I
19 understand. Okay.

20 MS. ARNOLD: Are there any further
21 questions for the witnesses?

22 (No response.)

23 MS. ARNOLD: No? We'll move on to
24 public testimony.

25 MS. BLOODGOOD: Representative Joe Neal.

1 REP. JOE NEAL

2 REP. NEAL: Good afternoon. I wanted to
3 take a moment to add another dimension to what
4 you've heard. The dimension I am referring to is
5 simply this. In looking back over the last 20 years
6 or so of reapportionment in South Carolina, one of
7 the things that became very clear to me over the
8 years is that not only has this been an effort to
9 pack black voters into black districts and purge
10 white districts of black voters, but there is
11 apparently a larger effort even than that afoot.

12 In the last four years I and a group of
13 other activists in the state, including Gilda
14 Cobb-Hunter, have been involved in the effort to
15 blunt a move by the Greenville Republican party who
16 went to federal court to force voters to register by
17 party. That effort, if successful, would complete
18 the segregation of voting in the state because, as
19 you've heard, what we have now is equivalent of band
20 two (phonetic) stands in our precincts and in our
21 districts. And this piece that is being pushed
22 right now, a bill introduced by Senator Shealy from
23 Lexington County, that would, in effect, force this
24 to happen. The Greenville Republican party has also
25 appealed to the 4th District in Richmond to try and

1 REP. JOE NEAL

2 overturn the two failures on their part to pass this
3 in federal court.

4 When you look at the reality of what
5 that means, when black voters are packed into black
6 districts and white districts have been purged of
7 black voters, and then on top of that to have
8 registration by party which would deny black voters
9 the ability to intervene or vote for anyone other
10 than those people in their own districts, I think
11 that's a shame and it's an affront to the concept of
12 democracy and freedom itself. It is insidious, it
13 is unnecessary, and it is designed to disempower
14 people of color in this state.

15 So I'm not going to hold you long, I
16 wanted to point that out that this battle is not
17 over. It's really just beginning. And what we need
18 is not just an independent group to redraw
19 districts, but we need a challenge to everything
20 that's been done in the way of reapportionment in
21 South Carolina. Those of us who have been there for
22 a while actually wanted to see additional
23 representation for minority districts. But it was
24 never our intent to see the extent to which this
25 state has gone to pack rat voters into black

COLLOQUY

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2 districts, purge black voters from white districts.
3 It is an insult, it is an affront, and it needs to
4 stop. Thank you.

5 (Applause.)

6 DR. RUDOLPH: Representative Neal,
7 before you take your seat and, again, I can tell you
8 hang around with Representative Gilda Cobb-Hunter,
9 are you at liberty to give an example of what
10 caused -- or caused this registering of being
11 affiliated with a particular party is nothing new.
12 South Carolina didn't do anything bad one time, they
13 just keep doing it. But would you give the most
14 recent event that took place in the Greenville area
15 that caused this response to this particular piece
16 of legislation that you spoke of?

17 REP. NEAL: I believe the Greenville
18 Republican Party has led this effort to force
19 registration by party. And I believe that is in
20 response to something that happened in Greenville a
21 few years ago.

22 As you might remember, Greenville was
23 the only county in South Carolina who did not have a
24 Martin Luther King holiday and Republican members of
25 that council had repeatedly refused to create such a

COLLOQUY

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2 holiday in that county. Well, black voters in
3 Greenville County crossed over and voted in the
4 Republican primary and removed two sitting
5 Republican members of County Council and, as a
6 result, Greenville now has a Martin Luther King
7 holiday.

8 I think that sent a warning message to
9 the Republican party in Greenville that black voters
10 may well be intelligent enough to know how to
11 manipulate that process and vote their own interest.
12 And their response has been, let's close that
13 opportunity. Let's remove that opportunity so that
14 we lock them in and they can never vote outside of
15 their party again. That has been their response,
16 that has been their response to date. They've lost
17 twice in federal court. They will go back to appeal
18 in the Richmond circuit and we'll see where that
19 goes

20 But I think we all need to be aware that
21 this is a strategy that is still unfolding and it is
22 still designed to disempower people of color.

23 DR. RANDOLPH: Thank you very much
24 for -- for that answer because in your response you
25 did single Greenville County out. Forty-six

COLLOQUY

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2 counties in South Carolina, it was the last -- the
3 most industrious part of the state, by the way, but
4 you failed to mention of the 50 states your home
5 state was the last state to recognize Dr. Martin
6 Luther King, Jr. with a clean holiday.

7 REP. NEAL: Yes.

8 MR. MCLAWHORN: A clean holiday.

9 DR. RANDOLPH: A clean holiday.

10 MR. MCLAWHORN: Explain that.

11 DR. RANDOLPH: Yes. We don't have a
12 clean Dr. Martin Luther King, Jr. holiday. We had
13 to -- well, in order for this body that we're
14 speaking of today to make decisions on the rights of
15 people to vote and to be citizens in this state, in
16 order for this state to get a Dr. Martin Luther
17 King, Jr. holiday -- and I have looked high and low
18 and I cannot find another state that has such a bill
19 as ours -- that there had to be a Confederate Day
20 associated with Dr. Martin Luther King Day.

21 REP. NEAL: That's true.

22 DR. RUDOLPH: How oxymoronic can you be?
23 Peace and love versus hate and discrimination, but
24 that's what we ended up with. Somebody compromised.

25 REP. NEAL: Thank you, and you're

1 DORI TEMPPIO

2 absolutely right. Wasn't much of a compromise, but
3 it is what we passed. It is what we passed.

4 DR. RANDOLPH: It wasn't a compromise.
5 It was a disaster.

6 REP. NEAL: I could add a lot back to
7 you, but I won't. Thank you very much.

8 MS. BLOODGOOD: Dori Tempio.

9 MS. ARNOLD: Before we continue on, I
10 don't want to quash the passion and fire that
11 everybody has here by any means, but I just want to
12 remind everybody that this is nonpartisan so please
13 just try to keep that in mind when giving all of
14 your comments and try not to cast dispersions on any
15 particular individual or party in authority. Thank
16 you, everyone.

17 MS. TEMPPIO: Good afternoon.

18 COMMISSIONERS: Good afternoon.

19 MS. TEMPPIO: How are you today?

20 DR. RANDOLPH: And you?

21 MS. TEMPPIO: I'm Dori Tempio and I'm
22 actually a citizen of Richland County. You know,
23 Ralph Waldo Emerson once said you get out of life
24 exactly what you put into it. And, to me, voting is
25 not just a right, it is a privilege. I've been

1 DORI TEMPIO

2 doing it since the age of 18 when I first could vote
3 and, to me, that is such a thing I treasure and
4 cherish.

5 But, unfortunately, voting is not
6 accessible for everyone in this community nor is it
7 private as it should be. On two occasions, one in
8 the most recent election, I went to vote in Richland
9 County. I requested accommodations, I requested
10 accommodations to be able to vote privately, have
11 the machine put on a table where it would be
12 accessible and that is not what happened.

13 What occurred, the election poll worker
14 put the machine -- which, let me tell you, is about
15 40 pounds on my lap. He stood next to me and said,
16 I'll just close my eyes, and that is what he
17 proceeded to do. I wanted to vote. Voting is
18 important. I want to have a say in what occurs in
19 our community because I believe in that. I believe
20 in the power of voice and all of us should have that
21 voice. And, to me, that should not occur, period.
22 If someone requests accommodation and requests
23 privacy to vote, they should be given that right.

24 How many people in this room would want
25 everyone knowing what you were voting? Not only am

1 DORI TEMPIO

2 I sitting in the middle like I am here where
3 everybody was around me and could see me voting, but
4 I had this person who's a poll worker member of the
5 commission looking over me.

6 To me, what I'm trying to say is if
7 we're going to provide equality, it needs to be
8 equal for everyone. And everyone who wants to vote
9 should have that right and privilege. Everyone who
10 wants to have privacy and requests it should have
11 that right.

12 In addition, trying to get into my
13 location to vote. There were people parked
14 inappropriately on -- hash marked (phonetic). Let
15 me tell you, I went -- walked three blocks in my
16 wheelchair to get to vote. Once I got inside that
17 location, the signage isn't accessible. And no
18 matter who you are, no one wants to feel as though
19 you can't. I also told -- saw them tell somebody
20 else to go home because they didn't need to vote.

21 So what I'm imploring you to do today is
22 to please provide accommodations, give people those
23 rights to privacy and access because, to me, I find
24 it a privilege to live in Richland County and I just
25 want to have the equal opportunity to vote like

1 ROBERT KOPP

2 everyone else does.

3 (Applause.)

4 THE COURT REPORTER: Would you please
5 spell your name?

6 MS. TEMPPIO: Sure. My name is Dori,
7 D-O-R-I, Tempio, T-E-M-P, like in Peter, I-O.

8 THE COURT REPORTER: Thank you.

9 MS. TEMPPIO: Did you have any questions?

10 DR. RUDOLPH: Would you please -- I
11 didn't hear.

12 MS. TEMPPIO: Okay. My name is Dori. D,
13 like in David, O-R-I. And my last name is Tempio.
14 That's T as in Tom, E as in elephant, M like in
15 Mary, P like in Peter, I-O.

16 DR. RANDOLPH: Thank you.

17 MS. BLOODGOOD: Mr. Robert Kopp.

18 MR. KOPP: That's me, sorry. I'm going
19 to be reading testimony from Matthew Phillips, a
20 private citizen who couldn't be here today.

21 The right to vote is a constitutional
22 right, important to everyone in every community.
23 Those who have disabilities should not be denied
24 this opportunity to express their opinion on who
25 would -- who they would like to have serve in a

1 ROBERT KOPP

2 leadership role.

3 An item that should be considered is not
4 just the right to vote but the accessibility to
5 vote. This is an issue I have contended with every
6 election year. Changes must be made in the voting
7 process for those who are blind or may not have
8 access to reading the printed word. As someone who
9 is blind, I have encountered the problem of
10 inaccessibility at the polls. The voting machines
11 are not accessible for those who are blind. I have
12 to have someone read the names of each candidate to
13 me but, to me, it's impersonal when I have to tell
14 them who I'm voting for. This is a private issue.
15 Even though my assistant is someone I can trust it
16 would be -- it would make me feel better about
17 voting if I could vote using an accessible machine
18 while keeping my votes personal.

19 The other issue, which is also an issue,
20 accessibility is having the freedom to maneuver
21 around in the building. I would not know what
22 machines were open or where they -- or where they
23 were located in the facility. Therefore, I cannot
24 be dropped off in the polling place, vote and picked
25 up later. Those who work the polls need to be

1 ROBERT KOPP

2 informed of all accessibility issues, not just for
3 those who are blind but anyone who may have an issue
4 with voting independently. Anyone with any
5 disability doesn't need their constitutional right
6 to vote denied. There must be change -- there must
7 be changes made so they can keep that right and have
8 their say on the best man or woman for serving on a
9 local or national level.

10 Accessibility is the key for helping
11 those who are blind or have physical disabilities
12 maintain their independence in voting. Knowledge --
13 knowing what is available and how it works is
14 important to those who vote and for those who
15 oversee the voting process. Voting for people who
16 have disabilities is not just a right but a free
17 right. Doing this freely may increase an
18 individual's self-esteem and they may feel proud
19 that they have hopefully voted for the right
20 candidate or at least the candidate of their choice.

21 THE COURT REPORTER: Can I have your
22 last name, please?

23 MR. KOPP: Kopp, K-O-P-P.

24 THE COURT REPORTER: Thank you.

25 MR. KOPP: Reading for Matthew Phillips.

1 NIKKY FINNEY

2 MS. BLOODGOOD: Nikky Finney.

3 MS. FINNEY: Good afternoon, everyone.

4 I did not plan to stand up before you today. I was
5 only bringing my father and my mom to this session.
6 I was going to be quiet and maybe write a poem later
7 about something I heard, but I am compelled to stand
8 and say something in this moment.

9 I have been home 129 days now. Yes, I
10 have been counting. I fled South Carolina when I
11 was 18 years old because I did not think I could
12 become the woman that I wanted to become in this
13 state. And what is happening now, still in South
14 Carolina, makes me understand why I left. And I
15 have -- I'm standing here not as the daughter of him
16 or the daughter of her. I am standing here, my own
17 woman, to say this to you today.

18 And the Commissioner on the end here I
19 have to say something about. As she began she said,
20 I'm not important. I'm not an important person.
21 And I want to say part of why I left was because
22 there were so many important people here doing
23 things when I left in 1975 who didn't see themselves
24 as important. And they were critical, crucial.
25 Without Gilda Cobb-Hunter, who's one of my heroes,

1 NIKKY FINNEY

2 half the things that -- that circulate in the air
3 right now as it addresses people of color and black
4 people wouldn't be in the air. She's a critical
5 component to what's happening now.

6 I am an artist, I am a poet, I am now
7 a -- I hold a chair at the University of South
8 Carolina. Something I never thought would happen.
9 I never thought I would be back here. But now that
10 I am back, let me say this.

11 My job, after being the daughter of him
12 and her, is to say aloud to this community, please
13 tell your stories. Please stand up and come to
14 meetings like this, because this will never change
15 in this state until we understand that every voice,
16 whether it's a commissioner or a judge or anybody --
17 you know, they always let -- and this is one of the
18 things in South Carolina. They'll let one black
19 person come through.

20 MR. MCLAWHORN: Yes, ma'am.

21 MS. FINNEY: And that's my father I'm
22 talking about. They'll let one come through. But
23 they will stop the gates after him for another
24 hundred years. And we don't have that -- we can't
25 tolerate that anymore. We have to stand up. We

1 NIKKY FINNEY

2 have to write the newspaper if they don't cover a
3 story and say, why didn't you cover this story? We
4 have to call the television station when they cut
5 off the person that we want to be on that nightly
6 news segment to say, why didn't you show
7 Commissioner so and so saying that very important
8 thing? They're human beings behind everything that
9 happened to us at the voting poll, in the newspaper,
10 at the TV station, even here today. We all have a
11 critical voice to add.

12 I am an artist. I wrote -- I won the
13 National Book Award in 2011, and you know what I
14 talked about? South Carolina. I stood up and I
15 said in 1739 -- 1739 my ancestors, African people
16 who were enslaved in South Carolina, there was a
17 law, the Black 'Hos of South Carolina, that read if
18 that person over there with black skin tries to
19 vote, tries to read -- I'm sorry, I'm going to make
20 the connection -- tries to read or tries to write,
21 kill them. Cut their feet off, cut their hands off,
22 gouge their eyes. But whatever you do, don't let
23 them read or write.

24 Arc to today. The same thing is
25 happening on another level. Do whatever you have to

1 NIKKY FINNEY

2 do -- lie, cheat and steal, but don't let the black
3 community en masse come into the voting booth to
4 vote. Why? Because it will change everything.

5 That law of 1739, in my mind, connects
6 with the laws of 2014 and connects with why -- what
7 is happening to voting rights in America is
8 happening right now. And I ask you, please get
9 involved. Don't be silent. People of all walks of
10 life, of all color and all culture, we need to have
11 a progressive movement so that people in the
12 legislature, so that people who make the laws who
13 won't -- who at this point won't change the
14 districts will have another thing to think about in
15 the future of South Carolina.

16 I didn't come home to sit idly by. I
17 came home to teach and I came home to be involved,
18 and that's why I had to stand up today. So I ask
19 you to join me and join the rest of the people who
20 really cannot sit by. Don't just come to the
21 meeting today. Find some organization and some way
22 to get involved so that what they predict will
23 happen won't happen. Thank you.

24 (Applause.)

25 MS. BLOODGOOD: Kevin Myles.

1 KEVIN MYLES

2 MR. MYLES: Good afternoon -- or I
3 should say good evening, Commissioners. I would
4 like to just take a brief second and add another
5 dimension to a piece of testimony that we've already
6 heard from our partners over at the League of Women
7 Voters.

8 There's a bill that was spoken to, and
9 that is Senate Bill 227 that would require proof of
10 citizenship at the time of registration here in
11 South Carolina. This is a bill -- this is not the
12 first time that it's been introduced. This is one
13 of those bills that's kind of made its circuits. It
14 was introduced in the State of Kansas, it was
15 introduced in the State of Arizona, and there's
16 another piece to the impact of that bill that I
17 think is important to get on the record.

18 While our partner from the League of
19 Women Voters talked about the people who would be
20 disenfranchised by such a bill, perhaps one of the
21 more insidious aspects of requiring proof of
22 citizenship at the time of registration is what it
23 does to organizations like the NAACP and like the
24 League of Women Voters who typically would go out
25 and have voter registration drives and try to help

1 KEVIN MYLES

2 people register to vote -- particularly people who
3 may be of low income and may be more likely not to
4 have a driver's license or a state issued ID.

5 But South Carolina statute does allow a
6 person to include their driver's license number on
7 their voter registration form if they are
8 registering to vote; however, if they don't have a
9 driver's license or a state issued ID they would
10 have to prove their citizenship by producing either
11 a birth certificate, a passport or some
12 naturalization certificate that no third party
13 registrar could certify. If they did not have a
14 driver's license, that person could not be
15 registered by any voter registration drive by any
16 organization. They would then have to go all the
17 way to the Board of Elections to register themselves
18 which would be all the more difficult because they
19 don't have a driver's license.

20 So the impact, the practical impact of a
21 bill that requires proof of citizenship at the time
22 of registration, is not just that it disenfranchises
23 certain people who would like to register to vote,
24 but it also makes it harder for organizations who
25 are out there trying to mitigate that difficulty.

1 KEVIN MYLES

2 And I wanted to just take a brief moment and make
3 sure that we got that on the record, because this is
4 one of those bills that has dual impacts and we want
5 to make sure that we're highlighting that. Thank
6 you.

7 MS. BRIDGETT TRIPP: What's the Bill
8 number?

9 MR. MYLES: Senate Bill 227.

10 (Applause.)

11 MS. ARNOLD: If there are no further
12 questions for any of our witnesses we can take a
13 brief break before the next panel.

14 (No response.)

15 MS. ARNOLD: So we can just take a brief
16 break and since we're ahead of schedule why don't we
17 reconvene at 4:45?

18 (A recess transpired.)

19 MS. ARNOLD: I just want to remind you
20 about Twitter. We set up a hash tag and that's
21 NCVR. So, again, that's hash tag NCVR, National
22 Commission on Voting Rights, and that's
23 @lawyerscomm, L-A-W-Y-E-R-S-C-O-M-M.

24 Again, I said this earlier but I want
25 just to remind this again, this is a nonpartisan.

1 PROFESSOR DUNCAN BUELL

2 fact-finding hearing. So now just to begin, before
3 we get into the meat of this second panel, I want to
4 welcome our guest Commissioner who's just come,
5 Professor Duncan Buell. He's going to offer a few
6 opening remarks and then we will begin again with
7 the second set of witnesses. Thank you.

8 PROFESSOR BUELL: Thank you. I couldn't
9 make it for the earlier part because I had to teach
10 a class, but I'm here. I'm a computer science
11 professor at the University of South Carolina and,
12 in a nutshell, I am the person who has run the
13 programs to analyze the election data outcomes for
14 South Carolina since 2010 when we started with a
15 group of people and working with the League of Women
16 Voters to collect the data and then analyze the
17 data. That was when we discovered that not all the
18 votes were counted in Richland County in 2010,
19 neither Colleton County nor the State of South
20 Carolina could get the Colleton County right in
21 2010.

22 We were able to get it right, we were
23 able to put all the different pieces of data
24 together and account for all of the votes. In 2012
25 I analyzed the data and I was the one who spent a

1 PROFESSOR DUNCAN BUELL

2 lot of time working with Steve Hamm analyzing the
3 Richland County results to figure out what actually
4 went wrong and why we had lines and why we had 29
5 votes in Keels precinct after midnight in 2012.

6 At that time I was getting pinged by a
7 lot of different people with a lot of different
8 agendas and I tried to say that I was not interested
9 in dealing specifically with the policy issues. I
10 wanted to deal with the numbers issues to be able to
11 make sure that if we're going to make policy
12 decisions we make policy decisions based on the
13 accurate data that we have and not based on
14 conspiracy theory.

15 And I will say that -- I will have to
16 say Cliff LeBlanc from The State Newspaper
17 understood what he and I spent about six hours
18 together as he was writing this story, I think he
19 got it right. I was interviewed by another
20 journalist and spent three or four hours with him
21 and then he published the same old conspiracy
22 theories about people being shorted machines in
23 Richland County in November 2012.

24 My experience and my data did not show
25 that there was anything but a major screw-up. There

1 PROFESSOR DUNCAN BUELL

2 was nondiscriminatory shortage of voting machines
3 all across the county and there were lines all
4 across the county. It should have been caught, it
5 wasn't caught. There are ways to make things right
6 and I have been trying with the Election Commission
7 in Richland County especially to at least help them
8 explain why they're not getting it right.

9 The other thing I will say is that in
10 November 2010, when I looked at the data, there was
11 a lot of messy data all over the state. There were
12 a number of counties that had major flaws in the
13 process of collecting the data from the machines.
14 Richland County was a problem, Colleton County was a
15 problem, Oconee County only came up with a third of
16 the vote data, Charleston County never did get all
17 of its votes counted.

18 In November 2012, after the League of
19 Women Voters published their press release after the
20 State Election Commission started working on things,
21 the data was a lot cleaner. Having someone look
22 over the shoulder of the counties seems to have a
23 very beneficial effect on at least having data that
24 we know we can trust. We cannot guarantee that the
25 machines are actually storing the votes as they are

1 PROFESSOR DUNCAN BUELL

2 cast, but given the data we can at least make sure
3 that all of the votes that we know about get counted
4 the way they should, and that's part of the process
5 that I would like to make sure we continue with in
6 the future.

7 And I spent four days in Washington,
8 D.C. last week with the Overseas Vote Foundation at
9 a workshop on next generation voting systems. There
10 are better ways to do voting than the machines we're
11 using now. And there are a lot of very smart people
12 working on it, I'd like to think I was one of the
13 smart people, but I was certainly with some of the
14 smart people. And we had election commissioners, we
15 had the election commissioner from Los Angeles
16 County, from Travis County, Texas which is Austin,
17 from Albuquerque, New Mexico and Tallahassee,
18 Florida. So we had a lot of input from local
19 election officials on what absolutely has to be done
20 to make the elections run properly.

21 But then, also, we had technical people,
22 we had lawyers on how to make sure that we get it
23 done according to law but with a system that will
24 allow people to vote and record the votes. What is
25 it? The votes need to be cast as intended and

1 MAGGIE KNOWLES

2 counted as cast. And that's what I have been trying
3 to see that we do.

4 (Applause.)

5 MR. MCLAWHORN: We're going to call you
6 to come up and I've been told that we need to try to
7 stay on schedule. We have about five minutes and
8 there is a timekeeper. Let's try to make her job
9 easier this time. Let's hear from Ms. Maggie
10 Knowles -- Knowles?

11 MS. KNOWLES: Knowles.

12 MR. MCLAWHORN: Knowles.

13 MS. KNOWLES: Good evening. My name is
14 Maggie Knowles and I am the Protection and Advocacy
15 for Voting Access Coordinator at the statewide
16 nonprofit Protection and Advocacy for People with
17 Disabilities. I have submitted to you all and will
18 speak briefly about our polling place survey,
19 polling place accessibility, ensuring access for
20 voters with disabilities.

21 This report is a compilation of three
22 surveys that P&A has conducted. The first was a
23 statewide survey conducted during the November 2012
24 election. The second was done in Charleston County
25 during a special election in August 2013. And the

1 MAGGIE KNOWLES

2 third was in Richland County during the November
3 2013 election.

4 Currently, one in nine voting age
5 Americans has a disability; yet, these voters face a
6 number of obstacles in participating in the
7 democratic process. We at P&A believe that to
8 guarantee that these voters have the right to vote,
9 we need to improve three main areas.

10 The first is that poll workers need to
11 have the training on how to work effectively with
12 all voters, especially those with disabilities. The
13 second is that we need to ensure polling places are
14 accessible to all voters. This includes parking
15 lots, entrances and ballots. The third is that
16 curbside voting must be implemented consistently at
17 all precincts. Only when we improve these three
18 areas can people with disabilities exercise their
19 right to vote privately and independently.

20 We believe poll worker training should
21 be provided for poll workers that includes the
22 knowledge of the needs and abilities for people with
23 disabilities. This needs to include things like
24 respectful, first person language, how and when to
25 offer assistance to people, and how to communicate

1 MAGGIE KNOWLES

2 effectively. At one polling location a server --
3 surveyor was told by a poll worker, honestly,
4 someone with a disability cannot drive here. At
5 another location an individual was told that was
6 trying to vote, your problem must be mental. You
7 don't look handicapped to me.

8 These types of misconceptions and
9 degrading remarks can be resolved with education.
10 Voters with disability encounter barriers in all the
11 areas that we surveyed. This included accessible
12 parking spaces, difficulty accessing single --
13 difficulty accessing the voting area and difficulty
14 accessing voting machines. Twenty-five percent of
15 the locations we surveyed did not have a single van
16 accessible parking space.

17 We found entrances were not simply wide
18 enough for wheelchairs. We found ramps that were
19 too steep or unstable, and that the path of travel
20 was not often even clear for people to pass through.
21 Accessible ballots often were not available, and too
22 frequently when the accessible ballots were
23 available the poll workers did not know how to
24 utilize them.

25 At one polling location we found a sign

MAGGIE KNOWLES

1
2 going to the accessible entrance; except when you
3 looked to where the arrow pointed, it went to the
4 street -- the house across the street. At another
5 location we found that there was no ramp from the
6 parking lot to the sidewalk and there was no
7 accessible entrance from the sidewalk to the
8 building. Instead, there was a flight of five
9 stairs.

10 Often these areas of accessibility are
11 basic and easy to fix with the foresight and
12 training of poll workers so that they can learn how
13 to look for barriers when they arrive.

14 The purpose of curbside voting is to
15 allow people with disabilities to vote on Election
16 Day. Yet, we found that a third of all locations we
17 surveyed did not have a sign up indicating that
18 curbside voting was available to them. At nearly
19 half of the locations curbside voting was not
20 checked every 15 minutes as it was supposed to be.
21 At one location a man told us he was leaving after
22 one hour waiting in his car. He had sent a passerby
23 inside and asked them to help but, still, no one
24 came out. At another location a 72-year-old man
25 with Parkinson's disease was denied curbside voting

1 KAREN RUTHERFORD

2 because he did not have a parking placard on his
3 car. One of his children had driven him that day.
4 He then went inside to vote, he was determined to
5 vote, but was denied a chair to sit in because he
6 had the long wait. He ended up sitting on the floor
7 for hours.

8 In the 2012 national election 15.6
9 million people with disabilities voted; yet, there
10 are currently 35 million people with disabilities of
11 voting age in this country. We must improve
12 training accessibility and curbside voting so that
13 people with disabilities can exercise their right to
14 vote. Thank you.

15 (Applause.)

16 MR. MCLAWHORN: Ms. Karen Rutherford.

17 MS. RUTHERFORD: Good afternoon. I
18 represent approximately 3,000 students in a very
19 close proximity to this agency. And we have had an
20 insurmountable amount of problems trying to register
21 our students this year with the new voter ID bill.
22 It has become so complex that the students were
23 frustrated and felt that it perhaps did not mean for
24 them to vote in the first place.

25 We have had a lot of representation and

1 KAREN RUTHERFORD

2 help from Richland County. They did bring cameras
3 up to the campus at least four times, but the first
4 two times were not successful because the kids
5 didn't have a PO Box and they must have a PO Box in
6 order to register to vote. So we were inundated
7 with just many, many barriers to try to get these
8 students who probably were not excited about going
9 to vote anyway because they always were told that
10 that was not something that they were supposed to do
11 or something that they should want to do or
12 something that was their right.

13 And now it's become more and more
14 difficult with this new process that we get it so
15 that the kids can do it, so that I can go in and
16 somehow get them at least down here or get the
17 cameras up there to photograph them and take their
18 pictures and get them registered to vote. And that
19 is my issue and that is my plight because it's very,
20 very difficult.

21 MR. MCLAWHORN: Thank you very much.

22 (Applause.)

23 MR. MCLAWHORN: Mr. James Felder.

24 MR. FELDER: Commissioners, ladies and
25 gentlemen, good afternoon. I'm Jim Felder and I

1 JAMES FELDER

2 represent the South Carolina Voter Education
3 Project, an organization that came into being in
4 1966 to implement the '65 Voting Rights Act. I was
5 one of its first paid employees, today I'm a
6 volunteer. They pay me \$1 a year to head the
7 organization, but I have a passion about what we do.

8 In 1967 South Carolina had only eight
9 black elected officials in the entire state and less
10 than 50,000 registered voters. That has changed.
11 With the help of NAACP, its branches throughout the
12 state, we're now at the 901,000 registered voters,
13 African-Americans, and over 900 black elected
14 officials.

15 I want to say ditto to everything that's
16 been said so far about accessibility and preparation
17 for voting. Those are real issues but I want to
18 focus for a minute on the poll workers, the poll
19 managers, the poll workers, the people who see that
20 this is done. In the Army we said there's the right
21 way and the wrong way and the Army way. All right.
22 Well, some of these poll managers think the same
23 thing. It's their way, the government way and maybe
24 somebody else's way.

25 As a result of that, poll managers --

1 JAMES FELDER

2 there's disparities all over the place about how
3 they run a voting precinct and that needs to be
4 addressed. My thinking is that they should be more
5 assertive in advising voters what they need to do at
6 the polls. Nobody should leave the election
7 precinct or voting place without voting. They
8 should tell people that so that nobody leaves, but
9 they don't. You know, a few instances you have some
10 who do it but, uniformly, it is not done. So you
11 have a lot of people discouraged and they leave the
12 voting place, don't know they could have voted a
13 provisional ballot or what have you. That needs to
14 be changed or that needs to be a part of the
15 training of poll workers.

16 Security, that is a problem. Benedict
17 is a good example. You may need to alert the local
18 police department, sheriff's departments to have
19 somebody on duty at precincts where you know there
20 have been problems or where there may be problems so
21 that that poll manager doesn't have to argue with
22 elected officials or have to argue with the
23 surrogates of these people and take time away from
24 what they need to do.

25 So my point is we need to focus more

1 CARRIE FAIR

2 training. That's a job you only do every two years
3 and it changes so rapidly and newcomers come all the
4 time, so we need to invest more dollars in the
5 training aspect of it. Instead of once a year
6 training maybe there needs to be a six-month
7 training because there are elections all year
8 long -- special elections, school elections, city
9 council and so forth.

10 So that's the area I'd like to see us
11 focus on. More training, more poll managers and,
12 consequently, more training for poll workers. And
13 if we do that the elections can run smoothly, we
14 won't have all the long lines we've had in the past,
15 the people know what they're doing or what's
16 expected of them. They can produce, they can
17 execute.

18 So that is my recommendation to the
19 panel, that's how I feel about it, that's how the
20 Education Project feels about it, and I'll take any
21 questions that the panel may have at the appropriate
22 time. Thank you.

23 (Applause.)

24 MR. MCLAWHORN: Ms. Carrie Fair.

25 MS. FAIR: Good afternoon. My name is

1 CARRIE FAIR

2 Carrie Fair, I'm here representing the Jasper County
3 Northern Neighborhood Association which is a
4 nonprofit organization in Jasper County. We took on
5 a project at the beginning of the year to go out and
6 register voters. Our purpose is to educate and to
7 empower voters, letting them know of their rights
8 and their privilege to vote.

9 Our concern would be barriers and
10 impediments that will prevent people from voting.
11 Some of my concerns are the same as your concern
12 here today, though, the people who have come up and
13 spoke so far. We're concerned that our voters will
14 be turned away from the poll if they do not have an
15 ID. We are concerned that those people who are
16 unable to fill out affidavits, who cannot read or
17 write will have the privilege to cast a vote on the
18 day of voting.

19 And so we are very concerned that we
20 have people at the poll that will not let them know
21 that they can vote if they don't have an ID, that
22 they would have -- they have the privilege of
23 voting. And there's some mechanism put into place
24 if they do not have their ID on that particular day,
25 they can go to the Board of Election and show that

CARRIE FAIR

1
2 they do have proof. Of those who do not have ID at
3 all, we don't want any votes to be turned back on
4 that day. We want everyone to be able to vote on
5 that day and no one at the polls should be turned
6 around on that day, so we have these issues that
7 concerns us deeply.

8 We have the issue of felons in the State
9 of South Carolina. A felon who has -- who's not
10 incarcerated, who has served their term on
11 probation, who not -- who are not on parole, they
12 have the right to vote. That is the law in the
13 State of South Carolina. It says so. And so we
14 want to make sure that these -- these people have
15 the opportunity to vote. We're even registering
16 felons -- quite a few felons that come and want to
17 register. We have been in the school system, we
18 hope to bring out another 200 votes in the school
19 system. In the month of March we'll be in the
20 colleges. We hope to bring out a number of new
21 registered voters from the colleges in the month of
22 March. So we've been working and after that we plan
23 to go into -- into our areas, do some grass root
24 pulling out people, asking them to come out and
25 vote.

1 SUSAN SMITH

2 But when they get to the poll, we need
3 people there that would help them. My
4 recommendation is that since you have appointed poll
5 managers and you have high poll watchers, they're
6 not doing their job, there should be an independent
7 representative at the poll to help these people,
8 guide them and -- so they can cast their vote on
9 that day. Thank you.

10 (Applause.)

11 MR. MCLAWHORN: Ms. Susan Smith.

12 MS. SMITH: Hi. Thanks for having me.
13 Thanks for letting me speak. Actually I have lost
14 what I wanted to say because I agree with so many of
15 the speakers today.

16 I do want to address something that was
17 said a little bit earlier about the poll clerks and
18 assertiveness. It just so happens -- I'm trying to
19 keep this nonpartisan. It just so happens that half
20 the people in this room already know this but I am a
21 Democrat. I happen to live in a very, very
22 Republican precinct. And so many times, though, I
23 have lived in this precinct for 14 years, these poll
24 clerks want to guide me and -- guide me towards
25 voting for folks in the party that they prefer

1 SUSAN SMITH

2 instead of the party that I prefer. And so this
3 intimidation or voter intimidation can go both ways
4 and so I just wanted to address that as part of the
5 bigger problem.

6 I think -- I was talking to this young
7 lady up here about the use of provisional ballots
8 and fail-safe ballots and I know this is supposed to
9 be implemented in every county and, yet, it isn't in
10 my county, in Georgetown County. That is not
11 something that's emphasized very much at all. And I
12 have been a poll watcher for my particular political
13 party for many years and I know what occurs.

14 So, I mean, there are problems with the
15 ballots, there are problems I -- the electronic
16 ballots, which my favorite issue in the world is
17 electronic voting. And I've collected anecdotal
18 evidence since 2000 and I've had snaffews and
19 problems that have happened to me personally on
20 these electronic voting machines that we use in
21 South Carolina. Some of this is sloppiness on --
22 from a poll clerk or a poll manager and some of
23 it -- well, the problem is we just can't explain
24 what some of these problems are.

25 We can't explain what they are in these

1 DR. WANDA EUGENE

2 voting machines, we can't tell what happens to our
3 vote when it -- when it -- when we press that
4 button. We just can't tell. We don't have a paper
5 trail, we don't have -- we don't have a paper trail,
6 we don't have an open source code which is something
7 that I think we need in South Carolina if we
8 continue using this old dead dying system of
9 electronic voting machines.

10 So I guess I'm here to say what I would
11 like to see is a return to paper ballots because I
12 think we have less problems with paper ballots than
13 we do with these rickety old voting machines that
14 have no paper trail and no accountability. So,
15 there, I've said my peace. Thank you.

16 (Applause.)

17 MR. MCLAWHORN: Dr. Wanda Eugene.

18 DR. EUGENE: Good afternoon. My name is
19 Dr. Wanda Eugene from Clemson University. I'm part
20 of the Human-Centered Computing Lab, I'm here
21 representing Dr. Martin Gilbert. On his behalf,
22 though, I'll be reading from his written testimony.
23 I'm able to answer questions.

24 In 2002 Congress issued the Help
25 American Act -- Vote Act to better equip our nation

1 DR. WANDA EUGENE

2 for voting in this century to respond to the 2000
3 presidential election. You may recall the many
4 issues that were -- that our nation experienced in
5 2000 with respect to voting, especially in Florida
6 with the hanging chads. The final report of the
7 Presidential Commission on Election Administration
8 released last month stated by the end of the decade
9 a large share of the nation's voting machines bought
10 ten years ago with the HAVA funds will reach the end
11 of their natural life, and I think that was just
12 mentioned previously, and require a replacement. To
13 address this impeding challenge and to usher us into
14 the next generation of voting machines, the
15 standards and certification process for new voting
16 technology must be reformed so as to encourage
17 innovation and to facilitate the adoption of widely
18 available off the shelf technologies software only
19 solutions, end of quote.

20 With these issues in mind, I am
21 providing testimony on a decade's worth of
22 technol -- voting technology research and
23 development. In 2003 my research team developed the
24 first version of Prime 3. When we developed Prime 3
25 it was conventional thought that voting technology

1 DR. WANDA EUGENE

2 was the way -- was the way to conduct election for
3 people with disabilities, there would be a separate
4 accessible voting machine.

5 Prime 3 is a software based research
6 development platform for voting. As election
7 officials and presidential -- President's Commission
8 consider software only solution, Prime 3 has been a
9 software only solution for over ten years. We set
10 the standards of software only voting solutions.

11 Prime 3 runs on commercially off the
12 shelf components. It's a universal designed voting
13 system. This means one machine for everyone,
14 independent of your ability or disability. Prime 3
15 allows people to vote via by touch screen, touching
16 a two button switch using their voice via headset
17 with a microphone. Therefore, if you can't see, if
18 you can't hear, if you can't read, or even if you
19 don't have arms, you can privately independently
20 vote on the same machine as everyone else. As such,
21 Prime 3 is the world's most accessible voting
22 technology.

23 Our work in Prime 3 has been funded by
24 the National Science Foundation and recently a \$4.5
25 million grant from the U.S. Election Assistance

1 DR. WANDA EUGENE

2 Commission. Also, we received funding from the
3 Election Systems & Software and everyone counts.

4 We are not vendors. Prime 3 is free and
5 available to the public. With respect to security,
6 it is not possible with Prime 3 to change the
7 outcome of an election undetectable. We have vetted
8 Prime 3 with multiple security experts across the
9 country. None of them have been able to change the
10 results undetected. One reason we have such -- such
11 a high security is that Prime 3 produces a paper
12 ballot. It doesn't store any votes. So,
13 essentially, Prime 3 is a sophisticated ink pen,
14 it's an accessible ballot creation tool.

15 Although Prime 3 is essential to our
16 research, we have other projects relevant to today's
17 testimony. In the last presidential election,
18 voters experienced significant wait times,
19 especially in areas such as here in Richland County.
20 As a result of these wait times, we created a
21 technology called Voter Pass. Voter Pass allows
22 voters to use their telephone, mobile devices,
23 laptops or other computing devices to schedule a
24 time to vote on Election Day. Essentially, Voter
25 Pass is an election day line management tool.

1 DR. WANDA EUGENE

2 It works as following. Prior to Election
3 Day voters will call the Voter Pass system and
4 reserve a time to vote. On Election Day they will
5 arrive at the precinct where they will be -- where
6 there will be at least two lines, with one line
7 dictated for -- dedicated for Voter Pass. When a
8 voter arrives, she will enter the Voter Pass line
9 and at the end of the line an election worker will
10 be there with a tablet or a laptop device.

11 Another system that we've also
12 created -- well, another technique called Balloting
13 will help reduce voting time lines. More voters --
14 excuse me -- reduce voting times and engage more
15 voters in the election.

16 Prime 3, Voter Pass and Balloting are
17 three of the many projects in our labs. Clemson
18 University has many different, making a difference
19 in elections. Our research has been tested by every
20 demographic in the population -- in the voting
21 population for over the past ten years. We
22 demonstrated that these innovations are feasible,
23 securable, usable and accessible.

24 I would like to thank you for the
25 opportunity for inviting me here to provide this

COLLOQUY

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2 testimony today. And although Dr. Gilbert -- he
3 sends his apologies for not able -- not being able
4 to be here to provide his testimony in person.

5 Thank you.

6 (Applause.)

7 MS. ARNOLD: So at this time we'll allow
8 the guest commissioners to ask questions to any of
9 the witnesses who presented testimony for us.

10 MS. BLOODGOOD: I have a question for
11 Susan Smith.

12 MS. SMITH: Yes.

13 MS. BLOODGOOD: I -- I have encountered
14 lots of problems counting paper ballots. You put
15 the paper ballots in four times and four times you
16 get different results. Do you -- going back to
17 paper ballots is a pretty significant change. Is
18 there anyone who's doing that and is there any
19 reason that some of the new products like -- that
20 were just mentioned here or better security wouldn't
21 solve the same?

22 MS. SMITH: Well, that I don't -- don't
23 have an answer to that but I -- as far as an
24 implementation of a new system, we know that the
25 ES&S iVotronic machines are on their last gasp. We

COLLOQUY

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2 know that some of the counties are probably using
3 very old batteries for the mother boards and
4 internal documents from the Election Commission
5 shows that they think that the shelf life is four
6 years -- four to five years instead of the ten years
7 that they told everybody.

8 I'm just thinking is if there is no
9 money in the legislature, I know that the House of
10 Representatives -- the State House of
11 Representatives set aside a million dollars last
12 year to study a new system and to -- you know, the
13 process of a new system and then the South Carolina
14 Senate took it away. So I would actually like to
15 know what kind of money is being put aside to
16 implement a new system. There's going to be a lot
17 of cost no matter what -- no matter what you try. I
18 just -- that's a question I have and that could be
19 for anyone to answer, but I just don't know the
20 answer to that one.

21 MS. BLOODGOOD: Thank you. That's a
22 good question.

23 DR. RUDOLPH: I have -- and I guess we
24 can make comments, also, as opposed to a question of
25 a speaker. And, again, all of our speakers have

COLLOQUY

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2 made excellent comments. I just wish that the 170
3 people downtown at Main and Gervais could hear the
4 comments because those are the ones, in addition to
5 the people here, and I hope the persons in the
6 audience will go back to your communities and talk
7 with those 4.7 million people in South Carolina.
8 All of them are not voters, but above the age of 18.
9 I'm sure we have enough people that can cause some
10 positive changes to take place in this state to help
11 the people of the state, not the elected officials,
12 in trying to help wherever they can.

13 But Mr. Felder made a comment earlier
14 and I do want to ask him if he would -- both he and
15 Ms. Fair. The training you mentioned, have more
16 enforcement there. If you would, please, I would
17 only add to your training for employees of the
18 voter. Ms. Rutherford, we are quite aware of the
19 incident at Benedict College several years ago where
20 students were just harassed. Law enforcement was
21 there, but law enforcement doesn't know the laws of
22 voting. So I'm asking you would you include in
23 your -- your packet, because I don't know whether or
24 not you're going to -- these documentations are --
25 this is recorded, that you would include training

COLLOQUY

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2 for law enforcement personnel on the law so that
3 because at Benedict -- and we were there all day,
4 that problem could have been -- could have been
5 resolved as soon as it happened if law enforcement
6 did the training.

7 MR. FELDER: I will amend my remarks to
8 include that.

9 DR. RUDOLPH: Thank you, sir.

10 MR. FELDER: That law enforcement would
11 train also on the law -- and we're not talking about
12 all of them. Each law enforcement jurisdiction can
13 assign certain people to do that and have them be
14 prepped on the law and how to deal with it on
15 Election Day, so I amend my remarks in that. Thank
16 you.

17 DR. RANDOLPH: As well as Ms. Fair, I
18 thank you for your comments particularly regarding
19 felons. Seventy-two percent of the people who are
20 incarcerated in South Carolina are pigmented people.
21 We know why. History and that also disenfranchises
22 voters, but I think -- and I hope you would include
23 in your comments an amendment also to save that --
24 those persons who have been charged are not felons.
25 And we should let folks vote when they go to the

COLLOQUY

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2 drive -- get their driver's license, social
3 services, disabilities, wouldn't it be nice for us
4 to require the -- in each county those correctional
5 facilities, those young men and women that come
6 there, give them the opportunity to vote. They
7 haven't been charged and only after convicted do
8 they lose their right to vote. So I'm asking would
9 you mind --

10 MS. FAIR: Yes, sir. I will -- I agree
11 to amend as well.

12 DR. RANDOLPH: Thank you, ma'am.

13 MR. MCLAWHORN: Dr. Eugene, I was very
14 interested in your comments about the security
15 protection because I, personally, always felt that
16 voting in these electronic machines could be
17 compromised -- a vote could be compromised in that
18 instance. And I was interesting -- interested in
19 your observations that y'all have a vetted security
20 system and a back-up where you use the paper ballot.
21 Can you elaborate a little more and, also, have you
22 all had any discussion with the Election Commission
23 or whoever the most appropriate person is since the
24 machines that we currently have are about to expire?

25 DR. EUGENE: Yes. Yes. The paper

COLLOQUY

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2 ballot isn't a back-up. Prime 3 does not store the
3 data. It's just -- like I said, it's a fancy pen.
4 All it is is a ballot marking device. The paper
5 ballot is the official ballot that is counted.

6 And so with that, that's what makes the
7 system secure because you can't hack the system to
8 change the outcome of the election because in order
9 to do that it's the paper ballot that the voter
10 takes and casts is what's counted.

11 As far as your -- what was your -- I'm
12 sorry. Can you please restate your follow-up
13 question?

14 MR. MCLAWHORN: I guess other questions,
15 have you all presented this to the appropriate
16 officials over voting in South Carolina?

17 DR. EUGENE: Yes.

18 MR. MCLAWHORN: What kind of response
19 did you get from them?

20 DR. EUGENE: (Indicating.)

21 MR. MCLAWHORN: That was a good answer,
22 too, by the way. Very good answer.

23 DR. EUGENE: It's a mixed response I
24 guess is the best way to explain it. With different
25 aspects -- we have been in several conversations.

COLLOQUY

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2 We have some support, we have -- we've been working
3 with League of Women Voters and other entities as
4 far as ways to kind of adopt it in different areas
5 throughout the state but, overall, it's just been
6 kind of a mixed response where you have some support
7 from elected officials, et cetera, but the response
8 is a mixture.

9 MR. MCLAWHORN: Has it been used in
10 other states?

11 DR. EUGENE: It has been used in the
12 State of Oregon for their primaries and will be
13 using it in Wisconsin this April.

14 MR. MCLAWHORN: Are they satisfied with
15 it?

16 DR. EUGENE: Oregon is, yes. Wisconsin,
17 we'll know after April 1st.

18 MR. MCLAWHORN: Thank you.

19 MS. ARNOLD: So now we'll open things up
20 for public testimony. And just as a reminder to
21 everybody, if you have not signed up to testify and
22 you would like to please just come over here and
23 write your name down on a card and we'll pass it up
24 to the commissioners and they'll call your name.

25 MS. BLOODGOOD: Sandra Carr.

1 SAUNDRA CARR

2 THE COURT REPORTER: Can you spell your
3 name, please?

4 MS. CARR: S-A-U-N-D-R-A C-A-R-R.

5 THE COURT REPORTER: Thank you.

6 MS. CARR: Good afternoon, gentlemen and
7 lady. I just want to speak to you briefly about my
8 view -- I want to speak to you briefly about my view
9 of the situation here in South Carolina for voter
10 suppression.

11 To me, it appears that voters are
12 demonstrating some apparent ambivalence over the
13 fact that last year the Supreme Court gutted the
14 landmark Voting Rights of 1965. By eliminating the
15 protections that millions of people of color,
16 elderly and young voters and the poor -- and the
17 poor have depended on in the state who historically
18 have had major voting rights abuses.

19 Last month a new bipartisan bill, Voting
20 Rights Amendment Act of 2014, was introduced in
21 Congress to shore up the Voting Rights Act. The
22 bill will fix the provision the Supreme Court struck
23 down last Spring. This may not be the best written
24 bill; however, this is the best we have to modernize
25 and strengthen voter protection nationwide.

1 SAUNDRA CARR

2 Fighting suppression is going to require actions
3 such as this hearing.

4 South Carolina is a state known for its
5 traditionally conservative, deeply Southern and
6 heavily Christian population. While South Carolina
7 is solidly conservative as a whole, the state is
8 largely divided along geographical lines.

9 Northwestern regions, like Spartanburg and
10 Greenville, are the Upstate as it is known. They
11 are socially conservative with large evangelical and
12 Tea Party population, while economic conservatives
13 dominate the Coastal areas.

14 The flaws in the American election
15 system are deep and widespread, extending beyond
16 isolated voting issues in a few locations and
17 flaring up in states rich and poor according to a
18 new study from the Pew Charitable Trust Fund. The
19 Pew study focused on the 2008 and 2010 elections,
20 the most recent ones for which comprehensive data --
21 data was available. The study also found wide
22 variation in how easy registering to vote can be,
23 and the study stated that North Dakota does not even
24 require it. And Alabama and Kansas reported
25 rejecting less than 0.05 percent of registration

1 SAUNDRA CARR

2 applicants in 2008. But Pennsylvania and Indiana
3 each rejected more than half of the registration
4 applications they received in 2010.

5 On Election Day, the voting experience
6 also can vary. The ten states with the shortest
7 waiting times at the polls in 2008 averaged six
8 minutes. The study found in South Carolina the wait
9 was more than an hour. And I worked the polls that
10 day and I didn't get home until ten o'clock that
11 night.

12 But it has also produced new problems by
13 shifting the voting by mail, which now accounts for
14 more -- for some 20 percent of all ballots cast.
15 And this is supposed to eliminate the lines, but
16 it's making more problems. In South Carolina we
17 pushed for voting by mail or absentee voting. I'm
18 not sure what the breakdown would be for South
19 Carolina. It might be worthwhile to find out, since
20 voting by mail is common place. And some states had
21 the highest rates of problems with voter
22 registration and absentee ballots. In 2010
23 California rejected absentee ballots seven percent
24 of the time, a higher rate than any other state.

25 According to researchers, states in the

1 SUSAN DUNN

2 deep South with high obesity problems seem to be
3 having a problem getting people to the voting place.
4 We may need to campaign for fasting on the day of
5 election. What will the world be like if we only
6 gave intense attention to education, correction,
7 transportation and public health problems for a
8 one-week period every four years?

9 Respectfully submitted, Sandra Carr.

10 (Applause.)

11 MS. BLOODGOOD: Susan is next.

12 MS. DUNN: My name is Susan Dunn. I'm
13 the legal director for the ACLU of South Carolina.
14 I think, as everyone knows, the United States
15 District Court of D.C. finally pre-cleared the photo
16 ID law of South Carolina, but only after South
17 Carolina represented to the Court that the
18 reasonable impediment exemption was really going to
19 make it so everybody would get to vote. This is how
20 it was presented. And the Court went on to say that
21 if that's not how reasonable impediment is actually
22 applied, then somebody ought to come back to the
23 Court and ask for the pre-clearance to be pulled.
24 Because -- it was only because they had that that
25 this was pre-cleared. So, of course, there was no

1 SUSAN DUNN

2 mechanism really in place for anyone to be
3 monitoring whether or not the pre-clearance
4 exemption is being applied.

5 So the ACLU, along with allies in the
6 state, have actually attempted, as best we can with
7 the resources that we have, to monitor how this is
8 happening. What we have done is we had a trained
9 person go to every certification hearing that we can
10 get to that has taken place since January of 2013
11 when the photo ID went into place and we've observed
12 what's happened. We were also able at one election
13 to have monitors at every single one of the
14 precincts for a particular election to see what
15 things looked like actually at the precinct. That
16 was the initial primary for the District 42 seat in
17 Charleston. We were able to get student resources
18 so that we could have someone actually physically
19 see every precinct -- not there for the whole time
20 it was open but actually be there for some of the
21 time to gather information.

22 Having done that, what we're able to see
23 and report are several things. One of the things
24 that the -- that was represented to the Court when
25 this law was pre-cleared was that even though the

1 SUSAN DUNN

2 statute says that the pre -- the reasonable
3 impediment has to be notarized, that that's not
4 really what it means. And that it can just be a
5 sworn statement, it doesn't have to be an affidavit
6 and it doesn't have to be a notary.

7 So how is that landing in the ground?
8 Well, it appears that there's no -- there's been no
9 real attempt to have notaries at the precinct, so
10 the need to be notarized has just been thrown out
11 the window completely. The statements are being
12 sworn by poll workers, but they're not really
13 affidavits. They're simply sworn statements.

14 There has been -- there has not been --
15 at any of the certification hearings no one has
16 challenged any of the ballots for that reason, but
17 one has to be concerned about what would happen if
18 they were challenged. You know, this is not an
19 affidavit, you can't count that vote. You don't
20 know how that's going to happen because, actually,
21 if a person raised that challenge it would be a
22 valid and legitimate challenge.

23 Our concern is that unless the statute
24 is actually fixed to say that only a sworn statement
25 is required, there's always going to be a

1 SUSAN DUNN

2 possibility that votes will be thrown out on that
3 technicality -- which is not just a technicality but
4 good law.

5 The other question is do the officials
6 who are deciding whether to account the reasonable
7 impediment, do they know what they're doing? Are
8 they counting on them in the same way that the
9 officials of the state said that they would? The
10 officials said that they would count unless there
11 was a reason to believe that the person was not who
12 they said they were and that the -- there was not to
13 be an independent evaluation of what was reasonable
14 or what was an impediment, you know, but there had
15 to be some sense that this person was not who they
16 were.

17 It does seem -- at all of the
18 certification hearings that we went to, all of the
19 reasonable impediment affidavits that were -- that
20 were put in by people who did not have ID at all
21 were counted. So that's a good thing. However,
22 much of the conversation up to it leads us to
23 believe that many of the officials think these
24 affidavits should only be temporary, you know, like
25 how long somebody is not going to have

1 KAREN IRICK

2 transportation. They ask questions, they say they
3 don't have transportation but they got to the polls.
4 They did count them this time around, but how long
5 it's going to last is hard to know.

6 There -- there's -- there's a great deal
7 of confusion for people who show up at the polls and
8 who have an ID but don't have it with them. And
9 those people actually have to take action after they
10 vote in order to have the vote counted. That
11 information is not being passed on clearly. It's
12 really our suggestion that those people be given a
13 separate notification, not just this is the time and
14 place of the hearing, but you must do this in order
15 for your vote to be counted.

16 Some of those people were allowed to
17 fill in reasonable impediment affidavits which was
18 not appropriate for them, and some of those
19 people -- those folks were not counted even though
20 they filled out the affidavit. So that's it.

21 MR. MCLAWHORN: Thank you.

22 (Applause.)

23 MS. BLOODGOOD: Karen Irick.

24 MS. IRICK: Good afternoon.

25 THE COURT REPORTER: Will you spell your

1 KAREN IRICK

2 name, please?

3 MS. IRICK: I-R-I-C-K, Irick. Well, I
4 appreciate you guys having this discussion this
5 evening. I had not planned to speak, just to be an
6 observer, but Mr. Felder encouraged me through his
7 presentation as well as other comments that I've
8 heard to talk about my experience that would give
9 weight to what has been said so far in terms of
10 training of poll managers and poll workers.

11 First and foremost, I am a parent of an
12 adult daughter with disabilities. And her first
13 time voting was not a pleasant experience for either
14 of us. Now, let me qualify here. Since I was 16
15 years old -- I'm an old bird now. Since I was 16
16 I've been involved in this process. I've been
17 knocking on doors to get out the vote. It wasn't
18 until I was 18 and a registered voter that I was
19 able to register folks to vote.

20 So fast forward, my daughter is
21 registered to vote but at the polls they would not
22 allow her to vote in private, no matter how much I
23 tried to explain that to them, nor would they allow
24 me to assist her. So from that moment on I began to
25 walk with the Federal law as well as the State law.

1 KAREN IRICK

2 On our next go-around, because I had the law in my
3 hand and was able to point it out, then she was able
4 to vote with my assistance and in private.

5 Now, don't get me wrong, my assistance
6 did not influence whom she voted for. She did not
7 vote on my horse in that race, okay, so she cast her
8 own vote.

9 Fast forward to the 2010 elections. My
10 youngest child was now of age and he wanted to come
11 and vote, you know, early. And I encouraged him no,
12 I think you need to experience this process. I
13 don't feel like waiting in the long lines. I
14 promise you, in our precinct the lines aren't long.
15 You're going to get in and you're going to get out.
16 Well, on that day for four hours that kid rolled his
17 eyes at me. He voted, and he appreciated the
18 experience, so I don't think we're going to have
19 that I'm going to vote early anymore. He's going to
20 appreciate that.

21 However, in that four-hour period of
22 time, again I had the State law and the Federal law
23 with me and had to address some of the disability
24 issues in the law that tamed some of the attitudes
25 that I got from poll managers and poll workers. I

1 KAREN IRICK

2 left there and went to another precinct and as I was
3 getting out of the car I heard one of the persons
4 outside passing out literature asking a person, you
5 voted that fast? And that person said, no, they
6 told me I couldn't vote in this precinct although
7 I'm registered here. What do you mean you can't
8 vote? Well, I moved down from another county and,
9 of course, I got in it. Let me see your ID -- no,
10 you can vote here. Marched him back in there, asked
11 about a provisional ballot -- asked him did they
12 offer him a provisional ballot. He was, like, I
13 don't know what you mean. I took him back inside,
14 asked for the manager, the manager was not hearing
15 it -- it was later on in the day, not hearing it,
16 pulled out the law. They called downtown and I
17 could actually see him whispering in the phone, had
18 to have been saying, she's got the law. Needless to
19 say, they allowed him to vote a provisional ballot.
20 Another person was leaving, had the same issue,
21 turned him around, allowed him to vote.

22 Now, what I don't know is how many
23 people across this state were turned around because
24 either the poll managers did not know or did not
25 offer. The voter did not understand their right.

1 JENNIFER JENKINS

2 had I not been walking with both those laws, State
3 and Federal laws, had I not been there just in time
4 two votes would have -- it didn't matter to me who
5 they were voting for. The mere fact that they were
6 there to exercise their right and the poll manager
7 or workers did not understand their rights or did
8 not care about their rights, whatever it was, I was
9 just there at the right moment at the right time.

10 So, again, I'm here to commend
11 Mr. Felder on his recommendation for training and I
12 would like to see that happen. Thank you.

13 (Applause.)

14 MS. BLOODGOOD: Jennifer Jenkins.

15 MS. JENKINS: Good afternoon, and thank
16 you for the opportunity to bring forth some
17 complaints that we have in reference to voter
18 registration procedures, the managers, the poll
19 watchers and the machines that are located in
20 Fairfield County. I am Jennifer Jenkins, I'm the
21 president of Fairfield County Branch -- Fairfield
22 County Branch of NAACP where we served as poll
23 watchers in Fairfield County.

24 There were several incidents that
25 occurred in Fairfield County that was quite

JENNIFER JENKINS

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2 disturbing to all of us. One of the incidents
3 occurred with a young man who came in and wanted to
4 vote. He was told that he had already voted. Now,
5 how on earth can that happen? With the complaints
6 that we will be turning in and have already turned
7 in, we're not getting any answers. But how can
8 someone walk in with an ID, voter registration card,
9 and be told that you've already voted?

10 The second incident. There was a person
11 who came in, didn't have a card, didn't have an ID,
12 but was ushered over to the machine to vote.

13 Another incident. We had people running
14 for -- I think it was county council at that point.
15 When the people went in to cast their votes, the
16 votes were going to the opposite person, to the
17 opponent. How can that happen? If these machines
18 are outdated, we need to correct them. We need to
19 change the system. I think Dr. -- the doctor from
20 Clemson at least informing me of the fact that there
21 happens to be something else out there. And to
22 Dr. Felder who's saying, listen, the managers, the
23 poll watchers need to be trained. Not only that, we
24 are sick and tired of seeing the same families run
25 all of the polls, the same families. Every poll has

1 a sister, a brother, an aunt or uncle or somebody
2 that is connected. That's not going to be agreed
3 on.

4 So, also, we have a situation where
5 instead of being given a voting provision, a
6 provisional ballot, our people were sent back to the
7 voter registration office. Now, do you think they
8 turned around and came back? I don't think they
9 even went to get that information or get things
10 corrected but they're not -- we have to have better
11 things in place to make sure that we, as someone
12 said, do not allow anyone to leave those polls
13 without voting. Without voting.

14 So we're concerned and I hope you are.
15 Thank you.

16 (Applause.)

17 PROFESSOR BUELL: I would like to make a
18 couple of comments. For many of you, if you have
19 not gotten a copy of the report from the
20 Presidential Commission on Election Administration,
21 you should get a copy because -- and if you e-mail
22 me or call me I will help you get a copy. One of
23 the things which is definitely addressed in there is
24 the poll worker training which is inconsistent
25 across the country, inconsistent across counties,

1 PROFESSOR DUNCAN BUELL

2 and which leads to problems. And they also talk
3 about the logistics of the polling place. Poll
4 managers need to be taught how to manage a line.

5 I was a poll watcher in one precinct in
6 Richland County in November 2012 for five and a half
7 hours and the poll manager had no clue how to manage
8 a line and this caused problems and it caused people
9 not to feel good.

10 This is -- a lot of this is addressed.
11 There's a great deal in the -- in the report about
12 the standardization of what people understand about
13 the law, especially with regard to provisional
14 ballots, and I believe the data we have shows that
15 South Carolina is relatively low in the casting of
16 provisional ballots compared to national numbers.
17 And I think that is a question of poll worker
18 training. My experience was that the precinct I was
19 a poll watcher at, any problem the voter was told to
20 go downtown and that was not the right answer.

21 So all -- but a lot of these things
22 about the process are really covered as well as
23 documentation. This was a national commission -- I
24 have a copy signed by Tammy Patrick who was on the
25 commission who was in this workshop. I didn't get

COLLOQUY

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2 Bob Howard's signature, but he was there at the
3 conference I was there. So there is a lot there
4 about the standardization and about poll worker
5 training and the logistics of polling place --
6 places and the accessibility of polling places.

7 Now is the time to push because this has
8 been just written up as these are things which need
9 to be addressed all the way across the country
10 because the standards are not being applied the same
11 all across the country. And I wish I had questions
12 (sic) for you, but you can ask questions. There are
13 ways to do this. This is a very good time for
14 pushing on the process.

15 You're Ms. Fair?

16 MS. FAIR: Yes. Would those ballots be
17 at the poll, provisional ballots?

18 PROFESSOR BUELL: They're supposed to be
19 at the polls, yes. Yes. I certainly did not see
20 them in action when I was a poll watcher.

21 MS. FAIR: As a follow-up, who's
22 responsible for getting them to the poll?

23 MR. FELDER: Poll manager.

24 PROFESSOR BUELL: Well, the Election
25 Commission -- the local Election Commission should

COLLOQUY

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2 be responsible for making sure that there are enough
3 materials at the polling place consistent with state
4 law as well as HAVA for the federal elections.

5 AUDIENCE MEMBER: What type of
6 accountability do we have to know that the
7 provisional ballots are processed properly and
8 counted?

9 MS. BLOODGOOD: In my experience,
10 it's -- a lot of that is at the discretion of the
11 Election Commission. They make their own rules
12 on -- election by election as to what they will
13 accept and what they will not accept. There's a lot
14 of discretion in that.

15 PROFESSOR BUELL: And this is also an
16 issue. I will say in the November 2010 data in
17 Richland County I looked at -- I mean, we
18 separate -- in South Carolina we separate all of
19 those as a separate precinct and there was a one
20 vote difference between the cast vote record and the
21 certified count. And I happened to call Liz Crum on
22 this and I said there's one vote missing, and she
23 said, yes, there was one provisional ballot that
24 they threw out. But --

25 AUDIENCE MEMBER: Did they notify the

COLLOQUY

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2 voter?

3 PROFESSOR BUELL: There is -- in some
4 jurisdictions across the country it is permissible
5 for the voter to question. I don't think there's
6 automatic notification, but voters I believe are
7 permitted to find out if their provisional ballot
8 was counted or not. But, again, this -- and I
9 forget who it was, raised the issue of the
10 provisional status. There's also the Federal -- the
11 FVAP, and I forget what it's called. Overseas
12 voters who vote who register -- can register from
13 overseas, military voters can register from
14 overseas. There is nonstandard interpretation of
15 how long that registration is good for across the
16 country. This is another issue, but it's also a
17 good time to push that issue.

18 DR. RUDOLPH: That brings up an
19 interesting point, though. Provisional ballots
20 don't mean that it will be counted.

21 PROFESSOR BUELL: No.

22 DR. RUDOLPH: And that -- for voters,
23 that's the right to discretion as well as the law.

24 PROFESSOR BUELL: Well, again, there
25 are -- I have seen them and I can't remember the

COLLOQUY

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2 exact numbers because I'm not a political scientist
3 and it's the political scientist that look at those
4 kinds of statistics. The Pew -- I think it's Pew
5 did a study of the fraction of provisional ballots
6 counted across the country, so you can find out
7 who's throwing out more provisional ballots than
8 whom. And if -- now it's retroactive, but if
9 there's a problem you can go back and say, look, are
10 we being -- you know, is somebody being too
11 stringent on this? Because there is supposed to be
12 a record.

13 DR. RUDOLPH: Well, there are records --

14 PROFESSOR BUELL: Of why votes were not
15 counted.

16 DR. RANDOLPH: Jim -- and the reason I
17 call -- ask Jim, Mr. Felder. In many instances a
18 provisional ballot -- provisional ballots are not
19 counted until the Commission determines whether or
20 not that ballot is authentic. That leaves too much
21 leeway.

22 MS. FAIR: Yeah, yeah.

23 DR. RANDOLPH: To persons, employees --
24 part-time employees often, to determine whether a
25 vote is -- I've seen too many provisional ballots

COLLOQUY

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2 that were never counted.

3 MS. BLOODGOOD: Actually, it's the
4 Election Commission that meets after the election
5 and decides --

6 DR. RANDOLPH: Within what --

7 MS. BLOODGOOD: -- whether to count
8 provisionals.

9 DR. RANDOLPH: -- 48 hours?

10 MS. BLOODGOOD: But the problem is
11 they're not being given out and there's a lot of
12 discretion being -- as to whether they're --

13 DR. RANDOLPH: And that person also that
14 cast the provisional ballot, if there is a question,
15 has to be there also in order for that ballot -- if
16 there are questions to defend their vote.

17 PROFESSOR BUELL: Yes. In some
18 instances --

19 DR. RANDOLPH: Yes.

20 PROFESSOR BUELL: -- in order -- there
21 is a right to claim that it should be counted if
22 there's a question, which is why the voter has the
23 right to know whether the vote -- the ballot is
24 going to be counted.

25 AUDIENCE MEMBER: May I say something?

1 COLLOQUY

2 That process of counting the provisional ballots is
3 done after the election is over. So what good is it
4 going to do?

5 MS. BLOODGOOD: It's before the election
6 is certified.

7 AUDIENCE MEMBER: That still is not
8 right. I don't think it's right.

9 MR. FELDER: Forty-eight hours.
10 Election is on Tuesday, they certify on Thursday, so
11 that gives you 48 hours to do something.

12 AUDIENCE MEMBER: Even if you have --
13 even if you want to challenge the provisional ballot
14 after the 48 hours?

15 MS. FAIR: No, within the 48 hours.

16 AUDIENCE MEMBER: How do you know your
17 vote is not counted?

18 MR. FELDER: That is an issue.

19 DR. RUDOLPH: You can always take off
20 from your job and go in 48 hours later and miss a
21 day's work to have your vote -- make sure that your
22 vote was counted. That's, in essence, what happens.

23 MS. RUTHERFORD: The purpose for the
24 provisional ballot is that the last time you voted
25 you voted in one precinct and then between that time

COLLOQUY

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2 you moved to another precinct and you just have to
3 show proof that you were in that precinct and maybe
4 you haven't registered in that precinct yet. But
5 that 48-hour time is to show proof that you now live
6 in this precinct, so I'm not sure what would
7 invalidate the provisional ballot itself.

8 MS. BLOODGOOD: There are actually a lot
9 of reasons why a provisional ballot could be cast.
10 That's one important and probably predominant
11 reason, but there's a lot of other reasons
12 including --

13 DR. RUDOLPH: Questions of
14 identification.

15 MS. RUTHERFORD: I'd just like to say
16 Benedict, with the 3,000 students that we had and
17 how many voters we had, we had a multitude of
18 provisional ballots -- a multitude. Whenever there
19 was a question as to what should happen,
20 provisional. And, I mean, we had people from all
21 over the world who come and help us with our voting.
22 And there were so many questions we could not get an
23 answer from Richland County because there was no
24 phone line directly to somebody that could give us a
25 legitimate answer that we just then provisional

COLLOQUY

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2 voted. Now, nobody knows what happened to it,
3 nobody was told they had to come back and do
4 anything with it afterward. There was just no
5 follow-up to any of the kids that needed follow-up
6 with.

7 MS. DUNN: What I would say is what this
8 points out is how critical it is to have somebody at
9 every certification. It's more important than
10 having poll watchers roaming around the precincts.
11 You can really make a difference at the
12 certification hearing, and I think there ought to be
13 a concerted network of trained people at any
14 certification hearing.

15 MS. BLOODGOOD: If I could add, there
16 need to be people when the absentee ballots are
17 opened, because there are now thousands and
18 thousands of absentee ballots. And it's a separate
19 precinct. You have to challenge it when it's
20 opened, and that is not happening.

21 MS. DUNN: No.

22 AUDIENCE MEMBER: And for the people
23 that -- for the provisional ballot, I believe when
24 they are given that ballot, on the back of that is a
25 date and time for them to appear before the Election

1 JULIE SELLERS

2 Commission and present that evidence. They have to
3 go there, which means your students didn't show up.
4 So, therefore, those votes were not counted.

5 MS. RUTHERFORD: Yeah. They had been
6 standing in line for five hours, they weren't going
7 to go back.

8 AUDIENCE MEMBER: But the poll people
9 were supposed to explain that to them.

10 MR. FELDER: They don't do it.

11 MS. BLOODGOOD: Julie Sellers.

12 MS. SELLERS: I'm going to speak as an
13 individual although I'm a member of several
14 organizations that are represented here. I want to
15 say something about the logistics again and very
16 much on what we're talking about now.

17 I'm not sure exactly how this could be
18 done, but with the technology that we have today I'm
19 sure it could be done. Someplace, where the end of
20 the line is, there needs to be an ability to
21 check -- maybe just run through a data list to see
22 if that is the right precinct for that person to be
23 in. I understand that we're supposed to have in
24 Richland County, what, 23 new precincts at the next
25 one or something like that. And they always seem to

1 JULIE SELLERS

2 be changing boundaries of precincts and splitting
3 them and that sort of thing.

4 I saw a couple in the last election
5 where we all waited in line so long -- and this was
6 real dedication to the voting process. They went to
7 one precinct, where they really thought they were
8 supposed to be and had voted there the last time,
9 stood in line for two hours, only to be told they
10 were in the wrong precinct and then came to the
11 precinct where I was standing in line and stood
12 there for three hours, and I think that was
13 tremendous dedication. But if there had been a way
14 to check if they were in the right precinct to begin
15 with, I think it would have been a lot easier.

16 I realize that we're going to have
17 hopefully fewer problems and actually fewer people
18 when they do create more precincts and then more
19 machines working should make it go faster, but there
20 still needs to be a way for people to just check to
21 see if they are listed in that precinct.

22 DR. RANDOLPH: Before Election Day.

23 MS. SELLERS: I didn't hear what you
24 said, sir.

25 DR. RUDOLPH: Before Election Day.

1 JULIE SELLERS

2 MS. SELLERS: Well, I was thinking at
3 least on the day of election. If somebody is just
4 sitting there with a data program spreadsheet or
5 something that you can just have on a little
6 computer and just run down the list and see if your
7 name is there, not to check off anything special,
8 but just see if your name is there before you stand
9 in line for two or three hours. Because a lot of
10 people -- you hear all of these things, I know where
11 I'm supposed to vote. But there are a lot of people
12 who really end up not knowing where they're supposed
13 to vote. And even though it's listed in the
14 newspaper, I don't take the newspaper any longer so
15 I don't see that list. There are ways to find out,
16 but not everybody has those ways to find out. I can
17 get on the Internet and really find out if I really
18 needed to, but a lot of people don't have that
19 access.

20 So at least if they're making the effort
21 to get there and are willing to stand in line, they
22 ought to at least be able to find out if they're
23 standing in the right line.

24 DR. RUDOLPH: When the comment -- I
25 don't think you were here earlier when the comment

COLLOQUY

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2 was made and I made it. There's a reason that South
3 Carolina is 47th in voting.

4 MS. FAIR: Based on the comment that was
5 just made, sometimes I have experienced where the
6 Board of Election had the wrong address for me and
7 was sending me to a different precinct all together.
8 It was a mistake -- like my address is Calf Pen Bay
9 Road, there is an address that's called Cap Pen Road
10 as well. So they sent you to a different precinct
11 all together. But when I did go to the poll and was
12 very assertable about me not leaving, I did call and
13 I did vote.

14 MS. BLOODGOOD: Thank you. Those are
15 all of the speakers that we -- that we have. Do you
16 have a question?

17 AUDIENCE MEMBER: Yeah, for Dr. Buell.
18 I have a question. With the 25 new precincts that
19 have been done in Richland County, taking them up to
20 149, I think -- well, whatever it is, anyway, with
21 the -- how are the lines drawn for these new
22 precincts in order -- with the number of voters?
23 Some had too many people voting in their precinct
24 and they are redrawing the line. Are they doing it
25 by -- by street number, by race, by whatever? Do

COLLOQUY

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2 you know how are they doing it with each precinct --
3 would the number of voters in each precinct be equal
4 or almost equal as well as possible?

5 PROFESSOR BUELL: The answer is -- the
6 short answer is I don't know exactly how they're
7 doing that. In November 2012 I compared Richland
8 County against Greenville County, because we had 12
9 percent of our vote after closing. Greenville
10 County actually put more votes per machine than we
11 did. We had 192 votes per machine, Greenville
12 County had 200 votes per machine, and they had less
13 than one-half of one percent votes cast after
14 closing. And half of those late votes were in three
15 specific precincts where they happened to have
16 significant machine failures.

17 So one of my bits of advice was go talk
18 to Conway Belangia because, obviously, he knows how
19 to run an election. Somehow they got it right.
20 Now, their ballot was shorter than ours and that may
21 have been part of it. But it wasn't just the number
22 of machines, although they were -- one of the
23 problems with long lines is that when the cueing
24 theory says that when things start to go bad, they
25 can go very bad very quickly. So you only have to

COLLOQUY

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2 be a little bit below the amount of resources that
3 you need for things to really get bad. That's what
4 happened. Greenville County was just barely over
5 the edge of how many resources they needed and they
6 managed to stay okay, although their lines averaged
7 I think about an hour.

8 And one of the problems we also have is
9 that we do have a very wide disparity in the size of
10 our precincts. Greenville County's precincts are
11 much more equal in numbers of voters per precinct.
12 We have people with 300 voters in it and we have
13 some other precinct that was 5,000 voters. And,
14 again, if you allocate machines so that you have
15 enough machines and you have lots of small
16 precincts, you're allocating a lot of half of a
17 machine to the small precincts that you don't need
18 to do that and that eats into your total number of
19 machines that you can allocate elsewhere.

20 So if we did have -- I believe if we had
21 more equally sized precincts we would be able to do
22 a little better on allocating machines just because
23 of the way the mathematics works. You round up to
24 make sure you have enough. I don't know whether
25 that's being done. The guy from the Brennan Center

COLLOQUY

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2 at New York University did the statistics and he
3 says that, yes, there is a slight correlation of
4 long lines in November 2012 with the larger
5 precincts. Not a strong correlation, but a slight
6 correlation.

7 If you allocate enough machines, then
8 it's not the machines. It's the logistics of the
9 polling place. Do you have a school that is
10 configured so that you can push 5,000 voters through
11 or not? Maybe yes, maybe no. That gets back to
12 poll worker training, it gets back to figuring out
13 where you're doing the elections and how much
14 training you can give the poll manager in knowing
15 how to manage that space.

16 So the answer is it should improve some.
17 The biggest improvement would be just to make sure
18 that we don't go to war with a third of our troops
19 not going into battle, which is what we did in
20 November 2012. We had a third of our voting
21 machines in the warehouse. Somebody should have
22 noticed that.

23 AUDIENCE MEMBER: When the Election
24 Commission decided to rezone or re -- what you call
25 it, re -- what's that word?

COLLOQUY

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2 MR. FELDER: Changed the precinct.

3 AUDIENCE MEMBER: Change precinct lines,
4 it's got to be somewhere -- some way to notify the
5 voters that they're being shifted from another
6 precinct from the precinct that they used to live
7 in. Because, see, I live close to the line,
8 precinct, and they threw a line one night but I
9 didn't see it. And the next morning the people that
10 was campaigning in my precinct were in another
11 precinct and nobody knew it until almost Election
12 Day. And I think that's a little bit shaky there,
13 you know.

14 MS. BLOODGOOD: I want to thank you all
15 for the comments and ask if any of the commissioners
16 have any closing comments to make and then let
17 Rebecca speak.

18 DR. RUDOLPH: Well, to your statement,
19 the Election Commission does not rezone. That's not
20 a responsibility of the Election Commission.

21 AUDIENCE MEMBER: Who would do it?

22 MS. FAIR: County Council.

23 AUDIENCE MEMBER: Well, somebody needs
24 to let somebody know they change it.

25 MS. FAIR: Or contact your

1 REBECCA ARNOLD

2 representative.

3 MR. MCLAWHORN: I want to just thank
4 everyone for coming out this evening because it
5 really takes a sign of commitment to come out and
6 protect our rights. We don't have enough people
7 participating. We're very grateful for you because
8 each one of us have to leave here as an army of one
9 and spread the good news to others and mobilize the
10 community. It really takes a lot of people to do us
11 right, so thank you all for coming.

12 MS. ARNOLD: So I just want to echo that
13 sentiment. Thank you, everybody, for coming out and
14 sharing your testimony. It was really, really
15 compelling and thought provoking through really, I
16 think, demonstrating what is going on in South
17 Carolina, what progress is being made and what the
18 barriers are here. So I really thank you all for
19 that. I want to just give a round of applause to
20 our amazing guest commissioners for their time.

21 (Applause.)

22 MS. ARNOLD: And, again, I want to again
23 make sure I thank the Richland County Council
24 Chambers and the organizations that planned this and
25 I will say that one more time. The American Civil

1 REBECCA ARNOLD

2 Liberties Union of South Carolina, Columbia Urban
3 League, and the Family Unit, League of Women Voters,
4 NAACP Legal Defense Fund, National Action Network,
5 Protection and Advocacy for People with
6 Disabilities, South Carolina Progressive Network and
7 the State Conference of NAACP.

8 So thank you so much, and this
9 conversation can absolutely continue. If you all
10 have more that you want to say, please -- I mean,
11 say it locally, I know you will because you all are
12 extremely passionate and I appreciate that, but also
13 you can submit written testimony to us as part of
14 this hearing process at sclawyerscommittee.org --
15 and, actually, let me repeat that because I said
16 that wrong -- it's schearing.lawyerscommittee.org.
17 schearing.lawyerscommittee.org. You can submit
18 written testimony, it can be a comment, anything at
19 all. So thank you again so much for coming out.

20 (The preceding was concluded at 6:17
21 p.m.)

22

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

SS:

COUNTY OF LEXINGTON

I, Lori S. Mortge, Certified Court Reporter and Notary Public in and for the State of South Carolina at large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did report in shorthand the proceedings and evidence adduced and offered in the said proceedings, and that the foregoing and annexed pages, numbered 3 through 127, inclusive, comprise a true and correct transcription of my stenographic report of the said cause taken during the said hearing.

In witness whereof, I have hereunto affixed my signature this 19th day of February, 2014.

Lori S. Mortge, CCR and Notary Public

My Commission Expires: 12/13/16

1 Proceedings

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3
4 NATIONAL COMMISSION ON VOTING RIGHTS

5
6 HOUSTON, TEXAS

7
8
9 Saturday, April 5, 2014

10 10:20 a.m. to 1:52 p.m.

11
12 Thurgood Marshall School of Law Courtroom

13 Texas Southern University

14
15 Hosted by:

16
17 LAWYERS' COMMITTEE

18 FOR CIVIL RIGHTS UNDER LAW

19
20
21
22
23 JOB NO. 71940

24 Reported by: Rene Moarefi

25 Texas Certified Shorthand Reporter

1 Proceedings

2 MR. REYES: Good morning,
3 everyone. My name is Alejandro T. Reyes. I'm an
4 attorney with the Lawyers' Committee for Civil
5 Rights.

6 And this is actually the second
7 time we've convened the National Commission on
8 Voting Rights. When we first convened it in
9 2005-06, it was when the Voting Rights Act was up
10 for reauthorization. What brings us back to
11 communities all over the country the second
12 go-around has to do with recent changes in the
13 law, the Shelby v Holder decision, changes
14 throughout the country regarding voter ID as an
15 example, also election administration issues,
16 which we think are terribly important. So we're
17 really here to document what's happening here in
18 Harris County, but also in the great state of
19 Texas.

20 And until our law student arrives,
21 I just want to take a moment to thank the
22 Thurgood Marshall of Law for allowing us to hold
23 these events on their campus. It's a beautiful
24 campus.

25 I went to the Howard University

1 Proceedings

2 School of Law, and it's amazing to have one of
3 our law guys, Thurgood Marshall, have a law
4 school named after himself. So it's a privilege
5 to be here.

6 We have many sponsors, so it makes
7 it impossible -- there are too many to list, but
8 you'll find them on the screens and the monitors
9 around you.

10 And I would like to next just
11 welcome our guest commissioners who will then
12 essentially be proceeding this event -- will be
13 leading this event.

14 On your left, or your far left, my
15 far right is Deborah Chen. She's a national
16 treasurer and board member with OCA, the Asian
17 Pacific American Advocates.

18 Sitting directly next to Deborah
19 Chen is Professor Craig Jackson of the Thurgood
20 Marshall School of Law.

21 On your right, we have -- to my
22 immediate left, we have Mr. Goodwille Pierre,
23 vice president of the National Bar Association.

24 And seated next to him is
25 Mr. Howard Jefferson with the National Bar

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2 Association as well as national board member --
3 and also NAACP. We're using the official NAACP
4 Texas State Conference.

5 And with that, each guest
6 commissioner has five minutes for their opening
7 remarks before we begin with our first witness;
8 my understanding it will be Congresswoman Jackson
9 Lee.

10 I will hand it over to the chair,
11 Mr. Goodwille Pierre.

12 MR. PIERRE: Thank you, Alejandro.

13 I want to thank the Lawyers'
14 Committee for Civil Rights Under the Law for
15 coming back here to Texas to provide us with the
16 guidance to actually conduct these hearings.

17 I'll be remiss if I did not say
18 that the last NAACP Texas State Conference
19 meeting, we had a similar hearing in Dallas or
20 Fort Worth to actually do this, so it's great
21 that we're continuing to have these hearings in
22 order to preserve some type of record relating to
23 voting issues or problems with voting.

24 I want to first say that as
25 Alejandro stated, the Lawyers' Committee for

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2 Civil Rights Under the Law on behalf of the civil
3 rights community has convened the National Voting
4 Rights hearings around the country. It's a
5 collaboration with many organizations.

6 Here in Texas, we've had many
7 organizations to collaborate to help bring us
8 together with regard to bringing resources and
9 individuals to testify as well as the media
10 communicating around the state, the Texas State
11 Conference of the NAACP chapters. Of course,
12 we're here at Thurgood Marshall School of Law,
13 and they've been very instrumental at helping
14 here at Texas Southern University. The National
15 Bar Association, where I am vice president of, on
16 the national board; OCA Greater Houston chapter;
17 the NAACP Legal Defense Fund and Education Fund.
18 Of course, the Houston Area Urban League, the
19 Austin Black Lawyers Association, Earl Carl
20 Institute for Legal and Social Policy, 100 Black
21 Men of America, the Houston Metropolitan Chapter,
22 as well as the Houston Branch of the NAACP and
23 the NAACP Region 4 -- Region 6. They have all
24 come together as a coalition to assist in
25 bringing us together.

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2 I would like to first bring you
3 some greetings. We have student ambassadors
4 here. And I would like for them to raise their
5 hand. One of them will bring greetings on behalf
6 of the law school. Would it be you, Mr. Calhoun?
7 Yeah. Just bring greetings on behalf of the law
8 school. One L student here jumped into the fire,
9 and his name is Mr. Calhoun. He's going to bring
10 greetings on behalf of the Thurgood Marshall
11 School of Law.

12 MR. CALHOUN: Good morning. I
13 will be real brief. On behalf of the students
14 and the student leadership here at Thurgood
15 Marshall School of Law, we want to thank you for
16 your participation in this event, and we believe
17 strongly, from the inception of our institution,
18 the impact of voter registration and civil
19 rights. And once again, we thank you for being
20 here, and we hope you enjoy it.

21 MR. PIERRE: Thank you very, very
22 much, Mr. Calhoun.

23 And now what I would like to do is
24 allow our commissioners to give a five-minute
25 introduction of themselves and organizations and

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2 share any comments they have prior to us
3 starting. I want to first say that we -- all
4 testimony is being recorded. We have a court
5 reporter, Ms. Rene Moarefi, with TSG Reporting;
6 and also official photographer is being done by
7 Samuel Walker --

8 MR. WASHINGTON: Washington.

9 MR. PIERRE: Washington. Sorry.

10 -- Samuel Washington, and he's
11 taking actual photography, the official
12 photographer here.

13 And before the commission starts,
14 our first person that's going to speak -- I'm
15 going to let her know that she's here -- we've
16 been joined by the United States House of
17 Representatives for the 18th Congressional
18 District, whose district we're sitting in, Texas
19 Southern University, the Congresswoman Sheila
20 Jackson Lee. And she will be the first person to
21 actually give comments prior to starting our
22 testimony.

23 So without further ado, I would
24 like starting with Attorney Deborah Chen and then
25 going to Professor Craig Jackson and allow Howard

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2 Jefferson, national board member of NAACP, to
3 give them a five-minute presentation.

4 Deborah.

5 MS. CHEN: Good morning.

6 In the interest of time, I will
7 not be taking up the entire five minutes. I just
8 wanted to thank everyone for coming here today as
9 well as thanking the commission for inviting me
10 to be here today as a guest commissioner. It's a
11 great honor for me to be a part of this
12 proceeding, and I'm looking forward to hearing
13 what everyone has to say about the important
14 issue of voting rights.

15 I have worked in OCA for a number
16 of years since when I first started as a student
17 volunteer to where I've -- now I'm at -- a local
18 level board member as well as a national board
19 member, where each election cycle we've worked to
20 protect the rights of Asian-Americans to vote.
21 And I think that the Asian-American community
22 strongly believes in this important issue as well
23 as affording our other colleagues and friends in
24 the community, which has historically been an
25 issue that impacts all of our communities.

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2 So, again, thank you for having me
3 here today, and I look forward to hearing this
4 testimony.

5 PROF. JACKSON: My name is Craig
6 Jackson. I teach constitutional law here at
7 Thurgood Marshall School of Law. And -- and I'm
8 honored to be on the commission as a guest --
9 among the guest commissioners because I'm -- I'm
10 not a voting rights expert like the others on
11 this panel, but I teach constitutional law, and
12 I've been teaching it for a little more than a
13 decade. And I write on the issues having a lot
14 to do with the relationship between Congress and
15 the federal government and the states, federalism
16 in particular.

17 And the current Supreme Court has
18 an obsession with federalism, and their approach
19 to federalism has resulted in some pretty
20 interesting decisions, not the least of which was
21 the Shelby County decision, which was a decision
22 based upon reasoning that was not inevitable
23 because only five members of the court saw
24 federalism in the way that the majority did.

25 And as a result of the decision

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2 and its reasoning, we essentially have a
3 situation that we have to kind of be very careful
4 and be very observant as to the effects of Shelby
5 on local voting. So that's one of the reasons
6 why we're having this commission.

7 And I wanted to thank the Lawyers'
8 Committee for Civil Rights Under the Law for
9 being diligent in seeing that this commission
10 does go forward, this national commission, and
11 the national fact-finding project does go
12 forward, and hopefully we'll be able to put in
13 place some safeguards from the disastrous results
14 of the Shelby County decision.

15 MR. PIERRE: Thank you, Professor
16 Jackson.

17 And now last will be the dean,
18 godfather of all things in Houston in protecting
19 voting rights, the past president, president
20 emeritus of the local branch of the Houston
21 NAACP, now serving as a board member -- a
22 national board member, as well as the national
23 political action committee coordinator,
24 Mr. Howard Jefferson.

25 MR. JEFFERSON: Thank you. You

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2 know they shot the godfather.

3 I want to thank the National
4 Commission for having these kind of seminars. I
5 serve on the political action legislative
6 committee at the national NAACP special
7 committee, and we're working on that. We have a
8 staff that's up at the capitol working on this.
9 We've got a problem, you know. That's -- that's
10 not a secret. We've got a problem with this
11 voter suppression thing. I mean, Ray Charles can
12 see that. He's dead and blind. We got a
13 problem.

14 Now, since 2013, there have been
15 nine states that have enacted voter suppression
16 laws, voter suppression laws. So we have to let
17 our people know what these laws are and how to
18 deal with these laws. We've got to get the word
19 out like having seminars like this, but there
20 must be several other things that we can convene,
21 we can have these seminars and things, but we've
22 got to spread our wings a little bit. For
23 example, we need to go to the churches. That's
24 the foundation of civil rights. The black
25 churches are the foundation for civil rights.

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2 That's -- long before there was the NAACP, Urban
3 League and all of those, there was the church who
4 was doing that bit.

5 So Conyers in Congress is on the
6 committee where they're trying to strengthen the
7 Voting Right Act amendment. I won't deal with
8 that because I may mess it up. Congresswoman Lee
9 will probably talk about that.

10 But I want to let you know that
11 throughout this nation, people are not just
12 sitting down, they're ready to stand up and fight
13 for this.

14 So thank you all for inviting me
15 here, and I'm ready to communicate with you on
16 this.

17 MR. PIERRE: Thank you very much.

18 Now, without further ado, I want
19 to introduce to you for opening statements and
20 also testimony the congresswoman of the 18th
21 Congressional District, Sheila Jackson Lee.

22 REP. JACKSON LEE: Good morning.

23 This is an enormously appropriate
24 place to hold this historic and important
25 National Commission on Voting Rights hearing. I

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2 would also like to thank the Lawyers' Committee
3 as well for the importance of these national
4 hearings across the country.

5 And I do want to acknowledge the
6 president of the university, John Rudley, and
7 Dannye Holley, the dean of the law school, for
8 making Texas Southern University true to its
9 origins of rising up out of the ashes of
10 segregation to create and open the doors of
11 opportunity for Anglos, African-Americans,
12 Asians, Latinos, and many others. This is the
13 university of opportunity.

14 And that is what we speak of when
15 we speak of voting rights. It is not the denial
16 of the rights of anyone. It is the opening of
17 the doors of opportunity for all.

18 I want to pay special privilege or
19 attention and respect to Deborah Chen, national
20 treasurer and board member of the Asian Pacific
21 American Advocates. They are very active in
22 Washington with members of the United States
23 Congress, a very vital role that they play going
24 forward in the new redesign of the Voting Rights
25 Act.

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2 Professor Craig Jackson, who I've
3 known for a number of years for his astute
4 intellect and his recognition that things have
5 changed for the wrong after the Shelby case.

6 What can you say about Mr. J.
7 Goodwille Pierre who is ascending up the ladder
8 of the National Bar Association who I met with in
9 Washington, and they have always been -- their
10 members have always been the lawyers that have
11 stood by the side of the civil rights activists
12 and have stood in the gap. Martin King called
13 Thurgood and others as he proceeded to cross the
14 South and violate nonviolently the unjust laws of
15 that time.

16 Howard Jefferson is more than a
17 godfather to me. He stands as a steadfast
18 reminder that there is no shame in pushing
19 forward with respect to this time.

20 Now, I see a sign there, but I'm
21 going to ask for a little bit of special
22 privilege because I do have a presentation that I
23 will try to bring together in a concise manner.
24 But you're looking at a 20-year member of the
25 House Judiciary Committee and follow the

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2 footsteps of the Honorable Barbara Jordan and
3 Craig Washington.

4 I've stayed the longest on the
5 Judiciary Committee and the most senior member
6 from the state of Texas on the Judiciary
7 Committee. And I helped to rewrite the voting
8 rights back in 2006 and 2007, and I have helped
9 to write the response to Shelby.

10 So if you would allow me, since
11 there is a court reporter here, just to mention
12 with my remarks. Let me also say that the
13 Thurgood Marshall School of Law and Texas
14 Southern University is appropriate -- and,
15 Ms. Chen, it is my predecessor, the Honorable
16 Barbara Jordan, that amended the Voting Rights
17 Act in 1978, I believe, to add language
18 minorities. That was the only way that Texas was
19 able to get in the voting rights. We were not in
20 it in 1965. It was only what we call the states
21 of the Deep South, the Georgia, Alabama,
22 Mississippi.

23 And now in 2014, Texas is one of
24 only four -- one of only four states that are
25 actually listed and covered by the rewritten

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2 Voting Rights Act. And I will explain that to
3 you. We are still covered. North Carolina and
4 Alabama are not covered. And that is the
5 wrongness -- wrongness of the Shelby case. That
6 is the complete upside-downness of the Shelby
7 case is that Georgia, North Carolina -- let me
8 leave out Georgia -- North Carolina and Alabama,
9 all of you will remember, is not now covered by
10 the Voting Rights Act.

11 Let me also say that in our effort
12 to recognize the importance, I think this is
13 something -- I keep moving this, but I hope I
14 will not move it -- I hope you can hear me.

15 The Voting Rights Act that went
16 before the Supreme Court after 2006 and 2007 that
17 kept the preclearance Section 5 language rightly
18 so, when we reauthorized it, we added 15,000
19 pages of testimony. I sat in the hearing room in
20 Washington for many, many, many days to document
21 that the Voting Rights Act needed to be
22 reauthorized.

23 The bill is now named after Fannie
24 Lou Hammer, Rosa Parks, Coretta Scott King, Cesar
25 Chavez, and I added Barbara C. Jordan, William C.

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2 Velasquez -- these are names that we added from
3 Texas -- Dr. Hector P. Garcia, the Voting Rights
4 Act Reauthorization and Amendments Act of 2006.

5 So let me quickly say the Voting
6 Rights Act safeguarded the rights of Americans to
7 vote and stood as an obstacle to many of the more
8 egregious attempts by certain states and local
9 jurisdictions, including Texas, to game the
10 system by passing discriminatory changes in their
11 election laws and administrative policies. That
12 has not stopped. The new idea of hindrances to
13 voting, the voter ID laws in Arizona, it's the
14 very opposing and undermining immigration --
15 destruction laws dealing with Hispanics and other
16 immigrants, laws that were written in Arizona and
17 written in Alabama and other places throughout
18 the South and throughout the nation.

19 The -- but in June 2013, the
20 Supreme Court decided Shelby versus Holder, 570
21 US 193, which invalidated Section 4(b) of the
22 Voting Rights Act and paralyzed the application
23 of the Voting Rights Section 5 preclearance.

24 Officials in some states, notably
25 Texas and North Carolina, seemed to regard the

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2 Shelby decision as a green light and rushed to
3 implement election laws such as a voter ID law in
4 the state of Texas, rushed to be implemented by
5 attorney general, Greg Abbott, now running for
6 governor, policies and practices that could never
7 pass muster under Section 5 of the Voting Rights
8 Act.

9 It's at this moment that I want to
10 ask to add into the record a letter to General
11 Holder dated May 16, 2013. The date of the
12 Shelby case was, I believe, that Monday the
13 decision came out. We were fighting the
14 elimination of an Hispanic and African-American
15 school district by the name of North Forest
16 Independent School District. We were in the
17 courthouse on Section 5. We were winning because
18 by elimination of that school district, you'd be
19 eliminating minority elected officials.

20 And on the day after the Shelby
21 case as we went into court to continue, the judge
22 put our case on hold and ultimately dismissed it
23 under the Shelby case. We lost the whole school
24 district, a neighborhood of 60,000 people,
25 elected officials, because of the Shelby

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2 decision.

3 I'd ask unanimous consent to put
4 this into the record.

5 So there is an impact to the
6 Shelby case. To take just one example, this past
7 Tuesday, Councilwoman Pat Van Houte, who serves
8 on the Pasadena, Texas, city council, was
9 forcibly ejected by armed officers at the
10 direction of the Pasadena mayor at a city council
11 meeting to consider a controversial redistricting
12 plan.

13 The redistricting plan is one of
14 the first to be implemented in the aftermath of
15 the Shelby case. In actuality, the mayor said
16 that after the Shelby case, he felt comfortable
17 in pushing a redistricting plan that eliminated
18 two district seats which would eliminate Hispanic
19 representation, and he had no fear. And he threw
20 this lady out, this council member, because she
21 did not -- she wanted time to oppose it. In the
22 Chronicle. Pasadena Mayor Ejects Councilwoman.
23 This is a result of the present status of the
24 Shelby case, which is why we're attempting to do
25 the reauthorization.

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2 For example, the shameful episode
3 is a reminder that the Voting Rights Act
4 protected not only one's right to vote in federal
5 elections, but also applied to state and local
6 jurisdictions as well.

7 Mr. Jefferson's point is very well
8 taken. Now, the fight is not only in state -- in
9 federal government, Mr. Jefferson, it's that we
10 must wage war against state legislators that feel
11 empowered to pass laws that impact their state
12 voters. And so this is a two-pronged call.

13 For example, Section 5 subjected
14 to preclearance and could block the Texas
15 Education Administration from closing the North
16 Forest Independent School District, as I said.

17 Once freed by the Shelby County
18 decision from having to pass muster, this school
19 district went down. The redistricting plan for
20 Pasadena, it's now changed. And voted on, by the
21 way, by the city council which eliminates two
22 district seats.

23 Section 5 is a vital asset in such
24 circumstances because it would require TEA to
25 acquire a preclearance as it would for any other

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2 election body that would be impacted.

3 In signing the Voting Rights Act
4 on August 6th, 1965, President Lyndon Johnson
5 said, "The vote is the most powerful instrument
6 ever devised by man for breaking down injustice
7 and destroying the terrible walls which imprison
8 men because they are different from other men."

9 In 1940, there were less than
10 30,000 African-Americans registered to vote in
11 Texas, and only about 3 percent of
12 African-Americans living in the South were
13 registered to vote. Poll taxes, literacy tests,
14 and other threats.

15 After passage of the Voting Rights
16 Act in 1965, which prohibited these
17 discriminatory practices, registration and
18 electoral participation steadily went up. By
19 2012, more than 1.2 African-Americans living in
20 Texas were registered, but all throughout the
21 South it actually made a difference.

22 Section 5 of the Voting Rights Act
23 of 1965 requires that states and localities to
24 seek preclearance. Since 1982, Section 5 has
25 stopped more than 1,000 discriminatory voting

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2 changes in their tracks, including 107
3 discriminatory changes right here in Texas, and
4 those would have a major impact.

5 We all remember the voter ID law
6 passed in Texas in 2011, and we all know the
7 impact of that.

8 Let me move to the present status
9 of the Voting Rights Act and HR 3889. The Shelby
10 case in 2006. The city of Calera, which lies
11 within Shelby County, Alabama, enacted a
12 discriminatory redistricting plan without
13 complying with Section 5, leading to the loss of
14 the city's sole African-American councilman,
15 Ernest Montgomery.

16 In compliance with Section 5,
17 however, Calera was required to draw a
18 nondiscriminatory redistricting plan and conduct
19 another election in which Mr. Montgomery regained
20 his seat.

21 According to the Supreme Court, in
22 the Alabama County -- Shelby County took the case
23 up and to the Supreme Court, the reason for
24 striking down Section 4(b), which was the formula
25 for Section 5 preclearance. Times change.

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2 A wrong-headed decision to suggest
3 because there are a large number of
4 African-Americans voting, relatively speaking, a
5 large number of African-American elected persons,
6 relatively speaking, that times have changed.

7 To the United States Supreme
8 Court, you are absolutely wrong. That should not
9 be the criteria for whether or not we have the
10 right to vote. The criteria should be is whether
11 there are those who are blocked from being
12 represented or blocked from representation or
13 blocked from voting.

14 The question is the Voting Rights
15 Act is needed as much today to prevent another
16 epidemic of voting disenfranchisement. It would
17 almost be like taking the polio vaccine
18 discovered by Jonas Salk in 1953, eradicated the
19 crippling effects of polio, and because polio now
20 has diminished, to be able to say that you need
21 no polio shots. It is baffling and much, if I
22 might say, un-American.

23 As Justice Ginsburg says, "The
24 Court majority confuses the symptoms with the
25 cause." Congress' focus was not on voter

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2 registration or turnout votes. Congress instead
3 was focused on eliminating the causes or at least
4 eradicating the effects of racial discrimination
5 in voting in states that had a unique history of
6 problems with racial discrimination in voting.

7 That is why it is imperative that
8 there is a coming together under this National
9 Voting Rights Commission to understand where we
10 are in the reauthorization of this legislation.

11 Let me, as I conclude, give you a
12 brief summary of HR 3899. I am an original
13 co-sponsor and -- and, if you will, part of the
14 working team that designed the response. My
15 intent was to redo the formula of 4(b), because I
16 knew that the Court and our friends on the other
17 side of the aisle, our Republican friends that
18 did not fully appreciate and understand this,
19 would not allow us to do a broad reformation of
20 the bill.

21 So the original co-sponsors
22 includes reverend -- excuse me -- Representative
23 James Sensenbrenner, who many of you know was a
24 powerful force in the reauthorization early, and
25 John Conyers, a formula that was constructed that

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2 every Democratic member had to have a partner to
3 get on this legislation as well as to be part of
4 constructing the legislation.

5 John Lewis and Steny Hoyer and
6 Steve Chabot and Spencer Bacchus and Sheila
7 Jackson Lee and Bobby Scott, these are the
8 original members of this particular legislation.
9 We were led by James Clyburn. And the bill is a
10 bill that focuses on trying to be as pointed as
11 possible, but obviously there are some reasons
12 for us to be able to move in a different -- move
13 forward in its markup.

14 After months of hard work,
15 consideration, negotiation, collaboration, HR
16 3899, the Voting Rights amendment, achieved many
17 of these goals. HR 3899 specifies a new coverage
18 formula that is based on current problems in
19 voting and therefore directly responds to the
20 Court's concern.

21 The importance of this feature is
22 hard to overestimate. Legislators and litigators
23 understand that the likelihood of a Court
24 upholding an amended statute that fails to
25 correct the provision previously found to be

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2 defective is very low indeed.

3 It replaces the static coverage
4 formula with a new dynamic coverage formula, or a
5 rolling trigger.

6 And I will give you these as --
7 again, as I -- lawyers have three closings, but
8 as I try to roll to a close.

9 For states, it requires least --
10 at least one finding of discrimination at the
11 state level and at least four adverse findings by
12 its jurisdictions within the previous 15
13 years.

14 For political subdivisions, it
15 requires at least three adverse findings within
16 the previous 15 years.

17 Political subdivisions with
18 persistent and extremely low minority voter
19 turnout can also be covered if they have a single
20 adverse finding of discrimination.

21 The rolling trigger mechanism
22 effectively gives the legislation nationwide
23 reach because any state and any jurisdiction in
24 any state potentially is subject to being covered
25 if the requisite number of violations are found

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2 to have been committed.

3 A rolling trigger contained in HR
4 3899, however, does not cover all of these
5 states. To compensate for the fact that fewer
6 jurisdictions are covered, the bill also includes
7 several key provisions that are consistent with
8 the needs created by the narrower Section 5
9 trigger.

10 For example: Expands judicial
11 bail-in authority under Section 3 so that it
12 applies to voting changes that result in
13 discrimination so that you can discriminate and
14 then get covered, meaning that you bailed
15 yourself in, you haven't bailed yourself out.

16 Requires nationwide transparency
17 of late-breaking voting changes, allocation of
18 poll place resources, and changes within
19 boundaries, i.e., Houston, Texas, massive voting
20 booth changes that will allow Houston to bail-in.

21 Clarifies and expands the ability
22 of plaintiffs to seek a preliminary injunction
23 against voting discrimination in Section 2, and
24 clarifies and expands the attorney general's
25 authority to send election observers to protect

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2 against voting discrimination.

3 So I would like to urge the
4 commission to do the following: To be
5 particularly sensitive to the interests of
6 language minorities in emerging communities
7 because they have distinct and particular
8 interests that ought to be considered. Right
9 here in Houston we have issues and needs of
10 language minorities.

11 Emerging communities are those
12 located in states such as Alabama, Arkansas,
13 Tennessee, and South Carolina that historically
14 were not home to large numbers of Hispanics or
15 Asian-Pacifics, but that is changing. Americans
16 must have a -- a recent -- in recent years
17 experienced tremendous population growth, which
18 is expected to accelerate.

19 The concern is that as these
20 Hispanics and Asian-American voters in these
21 areas become more numerous in these states and
22 capable of having a tangible influence on
23 electoral outcomes, some communities may respond
24 by adopting measures that violate principles of
25 fair and equal treatment. As it relates to the

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2 African-American community, that still continues.

3 Such measures are -- may include:
4 Changes from single-member to at-large districts,
5 changes to jurisdictional boundaries through
6 annexation, or changes to multilingual voting
7 material requirements.

8 All of these -- we will agree that
9 language minorities and those residing in
10 emerging communities deserve protection from any
11 such retaliatory election.

12 In closing, let me offer into the
13 record the article dealing with the action of the
14 Pasadena mayor as unanimous consent for that to
15 be entered into the record.

16 And in addition -- in addition, I
17 want to put into the record a letter from me --
18 the previous letter was from me as well --
19 regarding North Forest Independent School
20 District, October 27th, 2010, right before the
21 midterm elections when here in Houston, Texas, we
22 were finding violations, if you will, of
23 preventing people from voting.

24 I was writing in this letter that
25 we have seen at least 15 reports of abuse of

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2 voter rights throughout the city of Houston with
3 a number of activist groups who are going to
4 minority polls and intimidating the voters. I'd
5 like to ask -- submit that into the record.

6 Let me say again that the right to
7 vote free from discrimination is the capstone of
8 full citizenship referred to by the Civil Rights
9 Amendment and the Voting Rights Act of 1964.

10 This year, 2014, is the 50th year of the
11 commemoration of the 1964 Civil Rights Act. Just
12 because it is 50 years ago does not mean that our
13 work is done and that our work is in essence time
14 for a victory.

15 Yesterday many of us commemorated
16 the fallen -- or the loss of Dr. Martin Luther
17 King in an assassination, but we did not dwell on
18 his death as much as we focused on his life.

19 Today I think that we walk in the memory and the
20 steps of so many who sacrificed and argued and
21 advocated for those that they represented to have
22 the right to be a full and voting American, a
23 full citizen, the right to be able to make one's
24 choice at the ballot box to select one's elected
25 officials.

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2 For millions of Americans, the
3 Voting Rights Act of 1965 was a sacred treasure
4 earned by the sweat, toil and tears and blood of
5 so many ordinary people.

6 Today, as I stand here, the state
7 of North Carolina led by Reverend Barber of the
8 NAACP, the great organization that I'm a member
9 of and so is my dear board member and many
10 others, Mr. Howard Jefferson, fighting across the
11 country for the violations -- along with LULAC --
12 fighting across the country with all
13 Asian-Pacific organizations in places around the
14 nation.

15 So the challenge is that we must
16 be ever vigilant. If we pass this present
17 reauthorization, the good news is that the whole
18 nation will be covered. That you can covered by
19 jurisdiction. You do not have to be covered by
20 state. And so we hope that you will encourage,
21 as we just did -- 165 members of the United
22 States Congress have sent a letter to Speaker
23 Boehner demanding a vote now on the voting rights
24 authorization or reauthorization.

25 We hope that this commission will

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2 have that as one of its challenges and one of its
3 causes to ensure that we have a vote on the floor
4 of the House to reauthorize the Voting Rights Act
5 before the 2014 elections to give our citizens
6 the right to vote.

7 MR. PIERRE: Thank you, thank you,
8 Congresswoman Sheila Jackson Lee. Thank you
9 very, very much.

10 Okay. In an effort to move on,
11 we're going to do action shots and we're not
12 going to do pose for the pictures.

13 Now, we're going to have testimony
14 from panel members, and then we're also going to
15 have public testimony. So although we have
16 individuals who have called and reserved and sent
17 in written testimony, there will be opportunity
18 for the public to speak at any point in time.

19 If you do want to speak, you can
20 sign up; let us know over here. And we will let
21 you know after the panel when you can come and
22 speak.

23 I want to take care of some
24 housekeeping rules, just brief housekeeping
25 rules. Of course, we have bathrooms outside on

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2 the right and left as well as if there's anybody
3 who has any limited mobility or limited English
4 proficiency, (speaking in Spanish) Espanol,
5 language, anything, please let any one of the
6 students -- raise your hand -- anyone know. You
7 want to ask a question in the room?

8 MR. REYES: (Speaking in Spanish.)

9 MR. PIERRE: Please let everyone
10 know, and then we will make any accommodations
11 that is needed for you.

12 Finally, the last admonishment
13 would be that this is a nonpartisan hearing.
14 We're -- we're soliciting testimony from anybody
15 regardless of if you have a political preference
16 or any other preference. This is without regard
17 to any ideal or anything that you may have or any
18 predisposition you may have. So we would like to
19 limit our comments to actual encounters or even
20 experiences or what you've heard that has been
21 going on around the state of Texas that relates
22 to preventing voting rights or even if you feel
23 that there's some action done that helped in some
24 voting rights. We're open -- and securing voting
25 rights. We're open to all testimony, but it must

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2 be nonpartisan.

3 You will have three minutes to
4 speak. If I should see or anyone in the
5 commission see that it's moving into a direction
6 of a partisanship or anything else ship, we will
7 definitely turn off your mike and ask for the
8 next person to come up.

9 So, first, we will be joined by
10 our first panel member, Robin Chandler.

11 Like I said, if you need any
12 assistance, please raise your hand, and one of
13 our student ambassadors from Thurgood Marshall
14 School of Law will assist you.

15 MS. CHANDLER: Good morning. My
16 name is Robin Chandler, and I'm a policy
17 specialist for Disability Rights Texas.
18 Disability Rights Texas is a federally mandated
19 protection and advocacy agency for people with
20 disabilities in Texas. As the state P and A, it
21 is our duty to ensure that the rights of Texans
22 with disabilities are upheld and protected.

23 It's an honor to be here today and
24 to follow Congresswoman Jackson Lee. We have a
25 lot of areas where we think the voting rights of

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2 people with disabilities are violated or
3 potentially violated. The -- probably the worst
4 for us is the issue of polling site
5 accessibility. You know, this is a really big
6 state. We have 7 of the 50 most populated cities
7 in the country. We can't get a number of polling
8 sites in the state, but we think it's fair to say
9 there's thousands at any given state or federal
10 election.

11 Obviously, we can't visit every
12 site, and we base -- we do surveys of polling
13 sites and -- and then we try to help -- help get
14 them up to federal -- federal regulation. But we
15 go when we're asked, where we're asked, or when
16 we have reports of violations. We have done 121
17 surveys in the last, like, year, year and a half.
18 Of those, up to 90 to 95 percent had some type of
19 accessibility problem. You know, some aren't
20 that serious, some are more serious.

21 And since we're not inside polling
22 places on election days, the accessibility issues
23 that could be occurring during the actual
24 polling -- voting process are unknown other than,
25 again, if they're reported to us. But they can

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2 be things like aisles that are too -- that are
3 too narrow for wheelchair or that have
4 obstructions and especially accessibility
5 machinery that's not working or polling persons
6 that don't know how to work it.

7 We think mostly it's a matter of
8 lack of education, but it's also a lack of
9 funding, you know. However, money was used to
10 fund a lot of things that did make things better,
11 but now we need another infusion.

12 We feel like there's a need for
13 another infusion of HAVA money, and we hope that
14 Congress sees to do that.

15 I was going to talk about voter
16 ID, but I did see that someone at the end of the
17 day is talking about how it affects people with
18 disabilities.

19 Very simply, I will say that
20 people with disabilities are -- even though it's
21 probably unintentional, they wind up being
22 affected by the same thing that -- things that
23 people of other disenfranchised racial or ethnic
24 minorities may be affected by and not --
25 obviously not all people with disabilities, but a

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2 lot of people with disabilities are low income, a
3 lot of people with disabilities are people of
4 color.

5 I'm going to skip ahead to what
6 you have in your folders, and I'm going to talk
7 about persistent legislative --

8 MR. PIERRE: Can I ask you a
9 question? And any of the commissioners can ask a
10 question during or you can wait. But before you
11 went on, you mentioned some things that we
12 haven't spoke about in Texas in a while. You
13 mentioned HAVA. Would you be so kind as to
14 explain what that acronym means. What does it
15 have to do with the statement with regard to
16 money being used to aid in providing
17 accessibility for people with disabilities?
18 Please.

19 MS. CHANDLER: Definitely. HAVA,
20 the Help America Vote Act. And when -- when the
21 funding came in, Texas got a lot of funding
22 because Texas is big. And it helped to provide
23 money for accessible voting machines. It helped
24 to -- I believe the money -- some of the money
25 was used to -- to help get -- get polling sites

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2 accessible, but I'm not actually positive of --
3 of that.

4 By the time I started doing this
5 work, the HAVA money in Texas was gone. And so
6 now when we go somewhere and they need -- they
7 need to -- to update or to, you know, maybe build
8 a ramp or whatever, there isn't money. The HAVA
9 money was given to the secretary of state's
10 office, the elections division, and then they
11 doled it out. There was a formula as to how they
12 doled it out to counties.

13 So that's -- that's why we're
14 hoping for more HAVA money, because we still have
15 a lot of problems there. Okay?

16 MR. PIERRE: One more question.
17 I'd like to -- and I already gave you two more
18 minutes. I extended it because I'm asking
19 questions. But I need to find out if you know --
20 because we don't talk about this and often we
21 take for granted because we're -- we're stuck on
22 particular issues that deal with -- with us, per
23 se. We don't look at the other affected voters
24 who are affected by certain things.

25 So in your best estimation, unless

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2 you said it already and I apologize, how many
3 Texas voters who are -- who are limited --
4 limited mobility or ADA or -- or anything that
5 affects them, how -- how many people we're
6 talking about? I mean, literally, do you have a
7 number.

8 MS. CHANDLER: We don't have a
9 number. And part of the reason we don't have a
10 number is because there's a requirement that
11 people with disabilities -- first of all, not --
12 if they say that they need an accommodation,
13 they're not -- they're not to be asked "What is
14 your disability?"

15 And really there's no way of
16 tracking how many people with disabilities are
17 being affected negatively. You know, we also
18 have people with disabilities -- and a lot of
19 things that affect people with disabilities also
20 affect -- affect the elderly. And, you know,
21 we've -- I've asked if there's a way to try to
22 get to these numbers, but there's a lot of people
23 with disabilities in Texas. So, you know, the --
24 the potential is there. And we hear about it.

25 So -- and then another quick thing

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2 on voter ID that I do want to say is that we have
3 a lot of people in institutions in this state,
4 way too many, and -- but he said I was going
5 to --

6 MR. PIERRE: You have another
7 minute.

8 MS. CHANDLER: Okay. Thank you.

9 And the difficulties that they --
10 the challenges they face just to be able to vote
11 is our -- many. And so -- and a lot of times if
12 they need something like if they needed to be
13 able to get a picture ID or the documents that
14 they would need to get a picture ID, there's no
15 one in these facilities to help them. The staff
16 is so overloaded that they wind up a lot of times
17 just not being a member of the voting community,
18 another violation of their rights.

19 I'm just going to say in as few
20 words as possible because now I have no idea how
21 much time I have left. Okay. 30 seconds.

22 I have a section here I call
23 persistent legislative efforts to restrict
24 assistance. So we have an election code that is
25 just -- has piles of laws that are -- you know,

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2 you can't help this person for this reason or you
3 can only help these many people with this
4 particular task or -- there's so many laws that
5 it makes a lot of people from -- what we hear, it
6 makes people, including these staff people in --
7 in facilities, very nervous about lending a hand
8 or assisting people with disabilities.

9 And this would occur also for
10 people who are not literate or, you know, again,
11 the elderly, that need assistance with everything
12 from filling out their -- their forms, filling --
13 filling out a mail-in ballot or an application
14 for a mail-in ballot to walking into the mailbox
15 to help that they might need at the polling
16 place.

17 So this is something that we've
18 fought -- well, that it was fought last session.
19 All session, one bill for one little piece of
20 that because of that, the message needs to be
21 sent that it's enough.

22 And that's it.

23 MR. PIERRE: Thank you.

24 MS. CHANDLER: Thank you.

25 MR. PIERRE: Thank you, thank you

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1
2 very, very much, Ms. Chandler. Thank you.

3 That was, for me, I don't know
4 about any anyone else, very educational. I've
5 been taking a lot of notes, doing a lot of
6 Facebooking, letting people know what's going on.

7 Our -- next we'll have Ms. Cynthia
8 Spooner.

9 MS. SPOONER: Good morning,
10 Congresswoman Lee, guest commissioners, and those
11 assembled.

12 My name is Cynthia Spooner. I'm
13 speaking as a private citizen, but with
14 particular expertise, I will say. I have lived
15 in the state of Texas for the last ten years. I
16 have voted in the following voting jurisdictional
17 states: Louisiana, Minnesota, Oklahoma,
18 Missouri, Arkansas, and now Texas, and for four
19 years I voted in the District of Columbia.

20 It was not until I came to the
21 state of Texas that it took three concerted
22 efforts to get a voter registration card. I will
23 let you know by virtue of my ten years of
24 residency in the state of Texas, I have acted in
25 a numerous number of capacities on a volunteer

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2 basis.

3 I have been a sworn deputy voter
4 registrar. I've been a sworn election precinct
5 judge. I've been a ballot board oversight
6 member. I have served as a call room coordinator
7 and trainer for 1-866-Our-Vote, which is a voter
8 protection arm on election periods that is
9 partially underwritten by the Lawyers' Committee
10 for Civil Rights Under the Law, who's one of the
11 co-sponsors of today. I've been a legal team
12 trainer. I've done data collection for
13 candidates who felt that their races were in
14 jeopardy. I've been a party representative in
15 the ballot board process.

16 And I asked to speak today because
17 I have a wide variety of experiences that most
18 people don't even see, because most people don't
19 even know how the ballot board process works
20 because they're never in the room. Because it's
21 normally less than 50 people who certify the
22 election here in Harris County.

23 I wanted to speak also as an
24 individual because I have lived my life as an
25 individual who believed that a lawyer is either a

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2 social engineer or a parasite on society. And
3 that quote comes from Charles Hamilton Houston
4 who was the dean of the Howard University Law
5 School during the tenure of Thurgood Marshall who
6 this law school was named after.

7 And I was lucky enough as a child
8 to be under him the same day that Congresswoman
9 Barbara Jordan addressed the Nixon hearings when
10 she made her "We the People Speech." And I share
11 that with Congresswoman Lee when they did the
12 commemoration lunch here on the campus roughly a
13 year ago.

14 So I really believe in this
15 constitutional process and what it means to be a
16 United States citizen. And I have lived my life
17 believing that I'm not here on a hall pass; that
18 I want every right that my parents fought for, my
19 grandparents fought for, and their parents fought
20 for, and that everyone deserves.

21 It's not just about my rights,
22 it's about the rights of the whole community,
23 because when one person loses, we lose as a whole
24 in our society.

25 Let me just say this -- and I'm

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2 going to hit some particular points that were not
3 touched on by my predecessor. There is an
4 absolute lack of educational and authentic
5 expertise by the people who administer our
6 elections, because in the state of Texas, and
7 particularly in Harris County, when you control
8 the election process, you collect -- you control
9 the tax process, which is a what, financial and
10 economic process. So that's why elections and
11 politics of voting are always local, local,
12 local, no matter what you may believe.

13 There is a disparate impact on
14 language, racial and ethnic minorities, I've seen
15 it at every level, from the way that people are
16 getting information and access to information
17 about when classes and trainings are held that
18 are required to participate in any of the
19 administrative roles. There is a discriminatory
20 implementation at the polling places when
21 individuals show up to vote.

22 I have probably been challenged on
23 my ability to vote in Harris County no less than
24 eight times. I have been a registered voter. I
25 have a valid state ID. I speak reasonably well.

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2 I present myself reasonably well, and I got
3 challenged for early voting. I -- my address was
4 correct. It matched my ID. And the woman said
5 to me, "Well, are you sure this is all correct?"
6 Imagine.

7 The Section 5 of the Voting Rights
8 Act and the Help Americans Voting Act, there's a
9 complete dearth of information or knowledge of
10 information that is used at the local and
11 precinct level here in the state of Texas.

12 I have participated in both the
13 2008, 2010, and 2012 elections, and I can tell
14 you that many of the assurances that the law
15 provides, even with the latest challenges from
16 Shelby and other cases, make it really
17 distressing to many individuals just seeking to
18 vote. And it's very challenging, especially for
19 people who are mail-in voters, our service people
20 abroad, people who travel for business, elderly
21 people, people who are not able to transport
22 themselves at the last minute. Because one of
23 the things that happens a lot in Harris County is
24 the night before the election, they consolidate
25 or move a precinct.

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2 As a person who is disabled and
3 uses METROLift, which is the local paratransit,
4 we are required to make all reservations for
5 transportation 24 hours in advance prior to
6 5:00 o'clock the previous business day. So if
7 election day is Saturday and they change the
8 polling place at 6:00 a.m. on election day, those
9 people, unless they have private funds to get to
10 a polling place, they've then been
11 disenfranchised, because they won't know until
12 they've already gone to the wrong place where
13 they'll be dropped off. They've got to find a
14 ride from that wrong polling place and then
15 locate the new polling place.

16 So those are just some of the
17 things as a private citizen and as a person who's
18 in the -- in the ballot board process.

19 And may I just ask for a moment --
20 a personal privilege just to finish -- to just go
21 into it about the ballot board process?

22 MR. PIERRE: 30 seconds?

23 MS. SPOONER: Yeah, I can do it in
24 30 seconds.

25 The ballot board process is where

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2 the elections are certified. That is where the
3 review of all those provisional ballots happens.
4 The ballot board process at this point in time is
5 now basically an electronic process. They have
6 now gone to rely strictly on microfiche scans,
7 but the sad thing is if the scan is unclear,
8 the -- the ballot is lost.

9 And the provisional is contingent
10 upon the expertise of the precinct judge, meaning
11 the -- the voter could have been willing to do
12 whatever was asked of them, but if the precinct
13 judge was not astute enough to say make sure you
14 put the date here or put the last address
15 correctly in this box, then that ballot is lost.
16 And that's not the voter's fault, that is that
17 paid precinct judge and assistant judge's behalf.

18 But because a lot of times those
19 individuals that they are having to do a
20 provisional ballot, it's not someone who they
21 necessarily want to deal with, they are not given
22 the same respect and the time and the
23 administrative care that they should be.

24 But thank you for your time.

25 MR. PIERRE: Thank you,

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2 Ms. Spooner.

3 Our next -- the next and last
4 person on this panel that will speak before we
5 take public testimony is Kyle Longhofer.

6 And please restate your name for
7 the record. I know I'm mispronouncing it.

8 MR. LONGHOFER: You actually got
9 it right.

10 MR. PIERRE: Oh, great. I just
11 want to say the first -- the first -- the first
12 speaker, because I interrupted her, I gave her
13 about two more minutes. But we're three minutes
14 for testimony. And the -- the
15 sergeant-at-arms -- while I'm the coordinator,
16 the sergeant-at-arms is going to be the dean,
17 Howard Jefferson. So we're going to let him be
18 sergeant-at-arms.

19 MR. JEFFERSON: Thank you. Let
20 me -- let me say this. There's several people
21 who are to testify, and we want to make sure that
22 we honor them. So would the speakers look to
23 your left -- look to your left and follow the
24 time limit that they are posting. They will tell
25 you when it's a few minutes, and they will tell

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2 you when to stop. Let's follow that so that
3 everybody can hear what the rest of the panelists
4 are going to say.

5 MR. PIERRE: That's why he's
6 sergeant-at-arms.

7 Okay. You may -- you may begin.

8 MR. LONGHOFER: Thank you. My
9 name is Kyle Longhofer. I've been working in the
10 voter protections for, oh, ten plus years. I
11 went to Florida to be an election observer in the
12 2004 elections, and I've been working in voter
13 protection actions ever since then.

14 I just want to talk quickly about
15 a couple of things because three minutes is not a
16 long time. First, in terms of the overview of
17 how we got here today, the Shelby County case is
18 really, really bad law and -- in my opinion. And
19 as Professor Jackson mentioned, it is based on
20 some decisions that are really bad. I was -- I
21 read through it. He didn't see it. But if you
22 read carefully, in the Shelby County case, the
23 law -- that decision's based on a concept called
24 equality of state sovereignty.

25 Now, that is the same legal

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2 principle that was used to justify Dred Scott.
3 And, you know, Justice Roberts never cites Dred
4 Scott, but he is using the same legal principle
5 as the Dred Scott case to justify the elimination
6 of Section 4(b) of the Voting Rights Act.

7 The other thing I want to note --
8 deal with is how we're dealing with Section 5,
9 voter ID, in my county, in Fort Bend County.
10 There's a couple of things I want to run by to
11 people quickly.

12 First of all, the Texas voter ID
13 law is extremely restrictive with -- the D.C.
14 circuit court, when it rejected this law in the
15 first round under Section 5 of the Voting Rights
16 Act, held as the most strict law in the -- in the
17 nation as to voter ID. Since then, if you look
18 at the statute carefully, you will see that it is
19 extremely restrictive because there's only a few
20 forms of ID that can be used. If you want to
21 know exactly how restrictive it is, you can
22 compare it to the Alabama law that just got
23 adopted.

24 Now, Alabama does not really come
25 across as a liberal jurisdiction, but in

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2 comparison to Texas is -- is -- is horrible -- I
3 mean, the Texas law was horrible. But let me
4 just tell you how we're dealing with voter IDs
5 right now.

6 I'm trying to organize voter ID
7 clinics. It is extremely difficult to get
8 election identification certificates in Texas.
9 You have to have a voter -- a birth certificate
10 certified, and there's no good way of doing that
11 without paying a poll tax. The best you can do
12 right now is going to the county clerk's office
13 and paying \$3 poll tax as opposed to the normal
14 \$22 poll tax to get a a free birth certificate.

15 The other thing you can do right
16 now that is being done is vote by mail. The
17 voter ID law does not apply to vote by mail.
18 People -- we are -- every -- we are -- my
19 organization is putting a great deal of emphasis
20 on vote by mail, and right now we are doing a lot
21 more vote by mail. Dis -- disabled voters can
22 vote by mail, and this is not the same way as in
23 the voting -- in Section -- SB14. But the vote
24 by mail process can be used by people who are
25 disabled. And that's self-certification. In

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2 other words, if you think you're disabled, then
3 you can apply to use vote by mail, and that's
4 what's being done for some of our disabled voters
5 in my county. Thank you very much.

6 MR. PIERRE: Thank you. Thank
7 you. Next?

8 PROF. JACKSON: I have a question.

9 MR. PIERRE: Yes.

10 PROF. JACKSON: You said that the
11 Texas voter ID law does not cover vote by mail.

12 MR. LONGHOFER: Yes, sir.

13 PROF. JACKSON: Is that for all
14 persons or just the disabled?

15 MR. LONGHOFER: It's for all
16 persons. And so in my county we went from having
17 92 people of my party registered to vote by mail
18 in 2010 and 2012 to 2,000 people. And the club
19 that I'm a member of mailed out 14,800
20 vote-by-mail applications to everyone over 65.

21 But in terms of disability, the
22 disabled provisions of vote -- I mean, vote by
23 mail only -- does not define who is disabled. So
24 you in effect self-certify. The -- the county
25 registrar in Travis County has told one of my

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2 friends that if you think getting the correct ID
3 is too big a pain than you-know-where, then you
4 can certify that you're disabled. And we are
5 having more and more people use the vote by mail
6 process to get around voter ID.

7 MR. PIERRE: Thank you.

8 PROF. JACKSON: Thank you.

9 MR. PIERRE: Thank you.

10 REP. JACKSON LEE: Chair, can I
11 ask if there are any questions of me that I may
12 come and answer. I can come down.

13 MR. PIERRE: Yes. We have one
14 more speaker, and then we have public testimony.
15 But prior to that, Congresswoman, I assume -- any
16 questions -- any particular questions you might
17 want to ask of the congresswoman, Sheila Jackson
18 Lee? Does anybody have any questions?

19 The next speaker has a plane to
20 catch, and so I want to make sure that she has an
21 opportunity to speak, Ms. Christina Sanders. And
22 then -- and anyone has any questions -- you can
23 actually ask the question during public testimony
24 if you want to just to keep our efficiency.
25 Thank you very much.

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2 MS. SANDERS: Thank you, and thank
3 you to the organizations that are putting this on
4 and having this really important conversation.

5 My name is Christina Sanders, and
6 I'm the state director of an organization called
7 the Texas League of Young Voters. The Texas
8 League is the largest ground-based engagement
9 group in the state of Texas for young people.
10 And in many elections we've seen an increase in
11 discrimination and disenfranchisement towards
12 young people.

13 The Circle Report said that in
14 2012, 46 million young people between the ages of
15 18 and 29 were eligible to vote. And by 2015 we
16 estimate that young people in that same
17 demographic will make up a third of the American
18 electorate.

19 Here in Texas we have a large
20 population of young people, and a couple of
21 things we worked on is in 2012 we worked as
22 plaintiffs in the voter ID case, and a large
23 group of those -- those -- those folks in that
24 population were young people, young blacks and
25 Latinos, and I think someone later is talking

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1
2 about that.

3 But I will note for the record
4 that the voter ID has a major impact on the youth
5 vote and young people being able to have access
6 to the ballot.

7 In 2012 we experienced personally
8 many -- much disenfranchisement. There are --
9 there are a couple of key things that I just want
10 to point out for the record is that students were
11 turned away. More than students, young people
12 were turned away because their names weren't on
13 the rolls, not that they were not registered to
14 vote.

15 The printed rolls that were
16 available at the locations -- the voting
17 locations in the early voter around the county
18 did not have their name on it. In fact, we
19 actually took the young person to the computer
20 and printed off their voter registration
21 certificate.

22 So on election day during early
23 vote, many young people were turned away and many
24 people were turned away because the county had
25 not put their names on the official rolls, and

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2 this is in 2012. Many people were turned away.

3 For the same election, we had
4 young people turned away because on the voter
5 registration cards, there was a printed date.
6 And my -- I'm at three minutes? Sorry.

7 MR. PIERRE: You have three
8 minutes left.

9 MS. SANDERS: Oh, I have three
10 minutes left. Okay. Thank you. Keeping me
11 honest.

12 The -- the printed date for
13 effective on the voter registration -- on the
14 voter registration cards said -- some of them
15 said the day after the election, some of them
16 said election day. But as we know, everybody who
17 has registered to vote is eligible to vote during
18 early voting. Many young people -- many people
19 were turned away as a result of the effective
20 date on the registration card not being the day
21 before early voting or it starting in the middle
22 of early voting.

23 Another thing that was difficult
24 with this last election was in 2011 during the
25 legislative session there were some changes made

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2 to how folks can register people to vote. So the
3 changes in terms of how people can get deputized,
4 when people can get deputized, that was a
5 complication, because as, you know, young people
6 have a different schedule.

7 If you're going to Prairie View
8 A&M University, you're not in school all year
9 round. Young people on that campus generally
10 register young people on that campus. If you're
11 at Texas Southern, it's difficult to engage and
12 register young people under this new law because
13 the rules are not clear.

14 So there are three recommendations
15 that I offer. The first thing is that there
16 needs to be clear and written administrative
17 rules at the local level. One of the things that
18 the state said was that we leave this to the
19 local jurisdiction because of funding issues.
20 But as we know from -- from history itself back
21 to the 40s, 30s, that's not effective when it
22 comes to populations that have a history of being
23 disenfranchised. And it is -- it is not clear up
24 to election day with the county attorney was
25 determining what the rules are and if the

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2 students were able to vote or not on election
3 day. We need clear and written rules for every
4 single voter and available to them.

5 And the other thing is that there
6 needs to be more respect given to the "in the
7 area" -- "in the area" conversation when it comes
8 to students. Prairie View -- Prairie View in
9 1979 became ground zero for disenfranchisement
10 because of this history of trying not to let the
11 students -- or letting the students vote. In the
12 area means that you can't hold elections when
13 students are not in school.

14 The way the rules have changed, it
15 makes it almost difficult, almost impossible, for
16 students to get registered with the 30-day
17 requirement plus the additional materials that
18 are needed. It's the same principle as "in the
19 area," and I think that that should really be
20 looked at. And also we need to make more
21 progress and be more efficient when it comes to
22 online registration, election day registration.

23 And, you know, if you can check
24 your bank account from your phone, you should be
25 able to have a system in Texas that's more

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2 efficient with -- with allowing people to
3 register to vote and have access to the ballot.

4 Thank you.

5 MR. PIERRE: Thank you,
6 Ms. Sanders. Appreciate your testimony. Any
7 questions?

8 PROF. JACKSON: Just a quick one.
9 Do you find any -- any correlation between
10 student disenfranchisement and race or ethnicity
11 or is it simply student or age -- not student
12 disenfranchisement, age disenfranchisement.

13 MS. SANDERS: In 2014 it still is
14 race. Why? Because when you look at the -- the
15 poll tax or you look at the cost, it's going to
16 disproportionately have a negative impact on
17 young people of color. And so it's -- it's still
18 in 2014 significant in terms of race.

19 I will say and I will offer that
20 there is a -- over time, and it probably will be
21 several years, I don't have any facts, it
22 probably will evolve to a pace of people who are
23 more likely in general to vote a certain way.
24 But, yes, because of the economic, the access, it
25 still is disproportionately young people of

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2 color.

3 MR. PIERRE: Any other questions?
4 Thank you.

5 MR. TYSON: Can I -- sir, is the
6 questions only from the panel? Is that the way
7 the meeting is being conducted?

8 MR. PIERRE: For the witnesses
9 here, the questions are from the panels.

10 Now, and you're going to give
11 testimony. We normally would not do any
12 questions. But if you had questions for
13 Congresswoman Sheila Jackson Lee on how she
14 opened, we were going to take a party person
15 privilege and allow that. But questions from the
16 audience to the panel members were not going to
17 be allowed.

18 MR. TYSON: I'm -- the question
19 was to the -- you asked questions. In our county
20 we're told we have to have a physical signature
21 on a online voter registration. I don't know
22 what the law is.

23 Ms. Lee, you mentioned legislation
24 that you're supporting, and obviously it's quite
25 comprehensive and would work to the benefit of

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2 all of us. But what are the chances of -- of the
3 Senate and the House -- is it possible to get it
4 enacted or are we just trying to get it to the
5 floor for a vote?

6 REP. JACKSON LEE: Thank you, sir.
7 Can I call your name. I know you.

8 MR. TYSON: James Tyson. I live
9 in Alvin. I've known you.

10 REP. JACKSON LEE: I've seen you.
11 That's what I'm saying. I want to call you
12 Mr. Tyson. Thank you for the question.

13 This legislation is in direct
14 response to the United States Supreme Court
15 knocking down Section 5 and 4(b) -- 4(b) under
16 the Voting Rights Act which in essence made the
17 Voting Rights Act impotent. We have no Voting
18 Rights Act at this point except what we call the
19 Section 2 action which is a lawsuit action which
20 comes after the offense.

21 So if you are disabled and you are
22 blocked or -- or you are disabled and we
23 determine before the election that there's
24 several polls that are inaccessible, under the
25 old law we could go right to the Department of

1 Proceedings

2 Justice who would immediately stop, hold up, or
3 require the state, the jurisdiction to fix it or
4 to stop the election or to turn the election
5 around. In this instance stop it.

6 We don't have that anymore. And
7 the Supreme Court said, Because you don't need it
8 anymore, not thinking of language minorities,
9 disabled, senior citizens, for example.

10 So the law that we have written
11 that has equal number of Republicans and
12 Democrats, and I'm on the Judiciary and helped
13 construct the formula here, again, I've always
14 said not perfect, is to fill the gap left by the
15 Supreme Court decision which literally made
16 impotent and cut any rights to get a preclearance
17 so you can go ahead with the vote.

18 I keep using Pasadena, Texas.
19 That mayor, that council, four people voted,
20 redrew the lines. There was great opposition,
21 but there was no way to stop it. And so two
22 people have lost their seat or they're forced
23 into an election against each other.

24 So I just want to quickly say that
25 again this can be done by states, political

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2 subdivisions. And two points of issue, I'll just
3 leave it at that. That means that Utah can now
4 be covered. If there are a certain number of
5 discriminatory factors, that means they're now
6 covered by the Voting Rights Act.

7 On the other side of the coin,
8 North Carolina is not covered. And why? Because
9 the test was you have a lot of minorities
10 registered to vote. That was the test the
11 Supreme Court used to eliminate you from being
12 part of the Voting Rights Act. Texas got
13 included. Why? Because there's a large number
14 of Hispanics that are not registered to vote. So
15 we're actually covered by the law of the -- by
16 the Supreme Court. We're still covered, and
17 we're in essence covered by this bill. Our names
18 are there.

19 But now the bill has the ability
20 to provide other states coverage as well. So it
21 has to pass on the House and the Senate. Where
22 are we in this? We have bipartisan support on
23 the House side in terms of the members of the
24 Judiciary Committee. We're now asking the
25 Speaker of the House. That's why we would hope

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2 the commission would ask that we get a vote on
3 this legislation.

4 MR. PIERRE: Thank you. We'll
5 have our next public speaker.

6 PROF. JACKSON: I just wanted to
7 ask, you indicated that you thought the new bill
8 might be vulnerable before the Supreme Court or
9 that some -- some -- some of the experts were
10 saying so.

11 REP. JACKSON LEE: No. We think
12 we've fixed the Supreme Court's decision or -- or
13 blanket statement that all is well. What the
14 Supreme Court said, All is well, you don't need
15 preclearance.

16 What we have done is we've redone
17 the formula because the formula before was you
18 could -- you had a preclearance with states that
19 had a history of discrimination. So all the
20 southern states were covered including Texas,
21 parts of California, some parts of New York,
22 wherever there were language minorities, pockets
23 across the state were covered.

24 The Supreme Court eliminated this
25 past history of discrimination, and we had to

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2 start anew to find out, well, how can you get
3 this done. So now we have a formula that says,
4 If you can pluck out discrimination, about five
5 in the last 15 years, you can -- you're covered.
6 You can be covered as a state or a political
7 subdivision, county, or city. So you could be in
8 South Dakota and a city in South Dakota could be
9 covered but not the whole state. And maybe it
10 will be Native Americans or maybe it will be
11 disabled persons or maybe it will be
12 Asian-Pacific that are, in fact, the ones that
13 are being discriminated against.

14 So they're doing it by you proving
15 or -- your -- your present acts -- remember,
16 that's -- 15 years is not -- not 40 years ago,
17 which is when the Deep South states -- we were
18 continuing to use the Deep South states because
19 they had past histories of discrimination.

20 Frankly, I think that was not an
21 unacceptable formula, but that has been knocked
22 out. And now we have this new formula that goes
23 back 15 years. And if you've given five
24 discriminatory acts in 15 years, then you are in.
25 You -- you -- you're now covered by the law.

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2 It's going to be a difficult
3 formula which is why I'm glad you asked the
4 question. It has not passed yet. But it's going
5 to be difficult because we really need a
6 partnership with the state because some of the
7 things that you mentioned, polling places,
8 online, that's state issues except when we can
9 pass a federal law.

10 But the State is going to be in
11 session in 2015, and it's going to be imperative
12 that activists and people interested in everyone
13 having the right to vote are on top, Carolyn, of
14 these voting changes that the State can make.

15 The State made the provisional
16 ballots, and, therefore, we only have real
17 dominance over federal elections. But you have
18 all kinds of elections. People miss all kinds of
19 elections. People are turned away with all kinds
20 of elections, city elections, school board
21 elections. The lines are redrawn, they're not
22 federal seats. And so you have to be very
23 concerned. But, remember, before you could go in
24 to block someone redrawing the lines on a school
25 board if it eliminated or diminished the rights

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2 of minorities or language minorities to vote.
3 This means that all of us have to come together.
4 So I hope -- and I think that case shows where we
5 are today post-Shelby.

6 PROF. JACKSON: Thank you.

7 REP. JACKSON LEE: And the one
8 last thing the -- Ms. Sanders said, one of the
9 most striking cases was the case of Prairie View
10 A&M which went to the Supreme Court which in
11 Prairie View in that county, Waller County, they
12 were preventing college students from voting
13 saying that the address of the school could not
14 be considered their residence. All over the
15 nation now, the Prairie View case has made it
16 where college students can claim their college
17 address as their residence and now they can vote.

18 That is an enormous decision and
19 tribute to the Prairie View students and many of
20 us who converged on that area. 7,000 people
21 marched in the rally. But it went to the Supreme
22 Court. And now that's one of the things that we
23 should encourage our college students -- why
24 campaigning and all of the social media should
25 drive our college students to vote because they

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2 can vote in the jurisdiction that they're in. It
3 is a big, big deal, and we need to do more about
4 letting them know about it.

5 MR. PIERRE: Thank you,
6 Congresswoman. Any other questions?

7 Congresswoman, thank you so much
8 for your information, and it is always good when
9 you have these hearings to serve as a backdrop
10 the actual in the field of battle type of
11 testimony that you presented to us in Congress as
12 well as what you have done to help and assist us
13 in maintaining the onslaughts that have tried to
14 chase away the voting rights that we fought for
15 over these years, so I really appreciate you, and
16 thank you so much for your assistance.

17 REP. JACKSON LEE: Outstanding
18 commission. Thank you very much.

19 MR. JEFFERSON: And we get good
20 information because Sheila is in the huddle when
21 the plays are called.

22 MR. PIERRE: Okay. We have some
23 public testimony. If there's anybody else that
24 has any testimony that -- in other words, you
25 know if you're on a panel because you were told

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2 that you're on a panel. But there are people
3 who've not registered who may be from the public
4 who may have heard it on the radio and wanted to
5 step in.

6 Please, you can sign up on the
7 corner. There's some note cards that you can
8 give your name. I have two individuals right
9 now, Ricky Forrest and James Tyson. You'll have
10 three minutes to give your public testimony, and
11 then we'll go on to the second panel.

12 So Ricky Forrest is here? Ricky
13 Forrest, you can come up and you may speak. You
14 have three minutes. And then after Mr. Forrest
15 we'll have James Tyson. You can stand in -- in
16 the dugout.

17 If there's anybody else that wants
18 to serve on this section of public testimony,
19 please sign up and then we'll get you -- if you
20 can sign up -- Maria, is there some note cards
21 there so I can have a name so she can sign up?

22 Okay. Are you ready, timekeeper?

23 MR. FORREST: My name is Ricky
24 Forrest, and I'm from Alvin, Texas. I'm a United
25 States veteran. I served in the Army Corps of

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2 Engineers. I served in -- well, that's in Fort
3 Belvoir, Virginia, right outside Washington, D.C.
4 I went to Germany for two years and served in the
5 United States Army Signal Corps. I was the unit
6 armory sergeant-at-arms, and I also facilitated
7 combat readiness audits.

8 My unit was decommissioned because
9 I recognized a system of failure. You know, when
10 you're being set up to fail, it's really obvious
11 because nobody would take the job. But our job
12 was -- my job, specific job, was to inventory our
13 entire unit, prepare the equipment for movement
14 upon any combat situation. Nobody would do their
15 job. They all want the title, but they don't do
16 the job.

17 You know, I filed a voting
18 complaint with the secretary of state. The
19 secretary of state elections division is
20 responsible for protecting your voting rights.
21 They dismissed my complaint with a -- a trumped
22 up -- they actually fabricate evidence to give
23 the illusion that they did their job.

24 When you file a complaint with the
25 Department of Justice voting rights section, they

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2 don't do their job either. They do so to protect
3 police officers in the state of Texas who commit
4 felonies by depriving you of your right to vote.
5 Conspiracy against rights under color of law that
6 results in a deprivation of rights under color of
7 law is punishable as a felony under federal
8 standards.

9 I served as an elected official.
10 My rights to give testimony as a public official,
11 my rights to vote as an elected official, my
12 rights to be protected by the laws of the United
13 States or the laws of the state of Texas have
14 been wholesale deprived of me.

15 The right wing engages in this
16 type of behavior as part of an entrapment
17 process. It is illegal. That is my testimony to
18 this commission.

19 MR. PIERRE: Thank you. Thank
20 you, Mr. Forrest. We appreciate your testimony.

21 Is Mr. Tyson still here?

22 Mr. Tyson and then next, Crystal Sowemimo. You
23 can come up to the witness section -- I mean,
24 excuse me, the jury box to prepare.

25 Mr. Tyson, you have three minutes.

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2 You may begin.

3 MR. TYSON: Thank you. My name is
4 James Richard Tyson, and I live in Alvin. My
5 parents married there and attended schools,
6 various places in the South. Graduated high
7 school and military school in Atlanta, had the
8 good fortune to visit several places, one of them
9 being the church Dr. King presided over. Another
10 was a restaurant down the street that the
11 opposition to civil rights and later governor of
12 Georgia had a restaurant.

13 I grew up in -- from a political
14 family, and with that I wanted to speak about the
15 election in '48, the election since -- history of
16 1900, and where we're at today with voter
17 registration ID bill.

18 There's one thing I'd like to
19 submit for the record which is a redistricting
20 map of Alvin, Texas. At this time I'm a
21 candidate for mayor. If I vote in the mayor's
22 election on election day in the city of Alvin, I
23 will have to go to another city to vote.

24 Now, I think you need to think
25 about that. That was fundamental that you

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2 usually -- used to get to vote in the city you're
3 running for. But when you have redistricting in
4 Alvin, Texas today in Brazoria County, that's not
5 the case. If the panel really wants to
6 investigate election laws in Texas, they will
7 look at Brazoria County which is very proud of
8 the fact that that's where Texas began. You
9 don't need to look all over the state or go in
10 the big cities, because you have minority
11 representation in Brazoria County. And you have
12 it in Alvin.

13 So with that hopefully the panel
14 that's -- really wants to investigate election
15 laws in Texas will do that and -- and inquire
16 about the history of Texas.

17 I had an uncle that was a
18 congressman, the biggest county in his district
19 that said he didn't sign up to -- to be a
20 candidate, and so under Woodrow Wilson he was
21 defeated. Those are the things that have
22 happened in Texas history, so with that I -- any
23 questions I'll be happy to answer. I
24 remember . . .

25 MR. PIERRE: No questions.

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2 MR. TYSON: And I appreciate Judge
3 Jefferson. I remember when he was elected
4 district judge and he served many years and he's
5 still serving as a parliamentarian, and I'll
6 certainly respect the rules. Thank you.

7 MR. PIERRE: Thank you, Mr. Tyson.
8 And next -- Crystal, would you be so kind for the
9 court reporter to spell your last name, and then
10 you have three minutes.

11 MS. SOWEMIMO: My name is Crystal
12 Sowemimo, S-o-w-e-m-i-m-o, and I'm speaking as a
13 student of the University of Houston and also as
14 an intern for the Texas Public Interest Research
15 Group.

16 So according to a study done by
17 the Center for Information and Research on Civic
18 Learning and Engagement, voter turnout among
19 those between the ages of 18 and 29 across the
20 country was at least 10 percentage points lower
21 than the turnout rate among 30-year-olds in
22 Texas, and it's no -- and Texas is no exception.

23 And right now in 2012 the average
24 of -- is -- less than one-third of the eligible
25 youth went out to the polls in Texas. And 36

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2 public institutions of higher education learning
3 and dozens of quality private universities are
4 available here in Texas, yet the voices of young
5 people are still not being heard. Texas
6 education institutions represent a large spectrum
7 of diverse populations, yet Latino and
8 African-American students are even less likely
9 to -- on average to vote.

10 As voter registration and voter ID
11 laws in Texas become more complex and often
12 more -- more confusing, it is now even more
13 critical that young people get the information
14 they need to cast their ballot.

15 As a student of the University of
16 Houston, I've been dedicated to educating and
17 registering students to turn out to vote. And
18 I've -- and because I have learned that young
19 adults like myself tend to be dissatisfied by our
20 current -- our current political climate. And
21 young people likely myself tend to complain a lot
22 about the issues created by policies that don't
23 support their best interest.

24 However, as I mentioned earlier,
25 it is evident that young people like myself don't

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2 show up to the polls to cast their ballot. I
3 have learned that dissatisfaction with the
4 politics issues is directly correlated with not
5 showing up to the polls and casting their ballots
6 and being educated and politically engaged in
7 those who are interested in solving some of
8 the -- some of our societal issues.

9 I got involved with youth voter
10 registration in 2012 when I started becoming a
11 leader with TexPIRG's New Voters Project two
12 years ago. To be fair, overall youth turnout has
13 improved since 2008 when elected officials and
14 voter mobilization efforts focused on the needs
15 and challenges of young people. Then young
16 voters showed up to the polls.

17 So now I'm going to present two
18 policy proposals from TexPIRG. First is for a
19 federal and state policy -- first, federal and
20 state policy must catch up to the modern
21 realities of voting. A policy of affirmative
22 registration would allow for state universities
23 to automatically forward student information to
24 registrars to be -- to the polls, unless a
25 student opted out of this process. This type of

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2 process can be adopted for any interaction with
3 government services from social -- from social
4 services to library cards. Several jurisdictions
5 have begun experimenting with demonstration
6 projects around modernizing registration.

7 And the second policy proposal is
8 Texas should adopt online voter registration.
9 According to the National Conference of State
10 Legislatures, as of April 2014, 16 states offer
11 online registration and another four states have
12 passed legislation, but have not been
13 implemented.

14 States that have this legislation
15 and have been implemented have seen significant
16 reduction in per-registration costs, but most
17 importantly this would bring voter registration
18 into an increasingly wireless world, encouraging
19 young people like myself to register at -- at
20 much higher rates.

21 These two relatively simple policy
22 changes would drastically increase voter
23 participation in Texas leading to a more
24 representative and more engaged youth population.
25 Thank you so much.

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2 MR. PIERRE: Your time is up, but
3 I have a question, though, and I think maybe the
4 other commissioners have a question.

5 In -- in -- from your testimony,
6 and I don't know if you heard Ms. Sanders'
7 testimony.

8 MS. SOWEMIMO: Yes.

9 MR. PIERRE: I want to know,
10 because I guess I'm not young anymore, Howard. I
11 used to brag; I'm now 48. So I want to know --
12 I'm one of the old people still on Facebook -- I
13 want to know do you -- do you see -- as a college
14 student, do you see much emphasis on the
15 challenges? Not so much the excitement -- I see
16 things about the excitement of the youth vote and
17 that it appears that if anyone is going to a poll
18 outside those who are dissatisfied is the young
19 youth vote.

20 However, what I'm hearing, just
21 like the education I got with people with
22 disabilities, what I'm hearing is that there are
23 challenges to voting that young people experience
24 that were not really reported. Would that be an
25 accurate assessment?

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2 MS. SOWEMIMO: Yes, it would.

3 MR. PIERRE: And what is -- why is
4 that? Do you know why there's not emphasis or
5 communication or -- or marketing that -- that
6 shares that issue with the youth vote? Because
7 there's -- there's more of you and it seems like
8 that you guys, through social media, seem to be
9 able to communicate much, much wider than -- than
10 anyone else can. Why do you think that there's
11 not a lot of attention on that?

12 MS. SOWEMIMO: It's a very complex
13 issue, and it's still currently very tough for me
14 to register students to vote on campus because
15 students have such busy schedules and it's really
16 hard to engage them in the issues and show them
17 the importance and educate them on the importance
18 of casting their ballot because they just see the
19 issue of -- that's affecting them, like a certain
20 policy issue. Like, I don't know, student loan
21 debt. But they don't see the connection between
22 the policy and then casting their ballot. And
23 that's really hard to get out there in the higher
24 education institution. And I feel that higher
25 education institutions and education

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2 institutions, in general, should be helping youth
3 better engage into going out into the polls.

4 MR. PIERRE: Then -- are there any
5 other -- other questions? Thank you very much.

6 MS. SOWEMIMO: Thank you so much.

7 MR. PIERRE: Do we have any
8 more -- any more for the public, any other public
9 speakers? Panel 2.

10 MR. REYES: We're going to take a
11 break.

12 MR. PIERRE: How long of a break?

13 MR. REYES: 15 minutes.

14 MR. PIERRE: Okay. We're going to
15 take a ten-minute break. We're going to take a
16 ten-minute break, and that means we're going to
17 be -- we're going to start up again at 12:05.
18 Will Panel 2 -- the first person on that panel be
19 Maureen Haver. Is Maureen Haver here?

20 MS. HAVER: Yes.

21 MR. PIERRE: So at 11:05 -- I
22 mean, 12:05, we'll start with Maureen Haver.

23 (Short recess.)

24 MR. PIERRE: Thank you everyone
25 for coming back, and I want to blame me for the

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2 lateness. I said ten minutes. But then when I
3 got out, the commissioners beat me up and stated
4 they needed more time and I wanted to make sure
5 that they were taken care of and everything.

6 We're going to have a slight
7 change, but first a couple of things. I'll wait
8 until -- I want to make sure that I recognize
9 some of our coalition members, but I'll wait
10 to -- until he comes back. I don't see him in
11 the room. And I want to thank once again Samuel
12 Washington. He is a world renowned photographer.
13 Samuel Washington donated his services pro bono
14 for this event, and definitely -- he has cards
15 and everything. So thank you so much, Sam, for
16 coming out on a Saturday. I saw you worked last
17 night, too. Double duties are appreciated.

18 And I also want to thank our court
19 reporter who has flown down here -- is it New
20 York or D.C.?

21 THE REPORTER: I'm actually local.

22 MR. PIERRE: You're actually
23 Houston. Okay, great. Great. Rene Moarefi,
24 great, with TSG Reporting. Thank you, Lawyers'
25 Committee. Thank you to the commissioners just

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2 once again. We have still here with us from your
3 left, to my right, thank you, we have Attorney
4 Deborah Chen from OCA, the national treasurer and
5 past president of the local OCA chapter. We have
6 professor Craig Jackson, a constitutional law
7 professor here at the Thurgood Marshall School of
8 Law.

9 My name is James Goodwille Pierre,
10 I am the national vice president and section
11 division of the National Bar Association. And
12 I'm a coordinator or facilitator, whatever name
13 you want to prescribe to me, Alejandro, of this
14 Texas voting rights hearing for the National
15 Commission on Voting Rights.

16 And to my left, last but not
17 least, is Howard Jefferson. He is president
18 emeritus of the Houston branch of the NAACP. He
19 is a former or current national board member as
20 well as a board -- a national political action
21 committee member for the national NAACP, among
22 other things, past HISD superintendent, currently
23 on the Harris County Board of Education. So he
24 serves a lot of capacities. And I want to thank
25 you and everyone else for your service, all the

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2 commissioners.

3 We're going to do a slight
4 deviation. Some of our commissioners wanted to
5 bring back up a -- a witness, a expert witness,
6 and so what I would like -- Ms. Chandler, if you
7 can come back up. We're going to have
8 Ms. Chandler come back up for a quick hot second
9 to answer questions from the commissioner. And
10 then after that we'll have board member Common
11 Cause, Maureen Haver. Did I pronounce your last
12 name right?

13 MS. HAVER: Yes.

14 MR. PIERRE: So I believe
15 Commissioner Chen has a question for you.

16 MS. CHEN: Yes, thank you.

17 MS. CHANDLER: My name is Robin
18 Chandler. I'm with Disability Rights Texas.

19 MS. CHEN: Thank you.

20 Ms. Chandler, earlier you had submitted some
21 paperwork in addition to your testimony, and you
22 briefly mentioned it towards the end of your
23 testimony regarding the different changes in the
24 laws that have made it more difficult for people
25 to even want to help seniors or the disabled who

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2 reside in retirement homes, for instance, to be
3 able to seek assistance. If you wouldn't mind,
4 please expand a little bit on that.

5 MS. CHANDLER: Absolutely. So I
6 showed you -- or I included in my packet a chart
7 and it talks about the different helpers. They
8 have helpers called witnesses, helpers called
9 assistants, helpers called agents, they're all
10 allowed to do different things. And, you know,
11 basically the way I explain it is they speak very
12 specifically to who can help, how many people
13 they can help, what they need to do in order to
14 legally provide assistance to every kind of -- of
15 voting related activity, filling out forms. And
16 I did say that in my prior test -- testimony.
17 And so what we found even with registration is
18 that we go into institutions -- my co-worker does
19 training, she's in institutions a lot, and the
20 staff doesn't know -- they're even afraid to help
21 with voter registration. And -- you know, and
22 then we -- when we were talking about this bill
23 this last session, they wanted to limit the
24 amount of ballots you can carry to the mail. And
25 so if you were a Meals on Wheels person and you

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2 were asked to -- to pick some -- you know, you go
3 there on the day they have to send them off and
4 you're asked to take it to the mailbox for them
5 or whatever, I mean, you can technically be
6 breaking the law just by doing things like --
7 well, that one didn't pass, but, I mean, those
8 kinds of things are -- are -- mostly it's
9 confusing because, you know -- and that --
10 because for the most part, if you do them, I
11 don't know if you're necessarily going to, you
12 know, be caught or the police are going to come
13 after you but it's -- it's intimidating. I guess
14 those are the two things that it creates, fear
15 and -- and our election law is littered with
16 them.

17 MS. CHEN: And so just to
18 summarize, what you're stating now, as well as
19 what you submitted, is that you -- in your work
20 you have found evidence or instances where people
21 are actually afraid of helping seniors or the
22 disabled who reside in nursing homes or other
23 residential programs from even helping them to
24 get registered or to help them to vote because of
25 fear of any confusion?

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2 MS. CHANDLER: Right. It's kind
3 of like, I don't know what I'm allowed to do. I
4 mean, they were we -- we know this one that they
5 said we -- we only will send the voter
6 registration home with our clients so that their
7 family member -- it might have been -- it must
8 have been not in an institution, but it was a
9 program for people with disabilities that -- it's
10 like a day-hab program or something. And
11 certainly staff could have helped them, you know,
12 but they -- they told my co-worker, as she was
13 doing the training -- and this happened -- has
14 happened many times. But this is just an
15 example, you know, we don't know what we're
16 allowed to do and we're -- so we're afraid to do
17 it, so we're not doing it. It happens a lot, and
18 in a lot of these cases in the institutions,
19 those staff people are the only people you have
20 regular contact with. So they're not going to do
21 it. It's not going to happen.

22 MS. CHEN: Thank you.

23 MR. PIERRE: Thank you. Do any of
24 the other commissioners have any more questions?
25 I appreciate you coming back up and sticking

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2 around. Thank you so much.

3 MS. CHANDLER: No problem at all.
4 Thank you.

5 MR. PIERRE: I would say that
6 while we're -- thank you -- that while we were
7 waiting, you know, the commissioners, we talked
8 amongst ourselves and we were very educated with
9 a lot of things that are apparent -- or not as
10 apparent to us but that exist related to people
11 with disabilities and an English deficiency, as
12 well as young people and students. And so I'm
13 really glad this testimony is serving as an
14 educational vehicle for everyone here, including
15 the commissioners.

16 And so now I would like to ask --
17 we're going into Panel 2, and our first expert
18 witness is Maureen Haver. Maureen Haver, she is
19 a board member with Common Cause. Thank you,
20 Ms. Haver.

21 And you have five minutes of
22 expert witnesses. And then if any public member
23 or anyone there who is not on the panel list to
24 give expert testimony, we allow three minutes for
25 public testimony. Anyone from the public can

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2 come up and -- and speak. So please -- please
3 see Alejandro of the Lawyers' Committee of Civil
4 Rights Under the Law. If you have any testimony,
5 you can speak. You don't have to have
6 preregistered to be allowed to speak. Anyone can
7 speak. Thank you.

8 Ms. Haver.

9 MS. HAVER: Good afternoon. I'd
10 like to thank the Lawyers' Committee on Civil
11 Rights, our guest commission and everybody here
12 today who has come on a glorious Saturday to bear
13 witness to what may be one of the most
14 challenging issues of our time, namely, to fight
15 back against regressive laws in Shelby v. Holder,
16 which strikes at the very heart of the Voting
17 Rights Act, which was landmark legislation
18 that -- for what began to take a step toward the
19 process of fulfilling the promise that this
20 country was based on.

21 And now today, in 2014, I am here
22 to tell you about my own experiences in Harris
23 County since 2008 in which I have documented and
24 researched voter suppression activity, both
25 coordinated county level through our -- our

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2 elected county administrators and also through
3 voter suppression activist groups, namely True
4 the Vote, which some of you may be familiar with.

5 As a brief bit of background, in
6 2008 I led a voter registration drive that was
7 primarily comprised of volunteer deputy
8 registrars. And we had about 150 and we were
9 registering voters at storefronts, at events and
10 what we found were that a lot of voters were not
11 making it onto the rolls. We would follow up
12 with those voters. We would find that sometimes
13 they were rejected because they had a hyphen in
14 their name on their application but they didn't
15 have a hyphen on their driver's license and they
16 would be noticed with an incomplete or that we'd
17 have people that as many as 45 days later would
18 be noticed with an incomplete when they should
19 have been noticed within seven days. And so we
20 brought this to the attention of a local
21 investigative journalist.

22 From that it was found that there
23 were thousands of voters who were not being
24 properly registered under the leadership of Paul
25 Bettencourt, who was then voter registrar and tax

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2 assessor. Paul Bettencourt is also one of the
3 pioneers of developing what is called a purge
4 model for removing voters from the rolls using
5 records like DPS. He's testified before
6 Congress. And so with that he played a
7 significant role in exposing what happened.

8 Fast-forward to 2010 and you have
9 a group emerge called True the Vote. True the
10 Vote is a voter suppression activist group that
11 targets minority precincts to try to prevent them
12 to vote. Their stated purpose is that they want
13 to bring integrity to the rolls. However, if you
14 actually look at some of their activities in
15 2010, including a video that I will submit to the
16 permanent record, on October 11th, 2010, at a
17 True the Vote meeting they were discussing the
18 placement of poll watchers. The now executive
19 director Mark Anhill stated, "Don't worry. We're
20 just doing to them what they've been doing to us
21 all along." Somebody else in the audience yells
22 "Payback." You hear cheering in the audience. A
23 week later across the county, at minority polling
24 locations there are reports of voter
25 intimidation, specifically at minority precincts.

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2 And while they stated, True the Vote leadership,
3 that they were not engaged in targeting minority
4 precincts, Dave Fehling, the KHOU reporter,
5 actually went to at least two different polling
6 locations during early vote that are considered
7 white, upper middle class. And the election
8 judges there documented and confirmed that there
9 had been no placement of poll watchers, which is
10 a direct contradiction made by the True The Vote.

11 Now True The Vote has a close
12 working relationship with the current election
13 administration, both the county assessor and tax
14 assessor, voter registrar, Mike Sullivan, who in
15 2012 vowed to work hand-in-hand with Catherine
16 Engelbrecht in True The Vote leadership and also
17 Stan Stanart, the current county clerk, who
18 writes letters of recommendation for True the
19 Vote discussing their efforts and how -- and how
20 much he is in favor of them. And now what
21 they're doing now is training workers to work as
22 election workers, to where you won't necessarily
23 be able to identify whether or not they're
24 associated with the True the Vote. Furthermore,
25 they're also challenging voters based on criteria

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2 that they established, for example, if you have
3 six or more people living in your home, then
4 they're going to challenge you. That necessarily
5 impacts minority voters.

6 Pew Research Center found that
7 50 percent -- that Hispanic and Asian families
8 are 50 percent more likely to live in
9 multi-generational housing. They're also
10 challenging voters if their driver's license
11 address differs from their voter registration.
12 And what that does is for people who can't afford
13 the \$25 fee to go update their driver's license
14 but update their registration, they get
15 challenged. And Mark Anhill has stated that the
16 goal is to get these people on the suspense list.
17 That can have a direct impact on elderly voters
18 who, if they're placed on the suspense list, are
19 not allowed to vote by mail.

20 Further Houston has the -- has the
21 second highest rate of minority renters in the
22 entire country, which means that minority voters
23 are necessarily impacted by these strategies that
24 are being carried out in concert with local
25 elected officials.

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2 And I have, obviously, a lot more
3 to say. It's hard to condense it all into five
4 minutes. I'm open to speaking with anybody
5 afterward if they have questions, and I'm also
6 available to answer any questions that our guest
7 commissioners may have.

8 MR. PIERRE: Can I ask you a
9 question? Are you located -- you personally
10 located local? Where are you located?

11 MS. HAVER: Oh, yes, I'm a Houston
12 native.

13 MR. PIERRE: As far as office of
14 Common Cause?

15 MS. HAVER: I'm a board member of
16 Common Cause, which means I'm a volunteer. In
17 various capacities since 2008, I've -- was the
18 director of Texas Together Education Fund. So
19 I'm now here, I don't have an office. I do this
20 research primarily as a volunteer.

21 MR. PIERRE: And where is --
22 what -- what is Common Cause?

23 MS. HAVER: Common Cause is a
24 national organization. They don't have a paid
25 staff member currently in Texas, and -- but they

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2 have a well-developed election protection plan,
3 which in 2012 I coordinated their election
4 protection efforts, and in concert with Lawyers'
5 Committee, I helped win the election command --
6 the election protection hotline command center
7 and other things. But they don't have,
8 unfortunately, right now paid staff. So this is
9 all as a volunteer board member.

10 MR. PIERRE: Is there an e-mail or
11 anything for people to contact you?

12 MS. HAVER: Yes. Should I just
13 give that now?

14 MR. PIERRE: If you want to.

15 MS. HAVER: Maureen dot Haver,
16 M-a-u-r-e-e-n dot H-a-v-e-r at gmail.com.

17 MR. PIERRE: Do any commissioners
18 have any questions?

19 PROF. JACKSON: Just a quick one.
20 Do you have a document or a document paper or
21 something you'd like to submit to the commission
22 or --

23 MS. HAVER: I don't have a copy of
24 it unfortunately, but I do have a summary of the
25 history of True the Vote since 2010. And I think

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2 that it's really important to understand that
3 their efforts act as a proxy for groups that have
4 aims that they want to contain the vote, mainly
5 that among minorities.

6 MR. PIERRE: Is True the Vote --
7 do you have another question?

8 PROF. JACKSON: I assume you can
9 submit that.

10 MR. PIERRE: Yes. I want to know,
11 is True -- I saw a paper -- newspaper articles on
12 the True the Vote, but you said something else.
13 And I notice you didn't say King Street Patriots.
14 What is the relationship between True The Vote
15 and King Street Patriots? What -- what -- in
16 your research, what are those -- what is that
17 group?

18 MS. HAVER: The exact same people
19 who founded King Street Patriots, Catherine
20 Engelbrecht, her husband, Brian Engelbrecht and
21 Diane Josephs, were the original officers
22 incorporating both the 501(c)(4), King Street
23 Patriots, and what is now a 501(c)(3), True the
24 Vote. They now make an effort to distinguish the
25 two as being separate entities. But from their

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2 genesis in 2010, they were completely intertwined
3 both from a leadership perspective, they also
4 shared office space. And so I usually use it
5 interchangeably, because they have essentially
6 the same membership. But King Street Patriots
7 can be considered the parent organization or the
8 organization that spawned the True the Vote
9 movement.

10 MR. PIERRE: So what you're
11 saying, then, and it is my last question, True
12 the Vote, a 501(c)(3) IRS tax exempt
13 organization, there is documentation that their
14 members of this nonprofit 501(c) -- IRS exempt
15 organization is in Houston challenging people and
16 their right to vote through the mechanisms and
17 means that you just described today?

18 MS. HAVER: Yes. They take
19 advantage of the citizen's challenge law, which
20 basically says that any citizen can challenge a
21 voter's -- voter's registration. The idea,
22 though, is that they're supposed to have a
23 personal knowledge of whether or not that voter's
24 registration should be challenged.

25 What True the Vote has done is

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2 cobbled together several different databases
3 which rely on faulty matching to then get citizen
4 volunteers who go through and say, I want to look
5 at voters in this precinct. And then they
6 automate the challenge process. So they can sit
7 there and look up and they can say, I want to see
8 every household where there are five or more
9 voters registered. I don't think five voters
10 should be living in one house, I'm going to
11 challenge that.

12 And so then that goes to the
13 county and the county then issues a letter
14 saying, Do you -- are you actually qualified to
15 vote? If people don't respond, they get put on
16 the suspense list, they get isolated from
17 candidate outreach. And it also means that if
18 they don't vote, then they're going to be removed
19 from the rolls, even though there's nothing
20 prohibiting a household from having five or six
21 or more voters. In fact, AARP reported in 2009
22 that during the two-year period from 2009 to 2011
23 is when you have the fastest rate of
24 multi-generational housing taking place because
25 of the economic collapse and recession.

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2 MR. PIERRE: Thank you very much,
3 Ms. Haver. Are there any other questions from
4 the commissioners?

5 Thank you again, Ms. Haver, for
6 your testimony.

7 One other question.

8 MS. CHEN: I'm sorry, not a
9 question. Just a reminder. Please do e-mail or
10 send -- submit to us your additional
11 documentation.

12 MS. HAVER: Yes, and I also have
13 hours of video, some of which has been taken
14 undercover, that will also be made part of the
15 record.

16 MS. CHEN: Thank you.

17 MR. PIERRE: Thank you very much.
18 Our next expert witness, Mario Salinas, Texas
19 State Deputy Director, Mi Familia Vota.

20 MR. SALINAS: Good afternoon.
21 Before I begin, as a point of personal privilege,
22 I just want to explain that I am a person that
23 stutters, so I'll be keeping it as concise as I
24 can, but will be pacing myself accordingly.

25 MR. PIERRE: Take all the time you

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2 need.

3 MR. SALINAS: Thank you. On the
4 behalf of Mi Familia Vota Education Fund, I would
5 like to thank the Lawyers' Committee and everyone
6 else involved for the opportunity to testify here
7 today.

8 Mi Familia Vota Education Fund is
9 a nonprofit organization dedicated to empower the
10 Latino community in order to increase civic
11 participation. We do this through partnering
12 with allies in order to naturalize citizens
13 through voter registration and voter education.
14 One of our community partners is the
15 Mexican-American Legal Defense Fund who
16 represented Mi Familia Vota Education Fund and
17 the Southwest Voter Registration Project and
18 Latino voters throughout Texas in opposing the
19 voter ID law, which has been put into place since
20 the Shelby County Supreme Court decision last
21 year invalidating a key provision of the Voting
22 Rights Act, as we all know here.

23 Of course, the striking down of
24 Section 5 is dire in a state which has a long and
25 recent history of voting discrimination, to which

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2 my fellow panelists have and will continue to
3 speak to. Concerning the voting ID laws
4 specifically, it is apparent that such a measure
5 that we are supposed to believe was conjured up
6 to fix the nonexistent problem of voter fraud in
7 Texas comes from a short-sighted partisan point
8 of view and unwillingness to acknowledge
9 realities, both in terms of demographics and
10 civic engagement.

11 But before I move on, I just want
12 to state specifically that the voter ID law, if
13 it results in just one disenfranchisement of one
14 voter, that is one voter too many. And as you
15 heard Christina Sanders say earlier, a large
16 number of Texas Latinos are young people, and
17 this voter ID law affects young people. Many of
18 you have maybe heard reports that more and more
19 young people are putting off getting their
20 driver's license and buying a car. So again,
21 it's just one more hurdle that they have to face.

22 And we need to establish a culture
23 of civic engagement as early as we can among our
24 young people in Texas. Although I'm here to
25 speak specifically about the challenges that

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2 Texas Latino voters face, I feel that it is --
3 that it is prudent to first set a context for the
4 state of civic engagement in general in Texas.
5 According to the Census Bureau's self-reported
6 statistics, Texas ranked 42 in the nation in
7 voter registration. The younger you are, the
8 less likely you are to be registered. 43.1
9 percent of Texans between the ages of 18 and 29
10 were registered in 2010 compared to 67.4 of those
11 30 and under.

12 Documentation shows that the level
13 of registration drops off between Anglos and
14 other ethnic groups. Within a state that is
15 becoming more and more diverse every day, this
16 eradication of engagement poses a major problem
17 within a representative democracy. Voter turnout
18 in Texas is equally dire with Texas ranking 51st,
19 51st behind the other states and the District of
20 Columbia, during the 2010 midterm election
21 compared with 42.7 percent. Of those 30 and
22 under, only 16.1 percent of those ages 18 to 29
23 reported voting in 2010.

24 In short, if you are not Anglo and
25 you are young, your rate of voting participation

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2 is significantly lower than other social groups.
3 What we see is a Texas population to define
4 between two peaks when represented on a line
5 graph, with one peak being an older Anglo
6 population that's mostly engaged and the other
7 peak being a younger non-Anglo population which
8 is not engaged to any degree comparable to the
9 other.

10 When you consider that 50 percent
11 of the Texas -- of Texans under the age of 18 are
12 Latino, we can see that if trends persist, the
13 future looks dim for healthy civic participation
14 in Texas. The Texas Civic Health Index released
15 out of the University of Texas at Austin last
16 year found that Latinos ranked last behind their
17 fellow Anglo and African-American Texans, an
18 indicator of political participation such as
19 voter registration, voter turnout, engaging with
20 public officials and even discussing politics in
21 person or online. Socioeconomic status had a
22 positive correlation with civic engagement, and
23 Texas Latinos tend to come in last in the
24 socioeconomic rankings and, thus, have the lowest
25 levels of engagement.

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2 Although all this seems grim,
3 organizations like Mi Familia Vota Education Fund
4 and our partners are willing to meet this
5 challenge head on to foster a culture of civic
6 engagement within the youngest and fastest
7 growing Texas population. Yes, we do focus on
8 engaging the Latino community, but in doing so,
9 we work to ensure the future population of Texas
10 as a whole will be more engaged. In terms of
11 healthy participation in our democracy, it is
12 what is good for Latinos is good for Texas as a
13 whole.

14 Today we hear a very vocal
15 minority that uses Latinos as a scapegoat for
16 their political goals. But we work to empower
17 the day-to-day majority of Texans to claim their
18 seat at the table and have a voice in the issues
19 that affect them right outside of their front
20 doors.

21 MR. JEFFERSON: Bring it to a
22 close.

23 MR. SALINAS: We must get away
24 from short-term partisan schemes that focus on
25 breaking down and dividing populations by

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2 ethnicity. Rather, we should focus on long-term
3 goals of ensuring that all Texan citizens, no
4 matter their background, get to participate in
5 voting without unnecessary hurdles or hindrances
6 as is -- as is their right as Americans. Only
7 then can the Lone Star State truly shine
8 brightly. Thank you.

9 MR. PIERRE: Thank you very much.

10 Do any of the commissioners have
11 any questions for Mr. Salinas? Okay.

12 Next, past NAACP -- past NAACP
13 president, local president, chapter president,
14 Ms. Carolyn Scantlebury.

15 While Ms. Scantlebury is coming
16 up, I want to recognize our Region 6 director of
17 the National Association for the Advancement of
18 Colored People, Ms. Carmen Watkins. Thank you
19 for being in the house. And we also had
20 Mr. Danny Norris of -- who was not listed on the
21 list, but one of our coalition partners. He is
22 the president-elect of the Houston Lawyers
23 Association affiliated with the National Bar.
24 And I see here -- would be remiss without
25 recognizing the executive director of the Houston

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2 branch of the NAACP, Ms. Yolanda Smith. So thank
3 you for coming. Ms. Scantlebury.

4 MS. SCANTLEBURY: Good afternoon.
5 You took my introductions away. I was so excited
6 to see -- he said that's his job. I was excited
7 to see all of the NAACPers in the room. Would
8 you wave your hands so everyone can see? We even
9 have Yannis Banks from Austin, Texas here. But I
10 am so excited to be here today. Thank you so
11 much to this national group of the national
12 voter -- voting rights commission here in
13 Houston.

14 And we have so much to say. We've
15 done so much work. You know, the NAACP is
16 nonpartisan, No. 1. I want to say that. We have
17 worked and coalesced with every group in the city
18 of Houston to ensure that voters get everything
19 that they need. Personally I am a native
20 Houstonian. My mother walked me to the polls
21 when I was 18, and I did the same thing for my
22 son. When I went to college, I was an activist
23 on every level, and I worked in political
24 campaigns all the way throughout. So I'm excited
25 for the young people that are here today, too,

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2 that's working in this process.

3 Now, relative to voter
4 administration, when I was president of the NAACP
5 in 2010, we received national funding to ensure
6 that we had voter protection and vote -- voter
7 information distributed all over the city and to
8 ensure that people had all of the information
9 that they need -- needed. What we did was to
10 organize approximately 100 volunteers. We had
11 T-shirts, we trained them on every protocol of
12 voting -- of the voting process. They knew that
13 we worked with the National Bar Association. And
14 if there were any problems, for them to call and
15 we would have a lawyer or someone to come and
16 assist them. Our voter -- our volunteers went by
17 twos or threes. We made sure that they
18 understood the 100-foot rule relative to the
19 election process so that they would not do
20 anything that was incorrect. I'm trying to do it
21 chronologically.

22 We received so many calls. During
23 the day Yolanda Smith, executive director,
24 received calls and then we would route them and
25 send people to the voting locations where there

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2 were problems. On -- in Acres Home, there were
3 two people who were with the King Street
4 Patriots, True the Vote, as they said the new
5 name was, and they were intimidating our
6 volunteers who were ensuring that the elderly and
7 the people who were ill were able to vote, to
8 make sure that they were -- the machines were
9 taken out to the cars or to the curb so that a
10 person would not have to stay in the heat. We
11 would give them water to ensure that they had
12 everything that they needed. In that process,
13 the -- some of the True The Vote people would
14 come out and intimidate them and say that the
15 people were not allowed to vote, but we knew that
16 we were in every right to do what we were doing.

17 We even had to call the sheriff's
18 department at one point. I'm not going to call
19 any of the names. But also during the process,
20 Ann Bennett, who was running for an office,
21 called us about some of the elderly people in
22 Sunnyside who were being intimidated. There were
23 so many calls that I had to literally leave the
24 office and go over to St. Mary's. There was a
25 lady there which would not allow the people to

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2 vote. She was intimidating them relative to IDs
3 and the -- the voting judge called me and asked
4 me to come and assist. So when I got there, she
5 was irate and they had to call the sheriff's
6 department to have her removed and she was
7 removed.

8 So I just want you to know that
9 we, as the NAACP, a 102-year-old organization,
10 has worked tirelessly to ensure that everyone has
11 the right to vote, to make sure that voter
12 intimidation, voter nullification, none of the
13 things that we know are the obstacles that have
14 been presented for us will be there. We are
15 hoping that this particular situation be stopped
16 and whatever we can do to assist in this process.
17 Thank you so much.

18 MR. PIERRE: Thank you. Thank
19 you. Thank you very much. Are there any
20 questions for Ms. Scantlebury?

21 PROF. JACKSON: Yes. When you say
22 voter intimidation, there is, of course,
23 suppression by officials and then there is True
24 the Vote and King Street Patriots. What did
25 voter intimidation consist of?

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2 MS. SCANTLEBURY: Oh, there is --

3 PROF. JACKSON: Especially the
4 time the sheriff was called.5 MS. SCANTLEBURY: Okay. When the
6 sheriff was called, when I was over at St. Mary's
7 Catholic Church, there was a person there who
8 said she was a poll watcher. And to be -- the
9 definition of a poll watcher is someone who is
10 assigned through a candidate's office to do poll
11 watching. So she was there to do that, and she
12 would intimidate -- there are a lot of seniors
13 that live over in that area.14 And when they would come she'd
15 say -- you know, first let me explain at
16 St. Mary's is one of those old precincts where
17 the people had been there for years, you know
18 your neighbors, you know, you come in. If you
19 have your driver's license, that's fine. You
20 know, you may not have your voter registration
21 card. So that was a situation with this
22 particular judge, and he knew had a lady who had
23 just her driver's license, and this person was
24 saying, no, she couldn't vote. And it just was a
25 big uproar, because the community people knew who

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2 she was. She was a senior citizen who had been
3 there for a while, and so we had to call and get
4 her removed and we did that. We -- we had the
5 poll watcher removed.

6 PROF. JACKSON: Any other examples
7 of intimidation? Are we talking any kind of
8 violence or any kind of "in your face" stuff or I
9 mean, what -- what's --

10 MS. SCANTLEBURY: Oh, yeah, yeah,
11 yeah. Good, I'm glad you asked. Okay. Okay.
12 Let me read this. The NAACP volunteers, two or
13 three persons arrived at a polling location with
14 T-shirts that had NAACP printed on them. We made
15 sure everyone had T-shirts, we were so excited.
16 And we're nonpartisan and no candidates' name was
17 on it and State Representative Sylvester Turner
18 was over in Acres Home, okay. And they
19 removed -- they removed him from the polling
20 station and I want -- don't want to call the
21 names. They had asked -- well, they asked him
22 to, you know, get away. And so he told them that
23 I am 100 feet away, you know, I'm not doing any
24 electioneering right there. And they said that
25 he was telling people who to vote for, for which

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2 he was not. There were witnesses there who
3 refuted the allegation, but -- however, one of
4 the poll watchers was actively telling
5 individuals to vote for the presidential
6 candidate of their choice along with voting a
7 straight ticket. And this was clearly improper
8 and misleading and witnesses indicate that the
9 poll watchers were traversing the polling
10 location in an intimidating manner and staring
11 down voters. And I've witnessed this myself,
12 where they would just walk around and stand over
13 you or stand around you and make you feel very
14 uncomfortable.

15 Some were telling people to vote a
16 straight ticket -- okay, let me get this
17 straight. They told the voters to vote a
18 straight ticket and then vote for president. If
19 you vote a straight ticket and then try to vote
20 for president, you deselect your vote for
21 president. So there were a lot of lies and
22 things that were going on, and they were telling
23 voters actions that would impact their vote and,
24 you know, so that it wouldn't be counted.

25 We had sheriff -- we called

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2 sheriff Sergeant Castleberry, a career law
3 enforcement official to report this incident to,
4 and he came out. So we've had some very serious
5 incidents to occur, and we've had to do a lot.

6 MR. PIERRE: Ms. Scantlebury, I'm
7 curious, now that you announced your name,
8 Mr. Norris, Danny Norris, president Houston
9 Lawyers Association, what -- what -- who was
10 leading the effort with the National Bar
11 Association? The National Bar Association, I
12 believe, Lawyers' Committee? You mentioned that
13 you got some money to -- to do election
14 protection.

15 MS. SCANTLEBURY: Yes, yes. We
16 received funds through the national funding
17 through the national office.

18 MR. PIERRE: And so after that
19 day, was there any more funds that Texas received
20 through the NAACP? Did they continue to get
21 funds years after for election protection?

22 MS. SCANTLEBURY: Well, every year
23 we would do election protection, whether we
24 received national funds or not.

25 MR. PIERRE: Right.

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2 MS. SCANTLEBURY: We did -- we had
3 volunteers that would come in, and Yolanda Smith
4 could speak to that. Did we receive any funds
5 nationally, but just we, locally, would do it.
6 Right?

7 MR. PIERRE: I'm trying to find
8 out -- let me try my point. I'm trying -- you
9 made a point you received funds, but that was my
10 sly way of trying to figure out -- or knowing
11 that funds have been increased because of what
12 Texas has been -- you know, with regard to the
13 ability to -- to -- to change certain things
14 compared to other states that were more important
15 or low hanging fruit. And what I was trying to
16 find out is the decrease of funding for Texas,
17 has it affected the ability of groups to conduct
18 a proper election protection? That was my point,
19 but you were taking too long, I had to get to it
20 quick.

21 MS. SCANTLEBURY: Absolutely. It
22 has affected because during that particular year,
23 we received a large amount of money. And after
24 then we have not received that type of funding
25 which is almost necessary to cover an area as

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2 large as Houston is. Yes, it has decreased
3 considerably given all of the problems that we
4 have encountered.

5 MR. PIERRE: And -- and with Texas
6 being on the national spotlight for so many
7 things related to election -- election issues and
8 voting issues, why do you think that funding to
9 Texas has decreased over the years, President
10 Scantlebury?

11 MS. SCANTLEBURY: Wow, that's a
12 deep question. We all know that there are a lot
13 of reasons. Given the voter ID situation that
14 has come forth, I think is a huge problem. Our
15 unwillingness to cooperate with federal
16 officials, i.e., Congresswoman Sheila Jackson Lee
17 stated, I think, very well this morning, just not
18 compliance -- not complying with edicts that are
19 sent down through the federal government, I would
20 say, and the -- the funders look at that. We
21 have funders who give funds to the national that
22 comes down to the branches from all over and
23 because of Texas's reputation, that money has
24 almost dried up so far.

25 MR. PIERRE: Thank you -- thank

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2 you, Ms. Scantlebury. Are there any questions
3 from the commissioners? Thank you,
4 Ms. Scantlebury.

5 MS. SCANTLEBURY: Thank you.

6 MR. PIERRE: Is Ann Bennett here?
7 Is Ann Bennett here? Okay. Are there any other
8 public testimony -- any other public testimony?
9 Okay. We're going to take from our next panel --
10 I want to recognize -- I did some recognition
11 before but Yannis Banks, who I remember when he
12 was youth and college coordinator, he is here
13 from Austin, Texas NAACP and he brought another
14 youth -- youth and college -- youth and college
15 director. I don't see him here. NAACP. There
16 you go. There -- yeah, he's here in the back.
17 Youth and college director for NAACP is also
18 here. And we're glad to make sure you get with
19 this young lady from the University of Houston so
20 that she can understand what's going on in NAACP
21 and y'all can kind of collate messages and
22 motions.

23 Is there any other public
24 testimony? Any other public testimony? Okay.
25 I'm going to go ahead to the next panel. We're

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2 doing well with regard to time. But please know
3 if anybody in the public wants to speak, and
4 because we're doing so efficiently with time, if
5 anybody that might have spoke earlier that might
6 want to speak -- I see some individuals in the
7 audience, so I'm going to ask for Ms. Rogene
8 Calvert, Rogene Calvert who just came in, and I
9 recognize her to immediately, come to the podium
10 and give testimony right here up front and
11 center. So glad you can be here. And after
12 Rogene, we are going to have George Korbell. Are
13 you still in the house, George? Great.
14 Ms. Chandler, are you going to speak? Okay.
15 Okay. So George will speak, and so we have
16 Rogene and you have five minutes.

17 MS. CALVERT: Okay, thank you.

18 Good afternoon, I'm sorry for my tardiness. So I
19 hope I can make up for that. Good afternoon,
20 Commissioners. I am Rogene Gee Calvert, director
21 of the Texas Asian American Redistricting
22 Initiative. It's a project of Asian-Americans
23 advancing justice which is based in D.C., a
24 nonprofit legal and advocacy organization. I
25 have been working since the last several years --

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2 MR. PIERRE: Slow down a little
3 bit.

4 MS. CALVERT: I only have five
5 minutes.

6 MR. PIERRE: I know, and we'll get
7 into a discussion about that. But we have a
8 court reporter and I don't want her hands to get
9 cramped up. I know she's a professional, but you
10 can get moving, so I just --

11 MS. CALVERT: And I can give you a
12 written.

13 MR. PIERRE: Right. I apologize.
14 You'll get those 30 seconds back.

15 MS. CALVERT: Thank you, sir.
16 I've been working in the past few years on behalf
17 of the Asian-American community on issues of
18 redistricting, Section 203 and of the Voting
19 Rights Act. Due to the large and growing
20 Asian-American population in Texas and the
21 greater Houston area, this is an important group
22 to which AAJC has dedicated resources.

23 Between 2000 and 2010 census, the
24 Asian-American population has grown over
25 70 percent, making it the fastest growing

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2 demographic group in the state. Texas has the
3 third largest Asian-American population of all
4 states in the country. In the suburban counties
5 of Collin and Fort Bend, the population has more
6 than doubled; while in the large urban-based
7 counties of Harris and Dallas, the population has
8 reached a critical mass, where the electoral
9 strength of the Asian communities has been felt.
10 Nearly three-fourths of Texas Asians reside in
11 the six counties of Harris, Fort Bend, Dallas,
12 Collin, Tarrant, and Travis. The remaining top
13 counties are Denton, Bexar, Williamson, and
14 Brazoria.

15 Asian-Americans in the greater
16 Houston area are not a protected group under the
17 Voting Rights Act because we do not constitute a
18 majority in any political district. However, we
19 do comprise several minority coalition districts
20 in which no one ethnic group is the majority.
21 Demographic changes in population and housing
22 patterns are creating fewer minority majority
23 districts. I would like to recommend that the
24 committee look at the protection of minority
25 coalition districts under the Voting Rights Act.

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2 In October of 2011, due to Harris
3 County reaching a threshold of limited English
4 proficient, or LEP, persons, the county was
5 mandated to put all voting materials in the
6 Chinese language and provide bilingual poll
7 workers. We were prepared in Harris County,
8 largely because the community had worked with the
9 secretary of -- the clerk's office, rather,
10 county clerk's office two years earlier to begin
11 translating key documents into Chinese. However,
12 things are still not completely worked out. Poll
13 workers must be willing and able to work with the
14 additional language needs. It may take
15 additional time and effort to acquaint and
16 integrate new voters into the process. Cultural
17 competency training should be made available for
18 all poll workers, including how to provide
19 language assistance, what's appropriate in
20 helping LEP voters cast ballots, and properly
21 displaying translated materials.

22 With two Asian languages mandated
23 in Harris County now, labeling of Vietnamese and
24 Chinese language materials and identifying --
25 identification of bilingual poll workers will be

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2 necessary. It's not always apparent to those who
3 are unfamiliar with these languages which is
4 which. The primary system of voting is even more
5 confusing to new voters who may not understand
6 the party system. They might be looking for a
7 specific candidate to whom they want to vote
8 and -- and do not realize that -- the need to
9 vote in a particular party primary that he or she
10 represents.

11 Although data are not officially
12 available, I believe we will find an increase in
13 the number of Chinese participating in the
14 election process. Data are probably available
15 showing this to be true for the Vietnamese
16 community, after the Vietnamese language was
17 mandated by Section 203 in 2002. I conducted a
18 monitoring program for the November 2012
19 elections to identify any issues that may have
20 arisen from the Section 203 implementation for
21 the Chinese language. Section 208 of the Voting
22 Rights Act allows voters who need assistance
23 because of blindness, disability, or inability to
24 read or write, and so it's been applied to
25 language minorities. Oftentimes people who need

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2 help from a family member or friend don't know
3 they can bring them into the polls, and sometimes
4 poll workers do not tell them that that's allowed
5 or even prohibit them from taking someone in
6 because they don't know that.

7 The -- voter ID has been a problem
8 for Asian voters because many of them are seniors
9 and they may not have the proper documents to get
10 a photo ID. And we all know what it's like to
11 get, you know, your ID at the Department of
12 Public Safety here. It takes hours and --
13 sometimes -- and to get there is very hard. Many
14 Asians have names that are not familiar or easy
15 to spell or pronounce, so they customarily put
16 their last name first and this has led to
17 misunderstanding and mistaken identity causing
18 confusion at the polls.

19 There have been few reports of
20 voter fraud to warrant the disenfranchisement of
21 thousands of voters and potential voters whom we
22 should be encouraging to participate.

23 Finally, my personal -- I'd like
24 to take personal privilege by asking why we can't
25 vote by mail, all of us. It has grown all --

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2 each election and has proven to be a -- a good
3 system, a good method and very few, evidently,
4 voter fraud because it hasn't been as contentious
5 to, you know, show your ID. And also why can't
6 we vote anywhere, like we do on early voting
7 period? If we have the technology to support
8 that, I don't understand why we can't do that
9 anyway any time.

10 So thank you, Commissioners for
11 listening to my remarks today. I hope I've
12 enlightened you on voting issues that affect the
13 Asian-American community and their ability to
14 participate fully in the electoral process. I
15 appreciate your time and attention today.

16 MR. PIERRE: Thank you. We have
17 questions. I want to start with a question --
18 anyone else with questions? Rogene, I appreciate
19 you coming in. You know, we've worked together
20 for a while and -- but I -- I want to ask a
21 question. I went to law school with another of
22 our fellow commissioners, Deborah Chen, and we
23 often talk. And I want to ask a similar question
24 that I asked in early testimony with regard to
25 the young vote, young person's vote and college

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2 students as well as those peoples with
3 disabilities.

4 Do you find -- do you find the
5 level of attention that is given to the issue
6 concerning Asian-American or -- or voters from
7 Asian descent and the frustrations they may have
8 voting to be diminished or diluted because of the
9 emphasis on other things? And this was brought
10 out by, you know, very little people paid
11 attention to people with disabilities or the
12 young vote. Is that the level of frustration
13 that is felt by the Asian community?

14 MS. CALVERT: Yes. First of all,
15 many of them don't speak up for themselves, so
16 people like Debbie, myself, you know, who are
17 more familiar, it's helpful for us to, but we
18 can't be everywhere. So just the inability to be
19 at the table and to speak for yourself. Yes,
20 they are. They receive very little attention.

21 MR. PIERRE: And you mentioned in
22 your opening that as an Asian voter, you're not a
23 protected class because of the -- that the
24 population is not to the level that -- that
25 allows you to be in that class. What about the

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2 -- the limited English proficiency aspect in
3 Title VI of the Civil Rights Act, does that --
4 has anyone ever looked at that as being -- we
5 ultimately look at the Voting Rights Act and
6 issues, but what about limited English
7 proficiency being a part of the 1964 Civil Rights
8 Act as something that -- that you could look to
9 to get that protected class?

10 MS. CALVERT: Let's do it. I
11 haven't tried it yet.

12 MR. PIERRE: Are there any other
13 questions for the commissioners? Thank you very,
14 very much.

15 MS. CALVERT: Thank you.

16 MR. PIERRE: Is David Wald here?
17 Are there any other public testimony? Okay. We
18 have George Korbell, and as he speaks up, he's
19 going to be our last panel witness, expert
20 witness. And so I want to ask again if there's
21 any other public testimony, please sign up with
22 Alejandro.

23 I also want to let everyone know
24 that a former national president of the National
25 Bar Association, a position that I'm aspiring to

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2 be this year, running for president-elect,
3 Ms. Algenita Scott Davis Segars, please stand up.
4 She's a past president of the local affiliate,
5 she's also past president of the National Bar
6 Association. It's very significant because
7 during her year, the Houston Lawyers Association
8 along with LULAC and other agencies and coalition
9 partners filed a lawsuit to try to get the
10 judicial -- the judges to be elected via a single
11 member district, similar to what the fight was
12 for city council and they lost in the Fifth
13 Circuit -- in the Supreme Court, excuse me, lost
14 in the Supreme Court. They refused to hear.
15 They actually lost in the Fifth Circuit, the
16 Supreme Court refused to hear it. And so I
17 appreciate you being here. Thank you so much,
18 Algenita.

19 You have five minutes.

20 MR. KORBELL: My name is George
21 Korbell, I'm an attorney, I've been an attorney
22 almost 50 years. I've been involved in voting
23 litigation for virtually all that time. Let me
24 tell you, first of all, you're wrong about the
25 thing about the judges. The Supreme Court said

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2 the judges were covered in the Fifth and remanded
3 it to the District Court, which had found for the
4 plaintiffs, remanded it to the District Court and
5 the Fifth Circuit grabbed that thing on the way
6 by, and they unbunked it and reversed the Supreme
7 Court. That's what happened. It's much worse.

8 I've got a paper that I put together, it's a
9 graph and I will provide you with a final copy of
10 it.

11 There are a couple of points I
12 wanted to make here today. First of all, the
13 paper -- what I tried to do is I tried to look at
14 this vast arc of -- of exclusion running from the
15 constitutional provision setting up the poll tax
16 and the statute saying blacks couldn't vote, the
17 constitutional provision saying blacks couldn't
18 vote. And if you look at the movement from Nixon
19 versus Herndon through Nixon versus Condon and
20 into the -- all the way down to the voter ID law,
21 you'll see that the defense, every defense is
22 exactly the same way. It's to purify the ballot.
23 Every time, that's the reason that they're
24 one-trick ponies. I also wanted to point out a
25 couple of things about the redistricting. Let me

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2 get this out. I brought some of our exhibits.

3 This, you probably know, is the
4 gerrymandering, the Eldridge Gary's district from
5 the cartoon, from the Nast cartoon, that's the --
6 this is a district in Dallas County, House
7 district in Dallas County. Looks like they're
8 exactly the same, exactly the same. And --

9 MR. PIERRE: I want the record to
10 show that he is holding up two pictures
11 representing -- I guess, describe -- describe --
12 we don't have a video, describe what you're
13 holding up.

14 MR. KORBELL: The first one is
15 the -- there's a famous Nast cartoon of a
16 gerrymander, and this is what that cartoon looks
17 like.

18 MR. PIERRE: What is a
19 gerrymander?

20 MR. KORBELL: A gerrymander is
21 districts that are drawn to accomplish a certain
22 end, and this was the one that Eldridge Gary,
23 which was one of the heros of the Revolutionary
24 War, but when he got into politics, he tried to
25 gerrymander his enemies.

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2 MR. PIERRE: Is it purposely
3 shaped like a human or --

4 MR. KORBELL: It's shaped like --
5 the Nast cartoon changes it a little bit.

6 MR. PIERRE: I just wanted to know
7 the purpose of the shape.

8 MR. KORBELL: But this is a famous
9 cartoon. And the other one I was holding up is a
10 Dallas House district that looks very similar, if
11 you look at it, to that gerrymander. And that
12 Dallas House district fits inside another Dallas
13 House district, as you can see. There's --
14 there's this one, which curves all the way around
15 and this one that fits in and the reason that
16 that's done is it makes it impossible to draw a
17 minority district in that area, because you're
18 dividing -- this is minority and this is minority
19 and so you divide that. And that's -- that's --
20 that's how the gerrymander works in Texas and
21 it's the same thing as the -- as the one in the
22 Nast cartoon.

23 The -- I'll show you one more
24 district. I just brought a couple of these over
25 so you can see it. As you can see, this is also

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2 a strange shaped district. And if you can
3 imagine Tarrant County, down here is the
4 Mid-Cities area, which is now heavily Hispanic so
5 that this is all minority, all right. There's a
6 small minority -- there's a fairly large minority
7 population in this little hook here, as it goes
8 by and picks it up. Everything else is heavily,
9 heavily Anglo.

10 So what they did was they tied the
11 minority community here to the minority community
12 here and -- and diluted them by putting them in
13 with all the Anglo voters. And this is -- if you
14 think about it, as I say, this runs from the
15 Mid-Cities area in -- in Tarrant County all the
16 way to the north -- excuse me -- the northwestern
17 corner of the county. It runs all the way across
18 the county.

19 There's one other point I wanted
20 to make as far as voter ID is concerned, and
21 that's that we've looked at how you would get to
22 a place to get your voter ID, how you would get
23 there if you didn't have a driver's license, if
24 you needed to get a ID card. And what we did was
25 we picked out all of the offices of the minority

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2 elected officials statewide, minority state
3 legislature and Senate and Congressional
4 districts, we picked out their offices and we
5 looked at how long it would take by bus to get to
6 the -- to the closest place that you could get
7 one of those voter ID cards. And you -- almost
8 every situation, you're looking at two hours by
9 bus, two hours by bus. And if you look at the
10 rural areas in Texas, there are 100 counties that
11 have no place to get a voter ID. And, again, in
12 each one of those, you're looking at sometimes as
13 much as 100 miles. But in every case more than
14 two hours to -- to get a -- a voter ID.

15 The -- I also -- I also want to
16 point out in that chart, that draft that I gave
17 you, what I did was I looked at all of the voting
18 cases since 2010, all the voting cases since
19 2010, and what I can tell you is that we have
20 findings of racially polarized voting in counties
21 that make up almost three-fourths of the state,
22 just since 2010. And then in addition to that,
23 there is this troika of cases in the district
24 court. In the District of Columbia, the Senate,
25 the House and Congress. And the district court

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2 for the District of Columbia found racially
3 polarized voting in every one of those, every one
4 of those cases and they have very strong
5 findings. And then we have, of course, the House
6 case here.

7 So that's -- that's what I've got
8 to say about -- about voting.

9 MR. PIERRE: I have -- I have a
10 question. Professor, do you have a question? I
11 didn't want to --

12 I have a question. And it's
13 funny, Mr. Korbell, all these years, it wasn't
14 until you held up those -- those, I guess,
15 geographic models did it just strike me. And I
16 know that we've been fighting redistricting and
17 dilution of votes for a very, very long time. Is
18 there something that can be argued just plain and
19 simple about carving people out? I mean, it
20 seems to me people just want to make a voting
21 district, you would just count adjacent, cut,
22 count adjacent, cut. That's the common sense
23 approach -- and I'm a lawyer. I'm trying to
24 rationalize and reconcile the carving out, like
25 it's a fruit cup in a -- in a pattern. That's

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2 just obvious that you're -- you're purposely
3 drawing something, and I know that there are
4 smarter people who have fought this in the
5 Supreme Court, Texas Supreme Court and have lost.
6 But I'm confused on why they can't just count,
7 cut, count, cut, count, cut. Why does it have to
8 be so zigzaggy?

9 MR. KORBELL: Well, I'll tell you
10 why it doesn't work. It doesn't work because the
11 minority communities in urban areas don't grow in
12 a square, and you know, you grow out these areas
13 and you grow out those areas and those -- and
14 those are neighborhoods. And so if you cut into
15 squares, we wouldn't have a single minority
16 congressman elected in Texas, I suspect, except
17 for South Texas, of course, where it's only
18 minorities. But -- and a lot of people criticize
19 the process of redistricting because they say,
20 oh, my God, there's all this stuff going on.

21 You're right, there's lots of
22 stuff going on. Every line is drawn on purpose
23 to accomplish something. It's the worst possible
24 system except there isn't -- there are none that
25 are better. And some of them say we should have

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2 a -- a commission of commissioners who would
3 redistrict the state and you know -- you've
4 probably been on some of those commissions, I
5 have, and you know what happens, the staff does
6 it all. The staff does it all. And if I was the
7 staff, I would trust it. If I'm not the staff,
8 it would be the people who would be exactly the
9 same that did it in Austin. Except that when
10 I -- when I took their depositions, I won't get
11 their depositions, I'm going to get depositions
12 of Supreme Court justices who are on that panel.
13 And they're going to say, well, of course, we
14 told them what to do and they did exactly what we
15 told them to do. And the judges would not have
16 spent a minute on the redistricting and -- but
17 they would create -- there would be a way to
18 avoid getting to the truth of what the
19 redistricting is. At least now there can be
20 gerrymandering, but with depositions you can
21 establish what happened. And that was done.

22 If you want to read something
23 that's really interesting, look at that troika of
24 cases in the District of Columbia. They go into
25 great detail as to how each one of those

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2 districts was created. And they use this concept
3 that they called nudging. And nudging to them
4 was to create a district that looked like a
5 minority district but wouldn't be a minority
6 district. And all over -- all over the state --
7 I can go into the districts all over the state
8 and explain how this nudging worked. But every
9 one of them -- every one of the districts that
10 looked like a minority wouldn't elect. So
11 anyway . . .

12 MR. PIERRE: One last question.

13 And so in 2003 -- and this is -- excuse the
14 recent court decisions to kind of challenge them,
15 in 2003 led by Tom Delay, when we had the big
16 redistricting in Texas, going back to the
17 question I asked you, what you're saying is, if
18 we were to just break apart the district based on
19 the population, numerical population,
20 regardless -- not encounter any -- because you
21 look at the redistricting, they took the Medical
22 Center out of the 18th Congressional District,
23 they took the Port of Houston, they created
24 District 9, but they took out every -- all the
25 money making areas. But if you were to just base

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2 it on population solely, you're saying that it
3 would be worse than what we have now.

4 MR. KORBELL: Yes, it would be
5 like going back to at-large elections. When we
6 litigated against the City of Houston, no
7 Hispanic had ever been elected and only one black
8 had been elected, only one black had been
9 elected. And that was -- that was a deal. So --
10 and it's the same thing in Dallas, the same thing
11 in San Antonio, you'd go back to those
12 situations.

13 If -- it is no accident that we
14 have to get a district up to about 40 percent
15 black voting age population before we can elect a
16 black. And if you went into squares, you'd never
17 have a district like that. Certainly would never
18 have a district in Harris County elect any
19 Hispanics that way. So anyway . . .

20 MR. PIERRE: Are there any other
21 questions?

22 MR. KORBELL: Can I say one
23 more -- just one more thing.

24 MR. PIERRE: Yes, of course.

25 MR. KORBELL: You brought it up.

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2 If you look at that voter ID statute and how --
3 how you would vote, if I had a 50-passenger
4 school bus and I filled it up with 50 vagrants
5 and I had -- and I had -- would take them to a
6 polling place to vote, we checked it, and it
7 takes about an hour for 50 people to get through
8 a polling place. There are seven hours -- seven
9 hours of actual voting, then, you could get in --
10 when you figure out how long it takes to transfer
11 the people by the bus. And if you figure that
12 out, if you could only -- if you could only vote
13 ten times, those 50 people, you'd only get 500
14 votes. No election in Texas has ever been
15 determined by 500 votes, and you would have the
16 driver and 50 co-conspirators. No conspiracy has
17 ever been successful with 50 co-conspirators.
18 And so what they say is, well, what about the
19 small counties. I grew up in a small county, and
20 I can tell you that if somebody showed up with a
21 50-passenger school bus with 50 vagrants that I'd
22 never seen before, that would -- that would come
23 to an end.

24 But also think about it in these
25 terms. In order for these people to vote,

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2 they're going to have to have an identification,
3 okay, they're going to have to have a voter
4 registration and the person whose identification
5 and voter registration you're giving them to vote
6 could not have voted in the early election, and
7 we -- and they would have to hope that they
8 wouldn't vote on election day because the
9 conspiracy would be found out. So it's
10 impossible for this -- this voter ID statute to
11 -- to do -- deal with anything other than one or
12 two votes statewide. It's -- it is the most --
13 the most incredible thing I've ever seen.

14 Thank you very much.

15 MR. PIERRE: Thank you, Attorney
16 Korbell. Thank you.

17 Any other questions?

18 PROF. JACKSON: This is a
19 question. You mentioned the gerrymandering in
20 redistricting. The states can -- can use
21 political parties as a basis for redistricting;
22 is that correct?

23 MR. KORBELL: Sure. They can --
24 it is not illegal to -- to discriminate on the
25 basis of party. But if you look at parties in

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2 Texas, if you discriminate on the basis of party,
3 you're discriminating on the basis of race,
4 there's no way around it. And, in fact, the
5 testimony in Washington about this was that the
6 map drawers were using minority concentration as
7 an ape for the -- for the Democratic party. The
8 way they figured out the Democratic party was by
9 using minority concentration.

10 PROF. JACKSON: How do you
11 overcome that?

12 MR. KORBELL: Well, first of all,
13 under section -- under Section 2 of the Voting
14 Rights Act, theoretically, you shouldn't have
15 to -- you shouldn't have to show intent. You
16 only show effect. But then you're faced with who
17 the judges are. And you were talking about these
18 polling place problems here discouraging people
19 to vote.

20 If you recall back in, I think it
21 was, '82 or -- in any event, the year that Mark
22 White was elected governor, the Republicans had
23 just elected judges in Dallas County. The judges
24 in Dallas County got together -- the Republican
25 judges in Dallas County got together and prepared

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2 a sign, it was this large (indicating), and they
3 took it to every black polling place and the sign
4 said, By the order of the sheriff of Dallas
5 County, you may not vote -- in the small
6 letters -- if you are a felon. And if you are a
7 felon, it is another felony to vote. And they
8 put those up. And you know what, one of those
9 judges -- one of those judges is now a federal
10 judge and two others became appellate judges in
11 Texas. And I think there's another -- was
12 another federal judge, also. And -- but those
13 are the people you're dealing with.

14 MR. PIERRE: Thank you. Thank
15 you.

16 I want to -- in closing, I want
17 to -- I want to thank -- I want to first thank
18 President Rudley and Dean Holley and the Thurgood
19 Marshall School of Law for allowing us to use
20 your courtroom. The student ambassadors, please
21 stand up. Stand up for being here and
22 volunteering. Thank you so much for your time
23 all day long. They were up all night long, One
24 Ls. Dee Allen, Debbie Allen, she's a secretary
25 of the Houston Area Environmental Justice

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2 Coalition. Thank you for coming and bringing
3 your volunteers.

4 We have also the Texas Southern
5 University, I stated that. The National Bar
6 Association, the NAACP Region 6, the NAACP Legal
7 Defense and Education Funds, the Houston branch
8 of the NAACP. Of course, we'll be remiss,
9 Lawyers' Committee for Civil Rights Under the
10 Law, please stand. Maria, Alejandro, thank you
11 so much for your hard work in leading the effort.
12 You need a coordinator, you need a spearheader,
13 someone to come out and take the risk and the
14 epithets and the abuse and, Why are you coming to
15 my place, and coming out very successful. Thank
16 you, guys. This has been very successful. We
17 couldn't have done it without you.

18 JL Turner Legal Association,
19 they're a Dallas affiliate of the National Bar
20 Association. The Houston Area Urban League, the
21 Earl Carl Institute for Legal and Social Policy,
22 Inc., the nonprofit organization started from
23 Texas Thurgood Marshall School of Law located
24 here on the campus of Texas Southern University.
25 The Austin Black Lawyers Association and the 100

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2 Black Men of America, as well as the Houston
3 Lawyers Association. Hopefully I did not forget
4 anyone.

5 I want to thank everyone for being
6 here, all of the witnesses and the testimony,
7 give yourself a hand, thank you so much. And
8 that's it for me. I said all I'm going to say,
9 and I'm going to allow in closing all the
10 commissioners to just give a three-minute
11 closing, ending with the dean, Howard Jefferson,
12 and I'm not going to speak again unless someone
13 needs to hear my mouth. So you want to go first
14 or last?

15 MR. JEFFERSON: Yes, I'll go
16 first. Well, I don't have anything to say except
17 that this has been a very good session, we've
18 learned a whole lot. The thing that I've learned
19 the most is that I didn't know that students
20 could declare their residence at college and
21 vote, because I've been out speaking and I've
22 been telling folks, if you're from Florida,
23 you've got to go back to Florida. I actually
24 have done that there. So I'm glad to know that.

25 I'd like to take a personal point

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2 of privilege to have Ms. Dee Allen, Dee, hold up
3 your hand there. Now, y'all may not have heard,
4 look, it's hard for African-Americans and
5 minorities to get the news out, the news media
6 for African-Americans is shrinking. I mean, and
7 Latinos too, you just can't get no news. Dee
8 Allen got -- do you call it a blog, Dee? She got
9 a blog where she tell everything. And so you all
10 need to look at that there and support her and
11 what she's done. I just wanted to take a
12 personal privilege.

13 MR. PIERRE: And since Dean Howard
14 Jefferson stated that, I want to also add a
15 little tidbit on voting. If you know -- if you
16 happen to be or know someone who's been formerly
17 incarcerated, Texas is one of the few places that
18 you regain your right to vote once you served all
19 your parole or probation. Another way of saying
20 it is when you're off paper. And so if you
21 have -- every one of us has some relative or
22 somebody that has worked for the State of Texas,
23 okay? And she's laughing, a One L. Wait until
24 you become a criminal lawyer. Okay? And so if
25 you know anyone, next-door neighbor --

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2 MR. JEFFERSON: When can you vote
3 now?

4 MR. PIERRE: When you are off
5 paper, when you serve your -- your -- you serve
6 your time and you're off probation and parole and
7 some places, in Denton, Texas, the women's prison
8 there and other places, when you get out, you're
9 automatically off paper. People assume that if
10 you've been in jail, you're going to be on parole or
11 probation. That's not always the case. So the
12 point is that when you're off parole or
13 probation, immediately you can register to vote
14 in Texas. That's something they don't -- don't
15 let anyone know and something we've been trying
16 to educate people for a number of years.

17 Who's next?

18 MR. TYSON: You said that once you
19 get out of prison that you -- and you served your
20 parole that you can register to vote. Is that
21 what you said?

22 MR. PIERRE: When your parole and
23 probation -- and on probation, some people have
24 both, you can -- they're registered to vote --
25 you are allowed to register to vote if you have

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2 been incarcerated and you're off paper in Texas,
3 in Texas.

4 MR. TYSON: We -- we've had a
5 constitutional change on the felony statute of
6 Texas, is that what I'm hearing you say? I don't
7 know. I was always under the impression that if
8 you had a felony, under Texas law, you couldn't
9 vote.

10 MR. PIERRE: Okay. We're going to
11 go ahead and close. Go ahead, Deborah.

12 PROF. JACKSON: Well, just a point
13 of order, this was very -- this is a great -- a
14 great commission and a great morning and
15 afternoon. I just want -- the big thing is we're
16 trying to build a record here for potential
17 litigation or potential legislation. And it's
18 crucial that if you have spoken and you have some
19 prepared materials, prepared statements and you
20 did not submit them for the record, you should do
21 so. And if you need information how to do so,
22 I'm sure that the chairman of our guest
23 commission here, Goodwille Pierre, will be able
24 to tell you how to go about doing that. But it's
25 crucial that we build a record of the information

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2 that has been presented, as well as any
3 documentation you did not get to present because
4 of the time limitations.

5 MR. JEFFERSON: Well, you are --
6 you are so right about that. So let's make it
7 positive now. Is there anyone who has a document
8 that you would like to give the committee? Okay.
9 Would you see Mr. Pierre after this is over and
10 give him that paper information? Thank you.

11 Next. Ms. Scantlebury?

12 MS. SCANTLEBURY: I just had a
13 question to see if we would be able to get a
14 transcript of today.

15 MR. PIERRE: Well, the
16 transcript -- the actual written testimony will
17 most likely be on the Lawyers' Committee Web site
18 . Now, if you google Lawyers' Committee, it's
19 actual lawyer -- Lawyers' Committee for Civil
20 Rights Under Law. I don't think the article is
21 there, I'd like to add it there, but it's Under
22 Law, and at some point the public testimony,
23 written public testimony will be online that you
24 could actually -- once it's compiled, they still
25 have other states to go to, and so we plan for

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2 this to be compiled in the summer, probably
3 around July, June or July.

4 Now, the -- the -- there's no --
5 there's not been any audio or anything of that
6 nature, so that's when we hope to have it on
7 there. But if you go to the site and you'll see
8 where else they're having these hearings, certain
9 information on this, and you're going to find a
10 lot of information on the National Commission On
11 Voters Rights, that is Lawyers' Committee, google
12 that. I don't have the Web Site. Is it
13 lawyerscommittee.org? I just found the Web site.
14 Lawyerscommittee.org with a S,
15 lawyerscommittee.org.

16 Okay. I'm sorry. Attorney
17 Deborah Chen.

18 MS. CHEN: Thank you. I want to
19 thank everyone for taking the time to be here
20 today and staying with us through the entire day
21 to hear all of this testimony. I would encourage
22 that everyone here to be involved in the upcoming
23 elections in the fall and especially to take note
24 of any type of activities that you may hear or
25 personally witness to document that at the time,

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2 as I'm sure there will be other opportunities in
3 the future where that information would be very
4 important to be gathered as future evidence.

5 Lastly, I just want to end the
6 note on encouraging people that you may know or
7 even yourself to be involved in the election
8 process this fall and in the future whether by
9 volunteering as a exit poll person, volunteering
10 as a poll clerk site -- at a site here in a
11 precinct or during early voting or considering
12 being a part of the ballot board here in Houston.
13 I think those are all very important things that
14 we need to make sure that the younger generation
15 is also involved in this process going forward in
16 the future, so that all the work that has come
17 before us is continued in the future. Thank you.

18 MR. PIERRE: Thank you, Attorney
19 Chen.

20 Alejandro, would you like to make
21 any last statements?

22 MR. REYES: Just thank you to the
23 Thurgood Marshall School of Law again and to our
24 guest commissioners. Thank you for making this
25 possible.

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2 Personally, I first met Mr. Pierre
3 back in 2010 when we ran election protection for
4 Harris County, so it's a privilege to work with
5 you again and I hope to do so again in the
6 future. Thank you, again, to everyone.

7 MR. PIERRE: Okay. What we did
8 not tell you, we did not say the hashtag for you
9 Twitterers out there, you know, #NCVR,
10 #votingrights is another, #Texasvotingrights. So
11 if you are putting out information of what you
12 experienced today and you wanted to be tracked,
13 definitely put these hashtags that you see up
14 there. It's the #NCVR, #votingrights,
15 #Texasvotingrights. If you hashtag voting rights
16 or NCVR, you'll get the history of all the
17 different communications or about the different
18 voting rights hearings around the country.

19 And so I want to thank you again,
20 thank you everyone for coming. That concludes
21 our hearing. Thank you, Mr. Washington, for your
22 photography skills. Thank you so much to our
23 court reporter. I look forward to speaking to
24 you again. If you have any questions to the
25 commissioners or anyone who spoke, definitely

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come up. Once again, have a great day.

(Hearing concluded)

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CERTIFICATE OF COURT REPORTER

STATE OF TEXAS)

COUNTY OF HARRIS)

I, RENE WHITE MOAREFI, a Certified
Shorthand Reporter in and for the state of Texas,
do hereby certify that I was authorized to and
did stenographically report the foregoing
proceedings and that the transcript constitutes a
true record of my stenographic notes.

Witness my hand dated this 16th day of
April, 2014.

RENE WHITE MOAREFI, CSR, CRR

NATIONAL COMMISSION ON VOTING RIGHTS
RICHMOND, VIRGINIA

TUESDAY, APRIL 29, 2014
3:00 - 7:00 P.M.

VIRGINIA COMMONWEALTH UNIVERSITY
STUDENT COMMONS BUILDING
VIRGINIA ROOM A
907 Floyd Ave
RICHMOND, VIRGINIA

Reported by: Lori Krenik
Job No. 73301

1 COMMISSIONERS:

2 Jean Jensen, former Deputy, Sect'y, State Board of Elections

3 Claire Guthrie Gastanaga, Exec. Director, ACLU of Virginia

4 Thursa Crittenden, Urban League of Hampton Roads

5 Carmen Taylor, President, Virginia NAACP

6

7 PANEL #1:

8 Don Palmer, Secretary, State Board of Elections

9 Mercedes Harris, Hollaback and Restore Project

10 Rebecca Green, William & Mary Law School

11 Robert Barnette, Hanover President NAACP/Hanover Elec. Board

12 Michelle Kantor Cohen, Project Vote

13 Hope Amezquita, ACLU of Virginia

14

15 PANEL #2:

16 Tram Ngyuen, Virginia New Majority

17 Anna Scholl, Progress VA

18 Courtney Mills, Fair Elections Legal Network

19 Mike Burns, Fair Elections Legal Network

20 Greg Lucyk, One Virginia 2021

21 Dong Yoon Kim, Nat'l Korean-American Service & Education Cons.

22 Cathy Woodson, Virginia Organizing

23

24

25

1 REBECCA ARNOLD: Good afternoon, everyone.
2 Thank you so much for joining us here in Richmond,
3 Virginia, as part of the National Commission on Voting
4 Rights. I'm Rebecca Kelly Arnold, associate counsel
5 with the Lawyers' Committee for Civil Rights Under Law
6 in DC, and I am joined by my colleague, national
7 coordinator, Rose Clouston, back there.

8 On behalf of the Lawyers' Committee, we
9 thank you all for your participation and your support
10 of this hearing. Today's hearing in Virginia is one
11 in a series of nationwide fact-finding hearings
12 convened by our National Commission On Voting Rights.
13 As many of you know, this summer the US Supreme Court
14 nullified a vital provision of the Voting Rights Act
15 that required federal review of voting changes in
16 states of history of voting discrimination. This
17 ruling compelled the Lawyers' Committee to reconvene
18 the National Commission to host hearings through
19 discrimination in voting as well as the impact of
20 recent changes in election administration law. It is
21 your input on these issues that is vital for ongoing
22 advocacy and reformed efforts at a local, state and
23 national levels. Thank you so much for attending.

24 Following these hearings, two reports will
25 be issued, one on voting discrimination and the other

1 on election administration issues. It's our hope that
2 these reports will serve as a tool for your continued
3 advocacy and to inform the public to date on the state
4 of voting discrimination and the impact of recent
5 election administration laws and efforts to reform
6 across the country.

7 So now I'd like to introduce our guest
8 commissioner panel for today's hearing. Presiding
9 over our events today are four Virginia commissioners,
10 each with a deep commitment to protecting access to
11 the ballot on equal terms for all. Jean Jensen,
12 former Deputy and Secretary of the State Board of
13 Elections from 2001 to 2007. Claire Guthrie
14 Gastanaga, Executive Director of the American Civil
15 Liberties Union of Virginia. Thursa Crittenden,
16 representing the Urban League of Hampton Roads. And
17 Carmen Taylor, President of the Virginia State
18 Conference of NAACP. Our commissioners will preside
19 over today's events and receive two panels of
20 witnesses and ask follow-up questions to ensure for a
21 robust record about the state of voting in Virginia
22 today.

23 Just a little bit of process before we get
24 going. If you've confirmed on a panel in advance and
25 you haven't already checked in, please do so in the

1 back with Rose. For those of you who would like to
2 share your voting experiences and haven't been
3 assigned to a panel, we'd like to hear from you, too,
4 so you can also go to the back there and Rose will
5 give you a card to participate in the public testimony
6 portion and guest commissioner will call your name
7 during that open mic session and you can move forward
8 and speak at this podium. The preset witnesses will
9 also testify from this podium once the guest
10 commissioners call you up.

11 Our hearing is being transcribed so please
12 speak clearly and state your name before you begin
13 your testimony. Also be mindful of the time clock.
14 I'm going to be holding it sitting right here so
15 you'll see me. If you're on Twitter, we set up a hash
16 tag for our hearing, #NCVR and #VotingRights and
17 @LawyersComm.

18 So in addition to our host, Virginia
19 Commonwealth University, I want to thank our fantastic
20 panel of witnesses who are presenting testimony and a
21 big thank-you to Tram from Virginia New Majority in
22 the back for all of her support in preparing this
23 event. And also a really good thank you to our guest
24 commissioner panel here. So now I will turn it over
25 to them for opening remarks.

1 JEAN JENSEN: It's an honor to be included
2 in this timely and important hearing. During my
3 five-year tenure as Secretary of the Virginia State
4 Board of Elections -- I spent one year as Deputy and
5 then four as Secretary -- I observed the challenges
6 faced by potential voters and registered voters and
7 the need for election officials and legislators to
8 provide fair and an easily accessible election system
9 of registering and voting. In my opinion, reform must
10 address a number of issues, including we must have
11 appropriate and enforceable laws to protect voter
12 rights and to penalize persons or groups who attempt
13 to subvert those rights.

14 I do have some anecdotes about personal
15 experiences I had when I was both Deputy and Secretary
16 of the State Board of Elections. I'm going to start
17 out with a humorous one -- some may not perceive it as
18 humorous -- just to make sure I've gotten your
19 attention. One call on the day of election from an
20 observer outside a polling place indicated that a
21 candidate for office was passing out miniature bottles
22 of liquor to voters waiting in line, and the person
23 who called me wasn't quite sure how to handle it. And
24 I said, You need to call the sheriff. Now, of course,
25 he could have gone inside and gotten the chief judge

1 to come out and help. But I was very concerned about
2 if there was a long line and people were waiting
3 didn't want to pull a judge, so the local sheriff
4 showed up and quickly confiscated the liquor and
5 escorted the gentleman to another place. There have
6 been some instances -- and I want to tell you that
7 I've found during my five years that the instances of
8 abuse of the system were far and few between.
9 Dedicated officers of election all over the state
10 would make certain that on the day of the election
11 things are conducted in a fair manner. These are just
12 a few incidents that I do think it's important to
13 realize that we do have to be ever watchful. Local
14 elected officials had been in office for a very long
15 time and three of them got together and decided that
16 they were going to be challenged for the first time in
17 many years so they decided that they needed to brew up
18 some excitement about their involvement in the race.
19 And they went into areas where the majority of people
20 they knocked on their doors to talk with were not
21 currently registered to vote. They not only provided
22 them with a voter registration application but with an
23 absentee ballot form and told them when their absentee
24 ballot came to please give them a call and they would
25 come and assist them. Now, they assisted them by

1 helping them vote those ballots and providing them
2 with a reward, which usually consisted of a carton of
3 cigarettes or food or a bottle of alcohol. One woman
4 was very concerned that she did not receive as fair an
5 award for her efforts as she should have so she
6 reported them, and fortunately they all three not only
7 were convicted of a Class 5 felony, they were never
8 reelected to office again. We have dealt with issues
9 in the past and I'm just suggesting that we have to be
10 ever watchful because I'm convinced that fraud is not
11 rampant in the state of Virginia, but we need to be on
12 our toes to make sure that voters aren't
13 disenfranchised because somebody is up to monkey
14 business. Calls during an election, on Election Day
15 or the day before saying that the polling places
16 changed and, therefore, the voters are disenfranchised
17 because they go to the wrong polling place and can't
18 vote.

19 State and local governments must
20 financially support local election officials and
21 prioritize their function and their importance. In my
22 personal experience, local general registrars who in a
23 majority of situations carry the load are overworked
24 and understaffed. They and the electoral board
25 members are facing challenges recruiting and training

1 officers of election, locating accessible polling
2 places, processing registration applications in a
3 timely manner, all of which impact packet voters.
4 It's a misnomer to list a variety of locations as
5 places where citizens can register to vote, DMV, state
6 agencies, et cetera, when, in fact, you may only apply
7 to register to vote at those places. Only a general
8 registrar can process your voter registration
9 applications. As an example of how well a local
10 government prioritizes the voter registrar and
11 electoral board office, I challenge each of you to go
12 home today and go to the state board of -- go to as
13 many different localities in your area that you have
14 the patience to do and time how quickly you can find
15 either the office of the registrar or the office of
16 the electoral board. I discovered in one locality you
17 need to know -- in order to find them you need to know
18 that they are listed under appointed officials
19 alphabetically in that locality. That makes it very
20 difficult and challenging to find the voter
21 registrar's office. It should not be easier to find
22 information about Sheryl Crow's concert in town as it
23 is to answer the question how do I register to vote,
24 what is the date of the next election, where is my
25 polling place. Bottom line: The voters need and

1 deserve quick access to information.

2 We also need to continue to ensure polling
3 places are accessible to all voters. When HAVA was
4 implemented in 2002, states were provided with funds
5 to help improve elections, and one of the priorities
6 we made was to make sure that all polling places were
7 accessible to all Virginia voters. Prior to HAVA, the
8 State Board of Elections had surveyed all the
9 localities to determine how many polling places were
10 totally accessible and about 95 percent were
11 self-reporting. We discovered that it wasn't a
12 deliberate misrepresentation. It was just not knowing
13 the right information to make a polling place -- what
14 needed to be accessible, what accessibility actually
15 meant. So we worked with the disability community and
16 hired them to go out and personally inspect all of
17 Virginia's 134 polling places and then we used some of
18 the HAVA funds to remediate them so that they were
19 more accessible.

20 I look forward to the testimony of today's
21 witnesses and know that all of us will learn a lot.
22 Thank you.

23 CLAIRE GASTANAGA: Good afternoon. Thank
24 you so much for being here, and I appreciate very much
25 the opportunity to serve as a guest commissioner. I

1 think one of the things that I always try to remember
2 is that while no one wants to be completely cast in
3 concrete when it comes to thinking about change, the
4 present and the future in relation to the past, it's
5 also true that the old saga that those who forget
6 history are doomed to repeat it is something that
7 Virginians particularly need to be conscious of. All
8 we have to do is go back and rehearse the history of
9 the 1902 constitution where in order to reduce the
10 growing number of African-American voters we were well
11 over 100,000, probably 130,000 by then, in order to
12 reduce that number, those who rewrote our constitution
13 did so that would include the poll tax, the literacy
14 test and disenfranchise people convicted of felonies
15 at a time when, unfortunately, the same thing is true
16 today, there was a concerted effort or at least if it
17 wasn't intentional an inadvertence that was effective
18 that only certain people were more likely to be
19 convicted of felonies back then. Our institutional
20 racism also had effects beyond the African-American
21 community. Many people don't remember that the
22 women's right to vote was not affirmed by our Virginia
23 legislature until the '50s, and the 1940s commission
24 that looked at trying to repeal the poll tax and the
25 literacy test identified the resistance to women

1 getting the right to vote in the '20s as being in part
2 a reflection of the fact that folks understood that
3 significant numbers of African-American women would
4 register to vote if women were given the right to
5 vote. So our legislature didn't affirm something that
6 went into effect without their consent or affirmation
7 until the '50s, women's right to vote and then, of
8 course, the poll tax and the literacy test got set
9 aside only because Congress passed the Voting Rights
10 Act of '65 and then those two things were written out
11 of our constitution in the '70s but the Jim Crow era
12 disenfranchisement provisions remained intact and
13 remained a blemish on Virginia's presence that
14 harkened back to its past. One of the things that I'm
15 very much concerned about is that the Voting Rights
16 Act has become something that's used by some to
17 obscure a purposeful effort to diminish minority
18 influence. And we saw it to some extent in the 2000
19 redistricting and we certainly saw it in the 2010
20 redistricting where, for example, the 4th
21 Congressional District, which had the potential to
22 become a very strong minority influence district, was
23 recrafted to pack a significant number of
24 African-Americans in that district into the 3rd
25 Congressional District, thereby, diminishing the

1 influence rather than enhancing the influence of
2 minority voters in Virginia. And the excuse for that
3 was that those hyper-super majority African-American
4 districts were required by the Voting Rights Act, even
5 though to his credit Bobby Scott has said resolutely
6 for many, many years he doesn't need a 70, 80 percent
7 district to get elected; he only needs a 51 percent to
8 get elected. So that's something that we need to be
9 conscious of in Virginia. At the same time, we need
10 to be conscious of the reality that places like Prince
11 William County, which is a majority minority county,
12 which recently and before the Shelby County case got
13 out from under preclearance is a county in which no
14 person of color had ever served on the county board
15 and yet they were no longer subject to preclearance
16 for mysterious reasons. And in a circumstance in
17 which when the districts were drawn in 2010, two of
18 the most virulent anti-immigrant people in the
19 Virginia General Assembly got 12 or 13 percent whiter
20 districts because of the people of color in the county
21 were packed into either Bob Marshall's district or
22 Luke Torian, the only African-American person
23 representing that part of the state. Again, these are
24 things that suggest the history isn't so much in the
25 past. And I think this issue coupled with

1 hyper-partisan redistricting in which people of color
2 are perceived as being monolithic and not diverse in
3 their interests or their party has meant that the
4 influence of people of color in a state that's now
5 20 percent African-American, you know, double digit
6 percentages of Latinos and almost 10 percent Asian,
7 that's not what our legislature looks like and it's
8 not what our legislature is going to look like as long
9 as hyper-partisan redistricting continues, and I'm
10 glad that somebody is going to be talking about that
11 today.

12 And finally I want to say in our current
13 reality -- I hope this is something that the secretary
14 will take notice of -- there's some question in my
15 mind whether there is equal access to the ballot box
16 across our Commonwealth. As former Secretary Jensen
17 pointed out, different localities have different
18 capacity to fund their local registrars and their
19 activities, and in my experience, this has led to
20 certain regions having more distributed access to
21 early voting and to registration by registrars and not
22 at the DMV than other localities and that even within
23 localities like Fairfax it's not always clear to me
24 that the satellite offices are distributed evenly
25 across the population of the county. The people in

1 certain parts of the county have greater access to
2 that distributed level of service, and we have a state
3 constitution that says that our voting system is
4 supposed to be uniform, and one can ask whether that
5 goal is currently being achieved and if you define it
6 as access to registration and access to the ballot box
7 for early absentee voting, in-person absentee voting?
8 And absentee voting is another issue and there are
9 lots of things we can talk about today, so I'm looking
10 forward to you hearing you all talk about many of them
11 and learning from you some of the ideas about problems
12 that need to be addressed and solutions which might be
13 offered.

14 THURSA CRITTENDEN: Good afternoon. I'm
15 Thursa Crittenden, and I am here representing the
16 Urban League of Hampton Roads. I am a board member of
17 the Urban League of Hampton Roads and I also serve as
18 President of the Urban League Guild, and our interests
19 are in housing, health, education, and employment.
20 Those are the four core issues of the Urban League.
21 However, without our citizens participating in voting
22 and in the legislative process, we are not able to
23 achieve as much as we need to. About four or five
24 years ago we decided to create a campaign that dealt
25 with citizen engagement, and it was around voting.

1 And the whole purpose was to inform people about the
2 significance and the importance of the vote. And it's
3 interesting because -- Claire here has done my job.
4 She has given you a very good history of the vote as
5 it pertains to the state of Virginia. One of the
6 things that we do in our work in educating the public
7 is to start from the beginning, 1786 when the only
8 person that could vote in Virginia were white males
9 that owned property that were 21 years of age. And it
10 took from 1786 until 1972 for us to get where we are
11 now. So our interest in making sure that people have
12 access to vote without being impaired is very high.
13 We have worked over time to educate people not only
14 about the history of the vote and the significance but
15 to try to engage them and get them involved in
16 learning what to do when they felt that they were not
17 being served well or if they had problems and so we
18 stand to help anyone go to the ballot without any kind
19 of impairment, without any kind of frustration, making
20 sure they know exactly what they're supposed to do and
21 how to do it, what they need to carry with them. So
22 that's what we do. And we look at our engagement and
23 our involvement in making sure that our citizens vote
24 is just part of the continuum. Took a long time to
25 get to where we are and we need to stay vigilant and

1 we need to make sure that people have the tools to do
2 the things that they need to do when they go and cast
3 that very, very significant and important vote.

4 So I'm thrilled to be here and I look
5 forward to hearing from everyone and, again, like the
6 rest of the panel just learning a lot. Thank you.

7 CARMEN TAYLOR: Good afternoon. My name
8 is Carmen Taylor, and I'm the president of the
9 Virginia State Conference of the NAACP. I'm here this
10 evening as a commissioner to share with you that much
11 of the work that the NAACP has done throughout the
12 years is to fight for making sure that everyone has
13 been educated on what is your right to vote. We've
14 been fighting against voter suppression and we will
15 continue to fight in that direction. Over the past
16 couple of years, we have seen an unprecedented attack
17 on the voting rights of all individuals, especially
18 young individuals, elderly, and African-Americans and
19 people of color, taking us back to what we call the
20 Jim Crow era. In the state of Virginia in particular,
21 these attacks have been particularly aggressive and
22 followed along a dark history in our state. The NAACP
23 takes these attacks very seriously, and we've been
24 advocating on behalf of Virginians tirelessly for a
25 long time. We have had some victories, including with

1 Governor McAuliffe and former Governor McDonnell,
2 executive orders to help people with felony
3 convictions have their rights restored, but there's
4 still a lot of work to do, and we are well aware of
5 that. The NAACP and members of the Virginia State
6 Conference are working hard to continue making
7 democracy accessible to all. Voting rights, your
8 right to vote should be automatic and convenient for
9 you. It should not be suppressed.

10 I can personally share with you I live in
11 the City of Hampton, Virginia. I vote in the City of
12 Hampton, Virginia, and during the last election I came
13 across going into my voting poll I realized that as I
14 came across the individuals who were sitting there --
15 I always challenge the system, so I walked in without
16 my ID. I've been voting at this particular poll for
17 well over 15 years and most of the people that have
18 worked the polls know me. This particular day I went
19 in blue jeans, ragged hairdo, took off my glasses,
20 tried to go incognito, but I'm still who I am, Carmen
21 Taylor. I said, I do not have a voter ID. They said,
22 You cannot vote. I said, What do you mean? They
23 said, You cannot vote. They said, This is something
24 that started now. These individuals at the time had
25 been educated but for some odd reason had forgotten

1 what was important to remember during this particular
2 voting election period. I say that, too, because in
3 the City of Newport News we have subtle suppression.
4 We have areas where there's voting polls and I'm sure
5 former Delegate Crittenden can tell you this that we
6 had an area where individuals they could be considered
7 a high crime area and you have police officers who
8 come with the intention of telling people we're coming
9 to protect you when in reality we know what's
10 happening is it's a subtle way of exploiting voter
11 suppression.

12 The NAACP has stood strong for many years.
13 We will continue to stay strong because we believe,
14 again, that you should have the right to vote. We're
15 here today to hear your testimonies, to take those
16 testimonies forward, and I look forward and appreciate
17 those of you who have taken the opportunity to come
18 forward and stand and be courageous in sharing your
19 information with us. Thank you.

20 JEAN JENSEN: Now we will begin our
21 testimony, and I encourage the names that I read, if
22 you don't mind, move closer to the podium and it will
23 be a little easier to facilitate. You can probably
24 speak up here at the podium? I think that would be
25 convenient. We're going to have a substitute. Our

1 first speaker will be Secretary Palmer of the Virginia
2 State Board of Elections. And then Mercedes Harris,
3 Hollaback and Restore Project. Is she here? Did I
4 mispronounce your name?

5 MERECEDES HARRIS: No, you did not.

6 JEAN JENSEN: Just gave you the wrong
7 gender. And Rebecca Green from William & Mary.
8 Robert Barnette, Michelle Kantor Cohen, and Hope
9 Amezquita.

10 DONALD PALMER: Thank you. My name is
11 Donald Palmer. Thank you for inviting me for the
12 commission to discuss election administration and
13 voting rights. I want to focus my comments today on
14 the use of technology in the Commonwealth to
15 streamline our election administration process. And
16 as former Secretary Jean Jensen talked about, our
17 general registrars and the State Board of Elections
18 and much of the Commonwealth is under financial
19 strain. We've had reductions of budgets for years
20 going on almost a decade now, every year more cuts.
21 And so what do we do in an environment where we want
22 to increase access and the integrity of our system
23 while we're having reductions of resources. Very
24 difficult. But what we do is we try to use technology
25 to make it easier for voters, to make our systems more

1 accurate. So I want to talk about some of the things
2 that I think we should be focusing on that will bring
3 savings to our process and also efficiencies and help
4 voters.

5 The first thing is one of the things we've
6 done is online registration and we hope that that
7 will -- it does increase the access to the voter, it
8 increases integrity of the system, and it will have
9 savings. One of the things we want to do following up
10 with on that is a modernization of the registration
11 process inside the DMV. It's one of those agencies
12 that most Virginians will go to if not initially at
13 some point while they're a resident of the
14 Commonwealth, they will go to the DMV, and the process
15 that we have there is very antiquated. It's based on
16 paper. It's based on the mailing system, postal
17 system, which is problematic, and I won't go through
18 all those details. We think there's a better way, and
19 there is a better way. One of the recommendations of
20 the Presidential Commission on Election Administration
21 and something we can do in Virginia, and I would like
22 you to keep that in your minds to talk to folks at the
23 executive branch and legislative branch to bring that
24 to fruition, and that is modernizing the process to
25 make it an electronic process, to make it quick, to

1 make it efficient and more accurate. That is one of
2 the things that we're looking at implementing over the
3 next couple of years hopefully.

4 Polling place and line management, again,
5 these are some fundamentals that we need to focus on.
6 Before you can throw the long pass, you have to learn
7 how to block and to tackle and to run. The polling
8 place and basically management within the polling
9 place is very important, and that means that
10 electronic pollbooks, using technology versus paper,
11 training our poll workers or officers of elections to
12 be fully involved with electronic pollbooks to make
13 that process with the voter, that interaction
14 streamlined and as quick as possible, reduce those
15 lines. It seems like a fundamental thing that's very
16 important to make that a positive experience for the
17 voter when they come into the polling place, and
18 sometimes the old habits that we have just don't work
19 anywhere. People expect better. We expect better in
20 the use of technology. So use of pollbooks and new
21 technology that allows scanning of IDs or looking up
22 an individual to see what their status is to make sure
23 they're in the right line, the right polling place.
24 This will ensure that that line moves quickly, that
25 the individual stands in one line and one line only

1 for the process.

2 Voting equipment. This is the fundamental
3 thing where the voter actually puts the ballot in the
4 piece of voting equipment. How much more important
5 can that be? Well, we have very antiquated pieces of
6 equipment. Some people really question the integrity
7 of those machines. I certainly don't. Believe me, we
8 test them before every election, but we in the State
9 Board of Elections and the general electoral
10 community, we care what the individuals think about
11 the integrity of our process and do they have
12 confidence in the voting process. We in Virginia need
13 to replace our voting system with new technology, more
14 accurate technology, something where the voter isn't
15 waiting in line to process their ballot. One of the
16 issues that came out of the commission is how do we
17 reduce lines. Well, in my estimation, we need new
18 voting equipment in the Commonwealth of Virginia. It
19 takes resources. It takes commitment to the
20 fundamentals of the voting process. It also includes
21 new accessible equipment. A great thing with the Help
22 America Vote Act, it brought accessible equipment for
23 voters with disabilities so they can have that
24 independent experience in the polling place. But it's
25 been almost a decade before there's been actually new

1 equipment in the polling places from that initial
2 supply of equipment. New technology is out there.
3 It's coming to Virginia. We'll be testing it, but the
4 localities don't have the resources to buy the newest
5 accessible equipment. Don't we want to have the
6 newest accessible equipment in Virginia? Yes. It
7 takes a commitment though.

8 The absentee ballot process. One of the
9 ways that a large number of Virginians were not able
10 to participate in the process, some of it's due to
11 their own procrastination, they waited the last minute
12 to request an absentee ballot. It takes time for that
13 to go through the mail system, get to the registrar,
14 get processed, then have the absentee ballot sent to
15 the voter and returned. Well, there's a way that we
16 can streamline that process where you can
17 electronically request that ballot, capturing the
18 signature from DMV, making it almost an instantaneous
19 process. Takes time and resources, but we can do
20 that. We can streamline that process. So if somebody
21 doesn't have, you know, they're not thinking about the
22 process at the last minute, they can make that request
23 and instantaneously request an absentee ballot
24 request. You can cut that time in half or more.

25 Statewide database. Again, Help America

1 Voting Act brought a database to the Commonwealth
2 which increased some of the federal functions that
3 we're relying on. We need to improve functionality
4 and make it more accurate, and it's possible with the
5 new technology today to do that. One of the
6 commission's recommendations that the president had
7 was that when you have a voter registration list that
8 have errors in it, there's a delay in the polling
9 place. Either an active voter or an error in the
10 registration so the mistake from the very beginning of
11 the process slows down the process, so we need to
12 upgrade the voter registration system.

13 Ballot design. One of the issues that the
14 Presidential Commission found was inherent in Florida
15 and Virginia had a little bit of this we had too many
16 races on the ballot. We're all for democracy, but
17 when you have a presidential race and all the local
18 races plus constitutional amendments it gets out of
19 hand, and you have to realize that the more races you
20 put on there the more time the voter will be spending.
21 That means everybody in line will be waiting for that
22 process to occur. And in Florida we saw what
23 happened. It went from two to ten, they had like 14
24 constitutional amendments on their ballot. I don't
25 care what state you are. If you have 14 amendments on

1 the ballot, there's going to be a line. So those are
2 some things that I think would streamline the process,
3 the use of technology in these budgetary times to try
4 to make the process easier for the voter.

5 JEAN JENSEN: Thank you, Mr. Secretary.
6 Our next speaker is Mr. Harris.

7 MERECEDIES HARRIS: Good afternoon,
8 everyone. My name is Mercedesies Harris, and I'm the
9 Executive Director of a non-profit organization called
10 Hollaback and Restore Project, HARP, based in the City
11 of Waynesboro in Central Virginia. I am a community
12 leader and a felon convicted as well as a counselor,
13 entrepreneur, father, and I've had my civil rights
14 restored October of 2012, right on October 15, just in
15 time. After I advocated for myself and others at an
16 invitation-only meeting with former Secretary of the
17 Commonwealth, Janet Kelly, I have gone on to found
18 HARP to help dozens to restore their civil rights
19 across my region. I served on the statewide Automatic
20 Restoration Task Force and lectured at the National
21 Reentry Leaders about the issue. It is my pleasure to
22 share my experience and expertise as a directly
23 affected person with the National Commission on
24 Voting. Unfortunately, there is little data about
25 this disenfranchised population in Virginia. The

1 sentencing project has estimated that about over
2 350,000 non-incarcerated people are disenfranchised,
3 including a shocking 1 in 5 African-Americans. There
4 is no reliable data on who has completed their
5 sentence. The breakdown of people with so-called
6 non-violent or violent convictions or even where
7 people with convictions live throughout the
8 Commonwealth, the automatic restoration implementation
9 process has shown how poor Virginia agencies and court
10 records keeping is and always in which must be
11 modernized so that we have good data. Therefore, my
12 testimony will mainly focus on what's known to me and
13 other community members who have worked very hard to
14 change the failure of the new automatic restoration,
15 the need for actual automatic restoration and a
16 positive impact of restoration on integrity.

17 Background: In May of 2013, myself and
18 other community members with felony convictions
19 successfully advocated for the historic change to
20 Virginia's old clemency rights restoration system.
21 Former Governor Bob McDonnell approved an executive
22 policy that allowed people with so-called non-violent
23 convictions to receive automatic civil rights
24 restoration, which includes the right to vote, hold
25 public office, and serve on a jury and as a notary.

1 While many people with felony convictions who fought
2 for changes commended the changes, the truth is there
3 remains hundreds of thousands disenfranchised
4 Virginians, many of whom are African-Americans, and
5 the new process will never re-enfranchise Virginians
6 at an acceptable rate.

7 My first point is the problem with
8 automatic restoration process for voting is even as it
9 is automatic, the process takes even longer than
10 before. First, identifying you as the person that you
11 say you are. The second, the need to have your
12 sentence order, proof of fines, court costs, and
13 restitution have been satisfied. Third, these above
14 things are checked by Virginia State Police and each
15 Circuit Court via the Secretary of the Commonwealth
16 which takes time. For example, at one time the state
17 police was only processing about 70 background checks
18 per week. Fourth, getting your restoration record to
19 the State Board of Elections so it is placed in voter
20 files and placed in the databank where it can be
21 retrieved by registrars before you vote. If you don't
22 have your certificate of proof, you can't vote.
23 Second, there's a need of an effective automatic
24 restoration process for everyone, so-called
25 non-violent and so-called violent offenders. Recently

1 we, the stakeholders, community leaders and grassroots
2 organizers and state officials have accomplished and
3 agreed that we all felt was a step in the right
4 direction, which classified all drug convictions as
5 non-violent. We fought for this change because most
6 drug convictions involve no violence. No other legal
7 standard considers drug crimes as violent and such a
8 classification overwhelmingly impacts
9 African-Americans, disproportionately putting black
10 Virginians into a longer, more difficult process. You
11 see advancement projects, July 2013 memo to the
12 Secretary of Commonwealth. I also believe through
13 more stakeholder meetings and community input we will
14 arrive at a point in which Virginia will change its
15 outdated laws and policies that disenfranchise at all.
16 With over 350,000 disenfranchised Virginians, the
17 disenfranchised could be a voting population all on
18 its own. We are tax-paying citizens. Who should not
19 have to restore their franchise in the first place.
20 At the very least, there should be immediate automatic
21 rights restoration. There should be a package that
22 takes care of the whole problem those felons who have
23 served their time, paid their fines, court costs, and
24 restitution. Important, No. 3, are the voting rights
25 restoration for civic engagement. If we have over

1 350,000 felons who can't vote for the elected
2 officials in our cities, counties, and states, then
3 how can we say that we like or dislike anyone who
4 holds public office, even though they dictate what
5 happens in our lives or the lives of our family. When
6 we don't know how to vote at a state or city or county
7 level, then how can we make informed choices about our
8 higher offices? When these things take place,
9 everyone is dissatisfied with who's in the office
10 running our country because of our lack of knowledge,
11 and that's why the Bible says this, you can't serve
12 two masters, ignorance or experiential knowledge in
13 this case.

14 In concluding thoughts, why an automatic
15 restoration system is critical to our community, and
16 I'd just like to finish by saying in New York, you
17 have the right even if you have a criminal record.
18 Can I register and vote in New York if I am a felon?
19 Yes. If you are on probation or were not sentenced to
20 prison or had your prison sentence suspended or served
21 your maximum sentence or were discharged from parole
22 or were pardoned or were convicted of a misdemeanor,
23 and there are many other questions to go with that. I
24 just brought this for the board to look at and the
25 election laws that New York have, and why can't we

1 adapt the same thing. They don't hold it against them
2 and it's a lot more people there. Thank you.

3 JEAN JENSEN: All of you who are going to
4 present testimony today, in order to accommodate
5 everybody who has signed up to speak, we need to be a
6 little bit respectful of the time limit. I hate to
7 interfere and cut anybody off, but each speaker, we
8 have a lot of speakers and to keep us from having to
9 say, I'm sorry, but your time is up, just sort of be
10 cautious of your time and we've got Rebecca in the
11 very first row who's keeping time. Hopefully we'll
12 have a chance during questioning period to elaborate
13 on some of these things you wanted to say.

14 Rebecca Green, William & Mary Law School.

15 REBECCA GREEN: Hello. My name is Rebecca
16 Green. I am from William & Mary Law School where I
17 co-direct the election law program and I teach
18 election law. I've been involved over the course of
19 the past six months or so in founding a program that
20 helps Virginians with prior felony convictions restore
21 their right to vote. This is a student effort,
22 students and supervising attorneys helping Virginians
23 with regaining voting rights.

24 The rights restoration process for persons
25 with prior felony convictions, non-violent convictions

1 should be straightforward, it should be simple.
2 Applicants need only to submit an online form that
3 includes basic information like their name and
4 conviction history. One wonders, therefore, whether
5 there's a need for a project like my project which is
6 called Revive My Vote. In our experience, despite the
7 fact that this should be a simple process, it, in
8 fact, can be very complicated and it can raise a lot
9 of complicated questions that are much more sort of
10 difficult to navigate than an online form would
11 suggest, so in our experience, it's anything but
12 automatic. And I want to talk a little bit about our
13 experience so far. We've only been operating since
14 April 7. We have a hotline where people can call in.
15 We also have an email address, ReviveMyVote@wm.edu.
16 People can send us emails as well. While we've only
17 operated a short time, during that time we've learned
18 a few things about the process and some of the
19 challenges that I thought I'd share with you.

20 Though we are early in our launch, there
21 are several things that I think we've learned so far.
22 First, many people have contacted us expressing
23 frustration that the rights restoration process for
24 non-violent offenders takes so long. We're hearing
25 from individuals who applied as long ago as last

1 summer who have not received a response. Many of them
2 have repeated calls to the Secretary of the
3 Commonwealth. Seems like there's a lot of
4 frustration. Second, we're finding that the rights
5 restoration process can be confusing for applicants
6 with out-of-state convictions. Virginia will
7 recognize voting rights restoration policies of other
8 states, but providing adequate documentation can often
9 be a challenge. It's not always clear which states'
10 policies apply. For example, we had one caller who
11 had been convicted of a felony out of state but he had
12 his probation transferred to Virginia. He asked us
13 whether Virginia would follow North Carolina's
14 automatic rights restoration process or whether the
15 transferred probation would somehow trigger Virginia's
16 policies. Once Virginia rights' restoration
17 eligibility can be established, for example, whether a
18 state automatically reinstates voting rights upon
19 completion of sentence, our understanding is that the
20 individuals need not apply for rights restoration to
21 the Secretary of the Commonwealth but, instead, may
22 simply register to vote indicating on their voter
23 registration form that they've been convicted of a
24 felony and that their rights were restored on a
25 particular date. This process, as I hope you can tell

1 at this point, is far from clear and it's certainly
2 not always clear to individuals who are trying to
3 restore their rights.

4 Third, many callers to Revive My Vote
5 hotline are elderly. Several callers have expressed
6 that they're reaching the end of their lives and would
7 like to restore their rights as a matter of principle
8 before it's too late. Felony convictions for some
9 callers are often in a distant past and can be very
10 difficult to recall where their conviction or
11 convictions took place and whether their fees and
12 fines have been paid. Many have lost payment receipts
13 years ago. Some callers to the Revive My Vote
14 hotline, particularly older callers, are not
15 technological savvy or lack access to the Internet.
16 One elderly caller convicted of a crime over 30 years
17 ago reported that he did not believe in computers and
18 did not have one or know how to use one. For some
19 callers we've determined that online document
20 retrieval may be difficult, if not impossible, for
21 other reasons, such as distance or mobility. That's
22 where we believe that our students and attorney
23 volunteers can help in terms of helping people sort of
24 track down documentation that they need.

25 Fourth and relatedly, while we're just

1 beginning this work ourselves, according to the
2 several individuals that we've connected with in the
3 community who assist with the re-entry, the process of
4 determining what is owed in fees and fines can be very
5 complicated. We've also encountered a perception that
6 the rights restoration process is costly when, in
7 fact, the Secretary of the Commonwealth does not
8 charge a fee for the process. This misperception
9 might arise from costs that attorneys may quote. One
10 Virginia gentleman in Virginia Beach consulted a
11 lawyer who quoted a fee of \$900 to do the work.
12 Depending on how complicated the case is, seeking a
13 lawyer's assistance may indeed be costly particularly
14 for felons who fall in the more serious category and
15 require a more involved process. The requirements of
16 payment of all fines, fees, and restitution adds to
17 the public perception that rights restoration is
18 costly.

19 Fifth, we have found that convictions of
20 hotline callers can be less than straightforward. On
21 more than one occasion, the state public record
22 database listed inaccurate birth dates, in one
23 instance listing the individual as being eight years
24 old. In addition, some counties in Virginia don't
25 participate in the online Virginia court case

1 information page. The circuit courts of Alexandria,
2 Fairfax, and Virginia Beach do not use the statewide
3 system. This can hinder the ability to verify
4 convictions remotely. Additionally, the case
5 information page requires knowledge of the county from
6 which a conviction is issued, which especially for
7 applicants as I mentioned whose convictions are in the
8 distant past and are not always known.

9 Finally, while Governor McAuliffe added
10 needed clarity what constitutes a non-violent felony,
11 for many individuals, questions still persist. If an
12 individual has filed an application under the violent
13 offender process but the underlying felony is now
14 classified as non-violent, does that applicant submit
15 a new application on the non-violent offender form?
16 If an applicant has already submitted an online
17 application in the non-violent category, will it speed
18 up the process if the applicant gathers documentary
19 proof that all sentences have been completed and fines
20 and fees paid and mails a physical copy in? In
21 addition, we've encountered much confusion regarding
22 the term "automatic" that requires application and
23 potentially a long wait time.

24 So far, undertaking this work has been
25 very rewarding. We're excited to be a part of an

1 effort endorsed by two governors, one Republican, one
2 Democrat, who recognize the importance of restoring so
3 many Virginians in the democratic process. We hear
4 again and again from the callers to Revive My Vote
5 that they are anxious to regain their status as full
6 participating members of society. Those who have
7 reached out to Revive My Vote have been polite,
8 respectful, and, above all, thankful for assistance in
9 regaining this most fundamental right. Thank you.

10 JEAN JENSEN: Thank you. The next speaker
11 is Robert Barnette, president of the NAACP, Hanover
12 County and member of the Hanover County Electoral
13 Board. I want to alert the speakers to the fact that
14 the timekeeper is here and just so that everybody can
15 have a chance to make their remarks.

16 ROBERT BARNETTE: I won't be that long.
17 My name is Robert Barnette. I serve as the vice
18 chairman of the Hanover Electoral Board and the
19 President of the Hanover NAACP. The right to vote is
20 fundamental to our democracy. Hanover County has 36
21 polling precincts and a central absentee precinct.
22 With the support of the electoral board and governed
23 by the Virginia Code, the county registrar recommended
24 relocating a majority of the county precincts and
25 adding a polling station. The precinct evaluation

1 criteria included number of voters, parking spaces,
2 proximity to the precinct, and facility functionality.
3 Primary concerns included both the Clay and Shady
4 Grove precincts are located at the Washington Henry
5 School with a total of 4506 registered voters. This
6 location has only 6 handicapped spaces for parking.
7 Voters are confused whether to -- whether their
8 precinct is located in the cafeteria or the library.
9 Wait times have exceeded sometimes as much as 70
10 minutes during the presidential elections. Most of
11 the Hanover County precincts are located at fire
12 stations and schools, which inhibits or disrupts
13 response times if emergencies occur during the voting
14 period and sometimes planning school activities such
15 as the PTA meetings. Most people vote before work and
16 after work creating parking issues during those times.
17 All in all, there is a major shift from public to
18 private locations. Currently only 4 precincts are
19 located in private locations. Some citizens have
20 expressed concerns if their polling precinct location
21 is moved to a church, synagogue, or a mosque. Some
22 citizens in Hanover, it doesn't matter. Several
23 citizens have not been informed of these suggested
24 changes and are concerned that they may not have
25 enough time to voice their opinion on the possibility

1 of changes to their polling place. How much time is
2 needed? No one knows what that means. The current
3 proposed communication methods are the Hanover Review,
4 a quarterly publication in Hanover County to all
5 voters, a new voter registration card, printed media,
6 the Herald Progress, Mechanicsville Local, and
7 Richmond Times-Dispatch. The board of supervisors
8 will hold a work session May 14 to decide which
9 recommendations to take to a public hearing. The
10 public hearing will be June 11. On July 27, it is 100
11 days before the November election. After September 5,
12 no changes can be made. These will allow voters
13 easier access to the polling precincts by increasing
14 parking, increased size of polling room and to vote
15 with reduced confusion. But will everyone get the
16 word? How can we assure that everyone gets the word?

17 Finally, voter turnout has increased from
18 49,611 in the 2004 presidential election to 59,058
19 voters in the 2012 presidential election. Hanover
20 County has approximately 72,000 registered voters, and
21 during presidential elections we may turn out over
22 80 percent in each of those elections. So in Hanover,
23 we vote. We want to make sure that the polling
24 precincts are accessible and that everyone, if they're
25 changed, everyone gets the word. Some people don't

1 read the newspapers. Some people don't listen to the
2 radio, but however you get the news I think it is
3 incumbent on us as electoral board members to make
4 sure everyone has equal access to exercising their
5 fundamental right to vote. And, again, our senior
6 citizens may not be informed of this on time to make
7 sure that they are included as well. So that's my
8 story and I'm sticking to it.

9 JEAN JENSEN: Thank you. Our next speaker
10 is Michelle Kantor Cohen, Project Vote.

11 MICHELLE COHEN: Good afternoon. My name
12 is Michelle Kantor Cohen. I'm here from Project Vote.
13 I'm election counsel for Project Vote. Project Vote
14 is a national, nonpartisan, non-profit 501(c)(3) that
15 works to empower, educate, and mobilize low-income,
16 minority, youth, and other marginalized and other
17 underrepresented voters. One important aspect of our
18 mission focuses on voter registration. Like in all
19 states, in Virginia, registration is the first step of
20 voting. It is a prerequisite to casting a valid
21 ballot. In order to cast a valid ballot, however,
22 their name must be added to the voter rolls. Groups
23 and advocates must be able to help voters register,
24 make sure that eligible citizens are able to be added
25 to the voter rolls, and that eligible citizens remain

1 on the rolls. Relatedly, although it is important for
2 election officials to conduct list maintenance, which
3 can often make the election process smoother, it is
4 also important that efforts to maintain the voter
5 rolls are consistent with federal and state law to
6 protect legitimate voters from wrongful under roll.
7 One recent development in Virginia relates to
8 enforcement of federal law regarding transparency of
9 voter registration records. Transparency is an
10 important aspect of the ability to ensure that voters
11 are able to register, remain on the rolls, and cast
12 ballots that count. Transparent processes are
13 important for three reasons. First, it is important
14 that all eligible voters understand the process by
15 which they can be added to the rolls and remain on
16 them. Second, the ability to obtain information
17 regarding the voter registration process allows
18 advocates to rely on better information to understand
19 election officials' processes and help them meet
20 voters' needs. Third, transparency promotes
21 accountability in the process, allowing organizations
22 and individuals to provide a check on the system
23 making sure that election officials are properly
24 executing their responsibilities in a way that is fair
25 to all voter registration applicants and accurate.

1 In recent years, transparency has been a
2 challenge in Virginia. Following the 2008 election,
3 Project Vote and our partner, Advancement Project,
4 obtained information from local community partners
5 that the registrar had directed large numbers of voter
6 registration applications, particularly from students
7 at the historically African-American Norfolk State
8 University. The organizations then sought to review
9 Norfolk's conducted registration applications to
10 ascertain if qualified persons were unlawfully being
11 kept off the voter rolls. However, access to those
12 applications was denied. This was true even though
13 federal law requires public disclosure of voter
14 registration activities requiring that each state
15 subject to the NVRA, the National Voter Registration
16 Act, make available for public inspection and
17 available for photocopying at reasonable costs all
18 records concerning the implementation of programs and
19 activities conducted for the purpose of ensuring the
20 accuracy and currency of official lists of eligible
21 voters. This language requiring all records to be
22 maintained and made available is broad. However, the
23 local registrars with the agreement of the State Board
24 of Elections took the position that productive voter
25 registration applications were not covered by the

1 National Voter Registration Act and could not be
2 disclosed under Virginia law. Following two years of
3 litigation in both the district court and on appeals
4 to the US Court of Appeals for the 4th Circuit Court
5 in the case of Public Vote v. Long, Project Vote was
6 able to obtain a precedent-setting ruling that voter
7 registration applications are records that the NVRA
8 requires election officials to disclose with social
9 security numbers redacted. However, the ruling was
10 prospective so those Norfolk applications could not
11 ultimately be inspected.

12 During the course of this case, a pro bono
13 law firm spent time and resources working to obtain
14 Virginia's compliance with what the court found was
15 plainly required by the NVRA. The unanimous appeals
16 court opinion stated, "State officials labor under a
17 duty of accountability to the public in ensuring that
18 voter lists include eligible voters and exclude
19 ineligible ones in the most accurate manner possible."
20 The court continued, "Without such transparency,
21 public confidence in the essential workings of
22 democracy will suffer."

23 Disclosure of voter registration records
24 is vital to ensuring that states are not conducting
25 voter purges in secret or using arbitrary or political

1 motivated criteria for removing eligible Americans
2 from the voter rolls. Through transparency, advocates
3 can help identify and stop controversial and
4 inaccurate voter purges, educate voters on how to
5 complete applications that remain on the rolls, and
6 support fact-based policy improvements. Thank you.

7 JEAN JENSEN: Hope Amezquita.

8 HOPE AMEZQUITA: Hi. Good afternoon. My
9 name is Hope Amezquita, and I serve as staff attorney
10 and legislative counsel for the ACLU of Virginia. The
11 American Civil Liberty Union of Virginia is a private,
12 non-profit organization that promotes civil liberties
13 and civil rights for everyone in the Commonwealth
14 through public education, litigation, and public
15 advocacy with the goal of securing freedom and
16 equality of all. Thank you for the opportunity to let
17 me speak about voting rights in Virginia today.

18 Across the United States, there's a
19 dramatic shift in voting rights that is occurring. In
20 the aftermath of the 2008 presidential election and
21 leading up to the 2012 election, nearly every state
22 introduced hundreds of bills to limit access to the
23 ballot box. In 2013, we saw the Supreme Court gut the
24 Voting Rights Act. But the tide seems to be turning
25 this year, in 2014, because of the increasing public

1 and bipartisan support for making our elections more
2 free, fair, and accessible to all citizens. Recently,
3 the bipartisan Presidential Commission On Election
4 Administration has agreed on common sense
5 recommendations to improve elections, including ideas
6 to expand early voting and modernizing our election
7 systems. Importantly, Attorney General Eric Holder
8 and Republican Senator Rand Paul of Kentucky, who
9 disagree on most policy issues, have come out and
10 supported restoration of rights. According to a
11 report by the Brennan Center for Public Policy, this
12 year over 31 states introduced 190 pro-voter measures
13 in January of 2014 alone in stark contrast to years
14 prior. Politically diverse states such as Nebraska
15 and Massachusetts are moving towards early voting and
16 modernizing their election systems to make voter
17 registration and voting easier. Bipartisan, common
18 sense measures that expand access and opportunity to
19 this right to vote are gaining in popularity.
20 Undoubtedly, there are states that are still trying to
21 restrict voting rights, including repealing already
22 enacted laws that hinder the right to vote. In
23 Virginia's case, it affects voters in two different
24 ways. First, the Commonwealth has already enacted
25 laws to hinder the right to vote. Second, year after

1 year the General Assembly fails to consider
2 legislation that expands access to the ballot box and
3 bills that would increase the efficiency of election
4 administration. So why is Virginia so different from
5 other states that seem to be moving forward? First,
6 there is a true lack of political balance and
7 bipartisan spirit in the House of Delegates that would
8 allow legislators to consider proposals to expand
9 voting rights in contrast to other states. There is a
10 lack of contested election for seats in the General
11 Assembly and, therefore, there's been no incentive to
12 change the way that Virginia does business when it
13 comes to voting rights. Finally, there are many
14 misguided beliefs about the current system and how it
15 works. Whether it is pure ignorance about the need to
16 improve voting rights or deliberate denial, it is
17 apparent that Virginia is out of step with most of the
18 nation. In the past few years, the General Assembly
19 has passed several laws eroding voting rights. In
20 2012, 2013, different versions of the voter ID law
21 passed. Virginia has subsequently passed other
22 measures that would remove voters from the rolls by
23 running their information against databases that have
24 been known to be flawed or incomplete. Bills that
25 expand access and opportunity to the right to vote are

1 routinely introduced in the General Assembly, but they
2 meet a miserable end. Measures that would permit
3 voters to vote by absentee ballot without providing an
4 excuse have failed. Virginia's current system
5 requires voters to provide a legislatively approved
6 reason and in some cases that voter must provide
7 confidential information despite raising privacy and
8 security concerns. Bills that would alleviate long
9 lines on election date by allowing early voting and
10 longer precinct hours do not receive serious
11 consideration. In recent years, measures that would
12 reform a gerrymandered system through a non-partisan
13 redistricting committee have failed. Finally, all
14 measures to amend the Virginia constitution to repeal
15 the permanent felony restoration of rights have been
16 killed despite overwhelming support from the public
17 and the past three governors.

18 I see my time is running short. I still
19 have a small bit to go, but I'll get to the point
20 where the common arguments that are being used to
21 defeat this process or to expand voting rights. We're
22 seeing often that these arguments to revoke common
23 sense measures are because legislators believe that
24 Election Day is special and a tradition and no reason
25 to deviate from what we've always done despite the

1 reality of a modern day Virginia. There is a belief
2 that the current system works well and it is
3 sufficient despite the fact that people wait hours in
4 line to vote and that disproportionately minorities,
5 low-income, the elderly and people with disabilities
6 do not have photo IDs or ability to maintain one.
7 Second, there's often the response of voter fraud is
8 running rampant and it is necessary to prove one self
9 despite any evidence of any sort of voter fraud.

10 Another common response is that
11 modernizing our election system is too expensive and
12 that it requires state and localites to spend more
13 money to do more work. Currently, there are several
14 registrars in Virginia that are only open part-time.

15 Finally, the failure of the legislature to
16 remedy the Jim Crow era that a felony conviction is
17 often discussed without consideration of a
18 disproportionate racial impact on Virginia's
19 African-American population. Frequently, legislators
20 have stated that the governor's authority under the
21 state constitution is the intended remedy and that the
22 process is working. Sadly, it has been said in
23 legislative hearings that the process to get your
24 rights restored is hard for a reason and that's the
25 way it should be. While there are no easy remedies,

1 increased transparency in the legislature, namely the
2 procedures in the House of Delegates should improve
3 the process if enacted. There should be a timely
4 notice to the public on committee hearings on voting
5 rights bills. It's not sufficient to alert the public
6 on a Friday of a Monday morning meeting at 7:30.
7 There should always be the opportunity for a full
8 public comment at committee meetings instead of people
9 who want to speak have to go to subcommittee meetings.
10 It defeats the intent and interferes with the
11 democratic process. Other remedies should include
12 where appropriate action by the State Board of
13 Elections and the governor to act to protect the
14 fundamental right to vote. Thank you.

15 JEAN JENSEN: Now it's time for those of
16 us up here who are learning I assume -- I hope you're
17 learning as much as I am -- to ask a few questions and
18 perhaps if we'll be brief, that will give more time
19 later on for the speaking section. Ms. Taylor, would
20 you like to start?

21 CARMEN TAYLOR: I will start with Ms. Hope
22 and I apologize for not being able to say your last
23 name, but if you would share very quickly if there was
24 anything else important you felt we needed to hear.

25 HOPE AMEZQUITA: I was just going to go

1 over I believe, you know, some more of the arguments
2 that don't hold water and because Virginia lacks a
3 full legislative record, meaning you can obtain
4 filmed -- when the General Assembly is on the floor,
5 you can obtain through Freedom of Information requests
6 what legislators say but there's no legislative record
7 of what is said in subcommittee or full committee
8 meetings. So often these things I'm saying are
9 anecdotal because we have no record. And those are
10 the important things that if one were to bring
11 litigation, a lawsuit under Section 2 of the Voting
12 Rights Act, we would like to point to that there's a
13 lot of misguided beliefs and ignorance and a common
14 belief that racism or our past in Virginia doesn't
15 play a part in the laws we pass today.

16 JEAN JENSEN: Anything additional?

17 THURSA CRITTENDEN: I think I would like
18 to direct a question to Secretary Palmer who talked a
19 lot about the need for modernization, upgrading
20 commuters, and I understand there are cost restraints
21 in all of that, but what can you share with us in
22 terms of something hopeful? What possible progress
23 can we make considering all of the constraints, the
24 costs that counties and cities sometimes don't have
25 the money to get the new equipment, what can we do to

1 programs start the process to become modernized?

2 DONALD PALMER: I think there's two ways
3 of looking at it. The first way is when you go back
4 to your locality is to voice your same concerns, you
5 and your family and friends, to the local board of
6 supervisors, City Council. You know, we could replace
7 voting equipment in the Commonwealth basically for all
8 of the jurisdictions for about \$30 million. We talked
9 about big numbers for big issues in the Commonwealth,
10 and there are other -- there are lots of issues. Not
11 a lot of money. I mean, it takes a will, but it's not
12 that much money. And it's -- and when we're talking
13 about technology, a lot of it is for bring sanity back
14 to the Commonwealth in the way we do business.
15 Because the way we do business is antiquated. The
16 general registrars and local boards really need our
17 support on just a fundamental level of resources,
18 human resources and monetary resources because the
19 more resources they have, a better job they can do for
20 the citizens. And I think it's just saying that this
21 is a priority, this really should be a priority, we
22 shouldn't starve the electoral community of funds, we
23 shouldn't wait until a problem occurs until we decide
24 to increase funding for voting.

25 CLAIRE GASTANAGA: I have a follow-up

1 question for you on costs. Would you not agree that
2 it would reduce the costs on local registrars if they
3 weren't required to keep records for excuse absentee
4 ballot voting? Currently there's a whole process that
5 they have to go through and records they have to keep.
6 If we had no-excuse absentee ballot voting, wouldn't
7 that reduce the costs on local registrars?

8 DONALD PALMER: I think you have a point,
9 but I think the problem -- and I can't speak for all
10 the legislators, but we've gotten ourselves into a
11 pickle with the way we do absentee voting in the
12 Commonwealth. We have all of these excuses, but those
13 who have an excuse, there's been estimates if we had
14 early voting or absentee voting, there will be costs
15 at the local level, and so we just cannot say tomorrow
16 let's have no-excuse absentee. The registrars will be
17 overwhelmed, so there has to be resources from the
18 state or local level so we can actually implement
19 something like that. It's going to be a cost-benefit
20 analysis by the legislature.

21 CLAIRE GASTANAGA: Given the amount of
22 private information that is being acquired by
23 registrars about when people are out of town, when
24 they're traveling, which information under
25 transparency should be readily available to anyone who

1 wants to look at it, isn't the state or locality only
2 one very expensive lawsuit away from proving that the
3 cost of getting rid of the system will be less than
4 the cost of keeping it?

5 DONALD PALMER: Well, I don't have the
6 numbers in front of me. I think that most states
7 still have excuse absentee. Very few states have no
8 excuse. In Florida there is no excuse and it's a
9 wonderful thing and I used it all the time, but I
10 wouldn't say it's the rule.

11 CLAIRE GASTANAGA: And can I ask you one
12 question about the Norfolk case as well? I mean, I
13 understand that the ruling in the case was
14 prospective, but why wouldn't the State Board of
15 Elections be working with the Norfolk registrar to
16 make those records that they wanted available so that
17 the public could have confidence that there wasn't
18 discrimination or that the system wasn't unfairly
19 applied? In other words, I mean, I understand there
20 was all this litigation and two years and the ruling
21 was prospective and I understand that that meant the
22 ruling didn't require that those be made available,
23 but they could certainly be permitted to be made
24 available. Why wouldn't you support that?

25 DONALD PALMER: In the case of the Norfolk

1 case, this case sort of spanned a couple of
2 administrations. They were actually able to get the
3 applications because in the discovery process, they
4 were able to get those students in the Norfolk case in
5 the discovery process. I think that the Project Vote,
6 they're speaking about generally what the actual order
7 from the court directed all, so in that particular
8 case, they were able to get their hands on it. When
9 the court came up with its ruling it protected certain
10 identifying information like social security number
11 and from her perspective, I think she did that because
12 the impact on the Commonwealth would have been
13 dramatic if they would have said, you know, go back to
14 1960.

15 JEAN JENSEN: I'm going to preface my
16 question by saying that I wish the members of the
17 House Privileges and Election Committee were sitting
18 in this room today and that we could ask them a few of
19 these questions because we have put -- and I've been
20 in that seat. We're putting the pressure on
21 Mr. Palmer to answer these questions when, in fact,
22 it's the legislature and the members of the majority
23 on the Privileges and Elections Committee are creating
24 bills and acts that he has to execute. And there's a
25 huge difference. We need to start showing up at these

1 house P & E Committee meetings and start trying to
2 make some differences. Okay. Now I'm off my soapbox.

3 I have a question for you, sir. How long
4 did it take you, how long was the process to restore
5 your rights? Your rights were not restored until --
6 how long after you were eligible did it take?

7 MERECEDIES HARRIS: Because I've had
8 everything that I was supposed to have for them to do
9 their job, it only took from about September 9, and
10 October 15 I had my paperwork.

11 JEAN JENSEN: That's stunning, but how
12 long did it take you to gather all of your
13 information?

14 MERECEDIES HARRIS: Because of the way
15 that I am, it didn't take a long time at all.

16 JEAN JENSEN: Good for you.

17 MERECEDIES HARRIS: Because I'm active in
18 what I'm doing, and I've been going through that
19 process 28 years. It took me 28 years to get my
20 rights back.

21 JEAN JENSEN: Can you get a microphone to
22 Delegate Crittenden?

23 FLORA CRITTENDEN: The law has been
24 changed recently. I was working with a young man who
25 had been trying to get his rights restored for 20

1 years but as soon as the law was changed, he got his
2 rights restored in a few weeks. So we are beyond that
3 now. And I'm sorry that happened to you, but I'm very
4 happy that the law has been changed.

5 JEAN JENSEN: I'm glad to know even though
6 you retired from the legislature you're still working.

7 FLORA CRITTENDEN: I'm still working.

8 JEAN JENSEN: I wanted to ask Hope a
9 question. You didn't really have a chance to talk
10 about voter ID, but you mentioned something about
11 part-time registrars, and I wonder if you can talk a
12 little bit about some of the issues that the ACLU has
13 identified in terms of how the voter ID process and
14 the free ID is going to be implemented.

15 HOPE AMEZQUITA: Sure. I can answer I
16 think part of that question. I think final
17 implementation will go into place but it's not
18 completely done yet. But we're concerned about people
19 and we suspect people of low income and the elderly
20 and members of the minority community who may not have
21 access to the free ID. The 2013 voter ID law that
22 passed requires a mandatory photo ID but the state is
23 also offering a free ID if you don't have an approved
24 ID, which is great, but I think that for the
25 organizations like ACLU and others in the community

1 there's a concern that individuals with disabilities
2 or individuals that live in communities where, one,
3 there is no public transportation or, two, like the
4 example that we frequently cite Fairfax County where
5 if you live in one portion of the county it may take
6 you hours via public bus to get to the government
7 registration center where you can obtain a free ID and
8 that's a full-time general registrar. Now, I heard
9 the number is 17 general registrars are only open
10 part-time so if you're only open 8 a.m. to 12 or 1,
11 how are you going to get there if you lack means? And
12 then also even if you have a full-time registrar and
13 you need to go get a photo ID they're only open 8 a.m.
14 to 5 p.m. and as we know, there are several
15 individuals who work 9 to 5, who do not have a luxury
16 of what my boss allows me to do, take an hour out of
17 the day to go see a doctor and go vote. We know
18 Virginia law doesn't protect an employee who wants to
19 go and vote and miss that time from work. So we're
20 really concerned about the mobile portion of the voter
21 ID, you know, wanting registrars to get out in the
22 community and to sign people up, whether at hospitals,
23 nursing homes, homes where people with intellectual
24 disabilities live, people who don't have public
25 transportation, rural communities, all of Southwest

1 Virginia I think that's a big concern.

2 JEAN JENSEN: Thank you.

3 THURSA CRITTENDEN: I just have a quick
4 follow-up with Mr. Harris. Even though the law has
5 changed, I think what you were telling us is that even
6 though restoration of rights is now automatic that it
7 still is a long process and could you sort of
8 reinforce what you said about that.

9 MERECEDIES HARRIS: Well, since I've been
10 advocating this and I started Hollaback and Restore,
11 which as I already stated, I worked on a task force at
12 the governor's office so I have my hands in it and on
13 it. What I do is I go around to people because it's
14 hard for you to obtain your sentencing orders, proof
15 of fines, court costs, and payments, and at times, you
16 can't even get the letter that was required for
17 violent crime from the probation office because like
18 in Fairfax County if it's over ten years, it's gone.
19 So they just tell you, I don't know what to tell you.
20 And so you're stuck right there trying to figure out
21 what you've got to do. And I was thankful for the
22 Advancement Project and attorneys there because they
23 were the ones that were able to find that, but
24 everybody else doesn't know that. I only knew it
25 because I do this work and I've been trained. So why

1 I said that we need to make it automatic is automatic
2 is supposed to be automatic. If you have to still go
3 through the hoops of you have to find all the
4 paperwork and you still have to do all of these
5 things, then it's not automatic and it can still take
6 a longer process because the governor said 60 -- 30 to
7 60 days. That worked for a violent crime. But when
8 it's automatic, it takes longer. Some people as they
9 already said has not received since last summer.

10 THURSA CRITTENDEN: Thank you.

11 JEAN JENSEN: Any other questions from the
12 panel?

13 CLAIRE GASTANAGA: I have one other one.
14 Mr. Harris, are you aware of anybody who has done
15 everything but can't afford to pay the court costs
16 that are owed from when they were sentenced?

17 MERECEDIES HARRIS: 85 percent of them.
18 And why we suggested that there be a price cap on them
19 to go back to the principal or even then if there's a
20 certain amount of money, why can't we make it a
21 certain price or even add community service to help
22 reduce the cost because some people can't even pay the
23 court clerk to get the paper because they charge you
24 money if they have to go in the archives. And I'm
25 familiar with Hampton Roads because I deal with Vicki

1 Williams and other people from there so it's not
2 something that's just happening in one area. And I
3 live in Waynesboro, which is a rural area where we
4 have big problems at election and everything else.

5 CLAIRES GASTANAGA: So I guess I'm curious,
6 Hope, can you see an argument that if somebody has
7 done everything, including restitution, so let's just
8 say the court costs which are the state imposed fees
9 for the process of going through the court procedure,
10 if all that's left, is that a poll tax?

11 HOPE AMEZQUITA: I would believe so.

12 JEAN JENSEN: We need to move on to let
13 other people in the audience ask some questions.

14 MICHELLE COHEN: A quick clarification.
15 One quick clarification. It is correct when I was
16 thinking about the applications that that was
17 basically a summary of the prospective danger of vote
18 order and so I guess I don't have the information
19 today to speak to exactly what was exchanged in
20 discovery, but I just wanted to clarify that the key
21 point is that it was prospective from that ruling to
22 the general public.

23 JEAN JENSEN: According to the information
24 I have, we are going to have an open mic session and
25 everybody is going to have an opportunity if they want

1 to say something. Please respect the 3 minute time
2 period just because we want to hear from as many
3 people as we possibly can. I'm not sure I understand
4 the note. I'm sorry. Open mic, and that means that,
5 Rose, you're going to get a microphone to people?
6 Glen Besa, director of the Sierra Club, Virginia
7 Chapter.

8 GLEN BESA: Thank you for hosting this
9 event today. My name is Glen Besa. I'm the director
10 of the Sierra Club of the Virginia chapter. I'm also
11 former member of the county electoral board, served
12 through the term of 2012. The Sierra Club has offered
13 testimony before the General Assembly in the past in
14 opposition to a number of bills that would have
15 limited access to the right to vote, including more
16 stringent identification requirements. Sierra Club
17 supports a strong Voting Rights Act nationally, not
18 just in Virginia, not just the Virginia chapter, that
19 maximizes citizen participation in elections. A more
20 active electoral the more vibrant democracy and a
21 greater stewardship and protections that we enjoy.
22 One only look at countries like China with its extreme
23 pollution problems or Russia and its oligarchy where
24 activism lands you up in jail. We know that a more
25 vibrant democracy leads to a greater and cleaner

1 environment. People want a healthy environment, they
2 want clean air, they want safe food, and those
3 countries, those states with the greatest public
4 engagement in the electoral process people expect and
5 enjoy a clean and healthy environment.

6 In a related topic, the Sierra Club also
7 supports nonpartisan redistricting. Current partisan
8 redistricting degrades voter rights, citizens' rights
9 to vote and eliminates healthy competition, which is a
10 hallmark of a healthy democracy. Why should elected
11 officials get the right to choose their voters rather
12 than having voters choose their elected officials.
13 That's the way it's supposed to be.

14 As a Sierra Club staffer, I've interacted
15 with constitutes very often and I've had experience of
16 seeing them denied the right to vote by local
17 registrars who objected to their ability to register
18 because their parents lived somewhere else and they
19 were dependents or they had their driver's license
20 somewhere else, and in that situation I had to call
21 the ACLU and had to set them straight. As a former
22 member of the Chesterfield County Board of Elections,
23 I never experienced any issues with regard to fraud
24 that necessitated more stringent identification
25 requirements as was stated earlier here in a couple of

1 instances. It occurred to me that Chesterfield County
2 is a relatively affluent county but in those counties
3 that aren't as affluent, it really seems to be
4 inappropriate that that would influence the technology
5 they have available and the integrity of their
6 elections because you happen to live in a jurisdiction
7 that may not be as wealthy as Chesterfield County
8 where I served. In my experience on the electoral
9 board, I never seen any real issues of fraud on the
10 part of voters. Rather, it appears to me that through
11 confusion, through resources, lack of resources, and
12 some cases through an intent, it's a much more likely
13 problem that there's systemic hurdles for eligible
14 voters the right to vote. Thank you so much.

15 JEAN JENSEN: The next person who has
16 requested an opportunity is Marie Stella. She has
17 experience as a polling place observer in Chesterfield
18 County.

19 MARIE STELLA: Actually Chesterfield and
20 Richmond, and it's the Richmond experience that I'd
21 like to talk to you about. I worked as an observer.
22 I'm not even going to mention the precinct. You can
23 figure it out. I got there, I could barely find it
24 because the picture that showed this community center
25 on the Internet had a swimming pool, was modern and it

1 was nothing like where I went. There were no signs
2 out there. There was no signs for people to access
3 handicapped parking. When I got into the precinct
4 itself, no one checked my documentation. I was asked
5 to go outside and put signage up. The signage was
6 broken. I had to tape it to a lamp pole with duct
7 tape. 6 o'clock when the voting opened, there still
8 was not a working sample ballot machine. Prior to
9 that, the chief had asked me to paste a ballot behind
10 the voting machine so anyone who wanted to look at a
11 sample ballot had to go behind the machines and read
12 it, which was probably not a good idea since people
13 were voting and they could see how people were voting.

14 When the precinct opened, the voting
15 machines went down. There were insufficient paper
16 ballots and insufficient staff. Once the machines
17 came up, the polling books went down. As the day went
18 on, things got worse. It was almost like a comedy,
19 something that Three Stooges would put on. The purge
20 obviously didn't work I'm sorry to say because many,
21 many people I would estimate close to 50 were not able
22 to vote, some of them the pollbooks were changed, they
23 were allowed to come back, a lot of them were filling
24 out absentee ballots, but at the end of the evening,
25 not one absentee ballot was filed. People left. I

1 followed them outside. They said they were going to
2 go to City Hall to file complaints. People said they
3 registered and were told they weren't allowed to
4 register. There were such insufficient staff that I
5 was asked to give out the "I Voted" stickers. Nowhere
6 was I close to people going in to vote or anything
7 else because the room was so filled, it was so cold
8 outside. At about 5:30, some someone from the Board
9 of Election came in and started yelling at me in front
10 of everyone though I had seen her twice before during
11 the day and told her I was an observer and she knew I
12 had to give out the "I Voted" stickers because people
13 wouldn't leave and they refused to leave because they
14 had no -- their churches or their schools wanted the
15 "I Voted" signs, to see that people had voted.

16 At the end of the evening, the numbers
17 didn't add up. The people were told to sign the cards
18 and left. I was told I was being written up and that
19 I left at 10:30, called the people that I was
20 representing and told them there's a good chance I
21 might be going to jail. I messaged my sister to make
22 sure she got me bail if she heard from me. And, of
23 course, nothing happened because the next day, when
24 the canvas -- I was canvassing, I was observing a
25 canvas in Chesterfield County, but the precinct was

1 never counted until something was done about it later
2 on and a thousand votes suddenly turned up. This is
3 not acceptable. It was a very poor -- I know I have
4 to end -- this is unacceptable. It was a very poor
5 community. I knew nothing about the community when I
6 went there. The people were wonderful. They wanted
7 to vote and the fact that there were people who were
8 turned away from the gift that we give to Americans to
9 US citizens is the gift of voting, the fact that
10 people were turned away, absentee ballots weren't put
11 in. I understand from Call 12 that the voters that
12 filed paper votes, the votes were put in a plastic
13 bag. It was a disgrace and we need to change that.
14 Thank you.

15 JEAN JENSEN: Ms. Stella, thank you so
16 much. I do have one quick question. Have you
17 presented this information to any organization, any
18 election officials other than this group today?

19 MARIE STELLA: Yes, I have. I don't know
20 what's happened to it. I did give an initial copy for
21 you to read, but the official copy that I sent out to
22 different people, I don't think anything was done
23 about it. Thank you.

24 JEAN JENSEN: We have a couple more
25 minutes. Does anyone have a question that you have

1 not yet signed up? We can take one more. Would you
2 stand, please, or come up to the mic?

3 MABEL G. WELLS: Mr. Harris talked about
4 it, and I have always wondered about the distinction
5 between violent and non-violent. I wondered why, what
6 the rationale is after somebody has served their time?

7 CLAIRE GASTANAGA: Basically the
8 distinction has been drawn on political lines in my
9 view. This is my personal view. We just got the
10 definition changed to include non-violent drug
11 offenses so that what is considered non-violent for
12 voting restoration is now everything that's considered
13 non-violent for sentencing, but the distinction being
14 made between the violent and non-violent offenders is
15 a fundamentally political distinction. It's not a
16 legal one and it's not based on policy.

17 MABEL G. WELLS: It makes no sense then.
18 Not to me.

19 CARMEN TAYLOR: Go to your legislators.

20 CLAIRE GASTANAGA: The governor has worked
21 very hard to enhance the restoration process. I wrote
22 down the number that Mr. Harris gave in his testimony
23 that the state police were doing 70 background checks
24 a week, and that's 3640 background checks a year,
25 which means we only have 96 years to get the 350,000

1 people who are currently on the disenfranchised list
2 off at the rate we're going, which obviously is longer
3 than anyone should tolerate.

4 CARMEN TAYLOR: I also agree with
5 Mr. Harris in saying that we need to have this
6 automatic process a little bit more finalized in that
7 instead of paying -- instead of going through the
8 process of worrying how to pay to get your rights
9 back, it should be automatic. Like he said, if you
10 paid your time, everything, the finances and all that
11 should go right along with it because what you're
12 looking at is just incurring a debt. If you keep
13 putting some sort of percentage on top of this debt
14 that I owe you, I'm never going to pay you back. So,
15 in essence, politically, you're not really giving me
16 my rights back.

17 JEAN JENSEN: One more question here.

18 VIRGINIA COWLES: I wanted to follow up on
19 what Dr. Wells asked and the response that she
20 received. I thought about this. I think the general
21 public thinks, oh, a violent offender, we can't let
22 murderers and rapists vote, but the thing is they
23 usually never complete their sentences because they
24 get life. So it's only people that are allowed to
25 complete their sentences that are involved in this

1 issue about restoration of felons' rights. That's not
2 a question; is it? I think there's a -- I'll put it
3 as a question. Isn't there a false public perception
4 about the difference between violent and non-violent
5 offenders?

6 CLAIRES GASTANAGA: Yes, and the ACLU has
7 suggested to both Governor McDonnell and Governor
8 McAuliffe, we've given a legal opinion that we believe
9 they can do automatic restoration by executive order
10 and just essentially issue an executive order that
11 says everybody who meets the following criteria
12 automatically gets their rights back. They have
13 chosen to follow other legal advice they've gotten
14 that says they have to do it case by case. We're
15 going to continue to advocate until we can change the
16 constitution that the governor has more authority than
17 the current governors have been willing to exercise.

18 JEAN JENSEN: Is there anyone else who
19 would like to make a comment? We have about four
20 minutes left. We need to take a break. Thank you so
21 much for your time. And we're going to take a brief
22 break and then we'll be back in this room.

23 (A break was taken.)

24 JEAN JENSEN: Good afternoon. Well, good
25 late afternoon. I think to maximize the time that the

1 speakers will have that we need to just assume that
2 those who have come in late we'll say our two cents,
3 we'll let you get to know us as we go along so we can
4 proceed with the remarks that our guests want to make.
5 We have a little bit of a switch with Secretary
6 Palmer, and Tram Ngyuen will be the first speaker.
7 Thank you very much for switching times. That was
8 very gracious of you.

9 TRAM NGYUEN: Thank you. My name is Tram
10 Ngyuen. I'm co-executive director of Virginia
11 Majority. We are a statewide civic engagement
12 organization that works primarily in communities of
13 color, encouraging folks to actively participate in
14 the vote. There are a number of issues being
15 addressed today, but I want to focus my remarks on
16 list maintenance issues. In 2013, Virginia joined the
17 Interstate Voter Registration Crosscheck Program,
18 which is maintained by the state of Kansas, and there
19 are currently 28 states that participate in this
20 crosscheck program. What it does is it collects
21 registration data from all participating states,
22 including voter's full name, date of birth, address
23 and it provides the last four digits of the social
24 security number. Then the program attempts to match
25 the records to identify any duplicates and make

1 results known to each of the states. Arguably, this
2 crosscheck has the potential to be a very useful tool
3 for providing accurate registration lists since it
4 provides a means of identifying individuals that may
5 be registered in multiple states. And we can all
6 agree that it's important to maintain accurate lists.
7 It helps in a number of areas, including reducing the
8 time of check-in on Election Day. However, when
9 states use crosscheck to determine whether a
10 particular voter should be purged, appropriate
11 safeguards must be included in the purge process since
12 data matching by its nature is notoriously unreliable.
13 For example, data entry errors, similar sounding
14 names, and changing information can all produce false
15 positives. Last year after Virginia conducted its
16 first list match under the crosscheck program, it
17 identified nearly 57,000 voters with duplicate
18 registrations and flagged them for removal. General
19 registrars were not given clear guidance when the
20 lists were initially sent to them. The State Board of
21 Elections distributed the crosscheck list to local
22 registrars with instructions that encouraged that a
23 voter's appearance on the list should be created as a
24 request by the voter to be deleted from Virginia's
25 registration rolls and a sufficient basis for removal.

1 A few weeks after the initial lists were sent, the SBE
2 sent clarifying information in an email that explained
3 that it was the county registrar's responsibility to
4 determine whether the flagged voters could be
5 legitimately purged from the voter roll and laid out
6 some instances why the fact might be inaccurate. So
7 these instructions should have been provided
8 beforehand when the lists were initially sent out, not
9 weeks after the fact. So upon implementation of this
10 list, it was reported that several registered voters
11 were improperly removed from the voter registration
12 list. For example, in Accomack County, a voter
13 reported that he had his Virginia registration
14 canceled because the local official believed he was
15 registered in South Carolina. Well, what happened was
16 he lived in Virginia, he moved to South Carolina,
17 registered to vote there, and then subsequently moved
18 back to Virginia and registered to vote here in
19 Virginia, and South Carolina didn't remove them from
20 his rolls where he was registered. Some registrars,
21 including the registrar here in Chesterfield County,
22 discovered nearly a 20 percent error rate in the list
23 that was given to him. So all of this is a lesson
24 learned here as Virginia continues to participate in
25 the crosscheck program and other list maintenance

1 programs such as using the Systematic Alien
2 Verification for Entitlements, the SAVE database,
3 which is administered by the Department of Homeland
4 Security. It's an immigrant database. Virginia
5 hasn't use the SAVE database yet, they are about to,
6 and was assigned with the Department of Homeland
7 Security a several weeks ago. So as Virginia
8 continues to use this data match program for list
9 maintenance, it is imperative that safeguards are in
10 place to prevent the removal of qualified voters who
11 are eligible to vote in Virginia. At the very least,
12 the State Board of Elections should adopt a uniform
13 process by which they handle the data from these list
14 maker programs and the protocol should be clear and
15 easily understood by election administrators
16 responsible for actually doing anything with the
17 lists. So at the end of the day, list maintenance is
18 a good thing. We want clean, accurate voter rolls but
19 we need to make sure that safeguards are in place and,
20 frankly, need to follow the timeline of the national
21 Voting Rights Act and not purge votes as close to the
22 election as what happened last year as well. Thanks.

23 JEAN JENSEN: Thank you very much. Anna
24 Scholl, Progress Virginia.

25 ANNA SCHOLL: Good afternoon. My name is

1 Anna Scholl. I'm the Executive Director of Progress
2 Virginia. We are a statewide multi-issue progressive
3 advocacy organization that promotes progressive values
4 across the Commonwealth.

5 I'm going to speak for a moment about the
6 implementation process for Virginia's new photo voter
7 ID law that will go into effect July 1 of this year
8 and specifically implementation around the application
9 that the State Board of Elections is developing for
10 how voters will get a photo voter ID if they don't
11 have a currently acceptable photo ID for voting
12 purposes. Leaving aside a moment the wisdom of the
13 photo voter ID law, the application to obtain an ID
14 actually represents a great collaboration between
15 advocates across the state and the State Board of
16 Elections. The State Board of Elections has been very
17 responsive and open to input from advocates to make
18 sure that the application reflects concerns.

19 Specifically the State Board of Elections addressed
20 concerns about requiring voters to sign a statement
21 under felony perjury to attest whether they currently
22 have an acceptable voter ID. There were concerns that
23 that would perhaps scare off voters as well as
24 catching folks who inadvertently lost a driver's
25 license or another acceptable ID only to find it later

1 after they signed this form. Additionally, the State
2 Board has drafted and is currently available for
3 public comment have decided not to force voters to go
4 through an expensive and laborious process of
5 obtaining a birth certificate or nationalization
6 papers in order to testify to their identity other
7 processes that could dissuade voters who already are
8 somewhat disengaged from the system potentially when
9 they don't have a valid voter photo ID. The
10 application is really the best case scenario under the
11 law mitigating impact on voters and with photo ID laws
12 advancing across the country, the application and the
13 process that the State Board has engaged in a dialogue
14 we hope will be a model for other states who are
15 looking to implement similar procedures.

16 Unfortunately what the State Board hasn't
17 addressed and what will be a major hurdle going
18 forward is the accessibility of that application and
19 the ID process to voters once the law goes into
20 effect. As Hope from the ACLU mentioned earlier,
21 there are a number of locales across the state that
22 only have part-time registrars. We have a number of
23 geographically large jurisdictions where it can take
24 up to an hour to get from one end of the county to the
25 other end where the registrar is and have no access to

1 public transportation.

2 Secretary Palmer spoke earlier about the
3 financial constraints both on the State Board and on
4 the local registrars, and what the State Board and the
5 General Assembly need to address is how to fund local
6 registrars and electoral boards to ensure that they
7 are able to offer the application and the photo ID
8 process in locations that are accessible to voters and
9 especially to voters who are less likely to have a
10 voter photo ID whether they are seniors, students, or
11 other historically disenfranchised populations. Thank
12 you.

13 JEAN JENSEN: Our next speaker -- and
14 there are two; and we will let you all decide how you
15 split this up -- Mike Burns and Courtney Mills, Fair
16 Elections Legal Network.

17 COURTNEY MILLS: First I just want to
18 thank the Lawyers' Committee for inviting us to speak
19 today and also the commissioners for listening to
20 these very important topics.

21 My name is Courtney Mills, and I speak to
22 you on behalf of the Fair Elections Legal Network.
23 I'm also a Virginian and an election officer in
24 Fairfax County. I feel that as a non-partisan
25 organization based in Washington, DC, with a focus on

1 election administration policy and practice, I'm going
2 to be splitting my time today with Mike Burns, who
3 works on our student campaign called the Campus Vote
4 Project. The comments from FELN today will continue
5 on with what Anna was saying and what we've been sort
6 of addressing today are concerns about the
7 implementation of the upcoming voter photo ID law.
8 There are numerous concerns, but I'm going to focus on
9 three today.

10 First is the lack of funding for voter
11 education. The biggest two major elections in
12 Virginia in 2010 and 2012 have occurred under
13 different voter ID standards than what we will have in
14 2014. Elections in 2014 will, of course, mark the
15 third major election with the third change in ID law,
16 and voter confusion is a serious concern unless the
17 State Board of Elections has sufficient funds and
18 dedication to ensure that all voters know about these
19 changing rules. The fiscal impact statement for SB
20 1256 allocated \$166,250 for the initial implementation
21 of this bill, which covered machines that were needed
22 to make these IDs. The following years have
23 approximately \$212,000 allocated for educational
24 outreach. In 2012 when implementing a non-photo voter
25 ID standard, the State Board of Elections spent

1 approximately \$2 million to implement that ID law.
2 1.8 million was spent on sending out new voter
3 registration cards to everyone in Virginia with
4 \$800,000 left over for other implementation costs. To
5 allocate only \$200,000 per year for implementation of
6 a stricter photo ID standard seems to cast aside the
7 experience that the State Board of Elections had in
8 2012 and greatly limit the amount of outreach that can
9 be done. Of course, this year we do not have a budget
10 yet in Virginia so there are actually no funds which
11 is even worse than 200,000. In order for this ID law
12 to be properly implemented in 2014, if it must be,
13 then the SBE and the General Assembly should work
14 together to allocate a tremendous amount of funds to
15 make sure that all the voters have the requisite
16 amount of education to know that they need this ID.
17 Touching on what Anna said, the limitation on free ID
18 having only one machine per locality greatly limits
19 the accessibility of these free IDs. By definition,
20 these are voters that do not have a driver's license
21 and they will need to use public transportation to get
22 them. It is also very unlikely that registrars will
23 travel during the workweek with their one machine to
24 all the locations to ensure greater outreach. Also
25 minority population outreach, we should make sure that

1 the State Board is working with local registrars that
2 outreach and education is being done in all of the
3 languages or at least as many languages as possible to
4 ensure that we don't have many of our large language
5 populations unaware that our ID laws have changed.
6 And I pass off to Mike.

7 JEAN JENSEN: This is Mike Burns.

8 MIKE BURNS: Good evening. My name is
9 Mike Burns. I'm the director of the Campus Vote
10 Project. It's a project of the Fair Elections Legal
11 Network. We work with administrators and election
12 officials to institute reforms on college campuses to
13 empower students to participate in the electoral
14 process. Last year I worked specifically just in
15 Virginia since we were one of the few states to have
16 such an active election. Traveled all over the state
17 to a bunch of different campuses, made 27 in-campus
18 visits last year, spent a week over in Norfolk,
19 Hampton Roads working with student fellows there, had
20 a chance to hear from students about their experiences
21 with these sorts of processes. One of the things I'd
22 like to hit on is photo ID and how it actually affects
23 students. We're very excited that they are leaving
24 the student IDs that have photos in them as a valid
25 form of photo ID but, likewise, we're very concerned

1 about the fact that there's no money being allocated
2 to do educational outreach to inform people about
3 these new changes. Students as our newest voters
4 frequently start at an information deficit when
5 voting, so to have these substantial changes to rules,
6 if they're poorly explained to the public, that has a
7 drastic impact on them.

8 The other thing I'd like to talk about
9 just very briefly is campus polling places. One of
10 the things we've noticed here in Virginia we're less
11 to have this tremendous wealth of FOIA public
12 institutions, a lot of communities colleges are
13 initial review, only found two public FOIA schools
14 that have point places directly on campus. So one of
15 the things we'd just like to really encourage is the
16 local board of elections to consider on-campus
17 students to be a community that should be preserved by
18 precinct boundary lines which would make it much
19 easier to locate a polling place to serve that
20 community directly on those campuses. We see hundreds
21 of polling places across the Commonwealth being
22 located at K through 12 institutions, yet we don't see
23 that same consideration and advantage being taken of
24 our public higher institutions. Thanks for your time.

25 JEAN JENSEN: Thank you very much. Our

1 next speaker is Greg Lucyk. He's with One Virginia
2 2021.

3 GREG LUCYK: Good afternoon. My name is
4 Gregory Lucyk and I thank you all, the panel, for
5 allowing me to speak today. I am a member of the bar
6 of the Commonwealth of Virginia, recently retired as
7 chief staff attorney of the Supreme Court of Virginia.
8 I spent 18 years in the office of the Attorney General
9 as Assistant Attorney General, then Senior Assistant.
10 I handled all of the redistricting litigation that
11 came before the Commonwealth between 1985 and 2002.
12 And I am going to talk to you about a different
13 subject, gerrymandering. Gerrymandering is the
14 deliberate manipulation of legislative district
15 boundaries to advantage or benefit a particular party
16 or group or to cause disadvantage or harm to an
17 opposing party or group. It distorts the electoral
18 process, undermines democracy, and renders legislative
19 elections a meaningless exercise. Gerrymandering
20 reduces and eliminates competition in elections.
21 Unchallenged incumbents have less incentive to
22 ascertain and represent the interests of their
23 constituents. Gerrymandering promotes partisanship
24 and polarization. There's no need to compromise if
25 you know you don't face opposition, and gridlock in

1 government has increased. Gerrymandering has
2 increased voter apathy and confusion and reduces voter
3 participation. Why bother to vote when the outcome is
4 preordained? Or why make the effort to vote when you
5 can't find your polling place because your precinct or
6 your political subdivision is split into multiple
7 legislative districts? Virginia is considered in
8 several major indices to be one of the most
9 gerrymandered states in the country. Virginia's House
10 of Delegates is currently drawn so that 59 localities,
11 cities and counties are divided between multiple
12 districts. Virginia's Senate has 46 localities
13 divided in 40 districts. Hundreds and hundreds of
14 precincts were split in order to create the House and
15 the Senate mapped in 2011. Moreover, the 2013
16 election results show that legislative gerrymandering
17 has thwarted the will of Virginia voters. Democratic
18 statewide candidates swept the 2013 election with more
19 than 47 percent of Virginia voters backing all three
20 statewide Democrats. Assuming those voters also would
21 have preferred a Democratic legislator, a proportion
22 of the legislative map would give Democrats a minimum
23 of 47 seats. Today, Democrats hold only 32 seats in
24 the House of Delegates. In 24 Democratic controlled
25 districts and 33 Republican controlled districts, no

1 other party even bothered to field a candidate. In
2 several other districts, there was nominal opposition
3 from relatively unknown third-party candidates.
4 Still, out of over 2 million votes cast in 2013,
5 Democrats got 43 percent of the votes for major party
6 candidates while Republicans received 51 percent. A
7 proportional map based on this result again is going
8 to give you better than 40 seats to the Democrats.
9 Virginia is a purple state with roughly equal
10 populations of Republicans and Democrats. But the
11 power of gerrymandering has made for a lopsided House.
12 Democrats have virtually no say in that chamber. In
13 sum, gerrymandering is distorting Virginia's electoral
14 maps. Increasingly sophisticated tools and techniques
15 game the process with voters ultimately losing. Map
16 makers are given mountains of information on voters
17 and the voting behavior and are told to leverage the
18 districts as much as possible. Abuses include packing
19 party line voters into a single district in order to
20 create an overwhelming majority of favor of one party.
21 Cracking involves dividing cohesive groups of voters
22 among several districts in order to dilute their
23 influence. Opposing party incumbents are often paired
24 in a single district in order to force a primary
25 battle or more likely to force the incumbent to drop

1 out. In 1991, the House plan paired 14 minority party
2 incumbent legislators in 7 districts in order to
3 diminish their numbers. And they were successful.
4 Minority party incumbents may be paired with opposing
5 party legislators in districts drawn to favor
6 overwhelmingly the majority party, forcing a minority
7 party incumbents to move, lose, or drop out. The
8 current redistricting process is nothing more than
9 pure self-interested political manipulation. It is
10 time to change, to restore integrity to our government
11 and this process, and One Virginia 2021 hopes to
12 achieve that objective.

13 Very briefly, who are we? One Virginia
14 2021 is a group of Virginians who believe that
15 Virginia state and congressional districts belong to
16 its citizens and not to any legislators, interest
17 groups, or political party. Our goal very clearly is
18 that Virginia's legislative and congressional
19 districts will be drawn in accordance with districting
20 plans created by a non-partisan, independent
21 redistricting commission, and our mission is to
22 advocate for the adoption of an amendment to the
23 Constitution of Virginia establishing a redistricting
24 process that is fair, transparent, and accountable to
25 the citizens of the Commonwealth.

1 One more sentence and I'll wrap it up.
2 One Virginia 2021, Virginians for Fair Redistricting,
3 is working together with concerned citizens from all
4 over the Commonwealth to demand fair, non-partisan
5 redistricting. We must involve citizens, voters,
6 business interests, local governments, not just
7 legislators in order to achieve real, lasting change
8 to restore our faith and bring fairness back to
9 government. One Virginia 2021 appeals to all
10 Virginians to become part of this important effort,
11 and you can go to our website at
12 www.OneVirginia2021.org. It's an extensive website.
13 There's a great deal of information, and you can
14 register to show your support. Thank you all so very
15 much.

16 JEAN JENSEN: Our next speaker is Mr. Kim
17 from the National Korean American Service and
18 Education Consortium.

19 DONG YOON KIM: Good afternoon. My name
20 is Dong Yoon Kim, and I work with the National Korean
21 American Service and Education Consortium. I'd like
22 to thank the Lawyers' Committee for inviting me, and
23 I'd also like to thank the many wonderful folks in the
24 room who have -- who are very actively engaged on very
25 critical issues in the state of Virginia.

1 The National Korean American Service and
2 Education Consortium was founded in 1994. It's a
3 group of progressive national voice for Korean
4 Americans. We were founded by our local centers in LA
5 and Chicago, and recently we came to Virginia to do
6 more advocacy work as the Korean American community
7 continues to grow and continues to have a strong
8 influence in Virginia.

9 A couple of brief things. One will be the
10 2012 incident in Fairfax County. The other issue is
11 how we've been working with Fairfax County office of
12 election, our upcoming work on what we hope to
13 accomplish in Fairfax, Loudoun, and hopefully Prince
14 William Counties and a brief statement on the new
15 voter implementation law.

16 As many folks have known, in 2012 there
17 was an incident in Fairfax County regarding Korean
18 American seniors at the Annandale firehouse precinct.
19 Korean American seniors along with other voters were
20 separated into a separate line, and when poll monitors
21 pointed it out, one of the reasons given was, well,
22 that's a separate line for them to receive language
23 assistance. When they asked where is the person to
24 help with language assistance, they were still
25 scrambling at that time. So there was some confusion

1 there on many sides. One of the things that we were
2 trying to do at that time was to continue advocating
3 more for in language of voter materials at the county
4 level and we'll continue to work on that for the state
5 level.

6 One of the things that we were able to
7 accomplish in 2013 with Fairfax County office of
8 elections was for the absentee ballots translation
9 into Korean. We provided assistance on proofing the
10 documents as well. Not only that was a basic palm
11 card on basic voter information, polling locations for
12 early absentee voting were created as well. This year
13 we're looking forward to continue doing those efforts
14 not only in Fairfax but also Loudoun County,
15 considering that there are many Korean Americans and
16 API voters there.

17 So going back to Korean American seniors,
18 Korean American seniors are probably the highest voter
19 turnouts in Virginia and not only in Virginia but
20 probably nationwide. Many of the complaints that we
21 receive or issues that come up stem from Korean
22 American seniors. Many of the Korean American seniors
23 are low English proficient, and we are advocating for
24 more resources towards Korean Americans and Korean
25 American seniors who are low English proficient, not

1 only those who are Korean American but other API
2 languages as well.

3 Regarding the voter ID implementation law,
4 we will continue advocating with our advocates to
5 ensure that every Korean American voter who doesn't
6 have a photo ID has information they need to vote. I
7 believe that's all I have. Thank you so much.

8 JEAN JENSEN: Thank you very much. You
9 have a few more minutes. Do you have any additional
10 comments?

11 DONG YOON KIM: It's been kind of busy.
12 My apologies for not preparing well.

13 JEAN JENSEN: No, no, that's absolutely
14 fine. I just wanted to make sure you knew you had
15 more time. If you can stay, then perhaps some
16 questions will come up and that will help.

17 DONG YOON KIM: Thank you.

18 JEAN JENSEN: Cathy Woodson, Virginia
19 Organizing.

20 CATHY WOODSON: Good evening, everyone.
21 Thank you again for holding this hearing. My name is
22 Cathy Woodson. I'm with Virginia Organizing. We are
23 a statewide, nonpartisan grassroots organization and a
24 lot of our work engages in civic duties within the
25 state of Virginia, and we encourage people through

1 voter education, voter participation, registration,
2 and restoration of rights. So today I'm hear to talk
3 about the training program that's implemented through
4 the State Board of Elections with registrars but more
5 focused on election workers. So I'm going to give you
6 some examples to start off with, some of the reasons,
7 and I'm going to follow up with some recommendations
8 that we think will be helpful.

9 So talking to voters around the state,
10 here are a couple of things that happened over the
11 last three to four years during major elections, and
12 just reminder, Virginia has an election every year so
13 every election is important to us. So you have an
14 example of workers having the lack of knowledge about
15 voter ID. Lots of confusion around what is needed and
16 what is considered a valid voter ID. And now we're
17 about, of course, to implement the new law of photo
18 ID. One particular example from the South Hampton
19 Roads area was one person, a worker, election workers
20 had been working the precinct for years and years and
21 years and she never accepted anything except a photo
22 ID. Never, ever. Would ask people to leave, go back
23 and get a photo ID. Another example of confusing
24 voters and not being helpful is the I'm not sure what
25 to do if a voting machine goes down. Voters have

1 said, Well, I went to vote, I was on my lunch hour,
2 machines were down and nobody seems to know what to
3 do. The inconsistency of what to do with voters who
4 have disabilities, can they take the machine out, do
5 they have to help the person in, how are they going to
6 manage this. It's inconsistent across the state. And
7 then one particular issue that's very important to me
8 personally because it happened at my precinct and I
9 won't name it but election workers run out of the
10 precinct and say, Excuse me, excuse me, you didn't
11 cast your ballot. They're outside of the voting
12 precinct. So it's sort of like, Well, what happened?
13 So one of the things that we believe is uniform
14 training standards for all election workers. We know
15 the registrars are trained. We know the registrars
16 train the chief officers, but what we've observed is
17 if the workers, the Election Day workers are trained
18 and use a unified training program that everyone is
19 trained with the same information it would help so
20 that you don't have different standards for different
21 localities. And that's our big concern. So you have
22 voters who might be directed with the same procedures
23 but they're just given different information.
24 Regardless of localities, we believe that this would
25 eliminate a lot of voter confusion. It also would

1 provide a way for the registrar to evaluate their
2 election workers so you would be able to pair people
3 with their abilities and their challenges. So I know
4 it's a job that a lot of people have been doing for
5 years and years and you don't want to discredit their
6 work, you want to value their work, but we also have
7 to be concerned with voters. We also think that the
8 workers having a standardized program would allow
9 registrars to do a really good evaluation of what
10 happened on Election Day so it would decrease
11 inconsistent information given to voters, it would
12 cause less confusion with voters, and we would have,
13 regardless of where you live and where you vote, you
14 would be getting the same information. So that's why
15 we think a standardized uniform training program for
16 all workers, all election workers, not just
17 registrars, not just chief officers, but for every
18 person that's working in a precinct on Election Day to
19 be trained. Thank you.

20 JEAN JENSEN: Thank you very much. Do we
21 have any questions from the audience? Can I just ask
22 the audience if we have questions? That's where we go
23 next? Oh, the commissioners first.

24 CLAIRE GASTANAGA: Cathy, do you think it
25 would be possible to do the kind of training you're

1 talking about through webinars? You could gather
2 people together and use new technologies to deliver
3 the training all at the same time, all across the
4 state in webinars or other technologically delivered
5 learning?

6 CATHY WOODSON: I think that would be
7 great. SBE implemented the voter registration webinar
8 or you can go on line and take a training or they
9 would come out. I think you could use all sorts of
10 technology to gather people together, and that might
11 be helpful to registrars to have all of their workers
12 at one location so that --

13 CLAIRE GASTANAGA: A standard curriculum
14 that was developed by SBE?

15 CATHY WOODSON: Yes.

16 CARMEN TAYLOR: Cathy, in addition to
17 that, do you think it would help if the workers
18 actually had some sort of like standardized template
19 in front of them that highlighted let's say the
20 specific concerns such as -- you weren't here earlier
21 when I mentioned what I went through some of the very
22 same things even as a voter in which my poll workers
23 were unsure of whether or not I needed an ID or not
24 and denied me the right to vote, but I knew what to
25 do. But do you think if they had some sort of

1 template because the outcome of that was the poll
2 workers actually made a phone call to someone to find
3 out whether or not I was telling them the truth or
4 not.

5 CATHY WOODSON: Yeah, I would hope that
6 there are provisions there and, again, that's part of
7 it. If you standardize or uniform the materials, the
8 training, you can ensure that everything is there that
9 the worker will need that day. You know, I listened
10 to so many people didn't understand provisional
11 ballots. So many pieces that people don't -- you
12 can't hold all of it in your head all the time, but at
13 least if you had a template there or something, you
14 can use it.

15 CARMEN TAYLOR: Because the training
16 sometimes becomes overwhelming especially for people
17 who have been doing it for years and all these changes
18 to the laws.

19 CATHY WOODSON: And I do respect that, but
20 speaking as a voter and I think we want to ensure that
21 voters feel that they have the right to vote and that
22 there are no barriers.

23 CARMEN TAYLOR: Absolutely. Thank you.

24 JEAN JENSEN: I am so glad that you said
25 what you did. I am 75 years old and I'll be 76 in

1 November. I am too old to be an officer of election.
2 If I start at 5:15 in the morning and I go and am
3 trying to make important decisions at 8:30 at night,
4 I'm not going to be able to make them. We have an
5 extremely aging workforce. They don't want to give up
6 that job. For many of them in their 70s and 80s, it's
7 the most important thing they still do in their
8 community. We've got to find a way to get them, you
9 know, the one instance that you talked about was the
10 woman who she did it one way 20 years ago and I don't
11 care how much training you're going to put her
12 through, she's going to still do it the way she did it
13 20 years ago. And I wouldn't be speaking so boldly if
14 I did not incur so many problems as a former election
15 official going to the polls. We've got to be
16 realistic. We've got to get the business community to
17 give people time off from work to work the polls.
18 We've got to get high school and college kids to work
19 the polls. They understand the machinery. I watched
20 an 82-year-old officer of election who treated an
21 electronic voting machine like it was a bomb. We've
22 got to be realistic about it and we've got to change
23 the dynamics because I agree with you on training.
24 That's just my personal soapbox that I have very
25 strong feelings about. We've got to do something

1 about the aging workforce as the officers of election.

2 CLAIRe GASTANAGA: I have a question for
3 Mr. Lucyk. Mr. Lucyk, do you think there's a point at
4 which gerrymandering becomes so extreme that there's a
5 legal argument it interferes with one person one vote?

6 GREG LUCYK: The courts, especially the US
7 Supreme Court, have given a great deal of latitude to
8 the legislatures in drawing districts. In fact, we
9 had a political gerrymandering claim that was
10 litigated before a three-judge federal court in 1991,
11 the Republican Party of Virginia v. Wilder, and that
12 case was thrown out and the districts were upheld
13 because the burden of proof of political
14 gerrymandering is so high. This is not to say that at
15 some point it can't be met, but in '91 that's when 14
16 Republican incumbents were paired in 7 districts and
17 it was very clear that political data drove the
18 creation of those legislative districts and yet that
19 wasn't sufficient to overcome the burden of proof.

20 CLAIRe GASTANAGA: I think the computer
21 technology has gotten to be such an important part of
22 all of this there might be a more accessible record of
23 the manipulation today than in 1991?

24 GREG LUCYK: You know, it was pretty
25 accessible in 1991 as well, and you should know that

1 the districting plans in 2001 and 2011 weren't even
2 drawn in Virginia. They were drawn at the Republican
3 National Committee and Democratic National Committee
4 headquarters in Washington and brought down and loaded
5 to the state's computers.

6 CLAIRES GASTANAGA: Right.

7 GREG LUCYK: What we need to do is to get
8 political and partisan data completely out of the
9 process and rely solely on objective redistricting
10 criteria, including equal representation, racial
11 fairness, compactness, contiguity.

12 CLAIRES GASTANAGA: Communities of
13 interest.

14 GREG LUCYK: Well, even communities of
15 interest in my view is a little subjective. I think
16 preserving political subdivisions and especially
17 precinct boundaries would take precedence over
18 communities of interest. That is something that can
19 play into it. But strict, rigid adherence to that
20 objective, neutral districting criteria and spell it
21 out in the constitutional amendment that incumbency
22 and partisanship and politics have no role in drawing
23 of these plans. And that's one of the principles that
24 One Virginia 2021 I think would adhere to.

25 THURSA CRITTENDEN: I have a question for

1 Mr. Lucyk as well. During your presentation you
2 mentioned the fact that we could go on line and get
3 information about your organization. And perhaps most
4 of us can here, but there are many people within
5 communities that maybe don't have access or they're
6 aged and don't have interest so I was just wondering
7 what kind of education program do you have for people,
8 say, at a grassroots level?

9 GREG LUCYK: We have already created
10 several committees including an outreach committee.
11 We've divided the state into seven regions, and our
12 goal is to go out into the community, to chambers of
13 commerce, to the senior centers, and to reach as many
14 voters, as many business people and as many local
15 governments as we can. We are scheduled to have an
16 article appearing in the Virginia Municipal Leagues
17 quarterly magazine very soon, which will hopefully not
18 only spell out what we're doing but also spell out the
19 process by which we need to bring as many citizens
20 into the process as we can. So it's a very large
21 organization. The steering committee consists of a
22 wide range of people from all over the Commonwealth,
23 and they're already working very hard to get the word
24 out to the people.

25 THURSA CRITTENDEN: So basically there is

1 a lot of diversity within your organization so that we
2 reach many of the populations within the state;
3 correct?

4 GREG LUCYK: Correct. Absolutely correct.

5 CLAIRE GASTANAGA: I have a question for
6 Mr. Kim. I have a question for you. You were talking
7 about the limited English proficiency with some of the
8 voters you are working with, and I was wondering based
9 on some of the anecdotal information you gave us
10 whether you've been in touch with the Department of
11 Justice's Civil Rights Division that oversees the
12 limited English proficiency requirements of Title VI
13 or the executive order which both followed federal
14 funding and the Help America Vote if a federal funding
15 mechanism that has funded many electoral offices
16 across the Commonwealth, I just wondered whether you
17 had raised those issues with the powers that be in
18 Washington and talked to them about the LAP
19 discrimination that you're seeing.

20 DONG YOON KIM: As of now, we haven't
21 reached out to them. We are still new working in
22 Virginia. Most of our campaign work is kind of
23 focused on the federal and national level and not
24 specifically in Virginia. Having said that, we have
25 done work with DOJ in LA, Chicago, New York and other

1 places where we've worked extensively with Korean
2 Americans.

3 CLAIRe GASTANAGA: Let me just say that
4 the ACLU would be happy to work with you if you would
5 like to address those.

6 JEAN JENSEN: Let me ask a follow-up
7 question to that. You've obviously worked with the
8 Fairfax County Board of Elections --

9 DONG YOON KIM: Yes.

10 JEAN JENSEN: -- to try to enhance the way
11 Korean Americans are able to vote. Has that been --
12 I'm trying to be diplomatic. Has that been a
13 cooperative relationship?

14 DONG YOON KIM: As of now, it has been
15 cooperative. Even before the 2012 voter lines of
16 separation, even before, they reached out to us and we
17 reached out to them regarding separate matters. And
18 one of the things that we talked about was how we can
19 increase or how we can make voting access more
20 accessible to Korean American seniors, Korean American
21 voters. But in terms of an advocacy, we're not
22 working directly with them, obviously there's a
23 certain line that we've drawn. Having said that, we
24 home to continue working with them and other folks not
25 only for Korean Americans but also API. I think one

1 of the focuses this year will be Vietnamese outreach
2 as well.

3 JEAN JENSEN: I think what -- I'm retired,
4 I'm a little more outspoken because I can get away
5 with it. I think what Claire is suggesting that if
6 you reach a point where you're batting your head up
7 against the wall, I would not hesitate to take
8 advantage of help to get those doors open. It may be
9 a funding issue in that, you know, Fairfax County has
10 a more diverse language base than any county in the
11 entire state. But whether, I mean, I'm sure you can
12 find volunteers that would be willing to staff the
13 polling places to help, but, you know, you now can
14 leave this meeting with a plan B.

15 DONG YOON KIM: Yes. Thank you.

16 CLAIRE GASTANAGA: I think it's
17 extraordinarily important to point out that when the
18 Joint Legislative Audit Review Committee looked at
19 what they called the acclimation of the foreign born
20 in Virginia in 2004, they identified lack of state
21 compliance with Title VI on limited English
22 proficiency issues across the board, whether it was
23 education, healthcare, social services, whatever it
24 was as a major problem for the Commonwealth of
25 Virginia, and nothing's really happened since then.

1 So that continues to be a huge issue and not just in
2 Fairfax County but across the Commonwealth in ways
3 that, you know, if you go to a hospital and the
4 hospital can't interact with you because of language
5 issues, your health is in jeopardy, so it's a really
6 serious problem outside of even the electoral context.

7 JEAN JENSEN: Any of the other
8 commissioners have a question?

9 CLAIRE GASTANAGA: Do we want to take
10 additional questions from the audience?

11 JEAN JENSEN: Thank you for keeping me on
12 track. Rose has a microphone. Dr. Crittenden.

13 FLORA CRITTENDEN: Yes, I have a question.
14 I would like to know if items that have been discussed
15 today, if this panel, if there are items that can be
16 handled through the legislative process, if this panel
17 will refer those items to the appropriate committees.

18 JEAN JENSEN: Rebecca, I think it would be
19 appropriate to --

20 CLAIRE GASTANAGA: Talk about what happens
21 with the report.

22 REBECCA ARNOLD: As you all see here, this
23 hearing is being transcribed so at the close of the
24 hearing, as we complete all of our hearings
25 nationwide, this is a series of hearings that we're

1 having across the country, we're going to complete a
2 report of the array of issues that have been
3 highlighted at these hearings, so that will be made
4 public. Anything you've heard here will be included
5 in that report and you will be able to use that in
6 your advocacy at the state level.

7 CARMEN TAYLOR: What's the timeline?

8 FLORA CRITTENDEN: I want to know if you
9 send your report directly to the legislatures.

10 REBECCA ARNOLD: No, we'll be making it
11 available to the public for you all to use.

12 ROSE CLOUSTON: There will two reports,
13 one on election administration and one on voter
14 discrimination, and those will be we planned to be
15 wrapped up during the summer. We have had a couple of
16 hearings that have gotten pushed into May just by our
17 efforts to complete them in April, but those reports
18 should be available by mid-summer I would anticipate
19 and we also have a colleague who was unable to be here
20 today for other obligations unfortunately, but she
21 will be working with a lot of the advocates in
22 Virginia who have spoken here today to try to help
23 push these issues forward and be a resource to you all
24 from the Lawyers' Committee for Civil Rights Under The
25 Law and she will, of course, have access to that

1 report and be trying to use it for those advocacy
2 efforts and be a resource in that way, so hopefully it
3 will find its way to the legislature through ACLU or
4 other means.

5 FLORA CRITTENDEN: Let me see if I
6 understand what you are saying. Are you saying that
7 we as participants who have presented items that might
8 need legislative action will have to refer them
9 ourselves or does that go from the panel or how can
10 that be done?

11 THURSA CRITTENDEN: Basically, basically
12 the idea is that people from all across the state will
13 share their experiences, their issues and all of that
14 and then that information will be collected and then
15 it will be made available to those advocacy groups
16 that can go out and work towards solving some of these
17 problems. So that's how it's going to work. It's
18 more that organizations will continue the fight to try
19 to make sure that some of the ideas or issues that
20 have been brought forth here will then be worked on.

21 FLORA CRITTENDEN: I just ask the question
22 because I heard some things I thought perhaps would
23 need legislative action. I just want to know how
24 they're going to get it.

25 CLAIRE GASTANAGA: Dr. Crittenden, I think

1 there are two things going on here. One, Congress is
2 looking at what are they going to do about the Voting
3 Rights Act now that Shelby County has been decided.
4 One of my deep concerns is that the current draft of
5 the bill doesn't include Virginia among the states
6 that are going to have required preclearance going
7 forward, which means that those of us who care about
8 these things are going to be ready to use Section 2,
9 which is the direct litigation route if we're going to
10 raise questions of election fairness, and that's going
11 to change the whole ballgame for us. I'm not sure why
12 Virginia's not on the list, but whatever formula
13 they're developing right now includes only four
14 southern states, Georgia, Texas, Alabama and either
15 Louisiana or Mississippi. Louisiana, Mississippi,
16 Georgia, and Texas. Those are the four. Not Alabama.
17 So we don't really -- and everybody is sort of talking
18 about it it's the best bill we can get, and I will say
19 to you today that one of the major concerns we have
20 right now is that Congressman Goodlatte, who chairs
21 Judiciary, will not bring the bill forward for a
22 hearing. If it doesn't get a hearing before June, it
23 will not be considered by this Congress and it will
24 have to be carried over by this Congress. So
25 hopefully part of this process as a record that will

1 help generate that but anybody who's in a position to
2 push Congressman Goodlatte on the issue, Please have a
3 hearing, should do so immediately and loudly.

4 And then the second thing is that we would
5 take this information and look at Virginia
6 particularly since we're not going to have Section 5
7 preclearance going forward it looks like and ask
8 ourselves what should we be advocating before the
9 legislature in terms of voting reform, and one of the
10 key things that the ACLU is concerned about is
11 changing the constitution to get rid of the lifetime
12 ban on voting because there are 350,000 people that
13 would affect, and as you know, that's a long process
14 and one that even if we got a voter restoration
15 resolution passed next year would be years off before
16 we could get it on the ballot.

17 CARMEN TAYLOR: It's not really a
18 question, but it's actually sharing with you,
19 Ms. Crittenden, the fact that the Virginia State
20 Conference NAACP and all of its members have been
21 focused in on advocating Congressman Goodlatte to make
22 sure that he does bring this to a hearing. That's
23 been our focus for some time now. We've actually
24 called many of our members in that area, the western
25 part of the state, and we're galvanizing them to set

1 up meetings with him at his home base rather than
2 going up to Washington or whatever to make sure that
3 we put the pressure on him. We've also collaborated
4 with other groups. We currently have I think it's
5 Goodlatte we're trying to work with now to galvanize a
6 meeting to meet with him. We're putting the pressure
7 on him. In addition to that what you're saying about
8 some of the things whether or not we're going to lobby
9 our legislators, I know you know for years that we
10 lobbied you, that we definitely, the NAACP, will be
11 lobbying our legislators for some of the things we
12 heard here.

13 I just have a question though in reference
14 to the information. I know you said it's not going to
15 be available to us until May; is that correct? The
16 summer. As commissioners, will we be able to review
17 documents ahead of time?

18 ROSE CLOUSTON: Why don't we correspond
19 about that via email because I'm not quite sure how
20 exactly that's going to work.

21 ELIZABETH SMITH: I'm Elizabeth Smith,
22 Richmond, Virginia. What concerns me very much and
23 I'm not -- I don't know what you can do about it, but
24 the dropping of Virginia from the section of the
25 voting rights law that avoids us having to do

1 preclearance concerns me very much because of what I
2 have heard here in this room is evidence of racial
3 discrimination. It has been spoken of in terms of
4 redistricting, it has been spoken of in terms of
5 preparation of election officers, it has been spoken
6 of in terms of treating voters. It seems to me that
7 this is a serious problem which is in the Virginia way
8 kept hidden and only talked about in polite ways so it
9 doesn't appear that it's a problem. So I'm distressed
10 that there seems to be nothing we can do about the
11 preclearance provisions?

12 CLAIRES GASTANAGA: Who's your Congressman?
13 Because like one person who needs to hear from all of
14 you is --

15 ELIZABETH SMITH: Bobby Scott.

16 CLAIRES GASTANAGA: He should be a vocal
17 advocate for continuing preclearance. But Congressman
18 Forbes who voted for the Voting Rights Act in 2006 is
19 not clear he's going to vote for it this time. So
20 there's a lot of work that needs -- even the way it's
21 currently structured with Virginia not covered.

22 ELIZABETH SMITH: I also expect that in
23 your report in writing this report that like it's
24 mentioned in this report is the evidence that racial
25 discrimination continues in the state of Virginia.

1 CARMEN TAYLOR: Hear, hear.

2 CLAIRE GASTANAGA: I'm with you.

3 ELIZABETH SMITH: The more people we have
4 saying this maybe helps, but I don't know.

5 COURTNEY MILLS: I just wanted to touch on
6 the poll worker issue as someone who has served as an
7 election officer. I think it ties together a lot of
8 issues that we've heard discussed today, and that's
9 the lack of funding. There is not enough money. It
10 was one of the main points that the Presidential
11 Commission on Election Administration made that there
12 is a tremendous lack of resources nationally. There
13 are a lot of costs that go into putting on an election
14 and, as mentioned, Virginia has elections every year,
15 so it's a constant cost. It's constant recruiting for
16 poll workers, and if any of you have ever gone through
17 election training, it's very short. It's usually
18 about four hours and that's all you get. So they have
19 to fit in everything for anyone who is coming to be an
20 election officer for the very first time. You know
21 exactly nothing except your experience when you've
22 voted before and they need to teach you from A to Z.
23 So I think we have a lot of work to do with registrars
24 and with boards of election to make sure that they are
25 teaching the right information to our election

1 officers, but I think that we also need to as
2 advocates make sure we're doing work to make sure that
3 they have the resources that they need as well. They
4 need up-to-date equipment, they need to fix their
5 equipment so it isn't breaking down, they need to have
6 resources to recruit young people. And a lot of the
7 registrars that we've spoken to are trying to recruit
8 young people specifically because they tend to be
9 bilingual at a higher rate than some of the older
10 population, so it's a way in our counties that don't
11 have a bilingual requirement, which Fairfax County is
12 the only county that is required to have materials in
13 a second language and they are only covered for
14 Spanish, it's a way for the registrars to make sure
15 that there is someone there who can assist these
16 voters who have limited English proficiency. So I
17 think it's something that ties together a lot of the
18 problems that we see, and it is something that we
19 really need to bump our funding for elections if we
20 ever want to have early voting in Virginia. That's
21 one of the main things that we hear whenever we talk
22 about early voting and the fact that our lines are
23 getting longer and that is obviously going to have an
24 impact on low income voters who can't afford to stand
25 in line for three hours or six or seven hours like we

1 see in Florida. They have to go to work. And so we
2 need early voting in Virginia, but as long as our
3 local election offices don't have the money necessary
4 to put on Election Day, they're going to resist having
5 early voting as well, so I think that's sort of the
6 root of a lot of these problems that we need to
7 address.

8 JEAN JENSEN: Agreed. Agreed. Thank you
9 so much.

10 VIRGINIA COWLES: Virginia Cowles. My
11 first point is just a rhetorical question. Why is it
12 that the wealthiest democracy in the world doesn't
13 have enough money to conduct fair elections? And then
14 I'll go on to another thing and that is
15 gerrymandering. Isn't it in our constitution that
16 districts should be compact?

17 GREG LUCYK: It is.

18 VIRGINIA COWLES: Why isn't this enforced?

19 GREG LUCYK: Because the Virginia Supreme
20 Court has ruled that the legislature has great
21 latitude in determining what compactness means.

22 CLAIRE GASTANAGA: Or contiguity.

23 GREG LUCYK: So that even highly irregular
24 districts can pass constitutional muster.

25 VIRGINIA COWLES: Can we refer them to

1 Webster's Dictionary?

2 CLAIRE GASTANAGA: We did that in 2001.

3 GREG LUCYK: Our role is to take politics
4 out of it because it's the politics that creates the
5 irregular districts. If we can use the objective
6 districting criteria and some of the compactness
7 measures that are available, we can have compact
8 districts.

9 CLAIRE GASTANAGA: And contiguous, other
10 than just by water. The only districts that should be
11 contiguous by water are the Eastern Shore with the
12 rest of Virginia. You should not have a district in
13 Richmond that connects Hopewell by going down a
14 waterway without any other people. Or Bobby Scott's
15 district in which the only link between Ghent in
16 Norfolk and the Fan in Richmond is 64, and Route 64
17 links the two parts of the barbell but there are no
18 people in significant parts of Congressman Scott's
19 district. But that was approved as contiguous.

20 JEAN JENSEN: I think unfortunately the
21 problem is that I would assume that everyone at this
22 front table and everyone in this audience would
23 support fair redistricting. We're not the ones that
24 do it. So we've got to get the message to the people
25 who do do it. It's going to be the hardest group for

1 One Virginia 2021. We have got to get such a ground
2 swell going that the legislators don't have any
3 choice. And I will tell you in my experience -- and I
4 worked in the legislature for years -- the very best,
5 most honest, hard working legislators turn into
6 different people when you start talking about taking
7 something out of their district or giving them a
8 district that doesn't have a lot of their people.
9 They are different animals, and that's the battle
10 we're going to all have to face. So go out and
11 recruit lots and lots of people because that's what
12 we're going to -- that's what Virginia 2021 right now
13 is trying to do, get as many people on board as
14 possible.

15 MERECEDES HARRIS: My question is 350,000
16 disenfranchised felons, how are we going to train
17 them, which we should be doing it while they're
18 incarcerated so they come home. How are we going to
19 do it because now there's some probation thing you
20 can't live where you want to in Virginia; you have to
21 go back to where you came from. So what I'm saying is
22 how is the education going to get to the Department of
23 Corrections where it should be? And now that we got
24 automatic restoration, that's going to cover about
25 250,000 felons that have probably been locked up for

1 10, 15, 20 years ago. I know I hadn't seen a booth in
2 28 years. When I walked in there, nobody showed me
3 how to do anything. They just put me in a booth and I
4 was confused at the buttons or the arrows or whatever
5 else. And I'm visually impaired. No one asked me
6 could I see well enough to do what I needed to do.
7 I'm just asking how are we going to deal with all of
8 those I call them clients, not inmates, that are about
9 to come out and embark in the world very shortly, how
10 many are going to train them? Shouldn't we be
11 training them in there, while they're in there so
12 they'll know what to do when they come out? Because
13 they're going to have their names turned in at the
14 Department of Corrections all the way to the
15 Governor's Office to have their paperwork done before
16 they even get out. That's what they're talking about
17 doing.

18 JEAN JENSEN: Where do you live?

19 MERECEDIES HARRIS: I live in Waynesboro.
20 Waynesboro, Staunton, and Augusta County, Rockbridge
21 in that area, Page County, there's no information but
22 me. I'm like the great white hope there.

23 JEAN JENSEN: Any other questions?

24 ROSE CLOUSTON: I think we do have someone
25 from public testimony. Lynetta Thompson.

1 LYNETTA THOMPSON: My question is about
2 accountability. I'm really in favor of the
3 standardized -- standard training for training
4 everyone because even though people know better, it's
5 a lot of bias in the process. So the accountability.
6 One lady spoke about I think she's gone, when she went
7 to the poll and they were not doing things the correct
8 way, who is it that turned that in and is there any
9 accountability? Is there any type of -- because most
10 of the volunteers, some of them get paid, but for the
11 most part it's a volunteer system.

12 JEAN JENSEN: They're all paid.

13 LYNETTA THOMPSON: But where is the
14 accountability?

15 CLAIRE GASTANAGA: It's with the general
16 registrar. The general registrar in the situation
17 where they should be enforcing the requirements and if
18 an officer of election doesn't comply with the
19 requirements, they shouldn't be an officer of election
20 next time.

21 JEAN JENSEN: And it's a combination of
22 general registrar and the local electoral board.

23 LYNETTA THOMPSON: If there's a standard
24 that everyone is trained the same way, we the voters
25 know what's to be done, we are the one that's turning

1 them in.

2 CLAIRE GASTANAGA: The complication is the
3 State Board of Elections doesn't hire and fire the
4 registrars. They're hired and fired by local boards
5 of election and so there's some quasi state, quasi
6 local thing going on and so part of the impediment to
7 standardized training that applies statewide and can
8 be enforced statewide is this bifurcated
9 responsibility for who's doing what. And so there's a
10 statute over here that says that the registrars have
11 to deliver a certain training in accordance with the
12 State Board standards, but the State Board doesn't
13 have any ability to enforce that directly because they
14 don't hire and fire the registrars. So to get uniform
15 standardized training statewide and to get it mandated
16 would require probably some legislative changes, which
17 is why I'm taking notes and making sure that
18 Dr. Crittenden's point is understood and well taken,
19 which is some of the stuff that people have talked
20 about won't happen without some kind of change in the
21 law.

22 JEAN JENSEN: Kendra Glover.

23 KENDRA GLOVER: Good evening. My name is
24 Kendra Glover, and I'm a paralegal in the office of
25 the general counsel of the NAACP, the headquarters in

1 Baltimore. Before I get started so don't start timing
2 me, I just want you to know that we do have a vote
3 monitor project and the email address, if you see
4 anything that's wrong, some of the things that you
5 mentioned here today, you can email Vote
6 Monitor@NAACPnet.org, VoteMonitor@NAACPnet.org. The
7 telephone number is 410-580-5114. And if you forget
8 all of that, call the national headquarters. My name
9 is Kendra Glover. I'll give it back to you again.

10 Actually, the reason I'm here, even though
11 I work in Baltimore, I am from the Chuckatuck Borough,
12 one of the seven boroughs in the City of Suffolk, and
13 I was the assistant project manager for the NAACP's
14 national redistricting project. And I am here to
15 speak on redistricting that we did in Suffolk. The
16 City of Suffolk went through its usual redistricting
17 process. However, when the City Council adopted a
18 redistricting plan, it excluded an African-American
19 council person, an African-American SCHOOL BOARD
20 member, there was a white council person and a white
21 school board member as well. But when they adopted
22 the plan, they drew the two African-Americans out of
23 their districts and pitted them against other
24 African-Americans in another large African-American
25 district. The two white incumbents were actually

1 drawn out of their districts as well but their
2 constituents followed them. So they still had the
3 opportunity to be elected. Now, the local branch of
4 the NAACP, of course, objected to this plan. The two
5 African-American incumbents were placed in the same
6 district and, like I said before, the two white
7 incumbents were not pitted against each other. In
8 addition, to add insult to injury, the name of one of
9 the longstanding black districts was changed in the
10 City Council's plan in exchange or traded with the
11 name of a majority white district and the plan adopted
12 2 percent to the Department of Justice. How's that
13 for transparency, an important objective in
14 redistricting, a process traditionally and too often
15 even today in many jurisdictions shrouded in secrecy.
16 Moreover, the districts had been named in what would
17 be considered the correct position in an earlier
18 proposal of the new district scheme. The final
19 approved plan swapped the names of the majority black
20 Nansenmond district and the white Sleeping Hole
21 districts. The name change caused some confusion with
22 voters who were used to voting in the Nansenmond
23 District. I will note parenthetically that the city's
24 somewhat odd actions of pitting the two black
25 incumbents against each other in the same district but

1 not doing the same for any white incumbents, switching
2 districts and changing their names, taken together
3 certainly raised important questions about equal
4 protection. In *Arlington Heights v. Metropolitan*
5 *Housing Corporation*, the Supreme Court outlined
6 factors to consider in determining whether there was a
7 14th Amendment equal protection violation determining
8 whether an invidious, discriminatory purpose was a
9 motivating factor demands a sensitive inquiry into
10 such circumstantial and direct evidence of intent as
11 may be available the historical background of the
12 decision in one evidentiary source particularly if it
13 reveals a series of official actions taken for
14 invidious purposes. The specific sequence of events
15 leading up to the challenged decision also may shed
16 some light on the decision-maker's purposes.
17 Departures from the normal procedure sequence also
18 might afford evidence that improper purposes are
19 playing a roll. Substantive departures too may be
20 relevant particularly if the factors usually
21 considered important by the decision-maker strongly
22 favor a decision contrary to the one reached.
23 Finally, the legislative or administrative history may
24 be highly relevant, especially when there are
25 contemporary statements of members of the

1 decision-making body. Minutes of meetings or reports,
2 the foregoing summary identifies, without purporting
3 to be exhaustive, subject of proper inquiring into
4 determining whether racially discriminatory intent
5 existed. Though the election is now over, sometimes
6 the past has a way of catching up with us. The city
7 may not have heard the last of such concerns. Thank
8 you.

9 JEAN JENSEN: Any comments?

10 CLAIRE GASTANAGA: I think one of the
11 problems with not having preclearance is that you have
12 to wait -- I was going to say this in a less delicate
13 way. You have to wait to get screwed before you can
14 sue. The bottom line is that if you're bringing a
15 Section 2 case, you have to wait until the election's
16 over to get the information that is needed to make the
17 14th Amendment claims. With preclearance you've got
18 to raise the issues before the bad stuff happens and
19 have it addressed so that you actually make sure that
20 people have the right to elect the person of their
21 choice before the election takes place. That's the
22 major difference between Section 2 of the Voting
23 Rights Act and Section 5. Section 5 is about keeping
24 bad things from happening. Section 2 is about
25 visiting bad things after they've happened and making

1 a case that illegal discrimination took place, and
2 that's why it's really sad if the Voting Rights Act is
3 passed without Virginia being subject to preclearance
4 in the future, although I have to say that I've been
5 perplexed by what the proper standard is ever since
6 Prince William got out, Justice Department said they
7 no longer needed to get preclearance even before the
8 Shelby case, so the standards have not been what you
9 call as exacting or narrow as they might have been in
10 my view in the past.

11 JEAN JENSEN: Are there any other comments
12 from anyone on the panel or anybody in the audience?
13 Would you like to give us an idea of how you'd like to
14 wrap this up?

15 REBECCA ARNOLD: Feel free to make any
16 closing remarks.

17 CARMEN TAYLOR: I'm going to be very
18 brief. Just to remind everyone I think it's very
19 important, even though we're coming here when we're
20 sharing our ideas and sharing the concerns that we
21 have and the experiences that we've gone through, that
22 it's very important to understand that going
23 towards -- leaning towards the future I believe that
24 many of us need to collaborate together for the common
25 theme and a common focus to get done what we need to

1 get done, which is for -- which is to do what's right
2 for everyone, not just for some. Thank you.

3 THURSA CRITTENDEN: Thank you very much.
4 First of all, I'd like to say thank you to all of
5 those that have participated in today's program. Your
6 information has been invaluable. It gives us a path
7 towards solving some of the serious issues that we
8 have here in the state regarding voting rights.

9 I had a few takeaways from today's meeting
10 and these are all issues that we found important and
11 whatever organization you're with, you know, you can
12 take one or all but whatever you do, don't let things
13 stop here. And basically I heard today we desperately
14 need civic engagement. And so we all represent
15 organizations, so let's roll up our sleeves and do the
16 work.

17 No. 2 is education. Because we have so
18 many issues swirling around and so many people that
19 don't have a clue and we really need to talk to
20 people, to get to them and to educate them and to
21 educate them in a way that they do become those foot
22 soldiers and those people within our communities to
23 help with our civic engagement. We talked a lot about
24 working with or the need to work with those people
25 that represent us and so we need to put them on our

1 calendars and we need to know who they are and we need
2 to go directly to them. There's so many people
3 intimidated by that, and the way I look at it the
4 citizens are the boss and we need to express ourselves
5 and let them know what we think about issues. Not
6 once, not twice, but as often as possible.

7 The other thing that I have is as a
8 takeaway we really in the state of Virginia need to
9 modernize and so whatever it takes in terms of getting
10 ideas to people, finding the money to do it or
11 whatever, I mean, I don't know the law, I'm not an
12 attorney. However, you know, people can raise money
13 for anything on line. If you are making a movie,
14 there are several sites where you can go, you can make
15 your -- you can put up your proposal and you can say,
16 you know, I need funding for this and there are movie
17 producers that are bypassing Hollywood. They go on
18 line, they're making their movies. Surely there's
19 something that perhaps the state of Virginia could do
20 to modernize that incorporates modern technology and
21 social media or whatever it takes, but we desperately
22 need to move it to the future.

23 And so with that, I say, again, it's been
24 my pleasure to be here today, it's been my pleasure to
25 represent the Urban League of Hampton Roads, and I

1 look forward to working with many of you, if not all
2 of you, as we pursue our goals to make sure that
3 citizens in the state of Virginia, all citizens in the
4 state of Virginia receive the right to vote without
5 being impeded or impaired in utilizing their given
6 right.

7 CLAIRE GASTANAGA: Well, I add my thanks
8 to all of you on behalf of the ACLU of Virginia. I
9 think this has been a wonderful thing that the
10 Lawyers' Committee put together and I was pleased to
11 make some new friends and to think about new potential
12 collaborators on the work that we're doing. And I
13 think my colleagues from the Urban League and the
14 NAACP are exactly right. This is a project that all
15 of us need to take on. I feel some urgency about one
16 thing in the short term, which is making sure the
17 Voting Rights Act gets a hearing and reaching out to
18 Congressman Goodlatte and Congressman Cantor, who is
19 of course in the leadership of the House, and
20 Congressman Forbes particularly about moving that bill
21 out of committee and on to the floor of the House so
22 we can get something done in this Congress. And I
23 feel a long-term sense of urgency and concern about
24 the project that Mr. Lucyk is working on because,
25 unfortunately, when you talk about redistricting the

1 most voters they see it as sort of an eyes glazing,
2 what does that have to do with me kind of thing, and I
3 think the challenge for all of us is to try to
4 translate that issue in a way that the average person
5 can understand that it is critically important that
6 voters choose their legislators and that legislators
7 don't choose their voters, and right now we have a
8 system in Virginia where the legislators are choosing
9 their voters and making sure that people aren't as
10 free to vote as they could be and don't have the same
11 power to influence the outcome of an election because
12 of the way our districts are drawn. And for me
13 personally, accomplishing a change in the way we
14 district before the next census, which is 2020, is
15 fundamental whether we have a real participatory,
16 democratic process in Virginia on any issue, and if we
17 don't change that, the rest of it won't matter.
18 Because we can't effect the voting laws, you can't
19 change the constitution to restore felons' rights
20 because the way that we're currently districted stands
21 in the way of our ability to accomplish any of that.
22 So I'm saying short-term urgency, Voting Rights Act in
23 Congress; longer term urgency, redistricting is the
24 key to everything.

25 MABEL WELLS: I just wanted to say that

1 there are five of us here from the League of Women
2 Voters. And we are a non-partisan group. We're
3 always reminding ourselves that we are, and I think
4 that some of us are trying to think about what -- how
5 we can get in on something and keep our non-partisan
6 situation.

7 CLAIRES GASTANAGA: We're not partisan at
8 the ACLU as well.

9 MABEL WELLS: But it always comes up when
10 there is some sort of issue so I'm sure that we'll be
11 struggling with this. Okay. Thanks.

12 CLAIRES GASTANAGA: I think voting rights
13 and redistricting I would argue should be bipartisan.
14 I'm afraid that's not necessarily the case right now,
15 but it should be.

16 JEAN JENSEN: Thank you all for coming.
17 This was so productive, but I think on a larger scale
18 it's what you're going to do when you walk out of this
19 room and go home. Because we can't reinvent the
20 wheel, the few of us that are here, but I know you're
21 all on a mission and that you have access to other
22 people, and I like the idea of those of you who are
23 here putting your efforts together just sort of
24 raising awareness. I'm very concerned about a few
25 basic issues because we don't all have access to

1 computers. As the state tries to modernize what we're
2 doing, we can't forget the people who don't have a
3 driver's license, how are they going to get the voter
4 photo ID, how are they going to get it. We don't all
5 live in suburban areas where we have access to
6 computers and much less one in our home or easy access
7 to one in a library. So we've just got to be very
8 careful that we don't modernize more people out of
9 what needs to be done. Thank you for all your work.
10 It's really appreciated, and it's been a pleasure to
11 listening to the things you will offer.

12 REBECCA ARNOLD: Real quickly, on behalf
13 of the Lawyers' Committee of the National Commission
14 On Voting Rights, thank you all for coming out,
15 sharing your testimony and your comments and to our
16 guest commissioner panel for facilitating a wonderful
17 afternoon on voting rights.

18 Just going back to what we were talking
19 about earlier, we are going to be creating a report
20 from what we've heard today so we really do hope that
21 we can take this information and you all can put that
22 into action. But in advance of those reports, also I
23 just want to draw your attention in the back when you
24 walked in, we have some fliers on strategies on how to
25 engage in post-Shelby County monitoring because there

1 is a bit of a gap now on the information on voting
2 changes and if you need help implementing that or sort
3 of perhaps to engage in post-Shelby monitoring, so
4 please do get in touch with us. Thank you.

5
6 (Ending at 6:38 p.m.)
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REPORTER'S CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of my shorthand notes taken in this matter.

May 2nd, 2014

Lori Jo Krenik - Notary Public
Commonwealth of Virginia at Large
Notary Registration No. 149365



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

**STATEMENT OF KRISTEN CLARKE
PRESIDENT AND EXECUTIVE DIRECTOR
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

**U.S. HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES
HEARING ON "CONTINUING CHALLENGES TO THE VOTING RIGHTS ACT
SINCE *SHELBY COUNTY V. HOLDER*"**

JUNE 25, 2019

Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the U.S House of Representatives Committee on the Judiciary, my name is Kristen Clarke and I serve as the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today on challenges to voting rights: an issue of paramount importance to minorities and our democracy.

The Voting Rights Act of 1965 transformed American Democracy. Ninety-five years after its ratification, it fulfilled the promise of the Fifteenth Amendment that the right to vote should not be denied because of race, color or previous condition of servitude. Today, our nation is at a crucial juncture in the decades-long struggle to create, maintain, preserve, and ensure true equality of voting rights for African Americans, Latinos and other minority communities. The United States Supreme Court's evisceration of a core provision of the Voting Rights Act, coupled with the Department of Justice's abdication of responsibility for enforcing the remaining provisions of the Act, place the voting rights of those populations most in need of protection at peril.

The Lawyers' Committee for Civil Rights Under Law, the organization that I lead, has been a leader in the forefront of the battle for equal rights since it was created in 1963 at the request of President Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. Simply put, our mission is to secure equal justice under the rule of law. For more than 50 years, the Lawyers' Committee has been at the forefront of many of the most important cases brought under the Voting Rights Act. We spearheaded the National Commission on the Voting Rights Act, which made the largest contribution to the record supporting the 2006 reauthorization of the Act and participated in the legal defense of the two cases challenging the constitutionality of the reauthorization. In 2014, we organized the National Commission on Voting Rights which issued a report documenting ongoing voting discrimination.¹ To this day, the Lawyers' Committee's docket of significant voting rights litigation is among the most comprehensive and far-reaching – both geographically and in terms of the issues raised – as any in the nation.

It is unacceptable that in 2019, the right to vote is at risk. A little over 12 years ago, a unanimous Senate and a nearly unanimous House of Representatives reauthorized the temporary provisions of the Voting Rights Act including Section 5.² This vote reflected the historical bipartisan support for the Voting Rights Act. That bipartisanship consensus ended six years ago, with the Supreme Court's decision in *Shelby County v. Holder*,³ which despite Chief Justice Roberts conceding that "voting discrimination still exists; no one doubts that," held that the formula determining which jurisdictions were subject to the pre-clearance requirements of Section 5 was not based on current conditions, and was therefore unconstitutional. Further, the Department of Justice, a governmental agency with not only the primary enforcement authority for enforcing the Voting Rights Act but greater capacity and resources than organizations like the Lawyers' Committee has largely been absent. Indeed, the current Administration has not filed a single case under the Voting Rights Act.

The *Shelby County* decision has led to heightened challenges to voting rights for minorities including: 1) the resurgence of discriminatory voting practices, many motivated by intentional discrimination; 2) increasing levels of recalcitrance among officials who institute and re-institute discriminatory voting changes with impunity; 3) the loss of public notice regarding changes in voting practices that could have a discriminatory effect; 4) the elimination of the public's ability to participate in the process of reviewing those practices; 5) the loss of the deterrent effect of Section 5; and 6) the

¹ National Commission on Voting Rights, *Protecting Minority Voters: Our Work Is Not Done* (2014).

² The Senate passed the reauthorization bill 98-0 and the House 390-33. Congress.Gov, H.R.9 - Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (2006), <https://www.congress.gov/bill/109th-congress/house-bill/9/all-actions?overview=closed&q=%7B%22roll-call-vote%22%3A%22all%22%7D>.

³ 570 U.S. 529 (2013).

increasing costs and burdens imposed on civil rights organizations and community leaders who must fill the gap left by the suspension of Section 5 and the absence of the Department of Justice in the fight to protect the most basic of freedoms. In addition, in two appendices, I provide examples of how Section 5 worked and of post-*Shelby County* instances of voting discrimination. Additionally, at present, the Lawyers' Committee is in the process of conducting a nationwide review of voting discrimination which will be included in a report later this year.

Below is a discussion of the consequences of the *Shelby County* decision, examples of the Lawyers' Committee's efforts to challenge discriminatory voting changes and the lack of enforcement of the Voting Rights Act by the Department of Justice.

A. The consequences of *Shelby County*

The ramifications of the decision in *Shelby County* are numerous and grave. At the most basic level, without the protections of Section 5 of the Voting Rights Act, changes that negatively impact the rights of minority voters in jurisdictions with documented histories of discrimination are now implemented without review by the federal government. As we discuss below, and as shown in Appendix 2, this permits government-authorized voter discrimination to remain in effect while challenges to it are litigated for years. The loss of the right to vote, or restrictions imposed on ballot access, even if ultimately vindicated, can never be fully remedied.

1. Loss of Notice of Proposed Discriminatory Voting Practices

One of the less recognized and more nuanced problems resulting from the lack of Section 5 preclearance is loss of notice that a discriminatory voting change has been enacted in the first place. There are a myriad of ways that the voting rights of minority citizens can be jeopardized. Many of them occur at the local level. Many of them are subtle. They range from the consolidation of polling places so as to make it less convenient for minority voters to vote, to ID requirements, to the curtailing of early voting hours that makes it more difficult for hourly-wage workers to vote, to the disproportionate purging of minority voters from voting lists under the pretext of "list maintenance." Many of these suppressive actions occur in small towns sprinkled across the country, where constant oversight is difficult, if not impossible. By requiring changes in voting practices and procedures to be reported to the federal government by jurisdictions covered by Section 5, the Voting Rights Act provided indispensable notice of such actions before they could be implemented.

2. Loss of Transparency of the Process

With notice came substantial transparency. Under Section 5, on a weekly basis, the Department of Justice posted on its website Section 5 submissions it received, pursuant to the Attorney General's Procedures for the Administration of Section 5 of the Voting Rights Act (Part 51 of Title 28 of the Code of Federal Regulations). Indeed, during 2000-2010, the Attorney General received between 4,500 and 5,500 Section 5 submissions, and reviewed between 14,000 and 20,000 voting changes per year.⁴ The pre-clearance process itself encouraged further transparency, often involving telephone interviews with persons representing or associated with the submitting authority, local organizations, and private citizens, particularly members of the affected racial or language minority groups.

3. Loss of Participation in the Process

The administrative preclearance process encouraged public participation and allowed voters themselves to assess proposed voting changes, consult with racial justice organizations to determine the impact of any proposed changes, and have a real say in the process. For example, in Section 5 reviews of redistricting

⁴United States Department of Justice, About Section 5 of the Voting Rights Act (2017), <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

plans, organizations often presented redistricting plans with demographic and statistical detail, and individual voters submitted their views on the proposed plans to the Department of Justice. This avenue of participation, particularly for minority voters and the organizations representing their interests, is lost without the Section 5 process. Notably, without Congressional action, the upcoming redistricting cycle will be the first without the full protections of the Voting Rights Act.

4. Loss of Deterrence

Section 5 had its intended effect. As Justice Ginsburg memorably analogized in her *Shelby County* dissent, it was the umbrella in a rainstorm⁵. Its specific deterrent effect was self-evident any time the Attorney General or the United States District Court for the District of Columbia refused to preclear a proposed change in voting practices or procedures. Although the Attorney General objected to only approximately one percent of voting changes submitted under Section 5,⁶ these objections represented over 500 redistricting plans, and nearly 800 election method changes.⁷ Examples of discriminatory practices stopped in their tracks under Section 5 are attached to this Testimony as Appendix I.

However, Section 5 also had a powerful general deterrent effect: jurisdictions were clearly more prudent in their approach to changes in voting policy or procedure because of the preclearance requirements. The impact of *Shelby County* on general deterrence was felt immediately, when Texas announced the implementation of its discriminatory photo ID law before the ink was dry on the *Shelby County* opinion⁸, and the North Carolina legislature, with similar haste, enacted an omnibus voting rights law, subsequently found to have been drafted with “surgical precision” to discriminate against minority voters.⁹

The Texas and North Carolina examples represent the headline-grabbing events – cases that would be in the public eye even without Section 5. But the general deterrent effect of Section 5 is equally visible in those relatively smaller, but equally pernicious acts, of suppression, such as poll closings. Changes in polling places accounted for the largest number of submissions under Section 5.¹⁰ Since *Shelby*, in Georgia – a state that had been subject to 151 objections by the Attorney General under Sections 5 – jurisdictions have moved swiftly with attempted efforts to close, consolidate, or relocate polling places and voting precincts since 2013, including:

- Proposal to move 16 of 37 polling sites in Henry County, GA;¹¹
- Proposal to close all but two polling places in Randolph County, GA;¹²

⁵ “Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

⁶ United States Department of Justice, About Section 5 of the Voting Rights Act (2017), <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

⁷ Mark A. Posner, The Real Story Behind the Justice Department’s Implementation of Section 5 of the VRA: Vigorous Enforcement, as Intended by Congress, 1 Duke J. Const. L. & Pub. Pol’y 79, 102, 104–05 (2006).

⁸ See Ryan J. Reilly, Harsh Texas Voter ID Law ‘Immediately’ Takes Effect After Voting Rights Act Ruling, Huffington Post (June 25, 2013 2:04 PM), https://www.huffpost.com/entry/texas-voter-id-law_n_3497724.

⁹ *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

¹⁰ United States Department of Justice, Section 5 Changes by Type and Year (2015), <https://www.justice.gov/crt/section-5-changes-type-and-year-2>.

¹¹ Henry County Board of Commissioners, Notice of Change of Polling Places (January 23, 2019), <http://www.co.henry.ga.us/Departments/D-L/Elections-Registration>.

¹² Vanessa Williams, *Ill-Fated Plan to Close Polling Places in Georgia County Recalled Lingering Prejudice*, Washington Post (August 24, 2018), available at: https://www.washingtonpost.com/politics/ill-fated-plan-to-close-polling-places-in-georgia-county-recalled-lingering-prejudice/2018/08/24/6cad0ee6-a78c-11e8-97ce-cc9042272f07_story.html?utm_term=.f21a24b830ee

- Proposal to eliminate all but one of the City of Fairburn, GA polling places;¹³
- Proposal to eliminate all but one of Elbert County, GA precincts and polling locations;¹⁴
- Numerous polling place and precinct changes in Fulton County, GA;¹⁵
- Proposal to close 2 of 7 precincts and polling places in Morgan County, GA after previously reducing the number from 11 to 7 in 2012;
- Proposal to reduce the number of precincts and polling locations from 36 to 19 in Fayette County, GA;¹⁶
- Proposal to consolidate polling locations in majority-Black Hancock County, GA;¹⁷
- Proposal to eliminate 20 of 40 precincts and polling locations in Macon-Bibb County, GA;¹⁸

Post- *Shelby County* attempts at suppression are not limited to poll closings. Over the past 17 years, the Lawyers’ Committee has led Election Protection, the nation’s largest nonpartisan voter protection coalition. Election Protection—through a suite of hotlines and poll monitoring programs across the country—has provided assistance and support to hundreds of thousands of voters to ensure that they can cast a ballot that counts. Through Election Protection we have also amassed extensive data evidencing systemic barriers faced by voters. Leading up to and during the 2018 midterm election, we received widespread reports of voting practices in states with long histories of voting discrimination like Georgia, Texas, Florida and North Dakota that suppressed the vote. Here are a few examples:

- In Georgia under the state’s “exact match” law, more than 53,000 voter registration applicants, a disproportionate number of whom were African Americans, were placed into “pending” status if the information on their voter registration forms did not exactly match the information in the state’s other error-laden government databases. The law also led to Georgians who are citizens being flagged as potential non-citizens due to the process of comparing the information in the applicant’s voter registration form against outdated citizenship data in the state’s driver’s license records. The Lawyers’ Committee and its partners challenged the law, and a federal court enjoined Georgia’s practice of mandating proof of citizenship documents be produced only to

¹³Daily Report, Notice of Polling Place Location Changes (March 7, 2018), <https://www.law.com/dailyreportonline/public-notices/?atex-class=&keyword=permanent+polling+place+location+change+fairburn+march+15%2C+2018&from=01%2F01%2F2018&to=03%2F31%2F2019>.

¹⁴Elbert County Board of Commissioners, Notice Of Proposal To Consolidate Elbert County Voting Precincts (2018), <https://nearme.elberton.com/local-business/Elbert-County-Board-of-Commissioners/Public-Notice/Notice-Of-Proposal-To-Consolidate-Elbert-County-Voting-Precincts-By-Elbert-County-Board-Of-Commissioners-In-Elberton-Georgia>.

¹⁵Kristina Torres, Fulton OKs Polling Site Changes in Mostly African-American Precincts, Atlanta Journal Constitution (July 13, 2017), <https://www.ajc.com/news/state--regional-govt--politics/fulton-oks-polling-site-changes-mostly-african-american-precincts/BOR4EHJnhNkXa9E32JQU8L/>.

¹⁶ <http://www.fayettecountygga.gov/elections/pdf/Quick-Facts-with-Maps.pdf>

¹⁷ Kristina Torres, Cost-cutting Moves Spur Fears about Reducing Access to Georgia voters, Atlanta Journal-Constitution (October 11, 2016), available at: <https://www.ajc.com/news/state--regional-govt--politics/cost-cutting-moves-spur-fears-about-reducing-access-georgia-voters/qu9lInbKd6dSl6yblbB68M/>

¹⁸ Jeremy Timmermann, Board of Elections Settles on 33 Precincts, The Telegraph (June 10, 2015), available at: <https://www.macon.com/news/politics-government/election/article30238326.html>.

deputy registrars, who are frequently not stationed at polling places, and ordered that the documents be produced to poll managers, who are required to be on-site at polling stations.¹⁹

- In Georgia ahead of the 2018 midterm election, a federal court ordered emergency relief to block the practices of allowing election officials with no prior training in signature verification to reject absentee ballots if they believed the signature on the ballot did not match the voter's signature on file and to reject absentee ballots based upon immaterial omissions or mistakes on the absentee ballot envelopes without allowing the voters a reasonable opportunity to cure the issue so the ballots could be counted.²⁰
- In November 2018, a federal court in Florida held that the state's law, which allowed county election officials to reject vote by mail ballots based upon the officials' untrained determination that the signature on the vote by mail ballot did not match the voter's signature on file with the county election office, constituted an unconstitutional burden on the right to vote.²¹
- In North Dakota, where Native Americans comprise a larger share of the state's population than nationwide, voters were required to provide a state ID showing a residential address. Many Native Americans who live on reservations lack street addresses on their state ID.²²
- In Texas, minority voters and voters who are not native English speakers reported incidents where they were asked about their race, citizenship status, and length of stay in the country by poll workers and poll watchers.²³

5. Increased Burden and Cost of Litigation

Additionally, there is the cost of challenging of discriminatory voting changes – costs which now must be borne primarily by civil rights organizations, whose resources are already stretched thin. Under Section 5, the two methods for a covered jurisdiction to comply with the preclearance requirement were a declaratory judgment action filed by the covered jurisdiction in the United States District Court for the District of Columbia, or administrative review requiring the Attorney General to determine within 60 days of submission whether to block a voting change because the submitting jurisdiction failed to show the change was non-discriminatory.²⁴ The latter avoided expensive and lengthy litigation by submitting proposed changes to the Civil Rights Division of the Department of Justice. The optional declaratory judgment route required a convening by a three-judge panel in the United States District Court for the District of Columbia, with the United States or the Attorney General as the defendant. Over 99 percent of

¹⁹ Laura Grace & Morgan Conley, *Election Protection 2018 Midterm Elections Preliminary Report*, (2018) <https://866ourvote.org/wp-content/uploads/2019/01/Election-Protection-Preliminary-Report-on-the-2018-Midterm-Elections.pdf>; *Georgia Coalition for People's Agenda, Inc. v. Kemp*, 347 F.Supp.3d 1251 (N.D.Ga. 2018).

²⁰ *Id.*; *Martin v. Kemp*, 341 F.Supp.3d 1326 (N.D.Ga. 2018)(blocking practice of rejecting absentee ballots based upon signature match and allowing voters the opportunity to cure the issue); *Martin v. Crittenden*, 347 F.Supp.3d 1302 (N.D.Ga. 2018)(blocking practice of rejecting absentee ballots based upon immaterial or minor errors on the absentee ballot envelope).

²¹ *Democratic Executive Committee of Fla. v. Detzner*, 347 F.Supp.3d 1017 (N.D.Fla. 2018).

²² Laura Grace & Morgan Conley, "Election Protection 2018 Midterm Elections Preliminary Report," (2018) <https://866ourvote.org/wp-content/uploads/2019/01/Election-Protection-Preliminary-Report-on-the-2018-Midterm-Elections.pdf>; Cheyenne Haslett & Roer Hadar, *North Dakota Native Americans fight to protect their right to vote after court ruling (Oct. 21, 2018)*, <https://abcnews.go.com/Politics/native-americans-north-dakota-fight-protect-voting-rights/story?id=58585206>

²³ *Id.*

²⁴ United States Department of Justice, About Section 5 of the Voting Rights Act (2017), <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

changes were reviewed administratively.²⁵ It is important to note that Section 2 of the Voting Rights Act is not an adequate substitute for the prophylactic remedy provided by Section 5.

Without Section 5, enormous resources are needed to both bring, and defend Section 2 claims. While jurisdictions may extend the financial burden to taxpayers, citizens often rely on nonprofit organizations to challenge discriminatory voting practices. Section 2 cases cost millions of dollars to litigate,²⁶ not only in terms of thousands of hours of attorney time, but out-of-pocket expenses for filing fees, transcripts, expert witnesses, and travel.

Section 2 litigation often lasts years and, in some cases, plaintiffs are forced to bring multiple lawsuits over the course of many years to address the same problems because state officials refuse to comply with the federal law even after they have been sued previously for the same issues. The Section 2 Texas photo ID case was a 5-year legal battle, before it ended with a judgment of discrimination and the Texas Legislature's enacting a new law found by the Court of Appeals to cure the discriminatory effect of the old law.²⁷

In Georgia, voters and advocates have been forced to bring multiple lawsuits challenging various iterations of the state's "exact match" voter registration process over the years that has been demonstrated to prevent Georgia's eligible people of color to complete the voter registration process in order to participate in Georgia's elections. In 2008, voters challenged an iteration of the "exact match" process that was instituted by former Secretary of State, Karen Handel, because the state failed to obtain preclearance of the process by the DOJ before implementing it.²⁸ Subsequently, once Handel's successor, Brian Kemp, finally obtained preclearance of a different iteration of the "exact match" process in 2010, voting advocates discovered that the process was disproportionately preventing eligible people of color from successfully completing the voter registration process and filed a second lawsuit challenging the process in 2016.²⁹ Even after Secretary Kemp agreed to settle the 2016 "exact match" litigation, his staff was working behind the scenes with lawmakers in the Georgia General Assembly to draft House Bill 268 in 2017, which codified the exact match process - a process which had already been shown to have a disproportionate, negative effect on the ability of people of color to complete the voter registration process.³⁰ As a result, voting advocates were forced to file the third lawsuit within 10 years to challenge the iteration of the "exact match" process enacted as a result of the passage of House Bill 268 in 2018.³¹

As noted above, costs are also borne by governmental entities defending against discrimination claims. North Carolina lawmakers spent more than \$10.5 million defending their discriminatory omnibus voting bill; and Texas spent more than \$3.5 million defending its discriminatory photo ID law.³² It is unfortunate that taxpayers -- who include those discriminated against -- must foot the bill for their government's discriminatory conduct. But those are among the additional protections lost by the elimination of the much less-costly and time-consuming administrative process under Section 5 that often nipped discriminatory practices in the bud.

²⁵ *Id.*

²⁶ See Understanding the Benefits and Costs of Section 5 Pre-clearance: Hearing Before the S. Comm. on the Judiciary, 109th Cong. 20 (2006) (statement of Armand Derfner, Voting Rights Att'y, Derfner, Altman and Wilborn).

²⁷ *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016); *Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018).

²⁸ See *Morales v. Handel*, Civil Action No. 1:08-CV-3172, 2008 WL 9401054 (N.D.Ga. 2008).

²⁹ See *Georgia State Conference of the NAACP v. Kemp*, Civil Action No. 2:16-cv-00219-WCO (N.D.Ga. 2016).

³⁰ See Georgia House Bill 268 as enacted in the 2017 Georgia Legislative Session, <http://www.legis.ga.gov/Legislation/20172018/170669.pdf>.

³¹ See *Georgia Coalition for the People's Agenda v. Kemp*, 1:18-CV-04727-ELR (N.D..Ga. 2018).

³² Jim Malewitz & Lindsay Carbonell, Texas' Voter ID Defense Has Cost \$3.5 Million, THE TEXAS TRIBUNE (June 17, 2016, 6:00 AM), <https://www.texastribune.org/2016/06/17/texas-tab-voter-id-lawsuits-more-35-million/>.

B. Examples of Lawyers' Committee's Efforts to Challenge Discriminatory Voting Changes

In the years since *Shelby*, we have seen many discriminatory voting practices put in place, both in jurisdictions previously covered by Section 5 and those that were not. But, I emphasize, we have not seen all such attempts. We can only fight the threats we know about, and we have been fortunate to have strong local partners on the ground who use their own strained resources to maintain a wary eye on local election changes. Georgia, a state previously covered by Section 5 of the Voting Rights Act, provides examples of the obstacles facing minority voters that Section 5 would have blocked.

In 2015, the Board of Elections and Registration, in Hancock County, Georgia, changed its process so as to initiate a series of “challenge proceedings” to voters, all but two of whom were African American, which resulted in the removal of 53 voters from the register. Later that year, the Lawyers' Committee, representing the Georgia State Conference of the NAACP and the Georgia Coalition for the Peoples' Agenda and individual voters, challenged this conduct as violating the Voting Rights Act and the National Voter Registration Act, and obtained a preliminary injunction, which resulted in the unlawfully-removed voters placed back on the register. Ultimately plaintiffs and the Hancock County Board agreed to the terms of a Consent Decree that will remedy the violations, and requires the county's policies to be monitored for five years.³³ But after the purge and prior to the court order, Sparta, a predominantly black city in Hancock County, elected its first white mayor in four decades. And before the case was settled, and the wrongly-purged voters placed back on the rolls, at least one of them had died.

Also, in 2015, the Georgia state enacted a mid-decade redistricting plan that reduced the minority population in State House districts in 105 and 111, where increases in the minority voting population had enabled candidates preferred by minority voters to almost defeat the white incumbents. They provided the incumbents with a greater safety margin by re-drawing the districts that made the districts more white in composition and those incumbents narrowly prevailed in 2016. The Lawyers' Committee filed suit in 2017 alleging intentional racial discrimination and a racial gerrymander.³⁴ Fortunately, there, the plan did not work, and African American candidates were able to prevail in 2018, despite the efforts to prevent such a result. Ultimately the site was relocated to a majority black church.

Efforts to move polling sites to hostile locations was also another discriminatory practice that had been blocked by the Section 5 review process. Without Section 5, we've seen officials attempt to move sites to intimidating locations. In 2016, the Macon-Bibb County, Georgia, Board of Elections voted to temporarily relocate a voting precinct location to the Macon-Bibb Sheriff's Office. Because of valid fears that this decision would reduce turnout among African American voters, the Lawyers' Committee worked with its local partners, the Georgia State Conference of NAACP Branches, the Georgia Coalition for the People's Agenda, and New Georgia Project, to organize a successful petition drive that required the Board of Elections to reverse the relocation decision under Georgia law³⁵

In certain instances, we were fortunate to have partners on the ground that alerted us to potentially discriminatory voting barriers. An effective Section 5 process would have placed the burden on these jurisdictions to have provided notice of these changes in their voting practices and policies before they took effect.

³³ See *Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR), 2018 WL 1583160, at *1 (M.D. Ga. Mar. 30, 2018).

³⁴ See *Georgia State Conference of the NAACP v. State of Georgia*, 269 F. Supp. 3d 1266 (N.D. Ga. 2017).

³⁵ Stanley Dunlap, *Macon-Bibb Polling Location OK'd After Sheriff's Precinct Nixed*, *The Telegraph* May 16, 2016, 7:27 PM, <http://www.macon.com/news/local/article77920442.html>.

Texas presents another jurisdiction which demonstrates the substantial problems caused by *Shelby County* in previously covered jurisdictions. In 2011, the Texas legislature passed a law, SB 14, which limited the number of identifying documents for purposes of voting to seven, all photo IDs.³⁶ Because Section 5 was in effect at the time of SB 14's passage, Texas sought pre-clearance, first from the Justice Department, which blocked the change. Then, Texas sought preclearance from the United States District Court for the District of Columbia. On August 30, 2012, a unanimous three-judge panel of that court denied Texas pre-clearance, ruling that because Black and Latinx voters would be disproportionately burdened in obtaining the required IDs compared to white voters, that SB 14 would have a retrogressive effect on these minority voters.³⁷ However, on June 27, 2013, this judgment was vacated by the Supreme Court in accordance with the ruling in *Shelby* two days earlier.³⁸

Texas had not even waited for the Supreme Court to act on the case. The afternoon that *Shelby* was decided, then Texas Attorney General Greg Abbott announced that the State would immediately implement SB 14.³⁹ Without the protections of Section 5, several civil rights groups including the Lawyers' Committee for Civil Rights Under Law, filed suit in Texas federal court, challenging SB 14 under Section 2 of the Voting Rights Act. The Department of Justice filed its own suit under Section 2, which was consolidated with those of the civil rights groups.⁴⁰ The parties then embarked on months of discovery, leading to a two-week trial in September 2014, where dozens of witnesses, including 16 experts – half of whom were paid for by the civil rights groups – testified.

In late 2014, the District Court ruled that SB 14 violated the “results” prong of Section 2 of the Voting Rights Act, because it had a discriminatory result in that Black and Hispanic voters were two to three times less likely to possess the SB 14 IDs and that it would be two to three times more burdensome for them to get the IDs than for white voters.⁴¹ The District Court's injunction against SB 14, however, was stayed pending appeal by the Fifth Circuit, so the law – now deemed to be discriminatory remained in effect. Subsequently, a three-judge panel and later an en banc panel of the Fifth Circuit Court of Appeals, affirmed the District Court's finding. As a result, elections that took place from June 25, 2013 until the Fifth Circuit *en banc* opinion on July 20, 2016 took place under the discriminatory voter ID law.⁴²

Had Section 5 been enforceable, the enormous expense and effort that the civil rights groups bore would not have been necessary. More important, had Section 5 been enforceable, a law found to have been discriminatory by 14 different federal judges would never have taken effect.

³⁶ These were Texas drivers' licenses, Texas personal identification cards, United States passports, United States naturalization papers, United States military identification, Texas licenses to carry a concealed handgun, and Texas Election Identification Certificates. Tex. Elec. Code Ann. § 63.0101.

³⁷ *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012).

³⁸ *Texas v. Holder*, 570 U.S. 928 (2013).

³⁹ See Ryan J. Reilly, Harsh Texas Voter ID Law ‘Immediately’ Takes Effect After Voting Rights Act Ruling, Huffington Post (June 25, 2013 2:04 PM), https://www.huffpost.com/entry/texas-voter-id-law_n_3497724.

⁴⁰ The suits were consolidated under *Marc Veasey v. Greg Abbott*, 265 F. Supp. 3d 684 (S.D. Tex. 2017).

⁴¹ *Veasey v. Perry*, 71 F. Supp. 3d 627, 659-77 (S.D. Tex. 2014), *aff'd in part, vacated in part, remanded sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), on reh'g en banc, 830 F.3d 216 (5th Cir. 2016), and *aff'd in part, vacated in part, rev'd in part sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

⁴² *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016). The district court had also found that SB 14 was enacted, at least in part, with discriminatory intent, a prerequisite of a constitutional violation, but the issue was remanded for further fact-finding. On remand, the district court reaffirmed its finding of discriminatory intent. On appeal from that ruling, the Fifth Circuit reversed, not on the merits, but because by then the Texas Legislature had enacted a new law that substantially remediated the discriminatory effects of SB 14, according to that court.

A. Enforcement of the Voting Rights Act

Since *Shelby*, the Department of Justice has filed only *four* suits alleging violations of Section 2 of the Voting Rights Act and only one after 2013.⁴³ By way of comparison, the Lawyers' Committee has filed *thirteen* such suits during that same time period.⁴⁴ Of even greater concern is that since January 20, 2017, the Department has not filed a single suit under the Voting Rights Act.⁴⁵ Again, by way of comparison, the Lawyers' Committee has filed *five* lawsuits under Section 2 during that same period.⁴⁶ Two of the Section 2 cases filed by the Lawyers' Committee settled relatively quickly with the establishment of majority-minority election districts in Emanuel County, Georgia and Jones County, North Carolina. The increase in work being carried out by civil rights organizations has helped provide relief for minority voters, but is no substitute for the protections provided by Section 5.⁴⁷

As shown in Appendix 2, enforcement of voting rights in the states has fallen primarily upon the shoulders of individual voters, non-profit voting rights and racial justice organizations or other non-governmental advocates. Although not all of the cases in Appendix 2 would have been avoided through the preclearance process, it is clear that states, particularly those with a well-documented history of voting discrimination, wasted no time in enacting discriminatory voting changes and implementing a whole host of barriers to the ballot box that negatively and disproportionately impacted African Americans, Latinxs, and other people of color in the wake of *Shelby*. Many of these cases stand as stark examples of the onerous and burdensome nature and uncertain outcome of private enforcement of our voting rights laws

⁴³ *Perez v. Perry*, No. SA-11-CV-360, 2014 WL 2533801, at *1 (W.D. Tex. June 5, 2014) (Texas Photo ID); *United States v. Texas*, No. 5:11-cv-00360(W.D. Tex.) (legislative redistricting); *United States v. North Carolina*, No. 13-cv-861 (M.D.N.C. Feb. 6, 2014) (state omnibus voting law); *United States v. City of Eastpointe*, No. 4:17-CV-10079, 2019 WL 1379974, at *1 (E.D. Mich. Mar. 27, 2019) (vote dilution).

⁴⁴ *Texas State Conference of NAACP Branches v. Steen* No. 2:13-cv-291 (S.D. Tex.2013) , consolidated under *Veasey v. Abbott*, No. 2:13-cv-00193 (NGR) (S.D. Tex. 2013)Texas Photo ID law); *Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR), 2018 WL 1583160, at *1 (M.D. Ga. 2018) (voter purge); *Georgia State Conference of NAACP v. Gwinnett Cty. Bd. of Registrations & Elections*, No. 1:16-cv-2852-AT, 2017 BL 344388 (N.D. Ga. 2017) (vote dilution); *Georgia State Conference of the NAACP v. Emanuel County Board of Commissioners*, No. 6:16-cv-00021 (S.D. Ga. Feb 23, 2016) (creation of two majority-minority single-member districts for seven member Board of Education); *Navajo Nation Human Rights Comm'n v. San Juan Cty.*, No. 2:16-CV-00154 JNP, 2016 WL 3079740, at *1 (D. Utah May 31, 2016), vacated (June 16, 2016) access to in-person absentee voting and language assistance); *Lopez v. Abbott*, 339 F. Supp. 3d 589 (S.D. Tex. 2018) (vote dilution); *Georgia State Conference of the NAACP v. Kemp for Georgia*, No. 1:17-CV-1397-TCB, 2018 WL 2271244, at *1 (N.D. Ga. 2018) (challenge to exact match process for voter registration); *Alabama State Conference of NAACP v. State*, 264 F. Supp. 3d 1280 (M.D. Ala. 2017) (vote dilution); *Georgia State Conference of NAACP v. State*, 269 F. Supp. 3d 1266 (N.D. Ga. 2017) (racial gerrymander); *Hall v. Jones County Board of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Feb. 13, 2017) (vote dilution); *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (challenge to new statute reinstating exact match for voters registration); *Thomas v. Bryant*, 366 F. Supp. 3d 786, 2019 BL 52194 (S.D. Miss. 2019) (vote dilution); *MOVE Texas Civic Fund v. Whitley*, No. 3:19-cv-00041 (S.D. Tex. Feb. 4, 2019) (voter purge).

⁴⁵ The last Voting Rights Act complaint filed by the United States was a vote dilution claim filed on January 10, 2017. *United States v. City of Eastpointe*, No. 4:17-CV-10079, 2019 WL 1379974, at *1 (E.D. Mich. 2019).

⁴⁶ *Hall v. Jones County Board of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Feb. 13, 2017) (vote dilution); *Georgia State Conference of NAACP v. State*, 269 F. Supp. 3d 1266 (N.D. Ga. 2017) (racial gerrymander); *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (challenge to new statute reinstating exact match for voter registration); *Thomas v. Bryant*, 366 F. Supp. 3d 786, 2019 BL 52194 (S.D. Miss. 2019)(Racial gerrymander); *MOVE Texas Civic Fund v. Whitley*, No. 3:19-cv-00041 (S.D. Tex. Feb. 4, 2019).

⁴⁷ *Hall v. Jones County Board of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Feb. 13, 2017) (creation of two single-member, majority-minority districts for seven member Board of County Commissioners); *GA State Conference of the NAACP v. Emanuel County Board of Commissioners*, No. 6:16-cv-00021 (S.D. Ga. Feb 23, 2016) (creation of two majority-minority single-member districts for seven member Board of Education).

that the Section 5 preclearance process and strong federal enforcement of voting rights could largely prevent or mitigate against.

Conclusion

The combination of the effective elimination of Section 5 of the Voting Rights Act and lack of enforcement activity of the Civil Rights Division of the Justice Department presents a perfect storm not seen since the days preceding the enactment of the momentous civil rights legislation in the 1960s. Vigilance is required to monitor and xxx the resurgence of voting rights discrimination in formerly covered jurisdictions and we urge Congress to act swiftly to restore the Voting Rights Act to help this Nation protect that most fundamental of all civil rights: the right to vote.

APPENDIX I

Examples of discriminatory voting changes that Section 5 prevented from taking effect.

Prior to the Supreme Court's decision in *Shelby County v. Holder*,⁴⁸ Section 5 of the Voting Rights Act prevented numerous discriminatory voting changes from taking effect. The *Shelby County* decision has hit African American voters particularly hard as nearly 90% of the proposed voting changes stopped by Section 5 between 1995 and 2013 involved a discriminatory purpose or effect on African American voters.⁴⁹ During that 18-year period, there were 113 denials for Section 5 preclearance, examples of which are highlighted below:⁵⁰

Redistricting Changes: Over half of the Section 5 preclearance denials were for redistricting changes, including denials of statewide redistricting plans in Arizona, Florida, Louisiana, South Carolina and Texas.

- In 1996, the Justice Department objected to Louisiana's congressional redistricting plan, concluding that with the racially polarized voting pattern in Louisiana, the proposed plan would "provide no realistic opportunity for black voters to elect a candidate of their choice outside the New Orleans area."⁵¹
- In 1997, the Justice Department objected to South Carolina's State Senate redistricting plan based on clear findings of racially polarized voting patterns.⁵²
- In 2002, the Justice Department objected to Arizona's 2001 legislative redistricting plan on the grounds that the state failed to provide sufficient evidence to show that voting was not racially polarized and failed to prove that the proposed decreased number of majority-minority districts would not be retrogressive.⁵³
- In 2011, Texas created redistricting plans for the Texas House of Representatives, the Texas Senate and the United States Congress and sought to bypass the Justice Department's preclearance process by filing suit for judicial preclearance. The three-judge panel of the U.S. District Court for the District of Columbia denied preclearance for all three plans, finding signs of purposeful discrimination in the State House of Representatives plan, intentional discrimination against minority voters in the Texas Senate and congressional redistricting plans. Additionally, the court concluded that the State House of Representatives and congressional redistricting plans were retrogressive.⁵⁴

Polling Place Closures and Changes

- In 2003, Bexar County in Texas announced it was planning to reduce the number of early voting polling places from 20 to 11 while awaiting the Justice Department's decision on the County's preclearance request. Among the polling place closures were five that served the predominantly-

⁴⁸ 570 U.S. 529 (2013).

⁴⁹ National Commission on Voting Rights, *Protecting Minority Voters: Our Work Is Not Done* 13 (2014).

⁵⁰ *Id.* at 57.

⁵¹ Determination Letter from Deval L. Patrick, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to state of La. (Aug. 12, 1996), available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-2310.pdf>.

⁵² Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to state of S.C. (Apr. 1, 1997), available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-2090.pdf>.

⁵³ Determination Letter from Ralph F. Boyd, Jr., Assistant Att'y Gen., U.S. Dep't of Justice, to state of Ariz. (May, 20 2002), available at https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/A_020520.pdf.

⁵⁴ *Texas v. United States*, 887 F. Supp. 2d 133, 138, 152, 161-162, 177 (D.D.C. 2012).

Hispanic west side of San Antonio. A civil rights organization filed a Section 5 enforcement action seeking an injunction, which was granted by a federal court to enjoin the polling place closures.⁵⁵

Voter Registration Laws:

- In response to the NVRA, in 1995 Mississippi implemented a dual registration system where voters who registered under NVRA-mandated options would only be eligible to vote in federal elections. In order to vote in state elections, eligible voters were required to re-register using state forms. Following concerns raised by the Justice Department, Mississippi refused to submit the dual registration system for Section 5 preclearance. Private plaintiffs commenced a Section 5 enforcement action that made its way to the Supreme Court, which held that Mississippi was required to obtain preclearance. The Justice Department objected to the dual registration system and Mississippi abandoned it.⁵⁶

Voter Purges:

- In 2007, Georgia implemented a computerized citizenship matching procedure that cross-checked the statewide voter registration list with citizenship information in the state's driver's license database to identify and remove noncitizens from the voter rolls. Local election officials in the state were provided with a computerized printout of potential noncitizens with instructions that they use it to review voter eligibility. This led to local election officials mailing letters to thousands of voters informing them that they would be removed from the voter registration lists unless they appeared in-person and presented proof of citizenship. In some instances, voters were given as little as a few days to do so. A private citizen, who obtained their license in April 2006, became a United States citizen in November 2007 and registered to vote in September 2008 then subsequently received letters from Cherokee County election officials, brought a Section 5 enforcement action because Georgia had not submitted the new procedure for preclearance. A federal court in Georgia enjoined the State from using the procedure until preclearance was obtained and ordered the State to take steps to remedy its prior unauthorized use of the procedure. In May 2009, the Justice Department interposed a Section 5 objection to Georgia's procedure noting that it subjects minority voters to additional and erroneous burdens on the right to vote.⁵⁷

⁵⁵ Order Granting Plaintiff's Application for a Temporary Restraining Order at 1-3, 6 *Miguel Hernandez Chapter of the Am. GI Forum v. Bexar Cty.*, No. 5:03-cv-00816 (W.D. Tex. 2003), available at http://www.clearinghouse.net/chDocs/not_public/VR-TX-0420-0002.pdf; Testimony of Nina Perales, Reg'l Counsel, Mexican Am. Legal Def. & Educ. Fund, Southwest Regional Hearing 51 (Apr. 7, 2005) (on file with the Lawyers' Committee).

⁵⁶ *Young v. Fordice*, 520 U.S. 273, 291 (1997);

Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Mississippi (Sept. 22, 1997), available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/MS-2650.pdf>.

⁵⁷ See Determination Letter from Loretta King, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Georgia (May 29, 2009), available at <https://www.justice.gov/crt/voting-determination-letter-58>; Complaint at ¶¶ 33-40, *Morales v. Handel*, No. 1:08-cv-3172 (N.D. Ga. October 9, 2008); See also *Morales v. Handel*, No. 1:08-CV-3172, 2008 WL 9401054 (N.D. Ga. Oct. 27, 2008).

APPENDIX 2

Alabama

Challenge to At-Large Elections for Judicial Candidates that Dilute the Voting Strength of Black Voters

***Alabama State Conference of NAACP v. Alabama*, 264 F. Supp. 3d 1280 (M.D. Ala. 2017):** On September 7, 2016, Plaintiffs filed a vote dilution lawsuit under Section 2 of the Voting Rights Act (VRA) in the Middle District of Alabama challenging the state's at-large method of electing justices and judges of the Alabama Supreme Court, the Court of Criminal Appeals, and the Court of Civil Appeals. Defendants filed a motion to dismiss; the District Court denied the motion. The case was tried in November 2018 and the parties are awaiting a decision.

Lawsuit Challenging Alabama's Discriminatory Photo ID Law

***Greater Birmingham Ministries v. Merrill*, Case No. 2:15-cv-02193-LSC (N.D. Ala 2015):** On December 2, 2015, advocates filed a lawsuit in the United States District Court for the Northern District of Alabama challenging Alabama's photo ID law under Section 2 of the VRA and the United States Constitution. Plaintiffs contend the photo ID law violates 1) Section 2 of the Voting Rights Act because it abridges or denies the right to vote on account of race, color, or language minority status, 2) violates the prohibition on tests or devices for voting under the VRA, and 3) violates the Fourteenth and Fifteenth Amendments because it was purposefully enacted to deny or abridge the right to vote on account of race or color. On January 10, 2018, the Court granted summary judgment in favor of the Alabama Secretary of State and dismissed the lawsuit.⁵⁸ The Plaintiffs' appeal is pending.

Voters Challenge Alabama's Congressional Map that Dilutes the Voting Strength of Black Voters

***Chestnut v. Merrill*, No. 2:18-CV-00907 (N.D. Ala. Mar. 27, 2019):** In June of 2018, eight Alabama voters filed a federal lawsuit alleging that Alabama's 2011 congressional map violates Section 2 of the VRA. Plaintiffs allege the map packs African-American voters into Alabama's Seventh Congressional District and significantly cracks African-American voters between three other congressional districts, with the effect of diluting African-American voting strength. The suit alleges that the African-American population in the three "cracked" congressional districts is sufficient to form a second majority-minority district. On March 27, 2019, the court partially granted the Defendant's motion for judgment on the pleadings, concluding that Plaintiffs' demand for affirmative relief is barred by the doctrine of laches, but denied the motion as to Plaintiffs' demand for declaratory relief (i.e., a declaration determining the maps violate Section 2). The case is currently scheduled for trial later this year.

⁵⁸ *Greater Birmingham Ministries v. Merrill*, 284 F.Supp.3d 1253 (N.D. Ala. 2018).

Voters Challenge Alabama's Felony Disenfranchisement Law

Thompson v. Merrill, Civil Action No. 2:16-cv-783-WKW-CSC (M.D.Ala. 2016): In 2016, Alabama voters filed suit challenging Alabama's felony disenfranchisement law which they allege is intentionally racially discriminatory and leads to arbitrary and unconstitutional disenfranchisement of citizens in violation of the United States Constitution and Section 2 of the VRA. Plaintiffs also argue that broad felon disenfranchisement is not sanctioned by the Fourteenth Amendment's "rebellion or other crime" language and that the Constitution supports, at most, very limited disenfranchisement of voting-related offenses. The case is pending.

Alaska

Lawsuit Successfully Challenged Alaska's Failure to Provide Language Assistance to Yup'ik and Gwich'in Speaking, Limited English Proficient Voters

Toyukak v. Treadwell, No. 3:13-cv-00137-SLG (D. Alaska June 24, 2014): Voters and tribal councils filed suit challenging the failure of state and local officials to provide language assistance to Yup'ik and Gwich'in speaking, limited English proficient voters under Section 203 of the VRA and the United States Constitution. After prevailing on their Section 203 claim at trial, the Court ordered comprehensive remedies for the 2014 election cycle and, in 2015, the parties entered into a settlement that included additional language assistance reforms in the state.

Arizona

Maricopa County, Arizona Sued Post-Shelby Due to Election Administration Problems caused by Polling Place Consolidations

Huerena v. Reagan, Superior Court of Arizona, Maricopa County, CV2016-07890: This lawsuit challenged the reduction of polling places in Maricopa County after severe cut-backs disenfranchised voters in the 2016 presidential preference primary because of extremely long lines, hours-long wait-times and a host of election administration problems. Maricopa County is Arizona's most populous county and was a covered jurisdiction under Section 5 of the VRA with approximately 60 percent of the state's minority voters residing in the county. As a result of the *Shelby* decision, Maricopa County was no longer required to preclear polling place changes. As a result, in February 2016 the county slashed the total number of polls from 211 in 2012 to only 60 in 2016. With this reduction, there was approximately one polling place for every 21,000 voters in Maricopa County as compared to one polling place for every 1,500 voters in the rest of the state. The parties settled the case with an agreement that required Maricopa County to create a comprehensive wait-time reduction plan and a mechanism to address wait times at the polls that exceed 30 minutes.

Arizona Secretary of State Sued to Enjoin the State's Two-Tier Voter Registration Process

***League of United Latin Am. Citizens Arizona v. Reagan*, No. CV17-4102 PHX DGC, 2018 WL 5983009 (D. Ariz. Nov. 14, 2018)**: Arizona created a two-tier voter registration process in the wake of the Supreme Court's decision in *ITCA v. Arizona*, which held that Arizona's documentary proof of citizenship requirement was preempted by the National Voter Registration Act (NVRA) as applied to federal elections. Confusion ensued when the state limited voters using the federal form to voting in federal elections, even if the state had information in its possession confirming the applicant was a United States citizen. Plaintiffs argued that the state's two-tier registration process constituted an unconstitutional burden on the right to vote. The parties settled the matter with an agreement that allows the state to continue to require proof of citizenship to register to vote in state elections, but requires the state to treat federal and state registration forms the same and to check motor vehicle databases for citizenship documentation before limiting users of the federal registration form to voting in federal elections.

State Court Challenge to the Redistricting of the Maricopa County Community College District Which Added Two At-Large Seats to the Board

***Gallardo v. State*, 236 Ariz. 84 (Ariz. 2014)**: Elected officials and voters filed suit in December 2013 in Arizona state court challenging the method used for electing the Governing Board of the Maricopa County Community College District. In 2010, the Arizona Legislature enacted H.B. 2261 requiring that two at-large seats be added to the Governing Board, increasing the size of the Board from five to seven. The pre-existing five members of the Board were elected from single-member districts. As a result, H.B. 2261 established a new method of election consisting of five members elected from single-member districts and two elected at large. The lawsuit alleged that H.B. 2261 violated the Arizona State Constitution because the statute effectively only applies to the Maricopa County District, and does not apply to any of the other community college districts in the state. The suit alleged that H.B. 2261 violates the state Constitution's prohibition against local or special laws and the Constitution's privileges and immunities clause.

When H.B. 2261 was enacted, Arizona was required by Section 5 of the Voting Rights Act to obtain preclearance for its voting changes. The State submitted this legislation to the U.S. Department of Justice for review, and the DOJ responded by sending a written request for additional information noting concerns as to whether the addition of two at-large seats would discriminate against the District's minority residents. Instead of providing the requested information, the State set the legislation aside and did not seek to implement it. However, as a result of the Supreme Court's decision in June 2013 in *Shelby County v. Holder*, Arizona was no longer covered by Section 5 and thus was not required to obtain preclearance to implement H.B. 2261. As a result, after *Shelby County* was decided, local election officials began preparations to fill the two new at-large seats in the November 2014 election.

Shortly after suit was filed, the constitutionality of H.B. 2261 was presented to the Arizona superior court for decision and, on March 27, 2014, the court ruled in favor of the defendants. Plaintiffs appealed and on April 23, 2014, one day after oral argument, the Arizona Court of Appeals held that H.B. 2261 is a special law that violates the Arizona Constitution. Defendants then appealed and, on August 26, 2014, the Arizona Supreme Court issued a minute order vacating the ruling by the Arizona Court of Appeals. In the November 2014 election, the two new at-large seats were filled. A Latino candidate ran but finished third, and thus was defeated.

**Voters, Political Party and Candidate Filed Suits Challenging Arizona’s Criminalization of the
Collection of Absentee Ballots by Persons other than the Voter and
Restrictions on Out of Precinct Voting**

Democratic National Committee v. Reagan CV-16-01065 (D.Az. 2016): The Plaintiffs allege that Arizona’s criminalization of the collection of valid absentee ballots by persons other than the voter and the state’s restrictions on out of precinct voting violate Section 2 of the VRA and Constitution. Plaintiffs did not prevail at trial or before a panel of the Ninth Circuit Court of Appeals. However, in January 2019, the Ninth Circuit granted a rehearing *en banc* and the case remains pending at this time.

California

**Successful Section 2 Vote Dilution Lawsuit on Behalf of Latino Voters Challenging the Districting
Plan for the Five Member Kern County Board of Supervisors**

Luna v. County of Kern, 291 F.Supp. 3d 1088 (E.D. Cal. 2018): This was an action brought pursuant to Section 2 of the Voting Rights Act on behalf of Latino voters in Kern County, California, in which Plaintiffs alleged that the districting plan under which the five members of the Kern County Board of Supervisors were elected deprived Latino voters an equal opportunity to elect candidates of their choice. After the District Court found in favor of the Plaintiffs at trial, the parties agreed to a settlement which provided for a new districting plan with ability to elect majority-Latino districts and an award of \$3 million dollars in attorneys’ fees and costs to plaintiffs’ counsel.

Connecticut

NAACP Challenged “Prison Gerrymandering” of Connecticut Legislative Districts

NAACP v. Merrill, No: 3:18-cv-01094 (D. Conn. 2018): In June 2018, the NAACP, the NAACP Connecticut State Conference and five Connecticut NAACP members, filed suit contending that Connecticut’s 2011 state legislative maps violate the “one person, one vote” principle of the Fourteenth Amendment because of unlawful prison gerrymandering, i.e., counting incarcerated individuals as residents of the district in which they are imprisoned rather than at their home addresses for the purpose of drawing state legislative districts. Plaintiffs argue that this practice dilutes the voting power of the predominantly African American and Latino prisoners’ home communities. Defendants’ motion to dismiss was denied in February 2019 and the state has appealed that decision.

Florida

Voters and Voting Rights Advocates Challenge Florida's Arbitrary Standards for Restoring the Voting Rights of Returning Citizens

***Hand v. Scott*, 315 F. Supp. 3d 1244 (N.D. Fla. 2018):** Advocates filed a class action lawsuit that sought to automatically restore the voting rights of returning citizens and eliminate Florida's arbitrary petition process for re-enfranchisement. The case cited the lack of any rules governing the Executive Clemency Board, which grants or denies former felons' petitions for re-enfranchisement, as arbitrary treatment in violation of the First and Fourteenth Amendments. The case was filed in March 2017, and the Plaintiffs obtained a preliminary injunction in March 2018 that required the Executive Clemency Board to establish a new re-enfranchisement process by April 26, 2018. Defendants appealed to the Eleventh Circuit Court of Appeals, and on April 25, 2018, the court granted then Governor Scott's request to stay the order requiring him to establish a new re-enfranchisement process.

Voters and Voting Rights Advocates Successfully Challenge Florida's Congressional District Maps in State Court

***League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258 (Fla. 2015):** State-court litigation was filed by good-government groups over concerns that Florida's congressional maps were unconstitutional under state law. The Circuit Court agreed and found that congressional districts five and ten were unconstitutional and had to be redrawn. The legislature enacted new maps, and the Court did not object to the new maps. Plaintiffs appealed the decision after the Florida Legislature enacted the new maps and requested certification to the Florida Supreme Court. The district court of appeals granted certification to the Florida Supreme Court, and it accepted jurisdiction. The NAACP intervened to defend African American opportunity districts that were threatened. Other civil rights advocates filed an *amicus* brief to inform the Court about concerns over the reduction of District Nine's Latino population. Both the NAACP and *amici* have focused on protections offered by the Fair Districts Amendment under Florida's Constitution. The Florida Supreme Court ruled that the maps are unconstitutional and ordered the legislature to redraw several congressional districts.

Voters Filed Suit against the Florida Secretary of State and 32 Counties Due to Their Failure to Provide Adequate Language Assistance to Puerto Rican Voters under the Voting Rights Act

***Madera v. Detzner*, No. 1:18-CV-152-MW/GRJ (N.D. Fla. 2018):** After Hurricane Maria devastated Puerto Rico, an estimated 160,000 people fled to Florida, joining over half a million people who left Puerto Rico in the past decade because of the island's economic crisis. As a result, Florida's Puerto Rican population now totals over one million. Section 4(e) of the VRA requires the provision of bilingual voting materials and assistance for Puerto Rican-educated, limited English proficiency voters. After advocates were unable to informally obtain compliance by sending letters about these requirements to election officials, they filed a lawsuit against the Florida Secretary of State and 32 Florida counties to compel compliance with Section 4(e). On September 7, 2018, the district court ordered the Secretary of State to issue instructions to the 32 counties, requiring them to provide Spanish-language sample ballots at polling places, on county websites, and by mail to guide voters in marking their ballots, and to publicize the availability of these sample ballots and instructions on how to use them. On May 10, 2019, the District Court issued an order requiring Florida's Secretary of State and the Supervisors of Elections in the 32

Florida counties take further action to comply with Section 4(e) of the VRA. Specifically, the order requires the Secretary of State to ensure that those 32 counties provide 1) official ballots in both Spanish and English, 2) Spanish language election assistance, and, 3) Spanish translations of other voting materials for elections beginning with the 2020 presidential primary election. The case remains pending.

Voting Rights Advocates Successfully Organized Campaign to Pass Amendment Automatically Restoring Rights to Returning Citizens, but the Florida Legislature Made Efforts to Undermine its Implementation

Advocates invested significant resources to support a ballot initiative (Amendment 4) that restored voting rights to individuals with felony records upon completion of their sentences. Despite the fact that Amendment 4 was designed to be self-implementing, the Florida enacted laws in 2019 that will require returning citizens to satisfy fines and fees before becoming eligible to register to vote. In addition, in the wake of this successful ballot initiative, Florida also enacted legislation making it more difficult for proponents of ballot initiatives to be successful in the future.

Georgia

Voters and Voting Rights Advocates Challenge Georgia’s “Exact Match” Law Which Disproportionately Disenfranchises African American, Latino and Asian American Voters

Georgia Coal. for People's Agenda, Inc. v. Kemp, 347 F. Supp. 3d 1251 (N.D. Ga. 2018): On October 11, 2018, a coalition of civil rights organizations filed suit in the U.S. District Court for the Northern District of Georgia, against then Georgia Secretary of State, Brian Kemp, alleging that Georgia’s “exact match” voter registration process, which requires information on voter registration forms to exactly match information about the applicant on Social Security Administration (SSA) or the state’s Department of Driver’s Services (DDS) databases, violates Section 2 of the VRA, the NVRA, and imposes an unconstitutional burden on the right to vote in violation of the First and Fourteenth Amendments. Under the “exact match” process, more than 53,000 applicants were in “pending” status in 2018 because the information on their voter registration applications did not exactly match the DDS or SSA database information or because the process inaccurately flagged United States citizens as potential non-citizens. On November 2, 2018, the Court partially granted Plaintiffs’ motion for preliminary relief, ordering that Georgians inaccurately flagged as non-citizens could vote a regular ballot if they provided proof of citizenship to a poll manager, rather than a deputy registrar, when voting at the polls for the first time. The Georgia legislature subsequently amended the “exact match” law in 2019 to permit applicants who fail the “exact match” process for reasons of identity to become active voters, but the Legislature chose not to enact any remedial legislation to reform the “exact match” process that continues to inaccurately flags United States citizens as non-citizens. The litigation is still pending.

Voters and Advocates Successfully Challenged Georgia’s Rejection of Absentee Ballots Based upon Alleged Signature Matching and Immaterial Errors or Omissions

Martin v. Kemp, No. 18-14503-GG (N.D. Ga. 2018): On October 23, 2018, civil rights organizations joined lawsuits challenging the state’s practices of 1) rejecting of absentee ballots based upon election officials’ untrained conclusion that the voter’s signature on the absentee ballot envelope did not match the voter’s signature on file with the registrar’s office, and 2) rejecting absentee ballots for immaterial errors or omissions on the ballot envelope. Georgia had an extraordinarily high rate of absentee ballot rejections

generally, but the rejection rate in Gwinnett County was almost 3 times that of the state and absentee ballots cast by voters of color were rejected by Gwinnett County at a rate between 2 and 4 times the rejection rate of absentee ballots cast by white voters. Plaintiffs were granted preliminary relief before the November 2018 mid-term election. Subsequently, Georgia enacted remedial legislation and the lawsuits were voluntarily dismissed in 2019.

Successful Legal Challenge to Georgia's Runoff Election Scheme in Federal Elections

***Georgia State Conference NAACP v. Georgia*, No. 1:17-CV-1397-TCB (N.D. Ga. May 4, 2017):** This case challenged Georgia's runoff election voter registration scheme as a violation of the National Voter Registration Act ("NVRA"). Under Georgia law, eligible Georgians were required to register to vote on the fifth Monday before a general or primary election in order to be eligible to vote in a runoff election if no candidate received a majority of the vote. The runoff election would generally be held about two months after the general or primary election. As a result, Georgians would be required to register to vote approximately three months before a runoff election in order to participate in that election. Under Section 8 of the NVRA (52 U.S.C. § 20507(a)(1)), states are prohibited from setting voter registration deadlines in excess of thirty days before a federal election. Thus, Georgia's runoff election voter registration scheme violated this provision of the NVRA and the District Court granted a preliminary injunction enjoining the state from using the longer deadline ahead of the Georgia Sixth Congressional Runoff Election in June 2017. Subsequently, the parties settled the matter with the Secretary of State agreeing not to enforce a voter registration deadline that violated Section 8 of the NVRA.

Voters and Voting Rights Advocates Challenged Georgia's Mid-Decade Redistricting of Two Legislative Districts Targeting African-American Communities

***Georgia State Conference of NAACP v. Georgia*, No. 1:17-CV-1427 (N.D. Ga. 2017) and *Thompson v. Kemp*, 1:17-cv-03856-TCB (N.D. Ga. 2017):** Voters and advocates filed two lawsuits in the United States District Court for the Northern District of Georgia, challenging the State legislature's post-*Shelby* 2015 redistricting of two legislative districts as racial and partisan gerrymanders. The Plaintiffs alleged the legislature targeted African American population in drawing the districting plans to increase the electoral advantage of white Republicans as the districts were becoming more competitive for Black Democrats. The *Thompson* Plaintiffs' suit also alleged a claim under Section 2 of the Voting Rights Act. After African American candidates were elected to seats in both of the challenged districts in November 2018, the parties agreed to voluntary dismissals of the actions.

Voters and Voting Rights Advocates Successfully Challenged Hancock County's Illegal Purge of 53 Voters, Mostly Black, from the Voter Rolls

***Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR) (M.D. Ga. 2015):** Plaintiffs filed this action on November 3, 2015 in the U.S. District Court for the Middle District of Georgia, challenging the removal of 53 voters, who were almost all African Americans, from the voter rolls of a small, predominately Black county prior to a hotly contested election in Sparta in which white candidates successfully ran for seats on the City Council for the first time in decades. The case was brought under Section 2 of the VRA and Section 8 of the NVRA. The district court directed Defendants to restore qualified purged voters to the registration rolls or show cause why they would not do so. As a result, 17 voters were restored to the rolls; two others would have been restored, but had died in the interim; and eight voters were placed into inactive status, but remained

eligible to vote by producing proof of their residency when requesting a ballot. The parties subsequently mediated the case, which resulted in a settlement in which the Defendants agreed to comply with the NVRA before removing anyone from the voter rolls and to be subject to monitoring by a court appointed examiner. On March 30, 2018, the Court granted the parties' Joint Motion for Entry of Consent Decree and awarded Plaintiffs' fees and expenses. Compliance with the Consent Decree is being actively monitored by the Court appointed examiner.

Vote Dilution Lawsuit Challenged the Districting Plans for the Gwinnett County Board of County Commissioners and School Board

Ga. State Conference of the NAACP v. Gwinnett Cty. Bd. of Registrations & Elections, No: 1:16-cv-02852 (N.D. Ga. 2016): Plaintiffs filed a vote dilution suit under Section 2 of the VRA challenging the districting plans for the County Board of Commissioners and Board of Education. At the time the lawsuit was filed, no African American, Latino or Asian American candidates had ever won election to these boards, despite the fact that Gwinnett County is considered to be one of the most racially diverse counties in the Southeastern United States. After two long-term incumbents chose not to run for re-election to the School Board in the 2018 mid-term election, and with the minority population of the county continuing to grow, African American and Asian American candidates were finally elected to the County Commission and an African American candidate was elected to the School Board for the first time in the county's history. Following these electoral successes, the parties agreed to a voluntary dismissal of the litigation.

Voters and Voting Rights Advocates Successfully Challenged Sumter County’s Reduction of Board of Education and Creation of At-Large Seats Diluting Strength of Black Voters

***Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297 (M.D. Ga. 2018):** Sumter County adopted a districting plan for the Board of Education that switched from 9 single-member districts to a total of seven districts, five of which are single-member and two are at-large. This case presents the precise factual scenario that advocates worried about after *Shelby County*: that local jurisdictions would move from district-based elections where minority voters have an opportunity to elect their preferred candidates, to an arrangement where some or all seats are chosen by the jurisdiction as a whole, which is majority white. Black residents comprise about 48 percent of the voting age population in Sumter County, but are packed into two of the five single-member districts. As a result, they can elect representatives of their choice for only two of the seven seats. In March 2018, the District Court ruled that the current at-large method of voting for the county’s public education school board members disproportionately favored the white majority candidates over the black minority preferred candidates. The court ordered Sumter County to re-draw the district lines to give African Americans the ability to elect candidates of their choice to the Board of Education.

Voters and Voting Rights Advocates Challenged Crisp County’s At-Large Voting System that Diluted the Voting Strength of Black Voters

***Whitest v. Crisp Cty. Bd. of Education, No. 1:17-cv-00109* (M.D. Ga. filed June 14, 2017):** In July 2017, advocates brought a Section 2 challenge in the Middle District of Georgia to the at-large method of electing members to the Board of Education in Crisp County, Georgia. No Black candidate has ever won a contested seat on the board, and a data analysis on election history has shown voting to be statistically racially polarized. The case is still pending.

Voters and Voting Rights Advocates Successfully Challenged a Georgia Law Restricting Rights of Limited English Proficient Voters to Obtain Assistance at the Polls

***Kwon v. Crittenden, 1:18-cv-05405-TCB* (N.D.Ga. 2018):** In 2018, advocates successfully challenged Section 21-2-409 of the Georgia Code under Section 208 of the Voting Rights Act. The Georgia law restricted the rights of limited English proficient (LEP) voters to obtain the assistance of interpreters or assisters of their choice. The statute limited an LEP voter, in non-federal elections, to the assistance of only either (1) a voter in the same precinct, or (2) one of certain statutorily-prescribed family members. The statute also provided that no person was allowed to assist more than 10 voters and that no candidate or family member of a candidate in any particular election could offer assistance to a voter in that election who is not a family member. After obtaining a preliminary injunction enjoining enforcement of the law, the Georgia General Assembly amended the law in 2019 to conform to the federal law.

Voters and Voting Rights Advocates File Suit Challenging Systemic Voter Suppression in Georgia

Ebenezer Baptist Church of Atlanta, Georgia, Inc. v. Raffensperger, 1:18-cv-05391-SCJ: Fair Fight Georgia, Inc., Care in Action and several Black Churches filed suit challenging systemic voter suppression in Georgia under Section 2 of the Voting Rights Act and the Constitution. In May 2019 the District Court granted in part and denied in part Defendants' motion to dismiss. The case remains pending.

Voters Challenge the Failure of the Georgia General Assembly to Draw a Congressional District in Central and Southeast Georgia to Provide African Americans an Equal Opportunity to Elect Candidates of their Choice

Dwight v. Kemp, 1:18-cv-02869-JPB (N.D. Ga. 2018): This is a vote dilution lawsuit that was filed on June 13, 2018 by six African American Georgia voters under Section 2 of the VRA. The lawsuit challenges the Georgia General Assembly's failure to draw a congressional district in central and southeast Georgia, where the 12th Congressional District (CD 12) is currently located, that would provide African Americans in that region an equal opportunity elect their preferred candidates. On May 1, 2019, the Plaintiffs filed a motion for summary judgment and that motion is currently pending in the District Court.

Voting Rights Advocates Fight Precinct Closures and Efforts to Reduce Voting Hours in the Wake of Shelby County

Pre-litigation advocacy has been ongoing in a number of Georgia jurisdictions which have proposed the closure and relocation of polling places and have made efforts to reduce or curtail early voting and poll hours, which in many instances adversely impact voters of color. These include:

- 1) Macon-Bibb County, where in January 2015, the majority white Macon-Bibb Board of Elections and Registration proposed a plan to close or consolidate 14 of the county's 40 voting precincts as an alleged cost-savings device. Many of the proposed closures were in majority-Black precincts. In the wake of strong opposition to the plan by voters and voting rights advocates, the Board scaled back the plan by consolidating 7 of the 40 voting precincts and including a majority-White precinct as among the consolidated precincts.

- 2) Hancock County, where in May 2014, the Hancock County Board of Elections and Registration announced that it was planning to close all precincts except a single precinct located in downtown Sparta. The plan presented a travel burden for voters living in the majority African American precincts in a mostly poor and rural County, particularly since the County does not have a robust public transportation system. The Board abandoned the plan following public outcry and threats of potential litigation by advocates.

- 3) In September 2018, advocates, working with local groups, were able to reverse a decision by the Randolph County Board of Elections to close 7 out of 9 polling places, several of which were in predominantly African American precincts. However, it appears that the Board of Elections may be planning to again consider polling place closures and consolidations in 2019, notwithstanding overwhelming objection by the county's voters, local and national advocates.

4) In 2018, the City of Fairburn, Georgia proposed closing 2 of its 3 polling locations, despite the fact this proposal would have increased the number of minority voters in the single remaining polling location to almost 8,000 and after the city had previously increased the number of polling locations from 1 to 3 because of complaints by voters about long lines and delays at the polls. Advocates submitted written objections and in the face of strong opposition by voters, the proposal did not pass.

5) During 2017-2018, Fulton County, Georgia proposed numerous precinct consolidations and polling location changes. Advocates and voters objected to many of these changes. The County has often claimed that it needs to close or consolidate poll locations to save money because of alleged low turn-out since 2008 and 2012 - which were high watermarks for voter turn-out in many of Georgia's minority communities because Barak Obama was on the ticket. In some cases, the alleged low turnout in the majority-minority precincts was on par with or above turnout at other polling locations that were not being proposed for closure or consolidation. Rapid response advocacy efforts were successful in convincing the Fulton County Board of Elections to back down from some, but not all, of the closures, consolidations and relocations.

6) During 2017-2018, the Morgan County elections board proposed closing 2 of the 7 voting precincts/polling places after having previously reduced the number from 11 to 7 in 2012. The county Board of Elections initially took the position that it was not required to allow public comment on the proposal or conduct this change via an open meeting. Ultimately, the proposal failed to pass after objections were interposed by advocates and voters.

7) In 2017, the Fayette County Board of Elections proposed reducing its 36 voting precincts to 19. The proposal would have negatively impacted many minority voters and would have increased the number of voters in the remaining precincts by 45%. After advocates submitted written objections and voters turned out at the Election Board meeting to voice their objections, the Board tabled the proposal. This is the same county which was the subject of a successful vote dilution lawsuit brought under Section 2 of the Voting Rights Act by the NAACP Legal Defense Fund involving the County Commission and School Board.

8) In 2013, advocates persuaded election officials in Baker County, Georgia to keep open all five of its polling places (rather than close four of them) in that impoverished, rural community.

9) In 2018, voting rights advocates fought against efforts to reduce Sunday voting in Fulton County and the hours to vote in Atlanta.

Kansas

Kansas' Documentary Proof-of-Citizenship Requirement for Voter Registration Struck Down as Violative of the Constitution and the National Voter Registration Act

***Fish v. Kobach*, 309 F.Supp. 3d 1048 (D.Kan. 2018)**: After Kansas' then Secretary of State, Kris Kobach, refused to fully process thousands of voter registration applications without documentary proof-of-citizenship, voter registration applicants impacted by the policy sued Kobach, contending that the state's documentary proof of citizenship requirement violated Section 5 of the NVRA and violated the Fourteenth Amendment of the United States Constitution. In June 2018 the District Court struck down

Kansas' proof-of-citizenship law, finding that it violated the NVRA and the Equal Protection Clause of the Fourteenth Amendment.⁵⁹

Voters Were Forced to File Suit Challenging the Relocation of Dodge City, Kansas' Sole Polling Place out of the City to Disadvantage Minority Voters

***Rangel-Lopez v. Cox*, 344 F. Supp. 3d 1285, 1287 (D. Kan. 2018):** Voters filed suit alleging claims under Section 2 of the VRA and the Constitution challenging the decision to move the sole polling place in Dodge City, Kansas, one of the few majority-minority cities in the state, from a centrally located facility to a location outside of the city. While the court declined to grant plaintiffs' motion for emergency relief to reopen the polling place within the city for the 2018 general election, the county clerk later agreed to open two new voting sites within the city for future elections and the plaintiffs voluntarily dismissed the lawsuit.

Louisiana

Voters and Voting Rights Advocates Successfully Challenged Louisiana's At-Large Method of Electing Judges That Diluted Voting Rights of Black Voters

***Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395 (M.D. La. 2017), appeal dismissed sub nom. *Fusilier v. Edwards*, No. 17-30756, 2017 WL 8236034 (5th Cir. Nov. 14, 2017), and reconsideration denied, No. CV 14-69-SDD-EWD, 2018 WL 5786215 (M.D. La. Nov. 5, 2018):** Voters and advocates filed suit under Section 2 of the VRA and the U.S. Constitution challenging Louisiana's at-large method of electing judges. Plaintiffs contended the system maintained a racially segregated state court ("32nd JDC") which had jurisdiction over Terrebonne Parish. A Black candidate had never won election to this court in a contested election. Meanwhile, a judge on the court was suspended for wearing blackface, an orange prison jumpsuit, handcuffs, and an afro wig to a Halloween party as part of his offensive parody of a Black prison inmate. In August 2017, following a trial on the merits, the court ruled that the at-large electoral scheme deprived Black voters an equal opportunity to elect candidates of their choice in violation of Section 2 of the VRA and that the scheme had been maintained for that purpose in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution. The Defendant's appeal to the Fifth Circuit was dismissed. On June 3, 2019, the assigned Magistrate Judge issued a report making recommendations for remedial relief. The case remains pending.

⁵⁹ Kansas voters also filed a state court challenge to a two-tier voter registration system adopted by Kobach which purported to limit persons using the federal voter registration form to voting in federal elections, but not in state or local elections. See *Belenky v. Kobach*, Case No. 2013CV1331 (District Court of Shawnee County, KS 2013).

Voting Rights Advocates Commence Litigation to Challenge the Constitutionality of Louisiana’s Disenfranchisement of Probationers and Parolees

***VOTE v. Louisiana*, No: 2017-CA-1141 (1st Cir. La. App. Ct. Apr. 13, 2018):** Voting advocates filed suit in state court challenging the constitutionality of a Louisiana law that disenfranchises more than 71,000 probationers and parolees who are not incarcerated, but are nevertheless prohibited from voting. Plaintiffs contend that the law violates Louisiana’s Constitutional Right to Vote provision, which denies the franchise to those under an “order of imprisonment for a felony conviction.” In March 2017, the trial court granted summary judgment to the State and this decision was upheld by the Court of Appeals. On October 30, 2018, the Louisiana Supreme Court, over a powerful dissent by Louisiana Supreme Court Chief Justice Bernette Johnson, denied review.

African American Voters in Baton Rouge Challenged the Method of Electing Judges to the Baton Rouge City Court under Section 2 of the Voting Rights Act

***Hall v. State of Louisiana*, 3:12-cv-00657-BAJ-RLB (M.D.La. 2012):** This action was brought by African-American voters in Baton Rouge, Louisiana, to challenge the method of election for judges to the Baton Rouge City Court. Plaintiffs claimed that the election system violates Section 2 of the VRA because it dilutes African-American voting strength in the city. Since 1993, the City Court’s five judges had been elected from two separate districts, called Election Sections. Section 1 was majority black in population and elects two judges, while Section 2 is majority white and elects three judges. Baton Rouge has experienced a change in the racial composition of its population since 1993, with African Americans now constituting a majority. Nonetheless, white voters continued to control the election of 60 percent of the judges in the context of racially polarized voting in judgeship elections and other local electoral factors. Efforts in the state legislature to modify the election system to reflect African Americans’ current voting strength have failed.

Trial began in August 2014 and, after a recess of several months, concluded on November 19, 2014. Plaintiffs presented extensive evidence regarding the difficulties African-American voters face in winning judicial elections in the majority-white election section, including the ongoing pattern of polarized voting, Louisiana’s long history of discrimination in voting and other spheres, and the substantial socioeconomic disparities between the city’s African-American and white residents. Plaintiffs also presented evidence that an additional majority-Black district could be drawn to allow African Americans a fair opportunity to elect an additional candidate of their choice. On June 9, 2015, the District Court ruled in favor of Defendants. Before Plaintiffs had an opportunity to appeal, however, the Louisiana legislature passed a new judicial districting plan which met most of Plaintiffs’ concerns, and Plaintiffs moved for an order that the Section 2 claims had been rendered moot and that the judgment in favor of defendants be vacated. The trial court agreed that the Section 2 claims were moot, but declined to vacate its judgment. On March 13, 2018, the Fifth Circuit Court of Appeals affirmed the District Court’s decision not to vacate the judgment even though Plaintiffs’ claims were rendered moot by the remedial legislation.

African American Louisiana Voters Challenge the State's Congressional Districting Plan under Section 2 of the Voting Rights Act

Johnson v. Ardoin, Civil Action No. 18-625-SDD-EWD (M.D.La. 2018): This is a vote dilution action brought under Section 2 of the VRA by African American voters who allege that the Louisiana Legislature intentionally “packed” African-American voters into the Second Congressional District and diluted, or “cracked,” African-American voters among the other districts in the 2011 Congressional Plan when they could have created an additional majority-minority Congressional District. On May 31, 2019, the District Court denied Defendant’s motion to dismiss. The case remains pending.

Massachusetts

Voters and Voting Rights Advocates Successfully Challenged the Lowell, Massachusetts At-Large Voting System that Dilutes the Strength of Latino and Asian American Voters

Huot v. City of Lowell, No: 1:17-cv-10895 (D. Mass. 2017): Plaintiffs filed suit on May 18, 2017 alleging the City of Lowell’s at-large municipal election system illegally diluted the vote of Latino and Asian American communities in violation of the VRA and Constitution. Although communities of color make up about half of Lowell’s population, its city council and school board have virtually never had minority representatives. The case was ultimately settled in 2019, with Defendants agreeing to change the election system to either a purely district-based system or a hybrid system with districts and at-large ranked choice voting. The city is currently planning a public process to receive community input and planning a comprehensive public education and outreach campaign.

Michigan

Department of Justice Challenges the At-Large Method of Electing Members to the Eastpoint, Michigan City Council

United States v. City of Eastpointe, 4:17-cv-10079 (E.D.Mich. 2017): In one of the very few voting rights enforcement actions taken by the Department of Justice in recent years, the DOJ filed suit against the City of Eastpoint, Michigan, challenging its at-large method of electing members of the city council. DOJ contended that the at-large method of election diluted the voting strength of African American voters in the city. On March 27, 2019, the District Court denied the Defendant’s motion for summary judgment. On June 4 2019, the parties reached a settlement in which the city will be one of the first cities in Michigan to implement ranked choice voting in city council elections.

Mississippi

State Senate Candidate and Voters Commenced Litigation Challenging the Boundary Lines of Majority-Black Mississippi Senate District 22

Thomas v. Bryant, 919 F.3d 298 (5th Cir. 2019): On July 9, 2018, Black Mississippi voters filed a Section 2 of the VRA vote dilution lawsuit challenging the districting plan for Mississippi State Senate District 22. Plaintiffs contend that the plan dilutes the voting strength of Black voters and, combined with racially polarized voting, prevents them from electing candidates of their choice to the Senate District 22 seat. Plaintiffs prevailed at trial and Defendant has filed an appeal to the Fifth Circuit. Oral argument before the Fifth Circuit was held on June 11, 2019. The case remains pending.

Voters and Voting Rights Advocates Challenge Mississippi’s Requirement that Absentee Ballots and Applications Must Be Notarized

***O’Neil v. Hosemann*, No: 3:18-cv-00815 (S.D. Miss. Nov. 27, 2018):** On November 21, 2018, Plaintiffs filed a complaint challenging, on federal constitutional right to vote grounds, Mississippi’s unique combination of requiring notarization of both the absentee ballot application and the ballot itself, together with a deadline of receipt of the ballot the day before election day. Plaintiffs also sought emergency relief to compel the counting of ballots post-marked by election day (November 27) in the senatorial run-off, where voters had only 9 days – including Thanksgiving weekend – to apply for, obtain, and cast their absentee ballots. The court denied relief on November 27, 2019 on grounds that it was too close to the election to order relief. The case is still pending.

Mississippi’s Felony Disenfranchisement Law is Challenged in Two Federal Lawsuits

***Harness v. Hosemann*, Civil Action No. 3:17-cv-791-DPJ-FKB (S.D.Miss. 2017) and *Hopkins, et al. v. Hosemann*, Civil Action No. 3:18-cv-188-CWR-LRA (S.D.Miss. 2018):** Plaintiffs who are disenfranchised by the Mississippi Constitution’s felony disenfranchisement provisions filed suit to strike down the provisions. In *Hopkins*, the Plaintiffs are also challenging the process by which voting rights are restored for formerly convicted individuals. Plaintiffs contend that the disenfranchisement scheme was born from racism embedded in the 1890 Mississippi Constitution, which was created in the wake of Reconstruction, and continues to disproportionately deny the franchise to Black Mississippians. On June 28, 2018, the District Court consolidated the two cases. On February 13, 2019, the District Court granted the *Hopkins* Plaintiffs’ motion to certify the case as a class action. The cases remain pending.

Voters Challenge Mississippi’s Majority Vote Scheme for the Election of the State’s Governor and other State-wide Offices

***McLemore v. Hosemann*, 3:19-cv-00383-DPJ-FKB (S.D.Miss. May 30, 2019):** Four Mississippi Black voters filed suit challenging the state’s majority vote requirement for electing the Governor and for other statewide offices. Plaintiffs contend the scheme has its basis in the racism that was at the heart of the post-Reconstruction adoption of the 1890 Mississippi Constitution and that it was intended to prevent African Americans from holding statewide elected offices. Since the enactment of the majority vote requirement in 1890, no African Americans have been elected to statewide offices, despite the fact that Mississippi has the highest percentage of African Americans of any state in the country. Plaintiffs have alleged claims under Section 2 of the Voting Rights Act and the Constitution. The case is currently pending in the United States District Court for the Southern District of Mississippi.

Missouri

Successful Section 2 Challenge to the At-Large Method of Electing Board Members to the Ferguson-Florissant, Missouri School Board

Missouri State Conference of the National Association for the Advancement of Colored People v. Ferguson–Florissant School District, 894 F.3d 924 (8th Cir. 2018). This is a vote dilution lawsuit filed under Section 2 of the Voting Rights Act to challenge the at-large method of election for members to the School Board for the Ferguson-Florissant School District. African Americans are 47 percent of the district’s population, but had only been able to elect two candidates of their choice to the board because of the at-large scheme. Plaintiffs prevailed at trial; the Eighth Circuit denied the Defendant’s appeal and the Supreme Court denied the Defendant’s petition for *certiorari*.

New York

Lawsuit Filed to Restore Voting Rights to New Yorkers Who Were Removed from Poll Books in Violation of Federal Law

Common Cause/New York v. Brehm, Case No. 1:17-cv-06770 (S.D.N.Y. 2017): Advocates filed suit to restore the voting rights of millions of New Yorkers ahead of the 2018 election. Plaintiffs alleged that certain eligible but “inactive” voters are improperly removed from poll books throughout New York State in violation of the National Voter Registration Act (NVRA). Plaintiffs contend that the removal of inactive voters from the poll books disproportionately impacts voters of color. The litigation is continuing.

Vote Dilution Lawsuit Filed under Section 2 of the Voting Rights Act to Challenge the At-Large Method of Electing Members of the East Ramapo Central School District

National Association for the Advancement Of Colored People, Spring Valley Branch v. East Ramapo Central School District, Case No. 7:17-cv-08943 (S.D.N.Y. 2017): This is a Section 2 vote dilution lawsuit filed in November 2017 by the Spring Valley Branch of the NAACP and seven Black and Latino voters. Plaintiffs challenge the at-large method of electing members to the Board of Education of the East Ramapo Central School District and contend that it dilutes the voting strength of Black and Latino voters in the District. As a by-product of the dilutive election scheme, Plaintiffs contend that White Board Members are not responsive to the needs of minority students and their parents in the district and have undertaken funding cuts and other actions which deprive minority students of an adequate education. The case is still pending.

North Carolina
Challenge to Voter Suppression Legislation on the Heels of *Shelby* that
Targeted Black Voters with almost Surgical Precision

North Carolina State Conference of NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016): In the immediate aftermath of the *Shelby* decision, North Carolina enacted omnibus voter suppression legislation which included a strict voter ID requirement that excluded the use of out-of-state and college IDs; eliminated same-day voter registration and pre-registration for 16 and 17 year olds; increased opportunities for voters' eligibility to be challenged at the polls; reduced early voting by an entire week; and required the rejection of out-of-precinct ballots. After Plaintiffs' challenge was rejected by the District Court following a trial on the merits, Plaintiffs appealed. The Fourth Circuit then struck down the law's voter ID requirement; cutbacks to early voting; elimination of same-day registration and pre-registration; and the provisions relating to out-of-precinct ballots. In its decision, the Fourth Circuit noted:

“After years of preclearance and expansion of voting access, by 2013 African American registration and turnout rates had finally reached near-parity with white registration and turnout rates. African Americans were poised to act as a major electoral force. But, on the day after the Supreme Court issued *Shelby County v. Holder*, — U.S. —, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013), eliminating preclearance obligations, a leader of the party that newly dominated the legislature (and the party that rarely enjoyed African American support) announced an intention to enact what he characterized as an “omnibus” election law. Before enacting that law, the legislature requested data on the use, by race, of a number of voting practices. Upon receipt of the race data, the General Assembly enacted legislation that restricted voting and registration in five different ways, all of which disproportionately affected African Americans.

“In response to claims that intentional racial discrimination animated its action, the State offered only meager justifications. **Although the new provisions target African Americans with almost surgical precision, they constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist. Thus, the asserted justifications cannot and do not conceal the State's true motivation.** “In essence,” as in *League of United Latin American Citizens v. Perry* (LULAC), 548 U.S. 399, 440, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006), “the State took away [minority voters'] opportunity because [they] were about to exercise it.” As in LULAC, “[t]his bears the mark of intentional discrimination.” *Id.*

“Faced with this record, we can only conclude that the North Carolina General Assembly enacted the challenged provisions of the law with discriminatory intent. Accordingly, we reverse the judgment of the district court to the contrary and remand with instructions to enjoin the challenged provisions of the law.”

Id., at 214–15 (emphasis added).

Despite the Fourth Circuit's strongly worded decision and conclusion that the law was enacted with discriminatory intent, North Carolina asked the Supreme Court to stay the Fourth Circuit's decision, claiming that the state did not have sufficient time to make changes before the November 2016 general election. The Supreme Court granted the State's request for a stay. As a result, the law remained in effect

for the November 2016 general election until the Supreme Court eventually denied North Carolina's petition for *certiorari* on the merits in May 2017.

Voters and Voting Rights Advocates Forced to Commence Litigation to Restore Illegally Purged North Carolina Minority Voters to the Registration Rolls ahead of the November 2016 General Election

***North Carolina State Conference of the NAACP v. North Carolina State Board of Elections*, Case No. 1:16CV1274, 2016 WL 6581284 (M.D.N.C., 2016)(order granting preliminary relief); and *North Carolina State Conference of NAACP v. Bipartisan Board of Elections and Ethics Enforcement*, Case No. 1:16CV12742018, WL 3748172 (M.D.N.C. 2018)(order granting Plaintiffs' motion for summary judgment and permanent relief):** Plaintiffs alleged that in the months and weeks immediately preceding the November 2016 general election, boards of elections in three North Carolina counties - Beaufort, Moore, and Cumberland -improperly canceled thousands of voter registrations of predominantly African American voters for changes of residency on the basis of single mailings returned as undeliverable. Specifically, Plaintiffs alleged that a handful of private individuals brought coordinated and targeted *en masse* challenges to voter registrations on change-of-residency grounds pursuant to North Carolina's voter challenge statute, N.C. Gen. Stat. § 163-85, *et seq.* and that this process violated Section 2 of the VRA, Section 8 of the NVRA and the Equal Protection Clause of the Fourteenth Amendment. The Court granted a preliminary injunction in favor of the Plaintiffs to restore impacted voters to the registration rolls ahead of the November 2016 general election and subsequently granted Plaintiffs' motion for summary judgment to permanently enjoin the practice.

Voters and Advocates File a Successful Post-Shelby Racial Gerrymander Challenge to Redistricting Plans in Two North Carolina Congressional Districts

***Cooper v. Harris*, 137 S.Ct. 1455 (2017):** Filed in October 2013, this case challenged the redistricting of two North Carolina congressional districts as racial gerrymanders in violation of the Equal Protection Clause of the Fourteenth Amendment. After a bench trial, a three-judge panel of the United States District Court for the Middle District of North Carolina ruled in favor of the voters. In 2017, the Supreme Court held that deference to the District Court's findings, under a clearly erroneous standard of review, was warranted; finding that race was the predominant factor in drawing one district as majority-minority district was not clearly erroneous; the State lacked a strong basis in evidence for believing that it needed a majority-minority district in order to avoid liability under § 2 of the Voting Rights Act (VRA) for vote dilution; and finding that racial gerrymandering rather than political gerrymandering was predominant factor in drawing the other district as majority-minority district was not clearly erroneous.

Section 2 Litigation Filed to Remedy Dilution of Voting Strength of Black Voters in Jones County, North Carolina Due to At-Large Method of Electing County Commissioners

***Hall v. Jones Cty. Bd. of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Aug. 23, 2017):** Plaintiffs challenged the at-large scheme of electing members to the Jones County, NC Board of Commissioners under Section 2 of the Voting Rights Act. Due to the at-large method of electing members to the Jones County Board of Commissioners, which diluted the voting strength of African American voters, no African American candidates had been elected to the Jones County Board of Commissioners since 1998. The parties eventually settled the matter with an agreement that the Board of Commissioners would implement a seven single-member district electoral plan, including two single-member districts in which African-American voters constitute a majority of the voting-age population.

Voting Rights Advocates Forced to Commence Litigation Challenging a North Carolina Law Restructuring the Greensboro City Council which also Prohibited Voters from Changing the Restructuring Via Referendum

City of Greensboro v. Guilford County Board of Elections, 251 F.Supp.3d 935 (M.D.N.C. 2017). In 2015, after the *Shelby* decision, North Carolina enacted a bill which restructured the Greensboro City Council and eliminated the ability of voters to change the restructuring via a referendum. Plaintiffs alleged the legislature's plan diluted the voting strength of African American voters and violated other traditional redistricting principles, including one person, one vote and not pairing incumbents against each other, and that the prohibition against restoring the previous plan via a referendum was unconstitutional. The Plaintiffs eventually prevailed on their claims that the prohibition against a referendum and the violation of one person, one vote violated the Constitution. Because the court found in favor of the Plaintiffs on these claims, the court did not reach the issue of whether the plan was a racial gerrymander.

Voters and Voting Rights Advocates Bring Litigation Successfully Challenging North Carolina's Racially Gerrymandered State Legislative and Congressional Redistricting Plans

Dickson v Rucho, No. 11 CVS 16896 (N.C.Super. July 08, 2013): This is a state court action challenging North Carolina's racially gerrymandered state legislative and congressional redistricting plans. The state courts upheld the plans. Plaintiffs sought review by the United States Supreme Court. In April 2015, the Supreme Court granted *certiorari* and remanded the case to the state Supreme Court in light of the Court's ruling in *Alabama Legislative Black Caucus v. Alabama*. On remand, in a 4-3 decision, the state Supreme Court affirmed its earlier opinion. On May 30, 2017, the United States Supreme Court again granted *certiorari* and reversed and remanded the case for further consideration in light of *Cooper v. Harris* and *North Carolina v. Covington*. On February 7, 2018, the day after the United States Supreme Court's ruling in *Covington* precluded the special master's new House districts in Wake and Mecklenburg counties from going into effect, Plaintiffs filed an emergency motion in this state court proceeding, seeking relief from the state constitutional violations in the Wake and Mecklenburg County state house districts. On February 12, 2018, the state court three-judge panel denied that motion but entered judgment in Plaintiffs' favor.

Federal Court Determined that 28 North Carolina Legislative Districts were Unconstitutional Racial Gerrymanders in Violation of the Constitution

Covington v. North Carolina, 316 F.R.D. 117 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017): Federal court litigation filed in 2015 challenged the racial gerrymandering of the state's legislative districts in 2011. On August 11, 2016, a three-judge panel unanimously found that 28 of the State's districts were racially gerrymandered and ordered all of those districts to be redrawn after the 2016 election. In another unanimous ruling on November 29, 2016, the three-judge panel ordered the General Assembly to redraw the racially gerrymandered house and senate districts, which was upheld by the Supreme Court. On October 26, 2017, the Court issued an order appointing a special master to assist in evaluating the districts and in developing an appropriate remedial plan. The special master submitted his proposed remedial plan on December 1, 2017, and the Court issued a unanimous Order incorporating his recommendations on January 19, 2018.

North Dakota

Spirit Lake Tribe and Native American Voters Challenge North Dakota's Strict Voter ID Law

Brakebill v. Jaeger, Civil Action No. 18-1725 (D.N.D. 2018): Plaintiffs secured a preliminary injunction prohibiting enforcement of a strict voter ID law which negatively impacted Native American voters. However, after the District Court granted preliminary relief, the state appealed to the Eighth Circuit for an emergency stay of the court's order and the Supreme Court, in a split decision, declined to overturn the stay while the litigation of the case on the merits continues.

Ohio

Sixth Circuit Reverses Trial Court Decision Finding that Modifications to the State's Early Voting Rules Violated the Fourteenth Amendment by Burdening the Right to Vote of African Americans

Ohio Democratic Party v. Husted, Case No. 16-3561 (6th Cir. 2015): In May of 2015, state and county political parties and three individual voters filed suit challenging modifications to state's early voting rules, contending that the changes violated the Equal Protection Clause of the Fourteenth Amendment. After the District Court found in favor of the Plaintiffs, enjoined enforcement of the statute and found it placed impermissible disparate burden on African-American voters, the Sixth Circuit reversed, concluding that the state's justifications for the changes outweighed the burden on African American voters and that the changes did not have a disparate impact.

Tennessee

Advocates Filed Suit to Challenge a Tennessee Law Imposing Severe Restrictions on Voter Registration Activity with Criminal and Civil Penalties that was Enacted in the Wake of Successful Registration Drives in 2018 Targeting Minority and Underserved Communities

Tennessee State Conference of the N.A.A.C.P. v. Hargett, Case No. 3:19-cv-00365 (M.D.Tenn. 2019) and League of Women Voters of Tennessee v. Hargett, 3:19-cv-00385 (M.D.Tenn. 2019): Voting advocates filed two lawsuits in 2019 challenging the enactment of a Tennessee law which imposes severe restrictions on voter registration activity by community groups and third parties and includes criminal and civil penalties for failures to comply with the law. The law was enacted in the wake of successful large-scale voter registration initiatives in the state in 2018 which targeted minority and underserved communities. Defendants filed motions to dismiss in both cases which are currently pending.

Texas

Voters, Voting Rights Advocates, and Congressional Representative Forced to Commence Litigation to Invalidate Racially Discriminatory Strict Texas Voter ID Law

***Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018):** This is a Federal court action challenging the Texas voter ID law under Section 2 of the VRA and the U.S. Constitution. In October 2014, the district judge ruled in Plaintiffs' favor on all claims and blocked the law, holding that it violates Section 2 of the VRA, constitutes an unconstitutional burden on the right to vote, amounts to a poll tax, and was motivated in part by a racially discriminatory purpose. In August 2015, the Fifth Circuit Court of Appeals upheld the district court's ruling that the State's restrictive photo ID requirement violated Section 2 of the Voting Rights Act. The appeals court upheld the finding of discriminatory effect under Section 2, but remanded on the issue of discriminatory intent, asking the lower court to re-examine the evidence. In July 2016, the *en banc* court affirmed the district court's finding of discriminatory effect under Section 2, and remanded the case to the district court for further fact-finding on the discriminatory intent claim. On April 10, 2017, the Court issued a decision re-affirming its prior determination that SB 14 was passed, at least in part, with a discriminatory intent. On June 1, 2017, Texas passed SB5, which it claimed remedied the effects of SB 14. While SB 5 shares provisions in common with the court-ordered interim remedy, there are aspects of concern, including a harsh felony penalty (up to two years of imprisonment) for voters who inappropriately use the affidavit process for voting in-person without an acceptable photo ID. On August 23, 2017, the court granted declaratory relief, holding that SB 14 violates Section 2 of the VRA and the 14th and 15th Amendments to the U.S. Constitution. The court enjoined SB 14 and SB 5, finding that the new law "perpetuates SB 14's discriminatory features." On April 27, 2018, the Fifth Circuit issued its opinion "reversing and rendering" the district court's order for permanent injunction and further relief, finding that the district court had abused its discretion, and further finding that SB 5 constituted an effective remedy "for the only deficiencies in SB 14," and that there was no equitable basis for subjecting Texas to ongoing federal election scrutiny under Section 3(c) of the Voting Rights Act.

Voters and Voting Rights Advocates File Suit to Remedy Dilution of Voting Strength of Latino Voters in Texas Due to At-Large Method of Electing Statewide Judges

***Lopez v. Abbott*, 339 F. Supp. 3d 589 (S.D. Tex. 2018):** In 2016, Plaintiffs challenged Texas' method of using at-large elections to elect judges to the two courts of last resort in the state, the Supreme Court of Texas and the Texas Court of Criminal Appeals. The lawsuit alleged that the statewide method of electing judges to these courts is discriminatory and denies Latinos an equal opportunity to elect candidates of their choice. In Texas, whites vote as a bloc resulting in the defeat of candidates supported by the Latino community. If the election process was changed from statewide to single districts, two districts could be created with a majority of CVAP of Latino voters, increasing the likelihood that Latino voters could overcome the bloc voting of White voters and have the chance to elect candidates of their choice to these courts. However, the court ultimately ruled for the Defendants, holding Plaintiffs could not show under the totality of the circumstances that the lack of electoral success by Latino-preferred candidates for high judicial office is on account of race rather than other factors, including partisanship.

Voting Rights Advocates Successfully Challenged Texas' Illegal Flagging of Naturalized Citizens for Removal from Voter Rolls

Texas League of United Latino American Citizens v. Whitley, No. 5:19-cv-00074 (W.D. Tex. February 27, 2019): In late January 2019, David Whitley, Texas' Secretary of State, sent Texas counties a list containing 95,000 registered voters and directing the counties to investigate their voting eligibility. The list was based on DMV data the state knew was flawed and would necessarily sweep in thousands of citizens who completed the naturalization process after lawfully applying for a Texas drivers' license. Naturalized citizens are entitled to full voting rights under Constitution. Voting rights advocates filed lawsuits challenging the purging of voters based upon this flawed process. The case was eventually settled after the U.S. District Court in Texas granted a motion for preliminary injunction, enjoining the removal of voters from the rolls based upon this flawed process.

Voter and Voting Rights Advocates Successfully Challenge Law Restricting Language Assistance for Voters with Limited English Proficiency

OCA-Greater Houston v. Texas, 867 F.3d 604 (5th Cir. 2017): Litigation was commenced on August 6, 2015, under Section 208 of the VRA challenging a provision of the Texas Election Code that requires interpreters to be registered to vote in the same county as the voter who needs assistance. This state requirement unduly restricts the range of individuals who are permitted to provide language assistance. The Court found, "In short, the State Defendants get the VRA wrong...the Texas Code Interpretation Provisions, restrict voter choice in a manner inconsistent with the Federal Voting Rights Act." The county defendants agreed to settle in light of the decision. In the settlement, the county agreed to revise the poll worker manual and to change the training procedure for interpreter requirements to be consistent with Section 208 of the VRA. The County will also maintain data of Section 208 violations that are reported to them. On August 16, 2017, the Fifth Circuit Court of Appeals affirmed the district court ruling that the Texas law, which requires interpreters to be registered voters, violates the VRA. The Fifth Circuit decision also affirmed the district court's finding that the plaintiff organization, OCA-Greater Houston, had satisfied its standing requirement.

Voters, State and Federal Legislators, and Voting Rights Advocates Successfully Challenged Texas' Redistricting Plan That Diluted Strength of Latino Voters

Abbott v. Perez, 138 S. Ct. 2305, 201 L. Ed. 2d 714 (2018): During the initial challenge to Texas' redistricting plan, Texas was denied Section 5 preclearance. Following the decision in *Shelby*, Plaintiffs again challenged Texas' maps that did not provide for a new Latino-majority congressional seat. The Court concluded that the congressional districting plans diluted Latino voting strength and were intentionally discriminatory against Latinos and African Americans. The case was tried a third time, focusing on Texas State House Districts, and the Plaintiffs prevailed again. Defendant appealed the District Court's rulings to the United States Supreme Court. On June 25, 2018, the Supreme Court reversed the District Court's rulings in Plaintiffs' favor with the exception of House District 90 in Fort Worth.

Voters and Voting Rights Advocates Commence Litigation to Challenge a Waller County, Texas Early Voting Scheme That Did Not Provide a Polling Place for HBCU Prairie View A&M University Voters

Allen v. Waller Cty., Tex., No: 4:18-cv-03985 (S.D. Tex. filed Oct. 22, 2018): On October 22, 2018, advocates filed a federal lawsuit against election officials in Waller County, Texas, who refused to provide any early voting location on the campus of Prairie View A&M University (PVAMU), an historically Black university, during early voting for the 2018 general election. Plaintiffs contend the County has provided fewer early voting opportunities to PVAMU students who are one of the highest users of this opportunity as compared to other voters in Waller County. Waller County has moved to dismiss Plaintiffs' First Amended Complaint and that motion is currently pending.

District Court in Texas Determines that Redistricting Plan for the City of Pasadena, Texas City Council that was Adopted in the Wake of the *Shelby* Decision Diluted the Voting Strength of Latino Voters and was Enacted with Discriminatory Intent

Patino v. City of Pasadena, Texas, 230 F.Supp.3d 667 (S.D.Tex. 2017): Latino voters filed suit against the City of Pasadena, Texas alleging that city's change from an eight single-member district plan for electing city council members to a plan with six single-member districts and two at-large districts, in 2014 – after the *Shelby* decision, diluted Latino voting strength in violation of Section 2 of the VRA and Fourteenth and Fifteenth Amendments to the Constitution. Following a bench trial, the Court ruled in favor of the Plaintiffs on both their Section 2 and discriminatory intent claims and ordered the restoration of the eight single member district plan for the 2017 city council election. The District Court noted that this was one of the first lawsuits brought to remedy a discriminatory redistricting plan enacted in the wake of the *Shelby* decision. Defendant's request for a stay of the District Court's remedial order was denied by the District Court and Fifth Circuit.

Utah

Lawsuit Filed Against San Juan County, Utah for the Failure to Provide Effective Language Assistance and In-Person Early Voting Sites for Navajo Nation Voters

Nation Human Rights Comm'n v. San Juan County, 216CV00154JNPBCW, 2017 WL 3976564, at *1 (D. Utah Sept. 7, 2017). San Juan County, Utah is home to a substantial Native American population. The County moved to all-mail balloting in 2014. Coupled with a lack of sufficient in-person early voting sites serving the Navajo Nation's voters, Plaintiffs argued that the county failed to provide effective language assistance to its Native American population. Following a period of intense and sometimes contentious litigation, the parties reached a settlement in which the county agreed to 1) provide in-person language assistance on the Navajo reservation for the 28 days prior to each election through the 2020 general election; 2) maintain three polling sites on the Navajo reservation for election day voting, including language assistance; and 3) to take additional action to ensure quality interpretation of election information and materials in the Navajo language.

Washington, D.C.

Voting Advocates File Suit Challenging the Decision by the Election Assistance Commission's Executive Director, Brian Newby, to Include Proof of Citizenship Requirement on Federal Registration Form Instructions

League of Women Voters of United States v. Newby, 838 F.3d 1 (D.C. Cir. 2016): In January 2016, EAC Executive Director Brian Newby, acting without input from the EAC Commissioners, issued notice to Alabama, Georgia, and Kansas that the federal registration form instructions would be amended to allow these states to require citizenship documents from applicants who use the federal registration form. Plaintiffs filed suit to enjoin Newby's action and the United States Court of Appeals for the District of Columbia Circuit preliminarily enjoined the EAC from changing the federal voter registration form after the District Court for the District of Columbia denied Plaintiffs' motion for a preliminary injunction. The parties have fully briefed cross-motions for summary judgment and the action remains pending.



**LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W**

**STATEMENT OF JON GREENBAUM
CHIEF COUNSEL
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

**U.S. HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL
LIBERTIES HEARING ON "DISCRIMINATORY BARRIERS TO VOTING"**

SEPTEMBER 5, 2019

Introduction

Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the U.S House of Representatives Committee on the Judiciary, my name is Jon Greenbaum and I serve as the Chief Counsel for the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today on the following topics:

- the Supreme Court's decision in *Shelby County v. Holder*,¹ which effectively immobilized the preclearance provisions of Section 5 of the Voting Rights Act by finding its underlying coverage formula unconstitutional;
- the efficiency of the Section 5 process prior to the *Shelby County* decision; the negative effect of the *Shelby County* decision on minority voting rights and the limitations and costs of employing Section 2 of the Act as a substitute;
- the high level of voting discrimination since the *Shelby County* decision, especially in the jurisdictions formerly covered by Section 5;
- how the replacement coverage formula in HR4, the Voting Rights Advancement Act,² sufficiently responds the constitutional issues raised by the Supreme Court in *Shelby County*.

I come to my conclusions based on twenty-two years of working on voting rights issues nationally. From 1997 to 2003, I served as a Senior Trial Attorney in the Voting Section at the United States Department of Justice, where I enforced various provisions of the Voting Rights Act, including Section 5, on behalf of the United States. In the sixteen years since, I have continued to work on voting rights issues at the Lawyers' Committee for Civil Rights Under Law as Chief Counsel, where I oversee our Voting Rights Project, and prior to that, I served as Director of the Voting Rights Project.

The Lawyers' Committee is a national civil rights organization created by President Kennedy in 1963 to mobilize the private bar to confront issues of racial discrimination. Voting rights has been an organizational core area since the inception of the organization. During my time at the Lawyers' Committee, among other things, I was intimately involved in the constitutional defense of Section 5 and its coverage formula in *Shelby County*, its predecessor case *Northwest Austin Municipal Utility District No. 1 v. Holder*, and two extensive reports that have examined the extent of minority voting discrimination based on DOJ and court enforcement records and numerous field hearings: National Commission on Voting Rights, *Protecting Minority Voters: Our Work Is Not Done* (2014) ("2014 National Commission Report") and *The National Commission on the Voting Rights Act, Protecting Minority Voters: The Voting*

¹ 570 U.S. 529 (2013).

² Voting Rights Advancement Act, H.R. 4, 116th Cong. 2019.

Rights Act at Work 1982-2005 (2006). The report and record of the latter National Commission, which was submitted to the House Judiciary Committee at the Committee's request, was the largest single piece of the record supporting the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 ("2006 VRA Reauthorization"). The Lawyers' Committee is currently compiling a report that will detail the federal enforcement record of voting discrimination on a state-by-state basis for the last twenty-five years. We hope to release this report to the public in early October.

The *Shelby County* decision

Prior to the *Shelby County* decision, the combination of Section 2 and Section 5 of the Voting Rights Act provided a relatively effective means of preventing and remedying minority voting discrimination. Section 2, which is discussed more fully below, remains as the general provision enabling the Department of Justice and private plaintiffs to challenge voting practices or procedures that have a discriminatory purpose or result. Section 2 is in effect nationwide.³ Section 5 required jurisdictions with a history of discrimination, based on a formula set forth in Section 4(b), to obtain preclearance of any voting changes from the Department of Justice or the District Court in the District of Columbia before implementing the voting change.⁴ From its inception, there was a sunset provision for the formula, and subset provision for the 2006 Reauthorization was 25 years.⁵

In the *Shelby County* case, the Supreme Court decided in a 5-4 vote that the Section 4(b) coverage formula was unconstitutional. The majority held that because the Voting Rights Act "impose[d] current burdens," it "must be justified by current needs."⁶ The majority went on to rule that because the formula was comprised of data from the 1960s and 1970s, it could not be rationally related to determining what jurisdictions, if any, should be covered under Section 5 decades later.⁷ The four dissenting justices found that Congress had demonstrated that regardless of what data was used to determine the formula, voting discrimination had persisted in the covered jurisdictions.⁸ The majority made clear that "[w]e issue no holding on §5 itself, only on the coverage formula. Congress may draft another formula based on current conditions."⁹

The effect of the *Shelby County* decision is that Section 5 is effectively

³ 52 U.S.C. § 10301.

⁴ 52 U.S.C. §§ 10303(b), 10304.

⁵ 52 U.S.C. § 10303(b).

⁶ *Shelby County*, 570 U.S. at 536 (quoting *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193 at 203) 2009.

⁷ *Shelby County*, 557 U.S. at 545-54.

⁸ *Id.* at 560 (Ginsberg, J. dissenting).

⁹ *Id.* at 556.

immobilized as, for now, preclearance is limited only to those jurisdictions where it is imposed by a court after a court previously made a finding of intentional voting discrimination. This special preclearance coverage is authorized by Section 3(c) of the Act. Courts have rarely ordered Section 3(c) coverage, and when they do, it is typically quite limited. Indeed, the only jurisdictions I am aware of that are currently subject to Section 3(c) coverage are Pasadena, Texas and Evergreen, Alabama.¹⁰ In the case of Pasadena, the only changes subject to preclearance relate to the method of election and redistricting.¹¹

As a result, Section 5 is essentially dead until Congress takes up the Supreme Court's invitation to craft another coverage formula. There are compelling reasons for Congress to do so because, as discussed below, voting discrimination has increased in the absence of Section 5, and Section 2 cannot adequately substitute for Section 5.

How Section 5 worked prior to the *Shelby County* decision

Before looking at the *post-Shelby County* record, it is important to first understand how Section 5 worked prior to the *Shelby County* decision. Covered jurisdictions had to show federal authorities that the voting change did not have a discriminatory purpose or effect. Discriminatory purpose under Section 5 was the same as the Fourteenth and Fifteenth Amendment prohibitions against intentional discrimination against minority voters.¹² Effect was defined as a change which would have the effect of diminishing the ability of minority voters to vote or to elect their preferred candidates of choice.¹³ This was also known as retrogression, and in most instances was easy to measure and administer. For example, if a proposed redistricting plan maintained a majority black district that elected a black preferred candidate at the same black population percentage as the plan in effect, it would be highly unlikely to be found retrogressive. If, however, the proposed plan significantly diminished the black population percentage in the same district, it would invite serious questions that it was retrogressive.

Except in rare circumstances, covered jurisdictions would first submit their voting changes to the Department of Justice. DOJ had sixty days to make a determination on a change, and if DOJ precleared the change or did not act in 60 days, the covered jurisdiction could implement the change.¹⁴ The submission of additional information by the jurisdiction, which often happened because DOJ requested such information orally, would extend the 60 day period if the submitted information materially supplemented the submission.¹⁵ DOJ could extend the 60 period once by

¹⁰ See *Patino v. City of Pasadena*, 230 F. Supp. 667, 729 (S.D. Tex. 2017).

¹¹ *Id.*

¹² 52 U.S.C. § 10304(c).

¹³ 52 U.S.C. § 10304(b), (d).

¹⁴ 52 U.S.C. § 10304(a).

¹⁵ *Id.* Procedures for the Administration of Section 5 of the Voting Rights Act ("Section 5 Procedures"), 28 C.F.R. §

sending a written request for information to the jurisdiction.¹⁶ This often signaled to the jurisdiction that DOJ had serious concerns that the change violated Section 5. If DOJ objected to a change, it was blocked, but jurisdictions had various options, including requesting reconsideration from DOJ, Section 5 Procedures,¹⁷ seeking preclearance from the federal court,¹⁸ and modifying the change and resubmitting it.

In the nearly seven years I worked at DOJ, I witnessed first-hand how effective Section 5 was at preventing voting discrimination and how efficiently DOJ administered the process to minimize the burdens to its own staff of attorneys and analysts, and to the covered jurisdictions. The Section 5 Procedures cited above provided transparency as to DOJ's procedures and gave covered jurisdictions guidance on how to proceed through the Section 5 process. Internal procedures enabled DOJ staff to preclear unobjectionable voting changes with minimal effort and to devote the bulk of their time to those changes that required close scrutiny.

The benefits of Section 5 were numerous and tangible. The 2014 National Commission Report provided the following statistics and information regarding DOJ objections:

By any measure, Section 5 was responsible for preventing a very large amount of voting discrimination. From 1965 to 2013, DOJ issued approximately 1,000 determination letters denying preclearance for over 3,000 voting changes. This included objections to over 500 redistricting plans and nearly 800 election method changes (such as the adoption of at-large election systems and the addition of majority-vote and numbered-post requirements to existing at-large systems). Much of this activity occurred between 1982 (when Congress enacted the penultimate reauthorization of Section 5) and 2006 (when the last reauthorization occurred); in that time period approximately 700 separate objections were interposed involving over 2,000 voting changes, including objections to approximately 400 redistricting plans and another 400 election method changes.

Each objection, by itself, typically benefited thousands of minority voters, and many objections affected tens of thousands, hundreds of thousands, or even (for objections to statewide changes) millions of minority voters. It would have required an immense investment of public and private resources to have accomplished this through the filing of individual lawsuits.¹⁹

51.37.

¹⁶ Section 5 Procedures, 28 C.F.R. § 51.37.

¹⁷ 28 C.F.R. § 51.45

¹⁸ 52 U.S.C. § 10304(a)

¹⁹ National Commission on Voting Rights, *Protecting Minority Voters: Our Work Is Not Done* 56 (2014) (internal citations omitted).

In addition to the changes that were formally blocked, Section 5's effect on deterring discrimination cannot be understated. Covered jurisdictions knew that their voting changes would be reviewed by an independent body and they had the burden of demonstrating that they were non-discriminatory. By the time I began working at DOJ, Section 5 had been in effect for several decades and most jurisdictions knew better than to enact changes which would raise obvious concerns that they were discriminatory – like moving a polling place in a majority black precinct to a sheriff's office. In the post-*Shelby* world, a jurisdiction is likely to get away with implementing a discriminatory change for one election (or more) before a plaintiff receives relief from a court, as the Hancock County, Georgia voter purge and Texas voter identification cases detailed later illustrate.

The Section 5 process also brought notice and transparency to voting changes. Most voting changes are made without public awareness. DOJ would produce a weekly list of voting changes that had been submitted, which individuals and groups could subscribe to in order to receive this weekly list from DOJ.²⁰ For submissions of particular interest, DOJ would provide public notice of the change if it believed the jurisdiction had not provided adequate notice of the change.²¹ But even more importantly, the Section 5 process incentivized jurisdictions to involve the minority community in voting changes. DOJ's Section 5 Procedures requested that jurisdictions with a significant minority population provide the names of minority community members who could speak to the change,²² and DOJ's routine practice was to call at least one local minority contact and to ask the individual whether she or he was aware of the voting change and had an opinion on it. Moreover, involved members of the community could affirmatively contact DOJ and provide relevant information and data.²³

Why Section 2 is an inadequate substitute for Section 5

Prior to the *Shelby County* decision, critics of Section 5 frequently minimized the negative impact its absence would have by pointing out that DOJ and private parties could still stop discriminatory voting changes by bringing affirmative cases under Section 2 of the Voting Rights Act. Indeed, in the same paragraph of *Shelby County* where the Supreme Court majority states that Congress could adopt a new formula for Section 5, it also notes that its “decision in no way affects the permanent, nation-wide ban on racial discrimination in voting found in §2.”²⁴

²⁰ Section 5 Procedures, 28 C.F.R. § 51.32-51.33.

²¹ *Id.* at 28 C.F.R. § 51.38(b).

²² *Id.* at 28 C.F.R. § 51.28(h).

²³ *Id.* at 28 C.F.R. § 51.29.

²⁴ *Shelby County*, 570 U.S. at 556.

During the *Shelby County* litigation and the reauthorization process preceding it, defenders of Section 5 repeatedly pointed out why Section 2 was an inadequate substitute. Six years of experience demonstrate this.

This is hardly a surprise given that Section 5 and Section 2 were designed by Congress to complement one another as part of comprehensive set of tools to combat voting discrimination. Section 5 was designed to prevent a specific problem – to prevent jurisdictions with a history of discrimination from enacting new measures that would undermine the gains minority voters were able to secure through other voting protections, including Section 2. The Section 5 preclearance process was extremely potent, but also efficient and surgical in its limited geographic focus and sunset provisions. It was also relatively easy to evaluate because the retrogressive effect standard – whether minority voters are made worse off by the proposed change – is simple to determine in all but the closest cases. Section 5 is designed to protect against discriminatory changes to the status quo.

Section 2 is quite different. It evaluates whether the status quo is discriminatory and thus must be changed. The test for liability should be, and is, rigorous because it is a court-ordered change. Although Section 2 (results) and Section 5 (retrogression) both have discriminatory impact tests, they are distinct. As discussed above, the Section 5 retrogression test is quite straightforward in determining whether a jurisdictional-generated change should be blocked — will minority voters be worse off because of the change?

In contrast, the Section 2 results inquiry is complex and resource intensive to litigate. The “totality of circumstances” test set forth in the statute is fact-intensive by its own definition. The Senate Report supporting the 1982 amendment to Section 2 lists factors that courts have used as a starting point in applying the totality of circumstances test to include seven such factors (along with two factors plaintiffs have the option to raise).²⁵ On top of the Senate factors, courts have introduced additional requirements. For example, in vote dilution cases, which typically involve challenges to redistricting plans or to a method of election, the plaintiff must first satisfy the three preconditions set forth by the Supreme Court in *Thornburg v. Gingles*,²⁶ before even getting to the Senate factors. These *Gingles* preconditions require plaintiffs to show that that a minority group is compact and numerous enough to constitute a majority of eligible voters in an illustrative redistricting plan and whether there is racially polarized voting (minority voters are cohered in large number to support certain candidates and those candidates are usually defeated because of white bloc voting) and are necessarily proven by expert testimony. In vote denial cases, which involve challenges to practices such as voter identification laws, courts have also added an additional test, with the developing majority view requiring that plaintiffs demonstrate

²⁵ See e.g., *Thornburg v. Gingles*, 478 U.S. 30, 44-45 (1986).

²⁶ *Id.* at 50-51.

that the challenged law imposes a discriminatory burden on members of a protected class and that this “burden must be in part caused by or linked to social conditions that have or currently produce discrimination against members of the protected class.”²⁷

The result is that Section 2 cases are extremely time-consuming and resource-intensive, particularly when defendants mount a vigorous defense. For example, *United States v. Charleston County*,²⁸ which I litigated at the Department of Justice, was a successful challenge to the at-large method of electing the Charleston (South Carolina) County Council. The litigation took four years, and it involved more than seventy witness depositions and a four-week trial, even though we had prevailed on the *Gingles* preconditions on summary judgment,²⁹ and needed to litigate only the totality of circumstances in the district court.

Below is an analysis of the voting cases the Lawyers’ Committee has participated in since 2013 that is detailed in Appendix A and B. Thirteen of the cases involve voting changes, ten in covered jurisdictions, two in non-covered jurisdictions, and the thirteenth of the Federal Government. In my view, the changes in all ten of the cases in covered jurisdictions would have been blocked by Section 5 because they were retrogressive. In the ten cases we filed, we included Section 2 claims only five times. In the other five cases although we believed the changes had a discriminatory impact we were concerned about meeting the demanding standard of proof under Section 2 or the time and resources it would take to do so. In the five cases that contained a Section 2 claim, we included other claims. Of all of the cases in which we filed for a temporary restraining order or a motion for preliminary injunction, we used Section 2 as a basis only once.

Three specific examples from the Lawyers’ Committee’s litigation record illustrate why Section 2 is an inadequate substitute for Section 5. The most prominent example is the Texas voter identification law, which illustrates the time and expense of litigating a voting change under Section 2 that both DOJ and the federal district court found violated Section 5 prior to the *Shelby County* decision.³⁰ The afternoon that *Shelby* was decided, then-Texas Attorney General Greg Abbott announced that the State would immediately implement the ID law.³¹ Several civil rights groups, including the Lawyers’ Committee, filed suit in Texas federal court, challenging SB 14 under several theories, including Section 2 and DOJ filed its own suit under Section 2 and all of the cases were consolidated. The parties then embarked on months of discovery, leading to a two-week trial in September 2014, where dozens of witnesses, including 16 experts — half of whom were paid for by the civil rights groups — testified.

²⁷ *Veasey v. Abbott*, 830 F.3d 216, 244 (5th Cir. 2016) (en banc) (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 240 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 1735 (2015)); see also, *Ohio State Conference for the NAACP v. Husted*, 786 F.3d 524, 554 (6th Cir. 2014).

²⁸ 316 F. Supp. 2d 268 (D.S.C. 2003), *aff’d*, 365 F.3d 341 (4th Cir.), *cert denied*, 543 U.S. 999 (2004).

²⁹ *United States v. Charleston County*, 318 F. Supp. 2d 302 (D.S.C. 2002).

³⁰ *Veasey*, 830 F.3d at 227 n.7.

³¹ *Id.* at 227.

Prior to the November 2014 election, the District Court ruled that SB 14 violated the “results” prong of Section 2 of the Voting Rights Act, because it had a discriminatory result in that Black and Hispanic voters were two to three times less likely to possess the SB 14 IDs and that it would be two to three times more burdensome for them to get the IDs than for white voters. The District Court’s injunction against SB 14, however, was stayed pending appeal by the Fifth Circuit, so the law — now deemed to be discriminatory — remained in effect.³² Subsequently, a three-judge panel and later an *en banc* panel of the Fifth Circuit Court of Appeals, affirmed the District Court’s finding.³³ As a result, elections that took place from June 25, 2013 until the Fifth Circuit *en banc* opinion on July 20, 2016 took place under the discriminatory voter ID law. Had Section 5 been enforceable, enormous expense and effort would have been spared. The civil groups are seeking \$6,767,508.37 in attorneys’ fees and \$946,844.87 in expenses, for a total of \$7,714,353.24. As of June 2016, Texas had spent \$3.5 million in defending the case.³⁴ Even with no published information from DOJ, more than \$10 million in time and expenses were expended in that one case.

In *Gallardo v. State*,³⁵ the Arizona legislature passed a law that applied only to the Maricopa County Community College District and added two at-large members to what was previously a five-single district board. The legislature had submitted the change for Section 5 preclearance. The Department of Justice issued a more information letter based on concerns that the addition of two at-large members, in light of racially polarized voting in Maricopa County, would weaken the electoral power of minority voters on the board. After receiving the more information letter, Arizona officials did not seek to implement the change. Only after the *Shelby County* decision did they move forward, precipitating the lawsuit brought by the Lawyers’ Committee and its partners. We could not challenge the change under Section 2, especially because we would not have been able to meet the first *Gingles* precondition. Instead we made a claim in state court alleging that the new law violated Arizona’s constitutional prohibition against special laws because the board composition of less populous counties was not changed. Reversing the intermediate court of appeal, the Arizona Supreme Court rejected our argument, holding that the special laws provision of the state constitution was not violated. Unsurprisingly, the Latino candidate who ran for the at-large seat in the first election lost and the two at-large members are white.

In 2015, the Board of Elections and Registration, in Hancock County, Georgia, changed its process so as to initiate a series of “challenge proceedings” to voters, all but two of whom were African American. This resulted in the removal of 53 voters from the register. Later that year, the Lawyers’ Committee, representing the Georgia State Conference of the NAACP and the Georgia Coalition for the Peoples’ Agenda and individual voters, challenged this conduct as violating the Voting Rights Act and the

³² *Id.* at 227-29, 250.

³³ *Id.* at 224-25.

³⁴ Jim Malewitz & Lindsay Carbonell, Texas’ Voter ID Defense Has Cost \$3.5 Million, *The Texas Tribune* (June 17, 2016), <https://www.texastribune.org/2016/06/17/texas-tab-voter-id-lawsuits-more-35-million/>.

³⁵ 236 Ariz. 84, 336 P.3d 717 (2014).

National Voter Registration Act, and obtained relief which resulted in the placement of unlawfully-removed voters back on the register.³⁶ Ultimately, plaintiffs and the Hancock County Board agreed to the terms of a Consent Decree that will remedy the violations, and require the county's policies to be monitored for five years. But after the purge and prior to the court order, Sparta, a predominantly black city in Hancock County, elected its first white mayor in four decades. And before the case was settled, and the wrongly-purged voters placed back on the rolls, at least one of them had died.

Section 2 was not designed to stop retrogressive voting changes from taking effect and so it is an ill-suited replacement for Section 5. In the nearly forty years since Section 2 was expanded in 1982 to include discriminatory results claims, there are few cases in which Section 2 plaintiffs have obtained preliminary relief among the several hundred cases in which Section 2 plaintiffs ultimately succeeded through a court judgment or a settlement.

The Lawyers' Committee's voting litigation record post-*Shelby County* shows the high degree of voting discrimination, particularly in the areas formerly covered by Section 5

The Lawyers' Committee's litigation record since the *Shelby County* decision bears out both the high degree of contemporaneous voting discrimination and the inadequacy of Section 2 as a substitute for Section 5. Through our Voting Rights Project, we have been involved in 41 voting cases since the *Shelby County* decision. This record ranks either first or second of any entity nationally. A narrative summary of each case can be found at Appendix A and a summary table of the cases can be found at Appendix B. It is important to note that as, a racial justice organization, the Lawyers' Committee does not participate in litigation where we do not believe the issue at hand involves a question of discriminatory purpose and/or impact.

This record is notable in a number of respects. First, our litigation docket has become more active in the post-*Shelby County* years. Though I do not have exact numbers for the pre-*Shelby County* period, I can confidently say that we have had more cases in my six post-*Shelby County* years at the Lawyers' Committee than in my ten pre-*Shelby County* years.

Second, although we have participated in cases all over the country, most of our voting litigation has involved jurisdictions covered by Section 5 prior to *Shelby County*. Not including the four cases where we sued the federal government, in twenty-nine of the thirty-seven (78.3%) cases we have been opposed by state or local jurisdictions that were covered by Section 5, even though far less than half the country was covered by Section 5. Moreover, we have sued seven of the nine states that were covered by Section

³⁶ Georgia State Conference of the NAACP v. Hancock County, Case No. 15-cv-414 (M.D. Ga. 2015).

5 (Alabama, Arizona, Georgia, Louisiana, Mississippi, Texas, Virginia), as well as the two states that had were not covered but had a substantial percentage of the population covered locally (North Carolina and New York). To be clear, I am not talking about cases brought against local jurisdictions in a state, but cases brought against state officials.

Third, we have achieved substantial success. Of the thirty-three cases where there has been some result, we have achieved a positive result in 26 of 33 (78.8%). In most of the seven cases where we were not successful, we had filed emergent litigation – either on Election Day or shortly before – where achieving success is most difficult.

This data tells us that voting discrimination remains substantial, especially considering that the Lawyers’ Committee is but one organization, and particularly in the areas previously covered by Section 5.

Notwithstanding the successes of the Lawyers’ Committee and others, the hole left by the absence of Section 5 is immense. We are simply unaware of many potentially discriminatory voting changes that are enacted. Even when we are aware of the changes, without Section 5, it is extremely difficult to stop changes from going into effect through litigation, as demonstrated above. Such litigation is extremely resource-intensive, both in time and expense, and the relatively small voting rights bar has significant limits on how cases it can litigate simultaneously. The case-by-case method is inefficient and inadequate as compared to Section 5.

These issues will be exacerbated enormously during the post-2020 Census redistricting, as several thousand formerly covered jurisdictions will be redistricted within about a two-year window and Section 5 will not be available to protect minority voters for the first time since the 1960s. Critics of Section 5 cited the costs to state sovereignty and the resource costs of Section 5 as reasons why it should be abandoned. These costs pale in comparison to the costs to minority voting rights in the absence of Section 5 as well as the resource costs involved in evaluating the redistricting plans in several thousand jurisdictions and litigating individual plans on grounds they are discriminatory. Moreover, Section 2 will serve to protect minority voters only where they can constitute a majority of voters in a district,³⁷ whereas Section 5 is not so limited. In certain areas of the country, minority voters in some districts have been able to elect candidates of choice with slightly less than a majority. These districts will not be protected under Section 2 as they were under Section 5.

Using the standards set forth in *Shelby County*, the current need for Section 5 outweighs the current burden in those areas with persistent and current discrimination.

³⁷ *Bartlett v. Strickland*, 559 U.S. 1 (2009)

The Voting Rights Advancement Act's (VRAA) Coverage Formula is Constitutional

The Supreme Court majority in *Shelby County* found that Congress's readopting of a coverage formula in 2006 based on voter registration and turnout data from the 1964, 1968, and 1972 election was irrational, irrespective of whether voting discrimination was still concentrated in the covered areas. According to the Court, the formula itself must be based on current data and must be constructed based on the current problems in order to be rational:

Congress did not use the record it compiled to shape a coverage formula grounded in current conditions. It instead reenacted a formula based on 40-year-old facts having no logical relation to the present day. The dissent relies on "second-generation barriers," which are not impediments to the casting of ballots, but rather electoral arrangements that affect the weight of minority votes. That does not cure the problem. Viewing the preclearance requirements as targeting such efforts simply highlights the irrationality of continued reliance on the § 4 coverage formula, which is based on voting tests and access to the ballot, not vote dilution. We cannot pretend that we are reviewing an updated statute, or try our hand at updating the statute ourselves, based on the new record compiled by Congress.³⁸

In my view, the geographical coverage formula contained in the VRAA's amendment to Section 4(b) satisfies the constitutional concerns articulated by the Court because it is based on current data and is designed to address current problems.

The threshold for coverage is a relatively high one — statewide coverage applies only if, during the last 25 calendar years, there have been 15 or more voting rights violations in the State or 10 or more violations with at least one committed by the State.³⁹ For political subdivisions, coverage applies only if there are three voting rights violations within the political subdivision in the past twenty-five years.⁴⁰ Violations are based on DOJ objections, court findings of voting discrimination, or a settlement of a Voting Rights Act and/or constitutional challenge to a voting law or practice that results in a change to that voting law or practice.

This formula is tailored to ensure that only those jurisdictions that have

³⁸ *Shelby County*, 570 U.S. at 554.

³⁹ Voting Rights Advancement Act, H.R. 4, 116th Cong. 2019.

⁴⁰ *Id.*

engaged in persistent voting discrimination over a sustained period of time are covered. No jurisdiction will be covered because of a one-time episode. Coverage is rolling: jurisdictions whose records improve can get out under the formula, those whose worsen can be added. The twenty-five period is logical because it ensures that two redistricting cycles are within the window of review, which is important because redistricting and changes related to redistricting (such as precinct boundaries and polling place changes) represent the most frequent occurrences of voting discrimination.

Conclusion

The Supreme Court decision in *Shelby County v. Holder* left minority voters the most vulnerable to voting discrimination they have been in decades. The record since the *Shelby County* decision demonstrates what voting rights advocates feared – that without Section 5, voting discrimination would increase substantially. It will only get worse with the 2020 election and the post-2020 redistricting on the horizon. For these reasons, it is imperative for Congress to act quickly.

APPENDIX A

CASES THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS' VOTING RIGHT PROJECT HAS PARTICIPATED IN SINCE *THE SHELBY COUNTY V. HOLDER* DECISION¹

Alabama

Section 2 Vote Dilution Challenge to At-Large Election to State High Courts:

On September 7, 2016, the Lawyers' Committee, on behalf of the Alabama NAACP, filed a vote dilution lawsuit under Section 2 of the Voting Rights Act (VRA) in the Middle District of Alabama challenging the state's at-large method of electing justices and judges of the Alabama Supreme Court, the Court of Criminal Appeals, and the Court of Civil Appeals. The case was tried in November 2018 and the parties are awaiting a decision. Despite African Americans comprising more than one-quarter of Alabamians, none sit on any of these 3 courts, and none have been elected to any of these courts in a quarter of a century. The matter has been tried and is awaiting decision. *Alabama State Conference of NAACP v. Alabama*, 264 F. Supp. 3d 1280 (M.D. Ala. 2017)

Defense of Suit Challenging Congressional Apportionment and Distribution of Electoral College Votes:

The State of Alabama and Congressman Morris J. Brooks, Jr. of Alabama sued the Department of Commerce and others, alleging that the inclusion of undocumented immigrants in the total population count for congressional apportionment and Electoral College votes violates the Fourteenth Amendment, the Census Clause, and the Enumeration Clause of the U.S. Constitution, and the Administrative Procedures Act. The Lawyers' Committee successfully moved to intervene as defendants on behalf of affected local jurisdictions. The matter is pending. *State of Alabama, et al. v. U.S. Dept. of Commerce, et al.*, No. 2:18-cv-0772-RDP (N.D. Ala., May 21, 2018).

Arizona

Challenge to At-Large Election System: Prior to the *Shelby County* decision, the Arizona legislature passed a law that applied only to the Maricopa County Community College District and added two at-large members to what was previously a five-single district board. The legislature had submitted the change for Section 5

¹ Lawyers' Committee staff served as counsel in all of these cases except for certain cases filed on Election Day where staff worked with local counsel, who filed the case.

preclearance. The Department of Justice issued a more information letter based on concerns that in light of racially polarized voting in Maricopa County, the addition of two at-large members , would weaken the electoral power of minority voters on the board. After receiving the more information letter, Arizona officials did not seek to implement the change. Only after the *Shelby County* decision did they move forward. Because it would not be possible to meet the first *Gingles* precondition, a Section 2 suit could not be brought, so the Lawyers' Committee and its partners sued in state court alleging that the new law violated Arizona's constitutional prohibition against special laws because the board composition of less populous counties was not changed. Reversing the intermediate court of appeal, the Arizona Supreme Court rejected the plaintiffs' argument, holding that the special laws provision of the state constitution was not violated. ***Gallardo v. State*, 236 Ariz. 84, 336 P.3d 717 (2014).**

Challenge to Long Waiting Lines Caused by Polling Place Consolidation: The Lawyers' Committee's lawsuit challenged the reduction of polling places in Maricopa County after severe cut-backs disenfranchised voters in the 2016 presidential preference primary because of extremely long lines, hours-long wait-times and a host of election administration problems. Maricopa County is Arizona's most populous county and was a covered jurisdiction under Section 5 of the VRA with approximately 60 percent of the state's minority voters residing in the county. In February 2016, the county slashed the total number of polls from 211 in 2012 to only 60. With this reduction, there was approximately one polling place for every 21,000 voters in Maricopa County as compared to one polling place for every 1,500 voters in the rest of the state. The parties settled the case with an agreement that required Maricopa County to create a comprehensive wait-time reduction plan and a mechanism to address wait times at the polls that exceed 30 minutes. ***Huerena v. Reagan*, Superior Court of Arizona, Maricopa County, CV2016-07890 (D. Ariz. July 7, 2016).**

Suit to Enjoin State's Two-Tier Voter Registration Process: Arizona created a two-tier voter registration process in the wake of the Supreme Court's decision in *ITCA v. Arizona*, which held that Arizona's documentary proof of citizenship requirement was preempted by the National Voter Registration Act (NVRA) as applied to federal elections. Confusion ensued when the state limited voters using the federal form to voting in federal elections, even if the state had information in its possession confirming the applicant was a United States citizen. The Lawyers' Committee and other civil rights organizations sued, alleging that the state's two-tier registration process constituted an unconstitutional burden on the right to vote. The parties settled the matter with an agreement that allows the state to continue to require proof of citizenship to register to vote in state elections, but requires the state

to treat federal and state registration forms the same and to check motor vehicle databases for citizenship documentation before limiting users of the federal registration form to voting in federal elections. *League of United Latin Am. Citizens Arizona v. Reagan*, No. CV17-4102 PHX DGC, 2018 WL 5983009 (D. Ariz. Nov. 14, 2018).

Election Day Suit Seeking Extensions of Polling Hours in Maricopa County:

On Election Day, November 6, 2018, Plaintiffs, in coordination with the Lawyers' Committee's Election Protection program, filed an emergent action, seeking an extension of the voting hours at all of Maricopa County's mega voting centers, which had suffered technology problems leading to the sites being closed for significant periods of time. The state court denied the request for emergency relief. *Arizona Advocacy Network v. Maricopa Co. Bd. of Supervisors, et al.*, No. cv-20-8-013943 (Superior Court of Ariz., County of Maricopa, Nov. 6, 2018).

California

Successful Challenge to Decision by Secretary of Commerce to Add Citizenship Question to 2020 Census:

On April 17, 2018, the City of San Jose and the Black Alliance for Just Immigration, represented by the Lawyers' Committee and other counsel, filed a Complaint in the Northern District of California under the Enumeration Clause of the Constitution and the Administrative Procedure Act seeking an injunction against the March 26, 2018 decision by Secretary of Commerce Wilbur Ross to add a citizenship question to the 2020 Census questionnaire. The decision was made, ostensibly, in response to a request by the Department of Justice, which professed a need for the question in order to allow it to prosecute actions under Section 2 of the Voting Rights Act. The Complaint alleged that the addition of the question would diminish the quality and accuracy of the Census count, further decrease the undercount of minority and immigrant populations, and was arbitrary and capricious and contrary to law. After trial, on March 6, 2019, the District Court ruled that the Secretary's decision was arbitrary and capricious under the APA and violated the Enumeration Clause. On June 27, 2019, in a companion case, *U.S. Dept. of Commerce v. Ross*, the Supreme Court issued a decision affirming the finding that the Secretary had violated the APA because he had contrived false reasons for his decision, leading to entry of final judgment in the California case, permanently enjoining Ross from adding the question to the Census. *City of San Jose, et al. v. Wilbur Ross, et al.* (N.D. Ca., No. 3:18-cv-2279-RS).

Florida

Suit Seeking Extension of Registration Deadline for Counties Affected by Hurricane Michael: In the wake of the devastation wreaked by Hurricane Michael, plaintiffs sought an emergency extension of the voter registration deadline in counties that had been particularly affected; the application was denied. *New Florida Majority Educ. Fund, et al. v. Detzner*, No. 4:18-cv-00466-RH-CAS (N.D. Fla., October –, 2018).

Georgia

Challenge to Georgia’s Electronic Ballot System as Insecure and Not Allowing Voters To Check Their Vote: The Lawyers’ Committee and co-counsel represented the Coalition for Good Governance and individual plaintiffs in a suit challenging Georgia’s use of electronic ballot machines system, alleging that the vulnerability of the machines to tampering and their failure to have a paper back-up so voters can verify their votes violate the constitutional right to vote. On August 9, 2019, the district court preliminarily enjoined the state’s use of their direct-recording electronic voting machines for all elections after December 31, 2019. The court further directed that, if the state is unable to implement completely a new system beginning January 2020, it must be ready to use paper ballots. The court also ordered that the state ensure that all polling places have paper back-ups for their electronic polling books. *Donna Curling, et al. v. Brian Kemp, et al.* No. 1:17-cv-02989-AT (N.D. Ga., August 8, 2017).

First State Challenge to Georgia’s “Exact Match” Law Which Disproportionately Disenfranchises African American, Latino and Asian American Voters: The Lawyers’ Committee brought this action in state court, seeking a writ of mandate compelling county registrars to process voter registration applications submitted by its client the New Georgia Project. The state had been cancelling voter registration applications which failed to exactly match Social Security or Georgia Driver’s Service Records, unless the applicants contacted their county registrars to resolve the non-match within 40 days. Compounding the problem, county registrars would stop processing all voter registration applications for 90 days from the close of voter registration for state primary elections at the end of April until runoffs were over in August, the height of voter registration drives. As a result, the controverted applications were not appearing on any active or pending voter registration lists. After the county registrars starting processing the applications again in August, registrants began seeing their applications cancelled right before the close of voter registration for the general election on Election Day. The court denied the petition for a writ of mandate, ruling that state law did not

require counties to process voter registration forms on any particular deadline other than by Election Day. *Third Sector Development, et al. v. Kemp, et al., Fulton County Superior Court, Case No. 2014CV252546, 2014 WL 5113630 (October 10, 2014)*

First Federal Challenge to Georgia’s “Exact Match” Law Which Disproportionately Disenfranchises African American, Latino and Asian American Voters: This suit, brought by the Lawyers’ Committee and a coalition of civil rights organizations, alleged that Georgia’s “exact match” voter registration process, which required information on voter registration forms to exactly match information about the applicant on Social Security Administration (SSA) or the state’s Department of Driver’s Services (DDS) databases, violated Section 2 of the VRA, the NVRA, and imposed an unconstitutional burden on the right to vote in violation of the First and Fourteenth Amendments. Under the “exact match” process, more than 40,000 applicants were in “pending” status in 2016 because the information on their voter registration applications did not exactly match the DDS or SSA database information. The suit was settled when the State agreed to allow all such persons to vote, upon showing acceptable voter ID at polling places. *Georgia State Conference of NAACP, et al., v. Brian Kemp, et al. (N.D. Ga. No. 2:16-cv-00219-WCO, September 14, 2016).*

Second Challenge to Georgia’s “Exact Match” Law Which Disproportionately Disenfranchises African American, Latino and Asian American Voters and Naturalized Citizens: This is the second challenge to Georgia’s “exact match” practice. After the Georgia legislature passed a statute again establishing an “exact match” system, the Lawyers’ Committee and a coalition of civil rights organizations filed suit in the U.S. District Court for the Northern District of Georgia against then Georgia Secretary of State, Brian Kemp, alleging that Georgia’s “exact match” voter registration process, violated Section 2 of the VRA, the NVRA, and imposed an unconstitutional burden on the right to vote in violation of the First and Fourteenth Amendments. Under the “exact match” process, more than 53,000 applicants were in “pending” status in 2018 because the information on their voter registration applications did not exactly match the DDS or SSA database information or because the process inaccurately flagged United States citizens as potential non-citizens. On November 2, 2018, the Court partially granted Plaintiffs’ motion for preliminary relief, ordering that Georgians inaccurately flagged as non-citizens could vote using a regular ballot if they provided proof of citizenship to a poll manager rather than a deputy registrar (who might not be at the polling station), when voting at the polls for the first time. The Georgia legislature subsequently amended the

“exact match” law in 2019 to permit applicants who fail the “exact match” process for reasons of identity to become active voters, but the Legislature chose not to enact any remedial legislation to reform the “exact match” process that continues to inaccurately flag United States citizens as non-citizens. The litigation is pending. ***Georgia Coal. for People's Agenda, Inc. v. Kemp***, 347 F. Supp. 3d 1251 (N.D. Ga. 2018).

Challenge to Georgia’s Rejection of Absentee Ballots Based upon Alleged Signature Matching and Immaterial Errors or Omissions: On October 23, 2018, the Lawyers’ Committee joined lawsuits challenging the state’s practices of 1) rejecting absentee ballots based upon election officials’ untrained conclusion that the voter’s signature on the absentee ballot envelope did not match the voter’s signature on file with the registrar’s office, and 2) rejecting absentee ballots for immaterial errors or omissions on the ballot envelope. Georgia had an extraordinarily high rate of absentee ballot rejections generally, but the rejection rate in Gwinnett County was almost 3 times that of the state and absentee ballots cast by voters of color were rejected by Gwinnett County at a rate between 2 and 4 times the rejection rate of absentee ballots cast by white voters. Plaintiffs were granted preliminary relief before the November 2018 mid-term election. Subsequently, Georgia enacted remedial legislation and the lawsuits were voluntarily dismissed in 2019. ***Martin v. Kemp***, No. 18-14503-GG (N.D. Ga. 2018).

Challenge to Georgia’s Unlawful Registration Scheme Relating to Federal Runoff Elections: In this case, the Lawyers’ Committee challenged Georgia’s runoff election voter registration scheme as a violation of NVRA. Under Georgia law, eligible Georgians were required to register to vote on the fifth Monday before a general or primary election in order to be eligible to vote in a runoff election if no candidate received a majority of the vote. The runoff election would generally be held about two months after the general or primary election. As a result, Georgians would be required to register to vote approximately three months before a runoff election in order to participate in that election. Under Section 8 of the NVRA (52 U.S.C. § 20507(a)(1)), states are prohibited from setting voter registration deadlines in excess of thirty days before a federal election. Thus, Georgia’s runoff election voter registration scheme violated this provision of the NVRA and the District Court granted a preliminary injunction enjoining the state from using the longer deadline ahead of the Georgia Sixth Congressional Runoff Election in June 2017. Subsequently, the parties settled the matter with the Secretary of State agreeing not to enforce a voter registration deadline that violated Section 8 of the NVRA. ***Georgia State Conference NAACP v. Georgia***, No. 1:17-CV-1397-TCB (N.D. Ga. May 4, 2017).

Suit Challenging State Legislative Redistricting: Civil rights organizations and voters, represented by the Lawyers' Committee, filed suit in the United States District Court for the Northern District of Georgia, challenging the State legislature's post-*Shelby* 2015 redistricting of two legislative districts as racial and partisan gerrymanders. The Plaintiffs alleged the legislature targeted African American population in drawing the districting plans to increase the electoral advantage of white Republicans as the districts were becoming more competitive for Black Democrats. After African American candidates were elected to seats in both of the challenged districts in November 2018, the parties agreed to voluntary dismissals of the actions. *Georgia State Conference of NAACP v. Georgia*, No. 1:17-CV-1427 (N.D. Ga. 2017).

Challenge to Purge of Mostly Black Voters in Hancock County: Plaintiffs, represented by the Lawyers' Committee, filed this action on November 3, 2015 in the U.S. District Court for the Middle District of Georgia. This case challenged the removal of 53 voters, 51 of whom were African Americans, from the voter rolls of a small, predominately Black county. The purge occurred just prior to a hotly contested election in Sparta, the largest city in Hancock County, and white candidate was elected mayor for the first time in decades. The case was brought under Section 2 of the VRA and Section 8 of the NVRA. Immediately, the District Court directed Defendants to restore qualified purged voters to the registration rolls or show cause why they would not do so. As a result, 17 voters were restored to the rolls; two others would have been restored, but had died in the interim; and eight voters were placed into inactive status, but remained eligible to vote by producing proof of their residency when requesting a ballot. The parties subsequently mediated the case, which resulted in a settlement in which the Defendants agreed to comply with the NVRA before removing anyone from the voter rolls and to be subject to monitoring by a court appointed examiner. On March 30, 2018, the Court granted the parties' Joint Motion for Entry of Consent Decree. Compliance with the Consent Decree is being actively monitored by the Court appointed examiner. *Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR) (M.D. Ga. 2015).

Vote Dilution Lawsuit Challenging District Plans for Gwinnett County: Plaintiffs, represented by the Lawyers' Committee and other civil rights organizations, filed a vote dilution suit under Section 2 of the VRA challenging the districting plans for the County Board of Commissioners and Board of Education. At the time the lawsuit was filed, no African American, Latino or Asian American candidates had ever won election to these boards, despite the fact that Gwinnett

County is considered to be one of the most racially diverse counties in the Southeastern United States. After two long-term incumbents chose not to run for re-election to the School Board in the 2018 mid-term election, and with the minority population of the county continuing to grow, African American and Asian American candidates were finally elected to the County Commission and an African American candidate was elected to the School Board for the first time in the county's history. Following these electoral successes, the parties agreed to a voluntary dismissal of the litigation. *Ga. State Conference of the NAACP v. Gwinnett Cty. Bd. of Registrations & Elections*, No: 1:16-cv-02852 (N.D. Ga. 2016).

Suit to Extend Registration Period for Communities Hard-Hit by Hurricane

Matthew: The Lawyers' Committee sought emergency relief to extend the voter registration for Chatham County, Georgia residents in the wake of Hurricane Matthew. The storm had resulted in the closing of County government offices for what would have been the last six days of the voter registration period. Despite requests to extend the deadline, both Governor Nathan Deal and Secretary of State Brian Kemp, refused to extend the deadline for Chatham County residents. Chatham County, which includes the city of Savannah, has over 200,000 voting age citizens, of whom more than 40 percent are African American or Latino. It was hit particularly hard by the devastating storm. Almost half of its residents lost power, and it was one of six counties subject to a mandatory evacuation order. Following a hearing on the plaintiffs' motion for a preliminary injunction on October 14, 2016, the Court ordered that the voter registration deadline for Chatham County residents be extended from October 11, 2016 to October 18, 2016. As a result of this extension, approximately 1,418 additional Chatham County residents registered in time to be eligible to vote in the November 2016 general election. Approximately 41 percent of these new registrants are African American, 4.5 percent are Latino and 38.6 percent are white. *Georgia Coalition for the Peoples' Agenda, et al., v. John Nathan Deal, et al.* (S.D. Ga., No. 4:16-cv-0269-WTM-GRS, October 12, 2016).

Challenge to District Lines of Emanuel County School Board as Dilutive of

Black Votes: Plaintiffs, represented by the Lawyers' Committee, alleged that the district boundaries for the Emanuel County School Board violated Section 2 of the VRA. The complaint alleged that the then current map of seven School Board districts impermissibly diluted the voting strength of African American voters by "packing" them into one district. African Americans comprises 81 percent of the voting-age population in one of the districts and a minority in all of the other six. Although African Americans made up one-third of the county's voting-age population and close to half of the students in Emanuel County, and although African American

candidates had run in other districts, there had never been more than one African American member on the School Board at one time. After suit was filed, the parties negotiated a settlement, resulting in the creation of two majority-minority single-member districts. ***Georgia State Conference of NAACP, et al., v. Emanuel County Board of Commissioners, et al.***, (S.D. Ga., No. 6:16-cv-021, February 23, 2016).

Election Day Suits to Extend Voting Hours: Plaintiffs, working with the Lawyers' Committee's Election Protection program, filed two suits on Election Day 2018 to extend voting hours in precincts with large African-American populations, that had suffered technology failures, resulting in extraordinarily long lines. The court granted hours' long extensions at the Booker T. Washington and Morehouse College Archer Auditorium Precincts, and Pittman Park Recreation Center precincts. ***Georgia State Conference of NAACP, et al. v. Fulton County Bd. of Reg. & Elections*** (Superior Ct. of Fulton County, State of Georgia, Nov. 6, 2018).

Indiana

Election Day Suit to Extend Voting Hours: Plaintiffs, in a suit coordinated by the Lawyers' Committee's Election Protection program, unsuccessfully sought emergent relief to extend the voting hours in Johnson County, Indiana, because polling places had run out of paper ballots. ***Dan Newland v. Johnson Co., et al.***, (Johnson County Superior Court, State of Indiana, November 6, 2018).

Kansas

Defense against Attempt to Change Federal Registration Form re Proof of Citizenship: The Lawyers' Committee intervened on behalf of the Inter Tribal Council of Arizona, Inc. to successfully defeat an attempt by the states of Arizona and Kansas to modify the state-specific instructions of the federal mail voter registration form to require applicants residing in Kansas and Arizona to submit proof-of-citizenship documents in accordance with state law. ***Kobach v. U.S. Election Assistance Commission***, 772 F. 3d 1183 (10th Cir. 2015).

Louisiana

Challenge to State's Districting Plan for Electing Justices to Supreme Court: The Lawyers' Committee's Complaint alleges that the method of electing members of the Louisiana Supreme Court violates the Voting Rights Act. The suit

maintains that Louisiana’s electoral map for electing justices denies black voters an equal opportunity to elect justices of their choice. Louisiana’s population is 32% African American but just one of state’s seven Supreme Court districts is majority-black in population. As a result, six of the seven justices on the most powerful court in the state are white. The suit, which highlights that the state’s Supreme Court districts have not been redrawn since 1999, alleges that a second majority-black district must be drawn to address the harm to black voters. ***Louisiana State Conference of the NAACP, et al., v. State of Louisiana, et al.*** (M.D. La., No. 3:19-cv-00479-JWD-EWD, July 23, 2019).

Mississippi

Challenge to Redistricting of State Senate District: On July 9, 2018, Black Mississippi voters filed a challenging the districting plan for Mississippi State Senate District 22 under Section 2 of the Voting Rights Act. Plaintiffs, represented by the Lawyers’ Committee and Mississippi Center for Justice contended that the plan diluted the voting strength of Black voters and, combined with racially polarized voting, prevented them from electing candidates of their choice to the Senate District 22 seat. Plaintiffs prevailed at trial and the trial court gave the Legislature an opportunity to re-draw the district to comply with the court’s decision. After failing to obtain a stay of the court’s order, the Legislature redrew the district to create a district with a sufficiently large Black voting population to give Black voters an equal opportunity to elect candidates of their preference. The Fifth Circuit affirmed the district court’s decision. ***Thomas v. Bryant*, 919 F.3d 298 (5th Cir. 2019).**

Suit Challenging State’s Restrictive Absentee Ballot Procedures: On November 21, 2018, Plaintiffs, represented by the Lawyers’ Committee, filed a complaint challenging, on federal constitutional right to vote grounds, Mississippi’s unique combination of requiring notarization of both the absentee ballot application and the ballot itself, in addition to a deadline of receipt of the ballot the day before election day. Plaintiffs also sought emergency relief to compel the counting of ballots post-marked by election day (November 27) in the senatorial run-off, where voters had only 9 days – including Thanksgiving weekend – to apply for, obtain, and cast their absentee ballots. The court denied relief on November 27, 2019 on grounds that it was too close to the election to order relief. The case is still pending. ***O’Neil v. Hosemann*, No: 3:18-cv-00815 (S.D. Miss. Nov. 27, 2018).**

New York

Suit to Restore Voting Rights to New Yorkers Who Were Removed from Poll Books in Violation of Federal Law: The Lawyers' Committee and another civil rights organization filed suit to restore the voting rights of millions of New Yorkers ahead of the 2018 election. Plaintiffs alleged that certain eligible but "inactive" voters are improperly removed from poll books throughout New York State in violation of the NVRA. Plaintiffs contend that the removal of inactive voters from the poll books disproportionately impacts voters of color. The litigation is continuing. *Common Cause/New York v. Brehm*, Case No. 1:17-cv-06770 (S.D.N.Y 2017).

Suit Challenging Purge of New York City Voters: On November 3, 2016, the Lawyers' Committee and another civil rights organization filed suit alleging that the New York City Board of Elections (NYCBOE) had purged voters from the rolls in violation of the NVRA. Plaintiffs sought the restoration of all purged voters to the registration list, and also that the NYCBOE count all affidavit ballots cast by these individuals in the November 2016 election. Earlier in 2016, the NYCBOE had confirmed that more than 126,000 Brooklyn voters were removed from the rolls between the summer of 2015 and the April 2016 primary election. Shortly before the November 2016 election, the parties reached an agreement under which the NYCBOE agreed to provide various forms of notice to poll workers and voters concerning the requirement that all voters who believed they were registered were to be offered an affidavit ballot on Election Day. The NYCBOE also agreed to send absentee ballots to two individual plaintiffs who had previously been purged from the registration list. After further negotiations and the entry of the State of New York and the U.S. Department of Justice in the case, the NYCBOE agreed to place persons who were on inactive status or removed from the rolls back on the rolls if they lived at the address listed in their voter registration file and/or if they had voted in at least one election in New York City since November 1, 2012 and still lived in the city. Subsequently, the parties negotiated a Consent Decree, under which the NYCBOE agreed to comply with the NVRA before removing anyone from the rolls, and to subject itself to a four-year auditing and monitoring regimen. The Consent Decree was approved by the Court in December 2017 and is being monitored by the plaintiffs. *Common Cause/New York v. Board of Elections in City of New York* (E.D.N.Y., No. 1:16-cv-06122-NGG-VMS).

North Carolina

Challenge to At-Large Method of Electing Jones County Commissioners as Dilutive of Black Voters' Rights: Plaintiffs, represented by the Lawyers' Committee, challenged the at-large scheme of electing members to the Jones County,

NC Board of Commissioners under Section 2 of the Voting Rights Act. Due to the at-large method of electing members to the Jones County Board of Commissioners, which diluted the voting strength of African American voters, no African American candidate had been elected to the Jones County Board of Commissioners since 1998. The parties eventually settled the matter with an agreement that the Board of Commissioners would implement a seven single-member district electoral plan, including two single-member districts in which African-American voters constitute a majority of the voting-age population. *Hall v. Jones Cty. Bd. of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Aug. 23, 2017).

Suit Alleging Violation of Sections 5 and 7 of NVRA: Since 2013, North Carolina has seen a precipitous drop in the number of voter registration applications offered and collected at public assistance agencies and DMV offices across the state. In particular, the drop in public assistance registration significantly and detrimentally affects low income voters of color. Suit was filed in December 2015, by the Lawyers' Committee and other civil rights organizations, alleging that North Carolina was violating Sections 5 and 7 of the NVRA, in not adequately making assistance to register to vote available to people who visit motor vehicle and public assistance agencies. The case settled in 2018, with substantial improvements made at both DMV and NC social service agencies in how voter registration applications are offered and processed. *Action NC, et al. v. Kim Westbrook Strach, et al.* (M.D.N.C., No. 1:15-cv-01063).

Pennsylvania

Election Day Challenge to Acceptance of Absentee Ballots: On Election Day, 2018, Plaintiff, coordinating with the Lawyers' Committee's Election Protection program, obtained a court order from the Commonwealth of Pennsylvania allowing her to vote her absentee ballot which had been rejected because of Pennsylvania's overly-restrictive time requirements, due to no fault of Plaintiff.

Challenge to Absentee Ballot Deadline: On November 13, 2018, Plaintiffs, represented by the Lawyers' Committee and other civil rights organizations, filed a challenge under Pennsylvania's and the federal constitutions, alleging that Pennsylvania's requirement that absentee ballots must be received by the Friday before election day violates the right to vote. The suit is pending. *Cassandra Adams Jones, et al. v. Robert Torres, et al.* (Commonwealth Court of Pennsylvania, No. 717 MD 2018, Nov. 13, 2018).

South Dakota

Challenge to Lack of Access for Native Americans to Polling Place Locations: This suit, brought by the Lawyers' Committee in 2014, challenged the failure of Jackson County to maintain a voting and registration location sufficiently convenient to the Pine Ridge Reservation of the Oglala Sioux Tribe. After suit was filed, the County passed a resolution to open a location in proximity to the Reservation for federal elections over the next four years. The suit was subsequently dismissed as moot. *Thomas Poor Bear, et al. v. The County of Jackson, et al.*, (D. S.D.No. 5:14-cv-05059-KES).

Tennessee

Suit Challenging New Law Restricting Voter Registration Activity: The Lawyers' Committee, representing several civil rights organizations, filed suit the day the Governor signed into law a statute that imposes severe restrictions on voter registration activity by community groups and third parties and includes criminal and civil penalties for failures to comply with the law. The law was enacted in the wake of successful large-scale voter registration initiatives in the state in 2018 which targeted minority and underserved communities. The case is pending. *Tennessee State Conference of the N.A.A.C.P. v. Hargett*, Case No. 3:19-cv-00365 (M.D. Tenn. 2019).

Texas

Challenge to Restrictive Voter ID Law: This Was a Federal court action, brought by several civil rights organizations, including the Lawyers' Committee, and the Department of Justice, challenging the Texas voter ID law under Section 2 of the VRA and the U.S. Constitution. In October 2014, the district judge ruled in Plaintiffs' favor on all claims and blocked the law, holding that it violated Section 2 of the VRA, constituted an unconstitutional burden on the right to vote, amounted to a poll tax, and was motivated in part by a racially discriminatory purpose. In July 2016, the Fifth Circuit, sitting *en banc*, affirmed the district court's finding of discriminatory effect under Section 2, and remanded the case to the district court for further fact-finding on the discriminatory intent claim. The district court entered an interim remedial order that allowed anyone to vote without the required ID. On April 10, 2017, the district court issued a decision re-affirming its prior determination that SB 14 was passed, at least in part, with a discriminatory intent. On June 1, 2017, Texas passed a new law, SB 5, which it claimed remedied the effects of SB 14. While SB 5

shares provisions in common with the court-ordered interim remedy, there are aspects of concern, including a harsh felony penalty (up to two years of imprisonment) for voters who inappropriately use the affidavit process for voting in-person without an acceptable photo ID. On August 23, 2017, the court granted declaratory relief, holding that SB 14 violated Section 2 of the VRA and the 14th and 15th Amendments to the U.S. Constitution. The court enjoined SB 14 and SB 5, finding that the new law “perpetuates SB 14’s discriminatory features.” On April 27, 2018, the Fifth Circuit issued an opinion “reversing and rendering” the district court’s order for permanent injunction and further relief, finding that the district court had abused its discretion, and further finding that SB 5 constituted an effective remedy “for the only deficiencies in SB 14,” and that there was no equitable basis for subjecting Texas to ongoing federal election scrutiny under Section 3(c) of the Voting Rights Act. ***Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018).**

Challenge to Attempted Purge of Naturalized Citizens: In late January 2019, David Whitley, Texas’ Secretary of State, sent Texas counties a list containing 95,000 registered voters and directing the counties to investigate their voting eligibility. The list was based on DMV data the state knew was flawed and would necessarily sweep in thousands of citizens who completed the naturalization process after lawfully applying for a Texas drivers’ license. Naturalized citizens are entitled to full voting rights under Constitution. Voting rights advocates, including the Lawyers’ Committee, filed lawsuits challenging the purging of voters based upon this flawed process. The case was eventually settled after the U.S. District Court in Texas granted a motion for preliminary injunction, enjoining the removal of voters from the rolls based upon this flawed process. ***Texas League of United Latino American Citizens v. Whitley*, No. 5:19-cv-00074 (W.D. Tex. February 27, 2019).**

Challenge to At-Large Election of Texas High Courts as Diluting Votes of the Latinx Population: The Lawyers’ Committee brought this suit challenging the at-large voting districts for the Texas Supreme Court and the Texas Court of Criminal Appeals, as unlawfully diluting the votes of Latinx voters, who, despite comprising a sizeable percentage of Texans, had not elected a candidate of their choice to either of these courts for decades. Although the court found, after trial, that plaintiffs had met the basic standards for a violation of Section 2 of the Voting Rights Act, it denied relief on the primary basis that partisanship, rather than race, explained the election results. ***Lopez, et al. v. Abbott*, (S.D. Tex., 2:16-cv-00303, July 20, 2016).**

Utah

Suit Challenging County’s Failure to Provide Effective Language Assistance and In-Person Early Voting Sites for Navajo Nation Voters: San Juan County, Utah is home to a substantial Native American population. The County moved to all-mail balloting in 2014. Coupled with a lack of sufficient in-person early voting sites serving the Navajo Nation’s voters, Plaintiffs, represented by the Lawyers’ Committee and other civil rights organizations, argued that the county failed to provide effective language assistance to its Native American population. Following a period of intense and sometimes contentious litigation, the parties reached a settlement in which the county agreed to 1) provide in-person language assistance on the Navajo reservation for the 28 days prior to each election through the 2020 general election; 2) maintain three polling sites on the Navajo reservation for election day voting, including language assistance; and 3) to take additional action to ensure quality interpretation of election information and materials in the Navajo language. The settlement is being monitored by the plaintiffs. *Navajo Nation Human Rights Comm’n v. San Juan County*, 216CV00154JNPBCW, 2017 WL 3976564, at *1 (D. Utah Sept. 7, 2017).

Virginia

Suit to Extend Registration Deadline: In 2016, Virginia’s state online voter registration platform crashed during the last days of voter registration, leading up to the October 17th voter registration deadline. The Lawyers’ Committee, working with local civil rights groups, filed suit in the U.S. District Court for the Northern District of Virginia, after the Commonwealth had refused a request to extend the time for registration. After a hearing, the court ordered Virginia to extend the deadline until midnight October 21. As a result, approximately 28,000 Virginians registered to vote, who otherwise would not have been able to. *New Virginia Majority Education Fund, et al. v. Virginia Department of Elections, et al.*, No. 1:16-cv-013190CMH-MSN, N.D.VA, Alexandria Division.

Washington, D.C.

Challenge to Decision by the Election Assistance Commission’s Executive Director to Include Proof of Citizenship Requirement on Federal Registration Form Instructions: In January 2016, EAC Executive Director Brian Newby, acting without input from the EAC Commissioners, issued notice to Alabama, Georgia, and Kansas that the federal registration form instructions would be amended to allow these states to require citizenship documents from applicants who use the federal registration form. Plaintiffs, represented by a number of civil rights organizations including the Lawyers’ Committee, filed suit to enjoin Newby’s action

and the United States Court of Appeals for the District of Columbia Circuit preliminarily enjoined the EAC from changing the federal voter registration form after the District Court for the District of Columbia denied Plaintiffs' motion for a preliminary injunction. The parties have fully briefed cross-motions for summary judgment and the action remains pending. *League of Women Voters of United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).

Challenge to Presidential Advisory Commission on Election Integrity: On May 11, 2017, President Trump established the Presidential Advisory Commission on Election Integrity, to study the registration and voting processes used in Federal elections, including those that “could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.” Exec. Order 13799. The Commission was chaired by Vice President Pence, but its Vice-Chair is Kansas Secretary of State Kris Kobach, a known advocate of laws and regulations that have the effect of suppressing votes, particularly those of minority voters. Other members of the Commission included Hans Von Spakovsky, Christian Adams, and Ken Blackwell, all advocates of similar laws and regulations. On June 28, 2017, the Commission held a meeting after which Kobach sent a letter to every state requesting the production of information relating to every voter in the nation, including political affiliation and the last four digits of their social security numbers. This meeting was not open to the public. The Commission also announced that its next meeting would be held on July 19, 2017, but would be open to the public only via video streaming. On July 10, 2017, the Lawyers' Committee filed an action on its own behalf, seeking production of all Commission records under Section 10 of the Federal Advisory Committee Act, simultaneously seeking a temporary restraining order that would require the Commission to produce its records prior to the July 19 meeting, and would open that meeting to in-person public participation. On July 18, 2017, Judge Kollar-Kotelly issued an opinion denying the TRO application on the bases that (1) the Commission had submitted an affidavit promising to make all documents public; (2) there was no requirement that the documents be produced prior to the July 19 meeting; and (3) there was no requirement for in-person public participation. The Commission proceeded with its meeting on July 19. On July 21, Plaintiff filed motions on the basis that the Commission had not fulfilled its commitment to produce all records and documents. After reviewing the briefing, the Court set a hearing date of August 30, at which time DOJ apologized on behalf of its client, the Commission, for not disclosing all the documents it had promised to disclose. The Court ordered that the Commission prepare a Vaughn Index, listing all documents it is withholding from production and that the parties meet and confer to discuss the specifics and timing of the Vaughn Index. On September 29, the federal government provided Plaintiff with

its Vaughn Index, which indicated, among other things, that there were communications between some of the members of the Commission on substantive matters that had not been disclosed to the public. The Lawyers' Committee then filed a motion to compel compliance with the court's prior order, which is fully briefed and pending decision. On January 3, 2018, President Trump announced that he was dissolving the Commission. The suit was subsequently dismissed. ***Lawyers' Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity, et al.***, D.D.C. No. 1:17-cv-01354-CKK, July 10, 2017.

Presidential Advisory Commission on Election Integrity – FOIA: On January 26, 2018, the Lawyers' Committee filed a complaint on its own behalf in the District Court for the District of Columbia, seeking compliance by the Department of Justice and the Department of Homeland Security with FOIA requests for documents relating to the Presidential Advisory Commission on Election Integrity. The matter is pending. ***Lawyers' Committee for Civil Rights Under Law v. U.S. Dept. of Justice***, D.D.C. No. 1:18-cv-00167-EGS, January 26, 2018.

Appendix B – Summary Table of Cases which the Lawyers’ Committee for Civil Rights Under Law's Voting Rights Project has participated in since <i>Shelby County v. Holder</i>						
Case Name	Year Filed	State	Result	Opposing Covered Jurisdiction	Challenging Voting Change	Section 2 Claim
Alabama State Conference of the NAACP v. State of Alabama	2017	Alabama	Pending	Y	N	Y
State of Alabama v. US Dept. of Commerce	2018	Alabama	Pending	Y	N	N
Gallardo v. State of Arizona	2014	Arizona	Negative	Y	Y	N
Huerena v. Reagan, Superior Court of Arizona	2016	Arizona	Positive	Y	Y	N
League of United Latin American Citizens of Arizona v. Reagan	2018	Arizona	Positive	Y	Y	N
Arizona Advocacy Network v. Maricopa County Board of Supervisors	2018	Arizona	Negative	Y	N	N
City of San Jose v. Wilbur Ross	2018	California	Positive	N, Federal Gov't	N	N
New Florida Majority Education Fund v. Detzner	2018	Florida	Negative	No	N	N
Donna Curling v. Brian Kemp	2017	Georgia	Positive	Y	N	N
Georgia State Conference of the NAACP v. Brian Kemp	2016	Georgia	Positive	Y	Y	Y (+)
Georgia Coalition for the People's Agenda v. Brian Kemp	2018	Georgia	Positive	Y	Y	Y (+)
Martin v. Kemp	2018	Georgia	Positive	Y	N	N
Georgia State Conference of the NAACP v. Georgia (Runoff Elections)	2017	Georgia	Positive	Y	N	N
Georgia State Conference of the NAACP v. Georgia (Redistricting)	2017	Georgia	Positive	Y	Y	N
Georgia State Conference of the NAACP v. Hancock County Board of Elections and Registration	2015	Georgia	Positive	Y	Y	Y (+)
Georgia State Conference of the NAACP v. Gwinnett County Board of Registration and Elections	2016	Georgia	Positive	Y	N	Y

Case Name	Year Filed	State	Result	Opposing Covered Jurisdiction	Challenging Voting Change	Section 2 Claim
Georgia Coalition for the People's Agenda v. John Nathan Deal	2016	Georgia	Positive	Y	N	Y
Georgia State Conference of the NAACP v. Emanuel County Board of Commissioners	2016	Georgia	Positive	Y	N	Y
Georgia State Conference of the NAACP v. Fulton County Board of Registrations and Elections	2018	Georgia	Positive	Y	N	N
Third Sector Development, et al. v. Kemp, et al.	2014	Georgia	Negative	Y	N	N
Dan Newland v. Johnson County	2018	Indiana	Negative	N	N	N
Kobach v. U.S. Election Assistance Commission	2013	Kansas	Positive	Y	N	N
Louisiana State Conference of the NAACP v. State of Louisiana	2019	Louisiana	Pending	Y	N	Y
Thomas v. Bryant	2018	Mississippi	Positive	Y	N	Y
O'Neil v. Hosemann	2018	Mississippi	Pending	Y	N	N
Common Cause New York v. Brehm	2017	New York	Pending	Y	N	N
Common Cause New York v. Board of Elections in the City of New York	2016	New York	Positive	Y	Y	N
Hall v. Jones County Board of Commissioners	2017	North Carolina	Positive	N	N	Y
Action North Carolina v. Kim Westbrook Strach	2015	North Carolina	Positive	Y	N	N
Election Day Challenged to Acceptance of Absentee Ballots	2018	Pennsylvania	Positive	N	N	N
Cassandra Adams Jones v. Robert Torres	2018	Pennsylvania	Pending	N	N	N
Thomas Poor Bear v. The County of Jackson	2014	South Dakota	Positive	N	N	Y
Tennessee State Conference of the NAACP v. Hargett	2019	Tennessee	Pending	N	Y	N
Veasey v. Abbott	2018	Texas	Positive	Y	Y	Y (+)
Texas League of United Latin American Citizens v. Whitley	2019	Texas	Positive	Y	Y	Y (+)

Case Name	Year Filed	State	Result	Opposing Covered Jurisdiction	Challenging Voting Change	Section 2 Claim
Lopez v. Abbott	2016	Texas	Negative	Y	N	Y
Navajo Nation Human Rights Commission v. San Juan	2017	Utah	Positive	N	Y	Y (+)
New Virginia Majority Education Fund v. Virginia Department of Elections	2016	Virginia	Positive	Y	N	N
League of Women Voters of United States v. Newby	2016	Washington, DC	Positive	N, Federal Gov't	Y	N
Lawyers' Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity	2017	Washington, DC	Positive	N, Federal Gov't	N	N
Lawyers' Committee for Civil Rights Under Law v. US Dept. of Justice	2018	Washington, DC	Pending	N, Federal Gov't	N	N

Legend
Case Name = name of the case
Year Filed = year in which case was filed
State = State of the court the case was filed in, including the federal court
Result
Positive = positive change resulting from case if representing plaintiff, no change if representing defendant
Negative = no change resulting from case if representing plaintiff, change if representing defendant
Pending = case still pending with no positive or negative results yet
Opposing Covered Jurisdiction
Y= an opposing party was covered under Section 5,
N = no opposing party was covered under Section 5,
N, Fed Gov't = the federal government is the opposing party
Challenging Voting Change
Y = Yes, challenged voting change
N = No, did not challenge voting change
Section 2 Claim
Y = Only a Section 2 claim
Y (+) = Section 2 is one of multiple claims
N = no Section 2 claim



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

PRELIMINARY REPORT ON

**Voting
Discrimination
Against Racial
and Ethnic
Minorities
1994–2019**



ABOUT THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under the law, particularly in the areas of criminal justice, fair housing and fair lending, voting, education, and economic justice. For more information about the Lawyers' Committee, visit www.lawyerscommittee.org.

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This is the Preliminary Report of Racial and Ethnic Discrimination in Voting, 1994-2019 prepared by the Lawyers' Committee for Civil Rights Under Law. When completed, this Report will present in a unified package all administrative actions and court proceedings between 1994 and the present, based on claims of voting discrimination by state or local jurisdictions, that resulted in critical protections for protected racial or ethnic groups.

The Lawyers' Committee for Civil Rights Under Law has a unique vantage point from which to analyze this information. Since 1963, when President John F. Kennedy enlisted the private bar's leadership and resources in combating racial discrimination, the Lawyers' Committee has been at the forefront of the battle for equal rights. The Lawyers' Committee created and staffed the National Commission on the Voting Rights Act, which made the largest contribution to the record supporting the 2006 reauthorization of the Voting Rights Act,¹ and participated in the legal defense of the two cases challenging the constitutionality of the reauthorization, *Northwest Austin Municipal Utility District No. 1 v. Holder*² and *Shelby Coun-*

ty v. Holder.³ In 2014, the Lawyers' Committee organized the National Commission on Voting Rights which issued a report documenting ongoing voting discrimination.⁴ For almost two decades, the Lawyers' Committee has led Election Protection, the largest and longest-running non-partisan voter protection program in the country. And, to this day, the Lawyers' Committee's docket of significant voting rights litigation is among the most comprehensive and far-reaching—both geographically and in terms of the issues raised—as any in the nation.

This preliminary report identifies approximately 340 instances between 1994 and the present where actions by state or local governments gave rise to either a finding of racial discrimination in voting by the Attorney General or a court, or a change in the jurisdiction's actions as a result of litigation brought claiming racial discrimination in voting. The vast majority involved court cases from all over the country, but with a disproportionate number arising from jurisdictions once covered by Section 5 of the Voting Rights Act. The remainder are objections interposed by the Attorney General pursuant to the then authority under

Section 5 of the Voting Rights Act to block or deny proposed changes in voting practices or procedures by jurisdictions formerly covered by Section 5.

The enormous number of findings of discrimination in a relatively small number of years serve as a sobering reminder that our fight for equality in the polling place is yet to be won.

THE PURPOSE OF THIS REPORT

In some ways, this Report is a response — albeit at this stage, preliminarily and partial — to the majority opinion in *Shelby County*, where the Supreme Court gutted Section 5 of the Voting Rights Act, one of the most important and most protective pieces of civil rights legislation in our history. Section 5 required jurisdictions with a history of discrimination, based on a formula set forth in Section 4(b), to obtain preclearance of any voting changes from the Department of Justice or the District Court in the District of Columbia before implementing the voting change. In the *Shelby County* case, the Supreme Court decided in a 5-4 vote that the Section 4(b) coverage formula was unconstitutional.

1 NATIONAL COMMISSION ON VOTING RIGHTS, PROTECTING MINORITY VOTERS: THE VOTING RIGHTS ACT AT WORK 1982-2005 (Feb. 2006).

2 557 U.S. 193 (2009).

3 570 U.S. 529 (2013).

4 NATIONAL COMMISSION ON VOTING RIGHTS, PROTECTING MINORITY VOTERS: OUR WORK IS NOT DONE (2014), <http://votingrightstoday.org/ncvr/resources/discriminationreport>.

The majority in *Shelby County* held that, because the Voting Rights Act “impose[d] current burdens,” it “must be justified by current needs.”⁵ The majority went on to rule that because the formula was comprised of data from the 1960s and 1970s, it could not be rationally related to determining which jurisdictions, if any, should be covered under Section 5 decades later. That Congress had reauthorized Section 5 after holding several hearings, reviewing tens of thousands of pages of records of discrimination, and with a 98-0 vote in the Senate did not appear to faze the majority. Indeed, Chief Justice Roberts, writing for the Court, said that “things have changed dramatically” in the South since passage of the Voting Rights Act in 1965,⁶ and that “[b]latantly discriminatory evasions of federal decrees are rare.”⁷ Unfortunately, as seen by even the partial record compiled in this Report, that is an overly optimistic view of the state of voting rights in this country.

Of course, some “things” have changed—we no longer have literacy tests or direct poll taxes, and perhaps more people today understand that discrimination is illegal and actionable.

But, the “[b]latantly discriminatory evasions” of decades past have been replaced by subtler, but equally pernicious discrimination. At a time when the country is progressing towards becoming majority people of color,⁸ access to the franchise is under threat by both overt and covert voter suppression laws and tactics, (1) including making voter registration more difficult and restricting organizations from helping people register, (2) voter purges of eligible voters, (3) unduly restrictive photo ID laws, (4) polling place closures and polling place relocations to sites deemed hostile by voters of color, (5) ineffective language assistance for voters with limited English proficiency, (6) long lines at polling places due to insufficient staffing and poll locations, (7) improper handling of absentee ballots, (8) faulty technology, particularly in minority communities, that risks votes not being properly counted and exposes the machines to the risk of tampering, and (9) vote dilution that undermines the ability of people of color to elect candidates of their choice. It is these sorts of cases that this preliminary report summarizes, and which our subsequent final report will discuss in detail.

In this Report, we take a preliminary look back a quarter of a century to the two decades before *Shelby County* and the six years since. We have tried to identify instances of state or local racial discrimination in voting — anywhere in the country — that rose to a such a level of concern as to lead to a change in the conduct because of action by the Attorney General or in the courts. The Attorney General actions have been easy to identify: objection letters by the Attorney General in response to submissions by jurisdictions then covered by Section 5 of the Voting Rights Act notifying the Attorney General of proposed changes in voting practices or procedures. Those objection letters necessarily stopped the proposed changes from taking effect, and thus resulted in benefit to protected populations in those jurisdictions.

Court action is a little more difficult to categorize. First, it is necessary to discern whether the claim being litigated is a claim of racial discrimination relating to voting rights. Most of the cases listed were brought either under Section 2 or Section 5 of the Voting Rights Act and were therefore, necessarily, race-based discrimination claims. We note that, although

5 570 U.S. at 536, quoting *Northwest Austin*, 557 U.S. at 203.

6 570 U.S. at 547.

7 570 U.S. at 547, quoting *Northwest Austin*, 557 U.S. at 202.

8 William H. Frey, *The US will become ‘minority white’ in 2045*, *Census projects*, The Brookings Institution (Oct. 15, 2019, 1:22 PM), <https://www.brookings.edu/blog/the-avenue/2018/03/14/the-us-will-become-minority-white-in-2045-census-projects/>.

Section 2 of the Voting Rights Act remains a viable weapon in the fight against racial discrimination in voting, it is nowhere near as potent a weapon as was Section 5. Where Section 5 protected against discriminatory changes in voting, against an easily applied standard of whether minority voters would be worse off as a result of the change, Section 2 requires plaintiffs to bear the burden of complex and costly protracted litigation to show that an existing or newly instituted policy or practice is discriminatory. Where, under Section 5, the Department of Justice would necessarily bear the costs of defending against the jurisdiction's claim that the change in voting practices was not retrogressive, Section 2 places those costs on resource-strapped private litigants.

For Section 2 cases, we included both vote denial and vote dilution claims. For Section 5, we included actions seeking to enforce Section 5 of the Voting Rights Act, if filed before submission by the covered jurisdiction of its proposed voting practice change to the Attorney General, if the action succeeded in subjecting the proposed change to Section 5 review, even if the proposed change was ultimately precleared. On the other hand, we did not include Section 5 enforcement actions, if the covered jurisdiction had submitted the proposed

change for Section 5 review prior to the filing of the enforcement action, unless the proposed change was ultimately not precleared. Claims for violation of Section 203 of the Voting Rights Act, alleging failure to provide effective language assistance, were categorized as race-based claims.

We also included constitutional claims, typically brought under the Equal Protection Clause, if it was clear that the claim was of racial discrimination in voting. In this context, at least for purposes of this preliminary report, we included cases claiming racial discrimination brought by any racial group. These included, so-called “*Shaw* claims,” brought by white plaintiffs, claiming that district lines were the result of racial gerrymandering.⁹

There were many cases brought under other constitutional and statutory doctrines, like First and Fourteenth Amendment “right-to-vote” claims and claims under the National Voter Registration Act, which we did not include, even though the allegations may have included some race-based themes, such as allegations that the challenged state or local conduct affected minority populations, unless the claims specifically included allegations of discrimination and the benefit achieved was

connected to the discrimination claim.

Determining whether a benefit had been achieved by the racial group also entailed analysis. We included cases where there was a result, preliminarily or final, that benefited the racial or ethnic group in a way sought by the lawsuit. These included final judgments in favor of plaintiffs on racial discrimination grounds, the issuance of preliminary injunctions in favor of such plaintiffs that provided them with concrete relief, and the resolution of the case by way of Consent Decree or settlement — with or without the acknowledgement of liability — so long as plaintiffs received at least some of the relief the plaintiff had sought. In a few other instances, where it appeared clear that the jurisdiction had changed its conduct — by regulation, legislation or otherwise — in response to the litigation, we included such cases.

It should also be noted that we did not include the many cases that are pending around the country, where neither preliminary nor final relief has been issued yet. Nor did we include voting discrimination cases brought in state court. These cases may be discussed in our Final Report.

We consider these criteria to be conservative in

9 *Shaw v. Reno*, 509 U.S. 630 (1993).

assessing voting discrimination. By not including instances where plaintiffs received relief that inured to the benefit of racial minorities but not based on a theory of racial discrimination, we have excluded many cases, including numerous cases brought by the Lawyers' Committee, where we do not file litigation unless it furthers our racial justice mission. In addition, by including only cases and DOJ objections, we have excluded other instances of racial discrimination.

Finally, we emphasize the preliminary nature of this report. When we announced that the Lawyers' Committee would publish a report of this nature, we set an October 2019 deadline, knowing that the information in this report would be of great interest to the public, as Congress is considering legislation to reestablish the protections removed by the decision in *Shelby County*. Because we intended to undertake a survey of cases in all 50 states and the District of Columbia, we enlisted the

help of our large *pro bono* network of private firms, who, as they have done since President Kennedy's clarion call in 1963, responded enthusiastically to the task. Undoubtedly, some may quibble with some of the choices made to include or not include certain matters, and we welcome feedback as we proceed with preparation of our final report, which will include not only an updated version of the list identifying each instance of racial discrimination in voting based on data from Section 5 objections and

Voting Rights Violations by State

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				(1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	
ALABAMA					
Statewide	Section 5 objection letter	1994	Attorney General Objection	vote denial	Section 5 objection letter, James P. Turner to Lynda K. Oswald (Jan. 31, 1994) (Alabama)
Statewide	case/litigation	2006	Preliminary Injunction	vote denial	United States v. State of Alabama, 2:2006cv00225 (2006)
Statewide	case/litigation	2015	Final Order	racial gerrymandering	Alabama Legislative Black Caucus v. State of Alabama, 2:2012cv00691 (2017); Alabama Legislative Black Caucus v. Alabama, 231 F. Supp. 3d 1026 (M.D. Ala. 2017)
Etowah County	case/litigation	1994	Final Order	vote dilution	Presley v. Etowah Cty. Comm'n, 869 F. Supp. 1555 (M.D. Ala. 1994)
City of Greensboro in Hale County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, James P. Turner to Nicholas H. Cobbs, Jr. (Jan. 3, 1994) (Alabama)
City of Foley	case/litigation	1995	Consent Decree	vote dilution	Dillard v. City of Foley, 926 F. Supp. 1053, 1059 (M.D. Ala. 1995)
Tallapoosa County	Section 5 objection letter	1998	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to E. Paul Jones (Feb. 6, 1998) (Alabama)
Dallas County Commission	case/litigation	2000	Final Order	vote dilution	Wilson v. Minor, 220 F.3d 1297 (11th Cir. 2000)
City of Alabaster	Section 5 objection letter	2000	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to J. Frank Head (Aug. 16, 2000) (Alabama)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
City of Calera	Section 5 objection letter	2008	Attorney General Objection	vote dilution	Section 5 objection letter, Grace Chung Becker to Dan Head (Aug. 25, 2008) (Alabama)
Montgomery City	case/litigation	2008	Consent Decree	vote denial	May et al v. City of Montgomery, 2:2007cv00738 (2010)
City of Evergreen	case/litigation	2013	Final Order	vote dilution	Allen v. City of Evergreen, Ala., No. CIV.A. 13-107-CG-M, Document 32, filed 2/2/2013
ALASKA					
Bethel	case/litigation	2009	Preliminary Injunction/ Settlement Agreement	language assistance	Nick v. Bethel, No. 3:07-CV-0098 (TMB) (D. Ak. July 9, 2009).
Dillingham, Yukon-Koyukuk, and Wade Hampton Census Areas	case/litigation	2015	Settlement Agreement	language assistance	Toyukak v. Mallott, No. 3:13-cv-00137 (D. Ak. Sept. 30, 2015).
ARIZONA					
Statewide	case/litigation	2002	Final Order	vote dilution	Navajo Nation v. Arizona Indep. Redistricting Comm'n, 230 F. Supp. 2d 998, 1016 (D. Ariz. 2002)
Statewide	case/litigation	2018	Consent Decree	other barriers to voter registration	League of United Latin American Citizens Arizona v. Reagan, No. CV17-4102 PHX DGC, 2018 WL 5983009 (D. Ariz. Nov. 14, 2018)
Statewide	case/litigation	2019	Settlement Agreement	early or absentee voting, language assistance.	Navajo Nation v. Hobbs, No. CV-18-08329-PCT-DWL (D. Ariz. 2019)
Coconino County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Terence C. Hance (April 8, 1994) (Arizona)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				((1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other)	
Navajo County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to D. Rand Henderson (May 16, 1994) (Arizona)
Coconino Association for Vocations, Industry, and Technology	Section 5 objection letter	2003	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to Jean E. Wilcox (February 4, 2003) (Arizona)
Cochise County	case/litigation	2006	Consent Decree	language assistance	US v. Cochise County, case no. cv 06-304 TUC-FRZ (D. Ariz. 2006)
ARKANSAS					
City of Texarkana	case/litigation	1994	Final Order	vote dilution	Williams v. City of Texarkana, Ark., 32 F.3d 1265 (1994) and Williams v. City of Texarkana, Arkansas, 861 F. Supp. 756, 758 (W.D. Ark. 1992)
Blytheville	case/litigation	1995	Final Order	vote dilution	Harvell v. Blytheville Sch. Dist. No. 5, 71 F.3d 1382(8th Cir. 1995) (en banc)
Crittenden County	case/litigation	2000	Final Order	problems at the polls	Taylor, et. al. v. Howe, et. al., No. 99-2282EA (8th Cir.)
Chicot County	case/litigation	2003	Final Order		Cox, et al v. Donaldson, et al., Case no. 5:02-cv-00319-GH (E.D. Ar.)
Phillips County	case/litigation	2007	Dismissed after alleged violation addressed	problems at the polls	Nichols v. Phillips Cty Election Commission, Case No. 2:06-cv-00158-SWW (E.D. Ar.)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
CALIFORNIA					
Statewide	case/litigation	2001	Consent Decree	vote denial	Common Cause v. Jones, 2002 WL 1766436 (C.D. Cal. Feb. 19, 2002)
Alameda County	case/litigation	1996	Settlement Agreement	language assistance	United States v. Alameda County, No. 95-1266 (N.D. Cal. 1996)
Los Angeles	case/litigation	1997	Final Order	vote dilution	Garcia v. Los Angeles, 96-cv-7661 (C.D.Cal. 1997)
Monterey County	case/litigation	1999	Final Order	vote dilution	Lopez v. Monterey County, 871 F. Supp. 1254 (N.D. Cal. 1994), rev'd and remanded, 519 U.S. 9 (1996), appeal after remand, 525 U.S. 266 (1999)
Upper San Gabriel Valley Municipal Water District	case/litigation	2001	Dismissed after alleged violation addressed	vote dilution	United States v. Upper San Gabriel Valley Municipal Water District, cv-07903-AHM-BQR (C.D. Cal. 2001)
City of Santa Paula	case/litigation	2001	Settlement Agreement	vote dilution	United States v. City of Santa Paula, 00-cv-03691 GHK (SHx) (C.D.Cal. 2001)
Monterey County	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to Willim D. Barr (March 29, 2002) (California)
San Diego County	case/litigation	2004	Settlement Agreement	language assistance	U.S. v. San Diego, 04-cv-1273 IEG (JMA) (S.D. Cal. 2004)
Ventura County	case/litigation	2004	Consent Decree	language assistance	U.S. v. Ventura County, 04-cv-6443 CAS (VBKx) (C.D.Cal. 2004)
San Benito County	case/litigation	2004	Consent Decree	language assistance, problems at the polls	U.S. v. San Benito County, 04-cv-02056 JW (N.D. Cal. 2004)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
City of Paramount	case/litigation	2005	Consent Decree	language assistance	U.S. v. City of Paramount, 05-cv-05132 AHM (JTLx) (C.D.Cal. 2005)
City of Azusa	case/litigation	2005	Consent Decree	language assistance	United States v. City of Azusa, 05-cv-5147 GAF (SSx) (C.D.Cal. 2005)
City of Rosemead	case/litigation	2005	Consent Decree	language assistance	U.S. v. City of Rosemead, 05-cv-5131 GAF (MANx) (C.D.Cal. 2005)
City of Walnut, Los Angeles	case/litigation	2007	Consent Decree	language assistance	United States v. City of Walnut, 07-cv-2437 PA-SJO-MMS (VBKx) (C.D.Cal. 2007)
Riverside County	case/litigation	2010	Settlement Agreement	language assistance	U.S. v. City of Riverside, 10-cv-01059 SJD (OPx) (C.D.Cal. 2010)
Alameda County	case/litigation	2011	Consent Decree	language assistance	U.S. v. Alameda County, 11-cv-3262 EMC-MMS-RS NDCA (. 2011)
Napa County	Attorney General Letter	2016	Settlement Agreement	language assistance	Napa County Memorandum of Agreement
Kern County	case/litigation	2018	Final Order	vote dilution	Luna v. County of Kern, 291 F.Supp.3d 1088 (E.D. Ca. 2018)
COLORADO					
Statewide	case/litigation	1996	Final Order	vote dilution	Sanchez v. State of Colo., 97 F.3d 1303 (10th Cir.).
Montezuma-Cortez School District No. RE-1	case/litigation	1998	Final Order	vote dilution	Cuthair v. Montezuma-Cortez, Colorado School Dist. No. RE-1, 7 F.Supp.2d 1152 (D. Colo. 1998).

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				(1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	
CONNECTICUT					
City of Bridgeport	case/litigation	1995	Final Order	vote dilution	Bridgeport Coalition for Fair Representation v. City of Bridgeport, Civ. No. 93-1476 (D. Conn.).
FLORIDA					
Statewide	case/litigation	1994	Final Order	racial gerrymandering	Johnson v. Smith, Case No. 94-40025-WS, 1994 U.S. Dist. Lexis 20765, (N.D. Fl. Sept. 2, 1994)(denying PI motion); later proceedings, sub-nom, Johnson v. Mortham, 926 F.Supp. 1460 (N.D.Fla.,1996)(order granting plaintiffs' MSJ).
Statewide	case/litigation	2002	Settlement Agreement	barriers to registration; problems at the polls	NAACP v. Secretary of State, No. 01-120 (S.D. Fla. 2002)
Statewide	case/litigation	2002	Dismissed after alleged violation addressed	barriers to registration	Major v. Sawyer, No. 01-10088 (S.D. Fla. 2002)
Statewide	case/litigation	2012	Dismissed after alleged violation addressed	barriers to registration	League of Women Voters of Fla., Inc. v. Detzner, Case No. 11-cv-00628 (Aug. 30, 2012, N.D. Fla. 2012)
Statewide	case/litigation	2012	Dismissed after alleged violation addressed	barriers to registration	Mi Familia Vota Education Fund, et al v. Detzner, 8:12-cv-01294-JDW-MAP (M.D.Fla. 201
Statewide	case/litigation	2012	Final Order	early voting	Florida v. United States, 885 F. Supp. 2d 299 (D.D.C. 2012)
Statewide	case/litigation	2011	Dismissed after alleged violation addressed	early voting	The League of Women Voters of Florida, et al v. Rick Scott, et al, No. 11-cv-10006 (S.D. Fla. 2011)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
Statewide	case/litigation	2019	Preliminary Injunction	language assistance	Marta Valentine Rivera Madera, et al., v. Laurel Lee, Florida Secretary of State, et al., Case No. 18-00152, (May 10, 2019, N.D. Fla.)
City of Miami	case/litigation	1997	Dismissed after alleged violation addressed	vote dilution	PULSE v. City of Miami, No. 96-cv-3327 (S.D. Fla. 1997)
Ashcroft	case/litigation	2002	Attorney General Objection	vote dilution; barriers to registration	Section 5 objection letter, Ralph F. Boyd Jr. to John M. McKay (July 1, 2002) (Florida)
Dade County	case/litigation	2002	Dismissed after alleged violation addressed	vote dilution	Packingham v. Dade County, No. 96-cv-1749 (S.D.Fla. 2002)
Orange County	case/litigation	2002	Consent Decree	language assistance; problems at the polls	United States v. Orange County Florida; 6:02-cv-00737-ACC (M.D.Fla.)
Osceola County	case/litigation	2002	Final Order	language assistance, problems at the polls	United States v. Osceola County Florida; 6:02-cv-00738-ACC (M.D.Fla.)
Miami-Dade County	case/litigation	2002	Consent Decree	Language assistance; problems at the polls	United States v. Miami-Dade County Florida; 1:02-cv-21698 (S.D. Fla 2002)
Volusia County	case/litigation	2004	Dismissed after alleged violation addressed	Polling place locations, Early voting	NAACP et al v. Lowe; 6:04-cv-01469-GKS-KRS (M.D.Fla.)
Osceola County	case/litigation	2006	Final Order	vote dilution	United States v. Osceola County Florida; 6:05-cv-01053-GAP-DAB (M.D.Fla. 2006)
Osceola County	case/litigation	2008	Consent Decree	vote dilution	United States v. School Board of Osceola County Florida; 6:08-cv-00582-GAP-DAB (M.D.Fla. 2008)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				(1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	
Town of Lake Park	case/litigation	2009	Consent Decree	vote dilution	United States v. Town of Lake Park, Florida, No. 09-cv-80507 (S.D. Fla. Oct. 26, 2009)
Volusia County	case/litigation	2010	Settlement Agreement	language assistance, problems at the polls	Perez-Santiago v. Volusia County Department of Elections, 6:08-cv-1868-JA-KRS (M.D.Fla 2008)
GEORGIA					
Statewide	case/litigation	2008	Dismissed after alleged violation addressed	identification requirements; other barriers to voter registration	Morales v. Handel, United States District Court for the Northern District Court of Georgia Case No.: 1:08-cv-03172
Statewide	Section 5 objection letter	2009	Attorney General Objection	identification requirements; other barriers to voter registration	Section 5 objection letter, Loretta King to Thurbert E. Baker (May 29, 2009) (Georgia)
Statewide	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 Objection letter, Thomas E. Perez to Dennis R. Dunn (December 21, 2012) (Georgia)
Statewide	case/litigation	2017	Settlement Agreement	other barriers to voter registration	Georgia State Conference of the NAACP v. Kemp; No. 2:16-cv-219 (N.D. Ga.)
Statewide	case/litigation	2018	Preliminary Injunction	identification requirements; other barriers to voter registration	Georgia Coalition for the Peoples' Agenda, Inc. v. Brian Kemp, Case 1:18-cv-04727-ELR
Randolph County	case/litigation; Section 5 objection letter	2006	Final Order; Attorney General Objection	barriers to voter registration	Jenkins v. Ray, No. 4:06-CV-43, 2006 WL 1582426 (M.D. Ga. June 5, 2006); Section 5 objection letter, Wan J. Kim to Tommy Coleman (September 12, 2006) (Georgia)

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Lowndes County	Section 5 objection letter	2009	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Walter G. Elliott (November 30, 2009) (Georgia)
Greene County	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Michael S. Greene & Cory O. Kirby (April 13, 2012) (Georgia)
Long County	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Andrew S. Johnson & B. Jay Swindell (August 27, 2012) (Georgia)
Fayette County	case/litigation	2015	Consent Decree	vote dilution	Georgia State Conference of the NAACP v. Fayette Cnty. Bd. of Comm'rs, 118 F.Supp 3d 1338 (N.D. Ga. 2015)
Emanuel County	case/litigation	2016	Settlement Agreement	vote dilution	Georgia State Conference of the NAACP v. Emmanuel Cnty. Bd. Of Comm'rs; No. 6:16-CV-21 (S.D. Ga.)
Hancock County	case/litigation	2016	Consent Decree	other barriers to voter registration	Georgia State Conference of the NAACP v. Hancock Cnty. Bd. of Elections & Registration; No. 5:15-cv-414 (M.D. Ga.)
HAWAII					
Statewide	case/litigation	2000	Final Order	identification requirements	Rice v. Cayetano, 941 F.Supp. 1529 (1999) ; Rice v. Cayetano, 528 U.S. 495 (2000)
Statewide	case/litigation	2002	Final Order	Identification requirement	Arakaki v. State of Hawaii, 314 F. 3d 1091 (9th Cir 2002)

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				((1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other)	
ILLINOIS					
City of Chicago Heights	case/litigation	1993	Final Order	vote dilution	Harper v. City of Chicago Heights, 223 F.3d 593 (7th Cir. 2000)
City of Chicago	case/litigation	1998	Final Order	vote dilution	Barnett v. City of Chicago, 17 F. Supp. 2d 753, 759 (N.D. Ill. 1998)
Lake County	case/litigation	2001	Settlement Agreement	vote dilution	Vazquez v. Lake County, Case No. 1:01-cv-06541 (N.D. Ill. Aug. 22, 2001)
Chicago Board of Elections	case/litigation	2003	Settlement Agreement	vote dilution; problems at the polls	Black et al. v. McGuffage et al., Case No. 1:01-cv-00208 (N.D. Ill. Jan. 11, 2001)
Kane County	case/litigation	2007	Settlement Agreement	language assistance	USA v. County of Kane, et al, 07-cv-5451 (ND Ill. Sept. 26, 2007)
St. Clair County	case/litigation	2009	Settlement Agreement	barriers to registration	Chatman et al v. Delaney et al, Case No. 3:09-cv-00259-CJP (S.D. Ill. April 3, 2009)
KANSAS					
Ford County	case/litigation	2018	Dismissed after violation addressed	polling place locations	League of United Latin America Citizens, Kansas, Rangel-Lopez v. Cox, No. 2:18-cv-02572 (D. Kan. Oct. 26, 2018)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				((1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other)	
KENTUCKY					
Statewide	case/litigation	2013	Final Order	vote dilution	Brown v. Kentucky Legislative Research Comm'n, 966 F. Supp. 2d 709, 718 (E.D. Ky. 2013), judgment entered, No. CV13CV25DJBGFTWOB, 2013 WL 12320875 (E.D. Ky. Oct. 31, 2013). Herbert v. Kentucky State Board of Elections, Case No. 3:13-cv-00025 (E.D. Ky. 2013) (consolidated with Brown)
LOUISIANA					
Statewide	case/litigation	1996	Final Order	vote dilution	Hays v. Louisiana, 936 F. Supp. 360, 365 (W.D. La. 1996)
Statewide	Section 5 objection letter	1996	Attorney General Objection	dismissed after violation addressed	Section 5 objection letter, Deval L. Patrick, to E. Kay Kirkpatrick, (Aug. 12, 1996) (Louisiana)
Statewide	Section 5 objection letter	1998	Attorney General Objection	other barriers to voter registration	Section 5 objection letter, Bill Lann Lee to Angie Rogers LaPlace (Jan. 13 1998) (Louisiana)
Statewide	Section 5 objection letter	2003	Settlement Agreement	vote dilution	House of Representatives v. Ashcroft, No. 1:02-CV-00062 (D.D.C. May 20, 2003)
Statewide	case/litigation	2005	Settlement Agreement	early or absentee voting	Wallace v. Chertoff, No. 2:05-CV-05519 (E.D. La. 2005)
Statewide	case/litigation	2016	Dismissed after Violation Addressed	identification requirements; other barriers to voter registration	VAYLA New Orleans v Schedler, No. 3:16-CV-00305 (M.D. La. 2016)
Veron Parish School Board	case/litigation	1994	Final Order	vote dilution	Dye v. McKeithen, 856 F. Supp. 303 (W.D. La. 1994)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
City of Shreveport	case/litigation	1997	Final Order	vote dilution	United States v. Louisiana, 952 F. Supp. 1151 (W.D. La. 1997)
City of Morgan City	case/litigation	2001	Settlement Agreement	vote dilution	United States of America v. Morgan City, No. 6:00-CV-01541 (W.D. La. 2001)
St. Bernard Parish	case/litigation	2002	Final Order	vote dilution	St. Bernard Citizens for Better Government v. St. Bernard Parish Sch. Bd., No. 02-2209, 2002 U.S. Dist. LEXIS 16540 (E.D. La. Aug. 28, 2002)
Ouachita Parish	case/litigation	2002	Preliminary Injunction	vote dilution	Young & Golsby v. Ouachita Parish School Board, No. 3:02-CV-1644 (W.D. 2002)
Pointe Coupee Parish	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter from Ralph F. Boyd, Jr. to Gregory B. Grimes (Oct. 4, 2002) (Louisiana)
DeSoto Parish	Section 5 objection letter	2002	Attorney General Objection	vote dilution; other barriers to voter registration	Section 5 objection letter, Andrew E. Lelling to Walter Lee, (Dec. 31, 2002) (Louisiana)
Richmond Parish	Section 5 objection letter	2003	Attorney General Objection	vote dilution; other barriers to voter registration	Ralph F. Boyd, Jr. to John R. Sartin (May 13, 2003) (Louisiana)
Jefferson Parish	case/litigation	2003	Consent Decree	vote dilution	Jefferson Citizens for Better Government v. Parish of Jefferson, No. 2:03-CV-00345, 2003 WL 1595167 (E.D. 2003)
St. John the Baptist Parish City Council and School Board	case/litigation	2003	Consent Decree	vote dilution	Sorapur v. Mitchell, No. 2:02-CV-02524 (E.D. La. 2003)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
City of Baton Rouge	case/litigation	2004	Settlement Agreement	vote dilution	Gasper v. Baton Rouge, No. 3:93-CV-00537 (M.D. La. 2004)
Tangipahoa Parish	case/litigation, Section 5 objection letter	2004	Dismissed after alleged violation addressed	vote dilution	Tangipahoa Citizens v. Tangipahoa Parish, No. 2:03-CV-02710, 2004 WL 1638106 (E.D. La. 2004) Section 5 objection letter, R. Alexander Acosta to Carlos Natarino (October 16, 2003) (Louisiana)
St. Landry Parish	case/litigation	2005	Settlement Agreement	vote dilution	NAACP v. St. Landry Parish, No. 6:03-CV-00610 (W.D. La. 2005)
Avoyelles Parish School Board	case/litigation	2006	Settlement Agreement	vote dilution	Guillory v. Avoyelles Parish School Board, No. 1:03-CV-00285, 2011 WL 499196 (W.D. La. 2006)
Jefferson Parish	case/litigation	2007	Consent Decree	vote dilution	Williams v McKeithen, No. 2:05-CV-01180, 2007 WL 9676892 (E.D. La. 2007)
City of St. Martinville	case/litigation	2011	Dismissed after alleged violation addressed	vote dilution; vote denial	Greig v. St. Martinville & United States of America, No.6:00-CV-00603 (W.D. La. 2000)
Terrebonne Parish	case/litigation	2017	Final Order	vote dilution	Terrebonne Parish Branch NAACP v. Jindal, 274 F. Supp. 3d 395 (M.D. La. 2017)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				(1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	
MARYLAND					
Statewide	case / litigation	1994	Final Order	vote dilution	Marylanders for Fair Representation, Inc. v. Schaefer, 849 F. Supp. 1022 (D. Md. 1994)
Worcester County	case / litigation	1994	Final Order	vote dilution	Cane v. Worcester Cty., Md., 840 F. Supp. 1081 (D. Md. 1994).
MASSACHUSETTS					
Statewide	case/litigation	2004	Preliminary Injunction	vote dilution	Black Political Task Force v. Galvin, 300 F. Supp. 2d 291, 2004 U.S. Dist. LEXIS 2681
City of Lawrence	case/litigation	2001	Preliminary Injunction	identification requirements	Morris, et al v. City of Lawrence, et al
City of Lawrence	case/litigation	2002	Consent Decree	vote dilution	USA v. City of Lawrence, MA, et al
City of Boston	case/litigation	2005	Dismissed after alleged violation addressed	language assistance; problems at the polls	United States of America v. City of Boston, Massachusetts et al
City of Lawrence	case/litigation	2006	Dismissed after alleged violation addressed	language assistance; problems at the polls	OISTE Inc. et al v. City of Lawrence, Massachusetts et al 1:05-cv-12218
City of Springfield	case/litigation	2007	Settlement Agreement	vote dilution	Arise for Social Justice, et al. v. City of Springfield, et al.
City of Springfield	case/litigation	2008	Settlement Agreement	language assistance; problems at the polls	United States of America v. City of Springfield et al
City of Lowell	case/litigation	2019	Consent Decree	vote dilution	Huot v. City of Lowell, No. 1:17-cv-10895-DLC

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
MICHIGAN					
City of Hamtramck	case	1999	Consent Decree	language assistance, identification requirements, problems at polls	United States v. City of Hamtramck, no. 00-73541 (E.D. Mich. Aug. 7, 2000; Sep. 3, 2003; Jan 29, 2004)
City of Eastpointe	case/litigation	2019	Consent Decree	vote dilution	United States v. City of Eastpointe, No. 417CV10079TGDRG, 2019 WL 2647355, at *2 (E.D. Mich. June 26, 2019)
MINNESOTA					
Statewide	case/litigation	2005	Preliminary Injunction; Dismissed after alleged violation addressed	identification requirements and other barriers to voter registration	American Civil Liberties Union of Minnesota et al v. Kiffmeyer, Case No. 00:2004cv04653
MISSISSIPPI					
Statewide	Section 5 objection letter	1995	Attorney General Objection	other - denial of office	Section 5 objection letter, Deval L. Patrick to Sandra Murphy Shelson (February 6, 1995) (Mississippi)
Statewide	Section 5 objection letter; case/litigation	1997	Attorney General Objection; Final Order	dual registration	Section 5 objection letter, Isabelle Katz Pinzler to Sandra M. Shelson (September 22, 1997) (Mississippi); Young v. Fordice, 520 U.S. 273 (1997)
Statewide	Section 5 objection letter	2010	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Margarette L. Meeks (March 24, 2010) (Mississippi)
Statewide	case/litigation	2019	Final Order	vote dilution	Thomas v. Bryant, 939 F. 3d 134 (5th Cir. 2019) reh'g granted, 939 F. 3d. 629 (5th Cir. 2019)
Clarke County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, James P. Turner to Gilford F. Dabbs, III (January 10, 1994) (Mississippi)

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Carroll County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Kenneth E. Downs (April 18, 1994) (Mississippi)
Quitman (Clarke County)	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Hubbart T. Saunders, IV (December 19, 1994) (Mississippi)
Adams County	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Marion Smith (January 30, 1995) (Mississippi)
Monroe County	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Claude A. Chamberlin (March 20, 1995) (Mississippi)
Chickasaw County	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Isabelle Katz Pinzler to James S. Gore (April 11, 1995) (Mississippi)
Union County	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Lester F. Sumner (June 20, 1995) (Mississippi)
Aberdeen (Monroe County)	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Jeffrey M. Navarro (December 4, 1995) (Mississippi)
Calhoun County	case/litigation	1996	Final Order	vote dilution	Clark v. Calhoun Cty., Miss., 88 F.3d 1393 (5th Cir. 1996)
Attala County	case/litigation	1996	Final Order	vote dilution	Teague v. Attala Cty., Miss., 92 F.3d 283 (5th Cir. 1996)
Grenada County	Section 5 objection letter	1997	Attorney General Objection	problems at the polls	Section 5 objection letter, Isabelle Katz Pinzler to James McRae Criss (March 3, 1997) (Mississippi)

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Grenada County	Section 5 objection letter	1997	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to T.H. Freeland, IV (August 17, 1998) (Mississippi)
Chickasaw County	case/litigation	1997	Final Order	vote dilution	Gunn v. Chickasaw County, Mississippi, No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761 (N.D. Miss. Oct. 28, 1997)
Lafayette County	case/litigation	1998	Final Order	vote dilution	Houston v. Lafayette Cty., 20 F. Supp. 2d 996 (N.D. Miss. 1998)
Pike County	Section 5 objection letter	1999	Attorney General Objection	polling place locations	Section 5 objection letter, Bill Lann Lee to John H. White, Jr. (June 28, 1999) (Mississippi)
Montgomery County	Section 5 objection letter	2001	Attorney General Objection	denial of voting opportunity	Section 5 objection letter, Ralph F. Boyd, Jr. to Lane Green Lee (December 11, 2001) (Mississippi)
Tupelo	case/litigation	2007	Final Order	vote dilution	Jamison v. Tupelo, Mississippi, 471 F. Supp. 2d 706 (N.D. Miss. 2007)
Noxubee County	case/litigation	2007	Final	vote dilution	United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. 2007) aff'd by United States v. Brown, 561 F.3d. 420 (5th Cir. 2009)
Amite County	Section 5 objection letter	2011	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Tommie S. Cardin (October 4, 2001) (Mississippi)
Adams County	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Everett T. Sanders (April 30, 2012) (Mississippi)
Hinds County	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Kenneth Dreber and David Wade (December 3, 2012) (Mississippi)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				(1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	
MISSOURI					
Ferguson-Florissant School District; St. Louis County Board of Election Commissioners	case/litigation	2016	Final Order	vote dilution	Mo. State Conference of NAACP v. Ferguson-Florissant Sch. Dist., 201 F. Supp. 3d 1006 (E.D. Mo. 2016), affirmed, 894 F.3d 924 (8th Cir. 2018), cert. denied sub nom. Ferguson Florissant Sch. Dist. v. Missouri State Conference of N.A.A.C.P., 139 S. Ct. 826, 202 L. Ed. 2d 579 (2019).
MONTANA					
Statewide	case/litigation	2014	Settlement Agreement	polling place locations; early or absentee voting	Wandering Medicine v. Montana Secretary of State, Case No. 1:12-cv-00135-DWM
Blaine County	case/litigation	2001	Final Order	vote dilution	United States v. Blaine Cty., Mont., 157 F. Supp. 2d 1145 (D. Mont. 2001); United States v. Blaine Cty., Mont., 363 F.3d 897 (9th Cir. 2004), Case No. 4:99-00-00122
Wolf Point School District	case/litigation	2014	Consent Decree	vote dilution	Jackson v. Bd. of Trustees of Wolf Point Sch. Dist., et al., Case No. 4:13-cv-00065-BMM
NEBRASKA					
County of Thurston	case/litigation	1995	Final Order	vote dilution	Stabler v. County of Thurston, No. 8:CV93-00394(D.Neb.Aug.29, 1995), aff'd,129 F.3d 1015 (8th Cir. 1997), cert.denied,523 U.S. 1118 (1998)
Colfax County	case/litigation	2012	Consent Decree	language assistance	US v. Colfax County, 8:12-cv-84 (D.Neb.) Consent Order

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
NEVADA					
Washoe and Mineral Counties	case/litigation	2016	Preliminary Injunction	polling place locations; early voting	Sanchez v. Cegavske, 214 F. Supp. 3d 961 (D. Nev. 2016).
NEW MEXICO					
Sandoval County	case/litigation	2011	Consent Decree	language assistance	U.S. v. Sandoval County, NM, 797 F.Supp.2d 1249 (D. New Mexico 2011)
NEW YORK					
Statewide	Section 5 objection letter	1994	Attorney General Objection	vote dilution; barriers to registration	Section 5 objection letter, Loretta King to G. Oliver Koppell (Dec. 5, 1994) (New York)
City of Hinesville	Section 5 objection letter	1991	Attorney General Objection	vote dilution	Section 5 objection letter, John R. Dunne to Judith Reed (Jul 19, 1991) (New York)
Kings and New York Counties in New York City, New York	Section 5 objection letter	1994	Attorney General Objection	language assistance	Section 5 objection letter, Deval L. Patrick to Kathy King (May 13, 1994) (New York)
Bronx County, New York	Section 5 objection letter	1996	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Judith Kay (Nov. 15, 1996) (New York)
City of New York	case/litigation	1998	Settlement Agreement	language assistance	Chinatown Voter Education Alliance v. Ravitz, Case 1: 06-Civ-00 913-NRB, S.D.N.Y. 2006 (Reice Buchwald, J.).
Town of Hempstead	case/litigation	1999	Final Order	vote dilution	Goosby v. Town Board of the Town of Hempstead, 180 F.3d 476 (2d Cir. 1999)

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City of Rochelle and city council	case/litigation	2003	Final Order	vote dilution	New Rochelle Voter Defense Fund v. city of New Rochelle, 308 F. Supp. 2d 152 (S.D.N.Y. 2003)
Albany County	case/litigation	2004	Final Order	vote dilution	Arbor Hill Concerned Citizens Ass'n v. County of Albany, 357 F.2d 260 (2d Cir. 2004)
Suffolk County; Suffolk County Board of Elections	case/litigation	2004	Consent Decree	language assistance	Consent Decree, U.S. v. Suffolk County, Case 2:04-cv-02689-TCP-MLO, June 29, 2004.
Westchester County, New York	case/litigation	2005	Consent Decree	language assistance	US v. Westchester County, et al. 05 Civ 0650 (S.D.N.Y. 2005);
Albany County Board of Elections	case/litigation	2011	Final Order	vote dilution	Anne Pope, et al. v. County of Albany, et al. Case No.: 11-cv-00736 (N.D.N.Y.)
County of Orange	case/litigation	2013	Final Order	vote dilution	Order Adopting Special Master's Legislative Redistricting Plan, Molina v. County of Orange, 13-cv-3018-ER (S.D.N.Y. June 14, 2013)
Orange County Board of Elections	case/litigation	2015	Settlement Agreement	vote dilution; language assistance; other barriers to voter registration; problems at polling places	USA v. Orange County Board of Elections et al.; Case No. 7:12-cv-03071 (S.D.N.Y. 2012)
Village of Port Chester	case/litigation	2018	Final Order	vote dilution	United States of America v. Village of Port Chester, 704 F.Supp.2d 411 (S.D.N.Y. 2010)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
NORTH CAROLINA					
Statewide	Section 5 objection letter	1996	Attorney General Objection	vote dilution	Section 5 objection letter, Loretta King to Charles M. Hensley (Feb. 13, 1996) (North Carolina)
Statewide	case/litigation	1996	Final Order	vote dilution	Shaw v. Hunt, 517 U.S. 899, 900 (1996)
Statewide	case/litigation	2016	Final Order	identification requirements; barriers to registration; problems at the polls; early voting	North Carolina State Conference of NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016) cert. denied 137 S. Ct. 1399, 198 L. Ed. 2d 220 (2017)
Statewide	case/litigation	2018	Final Order	racial gerrymandering	Covington v. North Carolina (Covington I), 316 F.R.D. 117 (M.D.N.C. 2016) summarily aff'd North Carolina v. Covington, 137 S.Ct. 2211 (2017) Covington v. North Carolina (Covington II), 283 F. Supp. 3d 410 (M.D. N.C. 2018), summarily aff'd in part, rev'd in part, North Carolina v. Covington, 138 S.Ct. 2548 (2018).
Anson County Board of Education	case/litigation	1994	Consent Decree	vote dilution	United States v. Anson Board of Education, No. 3:93-cv-00210 (W.D.N.C. 1994)
Cleveland County Board of Commissioners	case/litigation	1994	Consent Decree	vote dilution	Campbell v. Cleveland Co. Board of Commissioners, 4:49-cv-00011 (W.D.N.C. 1994)
Laurinburg City Council	case/litigation	1994	Dismissed after alleged violation addressed	vote dilution	Speller v. Laurinburg, No. 3:93-cv-00365 (M.D.N.C. 1994)

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Rowan County Board of Education	case/litigation	1994	Consent Decree	vote dilution	N.A.A.C.P. v. Rowan Board of Education, No. 4:91-cv-00293-FWB-RAE (M.D.N.C. 1994)
Tyrrell County	case/litigation	1994	Consent Decree	vote dilution	Rowsom v Tyrrell County Commissioners, No. 2:93-cv-00033 (E.D.N.C. 1994)
Washington County	case/litigation	1994	Consent Decree	vote dilution	Wilkins v. Washington County Commissioners, No. 2:93-cv-0012 (E.D.N.C. 1996)
Town of Mt. Olive	case/litigation	1995	Dismissed after alleged violation addressed	vote dilution	Fussell v. Town of Mount Olive, No. 5:93-cv-00303 (E.D.N.C. 1995)
Person County	case/litigation	1995	Consent Decree	vote dilution	Webster v. Board of Education of Person County, No. 1:91-cv-00554 (M.D.N.C. 1995)
Granville County	Section 5 objection letter	1997	Attorney General Objection	vote dilution	Section 5 objection letter, Isabelle Katz Pinzler to Susan K. Nichols (Feb. 3, 1997) (North Carolina)
Harnett County	case/litigation	2003	Dismissed after alleged violation addressed	vote dilution	Porter v. Stewart, No. 5:88-cv-00950 (E.D.N.C. 2003)
Franklin County	case/litigation	2004	Dismissed after alleged violation addressed	vote dilution	White v. Franklin County, No. 5:03-cv-00481 (E.D.N.C. 2004)
City of Fayetteville	Section 5 objection letter	2007	Attorney General Objection	vote dilution	Section 5 objection letter, Wan J. Kim to Michael Crowell (Jun. 25, 2007) (North Carolina)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				(1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	
City of Kingston	Section 5 objection letter	2009	Attorney General Objection	vote dilution	Section 5 objection letter, Loretta King to James P. Cauley III (Aug. 17, 2009) (North Carolina)
Pitt County School District	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Tom Perez to Robert T. Sonnenberg (April 30, 2012) (North Carolina)
Jones	case/litigation	2017	Consent Decree	vote dilution	Hall, et al. v. Jones County Board of Commissioners, Case No. 4-17-cv-18 (ED NC 2017)
NORTH DAKOTA					
Benson County	case/litigation	2000	Consent Decree	vote dilution	United States v. Benson Cty., No. 2:00-cv-00030-RSW-KKK (D.N.D. Mar. 10, 2000).
Benson County	case/litigation	2011	Preliminary Injunction	polling place locations	Spirit Lake Tribe v. Benson Cty., No. 2:10-cv-00095-RRE-KKK, 2010 WL 4226614 (D.N.D. Oct. 21, 2010)
OHIO					
City of Euclid	case/litigation	2008	Final Order	vote dilution	U.S. v. City of Euclid, WL 4790789, Case No. 1:06CV1652, (N.D. Ohio Aug. 1, 2007).
Cuyahoga County	case/litigation	2010	Settlement Agreement	language assistance	United States of America v. Cuyahoga Board of Elections, et al., No. 1:10-cv-01949
Lorain County	case/litigation	2011	Settlement Agreement	language assistance	United States of America v. Lorain County, et al., No. 1:11-cv-02122

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				((1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other)	
PENNSYLVANIA					
Statewide	case/litigation	2009	Final Order	problems at the polls	Pa. NAACP v. Cortes, No. 2:08-cv-05048 (E.D. Pa. Jan. 29, 2009), https://ecf.paed.uscourts.gov/doc1/15315000562
Berks County	case/litigation	2003	Final Order	problems at the polls; language assistance	United States v. Berks County, Pa., 277 F. Supp.2d 570 (E.D. Pa. 2003)
City of Philadelphia, et. al.	case/litigation	2007	Settlement Agreement	language assistance	United States v. City of Philadelphia, PA (E.D. Pa. 2006) https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/phila_settlement.pdf https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/phila_amend.pdf
Bethlehem Area School District	case/litigation	2008	Settlement Agreement	vote dilution	Negron v. Bethlehem Area School District, No. 2:06-cv-0666 (E.D. Pa. Aug. 12, 2008), https://ecf.paed.uscourts.gov/doc1/15314381817
Bucks County, et. al.	case/litigation	2009	Dismissed after alleged violation addressed	polling place locations	Prescod v. Bucks County, Pa., No. 2:08-cv-03778 (E.D. Pa. Oct. 10, 2008), https://ecf.paed.uscourts.gov/doc1/15314630796
Chester County, et. al.	case/litigation	2010	Settlement Agreement	problems at the polls polling place locations	English, et al v. Chester County, Case No. 2:2010cv0044 (E.D. Pa. 2010)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				((1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other)	
SOUTH CAROLINA					
Statewide	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Robert J. Sheheen (May 2, 1994) (South Carolina)
Statewide	case/litigation	1996	Final Order	racial gerrymandering	Smith v. Beasley, 946 F.Supp. 1174 (D.S.C. 1996)
Statewide	Section 5 objection letter	1997	Attorney General Objection	vote dilution	Section 5 objection letter, Isabelle Katz Pinzler to John W. Drummond (Apr. 1, 1997) (South Carolina)
Statewide	Section 5 objection letter; case/litigation	2011	Attorney General Objection; Final Court Order	identification requirements; case/litigation	Thomas E. Perez objection letter (5/18/2011); South Carolina v. United States, Civil Action No. 898 F. Supp. 30 (D.D.C. 2012);
Lee County and Lee County School District	Section 5 objection letter	1994	Attorney General Objection	problems at the polls	Section 5 objection letter, Deval L. Patrick to Jacob H. Jennings (June 6, 1994) (South Carolina)
Florence and Williamsburg Counties	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter Deval L. Patrick objection letter
Town of Hemingway	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Gregory B. Askins and Jeffrey N. Thorndahl (July 2, 1994) (South Carolina)
Georgetown County School District	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Kerry Alan Scanlon to C. Havird Jones, Jr. (Oct. 3, 1994) (South Carolina)
North Charleston	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to James E. Gonzales (Oct. 17, 1994) (South Carolina)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
Spartanburg County School District	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to C. Havird Jones (Nov. 20, 1995) (South Carolina)
Spartanburg County School District	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to C. Havird Jones (No. 20, 1995) (South Carolina)
Gaffney Board of Public Works	Section 5 objection letter	1996	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to James R. Thompson (March 5, 1996) (South Carolina)
Horry County	Section 5 objection letter	1998	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to John C. Henry (May 20, 1998) (South Carolina)
Charleston	Section 5 objection letter	2001	Attorney General Objection	vote dilution	Section 5 objection letter, Alex Acosta to Francis I. Cantwell (Oct. 12, 2001) (South Carolina)
Greer	Section 5 objection letter	2001	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to John B. Duggan (Nov. 2, 2001) (South Carolina)
Sumter County	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to Charles T. Edens (Jun. 27, 2002) (South Carolina)
Union County School District	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to C. Havird Jones (Sep. 3, 2002) (South Carolina)
Clinton	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to C. Samuel Bennett II (Dec. 9, 2002) (South Carolina)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
Charleston County	case/litigation	2003	Final Order	vote dilution	United States v. Charleston Cty., 316 F. Supp. 2d 268 (D.S.C. 2003), aff'd sub nom. United States v. Charleston Cty., S.C., 365 F.3d 341 (4th Cir. 2004)
Cherokee County School District No. 1	Section 5 objection letter	2003	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to C. Havird Jones (Jun. 16, 2003) (South Carolina)
North	Section 5 objection letter	2003	Attorney General Objection	vote dilution	Section 5 objection letter, Alex Acosta to H. Bruce Buckheister (Sep. 16, 2003) (South Carolina)
Charleston County School District	Section 5 objection letter	2004	Attorney General Objection	vote dilution	Section 5 objection letter, Alex Acosta to C. Havird Jones (Feb. 26, 2004) (South Carolina)
Richland-Lexington School District No. 5	Section 5 objection letter	2004	Attorney General Objection	vote dilution	Section 5 objection letter, Alex Acosta to C. Havird Jones (Jun. 25, 2004) (South Carolina)
City of Columbia	case/litigation	2010	Preliminary Injunction	vote dilution (this is a Section 5 case involving a city's failure to preclear a change regarding an election)	Butler v. City of Columbia, No. 3:10-CV-794-CMC-CHH-JFA, 2010 WL 1372299 (D.S.C. 2010)
Fairfield County School District	Section 5 objection letter	2010	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to C. Havird Jones (Aug. 16, 2010) (South Carolina)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
SOUTH DAKOTA					
Statewide	Section 5 objection letter	1995	Attorney General Objection	other barriers to voter registration	Section 5 objection letter, Deval L. Patrick to Hon. Joyce Hazeltine (Jun. 19, 1995) (South Dakota)
Statewide	case/litigation	2002	Final Order	violation of Section 5 of the VRA	Bone Shirt v. Hazeltine, 200 F. Supp. 2d 1150 (D.S.D. 2002).
Statewide	case/litigation	2002	Consent Decree	violation of Section 5 of the VRA	Quick Bear Quiver v. Hazeltine, No. 02-5069 (D.S.D. 2002).
Statewide	case/litigation	2004	Final Order	vote dilution	Reference: Bone Shirt v. Hazeltine, 336 F.Supp.2d 976 (D.S.D. 2004)
Statewide	case/litigation	2009	Settlement Agreement	other barriers to voter registration	Janis v. Nelson, CIV. 06-5019 (D.S.D. 2009).
Enemy Swim Sanitary District	case/litigation	2000	Settlement Agreement	other barriers to voter registration (maintaining boundaries with the purpose and effect of excluding Native American voters)	United States v. Day County, S.D., CIV. 99-1024 (D.S.D. 2000).
Wagner Community School District	case/litigation	2003	Consent Decree	vote dilution	Weddell v. Wagner Cmty. Sch. Dist., CIV. 02-4056 (D.S.D. 2003).
Buffalo County	case/litigation	2004	Consent Decree	vote dilution	Kirkie v. Buffalo County, S.D., CIV. 03-3011 (D.S.D. 2004).
Charles Mix County	case/litigation	2005	Settlement Agreement	vote dilution, violation of Section 5 of the VRA	Blackmoon v. Charles Mix County, CIV. 05-4017 (2007); Quick Bear Quiver v. Nelson, 387 F. Supp. 2d 1027 (D.S.D. 2005).

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				((1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other)	
Charles Mix County	Section 5 objection letter	2008	Attorney General Objecton	vote dilution	Section 5 objection letter, Grace Chung Becker to Sara Frankenstein (Feb. 11, 2008) (South Dakota)
Shannon County	case/litigation	2013	Dismissed after alleged violation addressed	early or absentee voting	Brooks v. Gant, CIV. 12-5003 (D.S.D. 2013).
TENNESSEE					
Crockett County and the Crockett County Board of County Commissioners	case/litigation	2001	Settlement Agreement	vote dilution	United States v. Crockett County, Civil Action 1-01-1129 (W.D. Tenn. 2001); Complaint and Consent Decree.
City of Bolivar	case/litigation	2003	Consent Decree	vote dilution	Hardeman Cty NAACP v. Frost, et al., 03-1041 (W.D. Tenn. Dec. 9, 2003)
TEXAS					
Statewide	Section 5 objection letter	1995	Attorney General Objection	language assistance	Section 5 objection letter, Deval L. Patrick to Ronald Kirk (Feb. 17, 1995) (Texas)
Statewide	Section 5 objection letter	1996	Attorney General Objection	barriers to registration	Section 5 objection letter, Deval L. Patrick to Antonio Garza (Jan. 16, 1996) (Texas)
Statewide	case/litigation	1998	Preliminary Injunction	other - change of election structure	LULAC of Texas v. State of Texas, Case no. 96-cv-00930-HFG-SS (W.D. Tex 1996)
Statewide	Section 5 objection letter	2001	Attorney General Objection	redistricting	Section 5 objection letter, Ralph R. Boyd to Geoffrey Connor (Nov. 16, 2001) (Texas)
Statewide	Section 5 objection letter	2008	Attorney General Objection	other - change in election qualification requirement	Section 5 objection letter, Grace Chung Becker to Phil Wilson (Aug. 21, 2008) (Texas)

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Statewide	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Keith Ingram (March 12, 2012)(Texas)
Statewide	case/litigation	2013	remedial plan adopted	vote dilution	Perez v. Perry, 891 F. Supp. 2d 808 (W.D. Tex. 2012)
Statewide	case/litigation	2014	Final Order	vote dilution	Texas v. Holder, 888 F.Supp.2d. 113 (D.D.C. 2012), vacated and remanded, 570 U.S. 928 (2013), dismissed, cv. 12-128 (RMC)(2014)
Statewide	case/litigation	2016	Final Order	vote denial	Veasey v. Abbott, 830 F.3d 216 (2016)
Statewide	case/litigation	2018	Final Order	vote dilution	Perez et al v. Perry et al, Case No. 11-CV-360 (W.D. Tex. 2011). Later Abbott v. Perez, 138 S.Ct. 2305 (2018).
Statewide	case/litigation	2019	Final Order	problems at the polls	OCA-Greater Houston et al v. State of Texas et al, 1:2015cv00679, (W. D. Tex. 2015).
Statewide	case/litigation	2019	Preliminary Injunction; Settlement	vote dilution	MOVE Texas Civic Fund et al v. Whitley et al, 5:2019cv00171, (W.D. Tex. 2019).
Tarrant County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Ronald Kirk (Aug. 15, 1994) (Texas)
Marion County	Section 5 objection letter	1994	Attorney General Objection	polling place location	Section 5 objection letter, Deval L. Patrick to James P. Finstrom (Apr. 18, 1994) (Texas)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
Midland County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to John Hannah, Jr. (May 9, 1994) (Texas)
Fort Bend County and Harris County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Ronald Kirk (May 31, 1994) (Texas)
Limestone County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to David M. Guinn (Jun. 13, 1994) (Texas)
Galveston Independent School District	case/litigation	1994	Settlement Agreement	vote dilution, polling place locations	Henderson, et al v. Galveston Independent, et al, Case No. 1994cv00144 (S. D. Tex, 1994)
Edna Independent School District	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Stuart Ishimaru to Arturo G. Michel (Aug. 22, 1994) (Texas)
Morton	Section 5 objection letter	1994	Attorney General Objection	language assistance	Section 5 objection letter, Kerry Scanlon to Paul Lyle (Sep. 12, 1994) (Texas)
San Antonio	Section 5 objection letter	1994	Attorney General Objection	language assistance	Section 5 objection letter, Deval L. Patrick to Lloyd Garcia (Oct. 21, 1994) (Texas)
Gonzalez County Underground Water Conservation District	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Mary Ann Wyatt (Oct. 31, 1994) (Texas)
Judton Independent School District	Section 5 objection letter	1994	Attorney General Objection	language assistance	Section 5 objection letter, Deval L. Patrick to Galen R. Eloff (Nov. 18, 1994) (Texas)

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Edwards Underground water District	Section 5 objection letter	1995	Attorney General Objection	problems at the polls	Section 5 objection letter, Deval L. Patrick to Sally Tamez-Salas (March 2, 1995) (Texas)
Karnes City	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Don Tymrac (Oct. 31, 1994) (Texas)
City of Boerne	case/litigation	1996	Settlement Agreement	vote dilution	League of United Latin American Citizens, District 19 v. City of Boerne et al; Case no. 5:96-cv-00808 (W.D. Tex 1996)
Sharyland Independent School District	case/litigation	1997	Dismissed after alleged violation addressed	vote dilution	League of United Lat, et al v. Sharyland ISD, et al, Case No. 1996cv00132 (S. D. Tex, 1996)
Galveston County	Section 5 objection letter	1998	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to Barbara E. Roberts (Dec. 14, 1998) (Texas)
Lamesa	Section 5 objection letter	1999	Attorney General Objection	deannexation	Section 5 objection letter, Bill Lann Lee to Robert Gorsline (Jul. 16, 1999) (Texas)
Sealy Independent School District	Section 5 objection letter	2000	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to David Mendez (Jun. 5, 2000) (Texas)
Haskell Consolidated Independent School District	Section 5 objection letter	2001	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd to Cheryl T. Mehl (Sept. 24, 2001) (Texas)
Schleicher County Independent School District	case/litigation	2002	Final Order	vote dilution	Belman, et al v. Schleicher Co ISD, et al., Case No. 6:2002cv00022 (N.D. Tex. 2002).

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Waller County	Section 5 objection letter	2002	Attorney General Objection	redistricting	Section 5 objection letter, J. Michael Wiggins to Denise Nance Pierce (Jun. 21, 2002) (Texas)
Freeport	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, J. Michael Wiggins to Wallace Shaw (Aug. 12, 2002) (Texas)
Bexar County	case/litigation	2003	Preliminary Injunction	vote dilution	M Hernandez Chapter v. Bexar County, et al Case No. 5:03-cv-00816-WRF (W.D. Tex. 2003)
Yorktown City Council	case/litigation	2003	Dismissed after alleged violation addressed	failure to obtain section 5 preclearance	Perez v. City of Yorktown, The, et al, Case No. 2003-cv-029 (S.D. Tex. 2003)
Waller County	case/litigation	2004	Settlement Agreement	other barriers to voter registration	Prairie View Chapter, et al v. Kitzman, Case No. 2004cv00459 (S. D. Tex. 2004)
Bexar County	case/litigation	2005	Final Order	polling place locations	American GI Forum, et al v. Bexar County, et al, Case No. 5:04-cv-00181-FB (W.D. Tex. 2004)
Ector County	case/litigation	2005	Consent Decree	language assistance	United States, et al v. Ector County, Texas, et al, Case No. 7:05-cv-00131-RAJ (W.D. Tex. 2005)
Hale County, TX	case/litigation	2006	Consent Decree	language assistance	United States of America v. Hale County, Texas et al., Case No. 5:2006cv00043 (N.D. Tex. 2006).
North Harris Montgomery Community College District	Section 5 objection letter	2006	Attorney General Objection	polling place location	Section 5 objection letter, Wan J. Kim to Renee Smith Byas (May 5, 2006) (Texas)

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Brazos County	case/litigation	2006	Consent Decree	language assistance	The United States Of America v. Brazos County, Texas et al, Case No. 2006cv02165 (S. D. Tex. 2006)
North Harris Montgomery Community College District	case/litigation	2006	Settlement Agreement	problems at the polls	The United States Of America v. North Harris Montgomery Community College District et al, Case No. 2006-cv-02488 (S. D. Tex. 2006)
Amarillo College District	case/litigation	2006	Dismissed after alleged violation addressed	vote dilution	Bosquez et al v. Amarillo College District, Case No. 2:2005cv00323 (N.D. Tex. 2006).
Dallas Independent School District	case/litigation	2006	Dismissed after alleged violation addressed	vote dilution	Villegas, et al v. Dallas Independent S, et al., Case No. 3:2002cv00858 (N.D. Tex. 2006).
Bexar Metropolitan Water District	case/litigation	2007	Preliminary Injunction	vote dilution	Rios v. Bexar Metro. Water, et al - Case no. 5:96-cv-00335 (W.D. Tex 1996)
The City of Amarillo, TX	case/litigation	2007	Settlement Agreement	vote dilution	Bosquez et al v. City of Amarillo, TX, Case No. 2:2005cv00324 (N.D. Tex. 2007).
Galveston County	case/litigation	2007	Consent Decree	language assistance; problems at the polls	United States v. Galveston County, Case No. 07-cv-00377 (S.D. Tex. 2007)
City of Hondo, Texas	case/litigation	2007	Dismissed after alleged violation addressed	1) vote dilution; (2) language assistance	Garcia, et al v. City of Hondo, Texas, Case No. 09-cv-00394 (W.D. Tex.2007)
Littlefield Independent School District	case/litigation	2007	Consent Decree	language assistance	United States of America v. Littlefield Independent School District et al., Case No. 5:2007cv00145 (N.D. Tex. 2007).

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
Post Independent School District	case/litigation	2007	Consent Decree	language assistance	United States of America v. Post Independent School District et al., Case No. 5:2007cv00146 (N.D. Tex. 2007).
Seagraves Independent School District	case/litigation	2007	Consent Decree	language assistance	United States of America v. Seagraves Independent School District et al., Case No. 5:2007cv00147 (N.D. Tex. 2007).
Smyer Independent School District	case/litigation	2007	Consent Decree	language assistance	United States of America et al v. Lewis, Case No. 5:2007cv00148 (N.D. Tex. 2007).
City of Earth	case/litigation	2007	Consent Decree	language assistance	United States of America v. City of Earth, Texas et al., Case No. 5:2007cv00144 (N.D. Tex. 2007).
Engelman Irrigation District	case/litigation	2008	Final Order	other barriers to voter registration	Shields et al v Engelman Irrigation District et al, Case No. 08-cv-00116 (S.D. Tex. 2008)
Waller County	case/litigation	2008	Consent Decree	other barriers to voter registration	UNITED STATES DEPARTMENT OF JUSTICE v. Waller County et al, Case No. 18-cv-03022 (S.D. Tex. 2008)
Dumas Independent School District	case/litigation	2008	Dismissed after alleged violation addressed	vote dilution	League of United Latin American Citizens, Statewide v. Dumas Independent School District et al., Case No. 2:1993cv00154 (N.D. Tex. 2008).
Gonzales County	Section 5 objection letter	2009	Attorney General Objection	language assistance; problems at the polls	Section 5 objection letter, Loretta King to Robert T. Bass (March 24, 2009) (Texas)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
Fort Bend County	case/litigation	2009	Consent Decree	language assistance; other barriers to voter registration; problems at the polls	United States of America v. Fort Bend County, Texas, Case No. 09-cv-01058 (S.D. Tex. 2009)
Texas Democratic Party and State of Texas	case/litigation	2009	Dismissed after alleged violation addressed	vote dilution	LULAC of Texas et al v. State of Texas et al, Case 08-cv-00389 (W.D. Tex.2007)
City of Irving	case/litigation	2010	Final Order	vote dilution	Benavidez v. The City of Irving, Texas et al., Case No. 3:2007cv01850 (N.D. Tex. 2010).
Runnels County	Section 5 objection letter	2010	Attorney General Objection	language assistance; problems at the polls	Section 5 objection letter, Thomas E. Perez to Elsa Ocker (Jun. 28, 2010) (Texas)
Val Verde County Clerk, Val Verde County and State of Texas	case/litigation	2010	Dismissed after alleged violation addressed	vote dilution	LULAC of Texas et al, Case No. :10-cv-00058 (W.D. Tex. 2010)
Dallas County, Texas	case/litigation	2011	Dismissed after alleged violation addressed	Problems at polls	Texas Democratic Party v. Dallas County, Case No. 3:2008cv02117 (N.D. Tex. 2011).
Board of Directors for Garza County Hospital District	case/litigation	2011	Consent Decree	vote dilution	Tobias, et al v. Garza County Hospital, et al,5:2000-cv-00293, (N.D. Tex. 2000).
Galveston County	Section 5 objection letter	2011	Attorney General Objection	language assistance; problems at the polls	Section 5 objection letter, Thomas E. Perez to C. Robert Heath (Oct. 3, 2011) (Texas)
Medina County	case/litigation	2011	Final Order	vote dilution	Vasquez-Lopez et al v. Medina County, Texas et al, Case 5:11-cv-00945 (W.D. Tex. 2011)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
Nueces County	Section 5 objection letter	2012	Dismissed after alleged violation addressed	vote dilution	No. 11-1784 (D.D.C. 2011)
Galveston County	Section 5 objection letter; case/litigation	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to James E. Trainor III (March 5, 2012) (Texas); Galveston County, Texas v. United States of America et al., Case No. 11-1837 (D.D.C. 2011)
Galveston County	case/litigation	2012	Preliminary Injunction	vote dilution	Petteway, et al. v. Galveston County, Texas, et al., Case No. 2011cv00511 (S.D. Tex 2011)
Beaumont Independent School District, Jefferson County	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Melody Thomas Chappell (Dec. 21, 2012) (Texas)
City of Farmers Branch	case/litigation	2013	Dismissed after alleged violation addressed	vote dilution	Fabela et al v. City of Farmers Branch Texas et al., Case No. 3:2010cv01425 (N.D. Tex. 2013).
Beaumont Independent School District, Jefferson County	Section 5 objection letter	2013	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Melody Thomas Chappell (Apr. 8, 2013) (Texas)
Lone Star College System District	case/litigation	2013	Consent Decree	vote dilution	Hubbard et al v. Lone Star College System et al, Case No. 2013cv01635 (S.D. Tex 2013)
Irving Independent School District	case/litigation	2014	Final Order	vote dilution	Benavidez v. Irving Independent School District et al., Case No. 3:2013cv00087 (N.D. Tex. 2014).
Grand Prairie Independent School District	case/litigation	2014	Settlement Agreement	vote dilution	Rodriguez v. Grand Prairie Independent School District et al., Case No. 3:202013cv01788 (N.D. Tex. 2014).

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination (1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	Reference
City of Pasadena	case/litigation	2017	Final Order	vote dilution	Patino et al v. City of Pasadena et al, Case No. 2014cv03241 (S.D. Tex. 2014)
Hereford Independent School District	case/litigation	2018	Settlement Agreement	vote dilution	Gamez v. Hereford Independent School District et al., Case No. 2:1995cv00028 (N.D. Tex. 2018).
Richardson Independent School District	case/litigation	2019	Settlement Agreement	vote dilution	Tyson v. Richardson Independent School District et al., Case No. 3:2018cv00212 (N.D. Tex. 2019).
UTAH					
San Juan County	case/litigation	2016	Final Order	vote dilution	Navajo Nation et al v. San Juan Cty., 929 F.3d 1270 (10th Cir. 2019) (affirming the district court); Navajo Nation et al v. San Juan Cty., 162 F. Supp. 3d 1162 (D. Utah 2016); Navajo Nation v. San Juan Cty., 266 F. Supp. 3d 1341 (D. Utah 2017); Navajo Nation v. San Juan Cty., 2:12-cv-39, 2017 U.S. Dist. LEXIS 211230 (D. Utah Dec. 21, 2017)
San Juan County	case/litigation	2018	Settlement Agreement	language assistance; polling place location	Navajo Nation Human Rights Commission et al v. San Juan Cty. et al, 215 F. Supp. 3d 1201 (D. Utah 2017); Id. Case No. 2:16-cv-154, 2017 U.S. Dist. LEXIS 145158 (D. Utah Sept. 7, 2017); 2:16-cv-154, Dkt. No. 198 (D. Utah Feb. 20, 2018)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				(1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	
VIRGINIA					
Statewide	case/litigation	1997	Final Order	vote dilution	Moon v. Meadows, 952 F. Supp. 1141 (E.D. Va.), aff'd, 521 U.S. 1113, 117 S. Ct. 2501 (1997), and aff'd sub nom. Harris v. Moon, 521 U.S. 1113 (1997)
Statewide	case/litigation	2015	Final Order	racial gerrymandering	Page v. Virginia State Bd. Of Elections, No. 3:13CV678, 2015 WL 3604029, at *1 (E.D. Va. June 5, 2015)
Statewide	case/litigation	2018	Final Order	racial gerrymandering	Bethune-Hill v. Virginia State Bd. of Elections, 326 F. Supp. 3d 128 (E.D. Va. 2018), appeal dismissed sub nom. Virginia House of Delegates v. Bethune-Hill, 139 S. Ct. 1945 (2019)
City of Newport News, VA	case/litigation	1994	Consent Decree	vote dilution	U.S. v. City of Newport News, No. 4:94-cv-00155 (E.D. Va. 1994)
Dinwiddie County, VA	Section 5 objection letter	1999	Attorney General Objection	polling place locations	Section 5 objection letter, Bill Lann Lee to Benjamin W. Emerson (Dec. 27, 1999) (Virginia)
Northhampton County, VA	Section 5 objection letter	2001	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to James E. Trainor III (Sept. 28, 2001) (Virginia)
Northhampton County, VA	Section 5 objection letter	2001	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to James E. Trainor III (Sept. 28, 2001) (Virginia)
Pittsylvania County, VA	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to William D. Sleeper (Apr. 29, 2002) (Virginia)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination	Reference
				(1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other	
Cumberland County, VA	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to Darvin Satterwhite (July 9, 2002) (Virginia)
Northhampton County, VA	Section 5 objection letter	2003	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to Bruce D. Jones, Jr. (May 19, 2003) (Virginia)
Northhampton County, VA	Section 5 objection letter	2003	Attorney General Objection	vote dilution	Section 5 objection letter, J. Michael Wiggins to Bruce D. Jones, Jr. (Oct. 21, 2001) (Virginia)
WASHINGTON					
Yakima County	case/litigation	2004	Consent Decree	language assistance	United States v. Yakima County, No. CV-04- 3072-LRS (E.D. Wash. 2004)
City of Yakima	case/litigation	2014	Final Order	vote dilution	Montes v. City of Yakima: https://aclu-wa.org/file/99782/download?token=OWBlvKUP
City of Pasco	case/litigation	2016	Consent Decree	vote dilution	Glatt v. City of Pasco: https://www.aclu-wa.org/file/101908/download?token=oHPP3kU5
WISCONSIN					
Statewide	case/litigation	2012	Final Order	vote dilution	Baldus v. Members of Wisconsin Gov't Accountability Board, 849 F.Supp.2d 840 (E.D. Wis 2012)
WYOMING					
Fremont County	case/litigation	2010	Final Order	vote dilution	Large v. Fremont County, Wyo., 709 F. Supp. 2d 1176 (D. Wyo. 2010)



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Voting Cases the Lawyers' Committee for Civil Rights Under Law Has Participated in Since the Decision in Shelby County v. Holder

- *A. Philip Randolph Inst. of Ohio v. LaRose*, No. 1:20-CV-01908, 493 F. Supp. 3d 596 (N.D. Ohio Oct. 6, 2020), *stayed*, 831 Fed. App'x 188 (6th Cir. 2020). The Lawyers' Committee and co-counsel filed suit in the Northern District of Ohio on August 26, 2020, representing Ohio APRI, the League of Women Voters of Ohio, the Ohio NAACP, and a number of individual Plaintiffs in a challenge against Ohio Secretary of State Frank LaRose's Directive prohibiting any county to install more than one secure ballot drop box for the 2020 general election. The district court denied Plaintiffs' preliminary injunction and the case was dismissed without prejudice. On October 6, 2020, Secretary LaRose issued another directive authorizing county election board staff to collect absentee ballots off-site. Plaintiffs filed a motion for reconsideration based on the Secretary's favorable interpretation of the Directive. The district court granted the motion for reconsideration, and entered a preliminary injunction, which was stayed by Sixth Circuit on October 9. The case was voluntarily dismissed with prejudice, but without costs on October 22, 2020.
- *Abbott v. Perez*, 138 S. Ct. 2305 (2018). The Lawyers' Committee, Campaign Legal Center, and NAACP Legal Defense & Educational Fund filed a brief as amici curiae with the Supreme Court on April 4, 2018, requesting that the Court affirm the judgment of a three-judge panel of the United States District Court for the Western District of Texas, which had found that Texas's 2013 statewide redistricting maps unlawfully furthered and maintained purposeful dilution of minority voting strength in Texas's 2011 maps. The Supreme Court ruled that the 2013 maps were valid, with except for one district, and that Texas' past discrimination was not sufficient to undermine the good faith presumption of a legislature in its redistricting.
- *Action NC, et al. v. Strach et al.*, No. 1:15-cv-1063 (M.D.N.C.). On December 15, 2015, the Lawyers' Committee and co-counsel representing three nonpartisan voter engagement organizations, Action NC, Democracy North Carolina and the North Carolina A. Philip Randolph Institute, and three individual Plaintiffs challenged North Carolina's failure to offer federally mandated voter registration services through motor vehicle and public assistance agencies under sections 5 and 7 of the National Voter Registration Act. The matter was resolved on June 25, 2018 when the parties reached a favorable settlement that required the agencies and the North Carolina Secretary of State to improve their voter registration forms, to provide assistance to individuals filling out voter registration forms (if needed) and to properly collect and transmit voter registration forms to election officials.
- *Ala. State Conf. of NAACP v. Alabama*, 264 F. Supp. 3d 1280 (M.D. Ala. 2017), *aff'd*, 949 F.3d 647 (11th Cir. 2020); 2020 WL 583803 (M.D. Ala., Feb. 5, 2020). The Lawyers' Committee and pro bono counsel brought an action on behalf of a civil rights organization and individual voters, claiming that Alabama's system of electing members of its three highest courts on the basis of statewide, at-large, elections diluted the votes of Black voters in violation of Section 2 of the Voting Rights Act of 1965. Defendants' motion to dismiss was denied by the district court, and its denial was affirmed by the Eleventh Circuit Court of Appeals. After trial, the district court entered judgment in favor of Defendants, finding that Plaintiffs had not met their burden of proving a Section 2

violation. After judgment, Alabama appealed to the Eleventh Circuit Court of Appeals to vacate its prior ruling that the doctrine of sovereign immunity did not bar this action, on the basis that the judgment in the case rendered the entire case moot. After the Eleventh Circuit declined to vacate the judgment, 806 F. App'x 975, Alabama petitioned the Supreme Court for a writ of certiorari, which was granted on May 17, 2021. The Supreme Court vacated the judgment and remanded the case to the Eleventh Circuit with instructions to dismiss the case as moot. (No. 20-1047, U.S. Supreme Court).

- *Alabama v. U.S. Dep't of Com.*, 396 F. Supp. 3d 1044 (N.D. Ala. 2019). This suit was filed by the State of Alabama and Congressman Mo Brooks, seeking a declaratory judgment that the Department of Commerce's Residence Rule that counted all persons residing in the United States on April 1, 2020, for purposes of the Census was unconstitutional. Specifically, the Plaintiffs allege that undocumented persons should not be counted in the census for purposes of apportionment of congressional seats and claim that Alabama will lose a congressional seat if they are counted. The Lawyers' Committee and pro bono counsel moved to intervene as Defendants on behalf of several Local Government Intervenors, and motions were granted on September 9, 2019. *Alabama v. U.S. Dep't of Com.*, 2018 WL 6570879 (N.D. Ala. Dec. 13, 2018); *Alabama v. U.S. Dep't of Com.*, 2019 WL 4260171 (N.D. Ala. Sept. 9, 2019). The district court denied certain of the Defendant and Defendant intervenors' motion to dismiss on the ground of lack of standing, *id.* at 396 F. Supp. 3d at 1044, and denied Plaintiffs' motion for a three-judge panel to be convened to adjudicate the case. *Alabama v. U.S. Dep't of Com.*, 493 F. Supp. 3d 1123 (N.D. Ala. 2020). After the Census Bureau issued its apportionment figures showing that Alabama would not lose a congressional seat as a result of the 2020 Census, the parties stipulated to voluntary dismissal of the action.
- *Bally, et. al. v. Gretchen Whitmer, et al.*, No. 1:20-cv-01088 (W.D. MI., filed Nov. 11, 2020). This was a lawsuit brought by four Michigan voters against the Governor of Michigan, Michigan Board of State Canvassers, the individual board members of the Michigan Board of State Canvassers, the Wayne County Board of Canvassers, individual members of the Wayne County Board of Canvassers, the Washtenaw County Board of Canvassers, individual members of the Washtenaw County Board of Canvassers, the Ingham County Board of Canvassers and individual members of the Ingham County Board of Canvassers seeking to exclude ballots cast in these counties in the certified election results. Plaintiffs alleged the exclusion of these votes was required because of alleged fraud and other irregularities in the Defendant counties. After the Lawyers' Committee and pro bono counsel filed a motion to intervene with the assistance of local counsel, and the court ordered the Plaintiffs to file a response to said motion, the Plaintiffs chose instead to file a voluntary dismissal on November 16, 2020.
- *Arctic Vill. Council v. Meyer*, No. 3AN-20-07858CI (AK. Superior Ct. 3rd Judicial Dist. Anchorage Oct. 5, 2020), *aff'd* sub nom. *Alaska v. Arctic Vill. Council*, S-17902 (AK. Supreme Ct. Oct. 12, 2020). Together with ACLU of Alaska, ACLU, and NARF, the Lawyers' Committee represented a tribe and several other Plaintiffs in a state constitutional challenge to Alaska's enforcement of the witness requirement for absentee ballots during the pandemic. The superior court granted Plaintiffs' preliminary injunction enjoining the state from enforcing its witness requirement for absentee ballots in the November general election and ordering the state to count unwitnessed absentee ballots.

The state appealed and after oral argument, the Alaska Supreme Court affirmed the district court's decision on October 12. The case is still pending.

- *Benisek v. Lamone*, 138 S. Ct. 1942 (2018). The Lawyers' Committee and pro bono counsel filed a brief on January 29, 2018 behalf of the NAACP, the Georgia State Conference of the NAACP, and individuals as amici curiae in support of neither party, in a case appealing the denial of a preliminary injunction against Maryland's implementation of its congressional districting maps. The case raised the issue of the justiciability of a claim of partisan gerrymandering, and the Lawyers' Committee's brief argued that such claims were justiciable, and provided an example from a case the Lawyers' Committee was litigating in Georgia as to the nature of the proofs that could be elicited in such a case. The Supreme Court did not reach the issue of justiciability, but affirmed the denial of the preliminary injunction motion on equity grounds.
- *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788 (2017). This case arose from the redistricting of 12 Virginia legislative districts after the 2010 Census. Plaintiffs, who were voters residing in each of the challenged districts, alleged the redistricting plan constituted an unlawful racial gerrymander. On September 14, 2016, the Lawyers' Committee and pro bono counsel filed an amicus curiae brief in support of neither party which focused upon the confusing nature of the lower court's holdings, which appeared to conflate the predominance inquiry for triggering strict scrutiny with the narrow tailoring inquiry for a district already subject to strict scrutiny. The Supreme Court affirmed the district court majority decision as to one district, but vacated and remanded to the district court with respect to the remaining 11 districts.
- *Brnovich, et al. v. Democratic National Committee, et al.*, Nos. 19-1257 and 19-1258 (U.S. Supreme Ct., Jan. 20, 2021). The Lawyers' Committee, the NAACP, and pro bono counsel filed a brief as amici curiae in the appeal from a decision of the Ninth Circuit Court of Appeals, sitting en banc, which had ruled that Arizona's laws prohibiting out-of-precinct voting and the collection of absentee ballots by other than family members constituted racial discrimination in violation of Section 2 of the Voting Rights Act. This is the first case in decades taken by the Court in a Section 2 vote denial case, and the petitioners have argued that the Court should change settled standards for adjudication of such claims, specifically that Section 2 should apply only to voter "qualification" laws/ We and the NAACP have urged the Court not to abandon the established standard, because to do so would thwart the goals of the Fifteenth Amendment and the plain language of the Act and Congress's intent. The case is awaiting decision.
- *Brooks v. Mahoney*, No. 4:20-cv-00281-RSB (S.D. Ga.). The Lawyers' Committee and pro bono counsel filed a motion to intervene on behalf of the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, James Woodall, Helen Butler, and Rev. Melvin Ivey in this action seeking to stop the certification of the November 2020 presidential election. The Plaintiffs alleged various electoral irregularities occurred in eight Democratic and predominantly-minority counties surrounding absentee ballots. The Plaintiffs filed the action on November 12, 2020 and voluntarily dismissed the case on November 16, 2020, before any action had occurred in the case.
- *City of San Jose v. Ross*, 18-cv-02279 (N.D. Cal. filed Apr. 17, 2018) (consolidated with *California v. Ross*, No. 18-cv-01865). The Lawyers' Committee and co-counsel filed suit on behalf of the City of San Jose, California and the Black Alliance for Just Immigration, challenging the decision by Secretary of Commerce Wilbur Ross to add a citizenship

question to the 2020 Census. The case was consolidated with a similar case brought by the State of California. Defendants' first motion to dismiss was denied, 362 F. Supp. 3d 727 (N.D. Cal. 2018), as was their motion for summary judgment and Plaintiffs' partial motion for summary judgment, 362 F. Supp. 3d 749 (N.D. Cal. 2018). The matter proceeded to trial after the district court denied Defendants' motion in limine to exclude certain witnesses, 2019 WL 1975437 (N.D. Cal. Jan. 4, 2019). After trial, the district court issued a decision enjoining the addition of the citizenship question on the grounds that it violated the Enumeration Clause of the Constitution and the Administrative Procedure Act. 358 F. Supp. 3d 965 (N.D. Cal. 2019). Defendants filed a petition for certiorari with the U.S. Supreme Court and the Court granted the petition, vacated the judgment, and remanded the case to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Dep't of Com. v. New York*, 139 S. Ct. 2551 (2019), where the Court had found that the decision to add the citizenship question to the Census violated the Administrative Procedure Act. The Ninth Circuit dismissed Defendants' appeal on July 30, 2019. *City of San Jose v. Ross*, 2019 WL 4273890 (9th Cir. July 30, 2019).

- *City of San Jose, et al. v. Donald J. Trump, et al.*, No. 5:20-5167 RRC-LHK-EMC, 497 F. Supp. 3d 680 (N.D. Cal. 2020), judgment vacated and remanded, 141 S. Ct. 1231 (2020). The Lawyers' Committee and co-counsel filed suit, claiming that President Trump's Executive Memorandum seeking to exclude undocumented persons from the apportionment count resulting from the 2020 Census violated the Census Act, and the Enumeration Clause and Fourteenth Amendment to the U.S. Constitution. A three-judge court granted Plaintiffs' motion for summary judgment, and denied Defendants' motion to dismiss. The Defendants appealed the decision to the Supreme Court. In a decision in a separate case on the same issues, *Trump v. New York*, 141 S. Ct. 530 (2020), the Supreme Court determined that Plaintiffs lacked standing because their injuries were not ripe. Just over a week later, the Supreme Court dismissed the Lawyers' Committee case on similar grounds.
- *Collins, et al. v. Adams, et al.*, No. 3:20-00375 CRS (W.D. Ky. 2020). The Lawyers' Committee and co-counsel filed suit claiming that the Governor, Secretary of State, and the State Board of Elections had unduly burdened the constitutional right to vote by failing to make the following adjustments for the general election in November 2020 in light of the COVID-19 public health emergency: (1) waive implementation of the state's new photo identification requirement; (2) implement no-excuse absentee voting; and (3) implement several changes to election procedures that improve the accessibility of absentee voting. The Lawyers' Committee filed a motion for a preliminary injunction, but the state ultimately announced that it was all implementing most of the adjustments that Plaintiffs were seeking. As a result, the Plaintiffs agreed to voluntarily dismiss the case.
- *Common Cause Indiana v. Lawson*, No. 1:20-cv-01825 (S.D. Ind.), *preliminary injunction granted*, No. 120CV01825RLYTAB, 488 F. Supp. 3d 724 (S.D. Ind. 2020), *reversed*, 978 F.3d 1036 (7th Cir. 2020). The Lawyers' Committee and co-counsel represented Plaintiff organizations challenging provisions restricting state court standing to bring action to extend poll hours and limiting available judicial remedies as an undue burden on the right to vote, a violation of procedural due process, and a violation of the Supremacy Clause. The district granted a preliminary injunction granted but the order was stayed and summarily reversed by Seventh Circuit. The case has been dismissed.

- *Common Cause Indiana and Indiana State Conference of the NAACP v. Lawson*, No. 1:20-cv-02007 (S.D. Ind.), *preliminary injunction granted*, 490 F. Supp. 311 (S.D. Ind. 2020), *reversed*, 977 F.3d 663 (7th Cir. 2020). The Lawyers' Committee and co-counsel represented Plaintiff organizations challenging a noon Election Day mail ballot receipt deadline as an undue burden on the fundamental right to vote during COVID-19 pandemic. The district court granted a preliminary injunction but the order was stayed and summarily reversed by Seventh Circuit.
- *Common Cause N.Y. v. Brehm*, 432 F. Supp. 3d 285 (S.D.N.Y. 2020). The Lawyers' Committee and co-counsel represented Common Cause New York in a successful challenge to a New York statute that required keeping inactive voters' names out of poll books on Election Day. The Plaintiffs brought the case in 2017 and the district court dismissed Plaintiffs' facial claim under the National Voter Registration Act. *Common Cause N.Y. v. Brehm*, 344 F. Supp. 3d 542 (S.D.N.Y. 2018). A full trial on the merits was held in October of 2019. In January of 2020, District Court Judge Allison J. Nathan held that the New York State imposed an unconstitutional burden on the fundamental right to vote and that the statute violated the National Voter Registration Act as applied to particular voters disenfranchised in recent elections. The district court permanently enjoined New York's prohibition on including inactive voters' names in poll books but held that inactive voters would have to continue casting provisional ballots, which would then automatically be counted.
- *Cook County Republican Party v. Pritzker, et al.*, 487 F. Supp. 3d 305 (N.D. Ill.). The Lawyers' Committee and co-counsel filed an amicus brief on behalf of voting rights and racial justice organizations in opposition to Plaintiff political party's motion for preliminary injunction challenging expanded access to mail voting during COVID-19 pandemic. The brief argued temporary measures expanding and encouraging voting by mail were justified by public interest in voting safely during pandemic, and that Plaintiff's allegation that these measures would lead to fraud were speculative and unsupported. The court denied Plaintiff's motion for preliminary injunction.
- *Cooper v. Harris*, 581 U.S. ---, 137 S. Ct. 1455 (2017). On October 19, 2016, the Lawyers' Committee and pro bono counsel filed a brief as amicus curiae on its own behalf, in support of the appellees, who had challenged North Carolina's congressional redistricting as including two districts that had been racially gerrymandered in violation of the Fourteenth Amendment. The brief argued that the Court had settled standards to apply in racial gerrymander cases; that, under those standards, the redistricting was subject to strict scrutiny; and that it did not pass muster under that test. The Supreme Court affirmed the decision of the three-judge panel of the United States District Court for the Middle District of North Carolina, giving deference to the lower court's fact-finding, and ruling that the lower court's decision that race was the predominant factor in drawing the two districts in question as majority-minority districts was not clearly erroneous.
- *Curling v. Raffensperger*, 397 F. Supp. 3d 1334 (N.D. Ga. 2019) (granting 2019 preliminary injunction motion). The Lawyers' Committee entered this case in the summer of 2019, about a year after the case had been filed, representing the Coalition for Good Governance and four voters challenging two voting systems employed statewide in Georgia. The district court granted Plaintiffs' motion for a preliminary injunction, enjoining Georgia officials from using the DRE voting machines after January 1, 2020.

The district court ordered additional relief including implementation of a hand-marked paper ballot pilot program, a plan for using paper ballots as backup in case electronic voting machines falter, and a plan for using paper ballots as a backup to electronic poll books. The Plaintiffs continued the case after Georgia officials scrapped the DRE voting machines and instituted Dominion Ballot Marking Devices, although the Lawyers' Committee ceased active participation in summer 2020 and eventually filed a motion to withdraw as counsel, which was granted in December 2020. The Plaintiffs filed successive preliminary injunction motions in 2020, which the district court largely rejected, but did grant narrow relief on two occasions; the Eleventh Circuit stayed one of those orders prior to the November 2020 election. *Curling v. Raffensperger*, 491 F. Supp. 3d 1289 (N.D. Ga. Sept. 28, 2020) (requiring the Secretary of State to generate and transmit an updated hard copy electors list to each county election superintendent at the close of absentee in-person early voting, to be available as a backup in case the electronic poll books fail), *stayed by Curling v. Sec'y of State for Ga.*, 2020 WL 6301847 (11th Cir. Oct. 24, 2020); see also *Curling v. Raffensperger*, 493 F. Supp. 3d 1264 (N.D. Ga. Oct. 11, 2020) (granting a preliminary injunction in part and finding that "the modified scanner settings may well still result in the rejection of valid votes and ballots falling through the identified crack in the system by failing to flag visibly clear voter marks for adjudication by a review panel"). Both preliminary injunction orders are currently before the Eleventh Circuit, but the Lawyers' Committee is no longer counsel.

- *Dep't of Com. v. New York*, 139 S. Ct. 2551 (2019). On April 1, 2019, the Lawyers' Committee and pro bono counsel filed a brief for the City of San Jose and the Black Alliance for Just Immigration as amici curiae in Support of Respondents in a case arising from the Southern District of New York, challenging the decision of the Secretary of Commerce to add a citizenship question to the 2020 Census. As noted elsewhere in this report, the Lawyers' Committee was representing these parties in a similar case in the Northern District of California. The Supreme Court ruled that the decision to add the citizenship question violated the Administrative Procedure Act.
- *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-cv-02078, 2020 WL 6821992 (M.D. Pa. Nov. 21, 2020), *aff'd*, 830 Fed. App'x. 377 (3d Cir. Nov. 27, 2020). The Lawyers' Committee and co-counsel represented Defendant-Intervenors the Black Political Empowerment Project, Common Cause Pennsylvania, League of Women Voters of Pennsylvania, NAACP Pennsylvania State Conference, and eight impacted voters in opposition to the Trump Campaign's attempt to overturn the November 2020 presidential election results in Pennsylvania. In an amended version of the lawsuit filed on November 15, 2020, the Trump campaign asked the court to order the Department of State to not certify its presidential election results because some counties contacted and permitted voters to fix mistakes with their mail ballot declarations while others did not. After hearing argument on Defendants' motion to dismiss, the district court dismissed the case on November 21, saying that "this Court has been presented with strained legal arguments without merit and speculative accusations... unsupported by evidence." The Trump Campaign appealed immediately to the Third Circuit, which affirmed the district court's dismissal of the case.
- *Donald J. Trump For President, Inc. v. Boockvar*, 493 F. Supp. 3d 331 (W.D. Pa. Oct. 10, 2020). The Lawyers' Committee and co-counsel represented Defendant-Intervenors NAACP Pennsylvania State Conference, Common Cause, and the League of Women

Voters of Pennsylvania in this action brought by the Trump Campaign alleging federal and state constitutional violations stemming from Pennsylvania's implementation of a mail-in voting plan for the November 2020 general election. The Plaintiffs sought emergency relief but, on August 23, 2020, the Court found that *Pullman* abstention applied due to unsettled questions of state law being litigated in the *Pennsylvania Democratic Party v. Boockvar* case. Proceedings continued after the Pennsylvania Supreme Court ruled in the *Pennsylvania Democratic Party* case and the parties filed cross motions for summary judgment. On October 10, 2020, the Court granted Defendants' summary judgment motion. The court found that the use of absentee ballot drop boxes is constitutional, that the Secretary's guidance that mail-in ballots should not be rejected where the voter's signature does not match the one on file is constitutional, and that Pennsylvania's restriction on poll watchers to residents of that county is constitutional.

- *Donald J. Trump, et al., v. Jocelyn Benson, et al.*, No. 1:20-cv-01083, ECF 1 (W.D. MI. Nov. 11, 2020). This was a lawsuit filed by the Donald Trump campaign and seven Michigan voters on November 11, 2020 seeking to enjoin the Michigan State Board of Canvassers and the Wayne County Board of Canvassers from certifying the November 3, 2020 presidential election results based upon claims of fraud and other irregularities. On November 13, 2020, the Lawyers' Committee, with the assistance of pro bono counsel, filed a motion to intervene as Defendants on behalf of the Michigan State Conference of the NAACP, Wendell Anthony, Yvonne White and Andre Wilkes. On November 17, 2020, the Court granted the motion to intervene filed by the Lawyers' Committee as well as motions filed by the Democratic Party and the City of Detroit. Subsequently, the Democratic Party Plaintiffs filed a motion to dismiss. The Lawyers' Committee as well as other Defendant parties concurred in the motion to dismiss. On November 19, 2020, the Plaintiffs voluntarily dismissed their lawsuit.
- *Donald J. Trump for President, Inc. v. Montgomery County Board of Elections*, No. 2020-18680 (Montgomery Cty. Ct. of Common Pleas). The Lawyers' Committee and co-counsel filed an amicus brief on behalf of the Pennsylvania NAACP, Common Cause Pennsylvania, the Pennsylvania League of Women Voters, and the Black Political Empowerment Project opposing the Trump Campaign's November 5, 2020 petition for emergency relief. The Trump Campaign sought to invalidate approximately 600 absentee and mail-in ballots cast in the November 2020 election because the voters failed to fill out their address immediately below their signed declaration on the outer ballot envelope. On November 13, 2020, a Montgomery County Court of Common Pleas judge issued an order denying the Trump Campaign's petition and ordering that the absentee and mail-in ballots must be counted. The Trump Campaign filed a notice of appeal to the Commonwealth Court on November 17, 2020, which it withdrew the next day.
- *Donald J. Trump, Michael R. Pence and Donald J. Trump for President, Inc. v. Joseph R. Biden, et al.*, 2020 WI 91, 951 N.W.2d 568. Candidates and campaign appealed results of recount and determinations of county and state election officials and requesting relief including reversal of election officials' determinations to count certain ballots in certain counties. Lawyers' Committee and pro bono counsel filed motion to appear as amicus curiae on behalf of itself and Wisconsin NAACP in opposition to a challenge of vote counts in Dane and Milwaukee Counties. The case was dismissed and the results affirmed.

- *Feehan v. Wisconsin Elections Comm'n*, No. 20-CV-1771-PP, 2020 WL 7250219 (E.D. Wis. Dec. 9, 2020): Plaintiff Presidential Elector brought suit alleging that a massive transnational conspiracy altered the outcome of the 2020 presidential election and requesting relief including “de-certifying” election results and certifying for Plaintiffs’ preferred candidate. Lawyers’ Committee and pro bono counsel filed a brief as amicus curiae on behalf of Wisconsin NAACP in support of dismissal. The district court dismissed the case.
- *Gallardo v. State*, 236 Ariz. 84, 336 P.3d 717 (2014), The Arizona legislature passed a law that applied only to the Maricopa County Community College District and added two at-large members to what was previously a five-single district board. The legislature had submitted the change for Section 5 preclearance. The Department of Justice issued a more information letter based on concerns that the addition of two at-large members, in light of racially polarized voting in Maricopa County, would weaken the electoral power of minority voters on the board. After receiving the more information letter, Arizona officials did not seek to implement the change. Only after the *Shelby County* decision did they move forward, precipitating the lawsuit brought by the Lawyers’ Committee and its partners. We could not challenge the change under Section 2, especially because we would not have been able to meet the first *Gingles* precondition. Instead we made a claim in state court alleging that the new law violated Arizona’s constitutional prohibition against special laws because the board composition of less populous counties was not changed. Reversing the intermediate court of appeal, the Arizona Supreme Court rejected our argument, holding that the special laws provision of the state constitution was not violated. Unsurprisingly, the Latino candidate who ran for the at-large seat in the first election lost and the two at-large members are white.
- *Ga. Assoc. of Latino Elected Officials v. Gwinnett Cty. Bd. of Registrations and Elections*, No. 1:20-cv-1587-WMR, 2020 WL 6589661 (N.D. Ga. Oct. 5, 2020) (granting motion to dismiss). The Lawyers’ Committee and co-counsel represent the Georgia Association of Latino Elected Officials, Georgia Coalition for the People’s Agenda, Asian Americans Advancing Justice-Atlanta, New Georgia Project, Common Cause, and two individual voters in this lawsuit. The case challenges election officials’ provision of English-only election materials, including paper absentee ballot applications and online voter registration and absentee ballot application portals, to Gwinnett County voters under Sections 203 and 4(e) of the Voting Rights Act. The case arose prior to Georgia’s June 2020 primary election when the State mailed English-only absentee ballot applications to Gwinnett County voters. Plaintiffs filed a preliminary injunction motion, which the district denied on the merits on May 8, 2020. *See Ga. Assoc. of Latino Elected Officials v. Gwinnett Cty. Bd. of Registrations and Elections*, --- F. Supp. 3d ----, 2020 WL 2505535 (N.D. Ga. May 8, 2020). The Plaintiffs subsequently amended their complaint to identify a broader scope of English-only materials that election officials are providing to Gwinnett County voters. Defendants subsequently filed motions to dismiss, which the district court granted on October 5, 2020. Plaintiffs appealed the district court’s dismissal of the case to the Eleventh Circuit on December 5, 2020. The matter is fully briefed and awaiting argument.
- *Georgia Coalition for People’s Agenda v. Deal*, 214 F. Supp. 3d 1344 (S.D. Ga. 2016). The Lawyers’ Committee and pro bono counsel represented the Georgia State Conference of the NAACP, Georgia Coalition for the People’s Agenda, and Third Sector

Development, Inc. in a case challenging State and local officials' failure to extend the registration deadline in the greater Savannah area following Hurricane Matthew. The Plaintiffs brought a fundamental right to vote claim under the U.S. Constitution and a claim under the National Voter Registration Act. Plaintiffs sought a temporary restraining order and preliminary injunction and prevailed on their constitutional claim. As a result, the court ordered an extension of the registration deadline in Chatham County for the November 2016 election.

- *Georgia Republican Party, Inc., et al. v. Raffensperger, et al.*, No. 1:20-cv-05018-ELR, ECF 1 (N.D. Ga., December 10, 2020). This lawsuit was filed by the Georgia Republican Party, the National Republican Senate Committee and the Kelly Loeffler and David Perdue Senate campaigns, against Brad Raffensperger, the Georgia Secretary of State, the Georgia State Election Board and its individual Board members in their official capacities. The suit challenged the absentee ballot signature match process, and sought to enjoin modifications to the process resulting from a settlement reached in a federal voting rights lawsuit in March 2020. On December 16, 2020, the Lawyers' Committee and pro bono counsel successfully moved for leave to file an amicus brief on behalf of the Georgia Coalition for the People's Agenda and the Georgia State Conference of the NAACP in opposition to the Plaintiffs' motion for emergency injunctive relief. Ultimately, the Court denied relief to the Plaintiffs and dismissed the Plaintiffs' complaint from the bench on December 17, 2020. On December 18, 2020, the Plaintiffs filed a notice of appeal to the 11th Circuit Court of Appeals. However, the Plaintiffs voluntarily dismissed the appeal on January 4, 2021.
- *Ga. State Conf. of the NAACP v. DeKalb Cty. Bd. of Registration and Elections*, 484 F. Supp. 3d 1308 (N.D. Ga. 2020). The Lawyers' Committee and co-counsel represent the Georgia State Conference of the NAACP and the Georgia Coalition for the People's Agenda in an action brought under the National Voter Registration Act and the U.S. Constitution that challenges the Board of Election's purges of DeKalb County voters, including the removal of homeless voters. The challenges took place in late 2019, when the Lawyers' Committee sent the county an NVRA notice letter, and the lawsuit was filed in February of 2020. On September 2, 2020, the district court denied Defendants' motion to dismiss the lawsuit on standing and immunity grounds. The case is ongoing.
- *Georgia State Conference of the NAACP v. Emanuel Cty. Bd. of Comm'rs*, No. 6:16-cv-0021 (S.D. Ga. Oct. 24, 2016): The Lawyers' Committee represented Black Plaintiffs who brought a minority vote dilution claim under Section 2 of the Voting Rights Act concerning the map of Emanuel County School Board districts. The parties negotiated a settlement that resulted in the creation of two majority-minority single-member districts.
- *Georgia State Conference NAACP, et. al. v. Georgia, et, al.*, No. 1:17-cv-1397, 2017 WL 9435558 (N.D. Ga. May 4, 2017), *order granting preliminary injunction in part*; *Georgia State Conference of the NAACP, et. el. v. Kemp, et, al.*, No. 1:17-cv-1397, 2018 WL 2271244 (N.D. Ga. April 11, 2018), *order granting Plaintiffs' motion for attorneys' fees and costs in part*. On April 20, 2017, the Lawyers' Committee, with the assistance of pro bono counsel, filed a lawsuit in the United States District Court for the Northern District of Georgia in Atlanta on behalf of Plaintiffs the Georgia Coalition for the Peoples' Agenda, Asian Americans Advancing Justice-Atlanta, Inc., Georgia State Conference of the NAACP, Third Sector Development, Inc. (parent of the New Georgia Project), ProGeorgia State Table, Inc., and a Fulton County prospective voter. The suit alleged that

the voter registration deadline for federal runoff elections violated Section 8 of the National Voter Registration Act of 1993 and was preempted by federal law. The lawsuit was filed prior to a June 2017 runoff election for the Georgia Sixth Congressional District seat. Under Georgia law, the voter registration deadline for runoff elections required voters to register to vote by the 5th Monday prior to the original election leading to the runoff election in order to be eligible to vote in the runoff election. Under Section 8 of the National Voter Registration Act of 1993, Congress set a maximum voter registration deadline for elections in which a federal candidate was on the ballot and Georgia's runoff voter registration scheme violated the federally mandated maximum voter registration deadline in federal elections. On May 4, 2017, the Court granted almost all of the relief requested by Plaintiffs for the June 2017 runoff election and the prospective individual Plaintiff voter was able to successfully register to vote and voted in the Sixth Congressional District runoff election. Subsequently, the parties resolved the matter with a consent order in which the preliminary injunction entered by the Court was extended to apply to all federal runoff elections in Georgia in the future.

- *Georgia State Conference of NAACP v. Georgia*, 312 F. Supp. 3d 1357 (N.D. Ga. 2018) (denying the 2018 preliminary injunction motion). The Lawyers' Committee and pro bono counsel represented the Georgia State Conference of the NAACP and registered voters in Gwinnett and Henry Counties in a challenge to a 2015 mid-cycle redistricting plan. Plaintiffs alleged that the plan was a racial and partisan gerrymander drawn for the racially discriminatory purpose of preventing candidates supported by minority voters from being elected in two Georgia State House districts. A three-judge panel dismissed our Section 2 discriminatory purpose claim in response to the State's motion to dismiss on the basis that the protected districts were not majority-minority. See *Georgia State Conference of NAACP v. State of Georgia*, 269 F. Supp. 3d 1266 (N.D. Ga. 2017). The Plaintiffs then filed a preliminary injunction seeking emergent relief for the 2018 election cycle. The district court denied the preliminary injunction motion, holding that the Plaintiffs failed to establish a likelihood of success on the merits even though the "evidence that race predominated this redistricting process is compelling" and said there was evidence of partisan gerrymandering. The minority-preferred candidates then proceeded to win the 2018 general elections in both of the contested districts, causing the Plaintiffs to voluntarily dismiss the lawsuit shortly thereafter.
- *Georgia State Conference of the NAACP, et al. v. Gwinnett County Board of Registration and Elections, et al.*, No 1:16-cv-2852, 2017 WL 4250535 (N.D. Ga. 2017). On August 8, 2016, the Lawyers' Committee, along with pro bono counsel, filed a lawsuit on behalf of the Georgia State Conference of the NAACP, Georgia Association of Latino Elected Officials and seven Gwinnett County, Georgia-registered voters. The complaint alleged that the district boundaries for the Gwinnett County Board of Commissioners and the Gwinnett County Board of Education violated Section 2 of the Voting Rights Act of 1965, because they diluted the voting strength of minority voters. In May 2017, the District Court denied Defendants' motions to dismiss and rejected Gwinnett County's argument that claims under Section 2 of the Voting Rights Act are limited to members of a single minority group. Subsequently, Plaintiffs agreed to voluntarily dismiss the action after the 2018 mid-term elections when, after demographic changes in the county led minority candidates to win seats for the first time in the county's history on both the Gwinnett County Board of Education and Board of County Commissioners.

- Georgia State Conference of NAACP, et. al. v. Hancock County Board of Elections and Registration, et al.*, No. 5:15-cv-00414, 2018 WL 1583160 (M.D. Ga. 2018). On November 3, 2015, the Lawyers' Committee, along with pro bono co-counsel, filed a voting rights lawsuit in the United States District Court for the Middle District of Georgia in Macon against the Hancock County Board of Elections and Registration (BOER), five individual members of the BOER, and the Hancock County Supervisor of Elections alleging violations of Section 2 of the Voting Rights Act of 1965, Civil Rights Act of 1964, National Voter Registration Act of 1993 and United States Constitution. The Plaintiffs were the Georgia State Conference of the NAACP, the Georgia Coalition for the Peoples' Agenda, and five Black Hancock County voters. This action arose as a result of the challenging and purging of Black voters from the Hancock County voter registration list in advance of the November 3, 2015 City of Sparta municipal election by the majority white Hancock County BOER. After the suit was filed, the district court ordered that all eligible voters be restored to the rolls. The Lawyers' Committee was able to identify 19 such eligible voters (two of whom, unfortunately, had died in the interim). An additional 9 voters were identified as eligible, so long as they produced proof of county address when voting. The case was resolved by a Consent Order which required, among other things, the appointment by the Court of an independent Examiner to oversee the Defendants' compliance with the Consent Order. The monitoring of compliance with the Consent Order by the Examiner is ongoing.
- Georgia State Conference of the NAACP v. Kemp*, No. 2:16-CV-00219-WCO (N.D. Ga. 2016). The Lawyers' Committee and co-counsel filed suit on September 14, 2016 on behalf of the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda and Asian Americans Advancing Justice – Atlanta alleging that Georgia's exact-match voter registration verification scheme violates Section 2 of the Voting Rights Act of 1965 and denies eligible Georgians their fundamental right to vote under the First and Fourteenth Amendments to the United States Constitution. The complaint, filed in the United States District Court for the Northern District of Georgia, concerns Georgia's voter registration verification process as implemented administratively by the Georgia Secretary of State, which required all of the letters and numbers comprising the applicant's name, date of birth, driver's license number or last four digits of the Social Security number to exactly match the same letters and numbers for the applicant in the state's Department of Drivers Service or Social Security Administration databases. This process resulted in the cancellation of applications submitted by African American, Latino, and Asian American applicants at rates significantly higher than White applicants. Shortly before the 2016 general election, the parties reached an agreement that would allow applicants who were placed into pending status due to a matching discrepancy with their name, date of birth, Social Security or Driver's license numbers to show ID when they requested a ballot to resolve the issue. And the Defendant agreed to remove a deadline by which the applicants were required to cure a matching discrepancy. Subsequently, the parties reached a settlement in early 2017. Shortly after reaching this settlement, the Georgia General Assembly passed a new law codifying the exact match process. This led to the filing of a second lawsuit, *Georgia Coalition for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018). That lawsuit is ongoing.

- *Georgia Coalition for People’s Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018). This is the second “exact match” suit, filed by the Lawyers’ Committee and co-counsel after the Georgia General Assembly passed the new law, codifying the exact match process described above. As part of the exact match process, eligible Georgia citizens who held limited term Georgia driver’s licenses before they attained citizenship will also have their voter registration applications flagged as allegedly submitted by a potential non-citizen. Those applications are put into pending status and subject to cancellation after 26 months even though the applicant subsequently attained citizenship because Driver’s Services records are not routinely updated to reflect a change in citizenship status. In November 2018, the district court partially granted the Plaintiffs’ motion for a preliminary injunction that was focused upon the procedure employed for verifying citizenship at the polling place which resulted in an unreasonable burden on the right to vote. During the 2019 legislative session, the Georgia General Assembly substantially amended the 2017 law, mooting a significant part of the litigation addressing the exact match process relating to the verification of the identity of the applicant (i.e., matching discrepancies related to name, date of birth, driver’s license and Social Security records). Because the 2019 amendment did not change the defective citizenship match process, the litigation is now focused upon obtaining permanent relief enjoining the citizenship match process. This litigation is currently in the discovery phase.
- *Georgia State Conference of the NAACP, et al. v. Raffensperger*, No. 1:21-cv-01259-JPB (N.D. Ga., March 29, 2021). The Lawyers’ Committee and pro bono counsel filed suit challenging the implementation of SB 202, a law passed by the Georgia General Assembly, which establishes restrictions and limitations on several forms of voting and enhances the power of the State Board of Elections to the detriment of county boards. The new law, among other things, reduces the time in which voters may apply for absentee ballots, imposes new identification requirements for the submitting of absentee ballots, diminishes the utility of drop boxes by limiting their availability to the days and hours of early voting, prohibits mobile voting unless ordered by the Governor in response to an emergency, criminalizes line-warming (the practice of providing food and water to those waiting in line to vote), eliminates the Secretary of State’s vote on the State Board of Elections, and adds as Chair a person selected by the General Assembly, and grants the State Board to power to assume the powers of a county board the State Board deems is underperforming. The law was enacted in the wake of elections in 2020 and 2021 which saw voters of color continuing to make use of different methods of voting, and continuing the trend of their increasing political power in the State. The complaint alleges that SB 202 is intentionally discriminatory in violation of the 14th and 15th Amendments and Section 2 of the Voting Rights Act, has a discriminatory effect in violation of Section 2 of the Voting Rights Act, and violates the right to vote.
- *Gill v. Whitford*, 138 S. Ct. 1916 (2018). On September 5, 2017, the Lawyers’ Committee and pro bono counsel filed a brief on behalf of the Georgia State Conference of the NAACP, and individuals as amici curiae in Support of Appellees in a case challenging a partisan gerrymander in the State of Wisconsin. The brief argued that a claim of an illegal partisan gerrymander was justiciable. The Supreme Court did not reach the issue, but remanded the matter to give voters the opportunity to prove that they suffered concrete and particularized injuries.

- *Greater Birmingham Ministries v. Sec’y of State for Ala.*, 691 F.3d 1249 (11th Cir. 2020). On February 28, 2018, the Lawyers’ Committee, together with the ACLU, the ACLU of Alabama, and Campaign Legal Center, filed a brief as amici curiae in an appeal from the decision of the Northern District of Alabama, which had granted Defendants summary judgment on Plaintiffs’ claims that Alabama’s photo ID law violated Section 2 of the Voting Rights Act. 284 F. Supp. 3d 1253 (N.D. Ala. 2018). The brief argued that the district court had misapplied the legal standards in reaching its decision. The Eleventh Circuit affirmed the district court’s decision.
- *Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Reg. and Elections*, 446 F. Supp. 3d 1111 (N.D. Ga. 2020) (denying PI motion). The Lawyers’ Committee and pro bono counsel represented the Gwinnett County NAACP, Georgia State Conference of the NAACP, and the Georgia Coalition for the People’s Agenda in this lawsuit challenging the Gwinnett County Board of Commissioners’ decision to employ one countywide early voting location during the first week of early voting for the March 2020 primary election. The Board of Commissioners limited the number of locations in defiance of a request for additional locations from the Board of Elections. Plaintiffs brought a fundamental right to vote claim under the U.S. Constitution. The district court denied the Plaintiffs’ preliminary injunction motion on March 3, 2020, and the Plaintiffs dismissed the action shortly thereafter.
- *Hall, et al. v. Jones Cty., et al.*, No. 4:17-cv-18 (E.D.N.C, filed Feb. 3, 2017). The Lawyers’ Committee and pro bono counsel represented Black Plaintiffs who brought a minority vote dilution claim under Section 2 of the Voting Rights Act. The suit challenged the at-large method used to elect the five member Board of Commissioners (governing body) of Jones County, North Carolina. As a result of a favorable settlement reached in this case, the county board is now elected from seven single-member districts, two of which are majority-minority.
- *Hall v. Louisiana*, 884 F.3d 536 (5th Cir. 2018). The Lawyers’ Committee had entered this case mid-stream in 2015, when counsel for the Plaintiffs took ill at the outset of trial. Plaintiffs in the case had challenged the districting for election of judges to the city court as violating Section 2 of the Voting Rights Act. After trial, the district court entered judgment for Defendants. 108 F. Supp. 3d 419 (M.D. La. 2015). After the State changed the district lines on the day the district court ruled for Defendants, the case was declared moot, and Plaintiffs moved for vacatur of the judgment, which motion was denied by the district court. 2015 WL 5022568, August 24, 2018. Plaintiffs appealed the denial of their motion for vacatur. The Court of Appeals for the Fifth Circuit affirmed the denial.
- *Hamm v. Boockvar*, No. 600 M.D. 2020 (Pa. Commw. Ct.). The Lawyers’ Committee and co-counsel represented amici Pennsylvania NAACP, PA Common Cause, PA League of Women Voters, and Black Political Empowerment Project opposing a petition filed in the Pennsylvania Commonwealth Court by a U.S. House candidate, Pennsylvania State House candidate, and four voters. On November 3, 2020, the Petitioners sought a preliminary injunction barring Pennsylvania officials from permitting allegedly invalidly submitted absentee and mail-in ballots to be cured by the submission of provisional ballots. On November 6, 2020, the Commonwealth Court granted preliminary relief ordering that provisional ballots be segregated pending compliance with state procedures for determining the validity of the provisional ballots. The Court denied all other requests for relief and stayed the matter pending further order of the Court.

- *Hotze v. Hollins*, No. 4:20-cv-3709, 2020 WL 6437668 (S.D. Tex. Nov. 2, 2020), *aff'd*, 2020 WL 6440440 (5th Cir. Nov. 2, 2020). The Lawyers' Committee and pro bono counsel filed a motion to intervene as Defendants on behalf of the Texas State Conference of NAACP Branches, Common Cause Texas, and two individual absentee voters in an action brought by Harris County residents challenging local officials' use of drive-thru early voting locations for the November 2020 election. Plaintiffs brought Equal Protection Clause and Elections Clause claims seeking not only to shut down operational locations but also to invalidate thousands of ballots that had been cast at those locations during the early voting period. The Court ultimately granted Defendant individual voters' motions to intervene and dismissed the action due to a lack of standing on November 2, 2020. The Plaintiffs sought an emergency stay with the Fifth Circuit, which the Fifth Circuit denied. The Plaintiffs are continuing to pursue their appeal with the Fifth Circuit. The appeal is fully briefed and will be argued in early August.
- *Huerena v. Reagan*, No. CV2016-00789 (Ariz. Superior Court, Maricopa Cty. filed June 2, 2016). The Lawyers' Committee and pro bono counsel filed suit challenging the closing of polling places resulting in ordinally long wait times. The matter settled on October 19, 2016, with the County agreeing to develop a time reduction plan for the 2016 and 2020 general elections with the goal of not subjecting more than 5% of voters to a wait of more than an hour.
- *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018). On September 22, 2017, the Lawyers' Committee and pro bono counsel filed a brief as amici curiae on behalf of Rock the Vote, The Nuns on the Bus of Ohio, The Texas Civil Rights Project, and The Center for Media and Democracy in Support of Respondents, on an appeal to the Supreme Court from a decision of the Sixth Circuit Court of Appeals ruling that Ohio's Supplemental Process for removing voters from the rolls violated the National Voter Registration Act. The brief argued that Ohio's Supplemental Process violated the NVRA, failed to make a reasonable effort to remove ineligible voters from the rolls, and disproportionately disenfranchised minority voters. The Supreme Court reversed the decision of the Sixth Circuit, ruling that Ohio's Supplemental Process did not violate the NVRA.
- *Issa v. Newsom*, No. 2:20-cv-01044 (E.D. Cal. filed May 21, 2020); *Republican Nat'l Comm. v. Newsom*, No. 2:20-cv-01055 (E.D. Cal. filed May 24, 2020). The Lawyers' Committee and pro bono counsel represented Common Cause California and other organizations as amicus in two cases brought by Congressman Issa and the RNC challenging the Governor and Secretary of State of California under 42 U.S.C. § 1983, alleging violations of their First and Fourteenth Amendment rights, the Elections and Electors Clauses, and state law. Specifically, the Plaintiffs challenged the governor's Executive Order N-64-20, which authorized the Secretary of State to mail absentee ballots to every registered California voter to preserve the public health, arguing that changing the "time, place, and manner in which Californians" vote was unconstitutional. The Lawyers' Committee filed an amicus brief arguing in particular the disproportionate impact COVID-19 had on minority populations in California and the burden on the right to vote if Governor Newsom's Executive Order were to be lifted. The case was dismissed after the California legislature passed a new law that permitted the state to mail absentee ballots to all active, registered California voters.
- *Johnson, et. al., v. Benson, et. al.*, No. 20-cv-01098, 2020 WL 6733809 (W.D. MI. November 15, 2020). This was a lawsuit filed by two Michigan voters against Jocelyn

Benson, the Michigan Secretary of State, and Jeannette Bradshaw, the chair of the Michigan State Board of Canvassers, seeking to prevent the certification of the November 3, 2020 presidential election based upon claims of alleged fraud and other irregularities, including that the Secretary of State had allegedly illegally “flooded” the state with absentee ballot applications. After the Lawyers’ Committee, with the assistance of *pro bono* counsel, filed a motion to intervene as Defendants on behalf of the MI NAACP and three of its members, the Plaintiffs filed a voluntary dismissal; the motion to intervene was fully briefed or heard by the court.

- *Johnson v. Secretary of State*, --Mich--, 951 N.W.2d 310 (2020). On November 26, 2020, two Michigan voters who identified themselves as “Black Voices for Trump,” filed an original action in the Michigan Supreme Court seeking extraordinary *quo warranto* relief to delay or prevent certification of Michigan’s presidential election results based upon unfounded allegations of massive fraud and other baseless allegations of improprieties in the November 3, 2020 Michigan presidential election. The relief sought by the Plaintiffs included the seizure of ballots, ballot boxes and poll books; appointment of a special master or legislative committee to investigate claims of fraud related to the counting of absentee ballots at the TCF Center in Detroit, and an injunction preventing Gov. Gretchen Whitmer from certifying Michigan’s presidential election results. The Lawyers’ Committee and *pro bono* counsel were granted leave to file an amicus brief on behalf of the Michigan State Conference of the NAACP opposing the Plaintiffs’ *quo warranto* action. On December 9, 2020, the Michigan Supreme Court rejected the Plaintiffs’ demands for relief in a 4-3 Order of the Court in which the Court noted that it was denying relief “because the Court is not persuaded that it can or should grant the requested relief.”
- *Jones v. Boockvar*, No. 717 MD 2018 (Pa. Commw. Ct). The Lawyers’ Committee and co-counsel represented the American Civil Liberties Union of Pennsylvania and several individual Pennsylvania voters who cast absentee ballots in the November 2018 election that were rejected because election officials did not receive them by what was, at the time, the nation’s earliest absentee ballot return deadline (the Friday before Election Day). Plaintiffs brought this case shortly after the November 2018 election, raising claims under the Pennsylvania State Constitution as well as a fundamental right to vote claim under the U.S. Constitution. In 2019, after the motion to dismiss was fully briefed and argued, the Pennsylvania Legislature enacted Act 77, which not only pushed back the absentee ballot receipt deadline until the close of Election Day but also instituted no-excuse absentee voting in Pennsylvania for the first time. The Plaintiffs voluntarily dismissed the case following the passage of Act 77.
- *Justice for the Next Generation et al. v. Cole et al*, 1:20-cv-0998 (M.D.N.C., Nov. 2, 2020) (consolidated with *Allen et al v. City of Graham et al*, 1:20-CV-0997). The Lawyers’ Committee represents a racial justice and local community group and 13 individuals whom the Alamance County (North Carolina) Sheriff’s Office and the City of Graham Police Department violently dispersed with pepper spray and arrests on October 31, 2020. Plaintiff organizations had organized the “I am Change” March to the Polls in Graham on the last day of early voting and same-day voter registration in North Carolina, and three days before the November 2020 General Election. Individual Plaintiffs were injured when, without warning and before many marchers had risen to their feet after kneeling for 8 minutes and 46 seconds in memory of George Floyd, GPD officers began

yelling at them to “move” while spraying the marchers indiscriminately with pepper spray. Plaintiffs’ claims include Voting Rights Act Sec. 11(b), KKK Act conspiracy (§1985), First and Fourth Amendment as well as state law tort claim against the police chief, Sheriff, and certain personnel from each agency.

- *King, et al., v. Whitmer, et al.*, No. 2:20-cv-13134-LVP-RSW, 2020 WL 7134198 (E.D. MI, Dec. 7, 2020). This lawsuit was filed by Sidney Powell, L. Lin Wood and allied co-counsel on behalf of six Michigan voters against the Governor of Michigan, Gretchen Whitmer, the Michigan Secretary of State, Jocelyn Benson, and the Michigan Board of State Canvassers. The lawsuit alleged that the Michigan election results should not be certified and that the court should determine that Donald Trump won the election in Michigan. The Lawyers’ Committee, with the assistance of pro bono counsel, filed an amicus brief on behalf of the Michigan State Conference of the NAACP in opposition to the Plaintiffs’ motion for emergency injunctive and declaratory relief. On December 7, 2020, the District Court entered its opinion and memorandum denying the Plaintiffs’ motion for emergency relief. Plaintiffs filed a notice of appeal to the Sixth Circuit Court of Appeals from the denial of their motion for emergency relief on December 8, 2020. Plaintiffs also filed a petition for *certiorari* in the Supreme Court on December 11, 2020. On January 26, 2021, the Sixth Circuit ordered the voluntary dismissal of the appeal at the request of Plaintiffs’ counsel. Nevertheless, the Plaintiffs’ petition for *certiorari* is still pending in the United States Supreme Court, although the Court denied the Plaintiffs’ motion to expedite consideration of the petition on January 11, 2021. *King v. Whitmer*, No. 20-815, 2021 WL 78064 (S. Ct.). The Defendants subsequently filed motions for sanctions against Plaintiffs’ counsel which are still pending in the District Court.
- *Langenhorst, et al. v. Pecore, et al.*, 1:2020cv01701 (E.D. Wis.). Voters brought suit alleging violations of state election law in certain counties and requesting relief including excluding vote counts from certain counties. The Lawyers’ Committee and pro bono counsel moved to intervene on behalf of Michigan NAACP and individuals. The case was voluntarily dismissed.
- *Lawyers’ Comm. for Civil Rights Under Law v. Presidential Advisory Comm’n on Election Integrity*, 265 F. Supp. 3d 54 (D.D.C. 2017), *appeal voluntarily dismissed*, 2017 WL 6945782 (D.C. Cir. Dec. 20, 2017). The Lawyers’ Committee and pro bono counsel filed this suit, alleging that the Presidential Advisory Commission on Election Integrity violated the disclosure, notice, and reporting requirements of the Federal Advisory Committee Act. Its motion for a temporary restraining order and a preliminary injunction to require the Commission to hold an in-person meeting with public attendance and to disclose records before the meeting was denied by the district court. *Id.* at 265 F. Supp. 3d at 54. On August 30, 2017, the district court granted the Lawyers’ Committee’s motion to require the Commission to produce a Vaughn-type index of its documents. The Commission was disbanded, citing the effects of litigation. The Lawyers’ Committee voluntarily dismissed its appeal, previously filed, from the denial of its motion for a TRO and preliminary injunction. *Id.* at 2017 WL 6945782 at *1. The district court subsequently denied the Lawyers’ Committee’s motion to compel compliance with aspects of the order re the Vaughn-type index, because the Commission was defunct, and some of the documents sought were being produced in other litigation. 316 F. Supp. 3d 230 (D.D.C 2018).

- *Lawyers' Comm. for Civil Rights Under Law v. U.S. Dep't of Justice*, 2020 WL 7319365 (D.D.C. Oct. 16, 2020). The Lawyers' Committee and pro bono counsel sued the Department of Justice and the Department of Homeland Security under the Freedom of Information Act to obtain documents pertaining to the creation of the Presidential Advisory Commission on Election Integrity. On October 16, 2020, the U.S. Magistrate Judge issued his Report and Recommendation, recommending that DOJ's motion for summary judgment should be granted as to the adequacy of the office of Solicitor General's search as to DOJ's withholding of information under Exemption 5, denying both the Lawyers' Committee's and DOJ's motions for summary judgment without prejudice as to the adequacy of the Office of Information Policy's search; and denying without prejudice both as to the adequacy of the Homeland's Security search and as to its withholding of information pursuant to Exemptions 5 and 6. The district court has accepted the Magistrate's Report.
- *Lay v. Goins*, No. M2020-00832-SC-RDM-CV (Tenn. Supreme Ct. filed July 7, 2020). The Lawyers' Committee and co-counsel filed an amicus brief on behalf of the Tennessee NAACP and other organizations concerning the chancery court's enlarging eligibility for absentee voting in light of COVID-19. The case concluded with a favorable opinion from the Tennessee Supreme Court that held that vulnerable populations at risk of contracting COVID-19 or individuals taking care of a high-risk person could request absentee ballots in the August and November 2020 elections.
- *League of United Latin Am. Citizens v. Reagan*, No. 2:17-cv-04102-DGC, 2018 WL 5983009 (D. Ariz., Jun. 18, 2018). The Lawyers' Committee and co-counsel, on behalf of the League of United Latin American Citizens Arizona and the Arizona Students' Association, brought this action against the Secretary of State of Arizona and the Maricopa County Recorder alleging that Arizona had a dual voter registration system that violated various constitutional guarantees. The parties settled the lawsuit by consent decree.
- *League of Women Voters of Arizona, et al. v. Reagan*, No. 2:18-cv-02620, 2018 WL 4467891 (D. Az., Sept. 18, 2018). The Lawyers' Committee and co-counsel filed this lawsuit alleging that the Arizona Secretary of State failed to update the voter registration addresses of people who update their address with the Arizona Department of Transportation under §5 of the National Voter Registration Act. Plaintiffs filed a Motion for Preliminary injunction, which was denied based on laches and the *Purcell* doctrine on September 18, 2018. The parties voluntarily dismissed the case in January 2020 pursuant to a settlement agreement.
- *League of Women Voters of Ark. v. Andino*, 497 F. Supp. 3d 59 (D.S.C. 2020) (granting preliminary injunction in part); *voluntarily stayed in part*, 2020 WL 6395498 (4th Cir. Oct. 29, 2020); appeal dismissed and remanded, 2021 WL 927238 (4th Cir, Mar. 11, 2021). The Lawyers' Committee and co-counsel represent the League of Women Voters of South Carolina, The Family Unit, Inc., and two individual voters in an equal protection and procedural due process challenge to a South Carolina statute providing for the rejection absentee ballots due to missing or allegedly mismatched signatures on the absentee ballot envelope. Plaintiffs alleged that South Carolina law failed to provide voters with notice and an opportunity to cure the deficiency. On October 27, 2020, the district court granted Plaintiffs' preliminary injunction motion in part. The district court found a likelihood of success on Plaintiffs' procedural due process and fundamental right

to vote claims as to South Carolina's signature match process, but it denied Plaintiffs' preliminary injunction motion with respect to absentee ballots lacking a signature. The parties subsequently agreed to a partial stay in the Fourth Circuit (staying the order requiring counties to seek judicial preclearance for any proposed signature matching processes), which kept the portion of the district court order preventing the rejection of absentee ballots based on an alleged signature mismatch in place. The Defendants have appealed the district court's preliminary injunction to the Fourth Circuit, which remains pending. The Fourth Circuit held oral argument on the motion on January 25, 2021, and, on March 11, issued an order dismissing the appeal and remanding the matter to the district court for determination of whether the case was moot. Subsequently, the parties entered into a stipulation of dismissal of the matter, with the state acknowledging that, pursuant to current South Carolina law and Directive No. 2020-001, county boards of elections and voter registration are not authorized to and should not match voters' signatures located on absentee ballot voter oaths with voters' signatures on any other document for the purpose of determining the legitimacy of the absentee ballot or any voter's eligibility to cast a legal ballot in any future election in South Carolina.

- *League of Women Voters of Ark. v. Thurston*, No. 5:20-cv-5174, 2020 WL 6269598 (W.D. Ark. Oct. 26, 2020) (denying preliminary injunction motion). The Lawyers' Committee and pro bono counsel represent the League of Women Voters of Arkansas and several individual voters in a federal constitutional challenge to Arkansas law and procedures that require rejecting absentee ballots due to missing or allegedly mismatched signatures or other minor errors on the absentee ballot envelope without providing voters with notice and an opportunity to cure the deficiency. Plaintiffs filed a preliminary injunction motion in September of 2020 seeking relief for the November 2020 election alleging violations of the fundamental right to vote and procedural due process, which the district court denied on October 26, 2020. The district court held that the election was too close for relief to be appropriate. Plaintiffs have subsequently amended their complaint to add individual voters whose absentee ballots were rejected in the November 2020 election, and the parties are in the course of briefing Defendants' motion to dismiss.
- *League of Women Voters of Ohio v. LaRose*, No. 2:20-cv-1638, 2020 WL 6115006 (S.D. Ohio Apr. 3, 2020). The Lawyers' Committee and co-counsel represented the League of Women Voters of Ohio, other organizations, and individual Plaintiffs in a National Voter Registration Act and constitutional challenge to the decision to cut off voter registration more than 30 days before the new primary election date and to hold the primary election on April 28, too little time for Plaintiffs and their members to complete the absentee ballot process and submit their ballots in time to be counted. Plaintiffs filed a temporary restraining order in district court seeking an extension of the voter registration deadline in compliance with the NVRA and an extension of the primary election date on the grounds that it placed a significant burden on the right to vote. The district court denied the Plaintiffs' restraining order finding that Ohio had not violated the NVRA because the primary election date of April 28 was an extension of the original date and because the compressed timeframe for submitting absentee ballots did not burden Ohio voters. The case was voluntarily dismissed.
- *League of Women Voters of Ohio v. LaRose*, No. 2:20-cv-3843, 489 F. Supp. 3d 719 (S.D. Ohio 2020). Lawyers' Committee and co-counsel represented the League of Women Voters of Ohio and other organizations and individual Plaintiffs in a challenge

against Ohio Secretary of State's enforcement of signature-matching requirements and cure procedures for absentee ballot applications and absentee ballots during the COVID-19 pandemic. Plaintiffs filed a preliminary injunction alleging that the signature-matching procedures, or lack thereof, violated the Right to Vote under the First and Fourteenth Amendments, Equal Protection, and Procedural Due Process. The district court denied the preliminary injunction finding that Ohio's signature-matching laws placed only a moderate burden on elections, did not violate procedural due process, and did not violate equal protection because there was little evidence that the differing procedures employed by counties in matching signatures were merely election-related irregularities. The case is pending.

- *League of Women Voters of U.S. v. Newby*, 195 F. Supp. 3d 80 (D.D.C. 2016), *rev'd*, 838 F.3d 1 (D.C. Cir. 2016). The Lawyers' Committee, together with other civil rights organizations, filed suit against the Executive Director of the Election Assistance Commission, challenging his decision to allow Alabama, Georgia, and Kansas to require to add their documentary proof-of-citizenship requirements to the federal mail-in voter registration form applicable to those states. The district court's denial of Plaintiffs' motion for a preliminary injunction against implementation of the Executive Director's decision, *League of Women Voters of U.S. v. Newby*, 2016 WL 4729502 (D.C. Cir. Sept. 9, 2016), was reversed by the Court of Appeals for the District of Columbia Circuit, *Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016). The case is pending.
- *Lichtenstein v. Hargett*, No. 3:20-cv-374, 489 F. Supp. 3d 732 (M.D. Tenn. 2020). The Lawyers' Committee and co-counsel represented several organizations (including Memphis & West Tenn AFL-CIO Central Labor Council, Equity Alliance, Tennessee NAACP, Memphis APRI, and Free Hearts) in a First Amendment challenge to statute criminalizing distribution of absentee ballot applications. This case was filed after a similar claim brought under a different statute that the state later admitted did not govern the prohibited conduct was dismissed. *See Memphis A. Phillip Randolph Inst. v. Hargett*, No. 3:20-cv-00374, 478 F. Supp. 3d 699 (M.D. Tenn. 2020). The district court denied the preliminary injunction on September 23, 2020 on the grounds that Plaintiffs had not shown that the statute prohibiting distribution restricted expressive conduct or political speech protected under the First Amendment. A motion to dismiss is pending.
- *Lopez v. Abbott*, 339 F. Supp. 3d 589 (S.D. Tex. 2018). The Lawyers' Committee and pro bono counsel filed this challenge to Texas's system for electing members of its two highest courts by statewide, at-large, elections as diluting the votes of Latinx voters, in violation of Section 2 of the Voting Rights Act of 1965. After trial, the district court entered judgment for Defendants.
- *Louisiana State Conference of National Association for Advancement of Colored People v. State of Louisiana*, No. 19-479-JWG (M.D. La. June 26, 2020), *appealed*, No. 20-30734 (5th Cir. 2020). Lawyers' Committee and pro bono counsel are challenging the electoral map for Louisiana Supreme Court justices, arguing that the map denies Black voters an equal opportunity to elect justices of their choice, in violation of Section 2 of the Voting Rights Act. Defendants moved to dismiss arguing that the relief sought in the case, the drawing of a second majority Black Supreme Court district in and around Baton Rouge, would infringe on the jurisdiction of a court in the Eastern District of Louisiana, which had previously issued orders relating to the Supreme Court electoral map in

Louisiana. The District Court denied the motion to dismiss, and Defendants appealed to the 5th Circuit where the case is awaiting oral argument on the first week of July.

- *Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018) (granting preliminary injunction based on missing or incorrect year birth on the absentee ballot envelope); *Martin v. Kemp*, 341 F. Supp. 3d 1326 (N.D. Ga. 2018) (granting preliminary injunction based on the mismatched signature issue), *stay denied sub. nom Georgia Muslim Voter Project v. Kemp*, 2018 WL 7822108 (11th Cir. Nov. 02, 2018), *appeal voluntarily dismissed*, *Martin v. Sec’y of State of Georgia*, 2018 WL 7139247 (11th Cir. Dec. 11, 2018). The Lawyers’ Committee and pro bono counsel represented the Georgia Coalition for the People’s Agenda and four individual voters affiliated with the Coalition for Good Governance in this challenge to the rejection of absentee ballots due to mismatched signatures or other minor errors on the absentee ballot envelope. The Plaintiffs obtained preliminary relief on the signature match issue in October 2018. The State sought a stay of the signature match from the Eleventh Circuit, which was denied on November 2, 2018. The State subsequently dismissed its appeal of the signature match decision. The district court rejected Plaintiffs’ request for preliminary relief stopping the rejection of absentee ballots due to minor mistakes or omissions on the absentee ballot envelope in an October 2020 order. The Plaintiffs filed another preliminary injunction motion after identifying eligible voters whose absentee ballots were rejected in the November 2020 election, which the district court granted with respect to missing or incorrect year of birth on November 13, 2018. The Plaintiffs voluntarily dismissed the lawsuit in 2019 after the Georgia Legislature adopted H.B. 316 (2019), which made substantial changes to the mail voting process in Georgia.
- *Memphis A. Phillip Randolph Inst. v. Hargett*, 473 F. Supp. 3d 789 (M.D. Tenn. 2020) (denying preliminary injunction as to August 3 primary election on laches grounds); No. 3:20-cv-00374, 478 F. Supp. 3d 699 (M.D. Tenn. 2020) (denying preliminary injunction and motion for reconsideration for November 3 general election with respect to absentee ballot application distribution statute); No. 3:20-cv-00374, 482 F. Supp. 673 (M.D. Tenn. 2020) (denying preliminary injunction for November 3 general election concerning signature-matching claims), *aff’d on other grounds*, 978 F.3d 378 (6th Cir. 2020); No. 3:20-cv-00374, 485 F. Supp. 3d 959 (M.D. Tenn. 2020) (granting preliminary injunction allowing first-time voters who registered by mail to vote absentee), *denying stay pending appeal*, 977 F.3d 566 (6th Cir. 2020), filed May 1, 2020. The Lawyers’ Committee and partners filed an action challenging the constitutionality of Tennessee’s restrictive absentee ballot statute, a statute on signature verification on absentee ballots in particular the absence of pre-deprivation notice and cure opportunities, a statute criminalizing distribution of absentee ballot applications by anyone other than a member of the election commission, and a statute prohibiting first-time voters who registered by mail from voting absentee in their first election. The Lawyers’ Committee represented multiple organizations and individual Plaintiffs. After the decision in *Lay v. Goins*, No. M2020-00832-SC-RDM-CV (Tenn. Supreme Ct. filed July 7, 2020), which expanded the criteria for voting absentee in the state during COVID-19, Plaintiffs dismissed that claim from the district court case. The district court issued multiple opinions (see above) on the other claims. The court denied, on laches grounds, Plaintiffs’ preliminary injunction on all claims for the August 6 election. 473 F. Supp. 3d 789 (M.D. Tenn. 2020). The district court denied relief for the November 3 election on Plaintiffs’ signature-match claims

which was affirmed by the Sixth Circuit. 482 F. Supp. 3d 673 (M.D. Tenn. 2020), *aff'd on other grounds*, 978 F.3d 378 (6th Cir. 2020). The court also denied relief on the absentee ballot distribution claim. 478 F. Supp. 3d 699 (M.D. Tenn. 2020). The district court granted relief for November 3 on the first-time voters claim and the Sixth Circuit denied Defendants' stay pending appeal. 485 F. Supp. 3d 959 (M.D. Tenn. 2020), *denying stay pending appeal*, 977 F.3d 566 (6th Cir. 2020). Both the signature-match claim and the first-time voter claim are pending.

- *Miss. Immigrants Rights Alliance v. Hosemann*, No. 3:19-cv-831-CWR (S.D. Miss.). The Lawyers' Committee and co-counsel represent the Mississippi Immigrants Rights Alliance and the League of Women Voters of Mississippi in a federal constitutional challenge to Mississippi's proof of citizenship requirement for naturalized citizens and Mississippi's use of the citizenship information contained in the state's driver's license database to require alleged "non-citizen" voters to provide proof of citizenship. The case is ongoing; the Defendants filed an answer to the Plaintiffs' amended complaint and the parties are in the middle of discovery.
- *MOVE Tex. Civic Fund v. Whitley*, No. 5:19-cv-00171 (S.D. Tex. filed Feb. 4, 2019). The Lawyers' Committee and co-counsel filed suit challenging action by the Texas Secretary of State by which he had sent all counties a list of approximately 95,000 persons, whom he had identified as possible non-citizens who had registered to vote, and directed the counties to confirm their status with a goal of removing non-citizens from the voting list. Because the list was created by comparison with the drivers' license database, and because many non-citizens become naturalized citizens after obtaining their drivers' license, the complaint alleged that this process was unconstitutional and discriminated against naturalized citizens in violation of the U.S. Constitution and the Voting Rights Act. The case was transferred and consolidated with a similar pending case, *Texas League of Latin American Citizens v. Whitley*, No. 5:19-cv-00074 (W.D. Tex. filed Jan. 29, 2019). The matter settled with the Secretary of State withdrawing his directive to the counties, agreeing that the counties would take no further action under the directive, that the counties would identify only currently registered voters who registered to vote before they presented documents to the Department of Public Safety indicating their non-U.S. citizenship status, and other procedures.
- *National Urban League, et al. v. Louis DeJoy, et al.*, No. 1:20-cv-02391 (D. Md.), *preliminary injunction denied*, No. CV GLR-20-2391, 2020 WL 6363959 (D. Md. Oct. 29, 2020). The Lawyers' Committee and pro bono counsel represented Plaintiff organizations challenging changes in U.S. Postal Service policy and practice affecting mail voting on right-to-vote, First Amendment, and statutory grounds. The district court denied a motion for preliminary injunction and the case was dismissed voluntarily.
- *National Urban League, et al., v. Wilbur L. Ross*, No. 20-5799-LHK, 489 F. Supp. 3d 939 (N.D. Cal. 2020), *stay pending appeal denied*, 977 F.3d 698 (9th Cir. 2020), *order clarified by* 491 F. Supp. 3d 572 (N.D. Cal. 2020), *stay granted in part and denied in part*, 977 F.3d 770 (9th Cir. 2020), *stay granted* 141 S. Ct. 18 (2020). The Lawyers' Committee and co-counsel challenged the federal government's decision to shorten the timeline for collecting and processing Census data under the Administrative Procedure Act and the Enumeration Clause. Initially, the Plaintiffs obtained a fourteen-day temporary restraining order preventing the government from winding down Census operations prematurely. *See* 484 F. Supp. 3d 802 (N.D. Cal. 2020). The Plaintiffs

subsequently obtained an injunction extending data collection by one month, and data processing by four months. The Defendants sought a stay from the Ninth Circuit. The Ninth Circuit granted a stay as to the deadline for processing the Census, but denied a stay for the data collection deadline. Defendants then sought relief from the Supreme Court. The Supreme Court granted a stay of the entire injunction. By that time, however, data collection had already been extended two weeks beyond the rushed deadline. The case was settled by stipulated order, under which the Census Bureau (1) agreed to continue to process the population numbers for congressional apportionment on an appropriate full timeline and to release those numbers no earlier than April 26, 2021; (2) agreed to include everyone, regardless of citizenship status, in population numbers for congressional apportionment and state-level redistricting; (3) acknowledged that the “illegal alien” citizenship data it was preparing for former President Trump is statistically unfit for use in apportionment and redistricting; and (4) agreed to continue, with the assistance of third parties, to assess the data it obtained during the partially truncated data collection period under the Trump administration and to provide plaintiffs and the public critical information and bi-monthly reports on its reviews of the quality of the 2020 Census data for the next year.

- *Navajo Nation Hum. Rts. Comm’n. v. San Juan Cnty.*, 281 F.Supp.3d 1136 (D. Utah, 2017). The Lawyers’ Committee and co-counsel, representing Navajo human rights commission and voters who were members of Navajo Nation, filed suit against San Juan County claiming that the county’s voting procedures violated the Equal Protection Clause and the Voting Rights Act, after the county decided to switch to a vote-by-mail system and offer in-person voting in only one place located in the majority-white section of the county. The lawsuit claimed the county did not provide effective language assistance to the region’s many Navajo-speaking voters, resulting in unequal voting opportunities. The parties settled and the County agreed to implement various measures aimed at providing effective language assistance and equal opportunities for Navajo voters.
- *New Florida Majority Education Fund, et al. v. Detzner*, No. 4:18-cv-00466-MW-CAS (N.D. Fl., Oct. 10, 2018). The Lawyers’ Committee, its partners, the ACLU and the Advancement Project challenged the State’s refusal to provide for a reasonable extension of the voter registration deadline for participation in the November general election in the face of the impending catastrophic Hurricane Michael, coupled with reported problems with the state’s online voter registration system in the waning days of the registration period. The court conditionally denied plaintiffs’ motion for emergency relief and the case was subsequently dismissed.
- *New Va. Majority Educ. Fund v. Fairfax Cty. Bd. of Elections*, No. 1:19-cv-1379-RDA-MSN, Dkt. 17 (E.D. Va. Nov. 1, 2019). The Lawyers’ Committee and pro bono counsel represented the New Virginia Majority Education Fund and George Mason University student Amyla Bryant in a federal constitutional challenge brought shortly before the November 3, 2019 election to Fairfax County’s rejection of approximately 170 voter registration applications completed by George Mason University students who provided their university address but failed to provide their dormitory address. On November 1, 2019, the Defendants agreed to a consent order that permitted purged voters to cure their registration status prior to Election Day and allowed those who did not cure to cast a provisional ballot that would count in the November 2019 election. The Defendants ceased their purge practices and the Plaintiffs voluntarily dismissed the case.

- *New Va. Majority Educ. Fund v. Va. Dep't of Elections*, No. 1:16-cv-01319-CMH-MSN (E.D. Va. Oct. 20, 2016). The Lawyers' Committee and pro bono counsel filed emergency litigation to extend Virginia's voter registration deadline after the state voter registration website crashed on the final day of registration in advance of the 2016 election. The Court granted a preliminary injunction extending Virginia's statutory voter registration deadline.
- *New Va. Majority Educ. Fund, et al. v. Va Dep't of Elections*, et. al., No. 3:20-cv-00801, 2020 WL 6051855 (E.D. Va. Oct. 14, 2020). The Lawyers' Committee and co-counsel brought suit on behalf of Plaintiff organizations alleging that the sudden unavailability of Virginia's online voter registration system due to technical failure on the last day of voter registration for the 2020 General Election constituted an undue burden on the right to vote, and requesting relief including an extension of the voter registration deadline. Defendant state election officials agreed an extension was warranted. The court granted Plaintiffs' motion for temporary restraining order and emergency injunctive relief, entered a consent decree extending the deadline for voter registration by 48 hours, and dismissed the case.
- *N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, No. 20 CVS 5194 (N.C. Super. Wake Cty., Apr. 30, 2020). The Lawyers' Committee and co-counsel represent the North Carolina State Conference of the NAACP and several Black voters in a state constitutional challenge to several North Carolina counties' use of ES&S ExpressVote ballot marking devices (electronic voting machines) that mark ballots with unreadable barcodes. A Wake County Superior Court judge denied Plaintiffs' preliminary injunction motion on August 19, 2020 in an unpublished decision based on lack of likelihood of success on the merits and the difficulty of implementing the requested relief. Plaintiffs' emergency appeals to the North Carolina Court of Appeals and the North Carolina Supreme Court were denied. The State has filed a motion to dismiss Plaintiffs' Complaint in superior court, and have requested that a hearing be calendared on that motion.
- *O'Neil v. Hosemann*, ND Miss. 3:18-cv-00815-DPJ-FKB, filed Nov. 21, 2018. The Lawyers' Committee and co-counsel filed this suit challenging Mississippi's burdensome absentee ballot application procedures for run-off elections. The suit was voluntarily dismissed in 2020 after the Mississippi legislature enacted legislation addressing the problems raised in the complaint.
- *Organization for Black Struggle, et al., v. John R. Ashcroft, et al.*, No. 2:20-cv-4184 (W.D. Mo.), *preliminary injunction granted in part*, No. 2:20-CV-04184-BCW, 493 F. Supp. 3d 790 (W.D. Mo. 2020), *stay pending appeal granted*, 978 F.3d 603 (8th Cir. 2020). The Lawyers' Committee and co-counsel represent Plaintiff organizations challenging more restrictive procedures for no-excuse vote-by-mail than for absentee ballots as an undue burden on the right to vote during COVID-19 pandemic; rejection of mail ballots for immaterial errors or omissions in violation of the Civil Rights Act; and failure to provide notice and opportunity to cure prior to rejection in violation of procedural due process. Preliminary injunction was partially granted allowing vote-by-mail ballots to be dropped off in person for November 2020 election but the order was stayed by Eighth Circuit. The case continues on the remaining claims.
- *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020). The Lawyers' Committee and co-counsel represented filed a motion to intervene on behalf of Common Cause, League of Women Voters of Pennsylvania, Make the Road Pennsylvania, and the Black

Political Empowerment Project in this case filed by the Pennsylvania Democratic Party on July 10, 2020 in Pennsylvania Commonwealth Court. The Commonwealth Court denied the motion to intervene but granted amicus status, and the Lawyers' Committee filed an amicus brief with the Pennsylvania Supreme Court. The Pennsylvania Supreme Court took original jurisdiction of the case using its King's Bench authority. On September 17, 2020, the Supreme Court held that the Pennsylvania election code permits the use of absentee ballot drop boxes, that a three-day extension of the mail-in ballot deadline for the November 2020 election only was warranted under the Pennsylvania Constitution, that county boards of elections were not required to provide opportunity to cure mail-in ballots that were filled out incorrectly, that absentee ballots were invalid if not enclosed in a secrecy envelope, and that the poll watcher residency requirement was constitutionally compliant. The Pennsylvania Republican Party Defendant-Intervenors sought a stay of that decision with the U.S. Supreme Court, which was denied by an equally divided Court on October 19, 2020. On October 24, 2020, the Pennsylvania Republican Party then sought a writ of certiorari on the portion of the Pennsylvania Supreme Court's decision extending the absentee ballot receipt deadline to the U.S. Supreme Court, which has not yet made a decision on that cert petition.

- *Poor Bear v. Cnty. of Jackson*, No. 5:14-CV-05059-KES, 2017 WL 52575 (D.S.D., Jun. 17, 2016). The Lawyers' Committee and pro bono counsel sought injunctive and declaratory relief on behalf of members of the Oglala Sioux Tribe requiring Defendants to establish a satellite office for voter registration and in-person absentee voting in the town of Wanblee on the Pine Ridge Indian Reservation. The Court granted Defendants' motion to dismiss on grounds of ripeness.
- *Republican National Committee, et. al., v. State Election Board, et. al.*, No. 2020-CV-343319 (Super. Ct., Fulton Cnty, filed Dec. 8, 2020). This lawsuit was filed by the Republican National Committee and the Georgia Republican Party, Inc. against the State Election Board, Brad Raffensperger, the Georgia Secretary of State, and individual members of the State Election Board in their official capacities. The Plaintiffs alleged that poll watchers were not being given adequate access to the areas where the tabulation and processing of ballots were taking place; argued that 24-hour absentee ballot dropboxes were not authorized under Georgia law and should be enjoined; and demanded that video surveillance recordings of absentee ballot dropboxes be made available to the public upon request. The Plaintiffs also sought an order compelling the Secretary of State to issue guidance on the issues relating to the lack of adequate access to pollwatchers and with regard to alleged deficiencies relating to absentee ballot dropboxes. On December 23, 2020, the Lawyers' Committee and pro bono counsel sought to file an amicus brief on behalf of the Georgia State Conference of the NAACP, the League of Women Voters of Georgia and the Georgia Coalition for the People's Agenda opposing the relief sought by the Plaintiffs limiting access to the absentee ballot dropboxes because the organizations and the voters they serve would be prejudiced in the event this relief was granted. The Court denied the relief sought by the Plaintiffs, concluding that the Court lacked subject matter jurisdiction based upon sovereign immunity and dismissed the Plaintiffs' Complaint on December 29, 2020.
- *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), and *Benisek v. Lamone*, 138 S. Ct. 1942 (2018). On March 8, 2019, the Lawyers' Committee and pro bono counsel submitted a brief on its own behalf as amicus curiae in these cases raising the issue of the

justiciability of partisan gerrymandering claims. The Lawyers' Committee brief addressed the implications of partisan gerrymandering on racial gerrymandering. The Supreme Court held that partisan gerrymandering claims were not justiciable. *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

- *Schmitz v. Fulton Cty. Bd. of Registration and Elections*, No. A21A0595 (Ga. Ct. App.), *appealed from* No. 2020CV339337 (Fulton Cty. Sup. Ct.). The Lawyers' Committee and pro bono counsel filed a motion to intervene on behalf of the Georgia State Conference of the NAACP and the Georgia Coalition for the People's Agenda in this mandamus action brought by private Plaintiffs challenging the decision of the Fulton County Board of Registration and Elections not to purge challenged voters shortly before the November 2020 general election. The Plaintiffs argued that Georgia state law required the Fulton County Board to immediately convene challenge hearings to determine whether 14,346 voters should be removed from the rolls. On October 1, 2020, Fulton Superior Court Judge Jane Barwick granted the Defendants' motion to dismiss the lawsuit on the basis that the National Voter Registration Act prohibits the proposed purges. The Petitioners subsequently appealed the Superior Court's dismissal of the case to the Georgia Court of Appeals, which referred the case to the Georgia Supreme Court. The Georgia Supreme Court dismissed the case on January 5, 2021 due to pleadings deficiencies. Plaintiffs-Appellants' motion for reconsideration was denied on February 1, 2021.
- *State ex rel. Ohio Democratic Party v. LaRose*, No. 2020-0388 (Ohio Supreme Ct. Mar. 17, 2020). The Lawyers' Committee and co-counsel filed an amicus brief on behalf of the League of Women Voters and the Ohio A. Philip Randolph Institute in the Democratic Party's lawsuit challenging Ohio Secretary of State Frank LaRose's directive to postpone the primary election to June 2, 2020. The amicus brief did not take a position on the Secretary's authority to issue such a directive but it urged the Ohio Supreme Court to consider extending the voter registration deadline to 30 days before any new election date and in considering a new election date, account for the multi-step, complex absentee ballot process that voters would have to complete in order to get their ballots counted. The case was dismissed when Ohio's legislature passed a new bill setting the election date to April 28, 2020 and mooting out Secretary LaRose's directive.
- *Tenn. State Conf. of NAACP v. Hargett*, 420 F. Supp. 3d 683 (M.D. Tenn. 2019). The Lawyers' Committee and co-counsel represented the Tennessee NAACP and other organizational Plaintiffs in a facial constitutional challenge under the First and Fourteenth Amendments to a newly enacted law that restricted civic engagement organizations from conducting large-scale voter registration drives. The restrictions included draconian criminal and civil penalties for failure to register drives with the Secretary's office, failure to comply with training provisions or the compelled disclosure requirements, and submitting "incomplete applications". Plaintiffs argued that these provisions violated their right to associate and express themselves, were vague, and violated their right to speech and filed a preliminary injunction to enjoin enforcement of the law. The district court granted Plaintiffs' preliminary injunction enjoining the law from taking effect prior to the November 2019 municipal elections. A few months later the legislature repealed these provisions altogether. The case was dismissed and an attorneys' fees motion is pending.
- *Texas League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136 (5th Cir. 2020), and *Texas State Conference of the NAACP v. Abbott*, No. 1:20-cv-1024-RP (W.D. Tex.). The

Lawyers' Committee and pro bono counsel represented the Texas State Conference of NAACP Branches in a federal constitutional and Section 2 Voting Rights Act challenge to Governor Abbott's proclamation prohibiting Texas counties from providing voters with more than one absentee ballot delivery location for the November 2020 election. The proclamation had the effect of closing absentee ballot delivery locations in Harris and Travis Counties that were operating in minority communities. The Plaintiffs filed a preliminary action in the matter but voluntarily dismissed the case after the Fifth Circuit stayed the district court's preliminary injunction in a parallel action filed by LULAC. *See Texas League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136 (5th Cir. 2020). The Lawyers' Committee filed an amicus brief in the Fifth Circuit in the *Hughs* case on behalf of the Texas NAACP.

- *Third Sector Development, Inc. et al. v. Kemp*, Superior Court of Fulton County, State of Georgia, no. 2014cv252546. The Lawyers' Committee, together with co-counsel, filed this challenge to Georgia's "exact match" process of placing voters on a suspended list, if their registration information did not exactly match driver's license and social security data bases. The action sought a writ of mandamus directing the Secretary of State to determine the eligibility of the voters and place them on the rolls. The matter was dismissed after resolution of the issue in *Georgia State Conference of the NAACP v. Kemp*, No. 2:16-CV-00219-WCO (N.D. Ga. 2016), described above.
- *Thomas v. Bryant*, 366 F. Supp. 3d 786 (S.D. Miss. 2019), *stay pending appeal denied*, 2019 WL 943409 (S.D. Miss. Feb. 26, 2019), *stay pending appeal dismissed*, 756 Fed. App'x. 421 (5th Cir. 2019), *stay granted in part and denied in part*, 919 F.3d 566 (5th Cir. 2019), *aff'd*, 938 F.3d 134 (5th Cir. 2019), *reh'g en banc granted*, 939 F.3d 629 (5th Cir. 2019), *judgment vacated and appeal dismissed sub nom. Thomas v. Reeves*, 961 F.3d 800 (5th Cir. 2020). The Lawyers' Committee and co-counsel represented three individual African American Plaintiffs in a minority vote dilution claim under Section 2 of the Voting Rights Act concerning District 22 of the Mississippi State Senate redistricting plan of 2012. Plaintiffs prevailed at trial and the district court ordered a remedial plan. The Defendants sought stays before the Fifth Circuit. The Fifth Circuit denied a stay on the merits but remanded to give the state legislature an opportunity to enact its own remedial plan, which it did. A Fifth Circuit panel affirmed the judgment on the merits and the 2019 August primary and November general elections were conducted under the remedial plan. Joseph Thomas, a Plaintiff and the Black candidate of choice, prevailed in District 22 in the 2019 primary and general elections. The Fifth Circuit, *sua sponte*, heard the case *en banc* and vacated the judgment as moot in 2020 because no regular elections would be held under the remedial plan before the 2020 Census and a new redistricting plan was put in place for the 2023 elections.
- *Trump v. New York*, 141 S.Ct. 530 (Dec. 18, 2020): This case involved the same issues as were involved in *City of San Jose v. Donald Trump*, No. 5:20-5167 RRC-LHK-EMC. Specifically, a coalition of states and localities led by the State of New York had challenged President Trump's Executive Memorandum seeking to exclude undocumented persons from the apportionment count. The Lawyers' Committee and co-counsel filed an amicus brief on behalf of the Plaintiffs it was representing in *City of San Jose v. Trump*. In the brief, Lawyers' Committee argued first that the potential injury in the case, the loss of representation and federal funding, was not speculative and that several Plaintiffs and amici

were likely to be harmed by the Defendants’ action; and second that the Defendants’ action was unconstitutional. The Supreme Court found that the case was not ripe.

- *Trump v. Raffensperger*, No. 20-343255 (Fulton Cty. Sup. Ct., filed Nov. 4, 2020). The Lawyers’ Committee and pro bono counsel submitted a motion to intervene on behalf of the Georgia NAACP, the Georgia Coalition for the People’s Agenda, James Woodall, and Helen Butler in support of the Defendants in this election contest filed by Donald J. Trump and the Trump Campaign. The Trump Campaign filed this action on December 4, 2020, and sought to overturn the election results on the basis that the number of illegal votes cast in the November 3, 2020 election exceeded the margin of victory. The Lawyers’ Committee filed numerous papers in the case, including a motion for judgment on the pleadings. The Plaintiffs voluntarily dismissed the case on January 7, 2021, the day before trial was to be held. The superior court never ruled on the motion to intervene.
- *Trump v. Wisconsin Elections Commission*, No. 20-CV-1785-BHL, 2020 WL 7318940 (E.D. Wis. Dec. 12, 2020), *affirmed*, 983 F.3d 919 (7th Cir. 2020). Candidate brought suit alleging violations of state election law constituted violation of Electors Clause and requesting relief including voiding election results and “remanding” to Wisconsin Legislature. The Lawyers’ Committee and pro bono counsel intervened on behalf of Wisconsin NAACP and individuals in support of dismissal. The case was dismissed and affirmed on appeal by Seventh Circuit.
- *Twelfth Congressional District Republican Committee v. Raffensperger*, No. 1:20-cv-00180-JRH-BKE, 2020 WL 8255193 (S.D. Ga. Dec. 17, 2020). This lawsuit was filed by the Twelfth Congressional District Republican Committee along with three individual Georgia voters against Georgia’s Secretary of State Brad Raffensperger, the Georgia State Election Board Members in their official capacities; the Richmond County Board of Elections and individual members of the Board in their official capacities. The Plaintiffs sought to permanently 1) enjoin the use of absentee dropboxes, including in the high interest January 5th Senate runoff elections; 2) enjoin the early processing of mail-in absentee ballots; and 3) enjoin the use of written guidance issued by the Secretary of State relating to the verification of absentee ballot signatures. The Lawyers’ Committee and pro bono counsel successfully moved on behalf of the Georgia State Conference of the NAACP and the Georgia Coalition for the People’s Agenda to intervene as Defendants in this matter because of the prejudice they and the voters they serve would suffer in the event the relief sought by the Plaintiffs was granted. The Court dismissed the Plaintiffs’ claims with prejudice and denied their motion for emergency relief as moot on December 17, 2020 based upon the doctrine of laches, Plaintiffs’ lack of Article III standing and principles of abstention. On January 15, 2021, Plaintiffs filed a notice of appeal to the 11th Circuit Court of Appeals from the order and judgment of dismissal.
- *Veasey v. Abbott*, judgment entered *sub nom. Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014); *stay denied*, 769 F. 3d 890 (5th Cir. 2014); *mot. to vacate stay denied*, 135 S. Ct. 9 (2014), *aff’d in part, rev’d in part sub nom, Veasey v. Abbott*, 820 F.3d 216 (5th Cir. 2016), *aff’d in part, rev’d in part and remanded*, 830 F.3d 216 (5th Cir. 2016) (en banc); *mot. to vacate stay denied*, 136 S. Ct. 1823 (2016), *cert denied sub nom. Abbott v. Veasey*, 137 S. Ct. 612 (2017); *motion for voluntary dismissal granted and motion to dismiss on mootness grounds denied sub nom. Veasey v. Abbott*, 248 F. Supp. 3d 833 (S.D. Tex. 2017); *decision on remand*, 249 F. Supp. 3d 868 (S.D. Tex. 2017); *motion for reconsideration denied*, 265 F. Supp. 3d 684 (S.D. Tex. 2017), *stayed*, 870 F. 3d 387 (5th

Cir. 2017), *rev'd in part and rendered*, 888 F.3d 792 (5th Cir. 2018). The Lawyers' Committee and its co-counsel brought suit on behalf of the Texas State Conference of the NAACP and the Mexican American Legislative Caucus of the Texas State House of Representatives challenging Senate Bill 14 ("SB 14"), which required voters to produce one of a limited number of photo IDs in order to vote in person. The complaint, *Texas State Conference of the NAACP v. Steen*, No. 2:13-cv-00291, was consolidated with other similar complaints under *Veasey v. Perry*, later changed to *Veasey v. Abbott*. After trial, the district court entered judgment in favor of Plaintiffs, ruling that SB 14 resulted in discrimination in violation of Section 2 of the Voting Rights Act in that Black and Latinx voters were less likely to possess the required IDs and more likely to have difficulty in obtaining the IDs than were white voters. The court also found that SB 14 had been enacted with discriminatory intent. On appeal, the Fifth Circuit, sitting *en banc*, affirmed the discriminatory result finding and remanded the discriminatory intent finding for further fact-finding. The Fifth Circuit ordered that an interim remedial order be entered by the district court to remedy the Section 2 results violation, while the intent claim was being litigated. On remand, the district court again found that SB 14 had been enacted with discriminatory intent and enjoined both SB 14 and Senate Bill 5 ("SB 5") which had been enacted by the legislature to effectuate the Fifth Circuit's ruling, largely tracking the terms of the interim remedial order. On appeal, the Fifth Circuit ruled that SB 5 rectified both the results and the intent violations, and that there was, therefore, no further need for additional remedy. The district court subsequently dismissed the case for those same reasons, and the matter is pending argument before the Fifth Circuit Court of Appeals on the defendants' appeal from the district court's order awarding attorneys' fees and expenses to the plaintiffs.

- *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019). This is the second appeal to the Supreme Court in this litigation. The Plaintiffs filed the first appeal in the Supreme Court after the three-judge district court majority rejected their racial gerrymander challenge to twelve Virginia House of Delegates Districts. *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788 (2017). As a result of that appeal, the Supreme Court remanded the case to the district court for further consideration. After the Plaintiffs were successful on their racial gerrymander claim with regard to 11 of the House of Delegate districts on remand, the Virginia House of Delegates appealed that judgment to the Supreme Court. On February 4, 2019, the Lawyers' Committee, with the assistance of *pro bono* counsel, filed an amicus brief in support of the Plaintiffs-appellees *Virginia House of Delegates v. Bethune-Hill*, No. 18-281, 2019 WL 527481 (2019). In its amicus brief, the Lawyers' Committee argued, *inter alia*, that substantial evidence supported the district court majority's finding that the eleven challenged districts in Virginia's 2011 redistricting were the product of a racial gerrymander in violation of *Shaw v. Reno*, 509 U.S. 630 (1993), and represented the misuse of federal civil rights protections, specifically Section 5 of the Voting Rights Act, 52 U.S.C. § 10301(c). On June 17, 2019, the Supreme Court, with Justice Ginsburg writing the opinion for the majority, dismissed the appeal, concluding that the Virginia House of Delegates lacked standing to represent the state's interests on appeal and did not have standing in its own right to appeal.
- *Wisconsin Voters Alliance, et al. v. Wisconsin Elections Commission, et al.*, No. 2020-AP-001930-OA (Wis. Dec 4, 2020). Voters brought petition alleging violations of state

election law in certain counties and requesting relief including voiding election results. The Lawyers' Committee and pro bono counsel filed a brief as amici curiae on behalf of itself and Wisconsin NAACP in opposition to petition to void election results. The petition was denied.

- *Wittman v. Personhuballah*, No. 14-1504. 136 S. Ct. 1732 (2016). This case involved a challenge to Virginia's Third Congressional District as an unconstitutional racial gerrymander. The Lawyers' Committee and pro bono counsel filed an amicus brief supporting the district court's holding that race was the predominant concern in the original map's creation, in violation of the Constitution. The Supreme Court dismissed the appeal for lack of standing, leaving the district court's opinion in place.
- *Wood v. Raffensperger*, 981 F.3d 1307 (11th Cir. 2020), *aff'g Wood v. Raffensperger*, --- F.Supp.3d ----, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020). The Lawyers' Committee and pro bono counsel filed a motion to intervene in the district court in this case on behalf of the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, James Woodall, Helen Butler, and Rev. Melvin Ivey, as well as a brief in opposition to a motion for temporary restraining order sought by L. Lin Wood. The Plaintiff sought to overturn the November 2020 presidential election results. The Plaintiff argued that an agreement between the Secretary of State and the Georgia Democratic Party in March 2020 to settle a lawsuit concerning signature-matching rules had unconstitutionally altered Georgia election law as enacted by the Georgia Legislature. The district court did not rule on the motion to intervene. The district court denied the temporary restraining order on November 20, 2020 on several grounds, including standing and a lack of success on the merits. The Plaintiff appealed the decision to the Eleventh Circuit, which unanimously affirmed the district court's decision on December 5, 2020 on standing and mootness grounds. The Lawyers' Committee's clients participated as amicus before the Eleventh Circuit. The Plaintiff has appealed the Eleventh Circuit's decision to the U.S. Supreme Court, which will consider the cert petition at its February 19, 2021 conference.
- *Wood v. Raffensperger*, No. 2020CV342959 (Fulton Cty. Sup. Ct.). The Lawyers' Committee and pro bono counsel filed a motion to intervene on behalf of the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, James Woodall, and Helen Butler in opposition to this November 25, 2020 action seeking to overturn the November 3, 2020 presidential election results. The Petitioner, a Georgia voter unaffiliated with the Trump Campaign, alleged that the election was improperly funded, that numerous illegal absentee ballots were counted due to a deficient March 2020 settlement agreement between the Georgia Democratic Party and the Georgia Secretary of State's office, among other irregularities. The superior court held a hearing on December 7, 2020, and issued an order the next day. The superior court never ruled on the motion to intervene.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIA STATE CONFERENCE OF THE)
NAACP, as an organization; GEORGIA)
COALITION FOR THE PEOPLE’S)
AGENDA, INC., as an organization; LEAGUE)
OF WOMEN VOTERS OF GEORGIA, INC.,)
as an organization; GALEO LATINO)
COMMUNITY DEVELOPMENT FUND,)
INC., as an organization; COMMON CAUSE;)
as an organization; LOWER MUSKOGEE)
CREEK TRIBE,)

Plaintiffs,)

v.)

BRAD RAFFENSPERGER, in his official)
capacity of the Secretary of State for the)
State of Georgia, REBECCA N.)
SULLIVAN, DAVID J. WORLEY,)
MATTHEW MASHBURN, and ANH LE, in)
their official capacities as members of the)
State Election Board,)

Defendant.)

Civil Action

Case No. _____

**COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

**52 U.S.C. § 10301, 42 U.S.C.
§ 1983; First, Fourteenth
and Fifteenth Amendments
to the United States
Constitution)**

PRELIMINARY STATEMENT

1. This is a voting rights lawsuit filed pursuant to Section 2 of the Voting Rights Act of 1965 (52 U.S.C. § 10301) and 42 U.S.C. § 1983¹ seeking prospective declaratory and injunctive relief against Brad Raffensperger, in his official capacity as the Georgia Secretary of State; Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le in their official capacities as members of the State Election Board, to enjoin the enforcement and implementation of Georgia Senate Bill 202 (“SB 202”), an omnibus voter suppression bill passed by the Georgia General Assembly on March 25, 2021 and signed into law the same day by Georgia Governor, Brian Kemp.²

2. SB 202 is the culmination of a concerted effort to suppress the participation of Black voters and other voters of color by the Republican State Senate, State House, and Governor. In the last two decades, Georgia has undergone demographic change, namely the increasingly large percentage of the

¹Plaintiffs anticipate supplementing this Complaint with claims arising under Section 8 of the National Voter Registration Act of 1993 (52 U.S.C. § 20507, 20510)(“NVRA”) after notice of NVRA violations are served on the appropriate parties and the pre-litigation notice period expires.

²A copy of SB 202 as passed by the Georgia General Assembly on March 25, 2021 (“SB 202/AP”) is available on the Georgia General Assembly’s website at this link: <https://www.legis.ga.gov/api/legislation/document/20212022/201498> (last checked 3/27/21).

electorate comprised of Black voters and other voters of color. Additionally, as demonstrated by election analyses, Black voters and voters of color usually provide strong support to Democratic candidates. The demographic changes and the voting patterns of voters of color have resulted in evolving political change in Georgia. After several cycles of Republican dominance, Democratic statewide candidates almost won election in 2018 and then won the races for President in 2020 and two Senatorial races in 2021. Unable to stem the tide of these demographic changes or change the voting patterns of voters of color, these officials have resorted to attempting to suppress the vote of Black voters and other voters of color in order to maintain the tenuous hold that the Republican Party has in Georgia. In other words, these officials are using racial discrimination as a means of achieving a partisan end. These efforts constitute intentional discrimination in violation of the Constitution and Section 2 of the Voting Rights Act.

3. SB 202's sweeping changes are aimed at suppressing the vote of Black voters and other voters of color. The law targets early in-person voting, voting by absentee ballots, and the use of absentee ballot drop boxes - means of voting that have been increasingly used by Black, Latinx, Asian American, members of indigenous populations and other voters of color. In the most recent

elections in 2020 and 2021, voters of color used these methods of voting in numbers not seen before. In response, the Georgia General Assembly enacted SB 202 to limit access to these voting methods and burden their use.

4. Despite the fact that many of the provisions of SB 202 will add to the problems of long lines and delays at polling locations by making absentee mail voting and in-person early voting harder, SB 202 even penalizes voters forced to wait in long lines to vote for protracted periods by criminalizing the simple act of individuals and charitable organizations providing voters with water when they are waiting in line to vote. More often than not, it is Black voters or other voters of color who are negatively impacted by long lines and delays at the polls and stand to suffer most when charitable organizations can no longer provide such items to voters waiting to vote.

5. SB 202 also threatens the power of county election boards, responsible for ensuring that voters of color are able to participate equally in the political process, by stripping the Secretary of State of his vote on the State Election Board, replacing the Secretary of State with a voting member appointed by the General Assembly and granting the State Election Board the power to effectively take over the County Board. SB 202, Section 5.

6. The provisions of SB 202, viewed individually or collectively, threaten the fundamental right to vote of all Georgians, but their impact will be felt most intensely by persons of color, which is precisely what the legislature intended.

7. This Court should declare SB 202 unlawful and unconstitutional, and permanently enjoin its implementation.

JURISDICTION AND VENUE

8. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1343(a) because it seeks to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the Voting Rights Act, and 28 U.S.C. § 1331 because it arises under the laws of the United States.

9. This Court has jurisdiction to grant both declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

11. Plaintiff GEORGIA STATE CONFERENCE OF THE NAACP (“Georgia NAACP”) is a non-partisan, interracial, nonprofit membership

organization that was founded in 1941. Its mission is to eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, in particular African Americans. It is headquartered in Atlanta and currently has approximately 10,000 members.

12. The Georgia NAACP works to protect voting rights through litigation, advocacy, legislation, communication, and outreach, including work to promote voter registration, voter education, GOTV efforts, election protection, and census participation.

13. The Georgia NAACP has branches in counties across the state of Georgia that are involved in voter registration, voter assistance, voter education, election protection, grassroots mobilization, and get-out-the-vote efforts, including Sunday early voting events, such as “Souls to the Polls.”

14. The Georgia NAACP has sought to prevent efforts to suppress or disenfranchise African American voters and has been involved in voting rights litigation in Georgia to vindicate their rights.

15. The Georgia NAACP engages in voter outreach efforts, including voter education on voting in-person during early voting, voting by mail and voting in person on election day.

16. The Georgia NAACP has engaged in GOTV campaigns. One of the key components of these campaigns is providing accurate information regarding mail-in ballots to the Georgia NAACP's membership and the rest of the public.

17. The Georgia NAACP has developed materials and worked with local NAACP branches to educate its members and the public about voting by mail, including providing information concerning the availability and location of mail ballot drop boxes during the 2020 general election and 2021 runoff election cycle. The Georgia NAACP also developed messaging and materials regarding mail ballot drop box locations in particular counties.

18. The Georgia NAACP has conducted text and phone banking programs and reached out to voters throughout Georgia to encourage voter participation and to educate the public about the voting process, including about voting by mail.

19. Many of the Georgia NAACP's members have voted by mail in the past and stand to be negatively impacted by the substantial changes to Georgia's vote by mail procedures that have been enacted as part of SB 202. Many more will be impacted by the changes to the availability of absentee ballot drop boxes, changes to early voting times and days and the requirement of a sworn affidavit for voters who go to the wrong precinct to vote prior to 5 p.m., as set forth in SB 202.

Many Georgia NAACP members are at risk of being disenfranchised by the changes in SB 202.

20. The Georgia NAACP has an interest in preventing the disenfranchisement of eligible voters, including its members and voters it may have assisted with navigating the voting process.

21. Due to the substantial changes in absentee voting procedures, absentee ballot drop boxes, early voting periods, restrictions on out of precinct voting, criminalization of line-warming activities (supplying water and snacks to voters in line and other persons who request the refreshments) and the other changes caused by the enactment of SB 202, the Georgia NAACP will not only have to change its messaging to voters of color about these changes, but the NAACP will also have to divert considerable resources from its ongoing election protection, advocacy, and get out the vote efforts to educate and assist eligible voters.

22. The Georgia NAACP will also have to divert its resources to educate voters about the substantial changes to the mail voting process, and will have to respond to questions from voters who used a mail ballot drop box in the November 2020 election and will be confused by the fact that they are not available outside early voting locations in the future.

23. The Georgia NAACP has traditionally provided transportation to the polls for voters on Election Day. The Georgia NAACP will have to divert resources to physically transport voters to the county board of elections to drop off their mail ballots or to polling places or early voting locations to vote in person if they cannot vote by absentee. The nature and scope of the Georgia NAACP's voter assistance efforts will need to change if voters do not have access to a drop box or mail ballots are rejected due to the burdensome ID requirements, the complicated changes for completing absentee ballot applications and returning absentee ballots.

24. The Georgia NAACP's additional efforts to educate voters whose mail ballots are rejected due to the new ID requirements and other procedures will force the Georgia NAACP to have to divert substantial resources away from core activities such as voter registration and other efforts such as criminal justice work. This is due to the fact that the Georgia NAACP's resources are limited.

25. Plaintiff THE GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC. ("GCPA") is a Georgia nonprofit corporation with its principal place of business located in Atlanta, Georgia. The GCPA is a coalition of more than 30 organizations, which collectively have more than 5,000 individual members.

26. In addition to its main office in Atlanta, the GCPA has field offices in Athens, Albany, Augusta, Macon, Savannah, and LaGrange, Georgia where it is able to provide outreach and support to voters and prospective voters of color and underserved communities outside of the Metro Atlanta area.

27. During the 2020 elections and the January 5, 2021 runoff cycle, the GCPA's voter outreach efforts were conducted in the greater Metro Atlanta region as well as throughout other areas of Georgia from the aforementioned field offices and covered approximately 88 counties in the state.

28. The GCPA encourages voter registration and participation, particularly among Black and other underrepresented communities of color in Georgia. The GCPA's support of voting rights is central to its mission. The organization has committed, and continues to commit, time and resources to protecting voting rights through advocacy, legislation, communication, and outreach, including work to promote voter registration, voter education, GOTV efforts, election protection, census participation and litigation.

29. The GCPA conducts voter registration drives, voter ID assistance, "Souls to the Polls" GOTV events during Sunday early voting and other get out the vote ("GOTV") efforts in Georgia that seek to encourage voter participation among Black and Brown voters and voters in historically underserved communities of

color. The GCPA in coalition with other civic engagement organizations in Georgia also participates in voter education and voter empowerment programs.

30. GCPA's voter education and empowerment programs have included, but were not limited to, educating prospective voters about how to register to vote and to confirm their registration status; educating voters about the options to vote in-person during advanced voting, in-person on Election Day and by mail via absentee ballot; providing information to voters about accessing absentee ballot drop boxes to cast their absentee ballots safely and securely, and helping voters to understand the new voting system implemented for the first-time during the 2020 election cycle statewide.

31. The GCPA has also distributed civic education materials to voters and prospective voters; arranged for rides to the polls for voters; and supported the Georgia Election Protection field program in order to provide assistance to voters on the ground near polling sites.

32. GCPA also participates in media interviews, sponsors Public Service Announcements (PSAs), places billboard ads, conducts phone banking, and engages in text message campaigns to educate voters and to encourage participation.

33. The GCPA has an interest in preventing the disenfranchisement of eligible voters who now run the risk of becoming disenfranchised as a result of the new restrictions imposed by SB 202, including substantial and burdensome ID requirements for absentee by mail voting; limitations on early voting days and hours, including Sunday early voting; diminished availability of absentee ballot drop boxes except inside early voting locations during early voting hours, the lack of 24/7 hour access to absentee ballot drop boxes which renders them essentially useless to many voters; the criminalization of “line-warming,” activities, i.e., providing water and snacks to people in line to vote and other persons in the vicinity of polling locations; and other unreasonably burdensome restrictions imposed by these new voting changes on voters and election officials alike.

34. SB 202 will substantially and negatively impact the GCPA’s advocacy efforts now and in the future. This law will inevitably cause Black voters and other voters of color negatively impacted by these new restrictions to lose faith that their votes will be counted on an equal basis as white voters. This sense of futility will likely depress turnout in the future and make it more difficult for the GCPA to carry out its mission of encouraging Black voters, other voters of color and voters in underserved communities to register to vote, vote, and to help protect the rights of other Georgians to vote.

35. Due to the substantial changes in existing Georgia election law and procedures, including the potential imposition of new criminal penalties and significant fines and fees, SB 202 has caused, and will continue to cause, the GCPA to divert a portion of its financial and other organizational resources to educating voters about these changes and assisting voters facing these new restrictions and burdens.

36. As a result of the enactment of these new restrictions on voting in Georgia, the GCPA has, and will continue to have, fewer resources to dedicate to its other organizational activities, including voter registration drives, GOTV efforts and other projects, unless the Court enjoins enforcement of these new laws.

37. Plaintiff LEAGUE OF WOMEN VOTERS OF GEORGIA, INC. (League) is a nonpartisan political organization that has worked for the last 101 years to ensure that every person has the desire, the right, the knowledge and the confidence to participate in our democracy. The League's 13 local organizations and nearly 700 members are dedicated to our mission of empowering voters and defending democracy.

38. From the League's inception, members have worked for good government by studying issues, advocating for reforms, and, through the League's Observer Corps, observing and reporting on the work of all levels of government.

The League is committed to registering voters, regardless of their political affiliation, and is particularly proud of its work, with community partners, in registering new American citizens at citizenship ceremonies. The League is also dedicated to voter education, both through candidate forums and the Vote411.org voter guide. Many League members also assist with get out the vote efforts, poll watching, and serving as vote review panelists.

39. As part of its mission, the League advocates for expansion of voting opportunities, including through absentee by mail voting, early in-person voting and election day voting. The League expends significant resources in furtherance of its mission, including by organizing voter registration drives, educating the public about the voting process, and assisting voters who have questions or need help navigating the voting process. The League has seen a substantial increase in the number of its members and other individuals who turned out to vote by mail and during early in-person voting during the 2020 election cycle and January 5, 2021 Senate runoff elections.

40. As a result of the risk of disenfranchisement due to new ID requirements for absentee by mail voting, the League must divert more resources toward educating voters about these new requirements, including, but not limited to, warning them of the risk of disenfranchisement if they fail to provide the

required ID and other required information when applying or absentee ballots and when returning the ballots; answering questions from members of the public about these new voting restrictions; and explaining how they impact their right to vote. The League will need to devote significant staff time and funds to update standard training materials and informational booklets to reflect these sweeping changes.

41. The League must divert these resources away from its regular advocacy, voter registration, fundraising, and other activities, affecting its ability to operate and function with respect to its normal activities.

42. Plaintiff GALEO LATINO COMMUNITY DEVELOPMENT FUND, INC. (“GALEO LCDF”); is a non-partisan, nonprofit corporation. GALEO LCDF is one of the oldest, largest, and most significant organizations promoting and protecting the civil rights of Georgia's Latinx community. GALEO LCDF has approximately 165 members across Georgia.

43. GALEO LCDF's headquarters is located in Norcross, which is in Gwinnett County, and a substantial amount of GALEO LCDF's civic engagement, voter registration and get out the vote work takes place in Gwinnett County and other Metro Atlanta counties. This work includes organizing voter education, civic engagement, voter empowerment and get out the vote events and conducting voter

registration drives. After Gwinnett County became a covered jurisdiction for Spanish under Section 203 in December 2016, GALEO LCDF has worked also with the Gwinnett County Board of Registration and Elections (“BORE”) in an effort to bring its procedures and election materials into compliance with the law’s requirements.

44. During the 2020 election cycle, GALEO LCDF also worked to address challenges facing Gwinnett County’s LEP Spanish speaking voters as a result of the impact of the COVID-19 pandemic.

45. GALEO LCDF sent bilingual mailers to Latinx Gwinnett County voters with information about the presidential primary as well as additional mailers after the primary was postponed due to COVID-19.

46. GALEO LCDF also sent several rounds of bilingual mailers to all Latinx Georgia voters for both the General Election and the January 5, 2021 runoffs. GALEO LCDF also ran paid advertisements on Spanish media (radio & TV) to promote voting and educate voters about voting for both elections.

47. Due to the sweeping changes to many facets of voting that stand to disenfranchise Latinx, language minority voters and voters of color, GALEO LCDF will be forced to divert resources from his voter registration, existing voter education programs, get out the vote (GOTV) activities and other programs to

assist voters, particularly limited English proficient voters and new Americans, in being able to navigate the many changes and challenges of SB 202 that will make it more burdensome for them to vote by absentee ballot, during early voting and in person on Election Day.

48. Plaintiff COMMON CAUSE is a nonprofit corporation organized and existing under the laws of the District of Columbia. It is one of the nation's leading grassroots democracy-focused organizations and has over 1.2 million members nationwide and chapters in 35 states, including 18,785 members and supporters in Georgia. Since its founding in 1970, COMMON CAUSE has been dedicated to the promotion and protection of the democratic process, including the right of all citizens to vote in fair, open, and honest elections. COMMON CAUSE, at the national level and in Georgia, conducts significant nonpartisan voter-protection, advocacy, education, and outreach activities to ensure that voters are registered and have their ballots counted as cast.

49. In Georgia, COMMON CAUSE has increased its efforts in the areas of election protection, voter education, and grassroots mobilization around voting rights in the state. COMMON CAUSE works on election administration issues with its coalition, much of which is represented by the other plaintiffs in the instant lawsuit.

50. COMMON CAUSE, alongside other partners in Georgia, created a program to help recruit volunteers to monitor local board of elections meetings. Common Cause also works with these partners in election protection efforts during both midterm and presidential elections. Through its volunteer recruitment for poll monitors, COMMON CAUSE in Georgia monitors an average of five polling locations in 22 counties for a total of 110 polling places. COMMON CAUSE in Georgia additionally engages in online petition drives, soliciting signatures from its members and supporters urging government officials to take certain actions.

51. COMMON CAUSE in Georgia also works directly with voters who cast provisional ballots to help ensure their ballots can be counted.

52. During the 2020 election cycle, COMMON CAUSE in Georgia assisted some 6,000 voters who cast provisional ballots to cure those ballots so they could be counted — most were cast because the voter appeared at the wrong precinct. As a result of the enactment of SB 202, COMMON CAUSE will continue to divert resources that it would apply to other organizational and programmatic resources toward helping voter resolve provision ballot issues, including provisional ballots cast due voters appearing at the wrong precinct, often through no fault of their own.

53. Plaintiff LOWER MUSKOGEE CREEK TRIBE is a state-recognized tribe located in Grady County on the southwest border of Georgia. The tribal government is located in the old tribal town of Tama, which is located in Whigham, Georgia. The tribe has an enrollment of approximately 2,700 members, most of whom live in rural southwest Georgia and northern Florida within a 150-mile radius to Whigham. The tribe operates a civics education program for its members to encourage them to participate in the political process. The tribe's members are disproportionately poor and likely to be affected by SB202's cutback on voting by mail and criminalization of providing food and water to voters in line at the polls.

54. The United States Census Bureau's 2019 5-Year American Community Survey (ACS) estimates indicate that 41.6% of American Indians in Georgia do not have a computer at home and that American Indians in Georgia are 155% less likely than white Georgians to not have a computer at home. This makes it more likely that Georgia's American Indian voters, including members of the LOWER MUSKOGEE CREEK TRIBE, will face significantly higher burdens complying with SB 202's absentee ballot provisions than white voters because they are less likely to have a computer, printer scanner or internet access at home. These resources are needed to obtain and print an absentee ballot application from

the websites of the Secretary of State or county registrar and to print necessary ID documentation for the absentee ballot application and to include when returning a voted absentee ballot to their county registrar's office.

55. Defendant BRAD RAFFENSPERGER is the Secretary of State of the State of Georgia. He is responsible for administering and implementing Georgia's election laws and regulations as well as coordinating Georgia's compliance with the National Voter Registration Act of 193 (52 U.S.C. § 20507, *et seq.*). He is sued in his official capacity.

56. Defendants REBECCA N. SULLIVAN, DAVID J. WORLEY, MATTHEW MASHBURN, AND ANH LE are members of the State Election Board and are named herein in their official capacities.

57. The duties of members of the State Election Board include: promulgating rules and regulations to "obtain uniformity" in the practices and proceedings of elections officials, "as well as the legality and purity in all . . . elections"; formulating, adopting, an orderly conduct of primaries and elections"; promulgating rules and regulations to "define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote"; and investigating frauds and irregularities in elections. *See* O.C.G.A. § 21-2-31.

STATEMENT OF FACTS

Summary of the Challenged Provisions of SB 202

58. SB 202 is a 98 page omnibus bill which constitutes a major overhaul of Georgia's Election Code and voting procedures. The bill as enacted includes a new and complicated absentee ballot application and ballot return process and mandates new ID requirements when voting by absentee ballot, as well as when requesting an absentee ballot. SB 202/AP Section 25.

59. The new absentee ballot ID requirements mandate that voters include a Georgia Driver's license number or Georgia State ID number on their absentee ballot application. If they have neither, voters are required to copy another form of acceptable voter ID and attach the copies of ID documents along with other identifying information to both their absentee ballot applications and inside the absentee ballot envelope when returning the voted ballot – thereby opening up absentee ballot applicants to potential fraud or identity theft. Because voters, except those over the age of 65 or disabled, must make a new application for an absentee ballot for each election in an election cycle, voters are now required to provide this ID information multiple times each election cycle.

60. The bill also prohibits public employees and agencies from sending unsolicited absentee ballot applications to voters, yet threatens private individuals

and organizations who are not so prohibited, such as the Plaintiffs, with a substantial risk of incurring hefty fines for every application they send to an individual who has not yet registered to vote or who has already requested a ballot or voted absentee. This will be the case under SB 202 even though many voters reported not receiving their absentee ballots after making an initial request for one in the 2020 election cycle and voters benefited from having assistance from individuals and groups, like the Plaintiffs' organizations, in helping them submit additional requests so that they could receive their absentee ballots. SB 202/AP, Section 25.

61. SB 202 also significantly limits the accessibility of absentee ballot drop boxes to voters. While all counties would be required to have at least one, the placement of drop boxes is limited to early voting locations and drop boxes are available only to voters who can enter the early voting location during early voting hours to deposit their ballot inside the box. Thus, drop boxes are essentially useless to voters who can vote early in-person or who cannot access early voting hours at all due to work or other commitments during early voting hours.

SB202/AP Section 26.

62. The bill also mandates an earlier deadline of 11 days before an election to request an absentee ballot, leaving some voters who become ill or have

to travel out of the area in the lurch if they cannot vote during early voting and are unable to meet the earlier deadline to apply for a ballot.

63. SB 202 gives unlimited discretion to election boards to limit early voting hours to 9 am to 5 pm weekdays and on weekends, and to two Saturdays before the election.

64. This change in the law provides county registrars with unfettered discretion to set the time period for early voting between 9 am and 5 pm during weekdays and on weekends, despite the fact that these are the same hours many individuals work, attend school or have other responsibilities that make it impossible or significantly more burdensome for them to cast ballots during regular workday hours. This change will have a disproportionate impact on Black voters and voters of color who have low income and hourly wage jobs and will have difficulty being able to take time off during their workday to vote between 9 am and 5 pm.

65. Additionally, county boards of election are given unfettered discretion with no guidelines in determining whether to eliminate all Sunday early voting days. SB 202/AP, Section 28.

66. Georgia Secretary of State statistics demonstrate that Black voters and other voters of color utilize Sunday early voting hours significantly more than

White voters. Black voters and other voters take part in GOTV efforts focused on Sunday early voting, including “Souls to the Polls” events hosted by Black churches and other faith-based organizations that provide rides to the polls following church services or as part of their church fellowship activities. As a result, the elimination or reduction of Sunday early voting under SB 202 discriminates against Black voters and other voters of color who utilize Sunday early voting hours at higher rates than white voters.

67. SB 202 also substantially changes the rules on whether voters may cast ballots at the wrong polling location or precinct within the same county where they are registered to vote. SB 202 /AP Section 34.

68. Under SB 202, voters who arrive to vote after 5 pm and sign an affidavit under penalty of perjury that they cannot get to their home precinct before the close of the polls will be able to cast a provisional ballot which will count with respect to the same contests on the voter’s home precinct ballot. All other voters who arrive at the incorrect precinct before 5 pm can cast a provisional ballot at the incorrect precinct, but none of their votes will count. In order for their votes to count, they will be required to vote at their home precinct, even if they cannot get to their home precinct by the time polls close. The Board of Elections is tasked with reviewing the sworn statements submitted by the voters who cast provisional

out of precinct ballots after 5 pm, but it is unclear what the purpose of that review would be.

69. SB 202 shortens the runoff period to four weeks following the election that led to the runoff for stateside voters, significantly limiting access to in-person early voting, which may only allow for a three-day early voting period if a runoff occurs during Thanksgiving week. The ability to cast an absentee mail-in voting during this reduced time period will also be challenging, if not impossible for some voters. SB 202/AP Section 28.

70. The provisions of SB 202 imposing new burdens on voting by absentee ballots and limiting access to early voting will likely result in longer lines and delays at the polls on Election Day, particularly for Black voters and voters of color in Georgia who are more often than white voters impacted by lines and delays when voting on election day. *See, e.g.,* Stephen Fowler, *Why Do Nonwhite Georgia Voters Have To Wait In Line For Hours? Too Few Polling Places*, Georgia Public Broadcasting, October 17, 2020, accessible at: <https://www.npr.org/2020/10/17/924527679/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl>

71. Compounding the burden on Black and Brown voters who experience long lines and delays at the polls, SB 202 also criminalizes “line-warming,” the act

of well-meaning individuals and organizations who hand out water or snacks, umbrellas, or chairs to ease the burden on voters standing in line for protracted periods to vote. SB 202/AP Section 33.

72. SB 202 also removes powers from the Secretary of State. The Secretary of State will no longer serve as the Chair of the State Election Board and would no longer have voting powers as a member of the State Election Board. Another provision allows the State Election Board and members of the General Assembly to take over county election offices. SB 202/AP Section 5.

73. Pursuant to SB 202, the county commission or members of the General Assembly could take action to commence a performance review of election supervisors that could lead to their suspension. Up to four election supervisors could be suspended at one time. SB 202/AP Section 7.

Racial and Ethnic Demographics of Voting in Georgia

74. The Secretary of State of Georgia maintains detailed records as to the racial demographics of voting. As a result, the Georgia legislators and its elected officials are well aware of the implications of making decisions as to voting on racial and ethnic minorities.

75. In every presidential election since 2004, the share of registered voters who are white has decreased in Georgia: from 68% in 2004, to 63% in 2008, to

59% in 2012, to 56% in 2016, to 53% in 2020. During that same period, the cumulative share of registered Black, Latinx and Asian American/Pacific Islander (“AAPI”) voters and voters who are members of indigenous tribes has increased.

76. The percentage of the vote that the Republican Presidential candidate has received in Georgia has decreased in every election since 2004 with the exception of 2012.

77. The 2018 statewide election in Georgia demonstrated how fragile the Republican party’s hold on the state was. While Republican candidates won the races for Governor, Lieutenant Governor, Secretary of State, and Attorney General, all of the winners received less than 52% of the vote and the Secretary of State election went to a run-off.

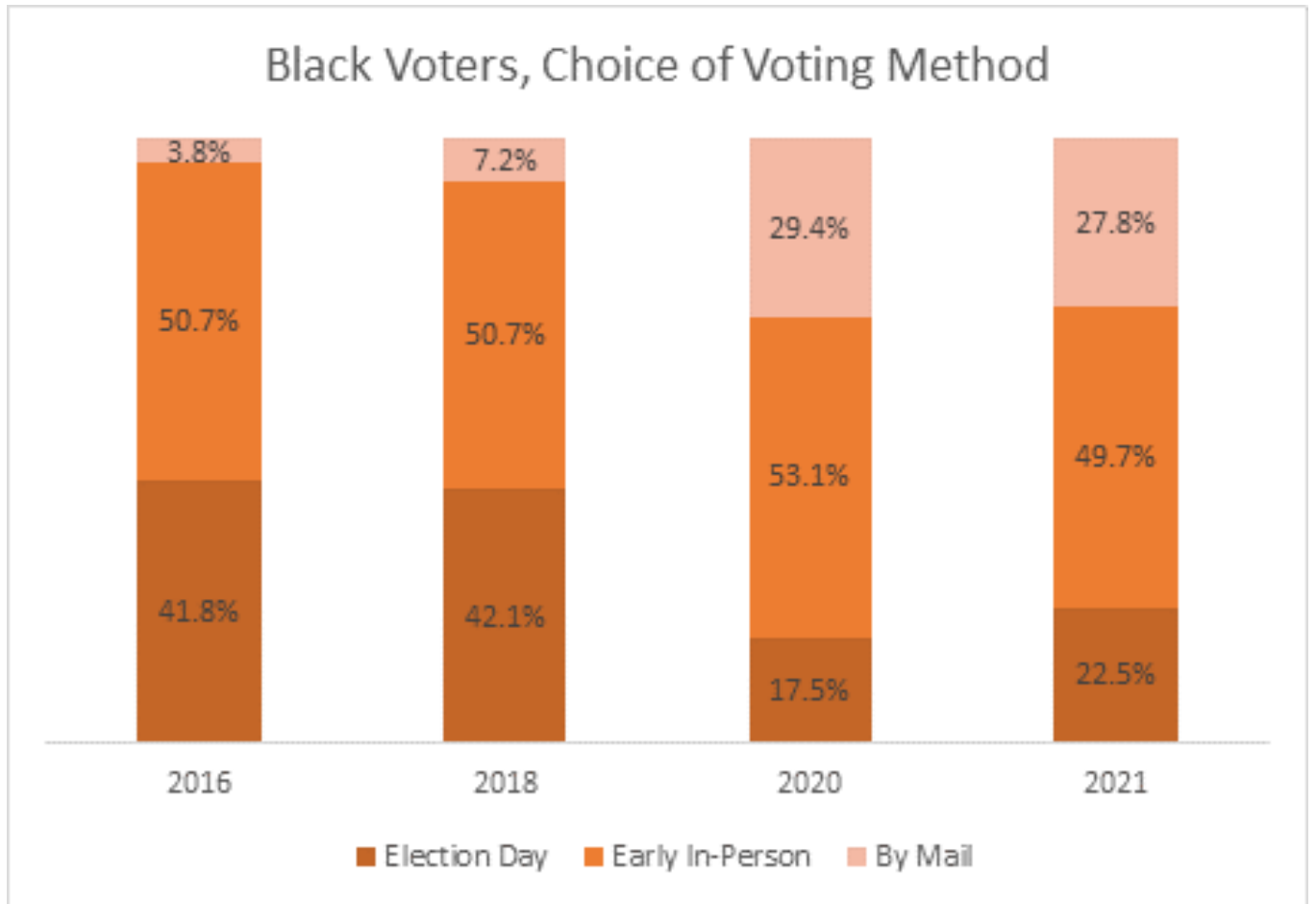
78. In 2020, a Democratic candidate won the presidential election for the first time in Georgia since 1992, and two senatorial races were sent to run-offs, with both Democratic candidates winning in January 2021. This was the first time a Democrat had won a United States Senate race in Georgia since 1996.

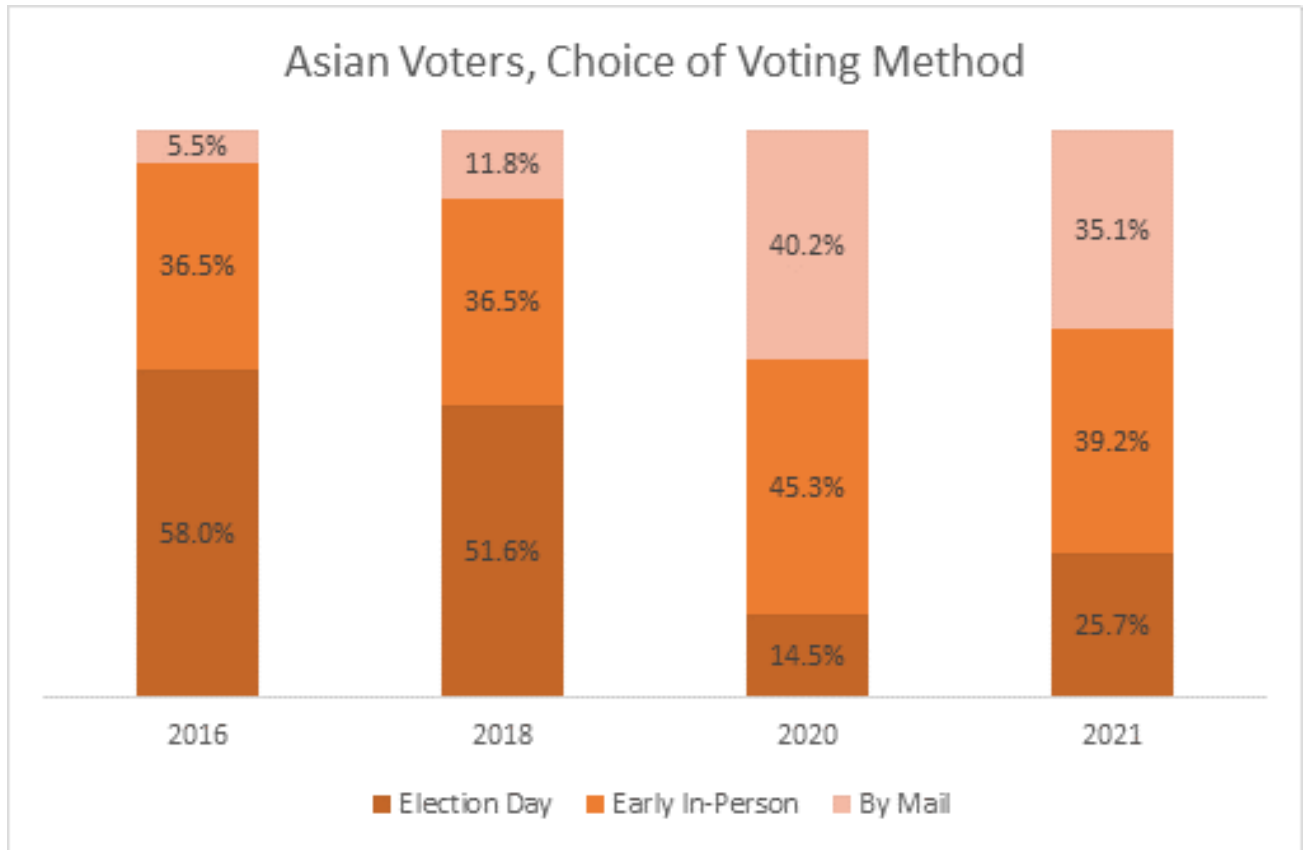
79. Between 2016 and 2020, the share of registered voters who are white decreased from 56% to 53% and the percentage of voters who turned out who were white decreased from 61% to 58%. These percentages stayed the same for the

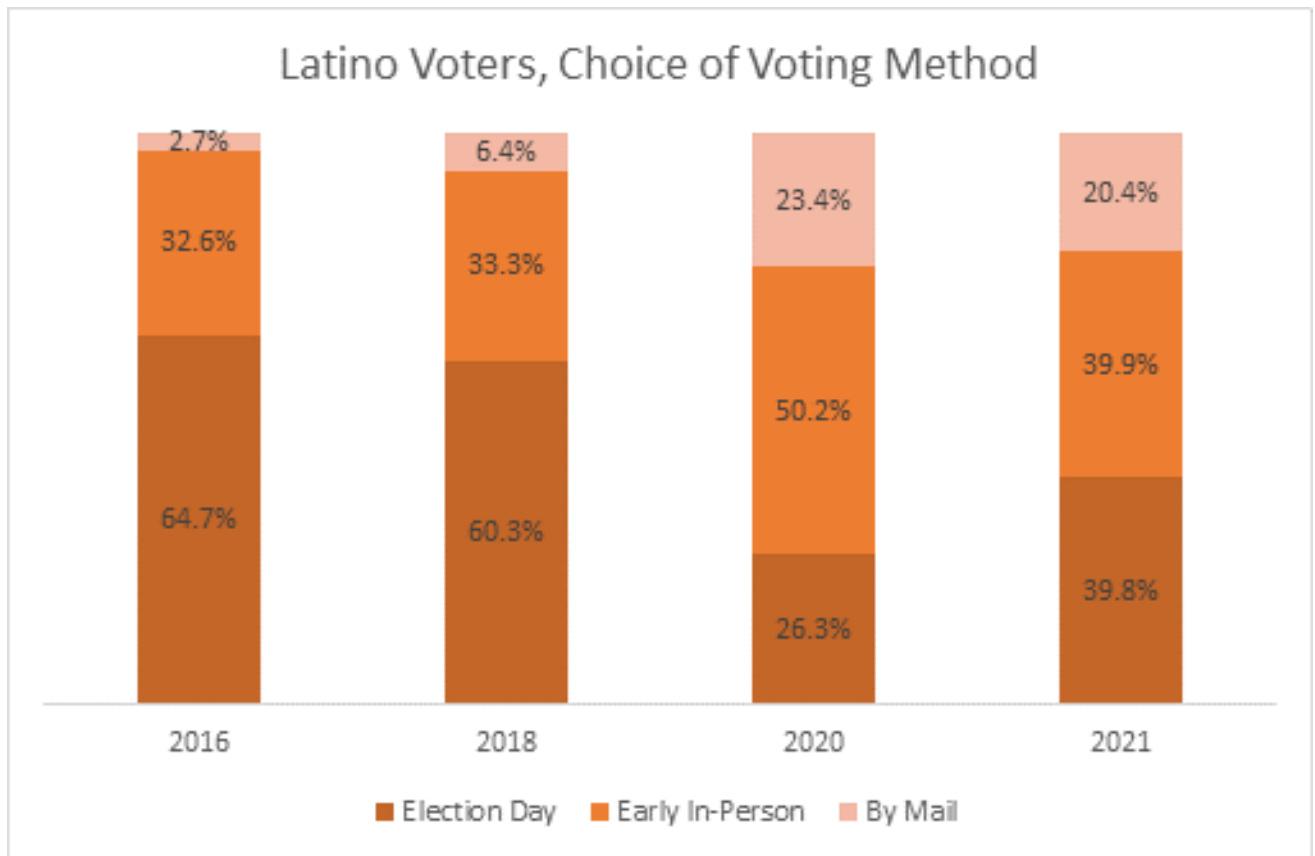
January 2021 run-off elections. These 3 percentage point drops were determinative in who won the 2020 and 2021 elections.

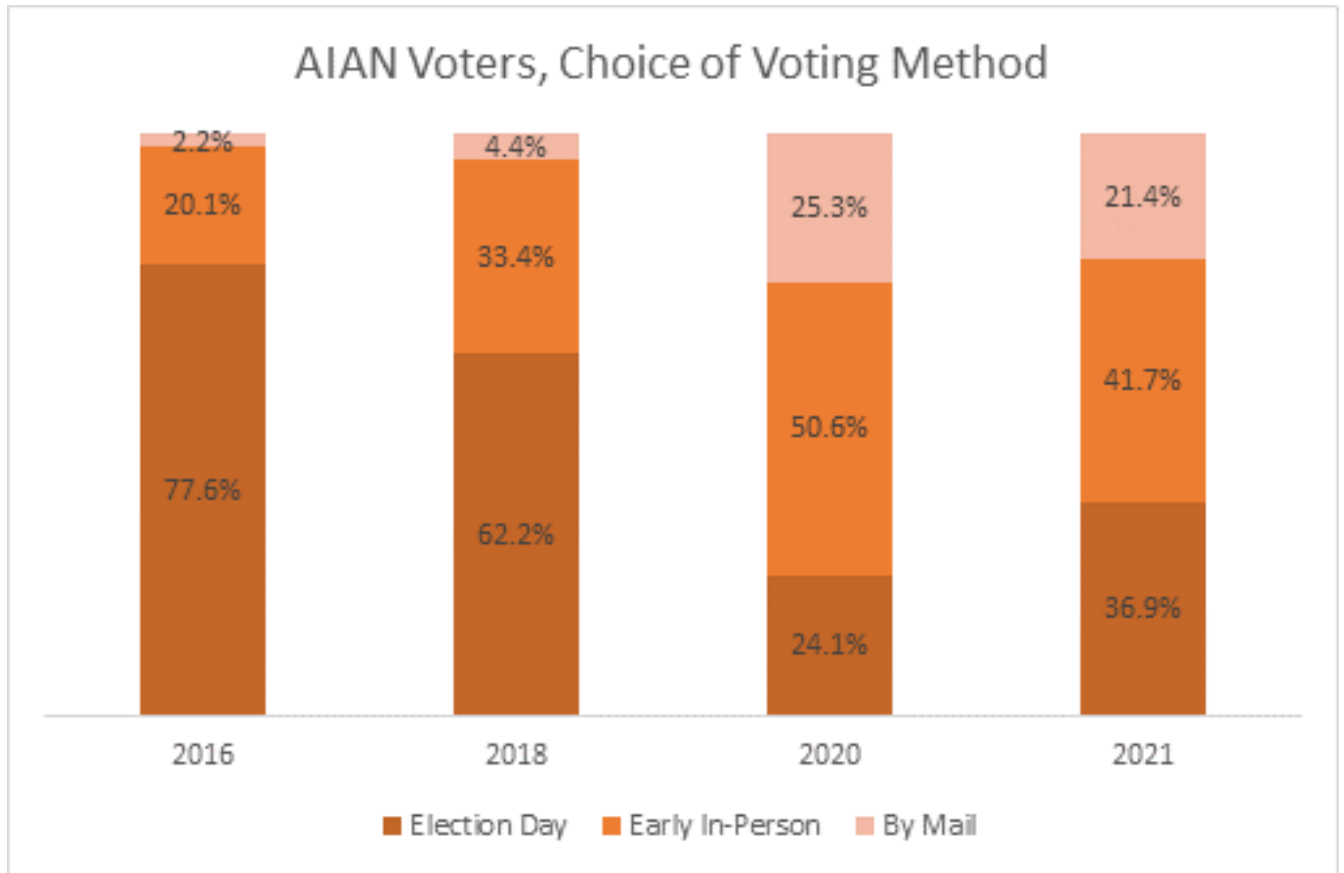
80. Election analysis demonstrates that Black voters and voters of color usually provide strong support to Democratic candidates. Members of the Georgia General Assembly are aware of this fact.

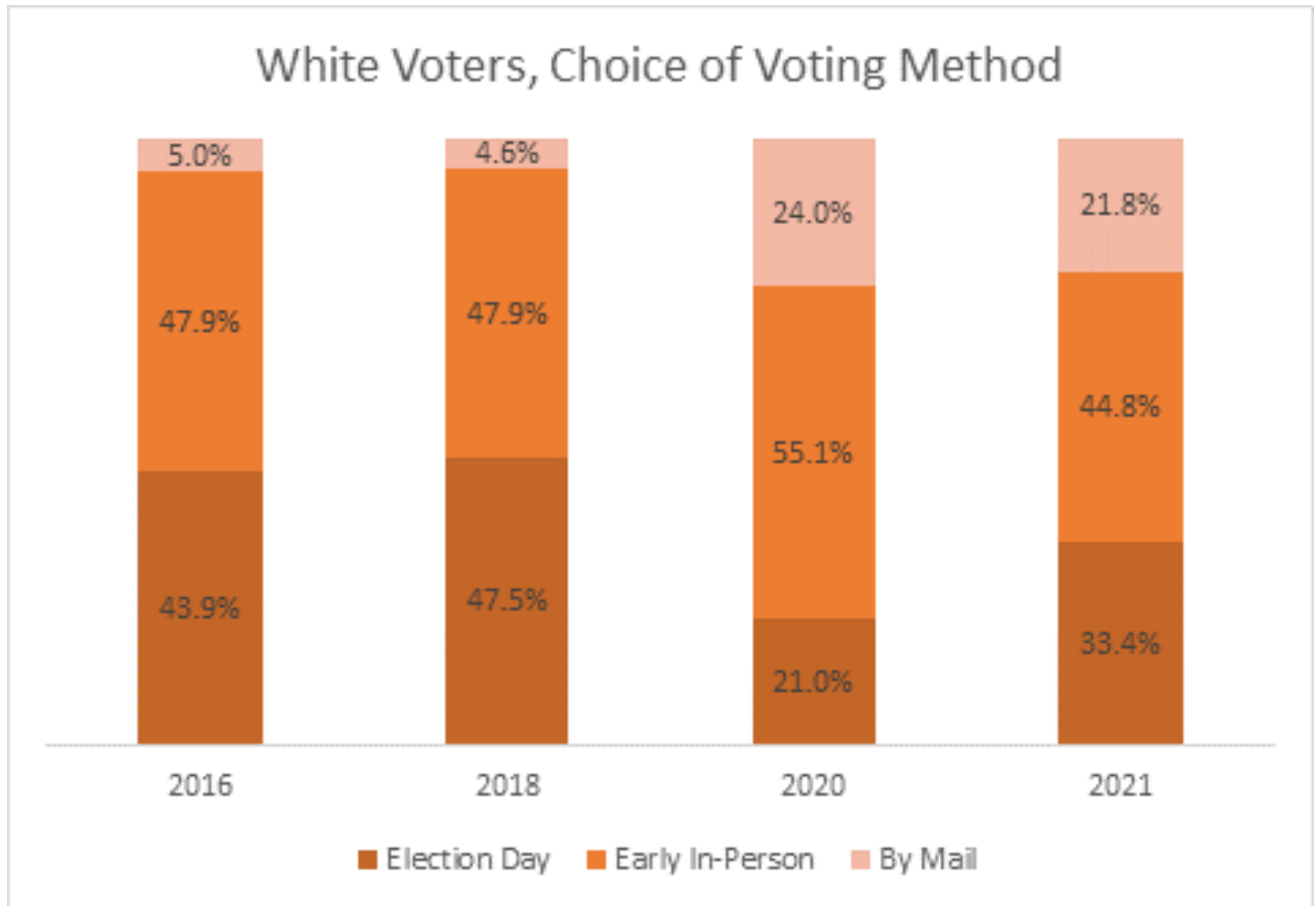
81. As seen in the following graphs, even before the pandemic, Black, Latinx, AAPI and American Indian Alaska Native voters (referred to as “AIAN”) in Georgia had made increasing use of voting by mail and early voting. This trend increased significantly during the 2020 and 2021 elections because of the pandemic.











82. Between 2016 and 2018 general elections in Georgia, the percentage of Black, Latinx, AAPI and indigenous tribe voters choosing to vote by mail increased, while the percentage of White voters choosing to vote by mail or to vote decreased somewhat. White, Black, Latinx, AAPI, and indigenous voters all chose to vote by mail at larger percentages during the 2020 and 2021 elections because of the pandemic, with a greater percentage of Black and Asian voters choosing to vote by mail than White voters.

83. Persons of color in Georgia, and particularly Black voters, have chosen to take advantage of early voting opportunities even before the pandemic, at rates comparable to, and often higher than White voters. This is particularly so as to in-person early voting on Sunday where, because of “Souls to the Polls” programs, Black voters, who in the 2020 general election comprised approximately 30% of all registered voters in Georgia, but accounted for 36.5% of Sunday voters, compared to 26.8% of early in-person voters on other days. In comparison, 60% of voters who voted early on days other than Sunday were white; but whites comprised only 47% of in-person early voters on Sundays, despite comprising 53% of Georgia’s registered voters.

84. Black residents of Georgia are 88% more likely than white Georgia residents to be below poverty level, and, upon information and belief, as a result are less likely to possess the IDs required by SB 202, and more likely to encounter technology access issues that would render the printing and copying requirements of SB 202 more burdensome on them.

85. Latinx residents of Georgia are 91% more likely than white Georgia residents to be below the poverty level, and, upon information and belief, as a result are less likely to possess the IDs required by SB 202, and more likely to

encounter technology access issues that would make the printing and copying requirements of SB 202 more burdensome.

86. Black Georgians are 58% more likely than white Georgians to lack computer access in their homes.

87. Latinx Georgians are 74% more likely than white Georgians to lack computer access in their homes.

88. Native Hawaiian Pacific Islanders are 100% more likely to lack home computer access than are white Georgians.

89. Upon information and belief, Black and Latinx voters and other persons of color in Georgia are more likely than white voters in Georgia to hold jobs that do not give them the flexibility to take off from work during the time that early voting and drop boxes are available under the new restrictions of SB 202.

90. Since 2013, Georgia has experienced polling place closures, consolidations, and changing of locations of polling places, often in communities of persons of color.

91. Persons of color are more likely than White voters to confront long lines to vote in Georgia when they vote in person.

Legislative History of SB 202

92. SB 202 was part of a wave of proposed legislation introduced in 2021, in a number of jurisdictions, grounded in baseless and often racially tinged claims of voter fraud and election irregularities. Eleven such bills were proposed in Georgia itself.

93. The procedure leading up to the passage of SB 202 was rushed and irregular. Bills covering the same subjects, but with slightly conflicting provisions were introduced in both houses of the Georgia legislature, sometimes in the same house. Committee hearings were scheduled on the bills, but without posted agendas, and without ample notice to the public or opportunity for the public to view the proceedings without attending them in person.

94. Throughout the hearings held on these bills, the legislators were repeatedly warned by community members and organizations that these bills, including SB 202 and predecessor bills with similar provisions, would adversely and disproportionately impact populations of persons of color.

95. For example, at a February 19, 2021 hearing on a related bill that contained many of the same provisions that ultimately were incorporated in SB 202, representatives of the Georgia Coalition for the People's Agenda noted that

“prohibiting of early voting on Sundays, and therefore the elimination of the Souls to Polls, feels like a direct attack on certain communities.”

96. At this same hearing, representatives from the Southern Poverty Law Center Action Fund warned legislators that these bills represented calculated attempts to adversely impact minority groups, and that the provisions such as the photo ID requirement for absentee ballots would disproportionately impact racial minorities.

97. There was a brief hearing on SB 202 during the first week of March before the Senate Ethics Committee. At this time, SB 202 was a scant two-pages long, and limited to the issue of distribution of absentee ballot applications. At that hearing, representatives of community groups alerted the Committee to the potential negative impact of the civil penalties for distributing absentee ballot applications to certain voters would have on such community groups.

98. On March 17, 2021, at a hearing of the House Special Committee on Election Integrity, SB 202 was discussed, despite no agenda for the hearing being provided to the public until two hours before the hearing.

99. At this March 17, 2021 hearing, community organizations and civil rights organizations, including from the Georgia Coalition for the People’s Agenda, expressed multiple concerns to lawmakers about SB 202, including the

lack of transparency and irregular process, as well as concerns about the bill taking local authority away from county election officials.

100. On March 18, 2021 – the very next day – SB 202 was amended again, with a new substitute replacing it. Chairman Barry Fleming conducted a hearing of the House Special Committee on Election Integrity, despite not having a substitute ready to distribute, and instead described the changes to the bill without releasing new language to the public. Despite the fact that there were changes from the prior day, Chairman Fleming also prohibited comment from organizations that had provided comments on March 17, 2021.

101. On March 19, 2021, two further substitutions to the bill were made and released to the public.

102. On March 22, 2021, an hour before a scheduled hearing of the House Special Committee on Election Integrity on March 22, 2021, House leadership shared the new over 90-page version of SB 202 with Democratic members of the Committee. Chairman Fleming refused to take additional comment on the bill, despite the substantial changes and the two additional March 19 substitutions.

103. When SB 202 was first passed over from the Senate to the House on March 9, 2021, it was a 2-page bill that dealt only with restrictions concerning individuals and third-party groups sending absentee ballot applications to

prospective voters. In a matter of two weeks, the bill had grown to over 90 pages dealing with numerous topics.

104. During the debate on the House and Senate floor on SB 202, Black legislators alerted their colleagues to the discriminatory impact SB 202 would have on Black voters and other voters of color.

105. The bill was put up for a full vote two days later on March 25, 2021.

106. Despite the requirements of Georgia law that bills having either a significant impact on expenditures of a state agency or at least \$5 million cost to local agencies must have a fiscal note attached, SB 202 contains no fiscal note. The failure to attach a fiscal note to the bill was raised on the Senate floor, but was summarily rejected by the President of the Senate.

107. Throughout the debate on SB 202, its supporters attempted to justify the bill using language similar to that used by former President Trump and his allies concerning non-existent election irregularities in the 2020 Georgia Presidential vote. Representative Barry Fleming, Chair of the House Special Committee on Election Integrity, publicly likened absentee ballots to the “shady part of town down near the docks” where the “chance of being shanghaied” is significant.

CLAIMS FOR RELIEF

COUNT I

**52 U.S.C. § 10301 and 42 U.S.C. § 1983
(Discriminatory Purpose in Violation of the
Fourteenth and Fifteenth Amendments to the United States Constitution and
Section 2 of the Voting Rights Act, Against all Defendants)**

108. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1 to 107 above, as if fully set forth herein.

109. 42 U.S.C. § 1983 authorizes suits for the deprivation of a right secured by the Constitution or the laws of the United States caused by a person acting under the color of state law.

110. Section 1 of the Fourteenth Amendment to the United States Constitution provides that:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

111. Section 1 of the Fifteenth Amendment to the United States Constitution provides that:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

112. Both the Fourteenth and Fifteenth Amendment prohibit intentional racial discrimination by state actors.

113. Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, in relevant part, provides:

- (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United State to vote on account of race or color, or [membership in a language minority group].
- (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

114. A violation of Section 2 of the Voting Rights Act may be based either on a finding of a discriminatory purpose behind the challenged governmental

action or a finding of a discriminatory result from the challenged governmental action

115. Discriminatory intent may be established by proof that the defendants used race as a motivating factor in their decisions. *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977).

116. The burdens of SB 202 are intended to, and will have, the effect of disproportionately and adversely affecting the right to vote of Black voters and other voters of color, including, but not limited to,

- 1) Imposing onerous and unnecessary ID requirements on voters who submit applications for absentee ballots and when they return voted absentee ballots;
- 2) Prohibiting public employees and public entities from sending out unsolicited absentee ballot applications to voters;
- 3) Threatening private individuals and non-public entities with potentially large fines for sending absentee ballot applications to voters who are not currently registered to vote or who have already requested a ballot, received a ballot or voted a ballot;
- 4) Giving county registrars unfettered discretion to limit early voting hours to 9 am to 5 pm and to entirely eliminate Sunday early voting

which will weigh more heavily on Black voters and other voters of color who must work 9-5 pm jobs and participate in “GOTV events, such as, “Souls to the Poll” events organized to increase Black voter turnout.

- 5) Limiting access to absentee ballot drop boxes to locations inside early voting sites when advance in person voting is taking place, rendering the drop boxes virtually useless since voters can vote early in person at these locations;
- 6) Prohibiting out of precinct voting before 5 pm without recognizing the confusion and negative impact experienced by Black voters and other voters of color from hundreds of polling place changes in Georgia since the Supreme Court’s decision in *Shelby County v. Holder*;
- 7) Criminalizing “line-warming,” which provides relief for voters forced to wait in long lines because of the other discriminatory voting changes imposed by SB 202;
- 8) Removing the voting power of the Secretary of State on the State Elections Board, coupled with granting power to the State Election Board to take over county election boards and targeting jurisdictions with large populations of Black voters and other voters of color;

- 9) Encouraging the submission of large numbers of voter challenges by using the term, “unlimited,” in referring to elector challenges in SB 202.

117. Race was a motivating factor behind the enactment of SB 202.

118. SB 202 was enacted at a time when Black voters and other voters of color were making increasing use of means of voting that are being limited and restricted in SB 2020.

119. SB 202 was enacted immediately following elections in which the size of the population of Black voters and other voters of color, particularly when compared to the diminishing share of the white vote, had become larger in statewide elections.

120. In passing SB 202, the Georgia legislature deviated from procedural norms in its rushing the bill to passage, in its failure to provide adequate notice and opportunity to be heard and to view committee proceedings; in its speedy replacement of a 2-page bill with a 95-page bill without sufficient notice; and in its failure to include the required fiscal statement.

121. The purported justification for SB 202 was pretextual.

122. The Chair of the House Committee on Public Integrity made culturally-insensitive statements in connection with the passage of SB 202.

123. The supporters of SB 202 were on notice of the foreseeability of the disparate impact of SB 202.

124. There are less discriminatory alternatives to every aspect of SB 202, including simply maintaining the status quo, particularly given the complete lack of evidence of significant voter fraud.

125. Defendants will be unable to prove that, SB 202 would have been enacted without race as a motivating factor.

126. SB 202 was enacted with a racially discriminatory purpose in violation of Section 2 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments.

127. Implementation of SB 202 will irreparably harm Plaintiffs as well as Black voters and other voters of color by denying or abridging their right to vote.

128. WHEREFORE, Plaintiffs pray for relief as set forth hereafter.

COUNT II

(Violation of Section 2 of the Voting Rights Act of 1965 52 U.S.C. § 10301)

129. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1 to 128 above, as if fully set forth herein.

130. In determining whether a challenged voting practice violates the results prong of Section 2 of the Voting Rights Act, a court undertakes a two-step

analysis. First, it must determine whether a provision produced a disproportionate impact on account of race.

131. If there is a disproportionate impact, a court must examine the “totality of the circumstances” and determine whether “the political processes ... are [] equally open to participation by [members of a protected class] ... in that its members have less opportunity than other members of the electorate to participate in the political process.” *See e.g., Johnson v. Governor of Fla.*, 405 F.3d 1214, 1228 n.26 (11th Cir. 2005); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1197-98 (11th Cir. 1999).

132. The provision of SB 202 that limits early voting, and specifically, limits early voting on Sundays, will have a disproportionate impact on the ability of Black voters in Georgia to participate equally in the political process because Black voters have traditionally voted early on Sundays disproportionately to their share of the Georgia registered voting population.

133. The provision of SB 202 that prohibits “line-warming” will have a disproportionate impact on the ability of Black voters and other voters of color in Georgia to participate equally in the political process because they are more likely than White voters to confront long lines and wait times when they vote in person.

134. The disproportionate impact of these provisions, individually and collectively, is caused by present and past discrimination on account of race and ethnicity by the state of Georgia, as shown by the totality of the circumstances, including factors deemed relevant by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30, 36 (1986).

135. Georgia has a long history of official discrimination in the jurisdiction that touched the right of minorities to register, vote, or otherwise participate in the electoral process, and the history of voting discrimination against Black residents in Georgia is well documented. Georgia's history of racial discrimination in voting is so long and deep that courts have taken judicial notice of it. *Johnson v. Miller*, 864 F. Supp. 1354, 1379-80 (S.D. Ga. 1994), *aff'd and remanded*, 515 U.S. 900 (1995); *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F.Supp. 3d 1297, 1310 (M.D. Ga. 2018), *aff'd*, 979 F.3d 1282 (11th Cir. 2020).

136. Voters of color in Georgia bear the effects of discrimination in education, employment, and health that hinder their ability to participate effectively in the political process.

137. The policy behind the use of the voting practices in question is tenuous and pretextual.

138. As a result of SB 202's requirements and prohibitions described above, individually and collectively, under the totality of the circumstances, the political process in Georgia is not equally open to participation to Black voters and other voters of color in that such citizens have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

139. The requirements and prohibitions of SB 202 described above constitute qualifications or prerequisites to voting within the meaning of Section 2 of the Voting Rights Act, and result in the denial or abridgement of the right to vote of U.S. citizens who are residents of Georgia on account of their race or color, or membership in a language minority group, in violation of Section 2 of the Voting Rights Act.

140. Implementation of SB 202 will irreparably harm Black voters and other voters of color.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

COUNT III

42 U.S.C. § 1983

**(Burden On The Fundamental Right To Vote
First And Fourteenth Amendments)**

141. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1 to 140 above, as if fully set forth herein.

142. The First and Fourteenth Amendments of the United States Constitution protect the right to vote as a fundamental right. The First Amendment's guarantees of freedom of speech and association protect the right to vote and to participate in the political process.

143. The right to vote is a fundamental constitutional right also protected by both the due process and equal protection clauses of the Fourteenth Amendment. *See, e.g., Bush v. Gore*, 531 U.S. 98, 104-05 (2000); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966); *Anderson v. Celebrezze*, 460 U.S. 780, 786-87 (1983).

144. “A court considering a challenge to a state election law must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it

necessary to burden the plaintiffs' rights.” See *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

145. Even when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden. *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009). The more a challenged law burdens the right to vote, the closer the scrutiny courts will apply when examining that law. *Stein v. Ala. Sec. of State*, 774 F.3d 689, 694 (11th Cir. 2014).

146. SB 202’s provisions inflict substantial burdens on Georgia’s voters, both through the individual restrictions and provisions and collectively through the combined effect of all of the restrictions and barriers.

147. SB 202’s provisions requiring ID information and photo identification with absentee ballot applications and ballots imposes a substantial burden on all voters. This burden is unnecessary and is not outweighed by any purported State interest.

148. SB 202’s restrictions on sending of absentee ballot applications, both by the Secretary of State and third parties, imposes a substantial burden on voters trying to apply for and vote absentee that is not outweighed by any purported state interest.

149. SB 202's significant limitations on early voting, in particular the impact on Sunday early voting, impose a substantial burden on all voters; this burden is unnecessary and is not outweighed by any purported State interest.

150. SB 202's restrictions on drop boxes will make it harder for Georgia voters, particularly those who do not have the schedule flexibility or ability to take time off of work, to vote also impose an unnecessary burden that is not outweighed by any purported State interest.

151. SB 202's restrictions on out-of-precinct voting, by setting arbitrary times for when out-of-precinct voting is permitted (though still restricted) and otherwise restricting by arbitrary times, impose an unnecessary burden that is not outweighed by any purported State interest.

152. SB 202 also prohibits providing food and water to voters waiting in line at the polls, i.e., "line-warming," which serves no legitimate purpose other than to create unnecessary burdens on those trying to vote in person.

153. The burdens caused by these provisions, individually and collectively, are serious and substantial, and in some cases cause voters to risk being completely disenfranchised.

154. No legitimate state interest justifies these significant restrictions and burdens.

155. The purported goals of increasing confidence in elections or encouraging uniformity are pretextual at best, and in fact would be harmed by imposing the restrictions and requirements of SB 202.

156. These restrictions could undermine, not restore, confidence in Georgia's elections, and would do so at the expense of imposing undue burdens on voters.

157. The requirements and prohibitions in SB 202, individually and collectively, impose a substantial burden on the fundamental right to vote of Georgia citizens, and are neither justified by, nor necessary to promote, interests put forward by the State that were not already being adequately protected by pre-existing criminal laws and election procedures.

158. These provisions will irreparably harm Black voters and other voters of color.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

COUNT IV

**42 U.S.C. § 1983
(Freedom of Speech and Association)
First And Fourteenth Amendments)**

159. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1 to 158 above, as if fully set forth herein.

160. The First Amendment to the Constitution, as applied by the Fourteenth Amendment, prohibits abridgement of freedom of speech.

161. SB 202, restricts Plaintiffs and their members core political speech and expressive conduct – namely encouraging voting through the distribution of absentee ballots applications in an effort to engage the public and voters and encourage them to vote.

162. By penalizing innocent errors in the distribution of absentee ballot applications, SB 202 will have a chilling effect on Plaintiffs’ and their members’ core political speech, without being narrowly tailored to meet a compelling state interest.

163. As a result of SB 202, Plaintiff organizations will not be able to carry out a key aspect of their organizational mission.

164. Because the restrictions in SB 202 and the potential penalties extend to Plaintiff organizations’ members, their members’ right of association is also jeopardized.

WHEREFORE, Plaintiffs pray for relief as set forth herein.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

1. Declare that the challenged provisions in SB 202 violates the Fourteenth and Fifteenth Amendment to the United States Constitution and Section 2 of the Voting Rights Act's prohibitions on discriminatory purpose;
2. Declare that the challenged provisions in SB 202 violate the results prong of Section 2 of the Voting Rights Act;
3. Declare that the challenged provisions of SB 202 violate the First and Fourteenth Amendments to the U.S. Constitution as undue burdens on the right to vote;
4. Declare that the challenged provisions of SB 202 violate the First and Fourteenth Amendments to the U.S. Constitution as undue burdens on the right to free speech and freedom of association;
5. Enjoin Defendants, their agents, officers, employees, successors, and all persons acting in concert with them from enforcing any of the challenged provisions of SB 202;
6. Award Plaintiffs their costs, expenses, and reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988, 52 U.S.C. § 10301 and other applicable laws; and
7. Order any other relief that this Court deems just and proper.

Dated: March 28, 2021

/s/ Bryan L. Sells

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**Applications for admission pro hac vice to
be filed*

Counsel for Plaintiffs

CERTIFICATE OF COMPLIANCE AND OF SERVICE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing COMPLAINT FOR NJUNCTIVE AND DECLARATORY RELIEF has been prepared in Times New Roman 14, a font and type selection approved by the Court in L.R. 5.1(C), and that I provided notice and a copy of the foregoing using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

Respectfully submitted this 28th day of March, 2021.

/s/ Bryan L. Sells

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27. June 25, 2019 Statement of Kristen Clarke, President and Executive Director for the Lawyers’ Committee for Civil Rights Under Law, before the U.S. House Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties Hearing on “Continuing Challenges to the Voting Rights Act Since *Shelby County v. Holder*”
28. September 5, 2019 Statement of Jon Greenbaum, Chief Counsel for the Lawyers’ Committee for Civil Rights Under Law, before the U.S. House Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties Hearing on “Discriminatory Barriers to Voting”
29. Lawyers’ Committee for Civil Rights Under Law’s *Preliminary Report on Voting Discrimination Against Racial and Ethnic Minorities 1994-2019*
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31. Complaint in *Georgia State Conference of the NAACP et al v. Raffensperger et al*