



**STATEMENT OF WADE HENDERSON, INTERIM PRESIDENT AND CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**U.S. HOUSE OF REPRESENTATIVES
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES**

**HEARING ON “OVERSIGHT OF THE VOTING RIGHTS ACT:
POTENTIAL LEGISLATIVE REFORMS”**

AUGUST 16, 2021

Chairman Cohen, Ranking Member Johnson, and members of the subcommittee: Thank you for holding this important hearing today to highlight the ongoing crisis of racial discrimination in our voting system and the urgency to fulfill the promise of our democracy. My name is Wade Henderson, and I am the interim president and CEO of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations working to build an America as good as its ideals.

The Leadership Conference was founded in 1950 and has coordinated national advocacy efforts on behalf of every major civil rights law since 1957, including the Voting Rights Act of 1965 and subsequent reauthorizations. Much of our work today focuses on making sure that every voter has a voice in key decisions like pandemic relief, access to affordable health care, and policing accountability. At The Leadership Conference, we aim to ensure that every voter can cast a vote and have it counted. We are deeply grateful to this subcommittee for its work to restore the Voting Rights Act and for introducing voluminous evidence of racial discrimination into the record with integrity, deliberation, and due diligence.

In 1965, Congress passed the Voting Rights Act to outlaw racial discrimination in voting. Previously, many states barred Black voters from participating in the political system through literacy tests, poll taxes, voter intimidation, and violence. In the mid-1950s, only 25 percent of African Americans were registered to vote, and the registration rate was even lower in some states. In Mississippi, for example, fewer than 5 percent of African Americans were registered to vote.¹ Those rates soared after Congress enacted the Voting Rights Act. By 1970, almost as many African Americans registered to vote in Alabama, Mississippi, Georgia, Louisiana, North Carolina, and South Carolina as had registered in the century before 1965.² The Voting Rights Act became the nation’s most effective defense against racially discriminatory voting policies.

Only 15 years ago, this body reauthorized the Voting Rights Act for the fourth time with sweeping bipartisan support. The House of Representatives reauthorized this legislation by a 390-33 vote and the Senate passed it unanimously, 98-0.³ Given the importance of the Voting Rights Act, Congress undertook

¹ U.S. COMM’N ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE UNITED STATES 171 (2018).

² *Shelby County v. Holder*, 570 U.S. 529, 562 (2013) (Ginsburg, J., dissenting).

³ <https://www.congress.gov/bill/109th-congress/house-bill/9>

that reauthorization with care and deliberation — holding 21 hearings, hearing from more than 90 witnesses, and compiling a record of more than 15,000 pages of evidence of continuing racial discrimination in voting.

Then, in 2013, the U.S. Supreme Court in *Shelby County v. Holder* eviscerated the most powerful provision of the Voting Rights Act: the Section 5 preclearance system.⁴ This provision applied to nine states and localities in another six states. These jurisdictions with histories of voting discrimination were required to obtain preclearance from the U.S. District Court for the District of Columbia or the U.S. Department of Justice before implementing any change in a voting practice or procedure. As discussed herein, Section 5 was incredibly successful in blocking proposed voting restrictions in certain states and localities with histories of racial discrimination. It also ensured that changes to voting rules were public, transparent, and evaluated to protect voters against discrimination based on race and language. But, in *Shelby County*, Chief Justice John Roberts, on behalf of the majority, declared that “Our country has changed.” The Court held that the formula that decided which jurisdictions were subject to preclearance was based on “decades-old data and eradicated practices.” It instructed Congress to assess “current conditions” in order to require states and political jurisdictions to preclear voting changes. Now that this assessment has been conducted, there can be no question of the persistent racial discrimination at the ballot box. Congress must act.

Despite the best efforts of The Leadership Conference and its many member organizations to protect voting rights and promote civic participation, the eight-year impact of the *Shelby County* ruling has been devastating to our democracy. The Supreme Court’s invalidation of the preclearance formula released an immediate and sustained flood of new voting restrictions in formerly covered jurisdictions. Without the Voting Rights Act’s tools to fight the most blatant forms of discrimination, people of color continue to face barriers to exercising their most important civil right, including voter intimidation, disenfranchisement laws built on top of a system of mass incarceration, burdensome and costly voter ID requirements, and purges from the voter rolls. States have also cut back early voting opportunities, eliminated same-day voter registration, and shuttered polling places. The pattern is familiar: Gains in participation in voting among communities of color are met with concerted efforts to impose new barriers in the path of those voters.

Attached to this testimony are reports covering several states which document the “current conditions” surrounding voting discrimination, the same conditions required by the Supreme Court in *Shelby County* as the basis for Congress to update a coverage formula. Additional reports will be submitted into the congressional record. These reports highlight the pervasiveness and persistence of voting discrimination in its modern-day form. They demonstrate the importance of reinstating Section 5 preclearance to stop discriminatory voting changes from going into effect and thereby ensuring that voters of color can fully participate in the political process and have their voices heard.

Alabama

In reviewing the current state of voting discrimination, it is only appropriate to begin with the State of Alabama, the birthplace of the Voting Rights Act of 1965. From Selma to Shelby County, Alabama has served as ground zero for the struggle by Black voters to exercise the franchise. In 1982, Congress had to explicitly add a results test to Section 2 of the Voting Rights Act after the Supreme Court required proof of intent in a Section 2 case challenging the City of Mobile’s at-large voting districts as a dilution of Black voting power in *City of Mobile v. Bolden*.⁵ As the report written by the NAACP Legal Defense and Educational Fund indicates, “racial discrimination in voting remains a persistent and significant problem in

⁴ *Shelby County v. Holder*, 570 U.S. 529 (2013).

⁵ 446 U.S. 55 (1980).

Alabama today.”⁶ The Southern Poverty Law Center states in its report, also attached to this testimony: “The State of Alabama has never rested in its efforts to undermine its Black citizens’ right to vote.”⁷

Since the *Shelby County* decision, Alabama is the only state in the nation where federal courts have ordered more than one jurisdiction to submit to preclearance under Section 3(c) of the Voting Rights Act.⁸ Plaintiffs in a longstanding school desegregation case, *Stout v. Jefferson County Board of Education*, challenged the hybrid system of electing school board members in Jefferson County under which four were elected at-large from a “multi-member” district and a fifth was elected from a single-member district. No Black person had ever been elected to an at-large seat. A federal court ruled that at-large districts violated Section 2 of the Voting Rights Act, finding that the state legislature created the districts “for the purpose of limiting the influence of Black voters.”⁹ It ordered that multi-member districts be divided into four single-member districts and the county to submit future voting changes for Section 3(c) preclearance through 2031.¹⁰

The City of Evergreen became the first jurisdiction in the nation to be subjected to preclearance after *Shelby County*. A lawsuit by Black voters challenged Evergreen’s post-2010 Census redistricting plan for five single-member districts, which retained three districts with white majorities even though 62 percent of Evergreen’s population is Black. The lawsuit also challenged the city’s system for determining voter eligibility, which removed registered voters if their names did not also appear on the list of utility customers, a practice which disproportionately removed Black voters from the voter list. Evergreen failed to obtain preclearance for these changes before the *Shelby County* ruling, and a federal court issued a preliminary injunction against the redistricting plan. After *Shelby County*, the court granted the plaintiffs’ motion for summary judgment on their intentional discrimination claims and ordered Evergreen to submit future voting changes relating to redistricting and voter eligibility for preclearance until December 2020.¹¹

The Alabama report reveals additional “stunning evidence” of intentional racial discrimination against Black voters by the Alabama state legislature and local jurisdictions.¹² African-American state legislators filed a lawsuit alleging that the Republican-led legislature intentionally sought to dilute the Black vote in violation of the Voting Rights Act and the Fourteenth Amendment by redrawing the state’s legislative districts to pack Black voters into majority-Black districts, thereby reducing their influence in other districts.¹³ The legislators also claimed that the redistricting plan was an unconstitutional “racial gerrymander,” where it deliberately segregated voters into districts based on their race without adequate legal justification. A three-judge district rejected the claims, and the case was appealed to the Supreme Court, which vacated the lower court ruling and remanded the case for reconsideration. The Court concluded that the fact that the legislature “expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines in multiple districts in the State.”¹⁴ On remand, one of the Eleventh Circuit’s most conservative judges, William Pryor, authored an opinion for the three-judge

⁶ NAACP Legal Defense & Educational Fund, VOTING RIGHTS IN ALABAMA: 2006 TO 2021, August 2021, at 1.

⁷ Southern Poverty Law Ctr., SELMA, SHELBY COUNTY, & BEYOND, Alabama’s Unyielding Record of Racial Discrimination in Voting, the Unwavering Alabamians Who Fight Back, & The Critical Need to Restore the Voting Rights Act, Aug. 16, 2021.

⁸ *Id.*

⁹ *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-cv-018121-MHH, 2019 WL 7500528, at *3 (N.D. Ala. Dec. 16, 2019).

¹⁰ *Id.* at **4-5.

¹¹ *Allen v. City of Evergreen*, No. 1:13-cv-107, 2014 WL 12607819, at *1-3 (S.D. Ala. Jan. 13, 2014).

¹² NAACP Legal Defense & Educational Fund, VOTING RIGHTS IN ALABAMA: 2006 TO 2021, August 2021, at 5.

¹³ *Ala. Legis. Black Caucus v. Alabama* (“ALBC I”), 989 F. Supp. 2d 1227, 1236 (M.D. Ala. 2013 (three-judge court)).

¹⁴ *Ala. Legis. Black Caucus v. Alabama* (“ALBC II”), 575 U.S. 254, 267 (2015).

court, ruling that 12 of the majority-minority districts were unconstitutional because the legislature relied too heavily on race in drawing their boundaries.¹⁵

Another glaring example of intentional discrimination by Alabama arose in a federal bribery investigation in which recordings by White Alabama legislators revealed a plot by legislators to stop a gambling referendum from appearing on the ballot because it would increase Black voter turnout. The legislators were overheard calling Black voters “Aborigines” and predicting that the referendum would lead “[e]very black, every illiterate to be “bussed [to the polls] on HUD financed busses.”¹⁶ A district court judge presiding over the bribery trial ruled that these legislators were not credible because they tried to “increase Republican political fortunes by reducing African American voter turnout” and because “the record establishes their purposeful, racist intent.”¹⁷ The court concluded that the “recordings represent compelling evidence that political exclusion through racism remains a real and enduring problem” in Alabama, and that overt racism “remain[s] regrettably entrenched in the high echelons of state government.”¹⁸

Finally, Alabama’s efforts to enact photo ID laws, which disproportionately burden voters of color, dates back several decades.¹⁹ Although Alabama was required to seek preclearance before enforcing a 2011 law enacted prior to the *Shelby County* ruling, it did not. Instead, it waited until the ruling and then allowed the law to go into effect.²⁰ The photo ID law was the subject of multiple lawsuits, recounted by both the NAACP Legal Defense Fund and the Southern Poverty Law Center in their reports. A key issue in the litigation was the limited ability of Black voters to obtain photo ID. In 2015, the Alabama governor and a state agency announced the closure of 31 driver’s license offices, many in majority Black counties. The U.S. Department of Transportation opened a civil rights investigation under Title VI of the Civil Rights Act of 1964 and concluded that the closures had a disparate impact on Black Alabamians in violation of the law.²¹

Alaska

There is a well-developed record of Alaska’s discrimination against the state’s indigenous peoples, Alaska Natives, which continues to this day and which was outlined in a 2017 article attached to the testimony.²² In 1975, the Section 4(b) coverage formula was amended to address the “pervasive” problem of “voting discrimination against citizens of language minorities.”²³ Congress identified what it described as “substantial” evidence of discriminatory practices against Alaska Natives.²⁴ That evidence came in four forms: (1) Alaska Natives suffered from severe and systemic educational discrimination.²⁵ (2) Alaska Natives suffered from illiteracy rates rivaling and even exceeding rates of Black voters in the South.²⁶ (3)

¹⁵ *Ala. Legis. Black Caucus v. Alabama* (“ALBC III”), 231 F. Supp. 3d at 1037-38 (M.D. Ala. 2017) (three-judge court).

¹⁶ NAACP Legal Defense & Educational Fund, VOTING RIGHTS IN ALABAMA: 2006 TO 2021, August 2021, at 6.

¹⁷ *Id.*

¹⁸ *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345 (M.D. Ala. 2011).

¹⁹ *Id.* at 1347.

²⁰ NAACP Legal Defense & Educational Fund, VOTING RIGHTS IN ALABAMA: 2006 TO 2021, August 2021, at 12.

²¹ *Id.*

²² See James T. Tucker, Natalie A. Landreth & Erin Dougherty Lynch, “Why Should I Go Vote Without Understanding What I am Going to Vote For?”: *The Impact of First Generation Barriers on Alaska Natives*, 22 MICH. J. RACE & LAW 327 (2017).

²³ 52 U.S.C. § 10303(f)(1) (transferred from 42 U.S.C. § 1973b(f)(1)).

²⁴ S. REP. NO. 94-295 at 31, reprinted in 1975 U.S.C.C.A.N. at 797.

²⁵ See James T. Tucker, Natalie A. Landreth & Erin Dougherty Lynch, “Why Should I Go Vote Without Understanding What I am Going to Vote For?”: *The Impact of First Generation Barriers on Alaska Natives*, 22 MICH. J. RACE & LAW 327 (2017); JAMES THOMAS TUCKER, THE BATTLE OVER BILINGUAL BALLOTS: LANGUAGE MINORITIES AND POLITICAL ACCESS UNDER THE VOTING RIGHTS ACT 235-57 (Dec. 2009).

²⁶ See *Extension of the Voting Rights Act of 1965: Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 Before the Subcomm. on Const’l Rts. of the Senate Comm. on the Judiciary* (1975 Senate Hearings), 94th Cong., 1st Sess., at 664 (1975).

The illiteracy of Alaska Natives was exacerbated by their high limited-English proficiency (LEP) rates and need for interpreters to understand even the most basic voting materials written in English.²⁷ (4) Congress considered evidence of Alaska’s constitutional literacy test and its impact on Alaska Native voters.²⁸

When Section 4(b) was reauthorized in 2006, Congress considered substantial evidence of the impact of past and present educational discrimination on Native voters. Court decisions found “degraded educational opportunities” for Alaska Natives, resulting in graduation rates that lagged far behind non-Natives.²⁹ Alaska’s continued failure to provide equal educational opportunities profoundly affected the ability of Native voters to read registration and voting materials.³⁰ Congress determined that because of Alaska’s discrimination, Native voters continued “to experience hardships and barriers to voting and casting ballots because of their limited abilities to speak English and high illiteracy rates ... particularly among the elders.”³¹ The sad legacy of education discrimination remains. According to the most recent census data from the 2016 language coverage determinations under Section 203, approximately one in five adult citizens of voting age in the Bethel Census Area is Limited English Proficient in the Yup’ik language.³²

Alaska’s record of voting discrimination has exacerbated the continuing effects of its educational discrimination against Alaska Natives. While *Shelby County* was being litigated, Alaska was under a settlement agreement for violating the language assistance provisions in Section 203 of the Voting Rights Act and the voter assistance provisions in Section 208 of the Act.³³ In 2009, a federal court issued a preliminary injunction in *Nick v. Bethel* finding that the State of Alaska had engaged in a wholesale failure to provide language assistance to Yup’ik-speaking voters in the Bethel Census Area.³⁴ The court noted that “State officials became aware of potential problems with their language-assistance program in the spring of 2006,” but their “efforts to overhaul the language assistance program did not begin in earnest until *after this litigation*.”³⁵ At that time, Alaska had been covered under Section 5 for Alaska Natives since 1975. However, state officials had taken no steps “to ensure that Yup’ik-speaking voters have the means to fully participate in the upcoming State-run elections” in 2008,³⁶ a third of a century later.

Alaska Native villages outside of the Bethel region expected that the fruits of the hard-fought victory in the *Nick* litigation would be applied to other regions of Alaska where language coverage was mandated. However, Alaska officials made a “policy decision” not to do so. The state directed its bilingual coordinator to deny language assistance to other areas. The bilingual coordinator’s last day of employment was on December 31, 2012, the very day that the *Nick* agreement ended. That led Alaska Native voters and villages from three covered regions, the Dillingham and Wade Hampton Census Areas for Yup’ik and the Yukon-Koyukuk Census Area for the Athabascan language of Gwich’in, to file suit just a month after *Shelby County* was decided. In *Toyukak v. Treadwell*, Alaska Natives sued the state for again violating Section 203

²⁷ *Id.* at 526, 531 (statement of Sen. Gravel).

²⁸ *Id.*

²⁹ See H.R. Rep. No. 109-478, at 50-51, reprinted in 2006 U.S.C.C.A.N. 651 (citing *Kasayulie v. State*).

³⁰ See H.R. Rep. No. 109-478 at 50-51, reprinted in 2006 U.S.C.C.A.N. 651; *Continued Need, supra*, at 1335; *Modern Enforcement of the Voting Rights Act, Hearing Before the Senate Comm. on the Judiciary (Modern Enforcement)*, 109th Cong., 2d Sess., at 79 (2006).

³¹ H.R. Rep. No. 109-478, at 45-46, reprinted in 2006 U.S.C.C.A.N. 650-51.

³² See U.S. Census Bureau, Section 203 Determinations - Published December 05, 2016, Section 203 Determinations Dataset (Dec. 5, 2016).

³³ See Settlement Agreement and Release of All Claims, *Nick v. Bethel*, No. 3:07-cv-00098-TMB, docket no. 787-2 (D. Alaska Feb. 16, 2010).

³⁴ Order Re: Plaintiffs’ Motion for a Preliminary Injunction Against the State Defendants, *Nick v. Bethel*, No. 3:07-cv-00098-TMB, docket no. 327 at 7-8 (D. Alaska July 30, 2008).

³⁵ *Id.* at 8 (emphasis added).

³⁶ *Id.* at 9.

and for intentional discrimination in violation of the U.S. Constitution because election officials deliberately chose to deny language assistance to other regions of Alaska even while the *Nick* settlement was in effect. Alaska's recalcitrance to comply with the Voting Rights Act is particularly noteworthy because it was the first Section 203 case fully litigated to a decision in 35 years.³⁷

In defending the latter claim, Alaska argued that the Fifteenth Amendment was inapplicable to Alaska Native voters.³⁸ State officials argued that Alaska Natives were entitled to less voting information than English-speaking voters.³⁹ The Alaska Native voters prevailed, but only after nearly two million dollars in attorneys' fees and costs, the passage of 14 months for the "expedited" litigation, and a two-week trial in federal court.⁴⁰ The court concluded that "based upon the considerable evidence," the plaintiffs had established that Alaska's actions in the three census areas were "not designed to transmit substantially equivalent information in the applicable minority... languages."⁴¹ The *Toyukak* decision came just 14 months after *Shelby County*, which refutes the majority's conclusion that "things have changed dramatically" and "[b]latantly discriminatory evasions of federal decrees are rare."⁴² The norm in many areas like Alaska in a post-*Shelby* world is defiance and deliberate violations of federal voting rights law to suppress registration and voting by American Indians and Alaska Natives.

Florida

The combination of a large and racially diverse electorate, two different time zones, and a history of razor-thin, contested elections would be enough basis for any state to become a focal point in an examination of voting rights. Florida's place in the ongoing conversation about the need for a renewed Voting Rights Act is well-deserved. Since situating itself at the epicenter of a modern meltdown in the 2000 presidential election, the leaders who run the state's government have been on the wrong side of policy reform opportunities that would protect the right to vote. As a result, communities of color, who comprise nearly half of Florida's population in excess of 21 million voters, remain unable to enjoy the franchise by participating fully in deciding who represents them.

Since the entire nation witnessed its ballot counting meltdown during a presidential election more than two decades ago, Florida has not ceased to find its way into voting rights controversy. The Florida report prepared by the Advancement Project and submitted with this testimony outlines a series of issues that have required careful federal oversight and intervention in support of voting rights.⁴³ Prior to the *Shelby County* decision, the state had crafted several policies that elicited multiple inquiries and preclearance objections from the Justice Department. For instance, the department interposed objections to Florida's state legislative maps along with subsequent policies purporting to "reform" its election administration system. All of these objections demonstrated threats to voters' ability to access the ballot due to the state's inattention to the effect of language accessibility.⁴⁴

Since *Shelby County*, however, the scope of the loss of voting rights has been exceedingly apparent. Florida has moved quickly to adopt changes in its election system, and challengers now must resort to court

³⁷ See *Apache County High Sch. Dist. No. 90 v. United States*, case no. 77-1815 (D.D.C. June 12, 1980).

³⁸ See Tucker, Landreth & Dougherty, *supra*, at 361-62 (2017) (quoting trial transcripts).

³⁹ Tucker, Landreth & Dougherty, *supra*, at 361.

⁴⁰ *Id.* at 361.

⁴¹ *Id.* at 372.

⁴² 570 U.S. at 547.

⁴³ Advancement Project, *FLORIDA: 2021 REPORT IN SUPPORT OF CONGRESSIONAL VOTING RIGHTS LEGISLATION*, August 2021.

⁴⁴ *Id.* at 9-10.

challenges in place of the preclearance administrative review process. For example, Florida's secretary of state was enjoined by the Northern District of Florida from employing a ballot review process based on a flawed signature mismatch examination due to a lack of notice for people to cure perceived issues with their signatures. At the same time, it should be noted that certain policy decisions that had not reached disposition under the preclearance regime slipped through the cracks, like Florida's 2012 voter purge policy where the challenge was dismissed due to the *Shelby County* decision in *Mi Familia Voter Education Fund v. Detzner*.⁴⁵

Florida has sustained its habit of undermining the will of the people, even when it was expressed clearly in a public ballot measure. In 2018, more than 60 percent of Florida voters approved a constitutional mandate to restore the rights of its returning citizens.⁴⁶ After moving slowly to even review applications for pardons and clemency before Amendment Four, state officials doubled down by severely curtailing eligibility for rights restoration. Florida Senate Bill 7066, signed into law in 2019, created a new barrier between these citizens and the franchise: a modern-day poll tax.⁴⁷ The new rules require these citizens to resolve all fees and costs associated with their prior convictions before becoming eligible to register.

In practice, this policy is arguably worse than the classic poll tax, because Florida acknowledges that it does not keep reliable documentation to allow a person to pay outstanding costs.⁴⁸ Further, the impact of this law shows significant racial effects in several counties, meaning that people of color will be less likely than others to pursue the restoration of their rights. While the federal challenge to the law was not successful, the fact that the state still did not understand the likely impact of its fines and fees policy makes clear the work that preclearance review would address; this provision would be more carefully researched and either revised or eliminated due to the significant limits on the franchise.

In multiple ways, Florida impeded efforts to enhance voter accessibility during the 2020 election. Amidst a global pandemic, where voters could not cast ballots in person without risking life and health, the state did precious little to provide more opportunities to vote from home. To the extent the state took affirmative steps, officials made the problems for voters worse, not better. Even though Florida has an established record of allowing citizens to vote by mail, the state limited the number of drop boxes and locations to drop off ballots, and also curtailed the period in which early voting would occur. These policies were compounded by the troubling policy of signature matching for ballots, an arbitrary methodology which placed doubts on many cast ballots. All of this occurred against the backdrop of a well-documented fiasco with delivery times in the U.S. Postal Service. The results placed unnecessary pressures on participation rates in low-income areas of the state, as well as in communities of color.

Finally, Florida adopted S.B. 90 this year, following efforts elsewhere to push back on many of the activities and third party organizations working to address the above problems with voting practices.⁴⁹ The new law places restrictions on the ability of organizations to assist with voter registration, a bedrock activity for many groups whose mission is to enhance participation among voters of color.⁵⁰ Additionally, the bill directs these organizations to warn citizens who register through their systems that their applications might not arrive in time, which sows doubt and uncertainty into these private efforts to expand the franchise. And focusing on election management by local officials, the bill eliminates ballot drop-offs on Sundays, which

⁴⁵ *Id.* at 11.

⁴⁶ *Id.* at 14-15.

⁴⁷ *Id.* at 16.

⁴⁸ *Id.*

⁴⁹ *Id.* at 19.

⁵⁰ *Id.* at 21-23.

is widely used by churches in Souls to the Polls programs.⁵¹ It is difficult to see these changes by Florida's leadership as motivated by anything more than a hostile move against threats to their power.⁵²

Georgia

Georgia is home to history. In 2021, Black voters in Georgia turned out in record numbers, electing the state's first Black U.S. senator, Reverend Raphael Warnock. These voters were able to make their voices heard despite tremendous obstacles enacted by the state to limit Black Georgians' participation. Their ability to not just overcome, but to triumph, is yet another example of Black Georgians' achievements, including those of storied civil rights leaders like Martin Luther King Jr. and the late Congressman John Lewis. Black and Brown Georgians deserve a democracy that allows for and encourages their full participation. Sadly, the state remains relentless in its pursuit of racial discrimination in voting.

The state has a long and sordid history of relentless efforts to disenfranchise voters of color, beginning with prohibitions against Black voting enshrined in the state's first Constitution in 1777. As Fair Fight Action demonstrates in its report, "Georgia's Enduring Racial Discrimination in Voting and the Urgent Need to Modernize the Voting Rights Act," which is attached to this testimony, there is "an urgent and overwhelming need for Congress to bring the preclearance formula found in the Voting Rights Act ("VRA") of 1965 . . . into the modern era, to reinstate robust federal oversight over discriminatory voting practices, and to strengthen and protect voting rights—for all eligible voters in Georgia and nationwide."⁵³

The glaring examples of current disenfranchisement take many forms and are recounted, chapter and verse, in the Fair Fight Action report. For example, the two recent objections interposed directly against the State of Georgia arose in the five years preceding the *Shelby County* ruling. In both cases, the Department of Justice found that Georgia had attempted to implement new laws that would have a retrogressive and disproportionate impact on voters of color. Most recently, in 2012, Georgia submitted for preclearance an amendment to the Georgia election code that required all nonpartisan elections for members of consolidated governments to be held in conjunction with the July primary, rather than in November. The Department of Justice objected, finding the change would affect Augusta-Richmond County, in which Black voters had just become a majority. Because Black voters were less likely to vote in July, the Department determined the change depressed turnout for voters of color and further, that the state had not sustained its burden of showing a lack of discriminatory purpose or effect.⁵⁴

Three years earlier, in 2009, the Department of Justice lodged an objection to a version of Georgia's voter verification program. It found that the "seriously flawed" program, which improperly removed voters from the rolls, disproportionately affected voters of color. It made this finding based on the "actual results of the state's verification process" because Georgia had violated Section 5 of the Voting Rights Act by not seeking preclearance before implementing the program.⁵⁵

⁵¹ *Id.*

⁵² Advancement Project has captured first-hand accounts and the real impact on voters of color in several reports. *See, e.g.,* We Vote, We Count: The Need for Congressional Action to Secure the Right to Vote for All Citizens (2019); Democracy Rising: The End of Florida's History of Felony Disenfranchisement and Launch of a New Age of Empowerment (2019); Lining Up: Ensuring Equal Access to the Right to Vote (2013).

⁵³ Fair Fight Action, GEORGIA'S ENDURING RACIAL DISCRIMINATION IN VOTING AND THE URGENT NEED TO MODERNIZE THE VOTING RIGHTS ACT, Aug. 16, 2021.

⁵⁴ *Id.* at 26.

⁵⁵ *Id.* at 26.

Fair Fight Action has collected the stories of thousands of voters across the state who faced incredible barriers to voting in the 2018 general election and the 2020-21 election cycle. For example, a DeKalb County physician, one of the country's leading infectious disease specialists, was challenged at his polling location because there was a slight discrepancy with the spelling of his last name on his driver's license as compared with his registration information.⁵⁶ A Fulton County voter was initially refused a ballot because he was classified as a non-citizen, despite presenting his U.S. passport.⁵⁷ Voters across the state expressed frustration at the closing and moving of polling locations, including a voter from Clay County, who was forced to drive an hour to a new polling location because her old polling location down the street closed.⁵⁸

Voter purges have also disenfranchised eligible and properly registered voters whose only mistake was not voting recently enough, like a voter in Warner Robins who has lived at the same address for 50 years but did not vote in recent elections. In 2019, he was placed on the state's purge list impermissibly, with no notice.⁵⁹ Georgia voters also experienced unacceptably long lines when trying to vote, such that many voters were forced to leave without voting or experienced other adverse consequences. For example, a voter from Cobb County left her home at 6:30 a.m. to vote on Election Day in 2018. The line was too long, so she left and came back on her lunch break at 2:20 p.m. She was not able to cast her ballot until 5:30 p.m., and lost two hours of pay.⁶⁰ In the Fair Fight Action report, there are also powerful examples of how the state abdicated its responsibility to adequately train local officials and poll workers about provisional ballots, which in turn, has resulted in conflicting and incorrect information given to voters.⁶¹

Despite the high standards applied to voter discrimination claims by federal courts, at least two cases have resulted in a final judgment that a practice within the State of Georgia violated the Voting Rights Act. In a 2018 ruling, a federal court found that Sumter County's redrawn school board district map, which reduced the number of single-member districts and added two new at-large districts, violated Section 2.⁶² The plaintiff claimed the new map diluted the voting strength of Black voters. The court agreed, finding that the "infringement of black voters' right to vote in Sumter County is severe."⁶³ The court specifically found there was a "glaring lack of success for African American candidates running for county-wide office, both historically and recently, despite their plurality in voting-age population."⁶⁴ And the low rate of Black turnout was attributable to the indisputable history of discrimination in Sumter County and in Georgia.⁶⁵ A court made a similar finding in 1997 after a bench trial on claims challenging the City of LaGrange's at-large city council district plan. Noting that LaGrange and Georgia had a long history of discrimination, the court found the plan violated Section 2 of the Voting Rights Act because it deprived citizens of color of the opportunity to elect candidates of their choice.⁶⁶

For further proof that attacks on voting represent an escalating threat to the rights of Georgians of color, one need look no further than the state's recently enacted Senate Bill 202. Georgia's Republican-led

⁵⁶ *Id.* at 55.

⁵⁷ *Id.* at 56.

⁵⁸ *Id.* at 61-68.

⁵⁹ *Id.* at 74-75.

⁶⁰ *Id.* at 76-93.

⁶¹ *Id.* at 97-105.

⁶² *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297 (M.D. Ga. 2018), *aff'd* 979 F.3d 1282 (11th Cir. 2020).

⁶³ Permanent Injunction Order, *Wright v. Sumter Cnty. Bd. of Elections and Registration*, No. 1:14-cv-42-WLS, 2018 WL 7365178, at *3 (M.D. Ga. Mar. 30, 2018).

⁶⁴ *Wright*, 301 F. Supp. at 1323.

⁶⁵ *Id.*

⁶⁶ *Cofield v. City of LaGrange*, 969 F. Supp. 749 (N.D. Ga. 1997).

General Assembly hastily passed S.B. 202 after a historic turnout for the 2020 election and the 2021 Senate runoff, in which record participation among Black and Brown voters led to the election of Senator Warnock, and in response to conspiracy theory-fueled, groundless allegations of voter fraud. Provisions such as the photo ID requirement, reduced minimum early voting for runoff elections, limited access to drop boxes, and prohibition of most out-of-precinct voting will disparately impact voters of color, particularly those with limited resources and time to navigate the complex requirements.⁶⁷ Private parties have filed seven suits against Georgia's governor, the secretary of state, the State Election Board and its members, and various county election officials for declaratory and injunctive relief challenging various provisions of S.B. 202. On June 25, 2021, the Department of Justice sued the state, the secretary of state, and the State Election Board, bringing the number of pending lawsuits challenging S.B. 202 to eight.⁶⁸

Louisiana

Louisiana's record of racial discrimination in voting is ever present and well-documented. As the Southern Poverty Law Center demonstrates in its report attached to this testimony, Louisiana officials have consistently developed methods of denying or diluting the votes of Black Louisianans.⁶⁹ The tactics may have changed over time, but the outcome is the same: Black voters disproportionately bear the impact and are less able to participate in the political process.⁷⁰

Louisiana's population is nearly one-third Black.⁷¹ Since Reconstruction, however, the state has not elected a Black candidate to statewide office.⁷² Louisiana lawmakers continue to reduce the power of Black communities through at-large elections, proposed annexations, incorporation, and redistricting plans.⁷³ Louisiana currently unnecessarily restricts registration,⁷⁴ purges eligible voters from the rolls,⁷⁵ and makes registration onerous for people with felony convictions.⁷⁶ Since *Shelby County*, Louisiana has also eliminated dozens of polling places, mostly in Black communities.⁷⁷ And while the state provides early voting, it limits the number of sites, creating incredibly long lines in the most populous parishes, including those with the most Black residents.⁷⁸ The state also banned early voting on Sundays in 2016, which is a well-known tool for increasing Black voter turnout. The state narrowly restricts access to absentee ballots,⁷⁹ erects barriers to ensuring that votes are counted,⁸⁰ and engages in voter intimidation.⁸¹ Despite myriad barriers to voting placed in their path, Louisiana voters persevere. Southern Poverty Law Center's report recounts more than 70 Louisiana voters' stories demonstrating the personal side of voter suppression.

⁶⁷ Fair Fight Action, *GEORGIA'S ENDURING RACIAL DISCRIMINATION IN VOTING AND THE URGENT NEED TO MODERNIZE THE VOTING RIGHTS ACT*, Aug. 16, 2021 at 119.

⁶⁸ *Id.* at 138.

⁶⁹ Southern Poverty Law Center, *FIGHT FOR REPRESENTATION: Louisiana's Pervasive Record of Racial Discrimination in Voting, the Steadfast Louisianans Who Battle Onward, & the Urgent Need to Restore the Voting Rights Act*, Aug. 16, 2021.

⁷⁰ *Id.* at 28-91.

⁷¹ *Id.* at 28.

⁷² *Id.*

⁷³ *Id.* at 19-26, 28-29, 68-72.

⁷⁴ *Id.* at 35-42.

⁷⁵ *Id.* at 72-76.

⁷⁶ *Id.* at 30-35.

⁷⁷ *Id.* at 42-52.

⁷⁸ *Id.* at 52-60.

⁷⁹ *Id.* at 42-68.

⁸⁰ *Id.*

⁸¹ *Id.* at 76-82.

In 2000, the Department of Justice sued Morgan City, alleging that the at-large system for electing members to the city council violated Section 2.⁸² After five private plaintiffs filed a similar action,⁸³ the cases were consolidated and the parties settled.⁸⁴ The court entered a consent judgment, finding “a reasonable factual and legal basis to conclude that under the at-large system for election of City Council in Morgan City, minority voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”⁸⁵ As a condition of the settlement, the parties agreed that all future elections for the city council would proceed according to a single-member election system.⁸⁶

In 2002, a residents’ association sued the St. Bernard Parish School Board under Section 2 to prevent it from adopting a redistricting plan that reduced the board’s size and created two at-large seats.⁸⁷ The redistricting plan arose from Act No. 173, which required St. Bernard Parish, upon the collection of a sufficient number of petitions, to hold a referendum to transform the parish school board from a body composed of 11 members elected from single-member districts to one composed of seven members, five elected from single-member districts and two elected at-large.⁸⁸ Parish voters approved the “5-2” plan.⁸⁹ Under the 11-member single-district plan, it had been possible to create a majority-Black district;⁹⁰ indeed, prior to the referendum, the school board had tentatively approved doing just that.⁹¹ But the 5-2 plan made a majority-Black district impossible.⁹² The court invalidated the plan, finding that it diluted the voting strength of the parish’s Black voters in violation of Section 2.⁹³

In 2007, Black residents of Jefferson Parish filed suit against the State of Louisiana, alleging that the method for electing judges on an at-large basis to the First District of the Fifth Circuit Court of Appeals diluted Black voting strength.⁹⁴ On July 6, 2007, the Louisiana governor signed Act 261,⁹⁵ dividing the First District into two single-member “election sections.”⁹⁶ The court entered a consent judgement, confirming that Act 261 provided a framework for resolving the litigation.⁹⁷ The court ordered that the action be dismissed, subject to preclearance and implementation of Act 261.⁹⁸

In 2021, the Department of Justice filed suit against the City of West Monroe under Section 2, challenging the at-large method of electing representatives to the West Monroe Board of Aldermen.⁹⁹ Although Black residents comprised nearly 30 percent of the voting-age population in West Monroe, no Black candidate

⁸² Complaint, *United States v. City of Morgan City*, No. 00-cv-1541 (W.D. La. June 27, 2000), ECF No. 1.

⁸³ Complaint, *Keeler v. City of Morgan City*, No. 00-cv-1588 (W.D. La. July 3, 2000), ECF No. 1.

⁸⁴ Consent Judgement, *United States v. City of Morgan City*, No. CV 00-1541, 2000 WL 36743509, (W.D. La. Aug. 17, 2000) decree modified sub nom. *United States v. City of Morgan City*, No. CV 00-1541, 2000 WL 36743510 (W.D. La. Sept. 5, 2000).

⁸⁵ *Id.* at *3.

⁸⁶ *Id.*

⁸⁷ *St. Bernard Citizens For Better Gov’t v. St. Bernard Par. Sch. Bd.*, No. CIV.A. 02-2209, 2002 WL 2022589, at *1 (E.D. La. Aug. 26, 2002).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at *4.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at *10.

⁹⁴ Consent Judgment, *Williams v. McKeithen*, No. 05-1180, 2007 WL 9676892 (E.D. La. Oct. 31, 2007).

⁹⁵ 2007 La. Sess. Law Serv. Act 261 (S.B. 162) (WEST) (2007).

⁹⁶ Consent Judgment, *Williams v. McKeithen*, No. 05-1180, 2007 WL 9676892 at *1 (E.D. La. Oct. 31, 2007).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Complaint, *United States v. City of West Monroe*, Civ. Action No. 3:21-cv-0988 (W.D. La. April 14, 2021), ECF No. 1.

had ever been elected to the board.¹⁰⁰ The court entered a consent judgment adopting a “mixed” election method that provided for three single-member districts and two at-large seats.¹⁰¹

As a harbinger of what is to come, in the latest legislative session, state lawmakers passed five bills that would have further restricted voting rights, including a bill that would unnecessarily purge registered voters, a bill that would add additional identification requirements to absentee ballots, and a bill that would ban absentee ballot drop boxes.¹⁰² Only fierce and persistent advocacy from dedicated organizers and a veto from the governor prevented these bills from becoming law. Louisiana’s current conditions of racial discrimination in voting are unequivocal. Without federal preclearance, the promise of the Fifteenth Amendment and the Voting Rights Act to guarantee equal voting rights will slip further away.

Mississippi

Home to voting rights heroes like Fannie Lou Hamer and Medgar Evers and the site of Freedom Summer, Mississippi is notorious for its exclusion and suppression of Black voters throughout history. Mississippi enforced white supremacy through explicit legal impediments to Black voting as well as state-sanctioned murder, including more than 650 lynchings from Reconstruction through 1950 —the most of any state in the country.¹⁰³ Mississippi was the first state sued by the Department of Justice after the Voting Rights Act was passed. Between 1965 and 2006, the department objected to more than 169 proposed voting changes in Mississippi that disenfranchised voters of color, including redistricting plans, at-large election schemes, polling place changes, candidate qualification requirements, and open primary laws.¹⁰⁴ The state has the highest percentage of Black residents in the country — 38 percent — yet no Black candidate has been elected to statewide office since Reconstruction.

As documented in the Southern Poverty Law Center’s report, “Freedom Summer, *Shelby County*, & Beyond: Mississippi’s Continued Record of Racial Discrimination in Voting, the Tireless Mississippians Who Push Forward, & the Critical Need to Restore the Voting Rights Act,” the state and many of its jurisdictions have made strident and continuous efforts to prevent Black Mississippians from participating in the political process. For example, instead of paying a “poll tax” to vote, Black Mississippians are now required to incur the burdensome expense of having certain absentee ballots and applications notarized. Additionally, instead of being asked to interpret complex legal provisions under the guise of literacy tests, Black Mississippians are now subject to unevenly applied voter ID requirements.

Voting rights litigation during the last 25 years demonstrates the ongoing struggle of voters of color. In 1993, a nonprofit group sued the City of Quitman, Mississippi, arguing that the city violated Section 2 of the Voting Rights Act by electing its five aldermen from at-large districts, thus diluting the voting strength of the city’s Black voters.¹⁰⁵ A federal court granted a preliminary injunction, enjoining the upcoming 1993 alderman elections.¹⁰⁶ The court later entered a final judgment, concluding that the city’s system of electing

¹⁰⁰ *Id.*

¹⁰¹ Consent Judgment & Decree, *United States v. City of West Monroe*, Civil Action No. 3:21-cv-0988, at 4 (W.D. La. Apr. 15, 2021). ECF No. 5.

¹⁰² Southern Poverty Law Center, FIGHT FOR REPRESENTATION: Louisiana’s Pervasive Record of Racial Discrimination in Voting, the Steadfast Louisianans Who Battle Onward, & the Urgent Need to Restore the Voting Rights Act, Aug. 16, 2021, at 82-84.

¹⁰³ Southern Poverty Law Center, FREEDOM SUMMER, *SHELBY COUNTY*, & BEYOND: Mississippi’s Continued Record of Racial Discrimination in Voting, the Tireless Mississippians Who Push Forward, & the Critical Need to Restore the Voting Rights Act, August 16, 2021, at 5.

¹⁰⁴ *Id.* at 22.

¹⁰⁵ *Citizens for Good Gov’t v. Quitman*, 148 F.3d 472, 474 (5th Cir. 1998) (per curiam).

¹⁰⁶ *Id.*

its aldermen from at-large districts violated Section 2.¹⁰⁷ In 1996, Black voters challenged Calhoun County’s redistricting plan. Rather than drawing a “geographically compact black majority district,” the county created a plan that divided Black residents between five districts, where the Black population ranged from 19 percent to 42 percent. A federal appellate court held that the plan “dilute[d] minority voting strength” and therefore violated Section 2 of the Voting Rights Act.¹⁰⁸ In 1997, a federal court found that Chickasaw County’s redistricting plan for its justice court judge and constable elections violated Section 2 of the Voting Rights Act. The court concluded that “the lingering effect of the past history of discrimination, the racially polarized voting patterns, the substantial socio-economic differences between black and white citizens, and the lack of success of black candidates in country-wide, county district and city-wide elections in Chickasaw County causes black voters to ‘have less opportunity than other members of the electorate in the political process and to elect candidates of their choice.’”¹⁰⁹

It is harder to vote in Mississippi than in almost any other state. Mississippi ranked 47 out of 50 in the 2020 Cost of Voting Index — which considers election system features that impact voting access, including registration deadlines, availability of pre-registration and early voting, number of polling places, poll hours, and voter ID laws. It was a modest improvement from 2016 when it ranked dead last.¹¹⁰ There is no online voter registration. No automatic or same-day registration. No early voting. Mississippi has a strict photo ID law for voting in person. One can only vote absentee by qualifying for one of a narrow set of excuses. Even those who qualify to vote absentee must have their absentee ballot application *and* their absentee ballot notarized. During the 2020 election season, the state refused to lift these burdensome requirements even amid a global pandemic, endangering Mississippians wishing to avail themselves of their rights and make their voices heard while keeping themselves and their families safe.

In its report, the Southern Poverty Law Center documented Mississippians’ obstacles to cast their votes. On Election Day 2012, a Hinds County resident arrived at the polling location at which she had voted for years, only to be told that her name was not in the register, and she was not able to vote. After the election, she took time off from work to go to the courthouse and ask why her name had been removed from the rolls. She was eventually informed that her name had been removed as part of a redistricting — the first time she had ever been notified of this fact.¹¹¹ In the 2016 presidential election, a Grenada County resident and Ole Miss student attempted to vote absentee but was charged \$10 for each document she needed to get notarized, for a total of \$20. She had to spend her last \$20 on the notary and points out that this notarization requirement is “equivalent to charging a poll tax.”¹¹² A Harrison County resident moved in fall 2020 and promptly re-registered to vote at her new address. On Election Day 2020, she was turned away from her nearest polling place and was told she needed to vote at another location 30 minutes away. Once there, however, she was required to vote using a provisional ballot and later received a letter indicating her ballot had not been counted. It ultimately took her three attempts to update her address before she was finally able to receive her voter card.¹¹³ In the 2020 election, a Hinds County resident encountered delays and overcrowding at her polling location, which was located on the corner of two roads with no sidewalks. She and other voters had to wait in line on the side of the road for about an hour, which was difficult for many

¹⁰⁷ *Id.*

¹⁰⁸ *Clark v. Calhoun County*, 88 F.3d 1393, 1395 (5th Cir. 1996).

¹⁰⁹ *Gunn v. Chickasaw County*, 1997 WL 33426761, at *4 (N.D. Miss. Oct. 28, 1997).

¹¹⁰ Scot Schraufnagel, Michael J. Pomante II, & Quan Li, Cost of Voting in the American States: 2020, 19 Election L.J. 503, 505 (2020).

¹¹¹ Southern Poverty Law Center Report, Exhibit 10.

¹¹² *Id.* at Exhibit 33.

¹¹³ *Id.* at Exhibit 19.

disabled and elderly voters, including the voter in front of her in line, whose wheelchair broke while waiting in line due to the poor road conditions.¹¹⁴

Mississippi officials are relentless in curtailing the right to vote for their constituents of color. Earlier this year, House Bill 586 proposed that Mississippi direct its voter registration system to identify registered voters who may not be U.S. citizens by checking other unspecified “identification databases.” Voters flagged as “potential non-citizens” would have faced an immediate challenge to their registrations: The bill “mandated a 30-day period in which flagged voters would have had to provide a birth certificate, passport, or naturalization documents to the relevant authority.”¹¹⁵ Failure to do so would result in an immediate purge from the registered voter roll. Under threat of litigation by advocates, the bill ultimately failed, but it demonstrates that many Mississippi lawmakers remain determined to make it even more difficult to vote.

North Carolina

North Carolina’s shameful history of racism in voting includes the only successful violent municipal coup d’état in our nation’s history in the Wilmington massacre of 1898; enactment of a literacy test, poll tax, and felony-based disenfranchisement; prohibitions on single-shot voting; and discriminatory multi-member districts of 1982 that led to the landmark *Thornburg v. Gingles* decision.¹¹⁶ Yet, as documented in Forward Justice’s report, “The Struggle for Voting Rights in North Carolina: 2006-2021,” North Carolina’s recent history demonstrates the effectiveness of the Voting Rights Act prior to *Shelby County* and the urgent need for its reinvigoration.

In the two decades before *Shelby County*, the Voting Rights Act was working in North Carolina. Prior to 2013, 40 out of 100 counties were covered by Section 5, primarily located in Eastern North Carolina.¹¹⁷ As the report describes, “[w]hile the impact of Section 2 litigation since 1965 cannot be underestimated, Section 5 was the critical legal protection undergirding the fragile, but notable, gains by Black voters in the state.”¹¹⁸ From 1982 to 2013, more than 49 Section 5 objection letters were issued by the Department of Justice to North Carolina and its local jurisdictions. By 2012, African Americans were “poised to act as a major electoral force.”¹¹⁹

After *Shelby County*, North Carolina became “a national testing ground for modern manifestations of Jim Crow-era voter suppression strategies and epicenter for a renewed voting rights movement to prevent discrimination at the ballot box.”¹²⁰ In just a matter of hours after *Shelby County* was handed down, leadership of the North Carolina General Assembly announced that because the decision had rid them of the “headache” of the Voting Rights Act’s preclearance protections, they could now move forward with the “full bill.”¹²¹ H.B. 589 became known as the “monster” voter suppression law — and was more restrictive than bills seen in any other state. Among other changes, the law eliminated same-day registration, pre-

¹¹⁴ *Id.* at Exhibit 28,

¹¹⁵ Southern Poverty Law Center, FREEDOM SUMMER, *SHELBY COUNTY*, & BEYOND: Mississippi’s Continued Record of Racial Discrimination in Voting, the Tireless Mississippians Who Push Forward, & the Critical Need to Restore the Voting Rights Act, August 2021.

¹¹⁶ *Thornburg v. Gingles*, 478 U.S. 30 (1986).

¹¹⁷ Forward Justice, THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006-2021, August 2021, Section II.

¹¹⁸ *Id.*

¹¹⁹ *NC NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

¹²⁰ Forward Justice, THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006-2021, August 2021, Section I.

¹²¹ Jim Rutenberg, *Disenfranchised: A Dream Undone*, N.Y. Times (July 27, 2009).

registration for 16- and 17-year-olds, out-of-precinct ballots, and the first week of early voting, and instituted one of the nation's most stringent voter ID requirements.¹²²

More than three years after H.B. 589's passage, the U.S. Court of Appeals for the Fourth Circuit invalidated the omnibus suppression legislation, holding that the State of North Carolina illegally and intentionally targeted the right to vote of African Americans "with almost surgical precision" in violation of Section 2 and the Fourteenth and Fifteenth Amendments.¹²³ The Court concluded "in sum, relying on ... racial data, the General Assembly enacted legislation restricting all — and only — practices disproportionately used by African Americans" and "that, because of race, the legislature enacted one of the largest restrictions of the franchise in modern North Carolina."¹²⁴

As described in Forward Justice's report, North Carolinians have labored for close to a decade defending against an all-out attack on voting rights. On top of the "surgical precision" of the omnibus voter suppression legislation, North Carolina's racially discriminatory redistricting following the 2010 decennial census represents some of the most egregious gerrymandering violations in the country to dilute and suppress the power of voters of color. Two federal decisions, *Covington v. North Carolina* and *Cooper v. Harris*, held that, in drawing the state legislative districts, the state manufactured one of the "largest racial gerrymanders ever encountered by a Federal Court"¹²⁵ and, in constructing both Congressional District 1 and 12, the General Assembly illegally used a "racial target that subordinated other districting criteria and produced boundaries amplifying divisions between blacks and whites."¹²⁶ These cases are among the most prominent of the state's complex web of voting rights violations since 2013, many documented in state and federal court challenges, which dominated the past decade.

Voting rights litigation, voter outreach and education, and voter protection work over the last decade yielded a detailed body of evidence summarized in the Forward Justice report, including in the form of coordinated third-party challenges to voter eligibility, significant reductions to polling locations and hours available in formerly covered counties, and county-level efforts to change methods of elections from single-member to at-large.¹²⁷ As North Carolina's elections developed into a federal battleground the state also experienced continued racial appeals in campaigning, and incidents of harassment and voter intimidation by both third-party groups and partisan actors, particularly heightened in the 2020 election cycle.¹²⁸ One shocking incident took place on the last day of early voting on October 31, 2020, when a peaceful "Souls to the Polls" march in Graham, North Carolina, organized by Black clergy, ended with those gathered, including the elderly and children, being pepper-sprayed and prevented from completing their walk to the early voting site in Alamance County.¹²⁹

Without the preventative umbrella of Section 5, North Carolinians were left working overtime to seek after-the-fact remedies, and equal democracy in the state suffered. North Carolina's General Assembly remains in legislative session today, with legislation pending that threatens the right to vote. Following the census

¹²² N.C. Sess. L. 2013-381 (Aug. 12, 2013), *invalidated by NC NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

¹²³ *McCrory* at 204. *Supra* note 8 at 11.

¹²⁴ *Id.* at 48.

¹²⁵ *North Carolina v. Covington*, 198 L. Ed. 2d 110 (U.S. 2017) (per curiam) (affirming lower court holding that 28 state legislative districts were unconstitutional racial gerrymanders). The U.S. Supreme Court also upheld the striking down as unconstitutional racial gerrymandering in North Carolina's congressional districts in *Cooper v. Harris*, 137 S. Ct. 1455 (2016).

¹²⁶ *Cooper v. Harris*, 581 U.S. ___ (2017).

¹²⁷ Forward Justice, THE STRUGGLE FOR VOTING RIGHTS IN NORTH CAROLINA: 2006-2021, August 2021, Section III.

¹²⁸ *Id.* at Section IV.

¹²⁹ Police used pepper spray to break up a North Carolina march to a polling place." CNN, (November 1, 2020).

data release, the 2021 redistricting process is officially underway. The state produced remarkable leaders in the modern struggle for voting rights, including elders Mother Rosa Eaton and Mother Grace Hardison, who represent the best of America, as they fought under the banner of the Forward Together Moral Mondays Movement to realize the full promise of our democracy. But, as Rev. Dr. William Barber, II, a leading architect of that movement described, “these battles should never have occurred at all.”¹³⁰ Without urgent congressional action, North Carolinians are bracing for another decade of struggle for the equal ballot, recognizing that the state’s past is a harbinger of the scope and scale of voter suppression to come.

South Carolina

South Carolina, where Black residents represent more than one quarter of the state’s population, has a long and deep history of racial discrimination in voting. It was the first state to challenge the constitutionality of the Voting Rights Act, in *South Carolina v. Katzenbach*, almost immediately after its passage in 1965.¹³¹ As the South Carolina report by veteran voting rights lawyer Mark Posner makes clear, that legacy of discrimination continues today, both in how the state runs elections and in structural election practices.¹³² The state has one of the most restrictive voter registration deadlines in the country; one of the most restrictive systems regarding the opportunity for voters to cast their ballot ahead of Election Day, either by mail or in person; and one of the worst recent records for wait times at the polls.¹³³

While some advances have been made in safeguarding the freedom to vote, particularly for Black Americans, they have largely been the result of Section 5 objections and litigation. Between 1996 and the *Shelby County* ruling, the Department of Justice issued 14 objections to voting changes which jurisdictions, including the state itself, were seeking to implement.¹³⁴ The glaring example of the challenge to the state’s restrictive photo ID law is a case in point. It illustrates the power and the efficacy of the Voting Rights Act to block discriminatory voting changes and to deter jurisdictions from seeking to implement such changes.

In 2011, South Carolina adopted an exceedingly onerous photo ID law for voting in person and for in-person absentee voting. It recognized only five limited forms of ID: a South Carolina driver’s license, another form of photo ID issued by the South Carolina Department of Motor Vehicles, a voter registration card with a photograph (issued only by visiting a local board of registration office); a federal military photo ID; and a passport. Voters without ID could cast a provisional ballot by presenting a non-photo voter registration card and signing an affidavit that “the elector suffers from a reasonable impediment that prevents him from obtaining a photo ID.”¹³⁵

The Department of Justice blocked the new requirement from being implemented on the basis that it would disenfranchise tens of thousands of voters of color. It concluded that “[n]on-white voters were ... disproportionately represented ... in the group of registered voters who ... would be rendered ineligible to go to the polls and participate in the election.”¹³⁶ The state filed a Section 5 declaratory judgement seeking

¹³⁰ *What Have We Learned: Lessons from the First Election Post-Shelby County Decision: Congressional Briefing*, Nov. 16, 2016 (statement of Rev. Dr. William Barber II, President of NC NAACP).

¹³¹ 383 U.S. 301 (1966).

¹³² Posner, Mark, SOUTH CAROLINA’S RECENT VOTING RIGHTS HISTORY, 1996 to July 2021, August 6, 2021.

¹³³ *Id.* at 4.

¹³⁴ *Id.* at 5.

¹³⁵ *Id.* at 14-15.

¹³⁶ *Id.* at 15.

preclearance from a three-judge court but failed to demonstrate that the limited roster of acceptable IDs would not have a discriminatory effect.¹³⁷

Facing a likely denial of preclearance, South Carolina reinterpreted the law to liberally construe the “reasonable impediment” exception to the photo ID requirement in an effort to neutralize the discriminatory effect. Under this new subjective test, the reasonableness of the impediment was “to be determined by the individual voter, not by a poll manager or county board.”¹³⁸ Based on this interpretation, the district court precleared the revised photo ID provision for elections after 2012 but denied preclearance for the 2012 general election on the ground that there was too little time to properly implement the new provision.¹³⁹

In a concurring opinion, U.S. Judge John Bates famously emphasized the key role Section 5 had played in South Carolina ultimately putting forth a nondiscriminatory photo ID provision: “[O]ne cannot doubt the vital function that Section 5 of the Voting Rights Act has played here. . . . Congress has recognized the importance of such a deterrent effect. . . . Rather, the history of [the new law] demonstrates the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes in state and local voting laws.”¹⁴⁰

Texas

They say that everything’s bigger in Texas. The battle for voting rights is no exception, as documented in the Texas report submitted with this testimony.¹⁴¹ Last week’s census results illustrate that Texas gained more residents than any other state since 2010, with people of color accounting for over 95 percent of this growth.¹⁴² Non-Hispanic White Texans now make up just 39.8 percent of the state’s population—down from 45 percent in 2010.¹⁴³ Meanwhile, the share of Hispanic Texans has grown to 39.3 percent.¹⁴⁴ The state’s growth of Black and Asian populations also significantly outpaced that of the White population since 2010.¹⁴⁵ These changes will no doubt affect the electorate for decades to come. Nearly half of all Texans under age 18 are Latino, and two million more will become eligible to vote in the next decade.¹⁴⁶ Not surprisingly, Texas added a record number of new voters between last two presidential elections.¹⁴⁷

These dramatic demographic shifts in the electorate coincide with continuing and harmful attacks on voting rights in the state. At the end of last year, researchers examining the time and effort required to vote in different states ranked Texas as the worst for voting.¹⁴⁸ The creation of — in their words — “the state with the most restrictive electoral climate” in light of unparalleled expansion and diversification of the electorate reflects the state’s past and foreshadows its future without federal oversight.¹⁴⁹ Indeed, the pattern here is

¹³⁷ *South Carolina v. United States*, 898 F. Supp. 2d 30, 40 (D.D.C. 2012).

¹³⁸ *Id.* at 36.

¹³⁹ *Id.* at 48-50.

¹⁴⁰ *Id.* at 53-54.

¹⁴¹ Adegbile, Debo; Liss, Jason, Baxenberg, Justin; Fischler, Matthew; Gargeya, Medha; Yi, Karis, A VIEW FROM TEXAS: AN ASSESSMENT OF THE VOTING RIGHTS ACT’S IMPACT AND MINORITY VOTER ACCESS, August 2021.

¹⁴² Alexa Ura et al., *People of color make up 95% of Texas’ population growth, and cities and suburbs are booming, 2020 census shows*, THE TEXAS TRIBUNE (Aug. 12, 2021).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Stephania Taladrid, *The Dream of Turning Texas Blue Depends on Latino Voters*, THE NEW YORKER (Mar. 22, 2020).

¹⁴⁷ Nicole Cobler, *Texas sets voter registration record after adding 1.8 million voters since 2016 election*, Austin-American Statesman (Oct. 13, 2020).

¹⁴⁸ Scot Schraufnagel et al., *Cost of Voting in the American States: 2020*, 19.4 ELECTION L.J. 503 (2020).

¹⁴⁹ *Id.*

familiar one: Gains in minority participation in voting are met with concerted efforts to impose new barriers in the path of those voters. As Justice Kennedy observed in *LULAC v. Perry*,

“Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State’s minority voting rights history. ... [T]he ‘political, social, and economic legacy of past discrimination’ for Latinos in Texas may well ‘hinder their ability to participate effectively in the political process.’”¹⁵⁰

Tory Gavito, a minority politics movement builder and founder of the Texas Futures Project and Way To Win, described that: “Texas is where the South meets the West. We have a legacy of slavery in the state. We have a legacy of stealing lands and killing Mexican landowners who lived here from before the state was part of the United States of America.”¹⁵¹ Its shared history demonstrates how the expansion or restriction of voting rights in Texas has implications across the country. In 1944, Thurgood Marshall successfully argued in *Smith v. Allwright* that the Texas Democratic Party’s policy of prohibiting Black people from voting in primary elections violated the Fourteenth and Fifteenth Amendments.¹⁵² Black voter registration markedly improved immediately following the Court’s ruling in *Smith*, causing Marshall to recognize the case as “a giant milestone in the progress of Negro Americans toward full citizenship.”¹⁵³ Though the white primary was struck down, several features of vote denial and abridgement in Texas remain: redistricting, the imposition of additional candidate qualifications, new at-large voting arrangements, photo ID laws, onerous voter registration procedures, voter roll purges, relocation, closures and overcrowded polling sites, and hurdles related to mail-in voting.

The wave of new voters of color in Texas have been met with the “most restrictive pre-registration law in the country.”¹⁵⁴ In particular, Texas has an in-person voter registration deadline 30 days prior to Election Day and prohibits online voter registration. Voters must print their registration and bring it to the county voter registrar. Texas also does not offer simultaneous registration for the 1.5 million Texans who renew or update their driver’s licenses online.¹⁵⁵ In contrast, other states permit an automatic voter registration process, same-day registration during early voting, and online registration options.

These same voters may need to journey to polling places that are distant from minority neighborhoods. A report by The Leadership Conference Education Fund recently noted that Texas “stands out for the volume, scale, and breadth of its polling place closures since *Shelby County*.”¹⁵⁶ This study shows that Texas has closed more polling places since *Shelby County* than any other state. The 750 polls closed constituted approximately 50 percent of the state’s total polling places, and 590 were closed before the 2016 presidential election — the first presidential election after *Shelby County*.¹⁵⁷ Furthermore, five of the six largest county closers of polling places are in Texas. Unsurprisingly, these counties — Dallas, Harris,

¹⁵⁰ 548 U.S. 399, 439-40 (2006) (citations omitted).

¹⁵¹ Taladrid, *supra* note 6.

¹⁵² 321 U.S. 649 (1944).

¹⁵³ Schraufnagel, *supra* note 8.

¹⁵⁴ *Id.*

¹⁵⁵ Emily Eby, *Texas Election Protection 2018*, TEXAS CIVIL RIGHTS PROJECT (Mar. 2019).

¹⁵⁶ *Democracy Diverted: Polling Closures and the Right to Vote*, THE LEADERSHIP CONFERENCE EDUCATION FUND (Sept. 2019).

¹⁵⁷ *Id.*

Brazoria, and Nueces — are all majority-minority jurisdictions with significant Latino and Black populations.¹⁵⁸

Courts have previously found Texas' voting restrictions to bear racial animus and hinder the ability of minorities to effectively participate in the political process. One recent example is from Texas' photo ID law. In 2011, Texas adopted a voter ID law that courts later found to have been passed with discriminatory intent. Senate Bill 14 required voters to present one of the specified types of photo ID when voting at the polls. The Justice Department successfully blocked the implementation of the law in 2012 under its Section 5 preclearance authority. However, Texas began enforcing S.B. 14 shortly after the *Shelby County* decision. Although the bill's proponents asserted that the law was necessary, both the district court and Fifth Circuit held that it violated Section 2 of the Voting Rights Act by intentionally discriminating against Black and Hispanic voters who were less likely to hold a required photo ID.¹⁵⁹

The Texas House just passed what must be regarded as a voter suppression bill, after Texas Republicans issued civil arrest warrants for 52 of their Democratic colleagues who refused to show up to legislative votes because they oppose the legislation. If enacted, the bill would create stricter vote-by-mail rules, add new requirements to the voting process, ban drive-thru and 24-hour voting, bolster access for partisan poll watchers, and curb local voting options that would make voting easier. These requirements only build on some of the most restrictive voting laws in the nation from the last election cycle. That election night, Jolt Action, a group aimed at building political momentum among Latinos in Texas, held a get together at its headquarters. Artwork of youth of color adorned the walls of the office. One painting showed children holding hands before a wall, with the caption "They tried to bury us. They didn't know we were seeds."¹⁶⁰ The question remains: Will voting restrictions scorch the earth upon which these seeds seek to grow, or will we see a garden of vibrant democracy, one tended to by federal and state protections, over decades to come?

Virginia

The post-*Shelby County* landscape in Virginia is devastated by rollbacks of protections for the right to vote. The Virginia report prepared by Campaign Legal Center details ongoing discrimination exposed through litigation, as well as anti-voter laws, voter intimidation and disinformation campaigns, and other tactics that disproportionately burden and disenfranchise voters of color.¹⁶¹

Very recent litigation in Virginia Beach powerfully demonstrates the toll that discrimination in voting takes on communities of color in the state. In March 2021, a federal court held that Virginia Beach's at-large system for electing city council members violates Section 2 of the Voting Rights Act because it dilutes the voting strength of Black, Latino, and Asian American voters.¹⁶² The state's largest city had an 11-member city council, composed of the mayor and 10 councilmembers, each elected at-large for four-year staggered terms.¹⁶³ The city had relied upon an at-large system since 1966, but in 50 years, the city's racial composition had changed dramatically: People of color now constitute 31.6 percent of the city's

¹⁵⁸ *Id.*

¹⁵⁹ See *Veasey v. Perry*, 71 F. Supp. 3d 627, 645 (S.D. Tex. 2014), *aff'd in part, vacated in part, remanded sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), *on reh'g en banc*, 830 F.3d 216 (5th Cir. 2016), and *aff'd in part, vacated in part, rev'd in part sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017).

¹⁶⁰ Taladrid, *supra* note 6.

¹⁶¹ Campaign Legal Center, VOTING RIGHTS IN VIRGINIA: 2006-2021, August 2021.

¹⁶² See *Holloway, et al. v. City of Virginia Beach*, No. 2:18-CV-69, 2021 WL 1226554 (E.D. Va. Mar. 31, 2021).

¹⁶³ *Holloway*, 2021 WL 1226554, at *3.

population.¹⁶⁴ Despite sizable communities of color, only six candidates of color have ever been elected to Virginia Beach’s city council, and barring special circumstances triggered by the pendency of litigation under the Voting Rights Act, no Black candidate has ever been re-elected to serve a second term.¹⁶⁵

In enjoining the at-large system, the federal court recognized that its discriminatory effects reflect a broader culture of racial discrimination in the city and the state that continues to impact residents of color today: “[t]he Commonwealth of Virginia and the City have histories of voter discrimination as it pertains to registration, voter suppression, gerrymandering, and other forms of discrimination.”¹⁶⁶ The Campaign Legal Center powerfully documents the many facets of this discrimination and concludes: “The vast evidence of racial discrimination this case has uncovered alone demonstrates the need for preclearance and other means of federal oversight to protect the right of all Americans to vote.”¹⁶⁷

The Campaign Legal Center’s report also sets forth discriminatory barriers to in-person voting, such as the closing, consolidating, and relocating of polling places documented in The Leadership Conference Education Fund’s reports in 2016 and 2019.¹⁶⁸ These changes no longer require preclearance and disproportionately impact communities of color. Because Virginia law caps the number of registered voters each precinct can serve, localities must create new precincts. But more precincts do not necessarily mean more polling locations in communities of color. Some localities opt for one polling location to serve multiple precincts, increasing the voters assigned to a single polling place. This increases poll wait times and transportation burdens to and from the polls. During the November 2020 election, Henrico County—30.9 percent of which is Black—consolidated four polling places into existing sites. Because state law allows multiple precincts to be assigned to the same polling place, the county maintained separate precincts in the same building: each had their own poll workers and entrances, heightening voter confusion.¹⁶⁹

The Time Is Now to Pass the John Lewis Voting Rights Advancement Act

When President Lyndon Johnson signed the Voting Rights Act of 1965, he declared the law a triumph and said, “Today we strike away the last major shackle of ... fierce and ancient bonds.”¹⁷⁰ But 56 years later, the shackles of white supremacy still restrict the full exercise of our rights and freedom to vote.

For democracy to work for all of us, it must include us all. When certain communities cannot access the ballot and when they are not represented in the ranks of power, our democracy is in peril. The coordinated, anti-democratic campaign to restrict the vote targets the heart of the nation’s promise: that every voice and every eligible vote count. Congress must meet the urgency of this moment and pass the John Lewis Voting Rights Advancement Act. This bill will restore the essential portion of the Voting Rights Act that blocks discriminatory voting policies before they go into effect, putting a transparent process in place for protecting the right to vote. It will also bring down the barriers erected to silence Black, Indigenous, young, and new Americans and ensure everyone has a voice in the decisions impacting our lives.

¹⁶⁴ *Id.* at *28.

¹⁶⁵ *Id.* at *6; Pls.’ Br. in Opp. to Defs.’ Motion for Summ. J., *Holloway, et al. v. City of Virginia Beach*, No. 2:18-CV-69, at 14 n.10 (E.D. Va. Mar. 31, 2021).

¹⁶⁶ *Holloway*, 2021 WL 1226554, at *8.

¹⁶⁷ Campaign Legal Center, *VOTING RIGHTS IN VIRGINIA: 2006-2021*, August 2021, at 46-53.

¹⁶⁸ The Leadership Conference Education Fund, *THE GREAT POLL CLOSURE* (Nov. 2016); *DEMOCRACY DIVERTED: POLLING CLOSURES AND THE RIGHT TO VOTE*, (Sept. 2019).

¹⁶⁹ Campaign Legal Center, *VOTING RIGHTS IN VIRGINIA: 2006-2021*, August 2021, at 21.

¹⁷⁰ <https://www.presidency.ucsb.edu/documents/remarks-the-capitol-rotunda-the-signing-the-voting-rights-act>



On March 7, 1965, just a few months before President Johnson would sign the Voting Rights Act into law, then 25-year-old John Lewis led more than 600 people across the Edmund Pettus Bridge to demand equal voting rights. State troopers unleashed brutal violence against the marchers. Lewis himself was beaten and bloodied. But he never gave up the fight. For decades, the congressman implored his colleagues in Congress to realize the promise of equal opportunity for all in our democratic process. Before his death, he wrote: “Time is of the essence to preserve the integrity and promises of our democracy.”¹⁷¹ Members of this body must now heed his call with all the force they can muster.

Thank you for inviting me to testify today. I am pleased to answer any questions you may have, and I look forward to working with you to ensure all of us, no matter race or place, have an equal say in our democracy.

¹⁷¹ <https://web.archive.org/web/20200719053551/https://johnlewis.house.gov/media-center/press-releases/rep-john-lewis-demands-doj-action-anniversary-shelby-v-holder-decision>