



Written Testimony of

Brenda Wright
Senior Advisor for Legal Strategies
Dēmos

Hearing: “Voting Rights and Election Administration in America”

Subcommittee on Elections of the Committee on House Administration
U.S. House of Representatives

Longworth House Office Building
Room 1310

October 17, 2019

I. INTRODUCTION

Thank you, Chairperson Fudge, Ranking Member Davis, and all members of the Committee, for the opportunity to testify on “Voting Rights and Election Administration in America,” a topic of critical importance in these times when our democracy is being severely tested. The right to register and vote is fundamental to preserving our democracy, and the Committee’s focus on these rights could not come at a better time.

My name is Brenda Wright, and I am Senior Advisor for Legal Strategies at Dēmos. Dēmos is a dynamic “think-and-do” tank that powers the movement for a just, inclusive, multiracial democracy. Our name—meaning “the people”—is the root word of democracy, and it reminds us that, in America, we are strongest when everyone’s voice is heard.

But today, this ideal is under attack. Voter suppression—sometimes through blatantly racist maneuvers, sometimes through sophisticated, ostensibly race-neutral tactics—poses an existential threat to our democracy. Dēmos is deeply involved in responding to these substantial and complicated challenges. We are fighting against obstacles to the right to register and vote through engagement with state and local elections officials when possible, and litigation when necessary. We are working to secure voting access for currently and formerly incarcerated persons; ensuring access to voter registration through state public assistance agencies and drivers’ license agencies; litigating against efforts to deter voter registration by threats related to citizenship status; and fighting overly aggressive voter purge efforts, among other initiatives.

Dēmos is encouraged that, to address these challenges, the House passed, as its first priority, H.R. 1, the For the People Act, which has the range and depth to help us build the multiracial, inclusive democracy that Americans deserve. Dēmos testified before the Committee on House Administration in support of the For the People Act earlier this year.¹ It is a visionary bill that can transform our democracy by addressing the deep political, racial, and economic inequalities that hold us back. We very much hope that the Senate will take up the For the People Act now that it has passed the House.

Still pending before the House is the Voting Rights Advancement Act, H.R. 4 (VRAA), which responds to the Supreme Court’s 2013 decision striking down critical provisions of the Voting Rights Act that had required preclearance of changes affecting voting in states with a history of voting discrimination. Discriminatory changes in voting procedures have greatly proliferated in the absence of those preclearance requirements. Dēmos strongly supports passage of the VRAA.

Dēmos also very much appreciates that this Committee continues to prioritize investigating how to best protect the right to register and vote, and how election administration can be supported and improved to safeguard those rights.

II. VOTING RIGHTS

A. Voting rights are under attack, and we must fully restore the Voting Rights Act.

When it passed the Voting Rights Act (VRA) in 1965, Congress took a major step toward fulfilling the promise of the Fifteenth Amendment that no citizen would be denied the right to vote “on account of race, color, or previous condition of servitude.”² The centerpiece of the Act was a provision requiring certain states and local jurisdictions to obtain approval from the federal government before making any changes to their voting practices and procedures.³ This “preclearance” protection applied to jurisdictions with a history of voting discrimination and helped to protect the right to vote for persons long excluded from equal access to the franchise.

Six years ago, in *Shelby County v. Holder*, the Supreme Court struck down the formula used to determine what jurisdictions were subject to preclearance, declaring that “[o]ur country has changed” and voting discrimination was no longer a major concern. In a 5-4 decision split along ideological lines, the Court stripped voters in nine states and dozens of counties and municipalities of the protection Congress had put in place.⁴

Shelby County’s successful challenge to the VRA’s preclearance provisions relied in part on the argument that victims of discrimination in voting would still have adequate recourse through enforcement of Section 2 of the VRA.⁵ That Section protects against voting practices and

¹ Chiraag Bains, Written Testimony, “For the People: Our American Democracy,” Hearing of the House Committee on Administration, U.S. House of Representatives, February 14, 2019.

² U.S. Const. amend. XV.

³ 52 U.S.C. § 10304.

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

⁵ Merits Brief of Petitioner, *Shelby County v. Holder*, No. 12-96, at 20.

procedures that have the effect of denying protected groups an equal opportunity to participate in the political process and elect candidates of choice to office.⁶

The reality since the *Shelby County* decision, however, has belied the doubtful prediction that the remedies available under Section 2 of the VRA would be sufficient to protect voting rights in the absence of the preclearance provisions of Section 5. In contrast to the pre-emptive protections of Section 5 of the VRA, the remedies under Section 2 cannot be achieved unless the aggrieved persons successfully pursue laborious and expensive litigation satisfying the burden of proof that the challenged enactment is discriminatory. Such litigation is extraordinarily expensive—prohibitively so for most plaintiffs. The legal organizations capable of undertaking this work are few; and we must constantly engage in triage because of the limitations of our resources.

The record of the Department of Justice (“DOJ”) since 2016 also belies the argument that enforcement of Section 2 of the VRA, and other remaining voting rights protections, would make up for the removal of the VRA’s preclearance requirements. According to information on the DOJ website, the current Administration has yet to file a single lawsuit to enforce Section 2 of the VRA.⁷ Nor has DOJ filed any actions to protect language access or disability access in voting.⁸ The sole enforcement action taken by DOJ’s Voting Section under the current Administration was to demand that Kentucky conduct more aggressive purges of voters from the voting rolls.⁹

The DOJ’s current enforcement vacuum is particularly harmful given how eager many states have been to implement new restrictions on registration and voting in the wake of *Shelby*. Since the *Shelby County* decision, at least 23 states have implemented new restrictions on voting, including onerous photo ID measures, cuts to early voting, and polling place closures.¹⁰ By 2018, 34 states had some form of voter ID law on their books; 17 of those requested photo IDs,¹¹ to

⁶ 52 U.S.C. § 10301(b).

⁷ The DOJ’s Voting Section lists all of its litigation since at least 1993 on its website:

<https://www.justice.gov/crt/voting-section-litigation>. The information cited is current as of October 14, 2019.

⁸ *Id.*

⁹ *Id.*

¹⁰ Eric Badner, *Discriminatory Voter Laws Have Surged in Last 5 Years, Federal Commission Finds*, CNN POLITICS, September 12, 2018, available at <https://www.cnn.com/2018/09/12/politics/voting-rights-federal-commission-election/index.html>.

¹¹ National Conference of State Legislatures, *Voter Identification Requirements – Voter ID Laws*, available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>. Of the 17 states requesting photo ID to vote, 7 of those have strict requirements, meaning that, unless a voter produces ID at the polls or at an elections office within a prescribed period of time post-election, that vote will not be counted. Additionally, one of the biggest problems with voter photo ID laws is that, even if they are not strict, they often produce much confusion. For example, even though Texas’s strict voter photo ID law was not in place for the 2016 or 2018 elections, many would-be voters reported confusion as to what documentation they needed to vote. Many stayed home. Poll workers too were confused about the requirements, leading to long lines and disenfranchisement. See Jessica Huseman, *Texas Voter ID Law Led to Fears and Failures in 2016 Election*, PROPUBLICA, May 2, 2017, available at <https://www.propublica.org/article/texas-voter-id-law-led-to-fears-and-failures-in-2016-election>.

which roughly 11 percent of the American population does not have access.¹² That 11 percent is disproportionately comprised of voters of color, seniors, and low-income citizens.¹³

Closures of polling places have especially accelerated in the wake of *Shelby County*. A report by the Leadership Conference on Civil and Human Rights found that state and local jurisdictions previously covered by Section 5 of the VRA had closed almost 1700 polling places between 2012 and 2018.¹⁴

We know these restrictive actions keep voters of color from full participation in our democracy. Recent survey research shows that black and Latino voters are three times as likely as white voters to encounter hurdles when trying to vote. They are more likely to be unable to take time off from work to go to the polls, be told that they do not have a proper form of ID, discover that their name is not on the list of registered voters, and be harassed or bothered at the polls.¹⁵

Because of these ongoing attempts to suppress the vote, particularly for voters of color, Dēmos calls for full restoration of the Voting Rights Act’s protections, and we urge Congress to approve H.R. 4, the Voting Rights Advancement Act.

B. Voter purges and intimidation are, increasingly, used as suppressive tactics against voters of color.

1. Voter purges

Over the past several years, many states have made voter registration—already a burdensome requirement—even more restrictive through voter purges that too often remove eligible persons from the voting rolls. And states that already have reasonable list maintenance procedures are increasingly targeted by self-proclaimed “voter integrity” groups seeking to force indiscriminate removals from the voting rolls. Examples from Dēmos’ recent litigation in Ohio, Indiana, Texas, and Florida show how ill-considered purges can exclude eligible persons from the political process.

Ohio

Last year, the U.S. Supreme Court considered *Husted v. A. Philip Randolph Institute*, a case challenging Ohio’s practice of using non-voting to initiate a voter purge process. Overturning the

¹² See Keesha Gaskins and Sundeep Iyer, *The Challenge of Obtaining Voter Identification*, Brennan Center for Justice (July 18, 2012), available at <https://www.brennancenter.org/publication/challenge-obtaining-voter-identification>; Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You’re Poor, Black, Latino or Elderly*, WASH. POST, May 23, 2016, available at https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html?utm_term=.9911008ca3b1.

¹³ ACLU, *Oppose Voter ID Legislation – Fact Sheet*, n.1, available at <https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet>.

¹⁴ Leadership Conference on Civil and Human Rights, *Democracy Diverted: Polling Place Closures and the Right to Vote*, 12 (September 2019), available at <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

¹⁵ Alex Vandermaas-Peeler et al., *American Democracy in Crisis: The Challenges of Voter Knowledge, Participation, and Polarization*, PUBLIC RELIGION RESEARCH INSTITUTE (July 17, 2018), <https://www.ppri.org/research/American-democracy-in-crisis-voters-midterms-trump-election-2018/>.

Sixth Circuit’s decision, a narrow 5-4 majority of the Court held that Ohio’s practice did not violate the National Voter Registration Act’s (NVRA) prohibition on roll-maintenance programs or activities that “result in the removal of the name of any person” from the registration rolls “by reason of the person’s failure to vote.”¹⁶

Members of Congress made clear during Supreme Court briefing that Section 8 of the NVRA was designed to prevent purge practices like Ohio’s.¹⁷ H.R. 1 would amend Section 8 of the NVRA to address the *Husted* decision and prohibit states from initiating a purge procedure based on non-voting—a metric that simply does not reliably indicate that a voter has moved, and the use of which disproportionately targets, removes, and disenfranchises traditionally marginalized persons from the registration rolls.

As numerous amici in *Husted* explained, barriers to voting such as transportation issues, inflexible work schedules, care-giving responsibilities, illnesses, inaccessible polling locations, and language access problems can disproportionately prevent persons of color, housing-insecure individuals, persons with disabilities, low-income individuals, older voters, and persons with limited English proficiency from making it to the polls to vote.¹⁸ Using a person’s failure to vote to initiate a removal process will therefore disproportionately target such groups and result in their subsequent removal from the registration rolls. This was borne out in an analysis of the number of infrequent voters purged in Hamilton County, Ohio, from 2012 through 2015, which found that “African-American-majority neighborhoods in downtown Cincinnati had 10 percent of their voters removed due to inactivity, compared to only four percent of voters in a suburban, majority-white neighborhood.”¹⁹

Dēmos is glad to report that, even after the Supreme Court’s decision in *Husted v. APRI*, we have continued to win significant relief on behalf of purged voters in Ohio. We obtained relief to protect improperly purged voters in the 2018 elections, and have now secured a final settlement that will continue to protect improperly purged voters through the 2022 elections. The settlement, reached in August 2019, locks in relief through the 2022 election cycle for voters improperly purged for non-voting under Ohio’s Supplemental Process prior to 2016, ensuring

¹⁶ *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833, 1841-46 (2018); see also 52 U.S.C. § 20507(b)(2).

¹⁷ Brief of Certain Members of the Congressional Black Caucus as *Amici Curiae* in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017).

¹⁸ See generally Brief of *Amici Curiae* National Association for the Advancement of Colored People and the Ohio State Conference of the NAACP in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017) (“NAACP Br.”); Brief of National Disability Rights Network, Disability Rights Ohio, AARP, AFL-CIO, SEIU, Democracy Initiative, National Coalition for the Homeless, Columbus Coalition for the Homeless, and Miami Valley Voter Protection Coalition as *Amici Curiae* in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017); Brief of Asian Americans Advancing Justice I AAJC, National Association of Latino Elected and Appointed Officials Education Fund, LatinoJustice PRLDEF, and Seventeen Other Organizations as *Amici Curiae* in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017); see also Brief of Current and Former Ohio Elections Officials as *Amici Curiae* in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980, at 5-6 (U.S. Supreme Court Sept. 22, 2017) (“Election Official Br.”).

¹⁹ NAACP Br., *supra* note 18, at 18 (referencing Andy Sullivan & Grant Smith, *Use it or Lose it: Occasional Ohio Voters May Be Shut Out in November*, Reuters (June 2, 2016), <http://www.reuters.com/article/us-usa-votingrightsohio-insight/use-it-or-lose-it-occasional-ohio-voters-may-be-shut-outin-november-idUSKCN0YO19D>).

that their votes will count. The relief also mandates several reforms to Ohio’s voter list maintenance program to minimize the number of eligible voters inadvertently removed.²⁰

Indiana

In 2017, Indiana adopted a law requiring elections officials to purge voters on Crosscheck’s list of “Potential Double Registrants” without first notifying them or offering a chance to correct or verify Crosscheck’s information. Crosscheck, the brainchild of former Kansas Secretary of State Kris Kobach, purports to identify people who register and vote in multiple states. But its formula for matching voter registration records across more than half the states is fundamentally flawed, resulting in millions of people being falsely flagged as double registrants. According to a 2008 study,²¹ finding different people with identical first names, last names, and date of birth—the only criteria Crosscheck uses to flag duplicate registrations, even when other information conflicts—is surprisingly common. Because of this and other problems, Crosscheck’s “matches” are entirely unreliable.²² But once voters have been flagged under this flawed formula, they are then subjected to extra scrutiny and can be purged from the voter rolls.

In a major win for Indiana voters, U.S. District Judge Tanya Walton Pratt granted motions filed by Dēmos and other partners for a preliminary injunction, and blocked the law. Had the law gone into effect, many voters would not have learned that they had been purged until they showed up at the polls. In August 2019, the U.S. Court of Appeals for the Seventh Circuit unanimously affirmed this ruling, finding that our claims were likely to succeed on the merits. The Seventh Circuit’s ruling in *Common Cause v. Lawson* ensures that Indiana must refrain from implementing its flawed legislation while the case remains in litigation toward a final judgment.

Texas

In February 2019, Dēmos and its partners filed a lawsuit and an emergency motion to stop Texas from discriminating against voters of color and purging naturalized citizens who are eligible to vote from the voter rolls. David Whitley, who was then Texas’s Secretary of State, made highly publicized accusations that 98,000 non-citizens might be on the voter rolls and that 58,000 may have actually voted in the state’s elections, based on DMV records. That claim was false. It was based on data the state knew was flawed, and it ignored the reality that many people who were lawfully in the country when they applied for a driver’s license or state ID, before attaining citizenship, had later become naturalized citizens—entitled to full voting rights under our Constitution.

That did not stop Texas Attorney General Ken Paxton from issuing a reckless “VOTER FRAUD ALERT”, which President Donald Trump amplified by tweeting about voter fraud and calling it “just the tip of the iceberg.” Then-Secretary Whitley also encouraged county election officials to

²⁰ Settlement agreement, Ohio A. Philip Randolph Institute v. LaRose, August 28, 2019, available at <https://www.demos.org/case/ohio-philip-randolph-institute-v-larose-ohio-philip-randolph-institute-v-husted>.

²¹ Michael P. McDonald and Justin Levitt, *Seeing Double Voting: An Extension of the Birthday Problem*, 7 ELECTION L.J. 111 (2008), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888.

²² Sharad Goel et al., *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections* (Oct. 24, 2017), available at <https://scholar.harvard.edu/files/morse/files/1p1v.pdf>.

send notices to these individuals and, if they didn't respond with documentary proof of citizenship within 30 days, purge them from the voting rolls.

These unsupported accusations left thousands of naturalized citizens outraged and fearful that their hard-won right to vote was in jeopardy. Nivien Saleh, a Harris County voter and one of our clients, gained her citizenship in January 2018, after living lawfully in the U.S. under a student visa and then an H1B visa since 1997. In a declaration filed with the court, Ms. Saleh described her experience voting for the first time in the March 2018 Texas primaries as “the culmination of many years of hard work” and “an experience I will always remember.” Finding herself wrongly accused of unlawfully registering to vote left Ms. Saleh “apprehensive, insulted and angry.” She explained, “I have worked hard to be a productive, law-abiding citizen,” and said that the Secretary’s false accusation “disturbs me deeply.”

Dēmos and its partners won a preliminary injunction in February 2019, and a [final settlement](#) in April 2019 that prevented Texas from carrying out the threatened purge. Under the settlement, the state rescinded its original advisory and informed targeted voters that their voting rights are no longer subject to scrutiny. In addition, Texas Secretary of State David Whitley ultimately was forced to step down from his position in large part because of his missteps in pursuing this indefensible voter suppression effort.

Broward County, Florida

After the 2016 election, so-called “voting integrity” groups such as the Public Interest Legal Foundation (PILF) and the American Civil Rights Union (ACRU) have been increasingly emboldened to push states and localities to promote overly aggressive purges of registered voters from the voting rolls, and are filing increasing numbers of lawsuits to demand such purges. In one such lawsuit, the ACRU sued Broward County to demand aggressive purges of the voter rolls. Dēmos intervened on behalf of 32BJ-SEIU to assist in defending against this unwarranted lawsuit. After a full trial in July 2018, the district court ruled in our favor, holding that the plaintiffs had relied on flawed data for their allegation that the voter rolls in Broward County were inflated. In August 2019, the 11th Circuit Court of Appeals [unanimously affirmed](#) our lower-court victory.

Attempts to purge eligible voters from the rolls—as we’ve seen recently in Ohio, Indiana, Texas, and Florida—threaten to undo the work that goes into registering eligible citizens. If Congress is committed to voter registration reform, then it must also ensure that we preserve those registrations through protections against aggressive attempts to remove voters from the rolls. We strongly endorse the approach taken by H.R. 1 to protect and expand voter registration and protect voters from overbroad purges.

C. Registration continues to be a barrier to participation.

The requirement of pre-registration to exercise the right to vote is still the number-one barrier to participation in our democracy. Fifty to 60 million eligible voters, disproportionately people of color, young people, and low-income people, remain unregistered.

The National Voter Registration Act of 1993 (NVRA) is an important tool for facilitating voter registration. The NVRA requires 44 states and the District of Columbia to actively offer voter registration through government agencies like motor vehicle bureaus and departments of health and human services; bans certain onerous state voter-registration policies; and mandates the development and acceptance of mail-in voter registration applications. The NVRA also increases the ability of citizens to remain registered and to update their voter registration records. When implemented properly, the NVRA can benefit millions of voters each election cycle.²³

However, achieving the NVRA’s full potential remains an unfinished project. Many states do not fully comply with the NVRA’s requirements, resulting at best in missed opportunities to bring millions more people into the political process and at worst the active suppression of certain communities’ voices. Over the last several years, Demos and partners such as Project Vote, the Lawyers’ Committee for Civil Rights Under Law, and others have worked to assess and improve compliance with the NVRA through collaboration with election administrators and state-based partners, advocacy, and, when necessary, litigation.²⁴

Dēmos estimates that our NVRA compliance work across nearly two dozen states has resulted in more than 3 million new voter registration applications being submitted through public assistance agencies under Section 7 of the NVRA alone.²⁵

The “Motor-Voter” provisions of the NVRA, established by Section 5 of the Act, also can facilitate voter registration for millions of people when properly implemented. But just as some states have neglected their obligations to provide voter registration through public assistance agencies, some have lagged in providing required voter registration services through drivers’ license offices. Here, too, Dēmos and partner organizations have worked extensively over the past several years to help states improve their voter registration services.²⁶

Millions of United States citizens find elections more accessible when the NVRA is adequately enforced, but significant hurdles remain. In the November 2016 general election, nearly 1 in 5 people (18 percent) who were eligible but did not vote cited registration issues as their main reason for not casting a ballot.²⁷ Ensuring compliance with the NVRA is important, but we know that states can and should do much more when it comes to registering eligible voters.

²³ LAURA WILLIAMSON, PAMELA CATALDO & BRENDA WRIGHT, DĒMOS, TOWARD A MORE REPRESENTATIVE ELECTORATE: THE PROGRESS AND POTENTIAL OF VOTER REGISTRATION THROUGH PUBLIC ASSISTANCE AGENCIES (2018), available at <https://www.demos.org/research/toward-more-representative-electorate>.

²⁴ *Id.*

²⁵ *Id.* The states in which Demos and partners have worked on Section 7 compliance include Alabama, Arizona, California, Colorado, Georgia, Indiana, Illinois, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Virginia, and Washington.

²⁶ Stuart Naifeh, *Accelerating the Vote: How States Are Improving Motor-Voter Registration Under the National Voter Registration Act* (2017) <https://www.demos.org/research/accelerating-vote>.

²⁷ CENSUS BUREAU, CURRENT POPULATION SURVEY, NOVEMBER 2016 VOTING AND REGISTRATION SUPPLEMENT. Reasons cited for not voting include “did not meet registration deadlines,” “did not know where or how to register,” and “did not meet residency requirements/did not live here long enough.”

That is why we have conducted research on and advocated for reforms such as same-day registration (SDR) and automatic voter registration (AVR), both of which increase registration rates and boost participation—particularly among voters of color and youth.²⁸

While some states have moved to restrict access to the ballot box, others are taking appropriate steps to adopt measures such as online, same-day, and automatic voter registration. Yet more can and should be done to ensure that all Americans, no matter where they live, have access to these kinds of registration reforms.

D. The exclusion of over 5 million individuals through felony disenfranchisement laws perpetuates a legacy of racial bias and is anti-democratic.

Despite significant advances in voting rights made possible by the tireless struggle and sacrifice of persons long excluded from the franchise,²⁹ one group of U.S. citizens remains formally locked out of the vote at some point in their lives across almost the entire United States: people with felony convictions. This stain on our democracy formally disenfranchises more than five million Americans.³⁰ And because our criminal legal system disproportionately targets, arrests, sentences, and locks up people of color, communities of color are represented among disenfranchised Americans far beyond their representation in the population.³¹ For example, a

²⁸ Dēmos, *Same Day Registration*, https://www.Dēmos.org/sites/default/files/publications/Sdr-Factsheet-Final_1.pdf; Sean McElwee, Brian Schaffner, and Jesse Rhodes, *Oregon Automatic Voter Registration*, <https://www.demos.org/policy-briefs/oregon-automatic-voter-registration>.

²⁹ Nikole Hannah-Jones, “Our democracy’s founding ideals were false when they were written. Black Americans have fought to make them true,” *New York Times*, August 14, 2019, <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html>. See also generally W.E.B. Du Bois, *Black Reconstruction in America*, (New York, The Free Press: 1935); Susan Ware, *Why They Marched: Untold Stories of Women Who Fought for the Right to Vote*. (Cambridge: The Belknap Press of Harvard University, 2019); John Lewis and Michael D’Orso, *Walking With the Wind*, (New York: Simon & Schuster, 1998); Reverend Dr. William J. Barber II, *The Third Reconstruction: Moral Mondays, Fusion Politics, and the Rise of a New Justice Movement*; (Boston: Beacon Press, 2016); Gary May, *Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy*, (Durham: Duke University Press, 2015).

³⁰ In 2016, the Sentencing Project estimated that felony disenfranchisement laws formally disenfranchised 6.1 million Americans. See Jean Chung, “Felony Disenfranchisement: A Primer,” The Sentencing Project, 2016, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>. In 2018, a supermajority of Floridians passed Amendment 4, which automatically restored the voting rights of 1.4 million Floridians who had served time and completed probation and parole. See Frances Robles, “1.4 Million Floridians With Felonies Win Long-Denied Right to Vote,” *New York Times*, November 7, 2018, <https://www.nytimes.com/2018/11/07/us/florida-felon-voting-rights.html>. However, in 2019, Republican lawmakers in Florida passed a law requiring returning citizens pay all outstanding fines and fees before their voting rights are restored, which has made hundreds of thousands of newly-eligible Floridians again ineligible to register and vote until they pay this modern-day poll tax. See Chiraag Bains, “Florida Prices Hundreds of Thousands of Returning Citizens Out of the Vote in a Stunning and Unconstitutional Move,” *Demos*, June 29, 2019, <https://www.demos.org/press-release/florida-prices-hundreds-thousands-returning-citizens-out-vote-stunning-and> and *Can’t Pay, Can’t Vote: A National Survey of the Modern Poll Tax*, Campaign Legal Center and the Civil Rights Clinic at Georgetown Law, July 25, 2019, 23, https://campaignlegal.org/sites/default/files/2019-07/CLC_CPCV_Report_Final_0.pdf. As a result, new estimates put the total number of disenfranchised people nation-wide between five and six million.

³¹ See Dorothy E. Roberts, “Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework Symposium on Pursuing Racial Fairness in Criminal Justice: Twenty Years after *McCleskey v. Kemp*.” *Columbia Human Rights Law Review* 39 (2007): 261–86; Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (Oxford: Oxford University Press, 2006); Michelle Alexander, *The*

national survey on drug use reported that “African Americans and whites use drugs at similar rates, but the imprisonment rate of African Americans for drug charges is almost *six times that of whites*.”³² African Americans “represent 12.5 percent of illicit drug users, but 29 percent of those arrested for drug offense and 33 percent of those incarcerated in state facilities for drug offenses.”³³

To achieve the goal of full enfranchisement that is central to democracy, we must reform our current laws that disenfranchise persons with felony convictions. Such laws are not required by the U.S. Constitution, and they have not been the law forever. In fact, today, all people who are incarcerated can vote in Maine, Vermont, and Puerto Rico, and in many other countries, including most of Europe; people serving felony prison sentences for certain crimes can also vote in Alabama, Alaska, Arkansas, California, and Mississippi.³⁴ In short, there’s nothing inevitable about these vote-stripping laws.

The proliferation and entrenchment of criminal disenfranchisement laws in the United States, we must acknowledge, is rooted in beliefs about white supremacy. After Reconstruction, states in the South began to tailor their disenfranchisement laws to cover crimes for which black citizens were most frequently prosecuted, “as part of a larger effort to disfranchise African American voters and to restore the Democratic Party to political dominance.”³⁵ Over time, states stopped distinguishing between kinds of crimes, instead imposing blanket disenfranchisement for all felony convictions. It is no accident that, today, the two states that do not disenfranchise any incarcerated persons are Maine and Vermont—states with overwhelmingly white populations.³⁶

Because of such disparities in the criminal legal system, felony disenfranchisement laws have formally stripped one in every 13 African Americans of their right to vote, four times the disenfranchisement rate of non-African Americans.³⁷ In the 2016 elections, approximately 2.5 percent of all Americans who would otherwise be able to vote could not vote due to felony convictions; that number jumps to 7.4 percent for African Americans.³⁸ Communities of color therefore experience reduced political power and the underrepresentation of their interests in government. Ending felony disenfranchisement would help bring equality and equity to the democratic process. Encouraging voting has also been found to aid with reentry and thus promote public safety.³⁹

New Jim Crow: Mass Incarceration in the Age of Colorblindness (New York: The New Press, 2012); NAACP Criminal Justice Fact Sheet, <https://www.naacp.org/criminal-justice-fact-sheet/>; and *Everyone’s America: 26 state policies for a race-forward, populist agenda to empower all Americans*, Demos 2018: 176. <https://www.demos.org/research/everyones-america>.

³² *Id.* (emphasis added).

³³ *Id.*

³⁴ ACLU, *Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and other Democracies* (2006) https://www.aclu.org/sites/default/files/pdfs/votingrights/outofstep_20060525.pdf; Chung, *supra* n. 30.

³⁵ Pippa Holloway, “A Chicken-Stealer Shall Lose His Vote”: *Disfranchisement for Larceny in the South, 1874-1890*, 75 J. S. HIST. 931, 931 (2009).

³⁶ Chung, *supra* note 30.

³⁷ *Id.*

³⁸ Bernard Fraga, *The Turnout Gap: Race, Ethnicity, and Political Inequality in A Diversifying America*, (Cambridge: Cambridge University Press, 2018), 173.

³⁹ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 197 (2004-2005). See also ALEX EWALD, DEMOS, PUNISHING AT THE POLLS, 35

Felony disenfranchisement laws in the U.S. are a deep stain on our integrity and our morality as a people. They are inconsistent with our values as a democratic society. They are racist in their roots and discriminatory in their impact. And they do nothing to promote community wellness; in fact, they deny directly impacted people and their communities the myriad benefits that come from full civic engagement. We must end this painful and violent practice of excluding people from our democracy by ending felony disenfranchisement laws and expanding voting rights to those whose rights have been taken away.

E. Prison-Based Gerrymandering Compounds the Injustices of Criminal Disenfranchisement.

The practice of prison-based gerrymandering has long distorted our democracy. Prison-based gerrymandering results from the current practice of the U.S. Census Bureau to count incarcerated persons as residents of the prison for purposes when conducting the Census.⁴⁰

Because prisons are often located far from the home residences of incarcerated persons, counting incarcerated persons as residents of the prison for redistricting purposes can award disproportionate representation to rural or semi-rural communities containing prisons, at the expense of representation for the home communities of incarcerated persons, which are disproportionately urban. The practice also defies most state constitutions and statutes, which explicitly state that incarceration does not change a person's legal residence.⁴¹ The injustice of the practice is compounded by the fact that all but two states entirely deny the right to vote to incarcerated persons with felony convictions, even while they treat the incarcerated persons as residents of the prison for Census purposes. And to make the Census rule even more absurd, when a state allows incarcerated persons the right to vote, they typically cannot vote as residents of the prison where they are counted for purposes of the Census; instead, they must vote an absentee ballot in the community where they resided before their incarceration.⁴²

To date, six states have enacted laws correcting the distortions of representation resulting from the Census Bureau's flawed practice of counting incarcerated persons as residents of the prison rather than as residents of their home community.⁴³ We applaud the House for including an amendment to end prison-based gerrymandering in its final passage of H.R. 1.⁴⁴

(2003) (describing value of developing greater civic consciousness by encouraging vote)
<https://www.demos.org/sites/default/files/publications/FD - Punishing at the Polls.pdf>.

⁴⁰ Prison Policy Initiative, Prison Gerrymandering Project, Overview, <https://www.prisonersofthecensus.org/impact.html>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ These states are California, Delaware, Maryland, Nevada, New York, and Washington. See Prison Policy Initiative, Prison Gerrymandering Project, What's New <https://www.prisonersofthecensus.org/>.

⁴⁴ John Nichols, "Prison Gerrymandering Distorts our Democracy in the Worst Ways," The Nation, March 8, 2019 <https://www.thenation.com/article/mark-pocan-gerrymandering-prisons/>.

CONCLUSION

The right to register and vote is fundamental to our democracy. Dēmos thanks the Committee for its careful study of the obstacles that too many voters face in exercising that fundamental right. The For the People Act would make voting more accessible and combat voter suppression efforts, blunt the distorting influence of big money in politics, and advance racial equity. Dēmos applauds the House's passage of the For the People Act and looks forward to seeing it signed into law. Dēmos also strongly supports passage of the Voting Rights Amendment Act, H.R 4, to restore critical protections for the right to register and vote that a bare majority of the Supreme Court stripped in *Shelby County v. Holder*. Dēmos also urges the Committee to build on the insights gathered through its extensive hearings over the past many months to propose additional critical reforms to enable every eligible person to register, to vote, and to have their vote counted.