

# We Vote, We Count:

THE NEED FOR CONGRESSIONAL ACTION TO  
SECURE THE RIGHT TO VOTE FOR ALL CITIZENS

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November 2019

## ABOUT US

The Racial Equity Anchors Collaborative is a collaborative of nine leading national racial equity anchor organizations generously supported by the **W.K. Kellogg Foundation**.

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### **Advancement Project National Office**

Advancement Project is a next generation, multi-racial civil rights organization. Rooted in the great human rights struggles for equality and justice, we exist to fulfill America's promise of a caring, inclusive and just democracy. We use innovative tools and strategies to strengthen social movements and achieve high impact policy change.



### **Asian Pacific Islander American Health Forum**

APIAHF influences policy, mobilizes communities, and strengthens programs and organizations to improve the health of Asian Americans, Native Hawaiians, and Pacific Islanders.



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Dēmos is a dynamic “think-and-do” tank that powers the movement for a just, inclusive, multiracial democracy.



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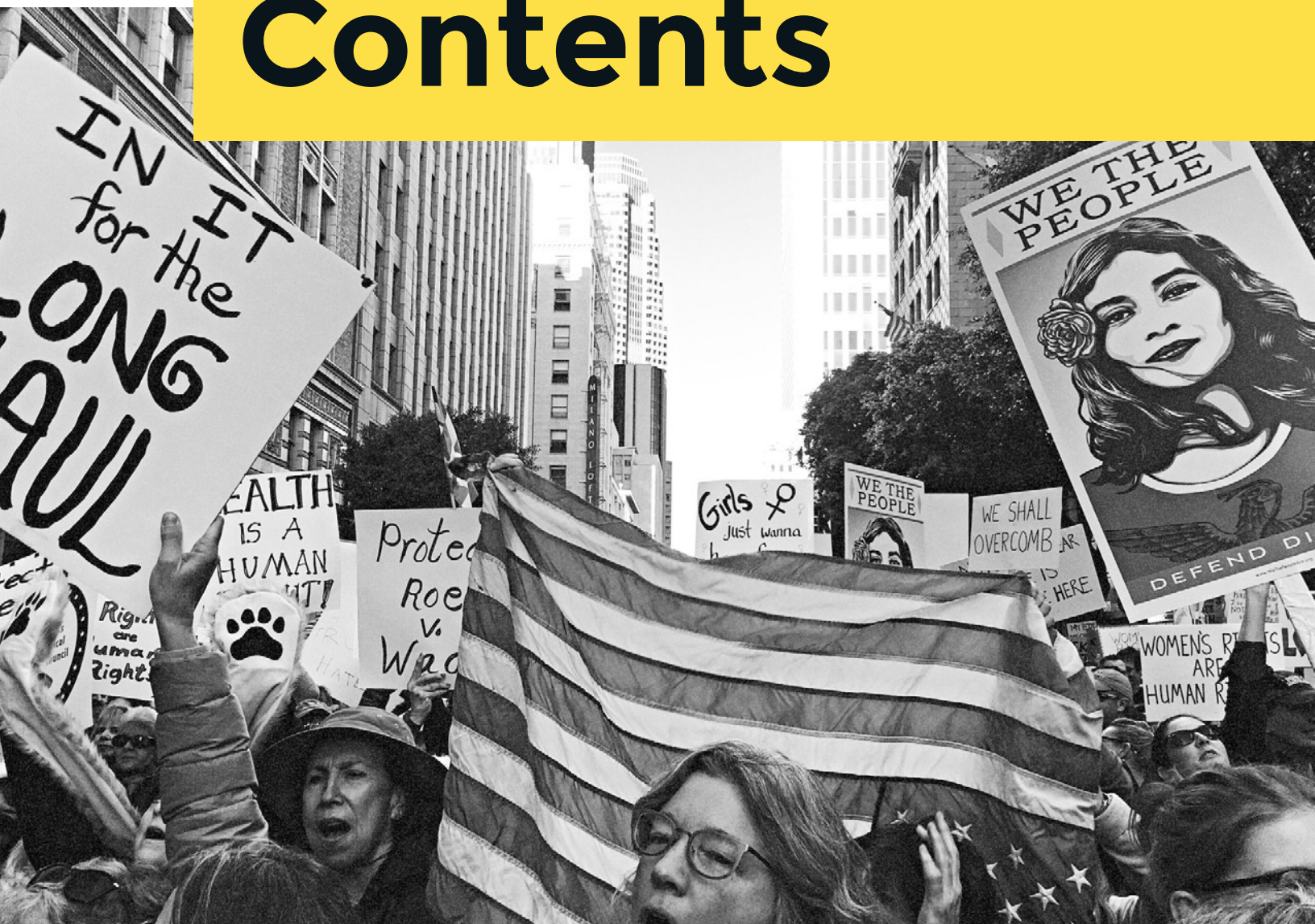
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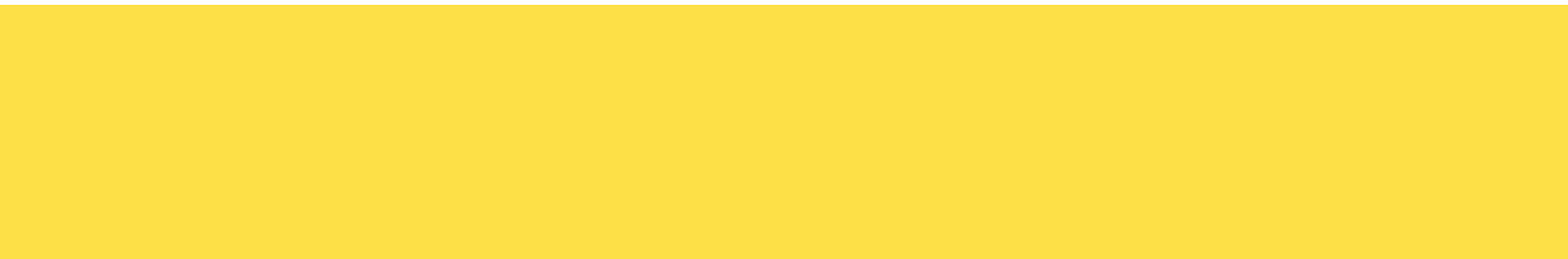
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## **ACKNOWLEDGEMENTS**

The authors would like to thank the W. K. Kellogg Foundation for funding the People's Hearings, this report, and the members of the Racial Equity Anchors Collaborative: Advancement Project, Asian & Pacific Islander American Health Forum, Dēmos, Faith in Action, National Association for the Advancement of Colored People, National Congress of American Indians, National Urban League, Race Forward, and UnidosUS. Special thanks to Asian Americans Advancing Justice - AAJC for adding Asian American, Native Hawaiian and Pacific Islander voters' voices into our work. The authors would especially like to thank Elana Needle, Project Director of the Racial Equity Anchor Collaborative, for her remarkable ability to keep everyone on task. We would also like to thank Maria Faini, Mellon/ACLS Fellow at Race Forward, and Amira Perryman, who served as an Advancement Project summer legal intern, for working on this project.

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# Executive Summary

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From “We the People” to “We Vote, We Count” constitutes a tumultuous journey involving the fundamental right to vote and the massive efforts to deny that right to people of color. The United States has historically limited access to the ballot and enacted laws that disenfranchised people of color. Paradoxically, the country was founded as a democracy, yet forces have constantly sought to suppress the electoral efforts of people of color. The federal government has periodically responded with hard-fought and long-awaited federal voting rights protections that were necessary for democracy to prevail. One of the most effective pieces of legislation was the Voting Rights Act of 1965 (VRA or “the Act”), which provided access to the ballot for people of color and required segregation’s forces to seek federal approval of voting changes prior to implementation. Nonetheless, structural racism remains pervasive not just throughout the South but the entire United States. The VRA continues to be necessary for combating widespread voter suppression, which includes, but is not limited to, registration restrictions and penalties against voter registration drives, voter purges, redistricting, reduction in polling places, restrictive voter ID laws, exorbitant fees for formerly incarcerated people to re-register, and proof of citizenship laws. Communities of color, in large scale, bear the brunt of voter suppression. Asian American, Native Hawaiian, Pacific Islander (AANHPI), African American, Hispanic <sup>1</sup> and American Indian communities from sea to shining sea have felt the pain of voter suppression.

Over the past 75 years, rising political participation among voters of color, along with increasing immigration, has motivated states to implement voter suppression measures. This phenomenon is not new, but reflects similar trends occurring during Reconstruction and the pre-Civil War era. Current efforts to diminish and disenfranchise people of color during this and other important times in our country’s history are not accidents, but a pervasive and effective strategy to prevent or dissuade people of color from freely participating in the political process. Without question, these attempts and successes to suppress the vote resemble practices of voter suppression during the civil rights era, prior to passage of the Voting Rights Act. A notable blow to federal efforts to curb suppression occurred in 2013, when the United States Supreme Court in *Shelby County v. Holder* found parts of the VRA unconstitutional. Since *Shelby*, states and other jurisdictions have implemented modern methods of disenfranchisement that are far-reaching and have real impact on communities of color and their ability to access the franchise.

The Racial Equity Anchor Collaborative (Anchors) embarked on a grassroots effort to lift up the voices of voters of color and their experiences in accessing the right to vote. We conducted “People’s Hearings” in select states over several months in 2019 and gathered first-hand accounts of voter suppression through those hearings and through lawsuits to protect voting rights. Witnesses testified to the erosion of equal

access to voting and voter registration and to the ferocity of post-*Shelby* election-related discrimination in Alabama, Florida, Georgia, North Carolina, North Dakota, Ohio, South Dakota, and Texas. Witnesses attested to, among other things, having to wait in long lines to cast a ballot, being denied bilingual ballot language assistance, having to restore their registration status after an illegal voter purge, and having to stand up against last-minute changes to polling locations and hours of operation. Additionally, voters have had to adjust to increasingly scarce polling places with ever-changing locations, which present a huge burden for those without easy access to transportation and with inflexible work schedules. Witnesses further testified to:

- An increase in the number voting rights violations since the *Shelby* decision
- An increase in the costs and burdens to access the right to vote
- An increase in the costs of litigating Voting Rights Act violations
- Strong evidence of discrimination in voting, and
- A need for transparency, notice, and federal protection for the right to vote.

In conducting the People’s Hearings, we found that witnesses primarily framed the right to vote in two ways: 1) the right to be regarded and recognized as an eligible voter, and 2) the right to cast a ballot without undue burden.<sup>2</sup> These frameworks were prevalent themes throughout the stories collected via the congressional and People’s Hearings, and on our [website](#). This consistency indicated that, for communities of color, the right to be recognized as an eligible voter and the right to vote without undue burden are the components of the concept of the “right to vote” most severely contested or undermined in the modern-day fight to vote.

This report seeks to elevate the voices of affected communities across the country and provide important insights on the quest to vote. *We Vote, We Count* addresses three primary issues:

1. The impact of voting rights violations and litigation since the landmark *Shelby County v. Holder* decision;
2. Evidence of continued discrimination in voting and the ongoing need for federal protection; and
3. The need for increased transparency and protection for the right to vote.

The members of the Racial Equity Anchors Collaborative—Advancement Project, Asian & Pacific Islander American Health Forum, Dēmos, Faith in Action, National

Association for the Advancement of Colored People, National Congress of American Indians, National Urban League, Race Forward, and UnidosUS—are a collaborative dedicated to a voting system that is free and allows all people the right to vote regardless of race, ethnicity or language ability. The stories contained in this report illustrate the need for action to ensure that the right to vote remains a central part of the democratic system. Efforts to destroy the right to vote have escalated since *Shelby*. However, the determination of these racial equity groups, and many other allies, has also increased to fight for the unfettered right to vote.

The current levels of voter suppression unduly burden this fundamental right and disproportionately disenfranchise voters of color. This report provides testimony from African Americans, Asian Americans, Native Hawaiians, Pacific Islanders, Latinos, and Native Peoples, whose first-hand accounts provide a glance into the inner workings of voter suppression in states across the country. The effort to add the voices of the people to the process has unearthed a symphony of witnesses who are worthy of attention. The people are declaring that We Vote! We Count!



# Introduction



The right to vote is fundamental. Yet, significant attacks and restrictions on this right, especially in communities of color, are widening. Long-standing discrimination and suppression tactics have only increased in the aftermath of the Supreme Court decision in *Shelby County v. Holder* (2013). In that decision, the Court's majority declared unconstitutional the coverage formula (Section 4(b)) that empowered Section 5 of the Voting Rights Act, which allowed for federal oversight of election administration decisions in some states and localities. Emboldened by the removal of oversight, state lawmakers and election administrators enacted and implemented stringent restrictions on access to the ballot which disproportionately disenfranchised voters of color. The combination of these new stringent restrictions and longstanding violations of the right to vote have had a devastating impact on the ability to exercise the right to vote in low-income communities and, in particular, for communities of color.

Many of the laws and procedures emerging after *Shelby* were rehashed or retooled versions of measures that initially did not survive scrutiny, or which were unlikely to survive scrutiny under pre-*Shelby* "preclearance," wherein certain states and localities had to present and defend proposed reforms before the Department of Justice or the United States District Court for the District of Columbia. The *Shelby* decision invalidated the coverage formula outlined in Section 4 of the Voting Rights Act, which determined the jurisdictions that were subject to the federal preclearance regime outlined in Section 5; those jurisdictions would have to pause enactment of proposed reforms until their potential effects could be evaluated. By invalidating the coverage formula and essentially shuttering federal oversight prior to the implementation of voting laws in Section 5 covered jurisdictions, the *Shelby* decision eliminated the most important protective dimensions of preclearance and reprimanded Congress for failing to modernize the coverage formula in order to capture jurisdictions which the Supreme Court theorized had a more recent record (as of Congress' reauthorization action in 2006) of abetting election-related discrimination. Surprisingly, the Court admitted that discrimination continued to exist in voting; yet, it removed the tools that helped to diminish discrimination. Despite the Supreme Court's decision that the need for federal protection had passed, communities of color continue to experience difficulties exercising their right to vote and accessing the ballot. Indeed, this widespread suppression of voters of color has been a mainstay in our democratic process.

This report begins with a brief history of voting discrimination in America impacting people of color, government action to protect voting rights, and challenges to government action, and discusses the ferocity and speed with which jurisdictions

adopted restrictive voting laws and discriminatory practices after *Shelby*, including restrictive voter ID laws, reductions of in-person registration and voting sites, and illegal voter purges. For the contemporary illustrations of voter suppression, this report draws from a number of sources: testimonies given by affected persons during both the 2019 field hearings and listening sessions conducted by the U.S. House of Representatives' Committee on House Administration Subcommittee on Elections, chaired by Representative Marcia Fudge of Ohio; the 2019 People's Hearings held by the Anchors; recent court cases that document the ongoing discrimination experienced by voters of color and community groups; and stories collected on the *WeVoteWeCount* website.

Likewise, this report summarizes witness testimony to document voter encounters with restrictive voting laws, discriminatory election administration practices, and persistently indifferent state officials who deny voters' claims that laws and practices are racially discriminatory by intent, racially discriminatory by effect, or both. Additionally, the report includes voter accounts of how restrictive voting measures impact the right to vote, how advocacy groups and affected communities have tried (unsuccessfully in most cases) to track suspicious election reforms and to stop constitutional violations through litigation, and how persistent socioeconomic disparities have strengthened secondary barriers to electoral participation. Finally, this report addresses the current state of federal efforts to protect the right to vote, the ongoing need for Congress to address the racial inequities that remain in the voting process, and the solutions proposed by witnesses to thwart continued assaults on the right to vote. Impacted people cry out for a robust and comprehensive solution to long-standing disenfranchisement, both in previously covered jurisdictions under Section 5 of the Voting Rights Act, and in jurisdictions throughout this country where the right to vote is compromised due to race, ethnicity and/or language ability.

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# The Fight to Vote in the United States

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The Preamble of the Constitution proclaimed our Founders' intent to redefine governance.<sup>3</sup> Instead of power flowing from the top, it would flow from the people of the United States. This phrase, "we the people," confers the hope of inclusion and empowerment in the ability of people to participate freely in the political process. Through voting and political participation, the people could shape the government. This was a noble desire. However, from the outset, the Founding Fathers determined that the linchpin of the democratic process, i.e., the vote, was reserved for only certain inhabitants.

"We the people" still proves to be a revolutionary concept. Those in power have defined the contours of who constitutes "the people." From the founding to the new millennium, those in power construct the political and electoral realities that continue to deny people of color access to the ballot box. Interestingly, the United States Constitution did not originally define who could access the fundamental right to vote. The Founders of this great republic would explicitly craft the three-fifths compromise in an attempt to ensure that the rights of people of color would not equal the rights of whites. With few exceptions, women were largely prohibited from voting, as were men without property, non-white Americans, and indigenous people. The absence of constitutional language protecting the right to vote allowed each state to determine who was eligible to vote, fragmenting the concept of "we the people." Indeed, before the ratification of the Fourteenth Amendment, the Constitution did not explicitly define citizen, merely referring to "Citizen[s] of the United States" and "Citizens of each State." Consequently, enslaved people and indigenous people, on whose homelands the new country was founded, were not considered citizens and were denied the rights given to white men in this country, including the right to vote. It would take a war that divided the country to put the pieces of our democratic government back together into a system that slightly resembled democracy.

After the Civil War, the period of Reconstruction constituted a seismic shift towards inclusion with passage and ratification of the Fourteenth and Fifteenth Amendments. The latter provides that voting rights cannot be denied or abridged based on "race, color, or previous condition of servitude."<sup>4</sup> This essentially granted the right to vote to all male citizens regardless of color or previous condition of servitude, sparking a wave of African American men becoming involved in the political process not only as voters but also as elected officials at the local, state, and national levels. For the first time in American history, some, but not all, people of color could have a voice in how the government was run.

## Jim Crow Laws and Disenfranchisement

In the face of a more representative electorate, states across the nation adopted new constitutions and enacted laws that made it harder for people to register to vote. These laws in the Jim Crow era<sup>5</sup> were used to directly disenfranchise non-white voters and poor white voters through poll taxes, literacy tests, and grandfather clauses. These disenfranchising devices were implemented in a discriminatory manner at the local level. Effectively, local election administrators were choosing who could register to vote and who could not. Literacy tests, and the like, were used as a means to discriminate against individuals based on their race, religion, or national origin with the express intent of reserving access to the ballot box for white male voters. While Jim Crow laws and the effects of exclusionary election administration were not limited to the South, it was in Southern states that the harmful effects could be seen so acutely. In Louisiana, for example, more than 130,000 black voters had been registered in 1896, but in 1904 only 1,342 Black people were registered to vote due to the systematic targeting of non-white communities through laws, tests, and outright terrorist tactics.<sup>6</sup>

Notably, indigenous people, who were not considered American citizens as a matter of birth, were still largely excluded from the franchise. The Supreme Court addressed the question of the 14th Amendment's application to Native Americans in 1884, holding that American Indians were "not . . . citizen[s] of the United States under the Fourteenth Amendment."<sup>7</sup> Native Americans faced barriers similar to African Americans in the South and Latinos in the Southwest. Native Americans were disenfranchised using a plethora of avenues, including: "[m]any states employed facially neutral measures, such as poll taxes or literacy tests, intended to avoid the proscriptions of the Fifteenth Amendment—techniques mirroring those deployed against African American voters throughout the Jim Crow South. Further, drawing on Native Peoples' 'unique status of citizenship at four levels of government' (federal, state, local, and tribal) and the complex history out of which that status arises, states deployed distinct methods of disenfranchising Native Peoples. Mirroring the Three-Fifths Clause and the Fourteenth Amendment, some states explicitly excluded 'Indians not taxed.' Others passed statutes defining residency to exclude Native Peoples living on reservations. Additionally, some states imposed tribal relation limitations, extending the franchise only to American Indians who had terminated their tribal relations and were deemed sufficiently 'civilized.' Finally, finding support

in Chief Justice Marshall's pronouncement that the relationship of Indians 'to the United States resembles that of a ward to his guardian,' states disenfranchised American Indians on account of their alleged under-guardianship status."<sup>8</sup>

Around the same period, following the Mexican-American War in 1848, the U.S. had annexed over half of Mexico—what is now the states of Arizona, Colorado, California, New Mexico, Nevada, Utah, and portions of Kansas, Oklahoma, and Wyoming, plus Texas, annexed in 1845. Mexicans who resided in those territories and stayed were allowed to choose U.S. citizenship. Nonetheless, remaining meant they faced violence, and laws and practices similar to those experienced by African American and Native Peoples, which codified segregation, unequal treatment, and exclusion from the political process through poll taxes, literacy and English tests, and outright intimidation.

Laws and practices to keep African Americans from voting had similar impacts on, or were also pursued against, Latino and Asian American communities, especially in states or localities where there was a sizable community of color. The U.S. Commission on Civil Rights heard testimony that Texas has been and continues to serve as the "disenfranchiser in chief" for communities of color, especially African American and Latinx communities. Texas's efforts to disenfranchise people of color extend to the 1800s.<sup>9</sup> For some time, "[w]hen Mexican Americans tried to register in one town, they were told the registrar ran out of printed forms. Polling places were located in 'white only' spaces. There were instances where Mexican American ballots were challenged for no cause. There was also evidence in later testimony of Mexican American voters and activists suffering economic punishment, losing their jobs and bank loans, and even suffering violence as a result of running for office."<sup>10</sup> Aiming to prevent African Americans from fully participating in the political process, "Texas banned African Americans from voting in 1901 by codifying all-white primaries. The law was not overturned until 1944 in *Smith v. Allwright*—one of four Texas cases challenging the all-white primaries."<sup>11</sup> All-white primaries also excluded Latinos from participating.

Similarly, passage of the Indian Citizenship Act of 1924 did not result in full enfranchisement of Native American voters. Many states continued to deny Native Peoples the right to vote in state and federal elections through the use of poll taxes, literacy tests, and intimidation.<sup>12</sup> It took nearly 40 years for all 50 states to recognize Native Peoples' right to vote. For years, Arizona denied Native Americans access to the franchise because they were "under guardianship," placing all indigenous Arizonians on par with convicted felons and the severely mentally incompetent.<sup>13</sup>

In other places, Native Peoples were denied the right to vote unless they could prove they were “civilized” by moving off the reservation and renouncing their tribal ties.<sup>14</sup>

Questioning one’s citizenship, or outright preventing people from becoming citizens in the first place, also has a long history in this country. Asian American, Native Hawaiian, and Pacific Islanders (AANHPI) were denied the ability to vote for most of the country’s existence, as Asian immigrants were barred from becoming citizens via federal policy until 1943 and subject to racial criteria for naturalization until 1952.<sup>15</sup> In fact, many legislative efforts prevented Asian immigrants from even entering the country and becoming citizens.<sup>16</sup> Asian immigrants were also prohibited from voting and owning land, as they were legally identified as aliens “ineligible for citizenship.”<sup>17</sup> Further, current U.S. Civil Rights Commissioner Karen Narasaki noted that one of the primary ways to prevent persons in the immigrant community from voting “was simply by not being allowed to be a citizen.”<sup>18</sup> She further noted, “[B]oth Native Americans . . . and then also my grandmother, who for over 50 years after she immigrated was not allowed to become a citizen because she came from Japan. So, I think that it’s important to note that there are many ways, and ever-inventive ways that unfortunately this country has sought to keep all of its people from being able to vote.”<sup>19</sup>

Today, U.S. Citizen and Immigration Services (USCIS), the government entity that processes applications for citizenship, has been embroiled in controversy over creating delays, backlogs, and other barriers to citizenship that have the effect of delaying new Americans’ ability to participate in the voting process. “According to data available from USCIS, as of March 2019, the number of pending citizenship applications at the agency is more than 713,000—double the amount compared to 2015. These delays persist, despite the fact that fewer people are applying for citizenship.”<sup>20</sup> Changes to the Immigration and Nationality Act in 1965<sup>21</sup> helped to change “America’s racial landscape . . . from a nation in which immigration was carefully controlled by national quotas and roughly 90 percent of immigrants came from Europe to a nation in which immigration rates are booming and about 85 percent came from Latin America and Asia. Today, Latinos are the largest nonwhite group in America.”<sup>22</sup> While the Latino community is the largest, the Asian community is the fastest growing community of color. In a seminal report, the Pew Research Center found that the Asian American population grew from 1 percent of the U.S. population in 1990 to approximately 6 percent in 2010. Further, the report projects that Asian Americans will increase to almost 10 percent of the U.S. population before 2050.<sup>23</sup> These communities, however, have been burdened with the same barriers to the ballot box as other communities of color.

## Congressional Efforts to Remove Barriers to the Ballot

More than half a century after the end of Reconstruction, when the states openly and systematically worked to deny people of color their fundamental right to vote, the federal government passed the Civil Rights Act of 1957. The Act established the United States Commission on Civil Rights and the United States Department of Justice, Civil Rights Division. Congress charged the United States Commission on Civil Rights with the responsibility of investigating, reporting on, and making recommendations concerning civil rights issues in the United States.<sup>24</sup> Similarly, the United States Department of Justice, Civil Rights Division was charged with enforcing federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status and national origin. These federal institutions were created to enforce and protect the right to vote at the federal level and showed a growing commitment to protecting the civil rights of people in the United States. With this legislation, Congress took a step towards ensuring the promise of the Reconstruction Amendments.

Although the Civil Rights Act of 1957 helped empower courts to remedy violations of federal voting rights, the Act failed to meaningfully expand the right to vote. In *United States v. Atkins*,<sup>25</sup> the Court found that despite the congressional action, registrars continued to deny African Americans an opportunity to equally participate in the electoral process. Its findings are exemplary of other parts of the country: “Dallas County [Alabama] had a voting-age population of 29,515, of which 14,400 were white persons and 15,115 were Negroes; 8,597 of the whites and 242 of the Negroes were qualified voters. Between January 1952 and December 1960, ten different individuals served as members of the Board of Registrars of Dallas County. Between those dates, 4,500 whites and only 88 Negroes were registered. Only 14 Negroes were registered from June 1954 to December 1960. The district court found that from 1954 to 1961 many unqualified whites were registered, whereas many qualified Negroes were rejected. Although the number of Negro applications which were rejected and the identity of the applicants are not known, testimony showed that among those rejected were two doctors, six college graduates, and two persons with some college education.”<sup>26</sup>

While a step in the right direction, the Civil Rights Act of 1957 did not immediately move the needle on all citizens’ ability to register to vote and cast a meaningful ballot. Congress passed additional legislation in 1960 and 1964 that included voting rights provisions, but it used a jurisdiction-by-jurisdiction approach that was costly, time-consuming, and ineffective.<sup>27</sup>

## The Voting Rights Act of 1965

Throughout the early twentieth century, people of color were constantly barred from exercising their right to vote. Passed after the increased visibility of police violently shutting down voter registration efforts and non-violent protests in places like Selma, Alabama, no single piece of legislation was more impactful toward the expansion of the right to vote than the Voting Rights Act of 1965 (VRA). The VRA was designed to enforce the power given to Congress in the Fourteenth and Fifteenth Amendments to the Constitution.

**Sections 2 and 5 of the Act.** The VRA provided nationwide protections for voting rights. It had two primary enforcement provisions: Section 2 and Section 5. Importantly, Section 2 prohibits the imposition of any voting law that results in discrimination against racial or language minorities.<sup>28</sup> Accordingly, it created the ability to challenge any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of race, color, or membership in a language minority group.<sup>29</sup> A 1980 decision, *Mobile v. Bolden*,<sup>30</sup> restricted the reach of Section 2, and made it harder to bring an action challenging voter discrimination,<sup>31</sup> because it required a finding of intentional discrimination, which is extremely difficult to prove. In 1982, while amending the VRA, Congress broadened Section 2, so that showing intent was no longer the only avenue towards a remedy. Importantly, President Ronald Reagan referred to the VRA as “the crown jewel of American liberties” when he signed the 1982 extension into law.<sup>32</sup> After the 1982 amendment, a plaintiff can now establish a violation under Section 2 if the evidence shows that in the context of the “totality of the circumstance of the local electoral process,” the action being challenged has the result of denying a member of a racial or language minority group an equal opportunity to participate in the political process.<sup>33</sup> Therefore if a person, community, or organization wishes to bring a Section 2 suit, they must meet these standards, which cost enormous amounts of money and time to establish, and only provide a remedy *after* the harm has already been committed. Compare this provision to Section 5 of the Act, which required certain jurisdictions to seek federal approval *prior* to implementation.

The Section 5 preclearance requirement was an even more powerful tool for preventing discrimination in the voting process. Before passage of the Voting Rights Act, all other remedies for voting rights discrimination did not allow for a solution until after the harm was done. The ineffectiveness of piecemeal litigation led in large part to the passage of Section 5 to address the need for a comprehensive remedy to the constantly changing ways that people of color experienced barriers to the franchise. In fact, in *South Carolina v. Katzenbach*,<sup>34</sup> a case challenging the consti-

tutionality of the Voting Rights Act, the Supreme Court noted that previous voting rights legislation did not go far enough, finding:

In recent years, Congress has repeatedly tried to cope with the problem by facilitating *case-by-case litigation* against voting discrimination. The Civil Rights Act of 1957 authorized the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds. Further, the Civil Rights Act of 1960 gave the Attorney General access to local voting records, and authorized courts to register voters in areas of systematic discrimination. Title I of the Civil Rights Act of 1964 expedited the hearing of voting cases before three-judge courts and outlawed some of the tactics used to disqualify Negroes from voting in federal elections.<sup>35</sup>

With the passage of the VRA, specifically the Section 4(b) preclearance formula and the Section 5 preclearance requirement, Congress finally attempted to stop voter discrimination and voter disenfranchisement before it occurred, at least in some jurisdictions. Section 5 of the VRA prohibited jurisdictions covered by Section 4(b) from implementing any change affecting a person's ability to vote without receiving preapproval from the U.S. Attorney General or the United States District Court for the District of Columbia.<sup>36</sup> This part of the Act only applied to jurisdictions encompassed by the Section 4(b) "coverage formula." The coverage formula was originally designed to identify jurisdictions that engaged in systemic voting discrimination in 1965.<sup>37</sup>

Essentially, the preclearance requirement of Section 5 stopped the harm to the act of voting before it could happen. In *Allen v. State Board of Elections*, the Supreme Court determined that the coverage of Section 5 should be given a broad interpretation, meaning even apparently minor or indirect changes to voting rights required approval.<sup>38</sup> For example, if a state subject to the preclearance formula wanted to change a polling place location or other law affecting voting, it was required to submit the potential change for review and wait for approval. In many jurisdictions this prevented harsh voter laws from going into effect, stopped the constant moving of polling locations, and halted the continued shrinking of early voting periods, which all too often disproportionately affected people of color.

**Language Access Provisions.** The poll taxes, violence and economic intimidation regularly used to disenfranchise African American voters also impacted other people of color. The primary provisions of the VRA, Sections 2 and 5, attempted to address those ills and enabled communities of color in large part to access the

ballot. However, Latino and Asian American voters experienced harassment and denials at the polls due to their language ability. For example, New York State had an English language literacy requirement from 1921 to the mid-1960s, which effectively denied the right to vote for Spanish speaking Puerto Rican-born U.S. citizens residing in the state. Congress addressed this inequity in section 4(e) of the VRA. However, in the 1966 case *Katzenbach v. Morgan*, registered voters in New York City sued to prevent compliance with Section 4(e).<sup>39</sup> While the VRA sought to expand the right to vote to more Americans, lawsuits and other actions followed seeking to challenge or overturn these provisions.



In addition to Section 4(e), when Congress reauthorized the VRA in 1975, it added Sections 203 and 208, which required translated election materials in certain states and localities and the ability for voters to choose the person who will assist them. Sec. 203 of the Voting Rights Act provides:

“The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition, they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language . . . In many areas

of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices."<sup>40</sup>

Organizations such as Southwest Voter Registration Education Project, launched in San Antonio, Texas, were instrumental in getting the 1975 Voting Rights Act passed. The new legislation required that voting materials be offered in the language of any language-minority population that was greater than 5 percent in a state or smaller political subdivision. Despite this, Congressional testimony found that Latinos experienced financial and physical retribution for civic engagement.

Section 203 has proven to be monumental in ensuring access to the ballot for persons with limited English proficiency. However, federal intervention and enforcement is sorely needed. For example, poll monitoring by Asian Americans Advancing Justice and Asian American Legal Defense and Education Fund for many decades has shown that noncompliance abounds in Section 203 jurisdictions, with unknowledgeable and unhelpful poll workers, unavailable and/or improperly displayed translated materials, and a general lack of bilingual poll workers, often resulting in Asian American voters being denied requested assistance.<sup>41</sup> Similar problems have also been documented for Latino and Native People voters in previously covered jurisdictions.<sup>42</sup>

### ***Other Federal Voting Rights Laws***

The VRA succeeded in expanding the franchise and helped those originally locked out of the political process gain access into the electorate.<sup>43</sup> While the Voting Rights Act was tremendous in its impact, additional measures were needed to ensure that citizens were not denied opportunities to register, cast a ballot, or have their ballots properly counted. Indeed, the passage and strong enforcement of the Voting Rights Act did not signal the end of voter disenfranchisement or the end of processes and practices which discouraged citizens from actively and consistently participating in the electoral process. With the urgency to act, Congress passed more laws to ensure all eligible voters retained the right to register to vote and cast their ballots.

**National Voter Registration Act of 1993.** The National Voter Registration Act of 1993, also known as the Motor Voter Act, requires state governments to allow mail-in voter registration and to provide voter registration opportunities to any eligible person through drivers' license agencies, public assistance agencies, and

disability agencies. It also prohibits states from removing registered voters from the voter rolls unless certain protections are followed. Voting rights organizations were forced into extensive litigation to ensure that states fully comply with the National Voter Registration Act.<sup>44</sup>

**Uniformed and Overseas Citizens Absentee Voting Act.** The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires that all U.S. states and U.S. colonies allow certain U.S. citizens to register to vote and to vote by absentee ballot in federal elections. The Act does not apply to non-federal elections, although some states and territories also allow citizens covered by the UOCAVA to register and vote in state and local elections as well.

**Help America Vote Act of 2002.** In the wake of controversy surrounding election results and ballot design in Florida and in other places during the 2000 election cycle, Congress passed the Help America Vote Act (HAVA) of 2002. This law mandates that all states and localities upgrade many aspects of their election procedures, including their voting machines, registration processes, and poll worker training. The specifics of implementation have been left up to each state, which allows for varying interpretations of the federal law.

## Challenges to Federal Enfranchisement Laws

Time after time, states and local actors have attempted to retain power by limiting who is included in “we the people.” Consequently, the courts have found themselves at the epicenter of the fight to access the franchise. Since the passage of the Voting Rights Act of 1965 and subsequent legislation, there have been many challenges to federal actions that ensure the right to vote for everyone. For example, shortly after its passage, *South Carolina v. Katzenbach* challenged the constitutionality of the Act.<sup>45</sup> The Supreme Court found that the measures that Congress adopted were necessary to combat the widespread voter suppression and disenfranchisement that existed.<sup>46</sup> Additionally, *Katzenbach v. Morgan* attempted to challenge Section 4(e) of the VRA as a violation of federalism.<sup>47</sup> However, the court found Section 4(e) to be a valid use of Congress’ power under the Fourteenth Amendment.<sup>48</sup> This was a major victory for voting rights advocates, reinforcing the notion that Congress does indeed have the power to stop discrimination at the state level. However, *Katzenbach* did not truly resolve the underlying debate over the degree to which federalism constrained the federal government in the arena of voting rights. The *Crawford v. Marion County Election Board* case brought the issue of federalism again to the forefront when

Indiana challenged the extent to which the Help America Vote Act constrained state election practices.<sup>49</sup> The Supreme Court concluded that the voter ID requirement at issue was closely related to Indiana's legitimate state interests in preventing voter fraud.<sup>50</sup> The decision in *Crawford* opened the door for more states to implement restrictive voter ID laws.

Recent history has proven there is still an urgent need for federal action in the face of systemic and particularized voter discrimination. Additionally, there have been many direct and indirect attacks on the VRA, from passing restrictive voting ID laws at the state level to an increase in policies that disenfranchise formerly incarcerated people. Those opposed to the expansion of voting rights challenged the constitutionality of the VRA in *Northwest Austin v. Holder*.<sup>51</sup> While in this case the Court declined to rule on the constitutionality of the VRA, it was only a few years later that another case challenging the constitutionality of the VRA made its way to the Court.

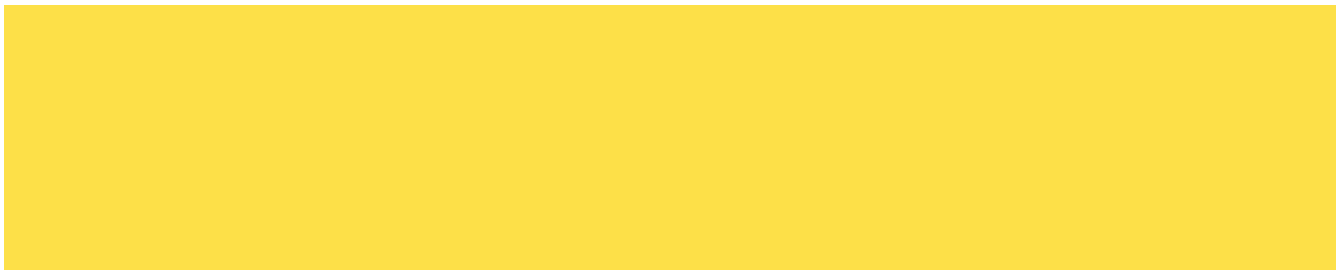
The Court in *Shelby County v. Holder* in 2013 ruled the preclearance formula in Section 4(b) of the VRA to be unconstitutional, not because discriminatory voting practices ceased, but because the formula relied on old data about voter discrimination which could not justify continued federal oversight. Effectively, this decision set aside the preclearance provision for those covered jurisdictions until Congress could pass (and the President could enact) another coverage formula. But since Congress has not acted, the *Shelby* ruling essentially gave a green light to jurisdictions previously covered by the preclearance formula to start implementing racially discriminatory barriers to voting.

As a result, restrictive voter ID laws, moving polling locations, and other changes that would have been stopped by the preclearance provision have come back with a vengeance to disenfranchise people of color. For example, in less than two months after the decision in *Shelby*, North Carolina enacted HB 589, which instituted a strict ID requirement, curtailed early voting, eliminated same day registration, and eliminated the authority of county boards of elections to keep polls open for an additional hour.<sup>52</sup> The U.S. Court of Appeals for the Fourth Circuit struck down the law three years later, finding that it targeted "African Americans with almost surgical precision."<sup>53</sup>

This law would have been subject to the Section 5 preclearance provision of the VRA if jurisdictions in the state had remained covered. The law would not have gone into effect and the people of color in North Carolina would not have had their vote kept from them in the subsequent elections that took place while this law was being litigated. It took three years for the blatantly racist voter ID law in North Carolina to be struck down, which is three years too many when a fundamental right is at stake.

North Carolina has not been the exception in the post-*Shelby* world we live in; it has become the rule. At least 23 states have enacted newly restrictive statewide voter laws since the *Shelby* decision.<sup>54</sup> We can look to Texas for a snapshot of the impact the VRA has on communities of color. It is important to note that “[t]he VRA also has contributed to increased political representation for Latinos, African-Americans, Asian-Americans and other under-represented minority groups in Texas. For example, in 1973, there were 565 Latino elected officials in the state. By 1984, the number had grown to 1,427. In January 2005, the number had increased to 2,137 Latino elected officials, nearly four times the number in 1973. The growth of Latino elected officials elected to Congress and to the Texas Legislature has been particularly significant. Between 1984 and 2003, the number of Latino Members of Congress doubled from three to six, and the number of state-level elected officials increased from twenty-five to thirty-eight. Additionally, between 1970 and 2001, the number of African-American elected officials in Texas rose from twenty-nine to 475, including two members of Congress (up from zero in 1970). Despite these substantial gains, Latinos and African-Americans continue to be vastly underrepresented at every level of federal, state and local government.”<sup>55</sup> Texas’ failure continues into this millennium, emboldened by its restrictive voter ID law found intentionally discriminatory by several federal courts.<sup>56</sup>

Texas and North Carolina are by no means the only perpetrators of political disenfranchisement. Many other states are adopting laws that adversely impact people of color’s ability to access the ballot. Indeed, states acted with speed and ferocity to enact discriminatory changes to election laws and administrative practices following *Shelby*. Voters now face an increasingly burdensome and complex array of barriers to exercising their constitutional right to vote and to petition the government for a redress of grievances. As a start, Congress must act and fully restore the Voting Rights Act to completely address the modern attacks on voting rights illustrated in this report and protect the inclusive meaning of “we the people.”



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*As a start, Congress must act and fully restore the Voting Rights Act to completely address the modern attacks on voting rights illustrated in this report and protect the inclusive meaning of “we the people.”*

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# Telling Our Stories

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In this era of voter disenfranchisement, voters of color confront renewed barriers to casting a ballot. Witnesses described a grave situation in twenty-first century America.<sup>57</sup> Unlike in the past, when states routinely enacted discriminatory laws and procedures to expressly deny all people of color the franchise based on the color of their skin, states in the post-*Shelby* era are enacting reforms that while “facially” neutral are indeed designed to block voters of color from the ability to exercise the franchise. In other words, while the *language* of laws affecting voting rights under the Jim Crow era may be different to that used in the post-*Shelby* era, the impact is the same. Years after enactment of high-profile, far-reaching, bipartisan efforts to protect the right to vote, voters of color confront barriers to electoral participation and empowerment that Americans thought were eliminated or at least kept in check by legislation and judicial precedent. Repeated problems experienced by voters underscore the massive impact of restrictive voting laws and discriminatory actions. Problems reported to the Subcommittee on Elections and during the People’s Hearings, as well as in court cases, include restrictive voting ID laws, illegal voter purges, reduced access to the ballot, diminished equal opportunity to elect candidates of choice, and increased costs associated with thwarting constitutional violations. Despite being well aware of these repeated problems experienced by voters, state lawmakers and election administrators in many parts of the country continue to enact new voting rules that create more barriers and decrease access.

## Impact of Voting Rights Violations



The new barriers to casting a meaningful ballot put into place after *Shelby* are, in many instances, exact replicas of proposed election reforms that would have been rejected under the Section 5 preclearance procedures.<sup>58</sup> In other instances, these new barriers are more aggressive versions of their predecessors.

**Voter ID.** Photo voter ID laws emerged as a classic example of the new barriers affecting voters. Take, for instance, North Carolina’s voter identification law enacted in 2013—what one witness in the field hearings called “the strictest discriminatory photo voter ID law in the nation”<sup>59</sup> and another witness in the field hearings called the “monster voter suppression law”<sup>60</sup>—which might not have survived under preclearance. Witnesses to the field hearings testified that North Carolina lawmakers exploited the *Shelby* decision to pass the controversial law because the state could not successfully defend the law against challenges (levied by civil rights organi-

zations, attorneys in the DOJ Civil Rights Division or by litigants before the U.S. District Court for the District of Columbia) that the law was racially discriminatory in its effect. Witnesses further testified that not only did North Carolina enact its controversial voter ID law, but that the state simultaneously eliminated same day registration, safeguards to protect out-of-precinct voting, and a week of early voting. Moreover, witnesses also underscored that while these changes diminished the ability of all voters to cast a ballot and to have it properly counted, the effects of these changes were borne disproportionately by poor people and people of color.

Similar stories offered in Alabama and Florida during the People's Hearings highlighted how voter ID laws created conditions eerily analogous to circumstances in the Jim Crow era. Commissioner Sheila Tyson, for instance, testified that "Alabama passed a strict ID requirement, hurting over 300,000 voters. Did not care that a fourth of those 300,000 people did not have cars. They knew exactly what they were doing when they did it."<sup>61</sup> Commissioner Tyson continued, "When they closed down the 31 ID spots, it wasn't just an ID or voter's ID, it was a driver's license. You have to drive four hours to get a driver's license but you can't vote without a driver's license or some type of state ID. But then you turn around and close [the voter ID offices]."<sup>62</sup> Other field hearing testimony pointed out that Alabama's closure of "thirty-one DMV offices" could not be separated from issues of race and class.<sup>63</sup>

Witnesses explained that many of the closed facilities were in primarily black and primarily poor counties and that "confusion among poll workers over what constituted proper identification" added other burdens to voters seeking to comply with the strict voter ID law.<sup>64</sup>

Other witnesses pointed out that strict voter identification laws enabled Jim Crow era practices to be resurrected outside of the traditional South. In North Dakota, a burdensome voter ID law was enacted that required voters to show photo identification that includes their name, birth date, and residential street address. This law disproportionately impacted Native voters living on reservations where they do not have residential street addresses. Witnesses at the field hearings reported that poll workers were rejecting "lifelong" Native voters that they had known "their entire lives," and whom they were previously permitted to vouch for if questions arose about the identity of the voter. Witnesses characterized the North Dakota voter ID law as carrying an "anti-Indian undertone," objecting to certain forms of identifications in a manner that was "incorrect as a matter of law." Witnesses reported, for example, that poll workers had rejected federal passports and military identifications as inadequate photo-based proof of a voter's identity.<sup>65</sup>

Complying with voter identification requirements is especially challenging to Native Americans. For those living on reservations in rural areas, it may be difficult to supply proof of residence because they lack street addresses. Additionally, “the number of Native Americans who have electricity, phone lines, or bank accounts to provide the requisite documentation is much less on average than the overall U.S. average.”<sup>66</sup> Native voters also report being unduly burdened by the cost of traveling long distances, particularly given the high poverty rates on many reservations, to obtain state identification. In North Dakota, for example, Charles Walker, the Judicial Committee Chairman of the Standing Rock Sioux Tribe, noted that the “[f]amily poverty rate in Sioux County, North Dakota alone is 35.9 percent . . . that the nearest driver’s license site is about 40 miles away . . . [and] that a tribal ID is still going to cost money.”

Many states do not accept tribal identification as an acceptable form of voter identification. On our *We Vote We Count* website, we received this account from Jenifer Van Schuyver discussing her experience in St. Louis in 2016:

“I was standing in line at my local voting place in St. Louis, taking a selfie and hash tagging #rockthenativevote. . . I’m Native and proud in a city that doesn’t see me. Coming from Oklahoma I never had to explain my heritage, how much ‘blood’ I had, or what the hell a CDIB card was (a complicated relationship with a piece of plastic #smh.) To vote in Missouri you just need your voting slip, or a federal photo ID. I handed her my CDIB card (because I can) and she immediately said, “that’s not a real ID.” I attempted to argue, the long line behind me became frustrated, and then I pulled out my driver’s license. For my local elections last year, I didn’t even try to use it. The federal government demands that my particular ethnicity should carry around a card to be proven legit and then people who work for the same government do not even know what it is.

For some Indigenous people this card is the only free piece of plastic with a picture on it. It’s the key to recognition in a world that keeps telling us we’re less than. I should be free to wander around this whole damn country using it without having to explain it. Especially when it comes time to vote. . . ”<sup>67</sup>

Here, as in the past, state actions and persons acting under the auspices of state law can effectively undermine the protections contained in the Fourteenth and Fifteenth Amendments and create often insurmountable barriers to the ballot box.

**Method of Election.** Enactment of strict voter ID laws was not the only way localities resurrected Jim Crow era laws. Many jurisdictions returned to anachronistic election procedures known to disadvantage voters of color. For example, in Texas, a witness reported that the City of Odessa passed a charter amendment to reinstate at-large voting and to add an at-large seat to the city council, a change that coincided with the growing voting strength of communities of color.<sup>68</sup> The witness juxtaposed the charter amendment reform alongside the gains made by people of color through the city's single-member districts (which Odessa only adopted in response to litigation begun in 1985 that challenged at-large voting), and alongside the "looming" possibility of people of color control over the city.<sup>69</sup> In short, witnesses testified that states were resurrecting rejected reforms from a bygone era *and* retooling these reforms with changes that appear neutral, yet would have a disproportionate impact on certain communities.<sup>70</sup>

Other witnesses remarked how the *Shelby* decision emboldened assaults on voters' equal opportunity to elect candidates of their choice. Those assaults include attempts to reinstitute at-large elections in place of districting systems, and attempts to resurrect or institute redistricting schemes that would dilute the voting power of protected groups. Testimony about egregious incidents involving redistricting were especially illustrative. For example, North Dakota State Representative (District 27) Ruth Buffalo testified about Native Peoples' experience with vote dilution. Buffalo said, "Tribal citizens make up 31.8 percent of the district [4] despite there being a sizeable Native American population. Five thousand, six hundred thirty-two members currently live on the Fort Berthold Reservation, with another 3,655 living in close proximity, yet there are no majority Native American districts."<sup>71</sup> For Buffalo, the absence of a majority district devalued the Native American community: "If maps were drawn another way, Native Americans could easily support their own district. In fact, the dilution of the Native vote is even more outrageous if you look at the counties. There are six counties that intersect the Fort Berthold Reservation, ensuring no Native American representation among county seats."<sup>72</sup>

Witnesses provided similar stories from North Carolina about the impact of "packing and cracking" on black electoral empowerment. Patricia Timmons-Goodson, Vice Chair of the United States Commission on Civil Rights, discussed comments from a community member about the ways in which the equal opportunity to vote was hampered. Timmons-Goodson recalled that the community member blamed "racial gerrymandering [which] prevented black political power through 'packing' and 'cracking.'"<sup>73</sup> Timmons-Goodson testified that the community member recol-

lected that the General Assembly “split” a majority black voting precinct “down the middle.”<sup>74</sup> That precinct was located in North Carolina Agricultural and Technical State University, a historically black college with a deep history of civil rights activism. “One part of the campus was in one district and the other part in another part of the district,” recalled the community member.<sup>75</sup>

The comments of Rolando Rios, a Texas voting rights attorney in private practice, perhaps best encapsulate witness testimony about what happened in Texas during the 2010-2011 battles over redistricting as potential indicators of problems to come. Rios remarked:

“Also, judicial findings of intentional discrimination have increased since *Shelby*. A court declaring a state action as intent to discriminate was a rare occurrence in this country. Courts usually attempt to resolve voting litigation without getting into constitutional findings. For example, in 2011, Texas’s congressional redistricting plan split the African-American and Hispanic communities in the Dallas/Fort Worth area into seven different Anglo-controlled congressional districts. I have a map here, just to illustrate the point. The area outlined in the dark line is the minority area in the Dallas area. This minority area was split into one, two, three, four, five, six, seven different districts. So, they would be controlled by Anglo districts. This area here, the court called it a lightning bolt that went down here and picked up the Latinos from Tarrant County and put them up in Denton so that they couldn’t have the right to vote. And congressional district 30, and we’re familiar with congressional district 30, was already 81 percent Latino and African-American. And they increased it to 85 percent. Basically, eviscerating the minority community. This is the kind of outward and aggressive action that is continuing to occur. Finally, in the [Paris] case, which is the congressional redistricting case, the court found that the map drawers acted with an impermissible intent to dilute minority voting strength. The court found intentional packing and cracking against minorities. Every decade since 1970”<sup>76</sup>

**NVRA Compliance.** Mimi Marziani, Chairwoman of the Texas Advisory Committee to the U.S. Commission on Civil Rights, testified that “Texas has been refusing . . . to comply with federal voter registration law, namely the Motor Voter Act.”<sup>77</sup> Marziani contextualized the impact of non-compliance as follows: “By not complying with the National Voter Registration Act when people go online to

update their driver's license, 1.5 million Texans annually are missing an opportunity to register to vote.”<sup>78</sup> The Chairwoman continued, “This, quite frankly, hits the entire population, but it hits frequent movers even harder because it means that as they move, they are no longer registered at their current address. Frequent movers tend to be poorer and younger, and therefore in Texas they are much more likely to be people of color.”<sup>79</sup> Accordingly, frequent movers are often registered at addresses that differ from their current address.

## **Burdening Access to the Right to Vote**

Denying voters an opportunity to acquire and to cast a (non-provisional) ballot in the language of their choice had a serious impact on voters' experiences and attitudes toward government in the years since the *Shelby* decision. For example, Daniel Ortiz, Outreach Director for Policy Matters Ohio, testified that “the closure of polling locations and consolidation of precincts, combined with the lack of reliable transportation options and paid time off from work, make it hard for many vulnerable communities to vote.”<sup>80</sup> Ortiz also noted, “Since 2012, Ohio has closed more than 300 polling locations across the state: a disproportionate number in urban areas,” and that “Cuyahoga County Board of Elections [reports] show in that time period there were closures that eliminated 78 polling locations in Ohio's second largest county.”<sup>81</sup>

Similarly, testimony offered at the Ohio People's Hearings placed into context the disproportionate impact of related decisions. Angela Woodson, Political Action Chair for the Cleveland Branch of the NAACP, for example, testified to the following: “It seems like every election cycle, at least two to three voting precincts move. We're noticing this is very consistent in the governor's race as well as the presidential election.”<sup>82</sup> Woodson explained that the frequency was particularly troubling because the moves seemed to occur “in the low-income African American wards” and that “. . . at least two to three precincts will shift to another location.”<sup>83</sup>

**Disability.** Woodson also noted that certain polling locations failed to maintain Americans with Disabilities Act (ADA) compliance so that election resources were accessible for individuals who are blind or in wheelchairs.<sup>84</sup> Witnesses in Alabama mentioned that race and disability often shaped access to the ballot. Scott Douglas, Executive Director of Greater Birmingham Ministries, told the story of habitual

voter Elizabeth Ware, an African American woman on Social Security disability benefits who had lost her non-driving photo ID and who had limited transportation and financial options available in order to obtain a photo ID in compliance with Alabama's strict voter ID law.<sup>85</sup> Ware's disability made it painful for her to walk "the five blocks" to the nearest bus stop, and she did not have reliable car transportation.<sup>86</sup> Douglas remarked, "The nearest license commission where [Ware] could have gone to get an ID was not in walking distance, and a ride costs 20 bucks, a significant amount for somebody on her income. She was finally able to get a ride to the Board of Registrars where she attempted to get a free voter ID card. However, she was wrongly denied the ID by a staff member who had been improperly trained, and told her that she had had an ID in the past."<sup>87</sup> For Douglas, the struggles of Elizabeth Ware fully illustrated how the effects of poverty, location, and disability status extend into the ballot box. Alabama did not provide Ware with a free voter ID despite her economic circumstances or the fact that she previously had an ID. According to Douglas' testimony, "[A]fter becoming a plaintiff in the case, challenging the photo ID law, Ms. Ware's attorneys arranged for the Secretary of State's office mobile unit to visit her home during her deposition. She had never heard of the existence of a mobile unit prior to litigation."<sup>88</sup> Coupled with the closure of polling locations and consolidation of precincts, the denial of ballot access to disabled citizens is particularly troubling for voting rights advocates.

Likewise, in Florida, Warnell Vickers, Pastor of New Vision Christian Center Ministries, expressed a similar sentiment about the frightening parallel between today's times and those of a bygone era, as he recounted the disenfranchisement experienced by one of his blind congregants. Vickers noted that his congregant was denied the ability to cast a ballot because of a discrepancy in her signature, which is connected to the need for a particular voter ID in the state. Vickers recalled, "She was participating in a state election and she was doing an absentee ballot. And her absentee ballot was not accepted because they would not accept her signature. Now, she's legally blind, but she's done this before, in terms of absentee ballot. It has been accepted, [in the past] as well."<sup>89</sup> Vickers believed that poll workers called attention to the discrepancy to hide their intent to illegally discriminate. He continued, "But in this case, here, I think it was during a primary within the state . . . they said they could not accept her absentee ballot because of her signature. And, again, being legally blind, signature's not going to always be exactly the same. But nonetheless, she submitted the Florida ID, but in the process of time, her vote was not counted for that primary."<sup>90</sup> The result, Vickers explained, was a denial of that voter's right

to participate in the primary. He remarked, “And so she wasn’t able to vote until the final election. And so, it was unfortunate she was unable to participate as she desired. And after that, she was able to cast her ballot as an absentee voter.”<sup>91</sup>

Accessing Polling Place Locations. In one form or another, voters of color encountered myriad problems in their attempt to exercise their right to vote. For example, voters were forced to travel long distances to register or to cast a ballot; peripheral and habitual voters found that the state had purged them from the rolls; they were unable to pay for a voter ID; and inadequately trained poll workers thwarted their attempts to vote. Additionally, voters noted infrequently open registration and polling locations, and that election boards did not notify voters about changes to poll locations. Voters of color and low-income individuals are unduly burdened with changing polling locations because they are more likely to move than their counterparts. This leads to confusion, frustration, and the reduced likelihood of voting because of the difficulty in locating one’s polling location.”

For many who testified, while any one of the aforementioned problems could constitute vote suppression, the combined effects of these circumstances was tantamount to outright vote denial. Witnesses across the country also testified about changing polling locations. In Ohio, for instance, Mike Brickner, Ohio State Director for All Voting is Local, testified that between 2016 and 2018, Cuyahoga County “eliminated 41 polling locations and nearly 16 percent of all precincts changed location.

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...as he recounted the disenfranchisement experienced by one of his blind congregants. Vickers noted that his congregant was denied the ability to cast a ballot because of a discrepancy in her signature, which is connected to the need for a particular voter ID in the state. Vickers recalled, "She was participating in a state election and she was doing an absentee ballot. And her absentee ballot was not accepted because they would not accept her signature..."

**Warnell Vickers** of Florida, Pastor of New Vision Christian Center Ministries recounts the disenfranchisement experienced by one of his blind congregants.

While polling places were reduced county-wide, a majority of black communities were particularly harmed.”<sup>92</sup> Brickner went on to note the effects on Cleveland, wherein eight of the 17 wards are majority black and comprise between 72 and 98 percent of the population: “Of the city’s 45 precincts with polling place changes, the majority, 29, were in black majority wards, while only 16 were in black minority wards.”<sup>93</sup>

Witnesses also described confusion surrounding where they should vote, given multiple changes and closures in polling locations. For example, an African American woman who testified anonymously during the Alabama People’s Hearings described feeling confused about where her polling location was located. She remarked, “Now the problem that I’m having is where to go vote, where to go register. That’s the problem that I’m having.”<sup>94</sup> She continued, “I live in Trussville [a suburb of Birmingham]. When all this was going on I was living downtown so I changed. So now I’m in Trussville. So now the problem is where do you go vote. Do you go vote at the First Baptist Church? Do you go to the public library in Springville? Is it Springfield? Do you go to, do you go vote over there at the little park.”<sup>95</sup> Many witnesses, like this African American woman, felt that lawmakers and election officials were deliberately sowing confusion among voters.

For many witnesses, the combination of restrictive photo identification laws, questionable budgetary considerations, and ineffective management had thwarted voting rights. In other words, the financial and logistical burdens associated with voting in the post-*Shelby* era was especially troublesome for witnesses because it was clear that not all voters were equally impacted: the elderly, African Americans, veterans, Latinos, students, people with disabilities, and lower-income voters were all less likely to possess the required forms of identification and resources to overcome the cumulative effects of disparate policies.

For Native voters, the challenge accessing polling places can be extreme. Polling places and early voting locations are generally not established by state election officials on tribal reservations, even in areas where most registered voters live on tribal lands. Distance issues and lack of reliable transportation limit Native access to off-reservation sites, which can be hours away. Many states either have switched to an all vote-by-mail system or impose that system in rural areas with fewer registered voters than urban areas. This creates a variety of problems for Native voters including: (a) non-traditional addresses prevent Native voters from registering or receiving ballots in a timely way; (b) jurisdictions covered by Section 203 do not provide necessary language assistance for mail-in voting; (c) post offices and voting

centers are located off-reservation or have reduced hours; (d) impoverished voters are required to pay for return postage, effectively a poll tax; (e) ballots may not be counted if other materials are not properly completed; and (f) eliminating in-person interactions that are culturally appropriate to Native voters, and the inability to learn if and why a ballot was counted or discarded, leads to greater distrust of government and can dissuade voting in future elections. Similar challenges exist with regard to voter registration. Voter registration sites are also often available only at the county seat or other places off-reservation that are several hours away by vehicle. Some states are moving to online voter registration to save money, but are not taking steps to accommodate Native voters living in rural or isolated areas that frequently lack reliable and affordable broadband and access to computers.

Testifiers decried arguments that state actors were unaware that proposed and implemented electoral reforms would result in disparate access to the ballot. In Alabama, Bernard Simelton, President of the Alabama State Conference of the NAACP, testified that the state's photo ID law "prohibit[s] lots of individuals from being able to vote," and that it "[was] estimated at that particular time there was approximately 118,000 people who were immediately disenfranchised because they didn't have the photo ID required."<sup>96</sup> In North Dakota, witness Oliver "OJ" Semans, Co-Director of Four Directions, testified to the extreme differences between Native people and whites in their ability to cast a ballot through early voting. To set the context, he explained that early voting in North Dakota "means that 14 days prior to the election, you can go and you can vote" and that even "[i]f you pass away, your vote still counts."<sup>97</sup> Semans continued, "Under this North Dakota law, over 400,000, this is from the census, over 400,000 of the white population has access to vote early, 14 days . . . [that is] two-thirds of the white population."<sup>98</sup> By contrast, Semans pointed out, "Indian country, living on a reservation, zero. Now, you want to talk about unequal, that's about as unequal as you're going to get."<sup>99</sup> Other North Dakota witnesses drew equally illustrative contrasts.

## Increased Litigation Costs



Advocacy groups and negatively affected voters must spend enormous financial and operational resources to track, study, and challenge proposed election reforms in a court of law. That is, in the absence of a Section 4 coverage formula, which gives

operative force to the Section 5 preclearance regime, groups and voters seeking to protect voting rights must rely on Section 2 (“the totality of the circumstance of the local electoral process”) to challenge proposed election reforms.<sup>100</sup> Significantly, with Section 2, harm has to take place for litigation to proceed to try to ensure that no additional harm can take place. Section 5 was far more effective at eliminating harm prior to implementation, holding “covered jurisdictions” to “higher standards” before the passing of new laws or policies. The elimination of Section 5 therefore inevitably leads to more harm in certain areas, and places the burden of experiencing, naming or pursuing justice for that harm on the people most adversely affected, particularly communities of color. For the jurisdictions covered by the Section 4 formula, most pre-*Shelby* challenges were adjudicated via the pre-clearance administrative route, whereby staffers in the DOJ Civil Rights Division duly vetted proposed reforms, weighing comments and evidence provided by states and groups regarding the potential discriminatory effects of proposed reforms. This post-*Shelby* change is not without significant financial and operational costs.<sup>101</sup> The *Shelby* decision therefore placed the burden to track, study, and challenge proposed election reforms on the groups most likely to be negatively affected. Of course, not all jurisdictions were affected by the Section 4 coverage formula, and voters in many places have long had the burden of attempting to address voting rights violations through expensive post hoc litigation.

Testifiers underscored the costs associated with this burden. In North Dakota, for example, a field hearing witness for the Native American Rights Fund reminded the Subcommittee that “the story of discrimination and disenfranchisement in North Dakota is not an isolated one” as it pertains to Native people, and that the “tremendous costs of litigating voting rights cases” often means that organizations are unable to respond to requests for assistance.<sup>102</sup> Such was the case in Alabama. A testifier responded to a question about the cost of litigation of a hypothetical Section 2 case in the following fashion: “[W]hen it came to polling place changes it would certainly cost [at] least hundreds of thousands of dollars if it were successful,” and a gerrymandering case would cost “millions of dollars,” especially if the parameters of the case mirrored prior cases in which affected groups might have to challenge every legislative district in the state’s House and Senate.<sup>103</sup> A similar sentiment was expressed by a testifier in North Carolina for Forward Justice. That witness testified that the plaintiff-side costs associated with a Section 2 case was “estimated [to be] more than \$10 million,” a figure that excludes “the state’s cost and bringing in private counsel to represent the governor as well as the General Assembly.”<sup>104</sup> Furthermore,

while advocacy groups and their partners pay all of the former costs, every state taxpayer in a state facing litigation pays a portion of the latter costs—certainly some subset of those state taxpayers effectively pay twice to defend or to launch a Section 2 challenge, which would have likely been resolved (if not prevented) under the pre-*Shelby* system.

In Ohio, a testifier noted that the 2016 lawsuit filed by the A. Philip Randolph Institute (APRI) to challenge the state’s “Supplemental Process” of removing certain registrants, specifically individuals who failed to vote in a two-year period and who did not send back a return postage prepaid “return card,” was not partially resolved until 2018, when the Supreme Court took up the case in *Husted v. A. Philip Randolph Institute*.<sup>105</sup> The costs associated with APRI’s protracted fight with Ohio have been substantial. The Supreme Court majority reversed the Sixth Circuit ruling, which found that Ohio had violated the Failure-to-Vote clause of the National Voter Registration Act (NVRA) of 1993, and the Supreme Court majority rejected evidence amassed by advocacy groups that Ohio’s process was not in compliance with the NVRA.<sup>106</sup> Substantive disagreements between Ohio and APRI have lasted well into 2019 as the two parties battled over what would constitute a proper final remedy—at a cost to APRI and to taxpayers alike.

The costs associated with the loss of Section 5 were placed on the shoulders of advocacy groups across the country. The Anchors received testimony attesting to a rise in the costs associated with litigating challenges

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A testifier in North Carolina for Forward Justice, responded to a question about the cost of litigation of a hypothetical Section 2 case in the following fashion.

to suspected constitutional violations. Witnesses asserted that the post-*Shelby* landscape had forced affected voters and community organizations to risk financial insolvency and organizational implosion in their efforts to protect the right to vote. For example, attorney James Blackshear of Alabama remarked, “In fact today it is impossible for private counsel like me to bring one of these lawsuits without substantial assistance, financial and legal, from other big law firms.”<sup>107</sup> For Blackshear, the need for assistance across multiple dimensions underscored the depth of the problem: The *Shelby* decision unleashed a horde of discriminatory reforms that touched upon every facet of the election process.<sup>108</sup> He continued, “I mean, I’ve got four cases going on right now where I’m local counsel for the NAACP Legal Defense Fund, who’s challenging photo ID, for the Campaign Legal Center, who’s challenging the felon disenfranchisement center, for the Lawyer’s Committee with Civil Rights, who’s challenging that we had large election of the Alabama Supreme Court, and the SEIU’s Service Employees International Union, challenge imminent. Those organizations are needed to bring the resources just to get the case started.”<sup>109</sup>

Field hearing testimonies about litigating a Section 2 case in North Dakota, Alabama, and Georgia were equally revealing. Jacqueline De León of the Native American Rights Fund (NARF) remarked, “[I] will pursue every case that I can, but as you [Representative Butterfield] mentioned, they’re very expensive.”<sup>110</sup> De León continued, “[A]nd it is prohibitively expensive for a small organization like NARF to reach every single instance of discrimination that’s happening across this country, and so we really urge you to take action.”<sup>111</sup> De León also highlighted the paradoxical ways in which media coverage and the outpouring of financial resources both helped and hurt organizations in their battles to challenge discriminatory reforms. De León remarked, “As the cameras move on from North Dakota, so do the resources that made the herculean response to the ID law and this last election possible.”<sup>112</sup> In Alabama, Nancy Abudu, Deputy Legal Director of the Southern Poverty Law Center, remarked that it would “cost absolutely millions of dollars to bring [a lawsuit] today.”<sup>113</sup> Abudu also described why organizations and affected voters might be risk averse about financing and initiating litigation. “It forces us into not only spending that much money, but also into a venue through the federal courts, unfortunately, that are becoming more and more hostile.”<sup>114</sup>

In Georgia, Stacey Abrams, former minority leader in the Georgia House of Representatives and 2018 Democratic gubernatorial candidate, highlighted the inadequacy of Section 2 to protect voting rights because it largely relies on establishing a post-action record of discrimination. “Section 2 essentially says that a bad action can be used as a predicate to argue that if a new bad action cannot be taken.

The challenge there is that you have to have someone disenfranchised before you could fight to make certain that someone else isn't disenfranchised," she explained.<sup>115</sup> "But that means that someone lost their right to vote. That means that communities were disallowed from actually having a voice in their community," she remarked.<sup>116</sup> Abrams also directly compared the retrospective nature of Section 2 in a post-*Shelby* era to the prophylactic nature of a pre-*Shelby* era coverage formula and preclearance regime. She noted the following: "The beauty of Section 5 said that before you commit harm you had to be held to a higher standard. Section 2 says once harm has been committed you have the ability to argue that it shouldn't be repeated. And therefore, it is an insufficient standard for a nation that is grounded in the notion of democracy, and representative democracy is the way to push forward our thoughts and ideas as citizens."<sup>117</sup> Given the extensive and costly nature of Section 2 litigation, not to mention the retrospective nature of a Section 2 claim, no organization or community group can launch or sustain a "herculean response" to every discriminatory reform. It can take months for a court to act on behalf of challengers (e.g., for a court to issue preliminary injunctions that pause implementation of an enacted reform), and it can take months for litigants to settle on a permanent relief plan.<sup>118</sup> And, in the absence of action by a court, disenfranchisement reigns.

Moreover, witness after witness underscored that it is risky for communities to focus solely or exclusively on litigation in their efforts to combat disenfranchisement. Witnesses like Dr. Reverend Barber, a member of the National Board of the NAACP and President Emeritus of the North Carolina NAACP, testified that affected groups and their allies needed to use multi-pronged approaches that were sustainable over time.<sup>119</sup> To illustrate, Barber testified that advocacy groups in North Carolina tried unsuccessfully to defeat the stringent voter ID bill while it was being considered in the General Assembly, and that advocacy groups filed suit "before the ink was dry" once the bill became law.<sup>120</sup> Barber also noted that sustained battles take an emotional, financial, and operational toll on their combatants: "We have been battling for 2,023 days today, five years, nine months and 24 days since the Voting Rights Act was gutted in 2013. This monster voter suppression law was the worst of its kind after *Shelby* in the nation, and it was only possible because . . . the preclearance protection was no longer in place."<sup>121</sup> Barber explained, "It, in fact, has been the worst we have seen since Jim Crow."<sup>122</sup> He went on, "We heard the lawyer who was leading the effort say in court that retrogression was okay now that the Voting Rights Act was no longer in place."<sup>123</sup> Testimony by Barber and others confirmed that affected voters in North Carolina had to wait a long time until their

'herculean' efforts yielded results.<sup>124</sup> On both scores, Barber explained, "Without the voting rights preclearance, it took us years of organizing and fighting. Finally, in July 2016, a unanimous panel of the U.S. Court of Appeals, the Fourth Circuit, held that the law, '[which] targeted African Americans with almost surgical precision,' was, in fact, unconstitutional."<sup>125</sup> That litigants challenging the North Carolina law eventually prevailed did not mean that they recouped all of the financial, emotional, and logistical costs they had incurred on their journey to defend voting rights.

Representative democracy is poorly served by a post-*Shelby* system whereby our most vulnerable portions of the electorate—those citizens more likely to suffer the effects of the diminished right to vote—are burdened with the responsibility to locate, monitor, and finance litigation aimed at stopping potential constitutional violations. Absent a systematic way of tracking and reviewing proposed election reforms and of monitoring the implementation of approved election reforms, groups must protect voting rights through a costly litigation process which creates circumstances that democracy can ill afford.

Additionally, the burden of time (three years or more for litigation after harm has happened, rather than 60 days for federal approval or disapproval) and money for litigation has shifted, falling almost entirely on communities most affected by restrictive voting laws. These are far more, and far more prolonged, litigation processes because a post-*Shelby* environment enables deeply repressive voting laws to be enacted and repressive practices to unfold before challenges can even be brought forward, let alone a push for reform. Accordingly, many more resources are needed for people of color to raise concerns about voting laws and practices or to pursue litigation, including resourcing collaborations with numerous organizations. As a result, voters of color, in particular, face an immediate and steep increase in barriers to the polls.

In conclusion, witnesses emphasized three primary issues when addressing how *Shelby* is shaping the current state of voting rights litigation. First, litigation to thwart constitutional violations has become more time-consuming, and more costly to organizations and affected voters. Absent preclearance, groups with relatively limited human capital and financial resources must compete with more heavily resourced state actors and allies in their pursuit of justice. Second, affected communities must now attack a very different default position than one prior to *Shelby*: They have to prove that the state's proposed reforms have discriminatory effects even if they agree that the state's proposed reforms do not discriminate. Third, the sheer volume and complexity of cases needed to effectively litigate challenges to new restrictive laws

was quite concerning to those who wanted to protect voting rights for poor communities and voters of color. The financial and logistical costs required organizations to remain both vigilant and well-resourced for what would likely be a protracted battle. Moreover, victories were rarely permanent: Even when a proposed piece of discriminatory legislation was rejected or struck down, lawmakers remained free to put forth another piece of discriminatory legislation. Simply put, the post-*Shelby* landscape, witnesses contended, places the burden of proof on the communities least able to afford the organizational, evidentiary, and financial burden of prosecuting constitutional violations.



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*Complying with voter identification requirements is especially challenging to Native Americans...Many states do not accept tribal identification as an acceptable form of voter identification.*

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# The Continuing Need for Federal Protection

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Communities of color have been engaged in a perpetual fight to secure and safeguard their right to vote since the founding of our democracy. Because one of the most effective tools in this fight was gutted in the *Shelby* decision, the landscape of American election law has rapidly altered. In 2016, the first presidential election after *Shelby*, 14 states imposed new voting restrictions, including Alabama, Ohio, and Texas. By 2019, Arizona, Arkansas, Indiana, Montana, New Hampshire, North Carolina, Tennessee, and Wisconsin had enacted new restrictions.<sup>126</sup> These restrictive voting bills worked alongside new and existing administrative practices to further shape the composition of the electorate. Many of these new measures were either exact replicas of proposed election reforms that would have been rejected under the Section 5 preclearance procedure, or were more aggressive versions of their predecessors. Without the strong protections of Section 5 of the Voting Rights Act, restrictive ID laws and voter purge initiatives in Georgia, North Carolina, North Dakota, Ohio, and Texas were proposed and signed into law. According to the Brennan Center for Justice, between 2012 and 2016, formerly covered “jurisdictions no longer subject to federal preclearance had purge rates significantly higher than jurisdictions that did not have it in 2013.”<sup>127</sup> In sum, *Shelby* emboldened and in some cases enabled states to move with speed and impunity to implement barriers that circumscribed voters’ access to the ballot and that diminished citizens’ ability to petition the government for a redress of grievances.

Co-Director of Forward Justice Caitlin Swain testified how quickly and deliberately North Carolina implemented discriminatory changes in the wake of the *Shelby* decision. Swain remarked, “As soon as protections were lifted . . . the General Assembly of North Carolina enacted the most comprehensive voter suppression law seen since the Jim Crow era, targeting African American access to the ballot with what the Court of Appeals has termed surgical precision.”<sup>128</sup> Swain also underscored the scope and range of such policies, explaining that North Carolina eliminated “same day registration, a week of early voting, the safeguard of out-of-precinct voting, and pre-registration of 16 and 17 year-old(s) . . . [and] enacting one of the strictest discriminatory photo voter ID laws in the nation.”<sup>129</sup> Below, this report provides a snapshot of witness testimony about Jim Crow 2.0 state reforms enacted following *Shelby* to further highlight the scope, magnitude, precision, and impact of these reforms.

## Vetting Voting Changes

Witnesses testified that many post-*Shelby* voting changes they believed to be discriminatory (or that were eventually deemed to be discriminatory by a court of law) would have been blocked by an operative Section 5. In that regard, the actions taken by the General Assembly of North Carolina were not atypical. According to Matthew McCarthy of the ACLU of Texas, for example, the state's voter ID laws placed a hefty burden on citizens.<sup>130</sup> McCarthy testified that the law required that voters "present one of seven approved forms of government issued identification before being allowed to vote" and that voters "attest under penalty of perjury that there [was] a reasonable impediment to having one of those forms of approved IDs."<sup>131</sup> In characterizing the judiciary's findings that Texas had unfairly circumscribed access to the ballot, McCarthy noted, "The voter ID laws were the subject of extensive litigation and were found by three district courts to have disproportionately burdened voters of color. And that was because of evidence that minorities are generally less likely to have one of the forms of approved ID, and also less able to obtain one of those forms of approved ID given the cost in terms of time and money in getting one. However, the current form of the ID law was ultimately approved by the Fifth Circuit Court of Appeals and was in place in time for the midterm elections last year." <sup>132</sup> The parallel between voter ID laws, which affect

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**McCarthy testified that the law required that voters “present one of seven approved forms of government issued identification before being allowed to vote”**

**Matthew McCarthy** of the ACLU of Texas

who appears on registration lists, and post-enrollment procedures, which affect who gets removed from registration lists, cannot be overstated. Noting this, George Corbel remarked, “Well, in some senses the voter ID law is a purge because what we’re doing is we’re essentially doing away with voter registration and changing it to driver’s licenses or Texas IDs.”<sup>133</sup> Corbel continued, “Now, it doesn’t sound like that’s a big deal, but an awful lot of people have parking tickets or minor violations. They don’t want to go anywhere near the DPS because they’re going to get arrested and they’re going to spend time in jail. And so, we’re essentially purging” citizens duly entitled to cast a ballot.<sup>134</sup>

Lawmakers in Alabama, like in North Carolina, also waited until the most opportune moment to strike at the right to vote. Alabama, for instance, enforced a photo ID law the state had initially enacted in 2011 but which was held in abeyance. According to Abudu, this was done deliberately to avoid likely denial under Section 5 preclearance. Abudu explained, “So the NAACP and the ministries that Mr. Douglas [Scott Douglas, Executive Director of Greater Birmingham Ministries] represents filed a lawsuit challenging the law as discriminatory based on their estimate that over 100,000 people, registered voters in Alabama, lack the necessary ID. So you’re talking about almost 5 percent of the registered voters in the state, who simply because of this photo ID law, essentially are losing their right to vote.”<sup>135</sup> Jenny Carroll, Professor of Law at the University of Alabama School of Law, put the point about post-*Shelby* regulations on voting more strongly, asserting that “[W]hile these regulations are facially neutral, they raise real concerns about the opportunity of enfranchisement among the very populations that the Voting Rights Act was designed to protect.”<sup>136</sup> Under Jim Crow 2.0, policies that appeared racially neutral often facilitated discriminatory effects. Carroll remarked, “The days of a sheriff standing in the doorway of the polling place may be a thing of the past. But the current voting regulations may produce the same effect on communities of color and poor populations in our state. The method may be softer, more subtle, but the results are exactly the same.”<sup>137</sup>

## Diminished Ability to Elect Candidates of Choice

Witnesses also testified about the ability of post-*Shelby* discriminatory reforms to limit the reach of pre-*Shelby* black political empowerment levels. Nancy Abudu, for instance, testified that white Alabama lawmakers used voter ID laws

to undermine black elected officials. She remarked, “One of the mainstay senators who worked for over a decade as far as we can tell, to pass this voter ID law, was also quoted in media outlets as saying that his ‘photo ID law would undermine Alabama’s black power structure.’ That is a quote, and that, ‘The absence of a voter ID law,’ and again this is a quote, ‘benefits black elected officials.’”<sup>138</sup> Witnesses in Texas draw similar connections between electoral reforms and the electoral power of communities of color. Attorney Chad Dunn, for example, described what he witnessed in the Beaumont School district. After deliberately oversimplifying details to set the context, Dunn stated, “[E]ssentially the district has been majority black in voting population since the 1980s, but it wasn’t an integrated school district until 1985, under *Brown v. Board of Education*. And it ultimately took a series of court decisions until the 1990s to give blacks legitimate right to vote for their school board.”<sup>139</sup> Dunn continued, “A majority of blacks served in that school board before *Shelby County* came down, but white citizens had managed to get a ballot initiative to force at-large voting in the school district, and the state courts had ordered this school district to go to parcel at-large voting. This is what I have the results of putting the whites in charge of the school district despite it being majority black.”<sup>140</sup>

Dunn next explained why preclearance mattered for black political representation. “A federal court in Washington, DC under Section 5 of the Voting Rights Act, and in a case I was involved in and joined that change, it made the school district stay as it had been ordered by previous federal courts. After *Shelby* all that was undone. And as we sit here today, the school board in Beaumont still does not have, in my opinion, an elected board that represents its community.”<sup>141</sup> Speaking to what happened in Beaumont and why it mattered, George Corbel explained that “[t]he Texas Education Agency (TEA) has the right to seize school districts and displace elected officials, take over school districts if they feel that there’s a problem.”<sup>142</sup> Corbel continued, “Now under section 5, we almost completely prevented that from happening. Since the doing away with section 5, the TEA has been seizing these school districts, and Beaumont was one of them. They seized the school districts, and you end up, Beaumont had a black superintendent, black board members and now it’s controlled by the whites.”<sup>143</sup>

Rolando Rios, a Texas voting rights attorney in private practice, successfully sued the city of Odessa in 1985 to challenge at-large elections where victory resulted in the creation of single-member districts. Rios explained that “[T]his year, as the community became stronger and minority control was looming, the city passed a charter amendment reinstating at-large voting. . . . The voter ID law was passed after

*Shelby*, and after years of litigation, was declared unconstitutional by the federal courts. This law would never have been passed in the first place by Texas before *Shelby*.”<sup>144</sup>

North Carolina Senate Minority Leader and former Speaker of the North Carolina House of Representatives Dan Blue made a similar point in his testimony. He remarked, “[I]n 1978, North Carolina had one of the lowest black participating voting rates. Over the next 30 years by 2008, North Carolina had one of the highest black participation rates in elections, and that was because of a series of laws that were enacted over that 30-year period to encourage voting and to remove the obstacles to minority voting, and we were successful at it.”<sup>145</sup> Blue continued, “One of the things that I’ve heard talked about earlier today was the monster law in 2013. I lived through it, I was in the Senate at the time, and it was designed to totally reverse the history that I just related to you. It was aimed at all of those measures that we had taken over the previous 30 years to ensure participation and access to the ballot for all of the citizens of this state.”<sup>146</sup>

## Inability to Combat Voting Changes

Throughout the People’s Hearings, we observed testimony regarding other examples of jurisdictions curtailing communities of color political empowerment that did not involve manipulating the composition of the electorate through gerrymandering. Chad Dunn, a civil rights attorney from Texas, offered the following testimony: “In Jasper, the community decided to vote at large to remove a districted office. So, imagine for example, all citizens of the United States could vote to remove one of you. And they were successful because the city was majority white, a black city council person was removed.”<sup>147</sup> Dunn blamed *Shelby*: “Because the Voting Rights Act has been so harmed by the Supreme Court and other judicial decisions, there was nothing we were able to do with that. This city council person was removed.”<sup>148</sup> This type of “third generation” assault on the right to vote, more specifically the equal opportunity to elect candidates of choice, is far from unprecedented.<sup>149</sup>

What is unprecedented is the absence of preclearance and a coverage formula. While the outward signs of segregation were not apparent, witnesses tacitly drew parallels between the discretion exercised by election administrators in the Jim Crow era and by election administrators in the current post-*Shelby* era. For example, witnesses testified about the dilatory effects of voter ID laws in North and South

Dakota as being magnified by the behavior of poll workers. These workers were either intentionally discriminatory or were unintentionally incompetent.

Inadequate training for poll workers leads to mishandled polling sites, which often disproportionately affects marginalized communities. Sites run according to the discrimination or bias of the worker rather than trained protocols designed to eliminate unnecessary burdens or disenfranchisement of voters. Jacqueline De León, staff attorney for the Native American Rights Fund (NARF), testified that the organization received “a request for assistance [in 2014] regarding Native people in North Dakota that were being turned away from the polls.”<sup>150</sup> The NARF investigation found that “veterans, school teachers, elders, and other lifelong voters were being rejected by poll workers that had known these individuals their entire lives.”<sup>151</sup> The investigation was a costly but worthwhile investment of the organization’s financial and personnel resources. “NARF decided that this was a case worth investing our limited resources. I mention resources because the burden of proof in Voting Rights Act and constitutional cases alleging voter discrimination is extremely high. Which means that in order to prevail in these cases, litigators must invest substantial resources. And unfortunately, NARF cannot address every injustice facing Native American voters today.”<sup>152</sup>

## Lack of Notice

Prior to *Shelby*, community organizations would have rightly but not exclusively depended upon the preclearance regime to facilitate tracking and notice of proposed reforms. Witnesses, however, testified that election administrators used their discretion to deny communities adequate notice about proposed voting changes. Specifically, witnesses attested to three things on this score. First, *Shelby* emboldened administrators to take or to reclaim a hostile posture toward communities possibly affected by proposed reforms. Second, community groups found it nearly impossible to track proposed changes. Third, affected voters found elected officials to be less transparent about proposed changes and unconcerned about the dilatory effects of enacted changes. In other words, as an integrated management device, Section 4 and Section 5 helped community groups hold governments accountable in the face of the sheer number, complexity, and diversity of proposed election reforms. Not only was the burden of proof placed on the covered jurisdiction rather than on voters, the notification of a proposed change itself (as well

as documentation of the resulting DOJ action or court ruling) acted as a signal to other jurisdictions about what was and what was not permissible.

Following *Shelby*, voters in large states, like Texas, were especially disadvantaged in their efforts to track proposed changes. George Corbel put it this way: “One of the advantages of Section 5 was that we got noticed that all this stuff was going on. The Department of Justice would publish a notice, I think weekly, of all the submissions they had gotten. So, we could look at and see where these polling place changes were made. Now none of that’s taking place. And you know how big Texas is, there’s no way that we can be in every one of our 254 counties, and except under Section 5 when we got this early notice.”<sup>153</sup>

*Shelby* dramatically shifted the “information costs” associated with learning about proposed electoral reforms and knowing what jurisdictions were doing to undermine the right to vote. For every proposed election reform, there was an underlying price for voter inaction and inattention. Chad Dunn encapsulated it this way: “So there’s redistricting, there’s voter registration, there’s countless polling place changes, and it’s scary to think, but there are scores of other changes we don’t even know about that can’t be done or dealt with because of the injury to the Section 5.”<sup>154</sup> Testimony by Patricia Timmons-Goodson, Vice Chair of the U.S. Commission on Civil Rights, painted an even starker picture: “From the Civil Rights Commission’s perspective, it certainly has made tracking more difficult. At one point, there was a single source or a

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"So there's redistricting, there's voter registration, there's countless polling place changes, and it's scary to think, but there are scores of other changes we don't even know about that can't be done or dealt with because of the injury to the Section 5."

Chad Dunn, Testimony at the Texas People's Hearing (2019)

limited number of places that we could go to get the information, but when it's left to individual citizens and organizations to do the filing, it makes it far more difficult to track them.”<sup>155</sup> However, requiring a state to provide notice to potentially affected voters does not mean that those voters will actually receive notice if they are not attentive. Put better, certain voters may be less attentive to information about proposed reforms precisely because their communal and personal socioeconomic circumstances make them prioritize other information. In sum, in the aftermath of *Shelby*, not only does the burden to track, monitor, and evaluate proposed election reforms disproportionately fall on those citizens more likely to suffer the effects of diminished right to vote, the content and ferociousness of those election reforms eerily parallel previously rejected proposals reminiscent of a so-called bygone Jim Crow era.

## Increased Barriers to the Ballot



Curtailed access to the ballot was the dominant theme in hearings across the country. Scores of witnesses affirmed that state officials deny voters opportunities to register, to acquire a ballot, to cast a ballot (especially to cast a non-provisional ballot), to receive proper notice about changes to polling locations, and to receive appropriate language assistance. Witnesses also testified about voter experiences with state purge procedures and with attempting to secure re-enrollment after an illegal purge.

Many witnesses confirmed that voters were finding it difficult to deal with frequent changes to their polling locations, especially when those changes seemingly came without notice or when those changes were communicated in a language other than the one most preferred by the voter. In Ohio, Kimlee Sureemee, Senior Manager of Policy, Advocacy, and Development Programing at Asian Services in Action, testified that frequent changes were a “huge barrier” facing the Asian community, particularly since such changes were “not translated to our community members, and also they’re not communicated on a regular basis to community members when there are changes to polling locations.”<sup>156</sup> Speaking from personal experience, Sureemee remarked, “For myself as an example, over the past three years I’ve had a change to my polling location every year when it came to the general election.”<sup>157</sup> And, Sureemee continued, “I live in Lakewood and one year it was at a school, one year it was in a different gym/school, and this last year I had a new polling location

as well. Changes in polling location is a huge barrier for communities, especially if they're limited English proficient community members as well.”<sup>158</sup>

Testifiers also described the ways in which the “anti-election fraud rhetoric” had curtailed access to the ballot in the post-*Shelby* era.<sup>159</sup> North Carolina witness Dan Blue, for instance, asserted that state and local officials created “voter ID law[s] claiming that it’s going to prevent voter fraud and nothing has gone on in a discussion of what we do about voter harvesting.”<sup>160</sup> Dan asserted, “The real cost of voter ID in the state, and we made this argument, is that this legislation that was enacted last year, this new amendment to our state constitution puts a tremendous burden on the state and local boards of election.”<sup>161</sup> Blue continued, “Without the funding to back up these obligations, then it makes access to the ballot even less likely. You’ve heard the testimony of the distances that people travel, but as importantly, it will cost \$17 million to implement a photo ID requirement without any funding having been provided specifically for that.”<sup>162</sup> For some witnesses, state lawmakers had proffered claims about fighting voter fraud and promoting ballot security to hide their intentions to erect unconstitutional barriers to the ballot.

**Anti-Fraud Hoax.** That the public can often be confused by the content of anti-election fraud rhetoric and can often be moved to support or to oppose discriminatory election reforms was not lost on witnesses, especially those witnesses who underscored that poll workers are drawn from the public. For example, in Texas, field hearing witness Matthew McCarthy, of the ACLU of Texas, testified that poll worker confusion undermined voter access to the ballot.<sup>163</sup> McCarthy testified, “As part of a coalition [involving the ACLU of Texas and the Texas Civil Rights Project] during the election last year to protect the right of Texans to vote . . . we had call centers, staffed by trained volunteer attorneys, taking calls from around the state, and we also had a number of field volunteers working at polling locations, assisting voters with queries.”<sup>164</sup> That process, McCarthy explained, revealed “a significant amount of confusion and misinformation about the voter ID requirements.”<sup>165</sup> For example, McCarthy noted that the coalition “heard reports of voters attending polling locations in rural Texas where election officials posted a sign saying, ‘Must have driver’s license to vote’” and that the coalition heard reports from “large metro areas [where] poll workers [were] telling folks who were lining up to vote, that you needed to have photo ID or you wouldn’t be permitted to vote.”<sup>166</sup> According to McCarthy, lawmakers should consider the enormous ripple effect that confusion and misinformation can have on the willingness of voters to cast a ballot vote.<sup>167</sup> He explained, “[What I described earlier] is plainly incorrect under the law and while we were able to address it, you do wonder how many voters saw that sign, or were

given that information and simply turned away and didn't exercise their right to vote."<sup>168</sup> And because context matters in all situations, McCarthy pointed out, "And that's a particular concern in polling locations where there were long lines. People aren't going to line up and vote if they think their vote won't be counted."<sup>169</sup>

Seemingly speaking to the aforementioned ripple effect, Dan Blue asserted, "Now, voter suppression is also occurring through voter confusion."<sup>170</sup> Blue testified that state entities seemed unconcerned about voter confusion.<sup>171</sup> Blue remarked, "[T]he recent bill put the unnecessary burden on voters, mandating that they must comply with new photo ID requirements at the polls in just five months from now. Five months from now these are our local elections, and so we have a requirement for voter ID without any implementation for providing it. Of the 850 universities, colleges, government agencies and tribes, only 72 applied for their voter identification requirements to be approved."<sup>172</sup>

**Language Assistance.** That poll locations need additional bilingual ballot resources, including personnel, to assist limited-English proficient voters was echoed by Winnie Tang, President for Asian Services, during testimony at the Florida People's Hearing. Tang praised certain organizations attempting to minimize the negative impact on affected voters. Tang explained, "So, what we are doing in the community to have translating. We're in Chinese, then we bring the voter to interpreter in Chinese to have them to read it to vote so they can feel their power, so they will not feel reluctance in their own way. And why we are doing that, because what happens if you don't vote? It doesn't mean that you did not vote. If you don't vote, that means you're voting something that you don't support, doesn't support you. So, we want to make sure everybody to know about the vote is very important."<sup>173</sup> Tang and other witnesses understood that a reduction in the number, training, or acumen of poll workers meant a reduction in access to the ballot. Ohio witness Sureemee further put the reduction into context when discussing "a bill that was introduced in 2017 to drop poll workers."<sup>174</sup> Sureemee explained that "this is one of our major concerns," and "we don't want to see this bill introduced again."<sup>175</sup> Sureemee also testified to the following:

"Poll worker reductions is another big barrier to our community. We rely on our poll workers because we are looking for bilingual poll workers in areas where our community members are turning out to vote. In particular, here in the Asia town area, a couple of blocks from here, we rely and make sure that we have bilingual poll workers in those two polling locations for our Chinese community voters. With reductions to poll

workers and reductions to access to poll workers at these polling locations, it makes it challenging, and it makes the lines longer.”<sup>176</sup>

Further, Hillary Lee spoke at the Georgia People’s Hearings about her challenges in the 2018 election in Atlanta, Georgia. She reported that “[o]ne issue that I saw was language access at the ballot. And so we met an elderly Korean man who approached our organization asking for help with interpretation at the polls because he was an American, is an American citizen, but doesn’t speak English fluently, and he and his wife both identify as limited English proficient. And so they needed someone who spoke Korean to help them vote in an informed ballot. And so they reached out to us and a staff member from our organization went to the polls with them and actually faced a lot of confusion on the polls.” He recalled further that “it actually delayed their right to vote by probably 15-20 minutes, maybe longer, while the poll worker called the poll manager have to call other supervisors to clarify whether or not our staff member could even help him vote. And so all of this burden really raised the question for us who’s actually allowed to interpret for LEP voters, limited English proficient voters at the polls. And what we found out was there was actually a really old law on the books in Georgia that said that in state and local elections, your interpreter has to be someone who’s related to you, like directly related to you or a registered voter in your same precinct, which is pretty narrow. And it’s very, very narrow compared to the federal voting rights act, which says that anyone can help you as an interpreter in federal elections except for a representative of your employer or your union.”<sup>177</sup>

Another speaker at the Georgia People’s Hearing provided an account. “I think seeing the language access issues is particularly hard for me because my parents are immigrants from China and both of them had to learn English as a second language. And both of them still today struggle with English. And my mom is actually really insecure about her English and always tries to practice speeches with me and then ask me to review papers and stuff because it just scares her to have to be in front of someone like a group of people and speak a language that isn’t her first. And so thinking about these voters that are out there trying to vote, trying to exercise their civic duty, trying to be an engaged part of their community and like the barrier is something that so many immigrants and so many Asian-Americans and people I know struggle with was, was very personally hard for me.”

**Poll Worker Training.** Furthermore, although litigation aimed at challenging the enactment of large-scale state statutes often garners public attention, the fight to stymie the discriminatory actions of poll workers is equally costly and further

reveals how the operational, financial, and evidentiary burden to combat challenges disproportionately falls on organizations and affected voters. Testimony about voting rights litigation aimed at dealing with poll workers was quite revealing, ranging from suits to address the behavior and availability of poll workers to suits challenging proposals to change how voters access polling locations. At each instance, witnesses remarked on the need to address poll workers as part and parcel of a larger post-*Shelby* landscape of discriminatory action. For example, witness Mimi Marziani, Chairwoman of the Texas Advisory Committee to the U.S. Commission on Civil Rights, testified that Texas voters reported blatant discriminatory actions by poll workers. Marziani stated, “Finally . . . I include some pretty horrific stories that voters experienced when they were seeking to vote. Many of them at the hands of election workers.”<sup>178</sup> The Chairwoman continued, “One I’ll highlight. A brown-skinned voter in Kingswood gave her driver’s license to a poll worker, who asked her how long she had been in the U.S. She responded that she was a naturalized citizen from Canada. The poll worker said, ‘Welcome to America.’ He then asked the same question of the voter’s mom. But, then did not ask that question of any of the light-skinned people standing in line.”<sup>179</sup>

In Ohio, witness Elaine Tso, Interim Co-CEO of Asian Services In Action, testified that Ohio lawmakers did not properly consider how a legislative proposal to reduce the number of poll workers “per precinct from four to two” would negatively impact participation.<sup>180</sup> Tso testified that the proposal “would disproportionately impact anyone who needed additional assistance at the polls.”<sup>181</sup> Whether that’s inviting a helper for a limited English proficient voter or anyone who needs an accommodation of some sort, because that would need some approval from our poll worker.”<sup>182</sup>

Ohio witness Kimlee Sureemee provided testimony regarding poll workers:

“Myself as a voter . . . last year I went to go vote in my polling location for the general election. I had eight lines to check in. There were eight lines to check in in my polling location. Four lines that were formed then to go into a polling booth. There were two lines that were formed to actually get your form scanned. That was just me as an individual in Lakewood voting. It was over 45 minutes in and out to actually get my vote counted. Imagine what that looks like for someone who has limited English. Not knowing how to . . . especially with poll worker reductions, being able to navigate and manage that type of experience, it’s just difficult. That’s why our program is primarily a vote by mail program as well. We really educate our community members to vote by mail, because we see that that’s the easiest way to ensure that their vote is counted. We do this in particular by partnering with the board of elections too.”<sup>183</sup>

**Poll Closures.** Witnesses also testified that poll and poll worker reductions affected voters of color more often than other communities precisely because states heavily rely on poll workers, many of whom did not receive adequate training or support. For example, witness Marziani noted that Texas poll workers were “usually appointed by the local political party,” with “very few standards on who is able to be a poll worker,” and that poll workers were “paid very little” and received “haphazard” training.”<sup>184</sup> The Chairwoman concluded, “The result of that is pretty gross mismanagement of the polling locations.”<sup>185</sup> Marziani then provided what the chairwoman called “one very blatant example, during the 2018 elections . . . [from] Harris County, home to Houston” where “at least nine polling locations . . . opened more than an hour late, all of them located in communities of color.”<sup>186</sup> Marziani recalled the indifference law enforcement personnel seemed to take toward the situation, and remarked, “When we called the local county clerk and said action needs to be taken, we were told that, ‘No, no, we shouldn’t worry about it. These sort of problems are typical for Election Day,’ even though countless folks couldn’t stand in line for hours and hours. . . . Ultimately,” she continued, “we sued, representing a community organizing group here in Texas, and we were able to get the polls opened for another hour.”<sup>187</sup> Whether by a coincidence of circumstances or by intention, voters were disenfranchised when poll workers did not show up on time and when poll workers did not ready their voting equipment to open up on time.

A speaker at the Georgia People’s Hearing discussed an experience with polling site closures: “In 2017 we learned that the Macon-Bibb County board of elections was prepared to shut down half of the polling locations in the county. And all of 98 percent, excuse me, of the board of elections or the polling locations that they wanted to shut down were counties that were majority . . . Polling locations that were majority black, that had voted for Obama in 2008 and 2012. When pushed on why do you want to close half of the polling locations in this major county, they said that they wanted to save money. While we joined with our brothers and sisters at the NAACP and folks from the Lawyers’ Committee that pushed to find out that they were probably going to save something like \$100. Per precinct . . . They [were] prepared to disenfranchise the majority of black voters in one of Georgia’s largest counties because they were going to save something like \$100. And when we ask . . . Not only that, they had planned to take one of the largest precincts in the black community and move it from the community center to the police station. And when we pushed back and said, ‘People don’t want to vote in the police station,’ they said, ‘Well, only criminals don’t want to vote in a police station, and if your folks aren’t criminals and then they won’t have any problems going into the police station in order to vote.’ So what do we do? We mobilize. We found a little-known provision

in Georgia law that says if we collect signatures from 20 percent of the voters in a particular location where they're trying to shut down or close a precinct, that we can block it."<sup>188</sup>

That poll workers coming from communities of color might bring a different orientation to the task of election administration was also highlighted during testimony. For example, witness Oliver "OJ" Semans, Co-Director of Four Directions, made recommendations that "election officials work with communities to get more people of color to become election judges and election poll watchers."<sup>189</sup> Semans remarked, "The voter suppression does not have to be a mile away and does not have to be a law. It could be three foot, the length of the table, when you're coming up to vote."<sup>190</sup> For Semans, the benefits of descriptive representation for stopping election-related discrimination could not be clearer. "We have found that where we have had our Natives as election officials, more people will come because they're not going to be embarrassed," Semans testified.<sup>191</sup> "They're not going to be turned away. It's a friendly atmosphere. Our people are friendly people, and so it doesn't matter what color you are. When you come in, you are going to be treated with respect."<sup>192</sup> In short, witnesses made direct connections between voting rights litigation to address poll workers and the larger battle to restore preclearance and to revise the coverage formula. Poll workers, witnesses testified, *can be too partisan* if their support for a preferred candidate motivates them to engage in discriminatory behavior towards their opponents.<sup>193</sup>

**Long Lines.** During both congressional field hearings and the People's Hearings in Florida and in Alabama, individuals spoke directly to the impact of seeing long voter lines and having experienced standing in long voter lines. Testimony by Jeralyn Cave, of Advancement Project, witnessed long lines during the 2016 election in Florida. Her account is both illustrative and typical. Cave described her experience during the 2016 presidential election in the following manner:

"So, I want to tell this story about how in 2016 my colleague and I, Carolyn Thompson, were here doing a press conference in honor of Desiline Victor. We are here at the north Miami Library where the Desiline Victor Wing is named after her because she waited six hours in line to vote for Obama and was honored at the State of the Union address. While we were here, though, we saw extremely long lines, and there were celebrities here. There were food trucks here. There were other people that were here that were trying to encourage people to stay in line, and that is extremely unnecessary. We think it's wrong, and so it does need to be fixed."<sup>194</sup>

Voters of color also complained about the disparities in long wait times between their polling locations and those in other districts. For example, in testimony at the Alabama People's Hearings, a witness described his experience during the 2012 presidential election. He remarked, "So, I can remember 2012 presidential election cycle and going to vote, I didn't get in line till about four o'clock. And I didn't vote until about 8:30. So you literally had lines, you know, back out of the parking lot, down into the neighborhood, and then you really look into extra cell block, you know, because, you know how many registered voters in your area, and you know about how long it takes to go to voting."<sup>195</sup> He continued, "So it's almost intentional when they set one voting location for thousands, thousands of people. So, when you look at other areas, where people can walk right in, vote and be back out in three minutes, and then you ask yourself, okay, why am I standing in line for four and a half hours to be able to vote?"<sup>196</sup>

Another Alabama witness shared a similar story about the stark contrast in the quality and number of polling locations made available to voters in predominantly white districts compared to those made available to voters in predominantly black districts. Tragically, her comments are also both illustrative and typical of what witnesses shared. The anonymous black woman testified to the following:

"Now I'm a resident of Fultondale and I vote at a senior facility. The first time I voted there, I was very surprised, there was no line. You walk in, and they do have separate... traditional sections, that you can stand up. But there were tables all lined up, and everybody was sitting down, filling out their ballot, and I was like 'Wait, what?' It was so pleasant, we would walk in and see air conditioning, and they're like 'Hi, Ma'am.' ...[T]hey give you your ballot. You sit down, you take your time; you're not rushed. You can talk to people if you want to, nobody is really moving. You put your ballot in, they give you your 'I voted' sticker, and you're out the door and I was like... I noticed that there's not a lot of people my color, that get that privilege. To sit in air conditioning and sit down and have their time to make well informed decisions in voting, and you go to the other side of town where I was born and raised for most of my life. You have older... elderly people and people that do look like me, that have to be in the 90 degree weather, standing up, disabled, old, and even something so simple as 'conditions' can deter people from voting."<sup>197</sup>

Roger White Owl, Chief Executive Officer of the Mandan, Hidatsa, and Arikara Nation, explained, "We also do not have enough polling places. Two important

polling places on our Four Bears Segment and Mandaree Segment were recently closed. Four Bears is one of the major economic hubs in our capital. With only a couple polling places, many tribal members had to drive 80 or 100 miles round trip to cast their vote. This is unacceptable. The federal government must provide resources and open staff for polling places on Indian reservations.”<sup>198</sup> Alicia LaCounte, General Counsel of the Turtle Mountain Band of Chippewa Indians, argued that “[T]he recent enactment of the North Dakota bills, which places requirements on the original citizens of this land, tend to diminish, discourage, and repress the Turtle Mountain tribal citizens’ right to vote and access to the poll.”<sup>199</sup>

**Provisional Ballots.** Duly registered voters were also denied opportunities to cast a regular ballot. In Ohio, for example, Angela Woodson, Political Action Chair for the Cleveland Branch of the NAACP, provided a story about a young voter who tried to navigate the state’s voter ID requirements. Woodson remarked that the “young lady . . . actually had a state ID from Alabama” and “did register in time to vote, to change her voter registration to here, but she had not quite gotten her state of Ohio license yet, but she did have an Ohio insurance card.”<sup>200</sup> The voter expected to cast a regular ballot, especially since one of the utility bills was in her husband’s name and “reflected the same address” as did “her health insurance card.”<sup>201</sup> But, as Woodson recounted, “The challenge was [that] she had no other ID to try to vote” and, as result, “[o]f course, they immediately say, ‘Provisional.’”<sup>202</sup>

Poll workers incorrectly denied voters a regular ballot. Ohio witness Billy Sharp, President of the Urban League Guild, recalled, “[F]or a while ago I was a poll watcher, and I watched poll workers tell voters, ‘You’re not on the voter rolls here, you have to go vote somewhere else.’ Well, they had no mention of a provisional ballot. If I’m working and I’m on my break, I really can’t afford to go to another location or to the right location.”<sup>203</sup> To address these problems, Sharp recommended that “we need to probably drill down on training” of poll workers.<sup>204</sup>

Moreover, James Major Woodall served as an Election Protection volunteer. He received a call that election officials were denying students at Albany State University the ability to cast ballots. He recalled, “[I]t was actually several students from Albany State University, one of the HBCUs here in Georgia. And it wasn’t a student, it was a parent who called us and said that her child was unable to vote, even though they had her registered to vote, even though that they was at the right precinct, and even though they had proof that they had did what they said they had done. But they were prevented from not only voting but casting their provisional ballot. . . . [I]n 2018 and I got a call from a parent of a student at Albany State University, and that student’s mother told us, ‘My baby cannot vote.’ And I asked her,

‘Well, what’s wrong? What’s going on? Talk to her.’ And she said, ‘My son registered to vote with the NAACP. They had made sure that they were going to the right precinct and they had registered right on time. They had all the correct and important information, the documentation they needed by the state law. They had identification, but when they showed up to vote, they were told not only that they were not on the roll, but that they also were not able to cast a provisional ballot.’ And then what got even worse was that student wasn’t the only one. There were several dozens of students at Albany State University who were not able to vote and we had to do a separate investigation to figure out what was going on because that was unacceptable. Even if there was some discrepancy, they should at least be able to cast a provisional ballot.”<sup>205</sup>

That “conditions” matter to how voters experience elections is not a new observation, but that the post-*Shelby* landscape may have emboldened states to ignore racial disparities in the factors shaping how voters experience the electoral process is a new observation worthy of congressional scrutiny and public outrage.<sup>206</sup> Because “conditions” matter, it is important that the Congress and the public attend to the ways in which public confusion can produce the same discriminatory results as outright poll worker hostility toward voters.

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"[F]or a while ago I was a poll watcher, and I watched poll workers tell voters, ‘You’re not on the voter rolls here, you have to go vote somewhere else.’ Well, they had no mention of a provisional ballot".

**Billy Sharp**, Ohio Witness and  
President of the Urban League Guild



# The People's Proposals

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Witnesses testifying before the Subcommittee on Elections and the People’s Hearings offered an array of short-, medium-, and long-range solutions to reaffirm (in the strongest terms possible) that citizens who are eligible to vote must have unfettered access to the ballot box and must have their votes appropriately counted, and that the effects of the *Shelby County* decision must be remediated. In an Alabama People’s Hearing, Earnest Montgomery, a resident of *Shelby County* offered, “I do understand now how important the power of the vote is. I believe the greatest survival to our democracy is the power to vote. Our government must commit to assuring that every legal citizen be included, every barrier that prohibits be destroyed, every election from our local schools all the way to our federal elections be fair. I hope our elected leaders in Washington, DC can soon come up with some solution to protect every person’s right to vote by some formula or preclearance. For we all know, as it’s been said, that one ounce of prevention is more valuable than a pound of cure.”<sup>207</sup>

In the table below and on the next page, we present a summary account of the solutions that hearing participants proposed. The solutions address issues at the federal, state, and local level, and aim to rebuild and strengthen the wall of protection enshrined in the extraordinary provisions of the Voting Rights Act. The witnesses’ solutions, we contend, reflect three realities. First, as remarked by Mimi Marziani, Chair of the Texas Advisory Committee to the U.S. Commission on Civil Rights, that “discrimination in voter registration is persistent, and in fact and sadly, it appears to be getting worse.”<sup>208</sup> Second, that the coverage formula and the preclearance regime helped to keep most election-related discrimination at bay, even though neither provision nor their combination could change the underlying attitudes that motivate actors to engage in unconstitutional behavior. Third, that the protection of voting rights has always been and must always remain a bipartisan effort that reflects the shared concerns of Democrats and Republicans.

**Table: Solutions and Recommendations Presented By Witnesses**

Talk directly with community members about voting practices and concerns

Restore Section 4 of the Voting Rights Act, which will give operative force to Section 5

Account for systemic discrimination in redistricting when considering a revised coverage formula

Establish an independent federal agency to regulate voting laws

Expand the Help America Vote Act

Adopt House Resolution 1 (H.R. 1) “For the People Act”

Enhance training for poll workers

Extend poll locations and hours

Establish pre-registration for 16 and 17 year-olds

Establish an Election Day holiday

Expand early voting

Expand same day registration and voting

Expand weekend voting

Increase funding for cyber security and equipment testing labs

Honor federal treaties with Native American tribes and nations

Allow tribal governments to choose polling locations on tribal lands

Increase funding to develop accessible polling locations for Native people

Enhance language accessibility at polling locations

End felony disenfranchisement

Source: Author analysis of the 2019 field hearings by the U.S. House of Representatives' Committee on House Administration Subcommittee on Elections and People's Hearings conducted by the Anchors.

Witnesses overwhelmingly called for Congress to “restore” the coverage formula to give operative force to the preclearance regime, and for Congress to consider refining Section 2, if necessary, to survive possible future judicial attacks. Witnesses also recommended that any attempts to develop a new coverage formula account for previous systemic acts of racial discrimination, and according to Patricia Timmons-Goodson, Vice Chair of the U.S. Commission on Civil Rights, it’s crucial for Congress to remember that these discriminatory acts “tend to recur in certain areas.”<sup>209</sup> Furthermore, witnesses suggested that lawmakers direct federal funding to monitor and respond to racial discrimination in voting practices, and suggested that Congress establish an independent federal agency to regulate voting rights laws. Irving Joyner, Professor of Law at North Carolina Central University School of Law, testified that “Voting is a fundamental right and it is just as fundamental as is communications, as is election financing, and their independent agencies at the federal level to oversee that we have lost faith in the Justice Department to protect our rights. Therefore, we

need something more permanent than that and it ought to be in the form of an independent agency with the authority and power to oversee and regulate voting.”<sup>210</sup>

Witnesses also recommended reforms that were unrelated to reanimating preclearance but that directly related to improving access to the ballot—e.g., expanding adoption of same day registration and voting, early voting, and weekend voting—and to improving protection of the electoral system. For example, Ohio People’s Hearing witness Ms. Simmons, a retired union worker, stressed that the registration and voting processes should be streamlined. She noted that voters encounter multiple steps along the way to casting a ballot. She testified to the following:

“When I was running for Precinct Committee Person, I was asking people to register to vote. I got an extra, I would say, an extra 70 some people to register to vote. Soon I got to get on their nerves, cause first they had to register to vote, then they got to turn that paper in, then you got to come back to them with the vote by mail, then they got to turn that in. Then they get the ballot, I got to go back to them, ‘Did you get your ballot?’. ‘I don’t know,’ you know it’s on the kitchen table so they don’t know if they got the ballot cause they got so many papers coming back in. It should be a little bit shorter. I don’t know how to make it shorter, cause I don’t know nothing about that practice, but when you register them

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**"Voting is a fundamental right and it is just as fundamental as is communications, as is election financing, and their independent agencies at the federal level to oversee that we have lost faith in the Justice Department to protect our rights. Therefore, we need something more permanent than that and it ought to be in the form of an independent agency with the authority and power to oversee and regulate voting."**

Irving Joyner, Professor of Law at  
North Carolina Central University  
School of Law

to vote, then you got to get this and get that and then they're tired. Bout time election time came, they got tired of all the paperwork to be done.”<sup>211</sup>

**Acknowledging the Unique Relationship with Tribal Governments.** Witnesses recommended that Congress enact legislation to deal with the unique circumstances facing Native American voters, particularly those residing on tribal lands. For example, witnesses called for stronger enforcement of treaties between the federal government and the Native American Nations in the area of voting rights; for an increase in direct communication between Native people communities and election officials; and for Congress to ensure access to voter registration, early voting, and election day polling places on Native Peoples' reservations. Other recommendations were for states and the federal government to work in collaboration with tribal governments, to provide additional funding for cyber-security protocols and equipment testing, and to respect the sovereignty of Native American tribes. Mr. White Owl called for the subcommittee to raise this issue to the highest levels of House leadership. For White Owl, “the federal government, not the states, should work with tribes to come up with the voting rules that will work on our reservations.”<sup>212</sup> White Owl explained the unique government-to-government relationship between American Indian tribes and the federal government, saying, “The federal government should also work with us to determine how many polling places are needed on our reservation, and the federal government should provide funding to support these polling places. The state should have no part in our right to vote in elections. In fact, North Dakota is working hard to keep tribal members from casting a vote. Recent elections here have been very close for a few thousand votes. If a tribal member can't cast their vote, candidates they support, that support our issues, can't get elected.”<sup>213</sup>

**Election Day Holiday.** Particularly prominent among the recommendations were calls for an Election Day holiday, either at the federal level or at the state/local level. Theoretically, such a holiday would enhance access to the ballot for all voters as well as promote entry for particular segments of the electorate (e.g., voters with disabilities, voters of low-income status, voters dependent upon public transportation, voters with non-traditional work hours). Additionally, an Election Day holiday could reduce the likelihood that citizens choose disengagement over participation when considering pressures on their time related to getting to work, traveling to the polls, and addressing childcare and eldercare responsibilities.

**Congressional Legislation.** Witnesses recommended that Congress pass House Resolution 1 (“For the People Act”). They noted that the legislation would allocate funding for the development and maintenance of polling locations (with

emphasis on rural areas and hard-to-reach areas) and for states to hire, train, and compensate poll workers from diverse backgrounds (especially to provide language assistance to voters with limited proficiency in English). Speaking to the financial resources needed to maintain voting equipment, Inajo Davis Chappell, member of the Cuyahoga County Board of Elections, argued that Congress must “make sure that the testing labs that are used, because there aren’t that many, that there are enough that they are testing the equipment to make sure that there’s no way to hack in.”<sup>214</sup>

**Felon Disenfranchisement.** Witnesses also demanded an end to felon disenfranchisement. Here we quote witness testimony from the Florida People’s Hearings and the Alabama People’s Hearings to provide illustrative examples of voter concerns about the often murky, arbitrary, frustrating, and confusing processes designed to restore or actualize voting rights. Because these processes interface substantially with the socioeconomic and political system, citizens often have limited options. Speaking to the economic constraints, Jason Barnes of the Alabama Voting Rights Project shared a story about working with a client who “owes \$60,000 in fines and fees right now. He is 55 years old. He has only paid maybe \$500. He will never be able to vote. Cause he can’t afford to get it back.”<sup>215</sup> Barnes also remarked on the lengthy process when individuals “have to fill out a certificate of eligibility to vote” which “goes to the board of pardons and paroles.”<sup>216</sup> Barnes noted that it “takes 44 days for that to come back,” and individuals “have to pay off their fines and fees” and “be off probation and parole.”<sup>217</sup> Barnes noted that individuals also “cannot have a pending conviction . . . they cannot have a pending disqualifying conviction because it is treated as if they are guilty.” In offering a summary conclusion, Barnes remarked, “So they have to jump through a whole bunch of hoops just for the board of pardons and paroles to tell them okay. now you can vote. Now you gotta add another 14 days on it because they actually have to register to vote.”

Speaking to the impact of other hoops and limitations, Florida Senator Victor Torres testified about a proposal put forth by state legislators. He remarked, “I want to read a brief on the legislation we just passed on the voter restoration rights. The bill the Senate passed requires a person to pay all court fees, fines, and restitutions before they can vote, and also sets up two ways these costs can be excused.”<sup>218</sup> Nevertheless, he intimated, those routes can be confusing: “Meaning that it’s not 100 percent but it’s given the opportunity to restoration rights to vote. It means that you who are in doubt have an opportunity to see if a judge or if you’re waiting for litigation on your trial or your case, that they have the opportunity to waive and get your voting rights restored by doing community time. But as we know, everything is.”<sup>219</sup> For these witnesses and others, felon disenfranchisement meant that some

portions of the citizenry were deliberately ignored and excluded from informing policy decisions which affected their lives and the lives of their families.

In conclusion, witnesses recommended a wide range of solutions to address modern-day voter suppression. Those solutions readily underscored the complex intersection between race/ethnicity, socioeconomic circumstances, and access to the ballot. In addition, those solutions acknowledged the need for greater cooperation between affected voters and federal, state, and local governmental entities. To that, it should be unsurprising that witnesses proposed innovative solutions to countering and reversing the effects of *Shelby* and to strengthening the Voting Rights Act. The post-*Shelby* landscape is replete with new and unprecedented dangers for all voters, and especially for voters of color. The Supreme Court decision removed several of the main protections keeping poor voters and voters of color safe from the incessant onslaught of discriminatory laws. In the immediate aftermath, legislators across the nation, particularly in those locales most notorious for voter discrimination, rushed to create and to enforce new rules that disenfranchised voters and that would shift elections in favor of persons who were not candidates of choice for communities of color. To add insult to injury, lawmakers often couched reform efforts as anti-election fraud (either registration fraud or voter impersonation fraud), and as non-injurious to particular communities. According to witness testimony, much of which included statistics about the effects of electoral reforms on vulnerable communities, nothing could be further from the truth. It is apparent that facially neutral policies often hide discriminatory effects. Moreover, the extremely low probability that individuals have committed voter fraud pales in comparison to the extremely high reality that individuals have been disenfranchised. Our country is at a crossroads. Democracy demands nondiscriminatory access to the ballot. Congress must protect the ability to participate in the electoral franchise. “We the People” demand action to eliminate the discriminatory barriers to the ballot as they currently exist and will evolve in the future.

# Endnotes

1. The term “Hispanic” is used interchangeably with Latino and Latinx throughout this report.
2. MICHAEL T. MORLEY, *Prophylactic Redistricting? Congress’s Section 5 Power and the New Equal Protection Right to Vote*, 59 WM. & MARY L. REV. 2053 (2018).
3. The preamble of the United States constitution reads:

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” U.S. CONST. pmbl.
4. The Fifteenth Amendment of the U. S. Constitution provides:

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Congress shall have power to enforce this article by appropriate legislation.” U.S. CONST. amend. XV, §§ 1–2.
5. The Jim Crow era defines the late 1800’s to the 1960’s in this country’s history where it sought to replace slavery with legal segregation. “‘Jim Crow laws’ were state laws and local ordinances enacted from the end of Reconstruction through the first six decades of the twentieth century for the purpose of mandating *de jure* racial segregation of all public transportation conveyances, restaurants, restrooms, water fountains, schools, hotels, libraries, and virtually every other form of public accommodations and facilities.” See, *Lynch by Lynch v. Alabama*, No. CV 08-S-450-NE, 2011 WL 13186739, at \*47–48 (N.D. Ala. Nov. 7, 2011), *aff’d in part, vacated in part, remanded sub nom. I.L. v. Alabama*, 739 F.3d 1273 (11th Cir. 2014).
6. Smithsonian Nat. Museum of Am. History, *White Only: Jim Crow in America*, SEPARATE IS NOT EQUAL: BROWN V. BOARD OF EDUCATION, <https://americanhistory.si.edu/brown/history/1-segregated/white-only-1.html> (last visited Oct. 22, 2019).
7. *Elk v. Wilkins*, 112 U.S. 94, (1884).
8. *Developments in the Law—Securing Indian Voting Rights*, 129 HARV. L. REV. 1731, 1734 (2016) (citations omitted); see also James Thomas Tucker, *The Battle over “Bilingual Ballots” Shifts to the Courts: A Post-Boerne Assessment of Section 203 of the Voting Rights Act*, 45 HARV. J. ON LEGIS. 507, 520 (2008).

9. Nina Perales, Luis Figueroa & Criselda G. Rivas, *Voting Rights in Texas: 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 713, 713 (2008) (“Texas has experienced a long history of voting discrimination against its Latino and African-American citizens dating back to 1845.”).
10. U.S. Comm’n on Civil Rights, August 18, 2017, pp. 77-78.
11. *Smith v. Allwright*, 321 U.S. 649 (1944).
12. *Continuing Need for Section 203’s Provisions for Limited English Proficient Voters: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 309 (2006) (letter from Joe Garcia, Nat’l Congress of Am. Indians); DANIEL MCCOOL, SUSAN M. OLSON, AND JENNIFER L. ROBINSON, *NATIVE VOTE: AMERICAN INDIANS, THE VOTING RIGHTS ACT, AND THE RIGHTS TO VOTE* 10 (2007).
13. *Harrison v. Laveen*, 67 Ariz. 337 (1948).
14. California limited voting rights to white citizens; Idaho, New Mexico and Washington withheld the right to vote from Native Americans not taxed. The North Dakota Constitution limited voting to “civilized” Native Americans who had severed tribal relations. In 1956, Utah was one of the last states to ban a statute that prevented Native Americans residing on the reservation from voting because it did not count them as citizens of Utah. DANIEL MCCOOL, SUSAN M. OLSON & JENNIFER L. ROBINSON, *NATIVE VOTE*, *supra* note 12.
15. *See* Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-61 (repealed 1943) (prohibiting immigration of Chinese laborers); Immigration Act of 1917, ch. 29, 39 Stat. 874, 874-98; Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952) (banning immigration from almost all countries in the Asia-Pacific region); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 415 (2005).
16. *See, e.g.*, Philippines Independence Act of 1934, ch. 84, 48 Stat. 456, 462 (amended 1946) (imposing annual quota of fifty Filipino immigrants); Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952) (denying entry to virtually all Asians); Scott Act of 1888, ch. 1064, 25 Stat. 504 (rendering 20,000 Chinese re-entry certificates null and void); Naturalization Act of 1790, ch. 3, 1 Stat. 103 (repealed 1795) (providing one of the first laws to limit naturalization to aliens who were “free white persons” and thus, in effect, excluding African Americans, and later, Asian Americans).
17. *Ozawa v. United States*, 260 U.S. 178, 198 (1922); *see, e.g.*, CAL. CONST. of 1879 art. II, § 1 (1879) (“no native of China . . . shall ever exercise the privileges of an elector in this State”); *Oyama v. California*, 332 U.S. 633, 662 (1948) (Murphy, J., concurring) (noting that California’s Alien Land Law “was designed to effectuate a purely racial discrimination, to prohibit a Japanese alien from owning or using agricultural land solely because he is a Japanese alien”).
18. Karen Narasaki serves as a Commissioner on the U.S. Civil Rights Commission. She is a former President and Executive Director of Asian Americans Advancing Justice., a national civil rights organization. Her statements were made during a U.S. Commission on Civil Rights Hearing in Washington, DC on August 18, 2017, pp. 77-78.
19. *Id.*

20. *Congressmen Jesús “Chuy” García, Jimmy Gomez and Adriano Espaillat join NPNA, UnidosUS, and Allies to Call on USCIS to Focus on Application Processing, not Enforcement*, NAT’L PARTNERSHIP FOR NEW AM., (Jul. 16, 2019), <https://partnershipfornewamericans.org/congressmen-jesus-chuy-garcia-jimmy-gomez-and-adriano-espaillatjoin-npna-unidosus-and-allies-to-call-on-uscis-to-focus-on-application-processing-not-enforcement/>.
21. Immigration and Nationality Act of 1965 (Hart-Cellar Act), Pub. L. No. 89-236, 79 Stat. 911.
22. Ming Hsu Chen & Taeku Lee, *Reimagining Democratic Inclusion: Asian Americans and the Voting Rights Act*, 3 UC IRVINE L. REV. 359, 376–77 (2013).
23. THE RISE OF ASIAN AMERICANS, PEW RESEARCH CENTER 59 (2012), <https://www.pewsocialtrends.org/2012/06/19/the-rise-of-asian-americans/>.
24. Civil Rights Act of 1957, Pub. L. 85-315, 71 Stat. 634 (codified as amended at 42 U.S.C. § 1995 (2006)).
25. *United States v. Atkins*, 323 F.2d 733 (5th Cir. 1963).
26. *Id.* at 736.
27. *See South Carolina v. Katzenbach*, 383 U.S. 301, 313 (1966) (reviewing the Civil Rights Acts of 1957, 1960, and 1964 to conclude that “Congress has repeatedly tried to cope with the problem by facilitating case-by-case litigation against voting discrimination”).
28. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301 reads:  
  
Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation  
  
(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).  
  
(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.
29. *Section 2 of the Voting Rights Act*, U.S. DEP’T. OF JUSTICE: CIVIL RIGHTS DIV., <https://www.justice.gov/crt/section-2-voting-rights-act>.
30. *Mobile v. Bolden*, 446 U.S. 55 (1980).
31. *Id.*

32. President Ronald Reagan, Text of President's Statement: Special to the New York Times, November 7, 1981, <https://www.nytimes.com/1981/11/07/us/text-of-president-s-statement.html>. ("The right to vote is the crown jewel of American liberties, and we will not see its luster diminished.").
33. *Section 2 of the Voting Rights Act*, *supra* note 29.
34. *South Carolina v. Katzenbach*, 383 U.S. 301, 313 (1966).
35. *Id.*
36. 28 C.F.R. § 51.52.
37. 28 C.F.R. § 51.1.
38. *Allen v. State Board of Elections*, 393 U.S. 544, 565 (1969)
39. *Katzenbach v. Morgan*, 384 U.S. 641 (1966).
40. H.R. 6219, 94th Cong. (1975) (as approved on Aug. 6, 1975) (codified at 52 U.S.C.A. § 10503).
41. U.S. COMM'N ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE U.S. 189-192 (2018); ASIAN AM. LEGAL DEF. FUND AND EDUC. FUND, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2014 ELECTIONS (2014), <https://www.aaldef.org/uploads/pdf/2014AccessToDemocracyReport.pdf>; Asian American Advancing Justice, Testimony at the People's Hearings (2019) (all testimony People's Hearing can be accessed at WEVOTE WECOUNT, <https://wevotewecount.org/>).
42. U.S. COMM'N ON CIVIL RIGHTS, *supra* note 4 at 189-192.
43. For a 50-year retrospective on the VRA's positive impact on political participation and empowerment. *See* KHALILAH BROWN-DEAN, ZOLTAN HAJNAL, CHRISTINA RIVERS, & ISMAIL WHITE, JOINT CENTER FOR POLITICAL AND ECON. STUDIES, 50 YEARS OF THE VOTING RIGHTS ACT: THE STATE OF RACE IN POLITICS (2015).
44. *See* LAURA WILLIAMSON, PAMELA CATALDO, AND BRENDA WRIGHT, DĒMOS, TOWARD A MORE REPRESENTATIVE ELECTORATE: THE PROGRESS AND POTENTIAL OF VOTER REGISTRATION THROUGH PUBLIC ASSISTANCE AGENCIES (2018), <https://www.demos.org/research/toward-more-representative-electorate>; STUART NAIFEH, DĒMOS, ACCELERATING THE VOTE: HOW STATES ARE IMPROVING MOTOR-VOTER COMPLIANCE UNDER THE NATIONAL VOTER REGISTRATION ACT (2017), <https://www.demos.org/research/accelerating-vote>.
45. *South Carolina v. Katzenbach*, 383 U.S. 301, 313 (1966).
46. *Id.*
47. *Katzenbach v. Morgan*, 384 U.S. 641 (1966).
48. *Id.*
49. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008).
50. *Id.*

51. *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009).
52. *The Effects of Shelby County v. Holder*, BRENNAN CENTER FOR JUSTICE (Aug. 6, 2018), <https://www.brennancenter.org/analysis/effects-shelby-county-v-holder>.
53. *NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).
54. U.S. COMM’N ON CIVIL RIGHTS, *supra* note 41.
55. Perales, Figueroa & Rivas, *supra* note 9 at 717.
56. *See Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).
57. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012); TYSON KING-MEADOWS, *WHEN THE LETTER BETRAYS THE SPIRIT: VOTING RIGHTS ENFORCEMENT AND AFRICAN AMERICAN PARTICIPATION FROM LYNDON JOHNSON TO BARACK OBAMA* (2011).
58. Preclearance applied to “Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color.”
59. Caitlin Swain, Co-Director, Forward Justice, *Testimony at Voting Rights and Election Administration in North Carolina Field Hearing*, United States Congress, Subcommittee on Elections of the Committee on House Administration, (116th Congress) (2019).
60. Dr. Rev. Barber, *Testimony at Voting Rights and Election Administration in North Carolina Field Hearing*, United States Congress, Subcommittee on Elections of the Committee on House Administration, (116th Congress) (2019); Caitlin Swain, *supra* note 59.
61. Sheila Tyson, Jefferson Cty. Comm’r., Dist. 2, *Testimony at the Alabama People’s Hearing* (2019).
62. *Id.*
63. *Id.*
64. Witness Testimony, *Testimony at the Alabama People’s Hearing* (2019).
65. Witness Testimony, *Testimony at the North Dakota People’s Hearing* (2019).
66. Sally Harrison, *May I See Your ID? How Voter Identification Laws Disenfranchise Native Americans’ Fundamental Right to Vote*, 37 AM. INDIAN L. REV. 597, 617 (2013).
67. Jeniver Van Schuyver, *That’s Not a Real ID*, WE VOTE. WE COUNT. (Nov. 2016), <https://wevotewecount.org/story/thats-not-real-id>.
68. Rolando Rios, Voting Rights Attorney, *Testimony at the Listening Session on Voting Rights and Elections*, United States Congress, Subcommittee on Elections of the Committee on House Administration, (116th Congress) (2019)..
69. *Id.*
70. *Id.*

71. Ruth Buffalo, N.D. State Representative, 27th District, Testimony at the voting Rights and Election Administration in the Dakotas Field Hearing, United States Congress, Subcommittee on Elections of the Committee on House Administration, (116th Congress) (2019).
72. *Id.*
73. Patricia Timmons-Goodson, Vice Chair, United States Comm’n on Civil Rights, Testimony at Voting Rights and Election Administration in North Carolina Field Hearing, United States Congress, Subcommittee on Elections of the Committee on House Administration, (116th Congress) (2019).
74. *Id.*
75. *Id.*
76. Roland Rios, *supra* note 68.
77. Mimi Marziani, Chairwoman, President, Texas Civil Rights Project and Texas Advisory Comm. to the U.S. Comm’n on Civil Rights, T Testimony at the Listening Session on Voting Rights and Elections, United States Congress, Subcommittee on Elections of the Committee on House Administration, (116th Congress) (2019).
78. *Id.*
79. *Id.*
80. Daniel Ortiz, Outreach Dir., Policy Matters Ohio, Testimony at Voting Rights and Election Administration in Ohio Field Hearing, United States Congress, Subcommittee on Elections of the Committee on House Administration, (116th Congress) (2019).
81. *Id.*
82. Angela Woodson, Political Action Chair, Cleveland Branch of the NAACP, Testimony at the Ohio People’s Hearing (2019).
83. *Id.*
84. *Id.*
85. Scott Douglas, Executive Dir., Greater Birmingham Ministries, Testimony at the Alabama People’s Hearing (2019).
86. *Id.*
87. *Id.*
88. *Id.*
89. Warnell Vickers, Pastor, New Vision Christian Center Ministries, Testimony at the Florida People’s Hearing (2019).
90. *Id.*
91. *Id.*

92. Mike Brickner, Ohio State Dir., All Voting is Local, Testimony at the Ohio People’s Hearing (2019).
93. *Id.*
94. Witness Testimony, Testimony at the Alabama People’s Hearing (2019).
95. *Id.*
96. Bernard Simelton, Board of Dir. and Member, NAACP National, Testimony at the Alabama People’s Hearing (2019).
97. Oliver “OJ” Semans, Co-Dir., Four Directions, Testimony at the South Dakota People’s Hearing (2019).
98. *Id.*
99. *Id.*
100. As the Department of Justice website explains, “Section 2 of the Voting Rights Act of 1965 prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified in Section 4(f)(2) of the Act.” A plaintiff could “establish a violation of the section if the evidence established that, in the context of the ‘totality of the circumstance of the local electoral process,’ the standard, practice, or procedure being challenged had the result of denying a racial or language minority an equal opportunity to participate in the political process.” *Section 2 of the Voting Rights Act*, *supra* note 29.
101. This is not to minimize the financial and operational costs associated with the administrative route. Furthermore, adjudication via the administrative route was replete with controversy. As one can imagine, career attorneys and political appointees within the DOJ Civil Rights Division often brought different interpretations of precedent, of congressional intent, and of the appropriate evidentiary standards to apply when examining proposed election reforms. For a discussion on how agency conflicts can undermine voting rights, see KING-MEADOWS, *supra* note 57 at 199-245.
102. Jacqueline De León, Staff Attorney, Native Am. Rights Fund, Testimony at the North Dakota People’s Hearing (2019).
103. Witness Testimony, Testimony at the Alabama People’s Hearing (2019).
104. Witness Testimony, Testimony at the Alabama People’s Hearing (2019).
105. Andre, Testimony at the [state] People’s Hearing (2019).
106. Husted v. A. Philip Randolph Institute, 138 S.Ct. 1833 (2018).
107. James Blackshear, Lawyer, Testimony at the Alabama People’s Hearing (2019).
108. *Id.*
109. *Id.*
110. Jacqueline De León, *supra* note 103.

111. *Id.*
112. *Id.*
113. Nancy Abudu, Deputy Legal Dir., Voting Rights, the Southern Poverty Law Ctr., Testimony at the Florida People’s Hearing (2019).
114. *Id.*
115. Stacey Abrams, former minority leader in the Georgia House of Representatives and 2018 Democratic gubernatorial candidate, Testimony at the Atlanta People’s Hearing (2019).
116. *Id.*
117. *Id.*
118. *Id.*
119. Dr. Rev. Barber, *supra* note 60.
120. *Id.*
121. *Id.*
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*
126. Those 14 states were: Alabama, Arizona, Indiana, Kansas, Mississippi, Nebraska, New Hampshire, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin.
127. JONATHAN BRATER, KEVIN MORRIS, MYRNA PÉREZ, & CHRISTOPHER DELUZIO, BRENNAN CENTER FOR JUSTICE, PURGES: A GROWING THREAT TO THE RIGHT TO VOTE 1 (2018). The report calculated that “2 million fewer voters would have been purged over those four years if jurisdictions previously subject to federal preclearance had purged at the same rate as those jurisdictions not subject to that provision in 2013.” *Id.*
128. *See Voting Rights and Election Administration in North Carolina: Hearing Before the H. Comm. on Administration Subcomm. on Elections*, 116th Cong. (2019) (statement of Caitlin Swain, Co-Director of Forward Justice), <https://docs.house.gov/meetings/HA/HA08/20190418/109315/HHRG-116-HA08-Wstate-SwainC20190418-U1.pdf>.
129. Caitlin Swain, *supra* note 59.
130. Matthew McCarthy, Legal Consultant, ACLU of Tex., Testimony at the Texas People’s Hearing (2019).
131. *Id.*
132. *Id.*
133. George Corbel, Testimony at the Texas People’s Hearing (2019).

134. *Id.*
135. Nancy Abudu, *supra* note 114.
136. Jenny Carroll, Testimony at the [state] People's Hearing (2019).
137. *Id.*
138. Nancy Abudu, *supra* note 114.
139. Chad Dunn, Testimony at the Texas People's Hearing (2019).
140. *Id.*
141. *Id.*
142. George Corbel, *supra* note 134.
143. *Id.*
144. Rolando Rios, *supra* note 68.
145. Senator Dan Blue, Senate Majority Leader, N.C., Testimony at the North Carolina People's Hearing (2019).
146. *Id.*
147. Chad Dunn, *supra* note 140.
148. *Id.*
149. LANI GUINIER, TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY (1994).
150. Jacqueline De León, *supra* note 103.
151. *Id.*
152. *Id.*
153. George Corbel, *supra* note 134.
154. Chad Dunn, *supra* note 140.
155. Patricia Timmons-Goodson, *supra* note 73.
156. Kimlee Sureemee, Senior Manager, Policy-Advocacy and Dev. at Asia Inc., Testimony at the Ohio People's Hearing (2019).
157. *Id.*
158. *Id.*
159. Dan Blue, *supra* note 146.
160. *Id.*
161. *Id.*

162. *Id.*
163. Matthew McCarthy, *supra* note 131.
164. *Id.*
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.*
169. *Id.*
170. Dan Blue, *supra* note 146.
171. *Id.*
172. *Id.*
173. Winnie Tang, President, Asian Am. Fed’n of Fla., Testimony at the Florida People’s Hearings (2019).
174. Kimlee Sureemee, *supra* note 158.
175. *Id.*
176. *Id.*
177. Hillary Lee, Testimony at the Georgia People’s Hearings, (2019).
178. Mimi Marziani, *supra* note 77.
179. *Id.*
180. Elaine Tso, Interim Co-CEO, Asian Services In Action, Testimony at the Ohio People’s Hearing (2019).
181. *Id.*
182. *Id.*
183. Kimlee Sureemee, *supra* note 158.
184. Mimi Marziani, *supra* note 77.
185. *Id.*
186. *Id.*
187. *Id.*
188. Witness Testimony, Testimony at the Georgia People’s Hearing (2019).
189. Oliver “OJ” Semans, *supra* note 98.
190. *Id.*

191. *Id.*
192. *Id.*
193. Witness Testimony, Testimony at the Georgia People's Hearing (2019).
194. Jeralyn Cave, Testimony at the Florida People's Hearing (2019).
195. Witness Testimony, Testimony at the Alabama People's Hearing (2019).
196. Witness Testimony, Testimony at the Alabama People's Hearing (2019).
197. Witness Testimony, Testimony at the Alabama People's Hearing (2019).
198. Roger White Owl, Chief Exec. Officer, Mandan, Hidatsa, and Arikara Nation, Testimony at the North Dakota People's Hearing (2019).
199. Alicia LaCounte, General Counsel, Turtle Mountain Band of Chippewa Indians, Testimony at the North Dakota People's Hearings (2019).
200. Angela Woodson, Political Action Chair, Cleveland Branch of the NAACP, Testimony at the Ohio People's Hearing (2019).
201. *Id.*
202. *Id.*
203. Billy Sharp, President, Urban League Guild, Testimony at the Ohio People's Hearing (2019).
204. *Id.*
205. James Woodall, Testimony at the Georgia People's Hearing (2019).
206. Of course, these conditions also include what happens outside polling locations, much of which affects voter willingness to cast a ballot. Some witnesses drew attention to voter intimidation and called upon Congress and the public to attend to this issue, given the continued tenuous relationship between the police and law enforcement personnel and residents in communities of color. Alabama People's Hearing witness Patrick Crabtree, for example, testified to the experience of black voters at polling locations patrolled by uniformed officers. Crabtree testified to the following: "Watch, I'm a poll worker, and every black precinct in Mobile there's a city police or sheriff car with the people there dressed. If they were really concerned about making sure voting is done right wouldn't they be in an unmarked car? Like everyday people, so they wouldn't feel threatened. They deliberately do this, so they will not have certain people come in there and try to educate people to vote because they scare them away." Patrick Crabtree, Testimony at the Alabama People's Hearing (2019).
207. Ernest Montgomery, Testimony at the Alabama People's Hearing (2019).
208. Mimi Marziani, *supra* note 77.
209. Patricia Timmons-Goodson, *supra* note 73.
210. Irving Joyner, Professor of Law, North Carolina Central University School of Law, Testimony at the North Carolina People's Hearing (2019).

- 211. Ms. Simmons, retired Union Worker, Testimony at the Ohio People’s Hearings (2019).
- 212. Roger White Owl, *supra* note 200.
- 213. *Id.*
- 214. Inajo Davis Chappell, Member, Cuyahoga Cty. Bd. of Elections, Testimony at the Ohio People’s Hearing (2019).
- 215. Jason Barnes, Ala. Voting Rights Project, Testimony at the Alabama People’s Hearing (2019).
- 216. *Id.*
- 217. *Id.*
- 218. Senator Victor Torres noted that “[T]he first option is that a judge with the agreement of the victim of a crime can dismiss the repayment requirement. The second option allows for a judge to convert all fines and fees and restitution into community service hours. In the second scenario, a person could have their voting rights restored after completing the community service.”
- 219. Jason Barnes, *supra* note 217.

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