



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

**STATEMENT OF KRISTEN CLARKE
PRESIDENT AND EXECUTIVE DIRECTOR
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

**U.S. HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES
HEARING ON "CONTINUING CHALLENGES TO THE VOTING RIGHTS ACT
SINCE *SHELBY COUNTY V. HOLDER*"**

JUNE 25, 2019

Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the U.S House of Representatives Committee on the Judiciary, my name is Kristen Clarke and I serve as the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today on challenges to voting rights: an issue of paramount importance to minorities and our democracy.

The Voting Rights Act of 1965 transformed American Democracy. Ninety-five years after its ratification, it fulfilled the promise of the Fifteenth Amendment that the right to vote should not be denied because of race, color or previous condition of servitude. Today, our nation is at a crucial juncture in the decades-long struggle to create, maintain, preserve, and ensure true equality of voting rights for African Americans, Latinos and other minority communities. The United States Supreme Court's evisceration of a core provision of the Voting Rights Act, coupled with the Department of Justice's abdication of responsibility for enforcing the remaining provisions of the Act, place the voting rights of those populations most in need of protection at peril.

The Lawyers' Committee for Civil Rights Under Law, the organization that I lead, has been a leader in the forefront of the battle for equal rights since it was created in 1963 at the request of President Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. Simply put, our mission is to secure equal justice under the rule of law. For more than 50 years, the Lawyers' Committee has been at the forefront of many of the most important cases brought under the Voting Rights Act. We spearheaded the National Commission on the Voting Rights Act, which made the largest contribution to the record supporting the 2006 reauthorization of the Act and participated in the legal defense of the two cases challenging the constitutionality of the reauthorization. In 2014, we organized the National Commission on Voting Rights which issued a report documenting ongoing voting discrimination.¹ To this day, the Lawyers' Committee's docket of significant voting rights litigation is among the most comprehensive and far-reaching – both geographically and in terms of the issues raised – as any in the nation.

It is unacceptable that in 2019, the right to vote is at risk. A little over 12 years ago, a unanimous Senate and a nearly unanimous House of Representatives reauthorized the temporary provisions of the Voting Rights Act including Section 5.² This vote reflected the historical bipartisan support for the Voting Rights Act. That bipartisanship consensus ended six years ago, with the Supreme Court's decision in *Shelby County v. Holder*,³ which despite Chief Justice Roberts conceding that "voting discrimination still exists; no one doubts that," held that the formula determining which jurisdictions were subject to the pre-clearance requirements of Section 5 was not based on current conditions, and was therefore unconstitutional. Further, the Department of Justice, a governmental agency with not only the primary enforcement authority for enforcing the Voting Rights Act but greater capacity and resources than organizations like the Lawyers' Committee has largely been absent. Indeed, the current Administration has not filed a single case under the Voting Rights Act.

The *Shelby County* decision has led to heightened challenges to voting rights for minorities including: 1) the resurgence of discriminatory voting practices, many motivated by intentional discrimination; 2) increasing levels of recalcitrance among officials who institute and re-institute discriminatory voting changes with impunity; 3) the loss of public notice regarding changes in voting practices that could have a discriminatory effect; 4) the elimination of the public's ability to participate in the process of reviewing those practices; 5) the loss of the deterrent effect of Section 5; and 6) the

¹ National Commission on Voting Rights, *Protecting Minority Voters: Our Work Is Not Done* (2014).

² The Senate passed the reauthorization bill 98-0 and the House 390-33. Congress.Gov, H.R.9 - Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (2006), <https://www.congress.gov/bill/109th-congress/house-bill/9/all-actions?overview=closed&q=%7B%22roll-call-vote%22%3A%22all%22%7D>.

³ 570 U.S. 529 (2013).

increasing costs and burdens imposed on civil rights organizations and community leaders who must fill the gap left by the suspension of Section 5 and the absence of the Department of Justice in the fight to protect the most basic of freedoms. In addition, in two appendices, I provide examples of how Section 5 worked and of post-*Shelby County* instances of voting discrimination. Additionally, at present, the Lawyers' Committee is in the process of conducting a nationwide review of voting discrimination which will be included in a report later this year.

Below is a discussion of the consequences of the *Shelby County* decision, examples of the Lawyers' Committee's efforts to challenge discriminatory voting changes and the lack of enforcement of the Voting Rights Act by the Department of Justice.

A. The consequences of *Shelby County*

The ramifications of the decision in *Shelby County* are numerous and grave. At the most basic level, without the protections of Section 5 of the Voting Rights Act, changes that negatively impact the rights of minority voters in jurisdictions with documented histories of discrimination are now implemented without review by the federal government. As we discuss below, and as shown in Appendix 2, this permits government-authorized voter discrimination to remain in effect while challenges to it are litigated for years. The loss of the right to vote, or restrictions imposed on ballot access, even if ultimately vindicated, can never be fully remedied.

1. Loss of Notice of Proposed Discriminatory Voting Practices

One of the less recognized and more nuanced problems resulting from the lack of Section 5 preclearance is loss of notice that a discriminatory voting change has been enacted in the first place. There are a myriad of ways that the voting rights of minority citizens can be jeopardized. Many of them occur at the local level. Many of them are subtle. They range from the consolidation of polling places so as to make it less convenient for minority voters to vote, to ID requirements, to the curtailing of early voting hours that makes it more difficult for hourly-wage workers to vote, to the disproportionate purging of minority voters from voting lists under the pretext of "list maintenance." Many of these suppressive actions occur in small towns sprinkled across the country, where constant oversight is difficult, if not impossible. By requiring changes in voting practices and procedures to be reported to the federal government by jurisdictions covered by Section 5, the Voting Rights Act provided indispensable notice of such actions before they could be implemented.

2. Loss of Transparency of the Process

With notice came substantial transparency. Under Section 5, on a weekly basis, the Department of Justice posted on its website Section 5 submissions it received, pursuant to the Attorney General's Procedures for the Administration of Section 5 of the Voting Rights Act (Part 51 of Title 28 of the Code of Federal Regulations). Indeed, during 2000-2010, the Attorney General received between 4,500 and 5,500 Section 5 submissions, and reviewed between 14,000 and 20,000 voting changes per year.⁴ The pre-clearance process itself encouraged further transparency, often involving telephone interviews with persons representing or associated with the submitting authority, local organizations, and private citizens, particularly members of the affected racial or language minority groups.

3. Loss of Participation in the Process

The administrative preclearance process encouraged public participation and allowed voters themselves to assess proposed voting changes, consult with racial justice organizations to determine the impact of any proposed changes, and have a real say in the process. For example, in Section 5 reviews of redistricting

⁴United States Department of Justice, About Section 5 of the Voting Rights Act (2017), <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

plans, organizations often presented redistricting plans with demographic and statistical detail, and individual voters submitted their views on the proposed plans to the Department of Justice. This avenue of participation, particularly for minority voters and the organizations representing their interests, is lost without the Section 5 process. Notably, without Congressional action, the upcoming redistricting cycle will be the first without the full protections of the Voting Rights Act.

4. Loss of Deterrence

Section 5 had its intended effect. As Justice Ginsburg memorably analogized in her *Shelby County* dissent, it was the umbrella in a rainstorm⁵. Its specific deterrent effect was self-evident any time the Attorney General or the United States District Court for the District of Columbia refused to preclear a proposed change in voting practices or procedures. Although the Attorney General objected to only approximately one percent of voting changes submitted under Section 5,⁶ these objections represented over 500 redistricting plans, and nearly 800 election method changes.⁷ Examples of discriminatory practices stopped in their tracks under Section 5 are attached to this Testimony as Appendix I.

However, Section 5 also had a powerful general deterrent effect: jurisdictions were clearly more prudent in their approach to changes in voting policy or procedure because of the preclearance requirements. The impact of *Shelby County* on general deterrence was felt immediately, when Texas announced the implementation of its discriminatory photo ID law before the ink was dry on the *Shelby County* opinion⁸, and the North Carolina legislature, with similar haste, enacted an omnibus voting rights law, subsequently found to have been drafted with “surgical precision” to discriminate against minority voters.⁹

The Texas and North Carolina examples represent the headline-grabbing events – cases that would be in the public eye even without Section 5. But the general deterrent effect of Section 5 is equally visible in those relatively smaller, but equally pernicious acts, of suppression, such as poll closings. Changes in polling places accounted for the largest number of submissions under Section 5.¹⁰ Since *Shelby*, in Georgia – a state that had been subject to 151 objections by the Attorney General under Sections 5 – jurisdictions have moved swiftly with attempted efforts to close, consolidate, or relocate polling places and voting precincts since 2013, including:

- Proposal to move 16 of 37 polling sites in Henry County, GA;¹¹
- Proposal to close all but two polling places in Randolph County, GA;¹²

⁵ “Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

⁶ United States Department of Justice, About Section 5 of the Voting Rights Act (2017), <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

⁷ Mark A. Posner, The Real Story Behind the Justice Department’s Implementation of Section 5 of the VRA: Vigorous Enforcement, as Intended by Congress, 1 Duke J. Const. L. & Pub. Pol’y 79, 102, 104–05 (2006).

⁸ See Ryan J. Reilly, Harsh Texas Voter ID Law ‘Immediately’ Takes Effect After Voting Rights Act Ruling, Huffington Post (June 25, 2013 2:04 PM), https://www.huffpost.com/entry/texas-voter-id-law_n_3497724.

⁹ *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

¹⁰ United States Department of Justice, Section 5 Changes by Type and Year (2015), <https://www.justice.gov/crt/section-5-changes-type-and-year-2>.

¹¹ Henry County Board of Commissioners, Notice of Change of Polling Places (January 23, 2019), <http://www.co.henry.ga.us/Departments/D-L/Elections-Registration>.

¹² Vanessa Williams, *Ill-Fated Plan to Close Polling Places in Georgia County Recalled Lingering Prejudice*, Washington Post (August 24, 2018), available at: https://www.washingtonpost.com/politics/ill-fated-plan-to-close-polling-places-in-georgia-county-recalled-lingering-prejudice/2018/08/24/6cad0ee6-a78c-11e8-97ce-cc9042272f07_story.html?utm_term=.f21a24b830ee

- Proposal to eliminate all but one of the City of Fairburn, GA polling places;¹³
- Proposal to eliminate all but one of Elbert County, GA precincts and polling locations;¹⁴
- Numerous polling place and precinct changes in Fulton County, GA;¹⁵
- Proposal to close 2 of 7 precincts and polling places in Morgan County, GA after previously reducing the number from 11 to 7 in 2012;
- Proposal to reduce the number of precincts and polling locations from 36 to 19 in Fayette County, GA;¹⁶
- Proposal to consolidate polling locations in majority-Black Hancock County, GA;¹⁷
- Proposal to eliminate 20 of 40 precincts and polling locations in Macon-Bibb County, GA;¹⁸

Post- *Shelby County* attempts at suppression are not limited to poll closings. Over the past 17 years, the Lawyers’ Committee has led Election Protection, the nation’s largest nonpartisan voter protection coalition. Election Protection—through a suite of hotlines and poll monitoring programs across the country—has provided assistance and support to hundreds of thousands of voters to ensure that they can cast a ballot that counts. Through Election Protection we have also amassed extensive data evidencing systemic barriers faced by voters. Leading up to and during the 2018 midterm election, we received widespread reports of voting practices in states with long histories of voting discrimination like Georgia, Texas, Florida and North Dakota that suppressed the vote. Here are a few examples:

- In Georgia under the state’s “exact match” law, more than 53,000 voter registration applicants, a disproportionate number of whom were African Americans, were placed into “pending” status if the information on their voter registration forms did not exactly match the information in the state’s other error-laden government databases. The law also led to Georgians who are citizens being flagged as potential non-citizens due to the process of comparing the information in the applicant’s voter registration form against outdated citizenship data in the state’s driver’s license records. The Lawyers’ Committee and its partners challenged the law, and a federal court enjoined Georgia’s practice of mandating proof of citizenship documents be produced only to

¹³Daily Report, Notice of Polling Place Location Changes (March 7, 2018), <https://www.law.com/dailyreportonline/public-notices/?atex-class=&keyword=permanent+polling+place+location+change+fairburn+march+15%2C+2018&from=01%2F01%2F2018&to=03%2F31%2F2019>.

¹⁴Elbert County Board of Commissioners, Notice Of Proposal To Consolidate Elbert County Voting Precincts (2018), <https://nearme.elberton.com/local-business/Elbert-County-Board-of-Commissioners/Public-Notice/Notice-Of-Proposal-To-Consolidate-Elbert-County-Voting-Precincts-By-Elbert-County-Board-Of-Commissioners-In-Elberton-Georgia>.

¹⁵Kristina Torres, Fulton OKs Polling Site Changes in Mostly African-American Precincts, Atlanta Journal Constitution (July 13, 2017), <https://www.ajc.com/news/state--regional-govt--politics/fulton-oks-polling-site-changes-mostly-african-american-precincts/BOR4EHJnhNkXa9E32JQU8L/>.

¹⁶ <http://www.fayettecountygga.gov/elections/pdf/Quick-Facts-with-Maps.pdf>

¹⁷ Kristina Torres, Cost-cutting Moves Spur Fears about Reducing Access to Georgia voters, Atlanta Journal-Constitution (October 11, 2016), available at: <https://www.ajc.com/news/state--regional-govt--politics/cost-cutting-moves-spur-fears-about-reducing-access-georgia-voters/qu9lInbKd6dSl6yblbB68M/>

¹⁸ Jeremy Timmermann, Board of Elections Settles on 33 Precincts, The Telegraph (June 10, 2015), available at: <https://www.macon.com/news/politics-government/election/article30238326.html>.

deputy registrars, who are frequently not stationed at polling places, and ordered that the documents be produced to poll managers, who are required to be on-site at polling stations.¹⁹

- In Georgia ahead of the 2018 midterm election, a federal court ordered emergency relief to block the practices of allowing election officials with no prior training in signature verification to reject absentee ballots if they believed the signature on the ballot did not match the voter's signature on file and to reject absentee ballots based upon immaterial omissions or mistakes on the absentee ballot envelopes without allowing the voters a reasonable opportunity to cure the issue so the ballots could be counted.²⁰
- In November 2018, a federal court in Florida held that the state's law, which allowed county election officials to reject vote by mail ballots based upon the officials' untrained determination that the signature on the vote by mail ballot did not match the voter's signature on file with the county election office, constituted an unconstitutional burden on the right to vote.²¹
- In North Dakota, where Native Americans comprise a larger share of the state's population than nationwide, voters were required to provide a state ID showing a residential address. Many Native Americans who live on reservations lack street addresses on their state ID.²²
- In Texas, minority voters and voters who are not native English speakers reported incidents where they were asked about their race, citizenship status, and length of stay in the country by poll workers and poll watchers.²³

5. Increased Burden and Cost of Litigation

Additionally, there is the cost of challenging of discriminatory voting changes – costs which now must be borne primarily by civil rights organizations, whose resources are already stretched thin. Under Section 5, the two methods for a covered jurisdiction to comply with the preclearance requirement were a declaratory judgment action filed by the covered jurisdiction in the United States District Court for the District of Columbia, or administrative review requiring the Attorney General to determine within 60 days of submission whether to block a voting change because the submitting jurisdiction failed to show the change was non-discriminatory.²⁴ The latter avoided expensive and lengthy litigation by submitting proposed changes to the Civil Rights Division of the Department of Justice. The optional declaratory judgment route required a convening by a three-judge panel in the United States District Court for the District of Columbia, with the United States or the Attorney General as the defendant. Over 99 percent of

¹⁹ Laura Grace & Morgan Conley, *Election Protection 2018 Midterm Elections Preliminary Report*, (2018) <https://866ourvote.org/wp-content/uploads/2019/01/Election-Protection-Preliminary-Report-on-the-2018-Midterm-Elections.pdf>; *Georgia Coalition for People's Agenda, Inc. v. Kemp*, 347 F.Supp.3d 1251 (N.D.Ga. 2018).

²⁰ *Id.*; *Martin v. Kemp*, 341 F.Supp.3d 1326 (N.D.Ga. 2018)(blocking practice of rejecting absentee ballots based upon signature match and allowing voters the opportunity to cure the issue); *Martin v. Crittenden*, 347 F.Supp.3d 1302 (N.D.Ga. 2018)(blocking practice of rejecting absentee ballots based upon immaterial or minor errors on the absentee ballot envelope).

²¹ *Democratic Executive Committee of Fla. v. Detzner*, 347 F.Supp.3d 1017 (N.D.Fla. 2018).

²² Laura Grace & Morgan Conley, "Election Protection 2018 Midterm Elections Preliminary Report," (2018) <https://866ourvote.org/wp-content/uploads/2019/01/Election-Protection-Preliminary-Report-on-the-2018-Midterm-Elections.pdf>; Cheyenne Haslett & Roer Hadar, *North Dakota Native Americans fight to protect their right to vote after court ruling (Oct. 21, 2018)*, <https://abcnews.go.com/Politics/native-americans-north-dakota-fight-protect-voting-rights/story?id=58585206>

²³ *Id.*

²⁴ United States Department of Justice, About Section 5 of the Voting Rights Act (2017), <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

changes were reviewed administratively.²⁵ It is important to note that Section 2 of the Voting Rights Act is not an adequate substitute for the prophylactic remedy provided by Section 5.

Without Section 5, enormous resources are needed to both bring, and defend Section 2 claims. While jurisdictions may extend the financial burden to taxpayers, citizens often rely on nonprofit organizations to challenge discriminatory voting practices. Section 2 cases cost millions of dollars to litigate,²⁶ not only in terms of thousands of hours of attorney time, but out-of-pocket expenses for filing fees, transcripts, expert witnesses, and travel.

Section 2 litigation often lasts years and, in some cases, plaintiffs are forced to bring multiple lawsuits over the course of many years to address the same problems because state officials refuse to comply with the federal law even after they have been sued previously for the same issues. The Section 2 Texas photo ID case was a 5-year legal battle, before it ended with a judgment of discrimination and the Texas Legislature's enacting a new law found by the Court of Appeals to cure the discriminatory effect of the old law.²⁷

In Georgia, voters and advocates have been forced to bring multiple lawsuits challenging various iterations of the state's "exact match" voter registration process over the years that has been demonstrated to prevent Georgia's eligible people of color to complete the voter registration process in order to participate in Georgia's elections. In 2008, voters challenged an iteration of the "exact match" process that was instituted by former Secretary of State, Karen Handel, because the state failed to obtain preclearance of the process by the DOJ before implementing it.²⁸ Subsequently, once Handel's successor, Brian Kemp, finally obtained preclearance of a different iteration of the "exact match" process in 2010, voting advocates discovered that the process was disproportionately preventing eligible people of color from successfully completing the voter registration process and filed a second lawsuit challenging the process in 2016.²⁹ Even after Secretary Kemp agreed to settle the 2016 "exact match" litigation, his staff was working behind the scenes with lawmakers in the Georgia General Assembly to draft House Bill 268 in 2017, which codified the exact match process - a process which had already been shown to have a disproportionate, negative effect on the ability of people of color to complete the voter registration process.³⁰ As a result, voting advocates were forced to file the third lawsuit within 10 years to challenge the iteration of the "exact match" process enacted as a result of the passage of House Bill 268 in 2018.³¹

As noted above, costs are also borne by governmental entities defending against discrimination claims. North Carolina lawmakers spent more than \$10.5 million defending their discriminatory omnibus voting bill; and Texas spent more than \$3.5 million defending its discriminatory photo ID law.³² It is unfortunate that taxpayers -- who include those discriminated against -- must foot the bill for their government's discriminatory conduct. But those are among the additional protections lost by the elimination of the much less-costly and time-consuming administrative process under Section 5 that often nipped discriminatory practices in the bud.

²⁵ *Id.*

²⁶ See Understanding the Benefits and Costs of Section 5 Pre-clearance: Hearing Before the S. Comm. on the Judiciary, 109th Cong. 20 (2006) (statement of Armand Derfner, Voting Rights Att'y, Derfner, Altman and Wilborn).

²⁷ *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016); *Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018).

²⁸ See *Morales v. Handel*, Civil Action No. 1:08-CV-3172, 2008 WL 9401054 (N.D.Ga. 2008).

²⁹ See *Georgia State Conference of the NAACP v. Kemp*, Civil Action No. 2:16-cv-00219-WCO (N.D.Ga. 2016).

³⁰ See Georgia House Bill 268 as enacted in the 2017 Georgia Legislative Session, <http://www.legis.ga.gov/Legislation/20172018/170669.pdf>.

³¹ See *Georgia Coalition for the People's Agenda v. Kemp*, 1:18-CV-04727-ELR (N.D..Ga. 2018).

³² Jim Malewitz & Lindsay Carbonell, Texas' Voter ID Defense Has Cost \$3.5 Million, THE TEXAS TRIBUNE (June 17, 2016, 6:00 AM), <https://www.texastribune.org/2016/06/17/texas-tab-voter-id-lawsuits-more-35-million/>.

B. Examples of Lawyers' Committee's Efforts to Challenge Discriminatory Voting Changes

In the years since *Shelby*, we have seen many discriminatory voting practices put in place, both in jurisdictions previously covered by Section 5 and those that were not. But, I emphasize, we have not seen all such attempts. We can only fight the threats we know about, and we have been fortunate to have strong local partners on the ground who use their own strained resources to maintain a wary eye on local election changes. Georgia, a state previously covered by Section 5 of the Voting Rights Act, provides examples of the obstacles facing minority voters that Section 5 would have blocked.

In 2015, the Board of Elections and Registration, in Hancock County, Georgia, changed its process so as to initiate a series of “challenge proceedings” to voters, all but two of whom were African American, which resulted in the removal of 53 voters from the register. Later that year, the Lawyers' Committee, representing the Georgia State Conference of the NAACP and the Georgia Coalition for the Peoples' Agenda and individual voters, challenged this conduct as violating the Voting Rights Act and the National Voter Registration Act, and obtained a preliminary injunction, which resulted in the unlawfully-removed voters placed back on the register. Ultimately plaintiffs and the Hancock County Board agreed to the terms of a Consent Decree that will remedy the violations, and requires the county's policies to be monitored for five years.³³ But after the purge and prior to the court order, Sparta, a predominantly black city in Hancock County, elected its first white mayor in four decades. And before the case was settled, and the wrongly-purged voters placed back on the rolls, at least one of them had died.

Also, in 2015, the Georgia state enacted a mid-decade redistricting plan that reduced the minority population in State House districts in 105 and 111, where increases in the minority voting population had enabled candidates preferred by minority voters to almost defeat the white incumbents. They provided the incumbents with a greater safety margin by re-drawing the districts that made the districts more white in composition and those incumbents narrowly prevailed in 2016. The Lawyers' Committee filed suit in 2017 alleging intentional racial discrimination and a racial gerrymander.³⁴ Fortunately, there, the plan did not work, and African American candidates were able to prevail in 2018, despite the efforts to prevent such a result. Ultimately the site was relocated to a majority black church.

Efforts to move polling sites to hostile locations was also another discriminatory practice that had been blocked by the Section 5 review process. Without Section 5, we've seen officials attempt to move sites to intimidating locations. In 2016, the Macon-Bibb County, Georgia, Board of Elections voted to temporarily relocate a voting precinct location to the Macon-Bibb Sheriff's Office. Because of valid fears that this decision would reduce turnout among African American voters, the Lawyers' Committee worked with its local partners, the Georgia State Conference of NAACP Branches, the Georgia Coalition for the People's Agenda, and New Georgia Project, to organize a successful petition drive that required the Board of Elections to reverse the relocation decision under Georgia law³⁵

In certain instances, we were fortunate to have partners on the ground that alerted us to potentially discriminatory voting barriers. An effective Section 5 process would have placed the burden on these jurisdictions to have provided notice of these changes in their voting practices and policies before they took effect.

³³ See *Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR), 2018 WL 1583160, at *1 (M.D. Ga. Mar. 30, 2018).

³⁴ See *Georgia State Conference of the NAACP v. State of Georgia*, 269 F. Supp. 3d 1266 (N.D. Ga. 2017).

³⁵ Stanley Dunlap, *Macon-Bibb Polling Location OK'd After Sheriff's Precinct Nixed*, *The Telegraph* May 16, 2016, 7:27 PM, <http://www.macon.com/news/local/article77920442.html>.

Texas presents another jurisdiction which demonstrates the substantial problems caused by *Shelby County* in previously covered jurisdictions. In 2011, the Texas legislature passed a law, SB 14, which limited the number of identifying documents for purposes of voting to seven, all photo IDs.³⁶ Because Section 5 was in effect at the time of SB 14's passage, Texas sought pre-clearance, first from the Justice Department, which blocked the change. Then, Texas sought preclearance from the United States District Court for the District of Columbia. On August 30, 2012, a unanimous three-judge panel of that court denied Texas pre-clearance, ruling that because Black and Latinx voters would be disproportionately burdened in obtaining the required IDs compared to white voters, that SB 14 would have a retrogressive effect on these minority voters.³⁷ However, on June 27, 2013, this judgment was vacated by the Supreme Court in accordance with the ruling in *Shelby* two days earlier.³⁸

Texas had not even waited for the Supreme Court to act on the case. The afternoon that *Shelby* was decided, then Texas Attorney General Greg Abbott announced that the State would immediately implement SB 14.³⁹ Without the protections of Section 5, several civil rights groups including the Lawyers' Committee for Civil Rights Under Law, filed suit in Texas federal court, challenging SB 14 under Section 2 of the Voting Rights Act. The Department of Justice filed its own suit under Section 2, which was consolidated with those of the civil rights groups.⁴⁰ The parties then embarked on months of discovery, leading to a two-week trial in September 2014, where dozens of witnesses, including 16 experts – half of whom were paid for by the civil rights groups – testified.

In late 2014, the District Court ruled that SB 14 violated the “results” prong of Section 2 of the Voting Rights Act, because it had a discriminatory result in that Black and Hispanic voters were two to three times less likely to possess the SB 14 IDs and that it would be two to three times more burdensome for them to get the IDs than for white voters.⁴¹ The District Court's injunction against SB 14, however, was stayed pending appeal by the Fifth Circuit, so the law – now deemed to be discriminatory remained in effect. Subsequently, a three-judge panel and later an en banc panel of the Fifth Circuit Court of Appeals, affirmed the District Court's finding. As a result, elections that took place from June 25, 2013 until the Fifth Circuit *en banc* opinion on July 20, 2016 took place under the discriminatory voter ID law.⁴²

Had Section 5 been enforceable, the enormous expense and effort that the civil rights groups bore would not have been necessary. More important, had Section 5 been enforceable, a law found to have been discriminatory by 14 different federal judges would never have taken effect.

³⁶ These were Texas drivers' licenses, Texas personal identification cards, United States passports, United States naturalization papers, United States military identification, Texas licenses to carry a concealed handgun, and Texas Election Identification Certificates. Tex. Elec. Code Ann. § 63.0101.

³⁷ *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012).

³⁸ *Texas v. Holder*, 570 U.S. 928 (2013).

³⁹ See Ryan J. Reilly, Harsh Texas Voter ID Law ‘Immediately’ Takes Effect After Voting Rights Act Ruling, Huffington Post (June 25, 2013 2:04 PM), https://www.huffpost.com/entry/texas-voter-id-law_n_3497724.

⁴⁰ The suits were consolidated under *Marc Veasey v. Greg Abbott*, 265 F. Supp. 3d 684 (S.D. Tex. 2017).

⁴¹ *Veasey v. Perry*, 71 F. Supp. 3d 627, 659-77 (S.D. Tex. 2014), *aff'd in part, vacated in part, remanded sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), on reh'g en banc, 830 F.3d 216 (5th Cir. 2016), and *aff'd in part, vacated in part, rev'd in part sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

⁴² *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016). The district court had also found that SB 14 was enacted, at least in part, with discriminatory intent, a prerequisite of a constitutional violation, but the issue was remanded for further fact-finding. On remand, the district court reaffirmed its finding of discriminatory intent. On appeal from that ruling, the Fifth Circuit reversed, not on the merits, but because by then the Texas Legislature had enacted a new law that substantially remediated the discriminatory effects of SB 14, according to that court.

A. Enforcement of the Voting Rights Act

Since *Shelby*, the Department of Justice has filed only *four* suits alleging violations of Section 2 of the Voting Rights Act and only one after 2013.⁴³ By way of comparison, the Lawyers' Committee has filed *thirteen* such suits during that same time period.⁴⁴ Of even greater concern is that since January 20, 2017, the Department has not filed a single suit under the Voting Rights Act.⁴⁵ Again, by way of comparison, the Lawyers' Committee has filed *five* lawsuits under Section 2 during that same period.⁴⁶ Two of the Section 2 cases filed by the Lawyers' Committee settled relatively quickly with the establishment of majority-minority election districts in Emanuel County, Georgia and Jones County, North Carolina. The increase in work being carried out by civil rights organizations has helped provide relief for minority voters, but is no substitute for the protections provided by Section 5.⁴⁷

As shown in Appendix 2, enforcement of voting rights in the states has fallen primarily upon the shoulders of individual voters, non-profit voting rights and racial justice organizations or other non-governmental advocates. Although not all of the cases in Appendix 2 would have been avoided through the preclearance process, it is clear that states, particularly those with a well-documented history of voting discrimination, wasted no time in enacting discriminatory voting changes and implementing a whole host of barriers to the ballot box that negatively and disproportionately impacted African Americans, Latinxs, and other people of color in the wake of *Shelby*. Many of these cases stand as stark examples of the onerous and burdensome nature and uncertain outcome of private enforcement of our voting rights laws

⁴³ *Perez v. Perry*, No. SA-11-CV-360, 2014 WL 2533801, at *1 (W.D. Tex. June 5, 2014) (Texas Photo ID); *United States v. Texas*, No. 5:11-cv-00360(W.D. Tex.) (legislative redistricting); *United States v. North Carolina*, No. 13-cv-861 (M.D.N.C. Feb. 6, 2014) (state omnibus voting law); *United States v. City of Eastpointe*, No. 4:17-CV-10079, 2019 WL 1379974, at *1 (E.D. Mich. Mar. 27, 2019) (vote dilution).

⁴⁴ *Texas State Conference of NAACP Branches v. Steen* No. 2:13-cv-291 (S.D. Tex.2013) , consolidated under *Veasey v. Abbott*, No. 2:13-cv-00193 (NGR) (S.D. Tex. 2013)Texas Photo ID law); *Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR), 2018 WL 1583160, at *1 (M.D. Ga. 2018) (voter purge); *Georgia State Conference of NAACP v. Gwinnett Cty. Bd. of Registrations & Elections*, No. 1:16-cv-2852-AT, 2017 BL 344388 (N.D. Ga. 2017) (vote dilution); *Georgia State Conference of the NAACP v. Emanuel County Board of Commissioners*, No. 6:16-cv-00021 (S.D. Ga. Feb 23, 2016) (creation of two majority-minority single-member districts for seven member Board of Education); *Navajo Nation Human Rights Comm'n v. San Juan Cty.*, No. 2:16-CV-00154 JNP, 2016 WL 3079740, at *1 (D. Utah May 31, 2016), vacated (June 16, 2016) access to in-person absentee voting and language assistance); *Lopez v. Abbott*, 339 F. Supp. 3d 589 (S.D. Tex. 2018) (vote dilution); *Georgia State Conference of the NAACP v. Kemp for Georgia*, No. 1:17-CV-1397-TCB, 2018 WL 2271244, at *1 (N.D. Ga. 2018) (challenge to exact match process for voter registration); *Alabama State Conference of NAACP v. State*, 264 F. Supp. 3d 1280 (M.D. Ala. 2017) (vote dilution); *Georgia State Conference of NAACP v. State*, 269 F. Supp. 3d 1266 (N.D. Ga. 2017) (racial gerrymander); *Hall v. Jones County Board of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Feb. 13, 2017) (vote dilution); *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (challenge to new statute reinstating exact match for voters registration); *Thomas v. Bryant*, 366 F. Supp. 3d 786, 2019 BL 52194 (S.D. Miss. 2019) (vote dilution); *MOVE Texas Civic Fund v. Whitley*, No. 3:19-cv-00041 (S.D. Tex. Feb. 4, 2019) (voter purge).

⁴⁵ The last Voting Rights Act complaint filed by the United States was a vote dilution claim filed on January 10, 2017. *United States v. City of Eastpointe*, No. 4:17-CV-10079, 2019 WL 1379974, at *1 (E.D. Mich. 2019).

⁴⁶ *Hall v. Jones County Board of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Feb. 13, 2017) (vote dilution); *Georgia State Conference of NAACP v. State*, 269 F. Supp. 3d 1266 (N.D. Ga. 2017) (racial gerrymander); *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (challenge to new statute reinstating exact match for voter registration); *Thomas v. Bryant*, 366 F. Supp. 3d 786, 2019 BL 52194 (S.D. Miss. 2019)(Racial gerrymander); *MOVE Texas Civic Fund v. Whitley*, No. 3:19-cv-00041 (S.D. Tex. Feb. 4, 2019).

⁴⁷ *Hall v. Jones County Board of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Feb. 13, 2017) (creation of two single-member, majority-minority districts for seven member Board of County Commissioners); *GA State Conference of the NAACP v. Emanuel County Board of Commissioners*, No. 6:16-cv-00021 (S.D. Ga. Feb 23, 2016) (creation of two majority-minority single-member districts for seven member Board of Education).

that the Section 5 preclearance process and strong federal enforcement of voting rights could largely prevent or mitigate against.

Conclusion

The combination of the effective elimination of Section 5 of the Voting Rights Act and lack of enforcement activity of the Civil Rights Division of the Justice Department presents a perfect storm not seen since the days preceding the enactment of the momentous civil rights legislation in the 1960s. Vigilance is required to monitor and xxx the resurgence of voting rights discrimination in formerly covered jurisdictions and we urge Congress to act swiftly to restore the Voting Rights Act to help this Nation protect that most fundamental of all civil rights: the right to vote.

APPENDIX I

Examples of discriminatory voting changes that Section 5 prevented from taking effect.

Prior to the Supreme Court's decision in *Shelby County v. Holder*,⁴⁸ Section 5 of the Voting Rights Act prevented numerous discriminatory voting changes from taking effect. The *Shelby County* decision has hit African American voters particularly hard as nearly 90% of the proposed voting changes stopped by Section 5 between 1995 and 2013 involved a discriminatory purpose or effect on African American voters.⁴⁹ During that 18-year period, there were 113 denials for Section 5 preclearance, examples of which are highlighted below:⁵⁰

Redistricting Changes: Over half of the Section 5 preclearance denials were for redistricting changes, including denials of statewide redistricting plans in Arizona, Florida, Louisiana, South Carolina and Texas.

- In 1996, the Justice Department objected to Louisiana's congressional redistricting plan, concluding that with the racially polarized voting pattern in Louisiana, the proposed plan would "provide no realistic opportunity for black voters to elect a candidate of their choice outside the New Orleans area."⁵¹
- In 1997, the Justice Department objected to South Carolina's State Senate redistricting plan based on clear findings of racially polarized voting patterns.⁵²
- In 2002, the Justice Department objected to Arizona's 2001 legislative redistricting plan on the grounds that the state failed to provide sufficient evidence to show that voting was not racially polarized and failed to prove that the proposed decreased number of majority-minority districts would not be retrogressive.⁵³
- In 2011, Texas created redistricting plans for the Texas House of Representatives, the Texas Senate and the United States Congress and sought to bypass the Justice Department's preclearance process by filing suit for judicial preclearance. The three-judge panel of the U.S. District Court for the District of Columbia denied preclearance for all three plans, finding signs of purposeful discrimination in the State House of Representatives plan, intentional discrimination against minority voters in the Texas Senate and congressional redistricting plans. Additionally, the court concluded that the State House of Representatives and congressional redistricting plans were retrogressive.⁵⁴

Polling Place Closures and Changes

- In 2003, Bexar County in Texas announced it was planning to reduce the number of early voting polling places from 20 to 11 while awaiting the Justice Department's decision on the County's preclearance request. Among the polling place closures were five that served the predominantly-

⁴⁸ 570 U.S. 529 (2013).

⁴⁹ National Commission on Voting Rights, *Protecting Minority Voters: Our Work Is Not Done* 13 (2014).

⁵⁰ *Id.* at 57.

⁵¹ Determination Letter from Deval L. Patrick, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to state of La. (Aug. 12, 1996), available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-2310.pdf>.

⁵² Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to state of S.C. (Apr. 1, 1997), available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-2090.pdf>.

⁵³ Determination Letter from Ralph F. Boyd, Jr., Assistant Att'y Gen., U.S. Dep't of Justice, to state of Ariz. (May, 20 2002), available at https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/A_020520.pdf.

⁵⁴ *Texas v. United States*, 887 F. Supp. 2d 133, 138, 152, 161-162, 177 (D.D.C. 2012).

Hispanic west side of San Antonio. A civil rights organization filed a Section 5 enforcement action seeking an injunction, which was granted by a federal court to enjoin the polling place closures.⁵⁵

Voter Registration Laws:

- In response to the NVRA, in 1995 Mississippi implemented a dual registration system where voters who registered under NVRA-mandated options would only be eligible to vote in federal elections. In order to vote in state elections, eligible voters were required to re-register using state forms. Following concerns raised by the Justice Department, Mississippi refused to submit the dual registration system for Section 5 preclearance. Private plaintiffs commenced a Section 5 enforcement action that made its way to the Supreme Court, which held that Mississippi was required to obtain preclearance. The Justice Department objected to the dual registration system and Mississippi abandoned it.⁵⁶

Voter Purges:

- In 2007, Georgia implemented a computerized citizenship matching procedure that cross-checked the statewide voter registration list with citizenship information in the state's driver's license database to identify and remove noncitizens from the voter rolls. Local election officials in the state were provided with a computerized printout of potential noncitizens with instructions that they use it to review voter eligibility. This led to local election officials mailing letters to thousands of voters informing them that they would be removed from the voter registration lists unless they appeared in-person and presented proof of citizenship. In some instances, voters were given as little as a few days to do so. A private citizen, who obtained their license in April 2006, became a United States citizen in November 2007 and registered to vote in September 2008 then subsequently received letters from Cherokee County election officials, brought a Section 5 enforcement action because Georgia had not submitted the new procedure for preclearance. A federal court in Georgia enjoined the State from using the procedure until preclearance was obtained and ordered the State to take steps to remedy its prior unauthorized use of the procedure. In May 2009, the Justice Department interposed a Section 5 objection to Georgia's procedure noting that it subjects minority voters to additional and erroneous burdens on the right to vote.⁵⁷

⁵⁵ Order Granting Plaintiff's Application for a Temporary Restraining Order at 1-3, 6 *Miguel Hernandez Chapter of the Am. GI Forum v. Bexar Cty.*, No. 5:03-cv-00816 (W.D. Tex. 2003), available at http://www.clearinghouse.net/chDocs/not_public/VR-TX-0420-0002.pdf; Testimony of Nina Perales, Reg'l Counsel, Mexican Am. Legal Def. & Educ. Fund, Southwest Regional Hearing 51 (Apr. 7, 2005) (on file with the Lawyers' Committee).

⁵⁶ *Young v. Fordice*, 520 U.S. 273, 291 (1997);

Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Mississippi (Sept. 22, 1997), available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/MS-2650.pdf>.

⁵⁷ See Determination Letter from Loretta King, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Georgia (May 29, 2009), available at <https://www.justice.gov/crt/voting-determination-letter-58>; Complaint at ¶¶ 33-40, *Morales v. Handel*, No. 1:08-cv-3172 (N.D. Ga. October 9, 2008); See also *Morales v. Handel*, No. 1:08-CV-3172, 2008 WL 9401054 (N.D. Ga. Oct. 27, 2008).

APPENDIX 2

Alabama

Challenge to At-Large Elections for Judicial Candidates that Dilute the Voting Strength of Black Voters

***Alabama State Conference of NAACP v. Alabama*, 264 F. Supp. 3d 1280 (M.D. Ala. 2017):** On September 7, 2016, Plaintiffs filed a vote dilution lawsuit under Section 2 of the Voting Rights Act (VRA) in the Middle District of Alabama challenging the state’s at-large method of electing justices and judges of the Alabama Supreme Court, the Court of Criminal Appeals, and the Court of Civil Appeals. Defendants filed a motion to dismiss; the District Court denied the motion. The case was tried in November 2018 and the parties are awaiting a decision.

Lawsuit Challenging Alabama’s Discriminatory Photo ID Law

***Greater Birmingham Ministries v. Merrill*, Case No. 2:15-cv-02193-LSC (N.D. Ala 2015):** On December 2, 2015, advocates filed a lawsuit in the United States District Court for the Northern District of Alabama challenging Alabama’s photo ID law under Section 2 of the VRA and the United States Constitution. Plaintiffs contend the photo ID law violates 1) Section 2 of the Voting Rights Act because it abridges or denies the right to vote on account of race, color, or language minority status, 2) violates the prohibition on tests or devices for voting under the VRA, and 3) violates the Fourteenth and Fifteenth Amendments because it was purposefully enacted to deny or abridge the right to vote on account of race or color. On January 10, 2018, the Court granted summary judgment in favor of the Alabama Secretary of State and dismissed the lawsuit.⁵⁸ The Plaintiffs’ appeal is pending.

Voters Challenge Alabama’s Congressional Map that Dilutes the Voting Strength of Black Voters

***Chestnut v. Merrill*, No. 2:18-CV-00907 (N.D. Ala. Mar. 27, 2019):** In June of 2018, eight Alabama voters filed a federal lawsuit alleging that Alabama’s 2011 congressional map violates Section 2 of the VRA. Plaintiffs allege the map packs African-American voters into Alabama’s Seventh Congressional District and significantly cracks African-American voters between three other congressional districts, with the effect of diluting African-American voting strength. The suit alleges that the African-American population in the three “cracked” congressional districts is sufficient to form a second majority-minority district. On March 27, 2019, the court partially granted the Defendant’s motion for judgment on the pleadings, concluding that Plaintiffs’ demand for affirmative relief is barred by the doctrine of laches, but denied the motion as to Plaintiffs’ demand for declaratory relief (i.e., a declaration determining the maps violate Section 2). The case is currently scheduled for trial later this year.

⁵⁸ *Greater Birmingham Ministries v. Merrill*, 284 F.Supp.3d 1253 (N.D. Ala. 2018).

Voters Challenge Alabama’s Felony Disenfranchisement Law

Thompson v. Merrill, Civil Action No. 2:16-cv-783-WKW-CSC (M.D.Ala. 2016): In 2016, Alabama voters filed suit challenging Alabama’s felony disenfranchisement law which they allege is intentionally racially discriminatory and leads to arbitrary and unconstitutional disenfranchisement of citizens in violation of the United States Constitution and Section 2 of the VRA. Plaintiffs also argue that broad felon disenfranchisement is not sanctioned by the Fourteenth Amendment’s “rebellion or other crime” language and that the Constitution supports, at most, very limited disenfranchisement of voting-related offenses. The case is pending.

Alaska

Lawsuit Successfully Challenged Alaska’s Failure to Provide Language Assistance to Yup’ik and Gwich’in Speaking, Limited English Proficient Voters

Toyukak v. Treadwell, No. 3:13-cv-00137-SLG (D. Alaska June 24, 2014): Voters and tribal councils filed suit challenging the failure of state and local officials to provide language assistance to Yup’ik and Gwich’in speaking, limited English proficient voters under Section 203 of the VRA and the United States Constitution. After prevailing on their Section 203 claim at trial, the Court ordered comprehensive remedies for the 2014 election cycle and, in 2015, the parties entered into a settlement that included additional language assistance reforms in the state.

Arizona

Maricopa County, Arizona Sued Post-Shelby Due to Election Administration Problems caused by Polling Place Consolidations

Huerena v. Reagan, Superior Court of Arizona, Maricopa County, CV2016-07890: This lawsuit challenged the reduction of polling places in Maricopa County after severe cut-backs disenfranchised voters in the 2016 presidential preference primary because of extremely long lines, hours-long wait-times and a host of election administration problems. Maricopa County is Arizona’s most populous county and was a covered jurisdiction under Section 5 of the VRA with approximately 60 percent of the state’s minority voters residing in the county. As a result of the *Shelby* decision, Maricopa County was no longer required to preclear polling place changes. As a result, in February 2016 the county slashed the total number of polls from 211 in 2012 to only 60 in 2016. With this reduction, there was approximately one polling place for every 21,000 voters in Maricopa County as compared to one polling place for every 1,500 voters in the rest of the state. The parties settled the case with an agreement that required Maricopa County to create a comprehensive wait-time reduction plan and a mechanism to address wait times at the polls that exceed 30 minutes.

Arizona Secretary of State Sued to Enjoin the State's Two-Tier Voter Registration Process

***League of United Latin Am. Citizens Arizona v. Reagan*, No. CV17-4102 PHX DGC, 2018 WL 5983009 (D. Ariz. Nov. 14, 2018)**: Arizona created a two-tier voter registration process in the wake of the Supreme Court's decision in *ITCA v. Arizona*, which held that Arizona's documentary proof of citizenship requirement was preempted by the National Voter Registration Act (NVRA) as applied to federal elections. Confusion ensued when the state limited voters using the federal form to voting in federal elections, even if the state had information in its possession confirming the applicant was a United States citizen. Plaintiffs argued that the state's two-tier registration process constituted an unconstitutional burden on the right to vote. The parties settled the matter with an agreement that allows the state to continue to require proof of citizenship to register to vote in state elections, but requires the state to treat federal and state registration forms the same and to check motor vehicle databases for citizenship documentation before limiting users of the federal registration form to voting in federal elections.

State Court Challenge to the Redistricting of the Maricopa County Community College District Which Added Two At-Large Seats to the Board

***Gallardo v. State*, 236 Ariz. 84 (Ariz. 2014)**: Elected officials and voters filed suit in December 2013 in Arizona state court challenging the method used for electing the Governing Board of the Maricopa County Community College District. In 2010, the Arizona Legislature enacted H.B. 2261 requiring that two at-large seats be added to the Governing Board, increasing the size of the Board from five to seven. The pre-existing five members of the Board were elected from single-member districts. As a result, H.B. 2261 established a new method of election consisting of five members elected from single-member districts and two elected at large. The lawsuit alleged that H.B. 2261 violated the Arizona State Constitution because the statute effectively only applies to the Maricopa County District, and does not apply to any of the other community college districts in the state. The suit alleged that H.B. 2261 violates the state Constitution's prohibition against local or special laws and the Constitution's privileges and immunities clause.

When H.B. 2261 was enacted, Arizona was required by Section 5 of the Voting Rights Act to obtain preclearance for its voting changes. The State submitted this legislation to the U.S. Department of Justice for review, and the DOJ responded by sending a written request for additional information noting concerns as to whether the addition of two at-large seats would discriminate against the District's minority residents. Instead of providing the requested information, the State set the legislation aside and did not seek to implement it. However, as a result of the Supreme Court's decision in June 2013 in *Shelby County v. Holder*, Arizona was no longer covered by Section 5 and thus was not required to obtain preclearance to implement H.B. 2261. As a result, after *Shelby County* was decided, local election officials began preparations to fill the two new at-large seats in the November 2014 election.

Shortly after suit was filed, the constitutionality of H.B. 2261 was presented to the Arizona superior court for decision and, on March 27, 2014, the court ruled in favor of the defendants. Plaintiffs appealed and on April 23, 2014, one day after oral argument, the Arizona Court of Appeals held that H.B. 2261 is a special law that violates the Arizona Constitution. Defendants then appealed and, on August 26, 2014, the Arizona Supreme Court issued a minute order vacating the ruling by the Arizona Court of Appeals. In the November 2014 election, the two new at-large seats were filled. A Latino candidate ran but finished third, and thus was defeated.

**Voters, Political Party and Candidate Filed Suits Challenging Arizona’s Criminalization of the
Collection of Absentee Ballots by Persons other than the Voter and
Restrictions on Out of Precinct Voting**

Democratic National Committee v. Reagan CV-16-01065 (D.Az. 2016): The Plaintiffs allege that Arizona’s criminalization of the collection of valid absentee ballots by persons other than the voter and the state’s restrictions on out of precinct voting violate Section 2 of the VRA and Constitution. Plaintiffs did not prevail at trial or before a panel of the Ninth Circuit Court of Appeals. However, in January 2019, the Ninth Circuit granted a rehearing *en banc* and the case remains pending at this time.

California

**Successful Section 2 Vote Dilution Lawsuit on Behalf of Latino Voters Challenging the Districting
Plan for the Five Member Kern County Board of Supervisors**

Luna v. County of Kern, 291 F.Supp. 3d 1088 (E.D. Cal. 2018): This was an action brought pursuant to Section 2 of the Voting Rights Act on behalf of Latino voters in Kern County, California, in which Plaintiffs alleged that the districting plan under which the five members of the Kern County Board of Supervisors were elected deprived Latino voters an equal opportunity to elect candidates of their choice. After the District Court found in favor of the Plaintiffs at trial, the parties agreed to a settlement which provided for a new districting plan with ability to elect majority-Latino districts and an award of \$3 million dollars in attorneys’ fees and costs to plaintiffs’ counsel.

Connecticut

NAACP Challenged “Prison Gerrymandering” of Connecticut Legislative Districts

NAACP v. Merrill, No: 3:18-cv-01094 (D. Conn. 2018): In June 2018, the NAACP, the NAACP Connecticut State Conference and five Connecticut NAACP members, filed suit contending that Connecticut’s 2011 state legislative maps violate the “one person, one vote” principle of the Fourteenth Amendment because of unlawful prison gerrymandering, i.e., counting incarcerated individuals as residents of the district in which they are imprisoned rather than at their home addresses for the purpose of drawing state legislative districts. Plaintiffs argue that this practice dilutes the voting power of the predominantly African American and Latino prisoners’ home communities. Defendants’ motion to dismiss was denied in February 2019 and the state has appealed that decision.

Florida

Voters and Voting Rights Advocates Challenge Florida's Arbitrary Standards for Restoring the Voting Rights of Returning Citizens

***Hand v. Scott*, 315 F. Supp. 3d 1244 (N.D. Fla. 2018):** Advocates filed a class action lawsuit that sought to automatically restore the voting rights of returning citizens and eliminate Florida's arbitrary petition process for re-enfranchisement. The case cited the lack of any rules governing the Executive Clemency Board, which grants or denies former felons' petitions for re-enfranchisement, as arbitrary treatment in violation of the First and Fourteenth Amendments. The case was filed in March 2017, and the Plaintiffs obtained a preliminary injunction in March 2018 that required the Executive Clemency Board to establish a new re-enfranchisement process by April 26, 2018. Defendants appealed to the Eleventh Circuit Court of Appeals, and on April 25, 2018, the court granted then Governor Scott's request to stay the order requiring him to establish a new re-enfranchisement process.

Voters and Voting Rights Advocates Successfully Challenge Florida's Congressional District Maps in State Court

***League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258 (Fla. 2015):** State-court litigation was filed by good-government groups over concerns that Florida's congressional maps were unconstitutional under state law. The Circuit Court agreed and found that congressional districts five and ten were unconstitutional and had to be redrawn. The legislature enacted new maps, and the Court did not object to the new maps. Plaintiffs appealed the decision after the Florida Legislature enacted the new maps and requested certification to the Florida Supreme Court. The district court of appeals granted certification to the Florida Supreme Court, and it accepted jurisdiction. The NAACP intervened to defend African American opportunity districts that were threatened. Other civil rights advocates filed an *amicus* brief to inform the Court about concerns over the reduction of District Nine's Latino population. Both the NAACP and *amici* have focused on protections offered by the Fair Districts Amendment under Florida's Constitution. The Florida Supreme Court ruled that the maps are unconstitutional and ordered the legislature to redraw several congressional districts.

Voters Filed Suit against the Florida Secretary of State and 32 Counties Due to Their Failure to Provide Adequate Language Assistance to Puerto Rican Voters under the Voting Rights Act

***Madera v. Detzner*, No. 1:18-CV-152-MW/GRJ (N.D. Fla. 2018):** After Hurricane Maria devastated Puerto Rico, an estimated 160,000 people fled to Florida, joining over half a million people who left Puerto Rico in the past decade because of the island's economic crisis. As a result, Florida's Puerto Rican population now totals over one million. Section 4(e) of the VRA requires the provision of bilingual voting materials and assistance for Puerto Rican-educated, limited English proficiency voters. After advocates were unable to informally obtain compliance by sending letters about these requirements to election officials, they filed a lawsuit against the Florida Secretary of State and 32 Florida counties to compel compliance with Section 4(e). On September 7, 2018, the district court ordered the Secretary of State to issue instructions to the 32 counties, requiring them to provide Spanish-language sample ballots at polling places, on county websites, and by mail to guide voters in marking their ballots, and to publicize the availability of these sample ballots and instructions on how to use them. On May 10, 2019, the District Court issued an order requiring Florida's Secretary of State and the Supervisors of Elections in the 32

Florida counties take further action to comply with Section 4(e) of the VRA. Specifically, the order requires the Secretary of State to ensure that those 32 counties provide 1) official ballots in both Spanish and English, 2) Spanish language election assistance, and, 3) Spanish translations of other voting materials for elections beginning with the 2020 presidential primary election. The case remains pending.

Voting Rights Advocates Successfully Organized Campaign to Pass Amendment Automatically Restoring Rights to Returning Citizens, but the Florida Legislature Made Efforts to Undermine its Implementation

Advocates invested significant resources to support a ballot initiative (Amendment 4) that restored voting rights to individuals with felony records upon completion of their sentences. Despite the fact that Amendment 4 was designed to be self-implementing, the Florida enacted laws in 2019 that will require returning citizens to satisfy fines and fees before becoming eligible to register to vote. In addition, in the wake of this successful ballot initiative, Florida also enacted legislation making it more difficult for proponents of ballot initiatives to be successful in the future.

Georgia

Voters and Voting Rights Advocates Challenge Georgia’s “Exact Match” Law Which Disproportionately Disenfranchises African American, Latino and Asian American Voters

Georgia Coal. for People's Agenda, Inc. v. Kemp, 347 F. Supp. 3d 1251 (N.D. Ga. 2018): On October 11, 2018, a coalition of civil rights organizations filed suit in the U.S. District Court for the Northern District of Georgia, against then Georgia Secretary of State, Brian Kemp, alleging that Georgia’s “exact match” voter registration process, which requires information on voter registration forms to exactly match information about the applicant on Social Security Administration (SSA) or the state’s Department of Driver’s Services (DDS) databases, violates Section 2 of the VRA, the NVRA, and imposes an unconstitutional burden on the right to vote in violation of the First and Fourteenth Amendments. Under the “exact match” process, more than 53,000 applicants were in “pending” status in 2018 because the information on their voter registration applications did not exactly match the DDS or SSA database information or because the process inaccurately flagged United States citizens as potential non-citizens. On November 2, 2018, the Court partially granted Plaintiffs’ motion for preliminary relief, ordering that Georgians inaccurately flagged as non-citizens could vote a regular ballot if they provided proof of citizenship to a poll manager, rather than a deputy registrar, when voting at the polls for the first time. The Georgia legislature subsequently amended the “exact match” law in 2019 to permit applicants who fail the “exact match” process for reasons of identity to become active voters, but the Legislature chose not to enact any remedial legislation to reform the “exact match” process that continues to inaccurately flags United States citizens as non-citizens. The litigation is still pending.

Voters and Advocates Successfully Challenged Georgia’s Rejection of Absentee Ballots Based upon Alleged Signature Matching and Immaterial Errors or Omissions

Martin v. Kemp, No. 18-14503-GG (N.D. Ga. 2018): On October 23, 2018, civil rights organizations joined lawsuits challenging the state’s practices of 1) rejecting of absentee ballots based upon election officials’ untrained conclusion that the voter’s signature on the absentee ballot envelope did not match the voter’s signature on file with the registrar’s office, and 2) rejecting absentee ballots for immaterial errors or omissions on the ballot envelope. Georgia had an extraordinarily high rate of absentee ballot rejections

generally, but the rejection rate in Gwinnett County was almost 3 times that of the state and absentee ballots cast by voters of color were rejected by Gwinnett County at a rate between 2 and 4 times the rejection rate of absentee ballots cast by white voters. Plaintiffs were granted preliminary relief before the November 2018 mid-term election. Subsequently, Georgia enacted remedial legislation and the lawsuits were voluntarily dismissed in 2019.

Successful Legal Challenge to Georgia's Runoff Election Scheme in Federal Elections

***Georgia State Conference NAACP v. Georgia*, No. 1:17-CV-1397-TCB (N.D. Ga. May 4, 2017):** This case challenged Georgia's runoff election voter registration scheme as a violation of the National Voter Registration Act ("NVRA"). Under Georgia law, eligible Georgians were required to register to vote on the fifth Monday before a general or primary election in order to be eligible to vote in a runoff election if no candidate received a majority of the vote. The runoff election would generally be held about two months after the general or primary election. As a result, Georgians would be required to register to vote approximately three months before a runoff election in order to participate in that election. Under Section 8 of the NVRA (52 U.S.C. § 20507(a)(1)), states are prohibited from setting voter registration deadlines in excess of thirty days before a federal election. Thus, Georgia's runoff election voter registration scheme violated this provision of the NVRA and the District Court granted a preliminary injunction enjoining the state from using the longer deadline ahead of the Georgia Sixth Congressional Runoff Election in June 2017. Subsequently, the parties settled the matter with the Secretary of State agreeing not to enforce a voter registration deadline that violated Section 8 of the NVRA.

Voters and Voting Rights Advocates Challenged Georgia's Mid-Decade Redistricting of Two Legislative Districts Targeting African-American Communities

***Georgia State Conference of NAACP v. Georgia*, No. 1:17-CV-1427 (N.D. Ga. 2017) and *Thompson v. Kemp*, 1:17-cv-03856-TCB (N.D. Ga. 2017):** Voters and advocates filed two lawsuits in the United States District Court for the Northern District of Georgia, challenging the State legislature's post-*Shelby* 2015 redistricting of two legislative districts as racial and partisan gerrymanders. The Plaintiffs alleged the legislature targeted African American population in drawing the districting plans to increase the electoral advantage of white Republicans as the districts were becoming more competitive for Black Democrats. The *Thompson* Plaintiffs' suit also alleged a claim under Section 2 of the Voting Rights Act. After African American candidates were elected to seats in both of the challenged districts in November 2018, the parties agreed to voluntary dismissals of the actions.

Voters and Voting Rights Advocates Successfully Challenged Hancock County's Illegal Purge of 53 Voters, Mostly Black, from the Voter Rolls

***Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR) (M.D. Ga. 2015):** Plaintiffs filed this action on November 3, 2015 in the U.S. District Court for the Middle District of Georgia, challenging the removal of 53 voters, who were almost all African Americans, from the voter rolls of a small, predominately Black county prior to a hotly contested election in Sparta in which white candidates successfully ran for seats on the City Council for the first time in decades. The case was brought under Section 2 of the VRA and Section 8 of the NVRA. The district court directed Defendants to restore qualified purged voters to the registration rolls or show cause why they would not do so. As a result, 17 voters were restored to the rolls; two others would have been restored, but had died in the interim; and eight voters were placed into inactive status, but remained

eligible to vote by producing proof of their residency when requesting a ballot. The parties subsequently mediated the case, which resulted in a settlement in which the Defendants agreed to comply with the NVRA before removing anyone from the voter rolls and to be subject to monitoring by a court appointed examiner. On March 30, 2018, the Court granted the parties' Joint Motion for Entry of Consent Decree and awarded Plaintiffs' fees and expenses. Compliance with the Consent Decree is being actively monitored by the Court appointed examiner.

Vote Dilution Lawsuit Challenged the Districting Plans for the Gwinnett County Board of County Commissioners and School Board

Ga. State Conference of the NAACP v. Gwinnett Cty. Bd. of Registrations & Elections, No: 1:16-cv-02852 (N.D. Ga. 2016): Plaintiffs filed a vote dilution suit under Section 2 of the VRA challenging the districting plans for the County Board of Commissioners and Board of Education. At the time the lawsuit was filed, no African American, Latino or Asian American candidates had ever won election to these boards, despite the fact that Gwinnett County is considered to be one of the most racially diverse counties in the Southeastern United States. After two long-term incumbents chose not to run for re-election to the School Board in the 2018 mid-term election, and with the minority population of the county continuing to grow, African American and Asian American candidates were finally elected to the County Commission and an African American candidate was elected to the School Board for the first time in the county's history. Following these electoral successes, the parties agreed to a voluntary dismissal of the litigation.

Voters and Voting Rights Advocates Successfully Challenged Sumter County’s Reduction of Board of Education and Creation of At-Large Seats Diluting Strength of Black Voters

***Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297 (M.D. Ga. 2018):** Sumter County adopted a districting plan for the Board of Education that switched from 9 single-member districts to a total of seven districts, five of which are single-member and two are at-large. This case presents the precise factual scenario that advocates worried about after *Shelby County*: that local jurisdictions would move from district-based elections where minority voters have an opportunity to elect their preferred candidates, to an arrangement where some or all seats are chosen by the jurisdiction as a whole, which is majority white. Black residents comprise about 48 percent of the voting age population in Sumter County, but are packed into two of the five single-member districts. As a result, they can elect representatives of their choice for only two of the seven seats. In March 2018, the District Court ruled that the current at-large method of voting for the county’s public education school board members disproportionately favored the white majority candidates over the black minority preferred candidates. The court ordered Sumter County to re-draw the district lines to give African Americans the ability to elect candidates of their choice to the Board of Education.

Voters and Voting Rights Advocates Challenged Crisp County’s At-Large Voting System that Diluted the Voting Strength of Black Voters

***Whitest v. Crisp Cty. Bd. of Education, No. 1:17-cv-00109* (M.D. Ga. filed June 14, 2017):** In July 2017, advocates brought a Section 2 challenge in the Middle District of Georgia to the at-large method of electing members to the Board of Education in Crisp County, Georgia. No Black candidate has ever won a contested seat on the board, and a data analysis on election history has shown voting to be statistically racially polarized. The case is still pending.

Voters and Voting Rights Advocates Successfully Challenged a Georgia Law Restricting Rights of Limited English Proficient Voters to Obtain Assistance at the Polls

***Kwon v. Crittenden, 1:18-cv-05405-TCB* (N.D.Ga. 2018):** In 2018, advocates successfully challenged Section 21-2-409 of the Georgia Code under Section 208 of the Voting Rights Act. The Georgia law restricted the rights of limited English proficient (LEP) voters to obtain the assistance of interpreters or assisters of their choice. The statute limited an LEP voter, in non-federal elections, to the assistance of only either (1) a voter in the same precinct, or (2) one of certain statutorily-prescribed family members. The statute also provided that no person was allowed to assist more than 10 voters and that no candidate or family member of a candidate in any particular election could offer assistance to a voter in that election who is not a family member. After obtaining a preliminary injunction enjoining enforcement of the law, the Georgia General Assembly amended the law in 2019 to conform to the federal law.

Voters and Voting Rights Advocates File Suit Challenging Systemic Voter Suppression in Georgia

Ebenezer Baptist Church of Atlanta, Georgia, Inc. v. Raffensperger, 1:18-cv-05391-SCJ: Fair Fight Georgia, Inc., Care in Action and several Black Churches filed suit challenging systemic voter suppression in Georgia under Section 2 of the Voting Rights Act and the Constitution. In May 2019 the District Court granted in part and denied in part Defendants' motion to dismiss. The case remains pending.

Voters Challenge the Failure of the Georgia General Assembly to Draw a Congressional District in Central and Southeast Georgia to Provide African Americans an Equal Opportunity to Elect Candidates of their Choice

Dwight v. Kemp, 1:18-cv-02869-JPB (N.D. Ga. 2018): This is a vote dilution lawsuit that was filed on June 13, 2018 by six African American Georgia voters under Section 2 of the VRA. The lawsuit challenges the Georgia General Assembly's failure to draw a congressional district in central and southeast Georgia, where the 12th Congressional District (CD 12) is currently located, that would provide African Americans in that region an equal opportunity elect their preferred candidates. On May 1, 2019, the Plaintiffs filed a motion for summary judgment and that motion is currently pending in the District Court.

Voting Rights Advocates Fight Precinct Closures and Efforts to Reduce Voting Hours in the Wake of Shelby County

Pre-litigation advocacy has been ongoing in a number of Georgia jurisdictions which have proposed the closure and relocation of polling places and have made efforts to reduce or curtail early voting and poll hours, which in many instances adversely impact voters of color. These include:

- 1) Macon-Bibb County, where in January 2015, the majority white Macon-Bibb Board of Elections and Registration proposed a plan to close or consolidate 14 of the county's 40 voting precincts as an alleged cost-savings device. Many of the proposed closures were in majority-Black precincts. In the wake of strong opposition to the plan by voters and voting rights advocates, the Board scaled back the plan by consolidating 7 of the 40 voting precincts and including a majority-White precinct as among the consolidated precincts.

- 2) Hancock County, where in May 2014, the Hancock County Board of Elections and Registration announced that it was planning to close all precincts except a single precinct located in downtown Sparta. The plan presented a travel burden for voters living in the majority African American precincts in a mostly poor and rural County, particularly since the County does not have a robust public transportation system. The Board abandoned the plan following public outcry and threats of potential litigation by advocates.

- 3) In September 2018, advocates, working with local groups, were able to reverse a decision by the Randolph County Board of Elections to close 7 out of 9 polling places, several of which were in predominantly African American precincts. However, it appears that the Board of Elections may be planning to again consider polling place closures and consolidations in 2019, notwithstanding overwhelming objection by the county's voters, local and national advocates.

4) In 2018, the City of Fairburn, Georgia proposed closing 2 of its 3 polling locations, despite the fact this proposal would have increased the number of minority voters in the single remaining polling location to almost 8,000 and after the city had previously increased the number of polling locations from 1 to 3 because of complaints by voters about long lines and delays at the polls. Advocates submitted written objections and in the face of strong opposition by voters, the proposal did not pass.

5) During 2017-2018, Fulton County, Georgia proposed numerous precinct consolidations and polling location changes. Advocates and voters objected to many of these changes. The County has often claimed that it needs to close or consolidate poll locations to save money because of alleged low turn-out since 2008 and 2012 - which were high watermarks for voter turn-out in many of Georgia's minority communities because Barak Obama was on the ticket. In some cases, the alleged low turnout in the majority-minority precincts was on par with or above turnout at other polling locations that were not being proposed for closure or consolidation. Rapid response advocacy efforts were successful in convincing the Fulton County Board of Elections to back down from some, but not all, of the closures, consolidations and relocations.

6) During 2017-2018, the Morgan County elections board proposed closing 2 of the 7 voting precincts/polling places after having previously reduced the number from 11 to 7 in 2012. The county Board of Elections initially took the position that it was not required to allow public comment on the proposal or conduct this change via an open meeting. Ultimately, the proposal failed to pass after objections were interposed by advocates and voters.

7) In 2017, the Fayette County Board of Elections proposed reducing its 36 voting precincts to 19. The proposal would have negatively impacted many minority voters and would have increased the number of voters in the remaining precincts by 45%. After advocates submitted written objections and voters turned out at the Election Board meeting to voice their objections, the Board tabled the proposal. This is the same county which was the subject of a successful vote dilution lawsuit brought under Section 2 of the Voting Rights Act by the NAACP Legal Defense Fund involving the County Commission and School Board.

8) In 2013, advocates persuaded election officials in Baker County, Georgia to keep open all five of its polling places (rather than close four of them) in that impoverished, rural community.

9) In 2018, voting rights advocates fought against efforts to reduce Sunday voting in Fulton County and the hours to vote in Atlanta.

Kansas

Kansas' Documentary Proof-of-Citizenship Requirement for Voter Registration Struck Down as Violative of the Constitution and the National Voter Registration Act

***Fish v. Kobach*, 309 F.Supp. 3d 1048 (D.Kan. 2018)**: After Kansas' then Secretary of State, Kris Kobach, refused to fully process thousands of voter registration applications without documentary proof-of-citizenship, voter registration applicants impacted by the policy sued Kobach, contending that the state's documentary proof of citizenship requirement violated Section 5 of the NVRA and violated the Fourteenth Amendment of the United States Constitution. In June 2018 the District Court struck down

Kansas' proof-of-citizenship law, finding that it violated the NVRA and the Equal Protection Clause of the Fourteenth Amendment.⁵⁹

Voters Were Forced to File Suit Challenging the Relocation of Dodge City, Kansas' Sole Polling Place out of the City to Disadvantage Minority Voters

***Rangel-Lopez v. Cox*, 344 F. Supp. 3d 1285, 1287 (D. Kan. 2018)**: Voters filed suit alleging claims under Section 2 of the VRA and the Constitution challenging the decision to move the sole polling place in Dodge City, Kansas, one of the few majority-minority cities in the state, from a centrally located facility to a location outside of the city. While the court declined to grant plaintiffs' motion for emergency relief to reopen the polling place within the city for the 2018 general election, the county clerk later agreed to open two new voting sites within the city for future elections and the plaintiffs voluntarily dismissed the lawsuit.

Louisiana

Voters and Voting Rights Advocates Successfully Challenged Louisiana's At-Large Method of Electing Judges That Diluted Voting Rights of Black Voters

***Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395 (M.D. La. 2017), appeal dismissed sub nom. *Fusilier v. Edwards*, No. 17-30756, 2017 WL 8236034 (5th Cir. Nov. 14, 2017), and reconsideration denied, No. CV 14-69-SDD-EWD, 2018 WL 5786215 (M.D. La. Nov. 5, 2018)**: Voters and advocates filed suit under Section 2 of the VRA and the U.S. Constitution challenging Louisiana's at-large method of electing judges. Plaintiffs contended the system maintained a racially segregated state court ("32nd JDC") which had jurisdiction over Terrebonne Parish. A Black candidate had never won election to this court in a contested election. Meanwhile, a judge on the court was suspended for wearing blackface, an orange prison jumpsuit, handcuffs, and an afro wig to a Halloween party as part of his offensive parody of a Black prison inmate. In August 2017, following a trial on the merits, the court ruled that the at-large electoral scheme deprived Black voters an equal opportunity to elect candidates of their choice in violation of Section 2 of the VRA and that the scheme had been maintained for that purpose in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution. The Defendant's appeal to the Fifth Circuit was dismissed. On June 3, 2019, the assigned Magistrate Judge issued a report making recommendations for remedial relief. The case remains pending.

⁵⁹ Kansas voters also filed a state court challenge to a two-tier voter registration system adopted by Kobach which purported to limit persons using the federal voter registration form to voting in federal elections, but not in state or local elections. See *Belenky v. Kobach*, Case No. 2013CV1331 (District Court of Shawnee County, KS 2013).

Voting Rights Advocates Commence Litigation to Challenge the Constitutionality of Louisiana's Disenfranchisement of Probationers and Parolees

***VOTE v. Louisiana*, No: 2017-CA-1141 (1st Cir. La. App. Ct. Apr. 13, 2018):** Voting advocates filed suit in state court challenging the constitutionality of a Louisiana law that disenfranchises more than 71,000 probationers and parolees who are not incarcerated, but are nevertheless prohibited from voting. Plaintiffs contend that the law violates Louisiana's Constitutional Right to Vote provision, which denies the franchise to those under an "order of imprisonment for a felony conviction." In March 2017, the trial court granted summary judgment to the State and this decision was upheld by the Court of Appeals. On October 30, 2018, the Louisiana Supreme Court, over a powerful dissent by Louisiana Supreme Court Chief Justice Bernette Johnson, denied review.

African American Voters in Baton Rouge Challenged the Method of Electing Judges to the Baton Rouge City Court under Section 2 of the Voting Rights Act

***Hall v. State of Louisiana*, 3:12-cv-00657-BAJ-RLB (M.D.La. 2012):** This action was brought by African-American voters in Baton Rouge, Louisiana, to challenge the method of election for judges to the Baton Rouge City Court. Plaintiffs claimed that the election system violates Section 2 of the VRA because it dilutes African-American voting strength in the city. Since 1993, the City Court's five judges had been elected from two separate districts, called Election Sections. Section 1 was majority black in population and elects two judges, while Section 2 is majority white and elects three judges. Baton Rouge has experienced a change in the racial composition of its population since 1993, with African Americans now constituting a majority. Nonetheless, white voters continued to control the election of 60 percent of the judges in the context of racially polarized voting in judgeship elections and other local electoral factors. Efforts in the state legislature to modify the election system to reflect African Americans' current voting strength have failed.

Trial began in August 2014 and, after a recess of several months, concluded on November 19, 2014. Plaintiffs presented extensive evidence regarding the difficulties African-American voters face in winning judicial elections in the majority-white election section, including the ongoing pattern of polarized voting, Louisiana's long history of discrimination in voting and other spheres, and the substantial socioeconomic disparities between the city's African-American and white residents. Plaintiffs also presented evidence that an additional majority-Black district could be drawn to allow African Americans a fair opportunity to elect an additional candidate of their choice. On June 9, 2015, the District Court ruled in favor of Defendants. Before Plaintiffs had an opportunity to appeal, however, the Louisiana legislature passed a new judicial districting plan which met most of Plaintiffs' concerns, and Plaintiffs moved for an order that the Section 2 claims had been rendered moot and that the judgment in favor of defendants be vacated. The trial court agreed that the Section 2 claims were moot, but declined to vacate its judgment. On March 13, 2018, the Fifth Circuit Court of Appeals affirmed the District Court's decision not to vacate the judgment even though Plaintiffs' claims were rendered moot by the remedial legislation.

African American Louisiana Voters Challenge the State's Congressional Districting Plan under Section 2 of the Voting Rights Act

***Johnson v. Ardoin*, Civil Action No. 18-625-SDD-EWD (M.D.La. 2018):** This is a vote dilution action brought under Section 2 of the VRA by African American voters who allege that the Louisiana Legislature intentionally “packed” African-American voters into the Second Congressional District and diluted, or “cracked,” African-American voters among the other districts in the 2011 Congressional Plan when they could have created an additional majority-minority Congressional District. On May 31, 2019, the District Court denied Defendant’s motion to dismiss. The case remains pending.

Massachusetts

Voters and Voting Rights Advocates Successfully Challenged the Lowell, Massachusetts At-Large Voting System that Dilutes the Strength of Latino and Asian American Voters

***Huot v. City of Lowell*, No: 1:17-cv-10895 (D. Mass. 2017):** Plaintiffs filed suit on May 18, 2017 alleging the City of Lowell’s at-large municipal election system illegally diluted the vote of Latino and Asian American communities in violation of the VRA and Constitution. Although communities of color make up about half of Lowell’s population, its city council and school board have virtually never had minority representatives. The case was ultimately settled in 2019, with Defendants agreeing to change the election system to either a purely district-based system or a hybrid system with districts and at-large ranked choice voting. The city is currently planning a public process to receive community input and planning a comprehensive public education and outreach campaign.

Michigan

Department of Justice Challenges the At-Large Method of Electing Members to the Eastpoint, Michigan City Council

***United States v. City of Eastpointe*, 4:17-cv-10079 (E.D.Mich. 2017):** In one of the very few voting rights enforcement actions taken by the Department of Justice in recent years, the DOJ filed suit against the City of Eastpoint, Michigan, challenging its at-large method of electing members of the city council. DOJ contended that the at-large method of election diluted the voting strength of African American voters in the city. On March 27, 2019, the District Court denied the Defendant’s motion for summary judgment. On June 4 2019, the parties reached a settlement in which the city will be one of the first cities in Michigan to implement ranked choice voting in city council elections.

Mississippi

State Senate Candidate and Voters Commenced Litigation Challenging the Boundary Lines of Majority-Black Mississippi Senate District 22

***Thomas v. Bryant*, 919 F.3d 298 (5th Cir. 2019):** On July 9, 2018, Black Mississippi voters filed a Section 2 of the VRA vote dilution lawsuit challenging the districting plan for Mississippi State Senate District 22. Plaintiffs contend that the plan dilutes the voting strength of Black voters and, combined with racially polarized voting, prevents them from electing candidates of their choice to the Senate District 22 seat. Plaintiffs prevailed at trial and Defendant has filed an appeal to the Fifth Circuit. Oral argument before the Fifth Circuit was held on June 11, 2019. The case remains pending.

Voters and Voting Rights Advocates Challenge Mississippi’s Requirement that Absentee Ballots and Applications Must Be Notarized

***O’Neil v. Hosemann*, No: 3:18-cv-00815 (S.D. Miss. Nov. 27, 2018):** On November 21, 2018, Plaintiffs filed a complaint challenging, on federal constitutional right to vote grounds, Mississippi’s unique combination of requiring notarization of both the absentee ballot application and the ballot itself, together with a deadline of receipt of the ballot the day before election day. Plaintiffs also sought emergency relief to compel the counting of ballots post-marked by election day (November 27) in the senatorial run-off, where voters had only 9 days – including Thanksgiving weekend – to apply for, obtain, and cast their absentee ballots. The court denied relief on November 27, 2019 on grounds that it was too close to the election to order relief. The case is still pending.

Mississippi’s Felony Disenfranchisement Law is Challenged in Two Federal Lawsuits

***Harness v. Hosemann*, Civil Action No. 3:17-cv-791-DPJ-FKB (S.D.Miss. 2017) and *Hopkins, et al. v. Hosemann*, Civil Action No. 3:18-cv-188-CWR-LRA (S.D.Miss. 2018):** Plaintiffs who are disenfranchised by the Mississippi Constitution’s felony disenfranchisement provisions filed suit to strike down the provisions. In *Hopkins*, the Plaintiffs are also challenging the process by which voting rights are restored for formerly convicted individuals. Plaintiffs contend that the disenfranchisement scheme was born from racism embedded in the 1890 Mississippi Constitution, which was created in the wake of Reconstruction, and continues to disproportionately deny the franchise to Black Mississippians. On June 28, 2018, the District Court consolidated the two cases. On February 13, 2019, the District Court granted the *Hopkins* Plaintiffs’ motion to certify the case as a class action. The cases remain pending.

Voters Challenge Mississippi’s Majority Vote Scheme for the Election of the State’s Governor and other State-wide Offices

***McLemore v. Hosemann*, 3:19-cv-00383-DPJ-FKB (S.D.Miss. May 30, 2019):** Four Mississippi Black voters filed suit challenging the state’s majority vote requirement for electing the Governor and for other statewide offices. Plaintiffs contend the scheme has its basis in the racism that was at the heart of the post-Reconstruction adoption of the 1890 Mississippi Constitution and that it was intended to prevent African Americans from holding statewide elected offices. Since the enactment of the majority vote requirement in 1890, no African Americans have been elected to statewide offices, despite the fact that Mississippi has the highest percentage of African Americans of any state in the country. Plaintiffs have alleged claims under Section 2 of the Voting Rights Act and the Constitution. The case is currently pending in the United States District Court for the Southern District of Mississippi.

Missouri

Successful Section 2 Challenge to the At-Large Method of Electing Board Members to the Ferguson-Florissant, Missouri School Board

Missouri State Conference of the National Association for the Advancement of Colored People v. Ferguson–Florissant School District, 894 F.3d 924 (8th Cir. 2018). This is a vote dilution lawsuit filed under Section 2 of the Voting Rights Act to challenge the at-large method of election for members to the School Board for the Ferguson-Florissant School District. African Americans are 47 percent of the district’s population, but had only been able to elect two candidates of their choice to the board because of the at-large scheme. Plaintiffs prevailed at trial; the Eighth Circuit denied the Defendant’s appeal and the Supreme Court denied the Defendant’s petition for *certiorari*.

New York

Lawsuit Filed to Restore Voting Rights to New Yorkers Who Were Removed from Poll Books in Violation of Federal Law

Common Cause/New York v. Brehm, Case No. 1:17-cv-06770 (S.D.N.Y. 2017): Advocates filed suit to restore the voting rights of millions of New Yorkers ahead of the 2018 election. Plaintiffs alleged that certain eligible but “inactive” voters are improperly removed from poll books throughout New York State in violation of the National Voter Registration Act (NVRA). Plaintiffs contend that the removal of inactive voters from the poll books disproportionately impacts voters of color. The litigation is continuing.

Vote Dilution Lawsuit Filed under Section 2 of the Voting Rights Act to Challenge the At-Large Method of Electing Members of the East Ramapo Central School District

National Association for the Advancement Of Colored People, Spring Valley Branch v. East Ramapo Central School District, Case No. 7:17-cv-08943 (S.D.N.Y. 2017): This is a Section 2 vote dilution lawsuit filed in November 2017 by the Spring Valley Branch of the NAACP and seven Black and Latino voters. Plaintiffs challenge the at-large method of electing members to the Board of Education of the East Ramapo Central School District and contend that it dilutes the voting strength of Black and Latino voters in the District. As a by-product of the dilutive election scheme, Plaintiffs contend that White Board Members are not responsive to the needs of minority students and their parents in the district and have undertaken funding cuts and other actions which deprive minority students of an adequate education. The case is still pending.

North Carolina
Challenge to Voter Suppression Legislation on the Heels of *Shelby* that
Targeted Black Voters with almost Surgical Precision

North Carolina State Conference of NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016): In the immediate aftermath of the *Shelby* decision, North Carolina enacted omnibus voter suppression legislation which included a strict voter ID requirement that excluded the use of out-of-state and college IDs; eliminated same-day voter registration and pre-registration for 16 and 17 year olds; increased opportunities for voters' eligibility to be challenged at the polls; reduced early voting by an entire week; and required the rejection of out-of-precinct ballots. After Plaintiffs' challenge was rejected by the District Court following a trial on the merits, Plaintiffs appealed. The Fourth Circuit then struck down the law's voter ID requirement; cutbacks to early voting; elimination of same-day registration and pre-registration; and the provisions relating to out-of-precinct ballots. In its decision, the Fourth Circuit noted:

“After years of preclearance and expansion of voting access, by 2013 African American registration and turnout rates had finally reached near-parity with white registration and turnout rates. African Americans were poised to act as a major electoral force. But, on the day after the Supreme Court issued *Shelby County v. Holder*, — U.S. —, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013), eliminating preclearance obligations, a leader of the party that newly dominated the legislature (and the party that rarely enjoyed African American support) announced an intention to enact what he characterized as an “omnibus” election law. Before enacting that law, the legislature requested data on the use, by race, of a number of voting practices. Upon receipt of the race data, the General Assembly enacted legislation that restricted voting and registration in five different ways, all of which disproportionately affected African Americans.

“In response to claims that intentional racial discrimination animated its action, the State offered only meager justifications. **Although the new provisions target African Americans with almost surgical precision, they constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist. Thus, the asserted justifications cannot and do not conceal the State's true motivation.** “In essence,” as in *League of United Latin American Citizens v. Perry* (LULAC), 548 U.S. 399, 440, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006), “the State took away [minority voters'] opportunity because [they] were about to exercise it.” As in LULAC, “[t]his bears the mark of intentional discrimination.” *Id.*

“Faced with this record, we can only conclude that the North Carolina General Assembly enacted the challenged provisions of the law with discriminatory intent. Accordingly, we reverse the judgment of the district court to the contrary and remand with instructions to enjoin the challenged provisions of the law.”

Id., at 214–15 (emphasis added).

Despite the Fourth Circuit's strongly worded decision and conclusion that the law was enacted with discriminatory intent, North Carolina asked the Supreme Court to stay the Fourth Circuit's decision, claiming that the state did not have sufficient time to make changes before the November 2016 general election. The Supreme Court granted the State's request for a stay. As a result, the law remained in effect

for the November 2016 general election until the Supreme Court eventually denied North Carolina's petition for *certiorari* on the merits in May 2017.

Voters and Voting Rights Advocates Forced to Commence Litigation to Restore Illegally Purged North Carolina Minority Voters to the Registration Rolls ahead of the November 2016 General Election

***North Carolina State Conference of the NAACP v. North Carolina State Board of Elections*, Case No. 1:16CV1274, 2016 WL 6581284 (M.D.N.C., 2016)(order granting preliminary relief); and *North Carolina State Conference of NAACP v. Bipartisan Board of Elections and Ethics Enforcement*, Case No. 1:16CV12742018, WL 3748172 (M.D.N.C. 2018)(order granting Plaintiffs' motion for summary judgment and permanent relief):** Plaintiffs alleged that in the months and weeks immediately preceding the November 2016 general election, boards of elections in three North Carolina counties - Beaufort, Moore, and Cumberland -improperly canceled thousands of voter registrations of predominantly African American voters for changes of residency on the basis of single mailings returned as undeliverable. Specifically, Plaintiffs alleged that a handful of private individuals brought coordinated and targeted *en masse* challenges to voter registrations on change-of-residency grounds pursuant to North Carolina's voter challenge statute, N.C. Gen. Stat. § 163-85, *et seq.* and that this process violated Section 2 of the VRA, Section 8 of the NVRA and the Equal Protection Clause of the Fourteenth Amendment. The Court granted a preliminary injunction in favor of the Plaintiffs to restore impacted voters to the registration rolls ahead of the November 2016 general election and subsequently granted Plaintiffs' motion for summary judgment to permanently enjoin the practice.

Voters and Advocates File a Successful Post-Shelby Racial Gerrymander Challenge to Redistricting Plans in Two North Carolina Congressional Districts

***Cooper v. Harris*, 137 S.Ct. 1455 (2017):** Filed in October 2013, this case challenged the redistricting of two North Carolina congressional districts as racial gerrymanders in violation of the Equal Protection Clause of the Fourteenth Amendment. After a bench trial, a three-judge panel of the United States District Court for the Middle District of North Carolina ruled in favor of the voters. In 2017, the Supreme Court held that deference to the District Court's findings, under a clearly erroneous standard of review, was warranted; finding that race was the predominant factor in drawing one district as majority-minority district was not clearly erroneous; the State lacked a strong basis in evidence for believing that it needed a majority-minority district in order to avoid liability under § 2 of the Voting Rights Act (VRA) for vote dilution; and finding that racial gerrymandering rather than political gerrymandering was predominant factor in drawing the other district as majority-minority district was not clearly erroneous.

Section 2 Litigation Filed to Remedy Dilution of Voting Strength of Black Voters in Jones County, North Carolina Due to At-Large Method of Electing County Commissioners

***Hall v. Jones Cty. Bd. of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Aug. 23, 2017):** Plaintiffs challenged the at-large scheme of electing members to the Jones County, NC Board of Commissioners under Section 2 of the Voting Rights Act. Due to the at-large method of electing members to the Jones County Board of Commissioners, which diluted the voting strength of African American voters, no African American candidates had been elected to the Jones County Board of Commissioners since 1998. The parties eventually settled the matter with an agreement that the Board of Commissioners would implement a seven single-member district electoral plan, including two single-member districts in which African-American voters constitute a majority of the voting-age population.

Voting Rights Advocates Forced to Commence Litigation Challenging a North Carolina Law Restructuring the Greensboro City Council which also Prohibited Voters from Changing the Restructuring Via Referendum

City of Greensboro v. Guilford County Board of Elections, 251 F.Supp.3d 935 (M.D.N.C. 2017). In 2015, after the *Shelby* decision, North Carolina enacted a bill which restructured the Greensboro City Council and eliminated the ability of voters to change the restructuring via a referendum. Plaintiffs alleged the legislature's plan diluted the voting strength of African American voters and violated other traditional redistricting principles, including one person, one vote and not pairing incumbents against each other, and that the prohibition against restoring the previous plan via a referendum was unconstitutional. The Plaintiffs eventually prevailed on their claims that the prohibition against a referendum and the violation of one person, one vote violated the Constitution. Because the court found in favor of the Plaintiffs on these claims, the court did not reach the issue of whether the plan was a racial gerrymander.

Voters and Voting Rights Advocates Bring Litigation Successfully Challenging North Carolina's Racially Gerrymandered State Legislative and Congressional Redistricting Plans

Dickson v Rucho, No. 11 CVS 16896 (N.C.Super. July 08, 2013): This is a state court action challenging North Carolina's racially gerrymandered state legislative and congressional redistricting plans. The state courts upheld the plans. Plaintiffs sought review by the United States Supreme Court. In April 2015, the Supreme Court granted *certiorari* and remanded the case to the state Supreme Court in light of the Court's ruling in *Alabama Legislative Black Caucus v. Alabama*. On remand, in a 4-3 decision, the state Supreme Court affirmed its earlier opinion. On May 30, 2017, the United States Supreme Court again granted *certiorari* and reversed and remanded the case for further consideration in light of *Cooper v. Harris* and *North Carolina v. Covington*. On February 7, 2018, the day after the United States Supreme Court's ruling in *Covington* precluded the special master's new House districts in Wake and Mecklenburg counties from going into effect, Plaintiffs filed an emergency motion in this state court proceeding, seeking relief from the state constitutional violations in the Wake and Mecklenburg County state house districts. On February 12, 2018, the state court three-judge panel denied that motion but entered judgment in Plaintiffs' favor.

Federal Court Determined that 28 North Carolina Legislative Districts were Unconstitutional Racial Gerrymanders in Violation of the Constitution

Covington v. North Carolina, 316 F.R.D. 117 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017): Federal court litigation filed in 2015 challenged the racial gerrymandering of the state's legislative districts in 2011. On August 11, 2016, a three-judge panel unanimously found that 28 of the State's districts were racially gerrymandered and ordered all of those districts to be redrawn after the 2016 election. In another unanimous ruling on November 29, 2016, the three-judge panel ordered the General Assembly to redraw the racially gerrymandered house and senate districts, which was upheld by the Supreme Court. On October 26, 2017, the Court issued an order appointing a special master to assist in evaluating the districts and in developing an appropriate remedial plan. The special master submitted his proposed remedial plan on December 1, 2017, and the Court issued a unanimous Order incorporating his recommendations on January 19, 2018.

North Dakota

Spirit Lake Tribe and Native American Voters Challenge North Dakota's Strict Voter ID Law

Brakebill v. Jaeger, Civil Action No. 18-1725 (D.N.D. 2018): Plaintiffs secured a preliminary injunction prohibiting enforcement of a strict voter ID law which negatively impacted Native American voters. However, after the District Court granted preliminary relief, the state appealed to the Eighth Circuit for an emergency stay of the court's order and the Supreme Court, in a split decision, declined to overturn the stay while the litigation of the case on the merits continues.

Ohio

Sixth Circuit Reverses Trial Court Decision Finding that Modifications to the State's Early Voting Rules Violated the Fourteenth Amendment by Burdening the Right to Vote of African Americans

Ohio Democratic Party v. Husted, Case No. 16-3561 (6th Cir. 2015): In May of 2015, state and county political parties and three individual voters filed suit challenging modifications to state's early voting rules, contending that the changes violated the Equal Protection Clause of the Fourteenth Amendment. After the District Court found in favor of the Plaintiffs, enjoined enforcement of the statute and found it placed impermissible disparate burden on African-American voters, the Sixth Circuit reversed, concluding that the state's justifications for the changes outweighed the burden on African American voters and that the changes did not have a disparate impact.

Tennessee

Advocates Filed Suit to Challenge a Tennessee Law Imposing Severe Restrictions on Voter Registration Activity with Criminal and Civil Penalties that was Enacted in the Wake of Successful Registration Drives in 2018 Targeting Minority and Underserved Communities

Tennessee State Conference of the N.A.A.C.P. v. Hargett, Case No. 3:19-cv-00365 (M.D.Tenn. 2019) and League of Women Voters of Tennessee v. Hargett, 3:19-cv-00385 (M.D.Tenn. 2019): Voting advocates filed two lawsuits in 2019 challenging the enactment of a Tennessee law which imposes severe restrictions on voter registration activity by community groups and third parties and includes criminal and civil penalties for failures to comply with the law. The law was enacted in the wake of successful large-scale voter registration initiatives in the state in 2018 which targeted minority and underserved communities. Defendants filed motions to dismiss in both cases which are currently pending.

Texas

Voters, Voting Rights Advocates, and Congressional Representative Forced to Commence Litigation to Invalidate Racially Discriminatory Strict Texas Voter ID Law

***Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018):** This is a Federal court action challenging the Texas voter ID law under Section 2 of the VRA and the U.S. Constitution. In October 2014, the district judge ruled in Plaintiffs' favor on all claims and blocked the law, holding that it violates Section 2 of the VRA, constitutes an unconstitutional burden on the right to vote, amounts to a poll tax, and was motivated in part by a racially discriminatory purpose. In August 2015, the Fifth Circuit Court of Appeals upheld the district court's ruling that the State's restrictive photo ID requirement violated Section 2 of the Voting Rights Act. The appeals court upheld the finding of discriminatory effect under Section 2, but remanded on the issue of discriminatory intent, asking the lower court to re-examine the evidence. In July 2016, the *en banc* court affirmed the district court's finding of discriminatory effect under Section 2, and remanded the case to the district court for further fact-finding on the discriminatory intent claim. On April 10, 2017, the Court issued a decision re-affirming its prior determination that SB 14 was passed, at least in part, with a discriminatory intent. On June 1, 2017, Texas passed SB5, which it claimed remedied the effects of SB 14. While SB 5 shares provisions in common with the court-ordered interim remedy, there are aspects of concern, including a harsh felony penalty (up to two years of imprisonment) for voters who inappropriately use the affidavit process for voting in-person without an acceptable photo ID. On August 23, 2017, the court granted declaratory relief, holding that SB 14 violates Section 2 of the VRA and the 14th and 15th Amendments to the U.S. Constitution. The court enjoined SB 14 and SB 5, finding that the new law "perpetuates SB 14's discriminatory features." On April 27, 2018, the Fifth Circuit issued its opinion "reversing and rendering" the district court's order for permanent injunction and further relief, finding that the district court had abused its discretion, and further finding that SB 5 constituted an effective remedy "for the only deficiencies in SB 14," and that there was no equitable basis for subjecting Texas to ongoing federal election scrutiny under Section 3(c) of the Voting Rights Act.

Voters and Voting Rights Advocates File Suit to Remedy Dilution of Voting Strength of Latino Voters in Texas Due to At-Large Method of Electing Statewide Judges

***Lopez v. Abbott*, 339 F. Supp. 3d 589 (S.D. Tex. 2018):** In 2016, Plaintiffs challenged Texas' method of using at-large elections to elect judges to the two courts of last resort in the state, the Supreme Court of Texas and the Texas Court of Criminal Appeals. The lawsuit alleged that the statewide method of electing judges to these courts is discriminatory and denies Latinos an equal opportunity to elect candidates of their choice. In Texas, whites vote as a bloc resulting in the defeat of candidates supported by the Latino community. If the election process was changed from statewide to single districts, two districts could be created with a majority of CVAP of Latino voters, increasing the likelihood that Latino voters could overcome the bloc voting of White voters and have the chance to elect candidates of their choice to these courts. However, the court ultimately ruled for the Defendants, holding Plaintiffs could not show under the totality of the circumstances that the lack of electoral success by Latino-preferred candidates for high judicial office is on account of race rather than other factors, including partisanship.

Voting Rights Advocates Successfully Challenged Texas' Illegal Flagging of Naturalized Citizens for Removal from Voter Rolls

Texas League of United Latino American Citizens v. Whitley, No. 5:19-cv-00074 (W.D. Tex. February 27, 2019): In late January 2019, David Whitley, Texas' Secretary of State, sent Texas counties a list containing 95,000 registered voters and directing the counties to investigate their voting eligibility. The list was based on DMV data the state knew was flawed and would necessarily sweep in thousands of citizens who completed the naturalization process after lawfully applying for a Texas drivers' license. Naturalized citizens are entitled to full voting rights under Constitution. Voting rights advocates filed lawsuits challenging the purging of voters based upon this flawed process. The case was eventually settled after the U.S. District Court in Texas granted a motion for preliminary injunction, enjoining the removal of voters from the rolls based upon this flawed process.

Voter and Voting Rights Advocates Successfully Challenge Law Restricting Language Assistance for Voters with Limited English Proficiency

OCA-Greater Houston v. Texas, 867 F.3d 604 (5th Cir. 2017): Litigation was commenced on August 6, 2015, under Section 208 of the VRA challenging a provision of the Texas Election Code that requires interpreters to be registered to vote in the same county as the voter who needs assistance. This state requirement unduly restricts the range of individuals who are permitted to provide language assistance. The Court found, "In short, the State Defendants get the VRA wrong...the Texas Code Interpretation Provisions, restrict voter choice in a manner inconsistent with the Federal Voting Rights Act." The county defendants agreed to settle in light of the decision. In the settlement, the county agreed to revise the poll worker manual and to change the training procedure for interpreter requirements to be consistent with Section 208 of the VRA. The County will also maintain data of Section 208 violations that are reported to them. On August 16, 2017, the Fifth Circuit Court of Appeals affirmed the district court ruling that the Texas law, which requires interpreters to be registered voters, violates the VRA. The Fifth Circuit decision also affirmed the district court's finding that the plaintiff organization, OCA-Greater Houston, had satisfied its standing requirement.

Voters, State and Federal Legislators, and Voting Rights Advocates Successfully Challenged Texas' Redistricting Plan That Diluted Strength of Latino Voters

Abbott v. Perez, 138 S. Ct. 2305, 201 L. Ed. 2d 714 (2018): During the initial challenge to Texas' redistricting plan, Texas was denied Section 5 preclearance. Following the decision in *Shelby*, Plaintiffs again challenged Texas' maps that did not provide for a new Latino-majority congressional seat. The Court concluded that the congressional districting plans diluted Latino voting strength and were intentionally discriminatory against Latinos and African Americans. The case was tried a third time, focusing on Texas State House Districts, and the Plaintiffs prevailed again. Defendant appealed the District Court's rulings to the United States Supreme Court. On June 25, 2018, the Supreme Court reversed the District Court's rulings in Plaintiffs' favor with the exception of House District 90 in Fort Worth.

Voters and Voting Rights Advocates Commence Litigation to Challenge a Waller County, Texas Early Voting Scheme That Did Not Provide a Polling Place for HBCU Prairie View A&M University Voters

Allen v. Waller Cty., Tex., No: 4:18-cv-03985 (S.D. Tex. filed Oct. 22, 2018): On October 22, 2018, advocates filed a federal lawsuit against election officials in Waller County, Texas, who refused to provide any early voting location on the campus of Prairie View A&M University (PVAMU), an historically Black university, during early voting for the 2018 general election. Plaintiffs contend the County has provided fewer early voting opportunities to PVAMU students who are one of the highest users of this opportunity as compared to other voters in Waller County. Waller County has moved to dismiss Plaintiffs' First Amended Complaint and that motion is currently pending.

District Court in Texas Determines that Redistricting Plan for the City of Pasadena, Texas City Council that was Adopted in the Wake of the *Shelby* Decision Diluted the Voting Strength of Latino Voters and was Enacted with Discriminatory Intent

Patino v. City of Pasadena, Texas, 230 F.Supp.3d 667 (S.D.Tex. 2017): Latino voters filed suit against the City of Pasadena, Texas alleging that city's change from an eight single-member district plan for electing city council members to a plan with six single-member districts and two at-large districts, in 2014 – after the *Shelby* decision, diluted Latino voting strength in violation of Section 2 of the VRA and Fourteenth and Fifteenth Amendments to the Constitution. Following a bench trial, the Court ruled in favor of the Plaintiffs on both their Section 2 and discriminatory intent claims and ordered the restoration of the eight single member district plan for the 2017 city council election. The District Court noted that this was one of the first lawsuits brought to remedy a discriminatory redistricting plan enacted in the wake of the *Shelby* decision. Defendant's request for a stay of the District Court's remedial order was denied by the District Court and Fifth Circuit.

Utah

Lawsuit Filed Against San Juan County, Utah for the Failure to Provide Effective Language Assistance and In-Person Early Voting Sites for Navajo Nation Voters

Nation Human Rights Comm'n v. San Juan County, 216CV00154JNPBCW, 2017 WL 3976564, at *1 (D. Utah Sept. 7, 2017). San Juan County, Utah is home to a substantial Native American population. The County moved to all-mail balloting in 2014. Coupled with a lack of sufficient in-person early voting sites serving the Navajo Nation's voters, Plaintiffs argued that the county failed to provide effective language assistance to its Native American population. Following a period of intense and sometimes contentious litigation, the parties reached a settlement in which the county agreed to 1) provide in-person language assistance on the Navajo reservation for the 28 days prior to each election through the 2020 general election; 2) maintain three polling sites on the Navajo reservation for election day voting, including language assistance; and 3) to take additional action to ensure quality interpretation of election information and materials in the Navajo language.

Washington, D.C.

Voting Advocates File Suit Challenging the Decision by the Election Assistance Commission's Executive Director, Brian Newby, to Include Proof of Citizenship Requirement on Federal Registration Form Instructions

League of Women Voters of United States v. Newby, 838 F.3d 1 (D.C. Cir. 2016): In January 2016, EAC Executive Director Brian Newby, acting without input from the EAC Commissioners, issued notice to Alabama, Georgia, and Kansas that the federal registration form instructions would be amended to allow these states to require citizenship documents from applicants who use the federal registration form. Plaintiffs filed suit to enjoin Newby's action and the United States Court of Appeals for the District of Columbia Circuit preliminarily enjoined the EAC from changing the federal voter registration form after the District Court for the District of Columbia denied Plaintiffs' motion for a preliminary injunction. The parties have fully briefed cross-motions for summary judgment and the action remains pending.