



## **STATEWIDE AND LOCAL RESPONSES TO THE SUPREME COURT'S VOTING RIGHTS ACT DECISION JUNE 25, 2013 - PRESENT**

### **INTRODUCTION**

Since 1965, Section 5 of the Voting Rights Act (VRA) has required certain jurisdictions (including states, counties, cities, and towns) with a history of chronic racial discrimination in voting to submit all proposed voting changes to the Department of Justice or a federal court in Washington, D.C. for pre-approval. This requirement was commonly known as “preclearance.”

For nearly 50 years, Section 5 preclearance has served as our democracy’s discrimination checkpoint by halting discrimination in voting before it occurred. Section 4(b) of the VRA authorized Congress to determine which jurisdictions should be “covered” and therefore which jurisdictions were required to seek preclearance.

On June 25, 2013, the United States Supreme Court issued its decision in *Shelby County, Alabama v. Holder*. In this case, *Shelby County* challenged the constitutionality of Sections 4(b) and 5 of the VRA. The NAACP Legal Defense and Educational Fund vigorously defended the VRA’s constitutionality in the Supreme Court and in the lower courts. In a devastating blow to the essence of the preclearance process, the Supreme Court ruled that Section 4(b) was unconstitutional. The Court held that the coverage provision was out of date and not responsive to current conditions in voting.

The Supreme Court’s decision in *Shelby County* effectively suspended the preclearance requirement for all jurisdictions covered by Section 4(b)—those states and localities with the worst records of discrimination in voting. Before the decision, preclearance applied to nine entire states, mostly in the South (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia), and a number of counties, cities, and towns in six partially covered states (California, Florida, Michigan, New York, North Carolina, and South Dakota). After *Shelby County*, these states and jurisdictions have been free to implement changes in voting without having to go through the preclearance process to determine whether they are discriminatory.

### **NAACP LEGAL DEFENSE FUND’S RESPONSE TO *SHELBY COUNTY***

Since the day of the *Shelby County* ruling, NAACP LDF has closely monitored how formerly covered states and localities are responding to the decision. In addition, NAACP LDF attorneys have fanned out across the country to empower communities of color made especially vulnerable by the Supreme Court’s ruling, and to urge them to be their community’s eyes and ears, and alert NAACP LDF to discriminatory voting changes.

NAACP LDF attorneys have collectively traveled hundreds of thousands of miles to more than a dozen states, holding community empowerment forums, meeting with community leaders and individuals, distributing literature, investigating complaints, meeting with elections official and elected representatives, and monitoring elections.

It is important to note that while changes in congressional districts attract media attention, local changes, such as moving a polling place or switching from district-based to at-large voting, also significantly impact communities of color. NAACP LDF is encouraging voters to let us know of any voting changes that are planned for their communities by emailing [vote@naacpldf.org](mailto:vote@naacpldf.org).

## THE VOTING RIGHTS AMENDMENT & ADVANCEMENT ACTS

In addition to pursuing litigation with all of the legal tools that remain available, the NAACP LDF is urging Congress to aggressively respond to the Supreme Court's shameful decision and to protect voters of color from discrimination.

On January 16, 2014, a bipartisan group of Members of Congress introduced the Voting Rights Amendment Act of 2014 (VRAA). Congressmen John Lewis (D-GA-5), James Sensenbrenner (R-WI-5), Steve Chabot (R-OH-1) and John Conyers, Jr. (D-MI-13), among others, introduced H.R. 3899 in the House. Senator Patrick Leahy (D-VT) and other Senators introduced a companion bill, S. 1945, in the Senate on the same day. Similar legislation was reintroduced in 2015 and Congressional members also introduced the Voting Rights Advancement Act of 2015 in another effort to respond to the gap left following the *Shelby County* decision.

These proposed pieces of legislation represent a measured, flexible, and forward-looking attempt by Congress to update the Voting Rights Act in response to the Supreme Court's ruling in *Shelby County*. Although not perfect, the legislation is an important first step toward restoring the protections now at risk because of the U.S. Supreme Court's decision in *Shelby County*. The legislation contains several components which respond directly to the Court's directive that preclearance be linked to recent acts of discrimination while seeking to provide victims of voting discrimination - and the courts that hear their claims - the tools to detect and prevent voting discrimination before it takes effect.

*What follows is a running-and still growing-compendium of state, county, and local level responses to the decision, including jurisdictions' intentions to implement new discriminatory voting changes in the wake of the Shelby County decision.*

*The need for immediate Congressional action is starkly illustrated in the details of efforts by states and localities to enact measures with potentially devastating consequences on political participation by communities of color.*

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## ALABAMA

### State Level:

Following the *Shelby County* decision, Alabama Attorney General Luther Strange stated that the State's voter identification law will be implemented immediately.<sup>1</sup> Civil rights and pro-democracy groups, among others, have expressed concerns with the "voucher provision" of the photo ID law, which enables two election officials to "vouch" for voters lacking photo ID and, accordingly places substantial discretion in the hands of local officials, which potentially violates the Voting Rights Act. Those groups have urged the Secretary of State to issue regulations related to the voucher provision.<sup>2</sup> Moreover, LDF complains that due to the state's implementation of its photo ID law, the ballots of at least 282 voters "went uncounted solely due to the failure of otherwise eligible voters to provide ID."<sup>3</sup> The legislature has contemplated, but not passed, a bill that would have required voters to submit a

copy of their photo ID (on the front end of voting) when requesting an absentee ballot, despite of a lack of evidence of voter fraud through the absentee voting process.<sup>4</sup> Currently, Alabama is one of only three states that require a voter to provide a photo ID (on the back end of the voting process) when they submit an absentee ballot.

Alabama also seeks to require voters to show proof of citizenship.<sup>5</sup> This move immediately follows a March 19, 2014 federal court decision that ordered the federal Election Administration Commission to modify the state-specific instructions on the federal mail voter registration form to reflect state requirements (of Arizona and Kansas only) that voter registrations provide documentary proof of citizenship.<sup>6</sup>

During the Supreme Court's 2012-2013 term, in *Arizona v. The Inter Tribal Council of Arizona*, the Court found that Proposition 200, Arizona's proof of citizenship law for voter registration, violated the National Voter Registration Act. Arizona contends that the Court's Inter Tribal decision only applies to federal elections. Section 5 blocked a similar two-tiered system of voting in Mississippi in the 1990s.<sup>7</sup>

Dual registration systems have a historical association with racial discrimination, harkening back to the pre-VRA era, when segregated voter rolls were maintained to intentionally prevent Black voters from lawfully casting ballots.

During the 2014-2015 term, the Supreme Court remanded two consolidated cases *Alabama Legislative Black Caucus v. State of Alabama*, and *Alabama Democratic Conference v. Alabama*, arising from a challenge to a Republican-drawn 2012 legislative map that Plaintiffs contend *intentionally packs* Black voters into a few super-majority-minority districts (on average 65% Black), limiting their electoral influence/opportunity in the Alabama legislature. Plaintiff-Appellants are individual African Americans, African-American state and county elected officials, and the Alabama Democratic Conference (ADC), an African-American political action committee.<sup>8</sup> The Supreme Court remanded the cases for the trial court to conduct a district-by-district review of whether the Alabama Legislature packed Black voters into districts to unconstitutionally dilute their voting strength.<sup>9</sup>

LDF, as did other organizations, filed an amicus brief in support of appellants-plaintiffs in the Supreme Court, focusing on whether Alabama's redistricting plan satisfies strict scrutiny under *Shaw v. Reno*, 509 U.S. 630 (1993), *i.e.*, it narrowly tailored to a compelling state interest. LDF's brief posits that compliance with the Voting Rights Act is a compelling state interest, but that Alabama's redistricting plan was not narrowly tailored. The brief explains that the Voting Rights Act does not require fixed percentages of minority voters nor does it prohibit *all* reductions in the population of a majority-minority district (e.g., 99% to 98% is not retrogressive). Nothing in Section 5 or DOJ guidance suggests otherwise or requires "perfect tailoring" to past census data, a position that the Supreme Court embraced in its 2015 decision in the case.<sup>10</sup>

#### Local Level:

A federal district court has ordered preclearance review of voting practices in **Evergreen** in Conecuh County under Section 3, the "bail-in" provision of the Voting Rights Act.<sup>11</sup> Specifically, Evergreen must submit voting changes related to the method of election for the city council, including any redistricting plan impacting the city council, as well as any change to the standards for determining voter eligibility to participate in Evergreen's municipal elections, to either the federal court or the Department of Justice through December 2020. In addition, the court appointed federal observers to monitor Evergreen's elections under the Voting Rights Act.

In 2012, Section 5 blocked Evergreen from continuing to implement an unprecleared discriminatory voter purge based on utility records that omitted eligible voters from a voter registration list, including nearly half of the Conecuh County registered voters who reside in districts heavily populated by Black people.<sup>12</sup> In 2012, Section 5

also blocked an unprecleared municipal redistricting plan that packed Black voters into only two of the five districts when it was possible to establish a third majority-Black voting district, thereby diluting the voting strength of Black voters in Evergreen.

In **Decatur**, Alabama, a city in Morgan and Limestone counties, a federal court retained jurisdiction over a challenge to Decatur's failure to implement the city manager form of government, which, pursuant to state law, would have reduced the single-member districts from five to three with a fourth district and the mayor elected at-large.<sup>13</sup> That lawsuit remains pending.<sup>14</sup> In a 2010 referendum vote, voters selected this form of government which the City has failed to implement because it contends that doing so would violate the Voting Rights Act as the reduction in the single-member districts (from five to three) would eliminate the only majority-minority district.

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## ALASKA

A federal judge ruled that Alaska's Elections Division violated Section 203, the language provision, of the Voting Rights Act by failing to provide ballot and candidate information in Native languages to Yup'ik and Gwich'in speakers in three rural regions of Alaska, rejecting the state's assertions that it had done enough in Southwest Alaska and the Interior by providing bilingual poll workers and "outreach" personnel.<sup>15</sup> Under Section 203 of the Voting Rights Act, state election officials are required to translate ballots and other election materials and information into Gwich'in and Yup'ik. Officials also must provide trained bilingual staff to register voters and to help voters at the polls through complete, accurate, and uniform translations.<sup>16</sup>

The court determined that the state's effort failed to provide "substantially similar" information in Native languages as it does in English, a requirement of the Voting Rights Act since 1975. A general election occurs in November. Still pending before the court is a claim that Alaska intentionally violated the constitutional rights under the Fourteenth and Fifteenth Amendments of Native language speakers on the basis of race or color.

Notably, the Alaska Native plaintiffs filed the above mentioned lawsuit three and a half years after the State of Alaska settled a similar lawsuit filed by Native voters from the Bethel region in *Nick, et al. v. Bethel, et al.* In this recent action, the federal court acknowledged that Alaska has a "rocky road" with the United States Department of Justice since the State first become covered by Section 203 in 1975.

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## ARIZONA

### State Level:

The state of Arizona, along with the state of Kansas, has sued the Election Assistance Commission (EAC) seeking to require proof of citizenship to vote in state and local elections, setting up a two-tiered system of voting for state/local versus federal elections.<sup>17</sup> The EAC issued a decision denying those states' requests.<sup>18</sup> Multiple groups, including communities of color, intervened in that action<sup>19</sup> and have brought other cases to challenge Arizona's and Kansas's proof-of citizenship for voter registration laws.<sup>20</sup> On March 19, 2014, in one case, a federal court ordered

the EAC to modify the state-specific instructions on the federal mail voter registration form to reflect Kansas and Arizona requirements that voter registrations provide documentary proof of citizenship.<sup>21</sup> An appeals court recently reversed that decision and remanded the case to the district court to vacate its order requiring the EAC to modify the federal form to require proof of citizenship; *i.e.*, the state must accept a federal voter registration form *without* additional proof of citizenship, though state voter registration forms can still demand proof of citizenship.<sup>22</sup> And the Supreme Court declined to hear a case during its 2015-2016 term that would allow states to require proof of citizenship for those applying to vote in federal elections, which effectively upholds that lower federal court ruling mentioned above against Arizona (and Kansas's) attempt to require that proof.<sup>23</sup>

During the Supreme Court's 2012-2013 term, in *Arizona v. The Inter Tribal Council of Arizona*, the Court found that Proposition 200, Arizona's proof of citizenship law for voter registration, violated the National Voter Registration Act. Arizona contends that the Court's *Inter Tribal* decision only applies to federal elections. Section 5 blocked a similar two-tiered system of voting in Mississippi in the 1990s.

Dual registration systems have a historical association with racial discrimination, harkening back to the pre-VRA era, when segregated voter rolls were maintained to intentionally prevent Black voters from lawfully casting ballots. State lawmakers also propose reenacting voting provisions—previously blocked by voter referendum—that would allow counties to purge people from the permanent early voter list, a list that counties use to mail ballots prior to every election to individuals, who, after marking their ballot, mail them back or take them to a polling place.<sup>24</sup>

Local Level:

The **Maricopa County Community College District Board** is proposing to add two at-large electoral districts to its existing five-member Board, which is elected by districts.<sup>25</sup> This year, the community college district, which is the largest in the country, enrolled more than 260,000 students. Section 5 blocked similar plans. Historically, jurisdictions have used at-large voting to dilute the voting strength of communities of color.

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## ARKANSAS\*

The State's photo ID law was scheduled to be implemented on January 1, 2014, following an April 2013 bi-cameral majority vote to override Governor Mike Beebe's veto of the law.<sup>26</sup> After voters filed state constitutional challenges to stop the implementation of the photo ID law, one state court ruled that the law was "void and unenforceable."<sup>27</sup> Notwithstanding these trial court decisions, appellate rulings permitted the photo ID law to be implemented in the May and June 2014 primary elections.<sup>28</sup> Subsequently, the Arkansas Supreme Court permanently struck down the photo ID law, finding that the photo ID law violated the state constitution by adding a new voter qualification.<sup>29</sup> Notwithstanding, during the November 2014 elections, reportedly the Secretary of State requested voter ID of certain voters, particularly voters who transferred their registration to a new county.<sup>30</sup> Moreover, civil rights organizations and other advocates had notified state and county officials of their concerns about the haphazard way in which they have implemented the new voter photo ID law, making it much more difficult for Black people and thousands of others to vote.<sup>31</sup>

Civil rights, pro-democracy groups and other advocates have sent an official notice letter to Arkansas's Secretary of State, informing him that Arkansas's public assistance agencies are failing to comply with the National Voter

Registration Act (“NVRA” also known as the “Motor Voter Law”), citing evidence that low-income Arkansas residents have unlawfully been denied the opportunity to register to vote.<sup>32</sup> The NVRA requires not only that motor vehicle departments provide voter registration services, but also that public assistance agencies, such as those providing SNAP, TANF, and Medicaid services offer voter registration services to their clients with every application for benefits, recertification, or change of address transaction. Advocates contend that the state is failing to provide many public assistance clients—including those who interact with DHS online—with voter registration services required by law.

\*While Arkansas was not covered immediately before the *Shelby County* decision, it once was formerly covered due to LDF’s litigation efforts in *Jeffers v. Clinton*.<sup>33</sup> LDF continues to work in that state and track racial discrimination in voting as it arises there.

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## FLORIDA

### State Level:

Following the *Shelby County* decision, Florida Secretary of State Ken Detzner said “[w]e’re free and clear to follow through with our [early voting] law now without any restriction by the Justice Department. . . . Last year I think we spent over a half a million dollars defending our pre-clearance cases. That cost will be eliminated in the future as a result of this opinion.”<sup>34</sup> In August 2012, under Section 5, a federal court rejected these changes as harmful to Florida voters of color.<sup>35</sup> In particular, the court determined that severe cuts to the state’s early voting period would have serious consequences for African-American Floridians. In 2008, over half of Black voters in Florida cast their ballots during the early voting period. During the 2012 elections, the wait to vote in some Florida locations was more than six hours.<sup>36</sup> More than 200,000 potential voters did not vote in 2012 because of long lines.<sup>37</sup>

Following the *Shelby County* decision, Governor Rick Scott also sought to reinstitute a purge of purported non-citizens from the state voter database, as he attempted to do in 2012.<sup>38</sup> In 2012, because of Section 5, Florida election officials were blocked from using an error-prone list to purge purported non-citizens from the election rolls.<sup>39</sup> Following *Shelby County*, county election supervisors resisted Governor Scott’s attempts to purge voters. In 2014, a federal appellate court ruled, following a challenge from several pro-democracy and civil rights organizations, that Florida’s 2012 program of systematically purging names from the voter rolls within 90 days of a federal election (in the State’s purported effort to remove suspected non-citizens) violated a provision of the National Voter Registration Act.<sup>40</sup>

Legal challenges under the 14th Amendment of the U.S. Constitution for racial and partisan gerrymandering, alleging that the state’s Congressional District 5 packs Black voters into that district have been filed.<sup>41</sup> As a consequence, a judge has thrown out Florida’s congressional redistricting plan.<sup>42</sup> During a special session, Florida lawmakers worked to develop a legally acceptable redistricting plan.<sup>43</sup> However, the legislative session ended without the legislature doing so, necessitating that a trial court develop a redistricting plan.<sup>44</sup> One issue that has arisen with respect to redrawing the congressional plan is how to count the more than 160,000 population of incarcerated people, which is disproportionately Black, whether in the facilities where they are held or in the communities from which they come.<sup>45</sup> Pro-democracy and civil rights groups contend that the population of incarcerated people should be counted in their home communities where incarcerated people will return upon their

release and maintain enduring ties. Moreover, a state legislature, representing District 5, has filed a lawsuit for cracking Black voting strength in her district through proposed redistricting.<sup>46</sup>

A coalition of voting-rights groups continues to challenge Florida's Senate districts, contending that the Florida Legislature failed to comply with the anti-gerrymandering Fair Districts amendments that voters put into the Florida Constitution in 2010.<sup>47</sup> Two Florida Republican Party officials have filed a federal lawsuit to block the state's anti-gerrymandering constitutional amendments, arguing the provisions limit First Amendment speech and amount to "thought policing."<sup>48</sup> Voting rights groups that worked to get those amendments on the ballot and then challenged Florida's redistricting plans under pursuant to those amendments may intervene in that lawsuit.

#### Local Level:

The Florida Department of Law Enforcement is investigating allegations that an appointed white city clerk in **Sopchoppy**, Florida (1) suppressed Black voters in a June 11, 2013 election by questioning their residencies with no reasonable basis; and, (2) failed to remain neutral in her capacity as city clerk, by actively campaigning for three white candidates.<sup>49</sup> Following the clerk's efforts to prevent Black voters from casting their ballots, the incumbent Black mayor lost by only one vote and a Black city commissioner lost.

In **Jacksonville**, the Board of Elections has closed and relocated a polling place that served large numbers of Black voters in the City.<sup>50</sup> In 2012, Black voters constituted more than 90 percent of those who voted early at the now closed polling place. The relocated polling place, according to plaintiffs challenging the closure, is inconvenient to public transportation, among other burdens.

**Hernando County** adopted a plan to close and consolidate voting locations, with a focus on the neighborhoods of the City of Brooksville.<sup>51</sup> The plan called for elimination of polling places for the general election, and consolidation of all Brooksville precincts into one. While the African American citizen voting-age population ("CVAP") of the County overall is about 4.5 percent, the CVAP affected by this change in polling places is nearly 22 percent African American. There are neither any African Americans nor Latinos serving on the County Commission.

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## GEORGIA

#### State Level:

Following the *Shelby County* decision, state lawmakers proposed legislation that would cut (to 6 days, including a Saturday) early-voting periods for small, but not larger, consolidated cities, as a purported cost-saving measure.<sup>52</sup> Just four years earlier, Georgia had already cut early voting in the state from 45 to 21 days. A Georgia legislator suggested that he opposed new Sunday voting hours because Black and other voters of color take advantage of these voting opportunities disproportionately, explaining that he "prefer[s] more educated voters than a greater increase in the number of voters."<sup>53</sup> Following that legislation's defeat, in the next legislative session, state lawmakers proposed an even more restrictive bill that would reduce early voting by 7 days across Georgia and would not mandate Sunday voting despite its proven popularity; this legislation is proposed for purported cost-saving measures and to achieve uniformity in early voting across Georgia.<sup>54</sup>

Moreover, Georgia's Secretary of State has initiated an investigation of voter fraud against the New Georgia Project, one of Georgia's largest voter registration efforts, having registered over 85,000 voters statewide, including many young voters of color registering for the first time; the Project views the allegations as an attempt at voter suppression.<sup>55</sup> Georgia's SOS has served a subpoena on the Project, compliance with which would divert the Project away from its voter registration efforts and chill those efforts because of registrants' concerns with the impact of the State's investigation on their application. The investigation follows complaints about New Georgia Project's submission of voter applications with allegedly forged voter registration applications and signatures on releases, as well as applications with purportedly false or inaccurate information.<sup>56</sup> Organizations registering voters are required to deliver all completed voter registration applications to the State's Secretary of State or the appropriate board of registrars within ten (10) days after receiving the application or by the close of registration, whichever period is earlier; these organizations are not required to filter or discard applications. Reportedly, just 25 of 85,000 voter registration applications have any issues.<sup>57</sup>

The parent organization of the New Georgia Project, the national NAACP, and the Georgia State Conference of the NAACP, filed a subsequent lawsuit because more than 40,000 voters (of the more than 85,000 registered, as above), a substantial number of whom are voters of color, are missing from the voter rolls because of the State's alleged failure to process these voter registrations;<sup>58</sup> the Secretary of State denies that the applications have not been processed.<sup>59</sup> A state judge dismissed this lawsuit, citing lack of proof that state and county officials failed to fulfill their duties to process voter registration applications.<sup>60</sup>

Recent reporting has demonstrated that Georgia may be purging voters from the rolls, many of whom are disproportionately voters of color, because these voters are suspected of being double voters (*i.e.*, suspected of voting in two or more states in the same election).<sup>61</sup>

#### Local Level:

Pending voting changes include a county commission plan in **Fulton County**, Georgia's most populous county that, among other things, creates a new overwhelmingly white district and reduces the district sizes of majority-Black districts.<sup>62</sup>

The **City of Athens** considered eliminating nearly half of its 24 polling places and replacing them with only two early voting centers—both of which would be located inside police stations.<sup>63</sup> Community members raised concerns that the location of the new centers would intimidate some voters of color and that the proposed closures would be harmful to voters of color and/or students, many of whom would need to travel on three-hour bus rides just to reach the new polling places.

**Greene County** implemented a redistricting plan for the five-member County Board of Commissioners. The plan, which one Black member of the Commission denounced, would result in Black voters' making up less than 51 percent, a bare majority, in all five districts under the plan.<sup>64</sup> Under Section 5, the Department of Justice blocked another redistricting plan in Greene County in 2012<sup>65</sup> and had been reviewing the above mentioned plan before the *Shelby County* decision.

**Morgan County**, after initially considering eliminating over half of the County's polling places, ultimately eliminated more than a third of them.<sup>66</sup> One city council member expressed his belief that the closures would disfranchise low-income voters and voters of color, many of whom lack cars.



Election officials in **Baker County**, a majority Black county with high poverty rates, considered eliminating four of its five polling places, requiring some voters to travel upwards of 20 miles to vote.<sup>67</sup>

Election officials in **Augusta-Richmond** reintroduced a plan that would move County elections from their traditional timing in November to over the summer, when Black voter turnout is typically lower.<sup>68</sup> A lawsuit was filed to challenge a change in election date from the November general election to the May 20 primary election.<sup>69</sup> Under Section 5, the Department of Justice in 2012 blocked this same attempt to switch the election date from November to a summertime month.<sup>70</sup>

In **Quitman City** in Brooks County, Georgia, a jury declined to convict Lula Smart one of twelve Black organizers arrested and incarcerated after their voter registration efforts contributed to an election in which Black voters elected a majority of Black representatives on the local school board for the first time in history.<sup>71</sup> The State's efforts to convict these twelve organizers for voter fraud have lasted over four-years beginning in 2010. Members of the community of color in Quitman believe that the State's attempt to prosecute these organizers (for example, for their role in helping voters with their absentee ballots) is related to their attempt to suppress a community of color on the verge of exercising power and control locally in Quitman.

Officials in **Macon**, a majority-Black city in Bibb County, decided to have just one non-partisan municipal election in July, when Black voter turnout typically is lower, moving from their traditional schedule of having partisan elections with a primary election in July and a general election in November.<sup>72</sup>

In **Bibb County**, Georgia, local officials rejected a proposal that would have provided for Sunday voting, an opportunity for poor and people of color to vote outside of traditional Election Day.<sup>73</sup>

The **Macon-Bibb** County Board of Elections also considered whether to reduce the number of polling places in the county from 40 to 26 by closures or consolidations, including the Macon Mall which is served by public transportation where 20% of residents in the County lack vehicles.<sup>74</sup> Despite that the overwhelming majority of the proposed polling places proposed for closure are in majority-Black neighborhoods, the County purports that the closures are to save the County approximately \$40,000 annually; other closures are due to other reasons like that certain schools, which serve as polling places, are closing or being renovated. In response, the Board is forming an advisory panel to consider these closures. Civil rights organizations and pro-democracy groups have voiced objections to the closures or consolidations.<sup>75</sup>

In **Sumter County**, Georgia, a plaintiff-voter is challenging a redistricting plan that would reduce school board districts from nine (9) to seven (7), two of which would be at-large, to align with the county commission districts.<sup>76</sup> Plaintiff alleges that the redistricting plan packs Black voters into two districts in violation of Section 2 of the Voting Rights Act.

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## LOUISIANA

Prior to the *Shelby* decision, in 2010, Section 5 prevented the Louisiana State Legislature from implementing Act No. 650, which would have reduced the size of the **Iberville Parish** School Board from (15) fifteen members to (9) nine members, (8) eight of which would have been single-member districts and (1) one of which would have been an at-large district.<sup>77</sup> Section 5 allowed the Parish to bypass State law that mandated that the board be no more than

(9) nine seats. In 2013, still prior to the *Shelby* decision, Section 5 allowed the Iberville Parish School Board to adopt a redistricting plan that reduced the size of the School Board from (15) fifteen members to (13) thirteen members. However, after the *Shelby* decision and because Section 5 no longer prevented Act No. 650 from going into effect, the Iberville Parish School Board redistricted into (8) eight single-member districts and (1) one at-large district with the School Board acknowledging their preference for the their (13) thirteen-member board to the (9) nine-member board mandated by state law.

In **East Baton Rouge Parish**, several local residents have filed suit to challenge the School Board's redistricting to reduce the Board's size (from 11 members districts – six majority white and five majority Black – to 9 – five majority white and four majority Black), contending that the redistricting decision have the effect of diluting minority representation on the School Board.<sup>78</sup>

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## MICHIGAN

Advocates for Arab-American voters in **Dearborn-Heights**, Michigan, are challenging officials for preventing Arab-Americans from obtaining absentee ballots because of officials' concerns about potential voter fraud and campaign irregularities.<sup>79</sup> In response, advocacy groups prepared to monitor polls and provide a hotline for voters to report issues during an upcoming primary election.<sup>80</sup> A Wayne County judge recently declined to halt the counting of certain challenged absentee ballots in Dearborn Heights that purportedly were cast fraudulently; the court found that "[t]here [was] absolutely no evidence in this case that there has been one fraudulent ballot submitted by absentee ballot."<sup>81</sup>

In **Hamtramck**, Michigan, Arab-American men, including a Hamtramck City Council candidate, as well as a campaign worker, were charged with improper possession or return of absentee ballots for allegedly violating state law that requires that absentee ballots be in the possession of the voter, a relative, mail carrier or authorized official.<sup>82</sup> Notably, in 2000, the U.S. Department of Justice sued Hamtramck under the Voting Rights Act because poll workers challenged Arab-American individuals on citizenship grounds and, based on those challenges, required many Arab-American voters to take an oath as a condition to voting; officials did not challenge white voters' citizenship or require them to take an oath to vote.<sup>83</sup>

## MISSISSIPPI

Tate Reeves, Mississippi's Lieutenant Governor, said that pre-clearance "unfairly applied to certain states should be eliminated in recognition of the progress Mississippi has made over the past 48 years."<sup>84</sup> Secretary of State Delbert Hosemann said he would move forward immediately to implement Mississippi's voter ID law for primaries in June 2014.<sup>85</sup> The implementation of Mississippi's photo ID law already has impacted Mississippi elections; the outcome of a tied (177-177) local special election depended upon a lone voter returning within five (5) business days with a valid photo ID, after voting provisionally by affidavit ballot, because the voter initially appeared to vote without an acceptable photo ID.<sup>86</sup>

A plan by conservative groups like the Senate Conservatives Fund, Tea Party Patriots, and True the Vote to poll watch a U.S. Senate race between a candidate preferred by them and another senator, whose campaign workers were

reportedly reaching out to Black Democrats, in a June 2014 primary election, prompted calls for the U.S. Department of Justice to send federal monitors to the polls.<sup>87</sup>

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## NEW YORK

A group of leading local and national voting rights advocates have pressed the Governor to hold special elections to fill 12 legislative vacancies in the New York State Senate and Assembly, which represent—but are left unrepresented currently—approximately 1.8 million voters across New York, over 800,000 of whom are people of color.<sup>88</sup> The Governor is departing from past precedent in refusing to call elections.

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## NORTH CAROLINA

### State Level:

Immediately following the *Shelby County* decision, the lead sponsor of the state's voter ID law said that he would move ahead with the measure as a result of the ruling.<sup>89</sup> North Carolina State Senator Tom Apodaca also said he would move quickly to pass a voter ID law that some say would bolster the integrity of the balloting process. Other state legislators in North Carolina began engineering an end to the state's early voting, Sunday voting, and same-day registration provisions.<sup>90</sup> North Carolina Attorney General Roy Cooper, said that "[t]he North Carolina General Assembly is now considering legislation that among other changes would limit early voting and require voter I.D."<sup>91</sup>

Thus, within two months of the *Shelby County* decision, Governor Pat McCrory signed an omnibus anti-voter bill, which includes numerous provisions designed to make it harder for voters to access the polls (including a strict photo ID requirement, elimination of same-day voter registration, cutting the early voting period by seven days, and throwing out provisional ballots cast at the wrong polling station).<sup>92</sup> A federal judge declined to preliminarily enjoin provisions of the law; this ruling is being appealed.<sup>93</sup> Subsequently, the Supreme Court failed to reinstate same-day registration and the counting of out-of-precinct ballots after a ruling from a court of appeals had ordered North Carolina to put those opportunities back in place.<sup>94</sup> Since implementation of various provisions of North Carolina's omnibus law, the ballots of at least 454 North Carolina voters, whom are disproportionately people of color, went uncounted in the 2014 primary because of North Carolina's elimination of same-day registration and prohibition on counting a provisional ballot cast in the wrong precinct;<sup>95</sup> These and other experiences with recent elections have been documented with one estimate that turnout was reduced by at least 30,000 voters in the 2014 election because of barriers to the ballot.<sup>96</sup> In 2008 and 2012, more than 250,000 voters in North Carolina relied on same day registration to cast their ballots; in 2012, 40 percent of the voters who relied upon same day voter registration were Black.<sup>97</sup> A three week federal trial was held in July 2015.<sup>98</sup>

A state court challenge to the photo ID requirement (to be implemented in 2016) in the omnibus bill is pending.<sup>99</sup> Whether that lawsuit (and a federal challenge to the photo ID law) will continue to move forward is tied to the North Carolina legislature's changes to the photo ID law and if those address the challenged problems with the photo ID law.<sup>100</sup> The new legislation would allow voters with an expired driver's license or state-issued ID card (no more than

four years expired) to vote, would require election officials to help voters use mail-in ballots, which do not require photo ID, to vote without a photo ID during the early voting period, and would allow voters who do not have a photo ID to provide their voter registration card or provide their birthdates, last four digits of their Social Security number, and affidavit attesting to a reasonable impediment (e.g., work schedule, lack of transportation, disability or illness, lost or stolen photo ID, lack of birth certificate or other underlying document necessary to obtain a photo ID) to obtaining one of the required photo IDs. Student ID cards, even when government issued, are not one of the accepted IDs.

The U.S. Supreme Court has remanded to the North Carolina Supreme Court a suit brought by election and civil rights advocacy groups and voters in North Carolina, challenging redistricting plans for state and congressional seats.<sup>101</sup> On remand, the state court will determine whether the state legislature engaged in racial gerrymandering in developing the plans.

Civil rights and pro-democracy organizations have notified North Carolina of its failure to provide public assistance clients with a meaningful opportunity to register to vote in violation of provisions of the National Voting Registration Act (NVRA).<sup>102</sup> According to advocates, voter registration applications initiated at public assistance agencies have dropped dramatically from an annual average of 38,400 between 2007 and 2012 to an average of only 16,000 in the last two years, a decline of more than 50 percent.

Civil rights and pro-democracy groups also have sent a pre-litigation notice letter to the North Carolina Board of Elections, and Secretary of Transportation and Commissioner of Motor Vehicles, alleging that the North Carolina Division of Motor Vehicles is failing to meet its voter registration obligations under the NVRA.<sup>103</sup> As a result, in the 2014 General Election, numerous individuals who thought they had registered to vote at the DMV were forced to cast provisional ballots because their names were not on the voter registration rolls. For instance, in Mecklenburg County, out of nearly 880 provisional ballots cast, 157 (nearly 18%) were cast by individuals who said they had registered at the DMV.

#### Local Level:

Within hours of the passage of the omnibus anti-voter bill, election boards in two college towns began efforts to make voting less accessible for students.<sup>104</sup>

The **Watauga County Board of Elections** voted to eliminate an early voting site and election-day polling precinct on the Appalachian State University campus.<sup>105</sup> A North Carolina trial court found that the State Board of Elections, having ratified the Watauga Board's decision, intended to discriminate against students<sup>106</sup>; an appellate court subsequently dissolved its stay of that decision, which likely will be heard next by the state Supreme Court.<sup>107</sup> The County also considered a plan to combine three precincts into one to serve 9,300 voters, making it the third-largest voting precinct in the state. That one precinct site has 35 parking spaces and is located a mile away from the University, along a campus road with no sidewalks.<sup>108</sup>

The **Pasquotank County Board of Elections** initially a senior at historically Black Elizabeth City State University from running for city council based on a determination that his on-campus address did not establish local residency. This move was eventually reversed by the State Board of Elections. A Pasquotank county leader continues to express his intention to challenge the voter registrations of more students at historically Black colleges and universities in advance of upcoming elections.<sup>109</sup>

In **Benson**, North Carolina, county commissioners are considering lifting limits on at-large voting in the wake of the *Shelby County* decision. Benson has three commission seats elected by district voting, and three commission seats elected by at-large voting. As a result of earlier Section 2 of the Voting Rights Act litigation, residents can only vote for one at-large seat every three years.<sup>110</sup>

In **Forsyth**, North Carolina, the Board of Elections considered, but tabled, two proposals that would have (1) placed security officers at the County's one-stop early voting site, and (2) collected information from individuals or organizations returning voter registration forms.<sup>111</sup> The board chairman also considered closing an early voting site at Winston Salem State University, a historically Black institution.<sup>112</sup>

In **Shelby**, North Carolina, officials are considering consolidating five voting precincts, which serve a substantial number of Black voters, into two precincts to save \$10,000 per election.<sup>113</sup>

In **Hoke County**, North Carolina, the moving of an early voting site has the potential to impact Black and other voters.<sup>114</sup>

In **Rockingham County**, North Carolina, the relocation of polling places from schools to other locations as a purported safety measure has impacted Black and other voters.<sup>115</sup>

In **Guilford County**, North Carolina, changes to school board districts has impacted Black voters.<sup>116</sup>

In April 2015, the **Wake County** Board of Commissioners redistricted in a manner that favored suburban and rural areas of the County to the detriment of the urban core and packed Black voters into one district, though under the benchmark plan the County elected two Black members to the Commission.<sup>117</sup> That redistricting plan is being challenged in court. Likewise, a legal challenge is pending to redistricting plans for the Wake County Board of Education that contain unequal populations to weaken the voting strength of urban areas (which contain larger Democratic and minority communities) of the County to the benefit of suburban (Republican and white communities).<sup>118</sup>

In **Greensboro**, a redistricting plan for the City Council has received criticism for its potential impact of packing Black voters in Greensboro into two districts when the benchmark plan elects four Black members to the City Council.<sup>119</sup> Aspects of Greensboro's voting changes have been preliminarily enjoined by a federal court.<sup>120</sup>

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## **SOUTH CAROLINA**

Adam Piper, a spokesman for Attorney General Alan Wilson, has stated that the assurance that South Carolina gave to a federal court about its interpretation of the reasonable impediment exception to the requirement of voter photo ID, which South Carolina began implementing in 2013, "still applies."<sup>121</sup>

"This is a victory for all voters, as all states can now act equally, without some having to ask for permission or being required to jump through the extraordinary hoops demanded by federal bureaucracy," South Carolina Attorney General Alan Wilson said.<sup>122</sup>

### **Local Level:**

In **Greenville**, the City Council has considered moving from partisan to non-partisan elections, drawing criticism from the Council's two minority representatives and others who contend that doing so would dilute the voting

strength of the City’s two majority-minority districts.<sup>123</sup> Unlike other South Carolina cities such as Columbia or Charleston, which have non-partisan elections and where the Black populations have remained steady, Greenville’s Black population has declined. For critics of non-partisan elections for Greenville, removing party-affiliation from elections would make it harder for Black representatives to get elected. According to some studies, nonpartisan elections do not foster greater voter turnout; rather, party affiliation on ballots can encourage low-information voters to participate.

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## **SOUTH DAKOTA**

### **Local Level:**

On behalf of Native people living on the Pine Ridge Reservation in **Jackson County**, South Dakota, advocates, including the Department of Justice, as an intervenor, have filed a lawsuit to challenge the County’s failure to open a permanent satellite office where Native people can register to vote and vote without having to travel long distances.<sup>124</sup>

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## **TEXAS**

### **State Level:**

Within two hours of the Supreme Court’s *Shelby County* decision, Texas Attorney General Greg Abbott announced that the state’s voter identification law, previously rejected by a federal court as the most discriminatory measure of its kind in the country, would “immediately” go into effect. Texas Secretary of State John Steen also immediately announced that the state’s voter photo identification law would go into effect.<sup>125</sup> On June 26, the Texas Department of Public Safety began to offer election identification certificates (“EICs”) to Texas voters lacking other forms of identification. But even though the EIC is “free,” applying for one requires several costly underlying documents. Moreover, as a federal court found, some citizens would need to drive up to 250 miles to the nearest DPS just to apply for an EIC.<sup>126</sup>

In a statement, Abbott also said that “[r]edistricting maps passed by the legislature may also take effect without approval from the federal government,” even though those same maps had been deemed intentionally discriminatory by a federal court.<sup>127</sup> That redistricting fight has cost Texas alone upwards of one million dollars.<sup>128</sup>

Civil rights groups, the U.S. Department of Justice, and other advocates have challenged Texas’s implemented photo ID law, SB 14, in federal court under Section 2 of the Voting Rights Act and various provisions of the U.S. Constitution.<sup>129</sup> In 2014, a federal court struck down Texas’s implementation of its photo ID law, holding that “SB 14 creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African-Americans, and was imposed with an unconstitutional discriminatory purpose,” as well as “constitutes an unconstitutional poll tax.”<sup>130</sup> Attorney General Abbott appealed the merits of the decision,<sup>131</sup> The Supreme Court permitted the law to remain in effect for the November 2014 elections.<sup>132</sup> With early voting in

advance of the November 2014 elections underway, reports reflected that Texans were prevented from casting ballots because of Texas's discriminatory photo ID law;<sup>133</sup> Provisional ballots cast by voters lacking photo IDs also were not counted following these mid-term elections.<sup>134</sup> Turnout during 2014 mid-term elections also reportedly was lower than during the 2010 mid-term elections.<sup>135</sup> For example, in a recent election, 217 provisional ballots were cast in Travis County because voters did not have the required ID with them when voting, and only 6% of those ballots were "cured" by presenting the required ID within 6 days of the election.<sup>136</sup> Moreover, in Travis County, the single zip code with the highest number of uncured ballots covered UT-Austin and the surrounding student residential areas, reflecting that many out-of-state students whose only state-issued photo ID is their UT ID were impacted since student IDs are not acceptable under the ID. And, a study found that 13 percent of those registered in the 23<sup>rd</sup> Congressional District and did not vote stayed home, because they thought they lacked proper photo ID under SB 14 (even when they actually had the appropriate ID) and inadequate public education about the law, and that nearly 6 percent did not vote primarily because of the requirements.<sup>137</sup>

Following the appeal of the trial court decision, striking down SB 14, a three-judge panel ruled that Texas' strict voter ID measure violated Section 2 of the Voting Rights Act (for having a discriminatory effect on Black and Hispanic voters in Texas). However, the appellate court found that SB 14 did not constitute an unconstitutional poll tax, while remanding the case to the federal trial court to determine whether there is a discriminatory purpose behind the law and an appropriate remedy for the Section 2 violation.<sup>138</sup> Civil rights groups, on behalf of Plaintiffs, have asked that the trial court be allowed to work on the remedy to cure the discriminatory effect of the law in time for the November 2015 election.

The U.S. Supreme Court will consider an appeal arising from a challenge to a 2013 Texas Senate apportionment plan. The plan created districts with equal total population based on the people counted in the 2010 decennial Census.<sup>139</sup> These districts are equal based on the census total population, but contain a somewhat different number of voters or potential voters. Petitioners, Sue Evenwel and Edward Pfenninger, brought this action pursuant to § 1983 alleging the plan violated the one-person, one-vote (OPOV) principle of the Fourteenth Amendment under *Reynolds v. Sims*, 377 U.S. 533 (1964). Specifically, they claim that their votes are worth less than people in other (urban) districts because they live in (rural) districts that are comparatively overpopulated with voters, thereby diluting the impact of their individual vote. For example, Petitioners claim that while each of the 31 Texas state Senate districts covers about 811,000 people, they vary in the number of eligible voters. The rural First District, home to Evenwel, includes about 548,000 eligible voters, while a neighboring urban district has only 372,000 such individuals. Whether the Court determines that total population rather than some other measure is appropriate for apportionment purposes could have an impact on areas in the country with higher proportions of immigrant people, as well as children, people with felony convictions, and others.

#### Local Level:

The **City of Pasadena** changed the structure of the district council by eliminating two seats elected from predominantly Hispanic districts, and replacing those seats with two at-large seats elected from majority white districts.<sup>140</sup> Voters recently approved this change. Pasadena's 152,000 residents include a large and burgeoning Latino population.<sup>141</sup> Historically, jurisdictions have used at-large voting to dilute the voting strength of communities of color. Five Latino voters have filed a lawsuit challenging this redistricting under the Voting Rights Act and U.S. Constitution.<sup>142</sup>

In **Galveston County**, officials have cut in half (from 8 to 4) the number of constables and justices of the peace districts—a move that was previously rejected under Section 5—and initially put in place by earlier litigation to

remedy discrimination and provide electoral opportunity for voters of color.<sup>143</sup> The effect of the reduced number of officials will be to eliminate virtually all of the Black- and Latino-held positions on both boards. This redistricting comes in the midst of Black and Latino population gains in Galveston between 2000-2010.

**Galveston's City Council** also proposes changing the city charter from a 6-1 single member district election system to a 4-2-1 hybrid at-large system, drawing criticism that such a proposal is another attempt to diminish the voting strength of the minority community in Galveston.<sup>144</sup>

In **Beaumont**, a group of white legislators has acted to eliminate the four-person Black majority school board.<sup>145</sup> Prior to the *Shelby County* decision, Section 5 blocked a plan that would have changed the method of electing from seven single- member districts, to five single-member districts and two at-large. This move would have likely reduced the number of Black representatives on the school board. Having failed in that regard, the group then stated that Black board members' districts were not up for re-election in that year, but nonetheless allowed white candidates to submit qualifying papers for elections for those same seats. Having been told that their seats were not up for re-election, the Black incumbents did not submit similar papers. A state court determined that the elections could go on, in spite of the Black candidates' having not filed qualifying papers for elections that they were led to believe were not taking place. Section 5 ultimately blocked that entire scheme. Without Section 5 in place, a state court has allowed Beaumont to implement the redistricting plan, changing the election method of certain seats on the board, while denying the challenges to the three Black board members' candidacy.

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## VIRGINIA

Paul Shanks, a spokesman for Governor Bob McDonnell, said; "We will be working with the Attorney General's Office to determine what, if any, impact the decision will have on the implementation of this [photo ID] legislation in July of 2014."<sup>146</sup> State Senate Majority Leader Tommy Norment explained that voters worried about discriminatory voting measures can still bring a lawsuit, noting that: "[v]oter discrimination has no place in the Commonwealth and will not be tolerated by members of the Senate of Virginia. As every Virginia voter who believes a voting law or redistricting line to be discriminatory retains the ability to bring a court challenge, protections against voter discrimination remain intact despite the Supreme Court's decision on the Voting Rights Act."<sup>147</sup>

Since *Shelby*, Virginia has implemented its new photo ID law beginning in June 2014. Reportedly, about 450,000 Virginian voters lack an acceptable photo ID under the law.<sup>148</sup> Registered Virginia voters lacking the required photo IDs already have been impacted.<sup>149</sup> The State elections board considered, but ultimately modified, a policy that would have allowed voters to present expired (regardless of how long), but otherwise valid forms of photo ID at the polls; the "compromise" policy allows voters to use an acceptable photo ID that has been expired no more than 12 months before Election day.<sup>150</sup> During the 2015 legislative session, state lawmakers passed a bill (under the guise of preventing purported nondocumented voter fraud) that would put require voters to submit a copy of their photo ID when they apply by mail to vote by absentee ballot.<sup>151</sup> Under existing law, only people who apply for absentee ballots in person are required to present photo ID. In *Lee v. Virginia Board of Elections*, individual voters and the Democratic Party are challenging the photo ID law under Section 2 of the VRA, the First, Fourteenth, Fifteenth, and Twenty-Sixth Amendments to the U.S. Constitution.<sup>152</sup>



A federal court dismissed a suit brought by the Democratic Party of Virginia (DPVA) against the State Board of Elections for removing up to 57,000 registered and qualified voters from voter registration lists; the court notwithstanding, the court acknowledged that officials had improperly removed some voters from the rolls.<sup>153</sup> The complaint alleges that the Board's purge process is error-ridden and that it has required county and city registrars to "use their best judgment," in determining whether to purge voters. Among others,<sup>154</sup> this purge has the potential to disenfranchise voters of color, the elderly and the poor.

A federal court panel ruled that aspects of Virginia's congressional maps are unconstitutional because they pack Black voters into a single district, limiting their voting strength.<sup>155</sup> Under the redistricting plan, the percentage of Black voters increased from a voting-age population of 53.1 percent to 56.3 percent. The U.S. Supreme Court required the federal court to review its ruling that the Virginia legislature packed Black voters into one congressional district to dilute their voting strength in light of another Supreme Court ruling in an Alabama redistricting case, discussed *supra*.<sup>156</sup> Subsequently, for the second time, a federal court panel determined that Virginia's legislature impermissibly packed Black voters into one congressional district to dilute their voting strength and, while it ordered the legislature to develop a new redistricting plan by September 1, 2015, it likely will be the case that the court will develop the plan.<sup>157</sup> Defendants, including Virginia's Republican congressional delegation, may appeal.<sup>158</sup> State legislative districts also are being challenged for illegally packing Black voters into districts to dilute their voting strength.<sup>159</sup>

Recent reporting has demonstrated that Virginia may be purging voters from the rolls, many of whom are disproportionately voters of color, because these voters are suspected of being double voters (*i.e.*, suspected of voting in two or more states in the same election).<sup>160</sup>

The Virginia Board of Elections has pulled back on a proposal which would have enabled people seeking to register to vote to bypass questions about their citizenship and criminal history background.<sup>161</sup>

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*The NAACP Legal Defense Fund is the country's first and foremost civil and human rights law firm. Founded in 1940 under the leadership of Thurgood Marshall, LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society. LDF's victories established the foundations for the civil rights that all Americans enjoy today. In its first two decades, LDF undertook a coordinated legal assault against officially enforced public school segregation. This campaign culminated in *Brown v. Board of Education*, the landmark Supreme Court decision in 1954, a unanimous decision overturned the "separate but equal" doctrine of legally sanctioned discrimination, widely known as *Jim Crow*.*

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