

DEMOCRACY DIMINISHED

State and Local Threats to Voting
Post-Shelby County, Alabama v. Holder



A Publication of
THE THURGOOD MARSHALL INSTITUTE AT LDF

LDF
DEFEND EDUCATE EMPOWER



ABOUT THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

The NAACP Legal Defense and Educational Fund, Inc. (LDF or NAACP Legal Defense Fund) is the country's first and foremost civil rights law organization. Founded in 1940, LDF has an unparalleled record of expert legal advocacy in state and federal courts and its legal victories serve as the foundation for the civil rights that all Americans enjoy today.

LDF has worked for over 75 years to ensure the full, proper, and continued enforcement of both the United States Constitution and the federal statutes guaranteeing full political participation, including the Voting Rights Act. To that end, LDF has been involved in nearly all of the precedent-setting cases regarding minority political representation and voting rights before federal and state courts. See, e.g., *Shelby Cty., Ala. v. Holder*, 133 S. Ct. 2612 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006); *Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *United States v. Hays*, 515 U.S. 737 (1995); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Beer v. United States*, 425 U.S. 130 (1976); *White v. Regester*, 422 U.S. 935 (1975) (per curiam); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Terry v. Adams*, 345 U.S. 461 (1953); *Smith v. Allwright*, 321 U.S. 649 (1944).

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ABOUT THE THURGOOD MARSHALL INSTITUTE AT LDF

The Thurgood Marshall Institute is a research, strategic communications, and organizing hub fully embedded within the NAACP Legal Defense Fund. LDF's archives are also located within the Institute. Named for our founder Thurgood Marshall, the Institute deepens and broadens the reach of LDF's litigation and policy work, adding new expertise and tools, and invigorates the "educational" arm of LDF's mission.

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INTRODUCTION

For nearly 50 years, Section 5 of the Voting Rights Act (VRA) 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 U.S. Department of Justice (U.S. DOJ) or a federal court in Washington, D.C. for pre-approval. This requirement is commonly known as “preclearance.”

Section 5 preclearance served as our democracy’s discrimination checkpoint by halting discriminatory voting changes *before* they were implemented. It protected Black, Latino, Asian, Native American, and Alaskan Native voters from racial discrimination in voting in the states and localities—mostly in the South—with a history of having the most entrenched and adaptive forms of racial discrimination in voting. Section 5 placed the **burden of proof, time, and expense**¹ on the covered state or locality to demonstrate that a proposed voting change was not discriminatory before that change went into effect and could spread its harm.

Section 4(b) of the VRA, the coverage provision, authorized Congress to determine which jurisdictions should be “covered” and, thus, were required to seek preclearance. Preclearance applied to nine states (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).

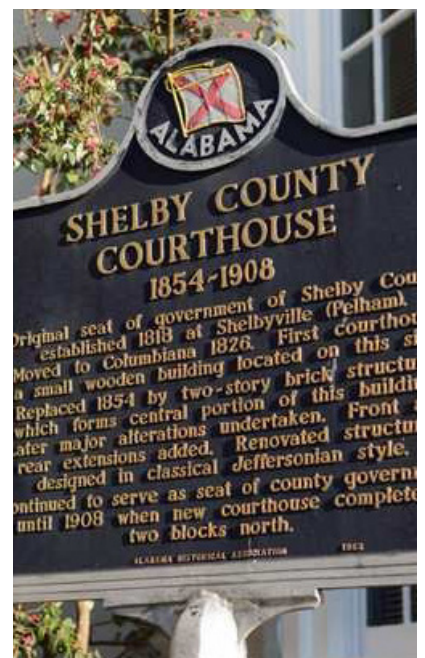
On June 25, 2013, the Supreme Court of the United States immobilized the preclearance process in *Shelby County, Alabama v. Holder*,² a challenge to the constitutionality of Sections 4(b) and 5 of the VRA. The NAACP Legal Defense and Educational Fund, Inc. (LDF) vigorously defended the VRA’s constitutionality 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, which effectively disabled Section 5. The Court held that the Section 4(b) formula for determining which jurisdictions would be covered under Section 5 was out of date and not responsive to current conditions in voting.



Following the *Shelby County* decision, states and local jurisdictions have been free to implement changes in voting without the preclearance process to determine whether those changes are racially discriminatory or harmful to language minorities.

■ LDF's Response to *Shelby County*

LDF has closely monitored how formerly covered states and localities are responding to the *Shelby County* decision. In addition, LDF attorneys have engaged with communities of color across the nation that are especially vulnerable by the Supreme Court's ruling to urge them to be their community's eyes and ears, and to alert LDF of any **potentially discriminatory voting changes**.³ 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 election officials and elected representatives, and monitoring elections through our annual *Prepared to Vote* campaigns.⁴ In addition, LDF continues to vigorously enforce other provisions of the VRA, such as Section 2, which are even more essential to the protection of our democracy in the absence of Section 5's preclearance process. LDF also is at the forefront of the effort to restore the VRA to its full strength and reactivate the preclearance protections.



More than 85% of preclearance work previously done under Section 5 of the Voting Rights Act was at the local level.

Statewide changes like redistricting and photo identification (ID) laws post-*Shelby County* have attracted significant media attention, as well as challenges in court under other provisions of the VRA. Voting changes at the local level, such as moving a polling place or switching from district-based to at-large voting, have garnered less attention, but are no less problematic. In fact, more than 85% of preclearance work previously done under Section 5 was at the local level.⁵ Common changes at the state or local level that potentially are discriminatory include: reducing the number of polling places; changing or eliminating early voting days and/or hours; replacing district voting with at-

large elections; implementing onerous registration qualifications like proof of citizenship; and removing qualified voters from registration lists.

■ The Voting Rights Amendment & Advancement Acts

In addition to monitoring post-*Shelby County* voting changes and pursuing litigation with the legal tools that remain available, LDF is urging Congress to aggressively respond to the *Shelby County* decision with new legislation that will protect voters of color from discrimination.

On January 16, 2014, seven months after the *Shelby County* decision, a bipartisan group of Members of Congress introduced the **Voting Rights Amendment Act of 2014**. 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.⁶ Senator Patrick Leahy (D-VT) and other Senators introduced a companion bill, S. 1945, in the Senate on the same day. The Voting Rights Amendment Act represents a threshold but significant step by Congress toward ensuring that communities of color are protected against voting discrimination.⁷ This bill includes several important provisions, including: a mechanism to identify places with the worst recent record of voting discrimination and require preclearance for their proposed voting changes; an enhanced ability to obtain preliminary injunctive relief when challenging voting changes likely to be discriminatory; an expansion of the authority of federal courts to order preclearance for jurisdictions that have discriminated against voters of color; and nationwide notification of potential voting changes to increase transparency and accountability and enable communities to challenge potentially discriminatory changes before elections.

The Voting Rights Amendment Act was reintroduced during the 2015-2016 legislative session.⁸ During the 2015-2016 legislative session, Congressional members also introduced the **Voting Rights Advancement Act of 2015** in another effort to respond to the void created by the *Shelby County* decision.⁹ This bill includes several important provisions, including ones that will: modernize the preclearance formula to cover states with a pattern of discrimination that puts voters at risk; ensure that last-minute voting changes will not adversely affect voters; protect voters from the types of voting changes most likely to discriminate against people of color and language minorities; enhance the ability to apply preclearance review when needed; expand the federal observer program; and improve voting rights protections for Native American and Alaskan Native people.¹⁰

Both the Voting Rights Amendment Act and the Voting Rights Advancement Act remain pending in Congress.

■ What you can do

Until the VRA is restored to its full strength, we must all play a vigilant role in protecting our democracy from discrimination in voting. Thus, LDF is encouraging individuals, communities of color, and their representatives to:

- notify LDF of any voting changes in their communities by emailing vote@naacpldf.org;
- reach out to representatives in the U.S. House of Representatives and Senate to urge them to do their job by holding hearings on the Voting Rights Amendment Act and Voting Rights Advancement Act, to assess the continuing need to restore federal protections following the *Shelby County* decision¹¹; and,
- sign a petition urging representatives to restore the full protections of the VRA now.

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

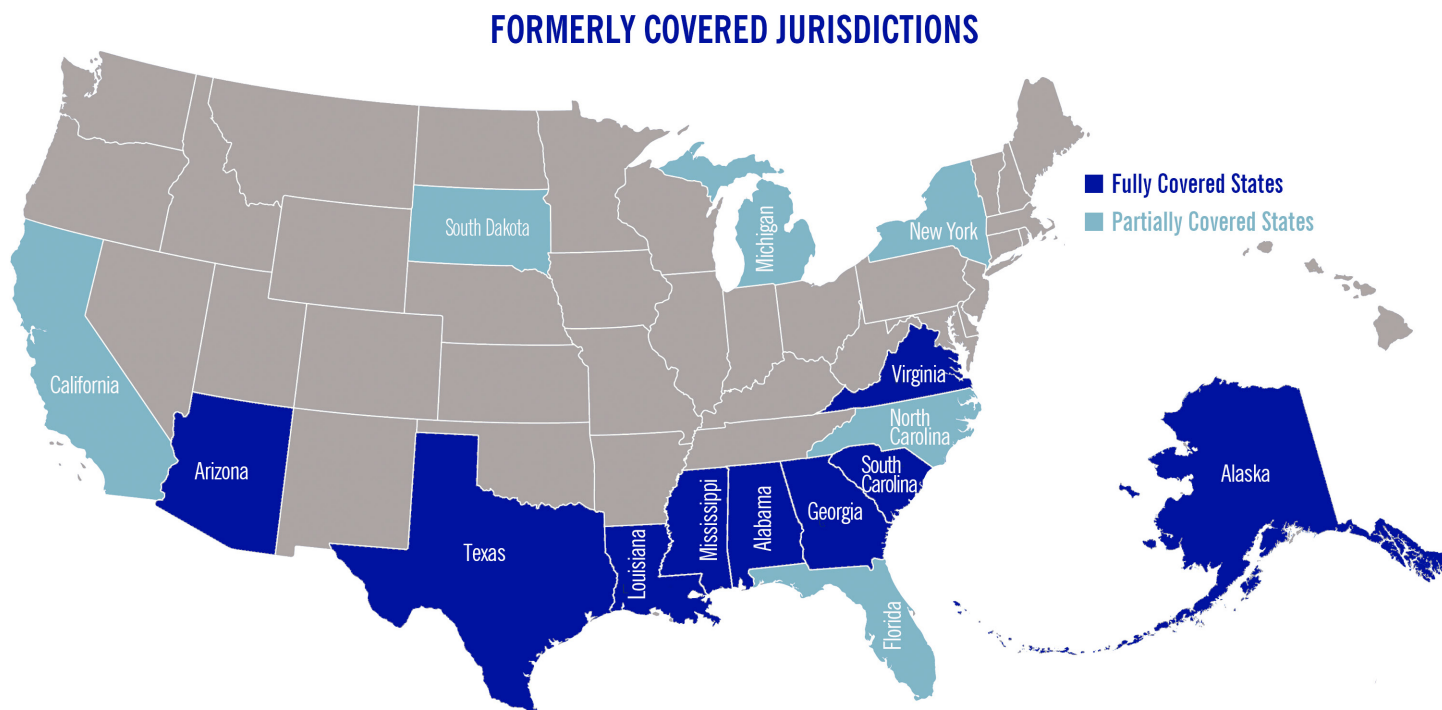
Until the Voting Rights Act is restored to its full strength, we must all play a vigilant role in protecting our democracy from discrimination in voting.

■ Democracy Diminished: State and Local Threats to Voting Post-*Shelby County, Alabama v. Holder*

What follows is a compendium of state, county, and local level voting changes in the wake of the *Shelby County* decision that threaten minority voting rights. There have been scores of changes following the *Shelby County* decision, as LDF predicted that there would be during our defense of Section 5 in the *Shelby County* case. Each change potentially impacts thousands of voters. For example, courts have found that Texas's implementation of its photo ID law (*i.e.*, one change) impacts more than 600,000 registered voters and one million eligible voters. A change to the electoral method for local bodies (*i.e.*, one change), when Fayette County, Georgia, attempted to implement at-large voting for a special election for members of its board of commissioners, had the potential to impact more than 100,000 people in that County.

In the absence of legislation that responds to the *Shelby County* decision, this compendium is ever growing. LDF maintains and regularly updates this compendium of voting changes on our website. For the most recent report, please visit our website at www.naacpldf.org.

LDF Senior Counsel, Leah Aden, led in the development of this report. For questions about the information contained in this report or to share information about voting changes in your community, please contact 212.965.2200 or vote@naacpldf.org.



Section 5 of the Voting Rights Act’s preclearance process served as our democracy’s discrimination checkpoint by halting discriminatory voting changes before they were implemented.

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ALABAMA

STATE LEVEL:

Photo ID & voucher requirements

In 2011, Alabama passed a law requiring photographic proof of identity to vote either in-person or absentee (“photo ID law”). However, the state did not immediately seek to implement the law, as all voting changes in the state were subject to preclearance under Section 5 at that time. Indeed, Alabama never sought preclearance for its photo ID law. Instead, for two years, the state delayed implementation of the law, awaiting the final resolution in *Shelby County*. The day after the Supreme Court announced the decision, Alabama announced that it would enforce its photo ID law for the 2014 election cycle.

Numerous studies indicate that photo ID laws depress voter turnout in Black and Latino communities.¹² Alabama’s photo ID law restricts in-person and absentee voting to individuals who are able to produce one of seven required forms of “valid” photo ID. A prospective in-person voter without the required photo ID cannot cast a regular ballot unless two election officials present at the polling place choose to “positively identify” that person.¹³ Reports indicate that in at least two cases, “elderly people who had been voting for decades could not be vouched for by the new people who had moved to the neighborhood and were working the polls.”¹⁴ All other prospective in-person voters, and nearly all other absentee voters without the required photo ID, must cast a provisional ballot that will be counted only if the prospective voter provides a designated election official with the required photo ID within a limited period of time before or after Election Day. LDF has found that the ballots of at least 600 voters went uncounted solely due to the failure of otherwise eligible voters to provide ID during the 2014 elections.¹⁵ According to the state’s 2014 numbers, an estimated 250,000 to 500,000 registered voters in Alabama lack a driver’s license or other acceptable ID under the law.

In December 2015, LDF, on behalf of other civil rights and pro-democracy organizations and individual voters, filed a lawsuit, *Greater Birmingham Ministries, et al. v. Alabama et al.*, under Section 2 of the VRA and the U.S. Constitution to challenge Alabama’s photo ID law and “positively identify” provision. The lawsuit seeks, among other remedies, that a federal court bail-in Alabama for preclearance review under Section 3(c) of the VRA.¹⁶ Plaintiffs filed a preliminary injunction in advance of the 2016 elections to stop the enforcement of the “positively identify”

The day after the Supreme Court announced the *Shelby County* decision, Alabama announced that it would enforce its photo ID law for the 2014 election cycle.



requirement, arguing that that provision functions as a prohibited voucher requirement. A federal court has denied the request for preliminary injunction with respect to the “positively identify” provision; however, LDF continues to challenge this and the photo ID provision before the federal court as part of the long-term relief that it seeks.

Closure of driver’s license issuing offices

In 2015, after implementing its photo ID law, Alabama also proposed closing 31 driver’s license offices, situated predominately in rural areas of Alabama’s Black Belt, even though driver’s licenses are one of the few forms of acceptable photo ID to vote in elections. LDF and other advocates voiced opposition to these proposed changes because of their likely impact on Black voters.¹⁷ As a result, rather than permanently close the offices, Alabama decided to keep them open one day a month, which still severely restricts access to photo ID for many individuals.¹⁸ LDF’s lawsuit challenging Alabama’s photo ID law seeks to completely restore the former hours of operation at each of these offices.

In addition to LDF’s advocacy in response to this reduction in access to driver’s license offices, the U.S. Department of Transportation is investigating whether Alabama’s proposed closure of and reduction of service hours for the state’s driver’s license offices is discriminatory in violation of Title VI of the Civil Rights Act. Title VI prohibits entities that receive federal funding for transportation-related projects from instituting policies that discriminate based on race.¹⁹

Proof of citizenship

Alabama also seeks to require voters to show proof of citizenship.²⁰ Specifically, Alabama has requested that the federal Election Administration Commission (EAC) modify the federal voter registration form to require proof of citizenship to vote in state and local elections. Such a requirement potentially sets up a two-tiered/dual system for voting for federal and state/local elections.²¹ The federal form, which can be used as an alternative to local voter registration forms and already requires individuals to swear, under penalty of perjury, that they are citizens, does not require a birth certificate or other document as proof of citizenship when registering. Civil rights and pro-democracy organizations have sued



According to Alabama's 2014 numbers, an estimated 250,000 to 500,000 registered voters in Alabama lack a driver's license or other acceptable photo ID under its law.



the EAC to challenge its actions to enable Alabama to attempt to require proof of citizenship.²² Other states (including Arizona) have attempted to construct a similar two-tiered/dual system, but have been blocked by the courts (see below on Arizona's efforts to require proof of citizenship).

Dual registration systems (*i.e.*, one system for voting in state elections and another for federal elections)

have a historical association with racial discrimination, harkening back to the pre-VRA era, when multi-tiered voter rolls were maintained to intentionally prevent Black voters from lawfully registering to vote. **Section 5** blocked a similar two-tiered system of voting in Mississippi in the 1990s.²³

LOCAL LEVEL:

Methods of election, redistricting, & voter purges

In January 2014, following litigation challenging various discriminatory voting practices, a federal district court ordered Section 5 preclearance review of certain voting practices in **Evergreen** in **Conecuh County** as a remedy under Section 3(c), the “bail-in” provision of the VRA.²⁴ Specifically, until December 2020, Evergreen must submit any 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 U.S. DOJ for Section 5 preclearance review. Since the *Shelby County* decision, Evergreen is the only jurisdiction to have been bailed back into Section 5's preclearance system through Section 3(c). In addition, the court appointed federal observers to monitor Evergreen's elections under the VRA.

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.²⁵ That same year, **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 March 2016, City Council members in **Daphne**, located in **Baldwin County**, passed a mid-cycle redistricting plan, which purportedly did not consider the impact on the Black community.²⁶ The racial impact remains unclear because the City's demographer did not perform a formal analysis on the plan's effect on the Black electorate, which would have been required under Section 5. Advocates have asked the U.S. DOJ to investigate.

Form of government

In **Decatur**, a city in **Morgan** and **Limestone** counties, a federal court in 2014 retained jurisdiction over a legal challenge to Decatur's failure to implement the city manager form of government, which, pursuant to state law, would have reduced the single-member voting districts from five to three, with a fourth district and the mayor elected at-large.²⁷ Voters selected this form of government in a 2010 referendum vote, but the City has failed to implement it because the City contends that doing so would violate the VRA by eliminating the only majority-minority district.

Polling place closures & reductions

In March 2016, City Council members in **Daphne**, located in **Baldwin County**, voted to reduce the number of polling places from five to two, forcing residents of one of the only two districts with a sizable Black population to travel more than two and a half miles away from their current polling places, while preserving the polling locations for most of the City's heavily white populated districts.²⁸ Advocates have asked the U.S. DOJ to investigate.

During the 2016 primary season, voters in Maricopa County, Arizona, the largest county in the state, endured long lines and waits (up to five hours) to vote because election officials

reduced the number of polling places by **70% (from 200 to 60).**



ARIZONA

STATE LEVEL:

Proof of citizenship

The state of Arizona (along with the state of Kansas) sued the federal Election Assistance Commission (EAC), seeking to require that agency to modify the federal voter registration form to require proof of citizenship to vote in state and local elections, potentially setting up a two-tiered/dual requirement.²⁹ The federal form can be used as an alternative form to local voter registration forms and already requires individuals to swear under penalty of perjury that they are citizens; the federal form does not require a birth certificate or other document as proof to register to vote. Arizona challenged the EAC because of its decision denying the state's request to modify the federal form.³⁰ **Section 5** blocked a similar two-tiered dual 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.

Multiple groups, including communities of color, intervened in the states' lawsuit³¹ and have brought other cases to challenge Arizona's (and Kansas's) proof of citizenship requirement for voter registration laws.³² On March 19, 2014, a federal court ordered the EAC to modify the state-specific instructions on the federal mail voter registration form to reflect Arizona's (and Kansas's) requirements that voter registrations provide documentary proof of citizenship.³³ An appeals court 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.³⁴ The U.S. Supreme Court declined to hear a case during its 2015-2016 term that could have allowed states to require proof of citizenship for those applying to vote in federal elections, effectively upholding the lower federal court ruling rejecting Arizona (and Kansas's) attempt to require that proof.³⁵

Notwithstanding this litigation, in 2016, the Executive Director of the EAC unilaterally acted to change the instructions that accompany the federal voter registration form to respond to Arizona's requests that residents who register to vote using the federal form must show proof of citizenship to vote in state and local elections.³⁶ In response, civil rights and pro-democracy organizations have sued the EAC challenging the actions of its Executive Director to enable Arizona to require proof of citizenship.³⁷

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 (NVRA). In its ongoing pursuit of a proof of citizenship requirement, Arizona contends that the Court's *Inter Tribal* decision only applies to federal elections.

Voter purges

In 2014, state lawmakers considered reenacting voting provisions—previously blocked by voter referendum—that would allow counties to purge people from the permanent early voter list. Counties use this list to mail ballots prior to every election to individuals, who, after marking their ballot, mail them back or take them to a polling place.³⁸

Advocates are concerned that H.B. 2023 may disfranchise many Native American people who live in remote areas of reservations and cannot make it to polling places. The legislation, enacted in 2016, makes it a felony (punishable by a year in prison and a potential fine of \$150,000) to collect other people's ballots and bring them to the polls.



Restrictions on third-party voter registration

Advocates are concerned that H.B. 2023 may disfranchise many Native American people who live in remote areas of reservations and cannot make it to polling places.³⁹ The legislation, enacted in 2016, makes it a felony (punishable by a year in prison and a potential fine of \$150,000) to collect other people's ballots and bring them to polls. The Democratic Party and the presidential campaigns of Hillary Clinton and Bernie Sanders, on behalf of the Democratic National Committee, the Democratic Senatorial Campaign Committee, the Arizona Democratic Party, and several individuals, are suing Arizona for policies like this one that could potentially have a dramatic and disparate impact on minority communities.⁴⁰

LOCAL LEVEL:

Method of election

The **Maricopa County** Community College District Board added two at-large electoral districts to its existing five-member Board, which were elected by districts.⁴¹ The community college district, which is the largest in the country, had enrolled more than 260,000 students in 2013. Reportedly, this change had been on hold, but was implemented for elections in 2014 following the *Shelby County* decision. **Section 5** previously blocked similar plans for at-large voting in other jurisdictions on the ground that this electoral method diluted the voting strength of communities of color.

Polling place closures & reductions

During the 2016 primary season, voters in **Maricopa County**, the largest county in the state, endured long lines and waits of up to five hours to vote because election officials reduced the number of polling places by 70% (from 200 to 60), so that one polling place served every 21,000 voters in the County, compared with one polling place for every 2,500 voters in the rest of the state.⁴² People of color are more than 40% of the County's population. The reduction was purported to save costs and transform the County to a vote center system wherein, instead of being assigned to a single polling place, voters could vote at any of the 60 centers. Those voting centers were unable to handle the number of voters in the County during the 2016 primary election season, producing long wait times to vote. The state's House and Elections Committee held a hearing with elected officials to learn about the issues experienced by voters in the County during the 2016 primary election and the reasoning behind the polling place consolidations. This type of assessment of the impact of the reduction in polling places would have taken place *before* the polling place consolidations took effect had Section 5 been operable.⁴³

The U.S. DOJ is investigating the County's voting change, seeking specific data that would support the County's purported rationales for closing the polling places.⁴⁴

The Democratic Party and the presidential campaigns of Hillary Clinton and Bernie Sanders, on behalf of the Democratic National Committee, the Democratic Senatorial Campaign Committee, the Arizona Democratic Party, and several individuals, are suing Arizona in federal court, alleging that its inadequate voting centers had a particularly burdensome impact on Black, Hispanic, and Native American communities, which had fewer polling locations than white communities and, in some cases, no places to vote at all. A civil rights organization, on behalf of two voters,

also has filed a lawsuit in state court, challenging the “drastic reduction in the number of polling places” in Maricopa County, that “created unendurable wait times for numerous Arizonans who were forced to leave polling places without casting a ballot.”⁴⁵



ARKANSAS*

STATE LEVEL:

**Arkansas was once a covered jurisdiction under Section 3’s bail-in mechanism due to LDF’s litigation efforts in Jeffers v. Clinton.⁴⁶ Prior to the Shelby County decision, Arkansas ceased to be covered; however, LDF continues to work in Arkansas to track racial discrimination in voting.*

Photo ID requirement

Arkansas passed a photo ID law in 2013. That same year, the Governor vetoed the law and a bi-cameral majority voted to override the veto.⁴⁷ The law was scheduled to be implemented on January 1, 2014. However, 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.”⁴⁸

Notwithstanding the trial court decision, appellate rulings permitted the photo ID law to be implemented in the May and June 2014 primary elections.⁴⁹ Subsequently, and after LDF submitted a friend of the court brief in support of the challenge, the Arkansas Supreme Court permanently struck down the law, finding that it violated the state constitution by adding a new voter qualification.⁵⁰ However, during the November 2014 elections, the Secretary of State reportedly requested voter ID of certain voters, particularly voters who transferred their registration to a new county.⁵¹ LDF and other civil rights organizations and advocates notified state and county officials of their concerns with the state’s implementation of a photo ID requirement and its impact on Black and other voters.⁵² Studies have indicated that photo ID laws depress voter turnout in Black and Latino communities.⁵³





FLORIDA

STATE LEVEL:

Voter purges

In 2014, Florida's Governor sought to reinstitute a purge of purported non-citizens from the state voter database, as he attempted to do in 2012.⁵⁴ In 2012, because of litigation in *United States v. Florida*, Florida election officials were blocked from using an error-prone list to purge purported non-citizens from the election rolls.⁵⁵ Following *Shelby County*, county election supervisors resisted the Governor's attempts to purge voters.



LOCAL LEVEL:

Registration qualifications & voter intimidation

The Florida Department of Law Enforcement investigated allegations that an appointed white city clerk in **Sopchoppy**, a city in **Wakulla County**: (1) suppressed Black voters in a June 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, including in an inter-racial contest.⁵⁶ Following the clerk's efforts to prevent Black voters from casting their ballots, a Black city commissioner lost and the incumbent Black mayor lost by only one vote.

Polling place closures & reductions

In **Jacksonville**, located in **Duval County**, the Board of Elections in 2013 relocated a polling place that served large numbers of Black voters in the City to a less accessible area.⁵⁷ In 2012, Black voters constituted more than 90% of

those who voted early at the former polling place. According to plaintiffs challenging the closure, the relocated polling place is difficult to reach by public transportation and imposes other burdens on voters.

In 2013, **Hernando County** adopted a plan to close and consolidate voting locations, with a focus on the neighborhoods of the **City of Brooksville**.⁵⁸ The plan called for elimination of polling places for the general elections, and consolidation of all Brooksville precincts into one. While the overall African American citizen voting-age population (CVAP) of the County is approximately 4.5%, the CVAP affected by this change in polling places is nearly 22% African American. There are no African American or Latino individuals serving on the County Commission.



GEORGIA

STATE LEVEL:

Early voting

State lawmakers proposed legislation during the 2014 legislative session that would have cut early voting periods to six days (including a Saturday) for small consolidated cities as a purported cost-saving measure.⁵⁹ Just four years earlier, Georgia had already cut early voting in the state from 45 to 21 days.⁶⁰ 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.”⁶¹ Following that legislation’s defeat, and opposition to the legislation by LDF and other organizations in 2014, in the next 2015 legislative session, state lawmakers proposed an even more restrictive bill that would reduce early voting by seven days across Georgia and would not mandate Sunday voting despite its proven popularity. This legislation, which LDF and other organizations also opposed, was proposed purportedly as a cost-saving measure and to achieve uniformity in early voting across



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According to a lawsuit, as of June 2015, over

800,000 VOTERS

in Georgia were in danger of being purged from the voter rolls.

Georgia.⁶² In 2016, the state's early voter turnout broke its 2008 record for early voting in advance of the presidential preference primary, demonstrating the ongoing need for early voting opportunities in Georgia.⁶³

Voter registration & purges

In 2014, Georgia's Secretary of State launched an investigation of allegations of voter fraud against the New Georgia Project (NGP) related to its registration of over 85,000 voters statewide, including many first-time, young voters of color.⁶⁴ NGP coordinated one of Georgia's largest voter registration efforts and views the allegations as an attempt at voter suppression.⁶⁵ The investigation followed complaints about NGP's submission of allegedly forged voter registration applications and signatures on releases, as well as applications with purportedly false or inaccurate information.⁶⁶ Organizations registering voters are required to deliver all completed voter registration applications to the Secretary of State or the appropriate board of registrars within 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. Overall, the Secretary of State's investigation diverted resources away from and chilled NGP's voter registration efforts because of registrants' concerns about the impact of the investigation on their applications, among other consequences. After conducting its investigation, the Secretary of State reportedly identified an issue with just 25 of 85,000 voter registration applications.⁶⁷

Following this finding, NGP filed a lawsuit against the Secretary of State and several counties in 2014, alleging that more than 40,000 voters (of the more than 85,000 registered), a substantial number of whom are voters of color, were missing from the voter rolls due to the state's alleged failure to process those voter registrations.⁶⁸ The Secretary of State denied that the applications had not been processed.⁶⁹ A state judge dismissed the lawsuit, citing lack of proof that state and county officials failed to fulfill their duties to process voter registration applications.⁷⁰

Recent reporting has demonstrated that Georgia may be continuing to purge voters from the rolls, many of whom are disproportionately voters of color, suspecting these voters of being double voters (*i.e.*, voting in two or more states in the same election).⁷¹ In 2016, civil rights and pro-democracy organizations sued the Secretary of State for these purges under the NVRA and U.S. Constitution.⁷² According to the lawsuit, as of June 2015, over 800,000 voters in Georgia were in danger of being purged from the voter rolls.⁷³



Proof of citizenship

Georgia (like Arizona and Alabama) also has requested that the federal Election Administration Commission (EAC) change the state-specific instructions that accompany the federal voter registration form to require residents to show proof of citizenship.⁷⁴ In 2016, civil rights and pro-democracy organizations sued the EAC for its actions enabling Georgia to require proof of citizenship.⁷⁵

Candidate qualifications

State officials are challenging the candidate residency qualifications and eligibility of a Black Democratic candidate, who is competing against a white Republican incumbent candidate and has represented a majority-Black state legislative district for three decades.⁷⁶ This district is exceptional because it is Georgia's only majority-minority district in the state represented by a Republican. The Black candidate has lived and voted in the district at issue for approximately 18 years. Yet, in March of 2016, the boundary lines of the district changed, edging the Black candidate out of the district in which he seeks to run for office and after the period for candidate qualifying ended.

LOCAL LEVEL:

Redistricting, voter registration, ballot access, & voter intimidation

In **Fulton County**, the state's most populous county, the County Commission considered a redistricting plan in 2013 that would create a new overwhelmingly white district and reduce the district sizes of majority-Black districts.⁷⁷

Additionally, in a 2015 litigation settlement, Fulton County admitted to illegally disfranchising and misleading voters in the 2008 and 2012 elections, constituting more than two dozen violations of state law, including improperly rejecting eligible ballots, sending voters to the wrong precincts, failing to update supplemental voter list, failing to timely process changes of address and other registration documents, failing to provide official voters lists to all precincts, and failing to provide absentee ballots to all voters who requested them.⁷⁸

In 2013, **Greene County** implemented a redistricting plan for the five-member County Board of Commissioners. The plan, which a Black member of the Commission denounced, resulted in Black voters making up less than 51% in all five districts under the plan.⁷⁹ Under **Section 5**, the U.S. DOJ blocked another redistricting plan in Greene County in 2012 and was in the process of reviewing the above-mentioned plan before the *Shelby County* decision.⁸⁰

A redistricting lawsuit against the **City of Decatur** is pending in federal court. At issue is whether a reduction in the number of City Council districts, through implementation of a voter referendum, would dilute Black voting strength in the City.⁸¹

In **Sumter County**, a plaintiff-voter is challenging a redistricting plan that would reduce school board districts from nine to seven, two of which would be at-large, to align with the county commission districts.⁸² The plaintiff alleges that the redistricting plan packs Black voters into two districts in violation of Section 2 of the VRA.

In 2014 in **Fayette County**, the Board of Commissioners and Board of Education attempted to revert to at-large voting to hold a special election for a seat vacated by the first Black County Commissioner, who was elected by a remedial district-based election and died unexpectedly. A federal court ordered the remedial district-based election in 2014, following Section 2 of the VRA litigation brought by LDF in 2011 and settled in 2016 in *Georgia State Conference of the NAACP, et al. v. Fayette County Board of Commissioners, et al.*⁸³ LDF won a preliminary injunction in 2015 that required that the special election be conducted by district-based voting.⁸⁴

In **Emmanuel County**, a civil rights organization and two voters filed a lawsuit in 2016 under Section 2 of the VRA, alleging that while two majority-Black districts are possible, the redistricting plan for the County school board packs Black voters into one district, thereby diluting Black voting strength.⁸⁵ Black residents make up one-third of the County's voting-age population, and close to half of the students in Emanuel County are Black, yet there has never been more than one Black member on the school board at one time. Although Black candidates have run in other districts, the only Black candidates who have ever been elected to the school board were elected from the single majority-Black district.



In 2013, the City of Athens, located in Athens-Clark County, Georgia, proposed 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.

In 2016, the Board of Elections decided to relocate a polling place to a Bibb County, Georgia Sheriff's office for the 2016 elections without considering its impact on voters of color, giving notice to them, or considering reasonable alternatives to this location, according to civil rights organizations concerned with that decision.



Early voting

In **Dekalb County**, when an early voting location was opened near a popular mall in 2014, a state senator responded that “this location is dominated by African American shoppers and it is near several large African American mega churches,” and that he would “prefer more educated voters than a greater increase in the number of voters.”⁸⁶ (See above for more on early voting restrictions in Georgia).

In **Bibb County**, local officials rejected a proposal in 2014 that would have provided for early voting

on Sunday, an opportunity for poor and people of color to vote outside of traditional Election Day.⁸⁷

Polling place closures & reductions, & voter intimidation

In 2013, the **City of Athens**, located in **Athens-Clark County**, proposed 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.⁸⁸ 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.

After initially considering eliminating over half of the County's polling places in **Morgan County**, the County ultimately eliminated more than a third of them in 2013.⁸⁹ One city council member expressed his belief that the closures would disfranchise low-income voters and voters of color, many of whom lack cars and would have difficulty reaching the reassigned polling sites.

Election officials in **Baker County**, a majority Black county with high poverty rates, proposed eliminating four of its five polling places in 2013, requiring some voters to travel upwards of 20 miles to vote.⁹⁰ As a result of LDF's advocacy, namely an inquiry about whether the purported cost-saving rationale for the change outweighed the potential harm to the minority community, the County decided not to close the four polling places.

In 2015, the Board of Elections in **Macon-Bibb County** proposed reducing the number of polling places from 40 to 26 by closures or consolidations, including closing the Macon Mall as a polling location, even though it is served by public transportation in a County where 20% of residents lack vehicles.⁹¹ Despite that the overwhelming majority of the polling places proposed for closure were in majority-Black neighborhoods, the County claimed that the closures were to save the County approximately \$40,000 annually. Other closures were based on rationales such as renovations in certain schools that serve as polling places. The Board formed an advisory panel to consider the closures. Civil rights organizations and pro-democracy groups voiced objections to the closures and consolidations.⁹² Moreover, in 2016, the Board of Elections decided to relocate a polling place to a Bibb County Sheriff's office for the 2016 elections without considering its impact on voters of color, giving notice to them, or considering reasonable alternatives to this location, according to civil rights organizations concerned with that decision.⁹³

Timing of elections

In 2013, election officials in **Augusta-Richmond** reintroduced a plan that would change the date of County elections from their traditional timing in November to over the summer when Black voter turnout is typically lower.⁹⁴ A lawsuit challenging the change in election date from the November general election to the May 20 primary election was unsuccessful.⁹⁵ Under **Section**

Election officials in Baker County, Georgia, a majority Black county with high poverty rates, proposed eliminating four of its five polling places in 2013, requiring some voters to travel upwards of 20 miles to vote.

As a result of LDF's advocacy, namely an inquiry about whether the purported cost-saving rationale for the change outweighed the potential harm to the minority community, the County decided not to close the four polling places.

5, the U.S. DOJ in 2012 blocked this same attempt to switch the election date from November to a summertime month.⁹⁶

In 2013, officials in **Macon**, a majority-Black city in **Bibb County**, decided to hold a single non-partisan municipal election in July, when Black voter turnout is typically lower. The U.S. DOJ had been scrutinizing this voting change under Section 5 before the *Shelby County* decision. This election schedule is a marked departure from Macon's traditional schedule of multi-party partisan primary elections in July and a general election in November.⁹⁷

Voter purges

In **Hancock** and **Sparta counties**, civil rights advocates filed a lawsuit in 2015, challenging the purging of eligible Black voters from the voter rolls because of alleged address changes in violation of the VRA and other laws.⁹⁸ For example, plaintiffs allege that the Hancock County Board of Elections and Registration (BOER) took nearly 17% of all eligible Spartan voters and at least 53 Spartan voters off of the voter rolls, nearly all of whom were Black. In response to the lawsuit, the BOER has reinstated 15 of the purged voters.⁹⁹



LOUISIANA

LOCAL LEVEL:

Redistricting

In 2010, **Section 5** review prevented the Louisiana State Legislature from implementing Act No. 650, which would have reduced the size of the Iberville Parish School Board from 15 members to nine members, eight of which would have been single-member districts and one of which would have been an at-large district.¹⁰⁰ However, Section 5 approval by the U.S. DOJ allowed the Parish to bypass state law that mandated that the board be no more than nine seats. In 2013, prior to the *Shelby County* decision, Section 5 approval also allowed the Iberville Parish School Board to adopt a redistricting plan that reduced the size of the School Board from 15 members to 13 members. However, after the *Shelby County* decision and because Section 5 no longer prevented Act No. 650 from going into effect, the Iberville Parish School Board redistricted in 2013 into eight single-member districts and one at-large district, even though the School Board acknowledged its preference for the 13-member board to the 9-member board mandated by state law.

In **East Baton Rouge Parish**, a civil rights organization, on behalf of several local residents, filed a lawsuit in 2014 to challenge the School Board's redistricting to reduce the Board's size from 11 single-members districts (six majority white and five majority Black) to nine (five majority white and four majority Black), contending that the redistricting decision has the effect of diluting minority representation on the School Board.¹⁰¹



MICHIGAN

STATE LEVEL:

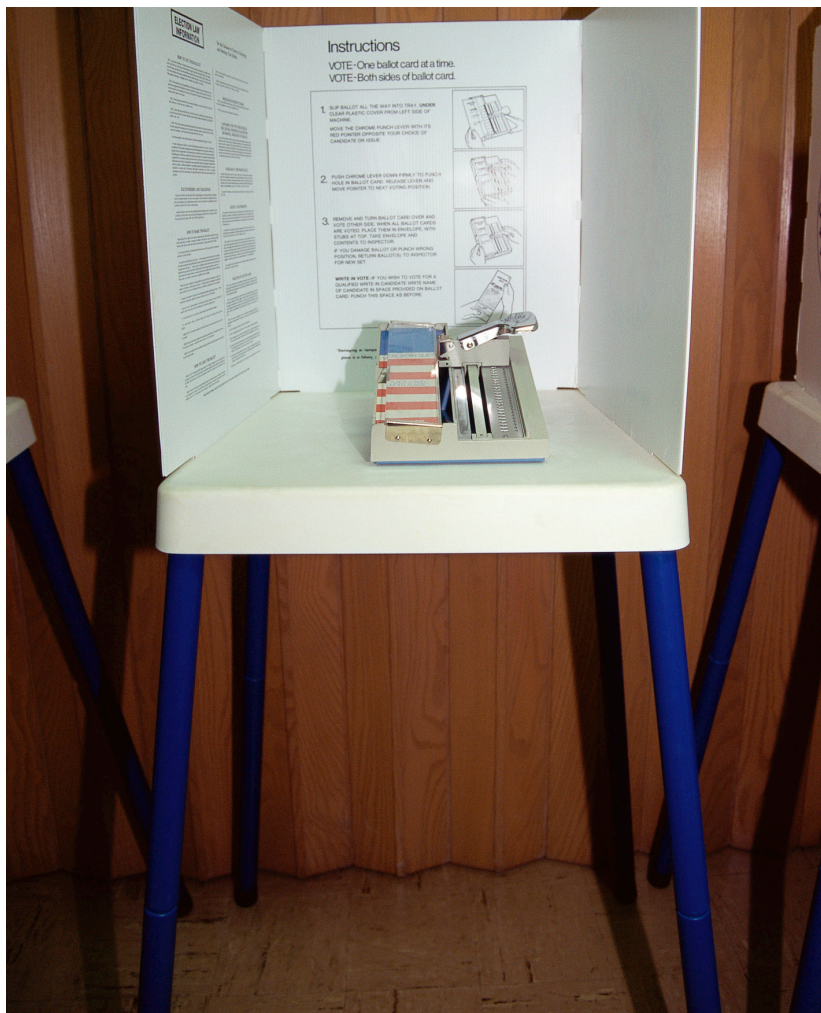
Photo ID & polling place operations

In 2015, the Michigan Legislature considered, but did not pass, a bill, S.B. 639, which would have allowed first-time voters to vote by mail only if they present ID in person at the municipal clerk's office for the municipality of registration.¹⁰² According to civil rights and pro-democracy organizations, who opposed this proposal, this requirement is needlessly restrictive since other laws like the federal Help America Vote Act (HAVA) already have identification requirements for first-time voters.¹⁰³ College and university students, who have not yet become Michigan residents, particularly freshmen studying away from the town of their parents' residence, as well as Michigan voters who travel frequently for work or work non-traditional hours, would have been severely affected by this bill. The bill also proposed prohibiting municipal clerk's offices from staying open beyond regular weekday business hours. This change would have likely suppressed turnout, increased lines at the polls on Election Day in urban areas, and would have had a disparate impact on minority and student voters, according to advocates.

LOCAL LEVEL:

Voter intimidation & proof of citizenship

In 2014, advocates for Arab-American voters in **Dearborn Heights** challenged election officials for preventing Arab-American individuals from obtaining absentee ballots, purportedly based on concerns about potential voter fraud and campaign irregularities.¹⁰⁴ Advocacy groups monitored polls and provided a hotline for voters to report such issues during a primary election.¹⁰⁵ A **Wayne County** judge 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."¹⁰⁶



The implementation of Mississippi's photo ID law already has impacted Mississippi elections; the outcome of a tied (177-177) local special election in 2014 depended upon a lone voter returning within 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.

MISSISSIPPI

STATE LEVEL:



Photo ID requirement

Following the *Shelby County* decision, Mississippi's Lieutenant Governor said that preclearance "unfairly applied to certain states [and] should be eliminated in recognition of the progress Mississippi has made over the past 48 years."¹⁰⁷ Mississippi's Secretary of State said he would move forward immediately to implement Mississippi's voter ID law for primaries in June 2014.¹⁰⁸ 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 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.¹⁰⁹ Reportedly, hundreds of voters could not vote in the 2014 mid-term election because of the photo ID law.¹¹⁰ Studies have indicated that photo ID laws depress voter turnout in Black and Latino communities.¹¹¹





NEW YORK

STATE LEVEL:

Vacancies

In 2014, a group of leading local and national voting rights advocates, including LDF, pressed the Governor to hold special elections to fill 12 legislative vacancies in the New York State Senate and Assembly, which would otherwise represent approximately 1.8 million voters across New York, over 800,000 of whom are people of color.¹¹² In maintaining these vacancies, advocates have claimed that the Governor has departed from past precedent in refusing to call elections.

In 2014, a group of leading local and national voting rights advocates, including LDF, pressed New York's Governor to hold special elections to fill 12 legislative vacancies in the New York State Senate and Assembly, which would otherwise represent approximately 1.8 million voters across New York, over 800,000 of whom are people of color.



NORTH CAROLINA

STATE LEVEL:

Omnibus anti-voter bill (photo ID, early voting, same day registration, out of precinct voting, pre-registration for 16 & 17 year olds)



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.¹¹³ A North Carolina State Senator also said that he would move quickly to pass a voter ID law on the ground that it would purportedly 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.¹¹⁴ North Carolina's Attorney General 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."¹¹⁵

Within two months of the *Shelby County* decision, North Carolina's Governor signed an omnibus anti-voter bill, H.B. 589, which includes numerous provisions designed to make it harder for voters to access the polls.

Numerous voters have recounted various difficulties voting in North Carolina given all of the changes to election laws in the state, including the photo ID requirement and the lack of notification of last-minute polling place location changes during the 2016 primary season.

Within two months of the *Shelby County* decision, North Carolina's Governor signed an omnibus anti-voter bill, H.B. 589, 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 (from 17 to 10 days); and throwing out provisional ballots cast at the wrong polling station.¹¹⁶

Early voting, same day registration, out of precinct voting, & pre-registration for 16 & 17 year olds

A federal judge declined to preliminarily enjoin certain (non-photo ID) provisions of H.B. 589. That ruling was successfully appealed¹¹⁷ to the federal Court of Appeals for the Fourth Circuit, which ordered North Carolina to reinstate same day registration opportunities and to count out-of-precinct ballots. The U.S. Supreme Court subsequently stayed that ruling for the 2014 election, but not others.¹¹⁸

A three-week federal trial was held in July 2015 related to the non-photo ID aspects of the omnibus voter law.¹¹⁹

The ballots of at least 454 North Carolina voters who are disproportionately people of color went uncounted in the 2014 primary election because of North Carolina's elimination of same day registration and prohibition on counting a provisional ballot cast in the wrong precinct.¹²⁰ These and other acts of discrimination in recent elections have been documented.¹²¹ One estimate suggests that turnout was reduced by at least 30,000 voters in the 2014 election because of barriers to the ballot.¹²² In 2008 and 2012, more than 250,000 voters in North Carolina relied on same day registration to cast their ballots. In 2012, 41% of the voters who relied upon same day voter registration were Black.¹²³ Reportedly, Black voters have cast out-of-precinct ballots at twice the rate of white voters.¹²⁴ In 2012, 70% of Black voters used early voting.¹²⁵

Photo ID requirement

Plaintiffs unsuccessfully moved the federal court for a preliminary injunction to halt implementation of the photo ID aspect of the omnibus law, which the state began implementing in 2016.¹²⁶

A federal trial on the photo ID requirement of the omnibus law took place in January 2016.¹²⁷

Prior to trial, the North Carolina legislature made changes to the photo ID law.¹²⁸ The new legislation purports to: allow voters with an expired driver's license or state-issued ID card (no more than four years expired) to vote; require election officials to help voters use mail-in ballots, which do not require photo ID, when voters vote during the early voting period; and 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 an accepted form of ID.

Reports indicate that many voters lack awareness about or are confused by the "reasonable impediment" provision of the photo ID law.¹²⁹ During the March 2016 primary, reportedly 26% of people who relied on the reasonable impediment provision were Black voters, who only account for 22% of North Carolina's population.¹³⁰

As of the March 2016 primary, approximately 318,000 registered North Carolina voters, disproportionately Black and Latino voters, lacked a driver's license or state ID card.¹³¹ Voters also have reported difficulties and burdensome costs associated with obtaining the "free" photo IDs.¹³² Numerous voters have recounted various difficulties voting given all of the changes to election laws in the state, including the photo ID requirement and the lack of notification of last-minute polling place location changes during the 2016 primary season.¹³³ More than 40,000 people across North Carolina voted by provisional early ballots; nearly 3,000 voted provisionally because of voter ID issues during the 2016 primary season.¹³⁴ Other voters reported difficulties with having to vote with a photo ID, such as having to satisfy a spelling test to vote, voter intimidation, and long lines at the polls.¹³⁵ During the 2012 primary, 23,000 provisional ballots were cast.



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As noted with respect to other stringent photo ID laws, numerous studies have indicated that photo ID laws depress voter turnout in Black and Latino communities.¹³⁶

Following the 2015 and 2016 trials on the omnibus voter suppression bill, a federal district court upheld the various provisions of the law, including the photo ID requirement, elimination of same day registration, out-of-precinct voting, pre-registration for 16 and 17 year olds, and reductions to early voting.¹³⁷ The court reasoned that: (1) the state had asserted legitimate interests for those provisions, none of which had been proven unconstitutional by plaintiffs; (2) the robust turnout in 2014 proved that the law did not suppress the votes of people of color in the state; (3) while Black residents of the state continue to endure socioeconomic disparities that can be linked to state discrimination and make it more difficult for them to participate in the political process, plaintiffs failed to show that such disparities will materially affect their ability to participate in the political process; and (4) there is “little official discrimination to consider” today. Plaintiffs have appealed to the Fourth Circuit Court of Appeals, which will hear the case on an expedited basis with oral argument scheduled to take place on June 21, 2016.¹³⁸

A state court challenge to the photo ID requirement is also pending.¹³⁹

LOCAL LEVEL:

Polling place closures & reductions, & voter intimidation

A 2015 analysis reflects that the widespread movement of polling places throughout North Carolina has kept tens of thousands of voters, disproportionately voters of color, from the polls. According to the analysis, state officials moved almost one-third of the state's early voting polling sites in 2014, which will increase the distance that Black voters would have to travel to vote early, while leaving white voters largely unaffected.

A 2015 analysis reflects that the widespread movement of polling places throughout North Carolina, as reported below, has kept tens of thousands of voters, disproportionately voters of color, from the polls.¹⁴⁰ According to the analysis, state officials moved almost one-third of the state's early voting polling sites in 2014, which will increase the distance that Black voters would have to travel to vote early, while leaving white voters largely unaffected.

In 2013, in **Watauga County**, the Board of Elections voted to eliminate an early voting site and election-day polling

precinct on the Appalachian State University campus.¹⁴¹ A North Carolina trial court found that the State Board of Elections, having ratified the Watauga Board's decision, intended to discriminate against students;¹⁴² an appellate court subsequently dissolved its stay of that decision.¹⁴³ The County also proposed combining three precincts into one to serve 9,300 voters, making it the third-largest voting precinct in the state. That one precinct site had 35 parking spaces and was located a mile away from the University, along a campus road with no sidewalks.¹⁴⁴

In **Forsyth County**, the Board of Elections considered, but tabled, two proposals in 2013 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.¹⁴⁵ The board chairman also proposed closing an early voting site at Winston Salem State University, a historically Black institution.¹⁴⁶ Reportedly, polling locations in Winston-Salem have slowly been reduced from 15 in 2014 to 12 in 2015, like in other parts of the state, erecting barriers in terms of transportation and other impediments to accessing existing polling places.¹⁴⁷

In 2014, officials in **Shelby**, located in **Cleveland County**, considered consolidating five voting precincts, which serve a substantial number of Black voters, into two precincts purportedly to save \$10,000 per election.¹⁴⁸

In 2014, **Rockingham County** relocated five polling places from schools to other locations as a purported safety measure, which has impacted Black and other voters.¹⁴⁹

Candidate qualifications

In 2013, the **Pasquotank County** Board of Elections initially blocked a senior at Elizabeth City State University, a historically Black university, from running for the 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. Reportedly, a Pasquotank county leader expressed his intention to continue to challenge the voter registrations of more students at historically Black colleges and universities.¹⁵⁰

Methods of election

In 2013, county commissioners in **Benson**, located in **Johnston County**, considered lifting limits on at-large voting. 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 VRA litigation, residents can only vote for one at-large seat every three years.¹⁵¹

Redistricting

In 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.¹⁵² That redistricting plan is being challenged in court. Likewise, a legal challenge to redistricting plans for the Wake County Board of Education—that contain unequal populations of urban areas of the county (which contain larger Democratic and minority communities) to the benefit of suburban areas of the county (which contain larger Republican and white communities)—is pending.¹⁵³

In 2015, a redistricting plan for the City Council in **Greensboro**, located in **Guilford County**, received criticism for its potential impact of packing Black voters into two districts when the benchmark plan would elect four Black members to the City Council.¹⁵⁴ Aspects of Greensboro's voting changes have been preliminarily enjoined by a federal court.¹⁵⁵

SOUTH CAROLINA



STATE LEVEL:

Photo ID requirement

Following the *Shelby County* decision, South Carolina's Attorney General stated: "[t]his 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."¹⁵⁶ Moreover, a spokesperson for South Carolina's Attorney General stated that the assurance that South Carolina gave to a federal court in 2012 about its interpretation of the reasonable impediment exception to the requirement that voters present one of five accepted photo IDs "still applies."¹⁵⁷ Indeed, as a result of a 2012 trial concerning South Carolina's photo ID law in *South Carolina v. United States*, which LDF, along with other organizations and the U.S. DOJ litigated, the state adopted a reasonable impediment exception that recognizes the many reasons why a qualified South Carolina voter may not have a photo ID and provides a process for how such voters still can vote in-person.¹⁵⁸

Notwithstanding the implementation of South Carolina's photo ID law, along with that of its reasonable impediment exception in 2013, the state estimates that, as of 2016, approximately

178,000

South Carolinians, disproportionately people of color, lack an acceptable photo ID under the law.

Notwithstanding the photo ID law's implementation along with that of its reasonable impediment exception in 2013, the state estimates that, as of 2016, approximately 178,000 South Carolinians, disproportionately people of color, lack an acceptable photo ID under the law. Moreover, in 2016, confusion over the reasonable impediment provision of that law persists three years after its implementation.¹⁵⁹ Further, even with a photo ID, at least one eligible voter was told that he was "dead" when presenting himself at the polls with a valid photo ID.¹⁶⁰

During the 2016 legislative session, the South Carolina Legislature proposed a bill, H.3167, that would allow voters to use concealed weapons permits for photo ID. These permits are disproportionately held by white South Carolina residents, as compared to Black residents. A proposed, but tabled, amendment to the bill would have added all state employee IDs and student IDs issued by one of South Carolina's colleges or universities to the list of potential acceptable IDs under the law.¹⁶¹

LOCAL LEVEL:

Non-partisan elections

In 2014, the City Council in **Greenville** proposed 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.¹⁶² 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. Critics of non-partisan elections in Greenville have argued that removing party-affiliation from elections will make it harder for Black representatives to get elected. According to some studies, non-partisan elections do not foster greater voter turnout; rather, party affiliation on ballots encourages increased voter participation.

TEXAS



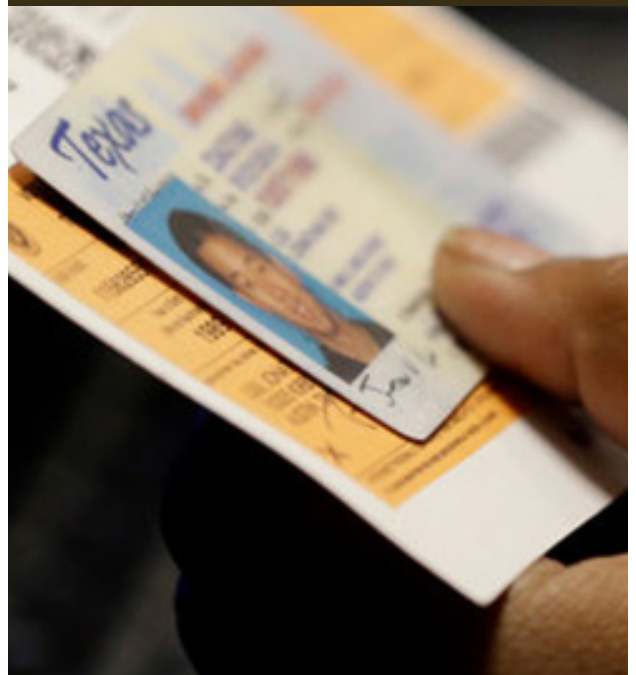
STATE LEVEL:

Photo ID requirement

Within two hours of the *Shelby County* decision, Texas's Attorney General announced that the state's photo ID law, previously rejected by a federal court as the most discriminatory measure of its kind in the country, would "immediately" go into effect. Texas's Secretary of State also immediately announced that the state's voter photo ID law would go into effect.¹⁶³

On June 26, 2013, the Texas Department of Public Safety began to offer election identification certificates ("EICs"), one of the forms of acceptable photo IDs under the law, to Texas voters lacking other forms of accepted photo ID. As of March 2016, Texas only had issued 653 EICs.¹⁶⁴ Even though the EIC is technically "free," applying for one can require several costly underlying documents like a birth certificate.¹⁶⁵ Moreover, as a federal court found in 2012, some citizens must drive up to 250 miles to the nearest Department of Public Safety just to apply for an EIC.¹⁶⁶ These costs to obtain a photo ID in Texas disproportionately harm minority voters. A survey of 46

Within two hours of the *Shelby County* decision, Texas's Attorney General announced that the state's photo ID law, previously rejected by a federal court as the most discriminatory measure of its kind in the country, would "immediately" go into effect.



counties reflected that “many election administrators had little to no familiarity with the [EIC] ID, and some expressed surprise that anyone would inquire about it.”¹⁶⁷

Civil rights groups, including LDF, the U.S. DOJ, and other advocates challenged Texas’s implemented photo ID law, SB 14, in federal court in *Veasey v. Perry*, under Section 2 of the VRA and various provisions of the U.S. Constitution.¹⁶⁸ 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 [*i.e.*, they comprise a disproportionate share of the more than 600,000 registered voters and one million eligible voters who lack the requisite photo ID], and was imposed with an unconstitutional discriminatory purpose,” and that it “constitutes an unconstitutional poll tax.”¹⁶⁹



That ruling has been stayed while Texas has appealed the merits of the decision.¹⁷⁰ Moreover, the Supreme Court, over a dissent by Justice Ginsburg, joined by Justices Sotomayor and Kagan, permitted the law to remain in effect for the November 2014 elections, and it remained in effect for the March 2016 primary season, reportedly impacting participation.¹⁷¹

During the early voting period in advance of the November 2014 elections, reports revealed that Texans were prevented from casting ballots because of the state’s discriminatory photo ID law.¹⁷² Turnout during the 2014 mid-term elections was reportedly lower than during the 2010 mid-term elections.¹⁷³ Certain provisional ballots cast by voters lacking photo IDs also were not counted following those mid-term elections because voters failed to “cure” the ballots by presenting the required ID within six days of the election.¹⁷⁴ Travis County, which covers UT-Austin and the surrounding student residential areas,

had the highest number of uncured ballots, reflecting that many out-of-state students were impacted by the law since student IDs are no longer an acceptable form of photo ID. In the County, 217 provisional ballots were cast because voters did not have the required ID with them when voting, and only 6% of those ballots were “cured” within six days of the election.¹⁷⁵ In the 23rd Congressional District, which runs along the majority of Texas’s border with Mexico, one study found that 13% of registered voters with the required ID stayed home during the 2014 midterm elections because they thought that they lacked proper photo ID under SB 14, illustrating inadequate public education about the law.¹⁷⁶ Additionally, nearly 6% of registered voters in that congressional district state that their principal reason for not voting was because they did not possess one of the limited forms of required photo ID.¹⁷⁷

During the 2016 primary election season, numerous voters were disfranchised because of a lack of an acceptable photo ID.¹⁷⁸ Studies have shown that photo ID laws can depress voter turnout in Black and Latino communities.¹⁷⁹

Following an appeal of the trial court decision that struck down SB 14, a three-judge panel in the Fifth Circuit ruled in 2015 that Texas's strict voter ID measure violated Section 2 of the VRA for having a discriminatory effect on Black and Hispanic voters in Texas. The court also determined that SB 14 places an unconstitutional burden on the right to vote. 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 effects and burden on the right to vote violations.¹⁸⁰ In light of that decision, civil rights groups, on behalf of Plaintiffs, asked the Fifth Circuit to remand the case to the trial court to work on the remedy to provide interim relief from the discriminatory effect of the law in time for the November 2015 election and elections thereafter, which could have required Texas to include voter registration certificates as one of the acceptable forms of photo ID under the law. That request will be considered by the full Fifth Circuit Court of Appeals, which granted Texas's motion to hear the case *en banc*. Texas continues to contend that the photo ID law does not violate the VRA, in spite of three federal court decisions that have determined otherwise, and seeks to be allowed to continue to enforce its photo ID law through the 2016 election season.¹⁸¹ The *en banc* panel of the Fifth Circuit Court of Appeals heard Texas's appeal on May 24, 2016.¹⁸²

Following the Fifth Circuit's refusal to grant that interim relief, civil rights advocates requested that the U.S. Supreme Court provide relief in advance of the 2016 presidential election.¹⁸³ On April 29, 2016, the U.S. Supreme Court issued an order indicating that it would be willing to consider issuing interim relief in advance of the 2016 presidential election, if the Fifth Circuit fails to rule by July 20, 2016.¹⁸⁴

A separate state court challenge, which was brought by a Texas judge, formerly a member of the Republican Party but now the only Democrat elected in a statewide office in Texas, alleged that Texas's photo ID law is an unconstitutional obstacle to a legal activity (*i.e.*, voting). After the case was heard by Texas's Fifth Court of Appeals in May 2016,¹⁸⁵ the plaintiff abruptly dismissed it.¹⁸⁶ The challenge was based on a provision of the Texas Constitution that provides: "[i]n

Texas's implementation

of its photo ID law

impacts more than

600,000

registered voters and

1 million

eligible voters.

all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary *to detect and punish fraud* and preserve the purity of the ballot box; and the Legislature shall provide by law for the registration of all voters” (emphasis added). In light of that provision, the plaintiff alleged that Texas’s photo ID law does not prevent fraud but rather presumes that someone is guilty of fraud before they vote, serving as a prior restraint on the constitutional right to vote.

LOCAL LEVEL:

Redistricting & candidate qualifications

In 2013, the **City of Pasadena**, located in **Harris County**, 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.¹⁸⁷ Voters approved this change. Pasadena’s 152,000 residents include a large and burgeoning Latino population.¹⁸⁸ Historically, jurisdictions have used at-large voting to dilute the voting strength of communities of color. A civil rights organization on behalf of five Latino voters has filed a lawsuit challenging this redistricting under the VRA and U.S. Constitution.¹⁸⁹

In 2013 in **Galveston County**, officials cut in half (from eight to four) the number of constables and justices of the peace districts—a change that was previously rejected under **Section 5**.¹⁹⁰ The benchmark redistricting plan had been put in place by earlier litigation to remedy discrimination and provide electoral opportunity for voters of color. 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 and 2010.

In 2015, **Galveston’s City Council** proposed to change the city charter from a 6-1 electoral system to a 4-2-1 electoral system, drawing criticism that such a proposal is another attempt to diminish the voting strength of the minority community in Galveston.¹⁹¹

In **Beaumont**, located in **Jefferson County**, a group of white legislators has acted to eliminate the four-person Black majority school board.¹⁹² Prior to the *Shelby County* decision, **Section 5** blocked a plan that would have changed the method of election from seven single-member districts to five single-member districts and two at-large. This change 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 a controversial and convoluted series of events, including that Black candidates were deemed to have 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.

Polling place closures & reductions

In 2016, civil rights and pro-democracy organizations in **Waller County** successfully urged a County judge, the Elections Administrator, and the County Commission, to protect early voting locations in a majority-minority precinct in the **City of Prairie View**, reminding those elected officials that closing early voting locations potentially violates the VRA.¹⁹³ The County Commission had voted to reduce (from eight to two) the number of early voting locations in advance of the March 2016 primary. In response to this advocacy, election officials voted to increase the early voting locations in the City of Prairie View, including one within walking distance of Prairie View A&M, a historically Black university.

As of October 2014, about **197,000** registered voters in Virginia did not have a driver's license, an acceptable photo ID under the state's new law.



VIRGINIA

STATE LEVEL:

Photo ID requirement

Following the *Shelby County* decision, a spokesman for Virginia's Governor said: "[w]e 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."¹⁹⁴ The State's Senate Majority Leader 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."¹⁹⁵

Since the *Shelby County* decision, Virginia has implemented its new photo ID law beginning in June 2014.¹⁹⁶ As of October 2014, about 197,000 registered voters in Virginia did not have a driver's license, an acceptable photo ID under the state's new law.¹⁹⁷ As of summer 2015, Virginia had issued only 4,400 "free" photo ID cards.¹⁹⁸ Numerous studies have shown that photo ID laws depress voter turnout in Black and Latino communities.¹⁹⁹

In 2014, 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 adopted “compromise” policy allows voters to use an acceptable photo ID that has been expired no more than 12 months before Election day.²⁰⁰

During the 2015 legislative session, state lawmakers passed a bill (under the guise of preventing purported non-documented voter fraud) that would require voters to submit a copy of their photo ID when they apply by mail to vote by absentee ballot.²⁰¹ Under existing law, only people who apply for absentee ballots in person are required to present photo ID.

In June 2015, in *Lee v. Virginia Board of Elections*, individual voters and the Democratic Party challenged the photo ID law and other elections-related practices, including a state requirement that restores voting rights to nonviolent individuals with felony convictions only on an individual basis. The lawsuit alleges violations of Section 2 of the VRA, as well as the First, Fourteenth, Fifteenth, and Twenty-Sixth Amendments to the U.S. Constitution.²⁰² While continuing to challenge the photo ID requirement, the parties reached a settlement with respect to waiting times for voters to cast ballots and how the state Board of Elections and Department of Elections will handle machine breakdowns.²⁰³ The photo ID trial was held in late February 2016 and, while a decision in that case was pending, the photo ID law was in effect for the state’s March presidential primaries.²⁰⁴ Also, in March 2016, Virginia’s Governor signed an executive order restoring voting rights to more than 200,000 citizens with past felony criminal convictions who have completed their sentences and any supervised probation or parole.²⁰⁵ Certain Republican representatives and four other Virginia voters have filed a lawsuit in the state’s Supreme Court, challenging the Governor’s authority to sign that order providing voting rights restoration for this broad class of individuals rather than having done so on an individualized basis; the Virginia Supreme Court will hold a special session in July 2016 in an effort to address this challenge in advance of the November 2016 elections.²⁰⁶



In late May 2016, a federal court upheld Virginia’s photo ID law, following the February trial on the law. The court wrote: “[w]hile the merits of this voter identification law . . . can be reasonably debated, it remains true that Virginia has created a scheme of laws to accommodate all people in their right to vote.”²⁰⁷ Plaintiffs are appealing this ruling to the federal Court of Appeals for the Fourth Circuit and seeking that that court hear the case on an expedited basis.²⁰⁸

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