The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation as of August 8, 2024

Introduction

In the 2013 *Shelby County, Alabama* v. *Holder* decision, the U.S. Supreme Court immobilized a core provision of the Voting Rights Act, Section 5, which had, for nearly 50 years, protected millions of voters of color from racial discrimination in voting. The Supreme Court rendered Section 5 inoperable by striking down as unconstitutional Section 4(b) of the Voting Rights Act, which identified the places in our country where Section 5 applied. Section 5 required those states and localities covered by Section 4(b)— for example, Alabama, Florida, Georgia, Louisiana, North Carolina, and Mississippi— to receive approval from the federal government *before* implementing a voting change. Section 5 protected Black, Latino, Asian, American Indian, and Alaskan Native voters from racial discrimination in voting in the parts of our country with the most entrenched and adaptive forms of voting discrimination. Striking Section 4(b) and, therefore, gutting Section 5, was like taking away your car keys (Section 4(b)), but letting you keep your car (Section 5).

Section 5 of the VRA as Compared to Section 2 of the VRA

Both before and after the *Shelby County* decision, skeptics of Section 5's continued need based on current conditions in covered jurisdictions, pointed to Section 2 of the Voting Rights Act as a potential stand-in for Section 5's protection. Section 2, which continues to apply nationwide, is the affirmative piece of the Voting Rights Act relied upon by voters of color to challenge racial discrimination in voting *after* a discriminatory voting practice or procedure is in place.

The differences between Sections 5 and 2 are critical. Whereas Section 5 served as a shield to protect voters of color *before* discriminatory voting practices are in place, Section 2 can be (and has been) used as a sword *after* a voting change has been implemented to uproot its harm. Section 5 blocked over 1,000 proposed discriminatory voting changes over a 25-year period from 1982 to 2006, placing the burden— of factual and legal proof, time, and expense— on the 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 2 places the burden of proof, time, and expense on voters of color to go to court and seek relief for the discrimination that they experience in voting.

In the more than a decade since the *Shelby County* decision, communities of color continue to rely upon Section 2, in spite of its high price in both time and dollars, to ensure that they can elect their preferred candidates and participate equally in the political process. Once communities of color acquire the resources needed to bring Section 2 litigation, the court proceedings can be slow, and several elections can occur with the discriminatory voting procedures in place. Taxpayers living in states and localities defending Section 2 claims also pay the high cost of Section 2 litigation when politicians who benefit from discriminatory voting practices are incentivized to use taxpayer dollars to prolong litigation to keep the illegal voting practice that got them elected in place.

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Below is a snapshot of the costs of Section 2 litigation brought nationwide.

Burden of Proof

Courts have recognized that Section 2 litigation is an extremely complex and intimidating area of the law.[1] Section 2 litigation also is resource- intensive. The burden that Section 2 litigation places on plaintiffs may prevent voters of color from bringing claims.[2] Moreover, there is a dearth of lawyers who have experience bringing Section 2 claims.[3] National organizations that focus on discrimination in voting practices are focused on impact litigation[4] and do not have the resources to bring claims against *every* discriminatory voting practice that a jurisdiction implements.[5] Eighty-five percent of the voting changes that Section 5 blocked occurred at the local level across various local jurisdictions[6]

Section 2 litigation is also labor-intensive. In its defense of a Section 2 claim, the town of Yakima in Washington produced more than 340,000 pages of documents and more than 50 people were deposed.[7] The complexity of Section 2 cases generally necessitates expert witnesses for both the plaintiff(s) and the defendant(s).[8]

Due to its complex and time-intensive nature, Section 2 litigation strains district court judges and judicial resources. Because of the difficulties of securing preliminary injunctions, Section 2 litigation rarely serves as a preemptive tool against discriminatory voting practices.[9] Section 2 litigation typically follows the implementation of discriminatory

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[1] *Johnson v. Hamrick*, 196 F.3d 1216, 1223 (11th Cir. 1999) ("the resolution of a voting dilution claim requires close analysis of unusually complex factual patterns") (emphasis added); *Williams v. Bd. of Comm'rs of McIntosh Cnty*., 938 F. Supp. 852, 858 (S.D. Ga. 1996); *Project Vote v. Blackwell*, 1:06-CV- 1628, 2009 WL 917737, *10 (N.D. Ohio Mar. 31, 2009) (calling voting rights "an area of law that [is] anything but simple"); Br. of Joaquin Avila, et al. as *Amici Curiae* in Supp. of Resp'ts at 16, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013) (explaining that "Section 2 actions have become increasingly complex and resource-intensive in recent years."); *id*. at 17; *see also id*. at 18-19 (referencing the Federal Judicial Center's *2003-2004 District Court Case-Weighting Study*, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources out of sixty-three types of cases analyzed)).

[2] Avila Brief, *supra* n.l at 16.

[3] Avila Brief, *supra* n.l at 28.

[4] Avila Brief, *supra* n.1 at 30.

[5] Justin Levitt, *Section 5 as Simulacrum,* 123 YALE L.J. ONLINE 151 (June 8, 2013).

[6] *Id.*

[7] Mike Faulk, *Big Costs, Heavy Hitters in ACLU Suit Against Yakima*, YAKIMA HERALD (Aug. 10, 2014), http://www.yakimaherald.com/special_projects/aclu/big-costs-heavy-hitters-in-aclu-suit-against-yakima/article_3cbcce20-ee9d-11e4-bfba-f3e05bd949ca.html.

[8] *Id.*; *see also Benavidez v. City of Irving, Tex.,* 638 F. Supp. 2d 709, 713 (N.D. Tex. 2009) (finding that expert witnesses that are qualified due to education and experience can give their opinions regarding the *Thornburg* v. *Gingles* factors for determining Section 2 liability).

[9] Avila Brief, *supra.* n.l at 20-21.

voting practices.

Money

A huge amount of resources is needed to bring a Section 2 complaint. Section 2 cases require voters of color and their lawyers to risk six- and seven-figure expenditures.[10]

Section 2 claims also are expensive to defend. Voting changes are highly likely to face court challenges, which end up using taxpayer resources. Section 2 litigation can run taxpayers in locales defending claims a considerable amount of money.

Lawmakers in Charleston County, South Carolina, spent $2 million unsuccessfully defending itself from a Section 2 claim.[11] After losing the lawsuit, Charleston County paid an additional $712,027 for plaintiffs' attorneys' fees and costs.[12] On the contrary, under Section 5, it cost an average of $500 for states and localities to submit paperwork for preclearance of changes to voting practices.[13]

Several other states and localities have amassed substantial legal fees, which are paid with public funds, defending Section 2 claims:

In Fayette County, Georgia, the Board of Commissioners and the Board of Education spent over $1.11 million of taxpayers' dollars on legal fees defending a Section 2 claim LDF litigated that challenged the County's at-large voting scheme, which discriminated against voters of color.[14]

Similarly, in Sumpter County, Georgia, after the Board of Education lost a Section 2 challenge to its at-large voting scheme, plaintiffs sought $990,576.09 for attorneys' fees and

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[10] *Id.* at 24.

[11] Order granting attorney's fees, *Moultrie v. Charleston Cty.,* No. 2:01-cv-00562-PMD (D.S.C. Aug. 8, 2005).

[12] *Congressional Authority to Protect Voting Rights After* Shelby County v. Holder*: Hearing Before the Subcomm. on the Constitution, Civil Rights and Civil Liberties of the H. Comm. on Judiciary*, 116th Cong. 14 (Sept. 24, 2019) [hereinafter *Subcommittee Hearing*] (Written Testimony of Professor Justin Levitt) (citing Amended Judgment, *Moultrie v. Charleston Cty*., No. 2:01-0562 (D.S.C. Aug. 9, 2005)).

[13] Avila Brief, *supra* n.1 at 27.

[14] Tammy Joyner, *Fayette's voting fight proves costly*, ATLANTA JOURNAL-CONSTITUTION (Oct. 20, 2015, 5:37 PM), https://www.ajc.com/news/local-govt--politics/fayette-voting-fight-proves-costly/JBKp4T7SwLma2gWQJFfpBO/.

costs.[15] The district court ordered the Board to pay plaintiffs $786,929.98;[16] however, the parties jointly moved to vacate and settled outside of court.[17]

In North Carolina, state lawmakers, between 2011 and 2016, spent at least $5 million of taxpayers' dollars defending its omnibus election law changes.[18] In *North Carolina State Conference of the NAACP v. McCrory*, the Fourth Circuit Court of Appeals, in July 2016, struck down those laws after finding that the state legislature enacted them with a racially discriminatory purpose in violation of Section 2 and the U.S. Constitution. After a lengthy dispute over attorney's fees where plaintiffs initially sought $7,977,902.47, the parties settled and North Carolina agreed to pay $5,922,165.28.[19]

Defending a Section 2 claim cost the city of Yakima, Washington, nearly $3 million—$1.1 million to defend and $1.8 million to pay to the ACLU who prevailed after bringing the Section 2 lawsuit in August 2012.[20] The complexity of Section 2 litigation affects the cost of litigation. In Yakima, the city paid three expert witnesses a total of $278,623 to rebut the testimony of the ACLU's four expert witnesses.

Pasadena, Texas paid more than $260,000, well in advance of trial, to defend a challenge to the City's at-large electoral method for diluting Latino voting strength in violation of Section 2 and the U.S. Constitution.[21] These expenses did not include those being borne by the Mexican American Legal Defense Fund (MALDEF) on behalf of plaintiffs, who were Latino voters in the lawsuit. In 2017, Pasadena agreed to a settle the case for $1 million dollars.[22]

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[15] Plaintiffs' Motion for Attorneys' Fees and Expenses, *Wright v. Sumter County Board of Elections*, No. 1:14- 00042-WLS (N.D. Ga. Apr. 22, 2020).
[16] Judgment, *Wright*, No. 1:14- 00042-WLS (N.D. Ga. Dec. 7, 2020).
[17] Joint Motion to Vacate Order, *Wright*, No. 1:14- 00042-WLS (N.D. Ga. Dec. 21, 2020).
[18] Alice Ollstein, *North Carolina Spent Nearly $5 Million Defending Voter ID, and Lost*, ThinkProgress (Aug. 9, 2016), https://archive.thinkprogress.org/north-carolina-legal-spending-voter-id-f0aa75082518/; Emery P. Dalesio, *McCrory Legal bills mount in Voter ID case*, Associated Press (Sept. 30, 2014, 3:16 PM), http://www.citizen-times.com/story/news/local/2014/09/30/mccrory- legal-bills-mount-voter-case/16488927/; *North Carolina State Conference of the NAACP, et. al v. McCrory, et al.*, 16-1468, ECF No. 150 (4th Cir. July 29, 2016), *available at* http://electionlawblog.org/wp-content/uploads/nc-4th.pdf; Jim Morrill & Michael Gordon, *After passing laws, NC Republicans spent millions defending them*, News & Observer (Nov. 25, 2016, 6:00 AM), http://www.newsobserver.com/news/politics-government/state-politics/article116795423.html.
[19] Order for Attorney's Fees and Expenses, *NAACP v. McCrory*, Nos. 1:13CV658, 1:13CV660, 1:13CV86 (M.D. NC. Dec. 7, 2018).
[20] Faulk, *supra* n.7.
[21] Kristi Nix, *Pasadena's legal fees top $260K with no trial date in sight for lawsuit*, THE PASADENA CITIZEN (Dec. 17, 2015, 7:00 a.m.), http://www.yourhoustonnews.com/pasadena/news/pasadena-s-legal-fees-top-k-with-no-trial-date/article_17b99c09-d160-511b-b29a-cae92cc8aa4e.html.
[22] Gabrielle Banks and Mike Snyder, *Pasadena Mayor Pitches $1 Million Settlement to End Voting Rights Suit*, Houston Chronicle (Sept. 29, 2017, 10:19 PM), http://www.houstonchronicle.com/news/houston-texas/houston/article/Pasadena-mayor-pitches-1M-settlement-to-end-12242251.php.

Moreover, as of October 2017, the state of Texas had spent more than $4 million dollars over more than five years to defend against challenges, brought under Sections 2 and 5 of the Voting Rights Act and the U.S. Constitution, to its strict photo ID law.[23] That exorbitant figure continued to rise as one of those challenges, *Veasey v. Perry*, was litigated through the appellate courts by LDF, alongside other civil rights groups and the U.S. DOJ. That figure did not include the costs and expenses borne by these civil rights groups and the U.S. DOJ. Indeed, in April 2019, (non-DOJ) plaintiffs, who challenged Texas's strict photo ID law, moved for approximately $8.8 million in attorneys' fees and costs.[24] In 2020, the district court ordered Texas to pay more than $6.7 million of the plaintiffs' documented costs.[25] Defendants appealed the district court's ruling and in September of 2021, the Fifth Circuit affirmed the district court's ruling.[26] That appeal resulted in the district court granting an extra $134,971.72 of appellate attorney's fees and costs to certain of the (non-DOJ) plaintiffs.[27] .

Virginia spent at least $600,000 defending its photo ID law.[28]

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[23] Justin Levitt, *The Other Costs of Voter ID*, Election Law Blog (Oct. 6, 8:16 PM), http://electionlawblog.org/?p=95298; Jim Malewitz and Lindsay Carbonell, *State's Tab Defending Voter ID $3.5 Million So Far*, THE TEXAS TRIBUNE (June 17, 2016), http://www.gilmermirror.com/view/full_story/27211479/article-State-s-Tab-Defending-Voter-ID-$3-5-Million-So-Far?instance=home_news_bullets; Peggy Fikac, *Supreme Court has been messing with Texas a lot lately: Recent rulings are setbacks to state's conservative initiatives*, HOUSTON CHRONICLE (July 2, 2016, 8:33 PM updated), http://www.houstonchronicle.com/news/politics/texas/article/Supreme-Court-has-been-messing-with-Texas-a-lot-8338698.php; *see also Groundhog Day for Texas Republicans – reliving the same political disaster over and over: After yet another judicial defeat, Texas should stop wasting tax dollars on appeal*, Houston Chronicle (Aug. 26, 2017), http://www.houstonchronicle.com/opinion/editorials/article/Groundhog-Day-for-Texas-Republicans-reliving-11969435.php (indicating that, as of 2015, Texas had spent at least $8 million dollars defending redistricting plans and a photo ID law that federal judges have found to be intentionally discriminatory).

[24] Order on Motions for Attorney's Fees, *Veasey v. Abbott*, No. 2:13-00193 (S.D. Tex. May 27, 2020) (outlining the combined $8,856,376.71 sought by the five sets of plaintiffs); *Subcommittee Hearing*, *supra* n. 12 at 14 (Written Testimony of Professor Justin Levitt).

[25] Order on Motions for Attorney's Fees, *Veasey v. Abbott*, No. 2:13-00193 (S.D. Tex. May 27, 2020); Spencer Mestel, *Revealed: US spends millions of taxpayer dollars on ineffective voting restrictions,* THE GUARDIAN (July 22, 2020, 12:22 PM updated), https://www.theguardian.com/us-news/2020/jul/22/voter- identification-laws-cost-taxpayers-36m.

[26] *Veasey v. Abbott*, 13 F.4th 362 (5th Cir. 2021).

[27] Order Granting Appellate Attorney's Fees, *Veasey v. Abbott*, No. 2:13-00193 (S.D. Tex. Mar. 10, 2022).

[28] Travis Fain, *4th Circuit Judges weigh Virginia voter ID law with N.C. case in mind*, DAILY PRESS (Sept. 22, 2016, 4:19 PM), http://www.dailypress.com/news/politics/.
A separate challenge to Virginia's state legislative redistricting under the U.S. Constitution for packing Black voters into 11 districts and thereby diluting their voting strength also cost taxpayers (because of money the state spent to defend the manipulative redistricting) more than $4 million dollars. Dave Ress, *Big bills for Virginia's redistricting battle,* Daily Press, (July 13, 2018),

In 2019, after three years defending an election rule that prohibited straight-party voting against a Section 2 challenge, Michigan paid $530,874 for plaintiffs' attorneys' fees and expenses.[29] This figure does not include costs incurred by Michigan in defending the lawsuit.

In North Dakota, the Native American Rights Fund (NARF) challenged a suppressive voter ID law under Section 2 and the state and federal constitutions. Prevailing in part, plaintiffs sought $1,132,459.41 in attorneys' fees and costs.[30] The district court awarded the plaintiffs $452,983.76—a cost borne by North Dakota taxpayers.[31] The 8th Circuit affirmed this judgment, further increasing the litigation costs.[32]

In Guam, a voter successfully challenged a law that limited the right to vote in its political status plebiscite to "Native Inhabitants of Guam" under Section 2 and the U.S. Constitution. Plaintiffs were awarded $947.717.39, nearly all of the attorney's fees and costs sought.[33] Following the defendants' unsuccessful appeal to the Ninth Circuit, plaintiffs were awarded an additional $144,034.90 in attorney's fees and costs.[34]

After parents of children, district residents, and the local chapter of the NAACP successfully challenged The East Ramapo Central School District's at-large voting scheme under Section 2 of the VRA, a series of appeals commenced from 2018-2021. In January 2021, the district was ordered to pay $5,446,139.99 in attorney's fees and costs.[35] Further controversy regarding how the district wants to pay the court-ordered fees persists.[36]

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http://www.dailypress.com/news/politics/dp-nws-shad-plank-0714-story.html#.

[29] Order Granting Plaintiffs' Motion for Attorneys' Fees And Costs In Part, *Michigan State A. Philip Randolph Institute v. Johnson*, No. 2:16-11844-GAD-MKM (E.D. Mich. May 31, 2019).

[30] Plaintiffs' Memorandum in Support of Motion for Attorneys' Fees and Litigation Expenses, *Brakebill v. Jaeger*, No. 1:16-00008-DLH-CSM (N.D.N. Apr. 17, 2018).

[31] Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees, *Spirit Lake Tribe v. Jaeger*, No. 1:18-00222-DLH-CRH (D.N.D. May 7, 2020).

The following year, Jacqueline De León, a staff attorney at NARF, testified that Section 2 litigation "is prohibitively expensive for a small organization like NARF to reach every single instance of discrimination that is happening across the country." STAFF OF H. SUBCOMM. ON ELECTIONS, 116TH CONG. REP. ON VOTING RIGHTS AND ELECTION ADMINISTRATION IN THE UNITED STATES OF AMERICA 82 (Comm. Print 2019) (citing *Voting Rights and Election Administration in the Dakotas: Hearing Before the Subcomm. on Elections*, 116th Cong. 64 (2019) (hearing transcript, testimony of Jacqueline De León)).

[32] *Spirit Lake Tribe v. Jaeger*, 5 F.4th 849 (8th Cir. 2021).

[33] Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees, *Davis v. Guam*, No. CV 11-00035 (D. Guam Apr. 8, 2019).

[34] Order Granting the Plaintiffs' Motion for Attorney's Fees, *Davis v. Guam*, No. CV 11-00035 (D. Guam Jun. 10, 2020).

[35] Order Granting Plaintiffs' Motion for Attorneys' Fees And Costs, *Nat'l Ass'n for Advancement of Colored People, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, No. 17-CV-8943 (S.D.N.Y. Mar. 30, 2021).

[36] Nancy Cutler, *Voting Rights Lawyers Blast How East Ramapo Wants to Pay Court-Demanded $5.4M Payment*, LoHud (Jul. 8, 2021, 9:57AM),

The City of Evergreen in Alabama was ordered to pay $138,643 in attorney's fees and costs after a successful Section 2 and constitutional challenge to the city's redistricting plan.[37] This does not include the costs incurred by the city defending its redistricting plan.

A coalition of Asian American, Hispanic, and Latino plaintiffs in the City of Lowell, Massachusetts challenged as dilutive the at-large voting electoral system for the city council and a school committee in 2017. After two years of litigation, the parties reached a settlement, and the city agreed to pay $280,000 to cover the plaintiffs' fees and costs.[38]

The Department of Justice brought suit against the City of Eastpointe, Michigan, alleging the city's method for electing city council members diluted the ability of Black voters to elect their preferred candidates and participate equally in the political process. After two years of litigation, the parties reached a settlement that instituted a ranked-choice voting method. While the City did not owe attorney's fees to the government, the City's defense of the challenged electoral practice cost taxpayers roughly one million dollars.[39]

Additionally, in the landmark *Merrill v. Milligan* case, Black voters won a preliminary injunction (before a trial court, which the U.S. Supreme Court affirmed) in their Section 2 challenge to Alabama's congressional map. Plaintiffs claim that Alabama enacted a congressional map that failed to include a second opportunity-to-elect district for Black voters. Defendants agreed to pay $3,000,000 in attorney's fees and costs to the plaintiffs for the preliminary injunction phase of the case.[40] This does not include the costs of defending the litigation and future costs associated with the lawsuit that Alabama continues to pursue through a trial on the congressional map.

Time

Another reality of Section 2 litigation is its time-consuming nature. Section 2 litigation does not keep up with the urgency of the political process. Because elections are frequent, election-based harms take effect almost immediately after rules are changed.[41] However, on average,

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https://www.lohud.com/story/news/local/rockland/2021/07/08/naacp-school-board-diversity-lawsuit/7887398002/.

[37] Order Directing the City of Evergreen to Pay Fees and Expenses Associated with Litigation, *Allen v. City of Evergreen, Ala.*, No. CV 13-0107-CG-M (S.D. Ala. Dec. 2, 2013).

[38] Elizabeth Dobbins, *Council to Release Requested Minutes*, Lowell Sun (Jul. 11, 2019, 12:00 AM), https://www.lowellsun.com/2019/06/27/council-to-release-requested-minutes/.

[39] Simon Shaykhet, *Eastpointe Struggling to Find Solution as They Face Allegations About Voting Rights' Violations*, WXYZ Detroit (Jan. 17, 2017), https://www.justice.gov/opa/pr/justice-department-reaches-agreement-city-eastpointe-michigan-under-voting-rights-act.

[40] Order, *Milligan v. Allen*, No. 2:21-cv-01530-AMM (N.D. Ala. Aug. 7, 2024).

[41] *Subcommittee Hearing*, *supra* n.12 at 6 (Written Testimony of Professor Justin Levitt).

Section 2 litigations can last between two to five years.[42] Preliminary relief is rare,[43] and rendered even rarer by courts' reluctance to enjoin election rules on the eve of an election.[44] As a result of this timeframe, by the time that Section 2 litigation is resolved, several elections under illegal, discriminatory practices can occur.[45]

In Fayette County, Georgia, Section 2 litigation related to its use of discriminatory at-large elections lasted approximately five years, beginning in August 2011.[46] County defendants appealed the district court's summary judgment ruling that the at-large voting scheme violated Section 2 because it prevented Black voters from electing their preferred candidates to the school board and county commission. In January 2015, the 11th Circuit Court of Appeals remanded the case to the district court to conduct a trial; a settlement in the case was reached in 2016.[47]

The Section 2 litigation in Yakima, Washington persisted over four years between 2012 and 2016 when the City Council voted to end its appeal of the lawsuit.[48] In 2014, the district court in Washington ruled that Yakima's at-large city council elections violated Section 2 and the district court implemented a remedial redistricting plan in February of 2015.[49]

A Section 2 challenge to the City of Chicago Height's at-large elections for city council and district board spanned over a decade. Litigation, including numerous appeals to the Seventh Circuit Court of Appeals, ended in a finding that the at-large electoral system violated Section 2. In a motion awarding the plaintiffs attorney's fees, the court noted the docket sheet

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[42] Avila Brief, *supra* n.1 at 22.

[43] *Subcommittee Hearing*, *supra* n.12 at 8 (Written Testimony of Professor Justin Levitt) (citing Transcript of Oral Argument at 38, *Shelby Cty. v. Holder*, No. 12-96 (U.S. argued Feb. 27, 2013) (statement of Attorney General Verrilli)).

[44] *Purcell v. Gonzalez*, 549 U.S. 1, 6 (2006) (warning lower courts that "considerations specific to election cases" counsel against issuing orders on election rules too close to an election).

[45] Avila Brief, *supra* n.1 at 19.

[46] Cal Beverly, *NAACP sues Fayette to halt at-large voting districts*, THE CITIZEN (Aug. 10, 2011, 4:35 AM), http://www.thecitizen.com/articles/08-10-2011/naacp-sues-fayette-halt-large-voting-districts.

[47] NAACP LDF, *Press Release: Black Voters in Fayette County, Georgia Win Historic Opportunity to Elect Candidates Choice and Settle Voting Rights Act Case* (Jan. 20, 2016), https://www.naacpldf.org/press-release/black-voters-in-fayette-county-georgia-win-historic-opportunity-to-elect-candidates-of-choice-and-settle-voting-rights-act-case/.

[48] Austin Jenkins, *ACLU Lawsuit: Yakima At-Large City Council Elections Dilute Latino Vote,* NPR (Aug. 22, 2012, 5:56 PM), https://www.npr.org/player/embed/159859795/159859822; Mike Faulk, *Yakima City Council abandons appeal of ACLU voting rights suit*, YAKIMA HERALD (Apr. 5, 2016), http://www.yakimaherald.com/news/elections/yakima-city-council-abandons-appeal-of-aclu-voting-rights-suit/article_5d1aba80-fbb0-11e5-b985-c3ce457c2bf1.html?utm_medium=social&utm_source=email&utm_campaign=user-share

[49] Michael Li, *Four Local Redistricting Fights to Watch*, BRENNAN CENTER FOR JUSTICE (Jan. 12, 2015), https://www.brennancenter.org/our-work/analysis-opinion/four-local-redistricting-fights-watch; *Montes v. City of Yakima*, 2:12-cv-03108-TOR, ECF No. 143, (E.D. Was. February 17, 2015).

contained "600 plus entries" and the case was "hard fought on both sides."[50]

In Charleston County, the U.S. DOJ and minority voters brought a Section 2 claim against Charleston County, South Carolina, over its use of the at-large electoral method for electing county commissioners. The federal district court found that the practice violated Section 2 in 2001, but the litigation proceeded until the U.S. Supreme Court denied the County's appeal in 2004.[51] Lawyers at a limited-budget nonprofit organization and a private practitioner in a two-person law firm collectively spent nearly 1800 hours representing private plaintiffs.[52]

Moreover, in *North Carolina State Conference of the NAACP v. McCrory*, the election rules at issue were challenged in court in 2013—the day they were enacted—but were not struck down until 2016. In the interim, several elections, including the 2014 midterms and the 2016 primaries, were held according to election rules that were intended to discriminate based on race.[53]

The challenge to Texas's photo ID law has lasted over seven years, including litigation under Section 5 of the Voting Rights Act in 2012, and the Section 2 and constitutional challenge filed in 2013.[54] During years that LDF and other advocates spent challenging Texas's voter ID law through trial and before a remedy was implemented, elections continued to take place under conditions the court later found impermissible.[55]

A series of challenges to North Dakota's voter ID laws spanned from 2016 to 2021. Most of the litigation concerned a 2017 law that imposed strict residency requirements.[56] In 2020, pursuant to a consent decree, North Dakota agreed to alternative means for voting for Native American voters who could not comply with the residency requirements.[57] Nevertheless, in

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[50] *Harper v. City of Chicago Heights*, Nos. 87 C 5112 88, C 9800, 2002 WL 31010819 (N.D. Ill. Sept. 6, 2002).

[51] *Cases Raising Claims Under Section 2 of the Voting Rights Act*, DEP'T OF JUSTICE, https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0.

[52] Order at 12, Charleston County, No. 2:01-cv-00562 PMD (D.S.C. Aug. 8, 2005).

[53] *Subcommittee Hearing*, *supra* n.12 at 10 (Written Testimony of Professor Justin Levitt).

[54] NAACP Legal Defense Fund case page, *United States v. Texas/Veasey v. Perry*, http://www.naacpldf.org/case-issue/united-states-v-texas-et-al.

[55] During that time, voters elected a U.S. Senator, all 36 members of the Texas delegation to the U.S. House of Representatives, a Governor, a Lieutenant governor, an Attorney General, a Controller, various statewide Commissioners, four Justices of the Texas Supreme Court, candidates for special election in the state Senate, State boards of education, 16 state Senators, all 150 members of the state House, over 175 state court trial judges, and over 75 district attorneys. Even though LDF proved at trial that more than half a million eligible voters were disenfranchised by the ID law, there was no retroactive solution available under federal law. *See Testimony of Sherrilyn Ifill, President and Director-Counsel, NAACP Legal Defense and Educational Fund, Inc.,* U.S. House of Representatives Committee on the Judiciary, Hearing on H.R. 1 (Jan. 29, 2019) at p. 9, https://bit.ly/3c7gTpg.

[56] Complaint for Declaratory and Injunctive Relief, *Spirit Lake Tribe v. Jaeger*, No. 1:18-00222 (D.N.D. Oct 30, 2018).

[57] Order, Consent Decree, and Judgment, *Spirit Lake Tribe*, 1:18-00222-DLH-CRH (D.N.D. Apr. 27,

the interim, the state enforced the law against *all* voters, preventing Native American voters who could not comply from participating in the 2018 midterm elections.[58]

In Guam, Section 2 litigation surrounding a plebiscite law began in 2011 and did not finalize until 2020. The District of Guam dismissed the suit for lack of standing and ripeness in 2013[59], the Ninth Circuit reversed that decision in 2014[60], the District of Guam then found a Section 2 violation in 2017[61], and the Ninth Circuit affirmed in 2019.[62] Disputes over attorney's fees continued into 2020.

Additionally, recent cases have been extended by states and localities beyond their unsuccessful appeals. Following the Supreme Court 2023 decision, upholding the district court's 2022 preliminary order, requiring Alabama to redraw its congressional map in *Milligan*, the Alabama legislature enacted a new redistricting map that failed to remedy the Section 2 violation. The district court rejected this map and approved an alternative court-drawn map drawn in consultation with a special master. Although 2024 elections will take place under this remedial court-ordered congressional map, the State is continuing the litigation at the district court level.[63]

If you have questions or need further information, please contact LDF Senior Counsel, Leah Aden, who leads in the development of this educational document, at laden@naacpldf.org.[64]

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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

2020).

[58] In 2016, eight Native American voters, represented by NARF, challenged the voter ID law on its face. *Brakebill v. Jaeger*, No. 16-cv-008, 2016 WL 7118548, at *2–3 (D.N.D. Aug. 1, 2016). The district court invalidated the ID law in 2018, but the Eighth Circuit stayed the injunction until after the 2018 midterm elections. *Brakebill v. Jaeger*, 905 F.3d 553, 561 (8th Cir. 2018). Immediately after, NARF and the Campaign Legal Center challenged the ID law as applied to Native American voters. Complaint for Declaratory and Injunctive Relief, *Spirit Lake Tribe v. Jaeger*, No. 1:18-00222 (D.N.D. Oct 30, 2018). The court declined to issue a preliminary injunction, so the ID law remained in effect for the 2018 midterm elections. Order Denying Plaintiffs' Motion for Temporary Restraining Order, *Spirit Lake Tribe*, 1:18-00222-DLH-CSM (D.N.D. Nov. 1, 2018).

[59] *Davis v. Guam*, No. CV 11-00035, 2013 WL 204697 (D. Guam Jan. 9, 2013).

[60] *Davis v. Guam*, 785 F.3d 1311 (9th Cir. 2015).

[61] *Davis v. Guam*, No. CV 11-00035, 2017 WL 930825 (D. Guam Mar. 8, 2017).

[62] *Davis v. Guam*, 932 F.3d 822 (9th Cir. 2019).

[63] *Singleton v. Allen*, No. 2:21-CV-01291-AMM, 2024 WL 3384840 (N.D. Ala. July 11, 2024).

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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.