



*The Cost (in Time, Money, and Burden) of
Section 2 of the Voting Rights Act Litigation
As of September 2021*

Introduction

In *Shelby County, Alabama v. Holder*, 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 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 as Compared to Section 2

Both before and after the *Shelby County* decision, skeptics cast doubt on the continued need for Section 5, based on current conditions in covered jurisdictions. They pointed to Section 2 of the Voting Rights Act as a potential stand-in for Section 5's protection. Section 2, which applies 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.

Following the *Shelby County* decision, communities of color continue to rely upon Section 2, despite 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 often use taxpayer dollars to prolong litigation to keep the illegal voting



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practice that got them elected.

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

Burden of Proof

Courts have recognized that Section 2 litigation is an extremely complex and intimidating area of the law.¹ Section 2 litigation is also 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 litigation⁴ 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 and the defendant.⁸

Due to its complex and time-intensive nature, Section 2 litigation strains district court judges and judicial resources. Because judges rarely grant 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

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.1 at 16.

³ Avila Brief, *supra* n.1 at 28.

⁴ Avila Brief, *supra* n.1 at 30.

⁵ *Id.*; *see also infra* n.30.

⁶ Justin Levitt, *Section 5 as Simulacrum*, 123 YALE L.J. ONLINE 151 (June 8, 2013) (more than 85% of Section 5’s work was previously done at the local level).

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_3cbce20-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 *Gingles* factors).

⁹ Avila Brief, *supra* n.1 at 20-21.



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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 are also 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 challenging 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 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, between 2011 and 2016, state lawmakers spent at least \$5 million of

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), <http://www.myajc.com/news/news/local-govt-politics/fayettes-voting-fight-proves-costly/nn6j9/>

¹⁵ Plaintiffs' Motion for Attorneys' Fees and Expenses, *Wright v. Sumpter 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).



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taxpayers' dollars defending its election law changes.¹⁸ That figure does not include the costs and expenses borne by civil rights groups and the U.S. DOJ, which challenged those changes. 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 discriminatory purpose.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 the ACLU who brought 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.²¹

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.²² These expenses did not include those being borne by the Mexican American Legal Defense Fund (MALDEF) on behalf of plaintiffs, who are Latino voters in the lawsuit. In 2017, Pasadena agreed to settle the case for \$1 million dollars.²³

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 draconian photo ID law.²⁴ That exorbitant

¹⁸ Alice Ollstein, *North Carolina Spent Nearly \$5 Million Defending Voter ID, and Lost*, ThinkProgress (Aug. 9, 2016), <https://thinkprogress.org/north-carolina-legal-spending-voter-id-f0aa75082518#2a9rl17u3>; 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 *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>

²⁰ Faulk, *supra* n. 7.

²¹ *Id.*

²² 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

²³ 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>

²⁴ 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](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->



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figure continued to rise as one of those challenges, *Veasey v. Perry*, which LDF has litigated alongside other civil rights groups and the U.S. DOJ, moved through the appellate courts. That figure also does 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.²⁵ The next month, the district court ordered Texas to pay more than \$6.7 million of the plaintiffs’ documented costs, which an appellate court affirmed in September 2021.²⁶

Virginia spent at least \$600,000, defending its photo ID law.²⁷

In 2019, after three years defending an election rule against a Section 2 challenge, Michigan paid \$530,874 for plaintiffs’ attorneys’ fees and expenses.²⁸ This figure does not include costs incurred by Michigan in defending the lawsuit.

Additionally, 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.²⁹ The district court awarded the plaintiffs \$452,983.76—a cost borne by North Dakota taxpayers.³⁰

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).

²⁵ 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).

²⁶ 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>; Mike Scarcella, *5th Circuit upholds \$6.7 mln in fees for plaintiffs in voting rights case*, Reuters (Sept. 4, 2021), <https://www.reuters.com/legal/government/5th-circuit-upholds-67-mln-fees-plaintiffs-voting-rights-case-2021-09-03/>

²⁷ 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 has cost taxpayers (because of money the state has 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), <http://www.dailypress.com/news/politics/dp-nws-shad-plank-0714-story.html#>

²⁸ 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). The Michigan lawsuit stemmed from a prohibition on straight-party voting.

²⁹ 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).

³⁰ 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).



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The East Ramapo Central School District in New York recently paid its lawyers in excess of \$7 million for unsuccessfully defending a Section 2 lawsuit brought by the local NAACP branch and have been ordered to pay over \$4 million in plaintiffs’ attorneys’ fees and costs as well.³¹

The Town of Islip in New York paid its lawyers over \$3 million for defending a Section 2 lawsuit and paid plaintiffs’ attorneys nearly \$1 million to settle the claims.³²

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.³³ However, on average, Section 2 litigations can last between two to five years.³⁴ Preliminary relief is rare,³⁵ and rendered even rarer by courts’ reluctance to enjoin election rules on the eve of an election.³⁶ As a result of this timeframe, by the time that Section 2 litigation is resolved, several illegal elections can occur.³⁷

In Fayette County, Georgia, Section 2 litigation related to its use of discriminatory at-large elections lasted approximately five years, beginning in August 2011.³⁸ County defendants appealed the district court’s pre-trial summary judgment decision, which ruled that the at-large voting scheme violated the Voting Rights Act because it prevented Black voters from electing their preferred candidates to the school board and county commission. In January

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)).

³¹ Jennifer Korn, *ERCSD Threatens to Fire Teachers if Legal Fees Not Cut to \$1: NAACP Leaders Respond*, ROCKLAND COUNTY TIMES, Jan. 21, 2020, <https://bit.ly/39dKvij>; Report and Recommendation, *NAACP, Spring Valley Branch v. East Ramapo Central School Dist.*, No. 7:17-08943-CS-JCM (S.D.N.Y. Dec. 29, 2020).

³² Sophia Chang, *Islip Spends Nearly \$3M So Far to Fight Voting Rights Case*, NEWSDAY (Dec. 16, 2019), <https://nwsdy.li/3EeAYWq>; Priscilla Korb, *Judge Rules in Town of Islip Voting Rights Case*, PATCH (Oct. 27, 2020), <https://bit.ly/3k4sIQz>

³³ *Subcommittee Hearing*, *supra* n. 12 at 6 (Written Testimony of Professor Justin Levitt).

³⁴ Avila Brief, *supra* n.1 at 22.

³⁵ *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)).

³⁶ *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).

³⁷ Avila Brief, *supra* n.1 at 19.

³⁸ 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>



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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 2016.³⁹

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.⁴⁰ In 2014, the district court in Washington ruled that Yakima’s at-large city council elections violated Section 2 of the Voting Rights Act and the district court implemented a remedial redistricting plan in February of 2015.⁴¹

The U.S. Department of Justice 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 2004.⁴²

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.⁴³

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 2013.⁴⁴ During the three years that LDF spent challenging Texas’s voter ID law through trial and appeals and before an interim remedial order took effect for elections in 2016, elections continued to take place under conditions the court later found impermissible.⁴⁵

³⁹ NAACP LDF, *Press Release: Black Voters in Fayette County, Georgia Win Historic Opportunity to Elect Candidates of Choice and Settle Voting Rights Act Case* (Jan. 20, 2016), <http://www.naacpldf.org/press-release/black-voters-fayette-county-georgia-win-historic-opportunity-elect-candidates-choice>

⁴⁰ Austin Jenkins, *ACLU Lawsuit: Yakima At-Large City Council Elections Dilute Latino Vote*, NPR (Aug. 22, 2012, 5:56 PM), <http://www.npr.org/templates/story/story.php?storyId=159859795>; 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

⁴¹ Michael Li, *Four Local Redistricting Fights to Watch*, BRENNAN CENTER FOR JUSTICE (Jan. 12, 2015), <https://www.brennancenter.org/blog/three-local-redistricting-fights-watch>; *Montes v. City of Yakima*, 2:12-cv-03108-TOR, ECF No. 143, (E.D. Was. February 17, 2015).

⁴² *Cases Raising Claims Under Section 2 of the Voting Rights Act*, DEPT OF JUSTICE, <https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0>

⁴³ *Subcommittee Hearing, supra* n. 12 at 10 (Written Testimony of Professor Justin Levitt).

⁴⁴ 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>

⁴⁵ 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



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A series of challenges to North Dakota’s voter ID laws spanned from 2016 to 2020. Most of the litigation concerned a 2017 law that imposed strict residency requirements.⁴⁶ In 2020, pursuant to a consent decree, North Dakota agreed to allow Native American voters who could not comply with the requirements, to establish residency through alternative means.⁴⁷ Nevertheless, in the interim, the state had enforced the law against *all* voters, preventing Native American voters who could not comply from participating in the 2018 midterm elections.⁴⁸

If you have questions or need further information, please contact LDF Deputy Director of Litigation, Leah Aden, at 212.965.2200.⁴⁹

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

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 and other advocates 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>

⁴⁶ Complaint for Declaratory and Injunctive Relief, *Spirit Lake Tribe v. Jaeger*, No. 1:18-00222 (D.N.D. Oct 30, 2018).

⁴⁷ Order, Consent Decree, and Judgment, *Spirit Lake Tribe*, 1:18-00222-DLH-CRH (D.N.D. Apr. 27, 2020).

⁴⁸ 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).

⁴⁹ Thank you to, Sara Carter, J.D. Candidate class of 2021, Harvard Law School, for her assistance updating this educational document.