



**DEMOCRACY DIMINISHED: STATE AND LOCAL THREATS TO VOTING POST-*SHELBY COUNTY, ALABAMA V. HOLDER***  
***As of December 8, 2017***

## 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](#)<sup>1</sup> 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](#),<sup>2</sup> 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 The Court held that the Section 4(b) formula for determining which jurisdictions would be covered under Section 5 was out of date and not responsive to current conditions in voting.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. Indeed, the *Shelby County* decision left voters of color with *no* notice of proposed discriminatory voting changes, despite that thousands of voting changes are considered by formerly covered jurisdictions each year. According to the U.S. DOJ, it processed 44,790 Section 5 submissions between 2010 and 2013 alone.<sup>3</sup>

Another consequence of the devastating *Shelby County* decision is that the number of federal election observers that the U.S. DOJ sent to previously covered jurisdictions for the November 2016 presidential election—the first election in more than 50 years without the VRA fully in operation—was the lowest since Congress passed the VRA in 1965.<sup>4</sup> Indeed, the U.S. DOJ sent federal election observers to only five states—Alabama, Alaska,



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California, Louisiana, and New York—in November 2016 because the U.S. DOJ interpreted the *Shelby County* decision to have ended the department’s ability to send observers to previously covered jurisdictions based on evidence of possible discrimination. Federal court rulings, however, authorized federal observers to monitor elections in these five states.

Historically, federal observers who are authorized by Section 8 of the VRA to be inside the polling place on Election Day and examine voter registration rolls within them have collected evidence of unlawful activities around elections and prepared reports that litigants have used in court to challenge those activities. There are scores of examples of federal observers acting to protect voters from racial discrimination at the polls.<sup>5</sup>

LDF and other advocates view this scale-back of the federal election observer program as another impediment to being able to learn of and defend against efforts to intimidate voters or stop them from voting, an issue that remains ongoing in previously covered jurisdictions, as the record below demonstrates.<sup>6</sup> The potential for voter intimidation and unlawful challenges to voters in the November 2016 election was a particular concern also because of calls by the then Republican president-elect, which had been challenged through litigation by state Democratic parties in some previously covered jurisdictions like Arizona and North Carolina, to deploy lay person observers to protect against non-existent voter fraud<sup>7</sup> and to activate law enforcement near and within polling places.<sup>8</sup> The Democratic National Committee claimed that the Republican National Committee had enabled the then Republican president-elect to intimidate minority voters in violation of an ongoing consent decree between the two party committees.<sup>9</sup>

Within the first week of the new administration, the President continued to claim, without credible evidence, that approximately three to five million people illegally voted, *i.e.*, committed voter fraud, in the 2016 election, and threatened to use his executive authority to order an investigation into widespread voter fraud.<sup>10</sup> This threat was resoundingly condemned by representatives from both major political parties, as well as civil rights and pro-democracy organizations because of the belief that this threat, based on the myth of voter fraud, would form the basis for continued voter suppression efforts, given their impact on communities of color, such as those documented here.<sup>11</sup>

In May 2017, following through on this threat, the President signed an executive order, establishing the Presidential Advisory Commission on Election Integrity, a purportedly bi-partisan commission to “enhance the American people’s confidence in the integrity of the voting processes,” with an emphasis on weeding out “improper” or “fraudulent” registration and voting.<sup>12</sup> Civil rights advocates and others remain deeply skeptical of the need for and purpose of the Commission, particularly as it is being led by the Kansas Secretary of State who has been frequently sued by civil rights group for voting rights violations (*i.e.*, involvement in discriminatory proof of citizenship and photo ID bills), fined in one of those suits for “demonstrate[ing] a pattern” of misleading statements to the court, and has been a vocal peddler of the voter-fraud myth,<sup>13</sup> as well as other members who have exaggerated claims of voter fraud,<sup>14</sup> or have little experience with voting-related administration or voting rights issues.<sup>15</sup> Accordingly, LDF and other advocates have filed various [Freedom of Information Act requests](#) related to this Commission.<sup>16</sup> LDF and other advocates also have filed lawsuits



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alleging that the Commission’s operation and actions violate multiple federal statutes and state laws.<sup>17</sup> Various secretaries of state—of California, Virginia, Kentucky, Massachusetts, North Carolina, and Wisconsin, for example—were part of a number of SOS’s that pushed back against the Commission’s efforts in late June 2017 to obtain, among other things, a wide array of voter data, given the concerns about how and for what undisclosed purposes the Commission seeks this information, which it may not legally be entitled to have.<sup>18</sup> A second request for data was sent in August 2017.<sup>19</sup> Voters have responded in certain states by withdrawing their voter registrations<sup>20</sup> or suing elected officials to prevent the release of voter data.<sup>21</sup> Moreover, the Democratic National Committee formed a Commission on Protecting American Democracy from the Trump Administration, with an aim to debunk the myth of widespread voter fraud and highlight ways to expand access to the ballot box.<sup>22</sup> Legislation also has been introduced, the Anti-Voter Suppression Act, to repeal the President’s Commission and prohibit the use of federal funds for it.<sup>23</sup>

### **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](#).<sup>24</sup> 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.<sup>25</sup>

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.

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.<sup>26</sup> 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-based voting with at-large elections; implementing onerous registration qualifications like proof of citizenship; and removing qualified voters from registration lists. Indeed, minority communities are



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more likely to live in areas where polling places are difficult to access, depressing turnout of minority communities.<sup>27</sup>

## 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.<sup>28</sup> 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 represented a threshold but significant step by Congress toward ensuring that communities of color are protected against voting discrimination.<sup>29</sup> This bill included 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 (H. 885) and had 100 co-sponsors, 15 of whom are Republican.<sup>30</sup> During the 2015-2016 legislative session, Congressional members also introduced the [Voting Rights Advancement Act of 2015](#) (H.R. 2867/S. 1659), which had 45 co-sponsors, including a Republican representative, in another effort to respond to the void created by the *Shelby County* decision.<sup>31</sup> This bill included several important provisions, including ones that would have: modernized the preclearance formula to cover states with a pattern of discrimination that puts voters at risk; ensured that last-minute voting changes would not adversely affect voters; protected voters from the types of voting changes most likely to discriminate against people of color and language minorities; enhanced the ability to apply preclearance review when needed; expanded the federal observer program; and improved voting rights protections for Native American and Alaskan Native people.<sup>32</sup>

Four years after the *Shelby County* decision, congressional representatives introduced the [Voting Rights Advancement Act of 2017](#), which, under a new coverage provision, would apply to 13 states—Alabama, Georgia, Mississippi, Texas, Louisiana, Florida, South Carolina, North Carolina, Arkansas, Arizona, California, New York, and Virginia—and, among other things, require these jurisdictions to preclear their voting changes for 10 years with the opportunity to bail-out of this obligation if they demonstrated the necessary record.<sup>33</sup> A bipartisan [Voting Rights Amendment Act of 2017](#) also was introduced.<sup>34</sup> This legislation would make all states



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and local jurisdictions eligible for preclearance review based on having committed five voting violations in the last 15 years, require notice of any changes to polling times, dates, locations, and protocols, and ensure that preliminary relief could be obtained more readily.

## WHAT YOU CAN DO

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. 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](mailto: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* decision<sup>35</sup>; 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.

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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, five 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 [www.naacpldf.org](http://www.naacpldf.org).



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***If you have questions or need further information, please contact LDF Senior Counsel, Leah Aden, who authors this compendium. For questions about the information contained herein or to share information about voting changes in your community, please contact 212.965.2200 or [vote@naacpldf.org](mailto:vote@naacpldf.org).***

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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.<sup>36</sup> Alabama’s photo ID law restricts in-person and absentee voting to individuals who can 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.<sup>37</sup> 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.”<sup>38</sup> 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 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 election.<sup>39</sup> 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.<sup>40</sup> Plaintiffs filed a preliminary injunction in advance of the 2016 elections to stop the enforcement of the “positively identify” requirement, arguing that that provision functions as a prohibited voucher requirement.



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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.<sup>41</sup> This case is scheduled for trial in February 2018.

***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.<sup>42</sup> 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.<sup>43</sup> 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 (U.S. DOT) investigated 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.<sup>44</sup> In December 2016, the U.S. DOT and the Alabama Law Enforcement Agency (ALEA), Alabama’s department of motor vehicles, entered an agreement that fully restores the hours of driver’s license issuing offices in nine predominately Black counties in the Black Belt.<sup>45</sup> In addition, for the next two years, the agreement requires ALEA to seek pre-approval from the U.S. DOT before initiating any driver’s license office closures or other reductions in service.

***Proof of citizenship***

Alabama also seeks to require voters to show proof of citizenship.<sup>46</sup> 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.<sup>47</sup> 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 the EAC to challenge its actions to enable Alabama to attempt to require proof of citizenship and a federal court has temporarily blocked the EAC from enforcing the proof of citizenship requirement for 2016 elections.<sup>48</sup> 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



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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.<sup>49</sup>

### ***Voter Intimidation***

In November 2017, Alabama’s SOS claimed that nearly 700 people may have committed voter fraud by voting in the state’s Democratic primary elections in May 2017 and then the Republican runoff in September 2017.<sup>50</sup> Those convicted of violating a new law, banning such cross-over voting, risk a felony conviction with five years in prison and a \$15,000 fine. However, the SOS’s figures reportedly were wrong and the result of clerical error, meaning that roughly half—if not more—of those accused of violating the state’s law did not. Advocates criticized the SOS for making his claim before widely publicizing the change in the law and before verifying the numbers that he relied upon to accuse voters of illegally voting, because of the potential of these accusations to chill voter turnout in the December runoff election and the threat of prosecution under Alabama’s new law.<sup>51</sup>

### **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.<sup>52</sup> 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.<sup>53</sup> 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**, a majority-white city located in **Baldwin County**, passed a mid-cycle redistricting plan, which purportedly did not consider the impact on the Black community.<sup>54</sup> 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.





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In 2016, the **City of Gardendale** sought to secede from the Jefferson County school system to establish an independent municipal school system. The Gardendale school system (1) would transfer Black persons living in Gardendale from a district-based elections system (the Jefferson County School Board) in which Black voters have an equal opportunity to participate and elect candidates of their choice to a governmental system (the Gardendale school board) that is appointed by the Gardendale city council in which currently Black voters have no comparable opportunity or representation; and (2) would exclude nearby unincorporated Black neighborhoods.<sup>55</sup> In 1990, the U.S. DOJ blocked a similar attempt by the City of Valley to succeed from the Chambers County school system.<sup>56</sup> In 2017, in the [Stout v. Jefferson County School Board](#) school desegregation litigation, LDF represents Black parents and students who successfully demonstrated that Gardendale's proposed secession was motivated by a racially discriminatory intent, and would have a segregative effect on Black students. Among other remedies, the district court ordered the appointment of a Black person to the school board.<sup>57</sup>

### ***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.<sup>58</sup> 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 November 2016, a civil rights organization released a report that studied polling place closures in Alabama since the *Shelby County* decision and found that "12 counties reduc[ed] 66 polling places."<sup>59</sup>

Moreover, in March 2016, City Council members in **Daphne**, a majority-white city 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.<sup>60</sup> Advocates have asked the U.S. DOJ to investigate. Members of the City Council have denied that the decision to reduce the number of polling places was done to inconvenience minority voters.<sup>61</sup>

In December 2016, **Elmore County** Commissioners contemplated consolidating a voting precinct, God's Congregation Church, a majority-Black precinct, with the voting precinct at Tallaweka Baptist Church, which is a majority-white precinct, in part due to purportedly low turnout by voters at God's Congregation Church, as compared to Tallaweka, in the 2016 election season and to save the County money through consolidation.<sup>62</sup>



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These precincts are located in Jordanville which is in Tallassee, a city in Elmore County. A former Tallassee city councilmember opposes the closures because of its impact on Black voters.

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## 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 system.<sup>63</sup> 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.<sup>64</sup> 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, hearkening 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' lawsuit<sup>65</sup> and have brought other cases to challenge Arizona's (and Kansas's) proof of citizenship requirement for voter registration laws.<sup>66</sup> 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.<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup>

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.<sup>70</sup> In response, civil rights and pro-democracy organizations have sued the EAC, challenging the actions of its



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Executive Director to enable Arizona to require proof of citizenship; a federal court has temporarily blocked the EAC from enforcing the proof of citizenship requirement for 2016 elections.<sup>71</sup>

During the Supreme Court's 2012-2013 term, in *Arizona v. The Inter Tribal Council of Arizona*, the Court found that Proposition 200, Arizona's proof of citizenship law for voter registration, violated the National Voter Registration Act (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.<sup>72</sup>

### ***Restrictions on third-party voter registration***

Advocates are concerned that H.B. 2023 may disenfranchise many Native American people who live in remote areas of reservations and cannot make it to polling places.<sup>73</sup> 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. 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, sued Arizona for policies like this one that could potentially have a dramatic and disparate impact on minority communities.<sup>74</sup> Plaintiffs unsuccessfully sought a preliminary injunction to stop the implementation of this law, arguing that collecting ballots has benefited minority voters without secure mailboxes or transportation to the polls.<sup>75</sup> A divided (2-1) Ninth Circuit Court of Appeals affirmed the denial of the preliminary injunction, which had enabled the law to remain in effect as the litigation proceeds before the *en banc* Court, subsequently, temporarily enjoined Arizona from implementing the law; the Supreme Court, thereafter, stayed the appellate court's decision enjoining the law; it, therefore, was in effect for the November 2016 election.<sup>76</sup>

### ***Restrictions on ballots cast out-of-precinct***

In advance of the November 2016 election, a federal court rejected an attempt by the state and national Democratic Party to require, under Section 2 of the VRA, counties to count the provisional ballots of voters, disproportionately people of color, who vote at the wrong polling place, specifically for those seats that the person would have been entitled to vote for had he/she been in the correct assigned precinct.<sup>77</sup> The court determined that plaintiffs failed to show that this practice impacts voters of color disproportionately.



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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.<sup>78</sup> 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 because this electoral method diluted the voting strength of communities of color.

***Polling place closures & reductions***

In November 2016, a civil rights organization released a report that studied polling place closures in Arizona since the *Shelby County* decision and found that “[b]y sheer numbers and scale, Arizona is the leading closer of polling places in the aftermath of *Shelby [County]*,” with “[a]lmost every county in the state reduc[ing] polling places in advance of the 2016 election and almost every county clos[ing] polling places on a massive scale, resulting in 212 fewer polling places.”<sup>79</sup> The study further finds, that “**Pima County** has closed more voting locations than any county in our study and counties with a demonstrated record of discrimination, like **Cochise County**, have reduced polling places without any oversight.”

Moreover, 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.<sup>80</sup> 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.<sup>81</sup>

The U.S. DOJ initiated an investigation into the County’s voting change, seeking specific data that would support the County’s purported rationales for closing the polling places.<sup>82</sup>

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



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Party, and several individuals, sued 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 plaintiff in this lawsuit requested that the court order Maricopa County elections officials to explain its plan to have polling places open for the November 2016 election and to count as valid votes provisional ballots cast out-of-precinct in that election.<sup>83</sup> Plaintiffs also requested a preliminary injunction to stop the County from (1) implementing polling place changes that may lead to similar problems experienced in the 2016 primary election and (2) failing to count provisional ballots cast out-of-precinct in jurisdictions that opted to conduct the November 2016 general election under a precinct-based rather than vote center-based model.<sup>84</sup> In September 2016, the parties reached a partial-settlement in this lawsuit, while other claims (e.g., involving a ballot statute that automatically rejects provisional ballots not cast at the correct polling place and a law that makes it a felony to collect ballots for others and bring them to the polls) remain pending.<sup>85</sup>

A civil rights organization, on behalf of two voters, also 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.”<sup>86</sup> These plaintiffs also requested that the court order production of election administration plans and require judicial approval of those plans in advance of an August 30, 2016 primary election and November 8, 2016 general election.<sup>87</sup> In October 2016, plaintiffs reached an agreement with County election officials—in advance of the 2016 general election and for every primary and general election through 2020—that requires officials to develop a comprehensive wait time reduction plan.<sup>88</sup> This plan includes a formula for projecting turnout at each polling place; delineates roles and responsibilities for county officials, poll workers, and troubleshooters in reducing wait times; outlines a mechanism to effectively respond to wait times if they exceed 30 minutes; and promotes the use of poll worker and voter hotlines for reports of long lines.

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## **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*.<sup>89</sup> 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.<sup>90</sup> The law was scheduled to be implemented on January 1, 2014. However,



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after voters filed state constitutional challenges to stop the implementation of the photo ID law, one state court ruled that the law was “void and unenforceable.”<sup>91</sup>

Notwithstanding the trial court decision, appellate rulings permitted the photo ID law to be implemented in the May and June 2014 primary elections.<sup>92</sup> 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.<sup>93</sup> 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.<sup>94</sup> 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.<sup>95</sup> Studies have indicated that photo ID laws depress voter turnout in Black and Latino communities.<sup>96</sup>

Subsequent to the state court litigation, during the 2017 legislative session, the Arkansas legislature advanced, and the Governor signed into law, H.B. 1047, which, like the legislation previously found unconstitutional, would require voters to produce one of the following forms of photo ID to vote: driver’s licenses, photo ID cards, concealed-handgun carry licenses, passports, employee badges or ID documents, student ID cards issued by accredited Arkansas colleges and universities, U.S. military ID documents, public-assistance ID cards, and “free” voter-verification cards.<sup>97</sup> Opponents of the bill contend that it violates the Arkansas Constitution and will disproportionately impact minority voters in Arkansas. An amendment to the bill allows voters without an accepted ID to cast a provisional ballot—that should be counted unless there are separate grounds from the voter ID law for not counting the ballots—after attesting that they are who they say they are.<sup>98</sup>

Relatedly, during the 2017 legislative session, a constitutional amendment, SJR6, also was introduced, which would leave it to the voters to decide whether to require a photo ID to vote in person at the polls (but would not apply to absentee voters), as was another bill, HJR 1016, which would require the General Assembly to decide upon the acceptable IDs for and exceptions to photo IDs for in-person voting.<sup>99</sup>

***Voter purges***

In 2016, Arkansas’s Secretary of State mistakenly flagged about 4,000 registered voters to be purged from voter registration lists based on inaccurate data.<sup>100</sup> The SOS intended to flag people convicted of a felony and still on parole or probation who are denied the ability to vote under state law. However, some of those that the SOS flagged had not been convicted of a felony and others had been convicted of a felony but had legally regained the right to vote. The SOS reportedly left it to counties to deal with the flawed data, which led to varying responses from counties: some offices have reinstated all canceled voter registrations and thereafter planned to vet them; and other offices have cancelled all registration and planned to reinstate voters on a case-by-case basis after receiving a complaint from a purged voter.



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## CALIFORNIA

### Local Level:

#### *Voter intimidation*

In June 2016, in **Siskiyou County**, an armed Sheriff visited Hmong property owners and allegedly questioned them about their voter registration status and told those owners that they were believed to have registered illegally and could be arrested if they tried to cast a ballot.<sup>101</sup> Because Hmong people live in a rural area of the County, their property is given a parcel number rather than a street address, which was why the voter registrations were allegedly called into question. In California, parcel numbers can be used when registering to vote. Purportedly, while registrations of new Hmong voters were allegedly scrutinized, those of white property owners in the same area who also used parcel numbers were not. Several Hmong residents have filed a federal lawsuit, challenging this voter intimidation.<sup>102</sup>

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## 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.<sup>103</sup> 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.<sup>104</sup> Following *Shelby County*, county election supervisors resisted the Governor's attempts to purge voters.

In 2016, the Florida Democratic Party and the national Democratic Party filed a federal lawsuit, challenging the Secretary of State's practice of election officials tossing vote by mail ballots if the signature—which plaintiffs contend can change over time—on the ballot envelope does not match the one on file.<sup>105</sup> Plaintiffs contend that when a person does not sign the envelope, state law gives them the opportunity to submit an affidavit confirming that they are the one who cast the ballot. However, the state does not provide that same opportunity to those whose signature on the envelope does not match the one in the state's voter file. In that lawsuit, thus far, a federal court has accused the Secretary of State of delaying a hearing on the lawsuit “so that he could use every second available to run out the clock” so there would not be enough time to address problems raised in the lawsuit.<sup>106</sup> The court also said that the Secretary of State's actions amounted to an “undeclared war” on



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the right to vote in Florida, the largest swing state in the 2016 presidential election. In addition, the court temporarily enjoined the state’s matching requirement, noting that “this Court knows disenfranchisement when it sees it and it is obscene.”<sup>107</sup>

***Voter registration***

In October 2016, the Secretary of State refused to extend the deadline to register to vote for the November 2016 election in the wake of the devastation caused by Hurricane Matthew and the Governor’s evacuation order in the last five days before the registration deadline.<sup>108</sup> A substantial number of people seek to vote in the final days of voter registration; for example, in 2012, about 50,000 people in Florida registered to vote during the last five days before the deadline. A federal court has ordered the state to extend the voter registration deadline, following a lawsuit filed by the state Democratic party brought under the U.S. Constitution and Section 2 of the VRA.<sup>109</sup> As a result, at least 64,000 people could register to vote.<sup>110</sup>

**Local Level:**

***Registration qualifications***

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.<sup>111</sup> 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.<sup>112</sup> 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 was 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**.<sup>113</sup> 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.





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In February 2014, the **Manatee County** Commission approved a proposal submitted by the Supervisor of Elections that reduced almost one-third of polling sites (from 99 to 69) and half of the polling places in a district with a substantial minority population, citing decreased Election Day turnout as more voters switched to in-person early voting and vote-by-mail options.<sup>114</sup> Local civil rights organizations expressed concern that the elimination of these polling places would decrease voter turnout, particularly among the elderly and people without cars, because voters would have to travel further to a polling place and the cuts disproportionately affected minority-heavy precincts. When the Supervisor of Elections served in the Florida Senate in 2011, he supported legislation that reduced the number of early voting days in Florida, which LDF opposed in [\*Florida v. United States\*](#), and endorsed making it hard to vote, stating: “I wouldn’t have any problem making it harder. I would want them to vote as badly as I want to vote. I want the people of the state of Florida to want to vote as bad as that person in Africa who’s willing to walk 200 miles...This should not be easy.” One study demonstrates that the changes to early voting opportunities between the 2012 and 2014 elections reduced Latino voter turnout by 7% as compared to the turnout for Latino voters who polling places remained the same.<sup>115</sup>

**Monroe County** reportedly has reverted to English-only ballots following the *Shelby County* decision.<sup>116</sup> Indeed, its October 1, 2013, post-*Shelby County* election was conducted without Spanish language ballots or election materials.

In **Pinellas County**, the Supervisor of Elections have refused requests by advocates to provide early voting sites within Black communities in South St. Petersburg and St. Petersburg to provide access to voting for community members without transportation options.<sup>117</sup>

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## GEORGIA

### State Level:

#### *Early voting*

Georgia 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.<sup>118</sup> Just four years earlier, Georgia had already cut early voting in the state from 45 to 21 days.<sup>119</sup> A Georgia legislator suggested that he opposed new Sunday voting hours because Black and other voters of color take advantage of these voting opportunities disproportionately, explaining that he “prefer[s] more educated voters than a greater increase in the number of voters.”<sup>120</sup> Following that legislation’s defeat, and [opposition](#) to the legislation by LDF and other organizations in 2014, in the next 2015 legislative session, Georgia lawmakers proposed an even more restrictive bill that would reduce early voting by seven days across Georgia and would



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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 Georgia.<sup>121</sup> 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.<sup>122</sup>

***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.<sup>123</sup> NGP coordinated one of Georgia's largest voter registration efforts and views the allegations as an attempt at voter suppression.<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup>

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.<sup>127</sup> The Secretary of State denied that the applications had not been processed.<sup>128</sup> 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.<sup>129</sup>

Subsequently, reports reflected that Georgia continued 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).<sup>130</sup> In 2016, civil rights and pro-democracy organizations sued the Secretary of State for these purges under the NVRA and U.S. Constitution.<sup>131</sup> According to the lawsuit, as of June 2015, over 800,000 voters in Georgia were in danger of being purged from the voter rolls.<sup>132</sup> A pro-democracy organization also has filed a separate lawsuit under the NVRA against the Secretary of State over his refusal to release public records relating to voter registration applications that his office failed to process so that advocates can understand why voter registration applications were rejected, cancelled, or otherwise kept off of the rolls.<sup>133</sup> While that litigation is ongoing, a federal court has ordered the SOS to release certain public records under a disclosure provision in the NVRA.<sup>134</sup>



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In September 2015, civil rights organization filed a separate lawsuit under the VRA and First and Fourteenth Amendments to the U.S. Constitution, seeking to stop the Secretary of State's administrative policy that fails to add to the list of eligible voters persons whose identifying information on their voter registration applications does not match exactly with the Georgia Department of Driver Services or Social Security Administration Records.<sup>135</sup> Those persons, therefore, are denied the right to vote unless they overcome bureaucratic hurdles to match those records or fall within a couple of narrow and arbitrary exceptions. According to the complaint, at least 42,500 voter registration applications, a disproportionate number of which have been submitted by Black, Latino, and Asian American applicants, have been suspended or rejected due to the verification protocol between July 2013 to the present. For example, since July 2013, only 13.6% of the 47.2% of voter registration applications submitted by white applicants have been rejected because of the Secretary of State's policy. By contrast, 63.6% of the 29.4% of voter registration applications submitted by Black applicants have been rejected, and 7.9% of the 3.6% of voter registration applications submitted by Latino applicants have been rejected. In response, the Secretary of State filed a letter with the court, indicating that Georgia would suspend this database matching process and move voters canceled for failing to respond to a "non-match" letter back into "pending voters," effecting voters cancelled since October 2014. Once these voters showed appropriate ID at the polls, they could cast a regular ballot in November 2016 and be moved to "active voter" status.<sup>136</sup> In light of this, though the litigation remained pending, plaintiffs withdrew their motion to stop the Secretary of State from implementing this "no-match" policy for the November 2016 election. Notwithstanding, in October 2016, and in advance of the 2016 general election, advocates contended that Georgia had failed to process approximately 100,000 voter registration applications.<sup>137</sup>

Indeed, in February 2017, the parties settled the lawsuit, agreeing to implement reforms, similar to those in place for the November 2016 election, to help ensure that eligible voters will not be denied the right to register and vote because of data entry errors, typos, and other database matching issues.<sup>138</sup>

Notwithstanding, during the 2017 legislative session, the Georgia Legislature introduced House Bill 268, which advocates contend is an attempt to implement similar voter registration restrictions that were the subject of the above-mentioned litigation and settlement.<sup>139</sup> Indeed, this bill would require an exact match between the information that an individual provides on his/her voter registration application and the information included in the DMV's databases, which is known to be error-prone and flawed. Where there is not an exact match, applicants would have 26 weeks to correct any information. Moreover, other provisions of the legislation would: remove Bureau of Indian or tribal treaty ID cards as acceptable proof of citizenship (even though Georgia has long accepted tribal ID for these purposes and the federal government accepts them as valid ID), impacting over 25,000 Native Americans who are currently registered to vote; and limit the ability of nonpartisan groups to help voters and answer questions outside of polling places.

In October 2016, responding to a lawsuit filed by a civil liberties organization, a federal court refused to order the State to extend the deadline to register to vote (in Chatham, Bryan, Camden, Glynn, Liberty, and McIntosh counties) for the November 2016 election in the wake of Hurricane Matthew, whose devastation forced evacuations and government closures.<sup>140</sup> A substantial number of people sought to vote in the final days of



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voter registration, but disruptions caused by the storm made it difficult and, in some cases, impossible, for people to register or conduct voter registration drives, impacting Black and other voters. Other states like Florida, North Carolina, and South Carolina, in some instances by court order, extended deadlines in counties impacted by the hurricane.

Civil rights groups also won a preliminary injunction in May 2017, requiring Georgia to extend the voter registration deadline (from March 20 to May 21) for the June 20, 2017 special election for a congressional seat.<sup>141</sup> As a result, more than 5,500 voters, as of May 21, registered for the special election.<sup>142</sup> Georgia had cut off registration for the run-off elections two months early, according to advocates. The NVRA prohibits states from cutting off voter registration more than 30 days ahead of an election. Georgia, notwithstanding, unsuccessfully argued that the June 20 runoff was not its own election, but rather was just an extension of the first round of voting, held on April 18. Reportedly, Georgia has 464,000 more registrants in 2017 than during the last non-presidential election year.<sup>143</sup> Certain counties, like Cobb, DeKalb, and Fulton, struggled to publicly notify voters of the extension in voter registration.<sup>144</sup>

***Proof of citizenship***

Georgia (like Arizona and Alabama) has also 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.<sup>145</sup> In 2016, civil rights and pro-democracy organizations sued the EAC for its actions enabling Georgia to require proof of citizenship; a federal court temporarily blocked the EAC from enforcing the proof of citizenship requirement for 2016 elections.<sup>146</sup>

***Candidate qualifications***

In 2016, state officials challenged the candidate residency qualifications and eligibility of a Black Democratic candidate, who was competing against a white Republican incumbent candidate and represented a majority-Black state legislative district for three decades.<sup>147</sup> 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 2016, the boundary lines of the district changed, edging the Black candidate out of the district in which he sought to run for office after the period for candidate qualifying ended.

***Redistricting***

During the 2017 legislative session, the Georgia Legislature considered H.B. 515, which would have led to mid-Census redistricting by changing the district boundaries for one Black elected official affiliated with the Democratic party, without any advance notice, according to that official, and eight officials affiliated with the Republican party.<sup>148</sup> Civil rights and pro-democracy organizations expressed concern that this proposal was drawn to dilute Black voting strength in certain districts and with race as the predominant motivating factor.<sup>149</sup>



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Relatedly, in April 2017, civil rights organizations filed a lawsuit, claiming, among other allegations, that under the VRA, the Georgia Legislature diluted minority voting strength in two state House districts—specifically by moving minority voters out of the districts of two vulnerable incumbent lawmakers—during a 2015 mid-Census redistricting.<sup>150</sup> In October 2017, a similar lawsuit was filed, contending that the state legislative redistricting violated Black voting rights.<sup>151</sup>

**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 have created a new overwhelmingly white district and reduced the district sizes of majority-Black districts.<sup>152</sup> 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.<sup>153</sup> During the 2016 presidential election, Fulton County was one of three Georgia counties where federal monitors observed elections.<sup>154</sup>

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.<sup>155</sup> 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.<sup>156</sup>

A redistricting lawsuit against the **City of Decatur** was filed 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.<sup>157</sup>

In **Sumter County**, a plaintiff-voter challenged a redistricting plan that would have reduced school board districts from nine to seven, two of which would be at-large, to align with the county commission districts.<sup>158</sup> The plaintiff alleged that the redistricting plan packed 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](#)



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[State Conference of the NAACP et al. v. Fayette County Board of Commissioners et al.](#)<sup>159</sup> LDF won a preliminary injunction in 2015 that required that the special election be conducted by district-based voting.<sup>160</sup>

In **Emanuel County**, a civil rights organization and two voters filed a lawsuit in 2016 under Section 2 of the VRA, alleging that the redistricting plan for the County school board packs Black voters into one district, when two majority-Black districts are possible, thereby diluting Black voting strength.<sup>161</sup> 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 October 2016, a civil rights organization, on behalf of state-based civil rights and pro-democracy organizations, challenged the refusal of the **Chatham County** Board of Election, which has a sizeable Black population, to extend the voter registration deadline for the November 2016 election in light of the mandatory evacuations caused by Hurricane Matthew; the state refused to extend the registration deadline based on alleged administrative difficulties.<sup>162</sup> Plaintiffs won an order temporarily blocking the County's decision because it prevented potential voters from participating in the November 2016 general election in violation of the U.S. Constitution and the NVRA, which, among other things, requires that states process any voter registration form received or postmarked within 30 days of an election.

### ***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.”<sup>163</sup> (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.<sup>164</sup>

In October 2016, in advance of the general election, some voters in **Gwinnett County**, outside of Atlanta, waited up to three hours to vote.<sup>165</sup> During the 2016 election presidential election, Gwinnett County was one of three Georgia counties where federal monitors observed elections.<sup>166</sup>

### ***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.<sup>167</sup> Community members raised concerns that the location of the new centers would intimidate some



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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.<sup>168</sup> One city council member expressed his belief that the closures would disfranchise low-income voters and voters of color, many of whom lack cars 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.<sup>169</sup> 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.<sup>170</sup> 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.<sup>171</sup> Ultimately, the Board reduced the number of precincts from 40 to 33 (instead of 26), including by combining two precincts with majority-white voting populations rather than combining precincts with majority-Black precincts.

Moreover, in 2016, the Board of Elections reversed its decision to relocate a polling place to a Bibb County Sheriff's office for the 2016 elections after civil rights and community organizations: voiced concerns that officials had made this decision without considering its impact on voters of color, giving notice to them, or considering reasonable alternatives to this location; and conducted a petition, relying upon state law, that gives voters an opportunity to prevent a local board of elections from moving forward with a polling place change if 20% of a precinct's registered voters sign a petition against it.<sup>172</sup> Ultimately, the election officials relocated the polling place at issue to an African American church.

In 2015, the **Hancock County** Board of Elections and Registration (BOER) proposed to close all of the County's precincts except one precinct located in the downtown area of the **City of Sparta** for purported cost-saving reasons.<sup>173</sup> The precincts proposed for closure were around 11 to 17 miles from the downtown Sparta precinct, presenting travel burdens for voters in the majority-Black precincts in the County's mostly poor and rural areas. Civil rights organizations and community members opposed this proposal and, in response, in October 2015, the BOER decided to close only one of the 10 precincts instead of consolidating all of the precincts into



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one. During the 2016 election presidential election, Hancock County was one of three Georgia counties where federal monitors observed elections.<sup>174</sup>

In 2016, the Board of Elections in **Upson County** consolidated election precincts before the state's March 1 primary election.<sup>175</sup> One voter reported that poll workers urged people waiting in line to leave and come back later to vote. She stayed and waited an hour and a quarter to vote but estimated that 30 to 40 would-be voters left. Moreover, over the objection of the only Black Board of Elections member, officials in Upson also moved a polling site more than two miles away from a Black neighborhood, Lincoln Park, as part of a plan to cut the number of voting sites in the County from nine to four, purportedly to save \$20,000.<sup>176</sup> The Board of Elections ultimately did not adopt a plan which would have closed a polling site in a rural area in Salem that has a large Black population, following residents' complaints about the resulting burden of having to travel an additional 10 miles or more to vote.<sup>177</sup>

In 2016, **McDuffie County** elected to eliminate three polling places, such that two-thirds of the County's Black voters, and one-third of its white voters, must vote in one location.<sup>178</sup>

In 2017, **Fulton County**, the largest county in Georgia, election officials contemplated closing or moving three polling places located in neighborhoods with significant Black populations a few months before an election.<sup>179</sup> Voting rights advocates challenged that proposal, including by filing a lawsuit, because of lack of adequate notice about the changes and the potential impact on Black voters, particularly those who walk or take public transportation to vote.

### ***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.<sup>180</sup> A lawsuit challenging the change in election date from the November general election to the May 20 primary election was unsuccessful.<sup>181</sup> Under Section 5, the U.S. DOJ in 2012 blocked this same attempt to switch the election date from November to a summertime month.<sup>182</sup>

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 was a marked departure from Macon's traditional schedule of multi-party partisan primary elections in July and a general election in November.<sup>183</sup>

### ***Voter purges & intimidation***

In **Hancock** and **Sparta counties**, civil rights advocates filed a lawsuit in 2015, opposing the challenge to and purging of eligible Black voters from the voter rolls because of alleged address changes in violation of the VRA





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and other laws.<sup>184</sup> For example, plaintiffs allege that the majority-white Hancock County Board of Elections and Registration (BOER) took nearly 17% of all eligible Spartan voters, and at least 53 Spartan voters, nearly all of whom were Black, off of the voter rolls. The purges occurred before the November 15, 2105 Sparta election in which white candidates for mayor and city council were running against African American incumbents. In response to the lawsuit, the BOER has reinstated 17 of the purged voters.<sup>185</sup> Reportedly, these purges followed the BOER's having "systematically question[ed] the registrations of more than 180 Black Sparta residents, one fifth of the population, "by dispatching deputies with summonses commanding them to appear in person to prove their residence or lose their voting rights."<sup>186</sup> In March 2017, the parties settled this lawsuit, ensuring, among other things, that the County will no longer hear third-party challenges to voters' eligibility and will no longer remove voters based on allegations of a change of address, instead following federal law that requires a waiting period of two federal election cycles before officials may attempt to contact a voter to confirm their address.<sup>187</sup>

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## 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.<sup>188</sup> 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 9 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, in 2013, 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 into 8 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 filed a lawsuit in 2014 on behalf of several local residents to challenge the School Board's redistricting which would have reduced the Board's size from 11 single-member 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.<sup>189</sup>



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Local Level:

***Polling place closures***

In November 2016, a civil rights organization released a report that studied polling place closures in Louisiana since the *Shelby County* decision and found that “61 percent of Louisiana parishes have closed a total of 103 polling places since 2012,” including in **Jefferson** and **Terrebonne** parishes.<sup>190</sup> Terrebonne Parish encompasses a state court, whose method of election LDF is challenging in [Terrebonne Parish Branch NAACP et al. v. Jindal et al.](#), under Section 2 of the VRA and the U.S. Constitution.<sup>191</sup>

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**MICHIGAN**

State Level:

***Photo ID & voucher requirements***

In 2015, the Michigan Legislature considered, but did not pass, a bill, SB 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.<sup>192</sup> 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.<sup>193</sup> 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.

The following year, in 2016, the Michigan Legislature considered, but did not pass, House Bills 6066, 6067, and 6068, which would have eliminated a procedure whereby voters who appear in person to vote without an acceptable form of voter ID can cast a regular ballot if they sign an affidavit attesting to their identity. Instead, these bills would have required most Michigan voters to present limited forms of ID for their votes to count; for those voters without a required ID, the bills would have required voters to fill out a provisional ballot that would only be counted if the voter returned to their clerk’s office within 10 days to show either a photo ID or present evidence they are either indigent and, therefore, unable to afford an ID or have a religious objection to having their photo taken.<sup>194</sup> [LDF](#) and other advocates opposed these bills.<sup>195</sup>



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***Straight-party voting***

In 2016, a federal court issued four preliminary injunctions against state election officials, stopping them from implementing a new law, P.A. 268. Three Michigan residents and a civil rights organization challenged this law that bans straight-party ticket voting, in part because of the law's potential to reduce Black voter's opportunity to participate equally in the political process and place a disproportionate burden on Black voter's right to vote.<sup>196</sup> Straight-party ticket voting, which has been used in Michigan for nearly a century, allows voters to select a slate of candidates affiliated with a particular party rather than to select each individual candidate on a ticket. Black voters tend to vote for candidates affiliated with the Democratic party with a single mark on the ballot. Indeed, opponents advance a correlation between the use of straight-party voting by Black voters: of 15 Michigan cities with a straight-party voting rate of 65% or higher, two were comprised of a majority of white residents and five cities with rates greater than 75% were comprised of a majority of Black residents. Opponents of the law contend that its burden is caused in part by or linked to social and historical conditions in Michigan that have produced or are producing discrimination against Black residents in education, employment, and health. The Sixth Circuit Court of Appeals declined Michigan's request to overturn the trial court's orders staying the state's implementation of P.A. 268 while the case is litigated.<sup>197</sup> A full *en banc* panel of the Sixth Circuit refused to hear Michigan's request for their review of the trial court's injunction orders.<sup>198</sup> Michigan, subsequently, appealed to the Supreme Court seeking emergency relief and the Supreme Court declined Michigan's request.<sup>199</sup>

**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.<sup>200</sup> Advocacy groups monitored polls and provided a hotline for voters to report such issues during a primary election.<sup>201</sup> 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."<sup>202</sup>

***Machine malfunctions***

Officials acknowledge that 80 voting machines in **Wayne County**, which encompasses Detroit, where 82% of the residents are Black people, were broken on November 8, 2016, denying Black voters the opportunity to participate in the political process.<sup>203</sup>



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## 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."<sup>204</sup> Mississippi's Secretary of State said he would move forward immediately to implement Mississippi's voter ID law, which was passed in 2012, but not implemented pre-*Shelby*, for primaries in June 2014, and a law that, even in 2017, the SOS contends is a model photo ID law.<sup>205</sup> The implementation of Mississippi's photo ID law already impacted Mississippi elections; the outcome of a tied (177-177) local special election depended upon a lone voter returning within five business days with a valid photo ID, after voting provisionally by affidavit ballot, because the voter initially appeared to vote without an acceptable photo ID.<sup>206</sup> Reportedly, hundreds of voters could not vote in the 2014 mid-term election because of the photo ID law.<sup>207</sup> Studies have indicated that photo ID laws depress voter turnout in Black and Latino communities.<sup>208</sup>

### Local Level:

#### ***Polling place closures***

In November 2016, a civil rights organization released a report that studied polling place closures in Mississippi since the *Shelby County* decision and found that "[a]bout 34 percent of the 59 Mississippi counties surveyed have closed polling places since Shelby, resulting in at least 44 fewer polling places for the 2016 election."<sup>209</sup>

Just prior to the *Shelby County* June 25, 2013 decision, in **Lauderdale County**, on June 5, 2013, the majority-Black city of Meridian elected its first Black mayor even after a noose was hung outside of the candidate's campaign office.<sup>210</sup> Following *Shelby*, the majority-white County Board of Elections eliminated seven polling places – from 49 to 42 – since the 2012 election. Two years later, in 2015, the County BOE proposed a plan to move several of Meridian's municipal election polling places out of Black churches, over the objection of minority community members.<sup>211</sup>



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## 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.<sup>212</sup> In maintaining these vacancies, advocates have claimed that the Governor has departed from past precedent in refusing to call elections. In 2017, vacancies remain an issue.<sup>213</sup>

#### *Voter Registration*

In early March 2017, voting rights advocates sent a pre-litigation notice, alleging that New York is failing to meet its obligations under the NVRA and VRA by not ensuring that a driver's license or identification card application, renewal, or change of address transaction serves as a voter registration application or change of address, and not providing voting materials and assistance in certain language, impacting communities of color.<sup>214</sup>

### Local Level:

In the borough of **Brooklyn**, which is in **Kings County**, entire buildings and blocks were de-registered from voting in a purge of 126,000 voters, disproportionately Hispanic and Asian voters, from the rolls in advance of the April 2016 primaries, which remains under investigation by multiple entities.<sup>215</sup> Civil rights advocates contend that the Board of Elections failed to first designate voters as "inactive" before sending out a second notice that they would be purged from the rolls. Local and national voting rights advocates and a New York representative also asked the U.S. DOJ to monitor and oversee 2016 elections, including those occurring in Kings County.<sup>216</sup> The Board of Elections reportedly restored these voters to the voting rolls in advance of a June 28 primary election.<sup>217</sup> Notwithstanding, following the June 28th congressional primary election, reports indicated that voters in New York encountered other obstacles, including illegal requests for identification, unexpected poll closures, and wrongful denials of affidavit ballots.<sup>218</sup>

In November 2016, civil rights organizations filed a lawsuit against the Board of Elections, contending that the improper purge of registered voters, making them ineligible to participate in the November 2016 election, violates the NVRA.<sup>219</sup> Shortly thereafter, the parties settled the lawsuit, which included a provision for voters,



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who believed they had registered, but were no longer on the rolls, to vote by affidavit ballot, and to notify poll workers and voters of this provision.

A separate lawsuit also was filed in federal court by civil rights and pro-democracy organizations, challenging the purge of more than 200,000 voters, including 117,000 registered voters in Brooklyn who were purged before the April 2016 primary election; the U.S. DOJ and New York Attorney General moved to intervene in this lawsuit.<sup>220</sup> Among other relief, the NY AG's office requested that the court order the Board of Elections to perform an audit of every voter who was sent a cancellation notice based on their failure to vote or an alleged change of address since January 1, 2014, and the reinstatement of anyone the board removed in violation of state and federal law. In addition, the NY AG's office sought to have the court order the removal of New York City's current head of Voter Registration. As of late October 2017, the Board of Elections had tentatively agreed to terms of a consent decree that would require it to restore voters to the rolls that were illegally purged and establish a comprehensive plan to prevent future illegal voter purges.<sup>221</sup>

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## NORTH CAROLINA

### State Level:

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

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 because of the ruling.<sup>222</sup> A North Carolina State Senator also said that he would move quickly to pass a voter ID law because 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.<sup>223</sup> 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."<sup>224</sup>

Within two months of the *Shelby County* decision, North Carolina's Governor signed an omnibus anti-voter bill, H.B. 589 – dubbed the “monster law” – 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.<sup>225</sup>



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***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 appealed<sup>226</sup> 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 elections, but not others. In June 2016, the Fourth Circuit continued its order staying the rollback of same-day registration opportunities and to count out-of-precinct ballots, as the case was heard on appeal (see more below).<sup>227</sup>

A three-week federal trial was held in July 2015 related to the non-photo ID aspects of the omnibus voter law.<sup>228</sup>

The ballots of anywhere from 454 to 1,390 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.<sup>229</sup> These and other acts of discrimination in recent elections have been documented.<sup>230</sup> One estimate suggests that turnout was reduced by at least 30,000 voters in the 2014 election because of barriers to the ballot.<sup>231</sup> 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.<sup>232</sup> Reportedly, Black voters have cast out-of-precinct ballots at twice the rate of white voters.<sup>233</sup> In 2012, 70% of Black voters used early voting.<sup>234</sup>

***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.<sup>235</sup>

A federal trial on the photo ID requirement of the omnibus law took place in January 2016.<sup>236</sup>

Prior to trial, the North Carolina legislature made changes to the photo ID law.<sup>237</sup> The new legislation purported 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, 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 an 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, were not an accepted form of ID.

Reports indicated that many voters lacked awareness about or are confused by the "reasonable impediment" provision of the photo ID law.<sup>238</sup> During the March 2016 primary—the first election in North Carolina to require voters to show a photo ID under the new law and "reasonable impediment" exception—reportedly 26% of people who relied on the "reasonable impediment" provision were Black voters, who only account for



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22% of North Carolina’s population.<sup>239</sup> Also, during the March 2016 primary, poll monitors reported that: even when “reasonable impediment” declarations were submitted, it varied county to county whether they were accepted and that at least four different versions of the affidavit forms for identifying “reasonable impediments” were being used.<sup>240</sup>

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.<sup>241</sup> Voters also reported having difficulties and burdensome costs associated with obtaining the “free” photo IDs.<sup>242</sup> Numerous voters also 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.<sup>243</sup> 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.<sup>244</sup> Other voters reported difficulties with having to vote with a photo ID, such as having to satisfy a spelling test to vote, encountering voter intimidation, and enduring long lines at the polls.<sup>245</sup> During the 2012 primary, 23,000 provisional ballots were cast.

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 and other communities of color.<sup>246</sup>

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.<sup>247</sup> 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 appealed to the Fourth Circuit Court of Appeals, which heard the case on an expedited basis with oral argument on June 21, 2016.<sup>248</sup> On July 29, 2016, the Fourth Circuit reversed the trial court’s ruling that had upheld North Carolina’s voting restrictions, finding that the state Legislature adopted its omnibus law with discriminatory intent and the purpose to impose barriers to block Black voters from voting. The appellate court said: “[a]lthough the new provisions target African Americans with almost surgical precision, they constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist.”<sup>249</sup> The court noted that the Legislature “requested data on the use, by race, of a number of voting practices,” and then, data in hand, “enacted legislation that restricted voting and registration in five different ways, all of which disproportionately affected African Americans.” The court could not “ignore the record evidence that, because of race, the legislature enacted one of the largest restrictions of the franchise in modern





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North Carolina history.” With respect to the “reasonable impediment” provision of the photo ID aspects of the omnibus law, the appellate court stated: “[n]othing in this record shows that the reasonable impediment exception ensures that the photo ID law no longer imposes any lingering burden on African American voters.”

Ultimately, this appellate ruling: prohibits North Carolina from requiring photo ID for in-person elections; restores a week of early voting and pre-registration for 16- and 17-year-olds; ensures that same-day registration and out-of-precinct voting will remain in effect; and ordered that ballots of people who had mistakenly voted at the wrong polling stations be deemed valid. The court declined to bail North Carolina back into Section 5’s protections under Section 3(c) of the VRA.

Following its decision, the Fourth Circuit denied the state-defendants’ request for a stay of the decision, pending an appeal to the U.S. Supreme Court.<sup>250</sup> In denying the stay, the Fourth Circuit wrote: “[v]oters disenfranchised by a law enacted with discriminatory intent suffer irreparable harm far greater than any potential harm to the State.” Seventeen days after the Fourth Circuit’s decision, North Carolina then appealed it to the U.S. Supreme Court, requesting that that court allow provisions of its omnibus law to remain in effect (e.g., the voter ID provision) that were used in the 2016 primary election season to not disrupt the election; opponents of the law contended that election officials had sufficient time before November to implement an election that complied with the Fourth Circuit’s decision and that once an electoral law, such as North Carolina’s omnibus measure, has been found to be racially discriminatory and enjoined, operation of the law must be suspended.<sup>251</sup> In late August 2016, the Supreme Court denied North Carolina’s request to stay the Fourth Circuit decision; thus, North Carolina’s intentionally discriminatory voting laws were not put into effect for the November election.<sup>252</sup> In late December 2016, North Carolina filed papers requesting that the U.S. Supreme Court review the Fourth Circuit decision.<sup>253</sup> In the interim, following a change in administration after the November 2016 election and in an effort to end the state’s defense of the monster law, the Governor and Attorney General discharged the private attorneys who had been representing the state, as well as moved to dismiss the certiorari petition.<sup>254</sup> Notwithstanding, the former Governor hired private attorneys to continue to press the litigation and the Legislature and members of the Legislature sought to intervene in the case in support of the monster law.<sup>255</sup> Notwithstanding, on May 15, 2017, the U.S. Supreme Court declined to take the case on appeal, with Chief Justice Robert writing a separate statement and invoking the Court’s “frequent admonition that ‘[t]he denial of a writ of certiorari imports no expression of opinion upon the merits of the case’ ”.<sup>256</sup> Accordingly, the denial leaves in place the Fourth Circuit decision enjoining North Carolina’s omnibus law.

Ultimately, reports found that voter impersonation fraud was not rampant during the 2016 elections and that North Carolina’s photo ID provision would have prevented just one fraudulent vote in the November 2016 election, had it been in effect.<sup>257</sup>

Since 2011, North Carolina has spent at least \$5 million of taxpayers’ dollars defending the above-mentioned election law changes that are part of its omnibus measure.<sup>258</sup>



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A state court challenge to the photo ID requirement also was filed. The state court, however, stayed the case in light of the above-mentioned federal proceedings that have blocked North Carolina’s enforcement of its photo ID requirement for in-person voting.<sup>259</sup> According to reports, plaintiffs intended to support their state law challenge with evidence that the ballots of 1,400 eligible voters were thrown out because of the photo ID law in the 2016 primary election.<sup>260</sup>

In 2017, the state Legislature considered a bill that would add a photo ID requirement to the state Constitution, and would go into effect if approved by voters.<sup>261</sup>

### ***Straight-party voting***

Advocates expressed concern that North Carolina’s elimination of straight-party ticket voting, which voters in counties with large Black populations used in the 2010 and 2012 elections, would impact the 2016 election, given the competitive nature of the various races on the ballot and, thus, voters’ need for more time to cast their ballots, causing long lines and potentially preventing eligible voters from voting or fully completing their ballots.<sup>262</sup> One study reports that 2.5 million voters used straight-ticket voting in 2012.<sup>263</sup> At the start of early voting for the 2016 general election, voters in localities across North Carolina—in Charlotte, Raleigh, Fayetteville, and Winston-Salem—experienced long lines and waiting times to vote.<sup>264</sup>

### ***Appointments***

In 2016, State Republican legislators were reported to have considered holding a special session to add two additional Justices on the state Supreme Court, following the November election which changed the composition of the existing seven-member court to include four Democrats.<sup>265</sup> The need for an additional judgeship is predicated on case load criteria.

Moreover, during a special legislative session in December 2016, the Republican-controlled Legislature acted to place limits on the incoming Democratic-affiliated Governor’s power to make political appointments by (1) stripping future governors of their power to appoint a majority to the State Board of Elections (through expanding the number of board members from five to eight, with the eight members to be evenly divided between the two major parties), which a panel of state court judges temporarily blocked, and (2) changing the state court system so that it is more difficult for the losers of some superior court cases to appeal directly to the Democratic-controlled Supreme Court.<sup>266</sup>

Another proposed piece of legislation was introduced that would strip the incoming governor of his ability to name members of the boards of state universities and reduce the number of state employees that the governor can appoint from 1,500 to 425, as well as make the governor’s cabinet appointees subject to approval by the State Senate. Civil rights and other advocates have decried this power grab because of the impact that these changes—hastily made following the November election—would have on minority voters in North Carolina.



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There is ongoing litigation in North Carolina’s state courts over these changes.<sup>267</sup>

In 2017, North Carolina became the first state in nearly a century to adopt partisan court elections; and the Legislature also reduced the size of the state Court of Appeals, which deprives the Democratic-affiliated Governor of the ability to name the replacements of two retiring Republicans.<sup>268</sup>

***Voter registration***

Following the November 2016 election, the campaign of the incumbent Governor lodged complaints of voter fraud against approximately a dozen get-out-the-vote groups in North Carolina that had focused on outreach among African-American voters.<sup>269</sup>

***Redistricting***

In October 2017, the North Carolina legislature passed a redistricting bill that advocates contend could reduce the number of Black judges and other judges of color in North Carolina’s judicial system.<sup>270</sup>

**Local Level:**

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.<sup>271</sup> 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.

Similarly, in 2016, another analysis asserts that 17 of North Carolina’s 78 counties made changes to early voting opportunities that had negative impacts on voters, namely voters of color, and 24 counties made voting more difficult for the working poor, who are disproportionately Black.<sup>272</sup>

Moreover, in August 2016, the chair of the North Carolina GOP emailed Republican county election board members, who approve election schedules in each county, and other party members, requesting that they “make party line changes to early voting,” by reducing early voting hours, not offering Sunday voting (which African American communities commonly use and refer to as “souls to the polls,” where church members vote together following Sunday worship services), and not putting polling sites on college campuses.<sup>273</sup> This request follows a federal court ruling, discussed above, that necessitates that counties develop new early voting schedules. While the court ruling requires North Carolina’s 100 counties to offer 17 days of early voting, it does not prohibit election officials from providing fewer hours and early voting sites than in the last presidential election.<sup>274</sup> As a result, boards across 23 North Carolina counties, some discussed in detail below, acted to reduce the number of early voting hours and sites available to voters across the state.<sup>275</sup> Nine counties also



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acted to drop Sunday voting. For those counties in which boards of elections disagreed about early voting plans, the State Board of Election set those plans, and, in some cases, restored Sunday early voting hours and, in other cases, approved restrictions on early voting opportunities.<sup>276</sup> Litigation was filed by the presidential campaign of Hillary Clinton, on behalf of voters in federal court, that unsuccessfully sought an order requiring the state Board of Elections to modify early voting plans in Mecklenburg, Guilford, Forsyth, Nash, and New Hanover counties to comply with the July 2016 Fourth Circuit Court of Appeals decision (discussed below).<sup>277</sup>

Ultimately, during the 2016 general election, 17 North Carolina counties provided fewer total early voting hours than in 2012, and three counties that offered early voting on a Sunday in 2012 no longer offered that option.<sup>278</sup> Though the state is offered more early voting hours overall than voters had in 2012, many counties are offered no evening hours, making access difficult for people who work one or more jobs.

Potentially as a result of these changes to polling sites and early voting opportunities, as well as the elimination of straight-ticket voting (*see above*), voters in localities across North Carolina—including in Charlotte, Raleigh, Fayetteville, and Winston-Salem—experienced long lines and waiting times to vote at the start of early voting for the 2016 general election.<sup>279</sup>

Moreover, in November 2016, a civil rights organization released a report that studied polling place closures in North Carolina “even after significant opposition from minority communities and advocates,” including in **Pasquotank** and **Cleveland** counties.”<sup>280</sup>

Another report indicated that because of fewer early voting places, Black voter turnout decreased by 16% during the first week of early voting.<sup>281</sup> Republican officials also boasted that due to cutbacks to early voting hours, Black voter turnout reduced by 8.5% below 2012 turnout, while turnout for white voters increased by 22.5%.<sup>282</sup>

**The changes that follow reflect the particular limitations on polling sites and early voting opportunities across North Carolina’s cities and counties.**

***Polling place closures & reductions, voter intimidation, & early voting restrictions***

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 (ASU) campus.<sup>283</sup> A North Carolina trial court found that the State Board of Elections, having ratified the Watauga Board’s decision, intended to discriminate against students;<sup>284</sup> an appellate court subsequently dissolved its stay of that decision.<sup>285</sup> 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.<sup>286</sup> In 2016, the County also refused to approve a voting site on ASU’s campus and instead had only one early voting site for the County, in a “tiny office on the first floor of the County Courthouse.”<sup>287</sup>



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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.<sup>288</sup> The board chairman also proposed closing an early voting site at Winston-Salem State University, a historically Black institution.<sup>289</sup> 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.<sup>290</sup> In 2016, the Forsyth County Board of Elections, which is majority-Republican, approved a plan to move early voting polling sites in two of Winston-Salem's prominent minority neighborhoods.<sup>291</sup> The State Board of Elections reviewed this plan, as well as another submitted by the County board's lone democratic member, to ensure the African-American and Hispanic populations have access to early voting sites. At the start of early voting for the 2016 general election, voters in Winston-Salem experienced long lines and waiting times to vote.<sup>292</sup>

Litigation was filed by the presidential campaign of Hillary Clinton, on behalf of voters in federal court, seeking an order requiring the State Board of Elections to modify early voting plans in Forsyth to comply with the July 2016 Fourth Circuit Court of Appeals decision (discussed above).<sup>293</sup> Plaintiffs contended that the cuts to early voting on Sundays discriminated against Black voters who vote after Sunday service worship, (also known as "souls to the polls") and urged the County to open an early voting site on the Winston-Salem State University campus. A federal appeals court refused an emergency motion, seeking to reverse a trial court's denial of plaintiffs' request.<sup>294</sup>

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.<sup>295</sup>

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.<sup>296</sup>

In August 2016, a member of the **Wake County** Board of Elections attempted and failed to eliminate early voting on Sundays and the opening of an early voting site at N.C. State University.<sup>297</sup> This member had been appointed to the Board following a federal court decision, discussed below, that the County Commission and School Board's redistricting plans violated the U.S. Constitution and had to be remedied. This attempt comes as a leader of a conservative think tank in North Carolina reportedly encouraged counties to cut early voting sites and reduce hours, even while adding seven additional days of early voting, as required by the federal court litigation discussed above which blocked the State's efforts to cut early voting opportunities by one week.<sup>298</sup> Reductions to early voting sites are often proposed in the name of cost-saving measures and often without any analysis or studies of the cost-savings. At the start of early voting for the 2016 general election, voters in Wake experienced long lines and waiting times to vote.<sup>299</sup>



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Also in August 2016, the **Guilford County** Board of Elections threatened to reduce the number of early voting sites from 22 to 12, including closing two sites at two Greensboro universities, one of which (North Carolina A&T) being a historically Black educational institution.<sup>300</sup> Following opposition from activists and concerned citizens, the Board voted unanimously to create 25 early voting sites, maintain Saturday and Sunday voting days, and keep the two university early sites open. Still, litigation was filed by the presidential campaign of Hillary Clinton, on behalf of voters in federal court, seeking an order requiring the State Board of Elections to modify early voting plans in Guilford County to comply with the July 2016 Fourth Circuit Court of Appeals decision (discussed above), specifically by providing more early voting sites that will be open during the week and at least as many early voting polling sites that were available to voters in 2012, including those locations that Black voters have used heavily.<sup>301</sup> A 2016 analysis asserts that Guilford’s changes to early voting opportunities—including its decision to have only one early voting site open during the first week of early voting—are among the most troubling of those made by North Carolina’s counties that have had negative impacts on voters of color.<sup>302</sup> At the start of early voting in October 2016, turnout in the County was down by 85%.<sup>303</sup>

In August 2016, in **Mecklenburg County**, North Carolina’s largest county, the Board of Elections voted to cut early voting hours by 238, compared to the number of hours offered during the 2012 election, as well as to cut the number of early voting sites.<sup>304</sup> This decision came one day after the chair of the North Carolina GOP, emailed Republican county election board members, requesting that they “make party line changes to early voting,” including by reducing early voting hours. The State Board of Elections reviewed this decision and, according to civil rights advocates, failed to restore early voting hours and sites to account for the expected high turnout in this County. Litigation was filed by the presidential campaign of Hillary Clinton, on behalf of voters in federal court, seeking an order requiring the State Board of Elections to modify early voting plans in Mecklenburg to comply with the July 2016 Fourth Circuit Court of Appeals decision (discussed above), specifically by providing longer hours on the last day of early voting.<sup>305</sup> Recently, a federal appeals court refused an emergency motion, seeking to reverse a trial court’s denial of plaintiffs’ request.<sup>306</sup> Ultimately, during the 2016 general election, this County offered 12 fewer voting locations for the first day of early voting than in 2012, despite a federal court recognizing that in recent years, “African Americans disproportionately used the first seven days” of early voting.<sup>307</sup> A 2016 analysis asserts that Mecklenburg’s changes to early voting opportunities are among the most troubling of those made by North Carolina’s counties that have had negative impacts on voters of color.<sup>308</sup> At the start of early voting for the 2016 general election, voters in Charlotte experienced long lines and waiting times (*i.e.*, more than three hours) to vote.<sup>309</sup>

In August 2016, members of **Lenoir County**’s Board of Elections proposed to reduce, by about a quarter, the number of early voting hours available for the November 2016 election, and to provide only one early voting site, open only during weekday business hours and on the Saturday morning before the election, in the County seat, despite that the County spans 403 square miles.<sup>310</sup> One in four voters in Lenoir are Black. Elections officials purported that the reductions to these voting opportunities would allow officials to “monitor voter fraud more effectively,” even though impersonation voter fraud is virtually nonexistent. This decision follows an email



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from the chair of the North Carolina GOP that he sent to Republican county election board members, requesting that they “make party line changes to early voting,” including by reducing early voting hours.

In August 2016, in **Cumberland County**, the Board of Elections eliminated a Sunday early voting day from a 10-day early voting plan that they had adopted. Sunday voting has been used frequently by Black voters in North Carolina and is commonly referred to as “souls to the polls.”<sup>311</sup> Following this decision, the State Board of Elections restored Sunday voting hours. At the start of early voting for the 2016 general election, voters in Fayetteville experienced long lines and waiting times to vote.<sup>312</sup>

In October 2016, litigation was filed by the presidential campaign of Hillary Clinton, on behalf of voters in federal court, seeking an order requiring the State Board of Elections to modify early voting plans in **New Hanover County** to comply with the July 2016 Fourth Circuit Court of Appeals decision (discussed above), specifically by providing Sunday voting opportunities, which Black voters use to vote after Sunday service worship (also known as “souls to the polls”).<sup>313</sup> A 2016 analysis asserts that Mecklenburg’s changes to early voting opportunities are among the most troubling of those made by North Carolina’s counties that have had negative impacts on voters of color.<sup>314</sup>

In October 2016, litigation was filed by the presidential campaign of Hillary Clinton, on behalf of voters in federal court, seeking an order requiring the State Board of Elections to modify early voting plans in **Nash County**, specifically to comply with the July 2016 Fourth Circuit Court of Appeals decision (discussed above).<sup>315</sup> According to plaintiffs, under the challenged plan, Rocky Mount residents are forced to travel too far to rural sites to vote during the first week of early voting and no voting sites are opened in the more heavily populated town. A federal appeals court refused an emergency motion, seeking to reverse a trial court’s denial of plaintiffs’ request.<sup>316</sup>

In 2016, an analysis asserts that **Columbus County** made changes to early voting opportunities that had negative impacts on voters, namely voters of colors, by specifically decreasing the total number of early voting days and number of early voting sites.<sup>317</sup>

A 2016 analysis asserts that **Buncombe County’s** changes to early voting opportunities, particularly by cutting the early voting hours at voting sites, are among the most troubling of those made by North Carolina’s counties that have had negative impacts on voters of color.<sup>318</sup>

Opposition from a civil rights leader, as well as a 2016 analysis asserts that **Craven County’s** changes to early voting opportunities—including its decision to have only one early voting site open during the first week of early voting—are among the most troubling of those made by North Carolina’s counties that have had negative impacts on voters of color.<sup>319</sup> At the start of early voting in October 2016, only 59% of ballots had been cast in that County as compared to 2012, wait times to vote were longer than two hours, and voters reportedly endured other difficulties, including health complications, attempting to vote.<sup>320</sup>



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### ***Voter 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. The State Board of Elections subsequently reversed this move. Reportedly, a Pasquotank county leader expressed his intention to continue to challenge the voter registrations of more students at historically Black colleges and universities.<sup>321</sup>

At an August 2016 public meeting, the appointed chair of the **Henderson County** Board of Elections explored the possibility of requesting that the sheriff deputize armed civilians to patrol the polls in November 2016 in the name of purported safety measures.<sup>322</sup> The Board also circulated a flier designed to help poll workers spot potential terrorists, which included the following descriptions of actions to be aware of: “[p]erson out of place in environment”; “[f]ixed stare”; and “[p]erson whose appearance or manner makes you feel uneasy.”

### ***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.<sup>323</sup>

### ***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.<sup>324</sup> Civil rights advocates have challenged that redistricting plan in court. Likewise, advocates have brought 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).<sup>325</sup> The Fourth Circuit Court of Appeals, reversing the lower court decision, found that both plans violate the “one person, one vote” principle under federal and state law.<sup>326</sup> A federal court ordered that the County used interim remedial maps for the November 2016 elections involving these local bodies.<sup>327</sup>

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.<sup>328</sup> Aspects of Greensboro’s voting changes were preliminarily enjoined by a federal court.<sup>329</sup> After trial in February 2017, the court ruled in favor of the minority plaintiffs.<sup>330</sup>





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***Voter purges***

In advance of the start of early voting in October 2016, a 100-year-old Black woman voter, who had lived in Belhaven all her life, as well as other registered voters, were at risk of being purged by **Beaufort County's** Board of Elections after their voter registration statuses were challenged based on lists compiled by Republican officials.<sup>331</sup> The elderly voter has been voting for the past 24 years, including in the 2016 primary season. These lists have led to the challenges of the registration statuses of disproportionately Black and registered Democrats. A civil rights organization filed a lawsuit under the NVRA to prevent these purges and the U.S. DOJ filed a statement of interest in the case, contending that counties cannot legally remove voters “using only mail returned as undeliverable and without following specific required procedures” nor can they carry out “systematic removals within 90 days of a Federal election.”<sup>332</sup> During a hearing, a federal judge referred to North Carolina’s purge process as “insane” and something “put together in 1901.”

In 2016, hundreds of registered voters in **Moore County** were purged by the Board of Elections after their voter registration statuses were challenged based on lists compiled by Republican officials.<sup>333</sup> These lists have led to the challenges of the registration statuses of disproportionately Black and registered Democrats in other parts of North Carolina. A civil rights organization filed a lawsuit under the NVRA to prevent these purges and the Department of Justice filed a statement of interest in the case, contending that counties cannot legally remove voters “using only mail returned as undeliverable and without following specific required procedures” nor can they carry out “systematic removals within 90 days of a Federal election.”<sup>334</sup> During a hearing, a federal judge referred to North Carolina’s purge process as “insane” and something “put together in 1901.”

As of October 2016 in **Cumberland County**, thousands of registered voters were purged by the Board of Elections, within 90 days of the November 2016 election, after their voter registration statuses were challenged.<sup>335</sup> A civil rights organization filed a lawsuit under the NVRA to prevent these purges and the U.S. DOJ filed a statement of interest in the case, contending that counties cannot legally remove voters “using only mail returned as undeliverable and without following specific required procedures” nor can they carry out “systematic removals within 90 days of a Federal election.”<sup>336</sup> During a hearing, a federal judge referred to North Carolina’s purge process as “insane” and something “put together in 1901.”



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## 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.”<sup>337</sup> 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.”<sup>338</sup> 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 an acceptable photo ID and provides a process for how such voters still can vote in-person.<sup>339</sup>

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. Moreover, in 2016, confusion over the reasonable impediment provision of that law persists three years after its implementation, and South Carolina’s failure to collect data about its administration of the law and analyze that data makes it difficult to assess the law’s impact on minority voters in particular.<sup>340</sup> Furthermore, 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.<sup>341</sup> It also has been difficult to get data on the implementation of the photo ID law, including the number of provisional ballots cast and counted when used in conjunction with the reasonable impediment provision.<sup>342</sup>

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 possessed by white South Carolinian 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.<sup>343</sup>



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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.<sup>344</sup> Unlike other South Carolina cities, such as Columbia or Charleston, which have non-partisan elections and where the Black populations have remained steady, Greenville's Black population has declined. 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.

***Student voter eligibility***

In 2016, the Board of Voter Registration and Elections in **Greenville County** required students, seeking to register to vote and who live on college campuses, to complete a questionnaire with answers that establish their residence in Greenville to the Board's satisfaction and return the form within 10 days to register to vote or else their application will be rejected.<sup>345</sup> The questionnaire asks students to detail where their parents live (regardless of whether the student claims that as their legal residence), where their vehicle is registered, whether they work in Greenville County, whether they have other ties to the community, if they have ever registered to vote anywhere else, where their spouse lives (if married), where they have checking or savings accounts, where they pay taxes, whether they split living between Greenville and another location, and what residence they list on official documents. The Director of Elections claims that the additional questions are required, specifically in Greenville, by a 1973 federal district court decision that bars the Board from allowing college students who list their address as a college campus from registering to vote in the County. Other counties do not employ the questionnaire for any resident seeking to register to vote. A civil rights organization, on behalf of three college students, filed a lawsuit in state court seeking to temporarily enjoin the Board's use of the questionnaire for the November 2016 elections, and, thereafter, block them from implementing the challenged policies that treat students seeking to register to vote unlike any other voters in the state. The policy had the potential to impact 7,000 students in Greenville. In October 2016, a federal court granted the temporary injunction, blocking the Board from implementing the questionnaire.<sup>346</sup>



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### 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.<sup>347</sup>

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 acceptable photo ID. As of March 2016, Texas had only issued 653 EICs.<sup>348</sup> Even though the EIC is technically “free,” applying for one can require several costly underlying documents like a birth certificate.<sup>349</sup> 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.<sup>350</sup> These costs to obtain a photo ID in Texas disproportionately harm minority voters. A survey of 46 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.”<sup>351</sup>

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.<sup>352</sup> In 2014, a federal court struck down Texas’s implementation of its photo ID law, holding that “SB 14 creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African-Americans [*i.e.*, they comprise a disproportionate share of the more than 600,000 registered voters and one million eligible voters who lack the required photo ID], and was imposed with an unconstitutional discriminatory purpose,” and that it “constitutes an unconstitutional poll tax.”<sup>353</sup> That ruling was stayed while Texas appealed the merits of the decision.<sup>354</sup> 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.<sup>355</sup>

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.<sup>356</sup> Turnout during the 2014 mid-term elections was reportedly lower than during the 2010 mid-term elections.<sup>357</sup> 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.<sup>358</sup> **Travis County**, which covers UT-Austin and the surrounding student residential areas, had the highest number of



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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.<sup>359</sup> 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.<sup>360</sup> 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.<sup>361</sup>

During the 2016 primary election season, numerous voters were disenfranchised because of a lack of an acceptable photo ID.<sup>362</sup> Studies have shown that photo ID laws can depress voter turnout in Black and Latino communities.<sup>363</sup>

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.<sup>364</sup> 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 was considered by the full Fifth Circuit Court of Appeals, which granted Texas’s motion to hear the case *en banc*. Texas, thereafter, continued to contend that the photo ID law does not violate the VRA, in spite of numerous 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.<sup>365</sup> The *en banc* panel of the Fifth Circuit Court of Appeals heard Texas’s appeal on May 24, 2016.<sup>366</sup>

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.<sup>367</sup> 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.<sup>368</sup>

The *en banc* appellate court issued its decision on July 20, 2016, holding that Texas’s photo ID law has a discriminatory effect, as more than 600,000 registered Texan voters and 1 million eligible Texas voters, disproportionately Black and Latino, lack an acceptable photo ID under the law, in violation of Section 2.<sup>369</sup> The Fifth Circuit ordered the federal trial court to order an interim remedy in advance of the 2016 election.<sup>370</sup> The *en banc* court ordered the trial court to consider, on remand from the appellate court, what, if any,



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discriminatory purpose motivated Texas to pass SB 14, and, upon a finding of discriminatory purpose, whether Texas should be bailed back into Section 5's preclearance process. The Fifth Circuit noted that despite Texas's interest in ensuring electoral integrity, there were "only two convictions for in-person voter impersonation fraud out of 20 million votes cast in the decade preceding Texas' adoption of the legislation in 2011."

Following the Fifth Circuit decision, the federal trial court began issuing interim remedial orders, providing for the ability of voters without an SB 14 photo ID to cast a regular ballot in the November 2016 election.<sup>371</sup> Indeed, any voter who did not possess an SB 14 photo ID could sign a declaration affirming their identity, state their difficulty or "reasonable impediment" to obtaining an acceptable photo ID, and show an alternative form of identification—including a voter registration certificate, certified birth certificate, driver's or non-driver's license or personal ID card from any state (regardless of expiration date), utility bill, bank statement, government check, paycheck, or any other government document that displays the voter's name and an address—and vote a regular ballot. Voters who possessed one of the acceptable SB 14 photo IDs still had to show them to cast a ballot. In the lead up to the November election, civil rights organizations and the U.S. DOJ successfully challenged Texas's implementation of the interim remedy, including the inclusion of misleading information in the materials that it will use to train election officials and educate the public about the interim remedy.<sup>372</sup>

A September 22, 2016 court order required Texas to conform its training and educational materials to its August 10, 2016 remedial order and to share certain materials with plaintiffs for review before their implementation. Certain plaintiffs also unsuccessfully challenged statements by the Attorney General and the chief election officer for Harris County, threatening to potentially prosecute voters who avail themselves of the Court's interim remedy.<sup>373</sup>

Advocates also expressed concern that, as of the end of August 2016, only 20% of Texas's 254 counties provided "minimally adequate information" about the interim remedial election requirements.<sup>374</sup>

A poll by the University of Houston found, as of October 2016, that despite the state's public education about the ID law changes, half of the 1,000 respondents remained uncertain about the ID requirements.<sup>375</sup> Other reports indicated that there was widespread confusion about the interim remedial process (*i.e.*, the use of the affidavit to vote a regular ballot if voters did not possess and could not reasonably obtain an acceptable ID) during the 2016 elections, as well as referrals of affidavits by voters without acceptable ID for potential prosecution.<sup>376</sup>

As early voting began on October 24, 2016, voters complained about the posting of outdated signage and guidance from poll workers that failed to inform them about alternatives to voting with a photo ID for those who qualify in non-compliance with the federal court's interim remedial orders.<sup>377</sup> These complaints arose across various Texas counties, including Bell, Bexar, Dallas, Denton, Dewitt, El Paso, Harris, Hays, McLennan, Rio Grande Valley, Travis, and Waller. Civil rights groups won an order against Bexar County, halting its illegal enforcement of SB 14 by posting inaccurate signs and information about the ID process on its website and on



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its hotline.<sup>378</sup> Similar complaints regarding outdated signage and guidance from poll works about the ID requirements were also reported on Election Day.<sup>379</sup>

The federal trial court set a briefing schedule and oral argument date on the issue of whether Texas intended to discriminate against minority voters in enacting SB 14.<sup>380</sup> The January 24, 2017 oral argument date was rescheduled to February 28, 2017, after the U.S. DOJ sought a continuance on January 20, 2017, the presidential inauguration day, to “brief the new leadership of the Department on this case and the issues to be addressed at that hearing before making any representations to the Court.”<sup>381</sup> Ultimately, a day before the February 28 hearing, the U.S. DOJ moved to dismiss its claim that SB 14 was enacted with discriminatory intent, a claim that that agency had been making since 2013 when it filed its lawsuit against Texas; U.S. DOJ remains a party to the case on the claim already decided by the trial court and affirmed by the appellate court—that SB 14 has a discriminatory effect on Black and Latino Texans.<sup>382</sup> The U.S. DOJ cited the introduction of a new bill in the Texas legislature, SB 5 (discussed below) that they believe shows that Texas is taking effective and satisfactory steps to remedy the situation. The court held the hearing on intent on February 28.<sup>383</sup>

In the interim, on September 23, 2016, Texas petitioned to the U.S. Supreme Court, seeking its review of the *en banc* Fifth Circuit decision, and indicated that it may craft another photo ID law in the 2017 legislative session.<sup>384</sup> This request did not impact the November 2016 election. On January 23, 2017, the Supreme Court declined to hear the case, with Justice Roberts writing that: “[a]lthough there is no barrier to our review, the discriminatory purpose claim is in an interlocutory posture, having been remanded for further consideration. As for the Section 2 claim, the District Court has yet to enter a final remedial order. Petitioners may raise either or both issues again after entry of final judgment. The issues will be better suited for certiorari review at that time.”<sup>385</sup>

On April 10, 2017, the trial court issued a decision finding (again) that Texas enacted SB 14 with a discriminatory purpose.<sup>386</sup> The court ordered the parties to notify the court by June 10, 2017 about what, if any, remedial proceedings should occur in light of the court’s finding that SB 14 has discriminatory results and a discriminatory purpose.

During the 2017 legislative session, the Texas legislature passed, and the Governor signed into law, a new photo ID law, SB 5, which contains some provisions that are similar to those in place for the 2016 election because of the interim remedial order discussed above.<sup>387</sup> However, this law also includes a state criminal penalty of up to two years for those who intentionally misuse the affidavit process that is part of the interim remedy, and failed to expand the list of acceptable photo IDs to include those issued by federal and state government agencies, U.S. military veterans’ benefits cards, Native American tribal IDs, and college student IDs—the types of IDs more likely to be possessed by Black, Latino, and other Texans. For this and other reasons, lawyers challenging SB 14 argue that SB 5 keeps the former’s basic discriminatory architecture and is new poison in an old bottle.<sup>388</sup> The U.S. DOJ, which had challenged SB 14 for being intentionally discriminatory for approximately six years until 2017, joined Texas in contending that SB 5 cures SB 14’s discriminatory purpose and results.<sup>389</sup> Prior to passing, SB 5 had languished in the House after passing in the senate on the eve of the end of the regular



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legislative session. But Texas’s Governor issued an emergency declaration to push the legislation onto the House’s calendar. At the same time, the senate version of this bill was amended to H.B. 2691, which otherwise related to the appointment of election judges for countywide polling places and voter fraud at nursing homes, to ensure consideration of the photo ID law during the 2017 regular legislative session.

Also in June 2017, Texas considered, then immediately reversed, its decision to reduce operating hours at 11 of the state’s busiest and largest driver’s license-issuing offices, following pushback from legislators and others.<sup>390</sup> The reversal was against the backdrop of the state’s continued defense of its discriminatory photo ID law, discussed above, which requires driver’s licenses, among other select documents, to vote in-person. Alabama, as discussed above, also attempted to reduce the operating hours of ID-issuing offices before reversing course, though about a year later, after a DOT investigation and a lawsuit challenged those changes.

In August 2017, the federal district court *permanently enjoined* SB 14 of 2011 and SB 5 of 2017 as a remedy to its finding that SB 14 was enacted with a discriminatory purpose.<sup>391</sup> This decision returned the voter identification requirements to those in place prior to implementation of SB 14 in 2013 and the interim remedy in 2016. The court determined that SB 5, passed six years after SB 14, did not eliminate root and branch the purposeful discrimination finding regarding SB 14, writing: “SB 5 perpetuates the selection of types of ID most likely to be possessed by Anglo voters and, disproportionately, not possessed by Hispanics and African-Americans.” Moreover, “S.B. 5’s methodology remains discriminatory because it imposes burdens disproportionately on blacks and Latinos.” Indeed, the court stated: “[a]long with continued provisions that contribute to the discriminatory effects of the photo ID law, SB 5 on its face embodies some of the indicia of discriminatory purpose—particularly with respect to the enhancement of the threat of prosecution for perjury regarding a crime unrelated to the stated purpose of preventing in-person voter impersonation fraud.” The court ordered the parties to brief it by August 31, 2017 on whether an evidentiary hearing is requested for the court’s consideration of bail-in of Texas for all or some of its future voting changes under Section 3(c) of the VRA.<sup>392</sup> Within two days of the decision, Texas made a request to the district court to stay *proceedings* in that court, as well as to the Fifth Circuit, to stay the district court’s *decision*, pending appellate review; the Department of Justice did not oppose Texas’s requests.<sup>393</sup> A three-judge court, by a vote of 2-1, agreed to stay the district court proceedings and decision enjoining SB 14 and SB 5 pending appellate review by a three-judge court.<sup>394</sup> Private Plaintiffs petitioned for an en banc panel of the Fifth Circuit to hear the case on the merits and to rehear the three-judge court’s decision to stay the district court’s injunctive orders and proceedings.<sup>395</sup> Aligned with defendants on appeal, the U.S. DOJ also opposed private plaintiffs’ (civil rights organizations) request to be heard by the en banc panel.<sup>396</sup> The Fifth Circuit denied the petition; thus, the appeal has proceeded before a three-judge court with oral arguments held on December 5, 2017.<sup>397</sup>

As of June 2016, Texas has spent more than \$3.5 million defending its photo ID law since 2011, emblematic of the [time and expense of litigating Section 2 cases](#).<sup>398</sup> Reportedly, the U.S. DOJ has dedicated at least one million dollars challenging SB 14.<sup>399</sup> These figures do not include the time and money expended by the law’s opponents, civil rights, and pro-democracy organizations.





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A separate state court challenge 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,<sup>400</sup> the plaintiff abruptly dismissed it.<sup>401</sup> The challenge was based on a provision of the Texas Constitution that provides: “[i]n 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.

***Straight-party voting***

In 2017, the Texas legislature considered—and passed—a ban on straight-ticket voting in all elections, to go into effect in 2020, raising concerns of such a law’s impact on Black and Latino voters’ opportunity to participate equally in the political process and the potential to place a disproportionate burden on Black and Latino voters right to vote.<sup>402</sup> Straight party ticket-voting allows voters to select a slate of candidates affiliated with a particular party with the push of one button rather than to select each individual candidate on a ticket. Over 60% of Texas voters have used this practice. Black and Latino voters generally tend to vote for candidates affiliated with the Democratic party with a single mark on the ballot. One study of straight-ticket voting in Texas found that the two parties’ share of the straight-ticket vote was almost equal during the fall 2016 elections. But given Texas’s changing demographics, the study also found that the Republican share appears to be decreasing while the Democratic share appears to be increasing. And there was some evidence that straight-ticket voting is increasingly popular with Hispanic voters. Another [study](#) of Texas’s two largest counties, Harris and Dallas, found that precincts or House districts with higher minority populations had higher rates of straight-ticket voting. Opponents of the law contend that its burden—in terms of the increased time that it takes to vote were straight-ticket voting banned—is exacerbated in part by or linked to social and historical conditions in Texas that have produced or are producing discrimination against Black and Latino residents in education, employment, and health.

***Proof of Citizenship***

In 2017, the Texas Legislature considered HB 3474, which would have required voters to show proof of citizenship to vote in Texas state elections; this bill was criticized by voting rights advocates for its potential impact on elderly, rural voters, among others.<sup>403</sup>



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Local Level:

***Redistricting & voter qualifications***

In 2013, the **City of Pasadena**, located in **Harris County**, changed the structure of the district council by eliminating two seats elected from districts that were predominantly comprised of Hispanic voters, and replacing those seats with two at-large seats elected from districts comprised of a majority of white voters.<sup>404</sup> Voters approved this change. Pasadena's 152,000 residents include a large and burgeoning (63%) Latino population.<sup>405</sup> 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 filed a lawsuit in 2014, challenging this redistricting under the VRA and U.S. Constitution.<sup>406</sup> An August 2016 decision by the federal court rejected Pasadena's attempt to dismiss the lawsuit, paving the way for the parties to proceed to a trial, which took place in November 2016.<sup>407</sup> Following trial, in January 2017, the federal district court determined that Pasadena violated the VRA by redistricting in 2013 to dilute Latino voting strength, as well as the U.S. Constitution, writing that: "In short, Pasadena's elections are racially polarized. The City's 2013 racially polarized vote in favor of the 6-2 redistricting map and plan and the Council's 2014 vote to approve the change were narrowly decided. The effect was to dilute Latino voting strength. That effect was foreseeable and foreseen."<sup>408</sup> As remedies, the federal court required Pasadena to use the plan with eight single-member districts for 2017 elections and, until 2023, to submit and election-related changes to the U.S. DOJ for Section 5 preclearance. The U.S. DOJ sent monitors to observe Pasadena elections in May 2017.<sup>409</sup>

Following the remedial proceedings, Pasadena appealed the trial court's decision to the Fifth Circuit Court of Appeals on the narrow issue of what voting method should be in place for the 2017 elections since qualifying for certain elections is imminent (*i.e.*, the remedial eight single-member redistricting plan ordered by the trial court and preferred by minority plaintiffs, or an alternative plan that, according to Pasadena, would cause less disruption). Following oral argument, the appellate court agreed with the trial court that 2017 elections must be conducted under the remedial district voting plan; the City declined to appeal that appellate ruling.<sup>410</sup> Notwithstanding, Pasadena is appealing the district court's finding of intentional discrimination which was the predicate for the court's order that Pasadena seek preapproval of its voting changes until 2023. In October 2017, Pasadena settled the challenge, leaving in place the district court's injunction requiring Pasadena to use its 8-0 redistricting plan for the remainder of the decade, as well as the district court's bail-in order placing Pasadena under section 5 preclearance until June 30, 2023.<sup>411</sup> In 2013 in **Galveston County**, officials cut the number of constables and justices of the peace districts in half from eight to four — a change that was previously rejected under Section 5.<sup>412</sup> 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 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.



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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.<sup>413</sup> Section 5 previously blocked Galveston's attempts in 2011 and 1992 to change its method of electing City Council members from six single-member to four single-member and two at-large districts.<sup>414</sup>

In **Beaumont**, located in **Jefferson County**, a group of white legislators has acted to eliminate the four-person Black majority school board.<sup>415</sup> 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 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 Changes***

In November 2016, a civil rights organization released a report that studied polling place closures in Texas since the *Shelby County* decision and found that "[a]lmost half of all Texas counties in [the] sample closed polling places since *Shelby*, resulting in 403 fewer voting locations for the 2016 election than in past years," including **Fisher, Medina, Aransas, Coke, Irion, Caldwell, Nueces, and Galveston** counties, which have records of discrimination.<sup>416</sup> The preclearance process in place prior to the *Shelby County* decision would have scrutinized the reasons for these closures, as well as whether voters were provided with adequate places to vote and notice.

Moreover, 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.<sup>417</sup> 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.

### ***Third-party voter registration & intimidation***

In November 2016, a Hispanic organization filed a civil rights complaint with the U.S. DOJ, challenging the state's investigation of voter registration and assistance activities in Hispanic neighborhoods in **Tarrant**



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**County** for allegedly being fraudulent, which had been intimidating and concerning for impacted elderly voters.<sup>418</sup> The investigation was spurred by purportedly improper get-out-the-vote efforts, which include helping elderly Hispanic voters with their mail-in ballots.

A voting rights advocacy group also complained to the U.S. DOJ about an email sent by the local Republican Party in **Tarrant County**, calling for “poll watchers” for “Democrat-controlled polling locations” to “make sure OUR VOTER ID LAW IS FOLLOWED.”<sup>419</sup> According to the complainants, the overwhelming majority of “Democrat-controlled polling locations” in Tarrant County are comprised of a majority of minority eligible voters. As discussed above, a federal court has ordered Texas to remediate its ID law because of its discriminatory impact and that same court will reconsider whether it was enacted with a discriminatory purpose.

At the start of early voting for the 2016 general election, voters in **Bexar County** reported that a white man made repeated derogatory remarks against Latino people and others.<sup>420</sup>

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## 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.”<sup>421</sup> 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.”<sup>422</sup>

Since the *Shelby County* decision, Virginia has implemented its new photo ID law beginning in June 2014.<sup>423</sup> 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.<sup>424</sup> As of summer 2015, Virginia had issued only 4,400 “free” photo ID cards.<sup>425</sup> Numerous studies have shown that photo ID laws depress voter turnout in Black and Latino communities.<sup>426</sup> At least one study has attempted to examine the impact of the photo ID law in Virginia.<sup>427</sup>



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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.<sup>428</sup>

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.<sup>429</sup> 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.<sup>430</sup> 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.<sup>431</sup> 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 2016 presidential primaries.<sup>432</sup>

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; at least 11,000 formerly incarcerated people have registered to vote in the state, as of early July 2016, following the Governor’s executive order.<sup>433</sup> Republican representatives and Virginia voters filed lawsuits, 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.<sup>434</sup> The Virginia Supreme Court, which held a special session in July 2016 to address this challenge in advance of the November 2016 elections, by a 4-3, struck down the Governor’s order as unconstitutional, holding that the Governor exceeded his authority by unilaterally rewriting and suspending Virginia’s policy of lifetime disfranchisement for people with felony convictions.<sup>435</sup> In response, the Governor promised to restore on an individual-by-individual basis the voting rights of the more than 200,000 people with felony convictions; as of May 2017, he had restored voting rights to 156,000 individuals with felony convictions.<sup>436</sup>

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.”<sup>437</sup> While plaintiffs appealed this ruling to the federal Court of Appeals for the Fourth Circuit on an expedited basis, which held a hearing on the appeal in September 2016,<sup>438</sup> the appellate court affirmed the trial court’s decision.<sup>439</sup> Virginia has spent at least \$600,000, defending its photo ID law.<sup>440</sup>



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During the 2017 legislative session, a subcommittee blocked, HB 1904, which would have eliminated Virginia's requirement that registered voters produce one of the accepted photo IDs to vote in person, as well as amendments that would have permitted voters to use out-of-state university student IDs or photo IDs from state-run nursing homes.<sup>441</sup>

***Proof of Citizenship***

A state lawmaker has proposed legislation, HB 1598, that would require documentary proof of citizenship to vote in state and local elections, in the face of opposition by civil rights and pro-democracy organizations.<sup>442</sup> Specifically, the proposal would require registrants to provide a birth certificate, passport, naturalization document, or other record accepted under federal law, beginning January 1, 2018, 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. 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.

***Restrictions on voter registration***

After the *Shelby County* decision, Virginia reportedly placed restrictions on community-driven voting initiatives, including prohibiting pre-populated registration forms, and shortening the deadline for returning voter registration forms to the Florida Elections Commission.<sup>443</sup> The legislature attempted these restrictions again during the 2017 legislative session, over opposition from civil rights and pro-democracy organizations.<sup>444</sup> Given the reliance by Latino and Black communities on such community-based voter registration drives, these restrictions have the potential to harm those communities.<sup>445</sup>

In October 2016, responding to a lawsuit filed by a civil rights organization, a federal court ordered the State to extend the deadline to register to vote for the November 2016 election after heavy demand prevented some eligible voters from registering online.<sup>446</sup> Nearly 28,000 registered to vote because of the extension.<sup>447</sup>

During the 2017 legislative session, Virginia lawmakers considered a bill, SB 1581, over opposition from pro-democracy organizations, that would reject any new voter registration application if the name, social security number, and date of birth do not match information on file with the Social Security Administration or other database approved by the State Board of Elections, and would subject existing voters' registrations to the same scheme.<sup>448</sup> Opponents raised concerns about this legislation given the probability of data entry errors, typographical errors, and other issues that are no fault of the applicant and have nothing to do with their eligibility to vote. The Governor ultimately vetoed this bill.



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**ABOUT THE NAACP LEGAL DEFENSE FUND**

*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).*

*LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957— although LDF was originally founded by the NAACP and shares its commitment to equal rights. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.*

***If you have questions or need further information, please contact LDF Senior Counsel, Leah Aden, who authors this compendium. For questions about the information contained herein or to share information about voting changes in your community, please contact 212.965.2200 or [vote@naacpldf.org](mailto:vote@naacpldf.org).***

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**ENDNOTES**

- <sup>1</sup> *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, NAACP Legal Defense Fund (Apr. 29, 2016), <http://www.naacpldf.org/document/cost-time-money-and-burden-section-2-voting-rights-act-litigation>
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