



**Testimony of Leah Aden
Deputy Director of Litigation
NAACP Legal Defense and Educational Fund, Inc.**

**Before the United States House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties**

Hearing on

**Continuing Challenges to the Voting Rights Act
Since Shelby County v. Holder**

June 25, 2019

Introduction & Background

Good morning, Chairman Cohen, Ranking Member Johnson, Chairman Nadler and other members of the Subcommittee. My name is Leah Aden, and I am a Deputy Director of Litigation at the NAACP Legal Defense and Educational Fund, Inc. (LDF).¹ Thank you for the opportunity to testify this afternoon on some of LDF's efforts to expand and protect the voting rights of Black people and to share a bit of what we have observed with regard to the barriers to voting since the U.S. Supreme Court's decision in *Shelby County, Alabama v. Holder*.² LDF litigated the *Shelby* case and argued in the Supreme Court, defending Congress's reauthorization of Section 5 of the Voting Rights Act (Section 5). The Supreme Court's decision in the *Shelby* case has had a devastating effect on the voting rights of racial minorities in this country.

Since the Court's decision, LDF has tracked, monitored, and published a record of discriminatory voting changes in jurisdictions formerly protected by Section 5, which is regularly updated in a report entitled "Democracy Diminished: State and Local Threats to Voting Post-*Shelby County, Alabama v. Holder*."³ A copy of the most recently updated version of our report has been delivered to each member of this Committee. Based on our ongoing efforts to expand and protect voting rights and our documentation of various voting challenges post-*Shelby*, we feel particularly qualified to state unequivocally that there is a critical and urgent need for Congress to act to restore and strengthen the full protections of the Voting Rights Act of 1965 (VRA).

The VRA is considered one of this country's most transformative pieces of legislation, authorizing Congress for decades to enforce the Fourteenth and Fifteenth Amendments to the U.S. Constitution when federal and state governments had thwarted the import of those protections for almost a century. Among the important civil rights statutes passed in the 1960s, the Voting Rights Act has been referred to as "the crown jewel" of the Civil Rights Movement.

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the fight to secure, protect, and advance the voting rights of Black voters and other communities of color. Through litigation, public policy, public education, and other advocacy, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF was launched at a time when the nation's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality

¹ 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.

² *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013).

³ Leah Aden, NAACP LDF, *Democracy Diminished*, LDF's Thurgood Marshall Institute, <https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished-State-and-Local-Threats-to-Voting-Post-Shelby-County-Alabama-v.-Holder.pdf>.

in every area of life. Our mission has remained focused on racial justice and equality. In advancing that mission, from our earliest days, protecting the right to vote for African Americans has been positioned at the epicenter of our work. Beginning with *Smith v. Allwright*,⁴ our successful U.S. Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has been fighting to overcome a myriad of obstacles to ensure the full, equal, and active participation of Black voters.

With voter suppression intensifying each and every year at the local, state, and federal levels, the right to vote for African American people and other people of color is facing its greatest threat in decades. In 2013, the Supreme Court decision in *Shelby* loosened the reins of protection and allowed state and local governments to unleash discriminatory voter suppression schemes virtually unchecked. The *Shelby* decision gutted a key provision of the VRA that for nearly 50 years required jurisdictions across the country, though primarily in the American South, to (a) provide notice of every voting change that they proposed implementing⁵ and (b) satisfy their burden to receive approval from the federal government *before* they implemented any voting change and show that it would not worsen the ability of people of color to participate equally in the political process.

LDF defended the constitutionality of Section 5 in the *Shelby* litigation in the lower courts and in the Supreme Court. In striking down the preclearance provision that made Section 5 operational, the Court ignored the overwhelming and extensive evidence—contained in a more than 12,000 page record amassed by Congress—of continued voter suppression efforts that demonstrated the ongoing need for the preclearance process. Rather than defer to Congress’s determination and the record development over several years, the Court substituted its own judgment about the need for this key civil rights protection.⁶

By invalidating the preclearance provision of Section 5 of the VRA, the Supreme Court allowed jurisdictions with a history and ongoing record of voting discrimination to change their laws *without* scrutiny from any federal authority. The result was predictable. Within hours of the decision, the Texas Attorney General tweeted out his intention to reactivate a voter identification law that the state had been forbidden

⁴ 321 U.S. 649 (1944).

⁵ The Department of Justice reports that in just the three years before the *Shelby* decision, between 2010-2013, it considered 44,790 voting changes under Section 5. Section 5 Changes By Type and Year, Total Section 5 Changes Received By The Attorney General 1965 Through 2013, <https://www.justice.gov/crt/section-5-changes-type-and-year-2> (last visited June 24, 2019).

⁶ Congress most recently reauthorized the VRA in 2006. Between October 2005 and July 2006, the House Judiciary Committee had 12 hearings, called 46 witnesses, and compiled more than 12,000 pages of evidence from over 60 groups and individuals. The Senate had 9 hearings and called 46 witnesses between May and July 2006. *See Shelby Cnty., Ala. v. Holder*, 811 F. Supp. 2d 424, 435 (D.D.C. 2011) (describing the 2006 reauthorization record and acknowledging that it was “one of the most extensive legislative records in the Committee on the Judiciary’s history.”).

from implementing under Section 5.⁷ Other states and jurisdictions formerly covered by Section 5 followed suit. Even more alarming, voter suppression has metastasized in the years since the *Shelby* decision. Places like Wisconsin, North Dakota, and jurisdictions in Kansas have adopted the kind of voter suppression practices that were formerly more closely associated with southern jurisdictions.

Of course, we still have Section 2 of the Voting Rights Act, the provision that authorizes private actors and the U.S. Department of Justice to challenge discriminatory voting practices in the federal courts. Section 2 applies nationwide and places the burden on voters harmed by voting discrimination to bring litigation to challenge a law that has discriminatory results and/or a discriminatory purpose.⁸ It is one of the main protections available to people of color after the *Shelby* decision.

As a result of litigation brought under Section 2, some federal courts are serving as democracy's checkpoint, reviewing extensive evidence and ruling that some of the most egregious forms of discriminatory voting changes are unconstitutional and/or violate the VRA. Racial minorities are currently facing an array of schemes designed to restrict and suppress their participation at *every phase of the democratic process*—from their eligibility to vote, to their ability to register to vote, access a polling place, and cast a ballot that counts.

But litigation is a blunt instrument. It is expensive.⁹ It is time-consuming. In the years during the pendency of litigation, hundreds of thousands and in some cases millions of voters are effectively disenfranchised. In Texas, for example, the Fifth Circuit Court of Appeals affirmed a finding made by a trial court that over half a million registered voters and up to a million eligible voters were disenfranchised by the state's voter ID law. But during the years during which that litigation unfolded without a remedy, during which Texas implemented its ID law, Texas voters elected a U.S. senator in 2014, all 36 members of the Texas delegation to the U.S. House of Representatives, Governor, Lieutenant Governor, Attorney General, Controller, various statewide Commissioners, four Justices of the Texas Supreme Court, candidates for special election in the state Senate, state boards of education, 16 state senators, all 150 members of the state House, over 175 state court trial judges, and over 75 district attorneys. We proved at trial that more than half a million eligible voters were disenfranchised by the ID law we were ultimately successful in challenging. But it was too late for those elections.

⁷ Ed Pilkington, *Texas rushes ahead with voter ID law after Supreme Court decision*, The Guardian (June 25 2013), <https://www.theguardian.com/world/2013/jun/25/texas-voter-id-supreme-court-decision>.

⁸ 52 U.S.C. § 10301(a).

⁹ NAACP LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation* (Feb. 14, 2019), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-02.14.19.pdf>.

The beauty and innovative genius of Section 5’s preclearance mechanism is that it allowed federal authorities to stop voting discrimination *before* its implementation and the inevitable harm. That is why a mechanism to monitor and approve the proposed changes related to voting in states with a demonstrated pattern of discrimination was—and still is—urgently needed to protect the ability of racial minorities to exercise their constitutional right to vote, be free from unreasonable burdens to vote, and to fully participate in our democracy

Congress purposefully designed Section 5 to address our current crisis. Congress’s predecessors on both sides of the aisle and with the signature of presidents from both major political parties supported for nearly 50 years Section 5, a provision meant to address racial discrimination in voting and block any practices and procedures which may result in discrimination before they are implemented, elections are held, and harms to voters occur. This was an explicit intention of Congress in 1965, which expressly sought to prevent not only then-existing discriminatory voting schemes, but to also prevent the “ingenious methods” that might be devised to suppress votes in the future.¹⁰

The simple reality is that at local, state, and federal levels, too many officials are working tirelessly and at taxpayers’ expense to maintain their political power even if it means imposing unreasonable burdens on the ability of African American, Latinx, Asian American, and Native American voters to participate meaningfully in the political process. Voting rights are a question not only of civil rights but of democracy. Our system cannot and must not be predicated on laws that establish multiple hurdles for racial minorities to participate in the political process.

It should alarm us all that since the *Shelby* decision, federal courts have found that the legislatures passed racially discriminatory voting laws intentionally, for the purpose of discriminating against Black and/or Latinx voters. In Texas, a trial court held that the state enacted its strict voter ID law with the purpose of discriminating against Black and Latinx voters.¹¹ In Wisconsin, a federal court struck down various voting restrictions under the VRA, and found one, a limitation on hours for in-person absentee voting, based on intentional discrimination in violation of the Fifteenth Amendment.¹² And in North Carolina, the Fourth Circuit Court of Appeals found that the North Carolina legislature worked with “surgical provision” to ensure that its omnibus voting law would disproportionately disenfranchise African American

¹⁰ U.S. Congress, House, Committee on the Judiciary *Voting Rights*, 89th Cong., 1st sess., 1965, Mar. 18-19, 23-25, 29-Apr. 1 1965.

¹¹ *Veasey v. Abbott*, No. 2:13-CV-193, 2017 WL 3620639 (S.D. Tex. Aug. 23, 2017).

¹² *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016).

voters.¹³ These findings by federal courts are a shocking condemnation of our voting systems, and demonstrate what the unfettered post-*Shelby* world has wrought.

At its pre-*Shelby* strength, Section 5 would have required that we know about *all* of the voting changes being considered in parts of our country and would have prevented many of the voter suppression schemes that we have encountered over the past six years. Notably, Section 5 did the majority of its work preventing voting changes at the local level—preventing discrimination in elections for such important bodies as school boards and city and county councils.¹⁴ The actions we have seen post-*Shelby* demonstrate a broad and clear pattern of persistent and adaptive violations which cannot be adequately remedied through a case-by-case approach.

Post-*Shelby* Litigation & Other Advocacy in Alabama

Discriminatory Photo ID Required to Vote

In 2011, before the 2013 *Shelby* decision, the Alabama state legislature passed House Bill (HB) 19, a law which required voters to present a form of government-issued photo identification to vote.¹⁵ The law also included a provision that would allow a potential voter without the required ID to vote *if* that person could be “positively identified” by two poll workers, a provision that harkened back to pre-1965 vouch-to-vote systems. Notably, although HB 19 passed the state legislature—alongside judicially-recognized discriminatory redistricting plans¹⁶—and was sent to the Governor’s desk in 2011, it was not implemented until after the *Shelby* decision in 2013—after the state no longer had to submit this and other voting changes to the federal government for review under Section 5.

As reports show, variations of photo ID laws across the country have a disproportionate and burdensome effect on African American and Latinx voters.¹⁷ HB 19 is no different. Record evidence shows that 118,000 already-registered voters lack the photo ID required by this law.¹⁸ Black and Latinx voters are two times more likely than white voters to lack the required ID and Black voters are over four times more likely than other voters to have their provisional ballots rejected because of a lack of acceptable ID.

¹³ *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

¹⁴ In fact, more than 85% of preclearance work previously done under Section 5 was at the local level. Justin Levitt, Section 5 as Simulacrum, 123 Yale L.J. 151 (2013), <http://www.yalelawjournal.org/forum/section5-as-simulacrum>.

¹⁵ *AL HB 19* (2011), <https://legiscan.com/AL/text/HB19/id/327641>.

¹⁶ *Alabama Legislative Black Caucus v. Alabama*, 231 F. Supp. 3d 1026 (MD Ala. 2017).

¹⁷ *Citizens Without Proof*, Brennan Center for Justice at NYU School of Law (Nov. 2006), http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.

¹⁸ Appellant’s Br., *Greater Birmingham Ministries v. Merrill*, No. 18-10151, 2018 WL 1135793, at *3, 20-27 (11th Cir. Feb. 21, 2018).

On top of imposing this unnecessary and discriminatory extra requirement to vote, in 2015 Alabama closed 31 driver’s license issuing offices predominately in majority Black counties for the entirety of 2016—a presidential election year.¹⁹ Driver’s licenses are the primary form of photo ID that most voters can and do use to vote. Alabama only reopened these offices in December 2016, after the election, because the U.S. Department of Transportation concluded that the closings were racially discriminatory in violation of the Civil Rights Act of 1964.²⁰

LDF filed a federal lawsuit in December of 2015, arguing that HB 19 violated the Fourteenth and Fifteenth Amendments to the U.S. Constitution, and Section 2 of the VRA.²¹ Representing Greater Birmingham Ministries, the Alabama NAACP, and individual voters, we contend that voters of color without photo ID are more likely to lack transportation, and more likely to live below the poverty line, than white voters without a required ID. That makes it extremely difficult—if not impossible—for many people to get to a location that issues photo IDs, even before accounting for other obstacles like taking time off work and being able to afford fees associated with obtaining an ID. We also challenge the “positively identify” provision of HB 19, which places voters at the mercy of poll workers to vote. Indeed, there are reported instances of people who have voted at the same location for decades but could not be “positively identified” by election officials who had just moved to the area. The case is currently on appeal, after a federal judge dismissed our lawsuit in January 2018. We intend to continue to fight on behalf of thousands of voters throughout Alabama who are disenfranchised by a law that unnecessarily burdens voters and is racially discriminatory.

Election Day Monitoring Experiences

All too often, election systems in Alabama work as designed—to frustrate, confuse, and eventually discourage people from voting. Indeed, on election day in November 2018, LDF received reports that poll workers denied people the right to vote because the address on their ID did not match the address that they used to register. However, there is no address-match requirement. Alabama law only requires that a voter have a photo ID, the law being challenged by LDF currently. On November 6, 2018, we sent a letter to Alabama Secretary of State, John H. Merrill, urging him to reissue guidance on the new photo ID law and warned that improper application of the photo

¹⁹ Mike Cason, *State to Close 5 Parks, Cut Back Services at Driver License Offices*, Alabama.com (Sept. 2015), https://www.al.com/news/2015/09/state_announces_to_close_becau.html#incart_river_home.

²⁰ Melanie Zanona, *Feds: Closing driver's license offices in Ala. violates civil rights*, The Hill (Dec. 28, 2016), <https://thehill.com/policy/transportation/312055-feds-closing-driver-license-offices-in-alabama-violates-civil-rights>.

²¹ *Greater Birmingham Ministries v. Alabama*, <https://www.naacpldf.org/wp-content/uploads/Greater-Birmingham-Ministries-v.-Alabama-Complaint.pdf>.

ID law may violate the Fourteenth and Fifteenth Amendments and the VRA.²² This advocacy, however, does not thwart the damage that is already done when false requirements are implemented and people are denied their right to vote.

Additionally, on election day in 2018, LDF learned that dozens of Black students at Alabama A&M University, a historically Black university in Madison County, were purged from the voter rolls and denied the right to vote. Although these students submitted their completed voter registration forms before the deadline to register to vote, on election day they were informed that they were not registered to vote and would be forced to cast provisional rather than regular ballots. The students received no prior notice from the county that there were any issues with their respective registrations. Indeed, the day following election day, the website for the Alabama Secretary of State listed several of the students as registered to vote.

On November 9, 2018, LDF filed a complaint on behalf of four Alabama A&M students.²³ Ultimately, the provisional ballots of all four students were rejected because when the ballots were submitted on election day, the students were listed as either not registered or registered in the wrong county. This is, unfortunately, not an isolated experience for these four Alabama A&M students. Reportedly, over 175 provisional ballots were cast at the university in 2018—so many that the polling location ran out of provisional ballots multiple times throughout the day, causing long wait lines which forced students to leave before they had the opportunity to vote.

Discriminatory Electoral Systems

Against the backdrop of statewide and local barriers to registration and voting, Black Alabamians also face electoral structures which minimize their power to elect their preferred candidates to local government.²⁴ Often times, these structures exist in the form of dilutive electoral methods and redistricting plans that disburse voters of color among many districts or pack them into too few districts. While Section 5 blocked many of these structures prior to 2013, Black voters' experiences with discriminatory electoral methods demonstrate that other tools like Section 2 remain necessary to

²² NAACP LDF, *LDF Sends Letter to Secretary Merrill Over Widespread Confusions Regarding Inactive Voters and the Photo ID Law in Alabama* (Nov. 6, 2018), <https://www.naacpldf.org/press-release/ldf-sends-letter-secretary-merrill-widespread-confusion-regarding-inactive-voters-photo-id-law-alabama/>.

²³ NAACP LDF, *NAACP Legal Defense Fund Files Complaint on Behalf of Alabama Students Denied Voting Rights in Tuesday's Election* (Nov. 9, 2018), <https://www.naacpldf.org/press-release/naacp-legal-defense-fund-files-complaint-behalf-alabama-students-denied-voting-rights-tuesdays-election/>.

²⁴ Nationwide, racial and ethnic minorities are underrepresented in city government, including offices elected at-large, with Black communities comprising approximately 12% of our country's population, but only 4.3% of city councils and 2% of all mayors. Zoltan Hajnal, *Averting the Next Ferguson: One Simple Solution*, Political Violence at a Glance (Aug. 28, 2014), <http://politicalviolenceataglance.org/2014/08/28/averting-the-next-ferguson-one-simple-solution/>.

uproot discrimination.²⁵ The right to vote is so fundamental and core to democracy that any and all tools must be used to address efforts to deny and/or suppress voting.

Since *Shelby County*, LDF has warned officials in at least four local jurisdictions that the at-large aspects of their electoral systems may violate Section 2 of the VRA and potentially also the U.S. Constitution. This includes cases currently in litigation or other active advocacy in which we challenge at-large voting systems that have kept African Americans from electing their representatives of choice to various offices in Pleasant Grove, Madison County, and Morgan County.²⁶ At-large elections can allow 51 percent of voters to control 100 percent of the seats on an elected body, which, in the presence of racially polarized voting and other structures, can dilute a racial minority group's voice in the electoral system. It is no surprise then that for decades congressional, state, and many local officials have been elected by districts.

Elections Come and Gone

Notably, these voting rights barriers only include the instances in which LDF has been directly involved and not the work of other advocates to combat polling place changes, discriminatory redistricting schemes, and felony disenfranchisement barriers in Alabama. All the while, critical elections for the presidency, congress, state legislative seats, and scores of seats at the local levels have come and gone.

Since the *Shelby* decision, Alabama has held a total of 6 statewide elections voting on 403 seats and 25 amendments to the state constitution. They have voted for a President of the United States, U.S. senators, and U.S. congressmen. In the 6 years since the *Shelby* decision, Alabama has voted for Governors, Lieutenant Governors, Attorneys General, Secretaries of State, members of the State Senate, members of the State House, and 71 judgeships—some to the Alabama Supreme Court.

In two elections in 2014, Alabamians voted on 205 seats and 6 constitutional amendments under policies shown to disenfranchise voters.

In two elections in 2016, Alabamians voted on a total of 25 seats and 15 constitutional amendments under policies shown to disenfranchise voters.

²⁵ And still there are jurisdictions like Pasadena, Texas, that reverted to these structures in the absence of Section 5, only to be blocked since 2013 by a federal court under Section 2 and the Fourteenth Amendment. *Patino v. Pasadena*, 2017 WL 10242075 (S.D. Tex. Jan. 16, 2017).

²⁶ NAACP LDF, *LDF Files Complaint Against Pleasant Grove, Alabama Over Voting Rights Act Violations* (Dec. 13, 2018), <https://www.naacpldf.org/press-release/ldf-files-complaint-pleasant-grove-alabama-voting-rights-act-violations/>; NAACP LDF, *LDF Sends Letter to Madison County Official Over Voting Rights Concerns* (Jan. 1, 2019), <https://www.naacpldf.org/press-release/ldf-sends-letter-madison-county-officials-voting-rights-concerns/>; NAACP LDF, *LDF Sends Letter to Alabama County Commission Expressing At-large Voting Concerns* (Feb. 7, 2019), <https://www.naacpldf.org/news/ldf-sends-letter-alabama-county-commission-expressing-large-voting-concerns/>.

In three elections in 2017, Alabamians voted on 3 seats under policies shown to disenfranchise voters.

In three elections in 2018, Alabamians voted on 170 seats and 4 constitutional amendments under policies shown to disenfranchise voters.

The importance of the vote cannot be overstated. Each, and every, election provides an opportunity for citizens of this country to engage with and influence policy, to elect members to our government to represent them and their concerns, and to participate in the political process enshrined in the foundation of our nation. For a community that has for so long been denied the right to vote, the right to free and fair elections has an added significance. In local elections and presidential elections alike, each vote is sacred. Thus, it must be protected and any and all efforts which may cause a suppression of the vote must be scrutinized before implementation to ensure that there is no harm to this sacred right.

Notable post-*Shelby* litigation in other states

The transgressions in Alabama are disturbing, but they are also indicative of a larger, nationwide trend which warrants attention. LDF has investigated and filed suit against similar abhorrent methods of suppression in states across the country since *Shelby*. As referenced above, in Texas, for example, LDF has been embroiled in a statewide lawsuit for more than seven years involving the state’s photo ID law, and, more recently, at the local level, has challenged limitations on early voting in Waller County, a jurisdiction with a judicially-recognized and notorious record of voting discrimination targeted at Black college students.

In *Veasey v. Perry*, civil rights groups—including LDF, other advocates, and at one point, the U.S. Department of Justice—challenged the Texas photo ID law, State Bill (SB) 14, after the state implemented it within hours of the *Shelby* decision. On behalf of individual voters and organizations, including Black college students, harmed by the strict photo ID law, plaintiffs sought redress under Section 2 of the VRA and various provisions of the U.S. Constitution.²⁷

In 2014, a federal district court struck down that photo ID law, holding that “SB 14 creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African Americans [i.e., they comprise a disproportionate share of the more than 600,000 registered voters and one million eligible voters who lack the requisite photo ID], and was imposed with an unconstitutional discriminatory purpose,” and that it “constitutes an

²⁷ Texas adopted and implemented a law that permitted concealed hand-gun license owners to vote with that ID, a form disproportionately held by white Texans; the law prohibited the use of student ID, and employee or trial state or federal government-issued IDs.

unconstitutional poll tax.”²⁸ Following that decision, the Fifth Circuit Court of Appeals affirmed that SB 14 had a discriminatory impact on Black and Hispanic Texans.²⁹ Currently, plaintiffs collectively have filed for \$8 million in attorneys’ fees and costs as prevailing parties in that case; this figure is a reduction in the actual expense of challenging this statewide law and says nothing of the monies drawn from taxpayer dollars that Texas has borne defending a racially discriminatory law.

In 2018, LDF filed suit on behalf of students at Prairie View A&M University (PVAMU), a historically Black university located in the majority-Black city of Prairie View, Texas in Waller County. Plaintiffs challenged the county’s decision to limit early voting opportunities to Black and Latinx student voters and Black voters in the county while simultaneously offering ample early voting opportunities to white, older, and more resourced voters in other areas of the county.³⁰ Indeed, in an election season, where the eyes of the nation witnessed a statewide contest for U.S. Senate and other important positions, Waller County initially decided to provide no early voting anywhere in the City of Prairie View, including on PVAMU’s campus, during the first week of early voting. During the second week, the County initially provided the City of Prairie View with five early voting days, though two of them were at an off-campus location, inaccessible to many PVAMU students who lack transportation. After plaintiffs filed their pending lawsuit, Waller County provided one day of Sunday voting off-campus in Prairie View and extended voting hours on-campus at PVAMU over three days. Ultimately, while the City of Prairie View had a total of six early voting days (only three of which were accessible to students on-campus), some areas in Waller County that have majority-white and older voters had up to 12 total days of early voting over a two-week period and, collectively, opportunities to vote for substantially many more hours than Black voters in Prairie View, including PVAMU students.³¹

Waller County adopted and implemented this 2018 early voting schedule even though PVAMU students have been fighting for on-campus early voting for years—first to gain it, and, since they won it in 2013, to preserve it. Since then, the County has acted to limit the usefulness to PVAMU students of an on-campus voting space that they have long fought for, including because of the reality that many college students lack transportation. In addition to the county’s 2018 actions, in 2016, civil rights and pro-democracy organizations, including LDF, successfully urged County officials to protect early voting locations in a majority-minority precinct in the City of Prairie

²⁸ *Veasey v. Perry*, 71 F. Supp. 3d 627, 693 (S.D. Tex. 2014).

²⁹ *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc).

³⁰ NAACP LDF, *NAACP Legal Defense Fund Files Suit Against Waller County, Texas for Restricting Early Voting Rights of Black Students* (Oct. 23, 2018), <https://www.naacpldf.org/press-release/naacp-legal-defense-fund-files-suit-waller-county-texas-restricting-early-voting-rights-black-students/>.

³¹ *Ibid.*

View, reminding those elected officials that closing early voting locations potentially violates the VRA. The County Commission had voted to drastically 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 for the 2016 election, including by adding one location within walking distance of PVAMU. And, of course, officials in Waller County adopted this early voting plan in 2018 against the backdrop of a long and judicially-recognized record of voting discrimination against PVAMU students since at least the late 1970s.

In addition to those cases where LDF is specifically involved, over the last few years, we also are aware of numerous states and localities across the country that have implemented laws and practices which impeded and/or discouraged individuals from exercising their right to vote. For example:

In North Dakota, we saw the state implement a law requiring voters to provide IDs with a residential street address, threatening to disenfranchise thousands of Native American people who live on rural reservations where residential addresses are uncommon.³² Studies commissioned by Native American rights groups who sued to challenge the law revealed that roughly 35 percent of that population did not have an acceptable ID with a residential address.

In Dodge City, Kansas, voting was limited to one polling location, which was outside of town and inaccessible via public transportation. The nearest bus stop was more than a mile away and at times freight trains in the area block traffic, slowing access to the polls. Dodge City's population is 60 percent Hispanic, and the voter turnout among Latinx voters is lower than the national average.³³

And, in Wisconsin, the state implemented a law requiring voters to present a current driver's license, passport, or state or military ID to cast a ballot. There were substantial legal challenges to the state's voter ID law; however, aspects of it were allowed to stand for the 2016 election. Post-election surveys and other evidence clearly demonstrate that the law discouraged and/or prevented many people from exercising their right to vote.³⁴

³² Cheyenne Haslett, *North Dakota Native Americans fight to protect their right to vote after court ruling*, ABC News (Oct. 21, 2018), <https://abcnews.go.com/Politics/native-americans-north-dakota-fight-protect-voting-rights/story?id=58585206>.

³³ Kansas City Star Editorial Board, *Voter suppression at its worst: This Kansas town aims to keep people away on Election Day*, The Kansas City Star (Oct. 24, 2018), <https://www.kansascity.com/opinion/editorials/article220341790.html>.

³⁴ Ari Berman, *Rigged: How Voter Suppression Threw Wisconsin to Trump And Possibly Handed Him the Whole Election*, Mother Jones (Nov./Dec. 2017), <https://www.motherjones.com/politics/2017/10/voter-suppression-wisconsin-election-2016/>.

With this sampling of challenges to voting at every stage of the voting process since *Shelby*, we should understand that there are numerous methods of voter suppression and that they are effective and successful in their goal: to confuse, discourage, make burdensome, or deny the right to vote. The intimidation and disenfranchisement of Black voters has always been central to the American story and the nation's attachment to white supremacy. Indeed, the loathsome methods of voter suppression that we see today are not dissimilar from the methods of the past in their intent or results. Much of what we see is a modernization of old tactics, a modernization of the poll tax and grandfather clauses. But we also see the same strategies that were used during legal apartheid—e.g. confusing and ever-changing registration requirements and discriminatory at-large elections. What is different is that we are operating today without the protection of Section 5 of the VRA—at great costs to our democracy.

The need for full restoration of the Voting Rights Act

Evidence of widespread discrimination against Black voters is overwhelming and growing and the need for legislative action is urgent. The undermining of the VRA by the *Shelby* decision has made our democracy vulnerable and allowed for voter suppression to go unchecked. One election in which the fundamental right to vote is restricted is one election too many. Yet, we have seen six statewide elections in Alabama alone with discriminatory restrictions in place. As federal, state, and local elections happen across the country and as the nation prepares for the 2020 presidential election, it is now more critical than ever that Congress act to restore federal preclearance using provisions such as those proposed in the Voting Rights Advancement Act or Voting Rights Amendment Act. While LDF continues to vigorously pursue litigation to protect voting rights under Section 2 of the VRA, the U.S. Constitution, and other laws, we know that this is not enough.

The VRA must not only be fully restored but also must be strengthened. Congress should consider what can be done to lessen the burden on plaintiffs to achieve preliminary relief against discriminatory voting laws; they should not have to wait the 2 to 5 years on average or spend the exorbitant amount of money it takes to adjudicate a Section 2 case.³⁵

Congress also must work to remove obstacles to voting in federal elections faced by the nearly 4.7 million disenfranchised citizens who have been released from prison and are still denied the right to vote.

Moreover, as our democracy faces new and pervasive threats, Congress must act to ensure the actual integrity of our elections. Digital platforms are actively impacting

³⁵ See *supra* n.3, *Democracy Diminished* at 5 (referencing Br. of Joaquin Avila, et al. as Amici Curiae in Supp. of Resp'ts at 22, 27, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013)).

our elections as evidenced by their use to sow seeds of hate and racial division in the 2016 election season.³⁶ It is critical that Congress act to investigate and legislate these activities, reframing the intervention from the narrow consideration of privacy and data breaches to one that examines the issue within the context of the historic role of race in the public space.

Conclusion

The growing record of discriminatory voting changes since the *Shelby* decision requires Congress to fulfill its obligation to protect the right of every eligible person to vote and have their vote count. Since 2013, there have been at least nine federal court decisions finding that states or localities *intentionally* discriminated against Black and other voters of color.³⁷ There is no doubt that new and ingenious methods of voter suppression are relentlessly pursued by those invested in white supremacy. LDF and other advocates have a responsibility to fight those injustices whenever and wherever they occur. However, Congress also has an obligation to use the enforcement powers it was given in the Fourteenth and Fifteenth Amendments to the U.S. Constitution to amend the VRA to protect minority voters from racially discriminatory voting schemes.

The Supreme Court in *Shelby* rejected Congress's determination—despite the extensive record Congress amassed—that Section 5's preclearance formula was necessary. The Court, in particular, objected to what it regarded as a targeting of southern States whose history of disenfranchising African American voters created the need for passage of the VRA. We believe the Court got it wrong in the *Shelby* case, and substituted its own judgment for that of Congress. But *Shelby* is the law of the land and any effort by Congress to amend the Voting Rights Act must be undertaken with attention to the Court's guidance in that case.

HR 4 does precisely that. It proposes a nationwide formula—without geographic limitation—that will require any jurisdiction engaged in systematic discrimination to submit voting changes to a federal authority for preclearance.

³⁶ NAACP LDF, *LDF Responds to Facebook's New Policy on False Voter Information Ahead of Election* (Oct. 16, 2018), <https://www.naacpldf.org/press-release/ldf-responds-facebooks-new-policy-false-voter-information-ahead-election/>.

³⁷ See, e.g., *Perez v. Abbott*, 250 F.Supp.3d 123 (W.D. Tex. 2017); *Perez v. Abbott*, 253 F.Supp.3d 864 (W.D. Tex. 2017); *Stout v. Jefferson County Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018); *Veasey v. Abbott*, No. 2:13-CV-193, 2017 WL 3620639 (S.D. Tex. Aug. 23, 2017); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 730 (S.D. Tex. 2017); *Terrebonne Par. Branch NAACP v. Jindal*, 274 F.Supp.3d 395 (M.D. La. 2017); *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016); *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016); *Allen v. Evergreen*, No. 13-107, 2014 WL 12607819 (S.D. Ala. Jan. 13, 2014).