



**Testimony of Sherrilyn Ifill  
President and Director-Counsel  
NAACP Legal Defense and Educational Fund, Inc.**

**Before the United States House of Representatives  
Committee on the Judiciary**

**Hearing on  
H.R. 1, the “For the People Act of 2019”**

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## I. INTRODUCTION

Good morning, Chairman Nadler, Ranking Member Collins and members of the Committee. My name is Sherrilyn Ifill, and I am the President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (LDF). Thank you for the opportunity to testify this morning concerning HR 1, For the People Act.

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the struggle to secure, protect, and advance voting rights for Black voters and other communities of color. Beginning with *Smith v. Allwright*,<sup>1</sup> our successful Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has been fighting to overcome myriad obstacles to ensure the full, equal, and active participation of Black voters.

HR 1 is the first major bill of the 116th Congress that contains critical reforms that promise to strengthen our democracy, including restoring voting rights in federal elections to individuals with a criminal background, impacting upwards of five million Americans (notably, LDF has been instrumental in challenging such laws across the country), and prohibiting the use of deceptive practices and preventing voter intimidation which I will be discussing today.

The introduction of HR 1 also begins a larger legislative effort to restore the Voting Rights Act of 1965 (VRA) to its full strength following a disastrous 2013 Supreme Court decision, *Shelby County, Alabama v. Holder*<sup>2</sup>, which gutted a key provision of the Act. LDF litigated that case and lost in the Supreme Court in a decision which ignored the overwhelming evidence Congress accumulated in 2006 that the preclearance provisions of Section 5 of the Act were desperately needed to protect the ability of racial minorities to participate equally in the political process. Section 5 of the Act was expressly designed to address not only then-existing discriminatory voting schemes, but to also in the words of the legislators who debated the provision, to address the “ingenious methods” that might be devised and used in the future to suppress the full voting strength of African Americans. At its pre-*Shelby* strength, Section 5 would have prevented some of the voter suppression schemes that we have encountered over the past five years, including many that received national exposure most recently in the 2018 midterm elections. HR 1 makes important findings concerning the need to restore the Voting Rights Act to its full strength and calls for “Congress to conduct investigatory and evidentiary hearings to determine the legislation necessary to restore the Voting Rights Act and combat continuing efforts in America that suppress the free exercise of the franchise in communities of color.”<sup>3</sup> Indeed, restoring the VRA is critical to fully restoring our democracy and ensuring our political process functions fairly and equitably.

The Voting Rights Act is universally recognized as the most successful piece of legislation to emerge from the Civil Rights Movement. It enshrined our most fundamental values by guaranteeing to all citizens the right to vote, which the Supreme Court has called

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<sup>1</sup> 321 U.S. 629 (1944).

<sup>2</sup> *Shelby County, Ala. v. Holder*, 570 U.S. 529 (2013).

<sup>3</sup> See For the People Act, H.R. 1, 116th Cong. Sub. A, Title II, § 2001.

“preservative of all rights.”<sup>4</sup> Congress reauthorized the VRA on four separate occasions each time on a bipartisan basis. Each reauthorization received overwhelming bipartisan support and was signed into law by Republican Presidents in 1970, 1975, 1982, and most recently in 2006 based on a 10,000-plus page record. In 2006, the vote was 98-0 in the Senate and 396-33 in the House. The provisions of the VRA were considered by Congress to be an efficient and effective mechanism for detecting and redressing the many forms of discrimination *before* elections take place that now continue to undermine our democratic process.

Our current political climate demonstrates the continued need for the Voting Rights Act to protect the right to vote for racial minorities. In November 2016, voters participated in the first federal election in more than 50 years without the full protection of the VRA—an election marked by racist and exclusionary campaign tactics and talking points. In May 2017, President Donald Trump created the so-called “Presidential Advisory Commission on Election Integrity” to support his baseless claims of widespread voter fraud and suppress the votes of Black and Latino voters. After several lawsuits were filed, including LDF’s suit that alleged that the Commission was formed with the intent to discriminate against voters of color,<sup>5</sup> the Commission was disbanded in January 2018. However, the damage has been and continues to be done by the perpetuation of the false assertion that large amounts of Black and Latino voters are voting illegally. This stereotype has been used decade after decade to justify unconstitutional voter suppression tactics from poll taxes to photo ID laws. At LDF, we have remained vigilant in monitoring voting discrimination and protecting the vote of people of color in a post-*Shelby County* voting rights landscape. My testimony today will focus on what voting rights advocates, Congress, and others can do to remove the obstacles to voting faced by voters of color.

## **II. THE SECTION 5 PRECLEARANCE FRAMEWORK**

For nearly 50 years, Section 5 of the VRA required certain jurisdictions (including states, counties, cities, and towns) with a record of chronic racial discrimination in voting to submit all proposed voting changes to the U.S. Department of Justice (DOJ) or a federal court in Washington, D.C. for pre-approval. By all voting changes, I mean every polling place change, every annexation, every redistricting plan, every voter identification requirement, was scrutinized.

This requirement was known as “preclearance.” Section 5 preclearance served as our democracy’s discrimination checkpoint by halting discriminatory voting changes before they were implemented thus avoiding possible harm and protecting the sanctity of the vote. It protected Black, Latino, Asian, Native American, and Alaskan Native voters from racial discrimination in the states and localities—mostly in the South—with a history of the most entrenched forms of racial discrimination in voting. Section 5 placed the burden of proof, time, and expense 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.

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<sup>4</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

<sup>5</sup> *NAACP Legal Def. & Educ. Fund v. Trump*, No. 17 Civ. 5427 (S.D.N.Y. July 18, 2017).

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).

The preclearance process provided a quick, efficient, and non-litigious way of addressing America’s pervasive and persistent problem of voting discrimination. Under Section 5’s preclearance framework, communities were given broad public notice about proposed voting changes, and the status quo was preserved until the effect of the proposed changes on voters of color could be fully explored and presented to the federal government. This framework was important and further revealed/substantiated the ongoing struggle to combat voter discrimination. Between 1982 and 2006, the DOJ blocked over 700 discriminatory voting changes under Section 5,<sup>6</sup> and over 800 proposed voting changes were withdrawn or altered after DOJ requested more information.<sup>7</sup> This suggests that many jurisdictions withdrew or altered their proposed voting changes in anticipation of enforcement action by the federal government. In just a three-year period between 2010-2013, DOJ reviewed 10,000 plus changes. Further, many other jurisdictions likely never considered pursuing discriminatory changes because of the VRA.

Until 2013, the VRA had withstood numerous constitutional challenges.<sup>8</sup> On June 25, 2013, the Supreme Court immobilized the preclearance process in its decision in *Shelby County v. Holder*.<sup>9</sup> 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.

### **III. THE POST-SHELBY VOTING RIGHTS LANDSCAPE**

Formerly covered jurisdictions were emboldened to act immediately after the *Shelby County* decision. For instance, within hours and days of the Court’s decision, Alabama, Mississippi, and Texas each announced that their states’ voter photo identification (ID) laws, as well as Texas’s discriminatory redistricting plans, would go into effect. Within months, several states announced changes to early voting. Each of these changes have been documented as being significant obstacles to voting, particularly for people of color. The passage of time has not diminished the efforts of jurisdictions determined to implement obstacles that prevent voters of color from fully participating in the political process.

Further adding to the devastating impact of *Shelby County*, DOJ has changed its positions and priorities with respect to its role in enforcing voting rights. It no longer sends federal observers to jurisdictions, unless in a handful of cases, it has the cover of a court order. It has

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<sup>6</sup> *Shelby County*, 570 U.S. at 571 (Ginsburg, J. dissenting).

<sup>7</sup> *Id.* at 2639-40.

<sup>8</sup> See *Lopez v. Monterey County*, 525 U.S. 266 (1999) (rejecting a constitutional challenge to the reauthorization of Section 5); *City of Rome v. United States*, 446 U.S. 156 (1980) (same); *South Carolina v. Katzenbach*, 383 U.S. 301 (1996) (upholding the entirety of the VRA against constitutional attack).

<sup>9</sup> 570 U.S. 529 (2013).

brought only a handful of lawsuits affirmatively to challenge discrimination.<sup>10</sup> Indeed, DOJ has become this Administration's voter suppression agency, promoting efforts to curtail voting rights and make it more difficult for people to vote. DOJ reversed course to side with Texas in an effort to impose a racially discriminatory voter identification scheme, asking a federal appeals court to allow the state to enforce the law that a lower court found violated the Voting Rights Act and the 14<sup>th</sup> and 15<sup>th</sup> Amendments of the U.S. Constitution.<sup>11</sup> DOJ similarly sided with Ohio in an effort to unfairly purge voters from its rolls,<sup>12</sup> reversing a position which spanned more than two decades and across Republican and Democratic Administrations alike interpreting the National Voter Registration Act as prohibiting the exact type of racially discriminatory voter purges being conducted by Ohio.<sup>13</sup>

Both before and after the *Shelby County* decision, skeptics of the continued need for Section 5 pointed to Section 2 of the VRA as a potential stand-in for Section 5's protection. Section 2, which applies nationwide, authorizes plaintiffs to challenge racial discrimination in voting *after* a discriminatory voting practice or procedure is in place. The differences between Sections 5 and 2 are critical and highlight precisely why Section 2, though a meaningful tool that LDF and other advocates continue to employ, is no substitute for Section 5. Whereas Section 5 served as a shield to protect voters of color *before* discriminatory voting practices were in place, Section 2 may be used as a sword only *after* the fact, when the beneficiaries of an illegal voting scheme have been elected with the advantages of incumbency.

Moreover, federal litigation brought under Section 2 is some of the most expensive and time-consuming types of litigation.<sup>14</sup> So, in order to challenge a package of voter suppression laws such as those in North Carolina or a local discriminatory redistricting plan, it can cost millions of dollars, borne by taxpayers who pay for jurisdictions to defend these laws and minority plaintiffs who must secure legal representation and experts to challenge them. This also means that a discriminatory voter qualification, electoral system, or mechanism can remain in place for years until a federal court strikes it down. Texas's photo ID law was on the books for more than five years before it was changed in response to LDF's successful voting rights lawsuit.

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<sup>10</sup> See, generally, NAACP Legal Def. & Educ. Fund, Inc., *Democracy Diminished: State and Local Threats to Voting Post-Shelby County, Alabama v. Holder* (last updated Jan. 9, 2019), <https://www.naacpldf.org/wp-content/uploads/State-responses-post-Shelby-01.08.2019.pdf> (a 50 plus page report documenting voting changes that have impacted minority voters in jurisdictions formerly covered by Section 5).

<sup>11</sup> Jim Malewitz, *Trump's Justice Department Wants Texas to Keep Invalidated Voter ID Law*, TEX. TRIBUNE, Sep. 1, 2017, <https://www.texastribune.org/2017/09/01/trumps-doj-wants-texas-be-able-use-id-law-struck-discriminatory/>; *Veasey v. Abbott*, 265 F. Supp. 3d 684 (Aug. 23, 2017).

<sup>12</sup> *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018); Charlie Savage, *Justice Dept. Backs Ohio's Effort to Purge Infrequent Voters from Rolls*, N.Y. TIMES, Aug. 8, 2017.

<sup>13</sup> <https://www.naacpldf.org/files/about-us/16-980bsacNAACPLegalDefenseFundetal.pdf>.

<sup>14</sup> See Federal Judicial Center, *2003-2004 District Court Case-Weighting Study, Table 1* (2005) (finding that voting cases consume the sixth most judicial resources out of sixty-three types of cases analyzed), <https://www.fjc.gov/sites/default/files/2012/CaseWts0.pdf>; *Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing Before the Sub-comm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 73 (2005) (statement of Anita Earls, Director of Advocacy, Center for Civil Rights) (stating that “two to five years is a rough average” for the length of Section 2 lawsuits), [http://commdocs.house.gov/committees/judiciary/hju24120.000/hju24120\\_0.HTM](http://commdocs.house.gov/committees/judiciary/hju24120.000/hju24120_0.HTM).

However, despite the challenges associated with Section 2 litigation, LDF and other advocates continue to rigorously pursue enforcement of the law. 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.<sup>15</sup> In most of these decisions, the preclearance requirement would have prevented the discriminatory voting change.

The loss of Section 5 resulted in the loss of the notice of discrimination and the opportunity for communities to comment on how proposed changes could harm them. It also of course removed the central mechanism to block a discriminatory change before its implementation.

LDF continues to closely monitor how formerly covered states and localities respond to the *Shelby County* decision, and has been keeping a detailed account of post-*Shelby County* voting changes in its regularly-updated online publication *Democracy Diminished: State and Local Threats to Voting Post-Shelby County, Alabama v. Holder*.<sup>16</sup> This is an attempt to try to capture a fraction of the thousands of voting changes that would have been scrutinized by the federal government for their harm to minority voters via preclearance.

Also, as part of our annual Prepared to Vote initiative, LDF has been on the ground for major primary and general elections to conduct non-partisan poll monitoring and to assist voters primarily in certain states formerly covered by Section 5 of the VRA. Prior to election day, we educate partners on the ground about how to prepare to vote – register, what IDs they need on election day, important election dates. On election day, LDF staff and volunteers visit polling sites to educate voters about their state’s voting requirements and engage in rapid response actions when problems arise to ensure every eligible voter is able to cast a ballot. For the 2018 midterm election, LDF was on the ground in Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas. What we saw on November 6, 2018, and in the weeks before and after confirmed what we already knew: Discrimination against Black voters is an overwhelming and growing problem that demands immediate legislative action.

While examples can be found in states and counties all over the country, what transpired in Georgia in particular was a low-point, a disheartening blow to fairness, equality, and core democratic and constitutional principles. Well before the mid-term election, Georgia officials began placing additional burdens on voters, particularly voters of color, by closing voting

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<sup>15</sup>*Stout v. Jefferson County Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018); *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016); *Perez v. Abbott*, 253 F.Supp.3d 864 (W.D. Tex. 2017); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017); *Perez v. Abbott*, 253 F.Supp.3d 864 (W.D. Tex. 2017); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667 (S.D. Tex. 2017); *Terrebonne Par. Branch NAACP v. Jindal*, 274 F.Supp.3d 395 (M.D. La. 2017); *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).

<sup>16</sup> NAACP Legal Def. & Educ. Fund, Inc., *Democracy Diminished: State and Local Threats to Voting Post-Shelby County, Alabama v. Holder* (last updated Jan. 9, 2019), <https://www.naacpldf.org/wp-content/uploads/States-responses-post-Shelby-01.08.2019.pdf> (a 50 plus page report documenting voting changes that have impacted minority voters in jurisdictions formerly covered by Section 5).

precincts<sup>17</sup> and purging over half a million people from the voter rolls.<sup>18</sup> The voter purge, which removed 107,000 people simply because they did not vote in previous elections<sup>19</sup> and respond to a mailing, was overseen by the Republican candidate for Governor, Brian Kemp, who was also the Secretary of State. Under Kemp's purge policy, if a Georgia resident went to the polls in 2008 to, for instance, vote for Barack Obama, and had not voted since, that person could have been purged from the rolls and thus ineligible to vote in 2018.

LDF and a chorus of others called upon Secretary of State Kemp to recuse himself from the position of overseeing his own election,<sup>20</sup> but he refused. The results were even more troubling than one might have anticipated. Candidate Kemp proceeded to block the registration of approximately 53,000 voters, over 70% of whom were reportedly voters of color, in accordance with Georgia's "exact match" voter verification system. A federal lawsuit by our civil rights allies successfully challenged the exact match system less than one week before the election. On top of all this, on election day, LDF witnessed or received reports of malfunctioning voting machines, long lines and wait times of over three hours, changes to precincts with insufficient notice, and an overreliance on provisional ballots.

Our voter protection efforts in Texas also began before election day. We received reports that students at Prairie View A&M University, a historically Black university, did not have adequate early voting sites, and that county officials refused to provide them. Noting that repression of Black voters at the University and in the City of Prairie View dated back to at least the early 1970s, we filed a lawsuit that remains pending demanding that Prairie View A&M students be provided an equal opportunity to vote. In response to our lawsuit, the county provided more hours of early voting on-campus at Prairie View A&M. The lawsuit remains pending.

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<sup>17</sup> Mark Niesse, et al., *Voting Precincts Closed Across Georgia Since Election Oversight Lifted*, Atlanta J. Const. (Aug. 31, 2018), <https://www.ajc.com/news/state--regional-govt--politics/voting-precincts-closed-across-georgia-since-election-oversight-lifted/bBkHxptlim0Gp9pKu7dfrN/>; Press Release, NAACP Legal Def. & Educ. Fund, Inc., LDF and ACLU of Georgia Send Joint Letter to Georgia Officials Urging Against Discriminatory Polling Place Changes Aug. 22, 2018, <https://www.naacpldf.org/press-release/ldf-aclu-georgia-send-joint-letter-georgia-election-officials-urging-discriminatory-polling-place-changes/> (LDF sending letter to all 150 Georgia counties warning about polling place changes with an analysis of their impact on Black and other voters of color).

<sup>18</sup> Johnny Kauffman, *6 Takeaways from Georgia's 'Use It or Lose It' Voter Purge Investigation*, NPR (Oct. 22, 2018), <https://www.npr.org/2018/10/22/659591998/6-takeaways-from-georgias-use-it-or-lose-it-voter-purge-investigation>; see also Press Release, NAACP Legal Def. & Educ. Fund, Inc., Janai Nelson Speaks on MSNBC About Kemp and Georgia's Purged Voter Rolls (Oct. 13, 2018), <https://www.naacpldf.org/news/janai-nelson-speaks-msnbc-kemp-georgias-purged-voter-rolls/>.

<sup>19</sup> Johnny Kauffman, *6 Takeaways from Georgia's 'Use It or Lose It' Voter Purge Investigation*, NPR (Oct. 22, 2018), <https://www.npr.org/2018/10/22/659591998/6-takeaways-from-georgias-use-it-or-lose-it-voter-purge-investigation>.

<sup>20</sup> Press Release, NAACP Legal Def. & Educ. Fund, Inc., LDF Sends Letter to Georgia Secretary of State, Urging Recusal From Voter Registration Process During Gubernatorial Campaign (Oct. 12, 2018), <https://www.naacpldf.org/press-release/ldf-sends-letter-georgia-secretary-state-urging-recusal-voter-registration-process-gubernatorial-campaign/>; Janai Nelson, Op.-Ed., *Georgia Gubernatorial Candidate's Huge Conflict of Interest*, CNN (Oct. 16, 2018), <https://www.cnn.com/2018/10/16/opinions/brian-kemp-georgia-voter-suppression-stacey-abrams-nelson/index.html>.

In states with voter ID laws, we not only see the disenfranchising effects of the laws on economically under-resourced communities of color, but also the confusion and inefficiencies such laws tend to cause at the polls. This was particularly concerning during the midterm election in Alabama, where we received reports that poll workers were improperly rejecting voters who had valid photo IDs because their addresses on their IDs did not match the addresses on their registrations.<sup>21</sup> LDF is currently challenging Alabama’s photo ID law in federal court. According to the state’s own expert, tens of thousands of disproportionately Black and Latino Alabamians lack acceptable photo ID for voting.<sup>22</sup>

As we have seen repeatedly, voter suppression laws do not function only by blocking people from voting: they are designed to confuse, frustrate, delay, and deter. The most recent photo ID law comes from North Carolina, where the state legislature recently overrode the Governor’s veto of the restrictive statute. This is North Carolina’s latest attempt at such a law since its previous voter identification law, enacted soon after the *Shelby County* decision, was struck down along with other voting restrictions by a federal court for targeting Black voters “with almost surgical precision.”<sup>23</sup>

In Florida, we received reports of problems with confusing ballots, long lines, precinct changes, inaccurate information printed on voter materials, and precincts running out of ballots. On November 6, however, the people of Florida voted to approve a state constitutional amendment that will restore voting rights to over 1 million people with felony convictions upon the completion of their sentences. There will always be a question as to the legitimacy of our democratic system so long as millions of people, a disproportionate number of whom are people of color, are deprived of their right to vote because of a past felony conviction.<sup>24</sup> Mass incarceration, over-policing of Black communities, and felony disenfranchisement laws have not only stripped nearly six million people of their voting rights, but have also contributed to policies that too often deny communities of color the ability to elect candidates of their choice. Relegating the tools and practices of America’s Jim Crow history to the past is a moral necessity, and, with respect to felony disenfranchisement laws, is long overdue.

While it is our hope that both lawmakers and voters are motivated by the democratic principles of “one person, one vote” and racial equity, we all must also acknowledge the reality that racism and discrimination in the electoral process is nothing short of a national security

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<sup>21</sup> Press Release, NAACP Legal Def. & Educ. Fund, Inc., LDF Sends Letter to Secretary Merrill Over Widespread Confusion 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/>.

<sup>22</sup> *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253, 1269 (N.D. Ala. 2018), appeal docketed, No. 18-10151 (11th Cir. Jan. 1, 2018)

<sup>23</sup> *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

<sup>24</sup> See NAACP Legal Def. & Educ. Fund, Inc., *Felony Disenfranchisement*, (last visited Jan. 24, 2019), <http://www.naacpldf.org/case-issue/free-vote-people-felony-convictions>.

issue.<sup>25</sup> Reports from the Senate Intelligence Committee describe how Russian interference in the 2016 election included a concentrated campaign to exacerbate racism and deceive Black Americans. Indeed, Facebook and other platforms became high-tech venues for the kinds of racial appeals and misinformation we see regularly in our voting rights advocacy and litigation, illustrated by the indictments by Special Counsel Robert Mueller of 12 Russian nationals and entities that plotted to influence the 2016 Presidential election using tactics which included suppressing black votes.<sup>26</sup> The strength of our country depends on the strength of our democracy, which in turn depends on the strength of the right to vote. It is imperative that we resist all efforts, whether from our international adversaries or our own lawmakers, to weaken that right.

#### IV. RECOMMENDATIONS

Evidence of widespread discrimination against Black voters is overwhelming and growing, and the need for legislative action is urgent. Accordingly, Congress should reinstate federal preclearance using the formula from either the Voting Rights Advancement Act or Voting Rights Amendment Act.

On January 16, 2014, a bipartisan group of Members of Congress introduced the Voting Rights Amendment Act of 2014 (“VRAA”).<sup>27</sup> The VRAA represents a measured, flexible and forward-looking attempt by Congress to update the VRA in response to the *Shelby County* decision. The VRAA contains several components that respond directly to the Court’s directive that preclearance be linked to recent acts of discrimination while seeking to provide victims of voting discrimination and the lower courts with the tools to detect and prevent voting discrimination before it takes effect. This bill included, among other things, a mechanism to identify places with the worst recent record of voting discrimination and require preclearance for their proposed voting changes, and an enhanced ability to obtain preliminary injunctive relief when challenging voting changes likely to be discriminatory.

On June 24, 2015, the Voting Rights Advancement Act<sup>28</sup> was introduced in Congress to update the VRA consistent with the *Shelby County* decision. This bill included provisions that would have, among other things, modernized the preclearance formula to cover states with a pattern of discrimination that put voters at risk; ensured last-minute voting changes would not adversely affect voters; and expanded the federal observer program. Four years after the *Shelby County* decision, congressional representatives introduced the Voting Rights Advancement Act of 2017,<sup>29</sup> which, under a new coverage provision, would apply to 13 states—Alabama, Georgia,

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<sup>25</sup> See Sherrilyn Ifill, Op.-Ed. *It’s Time to Face the Facts: Racism Is a National Security Issue*, Wash. Post (Dec. 18, 2018), [https://www.washingtonpost.com/opinions/its-time-to-face-the-facts-racism-is-a-national-security-issue/2018/12/18/f9746466-02e8-11e9-b5df-5d3874f1ac36\\_story.html?utm\\_term=.80d1452b897b](https://www.washingtonpost.com/opinions/its-time-to-face-the-facts-racism-is-a-national-security-issue/2018/12/18/f9746466-02e8-11e9-b5df-5d3874f1ac36_story.html?utm_term=.80d1452b897b).

<sup>26</sup> See Indictment at 14, *United States of America v. Netyksho et al.* (D.D.C. July 13, 2018), <https://d3i6fh83elv35t.cloudfront.net/static/2018/07/Muellerindictment.pdf>; Scott Shane & Sheera Frenkel, *Russian 2016 Influence Operation Targeted African-Americans on Social Media*, N.Y. Times (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/us/politics/russia-2016-influence-campaign.html>.

<sup>27</sup> H.R. 3899, 113th Cong. (2014).

<sup>28</sup> S. 1659, 114th Cong. (2015).

<sup>29</sup> S. 1419, 115th Cong. (2017).

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. A bipartisan Voting Rights Amendment Act of 2017 also was introduced.<sup>30</sup> Notably, this bill would make all states and local jurisdictions eligible for preclearance review if they have committed five voting violations in the last 15 years.<sup>31</sup> Now, as called for in HR 1, Congress should move forward with consideration of legislation to restore vitally needed protections after *Shelby County*.

Of course, we continue to vigorously pursue litigation to protect voting rights under Section 2 of the Voting Rights Act, but we know that this is not enough. Even when we prevail – as we did in our suit challenging Texas’ voter i.d. law – irreparable damage is done. During the three years we litigated that case, Texas 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 i.d. law we were ultimately successful in challenging. But it was too late for those elections.

Congress should also 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. It is no secret that people of color are disproportionately represented in the prison population. Accordingly, restoring the voting rights of citizens returning to their communities would roll back unduly restrictive felony disenfranchisement laws that bar people of color from voting. HR 1’s democracy restoration provisions would restore voting rights in federal elections to individuals with criminal convictions and is consistent with trends to undo the disenfranchisement of those with criminal backgrounds at the state level.<sup>32</sup>

Finally, as discussed earlier, digital platforms are actively impacting our election system as evidenced by continuous revelations about how they were used to attempt to influence elections and sow seeds of hate and racial division. 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. HR 1’s provisions prohibiting deceptive practices and preventing voter

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<sup>30</sup> H.R. 3239, 115th Cong. (2017).

<sup>31</sup> H.R. 3239, 115th Cong. § 3(b) (2017).

<sup>32</sup> See For the People Act, H.R. 1, 116th Cong. Sub. E, Title I, § 1402; Brennan Center for Justice, *Criminal Disenfranchisement Laws Across the United States* (last updated Dec. 7, 2018), <http://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>.

intimidation provide both a vehicle for this examination, as well as a potential tool to address this issue.<sup>33</sup>

## CONCLUSION

The ever-growing record of discriminatory voting changes since the *Shelby County* decision requires Congress to fulfill its obligation to protect the right of every eligible voter to vote and have their vote count. With roughly 10 federal court decisions finding that states or localities intentionally discriminated against voters of color just since 2013, there is no doubt that race discrimination in voting is an endeavor pursued relentlessly by its proponents. LDF and other civil rights law organizations are using both litigation and public advocacy to aggressively combat the repeated attacks on voting rights that have occurred in the absence of Section 5's enforcement authority. However, only Congress has the ultimate authority to enforce the anti-discrimination principle articulated in the Fourteenth and Fifteenth Amendments to the Constitution. Thus, as called for in HR 1, we urge Congress to begin the hearing process on legislation that would restore the VRA. This hearing and fact-gathering process must be thoughtful, rigorous, and driven ultimately by the need to collect the best evidence to support the full restoration of the VRA. We also urge Congress to deploy the other provisions of HR 1 to ensure our democracy and political process is fully functioning, fair accessible to all.

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<sup>33</sup> See For the People Act, H.R. 1, 116th Cong. Sub. D, Title I, § 1302.