



**Testimony of Sherrilyn Ifill
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Before the United States Senate Committee on the Judiciary

**Hearing on
“The Voting Rights Amendment Act, S. 1945:
Updating the Voting Rights Act in Response to *Shelby County v. Holder*”**

**Dirksen Senate Office Building
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I. INTRODUCTION

Good morning Chairman Leahy, Ranking Member Grassley, and members of the Committee. My name is Sherrilyn Ifill. 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 on the most urgent civil rights problem facing us today: restoring the voting rights protections eliminated by the Supreme Court's decision in *Shelby County v. Holder*.

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the struggle to secure, protect, and advance voting rights for African Americans and other communities of color. Beginning with *Smith v. Allwright*, our successful Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has been engaged in combating all of the barriers to the full, equal, and active participation of African-American voters.

The Voting Rights Act of 1965 is universally recognized as the most successful piece of legislation to emerge from the Civil Rights Movement. The Act enshrined our most fundamental values by guaranteeing to all of our citizens the right to vote, which the Supreme Court has called "preservative of all rights."¹ The Act assures voters of color the utmost protection to participate fully in our political process. Congress has reauthorized the Voting Rights Act on four separate occasions. Each reauthorization received overwhelming bipartisan support and was signed into law by a Republican President. In 2006, Congress reauthorized the Act by a Senate vote of 98 to 0, and a House vote of 390 to 33. The provisions of the Act, including the process by which states and localities with records of discrimination are required to "preclear" voting changes before implementation, were considered by Congress to be an efficient and effective mechanism for detecting and redressing the many forms of discrimination that continue to taint our democratic process.

The Voting Rights Act has withstood constitutional attack in every instance except the last.² In *Shelby County v. Holder*,³ a decision handed down one year ago today, the Supreme Court ruled unconstitutional the provision of the Act by which Congress determined which states and jurisdictions are subject to preclearance. The Court reached that decision despite an overwhelming record amassed by this Committee and its counterpart in the House demonstrating the existence of contemporary voting discrimination.

The result of that decision is that minority voters have been left without critically-needed voting protections for an entire year. Some commentators have said that we no longer need the kind of protection afforded by Section 5 of the Act. Nothing could be further from the truth. My testimony today will focus on bringing into clear view the protections we lost last year and the wide array of potentially discriminatory voting changes that numerous states, counties, and cities across our nation have enacted or proposed in the wake of the Court's devastating decision. These are only the examples we know about. It is very likely that many more discriminatory changes have been enacted, but have gone undetected or unchallenged; still more prospective changes may

¹ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

² *See Lopez v. Monterey*, 525 U.S. 266 (1999) (rejecting a constitutional challenge to the reauthorization of Section 5); *City of Rome v. U.S.*, 446 U.S. 156 (1980) (same); *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) (upholding the entirety of the Voting Rights Act against constitutional attack).

³ 133 S.Ct. 2612 (2013).

be under consideration. The general election in November presents a looming opportunity for those actors who are inclined to discriminate, leaving many more voters of color vulnerable.

Some have said that other provisions of the Voting Rights Act are sufficient to deal with discrimination in voting. This is also not true. Litigation is costly, time-consuming, and can only address voting discrimination after it has gone into effect and after the democratic process has been besmirched with the taint of discrimination. Moreover, even the assortment of civil rights law organizations that, like my own, are committed to representing voters in such cases, could not keep up with litigating the litany of changes that have been unleashed in just the first year after the *Shelby County* decision. The result is that, for countless voters, discrimination will go unredressed. The Voting Rights Amendment Act (“VRAA”), S. 1945, represents a bipartisan response to the Court’s invitation in *Shelby County* to update the Voting Rights Act. With the discriminatory voting changes we have witnessed in the past year, combined with the many incidents compiled in advance of *Shelby County*, there is no question that this legislation is vital.

To LDF, the VRAA represents a modest and flexible approach to civil rights enforcement that will redress the present-day forms of voting discrimination and will ensure that voters are protected from discrimination anywhere in the country.

II. THE VOTING RIGHTS ACT BEFORE *SHELBY COUNTY V. HOLDER*

A year ago, on June 25, 2013, the United States Supreme Court issued its decision in *Shelby County, Alabama v. Holder*. The Supreme Court’s opinion declared Section 4(b), which was the “coverage” provision that Congress used to define which states and local jurisdictions are subject to the Section 5 “preclearance” process, unconstitutional. Although the Court did not invalidate Section 5, the unfortunate reality is that, without the coverage provision, no jurisdiction is currently required to review the impact of proposed voting changes on people of color.

A. The Preclearance Framework before *Shelby County v. Holder*

Prior to *Shelby County* the preclearance process of the Voting Rights Act of 1965 had served as our democracy’s discrimination checkpoint. For nearly fifty years, the preclearance regime had stopped thousands of potentially discriminatory voting changes before they happened.⁴ “Covered” states, municipalities, and other jurisdictions with a long, documented history of racial discrimination in voting were required to notify the United States Department of Justice (Justice Department) before implementing a discriminatory voting change.⁵ The burden was on the covered jurisdiction that was submitting the proposed change to demonstrate to the Justice Department that the proposed change was not more burdensome on voters of color than white voters when compared to the existing status quo.⁶ Jurisdictions were also required to prove that the proposed change did not have a discriminatory purpose.⁷ If the covered jurisdiction did not meet its burden,

⁴ See *Voting Determination Letters*, U.S. Dep’t of Justice, (last visited June 22, 2014) (listing all of the objections ever imposed in sixteen covered or partially covered states between 1965 and 2013).

⁵ 42 U.S.C. § 1973c.

⁶ See *Beer v. United States*, 425 U.S. 130, 141 (1976) (“[T]he purpose of [Section] 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.”).

⁷ 42 U.S.C. § 1973c(a).

the Justice Department could block the proposed change. The jurisdiction then had the option of submitting that change to a three-judge panel from the federal courts of Washington, D.C.

The preclearance process provided a quick, efficient, and non-litigious way of addressing the pervasive and persistent problem of voting discrimination in America. Congress, when enacting the Voting Rights Act, properly recognized that Section 5's preclearance requirement would not only lead to a decrease in litigation but would also provide an effective mechanism for expediently processing, investigating and possibly resolving voting rights challenges, without resorting to litigation.⁸ As such, Section 5's preclearance requirement is akin to the administrative processes found in other landmark civil rights legislation passed by Congress, before and after the Voting Rights Act. For example, when Congress created the Equal Employment Opportunity Commission as part of the Civil Rights Act of 1964, it provided the agency with an administrative enforcement mechanism so that the goal of remedying unlawful employment discrimination could be achieved, to the extent possible, through investigation, voluntary compliance, and informal conciliation.⁹ Likewise, Title VIII of the Civil Rights Act of 1968—more commonly known as the Fair Housing Act—provides a mechanism through which an aggrieved individual may file an administrative complaint with the Secretary of the U.S. Department of Housing and Urban Development.¹⁰ The Secretary, in turn, is empowered to investigate the complaint and to seek resolution of the complaint through “conciliation and persuasion.”¹¹

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 a third party. This framework was important. Between 1982 and 2006, the Voting Rights Act blocked over 700 discriminatory voting changes, more than half of which include findings of intentional discrimination.¹² Preclearance also had a significant deterrent effect. Since 1982, over 800 proposed voting changes were withdrawn or altered after the Justice Department merely sent a more information request letter.¹³ This suggests that many jurisdictions withdrew or altered the preclearance request in acknowledgement of the change's discriminatory effect or purpose. Similarly, an unknowable number of jurisdictions likely never considered pursuing discriminatory changes simply because they knew the changes would be blocked by the Voting Rights Act. As a time- and cost-saving measure, the preclearance process meant that, even where a jurisdiction did seek preclearance through a trial in the district court, Section 5 lawsuits were often completed after a year.¹⁴ This is

⁸ See, e.g., H.R. REP. No. 89-162, pt. 3, at 6-9, 23-24 (1965).

⁹ See *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 367-68 (1977) (“Congress, in enacting Title VII, chose cooperation and voluntary compliance . . . as the preferred means of achieving its goals.”) (internal quotation marks and citation omitted).

¹⁰ Herbert A. Danner, CONGRESSIONAL RESEARCH SERVICE, *The Civil Rights Act of 1968: Brief Summary of Basic Provisions* 6 (1968).

¹¹ *Id.*

¹² *Shelby County*, 133 S. Ct. at 2639 (Ginsberg, J., dissenting).

¹³ *Id.* at 2640-41.

¹⁴ See *id.* at 2640 (“And litigation places a heavy financial burden on minority voters. Congress also received evidence that preclearance lessened the litigation burden on covered jurisdictions themselves, because the preclearance process is far less costly than defending against a [Section] 2 claim, and clearance by [the Justice Department] substantially reduces the likelihood that a [Section] 2 claim will be mounted.” (citations omitted)); see also, e.g., *South Carolina v. United States*, 898 F. Supp. 2d 30, 50 (2012) (setting “an extremely aggressive trial schedule” in a Section 5 lawsuit regarding the state's voter ID law, and resolving the case in eight months).

significant as federal litigation brought under Section 2 of the Voting Rights Act is some of the most expensive and time-consuming type of litigation.¹⁵ Moreover, Section 2 litigation occurs only after the fact, when the beneficiaries of an illegal voting scheme have been elected with the advantages of incumbency. This means that a discriminatory voter qualification, and electoral system or mechanism can remain in place for years until a federal court strikes it down.

B. Recent Examples of Blocked Discriminatory Voting Changes

A survey of the types of changes blocked by the preclearance requirement in the last decade or more uniquely demonstrates the effectiveness and necessity of the Voting Rights Act as a preemptive remedy. In just the seven years between the 2006 reauthorization and *Shelby County* in 2013, Section 5 blocked dozens of discriminatory voting changes. Indeed, after reviewing the record before Congress in 2006 reauthorization, the Court was careful to acknowledge that “voting discrimination still exists; no one doubts that.”¹⁶ These examples are characteristic of the intentionally discriminatory changes blocked in the years before and after 2006.

In 2012, the City of Clinton, Mississippi proposed a districting plan for its six-member council that, like the existing plan, did not include a single ward where African-American voters had the power to elect their candidate of choice. This was the proposal despite the fact that 34% of the city’s population is African-American. After careful review under Section 5 of the Voting Rights Act, the Justice Department found reliable evidence that the City of Clinton acted with a racially discriminatory purpose in its decision not to create a city council ward where African-American voters had the ability to elect a candidate of their choice. In the wake of the Justice Department’s objection, the city redrew the council district lines, creating, for the first time, a ward where African-American voters have the ability to elect their preferred candidate.¹⁷

In 2011, two other cities in Mississippi and Texas experienced similar problems. The City of Natchez, Mississippi, proposed a redistricting plan that reduced the percentage of African-American voters in one ward (Ward 5) by 6% and placed these voters into the three wards that were already majority African-American. This change decreased the African-American voting-age population in the impacted ward from almost 53% to under 47%, thus eliminating the ability of African-Americans in that ward to elect their preferred candidate. After careful review, the Justice Department concluded that the city’s efforts to reduce the African-American population in Ward 5 were done with a discriminatory purpose.¹⁸ In late 2011, the county commission in Nueces County, Texas, enacted a redistricting plan that diminished the voice of Latino voters at the polls

¹⁵ 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); 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. 92 (2005) (“Two to five years is a rough average” for the length of Section 2 lawsuits).

¹⁶ *Shelby County*, 133 S. Ct. at 2619.

¹⁷ Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, to Kenneth Dreher, Esq., and David Wade, Senior Planner, City of Clinton (Dec. 3, 2012), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/MS/1_121203.pdf

¹⁸ Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, to Everett T. Sanders, Esq., City Attorney, City of Natchez (Apr. 30, 2012), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/MS/1_120430.pdf

by swapping Latino and white voters between election precincts. After careful review of the 2011 plan, the Justice Department concluded that the county's actions "appear to have been undertaken to have an adverse impact on [Latino] voters." The Justice Department also noted that the county offered "no plausible non-discriminatory justification" for these voter swaps, and instead offered "shifting explanations" for the changes.¹⁹

Even before the 2006 reauthorization of the Voting Rights Act, these forms of intentional discrimination were evident in covered jurisdictions. In September 2003, the town of North in Orangeburg County, South Carolina, proposed to annex a small white population into the town. Ultimately, the Justice Department concluded that the annexation could not go forward because "race appears to be an overriding factor in how the town responds to annexation requests." The letter denying the town approval to proceed with the annexation indicated that in the early 1990s, a large number of African Americans who resided to the southeast of the town had petitioned for annexation that was denied, and that the town gave no explanation for the denial. The Justice Department letter notes that the granting of the petition by this group of African Americans "would have resulted in African Americans becoming a majority of the town's population." Based on its investigation, the Department concluded that the county did not provide equal access to the annexation process for African-American and white residents, and blocked the proposed annexation.²⁰

Also in 2003, in the City of Ville Platte in Evangeline Parish, Louisiana, proposed a redistricting plan that reduced the African-American population in one of the four majority African-American council districts, District F, from 55.1% to 38.1%. Notably, the city experienced a dramatic growth in its African-American population between 1980 and 2000, increasing from less than a third African-American to African-American registrants constituting 51.3% of the city's eligible voters. In the 2003 plan, significant African-American populations in this district would have been shifted to a district that was already 78.8% African-American. After careful analysis, the Department blocked the plan, and concluded that the plan to reduce the number of African-American districts from four to three was designed, at least in part, to make African-American voters worse off by eliminating their electoral power in District F.²¹

Finally, three weeks before Election Day in 2001, the town council of Kilmichael, Mississippi, decided to cancel its municipal election. At the time the election was cancelled, the most recent Census numbers showed an increase in the African-American population such that the town was now 52.4% African-American, though the mayor and all five members of the Board of Alderman were white. All council members were elected at-large to four year terms, with a plurality vote requirement. The stated purpose for the town's action was to develop a single-member ward system for electing town officials. In its letter of decision to the town, however, the Justice Department noted that the decision to cancel the election came only after African

¹⁹ Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, to Joseph M. Nixon, et al., (Feb., 7, 2012), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/1_120207.pdf.

²⁰ Letter from R. Alexander Acosta, Assistant Attorney General, U.S. Department of Justice, to the Honorable H. Bruce Buckheister, Mayor, North, South Carolina, (Sept. 16, 2003), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/SC/SC-2170.pdf

²¹ R. Alexander Acosta, Assistant Attorney General, U.S. Department of Justice, to the Honorable Phillip A. Lemoine, Mayor, Ville Platte, Louisiana and Glenn A. Koepp, Esq, Chief Executive Office, Redistricting LLC, (Jun. 4, 2004), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/LA/LA-2440.pdf

Americans became a majority of the population in the town and only after several African-American candidates announced plans to run for office. Under the existing at-large electoral method, African Americans had the very strong potential to win a majority of the municipal offices, including the office of mayor. Thus, the Department objected to the attempt to cancel the election, concluding that the town's decision was motivated by an intent to negatively impact the voting strength of African-American voters, just as they were prepared to use it.²²

III. VOTING CHANGES SINCE *SHELBY COUNTY V. HOLDER*

Unfortunately, the Supreme Court's decision has now left communities of color largely on their own to monitor proposed statewide and local voting changes for potentially unfair changes. As LDF and others feared, over the last year, various states and jurisdictions have used the *Shelby County* decision to freely pursue and justify a range of voting changes, many of which are transparently aimed at suppressing the votes of people of color, while others have been proposed with a heedless disregard for the negative effects on voters of color. Not surprisingly, many of the states or jurisdictions that were once covered under the preclearance process are now the most likely to be engaged in pursuing changes that hurt voters of color. Although statewide changes to redistricting or voter qualifications are more widely known, the lack of preclearance is particularly troublesome at the local level where a number of counties and cities have eliminated elected positions once held by people of color, altered voting districts or methods of election, either moved or closed polling places, and shifted the dates of elections or even cancelled elections—all of which can effectively disfranchise voters of color, and which often occur without any prior public notice or legal challenges.

LDF has kept a running, and still growing, list of state and local level responses to the *Shelby County* decision. LDF's report identifying these responses is attached, hereto.

A. Statewide Voting Changes Since *Shelby County v. Holder*

State legislatures and executive officials have moved quickly and decisively to take advantage of the end of the preclearance process. For instance, within several months of *Shelby County*, several states announced changes to early voting. In February 2014, Georgia lawmakers proposed legislation that would cut early voting periods for smaller, but not larger, cities to six days, including a Saturday, as a purported cost-saving measure.²³ LDF submitted a letter on behalf of thirty organizations that helped to convince the state legislature not to go through with the proposed early voting cuts.²⁴ Similarly, in Florida, Secretary of State Ken Detzner has said

²² Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to J. Lane Greenlee, (Dec. 22, 2001), available at http://www.justice.gov/crt/records/vot/obj_letters/letters/MS/MS-2680.pdf

²³ Walter C. Jones, *Georgia lawmaker seeks shorter early-voting periods for small cities*, ATHENS BANNER-HERALD, Feb. 4, 2014, <http://m.onlineathens.com/general-assembly/2014-02-04/georgia-lawmaker-seeks-shorter-early-voting-periods-small-cities>; Spencer Woodman, *GOP's chilling new assault on voting: Why this man wants to scale back early voting in Georgia*, SALON.COM, Feb. 20, 2014, http://www.salon.com/2014/02/20/gops_chilling_new_assault_on_voting_why_this_man_wants_to_close_georgia_voting_sites/.

²⁴ *Voting Rights Advocates urge the Georgia Legislature to Reject Attack on Voters*, NAACP LDF (Feb. 25, 2014), <http://www.naacpldf.org/press-release/voting-rights-advocates-urge-georgia-legislature-reject-attack-voters>.

“[w]e’re free and clear to follow through with our [early voting] law now without any restriction by the Justice Department.”²⁵ In August 2012, LDF represented African-American voters in a Section 5 lawsuit where a federal court rejected these changes as harmful to Florida voters of color.²⁶ In particular, the court determined that severe cuts to the state’s early voting period would have serious consequences for African-American Floridians. In 2008, over *half* of African-American voters in Florida cast their ballots during the early voting period.

Equally troublesome are reports of statewide voter purges. Following *Shelby County*, Florida Governor Rick Scott sought to reinstitute a purge of purported non-citizens from the state voter database, as he attempted to do in 2012.²⁷ In 2012, because of Section 5, Florida election officials were blocked from using an error-prone list to purge purported non-citizens from the election rolls.²⁸ Following *Shelby County*, election supervisors resisted Governor Scott’s attempts to reinstitute the purge. In 2014, a federal appellate court ruled, following a challenge from several civil rights organizations, that Florida’s 2012 program of systematically purging names from the voter rolls within 90 days of a federal election (in the State’s purported effort to remove suspected non-citizens) violated a provision of the National Voter Registration Act.²⁹ In Virginia, the State Board of Elections moved to remove up to 57,000 registered and potentially qualified voters from voter registration lists.³⁰ In a federal lawsuit, the plaintiffs alleged that the Board’s purge process was error-ridden and that it had required registrars to “use their best judgment,” in arbitrarily determining whether to purge voters. Virginia’s purge likely disproportionately burdened voters of color, the elderly, and the poor. Although the lawsuit was recently dismissed, the court also acknowledged that otherwise eligible voters had been improperly removed from the rolls, and that these voters had been forced to bring a lawsuit to vindicate their rights.³¹ Arizona lawmakers also recently proposed enacting voting provisions that would allow counties to purge people from the permanent early voter list, which is used to mail absentee ballots to voters prior to every election.³²

Within hours and days of the Court’s decision, Alabama, Mississippi, and Texas had each announced that their states’ voter photo identification (ID) laws, as well as Texas’s discriminatory redistricting plans, would go into effect. In Texas, within two hours of the announcement of the

²⁵ *Reaction to Court Decision on Voting Rights Act*, THE ASSOCIATED PRESS, (Jun. 26, 2013), available at <http://bigstory.ap.org/article/reaction-court-decision-voting-rights-act-0>.

²⁶ *Case: Florida v. United States*, NAACP LDF, Sep. 6, 2011, <http://www.naacpldf.org/case-issue/florida-v-united-states>.

²⁷ Lizette Alvarez, *Florida Defends New Effort to Clean Up Voter Rolls*, N.Y. TIMES, Oct. 9, 2013, http://www.nytimes.com/2013/10/10/us/florida-defends-new-effort-to-clean-up-voter-rolls.html?_r=0; Steve Bousquet and Michael Van Sickler, *Renewed 'scrub' of Florida voter list has elections officials on edge*, TAMPA BAY TIMES, Aug. 3, 2013, <http://www.tampabay.com/news/publicsafety/crime/renewed-scrub-of-florida-voter-list-has-elections-officials-on-edge/2134695>.

²⁸ Mary Ellen Klas, *County elections officials to halt controversial voter purge*, TAMPA BAY TIMES, Jun. 1, 2012, <http://www.tampabay.com/blogs/the-buzz-florida-politics/content/county-elections-officials-halt-controversial-voter-purge/2041621>.

²⁹ *Arcia v. Florida Sec’y of State*, 746 F.3d 1273 (11th Cir. 2014).

³⁰ Matt Zapotosky, *Virginia’s Democratic Party loses challenge against purge of 38,000 voters from rolls*, WASH. POST, Oct. 18, 2013, http://www.washingtonpost.com/local/virginia-politics/federal-judge-rejects-democratic-challenge-to-virginia-voter-roll-purge/2013/10/18/26235068-3809-11e3-8a0e-4e2cf80831fc_story.html.

³¹ *Id.*

³² Howard Fischer, *Lawmakers want to repeal, then reenact, recent voting law changes*, E. VALLEY TRIBUNE, Jan. 16, 2014, http://www.eastvalleytribune.com/arizona/capitol_media_services/article_8a05991e-7f04-11e3-8a04-001a4bcf887a.html.

Shelby County decision, Texas Attorney General Greg Abbott³³ and Secretary of State John Steen³⁴ both announced that the state's voter identification (ID) law, which was previously rejected by a federal court as the most discriminatory measure of its kind in the nation, would "immediately" into effect. "With today's decision, the state's voter ID law will take effect immediately," Abbott said in a statement.³⁵ Mr. Abbott also stated that "[r]edistricting maps passed by the legislature may also take effect without approval from the federal government,"³⁶ even though a federal court had deemed those same maps *intentionally* discriminatory under Section 5 after a full trial.³⁷ Mississippi's Secretary of State Delbert Hosemann announced that, after *Shelby County*, his plan to move forward with implementing the state's voter ID law for the next primaries,³⁸ a plan that he ultimately followed through with in June 2014. Alabama Attorney General Luther Strange stated that that State's voter ID law would be implemented immediately.³⁹ In January 2014, Arkansas also went forward with plans to impose a voter ID law that has since disfranchised hundreds of voters.⁴⁰

Research shows that voter photo ID laws bear more heavily on voters of color, who are both less likely to own government-issued photo ID (disparate impact)⁴¹ and much more likely to be asked by poll officials to show ID before voting (disparate treatment).⁴² In Texas, LDF has intervened on behalf of Plaintiffs in a lawsuit under Section 2 to invalidate the Texas voter ID law. Trial is set for Fall 2014. In Alabama, LDF and over a dozen of other civil rights groups have expressed concerns with the Secretary of State's narrow interpretation of the "safety valve" provision of the photo ID law.⁴³ Rather than allowing people without photo ID to vote by showing non-photo IDs or by signing an affidavit, the Secretary of State has proposed rules that seek to

³³ Ryan J. Reilly, *Harsh Texas Voter ID Law 'Immediately' Takes Effect After Voting Rights Ruling*, HUFFINGTON POST, (Jun. 25, 2013), http://www.huffingtonpost.com/2013/06/25/texas-voter-id-law_n_3497724.html.

³⁴ Tom Curry, *Let the lawsuits begin: Advocates pivot strategy following Voting Rights Act ruling*, NBC NEWS, (Jun. 29, 2013), nbcpolitics.nbcnews.com/_news/2013/06/29/19192537-let-the-lawsuits-begin-advocates-pivot-strategy-following-voting-rights-act-ruling?lite.

³⁵ Sahil Kapur, *Texas Advances Voter ID Law After Supreme Court Strikes Down Voting Rights Act*, TALKING POINTS MEMO, (Jun. 25, 2013), <http://tpmdc.talkingpointsmemo.com/2013/06/texas-advances-voter-id-law-after-supreme-court-ruling.php>.

³⁶ *Id.*

³⁷ *See Texas v. United States*, 887 F. Supp. 2d 133 (2012).

³⁸ Geoff Pender, *Next June, Miss. voters must have ID; Secretary of state reveals time line for implementation*, CLARION LEDGER, Jun. 25, 2013, available at <http://www.clarionledger.com/article/20130626/NEWS01/306260018/Next-June-Miss-voters-must-ID>.

³⁹ Bob Johnson, *Alabama Officials Say Voter ID Law Can Take Effect*, THE ASSOCIATED PRESS, Jun. 26, 2013, available at <http://www.gadsdentimes.com/article/20130626/WIRE/130629842>;

⁴⁰ Josh Israel, *Hundreds Disenfranchised By America's Worst Voter ID Law*, THINKPROGRESS.COM, (Jun. 9, 2014), thinkprogress.org/justice/2014/06/09/3445559/arkansas-voter-id-absentee/.

⁴¹ BRENNAN CENTER FOR JUSTICE, *CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION* (2006), <http://www.brennancenter.org/analysis/citizens-without-proof>.

⁴² Stephen Ansolabehere, *Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day*, 42 POL. SCI. & POL. 127, 128 (2009), available at http://alt.coxnewsweb.com/shared-blogs/austin/investigative/upload/2009/03/voter_id_will_the_law_suppress_voter_turnout/Ansolabehere2009.pdf

⁴³ *Protecting Voting Rights in Alabama*, NAACP LDF, Mar. 6, 2014, www.naacpldf.org/press-release/protecting-voting-rights-alabama; see also Deuel Ross, Opinion, *Alabama's Voter ID Law Disenfranchises Some Minorities: Call for Secretary of State Jim Bennett to Relax Interpretation of 'Safety Valve' Provision*, AL.COM (Jun. 14, 2014), www.al.com/opinion/index.ssf/2014/06/alabamas_voter_id_law_disenfra.html.

enforce a congressionally-banned discriminatory test or device.⁴⁴ LDF also sent a letter to the Arkansas Secretary of State over his failure to do the minimum needed to make photo ID-issuing offices more accessible to African Americans living in the State's more rural and poorer counties.⁴⁵

Similarly, Arizona and Kansas are seeking to require people to provide proof of citizenship in order to register to vote.⁴⁶ This move immediately follows a March 19, 2014 federal court decision that ordered the federal Election Administration Commission (EAC) to modify the state-specific instructions on the federal mail voter registration form to reflect state requirements of Arizona and Kansas that voter registrations provide documentary proof of citizenship.⁴⁷ In 2013, the Supreme Court held that Proposition 200, Arizona's proof of citizenship law for voter registration, violated the National Voter Registration Act.⁴⁸ Arizona contends that the Court's decision only applies to federal elections and, along with Kansas, sued the EAC seeking to require proof of citizenship to register to vote in state elections, setting up a two-tiered system of registering to vote in state versus federal elections.⁴⁹ After the EAC flatly rejected that position, Arizona and Kansas sued in federal court. The court then sided with Arizona and Kansas. This decision has prompted Alabama to also consider adopting a form of dual registration.⁵⁰ The Arizona and Kansas dual registration requirements and proof-of citizenship laws, however, are being challenged on appeal in federal court⁵¹ and still face other challenges in state court.⁵²

Notably, LDF has extensive experience with dual voter registration systems, and their long historical association with discriminatory two-tiered registration systems designed to hinder and prevent African-American voter registration. In 1987, for instance, successful LDF litigation under the Voting Rights Act eliminated dual registration for state and municipal elections in Mississippi.⁵³ After the National Voter Registration Act of 1993, Section 5 also blocked

⁴⁴ 42 U.S.C. § 1973aa(b)(4).

⁴⁵ *NAACP Legal Defense Fund Presses Arkansas to Drop Discriminatory Voter ID Law: Urges Arkansas to Expand Opportunities for Voters to Obtain Photo IDs*, NAACP LDF, May 7, 2014, <http://www.naacpldf.org/press-release/naacp-legal-defense-fund-presses-arkansas-drop-discriminatory-voter-id-law>.

⁴⁶ Erik Eckholm, *After Ruling, Alabama Joins 2 States in Moving to Alter Voting Rules*, N.Y. TIMES, Mar. 21, 2014, available at <http://mobile.nytimes.com/2014/03/22/us/after-ruling-alabama-joins-2-states-in-moving-to-alter-voting-rules.html>.

⁴⁷ Fernanda Santos, *Two States Win Court Approval on Voter Rules*, N.Y. TIMES, Mar. 19, 2014, <http://www.nytimes.com/2014/03/20/us/judge-says-us-must-help-states-enforce-voter-id-laws.html?hp>; John Hanna, *Kansas, Arizona Prevail in Voter Citizenship Suit*, ASSOCIATED PRESS, Mar. 19, 2014, bigstory.ap.org/article/kansas-arizona-prevail-voter-citizenship-suit.

⁴⁸ *See Arizona v. The Inter Tribal Council of Arizona*, 133 S. Ct. 2247 (2013).

⁴⁹ *Judge sends Arizona, Kansas voter citizenship suit back to US Election Assistance Commission*, ABC 15, Dec. 13, 2013, <http://www.abc15.com/dpp/news/state/judge-sends-arizona-kansas-voter-citizenship-suit-back-to-us-election-assistance-commission>.

⁵⁰ *Kansas ruling could result in Alabama enforcing proof of citizenship for voter registration*, THE ASSOCIATED PRESS, (Mar. 24, 2014), blog.al.com/wire/2014/03/kansas_court_ruling_could_resu.html.

⁵¹ *Court Extends, in 2 States, Its Halt of Proof-of-Citizenship Voting Rules*, N.Y. TIMES, May 20, 2014, available at <http://www.nytimes.com/2014/05/21/us/court-extends-in-2-states-its-halt-of-proof-of-citizenship-voting-rules.html>.

⁵² Roxana Hegeman, *Kansas, Arizona rekindling lawsuit over proof-of-citizenship voter registration*, TOPEKA CAPITAL-JOURNAL, Feb. 3, 2014, available at <http://cjonline.com/news/2014-02-03/kansas-arizona-rekindling-lawsuit-over-proof-citizenship-voter-registration>.

⁵³ *See Miss. State Chapter, Operation PUSH v. Allain*, 674 F. Supp. at 1245 (N.D. Miss. 1987), *aff'd sub nom.*, 932 F.2d 400 (5th Cir 1991).

Mississippi's attempt to reinstate a dual federal and state registration system.⁵⁴ This blocked dual registration system is indistinguishable from the systems that Arizona, Alabama, and Kansas hope to implement.

Finally, North Carolina has perhaps been the most bold, enacting an omnibus anti-voter law that includes most of the above voter suppression measures: a photo ID law, changes to registration, and cuts to early voting.⁵⁵ As a result of the *Shelby County* ruling, North Carolina State Senator Tom Apodaca stated that he would move quickly to pass a voter ID law, and other state legislators in North Carolina quickly began engineering an end to the state's early voting, Sunday voting, and same-day registration provisions.⁵⁶ Within two months of the *Shelby County* decision, the state legislature had in fact passed and the Governor had signed the omnibus anti-voter bill with all of these provisions.⁵⁷ At present, civil rights advocates and organizations in North Carolina are challenging this bill in a series of state and federal lawsuits.

B. Local Voting Changes since *Shelby County v. Holder*

While the preclearance process under the Voting Rights Act gave important protections to millions of voters at the statewide level, LDF also is aware of various discriminatory voting changes in many local jurisdictions in Arizona, Florida, Georgia, New York, Texas, and elsewhere. They have adopted a wide range of discriminatory voting changes, including changes to elected boards and districts, moved polling locations, and even cancelled elections. Unfortunately, for the dozens of changes we are aware of, there are many more that we may never learn of.

The City of Pasadena, Texas, for instance, changed the structure of its district council by eliminating two seats elected from predominantly Latino districts, and replacing those seats with two at-large seats elected from majority-white districts. Pasadena's 152,000 residents include a large and burgeoning Latino population. Historically, jurisdictions have used at-large voting to dilute the voting strength of communities of color. Officials in Galveston County, Texas cut in half (from eight to four) the number of constables and justices of the peace districts—a move that was previously blocked by Section 5.⁵⁸ This eight district electoral system was initially put into place by earlier litigation to remedy racial discrimination in voting and provide equal electoral opportunity for voters of color. The effect of the reduced number of officials will be to eliminate virtually all of the African-American and Latino held positions on the boards. This redistricting also comes in the midst of minority population gains in Galveston following the 2010 census.

⁵⁴ Letter from Isabelle Katz Pinzler, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Sandra M. Shelson, Special Assistant Attorney General, State of Mississippi, (Sep. 22, 1997), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/MS/MS-2650.pdf.

⁵⁵ *NC voter ID bill moving ahead with Supreme Court ruling*, WRAL.COM, Jun. 25, 2013, <http://www.wral.com/nc-senator-voter-id-bill-moving-ahead-with-ruling/12591669/>.

⁵⁶ David Zucchino, *Changes Loom for N.C. Electorate*, L.A. TIMES, Jun. 30, 2013, <http://www.latimes.com/news/nationworld/nation/la-na-voting-rights-20130630,0,211700.story>.

⁵⁷ Colleen Jenkins, *North Carolina Voting Changes to Go on Trial in 2015*, REUTERS, Dec. 12, 2013, <http://www.reuters.com/article/2013/12/13/us-usa-northcarolina-voting-idUSBRE9BB19120131213>.

⁵⁸ Letter from Thomas E. Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to C. Robert Heath, Bickerstaff Heath Delgado Acosta, (Oct. 3, 2011), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/1_111003.pdf.

Local level redistricting plans are aggressively pushing for changes with similar effects. Disturbingly, some of these changes were previously blocked as discriminatory before the suspension of Section 5 preclearance. For instance, the five-member Greene County, Georgia, Board of Commissioners recently implemented a new redistricting plan that reduces African-American voters to less than 51%, a bare majority, in all five districts.⁵⁹ Under Section 5, before *Shelby County*, the Department of Justice had been closely reviewing this new plan, and had blocked another redistricting plan in Greene County in 2012.⁶⁰ In Fulton County, Georgia's most populous county, the county commission's redistricting plan creates a new overwhelmingly white district and reduces the sizes of the African-American districts.⁶¹ Benson County, North Carolina commissioners are considering lifting limits on at-large voting. Benson has three commission seats elected by district voting, and three commission seats elected at-large. At present, as the result of earlier litigation under Section 2, residents can only vote for one at-large seat every three years.⁶²

In addition to redistricting, the actual and proposed changes to polling places and early voting sites also have created substantial hurdles for voters of color. Georgia cities and counties have been particularly active in this regard. After *Shelby County*, the City of Athens considered eliminating nearly half of its twenty-four polling places, and replacing them with only two early voting centers—both of which would be located inside police stations.⁶³ The community raised concerns that the new early voting locations would intimidate voters, and that the proposed closures would require some people to travel up to three hours by bus to vote. Morgan County, after initially considering closing over half of its polling places, ultimately closed more than a third of them.⁶⁴ A city council member believed that the broader closures would disfranchise poor voters of color, many of whom lack access to a car. Election officials in Baker County, a 46.1% African-American county with high rates of African-American poverty, also considered eliminating four of its five polling places, requiring some people to travel over twenty miles to vote.⁶⁵ LDF advocacy drew attention to this proposed closures, leading officials to reconsider.⁶⁶ But, in general, the absence of preclearance process means that many comparable changes likely have occurred or will occur in Georgia and elsewhere without any public notice or legal challenges.

Indeed, in Jacksonville, Florida the Board of Elections has closed and relocated a polling place that once served large numbers of African Americans.⁶⁷ In 2012, African Americans constituted more than 90% of those who voted early at the now relocated location, which according

⁵⁹ Spencer Woodman, *Voting Rights At Risk in Georgia*, ROLLING STONE, Nov. 4, 2013, available at www.rollingstone.com/politics/news/voting-rights-at-risk-in-georgia-20131104.

⁶⁰ Letter from Thomas E. Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Michael S. Green, et al., Apr. 13, 2012, available at http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/1_120413.pdf.

⁶¹ Bill Barrow, *States Promise Quick Action on Election Laws*, ASSOCIATED PRESS, Jun. 26, 2013, <http://bigstory.ap.org/article/states-promise-quick-action-after-voting-ruling>.

⁶² Sarah Childress, *After Shelby, Voting-Law Changes Come One Town at a Time*, PBS FRONTLINE, Aug. 8, 2013, <http://www.pbs.org/wgbh/pages/frontline/government-elections-politics/after-shelby-voting-law-changes-come-one-town-at-a-time/>.

⁶³ <http://www.rollingstone.com/politics/news/voting-rights-at-risk-in-georgia-20131104>

⁶⁴ Woodman, *supra* note 61.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Deshayla Strachan, *Black Vote May Be Threatened in Jacksonville*, COURTHOUSE NEWS SERVICE, Oct. 3, 2013, <http://www.courthousenews.com/2013/10/03/61749.htm>.

to the plaintiffs challenging the closure, is inaccessible by public transportation. Hernando County, Florida also adopted a plan to close and consolidate voting locations, with a focus on the neighborhoods of the City of Brooksville.⁶⁸ The plan called for eliminating polling places for the general election, and consolidating all Brooksville precincts into one. While the African-American citizen voting-age population (“CVAP”) of the County overall is about 4.5%, the African-American CVAP affected by this change in polling places is nearly 22%, and there are no minorities serving on the county commission. These polling place changes come in the wake of the 2012 elections, when the wait to vote in some Florida locations was over seven hours long,⁶⁹ and where more than 200,000 potential Florida voters did not vote in 2012 because of long lines.⁷⁰

Even more brazen are the cancelations of elections and changes in election dates in local jurisdictions in Georgia and New York, some of which were previously blocked by Section 5. Just days after *Shelby County*, officials in Augusta-Richmond, Georgia moved to reintroduce a plan to move county elections from their traditional November date to over the summer, when African-American turnout is significantly lower.⁷¹ In 2012, the Department of Justice had blocked Georgia’s attempt to switch the county election date to a summertime month.⁷² A federal lawsuit challenging this change is now pending.⁷³ Similarly, officials in Macon, a majority-African-American city in Bibb County, Georgia, held just one non-partisan municipal election for the consolidated Macon-Bibb County government in July.⁷⁴ Although turnout for all voters is lower in the summer months, African Americans are particularly harmed by such changes in election dates. In 2012, for example, 74.5% of African-American registrants in Augusta-Richmond voted in the November election; whereas, in the July election, African-American turnout rate was 33.2%. By comparison, the turnout rates for white registered voters were 72.6% in the November 2012 election, and 42.5% for the July election. Thus, African Americans were 55.4% less likely to vote in July than in November, while white persons were only 41.4% less likely to vote. In New York, Governor Andrew Cuomo has refused to call special elections for twelve vacant state legislative seats, many of which are located in New York City, including the three boroughs formerly covered by Section 5. LDF and other civil rights groups have protested the Governor’s change from past precedent, in which special elections were called quickly. The Governor’s decision has left over

⁶⁸ Maryann Tobin, *Hernando Takes Mixed Approach to Voting Rights With Polling Location Changes*, EXAMINER.COM, (Aug. 25, 2013), <http://www.examiner.com/article/hernando-takes-mixed-approach-to-voting-rights-with-polling-location-changes>.

⁶⁹ Luke Johnson, *Florida Voting Lines Discouraged 201,000 Voters Statewide: Report*, HUFFINGTON POST (Jan. 24, 2013), http://www.huffingtonpost.com/2013/01/24/florida-voting-lines-report_n_2544373.html.

⁷⁰ Scott Powers & David Damron, *Analysis: 201,000 in Florida Didn’t Vote Because of Long Lines*, ORLANDO SENTINEL (Jan. 29, 2013), http://articles.orlandosentinel.com/2013-01-29/business/os-voter-lines-statewide-20130118_1_long-lines-sentinel-analysis-state-ken-detzner.

⁷¹ Woodman, *supra* note 61.

⁷² Letter From Thomas E. Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Dennis R. Dunn, Deputy Attorney General, State of Georgia, Dec. 21, 2012, *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/1_121221.pdf.

⁷³ Sandy Hodson, *Plaintiffs in Election Date Lawsuit File Response to City of Augusta*, THE AUGUSTA CHRONICLE, (May 7, 2014), *available at* <http://m.chronicle.augusta.com/news/crime-courts/2014-05-07/plaintiffs-election-date-lawsuit-file-response-city-augusta>.

⁷⁴ Adam Ragusea, *Ga. Voters Surprised Macon Election Change Isn’t Challenged*, NPR.COM, (Feb. 6, 2014), <http://www.npr.org/2014/02/06/272359791/voting-rights-act-update>.

two million voters, at least 800,000 of whom are people of color in New York City, unrepresented and largely voiceless.⁷⁵

Student voters of color face other new, yet eerily familiar, problems. In North Carolina, for example, elections officials in college towns and elsewhere began efforts to make voting more difficult for students and people of color.⁷⁶ Election officials considered closing an early voting site at Winston Salem State University, one of North Carolina's Historically Black Colleges and Universities (HBCUs).⁷⁷ The Watauga County Board of Elections voted to eliminate an early voting site and election-day polling precinct on the Appalachian State University campus.⁷⁸ The county also considered a plan to combine three precincts into one to serve 9,300 voters, making it the third-largest voting precinct in the state. That one precinct site has 35 parking spaces, is a mile away from the University, along a campus road with no sidewalks.⁷⁹ The Pasquotank County Board of Elections initially barred – before being reversed by the State Board of Elections – a senior at the HBCU Elizabeth City State University from running for city council based on a determination that his on-campus address did not establish local residency. A Pasquotank county leader continues to express his intention to challenge the voter registrations of *more* students at HBCUs in advance of upcoming elections.⁸⁰ In Arizona, the Maricopa County Community College District Board, which enrolled more than 260,000 students last year, and is located in a 30% Latino county, proposed adding two at-large electoral districts to its existing five-member Board, which is elected by districts.⁸¹ In the past, Section 5 had blocked similar discriminatorily plans in Arizona.⁸²

Finally, outright voter intimidation also remains a problem at the local level. In Florida, the Florida Department of Law Enforcement is investigating allegations that an appointed white city clerk in Sopchoppy intimidated African-American voters in a June 2013 election by needlessly questioning their residency; and, failed to remain neutral, instead actively campaigning for three white candidates.⁸³ Following the city clerk's efforts to prevent African Americans from voting, the incumbent African-American mayor lost by only one vote and an African-American city commissioner also lost the election. The Board of Elections in Forsyth County, North Carolina, also considered, but tabled, two proposals that would have placed security officers at the County's

⁷⁵ *New York Voting Rights Organizations Urge Governor Cuomo to Promptly Order Special Election for 12 Vacant Legislative Seats*, NAACP LDF, Mar. 18, 2014,

⁷⁶ Penda D. Hair, *North Carolina's Student Voting Battle Is Not Over*, HUFFINGTON POST, (Sept. 5, 2013), http://www.huffingtonpost.com/penda-d-hair/north-carolinas-student-voting-battle_b_3868345.html.

⁷⁷ Bertrand M. Gutierrez, *Chairman: Eliminate WSSU Early-Voting Site*, WINSTON-SALEM JOURNAL, Aug. 18, 2013, available at http://www.journalnow.com/news/elections/local/article_3da9300a-07a2-11e3-b6b3-001a4bcf6878.html.

⁷⁸ Ann Blythe, *State Elections Board Reverses Pasquotank Decision, Backs Watauga Ruling*, NEWSOBSERVER.COM, (Sept. 3, 2013), <http://www.newsobserver.com/2013/09/03/3161001/state-elections-board-says-elizabeth.html>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Al Macia, *Maricopa County Community College District Board To Add Two New Members*, KJZZ.COM, (Sept. 4, 2013), <http://kjzz.org/content/4855/maricopa-county-community-college-district-board-add-two-new-members>.

⁸² *Civil Rights Division: Arizona Determination Letters*, U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=az (last visited Jun. 23, 2014).

⁸³ Brendan Farrington, *Vote Suppression in Close Florida Election*, PHILADELPHIA TRIBUNE, Aug. 9, 2013, available at <http://www.phillytrib.com/newsarticles/item/10335-vote-suppression-alleged-in-close-fla-election.html>.

one-stop early voting site, and collected information from individuals or organizations returning voter registration forms.⁸⁴ Most recently, in advance of Mississippi’s 2014 U.S. Senatorial primary election, partisan poll watchers have just announced plans to use an ambiguous state election law to challenge African Americans who wish to lawfully vote in the Republican primary election.⁸⁵

IV. THE VOTING RIGHTS AMENDMENT ACT IS A NARROW AND TARGETED RESPONSE TO *SHELBY COUNTY V. HOLDER*

In *Shelby County, Alabama v. Holder*, the Supreme Court found that Section 4(b) of the Voting Rights Act—the formula for determining which jurisdictions must seek preclearance of voting changes—was unconstitutional because it relied on historical data. However, the Court upheld the preclearance mechanism itself, Section 5, and suggested that Congress could enact another formula to redress voting discrimination based on “current data reflecting current needs.”

The VRAA represents a measured, flexible and forward-looking attempt by Congress to update the Voting Rights Act in direct response to the Supreme Court’s ruling in *Shelby County*. The VRAA contains several components which 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 courts that hear their claims, the tools to detect and prevent voting discrimination before it takes effect. The proposals are uniform in that they protect against voting discrimination anywhere in the country.

One key provision is a revised formula which requires preclearance for jurisdictions with a recent history of voting discrimination. It is a direct response to the Court’s instruction in *Shelby County* that “Congress may draft another formula based on current conditions.”⁸⁶ The new formula provides that a state or political subdivision is required to preclear voting changes if a certain number of voting rights violations are committed by a state or political subdivision within any 15-year period. The new formula operates on a rolling basis, with an annual assessment of which states and political subdivisions meet the trigger. This ensures that coverage is always based on the most recent acts of discrimination, in keeping with the Supreme Court’s admonition that the formula should focus on “current conditions.”⁸⁷

In addition to this new coverage formula, the VRAA includes other important provisions to combat voting discrimination nationwide. These new protections will be available anywhere they are needed, which responds to the Supreme Court’s concern that some states were singled out for coverage.

⁸⁴ Meghan Evans, *Elections Board Tables Vote on Security Officers at Polling Sites*, WINSTON-SALEM JOURNAL, Aug. 20, 2013, available at http://www.journalnow.com/news/local/article_a3528306-0a05-11e3-adf2-001a4bcf6878.html

⁸⁵ Sheryl Gay Stolberg and Theodore Schleifer, *Conservatives Plan to Use Poll Watchers in Mississippi*, N.Y. TIMES, Jun. 22, 2014, available at <http://www.nytimes.com/2014/06/23/us/conservatives-plan-to-use-poll-watchers-in-mississippi.html>

⁸⁶ *Shelby County*, 133 S. Ct. at 2631.

⁸⁷ *Id.*

First, the VRAA strengthens requirements that states and counties provide notice to the public of any changes to certain voting laws, including laws enacted within 180 days of an election. This nationwide notice provision will promote transparency and improve the ability of communities to effectively engage with their local and state governments on potential changes to election laws.

The VRAA would provide guidance to federal courts regarding when it is appropriate to grant a request from the local community to temporarily suspend the implementation of new voting laws, pending a federal court review of whether that new law is racially discriminatory. The bill would also allow a federal court to order preclearance as a remedy when it finds that such a remedy is necessary to cure *any* violation of federal voting rights law. Finally, the VRAA permits the Department of Justice to send Federal Observers to monitor elections in jurisdictions covered under either the new rolling coverage provision or Section 203 of the Act, an existing provision that makes elections more accessible to citizens in jurisdictions where there is a concentration of voters who need language assistance in order to cast an informed ballot.

V. CONCLUSION

This record of discriminatory voting changes—over just a one-year period—illustrates that adopting the Voting Rights Amendment Act is the wisest constitutional course. It is clear that political entities previously covered by Section 5 have begun to use the *Shelby County* decision as license to enact discriminatory measures across the full panoply of electoral processes. The record developed thus far indicates that there will be more discrimination to come, particularly as our nation approaches a general election. While LDF and other civil rights law organizations are using both litigation and public advocacy to aggressively combat many of the discriminatory changes that have occurred in the absence of Section 5’s enforcement authority, we cannot do it alone. In reauthorizing the Voting Rights Act time and again, successive Congresses have sought to minimize the reliance on expensive, long-term, and contentious litigation in our courts to protect the fundamental right to vote and instead, have relied upon an administrative enforcement mechanism that is designed to detect discrimination and then prevent it from occurring before it can harm our democratic process. Only Congress has the ultimate authority to enforce the anti-discrimination principle articulated in the Fourteenth and Fifteenth Amendments to the Constitution. We urge this Congress to use that exclusive and clearly-stated authority to respond to the urgent need occasioned by the Court’s decision in *Shelby County*.

It is our view that the VRAA directly responds to the Court’s *Shelby County* decision by adopting a modern coverage provision, and restoring a preclearance process shaped to address contemporary voting discrimination wherever it may arise. The VRAA also would require public notice nationwide for many potentially discriminatory voting changes, make it easier to stop such changes at the earliest stages of litigation, and expand avenues for “bailing-in” certain jurisdictions to the preclearance regime if a court found this necessary to protect voters.

Without these vital protections, the very essence of our democracy is at stake. We call upon Congress to move quickly to enact the Voting Rights Act Amendment.

ATTACHMENT



STATEWIDE AND LOCAL RESPONSES TO THE SUPREME COURT'S VOTING RIGHTS ACT DECISION JUNE 2014

INTRODUCTION

Since 1965, Section 5 of the Voting Rights Act (VRA) has 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 Department of Justice or a federal court in Washington, D.C. for pre-approval. This requirement was commonly known as “preclearance.”

For nearly 50 years, Section 5 preclearance has served as our democracy’s discrimination checkpoint by halting discrimination in voting before it occurred. Section 4(b) of the VRA authorized Congress to determine which jurisdictions should be “covered” and therefore which jurisdictions were required to seek preclearance.

On June 25, 2013, the United States Supreme Court issued its decision in *Shelby County, Alabama v. Holder*. In this case, *Shelby County* challenged the constitutionality of Sections 4(b) and 5 of the VRA. The NAACP Legal Defense and Educational Fund 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. The Court held that the coverage provision was out of date and not responsive to current conditions in voting.

The Supreme Court’s decision in *Shelby County* effectively suspended the preclearance requirement for all jurisdictions covered by Section 4(b)—those states and localities with the worst records of discrimination in voting. Before the decision, preclearance applied to nine entire states, mostly in the South (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). After *Shelby County*, these states and jurisdictions have been free to implement changes in voting without having to go through the preclearance process to determine whether they are discriminatory.

NAACP LEGAL DEFENSE FUND’S RESPONSE TO SHELBY

Since the day of the *Shelby County* ruling, NAACP LDF has closely monitored how formerly covered states and localities are responding to the decision. In addition, NAACP LDF attorneys have fanned

out across the country to empower communities of color made especially vulnerable by the Supreme Court’s ruling, and to urge them to be their community’s eyes and ears, and alert NAACP LDF to discriminatory voting changes.

NAACP 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 elections official and elected representatives, and monitoring elections.

It is important to note that while changes in congressional districts attract media attention, local changes, such as moving a polling place or switching from district-based to at-large voting, also significantly impact communities of color. NAACP LDF is encouraging voters to let us know of any voting changes that are planned for their communities by emailing vote@naacpldf.org.

THE VOTING RIGHTS AMENDMENT ACT

In addition to pursuing litigation with all of the legal tools that remain available, NAACP LDF is urging Congress to aggressively respond to the Supreme Court’s shameful decision and to protect voters of color from discrimination.

On January 16, 2014, a bipartisan group of Members of Congress introduced the Voting Rights Amendment Act of 2014 (VRAA). 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. Senator Patrick Leahy (D-VT) and other Senators introduced a companion bill, S. 1945, in the Senate on the same day.

The VRAA represents a measured, flexible and forward-looking attempt by Congress to update the Voting Rights Act in response to the Supreme Court’s ruling in *Shelby County*. Although not perfect, the VRAA is an important first step toward restoring the protections now at risk because of the U.S. Supreme Court’s decision in *Shelby County v. Holder*. The VRAA contains several components which 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 courts that hear their claims - the tools to detect and prevent voting discrimination before it takes effect.

What follows is a running-and still growing-compendium of state, county, and local level responses to the decision, including jurisdictions' intentions to implement new discriminatory voting changes in the wake of the Shelby County decision.

The need for immediate Congressional action is starkly illustrated in the details of efforts by states and localities to enact measures with potentially devastating consequences on political participation by communities of color.

ALABAMA

State Level:

Following the *Shelby County* decision, Alabama Attorney General Luther Strange stated that the State's voter identification law will be implemented immediately.¹ Civil rights and pro-democracy groups, among others, have expressed concerns with the "voucher provision" of the photo ID law, which enables two election officials to "vouch" for voters lacking photo ID and, accordingly places substantial discretion in the hands of local officials, which potentially violates the Voting Rights Act. Those groups have urged the Secretary of State to issue regulations related to the voucher provision.²

Alabama also seeks to require voters to show proof of citizenship.³ This move immediately follows a March 19, 2014 federal court decision that ordered the federal Election Administration Commission to modify the state-specific instructions on the federal mail voter registration form to reflect state requirements (of Arizona and Kansas only) that voter registrations provide documentary proof of citizenship.⁴

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. Arizona contends that the Court's *Inter Tribal* decision only applies to federal elections. Section 5 blocked a similar two-tiered system of voting in Mississippi in the 1990s.⁵

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.

Local Level:

A federal district court has ordered preclearance review of voting practices in **Evergreen** in Conecuh County under Section 3, the "bail-in" provision of the Voting Rights Act.⁶ Specifically, Evergreen must submit 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 Department of Justice through December 2020. In addition, the court appointed federal observers to monitor Evergreen's elections under the Voting Rights Act.

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.⁷ In 2012, 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.

ARIZONA

State Level:

The state of Arizona, along with the state of Kansas, has sued the Election Assistance Commission (EAC) seeking to require proof of citizenship to vote in state and local elections, setting up a two-tiered system of voting for state/local versus federal elections.⁸ The EAC issued a decision denying those states' requests.⁹ Multiple groups, including communities of color, intervened in that action¹⁰ and have brought other cases to challenge Arizona's and Kansas's proof-of citizenship for voter registration laws.¹¹ On March 19, 2014, in one case, a federal court ordered the EAC to modify the state-specific instructions on the federal mail voter registration form to reflect Kansas and Arizona requirements that voter registrations provide documentary proof of citizenship.¹²

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. Arizona contends that the Court's *Inter Tribal* decision only applies to federal elections. Section 5 blocked a similar two-tiered 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.

State lawmakers also propose reenacting voting provisions—previously blocked by voter referendum—that would allow counties to purge people from the permanent early voter list, a list that counties use to mail ballots prior to every election to individuals, who, after marking their ballot, mail them back or take them to a polling place.¹³

Local Level:

The **Maricopa County Community College District Board** is proposing to add two at-large electoral districts to its existing five-member Board, which is elected by districts.¹⁴ This year, the community college district, which is the largest in the country, enrolled more than 260,000 students. Section 5 previously blocked this plan. Historically, jurisdictions have used at-large voting to dilute the voting strength of communities of color.

ARKANSAS*

The State's photo ID law was scheduled to be implemented on January 1, 2014, following an April 2013 bi-cameral majority vote to override Governor Mike Beebe's veto of the law.¹⁵ 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."¹⁶ Notwithstanding, appellate rulings may enable early voting with the photo ID law to go forward.¹⁷

*While Arkansas was not covered immediately before the *Shelby County* decision, it once was formerly covered due to LDF's litigation efforts. LDF continues to work in that state and track racial discrimination in voting as it arises there.

FLORIDA

State Level:

Following the *Shelby County* decision, Florida Secretary of State Ken Detzner said "[w]e're free and clear to follow through with our [early voting] law now without any restriction by the Justice Department. . . . Last year I think we spent over a half a million dollars defending our pre-clearance cases. That cost will be eliminated in the future as a result of this opinion."¹⁸

In August 2012, under Section 5, a federal court rejected these changes as harmful to Florida voters of color.¹⁹ In particular, the court determined that severe cuts to the state's early voting period would have serious consequences for African-American Floridians. In 2008, over half of Black voters in Florida cast their ballots during the early voting period.

Following the *Shelby County* decision, Governor Rick Scott also sought to reinstitute a purge of purported non-citizens from the state voter database, as he attempted to do in 2012.²⁰ In 2012, because of Section 5, Florida election officials were blocked from using an error-prone list to purge purported non-citizens from the election rolls.²¹ Following *Shelby County*, county election supervisors resisted Governor Scott's attempts to purge voters.

In 2014, a federal appellate court ruled, following a challenge from several pro-democracy and civil rights organizations, that Florida's 2012 program of systematically purging names from the voter rolls within 90 days of a federal election (in the State's purported effort to remove suspected non-citizens) violated a provision of the National Voter Registration Act.²²

A voter sued Florida's Secretary of State and Attorney General under the 14th Amendment of the U.S. Constitution for racial and partisan gerrymandering, claiming that the state's Congressional District 5 packs Black voters into that district.²³

During the 2012 elections, the wait to vote in some Florida locations was more than six hours.²⁴ More than 200,000 potential voters did not vote in 2012 because of long lines.²⁵

Local Level:

The Florida Department of Law Enforcement is investigating allegations that an appointed white city clerk in **Sopchoppy**, Florida (1) suppressed Black voters in a June 11, 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 candidates²⁶ Following the clerk's efforts to prevent Black voters from casting their ballots, the incumbent Black mayor lost by only one vote and a Black city commissioner lost.

In **Jacksonville**, the Board of Elections has closed and relocated a polling place that served large numbers of Black voters in the City.²⁷ In 2012, Black voters constituted more than 90 percent of those who voted early at the now closed polling place. The relocated polling place, according to plaintiffs challenging the closure, is inconvenient to public transportation, among other burdens.

Hernando County adopted a plan to close and consolidate voting locations, with a focus on the neighborhoods of the City of Brooksville.²⁸ The plan called for elimination of polling places for the general election, and consolidation of all Brooksville precincts into one. While the African American citizen voting-age population ("CVAP") of the County overall is about 4.5 percent, the CVAP affected by this change in polling places is nearly 22 percent African American. There are neither any African Americans nor Latinos serving on the County Commission.

GEORGIA

State Level:

Following the *Shelby County* decision, state lawmakers proposed legislation that would cut (to 6 days, including a Saturday) early-voting periods for small, but not larger, consolidated cities, as a purported cost-saving measure.²⁹

Local Level:

Pending voting changes include a county commission plan in **Fulton County**, Georgia's most populous county that, among other things, creates a new overwhelmingly white district and reduces the district sizes of majority-Black districts.³⁰

The **City of Athens** considered 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.³¹ Community members raised concerns that the location of the new centers would intimidate some 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.

Greene County implemented a redistricting plan for the five-member County Board of Commissioners. The plan, which one Black member of the Commission denounced, would result in Black voters' making up less than 51 percent, a bare majority, in

all five districts under the plan.³² Under Section 5, the Department of Justice blocked another redistricting plan in Greene County in 2012³³ and had been reviewing the above mentioned plan before the *Shelby County* decision.

Morgan County, after initially considering eliminating over half of the County's polling places, ultimately eliminated more than a third of them.³⁴ One city council member expressed his belief that the closures would disfranchise low-income voters and voters of color, many of whom lack cars.

Election officials in **Baker County**, a majority Black county with high poverty rates, considered eliminating four of its five polling places, requiring some voters to travel upwards of 20 miles to vote.³⁵

Election officials in **Augusta-Richmond** have reintroduced a plan that would move County elections from their traditional timing in November to over the summer, when Black voter turnout is typically lower.³⁶ A lawsuit, challenging a change in election date from the November general election to the May 20 primary election, is pending.³⁷ Under Section 5, the Department of Justice in 2012 blocked this same attempt to switch the election date from November to a summertime month.³⁸

Officials in **Macon**, a majority-Black city in Bibb County, decided to have just one non-partisan municipal election in July, when Black voter turnout typically is lower, moving from their traditional schedule of having partisan elections with a primary election in July and a general election in November.³⁹

MISSISSIPPI

Tate Reeves, Mississippi's Lieutenant Governor, said that pre-clearance "unfairly applied to certain states should be eliminated in recognition of the progress Mississippi has made over the past 48 years."⁴⁰ Secretary of State Delbert Hosemann said he is moving forward immediately to implement Mississippi's voter ID law for primaries in June 2014.⁴¹

NEW YORK

A group of leading local and national voting rights advocates have pressed the Governor to hold special elections to fill 12 legislative vacancies in the New York State Senate and Assembly, which represent—but are left unrepresented currently—approximately 1.8 million voters across New York, over 800,000 of whom are people of color.⁴²

NORTH CAROLINA

State Level:

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 as a result of the ruling.⁴³ North Carolina State Senator Tom Apodaca also said he would move quickly to pass a voter ID law that some say would 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.⁴⁴ North Carolina Attorney General Roy Cooper, 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."⁴⁵

Thus, within two months of the *Shelby County* decision, Governor Pat McCrory signed an omnibus anti-voter bill, 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, and throwing out provisional ballots cast at the wrong polling station).⁴⁶

Local Level:

Within hours of the passage of the omnibus anti-voter bill, election boards in two college towns began efforts to make voting less accessible for students.⁴⁷

The **Watauga County Board of Elections** voted to eliminate an early voting site and election-day polling precinct on the Appalachian State University campus.⁴⁸ The County also considered a plan to combine three precincts into one to serve 9,300 voters, making it the third-largest voting precinct in the state. That one precinct site has 35 parking spaces and is located a mile away from the University, along a campus road with no sidewalks.⁴⁹

The **Pasquotank County Board of Elections** initially a senior at historically Black Elizabeth City State University from running for city council based on a determination that his on-campus address did not establish local residency. This move was eventually reversed by the State Board of Elections. A Pasquotank county leader continues to express his intention to challenge the voter registrations of more students at historically Black colleges and universities in advance of upcoming elections.⁵⁰

In **Benson**, North Carolina, county commissioners are considering lifting limits on at-large voting in the wake of the *Shelby County* decision. 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 Voting Rights Act litigation, residents can only vote for one at-large seat every three years.⁵¹

In **Forsyth**, North Carolina, the Board of Elections considered, but tabled, two proposals 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.⁵² The board chairman also considered closing an

early voting site at Winston Salem State University, a historically Black institution.⁵³

SOUTH CAROLINA

Adam Piper, a spokesman for Attorney General Alan Wilson, has stated that the assurance that South Carolina gave to a federal court about its interpretation of the reasonable impediment exception to the requirement of voter photo ID, which South Carolina began implementing in 2013, “still applies.”⁵⁴

“This 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,” South Carolina Attorney General Alan Wilson said.⁵⁵

TEXAS

State Level:

Within two hours of the Supreme Court’s *Shelby County* decision, Texas Attorney General Greg Abbott announced that the state’s voter identification law, previously rejected by a federal court as the most discriminatory measure of its kind in the country, would “immediately” go into effect.

In a statement, Abbott also said that “[r]edistricting maps passed by the legislature may also take effect without approval from the federal government,” even though those same maps had been deemed intentionally discriminatory by a federal court.⁵⁶ Texas Secretary of State John Steen also immediately announced that the state’s voter photo identification law would go into effect.⁵⁷

On June 26, the Texas Department of Public Safety began to offer election identification certificates (“EICs”) to Texas voters lacking other forms of identification. But even though the EIC is “free,” applying for one requires several costly underlying documents. Moreover, as a federal court found, some citizens would need to drive up to 250 miles to the nearest DPS just to apply for an EIC.⁵⁸

Local Level:

The **City of Pasadena** changed the structure of the district council by eliminating two seats elected from predominantly Hispanic districts, and replacing those seats with two at-large seats elected from majority white districts.⁵⁹ Voters recently approved this change. Pasadena’s 152,000 residents include a large and burgeoning Latino population.⁶⁰ Historically, jurisdictions have used at-large voting to dilute the voting strength of communities of color.

In **Galveston County**, officials have cut in half (from 8 to 4) the number of constables and justices of the peace districts—a move that was previously rejected under Section 5—and initially put in place by earlier litigation to remedy discrimination and provide electoral opportunity for voters of color.⁶¹ The effect of the reduced number of officials will be to eliminate virtually all of the Black-

and Latino-held positions on both boards. This redistricting comes in the midst of Black and Latino population gains in Galveston between 2000-2010.

In **Beaumont**, a group of white legislators has acted to eliminate the four-person Black majority school board.⁶² Prior to the *Shelby County* decision, Section 5 blocked a plan that would have changed the method of electing from seven single-member districts, to five single-member districts and two at-large. This move 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 the Black candidates’ having 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 has 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.

VIRGINIA

Paul Shanks, a spokesman for Governor Bob McDonnell, said; “We 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.”⁶³ State Senate Majority Leader Tommy Norment 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.”⁶⁴

A federal court recently dismissed a suit brought by the Democratic Party of Virginia (DPVA) against the State Board of Elections for removing up to 57,000 registered and qualified voters from voter registration lists.⁶⁵ The complaint alleges that the Board’s purge process is error-ridden and that it has required county and city registrars to “use their best judgment,” in determining whether to purge voters. Among others,⁶⁶ this purge has the potential to disfranchise voters of color, the elderly and the poor.

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

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