

CONGRESSIONAL TESTIMONY OF  
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For a Hearing On

Modern-Day Voting Discrimination in Alabama

Submitted to the Subcommittee on the Constitution, Civil Rights, and Civil  
Liberties of the U.S. House Committee on the Judiciary

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## Introduction

Chairwoman Butler, Ranking Member Cruz, and Members of the Committee, thank you for the opportunity to testify before you.

The American Civil Liberties Union of Alabama was founded in 1965, the same year that the Voting Rights Act (“VRA”) was enacted – to serve as a permanent line of defense against unconstitutional threats and assaults on democracy. Today, with a staff of community organizers, public policy experts, communication professionals, and lawyers, we work in courts, legislatures, and communities to defend the civil liberties and civil rights guaranteed to us by the Constitution and the Bill of Rights. Since our inception as an organization, that work has included ensuring that all Alabamians have access to the ballot and equitable representation in our political processes.

Beginning in the 1960s, the ACLU of Alabama has participated in voting rights litigation in both state and federal courts challenging voting laws and procedures that build – and further entrench – barriers to the ballot. Currently, in my capacity as a staff attorney for the ACLU of Alabama, I am a part of litigation teams challenging Alabama’s 2021 State Senate redistricting map in *Stone v. Allen*, and its congressional maps in *Milligan v. Allen*, under Section 2 of the Voting Rights Act of 1965.

While *Milligan* demonstrates the continued importance of the ability to bring claims under Section 2 of the VRA, my written statements will describe some of the reasons why post-enactment relief in the wake of *Shelby County v. Holder* is insufficient to protect voting rights. It is not merely the history of Alabama which demonstrates the “current need” for the burdens that were previously imposed by Section’s Five preclearance requirement, but current discriminatory practices which continue to keep Black Alabamians “from full and equal participation in the social, economic, and political life of the state.”<sup>1</sup> For these reasons and more, Congress must act to expand the protections of the VRA and restore the preclearance provisions for jurisdictions that persist in enacting discriminatory voting laws and districting schemes.

### I. Systematic Use of Violence, Intimidation, and Disenfranchisement Before the Voting Rights Act

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<sup>1</sup> *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1360 (M.D. Ala. 1986), order dissolved, No. CIV.A.2:85CV1332-MHT, 2006 WL 3392071 (M.D. Ala. July 31, 2006), and order dissolved, No. CIV.A. 2:85CV1332MHT, 2006 WL 3923887 (M.D. Ala. Oct. 3, 2006).

Following the Supreme Court's decision in *Smith v. Allwright*,<sup>2</sup> Black Alabamians – who now saw the federal courts as a vehicle to access political rights – began to register to vote en masse.<sup>3</sup> In response, the governor and legislature adopted a variety of new measures to minimize Black voter registration, including a state constitutional amendment which gave local officials wide discretion in disqualifying prospective voters and the redrawing of Tuskegee's municipal boundaries to deprive its growing Black electorate of political power.<sup>4</sup> These tools of disenfranchisement were again effective. Despite securing victories in landmark voting cases in the 1940s and 1950s, access to the ballot was still out of reach for the majority of Black Alabamians. In Selma, Alabama, despite numerous registration attempts, only two percent of Black locals were on the voting rolls.<sup>5</sup>

After several years of Black voter registration efforts, and violent backlash to these attempts, Dallas County – where Selma is located – had only added 335 new voters out of 30,000 eligible voters. By the end of January 1965, nearly 400 Black individuals had been arrested in actions aimed at accessing their full political, social, and economic rights.<sup>6</sup>

In February of that same year, Judge James Hare requested that law enforcement arrest anyone who was protesting outside the courthouse. On the first day of this enforcement alone, 450 demonstrators were arrested, most of whom were juveniles. When local officials tried to end the protests, demonstrations, and boycotts by arresting Reverend James Orange, approximately 500 Black community-members attempted to march from a church to the Perry County Jail to protest the arrest.<sup>7</sup> However, when community-members left the church to begin the march, law

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<sup>2</sup> 321 U.S. 649 (1944). See also *Guinn and Beal v. United States*, 238 U.S. 347 (1915).

<sup>3</sup> Davidson, C., & Grofman, B. (Eds.). (2021). *Quiet revolution in the South: The impact of the Voting Rights Act, 1965-1990*, at 45. Princeton University Press.

<sup>4</sup> Davidson, C., & Grofman, B. (Eds.). (2021). *Quiet revolution in the South: The impact of the Voting Rights Act, 1965-1990*, at 46. Princeton University Press.

<sup>5</sup> "Selma to Montgomery March," Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 26, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>.

<sup>6</sup> "Selma to Montgomery March," Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 26, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>.

<sup>7</sup> J. Mills Thornton III, *Dividing Lines: Municipal Politics and the Struggle for Civil Rights in Montgomery, Birmingham, and Selma* (Tuscaloosa and London: The University of Alabama Press, 2002), 853-54.

enforcement turned off the street lights, charged into the crowd, and began beating and arresting Black citizens.<sup>8</sup> Local white citizens joined the melee and attacked the press who had been covering the event.<sup>9</sup>

While attempting to protect his mother from an officer's nightstick, a state trooper shot Jimmie Lee Jackson, a 26-year-old church deacon, civil rights activist, and Army veteran from Marion, twice in the stomach.<sup>10</sup> Mr. Marion died eight days later.<sup>11</sup> In total, eight other persons were hospitalized – five Black demonstrators and three white reporters – and 826 persons were charged with unlawful assembly.<sup>12</sup>

At Mr. Jackson's memorial service, James Bevel of the SCLC proposed that activists organize a march from Selma to the state capitol, Montgomery, to force Alabama Governor George Wallace to confront demands for reform to the voter registration process.<sup>13</sup> Despite orders from Governor Wallace forbidding the march, on March 7, 1965, approximately 600 individuals – many of whom were women and young

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<sup>8</sup> "History and Culture," National Park Service, February 26, 2024, <https://www.nps.gov/semo/learn/historyculture/index.htm>.

<sup>9</sup> "The House and Selma: Bridging History and Memory," United States House of Representatives, accessed February 26, 2024, <https://history.house.gov/Exhibitions-and-Publications/Civil-Rights/Selma/>.

<sup>10</sup> "Selma to Montgomery March," Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 26, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>; "The House and Selma: Bridging History and Memory," United States House of Representatives, accessed February 26, 2024, <https://history.house.gov/Exhibitions-and-Publications/Civil-Rights/Selma/>.

<sup>11</sup> "Selma to Montgomery March," Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 26, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>; "The House and Selma: Bridging History and Memory," United States House of Representatives, accessed February 26, 2024, <https://history.house.gov/Exhibitions-and-Publications/Civil-Rights/Selma/>.

<sup>12</sup> J. Mills Thornton III, *Dividing Lines: Municipal Politics and the Struggle for Civil Rights in Montgomery, Birmingham, and Selma* (Tuscaloosa and London: The University of Alabama Press, 2002), 854.

<sup>13</sup> "The House and Selma: Bridging History and Memory," United States House of Representatives, accessed February 26, 2024, <https://history.house.gov/Exhibitions-and-Publications/Civil-Rights/Selma/>; J. Mills Thornton III, *Dividing Lines: Municipal Politics and the Struggle for Civil Rights in Montgomery, Birmingham, and Selma* (Tuscaloosa and London: The University of Alabama Press, 2002), 854.

teenagers<sup>14</sup> – led by John Lewis of SNCC and Hosea Williams of SCLC made their way through Selma.<sup>15</sup>

When the marchers came to the foot of the Edmund Pettus Bridge, they were confronted by a blockade of state troopers, local law enforcement, and Major John Cloud, who ordered the marchers to disperse.<sup>16</sup> When the marchers refused, law enforcement advanced into the crowd and attacked the protestors with clubs and bullwhips. “Forty canisters of tear gas, twelve canisters of smoke, and eight canisters of nausea gas were used.”<sup>17</sup> The attack lasted for 30 minutes and resulted in the hospitalization of 56 marchers.<sup>18</sup>

On the back of a decades-long struggle – in which Black Alabamians and civil rights workers died at the hands of Klansmen, law enforcement, elected officials, and local white mobs – the television coverage of “Bloody Sunday” galvanized public support for voting rights legislation. A few months after the Selma to Montgomery March, on August 5, 1965, Congress passed the Voting Rights Act.<sup>19</sup>

## II. Sections 4 and 5 of the Voting Rights Act of 1965

The VRA was signed into law on August 6, 1965.<sup>20</sup> Section 4 identified states, and political subdivisions, with a history of discrimination in voting. In 1965, the

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<sup>14</sup> “Interview with John Lewis,” Southern Oral History Program Collection, November 20, 1973, <https://docsouth.unc.edu/sohp/A-0073/A0073.html>.

<sup>15</sup> “Selma to Montgomery March,” Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 27, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>.

<sup>16</sup> “Selma to Montgomery March,” Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 27, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>.

<sup>17</sup> The Jack Rabin Collection on Alabama Civil Rights and Southern Activists, “Selma-to-Montgomery March,” Penn State University Library, accessed February 27, 2024, <https://libraries.psu.edu/about/collections/jack-rabin-collection-alabamacivil-rights-and-southern-activists/alabama-civil-4>.

<sup>18</sup> The Jack Rabin Collection on Alabama Civil Rights and Southern Activists, “Selma-to-Montgomery March,” Penn State University Library, accessed February 27, 2024, <https://libraries.psu.edu/about/collections/jack-rabin-collection-alabamacivil-rights-and-southern-activists/alabama-civil-4>.

<sup>19</sup> 52 U.S.C. § 10101.

<sup>20</sup> “The Voting Rights Act of 1965: Background and Overview,” Congressional Research Service, Updated July 20, 2015, access on February 26, 2024, <https://crsreports.congress.gov/product/pdf/R/R43626/15#:~:text=The%20Voting%20Rights%20Act%20was,preclearance%20of%20new%20laws%20in>.

jurisdictions covered by Section 4 were Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, 39 counties in North Carolina, and specified counties in Arizona and Hawaii.<sup>21</sup> Although time-limited, Section 4 was reauthorized in 1970, 1975, 1982, and 2006. States covered by Section 4, including Alabama, were subject to the “preclearance” requirements of Section 5.<sup>22</sup> Under Section 5, before a state could implement any new law or change in voting, they had to submit the proposed change for “preclearance” approval to either the Attorney General or a three-judge panel. The State had to demonstrate that the proposed change did not have the purpose of “denying or abridging the right to vote on account of race or color.” If the State did not get approval, they were not able to implement the new law or procedural change.

From 1982 to 2006, the Department of Justice objected to 46 proposed changes in voting by Alabama: 7 from the state and 39 from local jurisdictions.<sup>23</sup> Additionally, Section 5 prevented 181 voting changes from being implemented through the more information request process (MIR). Under the MIR, the DOJ issued a letter regarding a change that had been submitted for preclearance and the Alabama jurisdiction withdrew the change, adopted a new change, or did not respond to the letter.<sup>24</sup>

Beginning in 1966, the DOJ began sending observers to monitor elections in Alabama.<sup>25</sup> From 1966 to 2006, the DOJ sent nearly 5,000 observers to Alabama to observe 176 elections in 20 different counties.<sup>26</sup>

Alabama had a variety of proposed voting laws or procedures blocked through the Section 5 preclearance regime, including redistricting plans, changes to method of

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<sup>21</sup> “The Voting Rights Act of 1965: Background and Overview,” Congressional Research Service, Updated July 20, 2015, access on February 26, 2024, <https://crsreports.congress.gov/product/pdf/R/R43626/15#:~:text=The%20Voting%20Rights%20Act%20was,preclearance%20of%20new%20laws%20in.>

<sup>22</sup> James Blacksher, Edward Still, Jon M. Greenbaum, Nick Quinton, Cullen Brown & Royal Dumas, Voting Rights in Alabama: 1982-2006, 17 S. CAL. REV. L. & SOC. JUST. 249 (2008).

<sup>23</sup> James Blacksher, Edward Still, Jon M. Greenbaum, Nick Quinton, Cullen Brown & Royal Dumas, “Voting Rights in Alabama: 1982-2006,” 17 S. CAL. REV. L. & SOC. JUST. 249 (2008).

<sup>24</sup> James Blacksher, Edward Still, Jon M. Greenbaum, Nick Quinton, Cullen Brown & Royal Dumas, “Voting Rights in Alabama: 1982-2006,” 17 S. CAL. REV. L. & SOC. JUST. 249 (2008).

election, candidate qualifying procedures, voter registration procedures, voter purge and reidentification procedures, candidate nominating procedures, and even the annexation of a school district.<sup>27</sup>

The employment of preclearance procedures, which had prevented Alabama from implementing discriminatory voting laws or procedures for years, abruptly ended when the Supreme Court handed down their 5-4 decision in *Shelby County, Ala. v. Holder*.

### III. *Shelby County, Ala. v. Holder*

Shelby County, Alabama filed a lawsuit against the U.S. Attorney General challenging the constitutionality of Sections 4 and 5 of the VRA.<sup>28</sup> Shelby County argued that the preclearance sections were unconstitutional due to advances in voting rights for minorities and the fact that only certain states and political subdivisions were required to obtain preclearance.

On June 25, 2013, in a 5-4 decision, the U.S. Supreme Court determined that Section 4 of the VRA was unconstitutional.<sup>29</sup> In the majority opinion, the Court ruled that Section 4 identified jurisdictions for preclearance based on historical data, but the formula was not responsive to the present conditions. By striking down the preclearance formula in Section 4, the effect of their decision was to nullify Section 5.

Over ten years later, the absence of the preclearance provisions and the impact of the Court's decision in *Shelby County* is evident in Alabama.

### III. Alabama Post-*Shelby County*

Post-*Shelby County*, Alabama is the only state in the country where federal courts have twice found that a jurisdiction engaged in intentional racial discrimination and required those jurisdictions to submit to preclearance under Section 3.<sup>30</sup> But litigating for post-enactment relief is an expensive, time-consuming tool and one that often allows discriminatory laws to take effect before parties can obtain relief in court. It cannot bear the weight of the current conditions. That is why stronger voting rights protections and preclearance regimes are necessary to address present

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<sup>28</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>29</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>30</sup> Deuel Ross, "Voting Rights in Alabama: 2006 to 2022," 25 U. PENN. J. CON. L. 252 (2023).

racial discrimination in voting. The current landscape of Alabama demonstrates why these protections are necessary.

a. Data on Registration and Voter Turnout Post-*Shelby County*

Public data on voter registration and turnout in Alabama is available on the Secretary of State's (SOS) website, including data broken down by race.<sup>31</sup> This data, combined with data from the United States Census Bureau,<sup>32</sup> plainly demonstrates that racial disparities in voter registration and turnout currently exist in Alabama and have widened since *Shelby County*.<sup>33</sup>

According to data reported by the SOS, in the 2020 general election, white turnout was at 66.3%, compared with Black turnout of 57.0%, which is a 9.3 percentage point gap statewide. In some counties, white voter registration outpaced Black voter registration by double digits. For example, in Elmore County, there was a 16.2 percentage point gap between white voter registration and Black voter registration.

Political scientists have repeatedly affirmed that access to resources – specifically, socioeconomic resources – is an important factor in whether an individual votes because “socioeconomic status is related to the available time, money, and civic skills an individual can devote to overcoming the cost of voting.”<sup>34</sup> It is both a historic and contemporary reality<sup>35</sup> that the state of Alabama has intentionally constructed systems which “keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave.”<sup>36</sup> In 2021, the median

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<sup>31</sup> Expert Report of Dr. Traci Burch in *Stone v. Allen*, No. 2:21-cv-01531-AMM (N.D. Ala. Feb. 2, 2024).

<sup>32</sup> Burch Expert Report.

<sup>33</sup> Burch Expert Report.

<sup>34</sup> Burch Expert Report.

<sup>35</sup> See Mann, Bryan. and Rogers, Annah. (2021), Segregation Now, Segregation Tomorrow, Segregation Forever? Racial and Economic Isolation and Dissimilarity in Rural Black Belt Schools in Alabama. *Rural Sociology*, 86: 523-558 and “Justice Department Secures Resolution in Madison County, Alabama, School Desegregation Case.” Available online <https://www.justice.gov/opa/pr/justice-department-secures-resolution-madison-county-alabama-school-desegregation-case>. Accessed 29 Jan 2024.

<sup>36</sup> *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986), order dissolved, No. CIV.A.2:85CV1332-MHT, 2006 WL 3392071 (M.D. Ala. July 31, 2006), and order dissolved, No. CIV.A. 2:85CV1332MHT, 2006 WL 3923887 (M.D. Ala. Oct. 3, 2006).



household income for Black Alabama households was \$36,104, compared with \$62,545 for white Alabama households.<sup>37</sup>

Socioeconomic disparities also fuel disparities in access to transportation. In Alabama, Black households are more than twice as likely to lack access to a vehicle than white households.<sup>38</sup> The state of Alabama has continuously exploited these conditions to build further barriers to the ballot.

In 2015, the United States Department of Transportation announced that they had opened an investigation into whether Alabama’s proposed selective closure of more than 30 driver’s license offices would disproportionately impacted Black citizens ability to register to vote in violation of the VRA and Title VI of the Civil Rights Act.<sup>39</sup> Alabama implemented strict voter ID laws in 2014 – after they no longer were subject to Section 5 preclearance – that required voters to show a limited number of state-issued photo IDs in order to vote. In 2016, after federal transportation officials concluded that the office closures would disproportionately impact Black residents in the Black Belt region, the Alabama Law Enforcement Agency agreed to cancel the closures, expand the hours of operation for driver’s license offices throughout the Black Belt region, and develop a community participation plan to inform potential voters about these services.<sup>40</sup>

In 2020, a federal court explained after a full trial on the merits that Alabama’s restrictive absentee voting laws “enacted in the 1990s” and still in place today “disproportionately disadvantaged the rural Black citizens who historically relied on absentee voting. Because these citizens regularly worked long hours outside their counties and often lacked access to vehicles, they struggled to reach ‘far-flung polling places’ on Election Day. Alabama’s rural Black Belt, which is predominately Black, thus saw sharp declines in the number of absentee ballots cast.”<sup>41</sup> That same court found that Alabama’s requirement that absentee voters have their ballot witnessed by two other individuals or have their ballot envelope notarized violated

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<sup>37</sup> Burch Expert Report.

<sup>38</sup> Burch Expert Report.

<sup>39</sup> “U.S. Department of Transportation to Investigate Possible Discrimination through Alabama Driver License Office Closures,” U.S. Department of Transportation (Dec. 9, 2015), <https://www.transportation.gov/briefing-room/us-department-transportation-investigate-possible-discrimination-through-alabama>.

<sup>40</sup> Melanie Zanona, “Feds: Closing driver's license offices in Ala. violates civil rights,” The Hill, Dec. 28, 2016.

<sup>41</sup> *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1107 (N.D. Ala. 2020) (internal citations omitted).

Section 2 of the VRA in the context of the COVID 19 pandemic.<sup>42</sup> The court found that the interaction of the witness requirement with “the totality of the circumstances’ people of color face, e.g. disparities in health, COVID-19 risks, and access to critical resources for safely adhering to the witness requirement like transportation, funds for a notary, technology, and internet access” created these unequal outcomes.<sup>43</sup> The court further found “that the history of discrimination shows racial bias in the Alabama community caused the alleged vote-denial or abridgment.”<sup>44</sup>

In sum, Alabama continues to enact policies which exploit existing disparities in social, political, and economic life, to construct barriers to Black Alabamians who want to engage in civic life.

#### b. The First Black Mayor, Locked Out of Town Hall

Newborn, Alabama, is a one-square mile town in Hale County.<sup>45</sup> Hattie Hollis, an 83-year-old resident who was born and raised in the town, could not recall a single election in the town’s history.<sup>46</sup> According to filings in federal court, the town has not held elections in 60 years, as the title of mayor was simple passed down.<sup>47</sup>

In 2020, Patrick Braxton became Newbern’s first Black mayor by operation of law. When Braxton approached the incumbent, Haywood “Woody” Stokes III, for the qualifying papers, he was told that Newbern did not hold elections.<sup>48</sup> But, Braxton traveled to the county seat, filed the necessary paperwork, and paid the qualifying

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<sup>42</sup> *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1169 (N.D. Ala. 2020).

<sup>43</sup> *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1172 (N.D. Ala. 2020).

<sup>44</sup> *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1174 (N.D. Ala. 2020).

<sup>45</sup> Lee Hedgepeth, “He Became the First Black Mayor of Newbern, Alabama. A White Minority Locked Him out of Town Hall,” *Tread* (Jun. 5, 2023), <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>.

<sup>46</sup> Lee Hedgepeth, “He Became the First Black Mayor of Newbern, Alabama. A White Minority Locked Him out of Town Hall,” *Tread* (Jun. 5, 2023), <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>.

<sup>47</sup> Lee Hedgepeth, “He Became the First Black Mayor of Newbern, Alabama. A White Minority Locked Him out of Town Hall,” *Tread* (Jun. 5, 2023), <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>.

<sup>48</sup> Kyle Whitmire, “A Fight for Rights and Control in a Black Belt Town Without Election,” *AL.Com* (Jul. 20, 2023), <https://www.al.com/news/2023/07/a-fight-for-rights-and-control-in-a-black-belt-town-without-elections.html>.

fee to run for mayor.<sup>49</sup> The former white mayor, admitted in court filings that he did not file the appropriate paperwork to qualify for the office of mayor.<sup>50</sup>

Patrick Braxton, as the only qualifying mayoral candidate, was sworn in as mayor in November of 2020. Because none of the incumbent city council members had qualified to run, under Alabama law, Mayor Braxton had the legal authority to fill the vacancies by appointment. The County Circuit judge swore both Mayor Braxton and his appointed council into office on the same day.<sup>51</sup> It was the first time the Alabama town had been represented by politicians that reflected its majority-Black population.

But then, according to a federal civil rights lawsuit filed by Mayor Braxton, former members of the prior majority-white council held an unpublicized special election to fill their own seats.<sup>52</sup> After appointing themselves as the town council, they met again, in private, to claim that Stokes was the mayor.<sup>53</sup>

Mayor Braxton remains locked out of town hall.<sup>54</sup> He was denied access to the city's bank accounts. He alleges that one day he was run off the road.<sup>55</sup> Mayor Braxton's federal lawsuit is still ongoing, but he has announced he is running for mayor again in 2025.<sup>56</sup>

The conditions in Newbern reflect that the history of intimidation, suppression, and disenfranchisement of not merely Black voters, but Black public officials, is not merely a history – but a present reality.

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<sup>49</sup> <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>

<sup>50</sup> <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>

<sup>51</sup> Kyle Whitmire, "A Fight for Rights and Control in a Black Belt Town Without Election," AL.Com (Jul. 20, 2023), <https://www.al.com/news/2023/07/a-fight-for-rights-and-control-in-a-black-belt-town-without-elections.html>.

<sup>52</sup> <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>

<sup>53</sup> <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>

<sup>54</sup> Kyle Whitmire, "A Fight for Rights and Control in a Black Belt Town Without Election," AL.Com (Jul. 20, 2023), <https://www.al.com/news/2023/07/a-fight-for-rights-and-control-in-a-black-belt-town-without-elections.html>.

<sup>55</sup> Kyle Whitmire, "A Fight for Rights and Control in a Black Belt Town Without Election," AL.Com (Jul. 20, 2023), <https://www.al.com/news/2023/07/a-fight-for-rights-and-control-in-a-black-belt-town-without-elections.html>.

<sup>56</sup> Kyle Whitmire, "A Fight for Rights and Control in a Black Belt Town Without Election," AL.Com (Jul. 20, 2023), <https://www.al.com/news/2023/07/a-fight-for-rights-and-control-in-a-black-belt-town-without-elections.html>.

c. SB1: Moving from Disenfranchisement to Criminalization

The current barriers to Black Alabamians accessing the ballot go beyond disenfranchisement. In 1979, Julia Wilder – an elderly civil rights worker from rural Pickens County, Alabama, along with her friend and then president of the local NAACP branch, 51-year-old Maggie Bozeman, were convicted of three counts of voting fraud.<sup>57</sup> Their crime: assisting elderly and illiterate Black citizens in filling out their absentee ballots. At the time of their conviction, Pickens County – which was approximately 40% Black, had no Black elected county officials.<sup>58</sup> For years, Mrs. Bozeman and Mrs. Wilder, who was president of a Pickens County voters' group and an officer with the SCLC, had led voter registration and turnout efforts.

An all-white jury found them guilty of voter fraud for their assistance and Circuit Court Judge Clatus Junkin sentenced Mrs. Wilder to five years in prison and Mrs. Bozeman to four.<sup>59</sup> When the judge announced his decision, a predominately Black crowd of approximately 300 courtroom spectators broke out into the civil rights song, "We Shall Not Be Moved."<sup>60</sup> Mrs. Bozeman, a grammar schoolteacher, was fired from her job after the conviction.<sup>61</sup>

Both elders appealed their convictions, but after Alabama courts refused to provide the women relief – despite noting that the testimony of the witnesses was

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<sup>57</sup> Art Harris, "Pickens County Flare-Up: The Story of 2 Blacks Found Guilty," The Washington Post (Feb. 6, 1982),

<https://www.washingtonpost.com/archive/politics/1982/02/06/pickens-county-flare-up-the-story-of-2-blacks-found-guilty/5fdc01a5-35f2-46a7-94eb-01bba7e47418/>.

<sup>58</sup> Reginald Stuart, "2 Alabama Rights Workers are Jailed for Voting Fraud," The New York Times (Jan. 12, 1982), <https://www.nytimes.com/1982/01/12/us/2-alabama-rights-workers-are-jailed-for-voting-fraud.html>.

<sup>59</sup> Art Harris, "Pickens County Flare-Up: The Story of 2 Blacks Found Guilty," The Washington Post (Feb. 6, 1982),

<https://www.washingtonpost.com/archive/politics/1982/02/06/pickens-county-flare-up-the-story-of-2-blacks-found-guilty/5fdc01a5-35f2-46a7-94eb-01bba7e47418/>.

<sup>60</sup> Reginald Stuart, "2 Alabama Rights Workers are Jailed for Voting Fraud," The New York Times (Jan. 12, 1982), <https://www.nytimes.com/1982/01/12/us/2-alabama-rights-workers-are-jailed-for-voting-fraud.html>.

<sup>61</sup> Art Harris, "Pickens County Flare-Up: The Story of 2 Blacks Found Guilty," The Washington Post (Feb. 6, 1982),

<https://www.washingtonpost.com/archive/politics/1982/02/06/pickens-county-flare-up-the-story-of-2-blacks-found-guilty/5fdc01a5-35f2-46a7-94eb-01bba7e47418/>.

“confusing and conflicting,”<sup>62</sup> Judge Junkin denied the women probation.<sup>63</sup> Seven armed deputies escorted both women to Tutwiler prison. After widespread community protest, Alabama Governor Fob James negotiated a work-release program where the women were transferred to Tuskegee to serve out their sentences.

While again, the harrowing story of two women facing criminal prosecution for assisting elderly, illiterate Black voters seems as though it comes from a distant past, in the current Alabama legislature session, ten senators have sponsored Senate Bill 1 (SB1). SB1 would make it a felony to provide assistance to absentee voters.

The proposed legislation would make it a Class C felony, punishable by up to 10 years in prison, for a third party to receive payment or a gift for distributing, ordering, requesting, collecting, completing, prefilling, obtaining, or delivering an absentee ballot application. The legislation does not define the term “gift.”

Additionally, the proposed legislation would make it a Class B felony, punishable by up to 20 years in prison, for any person who pays or provides a gift to a third party to distribute, order, request, collect, prefill, complete, obtain or deliver a voter’s absentee ballot application. In Alabama, other Class B felonies offenses include manslaughter, statutory rape, and theft of property in the first degree.

At a public hearing on the bill, held less than one month ago, community members packed the hearing room, including Barbara Manuel – the President of the National Federation of the Blind of Alabama – who testified as to how this bill would

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<sup>62</sup> Reginald Stuart, “2 Alabama Rights Workers are Jailed for Voting Fraud,” The New York Times (Jan. 12, 1982), <https://www.nytimes.com/1982/01/12/us/2-alabama-rights-workers-are-jailed-for-voting-fraud.html>.

<sup>63</sup> Art Harris, “Pickens County Flare-Up: The Story of 2 Blacks Found Guilty,” The Washington Post (Feb. 6, 1982), <https://www.washingtonpost.com/archive/politics/1982/02/06/pickens-county-flare-up-the-story-of-2-blacks-found-guilty/5fdc01a5-35f2-46a7-94eb-01bba7e47418/>.

criminalize the work of volunteers and voting rights organizations that aim to assist disabled voters.<sup>64</sup> Only one member of the public spoke in favor of the bill.<sup>65</sup>

Despite a statement from the Senate Governmental Affairs Chairperson that he did not plan to hold a vote on the bill (as a substitution was introduced that the public did not previously have access to), SB1 passed out of committee in a 7-3 vote.<sup>66</sup>

In the year 2024, the Alabama legislature is fighting to pass a bill that would not merely prevent churches, non-partisan organizations, and volunteers from assisting individuals in need of assistance from accessing absentee ballots, but would criminalize this behavior. Rather than investing public resources into ensuring that Alabamians have an opportunity to participate in political processes, the legislature is spending its resources criminalizing a problem that does not exist.

While proponents claim this bill is necessary to prevent fraud through absentee ballot return support, there is no evidence of widespread voter fraud in Alabama. Alabama law already strictly limits ballot return and the criminal penalties for violating these laws are already printed on absentee ballot applications. Even according to a database from the Heritage Foundation—which nonpartisan, independent researchers have called “grossly exaggerated and devoid of context”<sup>67</sup>—found only 20 cases even charging any type of election fraud occurred from 2000 to 2023.<sup>68</sup> A federal court in Alabama found in 2020 that “voter fraud rarely occurs today, and the defendants point to only two instances of voter fraud convictions

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<sup>64</sup> Jemma Stephenson, “Alabama Senate Committee Approves Restrictions on Absentee Ballot Assistance Amid Confusion,” Alabama Reflector (Feb. 7, 2024), <https://alabamareflector.com/2024/02/07/alabama-senate-committee-approves-restrictions-on-absentee-ballot-assistance-amid-confusion/>.

<sup>65</sup> Jemma Stephenson, “Alabama Senate Committee Approves Restrictions on Absentee Ballot Assistance Amid Confusion,” Alabama Reflector (Feb. 7, 2024), <https://alabamareflector.com/2024/02/07/alabama-senate-committee-approves-restrictions-on-absentee-ballot-assistance-amid-confusion/>.

<sup>66</sup> Jemma Stephenson, “Alabama Senate Committee Approves Restrictions on Absentee Ballot Assistance Amid Confusion,” Alabama Reflector (Feb. 7, 2024), <https://alabamareflector.com/2024/02/07/alabama-senate-committee-approves-restrictions-on-absentee-ballot-assistance-amid-confusion/>.

<sup>67</sup> Rudy Mehrbani, *Heritage Fraud Database: An Assessment*, Brennan Ctr. (Sept. 8, 2017), <https://www.brennancenter.org/our-work/research-reports/heritage-fraud-database-assessment>.

<sup>68</sup> “Election Fraud Cases,” The Heritage Foundation, accessed February 26, 2024, <https://www.heritage.org/voterfraud/search>.

secured in Alabama since the 1990s.”<sup>69</sup>

In fact, the last case of voter fraud in Alabama identified by the Heritage Foundation was when David Cole, a member of the Alabama House of Representatives, was charged with one count of felony false registration after falsely claiming he resided in a different state house district during the 2022 primary and general elections.<sup>70</sup> And yet, potentially this week, the Alabama legislature could vote to institute this unnecessary and extreme law.

Without the decision by the Supreme Court in *Shelby County*, SB1 would be subject to the preclearance requirements of the VRA. But, without the preclearance procedures, Alabamians who face criminal penalties for promoting election participation – in a state where only 38.5% of residents cast ballots in the 2022 midterms – must wait on costly, uncertain, and post-enactment litigation to address any discriminatory impact of SB1 if it is passed. These laws show that a new coverage formula like the one proposed by the John Lewis VRAA is necessary to ensure that jurisdictions like Alabama that persist in enacting discriminatory voting laws have review of those laws before they can harm voters.

### **Conclusion**

The Court’s decisions since 2013 demonstrate that Section 2 of the VRA remains a litigation tool for preliminary relief. However, unlike the previous pre-clearance regime that the Court struck down in *Shelby County*, Section 2 claims can only be filed in court after a new voting law or policy is already enacted. Plaintiffs must go to court to litigate their claims – a process which may take years and often cost millions – to even have an opportunity for a judge to strike down the law or order that the practice must temporarily stop. In between the filing and eventual resolution of these suits, the discriminatory law or practice remains in place. Unlike relief which can be quantified in monetary terms, there is no relief for the irrevocable impact of multiple election cycles which may have taken place under unconstitutional conditions.

I thank you again for the opportunity to testify in front of this subcommittee on these critical issues.

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<sup>69</sup> *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1107 (N.D. Ala. 2020).

<sup>70</sup> “Election Fraud Cases,” The Heritage Foundation, accessed February 26, 2024, <https://www.heritage.org/voterfraud/search>.