

# ENDNOTES

## CHAPTER 1

- 1 *South Carolina v. Katzenbach*, 383 U.S. 301, 315–16
- 2 See *United States v. Cruikshank*, 92 U.S. 542 (1876); *United States v. Reese*, 92 U.S. 214 (1876).
- 3 See J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910*, at 45–62 (1974).
- 4 Richard Wormser, *The Rise and Fall of Jim Crow* 165–82 (2003).
- 5 See, e.g., *Katzenbach*, 383 U.S. at 313.
- 6 U.S. Comm'n on Civil Rights, *The Voting Rights Act: Ten Years After* 43 (1975).
- 7 President Lyndon B. Johnson, Special Message to Congress: The American Promise (Mar. 15, 1965), available at <http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650315.asp>.
- 8 Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437.
- 9 *Id.* § 4 (codified as amended at 42 U.S.C. § 1973b).
- 10 42 U.S.C. § 1973b(c).
- 11 Voting Rights Act, § 6.
- 12 42 U.S.C. § 1973f.
- 13 See 42 U.S.C. § 1973c.
- 14 See Voting Rights Act, § 2 (codified as amended at 42 § 1973).
- 15 42 U.S.C. § 1973b(e).
- 16 42 U.S.C. § 1973i.
- 17 *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966).
- 18 *Id.* at 328 (footnote omitted).
- 19 Voting Rights Act, § 4.
- 20 Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314; Voting Rights Amendments of 1975, Pub. L. No. 94-73, 89 Stat. 400; Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131; Fannie Lou Hamer, Rosa Parks, Coretta Scott King, Cesar Chavez, Barbara C. Jordan, William C. Valasquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577.
- 21 Voting Rights Act Amendments of 1970.
- 22 Voting Rights Amendments of 1975.
- 23 H.R. Rep. No. 109-478 (2006); H.R. Rep. No. 97-205 (1982); H.R. Rep. No. 94-196 (1975); H.R. Rep. No. 91-397 (1969).
- 24 H.R. Rep. No. 94-196.
- 25 *Id.*
- 26 *Id.*
- 27 *Voting Rights Amendments of 1975* § 203 (codified as amended at 42 U.S.C. § 1973aa-la).
- 28 *Id.*
- 29 See *Mobile v. Bolden*, 446 U.S. 55 (1980).
- 30 S. Rep. No. 97-417 (1982).
- 31 *Katzenbach v. Morgan*, 384 U.S. 641 (1966).
- 32 *Georgia v. United States*, 411 U.S. 526, 535 (1973).
- 33 *City of Rome v. United States*, 446 U.S. 156, 172–82 (1980).
- 34 *Lopez v. Monterey Cnty.*, 525 U.S. 266 (1999).
- 35 *Backgrounder: The Voting Rights Act*, VRA for Today, [http://vrafortoday.org/?attachment\\_id=212](http://vrafortoday.org/?attachment_id=212) (last visited July 16, 2014).
- 36 See generally Nat'l Comm'n on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work 1982-2005* (2006).
- 37 Press Release, Leadership Conference on Civil Rights, Civil Rights Coalition Celebrates Renewal of Landmark Voting Rights Act (July 27, 2006), available at <http://www.civilrights.org/press/2006/civil-rights-coalition-celebrates-renewal-of-landmark-voting-rights-act.html>.
- 38 *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471 (1997).
- 39 *Georgia v. Ashcroft*, 539 U.S. 461 (2003).
- 40 H.R. Rep. No. 109-478, at 66-72.
- 41 *Id.* at 61-62.
- 42 *Section 2 of the Voting Rights Act*, U.S. Dep't of Justice, [http://www.justice.gov/crt/about/vot/sec\\_2/about\\_sec2.php](http://www.justice.gov/crt/about/vot/sec_2/about_sec2.php) (last visited July 16, 2014).
- 43 42 U.S.C. § 1973(b).
- 44 S. Rep. No. 97-417, 28-29 (1982).
- 45 *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986). The potential Section 2 factors include:
  1. the history of official voting-related discrimination in the state or political subdivision; 2. the extent to which voting in the elections of the state or political subdivision is racially polarized; 3. the extent to which the state of political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting; 4. the exclusion of members of the minority group from candidate slating processes; 5. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; 6. the use of overt or subtle racial appeals in political campaigns; and 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.
- See *id.* at 36–37. Also potentially relevant is: whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group [or] whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.
- Id.* at 37 (quoting S. Rep. 97-417, at 28-29).
- 46 See Nat'l Comm'n on the Voting Rights Act, *supra* note 36, at 88.
- 46a *Gingles*, 478 U.S. at 49-51.
- 47 *Id.* at 46.

- 48 Section 5 defines a voting change as any practice that differs either from the pre-existing practice or from the practice in effect on the date that the jurisdiction's coverage began. 42 U.S.C. § 1973c(a). Most of the Section 5 jurisdictions were covered for changes after November 1, 1964 based upon the original enactment of Section 5 in 1965; a few were covered for changes after November 1, 1968 based upon a 1970 amendment to Section 5; and others were covered after November 1, 1972 based upon the 1975 amendments to the statute. *Jurisdictions Previously Covered by Section 5*, U.S. Dep't Justice, [http://www.justice.gov/crt/about/vot/sec\\_5/covered.php](http://www.justice.gov/crt/about/vot/sec_5/covered.php).
- 49 *Allen v. State Board of Elections*, 393 US 544, 566 (1969).
- 50 *Clark v. Roemer*, 500 U.S. 646, 658 (1991).
- 51 Submissions to the Attorney General generally were required to be decided within 60 days or the submitted voting change automatically was precleared by operation of law. However, in certain circumstances the Attorney General was authorized to extend the review period, most particularly when needed to ensure that preclearance decisions regarding controversial changes were based on a complete factual record. See Procedures for Administration of Section 5 of the Voting Rights Act of 1965, As Amended, 28 C.F.R. § 51.10.
- 52 See *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966); 28 C.F.R. § 51.52(a).
- 53 See 42 U.S.C. § 1973c(a).
- 54 *Beer v. United States*, 425 U.S. 130, 141 (1976).
- 55 See 42 U.S.C. § 1973b(c).
- 56 *Id.* § 1973b(f)(3).
- 57 See *Katzenbach*, 383 U.S. at 329–33.
- 58 42 U.S.C. § 1973b(a)(1)–(6).
- 59 See Section 4 of the Voting Rights Act, U.S. Dep't of Justice, [http://www.justice.gov/crt/about/vot/misc/sec\\_4.php#bailout](http://www.justice.gov/crt/about/vot/misc/sec_4.php#bailout) (last visited July 24, 2014).
- 60 *Jurisdictions Previously Covered by Section 5*, *supra* note 48.
- 61 Voting Rights Act Amendments of 1975 (enacting 42 U.S.C. § 1973b(f)(4)).
- 62 *Id.* (enacting 42 U.S.C. § 1973 aa-1a).
- 63 28 C.F.R. § 55.8(a).
- 64 Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 198 (Oct. 13, 2011).
- 65 42 U.S.C. § 1973b(f)(4); *id.* § 1973aa-1a(b)(3)(A).
- 66 Attorney General's Guidelines on Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 76 Fed. Reg. 169 (Aug. 31, 2011) (codified at 28 C.F.R. pt. 55).
- 67 *Id.* § 55.2(b).
- 68 *Id.* § 55.16.
- 69 *Id.* § 55.17.
- 70 42 U.S.C. § 1973b(e).
- 71 42 U.S.C. § 1973a(a).
- 72 *Id.* § 1973a(c).
- 73 *Id.* § 1973aa.
- 74 *Id.* § 1973aa-6.
- 75 *Id.* § 1973i(a).
- 76 *Id.* § 1973i(b).
- 77 See generally Nat'l Comm'n on the Voting Rights Act, *supra* note 36, at 15-25 (discussing "The Two Problems Addressed by the Act[.]" disfranchisement and vote dilution).
- 78 See *Shelby County v. Holder*, 133 S. Ct. at 2633-35 (Ginsburg, J., dissenting).
- 79 *Bolden v. Mobile*, 542 F. Supp. 1050, 1075 (S.D. Ala. 1982).
- 80 *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).
- 81 *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986).
- 82 This transformation of American politics has been documented in numerous reports, books, and articles. See, e.g., *Quiet Revolution in the South* (Chandler Davidson & Bernard Grofman eds., 1994); Nat'l Comm'n on the Voting Rights Act, *supra* note 36; U.S. Comm'n on Civil Rights, *supra* note 6; U.S. Comm'n on Civil Rights, *The Voting Rights Act: Unfulfilled Goals* (1981).
- 83 U.S. Comm'n on Civil Rights, *supra* note 6, at 43.
- 84 H.R. Rep. No. 109-478, at 12–17, 25–28.
- 85 *Id.* at 29-31.
- 86 *Voting Determination Letters for Mississippi*, U.S. Dep't of Justice, [http://www.justice.gov/crt/records/vot/obj\\_letters/state\\_letters.php?state=ms](http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=ms) (referencing determination letters issued May 21, 1969 and May 26, 1969).
- 87 *Voting Determination Letters for Georgia*, U.S. Dep't of Justice, [http://www.justice.gov/crt/records/vot/obj\\_letters/state\\_letters.php?state=ga](http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=ga) (referencing determination letters issued June 19, 1968 and July 11, 1968). *Voting Determination Letters for South Carolina*, U.S. Dep't of Justice, [http://www.justice.gov/crt/records/vot/obj\\_letters/state\\_letters.php?state=sc](http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=sc).
- 88 *Voting Determination Letters for South Carolina*, U.S. Dep't of Justice, [http://www.justice.gov/crt/records/vot/obj\\_letters/state\\_letters.php?state=sc](http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=sc) (referencing determination letter issued March 6, 1972).
- 89 H.R. Rep. No. 94-196, at 10.
- 90 *Section 5 Objection Letters*, U.S. Dep't of Justice, [http://www.justice.gov/crt/records/vot/obj\\_letters/index.php](http://www.justice.gov/crt/records/vot/obj_letters/index.php).
- 91 See Mark A. Posner, *The Real Story Behind the Justice Department's Implementation of Section 5 of the VRA: Vigorous Enforcement, as Intended by Congress*, 1 Duke J. Const. L. & Pub. Pol'y 79, 104-05 (2006).
- 92 S. Rep. No. 97-417, at 9–11.
- 93 S. Rep. No. 97-417, at 9–11.
- 94 *White v. Regester*, 412 U.S. 755 (1973).
- 95 S. Rep. No. 97-417, at 24-27 (discussing *Mobile v. Bolden*, 446 U.S. 55 (1980)).
- 96 *Quiet Revolution in the South*, *supra* note 82, at 35–36 (overview), 54–56, 61–64 (Alabama), 78, 99–100 (Georgia), 112–13, 120–21, 133 (Louisiana), 142–43, 151–52 (Mississippi), 171–73, 189 (North Carolina), 226–27, (South Carolina), 254–55, 264–68 (Texas), 297 (Virginia); Nat'l Comm'n on the Voting Rights Act, *supra* note 36, at 81–88.
- 97 *Garza v. County of L.A.*, 918 F. 2d 763 (9th Cir. 1990).
- 98 Mark Rosenbaum, Op-Ed, *Drawing Fair District Lines*, L.A. Times, (Sept. 27, 2011), <http://articles.latimes.com/2011/sep/27/opinion/la-oe-roosenbaum-county-supervisors-redistricting-20110927>.
- 99 *Reno v. Bossier Parish School Bd.*, 520 U.S. 471 (1997).
- 100 *Reno v. Bossier Parish School Bd. (Bossier Parish II)*, 528 U.S. 320 (2000).
- 101 *Id.* at 342-53 (Souter, J., dissenting).
- 102 Mark A. Posner, *Time is Still on Its Side: Why Congressional Reauthorization of Section 5 of the Voting Rights Act Represents a Congruent and Proportional Response to Our Nation's History of Discrimination in Voting*, 10 N.Y.U. J. Legis. & Pub. Pol'y 51, 114 (2006); Peyton McCrary et al., *The End of Preclearance As We Knew It: How the Supreme Court*

- Transformed Section 5 of the Voting Rights Act*, 11 Mich. J. Race & L. 275, 276, 284–86, 297 (2006). In *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), the district court denied preclearance to a Georgia congressional redistricting plan that was not retrogressive but which was adopted specifically to minimize the opportunity of African Americans to elect any members of the State's congressional delegation. The plan was adopted pursuant to the leadership of a redistricting committee chair who openly avowed a racial intent. The district court's decision was summarily affirmed by the Supreme Court. *Busbee v. Smith*, 459 U.S. 1166 (1983).
- 103 See *Pleasant Grove v. United States*, 479 U.S. 462, n.11 (1987); *City of Richmond v. United States*, 422 U.S. 358, 378–79 (1975).
- 104 *Georgia v. Ashcroft*, 539 U.S. 461, 482 (2003).
- 105 H.R. Rep. No. 109-478, at 68–72.
- 106 H.R. Rep. No. 109-478, at 68, 71.
- 107 *Shelby Cnty. v. Holder*, 811 F. Supp. 2d 424 (2011).
- 108 *Shelby Cnty. v. Holder*, 679 F. 3d 848 (2012).
- 109 *Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013).
- 110 *Id.* at 2627.
- 111 *Id.* at 2619.
- 112 *Id.* at 2632–52.
- 113 *Id.* at 2632–33 (footnote omitted).
- 114 *Id.* at 2650.

## CHAPTER 2

- Cases brought under Section 2 of the VRA that raised successful claims based upon the failure to provide language assistance are included in the separate category of language assistance cases, along with cases brought under Sections 203, 4(f)(4), and 4(e) of the VRA.
- The Section 2 and language assistance cases include those in which a court ruled for the plaintiffs, and those in which the parties entered into a consent decree or settlement requiring that the challenged election practice be replaced or altered (including decrees and settlements in which the defendants admitted a violation (or the equivalent) and those in which no violation was admitted). The language cases include a few matters where out-of-court settlements were reached without litigation being filed.
- Had the passage of time purged the vestiges of historic voting discrimination (*i.e.* conditions as they existed *circa* 1965–75), then the cases should show no geographic clustering.
- As indicated in note 2, in identifying successful Section 2 lawsuits we include adjudicated court findings of Section 2 violations as well as settlements of Section 2 claims for which there was no court finding. This is because it would seriously understate the scope of the problem to rely exclusively upon adjudicated violations. In the first place, it would be incorrect to assume that the strongest Section 2 cases were those that were finally adjudicated. Indeed, strong Section 2 cases are very likely to settle. Voting rights cases are widely known for being “fact-heavy”, and it is the policy of the Federal Rules of Civil Procedure and the federal courts to encourage settlements and to conduct trials only when necessary to resolve genuine factual disputes. Cases are routinely weeded out via dispositive motions when courts conclude that they do not present triable factual claims. While defendants frequently deny liability in settlement agreements, the fact that a settlement has altered the status quo in the plaintiffs' favor weighs strongly in favor of including them for purposes of assessing the extent of voting discrimination and the impact of the Voting Rights Act. Plaintiffs carry the burden of proof under Section 2, and a settlement is a reasonable indication that the defendants made a considered judgment that they stood a substantial risk that trial would result in a finding of liability against them.
- At the time of the 2000 Census, nine states were fully covered under Section 4(b), and seven states were covered in part, leaving 34 states and the District of Columbia entirely uncovered. When Shelby County was decided, there was one fewer partially-covered state, since the covered townships in New Hampshire had bailed out of coverage.
- See *Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 202-03 (2006) (Findings of the Michigan Voting Rights Initiative).
- League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006).
- Id.* at 440.
- White v. Regester*, 412 U.S. 755 (1973), the first case in which the Supreme Court upheld a claim of minority vote dilution, involved a Texas state legislative redistricting plan.
- Texas v. United States*, 887 F. Supp. 2d 133, 153, 159 (D.D.C. 2012) *vacated and remanded*, 133 S.Ct. 2885 (2013).
- Cal. Elec. Code. §§ 14027-14032.
- The constitutionality of the CVRA was unsuccessfully challenged in *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660 (2007). See also generally National Commission on Voting Rights, California State Hearing (Jan. 30, 2014) (transcript on file with the Lawyers' Committee) (discussing examples of successful litigation under the CVRA).
- See Table 3, note b for an explanation as to six objections that are omitted from this objection count.
- Two of the preclearance denials by the D.C. district court were preceded by administrative preclearance denials by DOJ regarding the same voting changes. Since the district court rulings superseded the DOJ determinations, these two administrative denials are not included in the total number of objection letters issued by DOJ.
- This Report does not include Section 5 enforcement actions since 1995. Such cases concerned the limited (but important) question of whether voting changes were being implemented by a covered jurisdiction without the requisite preclearance. These cases can provide indirect evidence of efforts to implement discriminatory voting changes, but because they did not deal with the substantive question of whether the voting practices at issue were discriminatory or not, they are not included here.
- 28 C.F.R. § 51.52.

- 17 By contrast, Section 2 and Section 5 of the VRA do not require states to follow any specific procedures. Instead, they prohibit the use of voting practices and procedures that are shown to be racially discriminatory (under Section 2) or that jurisdictions could not show to be nondiscriminatory (under Section 5).
- 18 See Attorney General's Guidelines on Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. § 55 (2011), *available at* [http://www.justice.gov/crt/about/vot/28cfr/55/28cfr55\\_2011.pdf](http://www.justice.gov/crt/about/vot/28cfr/55/28cfr55_2011.pdf); see also Thomas E. Perez, Assistant Att'y Gen., Dep't of Justice, Assistant Attorney General Thomas E. Perez Speaks at the National Association of Secretaries of State 2012 Conference (Jan. 30, 2012), *available at* <http://www.justice.gov/crt/opa/pr/speeches/2012/crt-speech-1201301.html>.
- 19 28 C.F.R. § 55.17
- 20 42 U.S.C. § 1973aa-6 ("Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.")

## CHAPTER 3

- 1 See Mark A. Posner, *The Real Story Behind the Justice Department's Implementation of Section 5 of the VRA: Vigorous Enforcement, as Intended by Congress*, 1 Duke J. Const. L. & Pub. Pol'y 79, 102, 104–05 (2006).
- 2 See *id.*
- 3 See *id.*; see generally *Section 5 Objection Letters*, U.S. Dep't of Justice, [http://www.justice.gov/crt/records/vot/obj\\_letters/index.php](http://www.justice.gov/crt/records/vot/obj_letters/index.php) (last visited July 23, 2014), (listing determination letters issued by the Department of Justice by State). It was rare that a covered jurisdiction filed for preclearance with the U.S. District Court for the District of Columbia. From 1965 to 2006, that court denied preclearance in eleven cases. Posner, *supra* note 1, at 113–14. After the 2006 reauthorization, the district court denied preclearance in four additional cases: *Florida v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012); *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012), vacated and remanded, 133 S. Ct. 2886 (2013); *Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2013), *vacated and remanded*, 133 S. Ct. 2885 (2013); and *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012).
- 4 Determination Letter from J. Stanley Pottinger, Assistant Att'y Gen., U.S. Dep't of Justice, to State of Texas (Dec. 10, 1975), *available at* [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/TX/TX-1000.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-1000.pdf); Determination Letter from J. Stanley Pottinger, Assistant Att'y Gen., U.S. Dep't of Justice, to State of Texas (Jan. 3, 1976), *available at* [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/TX/TX-1010.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-1010.pdf).
- 5 *Texas v. Holder*, 888 F. Supp. 2d at 115.
- 6 *Texas v. United States*, 887 F. Supp. 2d at 138, 159, 161, 162, 177–78.
- 7 See *Voting Determination Letters for Texas*, U.S. Dep't of Justice, [http://www.justice.gov/crt/records/vot/obj\\_letters/state\\_letters.php?state=tx](http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=tx) (last visited July 23, 2014), (listing determination letters issued by the Department of Justice pertaining to the State of Texas).
- 8 *South Carolina v. United States*, 898 F. Supp. 2d at 32.
- 9 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, to State of South Carolina, 1–3, (Dec. 23, 2011), *available at* [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/SC/L\\_111223.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/SC/L_111223.pdf).
- 10 See 898 F. Supp. 2d at 40 ("About 96% of whites and about 92–94% of African-Americans currently have one of the . . . photo IDs [listed by the 2011 statute]. That racial disparity, combined with the burdens of time and cost of transportation inherent in obtaining a new photo ID card, might have posed a problem for South Carolina's law under the strict effects test of Section 5 of the Voting Rights Act. . . .").
- 11 *Id.* at 36.
- 12 *Id.*
- 13 *Id.*
- 14 *Id.* at 48.
- 15 *Id.* at 48–50.
- 16 *Id.* at 53–54.
- 17 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, to State of Georgia (Dec. 21, 2012), *available at* [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/GA/L\\_121221.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/L_121221.pdf).
- 17a *Id.*
- 18 *Id.* at 3.
- 18a Complaint at 5–6, *Howard v. Augusta-Richmond Cnty.*, No. 1:14-cv-00097 (S.D. Ga. May 13, 2014), *available at* <http://redistricting.ils.edu/files/GA%20howard%2020140414%20complaint.pdf>.
- 19 Order Granting Motion to Dismiss at 8, *Howard v. Augusta-Richmond Cnty.*, No. 1:14-cv-00097 (S.D. Ga. May 13, 2014), *available at* <http://redistricting.ils.edu/files/GA%20howard%2020140513%20order.pdf>.
- 20 Sandy Hodson, *City Wins Lawsuit over Change in Election Date for Local Offices*, *Augusta Chron.* (May 13, 2014), <http://chronicle.augusta.com/news/government/elections/2014-05-13/city-wins-lawsuit-over-change-election-date-local-offices>.
- 21 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, to Beaumont Indep. Sch. Dist. (Dec. 21, 2012), *available at* [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/TX/L\\_121221.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/L_121221.pdf).
- 21a *Id.* at 1–3.
- 22 *Id.* at 2.
- 23 See Complaint, *Walker v. Beaumont Indep. Sch. Dist.*, No. 1:13-cv-128 (E.D. Tex.), *available at* <http://redistricting.ils.edu/files/20131223%20walker%20v%20bisd%20complaint.pdf>.
- 24 H.R. Rep. No. 109-478 (2006), at 57.
- 25 *Shelby Cnty. v. Holder*, 679 F.3d 848, 872 (D.C. Cir. 2012).
- 26 *Id.* (quoting *Modern Enforcement of the Voting Rights Act: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 22 (2006)).
- 27 See *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see also *id.* at 51 (Ginsburg, J., dissenting).

- 28 In sum, the preliminary injunction remedy is considered “extraordinary” and “drastic.” 11A Wright, Miller, Kane, Marcus & Steinman, *Federal Practice & Procedure* § 2948 (3d ed.).
- 29 *United States v. Charleston Cnty.*, 316 F. Supp. 2d 268, 272 (D. S.C. 2003).
- 30 *Id.* at 272.
- 31 *Id.* at 273.
- 32 *Id.* at 307.
- 33 *United States v. Charleston Cnty.*, 365 F.3d 341 (4th Cir. 2004).
- 34 Determination Letter from Assistant Att’y Gen. R. Alexander Acosta, U.S. Dep’t of Justice, to Charleston Cnty. Sch. Dist. (Feb. 26, 2004), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/SC/SC-2180.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/SC/SC-2180.pdf)
- 35 N.C. Gen. Stat. §§ 163-227.2 (2013) (amended 2013).
- 36 N.C. Gen. Stat. § 163-82.6(a) (2013) (amended 2013).
- 37 N.C. Gen. Stat. § 163-82.1(d) (repealed by H.B. 589 (2013)).
- 38 *2012 Election Turnout Dips Below 2008 and 2004 Levels: Number Of Eligible Voters Increases By Eight Million, Five Million Fewer Votes Cast*, Bipartisan Policy Ctr. (Nov. 8, 2012), [bipartisanpolicy.org/news/press-releases/2012/11/2012-election-turnout-dips-below-2008-and-2004-levels-number-eligible](http://bipartisanpolicy.org/news/press-releases/2012/11/2012-election-turnout-dips-below-2008-and-2004-levels-number-eligible).
- 39 Press Release, Democracy N.C., Republicans, African Americans, Women and Seniors Post the Highest Voter Turnout Rates in North Carolina (Dec. 19, 2012), available at [democracy-nc.org/downloads/NCVoterTurnout2012PR.pdf](http://democracy-nc.org/downloads/NCVoterTurnout2012PR.pdf).
- 40 *Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013). *Shelby County* effectively removed the preclearance provision of Section 5 of the Voting Rights Act, which had required covered jurisdictions to prove that proposed voting changes had neither a discriminatory purpose or a discriminatory retrogressive effect.
- 41 Expert Report of J. Morgan Kousser at 38, *League of Women Voters of N.C. v. North Carolina*, No. 1:13-cv-00660-TDS-JEP (M.D.N.C. May 19, 2014) (quoting Rob Christensen & John Frank, *Confident GOP Preps for Voter ID Bill - Democrats Say It’s More the Same; Poll Shows Bill Has Support*, News & Observer, Mar. 6, 2013), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/League1557.pdf>.
- 42 The bill allowed voters to use employee ID; ID issued by the University of North Carolina or its constituent institutions; ID issued by a North Carolina community college; ID issued to a fireman, EMS or hospital employee, or law enforcement officer; ID issued by a unit of local government, public authority, or special district; and ID issued for a government program of public assistance.
- 43 United States’ Memorandum of Law in Support of its Motion for a Preliminary Injunction and for the Appointment of Federal Observers at 12, *League of Women Voters of N.C.*, No. 1:13-cv-00660-TDS-JEP (internal citation omitted).
- 44 See N.C. Sess. Laws 2013-381 (H.B. 589).
- 45 *Id.* at § 2.1.
- 46 United States’ Memorandum of Law in Support of its Motion for a Preliminary Injunction and for the Appointment of Federal Observers, *supra* note 43, (internal citation omitted).
- 47 Aaron Blake, *North Carolina Governor Signs Extensive Voter ID Law*, Wash. Post (Aug. 12, 2013), [www.washingtonpost.com/blogs/post-politics/wp/2013/08/12/north-carolina-governor-signs-extensive-voter-id-law/](http://www.washingtonpost.com/blogs/post-politics/wp/2013/08/12/north-carolina-governor-signs-extensive-voter-id-law/); cf. N.C. Sess. Laws 2013-381 (H.B. 589).

## CHAPTER 4

- 1 This report uses the terms “African American” and “black” interchangeably. In addition, the report uses the terms as “Latino” and “Hispanic” interchangeably. “Native Americans” include American Indians and Alaska Natives.
- 2 Whereas this report refers to Latinos, the statute refers to “persons . . . of Spanish heritage.” Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 203, 89 Stat. 400, 401–02.
- 3 Nat’l Comm’n on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work, 1982–2005* (2006).
- 4 *Id.* at 15.
- 5 Jon Greenbaum et al., *Shelby County v. Holder: When the Rational Becomes Irrational*, 57 How. L.J. 811, 816 (citing Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (2000)); J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Part South, 1880-1910* (1974); see also Ellen Katz et al., *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982*, 39 U. Mich. J.L. Reform 643, 646 (2006).
- 6 Keyssar, *supra* note 5, at 111.
- 7 Joel Heller, *Shelby County and the End of History*, 44 U. Mem. L. Rev. 357, 367 (2013).
- 8 Keyssar, *supra* note 5, at 114–15. Additionally, in Georgia by 1910, only 4% of all black males were registered to vote. *Id.* at 114–15. In 1964, only 6.7% of African Americans eligible to vote in Mississippi were registered compared to 70.2% of whites. *Extension of the Voting Rights Act: Hearings Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary*, 94th Cong. 4 (1975) [hereinafter House VRA Hearings of 1975] (statement of Hon. Peter W. Rodino, Jr.). Just prior to the enactment of the VRA in March of 1965, “registration statistics in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia were 19.3, 27.4, 31.6, 6.7, 46.8, 37.3, and 38.3 percent, respectively.” H.R. Rep. No. 109-478, at 7 n.8 (2006) (citing H.R. Rep. No. 94-196, at 6 (1975)).
- 9 Katz et al., *supra* note 5, at 646.
- 10 Heller, *supra* note 7, at 367 n.51.
- 11 House VRA Hearings of 1975, *supra* note 8, at app. 1023. The disparity between black and white registration rates in the covered states was approximately 44.1 percent prior to the Act (in March 1965). *Id.* at app. 1026. This disparity was approximately 27.4 percent in September 1967 and 11.2 percent for 1971–1972. *Id.* The 1975 legislative history also highlights the overall increase in turnout from pre-VRA to post-VRA elections. As compared to the 1964 presidential election, turnout in the 1968 presidential election increased

- in all seven covered states. *Id.* at app. 1029. “The increase ranged from 0.1 percentage point in Georgia to 19.3 percentage points in Mississippi.” *Id.* at app. 1029; see also *id.* at app. 1028 tbl. 4 (depicting “Voter Turnout in the Presidential Elections of 1964, 1968, and 1972 in Southern States Covered by the Voting Rights Act”). National turnout dropped for the 1972 election but remained above the 1964 rates in four of the seven covered states. *Id.* at app. 1029. The record notes that “[w]here persons vote in States with traditionally low turnout, despite a strong national trend toward nonvoting, it seems likely that many of the voters are persons who had previously been denied the opportunity to vote.” *Id.* Further, this conclusion is supported by survey data that Congress relied upon in 1975, which indicated that participation rates among Southern blacks “increased sharply” from 1964 to 1968. *Id.* at app. 1031. Though it declined slightly between 1968 and 1972, the 1972 rates remained higher than 1964 rates. *Id.*
- 12 *Id.* at 20 (statement of Hon. Arthur S. Fleming, Chairman, U.S. Comm’n on Civil Rights). Additionally, the U.S. Census found that the voter turnout rate of African Americans and other nonwhites in the South rose from 44 to 51 percent between the 1964 and 1968 elections despite an overall decline in voting turnout nationally in that year. U.S. Census Bureau, *Current Population Reports: Voting and Registration in the Election of November 1968* 1 (1969).
- 13 *1975 House VRA Hearings*, *supra* note 8, at 31.
- 14 U.S. Comm’n on Civil Rights, *Political Participation* 12 (1968).
- 15 *Id.* at 21.
- 16 *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969).
- 17 *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990* 33 (Chandler Davidson & Bernard Grofman eds., 1994).
- 18 *Id.*
- 19 *Id.* at 384.
- 20 See, e.g., Katz, *supra* note 5, at 656 (“Courts identified violations of Section 2 more frequently between 1982 and 1992 than in the years since. Of the 92 total violations identified, courts found 46.7% of them during the 1980s.”); see also Nat’l Comm’n on the Voting Rights Act, *supra* note 3, at 81–83.
- 21 *Quiet Revolution in the South*, *supra* note 17, at 385.
- 22 *Id.*
- 23 See Debo P. Adegbile, *Voting Rights in Louisiana: 1982-2006*, 17 S. Cal. Rev. L. & Soc. Just. 413, 429 (2008) (“In fact, [the governor] ‘publicly expressed his opposition to the concept of a majority black district, stating that districting schemes motivated by racial considerations, however benign, smacked of racism, and in any case were not constitutionally required.’”).
- 24 See *id.* at 429–30 (citing *Major v. Treen*, 574 F. Supp. 325, 355–56 (E.D. La. 1983)).
- 25 Though the rates of African American voter registration, turnout, and elected officials had increased, there were more Section 5 objections “lodged between 1982 and 2004 than were interposed between 1965 and 1982 and . . . such objections did not encompass minor inadvertent changes[,]” nor does this account for the number of withdrawals. H.R. Rep. No. 109-478, *supra* note 8, at 21 (citing Nat’l Comm’n on the Voting Rights Act, *supra* note 3, at 54).
- 26 H.R. Rep. No. 109-478, *supra* note 8, at 21.
- 27 *Voting Determination Letters for Mississippi*, U.S. Dep’t of Justice, [http://www.justice.gov/crt/records/vot/obj\\_letters/state\\_letters.php?state=ms](http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=ms) (last visited July 23, 2014).
- 28 Katz et al., *supra* note 5, at 646; see also H.R. Rep. No. 109-478, *supra* note 8, at 21.
- 29 H.R. Rep. No. 109-478, *supra* note 8, at 23.
- 30 *Id.* at 21.
- 31 *Dillard v. Crenshaw*, 640 F. Supp. 1347 (M.D. Ala. 1986).
- 32 *Id.* at 1356–57.
- 33 *Quiet Revolution in the South*, *supra* note 17, at 53–54.
- 34 *Dillard*, 640 F. Supp. at 1373.
- 35 James Blacksher et al., *Voting Rights in Alabama 1982–2006* 9 (2006), available at <http://www.protectcivilrights.org/pdf/voting/AlabamaVRA.pdf>.
- 36 *Harris v. Graddick*, 593 F. Supp. 128, 130 (M.D. Ala. 1984).
- 37 *Harris v. Siegelman*, 695 F. Supp. 517, 526 (M.D. Ala. 1988).
- 38 Press Release, U.S. Census Bureau, 2010 Census Shows Black Population has Highest Concentration in the South (Sept. 29, 2011), available at [http://www.census.gov/newsroom/releases/archives/2010\\_census/cb11-cn185.html](http://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn185.html).
- 39 See *Historical Time Series Tables*, U.S. Census Bureau, <https://www.census.gov/hhes/www/socdemo/voting/publications/historical/> (last visited July 23, 2014) (download Table A-1. Reported Voting and Registration by Race, Hispanic Origin, Sex, and Age Groups: November 1964 to 2012).
- 40 See *id.*
- 41 Nat’l Comm’n on the Voting Rights Act, *supra* note 3, at 11–25.
- 42 *Id.* at 37.
- 43 David Lublin et al., *Has the Voting Rights Act Outlived its Usefulness? In a Word, “No”*, 34 Legis. Studies Q. 525, 526 (2009). It may be the case that coalition districts, or districts in which “more than one protected minority group combined forms a majority in a district,” have been particularly successful in electing African American candidates. Matt Barreto et al., *Redistricting: Coalition Districts and the Voting Rights Act* 1 (2011), available at <https://www.law.berkeley.edu/files/Coalition.pdf> (discussing voting patterns among Black and Latino voters in Los Angeles County in the 2010 election of Kamala Harris as California Attorney General).
- 44 Throughout this chapter, references to “Section 2 cases” refer only to those cases not involving bilingual assistance.
- 45 See Supplemental Online Appendix, available at <http://votingrightstoday.org/discriminationreport>
- 46 See *id.*
- 47 See *id.*
- 48 See *id.*
- 49 See *infra* Chapter 6.
- 50 Paul Taylor et al., Pew Research Ctr., *An Awakened Giant: The Hispanic Electorate Is Likely to Double by 2030* 5 (2012), available at [http://www.pewhispanic.org/files/2012/11/hispanic\\_vote\\_likely\\_to\\_double\\_by\\_2030\\_11-14-12.pdf](http://www.pewhispanic.org/files/2012/11/hispanic_vote_likely_to_double_by_2030_11-14-12.pdf).
- 51 Mark Hugo Lopez et al., Pew Research Ctr., *Diverse Origins: The Nation’s 14 Largest Hispanic-Origin Groups* 5 (2013), available at [http://www.pewhispanic.org/files/2013/06/summary\\_report\\_final.pdf](http://www.pewhispanic.org/files/2013/06/summary_report_final.pdf).
- 52 NALEO Educ. Fund, *Latino Voters at Risk: The Impact of Restrictive Voting and Registration Measures on the Nation’s Fastest Growing Electorate* (2012), available at <http://www.naleo.org/downloads/LatinoVotersatRisk.pdf>.

- 53 The Latino community in the United States, although often referred to as a cohesive ethnic group, is in fact comprised of groups that are quite diverse in important aspects, including race and country of origin, tracing their family heritage to “more than 20 Spanish-speaking nations worldwide.” Lopez et al., *supra* note 51, at 3.
- 54 Mexican Americans and Puerto Ricans comprise 64.6 % and 9.5% of all Latinos in the U.S., respectively. *Id.*
- 55 In 1836, Anglo-Americans took control of the Texas government, then part of Mexico, and eventually Texas was annexed to the U.S. in 1845. Expert Report of Dr. Andres Tijerina at 2–3, *Texas v. United States*, 2011 WL 6476787 (D.D.C. Aug. 8, 2011); Juan F. Perea, *A Brief History of Race and the U.S.-Mexican Border: Tracing the Trajectories of Conquest*, 51 UCLA L. Rev. 283, 284–85 (2003). Shortly after, the Treaty of Guadalupe Hidalgo in 1848 which ended the Mexican–American War, ceded to the United States a great portion of land that belonged to Mexico, including California, present-day Arizona and New Mexico and parts of Utah, Nevada, and Colorado. *Id.*
- 56 Later, the Foraker Act of 1900 established a civilian government in Puerto Rico consisting in part of a governor and supreme court appointed by the President of the United States. César A. López Morales, Note, *A Political Solution to Puerto Rico’s Disenfranchisement: Reconsidering Congress’s Role in Bringing Equality to America’s Long-Forgotten Citizens*, 32 B.U. Int’l L.J. 185, 192–93 (2014). Congress authorized Puerto Ricans to elect their own governor and draft their own constitution in 1947 and 1950; in 1952, Congress approved a constitution providing for the establishment of the Commonwealth of Puerto Rico. *Id.* at 195. Importantly, because state electors have exclusive authority to elect the President, the 3.7 million U.S. citizens of Puerto Rico who reside on the island are unable to participate in the election of the President and Vice-President. *Id.* at 187–88
- 57 Katherine Culliton-González, *Time to Revive Puerto Rican Voting Rights*, 19 Berkeley La Raza L.J. 27, 29–31 (2008). This migration accelerated after World War II, when Puerto Ricans were recruited to work in East Coast factories and to support seasonal farm labor. New York has been and continues to be the most popular point of entry, but large concentrations of Puerto Ricans are also located in Chicago and Philadelphia. *Id.* at 43.
- 58 During the Great Depression, Mexican Americans were targeted through what came to be known as the Mexican “repatriation.” As unemployment rose, so did the level of hostility toward Mexican Americans and possibly 400,000 people, many of whom were U.S. citizens, were forced out of the country. Wendy Koch, *U.S. Urged to Apologize for 1930s Deportations*, USA Today (Apr. 5, 2006), [http://www.usatoday.com/news/nation/2006-04-04-1930s-deportees-cover\\_x.htm](http://www.usatoday.com/news/nation/2006-04-04-1930s-deportees-cover_x.htm). Although not at a massive scale, incidents of unlawful deportation of U.S. citizens of Mexican ancestry have continued to take place. In 2007, for example, Peter Guzman, a U.S. citizen was deported to Tijuana with \$3 in his pocket. He had not visited Tijuana in more than a decade and knew no one there. He survived by begging and eating from garbage cans. A lawsuit was filed by the ACLU in 2008. *Family of U.S. Citizen Illegally Deported to Mexico Says Government Endangered His Life*, Am. Civil Liberties Union (Feb. 27, 2008), <https://www.aclusocal.org/family-of-u-s-citizen-illegally-deported-to-mexico-says-government-endangered-his-life/>.
- 59 For example, Mexican-Americans in South Texas were the victims of government-sponsored vigilante raids to drive them away from land grants. In 1874, in a raid aimed at taking land south of Corpus Christi, every adult, male Mexican American in a community of 500 was murdered by white vigilantes whose leaders were deputized in Brownsville. See Juan Cartagena, *Latinos and Section 5 of The Voting Rights Act: Beyond Black and White*, 18 Nat’l Black L.J. 201, 212 n.69 (2004) (citing Expert Report of Dr. Andres Tijerina, *Balderas v. Texas*, No. 6:01CV158 (E.D. Tex. Nov. 28, 2001)). Another example of violence toward Mexican Americans were the Los Angeles “Zoot Suit” riots during World War II, during which “over a period of days, Anglo servicemen beat Mexican Americans on the city streets while police watched...and, if arresting anyone, only arresting the victims.” Kevin R. Johnson, Hernandez v. Texas: *Legacies of Justice and Injustice*, 25 Chicano-Latino L. Rev. 153, 165 (2005). Racial strife and hate crimes against Mexican Americans have not been completely eradicated. According to a leading Latino organization, hate crimes against Latinos have risen by 40%. *Hate Crimes*, Mexican Am. Legal Def. & Educ. Fund, [http://www.maldef.org/immigration/public\\_policy/hate\\_crimes/](http://www.maldef.org/immigration/public_policy/hate_crimes/) (last visited July 23, 2012).
- 60 See *Mendez v. Westminster*, 64 F. Supp. 544 (S.D. Cal. 1946), *aff’d*, 161 F.2d 774 (9th Cir. 1947) (en banc) (holding that the segregation of Latinos in public schools is unlawful).
- 61 See *Hernandez v. Texas*, 347 U.S. 475, 482 (1954) (holding that the dearth of persons of Mexican or Latin American descent serving on juries in the previous 25 years “bespeaks discrimination,” in violation of the Fourteenth Amendment). In 1977, the Supreme Court also held that a Texas county’s system for impaneling grand juries was unconstitutional. *Castaneda v. Partida*, 430 U.S. 482, 501 (1977). Mexican Americans made up approximately 80% of the county but from 1962 to 1972 they made up less than 40% of the grand jurors. *Id.* at 486–87 & n.7. Similarly, between 1959 and 1969, “Mexicans were under-represented on Los Angeles grand juries by a ratio of 8 to 1.” Johnson, *supra* note 59, at 185 (quoting Ian F. Haney Lopez, *Racism on Trial: The Chicano Fight for Justice* (2003)) (internal quotation marks omitted).
- 62 Ian Haney Lopez, *Race and Colorblindness After Hernandez and Brown*, 25 Chicano-Latino L. Rev. 61, 62 (2005).
- 63 *Hernandez*, 347 U.S. at 482.
- 64 *Id.* at 479–80.
- 65 Cartagena, *supra* note 59, at 212. In 1918, Texas Governor, William Hobby established an additional force of 1000 men to supplement the work of the Texas Rangers. Private citizens also attempted to block the Mexican vote. In 1928 in Welasco, Texas, a group of Anglo Texans headed to the polls with shotguns and yelling “Don’t let those Mexicans in to vote.” *Id.* (citing Expert Report of Dr. Andres Tijerina, *supra* note 59, at 4, 8).
- 66 Cartagena, *supra* note 59, at 213.
- 67 California adopted its English literacy test in 1894 and it was not invalidated until 1970 by the California Supreme Court. See *Castro v. California*, 466 P.2d 244, 256 (1970). Arizona passed its literacy test in 1912 “in an acknowledged attempt to deter the ‘ignorant Mexican vote.’” NALEO Educ. Fund, *supra* note 52, at 6.

- 68 NALEO Educ. Fund, *supra* note 52, at 6.
- 69 Culliton-González, *supra* note 57, at 29–31. The literacy test was used for voters who could not present a certificate demonstrating that they were educated in English up to the eighth grade. Even though English was the official language of schools in Puerto Rico until 1946, inspectors often denied certificates from Puerto Rican schools. Rodolfo O. de la Garza & Louis DeSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 *Tex. L. Rev.* 1479, 1493 (1993).
- 70 NALEO Educ. Fund, *supra* note 52, at 6.
- 71 *Id.*
- 72 42 U.S.C. § 1973b(e).
- 73 Testimony during the legislative process estimated that in New York, approximately 330,000 Puerto Ricans had been prevented from registering as a result of the literacy test. The literacy tests were not only discriminatory on their face, but also in application: “literacy test certificates would ‘suddenly disappear’ causing delays of hours, if not the entire day, to replace them, or how basic supplies like pencils would be missing whenever Puerto Ricans sought to take the test.” Cartagena, *supra* note 59, at 206.
- 74 *Katzenbach v. Morgan*, 384 U.S. 641, 646 (1966).
- 75 See Brief of National Latino Organizations as Amici Curiae in Support of Respondents at 11–12, *Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013); de la Garza & DeSipio, *supra* note 69, at 1492.
- 76 de la Garza & Desipio, *supra* note 69, at 1492.
- 77 Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 203, 89 Stat. 400, 401–02. See also de la Garza & DeSipio, *supra* note 69, at 1481–82.
- 78 Cartagena, *supra* note 59, at 212. The 1975 Amendments extended preclearance and federal observer protections to any jurisdiction in which more than 5 percent of voting age citizens were of a single language minority, election materials had been prepared only in English in the 1972 presidential election, and less than 50 percent of voting age citizens had registered for or voted in the 1972 presidential election. Voting Rights Act Amendments of 1975 § 203; see also de la Garza & DeSipio, *supra* note 69, at 1481–82. Bilingual election materials were mandated in jurisdictions where a single language minority constituted more than 5 percent of the voting age population and the illiteracy rate among the language minority was higher than the national English illiteracy rate, and the use of literacy tests in voter registration were permanently banned. See Voting Rights Act Amendments of 1975 § 203.
- 79 42 U.S.C. §§ 1973b(f)(1)–(2).
- 79a *White v. Regester*, 412 U.S. 755, 769 (1973).
- 80 *Id.* at 768 (first alteration in original).
- 81 *Garza v. Cnty. of Los Angeles*, 756 F. Supp. 1298, 1303–04 (C.D. Cal. 1990), *aff’d*, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991).
- 82 *Id.* at 1351.
- 83 Anna Brown & Mark Hugo Lopez, Pew Research Ctr., *Mapping the Latino Population, By State, County and City 4* (2013), available at <http://www.pewhispanic.org/2013/08/29/mapping-the-latino-population-by-state-county-and-city/>; see generally *id.* (providing a complete breakdown and maps of the Latino population growth by state, county and metropolitan area).
- 84 Benjamin Highton & Arthur L. Burris, *New Perspectives on Latino Voter Turnout in the United States*, 30 *Am. Pol. Res.* 285, 300 (2002).
- 85 *Current Population Survey*, U.S. Census Bureau (Nov. 2012).
- 86 See generally Highton & Burris, *supra* note 84.
- 87 *Id.* at 294–95.
- 88 *Id.* at 295.
- 89 *Id.* at 295.
- 90 de la Garza & DeSipio, *supra* note 69, at 1509–10.
- 91 Highton & Burris, *supra* note 84, at 294.
- 92 Nina Perales et al., *Voting Rights in Texas: 1982-2006*, 17 *S. Cal. Rev. L. & Soc. Just.* 713, 726 (2008).
- 93 S. Rep. No. 97-417, at 28–29 (1982).
- 94 *Id.* at 29.
- 95 *Thornburg v. Gingles*, 478 U.S. 30, 69 (1986).
- 96 Katz et al., *supra* note 5, at app. For complete VRI Database Master List, visit <http://www.sitemaker.umich.edu/votingrights/home>, select “Final Report” and download “MasterList.xls.”
- 97 NALEO Educ. Fund, *1996 National Directory of Latino Elected Officials* (on file with the Lawyers’ Committee).
- 98 NALEO Educ. Fund, *2009 National Directory of Latino Elected Officials* (on file with the Lawyers’ Committee); NALEO Educ. Fund, *2013 National Directory of Latino Elected Officials* (on file with the Lawyers’ Committee).
- 99 Lublin et al., *supra* note 43, at 532.
- 100 See, e.g., *League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399, 408, 423–43 (2006) (holding that changes to a Latino-majority district in west Texas violated Section 2); *Texas v. United States*, 887 F. Supp. 2d 133, 135 (D.D.C. 2012) (denying preclearance by unanimously concluding that the State of Texas engaged in intentional discrimination against African-American and Latino voters in enacting the 2011 State Senate and Congressional redistricting plans, and that the Congressional plan was retrogressive).
- 101 See, e.g., *United States v. Osceola County, Fla.*, 475 F. Supp. 2d 1220, 1235 (M.D. Fla. 2006) (holding that the county’s voting system diluted Hispanic votes in violation of Section 2).
- 102 See Supplemental Online Appendix, *supra* note 45.
- 103 *Sanchez v. Colorado*, 97 F.3d 1303 (1996).
- 104 *Id.* at 1307.
- 105 *Id.*
- 106 *Id.* at 1323.
- 107 See *id.* at 1308, 1319.
- 108 *Id.* at 1329.
- 109 *United States v. Long County*, No. 2:06-cv-00040 (S.D. Ga., Feb. 10, 2006).
- 110 *Id.*
- 111 Russ Bynum, *Georgia County Questions 95 Hispanics’ Right to Vote*, Fla. Times-Union (Oct. 28, 2004), <http://jacksonville.com/apnews/stories/102804/D860K2N01.shtml>.
- 112 Brannon Stewart, *Challenge Dropped Against Most Atkinson Voters*, WALB News (Oct. 28, 2004).
- 113 Paul Taylor et al., *supra* note 50, at 6.
- 114 Am. Civil Liberties Union, *Voting Rights in Indian Country 2* (Sept. 2009), available at <https://www.aclu.org/files/pdfs/votingrights/indiancountryreport.pdf>.
- 115 *Id.* at 16.



- 116 President Richard Nixon, Message to the Congress of the United States on the American Indians (July 8, 1970), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=2573&st=&st1=>.
- 117 Am. Civil Liberties Union, *supra* note 114, at 5 (quoting *Draper v. United States*, 164 U.S. 240, 246 (1896)).
- 118 Laughlin McDonald, *American Indians and the Fight for Equal Voting Rights* 5–7 (2010). Congress terminated the treaty-making process in 1871.
- 119 *Id.* at 11.
- 120 *Id.* at 10, 13.
- 121 Am. Indian Policy Review Comm'n, *Final Report* 66 (1977).
- 122 McDonald, *supra* note 118, at 6.
- 123 *Id.* at 12.
- 124 *Id.* at 18.
- 125 Natalie Landreth & Moira Smith, *Voting Rights in Alaska: 1982-2006* 4 (Mar. 2006), available at <http://www.protectcivilrights.org/pdf/voting/AlaskaVRA.pdf>.
- 126 Am. Civil Liberties Union, *supra* note 114, at 7.
- 127 *Id.*
- 128 *Id.*
- 129 *Id.*
- 130 McDonald, *supra* note 118, at 26.
- 131 *Id.* at 46.
- 132 *Every Native Vote Counts: Fast Facts*, Nat'l Congress of Am. Indians, available at [http://api.ning.com/files/p5H7-N8Ot6oPr2YAnodb2julJeBCSZyUzu\\*8mwLExUIWlcHSI05tI5aYJYM44Plw-YObm-USu6-wzlyZ5e7uaDvXMhxGA\\*YxQ/NVInfographic.compressed.pdf](http://api.ning.com/files/p5H7-N8Ot6oPr2YAnodb2julJeBCSZyUzu*8mwLExUIWlcHSI05tI5aYJYM44Plw-YObm-USu6-wzlyZ5e7uaDvXMhxGA*YxQ/NVInfographic.compressed.pdf).
- 133 *Current Population Survey: Voting & Registration Supplement*, U.S. Census Bureau (Nov. 2008).
- 134 *Current Population Survey: Voting & Registration Supplement*, U.S. Census Bureau (Nov. 2012).
- 135 See *Buckanaga v. Sisseton Indep. Sch. Dist.*, No. 54-5, S.D., 804 F.2d 469, 474–75 (8th Cir. 1986).
- 136 Ryan D. Dreveskracht, *Enfranchising Native Americans After Shelby County v. Holder: Congress's Duty to Act*, 70 Nat'l Law. Guild Rev. 193, 205 (2013).
- 137 *Stabler v. Cnty. of Thurston*, Neb., 129 F.3d 1015, 1023 (8th Cir. 1997).
- 138 Dreveskracht, *supra* note 136, at 205.
- 139 See Am. Civil Liberties Union, *supra* note 114, at 52–53.
- 140 *National Caucus of Native American of State Legislators*, Nat'l Conf. of St. Legis., <http://www.ncsl.org/research/state-tribal-institute/national-caucus-native-american-state-legislators.aspx> (last visited July 28, 2014) (reporting “76 members from 17 states”).
- 141 Nat'l Congress of Am. Indians, *supra* note 132.
- 141a Daniel McCool et al., *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote* 48–67 (2007).
- 142 Separate listings identifying each matter in these categories is included in the Supplemental Online Appendix, *supra* note 45, to this Report.
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## CHAPTER 5

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- 66 *Id.*
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- 98 *Id.* at 31. The decision was affirmed on appeal (based on the failure of the hybrid plan to conform to state law, which did not allow for such hybrid plans). *Large*, 670 F.3d at 1148–49.
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- 101 *Id.* at 1154–55.
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- 121 Determination Letter from R. Alexander Acosta, Assistant Att'y Gen., U.S. Dep't of Justice, to state of S.C. (Feb. 26, 2004), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/SC/SC-2180.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/SC/SC-2180.pdf).
- 122 *Reynolds v. Sims*, 377 U.S. 533 (1964).
- 123 *Voinovich v. Quilter*, 507 U.S. 146, 153–54 (quoting *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986)).
- 124 Consent Decree at 5, *Jackson v. Wolf Point Sch. Dist.*, No. CV-13-65-GF-BMM-RKS (D. Mont. Mar. 13, 2014).
- 125 *Id.* at 3.
- 126 *Id.*
- 127 *Id.*
- 128 *Id.* at 5.
- 129 Order Adopting Findings & Recommendations, *Jackson v. Wolf Point Sch. Dist.*, No. CV-13-65-GF-BMM-RKS (D. Mont. Apr. 9, 2014).
- 130 Consent Decree at 4 ¶ 13, *Jackson v. Wolf Point Sch. Dist.*, No. CV-13-65-GF-BMM-RKS (D. Mont. Mar. 13, 2014).
- 131 *Id.*
- 132 *Id.* at 6 ¶ 5(a).
- 133 *Id.*
- 134 Consent Decree at 7 ¶ 7, *Jackson v. Wolf Point Sch. Dist.*, No. CV-13-65-GF-BMM-RKS (D. Mont. Mar. 13, 2014).
- 135 Determination Letter from Ralph F. Boyd, Assistant Att'y Gen., U.S. Dep't of Justice, to state of Ariz. (May 20, 2002), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/AZ/l\\_020520.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/AZ/l_020520.pdf).
- 136 Determination Letter from Ralph F. Boyd, Assistant Att'y Gen., U.S. Dep't of Justice, to Northampton Cnty., Ga. (Sept. 28, 2001), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/VA/VA-1280.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/VA/VA-1280.pdf).
- 137 *Id.*
- 138 *Id.*
- 139 *Id.*
- 140 *Id.*
- 141 *Id.*
- 142 *Id.*
- 143 Determination Letter from Ralph F. Boyd, Assistant Att'y Gen., U.S. Dep't of Justice, to Northampton Cnty., Va. (May 19, 2003), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/VA/VA-1310.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/VA/VA-1310.pdf).
- 144 *Id.*
- 145 *Id.*
- 146 *Id.*
- 147 *Id.*
- 148 *Id.*
- 149 Determination Letter from J. Michael Wiggins, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to Northampton Cnty., Va. (Oct. 21, 2003), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/VA/VA-1320.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/VA/VA-1320.pdf).
- 150 *Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 847 (E.D. Wis. 2012).
- 151 *Id.* at 854.
- 152 *Id.*
- 153 *Id.* at 855–856.
- 154 *Bartlett v. Strickland*, 556 U.S. 1 (2009).
- 155 *Baldus*, 849 F. Supp. 2d at 855–856.
- 156 *Id.* at 856.
- 157 *Id.* at 855.
- 158 *Id.* at 856.
- 159 *Id.* at 855.
- 160 *Id.* at 859.
- 161 Determination Letter from R. Alexander Acosta, Assistant Att'y Gen., U.S. Dep't Justice, to state of La. (Dec. 12, 2003), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/LA/LA-2430.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/LA/LA-2430.pdf).
- 162 *Id.*
- 163 *Id.*

- 164 Determination Letter from R. Alexander Acosta, Assistant Att'y Gen., U.S. Dep't of Justice, to City of Ville Platte, La. (June 4, 2004), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/LA/LA-2440.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/LA/LA-2440.pdf).
- 165 *Id.*
- 166 *Id.*
- 167 *Id.*
- 168 *Stabler v. Cnty. of Thurston*, 129 F.3d 1015, 1019 (8th Cir. 1997).
- 169 *Id.* at 1020.
- 170 *Id.* at 1026.
- 171 *Cnty. of Thurston v. Stabler*, 523 U.S. 1118 (1998).
- 172 Determination Letter from Wan J. Kim, Assistant Att'y Gen., U.S. Dep't of Justice, to Randolph Cnty, Ga. (Sept. 12, 2006), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/GA/GA-2700.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/GA-2700.pdf) [hereinafter Randolph Cnty. Letter].
- 173 *Cook v. Randolph Cnty., Ga.*, 573 F.3d 1143, 1145 (11th Cir. 2009).
- 174 Randolph Cnty. Letter, *supra* note 172.
- 175 *Cook*, 573 F.3d at 1145–46.
- 176 Randolph Cnty. Letter, *supra* note 172.
- 177 *Id.*
- 178 *Id.*
- 179 *Id.*
- 180 *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399, 410 (2006).
- 181 *Id.* at 423–24.
- 182 *Id.*
- 183 *Id.* at 427.
- 184 *Id.* at 424.
- 185 *Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options After LULAC v. Perry: Hearing Before the Subcomm. on the Constitution, Civil Rights and Property Rights of the S. Comm. on the Judiciary*, 109th Cong. 2 (2006) (opening statement of Sen. Kennedy, Member, S. Comm. on the Judiciary).
- 186 *LULAC*, 548 U.S. at 424.
- 187 *Id.* at 423–24.
- 188 *Id.* at 439–41.
- 189 *Id.* at 441.
- 190 *Id.* at 438–439.
- 191 *Id.* at 440, 442.
- 192 *Texas v. United States*, 887 F. Supp. 2d 133, 138 (D.D.C. 2012).
- 193 *Id.* at 178.
- 194 *Id.* at 152, 161–62, 177.
- 195 *Id.* at 162.
- 196 *Id.* at 163.
- 197 *Id.* at 163–164.
- 198 *Id.* at 164.
- 199 *Id.* at 162.
- 200 *See id.* at 197–247 (lengthy appendix detailing the court's factual and legal findings).
- 201 *Id.* at 197.
- 202 *Id.*
- 203 *Id.* at 153.
- 204 *Id.* at 160.
- 205 *Id.* at 177.
- 206 *Id.* at 177–78.
- 207 *Id.* at 177.
- 208 *Id.* at 178.
- 209 *Id.* at 234.
- 210 *Id.*
- 211 *Id.* at 178 (emphasis in original).
- 212 *Id.*
- 213 Scheduling Order at 3–4, *Perez v. Perry*, No. 5:11-cv-00360-OLG-JES-XR (W.D. Tex. Oct. 18, 2013).

## CHAPTER 6

- 1 Brief of Community Voter Registration Orgs. as Amici Curiae in Support of Appellants at 19, *Kobach v. U.S. Election Assistance Comm'n*, Nos. 14-3062 and 14-3072 (10th Cir. June 3, 2014).
- 2 Decl. of Russell Weaver at A7688, *Florida v. United States*, No. 1:11-cv-01428 (D.D.C. April 10, 2012).
- 3 *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1317 (S.D. Fla. 2006).
- 4 *Id.* at 1316.
- 5 *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1159–65 (N.D. Fla. 2012).
- 6 *Id.* at 1157–58.
- 7 United States' and Defendant-Intervenor's Joint Submission Concerning Proposed Findings of Fact and Conclusions of Law at 26, *Florida v. United States*, No. 1:11-cv-01428 (D.D.C. May 3, 2012).
- 8 Decl. of Russell Weaver, *supra* note 2, at A7688–89.
- 9 *Id.*
- 10 United States' and Defendant-Intervenor's Joint Submission Concerning Proposed Findings of Fact and Conclusions of Law, *supra* note 7, at 31.
- 11 *Id.* at 27.
- 12 *Id.* at 32.
- 13 42 U.S.C. § 1973gg-5(a)(6)(A). Federal public assistance programs covered by Section 7 include, inter alia: the Supplemental Nutrition Assistance Program (SNAP, formerly the Food-Stamp Program); the Special Supplemental Nutrition Program for Women, Infants and Children (WIC); the Temporary Assistance for Needy Families (TANF) program (formerly the Aid to Families with Dependent Children or AFDC program); the Medicaid program; and the State Children's Health Insurance Program (CHIP). State public assistance programs are also covered. *The National Voter Registration Act of 1993 (NVRA)*, U.S. Dep't of Justice, [http://www.justice.gov/crt/about/vot/nvra/nvra\\_faq.php](http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php) (last visited July 28, 2014).
- 14 U.S. Dep't of Health & Human Servs., *Characteristics and Financial Circumstances of TANF Recipients, Fiscal Year 2010: Appendix tbl.8* (2011), available at [http://www.acf.hhs.gov/sites/default/files/ofa/appendix\\_fy2011\\_final\\_amend.pdf](http://www.acf.hhs.gov/sites/default/files/ofa/appendix_fy2011_final_amend.pdf); Kelsey Farson Gray & Esa Eslami, U.S. Dep't of Agric. Food and Nutrition Serv., Office of Policy Support, *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2012*, at 76 tbl.B.10 (2014), available at <http://www.fns.usda.gov/sites/default/files/2012Characteristics.pdf>.

- 15 *Id.*
- 16 *Id.*
- 17 Decl. of Russell Weaver, *supra* note 2, at A7688.
- 18 *Voting Rights Litigation*, Lawyers' Comm. for Civil Rights Under Law, [http://www.lawyerscommittee.org/projects/voting\\_rights/page?id=0025](http://www.lawyerscommittee.org/projects/voting_rights/page?id=0025) (last visited July 28, 2014).
- 19 *Voting Section Litigation*, U.S. Dep't of Justice, <http://www.justice.gov/crt/about/vot/litigation/caselist.php> (last visited July 28, 2014).
- 20 Lisa J. Danetz, Senior Counsel, Dēmos, Testimony to the U.S. Commission on Civil Rights: Increasing Compliance with Section 7 of the NVRA (April 19, 2013), *available at* <http://www.demos.org/sites/default/files/publications/Final%20USCCR%20Testimony.pdf>.
- 21 *Id.*
- 22 *Id.*
- 23 See *Miss. State Chapter, Operation Push v. Allain*, 674 F. Supp. 1245, 1251-52 (N.D. Miss. 1987), *aff'd* 932 F.2d 400 (5th Cir. 1991).
- 24 *Id.* at 1268. Plaintiffs also brought constitutional claims based on the clear discriminatory intent of the 1892 law and subsequent revisions, but the district judge found it unnecessary to address those claims in light of his statutory ruling. *Id.*
- 25 See 42 U.S.C. §§ 1973gg-3 to -5.
- 26 *Young v. Fordice*, 520 U.S. 273, 291 (1997).
- 27 Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Mississippi (Sept. 22, 1997), *available at* [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/MS/MS-2650.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/MS/MS-2650.pdf).
- 28 *Arizona v. Inter Tribal Council of Ariz.*, 133 S. Ct. 2247 (2013).
- 29 See Voter Registration, Op. Ariz. Att'y Gen., No. 113-011 (R13-016) (Oct. 7, 2013), *available at* <https://www.azag.gov/sites/default/files/sites/all/docs/Opinions/2013/113-011.pdf>; Letter from Kris W. Kobach, Sec'y of State, State of Kan., to Alice Miller, Acting Exec. Dir., Election Assistance Comm'n (Aug. 2, 2013), *available at* [http://www.eac.gov/assets/1/Documents/KW%20to%20EAC%20%20\(8%202%2013\)-with-Kansas-to-Counties-OCR.pdf](http://www.eac.gov/assets/1/Documents/KW%20to%20EAC%20%20(8%202%2013)-with-Kansas-to-Counties-OCR.pdf).
- 30 *Yearbook of Immigration Statistics: 2013*, Dep't of Homeland Security, <http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-naturalizations> (click to download tbl.21).
- 31 See Determination Letter from Loretta King, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Georgia (May 29, 2009), *available at* [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/GA/I\\_090529.php](http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/I_090529.php) [hereinafter King Determination Letter].
- 32 Compl. at ¶¶ 33-40, *Morales v. Handel*, No. 1:08-cv-3172 (N.D. Ga. October 9, 2008) [hereinafter *Morales* Complaint].
- 33 See *Morales v. Handel*, No. 1:08-CV-3172, 2008 WL 9401054 (N.D. Ga. Oct. 27, 2008).
- 34 *Morales* Complaint, *supra* note 32, at ¶¶ 49-63.
- 35 *Morales*, 2008 WL 9401054 at \*8-9.
- 36 King Determination Letter, *supra* note 31.
- 37 *Id.*
- 38 *Id.*
- 39 See *Morales v. Kemp*, Lawyers' Comm. for Civil Rights Under Law, [http://www.lawyerscommittee.org/projects/voting\\_rights/page?id=0021](http://www.lawyerscommittee.org/projects/voting_rights/page?id=0021) (last visited July 28, 2014).
- 40 Compl., *Arcia v. Detzner*, No. 1:12-CV-22282 (S.D. Fla., June 19, 2012).
- 41 *Id.* at ¶ 26.
- 42 *Arcia v. Florida Secretary of State*, 746 F.3d 1273, 1276-77 (11th Cir. 2014).
- 43 *Id.* See generally *What is SAVE?*, U.S. Citizenship and Immigration Services, <http://www.uscis.gov/save/what-save/what-save> (last visited July 28, 2014).
- 44 *Arcia*, 746 F.3d at 1286.
- 45 Compl., *Mi Familia Vota Education Fund v. Detzner*, No. 8:12-CV-01294-JDW-MAP (M.D. Fla. June 8, 2012).
- 46 Order of Dismissal, *Mi Familia Vota Education Fund v. Detzner*, No. 8:12-CV-01294-JDW-MAP (M.D. Fla. July 24, 2013).
- 47 Brandon Larrabee, *Appeals Court: Florida Voter Purge Violated Federal Law*, News-Press Apr. 2, 2014, <http://www.news-press.com/story/news/politics/2014/04/01/appeals-court-florida-voter-purge-violated-federal-law/7181283/>.
- 48 Rita Bettis, Written Testimony, National Commission on Voting Rights, Hearing in Kansas City, Missouri (Apr. 22, 2014) (on file with the Lawyers' Committee).
- 49 Aff. in Support of Resistance to Motion to Dismiss at 1-2, *Am. Civil Liberties Union v. Iowa Sec'y of State Matt Schultz*, No. CVCV009311, 2012 WL 4054139 (Iowa Dist. Sept. 13, 2012), *available at* <http://moritzlaw.osu.edu/electionlaw/litigation/documents/PetitionersExhibitList.pdf>.
- 50 Bettis, *supra* note 48, at 1-2.
- 51 *Id.*
- 52 Ariz. Rev. Stat. Ann. § 16-166(F); Kan. Stat. Ann. § 25-2309(l); Ala. Code § 31-13-28; Ga. Code Ann. § 21-2-216(g)(1); see also Wendy R. Weiser & Erik Opsal, Brennan Ctr. for Justice, *The State of Voting in 2014*, at 3 (2014), *available at* <http://www.brennancenter.org/analysis/state-voting-2014>.
- 53 42 U.S.C. §§ 1973gg-4(a)(1), 1973gg-7(a)(2).
- 54 See *Register to Vote in Your State by Using This Postcard Form and Guide*, [http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration\\_6-25-14\\_ENG.pdf](http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_6-25-14_ENG.pdf) (last visited July 25, 2014).
- 55 See 42 U.S.C. § 1973gg(b).
- 56 *Arizona v. ITCA*, 133 S. Ct. 2247 (2013).
- 57 *Id.* Plaintiffs also asserted in that litigation that the proof-of-citizenship requirement violated Section 2 of the Voting Rights Act, but that claim was not resolved on appeal to the Ninth Circuit and was not addressed by the Supreme Court. *Gonzalez v. Arizona*, 677 F.3d 383, 404 n.30 (9th Cir. 2012).
- 58 *Kobach v. U.S. Election Assistance Comm'n*, No. 13-cv-4095-EFM-TJJ, 2014 WL 1094957 (D. Kan. Mar. 19, 2014); See generally U.S. Election Assistance Comm'n, *Memorandum of Decision Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Registration Form 41-43* (2014), [hereinafter EAC Proof-of-Citizenship Decision] *available at* <http://www.eac.gov/assets/1/Documents/20140117%20EAC%20Final%20Decision%20on%20Proof%20of%20Citizenship%20Requests%20-%20FINAL.pdf>. The EAC denied Georgia's similar request, but the state is not participating in the lawsuit with Arizona and Kansas. *Id.*
- 59 *Kobach*, 2014 WL 1094957 at \*13.
- 60 *Kobach v. U.S. Election Assistance Comm'n*, Nos. 14-3062 and 14-3072 (10th Cir. June 3, 2014).

- 61 Erik Eckholm, *After Ruling, Alabama Joins 2 States in Moving to Alter Voting Rules*, N.Y. Times (Mar. 21, 2014), <http://www.nytimes.com/2014/03/22/us/after-ruling-alabama-joins-2-states-in-moving-to-alter-voting-rules.html>.
- 62 EAC Proof-of-Citizenship Decision, *supra* note 58, at 28–31, 33–35.
- 63 Kristen Baker & Nelly Ward, Brennan Ctr. for Justice, *Survey of Georgia Elections Officials on Voting by Non-Citizens 1* (2009), available at <http://www.brennancenter.org/sites/default/files/legacy/blog/GA.survey.e.officials.doc>.
- 64 Brief for Election Administrators as Amici Curiae in Support of Respondents, at 7, *Arizona v. ITCA*, 133 S.Ct. 2247 (2013), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/AmicusBriefofElectionAdministrators.pdf>.
- 65 Jessica Gonzalez, Congressional Hispanic Caucus Institute, *New State Voting Laws: A Barrier to the Latino Vote?* 5 (2012).
- 66 EAC Proof-of-Citizenship Decision, *supra* note 58, at 42–43.
- 67 Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att’y Gen., U.S. Dep’t of Justice, to State of Tex. (Jan. 16, 1996), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/state\\_letters.php?state=tx](http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=tx).
- 68 *Id.*
- 69 *Id.*
- 70 42 U.S.C. § 1973gg-6(b)-(d).
- 71 42 U.S.C. § 1973gg-6(e).
- 72 See U.S. Civil Rights Comm’n, *Voting Irregularities in Florida During the 2000 Presidential Election* ch. 5 (2001).
- 73 *Id.*; see also Tova Andrea Wang, *The Politics of Voter Suppression: Defending and Expanding Americans’ Right to Vote* 120 (2012).
- 74 Myrna Pérez, Brennan Ctr. for Justice, *Voter Purges 1* (2008), available at <http://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf>; *Florida Scraps Flawed Felon Voting List*, USA Today (July 10, 2004), [http://usatoday30.usatoday.com/news/nation/2004-07-10-felons-vote-fla\\_x.htm](http://usatoday30.usatoday.com/news/nation/2004-07-10-felons-vote-fla_x.htm); Laleh Ispahani & Nick Williams, Am. Civil Liberties Union et al., *Purged* (2004), available at [https://www.aclu.org/files/FilesPDFs/purged%20-voting\\_report.pdf](https://www.aclu.org/files/FilesPDFs/purged%20-voting_report.pdf).
- 75 Wang, *supra* note 73, at 115. (“The huge number of people with felony convictions has everything to do with the change in approach to criminal law in the 1980s and 1990s that increased the number of crimes considered felonies. And even though crime rates dropped in the 1990s, the national prison population grew at an unusually high rate because of the so-called war on drugs that increased penalties for drug crimes. These new sentencing rules for drug offenses also had a disproportionate effect on minority communities, particularly African Americans. African Americans are convicted of drug crimes at a much higher rate than white Americans, despite the fact that white Americans report higher rates of drug use. The disparities in the criminal justice system for African Americans and whites can be seen throughout the process from arrest, conviction, sentencing, and incarceration.”).
- 76 *Richardson v. Ramirez*, 418 U.S. 24 (1974).
- 77 *Id.* at 54.
- 78 *Hunter v. Underwood*, 471 U.S. 222 (1985).
- 79 Am. Civil Liberties Union et al., *Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States 2* (2013) [hereinafter *Democracy Imprisoned*].
- 80 See generally Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (2008).
- 81 Compl., *Johnson v. Bush*, No. 1:00-cv-03542-JLK (S.D. Fla. Sept. 21, 2000).
- 82 *Id.* at ¶ 31.
- 83 *Id.* at ¶ 44.
- 84 *Johnson v. Bush*, 214 F. Supp. 2d 1333, 1338–39 (S.D. Fla. 2002).
- 85 *Johnson v. Governor of State of Florida*, 353 F.3d 1287 (11th Cir. 2003).
- 86 *Johnson v. Governor of State of Florida*, 405 F.3d 1214, 1228 (11th Cir. 2005) (en banc) (citing *Richardson v. Ramirez*, 418 U.S. 24, 48–52 (1974)).
- 87 *Democracy Imprisoned*, *supra* note 79, at 6.
- 88 *Farrakhan v. Gregoire*, 590 F.3d 989 (9th Cir. 2010).
- 89 *Id.*
- 90 *Farrakhan v. Gregoire*, 623 F.3d 990, 993 (9th Cir. 2010) (en banc) (emphasis omitted).
- 91 *Howard v. Gilmore*, No. 99-2285, 2000 WL 203984 (4th Cir. Feb. 23, 2000); see also Anita S. Earls et al., RenewtheVRA.org, *Voting Rights in Virginia: 1982-2006*, at 23–24 (2006).
- 92 *Democracy Imprisoned*, *supra* note 79, at 5.
- 93 *Id.*
- 94 National Commission on Voting Rights, Richmond, Virginia Hearing 27 (Apr. 29, 2014) (transcript on file with the Lawyers’ Committee).
- 95 Ky. Const. § 145.
- 96 Ky. Advisory Comm. to the U.S. Comm’n on Civil Rights, *Voting Rights in Kentucky: Felons Who Have Completed all Terms of Their Sentences Should Have the Right to Vote 22* (2009), [hereinafter *Voting Rights in Kentucky*] available at <http://www.usccr.gov/pubs/KYVotingRightsReport.pdf>.
- 97 Christopher Uggen, Sarah Shannon & Jeff Manza, Sentencing Project, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*, at 16 tbl.3 (2012), available at [http://www.sentencingproject.org/doc/publications/fd\\_State\\_Level\\_Estimates\\_of\\_Felon\\_Disen\\_2010.pdf](http://www.sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf).
- 98 *Voting Rights in Kentucky*, *supra* note 96, at 22.
- 99 Phillip M. Bailey, *Opposition to Felon Voting Rights Thawing, Kentucky Lawmaker Says*, WFPL News (Oct. 21, 2013), <http://wfpl.org/post/opposition-felon-voting-rights-thawing-kentucky-lawmaker-says>.
- 100 Bettis, *supra* note 48, at 2.
- 101 Thomas H. Castelli, Written Testimony, National Commission on Voting Rights, Hearing in Nashville, Tennessee 3 (May 8, 2014) (on file with the Lawyers’ Committee).
- 102 *Id.*
- 103 See generally National Commission on Voting Rights, California State Hearing 50–53 (Jan. 30, 2014) (transcript on file with the Lawyers’ Committee).
- 104 National Commission on Voting Rights, Minnesota and Wisconsin Hearing 113 (Feb. 25, 2014) (transcript on file with the Lawyers’ Committee).
- 105 National Commission on Voting Rights, Miami, Florida Hearing 34 (Mar. 31, 2014) (transcript on file with the Lawyers’ Committee).
- 106 See, e.g., *South Carolina v. United States*, 898 F. Supp. 2d 30, 32 (D.D.C. 2012); *Texas v. Holder*, 888 F. Supp. 2d 113, 115 (D.D.C. 2012).



- 107 For Louisiana, see Tyler Bridges, *Louisiana's Voter ID Law from 1997 Eases Effects of Supreme Court Decision*, *The Lens* (June 27, 2013), <http://thelensnola.org/2013/06/27/louisianas-voter-id-law-from-1997-eases-effects-of-supreme-court-decision/>; see also Wendy Underhill, *Voter Identification Requirements | Voter ID Laws*, National Conference of State Legislatures (June 25, 2014), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Details> ("If the applicant does not have identification, s/he shall sign an affidavit to that effect before the commissioners, and the applicant shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners."). For Virginia, see *Election 2012: Voting Laws Roundup*, Brennan Ctr. for Justice (Oct. 11, 2012), <http://www.brennancenter.org/analysis/election-2012-voting-laws-roundup> ("Virginia passed a law requiring an ID to vote, including various forms of photo. *Id.* This law eliminated an option to sign an affidavit to confirm identity when voting at the polls or applying for an absentee ballot in person.").
- 108 42 U.S.C. § 15483(b)(2)(A). Acceptable identifying documents include current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. *Id.*
- 109 See Sarah Childress, *With Voting Rights Act Out, States Push Voter ID Laws*, PBS Frontline (June 26, 2013), <http://www.pbs.org/wgbh/pages/frontline/government-elections-politics/with-voting-rights-act-out-states-push-voter-id-laws/>.
- 110 Martha Bergmark, *Mississippi's Secretary of State Moves to Enforce Voter ID Law*, Huffington Post (July 10, 2013), [www.huffingtonpost.com/martha-bergmark/voting-rights-act-shelby-county-v-holder\\_b\\_3575216.html](http://www.huffingtonpost.com/martha-bergmark/voting-rights-act-shelby-county-v-holder_b_3575216.html). Mississippians in 2011 voted in favor of an initiative to amend the State Constitution to require that all voters seeking to vote in person (with certain limited exceptions) present a government-issued photo ID in order to cast a ballot that will be counted. A subsequent analysis of the initiative vote by the Lawyers' Committee showed that voting on the ballot measure was highly racially polarized—over 75% of non-white voters opposed the initiative while only about 17% of white voters opposed it. See Russell C. Weaver, Lawyers' Comm. for Civil Rights Under Law, *Pulling Back the Curtain: An Analysis of Racial Voting Shows that Mississippi's Ugly History of Voter Suppression Continues* (2012), available at <http://www.lawyerscommittee.org/admin/site/documents/files/Pulling-Back-the-Curtain.pdf>.
- 111 Tomas Lopez, Brennan Ctr. for Justice, *Shelby County: One Year Later 3* (2014), available at [http://www.brennancenter.org/sites/default/files/analysis/Shelby\\_County\\_One\\_Year\\_Later.pdf](http://www.brennancenter.org/sites/default/files/analysis/Shelby_County_One_Year_Later.pdf); see also Kara Brandeisky & Mike Tigas, *Everything That's Happened Since Supreme Court Ruled on Voting Rights Act*, Pro Publica (Nov. 1, 2013), <http://www.propublica.org/article/voting-rights-by-state-map>.
- 112 Indeed, incidents of fraud perpetrated by voters of any kind are rare. See, e.g., Lorraine C. Minnite, *The Myth of Voter Fraud* (2010); Justin Levitt, Brennan Ctr. for Justice, *The Truth About Voter Fraud* (2007); Natasha Khan & Corbin Carson, *Comprehensive Database of U.S. Voter Fraud Uncovers No Evidence That Photo ID Is Needed*, News 21 (Aug. 12, 2012), <http://votingrights.news21.com/article/election-fraud/>.
- 113 See Lorraine C. Minnite, Project Vote, *The Politics of Voter Fraud* (2007); Eric Lipton & Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. Times (Apr. 12, 2007), [www.nytimes.com/2007/04/12/washington/12fraud.html?pagewanted=all&r=0](http://www.nytimes.com/2007/04/12/washington/12fraud.html?pagewanted=all&r=0).
- 114 In early 2007, there was a major political controversy over the firings of several U.S. attorneys. As a larger picture of the politicization of the Department of Justice emerged, especially the Civil Rights Division, the focal point was the firing and forced resignations of nine U.S. attorneys and the consideration of three more for sudden removal, for apparent political reasons. As it turned out, five of those twelve were targeted because they had not pursued alleged voter fraud accusations with sufficient vigor for the political operatives in the Bush administration. See Lipton & Urbina, *supra* note 113; see also Dan Eggen & Amy Goldstein, *Voter Fraud Complaints by GOP Drove Dismissals*, Wash. Post (May 14, 2008) <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/13/AR2007051301106.html>; Eric Lipton, *Panel Asks Official about Politics in Hiring*, N.Y. Times (June 6, 2007) <http://www.nytimes.com/2007/06/06/washington/06justice.html>; Frank Morris, *Attorneys Scandal May be Tied to Missouri Voting*, NPR (May 3, 2007) <http://www.npr.org/templates/story/story.php?storyId=9981606>
- 115 According to Lorraine C. Minnite,
- [n]o state considering or passing restrictive voter identification laws has documented an actual problem with voter fraud. In litigation over the new voter identification laws in Wisconsin, Indiana, Georgia and Pennsylvania, election officials testified they have never seen cases of voter impersonation at the polls. Indiana and Pennsylvania stipulated in court that they had experienced zero instances of voter fraud.
- When federal authorities challenged voter identification laws in South Carolina and Texas, neither state provided any evidence of voter impersonation or any other type of fraud that could be deterred by requiring voters to present photo identification at the polls.
- Lorraine C. Minnite, *SSN Key Findings: The Misleading Myth of Voter Fraud in American Elections* (2014), available at [http://www.scholarsstrategynetwork.org/sites/default/files/ssn\\_key\\_findings\\_minnite\\_on\\_the\\_myth\\_of\\_voter\\_fraud.pdf](http://www.scholarsstrategynetwork.org/sites/default/files/ssn_key_findings_minnite_on_the_myth_of_voter_fraud.pdf); see also *Applewhite v. Pennsylvania*, No. 330 MD 12, 2012 WL 3332376 (Pa. Commw. Ct. Aug. 15, 2012), vacated, 617 Pa. 563 (2012), remanded to 2012 WL 4497211 (Pa. Commw. Ct. Oct. 2, 2012), *subsequent determination* in 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014) ("The parties are not aware of any incidents of any in-person voter fraud in Pennsylvania and do not have direct personal knowledge of in[-]person voter fraud elsewhere"); Nick Wing, *Pennsylvania Voter ID Law Trial Set To Begin As State Concedes It Has No Proof Of In-Person Voter Fraud*, Huffington Post (July 24, 2012) [http://www.huffingtonpost.com/2012/07/24/pennsylvania-voter-id-trial\\_n\\_1697980.html](http://www.huffingtonpost.com/2012/07/24/pennsylvania-voter-id-trial_n_1697980.html). In North Carolina,

[t]he state presented no tangible evidence of voter fraud to justify the new restrictions. "There is no evidence we had problems with these enhanced forms of participation," Senator Dan Blue, the Democratic minority leader, testified. (Ironically, the law does nothing to restrict absentee voting, where the potential for fraud is greatest.)

Ari Berman, *North Carolina Will Determine the Future of the Voting Rights Act*, *The Nation* (July 10, 2014) <http://www.thenation.com/blog/180608/north-carolina-will-determine-future-voting-rights-act#>; see also Press Release, Advancement Project, North Carolina's Answer to Lawsuit Offers No Justification for Making It Harder to Vote (Oct. 21, 2013), <http://www.advancementproject.org/news/entry/north-carolinas-answer-to-lawsuit-offers-no-justification-for-making-it-harder-to-vote>.

116 *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008).

117 *Frank v. Walker*, No. 11-CV-01128, 2014 WL 1775432, at \*6 (E.D. Wisc. Apr. 29, 2014).

118 Said Rep. Todd Rokita (R-IN), a former Indiana Secretary of State:

Whether or not you agree that in-person voter impersonation fraud exists -- and I will say that as eight years of being Indiana's Secretary of State, it does exist, we have allegations made every election . . . [b]ut if it's happening in Indiana, it's happening everywhere from New York to California. . . .

Now these gentleman and others say 'well you can't produce one case, you can't produce one conviction, therefore it doesn't exist,' the word evidence was used. Well that's not true, there's a lot of evidence . . . .

There are several cases that I presented to prosecutors who didn't take up the case, not because of a lack of evidence, but think about the kind of fraud it is, think about the kind of crime it is . . . . It's something that happens in an instant and than it's gone. . . .

It's the kind of cases, the kind of fraud, that's very hard to prosecute, but that doesn't mean it doesn't exist . . . .

Ryan J. Reilly, *GOP Rep: Voter Fraud 'Happening Everywhere,' But Prosecutors Wouldn't Take Cases*, Talking Points Memo (Sept. 13, 2011) <http://talkingpointsmemo.com/muckraker/gop-rep-voter-fraud-happening-everywhere-but-prosecutors-wouldn-t-take-cases-video>. Rokita said that the Indiana voter ID law

is intended to encourage "faith in the election process, and in the integrity of it. Identify theft is the fastest-growing problem in America."

He acknowledges there have been no prosecutions for impersonating a voter. "But we still have a

right to protect ourselves against the possibility of voter fraud," he said.

*ID Laws Spur Voting Legal Battle*, Assoc. Press (Jan. 23, 2008) [http://usatoday30.usatoday.com/news/nation/2008-01-23-voting-court\\_N.htm](http://usatoday30.usatoday.com/news/nation/2008-01-23-voting-court_N.htm). Testifying before the Indiana Committee on House Administration, he said

This is not about voter intimidation. It is about voter confidence. It is about the right of a legally registered voter to have her ballot counted and to expect that ballot to have exactly the same weight as every other legally registered voter's ballot. Inherent in this is the right not to have her vote diluted or cancelled out by someone who would act to defraud the system. Requiring government issued photo identification at the polls is a way to ensure this.

*Testimony of Indiana Secretary of State Todd Rokita for the Committee on House Administration*, Indiana Sec'y of State, Elections Division (Feb. 9, 2005), [www.in.gov/sos/3183.htm](http://www.in.gov/sos/3183.htm). North Carolina House Speaker Thom Tillis offered a similar rationale for North Carolina's voter ID law:

"There is some evidence of voter fraud, but that's not the primary reason for doing this," Tillis told Melvin. "We call this restoring confidence in government," Tillis said. "There are a lot of people who are just concerned with the potential risk of fraud."

He added a voter ID law "would make nearly three-quarters of the population more comfortable and more confident when they go to the polls."

Laura Leslie, *Tillis: Fraud 'Not the Primary Reason' for Voter ID Push*, WRAL (updated Mar. 17, 2013), [www.wral.com/tillis-actual-voter-fraud-not-the-primary-reason-for-voter-id-push-/12231514/](http://www.wral.com/tillis-actual-voter-fraud-not-the-primary-reason-for-voter-id-push-/12231514/). The U.S. Supreme Court has expressed similar reasoning:

Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

*Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). In *Purcell*,

The state Respondents' brief was most emphatic in its advocacy of a state interest to restore confidence in elections. Citing Gallup and Rasmussen polls attesting to the widespread lack of confidence Americans have in the integrity of elections, the state's brief contained an entire subsection titled, "The need to preserve public confidence in elections justifies the Voter ID Law." Because opportunities for abuse exist, this state interest in restoring confidence is compelling, the brief argued, "[r]egardless whether particular instances of fraud are well documented."

Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements* 4–5 (Columbia Law Sch. Pub. Law & Legal Theory Working Paper Grp., Paper No. 08-170, 2008), available at <http://www.brennancenter.org/sites/default/files/legacy/Democracy/Persily%20Ansolabehere%20attitudes%20study.pdf> (citations omitted).

- 119 *Crawford*, 553 U.S. at 197 (while “Indiana’s interest in protecting public confidence ‘in the integrity and legitimacy of representative government’ . . . is closely related to the State’s interest in preventing voter fraud, public confidence in the integrity of the electoral process [also] has independent significance, because it encourages citizen participation in the democratic process”) (citation omitted).
- 120 See, e.g., Matt A. Barreto et al., *The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate* (Wash. Inst. for the Study of Race and Ethnicity, Working Paper, 2007), available at [http://depts.washington.edu/uwiser/documents/Indiana\\_voter.pdf](http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf); Matt A. Barreto et al., *Voter ID Requirements and the Disenfranchisement of Latino, Black and Asian Voters* (Sept. 1, 2007) (prepared for presentation at the Am. Political Science Ass’n Annual Conference), available at [http://faculty.washington.edu/mbarreto/research/Voter\\_ID\\_APSA.pdf](http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf); Brennan Ctr. for Justice, *Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification* (2006) [hereinafter *Citizens Without Proof*], available at [http://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf); John Pawasarat, Univ. of Wisc.-Milwaukee Employment and Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin* (2005), available at <https://www4.uwm.edu/eti/barriers/DriversLicense.pdf>.
- 121 *Citizens Without Proof*, supra note 120, at 3.
- 122 Shailla Dewan, *In Georgia, Thousands March in Support of Voting Rights*, N.Y. Times (Aug. 7, 2005) [http://www.nytimes.com/2005/08/07/national/07march.html?\\_r=0](http://www.nytimes.com/2005/08/07/national/07march.html?_r=0); Ellen Berry, *Georgia Gov. Signs Voter ID Bill Into Law*, L.A. Times (Apr. 23, 2005) <http://articles.latimes.com/2005/apr/23/nation/na-voterid23>.
- 123 Ga. Code Ann. § 21-2-417.
- 124 *Common Cause of Ga. v. Billups*, 406 F. Supp. 2d 1326, 1376 (N.D. Ga. 2005).
- 125 Vishal Agraharkar, Wendy Weiser & Adam Skaggs, Brennan Ctr. for Justice, *The Cost of Voter ID Laws: What the Courts Say* 3 (2011), available at <http://www.brennancenter.org/sites/default/files/legacy/Democracy/Voter%20ID%20Cost%20Memo%20FINAL.pdf>.
- 126 *Common Cause III*, 504 F. Supp. 2d 1333, 1377–80.
- 127 *Crawford*, 553 U.S. 181.
- 128 *Id.*
- 129 From the Indiana Election Division’s website:

Public Law 109-2005 requires Indiana residents to present a government-issued photo ID before casting a ballot at the polls on Election Day.

Your photo ID must meet 4 criteria to be acceptable for voting purposes. It Must:

1. Display your photo
2. Display your name, and the name must conform to your voter registration record . . .
3. Display an expiration date and either be current or have expired sometime after the date of the last General Election . . .
4. Be issued by the State of Indiana or the U.S. government

In most cases, an Indiana driver license, Indiana photo ID card, Military ID or U.S. Passport is sufficient.

A student ID from an Indiana State school may only be used if it meets all of the 4 criteria specified above. A student ID from a private institution may not be used for voting purposes.

*Photo ID Law*, Indiana Election Div., [www.in.gov/sos/elections/2401.htm](http://www.in.gov/sos/elections/2401.htm) (last visited July 30, 2014). The law provides certain exemptions:

Exemptions do exist for the indigent, those with a religious objection to being photographed, and those living in state-licensed facilities that serve as their precinct’s polling place. If you are wishing to claim an exemption from the photo ID requirement based on indigence or a religious objection, you may do so in one of two ways:

1. Go the polls on Election Day, and cast a provisional ballot. Within 10 days of the election, visit the county election office and affirm that an exemption applies to you.
2. Vote absentee-in-person at the county election office before Election Day, and while there, affirm that an exemption applies to you.

If you are a resident at a state-licensed facility that serves as your polling place, you may claim the exemption at the polls on Election Day.

If you are unable or unwilling to present photo ID on Election Day, you may cast a provisional ballot. Upon casting a provisional ballot, you have until noon 10 days after the election to follow up with the County Election Board and either provide photo ID or affirm one of the law’s exemptions applies to you.

Also, if you qualify to vote absentee-by-mail or absentee-by-traveling board, and you chose to vote as such, you are not required to present photo ID.

Exemptions, Indiana Election Division, <http://www.in.gov/sos/elections/2624.htm> (last visited July 30, 2014). In *Crawford*, the Court asserted that “the evidence in the record does not provide us with the number of registered voters without photo identification[.]” *Crawford*, 553 U.S. at 200. Drawing from the district court’s determinations, the Supreme Court found that the burden on voters was “limited[.]” *Id.* at 203 (quoting *Burdick v. Takushi*, 504 U.S. 428, 439).

- 130 *Crawford*, 553 U.S. at 203 (quoting *Burdick*, 504 U.S. at 439).
- 131 *Id.* at 200.
- 132 *Id.* at 201.
- 133 *Id.*
- 134 *Id.* at 204.
- 135 *Texas v. Holder*, 888 F. Supp. 2d at 124, *vacated and remanded*, 133 S. Ct. 2886 (2013).
- 136 Defendants' Motion to Dismiss at 1, *Veasey v. Perry*, No. 2:13-CV-193, 2013 WL 6046807 (S.D. Tex. June 26, 2013). Texas cited *Crawford* repeatedly throughout its Motion to Dismiss.
- 137 Order on Motions to Dismiss at \*14-\*15, *Veasey v. Perry*, No. 2:13-CV-193, 2014 WL 3002413 (S.D. Tex. July 2, 2014).
- 138 *Frank v. Walker*, No. 11-CV-01128, 2014 WL 1775432 at \*3, \*18, \*33 (E.D. Wisc. 2014).
- 139 *Id.* at 23.
- 140 *Id.* at 24-38.
- 141 *Id.* at 33.
- 142 *Id.* at 8.
- 143 *Id.* at 8-10.
- 144 Karyn L. Rotker, Written Testimony, Nat'l Comm'n on Voting Rights, Hearing in Minneapolis, Minnesota 9 (Feb. 25, 2014) (citing Matt A. Barreto, Rates of Possession of Accepted Photo Identification Among Different Subgroups in the Eligible Voter Population, Milwaukee County, Wisconsin, Expert Report Submitted on Behalf of the Plaintiffs in *Frank v. Walker* at 18-19, 34, *Frank v. Walker*, No. 11-CV-01128, 2014 WL 1775432 (Apr. 23, 2012), available at <https://www.aclu.org/files/assets/062-10-exhibitjexpertreport.pdf>).
- 145 *Id.* at 10.
- 146 See Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 Vand. L. Rev. 89, 91, 101-05 (2014).
- 147 *Weinschenk v. State*, 203 S.W.3d 201, 221-22 (Mo. 2006).
- 148 Order on Preliminary Injunction at 3, *Kohls v. Martin*, No. 60CV-14-1495 (Ark. Cir. May 23, 2014). According to the ACLU of Arkansas, "as many as 25% of African-Americans in the state lack government issued photo ID, compared to 8% of their white counterparts." *Voter ID Laws Disenfranchise Eligible, Longtime Voters*, Am. Civil Liberties Union of Ark. (2013), [www.acluarkansas.org/content/voter-id-bill-in-arkansas-house#.U9fdlPldVp6](http://www.acluarkansas.org/content/voter-id-bill-in-arkansas-house#.U9fdlPldVp6).
- 149 *Applewhite v. Commonw. of Pennsylvania*, 617 Pa. 563 (2012).
- 150 *Id.* at 567 ("PennDOT—apparently for good reason—has refused to allow such liberal access. Instead, the Department continues to vet applicants for Section 1510(b) cards through an identification process that Commonwealth officials appear to acknowledge is a rigorous one.").
- 151 *Id.* at 569 ("While there is a debate over the number of affected voters, given the substantial overlap between voter rolls and PennDOT's existing ID driver/cardholder database, it is readily understood that a minority of the population is affected by the access issue. Nevertheless, there is little disagreement with Appellants' observation that the population involved includes members of some of the most vulnerable segments of our society (the elderly, disabled members of our community, and the financially disadvantaged).").
- 152 *Id.* at 570 ("[I]f the Commonwealth Court is not still convinced in its predictive judgment that there will be no voter disenfranchisement arising out of the Commonwealth's implementation of a voter identification requirement for purposes of the upcoming election, that court is obliged to enter a preliminary injunction.") (emphasis added).
- 153 *Applewhite*, 2014 WL 184988 at \*26-27.
- 154 *Id.* at \*11-\*12.
- 155 *Id.* at \*14-\*17.
- 156 In the first case, the North Carolina State Conference of the NAACP and other individuals and churches challenge portions of House Bill 589 pursuant to the federal Voting Rights Act, 42 U.S.C. § 1973, and pursuant to the Fourteenth and Fifteenth Amendments to the Constitution. *N.C. State Conference of the NAACP v. McCrory*, No. 1:13-CV-658 (M.D.N.C. 2014). In the second case, the League of Women Voters of North Carolina and other individuals and groups raise similar challenges under the Voting Rights Act, 42 U.S.C. § 1973 and § 1973a, and under the Fourteenth Amendment. *League of Women Voters of N.C. v. North Carolina*, No. 1:13-CV-660 (M.D.N.C. 2014). Finally, in the third case, the Department of Justice also raises similar challenges pursuant to the Voting Rights Act, 42 U.S.C. § 1973. In all three cases, the claims are asserted against the State of North Carolina, the members or director of the State Board of Elections, and/or North Carolina Governor McCrory. *United States v. North Carolina*, No. 1:13-CV-861 (M.D.N.C. 2014). See Order, *N.C. State Conference of the NAACP v. McCrory*, No. 1:13-CV-658 (M.D.N.C. 2014), available at <http://www.advancementproject.org/page/-/esjt/files/resources/NC%20Order.pdf>.
- 157 N.C. State Board of Elections, *Apr. 2013 SBOE-DMV ID Analysis* (Apr. 17, 2013), [www.democracy-nc.org/downloads/SBOE-DMVMatchMemoApril2013.pdf](http://www.democracy-nc.org/downloads/SBOE-DMVMatchMemoApril2013.pdf).
- 158 Compl. at 15-16, *United States v. North Carolina*, No. 13-CV-861 (M.D.N.C. Sept. 30, 2013).
- 159 Rachael V. Cobb, D. James Greiner & Kevin M. Quinn, *Can Voter ID Laws Be Administered in a Race-Neutral Manner? Evidence from the City of Boston in 2008*, 7 Q.J. Pol. Sci. 1, 3 (2010); Lonna R. Atkeson et al., *A New Barrier to Participation: Heterogeneous Application of Voter Identification Policies*, 29 Electoral Stud. 66, 66-73 (2010).
- 160 *Id.*
- 161 National Commission on Voting Rights, Pennsylvania State Hearing 125 (Feb. 6, 2014) (transcript on file with the Lawyers' Committee).
- 162 *Texas v. Holder*, 888 F. Supp. 2d at 115.
- 163 *Id.* at 124-25.
- 164 *Id.* at 144.
- 165 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., Dep't of Justice to State of Texas (Mar. 12, 2012), available at [http://www.justice.gov/crt/records/vot/obj\\_letters/letters/TX/I\\_120312.pdf](http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/I_120312.pdf).
- 166 *Texas v. Holder*, 888 F. Supp. 2d at 144.
- 167 *Id.*
- 168 *Id.* at 138.
- 169 *Id.* at 139-40. At the NCVR Texas hearing, the Commission heard direct testimony regarding the hours it can take some voters to get to the Department of Public Safety. See Rogene Gee Calvert, Testimony of Rogene Gee Calvert, Dir., Tex. Asian American Redistricting Initiative 122, National Commission on Voting Rights, Houston, Texas Regional Hearing (Apr. 5, 2014) (transcript on file with the Lawyers' Committee).
- 170 *Id.* at 144 (internal citations omitted).

- 171 *Texas v. Holder*, 133 S. Ct. 2886 (2013); *Texas v. Holder*, No. 1:12-cv-00128 (D.D.C. Aug. 27, 2013).
- 172 Sarah Ferris, *Texas Revives Voter ID Law in Wake of Supreme Court Decision, Opponents Pledge to Keep Up Fight*, Houston Chron. (June 25, 2013) [blog.chron.com/txpotomac/2013/06/texas-revives-voter-id-law-in-wake-of-supreme-court-decision-opponents-pledge-to-keep-up-fight/#13481101=0](http://blog.chron.com/txpotomac/2013/06/texas-revives-voter-id-law-in-wake-of-supreme-court-decision-opponents-pledge-to-keep-up-fight/#13481101=0).
- 173 The lawsuit brought by the United States and the private suits have been consolidated using the caption of the first-filed case, *Veasey v. Perry*, No. 2:13-cv-193 (S.D. Tex. 2014).
- 174 *Absentee and Early Voting*, Nat'l Conference of State Legislatures, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#early> (last visited July 30, 2014).
- 175 *Florida v. United States*, 885 F. Supp. 2d 299, 322–23 (D.D.C. 2012).
- 176 See, e.g., *id.* at 329–30, 337.
- 177 *Id.* at 308–09.
- 178 Carolyn Thompson, Florida Voter Protection Advocate, Advancement Project, National Commission on Voting Rights, Miami, Florida Regional Hearing (Mar. 31, 2014) (transcript on file with the Lawyers' Committee).
- 179 Michael C. Herron & Daniel A. Smith, *Precinct Closing and Wait Times in Florida during the 2012 General Election*, Dartmouth College (Aug. 28, 2013), <http://www.dartmouth.edu/~heron/HerronSmithAPSA2013.pdf>.
- 180 Scott Powers & David Damon, *Analysis: 201,000 Voters Didn't Vote Because of Long Lines*, Orlando Sent. (Jan. 29, 2013), [http://articles.orlandosentinel.com/2013-01-29/business/os-voter-lines-statewide-20130118\\_1\\_long-lines-sentinelanalysis-state-ken-detzner](http://articles.orlandosentinel.com/2013-01-29/business/os-voter-lines-statewide-20130118_1_long-lines-sentinelanalysis-state-ken-detzner).
- 181 Michael C. Herron & Daniel A. Smith, *Souls to the Polls: Early Voting in the Shadow of House Bill 1355*, 11 Election L.J. 331, 341 (2012).
- 182 *Id.* at 346.
- 183 *Id.* at 343.
- 184 *Florida v. United States*, 885 F. Supp. 2d at 322–24.
- 185 Paul Gronke & Charles Stewart, *Early Voting in Florida*, 26 (Mass. Inst. of Tech. Political Science Dep't, Working Paper No. 2013-12, 2013), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2247144](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2247144).
- 186 *Id.*
- 187 *Id.* at 6.
- 188 *Id.* at 7.
- 189 Compl. at ¶ 29, *United States v. North Carolina*, No. 13-CV-861 (M.D.N.C. Sept. 30, 2013).
- 190 *Id.* at ¶ 30; see also Expert Decl. of Charles Stewart III at ¶¶ 129–214, *United States v. North Carolina*, Nos. 13-CV-861 and 13-CV-660 (M.D.N.C. May 19, 2014) (citing the numbers for 2008 and 2012, as well as discussing figures from other years and predicting a negative impact on African Americans from HB 589's early voting cuts); Amended Rule 26(A)(2)(B) Expert Report & Decl. of Paul Gronke, PhD at ¶¶ 8–41, *League of Women Voters of N.C. v. North Carolina*, No. 13-CV-660 (M.D.N.C. May 19, 2014).
- 191 Compl. at ¶¶ 37–39, *League of Women Voters of N.C. v. North Carolina*, No. 13-CV-660 (M.D.N.C. Aug. 12, 2013). The trial in this case is not expected to take place until 2015, although motions for a preliminary injunction are pending.
- 192 See generally Michael Herron & Daniel A. Smith, *Race, Shelby County and the Voter Information Verification Act in North Carolina*, Dartmouth College (Feb. 12, 2014), <http://electionsmith.wordpress.com/2014/02/11/late-night-exclusive-latest-herron-smith-race-shelby-county-and-the-voter-information-verification-act-in-north-carolina/>.
- 193 Russell Weaver & Sonia Gill, Lawyers' Committee for Civil Rights Under Law, *Early Voting Patterns by Race in Cuyahoga County, Ohio* 10 (2012), available at [http://www.lawyerscommittee.org/admin/site/documents/files/EarlyVoting\\_Cuyahoga\\_Report.pdf](http://www.lawyerscommittee.org/admin/site/documents/files/EarlyVoting_Cuyahoga_Report.pdf).
- 194 Statistical Analysis on file with the Lawyers' Committee for Civil Rights Under Law.
- 195 Daniel Brill, Franklin Cnty. Bd. of Elections, *2008 Early In-Person Voting 2* (2012), available at <http://www.nova-ohio.org/Franklin%20Cty%20Brill%20Report%20revis%208-16-12.pdf>.
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## CHAPTER 7

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