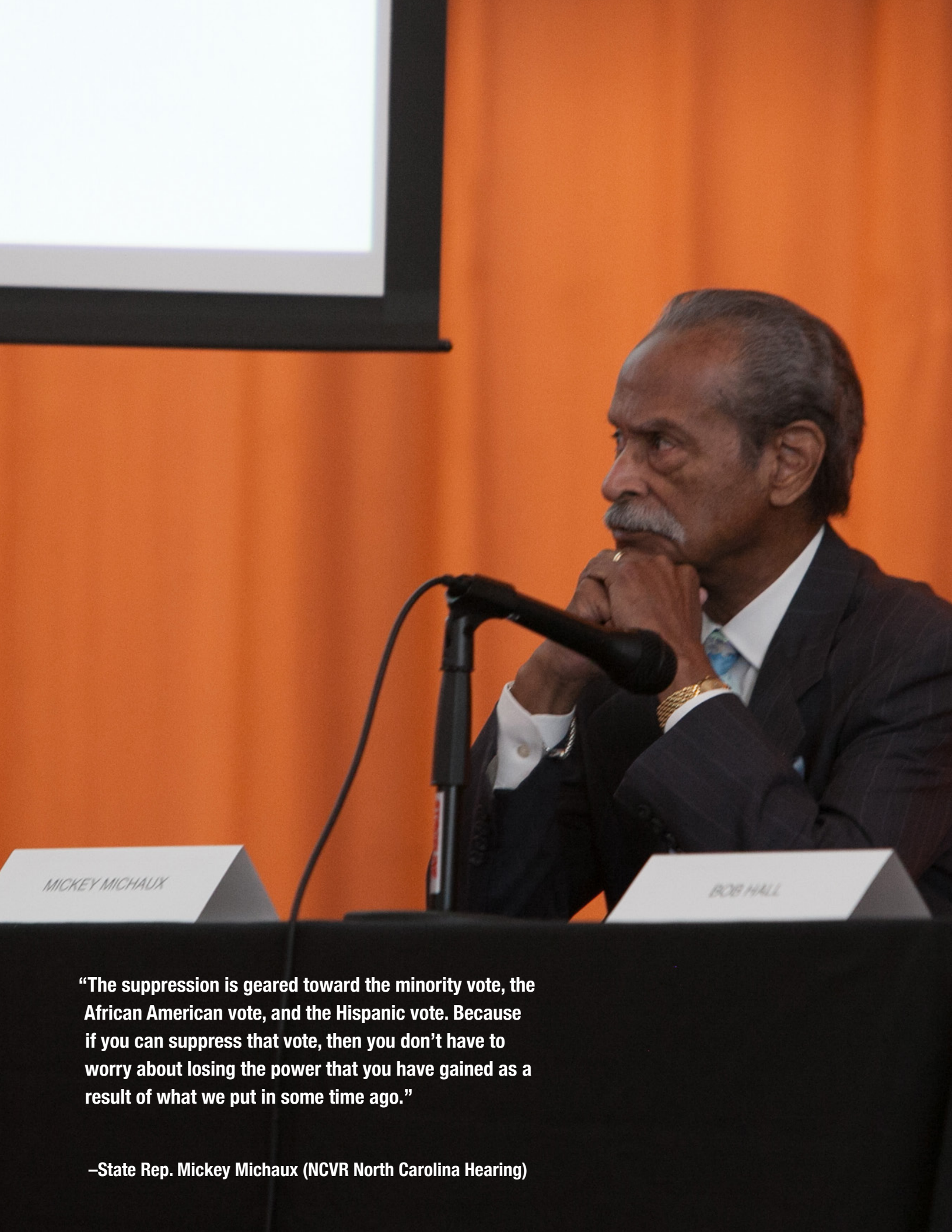

"The suppression is geared toward the minority vote, the African American vote, and the Hispanic vote. Because if you can suppress that vote, then you don't have to worry about losing the power that you have gained as a result of what we put in some time ago."

–State Rep. Mickey Michaux (NCVR North Carolina Hearing)

CHAPTER 2
National Overview Of Voting Discrimination, 1995–2014

Racial voting discrimination remains a serious problem in the United States. Several states, especially Texas, have shown a pattern of repeated and varied violations since 1995. Texas and other states with the worst records each: (1) have significantly more documented indicators of voting discrimination than average; and (2) were covered under Section 4(b) of the Voting Rights Act (VRA) prior to the *Shelby County* decision. This pattern is clearly seen in the post-1995 record of at least 171 successful lawsuits under Section 2 of the VRA, 113 Section 5 preclearance denials and 48 successful lawsuits and ten non-litigation settlements enforcing the language assistance provisions of the VRA.[1]

The voting rights record reviewed in this chapter focuses upon three types of compliance issues arising under the Voting Rights Act since 1995:

- Affirmative litigation brought in federal court under Section 2 of the VRA, including challenges to redistricting plans and methods of election (including at-large elections) that minimize or cancel out the ability of minority voters to elect their preferred candidates to office (i.e., vote dilution challenges), and vote denial challenges to other voting practices involving access to the ballot (bilingual procedures are treated separately);

- Section 5 preclearance denials, either in the form of administrative objections interposed by the United States Department of Justice (DOJ) or in litigation before a three-judge panel in the United States District Court for the District of Columbia, along with denials of preclearance for jurisdictions covered under Section 3(c) of the VRA; and

- Cases concerning bilingual election assistance for language minority voters, brought under Sections 203, 4(f)(4), and 4(e) of the VRA, as well as related claims brought on occasion under Section 2 and Section 208 of the VRA.

Separate listings identifying each individual matter in the three categories are included in the Supplemental Online Appendix (http://votingrightstoday.org/ncvr/resources/discriminationreport). While these categories are not the only relevant indicators of voting discrimination, each one sheds light on the critical questions of how frequently voting discrimination occurs today and whether it is geographically concentrated.[2]

PHOTO CREDIT: ALLISON MEDER

As shown in Table 1, between January 1995 and June 2014 over 300 lawsuits or administrative determinations under the VRA led to the prohibition, abandonment, or alteration of a variety of voting practices at both the state and local levels. While one or more of these matters occurred in 31 different states, the activity was heavily concentrated in the jurisdictions that were specially covered under Section 4(b) at the time of *Shelby County*. In fact, approximately three-fourths of these matters involved Section 4(b) jurisdictions.

Table 1: VRA Enforcement: January 1995 to June 2014

Type of Enforcement Matter	Number of Matters	Number of Matters Involving a State-Level Practice	Number of Matters Involving Jurisdictions That Were Covered Under Section 4	Number of Matters, By Type of Voting Practice at Issue
Preclearance Denials	113	21	113	58 Redistricting 20 Methods of election/selection 7 Jurisdictions' annexations/de-annexations 20 Ballot access (not bilingual) 4 Bilingual
Section 2 (non-bilingual) Cases	171	16	123	30 Redistricting 123 Methods of election/selection 21 Ballot access
Bilingual Cases	58	2	15	58 Bilingual

As shown in Tables 2, 3, and 4, Texas, a state fully covered by Section 4(b), had, by far, the greatest overall number of enforcement matters—over 110. Four states—Georgia, Louisiana, Mississippi, and New York—had between 20 and 28 enforcement matters each; three of these states were wholly covered under Section 4(b) and New York was partially covered (i.e., some local jurisdictions were covered and therefore subject to the Section 5 preclearance requirement though the state as a whole was not). Three states had between 13 and 19 enforcement matters each—California, Florida, and South Carolina; South Carolina was fully covered by Section 4(b) and California and Florida were partially covered.

Minority vote dilution was the problem in most of the Section 2 litigation and Section 5 preclearance denials, in the form of discriminatory redistricting plans or methods of election. However, discriminatory access to the ballot comprised a sizable minority of the Section 2 cases and Section 5 preclearance denials as well. The numerous lawsuits under the language assistance provisions of the VRA showed widespread failure by local jurisdictions to comply with those provisions.

Rogene Gee Calvert, director of the Texas Asian American Redistricting Initiative testified about the need for additional bilingual poll workers in Harris County, which now mandates Vietnamese and Chinese language assistance; she also discussed the difficulty Asian seniors have in obtaining proper documents to get a photo ID. (NCVR Texas Hearing) PHOTO CREDIT: SAMUEL WASHINGTON

About 10 percent of these enforcement matters (identified in Table 1) dealt with state-level voting practices. That is, about 10 percent dealt with practices adopted by or being administered by a state; in some instances, the discriminatory effect of these practices was statewide or nearly so, while in other instances the discrimination was more localized.

In its *Shelby County* decision, the Supreme Court admonished Congress to consider current conditions when it acts to address voting discrimination through a preclearance requirement. As discussed in detail below, the current conditions show that voting discrimination is a serious present-day problem and occurs most frequently in specific states.

I. LITIGATION UNDER SECTION 2 OF THE VRA

Section 2 of the VRA has applied nationwide since it was enacted in 1965. The record of successful lawsuits brought under Section 2 is not, on its own, sufficient to show the full extent of voting discrimination, but it is the logical point at which to begin that assessment. If voting discrimination is no longer a serious problem in the United States, then the overall number of successful Section 2 cases should be small, and the cases should either be evenly distributed among the states, or there should be fewer Section 2 cases in the states

formerly covered under Section 4(b) (since their voting changes had been federally screened for decades).[3]

In fact, there were at least 171 successful Section 2 cases since 1995, an average of nearly nine per year.[4] These included 16 state-level cases where a state law or practice, rather than a local one, was in question. Nearly 90 percent of the practices that were successfully challenged under Section 2 involved vote dilution claims, principally redistricting plans or at-large voting rules. These cases are summarized in Table 2 and are listed individually in the Supplemental Online Appendix.

Table 2: Successful Section 2 Cases: January 1995 to June 2014

State	Number of Cases	Coverage Under Section 4	State-Level Cases	Successfully Challenged Practices[ab]
TOTAL (27 States)	171	123 cases dealt with jurisdictions covered under Section 4	16 cases	Ballot access (21); Method of election (123); Redistricting (30)
Alabama	2	State	--	Method of election (1); Redistricting (1)
Arizona	1	State	1	Voter identification for in-person voting (Native American tribal members)
Arkansas	2	None	--	Election schedule (1); Method of election (1)
California	4	Partial (1 case)	1 (voting method)	Method of election (2); Redistricting (1); Voting method (1)
Colorado	2	None	1 (redistricting)	Method of election (1); Redistricting (1)
Florida	6	Partial (2 cases)	2 (poll worker training, provisional ballots, voting method, voter purges)	Method of election (4); Poll worker training (1); Provisional ballots (1); Voter purge (2); Voting method (1)
Georgia	9	State	--	Method of election (6); Redistricting (2); Voter challenges (1)
Hawaii	1	None	1	Candidate qualification
Illinois	5	None	1 (voting method)	Candidate qualification (1); Method of election (1); Redistricting (2); Voting method (1)
Louisiana	6	State	--	Method of election (2); Redistricting (5)
Massachusetts	2	None	1 (legis. redistricting)	Method of election (1); Redistricting (2)
Michigan	1	None	--	Race-based polling place challenges

State	Number of Cases	Coverage Under Section 4	State-Level Cases	Successfully Challenged Practices[ab]
Mississippi	13	State	--	Method of election (7); Redistricting (5); Voter intimidation (1)
Montana	5	None	--	Method of election (4); Registration and early voting sites (1)
Nebraska	1	None	--	Method of election
New York	5	Partial (1 case)	1 (voting method)	Method of election (2); Redistricting (2); Voting method (1)
North Carolina	2	Partial (both cases)	--	Method of election (2)
North Dakota	2	None	--	Method of election (1); Polling place (1)
Ohio	2	None	--	Method of election (2)
Pennsylvania	1	None	--	Polling place
Rhode Island	1	None	1 (legis. redistricting)	Redistricting
South Carolina	3	State	--	Method of election (3)
South Dakota	7	Partial (1 case)	2 (legis. redistricting & method of election)	Early voting (1); Method of election (2); Redistricting (3); Voting qualifications (1)
Tennessee	3	None	1 (legis. redistricting)	Method of election (1); Redistricting (2)
Texas	82	State	1 (cong. redistricting)	Method of election (78); Redistricting (2); Unknown (2)
Wisconsin	2	None	2 (photo ID; legis. redistricting)	Photo ID requirement (1); Redistricting (1)
Wyoming	1	None	--	Method of election

a Bilingual Section 2 claims are included together with other claims under the VRA language assistance provisions (see Table 4).
b A few lawsuits involved more than one voting practice.

These cases were—by an overwhelming margin—disproportionately concentrated in the states that were covered by Section 4(b) of the VRA at the time of *Shelby County v. Holder*. Specifically, nearly three-quarters (123 of 171) of the successfully resolved Section 2 lawsuits were brought in jurisdictions that were covered under Section 4(b).[5] By contrast, the 2000 census data showed that more than three-fourths of the nation's total population lived in non-covered areas, as did substantial majorities of the African-American (61 percent), Hispanic (68 percent), and Native American (75 percent) populations.[6]

Thus, one quarter of the nation's population resided in states or counties that prompted three-quarters of all successful Section 2 claims.

Approximately two-thirds (110) of the successful Section 2 suits were brought against jurisdictions in just four states: Georgia, Louisiana, Mississippi, and Texas. These included three state-level cases.

The Section 2 record in Texas is indisputably the worst of any state, both qualitatively and quantitatively. Texas alone accounted for about half of the successful Section 2 litigation since 1995.

The Supreme Court's 2006 decision in *LULAC v. Perry*,[7] which found that Texas' congressional redistricting plan violated Section 2 of the VRA and bore the "mark of intentional discrimination that could give rise to an equal protection violation,"[8] was but one instance where federal courts have found racial discrimination in a Texas statewide redistricting plan.[9] As discussed in more detail in Chapter 5, after having lost the *LULAC* case before the Supreme Court, based upon the racial gerrymandering of Congressional District 23 in West Texas, the Texas legislature used its next opportunity for redistricting to do precisely the same thing in the State's 2011 congressional redistricting plan, which a three-judge court found to be intentionally discriminatory and retrogressive under Section 5.[10]

California provides an informative contrast to Texas. California has had relatively few successful Section 2 cases since 1995. However, California did have extensive litigation under the language assistance provisions of the VRA, which coincided with a rapidly growing minority population and no shortage of racial tensions. The relatively small number of Section 2 cases in California might be seen as an anomaly given these other factors, but that can be largely explained because California has a state law, the California Voting Rights Act (CVRA),[11] that has been used to change the method of electing city councils and school boards from at-large to single-member districts. The legal showing that plaintiffs must make under the CVRA is somewhat less demanding than under Section 2 of the VRA, but there is little doubt that California would have seen a much greater number of Section 2 cases without the CVRA.[12] Unfortunately, California is the only state that provides a statutory remedy for vote dilution in local governmental election systems.

II. PRECLEARANCE DENIALS UNDER SECTION 5 OF THE VRA

Preclearance was denied on 113 occasions since 1995. DOJ issued 109 objection letters including 108 objections to voting changes covered under Section 5 and one objection concerning a jurisdiction covered under Section 3(c).[13] The U.S. District Court for the District of Columbia (DDC) denied preclearance on four occasions.[14] These 113 preclearance denials are summarized in Table 3 and listed individually in the Supplemental Online Appendix.[15]

Table 3: Administrative and Judicial Preclearance Denials: January 1995 to June 2014[a]

State	Coverage Under Section 4	Objection Letters[b]	DDC Denials[cd]	State-Level Denials	Types of Voting Changes Denied Preclearance[e]
TOTAL		109	4	21	20 Ballot access (non-bilingual) (10 state-level); 4 Bilingual (1 state-level); 7 Jurisdictions' annexations and de-annexations; 20 Methods of election/selection (1 state-level); 58 Redistricting (8 state-level)
Alabama	State	3	0	0	Annexation (2 cities); Redistricting (2)
Alaska	State	0	0	N/A	
Arizona	State	2	0	1	Method of election (1); Redistricting (1 state-level)
California	Partial	1	0	0	Method of election
Florida	Partial	2	1	3	Absentee voting procedure (1 state-level); Redistricting (1 state-level); Reduction in early voting hours (1 state-level)
Georgia	State	14	0	2	Election date (1 state-level); Method of election (2); Polling place (1); Redistricting (8); Voter registration/candidate qualification (1); Voter registration procedure (1 state-level)
Louisiana	State	21	0	3	Annexation (5 objections for a city court); Precinct change procedure (2 state-level); Redistricting (13 with 1 state-level); Reduction in size of elected body (1)
Michigan	Partial	1	0	0	Voter registration location
Mississippi	State	15	0	3	Annexation (1 city); Candidate qualification (1 state-level); Election cancellation (2); Method of election (1 state-level); NVRA implementation plan (1 state-level); Polling place (1); Redistricting (9); Special election (1)
New York	Partial	2	0	0	Changing an elected position to appointed (1); Method of election (1)
North Carolina	Partial	6	0	1	Method of election (3); Redistricting criteria (1 state-level); Redistricting (2)
South Carolina	State	15	1	2	Annexation (1 city); Defunding of school district (1); Method of election (4); Photo ID requirement (1 state-level); Redistricting (8 with 1 state-level); Reduction in size of elected body (1)

State	Coverage Under Section 4	Objection Letters[b]	DDC Denials[cd]	State-Level Denials	Types of Voting Changes Denied Preclearance[e]
South Dakota	Partial and Section 3(c)	1	0	0	Redistricting (Section 3(c))
Texas	State	20	2	6	Redistricting (8 with 4 state-level); Redistricting criteria (1); Method of election (5); Annexation, de-annexation (2 cities); Registration procedure (1 state-level); Photo ID req't (1 state-level); Bilingual procedure (4 with 1 state-level); Candidate qualification (1 state-level); General election procedure (1); Polling place & early voting location (1); Voting method (1)
Virginia	State	6	0	0	Method of election (1); Polling place (1); Redistricting (5)

a *Shelby County v. Holder* did not affect the ability of the Attorney General to interpose objections to changes affecting voting in jurisdictions covered by federal court preclearance orders under Section 3(c) of the VRA, but no such objections have been issued since June 2013.

b Administrative objections in this table are counted by objection letter, as opposed to the total number of voting changes objected to. Judicial preclearance denials are similarly counted in this table by lawsuit, as opposed to the total number of voting changes denied preclearance. On multiple occasions, a single objection letter blocked multiple voting changes, and in one judicial preclearance action the D.D.C. denied preclearance to three Texas statewide redistricting plans. The counts of administrative objections and D.D.C. denials are therefore conservative. The objection figures also exclude six objections withdrawn by the Attorney General based upon changes in fact or law, and exclude one other objection after which the United States consented to judicial preclearance.

c DDC refers to the U.S. District Court for the District of Columbia.

d Two administrative objections were followed by judicial preclearance denials in South Carolina and Texas (these two are included in this table in the counts of DDC denials, and not in the objection letters counts); two other judicial preclearance denials from Texas and Florida concerned voting changes for which no administrative preclearance decision was made.

e The counts in this column refer to specific voting changes denied preclearance, and thus will sum to a greater number than the counts of administrative objection letters and D.D.C. judgments that denied preclearance, per note b.

Texas and Louisiana vie for the worst Section 5 record. Texas had 22 total preclearance denials (20 administrative objections from the DOJ and two judicial preclearance denials), six of which were state-level in scope. Louisiana, a far smaller state, had a total of 21 preclearance denials, three of which were state-level in scope. Texas and Louisiana are followed closely by South Carolina (16 denials, two at the state level), Mississippi (15 denials, three at the state level), and Georgia (14 denials, two at the state level). These five states together accounted for four-fifths of the preclearance denials since 1995.

About a fifth (21) of the 113 total preclearance denials concerned voting changes at the state level—either statewide redistricting plans or state laws of general applicability. In the case of statewide redistricting plans, the concerns often focused upon a limited number of districts or geographic areas, but a preclearance denial for a statewide redistricting plan represented a determination that the plan would reduce or deliberately restrict minority representation across the state as a whole. The other state-level laws for which preclearance was denied restricted minority voters' access to the ballot, and applied generally across an entire state and had the potential to affect the electoral opportunities of hundreds of thousands—or even millions—of minority citizens in the affected state.

These 113 preclearance denials blocked the implementation of 58 redistricting plans (eight of which were at the state level); 20 changes to jurisdictions' methods of election/selection (one of which was at the state level); annexations or de-annexations involving seven jurisdictions; 20 restrictions on ballot access (10 at the state level); and four changes affecting bilingual procedures (one at the state-level).

Vote dilution was the issue in most preclearance denials (redistricting plans and method of election changes). At the same time, nearly one-quarter of all preclearance denials concerned discrimination in restricting ballot access. A number of these denials were at the state level, and included some of the most controversial recent voting law changes, such as photo identification requirements in Texas and South Carolina and cutbacks to early voting in Florida. It remains to be seen whether Section 2 will prove to be as effective as Section 5 in dealing with such problems. At a minimum, the loss of Section 5 has required private citizens and civil rights groups (joined by the DOJ) to assume the considerable burden of litigating Section 2 ballot access challenges in Texas and North Carolina.

Section 5 preclearance denials do not represent a nationwide sample of jurisdictions, but they are highly relevant to the national picture for a number of important reasons.

> **"As the redistricting process unfolded, we saw there would be no transparency. Changes in House districts […] seemed motivated by partisan and racial gerrymandering," testified Dierdre Payne of the League of Women Voters of Mississippi at the NCVR Mississippi state hearing.**

First, Section 5 preclearance denials were documented determinations by either the Department of Justice or a three-judge federal court. Any administrative determination could be reviewed de novo by a three-judge court, meaning that, unlike typical litigation challenging federal agency decisions, the court began with a fresh record and was not required to defer to the DOJ's fact findings or interpretation of the law. The DOJ therefore had to hew closely to how the D.C. Court would construe the law and the facts—assuming the role of a surrogate for the D.C. Court—when making administrative determinations.[16]

Second, vote dilution objections to redistricting plans and method of election changes rested in significant part upon findings that voting was racially polarized in the relevant areas. Racially polarized voting is a fact-based determination that does not rely upon generalized assumptions, and it is a key factor in Section 2 vote dilution litigation. These findings of racially polarized voting reflected considerable quantitative analysis by the Department of Justice, even if they were expressed in a summary form in objection letters. This "screening" for racially polarized voting provides an important reason to believe that many of the voting changes blocked by Section 5 preclearance denials would otherwise have been found to violate Section 2.

Third, the 113 preclearance denials in the covered jurisdictions since 1995 show that the Section 2 record in the covered jurisdictions—representing about three-fourths of all successful Section 2 cases—is a very conservative measure of the concentration of voting discrimination. Not every voting change that was blocked by a preclearance denial would have resulted in a successful Section 2 case, but there can be no doubt that Section 5 significantly reduced the need for Section 2 suits in the covered jurisdictions. This is true based solely upon the record of preclearance denials, and it is even more so the case if the deterrent effect Section 5 had on state and local decision-makers is properly credited, as discussed in Chapter 3.

III. LITIGATION UNDER THE LANGUAGE ASSISTANCE PROVISIONS OF THE VRA

Since 1995, there have been 48 cases involving successful claims relating to oral and/or written language assistance under the VRA. Additionally, there have been ten non-litigation settlements involving enforcement of the VRA's language assistance provisions. Most of these matters were brought under Section 203, but some were brought under Section 4(f)(4), Section 4(e), Section 2, and Section 208. The vast majority of these cases were resolved by consent decrees or other settlements. These cases are summarized in Table 4 and are listed individually in the Supplemental Online Appendix.

Table 4: Successful Bilingual Election Cases: January 1995 to June 2014

State	(Count for the State) Subjurisdictions Involved	Covered Under Section 4	Affected Language Minority Group/ Language[a] & Case Count
TOTAL (16 States)	48 cases (2 state-level); 10 non-litigation settlements	13 cases and 2 non-litigation settlements dealt with jurisdictions covered under Section 4	1 Bengali 7 Chinese 1 Creole 1 Ilocano 1 Japanese 2 Keresan 2 Korean 1 Lakota 3 Navajo 46 Spanish 1 Tagalog 4 Vietnamese 1 Yup'ik
Alaska	(1) State	Yes	Yup'ik
Arizona	(1) Cochise County	Yes	Spanish
California	(10) Alameda County (two cases); Riverside County; San Benito County; San Diego County; Ventura County; and the Cities of Azusa, Paramount, Rosemead, and Walnut (all cities in Los Angeles County)	No	4 Chinese; 1 Korean; 8 Spanish; 1Tagalog; 2 Vietnamese
Florida	(4) Miami-Dade County; Orange County; Osceola County; Volusia County	No	1 Creole; 3 Spanish
Hawaii	(1) State	No	1 Chinese; 1 Ilocano; 1 Japanese
Illinois	(1) Kane County	No	Spanish
Massachusetts	(4) City of Boston; City of Lawrence; City of Springfield; City of Worcester (non-litigation)	No	1 Chinese; 4 Spanish; 1 Vietnamese
Nebraska	(1) Colfax County	No	Spanish
New Jersey	(2) Passaic County and City of Passaic; Salem County and Penns Grove	No	2 Spanish
New Mexico	(3) Bernalillo County; Cibola County; Sandoval County	No	1 Keresan; 3 Navajo
New York	(13) Orange County; Suffolk County; Westchester County; New York City (Kings, New York, & Queens Counties); New York City (Queens County); Duchess, Montgomery, Putnam, Rockland, Schenectady, Sullivan, & Ulster Counties (separate non-litigation agreements with State AG); Brentwood Union Free School District	One case involved a covered jurisdiction	1 Bengali; 1Chinese; 1 Korean; 11 Spanish

State	(Count for the State) Subjurisdictions Involved	Covered Under Section 4	Affected Language Minority Group/ Language[a] & Case Count
Ohio	(2) Cuyahoga County; Lorain County	No	2 Spanish
Pennsylvania	(2) Berks County; Philadelphia County	No	2 Spanish
South Dakota	(1) Shannon County (non-litigation settlement)	Yes	Lakota
Texas	(11) Brazos County; Ector County; Fort Bend County; Galveston County; Hale County; Harris County; City of Earth (Lamb County); Littlefield Independent School District (ISD); Post ISD; Seagraves ISD; Smyer ISD	Yes	10 Spanish; 1 Vietnamese
Washington	(1) Yakima County	No	Spanish

a Some cases involved more than one language for which voting assistance was required in addition to English.

Sections 203, 4(f)(4) and 4(e) of the VRA place specific responsibilities upon election administrators to provide the effective written and oral assistance that is required for a segment of the language minority population.[17] These responsibilities are widely understood by the affected jurisdictions. The DOJ individually notifies each political subdivision that comes under Section 203 coverage of its responsibilities and also provides guidance and offers DOJ's assistance.[18] Thus, there is little reason to provide the "benefit of the doubt" to election administrators in Section 203 covered areas who fail to provide bilingual assistance that is specifically required by federal law. Instead, such noncompliance is better understood as involving a choice to evade those responsibilities for as long as possible, and it is fair to count such cases as evidence of voting discrimination.

Most of the 48 cases and ten non-litigation settlements identified in Table 4 involving minority language assistance issues did not arise in jurisdictions covered under Section 4(b) of the VRA. However, 15 did involve Section 4(b) jurisdictions: 11 in Texas and one each in Alaska, Arizona, New York, and South Dakota. On this measure Texas once again stands out as having the worst record among the Section 4(b) covered states.

Apart from the states covered by Section 4(b), the most successful cases, a total of 13, were in New York. These included two cases involving New York City, 10 concerning counties (including seven non-litigation settlements initiated by the New York Attorney General), and one against a school district. California had 10, including six cases against counties (Alameda being sued twice by DOJ) and four cases against municipalities within Los Angeles County.

Spanish was the language most often involved in these cases (46 of the 58). Asian languages were involved in 10 cases; Native American languages in four cases; an Alaskan Native language in one case; and Creole in one case.

These cases typically involved two basic issues: the translation of written materials and the availability of oral assistance to language minority voters. Some cases also involved claims that language minority voters were subjected to hostile treatment by poll workers and election officials.

In some of these cases no written materials were translated, while in other cases there were significant gaps in the types of documents that were translated, or problems with quality of the translations. Fortunately, this is a relatively straightforward form of noncompliance to remedy, once there is an enforceable commitment to do so.

The failure to provide adequate oral assistance was most typically the more challenging issue in these cases. The Department of Justice's policy is that targeting oral assistance to precincts with a demonstrated need is the most effective means of complying with the language minority requirements.[19] However, many jurisdictions that were sued lacked any program to identify the need for bilingual assistance in the first place, or to deploy competent bilingual poll workers in appropriate numbers to appropriate locations. The remedies for these problems typically included the designation of a bilingual program manager, who is made responsible for conducting outreach to the community to identify those areas where assistance is needed, recruiting bilingual poll workers, and supervising their deployment.

In a number of these cases brought outside the Section 4(b) covered jurisdictions, the Department of Justice and the defendant jurisdiction agreed to the court-ordered certification of the jurisdiction for federal observer coverage pursuant to Section 3(a) of the VRA. Federal observers were critically important to monitor the quality of translations being provided at the polling places and to identify occasions upon which minority voters were treated in a hostile or discriminatory manner.

One additional area of VRA noncompliance that came to light in some of these cases was poll workers' refusal to allow language minority voters to their assistance of choice in the polling place, including friends or family members. Under Section 208 of the VRA, voters are generally entitled to receive assistance from the person of their choice.[20] Compliance with Section 208 is particularly important in those jurisdictions that are not required to provide translated written materials. It is also important to voters who speak a language for which Section 203 does not require their jurisdiction to provide language assistance.