

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, FEBRUARY 2, 2018

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The Commission convened in the Marriott Courtyard
Raleigh Crabtree Valley at 4500 Marriott Drive,
Raleigh, NC 27612 at about 9:00 a.m., Catherine
Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair

DEBO P. ADEGBILE, Commissioner

GAIL HERIOT, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

STAFF PRESENT:

CAROLYN ALLEN

LASHONDA BRENSON

KATHERINE CULLITON-GONZALEZ

PAMELA DUNSTON, Chief, ASCD

LATRICE FOSHEE

TINALOUISE MARTIN

DAVID MUSSATT

SARALE SEWELL

MICHELE YORKMAN-RAMEY

MARIK XAVIER-BRIER

BRIAN WALCH

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

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(9:03 a.m.)

OPENING REMARKS

CHAIR LHAMON: I'm going to call us to order. If we can all get seated and ready. This briefing of the U.S. Commission of Civil Rights comes to order at 9:00 a.m. on February 2nd, 2018, and takes place at the Marriott Crabtree of Raleigh-Durham, located at 4500 Marriott Drive, Raleigh, North Carolina 27612.

I'm Chair Lhamon. Commissioners present at this briefing in addition to me are Vice Chair Timmons-Goodson, Commissioner Adegbile, Commissioner Heriot, Commissioner Narasaki, and Commissioner Yaki. The quorum of the commissioners is present. Is the court reporter present?

COURT REPORTER: Yes.

CHAIR LHAMON: Is the Staff Director present?

MAURO MORALES: Present.

CHAIR LHAMON: I welcome everyone to our briefing titled, "An Assessment of the Minority Voting Rights Access of the United States." In today's briefing the Commission examines voter access—including federal voting rights enforcement, efforts after the 2006 reauthorization of the temporary provisions of the Voting Rights Act of 1965, and the impact of the United States Supreme

1 Court's decision in Shelby County versus Holder on
2 the Department of Justice enforcement strategies
3 and priorities. Throughout the sixty-year history
4 of this commission, voting rights have been a core
5 component of the Commission's focus and work. In
6 light of the fundamental nature of voting rights,
7 the Commission was established in 1957 in part to
8 address issues with voting access in our country.
9 In the years leading to the passage of the 1965
10 Voting Rights Act the Commission held hearings and
11 issued reports on voting rights abuses. In our
12 early years, the Commission went to Mississippi and
13 invited community members to testify to their
14 experiences trying to vote. People testified to
15 being turned away, to being tested about their
16 detailed knowledge of constitutional meaning.
17 Elections officials disputed these claims until the
18 Commission enforced subpoena power to receive
19 records ultimately laying the data groundwork to
20 support the Voting Rights Act. In March of 1965
21 President Johnson called for new voting legislation
22 embodying the recommendations of the Civil Rights
23 Commission, and Congress passed the Voting Rights
24 Act. In the State of South Carolina versus
25 Katzenbach, the Supreme Court rejected a challenge
26 to the constitutionality of the 1965 Voting Rights

1 Act, in part relying on data published by the
2 Commission. Since those early days the Commission
3 has published twenty reports focused specifically
4 on voting rights and our most recent report was
5 last year. The issues in these reports have
6 included access to voter registration without
7 artificial barriers—like literacy tests and poll
8 taxes, the ability to vote without intimidation,
9 large structural barriers such as gerrymandering—
10 the way districts were drawn district lines were
11 drawn to defeat candidates of color, non-English
12 language access, and the role of federal
13 enforcement. The Commission's focus over these
14 decades on voting rights reflects the continuing
15 contest that persists over voting rights and
16 underscores the significance of voting rights as an
17 issue and what is at stake for democracy when those
18 rights are curtailed. The Commission rightly
19 recognized in the first report that, quote, "The
20 right to vote is its cornerstone of the Republic
21 and the key to all other civil rights." [end quote]
22 As is likely typical of black families like mine, I
23 grew up hearing regular admonitions that we died
24 for this right, the right to vote, and so we must
25 use it. It is my honor to conduct this briefing
26 today and further the availability and protection

1 of the right to vote together with my fellow
2 Commissioners. We are fortunate to have with us a
3 living exemplar of the success and ongoing vitality
4 of the Voting Rights Act promises. Vice Chair
5 Timmons-Goodson to my left served as the first
6 black woman on the North Carolina Supreme Court.
7 She was first appointed by the governor and then
8 elected to that statewide office in 2006. A result
9 that would have been unlikely and even impossible
10 in a time before the Voting Rights Act of 1965. The
11 Vice Chair's exemplar service on the court is
12 matched by her service here at the Commission for
13 which I'm very grateful for. I look forward to
14 working with my colleagues and to drawing
15 conclusions and make recommendations after
16 reviewing the materials submitted to the Commission
17 and benefiting from today's briefing. Today's
18 briefing features twenty-three distinguished
19 speakers who will provide us with an array of
20 viewpoints as well as the opportunity to hear from
21 the public.

22 The first panel includes policy experts and former
23 of government officials who will speak to the scope
24 and efficacy of the Department of Justice's
25 enforcement of the Voting Rights Act. I know the
26 Commission staff invited officials from the

1 relevant offices in the Department of Justice but
2 they declined to participate in today's briefing.
3 They have, however, produced data and documents
4 responsive to our requests and Commission staff
5 look forward to reviewing these materials for
6 inclusion in our report. The second panel, includes
7 litigators and advocates who will speak to the laws
8 affecting voter access since the Shelby County
9 decision. The third panel includes policy experts,
10 academics, and practitioners who will speak to
11 voter access generally.

12 The fourth panel includes election administrators,
13 advocates, and academics who will speak to
14 recommendations ensuring access to the ballot in
15 the context of changes since the Shelby County
16 decision. I thank all who have joined us today to
17 focus on this critical topic your views help us to
18 fulfill our mission to be the nation's eyes and
19 ears on civil rights.

20 We will, following this briefing, work on
21 collecting the materials that you have shared with
22 us, review those materials, and the Commission
23 staff will prepare a report that the Commissioners
24 will vote on and ultimately will produce to the
25 public to make recommendations about civil rights
26 policy with respect to voting rights.

1 And now I'll pass the mic to Commissioner Heriot,
2 who I understand would like to say a few words.

3 COMMISSIONER HERIOT: Thank you, Madame Chairman. I
4 know my commission colleagues have said they're
5 looking forward to today's tomorrow but I'm not
6 sure I can say the same thing. Of all the areas of
7 civil rights law and policy, voting right policy
8 may be my least favorite. Why? Because it's
9 important as voting rights are lurking beneath the
10 most aggressively-asserted claims on both sides are
11 often purely partisan concerns, somebody wants to
12 get elected and the passion of politics can be
13 mistaken for a passion of principle. I think we
14 understand the problem. Democratic voters tend to
15 be younger and less likely to turn out so it's in
16 the Democratic Party's interest to make voting as
17 easy as possible. Meanwhile, noncitizens and other
18 ineligible voters are also more likely to be
19 Democratic so it's in the Republican Party's
20 interest to take measures to ensure that only
21 qualified voters are able to vote. Both these goals
22 are entirely worthy when presented openly and
23 honestly. But in our imperfect world, it is
24 impossible to achieve perfection in one without
25 sacrificing the other. We obviously need reasonable
26 and diligent efforts in pursuit of both goals and

1 to try to make those conflict as little as
2 possible. What we don't need and what we see far
3 too much of our efforts to scare decent people into
4 believing that somebody's trying to send minority
5 voting right back to the stone ages or wild claims
6 that we are in the science fiction world where
7 voting machine manufacturers are nefariously
8 manipulating vote tallies via secret wireless
9 networks. Those who try to whip up fear are not
10 looking out for the welfare of minorities or the
11 welfare of anybody else. I appreciate all the
12 testimony we're going to be hearing today. I read
13 through the written testimony and almost all of it
14 is very measured and useful, but I would urge a few
15 of our witnesses to try to tone down the rhetoric a
16 little. Thank you.

17 CHAIR LHAMON: Thank you, Commissioner Heriot.

18 I want to pass the mic to Commissioner Adegbile at
19 whose impetus we have held this briefing.

20 COMMISSIONER ADEGBILE: Good morning, Madame Chair,
21 and thank you to our assembled witnesses and guests
22 I would like to thank the staff for making this
23 field briefing possible. I would also like to thank
24 all of our witnesses for a range of views who have
25 traveled from near and far to be here today and
26 will be with us over the course of the day. I'm

1 very pleased that the Civil Rights Commission has
2 taken up this subject of Voting Rights Act
3 enforcement as our statutory enforcement report for
4 2018, and I'm pleased about that for a number of
5 reasons. Principally, because the VRA tells us
6 something about the American story. We know many
7 things about our history, and one of the things
8 that we know is that although we have embraced for
9 a very long time high constitutional principles,
10 too often our practices have not lived up to our
11 principles and the VRA in that sense is understood
12 by many to be one of the most important
13 congressional enactments of any kind; in part,
14 because it is the vehicle for which we keep the
15 promise of our Constitution through which we
16 enforce the 15th Amendment and see that voting
17 rights are accessible and there to be used by all
18 of our citizens. I'm also pleased that we are
19 taking this up because in that sense the VRA is an
20 exemplar of the sense in which our democracy is
21 aspirational. That is to say it can become better
22 through hard work and through vigilance, and I
23 think the story from the VRA as we may hear from
24 your witnesses today from a range of perspectives
25 the story of VRA is that vigilance in a democracy
26 must be nonstop. Finally, I would like to say that

1 there is a very important and simple idea that
2 undergirds the VRA, Voting Rights Act, and that is,
3 that a democracy is stronger when it embraces a
4 minority inclusion principle. There are two ways to
5 think about elections in a democracy. Perhaps there
6 are more, but there are at least two, and because
7 of the shortness of time I will put them in two
8 buckets. One way is to think of a democracy as a
9 contest to mobilize people that shared your views
10 and to prevail on that basis. Another view of
11 democracy is the idea that the way to prevail in an
12 election is to prevent some people who may not
13 share your views from participating. I dare say
14 that the VRA is about a choice to compete on ideas
15 and on the basis of minority inclusion, and I think
16 for that reason it is a very important part of our
17 history. I'm very excited to hear from our
18 witnesses because I think that we share one idea,
19 and that idea is that democracy is the lifeblood of
20 the United States of American and that in some
21 sense we must be vigilant. We have different ideas
22 about what vigilance requires, but I look forward
23 to be illuminated on these points by our witnesses,
24 and again, I thank them for coming today to North
25 Carolina, a state which has been a field where
26 these voting right contests have occurred from the

1 Reconstruction Period forward, and so I think that
2 it's appropriate that we've chosen the field
3 briefing in a state that is continuing to grapple
4 with these very ideas. And while the view that we
5 take today is national, it sometimes is important
6 to think about it in particular context, and I
7 welcome witnesses to both expand with big ideas and
8 also some specific examples about what the state of
9 progress is today. The Voting Rights Act is about
10 the idea is that because we made progress doesn't
11 invite us to stop making progress. Instead, it's an
12 invitation to make more progress and to remain
13 vigilant, I thank you.

14 CHAIR LHAMON: Thank you, Commissioner Adegbile, and
15 also many thanks to Commissioner Yaki who is about
16 to celebrate his thirteenth year of service to this
17 Commission and whose expertise in voting rights has
18 been a strong guide in shaping today's briefing. I
19 turn us now to begin our briefing with a few
20 housekeeping items, the first of which and the
21 strongest, which is deep thanks to our commission
22 staff who brought today's briefing into being they
23 are: LaShonda Brenson, Maureen Rudolph, Sarale
24 Sewell, in addition to Teresa Adams, Carolyn Allen,
25 Katherine Culliton-Gonzalez, Pam Dunston, Latrice
26 Foshee, Abeer Hamid, Tina Lewis-Martin, David

1 Mussatt, Lenore Ostrowsky, Sarale Sewell, Brian
2 Walsh, Marik Xavier-Brier, and Michele Yorkman-
3 Ramey for preparing and making the logistical
4 details for today's work.

5 I caution all speakers, including our
6 Commissioners, to refrain from speaking over each
7 other for ease of transcription and to allow for
8 sign language translation to my right. For any
9 individuals who might need to view the sign
10 language translation, there are seats available in
11 clear view. Everyone present please silence your
12 phones and do not take flash photos to minimize
13 health risks to persons present. After our four
14 panels and our afternoon break we will reconvene at
15 6:00 p.m. for a public comment period. If you are
16 interested in participating in the public comment
17 period during which each person will have up to
18 three minutes to speak we would be honored to hear
19 from you. In total, the oral comments period will
20 last two hours with forty slots allotted on a first
21 come, first served basis. You may sign up at the
22 registration desk at our first break at 10:40 a.m.
23 or during the lunch break at 12:20 p.m. The first
24 twenty spots of our forty total will be open until
25 filled. We will open registration for the second
26 twenty spots in the afternoon break at 2:50 p.m.

1 and if spaces remain available, again after the
2 briefing concludes at 4:30 p.m. Again, the spots
3 will be available until filled. For any member of
4 the public who would like to submit materials for
5 our review, our public record will remain open
6 until Monday, March 19, 2018. Materials can be
7 submitted by the mail to the U.S. Commission on
8 Civil Rights, Office of Civil Rights Evaluation
9 1331 Pennsylvania Avenue Northwest, Suite 1150,
10 Washington, D.C. 20425, or by e-mail to
11 votingrights@ucccr.gov.

12 During the briefing each panelist will have seven
13 minutes to speak. After each panel present, the
14 Commissioners we will have the opportunity to ask
15 questions within the allotted period of time and I
16 will recognize Commissioners who wish to speak. I
17 will strictly enforce the time allotments given to
18 each panelist to present his or her statement, and
19 you may assume we have your statement so you do not
20 need to use your time to read them to us as your
21 opening remarks. Please do focus your remarks on
22 the topic of our briefing. Also note that we have a
23 very tight schedule today with nearly two dozen
24 experts who will speak before us, and I ask my
25 fellow Commissioners to be cognizant of the number
26 of panelists and the interests of each Commissioner

1 in asking questions. Please be brief in asking your
2 question so we move quickly and efficiently through
3 today's schedule. I will step in to move things
4 along, if necessary.

5 Panelists, please notice the system of warning
6 lights that we have set up. When the light turns
7 from green to yellow, that means two minutes
8 remain. When the light turns red panelists should
9 conclude your remarks so you do not risk my cutting
10 you off mid-sentence. My fellow commissioners and I
11 will do our part to keep our questions and our
12 comments concise. Just before turning to our first
13 panel, I understand Commissioner Yaki has some
14 brief remarks.

15 COMMISSIONER YAKI: Thank you very much, Madame
16 Chair. And as you said, this will mark my
17 thirteenth year on the Commission. This will
18 probably be about my fifth hearing on some aspect
19 of voting rights but the first since the Shelby
20 decision. I wanted to say something really briefly.
21 One, thanks to Commissioner Debo Adegbile and his
22 staff for helping to put this together. We co-
23 sponsored this but he really took the laboring oar
24 as the expert on this. The Voting Rights Act was
25 enacted not simply to give the disenfranchised a
26 chance to vote. It was an enacted to give meaning

1 to that vote, and I think part of what we're going
2 to be hearing today about whether or not that
3 meaning still exists in a post-Shelby world, but
4 the one thing I do want to say is, that hasn't been
5 said yet, is that whatever we do here today,
6 whatever report we put out, we as a commission are
7 the watchdog; we're the ones who are out there
8 telling Congress and the American people what is
9 going on and what should be, but ultimately it is
10 up to Congress to take action and ultimately it's
11 up to American people to get Congress to action, so
12 there's a little bit of strange circular logic to
13 all that we are doing here today when we talk about
14 minority disenfranchisement and the inability for
15 minority voters to have access to the ballot and to
16 elect minority candidates when that very lack of
17 access has an impact at the level of government
18 where change needs to be made. So I just want to
19 point that out to everyone that's a bigger universe
20 and a bigger job left to all of us. We will do
21 ours, but there are others who have to take up the
22 oar after us to make it meaningful. Thank you.

23 CHAIR LHAMON: Thank you Commissioner Yaki. Now will
24 we turn to our first panel. The order in which our
25 panelists speak include Peyton McCrary, who served
26 as a historian in the Civil Rights Division of the

1 Department of Justice until his retirement in 2016,
2 Vanita Gupta, president and CEO of the Leadership
3 Conference on Civil and Human Rights. Ms. Gupta
4 served at DOJ as principal deputy and assistant
5 attorney general and head of the Civil Rights
6 Division of 2014 and 2017, Hans von Spakovsky,
7 Manager of the Election Law Reform Initiative and
8 Senior Legal Fellow at The Heritage Foundation.
9 Earlier in his career Mr. Von Spakovsky served as
10 counsel to the Assistant Attorney General for Civil
11 Rights. Justin Levitt, Professor of Law at Loyola
12 Law School in LA. Professor Levitt served as the
13 Deputy Assistant Attorney General in the Civil
14 Rights Division of DOJ from 2015 to 2017. And
15 Bishop Dr. William J. Barber II, president and
16 senior lecturer of Repairers of the Breach. And
17 note that Gerry Hebert, Senior Director of Voting
18 Rights and Redistricting at the Campaign Legal
19 Center was scheduled to speak today and
20 unfortunately is unable to be with us but has
21 written a statement that will be added to the
22 record. Mr. McCrary would you please begin.

23 MR. McCRARY: Thank you. Let me begin by thanking
24 the Commission for inviting me to participate in
25 this important hearing on current challenges in
26 voting rights enforcement in the United States. My

1 remarks reflect my training as a historian and a
2 historian who, unusually, has worked on voting
3 rights litigation for 37 years. I also grew up on
4 the Virginia-North Carolina border and and when I
5 registered to vote for the first time in 1964 I had
6 to pay a poll tax and take a receipt to the polls
7 with me, which tells you that I'm old. It seemed to
8 me the most useful thing to tell the Commission is
9 about the experiences of the Department of Justice
10 and private plaintiffs in recent voting rights
11 litigation in cases that were decided after Shelby
12 County versus Holder and which in a couple cases
13 began which happened before the Shelby County
14 decision, which helps illustrate the differences
15 between the Section 5 process of litigation and
16 litigation under Section 2 of the Voting Rights
17 Act.

18 I emphasized in my written testimony these three
19 cases: the North Carolina case challenging the
20 omnibus election law adopted in the immediate
21 aftermath of the Shelby County decision in which
22 the legislature made clear that it was acting
23 because the preclearance review process was no
24 longer present and therefore they expanded the bill
25 to include a number of provisions that the Fourth
26 Circuit Court of Appeals found to be racially

1 discriminatory in intent and effect. Two cases in
2 Texas that I was also heavily involved in involved
3 one, the districting plan adopted by the states in
4 2011 for the congressional, state Senate, and state
5 Senate House plans, and also a case involving the
6 photo ID requirement adopted by Texas in 2011. The
7 focus of my work on all cases, including these
8 cases, was on the fact finding done by the
9 Department and the identification of appropriate
10 expert witnesses to use in addressing the empirical
11 issues before the Court, and that's the focus of my
12 written remarks as well. The importance of expert
13 witnesses in voting rights litigation has long been
14 a little understood part of the process, and that
15 was true in these recent cases as well. Expert
16 witnesses testifying about matters that the Court
17 either doesn't have the technical skills to address
18 or which the Court may not have the time to
19 address, and in doing so the experts use their
20 training as social scientists in most cases to
21 assemble evidence that is credible according to the
22 basic social science methods in their discipline,
23 and that's of course what we're doing in these
24 three cases. Putting on these cases is enormously
25 expensive even at the local level. These three
26 cases involve laws of statewide application and

1 were even more labor-intensive and therefore
2 resource-intensive than a local case. It occupied
3 much of the work of the Justice Department in the
4 years after 2011 and only in part of that time of
5 course were the resources of the voting section of
6 the Civil Rights Division also available to address
7 preclearance review under Section 5 the Voting
8 Rights Act. These cases demonstrated in the
9 instance of the two cases challenging the photo ID
10 requirements that legislatures were acting on the
11 professed belief that in-person voter fraud at
12 poles was a major problem facing their states. In
13 the cases there was never any evidence that
14 persuaded any of the courts that this was
15 empirically correct. Instead the courts' tended to
16 view this claim as pre-textual. In some of those
17 cases the states also offered the view that was
18 necessary to --to address voter fraud by adopting
19 rigorous restrictions on the use of -- on the
20 identification of voters through requiring photo ID
21 requirements -- for the photo ID documents. In
22 order to address the concerns about voters that the
23 process didn't operate in a fair and equitable
24 manner, states were never able to persuade the
25 courts that this was a claim based on any empirical
26 evidence as well. It proved to be necessary to

1 develop new techniques in order to address the
2 voter ID requirements using political scientists
3 who were experienced in large scale database
4 matching to address problems in election
5 administration. It was very time-consuming. It was
6 difficult to do. It required complex analysis, but
7 in all cases, the database-matching methodology was
8 effective in presenting this evidence to the
9 courts. A further of difficulty in database-
10 matching where the laws required certain federal --
11 or allowed certain federal documents to be used as
12 identifying voters was the need to coordinate with
13 a variety of federal agencies who issued those
14 documents and that was impossible to do during the
15 Section 5 timeframe where courts proceed on a very
16 rapid discovery schedule, but in the Section 2
17 litigation it was possible to coordinate all of
18 those agencies to assemble all the evidence, and
19 the record speaks for itself in those cases. One of
20 the problems with the focus on these statewide
21 cases is that local cases tended to fall by the
22 wayside, and of course it was the local issues of
23 voting rights that were addressed most effectively
24 under Section 5 of the Voting Rights Act, when it
25 existed, and it's very difficult to imagine Section
26 2 litigation being able to address those many local

1 changes that only the preclearance requirements of
2 the Act enabled the Department to address. At any
3 rate, we are now in a place where the only
4 effective remedy that can replace Section 5 is
5 Section 3(c) of the Voting Rights Act, which
6 requires proof of discriminatory intent. Thank you.

7 CHAIR LHAMON: Ms. Gupta?

8 MS. GUPTA: Good morning. Thank you to the
9 Commissioners for inviting me here today to speak
10 with you. As the head of the Leadership Conference
11 on Civil and Human Rights we were founded in 1950
12 and have coordinated national lobby efforts on
13 behalf of every major civil rights law since 1957,
14 including the Voting Rights Act of 1965 and its
15 subsequent reauthorizations and during the last two
16 and a half years of the Obama Administration, I led
17 the Justice Department Civil Rights Division. The
18 Supreme Court's devastating Shelby County decision
19 in 2013 dramatically weakened the government's
20 ability to prevent efforts to disenfranchise voters
21 and it emboldened some states to pass voter
22 suppression laws, including restrictive photo ID
23 laws, cutbacks on early voting hours, and
24 elimination of same-day registration. And
25 thankfully, a number of federal courts have struck
26 down several of these laws. In striking down the

1 North Carolina law, that my co-witness Peyton
2 McCrary just spoke of, in July 2016, a law that was
3 enacted very shortly after the Shelby County
4 decision came down, the Fourth Circuit described
5 the law as, quote, the most restricting voting law
6 North Carolina has seen since the era of Jim Crow
7 with provisions that, quote, target African
8 Americans with almost surgical precision. There
9 have been findings of intentional discrimination in
10 at least ten voting rights decisions since Shelby
11 County. And I just want to make a few top line
12 observations with the time that I have about the
13 impact of Shelby County on DOJ's enforcement. One
14 is that the loss of preclearance means that the
15 Justice Department must now use Section 2 to
16 affirmatively sue jurisdictions that engage in
17 discriminatory election practices. Litigation is
18 slow. It is enormously time-intensive. It ties up
19 very precious resources. It can take years for a
20 case to make its way through the courts, as
21 exemplified by both North Carolina and Texas
22 litigations and all while elections are happening
23 and harm is being done to the public as a result of
24 discriminatory laws being in place. Preclearance of
25 course was designed to stop discrimination before
26 the discriminatory rules went into effect. And now

1 the harm is ongoing and the statewide litigation
2 challenges that the Justice Department has been
3 engaged in North Carolina and Texas ate up a really
4 significant amount of the Justice Department
5 attorney resources and time. The second consequence
6 of the Shelby County decision is it has become
7 increasingly very, very difficult to track changes
8 in local election practices at the county level,
9 villages, state boards and the like, and what some
10 folks don't kind of remember is that actually the
11 vast majority of objections that were lodged by the
12 Justice Department under Section 5 between 2000 and
13 2013 concerned county and municipal school board
14 and special district election changes, so there is
15 the very real consequence that local discriminatory
16 changes are not being tracked, discovered, or
17 addressed since Shelby County. The third
18 consequence is that the Justice Department has
19 interpreted the Shelby County decision as also
20 curtailing election observers because the observers
21 have been dispersed according to the same section
22 4(b) formula that the Shelby -- that the Supreme
23 Court found throughout in its Shelby County
24 decision, and this has had a very significant
25 impact on the ability to gather evidence of
26 problems, particularly in Section 203 and Section

1 208 cases, which often depend on direct
2 observations of what's happening at the polls
3 themselves on the day of elections. A fourth
4 consequence is also the very significant impact
5 that we have not yet seen, and that will come right
6 after the 2020 Census. This is now going to be the
7 first time when Section 5 is not in place, to block
8 or deter discriminatory voting changes in
9 redistricting plans. And so, in order to meet the
10 Constitution's one-person, one-vote requirement
11 thousands of redistricting maps form statewide,
12 congressional, and legislative maps to county and
13 city council district lines are going to be redrawn
14 in jurisdictions that were previously covered by
15 the Voting Rights Act's preclearance requirement.
16 Following the 2010 Census the Justice Department
17 reviewed more than 2,700 redistricting plans from
18 covered jurisdictions. This round of restricting
19 will mark the very first time in five decades that
20 discriminatory maps are going to be enacted with no
21 prophylactic review and can only be challenged
22 after the fact in very time-consuming and expensive
23 litigation. I will also note that the Justice
24 Department shifting priorities under the charge of
25 Attorney General Jeff Sessions have created quite a
26 cause for alarm in undermining also the aggressive

1 enforcement of the Voting Rights Act. In February,
2 the Justice Department reversed its long-standing
3 litigating position that the Texas voter ID law was
4 intentionally racially discriminatory even though
5 no new factual evidence had arisen to undermine the
6 position the Justice Department had taken in court
7 for the past five years. In addition to that there
8 have been a lot of concerns about what this Justice
9 Department may be signaling with regards to
10 enforcement of the National Voter Registration Act,
11 a letter of that was sent in July asking where it
12 had 44 states asking for the first time extensive
13 information exclusively about how states maintain
14 their voter rolls. The Department's long-standing
15 practice has to send letters of this kind only
16 where there are particularized evidence of possible
17 noncompliance by a particular given state. In
18 sending an investigative demand letter to every
19 NVRA covered state in the country is certainly a
20 highly unusual move that appears to be to a prelude
21 to voter purge efforts. And then in August 2017,
22 the Justice Department filed a brief in the Husted
23 versus A. Philip Randolph Institute case, arguing
24 that it should be easier for states to remove
25 registered voters from their rolls, in so doing,
26 they reversed a consistent, long-standing legal

1 interpretation of the NVRA that had been enacted
2 since 1993 and also reversed a position the Justice
3 Department had taken in lower courts in precisely
4 the same case. I think there's no question that
5 American voters need Congress to restore the Voting
6 Rights act to its full and proper strength post-
7 Shelby County. Shelby County made clear that a new
8 preclearance system must be tailored to current
9 conditions and the Voting Rights Advancement Act is
10 one way that could create new coverage formula and
11 restore Section 5 of the VRA. In closing 2006 the
12 Voting Rights Act was re-authorized with strong
13 bipartisan support. This issue needs to remain
14 bipartisan even in these highly polarized times.
15 Thank you.

16 CHAIR LHAMON: Thank you, Ms. Gupta.

17 Commissioner von Spakovsky?

18 MR. von SPAKOVSKY: Good morning and thank you for
19 inviting me here. I was asked to answer a series of
20 questions. But, in summary I would say that the
21 Voting Rights Act remains a powerful statute whose
22 remedies more than sufficient to stop those rare
23 instances of voting discrimination when they occur.
24 The question has the Shelby County decision
25 affected DOJ's voting rights enforcements of
26 Section 2, Section 203 and Section 208. My analysis

1 of that is, the answer is no. If you look at the
2 litigation record of both the George Bush
3 Administration and the eight years of the Obama
4 Administration what they show is a sharp, overall,
5 downward trend in the number of enforcement actions
6 filed, including in 2013 the year after Shelby
7 County case. For example, Section 2, which is the
8 nationwide permanent provision of VRA, prohibits
9 racial discrimination in voting. The Bush
10 Administration filed fifteen cases to enforce
11 Section 2. Only three of those were in
12 jurisdictions covered by Section 5: South Carolina,
13 Georgia, and Mississippi. The Obama Administration,
14 eight years, only filed five cases to enforce
15 Section 2, only about one third of what the Bush
16 administration did. Three of those were in
17 jurisdictions covered by Section 5— Texas covered
18 in whole and North Carolina. The Obama
19 Administration thus filed far fewer Section 2
20 enforcement cases, but the number of cases filed in
21 either Section 5 covered jurisdictions or formally
22 Section 5 covered jurisdictions was exactly the
23 same for both administrations. Section 11(b), which
24 was not mentioned in your questions, but which is
25 another important provision because it prevents
26 coercion and intimidation in the voting context.

1 The Obama Administration filed no such cases to
2 enforce that provision. The Bush Administration
3 filed two. The VRA has two language minority
4 provisions. The Obama Administration filed eight
5 lawsuits and entered into two settlement
6 agreements, for a total of ten enforcement actions.
7 Only one of those occurred after 2013, a settlement
8 with Napa County, California, which was not covered
9 ever under Section 5. The Bush Administration filed
10 27 lawsuits and one settlement agreement, for a
11 total of 28 enforcement actions. Again, the Obama
12 Administration only filed about a third of the
13 number of cases the Bush Administration did to
14 enforce the language minority provisions. Section
15 208, which the Commission also asked about, is a
16 provision that protects voters who need assistance
17 because of disability, blindness, or inability. The
18 Obama Administration only filed one case in eight
19 years, to enforce that provision in 2009 four years
20 before Shelby County, no enforcement action was
21 filed after. By contrast, the Bush Administration
22 filed ten cases, only two of which were filed in
23 the jurisdiction covered by Section 5. Thus, the
24 litigation record does show that these provisions
25 have been continued to be enforced but there's been
26 a sharp downturn in the last eight years in

1 enforcement actions filed. Now, this is obviously
2 not due to a lack of personnel or resources since
3 the staff of the Voting Section who had worked on
4 Section 5 matters were not terminated. In fact,
5 they were all retained after Shelby County, which
6 meant that they could be used for those other
7 cases. Also, the Civil Rights Division's own budget
8 performance reports show that their appropriations
9 steadily increased from \$136 million in fiscal year
10 2013, the year that Shelby County was decided, to
11 \$175 million in 2016. Thus, the downturn seems to
12 reflect a reduction in the discriminatory action
13 that would justify a DOJ lawsuit. The other
14 question was if the federal clearance process
15 system should be reinstated. The answer to that is
16 no. In 1965 Section 5 was needed. There was
17 official systematic widespread discrimination that
18 kept black Americans from voting. Section 5 was put
19 in the law in addition to Section 2 for one reason.
20 The reason was that there was blatant evasion of
21 court decrees even when the Justice Department won
22 cases, and that's why the clearance provision was
23 put in, but times have changed and as the Supreme
24 Court said in Shelby County today, blatant evasion
25 of a court decree is extremely rare. Judge Steven
26 Williams, District of Columbia Court of Appeals,

1 pointed out in the Shelby County case in the lower
2 Court that in fact jurisdictions covered under
3 Section 5 had higher black registration and turnout
4 than non-covered jurisdictions. Covered
5 jurisdictions also had far more black office
6 holders as a proportion of the black population
7 than uncovered ones. And in a study of lawsuits
8 filed under Section 2, Judge Williams found that
9 the five worst uncovered jurisdictions had worse
10 records than the eight covered jurisdictions. With
11 no evidence of widespread voting disparities among
12 the states, continuing the coverage formula
13 unchanged in 2006, was irrational. Again going back
14 to the key point, Section 5 was there because of
15 evasion of court remedies, court-ordered decrees in
16 the 1960s. Because that so rare today and because
17 there's no discernible difference between states—
18 other than the formally-covered states actually
19 have better records these days—there's no reason
20 for Section 5 to be put back in as a blanket-
21 coverage, particularly because we have Section 3.
22 Section 3 is a custom-made version of Section 5. If
23 a Court believes that a particular defendant is not
24 only engaging in discrimination, for example, under
25 Section 2 but is a recalcitrant defendant, someone
26 who is feared may repeat this behavior they can be

1 put into a specific pre-clearance requirement. I'm
2 aware of only two cases that has happened since
3 2013 -- one involving city of Evergreen, Alabama,
4 which was formally-covered jurisdiction, and
5 another one covering the city of Pasadena, Texas
6 which was never covered under Section 5. To
7 conclude, there's no reason given the custom
8 provision in Section 3 to reinstate Section 5 and
9 in fact there's no evidence that particular states
10 are engaged in systematic official discrimination
11 that would justify treating them differently from
12 other states.

13 Thank you.

14 CHAIR LHAMON: Thank you, Mr. von Spakovsky.
15 Professor Levitt?

16 JUSTIN LEVITT: Thank you, Madame Chair, Madame Vice
17 Chair, distinguished Commissioners. I very much
18 appreciate the opportunity to testify before you
19 today, to supplement my written statement, and
20 answer any questions that you may have.

21 The Voting Rights Act that was enacted on a
22 bipartisan basis by Congress was a relentlessly
23 pragmatic tool that was designed to enforce a
24 cherished American commitment to equitable
25 representation -- as Commissioner Adegbile said,
26 "to keep the promise of the Constitution." Shelby

1 County, in my view, ripped a significant hole in
2 Congress' work. Despite the best efforts of private
3 attorneys and the civil servants at the Department
4 of Justice, Shelby County has left Americans less
5 able to timely defend themselves against voting
6 discrimination, plain and simple. Unfortunately, in
7 the past few years, a few jurisdictions have amply
8 demonstrated that existing tools, while powerful,
9 are nevertheless inadequate, even with armies of
10 lawyers. I fear that the worst is yet to come.
11 Shelby County is so significant because it gutted a
12 procedure uniquely tailored to a unique problem.
13 Most civil rights litigation, as you know well, is
14 responsive. If there's a legal problem, you sue,
15 you prove harm, the problem gets fixed for the
16 future. But election laws and enforcing the voting
17 rights provisions of federal law are different.
18 Discriminatory election laws artificially took the
19 terrain by which officials hold office. Because
20 these discriminatory procedures may help officials
21 keep their jobs, they're often willing to fight
22 tooth and nail even when the illegality becomes
23 strikingly clear. When officials do dig in, they
24 don't bear the costs of this extreme resistance --
25 the taxpayers do. And when the taxpayers
26 disapprove, they can't toss the offenders out of

1 office, because the election rules themselves are
2 the problem. In no other civil rights arena is the
3 impact on officials so personal and direct.
4 Election laws are different. Normal lawsuits, as
5 you've heard, are also a little bit like ocean
6 liners: they are very complicated, they're very
7 expensive, they're very slow to get going. Voting
8 lawsuits, and particularly suits under Section 2 of
9 the Voting Rights Act, are an extreme version --
10 among the most complicated in the federal system.
11 The Federal Judicial Center did a study a number of
12 years ago: of the 63 categories of federal cases,
13 voting cases rank sixth, sixth most complex. It can
14 take years to develop evidence, years to resolve.
15 Enforcing the voting laws is different. And in the
16 meantime elections infected with discrimination are
17 taking place. We know that elections have
18 consequences. Discriminatory elections have
19 consequences too. The winners of unjust contests
20 still become incumbents and still end up making
21 policy. And even if you can eventually get the
22 election structure right, that doesn't fix the
23 policy of the meantime. Election laws are
24 different. Unfortunately, these aren't just
25 theories. We are in North Carolina, and I expect
26 that you will hear plenty about North Carolina

1 today, and so I want to use my limited time --
2 there's plenty to hear in that regard. I want to
3 use my limited time to give you a different example
4 from outside of the jurisdiction where we sit and
5 where you're likely to hear public comment later.
6 Instead I will just briefly mention an example from
7 Texas. When it comes to racial misconduct, Texas
8 has unfortunately proven themselves to be an
9 unrepentant recidivist, one of the recalcitrant
10 jurisdictions that Mr. von Spakovsky mentioned.
11 After decades of trouble, after a Supreme Court
12 decision specifically railing against conduct
13 bearing the indicia of intentional discrimination,
14 Texas drew districts again determined by multiple
15 courts to be discriminatory. Some of the lines that
16 they drew were found to be intended to
17 discriminate. And at the same time, the same
18 legislature passed a restrictive ID law also found
19 to be intentionally discriminatory. Mr. von
20 Spakovsky mentioned in his written testimony that
21 no one can rationally claim there is still
22 widespread systemic official discrimination in any
23 of the formerly covered states; I simply don't know
24 what else to call this pattern. And though blatant
25 evasion of court decrees is indeed rare, more
26 subtle evasion is strikingly still present, and

1 pernicious. Preclearance blocked, effectively, both
2 of the policies that I just mentioned -- both the
3 ID law and the redistricting law in Texas -- but
4 Shelby County kicked open the door. The 2012, 2014,
5 and 2016 elections -- primary elections and general
6 elections, for Congress and for the state house --
7 were all held in districts determined to be
8 discriminatory. Those elections cannot be undone.
9 An army of lawyers arrived, including lawyers from
10 the Justice Department, to try to fill the gap
11 Shelby County left and that litigation, which has
12 consumed enormous resources, is still ongoing.
13 Given its schedule, it is extremely likely that
14 2018 elections will also be held under invalid
15 lines. And Section 3 relief, if it is ever to come,
16 will come a decade too late. That means that
17 justice has been repeatedly delayed in Texas, which
18 means that justice has been repeatedly denied in
19 Texas. Enforcing the voting laws is different, and
20 as Congress recognized, the existing tools are
21 simply not enough. If that's true for a statewide
22 problem -- along with both Mr. McCrary and Ms.
23 Gupta -- it's even more concerning for the tens of
24 thousands of local jurisdictions. That's where it's
25 more difficult to find out about the problem in the
26 first place and wherever those most at risk have

1 the least resources to fight back. The country's
2 early warning and rapid response system for many
3 local concerns was dismantled by Shelby County, and
4 the 2020 redistricting is around the corner. I had
5 the honor to serve at the Department of Justice
6 supporting the efforts of enormously talented
7 experts and lawyers to correct what problems they
8 could in this new environment, in ways that are not
9 always revealed by more facile numerical
10 comparisons. I look forward to getting into some
11 more of the detail if you have questions about it,
12 including the numbers cited by Mr. von Spakovsky,
13 including at least two factual inaccuracies. Some
14 of these issues are resolved before they ever
15 become cases and some are resolved in negotiated
16 settlements, but the Department's capacity to
17 discover wrongdoing has been severely hampered by
18 Shelby County, and once found, in too many matters
19 it takes too long to develop proof, too long to
20 fight to a liability finding, and far too long to
21 get a remedy. The Supreme Court invited Congress to
22 remedy the damage done by Shelby County. I know
23 that your work will help facilitate that. I look
24 forward to answering any questions toward that
25 endeavor that you may have.

26 CHAIR LHAMON: Thank you.

1 BISHOP BARBER: Thank you so much and thank you to
2 the Commission for allowing me to testify today.
3 Isaiah 10 says woe to those who legislate evil and
4 rob the poor of their rights. We are living in a
5 time when voters of color have increasing potential
6 for political power. Nearly thirty percent of
7 America's eligible voters are people of color. And
8 African Americans, Latinos, Asian Americans, whites
9 and others are coming together in historic numbers
10 to form fusion coalitions. But we are also living
11 in a time where we are with seeing, particularly
12 across the South, the worst redistricting and
13 abridgement of voting rights since the 19th
14 century. Without the protection of the Voting
15 Rights Act preclearance provisions, Jim Crow era
16 voter suppression efforts are reappearing in North
17 Carolina and in too many other states across the
18 country. The wave of voter suppression, which has
19 disproportionately impacted voters of color,
20 imperils the confidence of all voters of good will
21 and strikes to the very heart of our democracy. It
22 was a lie in 1965 when people argued against the
23 Voting Rights Act by saying systemic racism was a
24 thing of the past. It was a lie in 2018 for those
25 to say that systemic racism is a thing of the past.
26 Since 2008 at least 22 states have enacted new

1 state-wide voter suppression laws, and in 2017 at
2 least 99 additional bills proposing such measures
3 were introduced in 31 states. Here in North
4 Carolina when North Carolina's fifteen Electoral
5 College votes went to America's first black
6 president in 2008, it sent shock waves through the
7 racially polarized white dominated Republican Party
8 in North Carolina. Their southern strategy had
9 failed to deliver in 2008. Immediately, what we saw
10 were right-wing extremists scramble to invest
11 unprecedented sums of money in state legislative
12 races resulting in an extremist takeover of North
13 Carolina's government. The majority that took over
14 North Carolina General Assembly quickly redrew both
15 state legislative district and U.S. congressional
16 districts in their favor. They claim that they did
17 it just like Democrats. But two things should be
18 noted: once civil rights organizations have always
19 challenged everybody, and two, we have not seen
20 this kind of attack of stacking and packing since
21 the 19th century. They consolidated power in 2011
22 through district segregation of white and black
23 voters by mechanically adding voters to election
24 districts in concentrations not authorized or
25 compelled under the Voting Rights Act, thereby
26 bleaching adjacent districts of voters of color and

1 frustrating their ability to vote in alliance with
2 the racial fusion electorate that bridges racial
3 divides and mitigates the effects of racialized and
4 polarized voting. These very laws were overturned
5 by the current court. They were called
6 unconstitutional, but they took so long to do that
7 we had unconstitutionally-constituted legislature.
8 We won but it was only after this group was in
9 power and had begun to strike down many of the
10 advancements that had been made. It was devastating
11 in 2013 when Supreme Court gutted the heart of a
12 critical piece of civil rights legislation in
13 Shelby County v. Holder. At the date of the Shelby
14 decision, fifteen states were covered by Section 5
15 in whole or in part. North Carolina was one of
16 them. Even with the full protection of the Voting
17 Rights Act, voting had been a struggle in North
18 Carolina. In the thirty years prior to Shelby the
19 U.S. Department of Justice objected more than sixty
20 times to more than 150 voting changes in North
21 Carolina. After Shelby, one of our legislators
22 actually said now that the headache has been
23 removed, and they moved forward with the full bill.
24 Within hours of the 2013 Shelby ruling, they rolled
25 out the sweeping voters suppression bill that
26 erected a slate of stringent racially-

1 discriminating barriers to the ballot. The laws
2 eliminated, eliminated things that voters already
3 used, such as same-day registration, pre-
4 registration for sixteen- and seventeen-year-olds,
5 out of precinct ballots, the first week of early
6 voting, and instituted one of the nation's most
7 stringent photo ID laws. We called it the "monster
8 voter suppression law." In response, the movement
9 the Forward Together Moral Movement erupted. Over
10 1,200 people, most of them -- many of them, white,
11 engaged in nonviolent civil disobedience, and after
12 years of organizing, the courts finally struck down
13 this intentionally racially-discriminatory law and
14 said that it was with surgical -- almost surgical
15 precision to impose cures for problems that did not
16 exist, no matter how many experts or so-called
17 experts claimed that they do. And the Supreme
18 Court, this Supreme Court, denied the leadership of
19 the North Carolina General Assembly, in a petition
20 for certiorari. It is interesting that the Attorney
21 General, Jeff Session, one of his first acts was to
22 actually pull the U.S. Department of Justice out of
23 the defense of the voters of North Carolina.
24 Lastly, I will say, however, despite the Fourth
25 Circuit ruling requiring the restoration of the
26 first seven days of early voting period, North

1 Carolina Republican Chair Dallas Woodhouse produced
2 and distributed a memo to Republican members of the
3 County Board of Elections instructing them to make
4 party line decisions in drafting new early voting
5 plans, including voting against Sunday hours or
6 voting and maintaining decreased number of hours at
7 sites, particularly on weekends. This resulted in
8 2016, 158 fewer early voting sites in the 40
9 previously covered counties that we had in 2012.
10 This is another example of blatant evasion, blatant
11 attempt to block the power of the African American
12 and minority vote. What we have seen is systemic
13 racism, systemic racism, and we know that it is
14 past time for the full restoration of the Voting
15 Rights Act. We have seen this Congress since 2013
16 engage in a modern form of interposition and
17 nullification and hold up passing and fixing the
18 Voting Rights Act for nearly 2,000 days. We talk
19 about racism, just think of it in this historic
20 context. Strom Thurmond only filibustered the Civil
21 Rights Act of 1957 for one day, 24 hours. This
22 Congress had engaged in a filibuster of over 1,700,
23 nearly 2,000 days. We need full restoration of the
24 Voting Rights Act.

25 CHAIR LHAMON: Thank you, Bishop Dr. Barber. And now
26 we're going to open the conversation to my fellow

1 Commissioners. Commissioner Narasaki?

2 COMMISSIONER NARASAKI: Good morning everyone. I
3 have a lot of questions so I'm going to ask you to
4 keep your questions short because we only get so
5 many minutes. First, Ms. Gupta, you talked about
6 the importance of monitors and what the Shelby
7 decision did in terms of the Department of
8 Justice's ability to use them. So there are
9 observers and monitors, which I always get
10 confused. Some of them are still being fielded. It
11 seems to me that the observers were able to do a
12 lot more than the monitors. Could you explain the
13 difference and how the changes have undermined the
14 ability to enforce the Voting Rights Act?

15 MS. GUPTA: Yeah. So. You're correct that there is a
16 difference between the monitors and observers. The
17 observers were allocated in significant numbers
18 pursuant to the Section 4(b) coverage formula and
19 had much greater power to the inside of the polling
20 site and the way that the monitors are not. The
21 funding this is a little bit wonky but the way that
22 the funding comes to observers means that there was
23 a specific stream of funding that allowed for a
24 high number of observers in all the polling sites
25 covered by preclearance. When we were making
26 decisions about allocation of monitors in 2016 the

1 number was down to --by hundreds and hundreds in
2 terms of placement of Justice Department-trained
3 monitors, who could only be outside of the polls.
4 And that grossly, as you can imagine, inhibits the
5 kind of information and evidence collection that
6 can happen when people are not physically inside
7 the polling sites to observe ways in which voters
8 might be unable or challenged unlawfully in
9 exercising their right to vote, and so it has had a
10 dramatic consequence, I would say, on the ability
11 of the Justice Department to actually get the kind
12 of evidence they need to make these cases.

13 COMMISSIONER NARASAKI: I can see-- when I used to
14 work on these issues I was meeting with the then
15 Lieutenant Governor of Hawaii on Section 203
16 enforcement and they insisted that bilingual
17 assistance wasn't necessary and I said what was
18 their evidence and they said, well, we keep getting
19 the translated materials stole or shrink-wrapped,
20 which meant to me that they never put them out in
21 the first place, which is something that you can't
22 observe unless you're there.

23 So Mr. Levitt it seems to me that a lot of people
24 that don't know that there were actually several
25 legislative attempts before the '65 Act to try to
26 stop the voter oppression that was going on. And

1 the genius of Section 5 preclearance was based on
2 seeing local officials create new barriers every
3 time a Court said you can't do this so it wasn't
4 necessarily blatant disregard, it was more so ways
5 of evasion. You observed in your testimony that
6 there's a still subtle forms of evasion. Can you
7 give some examples of what's going on there? Is
8 that still happening?

9 MR. LEVITT: Certainly. Unfortunately, yes, and even
10 more unfortunately, I think that the ability of the
11 DOJ and the ability of private observers to know
12 all of the ways in which it is happening,
13 particularly on the local level, has itself been
14 hampered. Some of the examples that we've seen
15 involve acts that are passed with what has been
16 later found to be discriminatory intent. On the eve
17 of a trial which has taken years to accumulate the
18 evidence for, and which has taken years to prepare
19 -- immense amounts of resources -- the legislature
20 will adjust the law just enough to try to fly below
21 the radar of what is provable. That is, having set
22 out to discriminate against voters on the basis of
23 their race and ethnicity, only when their feet are
24 held to the fire on the eve of litigation will
25 legislatures then attempt to, not correct the
26 problem, but modify the laws just enough to make it

1 even more difficult to prove in litigation. We saw
2 this, unfortunately, right here in North Carolina.
3 In North Carolina, as several witnesses have
4 mentioned, there was a bill that was designed
5 before Shelby County. The moment that Shelby County
6 was enacted, the legislative leadership turned to
7 what they called the "full bill," a vastly expanded
8 and vastly more discriminatory omnibus set of
9 restrictions. Litigation commenced, and was
10 vigorously being contested, and a month before
11 trial was set to begin, the legislature revised
12 their law a bit -- not completely, not striking it
13 down, but revised it just a bit. That itself
14 delayed litigation and further proceedings. What
15 we're seeing is increasingly sophisticated and
16 increasingly -- they may not be quite as blatant as
17 in the years in which Mr. von Spakovsky mentioned,
18 but there are still certainly efforts by the
19 legislature, not to do right by their constituents,
20 but to do just enough to skate by beneath the guise
21 of a federal court. That is not what the VRA was
22 intended to further. Indeed it was intended to stop
23 exactly that sort of gamesmanship.

24 COMMISSIONER NARASAKI: Thank you. Mr. McCrary, some
25 of the witnesses today in their written testimony
26 seem to be arguing that the lack of explosion of

1 Section 2 litigation is somehow itself indication
2 that Section 5 is no longer needed. What is your
3 response to that? Is that the real measure of
4 whether Section 5 is needed?

5 MR. Mr. McCRARY: No. As several of the panelists.
6 including myself, indicated, litigation is time-
7 consuming, resource-intensive, and that slows down
8 other kinds of enforcement, plus the unavailability
9 of preclearance review means a lot of things that
10 were happening that we don't even know about at the
11 local level potentially. Things that were monitored
12 under the preclearance process before Shelby County
13 was decided, and to take the verdicts in court
14 decisions challenging discrimination as sole
15 evidence as to whether discrimination is happening
16 doesn't make a lot of sense to me as a social
17 scientist.

18 CHAIR LHAMON: Bishop Barber, it looked to me that
19 you may have had a response to one of those
20 questions or am I misreading your body language.

21 BISHOP BARBER: Just a couple of comments and I am
22 only standing because of a long-term bad hip. There
23 are a couple of things I'd like to just mention.
24 One is when we went to federal court, one of the
25 justices, asked a very simple yet powerful, and
26 profound, question to those who were fighting

1 against the roll back of voting laws: why don't you
2 want people to vote? And the courtroom got very
3 quiet. The federal judge, said, why is it that you
4 are fighting? Because the provisions in North
5 Carolina—same-day registration, early voting—were
6 things added that people had already used for
7 several election cycles, and there was no fraud.
8 But with the one thing that changed was, there was
9 an increase in African American and Latino and
10 other minority voting. What you saw is in this case
11 -- it was blatant. They were caught by this Supreme
12 Court, not by an earlier Supreme Court, but the
13 very Supreme Court that undermined in Shelby. To
14 say these laws were so racist, and so surgically
15 racist, and it was proven as such that the only
16 things they touched were the areas where it was
17 clearly shown that minority voters were able to
18 overcome past discrimination.

19 Last two things. You know, we have 340 years of
20 slavery and Jim Crow. We only had 52 years of the
21 Voting Rights Act. And all 52 of those years they
22 have been fights to undermine it. It took 25 years
23 after the passage of the Voting Rights Act before
24 North Carolina even got another Congressperson in
25 the United States Congress. It did not happen
26 quickly. The Voting Rights Act was passed in my

1 lifetime. I finally will just add to the question
2 about this is not the measure. Preclearance allowed
3 many things not to go to court. That's the point.
4 They didn't go to court so you can't measure what
5 went to court. However, when you reverse
6 preclearance what you allow is you allow laws to go
7 on the books. You allow legislatures to get
8 unconstitutionally elected and pass laws, even
9 though they are unconstitutionally-constituted, and
10 then you allow laws to go on the books and think
11 may be used for two or three election cycles only
12 to be proven unconstitutional, which means you get
13 an unconstitutional elections because the laws were
14 use in those elections are finally proven
15 unconstitutional. Lastly, all of those things: we
16 don't need Section 5; it's bad for the states; and,
17 you know, this should not happen to certain states
18 that haven't had a history of and contemporary
19 suppression. The last thing that I will say, every
20 state that's under the Voting Right Act's
21 preclearance could have had it released if they did
22 one simple thing: didn't discriminate for ten
23 years. Not one state has been able to resist trying
24 to—Democrats or Republicans, because we challenged
25 both, has not been able to resist for ten years,
26 and that is why they were still covered—or were

1 covered-- under the Voting Rights Act Section 5.

2 CHAIR LHAMON: Thank you. Commissioner Narasaki?

3 COMMISSIONER NARASAKI: Thank you, Reverend Barber.

4 That actually reminded me of another question,
5 which is, a couple of the witnesses refer to the
6 fact that there is surgical provision, there is
7 evidence of intent, courts have actually found, so
8 what actually was the evidence of racial intent,
9 intent to actually discriminate on a racial basis?

10 BISHOP BARBER: I would say let me turn it to the
11 attorneys, but I play one on Tuesday and sometimes
12 on Friday. But what we were actually advised by
13 some not to go after intentional racism, go after
14 disparity, which would still be illegal, but we
15 knew this legislature, we knew that they had heard
16 all of this evidence. They'd even heard some of the
17 people on this panel that had come, brother Hans
18 had come and given them support for what they
19 wanted to do. It was found that they actually went
20 to the Board of Elections and asked what was the
21 impact of the various laws, like the first week
22 voting, what was the impact based on race. And if
23 the impact was positive, based on race, that's what
24 they ended up removing. They actually looked at how
25 did same-day registration and early voting impact
26 and increase the participation of minority voters.

1 They asked the question in e-mails and whatever and
2 then wrote their legislation, blatantly wrote this
3 legislation despite the evidence and despite the
4 lies about fraud. And for me theologically, you
5 know, to suppress people's vote is not only
6 constitutionally illegal, it's theologically
7 illegal because the only people-only persons that
8 receive voting rights are people. You don't give
9 voting rights to goldfish and pets and puppies. So
10 if you suppress my voting rights, you are
11 suggesting I'm not a full person, which is the
12 violation of the most fundamental principle of
13 theology, and that is that we are all made Imago
14 Dei, in the image of God. To suppress the right to
15 vote is to deny the worth and the image of God in
16 every human being regardless of their race, their
17 color, or their sexuality.

18 VICE CHAIR TIMMONS-GOODSON: Thank you very much. I,
19 too, join my fellow commissioners in thanking our
20 panelists for being with us. We're in North
21 Carolina so I'm going to go in a North Carolina
22 direction. While we - - when we think of voting
23 rights, Section 5 and all of that, we think of
24 statewide elections, we often think of school board
25 elections and county commissioners or whatever. In
26 North Carolina we also elect our judges, and there

1 is a discussion and possible legislation underway
2 in North Carolina that will redraw our judicial
3 districts and some allege will pit some duly-
4 elected African-American Superior Court judges
5 against other African-American Superior Court
6 judges thereby reducing the presence of minorities
7 on the bench, and so I'd like for you to in terms
8 of Section 5 preclearance talk about judicial
9 elections and the effect. You've been speaking,
10 Bishop Barber. I'm going to turn to Mr. Levitt and
11 others to comment, if you will, about that and then
12 I just have one other question.

13 MR. LEVITT: Certainly. Thank you, Madam Vice
14 Chair, for the question.

15 The Supreme Court long ago held that the Voting
16 Rights Act, both Section 5 and Section 2, apply to
17 judicial elections. That there is a
18 representational equity in ensuring that, if you're
19 going to have judges elected, that you make sure
20 that you do so free of racial discrimination, just
21 like all other elections. I've been certainly
22 following the broader discussion in North Carolina.
23 I confess, I do not know the intended character of
24 the districts themselves. But this is part of the
25 point of the impact of Shelby County. There will be
26 attention to this statewide law -- that I'm not

1 worried about. For the smaller jurisdictions, where
2 we're really concerned that we won't know the
3 effect of the change, but the one thing we know
4 here is that people will focus on the impact of the
5 law. But proving discrimination in these districts,
6 if they in fact result-gathering the social science
7 evidence, gathering the quantity and qualitative
8 social science evidence, will take, experience has
9 shown, years to prove and years to litigate, and in
10 that period of time if indeed districts are passed
11 that are discriminatory -- I don't want to presume
12 that they will be, but if in fact they are -- that
13 will affect the character of justice that the
14 citizens of North Carolina receive while they're
15 waiting for a lawsuit to work its way through the
16 system. That sort of expense and that sort of
17 cumbersome nature of responsive litigation is
18 insufficient to the task I think. The Section 5
19 review process -- abbreviated, as Mr. McCrary
20 mentioned -- was designed to get a short, quick
21 answer on whether a particular new practice or a
22 particular change in practice was discriminatory.
23 That benefits both the jurisdictions themselves,
24 and those would seek to stop those practices when
25 they are discriminatory. And that sort of review,
26 before the discrimination takes effect, is

1 unfortunately no longer in place outside of three
2 very small jurisdictions already bailed in under
3 Section 3, as Mr. von Spakovsky mentioned.

4 VICE CHAIR TIMMONS-GOODSON: Thank you, Mr. Levitt.
5 Would you like to add to that, Bishop Barber?

6 BISHOP BARBER: One of the things we find in North
7 Carolina, Republicans and Democrats are against
8 undermining the independency of the judiciary. What
9 we're also seeing is these legislatures who have
10 been unconstitutionally-constituted continue,
11 despite all of the rulings, to attempt to pass laws
12 that they know they do not have to be precleared
13 and they could not stand a preclearance test. The
14 last two things I would say, this is the first time
15 in the history of North Carolina we have two
16 African-Americans sitting on the Supreme Court.
17 This attempt to say we want to appoint as opposed
18 to -- that we want to change the primary, change
19 the way they're elected, is an attempt to undermine
20 progress, particularly in the southern states. In
21 the 1990s, was when we in North Carolina, we had to
22 have special elections to get African-American
23 representation on our judiciary, that was 25 years
24 after -- over 25 years after the Voting Rights Act.
25 And it's only been 28 years. And now you have this
26 extremist legislature that know that now the

1 districts had been ordered to be redrawn, many will
2 not survive, probably will not survive, so what are
3 they doing? They are doing what they said in South
4 Africa one time: only a dying mule kicks the
5 hardest. They know that is what is happening and
6 they're trying to go after every institution they
7 can because they know they can do it without
8 preclearance and then once they do it, if they do
9 it, it will take years to undo it and that is the
10 great undermining that has happened because of the
11 gutting of Section 4, which nullified Section 5.

12 VICE CHAIR TIMMONS-GOODSON: Just one more quick
13 question. I believe that it was Mr. Spakovsky,
14 indicated that there's really no reason to
15 reinstitute Section 5 because of the presence of
16 Section 3, that Section 3 will handle it. What do
17 you say, sir, to Mr. Levitt's acknowledgement of
18 Section 3, but his indication that the relief comes
19 too slow or too late?

20 MR. VON SPAKOVSKY: You know, I constantly hear that
21 but that assumes that there's no such thing as a
22 temporary restraining order or preliminarily
23 injunction which is granted all the time in voting
24 cases. In fact, when I was at Justice Department
25 and we were engaging in Section 2 litigation, as
26 I'm sure you're aware that was the standard thing

1 to seek so if I do - if in fact, you have a case of
2 merit that is likely to succeed, the idea that this
3 is going proceed for years just isn't the case if
4 we've got the evidence to show that a TRO or
5 preliminarily injunction is going to work.

6 One thing I want to say about the redistricting
7 issue and I think everyone no matter what side that
8 you're on will agree with me that redistricting is
9 a chaotic mess. The law is particularly confused
10 and one of the biggest problems in this area is,
11 and I think I should probably trademark this but I
12 wrote an article recently about the Goldie Locks
13 principle of redistricting. The reason being
14 jurisdictions are in a Catch-22. If they've got to
15 consider some amount of race, if they don't they're
16 going to be sued under the Voting Rights Act for
17 protecting and looking out for minority voting
18 rights. On the other hand, if they use too much
19 race they are again going to get sued because
20 they're will be violating the law under the Shaw v.
21 Reno decision, which I'm sure you're familiar with
22 too, so they have to use exactly the right amount,
23 and the problem is that the view of whether you're
24 using too little race or too much race, frankly, it
25 varies from judge to judge. People with good
26 intentions see it differently, so it's a very, very

1 confusing area and it's very tough to get it
2 exactly right. There was a recent North Carolina
3 case where I think the justices talk about it. It
4 was the fifth time that case was up before the
5 court. Which showed that the parties and the judges
6 can't seem to get it right, so what my point is, is
7 that redistricting is a very confusing area and
8 everyone is -- the idea this automatic assumption
9 that some people are acting with an intent to
10 discriminate as opposed to trying to get it right,
11 I think you've got to keep that in mind.

12 VICE CHAIR TIMMONS-GOODSON: Mr. McCrary, it looked
13 like you wanted to say something? I want to ask
14 you, sir, if the presence or the existence of a
15 temporary restraining order is sufficient to answer
16 the concerns about the slow relief in connection
17 with Section 3.

18 MR. MCCRARY: Well, first of all, I understood your
19 question to be about Section 3(c) remedies, and
20 there is no possibility of any kind of injunction
21 triggering a Section 3(c) remedy because it
22 requires a finding after full trial on the merits
23 there was intentional discrimination before a
24 Section 3 remedy can be adopted by the court. When
25 the Court adopts it, it's limited in scope and
26 duration. And often courts are reluctant to impose

1 a Section 3(c) remedy. In the North Carolina case,
2 for example, where there is a finding by the Fourth
3 Circuit of the Court of Appeals that the law was
4 intentionally discriminatory and therefore it's
5 eligible for a Section 3(c) remedy, the Court
6 didn't order one.

7 VICE CHAIR TIMMONS-GOODSON: Okay.

8 CHAIR LHAMON: Ms. Gupta it looked like you had an
9 answer as well?

10 MS. GUPTA: Yeah, I was going to mention what Mr.
11 McCrary just mentioned. But also, on top of that I
12 think it's important when Mr. von Spakovsky says
13 that courts - you know that the race is hard, and
14 what the evidence is, the threshold is hard, and it
15 is Section 3 really bears emphasis that it relies
16 on individual determinations on findings of
17 intentional discrimination and a bar for those
18 findings is incredibly high. Congress has opined on
19 this, opined on it recently, and that even amidst
20 ample circumstantial evidence of wrongdoing, that
21 proof of intentional discrimination really is
22 exceedingly difficult to obtain, and so to meet
23 those cases is it's not only that you can't get the
24 kind of injunctive relief that we previously
25 referred to, but actually that the bar itself is
26 extremely high. And that restricts that is that is

1 a vastly different framework than what the
2 preclearance regime would have done and to the Vice
3 Chair's point earlier, the harm, it's intensively
4 resource-intensive and expensive to do litigation,
5 but I want to again bear emphasis that a harm at
6 that point is already done and that is in essence
7 one of the core differences between what existed
8 before Shelby and what exists now. Is that, we then
9 have elections, we have judges, we have systems in
10 place that are infected with racial discrimination
11 that are allowed to persist even during the
12 pendency of litigation and voters are harmed,
13 people who interact with the local justice systems
14 that are infected with unlawful racial
15 discrimination are harmed, and so again, that is in
16 essence, the core harm of what Shelby County has
17 left this country's voting systems with, the
18 inability to actually prevent these harms to begin
19 with.

20 MR. LEVITT: I agree with everything that Mr.
21 McCrary and Ms. Gupta mentioned, with respect to
22 the 3(c) "bail-in provision," as it is known. But
23 just one note on the difficulty of complying with
24 the various federal laws on the basis of race: it
25 is true that the Voting Rights Act is relentlessly
26 pragmatic and does not admit shortcuts, but that

1 does not mean that it's impossible to comply with
2 the various constitutional and federal statutory
3 commands. Perhaps this is a L.A.-based metaphor,
4 but I'm used to driving, and when you drive, it is
5 abundantly true that you cannot ignore the speed at
6 which you're traveling, and you cannot go over the
7 speed limit, but millions of Angelenos and, I
8 think, hundreds of millions of Americans actually
9 drive every day, paying attention to speed without
10 going too far. It is easiest to fail to comply with
11 the Voting Rights Act and with the constitutional
12 commands against excessive and unjustified use of
13 race if you are not trying. I do not presume bad
14 faith on the part of any legislature going into a
15 redistricting, going into an attempt to comply with
16 the Voting Rights Act or the Constitution, but
17 neither can I turn a blind eye when it has been
18 proven that legislatures are acting in bad faith.

19 CHAIR LHAMON: Thank you. I understand that
20 Commissioner Heriot has a question.

21 COMMISSIONER HERIOT: Yes, thank you. Madame Chair.
22 I guess this question is directly to Mr. von
23 Spakovsky. You may have been the one that would
24 most want to talk about this. I'm not sure we've
25 brought out enough as a notion that the Voting
26 Rights Act of 1965 was intended, at least part of

1 it, was to be temporary. My understanding of the
2 history of this-- I can't quote President Johnson
3 directly here because he had a bit of a foul mouth.
4 I will instead paraphrase. He wanted a very, very,
5 very, very, very strong Act and he got it. He got
6 it. He definitely did. And tt worked extremely
7 well. The efforts to recruit African-American
8 voters in the South prior to the passage of the
9 Act, you know, utterly pale compared to what
10 happened a few months after it went into effect.
11 But one of the ways he was able to persuade
12 Congress to pass such a strong bill was it was
13 supposed to be temporary.

14 Can you comment a little bit about the history of
15 that?

16 MR. VON SPAKOVSKY: Sure. It was intended to be
17 temporary. It was initially for five years and it
18 kept getting renewed for another four times. And--

19 COMMISSIONER HERIOT: And am I right that Katzenbach
20 v. South Carolina is partly premised on the notion
21 that it is constitutional?--

22 MR. VON SPAKOVSKY: What Katzenbach said was that
23 the idea that a state, particular a state
24 legislature, in our federal system and under our
25 Constitution would have to get permission from the
26 federal government before a piece of legislation

1 that passes can go into effect was an extraordinary
2 intrusion into state sovereignty. It was needed at
3 the time because of what I said, evasion of courts
4 remedies that had been ordered and in individual
5 suits and that was certainly needed at the time.
6 But one of the reasons, a key reason, that Shelby
7 County occurred the way it was and I think that
8 it's important to remember that the coverage
9 formula was based on having a test or device in
10 place and then registration or turnout of less than
11 fifty percent in the 1964 election. When they
12 renewed it they added the '68 and '72 presidential
13 elections, but the cover formula was never updated
14 after that. What that meant was that in 2006 when
15 they renewed Section 5 without updating the
16 coverage formula, they were basically renewing it
17 based on 45-year-old data. That's as if in 1965
18 when they passed the Voting Rights Act they had
19 said well we're going to base the coverage on
20 registration and turnout in the 1928 Hoover
21 election or the 1932 Roosevelt election. It didn't
22 make any sense to do that. If they were going to
23 renew it, they had to base it on current
24 conditions, and the reason they didn't base it on
25 current conditions in 2006 was because, as the
26 Census itself has reported, registration and

1 turnout in the covered states was on parity with,
2 and in some places black turnout actually exceeded
3 that of white turnout.

4 CHAIR LHAMON: Ms. Gupta I see that you wanted to
5 respond?

6 MS. GUPTA: I would just like to ask the Commission
7 to consider the tens of thousands, hundreds of
8 thousands pages of documents that Congress
9 considered in 2006 that very thoroughly and deeply
10 comprehensively documented ongoing serious systemic
11 racial discrimination in the jurisdictions covered
12 by the Voting Rights Act preclearance regime, and
13 it's all there publicly but I think it refutes what
14 Mr. Spakovsky said. It was a thoroughly-considered
15 bill with a ton of evidence about ongoing real
16 systemic racial discrimination.

17 CHAIR LHAMON: Commissioner Yaki do you have a
18 question?

19 COMMISSIONER YAKI: Yes, thank you very much, Madame
20 Chair. First of all, I find it ironic that we're
21 talking about some of this. When it said that it
22 was meant to be temporary in Congress nearly and it
23 overall a bipartisan fashion, in 2006 we
24 reauthorized this with hundreds of thousands of
25 pages of records and which ironically this
26 Commission did not, despite my best efforts, all we

1 had to do is look at what's going on today and see
2 what the work Rev. Barber is doing in North
3 Carolina to know that temporary is still today. The
4 question I have goes to the meaning of access. I
5 think a lot of our talk today has been in the
6 impact in terms of redistricting, how that has an
7 impact, but I also want to take a step back. I want
8 to take one of the pernicious elements of how
9 temporary still is today is the rise of voter ID
10 laws and how they impact the ability of people to
11 access the polls. In the 60s this Commission went
12 down into the deep South and looked at the literacy
13 and poll taxes other qualifications that states put
14 in as barriers for minorities to be able to access
15 the vote but now in this century we've developed
16 new ways of dealing it and it's fundamentally built
17 upon a premise that, I do not believe and I would
18 like someone first to ask, as I'm going to ask, the
19 person with the most seniority on this, Mr. McCrary
20 - part of the premise of these voter ID laws is
21 that there is voter fraud—that there is widespread
22 voter fraud out there in the country. And I would
23 like you, based on your long history with the VRA
24 and your history in Congress, to address that
25 issue, straight up.

26 MR. McCRARY: There is no evidence of which I'm

1 aware that there's in-person voter fraud at the
2 polls. The only kind of casting of ballots that is
3 covered by the photo ID requirement of these laws
4 exists anywhere in the United States except in a
5 handful of cases, and I mean literally a handful,
6 in most states throughout the millions of votes
7 case. There is some degree of election fraud, in
8 some states, where absentee ballot fraud is the
9 area where you can find instances of actual
10 fraudulent behavior by voters. In all of the photo
11 ID laws that I'm familiar with, do not apply to
12 absentee ballots. They forego absentee ballots
13 reform.

14 Another kind of election fraud that occurs is the
15 kind that involves actions by election officials,
16 party officials. There was one case brought by the
17 Department of Justice in the 21st century, U.S. v.
18 Ike Brown, that dealt with fraud in Noxubee County,
19 Mississippi, but that didn't involve in-person
20 voter fraud. It involved fraud by the conduct of
21 officials conducting primary elections and in the
22 preparation in the political process for fraudulent
23 behavior, not in-person voter fraud.

24 COMMISSIONER YAKI: So the danger has never been
25 that there's going to be hundreds of thousands or
26 three million Americans -- three million people

1 impersonating Americans going to the poles or to be
2 bussed crossing state lines to vote in other places
3 that just doesn't happen?

4 MR. McCRARY: Not in my lifetime, which you know is
5 fairly extensive. It happened in the 19th century,
6 but we are a long way past that and therefore this
7 is a -- this is essentially pretext for doing
8 something that has to have other purposes.

9 COMMISSIONER YAKI: I'd like briefly you, Ms. Gupta,
10 and Mr. Levitt, just discuss the mechanics of how
11 these voter ID laws are enacted in a way to deter
12 or turn away or deny voting access for minorities,
13 if you could briefly.

14 MR. McCRARY: If I understand your question, you're
15 asking about the litigative process and the
16 evidence in the cases?

17 COMMISSIONER YAKI: Yes.

18 MR. McCRARY: Taking the North Carolina case as an
19 example, the most recent case, there are only a
20 small number of documents that satisfy the
21 requirements of the state law that was challenged
22 in a case that satisfies it's requirements for in-
23 person voting, whether it during the early voting
24 process or on Election Day. Before Shelby County
25 was decided, many more photo ID documents with
26 photo IDs were permitted to satisfy the

1 requirements of the law. After the Shelby County
2 decision the legislature removed most of those that
3 were readily available, and the evidence in the
4 case showed readily available to African Americans
5 at a rate far greater than those that were retained
6 in the law and therefore the law was -- the bill
7 was made, a great deal more restrictive once
8 preclearance requirements were removed. And that
9 was a part of what the Court intended when it --
10 when it rendered its decision, the Fourth Circuit,
11 along with the fact that the law targeted the very
12 reformed provisions adopted by North Carolina
13 during the preceding decade, the first decade of
14 the 21st century, that had facilitated the increase
15 in African American participation, which Mr.
16 Spakovsky correctly notes, is very impressive, and
17 once the provisions were identified to the
18 legislators as provisions that had facilitated
19 minority participation they specifically targeted
20 those and removed them, to some degree removed them
21 from elections officials.

22 COMMISSIONER YAKI: Mr. Levitt.

23 MR. LEVITT: I agree with everything that Mr.
24 McCrary said. This issue is one place where, I
25 think as Commissioner Heriot mentioned, there is
26 often a lot of yelling and screaming and

1 comparatively little attention to the facts. So I
2 really welcome when there is factual analysis on
3 all of this. Every state has some provision to make
4 sure that people are who they say they are when
5 they come to the polls, every single state. And so,
6 most of the controversy in this area isn't over
7 whether we should have some sort of identification
8 system or some sort of security system: it's about
9 the details, it's about the "how." Precisely as Mr.
10 McCrary mentioned, there are some states --
11 relatively few -- that have taken steps that are
12 quite restrictive in the documentation that they
13 permit. Those restrictions have, it has largely
14 been shown, a disparate impact, and in some cases
15 were proven to have been enacted because of that
16 disparate impact. But that's not a condition of
17 having an identification system, it's a condition
18 of the particular choices that particular states
19 have made. So in a circumstance like this, the
20 choices that North Carolina has made are not the
21 same as the choices that Rhode Island has made.
22 The choices that Texas has made are not the same as
23 the choices that Michigan has made. And those
24 distinctions matter. Mr. McCrary spoke to the
25 absence of evidence of widespread in-person fraud -
26 the sort of fraud that these sorts of laws can

1 address. Even though these laws don't do much to
2 take care of a meaningful problem, I think there is
3 relatively little controversy when increased
4 security procedures don't have an impact on real,
5 eligible Americans. If you look at the debate now
6 about whether to secure online registration systems
7 or statewide voter registration databases against
8 hacking, because those sorts of security measures
9 have very little impact on eligible Americans, I
10 think there's widespread bipartisan agreement: yes,
11 we should do that. The benefits far exceed the
12 costs. The concern is not when these laws are put
13 in place and they don't have impact; the concern is
14 when the laws are put in place, based in large part
15 on a pretext that Mr. McCrary has mentioned, with
16 specific provisions that impact people's ability to
17 vote based on their race or ethnicity. There are
18 not a lot of states in which this is true, but
19 there has been litigation proving that there are
20 some states that have taken this path of extremely
21 restrictive laws -- in their configuration, in some
22 cases, targeting minority electors. And that's, I
23 think, not only the source of the controversy, but
24 where the controversy properly lies. As Reverend
25 Barber mentioned, these sorts of laws that are
26 targeted in this fashion actually deprive

1 individuals of the opportunity to have a voice in
2 the election process, and I think that's part of
3 why they are so fiercely contested.

4 COMMISSIONER YAKI: I just want to apologize. I
5 called you reverend and you are now a bishop, and I
6 have a bad time with my church elevations, but you
7 wanted to just close us out real quick?

8 BISHOP BARBER: I've been called a lot worse.

9 CHAIR LHAMON: Mr. Barber, I wanted to say that
10 there are six minutes remaining and I know
11 Commissioner Debo Adegbile has a question. Please
12 try and be speedy.

13 BISHOP BARBER: I just wanted to mention a couple
14 things. Part of the conversation is that people
15 will say we're not denying the right to vote. But
16 there is another part of the law that is called
17 abridgement. And voter photo ID becomes an
18 abridgement. In North Carolina, Democrats and
19 Republicans agreed on signature attestation when we
20 didn't have any fraud. The very legislators that
21 claimed that there was fraud going on got elected
22 with signature attestation, but never said their
23 own elections were fraudulent. And the fact is,
24 and I've been thinking about Rosa Nell Eaton, who'd
25 been voting for years, and the photo ID almost
26 undermined her right to vote and so many others.

1 What we have seen with this so-called voter ID, and
2 it's a red herring, because extremists want us to
3 talk about photo ID. Many people who reported on
4 North Carolina said we had a bad photo ID law-- no
5 it was a monster voter suppression law of which
6 photo ID was only one part. It was the first part
7 that was passed and then held until after Shelby,
8 so that the media was driven by that and people
9 were not talking about undermining sixteen- and
10 seventeen-year-olds preregistration, same-day
11 registration, and early voting. We have to speak
12 up. It's not just one piece but it's the whole.

13 CHAIR LHAMON: Mr. Adegbile?

14 COMMISSIONER ADEGBILE: Mr. McCrary, as somebody
15 who's had 37 years of experience in this space, I
16 think you can help us understand a key question
17 that's being debated. And that is, are we
18 meaningfully in a different place from 1965? I
19 think that many people would say that we are. But
20 does the fact that there's been progress and that
21 the Voting Rights Act has motivated that progress,
22 tell us about whether or not we need to continue to
23 make progress? The idea being that a great deal has
24 changed, but based on your testimony there is a
25 great deal that hasn't changed or more that needs
26 to change. Can you reflect on that?

1 MR. McCRARY: Well, a great deal has changed since
2 1965 in the South and as with the rest of the
3 country. Not all of those changes, however, have
4 been linear progression upward. Things have become
5 a great deal more sophisticated in our technology--
6 both in election administration and the way that
7 legislatures operate. There's a great deal more
8 carefulness in the way legislators discuss what
9 they are doing and the procedures as several
10 panelists have been mentioning, are a good bit more
11 sophisticated than the ham-handed racist behaviors
12 of legislators in the states where, such as Alabama
13 where I lived for ten years, and you don't see that
14 sort of behavior anymore. Usually you don't see any
15 kind of racial campaign messages that were common
16 in the 1960s, the explicit racial appeals. Now it
17 takes the form of putting your opponent's photo in
18 the newspaper in your own ad to make sure that
19 everyone knows that this is a member of minority
20 group or something of that sort. In one of the
21 Indian voting right cases in Montana we found
22 another kind of racial campaign appeal was shooting
23 bullet holes in the campaign signs of Indian
24 candidates for election. And so a lot has changed
25 but if you look at things such as the evidence of
26 racially polarized voting--that is the key are the

1 empirical evidence in virtually all voting rights
2 cases— even those involving photo ID requirements
3 or restrictions on early voting and other access
4 issues, we find that racially polarized voting
5 exists at a degree that is still alarming though
6 perhaps not quite as alarming as in the 1960s. And
7 in the instance of North Carolina, in particular,
8 where there was evidence of increase white
9 crossover voting for minority preferred candidates,
10 that's the very circumstances in which the
11 legislature adopted its discriminatory election law
12 in 2013.

13 CHAIR LHAMON: Ms. Gupta?

14 MS. GUPTA: Despite the fact that things have
15 changed since 1965, I want to bear repeating again
16 that since the Shelby County decision at least ten
17 courts have found intentional race discrimination
18 in voting and I think that is important to mention
19 given how high the standard is to meet and to prove
20 intentional race discrimination. I also want to
21 point out that even three justices who were the
22 majority in the Shelby County decision—Chief
23 Justice Roberts, Justice Kennedy, and Justice
24 Alito—acknowledged in 2006, quote: That racial
25 discrimination and racially polarized voting are
26 not ancient history and much remains to be done to

1 ensure that citizens of all races have equal
2 opportunity to share and participate in our
3 Democratic processes and traditions. Again, against
4 this backdrop or notion that somehow racial
5 discrimination -- systemic racial discrimination in
6 voting has ceased to exist, I think all of this is
7 quite concrete evidence to the contrary despite the
8 incredibly high bar that litigants have to
9 establish intentional race discrimination. That
10 proof has been met in a number of instances and
11 even three justices on the majority of Shelby
12 County acknowledged its continued existence.

13 COMMISSIONER ADEGBILE: Mr. Levitt, can you explain
14 to us very quickly the nature of voting
15 discrimination? That is to say that lots of time
16 when you have a discrimination case there is
17 something that's visited upon a particular
18 individual and there's a case brought, occasionally
19 they're broader class actions cases, but I'm
20 interested to understand because of the nature of
21 voting rules the ripple effects and the reach of
22 discrimination when you have official actors--
23 whether it be at a local level or statewide level,
24 passing discriminatory laws? Can you explain that
25 to us and tell us what you think it means, that
26 there are many statewide legislatures that are

1 being found to have repeatedly, in the modern day,
2 intentionally discriminated against minority
3 voters?

4 MR. LEVITT: The discriminatory voting cases
5 essentially are about clinging to power. And when
6 cases are brought and succeed under the Voting
7 Rights Act, they show clinging to power in some of
8 the most pernicious ways possible, against a class
9 of people, attempting to diminish their ability to
10 cast votes or the impact of those votes, across an
11 entire political structure. That undermines all of
12 the rest of the bases for law that we have. That
13 undermines legislation later passed, on any number
14 of social or economic issues that we find
15 important. Sometimes that discrimination looks, sad
16 to say, much as it did in the bad old days, based
17 on explicit animus. More often, the animus is
18 subtextual or otherwise hidden, and even more
19 often, the discrimination may not be based on
20 animus but is instead based on perceived partisan
21 gain, nevertheless using individuals' race or
22 ethnicity as a proxy for achieving that partisan
23 gain. And I want to make perfectly clear that all
24 sorts of that discrimination are pernicious. It is
25 not an excuse for intentionally discriminating on
26 the basis of race that "Really, broader political

1 goals were the underlying motive." It is just as
2 problematic to take steps against a class of people
3 based on their race or ethnicity, no matter what
4 the underlying motive may be. Sadly, I think we see
5 the "it's just politics" excuse being proffered
6 more often, and given more credence than it should.
7 CHAIR LHAMON: We are, unfortunately, out of time.
8 This has been an animated panel and I very much
9 appreciate your sharing your expertise with us.
10 We'll take a break now until 10:50. As a reminder,
11 the registration is now open for the first half of
12 the public comment section and we will commence the
13 second panel at 10:50 a.m.

14 (Break taken at about 10:43 a.m.)

15 CHAIR LHAMON: We'e coming back to order. It is now
16 10:52 a.m. We're proceeding with the second panel.
17 In the order in which they will speak are panelists
18 are Ezra Rosenberg, Co-director of the Voting
19 Rights Project at the Lawyers' Committee for Civil
20 Rights Under Law; Nina Perales, Vice President of
21 Litigation at the Mexican American Legal Defense
22 and Educational Fund; J. Christian Adams, General
23 Counsel at the Public Interest Legal Foundation;
24 Dan Morenoff, Executive Director of the Equal
25 Voting Rights Institute; Natalie Landreth, Senior
26 Staff Attorney at the Native American Rights Fund

1 and chair of the Commission's Alaska's state
2 advisory Committee - thank you for your service to
3 the Committee ; Sherrilyn Ifill, President and
4 Director-Counsel of the NAACP Legal Defense and
5 Educational Fund. Mr. Rosenberg. Please begin.

6 MR. ROSENBERG: Thank you. I would like to thank the
7 Commission for holding these important briefings
8 and particularly for holding them in the great
9 state of North Carolina, which has been
10 particularly hard hit by suppression voter laws
11 over the past years as we just heard. The Lawyers'
12 Committee For Civil Rights Under Law has been at
13 the forefront of the fight for equal justice and
14 particularly for voting rights and equality in
15 voting rights for African American populations and
16 other racial minorities since 1963 when President
17 Kennedy convened a meeting of the leaders of the
18 private bar and implored them to start lending
19 their services to fight for equal rights. By way of
20 aside, until three years ago I was one of those
21 private practitioners, and I'm humbled to be here
22 today and be on a panel with true experts. But more
23 than fifty years later that we are still concerned
24 with the issue of equal rights in voting is sad.
25 That we are more concerned about it than we were
26 five years ago is incredible. We were clearly not

1 in the place that we expected to be. When in 2006,
2 just eleven years ago, a unanimous Senate and
3 nearly a unanimous House of Representatives
4 reauthorized Section 5 of the Voting Rights Act.
5 That bipartisan dream came to a thudding crash with
6 the opinion in Shelby, which gutted Section 5,
7 which gutted the Voting Rights Act. In the words of
8 the Congressman John Lewis, struck a dagger through
9 the heart of the Voting Rights Act. The loss of
10 protections afforded by the preclearance provisions
11 of Section 5 had a certain nuance aspect, and that
12 is a lack of notice now that we have that,
13 discriminatory practices are about to go into
14 effect. We can only fight that which we know about
15 and too often there are discriminatory practices
16 that take root and bear fruit before they can be
17 stopped. We've seen many forms in which these sorts
18 of practices take. They range from the
19 consolidation of polling places, which make it more
20 difficult for minorities to vote, to the
21 curtailment of early voting, which makes it more
22 difficult for hourly wage workers to vote, to the
23 purging of minority voters from voting lists under
24 the pretext of list maintenance. Georgia, a state
25 previously covered by Section 5, provides an
26 example of some of these practices. In 2015,

1 Hancock County -- the Hancock County Board of
2 Elections started a challenge proceeding, which
3 resulted in the purge of 53 voters, all but two who
4 were African American. We were able to stop the
5 practice through litigation. We were able to
6 reinstate some of those who have been wrongfully
7 purged but by then the damage had been done.
8 Sparta, a small predominantly black town in Hancock
9 County had elected it's first white mayor in 40
10 years. Also in 2015, the Georgia legislation
11 undertook a pinpoint redistricting of two
12 legislative districts. Which because of growing
13 minority population had become increasingly
14 competitive. They moved in some white voters and
15 moved out some black voters. We've sued on the
16 basis of a racial gerrymander. That suit is pending
17 but an election has already been held in those
18 districts. In Macon-Bibb County the Board of
19 Elections in 2016 decided to temporarily relocate
20 the polling place from a black neighborhood to the
21 local sheriff's office. There we got notice ahead
22 of time through our local partners. We were able to
23 help mount a petition drive and change that
24 decision; however, placing the burden on small
25 local groups with strained resources to keep a
26 weary eye out for these subtle sorts of changes

1 places an enormous burden on these organizations.
2 And until Shelby and before Shelby and after Shelby
3 we did have a partner in the Department of Justice,
4 a partner with greater resources than the civil
5 rights organizations, but in the past year the
6 Department of Justice Division of Civil Rights has
7 not filed a single action under Section 2 of the
8 Voting Rights Act. We in the Lawyers Committee with
9 far fewer resources have two such actions filed
10 under Section 2 and another racial gerrymander
11 claim in addition to another eight or nine Section
12 2 cases already on our docket. In two of those
13 cases, one filed in 2016 and one filed in 2017, we
14 were able to achieve quick results. The
15 establishment of the majority-minority districts in
16 Jonas County, North Carolina and in Emanuel County,
17 Georgia, the majority which speak to the fact that
18 energetic enforcement of the Act can lead to
19 immediate relief for minority populations. The
20 previous panel talked about the change of positions
21 in the Texas voter ID case, which I have been
22 litigating now for five years, and in the Ohio
23 purge case by the Department of Justice away from
24 positions favoring minority rights that the
25 Department had taken until months before. Those
26 reversals of positions can be perceived as a wink

1 of the eye to those jurisdictions who wish to push
2 the envelope for discriminatory practices and a
3 cold shoulder to those vulnerable populations who
4 have for a long time relied on the Department of
5 Justice to have their backs. The single most
6 proactive step taken by the federal government over
7 the past year in the voting rights arena has been
8 the creation of the president advisory committee on
9 election integrity. Now, while litigation by the
10 lawyers committee and other civil rights
11 organizations may have speeded up the demise of
12 that commission, there still is the threat of using
13 this canard of the myth of voter fraud to further
14 suppress voter legislation as evidenced by the
15 tweets by the President commiserate with his
16 dissolving commission that the elections in this
17 country are rigged, and therefore there should be
18 strict voter ID laws. The combination of the
19 gutting of Section 5, the increasing inactivity of
20 the Department of Justice, and the joining of
21 forces with those who purvey the myth of voter
22 fraud, creates a perfect storm not seen since the
23 days before the 1965 Voter Rights Act. We urge the
24 Commission to do all it can to vigorously help
25 enforce those laws and protect the right to vote.

26 CHAIR LHAMON: Thank you, Mr. Rosenberg. Ms.

1 Perales?

2 Mr. ADAMS: Thank y'all for having me. My name is
3 Christian Adams. Oh I'm --

4 CHAIR LHAMON: I am sorry; Ms. Perales did you not
5 want to go?

6 Ms. PERALES: No, I did. I just thought that Mr.
7 Adams wanted to go before me. But --

8 CHAIR LHAMON: Ms. Perales, you are next in line. It
9 is your turn.

10 MR. ADAMS: That's what I thought too, just to be
11 clear. Okay.

12 CHAIR LHAMON: Please use your microphone. Thank
13 you.

14 MS. PERALES: I'd like to thank the chair and the
15 members of the Commission for inviting me to
16 testify here today. To get right to it, the impact
17 of the Shelby decision has been negative and its
18 effects minority voters have been twofold, at least
19 within the scope of my experience. First,
20 retrogressive practices that formerly would have
21 been blocked through the preclearance process are
22 being adopted and they are going into effect.
23 Second, the burden to halt these practices has
24 shifted over to minority communities, which now
25 have the burden and the responsibility of trying to
26 gather the resources that they need to end these

1 practices. The lens through which I'd like to
2 discuss these observations is MALDEF's successful
3 legal challenge to a post-Shelby change in method
4 of election to the City of Pasadena, Texas.
5 Pasadena is not a huge city, not a small city;
6 about 150,000 people in Harris County outside the
7 city of Houston. Pasadena is the former state
8 headquarters of the KKK and a number of our
9 witnesses who lived in Pasadena for many years
10 recall driving through town as children or even as
11 young adults and seeing members of the KKK in their
12 robes standing at major intersections handing out
13 their literature. That was what it was like to be
14 Latino or African American as a young person in
15 Pasadena. I'd like to make a small and respectful
16 correction to Mr. von Spakovsky. Pasadena was
17 covered by Section 5's preclearance provisions from
18 1975 until 2013. Three weeks after the Shelby
19 decision, in July of 2013, the mayor of Pasadena
20 announced a plan, an important new idea that he had
21 to change the method of electing members of the
22 city council. At the time Pasadena had eight
23 members of its city council who voted and the mayor
24 would cast a vote if there was a tie, among the
25 eight members. And what had happened in Pasadena is
26 that the Latino community had grown over the years

1 and the point at which the mayor announced his plan
2 to change the method of election the council vote
3 was often tied between four members of the council
4 who were either Latino themselves or being elected
5 by a substantially Latino single-member districts
6 and four members of the council who were coming
7 from primarily Anglo-areas of town. Pasadena had
8 converted to single-member district sometime in
9 1990s and there was this moment of pressure as
10 Latinos came up to be the population majority and
11 started to exercise more political power on the
12 city council. Some of the issues that Latinos were
13 interested in, some of these votes that began to
14 break 4-4 on the city council, included questions
15 of resource distribution, drainage, and the quality
16 of streets was very poor in the north part of
17 Pasadena where most of the Latino community lived.
18 There were also some financial dealings of the city
19 that Latino voters were very unhappy about. They
20 wanted more transparency and greater distribution
21 of resources towards their neighborhoods and their
22 community. As a result, the mayor found himself
23 casting more and more tiebreaking votes on what had
24 become a split council. And so, he proposed and the
25 city electorate adopted in an at-large election --
26 a conversion of two seat on the council to at-large

1 -- so that system shifted from eight single-member
2 districts to a 6-2 mixed system, shifting these
3 seats from single member districts to at-large
4 voting solidified Anglo-control over the council
5 even as the city became majority Latino in total
6 population. At the time Mayor Isabel pointed out,
7 quote: The Department of Justice can no longer tell
8 us what to do. Unquote. And he was absolutely right
9 because it was three weeks after the Shelby
10 decision and the Justice Department was no longer
11 going to tell Pasadena how it could run its
12 election system. Even though in the past other
13 cities in that region of Texas had had attempts
14 blocked by the Department of Justice to change at
15 least some of their seats in single-member district
16 to at-large voting. MALDEF they filed suit in 2014,
17 and I want to just touch for a moment on the
18 details of how incredibly time- consuming and
19 expensive this litigation was. We took or defended
20 35 depositions in the case. Between plaintiffs and
21 defendants we had seven expert witnesses - expert
22 witnesses are not cheap. We did extensive paper
23 discovery because in order to prove the Senate
24 factors you don't just need a historian, you need
25 somebody to talk about present day events in the
26 city; and so, there were many thousands of pages of

1 documents that we requested and received from the
2 city that helped us build an explanation around
3 what had happened recently in Pasadena. And then
4 finally, for a two-week trial we had to relocate
5 our entire trial team to Houston, where we do not
6 have an office, and try the case in November and
7 December of 2016. In January 2017 the federal court
8 ruled that Pasadena had intentionally discriminated
9 against Latino voters and that the change was also
10 dilutive of Latino voting strength. Pasadena
11 appealed and it is another nine months before we
12 were finally able to settle this controversy. All
13 in all, it took approximately \$3.5 million in three
14 years to resolve what could and should have been
15 resolved through the preclearance process. Thank
16 you.

17 CHAIR LHAMON: Thank you Ms. Perales. Mr. Adams?

18 MR. ADAMS: Thank you very much, Madame Chairman. My
19 name is Christian Adams. I served for five years in
20 the Justice Department in the Voting Section and
21 brought a variety of cases under the Voting Rights
22 Act as well as Section 5 reviews before Shelby
23 including congressional redistricting. One of the
24 most effective ways to preserve the viability of
25 the civil rights laws is remove partisan interest
26 from civil rights law enforcement. Previous panel

1 touched on this issue a bit when it indicated that
2 partisanship can sometimes provide an inadequate,
3 if you will, defense to a claim under the Voting
4 Rights Act alleging intent, but bear in mind that
5 partisanship is indeed a defense to a Voting Rights
6 Act claim and I think whatever work this commission
7 sets out on doing should be keenly aware of the
8 dangers of partisanship and Voting Rights Act
9 enforcement. The Voting Rights Act has enjoyed
10 broad, bipartisan support for decades. But if
11 enforcement of the law is hijacked by partisan
12 interest, it will lose bipartisan support. Now,
13 some will be happy to travel the dangerous road of
14 turning the Voting Rights Act into a partisan
15 weapon. Some are even brazen and open about their
16 goal of doing so. A few years ago, for example,
17 there was a law review written by University of
18 Michigan law Professor Katz who called for just
19 such an outcome. It was titled, quote: Democrats,
20 the DOJ, Why Partisan Use of the Voting Rights Act
21 Might Not Be So Bad After All, and was published in
22 the Standard Law Review -- Law and Policy Review.
23 To this end, reasonably state election laws have
24 been challenged under the Voting Rights Act in a
25 concerted effort by lawyers representing partisan
26 interest. Right now, for example, there is a

1 challenge to the very existence of recall elections
2 in the state of Nevada using the Voting Rights Act.
3 The case makes what I believe to be the immoral and
4 frankly bigoted claim that minority voters are less
5 capable of voting in a recall election because they
6 don't pay close enough attention to the public
7 issues and might have to vote twice. That is the
8 theory of the case. My organization is a defendant
9 intervener in the case on the side of Nevada
10 defending the state recall election against this
11 partisan use of Section 2 of the Voting Rights Act.
12 If the theory in the Nevada lawsuit is the future
13 of the Voting Rights Act, the enforcement of this
14 important law will eventually enjoy dwindling
15 support among only a small fringe far outside of
16 the mainstream. Predicating enforcement of the law
17 on the idea that racial groups are not smart enough
18 to pay attention, or otherwise less sophisticated
19 as experts for the Justice Department in some of
20 the litigation discussed today testified. It not
21 only offends the dignity of those individuals, it
22 is well outside the jurisprudence of the Voting
23 Rights Act. My view is that such negatively
24 partisan use of the law will eventually erode
25 support among the general public for the law. Now,
26 we heard a lot of testimony about Shelby and its

1 effects, and I will tell you that I brought one of
2 the last cases of the Justice Department to
3 challenge at-large elections against the city of
4 Lake Park, Florida, and that was in -- almost a
5 decade ago. Since Shelby there hasn't been much
6 activity, as we heard from the last panel. A more
7 recent DOJ case filed against East Point, Michigan
8 late in 2016 appears to have a number of
9 significant defects were the defendant savvy enough
10 to press those defenses -- which so far they have
11 not. Simply, the Department of Justice with its
12 vast arsenal of resources hardly brought any cases
13 for violations of the Voting Rights Act after 2009
14 and after Shelby. The numbers cannot be ignored.
15 What is most striking about the post-Shelby world
16 is how little difference the decision seems to have
17 made to actual voting. It is easier to register and
18 vote now in the United States than it ever has been
19 in the history of the country. Nothing about Shelby
20 affected that undeniable fact. Lawyers have
21 struggled to find actual plaintiffs who faced
22 insurmountable obstacles in voting. One famous
23 incident in Philadelphia, a plaintiff challenging
24 state voter ID laws claims she could not acquire
25 acceptable identification to register to vote, when
26 a lower court threw out her case she quickly

1 visited a PennDOT office and received her ID, the
2 same day before her lawyers could stop her from
3 doing so and mooting her appeal. This is the story
4 of farce that accompanies some of the recent
5 challenges to state election laws. States were
6 given the power to run their own elections in our
7 Constitution. Naturally, they must do so in
8 conformity with the various Amendments in the
9 Constitution and statues affecting elections. The
10 presumption that states manage their own elections
11 is not some an accidental choice. It was a choice
12 informed by the lessons of history that centralized
13 federal control is eventually adverse to individual
14 freedom. The founders knew that a central authority
15 would control over state elections would invariably
16 erode liberty. As the Supreme Court put it in
17 Shelby, the federal balance is not just an end in
18 itself rather federalism secures citizens the
19 liberties that derive from the diffusion of
20 sovereign power. I would urge this Commission to
21 look carefully at the abuses that occurred in
22 enforcement of Section 5 in the past. Johnson v.
23 Miller is of course the most famous one. The
24 butcher's bill for that case ran into the tens, and
25 frankly hundreds of thousands of dollars for the
26 abuses of Section 5 abuse. What should Congress do

1 to stop those abuses in the future? Should it make
2 individual DOJ employees liable? Should it do
3 something else? But, the abuses aren't just public.
4 I remember when I was in the Justice Department
5 many times organizations and local leaders were
6 opposed to a submitted change yet sometimes
7 individuals carry inordinate amount of clout in a
8 Section 5 review process and we were often
9 instructed to call representative Tyrone Brooks of
10 Georgia and ask him what he thought about the
11 submission because even if a lot of people oppose a
12 submission Mr. Brooks had the power to get it
13 something precleared. Now, that's something that
14 isn't in the public record but this is something
15 that is a fact. People had inordinate power behind
16 closed doors to have things approved or rejected,
17 not based on the law and the facts, but on their
18 clout to get something objected to or precleared,
19 and that's something that the Commission, if it
20 does report has to make a recommendation to remedy.
21 Thank you very much for your time.

22 CHAIR LHAMON: Thank you very much, Mr. Adams. Mr.
23 Morenoff?

24 MR. MORENOFF: Thank you. Let me first start by
25 thanking you all for including me on this panel and
26 in this event. I am well aware that my organization

1 is the youngest of the civil rights organizations
2 that you've included and we really appreciate you
3 giving us the opportunity to come here and speak.
4 To be clear, we sue governments. That's what we do.
5 We absolutely recognize the harms that members of
6 the last panel spoke to -- that arise through usage
7 of Section 2 rather than a no longer available
8 Section 5. It is certainly true that illegal
9 elections happen while litigation is pending. We've
10 got a case pending right now challenge -- we've
11 been pending for more than three years. So, those
12 things are fact and they are material. You've asked
13 us to discuss on this panel a series of questions,
14 several of which I have literally no ability to
15 address at all. I've never worked at the Department
16 of Justice. I cannot address the three issues
17 you've asked us to about how DOJ's enforcement
18 decisions have been affected by Shelby. I do want
19 to address the other four, two of which are about
20 the Shelby decision itself, with an eye towards
21 what it means for what could be in a new update of
22 the Voting Rights Act, as well as the two
23 additional issues that you've given us as to the
24 impact of Shelby more broadly. To begin with, the
25 first with the decision-side issues. You'd asked us
26 to discuss the Shelby majority's rejection of the

1 congressional record and specifically what it would
2 mean Congress would need to do to have a new act
3 survive judicial scrutiny. There are really two
4 ways that the Court rejected the record, one of
5 which has already been addressed and I don't think
6 the other has. The first was that the Court held
7 that -- while the record certainly documented the
8 existence of ongoing discrimination, it did not
9 believe the record to reflect a kind of
10 concentration of discrimination that on the
11 pervasive scale that it existed in the Jim Crow
12 South and had been the reason for the creation of
13 Section 5 and Section 4 covered formula in the
14 first instance. And they cited various things
15 including, I believe, the fact that Section 2
16 litigation in the years between 1982 and the Shelby
17 decision had reflected almost twice as many cases
18 of intentional discrimination in uncovered
19 jurisdictions as in covered jurisdictions, as well
20 as a number of things that I think Mr. Von
21 Spakovsky addressed. The second one, of course, was
22 that according to the Court, regardless of what was
23 in those thousands of pages compiled by Congress,
24 the Congress simply didn't use that record. This is
25 what Ms. Gupta referred to when she mentioned that
26 if there is an update to be re-imposing

1 preclearance it is simply going to be - have to be
2 based on current statistics. I think that is pretty
3 clear. I don't think anyone argues that that is
4 what the court is requiring. I do want to jump back
5 to that first factor, though, to what -- was
6 actually in the record and how the Court
7 invalidated because, while they used the language
8 of state sovereignty -- in particular, the
9 federalism costs of preclearance I don't read this
10 as actually being a 10th amendment concern. I don't
11 think that's what the Court talking about. I don't
12 think that it can be talking about that given that
13 in this very opinion it agreed that Congress has
14 the power to intervene in the way it did, in
15 creating preclearance to begin with. Instead, I
16 would suggest that this is best read as Congress --
17 I'm sorry -- as the court rediscovering the
18 systematic preference for laws of general
19 applicability. This is really a equal protection
20 concern; if there are minorities in this state,
21 which have preclearance protecting them and there
22 are minorities here who don't, they are not equally
23 protected - there rights are not equally protected
24 by the congressional act. And I think we should
25 really read the Court's opinion here as an
26 instruction that if Congress is going to re-impose

1 preclearance it should do so for the nation as a
2 whole. Write a law that applies everywhere, not
3 just jurisdictions you don't like. The minority on
4 the other hand, Justice Ginsburg wrote, in part,
5 finding that Section 2 cases are more likely to be
6 successful in what had been covered jurisdictions
7 than in uncovered jurisdictions. That's a fact.
8 It's true. Mr. McCrary rightly observed this. He
9 observed it with a note that preclearance is the
10 solution because there are things that otherwise
11 wouldn't be caught, that there's a real problem
12 with using the Section 2 data point when we don't
13 know what is going on. The second problem here
14 which is the circularity of the reasoning, given
15 that in any Section 2 case at the totality of the
16 circumstances, analysis, courts' engagement, one of
17 the things they look for is there a history of
18 discrimination, given that we know that their
19 preclearance formula was created to put into
20 covered jurisdictions those places that have a
21 history of discrimination. We should expect that
22 that factor is going to lead to a greater level of
23 success and litigation against those covered
24 jurisdictions. That isn't actually indicative that
25 there is greater discrimination there than
26 elsewhere. It's just as a result of how the courts

1 have chosen to measure this. So again, I would
2 suggest that it's necessary for the Congress to
3 avoid circularity. You've got in my materials --
4 the actual chart of filings under the voting rights
5 jurisdiction of the courts. It is perfectly clear
6 that there are simply less cases filed this decade
7 than last. It is equally clear that there has been
8 a mid-decade-surge in filings, which are
9 definitionally after Shelby. That was true in the
10 previous decade as well, though in this decade
11 there have been more of them and they've
12 accelerated more quickly. I'll also simply point
13 out that if going from 2000 to present at no point
14 in that period has DOJ actually filed a material
15 percentage of the voting races that were filed. The
16 laboring oar has always been handled by private
17 organizations and it still is.

18 CHAIR LHAMON: Thank you Mr. Morenoff. Ms. Landreth?

19 MR. MORENOFF: Thank you.

20 MS. LANDRETH: Thank you very much and good morning
21 to the Commissioners and the Chair. I want to thank
22 you very much for inviting me to speak here today.
23 Often when civil rights issues are discussed, the
24 Native American perspective is not included, so I
25 appreciate the real attention to this issue. There
26 is a great deal of activity going on in Indian

1 country related to voting rights. So, my name is
2 Natalie Landreth. I'm the senior staff attorney at
3 the Native American Rights Fund. I am based out of
4 the Anchorage office but I work on voting issues
5 nationwide. I'm also chair of the Alaska state
6 Advisory Committee. Today however, I am testifying
7 solely in my capacity as a voting rights litigator
8 at the Native American Rights Fund. I can only
9 describe my job right now as trying to empty the
10 ocean with a teacup. That's how bad it is. You just
11 heard Mr. Morenoff describe to you how burden is
12 often borne by private organizations like mine, and
13 I'd like to explain how big that burden is now that
14 Section 5 is gone. The first thing I'd like to
15 point out is of course there's been some discussion
16 about the imprecision of the coverage formula in
17 the Shelby case and one of the examples that I
18 often heard during the pendency of the case; and of
19 course mentioned in the Court of Appeals opinion is
20 that one of the examples of well Alaska is covered
21 this formula must be wrong. Let me tell you
22 something anybody who thinks that Alaska was
23 covered by mistake doesn't know anything about
24 Alaska. During the pendency of the case they just
25 lost a Section 203 and 208 case and a second one
26 had just begun. And yet people were saying to the

1 court this is an example of how imprecise this
2 formula was. Alaska was covered statewide and
3 statewide for good reason. Because it's the last
4 state to have a literacy test. 1970-71 was the
5 legislative session in which it was abolished and
6 it had never fully implemented Section 203, ever.
7 When I walked into the courtroom in 2008 to an oral
8 argument on the Voting Rights Act and its
9 implementation in Alaska, it had been active
10 covered for 35 years and the state at that time had
11 two pieces of evidence that they could provide and
12 they had translated any voting materials and they
13 were two 30 second ads, so I asked the Court to sit
14 through those and I said that's it, that's all
15 there is for 35 years. I think it's clear enough
16 that Alaska was correctly covered, correctly
17 captured in the formula. We sued based on
18 widespread 203 and 208 violations as I mentioned
19 but I want add, as Ms. Morales pointed out, the
20 enormous burden it places on private organization.
21 We spent over \$200,000 in expert costs, over a
22 million in legal fees, conducted or defended 25
23 depositions, had 30,000 pages of discovery, and
24 unfortunately for our district court judge a
25 staggering, 720 docket entries, which is a filing
26 basically every three days for the entire case.

1 That is the heels that were dug in by the state at
2 that time. I'd like to point out that at no time
3 did the Department of Justice intervene or assist
4 at all. In fact, in Indian country the DOJ has not
5 brought a case on behalf of Native Americans in
6 almost twenty years. The last one was South Dakota
7 in 2000 and before that Wayne County in 1999. Their
8 involvement has been limited to filing amicus
9 briefs or statements of interest. Though important,
10 it doesn't compare to the impact of them bringing
11 their own case. And I'd like to point out that the
12 entirety of the litigating lawyers in Indian
13 country are almost in this room. Mr. Rosenberg, Mr.
14 Arusha Gordon at Lawyers Committee, Mr. Ho at the
15 ACLU Voting Rights Project, myself, Lockland
16 McDonald, Bryan Sells, and Jim Tucker, that's it.
17 Those are all the people defending the rights of
18 over 500 tribes in the United States. The DOJ did
19 assign during this time fellow services to Alaska
20 and that has been one of the most important
21 decisions because it is the only way that we can
22 now find out what's going on in the polling places
23 -- and that's another part about the loss of
24 Section 5 that people don't often talk about is now
25 they don't have the ability to assign observers, so
26 when we settled our second consecutive Section 203

1 case after of course winning a victory we settled
2 the remaining claim, we were required to include in
3 that settlement that the state agreed to federal
4 observers because it was the only way that we could
5 keep them. And now it is the only way we know what
6 is going on. In that case the Department of Justice
7 filed a statement of interest; it was very
8 important to them, articulating the law. I want to
9 point out as well that at that time we realized the
10 pervasive nature of a lot of voting rights problems
11 in Indian country so we created something with
12 Lawyers Committee, ACLU, and other organizations
13 called the "Native American Voting Rights
14 Coalition" just to manage these issues together.
15 We've done two major projects. One is to conduct a
16 survey, and the second is to conduct some field
17 hearings to find out what's going on in Indian
18 county. And I want to point out the first and
19 largest survey as a coalition, NARF can't take
20 credit for it on its own. There are two things that
21 I'd like to point out. It's over 122 pages of
22 findings. It was a thirty-minute survey conducted
23 across four states. Number one, almost one-third of
24 eligible American Indian citizens are not
25 registered to vote. They don't have access to
26 registration. It's not so easy. In a lot of these

1 places they told us it was 89 miles one way to go
2 to the nearest registration or that in Nevada you
3 had to have a number with a form with a specific
4 number on it and they count each form. Second thing
5 I'd like to point out is that, although the number
6 varies by state, only 22 to 26 percent trust voting
7 by mail, it's not a panacea in Indian country and
8 we really wish people would stop advocating for
9 vote by mail as some sort of massive solution. They
10 won't do it because they have to share P.O. boxes
11 and often the reservations are not plotted and they
12 don't have street address and cannot receive their
13 absentee ballots in the same way. Finally, I'd like
14 to mention just some of the indications of which we
15 find out of some of our field hearings about just
16 how bad the situation is in Indian country, and to
17 keep in mind that most of the people who will have
18 to litigate these are in this room. Voters in one
19 case we're told at a field hearing that they had to
20 go retrieve their ID from home, even though the law
21 allowed the use of an affidavit, and of course
22 almost none of them returned. One reservation
23 comprises almost 90 percent of the county but it
24 has no polling place and instead it was moved to an
25 all-white community with only fourteen residents.
26 Tribes are told sometimes, especially in the

1 Dakotas, if they would like polling places on their
2 reservations they get to pay for them. I'd like to
3 see you tell that to someone in another community;
4 they can vote if they can pay for their polling
5 place. And finally, one of the most egregious
6 examples we've found, was when voters who asked for
7 years for a place to vote and were told they can
8 have the chicken coop. That is the state of voting
9 rights today and without the protections we find
10 ourselves on the front line defending them after
11 they've occurred. Thank you.

12 CHAIR LHAMON: Thank you, Ms. Landreth. Ms. Ifill?

13 MS. IFILL: Good morning. My name is Sherrilyn
14 Ifill. I'm the President and Director-Counsel of
15 the NAACP Legal Defense Fund -- the organization
16 founded by Thurgood Marshall and I am very grateful
17 to you not only for inviting me to participate in
18 this hearing, but for convening this hearing at
19 all, at this moment in our country. I think it is
20 critically important and that is why I wanted to be
21 here today. This year marks the 150th anniversary
22 of the 14th Amendment, the Amendment to the
23 Constitution that by its explicit terms was
24 designed to give full citizenship to African
25 Americans who had been formerly enslaved. Our civil
26 rights statutes including the Voting Rights Act

1 derived from those civil war amendments that were
2 designed to affect the dignity, the personhood and
3 the citizenship of African Americans in this
4 country. The importance of our civil rights
5 statutes including the Voting Rights Act is an
6 acknowledgment that the problem of racism and power
7 and democracy in this country reflects structural
8 impediments in our country. They're not issues of
9 personality, they're not issues of individual
10 action but actions of structure in our
11 constitutional framework, and that's important
12 because in this moment, in this country so much of
13 our focus on race and injustice happens in the
14 context of personality and of spectacle, and this
15 hearing provides us with an opportunity to return
16 to the fact that the framers of the 14th Amendment,
17 the framers of our civil rights statutes enacted in
18 the late 1950s and through the 1960s, recognized
19 that we need structural solutions to the structural
20 problems in our country. It's important to me also
21 because I think this is key a democratic moment in
22 our country, as we deal with this issue of voting
23 rights particularly of voting rights of the post-
24 Shelby world. Over the last year we've seen some of
25 the most egregious, odious, and distressing
26 presentations of white supremacy and racism in this

1 country. We've seen young people marching in the
2 streets with Nazi flags. We've seen violence. We've
3 even seen murder. And we recognize that as white
4 supremacy. We recognize that as something that
5 comes against our very national soul and the core
6 of our democracy. But I'd like to posit to you
7 today that when legislators in our country meet as
8 they did in Texas and as they did in North Carolina
9 and they pass laws that have been found by federal
10 courts to have the express purpose and intent of
11 discriminating against African Americans and
12 Latinos and keeping them from participating fully
13 in the political process and exercising their
14 rights as citizens. That too is white supremacy.
15 That too is odious. That too is a blow to our
16 national soul and to our democracy. And so it's
17 vitally important that we stare this in the face
18 and we recognize that we continue to have this
19 ongoing problem in our country that the framers of
20 the Voting Rights Act recognized when they enacted
21 Section 5. They created the preclearance formula
22 precisely because they recognized that racism was
23 long standing and was likely to extend into the
24 future. They created Section 5 to get at what they
25 called the ingenious methods of voter
26 discrimination that they couldn't imagine in 1965.

1 They looked into the future and they wanted to
2 create a mechanism that would allow us to get at
3 future discrimination. They did so. And what they
4 believed has come to pass. It's most certainly as
5 true today as-- it was prior to the Shelby
6 decision. We reference in our my testimony and you
7 can go to LDF's website to find our publication
8 "Democracy Diminished" that sets forth all of the
9 discriminatory voting changes that have been put
10 into place since the Shelby County decision.
11 Changes that could not have happened prior to that
12 decision. I want to speak very briefly with the
13 time I have left about our challenge to Texas'
14 voter ID law. Once again, this is a law that could
15 not have been enacted but for the Shelby decision.
16 And in fact, it was a law that the state had
17 attempted to enact and it had been thwarted from
18 doing so because of Section 5 prior to the Shelby
19 decision and we saw this all over the covered
20 jurisdictions, law that had laid in limbo because
21 of Section 5, like Alabama's voter ID law, were
22 suddenly enacted after the Shelby decision. The
23 Texas voter ID law was regarded as the most
24 stringent voter ID law in the country. It is a law
25 that specifically identified forms of ID that it
26 was less likely that African Americans and Latinos

1 would possess and made those ineligible to support
2 voting. But forms of ID like a concealed gun carry
3 permit were allowed to be used as identification
4 for voting. When I describe the discriminatory
5 nature of this voter ID law; like the
6 discriminatory nature of the omnibus voting rights
7 bill enacted in North Carolina, I'm not speaking
8 simply as an advocate. I am describing what was
9 found by a federal court and upheld by federal
10 Courts of Appeals. And I think this is important
11 because in the moment that we're in, a moment in
12 which there is even such a phrase as "alternative
13 facts" this panel is important because litigation
14 does something unlike rhetoric, unlike arguments,
15 or unlike debates. When we file a complaint we set
16 forth allegations of what we believe to be true.
17 Those of us who have been to law school know
18 they're not facts yet, they're allegations. They go
19 through the crucible of litigation. They go through
20 discovery. They are tested. They go through a
21 trial. There are witnesses. There's cross-
22 examination. There's rigorous review by a judge who
23 can assess the credibility of witnesses and review
24 the documents and understand the legal questions.
25 And when that judge issues a decision that judge
26 issues something called "findings of fact" and

1 those things that the judge finds in that opinion
2 are now true, they are accepted as facts. And that
3 means that North Carolina Omnibus Bill, the Texas
4 Voter ID law, have been found by federal courts,
5 upheld by appeal, to be racially discriminatory.
6 This is evidence that Congress -- the Supreme Court
7 simply got it wrong and congress, the bipartisan
8 Congress that reauthorized Section 2 -- Section 5
9 of the Voting Rights Act in 2006 should be outraged
10 that the Supreme Court countermanded their
11 assessment of what was necessary in the legislation
12 and that what they believe was necessary has been
13 borne out to be true by federal courts in multiple
14 states. So what do we do at this moment? At this
15 moment, we have to recognize we have a democracy
16 problem. We have a problem of intentional
17 discrimination. We have a problem of discriminatory
18 effects. It can be resolved, but Congress must have
19 the will to do its job and protect the voting
20 rights of African American, Latino, Asian American,
21 Native American citizens in this country. Thank
22 you.

23 CHAIR LHAMON: Thank you, Ms. Ifill. Commissioner
24 Narasaki?

25 COMMISSIONER NARASAKI: Thank you, Madame Chair. I
26 have a couple of questions for a couple of

1 witnesses so I'm going to ask you to keep your
2 questions -your responses brief so I can get all of
3 them. I want to start with Ms. Perales. There's
4 been a lot of discussion about the scope of and the
5 Shelby decision and whether Section 5 should
6 continue to work in the way it was. I know that
7 MALDEF has thought a lot about what it would see
8 replace Section 5 should Congress revisit it. Can
9 you explain some of the things that MALDEF is
10 proposing in terms of how you would instead trigger
11 Section 5?

12 MS. PERALES: Mr. -

13 CHAIR LHMAON: Please turn on your microphone. Thank
14 you.

15 MS. PERALES: Thank you. Because I don't work in our
16 DC office I cannot give you the exact details of
17 each and every of the legislative proposals that we
18 have commented on. What I can say is that, the
19 heart of the preclearance mechanism is something
20 that's vitally important for us to preserve and
21 that in the areas where we do litigation where
22 there is substantial Latino population throughout
23 the Southwest, whether it's Arizona, California, or
24 Texas, we do need coverage because the community
25 and the few lawyers who are there to serve the
26 community cannot keep up with what happens to

1 today.

2 COMMISSIONER NARASAKI: Thank you. Let me move to
3 Ms. Landreth. So, one of the focuses that you have
4 had has been the compliance with Section 203, and
5 you mentioned that the Department of Justice has
6 not actually been that active in the past in
7 enforcing Section 203. What are the tools that they
8 have, what should they be using? Are they doing
9 anything that's effective, and what recommendations
10 would you make to DOJ, to Congress, to better
11 enforce and improve language access?

12 MS. LANDRETH: Thank you, Commission Narasaki. I
13 think one of the things that I'm not sure has been
14 discussed this morning that people really need to
15 understand was exactly how Section 5 worked. It
16 worked through what are called "MIRs." It worked
17 through "More Information Requests." It did not
18 work for successful lawsuits and here's how it
19 happened. In 2008, I believe that's the correct
20 year. Very recent. The state of Alaska proposed a
21 project called "precinct alignment." Which was
22 combining precincts that were separated by air so
23 that you would have to fly to vote in a neighboring
24 village. We immediately objected and explained to
25 the Department of Justice when they called these
26 lists with contact people I was one of them. I got

1 calls all the time and I was grateful for it
2 because the people on the other end of the line had
3 no idea these communities were not connected by
4 road and so I said absolutely this is
5 inappropriate. And what they did was sent a letter
6 called a "More Information Request." And what we
7 can see if those are tracked is that after the MIR
8 letter is sent the proposal is removed. So it
9 doesn't get to an objection, it doesn't get to a
10 lawsuit because that is how Section 5 worked and
11 people did not look closely enough at the role of
12 MIRs because what the DOJ did was prophylactic on
13 the front end and a lot of things that you see
14 described here today are things that would have
15 been caught in that process. The second part of
16 your question was what they can do to enforce
17 correctly the - or more of the Section 203 of the
18 Act. I think an under enforced portion of that Act,
19 the number of covered jurisdictions under Section
20 203 changed somewhat in the last listing, which I
21 believe was in December of 2016. Great attention
22 needs to be paid back to that. In the two cases
23 that we have litigated the standard has been set
24 out in a very clear way that the ratio is a 1:1. If
25 you provided a voting material in English in a
26 covered jurisdiction it also has to be provided in

1 the covered language. One and done. Simple. This
2 law needs to be enforced more frequently because I
3 see voting materials all of the country for Indian
4 language that are one piece versus an entire 100
5 page booklet. One piece of information in the
6 covered language.

7 COMMISSIONER NARASAKI: Thank you. And I'd like to
8 ask Mr. Rosenberg and Ms. Ifill the same question,
9 I asked Ms. Perales. So, what would you be
10 recommending for a revitalized Section 4, Section
11 5?

12 MR. ROSENBERG: I think the important thing right
13 now is for there to be a discussion in Congress
14 about this. There are two bills I understand are
15 pending or at least have been drafted -- one of
16 which is bipartisan actually. And I think that it's
17 important for there to be this sort of discussion
18 that looks at what you've heard here over the past
19 hour-and-a-half, that there are substantial
20 instances of the continuation of racial
21 discrimination in voting of the precise sort that
22 set the stage for the original Voting Rights Act,
23 so I think the important thing is for there to be a
24 debate on this, an open debate, and hopefully a
25 bipartisan response. The Lawyers' Committee has not
26 taken a position, as I understand it, on either of

1 the bills that are pending yet so I don't want to
2 take an official position today but I think the
3 important thing is for there to be a move on the
4 legislation.

5 MS. IFILL: Thank you. My answer is largely the
6 same. There are several proposals that have been
7 knocking around for a number of years. It's been
8 alarming that we have not be able to get a hearing
9 on a bill to talk about what we think would be
10 necessary. I think many agree that the formula will
11 apply nationwide. The likelihood that a number of
12 the states that were formerly covered by
13 preclearance will be captured in that formula is
14 likely true but it's true because the formula would
15 be based on the actual discrimination and voting
16 discrimination in those jurisdictions. We've
17 already heard this morning about some of the cases
18 that have involved findings of intentional
19 discrimination. There are other cases that have
20 found violations of the Voting Rights Act. Some
21 menu that looks to those violations would be the
22 one that would trigger states being covered by
23 preclearance. I do want to suggest that what I
24 think is most important and I think what you're
25 hearing uniformly is the need for some sense of
26 urgency about this. If you think about one case

1 alone, Ms. Perales referred to a case that she
2 litigated for three years and Ms. Landreth also
3 referred to the length of time and the volume of
4 litigation they've been engaged in. The Texas voter
5 ID case is a case we filed in 2014. We received a
6 judgment from the district court judge that the
7 voter ID law was discriminatory in 2014. It is now
8 2018 and we are still litigating that case. We have
9 been -- you know, the decision was affirmed by the
10 panel and the Court of Appeals. It was affirmed in
11 en banc. We went back to the district court on the
12 question of intent. We had the Justice Department
13 dropout and switch sides on intent. We just had
14 another oral argument before the district court
15 judge in December. This is a case that's been going
16 on since 2014. Unless we think this is just about
17 litigators, let's talk about the offices that have
18 been up for election since 2014 under this voter
19 discrimination ID law. In 2014 in Texas, voters
20 voted for a U.S. Senator, all 36 members of
21 Congress, governor, lieutenant governor, attorney
22 general, comptrollers, commissioners, four Justices
23 of the Texas Supreme Court. In 2015 there was a
24 special election for a member of the state senate.
25 In 2016, the Presidential primary, 36 members of
26 Congress, three Supreme Court justices, state

1 boards of educations, sixteen state senators, all
2 150 members of the state House, over 175 district
3 judges, over 75 district attorneys. These are all
4 the offices that have been up for election and in
5 which voters in Texas have voted under a scheme
6 that was found by a federal court to be
7 intentionally discriminatory. That is a stain on
8 our democracy that is unfair to the voters and
9 citizens of the state of Texas. So whatever is
10 going to be the formula, what is most alarming is
11 the lack of urgency that we see from this Congress,
12 another reason why this hearing is so important,
13 that this Congress doesn't think it's important
14 that over six hundred thousand people who we found
15 did not have the voter ID to be able to vote in
16 Texas, could not participate in all the elections I
17 just described to you since 2014, and that's not
18 regarded as a democratic crisis, as a problem? So
19 the urgency I think is the piece that has to be
20 conveyed, and it has to be conveyed not as a matter
21 of partisan politics. Let's remember the
22 overwhelmingly bipartisan reauthorization of the
23 Voting Rights Act in 2006, but as a matter of
24 democratic principle and constitutional integrity.

25 CHAIR LHAMON: Thank you. Commissioner Yaki?

26 MR. YAKI: [Inaudible]

1 CHAIR LHAMON: Commissioner Adegbile?

2 MR. ADEGBILE: Ms. Perales, will you describe to us
3 some of the lessons that came out of the LULAC
4 redistricting decision and how the Supreme Court
5 made some observations about the nature of the
6 voting discrimination visited upon Latino voters in
7 Texas. And in particular, I'm interested in a
8 potential theme that I see in that case and the
9 case that you just described in Pasadena; this
10 notion that when minority voters are on the
11 precipice of exercising their voice in the
12 political fora that discrimination is visited upon
13 them. Could you help us understand that?

14 MS. PERALES: Yes. Thank you. In LULAC versus Perry
15 the Supreme Court concluded that the Texas 2003
16 congressional redistricting plan diluted the vote
17 of Latino voters and in particular, one
18 congressional district in Texas, which was a very
19 geographically large district where the Latino
20 population had been increasing and Latinos had
21 begun to flex their political muscle and vote for
22 candidates who were challenging the sitting
23 incumbent of that congressional district. At the
24 time, when the district was redistricted it was
25 about 55 percent Latino citizen voting age
26 population. Texas dropped the number from 55

1 percent to 45 percent Latino citizen voting age
2 population and because voting in the district was
3 extremely racially polarized, very high levels of
4 polarization, the redistricting shifted the
5 district from having possibility of having a Latino
6 candidate of choice to really not having the
7 possibility of electing the Latino candidate of
8 choice. And what the Supreme Court recognized and
9 noted in the opinion was that just as Latinos were
10 coming to the point where they would be able to
11 decide the outcome of the election in that
12 district, Texas took the opportunity away. The
13 Court then explained that these actions bordered on
14 intentional discrimination and were certainly
15 dilutive. And you see that pattern over and over
16 again, not limited to Latino voters but voters of
17 color across the board. In many jurisdictions where
18 minority voters might have been a smaller portion
19 of the jurisdiction, and not exercising a lot of
20 political strength, there is perhaps the
21 willingness in, for example, Pasadena to go to a
22 single-member district system to elect the city
23 council. But then as the minority community grows
24 and it becomes more able to elect members to
25 council and maybe even there's a moment where they
26 might be able to elect a majority of the council,

1 you often see a negative response - a response that
2 either dilutes the vote or restricts the ability to
3 access the ballot. That's what we saw in Pasadena.
4 That's what we saw in LULAC versus Perry.

5 MR. ADEGBILE: I am interested in understanding
6 since Texas has been covered under the Voting
7 Rights Act, the preclearance provision in 1975. How
8 many statewide redistricting maps have been
9 challenged decade over decade as being
10 discriminatory? Is this a one off thing that is
11 relegated in a particular period or something else?

12 MS. PERALES: It is not a one-off thing. Once the
13 Supreme Court announced that states ought to be
14 redistricting every ten years under the one-person,
15 one-vote rule and Texas passed a redistricting plan
16 in the early 1970s. Each decennial period, one or
17 both of the Texas statewide redistricting plans,
18 either legislative or congressional, has been
19 invalidated by either DOJ or the courts, as
20 discriminatory against Latino voters, so that would
21 include the 1970 round of redistricting, the 1980
22 round, the 1990, the 2000, and then the 2010 round,
23 which we are actually still litigating now and we
24 may not be able to get to a final remedy in this
25 case before we are lapped by next Census, and that
26 is directly as a result of the loss of the Section

1 5 preclearance in the Shelby decision.

2 MR. ADERGBILE: So in light of that, there has
3 certainly been progress for Latino votes in Texas.
4 Would you agree that the Voting Rights Act has made
5 change and Latinos are represented in high
6 political offices throughout the state?

7 MS. PERALES: Yes. We have made great progress.

8 MR. ADERGBILE: So what does that tell us? On one
9 hand we have great progress on the other hand, from
10 what you've just told us, is that decade after
11 decade there are statewide discriminatory measures
12 directed towards Latino populations. Are those two
13 things something that one can hold in their mind at
14 the same time?

15 MS. PERALES: Absolutely. While the Latino
16 population in Texas grows, while Latino -- we used
17 to have a poll tax in Texas and this prevented many
18 African Americans, Latinos, and others from
19 registering to vote. We don't have that anymore.
20 Right. But as we've made progress with the
21 population and increasing our political
22 participation, Texas has been intransigent and each
23 decade, with respect to redistricting, has enacted
24 plans were subsequently found to be discriminatory
25 and under Section 5 - not just discriminatory in a
26 foreword-looking way but by taking minority voters

1 backwards, which is the retrogression standard. So
2 we take some steps forward and then we meet the
3 policy—statewide and local—that take us backwards
4 and we have to have push and push again and without
5 section 5 we have to do this primarily through very
6 expensive litigation.

7 MR. ADERGBILE: Ms. Landreth, recently I had an
8 opportunity to travel to Alaska and learn a little
9 bit about the voting circumstances on the ground in
10 that Alaska. There's a lot of talk about voting in
11 the Deep South—some of the traditionally covered
12 Section 5 jurisdictions. There's a lot of talk
13 about Texas. But often what you hear as folks
14 consider voting discrimination is that, today's
15 discrimination is not as insidious because it's not
16 "first generation" - so-called "first generation"
17 type discrimination. I think typically people think
18 in terms of vote denial - "you can't vote because
19 you're a Native American, African American, a
20 Latino." But a second-generation type of
21 discrimination where voters are being weakened. In
22 your experience as an expert litigator in Alaska,
23 and nationwide, for Native American populations.
24 What do you make of this distinction between so-
25 called first and second generation discrimination.
26 What kind of discrimination is okay for you?

1 MS. LANDRETH: I would say none of the above,
2 Commissioner, but I suspect you already know that
3 was the answer. I think the that's -- one of the
4 other talking points - so thank you for bringing
5 this up--one of the other talking points I heard a
6 lot in the build-up to Shelby County and the amicus
7 briefs was quote "first-generation barriers the
8 actual denial of access had been eradicated and we
9 are now only looking at second generation barriers
10 because we've made so much progress." That is
11 absolutely not true. We know this through not only
12 my work in Alaska. Frankly, if you're conducting an
13 English-only election in an entirely non-English-
14 speaking Ubik population you are denying access to
15 the ballot box. We also seen physical denials. One
16 of the examples that I mentioned earlier is that
17 there are indeed places where you're driving forty,
18 sixty, or ninety miles one way to either to vote or
19 to register. What is most common that we see is the
20 refusal to locate polling places on reservations?
21 In one of the testimonies in of the field hearings
22 that we asked one of these people we had repeatedly
23 asked, we said, what did they say to you? And the
24 answer was this: "The sheriff told us he would
25 never allow a polling place on the reservation
26 because it would make a (and he made air quotes) a

1 jurisdictional nightmare. What if the tribe just
2 wants to keep the ballots? I have no authority to
3 go get them." So there are different reasons
4 provided, but the way that we most commonly see
5 first generation barriers is the refusal to provide
6 any physical access and it has to be combined with
7 some of the other factors. One of the reservations
8 they have to drive 40 miles in order to vote and
9 some people say, well I drive 40 miles to work
10 every day Well how about this - 45 percent of that
11 population has no access to transportation. That is
12 vote denial. That is the kind of thing we're
13 finding all over the place. It's not just the mere
14 failure to have a polling place. Even begrudgingly
15 when some of them are added they will make these
16 very bizarre hours - we're open from noon to 1:00
17 on Tuesday and if you want additional hours you are
18 going to have to pay for it because we want you to
19 pay for our staff. And so it changes - it is like a
20 game of whack-a-mole where you fix one and they
21 come up with another method and it's just non-stop
22 one after another. And so we see vote denial but we
23 see it in various forms and we see first generation
24 barriers in 31 different flavors in all the states.

25 MR. ADERGBILE: Ms. Ifill -sorry time for one more?

26 CHAIR LHAMON: Okay.

1 MR. ADERGBILE: Ms. Ifill, one of the things that I
2 think we would use some help understanding is the
3 nature of an injury that flows from voting
4 discrimination, that is to say, what are the
5 tangible impacts to people's rights? Are these the
6 kind of things that can be limited do we just count
7 cases and say, oh there's only one or two statewide
8 cases. Or is it more appropriate to think about the
9 impact of these measures. And as you've spoken to,
10 the duration of how long these measures are in
11 place.

12 MS. IFILL: Thank you. Maybe I can combine this
13 answer with a little bit of an answer to the
14 question that you just asked Ms. Landreth as well
15 about kind of denial because I regard these voter
16 ID cases as denial cases. When you impose the voter
17 ID laws, as they did in Alabama, and you close most
18 of the motor vehicle bureaus where you would get
19 that ID in the black belt and you have the kinds of
20 transportation issues that Ms. Landreth talked
21 about in Native American country, you are talking
22 about vote denial, so I want to make sure that we
23 are clear that we haven't cleared the first
24 generation entirely yet. But your question is a
25 really important one because I sometimes worry that
26 this conversation gets a little esoteric and we're

1 not understanding what the relationship is between
2 voting and citizenship and voting and the ability
3 of people to affect the material conditions in
4 which they live, which is what the entire movement
5 for voting rights was supposed to be about during
6 the Civil Rights Movement. And it's one of the
7 reasons why we spend a considerable amount of our
8 resources focused on local election because too
9 often when we focus on only elections that have
10 national significance. For example, the special
11 last election last November in Alabama, everyone
12 was focused on Alabama because it involved a state
13 senate seat and because there were potential
14 partisan power issues in the balance, but, you
15 know, we're in Alabama every Election Day on the
16 ground and dealing with the kinds of challenges
17 that voters faced last November as well. In those
18 elections they're voting for members of the school
19 board, district court judges, district attorneys,
20 county council persons, members of the county
21 commission and these are the individuals who
22 control really the day-to-day lives of the people
23 that we represent. In fact, they would tell you
24 that those people control their lives more than
25 their United States senator, more maybe even than
26 the President of the United States. On a given day

1 what that district attorney does, what that
2 district judge does, what that school board does,
3 what that county commission does affects the
4 economic, educational implications of the lives of
5 the people we represent, so when we take people,
6 six hundred thousand people in Texas or 118,000 in
7 Alabama and we suggest that they no longer have the
8 ability through these vote denial laws to
9 participate equally in the political process and
10 affect the people who are going to represent them
11 and have that kind of control over their lives we
12 have removed them from democracy, we have removed
13 them from having a say in their future, we've
14 removed them from being part of the Constitutional
15 structure that says they are full citizens. So when
16 we have these conversations it is really important
17 and I just want to make one more pitch on this
18 attempt to try to make this about something
19 partisan. Thurgood Marshall, who founded the NAACP
20 Legal Defense Fund in 1940, one of his earliest
21 successes was a case that he later described as his
22 most important case, I'm sure we all probably think
23 that was Brown v. Board of Education but what he
24 said was that his most important case was a case he
25 won in 1944 in the United States Supreme Court,
26 Smith versus Allwright, challenging the all-white

1 Democratic primary in the state of Texas, long
2 before there was a Voting Rights Act, or a
3 preclearance provision, that's how long Texas has
4 been in the game of voter suppression. So this has
5 never been a partisan issue. This has always been
6 about the ability of minority voters to participate
7 equally in the political process. What we are
8 saying to them when we allow these laws to go
9 forward that keep them from participating in the
10 kinds of elections that I described, we are saying
11 to them that they are not full citizens of this
12 country. We're saying that the 14th Amendment
13 promise of full citizenship cannot be realized.
14 We're telling them that they're second-class
15 citizens. We're telling them that they cannot be
16 part of the democratic process of this country and
17 there is simply nothing we can do about it, less we
18 hurt the feelings of the states. That simply cannot
19 be true. We are at this point now we're reaching
20 farce around this question of whether Section 5
21 preclearance was necessary. The Shelby County
22 decision was wrong. We knew it was wrong on the day
23 but if you thought maybe it wasn't wrong, what we
24 have seen in the years since the Shelby County
25 decision has borne out that it was in fact wrong.
26 We established that we can't keep up with the kinds

1 of voting changes. We've established that the
2 litigation takes too long. We've finally
3 established that hundreds of thousands, perhaps
4 millions of people, are being barred from
5 participating in electing individuals who control
6 their lives and who control their communities.

7 CHAIR LHAMON: Vice Chair, do you have a question?

8 VICE CHAIR TIMMONS-GOODSON: Yes, we've been
9 discussing in large measure citizens who have the
10 right to vote but that that right has been
11 suppressed or frustrated, in some way made more
12 difficult by the actions of their state
13 legislatures. You, Ms. Ifill, in your materials
14 discussed felon disenfranchisement and restoration
15 for voting rights to them. Why should this
16 Commission be concerned about that issue in the
17 context of Section 5 and the Voting Rights Act.

18 MS. IFILL: It seems to me this Commission must be
19 concerned about any law that prevents full citizens
20 from participating in the political process. I
21 think we've come to a moment in this country,
22 thankfully, where there is a rigorous conversation
23 about laws that deny those who have violated the
24 law and then paid their debt to society to be held
25 in a position of civil death, to be held as second-
26 class citizens for their lives for a mistake that

1 they made and that they paid for through their
2 sentence and whatever else they had to do to
3 fulfill the punishment that was meted out to them.
4 We also know that the origin of many of these laws,
5 of these felon disenfranchisement laws, in many
6 instances happen during a period, particularly at
7 the turn of the 20th century when southern
8 jurisdictions were rewriting their constitutions
9 and were creating mechanisms to ensure that African
10 Americans could not vote and participate in the
11 political process. The origin of many of those
12 franchise laws come from that period, and were
13 created in state constitutions in that period and
14 so we recognize that there are, and there always
15 were, racial implications to felon
16 disenfranchisement laws. When we then combine that
17 reality with the reality of mass incarceration that
18 has resulted in the exponential growth of the
19 prison population of this country since the 1970s.
20 In the early 1970s, the prisons in this country
21 contained 225,000 prisoners. That's the size of the
22 federal prison population. Now it's two million
23 people who are imprisoned in this country. When we
24 combine felon disenfranchisement with mass
25 incarceration, this means that in communities all
26 throughout this country there will be citizens who

1 have served their time who have been in prison and
2 we are now suggesting these citizens for life are
3 to be held separate and apart from having a voice
4 in their communities, so I think this Commission
5 should be concerned about any effort that tries to
6 remove or that in any way denigrates the full
7 citizenship of individuals who are entitled to
8 participate in the political process and elect
9 candidates of their choice who control their lives,
10 communities, and families.

11 CHAIR LHAMON: Commissioner Heriot?

12 COMMISSIONER HERIOT: Thank you, Madame Chairman.
13 Mr. Adams, I was interested in the case you were in
14 Nevada about the recall elections I assume that's a
15 private lawsuit though, right?

16 MR. ADAMS: Indeed. I believe the lead plaintiff is
17 named Luna.

18 COMMISSIONER HERIOT: But what about, another
19 example of what you were talking about, maybe you
20 know something about the case of the city of
21 Kinston here in North Carolina where they had
22 attempted to establish a nonpartisan ballot. Could
23 you comment on that case?

24 MR. ADAMS: Surely. This touches on my testimony
25 that addressed the potential -- this case, Kinston,
26 North Carolina touches on the issue I testified

1 about regarding abuse of the Section 5 process. And
2 what happened in Kinston was that a law was passed,
3 as I recall, that made elections in Kinston
4 nonpartisan. Right, they're no longer partisan
5 races and therefore the candidates were not listed
6 for city council - I believe it was city council,
7 as Democratic, Republican, they were just listed by
8 their name. We hear the term a lot, I like to vote
9 for the person, not the party. Well Kinston
10 followed through and got rid of partisan elections.
11 That was submitted to the Justice Department for
12 Section 5 preclearance and if this Commission wants
13 to see the depths of abuse that can be reached
14 under Section 5. Read the objection letter from
15 Loretta King, who was the Acting Assistant Attorney
16 General at the time, where it talks about the fact
17 that if you don't put the word Democrat on the
18 ballot that African Americans won't know for whom
19 to vote and it literally is the basis of the
20 objection and I think that it was one of those
21 unfortunate times where partisanship, mixed up with
22 enforcement of civil rights laws. Most Americans
23 find that offensive. Some don't. Sure some people
24 defend it, but most Americans find that offensive.
25 That you have to tell people how to vote based on
26 the party, and that's what happened in Kinston.

1 CHAIR LHAMON: Commissioner Narasaki?

2 COMMISSIONER NARASAKI: You don't have questions?

3 CHAIR LHAMON: I do, but I'm fine.

4 COMMISSIONER NARASAKI: No, go ahead.

5 CHAIR LHAMON: Ok. Mr. Morenoff, you included in
6 your statement that you believe there are other
7 mechanisms different from preclearance, different
8 from the enforcements, as we understood from before
9 Shelby County that are more effective, and I would
10 ask that you expand on that statement and also
11 speak to it in light of the testimony from this
12 panel and the last panel.

13 MR. MORENOFF: I don't know that I did say there are
14 more effective alternatives, so I don't really know
15 how to address that. There are certainly othr
16 alternatives --

17 CHAIR LHAMON: Your words were there are other
18 mechanisms that are more than sufficient to
19 overcome discrimination that --

20 MR. MORENOFF: Oh. Yes. Yes. Okay. That was on a
21 different topic and not what I was saying. Glad to
22 clarify. This was in a portion of my written
23 testimony where I was discussing the impact of
24 Shelby County opinion on turnout through the laws
25 that were put in place by jurisdictions--either put
26 in place or enacted or started to be enforced after

1 the Shelby decision. I had been discussing the fact
2 that there is a robust scholarly disagreement on
3 what impact, if any, Shelby, and the voter ID laws
4 that have been discussed at length here this
5 morning, have had on voter turnout. I have pointed
6 out in my written testimony and can flag for you
7 now there are scholarly articles that have
8 determined that in fact Mr. Rosenberg referred to
9 one of these in his testimony as well, the Hajnal
10 article concluded that strict voter ID laws have
11 dramatic impact in reducing the turnout of minority
12 voters, minority here meaning African American and
13 Hispanic voters. There are also scholarly articles
14 that have concluded that there is a statistically
15 significant increase in voter turnout that results
16 from the imposition of strict voter ID laws. And
17 the most recent that I've seen on this topic, the
18 Grimmer article that I have cited to concluded that
19 there is no discernable impact across the nation
20 from the imposition of strict voter ID laws. So, on
21 the one hand, we don't really know if turnout has
22 actually been impacted at all by the entire slate
23 of additional laws that we're talking about. What I
24 have been saying, though, was that whatever the
25 impact is, it does not appear that it winds up
26 being election-determinative and there what I was

1 flagging was that if you just look at the high-
2 profile elections over the last few months, both
3 New Jersey and Virginia, had gubernatorial
4 elections in November the voting. New Jersey, I
5 believe has no voter ID law, no-picture voter ID
6 law, Virginia has a comparatively strict law. Both
7 elections saw record-breaking turnout. In New
8 Jersey it was record-breakingly low. In Virginia it
9 was record-breakingly high so if we are trying to
10 gauge to what extent is voter turnout a function of
11 the presence of voter ID laws this is going exactly
12 the opposite direction. Similarly, the Alabama
13 Senate race that was discussed a moment ago. The
14 turnout in that election is highest in exactly
15 those locales that had been potentially impacted by
16 what critics had said was voter suppression
17 efforts. And that determined the results of that
18 election, high turnout in exactly those areas. So I
19 was not saying that there are other enforcement
20 options that are available and more effective than
21 Section 5. I'm simply saying that whatever impact
22 Shelby has had it does not appear too predominant
23 over a larger societal, political influences on
24 voter turnout.

25 CHAIR LHAMON: Thank you. I see Ms. Ifill and Ms.
26 Landreth, you wanted to respond?

1 MS. IFILL: I -- I -- I did. I really think it's
2 important that we're very clear about this. First
3 of all, using high profile national elections to
4 determine whether turnout is affected or not it
5 seems to me is not a great scientific way to go
6 about answering whether or not the voter
7 suppression laws have affected turnout. But more
8 importantly, that's actually not the question,
9 right? The ability of African Americans, for
10 example, to be, as they have been, outraged by
11 efforts to suppress the vote, whether it is voter
12 ID laws, whether it is ending early voting and
13 Sunday voting and undermining "Souls to the Polls"
14 and the willingness of African American voters to
15 try and overcome that. To do as they did in 2016,
16 and to stand in long lines, no matter how long it
17 took to vote to say my vote will not be taken away
18 from me. Those who are able to make it to the
19 polls. Those who are able to register, those who
20 were able to get the ID, that they were able to
21 overcome obstacles and determined that they would
22 not be denied the right to vote cannot be evidence
23 that voter suppression laws have no effect. It's
24 just simply not possible. And so I do think when we
25 try to figure out what's the harm? And maybe this
26 goes to Commissioner Adegbile's question earlier,

1 the harm is not about a number on the sheet as to
2 whether turnout went up or whether turnout went
3 down. If a law is created, particularly for the
4 purpose, if a legislature meets and passes a law
5 for the purpose of suppressing the votes of a
6 particular group or a law is passed knowing that
7 it's going to have the effect, it's going to have,
8 or as Ms. Landreth described, simply not knowing
9 because you haven't taken the time to figure out
10 the fact that this polling place is not connected
11 to another polling place by land. That's a problem
12 of democratic governance. That's a structural
13 problem that has to be dealt with and it was meant
14 to be dealt with by the Voting Rights Act, so it's
15 not about whether or not it affected the outcome of
16 an election or a given election. It's about the
17 individual's right to participate equally in the
18 political process, and about freeing our system
19 from something that has been the scourge of this
20 country, and it is our original sin and the
21 suppression of the citizenship of racial
22 minorities. That's what the 14th Amendment was
23 about, that's what the Voting Rights Act is about,
24 and that's what the target is. The target is can we
25 free ourselves of these structural impediments, not
26 what was the outcome of that election, and we

1 should celebrate when communities refuse to allow
2 themselves to become victims to these voter
3 suppression schemes, but it doesn't make those
4 voter suppression schemes legal and it doesn't make
5 them not a stain on our democracy.

6 MR. ROSENBERG: Madame Chair, may I add one thing?

7 CHAIR LHAMON: Sure, but you're next in line after
8 Ms. Landreth.

9 MS. LANDRETH: I just want to add two comments here
10 that relate to both the impact of voter ID laws on
11 voter turnout and also the partisanship issue. If
12 you want a perfect example of both you can look at
13 North Dakota. Heidi Heitkamp, Senator Heidi
14 Heitkamp was elected in large part due to the very
15 large Native American turnout on reservations and
16 she put a lot of effort into that and the turnout
17 went up. Immediately after that one of history's
18 amazing coincidences, the North Dakota legislature
19 enacted, what I will compete with Texas, as the
20 strictest voter ID law in the nation for the reason
21 that it didn't even have a fail-safe if the person
22 knew you, could identify you, and you had every
23 piece of paper in the world with your name on it.
24 You could only have a certain limited subset of IDs
25 that you had to get from the state that of course
26 required an original birth certificate, so the

1 costs went up and up and up as you went through
2 this process to try to get all of this. A lot of
3 Native Americans were born at home, the elderly
4 ones in particular, and couldn't produce some of
5 this paperwork and we saw the turnout in these
6 precincts go down and that was the purpose: was to
7 punish them electing a Democrat for North Dakota
8 and to make sure they couldn't vote. And let me
9 explain exactly how it was targeted to Native
10 Americans. It required they had a street address on
11 their IDs when the reservations are the only places
12 that didn't have street addresses. They went ahead
13 and platted them, but the people don't know what
14 their addresses are because the people refer to
15 themselves as "Oh I'm on the rural route on the
16 left" or "I live behind the store." So the state
17 claims well: we gave them addresses for purposes of
18 fire and emergency, but they have no idea what
19 those are, so that's a perfect example of how
20 partisanship has been used in the other direction
21 to disenfranchise a particular community that
22 became powerful through its exercise of the
23 franchise and the way they did it was through a
24 voter ID law targeted to that community.

25 CHAIR LHAMON: Thank you. Mr. Rosenberg?

26 MR. ROSENBERG: Yes, thank you. I want to very

1 briefly reiterate that I agree with Ms. Ifill that
2 using voter turnout is a very, very weak metric.
3 Particularly, we know what we know, and we know
4 that in Texas for example 600,000 Texans
5 predominantly black and Hispanic voters did not
6 have the required ID. It was two to three times
7 more difficult for them to get the ID. It was two
8 to three times more of a burden on them to obtain
9 the ID when they didn't have it. At the same time
10 this was a law that was justified supposedly to
11 stop in-person voter fraud when there were two
12 cases out of twenty million votes cast in the ten
13 years leading up to the promulgation of the Texas
14 photo ID law of in-person voter fraud. So the
15 equation is between a law was supposedly met to
16 stop a nonexistent problem on one hand when you
17 know that there are hundreds of thousands of people
18 who don't have the ID. We should be doing
19 everything we can to facilitate the right to vote,
20 not to stop people from voting.

21 CHAIR LHAMON: Thank you. Commissioner Yaki, if you
22 want the last question. We have three minutes.

23 COMMISSIONER YAKI: Yes. It is actually a homework
24 assignment for some of you. I think that's what's
25 very important is for the purposes of reinstating
26 for however way we can the pre-Shelby standards.

1 We're going to need some very good documentation
2 and we have a lot of your testimony and I know
3 that's what you elaborated on, but what Bishop
4 Barber said earlier, about the wholesale, it's not
5 just one little thing. It's a wholesale attack on
6 voting rights that has been going on since Shelby,
7 not just on voter ID. It's about polling places.
8 It's about driver's license hours, it's about
9 purges and challenge proceedings in states and
10 given the fact that we can supplement the record I
11 would really ask you to give us more of that
12 information because as much as someone would like
13 to translate this as a Democrat or Republican,
14 issue, it is not. This is as Commissioner Adegbile
15 said this is about how we work as a democracy and
16 how those people who vote are there and basically
17 consumers of the ideas that political parties and
18 men and women of good intent try to persuade you to
19 vote, but they're not going to be able to that
20 unless they can vote in the first place --

21 CHAIR LHAMON: I know I said you have the last
22 question but I understand that Commissioner
23 Narasaki had a point and then we will go back to
24 yours.

25 COMMISSIONER NARASAKI: Like Commissioner Yaki, I
26 have additional homework. So two things: One is I

1 know that some of your organizations run hotlines
2 during the elections and I think it would be
3 helpful for the Commission to have the benefit of
4 those reports about what is actually happening in
5 terms of stopping the problems that people are
6 having at the polling places. And the second one is
7 I had asked earlier for your recommendations about
8 what we should be advising Congress about what the
9 Voting Rights Act should look like should they get
10 to it, and it would be very helpful for you to
11 submit, while our record is open, your thoughts on
12 that. Thank you.

13 CHAIR LHAMON: Thank you. We are here right on time
14 closing this panel. This is a very powerful panel
15 and I very much appreciate your testimony, giving
16 your expertise. I remind the audience we will come
17 back at 1:20 and there are spots remaining in the
18 public comment period if people would like to sign
19 up in the room next door. Thanks you.

20 (A luncheon recess was taken at about 12:20 p.m.)

21 (Back on the record at about 1:20 p.m.)

22 CHAIR LHAMON: Thanks and welcome back. Thank you
23 for your continued to our important topic. We will
24 now proceed with our third panel. In the order in
25 which our panelists will speak is Michelle Bishop -
26 - Disability Advocacy Specialist for Voting Rights

1 at the National Disability Rights Network, Michael
2 J. Pitts -- Professor of Law at Indiana University,
3 Cleta Mitchell -- Partner at Foley & Lardner, John
4 Fund -- Columnist for the National Review, Anita
5 Earls -- former Executive Director of the Southern
6 Coalition for Social Justice, and John Merrill,
7 Secretary of State for the State of Alabama. Ms.
8 Bishop, please begin.

9 MS. BISHOP: Good afternoon and thank you so much
10 for the opportunity to provide testimony today. I
11 am here with the National Disability Rights
12 Network. We are a national membership association
13 for nationwide federally mandated system of
14 protection and advocacy agencies in every state,
15 territory, and the District of Columbia. I believe
16 that the impact of the Shelby County decision has
17 been felt in every election since the US Supreme
18 Court handed down its ruling, and a number of my
19 colleagues addressed the breadth of those issues
20 today so I wanted to use my brief time today to
21 focus on two particular impact of the Shelby County
22 decision that I feel are being felt very strongly
23 in the disability community. And that's voter ID
24 laws and the closure of polling places. If we take
25 a look first at one of the most prolific
26 consequences of Shelby County decision voter ID

1 laws first, the Brennan Center for Justice found
2 that 22 states introduced at least 39 pieces of
3 legislation to impose stricter ID requirements in
4 2017 alone. Yet we know that voters with
5 disabilities are less likely to have the proper ID
6 required to vote. Rutgers University took a look at
7 existing data from the Pew Research Center and
8 estimated that about 7.5 percent of people with
9 disabilities did not have state-issued photo ID,
10 compared with 4.8 percent of their non-disabled
11 peers. And that difference is statistically
12 significant. The U.S. Senate Committee on the
13 Aging, the U.S. Senate Committee on the Rules of
14 Administration, also took a look at barriers to
15 voting for older adults, and found that one in five
16 citizens over the age of 65 do not have a valid
17 photo ID, despite the fact that they made up
18 fifteen percent of voters in 2016. Proponents of
19 voter ID legislation often characterize it as a
20 matter of just leaving your home and going to get
21 the proper ID, to be prepared to vote, so I'd like
22 to take a moment to address that. Brennan Center
23 also found that 10 million voters live over 10
24 miles from the closest office that can issue the
25 proper form of ID and is open more than two days a
26 week. I encourage the Commission to take a moment

1 to imagine that you're also a person with a
2 disability and your disability prevents you from
3 driving to that office independently so now you
4 have to find another way to get the ten miles, and
5 like most Americans, you probably live somewhere
6 with public transportation that is not sufficient
7 or if it exists, it's not compliant with federal
8 accessibility laws so you can't ride it. Let's
9 assume you somehow surmount those odds, you get to
10 the office and it's open and now you've realized
11 what most people with disabilities know, that many
12 of those offices are not compliant with poorly
13 enforced federal accessibility laws. Perhaps you
14 can't get in the door, or if you had, you found
15 that the camera they use to take the photo that
16 puts the photo in photo ID, is mounted permanently
17 to a high counter and can't be tilted down to take
18 your photo when you sit in your wheelchair. The
19 idea that voters can simply leave their home on any
20 given day obtain the ID necessary to vote is one
21 that just simply doesn't hold up in the real world.
22 I'd like to take a moment to talk about polling
23 place closures as well. Voter ID has garnered a lot
24 of attention, that has been paid to these issues
25 post-Shelby decision but I believe that polling
26 place closures are having a really significant

1 impact on access to the vote, particularly for
2 voters with disabilities. The Leadership Conference
3 for Civil and Human Rights took a look at this
4 issue and estimates that 868 voting locations were
5 closed in 381 counties formally covered by federal
6 preclearance between 2013 and 2016. Arizona closed
7 212 polling places. Maricopa County, Arizona alone
8 closed half of its polling places in 2016, causing
9 over five-hour wait times for some of their voters.
10 Texas led the pack, closing 403 of their polling
11 places. We've already talked about the
12 inaccessibility and lack of public transit in the
13 U.S., thinking about the distances that voters are
14 being forced to travel when the polling places
15 around them are closed, particularly voters with
16 disabilities from whom those transit systems are
17 often insufficient. And we talk about longer wait
18 times and what a five-hour wait means with a person
19 with a disability whose disability prevents them
20 from standing for five to six hours in order to
21 exercise the right to vote. Does all of this equal
22 an impact on voter turnout? I believe that it does.
23 People with disabilities are overrepresented among
24 those as well who are hardest hit by some of these
25 laws. Rutgers University found that people with
26 disabilities are more likely to be low-income.

1 Specifically almost one-quarter of those with a
2 personal income of \$25,000 or below are people with
3 disabilities. Rutgers also estimates that eligible
4 voters with disabilities in 2016 included 5.1
5 million African Americans and 2.6 million Latinos.
6 Communities that are typically targeted by this
7 discriminatory practices. Our voter participation
8 is suffering as a result. Rutgers concluded that
9 35.4 million people with disabilities were eligible
10 to vote in the November 2016 election, yet in 2016
11 people with disabilities were registered to vote at
12 a rate two percentage points lower than their non-
13 disabled peers and turned out at a rate to six
14 percentage points lower. That gap represents 2.2
15 million lost votes in the disability community. If
16 we take a look at the longitudinal data that
17 Rutgers University has been building, the gap in
18 voter participation before passage of the Help
19 America Vote Act twelve percent between disabled
20 and non-disabled voters. That gap dropped to 7.2
21 percent in 2008 and decreased again to 5.7 percent
22 in 2012. But in 2016 the gap in the participation
23 for voters with disabilities actually increased to
24 6.2 percent. That means for the first time in over
25 fifteen years we're moving in the wrong direction
26 in terms of voter participation for people with

1 disabilities. I believe that Congress and the
2 Department of Justice have a role to play in this.
3 The Voting Rights Act, first and foremost, must be
4 fully restored. It has been, federal preclearance
5 specifically, has been our primary line of defense
6 against voter suppression for fifty years and
7 should continue to be so. I believe that effective
8 federal preclearance prevents a maze of state-based
9 litigation that causes fear and confusion for
10 elections administrators and voters alike. Until
11 the Voters Right Act is fully restored I believe
12 the Department of Justice must stay vigilant in
13 ensuring fair and accurate elections by exercising
14 its full authority to enforce voting rights laws. I
15 would be remiss if I did not encourage the
16 Department of Justice to all fully enforce the
17 Americans with Disabilities Act and its provisions
18 for poling pace access. The U.S. Senate and
19 Accountability office in 2016 found that only forty
20 percent of Americans polling places had no barriers
21 for people with disabilities. Only 35 percent of
22 voting booths had no barriers for people with
23 disabilities. The vast majority of America's voting
24 polling places are inaccessible. I understand we're
25 under a lot of pressure to make our voting systems
26 accurate and secure, but we cannot disregard

1 federal accessibility law. An election in which the
2 results cannot be trusted threatens the health of
3 America's democracy, but an election in which
4 eligible voters with disabilities are denied access
5 is not America. Thank you.

6 CHAIR LHAMON: Thank you. Professor Pitts.

7 MR. PITTS: I want to thank the Commission on Civil
8 Rights for giving me the opportunity to testify
9 here today. Section 5 of the Voting Rights Act is
10 an iconic piece of civil rights legislation and its
11 dormancy created by the decision in Shelby County
12 versus Holder is a truly unfortunate event in the
13 history of voting rights in the United States. The
14 initial letter that I received from the Commission
15 to provide testimony presented several questions
16 for consideration. I won't repeat those questions
17 verbatim but let me summarize their main focus.
18 First, several of the questions were retrospective
19 focusing on what has already happened, particularly
20 during the most recent presidential election.
21 Second, the thrust of the questions largely related
22 to issues of voter participation and vote denial,
23 with examples of vote denial including things like
24 restrictive photo identification laws. Third,
25 because of the focus on the presidential election
26 and vote denial, the questions centered around the

1 impact of Shelby County at the state and federal
2 level. While these areas are all genuinely
3 important and incredibly worthy of discussion, for
4 the reasons I will explain in a few moments, I'm
5 going to slightly reframe the discussion in three
6 ways. Anyway I am a law professor with tenure so I
7 never do exactly what I am asked. First, I'd like
8 to focus prospectively on what the loss of Shelby
9 County might augur going forward. Second, I'd like
10 to focus on vote dilution -- for instance, on
11 redistricting rather than on vote denial. Third,
12 and perhaps this is my most important move, I'd
13 like to focus on local governments rather than the
14 state and federal level. After that, and this is
15 something the Commission did explicitly ask about,
16 I'd like to make recommendation as to what the
17 United States Department of Justice might do in the
18 future in realm of local vote dilution in light of
19 the Shelby County decision. Looking prospectively,
20 it is now 2018. The 2020 Census is about two years
21 away. And a new Census means a new decennial
22 redistricting cycle. Indeed, and this is quite
23 amazing if you think about it, unless something
24 dramatic happens to resuscitate Section 5, this
25 will be the first decennial redistricting cycle
26 since the creation of the one-person, one-vote

1 doctrine in Reynolds versus Sims, where Section 5
2 will not play a role in the design of new
3 redistricting plans. It is important to be mindful
4 of the 2020 redistricting cycle because Section 5
5 has always had a major impact in those cycles.
6 There's no doubt Section 5 played a strong role in
7 preventing vote denial -- through chicanery
8 involving polling places, registration techniques,
9 and such. But Section 5 has played an enormous role
10 in preventing dilution and the retrogression of
11 minority voters' ability to elect their candidates
12 of choice. For example, the majority of Section 5
13 objections since 1982 came in the area of vote
14 dilution rather than vote denial and an outsize
15 amount of those vote dilution rejections involved
16 redistricting plans. Moreover, while Section 5
17 played an important role in state and congressional
18 redistricting, the impact Section 5 had on local
19 redistricting was arguably even greater. Over the
20 decades, Section 5 played a huge role in
21 redistricting when it came to the design of
22 districts of county commissions, city councils,
23 school boards and the like. As just a small example
24 of this from recent years, take the objections that
25 the Justice Department interposed between 2011 and
26 2013, dates that correspond with the most recent

1 2010 redistricting cycle. Of the objections
2 interposed, nearly two-thirds of those objections
3 were local redistricting plans. Relatedly, to
4 points I've already made, almost 75 percent of
5 those objections were related to vote dilution and
6 only twenty percent of all those objections were
7 changes enacted by state governments, as opposed to
8 local governments. In my opinion, Section 5 has
9 been absolutely critical in ensuring equal access
10 to voting on the local level by preventing vote
11 dilution. Again, this is not to say that vote
12 dilution and vote denial don't happen on the
13 statewide level as well. But the statewide level
14 changes tend to be high profile and, often,
15 relatively well-funded entities will have the time,
16 money, and incentive to bring litigation under the
17 Constitution or other provisions of the Voting
18 Rights Act. That's not always the case on the local
19 level where fewer resources typically exist.
20 Indeed, aside from direct litigation costs, it may
21 even be difficult to find plaintiffs ready and
22 willing to bring a case on the local level because
23 of the potential less tangible impacts local
24 litigation can have on individual lives. So, if
25 historically there has been a lot of action at the
26 local level related to redistricting and we have a

1 redistricting cycle coming up where Section 5 seems
2 likely to be inoperative, is there anything that
3 could be done? In my view, there is something that
4 could and should be done by the Justice Department
5 to ensure that the 2020 redistricting cycle does
6 not lead to widespread retrogression of minority
7 voting rights on the local level. And I'd like to
8 give the broad outlines of an idea here. My
9 recommendation is that the Justice Department
10 establish what I call a Local Redistricting
11 Taskforce for the 2020 redistricting cycle. The
12 Justice Department, undoubtedly, has an archive of
13 just about every local redistricting plan that
14 adopted during the 2010 cycle. The Department can
15 and should systematically monitor and request
16 redistricting plans adopted by local jurisdictions
17 after the 2020 Census. And the Justice Department
18 can and should compare what the old and new plans
19 do to minority voting strength. And let me all
20 emphasized that this should all be done in a highly
21 visible and systematic manner. I think there would
22 be two principle benefits to such a "Local
23 Redistricting Taskforce." First, local governments
24 who know that the Department has its eye on local
25 redistricting would be much less likely to engage
26 in vote dilution because they know they are being

1 monitored. It's a bit of the observer effect;
2 knowledge of the act of observation will impact
3 behavior. Indeed, it's what Section 5 did to
4 accomplish over the years -- deterring the adoption
5 of discriminatory changes before they even got off
6 the ground. Second, the Local Redistricting Task
7 Force will be able to, when necessary and
8 appropriate, use litigation to ensure that vote
9 dilution does not occur on the local level and that
10 important gains made by Section 5 are maintained
11 going forward. In conclusion, I commend the
12 Commission for holding this hearing will also focus
13 on the prospective issues related to vote dilution
14 on the local level that loom large on the American
15 voting rights horizon. Thank you.

16 CHAIR LHAMON: Thank you, Professor Pitts. Ms.
17 Mitchell?

18 MS. MITCHELL: Thank you Mr. -- Madame Chairman and
19 members of the Commission. I was going to say thank
20 you for inviting me here, and I guess I do say
21 thank you for inviting me here because I want to
22 refer the Commissioners to my testimony which I
23 have included in the packets, but I'm going to
24 depart from my prepared comments because of some of
25 the things I've heard here today, and I as a
26 citizen and taxpayer are pretty troubled by -- and

1 I'm taken aback by many of the things that I've
2 heard today because this to me is -- the fact is
3 that the Commission is supposed to represent the
4 thoughts and views of all Americans and not just
5 the professional grievance industry that has been
6 on full display today. I did not realize until I
7 came here that there is a well-oiled plan -- I
8 guess this is part of it to try to reinstate -- to
9 reverse Shelby and to reinstate preclearance
10 provisions for those states that we don't like, in
11 jurisdictions that we don't like. Somehow -- I
12 heard someone say that the reason the Supreme Court
13 made the decision it made in Shelby was to avoid
14 hurt they did avoid hurting some states' feelings.
15 No. There's a constitutional construct; and that
16 construct is, as the Court said in Shelby, that all
17 states and all jurisdictions are equal sovereigns
18 and there not supposed to be -- the federal
19 government is not supposed to pick and choose
20 between favored jurisdictions and disfavored
21 jurisdictions. I heard -- one of the most amazing
22 thing to me, this is perfect that this is on
23 February 2nd, Groundhog Day, because it seems as
24 though, as I said, the professional grievance
25 industry simply can never ever say we've made a lot
26 of progress, and in fact 1965 formulas no longer

1 should be utilized in any federal law or in the
2 action of the federal agencies. But I heard the
3 most remarkable thing just a moment before we broke
4 for lunch when someone said that we should not look
5 at minority voting patterns any longer. Really?
6 That's what Section 5 preclearance was premised
7 upon, minority voting patterns. Now, it is true
8 they were more minority voting patterns in 1964 and
9 '68 and '72, but the fact that the matter is, what
10 I've heard -- what I've realized sitting here
11 today, is that -- the grievance industry now wants
12 to move from fact-based determinations to intent-
13 based determinations, so now we're going to have
14 legislation be mind-reading, which I find pretty
15 troubling and quite Marxist. Now, I cannot imagine,
16 -- but it will play itself out in North Carolina.
17 I'm a registered voter in North Carolina. And I
18 have read the decisions; I've looked at what
19 happened. What happened in that case is exactly
20 what the witnesses and apparently what this
21 Commission wants to do, which is to take this out
22 of the realm of the minority voting patterns and
23 actual data and instead we're going to work on
24 intent, so here's what happened in the North
25 Carolina case. That's exactly what happened. The
26 trial court held -- conducted a trial, heard

1 witnesses, issued a 485-page opinion in which he
2 painstakingly went through the evidence and the
3 facts and addressed each and every one of the
4 allegations in the plaintiff's complaint and
5 determined that under the facts minority voter
6 turnout had in 19 -- 2014 had been better than it
7 had been in previous years with the law in effect
8 at that time that was being challenged. When that
9 case went to the Fourth Circuit, the Fourth Circuit
10 gave short shrift to the facts of that 485 page
11 opinion and instead said we're not going to look at
12 the facts, we're going to decide that the
13 legislature passed this law because they had a
14 discriminatory -- racially-discriminatory intent,
15 and the basis under which the Fourth Circuit made
16 that decision was the fact that the legislature had
17 contemplated, had sought and considered the impact
18 on minority voting by various proposed changes to
19 the statute. Now let me ask you this, ladies and
20 gentlemen: Had the legislature not considered
21 whether or not the statutory changes impacted --
22 how it impacted various groups, what would you have
23 said? What would all these witnesses have said?
24 They would have said the fact that the legislature
25 didn't even consider whether this would have a
26 dilatory effect on race based on race is a sign of

1 discriminatory intent, so I would say that the
2 industry, the professional grievance industry on
3 full display today, has moved the goalpost so now
4 we're not looking at data anymore, we're not
5 looking at data, we're now supposed to look at
6 intent, and I would just come back to the fact that
7 it's pretty clear to me --. Look, I used to be a
8 Democrat, then I was an Independent, now I'm a
9 Republican, so I'm a walking party switcher but I
10 will tell you that I would bet that most of you
11 believe most of the people that testified today
12 probably believe in their heart, with very rare
13 exceptions, there are no Republicans that really
14 aren't racist. They are really racist. Southerners,
15 people who talk like I do, are racist. And so, they
16 deserve to have extra scrutiny and supervision. I
17 think that it is important for this Commission to
18 stop and think about representing all of the people
19 of this country, about acknowledging our successes,
20 about looking at data. Let's look at the 20 --. I
21 expect somebody to testify about the 2016 minority
22 voting patterns, but I didn't hear -- I heard none
23 of that. It's Groundhog Day. It's let's not change
24 anything. Let's go back to the way it was and we'll
25 find new reasons, and if the data doesn't support
26 it, well, we'll just think about reading the minds

1 of the legislators and have judges read the mind of
2 legislators. I think that's a very dangerous
3 approach for a nation who prides itself
4 historically and has been grounded in the rule of
5 law. To me as a lawyer, as a citizen, and as a
6 taxpayer and as someone who supports the
7 Constitution, I would urge this Commission to
8 return to the Constitution and the rule of law.
9 Thank you.

10 CHAIR LHAMON: Thank you, Mr. Fund.

11 MR. FUND: Thank you. Thank the Commissioners. Many
12 people in this room have good motives and are
13 convinced that voter ID laws and other measures to
14 buttress elections are discriminatory. Many others
15 also believe that fraud is not a serious issue.
16 Rather than fighting these battles over and over
17 again, like Groundhog Day they should be working to
18 ensure that everybody can easily obtain an ID. The
19 U.S. Justice Department has spent as estimated \$50
20 million dollars during the Obama administration
21 fighting ballot integrity laws. Various civil
22 rights groups have probably spent an equal or
23 greater amount. What if all that money had gone
24 instead into real efforts to put an ID into
25 people's hands? There is sharp disagreement over
26 how many people lack proper identification. Former

1 Ohio Secretary of State Ken Blackwell says, that
2 quote: "One of the most often cited factoids,
3 something that should sound authoritative but is
4 not fact based, is the NAACP's claim that 25
5 percent of black American adults lack a government-
6 issued photo ID. Think about that for a moment.
7 This would mean that millions of African American
8 men and women are unable to legally drive, cash a
9 check, receive government benefits, board an
10 airliner, or participate in everyday activities of
11 modern-day life" unquote. Hyperbole of this sort
12 perpetuates the patronizing view that minorities
13 are helpless victims. Critics say Blackwell doesn't
14 understand how high the barriers are for some
15 people who have ID, or lack ID. But if he were
16 really wrong it's difficult to see why so few
17 voters apply for free IDs with such requirements.
18 This left-right stalemate breaks my heart. Former
19 Presidents Bill Clinton and Jimmy Carter have
20 released a very interesting statement that has an
21 idea that might just end a stalemate. They want to
22 add a picture ID to Social Security cards, which
23 almost ninety percent of Americans currently
24 possess. Carter said he would support this idea in
25 a New York minute. Bill Clinton said, quote: "The
26 idea behind the agreement to find a way to forward

1 that eliminates error and makes the best possible
2 decision that we can all live with." Let's give
3 somebody something else to argue about. Let's give
4 everyone an ID. The two former Presidents were
5 joined by Andrew Young, former US ambassador and
6 confidant of Martin Luther King Jr. Young said,
7 quote: It is our obligation to make sure that every
8 citizen has the ability to obtain a government-
9 issued photo ID and the Social Security
10 administration ideal for making that happen
11 effectively and efficiently. Social security has
12 twelve hundred offices around the country. Adding a
13 photo option for cardholders would cost just ten
14 cents a card, he said, ten cents a card. Speaking
15 recently, Young said voter ID was not a symbol of
16 discrimination but, quote, a freedom card. A
17 natural extension of President Johnson's efforts to
18 aid poor and disadvantaged. (quote) In today's
19 world you cannot do many things without an ID.
20 Ensuring people have one allows them to enter the
21 mainstream of American life and would be a benefit
22 to them. Martin Luther King, III, the son of the
23 civil rights leader, asks, quote: If we embrace the
24 freedom card we help marginalized citizens secure
25 independence from predators and ensure them that
26 our nation's most sacred right, that of voting,

1 will be enshrined. My father used to talk about
2 ending the silence of good people. I cannot
3 emphasize enough about the positive impact a free
4 and easy to obtain photo ID, Social Security card
5 would have for those who are marginalized today. On
6 the other side of the political spectrum, many
7 Republicans also see promise in a photo ID Social
8 Security card. And I can provide a list. Let me add
9 my own voice to those who urge policymakers to
10 consider the freedom card as a way to bridge
11 differences on this issue and get back to
12 fundamentals. Election law experts say more
13 safeguards might be necessary to end identity
14 theft. The Social Security Administration warns
15 people, quote: They should not routinely carry your
16 card or other documents that display your number
17 because someone illegally could use your number or
18 assume your identity and cause a lot of problems.
19 If we had a photo ID Social Security card we would
20 make it much harder for people to practice identify
21 theft. So if both sides agree, why isn't the photo
22 ID on a social security card already available? One
23 reason may be the engrained habits of groups who
24 have so much at stake and have previously
25 attributed positions, which they are reluctant to
26 retreat from. A spokesman for President Obama said

1 in 2014 that the issue of the freedom card was
2 being studied, after he was visited by Martin
3 Luther King III and Andrew Young. But sources say
4 the idea was opposed by Justice Department lawyers
5 who automatically oppose any voter ID requirement.
6 Nationally voter support for photo ID remains
7 strong across all demographic groups. In the
8 presidential election in 2016, the last time the
9 states' voters were asked on the subject, Missouri
10 backed the concept with 63 percent of the vote. The
11 freedom card has won over previous opponents of
12 voter ID laws. I cite the Brennan Center as an
13 example. Other liberal groups have recognized
14 subsidiary benefits of the idea. Right now the
15 difficulty of opening a bank account without a
16 photo ID has been a huge barrier to disadvantaged
17 people, putting them at mercy of check cashers,
18 payday lenders, which is an eleven billion dollar
19 industry. The freedom card would eliminate some of
20 the worst barriers to poor people participating in
21 our banking industry. In conclusion, Rhode Island
22 Secretary of State, Ralph Mollis, a Democrat, he
23 persuaded his state's Democratic legislature,
24 Democratic by 80 percent in membership in both the
25 House and Senate, to pass a photo ID bill in 2011
26 to address problems he detected in voter fraud in

1 Providence and other cities. It included the
2 extensive outreach efforts and members of the
3 Secretary of State's office went to senior centers,
4 homeless shelters, and community centers to process
5 free IDs. The law has been implemented smoothly.
6 Mollis says and they use it as a national model.
7 (quote) "When the day is done my job as Secretary
8 of State was to maintain the integrity of
9 elections. Even if a state doesn't have an
10 immediate problem with fraud, doesn't it make sense
11 to take sensible precautions rather than wait for
12 someone to abuse the system and then it's too
13 late." (Unquote) That same thinking went across the
14 country so that all citizens can become full
15 participants in American life. Many on the left and
16 many on the right occupy common ground on this
17 issue. The vast majority of average voters occupy
18 common ground in the middle on this issue. Voter ID
19 laws improve the honesty and efficiency of
20 elections. They can also, if designed properly,
21 empower people on the margins of society. Thank
22 you.

23 CHAIR LHAMON: Thank you, Mr. Fund. Ms. Earls?

24 MS. EARLS: Thank you, Madame Chairman and members
25 of the Commission. I really appreciate you taking
26 up this important issue and coming to North

1 Carolina. Thank you for the chance to tell you a
2 little bit from my perspective of some of the
3 barriers that we face here. I divide my testimony
4 into looking at denial of access and then measures
5 that make it harder to vote, so let me start with
6 the denial of access. Felon disenfranchisement is
7 clearly the provision in my view that has the
8 strongest disproportionate impact on African
9 Americans across the country. In 2016, 6.1 million
10 people nationwide could not vote because of a
11 former conviction. One in thirteen African
12 Americans is disenfranchised -- that's four times
13 the rate of whites. It varies greatly by the state.
14 This is an issues where the rules are very
15 different state-by-state and numbers of people
16 disenfranchised and a disproportionate impact on
17 African Americans varies a lot by state. But it
18 also impacts voters in states that you might think
19 have a more progressive or more open system. North
20 Carolina automatically restores the right to vote
21 once your sentence is completed. You don't have to
22 go through any process for clemency. All you have
23 to do is reregister. Nevertheless, many people end
24 up being disenfranchised by our felon
25 disenfranchisement laws, in part, because a lot of
26 people just don't know what they are. Even as an

1 attorney, I've said to voters I've looked up
2 online, you've have completed your sentence. As a
3 lawyer I'm telling you you're eligible to register
4 and vote, but they don't believe. They're scared,
5 they're intimidated, they won't try to vote. Also
6 there are people who don't know exactly when
7 they're able to reregister. In 2016 the State Board
8 of Elections did a study and identified 440 people
9 out of the millions of North Carolinian voters who
10 they thought voted when they had not completed
11 their sentence. Thirteen of those voters in
12 Alamance County are facing federal criminal
13 charges. They are being prosecuted as felons. Many
14 of those 13 did not know they had violated the law
15 until they saw their names in the paper as being
16 charged with a felony. There is some view in North
17 Carolina this is just not fair to people who are
18 trying to get their lives back on track and being
19 part of a society again. One important lessons is
20 it really does matter to people to be able to vote.
21 Often you hear people say. "Well the last thing
22 somebody who has a conviction is worried about is
23 voting, they want a job, they need to feed their
24 families." But, in fact, it does matter. It's how
25 we define who we are as a nation and who we include
26 in the us of "we the people." So, it does matter to

1 people. So, in Florida though there's good news.
2 Yesterday a federal judge threw out Florida's
3 clemency process, not because of the
4 disproportionate racial impact or because of the
5 way Florida's law originally came out of an
6 explicit attempt to discriminate against African
7 Americans in that state, but because the way
8 clemency is arbitrarily granted. The judge said, if
9 anyone of these citizens wishes to earn back their
10 fundamental right to vote they must plod through a
11 gauntlet of constitutionally infirm hurdles. No
12 more. So there are some promising rulings, but it
13 truly is an absolute denial of the franchise.
14 Secondly, let me say a little bit about voter ID
15 from the North Carolina perspective. When it is an
16 absolute bar it does deny access. When I was at the
17 Justice Department from 1990 to 2000, our policy
18 was you can have a voter ID requirement as long as
19 you have a signature alternative so the people who
20 don't have an ID can vote. In that kind of scheme,
21 it doesn't disenfranchise people. But what North
22 Carolina tried to impose on the eve of their voter
23 ID law being tried in both state court and federal
24 court was a reasonable impediment exception and it
25 didn't work. I need to tell you about Alberta
26 Currie. She is the named plaintiff in our state

1 court voter ID case. She first voted in 1956, when
2 she had to take a literacy test and stand at the
3 back of the line so that white voters could vote
4 first. For her it was matter of personal pride to
5 vote first on Election Day. So she would go get in
6 line so she could vote on Election Day. But she was
7 born at home with a midwife, did not have a birth
8 certificate. She spent a couple of hundred dollars,
9 and this is the daughter of share croppers, a woman
10 who picked cotton herself. She went and tried to
11 get an ID but without a birth certificate she could
12 not get a photo ID in North Carolina. In 2016, in
13 the March primary -- May primary we said to her
14 there is a reasonable impediment exception now, you
15 go ahead and vote. Our plaintiff, Alberta Currie,
16 went to her precinct in Fayetteville. And when she
17 got there they would not allow her to vote. So, she
18 called us and we had to encourage her. This woman
19 who was standing up for her right to vote to try
20 and go back and vote again. We sent one of our
21 lawyers down there with her, and you have in my
22 testimony what happened. But Basically again they
23 tried to turn her away and it took an attorney
24 standing next to her for her to be able to vote in
25 North Carolina. So, what we know from the data is
26 that of the 2,371 provision ballots in that

1 election, 1,419 were rejected. Thirty-four percent
2 of the ID-related provisional ballots were not
3 counted. Thirty-four percent were passed by African
4 Americans, even though African Americans were only
5 23 percent of registered voters. There is also a
6 disproportionate impact on Asian voters. Of all the
7 provisional ballots cast by Asian voters in North
8 Carolina, 20.3 percent were because of no ID
9 whereas only 5.9 percent of all provisionals passed
10 for that reason. So it truly did have a
11 disproportionate impact and denied the right to
12 vote. In my testimony, I also talk about how
13 improper purges, litigation we had over the ways
14 that people's voter registrations were not getting
15 through from DMV. Turning to making it more
16 difficult to vote, early voting restrictions limit
17 access because they not only make it harder for
18 when people can go vote, but we have same-day
19 registration at early voting and that is really the
20 fail-safe mechanism that enfranchises the most
21 people in the state. Let me talk just for a minute
22 about Sharpsburg, North Carolina. In 2017, this was
23 a hotly contested race between an African American
24 and white candidate. At the end of the day the
25 African American lost by three ballots, but what we
26 found out is that in one precinct where primarily

1 African Americans voted, they had 12 ballots in a
2 precinct 200 people voted at. So a whole bunch of
3 people went to vote in the Sharpsburg municipal
4 election and were give ballots, were not allowed to
5 vote. Democracy North Carolina has an exhaustive
6 report that I put in my testimony about all the
7 problems that happened at the polling places on
8 Election Day in 2016 and those are some of the
9 people that I hope that you'll hear from later on
10 today.

11 CHAIR LHAMON: Thank you very much, Ms. Earls.
12 Secretary Merrill?

13 MR. MERRILL: Thank you. Yes ma'am. I'm delighted to
14 be here with y'all, thank you so much for having
15 me. I'm excited to have the privilege to share with
16 you some of the things we have going on in the
17 great state of Alabama. When I became the Secretary
18 of State of Alabama three years and fourteen days
19 ago I made a commitment to our people that we were
20 going to ensure that each and every eligible U.S.
21 citizen, as a resident of Alabama is registered to
22 vote and has a photo ID. The reason for that is
23 because we want each and every person to
24 participate at the level that they want to
25 participate. Whether that is just by voting,
26 running for office, or whatever it happens to be.

1 So one of the questions you may ask is, how do we
2 go about accomplishing that? First of all, we
3 reached out to all 105 members of the House of
4 Representatives, all 35 members of the Senate. We
5 said give us three locations in your district where
6 you'd like us to go to conduct a voter registration
7 photo-ID drive. When we got those and we started
8 that process. Then we reached out to all probate
9 judges in all 67 counties. We said give us a can't
10 miss festival of inter-activity in your community
11 where you want us to go to conduct a drive. We've
12 been to the Chilton County Peach Festival in
13 Clanton, we've been to Peanut Butter Festival in
14 Brundidge, in Pike County and we've been to the
15 Peanut Festival in Dothan in Houston County. We've
16 been to the Tomato Festival in Slocomb in Geneva
17 County, I was the grand marshal at that parade.

18 COMMISSIONER YAKI: Did you bring anything with you?

19 MR. MERRILL: We've been to the Rattlesnake Rodeo
20 down in Covington County and we've been to the
21 Magic City Classic in Birmingham where Alabama
22 State and Alabama A&M play every year. We think
23 it's important to go where the people are, but we
24 still weren't sure that we're going to reach
25 everybody. So, we reached out to the two most
26 recognizable people in the state of Alabama. I

1 asked them would you please make a commercial for
2 us and would you allow us to use your likeness on
3 posters to distribute all over Alabama. So Alabama
4 head football coach, Nick Saban, and Auburn
5 University head football coach, Gus Malzahn, made
6 those commercials for us. In 2016, we asked Deontay
7 Wilder who is a heavy-weight boxing champion and
8 Charles Barkley, who's an NBA Hall of Famer to help
9 us the same way and they agreed. This past year we
10 asked Jessica Procter, who was 2017 Ms. Alabama,
11 and Dr. Mae Jemison, who was one of the first
12 African American astronauts, to help us promote our
13 effort, and they did so. We still weren't sure
14 after going through that entire process we were
15 reaching everyone. So, in 2016, we made it where if
16 you have a phone or if you have access to a
17 computer you can register to vote because now in
18 Alabama there's an app for that. We feel like it's
19 important to make it as convenient as it can
20 possibly be for our people to be able to register
21 to vote and to have a photo ID. Now, we have a
22 number of people who still believe there are some
23 folks in our state who are discriminated against
24 because they can't get access to an ID. Maybe they
25 can't go to one of those mobile locations that I
26 described to you even though we go to all 67

1 counties at least one time every year. They can't
2 go to the festivals or those events or those
3 activities. Maybe they can't go to the Board of
4 Registrar's office that's open each and every day
5 in our 67 counties throughout the state of Alabama-
6 -every day that the courthouse is open and they
7 will give them a free ID. So if those people
8 actually exist and they would like to have a photo
9 ID and they don't know where to go, we will go to
10 their homes and give them a photo ID. We have
11 actually done that on multiple occasions in
12 different parts of our state because we feel that
13 it's that important to make sure that we're
14 reaching our people. So your next question may be,
15 well, what does that actually mean? Let me tell you
16 what it means. In the last three years fourteen
17 days that I've been Secretary of State of Alabama
18 we have registered 906,214 new voters in Alabama.
19 We now have 3,342,124 voters in Alabama. Both of
20 those numbers are unprecedented and unparalleled to
21 the history of the state. We want everybody to
22 participate that wants to participate in the state
23 of Alabama. And I've had people ask me why would
24 you tell folks that you would go to somebody's
25 home? Why would you do that? Because if you do it
26 for one you have to do it for everybody. Do you

1 know what my response is? You're absolutely right,
2 that's why I do it because sometimes I think in
3 Alabama we have to try harder because we have to
4 show you that we're serious, we have to show you
5 that we're sincere, we have to show you that we
6 mean what we say when we tell you that we want each
7 and every person to participate. So what does that
8 actually meant? March 2016 we had the Presidential
9 Preference Primary in our state. We broke every
10 record in the history of the state for voter
11 participation with more than 1.25 million people
12 participating. November 8, 2016 when we voted for
13 President, we broke every record in the history of
14 the state for voter participation with more than
15 2.1 million Alabamians participating in the general
16 election. And in the special election that we just
17 had December 12, 2017 for the United States Senate
18 seat that Doug Jones now occupies in Washington
19 D.C., we broke every record in the history of the
20 state for voter participation with more than 1.3
21 Alabamians going to the poles, and not one instance
22 in any of those situations has it been reported
23 that anyone was denied the access to the franchise
24 at the polls in Alabama because they did not have a
25 valid photo ID. We're going to do whatever it takes
26 to ensure that each and every person who wants to

1 participate is eligible to participate. And if you
2 have any specific questions about what we've done
3 or how it related to other things that have been
4 introduced today, I'd be delighted to answer them.
5 I'm excited about what we're doing. We're changing
6 the standard in our state. We want everybody in
7 Alabama that wants to have the same privilege to
8 participate. If I find one instance where that's
9 not occurring, we're identifying those people,
10 we're investigating them where it is warranted,
11 we're indicting them, and we're prosecuting them to
12 the fullest extent of the law. Thank you very much.

13 CHAIR LHAMON: Thank you very much. Open the floor
14 up to my fellow Commissioner for questions.
15 Commissioner Adegbile?

16 COMMISSIONER ADEGBILE: Mr. Pitts, good afternoon
17 how are you? Could you speak for us for a moment
18 under what authority DOJ would obtain the
19 redistricting plans in your proposed model and do
20 you contemplate that to be a nationwide effort or
21 something less than that?

22 MR. PITTS: Now you are going to make me expound
23 upon my nugget of an idea. I can't say that I've
24 thought through every single detail of it, but I
25 would imagine that under most of the public access
26 laws in most states if you make a request for

1 information, you can get it. In Indiana, for
2 example, I could make a request and get whatever
3 information I want from a public entity. I can't
4 imagine that the Justice Department wouldn't be
5 able to do the same, but if we need to pass a law
6 to do that then let's pass a law to allow the
7 Justice Department to get those records, if
8 necessary. The second part of your question was?

9 COMMISSIONER ADEGBILE: Yes. And based on your
10 expertise in this area I take it it's not just a
11 plan but in order to assess the impact of a
12 redistricting plan there us certain underlying data
13 that is necessary as well.

14 MR. PITTS: That data is generally on CDs from
15 demographers who draw the plans. It's not that hard
16 to compile this information.

17 COMMISSIONER ADEGBILE: Ok. Is it your understanding
18 that DOJ would have the capacity to analyze
19 nationwide—every local redistricting plan?

20 MR. PITTS: That's a question I could not answer
21 because I haven't been at DOJ for about twelve
22 years now and I don't know exactly how much they
23 have in resources to do that. I know it wasn't a
24 problem to do the Section 5 states and I would say
25 actually you probably want to concentrate on the
26 Section 5 states at least initially and there may

1 be other places as well outside of the Section 5
2 states. Whether or not you could do it across the
3 nation; I don't know.

4 COMMISSIONER ADEGBILE: Ms. Earls, we heard a little
5 bit about what the relevance of intentional --
6 contemporary intentional discrimination may be
7 where courts find various state legislatures, or
8 perhaps local ones, had acted with the purpose of
9 discrimination against minority voters. Could you
10 help us understand why that might be relevant to
11 assessing whether or not we still need vigorous
12 Voting Rights Act protections?

13 MS. EARLS: Well, I think I would first make it
14 clear that the finding of intentional
15 discrimination is based on facts. It's not
16 mindreading. It's based on statements that
17 legislators made at the time. It's not based merely
18 on the fact that legislators looked at racial data.
19 It's based on the fact that once they had that
20 racial data they excluded all forms of ID that
21 disproportionately were held by African Americans
22 and allowed as permissible all forms of ID
23 disproportionately held by whites. It's not just
24 they looked at racial data. It's then what they did
25 once they had that racial data. So, I think the
26 Fourth Circuit's finding of intent was based on the

1 -- in that particular case was based on the
2 totality of all the evidence that they had about
3 the law at issue. It seems to me extremely
4 important to the enforcement of the Voting Rights
5 Act --the Fifteenth Amendment --the Voting Rights
6 Act is enforcing the 14th, and 15th Amendments and
7 they are designed to eradicate intentional
8 discrimination and it would be an anomaly if we
9 were to say somehow impact evidence is more
10 important than intent evidence. I think they are
11 both important and they -- sometimes the Supreme
12 Court has had to wrestle with the question of if
13 you have discriminatory intent, but not
14 discriminatory impact what should you do in those
15 circumstances. Certainly, if you have a law that a
16 court after looking at the evidence finds was
17 intentionally designed to discriminate against a
18 certain group of voters that's the fundamental
19 thing that our Constitution says that the
20 government is not allowed to do.

21 COMMISSIONER ADEGBILE: One further question about
22 your experience in North Carolina. I take it there
23 has been a history of voting discrimination in this
24 state, that fair to say?

25 MS. EARLS: Well absolutely. If you look at the
26 whole Thornburg v. Gingles case there is a whole

1 catalogue of the history of explicit legal
2 provisions that were intended to discriminate
3 against African Americans historically, but then
4 you look more recently and it's not just the voter
5 ID law and the vote suppression law, but a three-
6 judge panel unanimously found that the legislature
7 intentionally drew racially gerrymandered 28
8 legislative districts. A different three-judge
9 panel unanimously found that the legislature
10 racially gerrymandered 2 congressional districts.
11 There is a recent, it's not ancient history;
12 there's a post-2011 history of courts finding this
13 legislature is intentionally -- in matters
14 respecting voting is intentionally discriminating
15 against African American voters.

16 COMMISSIONER ADEGBILE: The reason I ask is because
17 I am trying to understand the concept in Shelby
18 County that spoke to the need for a demonstration
19 of contemporary evidence to justify remedial
20 measures, and in a situation in which you can
21 demonstrate a certain amount of continuity in some
22 places, I'm trying to find out what the difference
23 is between the findings that you see today and
24 those findings that happened a generation ago. To a
25 voter, does it matter if your parents were
26 discriminated against in a redistricting plan in

1 '65 or 1970 and today you're being discriminated
2 against in a redistricting plan in North Carolina?
3 What's -- what's the difference?

4 MS. EARLS: I don't see a huge difference. I see a
5 continuing pattern of lengthy, costly, time-
6 consuming lawsuits being brought. The legislature
7 changing the law a little bit and having to bring
8 another lawsuit immediately after the Fourth
9 Circuit's ruling was upheld in the Supreme Court by
10 dismissing the appeal. Some legislatures said oh we
11 just pass a constitutional amendment to have voter
12 ID and we will just pass these same laws a little
13 bit differently. So, this whole pattern that
14 initially led to Section 5, we see it being
15 repeated here in North Carolina. And we see young
16 people going to the legislature demonstrating and
17 being willing to be arrested and go to jail because
18 they feel like their right to vote is being taken
19 away. That doesn't seem all that different to me.

20 COMMISSIONER ADEGBILE: One last question, Ms.
21 Bishop. Do you have particular suggestions under
22 the ageis of the Voter Rights Act, or in some other
23 way, that the nation could do a better job to make
24 voting accessible to people with various types of
25 disabilities? I was interested in your point about
26 the accessibility the percentages of polling places

1 that are accessible to persons with different types
2 of disabilities. Do you have a sense about how DOJ
3 plays a role in determining whether or not polling
4 places are accessible?

5 MS. BISHOP: Department of Justice is responsible
6 for the enforcement of the Americans with
7 Disabilities Act. The accessibility provisions,
8 particularly architectural accessibility of polling
9 places falls under the ADA. A properly enforced and
10 overseen ADA would not allow those type of things
11 to happen. First and foremost, I think the Voting
12 Rights Act is important and Section 5 of the Voting
13 Rights Act was important because it facilitated
14 that sharing of information between jurisdictions
15 and the Department of Justice so that we had a
16 sense of what was happening and why these things
17 were happening, that helped us to make informed
18 decisions about those types of things. Access to
19 the vote for people with disabilities in the U.S.
20 is largely a patchwork of several pieces of
21 legislation. That's why I bring up the Voting
22 Rights Act, Americans With Disabilities Act, the
23 Help America Vote Act—all of these work in concert
24 to ensure that people with disabilities are not
25 deny access to the vote. So, what we really need
26 are fully restored legislation that are working in

1 concert to make that happen.

2 COMMISSIONER HARRIOT: I just have a tiny point of
3 clarification for Ms. Earls. You mentioned that the
4 state legislation had rejecting the IDs that
5 African Americans disproportionately had. Which
6 ones are those?

7 MS. EARLS: So, the evidence at the trial and the
8 evidence cited in the Fourth Circuit opinion was
9 that student IDs and I'm not going to remember
10 whether it was -- there was some other form of
11 government-issued IDs that might have been state
12 employee IDs were all - - the evidence showed were
13 disproportionately held by African Americans, but
14 were not in the law as permitted forms of ID.

15 CHAIRMAN LHAMON: Ms. Bishop, I will follow up on the
16 questions you've been asked. I appreciate your
17 point that full and effective federal enforcement
18 would be helpful to ensure access to the right to
19 vote for people with disabilities. But we are 50
20 years after the Voting Rights Act and 27 years
21 after the ADA and what you describe is the majority
22 of places not accessible. We have also been hearing
23 on the panels today about certainly vagaries in the
24 focus of DOJ enforcement with respect to voting
25 rights. I wonder if you think there is a
26 foreseeable future in which we would see sufficient

1 federal enforcement to allow for closing the gap
2 that you described. And if so - - but if not, do we
3 need a different law? Do we need something to
4 incent a way to make sure that those gaps don't
5 persist?

6 MS. BISHOP: I think it's possible, but I think the
7 tail end of your comment sort of make it clear how
8 that's possible. Some of this extends beyond DOJ,
9 whose role is primarily enforcement. I think that
10 Congress has a responsibility to make sure this is
11 happening as well. I think state and local
12 elections administrators are in desperate need of
13 funding to help update polling places and to help
14 update voting equipment to make sure that it's both
15 secure and accessible as possible. I am glad that
16 we are having a national conversation about that,
17 but if we're not willing to put dollars behind it
18 then it's not going to happen well in terms of
19 security or accessibility. I think it's really time
20 to start having practical conversations about what
21 that means. I think we need to continue to support
22 the existence of the United States Election
23 Assistance Commission that has a vital role to play
24 in this process. And I believe that we have to
25 start having very realistic where the rubber meets
26 the road conversations between voters with

1 disabilities and the accessibility community and
2 the security community about how we're going to
3 make both of those things happen. Often when we
4 have conversations about vote security, which is
5 clearly a primary issue in the world of elections
6 right now. We fail to talk adequately about
7 accessibility. If we're talking about reverting two
8 systems that required much more ability to hand-
9 mark a paper ballot which is really what we've been
10 talking about over the course of the past year, we
11 have to talk about how we can make that accessible
12 for all Americans. We cannot sacrifice one for the
13 other. Our elections have to be accurate and secure
14 but they also have to be accessible for all
15 Americans. Because that's what we do in American.
16 So I think that that issue is much larger than just
17 the Department of Justice's or just the points of
18 legislation they have in place right now. To
19 protect people with disabilities, we have to start
20 thinking practically about how we're going to piece
21 all those piece together. I think it requires
22 funding through Congress and I think it requires
23 the leadership of the Election Assistance
24 Commission to make that happen.

25 CHAIR LHAMON: Two members of the Election
26 Assistance Commission are on this Commission so I

1 am sure they appreciate your plug there as well.
2 Secretary Merrill, I wonder if you can respond to
3 what Ms. Bishop just said. You have described
4 frankly inspiring and laudable commitment to
5 actually making sure that everyone in the state of
6 Alabama could have access to an ID to be able to
7 vote. What would it take for you and your state to
8 make sure that all people with disabilities would
9 be able to access the polls and what would it take
10 for you to make sure that other impediments to
11 voting receive the same level of scrutiny.

12 MR. MERRILL: Yes, ma'am. I think it is very
13 important to ensure that people are able to go to
14 the place where they're supposed to be participate
15 in to be able to do so when it's convenient for
16 them. Some people choose to participate in the
17 absentee process by applying for an absentee ballot
18 and doing that from the comfort of their homes.
19 We're all trying to make that easier and we're also
20 trying to make that more secure, but if they want
21 to go to the polling site in Alabama, those sites
22 are determined by the probate judge and by the
23 county Commission in each individual location. Some
24 of those are not as convenient as others. But what
25 we have to do is work within the local community to
26 ensure that we're going to location that is safe

1 and secure and enables every person to gain access.
2 Now, I think one of the problems that we had with
3 the help with the Help America Vote Act was that
4 when information was introduced about what those
5 resources could be used for, it was not proper
6 training given to certain entities in the state to
7 understand what needed to be done as a priority
8 with those resources. One of the things that we
9 saw, we took the position as Secretary of State was
10 that we had people that would actually use those
11 resources to pave a parking lot at a particular
12 building. Well, that may be necessary but if that
13 parking lot is also being used as a parking lot for
14 a ball field, a lot of other times during the year
15 they may be trying to use those federal dollars to
16 pay for something that didn't need to be done with
17 those federal dollars because the community could
18 have gotten involved more or the municipality or
19 county, but we got to make sure we are more
20 discerning about how those resources are used, but
21 I think there needs to be a greater commitment from
22 the local community in working with the local
23 election administrators to make sure we've got the
24 best locations for those polling voting sites.

25 CHAIR LHAMON: Thank you.

26 MR. MERRILL: Yes, ma'am.

1 CHAIR LHAMON: Commissioner Yaki?

2 COMMISSIONER YAKI: Thank you, Madame Chair. It's
3 great when you have a Secretary of State who's here
4 because then you start asking some really on-the-
5 ground questions. I have a question about Alabama's
6 inactive status program. Can you describe a little
7 how that works, what happens if a voter who
8 actually has a history of voting but somehow - -

9 MR. MERRILL: Yes, sir. As a matter of fact for the
10 first time since the law was passed in 1993
11 Alabama's fully compliant with the National Voter
12 Registration Act. We're also very excited about
13 that. One of the things that happened in our state
14 was that we realized we're not following the rules
15 and procedures that were established according to
16 the law when it comes to declaring that someone
17 would be listed as inactive. I think that is a very
18 inappropriate term to use because of what we're
19 actually going through and describing here. The
20 Constitution, the code of Alabama, the laws that
21 have been passed in Washington would have indicated
22 that this exercise begins in January after the next
23 federal election for President occurs, so it
24 occurred in January 2017, so there were a number of
25 people went to vote in the primary in August of
26 2017 for the U.S. Senate election who were

1 indicated as being inactive. They were moved to
2 inactive rolls because the procedure that was
3 prescribed, and we fully adhere, that said this is
4 how we contact our people. And so, we actually had
5 to mail out a certain number of cards to a certain
6 number of voters and that number that got the first
7 mailing, at the time we had 3,399,899 registered
8 voters. When that occurred we mailed a contact card
9 that as described by the law, that was approved by
10 the Justice Department, we went to Washington and
11 had it approved, and that procedure meant that the
12 card could only go directly to the voter but not
13 following the voter according to the postal service
14 and how they would normally send mail- -

15 COMMISSIONER YAKI: So it was not-forwardable?

16 MR. MERRILL: No, sir, not forwardable. So, we had
17 416,632 voters that received a second mailing,
18 which was described as going to follow the voter
19 and indicate where that individual is supposed to
20 be. After we received 80,000 or so responses from
21 that mailing, 340,152 voters were then moved to the
22 inactive list at that time. We had people that
23 would go vote in August for the U.S. Senate Special
24 Election and they're saying I'm not inactive, I've
25 always voted. The first call I got was at 8:32 a.m.
26 that morning and it was Congressman Mo Brooks, who

1 was a candidate as a U.S. candidacy. He said, John,
2 we've got a problem. I'm listed as inactive, my son
3 is listed as inactive, daughter-in-law is listed as
4 inactive. Long story short what happened there is -
5 -Congressman Brooks could not let it rest. We
6 actually sent him a copy that day of his image of
7 his postcard that was returned to our office. But
8 two days that, he didn't make the run-off. He went
9 to the post office and the postmaster told him,
10 after he investigated, that the route carrier went
11 to his home, did not deliver it because it says
12 "Morris Baker Brooks, Junior," he thought that was
13 his son who moved out of their home and he didn't
14 deliver any one of them.

15 COMMISSIONER YAKI: But Congressman Brooks was able
16 to vote, is that correct?

17 MR. MERRILL: Oh, yes sir.

18 COMMISSIONER YAKI: So he had to do provisional
19 ballots. You do allow provisional ballot in that
20 instance.

21 MR. MERRILL: Oh, yes, sir.

22 COMMISSIONER YAKI: Under law is it required to be a
23 provisional ballot? Why does it have to be a
24 provisional ballot?

25 MR. MERRILL: It depends on situation. If someone
26 can indicate, and, you know, that's another thing

1 about our voter ID requirement. When people
2 actually go to vote, one of the things that our law
3 allows is that two election officials, poll workers
4 or otherwise, can identify who you are, then you're
5 able to vote just as if you had your regular ID
6 that's subscribed and we have ten different forms
7 of ID that are available to be used. And again, I
8 don't like the term inactive that we've been using
9 and we're trying to get that changed in our law so
10 that we won't use that. Basically it just means
11 that you need to update your information. You can
12 do that electronically, in person, or at the polls.

13 COMMISSIONER YAKI: If you update your information
14 at the polls, does that vote count?

15 MR. MERRILL: Yes, sir. You can vote and it would
16 count that day.

17 CHAIR LHAMON: It does occur to me that there is
18 obvious room for mischief. If two poll members
19 don't want to identify somebody as an active voter
20 using the term as has been used right now. What are
21 the steps you can take to try to avoid that?

22 MR. MERRILL: Well, they have to send an affidavit
23 if they do that, indicating that they recognize
24 this person and we have not had any instances that
25 have been reported to us where an individual went
26 to vote, and I already reshared it earlier in my

1 testimony when I said that we have not had anybody
2 turned away since this law has been in effect
3 requiring photo ID requirement. So, that instance
4 has not happened where somebody would be
5 discriminated against because somebody lied or
6 because they weren't interested in allowing them to
7 participate.

8 CHAIR LHAMON: Thank you.

9 MR. MERRILL: Yes, ma'am.

10 CHAIR LHAMON: Commissioner Narasaki?

11 COMMISSIONER NARASAKI: Thank you. I want to thank
12 Ms. Earls for mentioning Asian Americans. My first
13 experience with what was happening with the voting
14 rights and Asian Americans was actually Alabama,
15 Bayou La Batre where there was a Vietnamese
16 American running. There's a fishing community there
17 and because he was running, the election officials
18 decided that they were going to challenge every
19 single Vietnamese-American voter, assuming because
20 they were Vietnamese-American they probably could
21 not be a citizen and therefore were trying to vote
22 fraudulently. The Department of Justice intervened
23 and the first Asian American was elected in
24 Alabama, so it had a good ending.

25 I wanted to ask, because we had a lot of testimony
26 about North Carolina, and you mentioned that Asian

1 Americans had been disproportionately impacted.
2 Weren't there also findings by the court about
3 discrimination against Hispanics in terms of how
4 they decide which kinds of -- not just ID, but also
5 what kinds of other cuts and changes they would
6 make to the voting system in North Carolina?

7 MS. EARLS: Yes. There were Hispanic plaintiffs in
8 the case and there was evidence that, similar to
9 African Americans, they disproportionately did not
10 have some of the ID that were not allowed as
11 permissible ID. I believe there was also evidence
12 of other types of discrimination against Latino
13 voters that was part of the history of
14 discrimination in the case --not necessarily
15 directly tied to the law to be considered but
16 Alamance County, what I mentioned in my testimony
17 where these thirteen voters are now being
18 prosecuted is also a county where the sheriff
19 decided -- this is several election cycles ago --
20 but decided to take the voter rolls and knock on
21 the door with everyone with a Hispanic surname to
22 confirm that they were actually citizens. And when
23 he announced publically that he was going to do
24 that, obviously it caused a lot of fear and was
25 intimidating and the justice Department did get
26 involved and I think that there was ultimately

1 litigation that was generated by DOJ. So, there was
2 evidence in the case of past discriminatory actions
3 in the state involving Hispanic voters.

4 COMMISSIONER NARASAKI: Thank you. And Ms. Bishop, I
5 also want to ask you about Section 208. Most
6 people, I think, when they think of the Voting
7 Rights Act don't know what 208 is and so maybe you
8 could give a very brief explanation and how that
9 works in terms of helping people with disabilities.
10 And I would like your thoughts about how well it's
11 been enforced; how well DOJ has done outreach and
12 educated local election officials about what their
13 responsibilities are under that Act.

14 MS. BISHOP: Absolutely. Section 208 of the Voting
15 Rights Act is not often spoken about, although it
16 is part of the Voting Rights Act that applies
17 directly to people with disabilities, guaranteeing
18 your right to receive assistance at the polls if
19 you need someone to help you cast your ballot
20 anyone of your choosing, of course other than your
21 employer or your union rep. I think that not a lot
22 of attention is paid to Section 208. I don't know
23 that it is being particularly vigorously enforced.
24 I also think that instances of denial of the right
25 assistance are being underreported. I don't know
26 that our state and local election officials are

1 particularly versed in this or if they are it's not
2 necessarily stressed in the training that we are
3 giving to our poll workers which is really where
4 this issue comes into play. When you come to vote
5 on Election Day and it is the poll worker they
6 making the determination on whether or not they're
7 going to allow someone to assist you, I think it
8 goes underreported because I think that the
9 authority figure of the poll worker—who may or may
10 not be correct in what they're telling you—is very
11 intimidating to some voters and makes them question
12 if they do know whether they have the right to
13 assistance. We do get reports from voters that who
14 do say I brought somebody to help me vote and I was
15 told I cannot do that. I have to have on Democrat
16 and one Republican poll worker help me and that's
17 the only way it can be done. Now, that can be done
18 and you do have a right to bring someone with you.
19 So, I think we have misinformation and miseducation
20 all around. I think that DOJ can be helpful in that
21 regard but I do think it also starts with making
22 sure our poll workers are trained to understand the
23 rights of voters with disabilities and what type of
24 accommodation they're entitled to when they come to
25 the polls so that we can prevent things like that
26 before they happen. I think that voters should also

1 not be afraid to come forward and report these
2 types of the things when they're happening. Earlier
3 today it was mentioned that some of the
4 organizations here, and mine is involved with it as
5 well, run hotlines to assist voters. I would hope
6 voters would take that step of making that call, if
7 nothing else than to verify whether or not they
8 really do have the right to that kind of assistance
9 so that we can prevent it going forward.

10 COMMISSIONER NARASAKI: Thank you. Mr. Pitts, one of
11 our earlier panelists made the statement, at least
12 in his written testimony, I want remember if he
13 also said it in his oral that: "No one can
14 rationally claim that there's still widespread
15 discrimination in any of the formerly covered
16 states." And also -- and also someone else
17 testified that the success of black-- in their
18 written testimony-- the success of black officials
19 in North Carolina shows that there's no persuasive
20 or ramp discrimination going on. Do you have
21 thoughts about that?

22 MR. PITTS: Yes, I mean both of those are very
23 loaded comments. My concern is going forward what's
24 going to happen in the world without Section 5,
25 particularly at the local level. There's going to
26 be an opportunity in 2020 for every entity that has

1 single-member districts, many of which in the
2 former -- formally covered Section 5 states to
3 legitimately change their minds-- they don't have
4 to come up with an excuse to do so. They will have
5 to be because of the rules governing one-person,
6 one-vote from the Constitution, and I see the
7 potential for some serious backsliding of districts
8 that allow minority voters to elect their
9 candidates of choice - -

10 COMMISSIONER NARASAKI: I'm going to cut you off
11 because actually redistricting is not in the
12 purview of this hearing. As fascinating and as
13 challenging as I think all of this is going to be.
14 Ms. Earls, do you have any response to those
15 earlier statements?

16 MS. EARLS: So, on the question of does the success
17 of African-American candidates for office in North
18 Carolina demonstrate that there aren't any problems
19 with voting I have a couple of responses. One is if
20 you look across the board at all elected offices we
21 still don't have parity in numbers, but more
22 importantly, the Voting Rights Act is about the
23 rights of voters and the question is do African
24 Americans, do Hispanic Americans, do Asian
25 Americans in the state have an equal opportunity to
26 participate in the voting process. That's what we

1 have to evaluate and that doesn't -- there's some -
2 - election of people of color is some indication,
3 some measure but it's not the full picture by any
4 means, and the real question is, is our election
5 machinery equally open to everyone.

6 COMMISSIONER NARASAKI: Just one final question. So
7 we have an election in 2018. Unfortunately, we
8 didn't have anyone from the Department of Justice
9 currently testifying today. I'm wondering what your
10 advice would be to what they need to do to make
11 sure that voting rights is being protected in the
12 2018 election.

13 MS. EARLS: So they have enormous resources both in
14 terms of the observer capacity and letting
15 communities know if you anticipate there's going to
16 be a problem you can contact us and we can evaluate
17 whether or not an observer is justified, but then
18 all U.S. attorney offices, they all can be trained
19 up even better, they all get memos at election time
20 telling them here's all the laws, here's what's
21 looked for, here's what you can do as the US
22 Attorney, but a more rigorous effort working with
23 all of the U.S. Attorneys' offices can be very
24 useful.

25 COMMISSIONER NARASAKI: Secretary Merrill, since
26 you're coming from the state end is there anything

1 that you think is helpful that the Department of
2 Justice could be doing.

3 MR. MERRILL: Well, I think that an intentional
4 effort by the DOJ to make sure people understand
5 that they're available for support is always
6 important. I think one of the things we inherited
7 when I took office was the perception that the
8 Justice Department under President Obama was not as
9 friendly to our state as a Republican
10 administration might have been. I think there are a
11 number of states in the union now who feel that the
12 Justice Department under the leadership of Senator
13 Sessions who is now the Attorney General under
14 President Trump will not be as helpful as it could
15 be otherwise. I think whenever those situations are
16 identified they need to be publically exposed and
17 introduced so people can understand what needs to
18 change in order to make that positive interaction
19 occur and I think just being willing and open to
20 work with other people. We actually found members
21 of the Justice Department before President Trump
22 was elected to be very helpful to us because we
23 wanted to work with them and we expressed that to
24 them and whether it be at the US Attorney level,
25 directly with Justice. I think that is
26 extraordinary important.

1 CHAIR LHAMON: Commissioner Heriot?

2 COMMISSIONER HERIOT: Thank you. The name of the
3 panel is Voter Access but the flip side of that is
4 making sure that non-citizens, someone who's not
5 eligible to vote, doesn't vote because if the vote
6 is cancelled out by someone who is ineligible to
7 vote then you're being denied the right to vote.
8 Mr. Merrill, maybe you'd be the first to comment on
9 this but I'd love to hear from anyone. Ms. Mitchell
10 or anybody? What's the right way to make sure that
11 only citizens are voting? What does Alabama do to
12 make sure that someone who is not a citizen - and I
13 don't mean to suggest that someone who votes who is
14 a noncitizen necessarily is aware that they are
15 breaking the rules. I know that when these issues
16 come up, sometimes I went to defense is, offered
17 that well, I didn't realize it. I went to the DMV
18 and they gave me this and I thought I was supposed
19 to vote and I did vote. What's the right way to do
20 this?

21 MR. MERRILL: One of the first things that I said
22 when I shared with you what my goal was - which was
23 I think I said make sure that each and every
24 eligible U.S. citizen that is resident of Alabama
25 was registered to vote and had a photo ID. I think
26 that's very important. And really -- Somebody may

1 laugh when I say this but it's not no different
2 than me saying I'm going to North Carolina, I'm
3 going to vote for your governor and then I'm going
4 back to Alabama to be a permanent resident. Nobody
5 would want that to happen. Nobody would want
6 somebody in the Lions Club to vote for the JC's
7 President. Or in the rotary club to vote for the
8 Exchange Club President. That's just not the way
9 that you do it. And no individual that lives in our
10 state that is not a resident of our state and not a
11 citizen of the United States should not be
12 participating in our elections.

13 COMMISSIONER HERIOT: How do you do it? How do you
14 make sure that works?

15 MR. MERRILL: We have to vet each application that
16 comes in by our Board of Registrars, to ensure that
17 information being shared is accurate, complete, up-
18 to-date, and if that requires visiting, involvement
19 of law enforcement to have deputies when they're
20 out surveying to determine whether or not someone
21 actually lives at this location, to check
22 information in the records that have been
23 introduced to us, all of those things are very
24 important and it's a process and a procedure. It's
25 not something that to be done the same way each
26 time because each individual application can be

1 different.

2 COMMISSIONER HERRIOT: But if you have someone who is
3 not a United States citizen but they live in
4 Alabama and they're not entitled to vote --

5 MR. MERRILL: Yes, ma'am. And we encourage that. And
6 as you know, one of the things that we just
7 announced recently was the relocation of a brand
8 new facility, Toyota and Mazda, with a joint
9 partnership, and we're going to have a lot of folks
10 coming to Alabama that are not citizens, but
11 they're not going to be able to vote unless they
12 obtain citizenship.

13 COMMISSIONER HERRIOT: How do you document that?

14 MR. MERRILL: There are a number of ways to do that.
15 One of the things that we are able to use,
16 especially with our driver's license, is that if
17 you're a foreign national in Alabama then on your
18 driver's license there's a capital "F" and a
19 capital "N" that's placed here. This is a form of
20 identification for 95 percent of the people in our
21 state. It's very easy to use this as a tool that
22 will enable us to determine your citizenship first
23 and foremost, but most people when they go to
24 register to vote for the first time or get their
25 driver's license for the first time, use their
26 birth certificate so it's automatically recorded

1 and document and its automatically in the database.

2 COMMISSIONER HERRIOT: What if -- Well, if someone

3 else has a comment, please go ahead.

4 MS. MITCHELL: Some of the panelists earlier this

5 morning had to with - or some of the witnesses had

6 to or testifying about enforcement by the

7 Department of Justice. And let's, as the

8 Commissioner pointed out, it is a felony to -- for

9 someone who is not a citizen to register to vote in

10 a federal election. It is a felony for someone who

11 is not a citizen to cast a vote in the federal

12 election, and I would argue, that the Department of

13 Justice, and we're talking about enforcement of the

14 federal law, that they should actually take steps

15 to notify people to make it clear that it is still

16 against the law for noncitizens to register, and

17 noncitizens to vote. What happens if there is any

18 effort to let people know about that law? The very

19 industry that I was talking about earlier, cry out

20 that that's racist. It's racist to tell people that

21 it's against a law to register to vote if you're

22 not a citizen. There was a lawsuit about whether or

23 not a state was allowed to put on its voter

24 registration form, "Are you a citizen?" Now, I

25 think that these things are preposterous. It is

26 preposterous when we're having an argument that we

1 argue about enforcing the law. If you don't like
2 the law see if you can changed. But, the fact of
3 the matter is, I think most people in this country
4 agree with the rule of law that says only citizens
5 should decide our elections. The only way we're
6 actually going enforce this is if we put it on
7 forms and people testify or test under penalty of
8 perjury and we advise people and educate people
9 that only citizens have the right to vote and have
10 the right to register to vote and to me that is the
11 rule of law that this Commission ought to be
12 certain is being enforced and that the American
13 people are being positively told about those laws.

14 MR. FUND: We have a great debate on immigration
15 right now. One of the things that is being
16 discussed is a path to citizenship for the Dreamers
17 and others. Clearly people value citizenship. They
18 think American citizenship is important. Well, I
19 think there's been a cruel trick played on some
20 people who are waiting for their citizenship. One
21 of the secretary's colleagues had to resign in
22 Pennsylvania, had to resign his office after a
23 scandal last December. The scandal was that for
24 many years the Department of Motor Vehicles was
25 renewing people's driver's licenses on a
26 touchscreen and people who had a driver's license

1 and who were here legally, they were legal
2 residents or had a green card, were presented with
3 a screen that said do you wish to register to vote,
4 with no other explanation. Many people assumed if I
5 am asked the question I can say yes or no. So many
6 people said yes and they registered to vote, some
7 of them went on to vote. Public Interest Legal
8 Foundation is finding explicit examples of how many
9 going county to county. Well immigration attorneys,
10 when they prepare people for citizenship
11 proceedings, have to ask their clients is there
12 anything that you have done while you've been in
13 this country and they answer truthfully oh, I'm
14 registered to vote, or the lawyer asks them if
15 you're registered to vote. This is standard legal
16 procedure. Well, that presents a real problem. So,
17 all over this country people are being forced to go
18 to county registrars and voters - and we have
19 examples of this from Virginia, New Jersey, and
20 various other places - and they have had to ask to
21 have them removed from registration rolls. In many
22 cases they've actually voted in more than one
23 election. That is a cruel trick that's being played
24 upon them by either incompetent bureaucrats or some
25 voter registration groups that are perhaps not as
26 scrupulous as they should be, and they are signing

1 people up because they are putting their future
2 citizenship as Americans in jeopardy by doing that,
3 and the scandal in Pennsylvania is not a small one.
4 The best estimates from the legislative committee
5 looking into there is that 100,000 people are
6 involved in one state. These people have their
7 potential citizenship as legal residents
8 jeopardized. We have to take care of this not just
9 to make sure that noncitizens don't vote, but to
10 protect the rights of legal aliens in this country
11 so they don't lose their right to become citizens
12 because they inadvertently, or advertently,
13 committed a felony by voting and registering to
14 vote.

15 CHAIR LHAMON: Your last question for this panel.
16 Commissioner Adegible?

17 COMMISSIONER ADEGBILE: Mr. Merrill, are you aware
18 of a rash of non-citizen voting in Alabama based on
19 your years as Secretary of State.

20 MR. MERRILL: No, sir. I'd like to add something, if
21 I may, just so there's a clear understanding of
22 this. Earlier today on a previous panel it was
23 introduced that an individual believes there are
24 118,000 people in our state that should be
25 registered to vote that are not registered to vote
26 and do not have inadequate IDs in order to

1 participate in the process. I've told that
2 individual before, and I'm introducing this to the
3 panel now, if they will tell me one of those
4 individuals' names, I will call my office when I
5 leave here today and they will go to their house
6 and give them a photo ID. I want to make sure that
7 is clearly understood. I also want to make sure
8 everybody understands that if that indeed has
9 occurred, with anybody that we are going to make
10 sure that we take care of that. And another thing
11 that was not introduced in that panel was about the
12 voter ID lawsuit that had been filed against the
13 state of Alabama. One of the reasons it was not
14 introduced is because three weeks ago yesterday it
15 was summarily dismissed by the federal judge in
16 who's court it had been introduced the judge
17 indicated that because we were doing what we are
18 doing with our ID, that if other states in the
19 Union followed this we wouldn't be having the
20 concerns that we're been having throughout the
21 Union.

22 COMMISSIONER ADEGBILE: Thank you. Mr. Pitts,
23 there's been a lot of talk about the importance of
24 taking a local view of - or what was lost in Shelby
25 County, in terms of understanding what was
26 happening at the local level compared to the more

1 publicized statewide types of election laws. Can
2 you help us explain based either on your experience
3 as a DOJ lawyer or through your teaching, why the
4 DOJ under the old regime had a special advantage of
5 being able to have eyes on all of these local
6 voting changes and what has been lost in that
7 regard?

8 MR. PITTS: Yeah. It was systemic. The local
9 governments knew they had to deal with the Justice
10 Department and they wanted to make sure that they
11 complied with the law and so there was a built in
12 incentive for them to protect minority voting
13 rights and that built-in incentive is gone totally
14 and so, I mean, without it we have no idea what's
15 going on. I don't know of any systematic reviews
16 that anybody has done of voting changes on the
17 local levels since Shelby County's decision, and we
18 should be tracking that more, and DOJ just had the
19 resources and the power to do that tracking.

20 CHAIR LHAMON: So, actually, Commissioner Narasaki,
21 you have the last question.

22 COMMISSIONER NARASAKI: Yes. I just want to ask the
23 panelists, so one of the huge losses of Section 5
24 not being operational is the fact that you don't
25 have states required to give notice when they're
26 going to do a voting exchange so people can look at

1 it and determine whether in fact it's going to have
2 any kind of adverse impact, and under that
3 requirement the state actually had to do its own
4 analysis to make sure it wasn't inadvertently doing
5 something like that. Do you know of many states who
6 either have laws or have voluntarily provided
7 notice in enough advance of a change going into
8 effect? I believe that South Carolina may have
9 passed something a couple of years ago, but I was
10 wondering if you're aware of how many states
11 actually do that.

12 MR. MERRILL: What specific change are you talking
13 about in the voter activity, voter registration?

14 COMMISSIONER NARASAKI: So under Section 5 with four
15 coverage, right, if you're covered you had to say
16 if you were going to close a polling sight or move
17 it or change a registration rule, many things that
18 don't make newspapers cause they are seen as
19 administrative but as we had a witness testify from
20 Alaska, can be a big deal if you are combing in two
21 testify from Alaska, could be a big deal if you are
22 combing in two polling places that aren't connected
23 by any road and so to vote actually have to fly to
24 the polling place at great expense, so I'm just
25 wondering, as Mr. Pitts just said, a lot of this
26 happens on the local level. How can we be tracking

1 exactly what's going on?

2 MR. MERRILL: One of things that we have encouraged
3 and we can't mandate but this is supposed to be
4 done is that whenever that occurs in any local
5 county or municipality that affects those voters
6 they're supposed to be properly notified, and we do
7 encourage that to be done directly through specific
8 contact with those voters. That does not always
9 occur. There's not always stories that are in the
10 local newspaper or on the local T.V. or radio
11 stations and that's disappointing because any time
12 it affects a group of people it adds to the
13 inconvenience or the anxiety or any other number of
14 concerns they would have when they go exercise
15 their right to vote. So we need more education when
16 it comes to that. That's also part of what the
17 resources from Help America Vote Act have been used
18 for. If a community says we don't actually have the
19 resources to go do that should not be an excuse.

20 Election officials--

21 MR. MERRILL: Yes, ma'am, because we don't have a
22 list in Montgomery of all the polling places
23 throughout all 67 counties. Each local county has
24 that so they know where to go but we don't have a
25 master list for people to gain access to.

26 COMMISSIONER NARASAKI: No, I was thinking more of -

1 - I think what South Carolina does this. they
2 require local election officials, if they are going
3 to make any kind of change within a certain amount
4 of days of election, they have to put it up on the
5 state's website so that people know and can just
6 notified- -

7 MR. MERRILL: Because we're not always notified, but
8 one of the things that we do now with our systems,
9 our electronic system I was mentioning earlier,
10 where people can register is if you put your name
11 in and, Bayou La Batre, or wherever you happen to
12 be, and you can find out where you vote and if it
13 has been changed and that is automatically updated.

14 COMMISSIONER NARASAKI: I just want to let you know
15 there is a system that was created by Pew that does
16 actually check voter registrations with a number to
17 lists to other states to make sure --

18 MR. MERRILL: Yes, ma'am, and we're a member of
19 that--and Crosscheck.

20 COMMISSIONER NARASAKI: They also have the ability
21 to tell you which of your people probably should be
22 registered to vote for that aren't.

23 MR. MERRILL: Yes, ma'am, we're using that too.
24 Thank you so much.

25 CHAIR LHAMON: Thank you to our excellent panel - Oh
26 wait Ms. Bishop, do up want to have the last word?

1 MS. BISHOP: I want to add something to that
2 conversation. Even in the case of laws that require
3 for voters to be put up on state and local
4 government websites. That those websites are often
5 not compliant with federal accessibility laws, so I
6 want you to investigation and that is something
7 that could be implement into a reported Voting
8 Rights Act.

9 CHAIR LHAMON: Thank you. Thank you again for this
10 powerful panel, and we're taking a 10 minute break
11 and we'll be back for our final panel at 3:00 pm.

12 (Break taken at about 2:50 p.m.) 1:45:28

13 CHAIR LHAMON: We're ready for our final panel of
14 the day. Thank you. The order in which this final
15 panelists from this fourth will speak is John J.
16 Park Jr., Counsel at Strickland, Brockington,
17 Lewis, LLP; Judd Choate, President of the National
18 Association of State Election Directors and
19 Election Director of the State of Colorado; Dale
20 HO, Director of Voting Rights Project at the ACLU;
21 Lorraine Minnite, Professor of Political Science at
22 Rutgers University; Jerry Vattamala, Director of
23 the Democracy Program at AALDEF and Tomas Lopez,
24 Executive Director at Democracy North Carolina. Mr.
25 Park, please begin.

26 MR. PARK: Madame Chair, members of the commission

1 thank you for this opportunity to speak today. What
2 I'd like to do today, is deviate from my written
3 remarks and address something because a lot of this
4 has just been focused on Section 5, and what I'd
5 like to suggest that if Section 5 is renewed,
6 serious consideration be given to taking
7 redistricting out if it. I'd start by noting that
8 the Voting Rights Act was meant to address race,
9 not politics. President Lyndon Johnson focused on
10 ending practical barriers to minority voting, which
11 he identified and divided into three categories:
12 technical, that is, poll taxes; non-cooperation;
13 and subjective barriers - literacy tests. That's in
14 his message to the United States related to the
15 right to vote in 1965. When he spoke to a joint --
16 a special joint session of Congress, President
17 Johnson observed, "we meet here tonight as
18 Americans, not as Democrats or Republicans. We meet
19 here as Americans to solve that problem of ensuring
20 equal rights of African Americans when they went to
21 vote." And the Commission should heed President
22 Johnson's exhortation and refrain from doing
23 political work from one side or another, and the
24 redistricting process is an inherently political
25 process and it gets Justice involved in doing work
26 for one party or another. You start with the fact

1 that it (Section 5 review of redistricting plans)
2 has a limited scope. What the Justice Department
3 looked at was a benchmark plan and it compared the
4 number of minority-majority districts in the
5 benchmark plan to the new plan, and if you came in
6 at the right number, the plan should be precleared.
7 Maybe a state should draw more. Well, that's a
8 Section 2 problem, and you look at whether or not
9 there is a compact, contiguous group of minority
10 citizens that is large enough to form a majority in
11 a single-member district. But it's a separate
12 inquiry. The Department of Justice Voting Section
13 in the preclearance process wasn't supposed to
14 insist on drawing more districts. The preclearance
15 process was not designed to draw any more minority-
16 majority districts, but that's exactly what
17 happened in Miller versus Johnson. The Department
18 of Justice insisted that Georgia draw a third black
19 majority congressional district and - North
20 Carolina - the benchmark was two. And the Supreme
21 Court reversed said the drawing of a plan that
22 nited Atlanta suburbs with the coast was an
23 unconstitutional racial gerrymander, and the United
24 States paid some six hundred thousand dollars to
25 the successful plaintiffs in that case. And that's
26 not the only case in which that happened. If you go

1 back, go to the -- in Harris versus Arizona
2 Independent Redistricting Commission; the
3 Commission in that case came before -- the disputes
4 arising out of that Commission's work came to court
5 twice a couple of years ago. Their advisors to the
6 Arizona Commission told the Commission the Voting
7 Rights Act required minority-majority districts to
8 be underpopulated in order to obtain pre-clearance.
9 This led to the creation of ten minority ability to
10 elect districts when seven was the benchmark
11 number. It's fine, in my judgment, to create such
12 districts when Section 2 requires it, or if you
13 want to do it for political reasons, but it's not
14 fine to do that under the guise of Section 5. And
15 when we think about it, Section 2 of the Voting
16 Rights Act calls for an equal opportunity, not a
17 greater opportunity. Using the preclearance process
18 to give an advantage to minority citizens by under-
19 populating their districts and over-populating
20 others is inconsistent in Section 2, and to the
21 extent that was political work, the Voting Rights
22 Act is not designed to benefit one political party
23 over another. Another point I'd make is that --
24 it's of limited effect. You get a preclearance
25 letter that doesn't immunize a state from being
26 sued under Section 2 or under the Constitution.

1 Alabama Legislative Black District -- Legislative
2 Black Caucus, that case is indicative of that.
3 Alabama's plans were precleared. That did them no
4 good when it got to the Supreme Court and the Court
5 said the plans were racially gerrymandered. It took
6 a separate lawsuit. And what the Department - what
7 Alabama did -- the plans were drafted with the
8 Department of Justice's guidance in mind. The
9 Department said that a comparison of the Census
10 population in the benchmark districts and the
11 proposed plan is the important starting point of
12 any Section 5 analysis. Obviously more is required
13 and the State's preclearance submissions did not
14 stop there. So, the point is that the preclearance
15 letter didn't give much comfort to Alabama. The
16 last point, political point I'll make is, to go
17 back to Kinston, North Carolina. My understanding
18 is Kinston is a black majority. In 2008, almost
19 two-thirds of the voters of Kinston approved a
20 referendum making local elections non-partisan, and
21 that approach is consistent with what almost 100
22 percent of North Carolina's municipalities use, but
23 the Justice Department got it in its head to deny
24 pre-clearance. It thought that minority voters
25 wouldn't know which candidate to vote for if they
26 didn't have a party name next to the name on the

1 ballot, and that's just patronizing and it's wrong
2 and it shouldn't be part of the Section 5 review
3 process. Thank you very much.

4 CHAIR LHAMON: Thank you, Mr. Park. Mr. Choate?

5 MR. CHOATE: Madame Chair, Commissioners, thank you
6 very much for inviting me here today. I think I'm
7 your only elections professional. I'm certainly
8 your only bureaucrat who you're going to hear from
9 today. I take the label as bureaucrat as the
10 highest praise you're going to get because, unlike
11 some of the ways in which it has been disparaged
12 today, I don't have a constituency other than the
13 entire state of Colorado; I don't have a group of
14 people who voted for me, and a group of people that
15 voted against against me; I don't have people who
16 read my magazine or don't read my magazine; I don't
17 have people who support my point of view or fund my
18 organization. I do what's best for all the people
19 that live in my state. And I'm also very happy to
20 be on this panel because frankly the other panels
21 have kind of depressing. I like the idea of being
22 on the panel that talks about what we can do now
23 that we're in a post-Shelby environment. Let me
24 speak to some of those. I'm going to make a radical
25 proposition to you. I'm going to tell you that, I
26 don't believe that 4(b) is coming back and I don't

1 believe that we're going to have preclearance any
2 more after Shelby. So, what can we do within
3 federal law to shift to a new perspective on
4 access, and we do have some opportunities there
5 because elections are constructed around two
6 different principles. There two main elements of
7 elections. There's the voting element, which the
8 Voting Rights Act has sort of focused its
9 litigation around Voting Rights Act focused on
10 actual voting at the polls. But there's also an
11 incredibly important part of elections which is not
12 traditionally thought of in the realm of the Voting
13 Rights Act, which is registration and we do have a
14 federal law a pretty recent federal law --in the
15 last 25 years-- that deals with voter registration
16 and that's NVRA--the National Voting Registration
17 Act. And the NVRA is very underutilized. It has
18 language in it, which supports pretty significant -
19 different ways of thinking about voter
20 registration, which are currently not part of the
21 public conversation about elections. So, what is
22 motor voter? It was passed in 1993, it became law
23 in 1994, it links driver's license applications to
24 voter applications and it has specific language in
25 it, which encourages the registration of those who
26 apply for a driver's license or a state ID. So, I'm

1 you're only PowerPoint person of the day, but you
2 should have a document but I also have a
3 PowerPoint, and I'm going to show you the specific
4 language of the NVRA. So, this is 55 USC 20504.
5 This is the actual language out of that piece of
6 statute, and it's called "simultaneous application
7 for the voter registration and application for
8 motor vehicle driver's license." So that's not my
9 language. That's the language straight out of the
10 statute, and I'm going to read part of it to you,
11 and it says: "Each state motor vehicle driver's
12 application shall serve as an application for voter
13 registration." And that comes right after it says
14 simultaneous. So, the way I read that and the way
15 any kind of reasonable attorney would read that:
16 When you apply for a driver's license you are
17 simultaneously applying for a voter registration,
18 so you are registering to vote at the same time
19 you're registering for a driver's license. So, what
20 does that mean in practical application? In
21 practical application that means that every person
22 that applies for a driver's license, or by
23 extension a state ID, should be registering to
24 vote, and that's what we euphemistically call
25 automatic voter registration. Automatic Voter
26 Registration has been written into the law for the

1 last 25 years but we haven't been doing it. So,
2 there is a broader way to read the NVRA that hasn't
3 been applied in the majority of U.S. states. It was
4 first applied in 2014 in Oregon when they created a
5 automatic voter registration law. It's kind of a
6 complicated law and other states haven't adopted it
7 but there are a handful of states, Colorado
8 included who have adopted automatic voter
9 registration in a sort of more streamline kind way
10 that doesn't require the sort of follow-up contact.
11 But voter registration should be a part of
12 somebody's interaction at a driver's license
13 bureau. By the way, you might be asking, well, what
14 happens when I'm already registered or I already
15 have a driver's license? Well, they have a section
16 for that in the NVRA as well. Any change of address
17 form shall serve as notification of change of
18 address for voter registration. So if you already
19 have a driver's license and you're already
20 registered to vote and you make a change to your
21 driver's license, it should reflect simultaneously
22 as a update to your voter registration. That would
23 take care of the lion's share of voter registration
24 problems that we have in the United States and it
25 would help to increase the number of people who are
26 registered to vote. Colorado has the highest

1 percentage of voter registration in its eligible
2 population in the country -- almost 90 percent;
3 89.4 percent. One of the reasons why is because we
4 do this. Another reason is because we are in ERIC -
5 which was referenced earlier, the Electronic
6 Registration Information Center. The NVRA is a
7 really underutilized part of our federal statute,
8 which really could drives that percentage up. The
9 preclearance states, so the traditional southern
10 states all the way to Arizona, skipping New Mexico,
11 have some of the lowest percentages of registration
12 in the country, and if they adopted a reading of
13 the NVRA, which is clearly the language of the
14 NVRA, or if somebody really encouraged them to do
15 that, I don't know, say by filing a lawsuit, they
16 might drive up their registration and many of the
17 downstream problems that occur in the polling place
18 would be mitigated by the fact that they were
19 registered, and properly registered, and that that
20 information was updated on a routine basis. So, I
21 don't believe Shelby is going anywhere so let's go
22 around it. Let's make sure that everyone is
23 registered using the NVRA already existing
24 language. Let's give a population various ways to
25 vote. Colorado does mail voting, for the most part,
26 and that's another way you can get around some of

1 the polling place issues. Thank you.

2 CHAIR LHAMON: Thank you very much. Mr. Ho?

3 MR. HO: Chair Lhamon, members of the Commission,
4 thank you so much for holding this hearing today
5 and for inviting me to testify. My name is Dale Ho,
6 and I am the director of the ACLU's Voting Rights
7 Project. The right to vote is the cornerstone of
8 our democracy and we seek to protect it on equal
9 terms for all Americans, but that right is today
10 under siege. Almost immediately after Shelby County
11 seven states that were formerly covered by Section
12 5 enacted or implemented laws or administrative
13 practices that restricted voting or registration.
14 In addition to these statewide changes a study by
15 the Leadership Conference on Civil and Human Rights
16 - of 381 counties that were formerly covered by
17 Section 5 - found that about 43 percent had reduced
18 the number of polling locations with a total of 868
19 polling place closures in those counties alone.
20 Successful Section 2 litigation has been a ray of
21 light in states like Texas and North Carolina but
22 these cases put in stark relief what has been lost
23 with the demise in the preclearance system.
24 Litigation has been costly and has taken years, and
25 in the meantime, despite motions for preliminary
26 injunctions in these cases— several of which were

1 actually granted— multiple elections were held in
2 these states under rules that courts ultimately
3 determined were intentionally discriminatory and
4 thus unconstitutional. So simply put, since the
5 Shelby County decision we have a record of
6 constitutional violations necessitating a
7 congressional remedy. There are two bipartisan
8 proposals that seek to fill this gap: The Voting
9 Rights Amendments Act and the Voting Rights
10 Advancement Act, each of which would address the
11 gaps that we now have by subjecting states and
12 other jurisdictions with recent voting rights
13 violations to federal preclearance. Now, in the
14 meantime, Department of Justice has engaged in some
15 commendable work to enforce Section 2, but it could
16 have been doing and could be doing more in that
17 regard. Its voting section dwarfs the ACLU's voting
18 rights project, which I direct, but it has brought
19 fewer Section 2 cases since Shelby County than we
20 have. And unfortunately there are signs that DOJ
21 may be turning away from its historic mission of
22 promoting voter access. Now, in addition, to
23 abandoning its positions in Voting Rights
24 litigation out of Texas and Ohio, last year DOJ
25 requesting information on list-maintenance
26 practices from 44 states, a sweeping inquiry that

1 the former head of the DOJ's civil rights who
2 testified, Vanita Gupta, described as virtually
3 unprecedented. The timing of this request was also
4 suspect, coming on the same day as an infamous
5 demand by the now defunct Presidential commission
6 on Election Integrity for all 50 states' voter
7 rolls. One of my colleagues on this panel, Mr.
8 Park, has suggested in his written remarks that
9 DOJ's should actually be encouraging states to
10 engage in a more robust purging of their voting
11 rolls. And he referenced DOJ's opposition to a
12 voter purge program in Florida. And with all due
13 respect to Mr. Park, I think Florida actually
14 represents a cautionary tale about inaccurate and
15 overzealous purging. In 2012, Florida officials
16 claimed that nearly two hundred thousand registered
17 voters in the state may not be U.S. citizens, but
18 that number shrunk dramatically with the Secretary
19 of State's office sending a list of about 2,700
20 possible non-citizens on the voter rolls to County
21 Supervisors of Elections. But even that figure
22 collapses under scrutiny. PolitiFact confirmed that
23 a total of only 85 non-citizens were ultimately
24 removed from the rolls in a state of more than
25 eleven million registered voters, so we're talking
26 about 0.00077 percent of the registered voters in

1 that state. Now, meanwhile while all this was
2 happening, thousands of U.S. citizens were wrongly
3 designated as non-citizens and threatened with
4 removal from the rolls, and one was a Brooklyn-born
5 man named Bill Internicola, a World War II veteran
6 who had fought at the Battle of the Bulge. An
7 analysis conducted by the Miami Herald indicated
8 that 87 percent of those identified by the State as
9 noncitizens on the rolls were minorities and 58
10 percent were Hispanic; so, there's a racial
11 disproportionality that went along with this
12 inaccurate system. The U.S. Court of Appeals for
13 the Eleventh Circuit ultimately held that
14 legitimate voters in Florida "face a realistic
15 danger of being identified in the Secretary's
16 removal programs because of their names or status
17 as naturalized citizens" and ultimately ordered a
18 halt to the purge. You also heard a few comments
19 today about the Interstate Voter Registration
20 Crosscheck system, which to purports to compare
21 voter rolls across states. A team of researchers at
22 Stanford, Harvard, the University of Pennsylvania,
23 & Microsoft took a look at crosscheck and found
24 that it misidentifies supposed double voters about
25 99 percent of the time. Now, I went to law school
26 in part because I'm not very good at math, but that

1 sounds like not a very accurate system to me.
2 Crosscheck's user manual itself states that a
3 significant number of double voters are false
4 positives, and in very recent weeks there have been
5 non-stop revelations about significant lapses in
6 Crosscheck's data security protocols and practices.
7 Eight states, most recently Kentucky, have
8 therefore dropped out of the program. Now, to be
9 clear, I agree with the goal that we keep voter
10 rolls up-to-date and focus on reforms that improve
11 turnout. And the simplest way to facilitate both
12 goals is to do what Dr. Choate referenced, which is
13 to encourage automatic voter registration, which
14 updates the rolls when voters move. It's an
15 innovation that both maintains accuracy and helps
16 voters participate without unnecessary bureaucratic
17 headaches. As Dr. Choate noted, Oregon was the
18 first state to adopt a system like this, it saw its
19 turnout increase by four percentage points between
20 the 2012 and 2016 elections—that's the largest
21 increase in any state in the country. The largest
22 turnout increases in Oregon were among voters of
23 color. Now, between the novel interpretation of the
24 NVRA that we heard about moments ago and Senator
25 Leahy's proposed legislation, S.1353 on automatic
26 registration, we have multiple options to take this

1 experiment nationally. Now, in sum, our democracy
2 is more vibrant and truly representative when more
3 Americans participate. DOJ can do its part by
4 engaging in vigorous enforcement of the VRA and
5 NVRA and Congress can facilitate that work by
6 passing legislation that would restore the
7 preclearance process and boost participation more
8 broadly by encouraging automatic registration.
9 Thank you again for the opportunity to testify
10 today and I look forward to your questions.

11 CHAIR LHAMON: Thank you, Mr. Ho. Professor Minnite?

12 MS. MINNITE: Yes. Thank you very much to the
13 Commission for inviting me to testify. My name is
14 Lorraine Minnite. I'm an associate professor of
15 public policy at Rutgers University in Camden [New
16 Jersey] and I'm trained as a political scientist,
17 and I want to say, of course, that my views are my
18 own and not those of my employer. I also want to
19 flag that I have to leave a little early, but I'm
20 very happy to answer any questions you have by e-
21 mail, or however we can do that. I think in my
22 testimony I cited many of the examples that have
23 already been given about what has happened since
24 *Shelby County* with respect to changes in laws that
25 have ramped up restrictions to voting rights in the
26 last four-and-a-half years. I don't want to rehash

1 all those examples. I might add that Arizona, is a
2 state we haven't said much about, enacted a new
3 rule that makes it a felony to collect and turn in
4 another person's absentee ballot, even if the
5 person grants permission to do so. There are few
6 exceptions to that. But in addition, another study
7 found that, "...by sheer numbers and scale, Arizona
8 is the leading closer of polling places in the
9 aftermath of *Shelby*, with every county eliminating
10 polling places, most on a massive scale." These are
11 the kinds of changes, again, that other people have
12 pointed to, the sort of on-the-ground, granular
13 kinds of changes that might not show up, especially
14 if there's no litigation challenging them, but that
15 would have been blocked in the past under
16 preclearance. So I've written in my testimony that
17 I focus specifically on how the loss of pre-
18 clearance expands opportunities for imposing
19 partisan-motivated restrictions on minority access
20 to the ballot, which is a commonplace in U.S.
21 electoral history that I have written about in a
22 book called "Keeping Down the Black Vote: Race and
23 the Demobilization of American Voters." There, my
24 coauthors and I analyze U.S. electoral history,
25 explain the political and partisan logic of voter
26 suppression, and argue that restrictions intensify

1 when elections are hotly contested and when
2 operatives feel minorities will play a decisive
3 role in the outcomes. Historically, as we document
4 in the book, both of the two major political
5 parties have engaged in efforts to win elections by
6 suppressing minority votes. Importantly, they have
7 done so by advancing electoral rules that
8 disproportionately harm minority voters under the
9 false pretense of combating voter fraud, which is a
10 major focus of my scholarly research for the last
11 fifteen years. And in preparing my testimony I
12 tried to answer the questions that you put before
13 me, but I think perhaps my contribution could be
14 from the research that I've done on the incidence
15 of voter fraud and the uses of false allegations of
16 voter fraud to then justify the kinds of laws that
17 restrict access to the ballot, especially for
18 minority voters. I say that if the past is any
19 indicator of the future, the loss of Section 5,
20 which once blocked racially-targeted voter
21 suppression efforts, means that hundreds of
22 potentially racially discriminatory changes to
23 state election laws, some of them justified as
24 protections against alleged voter fraud, will go
25 forward, and the only recourse, you've heard from
26 many of the litigators who have testified before

1 you, is to challenge them on a case-by-case basis
2 and only after they've been implemented and caused
3 harm to minority voters. Thus, flagging one of my
4 simple recommendations for the Justice Department
5 or for you I guess in thinking about this, the
6 Justice Department must use all of the remaining
7 tools at its disposal as provided for in federal
8 voting laws, including the Voting Rights Act, the
9 National Voter Registration Act, the Uniform and
10 Overseas Citizens Absentee Voting Act, the Voting
11 Accessibility for the Elderly and Handicapped Act,
12 and the Help America Vote Act, to protect against
13 efforts to suppress minority voter access to the
14 ballot through avenues that have now opened up with
15 the elimination of preclearance, specifically: the
16 crafting of new voter registration and voter
17 identification rules that place a disproportionate
18 cost of compliance on minority and low-income
19 voters; polling place closures and relocations;
20 cutbacks on the accessibility of early voting
21 opportunities; restrictions on means and methods of
22 voter assistance; and restrictions on community
23 organizations and other organized activities to
24 promote voter registration and voting. Now, in
25 calling on the Justice Department to oversee and
26 correct partisan-influenced efforts to restrict

1 access to the ballot, we must be realistic. The
2 same politics that motivates efforts to exclude
3 certain voters with almost "surgical precision" --
4 as you have heard from the Fourth Circuit Court of
5 Appeals' decision - can also infect the nation's
6 highest law enforcement agency. Experience teaches
7 us this. One cause for worry is the new
8 administration and President Trump's unsupported
9 allegation that he lost the popular vote because
10 three to five million votes were cast illegally and
11 implausibly all against him. The President's
12 bizarre allegation raises grave concerns about the
13 current priorities guiding his Attorney General and
14 Justice Department in its voter access and voting
15 rights work. Now, I have no direct knowledge of
16 what the policy discussions are inside the Justice
17 Department, but we can look at some dramatic
18 examples that also have been noted and mentioned in
19 first supporting voter challenges to new
20 identification rules or aggressive voter list
21 purging, and then changing that position. The
22 tethering of party and racial divisions could drive
23 the Justice Department in a direction that is not
24 just neutral or even neglecting of the protections
25 still needed by minority voters. It could motivate
26 law enforcement decision-making toward a hostile

1 stance regarding expansion of voter access and the
2 protection of minority voting rights, in which law
3 enforcement is used to facilitate voter suppression
4 through the intimidation of black voters and voting
5 rights activists in the name of rooting out voter
6 fraud. I detailed in my written testimony two
7 examples of that. One as recent as ten years ago.
8 So to sum up, I said that one of my recommendations
9 was that the Justice Department should use existing
10 legal tools to promote registration and voting. The
11 second recommendation is that the Justice
12 Department should vigorously challenge rules that
13 restrict access to the ballot when they are
14 justified as protections against voter fraud in the
15 absence of a documented problem with fraudulent
16 voters. Thank you very much.

17 CHAIR LHAMON: Thank you, Professor Minnite. And I
18 deeply apologized for mispronouncing your name. I'm
19 sure you can imagine with a name like mine I'm very
20 sympathetic. I'll ask my fellow Commissioners who
21 have question for you to foreground those giving
22 your time. Go ahead, Mr. Vattamala.

23 MR. VATTAMALA: Thank you, Madame Chairwoman and
24 Commissioners. I think it's very important that you
25 have invited our organization, the Asian American
26 Legal Defense and Educational Fund here. It's

1 important to have the Asian American voice
2 included, because often times we are ignored. I am
3 the director of the Democracy Program at AALDEF.
4 AALDEF was founded in 1974. We are headquartered in
5 NY but we are a national organization. We seek to
6 protect the civil rights of Asian Americans through
7 litigation, through community, education,
8 organizing, and advocacy. In my testimony, you saw
9 I listed out some of the past discrimination and
10 historic discrimination against Asian Americans.
11 Many people are aware of the Chinese Exclusion Act
12 of 1882, prohibiting immigration and naturalization
13 of Chinese immigrants. Many people aren't aware
14 that that was not appealed until 1943, which is not
15 that long ago. Indian and Filipino immigrants could
16 not naturalize until 1946. And Korean and all other
17 Asian immigrants could not naturalize until 1952,
18 which is really not that long ago and we could not
19 immigrate to this country until - many of us not
20 until after the Immigration Act of 1965. So, I've
21 also outlined a bunch of discrimination and
22 historic discrimination that has prevented us from
23 the electoral - being included in the electoral
24 process in my testimony. AALDEF has conducted a
25 national Asian American exit poll and poll
26 monitoring program since 1988. There's a few

1 reasons for that. One of those is that Asian
2 Americans are often ignored from the political
3 discourse and that translates into us being ignored
4 by elected officials. But we also implemented this
5 program to document voting barriers that Asian
6 Americans face on Election Day. We have our
7 volunteers trained before Election Day to identify
8 voting problems and we are stationed outside of
9 both poll sites to approach Asian-American voters
10 after they've voted or been denied the right to
11 vote. In 2016 we surveyed almost 14,000 Asian
12 American voters in fourteen states and in
13 Washington, D.C. As consistent with prior
14 elections, hundreds, hundreds of Asian American
15 voters were required to prove their citizenship
16 before they were able to vote. Literally we had
17 interactions with voters who said they were told by
18 poll workers "you don't look like you're American";
19 "prove you're American to me." Most people do not
20 go to the poll cite with any proof of citizenship.
21 People don't walk around with their passport,
22 naturalization certificate, a birth certificate.
23 We've also had experiences where Asian-American
24 voters are disproportionately required to provide
25 ID where they are the only ones being asked for ID
26 and other voters are not and that's included in our

1 reports that are attached in my testimony. We have
2 seen numerous examples of violations of Section
3 203, required language minority assistance not
4 being implemented and Section 208 where voters are
5 being prevented from assistance from a person of
6 their choice inside the voting booth and we've also
7 even seen segregated voting lines. In 2012 in
8 Annandale, VA Asian American voters were segregated
9 into a Korean line and all other voters got to vote
10 on another line. Korean voters had to wait until
11 all other voters were done voting. It's not the
12 first time we have seen that, in 2004 in Boston's
13 Chinatown there was a Chinese voting line and a
14 line for everybody else. We intervened in a federal
15 lawsuit, a U.S. lawsuit in 2006 and were able to
16 achieve a consent decree where the city of Boston
17 was able to provide Chinese and Vietnamese language
18 assistance going forward. But these violations are
19 happening in every major election. We're talking
20 about Shelby County. There's been a lot of talk
21 about southern states being targeted. Well New York
22 City was covered under Section 5. Three boroughs -
23 The Bronx, Manhattan, and Brooklyn were covered
24 under Section 5. We also had coverage under Section
25 203 for Asian languages. In these jurisdictions
26 where you had double coverage, Section 5 and

1 Section 203 it' a valuable tool to protect Asian-
2 American voters. Through our exit polls we've seen
3 that just about a third, sometimes more, Asian-
4 American voters are limited English proficient.
5 These are American citizens that are eligible to
6 vote but many of them require election assistance.
7 Through Section 5 we're able to require the New
8 York City Board of Elections to fully translate the
9 ballot into Chinese. In 1990 when Chinese was
10 covered the New York City Board of Elections said
11 it could not do the translations because it would
12 not fit on the machine ballots. We were able to
13 show them that it does fit, and they said we can't
14 translate the candidate's name. Only because of
15 Section 5 and the DOJ at the time, interposing of
16 that objection. That required the city to translate
17 the ballot including transliterating candidates'
18 names, allowing 55,000 limited English proficient
19 Chinese-American voters to be able to cast a
20 ballot. In my testimony I also outlined other ways
21 we use Section 5 in NYC to protect Asian-American
22 voters. Poll site moves - and after 2001 in the
23 terrorist attack of 9/11, a poll site was
24 contemplated being moved without any notice to the
25 community only because of Section 5 and a request
26 for more information was that poll site required to

1 stay and people in the community allowed to cast
2 their ballot. Changes in methodology for school
3 board elections, changing in targeting methodology,
4 all those things was prevented from happening and
5 hurting Asian-American voters because of Section 5.
6 Again, I want to be clear, Section 5 did not only
7 protect African-American voters in the South. It
8 was protecting Asian voters in New York City. It
9 was very powerful and it is a shame we don't have
10 that protection right now because we still need to
11 protections. In 2013, just a week after Shelby
12 County, we sued the New York City Board of
13 Elections for not translating the ballots to
14 Bengali in Queens County, which was required under
15 Section 203. The NYC Board of Elections simply did
16 not do it. We had to sue them. We don't have the
17 notice - this was mentioned earlier - we don't have
18 the notice of violations of Section 203 and Section
19 208 that we may have had when we had in Shelby
20 County - prior to Shelby County. We have to do
21 these -- work with community-based organizations
22 and receive a notice from them or be apprised of it
23 ourselves to be aware and litigate these cases. We
24 sued the state of Texas after the 2014 midterm
25 elections for violating Section 208 of the voting
26 rights act, which allows you to bring somebody of

1 your choice inside the voting booth as long as it
2 is not your boss or union rep. It's a very simple
3 provision. States just need to gather away and
4 allow an LEP voter or a voter who has a disability
5 with a person of their choice. They couldn't even
6 comply with that. They fought us tooth and nail. At
7 the district court, we won there and we won in the
8 Fifth Circuit Court of Appeals. We asked DOJ to be
9 involved early on they were not. They were not. We
10 were pleased to see that they did submit an amicus
11 brief at the Fifth Circuit level but we need more
12 assistance from the DOJ in bringing 203 and 208
13 cases because it's are sorely needed and we do
14 support the Voting Rights Amendment Act and the
15 Voting Rights Enhancement Act that will give us
16 some coverage because we currently have no
17 coverage. That is just simply unacceptable.

18 CHAIR LHAMON: Thank you, Mr. Vattamala. Mr. Lopez?

19 MR. LOPEZ: Good afternoon, Madam Chair and
20 Commissioners. Thank you for being here and for
21 having me. I'm mindful that I'm the last panelist,
22 on the last panel of the whole day. My name is
23 Tomas Lopez and I'm the executive director of
24 Democracy North Carolina. We are nonpartisan
25 organization that uses research, organizing, and
26 advocacy to improve voter access and reduce the

1 negative influence of money in North Carolina's
2 political system. Immediately prior to joining this
3 organization, I was an attorney at the Brennan
4 Center for Justice at NYU School of Law, a national
5 organization with which I litigated federal voting
6 rights cases, advanced state-level litigation, and
7 participated in election law and administrative
8 research. Preclearance oversight served as
9 deterrent, prophylactic, and remedial functions
10 together, and they are together needed to protect
11 the right to vote at the state, local, and
12 individual levels. North Carolina is a telling
13 example of how their loss affects all three. Other
14 witnesses today have discussed the statewide impact
15 and in particular H589 and the Fourth Circuit's
16 holding in that case. I will use my time to
17 highlight the local and the individual.

18 First the local. Preclearance covered thousands of
19 counties and local jurisdictions, including forty
20 counties in North Carolina where Boards of
21 Elections hold substantial authority over voter
22 access, through among other things, polling sites
23 and early voting hours. From the 2016 election, I
24 would highlight dramatic reductions in early voting
25 hours in several counties. Gilford, which lost 660
26 hours of early voting across all of its sites,

1 Mecklenberg, the largest county in the state,
2 losing 282 hours, Brunswick, losing 165, Craven,
3 losing 141, Johnson, losing 124, Robeson, losing
4 121, and Jackson losing 113. Of these, Gilford,
5 Craven, and Robeson were previously covered under
6 Section 5 and Mecklenberg and Johnston had
7 significant black voting populations, which as of
8 2016, were 33 and 16 percent of all registered
9 voters in those counties, respectively. Second, I
10 want to address the individual level. Our research
11 agenda in Democracy North Carolina reports, among
12 other issues, how individuals experience voting
13 during early voting and on Election Day. That's a
14 perspective I want to make sure is represented on
15 these panels. With our work with the non-partisan
16 election protection coalition, we help led efforts
17 in the state to monitor that experience, assist
18 voters when they have issues and analyze them when
19 reported. And what voters reported to us in 2016
20 and in 2014 before that was an environment with
21 renewed intimidation. I will share some examples as
22 reported again to this organization and to the
23 press. In Johnston County a man was followed around
24 by a polling place worker until he cast his ballot.
25 The poll worker then told him, when he asked why he
26 was being followed that "things have changed." In a

1 formerly covered county, Wayne County, a local
2 African-American voter and local part official was
3 assisting a board in the County Board of Elections
4 when they reported the elections director yelled at
5 her for assisting voters, called her a troublemaker
6 and told her not to come back as she was leaving.
7 This person told the local paper that the director
8 told the local paper he was corrected the women's
9 overreach and offering assistance and that's a
10 claim that the complainant denied. In 2016 in
11 Pamlico County, an elderly white party volunteer
12 was handing out literature outside the County Board
13 Elections early voting site. A young man approached
14 and asked if she had a handicap sticker for the
15 car. When she said she didn't he shoved her down
16 and told her she would "if Hillary wins." She
17 suffered minor scrapes but did not want to press
18 charges. Finally, on Election Day in 2016 in that
19 same county Arcola reported driving past the
20 Bayboro precinct the same location as the county
21 Board of Elections' office, the only early voting
22 site in that county also, and seeing a black truck
23 with individuals holding a candidate sign saying
24 "go home N-word slurs" and the candidate will send
25 you back to Africa and then driving off. In 2016,
26 43 percent of the registered voters in that

1 district were African American. Preclearance would
2 not necessarily have stopped these individuals.
3 These are individual reports and part of a pattern.
4 I would urge the Commission to consider that the
5 law acts not only through its expressed functions
6 but in order to express this to the general public.
7 The failure to date to restore preclearance and the
8 recent retreat, as my fellow panelists mentioned in
9 federal oversight expresses the same message. That
10 voter access is simply not a priority for the
11 United States. That empowers people who cross
12 lines. It goes towards silencing others. That is
13 true here and the nation at large and speaks to the
14 need to restore the full protections of both the
15 VRA and its enforcement structure. Now, as far as
16 details how to do this, I would again echo my
17 fellow panelists who point to the legislation that
18 has been presented to Congress. I think these are
19 things that one of the earlier witnesses, Mr.
20 Rosenberg, discussed how frankly we're in a
21 position where we would like to have this
22 discussed. We understand this is something that
23 will have to be hashed out. I'll also say add I
24 appreciate the reminder from Secretary Choate and
25 others that our voting rights enforcement structure
26 is more than just the Voters' Rights Act. It's the

1 NVRA, and it's UOCAVA, it's the HAVA, it's the ADA.
2 I would urge this Commission in considering what to
3 do in terms of presenting solutions to move forward
4 to keep that in mind as well. Thank you.

5 CHAIR LHAMON: Thank you, Mr. Lopez. I'll open up
6 the panel for discussion.

7 COMMISSIONER YAKI: Thank you very much. On behalf
8 of the Chair and myself I would like to say hello
9 to all the Yale alumni on the panel there are three
10 of you -- and it's good to see that we are
11 overrepresented as always in the nontraditional
12 fields of study. I have a question for Mr. Ho and
13 Mr. Lopez, not just because you both are from Yale
14 Law School, but when it comes to either the Voting
15 Rights Amendments Act or the Voting Rights
16 Advancement Act, which one do you think now best
17 fits the situation that you're seeing in terms of
18 the state of litigation and the state of play with
19 regard to the problems that you see post-Shelby?

20 MR. HO: Thank you for the question, Commissioner
21 Yaki. Either Act would be a vast improvement over
22 what we have today because both acts would restore
23 the preclearance process. One thing that I noted in
24 my written submission to the Commission that I
25 think is valuable of both Acts is that they
26 establish preclearance based on voting rights'

1 violations of various kinds in recent years. So,
2 for instance, sometimes we talk about Section 2
3 litigation comparing that states have more Section
4 2 litigation vs. those that don't. That's a useful
5 way I think of starting to understand the problem
6 of where the rights are more frequent but it
7 doesn't capture everything. There are lots of
8 violations under the Voter Registration Act, under
9 Section 203, 208, that there are constitutional
10 claims for racially gerrymandering. We've seen
11 cases out of North Carolina, Virginia, that aren't
12 captured when we look just exclusively at Section 2
13 cases. So both acts have the benefit of casting a
14 broader net. I would say of the two, the Voting
15 Rights Advancement Act is the more -- provides for
16 more of a robust protections. It subjects
17 jurisdictions to pre-clearance based on violations
18 during a slightly longer period of time than the
19 Voting Rights Amendment Act. Most recently in 2015,
20 the Advancement Act was co-sponsored by Senator
21 Murkowski in Alaska. It has had bipartisan support
22 at times in Congress and of the two acts I think it
23 provides the stronger protections.

24 MR. LOPEZ: I would echo Mr. Ho's comments, I would
25 also say that Democracy North Carolina to my
26 knowledge has not formally endorsed either one of

1 these so I wouldn't want to go into too much detail
2 except to say we want enforcement that is as robust
3 as possible and also takes into account recent
4 violations like those that we've seen in North
5 Carolina.

6 COMMISSIONER YAKI: Just a quick question for Mr.
7 Choate. The panelists before you drew some example
8 of the pairing of voter registration driver's
9 license and alleged that there could be some abuse
10 in that situation. Could you respond to that?

11 MR. CHOATE: In a noncitizen perspective? So I can
12 speak about the real ID states, which is not every
13 state. In Colorado in order to get a driver's
14 license you have to supply two forms of ID that are
15 very high bars: either a previously-issued driver's
16 license from another state, a passport, birth
17 certificate, some combination of those elements, so
18 if you don't produce those in Colorado, and I think
19 in all the other real ID states they would take
20 note of the fact that you didn't supply those you
21 would, again in our regime, they put a -- there's a
22 column in the information we received from the
23 Department of Revenue, from our DMV, that lists the
24 documents that they did show. Those are typically a
25 travel visa, a work visa, a marriage visa, a green
26 card, and we get these codes and so we can see that

1 somebody is not eligible and we have it built into
2 our online voter registration system so if you try
3 to register online, and that happens, you're going
4 to get rejected. And then we also do a monthly
5 review where we take our entire voter registration
6 list and we run it against the DMV list with that
7 column. If anybody has comes out as having
8 registered in the last thirty days that has one of
9 these elements of the column we asked them: "Hey,
10 did you mean to do this - mean to register?" And in
11 many cases they say "yes, I did mean to register
12 because I'm a U.S. citizen now" and only rarely is
13 it the case that they're not a U.S. citizen, so
14 it's actually often somebody will show a document
15 when they're getting their driver's license which
16 is a document that suggests that they're not a U.S.
17 citizen or they did that in 2012 and subsequently
18 they become a U.S. citizen, so often that's where
19 the hang-up is, that's where the confusion comes,
20 but there are very few people in our review of our
21 lists that are not U.S. citizens who are registered
22 to vote.

23 CHAIR LHAMON: Commissioner Narasaki?

24 COMMISSIONER NARASAKI: So Mr. Lopez, in a lot of
25 states after Shelby passed I know that there are
26 community- based organizations such as yours set-up

1 efforts to be able to monitor boards of elections
2 or whatever that kind of grouping that is in that
3 particular state. Did that happen in North Carolina
4 and how much work has that been and how important
5 has that been in terms of replacing the fact that
6 there's now no notice requirement because there is
7 no Section 5 application.

8 MR. LOPEZ: Thank you for raising that question,
9 Commissioner. We've devoted considerable resources
10 to ground-level work over the past several years.
11 As a little bit of background, our organization is
12 based in Durham but has five offices around the
13 state where we are working in some years as many of
14 sixty of North Carolina's one hundred counties.
15 I'll share an example of our monitoring work from
16 the 2016 election. After the Fourth Circuit's
17 decision invalidating H589, it was -- we worked
18 with advocates on the ground to try to add and
19 restore early voting hours, targeting 60 counties
20 around that state and successfully did so in over
21 40 of those counties and it was in some cases some
22 very low population counties where it wasn't
23 necessarily a large group of people that needed to
24 make their presence heard. It was also the case
25 that these are places where in fact without a
26 notice requirement the county Board of Elections

1 may proceed with its activities without much public
2 oversight.

3 MR. CHOATE: I'd like to comment on that as well.

4 CHAIR LHAMON: Yes, Mr. Choate?

5 MR. CHOATE: Under Colorado law they have to post
6 where a polling place is going to be prior to an
7 election and there is an opportunity for a member
8 of the public to challenge where a location is. I
9 think that's not an unusual law in state
10 government. So, one of the opportunities that's
11 available where Shelby does pretty significant
12 damage to the Voting Rights Act is that you can
13 kind of incorporate that into your state law and
14 many states either formally had it before the
15 Voting Rights Act had its Shelby or subsequently
16 put something like that into their law—either
17 requiring public disclosure or even public hearing
18 at the locations which are chosen, so that's
19 another avenue that states have given the
20 limitations of the Voting Rights Act now post-
21 Shelby, is that they can just put it in their own
22 law.

23 COMMISSIONER NARASAKI: We actually had the
24 Secretary of State from Alabama on the panel
25 before. Are there any associations of elections
26 officials that are tracking that and could provide

1 data to our staff so we could look and see?

2 MR. CHOATE: Good question. There is an organization
3 called NCSL, the National Center for State
4 Legislators, which typically keeps that kind of
5 information. Wendy Underhill is the director of the
6 election section. She's a really good researcher.
7 That's the kind of thing I would ask Wendy and I
8 would guess within three weeks you would have it,
9 so I would recommend that you pursue that with the
10 NCSL.

11 COMMISSIONER NARASAKI: Thank you. Mr. Vattamala,
12 you reference your litigation about Section 208 in
13 Texas. Can you get a little bit more specifics
14 about what the actual issue was in terms of Texas
15 was not allowing that you felt was a violation?

16 MR. VATTAMALA: Sure. Yes. The state Texas law that
17 required law required all interpreters to be a
18 registered voter in the county in which they were
19 providing their service. Section 208 has no such
20 restriction. This was particularly problematic for
21 Asian American voters because, as I mentioned,
22 there's such a high percentage of LEP Asian voters
23 within the Asian American electorate and in a place
24 like Texas, prior to 2016 only one county was
25 covered for Asian language assistance, Harris
26 County, so all other Asian Americans voter within

1 the state of Texas had to rely on Section 208, for
2 language assistance rather than 203 and low and
3 behold we had a voter after their experience in
4 2014, she was a south Asian voter who was prevented
5 from being assisted by her adult son because she
6 was registered in the neighboring county where he
7 went to school. So, the law's pretty clear on its
8 face. The state law was clear on its face that it
9 violated 208. The county settled with us relatively
10 quickly, Williamson County, But the state litigated
11 all the way through to the 5th Circuit and we were
12 successful there. The Court found there was a
13 direct violation of Section 208.

14 COMMISSIONER NARASAKI: And we had earlier some
15 testimony by a panelist today about the importance
16 of observers. Can you talk about how that plays out
17 in terms of your effort that the laws are enforced
18 for Asian Americans?

19 MR. VATTAMALA: We're able to cover a certain amount
20 of ground, through our exit poll and poll-
21 monitoring project, but we're not able to cover
22 every jurisdiction that's covered under Section
23 203. There are jurisdictions all across the country
24 that are covered, a new list comes out every five
25 years. The last list came out in 2016. We have
26 newly covered jurisdictions in Lowell,

1 Massachusetts and Malden Massachusetts, Middlesex
2 County, New Jersey, Fairfax County, Virginia, and
3 Tarrant County, Texas. In addition to all the other
4 jurisdictions that were already covered, remain
5 covered under 203, it's crucial that we have
6 observers in those other locations where we are not
7 able to cover because we had some violations:
8 signage not being put up, poll workers refusing to
9 provide the language assistance that's required,
10 interpreters that are not given table and chairs to
11 sit at, interpreters assigned in the wrong
12 languages. In New York when Chinese was covered we
13 had Mandarin speaking interpreters in Chinatown
14 where everybody spoke Cantonese. We had Cantonese
15 interpreters in Flushing, Queens where everybody
16 spoke Mandarin and they came back and said isn't
17 that the same thing? After 2000 when Korean was
18 covered in Queens County we had Korean interpreters
19 in Chinatown and Chinese interpreters in Korean
20 speaking neighborhoods. So we had to sue the New
21 York City Board of Elections in 2006 for failure to
22 comply with Section 203 for Chinese and Korean
23 language assistance. And to this day we have an
24 understanding with them connected to a memorandum
25 of understanding with them connect to that
26 litigation. So, we have to have the observers there

1 even in a place where we are especially when we're
2 not because we have seen the violations that
3 continue to happen and they're only going to get
4 worse.

5 COMMISSIONER NARASAKI: And it's my understanding
6 that there are several states that in fact unless
7 you elected or somehow some party presentative or
8 elected - or somehow party officials are allowed to
9 be actually in the polling place and observe but
10 everyone else has to be outside the polling place
11 so it's harder to see what is going on?

12 MR. VATTAMALA: Right. It's really across the board.
13 Some states allow us within the no electioneering
14 zone within the poll site to allow us to observe
15 and other states we're not allowed within the no
16 electioneering zone so we have to rely on voters
17 telling us what's happening inside the poll site.
18 It's very problematic, and it would be helpful to
19 have a DOJ representative in there when we're not
20 allowed inside.

21 COMMISSIONER NARASAKI: This next question is kind
22 of wonky, but earlier today we had reference to the
23 fact that there are bail-out provisions in the
24 current Voting Rights Act, if you were covered
25 there were certain -- if you wanted to file to get
26 out of coverage you had to meet certain conditions

1 and if you did you could get out yet, obviously the
2 Chief Justice was very concerned in Shelby about
3 unfairness to states that he felt may be weren't
4 bad actors and were being unduly burdened. So, I'm
5 wondering if perhaps Mr. Ho thought about what
6 should that provision look like to try to meet the
7 Chief Justice's concerns about that.

8 MR. HO: Well, I can speak a little bit about the
9 bail-out provision as it existed before the Shelby
10 County decision. The bail-out provision was used to
11 bail out a number of counties before the 2006
12 reauthorization and afterwards. Afterwards a state
13 bailed out for the first time: New Hampshire. My
14 recollection is there had never been a denial of a
15 bail-out request -- prior to the Shelby County
16 decision so the issue does not appear to be whether
17 or not it was unduly onerous to bail- out, but
18 whether or not bail-out was being used frequently
19 enough do that jurisdictions may be - - where
20 preclearance - - was no longer required. I haven't
21 given thought today to the question of what could
22 be done with a new bail-out provision that might
23 encourage usage more frequently, but what I will
24 say is that the new bills or the bills that have
25 been proposed to bring preclearance back are based
26 on a record of recent voting rights violations in

1 particular states so encouraging jurisdictions to
2 bail-out may have been an issue say in 2006 when
3 you're reauthorizing a formula that had been
4 previously reauthorized in 1982, but if you're
5 starting with a new formula in 2018 or '19 or
6 something like that, then I think encouraging
7 jurisdictions to bail out right away, right after
8 you told them that they should be subject to
9 preclearance may not be the most pressing issue.

10 COMMISSIONER NARASAKI: My last question is, Ms.
11 Minnite -- hopefully I said that correctly, people
12 screw up my name all the time -- you reference the
13 fact that we asked very specific questions which
14 may or may not have fit with a lot of the expertise
15 you could bring to the table and staff would be
16 very interested in the submission of the
17 information you have about the issue of fraud
18 that's come up numerous times in this hearing. I
19 would invite you to please submit what you think to
20 be useful to the staff and I'm sure staff will be
21 following up with you.

22 MS. MINNITE: [nods in agreement]

23 CHAIR LHAMON: We didn't get your commitment in the
24 transcript and we would like to have that.

25 MS. MINNITE: I'd be happy to do that.

26 CHAIR LHAMON: Commissioner Adegbile?

1 COMMISSIONER ADEGBILE: Mr. Ho, I have a couple of
2 questions for you. Can you explain to us the
3 relationship, to the extent there is one, between
4 private counsel and DOJ's enforcement efforts. So
5 the aegis of this hearing is looking at that
6 statutory enforcement report of DOJ's voting rights
7 act enforcement. As I understand the regime, DOJ
8 has power to bring cases but the private part does
9 too. Could you help us understand the relationship
10 between what DOJ does and what the private part
11 does and how the statute overall has been enforced?

12 MR. HO: Both the VRA and the NVRA and other federal
13 voting rights protections contemplate both that The
14 Department of Justice will bring enforcement
15 actions but also create private rights of action
16 for private citizens represented by their own
17 attorneys to bring actions to enforce those
18 protections. Now DOJ is tasked with enforcing both
19 the VRA and DOJ and one would assume that as, you
20 know, the agency that's led by the Attorney General
21 who represents the people of the United States that
22 DOJ would be the chief enforcer of those two
23 statutes. The Department of Justice, however, I
24 think has brought since 2014 a single case under
25 the Voting Rights Act. One earlier this year --I'm
26 sorry, in 2017, and a single case under the

1 National Voter Registration Act, one in my home
2 state of NY last year.

3 COMMISSIONER ADEGBILE: Do you understand the
4 private bar and the DOJ have the same resources to
5 apply to these efforts?

6 MR. HO: No at all. Private citizens - voting rights
7 cases are very expensive. We've hear this refrain
8 numerous times. Particularly Section 2 of the
9 Voting Rights Act frequently require testimony from
10 multiple experts. I can speak from my own
11 experience that these cases easily run in six
12 figures, in terms of expert expenses alone, so for
13 a private citizen to bear that cost, it's
14 essentially impossible. It does obviously happen
15 that private organizations like the ACLU, like the
16 NAACP LDF, Brennan Center, MALDEF, and NARF can
17 bring some cases but we do not have the resources
18 either in terms of the financial resources or the
19 person power that the Department of Justice does
20 and I think it speaks volumes in terms of how
21 aggressive DOJ has been in protecting voting rights
22 when an organization like mine has brought four
23 more Section 2 cases than DOJ has in the last five
24 years.

25 MR. ADEGBILE: An earlier a panelist suggested that
26 preliminarily injunction in context of Section 2

1 litigation and the 3(C) remedy, very often voting
2 lawyers speak a language that only they understand.
3 There's been a great deal of talk about the 3(C)
4 remedy. I'm quite sure there are about twelve
5 people in that nation that know what means, we
6 might be up to fifteen because we had a lunch
7 break. To the extent you can, can you help us
8 understand what this mysterious 3(C) remedy and
9 are those two things, the 3(C) remedy and the
10 preliminary injunction under Section 2 or a
11 constitutional challenge a substitute for what has
12 been lost in Shelby?

13 MR. HO: I'd be happy to address both of those
14 questions. Let me start with the piece on
15 preliminary injunctions. One of the things that you
16 hear from frequently from voting rights advocates
17 is that voting is different. I believe Justin
18 Levitt, the former Deputy Assistant Attorney
19 General for Civil Rights testified to that effect
20 earlier today. If you're discriminated against in
21 the employment context, for example, it's obviously
22 a terrible thing, but you can be compensated and
23 made whole after the fact, right? If you're denied
24 a pay or promotion, you can get that back pay and
25 interest and be made whole. When it comes to voting
26 rights, that's not really the case. If an election

1 takes place under a discriminatory or otherwise
2 unlawful regime, there's no way to get that
3 election back, to rerun it and vindicate and get
4 your voting rights back after the fact. That's one
5 of the reasons why preclearance was so important,
6 Now, we heard that during the Shelby County
7 decision that maybe you don't need clearance - or
8 during the Shelby County argument I should say,
9 maybe we don't need preclearance anymore, which
10 freezes the status quo and requires jurisdictions
11 to show that their changes to voting laws are
12 nondiscriminatory before those changes go into
13 effect because you can always seek a preliminary
14 injunction in the voting rights case. You've heard
15 this refrain many times both in the 2006
16 reauthorization and around the time of the Shelby
17 County decision. Well, after Shelby County we
18 tried. We brought voting rights litigation in
19 numerous states. Places like Wisconsin, North
20 Carolina, other organizations brought cases in
21 Texas. We brought a case in Ohio. In a number of
22 these cases preliminarily injunctions were granted.
23 Yet still, the litigation took so long or the
24 preliminary injunctions were granted too close to
25 an election to be enforced in time for that
26 election, that we had elections take place under

1 regimes that were preliminarily determined to be
2 illegal, and then subsequently on final judgments
3 from the Court either after summary judgment or
4 after trial were determined to be illegal. In some
5 cases laws, there were determined by courts to have
6 been enacted with intentional discriminatory
7 purpose, which is unconstitutional, and thus we
8 have unconstitutional elections, violations that
9 took place that went unchecked for which there was
10 no remedy. It was simply tough luck and that's
11 precisely why -- I think that record shows that
12 preliminarily relief under other provisions of the
13 Voters' Right Act as been inadequate to the task
14 and why further congressional remedies are
15 necessary in this context. Now we've heard also
16 about bail-in, your second question Commission
17 Adegbile. The 3(C) of the Voting Rights Act permits
18 courts to order that jurisdictions found to have
19 violated the 14th and 15th Amendments to be subject
20 once again to the federal preclearance process.
21 It's a good thing that bail-in exists. No one I
22 think would say that it's a bad idea, but I think
23 it's important to remember that the standard for
24 bringing a jurisdiction into preclearance under the
25 bail-in provision is quite high. We have to show a
26 constitutional violation in the form of

1 discriminatory intent. Now, in 1982 the VRA was
2 amended, we're talking over 30 years ago, by
3 Congress and that amendment was signed into law by
4 President Reagan, which created a results standard
5 under Section 2 of the Voting Rights Act based in
6 part on the theory that those who would violate
7 voting rights frequently no longer advertise their
8 intentions and that a results standard would be
9 necessary in order to relieve plaintiffs of the
10 burden of having to be mind-readers and proving
11 discriminatory intent. So, for 35 years there's
12 been a recognition in federal law that proving
13 discriminatory intent is an extremely high bar, and
14 since that's the bar that you need to clear in
15 order to obtain bail-in, it's really not something
16 that is accessible to litigants in a way that can
17 meet the need for greater federal supervision of
18 voting rights.

19 COMMISSIONER ADEGBILE: One more for you, Mr. Ho.
20 We've heard also over the course of the day about
21 voting changes with respect to polling places, so
22 my question here is twofold. I think lots of people
23 would probably believe that a change in polling
24 place is sort of a rudimentary voting change that
25 election officials should be able to make and it's
26 not immediately clear why that raises questions of

1 voting discrimination. And so, if you could help us
2 understand, does it or does it not -- does it
3 depend on the context of? What the issue there, and
4 then separately to the extent there may be an issue
5 under the VRA, is Section 2 an adequate remedy to
6 deal with that type of voting change as opposed to
7 a law that is going to take place over a period of
8 time and is advertised the way in which that type
9 of voting change occurs.

10 MR. HO: Thank you for that question. Obviously
11 polling places -- the location of polling places can
12 change for a number of reasons of cases. No one is
13 suggesting that every change of a polling location
14 or closure of a polling place is in and of itself
15 discriminatory, but it can be under certain
16 circumstances, right? If polling places are being
17 located less frequently in predominantly minority
18 or low-income neighborhoods that can impose a great
19 burden on voters from that neighborhoods when it
20 comes to voting on Election Day. Fewer polling
21 locations can also translate into longer lines on
22 Election Day, which is the detriment of all voters.
23 I think if you look at the 2016 primary. Arizona's
24 Maricopa County closed a number of polling places,
25 dozens of polling places, a move that certainly
26 been reviewed under Section 5 percleanrace process,

1 and the result was routinely line stretched or five
2 hours during primary election in 2016. So, polling
3 places moving can be a significant problem. Now,
4 Section 2 relief isn't adequate to the task for
5 this for at least two reasons. The first is that,
6 as I mentioned before, Section 2 litigation is
7 quite expensive, you have to prove not only a
8 discriminatory result, you have to prove a number
9 of factors of the jurisdiction itself and racial
10 context of the political landscape in that
11 jurisdiction, and, you know, I've never seen a
12 Section 2 case brought over the decision to move or
13 close a single polling place. The second problem is
14 that, as I think the Arizona example demonstrates,
15 we frequently don't learn about these problems
16 until after the fact. It was not I think a well-
17 known fact that Maricopa County had reduced its
18 polling places so dramatically before the 2016
19 primary. The long lines that we saw as a result
20 happened on election Day and if a Section 2 were
21 brought at that time, it was too late. People
22 already had to wait four or five hours to vote.
23 Those that couldn't do that because of their work
24 or family responsibility or simply because they
25 couldn't stand in line for five hours, they lost
26 their voting rights in that election.

1 COMMISSIONER ADEGBILE: Mr. Vattamala, Section 203,
2 the language assistance provisions, they're
3 designed to create greater access for eligible
4 voters; that means citizens in the feral context.
5 Can you explain to us why such a provision is
6 important in terms of providing access to the vote?

7 MR. VATTAMALA: As you mentioned, and as you
8 mentioned as well, these are American citizens that
9 are eligible to vote. Through our exit polling some
10 interesting numbers come out. More than three
11 quarters of all of the voters that we survey in
12 2016 it was about 14,000 voters across fourteen
13 states and Washington, D.C. One of the three-
14 quarters were naturalized citizens and about a
15 third are limited English proficient voters and the
16 number of first-time voters is very high. Asian
17 Americans or Asians coming to this country, the
18 largest segment of new immigrants are the fastest-
19 growing racial group in this country so this
20 language assistance provision is key to allowing
21 these American citizens the ability to cast a
22 ballot. Otherwise many of them would not be able to
23 because they are not able to understand the ballot.

24 COMMISSIONER ADEGBILE: Last question: Professor
25 Minnite, you spoke a little bit to the fact that
26 sometimes both parties are responsible for

1 targeting or being found to have taken steps that
2 affect minority voters -- today we've heard some
3 suggestions that the Voting Rights Act is somehow
4 unworkable because it's a vehicle of partisan
5 warfare. I'm interested in your views about whether
6 the Voting Rights Act is in fact a vehicle of
7 partisan warfare or instead is a law designed to
8 protect the civil rights of minority voters and
9 what you have understand that history to have been.

10 MS. MINNITE: I think it's important for purposes of
11 analysis to separate partisan logics from the
12 struggle for the right to vote and the history of
13 racism and race relations in the United States. The
14 fact that today one party may be seem to "benefit"
15 from laws that try to expand access to voting and
16 the other party engages in pressing for laws that
17 are seen to constrict access means that there's an
18 overlay of race and party, and I think people don't
19 make the separation that they need to in looking at
20 that. In other words, I think the the Voting Rights
21 Act is about extending access, and my
22 recommendation about the Justice Department
23 enforcing laws that expand access, the metric is,
24 does it expand access or does it restrict access on
25 the argument that we need to do that to protect
26 against voter fraud, because that is the frequent,

1 common justification for these laws, for voter ID
2 laws and other laws that are seen to restrict
3 access: the claim is that it's needed to protect
4 against voter fraud without a showing that there is
5 voter fraud. I would point you to look at the
6 legislative record in every state that has recently
7 adopted a voter ID law. You will not find that
8 evidence entered into the record. You will not find
9 that evidence entered into the court cases that are
10 challenging voter ID laws, either. The argument
11 about voter fraud has been one that's been put to
12 good partisan use. The victims of it have been
13 racial minorities. Racial minorities -- if African
14 Americans are giving 90 percent of their votes to
15 the Democratic Party, that doesn't mean they can be
16 targeted for vote suppression as Democrats. So, I
17 think it's important to try to keep two ideas in
18 your head at the same time. One is there's a
19 partisan logic by which both parties could try to
20 win elections by suppressing the votes of their
21 opponents, the voter constituency that they
22 perceive to be voting for their opponents. That's
23 the logic of our two-party system and the kind of
24 electoral-representative system that we have. The
25 issue of access to the vote and the history of the
26 suppression of votes for racial minorities has to

1 be seen in that context. There's a partisan
2 struggle. If African Americans are targeted and the
3 reason being that they're Democrats, it's just not
4 acceptable. So, I know it's complicated, and
5 partisans have made this argument, that they are
6 not targeting African Americans, they're targeting
7 Democrats. That's not acceptable either. Just
8 because you're a Democrat you shouldn't be allowed
9 to vote? So, I see the Voting Rights Act as part of
10 the struggle for more than a century of African
11 Americans to have the dignity of full citizenship
12 in the United States and have the enforcement of
13 the 14th and 15th Amendment in law. That's how I
14 view what the Voting Rights Act is. That one party
15 benefits by expanding by access, and the other
16 party benefits by constricting it has to be seen in
17 the context of the broader issues here and
18 Democratic norms and Democratic practices that we
19 should pay attention to. We don't have a democracy
20 if some voters are targeted, whether they're
21 targeted because of the party they vote for or the
22 color of their skin. The Voting Rights Act protects
23 people based on race and language minority status
24 and so forth, not their party affiliation, but when
25 the two come together, you can't use the fact that
26 they're Democrats to say this is okay. We can

1 create laws that make it harder for Democrats to
2 vote.

3 MR. HO: May I offer add a few words? Discriminating
4 against people on the basis of their race is
5 prohibited by the Voting Rights Act and the
6 Constitution regardless of someone's motivation for
7 doing that. There was a decision from the Ninth
8 Circuit Court of Appeals, *Garza v. County of Los*
9 *Angeles* where one of the judges in that case made
10 an analogy to the days restrictive covenants.
11 People may have signed restrictive covenants
12 because they didn't want minorities in their
13 neighborhoods because they bore animus and hatred
14 towards racial minorities they may also have done
15 it because they thought racial minorities were bad
16 for property values. It didn't really matter why
17 they signed the racial restrictive covenant, it
18 constituted racial discrimination. S,o if
19 legislators are targeting voters on the basis of
20 their race, not because they hate people on the
21 basis of their race, but because they are concerned
22 by how those people might vote, that still
23 constitutes racial discrimination. It's not as if
24 there's sort of this neat line that divides race
25 and politics, and we can say well this is a
26 political issue not a race issue therefore race has

1 nothing to do with it. Race and politics has always
2 been intertwined and racial discrimination has
3 always been justified, in part, on the basis of the
4 policy consequences that follow from racially
5 exclusionary policies.

6 CHAIR LHAMON: Thanks very much. I think on that
7 note we will end this panel and our panels for the
8 day. Thank you again for powerful testimony, I
9 really appreciate it. I want to remind people you
10 can sign up again still for the second of the
11 public comment periods and all participants in the
12 open public comment period should report back here
13 at 5:30pm to be prepared. We'll recess ourselves
14 till 6:00 p.m. And those who would like at the stay
15 for the public comment period the sign-up is in the
16 next room. Thanks very much and thank to all of the
17 panelists.

18 (Recess taken at about 4:20 p.m.)

19 (On the record at about 7:57 p.m.)

20 CHAIR LHAMON: Welcome back, everyone. We're now
21 ready to proceed with the public comment period.
22 We're going to give a few opening instructions,
23 which has been provided, which I believe to each
24 participant. First, please tailor your remarks to
25 the topic, of today's briefing, that being voting
26 access and voting rights. Please state your name

1 for the record. Please note that the U.S.
2 Commission on Civil Rights has the policy not to
3 defame or degrade or incriminate any person. Also,
4 this comment period is a time for Commissioners to
5 listen, not to engage in questions or discussion
6 with presenters. We appreciate your testimony, and
7 are eager to hear it so, we will not take your
8 short time with questions or dialogue. You will
9 have three minutes to speak, which will be measured
10 by a timer. Please notice the box with the three
11 lights. When the light turns from green to yellow
12 that means two minutes remain. When the light turns
13 red you should conclude your statement and if you
14 do not conclude I will cut you off in order to
15 allow as many participants as possible in this open
16 comment period. If you have not finished or would
17 like to submit additional comments for us to
18 review, we encourage you to do so by mailing
19 written submission to us or emailing us at the
20 addresses provided on the information sheet. The
21 due date for those submissions is Monday, March
22 19th, 2018. While awaiting your turn, please sit in
23 a numbered chair that corresponds with your ticket.
24 In order to reduce time between speakers we ask
25 that you move forward to the microphones before the
26 speaker in front of you has finished and a staff

1 director -- member will direct you when to come
2 forward. If you need to step out briefly before it
3 is your turn to speak to use the rest room or
4 otherwise, please let us know and so you do not
5 lose your place in line. Sign interpreters will
6 continue signing during the presentations and if
7 you need additional accommodations while speaking
8 please let us know. If you have any questions
9 please ask a staff member. And with that, we will
10 began with the open comment period. I invite the
11 first - Oh, I'm sorry, Commissioner Adegbile?

12 COMMISSIONER ADEGBILE: We would just like to thank
13 all of you in advance for giving us your time and
14 your willingness to share that time on this
15 important topic. Thank you.

16 CHAIR LHAMON: Thank you. With that we will have the
17 first commenter begin.

18 MR. DELANCY: Good evening. I'm Jay Delancy,
19 president of a recently formed national group
20 called Election Integrity Alliance and Director of
21 North Carolina's Voter Integrity Project. In 2012
22 we had alerted elections officials to 30,000
23 deceased voters still on our voter rolls. We also
24 presented evidence of 147 people who voted in two
25 or more states in the 2012 general election.
26 Besides a paltry three felony prosecutions, the

1 only reward election officials gave us for this
2 groundbreaking research was to lock down the public
3 data. This way nobody could ever embarrass them
4 like that again. On another occasion we challenged
5 more than five hundred Wake County voters who were
6 disqualified from jury duty after they told the
7 Court they were not U.S. citizens. Besides the
8 Brennan Center immediately calling us racist vote
9 suppressors, the only reward we got from election
10 officials was from them to deny our evidence and
11 deny our challenges. This was after the DMV had
12 confirmed the accuracy of some of our cases. Then
13 the courts intervened, or rather invented new rules
14 to prevent our further research in this area.
15 Commissioners, we the people of North Carolina, we
16 the people of fly-over country here, want open and
17 honest elections but fraud-friendly federal
18 election law prevent it. The effect of VRA, NVRA,
19 and Help American Vote Act is that enterprise level
20 vote fraud is easy to commit, it's hard to detect,
21 and impossible to prosecute. We know this because
22 we've seen it. Over the past six years we've
23 encountered dozens of very credible people who
24 witnessed the kind of voter impersonation fraud
25 that a state-issued photo ID would have prevented.
26 You might even wonder where are they tonight. Well,

1 but thanks to this commission's byzantine speaker
2 sign-up rules, many of our most powerful witnesses
3 could not testify tonight. You see, they have jobs.
4 They couldn't sit here all day. In fact, judging
5 from the effect of your rules based on speaker
6 rules seem to be written with surgical precision to
7 suppress the voices of people who have jobs. As a
8 result you will hear from us but you'll only hear
9 from a few of us. So in closing, this Commission
10 owes an explanation to the people of North
11 Carolina. Why did this Commission design public
12 comment rules such that a person with a day job
13 could not testify at a six p.m. hearing?

14 CHAIR LHAMON: We will hear from the next speaker.

15 MR. NAILE: My name is Ed Naile. I'm chairman of the
16 Coalition of New Hampshire Taxpayers. Thanks for
17 letting me pop in here today. We are a taxpayer
18 group that normally deals with property taxes,
19 right to know issues, things like that but we have
20 so many complaints about voter fraud. Please help
21 us with this or that. And in 2000 we said okay,
22 we're going to red flag it. Bring in what you have.
23 The very first thing that we got was a checklist
24 from the supervisor from the town of Deerfield was
25 22 returned envelopes with the same address, 159
26 Bear Brook Rd in Deerfield which doesn't exist. So

1 twenty-two people voter from Bear Brook Park, it's
2 a state park at a cabin that doesn't exist on a
3 road that doesn't exist, they all came in on a
4 bus. I put their names on the Internet and I got
5 some responses and I asked them why they voted in
6 Deerfield and not where they are from the other
7 states and what not and they said that's where the
8 bus took us. So we took those, that was our very
9 first object and we've been tracking voter fraud
10 and interstate voters in our state ever since, and
11 since, as Jay mentioned, we have a lockdown on our
12 documents. We have a statewide database. I can't
13 get my hands on it. The addendums we used to get of
14 - about same day registrants I can't get them,
15 voter registration card has almost nothing on it
16 but luckily for us since we don't have statistics
17 and we just focused on catching individuals we have
18 a report from the Attorney General's office and
19 the Secretary of State that ran the November 8th
20 database of same day voters' with out-of-state
21 driver's licenses through their channel and come up
22 with 6,540 individuals on November 8 registered to
23 vote using an out-of-state driver's license. On
24 August 30th, 2017, only 1,014 of those individuals
25 had gotten a driver's license or a registered
26 vehicle. So, we have about 6,000 people, that's

1 just from people registered with an out of state
2 driver's license. You don't need any, any
3 identification to register to vote in New
4 Hampshire. I know this and we've been tracking
5 this. I was contacted by a guy named James O'Keefe
6 before our primary in 2016. We've documented hours
7 of voter fraud. You can review his tapes. What we
8 need is we cannot get prosecution, they won't even
9 look at this stuff in New Hampshire and the same in
10 many other states. We need the AG's office or US
11 attorneys to come in and enforce the law. Our
12 Supreme Court has state that you can have an out-
13 of-state driver's license and still register to
14 vote in New Hampshire. That sets up two classes of
15 voters. They don't have to serve on a jury. I do. I
16 can't have a driver's license from Massachusetts
17 and vote in my state. I have a New Hampshire
18 driver's license, I vote in New Hampshire like I'm
19 supposed to, legally. We have thousands of people
20 who voted here illegally. Our last U.S. Senate seat
21 flipped on 1,017 votes. It's time we have to
22 correct that. Thank you.

23 CHAIR LHAMON: Thank you. We'll hear from the third
24 speaker.

25 MR. HENSON: Hello. My name is Larry Henson, and I'm
26 from Lewisburg, North Carolina. I'm here to offer

1 evidence in support of the need of voter
2 identification. In 2004, 2008, and 2012 I served as
3 a poll observer. I have directly witnessed voter
4 fraud and have observed many situations alarmingly
5 suggesting voter fraud. In the most obvious example
6 of voter fraud I saw one woman come in and vote
7 three times in the same day. The second time she
8 came into the precinct I alerted the Chief Judge
9 that this woman was there to vote for a second
10 time. The Chief Judge walked in the direction of
11 the woman, talked to the poll workers there, and
12 later came over and let me know that everything was
13 all right. Later that morning when the woman came
14 back for the third time. I pointed her out to the
15 chief judge again. This time I followed the chief
16 judge and learned that the lady was trying to vote
17 for a man, someone who she claimed to be her
18 neighbor. When she was told that she could not vote
19 for him she said to the Chief Judge you're trying
20 to deny my neighbor's right to vote. About five
21 minutes after she left the polling location. She
22 returned escorted by a member of the NAACP and a UN
23 election observer that was stationed at this
24 polling location. They approached the Chief Judge
25 and accused her of denying this women's right to
26 vote. The Chief Judge was very nervous so I spoke

1 up and said did she tell you that she was trying to
2 vote for a man and that she says is her neighbor
3 and that she personally was not denied a vote, in
4 fact, that she had already voted two times earlier
5 that day? The men looked at each other, they locked
6 their arms around hers and walked out with her. I
7 followed them as far as the door and watched as
8 they walked completely off the polling site
9 property. The other incidents that I witnessed
10 include listening to several young man who were
11 standing in line ready to cast their ballots and
12 talking about being tired and only having three
13 more locations to visit today. This morning I heard
14 the panel saying they've never seen bussing to
15 polling locations, and respectfully they aren't
16 looking, as I see it happen every year we have a
17 Presidential election. On another occasion a
18 professor from St. Aug's came in with his class,
19 helped all his students get their ballots, told
20 them not to vote until he gave them instructions,
21 had them go to their polling booths, stood in the
22 middle of the floor and told them how to vote,
23 straight ticket. I'm not a legal person, but this
24 is just wrong and what kind of message is this for
25 these students? Thanks for this opportunity.

26 CHAIR LHAMON: Thank you. The fourth speaker?

1 MR. FORTE: Good evening. My name is Anthony Forte,
2 and I reside in Spring Lake, North Carolina. My
3 experience with apparent voting improprieties
4 occurred at the time of the 2012 general election.
5 Although as registered to vote, I reported to the
6 wrong polling place, the municipal building located
7 on North St. in Spring Lake. I was trying to sort
8 out exactly where I was supposed to vote I noticed
9 a White van arriving and a young gentleman, helping
10 an elderly passengers exit the vehicle. The young
11 man handed each passenger what later turned out to
12 be voter registration cards. As the passengers all
13 appeared to be mature citizens, 60 years of age or
14 more, and infirm, apparently required assistance I
15 recall thinking that it was a kind and useful
16 service to provide on an Election Day. I further
17 recall the van was marked the name of the church
18 but I could not positively identify which church it
19 was. And I really would not have given the matter
20 another thought had I not found myself an hour or
21 so later at a local elementary school, my
22 appropriate polling place, and there I witnessed
23 the same van, the same gentleman, the same
24 passengers, reporting to vote at the second polling
25 place. It wasn't an assumption. I witnessed the
26 same people completing ballots at both locations.

1 It was not just a case of seeing the same people
2 present at the second location. Feeling that
3 something very wrong was occurring, I decided to
4 take action and reported what I witnessed to a
5 woman who identified herself as a polling official.
6 She then explained to me and dismissed my concerns
7 by explaining to me that as long as they had
8 registration cards to vote at that location she was
9 required to assist them in casting their ballots.
10 She explained that my claim could not be
11 substantiated and made it plain to me that she was
12 utterly helpless to address my concerns. I am
13 positive that I witnessed what most people refer to
14 as voter fraud and I am gravely concerned that
15 there seems to be no course of action to prevent
16 this activity or in this case, even record it.
17 Thank you.

18 CHAIR LHAMON: Thank you. Next speaker.

19 MS. SNOWDON: Thank you. My name is Debbie Snowdon.
20 I'm a social worker. I have worked mainly in
21 Charlotte's African American community. I've spent
22 the last few days asking people how they feel about
23 North Carolina's voting laws, so I want to use this
24 opportunity to amplify their voices. They've given
25 me permission to use their names. The common themes
26 I'm hearing are it feels like we're going

1 backwards. They want to keep us away from the poles
2 after Obama. And one woman said quietly, I'm
3 scared. It feels like slavery is coming back. And
4 the woman next to her just nodded. I'm sorry I'm
5 nervous. Some people said they hadn't voted in the
6 last general election because the new laws made
7 things confusing. Polling locations had changed and
8 were harder to find and a few specifically
9 mentioned the voter ID laws. Herbert White, editor
10 of the Charlotte post a paper for the black
11 community said you can't keep suppressing minority
12 voices and not expect a backlash. People feel
13 shout out. District Court Judge Jane Harper said of
14 today's hearing It's sad that the strange issue of
15 voter fraud might predominate. As to judicial
16 redistricting, she said no sitting or former judge
17 I know of endorses the plan. Its only purpose seems
18 to be the election of more Republican judges. The
19 President of Charlotte's Poor People Campaign, Jay
20 Jackson, said minorities and low income folks feel
21 that these laws target them, that they don't have a
22 voice. In my conservative hometown of Denver, I
23 heard something different. A man at my gym summed
24 it up well. In the Obama elections, he said they
25 bussed blacks in to vote if the Democrats can do
26 that then it is only fair that we counter with

1 these laws. At a board of election meeting we were
2 told the new restrictions were needed to (a)
3 prevent voter fraud, and (b) save money. I say show
4 me valid evidence-based research and what better
5 place can a society put its resources. I was an
6 observer at two polling locations in the last
7 general election. At the Betty Ray Thomas Center,
8 which is in a black neighborhood, it was common to
9 be asked for ID to vote. In conservative Cornelius,
10 no one was asked. On a very personal note, my
11 daughter, Casey, who is gay, says that living in
12 Portland, Oregon is like living in a different
13 country. You feel like your vote matters. She said,
14 people can actually change things here. It breaks
15 my heart she will never live near us again, but I'm
16 so relieved because her civil rights are a whole
17 lot safer out there. I find it frightening that
18 individually North Carolina's policies can sound
19 reasonable, but take them as a whole and you get
20 what one Yale law professor called the death of
21 democracy by a thousand cuts.

22 CHAIR LHAMON: Thank you. Next speaker?

23 MS. HANCHEY: My name is Mary Elizabeth Hanchey. I'm
24 here from the North Carolina Council of Churches
25 and as a long-time voter in North Carolina. The
26 North Carolina council of Churches began talking

1 about voter access, ballot access, and poll access
2 as early as 1961, which was long before the Voting
3 Rights Act, and I would like to point out long
4 before I was born, there is no accident of history
5 that we are still talking about this today. When
6 North Carolina Council of Churches began talking
7 about this in 1961 we used the terminology let us
8 remove any intimidation or artful barriers and
9 welcome all citizens to full participation in
10 citizenship. I would like to submit that we are
11 drowning in artful barriers to access and that our
12 minority communities are particularly subject to
13 these artful barriers to access. They get described
14 in all sorts of ways, which make them sound
15 reasonable and sensible. We get fed frightening
16 information that does not match up with statistics.
17 We get told again and again and again that we're
18 just trying to save money, that we're just moving
19 polls because it makes things easier for someone or
20 some group, and that these artful barriers are
21 often -- described in ways that keep -- that keep
22 the intimidation, that keep the lack of access. I
23 am extremely concerned at having heard people
24 continue to say we can't make this political, we
25 can't make this partisan, we are talking about
26 people's bodies, people's communities, we're

1 talking about their access to ballots to polls, it
2 is wrong to label as inappropriately political the
3 effort to help make sure that all citizens can
4 vote. Thank you.

5 CHAIR LHAMON: Thank you. Seventh speaker.

6 MR. Dilahunt: Good evening, Commissioners. My name
7 is Ajamu Dilahunt. I'm a junior political science &
8 history double major at North Carolina Central
9 University, a historically black college here in
10 Durham, North Carolina. I'm honored to have the
11 opportunity to speak with you about voter
12 suppression here in North Carolina and specifically
13 its impact on college students. In 2013 after
14 Shelby v. Holder, ruling Section 4(b), of the
15 voting rights act unconstitutional, North Carolina
16 introduced a wave of voter suppression laws or, as
17 many referred to it, as the monster law. If you
18 attended the sessions with Reverend barber and
19 Attorney Anita Earls they articulated very well the
20 injustices of the racist driven law. So there is no
21 need for me to elaborate; however, it is important
22 to note that the monster law made it so college
23 students had to have a state-issued ID to vote
24 making it so out of state college student were not
25 able to vote and participate in the political
26 process. The monster law was overturned but

1 legislators found a way to disenfranchise voters
2 through gerrymandering. Racial gerrymandering
3 prevents black political power through packing and
4 cracking. The most recent example is the lines that
5 the North Carolina General Assembly drew that split
6 that largest historically black college, North
7 Carolina A&T, down the middle. One part of the
8 campus was in one district while the other was in
9 another. This was a direct attempt to prevent the
10 power of a black student vote. The General Assembly
11 is responsible for suppressing beyond laws and
12 drawing maps. They do this by the people they
13 appoint to the North Carolina Board of Governors
14 that cut programs like the Institute for Civil
15 Engagement and Social Change at North Carolina
16 Central University in 2015. The institute served as
17 an important voter education and voter registration
18 and social justice center on campus. Commissioners,
19 if I had more time I could further explain the
20 undemocratic and racist action of this General
21 Assembly that were made possible by the Shelby
22 decision. We need to restore the Voting Rights Act
23 Section 4(b) is more important than ever and North
24 Carolina is a prime example as to why. I repeat,
25 Section 4(b) is more important than ever and North
26 Carolina is a prime example as to why. Thank you

1 and I leave you with a saying from the black
2 freedom struggle, forward ever, backward never.

3 CHAIR LHAMON: Thank you. The eighth speaker?

4 MS. MILLER: Hi, I'm Barbara Miller and I'm from the
5 Duplin County, in the eastern part of the state--
6 Kenansville, North Carolina. And I came up here
7 today because when I found out I was available I
8 had had issues in the past with trying to vote. I
9 went to my local precinct to vote. It's been quite
10 a few years ago. When I went in to vote the ballot
11 had been marked all the way through, somebody had
12 picked their candidate and gone in and made sure
13 there were pencils so that everyone who came in
14 knew who to vote for. In my county if you're a
15 conservative you don't put a bumper sticker on your
16 car you don't put a sign in your front yard; your
17 neighbor won't speak to you for a year if you
18 disagree with them and that's certainly a case in a
19 lot of neighborhoods out there these days. Most
20 recently, the last presidential election, for years
21 I had gone and done my early voting so that I felt
22 like I wouldn't have any issues. I need to back up
23 a minute. I called our county election office when
24 I found the ballot and told them what I had found
25 and they literally laughed at me. And I said I
26 really don't think this is funny. He said, oh, I

1 thought you were kidding. No. The last time I went
2 to vote at my precinct I went in, I had my driver's
3 license in my hand. I was told Oh we don't need an
4 ID, I said ok cool. Gave her my name and she
5 informed me I had already voted. I said no I'm
6 pretty sure that I have not voted and she said I'm
7 pretty sure I have you as already voted, you know,
8 and I said okay. Understand I am not leaving here
9 without casting a ballot. Your problem is who you
10 let vote in my place. I understand. I hear the
11 argument all the time about the issues of ID. I
12 don't really know of many things, and somebody can
13 tell me, bring me up to speed here. What can you do
14 today without an ID? Can you go to the doctor, can
15 you pick up a prescription, can you go to the bank?
16 Can you cash a check? There are places you can't
17 even use a credit card. I just, I really, I love my
18 country. I think we have the right to vote but I
19 think it's important that the vote be taken
20 seriously. It's a privilege to vote. Research your
21 candidates, vote with your heart, but who's voting?
22 Thank you.

23 CHAIR LHAMON: Thank you. Ninth speaker?

24 MR. REINOEHL: Good evening, Madame Chair and
25 commission members. My name is Jerry Reinoehl, from
26 Fayetteville, North Carolina. Voter fraud exists,

1 voter fraud is nonpartisan and voter fraud
2 disenfranchises every American. I have extensive
3 boots on the ground in election experience. I have
4 witnessed and reported violations of our North
5 Carolina election laws committed by Republicans,
6 Democrats, and unaffiliated voters resulting in
7 fines and other corrective actions. The most
8 serious violations I have reported are dual state
9 voters, voters who voted in the same election in
10 more than one state. Fair and honest North Carolina
11 elections have become vulnerable to fraud when the
12 courts left us defenseless by tossing out North
13 Carolina voter identification requirements. Much of
14 my voter research and volunteer work requires
15 access to public voter registration information.
16 North Carolina does an excellent job providing no
17 cost online access to current voter registration
18 data and campaign finance reports. Many states do
19 not provide the same level of service, frustrating
20 research efforts. My recommendations to protect
21 election integrity and the voting rights of every
22 citizen are (1) enact a national photo
23 identification program such as the freedom card
24 discussed by Mr. Fund on panel 3. Two, enact a
25 national voter registration database with single,
26 no cost point of entry access for all public voter

1 registration information. Until then, require every
2 state to provide no cost online access to current
3 public voter registration information. And finally,
4 prosecute individuals who have voted in more than
5 one state during the same election in federal
6 court. Every American has the right to vote, but
7 with rights, citizens must also accept
8 responsibility. You must end voter fraud. New York
9 voters cast 7.7 million ballots on November 8th,
10 2016 without any of the special provisions such as
11 early voting requirements placed upon North
12 Carolina. North Carolinians cast 4.7 million
13 ballots, which included almost two weeks of early
14 voting. I wonder why there are no disenfranchised
15 voters in New York. Thank you.

16 CHAIR LHAMON: Thank you. Tenth speaker?

17 MS. HOY: Yes. Good evening. Hi my name is Janet
18 Hoy, and I'm the co-president of the League of
19 Women Voters of North Carolina, and I appreciate
20 the opportunity to speak this evening. The League
21 of Women Voters is a 98-year-old organization
22 started in 1920 with the passage of the 19th
23 Amendment granting women the right to vote. Since
24 then our focus has been, and continues to be,
25 protecting our fundamental right to vote and
26 supporting voter education and access. In short,

1 empowering voters and defending democracy. We're
2 all volunteers here in North Carolina we are spread
3 across 18 leagues and we have over 700 leagues
4 nationally with over 300,000 members and
5 supporters. In short, the League of Women Voters is
6 one of the groups dedicated to fighting for and
7 defending our most important right as Americans:
8 the right to cast our votes fairly and without
9 undue burden in state, local, and federal
10 elections. North Carolina has faced a number of
11 challenges related to voting and elections
12 throughout our history. But in recent years there
13 has been a concerted and coordinated effort to
14 undermine our democracy. Some of these issues you
15 heard previously. I'll just go through a couple
16 briefly. The 2013 omnibus or monster voting bill
17 which among other things, reduced early voting, did
18 away with one-stop voter registration in voting,
19 took away out-of-precinct voting, and added photo
20 ID requirements. When striking it down a three-
21 judge panel called it and I quote "the most
22 restrictive voting law changes since the era of Jim
23 Crow." Thankfully that law was struck down in 2016,
24 but we fully expect a new photo ID bill to surface
25 this year, possibly in the form of a Constitutional
26 Amendment on the primary ballot coming up in May.

1 In addition, there have been a series of court
2 battles on redistricting, which in the leagues'
3 view is a form, a serious form, of voter
4 suppression. There have been sixteen redistricting
5 cases in the courts in North Carolina since 2000
6 under both Republican and Democratic
7 administrations. They're currently five cases. Why
8 is this important? In 2016 thirty percent of state
9 legislative seats had no primary or general
10 election opposition. Forty percent, almost half,
11 had no opposition in the general election, so when
12 people ask why should I cast a vote here I often
13 wonder what the answer should be. I think we would
14 all agree this is not the way a democracy works, so
15 we've had unconstitutional elections in 2012, 2014,
16 2016, and now 2018. Elections held both primaries
17 and general elections with unconstitutional maps.
18 It is absolutely staggering. In short, the only way
19 to frame this is that the very foundation of our
20 democracy in North Carolina is at risk.

21 CHAIR LHAMON: Thank you. Our eleventh speaker?

22 MS. CABRALES: Good evening. My name is Juliana
23 Cabrales. I'm with the NALEO Education Fund. NALEO
24 Educational Fund is the leading nonprofit,
25 nonpartisan organization that facilitates full
26 Latino participation in the American political

1 process. Through our work we have identified
2 barriers that continue to impede Latino political
3 participation. Today I would like to touch on two:
4 unnecessarily and frequently changing requirements
5 for voter registration and casting ballots and
6 hostility towards and lack of understanding of
7 language assistance protections in polling places.
8 As language assistance needs grow in North Carolina
9 and across the county jurisdictions need to be
10 proactive in accommodating Spanish language voters.
11 As you know, Section 208 of the Voting Rights Act
12 states that everyone has right to be have assisted
13 by a person of his or her choice, yet a recent
14 report by a local partner here in North Carolina
15 highlights a story from 2016 on how a Latina in
16 Johnston County that was helping individuals in
17 need language assistance was asked to leave the
18 polling place. This type of incident is concerning.
19 As the number of Puerto Ricans moving to the
20 mainland increases, it is critical that election
21 administration officials are aware of the
22 protections under the voting rights act. Section
23 4(e) to ensure that Americans of Puerto Rican
24 origin are able to cast informed ballots regardless
25 of their ability to speak English. As we heard from
26 many witnesses today, unnecessary administrative

1 requirements in the voting process
2 disproportionately affect underrepresented voters.
3 As such, we strongly recommend that election
4 officials and policymakers reinstate proactive
5 protections against discriminatory voting policies.
6 NALEO educational fund strongly supports the
7 movement to reinstate the Voting Rights Act
8 preclearance procedures. I conclude my public
9 comment with a story: During the early period
10 voting in North Carolina a voter at the voting
11 place in North Carolina witnessed a Latina voter
12 arrive and ask where their Spanish interpreter was
13 available to help her. The poll worker said no and
14 offered no further assistance. After the voter
15 left, without voting, a poll worker said out loud
16 "When I was in school we didn't have Spanish people
17 around." This incident is representative of many
18 more reported to us. And it's effects will ripple
19 far beyond the individual American in question to
20 affect those with whom she shares her own story.
21 The future of our nation and her democracy depend
22 upon our strength of our commitment to welcoming
23 this woman and every other American into elections
24 on an equal and non- discriminatory basis.

25 CHAIR LHAMON: Thank you. Twelfth speaker?

26 MS. COURTNEY: My name is Dana Courtney. I am from

1 Alamance County, North Carolina which is the exact
2 center of the state. If you turn that screen around
3 on its end then that would kind of look like our
4 county. It's rural and urban. We're between - more
5 progressive I started to say but I will go ahead
6 and say it's more like city communities. We still
7 value our rural ways as well as some more
8 progressive. I am a social worker by training and I
9 believe in social justice advocacy. I am retired. I
10 have dedicated the last ten years to work on the
11 street. I call our president sometimes within the
12 NAACP. I'm doing street-walking today. I am not
13 here to represent NAACP or Democracy NCL, although
14 I work with both of them. Our county is about
15 155,000 people. We are about 66 percent white,
16 people that look like me, the privileged, and 34
17 percent, people of color. We are fairly separate in
18 many - within some of our schools and some of our
19 communities. We still have our pretty segregated
20 neighborhoods. We have very few elected people of
21 color in our community. Recently we've had some
22 people come forth and they had not been elected. My
23 work is a volunteer these last years I started door
24 to door doing canvassing, registering people, and
25 then I had moved more in the last three or four
26 years to monitoring at the board of elections and

1 in voter protection at the polls. What I've
2 observed with doing this street work is that it's -
3 - it goes -- it's sort of one hand and the other
4 hand. One group is just really glad to see me; they
5 know me as the voter lady and they're glad I'm
6 there and in other places that's not the case. They
7 need a little encouragement. I see as needs and I
8 do this work is to help people see the importance
9 of their vote and that is work. I also see the need
10 for funding from our county commissioners and I
11 hope can filter down from higher ups that we need
12 to pay for what we need. Polling places, equipment,
13 poll workers who are aging out like I am, and all
14 in the ways of getting people out for voting. And I
15 think this is education from top to bottom. Young
16 people, elder people, all the way through that
17 voting is the most important thing for people to
18 have.

19 CHAIR LHAMON: Thank you very much.

20 MS. COURTNEY: Thank you.

21 CHAIR LHAMON: Next speaker?

22 MS. BUTZNER: My name is Annie Butzner. I'm from
23 western North Carolina. I represent senior
24 suffrage. I'm here to offer comment on general
25 statute 163 Section 3. During my remarks I'm asking
26 you to imagine yourself as a resident of a long-

1 term health care facility or of an adult care home
2 and you're wanting to vote. This statute, GS 163,
3 was written in 2013 in order to comply with
4 requests from the State Board of Elections for new
5 health care voting laws. In a hurry because the
6 deadline was approaching, the rules that were
7 inserted were the same rules that were for voting
8 in prison facilities. I was told by a member of the
9 State Board of Elections that the intention was to
10 change the rules. They were never changed. They
11 went into effect in 2014. Effectively denying
12 access to the ballot of really hundreds of
13 thousands of residents in North Carolina. Senior
14 citizens are the largest segment, the fastest
15 growing segment of our population. If you were a
16 resident in one of these facilities and you would
17 like to vote, you need to be aware of a system
18 called multipartisan assistance teams help
19 available from your county board of elections, you
20 need to know about it in order to request it. If
21 you don't request it the help doesn't arrive. If
22 you request the help and it does arrive your help
23 to register to vote and apply for an absentee
24 ballot. At that point the team goes away. It does
25 not come back to help you unless another request is
26 made for help with the ballot. The workers are not

1 authorized to carry the completed ballot back to
2 the Board of Elections. Therefore, you are
3 responsible for finding an approved family member
4 to hand- deliver it to the Board of Elections or to
5 mail it yourself. If a neighbor, or a friend, helps
6 you instead of the state Board of Elections or an
7 approved family member, it is a felony charge in
8 North Carolina. This is just fear mongering to
9 prevent the experts in health care, the patients in
10 residence from voting. Thank you.

11 CHAIR LHAMON: Thank you. 14th speaker

12 MR. FLYNN: My name is Greg Flynn. I'm from here in
13 Raleigh. Thanks for coming here today. I believe
14 that democracy works better when more people
15 participate. We should be finding more ways for
16 people to vote instead of creating obstacles. I had
17 to laugh at an early panelist today, if there is a
18 grievance industry it is a free market response to
19 the demands created by prolific legislative acts,
20 unjust and discriminatory which after years of
21 litigation and high expense have proven to be
22 unconstitutional. Even here in Wake County I was
23 plaintiff in a federal case challenging
24 redistricting of the county Commission and Board of
25 Election districts by the North Carolina General
26 Assembly. Why we have to drive 160 miles to

1 Richmond in another state to secure voting rights
2 here is beyond me. The federal appeals court found
3 a racial gerrymander. The county elections board
4 was saddled with the cost of defending the case,
5 and the cost and the Wake County taxpayers,
6 including myself, paid for it even though we were
7 successful in the case. This was hundreds of
8 thousands of dollars. The North Carolina General
9 Assembly was not held accountable for its
10 capricious, unjust, and discriminatory acts and
11 this is why we need federal control. I know local
12 redistricting doesn't apply, but it's a good
13 example. So it goes the last seven years, I've
14 seen constant assault on voting rights in the form
15 of gerrymanders, restrictions of the voter access
16 and indeed spurious challenges to legitimate
17 voters. In 2016 there were false claims of felons
18 voting and false claims of interstate double
19 voting. People were falsely accused for the sole
20 purpose of clouding fighting election results. In
21 North Carolina photo ID, a hot topic, these
22 proposals have gone far beyond the need to secure
23 the vote and have elements that unnecessarily
24 restrict voters. The name on my own driver license
25 is not the name on my birth certificate and the
26 nationality on my birth certificate is not the same

1 as my U.S. passport. I recently renewed my license.
2 It required proof of citizenship, proof of Social
3 Security number and two proofs of address. It took
4 several hours at the DMV. I didn't have my Social
5 Security card. I had to take more time to obtain a
6 new one, but it worked out for me. My wife had a
7 little more trouble. She needed second proof of
8 address. She didn't have it at the time. Called me
9 frantically. The DMV office forgot to mention that
10 her vehicle registration was a valid proof of
11 address, but these are the kinds of things that
12 happen to people randomly to create obstacles to
13 obtaining ID when a photo ID is a requirement for
14 voting. I'm lucky I didn't live in Bertee County.
15 That's a majority African American county in
16 Eastern North Carolina, beset my storms, destroying
17 people's personal documents and the county is only
18 served periodically by a mobile DMV for a driver's
19 license.

20 CHAIR LHAMON: Thank you very much. Fifteenth
21 speaker?

22 MS. WATKINS: My name is Olinda.

23 CHAIR LHAMON: I think your mic's not on.

24 MS. WATKINS: My name is Olinda Watkins. I am the
25 president of the NAACP branch in Moore County,
26 North Carolina. I'm honored to speak today on the

1 important issue of our sacred right to vote. Voter
2 registration is a cowardly, and racist attempt to
3 divide and undermine our democracy in order to keep
4 power in the hands of a few. Here in North Carolina
5 we have seen how voter suppression has led to
6 elections of an unaccountable super majority that
7 was waged war on the poor and working people. I
8 work with my local branch and the state NAACP
9 conference to encourage and enable voters to cast
10 their ballot. I have assisted scores of voters who
11 have been met with voter suppression when they
12 attempted to cast their vote. I know the deep
13 sadness and anger that has resulted when voters'
14 voices are blocked by vote suppression. Because of
15 my limited time I will share just one voter
16 suppression story out of the many. As a president
17 of our NAACP branch, in the weeks leading to the
18 2016 election I learned that the county election
19 board was purging hundreds of voters at a time
20 because a group was filing mass voters challenge
21 based on their return post cards. These removals
22 reminded us of the passages from North Carolina's
23 recent history when candidates used a racist tactic
24 called voter caging to target and intimidate voters
25 of color from voting. When we investigated this led
26 us to uncover that thousands of voters across

1 several counties were being purged from the voter
2 registration rolls within weeks of the election,
3 all based on a return of post cards from the mass
4 mailing. In Beaufort County where two-thirds of the
5 voters were challenged were black. One of the
6 challenged voters was Miss Grace Bail Hardison. Ms.
7 Hardison, who is a hundred-year-old black woman who
8 lived in Belhaven, North Carolina had her entire
9 life and has voted regularly for decades even
10 though she feels it is difficult to leave her
11 house. She insisted on leaving her house to cast a
12 ballot each election day because her right to vote
13 is so important to her. Weeks before the president
14 election Ms. Hardison's voter registration was
15 challenged based on a post card that was sent in a
16 mass mailing by a local challenge. The Moore County
17 NAACP was honored to join Ms. Hardison to file a
18 lawsuit to fight this suppression. As you can see,
19 in North Carolina our voting rights are under
20 attack. Voter suppression is alive and well.
21 Congress must restore the full protection of the
22 Voting Rights Act. Thank you.

23 CHAIR LHAMON: Thank you very much. 16th speaker?

24 MS. TURNER: Good evening. Madame Chair, Madame
25 Vice-Chair, Commissioners. My name is Emily Turner
26 and I'm an attorney for the North Carolina Justice

1 Center. I'm originally from Yancy County, here in
2 North Carolina. Thank you for the opportunity to
3 speak today. The justice center's mission is to
4 eliminate poverty in North Carolina by ensuring
5 that every household in the state has access to the
6 resources, services and fair treatment it needs to
7 achieve economic security. Achieving our mission
8 requires full, free participation of all North
9 Carolinians in our democracy. In 1965 President
10 Johnson described this ability as the true measure
11 of dignity that each citizen can quote, "Share in
12 freedom, choose his leaders, educate his children,
13 and provide for his family." Over fifty years later
14 we're witnessing this state to a movement to
15 exclude people of color, the poor, and the
16 marginalized from their full measure of that
17 dignity. To prioritize hypothetical bad voters over
18 the right to vote, undermines our project of
19 democracy. If we accept the framework where voters
20 are the problem we obscure the real threat to the
21 integrity of our elections. Systematic targeting of
22 marginalized communities to prevent their full
23 exercise of the franchise. Recently our state has
24 seen a comprehensive attack on the voting power of
25 certain communities and a whole-sale disrespect for
26 the integrity of our democracy and the separation

1 of powers. When it struck down so-called monster
2 voting law the Fourth Circuit Court of Appeals
3 described the law as animated by quote, "A concern
4 that African Americans had too much access to the
5 franchise." That toxic idea that there is too much
6 access to the franchise is reflected in a myriad of
7 regressive policies here in our state. Reductions
8 to early voting hours, unconstitutional attempts to
9 purge voter rolls, and the elimination of mandatory
10 high school voter registration drives, to name just
11 a few. Commissioners, these policies restricting
12 free and fair elections in our state cannot be
13 separated from the districting schemes that dilute
14 the votes of African Americans and others through
15 both racial and partisan gerrymandering. Every
16 attack on voting access must be understood in the
17 context of an unconstitutionally composed
18 legislative body that itself constitutes an ongoing
19 and pervasive form, of disenfranchisement. At the
20 Justice Center we know that our state is stronger
21 when all our North Carolinian votes are valued we
22 reject disingenuous attempt to recast marginalized
23 voters as a threat. They are the embodiment of
24 democracy's promise reflecting what should be the
25 highest value in our electoral process, the full
26 participation of all people. Thank you.

1 CHAIR LHAMON: Thanks very much.17th speaker?

2 MS. POSADA: Buenos tardes. Good afternoon. My name

3 is Elizazar Posada. I am the director of the

4 community and advocacy manager at El Centro

5 Hispano, a local nonprofit here in Durham. It's

6 actually the largest Latino nonprofit in North

7 Carolina. So first of all, I don't claim to be an

8 expert in anything but my own experience and I'm

9 going to talk with you about that. I will be

10 submitting a written statement for further

11 information, but I want to talk about what I've

12 gone through as a voter, as a citizen, as a Latino

13 in North Carolina and what my family has gone

14 through as also citizens and Latinos in this

15 country. For one, we talk about access. When I

16 think about access I think about being able not

17 only go and submit a ballot and being able to vote

18 but knowing that you can speak the language that

19 you're most comfortable in in those areas. I

20 believe a speaker earlier said that, you know, in

21 order to have folks come in and be comfortable and

22 exercise their responsibility and right to vote

23 they need to be able to understand what they are

24 doing. Our folks need to be able to go in and say I

25 speak Spanish, there needs to be someone in there

26 who speaks Spanish or whatever language I speak so

1 that I can understand what I am doing, so that I
2 can have help when I need to understand. My
3 grandmother, a citizen of the United States, for
4 her entire life lived in a predominantly Spanish-
5 speaking community and she was unaware -- because
6 of her broken English she was unaware that she
7 could go into a voting place and ask for someone to
8 help her in Spanish, living in south Texas and, you
9 know, south Texas their official language is
10 Spanglish. So it's dear to me when you talk about
11 language and access, to ensure that before we talk
12 about these other things in North Carolina is doing
13 to suppress the vote. We talk about ensuring that
14 my community is able to understand that they have a
15 right to vote. A lot of our youth members that have
16 come into my office are worried that if they go to
17 vote there is going to be somebody coming to their
18 homes and checking the address. And some of their
19 family members aren't citizens. They're sons and
20 daughter of immigrants so when we're showing or
21 saying there's a possibility that someone's going
22 to go through your home because of the fact that
23 you registered to do your duty as an American.
24 That's just wrong, so I ask this Commission to
25 really think about the Latino experience when we're
26 talking about this. We are the largest minority -

1 and in North Carolina we're growing so it's
2 important that our Latino voices are heard. Thank
3 you so much.

4 CHAIR LHAMON: Thank you. 18th speaker?

5 MR. BOSTIC: Good evening. My name is Wayne Bostic.
6 I would like to thank the United States Civil
7 Rights Commission for hosting this event in my home
8 State of North Carolina and also for giving me the
9 opportunity to speak. I am here today to not
10 necessarily represent any one social justice
11 organization, although I am the vice president of
12 the North Carolina A. Philip Randolph Institute,
13 but more importantly as an American citizen, a
14 veteran, and a registered voter who happens to have
15 a dark complexion. Access to our relations
16 shouldn't be made inaccessible to an American
17 citizen simply because the complexion of their skin
18 is dark. Having different spiritual beliefs or
19 ideology, the whole assumption of truth behind a
20 Democratic society with America is supposed to be
21 our differences. I have registered thousands of
22 people to vote since becoming a social justice
23 advocate. I consider it a labor of love. We who
24 have a darker complexion in America have always
25 asked America to live up to its creed. The creed
26 written and won by William Tyler Page as an entry

1 into a patriotic contest then voted as a resolution
2 by United States House of Representatives on April
3 3rd, 1918, to refresh everyone's memory, the 5 core
4 pillars of that creed are liberty, the state of
5 being free within society from oppressive
6 restrictions imposed by authority on one's life,
7 behavior, or political views. Two: egalitarianism,
8 believing in the principle that all people are
9 equal and observe equal rights and opportunities.
10 Three, individualism: A social theory, favoring
11 freedom of action of individuals of collective or
12 state control. Four, popularism: support of the
13 concerns of ordinary people. Five, laissez faire: A
14 policy or attitude of letting things take their own
15 course without interfering. Voting is an indication
16 of choice, opinion or will. This democratic process
17 is at risk of being undermined in our society,
18 especially for Americans who look like me. 2016,
19 voter fraud 00002. Now, in order to not be sued for
20 plagiarism, my reference sources are
21 dictionary.com, Merriam Webster, and wikipedia.org.
22 Thank you for your time.

23 CHAIR LHAMON: Thank you very much. Ninetieth
24 speaker?

25 MR. SWANSON: Thank you all for allowing this
26 opportunity to address the Commission this evening.

1 My name is Tyler Swanson. I'm a proud North
2 Carolinian, and I remember sitting as a college
3 student and a leader with the North Carolina NAACP
4 Youth in College Division in the gallery of the
5 North Carolina General Assembly as they debated the
6 monster voter suppression law, also known as House
7 bill 589, that you've heard so much about today. I
8 sit among dozens of other college students all of
9 us with our mouths taped shut to symbolize our
10 protest over the General Assembly's attempts to
11 silence our votes by which they were doing by
12 implementing this law. Unlike other young folks our
13 age who were free to focus on college exams at the
14 end day -- at the end of the semester. Excuse me --
15 we were gathered in silent protest on the balcony
16 that day driven by fear that North Carolina General
17 Assembly would act to suppress our vote just as we
18 were coming to age to use our vote. The floor
19 debate that led to the passage of House bill 589
20 with numerous racially discriminatory voter
21 suppressions provisions, including voter ID
22 requirement, reducing a week of early voting,
23 eliminating sixteen and seventeen-year-olds from
24 preregistering, as well as eliminating same-day
25 voter registration. I personally sit alongside
26 modern day civil rights leaders who were fighting

1 against this bill. Like Ms. Rosenell Eaton, who was
2 the lead planner of the NAACP voting rights
3 challenge case. Mrs. Eaton was the granddaughter of
4 a slave who grew up in Jim Crow North Carolina
5 where she had to take two-hour long mule rides to
6 the court house just to register to vote. There she
7 was greeted by a white registrar who made her
8 recite the preamble of the Constitution. Ms. Eaton
9 passed this difficult hurdle to gain access to the
10 ballot and went on to become a lifelong voting
11 rights advocate who personally registered tens of
12 thousands of voters. She voted regularly until
13 North Carolina state legislator passed the monster
14 voter suppression law. For Ms. Eaton, her voter
15 registration card did not match the name on her
16 license so in her 90s she made eleven trips to
17 different state agencies; DMV, Social Security, and
18 many different banks over the course of months to
19 try to obtain the necessary ID. Though I could go
20 on time permitted, I just want to say that
21 throughout the three years we finally won this
22 battle and there the courts found that House bill
23 589 targets African Americans with almost surgical
24 precision. What we need is more access to the
25 booth. What we need is to allow everyday voters to
26 have fair access without these voter suppression

1 tactics. You know, I do hope that one day we will
2 be able to use our --use the words that I'm going
3 to paraphrase: Voting rights --I was close but I
4 ran out of time. Thank you.

5 CHAIR LHAMON: Thank you very much. The 20th
6 speaker?

7 MS. JAEB: Good evening. My name is Rebecca Jaeb. On
8 November 4th, 2014, as I had done several times
9 before, I worked as a Wake County Precinct Official
10 in North Carolina. That day I was stunned to see a
11 woman turning in a ballot who I had helped cast
12 provisional ballot earlier that day. I told my
13 Chief Judge, she asked me if I was sure. The young
14 woman was wearing the same clothes and distinctive
15 glasses and I had sat and talked with her for quite
16 a while doing paperwork so I said I was almost 100
17 percent positive. The chief judge ran after her and
18 asked her if she was the name she had given for the
19 provisional ballot. The woman said no, that her
20 name was what she had just used to vote, and then
21 she pointed to another woman and said that was the
22 sister of the name that she had used to cast a
23 provisional ballot. I would never want to make a
24 false accusation so after the election I looked
25 online to find more information and pictures for
26 both names that the woman had given. This confirmed

1 the name of the woman I saw was the original name
2 she gave when she came in the first time. She came
3 later with her sister and voted under another name
4 with a woman I had never seen. My Chief Judge
5 requested for us to that we meet with someone from
6 the Board of Elections to discuss the incident.
7 Over two weeks passed and they did not respond. It
8 wasn't until someone else asked the Board about it
9 for me and the board director finally answered. She
10 was very irritated that I had followed up on the
11 matter and said they looked at the signatures and
12 they were a match. I was never shown the signatures
13 but I was to accept what I had seen with my own
14 eyes hadn't happened because someone said they
15 looked like the signatures of the proper people. I
16 had always given been given Excellent job
17 performance feedback but I was never called to work
18 again. On several occasions I tried following-up
19 with people about it but nobody would even answer
20 me. Two years after the incident, and over a year
21 after the scolding director had left the board, I
22 applied to the recruiting agency that hires early
23 election workers. They were extremely positive and
24 told me that the board would be contacting me to
25 schedule working. The board never contacted me. I
26 had been officially blackballed. Naively I thought

1 the board would be interested in preventing voter
2 fraud but I discovered that instead they were more
3 interested in punishing a faithful worker that had
4 the audacity to report and follow up on it. We're
5 hearing a lot about voter suppression today but
6 what I encountered was suppression of pursuing
7 voter fraud and I think that should be a concern as
8 well. Thank you.

9 CHAIR LHAMON: 21st speaker?

10 MS. BOURGEOIS: My name is Emily Bourgeois .I had
11 the privilege of serving as a poll observer in the
12 Mecklenberg County precinct number 56 in the 2008
13 election. Upon immediately arriving my experience
14 was something like hers. There was a level of
15 hostility and intimidation against the poll
16 observers that I think anyone on you Commission
17 would not applaud. Some of it was quite petty. The
18 other was rude and simply bullying us but
19 nonetheless we did what we could to serve according
20 to what we had been trained to do and there were a
21 number of irregularities during the day. We filed a
22 report here with you in the basket out front. But
23 one of them, for example, that was of concern
24 involved a catatonic woman that was brought in in a
25 wheelchair. She was unable to speak, open her eyes,
26 or even lift her head up and yet she was rolled

1 into the voting booth and the person that pushed
2 her into the booth did all the voting for her. In
3 reference to Section 208 of Voting Rights Act how
4 could it possibly be that that's considered kind,
5 fair, or appropriate. We called the attorney but by
6 the time he got there the voter was gone and he was
7 unable to reconcile this with the judge. The bottom
8 line is it's not about whether someone was rude or
9 ugly to poll observers or intimidation. The bottom
10 line is the numbers, and they simply didn't add up
11 that day. There were 497 votes cast after the
12 machines were tallied; however, the voter
13 authorization slips didn't match the machine count.
14 As you all know, there should be one card for each
15 vote. These completed slips are designed to verify
16 that each is a bona fide and registered voter in
17 that precinct. The BOE is very clear with judges
18 that all of these slips must be accounted for and
19 in numerical order at the end of the day, these
20 were not. Our count was that out of 497 votes cast
21 there were 57 missing slips, 20 slips that were
22 incomplete and that didn't have their stickers on
23 the back, and there were 440 slips that were
24 actually complete and compliant; therefore, in our
25 precinct 56, 15 percent of the vote did not meet
26 the BOE standards and that 15 percent is clearly

1 enough to throw an election. Yet when we
2 complained, we even formed a committee with Joe
3 Martin and some other people. We were unable to get
4 anywhere. That I agree with the previous speaker is
5 another form of suppression and I'm not saying
6 suppression is not in both directions but we
7 deserve as Americans, an accurate voting system.
8 Thank you.

9 CHAIR LHAMON: Thank you. 22nd speaker?

10 MS. TALLY: Good evening, Madame Chair, Madame Vice-
11 Chair, and esteemed members of the Commission. I am
12 Kristi Tally from Raleigh, North Carolina. I
13 present today from the perspective as a former
14 member of a county Board of Elections. I served as
15 an election official here in this area during what
16 I consider the tumultuous season of the general
17 elections of 2012. During my time of service as a
18 member of the local board it was clear to me there
19 were plans under way to restrict access to the
20 polls including limiting voting hours and what
21 appeared to me as intentional discrimination
22 against voters of color. Much of the testimony
23 presented today brought back flashbacks of my
24 experiences serving on the local board. During the
25 earlier testimony, there were several mentions of
26 the limiting access of early voting. I'd like to

1 share a brief example during my time of service
2 related to the issue of limiting early voting.
3 Based on voter registration, there was an increase
4 of voters in our county from the 2008 general
5 election to the 2012 general election. Despite
6 this, there was an initial plan to provide fewer
7 early voting sites, times, days for 2012 to the
8 extent that at the local election table among my
9 colleagues we could not come to agreement on the
10 early voting site elections so in essence my
11 colleagues were seeking fewer sites. My response, I
12 casted the dissenting vote during our voting
13 process for the early voting sites plans at the
14 local level. The next steps I had to plead the case
15 as the lone member of our particular county board
16 to the state Board of Elections. Thankfully at that
17 time through the majority vote of the state board
18 our county gained more access for voting and could
19 expand access to voting for our county. The state
20 board of elections added a site, hours and days for
21 our 2012 election. I share this as only one example
22 of many which were present to limit voter access
23 during my time of service at the local level, which
24 required taking many extra steps to expand access.
25 Based on my personal experiences as a local Board
26 of Elections member, I am convinced of the

1 importance of decision-making process to protect
2 the vote as the cornerstone of our democracy. Thank
3 you.

4 CHAIR LHAMON: Thank you. 23rd speaker?

5 MS. AHN-REDDING: Good evening my name is Heather
6 Anh-Redding. And I am here from Hillsborough as a
7 community member and former criminal justice
8 educator. I came to speak about the
9 disenfranchisement of the North Carolinans who
10 because of their involvement in the criminal
11 justice system and are denied access to the ballot
12 box. In order to have an honest discussion about
13 minority voting rights, we need to acknowledge how
14 people of color are disproportionately affected by
15 our criminal justice system and the civil death
16 that follows a felony conviction. Felony
17 disenfranchisement laws exist in 48states plus DC.
18 Although some argue that felony disenfranchisement
19 is deserved or that it is necessary to preserve the
20 purity of the ballot box, it is a practice that
21 contributes in no material way to the main pillars
22 of punishment: deterrence, rehabilitation,
23 retribution, and incapacitation. So why are 6.1
24 million Americans are currently banned from voting?
25 Disenfranchisement of voters combined with the
26 racist black codes of the civil war originated to

1 prevent people of color from participating in the
2 democratic process. However, few people question
3 their origins or utility. Even when people of color
4 are disproportionately impacted by criminal justice
5 policies at every junction. This is how systems of
6 power selectively maintain structures of
7 oppression. This is true across the country and
8 especially true here in North Carolina where 1.2
9 percent of people were disenfranchised in 2016,
10 including thousands of African American voters. I
11 would like to bring your attention to an ongoing
12 case in Alamance County. Twelve individuals are
13 currently being prosecuted because they were active
14 felons when they cast their ballots in 2016. The DA
15 explained that prosecuting these individuals is
16 important for preserving the sanctity of our
17 election system. These twelve people who voted,
18 presumably without the intent to violate the law
19 are now facing a new two-year prison sentence.
20 Meanwhile, our own state official, for the sake a
21 political gain have jeopardized the sanctity of
22 the election voting system by passing restrictive
23 voter laws creating racially-biased gerrymanders.
24 North Carolina's troubled history of minority voter
25 suppression in addition to its felony
26 disenfranchisement laws risks affecting the

1 outcomes of key races by silencing of voices of
2 color. I maintain the United States criminal
3 justice voting system is by far the most
4 systematically violent and racially oppressive
5 institution in this country. It sweeps up people in
6 communities of color at destructive rates. It rips
7 apart families and subjects adults and children to
8 humiliation, physical brutality, and emotional
9 isolation. The additional restrictions placed on
10 justice involved individuals is another assault on
11 their integrity, humanity and agency especially
12 when they're living in the community, working,
13 going to school, or raising families and told that
14 they cannot vote. I ask that you consider the
15 impact of felony disenfranchisement laws here in
16 North Carolina as part of a broader attempt to
17 suppress the minority vote in the United States.
18 Denying citizens their franchise is a gross
19 injustice. Thank you.

20 CHAIR LHAMON: Thank you. 24th speaker?

21 MR. COMER: Good evening. My name is John Comer,
22 founder and CEO of Architects of Justice. I'm a
23 current resident of Baltimore city. I've been
24 living in Baltimore for about seven years, and when
25 I got there I started an organization and the
26 actual idea for the bill to re-enfranchise forty

1 thousand Marylanders were formerly incarcerated to
2 vote came from my office. We fought very hard to
3 get that bill passed. It was vetoed. Then we came
4 back and fought for the override and we received
5 the override. In the process there were many
6 individuals, men and women who were-enfranchised,
7 at least we thought, when that took place. But
8 later we only had three weeks to register people to
9 vote, and in the process the language never changed
10 that allowed on the voting form the language never
11 changed, so many of the people who had felonies
12 were scared to vote because they thought that if
13 they voted out of turn they would get another
14 felony. This is continuing disenfranchisement and
15 the process we're thinking that we're re-
16 enfranchising voters, but many of the voters are
17 still scared. At this point in time in the state
18 legislature in Maryland there is a bill put forth
19 by delegate Bilal Ali that will make the state
20 inform people who are coming home that they can
21 vote. I think that's part of the process that we
22 have to push forward and make sure that we
23 implement because people are coming home not
24 knowing that they can vote and if we're all here
25 and thinking that we want to improve the world for
26 a better place because many people are out here

1 just trying to survive. There are studies that have
2 been put forth from many institutions that show
3 recidivism goes down when people are allowed to
4 vote so, re-enfranchising people all the way by
5 informing them of what their rights are when
6 they're coming home from prison. By also the state
7 board of elections and things of that nature
8 actually sending out notifications allowing people
9 to know that they can vote is a huge process
10 because at this point in time 40,000 Marylanders
11 have not been re-enfranchised. The word has not
12 been spread. It's been left to small organizations
13 who don't have the funding to actually get that out
14 there. Allowing people to be reinstated to vote at
15 the MVA, that's another bill that's being put forth
16 so where if I just go and get your license you have
17 to opt out, you don't have to opt in, and these are
18 things that we need to be looking at if we're
19 really looking to re-enfranchise the community that
20 the Voters' Rights Act re-enfranchised the first
21 time. Thank you.

22 CHAIR LHAMON: Thanks very much. 25th speaker?

23 MR. RUTH: Good evening. It's a pleasure to speak
24 with you tonight. My name is Dr. Terrance Ruth. I'm
25 the executive director for the State Conference of
26 the NAACP for North Carolina and I'm here on behalf

1 of our state's president, Dr. T. Anthony Spearman.
2 I wanted to say that for anyone who says or states
3 that voter suppression is a phenomena of the past,
4 and that there are no longer any obstacles for
5 voters of color who seek to elect representatives
6 of choice, they need only to look at what have
7 happened in this state over the better part of the
8 last decade when the Supreme Court handed down its
9 decision Shelby versus Holder gutting the very
10 heart of the Voting Rights Act, a law that our
11 elders fought, bled, and died for. Not even one
12 generation ago. It opened the flood gate for Jim
13 Crow voter suppression efforts that we continue to
14 live in that reality today. In North Carolina alone
15 there's been an onslaught of voter suppression
16 efforts has included intentional racially
17 discriminatory racial voter suppression law,
18 racially gerrymandered district that diminished the
19 voting power of people of color, voter purges
20 targeted at removing people of color from the voter
21 rools, and a swell of tactics designed to
22 intimidate black and brown people from polling
23 places. For every single one of these fights, the
24 North Carolina NAACP as the state's largest civil
25 rights organization has been on the front lines of
26 the battle defending the sacred right to vote. In

1 conclusion, without preclearance protections those
2 who seek to suppress the vote in this state have
3 become absolutely brazen in their efforts. In every
4 election cycle we live the ongoing legacy of voter
5 suppression and Jim Crow. This is a tremendous
6 burden on us, on our branches, and on the people of
7 North Carolina, particularly people of color. This
8 is why we need the full protection of the Voting
9 Rights Act, why Congress must act now. My hope is
10 that we move forward together and not one step
11 back.

12 CHAIR LHAMON: Thank you. 26th speaker?

13 DR. FATIMAH: My name is Reverend Doctor Fatimah
14 Salleh. First and foremost I come from no
15 organization. I am a resident of North Carolina,
16 Durham County. I am married to a Caucasian man and
17 my experience in Alamance County when we lived
18 there was that we went to the voting booth at the
19 same time and at the same voting place and I was
20 asked a series of questions far more than my
21 husband in order to vote, so it's nothing more for
22 me. Now, that has happened at banks and other
23 places that my husband has far more had the
24 privilege of walking through and just see like he
25 can fly through processes a lot faster than his
26 woman of color as his wife. Second, not only that,

1 I'm the mother of four brown children in North
2 Carolina. I would like those same discrepancies in
3 the things we see at the polls not happened to them
4 as it has happened to me. I am also the daughter of
5 a former incarcerated man who has a felony on his
6 record. It is important to me. My father has never
7 voted since coming out of prison and it is
8 important to me that we begin to see formerly-
9 incarcerated individuals and the ability to vote
10 and what it is to them to pay their debt to
11 society. I would like us to take a firm stand and
12 reorient them to what it is to be back in the
13 population. More than that I am grateful that we
14 have this process. It's been a long fought process.
15 Has it come some ways? Yes, it has, and I hope it
16 will continue to grow and move forward, that it can
17 be a more just system. Thank you.

18 CHAIR LHAMON: Thank you. 27th speaker.

19 MR. McSURELY: My name is Al McSurely. I'm 82 years
20 old. I'm older than dirt. I worked with a, you can
21 see -- judge that we're getting some young people
22 coming forward, and Rev. Salleh that was my wife,
23 Olinda Watkins, that spoke from Moore County. She's
24 black. And I've experienced the same thing: I get
25 served first. Everything happens to me first, and
26 nobody ever questions me when I go to vote. Just

1 two points: One, to be ahistorical is to be racist.
2 We cannot talk about racism and racism in voting
3 particularly without talking about the long history
4 of what happened to black people in the United
5 States of America and I've studied your Commission
6 for many years, one problems of being old. I
7 remember 1964 when your predecessors went to
8 Mississippi and helped develop the outline of what
9 became the Voting Rights Act. It wasn't just Selma
10 Bridge, my good friends that got their head smashed
11 in there. It was because you all got out of DC,
12 went down into the toughest part of Mississippi and
13 talked with people. You were scared to hold hearing
14 but you went around and talked to people and
15 gathered information and put together what needed
16 to be done. That was the early drafts of the Voting
17 Rights Act. And you all need to get out of
18 Washington some more and come to North Carolina and
19 just sit around and talk and read some of the good
20 stuff that's been coming. Secondly, I wanted to
21 draw your attention a wonderful decision which I
22 asked your people out front that you already had a
23 good friend of mine, Loretta Biggs, sitting in
24 Greensboro. Did y'all get a copy of this decision
25 that she did last year?

26 CHAIR LHAMON: We've not seen it yet, but they come

1 to us.

2 MR. MCSURELY: I got five copies if you want them.
3 This is what my wife Olinda was talking about in
4 Moore County. Judge as you know it was in
5 Cumberland County, Moore County, and Beaufort
6 County out by the coast where these same clowns
7 that are in here taking our pictures and sitting
8 over here, VIP, they call it the Voter Integrity
9 Project, sent out postcards to what Judge Biggs
10 found -- it's all in here (indicating) I don't want
11 to waste my seventeen seconds talking about it, but
12 I do want to suggest that you spend more time
13 instead of taking pictures and showing these things
14 get out and take some pictures of what the voter
15 integrity project is doing as they go into the
16 polls and harass people and check people. Thank
17 you.

18 CHAIR LHAMON: 28th speaker?

19 MS. APPLEWHITE: Good evening. My name is Belincia
20 Applewhite, and I'm a twenty-year United States Air
21 Force disabled veteran and a former elected
22 official for the city of Fayetteville. And I also
23 am one of the many plaintiffs in Covington v. North
24 Carolina, a federal challenge to North Carolina's
25 2011 redistricting plan. I thought that our
26 challenge to the racially discriminatory

1 redistricting plan was going to be resolved shortly
2 after a federal three-judge panel found 28 state
3 legislative districts in that plan were
4 unconstitutionally racially gerrymandered. Here we
5 are nearly a year-and-a-half later found that our
6 redistricting plan discriminates based on race, we
7 still don't have fair maps in place. The remedy
8 that the legislature came up with clearly did not
9 resolve the racial discrimination and went well
10 beyond what they were allowed to do. When tasked
11 with resolving the racial discrimination,
12 legislatures simply turned off the race button and
13 drew lines using the same ones that they found
14 unconstitutional by two courts, including the
15 United States Supreme Court as the starting point.
16 What I am speaking of is about one case, one case
17 where more state legislative districts were found
18 to be racially discriminatory in a single
19 redistricting plan than ever before. One case where
20 we saw race predominate and the drawing of
21 districts across the state in Greensboro, Raleigh,
22 and in my home town of Fayetteville, and many more.
23 Again, this is just one case. There are many more
24 examples of how the voting rights of people of
25 color throughout the state had been undermined. We
26 have heard many of them today. Whether enacting a

1 voter suppression law that targeted African
2 Americans with almost surgical precision or drawing
3 new redistricting mass where partisanship is used
4 as a proxy for race or disenfranchising people. The
5 struggle for basic civil rights is nothing new for
6 the people of color in North Carolina. It goes back
7 centuries. But I am thankful for the testimony of
8 the people in this room today and hopefully one day
9 the work of commissions like this will not be
10 necessary. Unfortunately that is not today. We need
11 help in securing our basic civil rights and I hope
12 we can count on you to hear our call. Thank you.

13 CHAIR LHAMON: Thank you. 29th speaker?

14 MS. GRAY: Good evening. My name is Becky Gray. I'm
15 with the John Locke Foundation a free market
16 limited government state-based think-tank based
17 here in Raleigh. The recent contest for control of
18 the Virginia House of Delegates is an illustration
19 that every vote does matter. Virginia democrats did
20 very well in November, their net gain of 15 GOP-
21 held seats put them just one seat away from a tie
22 in a likely power sharing deal in the Virginia
23 House. That seat might have been won by a Democrat,
24 Shelly Simons however after the election night a
25 tally showed her just ten votes behind the
26 incumbent, Republican David Yancy, Simons sought a

1 recount, it put her ahead by a single ballot,
2 Republicans then successfully challenged that
3 ballot in court and the resulting tie was settled
4 by drawing a name out of a bowl. Yancy got the luck
5 of the draw. Tied elections aren't unknown in North
6 Carolina. Tied Municipal Races in Alleghany County,
7 Samson County, and Mecklenburg County, have
8 Recently Been Resolved By Chance, if we broaden
9 that category just a little bit to include races
10 settled by dozens or hundreds of votes, there are
11 many more cases across North Carolina in municipal,
12 county, even legislative races. For that matter who
13 can forget the 2000 Florida recount. A few hundred
14 ballots separated George W. Bush and Al Gore in a
15 state with enough electoral votes to sway the
16 Presidential race. The complaints about hanging
17 chads, butterfly ballots, weren't the only relevant
18 controversies. Another was illegal voters either by
19 felons or by snowbirds or students with residence
20 in multiple states. Over the years North Carolina
21 has implemented a number of policies to deter
22 illegal voting. Still after 2016 state Board of
23 Elections conducted an audit that found that 508
24 votes cast should not have been counted. There were
25 felons, there were 41 substantiated cases of votes
26 by non-citizens, double voting, voting

1 impersonation fraud, and some activists claimed
2 that this post-election audit proved that
3 additional measures to ensure election integrity
4 were unneeded, but they were wrong. Impersonation
5 fraud, for example, is done most of the time by
6 people voting on behalf of their relatives. What
7 about voting on behalf of shut-ins? Relatives with
8 mental disabilities, residential fraud also merits
9 more attention and could be policed in part by
10 voter ID requirements. So in the end a productive
11 response to all of this would be for Republicans
12 and Democrats to work together to implement a low-
13 cost insurance policy against fraudulent electoral
14 outcomes, voter ID, stricter rules for absentee
15 voters, greater oversight of in-person voting are
16 good ideas and worthy of consideration to ensure
17 the integrity of our elections. Thank you.

18 CHAIR LHAMON: Thank you. 30th speaker?

19 MS. STALLINGS: Good evening. My name is Cheryl
20 Stallings and I am a psychologist who lives and
21 works here in Wake County. Thank you all for being
22 here and for the important work that you are doing.
23 As a native of this state I am very concerned about
24 the state of voting rights of North Carolina. I
25 feel our democracy is under assault. In references
26 to draining the swamp, I feel like we have our own

1 swamp right here in North Carolina that is full of
2 racial and partisan gerrymanders and needs to be
3 drained with significant reform. According to the
4 North Carolina League of Woman Voters, there have
5 been sixteen legal challenges since 2000 regarding
6 concerns about bias voting maps and districts in
7 our state. There are about an even number of
8 registered Democrats, Republicans, and unaffiliated
9 voters in this state yet the Republican Party has
10 super majorities in both chambers of our General
11 Assembly. This state legislature enacted a massive
12 voter ID law that was intended to disenfranchise
13 the minority vote in this state. A federal appeals
14 court struck it down saying that it targeted
15 African Americans with almost surgical precision.
16 The Supreme Court has also struck down two of our
17 state's congressional districts on the grounds that
18 there were impermissible racial gerrymanders. I
19 believe that gerrymandering is toxic to our
20 democracy and, more concerning, it is the impact
21 that this unconstitutionally elected General
22 Assembly has on policy and the common wealth of
23 North Carolina. This state legislature has refused
24 to expand Medicaid, which has denied approximately
25 five hundred thousand low income North Carolinians
26 access to needed health care. In addition, they've

1 failed to invest in our state's children and public
2 education. On national report cards examining
3 student achievement and in school funding North
4 Carolina has fallen from the 19th in the nation in
5 2011 to now 40th and 45th on these measures. I
6 believe minorities in North Carolina are being
7 underserved and underrepresented. I also believe
8 the commonwealth of North Carolina is also
9 underserved and underrepresented. Although equal
10 access to the voting booth for minorities and
11 nonpartisan redistricting may not solve all of our
12 problems, I believe it is a fundamental and
13 necessary place to start. Thank you for working
14 diligently with us as we work to ensure fair and
15 equitable voting rights for all and hopefully we
16 will all continue to work together to form a
17 perfect union. Thank you.

18 CHAIR LHAMON: Thank you. And the final speaker.

19 MS. ELLMAN: Last but not least, my name is Kate
20 Fellman, and I am with a grassroots organization
21 based in Durham called the People's Alliance. I've
22 been working on elections in NC since 2008. In 2013
23 when House bill 589 passed, radically changed our
24 voting laws. I set up to work solely on helping
25 voters understand how, when, and where to vote and
26 what the current requirements were to vote. Since

1 then I have facilitated over 250,000 one-on-one
2 conversations with voters in North Carolinas. And
3 these conversations are heartbreaking. It is
4 downright shameful how understandable confused,
5 frustrated, and angry North Carolina voters are by
6 the changing rules in making voting harder and
7 unconditionally racially gerrymandering their
8 districts. I'd like to tell you about some of these
9 conversations. Every day we talked to eligible
10 voters that tell us that they can't vote. One
11 reason they say is that because confusion over
12 voter ID laws. They say I can't vote, because of
13 confusion over voter ID laws. They say, I can't
14 vote, I don't have an ID or my ID isn't up-to-date
15 with my current address so I can't vote. We've
16 dismantled the confusion on the status of these
17 rules. We also encounter voters every day who
18 believe they can't vote due to a prior felony
19 conviction. In 2016 we registered hundreds of
20 voters who were eligible but confused about this. I
21 registered a twenty-year-old kid who felt he'd
22 never been able to vote again. I registered a
23 sixty-year-old woman who hadn't voted in thirty
24 years. We also run into people who believed they
25 were registered to vote. They believed they voted
26 online. But there is no online voter registration

1 in the state of North Carolina, unless you print
2 it, stamp it, and mail it you are not register. We
3 also encountered thousands of voters who believed
4 they registered at the DMV in 2016 but the DMV was
5 failing to process the forms. The mass public
6 confusion over the voting laws and maps in North
7 Carolina and the lack of automatic voter
8 registration of eligible citizens disenfranchises
9 thousands and thousands of voters. Not only were
10 these laws found unconstitutional but they are un-
11 American because they infringe upon our most basic
12 civil right. I really thank you for being here. We
13 need you to hear our testimony. We need your help.
14 We need automatic voter registration in every
15 state. We need universal restoration of rights for
16 former felons. We need strict oversight on the
17 drawing of our voting maps and the making of our
18 voting rules. We need to make rules simple and
19 understandable. We only need rules that are aimed
20 at securing our elections while ensuring we are
21 assisting and facilitating voter access for all
22 eligible voters. People wonder why there is such
23 lower voter turnout in our democracy, after doing
24 this work I can tell you it is because the rules
25 are designed to discourage participation and to
26 disenfranchise voters. Thank you for being here and

1 hearing our call for help.

2 CHAIR LHAMON: Thank you very much for your
3 testimony, and thanks to all who participated here
4 today. This brings us to the end of our briefing. I
5 thank all of our panelists and all of our public
6 participants. Today has been tremendously
7 informative. And on behalf of the entire
8 Commission, I thank all who presented for sharing
9 your time, expertise, and experience with us. As
10 mentioned earlier, the record for this briefing
11 shall remain open until Monday, March 19th, 2018.
12 Panelists, or members of the public who like to
13 submit materials for the Commission's
14 consideration, which we welcome, may mail them to
15 the U.S. Commission on Civil Rights, Office of
16 Civil Rights Evaluation 1331 Pennsylvania Avenue
17 Northwest, Suite 1150, Washington, D.C. 20425, or
18 e-mail them to votingrights@USCCR.gov. I ask that
19 our attendees move any continuing conversations
20 outside the ballroom so our staff and hotel staff
21 can complete logistics necessary to close out. If
22 there's nothing further, I hereby adjourn the
23 briefing at 7:29 eastern standard time.

24 (Proceedings adjourned at about 7:29 p.m.)