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
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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.

Court's decision in Shelby County versus Holder on the Department of Justice enforcement strategies and priorities. Throughout the sixty-year history of this commission, voting rights have been a core component of the Commission’s focus and work. In light of the fundamental nature of voting rights, the Commission was established in 1957 in part to address issues with voting access in our country. In the years leading to the passage of the 1965 Voting Rights Act the Commission held hearings and issued reports on voting rights abuses. In our early years, the Commission went to Mississippi and invited community members to testify to their experiences trying to vote. People testified to being turned away, to being tested about their detailed knowledge of constitutional meaning. Elections officials disputed these claims until the Commission enforced subpoena power to receive records ultimately laying the data groundwork to support the Voting Rights Act. In March of 1965 President Johnson called for new voting legislation embodying the recommendations of the Civil Rights Commission, and Congress passed the Voting Rights Act. In the State of South Carolina versus Katzenbach, the Supreme Court rejected a challenge to the constitutionality of the 1965 Voting Rights
Act, in part relying on data published by the Commission. Since those early days the Commission has published twenty reports focused specifically on voting rights and our most recent report was last year. The issues in these reports have included access to voter registration without artificial barriers—like literacy tests and poll taxes, the ability to vote without intimidation, large structural barriers such as gerrymandering—the way districts were drawn district lines were drawn to defeat candidates of color, non-English language access, and the role of federal enforcement. The Commission’s focus over these decades on voting rights reflects the continuing contest that persists over voting rights and underscores the significance of voting rights as an issue and what is at stake for democracy when those rights are curtailed. The Commission rightly recognized in the first report that, quote, “The right to vote is its cornerstone of the Republic and the key to all other civil rights.” [end quote]

As is likely typical of black families like mine, I grew up hearing regular admonitions that we died for this right, the right to vote, and so we must use it. It is my honor to conduct this briefing today and further the availability and protection
of the right to vote together with my fellow Commissioners. We are fortunate to have with us a living exemplar of the success and ongoing vitality of the Voting Rights Act promises. Vice Chair Timmons-Goodson to my left served as the first black woman on the North Carolina Supreme Court. She was first appointed by the governor and then elected to that statewide office in 2006. A result that would have been unlikely and even impossible in a time before the Voting Rights Act of 1965. The Vice Chair’s exemplar service on the court is matched by her service here at the Commission for which I’m very grateful for. I look forward to working with my colleagues and to drawing conclusions and make recommendations after reviewing the materials submitted to the Commission and benefiting from today's briefing. Today's briefing features twenty-three distinguished speakers who will provide us with an array of viewpoints as well as the opportunity to hear from the public. The first panel includes policy experts and former government officials who will speak to the scope and efficacy of the Department of Justice’s enforcement of the Voting Rights Act. I know the Commission staff invited officials from the
relevant offices in the Department of Justice but they declined to participate in today's briefing. They have, however, produced data and documents responsive to our requests and Commission staff look forward to reviewing these materials for inclusion in our report. The second panel, includes litigators and advocates who will speak to the laws affecting voter access since the Shelby County decision. The third panel includes policy experts, academics, and practitioners who will speak to voter access generally. The fourth panel includes election administrators, advocates, and academics who will speak to recommendations ensuring access to the ballot in the context of changes since the Shelby County decision. I thank all who have joined us today to focus on this critical topic your views help us to fulfill our mission to be the nation’s eyes and ears on civil rights.

We will, following this briefing, work on collecting the materials that you have shared with us, review those materials, and the Commission staff will prepare a report that the Commissioners will vote on and ultimately will produce to the public to make recommendations about civil rights policy with respect to voting rights.
And now I'll pass the mic to Commissioner Heriot, who I understand would like to say a few words.

COMMISSIONER HERIOT: Thank you, Madame Chairman. I know my commission colleagues have said they're looking forward to today's tomorrow but I'm not sure I can say the same thing. Of all the areas of civil rights law and policy, voting right policy may be my least favorite. Why? Because it's important as voting rights are lurking beneath the most aggressively-asserted claims on both sides are often purely partisan concerns, somebody wants to get elected and the passion of politics can be mistaken for a passion of principle. I think we understand the problem. Democratic voters tend to be younger and less likely to turn out so it's in the Democratic Party’s interest to make voting as easy as possible. Meanwhile, noncitizens and other ineligible voters are also more likely to be Democratic so it's in the Republican Party’s interest to take measures to ensure that only qualified voters are able to vote. Both these goals are entirely worthy when presented openly and honestly. But in our imperfect world, it is impossible to achieve perfection in one without sacrificing the other. We obviously need reasonable and diligent efforts in pursuit of both goals and
to try to make those conflict as little as possible. What we don't need and what we see far too much of our efforts to scare decent people into believing that somebody's trying to send minority voting right back to the stone ages or wild claims that we are in the science fiction world where voting machine manufacturers are nefariously manipulating vote tallies via secret wireless networks. Those who try to whip up fear are not looking out for the welfare of minorities or the welfare of anybody else. I appreciate all the testimony we're going to be hearing today. I read through the written testimony and almost all of it is very measured and useful, but I would urge a few of our witnesses to try to tone down the rhetoric a little. Thank you.

CHAIR LHAMON: Thank you, Commissioner Heriot.
I want to pass the mic to Commissioner Adegbile at whose impetus we have held this briefing.

COMMISSIONER ADEGBILE: Good morning, Madame Chair, and thank you to our assembled witnesses and guests I would like to thank the staff for making this field briefing possible. I would also like to thank all of our witnesses for a range of views who have traveled from near and far to be here today and will be with us over the course of the day. I'm
very pleased that the Civil Rights Commission has
taken up this subject of Voting Rights Act
enforcement as our statutory enforcement report for
2018, and I'm pleased about that for a number of
reasons. Principally, because the VRA tells us
something about the American story. We know many
things about our history, and one of the things
that we know is that although we have embraced for
a very long time high constitutional principles,
too often our practices have not lived up to our
principles and the VRA in that sense is understood
by many to be one of the most important
congressional enactments of any kind; in part,
because it is the vehicle for which we keep the
promise of our Constitution through which we
enforce the 15th Amendment and see that voting
rights are accessible and there to be used by all
of our citizens. I'm also pleased that we are
taking this up because in that sense the VRA is an
exemplar of the sense in which our democracy is
aspirational. That is to say it can become better
through hard work and through vigilance, and I
think the story from the VRA as we may hear from
your witnesses today from a range of perspectives
the story of VRA is that vigilance in a democracy
must be nonstop. Finally, I would like to say that
there is a very important and simple idea that undergirds the VRA, Voting Rights Act, and that is, that a democracy is stronger when it embraces a minority inclusion principle. There are two ways to think about elections in a democracy. Perhaps there are more, but there are at least two, and because of the shortness of time I will put them in two buckets. One way is to think of a democracy as a contest to mobilize people that shared your views and to prevail on that basis. Another view of democracy is the idea that the way to prevail in an election is to prevent some people who may not share your views from participating. I dare say that the VRA is about a choice to compete on ideas and on the basis of minority inclusion, and I think for that reason it is a very important part of our history. I'm very excited to hear from our witnesses because I think that we share one idea, and that idea is that democracy is the lifeblood of the United States of American and that in some sense we must be vigilant. We have different ideas about what vigilance requires, but I look forward to be illuminated on these points by our witnesses, and again, I thank them for coming today to North Carolina, a state which has been a field where these voting right contests have occurred from the
Reconstruction Period forward, and so I think that it's appropriate that we've chosen the field briefing in a state that is continuing to grapple with these very ideas. And while the view that we take today is national, it sometimes is important to think about it in particular context, and I welcome witnesses to both expand with big ideas and also some specific examples about what the state of progress is today. The Voting Rights Act is about the idea is that because we made progress doesn't invite us to stop making progress. Instead, it's an invitation to make more progress and to remain vigilant, I thank you.

CHAIR LHAMON: Thank you, Commissioner Adegbile, and also many thanks to Commissioner Yaki who is about to celebrate his thirteenth year of service to this Commission and whose expertise in voting rights has been a strong guide in shaping today’s briefing. I turn us now to begin our briefing with a few housekeeping items, the first of which and the strongest, which is deep thanks to our commission staff who brought today’s briefing into being they are: LaShonda Brenson, Maureen Rudolph, Sarale Sewell, in addition to Teresa Adams, Carolyn Allen, Katherine Culliton-Gonzalez, Pam Dunston, Latrice Foshee, Abeer Hamid, Tina Lewis-Martin, David
Mussatt, Lenore Ostrowsky, Sarale Sewell, Brian Walsh, Marik Xavier-Brier, and Michele Yorkman-Ramey for preparing and making the logistical details for today’s work.

I caution all speakers, including our Commissioners, to refrain from speaking over each other for ease of transcription and to allow for sign language translation to my right. For any individuals who might need to view the sign language translation, there are seats available in clear view. Everyone present please silence your phones and do not take flash photos to minimize health risks to persons present. After our four panels and our afternoon break we will reconvene at 6:00 p.m. for a public comment period. If you are interested in participating in the public comment period during which each person will have up to three minutes to speak we would be honored to hear from you. In total, the oral comments period will last two hours with forty slots allotted on a first come, first served basis. You may sign up at the registration desk at our first break at 10:40 a.m. or during the lunch break at 12:20 p.m. The first twenty spots of our forty total will be open until filled. We will open registration for the second twenty spots in the afternoon break at 2:50 p.m.
and if spaces remain available, again after the briefing concludes at 4:30 p.m. Again, the spots will be available until filled. For any member of the public who would like to submit materials for our review, our public record will remain open until Monday, March 19, 2018. Materials can be submitted by the mail to the U.S. Commission on Civil Rights, Office of Civil Rights Evaluation 1331 Pennsylvania Avenue Northwest, Suite 1150, Washington, D.C. 20425, or by e-mail to votingrights@ucccr.gov.

During the briefing each panelist will have seven minutes to speak. After each panel present, the Commissioners we will have the opportunity to ask questions within the allotted period of time and I will recognize Commissioners who wish to speak. I will strictly enforce the time allotments given to each panelist to present his or her statement, and you may assume we have your statement so you do not need to use your time to read them to us as your opening remarks. Please do focus your remarks on the topic of our briefing. Also note that we have a very tight schedule today with nearly two dozen experts who will speak before us, and I ask my fellow Commissioners to be cognizant of the number of panelists and the interests of each Commissioner.
in asking questions. Please be brief in asking your question so we move quickly and efficiently through today's schedule. I will step in to move things along, if necessary.

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

COMMISSIONER YAKI: Thank you very much, Madame Chair. And as you said, this will mark my thirteenth year on the Commission. This will probably be about my fifth hearing on some aspect of voting rights but the first since the Shelby decision. I wanted to say something really briefly. One, thanks to Commissioner Debo Adegbile and his staff for helping to put this together. We co-sponsored this but he really took the laboring oar as the expert on this. The Voting Rights Act was enacted not simply to give the disenfranchised a chance to vote. It was an enacted to give meaning
to that vote, and I think part of what we're going to be hearing today about whether or not that meaning still exists in a post-Shelby world, but the one thing I do want to say is, that hasn't been said yet, is that whatever we do here today, whatever report we put out, we as a commission are the watchdog; we're the ones who are out there telling Congress and the American people what is going on and what should be, but ultimately it is up to Congress to take action and ultimately it's up to American people to get Congress to action, so there's a little bit of strange circular logic to all that we are doing here today when we talk about minority disenfranchisement and the inability for minority voters to have access to the ballot and to elect minority candidates when that very lack of access has an impact at the level of government where change needs to be made. So I just want to point that out to everyone that's a bigger universe and a bigger job left to all of us. We will do ours, but there are others who have to take up the oar after us to make it meaningful. Thank you.

CHAIR LHAMON: Thank you Commissioner Yaki. Now will we turn to our first panel. The order in which our panelists speak include Peyton McCrary, who served as a historian in the Civil Rights Division of the
Department of Justice until his retirement in 2016, Vanita Gupta, president and CEO of the Leadership Conference on Civil and Human Rights. Ms. Gupta served at DOJ as principal deputy and assistant attorney general and head of the Civil Rights Division of 2014 and 2017, Hans von Spakovsky, Manager of the Election Law Reform Initiative and Senior Legal Fellow at The Heritage Foundation. Earlier in his career Mr. Von Spakovsky served as counsel to the Assistant Attorney General for Civil Rights. Justin Levitt, Professor of Law at Loyola Law School in LA. Professor Levitt served as the Deputy Assistant Attorney General in the Civil Rights Division of DOJ from 2015 to 2017. And Bishop Dr. William J. Barber II, president and senior lecturer of Repairers of the Breach. And note that Gerry Hebert, Senior Director of Voting Rights and Redistricting at the Campaign Legal Center was scheduled to speak today and unfortunately is unable to be with us but has written a statement that will be added to the record. Mr. McCrary would you please begin.

MR. McCRARY: Thank you. Let me begin by thanking the Commission for inviting me to participate in this important hearing on current challenges in voting rights enforcement in the United States. My
remarks reflect my training as a historian and a
historian who, unusually, has worked on voting
rights litigation for 37 years. I also grew up on
the Virginia-North Carolina border and and when I
registered to vote for the first time in 1964 I had
to pay a poll tax and take a receipt to the polls
with me, which tells you that I'm old. It seemed to
me the most useful thing to tell the Commission is
about the experiences of the Department of Justice
and private plaintiffs in recent voting rights
litigation in cases that were decided after Shelby
County versus Holder and which in a couple cases
began which happened before the Shelby County
decision, which helps illustrate the differences
between the Section 5 process of litigation and
litigation under Section 2 of the Voting Rights
Act.
I emphasized in my written testimony these three
cases: the North Carolina case challenging the
omnibus election law adopted in the immediate
aftermath of the Shelby County decision in which
the legislature made clear that it was acting
because the preclearance review process was no
longer present and therefore they expanded the bill
to include a number of provisions that the Fourth
Circuit Court of Appeals found to be racially
discriminatory in intent and effect. Two cases in Texas that I was also heavily involved in involved one, the districting plan adopted by the states in 2011 for the congressional, state Senate, and state Senate House plans, and also a case involving the photo ID requirement adopted by Texas in 2011. The focus of my work on all cases, including these cases, was on the fact finding done by the Department and the identification of appropriate expert witnesses to use in addressing the empirical issues before the Court, and that's the focus of my written remarks as well. The importance of expert witnesses in voting rights litigation has long been a little understood part of the process, and that was true in these recent cases as well. Expert witnesses testifying about matters that the Court either doesn't have the technical skills to address or which the Court may not have the time to address, and in doing so the experts use their training as social scientists in most cases to assemble evidence that is credible according to the basic social science methods in their discipline, and that's of course what we're doing in these three cases. Putting on these cases is enormously expensive even at the local level. These three cases involve laws of statewide application and
were even more labor-intensive and therefore resource-intensive than a local case. It occupied much of the work of the Justice Department in the years after 2011 and only in part of that time of course were the resources of the voting section of the Civil Rights Division also available to address preclearance review under Section 5 the Voting Rights Act. These cases demonstrated in the instance of the two cases challenging the photo ID requirements that legislatures were acting on the professed belief that in-person voter fraud at poles was a major problem facing their states. In the cases there was never any evidence that persuaded any of the courts that this was empirically correct. Instead the courts' tended to view this claim as pre-textual. In some of those cases the states also offered the view that was necessary to --to address voter fraud by adopting rigorous restrictions on the use of -- on the identification of voters through requiring photo ID requirements -- for the photo ID documents. In order to address the concerns about voters that the process didn't operate in a fair and equitable manner, states were never able to persuade the courts that this was a claim based on any empirical evidence as well. It proved to be necessary to
develop new techniques in order to address the
voter ID requirements using political scientists
who were experienced in large scale database
matching to address problems in election
administration. It was very time-consuming. It was
difficult to do. It required complex analysis, but
in all cases, the database-matching methodology was
effective in presenting this evidence to the
courts. A further of difficulty in database-
matching where the laws required certain federal --
or allowed certain federal documents to be used as
identifying voters was the need to coordinate with
a variety of federal agencies who issued those
documents and that was impossible to do during the
Section 5 timeframe where courts proceed on a very
rapid discovery schedule, but in the Section 2
litigation it was possible to coordinate all of
those agencies to assemble all the evidence, and
the record speaks for itself in those cases. One of
the problems with the focus on these statewide
cases is that local cases tended to fall by the
wayside, and of course it was the local issues of
voting rights that were addressed most effectively
under Section 5 of the Voting Rights Act, when it
existed, and it's very difficult to imagine Section
2 litigation being able to address those many local
changes that only the preclearance requirements of the Act enabled the Department to address. At any rate, we are now in a place where the only effective remedy that can replace Section 5 is Section 3(c) of the Voting Rights Act, which requires proof of discriminatory intent. Thank you.

CHAIR LHAMON: Ms. Gupta?

MS. GUPTA: Good morning. Thank you to the Commissioners for inviting me here today to speak with you. As the head of the Leadership Conference on Civil and Human Rights we were founded in 1950 and have coordinated national lobby efforts on behalf of every major civil rights law since 1957, including the Voting Rights Act of 1965 and its subsequent reauthorizations and during the last two and a half years of the Obama Administration, I led the Justice Department Civil Rights Division. The Supreme Court’s devastating Shelby County decision in 2013 dramatically weakened the government's ability to prevent efforts to disenfranchise voters and it emboldened some states to pass voter suppression laws, including restrictive photo ID laws, cutbacks on early voting hours, and elimination of same-day registration. And thankfully, a number of federal courts have struck down several of these laws. In striking down the
North Carolina law, that my co-witness Peyton McCrary just spoke of, in July 2016, a law that was enacted very shortly after the Shelby County decision came down, the Fourth Circuit described the law as, quote, the most restricting voting law North Carolina has seen since the era of Jim Crow with provisions that, quote, target African Americans with almost surgical precision. There have been findings of intentional discrimination in at least ten voting rights decisions since Shelby County. And I just want to make a few top line observations with the time that I have about the impact of Shelby County on DOJ's enforcement. One is that the loss of preclearance means that the Justice Department must now use Section 2 to affirmatively sue jurisdictions that engage in discriminatory election practices. Litigation is slow. It is enormously time-intensive. It ties up very precious resources. It can take years for a case to make its way through the courts, as exemplified by both North Carolina and Texas litigations and all while elections are happening and harm is being done to the public as a result of discriminatory laws being in place. Preclearance of course was designed to stop discrimination before the discriminatory rules went into effect. And now
the harm is ongoing and the statewide litigation challenges that the Justice Department has been engaged in North Carolina and Texas ate up a really significant amount of the Justice Department attorney resources and time. The second consequence of the Shelby County decision is it has become increasingly very, very difficult to track changes in local election practices at the county level, villages, state boards and the like, and what some folks don't kind of remember is that actually the vast majority of objections that were lodged by the Justice Department under Section 5 between 2000 and 2013 concerned county and municipal school board and special district election changes, so there is the very real consequence that local discriminatory changes are not being tracked, discovered, or addressed since Shelby County. The third consequence is that the Justice Department has interpreted the Shelby County decision as also curtailing election observers because the observers have been dispersed according to the same section 4(b) formula that the Shelby -- that the Supreme Court found throughout in its Shelby County decision, and this has had a very significant impact on the ability to gather evidence of problems, particularly in Section 203 and Section

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208 cases, which often depend on direct observations of what’s happening at the polls themselves on the day of elections. A fourth consequence is also the very significant impact that we have not yet seen, and that will come right after the 2020 Census. This is now going to be the first time when Section 5 is not in place, to block or deter discriminatory voting changes in redistricting plans. And so, in order to meet the Constitution's one-person, one-vote requirement thousands of redistricting maps form statewide, congressional, and legislative maps to county and city council district lines are going to be redrawn in jurisdictions that were previously covered by the Voting Rights Act’s preclearance requirement.

Following the 2010 Census the Justice Department reviewed more than 2,700 redistricting plans from covered jurisdictions. This round of restricting will mark the very first time in five decades that discriminatory maps are going to be enacted with no prophylactic review and can only be challenged after the fact in very time-consuming and expensive litigation. I will also note that the Justice Department shifting priorities under the charge of Attorney General Jeff Sessions have created quite a cause for alarm in undermining also the aggressive
enforcement of the Voting Rights Act. In February, the Justice Department reversed its long-standing litigating position that the Texas voter ID law was intentionally racially discriminatory even though no new factual evidence had arisen to undermine the position the Justice Department had taken in court for the past five years. In addition to that there have been a lot of concerns about what this Justice Department may be signaling with regards to enforcement of the National Voter Registration Act, a letter of that was sent in July asking where it had 44 states asking for the first time extensive information exclusively about how states maintain their voter rolls. The Department's long-standing practice has to send letters of this kind only where there are particularized evidence of possible noncompliance by a particular given state. In sending an investigative demand letter to every NVRA covered state in the country is certainly a highly unusual move that appears to be to a prelude to voter purge efforts. And then in August 2017, the Justice Department filed a brief in the Husted versus A. Philip Randolph Institute case, arguing that it should be easier for states to remove registered voters from their rolls, in so doing, they reversed a consistent, long-standing legal
interpretation of the NVRA that had been enacted since 1993 and also reversed a position the Justice Department had taken in lower courts in precisely the same case. I think there's no question that American voters need Congress to restore the Voting Rights act to its full and proper strength post-Shelby County. Shelby County made clear that a new preclearance system must be tailored to current conditions and the Voting Rights Advancement Act is one way that could create new coverage formula and restore Section 5 of the VRA. In closing 2006 the Voting Rights Act was re-authorized with strong bipartisan support. This issue needs to remain bipartisan even in these highly polarized times. Thank you.

CHAIR LHAMON: Thank you, Ms. Gupta.

Commissioner von Spakovsky?

MR. von SPAKOVSKY: Good morning and thank you for inviting me here. I was asked to answer a series of questions. But, in summary I would say that the Voting Rights Act remains a powerful statute whose remedies more than sufficient to stop those rare instances of voting discrimination when they occur. The question has the Shelby County decision affected DOJ’s voting rights enforcements of Section 2, Section 203 and Section 208. My analysis
of that is, the answer is no. If you look at the litigation record of both the George Bush Administration and the eight years of the Obama Administration what they show is a sharp, overall, downward trend in the number of enforcement actions filed, including in 2013 the year after Shelby County case. For example, Section 2, which is the nationwide permanent provision of VRA, prohibits racial discrimination in voting. The Bush Administration filed fifteen cases to enforce Section 2. Only three of those were in jurisdictions covered by Section 5: South Carolina, Georgia, and Mississippi. The Obama Administration, eight years, only filed five cases to enforce Section 2, only about one third of what the Bush administration did. Three of those were in jurisdictions covered by Section 5—Texas covered in whole and North Carolina. The Obama Administration thus filed far fewer Section 2 enforcement cases, but the number of cases filed in either Section 5 covered jurisdictions or formally Section 5 covered jurisdictions was exactly the same for both administrations. Section 11(b), which was not mentioned in your questions, but which is another important provision because it prevents coercion and intimidation in the voting context.
The Obama Administration filed no such cases to enforce that provision. The Bush Administration filed two. The VRA has two language minority provisions. The Obama Administration filed eight lawsuits and entered into two settlement agreements, for a total of ten enforcement actions. Only one of those occurred after 2013, a settlement with Napa County, California, which was not covered ever under Section 5. The Bush Administration filed 27 lawsuits and one settlement agreement, for a total of 28 enforcement actions. Again, the Obama Administration only filed about a third of the number of cases the Bush Administration did to enforce the language minority provisions. Section 208, which the Commission also asked about, is a provision that protects voters who need assistance because of disability, blindness, or inability. The Obama Administration only filed one case in eight years, to enforce that provision in 2009 four years before Shelby County, no enforcement action was filed after. By contrast, the Bush Administration filed ten cases, only two of which were filed in the jurisdiction covered by Section 5. Thus, the litigation record does show that these provisions have been continued to be enforced but there’s been a sharp downturn in the last eight years in
enforcement actions filed. Now, this is obviously not due to a lack of personnel or resources since the staff of the Voting Section who had worked on Section 5 matters were not terminated. In fact, they were all retained after Shelby County, which meant that they could be used for those other cases. Also, the Civil Rights Division’s own budget performance reports show that their appropriations steadily increased from $136 million in fiscal year 2013, the year that Shelby County was decided, to $175 million in 2016. Thus, the downturn seems to reflect a reduction in the discriminatory action that would justify a DOJ lawsuit. The other question was if the federal clearance process system should be reinstated. The answer to that is no. In 1965 Section 5 was needed. There was official systematic widespread discrimination that kept black Americans from voting. Section 5 was put in the law in addition to Section 2 for one reason. The reason was that there was blatant evasion of court decrees even when the Justice Department won cases, and that's why the clearance provision was put in, but times have changed and as the Supreme Court said in Shelby County today, blatant evasion of a court decree is extremely rare. Judge Steven Williams, District of Columbia Court of Appeals,
pointed out in the Shelby County case in the lower Court that in fact jurisdictions covered under Section 5 had higher black registration and turnout than non-covered jurisdictions. Covered jurisdictions also had far more black office holders as a proportion of the black population than uncovered ones. And in a study of lawsuits filed under Section 2, Judge Williams found that the five worst uncovered jurisdictions had worse records than the eight covered jurisdictions. With no evidence of widespread voting disparities among the states, continuing the coverage formula unchanged in 2006, was irrational. Again going back to the key point, Section 5 was there because of evasion of court remedies, court-ordered decrees in the 1960s. Because that so rare today and because there's no discernible difference between states—other than the formally-covered states actually have better records these days—there's no reason for Section 5 to be put back in as a blanket-coverage, particularly because we have Section 3. Section 3 is a custom-made version of Section 5. If a Court believes that a particular defendant is not only engaging in discrimination, for example, under Section 2 but is a recalcitrant defendant, someone who is feared may repeat this behavior they can be
put into a specific pre-clearance requirement. I'm aware of only two cases that has happened since 2013 -- one involving city of Evergreen, Alabama, which was formally-covered jurisdiction, and another one covering the city of Pasadena, Texas which was never covered under Section 5. To conclude, there's no reason given the custom provision in Section 3 to reinstate Section 5 and in fact there's no evidence that particular states are engaged in systematic official discrimination that would justify treating them differently from other states.

Thank you.

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

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

The Voting Rights Act that was enacted on a bipartisan basis by Congress was a relentlessly pragmatic tool that was designed to enforce a cherished American commitment to equitable representation -- as Commissioner Adegbile said, “to keep the promise of the Constitution.” Shelby
County, in my view, ripped a significant hole in Congress’ work. Despite the best efforts of private attorneys and the civil servants at the Department of Justice, Shelby County has left Americans less able to timely defend themselves against voting discrimination, plain and simple. Unfortunately, in the past few years, a few jurisdictions have amply demonstrated that existing tools, while powerful, are nevertheless inadequate, even with armies of lawyers. I fear that the worst is yet to come. Shelby County is so significant because it gutted a procedure uniquely tailored to a unique problem. Most civil rights litigation, as you know well, is responsive. If there's a legal problem, you sue, you prove harm, the problem gets fixed for the future. But election laws and enforcing the voting rights provisions of federal law are different. Discriminatory election laws artificially took the terrain by which officials hold office. Because these discriminatory procedures may help officials keep their jobs, they're often willing to fight tooth and nail even when the illegality becomes strikingly clear. When officials do dig in, they don't bear the costs of this extreme resistance — the taxpayers do. And when the taxpayers disapprove, they can't toss the offenders out of
office, because the election rules themselves are the problem. In no other civil rights arena is the impact on officials so personal and direct. Election laws are different. Normal lawsuits, as you've heard, are also a little bit like ocean liners: they are very complicated, they're very expensive, they're very slow to get going. Voting lawsuits, and particularly suits under Section 2 of the Voting Rights Act, are an extreme version -- among the most complicated in the federal system. The Federal Judicial Center did a study a number of years ago: of the 63 categories of federal cases, voting cases rank sixth, sixth most complex. It can take years to develop evidence, years to resolve. Enforcing the voting laws is different. And in the meantime elections infected with discrimination are taking place. We know that elections have consequences. Discriminatory elections have consequences too. The winners of unjust contests still become incumbents and still end up making policy. And even if you can eventually get the election structure right, that doesn't fix the policy of the meantime. Election laws are different. Unfortunately, these aren't just theories. We are in North Carolina, and I expect that you will hear plenty about North Carolina
today, and so I want to use my limited time —
there’s plenty to hear in that regard. I want to
use my limited time to give you a different example
from outside of the jurisdiction where we sit and
where you’re likely to hear public comment later.
Instead I will just briefly mention an example from
Texas. When it comes to racial misconduct, Texas
has unfortunately proven themselves to be an
unrepentant recidivist, one of the recalcitrant
jurisdictions that Mr. von Spakovsky mentioned.
After decades of trouble, after a Supreme Court
decision specifically railing against conduct
bearing the indicia of intentional discrimination,
Texas drew districts again determined by multiple
courts to be discriminatory. Some of the lines that
they drew were found to be intended to
discriminate. And at the same time, the same
legislature passed a restrictive ID law also found
to be intentionally discriminatory. Mr. von
Spakovsky mentioned in his written testimony that
no one can rationally claim there is still
widespread systemic official discrimination in any
of the formerly covered states; I simply don't know
what else to call this pattern. And though blatant
evasion of court decrees is indeed rare, more
subtle evasion is strikingly still present, and
pernicious. Preclearance blocked, effectively, both of the policies that I just mentioned -- both the ID law and the redistricting law in Texas -- but Shelby County kicked open the door. The 2012, 2014, and 2016 elections -- primary elections and general elections, for Congress and for the state house -- were all held in districts determined to be discriminatory. Those elections cannot be undone.

An army of lawyers arrived, including lawyers from the Justice Department, to try to fill the gap Shelby County left and that litigation, which has consumed enormous resources, is still ongoing. Given its schedule, it is extremely likely that 2018 elections will also be held under invalid lines. And Section 3 relief, if it is ever to come, will come a decade too late. That means that justice has been repeatedly delayed in Texas, which means that justice has been repeatedly denied in Texas. Enforcing the voting laws is different, and as Congress recognized, the existing tools are simply not enough. If that’s true for a statewide problem -- along with both Mr. McCrary and Ms. Gupta -- it's even more concerning for the tens of thousands of local jurisdictions. That's where it's more difficult to find out about the problem in the first place and wherever those most at risk have
the least resources to fight back. The country’s
early warning and rapid response system for many
local concerns was dismantled by Shelby County, and
the 2020 redistricting is around the corner. I had
the honor to serve at the Department of Justice
supporting the efforts of enormously talented
experts and lawyers to correct what problems they
could in this new environment, in ways that are not
always revealed by more facile numerical
comparisons. I look forward to getting into some
more of the detail if you have questions about it,
including the numbers cited by Mr. von Spakovsky,
including at least two factual inaccuracies. Some
of these issues are resolved before they ever
become cases and some are resolved in negotiated
settlements, but the Department’s capacity to
discover wrongdoing has been severely hampered by
Shelby County, and once found, in too many matters
it takes too long to develop proof, too long to
fight to a liability finding, and far too long to
get a remedy. The Supreme Court invited Congress to
remedy the damage done by Shelby County. I know
that your work will help facilitate that. I look
forward to answering any questions toward that
endeavor that you may have.

CHAIR LHAMON: Thank you.
BISHOP BARBER: Thank you so much and thank you to the Commission for allowing me to testify today. Isaiah 10 says woe to those who legislate evil and rob the poor of their rights. We are living in a time when voters of color have increasing potential for political power. Nearly thirty percent of America’s eligible voters are people of color. And African Americans, Latinos, Asian Americans, whites and others are coming together in historic numbers to form fusion coalitions. But we are also living in a time where we are with seeing, particularly across the South, the worst redistricting and abridgement of voting rights since the 19th century. Without the protection of the Voting Rights Act preclearance provisions, Jim Crow era voter suppression efforts are reappearing in North Carolina and in too many other states across the country. The wave of voter suppression, which has disproportionately impacted voters of color, imperils the confidence of all voters of good will and strikes to the very heart of our democracy. It was a lie in 1965 when people argued against the Voting Rights Act by saying systemic racism was a thing of the past. It was a lie in 2018 for those to say that systemic racism is a thing of the past. Since 2008 at least 22 states have enacted new
state-wide voter suppression laws, and in 2017 at least 99 additional bills proposing such measures were introduced in 31 states. Here in North Carolina when North Carolina’s fifteen Electoral College votes went to America’s first black president in 2008, it sent shock waves through the racially polarized white dominated Republican Party in North Carolina. Their southern strategy had failed to deliver in 2008. Immediately, what we saw were right-wing extremists scramble to invest unprecedented sums of money in state legislative races resulting in an extremist takeover of North Carolina’s government. The majority that took over North Carolina General Assembly quickly redrew both state legislative district and U.S. congressional districts in their favor. They claim that they did it just like Democrats. But two things should be noted: once civil rights organizations have always challenged everybody, and two, we have not seen this kind of attack of stacking and packing since the 19th century. They consolidated power in 2011 through district segregation of white and black voters by mechanically adding voters to election districts in concentrations not authorized or compelled under the Voting Rights Act, thereby bleaching adjacent districts of voters of color and
frustrating their ability to vote in alliance with
the racial fusion electorate that bridges racial
divides and mitigates the effects of racialized and
polarized voting. These very laws were overturned
by the current court. They were called
unconstitutional, but they took so long to do that
we had unconstitutionally-constituted legislature.
We won but it was only after this group was in
power and had begun to strike down many of the
advancements that had been made. It was devastating
in 2013 when Supreme Court gutted the heart of a
critical piece of civil rights legislation in
Shelby County v. Holder. At the date of the Shelby
decision, fifteen states were covered by Section 5
in whole or in part. North Carolina was one of
them. Even with the full protection of the Voting
Rights Act, voting had been a struggle in North
Carolina. In the thirty years prior to Shelby the
U.S. Department of Justice objected more than sixty
times to more than 150 voting changes in North
Carolina. After Shelby, one of our legislators
actually said now that the headache has been
removed, and they moved forward with the full bill.
Within hours of the 2013 Shelby ruling, they rolled
out the sweeping voters suppression bill that
erected a slate of stringent racially-
discriminating barriers to the ballot. The laws eliminated, eliminated things that voters already used, such as same-day registration, pre-registration for sixteen- and seventeen-year-olds, out of precinct ballots, the first week of early voting, and instituted one of the nation’s most stringent photo ID laws. We called it the “monster voter suppression law.” In response, the movement the Forward Together Moral Movement erupted. Over 1,200 people, most of them -- many of them, white, engaged in nonviolent civil disobedience, and after years of organizing, the courts finally struck down this intentionally racially-discriminatory law and said that it was with surgical -- almost surgical precision to impose cures for problems that did not exist, no matter how many experts or so-called experts claimed that they do. And the Supreme Court, this Supreme Court, denied the leadership of the North Carolina General Assembly, in a petition for certiorari. It is interesting that the Attorney General, Jeff Session, one of his first acts was to actually pull the U.S. Department of Justice out of the defense of the voters of North Carolina. Lastly, I will say, however, despite the Fourth Circuit ruling requiring the restoration of the first seven days of early voting period, North
Carolina Republican Chair Dallas Woodhouse produced and distributed a memo to Republican members of the County Board of Elections instructing them to make party line decisions in drafting new early voting plans, including voting against Sunday hours or voting and maintaining decreased number of hours at sites, particularly on weekends. This resulted in 2016, 158 fewer early voting sites in the 40 previously covered counties that we had in 2012. This is another example of blatant evasion, blatant attempt to block the power of the African American and minority vote. What we have seen is systemic racism, systemic racism, and we know that it is past time for the full restoration of the Voting Rights Act. We have seen this Congress since 2013 engage in a modern form of interposition and nullification and hold up passing and fixing the Voting Rights Act for nearly 2,000 days. We talk about racism, just think of it in this historic contact. Strom Thurmond only filibustered the Civil Rights Act of 1957 for one day, 24 hours. This Congress had engaged in a filibuster of over 1,700, nearly 2,000 days. We need full restoration of the Voting Rights Act.

CHAIR LHAMON: Thank you, Bishop Dr. Barber. And now we're going to open the conversation to my fellow
COMMISSIONER NARASAKI: Good morning everyone. I have a lot of questions so I'm going to ask you to keep your questions short because we only get so many minutes. First, Ms. Gupta, you talked about the importance of monitors and what the Shelby decision did in terms of the Department of Justice's ability to use them. So there are observers and monitors, which I always get confused. Some of them are still being fielded. It seems to me that the observers were able to do a lot more than the monitors. Could you explain the difference and how the changes have undermined the ability to enforce the Voting Rights Act?

MS. GUPTA: Yeah. So. You're correct that there is a difference between the monitors and observers. The observers were allocated in significant numbers pursuant to the Section 4(b) coverage formula and had much greater power to the inside of the polling site and the way that the monitors are not. The funding this is a little bit wonky but the way that the funding comes to observers means that there was a specific stream of funding that allowed for a high number of observers in all the polling sites covered by preclearance. When we were making decisions about allocation of monitors in 2016 the
number was down to --by hundreds and hundreds in
terms of placement of Justice Department-trained
monitors, who could only be outside of the polls.
And that grossly, as you can imagine, inhibits the
kind of information and evidence collection that
can happen when people are not physically inside
the polling sites to observe ways in which voters
might be unable or challenged unlawfully in
exercising their right to vote, and so it has had a
dramatic consequence, I would say, on the ability
of the Justice Department to actually get the kind
of evidence they need to make these cases.

COMMISSIONER NARASAKI: I can see-- when I used to
work on these issues I was meeting with the then
Lieutenant Governor of Hawaii on Section 203
enforcement and they insisted that bilingual
assistance wasn't necessary and I said what was
their evidence and they said, well, we keep getting
the translated materials stole or shrink-wrapped,
which meant to me that they never put them out in
the first place, which is something that you can't
observe unless you're there.
So Mr. Levitt it seems to me that a lot of people
that don't know that there were actually several
legislative attempts before the '65 Act to try to
stop the voter oppression that was going on. And
the genius of Section 5 preclearance was based on seeing local officials create new barriers every time a Court said you can't do this so it wasn't necessarily blatant disregard, it was more so ways of evasion. You observed in your testimony that there's a still subtle forms of evasion. Can you give some examples of what's going on there? Is that still happening?

MR. LEVITT: Certainly. Unfortunately, yes, and even more unfortunately, I think that the ability of the DOJ and the ability of private observers to know all of the ways in which it is happening, particularly on the local level, has itself been hampered. Some of the examples that we've seen involve acts that are passed with what has been later found to be discriminatory intent. On the eve of a trial which has taken years to accumulate the evidence for, and which has taken years to prepare -- immense amounts of resources -- the legislature will adjust the law just enough to try to fly below the radar of what is provable. That is, having set out to discriminate against voters on the basis of their race and ethnicity, only when their feet are held to the fire on the eve of litigation will legislatures then attempt to, not correct the problem, but modify the laws just enough to make it
even more difficult to prove in litigation. We saw this, unfortunately, right here in North Carolina. In North Carolina, as several witnesses have mentioned, there was a bill that was designed before Shelby County. The moment that Shelby County was enacted, the legislative leadership turned to what they called the “full bill,” a vastly expanded and vastly more discriminatory omnibus set of restrictions. Litigation commenced, and was vigorously being contested, and a month before trial was set to begin, the legislature revised their law a bit -- not completely, not striking it down, but revised it just a bit. That itself delayed litigation and further proceedings. What we're seeing is increasingly sophisticated and increasingly -- they may not be quite as blatant as in the years in which Mr. von Spakovsky mentioned, but there are still certainly efforts by the legislature, not to do right by their constituents, but to do just enough to skate by beneath the guise of a federal court. That is not what the VRA was intended to further. Indeed it was intended to stop exactly that sort of gamesmanship.

COMMISSIONER NARASAKI: Thank you. Mr. McCrary, some of the witnesses today in their written testimony seem to be arguing that the lack of explosion of
Section 2 litigation is somehow itself indication that Section 5 is no longer needed. What is your response to that? Is that the real measure of whether Section 5 is needed?

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

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

BISHOP BARBER: Just a couple of comments and I am only standing because of a long-term bad hip. There are a couple of things I'd like to just mention. One is when we went to federal court, one of the justices, asked a very simple yet powerful, and profound, question to those who were fighting
against the roll back of voting laws: why don't you want people to vote? And the courtroom got very quiet. The federal judge, said, why is it that you are fighting? Because the provisions in North Carolina—same-day registration, early voting—were things added that people had already used for several election cycles, and there was no fraud. But with the one thing that changed was, there was an increase in African American and Latino and other minority voting. What you saw is in this case -- it was blatant. They were caught by this Supreme Court, not by an earlier Supreme Court, but the very Supreme Court that undermined in Shelby. To say these laws were so racist, and so surgically racist, and it was proven as such that the only things they touched were the areas where it was clearly shown that minority voters were able to overcome past discrimination.

Last two things. You know, we have 340 years of slavery and Jim Crow. We only had 52 years of the Voting Rights Act. And all 52 of those years they have been fights to undermine it. It took 25 years after the passage of the Voting Rights Act before North Carolina even got another Congressperson in the United States Congress. It did not happen quickly. The Voting Rights Act was passed in my
lifetime. I finally will just add to the question about this is not the measure. Preclearance allowed many things not to go to court. That's the point. They didn't go to court so you can't measure what went to court. However, when you reverse preclearance what you allow is you allow laws to go on the books. You allow legislatures to get unconstitutionally elected and pass laws, even though they are unconstitutionally-constituted, and then you allow laws to go on the books and think may be used for two or three election cycles only to be proven unconstitutional, which means you get an unconstitutional elections because the laws were use in those elections are finally proven unconstitutional. Lastly, all of those things: we don't need Section 5; it's bad for the states; and, you know, this should not happen to certain states that haven’t had a history of and contemporary suppression. The last thing that I will say, every state that's under the Voting Right Act’s preclearance could have had it released if they did one simple thing: didn’t discriminate for ten years. Not one state has been able to resist trying to—Democrats or Republicans, because we challenged both, has not been able to resist for ten years, and that is why they were still covered—or were
covered—under the Voting Rights Act Section 5.

CHAIR LHAMON: Thank you. Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you, Reverend Barber. That actually reminded me of another question, which is, a couple of the witnesses refer to the fact that there is surgical provision, there is evidence of intent, courts have actually found, so what actually was the evidence of racial intent, intent to actually discriminate on a racial basis?

BISHOP BARBER: I would say let me turn it to the attorneys, but I play one on Tuesday and sometimes on Friday. But what we were actually advised by some not to go after intentional racism, go after disparity, which would still be illegal, but we knew this legislature, we knew that they had heard all of this evidence. They’d even heard some of the people on this panel that had come, brother Hans had come and given them support for what they wanted to do. It was found that they actually went to the Board of Elections and asked what was the impact of the various laws, like the first week voting, what was the impact based on race. And if the impact was positive, based on race, that’s what they ended up removing. They actually looked at how did same-day registration and early voting impact and increase the participation of minority voters.
They asked the question in e-mails and whatever and then wrote their legislation, blatantly wrote this legislation despite the evidence and despite the lies about fraud. And for me theologically, you know, to suppress people’s vote is not only constitutionally illegal, it's theologically illegal because the only people—only persons that receive voting rights are people. You don't give voting rights to goldfish and pets and puppies. So if you suppress my voting rights, you are suggesting I'm not a full person, which is the violation of the most fundamental principle of theology, and that is that we are all made Imago Dei, in the image of God. To suppress the right to vote is to deny the worth and the image of God in every human being regardless of their race, their color, or their sexuality.

VICE CHAIR TIMMONS-GOODSON: Thank you very much. I, too, join my fellow commissioners in thanking our panelists for being with us. We're in North Carolina so I'm going to go in a North Carolina direction. While we -- when we think of voting rights, Section 5 and all of that, we think of statewide elections, we often think of school board elections and county commissioners or whatever. In North Carolina we also elect our judges, and there
is a discussion and possible legislation underway in North Carolina that will redraw our judicial districts and some allege will pit some duly-elected African-American Superior Court judges against other African-American Superior Court judges thereby reducing the presence of minorities on the bench, and so I'd like for you to in terms of Section 5 preclearance talk about judicial elections and the effect. You've been speaking, Bishop Barber. I'm going to turn to Mr. Levitt and others to comment, if you will, about that and then I just have one other question.

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

The Supreme Court long ago held that the Voting Rights Act, both Section 5 and Section 2, apply to judicial elections. That there is a representational equity in ensuring that, if you're going to have judges elected, that you make sure that you do so free of racial discrimination, just like all other elections. I've been certainly following the broader discussion in North Carolina. I confess, I do not know the intended character of the districts themselves. But this is part of the point of the impact of Shelby County. There will be attention to this statewide law -- that I'm not
worried about. For the smaller jurisdictions, where we’re really concerned that we won’t know the
effect of the change, but the one thing we know
here is that people will focus on the impact of the
law. But proving discrimination in these districts,
if they in fact result-gathering the social science
evidence, gathering the quantity and qualitative
social science evidence, will take, experience has
shown, years to prove and years to litigate, and in
that period of time if indeed districts are passed
that are discriminatory -- I don’t want to presume
that they will be, but if in fact they are -- that
will affect the character of justice that the
citizens of North Carolina receive while they're
waiting for a lawsuit to work its way through the
system. That sort of expense and that sort of
cumbersome nature of responsive litigation is
insufficient to the task I think. The Section 5
review process -- abbreviated, as Mr. McCrary
mentioned -- was designed to get a short, quick
answer on whether a particular new practice or a
particular change in practice was discriminatory.
That benefits both the jurisdictions themselves,
and those would seek to stop those practices when
they are discriminatory. And that sort of review,
before the discrimination takes effect, is
unfortunately no longer in place outside of three very small jurisdictions already bailed in under Section 3, as Mr. von Spakovsky mentioned.

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

BISHOP BARBER: One of the things we find in North Carolina, Republicans and Democrats are against undermining the independency of the judiciary. What we’re also seeing is these legislatures who have been unconstitutionally-constituted continue, despite all of the rulings, to attempt to pass laws that they know they do not have to be precleared and they could not stand a preclearance test. The last two things I would say, this is the first time in the history of North Carolina we have two African-Americans sitting on the Supreme Court. This attempt to say we want to appoint as opposed to -- that we want to change the primary, change the way they're elected, is an attempt to undermine progress, particularly in the southern states. In the 1990s, was when we in North Carolina, we had to have special elections to get African-American representation on our judiciary, that was 25 years after -- over 25 years after the Voting Rights Act. And it's only been 28 years. And now you have this extremist legislature that know that now the
districts had been ordered to be redrawn, many will not survive, probably will not survive, so what are they doing? They are doing what they said in South Africa one time: only a dying mule kicks the hardest. They know that is what is happening and they're trying to go after every institution they can because they know they can do it without preclearance and then once they do it, if they do it, it will take years to undo it and that is the great undermining that has happened because of the gutting of Section 4, which nullified Section 5.

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

MR. VON SPAKOVSKY: You know, I constantly hear that but that assumes that there's no such thing as a temporary restraining order or preliminarily injunction which is granted all the time in voting cases. In fact, when I was at Justice Department and we were engaging in Section 2 litigation, as I'm sure you're aware that was the standard thing
to seek so if I do – if in fact, you have a case of merit that is likely to succeed, the idea that this is going proceed for years just isn’t the case if we've got the evidence to show that a TRO or preliminarily injunction is going to work.

One thing I want to say about the redistricting issue and I think everyone no matter what side that you're on will agree with me that redistricting is a chaotic mess. The law is particularly confused and one of the biggest problems in this area is, and I think I should probably trademark this but I wrote an article recently about the Goldie Locks principle of redistricting. The reason being jurisdictions are in a Catch-22. If they've got to consider some amount of race, if they don't they're going to be sued under the Voting Rights Act for protecting and looking out for minority voting rights. On the other hand, if they use too much race they are again going to get sued because they’re will be violating the law under the Shaw v. Reno decision, which I'm sure you're familiar with too, so they have to use exactly the right amount, and the problem is that the view of whether you're using too little race or too much race, frankly, it varies from judge to judge. People with good intentions see it differently, so it's a very, very
confusing area and it's very tough to get it exactly right. There was a recent North Carolina case where I think the justices talk about it. It was the fifth time that case was up before the court. Which showed that the parties and the judges can't seem to get it right, so what my point is, is that redistricting is a very confusing area and everyone is -- the idea this automatic assumption that some people are acting with an intent to discriminate as opposed to trying to get it right, I think you've got to keep that in mind.

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

MR. MCCRARY: Well, first of all, I understood your question to be about Section 3(c) remedies, and there is no possibility of any kind of injunction triggering a Section 3(c) remedy because it requires a finding after full trial on the merits there was intentional discrimination before a Section 3 remedy can be adopted by the court. When the Court adopts it, it's limited in scope and duration. And often courts are reluctant to impose
a Section 3(c) remedy. In the North Carolina case, for example, where there is a finding by the Fourth Circuit of the Court of Appeals that the law was intentionally discriminatory and therefore it's eligible for a Section 3(c) remedy, the Court didn't order one.

VICE CHAIR TIMMONS-GOODSON: Okay.

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

MS. GUPTA: Yeah, I was going to mention what Mr. McCrary just mentioned. But also, on top of that I think it’s important when Mr. von Spakovsky says that courts – you know that the race is hard, and what the evidence is, the threshold is hard, and it is Section 3 really bears emphasis that it relies on individual determinations on findings of intentional discrimination and a bar for those findings is incredibly high. Congress has opined on this, opined on it recently, and that even amidst ample circumstantial evidence of wrongdoing, that proof of intentional discrimination really is exceedingly difficult to obtain, and so to meet those cases is it's not only that you can't get the kind of injunctive relief that we previously referred to, but actually that the bar itself is extremely high. And that restricts that is that is
a vastly different framework than what the preclearance regime would have done and to the Vice Chair's point earlier, the harm, it's intensively resource-intensive and expensive to do litigation, but I want to again bear emphasis that a harm at that point is already done and that is in essence one of the core differences between what existed before Shelby and what exists now. Is that, we then have elections, we have judges, we have systems in place that are infected with racial discrimination that are allowed to persist even during the pendency of litigation and voters are harmed, people who interact with the local justice systems that are infected with unlawful racial discrimination are harmed, and so again, that is in essence, the core harm of what Shelby County has left this country's voting systems with, the inability to actually prevent these harms to begin with.

MR. LEVITT: I agree with everything that Mr. McCrary and Ms. Gupta mentioned, with respect to the 3(c) "bail-in provision," as it is known. But just one note on the difficulty of complying with the various federal laws on the basis of race: it is true that the Voting Rights Act is relentlessly pragmatic and does not admit shortcuts, but that
does not mean that it's impossible to comply with the various constitutional and federal statutory commands. Perhaps this is a L.A.-based metaphor, but I'm used to driving, and when you drive, it is abundantly true that you cannot ignore the speed at which you're traveling, and you cannot go over the speed limit, but millions of Angelenos and, I think, hundreds of millions of Americans actually drive every day, paying attention to speed without going too far. It is easiest to fail to comply with the Voting Rights Act and with the constitutional commands against excessive and unjustified use of race if you are not trying. I do not presume bad faith on the part of any legislature going into a redistricting, going into an attempt to comply with the Voting Rights Act or the Constitution, but neither can I turn a blind eye when it has been proven that legislatures are acting in bad faith.

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

COMMISSIONER HERIOT: Yes, thank you. Madame Chair. I guess this question is directly to Mr. von Spakovsky. You may have been the one that would most want to talk about this. I'm not sure we've brought out enough as a notion that the Voting Rights Act of 1965 was intended, at least part of
it, was to be temporary. My understanding of the
history of this-- I can't quote President Johnson
directly here because he had a bit of a foul mouth.
I will instead paraphrase. He wanted a very, very,
very, very, very strong Act and he got it. He got
it. He definitely did. And it worked extremely
well. The efforts to recruit African-American
voters in the South prior to the passage of the
Act, you know, utterly pale compared to what
happened a few months after it went into effect.
But one of the ways he was able to persuade
Congress to pass such a strong bill was it was
supposed to be temporary.
Can you comment a little bit about the history of
that?
MR. VON SPAKOVSKY: Sure. It was intended to be
temporary. It was initially for five years and it
kept getting renewed for another four times. And--
COMMISSIONER HERIOT: And am I right that Katzenbach
v. South Carolina is partly premised on the notion
that it is constitutional?--
MR. VON SPAKOVSKY: What Katzenbach said was that
the idea that a state, particular a state
legislature, in our federal system and under our
Constitution would have to get permission from the
federal government before a piece of legislation
that passes can go into effect was an extraordinary intrusion into state sovereignty. It was needed at the time because of what I said, evasion of courts remedies that had been ordered and in individual suits and that was certainly needed at the time. But one of the reasons, a key reason, that Shelby County occurred the way it was and I think that it’s important to remember that the coverage formula was based on having a test or device in place and then registration or turnout of less than fifty percent in the 1964 election. When they renewed it they added the '68 and '72 presidential elections, but the cover formula was never updated after that. What that meant was that in 2006 when they renewed Section 5 without updating the coverage formula, they were basically renewing it based on 45-year-old data. That's as if in 1965 when they passed the Voting Rights Act they had said well we’re going to base the coverage on registration and turnout in the 1928 Hoover election or the 1932 Roosevelt election. It didn't make any sense to do that. If they were going to renew it, they had to base it on current conditions, and the reason they didn't base it on current conditions in 2006 was because, as the Census itself has reported, registration and
turnout in the covered states was on parity with, and in some places black turnout actually exceeded that of white turnout.

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

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

CHAIR LHAMON: Commissioner Yaki do you have a question?

COMMISSIONER YAKI: Yes, thank you very much, Madame Chair. First of all, I find it ironic that we're talking about some of this. When it said that it was meant to be temporary in Congress nearly and it overall a bipartisan fashion, in 2006 we reauthorized this with hundreds of thousands of pages of records and which ironically this Commission did not, despite my best efforts, all we
had to do is look at what's going on today and see what the work Rev. Barber is doing in North Carolina to know that temporary is still today. The question I have goes to the meaning of access. I think a lot of our talk today has been in the impact in terms of redistricting, how that has an impact, but I also want to take a step back. I want to take one of the pernicious elements of how temporary still is today is the rise of voter ID laws and how they impact the ability of people to access the polls. In the 60s this Commission went down into the deep South and looked at the literacy and poll taxes other qualifications that states put in as barriers for minorities to be able to access the vote but now in this century we've developed new ways of dealing it and it's fundamentally built upon a premise that, I do not believe and I would like someone first to ask, as I'm going to ask, the person with the most seniority on this, Mr. McCrary - part of the premise of these voter ID laws is that there is voter fraud—that there is widespread voter fraud out there in the country. And I would like you, based on your long history with the VRA and your history in Congress, to address that issue, straight up.

MR. McCRARY: There is no evidence of which I'm
aware that there's in-person voter fraud at the polls. The only kind of casting of ballots that is covered by the photo ID requirement of these laws exists anywhere in the United States except in a handful of cases, and I mean literally a handful, in most states throughout the millions of votes case. There is some degree of election fraud, in some states, where absentee ballot fraud is the area where you can find instances of actual fraudulent behavior by voters. In all of the photo ID laws that I'm familiar with, do not apply to absentee ballots. They forego absentee ballots reform.

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

COMMISSIONER YAKI: So the danger has never been that there's going to be hundreds of thousands or three million Americans -- three million people
impersonating Americans going to the poles or to be bussed crossing state lines to vote in other places that just doesn't happen?

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

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

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

COMMISSIONER YAKI: Yes.

MR. McCRARY: Taking the North Carolina case as an example, the most recent case, there are only a small number of documents that satisfy the requirements of the state law that was challenged in a case that satisfies it’s requirements for in-person voting, whether it during the early voting process or on Election Day. Before Shelby County was decided, many more photo ID documents with photo IDs were permitted to satisfy the
requirements of the law. After the Shelby County
decision the legislature removed most of those that
were readily available, and the evidence in the
case showed readily available to African Americans
at a rate far greater than those that were retained
in the law and therefore the law was -- the bill
was made, a great deal more restrictive once
preclearance requirements were removed. And that
was a part of what the Court intended when it --
when it rendered its decision, the Fourth Circuit,
along with the fact that the law targeted the very
reformed provisions adopted by North Carolina
during the preceding decade, the first decide of
the 21st century, that had facilitated the increase
in African American participation, which Mr.
Spakovsky correctly notes, is very impressive, and
once the provisions were identified to the
legislators as provisions that had facilitated
minority participation they specifically targeted
those and removed them, to some degree removed them
from elections officials.

COMMISSIONER YAKI: Mr. Levitt.

MR. LEVITT: I agree with everything that Mr.
McCrary said. This issue is one place where, I
think as Commissioner Heriot mentioned, there is
often a lot of yelling and screaming and
comparatively little attention to the facts. So I really welcome when there is factual analysis on all of this. Every state has some provision to make sure that people are who they say they are when they come to the polls, every single state. And so, most of the controversy in this area isn't over whether we should have some sort of identification system or some sort of security system: it's about the details, it's about the “how.” Precisely as Mr. McCrary mentioned, there are some states -- relatively few -- that have taken steps that are quite restrictive in the documentation that they permit. Those restrictions have, it has largely been shown, a disparate impact, and in some cases were proven to have been enacted because of that disparate impact. But that's not a condition of having an identification system, it’s a condition of the particular choices that particular states have made. So in a circumstance like this, the choices that North Carolina has made are not the same as the choices that Rhode Island has made. The choices that Texas has made are not the same as the choices that Michigan has made. And those distinctions matter. Mr. McCrary spoke to the absence of evidence of widespread in-person fraud – the sort of fraud that these sorts of laws can
address. Even though these laws don't do much to take care of a meaningful problem, I think there is relatively little controversy when increased security procedures don't have an impact on real, eligible Americans. If you look at the debate now about whether to secure online registration systems or statewide voter registration databases against hacking, because those sorts of security measures have very little impact on eligible Americans, I think there's widespread bipartisan agreement: yes, we should do that. The benefits far exceed the costs. The concern is not when these laws are put in place and they don't have impact; the concern is when the laws are put in place, based in large part on a pretext that Mr. McCrory has mentioned, with specific provisions that impact people’s ability to vote based on their race or ethnicity. There are not a lot of states in which this is true, but there has been litigation proving that there are some states that have taken this path of extremely restrictive laws -- in their configuration, in some cases, targeting minority electors. And that’s, I think, not only the source of the controversy, but where the controversy properly lies. As Reverend Barber mentioned, these sorts of laws that are targeted in this fashion actually deprive
individuals of the opportunity to have a voice in the election process, and I think that's part of why they are so fiercely contested.

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

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

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

BISHOP BARBER: I just wanted to mention a couple things. Part of the conversation is that people will say we're not denying the right to vote. But there is another part of the law that is called abridgement. And voter photo ID becomes an abridgement. In North Carolina, Democrats and Republicans agreed on signature attestation when we didn’t have any fraud. The very legislators that claimed that there was fraud going on got elected with signature attestation, but never said their own elections were fraudulent. And the fact is, and I’ve been thinking about Rosa Nell Eaton, who’d been voting for years, and the photo ID almost undermined her right to vote and so many others.
What we have seen with this so-called voter ID, and it's a red herring, because extremists want us to talk about photo ID. Many people who reported on North Carolina said we had a bad photo ID law--- no it was a monster voter suppression law of which photo ID was only one part. It was the first part that was passed and then held until after Shelby, so that the media was driven by that and people were not talking about undermining sixteen- and seventeen-year-olds preregistration, same-day registration, and early voting. We have to speak up. It's not just one piece but it's the whole.

CHAIR LHAMON: Mr. Adegbile?

COMMISSIONER ADEGBILE: Mr. McCrary, as somebody who's had 37 years of experience in this space, I think you can help us understand a key question that’s being debated. And that is, are we meaningfully in a different place from 1965? I think that many people would say that we are. But does the fact that there's been progress and that the Voting Rights Act has motivated that progress, tell us about whether or not we need to continue to make progress? The idea being that a great deal has changed, but based on your testimony there is a great deal that hasn’t changed or more that needs to change. Can you reflect on that?
MR. McCRARY: Well, a great deal has changed since 1965 in the South and as with the rest of the country. Not all of those changes, however, have been linear progression upward. Things have become a great deal more sophisticated in our technology—both in election administration and the way that legislatures operate. There’s a great deal more carefulness in the way legislators discuss what they are doing and the procedures as several panelists have been mentioning, are a good bit more sophisticated than the ham-handed racist behaviors of legislators in the states where, such as Alabama where I lived for ten years, and you don't see that sort of behavior anymore. Usually you don't see any kind of racial campaign messages that were common in the 1960s, the explicit racial appeals. Now it takes the form of putting your opponent’s photo in the newspaper in your own ad to make sure that everyone knows that this is a member of minority group or something of that sort. In one of the Indian voting right cases in Montana we found another kind of racial campaign appeal was shooting bullet holes in the campaign signs of Indian candidates for election. And so a lot has changed but if you look at things such as the evidence of racially polarized voting—that is the key are the
empirical evidence in virtually all voting rights cases— even those involving photo ID requirements or restrictions on early voting and other access issues, we find that racially polarized voting exists at a degree that is still alarming though perhaps not quite as alarming as in the 1960s. And in the instance of North Carolina, in particular, where there was evidence of increase white crossover voting for minority preferred candidates, that's the very circumstances in which the legislature adopted its discriminatory election law in 2013.

CHAIR LHAMON: Ms. Gupta?

MS. GUPTA: Despite the fact that things have changed since 1965, I want to bear repeating again that since the Shelby County decision at least ten courts have found intentional race discrimination in voting and I think that is important to mention given how high the standard is to meet and to prove intentional race discrimination. I also want to point out that even three justices who were the majority in the Shelby County decision—Chief Justice Roberts, Justice Kennedy, and Justice Alito—acknowledged in 2006, quote: That racial discrimination and racially polarized voting are not ancient history and much remains to be done to
ensure that citizens of all races have equal opportunity to share and participate in our Democratic processes and traditions. Again, against this backdrop or notion that somehow racial discrimination -- systemic racial discrimination in voting has ceased to exist, I think all of this is quite concrete evidence to the contrary despite the incredibly high bar that litigants have to establish intentional race discrimination. That proof has been met in a number of instances and even three justices on the majority of Shelby County acknowledged its continued existence.

COMMISSIONER ADEGBILE: Mr. Levitt, can you explain to us very quickly the nature of voting discrimination? That is to say that lots of time when you have a discrimination case there is something that’s visited upon a particular individual and there’s a case brought, occasionally they’re broader class actions cases, but I’m interested to understand because of the nature of voting rules the ripple effects and the reach of discrimination when you have official actors—whether it be at a local level or statewide level, passing discriminatory laws? Can you explain that to us and tell us what you think it means, that there are many statewide legislatures that are
being found to have repeatedly, in the modern day, intentionally discriminated against minority voters?

MR. LEVITT: The discriminatory voting cases essentially are about clinging to power. And when cases are brought and succeed under the Voting Rights Act, they show clinging to power in some of the most pernicious ways possible, against a class of people, attempting to diminish their ability to cast votes or the impact of those votes, across an entire political structure. That undermines all of the rest of the bases for law that we have. That undermines legislation later passed, on any number of social or economic issues that we find important. Sometimes that discrimination looks, sad to say, much as it did in the bad old days, based on explicit animus. More often, the animus is subtextual or otherwise hidden, and even more often, the discrimination may not be based on animus but is instead based on perceived partisan gain, nevertheless using individuals' race or ethnicity as a proxy for achieving that partisan gain. And I want to make perfectly clear that all sorts of that discrimination are pernicious. It is not an excuse for intentionally discriminating on the basis of race that “Really, broader political
goals were the underlying motive.” It is just as problematic to take steps against a class of people based on their race or ethnicity, no matter what the underlying motive may be. Sadly, I think we see the “it’s just politics” excuse being proffered more often, and given more credence than it should.

CHAIR LHAMON: We are, unfortunately, out of time. This has been an animated panel and I very much appreciate your sharing your expertise with us. We'll take a break now until 10:50. As a reminder, the registration is now open for the first half of the public comment section and we will commence the second panel at 10:50 a.m.

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

CHAIR LHAMON: We’re coming back to order. It is now 10:52 a.m. We're proceeding with the second panel. In the order in which they will speak are panelists are Ezra Rosenberg, Co-director of the Voting Rights Project at the Lawyers’ Committee for Civil Rights Under Law; Nina Perales, Vice President of Litigation at the Mexican American Legal Defense and Educational Fund; J. Christian Adams, General Counsel at the Public Interest Legal Foundation; Dan Morenoff, Executive Director of the Equal Voting Rights Institute; Natalie Landreth, Senior Staff Attorney at the Native American Rights Fund
and chair of the Commission’s Alaska’s state advisory Committee – thank you for your service to the Committee; Sherrilyn Ifill, President and Director-Counsel of the NAACP Legal Defense and Educational Fund. Mr. Rosenberg. Please begin.

MR. ROSENBERG: Thank you. I would like to thank the Commission for holding these important briefings and particularly for holding them in the great state of North Carolina, which has been particularly hard hit by suppression voter laws over the past years as we just heard. The Lawyers’ Committee For Civil Rights Under Law has been at the forefront of the fight for equal justice and particularly for voting rights and equality in voting rights for African American populations and other racial minorities since 1963 when President Kennedy convened a meeting of the leaders of the private bar and implored them to start lending their services to fight for equal rights. By way of aside, until three years ago I was one of those private practitioners, and I'm humbled to be here today and be on a panel with true experts. But more than fifty years later that we are still concerned with the issue of equal rights in voting is sad. That we are more concerned about it than we were five years ago is incredible. We were clearly not
in the place that we expected to be. When in 2006, just eleven years ago, a unanimous Senate and nearly a unanimous House of Representatives reauthorized Section 5 of the Voting Rights Act. That bipartisan dream came to a thudding crash with the opinion in Shelby, which gutted Section 5, which gutted the Voting Rights Act. In the words of the Congressman John Lewis, struck a dagger through the heart of the Voting Rights Act. The loss of protections afforded by the preclearance provisions of Section 5 had a certain nuance aspect, and that is a lack of notice now that we have that, discriminatory practices are about to go into effect. We can only fight that which we know about and too often there are discriminatory practices that take root and bear fruit before they can be stopped. We've seen many forms in which these sorts of practices take. They range from the consolidation of polling places, which make it more difficult for minorities to vote, to the curtailment of early voting, which makes it more difficult for hourly wage workers to vote, to the purging of minority voters from voting lists under the pretext of list maintenance. Georgia, a state previously covered by Section 5, provides an example of some of these practices. In 2015,
Hancock County -- the Hancock County Board of Elections started a challenge proceeding, which resulted in the purge of 53 voters, all but two who were African American. We were able to stop the practice through litigation. We were able to reinstate some of those who have been wrongfully purged but by then the damage had been done. Sparta, a small predominantly black town in Hancock County had elected it’s first white mayor in 40 years. Also in 2015, the Georgia legislation undertook a pinpoint redistricting of two legislative districts. Which because of growing minority population had become increasingly competitive. They moved in some white voters and moved out some black voters. We’ve sued on the basis of a racial gerrymander. That suit is pending but an election has already been held in those districts. In Macon-Bibb County the Board of Elections in 2016 decided to temporarily relocate the polling place from a black neighborhood to the local sheriff's office. There we got notice ahead of time through our local partners. We were able to help mount a petition drive and change that decision; however, placing the burden on small local groups with strained resources to keep a weary eye out for these subtle sorts of changes
places an enormous burden on these organizations. And until Shelby and before Shelby and after Shelby we did have a partner in the Department of Justice, a partner with greater resources than the civil rights organizations, but in the past year the Department of Justice Division of Civil Rights has not filed a single action under Section 2 of the Voting Rights Act. We in the Lawyers Committee with far fewer resources have two such actions filed under Section 2 and another racial gerrymander claim in addition to another eight or nine Section 2 cases already on our docket. In two of those cases, one filed in 2016 and one filed in 2017, we were able to achieve quick results. The establishment of the majority-minority districts in Jonas County, North Carolina and in Emanuel County, Georgia, the majority which speak to the fact that energetic enforcement of the Act can lead to immediate relief for minority populations. The previous panel talked about the change of positions in the Texas voter ID case, which I have been litigating now for five years, and in the Ohio purge case by the Department of Justice away from positions favoring minority rights that the Department had taken until months before. Those reversals of positions can be perceived as a wink
of the eye to those jurisdictions who wish to push the envelope for discriminatory practices and a cold shoulder to those vulnerable populations who have for a long time relied on the Department of Justice to have their backs. The single most proactive step taken by the federal government over the past year in the voting rights arena has been the creation of the president advisory committee on election integrity. Now, while litigation by the lawyers committee and other civil rights organizations may have speeded up the demise of that commission, there still is the threat of using this canard of the myth of voter fraud to further suppress voter legislation as evidenced by the tweets by the President commiserate with his dissolving commission that the elections in this country are rigged, and therefore there should be strict voter ID laws. The combination of the gutting of Section 5, the increasing inactivity of the Department of Justice, and the joining of forces with those who purvey the myth of voter fraud, creates a perfect storm not seen since the days before the 1965 Voter Rights Act. We urge the Commission to do all it can to vigorously help enforce those laws and protect the right to vote.

CHAIR LHAMON: Thank you, Mr. Rosenberg. Ms.
Perales?

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

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

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

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

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

CHAIR LHAMON: Please use your microphone. Thank you.

MS. PERALES: I'd like to thank the chair and the members of the Commission for inviting me to testify here today. To get right to it, the impact of the Shelby decision has been negative and its effects minority voters have been twofold, at least within the scope of my experience. First, retrogressive practices that formerly would have been blocked through the preclearance process are being adopted and they are going into effect. Second, the burden to halt these practices has shifted over to minority communities, which now have the burden and the responsibility of trying to gather the resources that they need to end these
practices. The lens through which I'd like to discuss these observations is MALDEF’s successful legal challenge to a post-Shelby change in method of election to the City of Pasadena, Texas. Pasadena is not a huge city, not a small city; about 150,000 people in Harris County outside the city of Houston. Pasadena is the former state headquarters of the KKK and a number of our witnesses who lived in Pasadena for many years recall driving through town as children or even as young adults and seeing members of the KKK in their robes standing at major intersections handing out their literature. That was what it was like to be Latino or African American as a young person in Pasadena. I'd like to make a small and respectful correction to Mr. von Spakovsky. Pasadena was covered by Section 5’s preclearance provisions from 1975 until 2013. Three weeks after the Shelby decision, in July of 2013, the mayor of Pasadena announced a plan, an important new idea that he had to change the method of electing members of the city council. At the time Pasadena had eight members of its city council who voted and the mayor would cast a vote if there was a tie, among the eight members. And what had happened in Pasadena is that the Latino community had grown over the years
and the point at which the mayor announced his plan to change the method of election the council vote was often tied between four members of the council who were either Latino themselves or being elected by a substantially Latino single-member districts and four members of the council who were coming from primarily Anglo-areas of town. Pasadena had converted to single-member district sometime in 1990s and there was this moment of pressure as Latinos came up to be the population majority and started to exercise more political power on the city council. Some of the issues that Latinos were interested in, some of these votes that began to break 4-4 on the city council, included questions of resource distribution, drainage, and the quality of streets was very poor in the north part of Pasadena where most of the Latino community lived. There were also some financial dealings of the city that Latino voters were very unhappy about. They wanted more transparency and greater distribution of resources towards their neighborhoods and their community. As a result, the mayor found himself casting more and move tiebreaking votes on what had become a split council. And so, he proposed and the city electorate adopted in an at-large election -- a conversion of two seat on the council to at-large
-- so that system shifted from eight single-member districts to a 6-2 mixed system, shifting these seats from single members districts to at-large voting solidified Anglo-control over the council even as the city became majority Latino in total population. At the time Mayor Isabel pointed out, quote: The Department of Justice can no longer tell us what to do. Unquote. And he was absolutely right because it was three weeks after the Shelby decision and the Justice Department was no longer going to tell Pasadena how it could run its election system. Even though in the past other cities in that region of Texas had had attempts blocked by the Department of Justice to change at least some of their seats in single-member district to at-large voting. MALDEF they filed suit in 2014, and I want to just touch for a moment on the details of how incredibly time-consuming and expensive this litigation was. We took or defended 35 depositions in the case. Between plaintiffs and defendants we had seven expert witnesses - expert witnesses are not cheap. We did extensive paper discovery because in order to prove the Senate factors you don't just need a historian, you need somebody to talk about present day events in the city; and so, there were many thousands of pages of
documents that we requested and received from the city that helped us build an explanation around what had happened recently in Pasadena. And then finally, for a two-week trial we had to relocate our entire trial team to Houston, where we do not have an office, and try the case in November and December of 2016. In January 2017 the federal court ruled that Pasadena had intentionally discriminated against Latino voters and that the change was also dilutive of Latino voting strength. Pasadena appealed and it is another nine months before we were finally able to settle this controversy. All in all, it took approximately $3.5 million in three years to resolve what could and should have been resolved through the preclearance process. Thank you.

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

MR. ADAMS: Thank you very much, Madame Chairman. My name is Christian Adams. I served for five years in the Justice Department in the Voting Section and brought a variety of cases under the Voting Rights Act as well as Section 5 reviews before Shelby including congressional redistricting. One of the most effective ways to preserve the viability of the civil rights laws is remove partisan interest from civil rights law enforcement. Previous panel
touched on this issue a bit when it indicated that partisanship can sometimes provide an inadequate, if you will, defense to a claim under the Voting Rights Act alleging intent, but bear in mind that partisanship is indeed a defense to a Voting Rights Act claim and I think whatever work this commission sets out on doing should be keenly aware of the dangers of partisanship and Voting Rights Act enforcement. The Voting Rights Act has enjoyed broad, bipartisan support for decades. But if enforcement of the law is hijacked by partisan interest, it will lose bipartisan support. Now, some will be happy to travel the dangerous road of turning the Voting Rights Act into a partisan weapon. Some are even brazen and open about their goal of doing so. A few years ago, for example, there was a law review written by University of Michigan law Professor Katz who called for just such an outcome. It was titled, quote: Democrats, the DOJ, Why Partisan Use of the Voting Rights Act Might Not Be So Bad After All, and was published in the Standard Law Review -- Law and Policy Review. To this end, reasonably state election laws have been challenged under the Voting Rights Act in a concerted effort by lawyers representing partisan interest. Right now, for example, there is a
challenge to the very existence of recall elections in the state of Nevada using the Voting Rights Act. The case makes what I believe to be the immoral and frankly bigoted claim that minority voters are less capable of voting in a recall election because they don't pay close enough attention to the public issues and might have to vote twice. That is the theory of the case. My organization is a defendant intervener in the case on the side of Nevada defending the state recall election against this partisan use of Section 2 of the Voting Rights Act. If the theory in the Nevada lawsuit is the future of the Voting Rights Act, the enforcement of this important law will eventually enjoy dwindling support among only a small fringe far outside of the mainstream. Predicating enforcement of the law on the idea that racial groups are not smart enough to pay attention, or otherwise less sophisticated as experts for the Justice Department in some of the litigation discussed today testified. It not only offends the dignity of those individuals, it is well outside the jurisprudence of the Voting Rights Act. My view is that such negatively partisan use of the law will eventually erode support among the general public for the law. Now, we heard a lot of testimony about Shelby and its
effects, and I will tell you that I brought one of the last cases of the Justice Department to challenge at-large elections against the city of Lake Park, Florida, and that was in -- almost a decade ago. Since Shelby there hasn't been much activity, as we heard from the last panel. A more recent DOJ case filed against East Point, Michigan late in 2016 appears to have a number of significant defects were the defendant savvy enough to press those defenses -- which so far they have not. Simply, the Department of Justice with its vast arsenal of resources hardly brought any cases for violations of the Voting Rights Act after 2009 and after Shelby. The numbers cannot be ignored. What is most striking about the post-Shelby world is how little difference the decision seems to have made to actual voting. It is easier to register and vote now in the United States than it ever has been in the history of the country. Nothing about Shelby affected that undeniable fact. Lawyers have struggled to find actual plaintiffs who faced insurmountable obstacles in voting. One famous incident in Philadelphia, a plaintiff challenging state voter ID laws claims she could not acquire acceptable identification to register to vote, when a lower court threw out her case she quickly
visited a PennDOT office and received her ID, the same day before her lawyers could stop her from doing so and mooting her appeal. This is the story of farce that accompanies some of the recent challenges to state election laws. States were given the power to run their own elections in our Constitution. Naturally, they must do so in conformity with the various Amendments in the Constitution and statues affecting elections. The presumption that states manage their own elections is not some an accidental choice. It was a choice informed by the lessons of history that centralized federal control is eventually adverse to individual freedom. The founders knew that a central authority would control over state elections would invariably erode liberty. As the Supreme Court put it in Shelby, the federal balance is not just an end in itself rather federalism secures citizens the liberties that derive from the diffusion of sovereign power. I would urge this Commission to look carefully at the abuses that occurred in enforcement of Section 5 in the past. Johnson v. Miller is of course the most famous one. The butcher’s bill for that case ran into the tens, and frankly hundreds of thousands of dollars for the abuses of Section 5 abuse. What should Congress do
to stop those abuses in the future? Should it make individual DOJ employees liable? Should it do something else? But, the abuses aren’t just public. I remember when I was in the Justice Department many times organizations and local leaders were opposed to a submitted change yet sometimes individuals carry inordinate amount of clout in a Section 5 review process and we were often instructed to call representative Tyrone Brooks of Georgia and ask him what he thought about the submission because even if a lot of people oppose a submission Mr. Brooks had the power to get it something precleared. Now, that’s something that isn’t in the public record but this is something that is a fact. People had inordinate power behind closed doors to have things approved or rejected, not based on the law and the facts, but on their clout to get something objected to or precleared, and that’s something that the Commission, if it does report has to make a recommendation to remedy. Thank you very much for your time.

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

MR. MORENOFF: Thank you. Let me first start by thanking you all for including me on this panel and in this event. I am well aware that my organization
is the youngest of the civil rights organizations
that you’ve included and we really appreciate you
giving us the opportunity to come here and speak.
To be clear, we sue governments. That's what we do.
We absolutely recognize the harms that members of
the last panel spoke to -- that arise through usage
of Section 2 rather than a no longer available
Section 5. It is certainly true that illegal
elections happen while litigation is pending. We’ve
got a case pending right now challenge -- we’ve
been pending for more than three years. So, those
things are fact and they are material. You've asked
us to discuss on this panel a series of questions,
several of which I have literally no ability to
address at all. I've never worked at the Department
of Justice. I cannot address the three issues
you've asked us to about how DOJ’s enforcement
decisions have been affected by Shelby. I do want
to address the other four, two of which are about
the Shelby decision itself, with an eye towards
what it means for what could be in a new update of
the Voting Rights Act, as well as the two
additional issues that you've given us as to the
impact of Shelby more broadly. To begin with, the
first with the decision-side issues. You'd asked us
to discuss the Shelby majority’s rejection of the
congressional record and specifically what it would mean Congress would need to do to have a new act survive judicial scrutiny. There are really two ways that the Court rejected the record, one of which has already been addressed and I don't think the other has. The first was that the Court held that -- while the record certainly documented the existence of ongoing discrimination, it did not believe the record to reflect a kind of concentration of discrimination that on the pervasive scale that it existed in the Jim Crow South and had been the reason for the creation of Section 5 and Section 4 covered formula in the first instance. And they cited various things including, I believe, the fact that Section 2 litigation in the years between 1982 and the Shelby decision had reflected almost twice as many cases of intentional discrimination in uncovered jurisdictions as in covered jurisdictions, as well as a number of things that I think Mr. Von Spakovsky addressed. The second one, of course, was that according to the Court, regardless of what was in those thousands of pages compiled by Congress, the Congress simply didn't use that record. This is what Ms. Gupta referred to when she mentioned that if there is an update to be re-imposing
preclearance it is simply going to be—have to be based on current statistics. I think that is pretty clear. I don’t think anyone argues that that is what the court is requiring. I do want to jump back to that first factor, though, to what—was actually in the record and how the Court invalidated because, while they used the language of state sovereignty—in particular, the federalism costs of preclearance I don’t read this as actually being a 10th amendment concern. I don’t think that’s what the Court talking about. I don’t think that it can be talking about that given that in this very opinion it agreed that Congress has the power to intervene in the way it did, in creating preclearance to begin with. Instead, I would suggest that this is best read as Congress— I'm sorry— as the court rediscovering the systematic preference for laws of general applicability. This is really a equal protection concern; if there are minorities in this state, which have preclearance protecting them and there are minorities here who don’t, they are not equally protected—there rights are not equally protected by the congressional act. And I think we should really read the Court's opinion here as an instruction that if Congress is going to re-impose
preclearance it should do so for the nation as a whole. Write a law that applies everywhere, not just jurisdictions you don't like. The minority on the other hand, Justice Ginsburg wrote, in part, finding that Section 2 cases are more likely to be successful in what had been covered jurisdictions than in uncovered jurisdictions. That's a fact. It's true. Mr. McCrary rightly observed this. He observed it with a note that preclearance is the solution because there are things that otherwise wouldn't be caught, that there's a real problem with using the Section 2 data point when we don't know what is going on. The second problem here which is the circularity of the reasoning, given that in any Section 2 case at the totality of the circumstances, analysis, courts' engagement, one of the things they look for is there a history of discrimination, given that we know that their preclearance formula was created to put into covered jurisdictions those places that have a history of discrimination. We should expect that that factor is going to lead to a greater level of success and litigation against those covered jurisdictions. That isn't actually indicative that there is greater discrimination there than elsewhere. It's just as a result of how the courts
have chosen to measure this. So again, I would suggest that it's necessary for the Congress to avoid circularity. You've got in my materials -- the actual chart of filings under the voting rights jurisdiction of the courts. It is perfectly clear that there are simply less cases filed this decade than last. It is equally clear that there has been a mid-decade-surge in filings, which are definitionally after Shelby. That was true in the previous decade as well, though in this decade there have been more of them and they've accelerated more quickly. I'll also simply point out that if going from 2000 to present at no point in that period has DOJ actually filed a material percentage of the voting races that were filed. The laboring oar has always been handled by private organizations and it still is.

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

MR. MORENOFF: Thank you.

MS. LANDRETH: Thank you very much and good morning to the Commissioners and the Chair. I want to thank you very much for inviting me to speak here today. Often when civil rights issues are discussed, the Native American perspective is not included, so I appreciate the real attention to this issue. There is a great deal of activity going on in Indian
country related to voting rights. So, my name is 
Natalie Landreth. I'm the senior staff attorney at 
the Native American Rights Fund. I am based out of 
the Anchorage office but I work on voting issues 
nationwide. I'm also chair of the Alaska state 
Advisory Committee. Today however, I am testifying 
solely in my capacity as a voting rights litigator 
at the Native American Rights Fund. I can only 
describe my job right now as trying to empty the 
ocean with a teacup. That's how bad it is. You just 
heard Mr. Morenoff describe to you how burden is 
often borne by private organizations like mine, and 
I'd like to explain how big that burden is now that 
Section 5 is gone. The first thing I’d like to 
point out is of course there's been some discussion 
about the imprecision of the coverage formula in 
the Shelby case and one of the examples that I 
often heard during the pendency of the case; and of 
course mentioned in the Court of Appeals opinion is 
that one of the examples of well Alaska is covered 
this formula must be wrong. Let me tell you 
something anybody who thinks that Alaska was 
covered by mistake doesn't know anything about 
Alaska. During the pendency of the case they just 
lost a Section 203 and 208 case and a second one 
had just begun. And yet people were saying to the
court this is an example of how imprecise this formula was. Alaska was covered statewide and statewide for good reason. Because it's the last state to have a literacy test. 1970-71 was the legislative session in which it was abolished and it had never fully implemented Section 203, ever. When I walked into the courtroom in 2008 to an oral argument on the Voting Rights Act and its implementation in Alaska, it had been active covered for 35 years and the state at that time had two pieces of evidence that they could provide and they had translated any voting materials and they were two 30 second ads, so I asked the Court to sit through those and I said that's it, that's all there is for 35 years. I think it's clear enough that Alaska was correctly covered, correctly captured in the formula. We sued based on widespread 203 and 208 violations as I mentioned but I want add, as Ms. Morales pointed out, the enormous burden it places on private organization. We spent over $200,000 in expert costs, over a million in legal fees, conducted or defended 25 depositions, had 30,000 pages of discovery, and unfortunately for our district court judge a staggering, 720 docket entries, which is a filing basically every three days for the entire case.
That is the heels that were dug in by the state at that time. I'd like to point out that at no time did the Department of Justice intervene or assist at all. In fact, in Indian country the DOJ has not brought a case on behalf of Native Americans in almost twenty years. The last one was South Dakota in 2000 and before that Wayne County in 1999. Their involvement has been limited to filing amicus briefs or statements of interest. Though important, it doesn’t compare to the impact of them bringing their own case. And I’d like to point out that the entirety of the litigating lawyers in Indian country are almost in this room. Mr. Rosenberg, Mr. Arusha Gordon at Lawyers Committee, Mr. Ho at the ACLU Voting Rights Project, myself, Lockland McDonald, Bryan Sells, and Jim Tucker, that’s it. Those are all the people defending the rights of over 500 tribes in the United States. The DOJ did assign during this time fellow services to Alaska and that has been one of the most important decisions because it is the only way that we can now find out what's going on in the polling places -- and that's another part about the loss of Section 5 that people don't often talk about is now they don't have the ability to assign observers, so when we settled our second consecutive Section 203
case after of course winning a victory we settled the remaining claim, we were required to include in that settlement that the state agreed to federal observers because it was the only way that we could keep them. And now it is the only way we know what is going on. In that case the Department of Justice filed a statement of interest; it was very important to them, articulating the law. I want to point out as well that at that time we realized the pervasive nature of a lot of voting rights problems in Indian country so we created something with Lawyers Committee, ACLU, and other organizations called the “Native American Voting Rights Coalition” just to manage these issues together. We've done two major projects. One is to conduct a survey, and the second is to conduct some field hearings to find out what's going on in Indian county. And I want to point out the first and largest survey as a coalition, NARF can’t take credit for it on its own. There are two things that I'd like to point out. It's over 122 pages of findings. It was a thirty-minute survey conducted across four states. Number one, almost one-third of eligible American Indian citizens are not registered to vote. They don’t have access to registration. It’s not so easy. In a lot of these
places they told us it was 89 miles one way to go to the nearest registration or that in Nevada you had to have a number with a form with a specific number on it and they count each form. Second thing I'd like to point out is that, although the number varies by state, only 22 to 26 percent trust voting by mail, it's not a panacea in Indian country and we really wish people would stop advocating for vote by mail as some sort of massive solution. They won't do it because they have to share P.O. boxes and often the reservations are not plotted and they don't have street address and cannot receive their absentee ballots in the same way. Finally, I'd like to mention just some of the indications of which we find out of some of our field hearings about just how bad the situation is in Indian country, and to keep in mind that most of the people who will have to litigate these are in this room. Voters in one case we're told at a field hearing that they had to go retrieve their ID from home, even though the law allowed the use of an affidavit, and of course almost none of them returned. One reservation comprises almost 90 percent of the county but it has no polling place and instead it was moved to an all-white community with only fourteen residents. Tribes are told sometimes, especially in the
Dakotas, if they would like polling places on their reservations they get to pay for them. I'd like to see you tell that to someone in another community; they can vote if they can pay for their polling place. And finally, one of the most egregious examples we've found, was when voters who asked for years for a place to vote and were told they can have the chicken coop. That is the state of voting rights today and without the protections we find ourselves on the front line defending them after they’ve occurred. Thank you.

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

MS. IFILL: Good morning. My name is Sherrilyn Ifill. I’m the President and Director-Counsel of the NAACP Legal Defense Fund -- the organization founded by Thurgood Marshall and I am very grateful to you not only for inviting me to participate in this hearing, but for convening this hearing at all, at this moment in our country. I think it is critically important and that is why I wanted to be here today. This year marks the 150th anniversary of the 14th Amendment, the Amendment to the Constitution that by its explicit terms was designed to give full citizenship to African Americans who had been formerly enslaved. Our civil rights statutes including the Voting Rights Act
derived from those civil war amendments that were
designed to affect the dignity, the personhood and
the citizenship of African Americans in this
country. The importance of our civil rights
statutes including the Voting Rights Act is an
acknowledgment that the problem of racism and power
and democracy in this country reflects structural
impediments in our country. They're not issues of
personality, they’re not issues of individual
action but actions of structure in our
constitutional framework, and that's important
because in this moment, in this country so much of
our focus on race and injustice happens in the
context of personality and of spectacle, and this
hearing provides us with an opportunity to return
to the fact that the framers of the 14th Amendment,
the framers of our civil rights statutes enacted in
the late 1950s and through the 1960s, recognized
that we need structural solutions to the structural
problems in our country. It's important to me also
because I think this is key a democratic moment in
our country, as we deal with this issue of voting
rights particularly of voting rights of the post-
Shelby world. Over the last year we've seen some of
the most egregious, odious, and distressing
presentations of white supremacy and racism in this
country. We've seen young people marching in the streets with Nazi flags. We've seen violence. We've even seen murder. And we recognize that as white supremacy. We recognize that as something that comes against our very national soul and the core of our democracy. But I'd like to posit to you today that when legislators in our country meet as they did in Texas and as they did in North Carolina and they pass laws that have been found by federal courts to have the express purpose and intent of discriminating against African Americans and Latinos and keeping them from participating fully in the political process and exercising their rights as citizens. That too is white supremacy. That too is odious. That too is a blow to our national soul and to our democracy. And so it's vitally important that we stare this in the face and we recognize that we continue to have this ongoing problem in our country that the framers of the Voting Rights Act recognized when they enacted Section 5. They created the preclearance formula precisely because they recognized that racism was long standing and was likely to extend into the future. They created Section 5 to get at what they called the ingenious methods of voter discrimination that they couldn't imagine in 1965.
They looked into the future and they wanted to create a mechanism that would allow us to get at future discrimination. They did so. And what they believed has come to pass. It's most certainly as true today as— it was prior to the Shelby decision. We reference in our my testimony and you can go to LDF’s website to find our publication “Democracy Diminished” that sets forth all of the discriminatory voting changes that have been put into place since the Shelby County decision. Changes that could not have happened prior to that decision. I want to speak very briefly with the time I have left about our challenge to Texas’ voter ID law. Once again, this is a law that could not have been enacted but for the Shelby decision. And in fact, it was a law that the state had attempted to enact and it had been thwarted from doing so because of Section 5 prior to the Shelby decision and we saw this all over the covered jurisdictions, law that had laid in limbo because of Section 5, like Alabama's voter ID law, were suddenly enacted after the Shelby decision. The Texas voter ID law was regarded as the most stringent voter ID law in the country. It is a law that specifically identified forms of ID that it was less likely that African Americans and Latinos
would possess and made those ineligible to support voting. But forms of ID like a concealed gun carry permit were allowed to be used as identification for voting. When I describe the discriminatory nature of this voter ID law; like the discriminatory nature of the omnibus voting rights bill enacted in North Carolina, I'm not speaking simply as an advocate. I am describing what was found by a federal court and upheld by federal Courts of Appeals. And I think this is important because in the moment that we’re in, a moment in which there is even such a phrase as “alternative facts” this panel is important because litigation does something unlike rhetoric, unlike arguments, or unlike debates. When we file a complaint we set forth allegations of what we believe to be true. Those of us who have been to law school know they're not facts yet, they're allegations. They go through the crucible of litigation. They go through discovery. They are tested. They go through a trial. There are witnesses. There's cross-examination. There's rigorous review by a judge who can assess the credibility of witnesses and review the documents and understand the legal questions. And when that judge issues a decision that judge issues something called “findings of fact” and
those things that the judge finds in that opinion are now true, they are accepted as facts. And that means that North Carolina Omnibus Bill, the Texas Voter ID law, have been found by federal courts, upheld by appeal, to be racially discriminatory. This is evidence that Congress -- the Supreme Court simply got it wrong and congress, the bipartisan Congress that reauthorized Section 2 -- Section 5 of the Voting Rights Act in 2006 should be outraged that the Supreme Court countermanded their assessment of what was necessary in the legislation and that what they believe was necessary has been borne out to be true by federal courts in multiple states. So what do we do at this moment? At this moment, we have to recognize we have a democracy problem. We have a problem of intentional discrimination. We have a problem of discriminatory effects. It can be resolved, but Congress must have the will to do its job and protect the voting rights of African American, Latino, Asian American, Native American citizens in this country. Thank you.

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

COMMISSIONER NARASAKI: Thank you, Madame Chair. I have a couple of questions for a couple of
witnesses so I'm going to ask you to keep your
questions -your responses brief so I can get all of
them. I want to start with Ms. Perales. There's
been a lot of discussion about the scope of and the
Shelby decision and whether Section 5 should
continue to work in the way it was. I know that
MALDEF has thought a lot about what it would see
replace Section 5 should Congress revisit it. Can
you explain some of the things that MALDEF is
proposing in terms of how you would instead trigger
Section 5?

MS. PERALES: Mr. –

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

MS. PERALES: Thank you. Because I don't work in our
DC office I cannot give you the exact details of
each and every of the legislative proposals that we
have commented on. What I can say is that, the
heart of the preclearance mechanism is something
that's vitally important for us to preserve and
that in the areas where we do litigation where
there is substantial Latino population throughout
the Southwest, whether it's Arizona, California, or
Texas, we do need coverage because the community
and the few lawyers who are there to serve the
community cannot keep up with what happens to
COMMISSIONER NARASAKI: Thank you. Let me move to Ms. Landreth. So, one of the focuses that you have had has been the compliance with Section 203, and you mentioned that the Department of Justice has not actually been that active in the past in enforcing Section 203. What are the tools that they have, what should they be using? Are they doing anything that's effective, and what recommendations would you make to DOJ, to Congress, to better enforce and improve language access?

MS. LANDRETH: Thank you, Commission Narasaki. I think one of the things that I’m not sure has been discussed this morning that people really need to understand was exactly how Section 5 worked. It worked through what are called “MIRs.” It worked through “More Information Requests.” It did not work for successful lawsuits and here's how it happened. In 2008, I believe that's the correct year. Very recent. The state of Alaska proposed a project called “precinct alignment.” Which was combining precincts that were separated by air so that you would have to fly to vote in a neighboring village. We immediately objected and explained to the Department of Justice when they called these lists with contact people I was one of them. I got
calls all the time and I was grateful for it because the people on the other end of the line had no idea these communities were not connected by road and so I said absolutely this is inappropriate. And what they did was sent a letter called a “More Information Request.” And what we can see if those are tracked is that after the MIR letter is sent the proposal is removed. So it doesn’t get to an objection, it doesn’t get to a lawsuit because that is how Section 5 worked and people did not look closely enough at the role of MIRs because what the DOJ did was prophylactic on the front end and a lot of things that you see described here today are things that would have been caught in that process. The second part of your question was what they can do to enforce correctly the – or more of the Section 203 of the Act. I think an under enforced portion of that Act, the number of covered jurisdictions under Section 203 changed somewhat in the last listing, which I believe was in December of 2016. Great attention needs to be paid back to that. In the two cases that we have litigated the standard has been set out in a very clear way that the ratio is a 1:1. If you provided a voting material in English in a covered jurisdiction it also has to be provided in
the covered language. One and done. Simple. This law needs to be enforced more frequently because I see voting materials all of the country for Indian language that are one piece versus an entire 100 page booklet. One piece of information in the covered language.

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

MR. ROSENBERG: I think the important thing right now is for there to be a discussion in Congress about this. There are two bills I understand are pending or at least have been drafted -- one of which is bipartisan actually. And I think that it's important for there to be this sort of discussion that looks at what you've heard here over the past hour-and-a-half, that there are substantial instances of the continuation of racial discrimination in voting of the precise sort that set the stage for the original Voting Rights Act, so I think the important thing is for there to be a debate on this, an open debate, and hopefully a bipartisan response. The Lawyers' Committee has not taken a position, as I understand it, on either of
the bills that are pending yet so I don't want to take an official position today but I think the important thing is for there to be a move on the legislation.

MS. IFILL: Thank you. My answer is largely the same. There are several proposals that have been knocking around for a number of years. It’s been alarming that we have not be able to get a hearing on a bill to talk about what we think would be necessary. I think many agree that the formula will apply nationwide. The likelihood that a number of the states that were formerly covered by preclearance will be captured in that formula is likely true but it's true because the formula would be based on the actual discrimination and voting discrimination in those jurisdictions. We've already heard this morning about some of the cases that have involved findings of intentional discrimination. There are other cases that have found violations of the Voting Rights Act. Some menu that looks to those violations would be the one that would trigger states being covered by preclearance. I do want to suggest that what I think is most important and I think what you're hearing uniformly is the need for some sense of urgency about this. If you think about one case
alone, Ms. Perales referred to a case that she litigated for three years and Ms. Landreth also referred to the length of time and the volume of litigation they've been engaged in. The Texas voter ID case is a case we filed in 2014. We received a judgment from the district court judge that the voter ID law was discriminatory in 2014. It is now 2018 and we are still litigating that case. We have been -- you know, the decision was affirmed by the panel and the Court of Appeals. It was affirmed in en banc. We went back to the district court on the question of intent. We had the Justice Department dropout and switch sides on intent. We just had another oral argument before the district court judge in December. This is a case that's been going on since 2014. Unless we think this is just about litigators, let's talk about the offices that have been up for election since 2014 under this voter discrimination ID law. In 2014 in Texas, voters voted for a U.S. Senator, all 36 members of Congress, governor, lieutenant governor, attorney general, comptrollers, commissioners, four Justices of the Texas Supreme Court. In 2015 there was a special election for a member of the state senate. In 2016, the Presidential primary, 36 members of Congress, three Supreme Court justices, state
boards of educations, sixteen state senators, all 150 members of the state House, over 175 district judges, over 75 district attorneys. These are all the offices that have been up for election and in which voters in Texas have voted under a scheme that was found by a federal court to be intentionally discriminatory. That is a stain on our democracy that is unfair to the voters and citizens of the state of Texas. So whatever is going to be the formula, what is most alarming is the lack of urgency that we see from this Congress, another reason why this hearing is so important, that this Congress doesn't think it's important that over six hundred thousand people who we found did not have the voter ID to be able to vote in Texas, could not participate in all the elections I just described to you since 2014, and that's not regarded as a democratic crisis, as a problem? So the urgency I think is the piece that has to be conveyed, and it has to be conveyed not as a matter of partisan politics. Let's remember the overwhelmingly bipartisan reauthorization of the Voting Rights Act in 2006, but as a matter of democratic principle and constitutional integrity.

CHAIR LHAMON: Thank you. Commissioner Yaki?

MR. YAKI: [Inaudible]
CHAIR LHAMON: Commissioner Adegbile?
MR. ADEGBILE: Ms. Perales, will you describe to us some of the lessons that came out of the LULAC redistricting decision and how the Supreme Court made some observations about the nature of the voting discrimination visited upon Latino voters in Texas. And in particular, I'm interested in a potential theme that I see in that case and the case that you just described in Pasadena; this notion that when minority voters are on the precipice of exercising their voice in the political fora that discrimination is visited upon them. Could you help us understand that?
MS. PERALES: Yes. Thank you. In LULAC versus Perry the Supreme Court concluded that the Texas 2003 congressional redistricting plan diluted the vote of Latino voters and in particular, one congressional district in Texas, which was a very geographically large district where the Latino population had been increasing and Latinos had begun to flex their political muscle and vote for candidates who were challenging the sitting incumbent of that congressional district. At the time, when the district was redistricted it was about 55 percent Latino citizen voting age population. Texas dropped the number from 55
percent to 45 percent Latino citizen voting age population and because voting in the district was extremely racially polarized, very high levels of polarization, the redistricting shifted the district from having possibility of having a Latino candidate of choice to really not having the possibility of electing the Latino candidate of choice. And what the Supreme Court recognized and noted in the opinion was that just as Latinos were coming to the point where they would be able to decide the outcome of the election in that district, Texas took the opportunity away. The Court then explained that these actions bordered on intentional discrimination and were certainly dilutive. And you see that pattern over and over again, not limited to Latino voters but voters of color across the board. In many jurisdictions where minority voters might have been a smaller portion of the jurisdiction, and not exercising a lot of political strength, there is perhaps the willingness in, for example, Pasadena to go to a single-member district system to elect the city council. But then as the minority community grows and it becomes more able to elect members to council and maybe even there's a moment where they might be able to elect a majority of the council,
you often see a negative response – a response that
either dilutes the vote or restricts the ability to
access the ballot. That's what we saw in Pasadena.
That's what we saw in LULAC versus Perry.

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

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

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

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

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

MS. PERALES: Absolutely. While the Latino population in Texas grows, while Latino -- we used to have a poll tax in Texas and this prevented many African Americans, Latinos, and others from registering to vote. We don't have that anymore. Right. But as we've made progress with the population and increasing our political participation, Texas has been intransigent and each decade, with respect to redistricting, has enacted plans were subsequently found to be discriminatory and under Section 5 - not just discriminatory in a foreword-looking way but by taking minority voters
backwards, which is the retrogression standard. So we take some steps forward and then we meet the policy—statewide and local—that take us backwards and we have to have push and push again and without section 5 we have to do this primarily through very expensive litigation.

MR. ADERGBILE: Ms. Landreth, recently I had an opportunity to travel to Alaska and learn a little bit about the voting circumstances on the ground in that Alaska. There's a lot of talk about voting in the Deep South—some of the traditionally covered Section 5 jurisdictions. There's a lot of talk about Texas. But often what you hear as folks consider voting discrimination is that, today's discrimination is not as insidious because it's not “first generation” — so-called “first generation” type discrimination. I think typically people think in terms of vote denial — “you can't vote because you're a Native American, African American, a Latino.” But a second-generation type of discrimination where voters are being weakened. In your experience as an expert litigator in Alaska, and nationwide, for Native American populations. What do you make of this distinction between so-called first and second generation discrimination. What kind of discrimination is okay for you?
MS. LANDRETH: I would say none of the above, Commissioner, but I suspect you already know that was the answer. I think the that’s -- one of the other talking points -- so thank you for bringing this up--one of the other talking points I heard a lot in the build-up to Shelby County and the amicus briefs was quote “first-generation barriers the actual denial of access had been eradicated and we are now only looking at second generation barriers because we've made so much progress.” That is absolutely not true. We know this through not only my work in Alaska. Frankly, if you're conducting an English-only election in an entirely non-English-speaking Ubik population you are denying access to the ballot box. We also seen physical denials. One of the examples that I mentioned earlier is that there are indeed places where you're driving forty, sixty, or ninety miles one way to either to vote or to register. What is most common that we see is the refusal to locate polling places on reservations? In one of the testimonies in of the field hearings that we asked one of these people we had repeatedly asked, we said, what did they say to you? And the answer was this: “The sheriff told us he would never allow a polling place on the reservation because it would make a (and he made air quotes) a
jurisdictional nightmare. What if the tribe just wants to keep the ballots? I have no authority to go get them.” So there are different reasons provided, but the way that we most commonly see first generation barriers is the refusal to provide any physical access and it has to be combined with some of the other factors. One of the reservations they have to drive 40 miles in order to vote and some people say, well I drive 40 miles to work every day Well how about this - 45 percent of that population has no access to transportation. That is vote denial. That is the kind of thing we're finding all over the place. It's not just the mere failure to have a polling place. Even begrudgingly when some of them are added they will make these very bizarre hours - we’re open from noon to 1:00 on Tuesday and if you want additional hours you are going to have to pay for it because we want you to pay for our staff. And so it changes - it is like a game of whack-a-mole where you fix one and they come up with another method and it’s just non-stop one after another. And so we see vote denial but we see it in various forms and we see first generation barriers in 31 different flavors in all the states.

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

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

MS. IFILL: Thank you. Maybe I can combine this answer with a little bit of an answer to the question that you just asked Ms. Landreth as well about kind of denial because I regard these voter ID cases as denial cases. When you impose the voter ID laws, as they did in Alabama, and you close most of the motor vehicle bureaus where you would get that ID in the black belt and you have the kinds of transportation issues that Ms. Landreth talked about in Native American country, you are talking about vote denial, so I want to make sure that we are clear that we haven't cleared the first generation entirely yet. But your question is a really important one because I sometimes worry that this conversation gets a little esoteric and we're
not understanding what the relationship is between voting and citizenship and voting and the ability of people to affect the material conditions in which they live, which is what the entire movement for voting rights was supposed to be about during the Civil Rights Movement. And it’s one of the reasons why we spend a considerable amount of our resources focused on local election because too often when we focus on only elections that have national significance. For example, the special last election last November in Alabama, everyone was focused on Alabama because it involved a state senate seat and because there were potential partisan power issues in the balance, but, you know, we're in Alabama every Election Day on the ground and dealing with the kinds of challenges that voters faced last November as well. In those elections they're voting for members of the school board, district court judges, district attorneys, county council persons, members of the county commission and these are the individuals who control really the day-to-day lives of the people that we represent. In fact, they would tell you that those people control their lives more than their United States senator, more maybe even than the President of the United States. On a given day
what that district attorney does, what that
district judge does, what that school board does,
what that county commission does affects the
economic, educational implications of the lives of
the people we represent, so when we take people,
six hundred thousand people in Texas or 118,000 in
Alabama and we suggest that they no longer have the
ability through these vote denial laws to
participate equally in the political process and
affect the people who are going to represent them
and have that kind of control over their lives we
have removed them from democracy, we have removed
them from having a say in their future, we've
removed them from being part of the Constitutional
structure that says they are full citizens. So when
we have these conversations it is really important
and I just want to make one more pitch on this
attempt to try to make this about something
partisan. Thurgood Marshall, who founded the NAACP
Legal Defense Fund in 1940, one of his earliest
successes was a case that he later described as his
most important case, I’m sure we all probably think
that was Brown v. Board of Education but what he
said was that his most important case was a case he
won in 1944 in the United States Supreme Court,
Smith versus Allwright, challenging the all-white
Democratic primary in the state of Texas, long before there was a Voting Rights Act, or a preclearance provision, that’s how long Texas has been in the game of voter suppression. So this has never been a partisan issue. This has always been about the ability of minority voters to participate equally in the political process. What we are saying to them when we allow these laws to go forward that keep them from participating in the kinds of elections that I described, we are saying to them that they are not full citizens of this country. We're saying that the 14th Amendment promise of full citizenship cannot be realized. We're telling them that they're second-class citizens. We're telling them that they cannot be part of the democratic process of this country and there is simply nothing we can do about it, less we hurt the feelings of the states. That simply cannot be true. We are at this point now we're reaching farce around this question of whether Section 5 preclearance was necessary. The Shelby County decision was wrong. We knew it was wrong on the day but if you thought maybe it wasn’t wrong, what we have seen in the years since the Shelby County decision has borne out that it was in fact wrong. We established that we can't keep up with the kinds
of voting changes. We've established that the litigation takes too long. We've finally established that hundreds of thousands, perhaps millions of people, are being barred from participating in electing individuals who control their lives and who control their communities.

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

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

MS. IFILL: It seems to me this Commission must be concerned about any law that prevents full citizens from participating in the political process. I think we’ve come to a moment in this country, thankfully, where there is a rigorous conversation about laws that deny those who have violated the law and then paid their debt to society to be held in a position of civil death, to be held as second-class citizens for their lives for a mistake that
they made and that they paid for through their sentence and whatever else they had to do to fulfill the punishment that was meted out to them. We also know that the origin of many of these laws, of these felon disenfranchisement laws, in many instances happen during a period, particularly at the turn of the 20th century when southern jurisdictions were rewriting their constitutions and were creating mechanisms to ensure that African Americans could not vote and participate in the political process. The origin of many of those franchise laws come from that period, and were created in state constitutions in that period and so we recognize that there are, and there always were, racial implications to felon disenfranchisement laws. When we then combine that reality with the reality of mass incarceration that has resulted in the exponential growth of the prison population of this country since the 1970s. In the early 1970s, the prisons in this country contained 225,000 prisoners. That's the size of the federal prison population. Now it's two million people who are imprisoned in this country. When we combine felon disenfranchisement with mass incarceration, this means that in communities all throughout this country there will be citizens who
have served their time who have been in prison and
we are now suggesting these citizens for life are
to be held separate and apart from having a voice
in their communities, so I think this Commission
should be concerned about any effort that tries to
remove or that in any way denigrates the full
citizenship of individuals who are entitled to
participate in the political process and elect
candidates of their choice who control their lives,
communities, and families.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Thank you, Madame Chairman.

Mr. Adams, I was interested in the case you were in
Nevada about the recall elections I assume that's a
private lawsuit though, right?

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

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

MR. ADAMS: Surely. This touches on my testimony
that addressed the potential -- this case, Kinston,
North Carolina touches on the issue I testified
about regarding abuse of the Section 5 process. And what happened in Kinston was that a law was passed, as I recall, that made elections in Kinston nonpartisan. Right, they're no longer partisan races and therefore the candidates were not listed for city council - I believe it was city council, as Democratic, Republican, they were just listed by their name. We hear the term a lot, I like to vote for the person, not the party. Well Kinston followed through and got rid of partisan elections. That was submitted to the Justice Department for Section 5 preclearance and if this Commission wants to see the depths of abuse that can be reached under Section 5. Read the objection letter from Loretta King, who was the Acting Assistant Attorney General at the time, where it talks about the fact that if you don't put the word Democrat on the ballot that African Americans won't know for whom to vote and it literally is the basis of the objection and I think that it was one of those unfortunate times where partisanship, mixed up with enforcement of civil rights laws. Most Americans find that offensive. Some don't. Sure some people defend it, but most Americans find that offensive. That you have to tell people how to vote based on the party, and that's what happened in Kinston.
CHAIR LHAMON: Commissioner Narasaki?
COMMISSIONER NARASAKI: You don’t have questions?
CHAIR LHAMON: I do, but I’m fine.
COMMISSIONER NARASAKI: No, go ahead.

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

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

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

MR. MORENOFF: Oh. Yes. Yes. Okay. That was on a different topic and not what I was saying. Glad to clarify. This was in a portion of my written testimony where I was discussing the impact of Shelby County opinion on turnout through the laws that were put in place by jurisdictions--either put in place or enacted or started to be enforced after
the Shelby decision. I had been discussing the fact that there is a robust scholarly disagreement on what impact, if any, Shelby, and the voter ID laws that have been discussed at length here this morning, have had on voter turnout. I have pointed out in my written testimony and can flag for you now there are scholarly articles that have determined that in fact Mr. Rosenberg referred to one of these in his testimony as well, the Hajnal article concluded that strict voter ID laws have dramatic impact in reducing the turnout of minority voters, minority here meaning African American and Hispanic voters. There are also scholarly articles that have concluded that there is a statistically significant increase in voter turnout that results from the imposition of strict voter ID laws. And the most recent that I've seen on this topic, the Grimmer article that I have cited to concluded that there is no discernable impact across the nation from the imposition of strict voter ID laws. So, on the one hand, we don't really know if turnout has actually been impacted at all by the entire slate of additional laws that we're talking about. What I have been saying, though, was that whatever the impact is, it does not appear that it winds up being election-determinative and there what I was
flagging was that if you just look at the high-profile elections over the last few months, both New Jersey and Virginia, had gubernatorial elections in November the voting. New Jersey, I believe has no voter ID law, no-picture voter ID law, Virginia has a comparatively strict law. Both elections saw record-breaking turnout. In New Jersey it was record-breaking low. In Virginia it was record-breakingly high so if we are trying to gauge to what extent is voter turnout a function of the presence of voter ID laws this is going exactly the opposite direction. Similarly, the Alabama Senate race that was discussed a moment ago. The turnout in that election is highest in exactly those locales that had been potentially impacted by what critics had said was voter suppression efforts. And that determined the results of that election, high turnout in exactly those areas. So I was not saying that there are other enforcement options that are available and more effective than Section 5. I'm simply saying that whatever impact Shelby has had it does not appear too predominant over a larger societal, political influences on voter turnout.

CHAIR LHAMON: Thank you. I see Ms. Ifill and Ms. Landreth, you wanted to respond?
MS. IFILL: I -- I -- I did. I really think it's important that we're very clear about this. First of all, using high profile national elections to determine whether turnout is affected or not it seems to me is not a great scientific way to go about answering whether or not the voter suppression laws have affected turnout. But more importantly, that's actually not the question, right? The ability of African Americans, for example, to be, as they have been, outraged by efforts to suppress the vote, whether it is voter ID laws, whether it is ending early voting and Sunday voting and undermining “Souls to the Polls” and the willingness of African American voters to try and overcome that. To do as they did in 2016, and to stand in long lines, no matter how long it took to vote to say my vote will not be taken away from me. Those who are able to make it to the polls. Those who are able to register, those who were able to get the ID, that they were able to overcome obstacles and determined that they would not be denied the right to vote cannot be evidence that voter suppression laws have no effect. It's just simply not possible. And so I do think when we try to figure out what's the harm? And maybe this goes to Commissioner Adegbile’s question earlier,
the harm is not about a number on the sheet as to whether turnout went up or whether turnout went down. If a law is created, particularly for the purpose, if a legislature meets and passes a law for the purpose of suppressing the votes of a particular group or a law is passed knowing that it's going to have the effect, it's going to have, or as Ms. Landreth described, simply not knowing because you haven't taken the time to figure out the fact that this polling place is not connected to another polling place by land. That's a problem of democratic governance. That's a structural problem that has to be dealt with and it was meant to be dealt with by the Voting Rights Act, so it's not about whether or not it affected the outcome of an election or a given election. It's about the individual’s right to participate equally in the political process, and about freeing our system from something that has been the scourge of this country, and it is our original sin and the suppression of the citizenship of racial minorities. That’s what the 14th Amendment was about, that’s what the Voting Rights Act is about, and that’s what the target is. The target is can we free ourselves of these structural impediments, not what was the outcome of that election, and we
should celebrate when communities refuse to allow themselves to become victims to these voter suppression schemes, but it doesn't make those voter suppression schemes legal and it doesn't make them not a stain on our democracy.

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

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

MS. LANDRETH: I just want to add two comments here that relate to both the impact of voter ID laws on voter turnout and also the partisanship issue. If you want a perfect example of both you can look at North Dakota. Heidi Heitkamp, Senator Heidi Heitkamp was elected in large part due to the very large Native American turnout on reservations and she put a lot of effort into that and the turnout went up. Immediately after that one of history's amazing coincidences, the North Dakota legislature enacted, what I will compete with Texas, as the strictest voter ID law in the nation for the reason that it didn't even have a fail-safe if the person knew you, could identify you, and you had every piece of paper in the world with your name on it. You could only have a certain limited subset of IDs that you had to get from the state that of course required an original birth certificate, so the
costs went up and up and up as you went through this process to try to get all of this. A lot of Native Americans were born at home, the elderly ones in particular, and couldn't produce some of this paperwork and we saw the turnout in these precincts go down and that was the purpose: was to punish them electing a Democrat for North Dakota and to make sure they couldn't vote. And let me explain exactly how it was targeted to Native Americans. It required they had a street address on their IDs when the reservations are the only places that didn’t have street addresses. They went ahead and platted them, but the people don’t know what their addresses are because the people refer to themselves as “Oh I’m on the rural route on the left” or “I live behind the store.” So the state claims well: we gave them addresses for purposes of fire and emergency, but they have no idea what those are, so that's a perfect example of how partisanship has been used in the other direction to disenfranchise a particular community that became powerful through its exercise of the franchise and the way they did it was through a voter ID law targeted to that community.

CHAIR LHAMON: Thank you. Mr. Rosenberg?

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

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

COMMISSIONER YAKI: Yes. It is actually a homework assignment for some of you. I think that's what's very important is for the purposes of reinstating for however way we can the pre-Shelby standards.
We're going to need some very good documentation
and we have a lot of your testimony and I know
that's what you elaborated on, but what Bishop 
Barber said earlier, about the wholesale, it's not
just one little thing. It's a wholesale attack on
voting rights that has been going on since Shelby,
not just on voter ID. It's about polling places.
It's about driver's license hours, it's about
purges and challenge proceedings in states and
given the fact that we can supplement the record I
would really ask you to give us more of that
information because as much as someone would like
to translate this as a Democrat or Republican,
issue, it is not. This is as Commissioner Adegbile
said this is about how we work as a democracy and
how those people who vote are there and basically
consumers of the ideas that political parties and
men and women of good intent try to persuade you to
vote, but they're not going to be able to that
unless they can vote in the first place --

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

COMMISSIONER NARASAKI: Like Commissioner Yaki, I
have additional homework. So two things: One is I
know that some of your organizations run hotlines during the elections and I think it would be helpful for the Commission to have the benefit of those reports about what is actually happening in terms of stopping the problems that people are having at the polling places. And the second one is I had asked earlier for your recommendations about what we should be advising Congress about what the Voting Rights Act should look like should they get to it, and it would be very helpful for you to submit, while our record is open, your thoughts on that. Thank you.

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

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

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

CHAIR LHAMON: Thanks and welcome back. Thank you for your continued to our important topic. We will now proceed with our third panel. In the order in which our panelists will speak is Michelle Bishop -- Disability Advocacy Specialist for Voting Rights
at the National Disability Rights Network, Michael J. Pitts -- Professor of Law at Indiana University, Cleta Mitchell -- Partner at Foley & Lardner, John Fund -- Columnist for the National Review, Anita Earls -- former Executive Director of the Southern Coalition for Social Justice, and John Merrill, Secretary of State for the State of Alabama. Ms. Bishop, please begin.

MS. BISHOP: Good afternoon and thank you so much for the opportunity to provide testimony today. I am here with the National Disability Rights Network. We are a national membership association for nationwide federally mandated system of protection and advocacy agencies in every state, territory, and the District of Columbia. I believe that the impact of the Shelby County decision has been felt in every election since the US Supreme Court handed down its ruling, and a number of my colleagues addressed the breadth of those issues today so I wanted to use my brief time today to focus on two particular impact of the Shelby County decision that I feel are being felt very strongly in the disability community. And that’s voter ID laws and the closure of polling places. If we take a look first at one of the most prolific consequences of Shelby County decision voter ID
laws first, the Brennan Center for Justice found that 22 states introduced at least 39 pieces of legislation to impose stricter ID requirements in 2017 alone. Yet we know that voters with disabilities are less likely to have the proper ID required to vote. Rutgers University took a look at existing data from the Pew Research Center and estimated that about 7.5 percent of people with disabilities did not have state-issued photo ID, compared with 4.8 percent of their non-disabled peers. And that difference is statistically significant. The U.S. Senate Committee on the Aging, the U.S. Senate Committee on the Rules of Administration, also took a look at barriers to voting for older adults, and found that one in five citizens over the age of 65 do not have a valid photo ID, despite the fact that they made up fifteen percent of voters in 2016. Proponents of voter ID legislation often characterize it as a matter of just leaving your home and going to get the proper ID, to be prepared to vote, so I'd like to take a moment to address that. Brennan Center also found that 10 million voters live over 10 miles from the closest office that can issue the proper form of ID and is open more than two days a week. I encourage the Commission to take a moment
to imagine that you're also a person with a
disability and your disability prevents you from
driving to that office independently so now you
have to find another way to get the ten miles, and
like most Americans, you probably live somewhere
with public transportation that is not sufficient
or if it exists, it's not compliant with federal
accessibility laws so you can’t ride it. Let's
assume you somehow surmount those odds, you get to
the office and it's open and now you've realized
what most people with disabilities know, that many
of those offices are not compliant with poorly
enforced federal accessibility laws. Perhaps you
can't get in the door, or if you had, you found
that the camera they use to take the photo that
puts the photo in photo ID, is mounted permanently
to a high counter and can't be tilted down to take
your photo when you sit in your wheelchair. The
idea that voters can simply leave their home on any
given day obtain the ID necessary to vote is one
that just simply doesn't hold up in the real world.
I'd like to take a moment to talk about polling
place closures as well. Voter ID has garnered a lot
of attention, that has been paid to these issues
post-Shelby decision but I believe that polling
place closures are having a really significant
impact on access to the vote, particularly for voters with disabilities. The Leadership Conference for Civil and Human Rights took a look at this issue and estimates that 868 voting locations were closed in 381 counties formally covered by federal preclearance between 2013 and 2016. Arizona closed 212 polling places. Maricopa County, Arizona alone closed half of its polling places in 2016, causing over five-hour wait times for some of their voters. Texas led the pack, closing 403 of their polling places. We've already talked about the inaccessibility and lack of public transit in the U.S., thinking about the distances that voters are being forced to travel when the polling places around them are closed, particularly voters with disabilities from whom those transit systems are often insufficient. And we talk about longer wait times and what a five-hour wait means with a person with a disability whose disability prevents them from standing for five to six hours in order to exercise the right to vote. Does all of this equal an impact on voter turnout? I believe that it does. People with disabilities are overrepresented among those as well who are hardest hit by some of these laws. Rutgers University found that people with disabilities are more likely to be low-income.
Specifically almost one-quarter of those with a personal income of $25,000 or below are people with disabilities. Rutgers also estimates that eligible voters with disabilities in 2016 included 5.1 million African Americans and 2.6 million Latinos. Communities that are typically targeted by this discriminatory practices. Our voter participation is suffering as a result. Rutgers concluded that 35.4 million people with disabilities were eligible to vote in the November 2016 election, yet in 2016 people with disabilities were registered to vote at a rate two percentage points lower than their non-disabled peers and turned out at a rate to six percentage points lower. That gap represents 2.2 million lost votes in the disability community. If we take a look at the longitudinal data that Rutgers University has been building, the gap in voter participation before passage of the Help America Vote Act twelve percent between disabled and non-disabled voters. That gap dropped to 7.2 percent in 2008 and decreased again to 5.7 percent in 2012. But in 2016 the gap in the participation for voters with disabilities actually increased to 6.2 percent. That means for the first time in over fifteen years we're moving in the wrong direction in terms of voter participation for people with
disabilities. I believe that Congress and the Department of Justice have a role to play in this. The Voting Rights Act, first and foremost, must be fully restored. It has been, federal preclearance specifically, has been our primary line of defense against voter suppression for fifty years and should continue to be so. I believe that effective federal preclearance prevents a maze of state-based litigation that causes fear and confusion for elections administrators and voters alike. Until the Voters Right Act is fully restored I believe the Department of Justice must stay vigilant in ensuring fair and accurate elections by exercising its full authority to enforce voting rights laws. I would be remiss if I did not encourage the Department of Justice to all fully enforce the Americans with Disabilities Act and its provisions for poling pace access. The U.S. Senate and Accountability office in 2016 found that only forty percent of Americans polling places had no barriers for people with disabilities. Only 35 percent of voting booths had no barriers for people with disabilities. The vast majority of America's voting polling places are inaccessible. I understand we're under a lot of pressure to make our voting systems accurate and secure, but we cannot disregard
federal accessibility law. An election in which the results cannot be trusted threatens the health of America's democracy, but an election in which eligible voters with disabilities are denied access is not America. Thank you.

CHAIR LHAMON: Thank you. Professor Pitts.

MR. PITTS: I want to thank the Commission on Civil Rights for giving me the opportunity to testify here today. Section 5 of the Voting Rights Act is an iconic piece of civil rights legislation and its dormancy created by the decision in Shelby County versus Holder is a truly unfortunate event in the history of voting rights in the United States. The initial letter that I received from the Commission to provide testimony presented several questions for consideration. I won't repeat those questions verbatim but let me summarize their main focus. First, several of the questions were retrospective focusing on what has already happened, particularly during the most recent presidential election. Second, the thrust of the questions largely related to issues of voter participation and vote denial, with examples of vote denial including things like restrictive photo identification laws. Third, because of the focus on the presidential election and vote denial, the questions centered around the
impact of Shelby County at the state and federal level. While these areas are all genuinely important and incredibly worthy of discussion, for the reasons I will explain in a few moments, I'm going to slightly reframe the discussion in three ways. Anyway I am a law professor with tenure so I never do exactly what I am asked. First, I'd like to focus prospectively on what the loss of Shelby County might augur going forward. Second, I'd like to focus on vote dilution -- for instance, on redistricting rather than on vote denial. Third, and perhaps this is my most important move, I'd like to focus on local governments rather than the state and federal level. After that, and this is something the Commission did explicitly ask about, I'd like to make recommendation as to what the United States Department of Justice might do in the future in realm of local vote dilution in light of the Shelby County decision. Looking prospectively, it is now 2018. The 2020 Census is about two years away. And a new Census means a new decennial redistricting cycle. Indeed, and this is quite amazing if you think about it, unless something dramatic happens to resuscitate Section 5, this will be the first decennial redistricting cycle since the creation of the one-person, one-vote
doctrine in Reynolds versus Sims, where Section 5 will not play a role in the design of new redistricting plans. It is important to be mindful of the 2020 redistricting cycle because Section 5 has always had a major impact in those cycles. There's no doubt Section 5 played a strong role in preventing vote denial -- through chicanery involving polling places, registration techniques, and such. But Section 5 has played an enormous role in preventing dilution and the retrogression of minority voters' ability to elect their candidates of choice. For example, the majority of Section 5 objections since 1982 came in the area of vote dilution rather than vote denial and an outsize amount of those vote dilution rejections involved redistricting plans. Moreover, while Section 5 played an important role in state and congressional redistricting, the impact Section 5 had on local redistricting was arguably even greater. Over the decades, Section 5 played a huge role in redistricting when it came to the design of districts of county commissions, city councils, school boards and the like. As just a small example of this from recent years, take the objections that the Justice Department interposed between 2011 and 2013, dates that correspond with the most recent
2010 redistricting cycle. Of the objections interposed, nearly two-thirds of those objections were local redistricting plans. Relatedly, to points I've already made, almost 75 percent of those objections were related to vote dilution and only twenty percent of all those objections were changes enacted by state governments, as opposed to local governments. In my opinion, Section 5 has been absolutely critical in ensuring equal access to voting on the local level by preventing vote dilution. Again, this is not to say that vote dilution and vote denial don't happen on the statewide level as well. But the statewide level changes tend to be high profile and, often, relatively well-funded entities will have the time, money, and incentive to bring litigation under the Constitution or other provisions of the Voting Rights Act. That's not always the case on the local level where fewer resources typically exist. Indeed, aside from direct litigation costs, it may even be difficult to find plaintiffs ready and willing to bring a case on the local level because of the potential less tangible impacts local litigation can have on individual lives. So, if historically there has been a lot of action at the local level related to redistricting and we have a
redistricting cycle coming up where Section 5 seems likely to be inoperative, is there anything that could be done? In my view, there is something that could and should be done by the Justice Department to ensure that the 2020 redistricting cycle does not lead to widespread retrogression of minority voting rights on the local level. And I'd like to give the broad outlines of an idea here. My recommendation is that the Justice Department establish what I call a Local Redistricting Taskforce for the 2020 redistricting cycle. The Justice Department, undoubtedly, has an archive of just about every local redistricting plan that adopted during the 2010 cycle. The Department can and should systematically monitor and request redistricting plans adopted by local jurisdictions after the 2020 Census. And the Justice Department can and should compare what the old and new plans do to minority voting strength. And let me all emphasized that this should all be done in a highly visible and systematic manner. I think there would be two principle benefits to such a “Local Redistricting Taskforce.” First, local governments who know that the Department has its eye on local redistricting would be much less likely to engage in vote dilution because they know they are being
monitored. It's a bit of the observer effect; knowledge of the act of observation will impact behavior. Indeed, it's what Section 5 did to accomplish over the years -- deterring the adoption of discriminatory changes before they even got off the ground. Second, the Local Redistricting Task Force will be able to, when necessary and appropriate, use litigation to ensure that vote dilution does not occur on the local level and that important gains made by Section 5 are maintained going forward. In conclusion, I commend the Commission for holding this hearing will also focus on the prospective issues related to vote dilution on the local level that loom large on the American voting rights horizon. Thank you.

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

MS. MITCHELL: Thank you Mr. -- Madame Chairman and members of the Commission. I was going to say thank you for inviting me here, and I guess I do say thank you for inviting me here because I want to refer the Commissioners to my testimony which I have included in the packets, but I'm going to depart from my prepared comments because of some of the things I've heard here today, and I as a citizen and taxpayer are pretty troubled by -- and
I'm taken aback by many of the things that I've heard today because this to me is -- the fact is that the Commission is supposed to represent the thoughts and views of all Americans and not just the professional grievance industry that has been on full display today. I did not realize until I came here that there is a well-oiled plan -- I guess this is part of it to try to reinstate -- to reverse Shelby and to reinstate preclearance provisions for those states that we don't like, in jurisdictions that we don't like. Somehow -- I heard someone say that the reason the Supreme Court made the decision it made in Shelby was to avoid hurt they did avoid hurting some states' feelings. No. There's a constitutional construct; and that construct is, as the Court said in Shelby, that all states and all jurisdictions are equal sovereigns and there not supposed to be -- the federal government is not supposed to pick and choose between favored jurisdictions and disfavored jurisdictions. I heard -- one of the most amazing thing to me, this is perfect that this is on February 2nd, Groundhog Day, because it seems as though, as I said, the professional grievance industry simply can never ever say we've made a lot of progress, and in fact 1965 formulas no longer
should be utilized in any federal law or in the action of the federal agencies. But I heard the most remarkable thing just a moment before we broke for lunch when someone said that we should not look at minority voting patterns any longer. Really? That's what Section 5 preclearance was premised upon, minority voting patterns. Now, it is true they were more minority voting patterns in 1964 and '68 and '72, but the fact that the matter is, what I've heard -- what I've realized sitting here today, is that -- the grievance industry now wants to move from fact-based determinations to intent-based determinations, so now we're going to have legislation be mind-reading, which I find pretty troubling and quite Marxist. Now, I cannot imagine, -- but it will play itself out in North Carolina. I'm a registered voter in North Carolina. And I have read the decisions; I've looked at what happened. What happened in that case is exactly what the witnesses and apparently what this Commission wants to do, which is to take this out of the realm of the minority voting patterns and actual data and instead we're going to work on intent, so here's what happened in the North Carolina case. That's exactly what happened. The trial court held -- conducted a trial, heard
witnesses, issued a 485-page opinion in which he painstakingly went through the evidence and the facts and addressed each and every one of the allegations in the plaintiff's complaint and determined that under the facts minority voter turnout had in 19 -- 2014 had been better than it had been in previous years with the law in effect at that time that was being challenged. When that case went to the Fourth Circuit, the Fourth Circuit gave short shrift to the facts of that 485 page opinion and instead said we're not going to look at the facts, we're going to decide that the legislature passed this law because they had a discriminatory -- racially-discriminatory intent, and the basis under which the Fourth Circuit made that decision was the fact that the legislature had contemplated, had sought and considered the impact on minority voting by various proposed changes to the statute. Now let me ask you this, ladies and gentlemen: Had the legislature not considered whether or not the statutory changes impacted -- how it impacted various groups, what would you have said? What would all these witnesses have said? They would have said the fact that the legislature didn't even consider whether this would have a dilatory effect on race based on race is a sign of
discriminatory intent, so I would say that the
industry, the professional grievance industry on
full display today, has moved the goalpost so now
we're not looking at data anymore, we're not
looking at data, we're now supposed to look at
intent, and I would just come back to the fact that
it's pretty clear to me --. Look, I used to be a
Democrat, then I was an Independent, now I'm a
Republican, so I'm a walking party switcher but I
will tell you that I would bet that most of you
believe most of the people that testified today
probably believe in their heart, with very rare
exceptions, there are no Republicans that really
aren't racist. They are really racist. Southerners,
people who talk like I do, are racist. And so, they
deserve to have extra scrutiny and supervision. I
think that it is important for this Commission to
stop and think about representing all of the people
of this country, about acknowledging our successes,
about looking at data. Let's look at the 20 --. I
expect somebody to testify about the 2016 minority
voting patterns, but I didn't hear -- I heard none
of that. It's Groundhog Day. It's let's not change
anything. Let's go back to the way it was and we'll
find new reasons, and if the data doesn't support
it, well, we'll just think about reading the minds
of the legislators and have judges read the mind of legislators. I think that's a very dangerous approach for a nation who prides itself historically and has been grounded in the rule of law. To me as a lawyer, as a citizen, and as a taxpayer and as someone who supports the Constitution, I would urge this Commission to return to the Constitution and the rule of law.

Thank you.

CHAIR LHAMON: Thank you, Mr. Fund.

MR. FUND: Thank you. Thank the Commissioners. Many people in this room have good motives and are convinced that voter ID laws and other measures to buttress elections are discriminatory. Many others also believe that fraud is not a serious issue. Rather than fighting these battles over and over again, like Groundhog Day they should be working to ensure that everybody can easily obtain an ID. The U.S. Justice Department has spent as estimated $50 million dollars during the Obama administration fighting ballot integrity laws. Various civil rights groups have probably spent an equal or greater amount. What if all that money had gone instead into real efforts to put an ID into people's hands? There is sharp disagreement over how many people lack proper identification. Former
Ohio Secretary of State Ken Blackwell says, that quote: “One of the most often cited factoids, something that should sound authoritative but is not fact based, is the NAACP’s claim that 25 percent of black American adults lack a government-issued photo ID. Think about that for a moment. This would mean that millions of African American men and women are unable to legally drive, cash a check, receive government benefits, board an airliner, or participate in everyday activities of modern-day life” unquote. Hyperbole of this sort perpetuates the patronizing view that minorities are helpless victims. Critics say Blackwell doesn’t understand how high the barriers are for some people who have ID, or lack ID. But if he were really wrong it's difficult to see why so few voters apply for free IDs with such requirements. This left-right stalemate breaks my heart. Former Presidents Bill Clinton and Jimmy Carter have released a very interesting statement that has an idea that might just end a stalemate. They want to add a picture ID to Social Security cards, which almost ninety percent of Americans currently possess. Carter said he would support this idea in a New York minute. Bill Clinton said, quote: “The idea behind the agreement to find a way to forward
that eliminates error and makes the best possible decision that we can all live with.” Let's give somebody something else to argue about. Let's give everyone an ID. The two former Presidents were joined by Andrew Young, former US ambassador and confidant of Martin Luther King Jr. Young said, quote: It is our obligation to make sure that every citizen has the ability to obtain a government-issued photo ID and the Social Security administration ideal for making that happen effectively and efficiently. Social security has twelve hundred offices around the country. Adding a photo option for cardholders would cost just ten cents a card, he said, ten cents a card. Speaking recently, Young said voter ID was not a symbol of discrimination but, quote, a freedom card. A natural extension of President Johnson's efforts to aid poor and disadvantaged. (quote) In today's world you cannot do many things without an ID. Ensuring people have one allows them to enter the mainstream of American life and would be a benefit to them. Martin Luther King, III, the son of the civil rights leader, asks, quote: If we embrace the freedom card we help marginalized citizens secure independence from predators and ensure them that our nation’s most sacred right, that of voting,
will be enshrined. My father used to talk about ending the silence of good people. I cannot emphasize enough about the positive impact a free and easy to obtain photo ID, Social Security card would have for those who are marginalized today. On the other side of the political spectrum, many Republicans also see promise in a photo ID Social Security card. And I can provide a list. Let me add my own voice to those who urge policymakers to consider the freedom card as a way to bridge differences on this issue and get back to fundamentals. Election law experts say more safeguards might be necessary to end identity theft. The Social Security Administration warns people, quote: They should not routinely carry your card or other documents that display your number because someone illegally could use your number or assume your identity and cause a lot of problems. If we had a photo ID Social Security card we would make it much harder for people to practice identify theft. So if both sides agree, why isn’t the photo ID on a social security card already available? One reason may be the engrained habits of groups who have so much at stake and have previously attributed positions, which they are reluctant to retreat from. A spokesman for President Obama said
in 2014 that the issue of the freedom card was being studied, after he was visited by Martin Luther King III and Andrew Young. But sources say the idea was opposed by Justice Department lawyers who automatically oppose any voter ID requirement. Nationally voter support for photo ID remains strong across all demographic groups. In the presidential election in 2016, the last time the states' voters were asked on the subject, Missouri backed the concept with 63 percent of the vote. The freedom card has won over previous opponents of voter ID laws. I cite the Brennan Center as an example. Other liberal groups have recognized subsidiary benefits of the idea. Right now the difficulty of opening a bank account without a photo ID has been a huge barrier to disadvantaged people, putting them at mercy of check cashers, payday lenders, which is an eleven billion dollar industry. The freedom card would eliminate some of the worst barriers to poor people participating in our banking industry. In conclusion, Rhode Island Secretary of State, Ralph Mollis, a Democrat, he persuaded his state's Democratic legislature, Democratic by 80 percent in membership in both the House and Senate, to pass a photo ID bill in 2011 to address problems he detected in voter fraud in
Providence and other cities. It included the extensive outreach efforts and members of the Secretary of State's office went to senior centers, homeless shelters, and community centers to process free IDs. The law has been implemented smoothly. Mollis says and they use it as a national model. 

(quote) “When the day is done my job as Secretary of State was to maintain the integrity of elections. Even if a state doesn't have an immediate problem with fraud, doesn't it make sense to take sensible precautions rather than wait for someone to abuse the system and then it's too late.” (Unquote) That same thinking went across the country so that all citizens can become full participants in American life. Many on the left and many on the right occupy common ground on this issue. The vast majority of average voters occupy common ground in the middle on this issue. Voter ID laws improve the honestly and efficiency of elections. They can also, if designed properly, empower people on the margins of society. Thank you.

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

MS. EARLS: Thank you, Madame Chairman and members of the Commission. I really appreciate you taking up this important issue and coming to North
Carolina. Thank you for the chance to tell you a little bit from my perspective of some of the barriers that we face here. I divide my testimony into looking at denial of access and then measures that make it harder to vote, so let me start with the denial of access. Felon disenfranchisement is clearly the provision in my view that has the strongest disproportionate impact on African Americans across the country. In 2016, 6.1 million people nationwide could not vote because of a former conviction. One in thirteen African Americans is disenfranchised — that's four times the rate of whites. It varies greatly by the state. This is an issues where the rules are very different state-by-state and numbers of people disenfranchised and a disproportionate impact on African Americans varies a lot by state. But it also impacts voters in states that you might think have a more progressive or more open system. North Carolina automatically restores the right to vote once your sentence is completed. You don't have to go through any process for clemency. All you have to do is reregister. Nevertheless, many people end up being disenfranchised by our felon disenfranchisement laws, in part, because a lot of people just don’t know what they are. Even as an
attorney, I've said to voters I've looked up online, you've have completed your sentence. As a lawyer I'm telling you you're eligible to register and vote, but they don’t believe. They’re scared, they’re intimidated, they won’t try to vote. Also there are people who don't know exactly when they're able to reregister. In 2016 the State Board of Elections did a study and identified 440 people out of the millions of North Carolinian voters who they thought voted when they had not completed their sentence. Thirteen of those voters in Alamance County are facing federal criminal charges. They are being prosecuted as felons. Many of those 13 did not know they had violated the law until they saw their names in the paper as being charged with a felony. There is some view in North Carolina this is just not fair to people who are trying to get their lives back on track and being part of a society again. One important lessons is it really does matter to people to be able to vote. Often you hear people say. “Well the last thing somebody who has a conviction is worried about is voting, they want a job, they need to feed their families.” But, in fact, it does matter. It’s how we define who we are as a nation and who we include in the us of “we the people.” So, it does matter to
people. So, in Florida though there's good news. Yesterday a federal judge threw out Florida's clemency process, not because of the disproportionate racial impact or because of the way Florida's law originally came out of an explicit attempt to discriminate against African Americans in that state, but because the way clemency is arbitrarily granted. The judge said, if anyone of these citizens wishes to earn back their fundamental right to vote they must plod through a gauntlet of constitutionally infirm hurdles. No more. So there are some promising rulings, but it truly is an absolute denial of the franchise. Secondly, let me say a little bit about voter ID from the North Carolina perspective. When it is an absolute bar it does deny access. When I was at the Justice Department from 1990 to 2000, our policy was you can have a voter ID requirement as long as you have a signature alternative so the people who don't have an ID can vote. In that kind of scheme, it doesn't disenfranchise people. But what North Carolina tried to impose on the eve of their voter ID law being tried in both state court and federal court was a reasonable impediment exception and it didn't work. I need to tell you about Alberta Currie. She is the named plaintiff in our state
court voter ID case. She first voted in 1956, when she had to take a literacy test and stand at the back of the line so that white voters could vote first. For her it was matter of personal pride to vote first on Election Day. So she would go get in line so she could vote on Election Day. But she was born at home with a midwife, did not have a birth certificate. She spent a couple of hundred dollars, and this is the daughter of sharecroppers, a woman who picked cotton herself. She went and tried to get an ID but without a birth certificate she could not get a photo ID in North Carolina. In 2016, in the March primary -- May primary we said to her there is a reasonable impediment exception now, you go ahead and vote. Our plaintiff, Alberta Currie, went to her precinct in Fayetteville. And when she got there they would not allow her to vote. So, she called us and we had to encourage her. This woman who was standing up for her right to vote to try and go back and vote again. We sent one of our lawyers down there with her, and you have in my testimony what happened. ButBasically again they tried to turn her away and it took an attorney standing next to her for her to be able to vote in North Carolina. So, what we know from the data is that of the 2,371 provision ballots in that
election, 1,419 were rejected. Thirty-four percent of the ID-related provisional ballots were not counted. Thirty-four percent were passed by African Americans, even though African Americans were only 23 percent of registered voters. There is also a disproportionate impact on Asian voters. Of all the provisional ballots cast by Asian voters in North Carolina, 20.3 percent were because of no ID whereas only 5.9 percent of all provisionals passed for that reason. So it truly did have a disproportionate impact and denied the right to vote. In my testimony, I also talk about how improper purges, litigation we had over the ways that people's voter registrations were not getting through from DMV. Turning to making it more difficult to vote, early voting restrictions limit access because they not only make it harder for when people can go vote, but we have same-day registration at early voting and that is really the fail-safe mechanism that enfranchises the most people in the state. Let me talk just for a minute about Sharpsburg, North Carolina. In 2017, this was a hotly contested race between an African American and white candidate. At the end of the day the African American lost by three ballots, but what we found out is that in one precinct where primarily
African Americans voted, they had 12 ballots in a precinct 200 people voted at. So a whole bunch of people went to vote in the Sharpsburg municipal election and were give ballots, were not allowed to vote. Democracy North Carolina has an exhaustive report that I put in my testimony about all the problems that happened at the polling places on Election Day in 2016 and those are some of the people that I hope that you’ll hear from later on today.

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

MR. MERRILL: Thank you. Yes ma’am. I’m delighted to be here with y’all, thank you so much for having me. I’m excited to have the privilege to share with you some of the things we have going on in the great state of Alabama. When I became the Secretary of State of Alabama three years and fourteen days ago I made a commitment to our people that we were going to ensure that each and every eligible U.S. citizen, as a resident of Alabama is registered to vote and has a photo ID. The reason for that is because we want each and every person to participate at the level that they want to participate. Whether that is just by voting, running for office, or whatever it happens to be.
So one of the questions you may ask is, how do we go about accomplishing that? First of all, we reached out to all 105 members of the House of Representatives, all 35 members of the Senate. We said give us three locations in your district where you'd like us to go to conduct a voter registration photo-ID drive. When we got those and we started that process. Then we reached out to all probate judges in all 67 counties. We said give us a can’t miss festival of inter-activity in your community where you want us to go to conduct a drive. We've been to the Chilton County Peach Festival in Clanton, we’ve been to Peanut Butter Festival in Brundidge, in Pike County and we've been to the Peanut Festival in Dothan in Houston County. We've been to the Tomato Festival in Slocomb in Geneva County, I was the grand marshal at that parade.

COMMISSIONER YAKI: Did you bring anything with you?
MR. MERRILL: We've been to the Rattlesnake Rodeo down in Covington County and we’ve been to the Magic City Classic in Birmingham where Alabama State and Alabama A&M play every year. We think it’s important to go where the people are, but we still weren't sure that we're going to reach everybody. So, we reached out to the two most recognizable people in the state of Alabama. I
asked them would you please make a commercial for us and would you allow us to use your likeness on posters to distribute all over Alabama. So Alabama head football coach, Nick Saban, and Auburn University head football coach, Gus Malzahn, made those commercials for us. In 2016, we asked Deontay Wilder who is a heavy-weight boxing champion and Charles Barkley, who's an NBA Hall of Famer to help us the same way and they agreed. This past year we asked Jessica Procter, who was 2017 Ms. Alabama, and Dr. Mae Jemison, who was one of the first African American astronauts, to help us promote our effort, and they did so. We still weren't sure after going through that entire process we were reaching everyone. So, in 2016, we made it where if you have a phone or if you have access to a computer you can register to vote because now in Alabama there's an app for that. We feel like it's important to make it as convenient as it can possibly be for our people to be able to register to vote and to have a photo ID. Now, we have a number of people who still believe there are some folks in our state who are discriminated against because they can't get access to an ID. Maybe they can't go to one of those mobile locations that I described to you even though we go to all 67
counties at least one time every year. They can't go to the festivals or those events or those activities. Maybe they can't go to the Board of Registrar's office that's open each and every day in our 67 counties throughout the state of Alabama—every day that the courthouse is open and they will give them a free ID. So if those people actually exist and they would like to have a photo ID and they don't know where to go, we will go to their homes and give them a photo ID. We have actually done that on multiple occasions in different parts of our state because we feel that it's that important to make sure that we're reaching our people. So your next question may be, well, what does that actually mean? Let me tell you what it means. In the last three years fourteen days that I've been Secretary of State of Alabama we have registered 906,214 new voters in Alabama. We now have 3,342,124 voters in Alabama. Both of those numbers are unprecedented and unparalleled to the history of the state. We want everybody to participate that wants to participate in the state of Alabama. And I've had people ask me why would you tell folks that you would go to somebody's home? Why would you do that? Because if you do it for one you have to do it for everybody. Do you
know what my response is? You're absolutely right, that's why I do it because sometimes I think in Alabama we have to try harder because we have to show you that we're serious, we have to show you that we're sincere, we have to show you that we mean what we say when we tell you that we want each and every person to participate. So what does that actually meant? March 2016 we had the Presidential Preference Primary in our state. We broke every record in the history of the state for voter participation with more than 1.25 million people participating. November 8, 2016 when we voted for President, we broke every record in the history of the state for voter participation with more than 2.1 million Alabamians participating in the general election. And in the special election that we just had December 12, 2017 for the United States Senate seat that Doug Jones now occupies in Washington D.C., we broke every record in the history of the state for voter participation with more than 1.3 Alabamians going to the poles, and not one instance in any of those situations has it been reported that anyone was denied the access to the franchise at the polls in Alabama because they did not have a valid photo ID. We're going to do whatever it takes to ensure that each and every person who wants to
participate is eligible to participate. And if you have any specific questions about what we've done or how it related to other things that have been introduced today, I'd be delighted to answer them. I'm excited about what we're doing. We're changing the standard in our state. We want everybody in Alabama that wants to have the same privilege to participate. If I find one instance where that's not occurring, we're identifying those people, we're investigating them where it is warranted, we're indicting them, and we're prosecuting them to the fullest extent of the law. Thank you very much.

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

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

MR. PITTS: Now you are going to make me expound upon my nugget of an idea. I can't say that I've thought through every single detail of it, but I would imagine that under most of the public access laws in most states if you make a request for
information, you can get it. In Indiana, for example, I could make a request and get whatever information I want from a public entity. I can't imagine that the Justice Department wouldn't be able to do the same, but if we need to pass a law to do that then let's pass a law to allow the Justice Department to get those records, if necessary. The second part of your question was?

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

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

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

MR. PITTS: That's a question I could not answer because I haven't been at DOJ for about twelve years now and I don't know exactly how much they have in resources to do that. I know it wasn't a problem to do the Section 5 states and I would say actually you probably want to concentrate on the Section 5 states at least initially and there may
be other places as well outside of the Section 5 states. Whether or not you could do it across the nation; I don’t know.

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

MS. EARLS: Well, I think I would first make it clear that the finding of intentional discrimination is based on facts. It's not mindreading. It's based on statements that legislators made at the time. It's not based merely on the fact that legislators looked at racial data. It's based on the fact that once they had that racial data they excluded all forms of ID that disproportionately were held by African Americans and allowed as permissible all forms of ID disproportionately held by whites. It's not just they looked at racial data. It's then what they did once they had that racial data. So, I think the Fourth Circuit's finding of intent was based on the
-- in that particular case was based on the totality of all the evidence that they had about the law at issue. It seems to me extremely important to the enforcement of the Voting Rights Act --the Fifteenth Amendment --the Voting Rights Act is enforcing the 14th, and 15th Amendments and they are designed to eradicate intentional discrimination and it would be an anomaly if we were to say somehow impact evidence is more important than intent evidence. I think they are both important and they -- sometimes the Supreme Court has had to wrestle with the question of if you have discriminatory intent, but not discriminatory impact what should you do in those circumstances. Certainly, if you have a law that a court after looking at the evidence finds was intentionally designed to discriminate against a certain group of voters that's the fundamental thing that our Constitution says that the government is not allowed to do.

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

MS. EARLS: Well absolutely. If you look at the whole Thornburg v. Gingles case there is a whole
catalogue of the history of explicit legal provisions that were intended to discriminate against African Americans historically, but then you look more recently and it’s not just the voter ID law and the vote suppression law, but a three-judge panel unanimously found that the legislature intentionally drew racially gerrymandered 28 legislative districts. A different three-judge panel unanimously found that the legislature racially gerrymandered 2 congressional districts. There is a recent, it’s not ancient history; there’s a post-2011 history of courts finding this legislature is intentionally -- in matters respecting voting is intentionally discriminating against African American voters.

COMMISSIONER ADEGBILE: The reason I ask is because I am trying to understand the concept in Shelby County that spoke to the need for a demonstration of contemporary evidence to justify remedial measures, and in a situation in which you can demonstrate a certain amount of continuity in some places, I'm trying to find out what the difference is between the findings that you see today and those findings that happened a generation ago. To a voter, does it matter if your parents were discriminated against in a redistricting plan in
'65 or 1970 and today you're being discriminated against in a redistricting plan in North Carolina? What's -- what's the difference? MS. EARLS: I don't see a huge difference. I see a continuing pattern of lengthy, costly, time-consuming lawsuits being brought. The legislature changing the law a little bit and having to bring another lawsuit immediately after the Fourth Circuit’s ruling was upheld in the Supreme Court by dismissing the appeal. Some legislatures said oh we just pass a constitutional amendment to have voter ID and we will just pass these same laws a little bit differently. So, this whole pattern that initially led to Section 5, we see it being repeated here in North Carolina. And we see young people going to the legislature demonstrating and being willing to be arrested and go to jail because they feel like their right to vote is being taken away. That doesn’t seem all that different to me.

COMMISSIONER ADEGBILE: One last question, Ms. Bishop. Do you have particular suggestions under the ageis of the Voter Rights Act, or in some other way, that the nation could do a better job to make voting accessible to people with various types of disabilities? I was interested in your point about the accessibility the percentages of polling places
that are accessible to persons with different types of disabilities. Do you have a sense about how DOJ plays a role in determining whether or not polling places are accessible?

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

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

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

CHAIRM LHAMON: Ms. Bishop, I will follow up on the questions you’ve been asked. I appreciate your point that full and effective federal enforcement would be helpful to ensure access to the right to vote for people with disabilities. But we are 50 years after the Voting Rights Act and 27 years after the ADA and what you describe is the majority of places not accessible. We have also been hearing on the panels today about certainly vagaries in the focus of DOJ enforcement with respect to voting rights. I wonder if you think there is a foreseeable future in which we would see sufficient
federal enforcement to allow for closing the gap that you described. And if so -- but if not, do we need a different law? Do we need something to incent a way to make sure that those gaps don’t persist?

MS. BISHOP: I think it's possible, but I think the tail end of your comment sort of make it clear how that's possible. Some of this extends beyond DOJ, whose role is primarily enforcement. I think that Congress has a responsibility to make sure this is happening as well. I think state and local elections administrators are in desperate need of funding to help update polling places and to help update voting equipment to make sure that it’s both secure and accessible as possible. I am glad that we are having a national conversation about that, but if we're not willing to put dollars behind it then it’s not going to happen well in terms of security or accessibility. I think it's really time to start having practical conversations about what that means. I think we need to continue to support the existence of the United States Election Assistance Commission that has a vital role to play in this process. And I believe that we have to start having very realistic where the rubber meets the road conversations between voters with
disabilities and the accessibility community and the security community about how we're going to make both of those things happen. Often when we have conversations about vote security, which is clearly a primary issue in the world of elections right now. We fail to talk adequately about accessibility. If we're talking about reverting two systems that required much more ability to hand-mark a paper ballot which is really what we've been talking about over the course of the past year, we have to talk about how we can make that accessible for all Americans. We cannot sacrifice one for the other. Our elections have to be accurate and secure but they also have to be accessible for all Americans. Because that's what we do in American. So I think that that issue is much larger than just the Department of Justice's or just the points of legislation they have in place right now. To protect people with disabilities, we have to start thinking practically about how we’re going to piece all those piece together. I think it requires funding through Congress and I think it requires the leadership of the Election Assistance Commission to make that happen.

CHAIR LHAMON: Two members of the Election Assistance Commission are on this Commission so I
am sure they appreciate your plug there as well.

Secretary Merrill, I wonder if you can respond to what Ms. Bishop just said. You have described frankly inspiring and laudable commitment to actually making sure that everyone in the state of Alabama could have access to an ID to be able to vote. What would it take for you and your state to make sure that all people with disabilities would be able to access the polls and what would it take for you to make sure that other impediments to voting receive the same level of scrutiny.

MR. MERRILL: Yes, ma'am. I think it is very important to ensure that people are able to go to the place where they're supposed to be participate in to be able to do so when it's convenient for them. Some people choose to participate in the absentee process by applying for an absentee ballot and doing that from the comfort of their homes. We're all trying to make that easier and we're also trying to make that more secure, but if they want to go to the polling site in Alabama, those sites are determined by the probate judge and by the county Commission in each individual location. Some of those are not as convenient as others. But what we have to do is work within the local community to ensure that we're going to location that is safe
and secure and enables every person to gain access. Now, I think one of the problems that we had with 
the help with the Help America Vote Act was that 
when information was introduced about what those 
resources could be used for, it was not proper 
training given to certain entities in the state to 
understand what needed to be done as a priority 
with those resources. One of the things that we 
saw, we took the position as Secretary of State was 
that we had people that would actually use those 
resources to pave a parking lot at a particular 
building. Well, that may be necessary but if that 
parking lot is also being used as a parking lot for 
a ball field, a lot of other times during the year 
they may be trying to use those federal dollars to 
pay for something that didn't need to be done with 
those federal dollars because the community could 
have gotten involved more or the municipality or 
county, but we got to make sure we are more 
discerning about how those resources are used, but 
I think there needs to be a greater commitment from 
the local community in working with the local 
election administrators to make sure we've got the 
best locations for those polling voting sites.

CHAIR LHAMON: Thank you.

MR. MERRILL: Yes, ma'am.
CHAIR LHAMON: Commissioner Yaki?

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

MR. MERRILL: Yes, sir. As a matter of fact for the first time since the law was passed in 1993 Alabama’s fully complaint with the National Voter Registration Act. We’re also very excited about that. One of the things that happened in our state was that we realized we're not following the rules and procedures that were established according to the law when it comes to declaring that someone would be listed as inactive. I think that is a very inappropriate term to use because of what we're actually going through and describing here. The Constitution, the code of Alabama, the laws that have been passed in Washington would have indicated that this exercise begins in January after the next federal election for President occurs, so it occurred in January 2017, so there were a number of people went to vote in the primary in August of 2017 for the U.S. Senate election who were
indicated as being inactive. They were moved to inactive rolls because the procedure that was prescribed, and we fully adhere, that said this is how we contact our people. And so, we actually had to mail out a certain number of cards to a certain number of voters and that number that got the first mailing, at the time we had 3,399,899 registered voters. When that occurred we mailed a contact card that as described by the law, that was approved by the Justice Department, we went to Washington and had it approved, and that procedure meant that the card could only go directly to the voter but not following the voter according to the postal service and how they would normally send mail—-

COMMISSIONER YAKI: So it was not-forwardable?

MR. MERRILL: No, sir, not forwardable. So, we had 416,632 voters that received a second mailing, which was described as going to follow the voter and indicate where that individual is supposed to be. After we received 80,000 or so responses from that mailing, 340,152 voters were then moved to the inactive list at that time. We had people that would go vote in August for the U.S. Senate Special Election and they're saying I'm not inactive, I've always voted. The first call I got was at 8:32 a.m. that morning and it was Congressman Mo Brooks, who
was a candidate as a U.S. candidacy. He said, John, we've got a problem. I'm listed as inactive, my son is listed as inactive, daughter-in-law is listed as inactive. Long story short what happened there is - Congressman Brooks could not let it rest. We actually sent him a copy that day of his image of his postcard that was returned to our office. But two days that, he didn’t make the run-off. He went to the post office and the postmaster told him, after he investigated, that the route carrier went to his home, did not deliver it because it says “Morris Baker Brooks, Junior,” he thought that was his son who moved out of their home and he didn't deliver any one of them.

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

MR. MERRILL: Oh, yes sir.

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

MR. MERRILL: Oh, yes, sir.

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

MR. MERRILL: It depends on situation. If someone can indicate, and, you know, that's another thing
about our voter ID requirement. When people actually go to vote, one of the things that our law allows is that two election officials, poll workers or otherwise, can identify who you are, then you're able to vote just as if you had your regular ID that's subscribed and we have ten different forms of ID that are available to be used. And again, I don't like the term inactive that we've been using and we're trying to get that changed in our law so that we won't use that. Basically it just means that you need to update your information. You can do that electronically, in person, or at the polls.

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

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

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

MR. MERRILL: Well, they have to send an affidavit if they do that, indicating that they recognize this person and we have not had any instances that have been reported to us where an individual went to vote, and I already reshar ed it earlier in my
testimony when I said that we have not had anybody turned away since this law has been in effect requiring photo ID requirement. So, that instance has not happened where somebody would be discriminated against because somebody lied or because they weren’t interested in allowing them to participate.

CHAIR LHAMON: Thank you.

MR. MERRILL: Yes, ma'am.

CHAIR LHAMON: Commissioner Narasaki?

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

I wanted to ask, because we had a lot of testimony about North Carolina, and you mentioned that Asian
Americans had been disproportionately impacted. Weren’t there also findings by the court about discrimination against Hispanics in terms of how they decide which kinds of -- not just ID, but also what kinds of other cuts and changes they would make to the voting system in North Carolina?

MS. EARLS: Yes. There were Hispanic plaintiffs in the case and there was evidence that, similar to African Americans, they disproportionately did not have some of the ID that were not allowed as permissible ID. I believe there was also evidence of other types of discrimination against Latino voters that was part of the history of discrimination in the case -- not necessarily directly tied to the law to be considered but Alamance County, what I mentioned in my testimony where these thirteen voters are now being prosecuted is also a county where the sheriff decided -- this is several election cycles ago -- but decided to take the voter rolls and knock on the door with everyone with a Hispanic surname to confirm that they were actually citizens. And when he announced publically that he was going to do that, obviously it caused a lot of fear and was intimidating and the Justice Department did get involved and I think that there was ultimately
litigation that was generated by DOJ. So, there was
evidence in the case of past discriminatory actions
in the state involving Hispanic voters.

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

MS. BISHOP: Absolutely. Section 208 of the Voting
Rights Act is not often spoken about, although it
is part of the Voting Rights Act that applies
directly to people with disabilities, guaranteeing
your right to receive assistance at the polls if
you need someone to help you cast your ballot
anyone of your choosing, of course other than your
employer or your union rep. I think that not a lot
of attention is paid to Section 208. I don't know
that it is being particularly vigorously enforced.
I also think that instances of denial of the right
assistance are being underreported. I don't know
that our state and local election officials are
particularly versed in this or if they are it's not necessarily stressed in the training that we are giving to our poll workers which is really where this issue comes into play. When you come to vote on Election Day and it is the poll worker they making the determination on whether or not they're going to allow someone to assist you, I think it goes underreported because I think that the authority figure of the poll worker—who may or may not be correct in what they're telling you—is very intimidating to some voters and makes them question if they do know whether they have the right to assistance. We do get reports from voters that who do say I brought somebody to help me vote and I was told I cannot do that. I have to have on Democrat and one Republican poll worker help me and that’s the only way it can be done. Now, that can be done and you do have a right to bring someone with you. So, I think we have misinformation and miseducation all around. I think that DOJ can be helpful in that regard but I do think it also starts with making sure our poll workers are trained to understand the rights of voters with disabilities and what type of accommodation they're entitled to when they come to the polls so that we can prevent things like that before they happen. I think that voters should also
not be afraid to come forward and report these
types of the things when they're happening. Earlier
today it was mentioned that some of the
organizations here, and mine is involved with it as
well, run hotlines to assist voters. I would hope
voters would take that step of making that call, if
nothing else than to verify whether or not they
really do have the right to that kind of assistance
so that we can prevent it going forward.

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

MR. PITTS: Yes, I mean both of those are very
loaded comments. My concern is going forward what's
going to happen in the world without Section 5,
particularly at the local level. There's going to
be an opportunity in 2020 for every entity that has
single-member districts, many of which in the former -- formally covered Section 5 states to legitimately change their minds-- they don't have to come up with an excuse to do so. They will have to be because of the rules governing one-person, one-vote from the Constitution, and I see the potential for some serious backsliding of districts that allow minority voters to elect their candidates of choice --

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

MS. EARLS: So, on the question of does the success of African-American candidates for office in North Carolina demonstrate that there aren't any problems with voting I have a couple of responses. One is if you look across the board at all elected offices we still don’t have parity in numbers, but more importantly, the Voting Rights Act is about the rights of voters and the question is do African Americans, do Hispanic Americans, do Asian Americans in the state have an equal opportunity to participate in the voting process. That's what we
have to evaluate and that doesn't -- there's some -- election of people of color is some indication, some measure but it's not the full picture by any means, and the real question is, is our election machinery equally open to everyone.

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

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

COMMISSIONER NARASAKI: Secretary Merrill, since you're coming from the state end is there anything
that you think is helpful that the Department of Justice could be doing.

MR. MERRILL: Well, I think that an intentional effort by the DOJ to make sure people understand that they're available for support is always important. I think one of the things we inherited when I took office was the perception that the Justice Department under President Obama was not as friendly to our state as a Republican administration might have been. I think there are a number of states in the union now who feel that the Justice Department under the leadership of Senator Sessions who is now the Attorney General under President Trump will not be as helpful as it could be otherwise. I think whenever those situations are identified they need to be publically exposed and introduced so people can understand what needs to change in order to make that positive interaction occur and I think just being willing and open to work with other people. We actually found members of the Justice Department before President Trump was elected to be very helpful to us because we wanted to work with them and we expressed that to them and whether it be at the US Attorney level, directly with Justice. I think that is extraordinary important.
CHAIR LHAMON: Commissioner Heriot?
COMMISSIONER HERIOT: Thank you. The name of the
panel is Voter Access but the flip side of that is
making sure that non-citizens, someone who's not
eligible to vote, doesn't vote because if the vote
is cancelled out by someone who is ineligible to
vote then you're being denied the right to vote.
Mr. Merrill, maybe you'd be the first to comment on
this but I'd love to hear from anyone. Ms. Mitchell
or anybody? What's the right way to make sure that
only citizens are voting? What does Alabama do to
make sure that someone who is not a citizen - and I
don’t mean to suggest that someone who votes who is
a noncitizen necessarily is aware that they are
breaking the rules. I know that when these issues
come up, sometimes I went to defense is, offered
that well, I didn't realize it. I went to the DMV
and they gave me this and I thought I was supposed
to vote and I did vote. What's the right way to do
this?
MR. MERRILL: One of the first things that I said
when I shared with you what my goal was - which was
I think I said make sure that each and every
eligible U.S. citizen that is resident of Alabama
was registered to vote and had a photo ID. I think
that’s very important. And really -- Somebody may
laugh when I say this but it's not no different than me saying I'm going to North Carolina, I'm going to vote for your governor and then I’m going back to Alabama to be a permanent resident. Nobody would want that to happen. Nobody would want somebody in the Lions Club to vote for the JC’s President. Or in the rotary club to vote for the Exchange Club President. That’s just not the way that you do it. And no individual that lives in our state that is not a resident of our state and not a citizen of the United States should not be participating in our elections.

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

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

COMMISSIONER HERIOT: But if you have someone who is not a United States citizen but they live in Alabama and they’re not entitled to vote --

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

COMMISSIONER HERIOT: How do you document that?

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

COMMISSIONER HERRIOT: What if -- Well, if someone else has a comment, please go ahead.

MS. MITCHELL: Some of the panelists earlier this morning had to with - or some of the witnesses had to or testifying about enforcement by the Department of Justice. And let’s, as the Commissioner pointed out, it is a felony to -- for someone who is not a citizen to register to vote in a federal election. It is a felony for someone who is not a citizen to cast a vote in the federal election, and I would argue, that the Department of Justice, and we're talking about enforcement of the federal law, that they should actually take steps to notify people to make it clear that it is still against the law for noncitizens to register, and noncitizens to vote. What happens if there is any effort to let people know about that law? The very industry that I was talking about earlier, cry out that that's racist. It's racist to tell people that it's against a law to register to vote if you're not a citizen. There was a lawsuit about whether or not a state was allowed to put on its voter registration form, “Are you a citizen?” Now, I think that these things are preposterous. It is preposterous when we're having an argument that we
argue about enforcing the law. If you don't like
the law see if you can changed. But, the fact of
the matter is, I think most people in this country
agree with the rule of law that says only citizens
should decide our elections. The only way we're
actually going enforce this is if we put it on
forms and people testify or test under penalty of
perjury and we advise people and educate people
that only citizens have the right to vote and have
the right to register to vote and to me that is the
rule of law that this Commission ought to be
certain is being enforced and that the American
people are being positively told about those laws.

MR. FUND: We have a great debate on immigration
right now. One of the things that is being
discussed is a path to citizenship for the Dreamers
and others. Clearly people value citizenship. They
think American citizenship is important. Well, I
think there's been a cruel trick played on some
people who are waiting for their citizenship. One
of the secretary's colleagues had to resign in
Pennsylvania, had to resign his office after a
scandal last December. The scandal was that for
many years the Department of Motor Vehicles was
renewing people's driver's licenses on a
touchscreen and people who had a driver's license
and who were here legally, they were legal residents or had a green card, were presented with a screen that said do you wish to register to vote, with no other explanation. Many people assumed if I am asked the question I can say yes or no. So many people said yes and they registered to vote, some of them went on to vote. Public Interest Legal Foundation is finding explicit examples of how many going county to county. Well immigration attorneys, when they prepare people for citizenship proceedings, have to ask their clients is there anything that you have done while you've been in this country and they answer truthfully oh, I'm registered to vote, or the lawyer asks them if you're registered to vote. This is standard legal procedure. Well, that presents a real problem. So, all over this country people are being forced to go to county registrars and voters – and we have examples of this from Virginia, New Jersey, and various other places – and they have had to ask to have them removed from registration rolls. In many cases they've actually voted in more than one election. That is a cruel trick that's being played upon them by either incompetent bureaucrats or some voter registration groups that are perhaps not as scrupulous as they should be, and they are signing
people up because they are putting their future citizenship as Americans in jeopardy by doing that, and the scandal in Pennsylvania is not a small one. The best estimates from the legislative committee looking into there is that 100,000 people are involved in one state. These people have their potential citizenship as legal residents jeopardized. We have to take care of this not just to make sure that noncitizens don’t vote, but to protect the rights of legal aliens in this country so they don’t lose their right to become citizens because they inadvertently, or advertently, committed a felony by voting and registering to vote.

CHAIR LHAMON: Your last question for this panel. Commissioner Adegbile?

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

MR. MERRILL: No, sir. I'd like to add something, if I may, just so there's a clear understanding of this. Earlier today on a previous panel it was introduced that an individual believes there are 118,000 people in our state that should be registered to vote that are not registered to vote and do not have inadequate IDs in order to
participate in the process. I've told that individual before, and I’m introducing this to the panel now, if they will tell me one of those individuals' names, I will call my office when I leave here today and they will go to their house and give them a photo ID. I want to make sure that is clearly understood. I also want to make sure everybody understands that if that indeed has occurred, with anybody that we are going to make sure that we take care of that. And another thing that was not introduced in that panel was about the voter ID lawsuit that had been filed against the state of Alabama. One of the reasons it was not introduced is because three weeks ago yesterday it was summarily dismissed by the federal judge in who’s court it had been introduced the judge indicated that because we were doing what we are doing with our ID, that if other states in the Union followed this we wouldn't be having the concerns that we're been having throughout the Union.

COMMISSIONER ADEGBILE: Thank you. Mr. Pitts, there's been a lot of talk about the importance of taking a local view of - or what was lost in Shelby County, in terms of understanding what was happening at the local level compared to the more
publicized statewide types of election laws. Can you help us explain based either on your experience as a DOJ lawyer or through your teaching, why the DOJ under the old regime had a special advantage of being able to have eyes on all of these local voting changes and what has been lost in that regard?

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

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

COMMISSIONER NARASAKI: Yes. I just want to ask the panelists, so one of the huge losses of Section 5 not being operational is the fact that you don't have states required to give notice when they're going to do a voting exchange so people can look at
it and determine whether in fact it's going to have any kind of adverse impact, and under that requirement the state actually had to do its own analysis to make sure it wasn't inadvertently doing something like that. Do you know of many states who either have laws or have voluntarily provided notice in enough advance of a change going into effect? I believe that South Carolina may have passed something a couple of years ago, but I was wondering if you're aware of how many states actually do that.

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

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

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

Election officials--

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

COMMISSIONER NARASAKI: No, I was thinking more of -
- I think what South Carolina does this. they require local election officials, if they are going to make any kind of change within a certain amount of days of election, they have to put it up on the state's website so that people know and can just notified--

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

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

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

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

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

CHAIR LHAMON: Thank you to our excellent panel – Oh wait Ms. Bishop, do up want to have the last word?
MS. BISHOP: I want to add something to that conversation. Even in the case of laws that require for voters to be put up on state and local government websites. That those websites are often not compliant with federal accessibility laws, so I want you to investigation and that is something that could be implement into a reported Voting Rights Act.

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

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

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

MR. PARK: Madame Chair, members of the commission
thank you for this opportunity to speak today. What I’d like to do today, is deviate from my written remarks and address something because a lot of this has just been focused on Section 5, and what I’d like to suggest that if Section 5 is renewed, serious consideration be given to taking redistricting out if it. I'd start by noting that the Voting Rights Act was meant to address race, not politics. President Lyndon Johnson focused on ending practical barriers to minority voting, which he identified and divided into three categories: technical, that is, poll taxes; non-cooperation; and subjective barriers - literacy tests. That's in his message to the United States related to the right to vote in 1965. When he spoke to a joint -- a special joint session of Congress, President Johnson observed, “we meet here tonight as Americans, not as Democrats or Republicans. We meet here as Americans to solve that problem of ensuring equal rights of African Americans when they went to vote.” And the Commission should heed President Johnson's exhortation and refrain from doing political work from one side or another, and the redistricting process is an inherently political process and it gets Justice involved in doing work for one party or another. You start with the fact
that it (Section 5 review of redistricting plans) has a limited scope. What the Justice Department looked at was a benchmark plan and it compared the number of minority-majority districts in the benchmark plan to the new plan, and if you came in at the right number, the plan should be precleared. Maybe a state should draw more. Well, that's a Section 2 problem, and you look at whether or not there is a compact, contiguous group of minority citizens that is large enough to form a majority in a single-member district. But it's a separate inquiry. The Department of Justice Voting Section in the preclearance process wasn't supposed to insist on drawing more districts. The preclearance process was not designed to draw any more minority-majority districts, but that's exactly what happened in Miller versus Johnson. The Department of Justice insisted that Georgia draw a third black majority congressional district and - North Carolina - the benchmark was two. And the Supreme Court reversed said the drawing of a plan that united Atlanta suburbs with the coast was an unconstitutional racial gerrymander, and the United States paid some six hundred thousand dollars to the successful plaintiffs in that case. And that's not the only case in which that happened. If you go
back, go to the -- in Harris versus Arizona Independent Redistricting Commission; the Commission in that case came before -- the disputes arising out of that Commission's work came to court twice a couple of years ago. Their advisors to the Arizona Commission told the Commission the Voting Rights Act required minority-majority districts to be underpopulated in order to obtain pre-clearance. This led to the creation of ten minority ability to elect districts when seven was the benchmark number. It's fine, in my judgment, to create such districts when Section 2 requires it, or if you want to do it for political reasons, but it's not fine to do that under the guise of Section 5. And when we think about it, Section 2 of the Voting Rights Act calls for an equal opportunity, not a greater opportunity. Using the preclearance process to give an advantage to minority citizens by under-populating their districts and over-populating others is inconsistent in Section 2, and to the extent that was political work, the Voting Rights Act is not designed to benefit one political party over another. Another point I’d make is that -- it's of limited effect. You get a preclearance letter that doesn't immunize a state from being sued under Section 2 or under the Constitution.
Alabama Legislative Black District -- Legislative Black Caucus, that case is indicative of that. Alabama's plans were precleared. That did them no good when it got to the Supreme Court and the Court said the plans were racially gerrymandered. It took a separate lawsuit. And what the Department – what Alabama did -- the plans were drafted with the Department of Justice’s guidance in mind. The Department said that a comparison of the Census population in the benchmark districts and the proposed plan is the important starting point of any Section 5 analysis. Obviously more is required and the State’s preclearance submissions did not stop there. So, the point is that the preclearance letter didn't give much comfort to Alabama. The last point, political point I'll make is, to go back to Kinston, North Carolina. My understanding is Kinston is a black majority. In 2008, almost two-thirds of the voters of Kinston approved a referendum making local elections non-partisan, and that approach is consistent with what almost 100 percent of North Carolina's municipalities use, but the Justice Department got it in its head to deny pre-clearance. It thought that minority voters wouldn't know which candidate to vote for if they didn't have a party name next to the name on the
ballot, and that's just patronizing and it's wrong
and it shouldn't be part of the Section 5 review
process. Thank you very much.
CHAIR LHAMON: Thank you, Mr. Park. Mr. Choate?
MR. CHOATE: Madame Chair, Commissioners, thank you
very much for inviting me here today. I think I'm
your only elections professional. I'm certainly
your only bureaucrat who you're going to hear from
today. I take the label as bureaucrat as the
highest praise you're going to get because, unlike
some of the ways in which it has been disparaged
today, I don't have a constituency other than the
entire state of Colorado; I don't have a group of
people who voted for me, and a group of people that
voted against against me; I don't have people who
read my magazine or don't read my magazine; I don't
have people who support my point of view or fund my
organization. I do what's best for all the people
that live in my state. And I'm also very happy to
be on this panel because frankly the other panels
have kind of depressing. I like the idea of being
on the panel that talks about what we can do now
that we're in a post-Shelby environment. Let me
speak to some of those. I'm going to make a radical
proposition to you. I'm going to tell you that, I
don't believe that 4(b) is coming back and I don't
believe that we're going to have preclearance any more after Shelby. So, what can we do within federal law to shift to a new perspective on access, and we do have some opportunities there because elections are constructed around two different principles. There two main elements of elections. There's the voting element, which the Voting Rights Act has sort of focused its litigation around. Voting Rights Act focused on actual voting at the polls. But there's also an incredibly important part of elections which is not traditionally thought of in the realm of the Voting Rights Act, which is registration and we do have a federal law a pretty recent federal law -- in the last 25 years -- that deals with voter registration and that’s NVRA—the National Voting Registration Act. And the NVRA is very underutilized. It has language in it, which supports pretty significant—different ways of thinking about voter registration, which are currently not part of the public conversation about elections. So, what is motor voter? It was passed in 1993, it became law in 1994, it links driver's license applications to voter applications and it has specific language in it, which encourages the registration of those who apply for a driver's license or a state ID. So, I'm
you're only PowerPoint person of the day, but you should have a document but I also have a PowerPoint, and I'm going to show you the specific language of the NVRA. So, this is 55 USC 20504. This is the actual language out of that piece of statute, and it's called “simultaneous application for the voter registration and application for motor vehicle driver's license.” So that's not my language. That's the language straight out of the statute, and I'm going to read part of it to you, and it says: “Each state motor vehicle driver's application shall serve as an application for voter registration.” And that comes right after it says simultaneous. So, the way I read that and the way any kind of reasonable attorney would read that: When you apply for a driver's license you are simultaneously applying for a voter registration, so you are registering to vote at the same time you're registering for a driver's license. So, what does that mean in practical application? In practical application that means that every person that applies for a driver's license, or by extension a state ID, should be registering to vote, and that's what we euphemistically call automatic voter registration. Automatic Voter Registration has been written into the law for the
last 25 years but we haven't been doing it. So, there is a broader way to read the NVRA that hasn't been applied in the majority of U.S. states. It was first applied in 2014 in Oregon when they created an automatic voter registration law. It's kind of a complicated law and other states haven't adopted it but there are a handful of states, Colorado included who have adopted automatic voter registration in a sort of more streamline kind way that doesn't require the sort of follow-up contact. But voter registration should be a part of somebody's interaction at a driver's license bureau. By the way, you might be asking, well, what happens when I'm already registered or I already have a driver's license? Well, they have a section for that in the NVRA as well. Any change of address form shall serve as notification of change of address for voter registration. So if you already have a driver's license and you're already registered to vote and you make a change to your driver's license, it should reflect simultaneously as a update to your voter registration. That would take care of the lion's share of voter registration problems that we have in the United States and it would help to increase the number of people who are registered to vote. Colorado has the highest
percentage of voter registration in its eligible population in the country -- almost 90 percent; 89.4 percent. One of the reasons why is because we do this. Another reason is because we are in ERIC – which was referenced earlier, the Electronic Registration Information Center. The NVRA is a really underutilized part of our federal statute, which really could drives that percentage up. The preclearance states, so the traditional southern states all the way to Arizona, skipping New Mexico, have some of the lowest percentages of registration in the country, and if they adopted a reading of the NVRA, which is clearly the language of the NVRA, or if somebody really encouraged them to do that, I don't know, say by filing a lawsuit, they might drive up their registration and many of the downstream problems that occur in the polling place would be mitigated by the fact that they were registered, and properly registered, and that that information was updated on a routine basis. So, I don't believe Shelby is going anywhere so let's go around it. Let's make sure that everyone is registered using the NVRA already existing language. Let’s give a population various ways to vote. Colorado does mail voting, for the most part, and that's another way you can get around some of
CHAIR LHAMON: Thank you very much. Mr. Ho?

MR. HO: Chair Lhamon, members of the Commission, thank you so much for holding this hearing today and for inviting me to testify. My name is Dale Ho, and I am the director of the ACLU’s Voting Rights Project. The right to vote is the cornerstone of our democracy and we seek to protect it on equal terms for all Americans, but that right is today under siege. Almost immediately after Shelby County seven states that were formerly covered by Section 5 enacted or implemented laws or administrative practices that restricted voting or registration. In addition to these statewide changes a study by the Leadership Conference on Civil and Human Rights – of 381 counties that were formerly covered by Section 5 – found that about 43 percent had reduced the number of polling locations with a total of 868 polling place closures in those counties alone. Successful Section 2 litigation has been a ray of light in states like Texas and North Carolina but these cases put in stark relief what has been lost with the demise in the preclearance system. Litigation has been costly and has taken years, and in the meantime, despite motions for preliminary injunctions in these cases– several of which were
actually granted—multiple elections were held in these states under rules that courts ultimately determined were intentionally discriminatory and thus unconstitutional. So simply put, since the Shelby County decision we have a record of constitutional violations necessitating a congressional remedy. There are two bipartisan proposals that seek to fill this gap: The Voting Rights Amendments Act and the Voting Rights Advancement Act, each of which would address the gaps that we now have by subjecting states and other jurisdictions with recent voting rights violations to federal preclearance. Now, in the meantime, Department of Justice has engaged in some commendable work to enforce Section 2, but it could have been doing and could be doing more in that regard. Its voting section dwarfs the ACLU's voting rights project, which I direct, but it has brought fewer Section 2 cases since Shelby County than we have. And unfortunately there are signs that DOJ may be turning away from its historic mission of promoting voter access. Now, in addition, to abandoning its positions in Voting Rights litigation out of Texas and Ohio, last year DOJ requesting information on list-maintenance practices from 44 states, a sweeping inquiry that
the former head of the DOJ's civil rights who
tested, Vanita Gupta, described as virtually
unprecedented. The timing of this request was also
suspect, coming on the same day as an infamous
demand by the now defunct Presidential commission
on Election Integrity for all 50 states’ voter
rolls. One of my colleagues on this panel, Mr.
Park, has suggested in his written remarks that
DOJ's should actually be encouraging states to
engage in a more robust purging of their voting
rolls. And he referenced DOJ’s opposition to a
voter purge program in Florida. And with all due
respect to Mr. Park, I think Florida actually
represents a cautionary tale about inaccurate and
overzealous purging. In 2012, Florida officials
claimed that nearly two hundred thousand registered
voters in the state may not be U.S. citizens, but
that number shrunk dramatically with the Secretary
of State's office sending a list of about 2,700
possible non-citizens on the voter rolls to County
Supervisors of Elections. But even that figure
collapses under scrutiny. PolitiFact confirmed that
a total of only 85 non-citizens were ultimately
removed from the rolls in a state of more than
eleven million registered voters, so we're talking
about 0.00077 percent of the registered voters in
that state. Now, meanwhile while all this was happening, thousands of U.S. citizens were wrongly designated as non-citizens and threatened with removal from the rolls, and one was a Brooklyn-born man named Bill Internicola, a World War II veteran who had fought at the Battle of the Bulge. An analysis conducted by the Miami Herald indicated that 87 percent of those identified by the State as noncitizens on the roles were minorities and 58 percent were Hispanic; so, there's a racial disproportionality that went along with this inaccurate system. The U.S. Court of Appeals for the Eleventh Circuit ultimately held that legitimate voters in Florida “face a realistic danger of being identified in the Secretary’s removal programs because of their names or status as naturalized citizens” and ultimately ordered a halt to the purge. You also heard a few comments today about the Interstate Voter Registration Crosscheck system, which to purports to compare voter rolls across states. A team of researchers at Stanford, Harvard, the University of Pennsylvania, & Microsoft took a look at crosscheck and found that it misidentifies supposed double voters about 99 percent of the time. Now, I went to law school in part because I'm not very good at math, but that
sounds like not a very accurate system to me. Crosscheck’s user manual itself states that a significant number of double voters are false positives, and in very recent weeks there have been non-stop revelations about significant lapses in Crosscheck’s data security protocols and practices. Eight states, most recently Kentucky, have therefore dropped out of the program. Now, to be clear, I agree with the goal that we keep voter rolls up-to-date and focus on reforms that improve turnout. And the simplest way to facilitate both goals is to do what Dr. Choate referenced, which is to encourage automatic voter registration, which updates the rolls when voters move. It's an innovation that both maintains accuracy and helps voters participate without unnecessary bureaucratic headaches. As Dr. Choate noted, Oregon was the first state to adopt a system like this, it saw its turnout increase by four percentage points between the 2012 and 2016 elections—that's the largest increase in any state in the country. The largest turnout increases in Oregon were among voters of color. Now, between the novel interpretation of the NVRA that we heard about moments ago and Senator Leahy’s proposed legislation, S.1353 on automatic registration, we have multiple options to take this
experiment nationally. Now, in sum, our democracy is more vibrant and truly representative when more Americans participate. DOJ can do its part by engaging in vigorous enforcement of the VRA and NVRA and Congress can facilitate that work by passing legislation that would restore the preclearance process and boost participation more broadly by encouraging automatic registration. Thank you again for the opportunity to testify today and I look forward to your questions.

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

MS. MINNITE: Yes. Thank you very much to the Commission for inviting me to testify. My name is Lorraine Minnite. I'm an associate professor of public policy at Rutgers University in Camden [New Jersey] and I'm trained as a political scientist, and I want to say, of course, that my views are my own and not those of my employer. I also want to flag that I have to leave a little early, but I'm very happy to answer any questions you have by e-mail, or however we can do that. I think in my testimony I cited many of the examples that have already been given about what has happened since Shelby County with respect to changes in laws that have ramped up restrictions to voting rights in the last four-and-a-half years. I don't want to rehash
all those examples. I might add that Arizona, is a state we haven't said much about, enacted a new rule that makes it a felony to collect and turn in another person's absentee ballot, even if the person grants permission to do so. There are few exceptions to that. But in addition, another study found that, “...by sheer numbers and scale, Arizona is the leading closer of polling places in the aftermath of Shelby, with every county eliminating polling places, most on a massive scale.” These are the kinds of changes, again, that other people have pointed to, the sort of on-the-ground, granular kinds of changes that might not show up, especially if there's no litigation challenging them, but that would have been blocked in the past under preclearance. So I've written in my testimony that I focus specifically on how the loss of preclearance expands opportunities for imposing partisan-motivated restrictions on minority access to the ballot, which is a commonplace in U.S. electoral history that I have written about in a book called “Keeping Down the Black Vote: Race and the Demobilization of American Voters.” There, my coauthors and I analyze U.S. electoral history, explain the political and partisan logic of voter suppression, and argue that restrictions intensify
when elections are hotly contested and when operatives feel minorities will play a decisive role in the outcomes. Historically, as we document in the book, both of the two major political parties have engaged in efforts to win elections by suppressing minority votes. Importantly, they have done so by advancing electoral rules that disproportionately harm minority voters under the false pretense of combating voter fraud, which is a major focus of my scholarly research for the last fifteen years. And in preparing my testimony I tried to answer the questions that you put before me, but I think perhaps my contribution could be from the research that I've done on the incidence of voter fraud and the uses of false allegations of voter fraud to then justify the kinds of laws that restrict access to the ballot, especially for minority voters. I say that if the past is any indicator of the future, the loss of Section 5, which once blocked racially-targeted voter suppression efforts, means that hundreds of potentially racially discriminatory changes to state election laws, some of them justified as protections against alleged voter fraud, will go forward, and the only recourse, you’ve heard from many of the litigators who have testified before
you, is to challenge them on a case-by-case basis and only after they've been implemented and caused harm to minority voters. Thus, flagging one of my simple recommendations for the Justice Department or for you I guess in thinking about this, the Justice Department must use all of the remaining tools at its disposal as provided for in federal voting laws, including the Voting Rights Act, the National Voter Registration Act, the Uniform and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Help America Vote Act, to protect against efforts to suppress minority voter access to the ballot through avenues that have now opened up with the elimination of preclearance, specifically: the crafting of new voter registration and voter identification rules that place a disproportionate cost of compliance on minority and low-income voters; polling place closures and relocations; cutbacks on the accessibility of early voting opportunities; restrictions on means and methods of voter assistance; and restrictions on community organizations and other organized activities to promote voter registration and voting. Now, in calling on the Justice Department to oversee and correct partisan-influenced efforts to restrict
access to the ballot, we must be realistic. The same politics that motivates efforts to exclude certain voters with almost “surgical precision” -- as you have heard from the Fourth Circuit Court of Appeals' decision -- can also infect the nation's highest law enforcement agency. Experience teaches us this. One cause for worry is the new administration and President Trump’s unsupported allegation that he lost the popular vote because three to five million votes were cast illegally and implausibly all against him. The President's bizarre allegation raises grave concerns about the current priorities guiding his Attorney General and Justice Department in its voter access and voting rights work. Now, I have no direct knowledge of what the policy discussions are inside the Justice Department, but we can look at some dramatic examples that also have been noted and mentioned in first supporting voter challenges to new identification rules or aggressive voter list purging, and then changing that position. The tethering of party and racial divisions could drive the Justice Department in a direction that is not just neutral or even neglecting of the protections still needed by minority voters. It could motivate law enforcement decision-making toward a hostile
stance regarding expansion of voter access and the protection of minority voting rights, in which law enforcement is used to facilitate voter suppression through the intimidation of black voters and voting rights activists in the name of rooting out voter fraud. I detailed in my written testimony two examples of that. One as recent as ten years ago. So to sum up, I said that one of my recommendations was that the Justice Department should use existing legal tools to promote registration and voting. The second recommendation is that the Justice Department should vigorously challenge rules that restrict access to the ballot when they are justified as protections against voter fraud in the absence of a documented problem with fraudulent voters. Thank you very much.

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

MR. VATTAMALA: Thank you, Madame Chairwoman and Commissioners. I think it's very important that you have invited our organization, the Asian American Legal Defense and Educational Fund here. It's
important to have the Asian American voice included, because often times we are ignored. I am the director of the Democracy Program at AALDEF. AALDEF was founded in 1974. We are headquartered in NY but we are a national organization. We seek to protect the civil rights of Asian Americans through litigation, through community, education, organizing, and advocacy. In my testimony, you saw I listed out some of the past discrimination and historic discrimination against Asian Americans. Many people are aware of the Chinese Exclusion Act of 1882, prohibiting immigration and naturalization of Chinese immigrants. Many people aren't aware that that was not appealed until 1943, which is not that long ago. Indian and Filipino immigrants could not naturalize until 1946. And Korean and all other Asian immigrants could not naturalize until 1952, which is really not that long ago and we could not immigrate to this country until - many of us not until after the Immigration Act of 1965. So, I’ve also outlined a bunch of discrimination and historic discrimination that has prevented us from the electoral - being included in the electoral process in my testimony. AALDEF has conducted a national Asian American exit poll and poll monitoring program since 1988. There's a few
reasons for that. One of those is that Asian Americans are often ignored from the political discourse and that translates into us being ignored by elected officials. But we also implemented this program to document voting barriers that Asian Americans face on Election Day. We have our volunteers trained before Election Day to identify voting problems and we are stationed outside of both poll sites to approach Asian-American voters after they've voted or been denied the right to vote. In 2016 we surveyed almost 14,000 Asian American voters in fourteen states and in Washington, D.C. As consistent with prior elections, hundreds, hundreds of Asian American voters were required to prove their citizenship before they were able to vote. Literally we had interactions with voters who said they were told by poll workers “you don't look like you're American”; “prove you're American to me.” Most people do not go to the poll cite with any proof of citizenship. People don’t walk around with their passport, naturalization certificate, a birth certificate. We've also had experiences where Asian-American voters are disproportionately required to provide ID where they are the only ones being asked for ID and other voters are not and that’s included in our
reports that are attached in my testimony. We have seen numerous examples of violations of Section 203, required language minority assistance not being implemented and Section 208 where voters are being prevented from assistance from a person of their choice inside the voting booth and we've also even seen segregated voting lines. In 2012 in Annandale, VA Asian American voters were segregated into a Korean line and all other voters got to vote on another line. Korean voters had to wait until all other voters were done voting. It’s not the first time we have seen that, in 2004 in Boston's Chinatown there was a Chinese voting line and a line for everybody else. We intervened in a federal lawsuit, a U.S. lawsuit in 2006 and were able to achieve a consent decree where the city of Boston was able to provide Chinese and Vietnamese language assistance going forward. But these violations are happening in every major election. We're talking about Shelby County. There's been a lot of talk about southern states being targeted. Well New York City was covered under Section 5. Three boroughs - The Bronx, Manhattan, and Brooklyn were covered under Section 5. We also had coverage under Section 203 for Asian languages. In these jurisdictions where you had double coverage, Section 5 and
Section 203 it's a valuable tool to protect Asian-American voters. Through our exit polls we've seen that just about a third, sometimes more, Asian-American voters are limited English proficient. These are American citizens that are eligible to vote but many of them require election assistance. Through Section 5 we're able to require the New York City Board of Elections to fully translate the ballot into Chinese. In 1990 when Chinese was covered the New York City Board of Elections said it could not do the translations because it would not fit on the machine ballots. We were able to show them that it does fit, and they said we can't translate the candidate's name. Only because of Section 5 and the DOJ at the time, interposing of that objection. That required the city to translate the ballot including transliterating candidates' names, allowing 55,000 limited English proficient Chinese-American voters to be able to cast a ballot. In my testimony I also outlined other ways we use Section 5 in NYC to protect Asian-American voters. Poll site moves – and after 2001 in the terrorist attack of 9/11, a poll site was contemplated being moved without any notice to the community only because of Section 5 and a request for more information was that poll site required to
stay and people in the community allowed to cast their ballot. Changes in methodology for school board elections, changing in targeting methodology, all those things was prevented from happening and hurting Asian-American voters because of Section 5. Again, I want to be clear, Section 5 did not only protect African-American voters in the South. It was protecting Asian voters in New York City. It was very powerful and it is a shame we don’t have that protection right now because we still need to protections. In 2013, just a week after Shelby County, we sued the New York City Board of Elections for not translating the ballots to Bengali in Queens County, which was required under Section 203. The NYC Board of Elections simply did not do it. We had to sue them. We don't have the notice - this was mentioned earlier - we don’t have the notice of violations of Section 203 and Section 208 that we may have had when we had in Shelby County - prior to Shelby County. We have to do these -- work with community-based organizations and receive a notice from them or be apprised of it ourselves to be aware and litigate these cases. We sued the state of Texas after the 2014 midterm elections for violating Section 208 of the voting rights act, which allows you to bring somebody of
your choice inside the voting booth as long as it
is not your boss or union rep. It's a very simple
provision. States just need to gather away and
allow an LEP voter or a voter who has a disability
with a person of their choice. They couldn’t even
comply with that. They fought us tooth and nail. At
the district court, we won there and we won in the
Fifth Circuit Court of Appeals. We asked DOJ to be
involved early on they were not. They were not. We
were pleased to see that they did submit an amicus
brief at the Fifth Circuit level but we need more
assistance from the DOJ in bringing 203 and 208
cases because it’s are sorely needed and we do
support the Voting Rights Amendment Act and the
Voting Rights Enhancement Act that will give us
some coverage because we currently have no
coverage. That is just simply unacceptable.

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

MR. LOPEZ: Good afternoon, Madam Chair and
Commissioners. Thank you for being here and for
having me. I'm mindful that I'm the last panelist,
on the last panel of the whole day. My name is
Tomas Lopez and I'm the executive director of
Democracy North Carolina. We are nonpartisan
organization that uses research, organizing, and
advocacy to improve voter access and reduce the
negative influence of money in North Carolina’s political system. Immediately prior to joining this organization, I was an attorney at the Brennan Center for Justice at NYU School of Law, a national organization with which I litigated federal voting rights cases, advanced state-level litigation, and participated in election law and administrative research. Preclearance oversight served as deterrent, prophylactic, and remedial functions together, and they are together needed to protect the right to vote at the state, local, and individual levels. North Carolina is a telling example of how their loss affects all three. Other witnesses today have discussed the statewide impact and in particular H589 and the Fourth Circuit's holding in that case. I will use my time to highlight the local and the individual.

First the local. Preclearance covered thousands of counties and local jurisdictions, including forty counties in North Carolina where Boards of Elections hold substantial authority over voter access, through among other things, polling sites and early voting hours. From the 2016 election, I would highlight dramatic reductions in early voting hours in several counties. Gilford, which lost 660 hours of early voting across all of its sites,
Mecklenberg, the largest county in the state, losing 282 hours, Brunswick, losing 165, Craven, losing 141, Johnson, losing 124, Robeson, losing 121, and Jackson losing 113. Of these, Gilford, Craven, and Robeson were previously covered under Section 5 and Mecklenberg and Johnston had significant black voting populations, which as of 2016, were 33 and 16 percent of all registered voters in those counties, respectively. Second, I want to address the individual level. Our research agenda in Democracy North Carolina reports, among other issues, how individuals experience voting during early voting and on Election Day. That’s a perspective I want to make sure is represented on these panels. With our work with the non-partisan election protection coalition, we help led efforts in the state to monitor that experience, assist voters when they have issues and analyze them when reported. And what voters reported to us in 2016 and in 2014 before that was an environment with renewed intimidation. I will share some examples as reported again to this organization and to the press. In Johnston County a man was followed around by a polling place worker until he cast his ballot. The poll worker then told him, when he asked why he was being followed that “things have changed.” In a
formerly covered county, Wayne County, a local African-American voter and local part official was assisting a board in the County Board of Elections when they reported the elections director yelled at her for assisting voters, called her a troublemaker and told her not to come back as she was leaving. This person told the local paper that the director told the local paper he was corrected the women’s overreach and offering assistance and that’s a claim that the complainant denied. In 2016 in Pamlico County, an elderly white party volunteer was handing out literature outside the County Board Elections early voting site. A young man approached and asked if she had a handicap sticker for the car. When she said she didn’t he shoved her down and told her she would “if Hillary wins.” She suffered minor scrapes but did not want to press charges. Finally, on Election Day in 2016 in that same county Arcola reported driving past the Bayboro precinct the same location as the county Board of Elections’ office, the only early voting site in that county also, and seeing a black truck with individuals holding a candidate sign saying “go home N-word slurs” and the candidate will send you back to Africa and then driving off. In 2016, 43 percent of the registered voters in that
district were African American. Preclearance would not necessarily have stopped these individuals. These are individual reports and part of a pattern. I would urge the Commission to consider that the law acts not only through its expressed functions but in order to express this to the general public. The failure to date to restore preclearance and the recent retreat, as my fellow panelists mentioned in federal oversight expresses the same message. That voter access is simply not a priority for the United States. That empowers people who cross lines. It goes towards silencing others. That is true here and the nation at large and speaks to the need to restore the full protections of both the VRA and its enforcement structure. Now, as far as details how to do this, I would again echo my fellow panelists who point to the legislation that has been presented to Congress. I think these are things that one of the earlier witnesses, Mr. Rosenberg, discussed how frankly we’re in a position where we would like to have this discussed. We understand this is something that will have to be hashed out. I'll also say add I appreciate the reminder from Secretary Choate and others that our voting rights enforcement structure is more than just the Voters' Rights Act. It's the
NVRA, and it’s UOCAVA, it’s the HAVA, it’s the ADA.

I would urge this Commission in considering what to do in terms of presenting solutions to move forward to keep that in mind as well. Thank you.

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

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

MR. HO: Thank you for the question, Commissioner Yaki. Either Act would be a vast improvement over what we have today because both acts would restore the preclearance process. One thing that I noted in my written submission to the Commission that I think is valuable of both Acts is that they establish preclearance based on voting rights'
violations of various kinds in recent years. So, for instance, sometimes we talk about Section 2 litigation comparing that states have more Section 2 litigation vs. those that don’t. That's a useful way I think of starting to understand the problem of where the rights are more frequent but it doesn't capture everything. There are lots of violations under the Voter Registration Act, under Section 203, 208, that there are constitutional claims for racially gerrymandering. We've seen cases out of North Carolina, Virginia, that aren't captured when we look just exclusively at Section 2 cases. So both acts have the benefit of casting a broader net. I would say of the two, the Voting Rights Advancement Act is the more -- provides for more of a robust protections. It subjects jurisdictions to pre-clearance based on violations during a slightly longer period of time than the Voting Rights Amendment Act. Most recently in 2015, the Advancement Act was co-sponsored by Senator Murkowski in Alaska. It has had bipartisan support at times in Congress and of the two acts I think it provides the stronger protections.

MR. LOPEZ: I would echo Mr. Ho’s comments, I would also say that Democracy North Carolina to my knowledge has not formally endorsed either one of
these so I wouldn't want to go into too much detail except to say we want enforcement that is as robust as possible and also takes into account recent violations like those that we've seen in North Carolina.

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

MR. CHOATE: In a noncitizen perspective? So I can speak about the real ID states, which is not every state. In Colorado in order to get a driver's license you have to supply two forms of ID that are very high bars: either a previously-issued driver's license from another state, a passport, birth certificate, some combination of those elements, so if you don't produce those in Colorado, and I think in all the other real ID states they would take note of the fact that you didn't supply those you would, again in our regime, they put a -- there's a column in the information we received from the Department of Revenue, from our DMV, that lists the documents that they did show. Those are typically a travel visa, a work visa, a marriage visa, a green card, and we get these codes and so we can see that
somebody is not eligible and we have it built into our online voter registration system so if you try to register online, and that happens, you're going to get rejected. And then we also do a monthly review where we take our entire voter registration list and we run it against the DMV list with that column. If anybody has comes out as having registered in the last thirty days that has one of these elements of the column we asked them: “Hey, did you mean to do this – mean to register?” And in many cases they say “yes, I did mean to register because I'm a U.S. citizen now” and only rarely is it the case that they're not a U.S. citizen, so it's actually often somebody will show a document when they're getting their driver's license which is a document that suggests that they're not a U.S. citizen or they did that in 2012 and subsequently they become a U.S. citizen, so often that's where the hang-up is, that's where the confusion comes, but there are very few people in our review of our lists that are not U.S. citizens who are registered to vote.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: So Mr. Lopez, in a lot of states after Shelby passed I know that there are community- based organizations such as yours set-up
efforts to be able to monitor boards of elections or whatever that kind of grouping that is in that particular state. Did that happen in North Carolina and how much work has that been and how important has that been in terms of replacing the fact that there's now no notice requirement because there is no Section 5 application.

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

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

CHAIR LHAMON: Yes, Mr. Choate?

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

COMMISSIONER NARASAKI: We actually had the Secretary of State from Alabama on the panel before. Are there any associations of elections officials that are tracking that and could provide
data to our staff so we could look and see?

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

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

MR. VATTAMALA: Sure. Yes. The state Texas law that required law required all interpreters to be a registered voter in the county in which they were providing their service. Section 208 has no such restriction. This was particularly problematic for Asian American voters because, as I mentioned, there's such a high percentage of LEP Asian voters within the Asian American electorate and in a place like Texas, prior to 2016 only one county was covered for Asian language assistance, Harris County, so all other Asian Americans voter within
the state of Texas had to rely on Section 208, for language assistance rather than 203 and low and behold we had a voter after their experience in 2014, she was a south Asian voter who was prevented from being assisted by her adult son because she was registered in the neighboring county where he went to school. So, the law's pretty clear on its face. The state law was clear on its face that it violated 208. The county settled with us relatively quickly, Williamson County, But the state litigated all the way through to the 5th Circuit and we were successful there. The Court found there was a direct violation of Section 208.

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

MR. VATTAMALA: We're able to cover a certain amount of ground, through our exit poll and poll-monitoring project, but we're not able to cover every jurisdiction that's covered under Section 203. There are jurisdictions all across the country that are covered, a new list comes out every five years. The last list came out in 2016. We have newly covered jurisdictions in Lowell,
Massachusetts and Malden Massachusetts, Middlesex County, New Jersey, Fairfax County, Virginia, and Tarrant County, Texas. In addition to all the other jurisdictions that were already covered, remain covered under 203, it's crucial that we have observers in those other locations where we are not able to cover because we had some violations: signage not being put up, poll workers refusing to provide the language assistance that's required, interpreters that are not given table and chairs to sit at, interpreters assigned in the wrong languages. In New York when Chinese was covered we had Mandarin speaking interpreters in Chinatown where everybody spoke Cantonese. We had Cantonese interpreters in Flushing, Queens where everybody spoke Mandarin and they came back and said isn't that the same thing? After 2000 when Korean was covered in Queens County we had Korean interpreters in Chinatown and Chinese interpreters in Korean speaking neighborhoods. So we had to sue the New York City Board of Elections in 2006 for failure to comply with Section 203 for Chinese and Korean language assistance. And to this day we have an understanding with them connected to a memorandum of understanding with them connect to that litigation. So, we have to have the observers there
even in a place where we are especially when we're not because we have seen the violations that continue to happen and they're only going to get worse.

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

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

COMMISSIONER NARASAKI: This next question is kind of wonky, but earlier today we had reference to the fact that there are bail-out provisions in the current Voting Rights Act, if you were covered there were certain -- if you wanted to file to get out of coverage you had to meet certain conditions
and if you did you could get out yet, obviously the Chief Justice was very concerned in Shelby about unfairness to states that he felt may be weren’t bad actors and were being unduly burdened. So, I'm wondering if perhaps Mr. Ho thought about what should that provision look like to try to meet the Chief Justice's concerns about that.

MR. HO: Well, I can speak a little bit about the bail-out provision as it existed before the Shelby County decision. The bail-out provision was used to bail out a number of counties before the 2006 reauthorization and afterwards. Afterwards a state bailed out for the first time: New Hampshire. My recollection is there had never been a denial of a bail-out request -- prior to the Shelby County decision so the issue does not appear to be whether or not it was unduly onerous to bail-out, but whether or not bail-out was being used frequently enough do that jurisdictions may be -- where preclearance -- was no longer required. I haven’t given thought today to the question of what could be done with a new bail-out provision that might encourage usage more frequently, but what I will say is that the new bills or the bills that have been proposed to bring preclearance back are based on a record of recent voting rights violations in
particular states so encouraging jurisdictions to bail-out may have been an issue say in 2006 when you're reauthorizing a formula that had been previously reauthorized in 1982, but if you're starting with a new formula in 2018 or '19 or something like that, then I think encouraging jurisdictions to bail out right away, right after you told them that they should be subject to preclearance may not be the most pressing issue.

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

MS. MINNITE: [nods in agreement]

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

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

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

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

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

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

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

MR. HO: I'd be happy to address both of those questions. Let me start with the piece on preliminary injunctions. One of the things that you hear from frequently from voting rights advocates is that voting is different. I believe Justin Levitt, the former Deputy Assistant Attorney General for Civil Rights testified to that effect earlier today. If you're discriminated against in the employment context, for example, it's obviously a terrible thing, but you can be compensated and made whole after the fact, right? If you're denied a pay or promotion, you can get that back pay and interest and be made whole. When it comes to voting rights, that's not really the case. If an election
takes place under a discriminatory or otherwise unlawful regime, there's no way to get that election back, to rerun it and vindicate and get your voting rights back after the fact. That’s one of the reasons why preclearance was so important, Now, we heard that during the Shelby County decision that maybe you don't need clearance - or during the Shelby County argument I should say, maybe we don’t need preclearance anymore, which freezes the status quo and requires jurisdictions to show that their changes to voting laws are nondiscriminatory before those changes go into effect because you can always seek a preliminary injunction in the voting rights case. You’ve heard this refrain many times both in the 2006 reauthorization and around the time of the Shelby County decision. Well, after Shelby County we tried. We brought voting rights litigation in numerous states. Places like Wisconsin, North Carolina, other organizations brought cases in Texas. We brought a case in Ohio. In a number of these cases preliminarily injunctions were granted. Yet still, the litigation took so long or the preliminary injunctions were granted too close to an election to be enforced in time for that election, that we had elections take place under
regimes that were preliminarily determined to be illegal, and then subsequently on final judgments from the Court either after summary judgment or after trial were determined to be illegal. In some cases laws, there were determined by courts to have been enacted with intentional discriminatory purpose, which is unconstitutional, and thus we have unconstitutional elections, violations that took place that went unchecked for which there was no remedy. It was simply tough luck and that's precisely why -- I think that record shows that preliminarily relief under other provisions of the Voters' Right Act as been inadequate to the task and why further congressional remedies are necessary in this context. Now we've heard also about bail-in, your second question Commission Adegbile. The 3(C) of the Voting Rights Act permits courts to order that jurisdictions found to have violated the 14th and 15th Amendments to be subject once again to the federal preclearance process. It's a good thing that bail-in exists. No one I think would say that it's a bad idea, but I think it's important to remember that the standard for bringing a jurisdiction into preclearance under the bail-in provision is quite high. We have to show a constitutional violation in the form of
discriminatory intent. Now, in 1982 the VRA was amended, we’re talking over 30 years ago, by Congress and that amendment was signed into law by President Reagan, which created a results standard under Section 2 of the Voting Rights Act based in part on the theory that those who would violate voting rights frequently no longer advertise their intentions and that a results standard would be necessary in order to relieve plaintiffs of the burden of having to be mind-readers and proving discriminatory intent. So, for 35 years there's been a recognition in federal law that proving discriminatory intent is an extremely high bar, and since that's the bar that you need to clear in order to obtain bail-in, it’s really not something that is accessible to litigants in a way that can meet the need for greater federal supervision of voting rights.

COMMISSIONER ADEGBILE: One more for you, Mr. Ho. We've heard also over the course of the day about voting changes with respect to polling places, so my question here is twofold. I think lots of people would probably believe that a change in polling place is sort of a rudimentary voting change that election officials should be able to make and it's not immediately clear why that raises questions of
voting discrimination. And so, if you could help us understand, does it or does it not -- does it depend on the context of? What the issue there, and then separately to the extent there may be an issue under the VRA, is Section 2 an adequate remedy to deal with that type of voting change as opposed to a law that is going to take place over a period of time and is advertised the way in which that type of voting change occurs.

MR. HO: Thank you for that question. Obviously polling places -- the location of polling places can change for a number of reasons of cases. No one is suggesting that every change of a polling location or closure of a polling place is in and of itself discriminatory, but it can be under certain circumstances, right? If polling places are being located less frequently in predominantly minority or low-income neighborhoods that can impose a great burden on voters from that neighborhoods when it comes to voting on Election Day. Fewer polling locations can also translate into longer lines on Election Day, which is the detriment of all voters. I think if you look at the 2016 primary. Arizona's Maricopa County closed a number of polling places, dozens of polling places, a move that certainly been reviewed under Section 5 percleanrace process,
and the result was routinely line stretched or five hours during primary election in 2016. So, polling places moving can be a significant problem. Now, Section 2 relief isn't adequate to the task for this for at least two reasons. The first is that, as I mentioned before, Section 2 litigation is quite expensive, you have to prove not only a discriminatory result, you have to prove a number of factors of the jurisdiction itself and racial context of the political landscape in that jurisdiction, and, you know, I've never seen a Section 2 case brought over the decision to move or close a single polling place. The second problem is that, as I think the Arizona example demonstrates, we frequently don't learn about these problems until after the fact. It was not I think a well-known fact that Maricopa County had reduced its polling places so dramatically before the 2016 primary. The long lines that we saw as a result happened on election Day and if a Section 2 were brought at that time, it was too late. People already had to wait four or five hours to vote. Those that couldn't do that because of their work or family responsibility or simply because they couldn't stand in line for five hours, they lost their voting rights in that election.
COMMISSIONER ADEGBILE: Mr. Vattamala, Section 203, the language assistance provisions, they're designed to create greater access for eligible voters; that means citizens in the feral context. Can you explain to us why such a provision is important in terms of providing access to the vote?

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

COMMISSIONER ADEGBILE: Last question: Professor Minnite, you spoke a little bit to the fact that sometimes both parties are responsible for
targeting or being found to have taken steps that affect minority voters -- today we've heard some suggestions that the Voting Rights Act is somehow unworkable because it's a vehicle of partisan warfare. I'm interested in your views about whether the Voting Rights Act is in fact a vehicle of partisan warfare or instead is a law designed to protect the civil rights of minority voters and what you have understand that history to have been.

MS. MINNITE: I think it's important for purposes of analysis to separate partisan logics from the struggle for the right to vote and the history of racism and race relations in the United States. The fact that today one party may be seem to “benefit” from laws that try to expand access to voting and the other party engages in pressing for laws that are seen to constrict access means that there's an overlay of race and party, and I think people don't make the separation that they need to in looking at that. In other words, I think the Voting Rights Act is about extending access, and my recommendation about the Justice Department enforcing laws that expand access, the metric is, does it expand access or does it restrict access on the argument that we need to do that to protect against voter fraud, because that is the frequent,
common justification for these laws, for voter ID 
laws and other laws that are seen to restrict 
access: the claim is that it's needed to protect 
against voter fraud without a showing that there is 
voter fraud. I would point you to look at the 
legislative record in every state that has recently 
adopted a voter ID law. You will not find that 
evidence entered into the record. You will not find 
that evidence entered into the court cases that are 
challenging voter ID laws, either. The argument 
about voter fraud has been one that's been put to 
good partisan use. The victims of it have been 
racial minorities. Racial minorities -- if African 
Americans are giving 90 percent of their votes to 
the Democratic Party, that doesn't mean they can be 
targeted for vote suppression as Democrats. So, I 
think it’s important to try to keep two ideas in 
your head at the same time. One is there's a 
partisan logic by which both parties could try to 
win elections by suppressing the votes of their 
opponents, the voter constituency that they 
perceive to be voting for their opponents. That’s 
the logic of our two-party system and the kind of 
electoral-representative system that we have. The 
issue of access to the vote and the history of the 
suppression of votes for racial minorities has to
be seen in that context. There's a partisan struggle. If African Americans are targeted and the reason being that they're Democrats, it's just not acceptable. So, I know it's complicated, and partisans have made this argument, that they are not targeting African Americans, they're targeting Democrats. That's not acceptable either. Just because you're a Democrat you shouldn't be allowed to vote? So, I see the Voting Rights Act as part of the struggle for more than a century of African Americans to have the dignity of full citizenship in the United States and have the enforcement of the 14th and 15th Amendment in law. That's how I view what the Voting Rights Act is. That one party benefits by expanding by access, and the other party benefits by constricting it has to be seen in the context of the broader issues here and Democratic norms and Democratic practices that we should pay attention to. We don't have a democracy if some voters are targeted, whether they're targeted because of the party they vote for or the color of their skin. The Voting Rights Act protects people based on race and language minority status and so forth, not their party affiliation, but when the two come together, you can't use the fact that they're Democrats to say this is okay. We can
create laws that make it harder for Democrats to vote.

MR. HO: May I offer add a few words? Discriminating against people on the basis of their race is prohibited by the Voting Rights Act and the Constitution regardless of someone’s motivation for doing that. There was a decision from the Ninth Circuit Court of Appeals, Garza v. County of Los Angeles where one of the judges in that case made an analogy to the days restrictive covenants. People may have signed restrictive covenants because they didn't want minorities in their neighborhoods because they bore animus and hatred towards racial minorities they may also have done it because they thought racial minorities were bad for property values. It didn’t really matter why they signed the racial restrictive covenant, it constituted racial discrimination. So if legislators are targeting voters on the basis of their race, not because they hate people on the basis of their race, but because they are concerned by how those people might vote, that still constitutes racial discrimination. It's not as if there's sort of this neat line that divides race and politics, and we can say well this is a political issue not a race issue therefore race has
nothing to do with it. Race and politics has always been intertwined and racial discrimination has always been justified, in part, on the basis of the policy consequences that follow from racially exclusionary policies.

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

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

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

CHAIR LHAMON: Welcome back, everyone. We're now ready to proceed with the public comment period. We're going to give a few opening instructions, which has been provided, which I believe to each participant. First, please tailor your remarks to the topic, of today’s briefing, that being voting access and voting rights. Please state your name
for the record. Please note that the U.S. Commission on Civil Rights has the policy not to defame or degrade or incriminate any person. Also, this comment period is a time for Commissioners to listen, not to engage in questions or discussion with presenters. We appreciate your testimony, and are eager to hear it so, we will not take your short time with questions or dialogue. You will have three minutes to speak, which will be measured by a timer. Please notice the box with the three lights. When the light turns from green to yellow that means two minutes remain. When the light turns red you should conclude your statement and if you do not conclude I will cut you off in order to allow as many participants as possible in this open comment period. If you have not finished or would like to submit additional comments for us to review, we encourage you to do so by mailing written submission to us or emailing us at the addresses provided on the information sheet. The due date for those submissions is Monday, March 19th, 2018. While awaiting your turn, please sit in a numbered chair that corresponds with your ticket. In order to reduce time between speakers we ask that you move forward to the microphones before the speaker in front of you has finished and a staff
director -- member will direct you when to come forward. If you need to step out briefly before it is your turn to speak to use the rest room or otherwise, please let us know and so you do not lose your place in line. Sign interpreters will continue signing during the presentations and if you need additional accommodations while speaking please let us know. If you have any questions please ask a staff member. And with that, we will began with the open comment period. I invite the first - Oh, I’m sorry, Commissioner Adegbile?

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

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

MR. DELANCY: Good evening. I'm Jay Delancy, president of a recently formed national group called Election Integrity Alliance and Director of North Carolina’s Voter Integrity Project. In 2012 we had alerted elections officials to 30,000 deceased voters still on our voter rolls. We also presented evidence of 147 people who voted in two or more states in the 2012 general election. Besides a paltry three felony prosecutions, the
only reward election officials gave us for this groundbreaking research was to lock down the public data. This way nobody could ever embarrass them like that again. On another occasion we challenged more than five hundred Wake County voters who were disqualified from jury duty after they told the Court they were not U.S. citizens. Besides the Brennan Center immediately calling us racist vote suppressors, the only reward we got from election officials was from them to deny our evidence and deny our challenges. This was after the DMV had confirmed the accuracy of some of our cases. Then the courts intervened, or rather invented new rules to prevent our further research in this area. Commissioners, we the people of North Carolina, we the people of fly-over country here, want open and honest elections but fraud-friendly federal election law prevent it. The effect of VRA, NVRA, and Help American Vote Act is that enterprise level vote fraud is easy to commit, it's hard to detect, and impossible to prosecute. We know this because we've seen it. Over the past six years we've encountered dozens of very credible people who witnessed the kind of voter impersonation fraud that a state-issued photo ID would have prevented. You might even wonder where are they tonight. Well,
but thanks to this commission's byzantine speaker sign-up rules, many of our most powerful witnesses could not testify tonight. You see, they have jobs. They couldn't sit here all day. In fact, judging from the effect of your rules based on speaker rules seem to be written with surgical precision to suppress the voices of people who have jobs. As a result you will hear from us but you'll only hear from a few of us. So in closing, this Commission owes an explanation to the people of North Carolina. Why did this Commission design public comment rules such that a person with a day job could not testify at a six p.m. hearing?

CHAIR LHAMON: We will hear from the next speaker.

MR. NAILE: My name is Ed Naile. I'm chairman of the Coalition of New Hampshire Taxpayers. Thanks for letting me pop in here today. We are a taxpayer group that normally deals with property taxes, right to know issues, things like that but we have so many complaints about voter fraud. Please help us with this or that. And in 2000 we said okay, we're going to red flag it. Bring in what you have. The very first thing that we got was a checklist from the supervisor from the town of Deerfield was 22 returned envelopes with the same address, 159 Bear Brook Rd in Deerfield which doesn’t exist. So
twenty-two people voter from Bear Brook Park, it's a state park at a cabin that doesn't exist on a road that doesn't exist, they all came in on a bus. I put their names on the Internet and I got some responses and I asked them why they voted in Deerfield and not where they are from the other states and what not and they said that's where the bus took us. So we took those, that was our very first object and we've been tracking voter fraud and interstate voters in our state ever since, and since, as Jay mentioned, we have a lockdown on our documents. We have a statewide database. I can't get my hands on it. The addendums we used to get of - about same day registrants I can't get them, voter registration card has almost nothing on it but luckily for us since we don't have statistics and we just focused on catching individuals we have a report from the Attorney General's office and the Secretary of State that ran the November 8th database of same day voters' with out-of-state driver's licenses through their channel and come up with 6,540 individuals on November 8 registered to vote using an out-of-state driver's license. On August 30th, 2017, only 1,014 of those individuals had gotten a driver's license or a registered vehicle. So, we have about 6,000 people, that's
just from people registered with an out of state
driver’s license. You don’t need any, any
identification to register to vote in New
Hampshire. I know this and we've been tracking
this. I was contacted by a guy named James O'Keefe
before our primary in 2016. We’ve documented hours
of voter fraud. You can review his tapes. What we
need is we cannot get prosecution, they won't even
look at this stuff in New Hampshire and the same in
many other states. We need the AG's office or US
attorneys to come in and enforce the law. Our
Supreme Court has state that you can have an out-
of-state driver's license and still register to
vote in New Hampshire. That sets up two classes of
voters. They don't have to serve on a jury. I do. I
can’t have a driver’s license from Massachusetts
and vote in my state. I have a New Hampshire
driver’s license, I vote in New Hampshire like I’m
supposed to, legally. We have thousands of people
who voted here illegally. Our last U.S. Senate seat
flipped on 1,017 votes. It’s time we have to
correct that. Thank you.
CHAIR LHAMON: Thank you. We’ll hear from the third
speaker.
MR. HENSON: Hello. My name is Larry Henson, and I'm
from Lewisburg, North Carolina. I'm here to offer
evidence in support of the need of voter identification. In 2004, 2008, and 2012 I served as a poll observer. I have directly witnessed voter fraud and have observed many situations alarmingly suggesting voter fraud. In the most obvious example of voter fraud I saw one woman come in and vote three times in the same day. The second time she came into the precinct I alerted the Chief Judge that this woman was there to vote for a second time. The Chief Judge walked in the direction of the woman, talked to the poll workers there, and later came over and let me know that everything was all right. Later that morning when the woman came back for the third time. I pointed her out to the chief judge again. This time I followed the chief judge and learned that the lady was trying to vote for a man, someone who she claimed to be her neighbor. When she was told that she could not vote for him she said to the Chief Judge you're trying to deny my neighbor's right to vote. About five minutes after she left the polling location. She returned escorted by a member of the NAACP and a UN election observer that was stationed at this polling location. They approached the Chief Judge and accused her of denying this woman's right to vote. The Chief Judge was very nervous so I spoke
up and said did she tell you that she was trying to vote for a man and that she says is her neighbor and that she personally was not denied a vote, in fact, that she had already voted two times earlier that day? The men looked at each other, they locked their arms around hers and walked out with her. I followed them as far as the door and watched as they walked completely off the polling site property. The other incidents that I witnessed include listening to several young man who were standing in line ready to cast their ballots and talking about being tired and only having three more locations to visit today. This morning I heard the panel saying they've never seen bussing to polling locations, and respectfully they aren't looking, as I see it happen every year we have a Presidential election. On another occasion a professor from St. Aug's came in with his class, helped all his students get their ballots, told them not to vote until he gave them instructions, had them go to their polling booths, stood in the middle of the floor and told them how to vote, straight ticket. I'm not a legal person, but this is just wrong and what kind of message is this for these students? Thanks for this opportunity.

CHAIR LHAMON: Thank you. The fourth speaker?
MR. FORTE: Good evening. My name is Anthony Forte, and I reside in Spring Lake, North Carolina. My experience with apparent voting improprieties occurred at the time of the 2012 general election. Although as registered to vote, I reported to the wrong polling place, the municipal building located on North St. in Spring Lake. I was trying to sort out exactly where I was supposed to vote I noticed a White van arriving and a young gentleman, helping an elderly passengers exit the vehicle. The young man handed each passenger what later turned out to be voter registration cards. As the passengers all appeared to be mature citizens, 60 years of age or more, and infirm, apparently required assistance I recall thinking that it was a kind and useful service to provide on an Election Day. I further recall the van was marked the name of the church but I could not positively identify which church it was. And I really would not have given the matter another thought had I not found myself an hour or so later at a local elementary school, my appropriate polling place, and there I witnessed the same van, the same gentleman, the same passengers, reporting to vote at the second polling place. It wasn't an assumption. I witnessed the same people completing ballots at both locations.
It was not just a case of seeing the same people present at the second location. Feeling that something very wrong was occurring, I decided to take action and reported what I witnessed to a woman who identified herself as a polling official. She then explained to me and dismissed my concerns by explaining to me that as long as they had registration cards to vote at that location she was required to assist them in casting their ballots. She explained that my claim could not be substantiated and made it plain to me that she was utterly helpless to address my concerns. I am positive that I witnessed what most people refer to as voter fraud and I am gravely concerned that there seems to be no course of action to prevent this activity or in this case, even record it.

Thank you.

CHAIR LHAMON: Thank you. Next speaker.

MS. SNOWDON: Thank you. My name is Debbie Snowdon. I'm a social worker. I have worked mainly in Charlotte’s African American community. I’ve spent the last few days asking people how they feel about North Carolina's voting laws, so I want to use this opportunity to amplify their voices. They've given me permission to use their names. The common themes I'm hearing are it feels like we're going
backwards. They want to keep us away from the poles after Obama. And one woman said quietly, I'm scared. It feels like slavery is coming back. And the woman next to her just nodded. I’m sorry I’m nervous. Some people said they hadn't voted in the last general election because the new laws made things confusing. Polling locations had changed and were harder to find and a few specifically mentioned the voter ID laws. Herbert White, editor of the Charlotte post a paper for the black community said you can't keep suppressing minority voices and not expect a backlash. People feel shout out. District Court Judge Jane Harper said of today’s hearing It’s sad that the strange issue of voter fraud might predominate. As to judicial redistricting, she said no sitting or former judge I know of endorses the plan. Its only purpose seems to be the election of more Republican judges. The President of Charlotte's Poor People Campaign, Jay Jackson, said minorities and low income folks feel that these laws target them, that they don’t have a voice. In my conservative hometown of Denver, I heard something different. A man at my gym summed it up well. In the Obama elections, he said they bussed blacks in to vote if the Democrats can do that then it is only fair that we counter with
these laws. At a board of election meeting we were told the new restrictions were needed to (a) prevent voter fraud, and (b) save money. I say show me valid evidence-based research and what better place can a society put its resources. I was an observer at two polling locations in the last general election. At the Betty Ray Thomas Center, which is in a black neighborhood, it was common to be asked for ID to vote. In conservative Cornelius, no one was asked. On a very personal note, my daughter, Casey, who is gay, says that living in Portland, Oregon is like living in a different country. You feel like your vote matters. She said, people can actually change things here. It breaks my heart she will never live near us again, but I’m so relieved because her civil rights are a whole lot safer out there. I find it frightening that individually North Carolina’s policies can sound reasonable, but take them as a whole and you get what one Yale law professor called the death of democracy by a thousand cuts.

CHAIR LHAMON: Thank you. Next speaker?

MS. HANCHEY: My name is Mary Elizabeth Hanchey. I'm here from the North Carolina Council of Churches and as a long-time voter in North Carolina. The North Carolina council of Churches began talking
about voter access, ballot access, and poll access
as early as 1961, which was long before the Voting
Rights Act, and I would like to point out long
before I was born, there is no accident of history
that we are still talking about this today. When
North Carolina Council of Churches began talking
about this in 1961 we used the terminology let us
remove any intimidation or artful barriers and
welcome all citizens to full participation in
citizenship. I would like to submit that we are
drowning in artful barriers to access and that our
minority communities are particularly subject to
these artful barriers to access. They get described
in all sorts of ways, which make them sound
reasonable and sensible. We get fed frightening
information that does not match up with statistics.
We get told again and again and again that we're
just trying to save money, that we're just moving
polls because it makes things easier for someone or
some group, and that these artful barriers are
often -- described in ways that keep -- that keep
the intimidation, that keep the lack of access. I
am extremely concerned at having heard people
continue to say we can't make this political, we
can't make this partisan, we are talking about
people's bodies, people's communities, we're
talking about their access to ballots to polls, it is wrong to label as inappropriately political the effort to help make sure that all citizens can vote. Thank you.

CHAIR LHAMON: Thank you. Seventh speaker.

MR. Dilahunt: Good evening, Commissioners. My name is Ajamu Dilahunt. I'm a junior political science & history double major at North Carolina Central University, a historically black college here in Durham, North Carolina. I'm honored to have the opportunity to speak with you about voter suppression here in North Carolina and specifically its impact on college students. In 2013 after Shelby v. Holder, ruling Section 4(b), of the voting rights act unconstitutional, North Carolina introduced a wave of voter suppression laws or, as many referred to it, as the monster law. If you attended the sessions with Reverend barber and Attorney Anita Earls they articulated very well the injustices of the racist driven law. So there is no need for me to elaborate; however, it is important to note that the monster law made it so college students had to have a state-issued ID to vote making it so out of state college student were not able to vote and participate in the political process. The monster law was overturned but
legislators found a way to disenfranchise voters through gerrymandering. Racial gerrymandering prevents black political power through packing and cracking. The most recent example is the lines that the North Carolina General Assembly drew that split that largest historically black college, North Carolina A&T, down the middle. One part of the campus was in one district while the other was in another. This was a direct attempt to prevent the power of a black student vote. The General Assembly is responsible for suppressing beyond laws and drawing maps. They do this by the people they appoint to the North Carolina Board of Governors that cut programs like the Institute for Civil Engagement and Social Change at North Carolina Central University in 2015. The institute served as an important voter education and voter registration and social justice center on campus. Commissioners, if I had more time I could further explain the undemocratic and racist action of this General Assembly that were made possible by the Shelby decision. We need to restore the Voting Rights Act Section 4(b) is more important than ever and North Carolina is a prime example as to why. I repeat, Section 4(b) is more important than ever and North Carolina is a prime example as to why. Thank you
and I leave you with a saying from the black freedom struggle, forward ever, backward never.

CHAIR LHAMON: Thank you. The eighth speaker?

MS. MILLER: Hi, I’m Barbara Miller and I'm from the Duplin County, in the eastern part of the state—Kenansville, North Carolina. And I came up here today because when I found out I was available I had had issues in the past with trying to vote. I went to my local precinct to vote. It's been quite a few years ago. When I went in to vote the ballot had been marked all the way through, somebody had picked their candidate and gone in and made sure there were pencils so that everyone who came in knew who to vote for. In my county if you're a conservative you don't put a bumper sticker on your car you don't put a sign in your front yard; your neighbor won't speak to you for a year if you disagree with them and that's certainly a case in a lot of neighborhoods out there these days. Most recently, the last presidential election, for years I had gone and done my early voting so that I felt like I wouldn't have any issues. I need to back up a minute. I called our county election office when I found the ballot and told them what I had found and they literally laughed at me. And I said I really don’t think this is funny. He said, oh, I
thought you were kidding. No. The last time I went
to vote at my precinct I went in, I had my driver's
license in my hand. I was told Oh we don't need an
ID, I said ok cool. Gave her my name and she
informed me I had already voted. I said no I'm
pretty sure that I have not voted and she said I'm
pretty sure I have you as already voted, you know,
and I said okay. Understand I am not leaving here
without casting a ballot. Your problem is who you
let vote in my place. I understand. I hear the
argument all the time about the issues of ID. I
don't really know of many things, and somebody can
tell me, bring me up to speed here. What can you do
today without an ID? Can you go to the doctor, can
you pick up a prescription, can you go to the bank?
Can you cash a check? There are places you can't
even use a credit card. I just, I really, I love my
country. I think we have the right to vote but I
think it's important that the vote be taken
seriously. It's a privilege to vote. Research your
candidates, vote with your heart, but who's voting?
Thank you.

CHAIR LHAMON: Thank you. Ninth speaker?

MR. REINOEHL: Good evening, Madame Chair and
commission members. My name is Jerry Reinoehl, from
Fayetteville, North Carolina. Voter fraud exists,
voter fraud is nonpartisan and voter fraud
disenfranchises every American. I have extensive
boots on the ground in election experience. I have
witnessed and reported violations of our North
Carolina election laws committed by Republicans,
Democrats, and unaffiliated voters resulting in
fines and other corrective actions. The most
serious violations I have reported are dual state
voters, voters who voted in the same election in
more than one state. Fair and honest North Carolina
elections have become vulnerable to fraud when the
courts left us defenseless by tossing out North
Carolina voter identification requirements. Much of
my voter research and volunteer work requires
access to public voter registration information.
North Carolina does an excellent job providing no
cost online access to current voter registration
data and campaign finance reports. Many states do
not provide the same level of service, frustrating
research efforts. My recommendations to protect
election integrity and the voting rights of every
citizen are (1) enact a national photo
identification program such as the freedom card
discussed by Mr. Fund on panel 3. Two, enact a
national voter registration database with single,
no cost point of entry access for all public voter
registration information. Until then, require every state to provide no cost online access to current public voter registration information. And finally, prosecute individuals who have voted in more than one state during the same election in federal court. Every American has the right to vote, but with rights, citizens must also accept responsibility. You must end voter fraud. New York voters cast 7.7 million ballots on November 8th, 2016 without any of the special provisions such as early voting requirements placed upon North Carolina. North Carolinians cast 4.7 million ballots, which included almost two weeks of early voting. I wonder why there are no disenfranchised voters in New York. Thank you.

CHAIR LHAMON: Thank you. Tenth speaker?

MS. HOY: Yes. Good evening. Hi my name is Janet Hoy, and I'm the co-president of the League of Women Voters of North Carolina, and I appreciate the opportunity to speak this evening. The League of Women Voters is a 98-year-old organization started in 1920 with the passage of the 19th Amendment granting women the right to vote. Since then our focus has been, and continues to be, protecting our fundamental right to vote and supporting voter education and access. In short,
empowering voters and defending democracy. We're all volunteers here in North Carolina we are spread across 18 leagues and we have over 700 leagues nationally with over 300,000 members and supporters. In short, the League of Women Voters is one of the groups dedicated to fighting for and defending our most important right as Americans: the right to cast our votes fairly and without undue burden in state, local, and federal elections. North Carolina has faced a number of challenges related to voting and elections throughout our history. But in recent years there has been a concerted and coordinated effort to undermine our democracy. Some of these issues you heard previously. I'll just go through a couple briefly. The 2013 omnibus or monster voting bill which among other things, reduced early voting, did away with one-stop voter registration in voting, took away out-of-precinct voting, and added photo ID requirements. When striking it down a three-judge panel called it and I quote “the most restrictive voting law changes since the era of Jim Crow.” Thankfully that law was struck down in 2016, but we fully expect a new photo ID bill to surface this year, possibly in the form of a Constitutional Amendment on the primary ballot coming up in May.
In addition, there have been a series of court battles on redistricting, which in the leagues’ view is a form, a serious form, of voter suppression. There have been sixteen redistricting cases in the courts in North Carolina since 2000 under both Republican and Democratic administrations. They’re currently five cases. Why is this important? In 2016 thirty percent of state legislative seats had no primary or general election opposition. Forty percent, almost half, had no opposition in the general election, so when people ask why should I cast a vote here I often wonder what the answer should be. I think we would all agree this is not the way a democracy works, so we’ve had unconstitutional elections in 2012, 2014, 2016, and now 2018. Elections held both primaries and general elections with unconstitutional maps. It is absolutely staggering. In short, the only way to frame this is that the very foundation of our democracy in North Carolina is at risk.

CHAIR LHAMON: Thank you. Our eleventh speaker?

MS. CABRALES: Good evening. My name is Juliana Cabrales. I'm with the NALEO Education Fund. NALEO Educational Fund is the leading nonprofit, nonpartisan organization that facilitates full Latino participation in the American political
Through our work we have identified barriers that continue to impede Latino political participation. Today I would like to touch on two: unnecessarily and frequently changing requirements for voter registration and casting ballots and hostility towards and lack of understanding of language assistance protections in polling places. As language assistance needs grow in North Carolina and across the county jurisdictions need to be proactive in accommodating Spanish language voters. As you know, Section 208 of the Voting Rights Act states that everyone has right to be have assisted by a person of his or her choice, yet a recent report by a local partner here in North Carolina highlights a story from 2016 on how a Latina in Johnston County that was helping individuals in need language assistance was asked to leave the polling place. This type of incident is concerning. As the number of Puerto Ricans moving to the mainland increases, it is critical that election administration officials are aware of the protections under the voting rights act. Section 4(e) to ensure that Americans of Puerto Rican origin are able to cast informed ballots regardless of their ability to speak English. As we heard from many witnesses today, unnecessary administrative
requirements in the voting process disproportionately affect underrepresented voters. As such, we strongly recommend that election officials and policymakers reinstate proactive protections against discriminatory voting policies. NALEO educational fund strongly supports the movement to reinstate the Voting Rights Act preclearance procedures. I conclude my public comment with a story: During the early period voting in North Carolina a voter at the voting place in North Carolina witnessed a Latina voter arrive and ask where their Spanish interpreter was available to help her. The poll worker said no and offered no further assistance. After the voter left, without voting, a poll worker said out loud “When I was in school we didn't have Spanish people around.” This incident is representative of many more reported to us. And it’s effects will ripple far beyond the individual American in question to affect those with whom she shares her own story. The future of our nation and her democracy depend upon our strength of our commitment to welcoming this woman and every other American into elections on an equal and non-discriminatory basis.

CHAIR LHAMON: Thank you. Twelfth speaker?

MS. COURTNEY: My name is Dana Courtney. I am from
Alamance County, North Carolina which is the exact center of the state. If you turn that screen around on its end then that would kind of look like our county. It's rural and urban. We’re between - more progressive I started to say but I will go ahead and say it's more like city communities. We still value our rural ways as well as some more progressive. I am a social worker by training and I believe in social justice advocacy. I am retired. I have dedicated the last ten years to work on the street. I call our president sometimes within the NAACP. I'm doing street-walking today. I am not here to represent NAACP or Democracy NCL, although I work with both of them. Our county is about 155,000 people. We are about 66 percent white, people that look like me, the privileged, and 34 percent, people of color. We are fairly separate in many - within some of our schools and some of our communities. We still have our pretty segregated neighborhoods. We have very few elected people of color in our community. Recently we've had some people come forth and they had not been elected. My work is a volunteer these last years I started door to door doing canvassing, registering people, and then I had moved more in the last three or four years to monitoring at the board of elections and
in voter protection at the polls. What I've observed with doing this street work is that it's -- it goes -- it's sort of one hand and the other hand. One group is just really glad to see me; they know me as the voter lady and they're glad I'm there and in other places that's not the case. They need a little encouragement. I see as needs and I do this work is to help people see the importance of their vote and that is work. I also see the need for funding from our county commissioners and I hope can filter down from higher ups that we need to pay for what we need. Polling places, equipment, poll workers who are aging out like I am, and all in the ways of getting people out for voting. And I think this is education from top to bottom. Young people, elder people, all the way through that voting is the most important thing for people to have.

CHAIR LHAMON: Thank you very much.

MS. COURTNEY: Thank you.

CHAIR LHAMON: Next speaker?

MS. BUTZNER: My name is Annie Butzner. I'm from western North Carolina. I represent senior suffrage. I'm here to offer comment on general statute 163 Section 3. During my remarks I'm asking you to imagine yourself as a resident of a long-
term health care facility or of an adult care home and you're wanting to vote. This statute, GS 163, was written in 2013 in order to comply with requests from the State Board of Elections for new health care voting laws. In a hurry because the deadline was approaching, the rules that were inserted were the same rules that were for voting in prison facilities. I was told by a member of the State Board of Elections that the intention was to change the rules. They were never changed. They went into effect in 2014. Effectively denying access to the ballot of really hundreds of thousands of residents in North Carolina. Senior citizens are the largest segment, the fastest growing segment of our population. If you were a resident in one of these facilities and you would like to vote, you need to be aware of a system called multipartisan assistance teams help available from your county board of elections, you need to know about it in order to request it. If you don't request it the help doesn't arrive. If you request the help and it does arrive your help to register to vote and apply for an absentee ballot. At that point the team goes away. It does not come back to help you unless another request is made for help with the ballot. The workers are not
authorized to carry the completed ballot back to
the Board of Elections. Therefore, you are
responsible for finding an approved family member
to hand-deliver it to the Board of Elections or to
mail it yourself. If a neighbor, or a friend, helps
you instead of the state Board of Elections or an
approved family member, it is a felony charge in
North Carolina. This is just fear mongering to
prevent the experts in health care, the patients in
residence from voting. Thank you.

CHAIR LHAMON: Thank you. 14th speaker

MR. FLYNN: My name is Greg Flynn. I'm from here in
Raleigh. Thanks for coming here today. I believe
that democracy works better when more people
participate. We should be finding more ways for
people to vote instead of creating obstacles. I had
to laugh at an early panelist today, if there is a
grievance industry it is a free market response to
the demands created by prolific legislative acts,
unjust and discriminatory which after years of
litigation and high expense have proven to be
unconstitutional. Even here in Wake County I was
plaintiff in a federal case challenging
redistricting of the county Commission and Board of
Election districts by the North Carolina General
Assembly. Why we have to drive 160 miles to
Richmond in another state to secure voting rights here is beyond me. The federal appeals court found a racial gerrymander. The county elections board was saddled with the cost of defending the case, and the cost and the Wake County taxpayers, including myself, paid for it even though we were successful in the case. This was hundreds of thousands of dollars. The North Carolina General Assembly was not held accountable for its capricious, unjust, and discriminatory acts and this is why we need federal control. I know local redistricting doesn’t apply, but it’s a good example. So it goes the last seven years, I’ve seen constant assault on voting rights in the form of gerrymanders, restrictions of the voter access and indeed spurious challenges to legitimate voters. In 2016 there were false claims of felons voting and false claims of interstate double voting. People were falsely accused for the sole purpose of clouding fighting election results. In North Carolina photo ID, a hot topic, these proposals have gone far beyond the need to secure the vote and have elements that unnecessarily restrict voters. The name on my own driver license is not the name on my birth certificate and the nationality on my birth certificate is not the same
as my U.S. passport. I recently renewed my license. It required proof of citizenship, proof of Social Security number and two proofs of address. It took several hours at the DMV. I didn't have my Social Security card. I had to take more time to obtain a new one, but it worked out for me. My wife had a little more trouble. She needed second proof of address. She didn't have it at the time. Called me frantically. The DMV office forgot to mention that her vehicle registration was a valid proof of address, but these are the kinds of things that happen to people randomly to create obstacles to obtaining ID when a photo ID is a requirement for voting. I'm lucky I didn't live in Bertee County. That’s a majority African American county in Eastern North Carolina, beset my storms, destroying people’s personal documents and the county is only served periodically by a mobile DMV for a driver’s license.

CHAIR LHAMON: Thank you very much. Fifteenth speaker?

MS. WATKINS: My name is Olinda.

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

MS. WATKINS: My name is Olinda Watkins. I am the president of the NAACP branch in Moore County, North Carolina. I'm honored to speak today on the
important issue of our sacred right to vote. Voter registration is a cowardly, and racist attempt to divide and undermine our democracy in order to keep power in the hands of a few. Here in North Carolina we have seen how voter suppression has led to elections of an unaccountable super majority that was waged war on the poor and working people. I work with my local branch and the state NAACP conference to encourage and enable voters to cast their ballot. I have assisted scores of voters who have been met with voter suppression when they attempted to cast their vote. I know the deep sadness and anger that has resulted when voters’ voices are blocked by vote suppression. Because of my limited time I will share just one voter suppression story out of the many. As a president of our NAACP branch, in the weeks leading to the 2016 election I learned that the county election board was purging hundreds of voters at a time because a group was filing mass voters challenge based on their return post cards. These removals reminded us of the passages from North Carolina’s recent history when candidates used a racist tactic called voter caging to target and intimidate voters of color from voting. When we investigated this led us to uncover that thousands of voters across
several counties were being purged from the voter registration rolls within weeks of the election, all based on a return of post cards from the mass mailing. In Beaufort County where two-thirds of the voters were challenged were black. One of the challenged voters was Miss Grace Bail Hardison. Ms. Hardison, who is a hundred-year-old black woman who lived in Belhaven, North Carolina had her entire life and has voted regularly for decades even though she feels it is difficult to leave her house. She insisted on leaving her house to cast a ballot each election day because her right to vote is so important to her. Weeks before the president election Ms. Hardison's voter registration was challenged based on a post card that was sent in a mass mailing by a local challenge. The Moore County NAACP was honored to join Ms. Hardison to file a lawsuit to fight this suppression. As you can see, in North Carolina our voting rights are under attack. Voter suppression is alive and well. Congress must restore the full protection of the Voting Rights Act. Thank you.

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

MS. TURNER: Good evening. Madame Chair, Madame Vice-Chair, Commissioners. My name is Emily Turner and I'm an attorney for the North Carolina Justice
Center. I’m originally from Yancy County, here in North Carolina. Thank you for the opportunity to speak today. The justice center's mission is to eliminate poverty in North Carolina by ensuring that every household in the state has access to the resources, services and fair treatment it needs to achieve economic security. Achieving our mission requires full, free participation of all North Carolinians in our democracy. In 1965 President Johnson described this ability as the true measure of dignity that each citizen can quote, “Share in freedom, choose his leaders, educate his children, and provide for his family.” Over fifty years later we're witnessing this state to a movement to exclude people of color, the poor, and the marginalized from their full measure of that dignity. To prioritize hypothetical bad voters over the right to vote, undermines our project of democracy. If we accept the framework where voters are the problem we obscure the real threat to the integrity of our elections. Systematic targeting of marginalized communities to prevent their full exercise of the franchise. Recently our state has seen a comprehensive attack on the voting power of certain communities and a whole-sale disrespect for the integrity of our democracy and the separation
of powers. When it struck down so-called monster voting law the Fourth Circuit Court of Appeals described the law as animated by quote, “A concern that African Americans had too much access to the franchise.” That toxic idea that there is too much access to the franchise is reflected in a myriad of regressive policies here in our state. Reductions to early voting hours, unconstitutional attempts to purge voter rolls, and the elimination of mandatory high school voter registration drives, to name just a few. Commissioners, these policies restricting free and fair elections in our state cannot be separated from the districting schemes that dilute the votes of African Americans and others through both racial and partisan gerrymandering. Every attack on voting access must be understood in the context of an unconstitutionally composed legislative body that itself constitutes an ongoing and pervasive form, of disenfranchisement. At the Justice Center we know that our state is stronger when all our North Carolinian votes are valued we reject disingenuous attempt to recast marginalized voters as a threat. They are the embodiment of democracy’s promise reflecting what should be the highest value in our electoral process, the full participation of all people. Thank you.
CHAIR LHAMON: Thanks very much. 17th speaker?

MS. POSADA: Buenos tardes. Good afternoon. My name is Elizazar Posada. I am the director of the community and advocacy manager at El Centro Hispano, a local nonprofit here in Durham. It’s actually the largest Latino nonprofit in North Carolina. So first of all, I don’t claim to be an expert in anything but my own experience and I’m going to talk with you about that. I will be submitting a written statement for further information, but I want to talk about what I’ve gone through as a voter, as a citizen, as a Latino in North Carolina and what my family has gone through as also citizens and Latinos is this country. For one, we talk about access. When I think about access I think about being able not only go and submit a ballot and being able to vote but knowing that you can speak the language that you’re most comfortable in in those areas. I believe a speaker earlier said that, you know, in order to have folks come in and be comfortable and exercise their responsibility and right to vote they need to be able to understand what they are doing. Our folks need to be able to go in and say I speak Spanish, there needs to be someone in there who speaks Spanish or whatever language I speak so
that I can understand what I am doing, so that I can have help when I need to understand. My grandmother, a citizen of the United States, for her entire life lived in a predominantly Spanish-speaking community and she was unaware -- because of her broken English she was unaware that she could go into a voting place and ask for someone to help her in Spanish, living in south Texas and, you know, south Texas their official language is Spanglish. So it's dear to me when you talk about language and access, to ensure that before we talk about these other things in North Carolina is doing to suppress the vote. We talk about ensuring that my community is able to understand that they have a right to vote. A lot of our youth members that have come into my office are worried that if they go to vote there is going to be somebody coming to their homes and checking the address. And some of their family members aren’t citizens. They’re sons and daughter of immigrants so when we’re showing or saying there’s a possibility that someone’s going to go through your home because of the fact that you registered to do your duty as an American. That's just wrong, so I ask this Commission to really think about the Latino experience when we’re talking about this. We are the largest minority -
and in North Carolina we’re growing so it's important that our Latino voices are heard. Thank you so much.

CHAIR LHAMON: Thank you. 18th speaker?

MR. BOSTIC: Good evening. My name is Wayne Bostic. I would like to thank the United States Civil Rights Commission for hosting this event in my home State of North Carolina and also for giving me the opportunity to speak. I am here today to not necessarily represent any one social justice organization, although I am the vice president of the North Carolina A. Philip Randolph Institute, but more importantly as an American citizen, a veteran, and a registered voter who happens to have a dark complexion. Access to our relations shouldn't be made inaccessible to an American citizen simply because the complexion of their skin is dark. Having different spiritual beliefs or ideology, the whole assumption of truth behind a Democratic society with America is supposed to be our differences. I have registered thousands of people to vote since becoming a social justice advocate. I consider it a labor of love. We who have a darker complexion in America have always asked America to live up to its creed. The creed written and won by William Tyler Page as an entry
into a patriotic contest then voted as a resolution by United States House of Representatives on April 3rd, 1918, to refresh everyone's memory, the 5 core pillars of that creed are liberty, the state of being free within society from oppressive restrictions imposed by authority on one's life, behavior, or political views. Two: egalitarianism, believing in the principle that all people are equal and observe equal rights and opportunities. Three, individualism: A social theory, favoring freedom of action for individuals of collective or state control. Four, popularism: support of the concerns of ordinary people. Five, laissez faire: A policy or attitude of letting things take their own course without interfering. Voting is an indication of choice, opinion or will. This democratic process is at risk of being undermined in our society, especially for Americans who look like me. 2016, voter fraud 00002. Now, in order to not be sued for plagiarism, my reference sources are dictionary.com, Merriam Webster, and wikidpedia.org. Thank you for your time.

CHAIR LHAMON: Thank you very much. Ninetieth speaker?

MR. SWANSON: Thank you all for allowing this opportunity to address the Commission this evening.
My name is Tyler Swanson. I'm a proud North Carolinian, and I remember sitting as a college student and a leader with the North Carolina NAACP Youth in College Division in the gallery of the North Carolina General Assembly as they debated the monster voter suppression law, also known as House bill 589, that you’ve heard so much about today. I sit among dozens of other college students all of us with our mouths taped shut to symbolize our protest over the General Assembly's attempts to silence our votes by which they were doing by implementing this law. Unlike other young folks our age who were free to focus on college exams at the end day -- at the end of the semester. Excuse me -- we were gathered in silent protest on the balcony that day driven by fear that North Carolina General Assembly would act to suppress our vote just as we were coming to age to use our vote. The floor debate that led to the passage of House bill 589 with numerous racially discriminatory voter suppressions provisions, including voter ID requirement, reducing a week of early voting, eliminating sixteen and seventeen-year-olds from preregistering, as well as eliminating same-day voter registration. I personally sit alongside modern day civil rights leaders who were fighting
against this bill. Like Ms. Rosenell Eaton, who was the lead planner of the NAACP voting rights challenge case. Mrs. Eaton was the granddaughter of a slave who grew up in Jim Crow North Carolina where she had to take two-hour long mule rides to the court house just to register to vote. There she was greeted by a white registrar who made her recite the preamble of the Constitution. Ms. Eaton passed this difficult hurdle to gain access to the ballot and went on to become a lifelong voting rights advocate who personally registered tens of thousands of voters. She voted regularly until North Carolina state legislator passed the monster voter suppression law. For Ms. Eaton, her voter registration card did not match the name on her license so in her 90s she made eleven trips to different state agencies; DMV, Social Security, and many different banks over the course of months to try to obtain the necessary ID. Though I could go on time permitted, I just want to say that throughout the three years we finally won this battle and there the courts found that House bill 589 targets African Americans with almost surgical precision. What we need is more access to the booth. What we need is to allow everyday voters to have fair access without these voter suppression
tactics. You know, I do hope that one day we will be able to use our --use the words that I'm going to paraphrase: Voting rights --I was close but I ran out of time. Thank you.

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

MS. JAEB: Good evening. My name is Rebecca Jaeb. On November 4th, 2014, as I had done several times before, I worked as a Wake County Precinct Official in North Carolina. That day I was stunned to see a woman turning in a ballot who I had helped cast provisional ballot earlier that day. I told my Chief Judge, she asked me if I was sure. The young woman was wearing the same clothes and distinctive glasses and I had sat and talked with her for quite a while doing paperwork so I said I was almost 100 percent positive. The chief judge ran after her and asked her if she was the name she had given for the provisional ballot. The woman said no, that her name was what she had just used to vote, and then she pointed to another woman and said that was the sister of the name that she had used to cast a provisional ballot. I would never want to make a false accusation so after the election I looked online to find more information and pictures for both names that the woman had given. This confirmed
the name of the woman I saw was the original name she gave when she came in the first time. She came later with her sister and voted under another name with a woman I had never seen. My Chief Judge requested for us to that we meet with someone from the Board of Elections to discuss the incident. Over two weeks passed and they did not respond. It wasn’t until someone else asked the Board about it for me and the board director finally answered. She was very irritated that I had followed up on the matter and said they looked at the signatures and they were a match. I was never shown the signatures but I was to accept what I had seen with my own eyes hadn’t happened because someone said they looked like the signatures of the proper people. I had always given been given Excellent job performance feedback but I was never called to work again. On several occasions I tried following-up with people about it but nobody would even answer me. Two years after the incident, and over a year after the scolding director had left the board, I applied to the recruiting agency that hires early election workers. They were extremely positive and told me that the board would be contacting me to schedule working. The board never contacted me. I had been officially blackballed. Naively I thought
the board would be interested in preventing voter fraud but I discovered that instead they were more interested in punishing a faithful worker that had the audacity to report and follow up on it. We're hearing a lot about voter suppression today but what I encountered was suppression of pursuing voter fraud and I think that should be a concern as well. Thank you.

CHAIR LHAMON: 21st speaker?

MS. BOURGEOIS: My name is Emily Bourgeois. I had the privilege of serving as a poll observer in the Mecklenberg County precinct number 56 in the 2008 election. Upon immediately arriving my experience was something like hers. There was a level of hostility and intimidation against the poll observers that I think anyone on your Commission would not applaud. Some of it was quite petty. The other was rude and simply bullying us but nonetheless we did what we could to serve according to what we had been trained to do and there were a number of irregularities during the day. We filed a report here with you in the basket out front. But one of them, for example, that was of concern involved a catatonic woman that was brought in in a wheelchair. She was unable to speak, open her eyes, or even lift her head up and yet she was rolled
into the voting booth and the person that pushed her into the booth did all the voting for her. In reference to Section 208 of Voting Rights Act how could it possibly be that that's considered kind, fair, or appropriate. We called the attorney but by the time he got there the voter was gone and he was unable to reconcile this with the judge. The bottom line is it's not about whether someone was rude or ugly to poll observers or intimidation. The bottom line is the numbers, and they simply didn't add up that day. There were 497 votes cast after the machines were tallied; however, the voter authorization slips didn't match the machine count. As you all know, there should be one card for each vote. These completed slips are designed to verify that each is a bona fide and registered voter in that precinct. The BOE is very clear with judges that all of these slips must be accounted for and in numerical order at the end of the day, these were not. Our count was that out of 497 votes cast there were 57 missing slips, 20 slips that were incomplete and that didn't have their stickers on the back, and there were 440 slips that were actually complete and compliant; therefore, in our precinct 56, 15 percent of the vote did not meet the BOE standards and that 15 percent is clearly
enough to throw an election. Yet when we complained, we even formed a committee with Joe Martin and some other people. We were unable to get anywhere. That I agree with the previous speaker is another form of suppression and I’m not saying suppression is not in both directions but we deserve as Americans, an accurate voting system. Thank you.

CHAIR LHAMON: Thank you. 22nd speaker?

MS. TALLY: Good evening, Madame Chair, Madame Vice-Chair, and esteemed members of the Commission. I am Kristi Tally from Raleigh, North Carolina. I present today from the perspective as a former member of a county Board of Elections. I served as an election official here in this area during what I consider the tumultuous season of the general elections of 2012. During my time of service as a member of the local board it was clear to me there were plans under way to restrict access to the polls including limiting voting hours and what appeared to me as intentional discrimination against voters of color. Much of the testimony presented today brought back flashbacks of my experiences serving on the local board. During the earlier testimony, there were several mentions of the limiting access of early voting. I'd like to
share a brief example during my time of service related to the issue of limiting early voting. Based on voter registration, there was an increase of voters in our county from the 2008 general election to the 2012 general election. Despite this, there was an initial plan to provide fewer early voting sites, times, days for 2012 to the extent that at the local election table among my colleagues we could not come to agreement on the early voting site elections so in essence my colleagues were seeking fewer sites. My response, I casted the dissenting vote during our voting process for the early voting sites plans at the local level. The next steps I had to plead the case as the lone member of our particular county board to the state Board of Elections. Thankfully at that time through the majority vote of the state board our county gained more access for voting and could expand access to voting for our county. The state board of elections added a site, hours and days for our 2012 election. I share this as only one example of many which were present to limit voter access during my time of service at the local level, which required taking many extra steps to expand access. Based on my personal experiences as a local Board of Elections member, I am convinced of the
importance of decision-making process to protect the vote as the cornerstone of our democracy. Thank you.

CHAIR LHAMON: Thank you. 23rd speaker?

MS. AHN-REDDING: Good evening my name is Heather Anh-Redding. And I am here from Hillsborough as a community member and former criminal justice educator. I came to speak about the disenfranchisement of the North Carolinans who because of their involvement in the criminal justice system and are denied access to the ballot box. In order to have an honest discussion about minority voting rights, we need to acknowledge how people of color are disproportionately affected by our criminal justice system and the civil death that follows a felony conviction. Felony disenfranchisement laws exist in 48 states plus DC. Although some argue that felony disenfranchisement is deserved or that it is necessary to preserve the purity of the ballot box, it is a practice that contributes in no material way to the main pillars of punishment: deterrence, rehabilitation, retribution, and incapacitation. So why are 6.1 million Americans are currently banned from voting? Disenfranchisement of voters combined with the racist black codes of the civil war originated to
prevent people of color from participating in the
democratic process. However, few people question
their origins or utility. Even when people of color
are disproportionately impacted by criminal justice
policies at every junction. This is how systems of
power selectively maintain structures of
oppression. This is true across the country and
especially true here in North Carolina where 1.2
percent of people were disenfranchised in 2016,
including thousands of African American voters. I
would like to bring your attention to an ongoing
case in Alamance County. Twelve individuals are
currently being prosecuted because they were active
felons when they cast their ballots in 2016. The DA
explained that prosecuting these individuals is
important for preserving the sanctity of our
election system. These twelve people who voted,
presumably without the intent to violate the law
are now facing a new two-year prison sentence.
Meanwhile, our own state official, for the sake a
political gain have jeopardized the sanctity of
the election voting system by passing restrictive
voter laws creating racially-biased gerrymanders.
North Carolina's troubled history of minority voter
suppression in addition to its felony
disenfranchisement laws risks affecting the
outcomes of key races by silencing of voices of color. I maintain the United States criminal justice voting system is by far the most systematically violent and racially oppressive institution in this country. It sweeps up people in communities of color at destructive rates. It rips apart families and subjects adults and children to humiliation, physical brutality, and emotional isolation. The additional restrictions placed on justice involved individuals is another assault on their integrity, humanity and agency especially when they're living in the community, working, going to school, or raising families and told that they cannot vote. I ask that you consider the impact of felony disenfranchisement laws here in North Carolina as part of a broader attempt to suppress the minority vote in the United States. Denying citizens their franchise is a gross injustice. Thank you.

CHAIR LHAMON: Thank you. 24th speaker?

MR. COMER: Good evening. My name is John Comer, founder and CEO of Architects of Justice. I’m a current resident of Baltimore city. I’ve been living in Baltimore for about seven years, and when I got there I started an organization and the actual idea for the bill to re-enfranchise forty
thousand Marylanders were formerly incarcerated to vote came from my office. We fought very hard to get that bill passed. It was vetoed. Then we came back and fought for the override and we received the override. In the process there were many individuals, men and women who were enfranchised, at least we thought, when that took place. But later we only had three weeks to register people to vote, and in the process the language never changed that allowed on the voting form the language never changed, so many of the people who had felonies were scared to vote because they thought that if they voted out of turn they would get another felony. This is continuing disenfranchisement and the process we're thinking that we're re-enfranchising voters, but many of the voters are still scared. At this point in time in the state legislature in Maryland there is a bill put forth by delegate Bilal Ali that will make the state inform people who are coming home that they can vote. I think that's part of the process that we have to push forward and make sure that we implement because people are coming home not knowing that they can vote and if we're all here and thinking that we want to improve the world for a better place because many people are out here
just trying to survive. There are studies that have been put forth from many institutions that show recidivism goes down when people are allowed to vote so, re-enfranchising people all the way by informing them of what their rights are when they're coming home from prison. By also the state board of elections and things of that nature actually sending out notifications allowing people to know that they can vote is a huge process because at this point in time 40,000 Marylanders have not been re-enfranchised. The word has not been spread. It's been left to small organizations who don't have the funding to actually get that out there. Allowing people to be reinstated to vote at the MVA, that's another bill that's being put forth so where if I just go and get your license you have to opt out, you don't have to opt in, and these are things that we need to be looking at if we're really looking to re-enfranchise the community that the Voters' Rights Act re-enfranchised the first time. Thank you.

CHAIR LHAMON: Thanks very much. 25th speaker?

MR. RUTH: Good evening. It's a pleasure to speak with you tonight. My name is Dr. Terrance Ruth. I'm the executive director for the State Conference of the NAACP for North Carolina and I'm here on behalf
of our state's president, Dr. T. Anthony Spearman. I wanted to say that for anyone who says or states that voter suppression is a phenomena of the past, and that there are no longer any obstacles for voters of color who seek to elect representatives of choice, they need only to look at what have happened in this state over the better part of the last decade when the Supreme Court handed down its decision Shelby versus Holder gutting the very heart of the Voting Rights Act, a law that our elders fought, bled, and died for. Not even one generation ago. It opened the flood gate for Jim Crow voter suppression efforts that we continue to live in that reality today. In North Carolina alone there's been an onslaught of voter suppression efforts has included intentional racially discriminatory racial voter suppression law, racially gerrymandered district that diminished the voting power of people of color, voter purges targeted at removing people of color from the voter rolls, and a swell of tactics designed to intimidate black and brown people from polling places. For every single one of these fights, the North Carolina NAACP as the state's largest civil rights organization has been on the front lines of the battle defending the sacred right to vote. In
conclusion, without preclearance protections those who seek to suppress the vote in this state have become absolutely brazen in their efforts. In every election cycle we live the ongoing legacy of voter suppression and Jim Crow. This is a tremendous burden on us, on our branches, and on the people of North Carolina, particularly people of color. This is why we need the full protection of the Voting Rights Act, why Congress must act now. My hope is that we move forward together and not one step back.

CHAIR LHAMON: Thank you. 26th speaker?

DR. FATIMAH: My name is Reverend Doctor Fatimah Salleh. First and foremost I come from no organization. I am a resident of North Carolina, Durham County. I am married to a Caucasian man and my experience in Alamance County when we lived there was that we went to the voting booth at the same time and at the same voting place and I was asked a series of questions far more than my husband in order to vote, so it's nothing more for me. Now, that has happened at banks and other places that my husband has far more had the privilege of walking through and just see like he can fly through processes a lot faster than his woman of color as his wife. Second, not only that,
I'm the mother of four brown children in North Carolina. I would like those same discrepancies in the things we see at the polls not happened to them as it has happened to me. I am also the daughter of a former incarcerated man who has a felony on his record. It is important to me. My father has never voted since coming out of prison and it is important to me that we begin to see formerly incarcerated individuals and the ability to vote and what it is to them to pay their debt to society. I would like us to take a firm stand and reorient them to what it is to be back in the population. More than that I am grateful that we have this process. It's been a long fought process. Has it come some ways? Yes, it has, and I hope it will continue to grow and move forward, that it can be a more just system. Thank you.

CHAIR LHAMON: Thank you. 27th speaker.

MR. McSURELY: My name is Al McSurely. I'm 82 years old. I'm older than dirt. I worked with a, you can see -- judge that we're getting some young people coming forward, and Rev. Salleh that was my wife, Olinda Watkins, that spoke from Moore County. She's black. And I've experienced the same thing: I get served first. Everything happens to me first, and nobody ever questions me when I go to vote. Just
two points: One, to be ahistorical is to be racist. We cannot talk about racism and racism in voting particularly without talking about the long history of what happened to black people in the United States of America and I've studied your Commission for many years, one problems of being old. I remember 1964 when your predecessors went to Mississippi and helped develop the outline of what became the Voting Rights Act. It wasn't just Selma Bridge, my good friends that got their head smashed in there. It was because you all got out of DC, went down into the toughest part of Mississippi and talked with people. You were scared to hold hearing but you went around and talked to people and gathered information and put together what needed to be done. That was the early drafts of the Voting Rights Act. And you all need to get out of Washington some more and come to North Carolina and just sit around and talk and read some of the good stuff that's been coming. Secondly, I wanted to draw your attention a wonderful decision which I asked your people out front that you already had a good friend of mine, Loretta Biggs, sitting in Greensboro. Did y'all get a copy of this decision that she did last year?

CHAIR LHAMON: We've not seen it yet, but they come
MR. McSURELY: I got five copies if you want them. This is what my wife Olinda was talking about in Moore County. Judge as you know it was in Cumberland County, Moore County, and Beaufort County out by the coast where these same clowns that are in here taking our pictures and sitting over here, VIP, they call it the Voter Integrity Project, sent out postcards to what Judge Biggs found -- it's all in here (indicating) I don’t want to waste my seventeen seconds talking about it, but I do want to suggest that you spend more time instead of taking pictures and showing these things get out and take some pictures of what the voter integrity project is doing as they go into the polls and harass people and check people. Thank you.

CHAIR LHAMON: 28th speaker?

MS. APPLEWHITE: Good evening. My name is Belincia Applewhite, and I'm a twenty-year United States Air Force disabled veteran and a former elected official for the city of Fayetteville. And I also am one of the many plaintiffs in Covington v. North Carolina, a federal challenge to North Carolina’s 2011 redistricting plan. I thought that our challenge to the racially discriminatory
redistricting plan was going to be resolved shortly after a federal three-judge panel found 28 state legislative districts in that plan were unconstitutionally racially gerrymandered. Here we are nearly a year-and-a-half later found that our redistricting plan discriminates based on race, we still don't have fair maps in place. The remedy that the legislature came up with clearly did not resolve the racial discrimination and went well beyond what they were allowed to do. When tasked with resolving the racial discrimination, legislatures simply turned off the race button and drew lines using the same ones that they found unconstitutional by two courts, including the United States Supreme Court as the starting point. What I am speaking of is about one case, one case where more state legislative districts were found to be racially discriminatory in a single redistricting plan than ever before. One case where we saw race predominate and the drawing of districts across the state in Greensboro, Raleigh, and in my home town of Fayetteville, and many more. Again, this is just one case. There are many more examples of how the voting rights of people of color throughout the state had been undermined. We have heard many of them today. Whether enacting a
voter suppression law that targeted African Americans with almost surgical precision or drawing new redistricting mass where partisanship is used as a proxy for race or disenfranchising people. The struggle for basic civil rights is nothing new for the people of color in North Carolina. It goes back centuries. But I am thankful for the testimony of the people in this room today and hopefully one day the work of commissions like this will not be necessary. Unfortunately that is not today. We need help in securing our basic civil rights and I hope we can count on you to hear our call. Thank you.

CHAIR LHAMON: Thank you. 29th speaker?

MS. GRAY: Good evening. My name is Becky Gray. I'm with the John Locke Foundation a free market limited government state-based think-tank based here in Raleigh. The recent contest for control of the Virginia House of Delegates is an illustration that every vote does matter. Virginia democrats did very well in November, their net gain of 15 GOP-held seats put them just one seat away from a tie in a likely power sharing deal in the Virginia House. That seat might have been won by a Democrat, Shelly Simons however after the election night a tally showed her just ten votes behind the incumbent, Republican David Yancy, Simons sought a
recount, it put her ahead by a single ballot, Republicans then successfully challenged that ballot in court and the resulting tie was settled by drawing a name out of a bowl. Yancy got the luck of the draw. Tied elections aren’t unknown in North Carolina. Tied Municipal Races in Alleghany County, Samson County, and Mecklenburg County, have Recently Been Resolved By Chance, if we broaden that category just a little bit to include races settled by dozens or hundreds of votes, there are many more cases across North Carolina in municipal, county, even legislative races. For that matter who can forget the 2000 Florida recount. A few hundred ballots separated George W. Bush and Al Gore in a state with enough electoral votes to sway the Presidential race. The complaints about hanging chads, butterfly ballots, weren’t the only relevant controversies. Another was illegal voters either by felons or by snowbirds or students with residence in multiple states. Over the years North Carolina has implemented a number of policies to deter illegal voting. Still after 2016 state Board of Elections conducted an audit that found that 508 votes cast should not have been counted. There were felons, there were 41 substantiated cases of votes by non-citizens, double voting, voting
impersonation fraud, and some activists claimed that this post-election audit proved that additional measures to ensure election integrity were unneeded, but they were wrong. Impersonation fraud, for example, is done most of the time by people voting on behalf of their relatives. What about voting on behalf of shut-ins? Relatives with mental disabilities, residential fraud also merits more attention and could be policed in part by voter ID requirements. So in the end a productive response to all of this would be for Republicans and Democrats to work together to implement a low-cost insurance policy against fraudulent electoral outcomes, voter ID, stricter rules for absentee voters, greater oversight of in-person voting are good ideas and worthy of consideration to ensure the integrity of our elections. Thank you.

CHAIR LHAMON: Thank you. 30th speaker?

MS. STALLINGS: Good evening. My name is Cheryl Stallings and I am a psychologist who lives and works here in Wake County. Thank you all for being here and for the important work that you are doing. As a native of this state I am very concerned about the state of voting rights of North Carolina. I feel our democracy is under assault. In references to draining the swamp, I feel like we have our own
swamp right here in North Carolina that is full of racial and partisan gerrymanders and needs to be drained with significant reform. According to the North Carolina League of Woman Voters, there have been sixteen legal challenges since 2000 regarding concerns about bias voting maps and districts in our state. There are about an even number of registered Democrats, Republicans, and unaffiliated voters in this state yet the Republican Party has super majorities in both chambers of our General Assembly. This state legislature enacted a massive voter ID law that was intended to disenfranchise the minority vote in this state. A federal appeals court struck it down saying that it targeted African Americans with almost surgical precision. The Supreme Court has also struck down two of our state's congressional districts on the grounds that there were impermissible racial gerrymanders. I believe that gerrymandering is toxic to our democracy and, more concerning, it is the impact that this unconstitutionally elected General Assembly has on policy and the common wealth of North Carolina. This state legislature has refused to expand Medicaid, which has denied approximately five hundred thousand low income North Carolinians access to needed health care. In addition, they've
failed to invest in our state's children and public education. On national report cards examining student achievement and in school funding North Carolina has fallen from the 19th in the nation in 2011 to now 40th and 45th on these measures. I believe minorities in North Carolina are being underserved and underrepresented. I also believe the commonwealth of North Carolina is also underserved and underrepresented. Although equal access to the voting booth for minorities and nonpartisan redistricting may not solve all of our problems, I believe it is a fundamental and necessary place to start. Thank you for working diligently with us as we work to ensure fair and equitable voting rights for all and hopefully we will all continue to work together to form a perfect union. Thank you.

CHAIR LHAMON: Thank you. And the final speaker.

MS. ELLMAN: Last but not least, my name is Kate Fellman, and I am with a grassroots organization based in Durham called the People’s Alliance. I’ve been working on elections in NC since 2008. In 2013 when House bill 589 passed, radically changed our voting laws. I set up to work solely on helping voters understand how, when, and where to vote and what the current requirements were to vote. Since
then I have facilitated over 250,000 one-on-one conversations with voters in North Carolinas. And these conversations are heartbreaking. It is downright shameful how understandable confused, frustrated, and angry North Carolina voters are by the changing rules in making voting harder and unconditionally racially gerrymandering their districts. I'd like to tell you about some of these conversations. Every day we talked to eligible voters that tell us that they can't vote. One reason they say is that because confusion over voter ID laws. They say I can't vote, because of confusion over voter ID laws. They say, I can't vote, I don't have an ID or my ID isn't up-to-date with my current address so I can't vote. We've dismantled the confusion on the status of these rules. We also encounter voters every day who believe they can't vote due to a prior felony conviction. In 2016 we registered hundreds of voters who were eligible but confused about this. I registered a twenty-year-old kid who felt he'd never been able to vote again. I registered a sixty-year-old woman who hadn't voted in thirty years. We also run into people who believed they were registered to vote. They believed they voted online. But there is no online voter registration
in the state of North Carolina, unless you print it, stamp it, and mail it you are not register. We also encountered thousands of voters who believed they registered at the DMV in 2016 but the DMV was failing to process the forms. The mass public confusion over the voting laws and maps in North Carolina and the lack of automatic voter registration of eligible citizens disenfranchises thousands and thousands of voters. Not only were these laws found unconstitutional but they are un-American because they infringe upon our most basic civil right. I really thank you for being here. We need you to hear our testimony. We need your help. We need automatic voter registration in every state. We need universal restoration of rights for former felons. We need strict oversight on the drawing of our voting maps and the making of our voting rules. We need to make rules simple and understandable. We only need rules that are aimed at securing our elections while ensuring we are assisting and facilitating voter access for all eligible voters. People wonder why there is such lower voter turnout in our democracy, after doing this work I can tell you it is because the rules are designed to discourage participation and to disenfranchise voters. Thank you for being here and
hearing our call for help.

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

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