

TESTIMONY OF LATOSHA BROWN
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MODERN-DAY VOTING DISCRIMINATION IN ALABAMA

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I. INTRODUCTION

Chair Butler, Ranking member Cruz and other members of the Subcommittee on the Constitution, my name is LaTosha Brown, and I am a co-founder of Black Voters Matter Fund (“BVM”), a power building southern-based civic engagement organization that focuses on connecting with and supporting grassroots community infrastructure in Black communities in the South. Through voter registration, get-out-the-vote, and voter education, BVM seeks to mobilize Black communities in the South by helping them exercise their right to vote. Since 2017, BVM has played an instrumental role in mobilizing Black voters to overcome voter suppression and access the ballot.

Thank you for the opportunity to testify today on the role that Selma played on the passage of the Voting Rights Act (“VRA”) and present-day discrimination in voting that highlights the continued need for the restoration of the full protections of the VRA.

II. THE SIGNIFICANCE OF SELMA

First, I will share what it was like to grow up in Selma and how Selma became a pivotal turning point in the civil rights movement that culminated in the passage of the Voting Rights Act and has influenced my life’s work.

A. Selma, My Birthplace

I have a deeply personal connection to Selma and to Alabama. My ancestors were brought to Selma as enslaved Africans, and I was raised and spent my formative years here as a member of a family of southern farmers. I attended Selma High School and then continued my studies at Auburn University. Selma is the place where I became an organizer. I found my passion for activism when I took on a job in my twenties as a clerk at a clothing store—there I engaged customers in conversations about the books I was reading. Those conversations led me to realize my passion for community activism and grassroots organizing.

Although I formally became an organizer in my twenties, my interest in organizing began when I was young. When I was a child, my mother and I went to live with my maternal grandparents in Mobile. It was during those years that I developed a close relationship with my grandparents. My grandparents instilled in me the values that I hold dear today.

My grandmother was born in 1910 and could not vote for most of her life because of poll taxes, literacy tests, and other devices designed to keep her from exercising the franchise. The same was true of my grandfather who carried his poll tax receipt in his wallet to remind himself that the right to vote was hard fought and hard won. When my grandmother finally did get the right to vote, she exercised that right with great care—she dressed in her “Sunday best” and went to cast her ballot as if it was a religious exercise. I accompanied her to the polls.

My family was also connected to the Baptist church, which played a significant role in the civil rights movement and in my upbringing. Not only did church serve as a place of worship, it also was an organizing hub for the Black community. Church was the place that brought everyone in the community together and where we organized and strategized to build political power.

These experiences during my formative years inform my work today. As a political strategist, a grassroots organizer, a consultant, and a co-founder of BVM, I strive to mobilize Black communities in the South through community building, political action, and grassroots activism. I hope that my testimony demonstrates the continued need for the Voting Rights Act and inspires Congress to act immediately to restore and further enhance the protections of the VRA in passing the John Lewis Voting Rights Advancement Act.

B. The Role that Selma Played in the Passage of the Voting Rights Act

The 1965 marches that took place in Selma became a “watershed moment” in the civil rights movement that ultimately spurred Congress into action and resulted in the passage of the VRA in 1965.¹ Three marches took place in early 1965 from Selma to Montgomery, the first of which was organized to protest the death of an activist by bringing it to the attention of Alabama’s Governor George Wallace. The first march, on March 7, 1965, led by SNCC chairman John Lewis and SCLC leader Reverend Hosea Williams, became known as “Bloody Sunday” because Alabama law enforcement officials formed a blockade and assaulted the peaceful protestors with

¹ Nat’l Archives, *Selma Marches* (updated Dec. 11, 2023), <https://www.archives.gov/research/african-americans/vote/selma-marches#:~:text=The%20Selma%20Marches%20were%20a,of%20the%20Jim%20Crow%20South> (last visited Feb. 27, 2024).

tear gas and clubs as they arrived at the Edmund Pettus Bridge. More than sixty protestors were injured and some beaten unconscious.²

The second march on March 9 was led by Reverend Dr. Martin Luther King Jr. and other clergy leaders, but the protestors never got to Montgomery, after the leaders of the march decided to turn back midway to avoid violent confrontation with state troopers.³ Protestors, nevertheless, became the targets of Ku Klux Klan violence. The third march took place on March 21, beginning at the Brown Chapel AME Church in Selma and ending at the Alabama state capitol. Thousands of people joined the march to the capitol, protected by the National Guard and by FBI agents. Demonstrators walked between seven and seventeen miles each day, camping at night, and marching across a two-lane highway. By the end of the march, more than 25,000 protestors had joined.⁴

The marches in Selma represented a turning point in the civil rights movement. On March 17, President Lyndon B. Johnson presented the Voting Rights Act to Congress, and on August 6, President Johnson signed the bill into law in the presence of Dr. King and other leaders.⁵

The Voting Rights Act has been one of the most successful pieces of legislation because of its “immediate impact” in drastically increasing voter registration rates among Black voters and allowing Black voters to access the ballot, in many cases, for the first time.⁶ The VRA was enacted to enforce the guarantees of the Fifteenth Amendment which prohibits the denial or abridgment of the right to vote based on race, color or previous condition of servitude.⁷ The VRA was amended and reauthorized by Congress in 1970, 1975, 1982, 1992, and 2006.⁸

Notably, Section 2 of the VRA placed a nationwide prohibition on voting qualifications based on race, color, or language-minority status.⁹ Section 3(c) permitted federal courts to exercise jurisdiction over a state or political subdivision that the court had found to violate the Fourteenth and Fifteenth Amendments; thus a political subdivision that was subject to Section 3(c) could not change voting laws

² *Id.*

³ Stanford: The Martin Luther King Jr. Research and Education Institute, *Selma to Montgomery March*, <https://kinginstitute.stanford.edu/selma-montgomery-march> (last visited Feb. 27, 2024).

⁴ *Id.*

⁵ *Id.*

⁶ Nat'l Archives,

⁷ U.S. Const. Amend. XV, Section 1.

⁸ Cong. Research Serv., *The Voting Rights Act: Historical Development and Policy Background*, at 18 (Apr. 25, 2023), <https://crsreports.congress.gov/product/pdf/R/R47520>.

⁹ *Id.* at 3.

or practices without court approval.¹⁰ Section 5 established a preclearance formula for federal review of any changes to voting procedures or qualifications in states covered under the coverage formula of Section 4. Under Section 5, any changes within covered jurisdictions had to be precleared by the Attorney General of the United States or after a lawsuit before the U.S. District Court for the District of Columbia.¹¹

III. RECENT SUPREME COURT DECISIONS HAVE NARROWED THE SCOPE OF THE VRA

In the past decade, the Supreme Court issued two decisions that significantly limit the scope of the VRA. These decisions have contributed to an alarming trend in formerly covered jurisdictions, which have passed legislation that disproportionately impacts Black voters resulting in low turnout among Black voters. I briefly touch on each of these decisions below.

A. *Shelby County v. Holder*

In 2013, the U.S. Supreme Court decided *Shelby County v. Holder*, in which the Court invalidated Section 4(b) of the VRA as unconstitutional.¹² Section 4(b) included the coverage formula that determined which jurisdictions were subject to the preclearance procedure in Section 5. Those jurisdictions that “maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential election” were deemed covered jurisdictions under Section 4(b).¹³ This meant that such jurisdictions had to submit any changes to their voting procedures for preclearance by the Attorney General as part of an administrative review or in a lawsuit in the federal district court in the District of Columbia.

The Supreme Court’s reasoning behind its invalidation of Section 5 in *Shelby County* stemmed from the view that “current conditions” did not justify the coverage formula under Section 4(b).¹⁴ The Court observed that the formula was based on “decades-old data and eradicated practices,” that voter registration and turnout had “risen dramatically” in covered states and the racial disparity in those numbers was not compelling to justify preclearance as a remedy.¹⁵

¹⁰ Cong. Research Serv., *Voting Rights Act: Section 3(c) “Bail In” Provision*, at 3–4 (June 27, 2022), <https://crsreports.congress.gov/product/pdf/LSB/LSB10771>.

¹¹ Dep’t of Justice, *About Section 5 of the Voting Rights Act* (updated Nov. 17, 2023), <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

¹² *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).

¹³ *Id.* at 537.

¹⁴ *Id.* at 550.

¹⁵ *Id.* at 551.

The dissent in *Shelby County* noted the efficacy of Section 5 and its continuing need. The dissent observed that “between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory.”¹⁶ The dissent went on, “Congress found that the majority of DOJ objections included findings of discriminatory intent . . . and that the changes blocked by preclearance were ‘calculated decisions to keep minority voters from fully participating in the political process.’”¹⁷ Relying on this evidence, and more, the dissent concluded it was “sufficient to support Congress’ conclusion that ‘racial discrimination in voting in covered jurisdictions remained serious and pervasive.’” Justice Ginsburg predicted that this would be the case when she warned that “throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”¹⁸

Much of what the dissent predicted would happen in *Shelby County* materialized almost immediately after the opinion issued. The same day that the Court issued its decision in *Shelby County*, Texas implemented a discriminatory voter ID law, SB 14, which had been previously found to violate Section 5 in *Texas v. United States*.¹⁹ Although SB 14 became the subject of protracted litigation that ultimately resulted in a finding of a Section 2 violation and the law’s repeal several years later, the fact that Texas was emboldened enough to implement SB 14 after the *Shelby County* decision, underscores the impact of not having a functional Section 5 and the need for continued protections under the VRA.

Since then, many states have followed Texas’s example by enacting laws that have made it harder for voters, particularly voters of color, to access the ballot box. As a result of these laws, racial turnout disparities sharply grew. Data from the 2022 midterm elections demonstrates that racial disparities in voter turnout, criminal enforcement of voting laws, access to the ballot, and several other indicators of racial discrimination in voting have continued to worsen in the years since the *Shelby County* decision.

B. *Brnovich v. DNC*

In 2021, the Supreme Court weakened Section 2 of the VRA in *Brnovich v. DNC*.²⁰ In *Brnovich*, the Supreme Court heightened the standard for plaintiffs to bring cases challenging voting laws under Section 2’s “results test.”²¹ These types of

¹⁶ *Id.* at 571.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Texas v. United States*, 997 F. Supp. 2d 133, 159–66 (D.D.C. 2012).

²⁰ *Brnovich v. DNC*, 141 S. Ct. 2321 (2021).

²¹ *Id.* at 2338.

challenges to voting laws, called “vote denial” cases, as in *Brnovich*, involved challenges to two of Arizona’s newly enacted voting procedures that forbade out-of-precinct voting and limited who could collect absentee ballots. At trial, the plaintiffs had shown that these laws made it more difficult for Black, Latino, and Indigenous voters to cast ballots.²²

While the Supreme Court did not completely invalidate Section 2 in the same way that it invalidated the preclearance formula and by extension Section 5 in *Shelby County*, the Court established a narrow and unproven set of “guideposts” that plaintiffs are required to meet to successfully establish a Section 2 vote denial violation.²³

Many of the “guideposts” were novel and had little to do with analyzing racial impact. *Brnovich* has led to a narrowing of Section 2 and consequently limited the ability of civil rights organizations and the Department of Justice to challenge discriminatory vote denial laws.

IV. CASE STUDIES THAT ILLUSTRATE THE CONTINUED NEED FOR ROBUST PROTECTIONS UNDER THE VOTING RIGHTS ACT

A. Redistricting – case study Alabama

The 2020 redistricting of Alabama’s congressional districts demonstrates the continued need for robust protections under the Voting Rights Act. In *Allen v. Milligan*, the Supreme Court affirmed a lower court’s decision to invalidate Alabama’s congressional districting plan under Section 2 and require the legislature to draw a second majority-Black district.²⁴ After the Supreme Court’s decision, the case went back to the district court which ordered Alabama’s legislature to draw a remedial map that complied with its previous order and the Supreme Court’s decision.²⁵

Alabama then drew a map that defied court orders and included only one majority-Black district. After the plaintiffs objected, the district court halted the use of Alabama’s new remedial plan on the grounds that it violated Section 2 and failed to adhere to the court’s previous rulings and ordered a special master to propose three remedial plans and a report and recommendation.²⁶ Meanwhile, Alabama petitioned for an emergency stay of the district court’s order to the Supreme Court which denied

²² *Id.* at 2334–35.

²³ *Id.* at 2336.

²⁴ *Allen v. Milligan*, 599 U.S. 1, 24 (2023).

²⁵ See Doc. 156, *Caster v. Allen*, No. 2:21-cv-01536 (June 20, 2023).

²⁶ See Doc. 226, *Milligan v. Allen*, 2:21-cv-01530 (Aug. 8, 2023) (omnibus order in three district court cases).

the petition. Ultimately, the district court selected one of the special master's remedial maps.

Had Section 5 remained in place, the Alabama legislature would not have been able to introduce and implement, for the first time in 2021, or the second time in 2023, a map that violated Section 2. It would have been required to submit the 2021 map for preclearance which would have required the state to prove that the new map did not have the effect of denying or abridging the right to vote on account of race or color. Without the protections of Section 5, it took more than two years of litigation for Alabama to implement a new congressional plan that afforded Black voters an opportunity to elect candidates of choice.

B. Ballot Access Issues – Case Studies Alabama and Georgia

The adoption of discriminatory policies and the passage of new restrictive voting legislation in Alabama and Georgia demonstrates how states, previously covered under Section 4(b) and subject to preclearance under Section 5, began passing suppressive voting policies and absent these protections.

In 2011, Alabama passed a voter ID law that required all Alabamians to provide a valid form of photo ID from a narrow list of options.²⁷ In 2015, Alabama began closing many DMV offices in majority Black counties. The closures had an impact on Black voters' ability to obtain the necessary ID to vote.²⁸ These closures illustrate the ways that state policies such as closing DMV offices, seemingly unrelated to voting, can directly impact the ability of Black voters to access the franchise.

In 2022, Georgia passed SB 202, an omnibus voter suppression bill with provisions restricting ballot drop boxes, prohibiting voters from receiving food or water while they wait in line to vote, making it harder to vote absentee, and allowing the State Election Board to take over county election boards, which would give the State Election Board unprecedented authority to target jurisdictions with a large population of Black voters and other voters of color.

After SB 202's passage, the gap between participation rates for Black voters and white voters increased. In fact, the racial disparities in voter turnout in Georgia during the 2022 midterm cycle not only persisted but became significantly worse. In the November 2022 election, there was a 13.3 percentage point gap in turnout between White registered voters (58.3 percent) and Black registered voters (45 percent) in Georgia, which was significantly greater than the 8.3 percentage point

²⁷ Ala. Legislature Act No. 2011-673; Photo ID Law Enacted, Ala. Sec'y State, <https://www.sos.alabama.gov/alabama-votes/photo-voter-id/law-enacted> (last visited Feb. 27, 2024).

²⁸ Daniel Luzer, *Alabama Closing Many DMV Offices in Majority Black Counties*, *Governing* (Oct. 2, 2015), <https://www.governing.com/archive/alabama-demands-voter-id--then-closes-drivers-license-offices-in-black-counties.html>.

gap (62.2 percent to 53.9 percent) in the previous midterm election in 2018.²⁹ The disparity between Black and White voter turnout in Georgia in 2022 was actually higher than it had been in any general election in the past decade.³⁰

Many of the restrictions and prohibitions in SB 202 specifically track or target the ways in which Black voters in Georgia vote. For example, data showed that Black voters in Georgia were far more likely to have to stand in long lines to vote than White voters in both the 2020 election and previous election cycles.³¹ Georgia lawmakers, likely aware of this data, included provisions in SB 202 that penalize voters who are forced to wait in long lines by criminalizing the simple act of individuals and charitable organizations providing water to voters while they wait.³²

C. System-Impacted Voters – case study Florida

In the absence of the protections of the VRA, some states have started criminalizing the right to vote by disseminating the narrative of voter fraud.

In April of 2022, Florida enacted legislation establishing an election police unit.³³ The stated purpose of this special police force was to pursue voter fraud and other election crimes following false claims that the 2020 presidential election was stolen.³⁴ The new police force, officially named the Office of Election Crimes and Security arrested 20 individuals in August of 2022 and the racial disparities in arrests were appalling. While Black Floridians made up just 14.5 percent of the state’s population in the 2020 Census, at least 15 of the 20 individuals arrested by the new police force—a whopping 75 percent—were Black.³⁵

²⁹ *Georgia Election Results*, Ga. Sec’y State, <https://sos.ga.gov/page/georgia-election-results> (last visited Mar. 8, 2023).

³⁰ Sara Loving & Kevin Morris, Georgia’s Racial Turnout Gap Grew in 2022, Brennan Ctr. for Justice (Dec. 16, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/georgias-racial-turnout-gap-grew-2022>.

³¹ Stephen Fowler, *Why Do Nonwhite Georgia Voters Have To Wait In Line For Hours? Too Few Polling Places*, NPR (Oct. 10, 2020), <https://www.npr.org/2020/10/17/924527679/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl>.

³² Complaint, Georgia State Conference of the NAACP v. Brad Raffensperger, 1:21-mi-99999-UNA (N.D. Ga. 2021), <https://lawyerscommittee.org/wp-content/uploads/2021/03/2021-03-28-complaint-as-filed-with-temporary-case-number.pdf>.

³³ Maryam Saleh & Ese Olumhense, *DeSantis’ Election Police Have Largely Flopped in Florida Voter Prosecutions. A New Law Aims to Change That*, REVEAL (Mar. 9, 2023), <https://revealnews.org/article/desantis-election-police-have-largely-flopped-in-florida-voter-prosecutions-a-new-law-aims-to-change-that/>.

³⁴ Gary Fineout, *DeSantis signs bill creating one of the nation’s only election police units*, POLITICO (Apr. 25, 2022), <https://www.politico.com/news/2022/04/25/desantis-florida-election-police-units-00027577>.

³⁵ Sergio Bustos, *Crist decries voting-fraud arrests after body cam video shows voters shocked by felony charges*, Tallahassee Democrat, <https://www.tallahassee.com/story/news/politics/elections/2022/10/19/charlie-crist-ron-desantis-voting-fraud-arrests-police-body-camera-florida/10539631002/> (last updated Oct. 20, 2022).

Many of these voters were told that they were eligible to vote and sent voter registration cards directly from the state. Florida's efforts to criminalize elections represent yet another example of the startling trend of voter intimidation under the color of law. These tactics are designed to scare Black voters and other voters of color away from the ballot box, if not outright disqualify them.

This significant racial disparity in arrests under Florida's new law and the failure of the newly established police force to secure convictions³⁶ show that Florida is not serious about ensuring its elections are secure and rather aims to intimidate and harass Black voters and other voters of color.

V. CONCLUSION

Without robust protections like Section 5 of the VRA, states have become emboldened to pass discriminatory redistricting plans, omnibus voter suppression laws, and assembling election integrity units focused on ferreting out alleged voter fraud through covert investigations primarily of Black voters. Therefore, Congress must act immediately to ensure that future elections are administered safely, adequately funded, and freed from suppressive and malicious barriers to registering, casting, and counting ballots so that our democracy can continue to function and Black voters and other voters of color have equal access to the fundamental, precious right to vote.

I call on our leaders in Congress to enact legislation to fully restore the Voting Rights Act of 1965 and ensure that states cannot enact laws that target Black voters and other voters of color. Reforms like many of those included in the John Lewis Voting Rights Advancement Act would provide the U.S. Department of Justice and civil rights organizations with the tools they need to invalidate or successfully challenge discriminatory voting laws that make it increasingly difficult for Black voters and other voters of color to access to the ballot.³⁷

³⁶ Gary Fields et al., *New state voter fraud units finding few cases from midterms*, ASSOC. PRESS (Nov. 26, 2022), <https://apnews.com/article/2022-midterm-elections-voting-rights-florida-georgia-4db14ddccf37e4597cb9b7f20ec499b4>.

³⁷ Ian Weiner, *House of Representatives Passes John Lewis Voting Rights Advancement Act*, LAWYER'S COMM. C.R. UNDER LAW (Aug. 24, 2021), <https://www.lawyerscommittee.org/house-of-representatives-passes-voting-rights-advancement-act/>.