

**“Restoring the Voting Rights Act: Combatting Discriminatory Abuses”  
Hearing before the Senate Committee on the Judiciary, Subcommittee on the Constitution  
September 22, 2021**

**QUESTIONS FROM SENATOR BLUMENTHAL**

**Questions for Mr. John Yang:**

1. Statements at the hearing reflected that there was record turnout by white and minority voters in recent elections, undermining the need for preclearance and to restore the Voting Rights Act more generally.
  - a. Did the statistics cited in support of this argument present a fair and representative assessment of the state of voter access during the 2020 election? If not, why not?

The 2020 election must be understood in the context of our country’s history of political participation as well as the historical nature of the 2020 election itself. In addition to an exceedingly contentious presidential race, the 2020 election was held during the COVID-19 pandemic, which resulted in increased voter access in many states as states sought to address voter access in a publicly safe manner (e.g., expanding access to voting by mail, utilization of drop boxes, etc.). The fervor of the presidential race as well as the expanded options to participate likely boosted the participation of all voters in 2020. And it is unquestionable that [voter turnout was at a record high](#) in 2020 at nearly 158.4 million votes. Simply because voters of color were motivated and managed to proverbially walk to the polls in a rainstorm without an umbrella – while other communities drove to the polls in a raincoat – does not mean that the federal government no longer has a duty to provide that umbrella. All communities deserve equal protection and access to the polls, and none should face additional barriers and obstacles.

Even with historical rates of participation and increases across the board for different groups, we continue to see the *unequal* participation between voters of color and non-Latino White voters. For example, the 2020 election saw 70.9 percent of white voters cast ballots while only 58.4 percent of nonwhite voters voted. See Brennan Center for Justice, “Large Racial Turnout Gap Persisted in 2020 Election,” <https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election>. This pattern can also be seen at the state level. For states with a large enough base of Asian Americans to show a derived measure, Asian Americans continue to lag behind non-Latino White voters, often by double digits for the 2020 election, indicating that this is not a partisan issue for Asian Americans. Pennsylvania, Michigan and Colorado had the largest gaps for voter registration (at 26.4, 25.6 and 24.5 respectively) and Colorado, Massachusetts, and Michigan with the largest gaps for voter turnout (28.7, 27.5, and 23.1 respectively) in the Asian American community for the 2020 election. Although voting rights laws alone will not eliminate the disparity, there is no question that the existing laws exacerbate the problem for our community. See Table 1.

**Table 1: Gap Between Asian American voters and non-Latino White Voters by state**

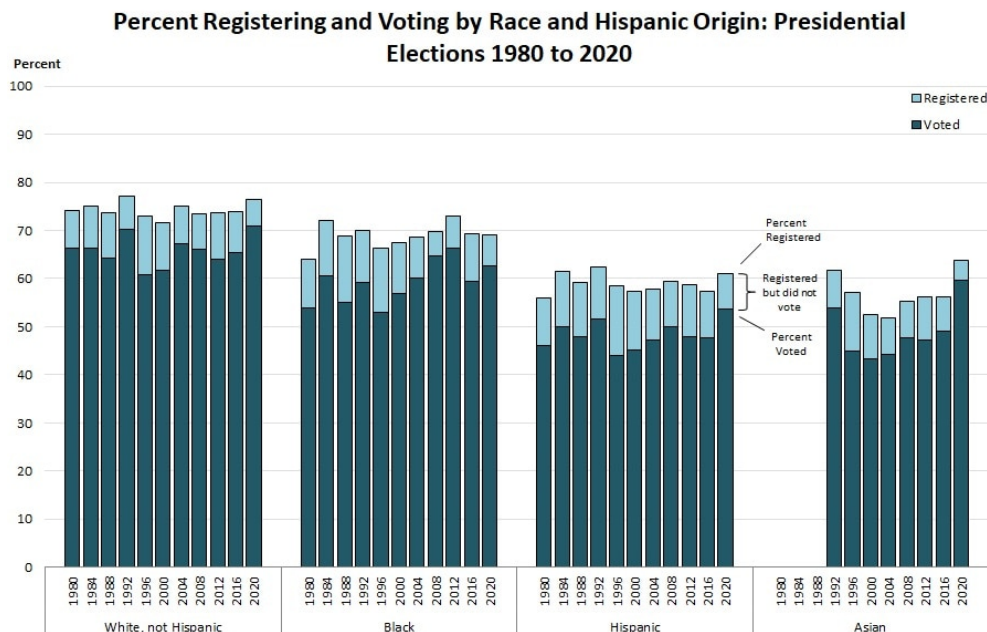
	<b>Voter Registration</b>	<b>Voter Turnout</b>
<b>ARIZONA</b>	9.9	9.1
<b>CALIFORNIA</b>	<b>15.3</b>	<b>14.7</b>
<b>COLORADO</b>	24.5	28.7
<b>CONNECTICUT</b>	<b>16.8</b>	<b>14.4</b>

<b>FLORIDA</b>	14.8	11.2
<b>GEORGIA</b>	18.2	17
<b>HAWAII</b>	<b>8.9</b>	<b>11.3</b>
<b>ILLINOIS</b>	<b>6.1</b>	<b>3.6</b>
<b>INDIANA</b>	4.6	2.1
<b>MARYLAND</b>	<b>8.6</b>	<b>8.2</b>
<b>MASSACHUSETTS</b>	<b>20.5</b>	<b>27.5</b>
<b>MICHIGAN</b>	25.6	23.1
<b>MINNESOTA</b>	4.7	15.9
<b>NEVADA</b>	<b>3.4</b>	<b>0.8</b>
<b>NEW JERSEY</b>	<b>1.7</b>	<b>3.2</b>
<b>NEW YORK</b>	<b>15.8</b>	<b>17.1</b>
<b>NORTH CAROLINA</b>	-4.7	-4.3
<b>OHIO</b>	17.8	14.4
<b>OREGON</b>	17.9	17.1
<b>PENNSYLVANIA</b>	26.4	22.6
<b>TEXAS</b>	15	13.3
<b>VIRGINIA</b>	<b>14.8</b>	<b>15.5</b>
<b>WASHINGTON</b>	<b>15.8</b>	<b>14.2</b>

Source: U.S. Census Bureau, Current Population Survey, Table 4b. Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020, <https://www2.census.gov/programs-surveys/cps/tables/p20/585/table04b.xlsx>.

This gap between voters in communities of color as compared to non-Latino white voters has been a persistent and consistent imbalance seen election after election. Every presidential election since 1980 has seen higher voter participation rates (i.e., both registration and turnout) for non-Latino White voters, except for the 2012 election when Black voters voted at a slightly higher rate (2.1%). See Figure 1 (for each election, there is a gap between different communities of color with non-Latino white voters).

**Figure 1. Historical Voting Patterns in Presidential Elections by Race**



Note: Percent of the citizen civilian noninstitutionalized population, age 18 and over.  
Source: Current Population Survey, Voting and Registration Supplements 1980 to Present, historical table A-6.  
Available: <https://www2.census.gov/programs-surveys/cps/tables/tme-series/voting-historical-time-series/>

This persistent gap in voter participation has also been egregious in the Asian American community. See Table 2; see also Figure 2. Since the 1990 election, Asian Americans have consistently seen a double-digit gap nationally for both voter registration and voter turnout as compared to non-Latino White voters. For example, even with the increase in voter engagement by Asian Americans in the 2020 election, there still existed a 11.2% gap between Asian Americans who voted compared to non-Latino White voters, and a gap of 12.7% for registration. These are virtually the same statistics from the 1990 elections, which is when data on Asian Americans voter participation first became available.

**Table 2: Historical Voting Patterns of Asian American Voters as compared to non-Latino (NL) White Voters**

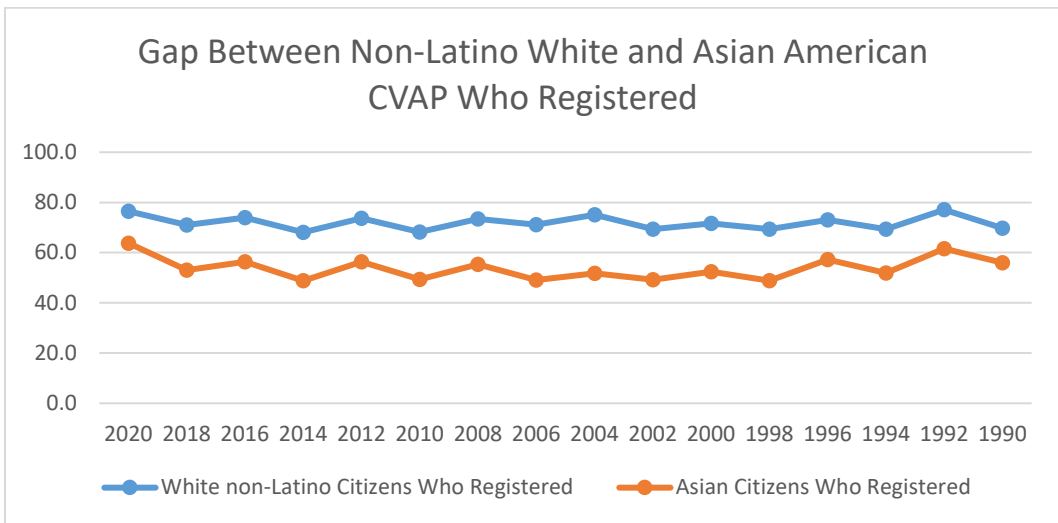
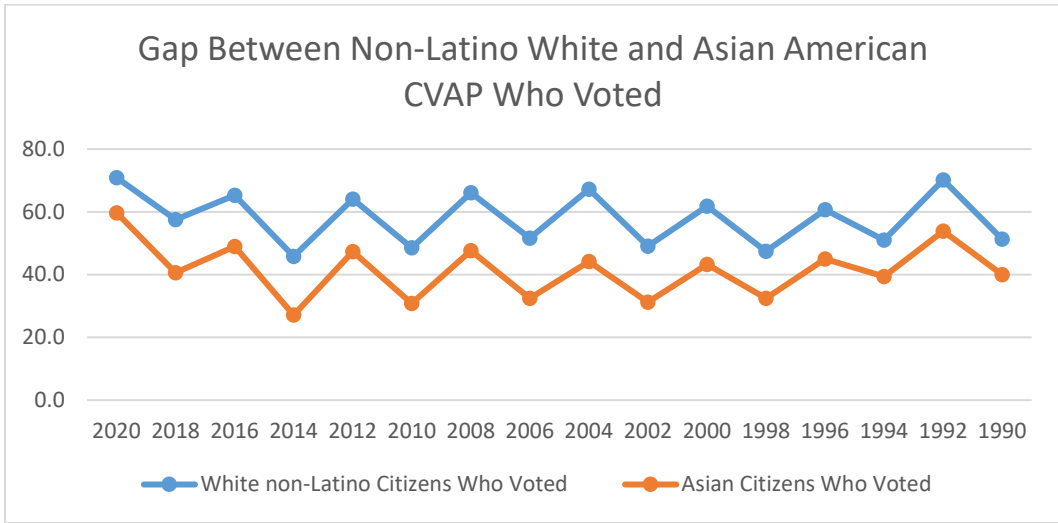
Year	NL White Voted	Asian <sup>1</sup> Voted	Gap between Asian and NL White Voted	NL White Registered	Asian <sup>1</sup> Registered	Gap between Asian and NL White Registered
2020	70.9%	59.7%	11.2%	76.5%	63.8%	12.7%
2018	57.5%	40.6%	16.9%	71.0%	53.0%	18.0%
2016	65.3%	49.0%	16.3%	73.9%	56.3%	17.6%
2014	45.8%	27.1%	18.7%	68.1%	48.8%	19.3%
2012	64.1%	47.3%	16.8%	73.7%	56.3%	17.4%
2010	48.6%	30.8%	17.8%	68.2%	49.3%	18.9%
2008	66.1%	47.6%	18.5%	73.5%	55.3%	18.2%
2006	51.6%	32.4%	19.2%	71.2%	49.1%	22.1%
2004	67.2%	44.2%	23.0%	75.1%	51.8%	23.3%
2002	49.1%	31.2%	17.9%	69.4%	49.2%	20.2%
2000	61.8%	43.3%	18.5%	71.6%	52.4%	19.2%
1998	47.4%	32.4%	15.0%	69.3%	48.9%	20.4%
1996	60.7%	45.0%	15.7%	73.0%	57.2%	15.8%
1994	51.0%	39.4%	11.6%	69.4%	51.9%	17.5%
1992	70.2%	53.9%	16.3%	77.1%	61.6%	15.5%
1990	51.3%	40.0%	11.3%	69.8%	56.0%	13.8%

<sup>1</sup> Prior to 2004, this category was 'Asian and Pacific Islanders', therefore rates are not directly comparable with prior years.

\* Note data not available prior to 1990 election for Asian voters

Source: U.S. Census Bureau, Current Population Survey, Table A-1. Reported Voting and Registration by Race, Hispanic Origin, Sex and Age Groups: November 1964 to 2020, <https://www2.census.gov/programs-surveys/cps/tables/time-series/voting-historical-time-series/a1.xlsx>.

**Figure 2. Persistent Gap in Voting Patterns Between Non-Latino White CVAP and Asian American CVAP**



Focusing merely on increases in absolute participation rates misses the point and the need for strong voting protections today – the reality is voting discrimination is still prevalent today. In fact, the increased participation by voters of color in the 2020 election has sparked an increase in retractions in the types of policies that would make voting more accessible, such as universal absentee voting, vote by mail opportunities, and expanded voter registration opportunities. As the [Brennan Center reported](#), in 2021, 18 states passed 34 laws restricting access to voting and as of May 4, 2022, at least 34 bills with restrictive provisions were moving through 11 state legislatures. At least 393 restrictive bills were being considered in 39 states for the 2022 legislative session. *See* Brennan Center for Justice, “Voting Laws Roundup: May 2022,” <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2022>. These restrictive measures will harm communities of color, who are often the targets for these restrictions. For example, vote by mail has been a major target for these restrictions precisely because this method of voting has been utilized by many voters of color, such as 64% of Asian Americans who chose to vote by mail in the 2020 elections.

Voting discrimination is not a thing of the past; simply looking at improvements to engagement by voters of color does not tell the appropriate story. The reality is that voters of color turned out IN SPITE OF all the barriers. And the rollback of many of the more flexible voting options precisely because they allowed for record turnout suggests that we still have a problem. Stated another way, in 2020, umbrellas were provided by the government because of COVID-19 and many people used them to prevent themselves from getting wet. Now, many jurisdictions are taking away the 2020 umbrellas through state legislation while at the same time saying that umbrellas are unnecessary because people did not get wet in 2020. Such circular and self-serving arguments result in the continued unequal engagement of voters of color, which shines the light on the continuing inequities of our democracy and the need for voting rights legislation to address the needs of our communities, including the need to restore and modernize the Voting Rights Act.

- b. Is overall turnout the appropriate metric to use to evaluate whether Congress should enact voting protections specifically for minority communities? If not, why not and what other metrics should be considered?

Overall turnout is a metric to use for consideration of the question on whether Congress should enact voting protections specifically for minority communities, but high turnout rates should not lead to the conclusion that voting rights protections are unnecessary. As evidenced by data shared in other parts of this response, there continues to be a persistent gap in voter participation by communities of color, regardless of increased engagement by the community. That is, even when our communities' numbers and participation increase (in spite of existing barriers), so do the barriers and obstacles that keep our community members from participating as freely and fully as non-Latino White voters. There should be no question that voting discrimination still exists, and Congress must fulfill its duty by enacting voting rights legislation that protects the rights of voters of color. There is a separate, but related, question about whether overall turnout is the appropriate metric to use to trigger voting protections, such as via a coverage formula as the previous Section 5 coverage formula did. To that end, a more sophisticated approach, which addresses the current moment and how the current generation of voting discrimination plays out, could be utilized. Such an approach can be found in the John R. Lewis Voting Rights Advancement Act via its geographic coverage formula and practice-based preclearance regime.

- c. How has the racial turnout gap been affected since the Supreme Court's *Shelby County* decision in 2013?

An [analysis conducted by the Brennan Center](#) found that “[b]etween 2012 and 2020, the white-Black turnout gap grew between 9.2 and 20.9 percentage points across five of the six states originally covered by Section 5 of the Voting Rights Act.” The analysis further found that “[t]he total white-nonwhite turnout gap has grown since 2012 in all of the eight states likely to be covered under the VRAA... [with] sufficient data to conclude that the gap has increased for Blacks, Hispanics, and Asians in Florida, Georgia, North Carolina, South Carolina, and Texas.” Observing that the increase was even more drastic in states likely to be subject to preclearance under the VRAA, the analysis noted seven out of the eight states saw white-nonwhite turnout gaps that grew more than the national rate between 2012 and 2020. See Brennan Center for Justice, “Racial Turnout Gap Grew in Jurisdictions Previously Covered by the Voting Rights Act,” <https://www.brennancenter.org/our-work/research-reports/racial-turnout-gap-grew-jurisdictions-previously-covered-voting-rights>.