

HEARING
SUBCOMMITTEE ON ELECTIONS
OF THE
COMMITTEE ON HOUSE ADMINISTRATION
“VOTING IN AMERICA: ENSURING FREE AND FAIR ACCESS TO THE BALLOT”
APRIL 1, 2021
MAJORITY QUESTIONS FOR THE RECORD
FOR
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1. *In your testimony, you noted that the current new wave of voter suppressive laws are being introduced and adopted in states that saw an increased turnout in Latino voters, as well as other voters of color during the 2020 election. To what extent does equal access to voting for Latino voters hinge on strengthening federal protections for access to voting?*

Equal access to voting for Latinos is intricately linked to federal voting protections, and strengthening these protections is essential in order to guarantee equal access to the vote. Latino voters are particularly vulnerable to this new wave of voter suppressive laws, in large part because Latinos are younger than other racial and ethnic groups.¹ Latinos, on average, are younger than the general population—the median age for Latinos is 30, while the median age for non-Hispanic Whites is 58.² Moreover, Latinos make up about 18% of the general population and over 12% of the United States’ citizen voting age population (CVAP).³ This new wave of restrictive voting bills may hinder the ability of young, first time Latinos to cast their first ballot. This generates a feedback loop in which youthful, registered voters are unable to overcome restrictive voter bills and thus remained locked out of the electoral process.

As discussed in more detail later in response to question 3, the new wave of restrictive voting bills directly targets, among other groups, young Americans. According to the 2019 5-year American Community Survey, the proportion of the Latino population under the age of 18 is 31.56% compared to 18.86% amongst non-Hispanic Whites.⁴ This gap will only continue to magnify as Latinos, who represent 18% of the U.S. population, increase their share of the American electorate for elections to come.⁵

¹ Katherine Schaeffer, *The most common age among whites in the U.S. is 59- more than double that of racial and ethnic minorities*, PEW RESEARCH CENTER (July 30, 2019), <https://www.pewresearch.org/fact-tank/2019/07/30/most-common-age-among-us-racial-ethnic-groups/>.

² Katherine Schaeffer, *The most common age among whites in the U.S. is 59- more than double that of racial and ethnic minorities*, PEW RESEARCH CENTER (July 30, 2019), <https://www.pewresearch.org/fact-tank/2019/07/30/most-common-ageamong-us-racial-ethnic-groups/>.

³ *Before the S. Committee on House Administration: Hearing on Voting in America: Ensuring Free and Fair Access to the Ballot*, 4, 117th Cong. (2021) (statement of Sonja Diaz, Founding Executive Director, UCLA Latino Policy & Politics Initiative), <https://latino.ucla.edu/wp-content/uploads/2021/03/Sonja-Diaz-UCLA-LPPI-April-2021-Congressional-Testimony.pdf>.

⁴ U.S. Census Bureau, 2019 American Community Survey 5-year Estimates. (Mar. 25, 2021).

⁵ *Id.*

The restrictive voting bills being introduced and enacted in states across the country make it harder to register to vote, cast a ballot, limit early voting, and close off avenues to the ballot box.⁶ Without a systemic, federal overhaul, states and localities will be able to continue to suppress and deny Latinos full access to voting. Federal protections will ensure that Latinos across the country have the same access as each and every other citizen, a right they are currently denied.

Enacting federal protections to ensure fair and free elections can increase the ability of Latinos, especially first-time voters, to engage in shaping our democracy. Latinos are the nation's largest non-White demographic and represent a growing segment of the American electorate. Between 2008 and 2019, the Latino CVAP increased by 54.98%.⁷ If Latino voters are given equal access to the ballot, this growth can lead to increases in electoral participation and civic engagement in American politics and government. Similarly, an increased CVAP should lead to an increase in the election of Latino-preferred candidates across the board. Yet, this trend has yet to emerge. Currently, Latinos still struggle to access the vote because states and localities dilute the voting potential of Latinos through discriminatory electoral systems and gerrymandered districting schemes that hinder their ability to elect a candidate of choice.⁸

These restrictive voting practices accelerated after the Supreme Court's decision in *Shelby County v. Holder*, which struck down the Voting Rights Act's preclearance formula.⁹ After the decision, states like Texas and North Carolina immediately passed or sought to enforce restrictive voting laws that the previously been prevented by the VRA and its enforcement mechanisms.¹⁰ The *Shelby County* decision paved the way for systematic statewide efforts to reduce the number of polling places, especially in states and localities with past histories of racial discrimination in voting.¹¹ Moreover, these efforts took place, "amid a larger constellation of efforts to prevent voters of color from electing the candidates of their choice, such as enactment of stricter voter identification laws, restrictions on voter registration, and voter purges."¹² For example, after the *Shelby County* decision, the State of Texas, which was covered under the preclearance provisions of Section 5 of the VRA,

⁶ BRENNAN CENTER FOR JUSTICE, State Voting Bills Tracker 2021, <https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021> (last visited Mar. 29, 2021). See also, The Governor of Iowa passed a restriction, limiting early voting and mail voting. Ryan Foley, *Early Voting in Iowa at Record Pace with Several Days Left*, AP (Oct. 23, 2020), <https://apnews.com/article/election-2020-donald-trump-iowa-elections-iowa-city-d8c7410cde65853bcd7d80b50f6b0a1b>; Ben Nadler and Jeff Amy, *Georgia Gov. Kemp Signs GOP Election Bill Amid an Outcry*, AP (Mar. 25, 2021) <https://apnews.com/article/donald-trump-legislature-bills-state-elections-voting-rights-b2b014cc81894a50fc513168a5f1d0b8>.

⁷ U.S. Census Bureau, 2008 American Community Survey 3-year Estimates; U.S. Census Bureau, 2019 American Community Survey 5-year Estimates. (Mar. 25, 2021). The number of Latino voting age citizens increased from 18.46 million to 28.61 million over this time period. This growth drastically outpaced the growth of the non-Hispanic White CVAP, which increased only 2.26%.

⁸ See *Luna et al. v. County of Kern et al.*, 291 F. Supp. 3d 1088 (E.D. Cal. 2018); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014); *Patino v. City of Pasadena*, 230 F. Supp. 3d 677 (S.D. Tex. 2017).

⁹ *Shelby County v. Holder*, 570 U.S. 529 (2013). Section 4(b) of the Voting Rights Act was the "coverage" formula, which indicated which areas of the United States were required to have their election changes approved of before they were made by either the Department of Justice or through a lawsuit before the United State District Court for the District of Columbia. See THE LEADERSHIP CONFERENCE EDUCATION FUND, *Democracy Diverted, Polling Place Closures And The Right To Vote*, September 2019, <http://civilrightsdocs.info/pdf/reports/DemocracyDiverted.pdf>.

¹⁰ BRENNAN CENTER FOR JUSTICE, *The Effects of Shelby County v. Holder*, <https://www.brennancenter.org/our-work/policy-solutions/effects-shelby-county-v-holder> (last visited Apr. 15, 2021).

¹¹ *Id.*

¹² THE LEADERSHIP CONFERENCE EDUCATION FUND, *Democracy Diverted, Polling Place Closures And The Right To Vote*, September 2019, <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

implemented SB 14, a strict voter identification law that had discriminatory effects on Black and Latino voters in Texas. In the 2016 suit *Veasey v. Abbott*, the Fifth Circuit found that SB 14 violated Section 2 of the Voting Rights Act because of its discriminatory effect and also determined that the law worked in concert with Texas’s “legacy of state-sponsored discrimination to bring about [a] disproportionate result.”¹³

Undoing federal protections undermines and diminishes the progress made for all voters, especially for Latinos and other voters of color. Absent sweeping federal action, Latinos will continue to face a myriad of barriers to their fundamental right to vote. Worse yet, Latino voters living in a subset of jurisdictions where the Latino population, including the Latino CVAP, has grown the most over the past decade will face even greater barriers than other voters. Indeed, in the same states where Latino CVAP has grown and where Latinos significantly increased the number of ballots cast between the 2016 and 2020 presidential elections, there exists an avalanche of restrictive voting bills.

This has been particularly evident in states with growing Latino electorates that have sought to close polling locations. In particular, there were increases in the number of potential eligible Latino voters in the jurisdictions that saw a disproportionate number of polling place closures. The growth of the Latino CVAP means that voters in those states are more heavily burdened. From 2008-2019, Texas and Arizona saw a significant increase in the Latino CVAP. In Texas, there was a 47.27% increase and in Arizona, there was a 59.07% increase.¹⁴ In Georgia, the Latino CVAP increased 82.22% from 2010 to 2019.¹⁵ In Texas, closing polls across the state before and during the 2020 General Election disproportionately harmed Latino voters since they lived in more populous counties but were suddenly faced fewer electoral resources.¹⁶ A paper by political scientists at the University of Houston “found that after [McLennan County (where Waco and West)] transition to vote centers, more voting locations were closed in Latinx neighborhoods than in non-Latinx neighborhoods, and that Latinx people had to travel farther to vote than non-Hispanic whites.”¹⁷ This issue is not unique. There have been nearly 1,700 poll closures across the United States, primarily in Texas, Arizona, and Georgia.¹⁸ Notably, these closures occurred in jurisdictions that both were previously covered by Section 5 of the Voting Rights Act and have growing Latino populations.¹⁹ These jurisdictions were previously covered because there was a demonstrated history of discrimination in voting access and the pattern that is being repeated in the aftermath of *Shelby County v. Holder*. The same jurisdictions closed polling places once their election practices were no longer subject to approval, showing that federal intervention is necessary to preserve long-lasting voting access.

The current wave of restrictive voting bills likewise reflects the political backlash that has appeared as a response to the growth and consequence of voters of color. During the 2020 General Election, approximately one third of all eligible voters were persons of color—the largest share of non- white

¹³ 830 F. 3d 216, 265 (5th Cir. 2016).

¹⁴ *Supra*, note 3 at 6, Table 1.

¹⁵ U.S. Census Bureau, 2019 American Community Survey 5-year Estimates, (Apr. 19, 2021).

¹⁶ LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, Democracy Diverted: Polling Place Closures and the Right to Vote (Apr. 23, 2020), <https://civilrights.org/democracy-diverted/>.

¹⁷ Richard Salame, *Texas Closes Hundreds of Polling Sites, Making it Harder for Minorities to Vote*, GUARDIAN (Mar. 2020), <https://www.theguardian.com/us-news/2020/mar/02/texas-polling-sites-closures-voting>.

¹⁸ THE LEADERSHIP CONFERENCE EDUCATION FUND, Democracy Diverted, Polling Place Closures And The Right To Vote, September 2019, <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

¹⁹ *Id.*

voters in history.²⁰ Even while facing the greatest barriers to accessing the ballot box, these voters turned out in record numbers; an estimated 16.6 million Latino voters cast a ballot in the 2020 General Election.²¹ After the record turnout of the 2020 election, state legislatures have introduced an unprecedented number of bills that would operate to restrict voting access.²² The bulk of these bills have been introduced in states that saw an increase in voter turnout for Latinos and other voters of color, including Arizona and Georgia.²³ Such trends are not coincidental.

The extent to which Latino voters have equal access to voting rights is directly linked to the presence and strength of federal laws protecting the fundamental right to vote. Federal protections are necessary to safeguard the fundamental right to cast a ballot. Congressional action to enact a robust benchmark to ensure fair and free elections are required to uphold equal access to the ballot box for Latinos and all Americans.

2. *The American electorate is changing, and we must ensure every American has the ability to participate.*

- a. *In your experience and research, what are the most common barriers people experience when attempting to cast a ballot?*
- b. *Has your research found that these barriers disproportionately impact certain communities? If so, which communities?*

Even though, “the right of suffrage is a fundamental matter in a free and democratic society,”²⁴ and, “[e]ach and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies,”²⁵ many Americans face significant barriers to casting their ballot. Unfortunately, these barriers are disproportionately felt by communities of color, low-income communities, people with disabilities, and people whose first language is not English. Common barriers to attempting to cast a ballot include:

- Inaccessible voter registration and onerous requirements;
- Unduly restrictive photo identification laws;
- Insufficient or ineffective language assistance for limited English proficient voters, including as a result of jurisdictions failing to comply with Section 203 of the Voting Rights Act;

²⁰ Michael Herndon Et Al., *The Power Of The New Majority* (2020), <http://lppi.sites.luskin.ucla.edu/research/the-power-of-the-new-majority-a-10-state-analysis-of-voters-of-color-in-the-2020-election/>; See also Anthony Cilluffo & Richard Fry, *An Early Look at the 2020 Electorate*, PEW RESEARCH CENTER (Jan 30, 2019), <https://www.pewresearch.org/social-trends/2019/01/30/an-early-look-at-the-2020-electorate-2/>.

²¹ Rodrigo Dominguez-Villegas Et Al., *Vote Choice Of Latino Voters In The 2020 Presidential Election* (2020), <https://latino.ucla.edu/wp-content/uploads/2021/01/Election-2020-Report-1.19.pdf>. This number represented the single largest four-year increase in the Latino vote in U.S. history.

²² As of February 19, 2021, state lawmakers in 43 states have advanced 253 bills with provisions that restrict voting access. Before the S. Committee on Rules & Administration: Hearing on S. 1, *The For The People Act*, 117th Cong. (2021) (statement of Michael Waldman, President, Brennan Center for Justice), <https://www.brennancenter.org/sites/default/files/2021-03/2021-03-22%20Waldman%20-%20Testimony.pdf>.

²³ Diaz, *Supra*, note 2 at 3. Indeed, “in the three states with the most voter suppression bills this legislative term, Latino voters played a significant role in influencing the outcome of the 2020 Presidential Election, whether they were 25% of a state’s registered voter population or less than 4%, as was the case in Georgia.”

²⁴ *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964).

²⁵ *Id.* at 565.

- Lack of access to in-person voting due to inaccessible polling locations, restrictive polling hours and dates, restrictions on early voting, lengthy wait times, and harassment and intimidation at the polling place;
- Inability to cast a ballot due to improper voter roll purges;
- Unduly restrictive vote-by-mail requirements, including restrictive qualifications as well as restrictive procedural requirements;
- Denial of the right to vote due to previous convictions; and
- Socioeconomic factors, which are heavily correlated with race and/or ethnicity, that compound the effects of restrictive voting laws.

Inaccessible Voter Registration and Onerous Requirements.

Barriers to casting a ballot start with voter registration, and these disproportionately impact first-time voters, like young people and new citizens, voters who have been previously purged from voter rolls, and voters who move frequently and are required to change their voter registration as a result. For many voters, simply accessing registration proves burdensome. See Table 1 below an overview of access to internet subscription by race/ethnicity for Black Americans, Latinos, and whites in the nation's ten most populous Latino states. Further disparities exist for voters living in rural areas, including many Indigenous voters living on reservations, who often live far from their nearest in-person registration location.²⁶ Moreover, lack of internet access prevents some voters from registering online and disproportionately burdens low-income voters and voters of color, who are over-represented amongst American households who lack access to the internet or an internet-connected device.²⁷ Finally, many online voter registration portals fail to provide accommodations for voters with disabilities.²⁸

²⁶ JAMES THOMAS TUCKER, JACQUELINE DE LEÓN, AND DAN MCCOOL, NATIVE AMERICAN RIGHTS FUND, OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICAN VOTERS 79 (Jun. 2020), https://vote.narf.org/obstacles-at-every-turn/?_ga=2.84448537.1897354183.1618606717-1660746096.1618424215.

²⁷ U.S. Census Bureau, 2019 American Community Survey 5-year Estimates, (Mar. 25, 2021). *See also*, JAMES THOMAS TUCKER, JACQUELINE DE LEÓN, AND DAN MCCOOL, NATIVE AMERICAN RIGHTS FUND, OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICAN VOTERS 78 (Jun. 2020), https://vote.narf.org/obstacles-at-every-turn/?_ga=2.84448537.1897354183.1618606717-1660746096.1618424215.

²⁸ *See* CENTER FOR ACCESSIBLE TECHNOLOGY, AMERICAN CIVIL LIBERTIES UNION, ACCESS DENIED: BARRIERS TO ONLINE VOTER REGISTRATION FOR CITIZENS WITH DISABILITIES (Feb. 2015), <https://www.aclu.org/report/access-denied-barriers-online-voter-registration-citizens-disabilities>.

Table 1. Total Households Without an Internet Subscription for Latino and Black Households in the U.S. and Ten Most Populous Latino States, 2019²⁹

	Total Households without Internet Subscription	% Without Internet Subscription - Latino	Percentage Point Difference from Latino Population Share	% Without Internet Subscription - Black	Percentage Point Difference from Black Population Share	% Without Internet Subscription - White	Percentage Point Difference from White Population Share
United States	22,917,611	25.99%	7.98	19.61%	7.30	48.23%	-12.47
Texas	2,520,760	55.62%	16.28	14.16%	2.38	27.12%	-14.83
California	2,348,580	56.83%	17.81	8.14%	2.62	24.26%	-12.92
Florida	1,698,610	31.91%	6.33	24.92%	9.60	40.88%	-13.02
New York	1,267,534	27.60%	8.59	22.44%	8.19	43.34%	-12.27
Illinois	811,908	24.34%	7.22	23.86%	9.89	46.73%	-14.59
Arizona	508,792	44.74%	13.41	5.19%	0.98	37.10%	-17.61
New Jersey	477,070	34.47%	14.26	21.65%	8.98	38.98%	-16.39
Colorado	297,953	36.73%	15.20	5.71%	1.76	52.24%	-15.82
Nevada	256,193	41.17%	12.47	14.62%	5.88	33.94%	-15.29
New Mexico	230,341	56.37%	7.58	2.16%	0.35	23.64%	-13.75

Overly burdensome voter registration requirements both independently burden voters and exacerbate the disparities created by inaccessible registration platforms and locations. Burdensome laws include those that require applicants to present a photo identification and offer no alternative as well as those that impose unduly harsh registration deadlines. Such laws disproportionately disenfranchise communities of color and low-income communities. One study found that, “more than one in 10 [B]lack[] and Hispanic[voters] missed the registration deadline to vote in 2016, as opposed to just 3 percent of whites.”³⁰

Unduly Restrictive Photo Identification Laws.

Over the past decade, states all over the country have enacted restrictive photo identification laws. In general, these laws require voters to present a valid government-issued photo identification and may require the identification to include the registrant’s current residential street address within the jurisdiction.³¹ In many states, the voter ID laws lack a meaningful alternative, requiring voters who

²⁹ U.S. Census Bureau, 2019 American Community Survey 5-year Estimates, (Mar. 25, 2021). Percentage point contrasts are calculated as the difference between the percent share of total households without an internet connection and the percent share of total population for each group.

³⁰ Vann R. Newkirk, *Voter Suppression is Warping Democracy*, ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>.

³¹ National Conference of State Legislatures, *Voter Identification Requirements: Voter ID Laws* (Aug. 25, 2020), <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

do not possess the requisite identification to cast a provisional ballot and take steps after Election Day to further prove their identity.³²

Restrictive voter identification laws disproportionately burden voters of color and low-income voters, who are less likely to possess a qualifying voter identification.³³ For example, research suggests that Latinos are less likely to have access to the underlying documents needed to secure a government-issued photo ID and are subject to socioeconomic disparities which can raise the cost of education on voter identification rules and visiting government offices.³⁴ Importantly, this disparity has a meaningful impact on participation: between 2006 and 2014, Latino turnout was 7.1% lower in strict voter identification states in general elections than in states without those requirements, and 5.3% lower in primaries, while white turnout was 0.2 percent higher in general, and 0.4 percent higher in primaries.³⁵ With the rise in strict voter identification and registration legislation, voter turnout gaps will be more pronounced among Latino voters in comparison to white voters.

Similarly, strict voter ID laws burden young voters who move frequently and may not have access to the underlying documents necessary to obtain the qualifying ID. Finally, these laws disenfranchise transgender and non-binary voters whose government-issued identification may list a sex that differs from their gender identity.³⁶

Insufficient or Ineffective Language Assistance.

Despite the minority language protections of Section 203 of the Voting Rights Act,³⁷ insufficient or ineffective language assistance remains a substantial burden for many limited English proficient voters, who, as of 2019, make up 4.82% of the CVAP of the United States, or 11.13 million total people.³⁸ The cause is twofold.

³² See *id.*

³³ Theodore R. Johnson and Max Feldman, Brennan Center, *The New Voter Suppression* (Jan. 16, 2020), <https://www.brennancenter.org/our-work/research-reports/new-voter-suppression>; JAMES THOMAS TUCKER, JACQUELINE DE LEÓN, AND DAN MCCOOL, NATIVE AMERICAN RIGHTS FUND, OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICAN VOTERS 73-78 (Jun. 2020), https://vote.narf.org/obstacles-at-every-turn/?_ga=2.84448537.1897354183.1618606717-1660746096.1618424215.

³⁴ See Matt Barreto, Stephen Nuño, & Gabriel Sánchez, *The Disproportionate Impact of Voter-ID Requirements on the Electorate—New Evidence from Indiana*, 42 Pol. Sci. & Pol., 111-116 (2009); M.V. Hood III & Charles S. Bullock III, *Worth a Thousand Words?: An Analysis of Georgia's Voter Identification Status*, 36 Am. Pol. Research 555 (July 2008); Keesha Gaskins & Sundee Iyer, *The Challenge of Obtaining Voter Identification*, THE BRENNAN CENTER FOR JUSTICE (2012), <http://www.brennancenter.org/publication/challenge-obtaining-voter-identification>; Zoltan Hajnal, Nazita Lajevardi & Lindsay Nielson, *Voter Identification Laws and the Suppression of Minority Votes*, 79 J. of Pol. 363 (2017).

³⁵ Zoltan Hajnal, Nazita Lajevardi & Lindsay Nielson, *Voter Identification Laws and the Suppression of Minority Votes*, 79 J. of Pol. 363, 368 (2017). The authors expressly disavow finding a causal connection between voter ID and voter turnout given the difficulty of disaggregating the impact of voting procedures from other factors such as the popularity of candidates or election day weather, but the authors' results are strongly suggestive. See *Id.*

³⁶ See generally TAYLOR N.T. BROWN AND JODY L. HERMAN, THE WILLIAMS INSTITUTE, UCLA SCHOOL OF LAW, THE POTENTIAL IMPACT OF VOTER IDENTIFICATION LAWS IN THE 2018 GENERAL ELECTION (Aug. 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Voter-ID-Aug-2018.pdf>.

³⁷ 52 U.S.C. § 10503. Section 203 requires certain covered jurisdictions to provide all voting materials in certain non-English languages.

³⁸ U.S. Census Bureau, 2019 American Community Survey 5-year Estimates, (Mar. 25, 2021).

First, many voters with limited English proficiency simply live in jurisdictions or speak languages that are not covered by Section 203 of the Voting Rights Act, and as a result, polling places are not required to provide voting materials in their language.³⁹ In these jurisdictions, language assistance and outreach are performed only as a result of goodwill or state law, and voters cannot expect to a bilingual translator or non-English language materials at the polling place. Although Section 208 of the Voting Rights Act requires polling locations to allow voters in need of language assistance to receive assistance from persons of their choice, the burden is on the voter to seek this assistance and in some instances jurisdictions have failed to allow such assistance, in violation of federal law.⁴⁰ Second, some jurisdictions that are covered by Section 203 of the Voting Rights Act have failed to comply with its requirements by not providing adequate and required materials in minority languages and Section 203 has been historically under-enforced.⁴¹

Inadequate Access to In-Person Voting.

Many voters face barriers to casting a ballot in person as a result of inaccessible polling locations, restrictive polling hours and dates, including restrictions on early voting, lengthy wait times, and harassment at the polling place. In-person voting can frequently be inaccessible for voters with disabilities, as a result of hard-to-use voting machines, untrained poll-workers and obstacles at the polling place that prevent voters with limited mobility from making it to the voting booth.⁴² Moreover, many Indigenous voters living on reservations live at significant distances from their nearest polling places, with some tribal members having to travel up to 100 miles round trip to cast a ballot.⁴³ Limited polling hours and reductions in early voting also burden voters, especially voters who have difficulties making it to the polls because of work, childcare, and lack of transportation. Laws that create inaccessible polling locations and long wait times often disenfranchise communities

³⁹ See, e.g., U.S. Dep't of Justice, *Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act*, <https://www.justice.gov/crt/cases-raising-claims-under-language-minority-provisions-voting-rights-act> (collecting cases where the United States has filed complaints against jurisdictions subject to Section 203 of the Voting Rights Act for noncompliance); JAMES THOMAS TUCKER, JACQUELINE DE LEÓN, AND DAN MCCOOL, NATIVE AMERICAN RIGHTS FUND, OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICAN VOTERS 51-52 (Jun. 2020), https://vote.narf.org/obstacles-at-every-turn/?_ga=2.84448537.1897354183.1618606717-1660746096.1618424215. See also, Asian Pacific American Legal Center & Asian American Justice Center, *Help Asian Americans Protect Their Voting Rights: A Guide to Ensure Language Assistance During Elections*, AAAJ (Feb. 2012), <https://www.advancingjustice-alc.org/wp-content/uploads/2012/11/Section-203-handbook-Final-02-2010.pdf>.

⁴⁰ See U.S. Dep't of Justice, *Cases Raising Claims Under Section 208 of the Voting Rights Act*, <https://www.justice.gov/crt/cases-raising-claims-under-section-208-voting-rights-act> (collecting cases where the United States has filed a complaint against jurisdictions for failure to comply with Section 208 of the Voting Rights Act).

⁴¹ See e.g., JAMES THOMAS TUCKER, JACQUELINE DE LEÓN, AND DAN MCCOOL, NATIVE AMERICAN RIGHTS FUND, OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICAN VOTERS 58-64 (Jun. 2020), https://vote.narf.org/obstacles-at-every-turn/?_ga=2.84448537.1897354183.1618606717-1660746096.1618424215. See also, Matthew Higgins, *Language Accommodations and Section 203 of the Voting Rights Act: Reporting Requirements as a Potential Solution to the Compliance Gap*, 67 STANFORD L. REV. 917, 919 (2015).

⁴² See Lisa Schur, Meera Adya, and Mason Ameri, *Accessible Democracy: Reducing Voting Obstacles for People with Disabilities*, 14 ELECTION L. J. 1 (2015), https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Accessible%20Democracy%20Reducing%20Voting%20Obstacles%20People%20Disabilities.pdf; National Disability Rights, *Polling Places Remain Inaccessible to Voters with Disabilities, Here's How to Fix Them* (Aug. 18, 2020), <https://www.ndrn.org/resource/polling-places-remain-inaccessible-to-voters-with-disabilities-heres-how-to-fix-them/>.

⁴³ JAMES THOMAS TUCKER, JACQUELINE DE LEÓN, AND DAN MCCOOL, NATIVE AMERICAN RIGHTS FUND, OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICAN VOTERS 90-92 (Jun. 2020), https://vote.narf.org/obstacles-at-every-turn/?_ga=2.84448537.1897354183.1618606717-1660746096.1618424215.

of color. In 2016, for example, the Fourth Circuit found that a North Carolina law that, amongst other things, limited the state's early voting because it was enacted with the intent of disenfranchising and did in fact disenfranchise Black voters.⁴⁴ During the 2020 Primary Election in Georgia, voters who voted at polling stations where 90% of the voters were Black, the wait time was 51 minutes, compared to six minutes at polling stations where 90% of the voters were White.⁴⁵

Voter Purges.

Voter purges, or the en masse removal of voters from voter registration lists, pose a substantial barrier to casting a ballot, especially in states previously covered by the Voting Rights Act's preclearance requirements. Between 2016 and 2018, 17 million people were purged from voter rolls, and the rate of purges was 40% higher in jurisdictions previously covered by the VRA than those not previously covered.⁴⁶ These purges are often conducted using error-prone systems and frequently result in eligible voters being improperly removed from the rolls, in violation of federal law.⁴⁷ Voter purges disproportionately impact voters of color, including Latino voters.⁴⁸

Unduly Restrictive Vote-by-Mail Requirements.

Many voters face barriers to voting by mail as a result of restrictive qualifications as well as restrictive procedural requirements. Although vote-by-mail can serve as an accessible alternative for voters who cannot vote at the polling place, many states have failed to open mail voting to all eligible voters.⁴⁹ Procedural restrictions on mail voting, like requiring mail ballots to be notarized or signed by an adult witness, signature matching, failure to provide sufficient opportunity to cure, and requiring voters to pay for return postage, create further barriers to mail voting.

Denial of the Right to Vote Due to Previous Convictions.

Many Americans are denied the right to vote as a result of a previous felony conviction. According to The Sentencing Project, as of 2020, approximately 5.17 million Americans, or 2.27 percent of the

⁴⁴ See North Carolina State Conf. of NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016).

⁴⁵ Jim Galloway, *Opinion: The data says people of color are waiting longest to vote in Georgia*, ATLANTA J. CONSTITUTION (Oct. 20, 2020), <https://www.ajc.com/politics/politics-blog/opinion-the-data-says-people-of-color-are-waiting-longest-to-vote-in-georgia/YKXQ63ZMUJC4POV7YCTYS7DNPQ/>.

⁴⁶ Wendy Weiser, Et Al, *Congress Must Pass the For the People Act*, BRENNAN CENTER FOR JUSTICE (Mar 18, 2021), <https://www.brennancenter.org/our-work/policy-solutions/congress-must-pass-people-act#s1-sa-p3>.

⁴⁷ Kevin Morris & Myrna Pérez, *Purges: A Growing Threat to the Right to Vote*, BRENNAN CENTER FOR JUSTICE (July 20, 2018), <https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote>; see also Christopher Ingraham, *This anti-voter-fraud program gets it wrong over 99 percent of the time. The GOP wants to take it nationwide*, WASH. POST (July 20, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/07/20/this-anti-voter-fraud-program-gets-it-wrong-over-99-of-the-time-the-gop-wants-to-take-it-nationwide/>; Benjamin Hardy, *Data mix-up from Ark. Secretary of State purges unknown number of eligible voters*, ARK. TIMES (July 25, 2016), <https://arktimes.com/arkansas-blog/2016/07/25/data-mix-up-from-ark-secretary-of-state-purges-unknown-number-of-eligible-voters>.

⁴⁸ See, e.g., Kevin Morris & Myrna Pérez, *Purges: A Growing Threat to the Right to Vote*, BRENNAN CENTER FOR JUSTICE (July 20, 2018), <https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote>.

⁴⁹ See UCLA Voting Rights Project: Mindy Acevedo, Matthew A. Barreto, Michael Cohen, & Chad W. Dunn, Sonni Waknin, *Ensuring Equal Access to the Mail-in Ballot Box*, 68 UCLA L. Rev. Discourse 4, 8 (2020); Nat'l Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, Sept. 24, 2020, <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

voting eligible population, are disenfranchised as a result of a past felony conviction.⁵⁰ Black Americans are disproportionately impacted by felony disenfranchisement-- more than 6.2 percent of the adult Black population is disenfranchised, compared to only 1.7 percent of non-Black adults.⁵¹

Socioeconomic Factors

Socioeconomic status directly correlates with political participation.⁵² Studies conclude that, even after controlling for other voter characteristics, political participation can be explained largely by socioeconomic factors.⁵³ Research has shown that race and ethnicity often determine a person's socioeconomic status and that communities are often segregated by these variables. Simply put, socioeconomic status impacts an individual's ability to participate in the electoral process, and research has long supported this association. Many of the regressive voting bills introduced across the U.S. over the last decade have targeted low-income voters, in effect targeting racial/ethnically diverse voters.⁵⁴

There are significant barriers to political participation that people face due to lower socioeconomic status; these barriers are highly correlated with race/ethnicity. Economic and social science research has established that racial/ethnic minorities are more likely than Whites to live in communities that are socioeconomically degraded, have lower incomes, less familial wealth, lower rates of homeownership, and more likely to rely on public transportation.⁵⁵ This differential footing between racial/ethnic minorities and Whites translates into issues of access to the ballot box.⁵⁶ Researchers have long agreed that regressive electoral reforms and restrictive voting bills discourage and impede eligible voters from casting ballots, while providing no real benefit.⁵⁷ These findings make Latinos uniquely vulnerable to voting laws aimed at restricting the practices and/or procedures relied on by low-income voters, including polling place closures, proof of citizenship laws, voter identification laws, reductions to early and absentee voters, and other measures. This results in a feedback loop, whereby restrictive voting laws and practices that decrease or even hold constant current participation rates will exacerbate the participation between an aging white electorate and growing,

⁵⁰ SENTENCING PROJECT, LOCKED OUT 2020: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION 4 (Oct. 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

⁵¹ *Id.* at 4.

⁵² SIDNEY VERBA & NORMAN H. NIE, PARTICIPATION IN AMERICA: POLITICAL DEMOCRACY AND SOCIAL EQUITY (1987).

⁵³ Jan E. Leighley & Jonathan Nagler, *Individual and Systemic Influences on Turnout: Whose Votes? 1984*, 54 J. of Pol. 3 (1992).

⁵⁴ See generally Valencia Richardson, *Voting While Poor: Reviving the 24th Amendment and Eliminating the Modern-Day Poll Tax*, 27 Georgetown J. on Poverty L. and Policy 3 (2020).

⁵⁵ See Centers for Disease Control and Prevention, *Health Equity Considerations and Racial and Ethnic Minority Groups* (Feb. 12, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

⁵⁶ See generally *Supra*, note 33. See Daniel Weeks, *Why Are the Poor and Minorities Less Likely to Vote?*, ATLANTIC (Jan 10, 2014), <https://www.theatlantic.com/politics/archive/2014/01/why-are-the-poor-and-minorities-less-likely-to-vote/282896/> (“While income and education levels were not recorded in the survey, race and age were major factors influencing who made it to the polls on Election Day and what kind of barriers they faced. Black and Hispanic citizens, for whom the poverty rate is close to three times that of whites, were three times as likely as whites to not have the requisite I.D. and to have difficulty finding the correct polling place.”); See also, Shawn Steven Morrow, *Causes of Low Voter Turnout of the Hispanic Population in Southwest Texas* 90 (2015), <https://core.ac.uk/download/pdf/147833578.pdf> (Research on the Hispanic community in Southwest Texas found that “continued lower socioeconomic status of Hispanics makes it difficult for them to compete within local political organizations.”).

⁵⁷ Joshua Clark, *Widening the Lens on Voter Suppression, From Calculating Lost Votes to Fighting for Effective Voting*, 6, 2018, <https://belonging.berkeley.edu/widening-lens-voter-suppression>

youthful Latino electorate, compromising the vibrancy of an inclusive democracy and substantive representation.

Voting restrictions depend on other structural causes to suppress the vote, including socio-economic status. The average per capita income in the U.S. is \$34,103. Yet, when considering race/ethnicity, there are significant income disparities. The per capita income for Blacks is \$23,383 and \$20,515 for Latinos.⁵⁸ States with significant per capita income gaps between White residents and non-White residents that advance costly restrictive voting bills complicate access to the ballot box. As such, socioeconomic status and being of lower socioeconomic status can prevent persons from being able to equitably access the franchise.

3. *Your testimony refers to a number of “restrictive voting bills” that have been enacted or are under consideration in state legislatures. What particular types of provisions in those bills disproportionately burden Latino voters?*

Currently in the United States, there are over 361 separate voter suppression proposals pending in 47 states.⁵⁹ This is significantly more than the number of bills proposed after the 2010 election—180 bills in 41 states—when the GOP gained a substantial amount of seats and triggered a similar wave of restrictive voting bills.⁶⁰ In the face of a redistricting cycle without the protection of Section 5 of the Voting Rights Act of 1965, state legislators and their aligned interest groups are ensuing an assault on voting rights that disproportionately burdens Latino voters.

Voter identification laws have well-documented disenfranchising effects on the nation’s growing Latino electorate. On March 25, 2021, Georgia Governor Brian Kemp signed SB 202 into law. SB 202 is an omnibus elections bill with elements of 16 other bills previously introduced that limits absentee voting by requiring voters to provide a state identification number or photocopy of an identifying document with their absentee ballot application.⁶¹ The bill also bars election officials from proactively sending out absentee ballot applications, gives voters less time to apply for absentee ballots, and sharply restricts the availability and hours of drop boxes.⁶² The restrictive voting bill could prevent an estimated 2.2 million or more Georgia voters, a great portion being Latino, from casting their ballots.⁶³

Similarly, the Arkansas legislature enacted two bills, HB 1112 and HB 1244, that tighten the state’s voter ID requirements.⁶⁴ Prior to the newly adopted bills, Arkansas’s voter ID law allowed voters who arrived at their polling place without valid identification to vote using a provisional ballot if

⁵⁸ U.S. Census Bureau, 2019 American Community Survey 5-year Estimates, (Mar. 25, 2021).

⁵⁹ BRENNAN CENTER FOR JUSTICE, Voting Laws Roundup: March 2021 (Apr. 1, 2021), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021#footnote25_48r2hf3

⁶⁰ Ronald Brownstein, *Democrats’ Only Chance to Stop the GOP Assault on Voting Rights*, *The Atlantic* (Mar. 3, 2021), <https://www.theatlantic.com/politics/archive/2021/03/democrats-need-hr-1-and-new-vra-protect-voting-rights/618171/>

⁶¹ Stephen Fowler, *What Does Georgia’s New Voting Law SB 202 Do?*, NPR (Mar. 27, 2021), <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do>

⁶² *Id.*

⁶³ NEW FACT SHEET: *Republicans’ Anti-Voting Bill Would Have Affected More Than 2.2 Million Georgian’s Votes in 2021-2021 Elections*, Georgia Democrats (Feb. 22, 2021), <https://www.georgiademocrat.org/new-fact-sheet-republicans-anti-voting-bill-would-have-affected-more-than-2-2-million-georgians-votes-in-2020-2021-elections/>

⁶⁴ BRENNAN CENTER FOR JUSTICE, Voting Laws Roundup: March 2021 (Apr. 1, 2021), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021#footnote25_48r2hf3

they signed a sworn statement attesting that they were registered to vote.⁶⁵ HB 1112 eliminates this option and requires voters who show up without identification to return to the county clerk's office by the Monday following the election with qualifying identification in order to have their vote counted.⁶⁶ As discussed in greater detail above, strict voter ID laws like HB 1112 disproportionately disenfranchises voters of color, including Latinos.⁶⁷ Likewise, HB 1244 revises Arkansas law to establish that non-photo IDs are not valid for voter identification purposes.⁶⁸

In Arizona, the legislature is advancing bills such as SB 1713 and SB 1485. These bills would: purge as many as 200,00 people from the roll of voters who automatically receive absentee ballots; reduce the number of early-voting days; impose tougher ID requirements for absentee ballots; require that absentee ballots be mailed by the Thursday before the election and received by the time the polls on Election Day; and create new reporting requirements for groups conducting voter-registration drives.⁶⁹ The purge alone would disenfranchise as many as 50,000, or approximately 7%, of the state's Latino voters.⁷⁰

In Texas, SB 7, one of the most comprehensive restrictive bills, seeks to implement a wide range of restrictions on voting access.⁷¹ The bill aims to limit early voting hours, increasing the risk of long lines on Election Day and eliminating the use of certain "mobile" and drive-through polling places.⁷² If implemented, the restrictions will disproportionately harm voters of color: Black and Hispanic voters in Harris County alone cast more than half of the votes counted both at drive-through sites and during extended hours.⁷³

Finally, Iowa's proposed SF 413 negatively impacts early voting by shortening the early voting period by nine days and limiting election officials' discretion to offer additional early voting locations.⁷⁴ Furthermore, IA SF 413 rolls back election day voting by requiring polls to close an hour earlier than they previously had and reducing the amount of paid time off employers must give people to go vote.⁷⁵

⁶⁵ *Id.*

⁶⁶ National Conference of State Legislatures, 2021 Election Enactments, *NCSL* (Apr. 15, 2021), <https://www.ncsl.org/research/elections-and-campaigns/2021-election-enactments.aspx>

⁶⁷ *See supra* question 2.

⁶⁸ BRENNAN CENTER FOR JUSTICE, Voting Laws Roundup: March 2021 (Apr. 1, 2021), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021#footnote25_48r2hf3

⁶⁹ Ronald Brownstein, Democrats' Only Chance to Stop the GOP Assault on Voting Rights, *The Atlantic* (Mar. 3, 2021), <https://www.theatlantic.com/politics/archive/2021/03/democrats-need-hr-1-and-new-vra-protect-voting-rights/618171/>

⁷⁰ Randy Perez, *LUCHA* (Mar. 3, 2021)

⁷¹ Alexa Ura, Texas Senate advances bill limiting how and when voters can cast ballots, receive mail-in voting applications, *The Texas Tribune* (Apr. 1, 2021), <https://www.texastribune.org/2021/04/01/texas-voting-restrictions-legislature/>

⁷² *Id.*

⁷³ *Id.* at 11.

⁷⁴ Democracy Dockets, Iowa Governor Signs Sweeping Voter Suppression Legislation Into Law (Mar. 8, 2021), <https://www.democracydocket.com/2021/03/legislation-alert-iowa-governor-signs-sweeping-voter-suppression-legislation-into-law/>

⁷⁵ BRENNAN CENTER FOR JUSTICE, Voting Laws Roundup: March 2021 (Apr. 1, 2021), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021#footnote25_48r2hf3

Researchers have long agreed that regressive electoral reforms and restrictive voting bills discourage and impede eligible voters from casting ballots, while providing no real benefit.⁷⁶ Enacting H.R. 1 would prevent many of the harms stated above and help preserve the fundamental right to vote. To ensure that Latinos are able to elect their candidates of choice and cast a meaningful ballot, Congress must act and account for the evolution of vote dilution over the past decade that seemingly disregards the will of Latino voters.

4. *Are there particular states where Latino voters have been able to elect or are on the verge of being able to elect their candidate of choice?*
 - a. *Have legislatures in any of those states enacted or considered restrictive voting bills? If so, which ones?*
 - b. *Did those bills disproportionately burden Latino voters? How?*

The impact of electoral laws on political participation is the focus of many theories in political-participation literature. In many states, restrictive voting laws have been proposed, typically purporting to address voter fraud. However, imposing administrative prerequisites for voting can be one of the most costly burdens on potential voters because they necessitate voters to have both time and political knowledge in order to satisfy the requirements. Institutional burdens to participation have been shown to have the most significant impact on individuals with fewer resources, less education, and smaller social networks.⁷⁷ Table 2 below demonstrates the disparate effects of restrictive voter laws on Latino representation in the top ten most populous Latino states.

⁷⁶ Joshua Clark, Widening the Lens on Voter Suppression, From Calculating Lost Votes to Fighting for Effective Voting, 6 (2018), <https://belonging.berkeley.edu/widening-lens-voter-suppression>

⁷⁷ Matt A. Barreto, et al., *The disproportionate impact of voter-ID requirements on the electorate: new evidence from Indiana*, 42 PS: POL. SCI. & POLITICS 1, 111-116 (2009).

Table 2. Share of population, representation in state legislature, and votes cast in the 2020 general election in the top ten most populous Latino states⁷⁸

	Total Restrictive Bills Introduced in 2021	Latino Population Share	Latino Vote Share 2020 General Election	Latino Share of State Legislature
Arizona	22	31.33%	24.62%	17.58%
Illinois	12	17.12%	10.69%	7.19%
New York	12	19.01%	12.50%	7.51%
Texas	10	39.34%	21.67%	19.34%
New Jersey	9	20.21%	12.35%	6.61%
Colorado	3	21.53%	9.86%	12.00%
Nevada	3	28.70%	19.55%	12.70%
California	2	39.02%	25.64%	23.75%
Florida	2	25.58%	20.41%	10.45%
New Mexico	1	48.79%	38.85%	36.61%

While increased engagement led to a rise in turnout during the 2020 presidential election, thousands of potential future voters are being threatened under the continued introduction of restrictive voting laws across the U.S.

Increased turnout among Latinos has yet to coincide with descriptive representation in state legislatures. None of the highly dense Latino states have shown a shares of Latino representation in state government that reflect their shares of the state population or population growth. There is a possible connection between states that are the most inclined to introduce restrictive voting bills and a significant disparity in the Latino representation across state government.

- 5. *Some argue that because voter turnout is up, new, and previously existing laws passed by state legislatures that are apparently suppressive do not have the effect of being suppressive. Why is voter turnout alone not a sufficient measure of voter suppression and discrimination?*

Political science literature informs us that voter turnout is driven by two primary factors-- (1) interest in an election, and (2) the ability to vote in an election.⁷⁹

⁷⁸ The number of restrictive bills was calculated using the Brennan Center for Justice, State Voting Bills Tracker 2021. Latino vote share in the 2020 general election are projections from the Power of The New Majority report. Latino share in state legislatures was estimated by collecting state legislature member rosters and matching them with a Spanish surname list to determine Latino representation.

⁷⁹ G. Bingham Powell Jr, *American voter turnout in comparative perspective* 17 AMER. POL. SCI. REV. 43 (1986).

Empirical research demonstrates that as the winning majority of a candidate increases, voter turnout decreases.⁸⁰ This is most likely because voters are interested in the likelihood of their votes affecting the outcome of a race. If turnout is relatively high, it could be because more individuals are interested in voting. High turnout, however, does not necessarily indicate that potentially thousands or millions of voters were not prevented from voting.⁸¹ In other words, if voter turnout was as high as 80% in a state, it could have been 85% or higher if everyone had an equal right and access to voting.

The second factor that affects turnout is how accessible the voting process is. Various published, peer-reviewed studies have documented that laws that add requirements and impediments to voting reduce voter access and lead to lower turnout among eligible voters.⁸² For instance, voter ID laws can affect who votes and who does not. In doing so, these laws could substantially affect who governs and ultimately who is represented in American democracy. These voter ID laws are becoming stricter and more popular among states claiming to prioritize deterring voter fraud. The effects of voter ID laws have been shown to have impacts similar to measures like poll taxes, literacy tests, residency requirements, and at-large elections that have historically limited turnout for voters of color.⁸³ Other restrictive laws that have altered the electoral system include shortened early voting periods, repeal of same-day voter registration, reduced polling hours, a decrease in poll locations, and increased restrictions on voting by felons.

Therefore, both notions can be correct. Turnout increases when voters are interested in an election, but not to the extent that would be possible if voting is made more accessible and equitable to all Americans. A study on the effect of the Georgia voter ID law concluded that more Black voters participated in the 2008 presidential election after the voter ID law than in 2004.⁸⁴ However, this is not an accurate comparison, as 2008 produced heightened interest among Black voters around the candidacy of Barack Obama. Follow-up studies in Georgia found extensive evidence of thousands of eligible voters who could not vote in 2008 because of the voter ID law.⁸⁵ So, while Black turnout was higher in 2008, thousands of potential voters were denied because of the voter ID law. Simply put, voter turnout alone is not a sufficient measure of voter suppression and discrimination because it can fluctuate based on voter interest, and it overlooks the potential increases in participation if voting is made more accessible.

6. *Is there anything else discussed during the April 1 hearing to which you would like to respond? If so, please provide your responses here.*

There has recently been discussion about the permissible sources for U.S. population data used for redistricting. Although states have historically used decennial census data, the COVID-19 pandemic and transition of presidential administrations have led to a delay in the release of 2020 Census Data, causing states to run up against redistricting deadlines enshrined in their state constitutions. State

⁸⁰ *Id.*

⁸¹ Zoltan Hajnal et al., *Voter identification laws and the suppression of minority votes*, 79 J. OF POL. 2, 363, 379 (2017).

⁸² Robert M Stein, & Greg Vonnahme, *Engaging the unengaged voter: Vote centers and voter turnout*, 70 J. OF POL. Journal of Politics 2, 487, 497 (2008).

⁸³ *Supra* note 82 at p. 363-79.

⁸⁴ M. V. Hood III, & Charles S. Bullock III, *Much ado about nothing? An empirical assessment of the Georgia voter identification statute* 12 STATE POLI. & POLICY QUART. 2, 394, 394-414 (2012).

⁸⁵ June Andra Gillespie, *Voter Identification and Black Voter Turnout An Examination of Black Voter Turnout Patterns in Georgia, 2000-2014*. PHYLON, 43-67 (2015).

representatives in Illinois have stated that they intend to redraw congressional and legislative districts using an alternative to the federal census.⁸⁶ Some states, including Illinois, have debating using data from the American Community Survey (ACS) for redistricting.⁸⁷ The ACS relies on sampling estimates, and typically decennial census data is favored if more recent. Further, Lawmakers in other states may attempt to use the legacy format Census datafile that the Census Bureau expects to release to the states in “mid-to-late August,” rather than the user-friendly PL 94-171 format that will be delivered September 30.⁸⁸

It is important to note that disputes over the permissible use of data to determine how voters should be represented are nuanced. While sampling has been associated with the potential for malapportionment, it is a vital technique in tracking the growth of communities of color between decennial censuses. There are consequences associated with applying one data source over another, and these consequences can disproportionately impact the counts of immigrant communities and other disenfranchised groups. More empirical research is required on the subject to accurately make reliable statements about the quality of data sources. Given the opportunity for misuse, state lawmakers need to be mindful, and oversight is required to advance this discussion.

⁸⁶ Rick Pearson, *Democrats may use population estimates for redistricting, raising questions about fairness of maps*, CHICAGO TRIBUNE (Apr. 19, 2021), <https://www.chicagotribune.com/politics/ct-illinois-legislative-redistricting-census-20210419-i7mp3towabej7jm57ikatm7tm4-story.html>.

⁸⁷ *Id.*

⁸⁸ U.S. Census Bureau, *U.S. Census Bureau Statement on Release of Legacy Format Summary Redistricting Data File, Release Number CB21-RTQ.09* (Mar. 15, 2021), <https://www.census.gov/newsroom/press-releases/2021/statement-legacy-format-redistricting.html>.

MINORITY QUESTIONS FOR THE RECORD
FOR
Ms. SONJA DIAZ
FOUNDING DIRECTOR, LATINO POLICY & POLITICS INITIATIVE
UCLA LUSKIN SCHOOL OF PUBLIC AFFAIRS

1. *The 2020 election cycle saw record-high voter turn-out, including from the minority communities. Could you please explain how you reconcile high voter turnout with allegations of voter suppression?*

As stated above, Political science literature informs us that voter turnout is driven by two primary factors-- (1) interest in an election, and (2) the ability to vote in an election.⁸⁹ Empirical research demonstrates that as the winning majority of a candidate increases, voter turnout decreases.⁹⁰ This is most likely because voters are interested in the likelihood of their votes affecting the outcome of a race. If turnout is relatively high, it could be because more individuals are interested in voting. High turnout, however, does not necessarily indicate that potentially thousands or millions of voters were not prevented from voting.⁹¹ In other words, if voter turnout was as high as 80% in a state, it could have been 85% or higher if everyone had an equal right and access to voting.

The second factor that affects turnout is how accessible the voting process is. Various published, peer-reviewed studies have documented that laws that add requirements and impediments to voting reduce voter access and lead to lower turnout among eligible voters.⁹² For instance, voter ID laws can affect who votes and who does not. In doing so, these laws could substantially affect who governs and ultimately who is represented in American democracy. These voter ID laws are becoming stricter and more popular among states claiming to prioritize deterring voter fraud. The effects of voter ID laws have been shown to have impacts similar to measures like poll taxes, literacy tests, residency requirements, and at-large elections that have historically limited turnout for voters of color.⁹³ Other restrictive laws that have altered the electoral system include shortened early voting periods, repeal of same-day voter registration, reduced polling hours, a decrease in poll locations, and increased restrictions on voting by felons.

Therefore, both notions can be correct. Turnout increases when voters are interested in an election, but not to the extent that would be possible if voting is made more accessible and equitable to all Americans. A study on the effect of the Georgia voter ID law concluded that more Black voters participated in the 2008 presidential election after the voter ID law than in 2004.⁹⁴ However, this is not an accurate comparison, as 2008 produced heightened interest among Black voters around the candidacy of Barack Obama. Follow-up studies in Georgia found extensive evidence of thousands of eligible voters who could not vote in 2008 because of the voter ID law.⁹⁵ So, while Black turnout was higher in 2008, thousands of potential voters were denied because of the voter ID law. Simply

⁸⁹ G. Bingham Powell Jr, *American voter turnout in comparative perspective* 17 AMER. POL. SCI. REV. 43 (1986).

⁹⁰ *Id.*

⁹¹ Zoltan Hajnal et al., *Voter identification laws and the suppression of minority votes*, 79 J. OF POL. 2, 363, 379 (2017).

⁹² Robert M Stein, & Greg Vonnahme, *Engaging the unengaged voter: Vote centers and voter turnout*, 70 J. OF POL. Journal of Politics 2, 487, 497 (2008).

⁹³ *Supra* note 82 at p. 363-79.

⁹⁴ M. V. Hood III, & Charles S. Bullock III, *Much ado about nothing? An empirical assessment of the Georgia voter identification statute* 12 STATE POLI. & POLICY QUART. 2, 394, 394-414 (2012).

⁹⁵ June Andra Gillespie, *Voter Identification and Black Voter Turnout An Examination of Black Voter Turnout Patterns in Georgia, 2000-2014*. PHYLON, 43-67 (2015).

put, voter turnout alone is not a sufficient measure of voter suppression and discrimination because it can fluctuate based on voter interest, and it overlooks the potential increases in participation if voting is made more accessible. Thus, voters can have an increased turnout because of their interest while also facing suppressive barriers which would cause interested voters unable to cast a ballot.

2. *The Help America Vote Act of 2002, a law that passed Congress with strong bi-partisan support, imposes a voter identification requirement for individuals who register to vote by mail in a State where they have not voted previously in a federal election. These voters must present one of the following forms of identification the first time they vote in person at the polls or by mail: (1) a current and valid photo identification; or (2) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter. Do you have any evidence that you can provide to the Committee of eligible voters being unable to vote because of HAVA's voter identification requirement?*

The Help America Vote Act of 2002 (HAVA) requires individuals who register to vote by mail and have never before voted in a federal election in the state in which they register to meet certain requirements. When voting for the first time, the voter must either present in person or include with their mail ballot: (1) a current and valid photo identification (or a copy in the case of mail voters); or (2), “a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.”⁹⁶ HAVA, however, provides an important fail-safe: voters who lack the requisite identification may cast a provisional ballot in person or have their mail ballot accepted as a provisional ballot.⁹⁷ Upon election officials’ determination that the voter is eligible, the ballot will be counted.⁹⁸ Thus, even voters without a valid identification may register to vote via mail and cast their ballot as a result of HAVA’s fail-safe. HAVA also does not impose the identification requirement for *all* voters. Only voters who register by mail are required to comply with the provision. Voters who register in person are subject to different requirements. If the registrant possess a current and valid driver’s license, they must provide their driver’s license number, and registrants without a valid driver’s license but who possess a social security number must provide the last four digits of their social security number.⁹⁹ If a registrant has neither, they are assigned a unique identifying number by the state to serve as their identification for the purpose of voter registration.¹⁰⁰ In other words, under HAVA, people who are eligible to vote may register in person without any identification.¹⁰¹

Voter identification laws that create substantial burdens for voters are those that impose harsher identification requirements than HAVA does, such as requiring all in-person voters to produce a valid government-issued photo identification, and/or lack HAVA’s various fail-safe options. It is documented that racial and/or ethnic minorities are among those most sensitive to changes in voting rules,¹⁰² including voter identification laws that go above the provisions of HAVA. For example, Texas’s SB 14, passed in 2011 and since replaced,¹⁰³ required voters to present a valid and

⁹⁶ 52 U.S.C. § 21083 (b)(2)(A).

⁹⁷ 52 U.S.C. § 21083 (b)(2)(B).

⁹⁸ 52 U.S.C. § 21082 (a).

⁹⁹ 52 U.S.C. § 21083 (a)(5)(A)(i).

¹⁰⁰ 52 U.S.C. § 21083 (a)(5)(A)(ii).

¹⁰¹ See 52 U.S.C. § 21082.

¹⁰² Rodrigo Dominguez-Villegas Et Al., Vote Choice Of Latino Voters In The 2020 Presidential Election (2020), <https://latino.ucla.edu/wp-content/uploads/2021/01/Election-2020-Report-1.19.pdf>.

¹⁰³ See Brennan Center for Justice, Case Tracker: Texas NAACP v. Steen (consolidated with Veasey v. Abbott) (Sept. 21, 2018), <https://www.brennancenter.org/our-work/court-cases/texas-naacp-v-steen-consolidated-veasey-v-abbott>.

current photo identification from only seven acceptable forms of ID. A federal district court found that 608,470 registered Texas voters, or about 4.5% of the electorate, lacked the requisite identification.¹⁰⁴ Moreover, some Texans even lacked the underlying documents required to obtain the identification.¹⁰⁵ Additionally, Black Americans and Latinos were found less likely than their White peers to possess or have access to the valid forms of photo ID required by the Wisconsin, Indiana, and Texas voter identification laws.¹⁰⁶ Recent studies show that these effects are even more disastrous for youth of color, who have even less access to valid forms of identification.¹⁰⁷ Research suggests that voter identification laws have an effect on Latinos more than any other racial or ethnic group.¹⁰⁸ HAVA's requirements are not at issue in this instance, but requirements that are enacted that go beyond the call of HAVA and place significant burdens requiring a voters time and out of pocket expenses in order to vote.

3. *H.R. 1 For the People Act seeks to nationalize our country's elections process. Why should politicians in Washington DC who do not run elections dictate to state and local election officials how to administer their elections?*

Voting is a fundamental right protected by the United State Constitution.¹⁰⁹ The political franchise of voting, “is regarded as a fundamental political right, because [it is] preservative of all rights.”¹¹⁰ “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.”¹¹¹

As such, while local administrators may run elections, it is within Congress’ authority to ensure that the right to vote is not violated in an arbitrary or discriminatory fashion. This authority manifests through the Elections Clause, the Fourteenth Amendment, Fifteenth Amendment, Nineteenth Amendment, Twenty-Fourth Amendment, and Twenty-Six Amendments. Importantly, the Elections Clause of Article I specifically envisions some congressional control over federal elections: this section of the Constitution gives states the authority over the times, places, and manner of elections, “but the Congress *may at any time by Law make or alter such Regulations*.”¹¹² This clause, called the Times, Places, and Manner clause, was the product of our Founders understanding that the Federal Government would need to alter and regulate elections to ensure that they are fair and free, even though states had local control. “In essence, Congress has a veto power over state practices that govern federal elections.”¹¹³ Therefore, when states are introducing or implementing

¹⁰⁴ *Veasey v. Perry*, 71 F. Supp. 3d 627, 659 (S.D. Tex. 2014), *aff'd in part, vacated in part, remanded sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), *on reh'g en banc*, 830 F.3d 216 (5th Cir. 2016), and *aff'd in part, vacated in part, rev'd in part sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

¹⁰⁵ See, e.g., Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You're Poor, Black, Latino, or Elderly*, WASH. POST (May 23, 2016), https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html.

¹⁰⁶ See *Veasey v. Perry*, 2:13-cv-00193 (S.D. Tex. Dec. 11, 2013), *Expert Report of Dr. Matt Barreto and Dr. Gábríel Sánchez Behalf of Plaintiffs*.

¹⁰⁷ J.C. Rogowski and C. J. Cohen, *Black and Latino Youth Disproportionately Affected by Voter Identification Laws in the 2012 Election*. Black Youth Project, 2012.

¹⁰⁸ Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson, *Voter Identification Laws and the Suppression of Minority Votes*, 79 *Journal of Pol.*, 363-379 (2017).

¹⁰⁹ See ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES* 893–94 (4th ed. 2011).

¹¹⁰ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

¹¹¹ *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

¹¹² U.S. CONST. art. 1, § 4.

¹¹³ Franita Tolson, *The Spectrum of Congressional Authority over Elections*, 99 B.U. L. REV. 317, 321 (2019).

suppressive voter laws, Congress has the authority to pre-empt those suppressive laws and create federal guidelines that must be followed, as dictated by our Founders and the Constitution.

Additionally, regulations by Congress, such as H.R. 1, do not nationalize elections, but are rooted in Congress' power to enforce the voting amendments.¹¹⁴ Congressional authority to enforce of voting rights is stated explicitly in the Constitution: “[t]he Congress shall have power to enforce this article by appropriate legislation,” and this authority is repeated, with some variation, in the Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Six Amendments. The United States Supreme Court has described the power of Congress under Fourteenth and Fifteenth Amendments enforcement powers as, “a broad power,”¹¹⁵ giving Congress a, “wide berth in devising appropriate remedial and preventative measures for unconstitutional actions.”¹¹⁶ Congress devised H.R. 1 as an appropriate remedial measure to prevent unconstitutional actions with respect to voting and ensure that all voters are able to equally access the franchise. H.R. 1's provisions give local election officials important control to run elections but provides constitutional guidelines and regulations that only interfere with a local government's ability to disenfranchise voters.

¹¹⁴ The voting amendments are collectively, the Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Six Amendments to the United States Constitution.

¹¹⁵ *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 732 (1982).

¹¹⁶ *Tennessee v. Lane*, 541 U.S. 509, 520 (2004).