

Testimony of Tomas Lopez, Democracy North Carolina
Before the United States Commission on Civil Rights

February 2, 2018

A North Carolina Perspective on the Importance of Reinstating Pre-Clearance

Good afternoon, Chairperson Lhamon, Vice-Chair Timmons-Goodson, and esteemed Commissioners. My name is Tomas Lopez, and I am the Executive Director of Democracy North Carolina, a non-partisan, non-profit organization that uses research, organizing, and advocacy to improve and expand access to the franchise and reduce the corrupting influence of money in politics in North Carolina. Although Democracy North Carolina has been doing this work for the last 25 years, I am new to this role, having started in January. However, I am not new to the field of voting rights. I came to Democracy North Carolina from the Brennan Center for Justice at NYU School of Law, a non-partisan law and policy institute working nationally to advance voting rights, among other issues. There, I litigated voting cases in federal courts, collaborated with advocates on policy campaigns at the state level, and participated in the Brennan Center's research on election law and administration reforms.

Today I will address the questions posed to this panel from the perspective of a state-level organization in a state that was partially covered by Section 5 under the previous formula.¹ Since the loss of preclearance protections, North Carolina has been subject to:

- Statewide consequences through the passage of H589, restrictive voting legislation that the United States Court of Appeals for the Fourth Circuit found to be intentionally discriminatory;
- Local consequences through the implementation of local changes to election procedures; and
- Changes to the individual voting experience, characterized by renewed reports of voter intimidation at the polls.

The laws and regulations at issue targeted African-American and youth voting in particular, and are precisely the sorts of changes that would previously have required review under Section 5. The North Carolina experience without preclearance demonstrates the need for both effective federal voting rights enforcement and the statutory protections to facilitate that.

¹ Forty of North Carolina's 100 counties were covered under Section 5 prior to *Shelby*: Anson, Beaufort, Bertie, Bladen, Camden, Caswell, Chowan, Cleveland, Craven, Cumberland, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Guildford, Halifax, Harnett, Herford, Hoke, Jackson, Lee, Lenoir, Martin, Nash, Northhampton, Onslow, Pasquotank, Perquimans, Person, Pitt, Robeson, Rockingham, Scotland, Union, Vance, Washington, Wayne, and Wilson counties. U.S. Department of Justice. (2015, August 6). *Jurisdictions previously covered by Section 5 at the time of the Shelby County decision*. Retrieved from <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>

I. Statewide Consequence: Loss of a Deterrent

The loss of preclearance meant the loss of a critical deterrent against discriminatory voting laws at the state level. This consequence was immediate in North Carolina. On the very same day as the *Shelby County* decision in 2013, Senator Tom Apodaca, then the powerful Rules Chair of the North Carolina State Senate, announced that the General Assembly leadership no longer had to worry about the “legal headache” of preclearance and could “go with the full bill” remaking the state’s elections system.² That full bill, H589, installed one of the nation’s strictest photo ID requirements and eliminated Same Day Registration during the early voting period; pre-registration of 16- and 17-year-olds; and the first week of early voting (including a Sunday traditionally used by Black churches for “Souls to the Polls” activities). These reforms had moved North Carolina from consistently ranking in the bottom twelve states for eligible voter turnout to 10th in the nation in 2012.³

H589’s passage led to years of costly litigation. In 2016, the U.S. Court of Appeals for the Fourth Circuit found that the ID requirement and the elimination of the above reforms were enacted with racially discriminatory intent and “target[ed] African-Americans with almost surgical precision.”⁴

Preclearance was created to deter laws like H589 from being passed, review potentially harmful laws before they went into effect, and avoid time-intensive and financially expensive lawsuits. Without it, North Carolina was subjected to a restrictive and intentionally discriminatory bill that became law and required several years and substantial resources to defeat in court.

II. Local Consequences: Reduced Access to the Polls

North Carolina county boards of elections (BOEs) hold significant power over voting access in this state through their ability to set polling locations, determine early voting schedules, and train poll workers on current law. During the 2014 and 2016 election cycles, these county bodies implemented changes to local election procedures that resulted in reduced access for voters of color. A handful of examples of those changes are listed below, as reported to Democracy North Carolina and Election Protection volunteers, or otherwise reported in the media.

- In 2014, over the strong objection of the local NAACP branch, the **Cleveland County** Board of Elections merged five heavily African-American precincts in the city of Shelby (Shelby 1, 2, 3, 6, and 7) into just two precincts. Our poll monitors reported that voters were confused and frustrated by the precinct changes. The effect on turnout in 2014 was

² Leslie, L. (2013, June 25). NC voter ID bill moving ahead with Supreme Court ruling. *WRAL*. Retrieved from <http://www.wral.com/nc-senator-voter-id-bill-moving-ahead-with-ruling/12591669/>

³ Democracy North Carolina. Voter Turnout in North Carolina, 1980 to 2012. Retrieved from <https://democracync.org/wp-content/uploads/2018/01/PresidentTurnoutNC1980-2012.pdf>

⁴ *North Carolina State Conference of the NAACP, et al. v. McCrory*, 831 F.3d 204 (4th Cir. 2016). Retrieved from <https://www.ca4.uscourts.gov/Opinions/Published/161468.P.pdf>

significant. The turnout at the first merged precinct dropped by 3.1% from 2010 turnout, and by 7.8% at the second.⁵

- In 2014, the **Lincoln County** Board of Elections passed an early voting plan that reduced voting hours from 2010, a move that was overridden by the State Board of Elections. As a result, hours had to be added to the early voting site in Lincolnton, the county seat – something the BOE chair strongly objected to because “it would have been favorable to the Democratic Party.” Although only 13% of the county population lives in Lincolnton, it is the home of 31% of the county’s African American voters.⁶
- In 2014, over the objections of community members, the **Forsyth County** Board of Elections adopted an early voting plan that moved early voting sites outside of the urban center of Winston-Salem, where the majority of Black voters live, to whiter, more conservative suburbs. The plan removed an early voting site from Winston Salem State University, a HBCU that had been an early voting location in 2012, 2010, and 2008, and did not replace it with any other sites in eastern Winston-Salem, although multiple alternatives were suggested. “Our African American community has been hurt,” testified a local Democratic party official before the BOE.⁷
- In 2014 and 2016, the Chavis Heights Community Center precinct in Southeast Raleigh in **Wake County** demonstrated the effect that having out-of-precinct voting available as an option and its correct implementation by precinct officials can have on access for voters of color. In 2014, when North Carolina did not have out-of-precinct voting in place, our poll monitors counted over 300 voters, mostly African-American, turned away from the poll and sent to other polling locations. In many cases, voters told monitors they would not be able to get to another polling place -- one person had used their last money on bus fare to Chavis Heights.⁸ In 2016, when out-of-precinct voting was permitted following the Fourth Circuit’s ruling, poll monitors reported that the chief judge at the polling place refused to offer provisional ballots to out-of-precinct voters. When voters demanded an out-of-precinct provisional, as was their right, precinct officials discouraged them from casting a ballot, saying, “it won’t count anyway.”⁹
- In 2016, in an attempt to blunt the impact of the Fourth Circuit’s decision to restore the first week of early voting, many of the Republican-led county BOEs adopted early voting

⁵ Gutierrez, I. and Hall, B. (2015, June). Alarm Bells from Silenced Voters. Democracy North Carolina. Retrieved from <https://democracync.org/wp-content/uploads/2017/06/SilencedVoters.pdf>

⁶ McCloskey, S. (2014, October 31). Lincoln County voters fight for hours at early voting sites. *The Progressive Pulse, NC Policy Watch*. Retrieved from <http://pulse.ncpolicywatch.org/2014/10/31/lincoln-county-voters-fight-for-hours-at-early-voting-sites/#sthash.2atO17Cj.gWaveGqq.dpbs>

⁷ Evans, M. (2014, July 22). Forsyth elections board approves early voting plan. *Winston-Salem Journal*. Retrieved from http://www.journalnow.com/news/local/forsyth-elections-board-approves-early-voting-plan/article_7cbf2a6a-11d3-11e4-b1fa-001a4bcf6878.html

⁸ Gutierrez, I. and Hall, B. (2015, June). Alarm Bells from Silenced Voters. Democracy North Carolina. Retrieved from <https://democracync.org/wp-content/uploads/2017/06/SilencedVoters.pdf>

⁹ Gutierrez, I. (2018, January). From the Voter’s View: Lessons from the 2016 Election. Democracy North Carolina. Retrieved from https://democracync.org/wp-content/uploads/2018/01/PostElectionReport_DemNC_web.pdf

plans with fewer hours and sites during the first restored week. There were dramatic reductions in early voting hours in **Guilford** (-660), **Mecklenburg** (-282), **Brunswick** (-165), **Craven** (-141), **Johnston** (-124), **Robeson** (-121), and **Jackson** (-113) counties. Of those, Guilford, Craven, and Robeson counties were previously covered under Section 5, and Mecklenburg and Johnston have significant Black voting populations, 33% and 16% of all registered voters (as of October 22, 2016) respectively.

III. Changes to the Voter Experience: Renewed Voter Intimidation and Harassment

The loss of federal oversight affected not only laws and rules, but also the voting experience.. In 2014, the first federal election cycle following the passage of H589, Democracy North Carolina heard from African American voters via our Election Protection work who reported incidents of intimidation and harassment at the polls. One of the most alarming reports is detailed below:

African-American voter and registered Democrat T.C. voted at the Archers Lodge early voting location in Johnston County during the 2014 Primary. (Although Johnston is not one of the previously-covered counties, it has a history of Ku Klux Klan presence.) He reported that a white poll worker followed him around the polling place from the time he received his ballot until he voted it. Finally, he asked the poll worker why he was following him. In response, the worker replied, “Things have changed.” At this point, T.C. felt compelled to show his ID, which was not required at the time under state law, but the worker continued to follow him, and even attempted to stop T.C.’s wife from helping him to complete his ballot. When asked, the poll worker gave T.C. a false name -- “George Smith” -- later the Johnston County Board of Elections said there was no George Smith working at the Archers Lodge site. T.C. was in his early 60s at the time and had been voting since he was 18. He said he had never felt intimidated like that before when voting. The only comparable experience he could recall was being followed around the corner store by a white storeowner as a child with his friends.

Section 5 coverage would not have prevented a rogue Johnston County poll worker from acting in a discriminatory way, but its elimination and the subsequent passage of H589 plausibly contributed to an environment in which “[t]hings [had] changed” in North Carolina. This environment emboldened this poll worker – and others we heard about across the state that year – to harass Black voters.

In 2016, an election cycle marked nationally by hyper-partisan, nationalist rhetoric and unfounded claims of widespread voter fraud, the political climate in North Carolina was extremely tense. With reports of Roger Stone’s “Stop the Steal” volunteers coming to conduct exit polling in minority-majority precincts in two major North Carolina cities, Charlotte and Fayetteville, voters of color and their allies were on high alert for any acts of intimidation or

violence.¹⁰ Democracy North Carolina, Common Cause, and the Brennan Center worked together with the State Board of Elections on an administrative policy memo and code of conduct to differentiate between First Amendment-protected activities outside of the polls and acts of intimidation intended to disrupt the voting process.¹¹

While few acts of overt violence ultimately occurred, Democracy North Carolina and the Election Protection hotline received reports of low-level acts of aggression toward voters of color, their allies, and their Presidential candidate of choice, such as:

- On Election Day morning, two young white men in a pick-up truck with two large Trump signs were stationed in the parking lot of the Lynn Road Elementary School precinct in **Wake County**, blaring country music. Two African American women voters at the precinct contacted us to express feeling intimidated by their presence. In 2016, 29% of registered voters assigned to the precinct were voters of color.
- On October 31st, a Democratic Party volunteer witnessed three large trucks leaving the Nash Agricultural Center Early Voting site in **Nash County** early in the morning, before the polling place opened. When partisan volunteers arrived at the site, they found that all the Clinton signs had been slashed with knives and Trump signs had been placed under the Democratic Party's tent.
- On Election Day around 11 a.m., an African-American voter called to report a man wearing a jacket with a big Confederate flag on it and holding a dog who was standing outside of the Griffith Fire Station precinct in Winston-Salem in **Forsyth County**. In 2016, 33% of all registered voters assigned to the precinct were African-American, and 43% were voters of color.
- On October 22nd, a local African-American voter and Democratic Party official who had come in to assist an elderly voter at the **Wayne County** BOE early voting site reported that the BOE director Wayne Beaver yelled at her for assisting voters, called her a troublemaker, and told her not to come back as she was leaving. Beaver told the local newspaper that he was correcting the woman's overreach in offering assistance; a claim which the complainant flatly denied.¹²
- On Election Day, an African-American voter at the Hollands United Methodist Church precinct in **Wake County** reported a person in standing in the buffer zone waving a full-sized American flag and Trump flag back and forth. The voter said she felt very

¹⁰Laughland, O. and Thielman, S. (2016, October 20). Trump loyalists plan own exit poll amid claims of 'rigged' election. *The Guardian*. Retrieved from <https://www.theguardian.com/us-news/2016/oct/20/citizens-for-donald-trump-exit-poll-roger-stone-rigged-election-claim>

¹¹ North Carolina State Board of Elections. (2016, October 19). NUMBERED MEMO 2016-20. Retrieved from <http://dl.ncsbe.gov.s3.amazonaws.com/sboe/numbermemo/2016/Numbered%20Memo%202016-20%20Conduct%20at%20the%20Polls.pdf>

¹² Moore, Rochelle. (2016, October 25). Democratic leader claims misconduct at polling site. *The Goldsboro News-Argus*. Retrieved from http://www.newsargus.com/news/archives/2016/10/25/democratic_leader_claims_misconduct_at_polling_site/

intimidated. In 2016, 26% of all registered voters assigned to the precinct were voters of color.

- On October 28th at the Mount Pleasant Community Building early voting site in **Nash County**, an elderly white male R.A. was handing out literature for the Democratic party alongside a younger African-American woman, when his partner noticed that someone had spit a wad of chewing tobacco on his shirt. While R.A. did not see the person who spit on him, he believed it happened because he was “associating with a Black person.”
- On November 3rd, an elderly, white volunteer for the Democratic Party was handing out literature outside of the **Pamlico County** Board of Elections early voting site. A young man approached her and asked if she had a handicapped sticker for her car. When she responded that she did not, he shoved her down and told her that she would “if Hillary wins.” She suffered minor scrapes, but did not want to press charges.
- On October 29th, a Democratic Party campaign volunteer at the **Pamlico County** Board of Elections early voting site reported a repurposed military vehicle with the words “lock her up” and “make America great again” written on the sides of the vehicle. The vehicle was carrying people who were yelling at voters and people with disabilities. She reported that the vehicle was driving around the region, and had just left neighboring Craven County where it was doing the same thing. The volunteer was extremely worried that this form of intimidation would deter Black voters from showing up to vote because “there are lynching trees in the area.”
- On Election Day, a caller reported driving past the Bayboro precinct in **Pamlico County** (the same physical location as the BOE office, which was the county’s only early voting site) and seeing a black truck with people holding a Trump sign and yelling “Go home, n-----s! Trump will send you back to Africa!” and then driving off. In 2016, 43% of the registered voters at this precinct were African-American.

In addition to the stories above, one voter’s report to the Election Protection hotline demonstrates the pre-existing racial and political tensions in the state that were magnified by the 2016 election’s divisive rhetoric and the tremendous anxiety it caused among some voters of color:

D.G., a Forsyth County voter, expressed great concern and fear about the presence of a military convoy vehicle with a sign saying “Pfafftown Militia” on the front that is parked across the street from the Pfafftown Christian Church, an Election Day polling place. (Pfafftown is a predominately white and conservative suburb of Winston-Salem.) D.G. had seen the “Pfafftown Militia” vehicle around town before -- he has a PO Box at the same post office as the vehicle owner -- and finds the vehicle so intimidating that he purposefully avoids making eye contact or interacting with vehicle owner. In general, D.G. described Pfafftown as hostile to African-Americans. He was signed up to canvass in Forsyth County with the Democratic Party, but was “petrified” that he would be asked to canvass in Pfafftown, “because I am a Black man.” As the election got closer, pro-Trump

and anti-Clinton signs were added to the vehicle, and its owner began parking it in a more prominent place -- on a lawn across the street from the Pfafftown Christian Church polling place. D.G. asked that his concerns about the vehicle and the hostility it represented be reported to the Forsyth County Board of Elections, and said that he had taken pains to vote early because he was sure that "there will be people with guns on their hips on Election Day."

IV. Recommendations

North Carolina has suffered from the loss of preclearance protections at every level: state law, local practice, and the individual voting experience. Section 5 and federal oversight overall acted as a deterrent against harmful laws in concept and intent, a prophylactic against such laws when passed, and a remedy when implemented. Right now, we lack the full force of these functions working together. The result has been litigation that has been expensive for both the state defending the law and the advocates challenging it; local changes that have tangibly diminished access to the polls; and an environment most hostile to voters.

To address this gap, we advocate for the statutory restoration of preclearance procedures. Congress should adopt a preclearance formula that accounts for history, including the recent record of intentionally discriminatory laws passed in North Carolina. This would act as a check on both laws like H589 and the local changes discussed above, and provide an opportunity to review the impact of these changes before implementation.

Second, we welcome robust federal voting rights law enforcement focused on protecting access to the polls. The Department of Justice (DOJ) should prioritize matters that challenge laws and practices that diminish access to the polls in a discriminatory manner -- both in intent and effect - - like H589. We recommend increased resources for these activities, and strongly believe that DOJ should avoid directing attorney resources toward politically motivated investigations and activities, like those that pursued baseless fraud claims in the 2000s.¹³

¹³Gitlin, A. and Weiser W. R. (2017, January 6). The Justice Department's Voter Fraud Scandal: Lessons. Brennan Center for Justice. Retrieved from <http://www.brennancenter.org/publication/justice-departments-voter-fraud-scandal-lessons>