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WHY NEW JERSEY NEEDS ITS OWN VOTING RIGHTS ACT



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INTRODUCTION

In February 2023, on the late Congressman John R. Lewis's birthday, a coalition of national and state organizations and voting rights champions in the legislature gathered in Trenton, New Jersey to call for passage of a New Jersey Voting Rights Act ("NJVRA").

Against the backdrop of an eroded federal Voting Rights Act and with democracy under attack across America, especially for voters of color, our goal is to build the most inclusive democracy in America.

With weakened federal voting protections and Congress' failure to act in the ten years since the Supreme Court tore the heart out of the federal Voting Rights Act ("VRA"), it is critical to protect access to the ballot on the state level.

We cannot rely on Washington, D.C. to protect New Jersey's democracy. Following sustained advocacy by the Institute and its partners, New Jersey has taken some important pro-democracy steps in recent years by implementing automatic and online voter registration, restoring the vote to more than 83,000 people on probation and parole, eliminating prison-based gerrymandering, establishing early voting and expanding the opportunity to vote by mail.¹

But more work remains to be done as voters—particularly Black, Latina/Latino and other voters of color—continue to face obstacles to casting their ballots election after election.

Following the lead of other states like California, Washington, Oregon, Virginia, New York and Connecticut, which have passed state-level voting rights acts that both codify and expand on the federal VRA's protections to address the specific problems each state sees at home, it is time for New Jersey to have its own state voting rights act.



Photo: Tom Lankford, Birmingham News

Experiences from other states show that a state voting rights act can reduce turnout disparities, increase diversity in local elected offices and improve government responsiveness. State voting rights acts have impacts beyond elections, too: when Black, Latina/Latino and other voters of color are able to vote for their candidates of choice, their voices gain political power. They are better able to change the policies that affect their communities, leading to, for example, narrowed racial wealth disparities and reduced racial inequality in health and mortality.

These issues are particularly important for New Jersey, where significant racial disparities in voter registration and turnout rates persist,² and where the median net wealth of white residents is 21 times greater than that of Black residents and 45 times greater than that of Latina/Latino residents.³

In a state where people of color are almost the majority of the population and where nearly one-third of its residents speak a language other than English,⁴ these wide racial disparities are particularly troubling. Part of the path to addressing these issues is to ensure that Black, Latina/Latino and other voters of color have greater access to democracy—and with it, a tool to help change those conditions.

That is why New Jersey must enact a strong state voting rights act. By doing so, New Jersey can create a more equitable democracy and address these related, systemic problems that disproportionately burden Black, Latina/Latino and other voters of color.

THE PROMISE AND LIMITS OF THE FEDERAL VOTING RIGHTS ACT

History of the Federal Voting Rights Act of 1965

The federal Voting Rights Act of 1965 was a landmark victory of the Civil Rights Movement. While the immediate aftermath of the Civil War saw the ratification of the Fifteenth Amendment—which formally prohibited voting discrimination on the basis of race—people of color in the United States, and especially Black Americans, were routinely prevented from voting prior to the enactment of the federal VRA. State and local governments and private individuals erected countless barriers to voting for Black, Latina/Latino and other voters of color, including disparately applied literacy tests, poll taxes, all-white primaries and campaigns of violence against those who attempted to register and vote.⁵

In response, Black Americans organized for generations. In the 1960s, their efforts gained steam. Courageous organizations like the Student Nonviolent Coordinating Committee registered and mobilized Black voters in the South. In March 1965, when white officials in Alabama brutally attacked peaceful civil rights demonstrators—including future-Congressman John R. Lewis—who marched across the Edmund Pettus Bridge in Selma to protest the denial of voting rights to Black Americans as well as the murder of 26-year-old civil rights activist Jimmie Lee Jackson, the nation rallied in support of the demonstrators' cause.⁶ In August of 1965, President Johnson signed the federal Voting Rights Act into law, the most comprehensive voting rights legislation in American history.⁷

The federal VRA immediately banned poll taxes, empowered the U.S. Department of Justice (“DOJ”) to investigate discriminatory policies and prohibited voter intimidation.⁸ The VRA also created two primary routes to challenge discriminatory voting practices: First, Section 5 created a “preclearance” program, under which certain states and localities with histories of voter discrimination had to obtain prior approval from the federal government before implementing new voting policies or procedures.⁹

The federal preclearance program allowed the DOJ or a federal court to block a proposed change to voting in certain “covered jurisdictions” with histories of discriminatory voting practices if it found that the new change was racially discriminatory. Between 1965 and 2013, the DOJ blocked more than 3,000 discriminatory voting changes in jurisdictions covered by Section 5, including voter ID laws prohibiting student IDs and double registration requirements for federal and state elections—while also likely stopping many discriminatory laws from being proposed in the first place.¹⁰ In 1975, these preclearance protections were expanded to protect language minorities,¹¹ and also presumptively required bilingual elections for places with significant language minorities.¹²

The federal VRA also included Section 2, which bans jurisdictions from imposing election practices or procedures that “result[] in a denial or abridgement of the right of any citizen . . . to vote on account of race.”¹³ Individuals and organizations are empowered to file lawsuits over policies that violate this mandate. If a court finds that the challenged practice is racially discriminatory in violation of the VRA, it can order the jurisdiction to abandon or modify the practice.¹⁴

Since the VRA’s passage, Black, Latina/Latino and other voters of color, civil rights organizations and the DOJ have successfully used Section 2 “vote denial” claims to challenge discriminatory voter suppression practices—such as shortened early voting periods,¹⁵ restrictive voter ID laws¹⁶ and the elimination of same-day voter registration¹⁷—that make it harder for Black, Latina/Latino and other people of color to vote. Plaintiffs have also used Section 2 “vote dilution” claims to challenge hundreds of redistricting maps, at-large methods of election—or elections where all voters cast their ballots for all candidates in the jurisdiction¹⁸—and other practices that weaken or drown out the voices of Black, Latina/Latino and other voters of color.¹⁹ Vote dilution occurs when an at-large system allows a white majority to elect most or all of the representatives in a legislative body despite a substantial population of voters of color who prefer other candidates; it can also occur when voters of color are packed into a few districts or spread thinly among many to minimize their influence on electoral outcomes.²⁰



Photo: Lyndon B. Johnson Presidential Library

The Threats to the Federal VRA

The federal VRA was historic when it passed and remains an important tool for protecting voting rights. But today, because of weakened political will and disastrous Supreme Court rulings, it is much harder for advocates to use the federal VRA to protect voters when they need it. These threats make it crucial to pass state-level protections like the NJVRA.

Over the past decade, the Supreme Court has issued decisions that have substantially weakened the strongest provisions of the federal VRA. First, the Court gutted the federal VRA's "preclearance" program. Section 5 preclearance²¹ had proven highly effective at blocking both obvious and "ingenious"²² methods of racial discrimination in voting procedures. Because the DOJ was able to review laws before they were enacted, it could ensure that any legal change would not disproportionately burden Black, Latina/Latino and other voters of color; this deterred covered jurisdictions from attempting voter suppression in the first place.

In 2013, the Supreme Court in *Shelby County v. Holder* rendered Section 5 functionally inoperable.²³ The Court struck down as unconstitutional the framework used to determine which states or localities were subject to preclearance requirements as "covered jurisdictions."²⁴ Without the framework, the program itself cannot operate.²⁵ As a result, jurisdictions with a history and pattern of implementing discriminatory policies can now enact voting procedures and policies without federal approval—and DOJ or private parties must wait to sue until after the policy has already become law.²⁶

Indeed, on the day *Shelby County* was decided, previously covered jurisdictions began to pass restrictive laws designed to suppress the voting strength of Black, Latina/Latino and other people of color.²⁷ The laws passed include strict voter ID requirements, purging of voter rolls and curtailing early voting, among many other voting barriers.²⁸ This has created a game of whack-a-mole, where civil rights advocates must find and chase each new discriminatory law, only for another one to appear in its wake. Ten years after the Supreme Court's devastating decision in *Shelby County*, Congress has still failed to act to restore the federal Voting Rights Act to its full strength.²⁹

Second, the federal VRA's tools to challenge vote dilution and denial have been substantially narrowed. Section 2 was designed to allow individuals to challenge a wide array of discriminatory voting practices. Over time, however, courts have made it much harder to win these claims, including by raising the level of proof needed to win. In 2021, for example, the Supreme Court in *Brnovich v. Democratic National Committee* upheld a discriminatory voter ID and ballot collection law in Arizona and added new "guideposts" for evaluating vote denial claims that make it more difficult for challengers and more likely for the government to prevail.³⁰ These additional legal hurdles and high costs³¹ often prevent economically marginalized groups from bringing Section 2 claims, even where they might otherwise win.³²

Finally, in addition to decisions weakening the federal VRA, the protections in the VRA itself are not always tailored to the specific barriers that voters face in different states; this means that federal voting protections often don't apply to everyone who needs them. This limitation is especially striking in the context of language minorities. The federal VRA requires states with certain populations of language minorities to provide election and voting information in those languages, to ensure that voters understand their ballots.³³ However, the federal formula used to identify which language minorities benefit from this provision is limited; this limitation matters in a linguistically diverse state like New Jersey, where there are plenty of language minority populations that either do not fall under the Act's coverage at all or that are significant in number but not quite large enough to trigger federal protections. In practice, this means that since the federal VRA doesn't cover all groups of language minorities that might be burdened—for example, speakers of African or Middle Eastern languages are not considered a protected class under the federal law³⁴—many voters in New Jersey are left out from its language access protections. As a result, many of these voters often have trouble understanding their non-translated ballots or voting instructions, which makes it more difficult for them to vote.

All told, while the federal VRA remains a valuable tool to protect voting rights—especially after the critical 2023 Supreme Court decision in *Allen v. Milligan* upheld its constitutionality³⁵—it has been significantly weakened by the Supreme Court over the past decade and it cannot address all of the issues Black, Latina/Latino and other voters of color face—including in places like New Jersey.

The Move Toward State Voting Rights Acts

Against this backdrop, states dedicated to protecting the right to vote have begun enacting their own state-level voting rights acts. State voting rights acts have proven to be a powerful tool to fill in the federal VRA's gaps and strengthen voting rights on the state level, even as the Supreme Court weakens them on the federal one. They guarantee stronger alternative protections and develop innovative solutions that other states and Congress can emulate.

New Jersey must join this growing, powerful movement.

California was the first state to pass a state-specific voting rights act, enacting the California Voting Rights Act ("CVRA") in 2002.³⁶ The CVRA simplified the process of challenging vote dilution, making it less costly to bring (and easier to win) lawsuits against localities, especially for groups that would have been too small or spread out to win under federal law.³⁷ Washington and Oregon followed California's lead, enacting state VRAs in 2018 and 2019, respectively.³⁸

Recently, Virginia, New York and Connecticut have also enacted comprehensive state VRAs to further protect voters. In addition to creating a new private cause of action, Virginia's VRA adds protections for voters who need language assistance at the polls.³⁹ New York and Connecticut's laws also enhance protections against voter intimidation, institute a state "preclearance" program modeled on Section 5 of the federal VRA, expand language access requirements beyond the federal VRA's, and require judges to interpret legal provisions in ways that support voters.⁴⁰ Connecticut's VRA—the most recent and most comprehensive to pass—also creates a publicly accessible database to provide election information.⁴¹ Other states such as Maryland and Michigan have also begun the process of passing their own state VRAs.⁴²

The movement for strong state voting rights acts has not only begun, it is picking up momentum. New Jersey must not get left behind; it should join these states in becoming a robust protector and champion of voting rights. Passing a strong NJVRA that is tailored to the needs of the state's diverse population is the best path to get there.

THE HISTORY OF VOTING DISCRIMINATION IN NEW JERSEY

New Jersey's first constitution made it a leader in granting the right to vote. Unfortunately, despite New Jersey's early leadership in expanding the franchise to Black, Latina/Latino and other people of color and women more than two centuries ago, the state subsequently retreated into a long and shameful history of voter suppression and disenfranchisement.

New Jersey's first constitution in 1776 allowed "all inhabitants of full age, who are worth fifty pounds...and have resided within the county... for twelve months" within the state the right to vote, regardless of their gender, race or citizenship status.⁴³

In 1790, the state legislature went on to pass legislation explicitly confirming that both men and women had the right to vote.⁴⁴ These protections came well before the passage of the Fifteenth and Nineteenth Amendments to the federal Constitution guaranteed those rights for all.⁴⁵

However, the state's electoral inclusiveness was short-lived.

In 1807, New Jersey passed a law explicitly rescinding its previous expansion of voting rights to noncitizens, Black people and women.⁴⁶ In the process, New Jersey became one of the first states in the North to restrict voting rights to white, male, tax-paying citizens only.⁴⁷

Beyond narrowing the right to vote to white landowners at the turn of the 19th Century, the state further limited the franchise in its 1844 Constitution. Under the 1844 document, only white men were formally allowed to vote. The new rules also instituted felony disenfranchisement, which prohibited individuals with prior criminal convictions for certain offenses from voting. These disenfranchising offenses included such minor crimes as forgery and “larceny above the value of six dollar[s].”⁴⁸

Through the Civil War, New Jersey continued its pattern of excluding Black, Latina/Latino and other people of color, and women from the polls. In the midst of the Civil War, the New Jersey legislature opposed the Emancipation Proclamation freeing enslaved people,⁴⁹ and after the war ended, the state initially refused to ratify the Thirteenth Amendment—only abolishing slavery in 1866 as the last Northern state to do so. New Jersey also rescinded its initial ratification of the Fourteenth Amendment, which guaranteed equal protection, and did not ratify the Fifteenth Amendment, which protected the vote for all male citizens regardless of their race, until after it was already part of the Constitution.⁵⁰

Unfortunately, New Jersey did not leave this anti-democratic streak in the 19th Century. Although a federal court in 1970 officially struck down the list of offenses comprising the 1844 felony disenfranchisement law,⁵¹ the next year, the New Jersey legislature vastly expanded felony disenfranchisement by including all individuals serving a sentence for any crime to the list of those not allowed to vote.⁵²

The expansion of felony disenfranchisement in the 1970s is important because the War on Drugs significantly increased the number of incarcerated individuals in New Jersey, particularly for drug-related offenses; this stripped tens of thousands of citizens of their right to vote.⁵³ In New Jersey, which has the worst racial disparity among its incarcerated population in the country, this means that felony disenfranchisement has disproportionately harmed Black, Latina/Latino and other communities of color within the state.⁵⁴ Fortunately, after years of organized advocacy, New Jersey reinstated the voting rights of individuals on probation or parole in 2019, which restored the vote to almost 83,000 people.⁵⁵ Still, there remain thousands of predominantly Black and Latina/Latino individuals who are incarcerated and therefore cannot vote or have a say in the political process.⁵⁶

In addition, localities in New Jersey have found other ways to block access to the ballot. Since the federal VRA's passage in 1965, New Jersey cities and counties have been found by the DOJ to have violated it on multiple occasions. For example, in 1999, the DOJ sued Passaic City and Passaic County for failing to provide resources for “limited English proficient” or “Spanish language minority citizens under Section 203 of the VRA.”⁵⁷ Again in 2008, the DOJ sued Salem County and the Borough of Penns Grove for their disparate treatment of Latina/Latino voters under Sections 2, 203 and 208 of the VRA.⁵⁸ The DOJ alleged that these localities were not providing required Spanish-language voting materials and were denying limited English proficient voters the right to choose their language assistant of choice.⁵⁹ In 2008, the court ultimately entered a consent decree to stop the two municipalities from adopting voting practices that would deny or abridge the rights of Latina/Latino voters, fail to provide materials for language minority voters and interfere with voter assistance.⁶⁰



THE CURRENT STATE OF VOTING RIGHTS IN NEW JERSEY- AND THE NEED FOR THE NJVRA

Encouragingly, New Jersey has taken recent steps to strengthen its democracy. As a result of advocacy by the New Jersey Institute for Social Justice, courageous legislators and partners,⁶¹ the state passed automatic and online voter registration,⁶² ended prison gerrymandering,⁶³ guaranteed early voting,⁶⁴ expanded vote-by-mail⁶⁵ and restored the franchise to more than 83,000 people on probation or parole.⁶⁶

But there's much more work to be done for New Jersey to become a true pillar of democracy. Today, Black, Latina/Latino and other voters of color in New Jersey continue to face disproportionate barriers to the ballot. They are more likely than white voters to face long lines and late poll openings,⁶⁷ limited physical accessibility of polling locations⁶⁸ and limited language assistance.⁶⁹ In Newark—a majority-Black city and the state's most populous jurisdiction—there have frequently been serious logistical problems that leave many polling places without functional voting machines.⁷⁰ During the November 2020 election cycle, “three polling places opened late, which ‘led to long lines and reports of at least some people leaving without voting because they had to go to work.’”⁷¹ This is a chronic problem that New Jersey election officials have declined to address for years,⁷² creating the “unfortunate reality” that “the election issues in Essex County are disproportionately felt by Black and Brown voters in Newark.”⁷³

Meaningful voter accessibility is also a major problem—one that especially affects voters with disabilities, older voters, language minority voters and Black, Latina/Latino and other voters of color. A recent U.S. Election Assistance Commission study found that turnout rates for New Jersey voters with disabilities in the 2020 elections were 7.5% lower than rates for voters without disabilities.⁷⁴ This is unsurprising because localities refuse to make polling places accessible and are not held accountable for their decisions. For example, when the city of Newark sued local and county election officials to demand that all polling places for the 2022 primary elections be made accessible, a state judge refused to issue an order compelling the election board to do so.⁷⁵ Instead, the judge stated that they expected the Board would voluntarily comply with the Americans with Disabilities Act.⁷⁶

Other New Jersey voters are kept from the polls by language barriers. The DOJ, for example, sued Union County, New Jersey for violating the federal VRA, accusing the jurisdiction of not providing appropriate language assistance and materials for its nearly 28,000 Spanish-speaking voters.⁷⁷ In May 2023, the DOJ announced that it had reached an agreement with Union County that would require the county to print all election materials in English and Spanish as well as ensure that there is someone at polling sites to assist Spanish-speaking voters and voters with disabilities.⁷⁸

The federal VRA requires translated election materials for those who have limited proficiency in speaking English, but only where there is a group of at least 10,000 people or 5% of a jurisdiction's population that speak one of a limited list of languages (Spanish, Asian languages and Native American languages). Because of this, many New Jersey voters who are a part of language minority groups that fall outside that limited list (such as Arabic) or just beneath that threshold (such as Filipino or Tagalog, Hindi and Chinese) don't receive voting materials in the language they speak.⁷⁹

All of these barriers to the polls have led to real racial disparities in voter registration. According to U.S. Census Bureau data, while 83.5% of white New Jersey voters were registered before the 2020 election, just 66.2% of Black citizens, 60.7% of Latina/Latino citizens and 54.7% of Asian citizens in New Jersey were registered.⁸⁰ Registration disparities then become turnout disparities: 78.6% of white citizens voted in the 2020 election, while just 60.9% of Black citizens, 53.4% of Latina/Latino citizens and 50.4% of Asian citizens voted.⁸¹

Such barriers to ballot access can also widen disparities in other aspects of life.⁸² This is particularly true in New Jersey, where large racial divides in key socioeconomic indicators further reinforce the need for voting rights reform. In 2022, for instance, the unemployment rate for white New Jersey residents was 2.5 percentage points lower than it was for Latina/Latino residents and four percentage points lower than for Black residents.⁸³ In 2021, poverty rates were 15.7% for Black residents and 18.2% for Latina/Latino residents, compared to just 6.5% for white residents.⁸⁴ And with respect to the portion of New Jersey residents earning a college degree, there is an 18.6 percentage point difference between white and Black residents, 29.9 percentage point discrepancy between white and Native American residents and 14.1 percentage point disparity between white and Pacific Islander residents.⁸⁵

These stark disparities in voting access, voter turnout and socioeconomic indicators need to be addressed by better protecting the right to vote. To do so, New Jersey voters might want to turn to courts. But at the state level, New Jersey lacks robust civil causes of action that would allow voters to combat voter intimidation and suppression in state court. The state also has no centralized hub for election information, making it hard for time- and cash-strapped voters to know where to begin a challenge.

Federal courts are unlikely to provide a more friendly reception. As discussed above, the Supreme Court has substantially weakened the federal VRA and its protections over time. Although Congress has the ability to restore the federal VRA to its previous power, it has so far failed to restore the Act's critical protections.⁸⁶ And even if Congress did act, the federal VRA cannot be granularly tailored to the specific needs of New Jersey, leaving voters with imperfect tools to challenge the barriers they face.

New Jersey should therefore build and improve upon existing federal law by passing its own strong state VRA, which would establish preclearance requirements, expand language assistance, improve physical accessibility to polling locations and dismantle obstacles that make voting harder among Black, Latina/Latino and other communities of color.



THE COMPONENTS OF A STRONG NJVRA

By passing a strong state voting rights act, New Jersey can be a leader in expanding and securing voting rights to create an inclusive and racially just democracy for the next generation.

The NJVRA, which has been introduced in the New Jersey legislature, will make significant improvements across state election law. A strong version of this legislation will, among other provisions, create private causes of action against vote denial and vote dilution for voters within the state; establish state legal protections against voter intimidation; make language assistance available in more languages and in more places around the state; institute a state preclearance program modeled after Section 5 of the federal VRA;⁸⁷ codify a “democracy canon” to guide the interpretation of election law in New Jersey courts; and establish a centralized hub for election information to facilitate both transparent policy making and equitable voting rights enforcement.

Each of these measures is crucial to ensure that the right to vote is fully protected for all New Jersey residents.

New Cause of Action for Vote Dilution and Denial

The NJVRA will, like other state VRAs, create a cause of action for vote dilution and vote denial claims that may be pursued by state officials, individual voters or organizations that represent affected voters. The “private right of action” means that individuals will not have to wait for the state or federal government to be able to bring lawsuits against jurisdictions that violate their voting rights. The NJVRA will also simplify the process of proving those claims, as compared to current federal law, and give Black, Latina/Latino and other voters of color and civil rights advocates new legal tools to protect voting rights by making it more efficient and less costly to do so. And, unlike the federal VRA, the NJVRA will include a mechanism for addressing discrimination through a notice process and negotiated agreements without going to court, which will encourage cooperation and decrease costs for both voters and local governments.

By becoming a more accessible tool, the NJVRA’s simplified private cause of action will help reduce needless barriers to challenging common vote-denial practices like late-opening polling locations and will provide an additional avenue for civil rights advocates to challenge racially discriminatory voting practices without resorting to federal courts. It will also make it easier for smaller and more geographically dispersed Black, Latina/Latino and other groups of color to win relief from the courts when their voting rights are diluted by discriminatory redistricting maps or unfair “at-large” election systems.⁸⁸

Expanded Protections Against Voter Intimidation

Across the country, recent elections have shown that voter intimidation directed at Black, Latina/Latino and other communities of color is growing.⁸⁹ To stop this trend before it reaches New Jersey, the NJVRA includes strong protections against voter intimidation, deception and obstruction at the polls. This includes a civil cause of action that will allow private parties to sue people who seek to intimidate, deceive or obstruct voters, and will allow those parties to obtain appropriate remedies, including monetary damages or equitable relief.



This tool will further strengthen protections for voters by providing an additional accountability mechanism—beyond the federal VRA and the KKK Act⁹⁰—for those who seek to intimidate people from voting.

Expanded Language Assistance Provisions

Reflecting the state’s status as one of the most diverse in the country, New Jersey voters speak a wide array of languages.⁹¹ Despite this reality, voters who have limited English proficiency face significant language barriers when casting their votes. Section 203 of the federal VRA provides insufficient protections for these voters; the law only requires election officials to provide translated voting materials and other language assistance for a language minority group that is comprised of citizens of voting age who are limited English proficient, and that makes up at least five percent or 10,000 members of a jurisdiction’s population.⁹² It also only applies to Spanish, Asian languages and Native American languages.⁹³

The federal VRA’s unnecessarily high threshold and limited set of covered languages leaves many New Jersey voters without a legal right to the language assistance they need to cast a ballot.⁹⁴ For example, New Jerseyans who speak Filipino or Tagalog, Chinese, Hindi and Arabic—all of which are sizable language-speaking groups that make up between three to four percent of the state population—are left out of the federal law’s protections.⁹⁵

To fill this gap left by the federal VRA, the NJVRA includes measures to expand voter language accessibility. By lowering the minimum population for when language assistance is required by law, expanding the number of languages that its provisions address, and providing more and better translated language resources for limited English proficient voters, the NJVRA will better meet the evolving language needs of New Jersey’s racially and ethnically diverse communities.

Preclearance Requirement

The NJVRA will prevent state and local government entities from enacting racially discriminatory voting practices by establishing a state “preclearance” program modeled on the now-gutted Section 5 of the federal VRA.

Like the original preclearance requirement from the federal VRA, the NJVRA’s state preclearance requirement will require that covered New Jersey jurisdictions get permission from the state or a court before implementing new voting policies. Specifically, the program will apply to jurisdictions that have a recent history of violating voting rights laws or civil rights laws, or that have racial disparities in certain socioeconomic metrics. The NJVRA framework will tailor preclearance to New Jersey’s unique governance structure and racial history, targeting the places most likely to discriminate based on historical and current evidence and putting expert state officials in charge of assisting local election officials with addressing problems before they harm voters.

This kind of oversight will reduce the need for individuals to challenge every discriminatory voting practice or policy that is enacted by state and local governments. It will also prevent elections from being held under discriminatory voting practices—since the discriminatory policies will be stopped before they’re passed, rather than only after the resolution of drawn-out litigation. And it will save taxpayer money over time by reducing the need for localities to spend exorbitant sums defending their election practices in court.⁹⁶

Democracy Canon

No matter how strongly a voting law is written, its strength is ultimately subject to court interpretation. As the history of the federal VRA proves, courts can diminish even robust voter protections. That is why other states like New York have written a “democracy canon”—a provision that directs judges to interpret election laws, where ambiguous, in a manner that allows the most people to vote—into their state VRAs.⁹⁷

The NJVRA will also codify into law this protection for New Jersey voters. The proposed “democracy canon” in the NJVRA will ensure that whenever state law is open to multiple reasonable interpretations, courts will interpret the law in the manner that most strongly protects voters’ rights to cast ballots and have them counted. If doubts arise about the meaning of a state election or voting rights law in a lawsuit, judges will now have clear guidance that the legislature intends those laws to be resolved in favor of voters’ full participation and inclusion in the democratic process.

Centralized Database for Election Data and Information

Finally, one overlooked barrier to identifying voting inequities is how hard it is to get election and demographic data from local authorities.⁹⁸ Accessing and analyzing this data is necessary to determine whether a voting practice or policy is discriminatory and can be necessary to prove claims of voter discrimination. However, each locality currently holds this information individually, posing a significant burden to anyone seeking to conduct such an analysis.

By creating a centralized and publicly accessible statewide database for important election data and information, New Jersey, through the NJVRA, will make it easier for experts, advocates and the public to understand where voting problems arise and how they can be solved.

This increased transparency will also enable voters to more effectively hold their local governments accountable for ensuring equal access to the polls, and it will let local officials better compare practices in order to improve election administration.

CONCLUSION

Although New Jersey was once a leader in voting rights, too much of its history has included discriminatory acts of voter suppression. Far from being a relic of the past, the legacy of those discriminatory voting policies is still felt by New Jersey voters. Today, too many New Jersey voters find it difficult or impossible to exercise their constitutional right to vote. And today—given the lack of protections in state law and the gutting of the federal Voting Rights Act—those same New Jersey voters lack meaningful ways to challenge their exclusion.

Too often—and by design—those disenfranchised and suppressed tend to be Black, Latina/Latino and other voters of color.

New Jersey has a democracy, but it is not an equally accessible one.

To make the ideal of an equal and accessible democracy real in New Jersey, the state can no longer only rely on weakened federal law to protect its own voters. Following the examples of other states, New Jersey must enshrine and pass strong voting rights protections that ensure equal access to the ballot, particularly for Black, Latina/Latino and other voters of color.

New Jersey needs a state-specific voting rights act. We need a strong version of the John R. Lewis Voting Rights Act of New Jersey (A4554/S2997).



Illustration: Jake Girard

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About the Organizations

Established in 1999 by Alan V. and Amy Lowenstein, the **New Jersey Institute for Social Justice's** cutting-edge racial and social justice advocacy seeks to empower people of color by building reparative systems that create wealth, transform justice and harness democratic power—from the ground up—in New Jersey. Known for its dynamic and independent advocacy aimed at toppling load-bearing walls of structural inequality to create just, vibrant and healthy communities, the Institute is committed to exposing and repairing the cracks of structural racism in our foundation that erupt into earthquakes in communities of color. The Institute advocates for systemic reform that is at once transformative, achievable in the state and replicable in communities across the nation.

The Legal Defense Fund is America's premier legal organization fighting for racial justice. Using the power of law, narrative, research, and people, we defend and advance the full dignity and citizenship of Black people in America.

The Election Law Clinic at Harvard Law School is a nonpartisan law firm that works to train the next generation of election lawyers through litigation and advocacy that bring novel academic ideas to the practice of election law. It aims to build power for voters, not politicians, and recognizes that the struggle for voting rights is a struggle for racial justice. ELC is led by an experienced team of voting rights attorneys and around 30 students each year.

ENDNOTES

¹ See Matt Friedman, *New Jersey Legislature Passes Vote-by-mail Bill to Undermine Trump Lawsuit*, POLITICO (Aug. 27, 2020, 4:10 PM), <https://www.politico.com/states/new-jersey/story/2020/08/27/new-jersey-legislature-passes-vote-by-mail-bill-to-undermine-trump-lawsuit-1313141>; see also *Governor Murphy Signs Voting Reform Package to Strengthen New Jersey Elections*, OFF. OF THE GOVERNOR (July 28, 2022), <https://www.nj.gov/governor/news/news/562022/20220728c.shtml>.

² *Voting and Registration in the Election of November 2020*, U.S. CENSUS BUREAU (Apr. 2021), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html> (Table 4b, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020).

³ See N.J. INST. FOR SOC. JUST., *THE TWO NEW JERSEYS BY THE NUMBERS: RACIAL WEALTH DISPARITIES IN THE GARDEN STATE* (March 2023), <https://njsj.org/wp-content/uploads/2023/07/Two-New-Jerseys-By-the-Numbers-Data-Brief-3.23.23-compressed.pdf>.

⁴ *QuickFacts New Jersey*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/NJ> (last visited July 21, 2023).

⁵ *Milestone Documents: Voting Rights Act (1965)*, NAT'L ARCHIVES (Feb. 8, 2022), <https://www.archives.gov/milestone-documents/voting-rights-act#>.

⁶ See *Bloody Sunday: Civil Rights Activist Brutally Attacked in Selma*, EQUAL JUST. INITIATIVE, <https://calendar.eji.org/racial-justice/mar/07> (last visited July 17, 2023).

⁷ *Milestone Documents: Voting Rights Act (1965)*, *supra* note 5.

⁸ 52 U.S.C. §§ 10305, 10306, 10307.

⁹ 52 U.S.C. § 10304.

- ¹⁰ See Sandhya Bathija, *5 Reasons Why Section 5 of the Voting Rights Act Enhances Our Democracy*, CTR. AM. PROGRESS (Feb. 19, 2013), <https://www.americanprogress.org/article/5-reasons-why-section-5-of-the-voting-rights-act-enhances-our-democracy/>; see also Luis Ricardo Fraga & Maria Lizet Ocampo, *More Information Requests and the Deterrent Effect of Section 5 of the Voting Rights Act* 49 (2006), https://www.law.berkeley.edu/files/ch_3_fraga_ocampo_3-9-07.pdf; Myrna Pérez & Vishal Agraharkar, *If Section 5 Falls: New Voting Implications*, BRENNAN CTR. FOR JUST. (June 12, 2013), <https://www.brennancenter.org/our-work/research-reports/if-section-5-falls-new-voting-implications>.
- ¹¹ 52 U.S.C. § 10303.
- ¹² 52 U.S.C.A. § 10503.
- ¹³ 52 U.S.C. § 10301.
- ¹⁴ *Section 2 of the Voting Rights Act*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/crt/section-2-voting-rights-act> (last updated April 5, 2023).
- ¹⁵ See *One Wis. Inst. Inc. v. Nichol*, No. 15-cv-324-jdp (W.D. Wis. July 29, 2016).
- ¹⁶ See *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc) (affirming the district court's ruling that Texas's voter identification law violated Section 2 of the VRA).
- ¹⁷ See *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016) (holding that the law's provisions "target African Americans with almost surgical precision . . . constitute inapt remedies for the problems assertedly justifying them, and, in fact, impose cures for problems that did not exist").
- ¹⁸ See *At-Large Voting Frequently Asked Questions*, NAACP LEGAL DEF. & EDUC. FUND, <https://www.naacpldf.org/wp-content/uploads/At-Large-Voting-Frequently-Asked-Questions-1.pdf> (last visited August 11, 2023).
- ¹⁹ See *A Primer on Sections 2 and 3(c) of the Voting Rights Act*, NAACP LEGAL DEF. & EDUC. FUND 1 (Jan. 5, 2021), <https://bit.ly/39csLUt>.
- ²⁰ See *Section 2 of the Voting Rights Act: Vote Dilution and Vote Deprivation*, SCOTUSBLOG, <https://www.scotusblog.com/election-law-explainers/section-2-of-the-voting-rights-act-vote-dilution-and-vote-deprivation/> (last visited August 11, 2023).
- ²¹ 52 U.S.C. § 10304.
- ²² U.S. Congress, House, Committee on the Judiciary Voting Rights, 89th Cong., 1st sess., 1965, Mar. 18-20, 23-25, 20 Apr. 1, 1965.
- ²³ *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).
- ²⁴ *Id.*
- ²⁵ Jurisdictions may be "bailed in" to coverage by a court following a finding of certain violations, per 52 U.S.C. § 10302(c), but currently no jurisdictions are so covered.
- ²⁶ See NAACP LEGAL DEF. & EDUC. FUND, *DEMOCRACY DIMINISHED: STATE AND LOCAL THREATS TO VOTING POST SHELBY CTY, ALA. V. HOLDER* 1–2 (June 21, 2021), https://www.naacpldf.org/wp-content/uploads/LDF_01192021_DemocracyDiminished-4b_06.24.21.pdf.
- ²⁷ Ryan P. Haygood, *Hurricane SCOTUS: The Hubris of Striking Our Democracy's Discrimination Checkpoint in Shelby County & the Resulting Thunderstorm Assault on Voting Rights*, 10 HAR. L. & POL'Y REV. ONLINE S11, S35–49 (2015).
- ²⁸ See NAACP LEGAL DEF. & EDUC. FUND, *supra* note 26, at 7.
- ²⁹ The federal John R. Lewis Act, which Congress refuses to pass, would update the formula. *Strengthening the Voting Rights Act*, BRENNAN CENTER, (2021), <https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-reform/strengthening-voting-rights-act>.
- ³⁰ See *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321 (2021).
- ³¹ See NAACP LEGAL DEF. & EDUC. FUND, *THE COST (IN TIME, MONEY, AND BURDEN) OF SECTION 2 OF THE VOTING RIGHTS ACT*, 2–3 (2017), available at https://www.naacpldf.org/wp-content/uploads/Section-2-costs-08.13.18_1.pdf. While vote denial claims do not require plaintiffs to satisfy the *Gingles* test, the "totality of the circumstances" test for vote denial claims similarly requires expert witnesses who can testify to the history of the jurisdiction, the effects of the practice, the extent of racially polarized voting, ongoing racial discrimination in education, employment, and health, and more.
- ³² In June of this year, the Supreme Court reaffirmed the constitutionality of Section 2 and the longstanding framework for addressing vote dilution under the law. See generally *Allen v. Milligan*, 143 S. Ct. 1487 (2023). That ruling also underscores that state voting rights acts such as the NJVRA are on solid constitutional ground.
- ³³ See *About Language Minority Voting Rights*, U.S. DEP'T OF JUST. (updated Apr. 5, 2023), <https://www.justice.gov/crt/about-language-minority-voting-rights>.
- ³⁴ See *id.* ("Covered language minorities are limited to American Indians, Asian Americans, Alaskan Natives, and Spanish-heritage citizens - the groups that Congress found to have faced barriers in the political process," as of the latest determination made on December 8, 2021).
- ³⁵ See *Milligan*, 143 S. Ct. at 1498.
- ³⁶ California Voting Rights Act of 2001, CAL. ELEC. CODE, § 14025 et. seq. (West 2002).
- ³⁷ See CAL. ELEC. CODE § 14028(c). For more information on the *Gingles* test, see *supra* note 31.

- ³⁸ See WASH. REV. CODE ANN. § 29A.92.900 et seq. (2018); ORE. REV. STAT. § 255.400 et seq. (2019).
- ³⁹ Virginia Voting Rights Act, VA. CODE ANN., § 24.2-126,-128 et seq. (2021).
- ⁴⁰ John R. Lewis Voting Rights Act of New York, N.Y. ELEC. LAW § 17-208 (language-minority protections), 210 (pre-clearance), 212 (voter intimidation) (McKinney 2022); Jaden Edison, *Gov. Ned Lamont Signs CT Voting Rights Act into Law*, CT MIRROR (June 12, 2023, 7:35 PM), <https://ctmirror.org/2023/06/12/ct-voting-rights-act-law-elections/>.
- ⁴¹ Edison, *supra* note 40.
- ⁴² H.B. 1104, 2023 Leg., 445th Sess. (Md. 2023); S.B. 0878, 2023 Leg., 445th Sess. (Md. 2023); *Michigan Voting Rights Act Introduced, Latest in a Wave of State VRAs*, CAMPAIGN LEGAL CTR. (June 28, 2023), <https://campaignlegal.org/press-releases/michigan-voting-rights-act-introduced-latest-wave-state-vras>.
- ⁴³ *Did You Know: Women and African Americans Could Vote in NJ before the 15th and 19th Amendments?*, NAT'L PARK SERV. (updated July 3, 2018), <https://www.nps.gov/articles/voting-rights-in-nj-before-the-15th-and-19th.htm#:~:text=New%20Jersey's%20first%20constitution%20in,and%20women%20had%20voting%20rights> (emphasis added) (omission in original) (quoting N.J. CONST. of 1776).
- ⁴⁴ *Id.*
- ⁴⁵ See *id.*
- ⁴⁶ ALEXANDER KEYSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 354 tbl. A5 (1st ed. 2000); *Part 2: How Did the Vote Expand? New Jersey's Revolutionary Decade*, MUSEUM OF AM. REVOLUTION, <https://www.amrevmuseum.org/virtualexhibits/when-women-lost-the-vote-a-revolutionary-story/pages/how-did-the-vote-expand-new-jersey-s-revolutionary-decade> (last visited July 21, 2023); *No Racial Requirement*, MUSEUM OF AM. REVOLUTION, <https://www.amrevmuseum.org/virtualexhibits/when-women-lost-the-vote-a-revolutionary-story/pages/no-racial-requirement-2> (last visited July 21, 2023).
- ⁴⁷ MUSEUM OF THE AM. REVOLUTION, *How Did the Vote Expand?*, *supra* note 46; MUSEUM OF THE AM. REVOLUTION, *No Racial Requirement*, *supra* note 46; see also N.J. INST. SOC. JUST., *1844 No More*, *supra* note 46; ALEXANDER KEYSAR, *supra* note 46, at 354 tbl. A5.
- ⁴⁸ N.J. INST. SOC. JUST., *1844 No More*, *supra* note 46.
- ⁴⁹ *Id.*
- ⁵⁰ *Id.*; GILES R. WRIGHT, *AFRO-AMERICANS IN NEW JERSEY: A SHORT HISTORY* 29 (N.J. Hist. Comm'n 1988).
- ⁵¹ See *Stephens v. Yeomans*, 327 F. Supp. 1182, 1188 (D. N.J. 1970).
- ⁵² *Id.*
- ⁵³ *Id.*
- ⁵⁴ N.J. DEP'T OF CORR., *INCARCERATED PERSONS IN NEW JERSEY CORRECTIONAL INSTITUTIONS ON JANUARY 3, 2023, BY RACE/ETHNIC IDENTIFICATION* (2023), available at https://www.state.nj.us/corrections/pdf/offender_statistics/2023/By_Race-Ethnicity_2023.pdf.
- ⁵⁵ Vanessa Romo, *New Jersey Governor Signs Bills Restoring Voting Rights to More than 80,000 People*, NPR (Dec. 19, 2019, 6:29 PM), <https://www.npr.org/2019/12/18/789538148/new-jersey-governor-signs-bills-restoring-voting-rights-to-more-than-80-000-people>; see also generally N.J. INST. SOC. JUST., *VALUE TO THE SOUL: PEOPLE WITH CRIMINAL CONVICTIONS ON THE POWER OF THE VOTE* (2019), available at https://d3n8a8pro7vhmx.cloudfront.net/njisj/pages/1360/attachments/original/1570569487/Value_to_the_Soul_10-08-19_FIN_WEB.pdf?1570569487.
- ⁵⁶ See Sophie Nieto-Munoz, *Annual Prison Count Shows Racial Disparities Persist Behind Bars*, NEW JERSEY MONITOR (Apr. 10, 2023, 7:20 AM), <https://newjerseymonitor.com/2023/04/10/annual-prison-count-shows-racial-disparities-persist-behind-bars/>.
- ⁵⁷ See Compl. ¶¶ 13, 33, 36, *United States v. Passaic City, N.J.*, No. 99-2544 (D.N.J. 1999), available at <https://www.justice.gov/crt/united-states-district-court-district-new-jersey-4>.
- ⁵⁸ See Compl. ¶¶ 13, 33, 36, *United States v. Passaic City, N.J.*, No. 99-2544 (D.N.J. 1999), available at <https://www.justice.gov/crt/united-states-district-court-district-new-jersey-4>.
- ⁵⁹ *Id.* ¶¶ 15-16.
- ⁶⁰ Settlement Agreement & Prop. Order ¶ 1, *United States v. Salem Cnty., N.J.*, No. 1:08-cv-032760-JHR-AMD (D.N.J. 2008), available at <https://www.justice.gov/crt/united-states-district-court-district-new-jersey-1>.
- ⁶¹ See e.g., Jake Girard, *Institute's New Report Proposes Bold Reforms to Increase Voter Turnout*, N.J. INST. FOR SOC. JUST. (Feb. 03, 2020), <https://www.njisj.org/institute-s-new-report-proposes-bold-reforms-to-increase-voter-turnout>.
- ⁶² Elise Young, *New Jersey Adopts Automatic Voter Registration*, BLOOMBERG, (Apr. 17, 2018, 1:38 P.M.), <https://www.bloomberg.com/news/articles/2018-04-17/new-jersey-adopts-automatic-voter-registration-democrats-cause#xj4y7vzkg>.
- ⁶³ Blake Nelson & Brent Johnson, *N.J. Changes How Inmates Are Counted in Census as Murphy Ends "Prison Gerrymandering"*, NJ.COM (updated Jan. 23, 2020, 1:45 P.M.) <https://www.nj.com/politics/2020/01/nj-changes-how-in-mates-are-counted-in-census-as-murphy-ends-prison-gerrymandering.html>.

- ⁶⁴ Jane C. Timm, *New Jersey's Democratic Governor Signs Early Voting Expansion, Calls Out Georgia*, NBC NEWS (March 30, 2021, 3:27 PM), <https://www.nbcnews.com/politics/elections/new-jersey-s-democratic-governor-signs-early-voting-expansion-calls-n1262464>.
- ⁶⁵ Brittany Gibson, *How New Jersey Became a Vote-by-Mail State*, AM. PROSPECT, (July 8, 2020), <https://prospect.org/civil-rights/how-new-jersey-became-a-vote-by-mail-state/>.
- ⁶⁶ Romo, *supra* note 55.
- ⁶⁷ While there were issues “throughout the [s]tate” during the 2020 general election, complaints about long lines and late poll openings were concentrated in Essex County and particularly Newark while whiter counties reported fewer issues. N.J. ELECTION PROT. COAL., ELECTION PROTECTION REPORT: ISSUES NEW JERSEY VOTERS ENCOUNTERED FROM OCTOBER 15 THROUGH NOVEMBER 3, 2020, at 21 tbl. 4, 22 & tbl. 5 (2021), available at https://www.aclu-nj.org/sites/default/files/2020_election_protection_report.pdf; see also Genesis Obando, *Election Day Problems, Newark: Delayed Openings, Confusion Forced Potential Voters Away From Polls*, NJ SPOTLIGHT NEWS (Nov. 13, 2020), <https://www.njspotlightnews.org/2020/11/nj-election-2020-newark-in-person-voting-problems-delayed-opening>. Wait times to vote in predominantly Black communities is significantly higher than in predominantly white communities nationwide. M. Keith Chen et al., *Racial Disparities in Voting Wait Times: Evidence from Smartphone Data* 12 (2020), available at <https://arxiv.org/pdf/1909.00024.pdf>.
- ⁶⁸ See, e.g., Steve Strunsky, *Polling Places Aren't Handicapped-Accessible and Need to Be, Newark Says in Lawsuit*, NJ.COM (updated Feb. 15, 2023, 9:45 PM), <https://www.nj.com/essex/2022/05/polling-places-arent-handicapped-accessible-and-need-to-be-newark-says-in-lawsuit.html>; N.J. ELECTION PROT. COAL., *supra* note 67, at 26 (“Based on the data, the most common issue affecting voters with disabilities on Election Day was the denial of access to ADA-accessible voting machines”).
- ⁶⁹ N.J. ELECTION PROT. COAL., *supra* note 67, at 28–29 (documenting polling locations throughout the state of New Jersey that lacked interpretation services).
- ⁷⁰ See David Wildstein, *33 Voting Machines, Mostly for Black Districts in Newark, Didn't Arrive Until After Polls Opened*, N.J. GLOBE (June 8, 2021, 11:48 AM), <https://newjerseyglobe.com/local/33-voting-machines-mostly-for-black-districts-in-newark-didnt-arrive-until-after-polls-opened/>; Eric Kiefer, *Some Election Day Snags in Newark, But Not at “Super Poll Site,”* PATCH (Nov. 3, 2020, 4:45 PM), <https://patch.com/new-jersey/newarknj/some-election-day-snags-newark-not-super-poll-site>.
- ⁷¹ Colleen O’Dea, *The Election So Far: Some Glitches with In-Person and Mail-In Voting, Some Voter Confusion*, NJ SPOTLIGHT NEWS (Nov. 3, 2020), <https://www.njspotlightnews.org/2020/11/nj-election-2020-mail-in-in-person-voting-election-day-some-glitches-voter-confusion/>.
- ⁷² See Letter from Abbott Leadership Inst., et al., to Patty Spango, Essex Cnty. Supervisor of Elections (June 11, 2021), available at https://tapinto-production.s3.amazonaws.com/documents/25298/Ltr_to_Patty_Spango_re_Newark_June_2021_Primary_Election.pdf.
- ⁷³ *Id.* at 1.
- ⁷⁴ Lisa Schur & Douglas Kruse, *Fact Sheet; Disability and Voter Turnout in the 2020 Elections* 10, RUTGERS UNIVERSITY & U.S. ELECTION ASSISTANCE COMM’N, https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/FactSheet_Disability_Voter_Turnout_2020.pdf (last visited July 18, 2023).
- ⁷⁵ Steve Strunsky, *Judge Refuses to Order that Newark Polling Places Be Made Handicapped Accessible*, NJ.COM (updated Feb. 16, 2023, 2:40 AM), <https://www.nj.com/essex/2022/05/judge-refuses-to-order-that-newark-polling-places-be-made-handicapped-accessible.html>.
- ⁷⁶ *Id.* This expectation seems particularly misplaced given that now-Mayor Ras Baraka had challenged similar policies before the May 10 election, yet little had changed by June. See *id.*
- ⁷⁷ See Ayanna Alexander, *Justice Dept. Settles with New Jersey County over Ballot Languages, Highlighting Widespread Barrier*, SEATTLE TIMES (May 10, 2023, 2:39 PM PST), <https://www.seattletimes.com/nation-world/nation/justice-dept-settles-with-new-jersey-county-over-ballot-languages-highlighting-widespread-barrier/>.
- ⁷⁸ Press Release, U.S. Att’y’s Off., Dist. of N.J., Justice Department Reaches Agreement to Protect Rights of Spanish-Speaking Voters in Union County (May 9, 2023), <https://www.justice.gov/usao-nj/pr/justice-department-reaches-agreement-protect-rights-spanish-speaking-voters-union-county#:~:text=in%20Union%20County-,Justice%20Department%20Reaches%20Agreement%20to%20Protect%20Rights%20of,Speaking%20Voters%20in%20Union%20County&text=NEWARK%2C%20N.J.%20%E2%80%93%20The%20Justice%20Department,settle%20a%20voting%20rights%20lawsuit>.
- ⁷⁹ See N.J. DEP’T OF HUMAN SERVS & N.J. DEP’T OF LAB. & WORKFORCE DEV., NEW AMERICANS INTEGRATION REPORT 3 (2020), available at <https://www.nj.gov/humanservices/library/slides/NJ%20ONA%20Report%20-%20Final%2010.14.2020.pdf>.

⁸⁰ *Voting and Registration in the Election of November 2020*, *supra* note 2.

⁸¹ *Id.* These gaps could be much worse than they appear. Recent research indicates that the Census Bureau's statistics on turnout may overestimate the incidence of voting among communities of color. See Stephen Ansolabehere et al., *The Current Population Survey Voting and Registration Supplement Overstates Minority Turnout*, 84 J. POL. 1850, 1853–54 (2022).

⁸² See Roman Pabayo et al., *Barriers to Voting and Access to Health Insurance Among US Adults: A Cross-Sectional Study*, LANCET REG'L HEALTH AMS. (2021), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9904135/>.

⁸³ *Complete Health Indicator Report of Population Demographics*, N.J. DEP'T OF HEALTH, N.J. STATE HEALTH ASSESSMENT DATA (updated Nov. 3, 2022), https://www-doh.state.nj.us/doh-shad/indicator/complete_profile/Demographics.html.

⁸⁴ *Health Indicator Report of Population Demographics*, N.J. DEP'T OF HEALTH, N.J. STATE HEALTH ASSESSMENT DATA (updated Nov. 3, 2022), <https://www-doh.state.nj.us/doh-shad/indicator/view/Demographics.Poverty.html>.

⁸⁵ *S1510: Educational Attainment*, U.S. CENSUS BUREAU, <https://data.census.gov/table?q=Educational+attainment+in+New+jersey+by+race&g=040XX00US34&tid=ACSS1Y2021.S1501> (last visited July 19, 2023).

⁸⁶ See generally, e.g., *Shelby Cnty. v. Holder*, 570 U.S. 529, (2013); *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321 (2021).

⁸⁷ Though Section 5 of the federal VRA remains on the books, it is effectively non-operable because of the Supreme Court's decision finding the coverage formula in Section 4 to be unconstitutional. See *Shelby Cnty.*, 570 U.S. at 557.

⁸⁸ At-large voting is understood as a system in which the entire electorate votes for all the candidates in a given jurisdiction. See *City of Rome v. United States*, 446 U.S. 156, 184 & n.19.(1980), *superseded by statute on other grounds*.

⁸⁹ See Neil Vigdor & Jon Hurdle, *Election Officials Say Efforts to Intimidate Voters Are Widening*, N.Y. TIMES (Nov. 3, 2022), <https://www.nytimes.com/2022/11/03/us/politics/voting-intimidation-democracy.html>.

⁹⁰ 42 U. S. C. §§ 1983, 1985, 1986.

⁹¹ See *New Jersey*, DELOITTE DATAUSA, <https://datausa.io/profile/geo/new-jersey> (last visited July 19, 2023).

⁹² See *Section 203 of the Voting Rights Act*, U.S. DEP'T OF JUST. (updated Mar. 11, 2020), <https://www.justice.gov/crt/language-minority-citizens>.

⁹³ See *id.*

⁹⁴ See Hansi Lo Wang, *A Federal Law Requires Translated Voting Ballots, But Not in Arabic or Haitian Creole*, NPR (June 26, 2022, 3:16 PM), <https://www.npr.org/2022/06/24/1083848846/bilingual-ballots-voting-rights-act-section-203-explained>.

⁹⁵ See N.J. DEP'T OF HUMAN SERVS. & N.J. DEP'T OF LAB. & WORKFORCE DEV., *supra* note 79, at 3.

⁹⁶ See NAACP LEGAL DEF. FUND, *supra* note 31, at 3–6.

⁹⁷ See Richard L. Hasen, *The Democracy Canon*, 62 Stan. L. Rev. 69, 77 (Dec. 2009).

⁹⁸ See, e.g., NYCLU & NAACP LEGAL DEF. & EDUC. FUND, JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK 18 (2022), available at <https://www.nyclu.org/en/publications/john-r-lewis-voting-rights-act-new-york>.



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