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COMMUNITY- BASED GUIDELINES FOR POST-SHELBY MONITORING

protecting the right
to vote in 2014-2016

Due to the recent United States Supreme Court decision in *Shelby County v. Holder*, Section 5 of the Voting Rights Act of 1965 ("VRA") cannot currently be used to monitor voting changes in the jurisdictions that were formerly covered under Section 5 (including Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia; some counties or townships in California, Florida, Michigan, New York, South Dakota; and the majority of counties in North Carolina). These jurisdictions were required to submit any changes in any voting practice or procedure to the Department of Justice or to a federal court, which investigated and analyzed whether or not they would be discriminatory. Any changes in voting procedures were frozen and could not be legally implemented before they could pass this test. Section 5 was thus a powerful tool to stop discrimination in voting before it could disenfranchise voters. Since 1965, it stopped hundreds of forms of discrimination in voting systems, attempted limits on voter registration, barriers to the ballot, & questionable election procedures.

The gutting of Section 5 of the VRA has already negatively impacted voters of color. For example, just one month after the *Shelby* decision, North Carolina passed a sweeping bill limiting access to the franchise, which impacts hundreds of thousands of

STEPS TO PROTECT YOUR VOTE



- Monitor misallocation and under allocation of polling places and polling place resources to make sure all communities have an equal access to vote

DECEPTIVE PRACTICES

- Monitor partisan voter caging activities (caging is the process of challenging a person's voter registration status). Sometimes this can be done by sending mail to voter's address and compiling lists of voters whose mail is returned
- Monitor the distribution of false, confusing or misleading information
- Monitor intimidating billboards, flyers or other information that may discourage someone from registering to vote or voting

VOTING DISTRICTS

- Monitor changes in the method of election to add seats elected at-large or to change one or more seats elected by single-member district to one or more at-large or multi-member seats, as well as annexations
- Monitor changing municipal boundaries in election districts where voters of color have experienced a population increase in recent years

Black and Latino voters. Advancement Project filed a lawsuit on behalf of the North Carolina NAACP challenging the state's cuts to early voting, elimination of same day voter registration, and a strict voter ID law, all of which have a discriminatory impact on voters of color. All of these recent voting changes and many others in the formerly-covered jurisdictions would have been frozen by Section 5. In order to ensure equal access to the ballot in future elections, community groups, grass-roots organizations, labor unions, faith organizations, student groups and civil rights organizations have banded together to monitor voting changes across the country to stop potentially discriminatory voting changes before they are implemented.

Purpose of Post-Shelby Monitoring

- Identify changes at the state, county, and municipal levels that make it harder for voters of color to cast a ballot and have it counted. (See the attached list of Potentially Discriminatory Voting Changes.)
- Investigate whether they will have a discriminatory impact on voters of color. (See Step-by-Step Monitoring Plan.)
- Use advocacy, communication campaigns, and litigation to work towards ensure that the ballot box is accessible for eligible voters by stopping discriminatory voting changes in their tracks.

A monitoring strategy should be in place at least six months before an election. This gives community groups time to collect and analyze data, and provide election officials notice that there are issues that the community wants to help resolve. It is almost always best to resolve problems or if that is not possible, freeze potentially discriminatory voting changes before they are implemented in an election, and this should be done collaboratively. Working collaboratively will help ensure that all collected and analyzed information is shared with local labor, faith, civic engagement and student partners. Suggestions for advocacy should also come from the groups on the ground. Finally, all groups who are monitoring voting changes are encouraged to work together and report to partners on a bi-weekly basis.

The following five steps will give you a basic outline of how to implement this monitoring strategy:

POLL WORKER TRAINING & OTHER POLL WORKER ISSUES

- Monitor poll worker training manuals and classes
- Encourage election officials to provide additional trainings to poll workers who request them
- Ensure training includes that poll workers must contact their election office before issuing a provisional ballot to ensure the correct procedure is followed
- Ensure that there are a sufficient number of bilingual poll workers who are able to assist voters who have limited-English proficiency
- Ensure poll workers are a diverse representation of the communities they serve
- Ensure poll workers are accountable for the provisional ballots they distribute by signing and the ballot envelope and stating a reason for issuing the provisional ballot
- Encourage election officials to offer in-person poll worker trainings rather than only online trainings

POLLING PLACE CHANGES

- Monitor any reduction, consolidation, or relocation of voting locations, including early, absentee, and election-day voting locations, especially where the relocation of polling places results in a net loss of voting locations

IMPROPER PURGES AND REMOVAL OF VOTERS

- Monitor the details of the method and reasons for purging voter from the rolls
- Get copies of purge lists, notice letters, and data about the race of targeted voters
- Monitor what notice and reply procedures are in place to inform targeted voters and permit them to stay on the voting rolls

LANGUAGE ACCESS

- Monitor any reduction of the kind or type of voting materials that are provided in a language other than English or any change in the manner in which such materials are provided or distributed
- Ensure that information printed in other languages is translated accurately
- Ensure that limited-English proficient voters have bilingual ballots
- Ensure that limited-English proficient voters have the assistance needed in order to cast their ballot
- Monitor if there is a reduction in the number of bilingual poll workers
- Ensure that voters can use assistors of their own choice and monitor changes in voting assistance rules

STEP 1: OBTAIN INFORMATION ABOUT THE VOTING CHANGES

Community groups working together to monitor voting changes can divide their state into regions based on where they have capacity. A meeting to determine regional capacity should happen at least 6 months before the Election. After community groups determine capacity, the first step of post-Shelby monitoring is to find out the voting changes with as much detail as possible. This can be done by the following:

A. Community Groups, Churches, Civic Organizations

- Local voters are one of the best sources we have of notice regarding voting changes. It is critical to build transformative relationships with community groups as they are best situated to hold elected and election officials accountable.

B. Election Official, County Legislative, and School Board Meetings

- Community groups who are designated to a region should meet with local election officials on a monthly basis (or a time period groups agree on) to determine if there are voting changes.
- To ensure consistency across counties, an informal election official survey can be utilized to guide the conversation. An election official survey is a comprehensive list of questions about all voting practices and procedures that are important to the

- local community, and it is sent in advance of the election official meeting.

- County legislative meetings as well as school board meetings should also be monitored to determine if there are meetings that relate to elections, including but not limited to: (1) polling place closures and relocations; (2) changes in the precinct or district lines; and (3) appropriations for all components of elections (such as appropriations for early voting, polling place resources, etc.); and (4) changes in the method of elections (such as changes to district bounds or a move from single member to at-large districts).

C. Secretary of State & Election Official Websites

- Many state and local election officials publish information about voting practices and procedures on their website. These websites should be consistently monitored to see what is changing over time. For example, there may be new rules or directives regarding voter registration, or poll worker training.

D. Local Media

- Many counties require publication of voting changes, and this is usually done through the local newspaper. Also, local political reporters may hear of voting changes before they are publicized. Groups should monitor local traditional, political and ethnic media on a weekly basis.

VOTER REGISTRATION

- Monitor changes of registration requirements and errors processing voter registration applications
- Check the voter rolls county by county to make sure new registrants make the list
- Monitor barriers for third party voter registration groups to make sure historically underserved communities have an opportunity to register
- Make sure voters are notified according to the law and have an opportunity to respond if their eligibility is questioned by election officials

PROVISIONAL BALLOTS

- Make sure provisional ballots are not distributed for wrong reasons
- Ensure poll workers take extra steps to contact their election offices to verify eligibility if a voter is not found in the electronic records (such as EVID) or poll registers

Since the moment the Supreme Court took away the protections of Section 5 in the Shelby decision, states across the South have begun implementing discriminatory voting changes. At the same time, voters of color are fighting back and recent court battles have shown that many times, the law is on our side. In order to stop the wave of new voting restrictions from taking away our most fundamental right, we must keep our eyes on the prize. This means watching election and voting rules closely and doing the monitoring together, challenging discriminatory voting changes through advocacy and communications strategies, and when necessary, initiating litigation. Experience shows that collaborative, grass-roots efforts are the most effective tools to combating voter suppression, and so these tools are also recommended in post-Shelby monitoring.

E. Public Records Requests

- If information is not already publicly available, public records requests can be submitted to election officials, and the Department of Elections. This can be done in combination with election official meetings, or in lieu of election official meetings.

STEP 2: DATA & INFORMATION ANALYSIS

The data and information that comes from election official meetings, public records requests, and local newspapers should be shared with the entire coalition through a streamlined process. Once this information is shared, designated group(s) will analyze the data to determine if there is a potential discriminatory impact (making it harder or less accessible for Black, Latino, Asian or Native Americans to vote).

STEP 3: COMMUNITY IMPACT ANALYSIS

It is important to analyze the community impact of the voting change to see how it will affect communities of color on the ground. Groups should always talk to voters of color from the local community to ask how the voting change affects their communities, and to involve them as lead partners in the advocacy strategy with election officials.

STEP 4: PROBLEM SOLVING

If data analysis shows there may be a discriminatory impact, then the coalition should determine the next steps to solve the problem. This could be through advocacy and/or through possible litigation, if there is indeed a potential violation of voting rights law. If litigation is determined to be necessary, the coalition should determine what the best remedy is.

STEP 5: ADVOCACY

- Resolve problems with local election and elected officials through strategic advocacy campaigns with partners who represent communities of color.
- Advocacy is an important tool to educate, and mobilize communities, while encouraging election officials to use affirmative authoritative discretion to make changes which lower barriers. Through advocacy we build local power which can lead to long term change and transformative relationships between communities and election officials.
- To work this process should be transformative, transparent and collaborative, so groups should consistently check in with each other to make sure the process is effective and should change strategies whenever needed. The groups on the ground should also be able change strategies as needed.

- Examples successful advocacy strategies include that election officials do these things:
 - Ensure that voter registration applications are processed according to the legal deadlines, and voters are notified about mandatory corrections with enough time to make changes and get on the rolls.
 - Reach out to community partners for support in building voter registration drives.
 - Expand opportunities to vote based on the needs of the communities, including expanding early voting hours and sites.
 - Improve poll worker training and allowing community groups to participate in trainings and make recommendations.
 - Stop unfair voter list maintenance (or purge) procedures.
 - Improve translations so that translated voting materials are clear, accurate and complete.
 - Make sure communities are notified of any change in polling locations well in advance of voting, by posting notices, as well as using local ethnic media to reach communities.
 - Stop partisan deceptive practices from influencing election administration.
 - Expand opportunities for communities to participate in "Adopt-a-Precinct" programs.
 - Allow community groups to make recommendation before election administration changes are made.