VOTING RIGHTS — VOTING RIGHTS ACT OF 1965 — WESTERN DISTRICT OF TEXAS REFUSES TO SUBJECT STATE OF TEXAS TO PRECLEARANCE. — *Perez v. Abbott*, 390 F. Supp. 3d 803 (W.D. Tex. 2019).

Section 5 of the Voting Rights Act of 1965[1] (VRA) historically required certain (mostly Southern) states that had previously erected barriers to minority voting[2] to obtain permission from either a federal three-judge panel or the Attorney General of the United States prior to changing their voting procedures.[3] This process was known as preclearance.[4] In 2013, in *Shelby County v. Holder*,[5] the Supreme Court struck down section 4 of the VRA,[6] which established a historically based formula for identifying states subject to preclearance.[7] However, section 3(c) of the VRA[8] — which remains in effect — allows federal courts to "bail in" additional states for preclearance if the state's voting procedures have violated either the Fourteenth or Fifteenth Amendment.[9] Recently, in *Perez v. Abbott*,[10] a three-judge panel in the Western District of Texas declined to "bail in" Texas for preclearance.[11] In doing so, the court erred in applying the reasoning of *Shelby County* to the section 3(c) claim in *Perez*, significantly raising the evidentiary threshold for section 3(c) claims and likely further limiting prospective remedies that prevent voting rights violations.

In 2011, in the aftermath of the 2010 decennial census, the State of Texas redrew its legislative and congressional districts.[12] Since the Court had not yet decided *Shelby County*, Texas immediately submitted its maps for preclearance in accordance with its status as a "covered jurisdiction" under the VRA's section 4 formula.[13] In May 2011, while the preclearance process was ongoing, voter-plaintiffs challenged the maps in the Western District of Texas on the grounds that the drawing of certain state and congressional districts diluted the votes of Latinos and African Americans in violation of the Fourteenth Amendment and

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1 Pub. L. No. 89-110, § 5, 79 Stat. 437, 439 (codified as amended at 52 U.S.C. § 10303 (2012)).

2 *See* 52 U.S.C. § 10303.

3 *Id.* § 10304(a).

4 Preclearance was a remedy implemented in response to states' evolving mechanisms for denying minority voters the equal opportunity to participate in elections. *See* Shelby County v. Holder, 570 U.S. 529, 536 (2013) (noting that prior to the VRA, "the States came up with new ways to discriminate as soon as existing ones were struck down").

5 570 U.S. 529.

6 § 4, 79 Stat. at 437 (codified as amended at 52 U.S.C. § 10303).

7 *Shelby County*, 570 U.S. at 557.

8 § 3(c), 79 Stat. at 437–38 (codified as amended at 52 U.S.C. § 10302(c)).

9 *Id.*; *see Shelby County*, 570 U.S. at 579 (Ginsburg, J., dissenting) (discussing the VRA's mechanism for "court-ordered 'bail ins'" that subject jurisdictions to preclearance).

10 390 F. Supp. 3d 803 (W.D. Tex. 2019).

11 *Id.* at 807.

12 Perry v. Perez, 565 U.S. 388, 390 (2012) (per curiam).

13 *Id.* at 390–91.

the VRA.[14] As it became clear that the preclearance process would not be resolved in time for the 2012 elections, the district court drew interim maps.[15] The State of Texas sought an emergency stay of the interim maps at the Supreme Court, which was granted.[16] In a per curiam opinion, the Court ruled that the district court had failed to abide by the proper standards in drawing the interim maps because it did not "follow[] the lead of Texas' enacted plan."[17] The Court then remanded for further proceedings.[18]

In 2013, the Texas Legislature repealed the original 2011 maps and adopted a version of the district court's interim maps, albeit with some key changes.[19] In March 2017, after a full trial, a three-judge panel in the Western District of Texas ruled that some districts in the repealed 2011 maps violated section 2 of the VRA[20] and others constituted racial gerrymanders in violation of the Fourteenth Amendment.[21] Crucially, the court found that at least some of the racial discrimination in the 2011 maps was intentional.[22] On August 15, 2017, the district court found that the 2013 maps were passed with the same racially discriminatory intent as the 2011 maps, at least with respect to certain districts that the legislature had carried over from the 2011 maps into the 2013 maps.[23] However, the Supreme Court stayed the remedial proceedings for both the congressional[24] and State House[25] maps pending decisions on the merits. In June 2018, the Supreme Court reversed the district court's finding of intentional racial discrimination as to the 2013 maps,[26] holding that only one House district was unconstitutional because the use of race had not been narrowly tailored.[27]

On July 24, 2019, the Western District of Texas issued an order in *Perez* denying plaintiffs' request that Texas be subject to preclearance

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[14] *Id.* at 391.

[15] *See* Perez v. Perry, No. SA-11-CV-360, slip op. at 1 (W.D. Tex. Nov. 26, 2011) (order adopting interim congressional map); Davis v. Perry, No. SA-11-CV-788, 2011 WL 6207134, at *1 (W.D. Tex. Nov. 23, 2011) (order adopting interim State Senate map); Perez v. Perry, No. SA-11-CV-360, slip op. at 1 (W.D. Tex. Nov. 23, 2011) (order adopting interim State House maps).

[16] Perry v. Perez, 565 U.S. 1090 (2011) (mem.) (order granting application for stay).

[17] *Perry*, 565 U.S. at 397.

[18] *Id.* at 399.

[19] Perez v. Abbott, 267 F. Supp. 3d 750, 757 (W.D. Tex. 2017).

[20] 52 U.S.C. § 10301 (2012); *see* Perez v. Abbott, No. SA-11-CV-360, 2017 U.S. Dist. LEXIS 35012, at *241–42 (W.D. Tex. Mar. 10, 2017).

[21] *Perez*, 2017 U.S. Dist. LEXIS 35012, at *59.

[22] *Id.* at *242.

[23] Perez v. Abbott, 274 F. Supp. 3d 624, 652 (W.D. Tex. 2017).

[24] Abbott v. Perez, 138 S. Ct. 49 (2017) (mem.) (order of August 15, 2017, granting stay of remedial proceedings on Texas congressional maps).

[25] Abbott v. Perez, 138 S. Ct. 49 (2017) (mem.) (order of August 24, 2017, granting stay of remedial proceedings on Texas State House maps).

[26] Abbott v. Perez, 138 S. Ct. 2305, 2330 (2018).

[27] *Id.* at 2335.

under section 3(c) of the VRA based upon the intentional racial discrimination found with respect to the State's 2011 maps.[28] The district court structured its analysis around two key questions: "(1) whether violations of the Fourteenth or Fifteenth Amendment[] justifying equitable relief have occurred within the State or its political subdivisions, and (2) whether, if so, the remedy of preclearance should be imposed."[29] The district court found that racial gerrymandering in the 2013 maps could not be a basis for imposing preclearance, as the Supreme Court had held that those racial gerrymanders were not based on *intentional* racial discrimination.[30]

Turning to the 2011 maps, the district court first found that the legislature's repeal of those maps did not render the case moot.[31] Instead, the central question under section 3(c) was whether the 2011 maps were intentionally racially discriminatory, regardless of actual effects.[32] Having previously found that the 2011 plan was intentionally racially discriminatory in violation of the Fourteenth Amendment,[33] the court held that it "potentially trigger[ed] bail-in" and proceeded to analyze whether preclearance was warranted.[34]

Although the district court found that the 2011 maps provided sufficient evidence of intentional racial discrimination to "potentially trigger bail-in,"[35] it denied preclearance largely on the basis that *Shelby County* counseled against it.[36] The district court first noted that in deciding whether to impose preclearance, it had considered certain traditional factors regarding the benefits of taking that step in this particular case.[37] However, the court immediately added that in addition to these traditional factors, it also needed to consider "the Supreme Court's and Fifth Circuit's recent guidance on preclearance."[38] The court turned to *Shelby County*, noting the federalism concerns that led the Supreme

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[28] *Perez*, 390 F. Supp. 3d at 807. District Judge Rodriguez delivered the order, in which Chief District Judge Garcia and Circuit Judge Smith joined.

[29] *Id.* at 813 (quoting Jeffers v. Clinton, 740 F. Supp. 585, 587 (E.D. Ark. 1990)).

[30] *Id.* at 814 ("[A] *Shaw*-type Fourteenth Amendment claim, without a finding of racially discriminatory purpose, is not a finding that supports bail-in relief."); *see* Shaw v. Reno, 509 U.S. 630, 657–58 (1993) (allowing racial gerrymandering claims under the Fourteenth Amendment).

[31] *Perez*, 390 F. Supp. 3d at 809.

[32] *Id.* at 811–12.

[33] *Id.* at 812.

[34] *Id.* at 818.

[35] *Id.*

[36] *Id.* at 819–21.

[37] *Id.* at 818. The court asked:

> Have the violations been persistent and repeated? Are they recent or distant in time? Are they the kinds of violations that would likely be prevented, in the future, by preclearance? Have they already been remedied by judicial decree or otherwise? How likely are they to recur? Do political developments, independent of this litigation, make recurrence more or less likely?

Id. (quoting Jeffers v. Clinton, 740 F. Supp. 585, 601 (E.D. Ark. 1990)).

[38] *Id.*

Court to strike down the VRA's preclearance formula in that case.[39] It wrote that only "exceptional circumstances" could justify requiring one state to go through prolonged federal legal processes (such as preclearance) in order to enact a law while another state could immediately enact that same law.[40] The district court also invoked dicta from a section of *Shelby County* where the Court seemingly alluded to the idea that preclearance itself might be unconstitutional,[41] even if, as the Court suggested, one were to disregard its "disparate coverage" across states.[42] The district court argued that while *Shelby County* left open the possibility of "bail-in," its reasoning, along with post–*Shelby County* decisions in other federal jurisdictions, indicated that preclearance was strongly disfavored.[43]

The district court also relied to a lesser extent on *Veasey v. Abbott*,[44] a Fifth Circuit voter ID case.[45] The district court noted that while it was not bound by *Veasey*, the case "counsel[ed] strongly" against preclearance because, "as in *Veasey*, there [were] no findings of discriminatory intent or Fourteenth Amendment violations concerning the [map] currently in place" and "the State acted promptly to adopt the interim [maps] to remedy any potential violations."[46] The district court concluded that while bail-in could be imposed in the future, "[o]n this record and under current law . . . bail-in [was] denied."[47]

Shelby County stands for the proposition that the federal government violates states' equal sovereignty when it treats them differently (that is, when it imposes preclearance on some but not others) based solely on historical evidence of racial discrimination. Meanwhile, *Shelby County* explicitly left open the possibility that states could be "bailed in" to preclearance under section 3(c) of the VRA, which requires recent evidence of racial discrimination. Thus, the district court erred in applying *Shelby County* to the section 3(c) claim in *Perez*. By invoking the reasoning of *Shelby County* to deny preclearance in Texas despite evidence of recent and intentional racial discrimination, the district court significantly raised the evidentiary threshold for section 3(c) claims, likely further limiting prospective remedies for voting rights violations.

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[39] *Id.* at 819.

[40] *Id.* (citing Shelby County v. Holder, 570 U.S. 529, 535, 544–45 (2013)).

[41] *Id.* ("[A]lthough the Supreme Court did not invalidate § 5 in *Shelby County*, it noted that arguments that the preclearance requirement was unconstitutional have a 'good deal of force,' given improvements in minority [voting] . . . and the fact that discriminatory tests and devices have been banned for over 40 years." (quoting *Shelby County*, 570 U.S. at 547)).

[42] *Shelby County*, 570 U.S. at 547.

[43] *Perez*, 390 F. Supp. 3d at 819 ("In the wake of *Shelby County*, courts have been hesitant to grant § 3(c) relief.").

[44] 888 F.3d 792 (5th Cir. 2018).

[45] *Id.* at 795–96.

[46] *Perez*, 390 F. Supp. 3d at 820.

[47] *Id.* at 821.

Shelby County held that contemporary, rather than historical, evidence of racial discrimination is needed in order to overcome the presumption that the federal government should treat states equally.[48] The majority in *Shelby County* was guided by the idea that "a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets."[49] In other words, the Court struck down the VRA's preclearance formula because of its presumption that the federal government should treat states equally, particularly when imposing such significant federal oversight as preclearance.[50] However, the Court left open the possibility that said presumption could be overcome when the disparate treatment of states (for instance, preclearance) targeted a contemporary problem (for instance, racial discrimination in voting).[51] Chief Justice Roberts concluded that the VRA's preclearance formula failed this requirement, writing that Congress's 2006 reauthorization of preclearance "reenacted a formula based on 40-year-old facts having no logical relation to the present day."[52] Put differently, the preclearance formula was void because a "statute's 'current burdens' must be justified by 'current needs.'"[53] But since section 3(c) claims already require plaintiffs to provide evidence of "current needs" (specifically, contemporary evidence of racial discrimination), voting rights advocates had no reason to believe that the equal sovereignty concerns animating *Shelby County* would apply to section 3(c) claims.[54]

The requirements for a section 3(c) claim underscore why the reasoning of *Shelby County* was inapplicable in *Perez*. The *Shelby County* Court wrote that "the preclearance requirement, even without regard to its disparate coverage," might be unconstitutional.[55] But the Court tied that dicta to a subsequent assertion that, at the time of writing in 2013,

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48 *See* Shelby County v. Holder, 570 U.S. 529, 547–50 (2013).

49 *Id.* at 542 (quoting Nw. Austin Mun. Util. Dist. No. One v. Holder, 557 U.S. 193, 203 (2009)).

50 *See id.* at 544–46; *see also* Abigail B. Molitor, Note, *Understanding Equal Sovereignty*, 81 U. CHI. L. REV. 1839, 1839–40, 1881 (2014).

51 *See Shelby County*, 570 U.S. at 556 (citing *Nw. Austin*, 557 U.S. at 201–03); *see also* Molitor, *supra* note 50, at 1881. The Court had good reason to constrain its use of the equal sovereignty doctrine to the VRA's coverage formula. After all, the doctrine had rarely been invoked prior to the Roberts Court. *See id.* at 1882 ("It is easy to see why critics of *Shelby County* accused the Court of inventing the principle to achieve political ends — equal sovereignty, as formulated by Chief Justice Roberts, had not been articulated as such before.").

52 *Shelby County*, 570 U.S. at 554.

53 *Id.* at 550 (quoting *Nw. Austin*, 557 U.S. at 203).

54 *See, e.g.*, Danielle Lang & J. Gerald Hebert, *A Post-*Shelby *Strategy: Exposing Discriminatory Intent in Voting Rights Litigation*, 127 YALE L.J.F. 779, 782 (2018), https://www.yalelawjournal.org/forum/a-post-shelby-strategy [https://perma.cc/T3Z5-D7YP] (arguing that voting rights advocates should attempt to prove discriminatory intent in litigation because "[u]nder Section 3's 'bail-in' process, jurisdictions that engage in intentional discrimination or other constitutional violations can be put under a preclearance system similar to the one that operated under Sections 4 and 5").

55 *Shelby County*, 570 U.S. at 547.

"[b]latantly discriminatory evasions of federal decrees [were] rare."[56] The district court alluded to this *Shelby County* dicta as a reason to deny preclearance,[57] but it did not grapple with the question of whether, given the Court's latter assertion regarding the relative infrequency of overt discrimination generally, the *Shelby County* Court's reasoning applied in the section 3(c) context.[58] Contrary to the district court's reasoning, this dicta from *Shelby County* illustrates why the logic of *Shelby County* should *not* apply to section 3(c) claims. Unlike the historically based preclearance formula in section 4, which the Court considered in *Shelby County*,[59] section 3(c) requires plaintiffs to show that a *particular* state has intentionally evaded federal law before a court can even consider preclearance.[60]

Moreover, by arguing that *Shelby County* counseled against preclearance on the specific facts of *Perez*, the district court significantly raised the evidentiary threshold for section 3(c) claims. First, there was no question that racial discrimination in the Texas 2011 maps was intentional and extreme. As just one example, the district court found that in drawing the 2011 maps, the legislature intentionally diluted Latino voting strength in order to protect an incumbent in a heavily Latino district.[61] The district court noted that "the Republican leadership took care" to manipulate the district lines so that the district would appear facially compliant with federal law but would simultaneously dilute the voting strength of Latino voters.[62] As the court said, "[t]his was not an easy task . . . and it did not happen by accident."[63]

Second, to address *Shelby County*'s statement that "'current burdens' must be justified by 'current needs,'"[64] a number of data points illustrate the reality that minority voters in Texas still face significant barriers to voting. For example, the Texas Civil Rights Project, which had phone lines and field volunteers engaged in election protection in Texas during the 2016 presidential race, tracked reports of voting-

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[56] *Id.* (quoting *Nw. Austin*, 557 U.S. at 202).

[57] *Perez*, 390 F. Supp. 3d at 819 (citing *Shelby County*, 570 U.S. at 547).

[58] *See id.* (noting the Court's factual assertions in *Shelby County*, 570 U.S. at 547, about the prevalence of discrimination, but failing to discuss whether those assertions applied in the context of a section 3(c) claim).

[59] *Shelby County*, 570 U.S. at 535, 537.

[60] *See* 52 U.S.C. § 10302 (2012) (requiring a judicial finding of voting rights violations in a particular state or locality before allowing federal oversight).

[61] Perez v. Abbott, No. SA-11-CV-360, 2017 U.S. Dist. LEXIS 35012, at *40–46 (W.D. Tex. Mar. 10, 2017).

[62] *Id.* at *41.

[63] *Id.* at *42.

[64] *Shelby County*, 570 U.S. at 550 (quoting Nw. Austin Mun. Util. Dist. No. One v. Holder, 557 U.S. 193, 203 (2009)).

related "incidents" that it received during that election season.[65] While individual requests for information constituted the majority of the reports, many Texans reported encountering serious obstacles to voting, ranging from voter ID laws to last-minute changes in polling locations.[66] Of the total 4075 incidents, fifty-two percent of reports were made by Latinos and over seventy-five percent of all reports were made by nonwhite voters.[67] Moreover, the gap between eligible Latino voters and Latino representation in Texas is significant. Despite the fact that "[o]ver a third of Texas' citizens are Latino,"[68] only seven of its thirty-six members of the House of Representatives (just over nineteen percent) were Latino as of 2019 when the district court handed down its decision.[69] In addition, over 1.3 million Latinos have no Latino representation at the local level.[70] The court's denial of preclearance despite these state-specific facts reveals that it significantly raised the evidentiary threshold for preclearance moving forward.[71]

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[65] BETH STEVENS, MIMI MARZIANI & CASSANDRA CHAMPION, TEX. CIVIL RIGHTS PROJECT, TEXAS ELECTION PROTECTION 2016, at 3 (2017), https://texascivilrightsproject.org/wp-content/uploads/2018/09/EP-Report.pdf [https://perma.cc/CG8H-Y4HG].

[66] *Id.* at 6–12.

[67] *Id.* at 4. In 2016, Texas also had the third lowest voter turnout rate in the country. *See* NONPROFIT VOTE & U.S. ELECTIONS PROJECT, AMERICA GOES TO THE POLLS 2016, at 10 (2017), https://www.nonprofitvote.org/documents/2017/03/america-goes-polls-2016.pdf/ [https://perma.cc/H89B-AFRH].

[68] Phoenix Rice-Johnson, *Despite Gains in 2018 Primaries, Latinos' Battle for Political Representation in Texas Far From Over*, BRENNAN CTR. FOR JUST. (Mar. 12, 2018), https://www.brennancenter.org/our-work/analysis-opinion/despite-gains-2018-primaries-latinos-battle-political-representation [https://perma.cc/V8VA-B6PT].

[69] *See* NALEO EDUC. FUND, ELECTION 2018: RACES TO WATCH — POST-ELECTION RESULTS 1–2 (2018), https://d3n8a8pro7vhmx.cloudfront.net/naleo/pages/190/attachments/original/1546543147/Post-RTW2018-CongressStatewide-FP8.pdf [https://perma.cc/R47X-95VA].

[70] Jeremy Schwartz & Dan Hill, *Silent Majority: Texas' Booming Hispanic Population Deeply Underrepresented in Local Politics*, AUSTIN AM.-STATESMAN (Oct. 21, 2016), https://projects.statesman.com/news/latino-representation [https://perma.cc/ZEB7-3GP2].

[71] This point becomes readily apparent when one compares the facts of *Perez* with cases in which federal courts *have* imposed preclearance under section 3(c) after *Shelby County*. In *Allen v. City of Evergreen*, No. 13-0107, 2014 WL 12607819 (S.D. Ala. Jan. 13, 2014), the United States District Court for the Southern District of Alabama ordered tailored preclearance after finding indicia of racial discrimination in the city's redistricting process. *See id.* at *1–2. In *Allen*, the city at issue was willing to cooperate with the court and federal officials to address persistent voter discrimination even though *Shelby County* had effectively terminated its status as a "covered jurisdiction" for preclearance. *See id.* Meanwhile, in *Perez*, counsel for the State of Texas declined to commit to making the redistricting process fair and transparent, *Perez*, 390 F. Supp. 3d at 820–21, a statement that does little to assuage the "grave concerns" about "Texas's past conduct" and the continued "existence of high levels of racially polarized voting across" the state, *id.* at 820. Accordingly, the facts in *Perez*, as they relate to the benefits of imposing preclearance, seem to counsel more strongly in favor of preclearance than did the facts in *Allen* — and yet the *Perez* court rejected that remedy, signaling that an unusually high threshold would need to be met to justify preclearance.

The district court's decision will likely further limit prospective remedies for discrimination, potentially leaving minority voters without protections against violations of their federal voting rights. As the Supreme Court said in *Shelby County*, prior to the passage of the VRA, voting rights "litigation remained slow and expensive."[72] Little appears to have changed in that regard.[73] Indeed, there is no better evidence of this than *Perez* itself, which spanned most of a decade, beginning in May 2011 and concluding in August 2019.[74] Now, in the event that Texas discriminates against minority voters in the next election or redistricting cycle,[75] plaintiffs will have to begin a new round of litigation in order to enforce their federal rights. If they fail to obtain relief against racially discriminatory maps in time for an upcoming election, the damage will be difficult, if not impossible, to reverse.[76] Such a result is precisely what the VRA was meant to avoid.[77]

Section 3(c) of the VRA is an important mechanism through which minority voters can enforce their federal constitutional rights against states that have shown a tendency to violate them. It is already difficult to invoke. The plaintiffs in *Perez* carried the heavy burden of proving that Texas had intentionally racially discriminated in voting,[78] and the court itself noted a significant risk that such discrimination would recur.[79] By adopting a broad reading of *Shelby County* and declining to require preclearance on these facts, the district court's decision has the potential not only to undermine minority voting rights in Texas, but also to cast a shadow over a core aspect of our democracy — free and fair elections.

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[72] Shelby County v. Holder, 570 U.S. 529, 536 (2013).

[73] *See, e.g.*, Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the Voting Rights Act After* Shelby County, 115 COLUM. L. REV. 2143, 2152–57 (2015) (explaining that litigation under section 2 of the VRA, which remains one of the only viable avenues for remedying voter discrimination after *Shelby County*, is "unpredictable and expensive," *id.* at 2157, as well as "weak and ineffective in comparison to section 5," *id.* at 2152).

[74] Plaintiffs' original complaint was filed on May 9, 2011. *See* Plaintiffs' Original Complaint at 1, Perez v. Perry, 835 F. Supp. 2d 209 (W.D. Tex. 2011) (No. 11-CV-0360). The district court's final judgment was filed on August 2, 2019. *See* Amended Final Judgment at 1, *Perez*, 390 F. Supp. 3d 803 (No. SA-11-CV-360).

[75] The district court itself expressed deep concern over this possibility, writing, "[g]iven the fact of changing population demographics, the likelihood increases that the Texas Legislature will continue to find ways to attempt to engage in 'ingenious defiance of the Constitution' that necessitated the preclearance system in the first place." *Perez*, 390 F. Supp. 3d at 820 (quoting South Carolina v. Katzenbach, 383 U.S. 301, 309 (1966)).

[76] As scholars have noted, "once discriminatory voting changes are in effect for an election, the damage cannot be fully reversed." Lang & Hebert, *supra* note 54, at 782 (citing *Voting Rights Act: Evidence of Continued Need, Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 97 (2006)). In *Perez*, the district court did not rule on the 2013 maps until 2017, demonstrating the difficulty of obtaining timely relief. *See* Perez v. Abbott, 274 F. Supp. 3d 624, 631 (W.D. Tex. 2017).

[77] *See* Lang & Hebert, *supra* note 54, at 782 ("Preclearance was vital to the VRA's prior success because it stopped discrimination in voting *before* it happened.").

[78] Perez v. Abbott, No. SA-11-CV-360, 2017 U.S. Dist. LEXIS 35012, at *242 (W.D. Tex. Mar. 10, 2017).

[79] *Perez*, 390 F. Supp. 3d at 820–21.