**US Programs Democracy Fund**

**Portfolio Review: Voting Rights**

**December 15, 2014**

**INCIDENT ONE:** *The 2011-2012 “war on voting,” waged to disenfranchise those who elected Barack Obama*

**Lead up to the “war” - 2009 & 2010:**

WhenBarack Obama was elected President in November 2008, many of us reveled in both its symbolism and in its implications for minority participation in American elections.  It was the first presidential election with broad usage of turnout-enhancing ballot access reforms like early voting. While a handful of state legislatures had proposed strict or photo voter ID laws in the early 2000s, it wasn’t until 2008 that the Supreme Court upheld their use-and it was not clear that many states would follow suit.[[1]](#footnote-1) We therefore focused on supporting the development of remedies to our antiquated, labor-intensive, paper-based registration systems, which had undermined every election for decades. Despite the fact that voter registration lists are used to assign precincts, to send sample ballots, and to determine the level of resources needed at polling places, registration systems are rife with errors and inefficiencies, resulting in millions of lost votes each year. This work seemed all the more urgent in light of withering assaults on private voter registration efforts. Registration reform also seemed within reach: Democrats traditionally support efforts to expand voter rolls, and many Republicans find an automated system attractive because it would eliminate the need for third parties (who some consider partisan) to register voters, and because automation would cost less and better protect the integrity of the rolls.

By 2009, there was a two part strategy: (1) to move a national policy to modernize registration, and (2) to support a set of registration fixes for the states. A core group of grantees collaborated to move the national reform, in a careful and bipartisan manner,[[2]](#footnote-2) but in early 2010, after coming quite close, that effort failed. State- level efforts were coordinated by then-grantee Pew Center on the States and the Brennan Center. Pew, working with IBM and Secretaries of State, designed technology that would allow elections officials to update and manage their state voter registration rolls with greater precision and accuracy. Called the Electronic Registration Information Center or ERIC, it is now a financially sustainable independent organization with a formal board, and state members.[[3]](#footnote-3) The Brennan Center developed a set of model policies states could adopt, which would make registration both automatic and permanent,[[4]](#footnote-4) and that, if fully adopted, would add the approximately 60 million eligible but unregistered citizens to the rolls, cost less and curb any potential for fraud. Brennan helped move important elements of that plan in dozens of states, through research and strategic communications support, and legislative and administrative assistance and advocacy.[[5]](#footnote-5)

While supporting efforts to modernize registration systems, we also supported work to lower barriers to registration within the existing framework, especially for low-income voters. We saw this work as more lasting and cost effective than (imperiled) third-party voter registration drives, because it leveraged government agencies to directly register the voters, and to do so on an ongoing basis. While pressing the Department of Justice to enhance enforcement of Section 7 of the National Voter Registration Act-requiring states to make registration available to all state public assistance agency (and DMV) clients-grantees Demos, Project Vote and Lawyers’ Committee negotiated with, and when necessary, sued, state governments to comply. They also targeted disability offices, corrections departments, and new agencies (USCIS, the VA, and later state health care exchanges).[[6]](#footnote-6)

**War years - 2011 & 2012:**

Whilestates enacted registration reforms through mid-2010 without fanfare or partisan wrangling, conservative quarters were quietly working with ALEC to design policies to sharply reverse voting rights. This culminated in November 2010, when conservative legislative majorities swept into control of state legislatures across the country and moved to enact a variety of franchise-restricting policies. Prior to the 2010 election, while there was much anti-Obama birtherism, and “death panel” rhetoric, as noted above, there was little evidence of concerted efforts to disfranchise voters. As a result, we weren’t prepared for the audacity and scale of the ensuing efforts to disfranchise. State policymakers pushed harsh rules requiring specific types of government ID to vote, proof of citizenship requirements for registration, cutbacks in early voting, repeal of same day registration, and crackdowns on nonpartisan voter registration drives. In 2011 alone, state legislators introduced over 100 restrictive bills, and by the 2012 election, 25 restrictive laws and two executive actions had passed.

The continuing increase in the number of suppressive voting laws, as well as voter intimidation of various kinds, left the field struggling to manage a sharp uptick in the volume of work. Making matters worse, as these were “off years,” the field received less support for political engagement and voting rights work, which hurt its ability to respond. We decided to support this set of interventions to best protect voting rights and ballot access: (1) research and litigation to reinforce defense, especially against strict ID policies, while strongly encouraging the field to focus on ballot expanding reforms; (2) the adaptation of election protection to the new landscape; and, in what was our largest contribution, (3) public opinion research and message development.

Strengthening defense, offense and state capacity: We supported the Brennan Center which produced influential research on the restrictive laws,[[7]](#footnote-7) and Advancement Project, the Lawyers’ Committee on Civil Rights and the Campaign Legal Center who litigated them. We also supported players like State Voices and Common Cause, who had reach into the state level, where most of these battles were taking place, to build state groups’ capacity and also to guide national organizations now engaging in substantially more state-level work.[[8]](#footnote-8) A donor-advised intermediary, State Infrastructure Fund, helped us reach savvy new grassroots networks like the Bus Federation,[[9]](#footnote-9) and the well-connected election lawyers’ network Fair Elections Legal Network, whose focus on the political engagement and rights of particular targeted constituencies (here, youth), as well as their connections to national groups, was now especially relevant. While supporting the field’s defensive work, we emphasized to the field the need to focus on affirmative reforms –not only as a way to expand the shrinking franchise, but also to strengthen the weakening perceptions of voting rights. Grantees Brennan Center, Advancement Project, Common Cause and others pressed for an array of affirmative reforms, while Demos concentrated on same-day registration (SDR). SDR is considered the biggest turnout booster at between 5% and 7%, including turnout of low-income communities, young people, and voters of color, segments of the electorate with higher rates of geographic mobility than others in our highly mobile society.[[10]](#footnote-10) Because photo ID policies loomed larger than other regressive measures and cutbacks, with its “poll tax” like costs,[[11]](#footnote-11) we concentrated resources on keeping ID measures at bay by supporting litigation as well as research and education that would blunt its spread.[[12]](#footnote-12) Given the financial crisis and ensuing recession, we supported Demos to work with state fiscal groups and economists to show policymakers considering ID proposals the significant costs of implementing those proposals.[[13]](#footnote-13)

Election Protection: Grassroots anti-voter fraud campaigns also began to appear. For example, Tea Party group True the Vote, which promised poll monitors who would assert one million challenges to registered voters in the 2012 election period.[[14]](#footnote-14) In addition, all kinds of voter misinformation proliferated - misleading billboards, radio ads, robocalls – most of them blatant attempts to deter minority voters from voting in the 2010 and 2012 election cycles. We funded research on the anti-fraud groups’ plans,[[15]](#footnote-15) advocacy with elections officials to prevent their use of improper tactics, and litigation, where necessary, to prevent disfranchisement.[[16]](#footnote-16) We also supported placement of properly trained poll monitors and workers at the polls.[[17]](#footnote-17) The anti-fraud groups’ threats didn’t ultimately amount to much, which many fairly credit to our grantees’ efforts. We also reinforced Election Protection, the Lawyers’ Committee-led voter assistance program, which is supported by a coalition of 100 member organizations and several thousand attorney volunteers. We supported (1) the expansion of its centerpiece - its voter services and complaints hotline (1-866-OUR-VOTE) - into Spanish and Asian languages, and its expansion following Hurricane Sandy to accommodate suddenly displaced voters; (2) its development of smartphone and other digital applications; and (3) its creation of a field program (81 local election protection committees in 22 states, which developed comprehensive local legal support plans and trained State Voices and other organizations).[[18]](#footnote-18)

Communications: Conservative visions of a voter impersonation crisis - and the concomitant “need” for voter ID – had, by late 2011, saturated the media. In social media alone, voter fraud rose sharply from 5,000 mentions in early 2012 to 37,000 mentions in November 2012.[[19]](#footnote-19) Proof of statistically insignificant impersonation fraud[[20]](#footnote-20) did not diminish the clamor for electoral integrity. We consulted with key field groups and certain U.S. Programs board members, and ultimately agreed that what we could most usefully do – and should do – to undermine the case for the restrictions, was to resource the development of new frames and language with which the field, and the media, could contend with the irrational pro-restriction arguments. With a substantial contribution from the U.S. Programs' Reserve Fund, we made grants totaling $3,000,000 to the Brennan Center and the Advancement Project, to seek field input, design and test values and messages, and then support national and state organizations in employing research-supported messages.[[21]](#footnote-21) Given the size and significance of the endeavor, we had the grants externally evaluated by Freedman LLC. Based on stakeholder interviews and a media analysis, the evaluators found that the grants helped elevate the discussion to a topic of intense attention and scrutiny among policymakers and the media, and that the field was disciplined in its use of the research-informed messaging (not denying fraud, for example).[[22]](#footnote-22) In interviews of the field and funders about the impact of this work, the evaluators received a range of feedback, from a strong sense that there was a palpable shift in the national conversation around voting laws, to some feeling there was less of a meaningful shift but that substantially more attention was paid to the proponents and exposing their political motives.

In the lead up to the 2012 election, with the help of federal intervention and popular resistance, 10 courts in 7 states blocked, postponed or mitigated virtually all of the harshest new voting restrictions that were slated to go into effect that year.[[23]](#footnote-23) Voter education, protection and mobilization all worked, supported by effective and intense national and local media debates that inveighed against the laws and their rationales. Turnout was high especially among low-income voters, communities of color, new voters, and young people.

**Post-war analysis:**

Anticipating the war:  We did not anticipate the extent of the backlash that would follow in the wake of the 2008 election. Many on the right worked themselves into a frenzy over President Obama’s legitimacy, questioning his allegiance and his faith--and asserting he had won the White House in the first place because of some problem with the voting systems or fraud.[[24]](#footnote-24) We didn’t fully anticipate the Tea Party’s 2010 sweep–and they really pushed for restrictions on the franchise. There was broad fear that Obama represented a new demography—winning with a coalition of African-Americans, Latinos and younger voters--and that these groups had distinct social and economic interests supported by the Democratic Party. Obama’s coalition—and a black Attorney General heading up civil- and voting-rights enforcement—was a reminder that the Republicans’ older, largely white base left them vulnerable to these emerging demographic trends, which threatened to reverse the racial dynamics that have governed American politics for decades. But it also left Democrats vulnerable to being painted as the party of big government whose primary goal is to expand programs that mainly benefit minorities. There followed hyper-aggressive discussion on the right of sabotaging Obama’s reelection and near-total obstruction of his legislative agenda. Few forecast that this mix race and party would entail such broad attacks on the franchise. Some grantees had warned of it, but the Democratic Party (with the exception of a few Congressional Black Caucus members) didn’t pay much attention to democracy issues. (Witness its failure to press registration reform in 2010 when given the chance.) Still, no one conceived quite such a naked and wholesale attempt to alter especially the *access*-related rules of the game.  So our post-war attempts to move the debate by showing statistically significant fraud didn’t exist, and when that didn’t work, using cost-benefit arguments in an environment of fiscal austerity, were largely failures.[[25]](#footnote-25) Lawmakers simply reintroduced defeated measures. In hindsight, the suppression wasn’t merely a partisan effort by a GOP fearing its mortality;[[26]](#footnote-26) this was also very much about race.[[27]](#footnote-27) It’s not surprising that states with surging minority populations saw the worst backlash: of the 11 states with the highest-African American turnout in 2008, seven passed laws making it more difficult for African-Americans to vote. Of the 12 states with the fastest growing Hispanic populations, 8 put new restrictions in place. Had we sooner related Obama’s election to the severity of the partisan, ideological and racist actions that followed the 2010 elections, we might have prepared for the onslaught of restrictions that followed those elections, including by beginning the air war we ultimately funded, and ensured that it dealt with this racism head on.

The role of other players:  We weren’t the only force trying to dismantle voting barriers, and our efforts ought to be understood in light of them. Political parties, and others like the Kochs (and their extensions), were spending, for contrary ends (and to influence election outcomes). While USP spent a total of about $8 million on the 2012 elections, and total foundation spending neared $47 million, the Kochs alone – with operations in dozens of states - spent around $440 million, on what they termed a battle "for the life or death of this country." Their spending also beat that of the top 10 labor unions combined that year, and topped the total amount spent by presidential candidates that cycle. Unions partnered with the field to fund litigation and otherwise sought to stem harmful policies, and were especially useful in state-level battles. But ultimately they spent their resources to support candidates, as did other big players like Planned Parenthood. (See annexed charts analyzing USP and external foundation funding.)

# Communications: The communications grants helped win the 2012 battle but won’t help win the war. When we moved to a communications strategy to undermine the case for the restrictions, we justified the substantial investment in part as one that would have enduring value.[[28]](#footnote-28) While it very likely protected one important national election, it was neither uniformly useful nor has it all stood the test of time thus far. The second best argument that research identified – that the focus of anger at repressive policies should be on “[unpleasant] politicians” - is unhelpful, given the historic levels of voter apathy, disenchantment with government, and political, cultural and geographic polarization. In addition, while the research was concluded a year before the *Shelby County v. Holder* decision, we did know that multiple cases challenging section 5 of the Voting Rights Act were in the pipeline. Given that fact – and that the suppressive laws were related to who held the Oval Office – we should have had the research explicitly focus on the racial dynamics at play in the support for greater voting restrictions.

Staffing: The ability to develop and implement a strong strategic plan for this work was hampered by the fact that the Fund did not have an elections or voting rights program officer until Spring 2014. The portfolio was modest at its outset in 2008, focused as it was solely on modernizing voter registration systems. But as the assault on voting rights picked up speed, the work began to grow, and it took some time for our staffing to catch up.

**INCIDENT TWO:** *The June 2013 Supreme Court decision in Shelby County v. Holder*

**Pre-*Shelby***:

The United States Supreme Court announced on November 9, 2012, just three days after the 2012 election, that it was going to take up the Alabama case challenging the constitutionality of the "preclearance" provision (Section 5) of the Voting Rights Act. As noted above, multiple cases challenging Section 5 had been in the pipeline, but the high court selected *Shelby County v. Holder* for review.

In December 2012, OSF partnered with the Ford Foundation to convene litigating and advocacy groups to help them coordinate their efforts in response to the upcoming decision.[[29]](#footnote-29) Because no one knew how the Supreme Court would rule, and what the actual effect on the *Shelby* states[[30]](#footnote-30) would be, advocates had to prepare for the worst - the invalidation of the Voting Rights Act. It was necessary to try to develop and control the narrative for a variety of possible scenarios. Staff therefore requested, and in February 2013, the U.S. Programs Board approved, an Opportunities Fund request to support a pre-decision strategic public advocacy campaign, and for field support to develop an advocacy strategy[[31]](#footnote-31) following the decision.

When the Court decided the case in June 2013, litigating groups and other advocates were already battling mass restrictions on voting rights, and trying to advance proactive measures. The decision[[32]](#footnote-32) added a layer of complexity for those working in the 15 jurisdictions formerly covered by Section 5 of the Voting Rights Act. *Shelby* gutted Section 5 and took away the Department of Justice and a three-judge federal court panel’s ability to review voting changes made by jurisdictions in 15 states that had a history of discriminatory election-related practices. Many in the field believe that the decision would have been worse had it not been for the pre-argument and decision advocacy. Rather than hold Section 5 itself unconstitutional, the Court struck down the formula determining which states would be covered, leaving open the possibility that Congress could enact a new formula to restore the vitality of Section 5. OSF grants helped cushion the decision’s blow and prepared the field to work to reverse its effects.

While OSF did convene the groups swiftly to prepare for whatever decision was to come, the *Shelby*-related messaging that was developed did not stop every state legislature from continuing to introduce and pass voter suppression measures. Nor did this message expressing the need to uphold the Voting Rights Act decrease the popularity of voter ID measures. Americans continued to be concerned with “election integrity” and have internalized messages about fraud.

**The *Shelby* Decision**:

Within hours of the *Shelby* decision, states moved to revive and implement discriminatory voting restrictions that had been previously blocked by the Department of Justice. Texas and North Carolina were among the first states to move to reinstate discriminatory voter identification requirements, and North Carolina and others acted to reduce early voting and eliminate same-day voter registration.

In the immediate wake of the Shelby decision, OSF, working with our partners at Ford and the Carnegie Corporation, reconvened the legal and advocacy groups and other funders to strategize and, as a consequence, founded the Shelby Response Fund (SRF), a donor collaborative housed at NEO Philanthropy (formerly known as Public Interest Projects)[[33]](#footnote-33) to provide state and national advocates funds to enhance their work against discriminatory voting measures and enable the development and implementation of a coordinated post-*Shelby* strategy.

The Shelby Response Fund was created to resource a field that, working on behalf of racial and language minorities, now needed to fill the government’s shoes as monitor, investigator, data collector and enforcer. SRF, after assessing the field, developed a three-part approach for the funding of litigation,[[34]](#footnote-34) advocacy and state/local mobilization, and research and communications—a rather ambitious agenda. OSF’s investment included c3, as well as c4 grants to support the Leadership Conference-led coalition working to develop policy and move a Voting Rights Amendment Act that would protect voters from discrimination in the wake of *Shelby*. The field had hopes that Congress would act quickly to repair the damage done by Shelby and get the government to once again fully enforce voting rights laws. So while the state-based groups worked, with funding through SRF, to coordinate their efforts and fill identified gaps while avoiding duplication, the Leadership Conference-led coalition worked on policy development and message framing to help shepherd the bipartisan Congressional fix into law.

Since SRF’s establishment, funders have donated directly to SRF for a total of over $4.5 million.[[35]](#footnote-35) “Unusual suspects” who have joined SRF include the Coulter Foundation (health care and science), JPB Foundation (poverty, medicine, environment) and Mertz Gilmore Foundation (culture and climate change). Carnegie and MacArthur generally do not fund litigation but through SRF and aligned funding they do. Smaller foundations like Mertz Gilmore and JPB invested due to the efficiency by which the collaborative fund could get the work done—they wanted to do something after *Shelby* but did not have the staffing to pull off individual strategies. The collaborative was attractive to OSF too given our still limited staffing to do this urgent and labor intensive work. In any case, the donor foundations derived great benefits from the collaborative effort from lower administrative fees, increased leverage of OSF’s investment, expert counsel and management from Karen Narasaki and less duplication of field efforts.

The important early task of the fund was getting the litigation collaborative off the ground. As Narasaki can attest, getting the litigating groups to come to agreement on a joint proposal was no small task given the history of jockeying for position, egos and inability to freely share information or share control. To date, the litigators struggle to meet in a timely and productive fashion, not all committee members comply with “principals and decision-makers need to be present” meeting rules, co-chair Sherrilyn Ifill has found it difficult to attend meetings, and MALDEF and the Lawyers Committee continue to have conflict as they have for some time. Some of the challenge, to be fair, has been an incredibly active litigation calendar with trials in complex cases and emergency appeals to the Supreme Court. On the whole, trying to get these groups to truly collaborate on litigation strategy failed.

**Post-*Shelby***:

Overall: SRF’s coordinated response has met with some success but has not fully achieved the level of coordination, cooperation and results that it set out to accomplish.[[36]](#footnote-36) The funding model did bring funders to the table that might not have otherwise made grants to the voting rights field. Local and state coalitions in states like North Carolina, Georgia and Florida experienced coordination that was palpable and appreciated by advocates, officials and voters alike. And litigators won several legal challenges that dismantled barriers to voting. As founding members of SRF, we can take pride in these and other accomplishments. However, we are mindful of the continued competition (and related duplication) among the litigating groups, the inability of the groups to fully coordinate data collection methods and materials development, the lack of a long-term communications campaign that took hold with the state-based groups, and the lack of state and local capacity to conduct communications initiatives.

Donor Collaborative Model: The collaborative enabled funders to give grants to state and local organizations across the South, Southwest, and in Alaska and South Dakota. Without such a mechanism, it would have been difficult to expeditiously identify and resource many of the organizations which ended up being funded.[[37]](#footnote-37) While some might argue that this collaborative model was a “lazy” way out (giving SRF’s staff the power to determine where OSF’s money went), that was not the case. With respect to the Shelby Response Fund, OSF and the other SRF donors serve on the steering committee to provide input into the grantmaking and to serve as strategy partners with SRF manager Narasaki. OSF also made additional, aligned grants, but was able to do it knowing what elements of the strategy others were funding and where the gaps in the field were. The creation of a collaborative in this case has had a bigger upside than down.

SRF also plays an important role in facilitating communications of best practices, materials, message framing, social media initiatives, research and issues across states and between litigators, researchers, communications groups and organizers. Because SRF was funding several strategies and across a wide geography, it was in a position to help the work of grantees get maximum exposure and engagement. It was also able to put together grantees working on similar issues. The social media campaign led by SRF grantee Rock the Vote was improved because of the collaboration with Voto Latino, Color of Change and 18 million and rising. Duplication was reduced and groups were able to put out higher quality videos and materials that could be tailored to minority groups through the sharing of resources and efforts to jointly plan the campaigns. SRF was then able to connect the campaign to local groups in the states who could promote it rather than having to produce their own.

As noted in our SRF eligibility assessment, there was, however, unexpected competition for resources between the Shelby Response Fund and its parent, collaborative fund SIF. The idea was for a standalone fund with “Shelby” in its name to raise the profile of the fund, make clear what it was for, and allow certain donors who did not want to invest in SIF’s voter engagement more broadly to donate only to SRF. There, baked in at its creation, was the basis for competition for funds. And, as we noted in our write up, SRF’s manager was sensitive to these issues and has since worked to address these concerns by engaging in conversations about better integrating and sustaining the work.

To that end, both SIF and SRF managers have expressed a desire to merge SIF and SRF fully and formally. We think this is a good idea for several reasons. It should eliminate confusion among funders and the field, who have wondered why voting rights issues in part or all of 15 states should be housed in a separate collaborative than civic engagement, and election reform work—especially with state and local organizations attempting to coordinate their civic engagement, voting, and election protection and reform efforts. The managers talked both about how they would do this – the need to clearly explain the union; and the need to bring Shelby Fund donors into the joint entity (while not losing them). The combined fund will integrate cycles of engagement – from census to voting –for historically marginalized and so-called members of the new American majority.

Litigation: There has been much work[[38]](#footnote-38) and success in the area of litigation, but also shortcomings. The ACLU, LDF, MALDEF and Lawyers Committee have all managed to defeat state voter suppression efforts in federal court at some level in states including Alaska, Texas, and Wisconsin.[[39]](#footnote-39) They also worked with local groups to stop further restrictive state legislation and minimize the closing of polling sites in minority communities. At the same time, the litigation team has difficulty holding meetings, has lacked the leadership required and has failed to produce some of the tangible results with which they were charged. There has been an inability to establish a formal brief bank and expert witness database. The collaboration has led to a sharing and vetting of data collection methods, but no agreement as to which method to promote. MALDEF’s President Tom Saenz, co-chair of the litigation committee, attempted to calendar, agendize and chair the meetings on his own. Narasaki has had to step in at times to help move the committee’s business along with some progress, demonstrating the need for administrative assistance for the grantees’ coordinated efforts—or, perhaps, at least in the area of litigation.

State Mobilization and Advocacy: State and local advocates have benefitted from funding which enabled them to better communicate with each other and to foster relationships with litigating groups. The field has been monitoring the activities of their state and local election officials and has felt a greater sense of empowerment to speak up when detecting discriminatory voting changes. However, the field has yet to develop a standard data collection tool leading groups to develop their own, thereby creating duplication SRF sought to avoid. At an advocates meeting held at OSPC in advance of the 2014 midterm elections, many organizations were surprised to hear of data collection instruments, Apps, hotline numbers, and other resources that had been developed or were in the stages of development by colleagues. Data collection tools and resource sharing platforms should be a top priority for future work.

Communications and messaging: Messaging efforts promoting the importance of the VRA have not yielded the results that we would have hoped; perhaps more work should have been done to explore and address the partisan and racial motivations behind *Shelby* and this country’s history of racial discrimination in voting and other areas, more broadly to inform this work. The field needed greater resources to take a longer term view at voting rights communications to determine how to make the case for continued full enforcement of the Voting Rights Act. At the recent Lawyers Committee post-election convening, Reverend Yearwood of the Hip Hop Caucus spoke of the “segregated progressive” community; this too has contributed to the lack of coordination in the field.

1. *See* National Conference of State Legislatures, Voter ID History (10/16/2014), accessible at <http://www.ncsl.org/research/elections-and-campaigns/voter-id-history.aspx> [↑](#footnote-ref-1)
2. It centered on mandating universal registration, with funds for states to implement the reform. The core group included grantees Brennan Center, Pew, Campaign Legal Center and the Lawyers’ Committee on Civil Rights, with the tactical and communications support of The Glover Park Group. [↑](#footnote-ref-2)
3. Eleven member states and Washington DC now participate in ERIC, which has identified about 15 million eligible but *never* registered citizens in these states and sent them registration forms. In controlled experiments to test the effect of the mailings, those ERIC reached out to had about a 50% higher rate of registration than the control group. This group also turned out to vote at a rate of about 50% higher than the control group. In 2012, total outreach was to 5.7 million eligible but unregistered citizens. About 300,000 of them registered in the 2-3 weeks after outreach – a rate of over 5% at a cost of less than $5 per registration. Some states saw much higher rates than others (e.g., Colorado and Virginia, where the rate was about 10%). [↑](#footnote-ref-3)
4. The 4-part plan called for electronic registration by government; portable registration; provided fail-safe procedures to ensure that eligible voters could register/correct data when they voted; and offered states federal funding to finance these upgrades. [↑](#footnote-ref-4)
5. Forty-five states have adopted at least one of the four elements of the Brennan policy; *see* for state-by-state breakdown: <http://www.brennancenter.org/analysis/voter-registration-modernization-states>. While Brennan hasn’t analyzed how many new registrations have resulted, it initially examines the impact of these reforms in [Voter Registration in a Digital Age](http://www.brennancenter.org/publication/voter-registration-digital-age). [↑](#footnote-ref-5)
6. By 2014, 2.1 million new voters have been registered in 14 states through this work. [↑](#footnote-ref-6)
7. *See* Brennan’s *Voting Law Changes in 2012*, accessible at <http://www.brennancenter.org/publication/voting-law-changes-2012>. [↑](#footnote-ref-7)
8. This work wasn’t without its challenges. Although the 2012 cycle involved more collaboration than in past cycles, national groups’ work at the state level reopened old wounds, though the field is more willing to remedy these problems, seeing that encroachments on the vote continue, and has developed a set of “operating principles” to build trust, communication and collaboration. [↑](#footnote-ref-8)
9. The Bus Federation led the effort to establish National Voter Registration day. In 2012, about 304,000 young voters registered on NVRD. [↑](#footnote-ref-9)
10. Demos contributed to its implementation in the 9 states plus DC that have SDR (North Carolina implemented and then revoked SDR). [↑](#footnote-ref-10)
11. *See* *Here’s How Much it Costs to Vote in States With Voter ID Laws,* accessible at <http://www.nationaljournal.com/domesticpolicy/voter-id-laws-can-decrease-minority-and-youth-turnout-20141008>. [↑](#footnote-ref-11)
12. *See* n.7; *see also* “Map of Shame” by the Lawyers’ Committee & Election Protection Coalition (2012) (showing state by state efforts to suppress the vote, and offering a sense of scale, <http://www.lawyerscommittee.org/projects/voting_rights/page?id=0117>). [↑](#footnote-ref-12)
13. The research helped persuade all but one of the states considering ID proposals to abandon them (and encouraged one state that *did* adopt an ID proposal to include extraordinary efforts to help people secure IDs). [↑](#footnote-ref-13)
14. These groups have historical antecedents. The most recent may have been Operation Eagle Eye the nation’s first large scale anti-voter fraud campaign following passage of the Civil Rights Acts of 1964 and Voting Rights Act of 1965. By banning discriminatory practices, they had stoked fears of the rising power of black voters. More recently, the Republican Party also ran anti-fraud programs, but signed a consent decree in 1982 to cease them. After *Bush v. Gore*, the party again became interested in the mechanics of elections as a means of gaining partisan advantage. In 2008, the party asked a judge to abolish or amend the decree. The judge denied the request. [↑](#footnote-ref-14)
15. Some grantees would even join the True the Vote’s monthly calls, as listeners. [↑](#footnote-ref-15)
16. *See* [Project Vote](https://na14.salesforce.com/006d00000075JM1) and [Campaign Legal Center](https://na14.salesforce.com/006d00000075K3q) grants. [↑](#footnote-ref-16)
17. *See* grant to Common Cause (with re-grant to PICO) at <https://na14.salesforce.com/006d00000075Jt8>*.* [↑](#footnote-ref-17)
18. *See* <https://na14.salesforce.com/006d00000075JM0>. Election Protection data, and its recommendations based on that data, has been used to inform the recently concluded Presidential Commission on Election Administration’s findings, among other uses. [↑](#footnote-ref-18)
19. Upwell, Project Upvote, pp. 45 (organization funded by Jonathan Soros to map social media conversation on, inter alia, voting rights). [↑](#footnote-ref-19)
20. *See* Brendan Nyhan, *Voter Fraud is Rare but Myth is Widespread, New York Times (6/10/2014), accessible at:* [*http://www.nytimes.com/2014/06/11/upshot/vote-fraud-is-rare-but-myth-is-widespread.html?\_r=0&abt=0002&abg=0*](http://www.nytimes.com/2014/06/11/upshot/vote-fraud-is-rare-but-myth-is-widespread.html?_r=0&abt=0002&abg=0)*.* Texas, for example, identified 2 voters in 10 years, a time when roughly 20 million ballots were cast. [↑](#footnote-ref-20)
21. Through an additional, $200,000 grant to New America Media, we extended the reach of this research and messaging to ethnic media, which has led to continued collaboration with the voting rights field (they partnered similarly on the *Shelby* decision). [↑](#footnote-ref-21)
22. *See* [Freedman analysis](https://na14.salesforce.com/00Pd000000FgzfI), executive summary, at pp. 5-8 (noting as key findings: (1) the investment correlated with total coverage volume; (2) the “anti-restriction side” dominated airspace; (3) despite prior research suggesting refraining from them, “suppression” messages were dominant, and increased over time; and (4) values-based messages, which research supported as most persuasive to voters, appeared relatively rarely in the national conversations). [↑](#footnote-ref-22)
23. We note here the U.S. Programs Board’s decision in 2012 to substantially cut the budget for grassroots constituency building, leadership development efforts, and direct voter contact, including voter registration and mobilization efforts. [↑](#footnote-ref-23)
24. *See* American Political Science Association study, accessible at: <http://journals.cambridge.org/action/displayAbstract?aid=9122051>, finding that states where more minorities turn out to vote are more likely to pass vote-suppressing laws (Keith Bentele & Erin O’Brien, [Perspectives on Politics](http://journals.cambridge.org/action/displayJournal?jid=PPS), Vol. 11, Issue 04 (December 2013) at pp 1088-1116). [↑](#footnote-ref-24)
25. The anti-fraud intransigence, with its imperviousness to fact, should also have triggered our analysis of acceptable ID regimes, something we will engage in next year. (We did discuss it, but resisted moving forward because it is a highly controversial proposition with some civil rights groups unwilling to even entertain such discussion.) [↑](#footnote-ref-25)
26. In Pennsylvania, state House Republican leader Mike Turzai promised a crowd that the state’s [new voter ID law](http://www.votespa.com/portal/server.pt/community/preparing_for_election_day/13517/voter_id_law/1115447) will “allow Governor Romney to win the state of Pennsylvania” in November. In September 2012, Wisconsin officials put a gag order on the DMV workers who might tell voters about free voter IDs, even firing one worker. [↑](#footnote-ref-26)
27. Recent research by the University of Delaware’s Center for Political Communication shows that public opinion about voter ID laws can be racialized by simply showing images of African American people. Support is 6% stronger (statistically significant) when shown images of African Americans using voting machines. *See* <http://www.udel.edu/cpc/research/fall2014/CPCVoterID-Race-final.pdf>. [↑](#footnote-ref-27)
28. And it had some. Civil rights organizations in particular have rarely been able to wage substantial communications campaigns, and showed that they could do so effectively. Building research and communications capacity was also a key strategy to success in the 2012 cycle. [↑](#footnote-ref-28)
29. During the “war on voting,” the field’s long-standing divide between good government and civil rights groups occasionally reared its head. This strain was aggravated by the actions of Democracy Alliance donors in the lead up to *Shelby*. [↑](#footnote-ref-29)
30. Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia, and certain local jurisdictions within California, Florida, Michigan, North Carolina, New York and South Dakota are collectively known as the “*Shelby* states.” [↑](#footnote-ref-30)
31. Advocates including the Leadership Conference Education Fund, the Mexican American Legal Defense and Education Fund (MALDEF) and the NAACP Legal Defense and Educational Fund (LDF), Constitution Accountability Center (CAC), American Constitution Society (ACS) and Brennan Center helped create a public advocacy, outreach and communications campaign that was designed to provide a common narrative about the importance of the right to register and vote during the time the Court considered the case. [↑](#footnote-ref-31)
32. The U.S. Supreme Court issued a 5-4 decision in *Shelby County v. Holder* invalidating Section 4(b) of the Voting Rights Act which contained the coverage formula determining which states would be subject to the Act’s preclearance requirement. [↑](#footnote-ref-32)
33. SRF was set up as a sub-fund of NEO’s State Infrastructure Fund in order to take advantage of a waiver of NEO’s 3% administrative fee due to an arrangement with Carnegie. [↑](#footnote-ref-33)
34. The national litigating groups include: Advancement Project, American Civil Liberties Union (ACLU), Asian American Legal Defense and Education Fund (AALDEF), Brennan Center for Justice, LatinoJustice/Puerto Rican Legal Defense and Education Fund (PRLDEF), Lawyers Committee for Civil Rights under Law, MALDEF, LDF, Native American Rights Fund (NARF) and Southern Coalition for Social Justice. [↑](#footnote-ref-34)
35. Directly aligned funding is approximately $8 million. [↑](#footnote-ref-35)
36. It is perhaps a bit early in the life of post-Shelby grantmaking to accurately determine the merits of this work. [↑](#footnote-ref-36)
37. If the recent 2-day trip that Ken Zimmerman, Bill Vandenberg, Ahely Rios Allende and I made to North Carolina to meet with local c3 and c4 advocates and political players is any indication of the amount of expense and due diligence required make grants expeditiously in 15 states, any such targeted *Shelby* response would have been unlikely, if not impossible. [↑](#footnote-ref-37)
38. Before *Shelby* was decided, SRF grantees were counsel in more than a dozen active voting rights cases. By summer 2014, the ACLU alone was engaged in voting rights litigation in 9 states: Alabama, Arkansas, Georgia, Kansas, Montana, North Carolina, Ohio, Pennsylvania and Wisconsin. [↑](#footnote-ref-38)
39. NARF won a Voting Rights Act language assistance case, brought on behalf of native Alaskans. At the trial level, LDF successfully litigated the Texas voter ID case where the trial court judge ruled that Texas’s ID law had “an unconstitutional discriminatory purpose,” and created “an unconstitutional burden on the right to vote.” The trial judge in the Wisconsin voter ID case agreed with the ACLU that the law there created an unreasonable burden on minority voters. Some victories have since been overturned by higher court decisions (as in the case of the U.S. Supreme Court reversal of the Texas ID case.) [↑](#footnote-ref-39)