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Before the United States Senate Committee on the Judiciary

Hearing on “Jim Crow 2021: The Latest Assault on the Right to Vote”

April 20, 2021

Good morning, Chairman Durbin, Ranking Member Grassley and members of the Committee. My name is Sherrilyn Ifill, and I am the President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”).¹ Thank you for the opportunity to testify regarding the state of voting rights in this country.

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the struggle to secure, protect, and advance voting rights for Black voters and other communities of color. Beginning with *Smith v. Allwright*,² our successful Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has fought to overcome a of myriad obstacles to ensure the full, equal, and active participation of Black voters. Despite LDF’S victory in *Brown v. Board of Education*,³ which set in motion the end of legal segregation in this country and transformed the direction of American democracy in the 20th century, Thurgood Marshall referred to *Smith v. Allwright* as his most consequential case. He held this view, he explained, because he believed that the vote, and the opportunity to access political power was critical to fulfilling the guarantee of full citizenship promised to Black people in the 14th Amendment to the Constitution. LDF has prioritized our work protecting the right of Black citizens to vote for 80 years – representing Martin Luther King and the marchers in Selma, Alabama in 1965, litigating seminal cases interpreting the scope of the Voting Rights Act, and working in communities in the South to strengthen and protect the ability of Black citizens to participate in the political process free from discrimination.

¹ LDF has been an entirely separate organization from the NAACP since 1957.

² 321 U.S. 629 (1944).

³ 347 U.S. 483 (1954).

As part of this work, LDF has monitored elections for more than a decade through our Prepared to Vote initiative (“PTV”) and, more recently, through our Voting Rights Defender (“VRD”) project. Our PTV and VRD initiatives place LDF staff and volunteers on the ground for primary and general elections every year to conduct non-partisan election protection, poll monitoring, and to support Black political participation in targeted jurisdictions- primarily in the South. Prior to election day, PTV equips voters with non-partisan educational materials answering questions about how to register to vote, what identification is needed on election day, and providing information on local voting laws and practices that may impact voters in the election process. On election day, PTV volunteers visit polling sites to ensure voters are informed of their state’s voting requirements, answer questions about how to comply with election laws, and, when necessary, engage in rapid response actions to ensure every eligible voter is able to cast a ballot. This rapid response work often includes direct communication with election officials and, where necessary, litigation. Critical to this work is connecting local community partners with national organizations, advocates, and resources to support ongoing non-partisan election protection work.

In September 2020, LDF partnered with More than a Vote (“MTAV”) to launch a non-partisan initiative to recruit poll workers for the General Election during the COVID-19 pandemic.⁴ Because polling places have traditionally been staffed by senior and elderly workers, the pandemic’s disproportionate rate of infection and death in Black communities threatened to result in a severe shortage of poll workers during early voting and on Election Day in Black

⁴ *Become a Poll Worker*, Voting at NAACP LDF (last visited April 12, 2021), <https://voting.naacpldf.org/voting-rights/become-a-poll-worker/>.

communities. Under the leadership of National Basketball Association player and leader LeBron James, the More Than a Vote initiative brought together the cultural influence of professional athletes and artists with LDF’s voting rights expertise and long-standing community activism to help address poll worker shortages across the country.⁵ Our poll worker recruitment drive successfully enlisted more than 42,500 new poll worker applicants and made a significant impact on polling site operations nationwide.

LDF is also a founding member of the non-partisan civil rights Election Protection Hotline (1-866-OUR-VOTE), administered by the Lawyers’ Committee for Civil Rights Under Law. The Election Protection hotline coalition works year-round to ensure that all voters have an equal opportunity to vote and have that vote count. Election Protection provides Americans from coast to coast with comprehensive information and assistance at all stages of voting—from registration to absentee and early voting, to casting a vote at the polls, to overcoming obstacles to their participation.

Assault on Voting Rights

This country’s long and difficult struggle to diminish racial discrimination in voting is well documented.⁶ However, despite the guarantees of the 14th and 15th Amendments to the Constitution, the Voting Rights Act and other federal voting rights statutes, racial discrimination and suppression of the Black vote persists. Indeed, in the years since the disastrous 2013

⁵ Astead Herndon, *LeBron James’s effort to attract more poll workers nets 10,000 volunteers*, New York Times (Sep. 30, 2020) <https://www.nytimes.com/2020/09/30/us/elections/lebron-james-more-than-a-vote-poll-workers.html>.

⁶ *South Carolina v. Katzenbach*, 383 U.S. 301, 310-314 (1966).

Supreme Court decision in *Shelby County v. Holder*,⁷ we have seen increases⁸ and ingenious mutations in methods of voter suppression.

In *Shelby County v. Holder*, the Supreme Court found that the formula reauthorized by Congress under Section 5 of the Voting Rights Act of 1968 (“VRA”) to bind local jurisdictions to the obligation to submit voting changes to a federal authority for “preclearance” before adoption was unconstitutional. In doing so, the Court ignored the overwhelming evidence accumulated by Congress in 2006⁹ which demonstrated that the preclearance provisions of Section 5 of the VRA were desperately needed to ensure full political participation for minority voters. The preclearance process provided an effective way of halting discriminatory voting changes *before* they were implemented thus avoiding possible harm and protecting the right to vote, which the Supreme Court has called “preservative of all rights.”¹⁰ Predictably, just hours after the Supreme Court invalidated the VRA’s preclearance provisions, jurisdictions announced their intention to implement aggressive and restrictive voting laws previously blocked by Section 5.¹¹

As the late-Justice Ruth Bader Ginsberg noted in her dissent to the *Shelby County* decision: “Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”¹²

Section 5 of the VRA was not only designed to address then-existing discriminatory voting

⁷ 570 U.S. 529 (2013).

⁸ *Democracy Diminished: State and Local Threats to Voting Post-Shelby County v. Holder*, NAACP Legal Defense and Educational Fund, Inc. (Aug. 2017) https://tminstituteldf.org/wp-content/uploads/2017/08/DemocracyDiminished-State-and-Local-Voting-Changes-Post-Shelby-v.-Holder_4.pdf.

⁹ H. R. REP. NO. 109-478, at 21 (2006) <https://www.congress.gov/109/crpt/hrpt478/CRPT-109hrpt478.pdf>.

¹⁰ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

¹¹ Ed Pilkington, *Texas rushes ahead with voter ID law after Supreme Court decision*, The Guardian (June 25, 2013), <https://www.theguardian.com/world/2013/jun/25/texas-voter-idsupreme-courtdecision>

¹² *Shelby County* supra note 7.

schemes, but it also explicitly sought to prevent “ingenious methods” that might be devised to suppress votes in the future.¹³ At its pre-*Shelby County* strength, Section 5 would have prevented many of the voter suppression schemes that we have encountered over the past years.

Since the *Shelby* decision federal courts have struck down voting changes as violative of the Constitution,¹⁴ the 24th Amendment to the Constitution,¹⁵ the Voting Rights Act and the Americans with Disability Act. Indeed, there have been at least **nine** federal court decisions finding that states or localities **intentionally** discriminated against Black and other voters of color.¹⁶ LDF has litigated challenges to new restrictive voter i.d. laws, absentee voting restrictions, and discriminatory early voting restrictions. LDF challenged President Trump’s Election Integrity Commission,¹⁷ and currently remains in litigation against former President Trump and the Republican National Committee for their efforts to discredit the legitimacy of ballots cast by voters in cities with large Black populations.¹⁸ LDF also sued the United States Postal Service

¹³ U.S. Congress, House, Committee on the Judiciary Voting Rights, 89th Cong., 1st sess., 1965, Mar. 18-19, 23-25 (Apr. 1, 1965).

¹⁴ 4th Circuit Court of Appeals strikes down North Carolina omnibus voting law finding “provisions target African Americans with almost surgical precision.” Robert Barnes & Ann Marrow, *Appeals court strikes down North Carolina’s voter-ID law*, Washington Post (Jul. 29, 2016), https://www.washingtonpost.com/local/public-safety/appeals-court-strikes-down-north-carolinas-voter-id-law/2016/07/29/810b5844-4f72-11e6-aa14-e0c1087f7583_story.html.

¹⁵ *NAACP v. Billups*, 554 F.3d 1340 (2009).

¹⁶ See, e.g., *Perez v. Abbott*, 138 S. Ct. 2305 (2018); *Stout v. Jefferson County Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018); *Veasey v. Abbott*, No. 2:13-CV-193, 2017 WL 3620639 (S.D. Tex. Aug. 23, 2017); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 730 (S.D. Tex. 2017); *Terrebonne Par. Branch NAACP v. Jindal*, 274 F.Supp.3d 395 (M.D. La. 2017); *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016); *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016); *Allen v. Evergreen*, No. 13-107, 2014 WL 12607819 (S.D. Ala. Jan. 13, 2014); *Perez v. Texas*, No. 11-CA-360, 2012 WL 13124275, at *3 (W.D. Tex. Mar. 19, 2012).

¹⁷ *LDF and Local Alabama Organization File Federal Lawsuit Challenging President’s “Election Integrity” Commission*, NAACP LDF (Jul. 18, 2017), <https://www.naacpldf.org/press-release/ldf-and-local-alabama-organization-file-federal-lawsuit-challenging-presidents-election-integrity-commission/>.

¹⁸ *LDF Files Amended Complaint in its Lawsuit Against President Trump and His Campaign’s Attempts to Overturn the Election by Disenfranchising Black Voters*, NAACP LDF (Dec. 22, 2020), <https://www.naacpldf.org/press-release/ldf-files-amended-complaint-in-its-lawsuit-against-president-trump-and-his-campaigns-attempts-to-overturn-the-election-by-disenfranchising-black-voters/>.

("USPS") in 2020 to ensure the timely delivery of mail-in ballots cast in the November Presidential election and January special election in Georgia.¹⁹

In addition to litigation, LDF continues to closely monitor how formerly covered states and localities respond to the *Shelby County* decision and regularly details post-*Shelby County* voting changes.²⁰ Those changes are catalogued in *Democracy Diminished*,²¹ a compendium of post-*Shelby County* voting changes, and *Democracy Defended*,²² which attempt to capture a fraction of the thousands of voting changes that would have been scrutinized by the federal government for their harm to minority voters via preclearance.

State of Voting Rights Today

Further adding to the devastating impact of *Shelby County*, over the past 4 years the Department of Justice ("DOJ") essentially abdicated its traditional role in protecting against voting discrimination. Although the loss of Section 5 removed the DOJ's central mechanism to block a discriminatory change *before* its implementation, the DOJ refrained from using alternatives tools available to combat voter discrimination. The Civil Rights Division of the DOJ previously played an active role in the enforcement of voting rights by bringing cases raising claims of violations of Section 2 of the VRA,²³ which authorizes private actors and the DOJ to

¹⁹ *NAACP v. U.S. Postal Service*, No 1:20-cv-02295 (D. D.C.2020).

²⁰ Ben Jealous and Ryan P. Haygood, *The Battle to Protect the Vote Voter Suppression Efforts in Five States and Their Effect on the 2014 Midterm Elections*, NAACP LDF and Center for American Progress (Nov. 2014), https://www.naacpldf.org/wp-content/uploads/The-Battle-to-Protect-the-Vote-1.pdf?_ga=2.210128989.933499795.1618246438-217316157.1616678028.

²¹ *Democracy Diminished* *supra* note 8.

²² *Democracy Defended: Analysis of Barriers to Voting in the 2018 Midterm Elections*, NAACP LDF Thurgood Marshall Institute (Sept. 6, 2019), https://www.naacpldf.org/wp-content/uploads/Democracy_Defended__9_6_19_final.pdf.

²³ *See, United States v. City of Eastpointe*, 378 F. Supp. 3d 589 (E.D. Mich. 2019); *United States v. North Carolina*, No. 1:13CV861 (M.D.N.C. Feb. 6, 2014); *United States v. State of Texas*, Case 5:11-cv-00360-OLG-JES-XR (W.D. Tex. Sep. 25, 2013); *United States v. State of Texas*, Case 2:13-cv-00263 (S.D. Tex. Aug. 22, 2013); *United States v. Town of*

challenge discriminatory voting practices in federal court.²⁴ The former administration filed only one Section 2 case in roughly four years.²⁵ Other federal statutes—the National Voter Registration Act, the Help America Vote Act, the Civil Rights Act of 1871 (also known as the KKK Act), and of course the United States Constitution—remained available to the DOJ in the exercise of its voting rights enforcement authority.

The lack of preclearance and the Department of Justice’s abdication of its role to protect and ensure compliance with civil rights laws compelled LDF and other civil rights organizations to increase our efforts to litigate cases, investigate violations, collect & disseminate data and provide leadership in the enforcement of the nation’s core civil rights laws. Unfortunately, voting

Lake Park, Civil Action No. 09-80570-MARRA (S.D. Fla. Oct. 26, 2009); *United States v. Euclid City School Bd.*, 632 F. Supp. 2d 740 (N.D. Ohio 2009); *United States v. Salem County and the Borough of Penns Grove*, Civil Action No. 1:08-cv-03276-JHR-AMD (D.N.J. Jul. 24, 2008); *United States v. School Board of Osceola County*, Civil Action No. 6:08-CV-582-ORL-18DAB (M.D. Fla. Apr. 23, 2008); *United States v. Georgetown County School District*, Civil Action No. 2:08-889 DCN (D.S.C. Mar. 21, 2008); *United States v. City of Philadelphia*, Case 2:06-cv-04592-PBT (E.D. Pa. Jun. 1, 2007); *United States of America v. Village of Port Chester*, No. 7:2006cv15173 - Document 124 (S.D.N.Y. 2010); *United States v. City of Euclid*, 580 F. Supp. 2d 584 (N.D. Ohio 2008); *United States v. Long County*, Case No. CV 206-040 (S.D. Ga. Feb. 10, 2006); *United States v. City of Boston*, 497 F. Supp. 2d 263 (D. Mass. 2007); *United States v. Osceola County*, Case No. 6:05-cv-1053-Orl-31DAB (M.D. Fla. Jun. 26, 2006); *United States v. Brown*, Civil Action No. 4:05CV33TSL-LRA (S.D. Miss. Aug. 27, 2007); *United States v. Berks County*, 250 F. Supp. 2d 525 (E.D. Pa. 2003); *United States v. Osceola County*, 6:02-cv-00738 (M.D. Fla. Jul. 22, 2002); *United States v. Alamosa County*, 306 F. Supp. 2d 1016 (D. Colo. 2004); *United States v. Crockett County*, No. 1-01-1129 (W.D. Tenn. 2001); *United States v. Charleston County*, 318 F. Supp. 2d 302 (D.S.C. 2002); *United States v. City of Hamtramck Michigan*, Civil Action No. 00-73541 (E.D. Mich. Jan. 29, 2004); *United States v. Upper San Gabriel Valley Mun. Water Dist.*, CV 00- 7903 AHM (BQRx) (C.D. Cal. Sep. 8, 2000); *United States v. Morgan City*, Civil Action No. 6:2000cv01541 (W.D. La. 2000); *Grieg v. City of St. Martinville*, Case 6:00-cv-00603-RFD-MEM (W.D. La. 2000); *United States v. City of Santa Paula*, CV 00-03691-GHK (SHx) (C.D. Cal. 2000); *United States v. Roosevelt County*, Civil Action No. 00-50-BLG-JDS, (D. Mont. Mar. 24, 2000); *United States v. Town of Cicero*, Civil Action No. 00C-153 (N.D. Ill. Mar. 13, 2000); *United States v. Benson County*, Civil Action No. A2-00-30 (D.N.D. 2000); *United States v. Blaine County*, Montana, 157 F. Supp. 2d 1145 (D. Mont. 2001); *United States v. Passaic City*, No. 99- 2544 (D.N.J. 1999); *United States v. Day County*, No. 99-1024 (D.S.D. June 16, 2000); *United States v. City of Lawrence*, No. 1:98-cv-12256 (D. Mass. Nov. 5, 1998); *United States v. Cibola County*, Civil Action No. 93-1134-LH/LFG (D. N.M. 1993); *United States v. Sandoval County*, No. 88-CV-1457-BRB-DJS (D. N.M. 1988).

²⁴ 52 U.S.C. § 10301.

²⁵ *Justice Department Reaches Agreement with Chamberlain School District, South Dakota, under the Voting Rights Act*, Department of Justice (May 28, 2020), <https://www.justice.gov/opa/pr/justice-department-reaches-agreement-chamberlain-school-district-south-dakota-under-voting>; *An Assessment of Minority Voting Rights Access in the United States*, U.S. Commission on Civil Rights (2018), https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

rights litigation is slow and expensive.²⁶ And the average length of Section 2 cases is two to five years.²⁷ In the years during the pendency of a case, thousands and, in some cases, millions of voters are effectively disenfranchised. For example, LDF challenged Texas' voter i.d. law,²⁸ which the state enacted after the *Shelby County* decision. It was widely described as the most restrictive voter i.d. law in the country.²⁹ A federal court found that the law "... creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African Americans [i.e., they comprise a disproportionate share of the more than 600,000 registered voters and one million eligible voters who lack the requisite photo ID], and was imposed with an unconstitutional discriminatory purpose," and that it "constitutes an unconstitutional poll tax."³⁰ Although LDF was ultimately successful in that litigation, in the years after the trial and while the case made its way twice to the 5th Circuit Court of Appeals and back to the trial court, Texas elected candidates to the following offices:

- In 2014 in Texas, voters voted for a U.S. Senator, all 36 members of Congress, governor, lieutenant governor, attorney general, comptrollers, commissioners, four Justices of the Texas Supreme Court.
- In 2015 there was a special election for a member of the state senate.

²⁶ *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, NAACP LDF (Feb. 14, 2019), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs02.14.19.pdf>.

²⁷ Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 92 (2005).

²⁸ *Veasey v. Abbott* - 830 F.3d 216 (5th Cir. 2016).

²⁹ *Veasey v. Abbott: A Challenge to Texas' Harsh Voter ID Law*, Campaign Legal Center (May 18, 2016), <https://campaignlegal.org/sites/default/files/Veasey%20v%20Abbott%205.18.16%20One%20Pager.pdf>.

³⁰ *Veasey v. Perry*, 71 F. Supp. 3d 627, 693 (S.D. Tex. 2014).

- In 2016, the Presidential primary, 36 members of Congress, three Supreme Court justices, state boards of educations, sixteen state senators, all 150 members of the state House, over 175 district judges, over 75 district attorneys.

These are all the officials elected in just one state during the pendency of litigation. This is not a model that can be sustained.

Moreover, today we find ourselves under siege from unprecedented and ingenious methods of voter suppression. 2020 was an unprecedented year in many respects. The COVID-19 pandemic tested our national spirit, our collective wellness, our economy, and our democracy. Unfortunately, some states used the circumstances of the pandemic as an opportunity to disenfranchise voters. Across the country, jurisdictions and states made it more difficult—not easier—for people to vote during a life-threatening pandemic. Where previously the federal government would have been tasked to review and evaluate the likely impact of many of the voting changes before they were implemented, instead citizens and voters across the country were left unprotected and at the mercy of partisan, political actors who saw an opportunity to advance their agenda rather than recommit themselves to their oath to uphold the specific provisions of the Constitution and more broadly the principles of democracy.

The importance of the vote cannot be overstated. Each, and every, election provides an opportunity for citizens of this country to engage with and influence policy, to elect members to our government to represent them and their concerns and to participate in the political process enshrined in the foundation of our nation. For a community that has for so long been denied the right to vote, the right to free and fair elections has an added significance. In local elections and presidential elections alike, each vote is sacred. Thus, it must be protected and any and all efforts

which may cause a suppression of the vote must be scrutinized *before* implementation to ensure that there is no harm to this sacred right.

COVID-19, Race, and Voting in 2020

In order to accurately map the scope of voter suppression in 2020, we must look at both primary and general elections, as well as special elections. We must look at national and local elections. We must look at early voting and absentee voting. And 2020 demonstrated that we must now also extend our examination to voter suppression efforts in the counting and canvassing of ballots.

The primary election in Wisconsin in retrospect was an early precursor of the challenges Black voters would face in 2020.³¹ In the beginning of the pandemic, when information about transmission and mortality rates of COVID-19 was scarce and messages from the Centers of Disease Control and Protection (“CDC”) were often contradicted by President Trump, thousands of voters literally risked their lives—waiting in line for hours, keeping as much distance as possible from fellow voters—to exercise their right to vote.³²

What was clear from the early months, however, was that the pandemic was taking a disproportionate toll on Black communities. During the week of the primary election, it was reported that although Black people constitute 28% of the population of Milwaukee, Blacks comprised 73% of the COVID-19-related deaths in the City.³³ And yet Black voters turned out at

³¹ Sherrilyn Ifill, *Never Forget Wisconsin*, Slate (Apr. 8, 2020), <https://slate.com/news-and-politics/2020/04/never-forget-wisconsin.html>.

³² Benjamin Swasey & Alana Wise, *Wisconsin Vote Ends As Trump Blames Governor For Long Lines*, National Public Radio (Apr. 7, 2020), <https://www.npr.org/2020/04/07/828835153/long-lines-masks-and-plexiglas-barriers-greet-wisconsin-voters-at-polls>.

³³ Robert Samuels, *Covid-19 is ravaging black communities. A Milwaukee neighborhood is figuring out how to fight back.*, Washington Post (Apr. 6, 2020), <https://www.washingtonpost.com/politics/covid-19-is-ravaging-black->

high rates to participate in the Wisconsin primary, standing in long lines for hours caused by the severe reduction in open polling places. Milwaukee only had five polling locations open for its April primary, instead of its usual 180.³⁴ It has been reported that at least 71 people contracted COVID-19 after voting in person or working at the polls during the Wisconsin election.³⁵ At least one study concluded that those counties with “more in-person voters per voting location had significantly higher rates of COVID19 transmission after the election than counties with lower voter density.”³⁶

Despite the warning signs of the Wisconsin April election—roughly seven months before the 2020 general election—states were still unprepared to deal with the effects of the COVID-19 pandemic on voting. The racial disparities in COVID-19 deaths and illnesses—nationwide, Black Americans are 3.4 times more likely to have died from COVID-19 than white Americans³⁷— meant communities of color were disproportionately at risk if their localities did not offer robust alternatives to voting in-person on Election Day. Given the staggering rate of transmission, infection, and death related to COVID-19 it cannot be overemphasized that voters were forced

communities-a-milwaukee-neighborhood-is-figuring-out-how-to-fight-back/2020/04/06/1ae56730-7714-11ea-ab25-4042e0259c6d_story.html

³⁴ Alison Dirr & Mary Spicuzza, *What We Know So Far About Why Milwaukee Only Had 5 Voting Sites for Tuesday's Election While Madison Had 66*, Milwaukee Journal Sentinel (Apr. 9, 2020), <https://www.jsonline.com/story/news/politics/elections/2020/04/09/wisconsin-election-milwaukee-had-5-voting-sites-while-madison-had-66/2970587001/>.

³⁵ David Wahlberg, *71 People Who Went to the Polls on April 7 Got COVID-19: Tie to Election Uncertain*, Wisconsin State Journal (May 16, 2020) https://madison.com/wsj/news/local/health-med-fit/71-people-who-went-to-the-polls-on-april-7-got-covid-19-tie-to/article_ef5ab183-8e29-579a-a52b-1de069c320c7.html.

³⁶ Chad D. Cotti, Bryan Engelhardt, et. al., *The Relationship between In-Person Voting, Consolidated Polling Locations, and Absentee Voting on COVID-19: Evidence from the Wisconsin Primary* (May 10, 2020). Available at SSRN: <https://ssrn.com/abstract=3597233>.

³⁷ *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM Research Lab (last updated March 5, 2021), <https://www.apmresearchlab.org/covid/deaths-by-race>; *COVID-19 hospitalization and deaths by race/ethnicity*, Centers for Disease Control and Prevention (last updated March 12, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

to make a life-risking choice in elections across the country because their government would not protect them.

Throughout the spring and summer of 2020, LDF was involved in numerous lawsuits challenging the lack of safe and accessible voting options in response to the COVID-19 pandemic in Texas,³⁸ Louisiana,³⁹ Alabama⁴⁰ and South Carolina.⁴¹ Our lawsuits resulted in changes in mail-in voting requirements, identification policies, and curbside voting access—significantly increasing voter protections and accessibility. For example, in South Carolina, where Black people account for 33% of COVID-related deaths but roughly 26% of the population,⁴² LDF and civil rights partners secured the temporary suspension of the witness signature requirement for absentee ballots removing a needless barrier that required people to violate social distancing protocols to vote. The victory ensured that eligible voters could participate in the state’s June elections without the fear of endangering their health.

Voter Intimidation During Early Voting

In late August, voters in the Detroit area were targeted by robocalls claiming that voters’ personal information would be shared with law enforcement, creditors, and other databases if

³⁸ *LDF Files Emergency Amicus Brief to Protect Texas Voters at Risk Amid COVID-19 Pandemic*, NAACP LDF (May 21, 2020), <https://www.naacpldf.org/press-release/ldf-files-emergency-amicus-brief-to-protect-texas-voters-at-risk-amid-covid-19-pandemic/>.

³⁹ *Power Coalition for Equity and Justice v. Edwards*, No. 3:20-cv-00283-BAJ-EWD (M.D. La., May. 7, 2020), https://www.naacpldf.org/wp-content/uploads/FILED-COMPLAINT_Power-Coalition-v.-Edwards-20-cv00283_20200507.pdf.

⁴⁰ *LDF, SPLC, and ADAP File Federal Lawsuit Challenging Alabama’s Lack of Safe and Accessible Voting During COVID-19 Pandemic*, NAACP LDF (May 1, 2020), <https://www.naacpldf.org/press-release/ldf-splc-and-adap-file-federal-lawsuit-challenging-alabamas-lack-of-safe-and-accessible-voting-during-covid-19-pandemic/>.

⁴¹ *Thomas v. Andino*, No.: 3:20-cv-01552-JMC, (D. S.C. May. 25, 2020) https://www.naacpldf.org/wpcontent/uploads/order_-_south_carolina_pi_granted-1.pdf.

⁴² *COVID-19 Deaths by Race/Ethnicity*, Kaiser Family Foundation (updated March 31, 2021; last accessed April 13, 2021), <https://www.kff.org/other/state-indicator/covid-19-deaths-by-race-ethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

they voted by mail.⁴³ The calls were specifically targeted to areas with high populations of Black residents. Roughly 12,000 residents with a “313” Detroit-area code received calls. The calls warned recipients to “beware of vote by mail” which would give “private information to the man.”⁴⁴ The calls also falsely claimed that voting by mail would result in voters’ personal information being put into a database accessible to the police pursuing warrants, credit card companies collecting debts, and the Centers for Disease Control and Prevention aiming to track people for mandatory vaccines. The Michigan Attorney General is pursuing felony charges, including intimidating voters and conspiracy to commit an election law violation, against two individuals who allegedly orchestrated these suppressive robocalls.⁴⁵ An investigation found that attorneys general in New York, Pennsylvania, Ohio, and Illinois received complaints about similar phone calls being placed in cities with large minority populations.⁴⁶

On October 31, the last day of early voting in North Carolina, voters peacefully marched from a local church to Court Square, a block from their polling location.⁴⁷ On at least two separate occasions, law enforcement deployed pepper spray into the gathering of marchers which included young children, elderly individuals, and those with disabilities, with no warning or justification. One of those times was just seconds after the marchers knelt in a moment of silence for eight minutes and 46 seconds honoring the memory George Floyd who was killed by a

⁴³ Sam Gringlas, *Far-Right Activists Charged Over Robocalls That Allegedly Targeted Minority Voters*, National Public Radio (Oct. 1, 2020) <https://www.npr.org/2020/10/01/919309649/far-right-activists-charged-over-robocalls-that-allegedly-targeted-minority-vote>.

⁴⁴ *Id.*

⁴⁵ *Burkman, Wohl Heading to Wayne County Circuit Court for Voter-Suppression Robocalls*, Department of Michigan Attorney General (Nov. 5, 2020), https://www.michigan.gov/ag/0,4534,7-359-92297_47203-544415--,00.html.

⁴⁶ *Supra* note 43.

⁴⁷ Artemis Moshtaghian & Dakin Andone, *Police used pepper spray to break up a North Carolina march to a polling place*, CNN News (Nov. 1, 2020), <https://www.cnn.com/2020/10/31/us/north-carolina-police-pepper-spray-polls/index.html>.

Minneapolis police officer in May 2020.⁴⁸ LDF filed suit⁴⁹ on behalf of marchers and prospective voters in Alamance County who were attempting to vote early when they were pepper-sprayed by law enforcement officers. The lawsuit challenges the use of force and intimidation by the City of Graham and Alamance County—through their law enforcement departments—in response to peaceful marchers and voters in violation of various civil rights statutes and the U.S. Constitution.

Across the country, voters looking to exercise their fundamental rights were confronted by armed observers at polls. In Pinellas County, Florida, two people, armed and wearing security uniforms were suspected of voter intimidation.⁵⁰ The individuals first claimed to work for a private security company but later stated they were hired by the Trump campaign. The Trump campaign denied this assertion. Nevertheless, the presence of two armed security officials seemingly associated with the Trump campaign had a suppressive and intimidating effect on voters. One voter noted “I noticed his gun, that was the first thing that I noticed as a voter was that this man was carrying a weapon.”⁵¹ The experience quickly turned his early voting excitement into fear.⁵² While the Secretary of Elections stated that voter intimidation would not be tolerated, the Pinellas County Sheriff Bob Gualtieri said the two guards remained outside the 150-foot no-solicitation zone, and therefore did not violate any laws.⁵³

⁴⁸ Id.

⁴⁹ *LDF and Co-Counsel File Lawsuit on Behalf of Pepper-Sprayed Voters in North Carolina*, NAACP LDF (Nov. 2, 2020), <https://www.naacpldf.org/press-release/ldf-and-co-counsel-file-lawsuit-on-behalf-of-pepper-sprayed-voters-in-north-carolina/>.

⁵⁰ Lisette Lopez & Ryan Smith, *Armed security guards spark concerns of voter intimidation in St. Pete*, WFTS Tampa Bay (Oct. 22, 2020), <https://www.abcactionnews.com/news/region-pinellas/sheriffs-office-investigates-report-of-possible-voter-intimidation-at-st-pete-voting-location-pinellas-soe-says>.

⁵¹ Id.

⁵² Id.

⁵³ Id.

During early voting periods, LDF also took action in response multiple instances of voter intimidation at polling places. For example, LDF and partners sent a letter to the Florida Attorney General, after numerous Floridians received emails threatening that the Proud Boys, an extremist far-right group, would “come after” voters who did not cast their ballots for a particular candidate, reports of hostile and confrontational demonstrations outside of early voting locations, and reports of a Miami police officer in uniform wearing a mask bearing the logo of a political candidate at a polling location.⁵⁴ We urged the Florida Attorney General to state publicly that voter intimidation is a serious crime under federal and Florida law. No such statement was made. Exercise of the franchise has become such a partisan issue, that an attorney general would not issue a public statement condemning and discouraging voter intimidation. Instead, the former President of the United States encouraged and endorsed such actions.⁵⁵

Election Day 2020

On Election Day, the Election Protection hotline received nearly 32,000 calls.⁵⁶ Accounts from LDF’s VRD and PTV teams detailed in the LDF Thurgood Marshall Institute’s report *Democracy Defended*,⁵⁷ revealed the depth and breadth of the issues reflected in these calls.

⁵⁴ *Coalition Urges Florida Attorney General to Speak Out Against Voter Intimidation Amid Reports of Illegal Activity*, NAACP LDF (Oct. 23, 2020), <https://www.naacpldf.org/wp-content/uploads/2020.10.22-Letter-re-Voter-Intimidation-1.pdf>.

⁵⁵ Frida Gihitis, *Trump encourages voter intimidation tactics in bid to hold on to power*, CNN News (Oct. 2, 2020), <https://www.cnn.com/2020/10/02/opinions/trump-proud-boys-voter-intimidation-ghitis/index.html>.

⁵⁶ Sherrilyn Ifill, *No, This Election Did Not Go “Smoothly,”* Slate (Nov. 9, 2020), <https://slate.com/news-and-politics/2020/11/2020-election-voting-did-not-go-smoothly.html>.

⁵⁷ *Democracy Defended: Executive Summary*, NAACP LDF Thurgood Marshall Institute (Feb. 10, 2021), https://www.naacpldf.org/wp-content/uploads/LDF_02102021_DemocracyDefendedPreview-11.pdf?_ga=2.209659025.2082701624.1617629692-217316157.1616678028.

Voters also encountered a myriad of administrative hurdles. Persistent across our target states, LDF witnessed a lack of, or confusing, signage at polling locations and entrances, last-minute polling place changes, and parking problems due to overcrowded facilities. These issues confused many voters on their way to the ballot box and contributed to accessibility issues for seniors and voters with disabilities. In many instances, our volunteers created signage or stood in front of polling locations that had been changed to direct voters to the correct location.

Long voting lines can serve as a deterrent to potential voters, who may not have the time to stand in line for hours. There were numerous reports of long lines across the country on Election Day. At one polling location in York County, Pennsylvania reports indicate that a line began forming even before poll workers showed up to open the polling place. The line grew to wrap around the polling place, Grace Baptist Church, onto the road on the shoulder of the busy rural highway.⁵⁸ Long lines at polling places are not instantly indicative of high voter turnout or voter enthusiasm. Many times, long lines can be a sign of understaffing, poor poll worker training, malfunctioning machines, inaccessible voting options, or polling sites that cannot accommodate the size of the voting population.⁵⁹

⁵⁸ Mike Argento, *At the Pa. polls on Election Day 2020: Long lines, QAnon, a pit bull and a drag queen: 'I've never seen a line like this before'*, York Daily Record (Nov. 3, 2020), <https://www.ydr.com/story/news/politics/elections/2020/11/03/election-day-2020-long-lines-greet-voters-battleground-pa/6058364002/>.

⁵⁹ Hannah Klain, Kevin Morris & Rebecca Ayala, *Waiting to Vote*, Brennan Center for Justice (Jun. 3, 2020), <https://www.brennancenter.org/our-work/research-reports/waiting-vote>.

Voter Intimidation on Election Day

Notably, our reports indicated an alarming surge in voter intimidation leading up to and on Election Day.⁶⁰ Nationwide, we received reports of, and witnessed, agitated partisan crowds verbally assaulting and threatening voters.⁶¹ Armed supporters of President Trump engaged in voter intimidation, such as loitering at and circling polling sites, in multiple polling locations across all 10 states that LDF monitored.⁶² In Louisiana, police were called to a polling site when a man carrying an assault rifle and campaign poster for President Trump arrived on the premises.⁶³ The presence of assault rifles or other guns and weapons can be especially threatening for Black voters, who have endured harrowing violence at the polls throughout this country's history. Unfortunately, robust enforcement of voting rights has become so devalued that reports of guns outside polling places has become the norm.⁶⁴

Instances of improper and intimidating signs, flags, and campaign caravans were abundant on and leading up to Election Day.⁶⁵ In one instance, outside a polling location

⁶⁰ Kristen Clarke, *Voter intimidation is surging in 2020. Fight for the right that begets all other rights.*, USA Today (Oct. 27, 2020), <https://www.usatoday.com/story/opinion/2020/10/27/voter-intimidation-surg-ing-2020-protect-minority-voters-column/6043955002/>.

⁶¹ Shaila Dewan, *Armed Observers, Chants of '4 More Years' at Polls: Is That Legal?*, New York Times (Oct. 30, 2020), <https://www.nytimes.com/2020/10/30/us/poll-watching-intimidation.html>; Jeffrey Kasky, *Poll workers signed up to help voters. Instead, we were abused by Trump supporters*, South Florida Sun Sentinel (Nov. 4, 2020), <https://www.sun-sentinel.com/opinion/commentary/fl-op-com-polling-sites-campaign-intimidation-20201104-rfr6d6npune7daoihytsogbhq-story.html>.

⁶² *Democracy Defended 2021 supra* note 57.

⁶³ Scottie Hunter, *Baker Police Dept. responds to reports of man armed with assault rifle near polling location*, WAFB 9 (Nov. 3, 2020), <https://www.wafb.com/2020/11/03/baker-police-respond-reports-man-armed-with-assault-rifle-near-polling-location/>.

⁶⁴ Time Sullivan & Adam Geller, *Increasingly normal: Guns seen outside vote-counting centers*, Associated Press (Nov. 7, 2020), <https://apnews.com/article/protests-vote-count-safety-concerns-653dc8f0787c9258524078548d518992>.

⁶⁵ Pariesa Young, *US voters face intimidation ahead of presidential election by caravans, armed militias, rallies*, The Observers (Nov. 3, 2020), <https://observers.france24.com/en/20201103-american-voters-intimidation-threats-election>.

in Hattiesburg, Mississippi, an old state flag containing the Confederate emblem was flown,⁶⁶ confronting voters with a symbol of white supremacy and racism as they sought to cast their ballots.

Multiple states reported heightened police presence at polling locations. The increased presence of police officers can have a suppressive effect on voting, especially for communities that are over-policed.⁶⁷ In Autauga County, Alabama, one of our nonpartisan poll monitoring volunteers who was evaluating polling place accessibility was pulled over by a sheriff's deputy and threatened with arrest if she returned to her rightful, legal duties.⁶⁸

In addition to these already substantial hurdles, voters endured misinformation campaigns on Election Day. In the predominantly Black city of Flint, Michigan voters received robocalls recommending that they vote the day after the election.⁶⁹ The Election Day robocalls in Flint were similar to those received in August in the Detroit area. The Michigan Attorney General is prosecuting individuals believed to be involved with the Detroit robocalls.⁷⁰

Mail in Voting in the General Election

At the beginning of the pandemic, LDF identified the essential role mail-in voting and early voting would play in the election, especially for Black and other at-risk voters seeking to limit their exposure to COVID-19. This was confirmed with the preliminary estimates which indicated

⁶⁶ *Democracy Defended* 2021 *supra* note 57.

⁶⁷ Kira Lerner, *Police at Polling Places Could Intimidate Voters, Advocates Warn*, The Appeal (Jul. 2, 2020), <https://theappeal.org/police-polling-places-voter-intimidation-consent-decree/>.

⁶⁸ William Thornton, *SPLC poll monitor says she was threatened with arrest, hand was slapped*, AL.com (Nov. 4, 2020) <https://www.al.com/news/2020/11/splc-poll-monitor-says-she-was-threatened-with-arrest-hand-was-slapped.html>.

⁶⁹ Kathleen Gray, *Michigan officials warn of robocalls meant to mislead residents in Flint.*, New York Times (Nov. 3, 2020), <https://www.nytimes.com/2020/11/03/us/politics/michigan-robocalls.html>.

⁷⁰ *Supra* note 43.

that the use of mail-in voting more than doubled when compared with the 2016 general election, with nearly half of all voters voting by mail.⁷¹ Despite these factors, the USPS knowingly implemented last minute changes to mail collection and prioritization that would lead to widespread disruptions in mail delivery, risking the delivery of mail-in ballots. LDF and Public Citizen joined forces to sue the USPS⁷² arguing that changes to reduce services would result in unacceptable mail delays that stood to disenfranchise voters during the November 2020 election. On the morning of Election Day, a United States District Court judge ordered the USPS to sweep 12 facilities that processed ballots for 15 different states after receiving reports that more than 300,000 ballots across the country could not be traced.⁷³ USPS leadership **defied** this court order.⁷⁴ Such an attempt to obstruct the mail system amid a pandemic and on the precipice of a pivotal election by an independent government agency was unprecedented.

In sum, the 2020 election did not, as numerous news reports suggested, “go smoothly.”⁷⁵ Voters overcame a litany of barriers and obstacles with determination and resilience. The Herculean efforts of civil rights groups, grassroots activists and civic groups proved critical to ensuring access to the polls for millions of voters.

⁷¹ *Id.*

⁷² *LDF and Public Citizen File Lawsuit on Behalf of the NAACP Against the USPS to Suspend Implementation of Postal Service Changes Ahead of the November Election*, NAACP LDF (Aug. 20, 2020), <https://www.naacpldf.org/press-release/ldf-and-public-citizen-file-lawsuit-on-behalf-of-the-naacp-against-the-usps-to-suspend-implementation-of-postal-service-changes-ahead-of-the-november-election/>.

⁷³ Jacob Bogage & Christopher Ingraham, *USPS data shows thousands of mailed ballots missed Election Day deadlines*, Washington Post (Nov. 4, 2020), <https://www.washingtonpost.com/business/2020/11/03/election-ballot-delays-usps/>.

⁷⁴ *LDF Issues Statement on USPS Court-Ordered Actions to Deliver Ballots on Time*, NAACP LDF (Nov. 3, 2020), <https://www.naacpldf.org/press-release/ldf-issues-statement-on-usps-court-ordered-actions-to-delivery-ballots-on-time/>.

⁷⁵ Sherrilyn Ifill, *No, This Election Did Not Go “Smoothly,”* Slate (Nov. 9, 2020), <https://slate.com/news-and-politics/2020/11/2020-election-voting-did-not-go-smoothly.html>.

Again, this model is not sustainable. It is unworthy of our democracy. It flies in the face of the spirit and letter of the 14th and 15th Amendments to the Constitution, and the sacrifices of the Civil Rights Movement that resulted in our most cherished civil rights statutes.

Post-Election Day Voter Suppression Efforts

The efforts at voter suppression continued beyond Election Day. Stoked and encouraged by the former President, people across the country participated in a campaign to disrupt the counting and certification of the presidential election and ultimately to overturn its results.⁷⁶ In Michigan, election officials dutifully counting votes were mobbed and harassed.⁷⁷ In Arizona, protestors attempted to infiltrate ballot counting headquarters and tamper with vote counting.⁷⁸ In Pennsylvania, the Federal Bureau of Investigations helped local police intercept and arrest two men carrying weapons suspected of involvement in a plot to interfere with ballot counting.⁷⁹ These actions have forced us to now consider voter suppression not only at the stage of registration and ballot casting but also inclusive of canvassing and counting.

The violent attack on the Capitol on January 6th was a brazen, virulent, and deadly manifestation of the concerted effort to undermine our democracy, to overthrow the

⁷⁶ Simon Romero, Shaila Dewan & Giulia McDonnell Nieto del Rio, *In a Year of Protest Cries, Now It's 'Count Every Vote!' and 'Stop the Steal!'*, New York Times (Nov. 5, 2020), <https://www.nytimes.com/2020/11/05/us/election-protests-vote-count.html>; *LDF Issues Statement Condemning Breach of U.S. Capitol, Attempted Coup by Supporters of President Trump*, NAACP LDF (Jan. 6, 2020), <https://www.naacpldf.org/press-release/ldf-issues-statement-condemning-breach-of-u-s-capitol-attempted-coup-by-supporters-of-president-trump/>.

⁷⁷ Bill Bostock, *Videos show Trump protesters chanting 'count those votes' and 'stop the count' outside separate ballot-counting sites in Arizona and Michigan*, Business Insider (Nov. 5, 2020), <https://www.businessinsider.com/videos-trump-protesters-michigan-arizona-vote-count-2020-11>.

⁷⁸ Jake Lahut, *Dozens of pro-Trump protesters chant 'Fox News sucks' outside major election HQ in Arizona, with several reportedly trying to get inside as votes are being counted*, Business Insider (Nov. 4, 2020), <https://www.businessinsider.com/video-fox-news-sucks-chant-crowd-outside-maricopa-election-arizona-2020-11?r=US&IR=T>.

⁷⁹ Maura Ewing et. al., *Two charged with carrying weapons near Philadelphia vote-counting site amid election tensions*, Washington Post (Nov. 6, 2020), <https://www.washingtonpost.com/nation/2020/11/06/philadelphia-attack-plot-vote-count-election/>.

government, and to negate the votes cast by our communities. What we saw on January 6th was the natural conclusion of years of rhetoric inciting and condoning racism and white supremacy,⁸⁰ expanding the proliferation of conspiracy theories,⁸¹ and flouting the rule of law. At least 138 police officers were injured—some hospitalized—and five people died as a result of the Jan. 6th attack.⁸² There were many photographs from the January 6th insurrection that were disturbing but one in particular demonstrated the historical significance of what is at stake: a picture of an insurgent inside the United States Capitol building brandishing a Confederate flag.⁸³

It has become disturbingly and abundantly clear that this country was brought to the brink of disaster by coddling and nurturing the very forces that nearly destroyed this country more than a century ago. Too many in power, from the business community to the legal profession to elected officials, did not do enough to stand up to the forces about which the civil rights community has been sounding the alarm for decades. Too many refused to forcefully condemn the rise of virulent and violent racism and yet were surprised by the debasement of our nation's capital by white supremacists. From President Trump's relentless and meritless lawsuits,⁸⁴ to

⁸⁰James Rainey & Melissa Gomez, *Asked to condemn white supremacists, Trump tells Proud Boys hate group to 'stand by'*, LA Times (Sept. 29, 2020), <https://www.latimes.com/world-nation/story/2020-09-29/asked-to-condemn-white-supremacists-trump-tells-proud-boys-hate-group-to-stand-by>.

⁸¹Shirin Ghaffary, *The long-term consequences of Trump's conspiracy theory campaign*, Vox.com (Nov. 20, 2020), <https://www.vox.com/recode/21546119/trump-conspiracy-theories-election-2020-coronavirus-voting-vote-by-mail>.

⁸²Michael S. Schmidt & Luke Broadwater, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, New York Times (updated Apr. 2, 2021), <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html>; Khadeeja Safdar, Erin Ailworth & Deepa Seetharaman, *Police Identify Five Dead After Capitol Riot*, Wall Street Journal (updated Jan. 8, 2021), <https://www.wsj.com/articles/police-identify-those-killed-in-capitol-riot-11610133560>.

⁸³Javonte Anderson, *Capitol riot images showing Confederate flag a reminder of country's darkest past*, USA Today (updated Jan. 13, 2021), <https://www.usatoday.com/story/news/2021/01/07/capitol-riot-images-confederate-flag-terror/6588104002/>.

⁸⁴William Cummings, Joey Garrison & Jim Sergent, *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA News Today (updated Jan. 6, 2021), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

the plot in the Department of Justice to remove the acting attorney general, too many were complicit in injustice and in the pursuit of power without consequence. Indeed, despite the repeated rejection by district courts, appellate courts, and the Supreme Court of President's Trump meritless and antidemocratic lawsuits to overturn the will of the voters, 17 Republican state attorneys general who signed on to these efforts are still free to push antidemocratic measures in their own states.⁸⁵

Whether it is through the introduction of voter suppression bills in state houses, intimidation at the ballot box, or misinformation circulated on social media, these attacks threaten the very integrity of our democracy. We witnessed, and many enabled, the most dangerous assault on American democracy in more than a century. The violent storming of the Capitol was only its most visible and ugly climax. The future of our country unequivocally depends on our ability to reform our voting and elections system. We shall be a democracy in name only if we continue to allow the voter suppression and discrimination.

Continued Voter Suppression Efforts in the States

In the wake of record turnout and voter engagement in Black communities during the 2020 election season,⁸⁶ state lawmakers have unleashed a wave of restrictive voting laws to

⁸⁵Jeremy W. Peters and Maggie Haberman, *17 Republican Attorneys General Back Trump in Far-Fetched Election Lawsuit*, New York Times (Dec. 9, 2020), <https://www.nytimes.com/2020/12/09/us/politics/trump-texas-supreme-court-lawsuit.html>.

⁸⁶ Abby Budiman, *Key facts about Black eligible voters in 2020 battleground states*, Pew Charitable Trusts Research Center (Oct. 21, 2020), <https://www.pewresearch.org/fact-tank/2020/10/21/key-facts-about-black-eligible-voters-in-2020-battleground-states/>.

suppress voters of color. According to the Brennan Center, as of March 24, state legislators have introduced 361 bills with restrictive provisions in 47 states.⁸⁷

Georgia

Following the failed attempts to overturn the results of the presidential election, lawmakers in Georgia rushed to pass one of the most restrictive voting laws of recent years, Senate Bill (“S.B.”) 202. S.B. 202, which: (1) severely restricts mobile voting; (2) imposes new identification requirements for requesting and casting an absentee ballot; (3) delays and compresses the time period for requesting absentee ballots; (4) imposes new restrictions on secure drop boxes; (5) implements out-of-precinct provision ballot disqualification; (6) drastically reduces early voting in runoff elections; and (7) criminalizes the provision of food and water to voters waiting in line to cast a ballot.

S.B. 202 is a transparent and direct attack on the Black voting power realized in the 2020 general election and 2021 Senate runoff elections. Supporters of the bill are promulgating the completely unfounded myth of voter fraud⁸⁸ to justify these suppressive measures. This myth was specifically addressed by Georgia’s own election officials with Georgia Secretary of State Brad Raffensperger stating in December 2020 that “we’ve never found systemic fraud” to warrant overturning the results of an election.⁸⁹ And Gabriel Sterling, the state’s voting system

⁸⁷ *State Voting Bills Tracker 2021*, Brennan Center for Justice (Last updated Apr. 1, 2021), <https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021>.

⁸⁸ Rachel Treisman, *'Based On A Lie' — Georgia Voting Law Faces Wave Of Corporate Backlash*, National Public Radio (Apr. 1, 2021), <https://www.npr.org/2021/04/01/983450176/based-on-a-lie-georgia-voting-law-faces-wave-of-corporate-backlash>.

⁸⁹ Quinn Scanlan, *'We've never found systemic fraud, not enough to overturn the election': Georgia Secretary of State Raffensperger says*, ABC News (Dec. 6, 2020), <https://abcnews.go.com/Politics/weve-found-systemic-fraud-overturn-election-georgia-secretary/story?id=74560956>.

implementation manager, holding a press conference in January 2021⁹⁰ specifically to debunk false claims of voter fraud.

The availability of equitable voting options -which were fought for long and hard- made it possible for Georgia voters to turn out in historic numbers for the November 3, 2020 general election and January 5, 2021 runoff election.⁹¹ S.B. 202 is written to undermine the significant progress made to expand voting rights and ballot access in Georgia, especially for voters of color. S.B. 202 creates unnecessary barriers and burdens on voters and disproportionately impacts the voting rights of people of color, the elderly, people with disabilities, low-income people, rural residents, and students. Since signed into law by Governor Kemp, S.B. 202 has garnered the outrage and opposition of 72 prominent and influential Black executives in corporate America, corporations like Coca Cola, airlines like Delta,⁹² sports associations like Major League Baseball,⁹³ those in the film industry,⁹⁴ and more.

⁹⁰ Miles Parks, *Georgia Election Official: Don't Let Misinformation 'Suppress Your Own Vote'*, National Public Radio (Jan. 4, 2021), <https://www.npr.org/2021/01/04/953321408/georgia-election-official-dont-let-misinformation-suppress-your-own-vote>.

⁹¹ Brittany Gibson, *Record Turnout in Georgia, but Mostly Before Election Day*, The American Prospect (Jan. 5, 2021), <https://prospect.org/politics/record-turnout-in-georgia-but-mostly-before-electionday/>; Adam Edelman, *'It's Too Important Now': Record Turnout, Black Voters Fuel Democratic Hopes in Georgia*, NBC News (Nov. 1, 2020), <https://www.nbcnews.com/politics/2020-election/it-stoo-important-now-record-turnout-black-voters-fuel-n1245416>; *Overcoming the Unprecedented: Southern Voters' Battle Against Voter Suppression, Intimidation, and a Virus*, Southern Poverty Law Center (March 16, 2021), <https://www.splcenter.org/overcoming-unprecedented-southern-voters-battle-against-voter-suppression-intimidation-and-virus>.

⁹² Andrew Ross Sorkin & David Gelles, *Black Executives Call on Corporations to Fight Restrictive Voting Laws*, New York Times (March 31, 2021), <https://www.nytimes.com/2021/03/31/business/voting-rights-georgia-corporations.html>; David Gelles, *Delta and Coca-Cola Reverse Course on Georgia Voting Law, Stating 'Crystal Clear' Opposition*, New York Times (March 31, 2021), <https://www.nytimes.com/2021/03/31/business/delta-coca-cola-georgia-voting-law.html>; Andrew Ross Sorkin & David Gelles, *Hundreds of Companies Unite to Oppose Voting Limits, but Others Abstain*, New York Times (Apr. 14, 2021), <https://www.nytimes.com/2021/04/14/business/ceos-corporate-america-voting-rights.html?smtyp=cur&smid=tw-nytimes>.

⁹³ Kevin Draper et. al., *M.L.B. Pulls All-Star Game From Georgia in Response to Voting Law*, New York Times (Apr. 6, 2021), <https://www.nytimes.com/2021/04/02/us/politics/mlb-all-star-game-moved-atlanta-georgia.html>.

⁹⁴ Kimberly Chin, *Will Smith Movie Pulls Production Out of Georgia Over GOP Voting Law*, Wall Street Journal (Apr. 12, 2021), <https://www.wsj.com/articles/will-smith-movie-emancipation-pulls-production-out-of-georgia-over-gop-voting-law-11618257076>.

On March 18, 2021, LDF submitted testimony in opposition to S.B. 202.⁹⁵ On March 30, 2021, LDF filed suit in partnership with the American Civil Liberties Union and the Southern Poverty Law Center to challenge S.B. 202.⁹⁶ Our suit claims that S.B. 202 violates the First Amendment rights of our clients and was created to discriminate against Black voters in violation of the 14th and the 15th Amendments to the Constitution, and Section 2 of the Voting Rights Act of 1965.

Texas

In Texas, House Bill (“H.B.”) 6⁹⁷ transfers authority for the safety and integrity of elections to partisan poll watchers. Notably, the bill prevents an election judge from removing any poll watcher from a polling place for any reason other than for an offense related to election fraud, a standard which could encourage voter intimidation.⁹⁸ The discretion H.B. 6 affords partisan operatives, particularly in a state with a long and well documented history of official and unofficial discrimination against Black and Latino voters creates a substantial risk of operating to intimidate and disproportionately disenfranchise voters of color.⁹⁹ H.B. 6 also repeatedly uses the phrase “purity of the ballot box” to justify its aim of emboldening partisan watchers.¹⁰⁰

⁹⁵ *LDF and SPLC Action Fund Submit Testimony Opposing Georgia’s S.B. 202*, NACCP LDF (March 18, 2021), <https://www.naacpldf.org/news/ldf-and-splc-action-fund-submit-testimony-opposing-georgias-s-b-202/>.

⁹⁶ *Civil Rights Groups Sue Georgia Over New Sweeping Voter Suppression Law*, NAACP LDF (March 30, 2021), <https://www.naacpldf.org/press-release/civil-rights-groups-sue-georgia-over-new-sweeping-voter-suppression-law/>.

⁹⁷ H.B. 6, 87th Leg., Reg. Sess. (Tex. 2021).

⁹⁸ *LDF Submits Testimony in Texas House Election Committee Expressing Opposition to House Bill 6*, NAACP LDF (March 25, 2021), https://www.naacpldf.org/wp-content/uploads/20210324_LDF-Opposition-TX-H.B.-6-v02.pdf?_ga=2.239021059.2082701624.1617629692-217316157.1616678028.

⁹⁹ See Lawrence Delbert Rice, *The Negro in Texas 1874-1900* 22 (1968); *The Fort Griffin Vigilante Movement*, Lynching In Texas, <https://www.lynchingintexas.org/cashion> (last accessed April 12, 2021); *United States v. Texas*, 252 F. Supp 234 (W.D. Tex. 1966); *Nixon v. Herndon*, 273 U.S. 536 (1927).

¹⁰⁰ See, e.g., H.B. 6 § 1.02; Tex. Const. Art. VI, § 4 (“In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect

Comparable language regarding the “purity of the ballot box” is found in the Texas Constitution and has deep ties to calls by white legislators’ in the state to ensure the “purity of the Anglo-Saxon race” by, among other tactics, disenfranchising Black Texans.¹⁰¹

Another bill in Texas, Senate Bill (“S.B.”) 7¹⁰² proposes to eliminate straight ticket voting, voting mega centers and drive thru voting, roll back early voting access, prohibit the distribution of early voting ballot applications, and curtail curbside voting. S.B. 7 simultaneously paves the way for pre-1965 voter intimidation by empowering poll watchers to roam freely around polling stations, checking voters’ ballots, and recording them on video. S.B. 7 severely limits how the 254 counties in Texas are able to respond to their different communities’ interests and needs by eliminating flexible early voting hours, structures and distribution methods, while imposing burdens and barriers to the ability of Black and Latino Texans in particular to participate in the political process. The misguided standardization rationale should not disguise the bill’s real purpose: to intimidate, discourage, and minimize the political power of millions of Texans, disproportionately people of color, students, those living in rural communities and individuals with disabilities. The individual and cumulative effects of S.B. 7 are not a matter of speculation; the impact of the elimination of straight ticket voting alone on Black and Latino Texans, after nearly a century of the practice because of Texas’ unusually lengthy ballots, was made clear to

and punish fraud and preserve the purity of the ballot box; and the Legislature shall provide by law for the registration of all voters.”).

¹⁰¹ Bruce A. Glasrud, *Child or Beast? White Texas’ Views of Blacks 1900-1910*, 15 E. Tex. Historical J. 38 (1977).

¹⁰² S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021).

the State last year in litigation in federal court.¹⁰³ The combined provisions of S.B.7 ensure that voting will take longer and operate to discourage and frustrate in person voting.

South Carolina

LDF recently submitted testimony in opposition to three restrictive voting laws in South Carolina: S.113, S. 236,¹⁰⁴ and H.4150.¹⁰⁵

S. 113 would impose new barriers on absentee voting that will disproportionately impact Black voters and other voters of color, as well as elderly and disabled voters. South Carolina law already imposes severe restrictions on who can collect absentee ballots on behalf of a voter.¹⁰⁶ S. 113 would take these restrictions to a new extreme by banning third-party absentee ballot collection, with only a narrow exception for immediate family members. Third-party absentee ballot collection is particularly important for voters who lack easy access to polling places for in-person voting, including elderly or disabled voters. Black voters are also more likely to rely on trusted third parties, such as home health aides or nonprofit organizations, to serve as their authorized representative to collect and return their ballots.¹⁰⁷ S. 113 would also effectively codify a total ban on drop boxes by requiring completed absentee ballots to be returned to election officials **during office hours**. The United States Department of Homeland Security

¹⁰³ *Texas Alliance for Retired Ams. v. Hughs*, No. 5:20-CV-128, 2020 WL 5747088 (S.D. Tex. Sept. 25, 2020) (granting preliminary injunction prohibiting enforcement of House Bill 25 which eliminated straight-ticket voting); stayed on Purcell grounds by *Texas Alliance for Retired Ams. v. Hughs*, 976 F.3d 364 (5th Cir. 2020).

¹⁰⁴ LDF Testifies Against South Carolina Voter Suppression Bills, NAACP LDF (Mar. 16, 2021), <https://www.naacpldf.org/news/ldf-testifies-against-south-carolina-voter-suppression-bills/>.

¹⁰⁵ *LDF Submits Testimony to the South Carolina House Judiciary Committee Regarding Two Voting Bills*, NAACP LDF (Apr. 14, 2021),

¹⁰⁶ See *SEC Form 1050, Authorization to Return Absentee Ballot*, South Carolina Election Commission (last visited Apr. 18, 2021), <https://bit.ly/3th6lZY>.

¹⁰⁷ See *Democracy Diverted: Polling Place Closures and the Right to Vote*, The Leadership Conference Education Fund (Sept. 2019), <http://civilrightsdocs.info/pdf/reports/DemocracyDiverted.pdf>.

(“DHS”) has endorsed drop boxes as a “secure and convenient means for voters to return their mail ballot” and recommends that states provide one drop box for every 15,000 to 20,000 voters.¹⁰⁸

Under current South Carolina law, any precinct with 500 or more registered voters must have its own polling place for municipal elections and is not permitted to “pool” with other precincts into a single polling location.¹⁰⁹ S. 236 would increase that threshold by a factor of six, so that only precincts with 3,000 or more registered voters would be required to have their own polling place in municipal elections. However, S. 236 takes no steps to consider or address the increased risk of congestion at polling places that would be required to serve a dramatically expanded number of voters. Such practical impediments include, among other things, a lack of sufficient parking, a lack of poll workers, and/or a shortage of equipment or supplies, all of which could lead to longer lines and voting delays.

South Carolina is one of only six states that do not offer pre-Election Day in-person voting options for all registered voters.¹¹⁰ However, the early voting framework set forth in H.4150 would implement an unequal system of early voting, resulting in troubling racial disparities in the availability of early in-person voting. Among other issues, the framework set forth by H.4150 mandates early voting during weekdays as well as the final Saturday before the election but does not permit any voting on Sunday. This approach prohibits the “Souls to the Polls” movement,¹¹¹

¹⁰⁸ See Ballot Drop Box, Cybersecurity and Infrastructure Security Agency, <https://bit.ly/2OQGxoz>.

¹⁰⁹ See S.C. Code Ann. § 7-7-1000.

¹¹⁰ See State Laws Governing Early Voting, National Conference of State Legislatures, <https://bit.ly/3uzP2nq>.

¹¹¹ Rebecca Brenner Graham, Attacking Sunday Voting is Part of Tradition of Controlling Black Americans, Wash. Post (Mar. 4, 2021), <https://wapo.st/3uIYbtV>.

which is widely known across the country as a practice in which Black voters worship together on Sunday morning and then march or share rides to vote. H. 4150 also:

- terminates absentee eligibility for voters between the ages of 65 and 75;
- bans counties from offering voters the option to return their absentee ballots to drop boxes;
- mandates that all early voting occur between 8:30 A.M. and 5:00 P.M.; prohibiting any early morning or evening voting; and
- imposes extreme and potentially discriminatory reductions to absentee ballot eligibility by eliminating many of the categories for eligibility.

Arkansas and Florida

In Florida, S.B. 90¹¹² includes a prohibition on giving “any item” to voters or “interacting or attempting to interact” with voters within 100 feet of polling places. Much like the infamous Georgia bill, S.B. 90 would effectively criminalize offering assistance or giving voters food or drink, including water, within 100 feet of polling places. Another Florida state bill, H.B. 7041,¹¹³ proposes expanding that zone to 150 feet. S.B. 90 also makes changes to canvassing and vote-by-mail processes, requires drop boxes are staffed (limiting the hours of operation and increasing costs) and increases limitations on who can collect absentee ballots.

¹¹² Jane C. Timm, *Florida Republicans considering new election bill that would effectively ban giving voters water*, NBC News (Mar. 29, 2021), <https://www.nbcnews.com/politics/elections/florida-gov-ron-desantis-calls-restrictive-new-voting-laws-n1258405>.

¹¹³ *Id.*

In Arkansas, S.B. 486, also mimics the Georgia bill by defining the provision of food or water to voters within a certain perimeter of a polling place as a crime.¹¹⁴ Supporters of the bill claim it is intended to ensure “election integrity” and prohibit electioneering; however, electioneering is already prohibited within that 100-foot perimeter in Arkansas,¹¹⁵ and voter fraud remains largely unfounded.¹¹⁶

The Need for Full Restoration of the Voting Rights Act

Evidence of widespread discrimination against Black voters is overwhelming and growing and the need for legislative action is urgent.

The Framers of the 14th and 15th Amendments gave Congress the explicit power to enforce the guarantee of equal protection and the protection against voting discrimination based on race. Section 5 of the 14th Amendment and Section 2 of the 15th Amendment are as important as the substantive provisions. They represent a recognition that the Framers expected that Congress would need to take action to ensure that the protections guaranteed in the substantive sections of the Amendment would be fulfilled. For 100 years after the ratification of those Amendments, Congress abdicated its obligation to use this enforcement as Black people were systematically disenfranchised by poll taxes, literacy tests, “understanding clauses,” threats, and lynching.¹¹⁷ The passage of the Voting Rights Act -spurred by grass roots activism,

¹¹⁴ Dianne Gallagher & Kelly Mena, *Arkansas bills that restrict voting access head to governor's desk*, CNN News (Apr. 14, 2021), <https://www.cnn.com/2021/04/14/politics/arkansas-voting-rights-bills-governor/index.html>.

¹¹⁵ *Id.*

¹¹⁶ *Debunking the Voter Fraud Myth*, Brennan Center for Justice (Jan. 31, 2017), https://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Debunking_Voter_Fraud_Myth.pdf.

¹¹⁷ Brad Epperly, et. al., *Rule by Violence, Rule by Law: The Evolution of Voter Suppression and Lynching in the U.S. South*, (Mar.1, 2016). Available at SSRN: <https://ssrn.com/abstract=3224412> or <http://dx.doi.org/10.2139/ssrn.3224412>

the sacrifice of those beaten on the Edmund Pettus Bridge, and the martyrdom of Medgar Evers, Jimmie Lee Jackson, Viola Gregg Liuzzo, Andrew Goodman, James Cheney and Michael Schwerner and so many others,¹¹⁸ was one of the most powerful instances of Congress' use of that Enforcement Power. Congress is called on once again in this moment to use the power the Framers of the Civil War Amendments entrusted to this body to ensure the full citizenship of Black people.

The undermining of the Voting Rights Act by the *Shelby County* decision has made our democracy vulnerable and allowed for voter suppression to go unchecked. One election in which the fundamental right to vote is restricted is one election too many. It is now more critical than ever that Congress act to restore federal preclearance using provisions. While LDF continues to vigorously pursue litigation to protect voting rights under Section 2 of the VRA, the U.S. Constitution, and other laws, we know that this is not enough. The Voting Rights Act must not only be fully restored but also must be strengthened. Congress should consider what can be done to lessen the burden on plaintiffs to achieve preliminary relief against discriminatory voting laws; they should not have to wait the 2 to 5 years on average or spend the exorbitant amount of money it takes to adjudicate a Section 2 case.¹¹⁹ Congress also must work to remove obstacles to

¹¹⁸ Marty Roney, *Remembering the martyrs of Bloody Sunday*, USA Today (Mar. 7, 2015), <https://www.usatoday.com/story/news/nation/2015/03/03/bloody-sunday-martyrs/24344043/>; Deborah Barfield Berry, *'Bloody Sunday' pilgrimage to move through Miss.*, USA Today (Feb. 10, 2014), <https://www.usatoday.com/story/news/nation/2014/02/10/civil-rights-pilgrimage/5376225/>.

¹¹⁹ See *supra* note 16, *Democracy Diminished* at 5 (referencing Br. of Joaquin Avila, et al. as Amici Curiae in Supp. of Resp'ts at 22, 27, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013)).

voting in federal elections faced by the nearly 5.2 million disenfranchised citizens who have been released from prison and are still denied the right to vote.¹²⁰

Moreover, as our democracy faces new and pervasive threats, Congress must act to ensure the actual integrity of our elections. Digital platforms are actively impacting our elections as evidenced by their use to sow seeds of hate and racial division in the 2016 and 2020 election seasons.¹²¹ It is critical that Congress act to investigate and legislate these activities, reframing the intervention from the narrow consideration of privacy and data breaches to one that examines the issue within the context of the historic role of race in the public space.

Conclusion

The threats to the right to vote expose cracks and rot in the foundation of our democracy that are not the result of one single Supreme Court case, an unprecedented global pandemic or even the policy choices of a presidential administration. This series of events provided a perfect storm for the disenfranchisement that we see laid bare today. But threats to voting rights and the desire to deny the right to vote to certain subsets of the American people has been with this country since the passage of the civil rights amendments. They are part of a project to dismantle the power and protections at the heart of the Voting Rights Act, which is universally recognized as the most successful piece of legislation to emerge from the Civil Rights Movement. Since 2013,

¹²⁰ Chris Uggen, et. al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, Sentencing Project (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

¹²¹ NAACP LDF, *LDF Responds to Facebook's New Policy on False Voter Information Ahead of Election* (Oct. 16, 2018) <https://www.naacpldf.org/press-release/ldf-responds-facebooks-new-policy-false-voter-information-ahead-election/>; Ben Popken, *Digital vote suppression efforts are targeting marginalized groups, report warns*, NCB News (Sep. 2, 2020), <https://www.nbcnews.com/tech/security/digital-vote-suppression-efforts-are-targeting-marginalized-groups-report-warns-n1239133>.

there have been at least nine federal court decisions finding that states or localities *intentionally* discriminated against Black and other voters of color.¹²² There is no doubt that new and ingenious methods of voter suppression are relentlessly pursued by those invested in white supremacy. The VRA goes to the heart of challenging white supremacy and white political power. It has long been targeted simply because it is so effective. Robust enforcement of the Voting Rights Act and the promise of full citizenship for Black Americans is an enduring fight to which the federal government must fully recommit.

This election laid bare the extreme urgency with which we must undertake serious, comprehensive voting system reforms. Anything less is an unacceptable affront to all voters, particularly voters of color, who are entitled to have their voices heard, fully and unencumbered. LDF and other advocates have a responsibility to fight injustices whenever and wherever they occur. However, Congress also has an obligation to use the enforcement powers it was given in the Fourteenth and Fifteenth Amendments to the U.S. Constitution to amend the Voting Rights Act to protect minority voters from racially discriminatory voting schemes.

This nation is at a critical junction, at which it must decide if it truly is committed to democracy. The severity of this moment cannot be overstated. The equal participation of citizens is the foundation of our democracy. It is the ideal upon which this country was founded. We must not relinquish the protections and progress we have won.

¹²² See *supra* note 16.