



**Written Testimony of Deuel Ross
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**Submitted to the
United States House Committee on House Administration
Subcommittee on Elections**

In connection with its May 24, 2023 hearing entitled

**“American Confidence in Elections: Ensuring Every Eligible American Has
the Opportunity to Vote – and for their Vote to Count According to Law”**

I. INTRODUCTION

Chairwoman Lee, Ranking Member Sewell, and members of the Subcommittee:

My name is Deuel Ross, and I am Deputy Litigation Director at the NAACP Legal Defense and Educational Fund, Inc. (“LDF”). Thank you for the opportunity to testify this morning regarding opportunities to strengthen our elections in the United States, and thereby improve voter confidence.

We meet today on the cusp of the tenth anniversary of the Supreme Court’s *Shelby County* decision, which gutted the heart of the Voting Rights Act (“VRA”), arguably the most effective civil rights law ever enacted.¹ A full decade since the Court invited Congress to update the Act’s preclearance coverage framework to maintain the protections of the VRA,² Congress has failed to act in accordance with its duty to enforce the Fourteenth and Fifteenth Amendments to the U.S. Constitution. Unfortunately, in that decade, the landscape around election administration has shifted markedly. In some states, a false narrative around stolen elections has stoked a backlash against the growing participation by voters of color in our multiracial democracy. Black Americans have faced this backlash with a shredded shield—exactly when we’ve needed strong voting rights protections, lax enforcement has stripped them away.

The single best way to improve all Americans’ confidence in our electoral system is to address concrete barriers to the ballot and other impediments to ensuring that we all have an equal voice in our political system. When people no longer go vote in racially discriminatory electoral districts, when states do not erect unnecessary and often arbitrary restrictions on voting, and when the ease of a person’s ability to exercise their fundamental right to vote no longer depends upon which state she happens to live in, confidence in elections will rightly rise, and our nation will draw closer to its highest ideals.

A. Statement of Purpose

My testimony today seeks to provide this Subcommittee with essential context regarding the state of elections in the United States to inform your discussions as you consider election-related legislation, as well as to assist your colleagues on the full Committee on House Administration and other relevant committees.

¹ *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).

² *Id.* at 557 (“We issue no holding on § 5 itself, only on the coverage formula. Congress may draft another formula based on current conditions.”).

Throughout my testimony, I will focus largely on the experiences of Black voters across the country. I will focus on Black voters both because Black voters' experiences serve as an essential barometer as to whether our nation is living up to its ideals as a truly inclusive, multiracial democracy and because LDF has special expertise in this area. My testimony is informed by LDF's eight-decade history litigating voting rights cases as well as our on-the-ground experience working to protect the vote in communities across seven states in the 2020 and 2022 elections.

In the pages below, I will provide both present and historical context for the current challenges facing our elections and democracy, including by enumerating several specific ways that the 2022 elections failed Black voters; and I will propose solutions for Congress to address these problems through much-needed legislation.

B. LDF and Our Work

Founded in 1940 under the leadership of Thurgood Marshall, the first Black U.S. Supreme Court justice, LDF is America's premier legal organization fighting for racial justice.³ Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF was launched at a time when the nation's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality and federal indifference. For over eighty years, LDF has had a transformative mission: to achieve racial justice, equality, and an inclusive society, using the power of the law, narrative, research, and people to defend and advance the full dignity and citizenship of Black people.

Since its founding, LDF has been a leader in the fight to secure, protect, and advance the voting rights of Black voters and other communities of color. LDF's founder Thurgood Marshall—who litigated LDF's watershed victory in *Brown v. Board of Education*,⁴ which set in motion the end of legal segregation in this country and transformed the direction of American democracy in the 20th century—referred to *Smith v. Allwright*,⁵ the 1944 case ending whites-only primary elections, as his most consequential case. Justice Marshall believed that the right to vote, and the opportunity to access political power, was critical to fulfilling the guarantee of full citizenship promised to Black people in the Reconstruction Amendments to the U.S. Constitution. LDF has prioritized its work protecting the right of Black citizens to vote for more than 80 years—representing Dr. Martin Luther King Jr. and the

³ LDF has been an entirely separate organization from the NAACP since 1957.

⁴ 347 U.S. 483 (1954), *supplemented*, 349 U.S. 294.

⁵ 321 U.S. 649 (1944).

marchers in Selma, Alabama in 1965, advancing the passage of the VRA, and litigating seminal cases interpreting the Act’s scope, and working in communities across the South to strengthen and protect the ability of Black citizens to participate in a political process free from discrimination. In recent years, LDF attorneys have argued seminal voting cases in the Supreme Court⁶ and successfully challenged discriminatory voting laws in Alabama, Georgia, Louisiana, South Carolina, and Texas.⁷

In addition to a robust voting rights litigation docket, LDF has been active in protecting voting rights on the ground in the context of ongoing elections. LDF is a founding member of the non-partisan civil rights Election Protection Hotline (1-866-OUR-VOTE), which is administered by the Lawyers’ Committee for Civil Rights Under Law. In addition, LDF has monitored elections through our Prepared to Vote initiative (“PTV”) for more than a decade and through our Voting Rights Defender (“VRD”) project. Our VRD / PTV program places LDF staff and volunteers on the ground for primary and general elections for non-partisan election protection to support political participation in particular jurisdictions—primarily in the South. During the 2022 elections, LDF staff were on the ground in seven states (Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas), and monitored media platforms for election-related misinformation, disinformation, or intimidation.

II. OUR DEMOCRACY IN 2023: OUR CURRENT MOMENT

The rhetoric around the 2020 elections arguably launched a new era of American democracy that is both ripe with opportunity and fraught with peril. Shifting demographics and surging voter turnout provided a glimpse of the truly inclusive multiracial democracy that our nation can and must continue to become. At the same time, the familiar historical pattern of backlash against increases in turnout has emerged at a time when key federal protections have been dangerously eroded. Three key characteristics of this moment are: (1) state and local governments’ enforcement of new and ongoing obstacles to political participation that often directly target effective participation by voters of color; (2) troubling turnout disparities by race; and (3) weakened federal voting rights protections, including Congress’s failure to enact new or restore previous federal protections.

⁶ *Allen v. Milligan*, No. 21-1086; *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009).

⁷ *See, e.g.*, *S.C. State Conf. of NAACP v. Alexander*, No. 321CV03302, 2023 WL 118775 (D.S.C. Jan. 6, 2023); *Harding v. Edwards*, 487 F. Supp. 3d 498 (M.D. La. 2020); *Thomas v. Andino*, 613 F. Supp. 3d 926 (D.S.C. 2020); *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-cv-1821-MHH, 2019 WL 7500528 (N.D. Ala. Dec. 16, 2019); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017); *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015).

A. Black Voters Faced Significant Obstacles in the 2022 Elections

LDF has been litigating several cases challenging discriminatory voting laws and redistricting schemes. Additionally, through our Prepared to Vote (PTV) program, staff and volunteers were on the ground in seven states during the 2022 elections. Below are some examples, gleaned from LDF's experiences, of the recent obstacles facing Black voters.

Post-2020 Restrictive Voting Laws

Many of the unnecessary hurdles Black voters faced in 2022 are the direct result of restrictive voting laws passed since the 2020 election. Legislators introduced more than 400 bills in nearly every state aiming to restrict the franchise.⁸ In 2021 and 2022, 24 states enacted a total of 45 laws that roll back voting rights and erect new barriers to the ballot.⁹ Through 2021, seventeen states enacted 32 laws to criminalize, politicize, or interfere with election administration.¹⁰ At least 12 similar laws across seven states were added in 2022.¹¹ These include measures to shift authority over elections from executive agencies or non-partisan bodies to the legislature; roll back local authority through centralization and micromanagement; and criminalize good-faith mistakes or decisions by elections officials.¹²

Critically, many of these laws are directly targeted at blocking pathways to the ballot box that Black and Latino voters used successfully in 2020. For example, after Black voters increased their usage of absentee ballots as a result of the pandemic, S.B. 90 in Florida severely curtailed the use of unstaffed ballot return drop boxes and effectively eliminated community ballot collection.¹³ And in Georgia and Texas, after strong early in-person turnout among Black voters, lawmakers initially moved to

⁸ *Resource: Voting Laws Roundup: December 2021*, Brennan Center For Justice (Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

⁹ *Id.*; Brennan Center for Justice, *Voting Laws Roundup: December 2022* (Dec 19, 2022), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022#footnote6_5ixmthi.

¹⁰ Memorandum from the States United Democracy Center, Protect Democracy, and Law Forward to Interested Parties (Dec. 23, 2021), at 2, https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-report-update_12232021-year-end-numbers.pdf.

¹¹ Brennan Center for Justice, *Voting Laws Roundup: December 2022* (Dec 19, 2022), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022#footnote6_5ixmthi.

¹² Memorandum of States United Democracy Center et al., *supra* note 10, at 2.

¹³ See generally Complaint for Declaratory and Injunctive Relief, *Fla. State Conf. of Branches & Youth Units of NAACP v. Lee*, No. 4:21-cv-00187-WS-MAF (N.D. Fla. May 6, 2021), ECF No. 1.

outlaw or limit Sunday voting in a direct attack on the “souls to the polls” turnout efforts undertaken by many Black churches to mobilize voters to engage in collective civic participation.¹⁴ After robust Black turnout in the January 2021 runoff led to the election of Georgia’s first Black U.S. senator, Georgia lawmakers decided to sharply reduced the number of early voting days in future runoff elections. The same law also hampers vote-by-mail, cuts back on early voting, and more.¹⁵ The 2021 omnibus voting law in Texas eliminates several common-sense voting methods, including “drive-thru” voting and 24-hour early voting, that greatly increased accessibility for voters with disabilities and voters of color in Texas’s largest cities in 2020.¹⁶

In May of 2021, Arizona converted its “Permanent Early Voting List” into an “Active Early Voting List,” just as voting early has become more popular with Native-American voters on tribal lands and other voters of color in the state.¹⁷ Voters will now be removed from the list, and not receive a mail ballot, if they do not vote by mail over a four year period—even if they vote in person during that time. Although this change has not yet taken full effect, one study predicted starkly higher risk of being dropped from this list for Latino and Native American voters.¹⁸

¹⁴ Letter from Sam Spital et al., NAACP LDF to Texas Senate (May 29, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-Conference-Committee-Report-Opposition-Senate-20210529-1.pdf>; Letter from John Cusick et al., NAACP LDF et al., to Georgia House of Representatives, Special Committee on Election Integrity (Mar. 14, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-SPLC-Written-Testimony-on-SB202-3.18.21.pdf>. In both states, after advocacy from LDF and others, lawmakers eventually removed these blatantly discriminatory provisions from the omnibus voting bills under consideration—although in both states, the final forms of the enacted bills remained extremely harmful to voters of color. See Press Release, NAACP LDF, LDF Files Lawsuit Against the State of Florida Over Suppressive Voting Law (May 6, 2021), <https://www.naacpldf.org/press-release/ldf-files-lawsuit-against-the-state-of-florida-over-suppressive-voting-law/>; Press Release, NAACP LDF, Civil Rights Groups Sue Georgia Over New Sweeping Voter Suppression Law (Mar. 30, 2021), <https://www.naacpldf.org/press-release/civil-rights-groups-sue-georgia-over-new-sweeping-voter-suppression-law/>.

¹⁵ See S.B.202, <https://www.legis.ga.gov/api/legislation/document/20212022/201498>.

¹⁶ Complaint for Declaratory and Injunctive Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00848 (W.D. Tex. Sept. 7, 2021), ECF No. 1, <https://www.naacpldf.org/wp-content/uploads/Houston-Justice-et-al.-v.-Abbott-et-al.-Complaint.pdf>; see also Press Release: Lawsuit Filed Challenging New Texas Law Targeting Voting Rights, NAACP LDF (Sept. 7, 2021), <https://www.naacpldf.org/press-release/lawsuit-filed-challenging-new-texas-law-targeting-voting-rights/>.

¹⁷ Kevin Morris, & Peter Miller, Opinion, *Nonwhite Voters at Higher Risk of Being Dropped from Arizona’s Mail Ballot List*, Brennan Center for Justice (Aug. 11, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/nonwhite-voters-higher-risk-being-dropped-arizonas-mail-ballot-list>.

¹⁸ *Id.*

In all, these laws severely restrict the ability of voters of color to cast a ballot and specifically target the ways in which these voters participated successfully in the 2020 Presidential elections. Many of them have already achieved their intended effect. In Georgia, despite a high turnout in 2022, the participation disparity between Black and white voters was wider than at any point in the past decade during both the primary and general elections.¹⁹ And in Texas, of the 25,000 ballots in the primaries that were returned or rejected, a disproportionate number belonged to Latino and Black voters.²⁰

Elections Took Place Under Discriminatory Districts

After the Supreme Court undercut the federal VRA's preclearance protections, states have taken steps to draw discriminatory districting maps that disenfranchise Black and brown voters. Of the nine states that were previously required to submit district maps for "preclearance" by federal officials or a court, six of these states are facing lawsuits challenging their maps for racial discrimination.²¹ In litigation involving LDF alone, courts in Alabama,²² Louisiana,²³ and South Carolina²⁴ (all

¹⁹ Jacob Fabina, *Voter Registration in 2022 Highest in 20 Years for Congressional Elections*, U.S. Census Bureau (May 2, 2023), <https://www.census.gov/library/stories/2023/05/high-registration-and-early-voting-in-2022-midterm-elections.html>; Sara Loving & Kevin Morris, *Georgia's Racial Turnout Gap Grew*, Brennan Center for Justice (Dec. 16, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/georgias-racial-turnout-gap-grew-2022>.

²⁰ Kevin Morris & Coryn Grange, *Disenfranchisement and Racial Disparities in the 2022 Texas Primary*, Brennan Center for Justice (October 20, 2022), <https://www.brennancenter.org/our-work/research-reports/records-show-massive-disenfranchisement-and-racial-disparities-2022-texas>.

²¹ *Cases*, ALL ABOUT REDISTRICTING, Loyola Law School <https://redistricting.lls.edu/cases/?cycles%5B%5D=2020&sortby=-updated+page=1> (last visited Apr. 18, 2023) (Click "Alabama", "Alaska", "Arizona", "Georgia", "Louisiana", "Mississippi", "South Carolina", "Texas," and "Virginia" from State filter).

²² Preliminary Injunction Memorandum Opinion and Order, *Milligan v. Merrill*, No. 2:21-cv-01530-AMM, 2021 WL 5979497 (N.D. Ala. Nov. 23, 2021), ECF No. 107, https://www.naacpldf.org/wp-content/uploads/PRELIMINARY-INJUNCTION-MEMORANDUM-OPINION-AND-ORDER.-Signed-by-Judge-Anna-M-Manasco-on-1_24_2022.-1.pdf.

²³ Ruling and Order, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. Ala. June 6, 2022), ECF No. 173, <https://www.naacpldf.org/wp-content/uploads/Robinson-v.-Ardoin-Ruling-and-Order-Preliminary-Injunction.pdf>; *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022).

²⁴ Findings of Fact and Conclusions of Law, *S.C. State Conf. of the NAACP v. Alexander*, No.: 3:21-cv-03302-MGL-TJH-RMG 23 WL 118775, at *15 (D.S.C. Jan. 6, 2023), ECF No. 493, https://www.aclu.org/wp-content/uploads/legal-documents/order_-_south_carolina_state_conference_of_the_naACP_v._alexander.pdf.

states previously covered by the VRA’s preclearance protections)²⁵ found that state-created maps were discriminatory.

The results were often egregious. In Alabama, a unanimous three-judge court found that, despite white residents shrinking to only about 65% of the population, the State drew congressional maps that boosted white political power and ensured that white voters exerted absolute control over 86% of the state’s seven congressional districts—leaving the 27% of Black Alabamians with a meaningful voice in only one of seven (14%) of districts in a scenario akin to a one-person, half-a-vote.²⁶ In South Carolina, three judges unanimously found that the State intentionally removed Black voters from a congressional district and made a “mockery” of traditional districting rules.²⁷

Yet, as a result of pending Supreme Court litigation, injunctions requiring legislatures to redraw racially discriminatory maps—including injunctions issued months prior to the 2022 election in Alabama and Louisiana—have been frozen, resulting in the use of discriminatory maps in the 2022 midterms. Because these cases were put on hold, tens of thousands of Black voters cast ballots in districts that *courts had already ruled* violated longstanding federal laws.

Mass Challenges to Voter Eligibility

Mass voter challenges have long been a tactic to suppress political participation, especially by Black voters and other voters of color,²⁸ but recent elections have seen a stark increase in the use of this tactic.²⁹ In many cases, these mass challenges are orchestrated by extremist organizations that proliferate disinformation among the electorate.³⁰

²⁵ *Jurisdictions Previously Covered by Section 5*, U.S. Dep’t of Just. (Nov. 9, 2021), <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>.

²⁶ See Stipulation of Facts, *Milligan v. Merrill*, No. 2:21-cv-01530-AMM (N.D. Ala. 2021), ECF No. 53.

²⁷ Findings of Fact and Conclusions of Law, *supra* note 24, at *15.

²⁸ Jonathan Brater, *Voter Purges: The Risks in 2018*, Brennan Center for Justice 1, 1–2 (2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_Voter_Purges_The_Risks_in_2018.pdf; see also Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement In Georgia* 1, 52–54 (2003) (describing the historical origins of Georgia’s voter challenge laws).

²⁹ Kate Hamilton, *Frivolous Mass Challenges to Voter Eligibility Damaging to Democracy*, Campaign Legal Center (Oct. 6, 2022), <https://campaignlegal.org/update/frivolous-mass-challenges-voter-eligibility-damaging-democracy>.

³⁰ Nick Corasanti & Alexandra Berzon, *Activists Flood Election Offices With Challenges*, N.Y. Times (Sept. 28, 2022), <https://www.nytimes.com/2022/09/28/us/politics/election-activists-voter-challenges.html>.

Georgia has long allowed residents to contest the registration of other voters within the county where they live; but post-2020 there has been a drastic increase that was further cemented by the state’s 2021 omnibus anti-voter law, S.B. 202, which codified the ability of any voter in a county to bring an unlimited number of challenges.³¹ There were at least 65,000 of these challenges across the state in 2022.³² One man alone challenged the eligibility of 31,000 Forsyth County voters in 2022.³³

In Florida, voters faced the novel phenomenon of local election officials, Supervisors of Election (“SOEs”), themselves filing challenges against voters’ eligibility in the final weeks before the election, prompted by late-breaking allegations received from state officials. The Florida Office of Election Crimes and Security sent lists of purportedly ineligible voters to County Elections Supervisors in October 2022 urging that the named voters be screened and possibly prevented from voting. Public records requests submitted by LDF revealed that at least fourteen SOEs submitted voter challenges against at least 2,370 Florida voters during the 30-day period before the November 8, 2022 election, largely on the basis of a potentially disqualifying felony conviction. Issuing mass challenges a month before an election may violate the federal National Voter Registration Act.³⁴ Moreover, these challenges based upon a “possible” felony conviction are especially irresponsible in Florida where a prior conviction does not automatically mean that a registrant is ineligible to vote.

Rollbacks to Early Voting

Black communities are increasingly utilizing multiple voting options to participate in the political process.³⁵ The lack of mail-in and early voting options in

³¹ See Ga. Code Ann. §§ 21-2-229 (“There shall not be a limit on the number of persons whose qualifications such elector may challenge.”).

³² *Mass Voter Challenges in Georgia*, Brennan Center for Justice, <https://www.brennancenter.org/our-work/research-reports/mass-voter-challenges-georgia> (last updated Feb. 3, 2023); Mark Niese, *Eligibility challenges impede several Georgia voters at the polls*, Atlanta J.-Const. (Nov. 1, 2022), <https://www.ajc.com/politics/several-georgia-voters-report-hurdles-after-eligibility-challenges/WOUAH77TLRBD5A5HLLFSJV3S44/>.

³³ Statement of Damon T. Hewitt, Before the Subcommittee on Elections, 2022 Lookback Series: Successes in the 2022 Midterm Elections (Mar. 10, 2023) at 13, <https://cha.house.gov/sites/evo-subsites/cha.house.gov/files/evo-media-document/damon-hewitt-house-admin-elections-subcommittee-testimony-3.10.23.pdf> (“March 2023 Testimony of Damon T. Hewitt”).

³⁴ 52 U.S.C. § 20507(c)(2)(A).

³⁵ See e.g. Geoffrey Skelley, *A Record Number of Black Americans Could Vote Early This Year*, FiveThirtyEight (Sept. 21, 2020), <https://fivethirtyeight.com/features/a-record-number-of-black-americans-could-vote-early-this-year/>; Katanga Johnson, *Early voting brings one million Black voters to Georgia polls*, Reuters (Oct. 30, 2020), <https://www.reuters.com/article/us-usa-election-georgia-voting/early-voting-brings-one-million-black-voters-to-georgia-polls-idUSKBN27F36Z>; Steven

several states limited those seeking to participate in the election to voting on Election Day, causing long lines and resulting in a heightened risk of disenfranchisement due to election administration hurdles.³⁶

In Texas, instead of building upon record turnout spurred by increased early voting options in 2020,³⁷ the legislature passed S.B.1 which eliminated several accessible, common sense voting methods, including “drive-thru” voting and 24-hour early voting—both methods that proved invaluable for Black and Latino voters in Texas’s largest cities in 2020.³⁸

More than 2 million voters cast ballots through advance voting in Georgia’s 2021 runoff election.³⁹ Weekend voting options are especially important for Georgia’s Black voters, who utilize this option at substantially higher rates than other voters. In Georgia’s 2021 U.S. Senate runoff election, Black voters were nearly twice as likely as white voters to vote on Saturday.⁴⁰ However, because of S.B. 202, which the Georgia Legislature enacted in 2021, the time for early voting in the 2022 runoff election was limited to just five mandatory days (compared to 17 mandatory days in previous elections), with discretion among county election officials to offer a limited number of additional days.⁴¹ Limiting opportunities for early voting falls particularly

Rosenfeld, *Mailed ballots boosted 2020’s turnout--will they work in 2022?*, Fulcrum (Mar. 10, 2022), <https://thefulcrum.us/voting-by-mail>.

³⁶ Testimony of Marcia Johnson, Before Committee on Rules and Administration, State and Local Perspectives on Election Administration (Mar. 28, 2023), <https://www.rules.senate.gov/imo/media/doc/Marcia%20Johnson%27s%20Senate%20Rules%20Committee%20Testimony%203.24%20-%20Revised%20Clean.pdf>.

³⁷ See Jeremy Schwartz & Mandi Cai, *Texas is on track for record turnout in this election after breaking early voting records*, KSAT (Oct. 31, 2020, 12:02 PM), <https://www.ksat.com/news/texas/2020/10/31/texas-is-on-track-for-record-turnout-in-thiselection-after-breaking-early-voting-records/>; Texas Presidential Election Results 2020, NBC News, <https://www.nbcnews.com/politics/2020-elections/texas-president-results> (last updated Mar. 31, 2021).

³⁸ Compl. for Decl. and Injunctive Relief, *supra* note 16; see also Press Release, NAACP LDF, Lawsuit Filed Challenging New Texas Law Targeting Voting Rights, (Sept. 7, 2021), <https://www.naacpldf.org/pressrelease/lawsuit-filed-challenging-new-texas-law-targeting-voting-rights/>.

³⁹ New Georgia Runoffs Data Finds That More Black Voters Than Usual Came Out. Trump Voters Stayed Home, Wash. Post (Jan. 29, 2021), <https://www.washingtonpost.com/politics/2021/01/29/new-georgia-runoffsdata-finds-that-more-black-voters-than-usual-came-out-trump-voters-stayedhome/>.

⁴⁰ Michael C. Herron & Daniel A. Smith, *The Racial Politics of Early In-Person Voting in Georgia*, 1 J. Election Admin. Rsch. & Practice (2022).

⁴¹ Election Integrity Act, SB202, § 28, <https://www.legis.ga.gov/api/legislation/document/20212022/201498>.

harshly on voters of color, who face substantially longer wait times than white voters.⁴²

Additionally, ahead of the 2022 December Runoff Election, the Georgia Secretary of State issued a last-minute bulletin further limiting the availability of early voting by prohibiting counties from exercising their discretion to offer early voting on Saturday, Nov. 26.⁴³ LDF filed an amicus brief in support of plaintiffs in a suit challenging the Secretary's flawed interpretation, emphasizing the racial disparities that would result.⁴⁴ Georgia state courts ultimately agreed with the plaintiffs that counties could provide Saturday early voting.⁴⁵ Further, LDF's PTV team sent letters to each of Georgia's 159 counties encouraging them to maximize early voting options by offering voting on the weekends around Thanksgiving.⁴⁶

As a result of this litigation and LDF's advocacy efforts, 27 counties ultimately exercised their discretion to offer early voting on Saturday November 26th, and over 70,000 Georgians were able to vote that day. Many counties also chose to offer early voting on Sunday November 27th and over 87,000 Georgians voted that day.⁴⁷

Restrictions on Absentee and Mail Voting

Following the 2020 election, where Black voters in Florida cast mail-in ballots at a rate higher than in 2016 and 2018, Florida enacted S.B. 90 which imposes a long

⁴² First Amended Complaint, *Sixth Dist. of the African Methodist Episcopal Church v. Kemp*, No. 1:21-cv-01284-JPB (N.D. Ga. May 24, 2021), ECF No. 83.

⁴³ Georgia law states that advance voting for runoff elections shall commence “[a]s soon as possible prior to a runoff from any general primary or election but no later than the second Monday immediately prior to such runoff and shall end on the Friday immediately prior to each primary, election, or runoff.” See Ga. Code Ann. § 21-2-385(d)(1).

⁴⁴ Brief of Amici Curiae NAACP Legal Defense & Educational Fund, Inc. and ACLU of Georgia In Opposition To Intervenor-Appellants' Emergency Motion To Stay, *Democratic Party of Georgia v. Georgia*, No. S23M0376, (S. Ct. Nov 23, 2022), <https://www.democracymotion.com/wp-content/uploads/2022/11/2022.11.23-Brief-of-Amici-Curiae-NAACP-Legal-Defense-KH745068x9D7F4.pdf>.

⁴⁵ Order Granting Declaratory and Injunctive Relief, *Democratic Party of Georgia v. Georgia*, No. 2022CV372734, (Sup. Ct. Ga. Nov. 18, 2022), <https://www.democracymotion.com/wp-content/uploads/2022/11/KH744536-1.pdf>.

⁴⁶ John Cusick, *Re: Advance Voting for the December 6, 2022 Runoff Election*, NAACP LDF (Nov. 15, 2022), <https://www.naacpldf.org/wp-content/uploads/2022.11.15-FINAL-Letter-re-Runoff-Advance-Voting25.pdf>.

⁴⁷ *Data Hub - December 6, 2022 Runoff*, Georgia Secretary Of State Brad Raffensperger, <https://sos.ga.gov/data-hub-december-6-2022-runoff>.

list of new constraints on mail voting.⁴⁸ The 2021 law severely limits the availability and accessibility of mail ballot drop boxes and requires voters to include their state identification (ID) number or Social Security Number on their mail ballot application, but the law does not provide an alternative for voters who lack such information. It also limits who can assist voters with returning their mail ballots.⁴⁹

Options such as mail-in voting are particularly important in a state such as Florida where elections typically take place during hurricane season, presenting a significant risk of Election Day disruption. For example, in Lee County, which was especially hard-hit by Hurricane Ian shortly before the election, the Supervisor of Elections was forced to consolidate the county's 99 polling places (many of which were severely damaged) to just 12 locations. This was particularly concerning for the predominantly Black community of Dunbar, where the only polling place in the community (Fort Myers Regional Library) was closed. In-person voting was already not readily accessible to many members of this community because the location was three miles away or a 55-minute walk for those without access to cars; and the hurricane made this worse.⁵⁰ LDF successfully advocated for placement of a drop box for vote-by-mail ballots in the Dunbar neighborhood (which was ultimately used by 235 voters), and LDF and partners worked to educate voters and provide rides to the polls.

Texas's S.B. 1 required voters to provide their Texas driver's license, personal identification card, or election identification certificate number on their mail ballot application and their mail ballot return carrier envelope.⁵¹ Voters must use the same identifying number throughout every stage of the process or their voting materials—whether the mail ballot application or the mail ballot—will be rejected.⁵² This can cause problems for voters who may not remember which particular identifying number they utilized at a prior stage. The predictable result of these new restrictions

⁴⁸ S.B. 90, Fla. Legis., Reg. Sess. (2021), <http://laws.flrules.org/2021/11>; Compl. for Declaratory & Injunctive Relief, *supra* note 13, at 28–37.

⁴⁹ *Case: LDF's Lawsuit Challenging Florida's S.B. 90*, NAACP LDF (May 6, 2021), <https://www.naacpldf.org/case-issue/florida-naacp-v-lee/>.

⁵⁰ See Written Testimony of Adam Lioz, Before the Senate Committee on Rules & Administration, State and Local Perspectives on Election Administration (Mar. 28, 2023), at 25, 25 n.95 <https://www.naacpldf.org/wp-content/uploads/LDF-Senate-Rules-Testimony-4-4-23.pdf> (“March 2023 Testimony of Adam Lioz”).

⁵¹ Tex. Elec. Code Ann. §§ 84.002, 86.002. If they do not have these identification numbers, they must provide the last four digits of their Social Security number. And if they have none of the above, they must affirm a statement to that effect. *Id.* at 26.

⁵² Testimony of Hani Mirza, Before Subcommittee on Elections, (Mar. 17, 2022), at 2, <https://docs.house.gov/meetings/HA/HA08/20220317/114504/HHRG-117-HA08-Wstate-MirzaH-20220317.pdf>.

was sky-high ballot rejection rates in the March 2022 primary, and elevated rates in the general election as well.⁵³

Based on public records requests, we now know that the overwhelming majority of primary mail-in ballot rejections were due to the new ID number requirements imposed by S.B. 1 and that Latino, Asian, and Black voters were significantly more likely to have their mail ballot applications rejected than white voters.⁵⁴ Even when voters successfully applied to vote by mail, voters of color were far more likely to have their mail ballots rejected. This combination of application and mail ballot rejections left voters of color at least 30% more likely to have an application or mail ballot rejected than white voters.⁵⁵

Problems at Polling Places

Beyond unfair districts that diluted their voices, mass challenges that threatened their places on the rolls, and restrictions on early and mail voting, Black voters faced significant obstacles at their polling locations in 2022.

In Georgia, changes in polling locations between early voting and Election Day led to ongoing voter confusion and delays during the November elections.⁵⁶ Across Louisiana, there were hundreds of changes to assigned polling locations during the 2022 election cycle. These changes were disproportionately focused in three parishes with significant Black populations: 27 in Iberia where 32% of the voting age population is Black, 31 in St. Landry (42% Black), and 26 in St. Martin (23% Black).⁵⁷

Poll site changes affected thousands of Mississippi voters ahead of the 2020 election due to omissions or inaccurate reporting of those changes on the Secretary of State's online poll site locator. Unfortunately, this problem remained unsolved during the June 2022 Primary Elections and well into the November 2022 General Election.

⁵³ Nick Corasanti, *Mail Ballot Rejections Surge in Texas, With Signs of a Race Gap*, N.Y. Times (Mar. 18, 2022), <https://www.nytimes.com/2022/03/18/us/politics/texas-primary-ballot-rejections.html>; Taylor Goldenstein, "10,000 mail ballots rejected in large Texas counties as new ID requirement is phased in," Hous. Chron. (Nov. 13, 2022), <https://www.houstonchronicle.com/politics/election/2022/article/New-Texas-law-leads-to-10-000-rejected-mail-17577757.php>.

⁵⁴ Kevin Morris, *Records Show Massive Disenfranchisement and Racial Disparities in 2022 Texas Primary*, Brennan Center for Justice (Oct. 20, 2022), <https://www.brennancenter.org/our-work/research-reports/records-show-massive-disenfranchisement-and-racial-disparities-2022-texas> (19 percent of Asian voters, 16.6 percent of Black voters, and 16.1 percent of Latino voters had either their applications to vote by mail or their mail ballots rejected in the March 2022 primary under new requirements in S.B. 1).

⁵⁵ *Id.*

⁵⁶ March 2023 Testimony of Adam Lioz, *supra* note 50.

⁵⁷ See U.S. Census Bureau, 2020 Decennial Census. Redistricting Data PL 94-171, <https://www2.census.gov/programs-surveys/decennial/2020/data/>.

Leading up to the June Primary, there were 70 changes to polling places, including 48 precinct relocations, 15 closures, and 8 new precincts.⁵⁸ Throughout the period leading up to the November 2022 Election, Mississippi voters continued to receive misinformation regarding their voting locations. LDF sent the Mississippi Secretary of State letters demanding a remedy to the systematic misinformation about polling locations in the Mississippi online poll-locator.⁵⁹ This issue affected more than 65,000 voters in 2020 and persisted in the 2022 elections, with poll site changes disproportionately affecting Black voters.⁶⁰

LDF's advocacy efforts resulted in fixes to the online poll locator, publication of polling locations for Mississippi voters in local news outlets, and additional guidance being posted on local election officials' websites that reduced many closures.⁶¹ Despite this effort, there were still problems related to polling location changes on Election Day in November. At Precinct 45, in majority-Black Hinds County, voters were directed to the wrong polling location and the correct polling location was misidentified by the Secretary of State. LDF engaged in rapid response work to send a mass text message to the 2,600 voters in that precinct to inform them of the polling location change.

In South Carolina, LDF's PTV team received reports of delayed poll site openings throughout the state. Richland County faced particularly egregious delays on Election Day, with the polling place at Greenview Park opening 90 minutes late. In Texas, polling places across Bell County opened extremely late for the 2022 general election after polling machines encountered technical issues.⁶² In Harris County, the most diverse county in the state, multiple locations opened more than one hour late,

⁵⁸ Ashton Pittman & William Pittman, *Mississippi Election Officials Made 70 Polling Place Changes Since 2020, MPF Finds*, Miss. Free Press (June 3, 2022), <https://www.mississippifreepress.org/24350/mississippi-electionofficials-made-70-polling-place-changes-since-2020-mfp-finds>, (describing changes in polling places from the 2020 election).

⁵⁹ Letter from Tanner Lockhead et al., NAACP LDF et al., to Hon. Michael Watson, Miss. Sec. of State (Oct. 14, 2022), <https://www.naacpldf.org/wp-content/uploads/Reply-letter-obligation-and-authority-to-act.pdf>.

⁶⁰ Ashton Pittman & William Pittman, *Madison County Moves 2,000 Black, Hispanic Voters to Crowded Precinct With Little Warning*, Miss. Free Press (Oct. 29, 2020), <https://www.mississippifreepress.org/6492/madison-county-moves-2000-black-hispanic-voters-to-crowded-precinct-with-little-warning> (describing disproportionate impact of voting site changes on communities of color in Mississippi); Robert McDuff, *The Voting Rights Act and Mississippi*, 17 Rev. L. & Soc. Just. 475, 480 (2008) (describing a broader history of discrimination in voting, including through discriminatory changes in polling locations).

⁶¹ March 2023 Testimony of Adam Lioz, *supra* note 50, at 18.

⁶² Joey Horta & Joel Leal, *Bell County polling locations to stay open until 8 PM after early morning issues*, 25ABC, (Nov. 8, 2022), <https://www.kxxv.com/hometown/bell-county/bell-county-officials-address-early-morning-technical-delays-at-polling-locations>.

and, in at least one instance, a location did not open until four hours past the scheduled opening of polls.⁶³

Heightened Criminalization of Voting

Criminalization provisions included in Texas’s S.B. 1 expose good-faith election officials to unreasonable risk for doing their jobs. For example, the law contains a provision that exposes election officials who follow the Texas Election Code in taking action to prevent poll watchers from harassing voters to possible criminal sanctions.⁶⁴ LDF is challenging the law on behalf of the Houston Area Urban League, Houston Justice, Delta Sigma Theta Sorority, Inc., The Arc of Texas, and an election judge.⁶⁵ Reports from LDF’s election protection efforts indicate there was an increase in staffing shortages at polling locations, indicating a chilling effect from S.B.1 on potential election workers.

In January 2022, Florida Gov. Ron DeSantis, with the backing of the state legislature, implemented a new Office of Election Crimes and Security (“OECS”), a special police force to investigate election crimes. The Office is housed within the Department of State and includes sworn special agents from the Department of Law Enforcement with the authority “to see that violators of the Florida Election Code are apprehended and punished.”⁶⁶ Considering the long history of law enforcement in Florida serving directly or indirectly as a tool of voter intimidation and the absence of any evidence of widespread wrongdoing by voters in Florida’s past elections, the move raises serious concerns of voter intimidation and a potential chilling effect on political participation.

Among the targets of the new OECS are returning citizens, *i.e.*, individuals who have felony convictions. On August 18, 2022, five days before the state primary elections, OECS together with the Florida Department of Law Enforcement and local police conducted highly publicized arrests of at least 20 returning citizens for allegedly voting while ineligible more than two years earlier. Governor DeSantis held a campaign-style press conference at a Broward County courthouse at which he

⁶³ Alex Ura, *Texas Supreme Court ruling opens possibility that late Harris County ballots won’t be counted*, Tex. Trib., (Nov. 8, 2022), <https://www.texastribune.org/2022/11/08/texas-harris-county-polls-close-8-pm/>.

⁶⁴ Compl. for Declaratory & Injunctive Relief, *supra* note 16; Tex. Elec. Code Ann. §§ 33.057, 33.058.

⁶⁵ Compl. for Declaratory & Injunctive Relief, *supra* note 16; *see also* Press Release, NAACP LDF, *supra* note 38.

⁶⁶ *LDF Sends Letter Opposing Florida’s Restrictive Voting Bill and Proposed Office of Elections Crime and Security*, NAACP LDF (Feb. 3, 2022), <https://www.naacpldf.org/news/ldf-sends-letter-opposing-floridas-restrictive-voting-bill-and-proposed-office-of-election-crimes-and-security/>.

appeared with more than a dozen uniformed law enforcement officers to proclaim the arrests as the “opening salvo” and not the “sum total.”⁶⁷ He also announced that he had tapped the State’s Office of Special Prosecutions (“OSP”) to prosecute the returning citizens who were arrested because “people weren’t getting prosecuted” by local prosecutors. Approximately 75% of those arrested were Black, in a state with a Black population of less than 15%.⁶⁸

B. Racial Turnout Disparities Persist

A troubling yet defining aspect of this post-2020 moment is that disturbing racial disparities in voter turnout persist. These disparities can indicate that restrictive state laws and underenforcement of federal laws continue to threaten Black Americans’ equal opportunity to participate in our elections.

Our most recent presidential and mid-term elections have featured relatively high turnout compared with historical averages. This is a positive development, and to some degree reflects voters’ rejection of the false narrative of stolen elections. But these aggregate numbers do not negate the more disturbing picture just below the surface. White voters remain over-represented in the U.S. electorate, at a cost of voice for, and responsiveness to, communities of color.

Even in the 2020 presidential election—where 66.8% of citizens over age 18 turned out, the highest rate since 1900—white voters were a disproportionate share of the electorate. White voter turnout was approximately eight percentage points higher than that of Black Americans and more than 12 points higher than the rate for people of color overall.⁶⁹ This reflected an historical trend. Other than the 2008 and 2012 elections when President Obama’s historic run for the presidency briefly reduced turnout disparities, these gaps have been stubbornly large for decades.⁷⁰

⁶⁷ Sam Sachs, ‘Opening salvo’: DeSantis announces 20 arrests for voter fraud in Florida, WFLA (Aug. 18, 2022) <https://www.wfla.com/news/florida/desantis-to-make-major-announcement-at-broward-courthouse/>; Bianca Fortis, *A Government Official Helped Them Register. Now They’ve Been Charged with Voter Fraud*, ProPublica (July 21, 2022), <https://www.propublica.org/article/florida-felonies-voter-fraud>; Press Release, Fla. Department of Law Enforcement, In case you missed it: FDLE arrests convicted murders, sex offenders for voting illegally (Aug. 18, 2022), <http://www.fdle.state.fl.us/News/2022/August/In-case-you-missed-it-FDLE-arrests-convicted-murde>.

⁶⁸ Sergio Bustos, *Crist decries voting-fraud arrests after body cam video shows voters shocked by felony charges*, Tallahassee Democrat (Oct. 20, 2022), <https://www.tallahassee.com/story/news/politics/elections/2022/10/19/charlie-crist-ron-desantisvoting-fraud-arrests-police-body-camera-florida/10539631002/>.

⁶⁹ Kevin Morris & Coryn Grange, Opinion, *Large Racial Turnout Gap Persisted in 2020 Election*, Brennan Center for Justice (Aug. 6, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election>.

⁷⁰ *Id.*

While the disparities have been relatively consistent that does not mean they are natural or unresponsive to conditions. As barriers to the ballot for voters of color increase, so too have turnout disparities. After the U.S. Supreme Court gutted the VRA’s “preclearance” protection in *Shelby County* in 2013, states immediately responded by making it harder to vote.⁷¹ Turnout disparities between white and Black voters increased substantially in *Shelby’s* aftermath in five out of the six states fully covered under the VRA’s preclearance protections.⁷² In Alabama, for example, Black and white voter turnout was roughly equal in the 2012 presidential election;⁷³ but, in the aftermath of the *Shelby County* decision and new state-enacted restrictions on voting, the disparity has grown, with Black turnout (54.8%) lagging nearly 8 points behind white turnout (62.5%) in 2020.⁷⁴

This trend continued in 2022. In Georgia, the disparity in turnout between white and Black voters in both the primary and general elections was higher than at any point in the past decade.⁷⁵ Disparities between white and Black turnout in mid-term elections have continued to grow in North Carolina, from a five-point disparity in 2014 to eight points in 2018 to a disturbing 16 points in 2022.⁷⁶ South Carolina

⁷¹ Thurgood Marshall Institute, *State and Local Threats to Voting Post-Shelby County, Alabama v. Holder (Shelby County)*, <https://tminstituteldf.org/publications/democracy-diminished/>.

⁷² Kevin Morris, Peter Miller & Coryn Grange, *Racial Turnout Gap Grew in Jurisdictions Previously Covered by the Voting Rights Act Facebook Twitter*, Brennan Center for Justice (Aug. 20, 2021), <https://www.brennancenter.org/our-work/research-reports/racial-turnout-gap-grew-jurisdictions-previously-covered-voting-rights>. It is important to note that turnout disparities were at an historical low in 2012 and so some of this increase was likely a return to historical patterns; but given the well-documented backsliding on voting accessibility for Black voters in these jurisdictions it is likely that additional barriers played at least some role.

⁷³ See Dep’t of Com., Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2012) (Table 4b), <https://www.census.gov/data/tables/2012/demo/voting-and-registration/p20-568.html>.

⁷⁴ See Dep’t of Com., Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2020) (Table 4b), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

⁷⁵ Kevin Morris, Opinion, *Despite High Voter Turnout, Racial Gap Persisted in Georgia Primary*, Brennan Center for Justice (Aug. 15, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/despite-high-voter-turnout-racial-gap-persisted-georgia-primary>; Sara Loving & Kevin Morris, Opinion, *Georgia’s Racial Turnout Gap Grew*, Brennan Center for Justice (Dec. 16, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/georgias-racial-turnout-gap-grew-2022>.

⁷⁶ Bob Hall, NC voter turnout in the midterms: What the data show for various groups, Pulse (Dec. 8, 2022), <https://pulse.ncpolicywatch.org/2022/12/08/nc-voter-turnout-in-the-midterms-whatthe-data-show-for-various-groups/#sthash.QNHe0dH5.w2aLakDb.dpbs>; March 2023 Testimony of Damon T. Hewitt.

had a greater than 15-point gap between white voters and voters of color.⁷⁷ Louisiana had nearly a 15-point turnout disparity between eligible white and Black voters.⁷⁸

C. Key Protections Have Been Eroded Without Congressional Response

As Black voters face a wave of restrictive laws targeting our most effective means of electoral participation, the Supreme Court has twice undercut the VRA in recent years. Unfortunately, in the decade after the *Shelby County* decision, Congress has failed to respond to the Court's actions. Due to Congress's failure to act, state legislatures across the country recently conducted the first redistricting cycle in six decades without being bound by the full protections of the VRA.

For nearly 100 years following the Civil War, Congress abdicated its responsibility to enforce the Reconstruction Amendments. Black people were systematically disenfranchised by poll taxes,⁷⁹ literacy tests,⁸⁰ threats,⁸¹ and lynching.⁸² Finally, Congress—compelled by the Civil Rights Movement generally, and the violent events of Bloody Sunday in Selma, Alabama, specifically⁸³—took its

⁷⁷ Statement of Marcia Johnson, Before the Subcommittee on Elections, 2022 Lookback Series: Successes in the 2022 Midterm Elections (Mar. 10, 2023), <https://www.rules.senate.gov/imo/media/doc/Marcia%20Johnson's%20Senate%20Rules%20Committee%20Testimony%203.24%20-%20Revised%20Clean.pdf> at 13.

⁷⁸ March 2023 Testimony of Damon T. Hewitt, *supra* note 33, at 11.

⁷⁹ Richard M. Valelly, *The Two Reconstructions: The Struggle for Black Enfranchisement* (Chicago: University of Chicago Press, 2004).

⁸⁰ Jason Morgan Ward, *Hanging Bridge: Racial Violence and America's Civil Rights Century* (New York: Oxford University Press, 2016).

⁸¹ Michael Fellman, *In the Name of God and Country: Reconsidering Terrorism in American History* (New Haven, CT: Yale University Press, 2010); U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Volume VII: The Mississippi Delta Report: Chapter 3, Voting Rights and Political Representation in the Mississippi Delta* (last accessed Aug. 12, 2021), <https://www.usccr.gov/pubs/msdelta/ch3.htm>.

⁸² Brad Epperly, et. al., *Rule by Violence, Rule by Law: The Evolution of Voter Suppression and Lynching in the U.S. South*, Soc. Sci. Rsch. Network (Mar. 1, 2016), <https://ssrn.com/abstract=3224412>.

⁸³ See Lyndon B. Johnson, *Special Message to the Congress: The American Promise, March 15, 1965*, Public Papers of the Presidents of the United States: Lyndon B. Johnson, 1965, vol. I, entry 107, at 281-87 (1966) (“At times history and fate meet at a single time in a single place to shape a turning point in man’s unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama.”); Lyndon B. Johnson, *Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act, August 6, 1965*, Public Papers of the Presidents of the United States: Lyndon B. Johnson, 1965, vol. II, entry 394, at 811-15 (1966) (“And then last March, with the outrage of Selma still fresh, I came down to this Capitol one evening and asked the Congress and the people for swift and for sweeping action to guarantee to every man and woman the right to vote. In less than 48 hours I sent the Voting Rights Act of 1965 to the Congress.

constitutional duty seriously by passing the VRA in 1965, justly described as “the crown jewel” of the Civil Rights Movement.⁸⁴

Throughout our history, passage and enforcement of the VRA has been a bipartisan enterprise. Republicans and Democrats have worked together and jointly recognized that voting rights for Black and brown Americans is fundamental to our aspirations to an equal, just, and racially and ethnically inclusive democracy.⁸⁵ Following its initial passage, Congress reauthorized the VRA several times on a bipartisan basis.⁸⁶ Republican presidents signed these VRA reauthorizations in 1970, 1975, 1982, and 2006. In 1982, President Reagan signed a bill that reauthorized the VRA for 25 years and strengthened it significantly by rejecting a 1980 Supreme Court ruling that would have forced voters to prove discriminatory intent to vindicate their rights.⁸⁷ Congress’s decision to act quickly lessened the negative impact of the ruling.

In contrast, in 2013, the Supreme Court struck at the heart of the VRA through its decision in *Shelby County, Alabama v. Holder*.⁸⁸ The result was an abrupt halt to the successes of the VRA’s preclearance provisions and an immediate increase in discriminatory voting procedures in formerly covered states.⁸⁹ But, in the years since that ruling, Congress has failed to restore the VRA to full strength.

In 2021, Supreme Court again undermined the strongest complement to preclearance⁹⁰ by weakening the protections afforded by Section 2 of the VRA in

In little more than 4 months the Congress, with overwhelming majorities, enacted one of the most monumental laws in the entire history of American freedom.”)

⁸⁴ See *Nw. Austin, Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 198, 201 (2009) (the “historic accomplishments of the [VRA] are undeniable”).

⁸⁵ See, e.g., To Agree to the Conference Report on S. 1564, The Voting Rights Act of 1965 (Aug. 4, 1965), <https://www.govtrack.us/congress/votes/89-1965/s178>; Pub. L. No. 91-285, 84 Stat. 314 (signed into law by President Richard Nixon on June 22, 1970); Pub. L. No. 94-73, 89 Stat. 402 (signed into law by President Gerald Ford on August 6, 1975); Pub. L. No. 97-205, 96 Stat. 134 (signed into law by President Ronald Reagan on June 29, 1982); Pub. L. No. 102-344, 106 Stat. 921 (signed into law by President George W. Bush on August 26, 1992).

⁸⁶ *Id.*

⁸⁷ With these amendments Congress overrode *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

⁸⁸ 570 U.S. 529 (2013).

⁸⁹ NAACP LDF, *Democracy Diminished*, LDF’s Thurgood Marshall Institute, https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished_-10.06.2021-Final.pdf.

⁹⁰ In the *Shelby* decision, the Court went out of its way to explain that its decision “in no way affect[ed] the permanent, nationwide ban on racial discrimination in voting found in [Section] 2.” *Shelby Cnty.*, 570 U.S. at 557. Indeed, the Court emphasized that “Section 2 is permanent, applies nationwide,” and broadly “forbids any ‘standard, practice, or procedure’ that ‘results in a denial or

Brnovich v. DNC.⁹¹ By weakening Section 2 based on its own views of how much discrimination is acceptable, the Supreme Court has once again diminished our democracy and weakened critical protections for Black voters.⁹² And, unfortunately, Congress has once again failed to act swiftly to respond to the *Brnovich* decision.

The Fifteenth Amendment gives Congress the authority to enact legislation to prevent the denial or abridgment of the right to vote based on race. Congress’s failure to restore the VRA’s full protections has left voters vulnerable to disfranchisement.

III. U.S. DEMOCRACY IN 2023: HISTORICAL CONTEXT

To fully appreciate the challenge this Congress faces in protecting free and fair elections, it helps to consider our current moment in its historical context. We are just a few generations away from a time when Black Americans were not permitted to vote in Texas’s primary elections and faced insurmountable barriers to the ballot throughout much of the South. We have made much progress since then—but it has not been linear nor inevitable; and much of it is currently at risk.

A. Voters of Color Overcame Barriers to Assert Consequential Political Power in 2020

According to the U.S. Census Bureau, more than 42% of Americans are now people of color.⁹³ Since the 2010 Census, the Latino population grew by 23%, compared to just 4.3% non-Latino population growth.⁹⁴ The Black population grew by nearly 6%.⁹⁵ This growth was even starker among *voters* of color. One 2021 report

abridgement of the right of any citizen of the United States to vote on account of race or color.” *Id.* at 536–37 (quoting 52 U.S.C. § 10301(a)).

⁹¹ *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321 (2021).

⁹² Justice Kagan explained in her *Brnovich* dissent, for example, that “to read [Section 2] fairly . . . is to read it broadly” and yet the majority opinion’s invented factors or guideposts “all cut in one direction—toward limiting liability for race-based voting inequalities” and shielding discriminatory laws from Section 2 challenges. *Id.* at 2361-62 (Kagan, J., dissenting).

⁹³ Press Release, 2020 Census Statistics Highlight Local Population Changes and Nation’s Racial and Ethnic Diversity, U.S. Census Bureau (Aug. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/population-changes-nations-diversity.html>.

⁹⁴ *Id.*

⁹⁵ U.S. Census Bureau, 2010 Census Redistricting Data (Public Law 94-171) Summary File, U.S. Census Bureau (accessed Jan. 18, 2022); U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171) Summary File, U.S. Census Bureau (accessed Jan. 18, 2022). See also U.S. Census Bureau, *Race and Ethnicity in the United States: 2010 Census and 2020 Census* (Aug. 12, 2021), <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>.

projected that nearly 80% of the growth in voting eligible population would be through people of color, including 17% from Black voters.⁹⁶

This newly diverse electorate made its voice heard in 2020, with two-thirds of eligible voters participating.⁹⁷ This is the highest turnout rate recorded since 1900; but in fact it represents the highest turnout ever given the significant expansion of both the general population and the population of eligible voters since the turn of the twentieth century.⁹⁸ Black voter turnout was greater than 65% and nearly matched records set when President Obama was on the ballot.⁹⁹

The historic turnout continued when a record 60% of Georgians turned out to vote for the January 5, 2021 runoff election.¹⁰⁰ The 4.4 million Georgians who voted in this runoff were more than double the number who voted in the 2008 runoff election.¹⁰¹ Black voters drove this historic participation, with Black turnout dropping just 8% from the general election versus an 11% decline among white voters.¹⁰² This high turnout led to the election of the first Black U.S. senator in Georgia's history.¹⁰³

⁹⁶ Michael C. Li, *The Redistricting Landscape, 2021-2022*, Brennan Center for Justice (Feb. 11, 2021), at 15, fig. 7, <https://www.brennancenter.org/our-work/research-reports/redistricting-landscape-2021-22>.

⁹⁷ Michael P. McDonald, National General Election VEP Turnout Rates, 1789-Present, United States Elections Project, Jan. 14, 2022, <http://www.electproject.org/national-1789-present>.

⁹⁸ *Id.*

⁹⁹ Michael P. McDonald, *Voter Turnout Demographics*, United States Elections Project (Jan. 14, 2022), <http://www.electproject.org/home/voter-turnout/demographics>.

¹⁰⁰ *Election Night Reporting: January 5, 2021 – Federal Runoff*, Georgia Secretary of State Brad Raffensperger, <https://results.enr.clarityelections.com/GA/107556/web.274956/#/summary> (last updated Jan. 20, 2021); Nathaniel Rakich et al., *How Democrats Won the Georgia Runoffs*, FiveThirtyEight (Jan. 7, 2021, 2:47 PM), <https://fivethirtyeight.com/features/how-democrats-won-the-georgia-runoffs/>.

¹⁰¹ *Id.*

¹⁰² Mark Niesse & Jennifer Peebles, *Turnout dip among Georgia Republicans flipped U.S. Senate*, Atlanta J.-Const. (Feb. 2, 2021), <https://www.ajc.com/politics/turnout-dip-among-georgia-republicans-flipped-us-senate/IKWGEGFEEVEZ5DXTP7ZXXOR0IA/>.

¹⁰³ Steve Peoples, Bill Barrow, and Russ Bynum, *Warnock, Ossoff win in Georgia, handing Dems control of Senate*, Associated Press (Jan. 6, 2021), <https://apnews.com/article/Georgia-election-results-4b82ba7ee3cc74d33e68daadaee2cbf3>.

B. Turnout Driven by Voter Protection Efforts and Pandemic Accommodations

In the midst of a global pandemic, 2020 voters overcame a host of obstacles with determination and resilience. This historic turnout was no accident and was not driven by the stakes alone. National civil rights and civil liberties groups and Black-led grassroots organizations in Georgia and elsewhere had spent years challenging attempts to restrict access to the ballot and building substantial voter outreach campaigns to educate voters regarding the stakes of federal, state, and local elections and assist communities as they navigate the voting process.¹⁰⁴

In addition, turnout was supported by sensible, legal adjustments to election procedures necessary to accommodate voting during a global pandemic. The key shift was from concentrated, in-person voting on Election Day to more distributed opportunities to vote. Some states moved quickly to meet the moment through a range of election administration shifts such as extending opportunities to vote by mail, deploying accessible ballot drop boxes, revising unnecessarily punitive ballot receipt deadlines, adjusting witness requirements that put people's health at risk, and permitting election officials to adjust to a newfound need to count and potentially cure large numbers of mail or absentee ballots.¹⁰⁵ Other states resisted these changes, or even made voting more difficult.¹⁰⁶ Voters, non-partisan advocacy

¹⁰⁴ Anna North, *6 Black women organizers on what happened in Georgia—and what comes next*, Vox (Nov. 11, 2020), <https://www.vox.com/21556742/georgia-votes-election-organizers-stacey-abrams>.

¹⁰⁵ California, Nevada, and Vermont proactively sent mail-in ballots to every registered voter; for the first time ever, every Kentucky voter could vote by mail or vote early if they were concerned about contracting the virus; Massachusetts enacted a temporary change to voting laws that allowed all voters to vote by mail; Utah created online voter registration, authorized ballot drop boxes and expanded its voter registration deadline. Mac Brower, *How States Used the Pandemic To Restrict (Or Expand) Voting*, Democracy Docket (May 9, 2022), <https://www.democracymocket.com/analysis/how-states-used-the-pandemic-to-restrict-or-expand-voting/>; Ryland Barton, *Kentucky Election Reform Effort Gets Bipartisan Backing*, NPR (Mar. 9, 2021), <https://www.npr.org/2021/03/09/974605448/kentucky-election-reform-effort-gets-bipartisan-backing>; Voting Laws Roundup 2020, Brennan Center for Justice (Dec. 8, 2020), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2020-0>; Benjamin Swasey, *Map: Mail-In Voting Rules By State — And The Deadlines You Need*, NPR (Oct. 14, 2020), <https://www.npr.org/2020/09/14/909338758/map-mail-in-voting-rules-by-state>; Ethan Geringer-Sameth, *Absentee Voters Must Now Be Allowed to 'Cure' Their Ballots Under Certain Circumstances; Here's How It's Supposed to Work*, Gotham Gazette (Oct. 26, 2020), <https://www.gothamgazette.com/state/9853-new-york-absentee-voters-cure-ballots-under-circumstances-signatures-how-it-works>.

¹⁰⁶ Voting Laws Roundup 2020, *supra* note 105; *See also* the LDF lawsuits described below.

organizations, and voting rights litigating organizations such as LDF were forced to file hundreds of lawsuits across the country to ensure safe access to the ballot.¹⁰⁷

In Louisiana, LDF filed a lawsuit on behalf of civil rights groups and three individual voters challenging the State's failure to offer certain baseline safety modifications for the general election—modifications which the State had put in place for the earlier primary and municipal elections. In September 2020, a federal court prioritized people's health and safety by extending the early voting period three days and providing voters at highest risk of COVID-19 with a way to vote by mail.¹⁰⁸

In South Carolina, LDF brought a case on behalf of several individuals and civil rights groups to challenge a state requirement that forced people who vote absentee to have a third-party witness signature on their ballot envelope. In May 2020, a federal court blocked this witness requirement for the primary elections, making it safer for South Carolinians to vote during the COVID-19 pandemic.¹⁰⁹

In Alabama, on behalf of several voters, and civil rights groups, LDF and our co-counsel challenged Alabama's photo ID and two-witness signature requirements for absentee ballots to protect the health of those voters who faced significantly increased risks of contracting COVID-19 in the pandemic. The case saw some success through settlements with local officials and the court's orders easing these rules for high-risk people in the 2020 elections. Before these orders were stayed, thousands of voters had the option to request and mail in ballots without satisfying these rules.¹¹⁰

Overall, strong advocacy for voters, including critical pandemic accommodations, supported historic turnout. But just as recent robust overall turnout can mask troubling racial disparities, strong 2020 turnout does not tell the whole story. The patchwork of voluntary accommodations, settlements, court orders, and resistance to change resulted in starkly uneven application of voting rules across the country. In the 2020 election and beyond, Americans' ability to vindicate their fundamental right to vote depended on where they lived—even in federal elections where this Congress is responsible for providing minimum standards of accessibility.

¹⁰⁷ Voting Rights Litigation Tracker 2020, Brennan Center for Justice (July 8, 2021), <https://www.brennancenter.org/our-work/court-cases/voting-rights-litigation-tracker-2020>.

¹⁰⁸ *Harding v. Edwards*, 487 F. Supp. 3d 498 (M.D. La. 2020).

¹⁰⁹ *Thomas v. Andino*, 613 F. Supp. 3d 926 (D.S.C. 2020).

¹¹⁰ Deuel Ross, *Current Conditions of Voting Rights Discrimination: Alabama*, at 12, NAACP LDF (Aug. 16, 2021), <http://civilrightsdocs.info/pdf/voting/vra/2021/VRAA-2021-StateReport-Alabama-LDF.pdf>.

C. Progress Towards Inclusive Democracy Stokes a Backlash

In spite of uneven pandemic accommodations, we did make substantial progress towards an inclusive, multiracial democracy in 2020—and this stoked an unfortunate yet predictable backlash among those invested in the status quo. This backlash manifested both in the violent insurrection at the Capitol and the restrictive voting laws described above; both fomented by the false narrative of stolen elections.

For decades, those seeking to restrict the franchise have used false concerns about voter fraud to justify barriers to the ballot.¹¹¹ In the past, state legislators and other officials have cited unfounded allegations of voter fraud to justify literacy tests, voter identification laws, poll taxes, white primaries, and limits on absentee voting.¹¹²

This narrative again took center stage in the 2016 and 2020 elections,¹¹³ with false allegations of widespread voter fraud targeted at communities with large numbers of Black and Latino voters.¹¹⁴ This false rhetoric regarding stolen elections

¹¹¹ German Lopez, *The case against voter ID laws, in one chart*, Vox.com (Aug. 6, 2015), <https://www.vox.com/2015/8/6/9107927/voter-id-election-fraud>; *See also*, 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-overturnelection-georgia-secretary/story?id=74560956>; *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.

¹¹² *See, e.g.*, *Veasey v. Abbott*, 830 F. 3d 216, 237 (5th Cir. 2016) (en banc); *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1105-1106 (N.D. Ala. 2020).

¹¹³ *See, e.g.*, Glenn Kessler, *Donald Trump's bogus claim that millions of people voted illegally for Hillary Clinton*, Washington Post (Nov. 27, 2016), <https://www.washingtonpost.com/news/fact-checker/wp/2016/11/27/trumps-bogus-claim-that-millions-of-people-voted-illegally-for-hillary-clinton/>.

¹¹⁴ Press Release, NAACP LDF, LDF Files Lawsuit Against President Trump and the Trump Campaign's Attempts to Overturn the Election by Disenfranchising Black Voters in Michigan (Nov. 20, 2020), <https://www.naacpldf.org/press-release/ldf-files-lawsuit-against-president-trump-and-the-trump-campaigns-attempts-to-overturn-the-election-by-disenfranchising-black-voters-in-michigan/> (President Trump's "use of dog whistles to suggest the illegitimacy of votes cast by Black voters in Detroit, Philadelphia, Milwaukee, and Atlanta are an appeal to a dangerous and corrosive racialized narrative of voter fraud."); *See generally* Amended Complaint For Declaratory And Injunctive Relief, *Mich. Welfare Rts. Org. v. Trump*, No. 1:20-cv-03388-EGS (D.D.C. Dec. 21, 2020) (ECF No. 8), <https://www.naacpldf.org/wp-content/uploads/2020.12.21-MWRO-v.-Trump-et-al.-Amended-Complaint-Dkt.-No.-8-2.pdf>; Hope Yen, Jeff Amy & Michael Balsamo, *AP FACT CHECK: Trump's made-up claims of fake Georgia votes*, Associated Press (Jan. 3, 2021), <https://apnews.com/article/ap-fact-check-donald-trump-georgia-elections-atlanta-c23d10e5299e14daee6109885f7dafa9> (Trump telling the Georgia Secretary of State he'll "find at least a couple of hundred thousand of forged signatures" in Fulton County); Cristiano Lima & Holly Otterbein, *Trump camp stokes fear over unfounded claims of mass voter fraud in Philly*, (Nov. 3, 2020), <https://www.politico.com/news/2020/11/03/trump-campaign-stokes-fear-voter-fraud-claims-philly-433966> ("Throughout the election, Trump has stoked fears about election security in Philly as well as

then encouraged the January 6th Insurrection, a violent attack on the Capitol that sought to bring an end to democracy in our nation.¹¹⁵

The next stage of the backlash came through the wave of restrictive voting laws described above. These laws are part of a race-based backlash—“racial demographics are a powerful factor *independent of party* in determining where restrictive voting laws are introduced and passed.”¹¹⁶ According to the Brennan Center, “[r]epresentatives from the whitest districts in the most racially diverse states were the most likely to sponsor anti-voter bills.”¹¹⁷

D. Post-2020 Backlash Part of an Historical Pattern

The backlash we are currently experiencing is not an anomaly but rather a predictable part of an historical pattern. The story of multiracial democracy in the United States is itself a tale of progress, backlash, and retrenchment—at times followed by further progress, yet often long-delayed.¹¹⁸

The post-Civil War amendments to the Constitution which ushered in the Reconstruction era engendered a severe backlash wherein the influence and dominance of white supremacy was restored through violence and laws, in a period known as Redemption.¹¹⁹ The “Great Migration” of Black Americans from the South to northern cities was met with redlining and other forms of discrimination.¹²⁰

mail-in voting across the country—all without evidence.”).

¹¹⁵ H.R. Rep. No. 117-663, 117th Cong., 2d Sess. (2022), <https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf>.

¹¹⁶ Kevin Morris, *Patterns in the Introduction and Passage of Restrictive Voting Bills are Best Explained by Race*, Brennan Center for Justice (Aug. 3, 2022), <https://www.brennancenter.org/our-work/research-reports/patterns-introduction-and-passage-restrictive-voting-bills-are-best>.

¹¹⁷ *Id.*

¹¹⁸ Indeed, eight of the seventeen post-Bill of Rights amendments to the U.S. Constitution expanded the franchise directly or expanded the constitutional rights and protection to ensure a more inclusive vision of “we the people” over the course of XX years. U.S. CONST. amends. XIII, XIV, XV, XVII, XIX, XXIII, XXIV, XXVI.

¹¹⁹ *Id.* Following the Compromise of 1877, the federal government withdrew its enforcement of the rules protecting the civil and voting rights of Black people and the Supreme Court ruled that courts would not protect Black people’s civil rights against private actors. *U.S. v. Cruikshank*, 92 U.S. 542 (1876). Nearly a century of racial terror through lynchings, mob violence and Jim Crow “Black Codes” enforcing strict segregation and second-class citizenship ensued.

¹²⁰ Isabel Wilkerson, *The Warmth of Other Suns: the Epic Story of America's Great Migration* (2011); Richard Rothstein, *The Color of Law* (2018); Lisa Rice, *Long Before Redlining: Racial Disparities in Homeownership Need Intentional Policies*, Shelterforce (Feb. 15, 2019), <https://shelterforce.org/2019/02/15/long-before-redlining-racial-disparities-in-homeownership-need->

Similarly, the progress of LDF’s landmark *Brown v. Board of Education* case which ended decades of legal segregation in America’s public schools, was followed by “massive resistance” and segregation academies.¹²¹

The progress of electing the nation’s first Black president in 2008 was followed by a substantial mobilization of white Americans through the Tea Party movement who questioned President Barack Obama’s birthplace and thus his legitimacy as president.¹²² More recently, robust public demonstrations of anguish and anger over George Floyd’s murder generated mass protests and important national conversations about structural racism, yet have been met with efforts to ban books and discourage the honest teaching about race’s role in shaping our institutions and society.¹²³

The backlash against inclusive democracy we are witnessing today is not unique to our era—rather it’s old poison in a new bottle. This historical perspective is essential in aiding Congress to fulfill its constitutional responsibilities by addressing, through strong legislation, attempts to marginalize and exclude Black voters and other voters of color.

IV. CONGRESS MUST ACT TO RESTORE AND STRENGTHEN VOTING PROTECTIONS

Black voters’ experiences in the 2022 elections as well as present and historical context all confirm the urgent need for Congress to both restore and strengthen the VRA and also to enact minimum standards for free, fair, and accessible elections so that Americans’ access to our most fundamental right does not depend upon where we happen to live.

In January 2022, the U.S. House of Representatives took action to confront many of the problems outlined above by passing the Freedom to Vote: John R. Lewis

intentional-policies/; Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (1998); Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (2005); Robert C. Lieberman, *Shifting the Color Line: Race and the American Welfare State* (Cambridge, MA: Harvard University Press, 1998). Ironically, the same federal government that briefly enforced Southern Blacks’ rights during Reconstruction now drove their deprivation in Northern cities through its racist housing policy among other racially discriminatory practices. See generally *Color of Law*.

¹²¹ Equal Justice Initiative, *Report: Segregation in America* 20–39 (2018), <https://segregationinamerica.eji.org/report.pdf?action=purge>.

¹²² Robb Willer, Matthew Feinberg & Rachel Wetts, *Threats to Racial Status Promote Tea Party Support Among White Americans*, Soc. Sci. Rsch. Network (May 4, 2016), <http://dx.doi.org/10.2139/ssrn.2770186>.

¹²³ *In Defense of Truth*, NAACP LDF, <https://www.naacpldf.org/truth/> (last visited Jan. 19, 2022).

Act (FTV:JRLA).¹²⁴ In this section, we highlight a small selection of provisions that would most directly address these particular challenges. We recommend this Subcommittee consider and strengthen similar provisions in this Congress.

A. Minimum standards for early voting & vote-by-mail

As noted above, since 2020 Black voters have increasingly used early voting and vote-by-mail options; and several state laws have targeted these very same voting opportunities for rollbacks. The FTV:JRLA contains strong minimum standards for states to provide robust early vote and vote-by-mail opportunities.¹²⁵ For example, the legislation requires nearly two weeks of early voting opportunities that include weekends.¹²⁶ In addition, restored preclearance through legislation strengthening the VRA can protect voters in covered jurisdictions from rollbacks in early voting and vote by mail or absentee voting opportunities to the extent these rollbacks make voters of color less able to fully participate in the electoral process.¹²⁷

B. Protections against frivolous challenges

The National Voter Registration Act already provides voters with strong protections regarding when and how they may be removed from voter rolls.¹²⁸ The FTV:JRLA amends Section 8 of the National Voter Registration Act by requiring verifications and clarifying that certain unreliable indicators are not a legal basis for removal.¹²⁹ In addition, the FTV:JRLA prohibits the practice of voter “caging” which is often used as a predicate for mass challenges.¹³⁰ Caging involves sending mass mailings to voters and using undelivered mail to assemble a purge or challenge list.¹³¹

¹²⁴*Summary: H.R.5746--117th Congress (2021-2022)*, Library of Congress (Jan. 13, 2022), <https://www.congress.gov/bill/117th-congress/house-bill/5746?s=2&r=1&q=%7B%22search%22%3A%5B%22%5C%22freedom+to+vote%3A+john+r+lewis+act%5C%22%22%5D%7D> (“FTV:JRLA”).

¹²⁵ FTV:JRLA § 1201; 1301–05.

¹²⁶ *Id.* at § 1201.

¹²⁷ *Id.* at § 9004.

¹²⁸ 52 U.S. Code § 20507

¹²⁹ FTV:JRLA § 1911.

¹³⁰ *Id.* at § 1901.

¹³¹ Justin Levitt, *A Guide to Voter Changing*, Brennan Center for Justice (June 29, 2007), <https://www.brennancenter.org/our-work/research-reports/guide-voter-caging>.

Finally, the FTV:JRLA requires states to provide voters with the chance to register to vote during early voting and on Election Day,¹³² which is a critical backstop to protect people who are challenged for allegedly being improperly registered to vote.

C. Protections against polling location changes

The FTV:JRLA creates minimum standards for notifying voters about polling place changes or closures for federal elections.¹³³ In addition, restored preclearance will protect voters in covered jurisdictions from polling location changes or consolidations that would leave voters of color worse off.¹³⁴

D. Protections against discriminatory districts

The discriminatory district maps drawn following the 2020 Census provide a key example of why it is essential for Congress to restore and strengthen the full protections of the VRA. All three of the states where LDF has litigated post-Census redistricting cases were required to “preclear” their voting changes as covered jurisdictions under the VRA prior to the 2013 *Shelby County* decision invalidating its coverage framework.¹³⁵

The FTV:JRLA provides additional important protections for voters of color as well: Sections 9001 and 9002 restore and strengthen Section 2 of the VRA; and Section 5003 lays out mandatory criteria for drawing congressional districts and prioritizes protecting voters of color from vote dilution.¹³⁶

V. CONCLUSION

The best way to ensure Americans are confident in our elections is to ensure equal access to the ballot regardless of race or geography. Black Americans have always fought to bring America towards its highest ideals. Focusing on Black voters’ and other voters of color’s experiences in recent elections, mindful of both the present moment and the historical context, gives this Congress clear guidance to act to fulfill its constitutional obligations. We look forward to working with you and your colleagues on the full Committee on House Administration and other committees to meet this moment.

¹³² FTV:JRLA § 1031.

¹³³ Id. at § 1601.

¹³⁴ Id. at § 9004.

¹³⁵ U.S. Dep’t of Just., *Jurisdictions Previously Covered by Section 5* (Nov. 9, 2021), <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>.

¹³⁶ FTV:JRLA §§ 9001, 9002, 5003.