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FOR JUSTICE

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The Honorable Jerrold Nadler  
Chairman  
House Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515

The Honorable Doug Collins  
Ranking Member  
House Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Collins:

On behalf of the Brennan Center for Justice at New York University School of Law, a non-partisan law and policy institute that works to improve our nation's systems of democracy and justice, we write in strong support of the For the People Act of 2019 (the "Act"), which the Committee is considering today.<sup>1</sup> The Act represents a much needed, and long overdue, effort to improve our nation's democracy, including provisions to protect and expand voting rights, end partisan gerrymandering, fix our nation's system for funding political campaigns, and strengthen ethics laws aimed at curbing government corruption.

The Brennan Center strongly supports the entire Act. In addition to the measures that are the subject of today's hearing, the Act contains many other vitally important reforms, including automatic and same-day voter registration,<sup>2</sup> nationwide early voting,<sup>3</sup> a small donor matching system and other important campaign finance reforms,<sup>4</sup> and much-needed election security enhancements.<sup>5</sup> We look forward to the opportunity to expand on our support for these and other critical provisions at the appropriate time.

This submission focuses on the provisions that are the subject of today's hearing: the clear commitment to restore the full protections of the Voting Rights Act (Title II, Subtitle A); the

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<sup>1</sup> This letter does not purport to convey the views, if any, of the New York University School of Law.

<sup>2</sup> According to the nonpartisan hotline Election Protection, voter registration problems were the second most common reported issue in both 2018 and 2016. See Laura Grace and Morgan Conley, *Election Protection 2018 Midterm Elections Preliminary Report*, Lawyers' Committee for Civil Rights Under Law, 2018, 4, <https://lawyerscommittee.org/wp-content/uploads/2018/12/Election-Protection-Preliminary-Report-on-the-2018-Midterm-Elections.pdf>. See also Wendy Weiser and Alicia Bannon, *Democracy: An Election Agenda for Candidates, Activists, and Legislators*, Brennan Center for Justice, 2018, 6, at [https://www.brennancenter.org/sites/default/files/publications/2018\\_05\\_Agendas\\_DEmocracy\\_FINAL.pdf.pdf](https://www.brennancenter.org/sites/default/files/publications/2018_05_Agendas_DEmocracy_FINAL.pdf.pdf); Walter Shapiro, "Election Day Registration Could Cut Through many of the Arguments in the Voting Wars," *Brennan Center for Justice*, Oct. 16, 2018, <https://www.brennancenter.org/blog/election-day-registration-could-cut-through-many-arguments-voting-wars>.

<sup>3</sup> See Weiser and Bannon, *Democracy*, 7.

<sup>4</sup> See Weiser and Bannon, *Democracy*, 20, 23, 25.

<sup>5</sup> See Weiser and Bannon, *Democracy*, 15.

Deceptive Practices and Voter Intimidation Act of 2019 (Title I, Subtitle D); the Democracy Restoration Act of 2019 (Title I, Subtitle E); the Redistricting Reform Act of 2019 (Title II, Subtitle E); the commitment to reverse the Supreme Court's evisceration of campaign finance laws in *Citizens United* (Title V, Subtitle A); and several provisions designed to strengthen government ethics (Title VII). All of these measures deserve to be top priorities for Congress. We address each briefly in turn:

### *Restoring and Updating the Voting Rights Act*

As recent experience makes clear, there is a critical need for Congress to restore the full protections of the Voting Rights Act ("VRA"). The VRA is the single most effective piece of civil rights legislation in our nation's history. As recently as 2006 it won reauthorization with overwhelming bipartisan support. For nearly five decades, the linchpin of the VRA's success was the Section 5 pre-clearance provision, which required certain states with a history of discriminatory voting practices to obtain pre-implementation approval from the federal government for any voting rules changes. In 2013, however, the U.S. Supreme Court eviscerated this provision in *Shelby County v. Holder*, by striking down the "coverage formula" that determined which states were subject to pre-clearance.<sup>6</sup>

That decision resulted in a predictable flood of discriminatory voting rules, contributing to a now decade-long trend in the states of restrictive voting laws, which the Brennan Center has documented extensively.<sup>7</sup> Within hours of the Court's decision, Texas announced that it would implement what was then the nation's strictest voter identification law—a law that had previously been denied preclearance because of its discriminatory impact.<sup>8</sup> Shortly afterward, several additional states moved forward with restrictive voting changes.<sup>9</sup> In the years since, federal courts have repeatedly found that new laws passed after *Shelby* made it harder for minorities to vote, some intentionally so.<sup>10</sup> Our research regarding last year's election confirmed the persistence and pliability of voter suppression. States and counties undertook a variety of measures, from new restrictions on registration to reductions in early voting opportunities to

<sup>6</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>7</sup> See Wendy R. Weiser and Lawrence Norden, *Voting Law Changes in 2012*, Brennan Center for Justice, 2011, at <http://www.brennancenter.org/publication/voting-law-changes-2012>; Wendy R. Weiser and Max Feldman, *The State of Voting 2018*, Brennan Center for Justice, 2018, at <http://www.brennancenter.org/publication/state-voting-2018>; "New Voting Restrictions in America," Brennan Center for Justice, accessed Jan. 1, 2019, <https://www.brennancenter.org/new-voting-restrictions-america>; "Voting Laws Roundup 2019," Brennan Center for Justice, last modified Jan. 23, 2019, <https://www.brennancenter.org/analysis/voting-laws-roundup-2019>.

<sup>8</sup> See generally "Texas NAACP v. Steen (consolidated with Veasey v. Abbott)," Brennan Center for Justice, last modified Sept. 21, 2018, <https://www.brennancenter.org/legal-work/naacp-v-steen>. In the past week, the Texas Secretary of State and Attorney General have suggested that there is widespread voter and voter registration fraud in their state, based on a match between their driver's license database and their voter rolls. Texas officials have regularly invoked the specter of voter fraud to support more restrictive voting laws. These new claims should be treated with serious suspicion. Several states have previously made similar allegations of large-scale voter fraud, with great fanfare, only for the subsequent investigation to show that such fraud was nearly non-existent.

<sup>9</sup> Tomas Lopez, "Shelby County: One Year Later," *Brennan Center for Justice*, June 24, 2014, <https://www.brennancenter.org/analysis/shelby-county-one-year-later>.

<sup>10</sup> See Danielle Lang & J. Gerald Hebert, "A Post-*Shelby* Strategy: Exposing Discriminatory Intent in Voting Rights Litigation," *Yale Law Journal Forum* 127 (2017–2018): 780 n.4. For example, the Fourth Circuit Court of Appeals found that a 2013 voting law passed by North Carolina targeted African-American voters with "surgical precision." *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

large-scale purges of the voter rolls, that made it more difficult for voters to cast a ballot and especially targeted voters of color.<sup>11</sup>

Congress has the power to address these problems, by updating the VRA's coverage formula, examining its coverage, and restoring the VRA to its full power. As this Committee recognizes, any new coverage formula must be supported by a thorough legislative record. We commend the commitment to restoring the VRA reflected in the Act, and we urge Congress to make development of this record and passage of a renewed VRA a top priority.

### *Combatting Deceptive Practices*

Some of the most pernicious attempts to undermine the right to vote do not involve legal changes to the voting process, but rather deception about elections and intimidation at the polls. Unfortunately, these practices are all too widespread. Over the course of multiple election cycles, the Brennan Center has documented numerous instances of deception and intimidation.<sup>12</sup> In 2016, for example, memes bearing Hillary Clinton's image and encouraging people to vote from home by text circulated on Twitter. In the 2017 special election in Alabama, voters in Jefferson County—home to the predominantly Black city of Birmingham—received text messages falsely indicating that their polling site had changed. And we identified multiple incidents of misleading information provided to voters and intimidation of voters at the polls during the 2018 elections.<sup>13</sup> In an analysis for the Brennan Center, for example, University of Wisconsin Professor Young Mie Kim documented hundreds of messages on Facebook and Twitter designed to discourage or prevent people from voting in the 2018 election.<sup>14</sup> These incidents are likely to become even more frequent and widespread in light of the rise of social media, which allows for mass dissemination of deceptive information and more accurate targeting of voters.

The Deceptive Practices and Voter Intimidation Prevention Act of 2019 would ameliorate these problems. This title prohibits attempts to impede or prevent a person from voting or registering to vote—including by making false and misleading statements for that purpose. It provides for additional criminal consequences and empowers citizens to go to court to stop voter deception. Perhaps most importantly, the bill includes innovative provisions to ensure that affected voters receive timely information correcting deceptive information so that it does not prevent them from properly voting. If state and local election officials do not adequately correct the misinformation, this legislation requires the Attorney General to do so. At a time when it is

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<sup>11</sup> See Zachary Roth and Wendy R. Weiser, "This Is the Worst Voter Suppression We've Seen in the Modern Era," *Brennan Center for Justice*, Nov. 2, 2018, <http://www.brennancenter.org/blog/worst-voter-suppression-weve-seen-modern-era>; Rebecca Ayala, "Voting Problems 2018," *Brennan Center for Justice*, Nov. 5, 2018, <https://www.brennancenter.org/blog/voting-problems-2018>; Weiser and Feldman, *State of Voting 2018*.

<sup>12</sup> See, e.g., Wendy Weiser and Vishal Agraharkar, *Ballot Security and Voter Suppression: What It Is And What the Law Says*, Brennan Center for Justice, 2012, at <https://www.brennancenter.org/publication/ballot-security-and-voter-suppression>.

<sup>13</sup> See Ayala, "Voting Problems 2018"; Sean Morales-Doyle and Sidni Frederick, "Intentionally Deceiving Voters Should Be a Crime," *The Hill*, Aug. 8, 2018, <https://thehill.com/opinion/civil-rights/400941-intentionally-deceiving-voters-should-be-a-crime>; Wendy R. Weiser and Adam Gitlin, *Dangers of "Ballot Security" Operations: Preventing Intimidation, Discrimination, and Disruption*, Brennan Center for Justice, 2016, at [https://www.brennancenter.org/sites/default/files/analysis/Briefing\\_Memo\\_Ballot\\_Security\\_Voter\\_Intimidation.pdf](https://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Ballot_Security_Voter_Intimidation.pdf).

<sup>14</sup> Young Mie Kim, "Voter Suppression Has Gone Digital," *Brennan Center for Justice*, Nov. 20, 2018, <https://www.brennancenter.org/blog/voter-suppression-has-gone-digital>.

increasingly easy to disseminate false information to prevent citizens from voting, these targeted measures are needed both to stem these voter suppression tactics and to counter their negative effects. The Brennan Center urges Congress to enact them.

### *Voting Rights Restoration*

The Brennan Center also urges Congress to enact the Democracy Restoration Act of 2019 and restore the right to vote to millions of Americans who are excluded from our democratic process because of criminal disenfranchisement laws. Thirty-four states disenfranchise at least some citizens with past criminal convictions, who are living and working in our communities.<sup>15</sup> This policy of disenfranchisement is a brutal and discriminatory relic of the Jim Crow era and a sorry stain on the national conscience.<sup>16</sup> In addition to diminishing our democracy, these laws undermine public safety by making it harder to reintegrate citizens into the community.<sup>17</sup>

Increasingly, Americans across the political spectrum are recognizing the harm caused by these laws and are supporting reform. Over the past two decades, a dozen states have restored voting rights to people with past criminal convictions.<sup>18</sup> Perhaps most dramatically, this past November, Florida voters passed a ballot initiative restoring voting rights to 1.4 million of their fellow residents, with a massive groundswell of bipartisan support—about 65 percent of Florida voters cast a ballot in favor of the measure.<sup>19</sup>

The Democracy Restoration Act builds on this momentum, recognizing that those who have fully paid their debt to society have earned back their right to vote. The legislation adopts a simple and fair rule: if you are out of prison and living in the community, you get to vote. It also requires that states provide written notice to individuals with criminal convictions when their voting rights are restored. These measures offer a second chance at citizenship to Americans who are transitioning back into their communities. The legislation improves our democracy by expanding the franchise to adult citizens living in our communities, advances civil rights by dismantling a discriminatory disenfranchisement system, aids law enforcement by encouraging individuals to participate in civic and community life, and facilitates election administration by reducing the risk of erroneous voter purges.<sup>20</sup> The Brennan Center strongly supports this legislation.

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<sup>15</sup> “Criminal Disenfranchisement Laws Across the United States,” Brennan Center for Justice, last modified Dec. 7, 2018, <https://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>.

<sup>16</sup> See, e.g., Weiser and Bannon, *Democracy*, 10; Erika Wood, *Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice, 2016, at <https://www.brennancenter.org/publication/florida-outlier-denying-voting-rights>.

<sup>17</sup> See, e.g., “About the Law Enforcement & Criminal Justice Advisory Council,” *Brennan Center for Justice*, May 1, 2017, <https://www.brennancenter.org/analysis/about-law-enforcement-criminal-justice-advisory-council>; Carl Wicklund, “Felon voting rights make us all safer,” *Lexington Herald Leader*, Mar. 6, 2014, <https://www.kentucky.com/opinion/op-ed/article44475018.html>. A Florida government study, for example, found that people released from prison whose voting rights were restored were three times less likely to return to the criminal justice system. See Weiser and Bannon, *Democracy*, 10.

<sup>18</sup> Weiser and Bannon, *Democracy*, 10.

<sup>19</sup> Myrna Pérez, “What Victory in Florida Means to Me,” Brennan Center for Justice, Nov. 7, 2018, <https://www.brennancenter.org/blog/what-victory-florida-means-me>.

<sup>20</sup> See Erika Wood, *Restoring the Right to Vote*, Brennan Center for Justice, 2009, at <https://www.brennancenter.org/sites/default/files/legacy/Democracy/Restoring%20the%20Right%20to%20Vote.pdf>.

### *Redistricting Reform*

The Brennan Center also encourages Congress to enact the Redistricting Reform Act of 2019. The need for redistricting reform is urgent. While gerrymandering is not a new phenomenon, the Brennan Center's analyses of this decade's maps has shown that the gerrymanders of this decade are much more extreme and durable than those of the past, locking in outsized advantages for the party in charge that are so unbreakable that not even an unprecedented wave election like 2018 was enough to upend them.<sup>21</sup> In most of the country there has been no judicial or other mechanism to rein these gerrymanders in. Without reform, the problem will only get worse as more sophisticated data and technology come to be used in drawing maps. Furthermore, beyond record levels of extreme partisan bias, this decade's maps have also revealed the limitations of the existing protections of the VRA and the Supreme Court's racial gerrymandering doctrine to protect communities of color.<sup>22</sup>

This legislation effectively combines best redistricting practices to ensure fair, effective, and accountable representation. It would require every state with more than one congressional district to use an independent citizen commission to draw district boundaries. In crafting district maps, these commissions would be required to follow a clear and prioritized set of criteria that put community interests first. And the legislation's transparency and public accountability measures would open up a process that has too often been characterized by backroom deals.

### *Combatting Citizens United*

We also support the Act's findings with respect to *Citizens United*. In a narrow 5-4 vote, *Citizens United* upended a century of precedent to sweep away limits on corporate and union campaign spending.<sup>23</sup> As the Brennan Center has documented, the Court's jurisprudence in this area is at odds with the history and purpose of the First Amendment, and has too often been predicated on unsupported and erroneous factual assumptions.<sup>24</sup> The Court's faulty reasoning has been used to eliminate almost all limits for outside groups, ushering in the super PAC era in which elections are increasingly dominated by a tiny class of the very wealthiest donors.<sup>25</sup> In the 2018 election cycle alone, the 100 top donors to super PACs gave approximately \$1 billion.<sup>26</sup> This amplifies both the risk and appearance of corruption in government and the feeling among ordinary citizens that their voices do not matter.

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<sup>21</sup> See Laura Royden and Michael Li, *Extreme Maps*, Brennan Center for Justice, 2017, at <https://www.brennancenter.org/sites/default/files/publications/Extreme%20Maps%205.16.pdf>.

<sup>22</sup> See Guy-Uriel E. Charles and Luis E. Fuentes-Rohwer, "Race and Representation Revisited: The New Racial Gerrymandering Cases and Section 2 of the VRA," *William and Mary Law Review* 59 (2017): 1559.

<sup>23</sup> Daniel I. Weiner, *Citizens United Five Years Later*, Brennan Center for Justice, 2015, 3, at [https://www.brennancenter.org/sites/default/files/analysis/Citizens\\_United\\_%20Five\\_Years\\_Later.pdf](https://www.brennancenter.org/sites/default/files/analysis/Citizens_United_%20Five_Years_Later.pdf).

<sup>24</sup> See Daniel I. Weiner and Benjamin T. Brickner, "Electoral Integrity in Campaign Finance Law," *New York University Journal of Legislation and Public Policy* 20 (2017): 101; Lawrence Norden and Iris Zhang, "Fact Check: What the Supreme Court Got Wrong in its Money in Politics Decisions," *Brennan Center for Justice*, Jan. 30, 2017, <https://www.brennancenter.org/analysis/scotus-fact-check>.

<sup>25</sup> Weiner, *Citizens United*, 5-6.

<sup>26</sup> "Super PACs: How Many Donors Give," *OpenSecrets.org*, accessed Jan. 9, 2019, <https://www.opensecrets.org/outside-spending/donor-stats>.

While *Citizens United* has done considerable damage, it is important to remember that many viable campaign finance reforms remain on the table. Small donor matching and the Act's other critical campaign finance reforms will go a long way toward curbing the worst effects of the Court's misguided jurisprudence, and we applaud their inclusion in this historic package of reforms.

### *Strengthening Government Ethics*

Finally, we also support the ethics reforms in the Act, including those in Title VII. The values that undergird our system of representative government are being tested like never before. Ethical constraints on self-dealing at the highest levels of government are eroding.<sup>27</sup> To reverse this process, Congress must put forward bold reforms to help ensure that officials act for the public good rather than private gain. The reforms proposed in the Act are an important first step.<sup>28</sup>

Of particular note, we strongly support the Act's proposal to require the Judicial Conference of the United States to issue a code of conduct applicable to the justices of the Supreme Court. This is a long-overdue, common-sense change.

The Supreme Court is a vital and powerful institution in our democracy, often providing the final word on legal questions of great consequence and serving as a symbol of our democracy's adherence to the rule of law. Public trust in the Court's fairness and legitimacy is central to its authority, but that trust has declined steadily over the last two decades.<sup>29</sup> During this period, nearly every recent justice has received attention for alleged ethical missteps, including participation in partisan events, accepting gifts and travel, or refusing to step aside from cases in which they had significant financial interests.<sup>30</sup> Several of these incidents likely would have been prohibited by the Code of Conduct for United States Judges, which compels other federal judges to avoid conflicts of interest but does not apply to Supreme Court justices.

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<sup>27</sup> Preet Bharara, Christine Todd Whitman, et al., *Proposals for Reform*, National Task Force on Rule of Law and Democracy, 2018, 4-5, at

[https://www.brennancenter.org/sites/default/files/publications/TaskForceReport\\_2018\\_09.pdf](https://www.brennancenter.org/sites/default/files/publications/TaskForceReport_2018_09.pdf).

<sup>28</sup> We urge Congress to build on the reforms included in the Act by taking up other measures at the appropriate time, including stronger protections against presidential conflicts of interest, reforms to ethics transparency rules, codification of the safeguards in the Foreign and Domestic Emoluments clauses, and creation of a special process for uncovering potential conflicts of interest related to national security. See Bharara, Whitman, et al., *Proposals*, 2; Daniel I. Weiner, *Strengthening Presidential Ethics Law*, Brennan Center for Justice, 2017, 2, at

<https://www.brennancenter.org/sites/default/files/publications/Strengthening%20Presidential%20Ethics%20Law.%20Daniel%20Weiner.pdf>.

<sup>29</sup> Justin McCarthy, "Women's Approval of SCOTUS Matches 13-Year Low Point," *Gallup*, Sept. 28, 2018, <https://news.gallup.com/poll/243266/women-approval-scotus-matches-year-low-point.aspx>.

<sup>30</sup> See, e.g., "The Justice's Junkets," *Washington Post*, Feb 20, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/20/AR2011022002961.html>; Adam Liptak, "Justices Disclose Privately Paid Trips and Gifts," *New York Times*, Jun. 22, 2016, <https://www.nytimes.com/2016/06/23/us/politics/justices-disclose-privately-paid-trips-and-gifts.html>; Elizabeth Warren, "The Supreme Court Has An Ethics Problem," *Politico*, Nov. 1, 2017, <https://www.politico.com/magazine/story/2017/11/01/supreme-court-ethics-problem-elizabeth-warren-opinion-215772>.

Requiring the Judicial Conference to develop a code of conduct applicable to Supreme Court justices is a modest step that is consistent with past exercises of congressional power.<sup>31</sup> We also agree that deference to the Judicial Conference regarding the substance of new ethics rules and the mechanisms for enforcing them is appropriate.<sup>32</sup>

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Taken together, the measures the Committee is considering today, coupled with the other provisions of the Act, have the potential to transform American democracy. The Brennan Center strongly supports these reforms and encourages Congress to enact them as expeditiously as possible.

Respectfully submitted,

/s/ Wendy R. Weiser

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<sup>31</sup> Supreme Court justices are already subject to several statutory ethics rules, including requirements that they step aside from cases in which they may not appear impartial, and restrictions on outside employment, honoraria and gifts. See 28 U.S.C. § 455; 5 U.S.C. § 7353(a)(2). A justice's failure to file annual financial disclosures can result in civil or criminal penalties. See 5 U.S.C. app. 4 § 104.

<sup>32</sup> We emphasize that the judicial branch need not wait for congressional action to adopt ethics rules, nor is it limited to Section 7001's provision extending the code of conduct to Supreme Court justices. We hope the Judicial Conference and the Court will take this opportunity to not only extend the code of conduct but also take additional steps to preserve the public's confidence in the Supreme Court, including requiring independent consideration of motions for justices to recuse themselves from cases, and providing transparency as to the reasons for the denial of recusal motions. See Matthew Menendez and Dorothy Samuels, *Judicial Recusal Reform: Toward Independent Consideration of Disqualification*, Brennan Center for Justice, 2016, [https://www.brennancenter.org/sites/default/files/publications/Judicial\\_Recusal\\_Reform.pdf](https://www.brennancenter.org/sites/default/files/publications/Judicial_Recusal_Reform.pdf).