

# ADMINISTRATION OF UPCOMING ELECTIONS

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## HEARING

BEFORE THE

COMMITTEE ON RULES AND  
ADMINISTRATION

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

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TUESDAY, MARCH 12, 2024

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SECOND SESSION

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## ADMINISTRATION OF UPCOMING ELECTIONS

TUESDAY, MARCH 12, 2024

UNITED STATES SENATE  
COMMITTEE ON RULES AND ADMINISTRATION  
*Washington, DC.*

The Committee met, pursuant to notice, at 3:05 p.m., in Room 301, Russell Senate Office Building, Hon. Amy Klobuchar, Chairwoman of the Committee, presiding.

**Present:** Senators Klobuchar, Fischer, Warner, Merkley, Padilla, Ossoff, Bennet, Butler, Hagerty, and Britt.

### OPENING STATEMENT OF HONORABLE AMY KLOBUCHAR, CHAIRWOMAN, A UNITED STATES SENATOR FROM THE STATE OF MINNESOTA

Chairwoman KLOBUCHAR. Senator Fischer and I are dealing with votes going on, so there will be a little back and forth. But I call the hearing to order, and good afternoon. I would like to thank Ranking Member Fischer and our colleagues for joining us.

Our witnesses, who I will introduce shortly, are Michigan Secretary of State, Jocelyn Benson; Isaac Cramer, Executive Director of Charleston County, South Carolina's Board of Voter Registrations and Elections; and Janai Nelson, President and Director-Counsel of the NAACP Legal Defense Fund.

We are also going to hear from our other witnesses. I left them last not for any omission but because Senator Fischer will be introducing them. That includes Alabama Secretary of State Wes Allen and Brian Kruse, Election Commissioner for the Douglas County, Nebraska Election Commission.

More Americans than ever have cast a ballot in recent elections, and it is in large part because of the work of state and local officials. These elections have run smoothly. Top security officials in both Republican and Democratic Administrations alike have confirmed the security of recent elections, including last week's primary elections.

Eighteen states have already held primaries this year. In fact, three of our witnesses, Secretary Benson, Secretary Allen, and Mr. Cramer have overseen primary elections this year already, and there are many more to go before the general election in November, including three states, Georgia, Mississippi, and Washington, in which voters are casting ballots today.

With voting already underway, we are here to discuss the key issues facing the state and local election officials on the frontlines of our democracy. One area of particular urgency is artificial intelligence. We have already seen how AI can be used to spread

disinformation about elections, like the fake robocalls using the President's voice telling people not to vote in New Hampshire, which is now under investigation by the state's Republican Attorney General. We must work across the aisle to protect our elections from these threats.

All of the witnesses at our hearing last fall agreed, we need to put guardrails in place when it comes to AI. That is why I am leading a bipartisan bill with Senators Hawley, Coons, and Collins. We have been joined by Senator Bennet and Ricketts and have broad support on both sides of the aisle to prohibit fraudulent AI-generated deepfakes in our elections.

We do this within the framework of the Constitution, which of course, allows satire and the like, but we are very concerned about what we have seen in just snippets of ads and videos that have gone out, that attack candidates actually on both sides of the aisle, but they are complete deepfakes and not the actual candidate and you cannot even tell it is not the candidate.

We also need to—in addition to banning deceptive deepfakes, we also need disclaimers when AI is used in other ways. Last week, I introduced a bipartisan bill with Senator Lisa Murkowski to require transparency in ads substantially generated by AI so that whether you are a Republican or a Democrat, voters will know if the ads they see are making use of this technology.

We got some guidance from the hearing we had earlier last year in that we do not want those labels to apply to every single thing when AI is used. We have defined that in a way that I think will pass muster and make it easier to pass that bill, but I cannot emphasize how important I believe it is to also pass the deepfake bill.

Finally, since AI can make it so much easier to spread disinformation about things like voter registration deadlines or polling locations, I myself called ChatGPT or wrote in a question I should say, and asked, well, what about this polling place in Bloomington, Minnesota? They often have lines. Where should they vote? It answered, I am making up the numbers now, but like 123 Elm Street. It did not even exist. Clearly they have work to do. We have concerns about that as well. We must tackle these issues head on. One way is the work Senator Collins and I are doing to require the Election Assistance Commission to issue guidelines, so election officials are prepared to meet these challenges.

Six states, including my State of Minnesota and Secretary Benson's State of Michigan, have passed new laws to address AI in elections, and more than three dozen states have bills pending, both red and blue states, but we cannot rely on a patchwork of state laws and Congress must act.

Election workers, including volunteers, also continue to face a barrage of threats and intimidation. We have heard testimony in this Committee from officials from both parties about threats targeting them and their families. It is no surprise that a survey last year found that nearly one in three election officials said that they have been abused, harassed, or threatened, and one in five said that they know someone who left their job due to safety concerns.

This has a real impact on how elections are run, including efforts to recruit poll workers and volunteers. Last November, more than a dozen anonymous letters, some containing fentanyl, were sent to

election offices in at least six states, leading to evacuations and delays in ballot counting. That is why Senator Fischer and I called on the Justice Department to prioritize investigating these incidents, and why I lead a bill with Senator Durbin and 26 co-sponsors to protect election workers from intimidation and threats.

In addition, it is critical as ever that state and local governments have reliable federal funding to maintain election infrastructure, keep pace with new technology, and combat cybersecurity threats. Election security is truly national security, and these investments must be prioritized as our intel agencies continue to warn about foreign adversaries trying to influence our elections. I have heard from officials in red, blue, and purple states about the need to get steady funding when it comes to elections.

Finally, I will note that in many states, voters continue to face new laws that will make it harder to vote. We had a major hearing on that this morning in the Judiciary Committee, with Senator Warnock launching off the hearing to talk about the John Lewis voting rights bill.

We also need basic federal standards like those contained in the Freedom to Vote Act that I lead along with many of my colleagues, including the Democrats on this Committee. I will not give up until these bills become the law of the land because I believe we truly need to have federal voting rights protections for the citizens of this country.

I want to thank our witnesses for being here and I look forward to hearing your testimony about your work year-round to prepare for our elections. I will now turn it over to Ranking Member Fischer.

**OPENING STATEMENT OF HONORABLE DEB FISCHER, A  
UNITED STATES SENATOR FROM THE STATE OF NEBRASKA**

Senator FISCHER. Good afternoon, and thank you, Chairwoman Klobuchar, for holding this hearing. Thank you to all of our witnesses for being here today. Today, while three states conduct elections and one week after Super Tuesday, we will hear from state and local election officials from across the country about one of the most fundamental aspects of our democracy, the administration of free and fair elections.

We look forward to learning about how jurisdictions across the country are preparing for the upcoming elections. Election Day is not just the date when voters cast ballots. It is also the culmination of months of preparation by state and local election officials to ensure that every eligible voter can fulfill their civic duty and participate in the democratic process.

Election officials maintain voter rolls, identify polling locations, train poll workers and volunteers, procure and test voting equipment, prepare ballots, and educate the public about the upcoming elections.

While every four years they step into a brighter spotlight, these hardworking and dedicated individuals address election administration challenges for every election, regardless of what offices are on the ballot.

On top of defending the cybersecurity and physical security of election infrastructure, election officials must recruit and train the

next generation of poll workers, while also retaining experienced poll workers. They also work hard to ensure voter confidence in the electoral process and the ultimate outcome of the elections.

I am interested in hearing from our witnesses how they adapt to the changing landscape to ensure election integrity. I also want to understand not only the challenges election officials face, but whether the existing federal resources are working as intended to ease those challenges.

Our founding fathers provided states the primary responsibility of administering elections under our Constitution. The resulting diversity of election systems is a strength of our democracy.

I look forward to a productive discussion and extend my sincere appreciation to our witnesses for being here today, as they are in the midst of preparations for the 2024 elections. Thank you all.

Chairwoman KLOBUCHAR. Thank you very much, Senator Fischer. I will introduce three of the witnesses and then Senators Fischer and Britt will introduce the remaining two.

Our first witness is Michigan Secretary of State Jocelyn Benson, a role she has held since her election in 2018. Previously, she served as Dean of Wayne State Law School, and she received her bachelor's degree from Wellesley, her master's from Oxford, and her law degree from Harvard.

Our next witness is Isaac Cramer of the Board of Voter Registration and Elections for Charleston County, South Carolina, where he has served for a decade and was appointed Executive Director in 2021. He is a graduate of Wheaton College.

Then we have Janai Nelson, welcome again, President and Director-Counsel of the NAACP Legal Defense Fund. She began her career at LDF as an extern before she was a Fulbright Scholar in Ghana. She returned to LDF as Associate Director Counsel and assumed the role of President in March 2022. She received her bachelor's degree from NYU and her law degree from the University of California, Los Angeles. Senator Fischer.

Senator FISCHER. Thank you, Madam Chair. Again, I thank all of our witnesses for being here today. We have with us Mr. Brian Kruse from the great State of Nebraska, who serves as the election commissioner for Douglas County.

Mr. Kruse has served as Douglas County's Election Commissioner since 2016 and was recently reappointed for a third term. I have had the privilege of working with him to serve Nebraskans for many years, and I am pleased that he has come all the way from Omaha, Nebraska to be with us here today, but we have direct flights. Thank you.

Senator BRITT. Thank you, Madam Chairwoman, Ranking Member Fischer, for your continued leadership on this Committee. It is a pleasure to introduce Secretary Allen today at this hearing.

Wes Allen serves as Alabama's 54th Secretary of State, where he is our state's chief election official. Prior to his election to his current office, Secretary Allen spent nearly a decade as Pike County, Alabama's Probate Judge, which is the county's senior election official.

He was then elected to the Alabama House of Representatives, where he served as the Vice Chair of the Legislature's Constitution, Campaigns, and Elections committees.

I know that Secretary Allen is honored to appear before this Committee and offer his knowledge on matters as he has made it his mission to make it easy to vote in safe and secure elections. Thank you for being here.

Chairwoman KLOBUCHAR. Thank you very much. If the witnesses would now please stand and raise their right hand. Do you swear that the testimony—give you a second. Do you swear that the testimony you will give before the Committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. BENSON. I do.

Mr. ALLEN. I do.

Mr. CRAMER. I do.

Mr. KRUSE. I do.

Ms. NELSON. I do.

Chairwoman KLOBUCHAR. Thank you. You may be seated. You will now proceed, and we will recognize you each for a five minute statement, starting with Secretary Benson. Senator, I will leave to vote for a little bit at some point, so thanks. Secretary Benson.

**OPENING STATEMENT OF HONORABLE JOCELYN BENSON,  
SECRETARY OF STATE, STATE OF MICHIGAN, LANSING,  
MICHIGAN**

Ms. BENSON. Thank you. Chair Klobuchar, Ranking Member Fischer, and Members of the Committee, it is an honor to be joining you here today for this important hearing. These next eight months will define the future of our country and our democracy.

As Michigan's Chief Election Officer, that reality is clear to me every day, both as we work to ensure our elections are safe and secure and in our efforts to protect every voter and every election official from the lies, threats, and deceptive tactics that continue to plague our democracy. It has been a challenging few years for us, but our democracy is getting stronger.

First, voter turnout is on the rise from 2020, when we saw more citizens vote than ever before, to 2022, when Michigan led the Nation in youth voter turnout. Citizens are engaged and they are voting.

Second, the number of ways voters can participate in our elections continue to expand, from the right to vote from home to early voting, to traditional Election Day voting places. Michigan's experience underscores that the expansion of options to vote directly leads to higher voter participation across the political spectrum in every election.

But as the Chief Elections Officer of a battleground state, I know these successes do not tell the whole story. We go into this election cycle expecting bad actors to use misinformation, turbocharged through AI, to divide, deceive, and deter voter participation throughout our country. I am not just talking about deepfakes.

AI will also make it easier to mislead voters about the voting process, or even conditions at a polling place. Imagine a voter receiving a text warning saying there is long lines at a precinct or not to go, or another seeing a social media post showing a polling location changing because of flooding.

All of these could be false, and all of these could deter participation. The realities of AI underscore the need for federal investment

in our elections. AI introduces a level of speed, scale, and sophistication that is difficult for under-resourced state agencies to handle on our own.

Federal funds help us to support and bolster our state cybersecurity infrastructure and do more voter education to address this evolving threat. We also need the Department of Homeland Security and CISA to be more aggressive in identifying and combating threats, and in notifying local officials and states with critical security information, helping us ensure voters know what to do when they encounter deceptive election practices.

At the state level in Michigan, we are doing our part. We have enacted laws to require disclaimers and disclosure of political advertisements generated with AI, and we have made it a crime for anyone to knowingly and deceptively distribute AI-generated deepfakes. But now we need you to do your part.

As United States Senators, you can protect every voter in this country from the harmful effects of deceptive AI-generated content by passing the Protect Elections from Deceptive AI Act. Finally, we cannot have a secure democracy if we do not protect the security of the people who protect our democracy.

Our job as election administrators increasingly forces us to endure harassment, false and malicious attacks on our character, and threats of violence all because of lies about our work and our integrity.

On a morning walk throughout her neighborhood, Detroit City Clerk Janice Winfrey was approached by a man who told her, “you are going to pay dearly for your actions in this election”. Oakland County Elections Director Joe Rozell was recently threatened that he would be hanged for treason.

Former Rochester Hills Clerk Tina Barton received a voicemail saying, “10 million patriots will surround you when you least expect it,” and that she deserved a knife to the throat. These are just a few examples of what our election administrators endure, and as misinformation increases, so do the threats.

We all have a duty to protect the people who protect democracy. In Michigan, we have made it a state crime to threaten or intimidate an election official with a specific intent of interfering with the officials’ duties. This should be a federal crime. Election officials are professionals. We are nonpartisan. We put voters first, and we are firmly committed to ensuring every citizen can have rightly placed faith in their vote and in our elections.

It should be your highest priority to ensure we have the funding, the resources, and the legal protections to make democracy work for everyone, because ensuring our security is critical to ensuring election security.

I have spent my year defending—I have spent my career defending—the right to vote of every eligible citizen. That commitment has never wavered, and it will not waver now. I am here today to ask you all to share that commitment and help us ensure we are protected so that our democracy continues to thrive this year and every year. Thank you.

[The prepared statement of Ms. Benson was submitted for the record.]



Chairwoman KLOBUCHAR. Thank you so much, Secretary. Secretary Allen.

**OPENING STATEMENT OF HONORABLE WES ALLEN,  
SECRETARY OF STATE, STATE OF ALABAMA, MONTGOMERY,  
ALABAMA**

Mr. ALLEN. Yes, ma'am, thank you. Good afternoon, ladies and gentlemen. I appreciate the opportunity to speak to you today about election security.

As Alabama's Secretary of State, I serve as the State's Chief Elections Official and work closely with the probate judges, circuit clerks, sheriffs, absentee election managers, poll workers, boards of registrars who are all an integral part of our elections process at the local level in each of our 67 counties.

When I took the oath of office 14 months ago, I made it a top priority to ensure that our elections are fair and secure, so that every eligible voter who wishes to cast a vote in any election in our state could do so with confidence, knowing that their vote would be properly counted.

Elections are the bedrock of our Constitutional Republic, and it is my Constitutional duty to ensure our elections are conducted with integrity, honesty, and accuracy. Voter registration and voter file maintenance are the foundation of election integrity.

Registered voters can choose to participate in elections in Alabama with the confidence that our elections process is fair and secure because Alabama has taken steps, solid steps in our state, to ensure election integrity.

We have enacted legislation in Alabama that makes it illegal for any voting tabulator to be connected to the internet. Alabama state law requires the use of paper ballots in all elections. Each of our voters must verify their identity with photo identification at his or her polling place. If a voter does not have a valid photo ID for voting purposes, my office will send someone to the location of their choice, even their home, to issue them a voter ID upon request.

Proper voter file maintenance is essential to instilling and preserving confidence in elections. Just this year, I, with the help of the dedicated team of the Office of Secretary of State, established the Alabama Voter Integrity Database, AVID.

For the first time in our state's history, we have been approved to directly cross-check our voter file with the National Death Master Index maintained by the Social Security Administration, so that when an Alabama voter dies in another state, we are able to identify and remove that individual from our voter file.

Quickly removing a deceased Alabamian from our voter file not only instills confidence, but also allows us to maintain a more accurate voter file. Every state should be able to do this, but excessive federal regulations make it more difficult than it should be for states to access this important information.

You, as Members of the United States Senate, can remove these obstacles and make this information immediately available to every Secretary of State in the country. AVID also enables us to work with the Alabama Law Enforcement Agency to receive notifications of Alabama licensed drivers over the age of 18 who have received a driver's license in another state.

Additionally, by comparing the National Change of Address Database maintained by the United States Postal Service to our voter file, we identified registered Alabama voters who have requested to have their mail forwarded due to moving to a location outside of the state.

For the first time in our state's history, we have entered into agreements with each of our border states, allowing us to identify people who are registered to vote in Alabama and in a border state.

Voters who are identified as possibly relocating through any of these methods receive a mailer from their county boards of registrars asking them to confirm their relocation or update their Alabama voter registration information. To date, we have, through AVID, identified 109,709 Alabama voters who have likely relocated outside of the state.

But unlike deceased voters, we cannot quickly remove them from the Alabama voter file. The National Voter Registration Act of 1993, also known as the NVRA, mandates that we wait four years to make such removal.

If I can make a recommendation to this body to increase confidence in our elections, it would be to shorten the four year waiting period mandated by the NVRA, especially considering the fact that state-to-state movers account for 19.9 percent of all relocations, according to the United States Census Bureau.

The four year waiting period allows an individual to remain in a voter file in a state in which they no longer live for several elections, including a Presidential election, a United States Senate election, a gubernatorial election, two congressional elections, and numerous local elections. Four years, quite frankly, is too long.

This federal law requires Secretaries of State to knowingly maintain bloated, inaccurate voter lists. Amending the NVRA to shorten the four year waiting period would certainly increase voter confidence, decrease bloated voter files, and result in more accurate voter files across the country.

Again, thank you for your time. It has been an honor and a privilege to appear before you today. Thank you.

[The prepared statement of Mr. Allen was submitted for the record.]

Chairwoman KLOBUCHAR. Thank you very much. Mr. Cramer.

**OPENING STATEMENT OF ISAAC CRAMER, EXECUTIVE  
DIRECTOR, CHARLESTON COUNTY BOARD OF VOTER  
REGISTRATION AND ELECTIONS NORTH CHARLESTON, SOUTH  
CAROLINA**

Mr. CRAMER. Chairwoman Klobuchar, Ranking Member Fischer, and Members of the Committee, I want to thank you for having me here today.

As was mentioned, I am the Executive Director of the Charleston County Board of Elections. But also, I have the privilege of serving as a Vice Chair of the Elections Subcommittee for the National Association of Counties and as a member of the United States Election Assistance Commission Board of Advisors.

I cannot overstate the significance of the county perspective in any topic involving election administration. We are the frontline workers responsible for ensuring smooth elections nationwide. Ad-

ministering elections in Charleston County is a responsibility I hold with the utmost seriousness.

But my journey is also very personal to me. It is rooted in my mother's dream of becoming a United States citizen. When I was a child, witnessing her exercise her right to vote left a permanent mark on my life, igniting in me a passion for politics and then election administration. I am here testifying before you because of her hard work and determination.

As we stand on the threshold of another crucial election cycle, it is important for us as election administrators to draw from the lessons of the past to strengthen the foundation of our democracy for the future.

When we reflect on the preparations for this upcoming year, in Charleston County, our main concerns revolve around three pivotal needs and these are crucial: the protection of election officials, the security of our polling places, and the assurance of adequate federal funding.

The safety and well-being of our election personnel is at the heart of our operational concerns. During the June 2022 primaries, our polling places became battlegrounds for these disruptive elements to the democratic process. A local group traveled to each polling place on Election Day. They harassed our poll workers. They claimed they were breaking the law and at several locations they actually called law enforcement to arrest our poll workers. Just to be clear, South Carolina law does not allow us to have law enforcement enter a polling place unless they have been summoned by the majority of poll workers.

Then one of the leaders on social media posted this, "for all of you on the team tomorrow observing the polls, good hunting. You know what you are looking for. We have the enemy on their back foot, press the attack forward." The enemies he is referring to were his neighbors, good people who are just trying to carry out the duty, their civic duty of the democratic process. As our lead poll manager to return on that night, many of them expressed to me personally they felt unsafe.

I believe Charleston County can be a model though for other election officials across the country trying to see how they can make their polling places safe and their voters safe. Our office meets monthly with our counter threat manager, our local law enforcement, emergency management, and public safety.

Together, we are enhancing our training for active shooters and also how to mitigate any disturbance at the polls and how to communicate in highly stressful situations. We hosted our first ever election security workshop last year, and we created a law enforcement guide that we give to all our law enforcement partners so they know what they do if they get a call on Election Day.

Charleston County has made substantial investments to the election process through building upgrades, surveillance systems, and also giving us access control mechanisms that are imperative to mitigate any potential threats in our election operations.

However, I want to say this clear, not every county can make similar investments. Numerous counties in South Carolina, rural and urban, need an infusion of federal funds to improve the security of their election infrastructure, and that is very vital to the se-

curity of our elections. South Carolina is one of several states that does not pass HAVA grant money to the county level. This needs to change.

Congress needs to give us the ability, the counties, those funds so we can have a direct access, because we are the ones who run elections day to day. This year, we have a huge effort to recruit the next generation of poll workers, as many of them have left due to threats and harassment.

To demonstrate that it is possible that counties can apply directly for funding, the EAC awarded \$1 million to support the Help America Vote College Program. Charleston County applied and received \$76,000 for an innovative program aimed at recruiting college students to serve as poll workers.

In addition, we have created the Day for Democracy Program, which allows county employees to serve on Election Day. County employees who participate, they also get poll worker pay on top of administrative leave with pay.

Over 15 percent of our poll workers in 2023 were county employees. Having trusted public officials serving as poll workers greatly boosts public trust in the election process. Many of our poll workers remember a day when elections were simple. They have now become more complex.

The stakes have never been higher, and we need Congress's help. You can pass Senator Klobuchar's Election Protection—Election Worker Protection Act or other proposals that will strengthen election worker safety. Also, we must impose penalties on anyone who would threaten, pressure, or dox election officials.

Without increased funding and action to protect election workers, counties will continue to see increased resignations of career election officials and struggle to recruit and retain seasonal poll workers.

In South Carolina, over 70 percent of election directors have left their posts since 2020, and I am often asked, why am I still in this profession? It is a really a simple answer for me. I believe in the United States of America and the freedoms we enjoy. I am able to serve this great country by providing the mechanism by which our country was founded, the ability to give everyone a voice in shaping the future and direction of our country through voting.

Election administrators need the support of Congress now more than ever to protect and fund our elections.

[The prepared statement of Mr. Cramer was submitted for the record.]

Chairwoman KLOBUCHAR. Very good. Thank you, Mr. Cramer. Mr. Kruse

**OPENING STATEMENT OF BRIAN KRUSE, ELECTION  
COMMISSIONER, DOUGLAS COUNTY ELECTION COMMISSION,  
OMAHA, NEBRASKA**

Mr. KRUSE. Chairwoman Klobuchar and Ranking Member Fischer, I appreciate the invitation before the Committee this afternoon. My name is Brian Kruse. I am the Douglas County Election Commissioner.

One of the most important aspects of election administration is trust and fairness in conducting and managing elections. In Nebraska, we have the gold standard for election administration.

First and foremost, we use paper ballots. Voters receive a paper ballot, whether it be for early voting or Election Day voting. The tabulating machines that count ballots are never connected to the internet or to each other, and these machines are used only after numerous pre-election tests.

Following the election and before results are official, a thorough canvass or audit process is conducted, as well as a manual audit directed by the Nebraska Secretary of State's Office. There is a paper trail.

Our office prepares for every election cycle by reviewing and updating procedures for each department to ensure that each voter registration, candidate filing, early voting request ballot, or petition signature is processed according to the statutes and using consistent rules and guidelines.

When processing thousands of records and training seasonal staff, it is important to ensure that correct procedures are being followed. Early voting by mail can be a secure and accurate method of voting if administered properly.

For polling place elections, Nebraska law requires voters in the majority of counties who choose to vote by mail to request an early voting or absentee ballot prior to each election, as ballots cannot automatically be sent.

Signatures, and now voter ID requirements, are checked at the time each request is processed. If these requirements are not met, a ballot will not be sent. Upon ballots being returned, signatures are checked again. Drop boxes in Douglas County are secured under 24/7 surveillance cameras and emptied each weekday by two individuals of differing parties.

I encourage voters to use one of our drop boxes, as they are the most direct way to return election mail. The voter places the item in the box and election workers pick them up. There are no third parties involved.

Voters in Douglas County, across all political spectrums, have embraced the drop boxes. On average, 77 percent of all vote by mail ballots are returned via one of our drop boxes. Bolstering public confidence in our elections is vital to successful elections. Local election officials are the trusted source for getting the message out about elections.

I am fortunate and grateful that I have a good relationship with the local media, TV, radio, and print as they assist my office in disseminating accurate and timely information. The big task this election cycle for Nebraska is the implementation of voter ID and making sure voters know what is needed both for by mail, early voting, and Election Day voting in order for their ballot to be accepted and their voices to be heard.

The media is also a vital partner in reminding voters of deadlines and other helpful guides to make the process successful. For instance, working with their office to create an infographic or flow-chart of the voter ID options.

My Chief Deputy Election Commissioner and myself attend as many community events as possible to provide election education,

answer questions, and build relationships. These relationships have forged trust and have been instrumental for my office in correctly informing voters of changes related to elections.

In Nebraska, we are also unique in the fact that we have a state law, the only state which allows for poll workers to be drafted, similar to jury duty. Douglas County was the only county in Nebraska that conducted a draft for many years.

Some advantages to drafting poll workers are increased community awareness of the election process, less difficulty in securing election workers, and a younger work force with an average age in the mid 50's, while the majority of poll workers nationwide are over 60.

In conclusion, it is my privilege to serve the voters of Douglas County and an honor to be here representing the 93 county election officials in Nebraska who work diligently to conduct accurate elections.

I encourage all citizens from coast to coast to go and have your voices heard on Election Day. Thank you for inviting me today, Senator Fischer, and thank you to the Committee for your time.

[The prepared statement of Mr. Kruse was submitted for the record.]

Chairwoman KLOBUCHAR. Thank you very much, Mr. Kruse. Ms. Nelson.

**OPENING STATEMENT OF JANAI NELSON, PRESIDENT AND  
DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND  
EDUCATIONAL FUND, INC., NEW YORK, NEW YORK**

Ms. NELSON. Chair Klobuchar, Ranking Member Fischer, and Committee Members.

My name is Janai Nelson, I am the President and Director-Counsel of LDF, formally the NAACP Legal Defense and Educational Fund. Thank you for the opportunity to testify about the state of voting rights for Black Americans, both on the ground and in the courts, and about the urgent need for congressional action to protect and secure the fundamental freedom to vote.

My testimony is informed by LDF's extensive experience over 80 years protecting and advancing voting rights for Black Americans since our founding by Thurgood Marshall in 1940. My testimony is also informed by the on the ground election protection work we must do every election cycle in order to ensure that Black voters can cast a ballot and have it counted.

Last week was the 59th anniversary of Bloody Sunday, when patriots like John Lewis were brutally beaten in Selma, Alabama for simply demanding the right to vote. Their courage and action led to the passage of the Voting Rights Act of 1965, and the true start of our multiracial democracy.

We need Congress to follow in the steps of those foot soldiers with courage and action today. It has been more than a decade since the *Shelby County* decision, where the Supreme Court gutted the heart of the Voting Rights Act, and Congress still has yet to act. But in that decade of congressional inaction, states that were previously subject to preclearance have aggressively and systematically trampled on voting rights, especially those of Black citizens.

Alabama, North Carolina, Texas, and other states with histories of discrimination advanced harsh voting restrictions within days, even hours of the *Shelby* decision, and a wave of voter suppression laws followed across the country.

More recently, the Big Lie and other myths to undermine faith in our elections have stoked a backlash against voters of color. Some states have targeted the precise pathways to the polls that Black voters have used in recent years, whether it is eliminating or limiting drop boxes in Florida, early voting in Georgia, or vote by mail in Texas.

Artificial intelligence is being weaponized to advance frivolous mass challenges to registered voters in Georgia, and this is gaining traction through programs like Eagle AI as a nationwide strategy to distort the electorate.

The increased use of AI also threatens to turbocharge disinformation campaigns historically targeted at Black voters.

Despite decades of progress toward becoming a more inclusive, just, and equal democracy, we are swiftly moving in the opposite direction. In Alabama Black and white voter turnout was nearly equal in 2012, but a decade after *Shelby*, Black voter turnout now lags nearly eight percentage points behind white voter turnout. Georgia had the largest racial disparity in turnout in 2022 at any point in the last decade.

The 2020 redistricting cycle was rife with discrimination. Of the nine states previously subject to preclearance, six, two-thirds, have faced lawsuits challenging their maps for racial discrimination.

Federal courts have already found in three of our recent cases, Alabama, South Carolina, and Louisiana, that the states created racially discriminatory congressional maps.

Let us be clear, while LDF is fighting in the courts, along with our other civil rights sisters and brothers, we cannot litigate our way out of this problem. But Congress can legislate.

Black Americans are headed into November with a shredded shield as a result of the *Shelby County and Brnovich v. DNC* decisions. The Voting Rights Act is a shadow of its former self. Precisely when we need strong voting rights protections in the face of rising authoritarianism, destructive court decisions, combined with inaction by Congress have stripped them away.

The state of voting rights for Black Americans is tenuous, and that is an urgent crisis for our democracy and for this Congress. The President issued a powerful call to action in last week's State of the Union address, and he named the specific solutions that were recently reintroduced in both chambers, the John R. Lewis Voting Rights Advancement Act and the Freedom to Vote Act, both of which we call on Congress to pass.

The right to vote preserves every right that we hold dear. It is an effective nonviolent means of expressing our will. Protecting the right to vote should not be a matter of partisan politics. It is the duty of all elected officials to honor and protect the sacred act that has enabled them to serve. Thank you, and I look forward to your questions.

[The prepared statement of Ms. Nelson was submitted for the record.]

Chairwoman KLOBUCHAR. Thank you very much, Ms. Nelson. Senator Warner is going to take my spot because he has to leave and is chair of the Intel Committee, so he has some interest in protecting our elections. Then we will turn it over to Senator Fischer, and then we will go from there. Thank you.

Senator WARNER. Well, thank you, Madam Chairwoman. Thank you, for holding this critically important hearing. I appreciate our panel here. Senator Klobuchar is right, I am Chairman of the Intelligence Committee.

Yesterday, we had the worldwide threats briefing from FBI, CIA, ODNI, NSA, all of our intelligence community across the board in law enforcement. They indicate—and I believe that we need more hearings like this, and I appreciate Senator Fischer is involved in this as well—that in many ways we are potentially less protected as we go into 2024, in terms of the security of our elections, than we were during 2020.

That is a pretty stunning fact. There are four reasons why this is the case. I am talking about now interference from foreign malign influence. Number one, a number of our adversaries have seen how cheap and effective it is to interfere in our elections. The template that was laid out by Russia in 2016 was literally pennies on the dollar.

If you are thinking about trying to disrupt, it is a heck of a lot cheaper to use technology to disrupt and undermine another nation states elections than it is to buy airplanes, submarines, and tanks.

Russia continues, and not just in our elections but elections around Europe, around the world, intervening. China has picked up some of these techniques as well. Iran, other nation states as well. We have a series of nations, and in particular led by Russia, who realize that interfering in our elections can—could have dramatic effects on America's position in terms of support of Ukraine.

Their interest level is higher, number one. Number two, and this is just the nature of our politics today, Americans on either end of the political agenda have much less faith in many of our institutions, and unfortunately, much less faith in particular in the integrity of our electoral—of our election system.

Number three, there was a case, *Murthy vs. Missouri*, that the Fifth Circuit put out a ruling in last July I think ill-suited, and the Supreme Court is reviewing it now. While they have put a stay on this, that literally prevents voluntary communication between our Government and social media companies.

I remember in the aftermath of the 2016 incursion, the CEO of Facebook, Mark Zuckerberg, said repeatedly in public, you know, if the Federal Government has got evidence of Russians or other entities being on Facebook, please share that with us.

Well, in a bipartisan fashion led by then Chairman Richard Burr of the Intelligence Committee shared that information. I have to say, all throughout actually the Trump Administration, and in this case the Trump Administration did right, there was voluntary sharing that went back and forth on a regular basis.

If NSA or CISA found evidence of foreign malign influence, that could be shared on a voluntary basis with the other companies and vice versa. As of last July, and literally until about two weeks ago, there had been no communication between those social media



platforms where a lot of this foreign misinformation, disinformation, takes place, and the Government.

Then finally, and I know the panel has talked about this a bit already, we have the whole new advent of artificial intelligence. AI brings at a scale and speed tools to interfere, misinform, and disinform.

We all know about deepfakes in terms of our images and our voices. It can happen at a scale and speed in which—and I have an appreciation for all of the Secretaries of States here. But you guys, there is no way you can keep up with. I feel it is critically important that we do a better job in a bipartisan fashion of educating the American public that this problem has not gone away. That our adversaries wish us ill.

Lord knows we have enough divisions between Americans in terms of our political views, that we ought to argue amongst ourselves. That is appropriate. But to somehow have this overly influenced, amplified, misinformed, disinformed by foreign maligned influence is incredibly problematic.

I know my clock is about out, but Secretary Benson, if you could just briefly, ERIC was a system that was voluntarily set up, again, by folks from the Trump Administration that, unfortunately, states have exited. You decided in Michigan to come into that system. Could you briefly address—and I thank the Ranking Member for allowing to put my question in.

Ms. BENSON. Yes. I want to also address what you were talking about with the threats of misinformation.

But yes, Michigan has been a member of ERIC since 2019, and we found it to be a really effective method to collaborate with 24—the current membership is 24 other states as well as Washington, DC, to ensure, you know, a lot of what my colleague from Alabama was talking about with his state system, that we are actually able to do collaboratively with states around the country, quite effectively, increasing the accuracy of our voter rolls, through what heretofore has been the most secure and effective bipartisan collaboration of states to protect the integrity of our elections and our election administration system has ever seen.

It has been victimized by a lot of misinformation. I actually want to—which really underscores how lies around our democracy harms the security of our democracy. As you just said, very clearly, and one thing we are not talking enough about is that our foreign adversaries, foreign adversaries to this country, have a greater incentive than ever before in this election cycle to interfere with our elections processes.

The way they will interfere with our processes is not through trying to harm our infrastructure. Our elections are secure. We all use paper ballots. We all have audits. We all have several layers of security in place to protect every voice and every vote, and ensure every eligible vote, and only eligible votes, are counted.

Where misinformation and where foreign threats will affect our elections are not just through AI but are in multiple multiscale attempts to fool voters about their rights in an effort to cause confusion and chaos and instill fear, in an effort to deceive voters, to divide us as Americans, and to deter us from believing in our voice and in our votes.

In that effort, to combat that effort, we must invest in efforts to educate our citizens, boost trusted messengers from all sectors and all parties, and collaborate more than we ever have before to ensure we are marching forward, arms locked, to protect every citizens' voice in this election from efforts to fool them about their voice and about their votes.

The Federal Government must be a partner in that effort. CISA must be a collaborative partner in that effort, working with all of us to ensure that we are recognizing what maligns our election system is not really left or right.

It is this foreign interference that could cause every citizen in this country to stop believing, not just in their institutions of government, but in their own voice. Against that, we can all fight proudly, I believe, and we can be successful if we do it together.

Senator FISCHER. Thank you, Senator Warner. As a Member of the Armed Services Committee, I am well aware of the maligned activities that we see from our foreign adversaries. But I know that election officials also still worry about infrastructure and still worry about the increase that we see from cybersecurity threats.

Whether it is threats to the infrastructure itself or government websites or voter registration databases, the poll books. Secretary Allen, could you tell us about how Alabama has worked to mitigate potential cybersecurity threats and whether you have encountered any unique challenges in this process, and whether you see some of those threats changing over time as well.

Mr. ALLEN. Yes, ma'am. Thank you. We work very closely with our Office of Information and Technology that oversees our statewide agencies and the backbone of our IT department.

We have an in-house IT department as well, but we collaborate with these agencies, with the FBI, with the DHS, quite frequently, especially over the last several months, getting prepared for the primary that we had last week and obviously getting prepared for the runoff coming up in certain parts of Alabama in April, and then to the general election in November.

We have many conversations on cyber. That is one thing we take very seriously. As a matter of fact, on election night, we have someone there from our Office of Information Technology, the statewide office.

We have someone from our own IT department in our office as returns, unofficial returns come in the evening. To make sure if there is ever anything that pops up on our radar that we are able to answer them very, very quickly and to mitigate any kind of potential threats that are out there with us or may be targeting Alabama.

We work across the many platforms to make sure that we are ready to fend off any type of cyber-attacks in Alabama.

Senator FISCHER. Thank you. Mr. Kruse, what are some of the unique challenges that local election officials face in mitigating those cybersecurity threats? If you turn your mic on. There you go.

Mr. KRUSE. Sorry. You know, the big one, I think, obviously would be the disinformation, if someone were to hack a website of ours and try and change information or results or something of that nature. Also, the AI of impersonating myself, perhaps polling place changes, or deadline changes, things of that nature.

We are fortunate in the fact, that in Douglas County, we have a group called DOT Comm, the Douglas Omaha Technology Commission, which is a joint venture between the city and county. They really are the experts on technology, cybersecurity, and things of that nature. They provide all of that for me.

I also do have two gentlemen in-house in our election system and technology department. They created our website and maintain the website. If something were to happen, we hopefully could fix it in-house fairly quickly. We do not contract with a third party for that.

We can also change things on it, instantly using them to get messages out. I think, from the local election official perspective, we hear all the time that voters trust their local election officials, and we hear a lot that we believe maybe there was fraud or misinformation or something in someplace else, but not our jurisdiction.

Really, having trust with your community, with your voters, and with media outlets so when issues do occur, you can contact them and get the correct information out quickly.

Senator FISCHER. You had talked about in your opening statement about the information that you provide to voters in Douglas County and your good relationship with the media. You also mentioned the post-election audit process. Could talk a little bit about the benefits of—that these audits provide to the voters in your jurisdiction?

Mr. KRUSE. Absolutely. That is administered by the Secretary of State's Office. The morning after the election, the Secretary of State's Office randomly picks certain precincts and certain races for counties to audit. Larger counties like myself have three of them, but every county has at least one in a statewide general.

Last time we had the three races in the three precincts, the races were the Congressional race, the Governor's race, and then the Sheriff's race. We had 2,325 votes cast amongst the three races in the three precincts. We go, get the ballots out of the vault. We sit down, we literally then hand tally them, make sure they match up with what the machine count had been, which they did.

We were perfect last time. This instills confidence in the voters. It is another level of check and balance. It is another level of proof to show that our machines are counting the ballots correctly, to not only the voters but to the workers who worked there as well, who were then great Ambassadors for our office.

Senator FISCHER. Great. Thank you very much. Thank you, Madam Chair.

Chairwoman KLOBUCHAR. Very good. Thank you. Secretary Benson, as you mentioned in your testimony, Michigan implemented in-person early voting during last month's primary. Can you share more information about how you worked with local officials about these and other reforms that expand access to voting, and why these efforts are important?

Ms. BENSON. I am happy to. Thank you, Senator and Chairwoman. I am proud in Michigan that both in 2018 and in 2022, voters themselves amended our State Constitution to implement automatic voter registration, Election Day registration, enhanced audits and protections, as well as enhanced opportunities for military and overseas citizens to vote.

They also gave every citizen a right to vote from home, a right to have a drop box for every—one for every 15,000 voters in our state that is secure and monitored and checked daily, and nine days of early voting in every statewide election.

Our Presidential primary, held just last month, was the first statewide election in which we held early voting, and we found it to be a game changer in how citizens have access to cast their ballot, not just on Election Day, but in-person voting.

Two Saturdays and two Sundays and a full week before Election Day can dramatically increase voter engagement and turnout and address the fact that when we look at who is not voting, a lot of the reasons why, according to various surveys and data, is because of inconvenience, because they cannot get to the polls in a certain time, in a certain day.

But expanding the number of election days we have has dramatically given more citizens opportunities to participate and has given more democracy partners opportunities to engage citizens in becoming fully educated and informed voters.

Chairwoman KLOBUCHAR. Thank you. I mentioned AI, and we know that we already have misinformation out there and how viral it can go. Ms. Nelson, can you speak briefly on how disinformation targets voters to suppress the vote, number one, and then how AI would make it even easier for disinformation to go viral.

Ms. NELSON. Yes. Disinformation is something that is not new to our election system. Unfortunately, Black voters in particular have been targeted throughout the time they have enjoyed the right to vote with information that would mislead them as to where to cast a ballot, whether they were eligible. There have been many barriers based on false information, but with AI, we see those efforts multiplied and exacerbated in extremely dangerous ways.

For example, we look at the current practice of doxxing. That is something that harkens back to when Black people would vote in the Jim Crow era, and they would have their names and information broadcast to the community so that they might suffer violent repercussions for exercising their right to vote.

Similarly, today we see doxxing and people's information being spread, but now at warp speed across the country, into the dark web, and permeating some of the most dangerous spaces because of technology. We also see manipulated images of voters and communities that misrepresent what their choices are.

It is quite dangerous, and it is hard to detect, and we certainly need legislation to improve that. But importantly, we need protections for the right to vote to enable voters to cast a ballot that will be counted.

Chairwoman KLOBUCHAR. Very good. Thank you. Along the same lines, briefly, Mr. Cramer. Senator Collins and I called on the EAC to take action following the fake robocalls in New Hampshire. It voted unanimously to allow state and local officials to use federal funds to combat AI-generated disinformation. Can you talk about efforts from local officials to take this on?

Mr. CRAMER. Yes. Thank you. I think the first thing is using that example in New Hampshire, we were next in line with the Republican primaries—sorry, the Democratic being the first in the Nation. It was a little confusing in New Hampshire there, but—

Chairwoman KLOBUCHAR. But Mr. Kruse was ready to, you know—and, so go ahead.

Mr. CRAMER. But at the end of the day, the first thing as election officials we do is plan and getting—making sure that our local partners—and one thing I am very thankful for, we have a counter threat manager in Charleston County who is monitoring all the threats that are coming in across the Nation and using that information to then inform our decisionmaking process.

You have to get everybody on board with this. One of the things with the elections, we rely on so many different processes county-wide, municipality wide, statewide. There is so much overlap that communication is so important. When we have something going on at the local level, we can push that information to our fusion center, which then goes to the national level.

When it comes to AI and funding specifically, you know, the counties have to have an ability to participate in the application of those funds if they were available, and using those funds proactively to mitigate any AI threats that we would encounter. In Charleston—I am sorry, go ahead, yes.

Chairwoman KLOBUCHAR. No, good. Thanks. I just want a quick—Mr. Allen, can you talk about how, you know, we work hard to get some federal funding for elections, it has been helpful for equipment and the like. Could you, talk—address how the way—the ways your state has been able to put federal election funds to use.

Mr. ALLEN. Yes, ma'am, thank you. We used HAVA funds to make available to all of our 67 counties, GIS software, mapping software, that is able to be used in all of our boards of registrars offices.

When they are getting folks registered to vote and when they are implementing new county commission lines, school board district lines, congressional lines, that the voters are making sure that they are put in their correct voting precinct in the correct district.

We have made that available, and it is being utilized right now, and we are happy and pleased with the implementation of how that is going so far.

Chairwoman KLOBUCHAR. Thank you very much. I will save a question, my colleagues are all here, for you Mr. Kruse, on recruiting poll workers and the like. With that, we turn it over to Senator Britt.

Senator BRITT. Thank you, Madam Chairwoman. Secretary Allen, this Committee has heard testimony before regarding nationwide challenges with recruiting and retaining poll workers.

I know that earlier this year, you launched the Heroes to the Polls initiative in Alabama to help recruit poll workers in our state. Can you explain more about what that initiative is and how it has been implemented, and how it is going at this point?

Mr. ALLEN. Thank you, Senator. Who better than veterans to protect our elections? You know, they have protected our Constitutional right to vote with their service through the military. We wanted to launch this program to help recruit poll workers.

I can tell you, as a former probate judge who stayed on the phone a lot recruiting poll workers, that is one thing we wanted to make available and help our local election officials who run our elections.

That is really, really important that we make that available to them. You know, we want to give another tool to the probate judges, circuit clerks, and sheriffs.

When they are appointing those election officials—and when I am speaking to groups, one thing I always try to encourage these groups to do is I ask them, I say, raise your hand if you have ever served as a poll worker, and sometimes you have some, sometimes you do not.

I always encourage them to get involved because that is how they can help their local communities. With our Heroes at the Polls program, we think that is important. We have also launched, Lawyers for Liberty, which is, we work with the Alabama State Bar, to give attorneys and to recruit attorneys.

If they sign up, get trained, and work on Election Day, they get four hours of continuing education—

Senator BRITT. Oh, that is great.

Mr. ALLEN —out of the State Bar. We want to make that tool available to them as well. We are taking steps to help these local officials to recruit poll workers.

Senator BRITT. Excellent. Thank you for your work on that. Additionally, as you know, federal law bans non-citizens from voting in federal elections. That being the case, it is important that states be given the tools that they need to ensure non-citizens are not able to register or vote in our elections.

Last year, I introduced the Citizen Ballot Protection Act here in the Senate, and I appreciate all of my Republican colleagues on this Committee joining me in that effort. Congressman Gary Palmer of Alabama introduced the House version of that bill earlier last summer; and it was voted out of House Committee on Administration in November. I hope to see both chambers pass this, and it become law.

The bill is simple. It amends the National Voter Registration Act to allow states to put in place a proof of citizenship requirement for both the federal mail voter registration form and any state mail voter registration form that they might be able to develop.

Secretary Allen, in that vein, can you explain what resources Secretaries of State around the country have at their disposal to provide their state or local election officials the ability to verify citizenship when individuals attempt to register to vote?

Mr. ALLEN. Thank you for the question. The simple answer is we do not have really anything at our disposal to verify citizenship. Really when a man or woman goes in to register to vote and they sign their name, they are attesting that they are telling the truth, that they are a citizen of the country.

Just recently, back in December, we asked the United States Citizenship and Immigration Services for a list of non-citizens so we could cross-check our voter file in Alabama. We were denied that list from the Federal Government, and they told us to use the SAVE program, which is the Systematic Alien Verification Entitlement program database.

But the thing is, the SAVE program database does not allow states to verify citizenship through that database. That is really all we have. We tried it. You know, the Federal Government, federal courts have blocked previous efforts by states to verify citizenship.

I think it is important now more than ever, especially given what is happening at our Southern border.

Senator BRITT. Do you—are there any other additional barriers that hinder citizenship verification that you can think of or—sounds like they are significant?

Mr. ALLEN. There are significant challenges to verifying citizenship. You know, we have tried everything—making telephone calls and so forth—

Senator BRITT. I only have 30 seconds left, just quickly. You mentioned this in your opening testimony, but you talked about if an Alabama voter needs identification, that you will go to their home.

Mr. ALLEN. Sure.

Senator BRITT. Free of charge. Can you explain to the Committee here the efforts that we make in the state to be able to make that available to every citizen?

Mr. ALLEN. Sure. We require photo identification to vote, but we will give anyone that needs a photo identification to vote in Alabama one free of charge. We will go to their home. If they call and request that, we will go to their house to make sure they have a photo identification. We want everybody, every eligible Alabama citizen, to be able to vote, Senator.

Chairwoman KLOBUCHAR. Okay. Thank you. Senator Merkley.

Senator MERKLEY. Thank you very much, Madam Chairwoman. Secretary Benson, you had several examples in your testimony of the intimidation of poll workers, and one was an election director was threatened to be hanged for treason, and I believe in Rochester Hills, a voicemail saying 10 million patriots will surround you when you least expect it directed toward Tina Barton.

Another in Detroit city, Detroit city saying you are going to pay dearly. This is all across the country. This is an example of the threats that were put forward in Oregon, being written on the parking lot. As you can see, it was basically done right after the election. Vote do not work, translated elections do not work, next time, bullets.

I must say, I have been hearing from clerks all over my state that they are having difficulty recruiting poll workers due to these threats, which have basically been inspired by Trump's argument that the election was stolen. Is this happening all over the country?

Ms. BENSON. Yes. It has since the 2020 election cycle. In terms of the threats and the challenges—and my colleagues on this panel have talked about some of the solutions of anti-doxxing legislation.

I think Michigan has gone a long way to pass state laws to very clearly draw a line in the sand about what is and is not appropriate in terms of threats to election workers. I would just add one thing. I think the absence of any clarity from the Federal Government that this is not appropriate and that it is a crime to threaten an election official in their line of official duties is—well, I would say passing a law to clearly make it a crime.

As you know, Senator Ossoff and others have proposed, would send a very clear message of support and protection to these individuals who have borne a lot of the brunt of the misinformation and lies and deception that has plagued our democracy for the last several years.

The other thing I will underscore is, one thing I am particularly proud of in Michigan, where we launched the democracy MVP program in 2020 to partners with Vote Our Vet—to recruit veterans into partners with the ABA, nationally, and in our state to recruit attorneys.

What we have seen as a result also is a new generation of election workers step up to the plate, determined to protect our democracy despite the threats, yet at the same time, these threat are still——

Senator MERKLEY. Thank you. I am going to try and get a couple other questions here, but that was a very comprehensive answer. Thank you. As Secretary Allen mentioned the importance of making sure that non-citizens do not vote.

This has been a point of some discussion as to whether these strategies are intended to essentially intimidate people and whether this is addressing a real problem. Have you seen a significant number of non-citizens attempting to vote in your state?

Ms. BENSON. No.

Senator MERKLEY. If I recall that Michigan did some audits to try to examine that. What did those audits find?

Ms. BENSON. Yes. We take the importance of ensuring every eligible vote is counted, and only eligible votes are counted, very seriously.

We have several layers of protection where we implemented automatic voter registration, in particular to ensure documentation, and also make clear to folks that the consequences, legal consequences, of lying on these forms.

But at the same time as we have done our work and done our investigations, we have consistently found that our voter rolls are clean and that non-citizens are not voting to the extent that some would allege.

Senator MERKLEY. There is many ways to approach this that have worked very well. Ms. Nelson, would you affirm that that is the case?

Ms. NELSON. Yes, Senator, it is correct that it is not the case—that there are non-citizens attempting to vote in any substantial or even notable number.

Senator MERKLEY. Just say, I hate to see people trying to address a non-problem and disguise it as a problem when they are really trying to intimidate people from voting. Ms. Nelson, I wanted to turn to your testimony, and you mentioned it.

Several things that are done to discourage people from voting, and I have heard about these all across the country. If you have a section of the state that you do not want to vote, like a certain city, a certain poor area, certain Native Indian reservation, changes in polling location, you move it, you consolidate it.

You proceed to open the voting place late. You proceed to understaff so that there is a long line. You proceed to put the voting place where there is no parking, so people get very frustrated. You proceed to run out of ballots, which was one I had not heard about before, when you are talking about Mississippi. These strategies, how do we tackle these?

Ms. NELSON. Well, the way we are tackling them is we have 25 poll monitors on the ground right now in Mississippi addressing



those very issues that you just laid out. I have a real-time email from my team telling me that that is what they are seeing.

There are also signage issues. There are many potential barriers that are not easily detectable until you are in the middle of an election, and voters are being disenfranchised, where there is a clear targeting and a clear disregard for certain communities when they are attempting to cast a ballot.

What we need is, in addition to our election protection efforts, we need strong legislation that will prevent some of these changes from happening without there being some preclearance, some authority that says it is okay for you to do this, it will not disproportionately harm certain voters.

Senator MERKLEY. Yes. I really want to just emphasize that in closing, because these things sound like legitimate operations moving to low polling location and so forth, but they can be used in extremely prejudicial manner. Thank you.

Chairwoman KLOBUCHAR. Very good. Senator Hagerty, and then Senator Padilla.

Senator HAGERTY. Thank you. I want to thank all of you for being here today. Your work overseeing our elections is extremely important. The founders tasked the states with conducting elections to help ensure the integrity of and the confidence in our election system. I want you all know I appreciate your service.

Secretary Allen, I am going to direct all of my questions to you, however, because we have a limited amount of time. I am going to ask you to keep your answers brief, yes or no, if appropriate, sort of answers.

Let us get started. Are you familiar with President Biden's Executive Order 14019, which directs Federal Government agencies to engage in voter mobilization, including helping with completing vote by mail materials and finding third party organizations to help provide voter services on federal property?

Mr. ALLEN. Yes, sir.

Senator HAGERTY. Secretary Allen, are you aware of any authority in federal law that permits the Executive Branch agencies to engage in this sort of voter mobilization activity?

Mr. ALLEN. I am not.

Senator HAGERTY. Nor am I. In fact, it seems like this activity actually may very well violate the Hatch Act. It may violate the Anti Deficiency Act, which prohibits spending funds in a manner that is not authorized by Congress. Secretary Allen, does it seem problematic to you for taxpayer funded federal agencies to "assist applicants in completing vote by mail ballot forms" and bringing outside organizations to help do that?

Mr. ALLEN. Yes, sir. It is problematic.

Senator HAGERTY. This Biden Executive Order says that any outside organizations brought in to help with voter mobilization must be "nonpartisan." Let us take a look at who is helping the Biden Administration with this order.

Last year, an agency within the Department of Health and Human Services acknowledged that it was working with groups like the ACLU and Demos to implement this voting executive order, the latter of which describes its mission as, "pioneering bold, progressive ideas."

A FOIA request also revealed that Demos is working with the Department of Agriculture on this matter. Secretary Allen, do the ACLU and Demos sound like nonpartisan groups to you?

Mr. ALLEN. No, sir.

Senator HAGERTY. They obviously are not nonpartisan. Their priorities are openly partisan. Secretary Allen, Biden agencies are using openly left-wing groups to conduct get out the vote activity. It sounds like the Federal Government is being used as an arm of the Biden campaign, doesn't it?

Mr. ALLEN. Yes, sir.

Senator HAGERTY. This is like a Republican Administration hiring the Heritage Foundation to engage in, "nonpartisan voter mobilization activities." A couple of weeks ago, Vice President Harris announced that the Biden Administration is paying college students to reach out to voters and serve as, "nonpartisan poll workers."

Then the Vice President provided an example of the nonpartisan poll workers that she was talking about, that the person that she gave as an example previously worked for the ACLU and the Alliance for Justice, which is a partisan group. Secretary Allen, does this inspire confidence that the Biden Administration's voter activity is nonpartisan?

Mr. ALLEN. It does not sound like it, sir.

Senator HAGERTY. No, it does not. One way the Biden Administration could alleviate some of this concern concerns by revealing what they are using these taxpayer dollars to do. Under Executive Order 14019, the Biden Administration required each federal agency to come up with a plan for driving voter mobilization and submit that plan to the White House.

Yet the Biden Administration refuses to disclose these plans, and that is despite Congressional inquiries. That is despite FOIA requests to do so. Coming back to your experience here, Secretary Allen, is it normal for a President, or even a Governor for that matter, to require government agencies to engage in voter mobilization and develop secret plans for doing that, and keep that all secret from the public?

Mr. ALLEN. I do not think that is normal.

Senator HAGERTY. I certainly do not either. I think it is understandable that many Americans are concerned about these secret, taxpayer funded voter mobilization plans, and the Biden Administration needs to release these plans. Thank you. I yield back my time.

Chairwoman KLOBUCHAR. Senator Padilla.

Senator PADILLA. Thank you, Madam Chair. Before I get to my questions, let me just share with my colleagues in the Committee and the witnesses in front of us just one of many examples.

The exchange I just witnessed fails to point to any partisan language in the directives that were referenced. If anything, I will call your attention to the National Voter Registration Act, which was passed on an overwhelming bipartisan basis in 1993.

Before we get to the substance of the Act, just find under section two, findings and purposes, findings to Congress, again, on a bipartisan basis, finds that one, the right of citizens of the United States to vote is a fundamental right. Number two, it is the duty of the

federal, state, and local governments to promote the exercise of that right.

It goes on from there. For anybody looking for where in statute we might find the opening for the Federal Government, not in a partisan basis, on a nonpartisan basis, to encourage, actually accept a role and responsibility in encouraging citizens of the United States to exercise their fundamental right to vote, here is one example. Moving on.

I know we can or should have longer term conversations about modernizing elections and what you all need to continue to protect the integrity of the bedrock of our democracy. I know that threats to election workers and poll workers has already been covered in this hearing.

But recognizing that—we are well deep into the primary season of 2024, November is on the horizon, let us talk about some practical here and now things that can and should be done. Just two examples from my home state.

At the county level, Santa Clara County, one the larger counties in my state, hosted an annual media—every election has a media day to help inform voters—but excuse me, the press and by extension the public of the voting process. The more understanding there is, the more we can follow the news and maintain faith and confidence in the process.

Post-primary, they are not doing the vote counting because it takes a while in California because of the high levels of participation. Statewide, California has implemented a ballot tracking system where people can sign up to receive text messages, email messages in multiple languages, by the way, on the status of their ballot on the way to the voter, on the way back to the county, when this is processed, when it is being counted.

Questions for Mr. Cramer, what systems are in place for state and local officials to learn what either federal resources or university resources are available to them, and maybe even a sharing of information system to share these best practices?

Mr. CRAMER. Thank you for the question, Senator. The great honor we have in Charleston County is election sharing with our state partners. We hold a state conference every year.

But one thing I am proud of is we are launching the Voter Ambassador Program in Charleston County, and we are the trusted election information source. We are going to empower other organizations within Charleston County to be our Ambassadors under strict guidelines, but it helps give that official information.

When we do a program like that, we have to be able to share that with other counties and states. The EAC has a great clearing-house program that we are now being able to tap into, and that is a resource sharing where we can ask questions, what are you doing to be effective in election administration? It is a tool that I actually applaud the EAC for introducing, and it helps election officials.

Senator PADILLA. Wonderful. Thank you. Now, on a very specific topic, recently the Department of Education clarified rules around the federal work study program, making it clear that, yes, it is legal for students on work study jobs to work in election offices.

I actually encouraged the department to make this clarification last October, because somehow it is a question in the minds of

some, and I am glad it happened. I think it is a terrific way to bring dedicated younger Americans into elections offices, to see their democracy up close and personal, and imagine being inspired to pursue a career in that area.

But in the short term, possibly help alleviate some staffing concerns. Question for Mr. Cramer, you have previously had high school and college age poll workers and election workers, correct? How did they perform?

Mr. CRAMER. They are amazing. They bring a fresh breath of air to the polling places. Our lead poll workers love when they see high school students and college students participating.

One of the things we see is then they continue serving after they have done it once. That is the remarkable thing about bringing young kids into the process. Then in South Carolina, you can serve as young as 16.

They get really conflict resolution. They are able to do team building. This is a really great resume builder. I look forward to actually working with the College of Charleston. We have the EAC grant money that we are going to introduce some programming through that, so we are excited.

Senator PADILLA. Secretary Benson, is this something you can adopt or expand on in Michigan?

Ms. BENSON. Well, Senator Padilla, you know, we are already doing this in Michigan.

[Laughter.]

Senator PADILLA. Softball. It is called a softball.

Ms. BENSON. But, yes, I mean, I am grateful for my colleague in South Carolina, for his leadership. But truly partnerships and Make Democracy Work, and it is a team sport. We welcome, you know, people of all backgrounds, left, right, and middle serving as election workers. It is a great way to see just how secure our system is.

Senator PADILLA. Thank you. Thank you, Madam Chair.

Chairwoman KLOBUCHAR. Thank you very much. Senator Ossoff, and then the ever patient Senator Butler. Senator Ossoff.

Senator OSSOFF. Thank you, Madam Chair. Thank you, Senator Butler. Thank you to the panel. Secretary Benson, the former President called Georgia Secretary of State, and this is in the immediate aftermath of the 2020 election and said, "so, look, all they want to do is this, I just want to find 11,780 votes, which is one more than we have." You ever gotten a call from a Presidential candidate asking you to find precisely the number of votes they need to win the election?

Ms. BENSON. No, I have never gotten a call from any candidate for any race asking for such a—making such an inappropriate request of an election official.

Senator OSSOFF. How about you, Secretary Allen. Have you ever gotten a call from a candidate asking you to find precisely the number of votes they need to win?

Mr. ALLEN. I have not received a telephone call.

Senator OSSOFF. Does it strike you as proper?

Mr. ALLEN. Excuse me?

Senator OSSOFF. Does it strike you as proper?

Mr. ALLEN. No. Listen, it—I can only take care of what we have in Alabama.

Senator OSSOFF. The question is, does it strike you as proper for the President of the United States to call a State Secretary of State and ask them to find the exact number of votes they need to win the state?

Mr. ALLEN. I do not know exactly what he meant by finding those votes, but I was not Secretary at the time—

Senator OSSOFF. Secretary Allen, does it strike you as proper for the President of the United States to call a State Secretary of State and ask them to find precisely the number of votes they need to win, yes or no?

Mr. ALLEN. I can tell you that as Secretary in Alabama, I am going to follow the law that Alabama Legislatures laid out for me to follow when administering the elections.

Senator OSSOFF. Your fear answering that question does not inspire confidence. Let me ask you, Secretary Benson, about the intimidation of election workers. You had noted legislation that I am introducing this week, the Election Worker and Polling Place Protection Act.

It would create criminal penalties for threats of violence to intimidate voters or election officials. Appreciate you expressing support for the legislation. What effects do threats on election workers and efforts to intimidate election workers have on election administration?

Ms. BENSON. I mean, not only does it cause us to fear going to work and feel even though we do important work and do it with pride, that somehow there are people who wish to harm us, our staff, or our families for simply doing our patriotic duty. But in addition to that, it makes it a lot harder for us to do that duty.

It makes it—it takes us away from the actual work of administering elections every time we need to issue protections or think about our own safety. I think, and I could say, speaking with our election workers, having a very clear statement in the law that it is not okay, that it is a crime to threaten us in our workplace for simply just doing the job of making elections work for everyone.

It is long overdue to see that federal legislation passed, and I can say with experience of passing similar legislation in Michigan, it goes a long way to send a message that type of behavior is not approved or appropriate in our state.

Senator OSSOFF. Mr. Cramer, what do you think? What is the impact on election administration when there are threats and intimidation of election workers, which as we saw in 2020, or we saw in Georgia—in fact, I would note, Madam Chair, the Republican election officials in Georgia were begging, begging in public that the former President cease spreading baseless conspiracy theories about the theft of the election in Georgia because it put lives at risk. What is the impact, Mr. Cramer, on the capacity of election workers to do their jobs when they face those kinds of threats and when those threats are based upon baseless conspiracies about election fraud?

Mr. CRAMER. It is keeping the good people still running elections for this country. In South Carolina, we are losing a wealth of knowledge, hardworking, professional men and women who serve

this country by performing this duty. They are leaving. That wealth of knowledge leaving is a bad thing for the United States.

These are people who swear to uphold the Constitution of the state and of the United States. No, it is a bad thing, and it is one thing that I actually, when asked, what keeps me up at night, it is this protection of these workers. When they wake up in the morning and they get a threat to their safety, that concerns me. It should concern everyone.

Senator OSSOFF. Thank you, Mr. Cramer. Ms. Nelson, in Georgia in the aftermath of a 2020 election—by the way, I want to note there is a lengthy Op-Ed that was written by a guy named Ken Block.

He was hired by the Trump campaign to find fraud in Georgia. Found none and wrote a lengthy editorial about how he found none and the impact of these conspiracy theories. Nevertheless, on the basis of those conspiracy theories, the Georgia State Legislature passed a law that, for example, cuts the available time for runoff elections in half, driving up wait times in runoff elections. What is the impact of that kind of policy on ensuring access to the ballot for all eligible voters?

Ms. NELSON. Well, Georgia passed a very harmful omnibus voter suppression law. What it does is exacerbates the issues that Black voters in particular face, like long lines.

We know that Georgia has a very, very, horrible reputation for disproportionate lines that Black voters face. We know that part of their law attempted to actually prevent people from providing basic sustenance to those people who have to wait in disproportionately long lines, like water and snacks.

We were fortunate enough to be able to beat back part of that law and some of the other aspects of that law that would have disenfranchised many Black voters. But good portions of that law still exist. We know that we have to redouble our efforts in order to have a fair shot at casting a ballot in the upcoming elections.

Senator OSSOFF. I believe the research is six times longer waiting in line for Black voters in Georgia. Thank you, Ms. Nelson. Thank you all for your testimony.

Chairwoman KLOBUCHAR. Thank you, Senator Ossoff. Senator Butler.

Senator BUTLER. The gift of being number 100. Thank you—

Chairwoman KLOBUCHAR. I remember that time you went first on this Committee.

[Laughter.]

Senator BUTLER. I totally did. That is why I say it works in all kinds of ways, and particularly depending on your Chair. Definitely appreciate you all for your testimony and for being here. Ms. Nelson, if you would not mind, would love to start with you. You have submitted in your written testimony the challenges that the LDF, sort of at worst facing and working with—in Hinds County, Mississippi—Jackson.

In particular, I think there was some specific data that you shared in that written testimony saying that Hinds County is approximately 70 percent Black, experienced extensive ballot shortages during the 2023 Mississippi statewide election.

Now, this was one of the first times, in my recent memory as a Mississippian that there was a competitive Governor's race. There was not an opportunity for Mississippi to elect their first Democratic Governor in, again, very long time. But you at your written testimony also noted that there were up to nine polling locations in Hinds County that ran out of ballots multiple times during Election Day.

Some of them before 12:00 noon. Now, I know that LDF was a part of some investigative work and steps to help to find out in Hinds County what went wrong in efforts to offer that—those learnings to other advocacy organizations across the state, and across the country and those who are doing that work.

Can you just share with the Committee, quickly, what you learned from the investigation of what—your investigation of what happened in Hinds County?

Ms. NELSON. Sure. Some of it is still ongoing. In fact, you know, I mentioned the elections in Mississippi today.

Unfortunately, we did not get an answer before today's election as to whether there was any threat of ballots running out, again, based on what we learned in the previous election. We are still investigating that.

That is why we have people on the ground, and that is why we are documenting in a new report, Democracy Defended, all of the different incursions on the right to vote that we are finding, so that there is a record that can support the federal legislation that we are here to demand Congress pass.

The suggestion that there are no modern conditions that should give rise to federal intervention is just patently false. The work that we do, along with our civil rights colleagues, every election on the ground, establishes that record to support federal legislation like the Freedom to Vote Act and the John R. Lewis Voting Rights Advancement Act.

Senator BUTLER. Thank you, Ms. Nelson. Mr. Allen, I actually had the pleasure of being down in Alabama just a week ago.

Being on the campus of Alabama State University, as a Member of this body conducting a field hearing in Alabama, talking to Alabama voters about just that point, the modern discrimination that Alabamians are experiencing and that we are seeing happen across the country, I would like to actually instead of landing there—you said something in your testimony just a few minutes ago in response to an earlier question and I would love to just press on just a little bit to understand more.

You made mention of some HAVA funds, you said that your office uses to get mapping software for counties and municipalities. Am I just—am I capturing that accurately?

Mr. ALLEN. It is for the county boards of registrars.

Senator BUTLER. That is really helpful because I noted that just earlier this month, there is 6,000 voters in Alabama's newly drawn second congressional district that received election postcards listing incorrect voter information.

I appreciate that your office has said before that you were not involved in sending out those postcards. Can you talk a little bit about the intersection between the challenges of Alabama voters not getting the correct information, the tools that you say that your

office helps to provide and facilitate for county elections, and why you think that your office had nothing to do with voters in Alabama getting the incorrect information for their polling location?

Mr. ALLEN. Sure. It is up to the boards of registrars in every county to make sure that the voters are placed in the correct district. It is not the Secretary's role or the Secretary's Office's role to conduct any of the voter assignments. That is solely left up to the county.

All the Southern Poverty Law Center had to do was to place a phone call to us and we could have made sure we got on the telephone with the county in question to make sure we got it right.

But instead, what they chose to do was to send out a press release that Monday afternoon before the primary, which caused—introduced confusion and introduced chaos right before the primary election.

You know, it was something that was not appreciated by my office. You know, open communication would have been, I think would have been best for the day to do that, but it was on Montgomery County and those boards of registrars to make sure they had those voters in the correct district and make sure that everyone was in the correct precinct.

Everyone that voted on Election Day got the correct ballot. I want everybody to understand that they got the correct ballot to vote in Congressional District 2.

Senator BUTLER. Thank you, Secretary Allen. I find it interesting, and I will—I know there is another Senator waiting. I find it interesting that the response goes to what an advocacy group was doing or not doing in Alabama, in SB1.

Those very same advocacy groups are prohibited from actually helping people get the information that they need. I find that an interesting contradiction, but thank you. I yield my time, Chairwoman.

Chairwoman KLOBUCHAR. Okay. Senator Bennet.

Senator BENNET. Thank you, Madam Chair. Thank you for holding this hearing. To all of you, thank you for your willingness to be here today to testify. Secretary Benson, I had a couple questions for you, if that is okay.

We heard yesterday on the Intelligence Committee from leaders of the intelligence community the not very surprising news about the continuing threat that social media platforms pose to our democracy.

Every single one of these platforms, I think, virtually has been used to spread election related disinformation, not just here, but all around the world, sometimes to a violent and deadly effect. In the lead up to the 2022 elections, online mentions of voter fraud just absolutely skyrocketed.

In 2020, we saw our fellow citizens storming the Capitol, which is well known, to save an election that had not been stolen. Their rage amplified by relentless algorithms that were engineered really for profit to sell advertising not for the sake of our democracy.

Certainly in 2016, it is well-established, this is not a political view that, Vladimir Putin interfered with our election, as he has repeatedly with elections in other countries around the world, here playing both sides of every single issue with 10 million tweets.



No, that is not an exaggeration, to quote Joe Biden, that is the reality of what was happening there. I think, you know, there is a lot going on, as the Chair knows, today on TikTok and in the Capitol.

I do not want to get distracted by that today, except to say probably good things are not going to happen if one of the sources of major information in terms of our electoral process is coming from a platform that is controlled by the Chinese Communist Party. One can imagine that that is going to end in a bad way for the United States.

I think it would be really self-defeating of us to assume that happened in 2022, and in 2020, and in 2016, is not going to happen again this year. You have stated that misinformation is the top concern in 2024, even more than in 2020.

Could you talk a little bit about what national standards you think we ought to be able to put in place to help safeguard our elections from online information campaigns?

Ms. BENSON. Thank you, Senator. Yes, we have been working in Michigan to emphasize that there is a greater incentive than ever before for foreign actors to interfere with our elections.

The mechanism through which they will interfere is to try and to deceive our voters. Particularly with this being a first election in which artificial intelligence is on the rise as an evolving threat, we believe that will be one of the more likely tactics that they will utilize, particularly through social media and elsewhere.

I do think, first and foremost, for the Senate to pass Senator Klobuchar's bill against deceptive practices with AI will be key to helping every state be prepared. We have state legislation.

We are one of six states that have passed state legislation to that effect. But secondly, I would argue that as I often say, democracy is a team sport. These statements saying what is okay and what is not, what is illegal and what is not with regards to deception and elections is one piece, but it is not the whole piece of the puzzle.

We also have to equip trusted voices, faith leaders, business leaders, community leaders, labor leaders, and many others, which we are doing in our state, and I think we need to do nationwide.

I think every Senator could be a convener of these trusted voices to equip them with truthful information about our elections, help us to get that out ahead of the misinformation hitting our states, and that will help us to ensure voters do not get fooled because they have already been educated ahead of time about the truth in our elections and where to get trusted information if they need more.

Senator BENNET. I have got one minute left. Can I ask one more question quickly, Madam Chair? Is that all right? Thank you.

Next week, as you know, the Supreme Court is going to hear the case of *Murthy vs. Missouri*, which addresses a district court decision preventing the Federal Government from communicating with social media companies about the content on their sites. This decision, the lower court decision has had a disastrous effect on our ability to combat foreign influence operations and protect the integrity of our elections.

It affects the government's ability to coordinate with the platforms, you know, on public health information that threatens to undermine the efforts undertaken across multiple Presidential Administrations to hold the platforms accountable for their own—you know, to have their own sets of policies.

The Washington Post has reported that the Federal Government has basically stopped warning some platforms about foreign disinformation campaigns altogether. As a result of that, legal experts have called the injunction strikingly broad.

They have pointed to flaws in its logic, its confuse legal arguments, and the alarming conclusions it draws about the Federal Government's role. But I just wonder how you are navigating these challenges, in this changing legal environment when it comes to communicating with platforms and the, you know, the clear and present danger to Michigan's elections.

Ms. BENSON. It is difficult. Certainly, the court ruling makes it a lot more challenging to collaborate, with social media companies that have an important role to play in protecting their users from deceptive tactics and misinformation.

We will be eagerly awaiting the outcome of that particular case. But in the interim, working with citizens to help them become critical consumers of the information they do receive, helping them understand the way in which the misinformation causes chaos, and confusion, and disruption to our elections has been our focus, so that we can empower the citizens in our state to spot the deepfakes, to spot people trying to fool them, to spot the bad information on social media, and not only not send it or forward it, but instead respond with truthful information to help us counter that in every way in our state.

Senator BENNET. Thank you. Thank you, Madam Chair. Thank you again to everybody on the panel.

Chairwoman KLOBUCHAR. Well, thank you very much. Thank you all our witnesses for a very good hearing. I am grateful to the election officials here today and for your work to ensure our elections are administered securely and safely.

I also want to thank Ms. Nelson for her continued work to ensure equal access on the ballot, and I look forward to continuing our work on this Committee to support election officials and protect our free and fair elections.

The hearing record will remain open for one week. With that, we are adjourned. Thank you.

[Whereupon, at 4:47 p.m., the hearing was adjourned.]

## **APPENDIX MATERIAL SUBMITTED**



STATE OF MICHIGAN  
JOCELYN BENSON, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

**Testimony of Jocelyn Benson, Michigan Secretary of State**  
**Before the U.S. Senate Committee on Rules and Administration**  
**March 12, 2024**

Chairperson Klobuchar, Ranking Member Fischer, and Members of the Committee: Thank you for hosting today's important hearing.

These next eight months will define the future of our country, and our democracy.

As Michigan's chief election officer, that reality is clear to me every day – both as we work to ensure our elections are fair, free, safe and secure and in our efforts to protect every voter and every election worker from the lies, threats and deceptive tactics that continue to plague our democracy.

Yet despite these challenges, our democracy in Michigan is stronger now than it was 4 years ago. Just a few weeks ago we saw nearly 2 million citizens participate in Michigan's statewide primary. It was a safe and secure statewide election where citizens had more options to vote than ever before – including, for the first time, nine days of in person early voting.

In 2018, the most cited reason registered voters didn't vote is that they were too busy or had a work or school related conflict on Election Day.<sup>1</sup> But through implementing these new voting options, and then educating Michigan voters about their right to vote from home or early in-person prior to Election Day we were able to ensure citizens have more options than ever before to conveniently cast their ballots and ensure their voice is heard. As a result, voter turnout rate – on both sides of the aisle – continues to increase in every election, and in 2022 Michigan led the nation in youth voter turnout.

This is great news for our state. Michigan voters, of all ages and across the political spectrum, are engaged and committed to ensuring their voice is heard.

While Michigan's voters are embracing expanded options to vote, and our clerks work overtime to ensure every option is provided safely and securely, our preparations for 2024 remain focused on two things: fighting deception and misinformation about our elections and protecting the people who protect democracy.

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<sup>1</sup> Source: U.S. Census Bureau Current Population Survey, November Voting and Registration Supplement 2018 to 2022

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### **Misinformation and Deception are threat to Election Security**

As the chief elections officer of a battleground state, I am acutely aware that the biggest threat to election security today is misinformation and disinformation designed to confuse voters and obfuscate the voting process. And as we enter the first election cycle where Artificial Intelligence will be used to amplify and expand exponentially these tactics and their impact, the time is now to enact needed federal protections.

We go into this election cycle expecting bad actors, both foreign and domestic, to use misinformation – turbo-charged through AI – to divide, deceive, and deter voter participation throughout our country over the next year.

We already know AI voice generators can create manipulated audio technology to interact with voters like the fake Biden robocall in New Hampshire before their primary. But I am also worried AI will make it easier to create and distribute hyperlocal disinformation that misleads voters about the voting process or conditions at their specific polling site. Bad actors may misuse public data about voting locations to produce highly specific claims about long lines or even violence to suppress the vote in key precincts. While voter suppression is not new, AI tools supercharge the ability to generate large volumes of believable-sounding claims and to distribute those messages at scale.

For example, one voter might get a text warning of long lines at his particular precinct, while another might see a social media post claiming her polling location moved because of flooding. The ability for AI to create content that includes specific details—like the name of individual voting sites—makes it more likely that voters will be misled.

Current federal law already criminalizes certain types of interference in the exercise of our civil rights—including voting. But the Senate should consider whether using AI in the commission of those crimes should be made an aggravating factor or sentencing enhancement.

Second, I am concerned AI tools could specifically target language-minority voters in uniquely harmful ways, producing credible-sounding claims in different languages. Large Language Models (LLM) and Massively Multilingual Speech (MMS) models make it easier to adapt disinformation and propaganda to reach more communities. As a result, misinformation may be translated seamlessly across numerous languages, and quickly disseminated. As Senators, you should continue pushing Big Tech companies to be transparent about their efforts to protect users, including non-English speakers. The Senate should settle for nothing less than unequivocal commitments that these platforms' integrity tools are equally effective across all languages.

Finally, AI underscores the need for a renewed federal investment to harden state elections systems against cyber-attacks. AI introduces a level of speed, scale, and sophistication that is difficult for under-resourced state agencies to counter alone. New AI systems are increasingly used to exploit vulnerabilities in code, to supercharge phishing, and to introduce ransomware that could cause a catastrophic system freeze in an unprepared state. Adversaries who target our states have nation-level resources, and our states should have nation-level resources committed to the defense of systems critical to our democracy. I urge you to consider ways to support and bolster state cybersecurity infrastructure in this evolving threat environment.

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We also need the Department of Homeland Security and the Cybersecurity and Infrastructure Security Agency to be aggressive in identifying and combatting threats, notifying local election officials with critical security information to protect our elections, and helping us ensure voters know what to do when they encounter deceptive elections materials.

At the state level in Michigan, we enacted laws to require political advertisements generated with AI to disclose this with an appropriate disclaimer. And we've made it a crime for anyone to knowingly distribute materially deceptive, AI-generated deepfakes with the intent of harming the reputation or electoral prospects of a candidate. But this is not enough to combat this looming threat. We need the federal government to also do its part to help us combat the corrosive effects of AI and misinformation on our election systems.

I was gratified to see the Federal Communications Commission ban robocalls that contain voices generated by artificial intelligence. But as US Senators there is more you can and must do to protect every voter in this country from the harmful effects of deceptive AI-generated content in our elections.

Please pass the Protect Elections from Deceptive AI Act.

This is a bipartisan proposal that would prohibit the distribution of materially deceptive AI-generated audio, images, or video relating to federal candidates in political ads or certain issue ads to influence a federal election or fundraiser. The bill protects you, as federal candidates, if you were to be targeted by this materially deceptive content by enabling you to get the content taken down and allowing you to seek damages in court. Enacting it now would go a long way towards helping equip us all with needed protections against the use of AI to deceive, divide, and deter citizens from voting.

### **Protect the People who Protect Democracy**

Finally, we cannot have a secure democracy if we do not protect the security of the people who administer our elections.

As Michigan's chief election officer, my responsibility is to ensure our elections are accessible, safe, secure, and that the results are an accurate reflection of the will of the people. It is not a partisan role and despite being an elected position, it's not a political role. But it is a role that increasingly forces us to endure threats, harassment, false and malicious attacks on our character and integrity, and sometimes even violence.

It's not lost on me, and it shouldn't be lost on anyone here, that the threats we endure are a direct result of lies and misinformation being spread about our work. And as misinformation increases, so do the threats to all of us.

Michigan's dedicated clerks work tirelessly - putting in long hours to navigating new protocols and managing logistics surrounding our state's new voting laws. They go the extra mile to work closely with my department to put out true and accurate voter education information, working to build trust in their communities and run safe, secure, and fair elections.

In Michigan we've welcomed a new generation of poll workers into our elections workforce. Through our Democracy MVP program, more than 80,000 voters have raised their hands to help

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run elections, leading to a new crop of dedicated public servants committed to the work of democracy.

Unfortunately, in many cases, this work is rewarded with a growing amount of vitriol, threats, and intimidation.

After Oakland County Elections Director Joe Rozell was threatened with being ‘hanged for treason’ for his work on the 2020 election, local law enforcement conducts regular patrols outside his home.

Former Rochester Hills Clerk Tina Barton was told in a chilling voicemail that, “Ten million plus patriots will surround you when you least expect it,” and saying she deserved a “knife” to the “throat” and that she should watch her back.

On a morning walk through her neighborhood, Detroit City Clerk Janice Winfrey was approached by a man saying, “I’ve been waiting for you at work, so I decided to come to your house... You’re going to pay dearly for your actions in this election.”

These are just a few examples of what our election workers endure. And remember: they do not have capitol police watching over them, nor can they or their jurisdictions afford private security officers to protect them and their families. They are regular people, our neighbors and community members, civil servants who drive themselves to town hall meetings, who go back and forth to their offices and homes, often dropping off or picking up children and groceries along the way. And as they go about the daily activities that so many of us take for granted, they are being threatened. Of those who have received those threats, nearly three in four have been threatened over the phone, and more than half have been threatened in person by their potential attacker.

Recognizing our duty to protect the people who protect democracy, last year in Michigan we passed the Election Worker Protection Bill. This clearly make it a crime in our state to threaten or intimidate an election official with the specific intent of interfering with the official’s duties.

It should be a federal crime.

In addition, the Senate should consider how to enact greater protections to deter doxing, intimidation, and mass harassment of those who administer our elections. Election officials sign up to do these jobs because we love our communities and love our democracy. We are professionals. We are nonpartisan. We are deeply committed to and passionate about our work. We put voters first, and we are firmly committed to maintaining citizens’ rightly placed faith in our elections and ensuring peaceful transitions of power in our country.

Ensuring our security is critical to ensuring election security.

Just 10 days ago I crossed the Edmund Pettus bridge in remembrance of the 1965 Selma to Montgomery march. I sit here today acutely aware of the risks borne throughout history of those working to stand guard over and protect our democratic process. None of the incessant and graphic threats, even those made outside my own home, or those that flood my social media accounts, will deter me, my team, or the tens of thousands of election workers across this country from doing our jobs.

Testimony of Jocelyn Benson, Michigan Secretary of State  
U.S. Senate Committee on Rules and Administration  
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But we shouldn't have to fight these battles alone.

The elections we administer are the bedrock of our democracy. They form the foundation of who we are as Americans. It should be your highest priority to protect us, protect every voter, and ensure we have the funding, resources, and legal protections to make democracy work for everyone.

I have spent my career defending and protecting the right of every eligible citizen to vote. That commitment has never wavered, and it will not waver now. I'm here today to ask you all to share that commitment and help us ensure our democracy thrives even in the midst of all of these many challenges.

This is our great opportunity to prove that we can defend our democracy and protect the basic American promise of one person one vote for future generations. Let's get it done.

Thank you.



**Written Testimony  
Secretary of State Wes Allen  
State of Alabama  
March 12, 2024**

Good afternoon Ladies and Gentlemen. I appreciate the opportunity to speak to you today about election security.

As Alabama's Secretary of State, I serve as the State's Chief Elections Officer and work closely with the Probate Judges, Circuit Clerks, Sheriffs, Absentee Elections Managers, poll workers and Boards of Registrars who are all an integral part of our elections process at the local level in each of our 67 counties.

When I took the oath of office 14 months ago, I made it a top priority to ensure that our elections are fair and secure so that every eligible voter who wishes to cast a vote in any election in our state could do so with confidence knowing their vote would be counted properly. Elections are the bedrock of our Constitutional Republic and it is my Constitutional duty to ensure our elections are conducted with integrity, honesty and accuracy.

Voter registration and voter file maintenance are the foundation of election integrity. Registered voters can choose to participate in elections in Alabama with the confidence that our elections process is fair and secure because Alabama has taken solid steps in our state to ensure election integrity.

We have enacted legislation in Alabama that makes it illegal for any voting tabulator to be connected to the internet. Alabama state law requires the use of paper ballots in all elections.

Each of our voters must verify their identity with photo identification at his or her polling place. If a voter does not have a valid photo ID for voting purposes, my office will send someone to the location of their choice, even their home, to issue them a voter ID, upon request.

When I served in the Alabama House of Representatives, I sponsored and passed legislation, which prohibits private individuals or organizations from purchasing election tabulators, ballots or supplies and prohibits those same entities from paying election administration officials or their staffs. This law ensures our elections are free of influence from any outside group or individual. Steps like these, that we have taken in Alabama, serve to solidify the foundation of voter confidence.

Proper voter file maintenance is essential to instilling and preserving confidence in elections. Just this year, I, with the help of the dedicated team at Alabama's Office of Secretary of State, established the Alabama Voter Integrity Database. . . AVID. For the first time in our state's history, we have been approved to directly cross check our voter file with the national death master index maintained by the Social Security Administration so that when an Alabama voter dies in another state, we are able to identify and remove that individual from our voter file. Immediately removing deceased Alabamians from our voter file not only instills confidence but also allows us to maintain a more accurate voter file. Every state should be able to do this, but excessive federal regulations make it more difficult than it should be for states to access this important information. Although we have now been approved to utilize that index, the process was burdensome and time consuming. In fact, our access was further delayed due to the fact that the State of Alabama was considered for access behind a long line of private entities. You, as members of the United States Senate, can remove those obstacles and make this information immediately available to every Secretary of State in this nation.

AVID also enables us to work with the Alabama Law Enforcement Agency to receive notifications of Alabama licensed drivers over the age of 18 who have received a driver license in another state. Additionally, by comparing the National Change of Address database maintained by the United States Postal Service to our voter file, we identify registered Alabama voters who have requested to have their mail forwarded due to moving to a location outside of our state. For the first time in our state's history, we have entered into agreements with each of our border states allowing us to identify people who are registered to vote in Alabama and in a border state.

Voters who are identified as possibly relocating through any of these methods receive a mailer from their county Board of Registrars asking them to confirm their relocation or update their Alabama voter registration information. To date, we have, through AVID, identified 109,709 Alabama voters who have likely relocated outside of the state. But, unlike deceased voters, we cannot immediately remove them from the Alabama voter file. The National Voter Registration Act of 1993, also known as NVRA, mandates that we wait four years to make such a removal. If I could make a recommendation to this body to increase confidence in our elections, it would be to shorten the four-year waiting period mandated by the NVRA, especially considering the fact that state to state movers account for 19.9% of all relocations according to the U.S. Census Bureau. The four-year waiting period allows an individual to remain in a voter file in a state in which they no longer live for several elections including:

- a Presidential election
- a U.S. Senate election
- a gubernatorial election
- 2 congressional elections

- Mayoral election
- County commission elections
- State house and Senate elections
- and Judicial elections.

Four years is, quite frankly, too long. Amending the NVRA to shorten the four-year waiting period would certainly increase voter confidence, decrease bloated voter files and result in more accurate voter files across the nation.

Finally, the federal government currently obstructs the ability of the states to verify the citizenship of men and women registering to vote or attempting to vote in our elections. The United States Citizenship and Immigration Services (USCIS) division of the Department of Homeland Security has denied our repeated requests to obtain a list of non-citizens for the purpose of ensuring that only legal American citizens register to vote or cast votes in our elections. The USCIS directs us to use the Systematic Alien Verification for Entitlements (SAVE) database. However, SAVE explicitly states that the database is not to be used for voter registration verification. One might ask why the federal government prevents us from using every available database to ensure that only U.S. Citizens are able to vote in our elections, especially in light of the hundreds of thousands of illegal immigrants crossing our Southern border each month.

Again, thank you for your time. It has been an honor and a privilege to appear before you today.

**Testimony of Mr. Isaac Cramer  
Executive Director, Charleston County Board of Voter Registration and Elections  
U.S. Senate Committee on Rules and Administration  
March 12, 2024**

Chairwoman Klobuchar, Ranking Member Fischer, and members of the committee,

Thank you for affording me the opportunity to address you today.

My name is Isaac Cramer, and I serve as the Executive Director of the Charleston County Board of Voter Registration and Elections. Additionally, I have the privilege of serving as vice chair of the election subcommittee for the National Association of Counties, and as a member of the United States Election Assistance Commission Board of Advisors.

I cannot overstate the significance of the county perspective in any topic involving election administration. We are the frontline workers responsible for ensuring the smooth conduct of elections nationwide. I can confidently say that my colleagues and I speak with a unified voice in support of adequate and predictable federal funding for elections and for robust protections for those entrusted with safeguarding our nation's voting processes. Administering elections in Charleston County is a responsibility I hold with the utmost seriousness. My journey to this role is deeply personal, rooted in my mother's dream of becoming a United States citizen when I was child. Witnessing her exercise her newly minted right to vote left an indelible mark on my life, igniting in me a passion for politics and then election administration. I am here testifying before you today because of her hard work and determination.

My goal is to provide for secure, free, and fair elections. We must follow federal and state laws while ensuring that all Americans have the ability to make their voices heard at the ballot box.

As we stand on the threshold of yet another crucial election cycle, it is incumbent upon election administrators to draw from the lessons of the past to strengthen the foundations of our democracy for the future.

Reflecting on our preparations for the 2024 elections in Charleston County, our main concerns revolve around three pivotal needs: the protection of election officials, the security of our polling places, and the assurance of adequate and reliable federal funding.

The safety and well-being of our election personnel, including staff and poll managers, lie at the heart of our operational concerns. During the June 2022 Primaries, our polling places became battlegrounds for disruptive elements seeking to undermine the electoral process. A local group traveled around to our polling places on Election Day. They harassed our lead poll managers, claimed we were breaking the law, and at several locations called law enforcement to come to polling places and demanded they arrest our poll managers. Just to be clear, under South Carolina law, only the poll managers may call law enforcement to come to a polling place. One of the leaders of this group posted on social media to his followers, "For all of you on the team tomorrow observing the polls, Good Hunting. You know where you are looking for. We have the enemy on their back foot, press the attack. Forward." The "enemies" that they were referring to were their own neighbors. Good people who were simply carrying out their civic duty to help our democracy function. As our lead poll managers returned from their locations on election night, many expressed that they felt unsafe. Such incidents not only jeopardize the safety of our personnel but also erode public trust in the integrity of our elections.

The recent spotlight on South Carolina during the presidential preference primaries serves as a stark reminder of the vigilance required to uphold the democratic process. While major incidents were averted, instances of voter issues underscored the importance of bolstering security measures at polling locations. The growing reluctance among poll workers to endure harassment and disinformation further worsens the challenges faced by election administrators. Without the dedication of these essential volunteers, our elections would not be able to happen.

I believe the Charleston County model can serve as a resource to other election officials wondering how they can ensure the security of each polling location and the safety of every voter and poll manager. Preparing for the administration of the upcoming elections, our office meets monthly with our Counter Threat Manager, local law enforcement, emergency management, and public safety. Collaborating with county officials, we have embarked on initiatives to assess and enhance the security apparatus of our facilities. In July 2023, we hosted our first-ever Election Security Workshop at the Charleston County Emergency Operations Center (EOC). Attendees included election leaders and law enforcement officials from across the state, as well as members from national organizations. We have used this a model for all our pre-election meetings to take place at the EOC. We meet with mayors, incident command, and our partners at the municipal and county level. We collaborate to ensure that all our polling locations will be protected in any disruptive event. We use these meetings for resource sharing and decision making and to gather and discuss intelligence on threats from national and local sources that can inform our

decision-making and planning. We created a Law Enforcement Guide, shared with all our local law enforcement, to better prepare them for any incidents during the election cycle. We learned in 2022 that we wanted to empower law enforcement to support not only the voters that cast their ballot, but election officials at the polling locations. We discovered that there was an information gap. It was also through these meetings that we gained the data and ideas necessary to make investments in upgraded surveillance systems and access control mechanisms. These upgrades are imperative to mitigate potential risks and ensure the integrity of our election operations.

However, not every county can make similar investments. Numerous counties in South Carolina are unable to upgrade election infrastructure, including the security of their elections buildings, provide 24/7 camera surveillance, or have adequate space to prepare and test election equipment. Whenever I travel and speak with my colleagues in South Carolina, whether it is a rural county like Laurens or an urban and populous county like Greenville, the lack of access to federal funds to enhance their elections operations is the same. South Carolina is one of several states that does not distribute HAVA funds to the local county level. This needs to change. Congress must appropriate more election grant funding, but those funds also must get down to the people who run the elections day to day. All federal funding should be administered in coordination with or made available directly to counties.

The demand for increased funding is reinforced by the expanding role of Artificial Intelligence (AI). While AI brings efficiency gains, it also presents challenges for election officials. In Charleston County, we employ various methods to monitor social media, phone calls, and other communication channels to ensure voters receive reliable election information and safeguard our teams. The potential for malicious actors to exploit AI underscores the need to equip election officials with the essential resources and tools for effective preparation.

Also in preparation of 2024, we have a huge need to recruit the next generation of poll workers as many workers have left due to threats and harassment. Charleston County relies on poll managers who serve their local communities. Without them, elections are impossible to administer. To demonstrate that it is possible for counties to apply for direct funding, the EAC awarded \$1 million dollars in discretionary grant funding, enacted in the 2023 Consolidated Appropriations Act, to support the Help America Vote College Program (HAVCP) authorized in the Help America Vote Act of 2002. Charleston County applied for and received about \$76,000 from the EAC for our innovative program aimed at recruiting college students to serve as poll workers. The poll manager workforce continues to age, and it is necessary to instill civic engagement in the next generation. We have two components of this program: the first is an

annual course in which students learn about elections and serve as poll managers for Charleston County on Election Day. The second is to build a recruitment program alongside students, who can provide guidance on the best way to engage their peers. We want to ensure that we have poll workers for years to come by bringing in a contingent of college-age workers through the course and then through the sustainable recruitment strategy. We also want to instill a sense of civic pride that will hopefully be something students carry with them as they grow.

To help with the growing shortage of poll workers, we have created the Day for Democracy program, which allows county employees to serve on Election Day. County employees who participate receive poll worker pay on top of an administrative leave with pay from the County. This innovative approach led to over 15% of our poll workers being county employees in 2023. Not only were we successful in gaining highly qualified workers who believe in service to their community, we also gave them the opportunity to see how elections are conducted and the meticulously planning that is required. Our Day for Democracy participants then became ardent defenders of the integrity our elections in the local community. Having trusted public officials serving as poll workers greatly boosts public trust in elections.

As we recruit the next generation of poll workers, I am also concentrated on training and giving resources to our poll workers so they can be resilient in the face of any threat. We are enhancing our training on what to do in active shooter situations, how to mitigate threats and disturbances, and how to communicate in highly stressful situations. Many of our poll workers remember the days where elections were simple. They have now become more complex, and the stakes have never been higher. In an imperfect world, election administrators are expected to execute everything perfectly.

Counties support a consistent, predictable and dedicated federal funding stream to assist us with meeting the significant federal requirements already imposed on local governments administering elections. A consistent federal funding stream would allow counties to:

- Prepare for future technology and security updates
- Recruit, train and retain high-quality individuals that administer elections
- Conduct voter outreach



- Provide continued access to voters that have challenges as required by existing federal laws such as the Americans with Disabilities Act (ADA) and the Voting Rights Act and Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)<sup>1</sup>

Counties cover the costs of administering federal elections even though federal races and candidates take up a significant portion of the ballots counties are required to design, print, mail, and process each election cycle. The federal government should pay its fair share of election administration costs.

I also come before you to ask that Congress pass Senator Klobuchar's bill that would protect election officials—Senate Bill 1318, the Election Worker Protection Act—and/or other proposals to strengthen election worker safety. Our democracy is being attacked, and the people safeguarding it are feeling the pressure more than ever. Congress must enact legislation that imposes appropriate penalties for offenses including but not limited to the following:

- Harassing or intimidating election officials in the performance of their duty
- Threatening or causing harm to election officials or their families
- Attempting to pressure election officials or their family members to violate state and federal election law or the U.S. Constitution
- Doxing, or disseminating by any means the personal information of election officials or their family members<sup>2</sup>

Without increased efforts to protect election workers, counties will continue to see increased resignations of career election officials and struggle to recruit and retain seasonal poll workers. In South Carolina over 70% of election directors have left their post since 2020. I often am asked why I am still in this profession. It really is a simple answer for me. I believe in the United States of America and the freedoms we enjoy. I am able to serve this great country by providing the mechanism by which our country was founded: the ability to give everyone a voice in shaping the future and direction of our country through voting. Election administrators need the support of Congress now more than ever to protect and fund our elections.

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<sup>1</sup> National Association of Counties. (2024). *County Election Administration*.

<sup>2</sup> National Association of Counties. (2024). *County Election Administration*.



douglas county  
ELECTION COMMISSION

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Brian W. Kruse, Election Commissioner

**Statement of Douglas County Election Commissioner, Brian W. Kruse  
United States Senate Rules Committee  
March 12, 2024**

Chairwoman Klobuchar and ranking member Fischer, I appreciate the invitation to speak before the committee this afternoon. My name is Brian W. Kruse and I am the Douglas County Election Commissioner in Omaha, Nebraska. I am here to discuss how we are preparing for the upcoming 2024 Presidential Election and what makes Nebraska a gold standard for election administration.

One of the most important aspects of election administration is trust and fairness in conducting and managing elections. In Nebraska, we have, as I mentioned, the gold standard for election administration. First and foremost we use paper ballots. Voters receive a paper ballot whether it be for early voting or Election Day voting. The tabulating machines that count ballots, are never connected to the internet or to each other, and these machines are used only after numerous pre-election tests. Following the election and before results are official a thorough canvass or audit process is conducted as well as a manual audit directed by the Nebraska Secretary of State's office. There is a paper trail.

Our office prepares for each election cycle by reviewing and updating procedures for each department to ensure that each voter registration, candidate filing, early voting request, ballot, or petition signature is processed according to the statutes and using consistent rules. When processing thousands of records and training seasonal staff, it's important to ensure the correct procedures are being followed.

Early voting by mail can be a secure and accurate method of voting if administered properly. For polling place elections, Nebraska law requires voters who choose to vote by-mail to request an early voting or absentee ballot prior to each election as ballots cannot be automatically sent. Signatures and now voter ID requirements are checked at the time each request is processed. If these requirements are not met, a ballot will not be sent. Upon ballots being returned, signatures are checked again.

Drop boxes in Douglas County are secure, under 24/7 surveillance cameras, and emptied each week day by two individuals of differing parties. I encourage voters to use one of our thirteen drop boxes as they are the most direct way to return election mail. The voter places the item in the box and election workers pick them up, there are no third parties involved. Voters in Douglas County across all political spectrums have embraced the drop boxes. On average 77%, of all by-mail ballots are returned via the drop boxes.

Bolstering public confidence in our elections is vital to successful elections. Local election officials are the trusted source for getting the message out about elections. I am fortunate and grateful that I have a good relationship with the local media - TV, radio and print as they assist my office in disseminating accurate and timely information. The big task this cycle for Nebraska is the implementation of Voter ID and making sure voters know what is needed both for by mail early voting and Election Day voting in order for their ballot to be accepted and their voices heard.

The media is also a vital partner in reminding voters of deadlines and other helpful guides to make the process successful, for instance working with our office to create an infographic or flowchart of Voter ID options. The Chief Deputy Election Commissioner and myself attend as many community events as possible to provide election education, answer questions, and build relationships. These relationships have forged trust and have been instrumental for my office in correctly informing voters of changes related to elections.

In Nebraska, we also are unique in the fact that we have a state law, the only state, which allows for poll workers to be drafted, similar to jury duty. Douglas County was the only county in Nebraska that conducted a draft for many years. Some advantages to drafting poll workers are increased community awareness of the election process, less difficulty in securing election workers, and a younger work force with an average age in the mid-50's while the majority of poll workers nationwide are over 60.

In conclusion, it is my privilege to serve the voters of Douglas County and an honor to be here representing the 93 county election officials in Nebraska who work diligently to conduct accurate elections. I encourage all citizens from coast to coast to go and have your voices heard on Election Day.

Thank You for inviting me today Senator Fischer and thank you to the committee for your time this afternoon.



Brian W. Kruse  
Douglas County Election Commissioner



**Written Testimony of Janai Nelson  
President and Director-Counsel  
NAACP Legal Defense and Educational Fund, Inc.**

**Submitted to the  
United States Senate Committee on Rules & Administration**

**In connection with its March 12, 2024 hearing entitled**

**“Administration of Upcoming Elections”**

## I. INTRODUCTION

Chairwoman Klobuchar, Ranking Member Fischer, and members of the Committee:

My name is Janai Nelson, and I am President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”). Thank you for the opportunity to testify today regarding the state of voting rights for Black Americans, both on the ground and in the courts, and the urgent need for congressional action to protect and secure the fundamental freedom to vote. My testimony is informed by LDF’s extensive experience litigating under the Voting Rights Act and other key federal voting rights protections, as well as our on-the-ground election protection work in multiple states.

We meet today at a perilous moment for American democracy. Last week was the 59<sup>th</sup> anniversary of Bloody Sunday, when heroes such as John Lewis were brutally beaten by state troopers on the Edmund Pettis bridge for demanding the right to vote, leading to the passage of the Voting Right Act (“VRA”). Yet more than a decade after the Supreme Court’s *Shelby County* decision gutted the heart of the VRA and invited Congress to update the Act’s preclearance coverage framework to maintain its protections,<sup>1</sup> Congress has failed to act in accordance with its duty to enforce the Fourteenth and Fifteenth Amendments to the U.S. Constitution; and failed to use its Elections Clause power to set minimum standards for access to the fundamental right to vote across the country.

Unfortunately, in that decade, the landscape around election administration and voting rights has shifted markedly. States such as Alabama, North Carolina, and Texas moved to enforce or enact harsh voting restrictions within days or even hours of the *Shelby County* decision; and this was followed by a wave of such laws across the country.<sup>2</sup> More recently, in some states, a false narrative around stolen elections, including the “Big Lie,” has stoked a backlash against the growing participation by voters of color in our multiracial democracy. As we head towards the 2024 election, this false narrative continues to drive targeted efforts to disenfranchise voters of color. This month, the New York Times reported on a coordinated, multi-state effort

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<sup>1</sup> *Shelby Cnty. v. Holder*, 570 U.S. 529, 557 (2013) (“We issue no holding on § 5 itself, only on the coverage formula. Congress may draft another formula based on current conditions.”).

<sup>2</sup> Thurgood Marshall Inst., *Democracy Diminished: State and Local Threats to Voting Post-Shelby County*, *Alabama v. Holder (Shelby County)* (Oct. 6, 2021), <https://tminstituteldf.org/publications/democracy-diminished/>.

to pressure local officials to remove voters from the registration rolls in violation of federal protections against wrongful and discriminatory purges.<sup>3</sup>

Black Americans have faced this backlash and onslaught with a shredded shield—precisely when we’ve needed strong voting rights protections, destructive court decisions combined with inaction by Congress have stripped them away. The result has been alarming backsliding on our most fundamental right. Instead of our democracy becoming more inclusive and more equal, we’ve seen disturbing racial turnout disparities continue to rise.

Right now, we are at a crossroads. The question before us is whether the United States will live up to its highest ideals to embrace the inclusive, multi-racial, multi-ethnic democracy it must become; or will we backslide, losing our grip on our fundamental values, our democratic institutions, and the future of our multi-racial democracy.

The state of voting rights for Black Americans is tenuous. Longstanding protections have been weakened and are under further threat. This is an urgent crisis for voters of color, and for our democracy. We implore Congress to act to protect our rights.

#### **A. Statement of Purpose**

My testimony today seeks to provide this Committee with insight into the current state of voting rights for Black Americans, and to highlight the urgent need for congressional action. My testimony is informed by our on-the-ground experience working to protect the vote in Black communities across multiple states, which we hope will contribute to your discussions as you consider election-related legislation within your jurisdiction, and also assist your colleagues on other relevant committees. In the pages below I will describe the specific challenges Black voters continue to face in casting their ballots; discuss the limits of the current legal framework protecting Black Americans, and indeed all Americans, from voting discrimination; and detail how Congress can address these problems through much-needed pending legislation.

#### **B. LDF and Our Work**

Founded in 1940 under the leadership of Thurgood Marshall, LDF is America’s premier legal organization fighting for racial justice. 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

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<sup>3</sup> Alexandra Berzon & Nick Corasaniti, *Trump’s Allies Ramp Up Campaign Targeting Voter Rolls*, N.Y. Times (Mar. 3, 2024), <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html>.

inequality. From that era to the present, LDF's mission has been transformative—to achieve racial justice, equality, and an inclusive society, using the power of law, narrative, research, and people to defend and advance the full dignity and citizenship of Black people in America.

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.<sup>4</sup> LDF's founder Thurgood Marshall—who litigated LDF's watershed victory in *Brown v. Board of Education*,<sup>5</sup> 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*,<sup>6</sup> the 1944 case ending whites-only primary elections, as his most consequential case. He held this view because he 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 14th Amendment 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 marchers in Selma, Alabama in 1965, advancing the passage of the Voting Rights Act and litigating seminal cases interpreting its 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 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), presently administered by the Lawyers' Committee for Civil Rights Under Law. In addition, LDF has monitored elections for more than a decade through our Prepared to Vote initiative ("PTV") and, more recently, through our Voting Rights Defender ("VRD") project, which place LDF staff and volunteers on the ground for primary and general elections to conduct non-partisan election protection, poll monitoring, and to support Black political participation in targeted jurisdictions—primarily in the South. During primary and general elections over the last two years, LDF has had staff on the ground in seven states (AL, FL, GA, LA, MS, SC, TX), and also engaged in monitoring various media platforms for misinformation, disinformation, or intimidation related to elections.

## **II. BLACK VOTERS FACE CONTINUED BARRIERS TO PARTICIPATION**

LDF's work on the ground and in the courts makes plain that six decades after the enactment of the Voting Rights Act, Black Americans continue to face substantial

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<sup>4</sup> LDF has been an entirely separate organization from the NAACP since 1957.

<sup>5</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

<sup>6</sup> *Smith v. Allwright*, 321 U.S. 649 (1944).

barriers to political participation. The result has been significant increases in racial turnout disparities. New technologies threaten to amplify existing threats in this consequential election year.

#### **A. Racial Turnout Disparities Persist**

The disturbing growth in racial disparities in voter turnout is a troubling yet defining aspect of our current post-*Shelby County* electoral landscape. These disparities 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, 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 steep cost to the voices of, 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<sup>7</sup>—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.<sup>8</sup> This reflected an historical trend. These gaps have been stubbornly large for decades, and persisted at substantial levels even during President Obama's historic run for the presidency.<sup>9</sup>

While racial disparities in turnout have been relatively consistent that does not mean they are natural or unrelated to election 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.<sup>10</sup> Turnout disparities between white and Black voters increased substantially in *Shelby County's* aftermath in five out of the six states that were fully covered under the VRA's preclearance

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<sup>7</sup> Michael McDonald, *Voting Statistics*, U.S. Elections Project (2020), <https://www.electproject.org/election-data/voter-turnout-data>.

<sup>8</sup> *Voting and Registration in the Election of November 2020*, U.S. Census Bureau, tbl4b, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>; see also Kevin Morris & Coryn Grange, *Large Racial Turnout Gap Persisted in 2020 Election*, Brennan Ctr. for Just. (Aug. 6, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election>.

<sup>9</sup> *Id.* During the 2008 and 2012 elections the disparity was 9.3 and 8.0 percentage points, respectively.

<sup>10</sup> Thurgood Marshall Inst., *Democracy Diminished* *supra* note 2.



protections.<sup>11</sup> In Alabama, for example, Black and white voter turnout was roughly equal in the 2012 presidential election;<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> South Carolina had

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<sup>11</sup> Kevin Morris, Peter Miller & Coryn Grange, *Racial Turnout Gap Grew in Jurisdictions Previously Covered by the Voting Rights Act* Facebook Twitter, Brennan Ctr. for Just. (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.

<sup>12</sup> See U.S. Census Bureau, *Table 4b: Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020*, <https://www2.census.gov/programs-surveys/cps/tables/p20/585/table04b.xlsx>.

<sup>13</sup> See *id.*

<sup>14</sup> Alpha Phi Alpha Fraternity Inc. v. Raffensperger, 2023 WL 7037537, at \*68 (N.D. Ga. Oct. 26, 2023); see also Kevin Morris, *Despite High Voter Turnout, Racial Gap Persisted in Georgia Primary*, Brennan Ctr. for Just. (Aug. 15, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/despite-high-voter-turnout-racial-gap-persisted-georgia-primary>; Sara Loving & Kevin Morris, *Georgia's Racial Turnout Gap Grew*, Brennan Ctr. for Just. (Dec. 16, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/georgias-racial-turnout-gap-grew-2022>.

<sup>15</sup> 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>; Statement of Damon T. Hewitt, *Before the Subcomm. on Elections, Hr'g on "State and Local Perspectives on Election Administration" 13, 2022 Lookback Series: Successes in the 2022 Midterm Elections*, (Mar. 10, 2023), [https://cha.house.gov/\\_cache/files/b/2/b28d0f70-d970-4da6-b7a8-9a1662e65cec/6C84640E7D64D929A4F9400445FB871A.damon-hewitt-house-admin-elections-subcommittee-testimony-3.10.23.pdf](https://cha.house.gov/_cache/files/b/2/b28d0f70-d970-4da6-b7a8-9a1662e65cec/6C84640E7D64D929A4F9400445FB871A.damon-hewitt-house-admin-elections-subcommittee-testimony-3.10.23.pdf).

a greater than 15-point gap between white voters and voters of color.<sup>16</sup> Louisiana had nearly a 15-point turnout disparity between eligible white and Black voters.<sup>17</sup>

### **B. Restrictive Voting Laws Target Black Turnout**

In 2020, Black and Brown voters faced significant barriers to the ballot across the country.<sup>18</sup> Voters of color nonetheless made their voices heard, turning out in record numbers despite a life-threatening pandemic, hurricanes in several states, and threats of violence at the polls. The arc of voter suppression extended beyond Election Day in an unprecedented campaign to disrupt the counting and certification of ballots and overturn the election's results.<sup>19</sup> Despite these obstacles, voters elected the first female Vice-President of the United States, who is also the first Vice-President of African and Asian descent. And the State of Georgia elected its first Black and first Jewish U.S. Senators.

This step towards a more inclusive democracy triggered an intense backlash, including a violent insurrection and increased state efforts to block access to the ballot. With the former president and his allies aggressively pursuing a false

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<sup>16</sup> Statement of Marcia Johnson, *Before the Subcomm. on Elections, Hr'g on "State and Local Perspectives on Election Administration"* 13, *2022 Lookback Series: Successes in the 2022 Midterm Elections*, (Mar. 28, 2023), <https://www.rules.senate.gov/imo/media/doc/Marcia%20Johnson's%20Senate%20Rules%20Committee%20Testimony%203.24%20-%20Revised%20Clean.pdf>.

<sup>17</sup> Statement of Damon T. Hewitt, *supra* note 15, at 11.

<sup>18</sup> Thurgood Marshall Inst., *Democracy Defended* (Sept. 2, 2021), [https://www.naacpldf.org/wp-content/uploads/LDF\\_2020\\_DemocracyDefended-1-3.pdf](https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf).

<sup>19</sup> Simon Romero, Shaila Dewan & Giulia McDonnell Nieto del Rio, *In a Year of Protest Cries, Now It's 'Count Every Vote' and 'Stop the Steal'*, N.Y. Times (Nov. 5, 2020), <https://www.nytimes.com/2020/11/05/us/electionprotests-vote-count.html>; Bill Bostock, *Videos show Trump protestors chanting 'count those votes' and 'stop the count' outside separate ballot-counting sites in Arizona and Michigan*, Bus. Insider (Nov. 5, 2020), <https://www.businessinsider.com/videos-trump-protesters-michigan-arizona-vote-count-2020-11>; Jake Lahut, *Dozens of pro-Trump protestors chant 'Fox News sucks' outside major election HQ in Arizona, with several reportedly trying to get inside as voters are being counted*, Bus. Insider (Nov. 4, 2020), <https://www.businessinsider.com/video-fox-news-sucks-chant-crowd-outside-maricopa-election-arizona-2020-11>; Maura Ewing et al, *Two charged with carrying weapons near Philadelphia vote-counting site amid election tensions*, Wash. Post (Nov. 6, 2020), <https://www.washingtonpost.com/nation/2020/11/06/philadelphiaattack-plot-vote-count-election/>; National Task Force on Election Crises, *Strengthening Our Elections and Preventing Election Crises: Lessons and Recommendations from the 2020 General Election* (2021), [https://static1.squarespace.com/static/5e70e52c7c72720ed714313f/t/600192b45103a7521617d636/1610715829231/ElectionTF-Report\\_2021.pdf](https://static1.squarespace.com/static/5e70e52c7c72720ed714313f/t/600192b45103a7521617d636/1610715829231/ElectionTF-Report_2021.pdf).

narrative that the election had been stolen, the January 6th insurrection attempted to thwart the peaceful transfer of power and undermine trust in our democracy.<sup>20</sup>

Legislators then introduced more than 400 bills across nearly every state aiming to restrict the franchise.<sup>21</sup> Many of these measures became law. Since 2021, more than 20 states have enacted at least 59 restrictive voting laws.<sup>22</sup> Separately, through 2021, seventeen states enacted 32 laws to criminalize, politicize, or interfere with election administration.<sup>23</sup> At least 12 similar laws across seven states were added in 2022.<sup>24</sup> These include measures to shift authority over elections from executive agencies or nonpartisan bodies to the legislature; roll back local authority through centralization and micromanagement; and criminalize good-faith mistakes or decisions by voters and elections officials.<sup>25</sup>

Critically, many of these laws are 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.<sup>26</sup> And in Georgia and Texas, after strong early in-person turnout among Black voters, lawmakers initially moved to 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

<sup>20</sup> Statement of Janai Nelson, Pres. & Director-Counsel of NAACP Legal Def. & Educ. Fund, Inc., *Submitted to the U.S. House of Representatives Select Comm. to Investigate the January 6th Attack on the United States Capitol* (May 3, 2022), <https://www.naacpldf.org/wp-content/uploads/NAACP-LDF-Statement-for-Select-Committee-to-investigate-January-6-Attack-on-the-Capitol-FINAL-05.03.2022.pdf>.

<sup>21</sup> Brennan Ctr. for Just., *Resource: Voting Laws Roundup: December 2021* (Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

<sup>22</sup> Brennan Ctr. for Just., *Voting Laws Roundup: October 2022* (Oct. 6, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2022>; Brennan Ctr. for Just., *Voting Laws Roundup: October 2023* (Oct. 19, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2023>.

<sup>23</sup> Mem. 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](https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-report-update_12232021-year-end-numbers.pdf)

<sup>24</sup> Brennan Ctr. for Just., *Voting Laws Roundup: December 2022* (Dec 19, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022>.

<sup>25</sup> Mem. from the States United Democracy Ctr., 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](https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-report-update_12232021-year-end-numbers.pdf).

<sup>26</sup> See generally Compl. for Declaratory & 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.

civic participation.<sup>27</sup> 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.<sup>28</sup>

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 reduce 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.<sup>29</sup> 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.<sup>30</sup>

Several of these restrictive laws contributed directly to the barriers to participation by Black voters described in the section below. In addition, as evidenced by the widening racial turnout disparities described above, many of these laws achieved their intended effect.

### **C. Barriers Black Voters Have Encountered on the Ground**

In prior Congressional testimony, including before this Committee, LDF has detailed a litany of challenges Black voters have faced in recent elections.<sup>31</sup>

<sup>27</sup> Letter from Sam Spital et al., NAACP Legal Def. Fund, 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 Legal Def. Fund et al., to Georgia House of Representatives, Special Comm. on Election Integrity (Mar. 14, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-SPLC-Written-Testimony-on-SB202-3.18.21.pdf>.

<sup>28</sup> See Press Release, NAACP Legal Def. Fund, 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 Legal Def. Fund, 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/>.

<sup>29</sup> See S.B. 202, 2021-2022 Leg. Sess (Ga. 2021), <https://www.legis.ga.gov/api/legislation/document/20212022/201498>.

<sup>30</sup> Compl. for Declaratory & 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, NAACP Legal Def. Fund, Lawsuit Filed Challenging New Texas Law Targeting Voting Rights (Sept. 7, 2021), <https://www.naacpldf.org/press-release/lawsuit-filed-challenging-new-texas-law-targeting-voting-rights/>.

<sup>31</sup> Test. of Adam Lioz, *Before the Comm. on Rules & Admin., Hr'g on "State and Local Perspectives on Election Administration"* 12-15, (Mar. 28, 2023), <https://www.naacpldf.org/wp-content/uploads/LDF-Senate-Rules-Testimony-4-4-23.pdf>; Test. of Deuel Ross, *Before the House Comm. on House Admin. Subcomm. on Elections, Hr'g on "American Confidence in Elections: Ensuring Every Eligible American Has the Opportunity to Vote – and for their Vote to Count According to Law"* 5-6 (May. 24, 2023),

Unfortunately, these barriers to the ballot persist. In this section, we briefly summarize our past testimony and report on subsequent developments.

### 1. Elections Took Place Under Discriminatory Districts

Congressional and legislative maps produced by states following the decennial census count failed to reflect America’s emerging multiracial democracy. Though the growth of Black people and other people of color fueled population growth, the voting strength of communities of color was diluted through racial gerrymandering. 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 have faced lawsuits challenging their maps for racial discrimination.<sup>32</sup> In litigation involving LDF alone, courts in Alabama,<sup>33</sup> Louisiana,<sup>34</sup> and South Carolina<sup>35</sup> (all states previously covered by the VRA’s preclearance protections)<sup>36</sup> found that state-created maps were racially 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

<https://www.naacpldf.org/wp-content/uploads/HHRG-118-HA08-Wstate-RossD-20230524-1.pdf>; Test. of Sherrilyn Ifill, *Before the House Comm. on the Jud., Subcomm. on the Const., C.R., & C.L., Hr’g on “Voter Suppression and Continuing Threats to Democracy”* 11-12 (Jan. 20, 2022), <https://docs.house.gov/meetings/JU/JU10/20220120/114336/HHRG-117-JU10-Wstate-IfillS-20220120.pdf>.

<sup>32</sup> All About Districting, Cases, <https://redistricting.lls.edu/cases/?cycles%5B%5D=2020&states%5B%5D=Alabama&states%5B%5D=Alaska&states%5B%5D=Arizona&states%5B%5D=Georgia&states%5B%5D=Louisiana&states%5B%5D=Mississippi&states%5B%5D=South%20Carolina&states%5B%5D=Texas&states%5B%5D=Virginia&sortby=&page=1>.

<sup>33</sup> Prelim. Inj. Mem. Op. & 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](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).

<sup>34</sup> Ruling & 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).

<sup>35</sup> Findings of Fact & Conclusions of Law, *S.C. State Conf. of the NAACP v. Alexander*, No.: 3:21-cv-03302-MGL-TJH-RMG 23 WL 118775 \*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](https://www.aclu.org/wp-content/uploads/legal-documents/order_-south_carolina_state_conference_of_the_naacp_v._alexander.pdf).

<sup>36</sup> 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>.

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.<sup>37</sup> 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.<sup>38</sup>

Yet, as a result of appeals to the Supreme Court, injunctions requiring legislatures to redraw racially discriminatory maps—including injunctions issued months prior to the 2022 election in Alabama and Louisiana—were frozen, resulting in the use of discriminatory maps in the 2022 midterms. Because these cases were put on hold, hundreds of thousands of Black voters cast ballots in districts that *courts had already ruled* violated the Voting Rights Act. This means that the congressional delegation from these states, as well as the election of other officials, was produced through a process infected with state-sponsored racial discrimination.

Discriminatory redistricting was not limited to congressional and state legislative maps. Local redistricting efforts also produced discriminatory maps in jurisdictions previously covered under Section 5. For example, in November 2021, the Commissioners Court in Galveston County, Texas enacted a redistricting plan that dismantled the county's sole majority-minority district, Precinct 3, comprised of a 60% combined Black and Latino population.<sup>39</sup> This was the County's second attempt to eliminate Precinct 3; the Department of Justice interposed an objection pursuant to VRA Section 5 against the County's prior attempt after the 2010 Census because it resulted in a “retrogression in minority voting strength.”<sup>40</sup> This time, multiple lawsuits were filed, and both the district court and a panel of the Fifth Circuit held that the County's plan violated Section 2.<sup>41</sup> The case is currently pending rehearing

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<sup>37</sup> See Stipulation of Facts, *Milligan v. Merrill*, No. 2:21-cv-01530-AMM (N.D. Ala. 2021), ECF No. 53.

<sup>38</sup> Findings of Fact & Conclusions of Law, *supra* note 35, at \*15.

<sup>39</sup> Findings of Fact & Conclusions of Law, *Petteway v. Galveston Cnty.*, No. 3:22-cv-57 5-6 (S.D. Tex. Oct. 13, 2023), [https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/TX\\_322-cv-57\\_10-13-23.pdf](https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/TX_322-cv-57_10-13-23.pdf).

<sup>40</sup> Review of Compl. from Thomas E. Perez, Asst. Att'y Gen. of U.S. Dep't of Just. Off. of C.R., to James E. Trainor III, Esq., Beirne, Maynard & Parsons, [https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1\\_120305.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_120305.pdf).

<sup>41</sup> *Petteway v. Galveston Cnty.*, 2023 WL 6786025 (S.D. Tex. Oct. 2023), *stayed*, 86 F.4th 214 (5th Cir. 2023).

by the full Fifth Circuit, which will reconsider existing precedent allowing for coalition opportunity districts.<sup>42</sup>

## 2. Mass Challenges to Voter Eligibility

Ahead of crucial 2022 elections, extremist groups and other partisan actors weaponized state laws to launch mass challenges to voter eligibility in several key states such as Florida and Georgia.<sup>43</sup> These frivolous challenges sought to prevent eligible citizens from freely exercising the franchise.<sup>44</sup> This trend continued in 2023 and will continue in increasing numbers in 2024, as reported by several groups carrying out these challenges.<sup>45</sup>

Recent technological developments have amplified the risk of frivolous mass voter challenges. Eagle AI is a tool that allows users to generate thousands of mass voter challenges in just a few clicks.<sup>46</sup> Using unreliable data, the tool gives conspiracy theorists the ability to inundate election officials, risking election administration failures and potentially intimidating voters whose eligibility is being questioned.

The technology’s developers have shopped it around to counties and states as a tool to conduct list maintenance, and at least one county in Georgia is currently beta testing it.<sup>47</sup> Adoption by governmental entities to perform list maintenance raises significant concerns because of how unreliable and potentially discriminatory the tool is. As Georgia’s elections director noted, “EagleAI draws inaccurate conclusions and then presents them as if they are evidence of wrongdoing.”<sup>48</sup>

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<sup>42</sup> *Petteway v. Galveston Cnty.*, 86 F.4th 1146 (5th Cir. 2023).

<sup>43</sup> Test. of Adam Lioz, *supra* note 31, at 12-15.

<sup>44</sup> *Id.*

<sup>45</sup> Berzon & Corasaniti, *supra* note 3.

<sup>46</sup> It was developed by the “Election Integrity Network,” the same organization campaigning for states to exit the bipartisan Electronic Registration Information Center (“ERIC”). Caroline Haskins, *A new tool targets voter fraud in Georgia – but is it skirting the law*, The Guardian (Feb. 26, 2024), <https://www.theguardian.com/us-news/2024/feb/26/eagleai-georgia-voter-registration-election>.

<sup>47</sup> *Id.*

<sup>48</sup> Jane C. Timm, *Inside the Right’s Effort to Build a Voter Fraud Hunting Tool*, NBC News, (Aug. 17, 2023), <https://www.nbcnews.com/politics/2024-election/conservatives-voter-fraud-hunting-tool-eagleai-cleta-mitchell-rcna97327>.

### 3. Polling Location Problems

In Georgia,<sup>49</sup> Louisiana,<sup>50</sup> and Mississippi<sup>51</sup> changes to polling locations led to widespread voter confusion and delays during early voting and on Election Day during elections in 2022 and 2023. In many instances, these changes, which included closures, relocations, and consolidations, were poorly communicated to voters or not communicated at all.<sup>52</sup> These changes to assigned polling stations disproportionately affected Black and other voters of color.<sup>53</sup> On the ground, voters faced the additional burden of late opening of polling facilities, which led to delays to the election process and long lines.<sup>54</sup>

Voters with physical disabilities, who are disproportionately Black, faced a unique set of challenges while voting in person during elections in 2022 and 2023 throughout the South. Polling places in multiple Southern states lacked accessible parking and entrances.<sup>55</sup> In addition, several states have enacted legislation that imposes additional burdens on voters with disabilities who need assistance at the polls. In 2021, Texas enacted SB 1, which, among other things, requires those providing assistance to disclose certain personal information and swear an oath under the penalty of perjury. Multiple individuals with disabilities testified during a trial concerning claims challenging SB 1 in fall 2023 that SB 1's assistance

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<sup>49</sup> Test. of Adam Lioz, *supra* note 31, at 16.

<sup>50</sup> *Id.* at 16-17.

<sup>51</sup> *Id.* at 17-19.

<sup>52</sup> Ashton Pittman & William Pittman, *Mississippi Officials Made 164 Voting Precinct Changes Since November 2022*, Miss. Free Press (Aug. 7, 2023), <https://www.mississippifreepress.org/35295/mississippi-officials-made-161-voting-precinct-changes-since-november-2022>; Ashton Pittman & William Pittman, *State Has Wrong or Missing Addresses for 92 Voting Precincts, MFP Investigation Finds*, Miss. Free Press (Nov. 7, 2023), <https://www.mississippifreepress.org/37388/state-has-wrong-or-missing-addresses-for-92-voting-precincts-mfp-investigation-finds>; Ashton Pittman & William Pittman, *Mississippi Election Officials Have Made 98 Polling Place Changes Since 2020, Investigation Finds*, Miss. Free Press (Nov. 4, 2022), <https://www.mississippifreepress.org/28941/mississippi-election-officials-have-made-97-polling-place-changes-since-2020-investigation-finds>; Ashton Pittman & William Pittman, *Mississippi Officials Moved Three Times More Polling Places Than Reported for 65,000 Voters*, Miss. Free Press (Oct. 31, 2020), <https://www.mississippifreepress.org/6577/mississippi-officials-moved-three-times-more-polling-places-than-reported-for-65000-voters>.

<sup>53</sup> Pittman & Pittman, *Mississippi Officials Moved Three Times More Polling Places Than Reported for 65,000 Voters*, *supra* note 51.

<sup>54</sup> Test. of Adam Lioz, *supra* note 31, at 19-21.

<sup>55</sup> *Id.* at 12-15.



restrictions deterred them from seeking assistance and deterred potential assistors from providing it.<sup>56</sup>

Election administration problems at polling locations created significant barriers for voters during elections in 2022 and 2023. For example, Hinds County, which is approximately 70% Black, experienced extensive ballot shortages during the 2023 Mississippi statewide election.<sup>57</sup> Up to nine polling locations ran out of ballots multiple times during Election Day, some before noon.<sup>58</sup> This caused hours-long lines, resulting in many voters leaving the polling place without voting.<sup>59</sup>

#### 4. Issues with Early Voting

Accessible and common-sense voting methods have also been rolled back. Early voting, for example, proved critical to the record-breaking voter turnout of Black and Latino voters during the 2020 general election. Nonetheless, it has been eliminated or curtailed in Arizona and Texas.<sup>60</sup> In Texas, “drive-thru” and 24-hour early voting were used in large numbers in Harris County in 2020, disproportionately by Black and Latino voters. The Texas legislature banned both methods of voting, adding to the burdens imposed on voters who have difficulty getting to voting locations during traditional hours.<sup>61</sup>

#### 5. Restrictions on Absentee Voting and Vote-By-Mail

Restrictions on absentee and mail voting increased the time, cost, and risk associated with voting. States eliminated or severely limited the use of vote-by-mail ballot drop boxes, which Black and Latino voters depended on in 2020.<sup>62</sup> At least one

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<sup>56</sup> Proposed Findings of Fact & Conclusions of Law, *La Union Del Pueblo Entero, et al v. Gregory W. Abbott, et al*, No. 5:21-cv-00844-XR 273 (W.D. Tex. Jan. 20, 2024), ECF No. 856.

<sup>57</sup> Shaunicy Muhammad, ‘Human Error’ Caused Hinds County Election Day Ballot Shortages, *Commissioners Say*, Miss. Free Press (Dec. 20, 2023), <https://www.mississippifreepress.org/38457/human-error-caused-hinds-county-election-day-ballot-shortages-commissioners-say>.

<sup>58</sup> Paul J. Weber, *Texas releases another audit of elections in Harris County, where GOP still challenging losses*, AP News (Oct. 19, 2023), <https://apnews.com/article/texas-voting-harris-county-4ac9b393ad1d7b91d92232d34620818c>.

<sup>59</sup> Michael Goldberg, *Voting rights groups push for answers from Mississippi election officials about ballot shortages*, AP News (Dec. 7, 2023), <https://apnews.com/article/mississippi-election-ballot-shortage-hinds-county-f669843c918edcc2af15667fb2399f0b>.

<sup>60</sup> *Id.* at 5, 22-23; Test. of Deuel Ross, *supra* note 31, at 5-6.

<sup>61</sup> Test of Adam Lioz, *supra* note 31, at 22.

<sup>62</sup> *Id.* at 22.

state required voters to include their state-issued ID number or Social Security Number on their mail ballot application without providing an alternative for voters who did not have such information.<sup>63</sup> Further, new ID requirements led to a record number of rejected absentee applications and mail ballots.<sup>64</sup> Florida's S.B. 90 eliminated the ability of voting advocates to assist with turning in absentee ballots after many Black voters adjusted to the pandemic by voting absentee.<sup>65</sup>

State legislatures have passed a wave of new laws restricting the ability of mail voters to receive assistance. Texas's SB 1, enacted in 2021, requires assistors to fill out additional information on the mail-ballot carrier envelope and makes it a crime to compensate, offer, or receive compensation for providing assistance, deterring would-be assistors, like a person's paid caregiver or an employee of a civic engagement organization, and increasing the risk that the ballot will be rejected for clerical errors.<sup>66</sup> In 2023, Mississippi enacted SB 2358, which imposes criminal penalties for helping a voter "collect and transmit" their mail ballot.<sup>67</sup> A federal court preliminarily enjoined the new law as a likely violation of Section 208 of the Voting Rights Act.<sup>68</sup> Alabama appears poised to enact SB 1, another bill that restricts vote-by-mail assistance by criminalizing many common forms of assistance, such as paying \$5.00 for gas money for someone who agrees to drive to the registrar's office to deliver an absentee ballot.<sup>69</sup> These laws impose additional burdens not only on voters with disabilities, but also hamper organized voter turnout drives.

These legislative attacks are part of a broader, concerted effort to limit the vote-by-mail process and undermine public trust in it. Litigation has been filed in Mississippi, Illinois, and North Dakota challenging post-Election Day return dates for mail ballots, asserting a fringe legal theory that federal law setting the date of federal elections prohibits states from counting timely cast mail ballots received after

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<sup>63</sup> *Id.* at 25.

<sup>64</sup> *Id.* at 25.

<sup>65</sup> Test. of Sherrilyn Ifill, *supra* note 31, at 11-12.

<sup>66</sup> SB 1 § 6.05-06, 87th Leg. (TX 2021), <https://legiscan.com/TX/text/SB1/id/2424492>.

<sup>67</sup> SB 2358, 2023 Reg. Sess. (Miss. 2023), <https://legiscan.com/MS/text/SB2358/id/2749983/Mississippi-2023-SB2358-Enrolled.html>.

<sup>68</sup> Prelim. Inj. Order, *Disability Rts. Mississippi v. Fitch*, No. 3:23-CV-350-HTW-LGI (S.D. Miss. 2023), <https://www.aclu.org/documents/disability-rights-mississippi-v-fitch-pi-order>.

<sup>69</sup> SB 1, 2024 Reg. Sess. (AL 2024), <https://legiscan.com/AL/amendment/SB1/id/203912>.

Election Day.<sup>70</sup> If successful, these lawsuits would increase the risk of rejected ballots for tens of thousands of mail voters, including military members, students, and individuals with disabilities, who rely on post-Election Day return dates. In Florida, an administrative challenge has been filed against a rule promulgated by the Secretary of State allowing voters to request a mail ballot through a designee.<sup>71</sup> And public officials, like the Mississippi Secretary of State, have publicly discouraged voters from voting by mail “if at all possible” because of purported USPS mail delays,<sup>72</sup> even though USPS delivered nearly 99% of trackable ballots from voters to election officials within three days during the 2022 midterm elections.<sup>73</sup>

## 6. Criminalization of Voting

One of the most alarming trends of the post-2020 environment has been the criminalization of the voting process. Between 2020 and 2022, twenty-six states created or heightened punishments for a total of 120 election-related crimes, largely in Southern states previously covered under Section 5.<sup>74</sup> These laws target voters, assistants, and civic organizations with criminal penalties for benign activities related to the voting process. For example, Georgia’s S.B. 202 criminalizes the distribution of food and water to voters waiting in line, a practice known as “line warming” or “line relief.”<sup>75</sup> And as noted above, there is a new wave of laws criminalizing the provision of needed assistance to absentee or mail voters.

Under the guise of ferreting out election fraud, some states have even created new police forces to criminalize the voting process. Created in 2022, Florida’s election crimes police force has targeted minority voters and chilled civic participation while

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<sup>70</sup> *Republican Nat’l Comm. v. Wetzel*, No. 1:24-cv-25-LG-RPM (S.D. Miss 2024); *Splonskowski v. White*, No. 1:23-cv-00123 (D.N.D. 2023); *Bost v. Illinois State Board of Elections*, No. 1:22-cv-02754 (N.D. Ill. 2022).

<sup>71</sup> *Boydston v. Department of State Division of Elections*, No. 23-004487RP (Fla. Div. of Admin. Hr’gs, 2023).

<sup>72</sup> Tweet from Sec. Michael Watson (Feb. 7, 2024), <https://twitter.com/MichaelWatsonMS/status/1755237396294045970>.

<sup>73</sup> U.S. Postal Serv., *2022 Post-Election Analysis: Successfully delivering the nation’s election mail during the 2022 midterm elections* (2022), <https://about.usps.com/what/government-services/election-mail/pdf/usps-2022-post-election-analysis.pdf>.

<sup>74</sup> Benjamin Barber, *Criminalizing voters in Southern states*, Facing South (Jan. 27, 2023), <https://www.facingsouth.org/2023/01/criminalizing-voters-in-southern-states>.

<sup>75</sup> H.B. 540 § 22, Act 632, Reg. Sess. (Ga. 2010); see also O.C.G.A. § 21-2-414(a)(1), (a)(3).

achieving only a handful of successful prosecutions.<sup>76</sup> Other states, including Georgia, Texas, and Ohio, have proposed their own specialized units to investigate and prosecute election fraud.<sup>77</sup> States like Florida have also targeted returning citizens, passing laws requiring them to pay all judicially mandated financial obligations in order to register to vote and cast their ballots, and conducting high-profile arrests for voting while ineligible.<sup>78</sup>

### 7. Threats to Election Officials

Election officials have experienced unprecedented threats to their safety and privacy since the 2020 election. Large numbers of election officials have expressed concern for their safety while carrying out their duties.<sup>79</sup> Some have even been harassed and threatened while on the job, including Secretaries of the States who are responsible for certifying election results.<sup>80</sup> As we heard in powerful testimony to the January 6th Committee, Black election workers Ruby Freeman and Shaye Moss had their lives turned upside down by a relentless campaign of threats and harassment sparked by Rudy Giuliani's false accusations.<sup>81</sup> Mr. Giuliani was ultimately found liable for defamation by a federal jury and ordered to pay nearly \$150 million in damages, in recognition of the steep cost two diligent election workers had paid for doing their jobs.<sup>82</sup>

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<sup>76</sup> John Kennedy, *Florida Election Crimes Office Dealt with 1,300 Complaints, Continues to Stir Controversy*, USA Today Florida (Jan. 17, 2024), <https://www.tallahassee.com/story/news/politics/2024/01/17/first-annual-report-shows-florida-election-crimes-office-1300-complaints-draws-controversy/72255279007/>.

<sup>77</sup> Mac Brower, *Criminalizing Elections Is on Red States' Agenda This Year*, Democracy Docket (Feb. 21, 2023), <https://www.democracymarket.com/analysis/criminalizing-elections-is-on-red-states-agenda-this-year/>.

<sup>78</sup> Test. Of Adam Lioz, *supra* note 31, at 28-29.

<sup>79</sup> Ruby Edlin & Lawrence Norden, *Poll of Election Officials Shows High Turnover Amid Safety Threats and Political Interference*, Brennan Ctr. For Just. (Apr. 25, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/poll-election-officials-shows-high-turnover-amid-safety-threats-and>.

<sup>80</sup> Test. Of Sherrilyn Ifill, *supra* note 31, at 14-15.

<sup>81</sup> Select Comm. to Investigate the January 6<sup>th</sup> Attack on the U.S. Capital, H.R. 117<sup>th</sup> Cong. 2<sup>nd</sup> Sess., Final Report on the Select Committee to Investigate the January 6<sup>th</sup> Attack on the United States Capital (Dec. 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf> at 305-307.

<sup>82</sup> Daniel Barnes, et al., *Rudy Giuliani Hit with \$148M Verdict for Defaming Two Georgia Election Workers*, NBC News, Dec. 15, 2023, <https://www.nbcnews.com/politics/politics-news/rudy-giuliani-hit-148m-verdict-defaming-two-georgia-election-workers-rcna129807>.

As threats against good-faith election officials and workers rise, there has been an exodus of paid workers and volunteers who have stopped staffing polling locations.<sup>83</sup> Lawmakers have exacerbated the problem by passing laws that put election workers at risk of criminal penalties for fulfill their duties.<sup>84</sup> In 2023, at least three states enacted laws that imposed criminal penalties on election officials for performing benign election administration activities. Arkansas's HB 1411 made it a crime for an election official to send an unsolicited mail ballot, while Georgia's SB 222 expanded a prior law making it a crime for election officials to accept third-party funding to support election administration.<sup>85</sup>

#### **D. LDF's Recent and Ongoing Voting Rights Litigation**

LDF's extensive voting rights litigation docket illustrates ongoing barriers to equal representation, highlights the resources required to fix problems after the fact, and exposes the shortcomings of the existing legal regime.

##### *1. Redistricting and Racial Vote Dilution*

Despite the growth of communities of color over the last decade, congressional and legislative maps following the 2020 Census failed to reflect the nation's increased diversity.<sup>86</sup> Racial vote dilution has systemically deprived Black and Latino voters of a meaningful opportunity to elect candidates of their choice. LDF has brought a series of lawsuits challenging congressional, state legislative, and local government maps on behalf of Black voters who were unlawfully gerrymandered out of political power in several states.

##### *i. Alabama: Allen v. Milligan*

In 2021, Alabama enacted a redistricting plan for its seven congressional districts. The new map divided the eighteen counties in Alabama's Black Belt in a way that prevented the Black community from electing candidates of their choice. The Black Belt is a "community with a high proportion of similarly situated black voters who share a lineal connection 'the many enslaved people brought there to work in the antebellum period.'"<sup>87</sup> This cracking of the Black Belt denied the Black voters there the opportunity to elect candidates of their choice. Despite Black voters casting

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<sup>83</sup> Test. of Adam Lioz, *supra* note 31, at 28-29.

<sup>84</sup> *Id.*, at 28-29.

<sup>85</sup> Brennan Ctr. for Just., *Voting Laws Roundup: 2023 in Review*, (Jan. 18, 2024), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2023-review>.

<sup>86</sup> Test. of Deuel Ross, *supra* note 31, at 7-8.

<sup>87</sup> *Allen v. Milligan*, 143 S. Ct. 1487, 1495 (2023).

on average over 90% of their ballots for their preferred candidates, bloc voting by the white majority uniformly cancelled out their votes. As a result of this cracking and racially polarized voting, Black Alabamians—who comprise 27% of the state’s population—formed the majority in only one of the state’s seven districts. The impact of this map is that white Alabamians who are only 65% of the population controlled elections in 86% of the state’s seven congressional districts.<sup>88</sup> LDF, along with the American Civil Liberties Union, ACLU of Alabama, Hogan Lovells LLP, and Wiggins, Childs, Pantazis, Fisher & Goldfarb filed a lawsuit on behalf of Greater Birmingham Ministries, the Alabama State Conference of the NAACP, and several individuals challenging the state’s redistricting plan under Section 2 of the Voting Rights Act. The lawsuit demanded that the state create a second district that gives Black Alabamians an equal chance to see their preferred candidates represent them in Congress.<sup>89</sup>

In January 2022 a three-judge panel in the district court in the Northern District of Alabama unanimously agreed with the plaintiffs. It found that the map likely violated Section 2 of the VRA and granted a preliminary injunction that required the state to draw a new map.<sup>90</sup> However, the Supreme Court halted the preliminary injunction by a 5-4 decision pending a merits decision in the case.<sup>91</sup> The result of this stay was that Alabama used a map that has been held to be discriminatory as the basis for the 2022 congressional elections in the state. As expected under this map, Alabamians elected only one Black person to Congress in 2022 out of seven seats.<sup>92</sup>

On June 8, 2023, the Supreme Court issued a landmark 5-4 decision affirming and restoring the district court’s preliminary injunction.<sup>93</sup> On remand, the Alabama Legislature drew a new map that still would not create a second opportunity district for Black voters. The district court rejected the State’s proposal, and the Supreme Court denied Alabama’s motion for a stay. On October 5, 2023, the district court adopted a new map, which, for the first time in history, creates a second congressional district where Black voters in Alabama will have an opportunity to elect candidates

<sup>88</sup> See Stipulation of Facts, *supra* note 37.

<sup>89</sup> Compl., *Milligan v. Merrill*, No. DC-775038/000001-16632740 ¶¶ 3-7, (N.D. Ala. Nov. 15, 2021), <https://www.naacpldf.org/wp-content/uploads/COMPLAINT-Milligan-v.-Merrill-1.pdf>.

<sup>90</sup> Prelim. Inj. Mem. Op. & Order, *supra* note 33.

<sup>91</sup> Grant of Appls. for Stays or Injunctive Relief, *Merrill v. Milligan*, Nos. 21A375 (21–1086) & 21A376 (21–1087) (595 U.S. 2022), [https://www.brennancenter.org/sites/default/files/2022-10/Merrill\\_stay\\_opinion\\_dissent.pdf](https://www.brennancenter.org/sites/default/files/2022-10/Merrill_stay_opinion_dissent.pdf).

<sup>92</sup> U.S. Cong., *Members of the U.S. Congress*, <https://www.congress.gov/members?q=%7B%22member-state%22%3A%22Alabama%22%2C%22congress%22%3A118%7D>.

<sup>93</sup> *Allen v. Milligan*, 143 S. Ct. 1487.

of choice this November.<sup>94</sup> However, Alabama continues to dispute this result, and the district court has now set a date for a full trial on the merits to begin on February 3, 2025.<sup>95</sup>

ii. *Louisiana: Robinson v. Landry*

In March 2022, LDF, the ACLU, ACLU of Louisiana, and Paul, Weiss, Rifkind, Wharton & Garrison LLP filed a lawsuit on behalf of the Louisiana State Conference of the NAACP, Power Coalition for Equity and Justice and nine individual voters, challenging the congressional redistricting maps passed by the Louisiana legislature as a violation of Section 2 of the Voting Rights Act.<sup>96</sup> The lawsuit alleged that the maps diluted the voting power of Black Louisianans by failing to provide Black voters an equal opportunity to elect their candidates of choice in a second congressional district. The discriminatory map was vetoed by Louisiana Governor Bel Edwards, but the legislature voted to overturn the veto.<sup>97</sup> On June 6, 2022, the map was blocked by a federal judge who ruled that it was racially discriminatory and likely violated the Voting Rights Act, and a motions panel of the Fifth Circuit Court of Appeals in New Orleans agreed.<sup>98</sup> The court's determination required legislators to draw a new map with two districts where Black voters can elect candidates of choice

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<sup>94</sup> Inj., Order, & Court-Ordered Remedial Map, *Milligan v. Allen*, No. 2:21-cv-01530-AMM (N.D. Ala. Oct. 23, 2023), [https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/AL\\_221-cv-1530\\_311.pdf](https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/AL_221-cv-1530_311.pdf).

<sup>95</sup> Order, *Milligan v. Allen*, No. 2:21-cv-01530-AMM (N.D. Ala. Jan. 11, 2024), [https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/AL\\_221-cv-1530\\_324.pdf](https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/AL_221-cv-1530_324.pdf).

<sup>96</sup> Compl., *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La. Mar. 30, 2022), <https://www.naacpldf.org/wp-content/uploads/LA-Redistricting-Suit-3.30.22.pdf>.

<sup>97</sup> Press Release, NAACP Legal Def. Fund, Louisiana Legislature Overturns Governor's Veto of Map Lacking a Second Majority-Black Congressional District; Civil Rights Groups File Suit Under Voting Rights Act (Mar. 30, 2022), <https://www.naacpldf.org/press-release/louisiana-legislature-overturns-governors-veto-of-map-lacking-a-second-majority-black-congressional-district-civil-rights-groups-file-suit-under-voting-rights-act>; Wesley Muller & Greg LaRose, *Louisiana Legislature overrides Gov. Edwards' veto of congressional map*, La. Illuminator (Mar. 30, 2022), <https://lailluminator.com/2022/03/30/louisiana-legislature-overrides-gov-edwards-veto-of-congressional-map/>; Mark Ballard et al., In an historic vote, Louisiana Legislature overturns governor's veto on congressional maps, The Advocate (Mar. 30, 2022), [https://www.theadvocate.com/baton\\_rouge/news/politics/legislature/in-an-historic-vote-louisiana-legislature-overturns-governors-veto-on-congressional-maps/article\\_fecf9998-b04c-11ec-be24-17a2c1389e4d.html](https://www.theadvocate.com/baton_rouge/news/politics/legislature/in-an-historic-vote-louisiana-legislature-overturns-governors-veto-on-congressional-maps/article_fecf9998-b04c-11ec-be24-17a2c1389e4d.html).

<sup>98</sup> Ruling & Order, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La. June 6, 2022), <https://www.naacpldf.org/wp-content/uploads/Robinson-v.-Ardoin-Ruling-and-Order-Preliminary-Injunction.pdf>; *Robinson v. Robinson*, No. 21A814, (5th Cir. Jun. 28, 2022).

to be used during upcoming elections, while litigation continued.<sup>99</sup> On June 28, 2022, the U.S. Supreme Court granted Louisiana's bid to temporarily halt the district court's ruling, allowing the discriminatory map to be used in the 2022 mid-term election.<sup>100</sup> Nearly a year later, following its decision in *Allen v. Milligan*, the Supreme Court lifted its stay, allowing the case to proceed in the lower courts.<sup>101</sup> On November 11, 2023, the Fifth Circuit Court of Appeals affirmed the district court's ruling that the State had likely violated the Voting Rights Act, but vacated the injunction for procedural reasons and set a timeline for the legislature or district court to act to install a new congressional map in time for the 2024 elections.<sup>102</sup>

The legislature took that opportunity and, on January 19, 2024, enacted a new congressional map with a second majority-Black district. On February 1, 2024, a number of self-described "non-African American" plaintiffs brought a new suit, *Callais v. Landry*, challenging the new map as a purported racial gerrymander.<sup>103</sup> This litigation is ongoing and may impact what congressional map will be used in 2024 election.

### iii. *South Carolina: Alexander v. South Carolina NAACP*

In 2021 and 2022, South Carolina enacted new post-Census maps for its congressional and state legislative districts. LDF, along with the American Civil Liberties Union, the ACLU of South Carolina, Boroughs Bryant LLC, Arnold & Porter, and the general counsel's office of the NAACP brought suit on behalf of the South Carolina State Conference of the NAACP and an individual voter, claiming that the districts in the congressional and state House maps were racially gerrymandered and designed with a discriminatory purposes under the Fourteenth and Fifteenth Amendments of the U.S. Constitution.<sup>104</sup> In 2022, South Carolina

<sup>99</sup> *Id.*.

<sup>100</sup> Misc. Order, *Ardoin v. Robinson*, 597 U.S. — (June 28, 2022), [https://www.supremecourt.gov/orders/courtorders/062822zr1\\_9ol1.pdf](https://www.supremecourt.gov/orders/courtorders/062822zr1_9ol1.pdf).

<sup>101</sup> Order dismissing the writ of certiorari before judgment as improvidently granted, and vacating the stay entered on June 28, 2022, *Ardoin v. Robinson*, S. Ct. No. 21-1596, 5th Cir. No. 22-30333 (June 26, 2023), [https://vhdsfh2oms2wensvk7sdv3so.blob.core.windows.net/thearp-media/documents/LA\\_22-30333\\_237-1\\_13cvCoI.pdf](https://vhdsfh2oms2wensvk7sdv3so.blob.core.windows.net/thearp-media/documents/LA_22-30333_237-1_13cvCoI.pdf).

<sup>102</sup> *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023).

<sup>103</sup> Compl., *Callais et al. v. Landry*, No. 3:24-cv-00122 (W.D. La. Jan. 31, 2024), [https://vhdsfh2oms2wensvk7sdv3so.blob.core.windows.net/thearp-media/documents/LA\\_324-cv-122\\_1.pdf](https://vhdsfh2oms2wensvk7sdv3so.blob.core.windows.net/thearp-media/documents/LA_324-cv-122_1.pdf).

<sup>104</sup> NAACP Legal Def. Fund, *Trial Wraps Up in Voting Rights Case Challenging South Carolina's Congressional Map* (Nov. 29, 2022), <https://www.naacpldf.org/press-release/trial-wraps-up-in-voting-rights-case-challenging-south-carolinas-congressional-map/>.



adjusted South Carolina state House district lines in some of the most historically significant areas of the state for Black voters by passing a new map in response to the lawsuit. Passage of the maps stems from a private settlement between the parties.<sup>105</sup> The congressional challenge continued forward in litigation. In January 2023, after an eight-day trial, a unanimous three-judge panel held South Carolina's Congressional District 1 was a racial gerrymander and was designed with a discriminatory purpose. The panel determined that the South Carolina legislature "bleached" Black voters out of a district, made a "mockery" of traditional districting principles, and that race rather than partisan affiliation explained the design of Congressional District 1.<sup>106</sup> As a result of the injury caused by this congressional map, the panel issued a permanent injunction enjoining the state from conducting an election until a constitutionally valid plan is approved by the court. While the case is currently pending before the Supreme Court, the 2022 elections were held prior to the lower court's ruling, and hence took place under the discriminatory map.<sup>107</sup> Oral argument took place on October 11, 2023.<sup>108</sup> Both parties asked for a ruling by January 2024, but as of this date, the Supreme Court has not issued a decision. Defendants have indicated that they plan to seek a stay of the permanent injunction and allow elections to proceed in 2024 under the discriminatory congressional map yet again, which Plaintiffs will oppose.

*iv. Louisiana: Nairne v. Landry*

In 2022, LDF challenged Louisiana's state legislative maps that disenfranchised and discriminated against Black residents in violation of Section 2 of the Voting Rights Act.<sup>109</sup> LDF, the American Civil Liberties Union, ACLU of Louisiana, Cozen O' Connor, and attorneys Ron Wilson and John Adcock brought suit

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<sup>105</sup> NAACP Legal Def. Fund, *South Carolina Passes New Redistricting Maps Following Civil Rights Legal Challenge* (June 22, 2022), <https://www.naacpldf.org/news/south-carolina-passes-new-redistricting-maps-following-civil-rights-legal-challenge/>.

<sup>106</sup> Findings of Fact & Conclusions of Law, pg 15, *South Carolina State Conference of the NAACP v. Alexander*, No.: 3:21-cv-03302-MGL-TJH-RMG 15 (D. S.C. Columbia Div. Jan. 6, 2023), [https://www.aclu.org/wp-content/uploads/legal-documents/order\\_-\\_south\\_carolina\\_state\\_conference\\_of\\_the\\_naACP\\_v.\\_alexander.pdf](https://www.aclu.org/wp-content/uploads/legal-documents/order_-_south_carolina_state_conference_of_the_naACP_v._alexander.pdf).

<sup>107</sup> Jurisdictional Statement, *Alexander v. The South Carolina State Conference of the NAACP*, No. 22-807 (2023), [https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/SC\\_22-807\\_1.pdf](https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/SC_22-807_1.pdf).

<sup>108</sup> NAACP Legal Def. Fund, *Oral Arguments Wrap in U.S. Supreme Court Case Challenging South Carolina's Congressional Map for Racial Discrimination* (Oct. 11, 2023), <https://www.naacpldf.org/press-release/oral-arguments-wrap-in-u-s-supreme-court-case-challenging-south-carolinas-congressional-map-for-racial-discrimination/>.

<sup>109</sup> Compl. for Declaratory and Injunctive Relief, *Nairne v. Ardoin*, No. 3:22-cv-00178-SDD-SDJ (M.D. La. March 14, 2022), [https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/Complaint\\_3.14.22.pdf](https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/Complaint_3.14.22.pdf).

on behalf of the Louisiana State Conference of the NAACP, Black Voters Matter, and four individuals, advocating for drawing three additional majority-Black districts in the state Senate and six additional majority-Black districts in the state House, in order to ensure that Black voters had an equal opportunity to participate in the political process and elect representatives of their choice. In February 2024, the district court ruled in favor of Louisiana voters and condemned the packing and cracking of Black communities within the maps.<sup>110</sup> Emphasizing the importance of upholding the principles of equal representation for all citizens, the court has now mandated remedial measures to rectify the discriminatory boundaries of the previously enacted map.

*v. Arkansas: Christian Ministerial Alliance et al. v. Thurston*

On May 23, 2023, LDF, along with attorney Arkie Byrd and O'Melveny & Myers LLP, filed a lawsuit on behalf of the Christian Ministerial Alliance and five individual Black voters alleging a racial gerrymandering claim under the Fourteenth Amendment and an intentional race discrimination claim under the Fourteenth and Fifteenth Amendments, both arising out of the Arkansas legislature's 2021 Congressional redistricting plan.<sup>111</sup> In this plan, Pulaski County, the most populous and diverse county in Arkansas and the long-time heart of the Second Congressional District, was split into three separate congressional districts. This cracking targeted southeastern Pulaski County, well-known as the state's largest community of Black voters. In February 2024, a three-judge district court issued a unanimous order denying Defendants' motion to dismiss on both claims.<sup>112</sup> The parties are engaged in discovery.

*vi. Arkansas: Christian Ministerial Alliance et al. v. Arkansas*

In June 2019, LDF filed a lawsuit under Section 2 of the Voting Rights Act on behalf of the Christian Ministerial Alliance, the Arkansas Community Institute, and three individual Black voters, challenging the method of electing judges to the

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<sup>110</sup> Ruling & Order, *Nairne v. Ardoin*, No. 3:22-cv-00178-SDD-SDJ (M.D. La. Feb. 8, 2024), [https://vhdsf2oms2wensvk7sdv3so.blob.core.windows.net/thearp-media/documents/LA\\_322-cv-178\\_233.pdf](https://vhdsf2oms2wensvk7sdv3so.blob.core.windows.net/thearp-media/documents/LA_322-cv-178_233.pdf).

<sup>111</sup> Press Release, NAACP Legal Def. Fund, Black Arkansas Voters Sue Over Racially Gerrymandered Congressional Map (May 23, 2023), <https://www.naacpldf.org/press-release/black-arkansas-voters-sue-over-racially-gerrymandered-congressional-map/>.

<sup>112</sup> Explanatory Order, *Christian Ministerial Alliance, et al. v. Thurston*, No. 4:23-cv-471 (E.D. Ark. Feb. 2, 2024), [https://vhdsf2oms2wensvk7sdv3so.blob.core.windows.net/thearp-media/documents/AR\\_423-cv-471\\_2-2-24\\_Order.pdf](https://vhdsf2oms2wensvk7sdv3so.blob.core.windows.net/thearp-media/documents/AR_423-cv-471_2-2-24_Order.pdf).

Arkansas Supreme Court and Court of Appeals, which dilute the voting strength of Black voters in Arkansas.<sup>113</sup> Co-counsel with LDF in this matter were , Arkie Byrd, Shearman & Sterling LLP, and Howell Shuster & Goldberg LLP. On July 25, 2023, the Court issued an opinion in favor of the Defendants.<sup>114</sup> While LDF filed a motion for reconsideration in August 2023, the Court ordered the case stayed in light of the Eighth Circuit's decision in *Arkansas State Conference of the NAACP v. Arkansas Board of Apportionment* that there is no implied private right of action under Section 2 of the Voting Rights Act, delaying resolution of LDF's motion.<sup>115</sup>

vii. *Alabama: McClure v. Jefferson County Commission*

In April 2023, LDF, along with Wiggins, Childs, Pantazis, Fisher & Goldfarb, filed a lawsuit on behalf of Greater Birmingham Ministries, the Metro-Birmingham Branch of the NAACP, the Alabama State Conference of the NAACP, and an individual Black voter, challenging the Jefferson County Commission's redistricting plans as an unconstitutional racial gerrymander in violation of the Fourteenth Amendment.<sup>116</sup> This litigation is ongoing, and trial is set for October 2024.

2. *Vote Suppression*

LDF is also actively challenging restrictive voting laws across several states to ensure election workers can effectively execute their lawful duties and that Black, Latino, and other voters have equal access to the ballot.

i. *Florida: Florida NAACP v. Lee*

In Florida, LDF, along with Benjamin Duke, Cyrus Nasser, Ellen Choi, Nia Joyner, Covington & Burling LLP, and Nellie King, challenged multiple provisions of S.B. 90 on behalf of the Florida State Conference of the NAACP, Disability Rights Florida, and Common Cause, including 1) restrictions and new requirements for standing vote-by-mail applications; 2) limits on where, when, and how drop boxes can

<sup>113</sup> NAACP Legal Def. Fund, *Case: Christian Ministerial Alliance Et Al. V. Arkansas* (June 10, 2019), <https://www.naacpldf.org/case-issue/christian-ministerial-alliance-et-al-v-arkansas/>.

<sup>114</sup> Order, *Christian Ministerial Alliance et al. v. Sanders*, No. 4 :19-cv-00402-JM (E.D. Ark. July 25, 2023) [[https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/AR\\_419-cv-402\\_Order\\_7-25-23.pdf](https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/AR_419-cv-402_Order_7-25-23.pdf)].

<sup>115</sup> Order, *Christian Ministerial Alliance et al. v. Sanders*, No. 4 :19-cv-00402-JM (E.D. Ark. Nov. 21, 2023) [[https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/AR\\_419-cv-402\\_198.pdf](https://vhdsf2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/AR_419-cv-402_198.pdf)].

<sup>116</sup> Press Release, NAACP Legal Def. Fund, *Black Voters Sue Jefferson County Commission for Racial Gerrymandering* (April 7, 2023), <https://www.naacpldf.org/press-release/black-voters-sue-jefferson-county-commission-for-racial-gerrymandering/>.

be used; and 3) a vague and overbroad definition of solicitation that prohibited certain conduct near polling places, including potentially criminalizing offering free food, water, and other relief to Florida voters waiting in long lines.<sup>117</sup>

On March 31, 2022, the district court ruled that S.B. 90 violated Section 2 of the Voting Rights Act, and was motivated by racial discrimination in violation of the First and Fourteenth Amendments to the United States Constitution.<sup>118</sup> Over a year later, on April 27, 2023, the Eleventh Circuit largely reversed the District Court's decision.<sup>119</sup> The Eleventh Circuit did, however, find that the second half of SB 90's solicitation definition, "which prohibits engaging in any activity with the . . . effect of influencing a voter," is "impermissibly vague in all of its applications."<sup>120</sup> While LDF and other plaintiffs filed a petition for rehearing en banc by the Eleventh Circuit, that petition was denied.

ii. *Georgia: Sixth District of the African Methodist Episcopal Church v. Kemp*

After Georgia voters turned out in record numbers for the 2020 presidential election and U.S. Senate elections in early 2021, state legislators passed S.B. 202, a sweeping racially discriminatory and other unconstitutional and illegal omnibus law that by its individual and collective provisions disenfranchises voters, particularly voters of color.<sup>121</sup> S.B. 202 bans line relief, restricts access to and usage of drop boxes and mobile voting units, and imposes new voter ID requirements for absentee voting. In 2021, LDF, along with the American Civil Liberties Union, ACLU of Georgia, SPLC, Wilmer Hale, and Davis Wright Tremaine sued state officials on behalf of the Sixth District of the African Methodist Episcopal Church, the Georgia Muslim Voter Project, Women Watch Afrika, Latino Community Fund Georgia, the Delta Sigma Theta Sorority, Inc., the Arc of the United States, Georgia ADAPT, and Georgia Advocacy Office challenging provisions in S.B. 202 on the grounds that they violate

<sup>117</sup> Test. of Sherrilyn Ifill, *supra* note 31, at 23; Press Release, NAACP Legal Def. Fund, 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/>.

<sup>118</sup> *League of Women Voters of Florida, Inc., et. al v. Lee*, 595 F.Supp.3d 1042 (N.D. Fla. 2022).

<sup>119</sup> *League of Women Voters of Florida, Inc., et. al v. Florida Secretary of State*, 66 F.4th 905 (11th Cir. 2023).

<sup>120</sup> *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 947 (11th Cir. 2023) (internal quotations and citations omitted).

<sup>121</sup> NAACP Legal Def. Fund, *LDF's Lawsuit Challenging Georgia's Voter Suppression Law*, <https://www.naacpldf.org/naacp-publications/ldf-blog/important-facts-about-ldfs-lawsuit-challenging-georgias-voter-suppression-bill/>.

Section 2 of the Voting Rights Act, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Civil Rights Act of 1964, and the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution.<sup>122</sup> In order to seek relief for the 2024 elections, LDF filed five preliminary injunction motions. The federal court granted two of these motions – one enjoining the date-of-birth requirement on absentee ballot envelopes and another enjoining one portion of the line-relief ban.<sup>123</sup>

S.B. 202 restricts line-relief activities in two ways. First, it provides for a restrictive zone around polling locations that extends “150 feet of the outer edge of any building within which a polling place can be established (the “Buffer Zone”) and then “25 feet of any voter standing in line to vote at any polling place” (the “Supplemental Zone”) even after the 150-foot restriction.<sup>124</sup> Practically, this effectively prohibits line-relief activities altogether. In LDF’s litigation, the court recently granted our preliminary-injunction motion seeking to block the Supplemental Zone restriction for upcoming election. In that decision, the court enjoined the ban on providing food and drink more than 150 feet beyond the entrance of a polling location because it is substantially likely to be an unconstitutional restriction on expressive conduct under the First Amendment.” As of March 2024, the litigation is still ongoing.

iii. *Texas: Houston Justice v. Abbott*

In Texas, LDF is challenging S.B. 1, an omnibus law containing several vote suppression provisions, particularly targeting the means and methods of voting primarily used by Black and Latino voters.<sup>125</sup> Among its many restrictions, S.B. 1 eliminates drive-thru voting and 24-hour voting, restricts early voting hours, and restricts vote-by-mail opportunities and application distribution, innovations that had given local counties the options and flexibility they needed to help eligible voters of all backgrounds and abilities cast a ballot, and that Black and Latino voters had disproportionately relied on to vote. S.B. 1 also imposes burdens and intrusive documentation requirements on individuals who provide voters with assistance or

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<sup>122</sup> First Amended Compl., *Sixth District of the African Methodist Episcopal Church, et. al v. Kemp*, No. 1:21-cv-01284-JPB (N.D. Ga. May 24, 2021), [https://www.naacpldf.org/wp-content/uploads/Amended-Complaint-in-AME-v.-Kemp\\_5.24.2021.pdf](https://www.naacpldf.org/wp-content/uploads/Amended-Complaint-in-AME-v.-Kemp_5.24.2021.pdf).

<sup>123</sup> Press Release, NAACP Legal Def. Fund, Federal Court Sides with Civil Rights Groups and Lifts Georgia’s Line Relief Ban, Birthdate Requirement on Absentee Ballot Envelopes for 2024 Elections (Aug. 18, 2023), <https://www.naacpldf.org/press-release/federal-court-sides-with-civil-rights-groups-and-lifts-georgias-line-relief-ban-birthdate-requirement-on-absentee-ballot-envelopes-for-2024-elections/>.

<sup>124</sup> H.B. 540 § 22, Act 632, Reg. Sess. (Ga. 2010); see also O.C.G.A. § 21-2-414(a)(1), (a)(3).

transport them to the polls, subjecting the assistants to the threat of criminal penalties for violations. S.B. 1 additionally broadens, in inscrutably vague terms, the definition of obstructing a poll watcher, another criminal offense that can be charged against election officials. While S.B. 1 threatens criminal penalties against election officials, it grants partisan actors enhanced power: it entitles partisan poll watchers to move freely within a polling place, limits the circumstances in which a poll watcher may be removed, and preserves the ability of political parties to distribute unlimited mail-in ballot applications while prohibiting elections official to do the same.

LDF, along with The Arc, Reed Smith and ArentFox Schiff, challenged S.B. 1 and its various provisions under Section 2 of the Voting Rights Act in that it was enacted with the intent to discriminate against Black and Latino voters and will have a discriminatory result; the Fourteenth and Fifteenth Amendments to the U.S. Constitution as intentional race discrimination in voting; and the First and Fourteenth Amendments to the U.S. Constitution as an undue burden on the right to vote, in addition to other claims. LDF participated in an extensive, six-week trial last fall on most claims, and while waiting for a decision, continues to prepare for a second round of trial addressing discriminatory intent claims.

Prior to *Shelby County*, none of the laws described above, which LDF and our clients have been forced to expend significant resources challenging in court, would have gone into effect without examination by a voting rights expert in the Department of Justice or a court to determine whether they were racially discriminatory. Given that some have proven to be so as a result of protracted litigation, it's likely that many of the provisions referenced above would have been blocked prior to going into effect—both protecting voters and saving civil rights organizations such as LDF and defendant jurisdictions substantial time and resources.

### **E. The Emerging Threat of AI in Elections**

The emergence of artificial intelligence (AI) technology presents many risks to civil rights as it threatens to amplify existing systemic biases in our economy, the criminal legal system, and other arenas.<sup>126</sup> Similarly, AI threatens to turbocharge existing election disinformation efforts, which have historically been targeted at Black communities and other communities of color. The late Harvard Law School professor and LDF attorney Lani Guinier taught us that Black Americans often serve

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<sup>126</sup> See e.g. Puneet Cheema et al., *To 'keep Americans safe,' Biden's AI executive order must ban these practices*, The Hill (Aug. 18, 2023), <https://thehill.com/opinion/civil-rights/4156858-to-keep-americans-safe-bidens-ai-executive-order-must-ban-these-practices/>.

as the canaries in the coal mine when it comes to threats to our democracy, and AI is yet another example.<sup>127</sup>

There is a long history of disinformation directed towards Black communities. From control and manipulation of information during slavery<sup>128</sup> to publishing contact information for those attempting to register to vote in the Jim Crow era with often violent consequences (now known as “doxxing”)<sup>129</sup> to darkening images of Black candidates running for office in the wake of the Voting Rights Act,<sup>130</sup> this history is deep and disturbing.

The targeting of Black communities has continued through modern-day disinformation campaigns that make use of present technologies like robocalling and the Internet. A Senate Intelligence Committee investigation into Russian interference in the 2016 election found that “no single group of Americans was targeted by ... information operatives more than African-Americans.”<sup>131</sup> Black voters in 2020 received robocalls telling them if they voted by mail their information would

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<sup>127</sup> Lani Guinier & Gerald Torres, *The Miner’s Canary: Enlisting Race, Resisting Power, Transforming Democracy* (Harvard Univ. Press 2002).

<sup>128</sup> British missionaries seeking to convert enslaved people in the West Indies edited the Bible itself to remove its many references to slave rebellions or liberation (Exodus and the story of Moses, for example). Michel Martin, *Slave Bible From The 1800s Omitted Key Passages That Could Incite Rebellion*, NPR (Dec. 9, 2018), <https://www.npr.org/2018/12/09/674995075/slave-bible-from-the-1800s-omitted-key-passages-that-could-incite-rebellion>. Most slave states in the U.S. took this even further by making it unlawful to teach enslaved persons to read or write at all. Smithsonian American Art Museum, *Literacy as Freedom* (n.d.), <https://americanexperience.si.edu/wp-content/uploads/2014/09/Literacy-as-Freedom.pdf>.

<sup>129</sup> After Black people began attempting to register to vote in Mississippi, a law enacted in 1962 required the names of those taking literacy tests for voting to be published in a local newspaper once a week for two weeks. Black applicants whose names were published were quickly met with physical violence, loss of employment, or arrest on spurious charges. Frank R. Parker, *Black Votes Count: Political Empowerment in Mississippi after 1965* 28 (Univ. of N.C. Press, 1990).

<sup>130</sup> *U.S. v. Charleston*, 316 F.Supp.2d 268, 295 (D.S.C. 2003).

<sup>131</sup> Donna M. Owens, *Misinformation may only worsen for Black voters in lead-up to election, experts warn*, NBC News (May 3, 2022), <https://www.nbcnews.com/news/nbcblk/misinformation-may-only-worsen-black-voters-lead-election-experts-warn-rcna26924>. The disinformation included the creation of inauthentic social media accounts that posed as Black influencers and a meme that targeted Black and Latine voters on Facebook and Twitter with the message “avoid the line — vote from home. Text ‘Hillary’ to 59925.”

be used by police departments to track down old warrants and credit card companies to collect outstanding debts.<sup>132</sup>

AI threatens to supercharge the problem of targeted disinformation in at least three important ways. First, “deep fakes” can be used to mislead voters about candidate positions or trick voters into believing they are receiving disinformation from a trusted source.<sup>133</sup> We are already seeing this technology targeted at Black voters in the 2024 elections.<sup>134</sup> Second, AI can increase the power of microtargeting and therefore help bad actors spread disinformation with more precision.<sup>135</sup> Third, more effective disinformation can undermine public trust in democracy more broadly. Through a phenomenon known as the “liar’s dividend” the mere existence of deep fakes and other AI tools that blur reality may make it easier for unscrupulous politicians to dupe the public into believing that real audio or video has been manipulated by AI.<sup>136</sup> In addition, as noted above, we have seen AI deployed to promote questionable and potentially discriminatory voter purges.<sup>137</sup>

### **III. CURRENT LEGAL PROTECTIONS CANNOT MEET THE MOMENT**

A key reason that voting rights for Black Americans are tenuous and under threat is that longstanding federal protections are weakened and now insufficient. This is largely because of judicial decisions that have increasingly misinterpreted, narrowed, and eviscerated portions of the Voting Rights Act of 1965, and have failed to fully enforce the protections of the Fourteenth and Fifteenth Amendments to the U.S. Constitution.

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<sup>132</sup> Maya Yang, *Rightwing election robocall fraudsters must spend 500 hours registering voters*, The Guardian (Nov. 30, 2022), <https://www.theguardian.com/us-news/2022/nov/30/jacob-wohl-jack-burkman-election-robocall-fraud-registering-voters>.

<sup>133</sup> For instance, during the recent New Hampshire primary in 2024, voters heard a robocall developed using AI that purported to be Joe Biden advocating for voters not to vote at all. Kevin Collier, *FCC Moves to Criminalize Most AI-Generated Robocalls*, NBC News (Jan. 31, 2024), <https://www.nbcnews.com/tech/tech-news/fcc-moves-criminalize-ai-generated-robocalls-rcna136347>.

<sup>134</sup> Marianna Spring, *Trump supporters target black voters with faked AI images*, BBC News (Mar. 4, 2024), <https://www.bbc.com/news/world-us-canada-68440150>.

<sup>135</sup> Spencer Overton, *State Power to Regulate Social Media Companies to Prevent Voter Suppression*, 53 U.C. Davis L. Rev. 1793, 1797 (2020).

<sup>136</sup> See Josh A. Goldstein & Andrew Lohn, *Deepfakes, Elections, and Shrinking the Liar’s Dividend*, Brennan Ctr. for Just. (Jan. 23, 2024), <https://www.brennancenter.org/our-work/research-reports/deepfakes-elections-and-shrinking-liars-dividend>.

<sup>137</sup> Haskins, *supra* note 46.



### A. The Voting Rights Act of 1965

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,<sup>138</sup> literacy tests,<sup>139</sup> threats,<sup>140</sup> and lynching.<sup>141</sup> Finally, Congress—compelled by the Civil Rights Movement generally, and the violent events of Bloody Sunday in Selma, Alabama, specifically<sup>142</sup>—took its constitutional duty seriously by passing the VRA in 1965, justly described as “the crown jewel” of the Civil Rights Movement.<sup>143</sup> Passage and enforcement of the VRA has historically been a bipartisan enterprise as Republicans and Democrats have 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.<sup>144</sup>

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<sup>138</sup> Richard M. Valelly, *The Two Reconstructions: The Struggle for Black Enfranchisement* (Chicago: Univ. of Chicago Press 2004).

<sup>139</sup> Jason Morgan Ward, *Hanging Bridge: Racial Violence and America's Civil Rights Century* (N.Y.: Oxford Univ. Press 2016).

<sup>140</sup> Michael Fellman, *In the Name of God and Country: Reconsidering Terrorism in American History* (New Haven, CT: Yale Univ. Press 2010); U.S. Comm. on C.R., *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Volume VII: The Mississippi Delta Report* ch. 3 (n.d.), <https://www.usccr.gov/pubs/msdelta/ch3.htm>.

<sup>141</sup> 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>.

<sup>142</sup> See Lyndon B. Johnson, *Special Message to the Congress: The American Promise, March 15, 1965* 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* 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. 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.”).

<sup>143</sup> 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”).

<sup>144</sup> Following its initial passage, Congress reauthorized the VRA several times on a bipartisan basis. 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. With these amendments Congress overrode *City of Mobile v. Bolden*, 446 U.S. 55 (1980). See, e.g., GovTrack, *Senate Vote 178 in 1965 (89th Congress) 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

Yet as Black voters and other voters of color are targeted by a wave of new restrictive voting laws, the Supreme Court has undercut the VRA, and Congress has failed to respond. Due to this inaction, state legislatures across the country recently conducted the first redistricting cycle in six decades without being bound by the full protections of the VRA.

### 1. *Preclearance Protection (VRA Section 5): Shelby County v. Holder*

For nearly five decades, states and local jurisdictions with a history of voting discrimination were required to secure pre-approval from the U.S. Attorney General or a federal court before making changes to their voting rules, practices, or procedures.<sup>145</sup> This “preclearance” protection was rooted in the principle that when it comes to a matter as fundamental as the right to vote, an ounce of prevention is worth a pound of cure.<sup>146</sup>

Preclearance succeeded in preventing discrimination before it occurred. As Congress recognized in 1965, case-by-case litigation alone is inadequate—too slow and too costly—to eradicate voting discrimination and prevent its resurgence.<sup>147</sup> Even if voters of color can muster the resources to sue, the discriminatory practices or procedures they challenge can remain in effect for years while litigation is pending. Preclearance relieves voters facing discrimination of the substantial burdens of litigation by “shifting the advantage of time and inertia” from the jurisdiction to the voters themselves.<sup>148</sup> As Justice Kennedy wrote in granting a stay of an election because of a failure to preclear voting changes, “permitting the election to go forward would place the burdens of inertia and litigation delay on those whom the statute was intended to protect, despite their obvious diligence in seeking an adjudication of their rights prior to the election.”<sup>149</sup> Instead of voters having to go to court to prove that new election laws and practices are discriminatory, under preclearance jurisdictions with a history of discrimination must show that new voting laws and practices are *not* discriminatory. For example, when a polling site in a covered municipality is relocated, preclearance ensures that local officials first justify the shift and show the

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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).

<sup>145</sup> 52 U.S.C. § 10304.

<sup>146</sup> See Brief of Appellee Travis Cnty. at 11, *Nw. Austin Mun. Util. Dist. No. 1 v. Holder*, 557 U.S. 193 (2009).

<sup>147</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 314 (1966).

<sup>148</sup> *Id.*

<sup>149</sup> *Lucas v. Townsend*, 486 U.S. 1301, 1305 (1988) (Kennedy, J., Circuit Justice).

change is not harmful to voters of color, instead of requiring voters to sue after the fact.

Preclearance at the federal level was effective at protecting voters of color without unduly burdening local election officials. In fact, some covered jurisdictions appreciated preclearance because the process ensured the use of best practices for fostering political participation, particularly among voters of color.<sup>150</sup> Covered jurisdictions also made clear that they viewed preclearance as a way to prevent expensive and prolonged litigation.<sup>151</sup>

In 2013, the Court struck at the heart of the Voting Rights Act through its decision in *Shelby County, Alabama v. Holder*.<sup>152</sup> The ruling undercut Section 5's preclearance regime not by invalidating preclearance itself, but rather by striking the formula Congress prescribed for determining which jurisdictions have a sufficient history of discrimination to require preclearance protection for their voters.<sup>153</sup>

The practical result was an abrupt halt to the successes of the VRA's preclearance provisions. As the late Justice Ruth Bader Ginsburg noted in her dissent to the *Shelby County* decision: "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."<sup>154</sup>

The *Shelby County* decision allowed state and local governments to unleash discriminatory voter suppression schemes virtually unchecked.<sup>155</sup> At its pre-*Shelby County* strength, Section 5 would have prevented many of the voter suppression schemes that we have encountered since 2013.

Through our report "Democracy Diminished: State and Local Threats to Voting post-*Shelby County, Alabama v. Holder*," LDF tracks, monitors, and publishes a

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<sup>150</sup> See, e.g., Brief for the States of New York, California, Mississippi, and North Carolina as *Amici Curiae* in Support of Respondents at 3, *Shelby Cty., Ala. v. Holder*, 570 U.S. 529 (2013) (No. 12-96) (describing preclearance as "a streamlined administrative process" that "fosters governmental transparency" and "provides substantial benefits to covered States and localities").

<sup>151</sup> See, e.g., *id.* at 8-10.

<sup>152</sup> 570 U.S. 529 (2013).

<sup>153</sup> *Id.* at 557 (holding that the coverage formula in Section 4(b) "can no longer be used as a basis for subjecting jurisdictions to preclearance," but "issu[ing] no holding on § 5 itself," and noting that "Congress may draft another formula based on current conditions").

<sup>154</sup> *Shelby Cnty.*, 570 U.S. at 590 (Ginsburg, J., dissenting).

<sup>155</sup> U.S. Comm. on C.R., *An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Report* (2018), [https://www.usccr.gov/pubs/2018/Minority\\_Voting\\_Access\\_2018.pdf](https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf).

record of discriminatory voting changes in jurisdictions formerly protected by Section 5.<sup>156</sup> *Democracy Diminished* details the many tactics that state and local policymakers have implemented with alarming speed since the *Shelby County* decision, including barriers to voter registration, cuts to early voting, purges of the voter rolls, strict photo identification requirements that target voters of color, restrictions on absentee ballots, prohibiting the provision of water to voters waiting in long lines, and last-minute polling place closures and consolidations. Court findings in litigation filed by LDF and other organizations show that these measures have significantly impacted access to the vote.

2. *Nationwide Antidiscrimination Protections (VRA Section 2):*  
Brnovich v. DNC and Allen v. Milligan

Preclearance applied only to a subset of the nation's states and political jurisdictions with the worst history of voting discrimination, but Section 2 of the Voting Rights Act has always applied nationwide. As amended in 1982, it allows voters to file litigation against state or local practices that were enacted with discriminatory intent or that have a discriminatory effect on voters' ability to participate in the political process and elect their preferred candidates to office. While the Supreme Court's most recent Section 2 decision preserves it as a viable tool to protect Black voters, this key protection of the Voting Rights Act has also been weakened by another recent Supreme Court decision making it more difficult to bring Section 2 challenges.

i. Brnovich v. DNC (2021)

While *Shelby County* struck at the heart of the VRA, the Supreme Court more recently undermined the strongest complement to preclearance by weakening the protections afforded by Section 2 of the VRA. In the *Shelby County* decision, the Court assured the country that its decision would do little harm because it “in no way affect[ed] the permanent, nationwide ban on racial discrimination in voting found in [Section] 2.”<sup>157</sup> 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 abridgement of the right of any citizen of the United States to vote on account of race or color.’”<sup>158</sup>

Yet, in 2021, six Supreme Court justices dealt a substantial blow to Section 2 and the democratic ideals it was designed to protect in *Brnovich v. DNC*.<sup>159</sup> By

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<sup>156</sup> Thurgood Marshall Inst., *supra* note 10.

<sup>157</sup> *Shelby Cnty.*, 570 U.S. at 557.

<sup>158</sup> *Id.* at 536-37 (quoting 52 U.S.C. § 10301(a)).

<sup>159</sup> *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321 (2021).

weakening Section 2 of the Voting Rights Act based on its own views of how much discrimination is acceptable, a majority of the Supreme Court has once again diminished our democracy.

In *Brnovich*, the Court’s majority created five new factors—or “guideposts,” in Justice Alito’s terminology—to uphold a pair of Arizona laws that the *en banc* Ninth Circuit had found discriminatory in violation of Section 2.<sup>160</sup> The decision disregards the plain text of Section 2, ignores nearly four decades of settled precedent, and severely curtails the broad application of Section 2 that Congress intended, thus making it more difficult to ensure that every eligible citizen is able to freely exercise their right to vote. Justice Kagan explained in her *Brnovich* dissent that “to read [Section 2] fairly. . . is to read it broadly,”<sup>161</sup> and yet the majority opinion’s guideposts “all cut in one direction—toward limiting liability for race-based voting inequalities” and shielding discriminatory laws from Section 2 challenges.<sup>162</sup>

While the full scope of its impact is not yet clear, the risks are obvious. VRA Section 2 cases are already arduous and expensive; forcing voters to meet standards skewed towards masking discrimination will cause many meritorious actions to fail in court and many more never to be brought, providing fresh oxygen to discriminatory practices Congress sought to eliminate when it enacted the Voting Rights Act. Just as Congress in 1982 overrode the Court’s cramped interpretation of Section 2 in *City of Mobile v. Bolden*,<sup>163</sup> today Congress must override the *Brnovich* decision and restore the full power of one of our nation’s most important and successful civil rights laws: the Voting Rights Act of 1965.

#### ii. *Allen v. Milligan* (2023)

As noted above, in 2023 LDF and our co-counsel secured a landmark victory on behalf of our courageous clients to secure a second Alabama congressional district where Black voters can elect a candidate of choice.<sup>164</sup> Beyond its local significance, *Milligan* reaffirmed that Section 2 of the Voting Rights Act remains a viable tool that Black voters, other voters of color, and civil rights organizations that represent them can use to fight voting discrimination. States or localities considering changes to their election laws or maintaining existing practices and procedures that unfairly curtail

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<sup>160</sup> *Id.* at 2336-40 (opinion of the Court).

<sup>161</sup> *Id.* at 2361 (Kagan, J., dissenting).

<sup>162</sup> *Id.* at 2362 (Kagan, J., dissenting).

<sup>163</sup> 446 U.S. 55 (1980).

<sup>164</sup> *Allen v. Milligan*, 143 S. Ct. at 1498.

Black political participation should know that LDF and our allies can and will make full use of *Milligan* in 2024 and beyond.

*Milligan*, however, did nothing to repair the damage done to the Voting Rights Act by previous cases such as *Shelby County* and *Brnovich*. Indeed, it illustrates the egregious racial discrimination that goes unchecked in our elections and ultimately compromises the integrity of our institutions absent preclearance. The nation's most successful and important voting rights law remains a shredded shield for Black voters—unable to meet the current moment of widespread attacks on Black political participation.

### 3. Current Threats to Voting Rights Act

The weakened VRA faces a new set of threats, with cases in the lower courts that threaten to further undermine Section 2. These include efforts to radically reinterpret Section 2 to prevent private individuals from even getting into court to seek enforcement of their Section 2 rights, and to prevent coalitions of different racial and ethnic groups from seeking redistricting plans that fairly reflect their joint voting strength.

#### iii. VRA Section 2 Private Right of Action

In November 2023, a two-to-one majority of the 8th Circuit ruled that Section 2 of the VRA contains no private right of action.<sup>165</sup> In January, the full 8th Circuit declined to revisit this ruling.<sup>166</sup>

In Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, the ruling bars both individuals and civil rights groups from bringing future lawsuits to uphold voting rights directly under a tool they have been using for nearly 60 years to challenge racial discrimination in voting.<sup>167</sup> It could leave enforcement of Section 2 solely in the hands of the U.S. Department of Justice, which historically has filed only a fraction of the overall cases enforcing Section 2.<sup>168</sup>

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<sup>165</sup> *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023).

<sup>166</sup> Order Denying Rehearing, *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023), <https://www.aclu.org/cases/naacp-v-arkansas-board-of-apportionment?document=Order-Denying-Rehearing>.

<sup>167</sup> Janai Nelson, *Victims and advocates deserve a right to fight through the Voting Rights Act*, The Hill (Dec. 5, 2023), <https://thehill.com/opinion/civil-rights/4341253-victims-and-advocates-deserve-a-right-to-fight-through-the-voting-rights-act/>.

<sup>168</sup> Br. for Appellants, *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204, 1218 n. 8 (8th Cir. 2023) (“Over the past forty years, there have been at least 182 Successful Section 2 cases; of those 182 cases, only 15 were brought solely by the Attorney General”) (citation omitted).

This ruling is also a stark departure from six decades of decisions in hundreds of Section 2 cases, including numerous Supreme Court decisions that have granted relief to private individuals under Section 2.<sup>169</sup> And the Court has explicitly recognized that Section 2, along with other provisions of the Voting Rights Act, are enforceable by private parties.<sup>170</sup> As the Court said in *Allen v. State Bd. of Elections*, “achievement of the Act’s laudable goal could be severely hampered . . . if each citizen were required to depend solely on litigation instituted at the discretion of the Attorney General.”<sup>171</sup> Although the divided decision of the Eighth Circuit panel remains an outlier, two Justices of the Supreme Court have also suggested, in a concurring opinion, that the existence of a private right of action under the VRA is an open question.<sup>172</sup>

Defendants in Section 2 lawsuits have also begun arguing that private litigants should also be barred from an alternative route of enforcing Section 2 left open by the Eighth Circuit’s recent decision: using 42 U.S.C Section 1983.<sup>173</sup> Section 1983 grants private individuals a cause of action to enforce “rights . . . secured by the Constitution and laws” of the United States against state actors.<sup>174</sup> In a recent North Dakota case related to Native voting rights, the District Court rejected this argument and held that Section 1983 clearly allows private litigants to enforce Section 2; but the state defendants have appealed this decision to the 8th Circuit, the same circuit that recently ruled that Section 2 itself contains no private right of action.<sup>175</sup>

#### *iv. Coalition Districts*

For decades, courts have entertained vote dilution claims under the Voting Rights Act of 1965 (“VRA”) on behalf of citizens comprised of a coalition of two or more

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<sup>169</sup> See, e.g., *Thornburg v. Gingles*, 478 U.S. 30 (1986); *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006); *Allen v. Milligan*, 143 S. Ct. 1487.

<sup>170</sup> *Morse v. Republican Party of Virginia*, 517 U.S. 186, 231-32 (1986) (affirming that the text, purpose, and history of the VRA permit private litigants to sue under Section 10 of the Voting Rights Act; *Allen v. State Bd. of Elections*, 393 U.S. 544, 557 (1969) (holding that Section 5 of the VRA was enforceable by private litigants because of its implied private right of action).

<sup>171</sup> *Id.* at 556.

<sup>172</sup> *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J., joined by Thomas, J., concurring).

<sup>173</sup> *Turtle Mountain Band of Chippewa Indians v. Jaeger*, No. 3:22-CVciv-22, 2022 WL 2528256, at \*4-\*6 (D.N.D. July 7, 2022).

<sup>174</sup> *Id.*

<sup>175</sup> *Turtle Mountain Band of Chippewa Indians, et al v. Michael Howe*, No. 23-3655 (8th Cir. 2023).

racial groups.<sup>176</sup> The viability of a coalition claim has turned on an intensely local factual question: whether the two racial groups prefer the same candidates in elections, whether their candidates are usually defeated by a majority's bloc voting, and whether the groups can be drawn into a reasonably configured remedial district.<sup>177</sup> Fully aware of these cases, Congress has repeatedly declined to disturb these holdings or otherwise limit the availability of coalition claims.

Nevertheless, in November 2023, a three-judge panel of the Fifth Circuit issued a decision urging the full court to grant rehearing to reconsider its long-standing precedent allowing Section 2 coalition claims.<sup>178</sup> On November 28, the *en banc* court agreed to rehear the case, giving the Fifth Circuit the opportunity to further curtail the vitality of Section 2.

## B. The U.S. Constitution

In addition to undercutting the Voting Rights Act, courts have failed to give full effect to the Constitution's protections for the right to vote.

### 1. *Burdens on the Right to Vote: Anderson-Burdick*

In addition to its protections against racial discrimination in voting, the Constitution protects all voters from laws that impose an undue burden on the right to vote. When considering whether a particular law or practice imposes an undue burden on voting, courts use the so-called *Anderson-Burdick* test, which involves a two-step inquiry.<sup>179</sup> A court first determines whether the challenged practice imposes a severe burden on voting rights, and if so, the court applies "strict scrutiny" in determining whether the practice violates the Constitution. If, however, the court does not view the burden on voting rights to be severe, it applies a balancing test, examining both the "character and magnitude" of the burden on the right to vote and

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<sup>176</sup> *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs.*, 906 F.2d 524, 526 (11th Cir. 1990); *Pope v. County of Albany*, 687 F.3d 565, 572 n.5 (2d Cir. 2012); *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 271, 275-76 (2d Cir. 1994), *vacated on other grounds*, 512 U.S. 1283 (1994); *Badillo v. City of Stockton*, 956 F.2d 884 (9th Cir. 1992); *LULAC v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (*en banc*); *LULAC v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1500-02 (5th Cir.), *vacated on state law grounds*, 829 F.2d 546 (5th Cir. 1987); *Jones v. City of Lubbock*, 727 F.2d 364, 383-84 (5th Cir. 1984); *Jones v. City of Lubbock*, 640 F.2d 777 (5th Cir. 1981). *See also* *Grove v. Emison*, 507 U.S. 25, 41 (1993) (assuming, without deciding, that it is "permissible" to aggregate "distinct ethnic and language minority groups" under Section 2).

<sup>177</sup> *See, e.g., Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir. 1988).

<sup>178</sup> *Petteway v. Galveston Cnty.*, 86 F.4th 214 (5th Cir. 2023), *vacated, rehearing en banc granted*, 86 F.4th 1146 (5th Cir. 2024).

<sup>179</sup> *Burdick v. Takushi*, 504 U.S. 428 (1992).



the justifications put forward by the state for the challenged practice along with the extent to which those interests make it necessary to burden the voters' rights.<sup>180</sup>

The Supreme Court's 2008 *Crawford* case was a particularly troubling application of *Anderson-Burdick*.<sup>181</sup> In upholding Indiana's strict photo identification requirement for in-person voting, the Court credited the state's interests in preventing fraud and upholding voter confidence, despite acknowledging that "[t]he record contains no evidence of any such [in person impersonation] fraud actually occurring in Indiana at any time in its history."<sup>182</sup> The ruling gives credence to pretextual justifications for barriers to the ballot that create actual burdens on voters while serving as solution in search of a problem.

Courts in recent years have continued to issue decisions making it more difficult to succeed in enforcing constitutional protections against undue burdens on the right to vote. Indeed, in many of these cases, federal appellate courts have reversed district court decisions finding that the challenged laws imposed undue burdens.<sup>183</sup> In effect, the courts have watered down the *Anderson-Burdick* test by giving wide deference to a jurisdiction's alleged justifications for burdening the right to vote and discounting the extent to which a particular provision burdens the right to vote.

## 2. The Purcell Problem: A Double Bind for Voters

In 2006, the Supreme Court articulated a principle that courts should be wary of ordering last-minute changes to election rules that could backfire by confusing

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<sup>180</sup> *Id.* at 429 ("A court considering a challenge to a state election law must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiffs seeks to vindicate' against 'the precise interest put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'") (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

<sup>181</sup> *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008).

<sup>182</sup> *Id.* at 194.

<sup>183</sup> See, e.g., *New Georgia Project v. Raffensberger*, 976 F.3d 1278 (11<sup>th</sup> Cir. 2020) (reversing district court decision finding that absentee ballot deadline imposed undue burden on voting during COVID emergency); *Tex. League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136, 140 (5<sup>th</sup> Cir. 2020) (reversing district court decision finding that limiting ballot drop-boxes to one per county, regardless of the size of the county, unduly burdened access to voting); *A. Philip Randolph Inst. of Ohio v. LaRose*, 831 Fed. App'x 188, 190 (6<sup>th</sup> Cir. 2020) (reversing district court finding that limiting ballot drop-boxes to only one per county unduly burdened access to voting). See also Joshua A. Douglas, Undue Deference to States in the 2020 Election Litigation, 30 Wm. & Mary Bill Rts. J. 59 (2021), <https://scholarship.law.wm.edu/wmblrj/vol30/iss1/3>.

voters.<sup>184</sup> Recently, courts have misapplied this guideline to reject changes that opened pathways for participation with no risk of confusion (such as extending ballot return deadlines).<sup>185</sup> Voters challenging election rules have ended up in a bind – it’s too early to sue before the harm is clear and documented, but it’s too late to sue if the election is around the corner.

An aggressive and overinclusive application of the *Purcell* theory has both shielded discriminatory barriers to the ballot and too often meant that elections go forward under redistricting plans that have been found to be racially discriminatory, even though the finding of discrimination is later affirmed. This type of drawn-out litigation where discriminatory laws remain in place while jurisdictions engage in delay tactics is the exact problem the preclearance protection of the Voting Rights Act was intended to address and prevent.

LDF’s *Milligan* litigation is a good example.<sup>186</sup> A three-judge federal district court unanimously found that Alabama’s congressional redistricting map unlawfully diluted minority voting strength under Section 2 of the VRA and ordered the map to be redrawn, but the Supreme Court reinstated the map for the 2022 elections in an unsigned order which relied on *Purcell*.<sup>187</sup> The Court ultimately affirmed the district court’s finding that the map violated plaintiffs’ rights under Section 2, meaning that the 2022 elections were conducted under an unlawful, racially discriminatory redistricting plan.<sup>188</sup>

#### **IV. CONGRESS MUST ACT TO RESTORE AND STRENGTHEN PROTECTIONS FOR BLACK VOTERS**

Persistent racial turnout disparities; ongoing state-level efforts to restrict participation; and legal protections undercut by recent Supreme Court decisions all confirm the urgent need for Congress to both restore and strengthen the Voting

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<sup>184</sup> *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (“Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”).

<sup>185</sup> See, e.g., *Merrill v. People First of Alabama*, 141 S. Ct. 25, 27 (2020) (Sotomayor, J., dissenting) (in a case litigated by LDF, explaining that the Court’s majority was wrong to rely on *Purcell* in staying a district court’s injunction granting relief to voting-rights plaintiffs, because the injunction “lift[ed] burdensome requirements rather than imposing them” and “[d]id not risk creating ‘voter confusion and consequent incentive to remain away from the polls’”).

<sup>186</sup> *Allen v. Milligan*, 143 S. Ct. 1487.

<sup>187</sup> Grant of Appls. for Stays or Injunctive Relief, *Merrill v. Milligan*, *supra* note 91; *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Kavanaugh, B., joined by Alito, S., concurring).

<sup>188</sup> *Allen v. Milligan*, 143 S. Ct. 1487.

Rights Act 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.

#### A. John R. Lewis Voting Rights Advancement Act

The John R. Lewis Voting Rights Advancement Act (JLVRAA) restores, strengthens, and modernizes the Voting Rights Act by addressing the damage wrought by several Supreme Court and lower court decisions, and providing new ways to address voting discrimination as our population rapidly diversifies.<sup>189</sup>

Among other provisions, the JLVRAA restores VRA Section 5's preclearance protections by updating the framework for determining which jurisdictions are subject to its requirements (addressing *Shelby County v. Holder*);<sup>190</sup> restores VRA Section 2's vote denial protections to forcefully address discrimination wherever it occurs (addressing *Brnovich v. DNC*);<sup>191</sup> clarifies that VRA Section 2 contains a private right of action (addressing *Arkansas State Conference of the NAACP v. Arkansas Board of Reapportionment*);<sup>192</sup> clarifies that voters of different races or ethnicities can work together through "coalition" claims to prevent their voices from being weakened or drowned out by unfair districts or election methods (addressing *Petteway v. Galveston County, Texas*);<sup>193</sup> makes clear that proximity to an election should not be a barrier to relief unless there is real, irreparable harm to voters caused by changing the rules (addressing the misapplication of *Purcell v. Gonzalez*);<sup>194</sup> and adds a form of preclearance based upon known discriminatory practices that persist in locations with substantial diversity (modernizing the law's protections).<sup>195</sup>

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<sup>189</sup> John R. Lewis Voting Rights Advancement Act of 2023, H.R. 14, 118th Cong. (hereinafter "JLVRAA"). The legislation has been introduced as S4 in the United States Senate, but its text is not yet available at Congress.gov so we refer hereinafter to the House version.

<sup>190</sup> JLVRAA § 5.

<sup>191</sup> JLVRAA § 2.

<sup>192</sup> JLVRAA § 9.

<sup>193</sup> JLVRAA § 2(b)(3).

<sup>194</sup> JLVRAA § 11(b).

<sup>195</sup> JLVRAA § 6.

## B. Freedom to Vote Act

The Freedom to Vote Act (FTVA)<sup>196</sup> is a critical complement to the JLVRAA that is under this Committee’s jurisdiction. Whereas the JLVRAA provides protections against voting discrimination, the FTVA sets affirmative minimum standards for election administration that ensure a basic floor of voting access for all voters no matter where they live. These include requiring states to implement critical programs that will significantly improve voting accessibility such as Automatic Voter Registration,<sup>197</sup> Same Day Registration,<sup>198</sup> Early Voting,<sup>199</sup> and Vote-By-Mail.<sup>200</sup>

Although in most cases the FTVA’s protections are not targeted specifically at protecting voters of color, in practice they would prevent states from rolling back the very voting methods that Black voters have used successfully in recent elections, such as early voting and vote-by-mail; and offer protections against other tactics that tend to be targeted at communities of color. As such, the legislation contains several provisions that would directly address the problems described above.

### 1. *Protections against discriminatory congressional districts*

The FTVA contains several provisions governing the creation of congressional district maps, including a ban on partisan gerrymandering.<sup>201</sup> To complement the core protections in the federal Voting Rights Act and the JLVRAA, the FTVA lays out mandatory criteria for drawing congressional districts that prioritize protecting voters of color from vote dilution.<sup>202</sup>

### 2. *Protections against frivolous challenges*

The National Voter Registration Act (“NVRA”) already provides voters with important protections regarding when and how they may be removed from voter rolls.<sup>203</sup> The FTVA amends Section 8 of the NVRA to strengthen these protections by requiring verifications and clarifying that certain unreliable indicators are not a legal

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<sup>196</sup> Freedom to Vote Act, S.1, 118th Cong. (2023) (hereinafter “FTVA”).

<sup>197</sup> FTVA § 1001-07.

<sup>198</sup> FTVA §§ 1031-32.

<sup>199</sup> FTVA § 1201.

<sup>200</sup> FTVA §§ 1301-05.

<sup>201</sup> FTVA §§ 5001-08.

<sup>202</sup> FTVA § 5003(b).

<sup>203</sup> 52 U.S. Code § 20507

basis for removal.<sup>204</sup> In addition, the FTVA prohibits the practice of voter “caging” which is often used as a predicate for mass challenges.<sup>205</sup> This involves sending mass mailings to voters and using undelivered mail to assemble a purge or challenge list.<sup>206</sup> Finally, the FTVA requires states to provide voters with the opportunity to register to vote during early vote and on Election Day,<sup>207</sup> which serves as a critical backstop to voter challenges to the extent these challenges are based upon allegations that voters are not properly registered.

### *3. Protections against polling location changes and long lines, and for line relief programs*

The restored preclearance mechanism created by the JLVRAA will protect voters in covered jurisdictions from polling location changes or consolidations that would leave voters of color worse off. Prior to *Shelby County*, covered states and localities were required to prove that proposed voting changes would not have a discriminatory effect on Black, Latino, Asian American, or Native American voters, and they were required to give the DOJ data from the U.S. Census Bureau about the racial impact of polling closures.

In addition, the FTVA creates minimum standards for notifying voters about polling place changes or closures for federal elections.<sup>208</sup> Critically, the FTVA also sets a clear standard that nobody should have to wait more than 30 minutes in line to vote.<sup>209</sup> As a backstop, the legislation also prevents states from outlawing the provision of basics such as water and snacks for voters who are forced to spend hours waiting to exercise their basic rights, sometimes in extreme heat or cold.<sup>210</sup>

### *4. Minimum standards for early voting and vote-by-mail*

Restored preclearance 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. In addition, the FTVA contains strong minimum standards for

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<sup>204</sup> FTVA § 1911.

<sup>205</sup> FTVA § 1901.

<sup>206</sup> Justin Levitt, *A Guide to Voter Caging*, BRENNAN CENTER FOR JUSTICE (Jun. 29, 2007), <https://www.brennancenter.org/our-work/research-reports/guide-voter-caging>

<sup>207</sup> FTVA § 1031.

<sup>208</sup> FTVA § 1601.

<sup>209</sup> FTVA § 1606.

<sup>210</sup> FTVA § 3701-02.

states to provide robust early vote and vote-by-mail opportunities.<sup>211</sup> For example, the legislation requires nearly two weeks of early voting opportunities that include weekends.<sup>212</sup>

*5. Protections for election workers against threats, harassment, and intimidation*

In response a disturbing trend that threatens to hollow out the core of experienced officials who administer our decentralized election system, the FTVA contains added protections against threats, harassment, and intimidation of election workers and damage of election infrastructure.<sup>213</sup> As we saw vividly displayed through Ruby Freeman and Shaye Moss’s testimony to the January 6th Commission, harassment can upend the lives of diligent election officials and drive them out of the profession; and such attacks are often targeted at Black officials and other election workers of color.<sup>214</sup>

*6. Protections against disinformation and deceptive practices*

As noted above, the increasing use of AI threatens to exacerbate historical and recent challenges with disinformation targeted at Black voters. The FTVA includes specific prohibitions of deceptive practices that can confuse voters about election participation or candidate endorsements.<sup>215</sup> Beyond the FTVA, we understand that Congress is exploring bipartisan legislation to address challenges specific to AI such as deepfakes and disclaimer requirements, and we urge this Committee to pursue effective legislation without losing focus on the FTVA itself.<sup>216</sup>

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<sup>211</sup> FTVA §§ 1201; 1301-05.

<sup>212</sup> FTVA § 1201.

<sup>213</sup> FTVA §§ 3101-02. The Senate version of the JLVRAA in the 118<sup>th</sup> Congress (S4) contains similar protections in Title II. Given the myriad ways in which our criminal legal system is systemically biased against Black Americans, we greatly appreciate the authors of both S1 and S4 for moderating the criminal penalties associated with these protections between the 117<sup>th</sup> and 118<sup>th</sup> Congresses to reflect a more sensible and less carceral approach to addressing the very real problem of election worker harassment.

<sup>214</sup> Statement of Janai Nelson, *supra* note 19.

<sup>215</sup> FTVA § 3201-06. Although we support these prohibitions, we strongly believe the associated criminal penalties should be aligned with those respecting election worker harassment referenced above.

<sup>216</sup> See, e.g., Protect Elections from Deceptive AI Act, S. 2770, 118<sup>th</sup> Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/2770/text?s=1&r=1&q=%7B%22search%22%3A%22s2770%22%7D>; REAL Political Advertisements Act, S. 1596, 118<sup>th</sup> Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate->

### 7. *Restoration of voting rights for returning citizens*

Laws that disenfranchise people with felony convictions have deeply racist roots, and ongoing discrimination in our criminal legal system (at times perpetuated through emerging technologies) means that Black Americans are stripped of their most fundamental right at starkly disparate rates.<sup>217</sup> Congress should end the practice of disenfranchisement in federal elections upon criminal conviction altogether;<sup>218</sup> and at a minimum should restore the right of all returning citizens to vote in federal elections, as the FTVA does.<sup>219</sup>

### 8. *Providing a federal statutory right to vote*

Courts have refused to robustly enforce constitutional protections against undue burdens on the right to vote. The FTVA provides a federal statutory right to vote and prevents states or localities rolling back or impairing that right without clear evidence that the policy at issue serves an important and specific need.<sup>220</sup> This is meant to address the shortcomings of the *Anderson-Burdick* standard, and prevent jurisdictions from asserting pretextual justifications such as fighting nonexistent voter fraud to defend unreasonable and often discriminatory barriers to the ballot.

## V. CONCLUSION

Voting rights for Black Americans are presently undermined and face increased threat. A backlash, rooted in a resurgence of white nationalist ideology, against recent robust political participation by communities of color and changing demographics both stoked a violent insurrection and unleashed a wave of voter suppression across the country. Recent elections have demonstrated that barriers to the ballot persist, driving widening racial turnout disparities. Black voters are forced to vote in districts that courts have already determined drown out their voices and discriminate against them on account of race. LDF and our allies maintain a robust litigation docket, but our legal protections have been weakened and are insufficient to meet the moment.

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bill/1596/text?s=2&r=1&q=%7B%22search%22%3A%22s1596%22%7D. LDF has not analyzed or taken a position on either piece of legislation.

<sup>217</sup> Christopher Uggen et al., *Locked Out 2022: Estimates of People Denied Voting Rights*, Sentence Project (Oct. 25, 2022), <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>.

<sup>218</sup> It can do so through legislation similar to the Inclusive Democracy Act, Inclusive Democracy Act of 2023, H.R. 6643, 118th Cong. (Dec. 6, 2023), <https://www.congress.gov/bill/118th-congress/house-bill/6643?s=1&r=23>.

<sup>219</sup> FTVA §§ 1701-09.

<sup>220</sup> FTVA §§ 3401-07.

Congress must act urgently to address barriers for Black voters that are a crisis for American democracy. This body has just one year to enact robust voting rights legislation to honor John Lewis and his fellow foot soldiers in Selma before the 60th anniversary of Bloody Sunday. A full decade after the disastrous *Shelby County* decision struck at the heart of the Voting Rights Act, it's long past time.



**U.S. Senate Committee on Rules & Administration  
Administration of Upcoming Elections Hearing, March 12, 2024  
Janai Nelson Testimony Addendum**

Chair Klobuchar & Ranking Member Fischer:

Thank you for the opportunity to complete my response to a question directed to me during the March 12, 2024 hearing entitled “Administration of Upcoming Elections.” Senator Butler posed a question about LDF’s investigation into the ballot shortages that occurred in Hinds County, Mississippi during the statewide general election in November 2023. I wish to add the following to complete my response.

“Through multiple meetings with the Election Commission and Circuit Clerk, public records requests, and conversations with the community, LDF’s PTV/VRD team ultimately learned that the ballot shortages in Hinds County resulted from insufficient training of election commissioners that was, in large part, due to gaps in the training materials provided by the Secretary of State. This insufficient training led to confusion on the part of the election commissioners in ordering ballots for split precincts in Hinds County, causing several precincts not to receive a sufficient number of the correct types of ballots for Election Day. Moreover, there was no formal procedure in place for poll workers to report ballot shortages to election commissioners, for additional ballots to be printed and distributed to polling locations, for election officials to instruct poll workers about what to do if ballots ran out, or for election officials to communicate to poll workers that poll hours had been extended by court order.

While Hinds County displayed some of the most serious problems, counties around the state experienced election administration issues on Election Day in 2023 that created additional barriers for voters to cast their ballots. In many counties, polling locations opened late, voting machines malfunctioned, and polling locations had serious accessibility issues. In Mississippi, these issues make voting on Election Day a high-stakes affair because the state prohibits no-excuse early voting and no-excuse mail voting, two baseline election administration reforms that the Freedom to Vote Act would require for federal elections to ease the stress on election systems on Election Day.”



ELECTION COMMISSIONERS ASSOCIATION  
OF THE STATE OF NEW YORK  
2023-2024  
DEMOCRATIC CAUCUS

**Written Testimony before United States Senate Rules Committee**

**Hearing on Administration of Upcoming Elections,**

**Tuesday, March 12, 2024. 3:00 PM**

**Dustin M. Czarny, NYSECA Democratic Caucus Chair, Commissioner (D) Onondaga County**

Thank you for allowing me to submit this testimony today. My name is Dustin Czarny, and I am an Elections Commissioner in Onondaga County and the Democratic Caucus Chair of the New York State Elections Commissioner Association. NYSECA represents the diverse sixty-two counties throughout New York State. I am proud of our bi-partisan Election Board system, and this is a model that should be followed nationwide. The Democratic and Republican Commissioners must work together to ensure the integrity of our election system. The built-in checks and balances help New York avoid partisan battles and meet the needs of the voters.

Despite the unique set of challenges that could cause turmoil in 2024 — one thing is certain: we can count on election officials to once again administer free, safe, and secure elections. Over the last eight years our electoral system have come under increased strain. We have seen a rise in foreign and domestic cyber security threats. We faced a pandemic during one of the largest turnout elections in generations. We have endured a rise in election denialism that has impugned not just our honor, but resulted in threats to our physical safety. We also face budget shortfalls as well with local resources under strain since the pandemic.

Our elections are safe and secure because they are administered by trained election officials at the state and county level who use sophisticated and continuously validated processes for counting ballots. Lead election officials are dedicated public servants committed to the highest level of transparency. We have chosen this line of work so we can help our fellow citizens take part in our democracy. We are not just faceless bureaucrats but friends and neighbors serving the community we love.

Both Republican and Democratic election observers are subject to all of the same rules and regulations and have equal access to the vote count process, and the public can also watch how it's done to make sure everything is fair. In New York this is mandated at every level of the election process. This holds true from the County and State Board commissioners, at every staffing level, and even down to the election

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ELECTION COMMISSIONERS ASSOCIATION  
OF THE STATE OF NEW YORK  
2023-2024  
DEMOCRATIC CAUCUS

inspectors that run our polling places. Every step of our process is designed to assure the public that no single person or party can ever manipulate any election.

Most importantly, election results are not finalized until election officials painstakingly count every ballot that is cast, check for duplicates, verify voter status, and give voters a chance to rectify mistakes that might otherwise disqualify their ballot. While the media may call it sooner, election officials will never certify an election until every legal ballot is counted. The increase use of mail ballots requires added controls and procedures that may extend the time needed to certify an election. However, the added time and investment is well worth it. The public deserves every opportunity to cast their ballot in the method they choose. The Boards of Elections should also get the time it needs to verify that every vote is accurately counted.

Elections have historically been followed by the peaceful transfer of power because these dedicated public servants from across the political spectrum have worked hard to ensure that all eligible voters are able to securely cast their ballots and that every legal vote is counted efficiently, accurately, and transparently. The rise of election deniers and the January 6<sup>th</sup> insurrection have made our job more difficult. We have had to devote resources to combat falsehoods in the media by those acting in bad faith. This has also made our offices and our people into targets for those who believe these lies. Additional security measures have had to be implemented in the wake of the 2020 election and continue to this day.

It's time we elevate these voices in our towns, counties, and states as trusted sources of information, instead of politicizing and disparaging election administrators. As we head into the 2024 election we must rededicate ourselves to uphold the single most basic tenant of our electoral system: that results are final and accepted by all parties. We must discourage bad faith election deniers and call upon our bi-partisan election officials to present the truth that our electoral system is strong and can be trusted. This will require not only words but an investment in local election offices so they can have the resources to combat.

It's also vital — now and over the long-term — that Congress makes a significant investment in our elections and provides adequate, regular, and stable funding for local and state election officials. We need money to continue to upgrade our security both at our main offices and at polling places. We need investment in staffing levels to not only deal with the Presidential election in 2024, but every year, the federal government has a responsibility to ensure free and fair elections throughout all of the states. Providing substantial and consistent funding from the federal government is the best way to ensure equal opportunity to the ballot box for all citizens.

Thank you very much for this opportunity to submit written testimony today. I hope that we can count on Congressional support in defending our democracy.

Dustin M. Czarny  
Commissioner (D), Onondaga County  
Democratic Caucus Chair, NYS Elections Commissioner Association.

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February 28, 2024

The Honorable Bryan Steil  
Chairman  
Committee on House Administration  
1526 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Amy Klobuchar  
Chairwoman  
Committee on Rules and Administration  
425 Dirksen Senate Building  
Washington, D.C. 20510

The Honorable Joe Morelle  
Ranking Member  
Committee on House Administration  
570 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Deb Fischer  
Ranking Member  
Committee on Rules and Administration  
448 Russell Senate Office Building  
Washington, D.C. 20510

### **Election Officials Call on Congress to Pass Anti-Doxxing Measures**

Dear Chairman Steil, Ranking Member Morelle, Chairwoman Klobuchar, and Ranking Member Fischer,

We, U.S. election workers from across the country, are writing to Congress to urge you to enact legislation expanding protections from targeted doxxing and intimidation. Election workers at the local and state level have been subjected to threats and harassment to an [unprecedented degree](#) since 2020. Many of us have received death threats, had our homes swatted, and our private information leaked to spread fear, all because we are simply doing our jobs and keeping American democracy running. Some of the most disruptive and terrifying threats that many of us have received included specific information about our homes, cars, offices, and children's schools. Using this kind of personal information alongside explicit or implicit death threats dramatically raises the danger to us and our families.

Today, people who work in elections do not have the ability to preemptively protect our private information from people who would use it to attack us and our families. And it is not a federal crime for someone to use that personal information to intimidate or threaten us. In response to these threats, [several states](#) have enacted legislation to protect elections officials and Congress has enacted anti-doxxing protections for [judges](#) facing similar personal threats. We call on Congress to follow their example and act to protect the people who run our elections from this persistent threat.

Congress has recognized this danger before. In June of 2023, a bipartisan group of more than 70 Representatives called on the [Cybersecurity and Infrastructure Security Agency](#) to emphasize anti-doxxing resources and training for election officials in updates to the agency's cybersecurity toolkit. We applaud this action, and the acknowledgment from Congress that doxxing of election workers is a threat to our democracy, we ask that Congress continue this effort in the form of a bill to further protect our election workers from threats such as doxxing.

Additionally, regular and increased federal funding for election security would go a long way towards improving protections for our election infrastructure and the people who keep it running. Appropriating

funds for the Election Security Grants program, run by the Election Assistance Commission, is an essential federal responsibility.

[Threats to election workers](#) have already begun to increase as the 2024 cycle ramps up. The time to act is now. We ask Congress to please continue its bipartisan work to strengthen anti-doxing measures to ensure the safety of all those who dedicate their lives to sustaining our democratic process.

Thank you for your careful consideration of this urgent matter.

Sincerely,

Natalie Adona  
*Nevada County, CA Clerk-Recorder*

Gregg M. Amore  
*Rhode Island Secretary of State*

Shenna Bellows  
*Maine Secretary of State*

Jocelyn Benson  
*Michigan Secretary of State*

Dave Bjerke  
*Falls Church, VA Director of Elections & General Registrar of Voters*

Bruce Brown  
*City of Alexandria, VA Election Board Secretary*

Barb Byrum  
*Ingham County, MI Clerk*

Kristin Connelly  
*Contra Costa County, CA Clerk-Recorder*

Isaac Cramer  
*Charleston County, SC Executive Director, Board of Voter Registration and Elections*

Dustin Czarny  
*Onondaga County, NY Elections Commissioner*

Cathy Darling Allen  
*Shasta County, CA Clerk/Registrar of Voters*

Lisa M. Deeley  
*Philadelphia, PA City Commissioner*

Adrian Fontes  
*Arizona Secretary of State*

Bill Gates  
*Maricopa County, AZ Board of Supervisors Supervisor*

Ken Hamm  
*Clark County, NV Election Department Poll Worker Trainer*

Carly Koppes  
*Weld County, CO Clerk and Recorder*

Brianna Lennon  
*Boone County, MO Clerk*

Amber McReynolds  
*Former election official and Director of Elections, Denver, CO*

Spenser Mestel  
*New York, NY Poll Worker*

Omar Sabir  
*Philadelphia, PA City Commissioner*

Natalie Tennant  
*Former West Virginia Secretary of State*

Tonya Wichman  
*Defiance County, OH Director, Board of Elections*

Julie Wise  
*King County, WA Director of Elections*

CC: The Honorable Charles Schumer  
 The Honorable Mike Johnson  
 The Honorable Alec Padilla  
 The Honorable Peter Welch  
 The Honorable Mark Warner  
 The Honorable Jon Ossoff  
 The Honorable Laphonza Butler  
 The Honorable Jeff Merkley  
 The Honorable Michael Bennet  
 The Honorable Mitch McConnell  
 The Honorable Roger Wicker  
 The Honorable Katie Britt  
 The Honorable Ted Cruz

The Honorable Cindy Hyde-Smith  
 The Honorable Shelley Moore Capito  
 The Honorable Bill Hagerty  
 The Honorable Barry Loudermilk  
 The Honorable Terri A. Sewell  
 The Honorable Morgan Griffith  
 The Honorable Norma Torres  
 The Honorable Greg Murphy  
 The Honorable Derek Kilmer  
 The Honorable Stephanie Bice  
 The Honorable Mike Carey  
 The Honorable Anthony D'Esposito  
 The Honorable Laurel Lee

March 19, 2024

The Honorable Amy Klobuchar  
Chair  
Senate Committee on Rules & Administration  
425 Dirksen Senate Building  
Washington, DC 20510

The Honorable Deb Fischer  
Ranking Member  
Senate Committee on Rules & Administration  
448 Russell Senate Office Building  
Washington, DC 20510

Dear Chair Klobuchar and Ranking Member Fischer,

The Southern Poverty Law Center (SPLC) submits this summary of events, pursuant to an exchange between Senator Butler and Alabama Secretary of State Wes Allen, in his capacity testifying in the Tuesday, March 12 Senate Rules Committee hearing on Election Administration in the Upcoming Elections. During the exchange, in which Senator Butler asked Secretary Allen about the role of his office as it related to the incorrect mailing to more than 6,000 voters—the vast majority Black—with erroneous information about their congressional district, Secretary Allen pointed the finger at SPLC attempting to admonish the organization for our public release encouraging voters to check their voter information ahead of the following day’s primary. We submit the following summary of events detailing the actions SPLC took over the 48-hour period following our having learned of the error and encourage the committee to follow up with written interrogatories to Secretary Allen’s office to clarify the role and responsibility of his office and the actions that he will take in the future to ensure this type of “glitch in software” does not happen again.

**Summary of SPLC Actions in Alabama**

On Sunday, March 3, a Montgomery County voter living in the newly established Alabama Second Congressional District alerted the Southern Poverty Law Center (SPLC) that his voter information card had him assigned to the Seventh Congressional District. A copy of the card was provided to the SPLC. This was a glaring error given that the entirety of Montgomery County lies within the Second District.

SPLC staff immediately consulted the voter file we purchased from TargetSmart via EveryAction and determined 1) the data in its voter file matched the incorrect data on the voter’s voter information card; and 2) that there were 5,604 Montgomery County voters erroneously listed as being in the CD-7. Of those voters, 4,513 were Black. (Subsequently, SPLC has identified a total of 6,465 Montgomery County voters erroneously listed as being in CD-7 the 7<sup>th</sup> in its copy of the voter file, of which 5,252 are Black.)

On the Secretary of State's "Find my polling place" website, the voter was correctly listed as being in "AL CD2." Thus, it became clear that at some point between the printing of the cards and the voter's receipt of such, the faulty data had been caught and corrected, resulting in conflicting information being made available to voters. Concerns were raised that if this happened in Montgomery, it could have likely happened in other parts of the district as well, especially in counties split between two Congressional districts.

Around 3:30pm on March 4, the SPLC released a statement encouraging voters to verify their election information and provided a link to the Secretary of State's website: [myinfo.alabamavotes.gov/voterview](http://myinfo.alabamavotes.gov/voterview). The statement also called for "an audit and public accounting from Secretary Wes Allen's office on the scope of the problem."

Two hours later, the Secretary's office made outreach to SPLC, including a written response from Allen's office. This correspondence did not deny that the voter received an election information card presenting incorrect data, but focused on the fact that the Secretary's Office did not distribute the mailer as SPLC had originally believed.

At 8:48pm Central time, SPLC Deputy Legal Director Bradley Heard responded via email to the Secretary's deflection of responsibility. Heard reminded the Secretary's counsel that "[p]ursuant to Section 303(a) of the Help America Vote Act, it is the chief election official's responsibility to maintain, on a state level, an accurate and current computerized list of all registered voters in the state... If a local registrar is sending out erroneous information to voters based on information contained in a statewide database, it is nevertheless ultimately the Secretary's responsibility to determine the source of the original error, the number of voters impacted (including absentee voters who may have been sent an incorrect ballot), and to ensure corrective measures are taken."

On Primary Election Day, March 5, the *Alabama Reflector* reported on the story, confirming with Zach Snipes, chair of the Montgomery County Board of Registrars, that: 1) There had been a "software glitch" in their computer system that caused voters to incorrectly be listed in the 7<sup>th</sup> Congressional District; 2) Around January 15 there was a mailing of "postcards reminding people of their voting precincts and districts misidentified people as living in the 7<sup>th</sup> Congressional District instead of the 2<sup>nd</sup> Congressional District"; and 3) They did not realize the error until January 23 and no action was ever taken to directly tell these voters that the information they had been provided was incorrect and provide them with their correct Congressional District.

The article goes on to state that "the Board of Registrars plan to mail some 6,600 postcards to voters indicating their correct voting district in several days. That doesn't necessarily address the issue of sending incorrect information during the initial mailing..." It appears that SPLC's publication of the mistake is what finally compelled the Registrars to directly notify affected voters.

Later on, March 5, the Secretary of State's office sent another letter to Deputy Director Heard. This correspondence attempted to characterize SPLC's actions as deliberately attempting to disinform voters on the eve of an election with the intent to disrupt. The letter purports to



confirm that all information in the state's voter database was correct and they never provided incorrect voter registration data to Montgomery County elections officials, including the Registrars. The letter *did not* acknowledge or address the fact that the Registrars had confirmed that voters were sent incorrect information about their Congressional District, that they were never directly notified about this mistake, and that the Registrars was aware of the problem on January 23<sup>rd</sup>.

Deputy Legal Director Heard responded to this second letter by highlighting the Board's own public admission that it mailed out thousands of incorrect election information cards, and more importantly, underscored the necessary focus by SPLC on encouraging voters to verify their correct voter information and the responsibility borne by the Secretary to supervise local election officials.

The day after the primary election, Mr. Snipes revised the number of Montgomery County voters who were sent a postcard with the incorrect Congressional District to 6,593 (which closely matches the number of affected voters SPLC sees in its copy of the voter file). In an interview with the *Sun Herald*, Mr. Snipes offered no explanation for how this error occurred: "We can't figure out how the software did that to us."

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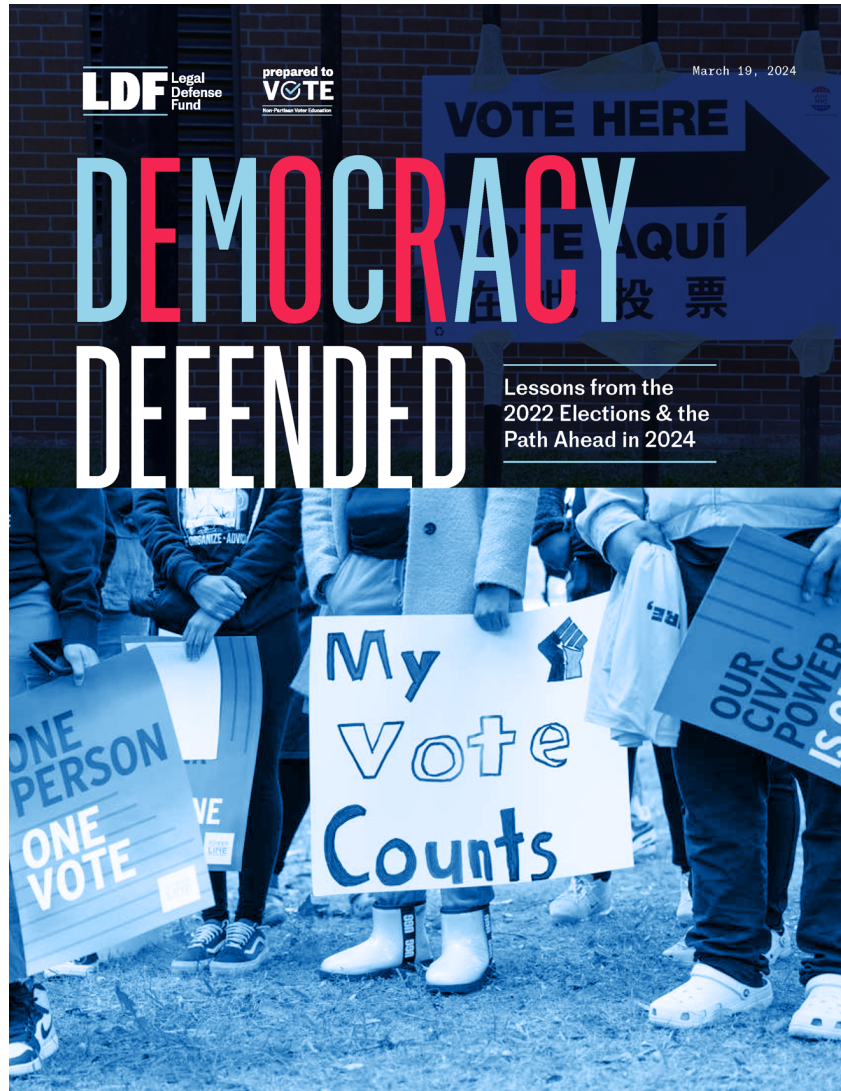
As of the date of this letter, we have yet to receive answers from the Secretary of State and Montgomery County Board of Registrars to the following questions and we encourage members of the committee to follow up with written interrogatories:

1. What exactly was the "software glitch" in the Registrars' system that caused the voters to be listed in the 7<sup>th</sup> Congressional District?
2. Why were Black voters disproportionately impacted?
3. Are any audits performed prior to mailing voters' information about upcoming elections to ensure all of the information is correct and accurate, especially given that many voters would be voting in a different Congressional District than they did since the last Congressional election?
4. When did the Registrars become aware of the problem and how?
5. If the mistake had not been caught prior to Election Day, could it have resulted in voters voting in the wrong election, including absentee voters?
6. Did the Registrars notify other county and state elections officials about the problem, and if so, when?
7. Why did the Registrars initially identify only 4,600 voters who received incorrect information and then revised the number to 6,593 voters?
8. Why did the Registrars choose to not directly notify affected voters and provide them with the correct information when they became aware of the problem? Are there standard operating procedures when mistakes like this occur?
9. When did the Secretary of State become aware of the problem and how?
10. When the Secretary of State became aware of the problem, what actions did they take to ensure that voters had the correct information and would be able to participate in the correct Congressional primary election?

11. How is it that the voter registration data in the Registrars system could become out of sync with the data in the Secretary of State system (the Secretary has insisted that their data was always correct)?
12. Will the Secretary of State take any disciplinary action with the Registrars?
13. What policies and procedures will the Secretary of State implement to ensure that a mistake like this never occurs again?
14. How did the bad data get into SPLC's voter file?

There are few government responsibilities more vital in a democracy than protection of the fundamental right to vote and in service of that right, the effective administration of an election. Just as each level of government in our federated system bears responsibility for protecting that right, so, too, must each level of government, and in this instance the Secretary of State of Alabama, ensure that the administration of elections where they happen – especially at the local level – bear responsibility for the operations related to elections within their jurisdictions.

We appreciate the opportunity to submit this statement. For more information about SPLC's work protecting voting rights in the Deep South, please contact Laura Williamson, Senior Policy Advisor, Voting Rights, at [laura.williamson@splcenter.org](mailto:laura.williamson@splcenter.org). We stand ready to work with subcommittee members to address these critical issues.





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LDF's Prepared to Vote and Voting Rights Defender team. Photo by Roberto Hernandez

## ACKNOWLEDGEMENTS

This Legal Defense Fund (LDF) is America's premier legal organization fighting for racial justice. Using the power of law, narrative, research, and people, LDF defends and advances the full dignity and citizenship of Black people in America.

The data and narratives included in this report build on years of collaboration between LDF and critical national, state, and grassroots partners. Hundreds of volunteers, researchers, and advocates have been collecting and reporting the data, visuals, and stories contained herein.

Most photos included in this publication were taken by LDF staff, contracted photographers, and volunteers, or are otherwise credited. Maps were generated by LDF staff, using Social Explorer mapping tools. Data reported from the 866-OUR-VOTE Hotline was collected by the 866-OUR-VOTE Hotline.

The report was written by members of LDF's Prepared to Vote team, including Ann Bailey, Anne Wenger, and Tia Williams. The report's design was created by Rachel Carter, DaMetrice Causeur, Christina Das, C.C. Huddleston, Evans Moore, Michael Pernick, and Lameese Satchell. Editorial support was provided by Jin Hee Lee, Tom Boyd, and Jamal Nelson. Design was completed by Koye Lee Johnson, Leigh Logan, and Tom Wenger.



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VOTE

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# INTRODUCTION

## A Model of Year-Round, Integrated Advocacy

Protecting the right to vote has been a core mission of the Legal Defense Fund (LDF) since its founding in 1940. Following the 2000 elections, LDF joined with fellow civil rights organizations to launch the nonpartisan Election Protection network and 866-OURVOTE hotline. In tandem with these efforts, LDF later launched its Prepared to Vote (PTV) initiative to provide nonpartisan voter education and on-the-ground election monitoring and advocacy during elections. In 2020, LDF launched the Voting Rights Defender (VRD) project, a companion effort of PTV, to enhance year-round advocacy to expand voting access, invest in sustained partnerships, and broaden multi-tactic advocacy efforts to protect and expand voting rights in target states.

## 2022 Midterm Elections — Lessons Learned

In 2022, LDF conducted civic engagement, election monitoring, and advocacy efforts in seven southern states: Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas. As identified through the monitoring and advocacy work during these elections, limitations on the ability of Black voters to access the ballot and have their votes counted remained a prominent factor in U.S. elections. In addition to voter intimidation and election sabotage threats, LDF and our partners observed many obstacles that made it harder for Black voters to vote. This report incorporates just some of the data points and observations captured during elections in LDF's target states in 2022. It also reflects lessons informed by these findings and key takeaways from prior Democracy Defended reports that can position civil rights advocates to engage strategically to support voters in 2024 and beyond.



Despite warnings to keep away from the polls, thousands of Black voters showed up to cast their ballots at the primary in Macon, GA, on July 27, 2022. Photo by Bettmann Archive/Getty Images

Voters line up to cast their ballots on November 29, 2022 in Decatur, Georgia. Photo by Justin Sullivan/Getty Images

Georgia Supreme Court rejected an effort to block counties from offering early voting on Saturday. Photo by Justin Sullivan/Getty Images



# prepared to VOTE

Non-Partisan Voter Education

Through the Prepared to Vote/Voting Rights Defender initiatives, LDF works to defend and advance the rights of Black voters and the promise of a free and fair democracy through the full life cycle of the political process.





## TOP ISSUES IN 2022



Voters wait in line on Nov. 21, 2022 to vote early in the Georgia Senate runoff election in Atlanta. Photo by Justin Sullivan/Getty Images

### Voting Infrastructure & Administration Problems

Issues concerning voting infrastructure and administration permeated the midterm elections in each of LDF's target states. Monitors observed polling locations with barriers for seniors and voters with disabilities, poor signage identifying polling locations, insufficient supplies of voting materials at polling locations, and technology failures.

### Limited Availability of Voting Options

The availability of multiple voting options continues to be significant for Black political participation. The lack of mail-in and early voting options in several states increased the need for voters to vote on Election Day, leading to long lines and heightened opportunities for disenfranchisement due to voting administration and process failures. Expansion of early voting options in some states, including South Carolina, where early voting was available to voters for the first time, reduced pressures on Election Day and improved access to the ballot box.

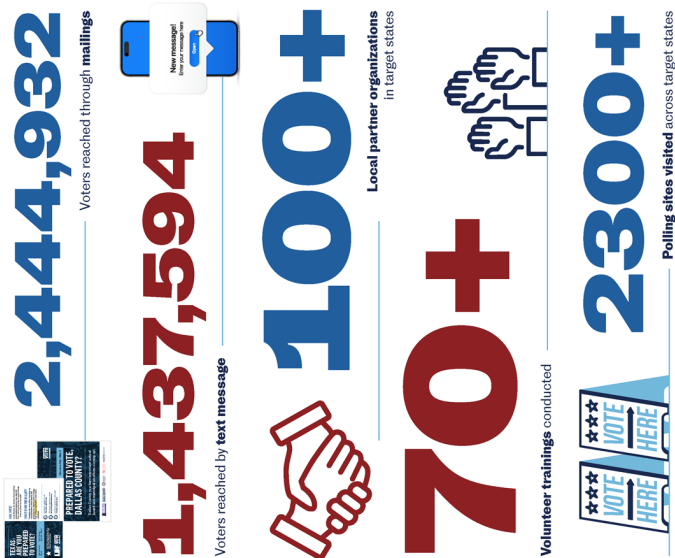
### Confusion About Nonpartisan Monitor Role

Poll workers in multiple states improperly restricted LDF monitors and other nonpartisan volunteers who were wearing apparel with nonpartisan messaging from being within the no-electronic zone around the polling place. These issues arose due to incorrect interpretations of electioneering rules and poor training of poll workers.

### Poor Information About Poll Site Changes

The process for poll site selection varies across states and many states failed to effectively communicate poll site information to voters. Poll site listings in many states remain decentralized, resulting in unreliable information and voter confusion. Moreover, the lack of transparency makes it difficult to track patterns of discriminatory changes and closures in Black communities.

## 2022 IMPACT BY THE NUMBERS



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Non-Partisan Voter Education

# STATE REPORTS

People are seen in line to vote on the first day of early voting in Cook County on Saturday, November 24, 2023 in Mayfield, CA.  
Photo by Elgin Newsphoto for The Washington Post via Getty Images

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# ALABAMA 2022

In 2022, the Alabama team addressed issues with poll site changes and transparency in advance of Election Day and dispatched volunteers during the primary and general elections to observe challenges at the polls. As recorded here, problems ranged from poor signage to considerable barriers to accessibility, among other issues.

## IMPACT BY THE NUMBERS

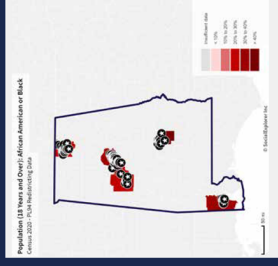
**30+** nonpartisan field volunteers

**18+** cities reached

**143** poll sites visited

**197+** poll site reports submitted

**23%** of reports indicating "no issues" – meaning that when the reports were submitted, the poll sites showed no barriers to voting.



The map depicts the poll sites visited across target counties statewide. The map overlays this data with the Black Voting Age Population. Map produced in Social Explorer.



Polling location in Alabama. Photo by volunteer

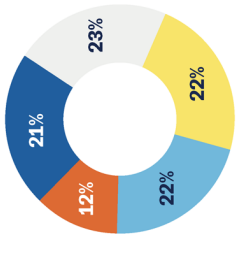
## HOTLINE REPORTS

During the Primary elections on May 24, 2022, and the General elections on November 8, 2022, the 866-OUR-VOTE Election Protection Hotline received over 550 calls from 35 counties.

Most issues reported through the hotline were related to voter registration and absentee ballot status. These issues, as well as information, were among those reported by our volunteers.

## FIELD REPORTS

The top issues reported by monitors, depicted on the chart below, were accessibility and signage, which were oftentimes intertwined. Parking concerns also occurred across sites, which also often implicated accessibility or lack of signage to designate reserved accessible spots.



■ Parking ■ Accessibility ■ Signage ■ None ■ Other

## ELECTION PROTECTION OUR VOTE

**550+** calls  
**35** counties

ADVOCACY SPOTLIGHT

UNIFORM POLL SITE INFORMATION

In the lead up to the November 2022 midterm elections in Alabama, LDF, along with our partner organizations, determined that the lack of accurate, uniform, and comprehensive polling place information available to voters was a significant barrier to voting that particularly disenfranchised Black voters and other voters of color.

Under state law, Alabama has a duty to notify voters of their polling locations by publishing a list of poll sites. However, some counties failed to publish anything online, while others published information that was inaccurate, contradictory, and at times so seriously lacking in relevant detail as to not meaningfully inform voters of their polling locations. We reviewed poll site information published by county officials in more than a fifth of Alabama counties and found that, among those counties with a Black population greater than 50%, each county lacked a precinct list, poll site map, and an interactive poll locator tool to enable voters to learn their voting location based on their address.

... among those counties with a **Black population greater than 50%**, each county lacked a precinct list, poll site map, and an interactive poll locator tool to enable voters to learn their voting location based on their address.

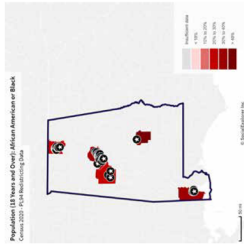


Wrennath High School Gym, Birmingham, AL on May 24, 2022. Photo by volunteer



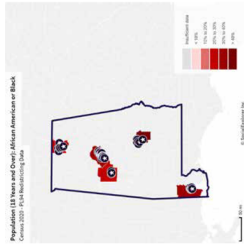
Municipal Precincts Center, Birmingham, AL on May 24, 2022. Photo by volunteer

## TOP ISSUES ON ELECTION DAY



**SIGNAGE:** Signage issues were reported in nearly all poll site issue checklists submitted.

Many of the reported signage issues cited problems with directional signage. This included issues with volunteers having difficulty locating the polling location from the street, but also instances in which it was hard to find the poll site entrance from the parking lot. Many sites were in large multi-purpose buildings, and the lack of signage indicating where voters should go to cast their ballots proved to be a significant impediment during the elections.



Map overlay: Issue reports on 2020 Census Black Voting Age Population data generated using Social Explorer.

**ACCESSIBILITY:** Volunteers reported accessibility issues in almost every poll site issue checklist.

As discussed above, the reported signage and accessibility issues were often intertwined. A majority of the poll site reports that referenced accessibility issues concerned with signs that incorrectly directed voters to inaccessible entrances. In addition, the accessibility issues revolved around inaccessible poll site entrances and lack of parking, i.e., poll sites often lacked curb cuts and ramps that allowed voters who use wheelchairs to access the polling locations.

## ISSUE SPOTLIGHT

### Labeled and Accessible Parking



A voter with a walker is forced to walk over grass to access the pathway to a poll site after a car parked illegally in the area designated for accessible vehicle ramps and lifts next to reserved accessible parking spots on Nov. 8, 2022, Jefferson County, AL. Photo by volunteer

The most common parking issue identified was no designated parking spaces for voters, especially at other locations that were open to the public for other purposes on Election Day. This caused voters to park in areas that were not designated for parking.

Monitors also observed that even at polling locations with an open lot, or open spaces, there often was

no signage to indicate that any parking, including accessible parking, was specifically available to voters.

Some voters with disabilities had no available designated parking spots, or there were no designated spots left at congested parking lots.





# FLORIDA 2022

In 2022, the LDF team and partners recorded an overwhelming number of issues, ranging from improper voter challenges and other suppression efforts prior to Election Day to confusing signage, long lines, and accessibility concerns once polls opened. This report provides a lens into just some of these concerns and the steps ahead.

## IMPACT BY THE NUMBERS

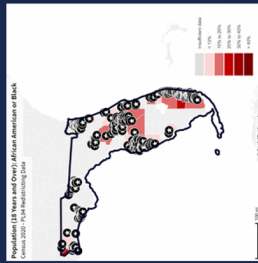
**400+** nonpartisan volunteers

**168** cities reached

**356** early voting and poll sites visited

**1600+** poll site reports

**75%** of reports indicating “no issues” – meaning that when the reports were submitted, the poll sites showed no barriers to voting.



The map depicts the poll sites visited across target counties statewide. The map overlays this data with the Black Voting Age Population. Map produced in Social Explorer.



Leon County Public Works Department, Tallahassee FL, Leon County Signage at entrance of poll site in Florida on August 23, 2022. Photo by volunteer

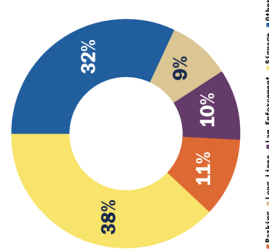
## HOTLINE REPORTS

From the beginning of the year up to the November 8 elections, the 866-OUR-VOTE Election Protection Hotline received over 2,600 calls from over 40 counties.

While many of the calls regarded individual voters' questions about their registration, absentee ballots, or other individualized needs, broader issues reported included topics like malfunctioning or broken machines at poll sites.

## FIELD REPORTS

The majority of poll site reports indicated no issues (75.5% of the total reports submitted). Of poll sites with reported issues, charted below, the main concerns related to signage, followed by parking, law enforcement activities, and long lines, while a variety of other miscellaneous issues rounded out the remaining issue reports.



**ELECTION PROTECTION** **OUR VOTE**  
**2600+** calls  
**40+** counties

ADVOCACY SPOTLIGHT

RESPONDING TO VOTER CHALLENGES

Voter challenges prior to the election presented a concerning threat in Florida. A member of the public submitted a frivolous mass voter challenge to the eligibility of 2,257 voters in Pinellas County. LDF sent a letter to county Supervisors of Elections (SOEs) ahead of the 30-day challenge period prior to Election Day providing recommendations for how to deal with frivolous mass voter challenges under the law. The Pinellas County Supervisor of Elections followed LDF's recommendations and rejected the challenges outright.

The decision in Pinellas to reject this challenge was an important win and set a helpful precedent for frivolous voter challenges in Florida.

At least 14 Supervisors of Elections submitted voter challenges against at least 2,370 Florida voters during the 30-day period before Election Day defined under law. These challenges were based on information provided to Supervisors by the new Florida Office of Election Crimes indicating that certain voters were ineligible.

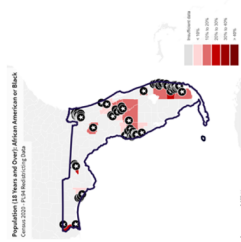
The overwhelming majority of these challenges were based on past felony convictions, although a small number of challenges were based on mental incapacity, death, double-voting in past elections, or residing at a non-residential address. These challenges present a serious concern for Florida voters who may have prior felony convictions.

The decision in Pinellas to reject this challenge was an important win and set a helpful precedent for frivolous voter challenges in Florida.



A man looks at an electronic device during an event held by the Florida Rights Restoration Coalition (FRC) to clear the names of voters who were removed from the 2018 statewide amendment. The event was held in Miami, Florida, on April 28, 2022. Despite the approval of a 2018 statewide amendment aimed to restore the voting rights of more than 1.5 million voters, many voters remain on the list of ineligible voters due to legal obligations before voting rights restoration. Photo by MARCO BELLOPP for Getty Images

## TOP ISSUES ON ELECTION DAY

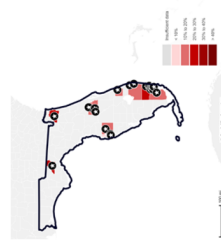


**SIGNAGE:** When citing signage issues, most volunteers indicated inadequate Spanish-language information.

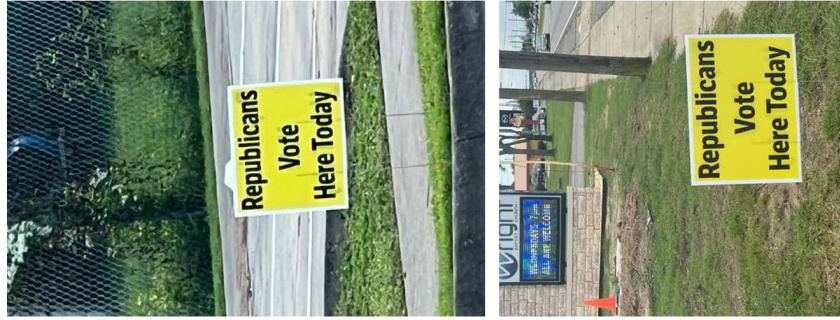
Signage proved to be a tremendous barrier for Florida voters in the 2022 election season. Spanish translation is required across the state, and many of the reports regarding improper signage cited the lack of Spanish language access. In some instances where the signs had Spanish translations, the font size of the translation was significantly smaller than the English translation. Additionally, many sites did not have enough "Vote Here" signs directing voters to the polling site entrance.

**LAW ENFORCEMENT ISSUES:** Law enforcement presence was reported in various regions across the state.

Volunteers reported an unexpected amount of law enforcement activity at polling locations this cycle. One volunteer submitted a report noting that there was a police car idling near the poll site entrance and that around the site itself were many signs highlighting the police's presence in the area. Police presence at poll sites can intimidate voters, which can, in turn, deter voters from casting ballots.



Map overlay: Issues reports on 2020 Census Black Voting Age Population data generated using Social Explorer.



## ISSUE SPOTLIGHT MISLEADING SIGNAGE

Leading up to Election Day, LDF, the Okaloosa County Branch NAACP, and the NAACP Florida State Conference sent a letter to the Okaloosa County Supervisor of Elections expressing concern over misleading signage outside early voting locations. Temporary signs reading "Republicans Vote Here Today" were placed in the immediate vicinity of at least two early voting sites.

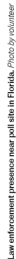
Even if posted beyond the electioneering boundary, these signs created an unacceptable risk of voter confusion and violated state and local law, including prohibitions on dissemination of false information to induce others to refrain from voting.

Specifically, the signs created a risk of voter confusion because they implied that Republicans and non-Republicans vote in different locations and on different days. Neither was true. The risk of confusion was also significant because the signs were similar in color and typography to the official "Vote Here" signs used by election officials.

Due to LDF's advocacy, the Okaloosa County Attorney arranged to remove misleading signs prior to Election Day.

LDF will continue to monitor this issue in future election cycles.

Misleading signage suggesting that only one party's voters may cast ballots at certain poll sites certain times during the early voting period on Aug. 22, 2022, in Okaloosa County, Florida. Photo by iStockphoto.



# COUNTERING INTIMIDATION

Florida has been a focal point of efforts to deter and intimidate eligible voters from participating in the democratic process—both through the state's efforts to expand the policing of elections and through voter challenges and the spread of mis- and disinformation by private actors.

- Educate voters on their rights to inoculate against mis- and disinformation about registration and voting rights
- Monitor for mass voter challenges and voter roll purge attempts
- Continue to recruit volunteers to serve as trusted messengers in their communities for reliable voting rights information and to support poll monitoring efforts

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# GEORGIA 2022

Facing barriers from the enactment of Georgia's 2021 omnibus voter suppression bill, SB 202, the Georgia team pursued a range of advocacy efforts to reduce harm to voters in advance of the 2022 elections. In addition to proactive advocacy, the team and partners compiled extensive data on barriers experienced by voters at the polls.

## IMPACT BY THE NUMBERS

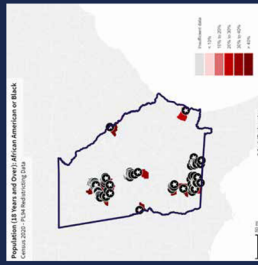
**40+** nonpartisan field volunteers

**29** cities reached

**124** early voting and poll sites visited

**148+** poll site reports submitted

**37%** of reports indicating "no issues" — meaning that when the reports were submitted, the poll sites showed no barriers to voting.



The map depicts the poll sites visited across target counties statewide. The map overlays this data with the Black Voting Age Population. Map produced in Social Explorer.



In a photo taken during the primary election on May 5, 2022, a sign describes prohibition on campaigning within 150 feet of a poll site in Newton County, Ga. Photo by volunteer

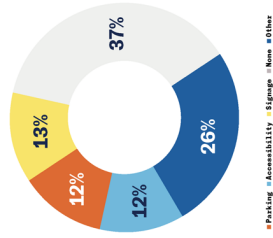
### HOTLINE REPORTS

During the May 24, Nov. 8, and Dec. 6, 2022 elections, the 866-OUR-VOTE Election Protection Hotline received over 2,500 calls from the 120 LDF target counties.

Of the thousands of reports into the hotline, many were questions about individuals' registration status or absentee ballot tracking. The others cited poll sites that opened late, voter roll purges, voting machine malfunctions and more.

### FIELD REPORTS

The main trends of the issues reported by monitors visiting poll sites, charted below, revolved around accessibility, parking, and signage, which were reported at comparable rates. Other miscellaneous issues made up over a quarter of issue reports, while over a third of reports submitted indicated no issues at all.



**ELECTION PROTECTION**  
866-OUR-VOTE  
**2500+** calls  
**120+** counties

ADVOCACY SPOTLIGHT

EARLY VOTING OPPORTUNITIES

As a result of SB 202, the omnibus voter suppression bill enacted in Georgia in 2021, the time period for early voting in runoff elections 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. The Georgia Secretary of State issued a last-minute bulletin further limiting the availability of early voting in runoff elections by prohibiting counties from exercising their discretion to offer early voting on Saturday, Nov. 26, based on an incorrect reading of state law.

LDF filed an amicus brief in support of plaintiffs in a lawsuit challenging the Secretary's misinterpretation of state law, which emphasized the racial disparities that would result from the Secretary's incorrect interpretation and also educated the court on the democracy canon as a tool to interpret ambiguities in state law. The court ultimately ruled in favor of the plaintiffs and held that counties could provide Saturday early voting.

LDF coupled this litigation with extensive letter writing efforts urging counties to exercise their discretion to offer weekend voting and sent nearly **300,000 text messages** to voters in 23 counties about these opportunities.



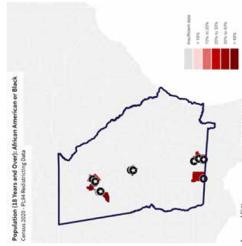
Voters fill out paper ballots before casting their ballots in a runoff election on November 26, 2022 in Decatur, Georgia. Early voting was held in 23 counties in Georgia. Photo by Justin Sullivan/Getty Images. Republican to block counties from offering early voting on Saturday. Photo by Justin Sullivan/Getty Images.

<div>Nov. 15, 2022</div> <div>LDF sends letters to <b>all 150 Georgia counties</b> encouraging them to provide at least three additional early voting days</div>	<div>Nov. 17, 2022</div> <div><b>LDF files amicus brief</b> in support of Saturday early voting opportunities</div>	<div>Nov. 18, 2022</div> <div>Court rules that counties <b>can host Saturday voting</b></div>	<div>Nov. 21, 2022</div> <div>LDF sends letters to all 150 counties encouraging them to provide early voting on Saturday in light of the Court ruling</div>	<div>Nov. 26, 2022</div> <div>27 counties offer early voting and <b>over 70k voters cast a ballot</b></div>	<div>Nov. 27, 2022</div> <div>28 counties offer early voting and <b>over 87k voters cast a ballot</b></div>
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## TOP ISSUES ON ELECTION DAY





Marked voters walk into a poll site to cast their ballots for the statewide primary on May 24, 2022 in Covington, Georgia. Photo by volunteer

## NEXT UP FOR GEORGIA

# MOBILIZING VOTERS WHERE THEY ARE

2024 is another important year for our nation's democracy, and once again, all eyes will be on Georgia.

**Looking ahead, LDF and partners will...**

- Build alliances in rural communities to support Black voters across the state
- Use multi-tactic methods to reach voters and defend democracy through the full life cycle of the voting process: from registration, GOTV, voting days, and the process of counting and certifying the election

LDF will work tirelessly to ensure Georgia's Black voters are able to fairly access the ballot free from intimidation or voter purges and combat any effort at the local or state level to diminish Black voting power.

**GEORGIA ARE YOU PREPARED TO VOTE?**

**GENERAL ELECTION DAY**  
Tuesday, November 8, 2022  
Polls open 7 a.m. to 7 p.m.

**Your Prepared-to-Vote Checklist**

Start this to:

- Confirm your registration status.
- See what's on your ballot.
- Find your polling place.
- Remember your ID.

**ARE YOU REGISTERED TO VOTE?**

Tuesday, October 11  
Last day to register.

**PICK A VOTING PLAN**

**PLAN 1: VOTE BY MAIL**

**Friday, October 28**  
Find your county registration office to receive your absentee ballot by mail or an drop-off location as soon as possible. Marked voters can receive their ballot by mail or drop-off at a marked voter site. Find your county's voting hours and dates by visiting [ladylib.com/elections](https://ladylib.com/elections).

**Tuesday, November 8 by 7 p.m.**  
Your county registration office is to receive your absentee ballot by mail or an drop-off location as soon as possible. Marked voters can receive their ballot by mail or drop-off at a marked voter site. Find your county's voting hours and dates by visiting [ladylib.com/elections](https://ladylib.com/elections).

**PLAN 2: VOTE EARLY IN PERSON**

**Monday - Saturday, 9 a.m. - 5 p.m.**  
Find your county's voting hours and dates by visiting [ladylib.com/elections](https://ladylib.com/elections).

**PLAN 3: VOTE IN PERSON ON ELECTION DAY**

**Tuesday, November 8**  
Find your county's voting hours and dates by visiting [ladylib.com/elections](https://ladylib.com/elections).

**What Photo IDs can I use?**

Any valid state, federal, or tribal photo ID	Student ID from GA public College or University
Valid employee ID	Valid U.S. passport
Georgia state or local government ID	Valid U.S. military ID

**What if I don't have one of these Photo IDs?**

Visit [ladylib.com/elections](https://ladylib.com/elections) for more information on the Department of Driver Services. Learn more at [ladylib.com/elections](https://ladylib.com/elections).

**Changes to Georgia Law**

**Start-up date:** Georgia's new law will be in effect starting on November 8, 2022. If you have a photo ID that expires before November 8, 2022, you will need to get a new one before that date. Learn how they affect your voting plan at [ladylib.com/elections](https://ladylib.com/elections).

→ **Photo ID:** You only need a photo ID to vote early in person. You do not need a photo ID to vote by mail or on Election Day.

**Know Your Rights!**

→ **Use of force or intimidation:** You have the right to vote without being forced or intimidated. If you see someone using force or intimidation, report it to the police.

**Have questions or issues?**

→ **Use of force or intimidation:** You have the right to vote without being forced or intimidated. If you see someone using force or intimidation, report it to the police.

**What Photo IDs can I use?**

Visit [ladylib.com/elections](https://ladylib.com/elections) for more information on the Department of Driver Services. Learn more at [ladylib.com/elections](https://ladylib.com/elections).

**What Photo IDs can I use?**

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# LOUISIANA 2022

In 2022, the Louisiana team provided voter support and poll monitoring efforts during four elections with various municipal and statewide races on the ballots. The data revealed important trends regarding issues such as poll site changes and accessibility concerns. This report sheds light on these topics and more.

## IMPACT BY THE NUMBERS

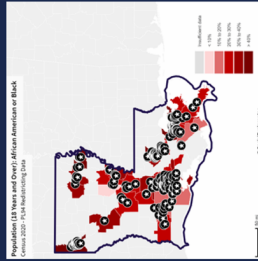
**40+** nonpartisan field volunteers

**29** parishes reached

**348** early voting and poll sites visited

**400+** poll site reports submitted

**32%** of reports indicating “no issues” – meaning that when the reports were submitted, the poll sites showed no barriers to voting.



The map depicts the poll sites visited across target counties statewide. The map overlays this data with the Black Voting Age Population. Map produced in Social Explorer.



This image shows a scene on Dec. 10, 2022, in the New Orleans area. The photo shows a blue car parked in front of a small, white, single-story building, likely a polling station. A sign on the car reads "BLACK VOTING AGE POPULATION". Photo by Democracy Defended.

## HOTLINE REPORTS

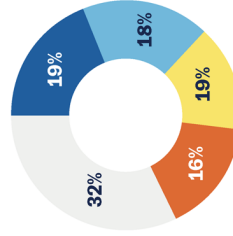
Across the multiple Louisiana elections held in 2022, the 866-OUR-VOTE Election Protection Hotline received 228 calls from roughly half of Louisiana's 64 parishes.

While many of the calls regarded individual voters' questions about their registration, absentee ballots, or other individualized needs, broader issues reported included topics like machine and technology issues and improper instructions from poll commissioners.

**ELECTION PROTECTION**  
**866-OUR-VOTE**  
**228** calls  
**32** parishes

## FIELD REPORTS

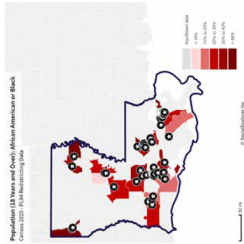
The main trends of the issues reported by monitors visiting polling sites, charted below, revolved around accessibility and parking, which were oftentimes intertwined. These reports with accessibility issues often had to do with insufficient or lack of accessible parking.



■ Parking ■ Accessibility ■ Signage ■ None ■ Other

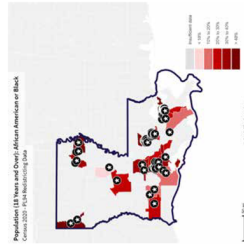


## TOP ISSUES ON ELECTION DAY



### PARKING: Parking limitations were reported for polling sites in nearly every parish monitored.

Parking proved to be a significant impediment in the voting process for all Louisianans. One monitor submitted a report where the reserved parking at a polling location was paid parking, and even those spots were occupied by law enforcement vehicles. Additionally, many of the polling locations were situated in buildings that have reserved parking spaces, which limited the availability of parking spaces for voters and made it difficult to access the poll site in a timely manner.



### ACCESSIBILITY: Inaccessible entrances, parking spaces, and walkways were reported almost 100 times.

Volunteers submitted 94 reports in which poll sites had issues regarding accessibility. These came from the majority of monitored parishes. In addition to the parking issues mentioned above, many volunteers cited accessible entrances being blocked off by vehicles and instances where entrances were inaccessible due to staircases or other barriers but were nonetheless inaccurately marked accessible.

More overlay issue reports on 2020 Census Black Voting Age Population data generated using Social Explorer.



## ISSUE SPOTLIGHT

### POLL SITE CHANGES

By the end of 2022, Louisiana implemented hundreds of changes to assigned poll sites, many of which were disproportionately located in three parishes with significant Black populations:

**27** in Iberia

**31** in St. Landry

**26** in St. Martin

In other words, **39% of the changed poll site assignments were in parishes that represent less than 5% of Louisiana's population.**

Many of those changes were complicated—for example, in St. Martin Parish, a previous polling place was split into three new sites, all changed from the previous location.

Some changes were made within days of an election. In one case, for instance, a poll site in Jefferson Parish had to be evacuated and relocated to a nearby site due to a bomb threat. LDP's rapid response team sent text messages to the thousands of impacted voters about the location and dispatched LDP team members to the site. Later reports confirmed that the threats were not related to the election, but the impact of displacing and frightening voters remained.

In a photo taken on Nov. 8, 2022, a sign indicates that a polling location has been moved in Lafayette Parish, La. Photo by volunteer.

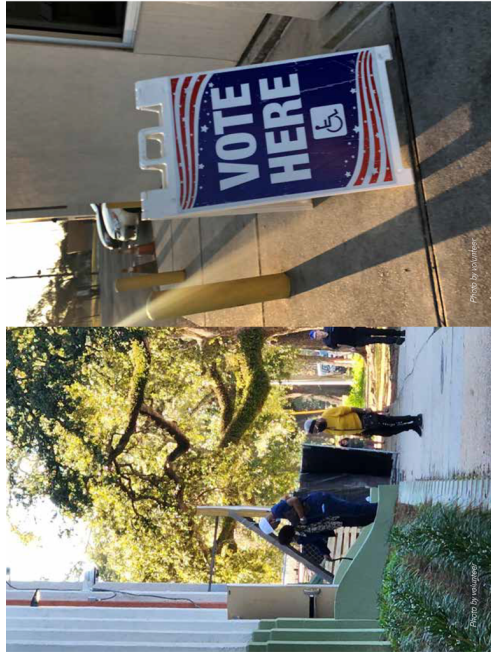


Photo by volunteer



Photo by volunteer

## ADVOCACY SPOTLIGHT

# VOTING ACCESSIBILITY

## May 23, 2022

LDF and partners advocate for the successful passage of HCR4, a joint resolution creating a task force to study voting accessibility and report policy recommendations back to the Louisiana Legislature.

## December 10, 2022

Election monitors report multiple accessibility issues during the General Election, including an unstable wooden ramp at a polling site in New Orleans with a hole in the middle of the ramp.

## February 10, 2023

The HCR4 Task Force publishes a report with over a dozen recommendations to improve voting accessibility.

## June 9, 2023

The Louisiana governor signs Act 277 into law, adopting multiple recommendations from the HCR4 Task Force.

## ACT 277 PROVIDES FOR:

- Increased poll commission training and testing on accessibility laws
- Appointment of an Americans with Disabilities Act (ADA) Compliance Officer in the Secretary of State's Office
- The establishment of a Voting Accessibility Advisory Group in the Secretary of State's Office, including voters with diverse disabilities

LDF staff and partners stand by at the Louisiana Capitol on June 9, 2023 as then-Louisiana Governor John Bel Edwards signs Act 277 into law.  
Photo by LDF staff



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# MISSISSIPPI 2022

## IMPACT BY THE NUMBERS

In 2022, less than one-third of Mississippi voters cast a ballot, among the lowest voter turnout in the nation. This low turnout is caused in part by multiple barriers: no early voting, no online voter registration, and no simple absentee ballot process. As this report captures, these barriers are compounded by other issues at the polls.

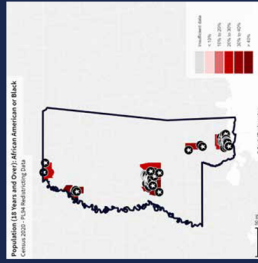
22+ nonpartisan field volunteers

25 cities reached

108 poll sites visited

100+ poll site reports submitted

16% of reports indicating "no issues" - meaning that when the reports were submitted, the poll sites showed no barriers to voting



The map depicts the poll sites visited across target counties statewide. The map overlays this data with the Black Voting Age Population. Map produced in Social Explorer.



The image above depicts the St. Joseph Catholic Church, the site of the 82nd Annual Election in the Mississippi Delta. The image shows a building with a sign that reads "VOTE HERE" in red letters. The building has a white door and a small porch with a railing. The sign is mounted on a wall to the right of the door.

## HOTLINE REPORTS

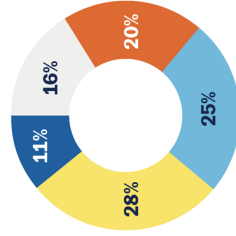
During the elections on June 7 and November 8, 2022, the 866-OUR-VOTE Election Protection Hotline received 200 calls from 50 of the 82 counties in Mississippi.

Of the 200 hotline reports, almost all were from individual voters who had questions about their registration status or how to locate their poll site. There were also multiple documented issues of intimidation, electioneering, machine malfunctions, and related problems.

**ELECTION PROTECTION**  
200 calls | 82 counties

## FIELD REPORTS

The primary issues reported by monitors, charted below, revolved around accessibility and signage, which were oftentimes intertwined. Parking concerns also occurred across locations, which often included accessibility issues and lack of signage to designate reserved accessible spots.



■ Parking ■ Accessibility ■ Signage ■ None ■ Other


ISSUE SPOTLIGHT


ELECTION SUPPLIES AND INFRASTRUCTURE

The lack of physical election infrastructure has been a persistent problem in Mississippi's elections, creating issues for all voters, particularly those with disabilities. This was true of the 2022 elections as well. Throughout Election Day, poll monitors repeatedly cited lack adequate signage at polling locations across the state. Too often, signage was not visible from the street, and was not effective in directing voters to the voting location. Some sites only had one sign affixed to the door with no accompanying signage.

Many polling locations were given a single lawn sign and a single paper sign to tape on the entrance to their polling location. This caused difficulties for voters at polling sites located in a campus-style area, necessitating the need to ask for directions to the specific building and room that served as a polling location. This also caused issues for buildings that were difficult to find off main highways and roads. At some polling locations, the lack of signage forced poll monitors to create their own signage.

Signage indicating entrance to polling location in Mississippi.  
Photos by volunteer



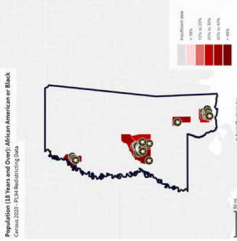


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TOP ISSUES ON ELECTION DAY

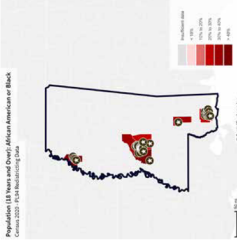
**ACCESSIBILITY:** Many poll sites did not have accessible entrances.

Most poll sites lacked proper accessibility measures which, made it difficult for voters to access the locations. Some sites could only be reached by stairs and did not have an alternative route, while others that may have had a ramp were too steep or narrow for wheelchair users to use safely. Volunteers also reported many polling locations that did not have accessible door handles (those that could be opened with a closed fist). Finally, parking was difficult for voters who use wheelchairs. Volunteers cited many sites that had accessible parking, but in order to enter the poll sites, voters had to cross through an inaccessible grassy area or another lot.



**SIGNAGE:** Volunteers reported signage issues in at least one poll site in each county monitored.

Improper signage outpaced all other issues reported in the state. Volunteers documented poll sites that had zero "Vote Here" signs (which caused confusion on where to enter to vote), no signage directing voters to the accessible entrances (if there were any), and inadequate signage indicating the designated parking for voters.



More overlay issue reports on 2020 Census Black Voting Age Population data generated using Social Explorer.

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ADVOCACY SPOTLIGHT

POLLING SITE MISINFORMATION

In 2022, Mississippi voters continued to receive inaccurate information regarding their voting locations. In particular, many voters used the Secretary of State's poll locator to identify their voting site, a tool that contained inaccurate voting site information—leading to confusion and disenfranchisement.

To supplement this effort, LDF sent a letter to all local officials regarding their reporting obligations and discouraging further lack of transparency with polling locations.

This effort resulted in clear publication of polling locations for Mississippi voters and reduced many closures.

In 2021 and 2022, LDF sent the Mississippi Secretary of State letters demanding that he fix systematic misinformation in the Mississippi online poll locator that gave voters inaccurate information about their poll location. This issue affected over 65,000 voters in 2020 and persisted in the 2022 elections. As a result of LDF's advocacy, the Secretary of State contacted county officials across the state to confirm that polling locations were accurately reported to

Still, despite our advocacy, there were problems related to polling location misinformation on Election Day. In Precinct 45 in majority Black Hinds County, voters were directed to the wrong polling location because the correct polling location was misidentified by the Secretary of State. LDF sent a mass text to the 2,600 voters in that precinct to inform them of the correct information.

[LDF's] effort resulted in clear publications of polling locations for Mississippi voters and reduced many closures.



Volunteer photo from Triumph Church Jackson, MS on 11/8/2022.



LDF staff with partners at civic engagement event in Jackson, MS. Photo by LDF staff

## NEXT UP FOR MISSISSIPPI

# FIGHTING FOR VOTER INFORMATION AND ELECTION ADMINISTRATION TRANSPARENCY

- In response to the recorded challenges identifying accurate poll site information and anticipating last-minute hurdles to voting access, LDF will continue to organize around advocacy solutions to mitigate voter confusion and increase transparency of election administration decision-making and information.
- Looking ahead, LDF and partners will...
    - Monitor poll site misinformation and pursue policy solutions
    - Continue to fight for election administration transparency
    - Coordinate with partners and volunteers to ensure voters have the information they need in advance of Election Day and the support they need to navigate voting barriers in real time on Election Day

MISSISSIPPI ARE YOU PREPARED TO VOTE?

**GENERAL ELECTION DAY**  
Tuesday, November 8, 2022  
Polls open 7 a.m. to 7 p.m.

**Your Prepared-to-Vote Checklist**  
Note: All links are case sensitive.

- Confirm your registration status.  
[bit.ly/MSVoting](http://bit.ly/MSVoting)
- Find your polling place.  
[bit.ly/MSVoting](http://bit.ly/MSVoting)

**ARE YOU REGISTERED TO VOTE?**

Monday, October 10  
Last day to register

**PICK A VOTING PLAN**

**PLAN 1: VOTE ON ELECTION DAY**  
Voting on Election Day is free. Vote in person on Election Day!  
Voting on Election Day is free. Vote in person on Election Day!

**PLAN 2: VOTE ABSENTEE IN PERSON**  
Voting on Election Day is free. Vote in person on Election Day!  
Voting on Election Day is free. Vote in person on Election Day!

**PLAN 3: VOTE ABSENTEE BY MAIL**  
Voting on Election Day is free. Vote in person on Election Day!  
Voting on Election Day is free. Vote in person on Election Day!

Want more information?  
[voting.mississippi.gov](http://voting.mississippi.gov)

**What IDs can I use?**

Mississippi Driver's License	Foreign-issued ID including a valid passport (Military ID's or employee ID)
Foreign License	Photo ID card issued by any branch, department, or entity of any state
Student Photo ID from Mississippi community college	Any employee ID issued by a government
MS Voter ID Card	Travel Photo ID

**What if I don't have one of these IDs?**  
Receive a FREE Voter ID card from County Clerk's Office during regular business hours. Pick out hours: [bit.ly/MSVoterCard](http://bit.ly/MSVoterCard)

**Have questions or issues?**  
Vote if you are in line and your ID is expired, changed or not well marked! This is not a requirement to vote. If you have questions, call the National Election Assistance Commission at 1-888-488-6863.  
Email [voting.mississippi.gov](mailto:voting.mississippi.gov) or call the National Election Assistance Commission at 1-888-488-6863.  
Or call the National Election Assistance Commission at 1-888-488-6863.  
If there is uncertainty regarding your registration status, call the National Election Assistance Commission at 1-888-488-6863.

**Know Your Rights**  
Vote if you are in line and your ID is expired, changed or not well marked! This is not a requirement to vote. If you have questions, call the National Election Assistance Commission at 1-888-488-6863.  
Email [voting.mississippi.gov](mailto:voting.mississippi.gov) or call the National Election Assistance Commission at 1-888-488-6863.  
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If there is uncertainty regarding your registration status, call the National Election Assistance Commission at 1-888-488-6863.

# SOUTH CAROLINA 2022

The 2022 primary election in South Carolina provided many insights, especially as the first election implementing statewide early voting. LDF worked with the South Carolina Election Protection Coalition to monitor the June primary election and the November general election. This report provides a snapshot of data collected, actions taken to ameliorate issues, and steps ahead.

## IMPACT BY THE NUMBERS

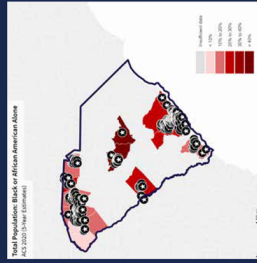
**50+** nonpartisan field volunteers

**21** counties reached

**229** poll sites visited

**459** poll site reports submitted

**52%** of reports indicating "no issues" - meaning that when the reports were submitted, the poll sites showed no barriers to voting



The map depicts the poll sites visited across target counties statewide. The map overlays this data with the Black Voting Age Population. Map produced in Social Explorer.



Voters in Columbia, SC wait in line to cast their ballots on the last day of early voting. Photo by volunteer

## HOTLINE REPORTS

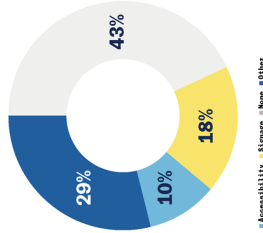
During the November 8, 2022 general election, the 866-OUR-VOTE Election Protection Hotline received 366 calls from 33 of 46 counties across South Carolina.

Similar to the field data, the majority of the reported issues referenced signage and accessibility issues, and the Election Protection Coalition, with the help of LDF attorneys, helped triage issues and support the voters who called.

## FIELD REPORTS

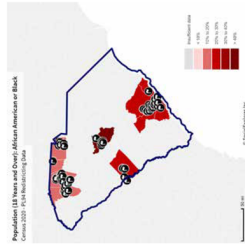
The most prevalent voting access issues reported during the elections were related to signage, and the next most common issue was accessibility. Analysis of these reports indicated that signage and accessibility issues often originated from the same polling locations. Many causes of these issues were insufficient signage directing voters to accessible entrances, parking, or curbside voting.

**ELECTION PROTECTION**  
**866 OUR VOTE**  
**336** calls  
**33** counties



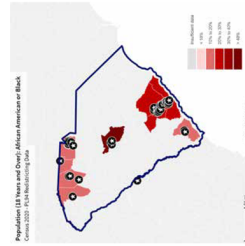


## TOP ISSUES ON ELECTION DAY



**SIGNAGE:** Across over two dozen counties, volunteers submitted 83 signage issue reports.

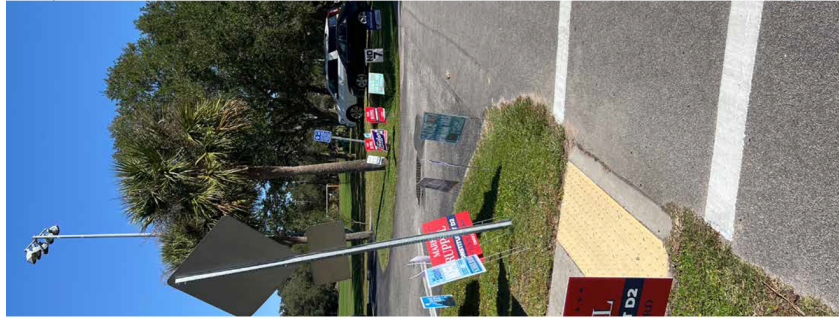
The main signage issues were a lack of directional signage to the poll site entrance and parking. Many of the poll sites in the state are public buildings that transformed a portion of the space to accommodate voting, which meant that the site had more than one entrance. Many sites also did not have designated voter parking or signs directing voters to the reserved parking space. The lack of signage directing voters to the correct locations made it difficult to find the correct entrance and in turn made the voting experience longer than necessary.



**ACCESSIBILITY:** Almost 10% of field reports submitted statewide referred to lack of accessibility at poll sites.

Many accessibility issue reports were due to a lack of access at curbside voting. Curbside voting laws require that a poll worker check outside for voters looking to vote curbside every 15 minutes. Volunteers reported that poll workers were not checking for curbside voters despite having a designated space for curbside voting. In one instance, a voter got out of their car to notify the workers that they were waiting outside. Curbside voting is supposed to limit barriers to voting for voters with disabilities but that is only the case when the law is followed.

Maps overlay issue reports on 2020 Census Black Voting Age population data generated using Social Explorer.



### ISSUE SPOTLIGHT

## IMPROPER ENFORCEMENT OF THE ELECTIONEERING BOUNDARY

Monitoring electioneering boundaries and ensuring poll workers' proper enforcement is crucial to the work of poll monitors. In South Carolina, electioneering is defined as persons wearing or handing out any campaign materials (apparel, buttons, stickers, literature, etc.) within 200 feet of any entrance to the polling place. Often, these boundaries need to be clarified because they are not marked at poll sites, and what consists of campaign materials can be subjective.

During the fall 2022 elections, the South Carolina Election Protection Coalition received numerous calls from across the state where poll workers wrongly turned away voters for wearing "Black Lives Matter" paraphernalia. As these reports accumulated, LDF worked with the ACLU of South Carolina to call local elections administrators and alert them of the First Amendment issues posed, as well as the proper definition of partisan electioneering.

Volunteer image of campaign signage right next to the voter parking lot on 11/6/2022 at the site of Palm Recreation Center in Charleston. See photo of volunteer.

ADVOCACY SPOTLIGHT

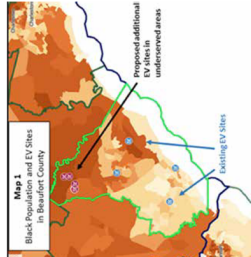
EQUITY IN EARLY VOTING IMPLEMENTATION

The 2022 midterms were the first election in which South Carolina implemented early voting. After a bill enacting early voting passed during the 2021 legislative session, South Carolina voters were able to vote early without an excuse during the midterms.

According to the South Carolina State Election Commission, 560,622 people, or nearly 16.5% of all registered voters, voted early during the November 2022 Election.

While the turnout numbers were extraordinary, implementation of early voting was not without its shortcomings, with voters of color facing inequitable distribution of early voting locations. South Carolina law authorizes counties to designate up to seven early voting centers for an election that maximizes accessibility for all voters to the greatest extent possible. However, several counties implemented early voting plans that fell short of their statutory obligations to voters.

LDF identified inequities in early voting locations and sent rapid response letters to five counties with significant Black populations—Florence, Marion, Beaufort, Berkeley, and Orangeburg—where LDF identified additional possible early voting locations. LDF urged the local Boards of Election to provide reasonable and fair accessibility to early voting for Black voters, and to appropriately distribute locations throughout the counties. In Florence County, this aided in the addition of an early voting site, and several other counties have expressed a desire to add more sites in response to LDF’s advocacy.



Sign indicating availability of curbside voting at polling location in South Carolina. Photo by volunteer

The map above shows early voting locations in Beaufort County overlaying the Black population. LDF identified areas with high concentrations of Black voters and urged the County Board of Voter Registration and Elections to ensure Black voters in the north were not denied equal access to early voting centers.





## AVOIDING ISSUES THROUGH POLL WORKER TRAINING IMPROVEMENTS

Many issues observed in South Carolina could be prevented with proper poll worker training. As the South Election Protection Coalition plans for the 2024 presidential elections, the focus will be on training and providing election workers with information to ensure safe and accessible voting for all South Carolina citizens.

- proper signage
- precise definitions of "electroinfringe"

- proper signage
- precise definitions of “electioneering” and the electioneering boundary
- accessibility, particularly curbside voting requirements

**Disclaimer:** The information here is a resource and not legal advice. It is provided for informational purposes only and not as a substitute for or supplement to the legal advice necessary to address the specific concerns of any individual. *South Carolina law review* like any other publication is not responsible for any consequences that may result from reliance on this information after this is published.



# TEXAS 2022

In 2022, LDF's Texas team recorded an overwhelming number of voter incidents across the state, ranging from lack of accessibility, delayed curbside voting, long lines, machine malfunctions, and intimidation. This report captures just a snapshot of these trends.

## IMPACT BY THE NUMBERS

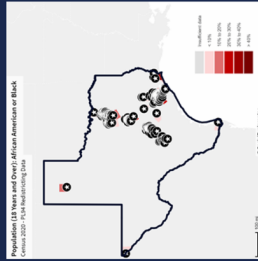
**244+** nonpartisan field volunteers

**95** cities reached

**324** early voting and poll sites visited

**494+** poll site reports submitted

**30%** of reports indicating "no issues" - meaning that when the reports were submitted, the poll sites showed no barriers to voting



The map depicts the poll sites visited across target counties statewide. The map overlays this data with the Black Voting Age Population. Map produced in Social Explorer.



The image above is from the Universal City Library in Universal City, Texas (Bexar County), where a volunteer reported an 80-minute wait time and full parking lot. Photo by volunteer

## HOTLINE REPORTS

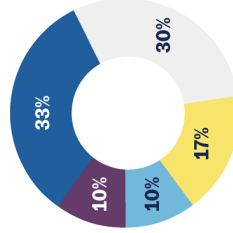
During the various 2022 elections, the 866-OUR-VOTE Election Protection Hotline received over 4,000 calls from more than half of the state's counties.

Many Texans called the 866-OUR-VOTE Hotline with questions regarding their individual statuses, but a significant majority of the calls dealt with polling place accessibility issues, tech malfunctions, intimidation, and more.

**ELECTION PROTECTION** 866-OUR-VOTE  
**4000+** calls  
**50%+** counties

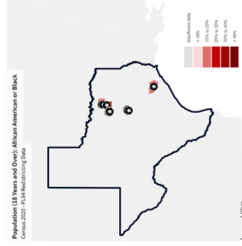
## FIELD REPORTS

While most sites either had no issues or miscellaneous concerns, there were recurring reports of signage, accessibility, and law enforcement presence at polling sites in target counties monitored across Texas.



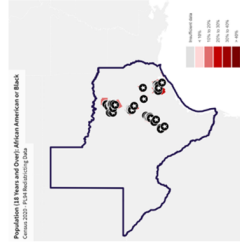
■ No Issues ■ Signage ■ Law Enforcement ■ Accessibility ■ Other

## TOP ISSUES ON ELECTION DAY



### LAW ENFORCEMENT: Many poll sites were located next to police precincts.

Volunteers reported many instances of intimidating law enforcement presence across the state, citing multiple sites that were located adjacent to police precincts. In one report during the primaries, a volunteer documented a sheriff that set up a tent outside a polling location, forcibly grabbing voters and telling them to vote for a specific candidate. The volunteer spoke to voters who mentioned feeling intimidated and less compelled to vote because of this encounter.



### SIGNAGE: Signage was the top issue reported across poll sites monitored.

The main problems with signage revolved around inadequate markings of curbside voting, which forced voters to find alternative measures. Some poll sites had confusing signage that directed voters to two separate places for curbside voting, and neither was the correct place. Volunteers also documented many sites that lacked proper directional signage into the polling location.

Image taken of New Sheriff Donnell McManus on Election Day at the First Assembly of God Church. Our volunteer noted that the Sheriff was stationed outside the poll site with his badge and a gun on display telling voters to vote for Josh Olsen who was running to serve as District Attorney. Photo by volunteer



ISSUE SPOTLIGHT

ELECTION TECHNOLOGY & SUPPLIES



The image above is from the Morton French High School polling site in Harris County, where a volunteer recorded lines lasting over an hour and malfunctioning curbside voting machines. Photo by volunteer

Problems with polling place technology caused severe delays for voters on Election Day.

**Due to malfunctioning machines or confusing user interfaces, wait times reached over 2 hours at times at some poll sites.**

Most machines that malfunctioned were either freezing or failing to input votes. In some cases, confusing user interfaces caused user error, forcing voters to redo their ballot until the machine accepted their choices.

Additionally, polling places began to run out of paper ballots and, in those instances, such as at Houston Community College Alief Campus, had to close the polling site down and refer voters to a nearby polling place. The Harris County election tech team was so inundated with calls that they were unable to fix issues at most polling places.

ISSUE SPOTLIGHT

VOTER INTIMIDATION

Texas faced serious instances of voter intimidation during the early voting period and on Election Day. In one case, a voter received a threatening letter regarding her party affiliation. At one poll site on Election Day, a voter was harassed and berated by another voter, causing her great distress. There were also numerous instances of poll workers incorrectly wearing party apparel or electioneers harassing voters inside the electioneering boundary. Though some harassers remained outside the 100-foot electioneering boundary, some boasted confederate flags, large political banners and/or audio expressing their political views.

Throughout early voting, there were several concerning reports of intimidation and voter suppression from a historically Black polling place in Beaumont, Jefferson County, where white poll workers repeatedly spoke in aggressive tones to Black voters and asked them to recite, out loud within the carshot of other voters, poll workers, and poll watchers, their addresses, even when the voter was already checked in by a poll worker. White poll workers and white poll watchers followed Black voters and, in some cases, their Black voter assistants, around the polling place, including standing two feet behind a Black voter and the assistant, while the voter was at the machine casting a ballot. White poll workers helped white voters scan their voted ballots into voting machines but did not help Black voters trying to do the same thing. Partner organizations ultimately had to sue to ensure similar patterns were not repeated in the future.



The image above was taken just outside a polling site in Collin County, Texas. White signs and flags were positioned beyond the 100-foot electioneering boundary, volunteers reported the intimidating effects of this display, which included a Confederate flag. Photo by volunteer







Veronica Blalock, 70, a first-time poll worker, puts out a sign for voters at Worship With Wonders Church in Marietta, Ga., on Tuesday, Nov. 8, 2022. Photo by Kevin J. Lamm for The Washington Post via Getty Images

### Election Infrastructure Improvements

Whether to ensure timely delivery of absentee ballots, visible signage and adequate parking at poll sites, or functioning machine technology on Election Day, investment in the fundamental infrastructure of America's elections must be a critical priority in 2024. Accessibility should be prioritized at every level.

### Transparency in Poll Site Changes

While standards vary across states for reporting poll site changes and making them available to the public, LDF and partners will continue to pursue efforts to promote transparency and monitor for discriminatory poll site changes and closures.

### Voter Education and Mobilization

As election rules continue to evolve due to legislative actions or court interventions, it will be essential that voters are informed of the rules that apply in their states. Voter education campaigns should be tailored to address the unique circumstances of first-time voters, out-of-state and college students,

formerly incarcerated and justice-impacted voters, and outreach materials should be provided in a range of languages.

### Poll Worker Recruitment & Training

Poll workers serve as the frontline of America's democracy. Recruiting a rising generation of poll workers and election staff will help promote the resilience of our political process. Further improvements to poll worker training can also serve as one of the most proactive means to avoid confusion, congestion, and other issues on voting days.

### Countering Election Sabotage

Strategic monitoring and messaging efforts to detect and counteract mis- and disinformation campaigns will continue to be vital to dismantle election sabotage efforts. The rise of new technology and rapid growth of artificial intelligence (AI) technologies will make these efforts increasingly vital. The strength of our democracy depends on trust in our elections.



#### ADDITIONAL RESOURCES

**Democracy Defended: Key Findings from the 2020 Elections**

**AVAILABLE AT:**

[bit.ly/DemocracyDefended2020](https://bit.ly/DemocracyDefended2020)  
Democracy Defended captures and analyzes LDF's election-related activities during the 2020 election season.

**Democracy Defended: An Analysis of Barriers to Voting in the 2018 Midterm Elections**

**AVAILABLE AT:**


[bit.ly/DemocracyDefended2018](https://bit.ly/DemocracyDefended2018)  
Democracy Defended captures and analyzes LDF's election-related activities during the 2018 election season.

**LDF's Voting Rights Microsite**

**AVAILABLE AT:**

[voting.nacpldf.org](https://voting.nacpldf.org)  
LDF's one-stop resource for voting rights information in target states.

**LDF**  
Legal Defense Fund



**prepared to**  
**VOTE**  
Non-Partisan Voter Education

**LDF** Legal  
Defense  
Fund

*The Legal Defense Fund (LDF) is America's premier legal organization fighting for racial justice. Using the power of law, narrative, research, and people, we defend and advance the full dignity and citizenship of Black people in America.*

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**naacpldf.org**

**Senate Committee on Rules and Administration**

Administration of Upcoming Elections

March 12, 2024

Questions for the Record

**Secretary Jocelyn Benson**Chairwoman Klobuchar

During the hearing, we discussed the importance of election security and the threat that disinformation poses to our elections, including from artificial intelligence (AI).

- While Congress needs to pass legislation to address AI's impact on elections, can you expand on the support that you receive from federal agencies like the Cybersecurity and Infrastructure Security Agency and the Election Assistance Commission to combat disinformation and counter cybersecurity risks, as well as on any additional steps you think that those agencies should take?

**Response from Secretary Benson**

The Cybersecurity and Infrastructure Security Agency (CISA) provides training and supports security exercises, assessments, and materials to assist election jurisdictions in detecting and combatting election security threats, including both disinformation (including AI-based) and cybersecurity threats. Additionally, CISA supports and promotes the Election Infrastructure Information Sharing and Analysis Center (EI-ISAC), which provides additional training and tools, as well as notifications of possible or pending threats.

The EAC provides general information for election administrators on public communications tools, which may be helpful in combatting some disinformation or AI-specific threats, but they are not specifically tailored to that function.

Training and materials, along with material support, received from federal partners is helpful as we assist municipal and county officials in preparing for election threats. The materials we receive from CISA are geared more toward disinformation and cybersecurity than the general election administration information available from EAC.

In addition to increasing the number of resources and coverage available to respond to cybersecurity, disinformation, and AI-related threats, CISA should bolster its programs and process for rapidly sharing information about security threats. Election officials across the country report mixed outcomes in receiving timely information about emerging or ongoing threats and security risks. At times, officials are notified quickly, proactively, and in detail, while at other times officials are contacted too late or not at all.

It would be beneficial for CISA to implement or further refine processes to identify the officials who must be contacted promptly in the event of emerging state-specific or national security threats. CISA should also identify, as well as hold itself, to a maximum allowable wait time to share information – even if it is preliminary information.



Senator Fischer

- Recruiting, training, and retaining poll workers is an on-going challenge for election officials. What has worked for your jurisdiction, and what do you think other election officials could do to ensure they are fully staffed with capable poll workers on election day?

**Response from Secretary Benson**

Election worker recruitment is critical to ensuring well run and fully staffed elections during the early voting period, on Election Day, and for post-Election Day functions like processing absentee ballots. Because Michigan's election system is de-centralized, each municipality and clerk's office is responsible for hiring their own election workers.

To assist local clerks in their recruitment efforts, in 2020 Secretary Benson established Democracy MVP, a statewide poll worker recruitment program. The Democracy MVP program encourages registered voters interested in serving as election workers in Michigan to sign up online. Once signed up, their information is automatically provided directly to local clerks who may need additional staff support for elections.

The Democracy MVP program manager stays in close contact with the 1,500+ clerks across the state to understand staffing needs and worker shortages. Regular communication with local clerks also helps the state understand specific worker skill-sets or language needs for communities, and allows for targeted recruitment to meet these needs. If a municipality communicates a need for more poll workers, a notification is sent to Democracy MVP sign-ups, as well various partner institutions to encourage more sign-ups. Democracy MVP recruitment partners include statewide and local businesses, chambers of commerce, voter engagement organizations, high schools, colleges and universities, and more.

By working closely with clerks, statewide and local partners, and national recruitment organizations like Power the Polls, Democracy MVP has recruited more than 80,000 individuals interested in serving as an election worker in Michigan since 2020. Partnering with other organizations and listening closely to election administrators about their specific staffing needs has been critical to the success of the Democracy MVP program, and it is a recommended tactic for all other state-level recruitment efforts.

**Senate Committee on Rules and Administration**  
Administration of Upcoming Elections  
March 12, 2024  
Questions for the Record  
**Secretary Wes Allen**

Senator Fischer

- Recruiting, training, and retaining poll workers is an on-going challenge for election officials. What has worked for your jurisdiction, and what do you think other election officials could do to ensure they are fully staffed with capable poll workers on election day?

**Response from Secretary Allen:**

“Before I was sworn in as Alabama’s Secretary of State, I was the probate judge of Pike County, Alabama for nearly a decade. In my years of experience as a probate judge, I spent countless hours on the phones recruiting poll workers. As Secretary of State, I have made it a priority to provide Alabama probate judges with tools to recruit and retain uniquely qualified poll workers. Heroes at the Polls is designed to recruit veterans to continue their service to their country by serving as poll workers. Veterans have defended our right to vote time and again, and that makes them ideal candidates to safeguard our elections. I have also instituted Lawyers for Liberty, a partnership with the Alabama State Bar to provide four hours of Continuing Legal Education credit to attorneys who serve as poll workers in Alabama elections. The work ethic, critical thinking skills, and dedication required of training and practicing in the legal profession makes attorneys exemplary poll worker candidates. We also provide an opportunity for eligible high school students to serve as unpaid poll worker interns on Election Day.

Additionally, the Alabama Legislature recently passed legislation allowing the State to supplement the pay provided to poll workers by their respective county at a rate of \$50 per election.

**I would encourage states struggling to recruit poll workers to look into implementing similar initiatives and programs in their states.”**

- While states have the responsibility of administering our elections, the federal government has played a supporting role, by providing election administration-related best practices and grants through the Election Assistance Commission and cybersecurity support through the Cybersecurity and Infrastructure Security Agency. Could you tell us more about your experiences with these federal agencies, and whether the resources they provide election officials are timely and helpful.

**Response from Secretary Allen:**

**“First, Article 1, Section 4 of the Constitution provides that the primary authority over election administration, including the "times, places, and manner of holding elections",**

belongs to the States and not the federal government. Congressional attempts to alter state election administration laws should be extinguished immediately.

To answer your specific question, my Office has not utilized election administration-related best practices provided by the Election Assistance Commission (EAC), as our state and local election officials are the best suited to carry out local, state and federal election administration law and practice. We do not see that as the primary role of the EAC. However, my Office has utilized federal funds approved by Congress and distributed and managed by the EAC as recently as 2023. In that regard, the EAC has been very helpful in providing guidance and best practices for utilizing and reporting spending on federal funds.

My Office has benefited from a positive relationship with our local Cybersecurity and Infrastructure Security Agency (CISA) representatives that monitor traffic around specific election times.

We intend to continue working with our federal partners in future elections provided that the Congress and the federal government do not encroach on the States' authority over election administration laws and procedures."

Senator Capito

- Secretary Allen, when you're signing up a new poll worker, what kind of vetting is applied to ensure security?

**Response from Secretary Allen:**

**"In Alabama, poll workers must meet the following requirements:**

1. be a registered voter in the state of Alabama
2. registered to vote in the county in which they desire to serve as a poll worker
3. cannot be a member of a candidate's immediate family of the second degree of kinship
4. cannot be a member of a candidate's political committee

**The appointing board consisting of the county probate judge, circuit clerk, and sheriff is charged with reviewing and approving poll worker applications. If an application is approved, the applicant must attend a mandatory poll worker training session, conducted by the county probate judge."**

- Secretary Allen, as discussed in your written testimony, Alabama created the Alabama Voter Integrity Database (AVID) allowing your state to cross check your voter registration lists with other lists, such as the national death master index maintained by the Social Security Administration. Your state also participates in the State Pointer Exchange Services (SPEXS) program, allowing Alabama Departments of Motor Vehicles to cross check with other participating states to determine if a voter currently holds a driver's license or ID card to be vacated in another state at the time of requesting a driver's license, and using that data to effectively cancel voter registrations in the location where residency is vacated. This prevents opportunities for fraudulent voting by removing the opportunity for ballots to be cast in

multiple states in the same election. West Virginia just passed a similar law, and will be able to participate in SPEXS beginning in 2025. **How is this program working in Alabama to protect voter integrity?**

**Response from Secretary Allen:**

“One of the four prongs of AVID is a cooperative agreement with the Alabama Law Enforcement Agency (ALEA) to identify registered voters in Alabama who have potentially moved or obtained a driver’s license in another state. Once a citizen with an Alabama driver’s license receives a license in another state, our office is notified by the Alabama Law Enforcement Agency (ALEA) to begin the removal process for that individual. We determine if the person is registered to vote, and if so, they are issued a mailer notifying them that they will be removed as an Alabama registered voter unless they update their Alabama registration or vote within the next two election cycles. If they do not update or vote, they are removed from the Alabama voters list after four years. Our Office, with the assistance of ALEA, performs this statewide voter file maintenance effort on a monthly basis. To date, we have identified 63,613 individuals registered to vote in Alabama who are potentially ineligible to be registered to vote in Alabama because they have obtained a driver’s license or non-driver ID in another state. I would encourage every state to work with their state designated motor vehicle agency to take advantage of the state-to-state partnerships already in place, like we are doing in Alabama. Since my taking office, we have increased the state’s voter file maintenance reach with AVID, and utilizing driver’s license issuances is a key tool to prevent bloated voters lists.”

**Senate Committee on Rules and Administration**

Administration of Upcoming Elections

March 12, 2024

Questions for the Record

**Mr. Isaac Cramer**Chairwoman Klobuchar

You testified about the funding challenges that counties in South Carolina face and the need for election grant funding to reach the local level.

- Can you expand on the financial costs that local governments face to administer state and federal elections – and why federal funding for election administration is so critical?

Local governments face significant financial costs to administer state and federal elections due to various factors. One major expense is the personnel required to manage the election process. This includes hiring poll workers, early voting staff, customer service specialists, technicians, and other temporary roles essential for smooth election operations. These positions are often not full-time roles, creating an additional strain on local government resources.

Recruiting an adequate temporary labor force for election periods can also be challenging, particularly in areas where there is stiff competition for available workers or where the pay for these roles may not be competitive.

Moreover, the cost of election equipment is a significant expense. Ensuring that voters have access to adequate resources, such as voting machines, ballots, and other necessary materials, is essential but can be financially burdensome for local governments.

In an era of increasing cybersecurity and physical security threats and concerns about election integrity, federal funding plays a crucial role in bolstering security measures. This includes investments in technology upgrades, cybersecurity training for election officials, and the implementation of safeguards to protect against hacking, tampering, and other malicious activities. Without sufficient resources, local governments may be unable to adopt the latest security protocols to ensure our elections are secure.

Federal funding for election administration is crucial because it helps alleviate the financial strain on local governments, allowing them to adequately staff polling places, provide necessary resources, and maintain election infrastructure without diverting funds from other essential services.

Also, federal funding ensures that elections are conducted fairly and efficiently, promoting trust and confidence in the electoral process. By investing in election administration, the federal government helps uphold the integrity of democratic institutions and ensures that every eligible citizen can exercise their right to vote.

Overall, federal funding for election administration is an investment in democracy itself, supporting the fundamental principles of representative government and ensuring that elections are accessible, secure, and conducted with integrity.

Senator Fischer

- Local election officials are the best and most accurate source of election information for the public. What steps have you taken to meet the informational needs of your voters and maintain public confidence that your elections are being run fairly and with integrity?

The Charleston County Board of Voter Registration and Elections (BVRE) has taken significant steps to ensure accurate and accessible election information for the public. Amid increased distrust surrounding election processes in recent years, BVRE has utilized several avenues to combat misinformation and serve as a reliable source for citizens with questions about voting.

BVRE continues to revamp its website, making it a central hub for election-related resources. Citizens can easily verify their registration status, find polling locations, and access election calendars through the user-friendly site. Resources include helpful guides for candidates and young voters, testimonial and behind-the-scenes videos chronicling the election process, and interactive maps for voters to see how they're represented.

Recognizing the importance of digital communication, BVRE has bolstered its social media presence. Regular postings on platforms like Facebook, Instagram, Reddit, Threads, and X keep the public informed. These channels serve as conduits for sharing updates, reminders, and educational content about the electoral process. BVRE also runs targeted ads promoting free and fair elections across Charleston County. In summary, this commitment ensures that citizens are well-informed and empowered to participate in the democratic process.

Additionally, BVRE has deeply strengthened its relationship with local, national, and international media. In 2024, dozens of outlets descended upon Charleston County to cover the first-in-the-nation Democratic Presidential Preference Primary and the first-in-the-South Republican Presidential Preference Primary. To ensure robust and accurate coverage of BVRE's gold standard of service to all, a comprehensive media election guide was developed to foster trust between election officials and journalists. This document was crucial as it assisted with producing fair and accurate coverage of these historic elections.

BVRE also actively engages with the community through outreach events. These face-to-face interactions allow residents to ask questions and learn about voting procedures, fostering trust and transparency with voters. A recent undertaking includes Future Voters Project classroom visits, which help educate and prepare the next generation of leaders and voters. Over the winter, BVRE applied for and was awarded a grant totaling \$76,861 by the U.S. Election Assistance Commission. This funding will develop a college-level course centered around civic engagement through working as a poll worker and recruiting fellow students to work at the polls.

BVRE's outreach team has achieved great success with its Voter Ambassador program. This program empowers volunteers from the community to organize voter registration drives and educate voters in their neighborhoods. As the information comes from a trusted source of election information, these efforts play an important role in ensuring that voters are prepared to vote on Election Day.

- Recruiting, training, and retaining poll workers is an on-going challenge for election officials. What has worked for your jurisdiction, and what do you think other election officials could do to ensure they are fully staffed with capable poll workers on election day?

We implemented two programs as part of our Partnership at the Polls initiative: Adopt a Polling Location and Day for Democracy. The objective of these programs is to lay the foundation for fully staffed polling locations in Charleston County for decades to come while supporting the community and bolstering our workforce.

Adopt a Polling Location (APL) is an opportunity for nonpartisan organizations to “adopt” a polling location on Election Day. Each organization’s staff serves as poll workers and the poll worker pay is donated directly to a local nonprofit of their choice. The organizations can establish themselves as a community presence, earn social capital, and promote their work. Charleston County benefits from locations that are fully staffed with professionals.

Day for Democracy (DFD) offers Charleston County government employees the chance to serve their community on Election Day, earning poll worker pay in addition to their county pay. Through this program, our voters benefit from reliable staffing, professional service, and a reduced administrative burden. We can reinvest funds into our community, highlight Charleston County’s dedication to public service, and build relationships among our workforce.

'Partnership at the Polls' implies that election officials cannot succeed without the support of their communities. Therefore, other jurisdictions should also focus on building strong community partnerships to improve their programming and invite the community to participate. DFD and APL prioritize group membership, such as County employees or local organizations, in relation to an individual's status. Working together with members of their respective groups can increase adherence to the program. Having community members work as poll workers is a powerful way to build trust in our elections. When voters see their own neighbors and peers giving back in such an important way, it sends a clear message that our democracy is strong and trustworthy.

**Senate Committee on Rules and Administration**

Administration of Upcoming Elections

March 12, 2024

Questions for the Record

**Mr. Brian Kruse**

Senator Fischer

- In your testimony, you highlighted that Nebraska will be conducting its first elections since the implementation of its new voter-ID requirements. Could you tell us about your experience educating the voters, poll workers, and volunteers in Douglas County about these new requirements?

Myself and my Chief Deputy, Chris Carithers, as well as our office staff started in the fall of 2023 educating the public by beginning to attend events and talk about the new voter ID law. In February, when voters could begin to start requesting early ballots, I held a press conference at our office which included TV, radio and newspaper representatives in attendance. These representatives and their respective media outlets have been instrumental in helping educate the public. Since the press conference, all press releases from the election office have included a voter ID reminder statement. The election office has also utilized social media and our website as a secured source of disseminating information. My Chief Deputy and I have spoken to untold community groups in the last six months. In addition I have recorded two public access show “Consider This” via the University of Nebraska at Omaha that has aired state wide on numerous occasions and “Chronicle” on a local television station that airs on Sunday mornings.

It appears as though our efforts, combined with the Secretary of State’s office, have been very successful. In Nebraska voters verify their ID for by-mail ballots at the time of requesting a ballot. In Douglas County we have approximately 72,000 requests to date and less than 3% have needed to be contacted for not providing proper ID.

In addition, poll worker training is conducted solely on-line in Douglas County and has been updated accordingly. The true test will be Election Day and all indications are that poll workers and Nebraska voters have received the message and are well prepared to cast their votes with proper ID.

- Local election officials are the best and most accurate source of election information for the public. What steps have you taken to meet the informational needs of your voters and maintain public confidence that your elections are being run fairly and with integrity?

First and foremost an open and honest relationship with voters, elected officials, candidates for office and the media has fostered open lines of communication. Trust has been earned through hundreds of speaking engagements since 2016 in all parts of the county and meeting many voters and community activists. When I was appointed in 2016 I immediately implemented a stakeholders group of community members that meet monthly



during election periods to share information and receive feedback. We have made several changes over the years as a result of input from this group. They have become invaluable and wonderful ambassadors for democracy and our office.

We also engage in social media posts for informational purposes. We have decided this year to discontinue comments in the spirit of making sure the platforms are nonpartisan and adhere to informational purposes only.

- Recruiting, training, and retaining poll workers is an on-going challenge for election officials. What has worked for your jurisdiction, and what do you think other election officials could do to ensure they are fully staffed with capable poll workers on Election Day?

Nebraska has a law that allows for the drafting of poll workers similar to jury duty. If you are drafted you must serve four elections, and there are few exemptions; those over 70 and those with an illness that present proper documentation. Having said that, we try to accommodate individuals that have made plans during an upcoming election. That can be accomplished by assigning them to another job in the office rather than being a poll worker or by exempting them for the current election to a future election. We often find that many election workers who were drafted find it rewarding and continue on as volunteers.

One of the things we hear the most is how much poll workers appreciate poll worker training being offered on-line. It allows them to take the training and quizzes at a time and place of their choosing. They can take the two hour training in segments so they do not have to complete the training all in one session. Convenience is the name of the game for poll workers with the busy lives we all lead these days.

In addition, we communicate with the poll workers via email and text. We have enhanced the response to poll workers using these methods rather than phone calls and letters. When we do send letters, we alert them with a text that a letter is arriving in their mail box and to be watching for it.

We try to meet poll workers where they are at in this busy world, and to make being a poll worker as a positive experience as possible.

- As the Election Commissioner for Douglas County, do you think that the resources provided by the Election Assistance Commission and Cybersecurity and Infrastructure Security Agency are adequately tailored to meet the needs of local election officials?

I do believe overall we have the resources we need. I do appreciate the EAC and CISA emails and conference calls. In addition I am a member of the EAC Standards Board which is another avenue to gain information for myself and fellow election officials in Nebraska.

We are fortunate that in Nebraska local election officials have a stellar working relationship with the Secretary of State's office. The Secretary of State's office has been very helpful with cybersecurity by offering resources both on the state and local level. In addition in

Douglas County there is a specific public/private organization called DOTComm, Douglas Omaha Technology Commission that provides for city and county technology support. Finally I am grateful that I have two technology employees who are a part of my team on site every day.

**Senate Committee on Rules and Administration**  
Administration of Upcoming Elections  
March 12, 2024  
Questions for the Record  
**Ms. Janai Nelson**

Chairwoman Klobuchar

Your testimony highlighted the unprecedented attacks on our democracy that we have seen in recent years including voter purges that can remove eligible voters from the rolls.

- Can you expand on the need for the basic national standards in the *Freedom to Vote Act* to protect access to the ballot, including the importance of its provisions to protect against voter purges?

**Introduction**

Chair Klobuchar, thank you for the opportunity to expand on my testimony regarding the need for national minimum standards to ensure equal access to the ballot, and specifically to address the growing problem of efforts to remove eligible voters from the registration rolls under the false pretext of fighting voter fraud.

A core insight of the organizers, litigators, and lawmakers who crafted the Voting Rights Act of 1965 (“VRA”) is that voter suppression tactics are not static; rather they evolve over time, often in “ingenious” ways.<sup>1</sup> It is for this reason, they recognized, that banning specific practices is necessary but insufficient. We also need robust protections against discrimination and other forms of suppression.<sup>2</sup>

We urgently need to restore and strengthen the full protections of the VRA by enacting the John Lewis Voting Rights Advancement Act (“VRAA”).<sup>3</sup> In addition, the Freedom to Vote Act (“FTVA”) provides an essential complement to a fully restored VRA by setting affirmative minimum standards for election administration that ensure a basic floor of voting access for all voters no matter where they live.<sup>4</sup> These two approaches work together to set fair rules to facilitate robust access to the franchise for all Americans, regardless of race or class; and then provide strong protections against discrimination in the event these rules are broken or unfairly applied, or new unanticipated tactics emerge to thwart their intent.

<sup>1</sup> *Hearing on S. 1564 to Enforce the 15th Amendment to the Constitution of the United States Before the H. Comm. on the Judiciary*, 89th Cong. 190 (1965) (statement of Hiram L. Fong, U.S. Sen., State of Hawaii).

<sup>2</sup> The preclearance protection in Section 5 of the VRA was explicitly intended to address evolving and yet unknown discriminatory practices by requiring certain jurisdictions to get pre-approval for any change to any “voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting.” 52 U.S.C. § 10304. The anti-discrimination provisions in Section 2 of the VRA can be deployed against a wide range of discriminatory practices. *See* 52 U.S.C. § 10301. In addition, the VRA contains protections against voter suppression regardless of whether it is race-based. *See, e.g.*, 52 U.S.C. § 10307.

<sup>3</sup> John R. Lewis Voting Rights Advancement Act, S.4, 118th Cong. (2024).

<sup>4</sup> Freedom to Vote Act, S. 1, 118th Cong. (2023) (hereinafter “FTVA”).

### **Voter Purges in Historical Context**

As with many other voter suppression tactics, efforts to weaponize voter registration requirements as a barrier to equal participation by Black voters and other voters of color have evolved over time. In the Jim Crow era, the primary means for preventing Black Americans from exercising their right to vote as established by the 15th Amendment to the U.S. Constitution was to prevent them from registering to vote. White officials denied registration to eligible Black people through poll taxes, literacy tests, and other prerequisites applied in blatantly discriminatory fashion.<sup>5</sup> White residents engaged in violence and other forms of intimidation with the explicit aim of keeping Black voters from registering, often with official silence or assent.<sup>6</sup>

Decades later, efforts to prevent Black people and other people of color from registering to vote remain prevalent, even if more subtle. Examples include restrictions on voter registration drives and burdensome and unnecessary documentary proof of citizenship requirements.<sup>7</sup> In recent years, those who fear an inclusive, multi-racial democracy have also increased their efforts to find new ways to remove from the registration rolls voters they consider undesirable, known as voter purges. Though this attack on voting rights is dressed up in the pretext of fighting voter fraud, there is no evidence that there is any meaningful fraud to begin with, or that these efforts reduce the incidence of such fraud. There is evidence, however, that aggressive and imprecise purging can result in eligible voters being wrongfully removed from voter rolls.<sup>8</sup>

In 2017, President Trump launched the “Presidential Advisory Commission on Election Integrity,” specifically to search for evidence justifying claims of widespread voter fraud which could then lay the groundwork for restrictive voting policies.<sup>9</sup> The NAACP Legal Defense and Educational Fund (“LDF”) and others challenged this Commission in court,<sup>10</sup> and it was ultimately dismantled

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<sup>5</sup> *Voting Rights*, Libr. of Cong., <https://www.loc.gov/collections/civil-rights-history-project/articles-and-essays/voting-rights/> (last visited Apr. 9, 2024).

<sup>6</sup> *See id.*

<sup>7</sup> The latter was a prominent topic of discussion at the instant hearing. *See, e.g.,* Jackie Llanos, *FL NAACP Stopped Voter Registration Drives Amid Legal Challenge to Election Law, Leader Testifies*, Fla. Phoenix (Apr. 4, 2024), <https://floridaphoenix.com/2024/04/04/fl-naacp-stopped-voter-registration-drives-amid-legal-challenge-to-election-law-leader-testifies/>; Liz Avore, *Unconstitutional and on the Rise: Proof of Citizenship Requirements in 2022*, Voting Rights Lab (June 27, 2022), <https://votingrightslab.org/2022/06/27/unconstitutional-and-on-the-rise-proof-of-citizenship-requirements-in-2022/>.

<sup>8</sup> Michael Kaplan et al., *Eligible Voters Are Being Swept Up in Conservative Activists' Efforts to Purge Voter Rolls*, CBS News (Dec. 4, 2023), <https://www.cbsnews.com/news/eligible-voters-swept-up-conservative-activists-purge-voter-rolls/>.

<sup>9</sup> *See Presidential Advisory Commission on Election Integrity*, The White House (June 13, 2017), <https://trumpwhitehouse.archives.gov/articles/presidential-advisory-commission-election-integrity/>; *Background on Trump's 'Voter Fraud' Commission*, Brennan Ctr. for Just. (July 18, 2017), <https://www.brennancenter.org/our-work/analysis-opinion/background-trumps-voter-fraud-commission>.

<sup>10</sup> Press Release, NAACP Legal Def. & Educ. Fund, LDF and Local Alabama Organization File Federal Lawsuit Challenging President's “Election Integrity” Commission (July 18, 2017), <https://www.naacpldf.org/press-release/ldf-and-local-alabama-organization-file-federal-lawsuit-challenging-presidents-election-integrity-commission/>.

without producing any such evidence and amidst credible allegations of secrecy, mismanagement, and discriminatory intent.<sup>11</sup> This, however, did not stop attempts to restrict voting.

Anti-voter activists and organizations claiming (without evidence) to fight fraud and protect the “integrity” of our elections have reportedly used at least two troubling strategies to remove voters from the rolls. First, they launched a targeted effort to pressure local elections officials to engage in aggressive purges of the voter rolls in a manner that presented significant risk of removing eligible voters, at times in violation of existing legal protections.<sup>12</sup> In addition, they have used faulty data and methodologies to produce lists of supposedly ineligible voters and directly challenge their voter registrations.<sup>13</sup>

As LDF has noted in prior testimony before this Committee, frivolous mass challenges have long been a tactic to suppress voter participation, particularly among Black voters; these challenges have increased significantly since 2020; and they cause manifold harms including disrupting election administration and chilling participation.<sup>14</sup>

Anti-voter organizations are increasingly leveraging technology to facilitate these challenges. For example, a new technology platform called EagleAI enables “volunteers to generate potentially thousands of voter challenges with a few clicks, based on their personal suspicions and a database that is totally opaque to anyone outside of the licensed user base” and these challenges are then delivered directly to boards of elections.<sup>15</sup> Georgia’s Elections Director, however, has said that “EagleAI draws inaccurate conclusions and then presents them as if they are evidence of wrongdoing.”<sup>16</sup>

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<sup>11</sup> See Marina Villeneuve, *Report: Trump Commission Did Not Find Widespread Voter Fraud*, AP News (Aug. 3, 2018), <https://apnews.com/article/f5f6a73b2af546ee97816bb35e82c18d>; Jessica Huseman, *A Short History of the Brief and Bumpy Life of the Voting Fraud Commission*, ProPublica (Jan. 4, 2018), <https://www.propublica.org/article/a-short-history-of-the-brief-and-bumpy-life-of-the-voting-fraud-commission>.

<sup>12</sup> *State and Local Officials’ Communications with Voting-Restriction Activists and Groups*, Am. Oversight (Nov. 5, 2020), <https://www.americanoversight.org/state-and-local-officials-communications-with-voting-restriction-activists-and-groups>; Chirag Bains & Laura Williamson, *The Attack on Vote-by-Mail: Weaponizing “Voter Fraud” Claims to Suppress the Vote*, Demos (Apr. 14, 2020), <https://www.demos.org/policy-briefs/attack-vote-mail-weaponizing-voter-fraud-claims-suppress-vote#Voter-Purges>.

<sup>13</sup> Dhruv Mehrotra, *Inside the ‘Election Integrity’ App Built to Purge US Voter Rolls*, Wired (Nov. 8, 2022), <https://www.wired.com/story/true-the-vote-iv3-app-voter-fraud/>; Alexandra Berzon & Nick Corasaniti, *Trump’s Allies Ramp Up Campaign Targeting Voter Rolls*, N.Y. Times (Mar. 3, 2024), <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html>.

<sup>14</sup> *State and Local Perspectives on Election Administration: Hearing Before the S. Comm. on Rules & Admin*, 118th Cong. (2023) (testimony of Adam Lioz, Senior Pol’y Couns., NAACP Legal Def. & Educ. Fund), <https://www.naacpldf.org/wp-content/uploads/LDF-Senate-Rules-Testimony-4-4-23.pdf>.

<sup>15</sup> *Meet “Eagle AI,” the Cleta Mitchell-Backed MAGA Mass Voter Challenge Program*, Documented (Mar. 7, 2024), <https://documented.net/investigations/meet-eagle-ai-the-cleta-mitchell-backed-project-for-maga-activists-to-file-mass-voter-challenges>.

<sup>16</sup> *Id.*

### **The Need for Expanded Legal Protections**

The National Voter Registration Act of 1993 (“NVRA”) contains important protections against voter purges, including limiting the reasons for removal, requiring notice and adequate time prior to removals, and preventing systemic purge efforts within close proximity of a federal election.<sup>17</sup> The Supreme Court weakened these protections in 2018, however, and they are not currently adequate to protect voters from modern, technology-assisted aggressive and targeted efforts to remove them.<sup>18</sup>

At the same time, some states have moved backwards with respect to relevant protections. For example, in its 2021 omnibus anti-voter bill, Georgia codified the ability of any voter in a county to bring an unlimited number of challenges to fellow voters’ eligibility.<sup>19</sup> Just six activists filed challenges to nearly 100,000 Georgia voters prior to the following election.<sup>20</sup>

There is a clear need for expanded federal protections to ensure that eligible voters are not disenfranchised by being wrongfully removed from the registration rolls. The Freedom to Vote Act contains several important protections against voter purges and frivolous challenges. First, the FTVA amends Section 8 of the NVRA to strengthen its existing protections by requiring verifications and clarifying that certain unreliable indicators are not a legal basis for removal.<sup>21</sup> In addition, the FTVA prohibits the practice of voter “caging” which is often used as a predicate for mass challenges.<sup>22</sup> This involves sending mass mailings to voters often based on questionable source data, and using undelivered mail to assemble a purge or challenge list.<sup>23</sup> Finally, the FTVA requires states to provide voters with the opportunity to register to vote during early vote and on Election Day,<sup>24</sup> which serves as a critical backstop to wrongful purges and voter challenges to the extent these challenges are based upon allegations that voters are not properly registered.

### **Conclusion**

Beyond fighting wrongful voter purges, the FTVA sets a range of essential minimum standards to ensure that voters enjoy fair access to the ballot across the country. These include requiring states

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<sup>17</sup> 52 U.S.C. § 20507(c).

<sup>18</sup> *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756 (2018).

<sup>19</sup> Ga. Code §§ 21-2-229 to 230; *State and Local Perspectives on Election Administration* (testimony of Adam Lioz), *supra* note 11, at 12-14.

<sup>20</sup> Doug Bock Clark, *Close to 100,000 Voter Registrations Were Challenged in Georgia — Almost All by Just Six Right-Wing Activists*, ProPublica (July 13, 2023), <https://www.propublica.org/article/right-wing-activists-georgia-voter-challenges>.

<sup>21</sup> FTVA § 1911.

<sup>22</sup> FTVA § 1901.

<sup>23</sup> Justin Levitt, *A Guide to Voter Caging*, Brennan Ctr. for Just. (June 29, 2007), <https://www.brennancenter.org/our-work/research-reports/guide-voter-caging>.

<sup>24</sup> FTVA § 1031.

to implement critical programs that will significantly improve voting accessibility such as Automatic Voter Registration,<sup>25</sup> Same Day Registration,<sup>26</sup> Early Voting,<sup>27</sup> and Vote-By-Mail.<sup>28</sup> Although in most cases the FTVA's protections are not targeted specifically at protecting voters of color, in practice they would prevent states from rolling back voting methods that Black voters have used successfully in recent elections, such as early voting and vote-by-mail; and offer protections against other tactics that tend to be targeted at communities of color. For this reason, LDF urges Congress to enact the FTVA as a critical complement to the VRAA.

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<sup>25</sup> FTVA § 1001-07.

<sup>26</sup> FTVA §§ 1031-32.

<sup>27</sup> FTVA § 1201.

<sup>28</sup> FTVA §§ 1301-05.