

**STATE AND LOCAL PERSPECTIVES  
ON ELECTION ADMINISTRATION**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON RULES AND  
ADMINISTRATION**  
**UNITED STATES SENATE**  
ONE HUNDRED EIGHTEENTH CONGRESS  
FIRST SESSION

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MARCH 28, 2023  
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FIRST SESSION

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## STATE AND LOCAL PERSPECTIVES ON ELECTION ADMINISTRATION

TUESDAY, MARCH 28, 2023

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, Padilla, Bennet, Cruz, and Britt.

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

Chairwoman KLOBUCHAR. Good afternoon. I call to order this hearing of the Rules Committee on State and Local Perspectives on Election Administration. I would like to thank Ranking Member Fischer, and our colleagues, and our witnesses for being here. The Rules Committee has a tradition of working together in a bipartisan way, and Senator Fischer and I have been continuing that tradition, including introducing a bill based on the top legislative recommendation of all six members of the Federal Election Commission.

Today we are holding this important hearing on the work of state and local officials who run elections and ensure that voters have access to the ballot. Our witnesses, who I will introduce shortly, are New Mexico Secretary of State Maggie Toulouse Oliver; Derrick Bowens, who is the Director of Elections for Durham County, North Carolina; and Marcia Johnson, who is Co-Director of the Voting Rights Project at the Lawyers' Committee for Civil Rights Under the Law.

We are also going to hear from witnesses who are going to be introduced by Senator Fischer. That is why I did them out of order. Did not forget you. Nebraska Secretary of State Robert Evnen, and Howard Knapp, who is the Executive Director of the South Carolina State Election Commission.

I thank all of you for joining us today. State and local election officials across the country worked tirelessly to administer the 2022 midterm elections so that over 111 million Americans could cast their ballots. The Department of Homeland Security has confirmed the security of recent elections under Republican and Democratic administrations alike. Those on the front lines of our democracy did the hard work to ensure that would happen.

Today, we will hear from state and local election officials and an expert on voter protection about takeaways from the 2022 elections and key issues for election administration moving forward.

With the 2024 primary elections less than a year away, this is an important—I did that so everyone could take a deep breath—this is an important discussion as effective election administration takes dedicated planning and resources. One area of particular urgency that we will hear about today is the need to counter the barrage of threats and harassment targeting election workers from those seeking to undermine our democracy.

According to a survey last year by the Brennan Center, nearly one in three local election officials are concerned about their safety because of their job, and nearly one in six have received threats.

Adrian Fontes, the Arizona Secretary of State, told me that when he served as Maricopa County Recorder in 2020, his family had to leave their house for days because of death threats.

Former Philadelphia City Commissioner Al Schmidt, a Republican who is now Pennsylvania's Chief Election Official, told this Committee at a bipartisan hearing last Congress that he received a message saying, "tell the truth or your three kids will be fatally shot", with the names of his 7 year old son and 11 and 14 year old daughters, their address, and photos of their house.

State and local election officials from both parties testified at that hearing, including the Kentucky Secretary of State, about what is happening with election workers. We want people who are full-time election workers, but we also want volunteers. When this happens, you also lose volunteers.

These dedicated public servants should be able to do their jobs without fear or intimidation, which is why I introduced comprehensive legislation to take this issue head on with many Senators, including Senators Feinstein, Warner, Merkley, Padilla, and Bennet, on this Committee. I hope that Senator Fischer and I will continue to work on a bipartisan basis when it comes to this really important issue.

These threats are in part fueled by disinformation that allows lies that undermine our elections to go viral. We must tackle the root causes of disinformation that spreads online and the impact it has on our democracy. I have introduced legislation to do that with Senator Warner, and I think there are other things we should be doing with regard to these social media platforms and other things that have impacted the way people feel about our democracy, the way they feel about each other, the way the algorithms work, the way the competition policy has not been changed.

I could go on and on, but I am going to stick to the matter at hand. In the face of these challenges, it is as important as ever that we continue to support election officials as they do their jobs to uphold our democracy.

State and local governments need a steady and reliable stream of yes, state and local support, but also federal support to plan and keep pace and protect against foreign interference as technology evolves, as well as to recruit and train poll workers and protect election officials from threats.

The investments we have made since 2018 have been important. Senator Blunt and I worked on this together. Senator Lankford and

I worked on bills regarding foreign interference. All of this has helped ensure that recent elections were what the Department of Homeland Security said were the most secure in American history.

That is thanks to all of you. But it is also thanks to all of our cyber experts who are looking out for issues. As we know there have been threats in the past but more must be done. I have introduced legislation, the Sustaining Our Democracy Act, to deliver critical resources to state and local governments for election administration, and the President's budget also includes a commitment to prioritize significant funding for elections to ensure their continued security and resilience.

Finally, I want to note that in many states, voters continue to face laws that make it harder to vote. These laws impose restrictions on things like voting by mail, cut days from early voting, and getting rid of secure drop boxes for people to return their ballots. That is why many leaders support basic federal standards to make sure all Americans can cast their ballots in the way that works best for them, regardless of what zip code they live in.

That is why I support the John R. Lewis Voting Rights Advancement Act to repair and restore the Voting Rights Act. I note that the majority of the Senate supports the Freedom to Vote Act, and while it is a Democratic bill, a number of Republicans have spoken in support of certain reforms in the bill, including one Republican witness we had in this very room who testified in support of these measures, who was a former Federal Election Commission Chairman.

I want to thank our witnesses for all the work that you do every single day. I am so proud of our local election officials. I am proud of the fact that Minnesota always ranks number one, if not or at least near the top—I say just a challenge to our Secretaries of State—for voter turnout. A lot of it has to do with—actually, we have same day registration, which is kind of, it may be an old fashioned concept, but in states that are red or blue or purple, it has greatly increased turnout.

We have good rules when it comes to mail-in balloting and early voting and the like. We have had both Democratic and Republican Governors and one very famous Independent that would be Governor Jesse Ventura, all with these laws in place. I think what it does is it makes people feel like they can participate.

When they come up and say, I did not vote for you, but I like what you did on this, at least they voted and at least they care about our democracy, is what I always think. Maybe I will convince them next time.

But I think having that kind of ease of voting is a big deal, and faith in our democracy, and makes people feel like they are part of the franchise, which is one of our—which should be our focus as elected representatives. With that, I will turn it over to my friend, Deb Fischer.

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

Senator FISCHER. Good afternoon. Thank you, Chairwoman Klobuchar, for holding this hearing, and thank you to our witnesses for joining us.

Today, we gather to discuss one of the most fundamental aspects of our democracy, the administration of free and fair elections. Across the Nation, hardworking and dedicated state and local officials regularly address election administration challenges head on. Today's hearing provides an opportunity to hear from some of them, highlight their important work, and learn more about how they successfully administered the 2022 elections.

Under the Constitution, states have primary responsibility for the administration of elections. This is what our founding fathers intended. Our role in Congress is to support state and local election officials in this important work rather than burden them with a one size fits all Federalized takeover that is ill suited to the needs and priorities of various jurisdictions. In fact, the diversity of state run election procedures is part of what makes disrupting a nationwide election effectively impossible.

Upending that system increases the risk of error and creates vulnerabilities. In recent years, new election administration challenges have presented themselves specifically regarding cybersecurity and threats to election integrity. Foreign and domestic adversaries have sought to disrupt our elections by attacking cyber and physical infrastructure. These same adversaries have sought to sow distrust in our elections and call the integrity of the democratic process into question.

As these new issues arise, states are still tasked with the important work of recruiting, training, and retaining poll workers. This has become more difficult in recent years, as many of the most dedicated election workers and volunteers have retired.

But while it is important to acknowledge that there were and are challenges to overcome, I believe that we should also take the time to recognize and celebrate the many successes that have been achieved in 2022. We saw marked improvements in election security.

Many states took state steps to bolster their cybersecurity defenses and ensure the integrity of the voting process. This included everything from ensuring that voting machines provide a paper trail for every vote cast to conducting thorough audits and investigations to detect and prevent potential fraud.

Today, this Committee has the opportunity to come together in a bipartisan manner and hear from witnesses regarding their successes during the 2022 election cycle and their tireless efforts to improve election integrity. I believe it is our duty to approach this issue with an open mind and a commitment to finding common ground.

We may not always agree on the specifics of how our elections should be run, but I am confident that by working together in good faith, we can ensure that every eligible citizen can exercise his or her right to vote and that every eligible vote is counted timely and accurately.

I am heartened by the progress states have made in recent years, and it is my sincere hope that we can work together to strengthen our election systems and foster public trust in the democratic process.

I look forward to a productive and informative hearing, and to hearing from our expert witnesses today. Thank you.



Chairwoman KLOBUCHAR. Very good. Well, thank you very much, Senator Fischer. I am going to introduce, as I noted, three of our witnesses, and Senator Fischer will introduce the other ones.

Our first witness is New Mexico Secretary of State Maggie Toulouse Oliver, as she has served as New Mexico's chief election official for six years and also has a decade of experience in local election administration as a county clerk. Previously, she served as President of the National Association of Secretaries of State. That is how I got to know her. Secretary Toulouse Oliver earned her bachelor's degree and master's degree from the University of New Mexico.

After hearing from Secretary Evnen and Mr. Knapp, our next witness will be Derek Bowens, Director of Elections for Durham County, North Carolina since 2017.

Mr. Bowens has over a decade of experience in local election administration, and he holds a bachelor's degree from the University of North Carolina. Our final witness is Marcia Johnson, Co-Director of the Voting Rights Project at the Lawyers' Committee for Civil Rights Under Law, which is the Nation's leading nonpartisan voter protection program.

She has worked on the Lawyers' Committee's human rights initiatives and taught as an Adjunct Professor at the Georgetown University Law Center. Something my husband also does, by the way. She earned her bachelor's degree from Georgetown and her law degree from Villanova University. Senator Fischer will now introduce our other two witnesses and I will swear witnesses in.

Senator FISCHER. Again, I thank all of our witnesses for joining us today. We have with us Secretary of State Bob Evnen of the great State of Nebraska, and Mr. Howard Knapp, Executive Director of the South Carolina State Election Commission. Secretary Evnen has served as Nebraska's Secretary of State since 2019, where he has worked tirelessly to ensure that Nebraska's elections are safe and secure.

Mr. Knapp has served as the Executive Director of the South Carolina State Election Commission since 2022, previously serving as the state's Interim Executive Director and Director of Voter Services. He also serves on the United States Election Assistance Commission Standards Board and has been nationally recognized and certified for his work in this space. Thank you both. We look forward to your testimony.

Chairwoman KLOBUCHAR. Okay, if the witnesses can now please stand and raise your right hand. 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. TOULOUSE OLIVER. I do.

Mr. EVNEN. I do.

Mr. KNAPP. I do.

Mr. BOWENS. I do.

Ms. JOHNSON. I do.

Chairwoman KLOBUCHAR. Thank you. We will now proceed to your testimony and recognize you each for a five minute statement, starting with Secretary Toulouse Oliver.

**OPENING STATEMENT OF HONORABLE MAGGIE TOULOUSE  
OLIVER, NEW MEXICO OFFICE, OF THE SECRETARY OF  
STATE, SANTA FE, NEW MEXICO**

Ms. TOULOUSE OLIVER. Thank you very much, Chairwoman Klobuchar, and Ranking Member Fischer, and Members, whoever they may be, for having us here today.

I am very pleased to be here, along with my election official colleagues. I also just want to say I appreciated both of your opening remarks very much, and we appreciate the support that Congress gives us in the election community. Thank you for having me here today. My name is Maggie Toulouse Oliver.

I am the New Mexico Secretary of State, and I appreciate the opportunity to be a part of this hearing as you gather state and local perspectives on election administration throughout the United States. The health of our democracy depends on informed discussions like this about the challenges and opportunities faced by election administrators across our country.

My goal today is to provide you with insight into how election administrators are coping with the new voting and elections landscape, and to highlight some of the initiatives we are taking in my state to support the vital work of county clerks and their staff, poll workers, and the myriad of other election professionals who make our American democracy a model for the world.

The rise of misinformation since 2020 has made the job of non-partisan election administration much harder. When many members of the public are mistrustful about the integrity of our elections, election administrators then bear the associated burdens of frivolous lawsuits, excessively burdensome public information requests, disruptive voters and poll workers, and outright threats and harassment.

One of the most important tactics to defend against the detrimental effects of election administration is simply putting good policies in place that are informed by election administrators themselves. Such policies can clarify existing laws or create new procedures that assist administrators in the execution of their duties. For example, during our latest Legislative Session in New Mexico, we passed a comprehensive election administration bill that provides needed policies for election administrators to efficiently and uniformly administer our elections.

The bill's provisions were drafted in concert with the state's election administrators and stem from actual experiences those administrators navigated either during the last election cycle or are currently navigating in preparation for elections. We actually have statewide elections every year in our state.

For this year, many county clerks have had trouble retaining or hiring poll workers because of the increased stress associated with being involved in elections, so we increased poll worker compensation. The bill mandates training for poll watchers and challengers with a curriculum developed by my office so these individuals and election administrators can gain a better understanding of the proper role of conduct of watchers and challengers at a polling place. One section clarifies procedures on public information requests, to protect the secrecy of the ballot, and information about our national critical infrastructure, but making sure that every-

thing else remains public. This specific section was included after county clerks were inundated with requests for data and other information that clerks do not actually use for administrating elections.

After an individual earlier this year, influenced by election misinformation allegedly orchestrated drive by shootings at the homes of six elected officials in New Mexico's biggest city, a provision was included in the bill that shields the home addresses of elected or appointed officials from public disclosure at their discretion.

Election administrators need policy tools like some of the ones I have just highlighted in order to maintain fair and efficient elections that are above the fray of misinformation and partisan meddling. Of course, every jurisdiction has their own decisions to make about which policies best serve their communities. But I believe our policies in New Mexico are a great model for many election administrators to mirror.

In addition to tailoring specific state policies that assist administrators as they conduct elections, funding for elections is key. Sufficient funding for election administration, however, remains an obstacle for many election offices around the country. The Federal Government can help states and their election administrators by providing consistent funding streams.

These funds can be used to assist us in fulfilling our duties under Federal law to supplement costs associated with new trainings and, or physical security upgrades or strengthen cybersecurity defenses.

Without more consistent Federal funding to states for elections, administrators may have to contend with outdated equipment and technology, persistent staffing issues, and other circumstances that can inhibit the efficient conduct of elections. More consistent Federal funding for elections allows election administrators to better plan for short, medium, and long term goals that benefit all voters.

The Federal Government has an important role to play in assisting states with the conduct of elections. Though each state is different with different needs, and states should continue to be the ultimate authority on running their own elections, but collaboration is key, and an entity like the United States Election Assistance Commission, the EAC, provides a great example of how the Federal Government can help states with election related needs.

Additionally, congressional funding of entities like the Cybersecurity and Infrastructure Security Agency, CISA, is vital because states and localities simply do not have the resources to defend against the modern threat landscape solely on our own.

Though the current political environment, coupled with the recent rash of election administration, makes the likelihood of enacting Federal minimum standards for voter access unlikely, I want to say that I do support minimum guarantees of access to early and absentee voting so that there is more equity across the board for voters in Federal elections across the country.

Some Federal involvement in elections will always be crucial for security and for the policy entrepreneurship that comes from such collaboration. Thank you again for this opportunity today to testify on these crucial matters on behalf of both New Mexico and our states' election administrators.

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

Chairwoman KLOBUCHAR. Very good. Thank you, Secretary. Secretary Evnen.

**OPENING STATEMENT OF HONORABLE ROBERT EVNEN, NEBRASKA OFFICE OF THE SECRETARY OF STATE, LINCOLN, NEBRASKA**

Mr. EVNEN. Good afternoon, Chairwoman Klobuchar, Ranking Member Fischer. My name is Bob Evnen, and I have the honor and privilege of serving as Nebraska's 27th Secretary of State. This afternoon, I would like to talk about takeaways, some nuts and bolts, from Nebraska's 2022 elections. I would like to discuss Nebraska's newly adopted state Constitutional voter ID requirement and security issues, including cybersecurity.

I would like to conclude with a thought about Federal versus state control of elections. Nebraska's 2022 elections were conducted efficiently, accurately, securely, and in accordance with law.

As we have done for some time, within approximately one month before the primary and general elections, every single ballot tabulation machine in the state was tested three times for accuracy by running three separate test decks of ballots through each machine. In addition to these three tests, two mock elections were held to further check the accuracy of our ballot tabulators and to check the accuracy of the computers that compile the results and our Election night reporting website.

Then, after each election, we hand count the results. We do this after the election, we hand count the results of certain races in 2 or 3 percent of our precincts statewide. After the 2022 general election, we expanded this audit to include 10 percent of our precincts statewide. We checked at least one precinct in each of our 93 counties. In all our counties, we hand counted a total of 48,292 ballots.

The counting was conducted by election boards in those counties composed of representatives of both major national parties. In total, out of the more than 48,000 ballots hand counted, discrepancies were noted on 11 ballots. That is a discrepancy rate of 23 thousandths of 1 percent. Of the 11 ballots where there were discrepancies, 5 were ballots that were marked too lightly for the machine to read the ballot, and the other 6 were ballots that were misfiled or misplaced. We did another check after the election. We found that 682,745 voters across the state were shown on the voter rolls as having cast a ballot.

Those records are kept by our county election officials. We compared that with the number of ballots that were tabulated. There was a net variance of 29 ballots. That is a variance rate of 4 thousandths of 1 percent. To the best of my knowledge, none of the variance was attributable to machine error. In Nebraska, in my view, our election officials across the state did an exemplary job of conducting an accurate and secure election.

I would like to take this opportunity this afternoon to express my thanks and gratitude to our friends and neighbors across the State of Nebraska who are the election officials who conducted an outstanding election for our citizens in 2022. Now in that election, in November 2022, Nebraska voters overwhelmingly enacted an

amendment to our state Constitution requiring the presentation of a photo ID before casting a ballot.

I have supported voter ID for many years. Our state legislature is now working on legislation to implement this new voter ID requirement. My office estimates that between 97 and 98 percent of registered voters in our state already have state issued photo IDs.

I am confident that effective legislation will be passed that will carry out Nebraska's new voter ID Constitutional requirement without disenfranchising any legitimate voter. I am working closely with the legislature to ensure that we have effective—an effective voter ID requirement that is consistent with the rights of voters.

In terms of the elections process itself in my view, one of the greatest challenges to election security grows out of the increasing availability of early voting. The challenges that come with early voting include the opportunity to pressure or intimidate voters and the possibility of vote buying efforts.

The potential for this sort of fraud is intensifying as these early voting methods become more ubiquitous. In my view, we ought to focus our attention on these matters. Turning briefly to cybersecurity, the elections division of the Nebraska Secretary of State's Office was awarded the 2019 Election Innovation Award from the National Association of State Elections Directors.

We received this award for our program of collaboration between our office, our voter registration data base vendor, the Department of Homeland Security, and EI-ISAC, which was referenced by Secretary to Toulouse Oliver.

Through this collaboration organized by our office, we were able to place an Albert networking monitor on the server of our elections vendor to detect intrusion on our voter registration system.

Finally, permit me to observe that under the United States Constitution, elections have been left at the sound discretion of the State Legislatures.

I am speaking from my perspective as the Secretary of State of Nebraska. The states ought to remain responsible for the conduct of elections. Issues affecting the conduct of elections can be and ought to be resolved by the State Legislatures. Thank you, Senators, for your time and attention this afternoon.

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

Chairwoman KLOBUCHAR. Very good. Thank you very much. Next up, Mr. Knapp.

**OPENING STATEMENT OF HOWARD KNAPP, SOUTH CAROLINA STATE ELECTION COMMISSION, COLUMBIA, SOUTH CAROLINA**

Mr. KNAPP. Chairwoman Klobuchar, Ranking Member Fischer, and Members of the Committee, I am honored to be here today to present the South Carolina perspective on election administration.

Elections play a vital role in a free and fair society and are the cornerstone of our Republic. There is an important link between the trust in our election process and the confidence our citizens place in all Government functions. This is why South Carolina has been keeping our elections accurate, secure, and accessible, and that is one of our state's top priorities.

In January 2021, I was appointed Executive Director of the South Carolina State Election Commission. The Commission is a five member bipartisan committee appointed by the Governor to oversee election operations. Since my appointment and subsequent confirmation by the South Carolina Senate, I have focused on improving and protecting the security and resilience of our state's election infrastructure while implementing the reforms needed to move South Carolina forward.

We have long been a national leader in elections. South Carolina was the first state to have a statewide voter registration system and the first to make our voter registration application available on the internet.

Last year, we built upon that tradition with the implementation of Act 150 of 2022, which was passed unanimously by the South Carolina General Assembly. This legislation established no excuse early voting, two weeks prior to an election, amended absentee ballot processes, and increased election crime penalties.

Any registered South Carolina voter can now visit early voting locations and vote like they would at their polling place on Election Day, replacing the need for in-person absentee voting. While the process to implement early voting has taken other states more than six months, we managed to do it in only ten days, just in time for the statewide primaries in June.

As a result, early voting was used for the first time in the state's history, and more than 100,000 voters chose to vote early throughout the state. Through our hard work, the general election was even more successful than the primaries.

Over half of all registered voters voted, and almost half of all votes cast were cast before the general election, either via early voting or absentee. We credit this remarkable turnout during early voting and on Election Day to robust education campaign that informed the public of the new election laws and changes through frequent statewide messaging to reach every eligible voter.

In a statewide survey conducted after the passage of Act 150, 85 percent of South Carolina voters indicated they felt confident in the accuracy of South Carolina elections, compared with only 66 percent in those carried out nationally. Ninety-seven percent of South Carolina voters thought registering to vote was easy and 93 percent felt their local polling place was organized and well run.

The success of implementing Act 150 is even more astounding when considering we were simultaneously implementing state and local redistricting plans. In addition, to implementing Act 150 and redistricting, the Commission and county offices also had to carry out their regular duties ahead of, during, and after the election.

This process starts accurately—starts with accurately maintaining our list of registered voters. When a person registers to vote, the person remains registered until they are disqualified or pass away.

Additionally, confirmation cards requesting voters to confirm the registration status are mailed to voters who have not voted or updated their information in the last two general election cycles. Notices are sent to voters when they are made inactive, giving voters a second chance to let us know if the removal was an error.

This process not only removes disqualified voters, but also protects qualified voters from wrongful removal. If there is any question about a voter's qualifications to vote, the voter can always cast a provisional ballot.

To keep our elections secure we have a—we have developed an unprecedented partnership of state, federal, and private cybersecurity, law enforcement, and intelligence entities. Together, we protect the security of our elections and investigate misconduct.

After election night and before the certification of state and federal elections, South Carolina requires hand count audits to be conducted in every county. We also conduct independent results verification audits, which digitally tabulate every ballot cast in an election to ensure every vote was counted as intended by the voter.

Recently, I established the agency's first audit division. This division is tasked with conducting county compliance audits in addition to overseeing the aforementioned post-election audits. These compliance audits will ensure that county election offices follow Federal law, state law, and the agency's statewide election policies and procedures to ensure every voter and every candidate is treated the same.

South Carolina is set to hold the Nation's first Presidential primary in 2024. It will continue to be a national model and leader in election administration, and we remain committed to being transparent with the public at every turn.

We stand ready to assist Congress as it contemplates national reform efforts. South Carolina's election success can serve as a framework for other states as they look to improve upon the cornerstone of American democracy and instill greater trust in the outcome of our elections. Thank you.

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

Chairwoman KLOBUCHAR. Thank you very much. Next up, Mr. Bowens.

**OPENING STATEMENT OF DEREK BOWENS, DURHAM COUNTY  
BOARD OF ELECTIONS, DURHAM, NORTH CAROLINA**

Mr. BOWENS. Thank you, Chairwoman Klobuchar, Ranking Member Fischer, and distinguished Members of the Committee on Rules and Administration of the United States Senate. I am honored to appear before you to talk about the administration of elections in Durham County, North Carolina, both in general and during the 2022 midterm elections.

I currently serve as the nonpartisan Elections Director for Durham County, North Carolina. In this position, I have administered many local, state, and federal elections. I have more than a decade of local election administration experience and my teams have won multiple awards from the National Association of Counties and the United States Election Assistance Commission for innovation in election administration.

I am privileged to have two of my dedicated team members with me today, Deborah Hart and Rebecca Troedsson. I must also speak to the hard work of my colleagues and the other 99 counties in North Carolina, many of which are participating in a director's as-

sociation conference to further advance their knowledge in election administration and security.

The county that I serve, Durham County, has over 320,000 residents making us the sixth largest of North Carolina's 100 counties. We have approximately 230,000 of North Carolina's 7.2 million registered voters.

We are proud to have two nationally recognized institutions of higher learning, Duke University and North Carolina Central University, in addition to our wonderful technical and community college system. Also, most of the Research Triangle Park, a hub of global science and technology firms, Government agencies, and academic institutions, is in Durham County. County Commissioners fund the county boards of elections in North Carolina.

However, these local election offices, under the general supervision of the State Board of Elections, are responsible for administering elections in their respective counties. My position is nominated by the county boards of elections and confirmed by the Executive Director of the State Board of Elections.

Election Administration in Durham County is administrated in a manner that promotes free, fair, transparent, and secure elections. There are several processes and checks and balances which work together throughout the election cycle that result in trustworthy elections.

In my testimony today, I want to stress that I am a nonpartisan public servant who believes strongly in the promise of democracy and in the preservation of the core tenets of our Democratic Republic. I take this responsibility very seriously and carry out my duties impartially without regard to partisan preferences or affiliations.

I am committed to developing and carrying out sound processes according to state and federal law, to give our citizens faith and confidence in the outcome of every Durham County election. Every day I am mindful that less than 60 years ago people who look like me could not execute a basic function guaranteed under our Constitution without hardship and restriction.

This became more real to me when I was verbally harassed by being called the N-word during a virtual public meeting while I was carrying out my duties as the Director of Elections during the 2020 general election.

As such, it is an honor to equitably serve all citizens in Durham County as the Director of Elections and ensure that elections conducted under my purview are free, fair, and secure. I look forward to sharing my experiences as an election administrator in Durham County, North Carolina.

I hope I have the opportunity to highlight how we conduct free, fair, and secure elections, discuss my experiences with the 2022 midterm election, provide my thoughts on election funding, and share the work of the Committee for Safe and Secure Elections, a bipartisan organization of which I am a member, and was established to address the recent threats, harassment, violence, and intimidation directed at local and state election officials in this country.

Again, thank you for the opportunity to speak with you today, and I look forward to your questions.



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

Chairwoman KLOBUCHAR. Thank you very much, Mr. Bowens. Just so you know, Senator Fischer, we have a vote. She is voting and then I will go vote. She has left you, Secretary Evnen, with me.

You know, I was showing her the—I was showing her the past records of the Gophers versus the Cornhuskers. Just so you know, the Gophers came out ahead in the deal. Marcia Johnson and I apologize for saying your first name wrong, so I will try to correct that throughout this hearing. Ms. Johnson, thank you.

**OPENING STATEMENT OF MARCIA JOHNSON, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, WASHINGTON, DC**

Ms. JOHNSON. Chairwoman Klobuchar, Ranking Member Fischer, and Members of the United States Senate Committee on Rules and Administration, my name is Marcia Johnson, and I serve as the Co-Director of the Voting Rights Project at the Lawyers' Committee for Civil Rights under Law. Thank you for the opportunity to testify today on state and local perspectives on election administration.

The Lawyers' Committee was founded in 1963 by President John F. Kennedy's request. We use legal advocacy to achieve racial justice and make the promises of our democracy real for black people and other people of color. As part of this vital work, we convened the Election Protection Coalition, which is made up of nearly 400 national, state, and local partners. We also administer the 866-OUR-VOTE election protection Hotline, which provides comprehensive nonpartisan assistance at all stages of the voting process to any American who needs it.

I have been with the Lawyers' Committee for 19 years, since 2004, when I worked on the first election protection program during a Presidential election.

In recent years, I have seen significant changes in the ways that Americans vote. For example, in 2018, nearly 50 percent of the calls to the 866-OUR-VOTE hotline were placed on Election Day. Yet in 2022, only around 20 percent of the calls we received during the election period were placed on Election Day.

The timing of these calls reflect the trend of more voters choosing to vote before Election Day, either by mail or early in-person. Election officials and administrators should be aware of these trends so that their jurisdictions have the resources to ensure access to the vote throughout the entire voting cycle.

The types of calls to the election protection hotline include: reports of intimidation and or aggressive electioneering, problems with polling place access or ballots, problems with voter ID and registration, problems with mail-in and absentee ballots, and questions or information requests. One of the disturbing trends we saw in 2022 was voter intimidation around ballot drop boxes.

In Arizona a Federal judge had to stop a coordinated group of men from openly carrying firearms and wearing body armor and masks to hide their faces while following, yelling at, and recording voters at ballot drop boxes. One voter wrote into the Arizona Secretary of State's Office saying, "I have never been more intimidated in my life trying to vote, and I am very worried for my safety."

This disturbing and fairly new trend proves two things. First, election myths and disinformation have significant consequences. When election myths and disinformation about election security are encouraged to flow freely on voters' social media feeds, it can encourage bad actors to create new and at times terrifying schemes to intimidate voters, particularly voters of color.

Second, as the ways Americans vote evolve, so do the methods of discrimination and intimidation. After the Supreme Court's decision in *Shelby County vs. Holder* weakening the Voting Rights Act, the late great Congressman John Lewis wrote, I disagree that because the incidence of voter discrimination is not as pervasive, widespread, or rampant as it was in 1965 that the contemporary problems are not a valid basis for scrutiny.

In a democracy, one act of voter discrimination should be too much. Following the record turnout in the 2020 Presidential election, something that all Americans, no matter their political affiliation, should applaud, too many states have passed laws that unduly restrict the very voting methods that contributed to that record turnout.

In order for this country to live up to its democratic ideals of equality for all, this Congress needs to enact baseline Federal voting standards. Congressional action is necessary to prevent the backsliding of voting rights for many Americans, especially black voters and voters of color. I look forward to sharing more about what we found in 2022 elections. Thank you.

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

Chairwoman KLOBUCHAR. Very good. I appreciate all of you. We are going to have a number of our colleagues joining us shortly that were at the vote. I am going to get started. As we look back first at the 2022 election, I guess I will ask all of you this, in your own state, which is what I believe you can address. Secretary Toulouse Oliver, do you believe that it was a secure election in 2022?

Ms. TOULOUSE OLIVER. Madam Chair. Yes, absolutely it was.

Chairwoman KLOBUCHAR. Okay, very good. Secretary Evnen.

Mr. EVNEN. Yes, Madam Chairwoman. In Nebraska, we had a secure and accurate election.

Chairwoman KLOBUCHAR. I appreciated those numbers that you put out there as well in your studies. Thank you. Mr. Knapp, South Carolina. Been in your state a few times for some reason. But please let me know if you believe it was a secure election.

Mr. KNAPP. Yes.

Chairwoman KLOBUCHAR. Okay. Very good. Mr. Bowens in North Carolina.

Mr. BOWENS. Yes.

Chairwoman KLOBUCHAR. Okay. Very good. Ms. Johnson, just what you saw across the country when it came to election security?

Ms. JOHNSON. Yes.

Chairwoman KLOBUCHAR. Okay. Very good. Thank you. Maybe I will start with you, Secretary Toulouse Oliver. What major issues did you see election officials in your state facing in 2022? Then get a little—dig deeper on some of the things you identified.

You said you listened to everyone and then came up with ideas for change. I know Secretary Simon in Minnesota—as I know we

have had a very good history of elections in our state in terms of turnout—he still found things he could do to improve things and has introduced legislation and the like. Why don't you talk about—and already passed some things—what you see went well, what you wanted to improve out of 2022.

Ms. TOULOUSE OLIVER. Thank you, Madam Chair. I think, you know, I do not think I would be remiss on speaking on behalf of all of my colleagues here when I say that, you know, when it comes to election administration, there is literally always room for improvement, no matter how successful an election we conduct, no matter how robust the participation, how well the policies and procedures were implemented, there is always room to make it better.

That is actually one of the beautiful things about the work that we do, especially as our society and our democracy evolve over time, looking at ways to improve the process, make it more secure and more accessible, is really important.

In my state, a couple of the challenges that we really sought to address in this most recent Legislative Session in our state, in particular the, what really is effectively the weaponization of public records request. As several of the witnesses here today mentioned, you know, myths and disinformation has generated a lot of threatening and harassing activity. Some of them, you know, are outright threats of violence, that I think probably all of us have had to deal with in some form or fashion.

But some of them come in the form of—you know, we have in my state, 33 counties, so not nearly as many as most of the folks up here. Some of our election offices are as small as two people, right. Two full-time employees.

When they are being bombarded with literally hundreds of requests for thousands of documents, many of which are not actually relevant to the conduct of elections or to kind of, you know, getting to the place where the interested party wants to go, that is really challenging.

We look to try to make sure how do we maintain documents, access to public documents, but let's make sure we are protecting the privacy of the voter or our critical national infrastructure, things like that as well. Last but not least, I will just mention that we did pass increased penalties for threats of violence and harassment toward election officials in particular.

That is a piece of legislation that I think is going to really help us moving forward with the not only the sense of safety and security of our election administrators, but also in terms of that challenging issue that we are seeing with regard to hiring, retaining, and training our poll officials.

Chairwoman KLOBUCHAR. A good segue for you, Secretary Evnen. With your experience, could you talk about retaining election work force, as you know, you have officials choosing to retire or leave.

There are issues as we—I know you surveyed and I mentioned the Brennan Center, and in some states more than others, where people are concerned about their safety because of threats or they do not want to be on the front line like that. Could you talk about the professional pathway to becoming an election official and just what recommendations you have when it comes to retaining elec-

tion officials? Really both—we have the professional ones, and then of course, we have volunteers.

Mr. EVNEN. Attracting and retaining election officials. There are county clerks in many of Nebraska's counties. It is our county clerks who serve as our election commissioners as well. Some of our larger counties have dedicated election commissioners. There is certainly a heightened interest in elections.

That heightened interest extends to the county level. There are two things that I think are helpful in my state. One is when I have the opportunity and when the chief deputy—when the deputy of elections has the opportunity to go out and speak, we find that when people become better informed about election systems, the elections process, that they leave with greater satisfaction.

We also try to involve people in it. That is, we encourage people to become poll workers. We encourage people to become observers on Election Day. What we find is that as they become more familiar with the process itself, their confidence in the integrity of the process grows.

The other observation I would make in response to your question, Senator, is that we had very good elections in Nebraska, and I am bragging on my state, Senator. But it is, I am not bragging on myself, because it is the people in those 93 counties who made that happen.

I think it is very important, and I did so in my remarks, I think it is very important that we recognize their work and that we express appreciation and gratitude to them for it. That is something that I have been doing and that others have been doing as well that I believe is helpful to encourage our election officials.

Chairwoman KLOBUCHAR. Exactly. I think that kind of—some of that is defending them. I would say if there is, you know, attacks from people who are misinformed, some of it is just lifting them up for what they are doing because it is such an important part of our democracy. They are truly on the front lines when people go and vote. In your absence, Senator Fischer, I did bring up the Gophers, Cornhuskers record. Just I wanted to have full disclosure.

Okay, I once called her from a Gophers game when the Gophers beat Nebraska, which was a surprise. I said, I thought it was funny because I know how important, and she said, it is not funny at all. I was still at the stadium.

She said, we could talk about it later. Okay, on that note, Mr. Knapp, if you want to talk a little bit just about, I raised this issue I have worked with Senator Graham of your state on disclosures on an election bill we did together, on election ads on that came about because of some of the foreign purchases of ads during one election.

We have worked on social media platforms and how we police this—and I know this was not in your testimony. I was just thinking of Senator Graham's willingness to work on some of these issues.

Could you talk a bit about how you deal with that with the—and I am not getting, I do not want to get into the political realm about it, I am just talking about making sure that your citizens are informed about what is going on with elections when they are bombarded with things that sometimes are not true, even for the

administration of elections, and how and when they vote. Mr. Knapp.

Mr. KNAPP. That is a fantastic question because it gives me an opportunity. As Secretary Evnen said, one of the weapons we have is to combat the misinformation with true information about what is going on with elections.

Shortly after the 2020 election, my agency published this on our website, basically South Carolina's elections A to Z, and it talks about everything about how we keep the voter lists as accurate as possible, how our voting machines work, how we do audits. This is for—it was written so it could be understandable to just about anybody.

This is from us. We also just this year started publishing an annual report to our General Assembly. I mean, that is the audience for this, for anybody. It talks about what have we done this last year as an agency to administer our elections in our state. The reality is there is a segment of the population that is not going to believe anything we say, no matter what we say.

That is not who I am speaking to. I am speaking to the other 90 percent of the population that all they hear is the screaming and the misinformation. You know, I get it. Questioning Government is an American pastime and has been for—since the beginning. But at some point, Americans have to decide, do you believe the election officials or not?

This is our best shot at trying to be as transparent as possible. That is really something I have tried to hone in on during my tenure is transparency.

Chairwoman KLOBUCHAR. Okay. Thank you. I really want to ask Mr. Bowens, Ms. Johnson a question. I am going to do that on my second round here because my colleagues are waiting. Before I go vote and turn this over briefly to Senator Fischer, I would like to ask unanimous consent to enter the following documents into the record.

A new report by two nonpartisan groups, Issue One and the Alliance for Securing Democracy at the German Marshall Fund, with 13 recommendations to improve election administration, including the reforms in the Election Worker Protection Act that I mentioned that I have introduced.

A letter from the Southern Poverty Law Center Action Fund and statements for the record from a bipartisan pair of county clerks about the challenges they face when running elections.

Justin Roebuck, the Clerk and Register of Deeds for Ottawa County, Michigan, who is a Republican, and Brianna Lennon, County Clerk for Boone County, Missouri, who is a Democrat. Without objection, these documents will be entered into the record. So entered.

[The information referred to was submitted for the record.]

Chairwoman KLOBUCHAR. Senator Fischer.

Senator FISCHER. Thank you, Chairwoman Klobuchar. Again, thank you to our witnesses. I have a question to address to Secretary Toulouse Oliver, Secretary Evnen, and Mr. Knapp. In recent years, election officials nationwide have faced an increasing number of cybersecurity threats from sophisticated and also very malicious actors.

Specifically, during the 2022 election cycle, both Illinois and Mississippi experienced cyberattacks on their public election websites, which provide voters with that important information, such as precinct locations.

While these attacks did not compromise voting systems themselves, this issue remains a serious and ongoing challenge. If you could tell me, have your respective jurisdictions experienced cybersecurity incidents or threats, and what have your officers done that ensure that your state's voting systems and your elections systems are secure? Secretary Toulouse Oliver, please.

Ms. TOULOUSE OLIVER. Thank you very much, Ranking Member, for the question. I think it is unfortunately safe to say that to one degree or another, every election jurisdictions in the country, certainly every statewide jurisdiction, has received or has been the target of attacks or potential attacks.

We know that there is constant, you know, scanning of sites, attempts, phishing attempts. You know, I personally I joked with my staff one time that I personally thwarted the Russians because there was a phishing email that looked suspicious and I reported it and it followed the path through, through the ISAC and up to CISA, and it was, you know, identified as a foreign source phishing attempt.

The reality is that this is a threat that we are all dealing with all day, every day, and even the smallest jurisdiction in the country has the potential to be vulnerable to such threats. In my state, and I will be as brief as possible, but of course, one of the first things we did was create a robust partnership with in particular CISA to utilize all the tools that they have available to us as a state jurisdiction and to push down to our local jurisdictions, to both look for any potential vulnerabilities, to get advice and information about how to patch those up.

As Secretary Evnen mentioned, we also have Albert sensors installed on our systems so that we are looking for odd patterns of internet traffic behavior coming into our systems so that we can be aware that maybe something is going on.

We have created a very robust cybersecurity and really generally an election security program in my office that we recently took from just being a program initiative that I created to now being required by New Mexico State law moving forward, that there is always going to be such a program in my office.

The point is really to take that the resources and tools that we receive from the Federal Government and from our private partners and be able to make sure that those are all available downward to every local election jurisdiction across the state.

Senator FISCHER. Thank you. Secretary Evnen.

Mr. EVNEN. Thank you, Senator. We are fortunate in Nebraska, we have not had any cybersecurity incidents in Nebraska. Nebraska was the first state to place an Albert monitor—this is a detection intrusion monitor system on the services—on the servers of a private vendor for our statewide voter registration system.

That, by the way, has now been replicated in seven other states. In terms of our ballot tabulation machines, the computers that compile the results, these are air gapped. They are not connected to the internet, for any purpose at any time.

We have also placed additional Albert monitors in strategic locations throughout our state. Since 2018, all of our state's vendors that are part of our elections infrastructure have and continue to work with the Department of Homeland Security, in particular the offices of cyber hygiene and physical security for best practices.

Those are not offices, those are our principles and profiles, cyber hygiene and physical security, best practices. All 93 counties in our state are members of the Elections, Infrastructure, Information Sharing and Analysis Center. This is EI-ISAC. All 93 counties are members, and that is also a very valuable resource to keep up with the latest threats and the best practices.

Senator FISCHER. Mr. Knapp, if you could answer that. But also, you had a lot of experience in dealing with that as director of voter services. You are responsible for information technology, cybersecurity, in support of statewide voting systems. How did that experience—I guess, did it shape your approach to cybersecurity a little differently than the Secretaries, or do you have the same concerns?

Mr. KNAPP. I have the exact same concern. Secretary Evnen and I have the exact same voting system, which is not connected to the internet, so that is not a concern. But the I will say South Carolina, the state, my agency, has not been a victim of a cyber incident, luckily.

We have all the resources we could ever need with Homeland Security, CISA, EI-SAC, the FBI, our state law enforcement, our Department of Administration, which houses are networks. We have Albert sensors. We have everything possible to protect our statewide election system, which we house.

I would say the biggest vulnerability in South Carolina is probably our locals. Although the State of South Carolina, I am sure, is inundated every second with attacks from adversaries, the biggest victims in my state of cybersecurity attacks are small municipalities, municipal utilities, and we are what is called a top-down state in that I supervise the county election offices, but they are still counties are still autonomous.

If they do not want to accept help or spend their own resources on cybersecurity, they do not have to. But that being said, county election officials that have access to our statewide election system, they all undergo cybersecurity training.

We do phishing. We do phishing campaigns in my office to ensure everybody is trained on that as well. We do lots of training. I can say that my agency at the state level has every resource I can think of. But I do worry about my smaller counties and municipalities.

Senator FISCHER. Thank you. Sec—I almost called you Secretary.

Senator PADILLA. I know why. As a former Secretary of State for the great State of California, now serving in the Senate, I am thrilled to welcome state and local elections officials to testify before us today.

I think it is important for this body to hear from the folks on the ground, the folks who do this day in and day out to inform our positions in decision making and investments. It is true here now more than ever before because we know the impact that the Big Lie has had through the sowing of disinformation throughout—

about our elections in the minds of a lot of the American people. It is that with abstract consequences.

There are very real consequences, even in the State of California, where Shasta County has chosen to stop using their Dominion voting system, and I should underscore a state tested and certified voting system, putting itself in a position with no system or plan in place with elections less than a year away, because it is not about next November, it is about the primaries in 2024.

There are real dangers here to all of this. I know Chairwoman Klobuchar mentioned earlier her concern about election workers and the threats that they are under on an increasing basis. Again, a consequence of the Big Lie.

When one in six election workers share that they have faced threats and harassment since the 2020 election, resulting in one in three election workers leaving their positions, it is not just a matter of capacity that is being lost as a result, but the tremendous talent and experience that is lost.

While threats and challenges to our elections are only on the increase, my first question is for Secretary Toulouse Oliver. Good to see you again. Can you just share what your experience in New Mexico has been in this regard? Any aside from stats, any tangible examples of the threats to harassment from your office to the locals, and the loss of election workers and what that means?

MS. TOULOUSE OLIVER. Thank you very much, Madam Chair, and Senator from my native State of California. It is very good to see you again. I did already allude to a little bit of this in some earlier comments.

Forgive me for repeating myself a little bit, but so I think the challenges are twofold in terms of the demands and the challenges in retaining—you know, and I really want to emphasize that because our poll, particularly down at the local level, our poll workers, the ones who come year in and year out, who have that breadth of experience and knowledge, but also our local election officials, right.

In my state, county clerks, their staff, right, having folks who know and understand the election process, who are educated, efficient, good at their jobs, keeping those professionals in place is really important. When they experience harassment and threats and we do lose and we have in my state, just as we have seen across the country, we have lost a lot of these experienced folks as a result of this. It is a challenge.

I think that the challenge is twofold. I think first and foremost, there is sort of the obvious, you know, threats of violence and just outright harassment. I mean, I have heard reports from poll officials who say they were, you know, followed home.

You know, folks who are kind of lingering outside of a polling place and waiting for them to close down and kind of you know, following them home to see where they live, you know, ostensibly to—I do not know, see if they brought a ballot with them or something like that from a polling place.

But also, one of the bigger challenges we are dealing with is that the misinformation is creating sort of, you know, tens of thousands of what I would call, you know, individual self-described detectives



who are flooding even our smallest offices with information requests.

They are so overwhelming that they cannot even—they do not have the time they need to do their jobs, right. Those are some of the challenges.

Senator PADILLA. These are, you know, great examples, which from what I hear, colleagues in other states were contentious states, particularly the once every 4-year state, it gets even more intense. I will try to make another couple of questions on the shorter side with my time left.

But yes, one question for Mr. Evnen, do you believe your team and the local leaders that you work with are prepared for the challenges that the Big Lie is going to cause in next year's election? Yes or no, or very brief answer.

Mr. EVNEN. Well, our elections officials across the state are county clerks. Our elections are conducted by county clerks across all 93 counties and election commissioners in our larger counties. They are prepared. We support them from the Secretary of State's Office in our elections division. We support them with information. We support them—

Senator PADILLA. Are we going to be ready next year?

Mr. EVNEN. We are ready.

Senator PADILLA. Any concern about being ready next year or not?

Mr. EVNEN. We do not have concerns about being ready. We have responded to questions and concerns. You can see on the Secretary of State's website, the Nebraska Secretary of State's website, we have a presentation called Fake versus Fact, and in that we have responded to a number of the concerns that have been raised. We lay out what we have found to be the case and we let the voters decide for themselves what they think.

Senator PADILLA. All right. Let me follow-up with some of you on—after the hearing with some more specific questions.

The last one is more on the technical side, you know, for a lot of people across the country, increasingly getting to the polls on a single particular day between a certain time and a certain time to cast your ballot is not always the most convenient, particular changing rules.

We know that primarily in the West, from Utah, Colorado, Oregon, California as well, we have expanded greatly the option of voting by mail, which has proven to be very safe, very secure, in addition to be very convenient.

Question for Mr. Bowens, do you think we would benefit from a basic Federal standard that would allow all voters that are eligible to vote, and we are talking about eligible voters here, to be able to exercise a vote by mail option?

Mr. BOWENS. Thank you, Senator. I can speak to Durham County, North Carolina, and what works there. Over the past three Federal general elections, approximately 63 percent of our voters have participated early.

Over the same three Federal general elections, we have received over 82,000 civilian, military and overseas, absentee by mail requests, no excuse. In North Carolina, 72 percent of those that were returned were accepted and counted.

I believe that North Carolina has established very good standards with respect to voting in general, but certainly early voting, which begins 17 days or the third Thursday prior to each election, and I believe the first in the country to distribute absentee by mail ballots beginning 60 days prior to Federal general elections.

To the extent that standards would comply with what North Carolina does, which I think is a very good model, I would agree with that.

Senator PADILLA. Thank you very much. I am a big believer, just so you know, and again, proven to be safe, secure, and very convenient for folks. Thank you, Madam Chair.

Senator FISCHER. Thank you, Senator. Nebraska kind of eased into voting by mail. We started in, I think it was 2005, a bill passed in the legislature when I was there that in reaction to the Help America Vote Act. The cost that would have had on some very sparsely populated counties.

A bill was passed to allow those counties to vote by mail. As Mr. Bowens said, you know, you—the state was able then to work it out and set standards that worked for the state, and so we enjoy voting by mail in Nebraska—

Senator PADILLA. I get—I appreciate that every state is different, every local jurisdiction is a little bit different. I am not a fan of vote by mail exclusively, but as an option because the general trend that we have seen is when voting by mail is an option, more people exercise it, fewer people show up in person, so that the cost of implementing vote by mail is actually a lot less than the cost of maintaining polling places and staff and equipment for days when fewer and fewer voters are showing up. You still maintain an in-person option, but that right balance of the two is the most efficient.

Senator FISCHER. I think that is important that, you know, as Mr. Bowens said, the states are able to figure out how to make that work. Thank you.

Chairwoman KLOBUCHAR. It is fun to come into a discussion between my colleagues.

Senator FISCHER. There are so few of us here—

Chairwoman KLOBUCHAR. Exactly. We are pleased to see two new Members of Committee here, Senator Britt, and then we will go to Senator Bennet. Senator Britt.

Senator BRITT. Thank you, Madam Chairwoman, and Ranking Member. I am excited to be at my first hearing today. I actually want to follow-up on the line of questioning from my colleague here across the aisle.

As he discussed, recruiting poll workers has been a constant challenge and it has actually become more challenging, more difficult in recent years as we have had more and more experienced volunteers choosing to retire.

I would like to do kind of a rapid fire very quick as we go through and talk with each of you just about what are your offices doing to encourage people to engage in this electoral process, to be poll workers?

Any tips you have or anything that is working? Because I think if we could hear what is working for you, that would help us get the word out to other places about what they may do to help remedy that problem. We will start with you. Yes, ma'am.

Ms. JOHNSON. I am not an election official, but I will say as part of our work with the Election Protection Coalition, we definitely push for people to sign up to be poll workers because we see them as an essential part of the process and we create guides to help voters know about the process.

Senator BRITT. Right, absolutely. Okay. Thank you. Yes, sir.

Mr. BOWENS. I would say it is twofold. One is related to compensation. In North Carolina, we pay our poll workers.

But I also understand that in many jurisdictions, very fortunate in Durham County, and many North Carolina counties, they cannot pay reasonable compensation outside of the statutory baseline to engage workers wanting to participate.

This speaks to the need as suggested by the National Association of Counties, for consistent, predictable Federal funding to help in that regard.

Senator BRITT. Thank you very much. Mr. Knapp.

Mr. KNAPP. I would agree with that. More pay is always good. Always I will say that in the last election we had two counties that were struggling to find poll workers. Their counties decided to supplement what we reimburse at the state level and lo and behold, they had a surplus of poll volunteers.

I will say the biggest issue we have in South Carolina in regards to poll workers is the harassments that they receive during the primaries from observers and watchers. One thing that my office did to kind of combat that because our state statute is very vague on what watchers and observers are and what they can do.

I just established a, here is what you can do. Here is what you cannot do. Poll watchers, observers, you cannot scream at election officials. Election officials, you cannot prohibit these observers from seeing what is going on. I think everybody on the same page—

Senator BRITT. With clear guidelines.

Mr. KNAPP. Yes, everybody is on the same page.

Senator BRITT. Secretary.

Mr. EVNEN. Thank you, Senator. Our recruitment efforts go back to the primary in 2020, May 2020. We did not change our primary date. You recall that we were very much closed down as a result of COVID, as a result of the pandemic. But Nebraska voters like to go to the polls and they want to go to the polls, and we have a percentage of Nebraska voters who are voting early.

But we also have Nebraska voters who like going to the polls. We were committed to having every one of our polling places open, on time, all day, and we did so. We were successful in that. One of the things we did was run a step up campaign. We did this on radio, television, social media.

What we said was this, Nebraskans take care of each other, and they do. Nebraskans take care of each other. There are older poll workers who are concerned about serving as poll workers in the midst of the pandemic. It is time for the next generation of poll workers to stand up, to step forward, and they did, Senator, they did.

This was a difficult challenge, which turns out to have been a generational opportunity for us. Now today, I encourage people who have concerns about our election processes to go serve as poll work-

ers. Go be a poll worker, take a look at what is going on and see what you think for yourself.

Senator BRITT. We need more people—[technical problems]—to step up and do it. I am almost out of time. I am so sorry.

Mr. EVNEN. Okay, I am sorry.

Senator BRITT. Just quickly, because I have one question I want to get—

Chairwoman KLOBUCHAR. We are not that strict here on the Rules Committee, even though we are called the Rules Committee—

Senator BRITT. Okay, great. I really appreciate that. Senator Klobuchar. Thank you.

Ms. TOULOUSE OLIVER. Thank you, Senator. I will echo all the comments that have been made. This is a truly bipartisan issue. I will just dovetail on Senator Evnen's campaign point. In my—Secretary sorry, all the s all the titles. In my state and many other states, we actually allow 16 and 17 year olds to serve as poll officials even before they are ready to be actual voters. They are getting in on the process—

Senator BRITT. Getting the younger generation involved—

Ms. TOULOUSE OLIVER. We are seeing a lot of success with that as well.

Senator BRITT [continuing]. Taking pride in the process. I love it. We have got to get more people engaged and be able to, the generation that is retiring and we have to have new people step up. Thank you for those ideas. Quickly, if I may, just a quick question actually for Secretary Evnen.

Am I saying that correctly? Excellent. Your testimony referred to your longstanding support of voter ID and the overwhelming decision of Nebraska voters this past November to amend the state Constitution to require a presentation of photo ID before casting a ballot. In Alabama, our voter ID law was passed in 2011 and has been in effect since 2014.

Under our law, a voter that does not have one of the approved forms of voter ID may receive a free Alabama voter ID from various locations, including the local County Board of Registrars, among others.

But in fact, actually, our Secretary of State's Office will drive to your house and give you—do a voter ID right in your driveway, if that is what it takes to make sure that you have that. I obviously share your view that voter ID laws are important way to help ensure the integrity of and enhance faith in our elections.

Can you just say a little bit more about the importance of that, and what do you believe have been some of the best practices that you have seen?

Chairwoman KLOBUCHAR. Secretary, I know Senator Bennet has another commitment so quick answer on this one. I would really appreciate it. Thank you.

Senator BRITT. Thank you.

Mr. EVNEN. We are looking into the implementation of it with the legislature, and I am working with them. The legislature is looking at can we make our state issued photo IDs available at no charge. I think that that goes a long way. Already 97 or 98 percent

of all registered voters possess a photo ID issued by the state. We are committed to make sure make—

Senator BRITT. Make sure everybody has one.

Mr. EVNEN [continuing]. sure that everyone has an opportunity.

Senator BRITT. Thank you so much, Mr. Secretary. Thank you all for being here.

Chairwoman KLOBUCHAR. Thank you. Thank you very much. Senator Bennet.

Senator BENNET. Madam Chair.

Chairwoman KLOBUCHAR. You are well aware of our competition over the years—who has the highest voter turnout—

Senator BENNET. I am going to talk about that today, and Senator Britt, it is a pleasure to be here with you today. Senator Fischer, thank you for letting me come to the Rules Committee.

I would like to thank all of you for your patriotic service to our country. This is—I never thought I would say that necessarily about people that were administering our elections, but you are at the heart of what this democracy is facing right now, and I deeply appreciate that. Ms. Johnson, thank you as well for your patriotic advocacy and service.

I am actually going to ask you maybe my first and only question. Please let me just say, Chair Klobuchar, thanks for letting me come to the Committee. I know it is not easy to get on the Rules Committee, and I am one of the youngest or newest Members—not the youngest.

I used to be one of the youngest, and I am grateful, grateful to represent Colorado and to work alongside everybody here to advance this Committee's important work. Through the last few years, the Chair and I have had a friendly competition.

It has been a losing competition for me about whose state could produce the highest turnout of voters in the election. Since I said in every single corner of Colorado this election, while I was running for reelection, I will say in front of everybody, that we lost again to Senator Klobuchar and to Minnesota. I implored people to get to the vote—to get to the polls so they could deprive the Chair of her talking point.

Even though Minnesota came out on top, both of our states have a lot to be proud of because we are consistently delivering higher voter turnout than the rest of the country. The reason for that is that we have made it very easy for everybody to vote without compromising security in any way. Nobody in Colorado would accept compromised security, and we do not.

Colorado's approach allows residents to register online not only with a driver's license, but with Social Security numbers, something only one other state in the Nation accepts. We have automatic voter registration that meets Coloradans where they are, so they do not have to take a day off work to find child care to ensure their names are on the voter rolls. We have same day voter registration. We have led the charge on vote by mail, one of just seven other states to do so in 2022.

We were just having a discussion about vote by mail. In 2022, 95 percent of Coloradans voted by mail. Today, if somebody tried to take away vote by mail in my state, they would be run out of town for doing that.

One reason I wanted to join this Committee is because we should make it easy for every American to vote the way people in Colorado have the chance to vote. Instead of expanding vote by mail, we have seen states move to restrict it, or at least 80 bills in 23 states introduced to limit vote by mail based on the false belief that it is somehow more susceptible to fraud.

Then, as we know in Colorado, an American is more likely literally to be struck by lightning than to commit fraud with a mail-in ballot. Do not take it from me.

Take it from the Heritage Foundation, a very conservative think tank here in Washington, who found that out of 250 million absentee votes cast over a 20 year period, the rate of mail voting fraud was 0.00006 percent of all votes cast. That is virtually zero. In fact, I do not know if you can get closer to zero than that.

Ms. Johnson, vote by mail has been a huge benefit to rural communities in my state that may live far from voter service and polling centers. How do you think efforts to restrict vote by mail affect voter turnout, in particular for communities that might already have difficulty making it to the polls?

Ms. JOHNSON.

[Technical problems]—where we had a historic turnout. That was because of increased opportunities to vote, including increased access to vote by mail. We saw particularly voters of color taking advantage of that opportunity to vote by mail.

I really hope that more states would be in competition with Colorado and Minnesota about who would have the highest turnout, because vote by mail really contributes to that. When we see efforts in states that are making it harder for voters to vote by mail, it is making it harder for voters to have a voice because they are taking away that opportunity that voters had.

When they have that opportunity, they turn out. It is really important to have a standard of vote by mail as an option so that we can make sure that we have high turnout across the country and not some states having opportunity and others not.

Senator BENNET. You know, one other thing I would just mention to the Chair and the Ranking Member before I wrap up is that the other benefit to vote by mail in our state is we have ballot initiatives, you know, and people have to read those ballot initiatives. It took me probably 45 minutes to fill out my ballot.

The last time I voted took 2 seconds to actually cast the vote, but it gave us the chance to be able to reflect on stuff, look stuff up, think about things. That is another aspect of it that I think if we gave it up, all it would mean is massive lines of less informed people at the polls.

Anyway, I commend it to everybody and thanks again for letting me be on the Committee, Madam Chair. I appreciate the time.

Chairwoman KLOBUCHAR. Okay. Very, very good. Well, we are excited to have you join us. I wanted to ask you, Mr. Bowens and Ms. Johnson, because I did not get to it, just some remaining questions here. I think Senator Cruz is going to be joining us, so I will do a bit of a Senate filibuster here.

But I also wanted to ask both of you questions. I wanted to ask you about disinformation, misinformation, and how you think that

affects things. I am thinking back, I talked to Mr. Knapp a little bit about it.

You know, thinking back to the worst of it, when Senator Graham and I did the bill—actually it was originally Senator McCain and I, and then Senator Graham took over the bill, the Honest Ads Act that came out of incidences in 2016 when we found out some ads were paid for by rubles.

We had situations where we had some African-American voters that were targeted in certain areas in I think it was Illinois and some other places with election information that said, why, why come in to vote? You can text your vote, which of course was not correct. At, you know, 8, 3, 4, 5, 6, 7. I mean, there were actual—we actually had stuff on the internet that had been sent to these voters.

Could you talk about that? What has been done recently to make some improvements in your state? Ms. Johnson, you certainly have a national perspective on that. Mr. Bowens.

Mr. BOWENS. Thank you, Chairwoman. We have had similar incidents in our county over time where individuals have received text messages with disinformation, whether it be in regard to polling place locations, or how to vote.

Our response in regards to this and misinformation has really been focused at a statewide level. Our state has implemented several campaigns to educate various members of our community and the state as a whole on what is factual. A part of that campaign is really focused on trust. Go to your local county board of elections.

We found that pushing out that model has really helped get the correct information out there and kind of quell issues when they arise with disinformation.

Chairwoman KLOBUCHAR. Okay. Ms. Johnson.

Ms. JOHNSON. Yes, Senator, we actually had a litigation targeting those who had a scheme to have robocalls to intimidate Black voters during the 2020 election cycle and very successfully litigated that claim and including having a fine from the FCC.

The reason we became aware of this was from a call to the 866-OUR-VOTE election protection hotline, because one of the things that misinformation and disinformation feeds on is when voters are not as informed about the election process, they can fall really susceptible to those efforts.

I have been here doing election protection long enough when it was a flier in the neighborhoods, and now it is on social media and really harder to detect. Having a resource like the hotline helps us to identify when this is happening and to be able to address it. I will also note that there was discussion about the challenges on local election officials when they have to confront mis-and disinformation.

We saw in 2022 where tens of thousands of voters were challenged and their voter registration was challenged and sent to election officials in Georgia right before the election that had to be processed based on mis-and disinformation.

It has an impact not just on the voter and their confidence, but it also puts, as you have heard, an outside pressure on election officials and their ability to administer elections as well.

Chairwoman KLOBUCHAR. Okay, Very, very good. Thank you. Next up, Senator Cruz. You should know I filibustered some Senator Cruz so that you would get here for our Committee hearing.

Senator CRUZ. I appreciate it very much. Having served with you for a long time, I know that you are quite capable of a wonderful filibuster.

Chairwoman KLOBUCHAR. Thank you.

Senator CRUZ. I am sure we heard the virtues of the great State of Minnesota.

Chairwoman KLOBUCHAR. Yes. Our highest voter turnout, which is higher than Texas. The only thing you have on us is a bigger state fair, but that is only because you are open for 30 days. We actually have the bigger state fair. But continue on, Senator Cruz.

Senator CRUZ. I might disagree, but I will pick a different forum for that discussion. Good afternoon. Welcome to everyone.

Every American wants election processes that they can trust and that are neutrally applied. When Secretaries of State or even State Supreme Courts contravene their own laws in order to skew election rules toward preferred political outcomes, this undermines the public faith in the democratic process.

One such area for this is voter ID. According to Forbes, 81 percent of Americans support voter ID, including 62 percent of Democrats. Voter ID, I believe should be a basic minimum requirement for a free and fair election. Yet voter ID right now is opposed on a partisan basis by virtually every Democrat in Congress and by a great many Democrat Secretaries of State.

Secretary Oliver, you have been vocal on this topic. You told the Albuquerque Journal, "I support policies that ensure the integrity of our elections. New Mexico requires voters to provide personal identifying information when voting in person with increased ID requirements for absentee voting. Photo voter ID laws, however, can make it harder for some communities to vote. I do not support this policy." According to the numbers I just cited from Forbes, 81 percent of Americans and 62 percent of Democrats support photo ID for voting, why is it that the policy you embrace is different from the policy that a majority of New Mexicans want to see?

Ms. TOULOUSE OLIVER. Thank you for the question, Senator. In my position as Secretary of State, first of all, I do not make the laws in the State of New Mexico, but I do have a bully pulpit in which to espouse my viewpoint as 16 years being an election administrator in my state.

There are communities for which having some physical form of ID—and of course, it looks different in every state, states that do require physical photo ID in order to vote. In some states there is a wide variety of such photos that can be used, in some it is much more limited. Obviously, states that have a wide variety of voter ID is available, that is, I think, personally a better policy.

But in my state there are communities where even getting—even getting a tribal, for example, we have a lot of tribal voters in my state. Twelve percent of my state is Native American. Many tribal IDs do not contain a photo. They are not necessarily issued in the same way that we understand photo ID to be issued.

Senator CRUZ. Madam Secretary, with respect, states can address that. Many states, like the State of Texas, provide for a zero



cost photo ID for voting. I will say the polling also shows over 60 percent of African-Americans support photo ID.

I will say the argument that minorities cannot get photo ID I think is condescending. I am Hispanic, I know how to get a driver's license. I have heard from many in minority communities that getting a photo ID is not an onerous requirement.

I will point out, that your website indicates, a physical form of identification is only required for first time New Mexico voters who registered by mail and did not include identification with their voter registration application form. Otherwise, the website continues, the only identification needed to vote is, "a verbal or written statement of identification, including a name, year of birth, and registered address."

You do not even require a date of birth, just a birth year. In about 30 seconds you can obtain enough information about someone to allow you to steal their vote. Madam Secretary, do you know the name Harris Hartz?

Ms. TOULOUSE OLIVER. Senator, that name is vaguely familiar to me. I do not remember.

Senator CRUZ. Harris Hartz is a judge, a Federal judge on the 10th Circuit who sits in Albuquerque. In 2017, Judge Hartz went to vote and he was barred from voting when the Albuquerque city clerk's record showed that somebody else had already voted under his name.

This is a Federal Judge in New Mexico, but you just needed his name and your birth, which is pretty easy to find. He ended up ultimately having to vote—he was initially denied the right to vote. Ultimately, he was given the ability to vote on a provisional vote.

Before voting, he presented his driver's license to the voting center staff, and after an investigation of the fraudulent ballot, Judge Hartz said, "the signature was nowhere near mine and it did not even look like Harris Hartz."

Does it concern you when Federal Judges are having their votes stolen in New Mexico because there is not a photo ID requirement?

Ms. TOULOUSE OLIVER. Senator, I remember this issue now. This was a mistake made by a poll worker. That is what happened. That—mistakes can be made by poll workers even when a physical ID is shown.

Senator CRUZ. But what was the mistake?

Ms. TOULOUSE OLIVER. The poll worker brought up the incorrect record, not—they brought up Mr. Judge Hartz's record as opposed to the individual who was casting the ballot. Neither the poll worker nor the voter noticed the discrepancy and a mistake was made.

When Judge Hartz came to vote, he—there was an investigation into what exactly happened. It was not that the individual was attempting to steal Judge Hartz's vote. It was that there was a clerical error that was made. Clerical errors do get made in elections. They are regrettable—

Senator CRUZ. I think we should protect everyone's right to vote. I agree with 81 percent of Americans that photo ID requirements protect the integrity of our elections and protect your right to vote, my right to vote, and even Federal Judges right's to vote. Thank you.

Chairwoman KLOBUCHAR. Okay. Just a few follow-ups here. I was someone that enforced our election laws as the county attorney for 8 years in the biggest county in Minnesota, and the Secretary of State's Office would forward any questionable things to my office, and I actually had an investigator because I wanted to follow-up on every one.

We looked into every single one and the vast majority of them, in fact, nearly all of them were father and son that had the same name, but it came up on the records. I think we are now at a more advanced stage of our computer systems that those are not being reported, but we would investigate each one.

We had one couple there where the school board line went through their house, and this is a county of over a million people, and they decided to vote twice in a school board election, which was wrong.

We had to deal with that. Then we had one guy who admitted that he had voted twice on the phone and he was put on probation. These are hundreds of cases that we actually pursued and investigated.

That just was in one county, anecdotal, of course, but it was my experience that this is very, very rare. You want to answer that question, Ms. Toulouse Oliver, because I think that is what Senator Cruz was trying to get at, because we know there is—in my state they vouch with—you can—if you are a voter who is doing same day registration and you are new in the neighborhood, you can bring, not brand new, but you can bring an electricity bill, gas bill with a neighbor who vouches for you, and there are things you can do.

But that person is actually putting themselves on the line and vouching that you live there. We just have not had this rampant problem. We have had many close elections, everyone knows that, including the Senate race with Senator Franken and Senator Coleman. These ballots were very closely reviewed on national TV.

Secretary Toulouse Oliver, do you want to talk about how rare voter impersonation is? I note this stat from 2020 from the Brennan Center, experts have found that voter impersonation fraud is so rare that an American is more likely to be struck by lightning than to commit voter impersonation fraud. This is simply because they are not going to risk the legal outcome of having, what was in Minnesota, the county prosecutor's office investigate them. But please answer.

Ms. TOULOUSE OLIVER. Sure, that is right, Madam Chair. Voter fraud, especially in-person voter impersonation, is extremely rare. It is extremely rare in my state as it is everywhere else. The example that Senator Cruz just showed, you know, these things do happen from time to time. When I was the county clerk in Bernalillo County, a former Secretary of State went to vote and the record had reflected that she had already voted. Of course, she was deeply concerned about that.

I was deeply concerned about that. We immediately conducted an investigation and what we found was that during her administration as Secretary of State, she would issue voter ID cards to every voter in the state through the mail with her name at the top of

them as Secretary of State, and a voter had come to present themselves to vote.

Of course, because the former Secretary of State's name was so big on the top of the card, the poll worker said, oh, it is you. Let me flag your record, right. It is very rare. I personally do not favor it for my state. To the extent that these things happen, 99 percent of the time they are clerical or administrative errors.

Chairwoman KLOBUCHAR. Okay. Just maybe ending here with you, Ms. Johnson. The New York Times editorial board noted Oregon has sent out more than 100 million mail-in ballots—100 million since 2000. As you know, they are a big mail-in ballot state.

I like the fact, by the way, that my state is kind of a mix because it gives people—it is easier to do both with the same day registration. I think that is one of the reasons we do so well with turnout. But Oregon also has a high turnout, as does Utah, and they are pure mail-in ballot, nearly pure mail-in ballot.

Oregon has sent out more than 100 million mail-in ballots since 2000, has documented only about a dozen cases of proven fraud. Rounded to the seventh decimal that is 0.0000001 of all votes cast. Does that surprise you at all?

Ms. JOHNSON. Not at all. I think what we saw in 2020, where we had 100 million people voting before Election Day and more people voting significantly before Election Day in 2022 as well, is that voters welcome the opportunity to vote by mail.

We have seen that it is a very secure form of voting. As you noted, the states who have vote by mail do not have any election security risk. It is very important that, as you mentioned, that voters have a range of opportunities to vote because we see when they do so, we have historic turnouts in the elections.

Chairwoman KLOBUCHAR. I also note that former Attorney General William Barr, when he looked at this—it is not just, you know, Oregon looking at their numbers—stated that for the 2020 election that he found no evidence of widespread voter fraud.

I just think in light of what all of you have been talking about in a bipartisan basis, elevating the facts, that when something bad happens we investigate it, we call it out no matter how small, it is so important because that is part of the integrity of the whole system.

But that our foremost focus is, as you Secretary Evnen talked about, it is that credibility of the election and making sure that people understand this, that these claims can be made. But then you look at the fact that every one of you with different voting laws said that you were confident in the security of the elections in the last election. I want to thank you. I do not know if you want to add anything, Senator Fischer.

Senator FISCHER. Thank you, Chairwoman. Thank you to our panel today. I appreciated all your comments and all your viewpoints, and I think it just reinforced how important it is that every state be able to set up and monitor their own elections, to be able to focus on things that work for them.

We heard a variety of differences between the states here, and I thank you all for bringing those viewpoints forward to us, because we know that it is the poll workers under your guidance, as the

election officials in your areas that make this democracy work. Thank you very, very much.

Chairwoman KLOBUCHAR. Well, thank you. I will just end by saying we heard some good things about 2022 including we had secure and safe elections. We also know that as we approach the next election, some states coming sooner than others, Mr. Knapp, as we approach the next election, we must continue to work together to address these challenges by ensuring state and local governments have consistent resources and then, of course, federal help as well.

That comes in forms of protecting electing workers and also technology, and then, of course, making sure that voters can cast their ballot in whatever way works best for them. I look forward to continuing to work with my colleagues on this Committee to provide election officials and voters across the country with the support they need.

The hearing record will remain open for one week. With no other Senators waiting to answer questions, I know you want them to arrive at the last minute and ask more, but we are happy to announce this hearing is adjourned. Thank you all for attending.

[Whereupon, at 4:45 p.m., the hearing was adjourned.]

## **APPENDIX MATERIAL SUBMITTED**

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STATE OF NEW MEXICO  
**MAGGIE TOULOUSE OLIVER**  
SECRETARY OF STATE

**Hon. Maggie Toulouse Oliver, New Mexico Secretary of State**  
**Statement Before the U.S. Senate Committee on Rules and Administration**  
**“State and Local Perspectives on Election Administration”**  
**March 28, 2023**

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

Thank you for having me here today. I am Maggie Toulouse Oliver, Secretary of State for the great state of New Mexico. I appreciate this opportunity to be part of this hearing as you gather state and local perspectives on election administration in the United States. The health of our democracy depends on informed discussions like this about the challenges and opportunities faced by election administrators across our country. My goal today is to provide you with insight into how election administrators are coping with the new voting and elections landscape and to highlight some of the initiatives we’re taking in New Mexico to support the vital work of county clerks and their staff, poll workers, and the myriad other election professionals who make our American democracy a model for the world.

The rise of misinformation and election denialism since 2020 has made the job of non-partisan election administration much harder. When many members of the public are mistrustful about the integrity of our elections, election administrators then bear the associated burdens of frivolous lawsuits, excessively burdensome public information requests, disruptive voters and poll workers, and outright threats and harassment.



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One of the most important tactics to defend against the detrimental consequences of election misinformation is simply putting good policies in place that are informed by election administrators themselves. Such policies can clarify existing laws or create new procedures that assist administrators in the execution of their duties. For example, during our latest legislative session in New Mexico we passed a comprehensive election administration bill that provides needed policies for election administrators to efficiently and uniformly administer all publicly funded elections held in our state.<sup>1</sup> The bill's provisions were drafted in concert with the state's election administrators and stem from actual experiences those administrators navigated either during the last election cycle or are currently navigating in preparation for elections this year.

Many county clerks have had trouble retaining or hiring poll workers because of the increased stress associated with being involved in elections, so we increased poll worker compensation. The bill mandates training for poll watchers and challengers, with a curriculum developed by my office, to aid those individuals and election administrators in better understanding the proper role and conduct of watchers and challengers at a polling place. One section clarifies procedures on public information requests to protect the secrecy of the ballot and information about our national critical infrastructure. This section was included after county clerks were inundated

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<sup>1</sup> New Mexico Legislature. "Senate Bill 180 - Election Changes." March 23, 2023.  
<https://nmls.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=180&year=23>



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with requests for data and other information contained on voting machines (and other sources) that clerks do not actually use for administering elections.

After an individual earlier this year, influenced by election misinformation, allegedly orchestrated drive-by shootings at the homes of six elected officials in New Mexico's biggest city, a provision was included in the bill that shields the home addresses of elected or appointed officials from public disclosure (with some exceptions).

Other provisions in the bill that will assist voters and administrators in future elections include the creation of an electronic signature gathering portal for candidate nominating petitions; mandatory mailed voter notifications to provide voters with information about the dates, purpose, and processes of an election; adjusting timelines and requirements for voter registration, mail-in ballot processing, and early voting hours; protections for monitored, secured ballot drop boxes; better inter-agency information sharing to assist with the maintenance of voter registration records; among others.

Election administrators need tools provided by policies like the ones highlighted above in order to maintain fair and efficient elections that are above the fray of misinformation and partisan meddling. Of course, every jurisdiction has their own decisions to make about which policies best serve their communities. But I believe the policies we have had in New Mexico for years, supplemented by our recent legislative achievements, are a great model for many election administrators to mirror.





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SECRETARY OF STATE

In addition to tailoring specific state policies that assist administrators as they conduct elections, funding for elections is key. Sufficient funding for election administration, however, remains an obstacle for many election offices across the country. The federal government can help states and their election administrators by providing consistent, robust funding streams. These funds can be used to assist election administrators in fulfilling their duties under federal law, supplement costs associated with new trainings and/or physical security upgrades or strengthen cyber security defenses. Without more consistent federal funding to states for elections, administrators may have to contend with outdated equipment and technology, persistent staffing issues, and other circumstances that can inhibit the efficient conduct of elections. More consistent federal funding for elections allows election administrators to better plan for short-, medium-, and long-term goals that benefit all voters.

The federal government has an important role to play in assisting states with the conduct of elections, though each state is different, with different needs, and states should continue to be the ultimate authority on running their own elections. But collaboration is key and an entity like the U.S. Election Assistance Commission (EAC) provides a great example of how the federal government can help states with election-related needs. I was heartened to see the recent budget increase for the EAC and know they will continue to provide needed assistance to states in the future. Additionally, congressional funding of entities like the Cybersecurity and Infrastructure Security Agency (CISA) is vital because states and localities simply do



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not have the resources to defend against the modern threat landscape solely on their own.

Though the current political environment, coupled with the recent rash of election misinformation, makes the likelihood of enacting federal minimum standards for voter access unlikely, I do support certain minimum guarantees of access to early and absentee voting so that there is more equity for voters in federal elections across the country. Some federal involvement in elections will always be crucial for security and for the policy entrepreneurship that comes from such collaboration.

I hope my testimony today is helpful for the Committee and your future work. I thank you again for giving me this opportunity to testify on these crucial matters on behalf of New Mexico and our state's election administrators.

I look forward to answering any questions you may have for me.

**Testimony of The Honorable Robert Evnen, Nebraska Secretary of State  
U.S. Senate Committee on Rules and Administration  
March 28, 2023**

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Good afternoon, Chairperson Klobuchar, Ranking Member Fischer, and Members of the Rules Committee. My name is Bob Evnen, and I have the honor and privilege of serving as Nebraska's 27<sup>th</sup> Secretary of State.

This afternoon I'd like to talk about takeaways from Nebraska's 2022 elections, Nebraska's newly adopted state constitutional voter ID requirement, and security issues including cyber security. I'd like to conclude with a thought about federal versus state control of elections.

After the November, 2020 general election, a significant percentage of voters became concerned about the integrity of voting processes across the country. Nebraska was not immune to these concerns. Within two weeks after the 2020 general election, the Secretary of State Elections Division began tracking concerns that were being raised.

As we began to see certain claims and concerns raised repeatedly, we created a presentation entitled "Fake vs. Fact." The format was modeled on a presentation that we had seen on the Commonwealth of Virginia website called "Myth Busters." In our presentation, we set out frequently cited claims and concerns, then we set forth what we had found in response to them. We put the presentation up on our website in February 2022. The presentation continues to be posted on our website to this day.

When I spoke to groups across the state, I found that the overwhelming majority felt satisfied with the security of Nebraska's elections after I explained our election process.

Nebraska's 2022 elections were conducted efficiently, accurately, securely and in accordance with law. As we have done for some time, within approximately one month before the primary and general elections, every single ballot tabulation machine in the state was tested three times for accuracy by running three separate test decks of ballots through each machine. In addition to these three tests, two mock elections were held. One of these three independent tests was a mock election

held to further check the accuracy of our ballot tabulators, and to check the accuracy of the computers that compile the results and our election night reporting website.

After each election we hand count the results of certain elections in two or three percent of our precincts statewide. After the 2022 general election, we expanded this audit to include ten percent of our precincts statewide. We checked at least one precinct in each of our 93 counties, then added precincts in more populous counties. In counties with more than one precinct we randomly selected the precinct to be checked. Counties were not advised of the precincts to be checked until after Election Day. In those precincts, three races were checked: Governor, House of Representatives, and a local race.

In all, our counties hand counted three races on each of 48,292 ballots. The counting was conducted by election boards in those counties, composed of representatives of both major national parties.

In total, out of the more than 48,000 ballots hand counted, discrepancies were noted on eleven ballots. That is a discrepancy rate of twenty-three thousandths of one percent.

Of the 11 ballots where there were discrepancies, five ballots were marked too lightly for the machine to read the ballot, even though every single ballot carries the instruction to mark the oval completely, and you can turn in your ballot to a poll worker and get a new one if you make a mistake. Five people failed to heed those instructions, even though more than 48,000 of their fellow Nebraskans were able to do so. I might add that, with respect to those five ballots, we really don't know what the voter intended, nor does our state law allow us to try to identify intent. The other six discrepancies were ballots that had been misfiled or misplaced.

We did another check after the election. We found that 682,745 voters across the state were shown on the voter rolls as having cast a ballot. We compared that with the 682,716 ballots that were tabulated. That's a variance of 29 ballots, which is a variance rate of four thousandths of one percent.

Most of the variance can be explained by voters who, for example, signed an early voting envelope and were shown as having cast a ballot, but later when the envelope was opened it was empty. Other times the record shows that a voter cast a ballot, but the ballot wasn't counted because it lacked one or both sets of poll worker initials on the bottom the ballot.

In Nebraska, in my view, our election officials across the state did an exemplary job of conducting an accurate and secure election. Our state, and indeed in my view our nation, owe a debt of gratitude to Nebraska's county election officials for conducting an election that is a model for the nation. I would like to take this opportunity this afternoon to express my thanks and gratitude to our friends and neighbors across the State of Nebraska who conducted an outstanding election for our citizens in 2022.

In November, 2022, Nebraska voters overwhelmingly enacted an amendment to our state constitution requiring the presentation of a photo ID before casting a ballot.<sup>1</sup> I have supported voter ID for many years. Our state legislature is now working on legislation to implement this new voter ID requirement.

My office estimates that between 97 and 98 percent of registered voters already have state issued photo IDs. I am confident that effective legislation will be passed that will carry out Nebraska's new voter ID constitutional requirement without disenfranchising any legitimate voter. I am working closely with the legislature to ensure that we have an effective voter ID requirement that is consistent with the rights of voters.

Let me turn to security issues which elections officials have an ability to address. I will not be talking about disinformation campaigns. These are highly significant but not something that elections officials have much ability to affect beyond cautioning voters to be cautious about their sources of information and to think critically about claim they hear.

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<sup>1</sup> "Before casting a ballot in any election, a qualified voter shall present valid photographic identification in a manner specified by the Legislature to ensure the preservation of an individual's rights under this Constitution and the Constitution of the United States." Initiative 432, November, 2022.

In terms of the elections process itself, in my view one of the greatest threats to election security grows out of the increasing availability of early voting. The threats that come with early voting include the opportunity to pressure or intimidate voters, and the possibility of vote buying efforts. The potential for this sort of fraud is intensifying as these early voting methods become more ubiquitous. In my view we ought to focus our attention on these matters.

Turning briefly to cyber security, the Elections Division of the Nebraska Secretary of State's office was awarded the 2019 Election Innovation Award from the National Association of State Elections Directors. We received this award for our program of collaboration between our office, our voter registration database vendor, the Department of Homeland Security and EI-ISAC (Election Infrastructure-Information Sharing and Analysis Center). Through this collaboration, organized by our office, we were able to place an Albert Networking Monitor on the server of our elections vendor to detect intrusion on our voter registration system.

Albert Monitors are hardware devices that connect to computer servers. These monitors use threat signatures to detect and report intrusion attempts into the server to which the Monitor is connected.

I would note that our ballot tabulation equipment and the computers that compile results are not connected to the Internet and for that reason do not require Albert Monitors. These monitors are important for intrusion detections in voter registration systems, which are connected to the Internet.

One recent issue has arisen regarding Albert Monitors. We are concerned that the Election Assistance Commission (EAC) may not permit states to continue to use HAVA grants to fully fund the purchase of Albert Monitors in smaller counties which use their servers not only for elections but also for other county governance functions. My concern is that, faced with the need to pay for much of the cost of the monitors themselves, counties will simply opt out of using them altogether. We are working with EAC on this issue and I wanted to alert you to it.

Finally, permit me to observe that under the U.S. Constitution, elections have been left to the sound discretion of state legislatures. Speaking from my perspective as the Secretary of State of

Nebraska, the states ought to remain responsible for the conduct of elections. Issues affecting the conduct of elections can be, and ought to be, resolved by the state legislatures.

Thank you, Senators, for your time and attention this afternoon.

**Testimony of Mr. Howard M. Knapp  
Executive Director, South Carolina State Election Commission  
U.S. Senate Committee on Rules and Administration  
March 28, 2023**

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

Thank you for inviting me to present the South Carolina perspective on election administration and discuss the ways my state has kept our elections accurate, secure, credible, and accessible.

I am a firm believer that elections play a vital role in a free and fair society and are the cornerstone of our republic. There is an important link between the trust in our election process and the confidence our citizens place in all government functions.

Since being appointed in January 2021 to my post as Executive Director of the South Carolina State Election Commission (SEC), a five-member bipartisan committee appointed by the Governor to oversee election operations, and subsequently being confirmed by the South Carolina Senate, I have strived to improve and protect the security and resilience of our state's election infrastructure while implementing the reforms needed to move South Carolina forward.

South Carolina has long been a national leader in election operations. We were the first state to have a statewide voter registration system and the first to make our application system available on the internet. It is in this vein that the S.C. General Assembly introduced, unanimously passed, and the SEC ultimately implemented sweeping, bipartisan election reform legislation in May of 2022.

The most substantial election reform legislation in modern South Carolina history, Act 150 of 2022 established no-excuse early voting two weeks prior to an election, amended absentee ballot processes, and modified election crime penalties. Any registered South Carolina voter can now visit early voting locations and vote like they would at their polling place on Election Day, replacing the need for in-person absentee voting. Election law violations including fraudulent voting or attempting to fraudulently vote are now felonies with heightened penalties that hold those that wish to interfere with our elections accountable.



While the process to implement early voting has taken other states more than six months, the SEC managed to do it successfully in 10 days, just in time for statewide primaries in June. As a result of quick action to implement the new legislation, early voting was used for the first time in the state's history, and more than 100,000 voters chose to vote early throughout the state. The SEC spent June through October helping counties prepare for the general election, which was even more successful than the primaries. Over half of all registered voters voted and almost half of all votes cast were cast before the general election either via early voting or absentee. We credit this remarkable turnout, during early voting and on Election Day, to a robust voter education campaign that informed the public of the new laws and election changes through frequent statewide messaging with a multitude of touchpoints to reach every eligible voter.

In a statewide survey conducted after the passage of Act 150, 85% of voters indicated they felt confident in the accuracy of South Carolina elections, compared with only 66% in those carried out nationally. 97% of South Carolina voters felt registering to vote was easy and 93% felt their local polling place was organized and well run.

While election reform legislation undoubtedly positively impacted our election processes during the 2022 cycle, so did the annual work that the SEC and county election officials carry out to maintain the integrity of our election system. This starts with accurately maintaining South Carolina's list of registered voters.

When a person registers to vote, the person remains registered until disqualified for moving outside their county, being convicted of a disqualifying crime or ruled mentally incompetent, requesting their name be removed from the list, or death. Approximately every two years, confirmation cards requesting voters to confirm their registration status are mailed to voters who have not voted in the last two general election cycles. Voters who return the card indicating they have moved, voters whose cards are returned undeliverable by the U.S. Postal Service, and voters who do not respond are made inactive. Notices are sent to voters when they are made inactive giving voters a chance to let us know if the removal was in error. This process not only provides a systematic process for removing disqualified voters but also protects qualified voters from erroneous removal and ensures qualified voters are not prevented from voting.

If there is ever any question about a voter's qualifications to vote, the voter can always cast a provisional ballot. This allows county election officials time to research the facts specific to the voter so the county board of voter registration and elections can decide whether to count the ballot.

In addition to maintaining accurate voter lists, the SEC has developed an unprecedented partnership of state, federal, and private cybersecurity professionals as well as state and federal law enforcement and intelligence agencies that are tasked with protecting the security of our elections and investigating misconduct.

After Election Night and before certification of state and federal elections, South Carolina requires hand count audits to be conducted in every county. At the state level, we select the precincts and offices to audit in each county for state and federal races while local officials select the same for local elections. During this process, election officials publicly open the ballot box for the selected precincts and hand count the votes for the selected office on the voter-verified paper ballots.

The SEC also conducts independent results-verification audits which allow election officials to maximize the technological functions of the voting system while minimizing human error and eliminating chain of custody issues by using securely stored ballot images, rather than voted paper ballots.

Recently, I successfully advocated for additional state appropriations that have allowed the SEC to establish a dedicated audit division with the agency. This division will soon be tasked with conducting county compliance audits in addition to overseeing the aforementioned auditing procedures. These compliance audits will ensure that County Boards of Voter Registration and Elections follow federal law, state law, and SEC policies and procedures.

As we look forward to the future, including leading off the nation in the 2024 presidential primaries, the SEC is confident in our election processes and procedures that have delivered accurate election results for our citizens for countless election cycles. South Carolina will continue to be a national model and leader in election administrations, and we remain committed to being transparent with the public at every turn. We stand ready to assist and provide feedback to the U.S. Congress as it contemplates national reform efforts. South Carolina's election success can serve as a framework for

other states as they look to improve upon the cornerstone of American democracy and instill greater trust in the outcome of our elections.

Thank you.

**TESTIMONY OF  
DEREK BOWENS  
DIRECTOR OF ELECTIONS, DURHAM COUNTY, NC**

**HEARING ON  
STATE AND LOCAL PERSPECTIVES ON ELECTION ADMINISTRATION**

**SENATE RULES COMMITTEE  
MARCH 28, 2023**

Chairwoman Klobuchar, Ranking Member Fisher, and distinguished members of the Committee on Rules and Administration of the United States Senate, thank you for allowing me to join you here today. I am honored by this opportunity to appear before you to talk about the administration of elections in Durham County, North Carolina, both in general and during the 2022 mid-term elections.

I currently serve as the Elections Director for Durham County, NC. In this position, I have administered several local, state, and federal elections. I have more than a decade of local election administration experience and my teams have won multiple awards from the National Association of Counties and the U.S. Election Assistance Commission for innovation in election administration. I am incredibly proud to serve my country in such an impactful way and am equally honored to have two staff members with me today, Deborah Hart and Rebecca Troedsson. It is also an honor to speak to the hard work of the remaining 99 counties in North Carolina, a significant number of which are participating in a Director's association conference today to enhance and advance their knowledge of election administration for our constituents.

I am a non-partisan public servant who believes strongly in the promise of democracy and in the preservation of the core tenants of our democratic republic. I am also a non-partisan elections administrator. I take this responsibility very seriously and carry out my duties impartially without regard to partisan preferences or affiliations. I am committed to developing and carrying out sound processes, according to state and federal law, to give our citizens faith and confidence in the outcome of every Durham County election.

Every day, I am mindful that, less than sixty years ago, people who look like me couldn't execute a basic function guaranteed under our Constitution without hardship and restriction. As such, it is an honor to

equitably serve all citizens in Durham County as the Director of Elections and ensure that elections conducted under my purview are free, fair, and secure. In my testimony, I would like to share with you my experiences as an election administrator in Durham County, North Carolina. I would like to highlight how we conduct free, fair, and secure elections; discuss my experiences during the 2022 mid-term election; provide my thoughts on election funding; and share the work of the Committee for Safe and Secure Elections, a bipartisan organization of which I am a member, and was established to address the recent threats, violence, and intimidation directed at local and state election officials in this country.

Again, thank you for giving me an opportunity to speak with you today and I look forward to your questions.

### Election Administration in Durham County

Durham County has over 320,000 residents, making us the 6th largest of North Carolina's 100 counties. The City of Durham is the largest of our five municipalities in the county. We have approximately 230,000 registered voters. Our county is to the west of Wake County, where Raleigh, our state's capital, is located. In fact, part of Raleigh is also in Durham County. We are proud to have two nationally recognized institutions of higher education in our county, Duke University and North Carolina Central University, in addition to our wonderful technical and community college system. Also, most of Research Triangle Park, a hub of global science and technology firms, government agencies and academic institutions, is in Durham County.

Durham County is governed by a five-member Board of Commissioners. Countywide offices include the Sheriff, the Register of Deeds, and the County Clerk of the Superior Court. Local election administration, including voter registration and election management, is the responsibility of the five-member local county board of elections. In North Carolina, four members of the local elections board are selected by the State Board of Elections (not more than two of which can be from the same political party), and one member is selected by the Governor.

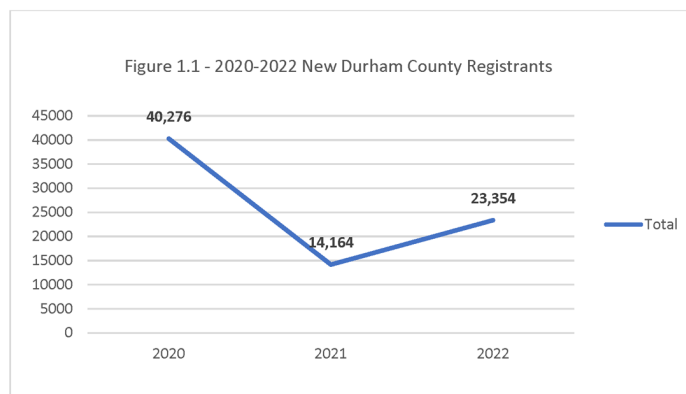
Local election boards, including the Durham County Board of Elections, hire a county elections director, and delegate core election administration responsibilities to the county elections director. The person selected to serve as county elections director is approved by the Executive Director of the State Board of Elections.

Election Administration in Durham County is administered in a manner that promotes free, fair, transparent, and secure elections. There are several core processes, including checks and balances, which work together throughout the election cycle that result in trustworthy elections.

### Voter Registration

Durham County citizens have access to multiple voter registration opportunities. Eligible citizens can register to vote or update their voter registration in-person, by-mail, electronically via email or fax, online as part of NC Department of Motor Vehicles (NCDMV) services, and in-person at the NCDMV and other National Voter Registration Act (NVRA) agencies. Voter registration forms are made available at no cost for voter registration drives and at public libraries, high schools, colleges and parks and recreation facilities. In addition to the traditional means of voter registration, North Carolina allows eligible voters to register in-person and vote during our early voting period – this is known as One-Stop Absentee Voting. There are processes in place to ensure that these *same-day registrants* are qualified to vote at the address they provided at the time of their registration.

No matter the method of voter registration, all voter registration applications are processed through North Carolina's State Elections Information Management System (SEIMS). When processing applications, SEIMS allows county elections staff to verify the accuracy of identification information on applications and check whether the applicant is a currently registered voter in Durham County. There are additional automated processes in place to help determine other qualification requirements, such as whether the applicant meets age thresholds, is currently serving a felony sentence or has an existing registration in Durham County. Figure 1.1 below provides an overview of new voter registrations processed in Durham County from 2020-2022<sup>1</sup>.



<sup>1</sup> Data provided by NVRA Statistics Reports retrieved from the Statewide Election Information Management System (SEIMS).

### Voter List Maintenance

The Durham County Board of Elections ensures the accuracy of its list of registered voters by following the North Carolina State Board of Elections (NCSBE) systematic list maintenance procedures, which comply with the National Voter Registration Act (NVRA) and state law. These procedures require that county election officials review periodic reports provided by different governmental actors, including those listed below, on an ongoing basis.

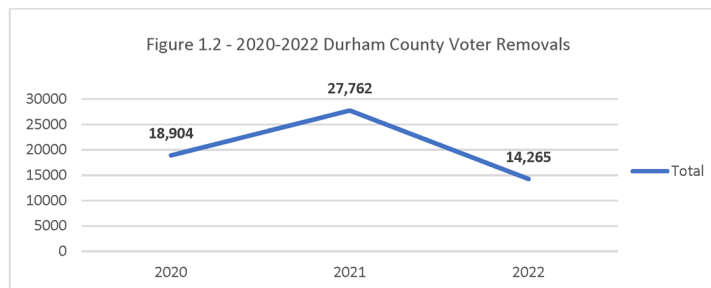
- North Carolina Department of Health and Human Services (NCDHHS) Death Report: This report is provided to each county on a monthly basis by the NCSBE via the NCDHHS and allows counties to remove responsive registrants who have been reported as deceased, if certain data matching criterion is met.
- North Carolina Department of Public Safety (NCDPS) Felony Conviction Report: This report is provided to each county on a daily basis by the NCSBE via the NCDPS and allows counties to initiate the removal process for responsive registrants who have been convicted of a felony and are currently inmates, if certain matching criterion is met.
- NCSBE Duplicate Registrations Matching Report: This report is provided to each county on a daily basis by the NCSBE and allows counties to remove registrants that appear to be registered in more than one North Carolina County, if certain matching criterion is met.
- NCSBE County Cancellation Report: This report is provided to each county on a monthly basis by the NCSBE and allows counties to remove registrants who have self-reported a move from one county to another, if certain matching criterion is met.

We also comply with our State's systematic list maintenance mailing programs, which include the following efforts:

- No-contact confirmation mailings are sent to active voters who have not had any voter registration activity, including voting, for two election cycles with a federal contest on the ballot.
- National Change of Address (NCOA) mailings are sent to active voters who have reported a change of address to the United States Postal Service and meet specific move parameters.

In addition to the data provided by the NCSBE, the Durham County Board of Elections also maintains an internal list maintenance database that evaluates registration data on a daily basis to assess possible duplicate registrations due to data entry errors, foreign characters in naming conventions, registration date

or date of birth discrepancies, and possible mailing address issues. Figure 1.2 below provides an overview of voter removals processed in Durham County from 2020-2022<sup>2</sup>.



These voter registration list maintenance procedures authorized by state law and the additional measures that my office employs are consistent with my assertion that Durham voters should have confidence in our elections.

#### Safe and Secure Voting Options

Durham County voters have multiple safe and convenient options to cast their ballot. North Carolina law permits voters to cast their ballot by mail (absentee voting), through in-person early voting (one-stop absentee voting), or in-person on Election Day.

Voters can request an absentee ballot up to the week before Election Day and there is also a process for emergency absentee requests following this deadline. During even-numbered years, absentee ballots are distributed as early as 50 days prior to the date of the primary election and 60 days prior to the date of the general election. These periods give voters more time to receive and return their voted ballot. In the last three federal general elections, Durham County received 82,145 requests from civilian, military, and overseas citizens voters and approximately 72% percent of these ballots were successfully returned and counted<sup>3</sup>.

In-person early voting in North Carolina begins in each county 17 days prior to Election Day and ends on the Saturday preceding the election. In the last three federal general elections, early voting in Durham County accounts for over 63% percent of voter participation in Durham County. Roughly 22% percent of voters wait to vote on Election Day. In Durham County, this method of voting has become the preferred method of

<sup>2</sup> Data extracted from the Statewide Elections Information Management System (SEIMS).

<sup>3</sup> Data extracted from the Statewide Elections Information Management System (SEIMS)



participation during federal general elections, which is historically when we see the largest voter participation in our county. We have also found that having a high percentage of participation by early voting reduces Election Day wait-time at polling places and mitigates Election Day issues.

Voters may also wait until Election Day to vote. Durham County uses an electronic poll book system developed by NCSBE to *check-in* voters during both one-stop early voting and Election Day voting. Voters sign an attestation of their qualifications to vote on an authorization to vote (ATV) form. Durham County early voting sites and Election Day polling locations are organized by processing stations. Voters' eligibility is checked, and they receive their ATV at the *check-in station*. The voter is then directed to the *ballot station* to receive their eligible ballot. The voter must submit their signed ATV to an attendee at the ballot station. Prior to issuing the voter a ballot, the ballot station attendee will scan a barcode on the ATV and on the ballot and wait for a confirmation notification that the voter has received their proper ballot style. Once a voter receives their ballot, they proceed to a private voting booth to mark their ballots.

Accessible voting options are provided at all Durham County early and election day voting sites. Each site has voting equipment for those who are visually impaired or unable to mark their ballot. All sites have accessible entrances, exits and throughways. Curbside voting is provided to any voter who attests they are unable to enter the voting location.

In some situations, a voter cannot be issued a regular ballot. In these instances, if the voter believes they are eligible and qualified to vote, they will be offered a provisional ballot.

Providing voters multiple options recognizes the variability in our citizens' professional and personal lives and supports greater participation in the electoral process.

#### [Election Night Reporting, Canvass and Election Certification in Durham County](#)

North Carolina law allows absentee by-mail ballots and one-stop early voting ballots to be preprocessed prior to the closing of the polls on Election Day. These procedures occur as part of an open county board of elections meeting under rigid chain of custody and security measures. Early voting results cannot be made public until the polls close at 7:30 pm on election night. When our polls close, the early voting results are some of the first results that are reported to our citizens on election night. Accordingly, Durham County voters can see a large percentage of contest results very early on election night, although they will still need to wait for the Election Day precincts to begin reporting. As part of our election night finalization procedures, it is our expectation that we will report results for all mail absentee ballots received by the Monday prior to Election Day, all in-person early voting ballots and all Election Day precinct ballots.

Election results are not final on election night. For regular absentee voting, ballots are eligible to be counted if they are received by mail up to three days after the date of the election, as long as they are postmarked by Election Day. For this reason, we appreciate the help of the U.S. Postal Service in ensuring that a postmark date is applied to the return envelope of ballots that are placed in the mail stream. Mailed military and overseas ballots can also be received until the day before the official *county canvass*. Counties in North Carolina must meet to officially *canvass* their election results on the 10<sup>th</sup> day following Election Day. During the post-Election Day *canvassing* period, the following activities occur:

- Eligible mail ballots received up until the Friday after Election Day are tabulated
- Provisional ballot applications are researched, and approved provisional ballots are tabulated
- Ballots that cannot be tabulated by the voting equipment are duplicated and then tabulated
- Eligible write-in votes are tabulated
- Other ballot adjudication procedures occur
- The county conducts a sample hand-to-eye audit count, according to the law and rules prescribed by NCSBE
- Voter history for the election is compared to ballots cast and reconciled by precinct, ballot style, party (during partisan primaries), method of voting, and location voted

These post-election processes ensure that only votes cast by eligible voters are counted and certified in the official abstract of votes.

#### [Pre-election and Post-election Quality and Accuracy Procedures](#)

I oversee routine pre-election and post-election procedures designed and implemented to promote confidence in Durham County's elections. These procedures include those required pursuant to state law and additional quality control procedures developed in-house, such as data validation protocols. The following is a partial list of the procedures I conduct or oversee prior to and following an election:

- Jurisdictional Assignment Audits
- Annual Maintenance on Voting Equipment
- Ballot Proofing for Accuracy and Legal Compliance
- Logic & Accuracy Testing on Voting Systems
- Voter History Reconciliation
- Election Official (Poll Worker) Training and Certification
- Hand Count Tabulation Audits
- Canvass procedures

These measures, and many others, help ensure that our elections are safe and secure.

### Successful 2022 Durham County Election

Due to advanced preparation, strong community support, and requisite funding from our county's governing body, we conducted a successful 2022 General Election. In total, 53.61% of our registered voters participated. Of that 53.61%, 6.7% voted absentee-by-mail, 62.2% voted utilizing in-person early voting, and 30.5% voted on Election Day. Sufficient funding is critical, and I know that many local jurisdictions, especially smaller and more rural jurisdictions, do not have desperately needed resources. Some local election officials in North Carolina would struggle to cover the travel expenses associated with appearing at this hearing in person. As is typical for larger counties, Durham County is fortunate to have sufficient resources to not only ensure compliance with federal and state law, but also to develop additional election security tools and trackers that increase voter confidence and engagement, such as wait-time trackers, polling place locator tools, and election material GPS trackers, to enhance our constituent experience.

### Committee for Safe & Security Elections (CSSE)

Following the 2020 general election, I noticed an uptick in alarming communications directed at the County Board of Elections. I personally experienced a vulgar public comment during a hybrid Board of Elections meeting in which I was called a "nigger" several times via a Zoom chat during the canvassing period. I know election officials in North Carolina and throughout the country who were threatened, harassed, and intimidated by people who did not understand the elections process and did not like the outcome of our certified elections.

A [2022 survey of local election officials](#) found that 1 in 6 election officials had been threatened for simply doing their jobs, and more than 3 in 4 election officials believe that threats against them have increased in recent years. This behavior is undemocratic and unacceptable. For these reasons, I joined the Committee for Safe and Secure Elections (CSSE), a bipartisan organization dedicated to building relationships between election officials and law enforcement to help prevent violence, threats and intimidation against election officials through practical resources. The Committee has over 30 members from around the country and includes people with experience in elections administration and law enforcement at the local and state-level.

CSSE's [three broad goals](#) are to strengthen relationships between election officials and law enforcement; provide resources and best practices for law enforcement and election officials to advance safe and secure elections; and support policies that protect election workers and voters from violence, threats, and intimidation.

I joined the Committee because of my commitment to my Durham County staff, our 1,100+ poll workers, and my peers in North Carolina and throughout the country. I believe that if election officials and workers feel unsafe carrying out their responsibilities or feel like they and their loved ones will become targets of harassment or violence, it will be difficult for them to effectively perform their duties. And there is no doubt that these threats have played a role in the exodus of election officials in North Carolina and across the country. As of this testimony, Election directors in 47<sup>4</sup> of North Carolina's 100 counties have left their jobs within the past three years. To address these threats, I believe policymakers should consider protecting election officials' personal information, like addresses. I believe that funding is needed for local election officials to put in place security measures, like security cameras, control access devices, [bullet proof glass](#), [and panic buttons](#), in their offices and other election-related facilities. I was encouraged to learn that the Department of Homeland Security recognized that election security should be included as one of the priority areas for the [2023 preparedness grant programs](#).

In my work, I often engage with election administrators in North Carolina and all over the country. I know that they share my conviction and vision.

It has been disheartening to witness many of my colleagues - defenders of democracy - experience violent threats and harassment aimed at them and their loved ones over the last few years.

### Election Security and Funding

Adequate funding for election administration is critical for secure elections. While the federal government's recent financial support of elections through direct grant funding to state election authorities is necessary to secure centralized systems and provide general resources to local authorities, and while much appreciated, this effort does not supplant the need for direct funding to local administrators who understand best, within the confines of the law, what works for their communities. This approach has broad support, including from the National Association of Counties (NACo), which just [reiterated](#) that it "supports a consistent, predictable and dedicated federal funding stream to assist counties with meeting federal requirements administering elections." The costs of the procedures outlined above are not insignificant. It takes considerable funding and other resources to conduct safe and secure elections. The costs of elections, and the expectations placed on election administrators, increased after the Secretary of the Department of Homeland Security designated election infrastructure as critical infrastructure in 2017. Since the designation, the Durham County Board of Commissioners has invested significant resources in the Durham County elections, which has made significant

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<sup>4</sup> Per Statistics provided by the North Carolina State Board of Elections as of March 24, 2023.

improvements to the security posture of the board of elections office, warehouse facility, networks, and other election assets.

In 2018, the Department of Homeland Security (DHS) conducted a physical security assessment of Durham County Board of Elections' facilities. This assessment found several areas of improvement related to the security of critical infrastructure. The resulting report, which included customized physical security improvement recommendations, was pivotal in the Durham County Board of Commissioners' decision to invest millions of dollars in the acquisition, design, and security upfit of a new consolidated facility for Board of Elections operations. The facility is expected to be move-in ready ahead of 2024. This is just one example of how direct support to local election officials bolsters election security.

Currently, our county commissioners are assessing our roughly \$3.5 million budget request for the 2023-24 fiscal year, which will include funding required to conduct the 2024 primary election. Although the 2023-24 budget will include some direct expenditures for the 2024 primary, the funding for much of the necessary planning and preparation was included in this fiscal year's budget request – because this critical work takes place long before Election Day. Our county election office is appreciative of the grants received from some of the recent federal election security grants. The last distribution of indirect HAVA funding to NC counties came in budget period 7/1/2020 – 6/30/2021, pursuant to NC Session Law 2020-17, Section 11.2(a). This bill required the State to create a "County Reimbursement Account" that allowed counties to submit reimbursement requests for eligible expenses not to exceed \$250,000, with a minimum of \$10,000 for each county. Actual funding amounts were designated based on NC Department of Commerce Tiers as of 1/09/2021. Durham's reimbursement share was \$192,290. Using these funds, the Board of Elections was able to purchase additional voting equipment to supplement our existing inventory, secure access badge readers for our warehouse facility, and acquire other supplies critical to conduct quality elections in Durham County.

## Conclusion

In conclusion, federal elections in Durham County were successful. However, it is important to understand that this success was the result of continuously growing financial investments since 2017, ongoing assessments and improvements of procedural checks and balances, and year-round planning and preparation. While I am proud of our success, I have some concerns as I look ahead to the 2024 presidential election. I know many of my colleagues in North Carolina and across the country do not have the financial support I enjoy. I know that threats against and harassment of election officials continue. With this in mind, I hope Congress will consider providing financial support directly to my colleagues who administer elections at the local level, many of whom may not be able to implement critical physical or cybersecurity measures

necessitated by today's threat environment. I truly appreciate this committee's time and attention to this important topic.

Durham/SBE Reports:

Voter History Audits (2016-Present): [Post-Election Procedures and Audits | NCSBE](#)

Voter History Dashboard: 2020 – Present: [Microsoft Power BI \(powerbigov.us\)](#)



**STATEMENT OF MARCIA JOHNSON  
CO-DIRECTOR OF THE VOTING RIGHTS PROJECT  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

**U.S. SENATE  
COMMITTEE ON RULES AND ADMINISTRATION  
HEARING ON  
"STATE AND LOCAL PERSPECTIVES ON ELECTION ADMINISTRATION"**

**MARCH 28, 2023**

## I. Introduction

Chairwoman Klobuchar, Ranking Member Fischer, and Members of the U.S. Senate Committee on Rules and Administration, my name is Marcia Johnson, and I am the Co-Director of the Voting Rights Project at the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today on state and local perspectives on election administration.

The Lawyers' Committee is a nonpartisan, nonprofit organization formed 60 years ago in 1963 at the request of President John F. Kennedy that uses legal advocacy to achieve racial justice, fighting inside and outside of the courts to ensure that Black people and other people of color have voice, opportunity, and power to make the promises of our democracy real. As part of this work, which continues to be vital today, we convene the national, non-partisan Election Protection coalition, which is made up of nearly four hundred national, state, and local partners. We also administer the 866-OUR-VOTE hotline, which is part of a suite of voter protection hotlines that provides comprehensive assistance at all stages of the voting process to any American who needs it.

I have been with the Lawyers' Committee for Civil Rights Under Law for 19 years and worked to build the first Election Protection program during a presidential election in 2004, just 3 years after the program's inception. In addition to overseeing the work of the Election Protection program, I manage our Voting Rights Project's voter engagement programs and advocacy portfolios which include promoting engagement in the census and the redistricting process; researching the history of discrimination in voting; advocating for the restoration of the full protections of the Voting Rights Act; promoting national and state-based voting reforms that ensure every American has access to the ballot; and advocating for the restoration of voting rights for those with felony convictions.

In my time at the Lawyers' Committee, I have fought for and won many battles for Black voters and other voters of color, but the one that I am most proud of is the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, which the U.S. Senate passed by a unanimous vote of 98-0. Since that time, when lawmakers on both sides of the aisle saw protecting the voting rights of Black voters and other voters of color as noncontroversial, many lawmakers seem to have lost their way. Not even 20 years later, Black voters, other voters of color, and even election officials are facing voter intimidation at levels that we have not seen in decades. States are passing laws with the purpose and aim of making it more difficult for voters of color to make their voices heard in the electoral process. And following record turnout in the 2020 presidential election, something that all Americans, no matter their political affiliation, should be proud of, we have seen states and jurisdictions pass restrictive laws that actually



clamp down on the methods that voters used to turnout in record numbers, as if high turnout is something to be ashamed of.

Even in states where turnout remains high, we have seen an increase in the racial disparities in turnout, ballot rejections, and unfounded arrests by newly established election police units proving that our nation still has a long way to go in the journey towards racial equality in voting. Congress must act and it must act now to prevent our democracy from continuing to backslide towards a dark past, where Black voters and other voters of color faced often insurmountable barriers to the ballot box.

## II. Overview of the Election Protection Program

Since 2001, Election Protection has been the go-to-resource for voters seeking comprehensive assistance in navigating and overcoming obstacles in the voting process.<sup>1</sup> Election Protection is the country's largest and longest-running non-partisan voter protection effort. The Election Protection coalition promotes and defends the right to vote through voter education, voter assistance hotlines, text message support, poll monitoring, advocacy with election officials and lawmakers and, when necessary, litigation to remove barriers to the ballot box. Election Protection works year-round, including throughout the primary season, early and absentee voting, and the post-election process when ballots are canvassed and run-offs are held. The Election Protection coalition not only has the 866-OUR-VOTE English hotline administered by the Lawyers' Committee, but also includes a suite of hotlines supporting voters in other languages including the 888-VE-Y-VOTE Spanish hotline administered by the NALEO Educational Fund, the 888-API-VOTE Asian language hotline which supports voters in Cantonese, Hindi, Korean, Mandarin, Tagalog, Urdu, Vietnamese, and Bengali and is administered by APIAVote and Asian Americans Advancing Justice-AAJC; and the 844-YALLA-US Arabic hotline, which is administered by the Arab American Institute. Voters can also receive assistance by texting the hotline, through an online chat system at [www.866ourvote.org](http://www.866ourvote.org), by direct message through the @866ourVote [Twitter](#) or [Instagram](#) accounts, and through the 866-OUR-VOTE Facebook account at [www.facebook.com/866OurVote](http://www.facebook.com/866OurVote).

Our partners work tirelessly around the clock to ensure that every eligible voter who wants to cast a ballot is able to do so. While reports of high voter turnout often focus on the laws that state legislatures enact to either make voting easier or more difficult, our work and the work of all of our partners play an essential role in turnout as well. In fact, the work of the Election Protection program may be more important today than ever before. With a rise in misinformation and disinformation, and the tendency for state legislatures to pass substantial overhauls of their election

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<sup>1</sup> *About Election Protection*, ELECTION PROTECTION, <https://866ourvote.org/about/> (last visited Mar. 24, 2023).

laws over the past decade, voters are more confused, and in some cases, mistrustful of the voting process and our voting systems than ever. Election Protection hotline volunteers take their roles seriously as reliable, trusted, nonpartisan sources of information for voters who provide relevant information on a state-by-state basis.

In addition to providing hotline, text, and online assistance, the Election Protection program provides both legal and grassroots assistance to voters at polling places. In every major election, thousands of attorneys and grassroots volunteers monitor polling locations across the country, meet with election officials at the city, county, and state level, develop and distribute legal and voter outreach materials, engage in legal and policy advocacy, and file litigation when necessary. Election Protection national partner Common Cause coordinates the grassroots program along with state and local partners. Election Protection's legal and grassroots volunteers work hand in hand to answer questions and aid voters at the polls during the early voting period, on Election Day, and now increasingly after election day for voters who wish to cure their ballots.

The Election Protection program has always operated nationwide; however, over the years our state field programs have increased in number. Today, Election Protection has field programs in 33 states. The Program has also grown to include nearly four hundred national, state, and community partner organizations that help provide Americans from coast to coast with accurate and comprehensive voting information and resources. Additionally, in alignment with the founding mission of the Lawyers' Committee, we partner with hundreds of private law firms and corporate legal departments whose attorneys volunteer for our Election Protection Program. In 2022, we partnered with over 136 law firms and legal departments and in 2020, we partnered with over 240 law firms and corporate legal departments.

### **III. What Election Protection Program Saw in 2022**

In 2022, the Election Protection 866-OUR-VOTE hotline received a call volume similar to the volume in 2018. The timing of these calls, however, indicates that far more voters are choosing to vote before Election Day either by voting by mail or voting early in person. In 2018, nearly 50 percent of the calls into the 866-OUR-VOTE hotline were placed on Election Day, yet in 2022 only around 20 percent of the calls received during the election period were placed on Election Day. Election officials and administrators should be aware of and prepare for these trends so that they can ensure their states, cities, and counties have the resources and staff they need to facilitate voting throughout the entire voting cycle. Early voting and voting by mail have the ability to make election administration easier by decreasing the volume of voters that poll workers have to service on Election Day. However, these shifts in voting patterns can also make election administration more difficult because there are more opportunities for bad actors to intimidate voters and spread voting

misinformation throughout the voting cycle. We saw examples of this during the 2022 midterm elections in states across the country. As Election Protection partner and Minneapolis, Minnesota attorney Jon Van Horn explained in November of 2022, "[e]very election cycle our hotline volunteers help someone navigate a problem that might have otherwise prevented them from voting,"<sup>2</sup> and this cycle was no different.

As of 2022, our Election Protection hotline volunteers generally categorize the types of calls they receive into 9 broad issue areas:

- Intimidation and/or Electioneering
- Polling Place Access
- Polling Place Technology
- Polling Place Ballot
- Election Administration
- Voter ID and Registration
- Mail-In and Absentee Ballot
- Health and Safety at Polling Place
- General Voter Concerns
- Questions or Informational Requests

During the 2022 midterm election cycle, the 866-OUR-VOTE hotline received a significant amount of calls in all nine of these categories from several states, with the highest call volume coming from Texas, Michigan, North Carolina, Pennsylvania, and Georgia. The four issue areas where the Election Protection program saw the biggest variation in call volume when compared to the 2020 and 2018 elections were: mail-in and absentee ballot issues, polling place access issues, polling place technology issues, and intimidation and electioneering issues.

#### **a. Mail-In and Absentee Ballot Issues**

In the calls that the 866-OUR-VOTE hotline received on mail-in and absentee ballot issues, callers had questions and concerns about their states' ballot tracking systems, their ballots not arriving on time, and how to fill out their ballot applications. 34 percent of calls to the 866-OUR-VOTE hotline during the 2022 midterm election cycle involved absentee and mail voting. Many of the calls about these issues included both a question and a report of a problem.

#### **b. Polling Place Access Issues**

In the calls on polling place access, callers had questions and concerns about their polling places' compliance with Americans with Disabilities Act ("ADA")

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<sup>2</sup> Gordon Severson, *Election Protection Hotline up and running, staffed by Twin Cities lawyers and paralegals*, KARE (Nov. 7, 2022), <https://www.kare11.com/article/news/politics/election-protection-hotline-up-and-running/89-fe76b08d-43b3-4ec9-ad37-35c69cb286dc>.

requirements, language assistance, and late openings or early closings at their polling places. In Pennsylvania, for example, the hotline received a call from a voter who went to vote before work early in the morning on Election Day, only to find that his assigned polling location was not yet open. That voter did not have the ability to vote later in the day due to his work schedule and was therefore unable to cast a vote. Late openings of polling places happen for several reasons, such as a lack of poll workers or poll workers not showing up, delays in ballot delivery for in-person voting, or breakdown of necessary voting equipment. In the past, the Election Protection coalition has successfully advocated for polling hour extensions in several states to accommodate voters whose polling place opened late; however, not all voters who are initially unable to vote because of a delay may become aware of poll hour extensions.

### c. Polling Place Technology Issues

In the calls the hotline received on polling place technology, callers had questions and concerns about the check-in systems at their polling places, issues with voting machines, and issues with ballot scanners at their polling places. In Mercer County, New Jersey, there was a county-wide breakdown of election equipment where scanners refused to accept ballots.<sup>3</sup> Although voters were still able to vote by paper ballot, misinformation began spreading online that voters could not vote at all. The Election Protection hotline received calls from voters in multiple states, including New Jersey, who did not trust paper backup systems like those used in Mercer County and were afraid that their votes would not be counted even though poll workers were following proper procedures.

### d. Voter Intimidation Issues

During the 2022 midterm election cycle, the share of the calls the Election Protection hotline received involving voter intimidation or electioneering increased compared to both the 2020 and the 2018 elections. In the calls the Election Protection hotline received about intimidation and electioneering, voters called with concerns about experiencing intimidation both online and in-person, including in some cases, intimidation by election officials, poll watchers, and law enforcement. In Virginia, our Election Protection partner Irene Shin explained how the Election Protection hotline has seen an increase in voter intimidation over the past 3 years. “There was a huge uptick in trends for this kind of intimidating or aggressive behavior... a huge uptick in 2020, for obvious reasons, and we also saw it in 2021 in state elections...”<sup>4</sup>

<sup>3</sup> *Voting machine malfunction forces Mercer County to tally paper ballots*, FOX 29 PHILA. (Nov. 8, 2022), <https://www.fox29.com/news/election-day-voting-machines-down-mercercounty-voters-instructed-fill-out-standard-ballot>.

<sup>4</sup> Anne Sparaco, *Voter intimidation is on the rise in recent years in Virginia. Here's how to avoid it*, 13NEWSNOW (Nov. 7, 2022), <https://www.13newsnow.com/article/news/local/vote/voter-intimidation-on-the-rise-in-virginia-heres-how-to-avoid-it/291-19ffa30b-4fb3-4ccf-829b-87fb53d61b9c>.

The Election Protection hotline also received numerous reports of voter intimidation near and at ballot drop boxes during the 2022 midterm election cycle. While the Election Protection hotline regularly receives reports of voter intimidation, the 2022 midterm election was the first time that the hotline received numerous reports of bad actors intimidating voters near and around drop boxes. This trend was likely fueled by misinformation and disinformation about the safety and reliability of ballot drop boxes that spread immediately following the 2020 election and has continued to spread. Arizona is one state that had particularly troubling instances of intimidation near drop boxes.<sup>5</sup> There, a federal judge had to enjoin a coordinated group of vigilantes who were openly carrying firearms, wearing visible body armor, and wearing masks to hide their faces while following, yelling at, and recording voters who were dropping off ballots at ballot drop boxes.<sup>6</sup>

One voter wrote to election officials in the Arizona Secretary of State's Office that, "I have never been more intimidated in my life trying to vote and standing only three feet from the box," and "I'm very worried for my safety" after two men standing just a couple of feet away from a drop box filmed the names on the voter's ballot, their mom's ballot, and their son's ballot, along with the voter's license plate.<sup>7</sup>

This disturbing and fairly new trend proves two things. First – election misinformation and disinformation have real consequences. When election misinformation and disinformation are allowed to flow freely in the universe of news and voters' social media feeds, it can encourage bad actors to create crafty, previously unseen schemes to intimidate voters—especially voters of color. Second, as the methods and means of voting evolve, so can the methods and means of discriminatory behavior. If lawmakers, election officials, and federal judges view modern-day voting discrimination only through the lens of whether an act would have been viewed as discriminatory decades ago, then they will miss a whole host of new racially discriminatory schemes tailor-made to discriminate against voters in the 21<sup>st</sup> century. Even if the methods of discrimination are not the same, the intent, purpose, and effects of those methods are the same: to limit the ability of Black voters and other voters of color to make their voices heard and give their voices weight at the ballot box.

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<sup>5</sup> Ali Dukakis, *Cases of alleged intimidation at Arizona ballot boxes continue to rise*, ABC NEWS (Nov. 7, 2022), <https://abcnews.go.com/US/cases-alleged-intimidation-arizona-ballot-boxes-continue-rise/story?id=92811526>.

<sup>6</sup> Ali Dukakis, *Group accused of voter intimidation must stay clear of ballot boxes, judge rules*, ABC NEWS (Nov. 3, 2022), <https://abcnews.go.com/US/group-accused-voter-intimidation-stay-clear-ballot-boxes/story?id=92570068>.

<sup>7</sup> Tami Abdollah, *Arizona becomes epicenter of concerns about ballot drop box security and voter intimidation*, USA TODAY (Nov. 7, 2022), <https://www.usatoday.com/story/news/politics/elections/2022/11/07/2022-midterms-arizona-election-officials-focus-voter-intimidation/8268316001/>.

#### e. Other Issues

One unique issue we saw that had the potential to make it difficult for not only our Election Protection program, but election officials themselves, to facilitate elections was a bill passed in Ohio that sought to ban a wide variety of state and local voter education efforts and threaten election officials who violated the vague law with criminal penalties.<sup>8</sup> This law was passed to prohibit any nongovernmental entity from working with election officials to provide voting information or services.<sup>9</sup> Ultimately, the law had the unintended consequence of preventing houses of worship, such as churches, synagogues, and mosques from being able to encourage people to vote.<sup>10</sup> While the full impact of this law is yet to be seen, it is already clear that Ohio's law added to the list of woes that election officials have to endure every election cycle in addition to other disturbing trends in election administration such as high staff turnover and threats to their personal safety.

#### IV. Racial Disparities in Voter Access and Turnout Widened in Some States in the 2022 Midterm Elections

In *Shelby County v. Holder*, the Supreme Court of the United States struck down the preclearance provision of the Voting Rights Act of 1965, which previously required “covered” jurisdictions to get approval from the U.S. Department of Justice or the U.S. District Court for the District of Columbia before changing their voting practices.<sup>11</sup> One of the key factors that led a particular jurisdiction to be “covered” under the Voting Rights Act was whether that jurisdiction had “significant racial disparities in ballot access.”<sup>12</sup> Evidence shows disparities in voter turnout between Black voters and White voters have continued to increase since the Supreme Court issued its decision in *Shelby County*.<sup>13</sup> Following the 2020 election, many states across the country that were previously covered under preclearance passed restrictive voting laws that made it particularly harder for Black voters and other voters of color to vote. While we are still learning exactly how these laws impacted voters of color during the 2022 Midterm cycle, one thing seems evident: racial disparities in voting access and turnout between Black voters and White voters grew after many of these laws were enacted. As detailed below, the data suggests that racial disparities in

<sup>8</sup> OHIO REV. CODE ANN. § 3501.054 (West 2021).

<sup>9</sup> Letter from Danielle Lang, Senior Dir., Campaign Legal Ctr., to Dave Yost, Ohio Attorney Gen. (Dec. 2, 2021) (on file with Campaign Legal Ctr.).

<sup>10</sup> Morgan Trau, *Religious groups, legislators butt heads on new election law*, OHIO CAPITAL J. (Feb. 25, 2022), <https://ohiocapitaljournal.com/2022/02/25/religious-groups-legislators-butt-heads-on-new-election-law/>.

<sup>11</sup> *Shelby County, Ala. v. Holder*, 570 U.S. 529 (2013).

<sup>12</sup> STEPHEN B. BILLINGS ET AL., *DISPARATE RACIAL IMPACTS OF SHELBY COUNTY V. HOLDER ON VOTER TURNOUT* (2022).

<sup>13</sup> *Kevin Morris et al., Racial Turnout Gap Grew in Jurisdictions Previously Covered by the Voting Rights Act*, BRENNAN CTR. JUST. (Aug. 20, 2021), <https://www.brennancenter.org/our-work/research-reports/racial-turnout-gap-grew-jurisdictions-previously-covered-voting-rights>.

voting access, voter turnout, and the criminalization of voting may have flowed directly from the restrictive voting bills that many state legislatures passed in 2021 and 2022.

#### a. Mail Ballot Issues in Texas Following SB 1's Passage

In 2021, the state of Texas enacted SB 1 into law, which fundamentally changed the way that Texans could cast mail ballots and vote early amongst a host of other things.<sup>14</sup> Texas' omnibus voting bill is illustrative of one of the main throughlines in restrictive state voter laws across the country: increased voter access for White, rural counties and restrictions on voter access for urban, predominantly Black and Brown counties.<sup>15</sup> SB 1 increased early voting hours in smaller, primarily rural counties, but it limited early voting hours in larger, predominantly Black and Latino counties, like Harris County that offered 24-hour early voting access or opportunities to vote late at night during early voting.<sup>16</sup> This dynamic is important because many state lawmakers and election officials lift up voting laws that increased access for rural, White voters while simultaneously decreasing access for urban, Black and Brown voters as expanding voting access overall. These lawmakers characterize these laws as making it easier to vote, but in reality, these laws make it easy for White voters to vote and hard for Black voters and other voters of color to vote. Much of the evidence from the 2022 midterm election cycle in Texas and elsewhere bears this out.

For instance, Texas rejected roughly one out of every eight mail ballots in the 2022 primaries due to onerous administrative requirements, such as requiring that voters list the same identification number they originally used to first register to vote, no matter how many decades ago they registered. Asian, Black and Latino voters disproportionately had their mail ballots rejected under these new rules during the March primary.<sup>17</sup> Specifically, 19 percent of Asian voters, 16.6 percent of Black voters, and 16.1 percent of Latino voters had either their applications to vote by mail or their mail ballots rejected in the March 2022 primary under new requirements in

<sup>14</sup> Lacy Crawford, Jr., *Texas S.B. 1 Discriminates Against Voters of Color*, LAWYER'S COMM. C.R. UNDER LAW (Sept. 7, 2021), <https://www.lawyerscommittee.org/texas-sb-1-discriminates-against-voters-of-color/>.

<sup>15</sup> Alexa Ura, *Gov. Greg Abbott signs Texas voting bill into law, overcoming Democratic quorum breaks*, TEX. TRIBUNE (Sept. 7, 2021), <https://www.texastribune.org/2021/09/01/texas-voting-bill-greg-abbott/>.

<sup>16</sup> Acacia Coronado & Nicholas Riccardi, *EXPLAINER: Details of the final version of Texas voting bill*, ASSOC. PRESS (Aug. 31, 2021), <https://apnews.com/article/health-texas-voting-coronavirus-pandemic-voting-rights-adecaa8570592740b202f9d2bab6e0622>.

<sup>17</sup> Natalia Contreras, *Voters of color had mail-in ballots rejected at higher rates than white voters in Texas' March primary*, TEX. TRIBUNE (Oct. 20, 2022), <https://www.texastribune.org/2022/10/20/voting-texas-ballot-rejections/>.

SB 1.<sup>18</sup> Meanwhile, only 12 percent of White voters had their applications to vote by mail or their mail ballots rejected during the same election.<sup>19</sup> Comparatively, in 2020, Texas had a 0.8 percent mail ballot rejection rate and in 2018 the rejection rate was just 1.7 percent.<sup>20</sup> While these rejection figures were lower for the November 2022 general midterm election, the rejection rate was still 2.7 percent overall, which was nearly double the statewide rate during the 2018 midterm elections and far higher than the national average.<sup>21</sup>

Our team expected that SB 1 would lead to unequal burdens for Black voters and other voters of color and that is exactly why we sued the Lone Star State over its omnibus voter suppression legislation. SB 1 included a whole host of provisions that make it unnecessarily harder for certain people, predominantly people of color, to vote. In addition to the vote by mail restrictions in the bill, the legislation also expands the power of partisan poll watchers by instituting criminal penalties for election officials who obstruct their actions, stripping local election officials of the power to take executive action in emergency situations. The legislation also restricts nearly every method of voting overwhelmingly used by voters of color in 2020, including early voting and ballot drop boxes. In our lawsuit, which we filed on behalf of the Texas State Conference of the NAACP, Common Cause Texas, three election judges, one voter assistant, and one registered voter in Harris County, we allege that these restrictions intentionally and disproportionately impact communities of color.<sup>22</sup> The racial disparities in mail ballot rejection rates during the 2022 election cycle indicate that the laws are having their intended effect.

**b. Racial Turnout Disparities Increase in Georgia following SB 202's Passage**

One common myth that has come out of the 2022 election is that Georgia's omnibus voter suppression bill, SB 202, was not a voter suppression bill because overall voter turnout reached historic levels following its enactment. But the goal of voter suppression laws, rules, and regulations has never been to stop everyone from voting, the goal has always been to make it harder for Black voters and other voters

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<sup>18</sup> See *id.*; See also Kevin Morris & Coryn Grange, *Records Show Massive Disenfranchisement and Racial Disparities in 2022 Texas Primary*, BRENNAN CTR. JUST. (Oct. 20, 2022), <https://www.brennancenter.org/our-work/research-reports/records-show-massive-disenfranchisement-and-racial-disparities-2022-texas>.

<sup>19</sup> *Id.*

<sup>20</sup> Ashley Lopez, *Despite mail voting changes, ballot rejections remain relatively low in 2022 midterms*, NPR (Jan. 13, 2023), <https://www.npr.org/2023/01/13/1148799521/mail-ballot-rejection-rates-state-tally>.

<sup>21</sup> *Id.*

<sup>22</sup> Lacy Crawford, Jr., *Texas S.B. 1 Discriminates Against Voters of Color*, LAWYER'S COMM. C.R. UNDER LAW (Sept. 7, 2021), <https://www.lawyerscommittee.org/texas-sb-1-discriminates-against-voters-of-color/>.



of color to vote than it is for White voters. Unfortunately, the turnout data in Georgia, when analyzed by race, proves that after the passage of SB 202 the racial turnout gap between Black voters and White voters in the Peach State widened significantly. This is despite the fact that in the U.S. Senate race for Georgia, the candidates for both major parties were high profile Black candidates and that one of the candidates for Governor was also a high-profile Black candidate.

After SB 202's passage, the gap between participation rates for Black voters and White voters increased. In fact, the racial disparities in voter turnout in Georgia during the 2022 midterm cycle not only persisted, but got significantly worse. In the November 2022 election, there was a 13.3 percentage point gap in turnout between White registered voters (58.3 percent) and Black registered voters (45 percent) in Georgia, which was significantly greater than the 8.3 percentage point gap (62.2 percent to 53.9 percent) in the previous midterm election in 2018.<sup>23</sup> The disparity between Black and White voter turnout in Georgia in 2022 was actually higher than it had been in any general election in the past decade.<sup>24</sup>

The administration of Georgia's 2022 midterm elections was eerily tied to Georgia's history of racial discrimination. After Georgia's U.S. Senate race went to a runoff, the state attempted to limit the number of early voting days by interpreting SB 202 to prohibit voters from voting on the Saturday after Thanksgiving.<sup>25</sup> In Georgia, the Saturday after Thanksgiving is a state holiday originally established to commemorate Confederate Civil War General Robert E. Lee. In recognition of this holiday, the state of Georgia argued that SB 202 meant that voters would not be able to make their voices heard at the polls on that day in observance of one of the most treasonous men in United States history. Senator Raphael Warnock was forced to sue state officials to allow Georgia voters to vote on that Monday.<sup>26</sup> Reducing the number of days that voters are able to vote early and exercise their most sacred and fundamental right is not making it "easy to vote." It is making it harder to vote.

We expected that Georgia's SB 202 would make it easier for White voters to vote and harder for Black voters and other voters of color to vote, like Texas' SB 1, so we sued Georgia over its law shortly after the bill was enacted. Our federal lawsuit

<sup>23</sup> *Georgia Election Results*, GA. SEC'Y STATE, <https://sos.ga.gov/page/georgia-election-results> (last visited Mar. 8, 2023).

<sup>24</sup> Sara Loving & Kevin Morris, *Georgia's Racial Turnout Gap Grew in 2022*, BRENNAN CTR. JUST. (Dec. 16, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/georgias-racial-turnout-gap-grew-2022>.

<sup>25</sup> Maya King & Neil Vigdor, *Georgia's Senate Runoff is Complicated by 2021 Voting Law*, N.Y. TIMES (Nov. 14, 2022), <https://www.nytimes.com/2022/11/14/us/politics/georgia-senate-runoff-holiday-rules.html>.

<sup>26</sup> Sam Levine, *Raphael Warnock sues Georgia over early voting restrictions for runoff*, THE GUARDIAN (Nov. 15, 2022), <https://www.theguardian.com/us-news/2022/nov/15/raphael-warnock-sues-georgia-early-voting-restrictions>.

over SB 202 was on behalf of the Georgia State Conference of the NAACP, Common Cause, the Georgia Coalition for the People's Agenda, Inc., the GALEO Latino Community Development Fund, Inc., League of Women Voters of Georgia, and the Lower Muskogee Creek Tribe.<sup>27</sup> We specifically sued over SB 202's provisions restricting ballot drop boxes, prohibiting voters from receiving food or water while they wait in line to vote, making it harder to vote absentee, and allowing the State Election Board to take over county election boards, which would give the State Election Board unprecedented authority to target jurisdictions with a large population of Black voters and other voters of color.<sup>28</sup>

Many of the restrictions and prohibitions in SB 202 specifically track or target the ways in which Black voters in Georgia vote. For example, data showed that Black voters in Georgia were far more likely to have to stand in long lines to vote than White voters in both the 2020 election and previous election cycles.<sup>29</sup> Georgia lawmakers, likely aware of this data, included provisions in SB 202 that penalize voters who are forced to wait in long lines by criminalizing the simple act of individuals and charitable organizations providing water to voters while they wait.<sup>30</sup> Our lawsuit is still pending in federal court and our litigation team is actively working on this case to ensure that Black voters and other voters of color in Georgia receive relief before the 2024 general election, so that the racial disparities we saw in 2022 do not carry over into the next election.

### **c. Florida Election Police Unit Disproportionately Arrested Black Floridians**

In April of 2022, Florida enacted legislation establishing an election police unit.<sup>31</sup> The stated purpose of this special police force was to pursue voter fraud and other

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<sup>27</sup> Ian Weiner, *Georgia's SB202 is a Culmination of Concerted Efforts to Suppress the Participation of Black Voters and Other Voters of Color*, LAWYER'S COMM. C.R. UNDER LAW (Mar. 29, 2021), <https://www.lawyerscommittee.org/georgias-sb202-is-a-culmination-of-concerted-efforts-to-suppress-the-participation-of-black-voters-and-other-voters-of-color/>.

<sup>28</sup> Complaint, Georgia State Conference of the NAACP v. Brad Raffensperger, 1:21-mi-99999-UNA (N.D. Ga. 2021), <https://lawyerscommittee.org/wp-content/uploads/2021/03/2021-03-28-complaint-as-filed-with-temporary-case-number.pdf>.

<sup>29</sup> Stephen Fowler, *Why Do Nonwhite Georgia Voters Have To Wait In Line For Hours? Too Few Polling Places*, NPR (Oct. 10, 2020), <https://www.npr.org/2020/10/17/924527679/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl>.

<sup>30</sup> Complaint, Georgia State Conference of the NAACP v. Brad Raffensperger, 1:21-mi-99999-UNA (N.D. Ga. 2021), <https://lawyerscommittee.org/wp-content/uploads/2021/03/2021-03-28-complaint-as-filed-with-temporary-case-number.pdf>.

<sup>31</sup> Maryam Saleh & Ese Olumhense, *DeSantis' Election Police Have Largely Flopped in Florida Voter Prosecutions. A New Law Aims to Change That*, REVEAL (Mar. 9, 2023), <https://revealnews.org/article/desantis-election-police-have-largely-flopped-in-florida-voter-prosecutions-a-new-law-aims-to-change-that/>.

election crimes following false claims that the 2020 presidential election was stolen.<sup>32</sup> The new police force, officially named the Office of Election Crimes and Security arrested 20 individuals in August of 2022 and the racial disparities in arrests were appalling. While Black Floridians made up just 14.5 percent of the state’s population in the 2020 Census, at least 15 of the 20 individuals arrested by the new police force—a whopping 75 percent—were Black.<sup>33</sup>

Many of these voters were told they were eligible to vote and sent voter registration cards directly from the state. Florida’s efforts to criminalize elections represent another example of the startling trend of voter intimidation under the color of law. These tactics are designed to scare Black voters and other voters of color away from the ballot box, if not outright disqualify them.

This significant racial disparity in arrests under Florida’s new law and the failure of the newly established police force to secure convictions<sup>34</sup> show that Florida is not serious about ensuring its elections are secure, but is serious about intimidating and harassing Black voters and other voters of color.

#### d. Racial Disparities in Voter Turnout in States Across the Country

In 2022, the racial voting turnout gap was wider than it had been in years in many states. For example, in South Carolina turnout among voters of color was the lowest it had been in at least a generation, according to South Carolina election participation data.<sup>35</sup> In the Palmetto State, while overall turnout among registered voters was 45.9 percent, White voter turnout was slightly higher at 50.6 percent and non-White turnout was significantly lower at 34.99 percent. That is a greater than 15 percentage point gap in turnout between White voters and voters of color.

In South Carolina’s neighbor to the north, North Carolina, 58 percent of White registered voters voted in the 2022 general election compared to just 41.8 percent of registered Black or African American voters. Ultimately, White voters had the

<sup>32</sup> Gary Fineout, *DeSantis signs bill creating one of the nation’s only election police units*, POLITICO (Apr. 25, 2022), <https://www.politico.com/news/2022/04/25/desantis-florida-election-police-units-00027577>.

<sup>33</sup> Sergio Bustos, *Crist decries voting-fraud arrests after body cam video shows voters shocked by felony charges*, TALLAHASSEE DEMOCRAT, <https://www.tallahassee.com/story/news/politics/elections/2022/10/19/charlie-crist-ron-desantis-voting-fraud-arrests-police-body-camera-florida/10539631002/> (last updated Oct. 20, 2022).

<sup>34</sup> Gary Fields et al., *New state voter fraud units finding few cases from midterms*, ASSOC. PRESS (Nov. 26, 2022), <https://apnews.com/article/2022-midterm-elections-voting-rights-florida-georgia-4db14ddccf37e4597cb9b7f20ec499b4>.

<sup>35</sup> Zak Koeske, *Non-white SC voter participation plummeted in 2022 midterms*, THE STATE (Dec. 31, 2022), <https://www.thestate.com/news/politics-government/article270262872.html>.

highest voter turnout percentage compared to all other racial groups.<sup>36</sup> This disparity was similar to the disparity in South Carolina in that it was higher than recent gaps in voter turnout. Disturbingly, the gap in turnout between White and Black voters in North Carolina’s midterm elections soared from 5 percentage points in 2014 to 8 points in 2018 to roughly 16 percentage points in 2022.<sup>37</sup>

There was a similar gap in racial voter turnout in Louisiana, where 52.56 percent of White eligible voters cast a ballot in 2022 compared with only 37.85 percent of eligible Black voters.<sup>38</sup> Ohio, where an estimated 61.2 percent of eligible White voters participated in Ohio’s 2022 election, only saw 26.2 percent of eligible Black voters vote in the 2022 midterm election, a whopping 35-point difference.<sup>39</sup> When analyzing voter turnout, it is not enough to examine the overall number of voters who are casting a ballot in each state, lawmakers and election officials must also examine who is voting. The significant racial disparities in states across the country in 2022 are shameful and emphasize the need for this body to act by passing federal voting rights legislation that ensures all voters are able to participate in this nation’s democracy and that states are not able to enact laws that make it easier for White voters to vote and harder for Black voters and other voters of color to vote.

## V. Recent Supreme Court Decisions Illustrate the Need for Federal Voting Rights Protections and Basic National Voting Standards

### a. *Shelby County v. Holder*

This year marks the 10th year that Black voters and other voters of color have been without the full protections of the Voting Rights Act. The U.S. Supreme Court has now weakened the Voting Rights Act twice in the past decade—first in *Shelby County v. Holder* in 2013 and again in *Brnovich v. DNC* in 2021. While the Lawyers’ Committee is hopeful that the Supreme Court will not further weaken the Voting Rights Act with its decision in *Merrill v. Milligan*, where a three-judge panel ruled that Alabama’s refusal to draw another majority Black Congressional district was a clear-cut violation of Section 2 of the Voting Rights Act, the risk that the trend of weakening the VRA will continue is real.

<sup>36</sup> *2022 General Election Turnout*, N.C. STATE BD. ELECTIONS, <https://www.ncsbe.gov/resultsdata/voter-turnout/2022-general-election-turnout> (last visited Mar. 7, 2023).

<sup>37</sup> Bob Hall, *NC voter turnout in the midterms: What the data show for various groups*, THE PULSE (Dec. 8, 2022), <https://pulse.ncpolicywatch.org/2022/12/08/nc-voter-turnout-in-the-midterms-what-the-data-show-for-various-groups/#sthash.QNHe0dH5.w2aLakDb.dpbs>.

<sup>38</sup> *State Wide Post Election Statistical Report*, LA. SEC’Y STATE, [https://electionstatistics.sos.la.gov/Data/Post\\_Election\\_Statistics/statewide/2022\\_1108\\_sta.pdf](https://electionstatistics.sos.la.gov/Data/Post_Election_Statistics/statewide/2022_1108_sta.pdf) (last visited Mar. 8, 2023).

<sup>39</sup> Lawyers’ Committee for Civil Rights Under Law estimate. Turnout by race estimated using Ecological Inference.

In *Shelby County v. Holder*, the U.S. Supreme Court invalidated Section 4(b) of the Voting Rights Act of 1965, the section of the bill that included the coverage formula governing which jurisdictions would be subject to the preclearance procedure outlined in Section 5 of the Act. The Supreme Court essentially nullified the provision of the VRA that required jurisdictions with a history of voting discrimination to get federal approval before enacting new voting laws. This decision opened the floodgates for the voter suppression legislation and procedures that are so prevalent today.

The very day of the *Shelby County* decision, Texas chose to implement its voter ID law, which had been previously found to be discriminatory. Since then, many states have followed Texas' example by enacting laws that have made it harder for voters, particularly voters of color, to access the ballot box. Over the past decade, state legislatures, particularly the states that previously had to submit voting changes for preclearance review, have focused on passing laws making it harder to vote or enacting processes that:

- Require voter ID where voters had limited options of the type of IDs they could use to vote;
- Make it harder to get on or stay on voter registration rolls;
- Consolidate or close polling places with little or no notice to voters; or
- Make it harder for voters to vote by mail or vote early.

In 2016, the U.S. Court of Appeals for the Fourth Circuit determined that North Carolina's omnibus voter suppression law, which was passed a month after the *Shelby County* decision, was enacted to "target African Americans with surgical precision."<sup>40</sup> Just as it took the Fourth Circuit three years to issue that decision, courts have been slow to issue decisions in court cases involving restrictive state voting laws passed by states in 2021 and 2022, making it unclear whether Black voters and other voters of color will be protected from these laws before the next presidential election in 2024.

Since the U.S. Supreme Court's decision in *Shelby County v. Holder*<sup>41</sup>, the U.S. Senate has failed to pass any legislation that would fully—or even partially—restore the Voting Rights Act of 1965. In fact, the last time that the Senate voted to restore the Voting Rights Act was in 2006. While much attention is often paid to what has happened since that 2013 decision, with state legislatures across the country passing waves of voter suppression laws, it is worth revisiting what happened before 2013, when Black voters and other voters of color maintained the full protections of the Voting Rights Act of 1965.

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<sup>40</sup> North Carolina State Conf. of NAACP v. McCrory, 831 F.3d 204, 215 (4th Cir. 2016).

<sup>41</sup> *Shelby County, Ala. v. Holder*, 570 U.S. 529 (2013).

As Justice Ginsburg laid out in her dissent in *Shelby County v. Holder*, “between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory.”<sup>42</sup> Further, “Congress found that the majority of DOJ objections included findings of discriminatory intent . . . and that the changes blocked by preclearance were ‘calculated decisions to keep minority voters from fully participating in the political process.’”<sup>43</sup> Justice Ginsburg cited this evidence, and more, to suggest that it was “indeed sufficient to support Congress’ conclusion that ‘racial discrimination in voting in covered jurisdictions remained serious and pervasive.’” The evidence in 2023, a decade after the *Shelby County v. Holder* decision, continues to show that racial discrimination in voting remains “serious and pervasive.” Justice Ginsburg predicted that this would be the case when she warned that “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>44</sup> Ten years after that decision, it is raining cats and dogs on Black voters and other voters of color in the jurisdictions that were previously subject to preclearance.

While much is often said about the damage the U.S. Supreme Court did in its decision in *Shelby County v. Holder*, less attention is given to the guidance that the Court gave Congress for restoring the full protections of the Voting Rights Act. In the majority opinion in *Shelby County*, Chief Justice John Roberts wrote, “Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past.”<sup>45</sup> While, as the dissent acknowledged in *Shelby County*, Chief Justice Roberts’ characterization of Congress’ analysis of current conditions before the 2006 reauthorization was misguided at best, it is shameful that the U.S. Senate has failed to pass legislation rewriting the formula in Section 4(b) or otherwise attempting to restore the full protections of the Voting Rights Act of 1965 in the 10 years since that decision.

The current data from the 2022 midterm elections show that racial disparities in voter turnout, criminal enforcement of voting laws, access to the ballot, and several other indicators of racial discrimination in voting have continued to worsen in the years since the *Shelby County* decision. Ten years ago, when the U.S. Supreme Court struck down the coverage formula in the Voting Rights Act, it did not tell Congress to rest on its laurels. It gave members of Congress clear directions on how to restore protections for Black voters and other voters of color. In order to restore these essential protections and reverse the trend of state legislatures passing restrictive

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<sup>42</sup> *Id.* at 571.

<sup>43</sup> *Id.*

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

<sup>45</sup> *Id.* at 532.

voting laws and Black voters continuing to face gaps in voter access and participation in states across the country, this body must get serious about passing legislation to restore the Voting Rights Act and enact baseline national standards for voting. This is not a partisan issue, it is a human rights issue.

Elections are not just about who wins or how many people are able to vote, they are about which voters are able to vote, the burdens that they are forced to overcome to do so, and their ability to select the representatives of their choice. As long as Black voters and other voters of color continue to be targeted with voting laws and procedures that diminish their opportunity to participate in the democratic process, the promises of American democracy will continue to go unfulfilled.

***b. Brnovich v. DNC***

In his majority opinion in *Shelby County v. Holder*, Chief Justice John Roberts wrote that under Section 2 of the Voting Rights Act “injunctive relief is available in appropriate cases to block voting laws from going into effect...Section 2 is permanent, applies nationwide, and is not at issue in this case.”<sup>46</sup> Presumably, Chief Justice Robert described Section 2 this way in the decision that stripped the teeth out of Section 5 to highlight it as an alternative option for voting rights litigants to seek relief against racially discriminatory voting laws, practices, or procedures. It is perhaps ironic then, if not inexplicable, that just eight years later, the Court decided to weaken those remaining protections.

In 2021, the U.S. Supreme Court weakened Section 2 of the Voting Rights Act, which Chief Justice Roberts previously described as “permanent.” Section 5 of the Voting Rights Act governing preclearance, which the court functionally nullified by striking down the coverage formula in Section 4(b) in *Shelby County*, served as a prophylactic measure, preventing states from enacting discriminatory laws in the first place.<sup>47</sup> Yet, the power of Section 2 in vote denial “results” cases, apart from it being applicable nationwide, was that voting rights litigants could still turn to it after *Shelby County* to stop discriminatory laws that were enacted from ever going into effect.<sup>48</sup> In *Brnovich v. DNC*, the Supreme Court made it unnecessarily more difficult for plaintiffs to bring cases under the portion of Section 2 of the Voting Rights Act that governed vote denial “results” cases.

Prior to the U.S. Supreme Court’s decision in *Brnovich*, Section 2 of the VRA functioned as a vehicle for civil rights litigants to stop discriminatory voting laws in

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<sup>46</sup> *Id.* at 537.

<sup>47</sup> Sonia Gill, *Congress Must Act to Protect the Right to Vote*, ACLU, <https://www.aclu.org/news/voting-rights/congress-must-act-to-protect-the-right-to-vote> (last updated Dec. 6, 2019).

<sup>48</sup> Hayden Johnson, *Vote Denial and Defense: A Strategic Enforcement Proposal for Section 2 of the Voting Rights Act*, 108 GEORGETOWN L.J. 2 (2020).

their tracks after they had already been enacted. The U.S. Court of Appeals for the Ninth Circuit interpreted Section 2 as prohibiting the state of Arizona from continuing to implement its racially discriminatory out-of-precinct policy and absentee-ballot collection laws, which each made it more difficult for Black, Latino, and Indigenous voters to vote. While the Supreme Court did not completely invalidate Section 2 of the Voting Rights Act in the same way that it invalidated the preclearance formula in *Shelby County v. Holder*, the Court did grossly disregard Congress' intent in originally passing and later amending the Voting Rights Act by establishing ambiguous, narrow, and unproven criteria that plaintiffs are required to meet to successfully establish a Section 2 violation.

While many of the “guideposts” the Court created out of whole cloth in *Brnovich* are irrelevant when analyzing a claim alleging racial discrimination in voting, one of the most egregious factors is whether the challenged practice was a “standard practice when § 2 was amended in 1982.” Earlier in my testimony, I described how many voting practices and patterns have changed over just the past two most recent federal elections in 2020 and 2018. These substantial changes illustrate exactly why looking back to 1982 to determine whether a voting law, regulation, or procedure is discriminatory is unreasonable.

Looking back to a static date in time does not make any sense whether one is analyzing Americans' ability to work remote, analyzing which methods of transportation most Americans use, or the way Americans vote. Yet, under *Brnovich*, if a state saw a significant shift in the methods that Black voters were using to vote between 2018, 2020, and 2022 and then changed its laws to prevent those voters from using their preferred method of voting, this particular “guidepost”—if read literally—would favor upholding that law.

Just as Congress must swiftly pass legislation to fully restore the Section 4(b) of the Voting Rights Act of 1965, Congress must also pass legislation to fully restore Section 2 so that courts are required to interpret this section of the law as Congress intended when it passed the 1982 Amendments to the VRA.

### *c. Purcell v. Gonzalez*

In 2006, the U.S. Supreme Court issued its decision in *Purcell v. Gonzalez*, reversing the U.S. Court of Appeals for the Ninth Circuit's earlier decision to block an Arizona voter ID law during the 2006 midterm election cycle.<sup>49</sup> The Supreme Court's reason for reversing the ruling was based in part on the Court's view that it was too close in time to the midterm election for the Ninth Circuit to issue a decision changing the state's voter ID law. Since the Supreme Court issued this decision, it has become increasingly difficult to successfully challenge voting procedures adopted

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<sup>49</sup> *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam).



or implemented close to an election. Moreover, civil rights litigants, election officials, and even judges themselves do not have clarity on what period of time is too close to an election because the Supreme Court has never articulated a clear standard. As a result, unconstitutional laws, such as the anti-line warming provision in Georgia’s SB 202 have been allowed to proceed due to timing even after courts find that the plaintiffs have the probability of success on the merits.

**d. Congress Must Enact Federal Legislation that Restores the Voting Rights Act of 1965 and Sets Baseline National Voting Standards**

While the Elections Clause of the United States Constitution gives states the ability to set the “Times, Places, and Manner” of holding federal elections, it also gives the U.S. Congress the power to “make or alter” states’ election laws, practices, and procedures.<sup>50</sup> As the Supreme Court of the United States continues to weaken the Voting Rights Act of 1965 and allow discriminatory voting laws to impact elections based on elastic and inconsistent interpretations of the amount of time remaining before an election, Congress must act to implement baseline national voting standards using its powers under the Elections Clause. Reforms such as requiring each state to offer 14 days of early voting, preventing poll watchers from harassing or intimidating voters, and allowing all voters to cast their votes by mail, would go a long way towards ensuring that states enact voting laws that increase the opportunities that all Americans have to vote rather than limit them.<sup>51</sup>

Congress should also enact legislation to fully restore the Voting Rights Act of 1965 and ensure that states cannot enact laws that target Black voters and other voters of color. Reforms like many of those included in the John Lewis Voting Rights Advancement Act would provide the U.S. Department of Justice and civil rights organizations with the tools they need to invalidate or successfully challenge discriminatory voting laws that make it increasingly difficult for Black voters and other voters of color to access to the ballot.<sup>52</sup> Congress should also revisit the provision in the John Lewis Voting Rights Advancement Act that addresses the *Purcell* Principle by clarifying the circumstances under which it is appropriate for federal courts to grant relief in emergent voting rights litigation. Without action from Congress, Black voters and other voters of color may face yet another federal

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<sup>50</sup> U.S. CONST. art. I, § 4, cl. 1.

<sup>51</sup> Will Wilder & Elizabeth Hira, *How the Freedom to Vote Act Can Blunt the Worst of Texas’s Voter Suppression Law*, BRENNAN CTR. JUST. (Dec. 15, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/how-freedom-vote-act-can-blunt-worst-texas-voter-suppression-law>.

<sup>52</sup> Ian Weiner, *House of Representatives Passes John Lewis Voting Rights Advancement Act*, LAWYER’S COMM. C.R. UNDER LAW (Aug. 24, 2021), <https://www.lawyerscommittee.org/house-of-representatives-passes-voting-rights-advancement-act/>.

election—the presidential election of 2024—without receiving relief from discriminatory voting laws that were passed years ago.

## VI. Conclusion

While the 2022 midterm elections may not have been a disaster or led to a potential constitutional crisis in the way that the 2020 presidential election did, they were not ideal, especially for Black voters and other voters of color. Unfortunately, states continue to introduce bills that will make it harder to vote. In just the third month of 2023, state legislatures across the country have already introduced at least 150 restrictive voting bills.<sup>53</sup> Moreover, in the 2022 midterm elections, racial disparities in voter turnout were higher in many states than they had been in years. In order for this country to live up to its democratic ideals of equality for all, this Congress must act to prevent the backsliding that has become rampant since the U.S. Supreme Court issued its decision in *Shelby County v. Holder*.

If Congress fails to act, America risks returning to previous, dark eras in our nation's history when Black voters and other voters of color did not have the same opportunities to participate in the democratic process. The increasing racial disparities in voting, racially charged voter intimidation, and discriminatory voting laws being enacted by states across the country indicate that this country is already headed in that direction and it is up to this distinguished body to act swiftly to stop that reversal in its tracks. Congress needs to pass federal voting rights legislation now that restores the full protections of the Voting Rights Act and that creates baseline national voting standards. This federal legislation would ensure that where a voter lives does not dictate whether they can vote free from racially discriminatory and disparate barriers to the ballot box.

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<sup>53</sup> *Voting Laws Roundup: February 2023*, BRENNAN CTR. JUST. (Feb. 27, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2023>.



## **Securing 2024**

### **Defending US Elections through Investment and Reform**



### **13 Policy Recommendations for Federal and State Lawmakers to Meet 2024 Administrative Challenges**

**David Levine and Gideon Cohn-Postar**

March 27, 2023

### About the Alliance for Securing Democracy at GMF

The Alliance for Securing Democracy (ASD) at the German Marshall Fund of the United States (GMF) is a nonpartisan initiative that develops comprehensive strategies to deter, defend against, and raise the costs on autocratic efforts to undermine and interfere in democratic institutions. ASD has staff in Washington, DC, and Brussels, bringing together experts on disinformation, malign finance, emerging technologies, elections integrity, economic coercion, and cybersecurity, as well as Russia, China, and the Middle East, to collaborate across traditional stovepipes and develop cross-cutting frameworks.

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### About Issue One

Issue One is the leading crosspartisan political reform group in Washington, DC. We unite Republicans, Democrats, and independents in the movement to fix our broken political system and build a democracy that works for everyone. Issue One educates the public and works to pass legislation on Capitol Hill to increase transparency, strengthen ethics and accountability, reduce the corrosive influence of big money in politics, and bolster U.S. elections.

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## Introduction

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As a result of the 2020 and 2022 federal elections, the job of administering elections has dramatically changed in the United States, and the demands on the dedicated officials that run our elections have also increased. The people who run US elections are still largely living in the world that the 2020 elections made—a world shaped by conspiracy theories, threats, and attacks on the people and processes that guarantee election integrity.

The [2022 midterms](#) were free and fair. And, due in part to election officials' dedication to public communication and transparency, trust in the administration of elections [is higher now](#) than it was following the 2020 general election. Policymakers at the local, state, and federal levels should seize this moment and take action to protect our election infrastructure against new threats from autocratic actors, and they should make commonsense changes to strengthen our elections and improve the voter experience. This report presents 13 specific recommendations for election security reforms responsive to the current threat environment that can be advanced at both the federal and state level.

### The Current Threat Environment

The 2022 midterms went surprisingly well in many respects. Thanks in part to the work of election officials and their partners, the midterms were not only administered in a free and fair manner but perceived as such [across the political spectrum](#). The vast majority of the candidates who lost, including those who said they would not have certified the 2020 presidential election or were [election deniers](#) vying for positions that would have overseen future elections, also [conceded](#) in a clear, timely manner.

However, a relatively quiet 2022 does not mean we can assume the same in 2024. The United States must take steps to ensure that this diverse array of potential threats—including ongoing cyber threats from foreign adversaries like China, Russia, and Iran—does not derail future votes. Congress recently took an important first step by [updating the Electoral Count Act](#), closing a loophole governing how Congress counts electoral votes in presidential elections. But, while it is now harder for Congress or rogue state officials to overturn legitimate election results, more action is needed to secure our democracy.

The threat posed by false narratives about election administration and election denialism [has not](#) completely vanished—[far from it](#). During the midterms, bad actors questioned voters' eligibility [using flawed methods](#), [intimidated voters](#) at ballot drop boxes, and threatened to disrupt [vote counting efforts](#). Election disinformation [escalated](#) as some [well-funded](#) candidates for secretary of state focused an increasing percentage of their social media posts on false election narratives as Election Day approached. Threats targeting election officials [increased](#). Local officials in [Arizona, Nevada, and Pennsylvania](#) attempted to stop the certification of election results on little more than conjecture. And some of the election deniers who did win office have already begun [to undermine](#) long-standing election administration processes based on [conspiracy theories](#). All of these actions further erode trust in US elections and democracy.

### Overview

This report outlines additional steps that Congress and state legislatures can take to mitigate existing electoral vulnerabilities and prevent threats from undermining future elections. Federal laws to protect election workers, for example, are urgently needed and are clearly the role of Congress. At the same time, states should lead by passing needed protections and playing their historic role as laboratories of innovative democracy. The laws [recently passed](#) at the state level that improve protections, expand funding, and increase penalties for those who

threaten election workers serve as demonstrations of these programs' effectiveness that will hopefully build support for federal action.

Nearly all the recommendations in this report connect to the persistent lack of sufficient federal funding for local and state election administration. Our election infrastructure is chronically underfunded, forcing creative election officials to scramble every year to run safe, smooth, and secure elections. Ensuring robust annual appropriations for election funding is a critical step to help state and local election officials meet basic modernization, staffing, and security needs, as well as implement many of the other reforms listed below. Chris Krebs, the former director of the Cybersecurity and Infrastructure Security Agency (CISA), [explained](#) to the Senate Committee on Homeland Security and Governmental Affairs in December 2020 the central role that federal funding plays in securing US elections: Although election officials “had the will” to tackle security challenges, he stated, they “lacked the resources to replace aging or out-of-date systems and hardware”. Krebs called on Congress to “authorize and appropriate election-security grants on an annual basis to provide election officials consistent and dependable funding by which they can make appropriate infrastructure and personnel investments”. Unfortunately, in the more than two years since his testimony, Congress has failed to regularize or increase election funding.

## Recommendations for Federal Election Funding

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### 1. Provide consistent, sustainable funding to protect the nation's election infrastructure, including its election officials.

A more reliable, steady stream of funding for elections is essential to ensure that every jurisdiction in every state can secure its elections from an increasingly complex set of threats. [A bipartisan coalition](#) of state and local officials recently estimated that \$53 billion is needed to modernize and administer the nation's election infrastructure over the next decade. President Joe Biden's [2024 budget](#) called for \$5 billion in election funding from the federal government over ten years.

**Federal:** Federal funding of elections is one of the few election issues that has enjoyed bipartisan congressional support in recent years. From 2018-2022, in response to cyber threats and the COVID-19 pandemic, Congress [appropriated](#) nearly \$1.3 billion in election funding on a largely bipartisan basis. Members of both parties have regularly introduced bills increasing and regularizing election security grant funding. Congress provides funding to states to help run federal elections through election security grants, originally authorized under the [2002 Help America Vote Act](#) (HAVA). Generally referred to as HAVA grants, these funds are administered by the Election Assistance Commission (EAC) and are requested and managed by each state's secretary of state or chief election officer. However, these appropriations have been irregular, insufficient, and often enacted too late in an election cycle for optimal effect. Because Congress must currently appropriate election grant funding each year, election officials are perpetually uncertain whether or how much federal funding they will receive. Moreover, the two most recent appropriations, in fiscal year [2022](#) and [2023](#), were for just \$75 million in grants each. Election officials are saddled with the unfunded mandate of tackling myriad new challenges, including dramatically increased cybersecurity expenses, and they need federal funding that matches the need.

**State:** Increasing election funding at the state level is a necessary stopgap to help state and local election officials better protect themselves from personal threats, expedite the replacement of antiquated election technology, and combat mis- and disinformation. For example, last year Pennsylvania enacted a budget that included [\\$45 million](#) in funding to help Pennsylvania county election offices address the rising costs of holding elections—a step that is even more imperative in states like [Pennsylvania, Arizona, and Georgia](#), where local election offices cannot accept funding from private groups.

## Recommendations for Protecting Election Workers and Improving Public Confidence

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### 2. Ensure legal protections against harassment and intimidation of election workers cover all individuals involved in the elections process, including election officials, observers, workers, voters, and candidates.

Since 2020, many election officials and workers have been repeatedly [threatened and harassed](#), and this behavior [persisted](#) through the midterms. More recently, a Republican candidate for the New Mexico state House, who had refused to accept his loss in the midterms, [was arrested](#) for allegedly hiring four people to shoot at the homes of four Democratic lawmakers, two state lawmakers, and two county officials.

**Federal:** While [federal law](#) already appears to protect voters and election workers in a general sense, Congress should clarify that federal laws against harassment and intimidation of election workers cover all individuals involved in the elections process, including election officials, observers, workers, candidates, and voters, so that it is unmistakably clear that those involved in the elections process are off-limits. Several bills addressing this issue have been introduced in Congress in recent sessions, but they have not been passed. The [Election Worker Protection Act of 2022](#), for example, defined who qualified as an “election worker” for purposes of prosecuting intimidation, but it did not make it out of committee.

**State:** States should enact laws that explicitly prohibit threatening those involved in the elections process. Some states have already led in this area. For example, in April of 2022, Maine [enacted a law](#) that added threatening an election official to the state’s criminal code and requires the Maine secretary of state to provide an annual report to a legislative committee on threats or harassment of public officials.

### 3. Impose effective and deterrent penalties on those who threaten or harm anyone involved in the elections process, including elections officials, poll workers, observers, and candidates running for elected office.

Many of the aforementioned individuals who take part in the elections process live in communities that do not have the resources to watch over them. And neither they nor their communities usually have the funds to pay for private security to guard them around the clock. If the United States wants to ensure that more people feel safe enough to participate in the elections process, more must be done to hold accountable those seeking to target them.

**Federal:** Congress should explicitly criminalize threats or attacks against those involved in the elections process and enact strong penalties for any related violations. During the 117th Congress, members introduced [several proposals](#) that would increase criminal penalties for threats to election workers, including a provision of the [Enhanced Election Security and Protection Act](#), a bipartisan Senate bill that emerged from the Electoral Count Act Reform bipartisan working group.

**State:** States can and should take similar action. For example, last year Colorado enacted the [Election Official Protection Act](#), which created new criminal penalties for threatening and intimidating election officials. In January 2023, Michigan Secretary of State Jocelyn Benson and state lawmakers [announced plans](#) to protect election officials and workers, including the reintroduction of legislation increasing penalties for threatening, harassing, or doxxing election workers. Additionally, Benson has called for [banning firearms](#) at polling places and election venues, a prohibition already in place in states such as [Texas, California, and Florida](#).



#### **4. Enact privacy protections for the personal information of all individuals involved in the elections process, including election officials, workers, observers, and candidates for office, by prohibiting doxxing and giving at-risk individuals the ability to remove covered information from public searches.**

Election officials and their families now expect harassment and potential threats to their lives simply for doing their jobs. While these threats were most widely covered during the 2020 election, doxxing and intimidation have continued. For example, on Election Day in 2022, Maricopa County Supervisor Bill Gates [was moved](#) to an undisclosed location due to specific threats made against him on social media. He also received additional protection from the sheriff's office to ensure his safety. This happened just weeks after the FBI [identified](#) Arizona as one of the top states for threats against election workers.

**Federal:** At the end of 2022, Congress passed the [Daniel Aderl Judicial Security and Privacy Act](#) with broad bipartisan support. The bill protects federal judges' personal identifiable information from resale by data brokers; allows judges to redact personal information displayed on federal government internet sites; and prevents the publication of personal information by others where there is no legitimate news media or other public interest. The Aderl Act also included funding for a federal grant program intended to enable state and local agencies and governments to proactively protect personal information of covered individuals. Congress could mirror this legislation to ensure similar protections are put in place for the personal information of individuals involved in the elections process. Any similar program focused on election officials should also include a grant program.

**State:** States should enact laws to protect the personal information of those involved in their election process. For example, last year, Oregon [passed a law](#) that not only criminalizes election worker harassment but also allows the election worker's address to be shielded from public view.

#### **5. Give election officials more resources to counter cyber threats.**

Top state election and cybersecurity officials recently [reiterated](#) that the United States' decentralized election system remains vulnerable to threats, including those from foreign adversaries. This is particularly true for jurisdictions that have insufficient funding to replace antiquated equipment, properly staff their offices, and/or update their training. Adversaries' capabilities vary greatly, but many have the ability to cast doubt on the legitimacy of an election through disinformation, cyber attacks, malign finance, economic coercion, and/or other means, and their capabilities continue to evolve at a rapid clip. It is critical that election officials have the resources they need to keep up.

**Federal:** To help prepare election offices for cybersecurity threats, including the harassment and abuse many have received since 2020, Congress should appropriate election security grant funding. Recently, the Department of Homeland Security [designated](#) \$30 million for election security in a nod to the important role US elections play in national security, but more is needed. Additional funds could be used by entities that still have antiquated equipment, insufficient staffing, and/or outdated election worker training to counter any potential threats on an ongoing basis. Congress can also buttress the critical infrastructure of US elections by extending and increasing funding for pre-existing federal programs that seek to improve cyber resilience more broadly, including CISA's [state and local cybersecurity grant program](#) and [cybersecurity assessment](#) program, as well as the Department of Justice's [Edward Byrne Justice Assistance Grant Program](#).

**State:** Those states that are not already providing consistent cyber funding for their elections should do it, particularly in the absence of reliable federal support. One of the report's co-authors is also a [former state and](#)

[local election official](#), who knows firsthand the challenge of setting an election budget when there is uncertainty over funding. A consistent cash flow could, for example, enable election offices to more easily hire and plan to hire staff that have the technical know-how to protect systems from cyber threats on a long-term basis.

### **6. Improve election officials' ability to counter election-related mis- and disinformation, including on social media platforms.**

As the House Oversight Committee [documented](#) in August 2022, the spread of conspiracy theories and mis- and disinformation about election processes poses a direct threat to the integrity of US elections and the safety of the people who administer them. Much of the false information about elections is spread via social media platforms. While its findings were [omitted](#) from the final report, the January 6 committee wrote a 122-page memo that detailed how social media platforms, especially Twitter, ignored internal warnings about violent rhetoric and disregarded their own policies ahead of the attack on the Capitol.

**Federal:** Effectively countering election mis- and disinformation will require increased funding for election officials, whether through HAVA grants or dedicated cybersecurity funding. Providing resources to ensure that as many election offices as possible have professional communications outfits could go a long way towards ensuring that important, accurate election information is provided to the public in a timely manner. As the House Oversight Committee's report [on election mis- and disinformation](#) last year concluded, "The federal government must do much more to support election administrators in their fight against election lies, including through reliable, robust grant funding to ensure local election officials have sufficient resources to administer elections and counter damaging election lies." Additionally, Congress should enact legislation requiring social media companies to disclose how information (and misinformation) is sorted and amplified on their platforms and empowering independent, verified researchers to analyze these powerful technologies.

**State:** States must continue to seek innovative ways to provide timely, accessible, accurate information that prepares the public for an election while preempting untrue narratives that are likely to emerge. For example, shortly before the 2022 midterm elections, the Ohio secretary of state produced an [informative video](#) about how mail ballots are printed, delivered, and processed. The video served as a reminder that elections are conducted by people's family, friends, and neighbors in a time-intensive, detail-oriented manner to ensure the will of the people is reflected.

## Recommendations for Securing Election Administration

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### 7. Facilitate the replacement of remaining paperless voting systems.

Paperless voting systems have been largely phased-out, but they [are still used](#) in at least some jurisdictions in six states: Indiana, Louisiana, Mississippi, New Jersey, Tennessee, and Texas. These systems not only leave no trace of a voter's intent, they enable conspiracy theorists to leverage any minor change or error during vote counting [to make claims](#) of rigging and hacking.

**Federal:** Congress should make available sufficient funding for all states and jurisdictions that still have paperless voting systems to be able to remove them as soon as is practical, and no later [than the 2028 presidential elections](#). Appropriating federal funds for election offices will be essential to this process, as replacing and updating voting technology is expensive and requires a lengthy procurement process. Prior to the 2020 election, there were a number of states that had statewide or significant use of machines without paper ballots, including Delaware, Georgia, Indiana, Louisiana, New Jersey, Pennsylvania, South Carolina, Tennessee, and Texas. After Congress provided grant funding in 2018, 2019, and 2020, many of these states [were able to replace](#) their paperless machines and procure auditable paper-based systems. Between 2016 and 2020, votes cast with a paper audit trail increased nationally from approximately 80% to more than 90%. This [enhanced nationwide paper trail](#) allowed for more post-election audits to confirm the outcome of races and identify potential anomalies.

**State:** Regardless of federal action, states should ensure the replacement of these systems by the 2028 presidential election. Following the 2020 election, when false narratives about rigged voting machines [spread](#) among the public, Georgia hand-counted more than 5 million ballots to validate the accuracy of its machine-counted results. This was an action Georgia could not have taken as recently as 2018, when the state used paperless systems that produced no independently auditable records.

### 8. Enable post-election audits nationwide.

Post-election audits of the equipment and procedures used in an election are well-established tools to ensure that the election was not marred by error or fraud. There are several approaches to audits, including [percentage-based audits](#), which review a certain percentage of the total voted ballots cast in a jurisdiction, and [risk-limiting audits](#), which review a certain percentage of ballots in relation to the margin of victory in the contest. The latter can provide voters with greater confidence that a counting error or malicious attack [did not change](#) the outcome, but they [can also take more time](#) for state and local election officials to successfully implement.

**Federal:** Congress should encourage all states to conduct a post-election audit of some of their paper ballots no later than the 2028 presidential election. One avenue for congressional action in this regard would be for Congress to explicitly authorize the use of EAC election grants for post-election audits. This provision was included as [Section 127 of the ACE Act](#) proposed by Rep. Rodney Davis (R-IL) in the 117th Congress. Additionally, funding for and oversight of post-election audits could be routed through CISA, an agency with [extensive election cybersecurity knowledge](#) and strong connections to state election officials.

**State:** While [most states](#) already require audits of one form or another, strengthening or clarifying audit plans is a necessary step to prevent vigilante "audits" and increase public confidence in election processes and reported results. In 2022, Idaho adopted a law that [required](#) officials from the Idaho secretary of state's office to check

some of the state's paper ballots to verify the results, as well as the equipment and procedures used to count votes across Idaho's 44 counties. A state audit of more than 19,000 ballots cast in Idaho's 2022 general election identified only six variations, none of which impacted any of the state's races, according to a report from the secretary of state's office.

### **9. Encourage states to defend and join the Electronic Registration Information Center (ERIC) program.**

The non-profit ERIC was initially created in 2012 by election officials from seven states to improve the accuracy of state voter registration rolls and boost access to voter registration. For voters who move [among or within ERIC states](#), their voter registration rolls and driver licenses can be safely shared to facilitate removal from their former states' voter rolls and addition to their new states' rolls. ERIC now includes the majority of states, [improving the accuracy](#) of the nation's voter rolls. However, there has been a move by some states to withdraw from ERIC. In the last few months, [Alabama, Florida, Iowa, Louisiana, Missouri, Ohio, and West Virginia](#) all left or announced their intention to leave the ERIC program.

**Federal:** Considering its importance and the recent misinformation [spreading](#) about it, Congress should adopt a bipartisan resolution supporting the use of ERIC that builds on the [bipartisan support](#) it already enjoys at the state level. Consistent, sustainable federal elections funding could also help the minority of states that aren't [current members of ERIC](#) to join (or rejoin) the consortium, which in turn would help ensure the development of accurate and up-to-date voter registration lists. Since the United States does not maintain a list of registered voters at the national level, joining a secure multi-state voter list maintenance system [is key](#) to developing and maintaining an accurate voter list, and Congress should consider providing funding to help facilitate such efforts.

**State:** The states that already participate in interstate exchanges of voter registration information should make an affirmative case for others to join. As the 2014 bipartisan [Presidential Commission on Election Administration](#) and others have noted, state programs that share data and synchronize voter lists with other states offer the best chance to create an accurate database of the eligible electorate.

### **10. Adopt online voter registration nationwide.**

Currently, 42 states and Washington, DC, offer online voter registration (OVR). This makes the voter registration process more accessible, more secure, and [less costly](#). As Election Assistance Commission Commissioner Donald Palmer and others [have noted](#), OVR is accessible to voters 24 hours a day, seven days a week; it enables voters to make fewer mistakes in the process (because it is generally programmed to flag certain errors, such as blank fields in the voter registration application); and it can make the registration process more secure by interacting with databases, such as those at the Department of Motor Vehicles (DMV), which can verify the identity and eligibility of potential registrants.

**Federal:** OVR has played a critical role in [upgrading](#) the nation's election administration system. It is a proven tool for managing the accuracy of the voter rolls and lessening the costs associated with voter registration and list maintenance. If Congress appropriates reliable, dedicated federal funding, the eight states that have yet to adopt OVR would undoubtedly be in a better position to do so.

**State:** In the meantime, the remaining states should adopt OVR because it can make their election processes more convenient, safer, and less expensive. For example, in March of 2020, North Carolina [expanded](#) its use of online voter registration as the COVID-19 pandemic thwarted in-person registrations. Previously, North Carolina only offered online voter registration as an extra option to people completing an online, paid

transaction through the Department of Motor Vehicles (DMV), such as applying for a driver's license, while all other registrations had to be submitted on paper. But when the state's response to the pandemic prompted the closure of most county boards of elections and many DMV offices, in-person voter registration efforts all but halted, leading North Carolina to become the 40th state [to adopt](#) OVR.

### 11. Ensure all states can track their mail ballots.

At a time when many Republicans and Democrats [are embracing](#) mail voting for future elections, one of the best ways to increase confidence in mail ballot voting is to enable all voters who use it to track their ballot, from when they request it to when it is counted. Ballot tracking also reduces voter confusion and decreases the possibility that a voter [will accidentally attempt to vote](#) twice in the mistaken belief that their mail-in ballot was not received.

**Federal:** Nearly every state offers [online ballot tracking](#). Providing states with regular, dedicated federal funding to operate elections will make it easier for the remaining few states to create programs that allow voters to track and confirm the status of their mail ballots. Additionally, [Democratic, Republican, and bipartisan](#) bills have been introduced in Congress that, with varying degrees of specificity and potential for passage, seek to standardize and improve mail ballot systems, including by improving ballot tracking. These bills generally seek to standardize mail ballot design and processes, speeding the delivery of election mail and making ballot tracking systems easier to enact, but they do not mandate that states adopt a particular voting method.

**State:** Those states that do not already have a ballot tracking program should adopt one to combat uncertainty, counter mis- and disinformation, and improve their voters' confidence. Virginia successfully implemented a ballot tracking program at the height of the COVID-19 pandemic when election officials across the country were seeking to boost confidence in election integrity amid a nationwide shift to voting by mail; in August 2020, the state's board of elections voted unanimously to adopt a regulation requiring all Virginia voters who were voting by mail [to send their ballots](#) back in envelopes marked with tracking codes. The regulation required local election officials to print a US Postal Service [intelligent mail barcode](#) on both the outgoing envelopes sent to voters and the included return envelopes voters used to mail completed ballots back, so that voters and election officials alike could keep track of the ballots.

### 12. Expand mail-in ballot pre-processing to all states.

Processing mail-in ballots that have been received before Election Day is a [widely accepted](#) best practice. By giving election workers time before Election Day to conduct tasks such as verifying mail ballot signatures, opening envelopes, and flattening and preparing ballots to run through scanners in a timely manner, election officials are able to report results more quickly, in addition to allowing for efficiencies in staffing. However, [12 states](#) currently do not permit the processing of ballots before Election Day. This has caused substantial delays in reporting unofficial results, which [has created openings](#) for the spread of mis- and disinformation about the integrity of the vote count and further threats against election officials. As the Bipartisan Policy Center has previously noted in [2022](#) and [2020](#) reports, states that allow for pre-processing are more likely to release results quickly, which can increase public confidence in elections. Pre-processing can also [mitigate disinformation](#) spread by [foreign adversaries](#) seeking to undermine the legitimacy of US elections since it increases the likelihood of unofficial election results being known on, or shortly after, election night.

**Federal:** Congress should use its bully pulpit to draw attention to the states that lack pre-processing, which often delays the reporting of unofficial election results. The relevant committees should conduct field hearings with election officials and state legislators to discuss the dangers caused by the lack of pre-processing and learn what

forms of federal support would be most effective in assisting states in making that transition. Enacting ballot pre-processing is also a perfect example of a state reform that could be assisted by the provision of federal election funds. If more funding is available for states to use to secure their elections, they will be better able to afford expanding pre-processing.

**State:** States that have yet to adopt mail-in ballot pre-processing should do so. Maryland, the only state that currently prohibits mail-in ballots from being processed until after [Election Day](#), is now [considering legislation](#) to allow for pre-processing to ensure quicker reporting of election results, greater confidence in election outcomes, and more support for election officials. Other states should follow Maryland's lead.

### 13. Expand in-person voting options.

Currently, [46 states and Washington, DC](#), offer in-person early voting. It is critical that voters continue to have a reasonable right to participate in the voting process, including in cases when a natural disaster, public health epidemic, or other kind of crisis could upend the elections process. In-person early voting, combined with mail ballots for those who cannot vote in person, would ensure a sufficient floor for participation.

**Federal:** All but four states already offer their voters the option of casting their ballot in person prior to Election Day. Congress should consider setting a requirement for the remaining four states to offer in-person early voting, while also allowing for smaller municipalities to join together to offer shared early voting locations. Early voting is a national security issue. As former CISA Director Chris Krebs [noted](#) during the 2020 election, early voting stretches out the opportunity for law enforcement, intelligence officials, and election workers to identify and resolve potential election issues earlier, rather than having to try and deal with them all at once on Election Day, which is inherently more risky.

Shortly before Election Day in 2020, for example, Iranian cyber actors [targeted American voters](#) in an attempt to cast doubt on the legitimacy of the election. The intelligence was quickly analyzed, downgraded, and shared with election officials and the public, so that Americans could make informed judgments about what to do in response to this highly targeted operation. High early voting turnout [meant](#) that this challenge, which might have otherwise appeared for the first time on Election Day, was detected earlier, when there was still time to address it before many voters had cast their ballots. Judging by the [record-breaking turnout](#) in the 2020 election, the operation seemed to have little, if any, impact on US participation.

**State:** Many states already offer [extensive early voting options](#), but requiring a minimum number of options could help ensure that all eligible voters have adequate access to the ballot. In the absence of federal action, states should seek to expand in-person voting opportunities. This not only helps make Election Day [more accessible](#); it can also help make the election [easier to administer and more secure](#).

## Conclusion

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The [recent update](#) to the Electoral Count Act is the latest indicator that there is bipartisan agreement that improving the security of the US election system before 2024 is essential. However, our nation's work to secure our democracy more broadly—from ongoing efforts from both foreign and domestic actors to undermine it—has only just begun. It is critical that federal and state lawmakers continue to address the vulnerabilities in the US electoral system, both at the federal and state levels. Cyber and physical attacks, threats to and intimidation of election workers, mis- and disinformation, and insider threats continue. If election officials are to succeed in rebuilding the public's trust in future elections, it is critical that they and their legislative partners show a united front through year-over-year federal election funding and the adoption of evidence-based election policies like those in this report. Doing this gives the United States the best chance to continue conducting free and fair elections going forward.



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March 28, 2023

Senator Amy Klobuchar  
Chairwoman, Senate Committee on Rules & Administration  
425 Dirksen Senate Building  
Washington, DC 20510

Senator Deb Fischer  
Ranking Member, Senate Committee on Rules & Administration  
454 Russell Senate Office Building  
Washington, DC 20510

Dear Chairwoman Klobuchar, Ranking Member Fischer, and Members of the Senate Committee on Rules & Administration:

On behalf of the Southern Poverty Law Center Action Fund (SPLC Action Fund), we write to provide our insights for the U.S. Senate Committee on Rules and Administration's hearing on "State and Local Perspectives on Election Administration." We appreciate the opportunity to share our expertise on the barriers to voting experienced by Black Indigenous, and other people of color (BIPOC) in the South, particularly in the aftermath of sweeping changes to state election laws, and to provide policy proposals to address continuing and emerging barriers to the ballot box. As a public interest organization working to protect voting rights and challenge unconstitutional and discriminatory voting practices, we have a vested interest in ensuring that adequate resources are provided to guarantee an equal opportunity for all to participate in our democracy. Our work is a consistent reminder that all communities are not equally resourced, which underscores the critical need for greater federal investment in state and local election administration infrastructure and for increased transparency and oversight. We urge you to carefully consider the policy recommendations included below and request that this statement be included as part of the official hearing record.

SPLC Action Fund is a catalyst for racial justice in the Deep South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. We advocate for the implementation of policies and laws to eliminate the structural racism and inequalities that fuel the oppression of Black, Indigenous, and other people of color, women, low-income people, and the LGBTQ+ community. This includes policies to protect voting rights. Our work is focused specifically in





the Deep South, where we have offices in Alabama, Georgia, Florida, Louisiana, Mississippi, and Washington, D.C.

The 2022 midterm elections were the most consequential in recent history, especially for BIPOC communities hit hardest by the COVID pandemic<sup>1</sup> and faced with, among other things, navigating high inflation, assaults on bodily autonomy, and challenges to educational inclusion.<sup>2</sup> With so much at stake, it was critical that all voters across the nation could exercise their fundamental right to vote with limited restrictions.

This was not the case, however, for many Black voters in the South. As a result of the Supreme Court's 2013 decision in *Shelby v. Holder*, state legislatures across the nation have passed waves of restrictive voting laws for almost a decade that have disproportionately affected the BIPOC community. Importantly, there was a brief reprieve from this activity during the COVID-19 pandemic, with the 2020 election seeing the highest election turnout in over a century due in large part to the development of innovative voting procedures.<sup>3</sup> The ingenuity exhibited by administrators to make voting more accessible during the COVID pandemic thus proved that barriers can be removed to ensure we have a thriving democracy, but there must be political will to do so. Instead of celebrating the increase in voter participation during the 2020 election due to these efforts, however, several states quickly returned to voter suppression efforts. In 2021, at least 19 states passed 34 laws limiting access to voting – the highest number of such bills in at least a decade.<sup>4</sup>

These restrictive laws had a measurable impact – stymieing the vote of Black voters in the South during the 2022 midterms. Voters in Georgia, for example, waited in line for over two hours<sup>5</sup> to cast their vote – with the longest lines appearing in metro areas<sup>6</sup> like metro Atlanta,<sup>7</sup>

<sup>1</sup> Maggie Fox, *Study Confirms Pandemic Hit Black Americans, Native Americans and Latinos Harder than Whites*, CNN (Oct. 4, 2021), <https://www.cnn.com/2021/10/04/health/pandemic-deaths-minorities/index.html>.

<sup>2</sup> Dan Balz & Marianna Sotomayor, *Election 2022: Key Issues*, WASH. POST. (May 18, 2022), <https://www.washingtonpost.com/politics/interactive/2022/key-issues-voting-2022-midterms/>.

<sup>3</sup> See e.g., Kevin Schaul, Kate Rabinowitz & Ted Mellnik, *2020 Turnout is the Highest in Over a Century*, WASH. POST (Nov. 5, 2020), <https://www.washingtonpost.com/graphics/2020/elections/voter-turnout/>; Drew DeSilver, *Turnout Soared in 2020 as Nearly Two-Thirds of Eligible U.S. Voters Cast Ballots for President*, PEW RSCH. CTR. (Jan. 28, 2021), <https://www.pewresearch.org/fact-tank/2021/01/28/turnout-soared-in-2020-as-nearly-two-thirds-of-eligible-u-s-voters-cast-ballots-for-president/>.

<sup>4</sup> *Voting Laws Roundup: December 2021*, BRENNAN CTR. FOR JUST. (Dec. 21, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

<sup>5</sup> Neil Vigdor, *Georgia Voters Brace for Long Lines and Wet Weather*, N.Y. TIMES (Dec. 5, 2022), <https://www.nytimes.com/2022/12/04/us/politics/georgia-runoff-election-day-weather.html>.

<sup>6</sup> Gregory Krieg, *Record Turnout and Long Lines Mark First Day of Early Voting in Georgia*, CNN (Oct. 18, 2022), <https://www.cnn.com/2022/10/18/politics/georgia-first-day-early-voting-record-turnout-long-lines/index.html>.

<sup>7</sup> WSBTV.com News Staff, *Long Lines Across Metro Atlanta as Voting for Runoff Senate Election Begins*, WSB-TV (Nov. 27, 2022), <https://www.wsbtv.com/news/local/long-lines-across-metro-atlanta-voting-runoff-senate-election-begins/CYV652A7JFFIRDR7YDAWDOQ2WQ/>.



which is majority non-white<sup>8</sup> – in one of the most consequential races in the nation.<sup>9</sup> In Alabama, absentee ballot restrictions that were loosened during the pandemic returned,<sup>10</sup> and voters also expressed confusion over absentee affidavits that required them to declare party affiliation when voting absentee.<sup>11</sup> And in several other southern states, voters were completely excluded from the right to vote because of a criminal conviction.<sup>12</sup>

The below are just a few additional examples of issues voters faced across the South during the 2022 midterms and beyond:

- In **Georgia**, a quarter of voters saw their travel time increase from the 2020 election due to new legislation (S.B. 202) that limited access to drop boxes in counties that happened to have the highest number of voters of color.<sup>13</sup> S.B. 202 also cut the early voting period for runoff elections in Georgia by about half,<sup>14</sup> which likely further contributed to the long lines during the December 2022 runoff election. Speaking to the high Georgia turnout for the midterms, Marvin Colbert, a pastor from Bethel African Methodist Episcopal Church in the state, noted, “You see these record lines in defiance of the law, not because of the law . . . You know, if you’re gonna make it harder for us, we’re just going to come out, and really that’s what it gets down to.”<sup>15</sup>
- In **Alabama**, newly elected Secretary of State Wes Allen, who supported overturning the 2020 presidential election, swiftly ended Alabama’s participation in the Electronic Registration Information Center – a program used by approximately 30 states to ensure accurate voter lists.<sup>16</sup> This move was directly condemned by his predecessor, John

<sup>8</sup> Patricia Murphy, Greg Bluestein & Tia Mitchell, *The Jolt: For the First Time, Metro Atlanta is Now Majority-Nonwhite*, ATLANTA J.-CONST. (Aug. 15, 2021), <https://www.aic.com/politics/politics-blog/the-jolt-for-the-first-time-metro-atlanta-is-now-majority-nonwhite/VRYNX467VBHQBAPJUDDMK4RK5U/>.

<sup>9</sup> Vigdor, *supra* note 5.

<sup>10</sup> Donna Thornton, *Absentee Voting Back to the Routine This Year; Here’s What You Need to Know*, GADSDEN TIMES (Apr. 18, 2022), <https://www.gadsdentimes.com/story/news/2022/04/19/etowah-absentee-voting-may-primary-how-apply-what-deadlines/7355874001/>.

<sup>11</sup> John H. Glenn, *Why Do You Need to Declare Party Affiliation When Filling Out Your Absentee Affidavit*, ALA. POL. REP. (June 29, 2022), <https://www.alreporter.com/2022/06/29/why-do-you-need-to-declare-party-affiliation-when-filling-out-your-absentee-affidavit/>.

<sup>12</sup> CHRISTOPHER UGGEN, ET AL., SENT’G PROJECT, LOCKED OUT 2022: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS (2022), <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>.

<sup>13</sup> Stephen Fowler, Sam Gringlas & Huo Jingnan, *A New Georgia Voting Law Reduced Ballot Drop Box Access in Places that Used Them Most*, NPR (July 27, 2022), <https://www.npr.org/2022/07/27/1112487512/georgia-voting-law-ballot-drop-box-access>.

<sup>14</sup> Neil Vigdor & Blake Hounshell, *Georgia’s Senate Runoff Sets Records for Early Voting, But with a Big Asterisk*, N.Y. TIMES (Nov. 30, 2022), <https://www.nytimes.com/2022/11/30/us/politics/georgia-senate-runoff-early-voting.html>.

<sup>15</sup> Sofi Gratas, *A Decades-Long Tradition of Sunday Voting Encourages Black Voters Ahead of the Midterm*, GPB (Oct. 25, 2022), <https://www.gpb.org/news/2022/10/25/decades-long-tradition-of-sunday-voting-encourages-black-voters-ahead-of-the>.

<sup>16</sup> Daniel Nicheanian, *Alabama’s New Election-Denying Secretary of State Leaves Group That Helps States Clean Voter Rolls*, BOLTS (Jan. 18, 2023), <https://boltsmag.org/alabama-secretary-of-state-leaves-eric/>.



Merrill, who argued that ERIC was a critical tool for maintaining proper voter rolls;<sup>17</sup> this position was recently reaffirmed by ERIC’s Executive Director.<sup>18</sup>

- In **Mississippi**, voters statewide had difficulty assessing the Secretary of State’s website to locate their polling place, with the U.S. Department of Homeland Security later announcing the site had been the target of a cyber-attack.<sup>19</sup>
- In **Louisiana**, the Secretary of State’s election portal was down for parts of Election Day,<sup>20</sup> and concern has been raised about how the state’s aging voting machines could be vulnerable to a cybersecurity attack in future elections.<sup>21</sup>
- And in **Florida**, some voters with criminal convictions, who were re-enfranchised by the recent passage of Amendment 4, expressed confusion over whether they were eligible to vote.<sup>22</sup> This confusion was compounded by fear of being targeted by the newly-created Office of Election Crimes and Security, which has brought voter fraud charges against potentially ineligible voters with criminal convictions, some of whom said they had been encouraged to vote by election officials.<sup>23</sup>

Not only did voters face restrictions, but many who sought to provide support to voters were also barred from doing so. In Georgia, for example, the recently passed S.B. 202 bans handing food and water to people waiting in line to vote. This provision has been viewed by some as an attempt to suppress the vote of urban communities of color given the long voting lines often found in those communities.<sup>24</sup>

More broadly, outside support for election administration – which has previously been used to bolster underfunded local elections – has been largely shut out of the process. State and local election administrators have historically struggled to support myriad election costs – including personnel, equipment, and supplies – with scarce resources (and inconsistent federal support)<sup>25</sup>

<sup>17</sup> AP, *Alabama Withdraws from Voter Registration Data Sharing Group*, CBS NEWS (Jan. 17, 2023),

<https://www.cbsnews.com/news/alabama-withdraws-voter-registration-data-sharing-group-secretary-of-state-wes-allen/>.

<sup>18</sup> Shane Hamlin, *An Open Letter from ERIC’s Executive Director*, ERIC (Mar. 2, 2023), <https://ericstates.org/an-open-letter-2023-03/>.

<sup>19</sup> Wicker Perlis, *With Election Issues, Mississippi Turnout Leads to Republican Victories in Three of Four Districts*, CLARION LEDGER (Nov. 9, 2022), <https://www.clarionledger.com/story/news/2022/11/09/mississippi-midterm-elections-roundup-who-won-who-lost/69654299007/>.

<sup>20</sup> Carlie Kollath Wells, *Louisiana’s Election Website Working Again After Tech Problems, Sec. of State Says*, NOLA.COM (Nov. 8, 2022), [https://www.nola.com/news/politics/elections/louisianas-election-website-working-again-after-tech-problems-sec-of-state-says/article\\_56cbabd0-5f6a-11ed-81dd-bfed866fa85e.html](https://www.nola.com/news/politics/elections/louisianas-election-website-working-again-after-tech-problems-sec-of-state-says/article_56cbabd0-5f6a-11ed-81dd-bfed866fa85e.html).

<sup>21</sup> Wesley Muller, *Louisiana Elections Secure, But Voting Machines Still Vulnerable*, LA ILLUMINATOR (Nov. 11, 2022),

<https://lailluminator.com/2022/11/11/louisiana-elections-secure-but-voting-machines-still-vulnerable/>.

<sup>22</sup> Douglas Soule, *Why Did Voter Turnout Drop in 2022 Versus 2018? Strict Voting Laws, Voter Arrests, Say Voting Rights Advocates*, PALM BEACH DAILY NEWS (Dec. 5, 2022), <https://www.palmbeachdailynews.com/story/news/politics/elections/2022/12/05/2022-voter-turnout-dropped-year-strict-voting-laws-voter-arrests-ron-desantis-florida/10816752002/>.

<sup>23</sup> Michael Wines & Neil Vigdor, *Videos Show Confusion as Florida Police Arrest People on Voter Fraud Charges*, N.Y. TIMES (Oct. 19, 2022), <https://www.nytimes.com/2022/10/19/us/florida-voter-fraud-arrests-video.html>.

<sup>24</sup> Faith Karimi, *It’s Now Illegal in Georgia to Give Food and Water to Voters in Line*, CNN (Mar. 26, 2021),

<https://www.cnn.com/2021/03/26/politics/georgia-voting-law-food-drink-ban-trnd/index.html>.

<sup>25</sup> See, e.g., CHARLES STEWART III, MIT ELECTION DATA & SCIENCE LAB, ET AL., *THE COST OF CONDUCTING ELECTIONS* (2022), <https://electionlab.mit.edu/sites/default/files/2022-05/TheCostofConductingElections-2022.pdf>.



and outdated systems.<sup>26</sup> Indeed, the Election Infrastructure Initiative estimates it will cost \$53 billion over ten years to fully modernize our election infrastructure – including election administration.<sup>27</sup> Out of this total, \$6.6 billion is needed to strengthen the elections process in the Deep South. Importantly, when election officials were facing administering an election during a global pandemic, many local jurisdictions were able to rely on money from private funders to conduct proper elections to great success.<sup>28</sup> Rather than build upon these successes, however, states soon after – including Georgia, Mississippi, and Florida – began passing laws banning these funds, arguing election interference and bias;<sup>29</sup> Alabama also passed similar legislation in 2022.<sup>30</sup> As a result, already cash-strapped local jurisdictions no longer have access to critical “lifeline”<sup>31</sup> funding to support effective election administration.

Accordingly, turnout numbers from the 2022 midterms must be analyzed with this record in mind, which speaks to Black communities across the South working against seemingly insurmountable barriers to exercise their precious right to vote. And, as the nation continues to diversify, it is imperative that we act urgently to protect the political power of these communities against those who wish to disenfranchise them for potentially racially motivated reasons.<sup>32</sup>

**Strengthening election administration in our nation – including in the Deep South – must be one of Congress’ top priorities as we look toward the 2024 elections.** Based on the current voting rights landscape at the state and local level, Congress must act urgently to secure effective election administration in the Deep South. We must fortify our election process now to guarantee that the 2024 federal elections are carried out in a way that protects the fundamental right to vote for all. To do so, we urge Congress to take the following actions:

<sup>26</sup> TURQUOISE BAKER, ET AL., BRENNAN CTR. FOR JUST., VOTING MACHINES AT RISK IN 2022 (2022), <https://www.brennancenter.org/our-work/research-reports/voting-machines-risk-2022>.

<sup>27</sup> ELECTION INFRASTRUCTURE INITIATIVE, 50 STATES OF NEED: HOW WE CAN FULLY FUND OUR STATE AND LOCAL ELECTION INFRASTRUCTURE 1,9 (2022), <https://static1.squarespace.com/static/6083502fc0f6531f14d6e929/61f836e405feca3722d63b9d/1643656990641/50-States-Of-Need.pdf>.

<sup>28</sup> See e.g., Mike DeBonis & Amy Gardner, *Election Experts Sound Alarms as Costs Escalate and Funding Dwindles*, WASH. POST (Feb. 16, 2022), <https://www.washingtonpost.com/politics/2022/02/16/election-funding-midterms/>.

<sup>29</sup> Miles Parks, *Private Funding Saved the 2020 Election. Now, Some GOP-Led States are Banning it*, NPR (Mar. 31, 2022), <https://www.npr.org/2022/05/31/1088252896/private-funding-saved-the-2020-election-now-some-gop-led-states-are-banning-it>.

<sup>30</sup> Jacob Holmes, *Alabama House Passes “Zuckerbucks” Bill Prohibiting Private Funding of Elections*, ALA. POL. REP. (Mar. 11, 2022), <https://www.alreporter.com/2022/05/11/alabama-house-passes-zuckerbucks-bill-prohibiting-private-funding-of-elections/>.

<sup>31</sup> Parks, *supra* note 29.

<sup>32</sup> KEVIN MORRIS, BRENNAN CTR. FOR JUST., PATTERNS IN THE INTRODUCTION AND PASSAGE OF RESTRICTIVE VOTING BILLS ARE BEST EXPLAINED BY RACE (2022), <https://www.brennancenter.org/our-work/research-reports/patterns-introduction-and-passage-restrictive-voting-bills-are-best>.



***Pass the Sustaining Our Democracy Act.***

We commend Chairwoman Klobuchar for the recent reintroduction of the *Sustaining Our Democracy Act*.<sup>33</sup> This critical piece of legislation will designate \$20 billion dollars in federal funding over the next decade to strengthen election administration – including expanding polling places, making upgrades to voter registration systems, and increasing access to voting for underserved communities and racial and language minority groups. We support this bill’s passage as a critical tool to protect proper election administration for the 2024 elections and beyond.

***Urge States to Use Innovative Approaches for Federal Election Administration.***

COVID-19 changed the nature of our everyday lives, including how we vote. The inability of voters to reach the polls led to states across the nation engaging in a plethora of innovative strategies to protect access to the franchise – including expanded early voting, increased vote by mail options, and ballot postage.<sup>34</sup> Such efforts also took place in some Deep South states; for example, Mississippi counted ballots that were timely sent but arrived after Election Day<sup>35</sup> and Alabama loosened some absentee voting restrictions.<sup>36</sup> As a result of these innovations, the 2020 election had the highest voter turnout this century and the largest increase in voters between presidential elections on record.<sup>37</sup> With states beginning to prepare for the 2024 elections, we urge Congress to provide financial and other support for states to think innovatively, building upon the successes of previous pandemic voting schemes, to ensure effective election administration.

***Encourage States to Use Third-Party Funding for Election Administration.***

We thank Chairwoman Klobuchar for urging the Department of Homeland Security (DHS) to prioritize election security and support for election officials in its grantmaking process,<sup>38</sup> as well as DHS for acting urgently to do so.<sup>39</sup> At the same time, due to the significant underfunding of election infrastructure, more support is needed. Private support for election administration was

<sup>33</sup> S. 650, 118th Cong. (2023).

<sup>34</sup> ELIZA SWEREN-BECKER, ANNE GLATZ & ELISABETH CAMPBELL, BRENNAN CTR. FOR JUST., *VOTING DURING COVID-19* (2020), <https://www.brennancenter.org/our-work/research-reports/voting-during-covid-19>.

<sup>35</sup> WENDY R. WEISER, ET AL., BRENNAN CTR. FOR JUST., *MAIL VOTING: WHAT HAS CHANGED IN 2020* (2020), <https://www.brennancenter.org/our-work/research-reports/mail-voting-what-has-changed-2020>.

<sup>36</sup> John H. Glenn, *In-Person Absentee Voting Underway in Alabama*, Ala. Pol. Rep. (Sept. 10, 2020), <https://www.alreporter.com/2020/09/10/in-person-absentee-voting-underway-in-alabama/>.

<sup>37</sup> Jacob Fabina, *Record High Turnout in 2020 General Election*, U.S. CENSUS BUREAU (Apr. 29, 2021), <https://www.census.gov/library/stories/2021/04/record-high-turnout-in-2020-general-election.html>.

<sup>38</sup> News Releases, Amy Klobuchar, Chairwoman, U.S. Senate Comm. on Rules & Admin., Klobuchar, Peters, Colleagues Call on Dep’t of Homeland Sec. to Prioritize Funding for Election Sec. (Feb. 24, 2023), <https://www.klobuchar.senate.gov/public/index.cfm/2023/2/klobuchar-peters-colleagues-call-on-department-of-homeland-security-to-prioritize-funding-for-election-security>.

<sup>39</sup> *DHS Announces \$2 Billion in Preparedness Grants*, DEP’T. OF HOMELAND SEC. (Feb. 27, 2023), <https://www.dhs.gov/news/2023/02/27/dhs-announces-2-billion-preparedness-grants>.



critical to the success of the 2020 election.<sup>40</sup> We urge Congress to encourage states to reengage with this critical funding source to operate effective elections.

As we look forward toward the 2024 federal elections, it is imperative that Congress does all it can to safeguard effective election administration. For further information, please contact LaShawn Y. Warren, SPLC Action Fund Chief Policy Officer, by e-mail at [lashawn.warren@splcactionfund.org](mailto:lashawn.warren@splcactionfund.org) or by phone at 202-288-2352.

Respectfully,

Margaret Huang  
President & CEO  
SPLC Action Fund

LaShawn Y. Warren  
Chief Policy Officer  
SPLC Action Fund

Andrea McChristian  
Policy Research Director  
SPLC Action Fund

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<sup>40</sup> DeBonis, *supra* note 28.



**Testimony of Justin F. Roebuck, Clerk of Ottawa County, Michigan  
To the United States Senate Committee on Rules and Administration  
March 28, 2023**

Chairperson Klobuchar, Ranking Member Fischer and Members of the Committee,

Thank you for holding this important hearing and for providing the opportunity for state and local election officials to share their experiences, as well as the challenges and opportunities that we see on the horizon for the administration of elections across the United States.

I have served as the County Clerk in Ottawa County, Michigan for the past nine years. Ottawa County is the 7<sup>th</sup> largest of Michigan's 83 counties and as of today we have over 220,000 registered voters. During my time in office, I have observed some remarkable changes in the challenges and responsibilities of election administration at the local level.

While the number of changes have been vast over the past decade, I believe there are three main threats that have emerged specifically over the past few years that are directly affecting our nation's local election officials, and that if not addressed will have a significant impact on the future of election administration. Those changes are: heightened scrutiny leading to increased demands on our time, threats to our physical security, and the departure of experienced colleagues and staff, creating a deficiency of institutional knowledge. These threats represent a transformation in the work of election administration, and I believe they necessitate a shift in the way we think about funding our election infrastructure, particularly the need for sustained and regular funding at the federal level.

**Intense Scrutiny**

Elections are the lifeblood of a free people; and election administration requires examination and oversight from the public. Our elections must be public events, open to observation and healthy challenge. We must have visible checks and balances in place to correct human error, and enforceable laws on the books to ensure prosecution of intentional wrongdoing. These ideas are cornerstones of a healthy democratic republic.

In recent years, however, we have seen a new kind of scrutinization of the process. This inquisition emanates less from a vigilant and informed public, and more from intentional disinformation, proliferated at best for the profit of a few, and at worst, aimed at undermining our institutions.

Local election officials have felt the impacts of this disinformation in the countless conversations we are having across America with voters who feel that they can no longer have confidence in their elections. They have been given information from sources that they trust: political leaders, media outlets, or activists. Many of

the citizens in our communities are genuinely concerned. Some are willing to engage in dialogue with their local election officials and come to a richer understanding of how our process works. Some are angry and disillusioned with the process entirely and have chosen antagonism rather than a solution-based approach.

Whether we are having conversations with local residents or producing information for the extensive public records requests that stream in from across the country, local election officials are finding less time for the everyday work that is required to prepare for and execute our elections. In late 2022, I was fortunate to have the funding from my Board of County Commissioners for an additional staff person whose main function would be to respond to Freedom of Information Act (FOIA) requests so that our elections team could continue their normal functions. Many of my colleagues have not been as fortunate. In many communities, additional local funding has not been made available to meet this growing need.

#### **Security Threats**

The stream of disinformation and confusion surrounding election administration has also resulted in serious threats to the security of our election operations and to the physical safety of election officials. We need investment in the physical security of election equipment as it is stored prior to use. We need investment to ensure the safety of polling places during voting hours. And in some cases, we need to ensure proper physical security of the spaces in which we work. All these challenges are relatively new in the post-2020 environment, but again, have not seen adequate recognition of, or investment in, the need.

#### **Workforce Challenges**

As we look to the future of election administration, I believe we face a fundamental shift in the nature of this work. Now more than ever, we need a professional workforce capable of taking on the new challenges and opportunities in election administration. Yet, we are seeing an exodus of institutional knowledge and experience in the field of election administration. Many veteran election officials are making the decision to retire or leave the profession. We need a new generation of public servants, committed to high ethical standards, to ensure the integrity of our elections and to bolster the public confidence that is so vital to the continuation of our system of government. We must make the public investment necessary to ensure that the field of election administration is one that attracts highly skilled professionals willing to make a career of this work.

#### **The Need to Re-Think Funding at the Federal Level**

These challenges all point to a need to reconsider how we look at federal funding for our elections. The autonomy of states and local governments to administer their own elections is a distinctive feature of the American electoral system. De-centralized elections celebrate the uniqueness of states and communities and contribute to the integrity of the process. Nonetheless, there is a vital role for the federal government to play in providing support and resources for election administration. For the future of our democratic process to thrive, election operations at the state and local level require thoughtful and consistent funding from the federal government.

Though election infrastructure was rightfully named as critical government infrastructure by the Department of Homeland Security in 2017, we have yet to see any form of sustained, regular funding at the federal level to acknowledge this designation. Periodic grant funding provided through various federal agencies has helped to support security measures and provide important modernization to state and local systems. However, a key challenge with these grant dollars is their yearly appropriation. The uncertainty of whether funds will be



available undermines preparedness, as election officials are working many months in advance to shore up needed resources and ensure readiness for our voters.

**Deficiency of Government Funding Risks Special Interest Involvement in Elections**

The continued absence of funding in the long term will have significant negative effects upon the infrastructure of our elections, and place their security at risk. The lack of adequate federal support has drawn private interests to step into the gap in the form of individual, foundation, and corporate grants for election administration. This intervention, however well-intentioned, has the potential to place our democratic system upon the weak footing of dependency on special interests.

I do believe there is a space for government and private interests to work collaboratively toward solutions that benefit everyone. While there are many successful examples of public-private partnerships working to foster innovation and provide resources in the public sector, I believe that using these partnerships to fund the critical infrastructure by which we choose our government can lead to a dangerous precedent of private or corporate influence, whether real or perceived.

While in some jurisdictions the use of private grants in funding election operations may be an option that does not negatively impact public trust, this is not the case in my community. Our citizens should not be forced to wonder whether the political leanings of a donor are influencing processes or affecting outcomes. America is the wealthiest and most powerful democracy in world history. We should never put the public servants who run our elections in the place of asking private donors for the resources to do what their tax dollars should already provide.

Though there are many challenges on the horizon, we are also faced with innumerable opportunities to make our elections more efficient, more secure, more responsive to voters. I am hopeful that the recent national focus on the process of election administration will propel us to action, in order to ensure a democracy worthy of passing to future generations.

Thank you again for the opportunity to submit testimony to the Senate Rules Committee. I am grateful for your willingness to hear some of the challenges facing election administrators at the local level, and I look forward to following your work and the continuing discussion on these critical issues.

Respectfully Submitted,

Justin F. Roebuck  
Clerk and Register of Deeds  
Ottawa County, Michigan

Brianna L. Lennon  
County Clerk  
Boone County, Missouri  
March 28, 2023

Written Testimony submitted for the record of the Senate Committee on Rules hearing entitled: "State and Local Perspectives on Election Administration."

Chairwoman Klobuchar, Ranking Member Fischer, and members of the Senate Committee on Rules, I want to thank this Committee for giving local election administrators an opportunity to share our experience and testimony with the committee today. We are already preparing for the 2024 election cycle, and we appreciate today's hearing.

Across the country, local election administrators are facing the reality that the 2020 election cycle has thrust us into the spotlight and fundamentally changed the perception of our jobs. We're asked to be experts in everything from cybersecurity to communications, but our resources are limited, causing experienced administrators to leave the field at alarming rates.

Election administration is a close-knit and cooperative community. We share stories, best practices, and, lately, anxieties about future elections. As a county clerk, I work with my Missouri colleagues every day. However, in my personal time, I co-host an election administration podcast called *High Turnout Wide Margins*, in which we interview election officials across the country to amplify their experience conducting elections over the past three years. Those conversations have shown me that our concerns are nearly universal. We are constantly trying to find effective ways to push back on policy proposals that contradict every best practice for successful elections. As we head into 2024, pressure from national advocacy groups and voters preoccupied with November 2020 makes our work that much more daunting.

In Missouri, one of those policy decisions was the state's decision to withdraw Missouri from the Electronic Registration Information Center (ERIC) this month. ERIC is a nonprofit organization governed by a board of member states and it provides local election administrators with an efficient and cost-effective way to keep voter rolls clean. Missouri's statewide voter registration database only allows us to update voter records if the voter moves or dies within Missouri, but ERIC let us know if voters moved or died out-of-state. Without that information, our voter rolls will lose integrity because out-of-state and deceased voters stay on our roll longer and we waste our limited resources mailing election materials to voters that no longer reside in

Missouri. The state's withdrawal from ERIC occurred without the input of local election authorities, even though voter rolls are maintained at the county-level.

Shortly after losing a major resource for voter list maintenance, a second proposal to fundamentally change Missouri's election administration began circulating in the state legislature. Since the implementation of the Help America Vote Act of 2002, counties have used tabulating equipment that is certified and tested for every election. Missouri's post-election process also requires counties to conduct a hand count audit of the ballots from 5% of their precincts to ensure the tabulators counted correctly. But Missouri is not immune to national narratives about stolen elections and last week a state senate committee held a hearing on a bill that prohibits tabulators and requires counties to count every ballot by hand.

Missouri's local election administrators proactively compiled data from their November 2022 hand count audits, finding that the hand count was initially inaccurate in many counties. In fact, in one county the election judges had to recount eight times. On the other hand, the tabulator results were correct the first time in every county. The average county employed four counting judges to count 1,010 ballots and the process took seven hours. Data aside, the risk of fraud from intentionally miscounting ballots, delays in reporting results, and the perennial challenge of finding enough poll workers to administer an election should be enough to convince anyone that hand counting is an untenable plan for 2024. Unfortunately, those observations have not deterred advocates and legislators from pressuring counties to hand count in Missouri.

These recent events are not isolated to Missouri. Colleagues in California, Arizona, Michigan, and Ohio are experiencing these same challenges, too, which suggests a national effort. We are already seeing advocacy groups target small counties to loudly criticize mundane administrative decisions, hoping to inject doubt into the outcome of their elections. As November 2024 approaches, I fully expect national pressure to increase on local election officials and counties with minimal staff and very little political experience will be ensnared in a partisan narrative about election integrity. I ask that this committee take to heart the concerns of our local election officials and be prepared to push back on our behalf on this narrative that elections in the United States are broken or untrustworthy. They are not. We work each and every day to ensure they are not. I invite you to visit with me in Boone County, watch our processes, and allow me and my colleagues to answer any questions you have.



**Written Testimony of Adam Lioz**

**Senior Policy Counsel**

**NAACP Legal Defense and Educational Fund, Inc.**

**Submitted to the**

**United States Senate Committee on Rules & Administration**

**In connection with its March 28, 2023 hearing entitled**

**“State and Local Perspectives on Election Administration”**

## I. INTRODUCTION

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

My name is Adam Lioz and I am Senior Policy Counsel at the NAACP Legal Defense and Educational Fund, Inc. (“LDF”). Thank you for the opportunity to provide written testimony regarding the experience of Black voters in the 2022 midterm elections, garnered from LDF’s on-the-ground election protection work across seven states.

The 2022 elections took place in a unique and notable historical context. As LDF has detailed in our statement to the Select Committee to Investigate the January 6<sup>th</sup> Attack on the United States Capitol, the white supremacist backlash to voters of color asserting voice and power that fueled the January 6<sup>th</sup> insurrection extended to widespread efforts to erect barriers to the ballot across several states.<sup>1</sup> Like the violent insurrection, this attack on basic democratic values was fueled by a massive, coordinated effort to convince millions of Americans that our election systems cannot be trusted.<sup>2</sup> In addition, the 2022 midterm election took place under new congressional, state legislative, and often local districts drawn as part of the recent redistricting process for the first time in six decades without the full protections of the Voting Rights Act (VRA).

In this context, we can say the 2022 elections were a limited success on some metrics. There was no significant voter fraud or widespread breakdown of election administration. Yet for Black voters, and voters of color more broadly, last November’s elections once again fell well short of our aspirations for an inclusive, equitable democracy. In addition, the specific problems LDF and our partners have identified were often exacerbated by restrictive voting laws recently enacted pursuant to the false narrative of stolen elections. Finally, to the extent the elections went relatively smoothly, it was often because of tremendous effort by community and voting rights organizations such as LDF and our partners that expended

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<sup>1</sup> Testimony of Janai Nelson, Before the 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>2</sup> *Id.*

significant resources protecting the vote—the kind of effort that should not be required year-after-year in a truly inclusive, accessible democracy.

We simply cannot declare success and move on from addressing voting discrimination and access problems when several 2022 elections took place in electoral districts courts have declared racially discriminatory and Black and brown voters still confront unnecessary and unequal barriers to the ballot across the country. Congress must focus on fulfilling its constitutional duty to address these problems through legislation guaranteeing free and fair access to the ballot for all.

A. Statement of Purpose

My testimony today seeks to provide this Committee with insight into the challenges and barriers Black voters experienced in the 2022 elections. My testimony is informed by our on-the-ground experience working to protect the vote in Black communities across seven 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 expand on the specific context in which the 2022 elections took place; enumerate several specific ways that the 2022 elections failed Black voters; and propose how Congress can address these problems through much-needed 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 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>3</sup> LDF's founder Thurgood Marshall—who litigated LDF's watershed victory in *Brown v. Board of Education*,<sup>4</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>5</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 the 2022 elections, LDF 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. THE 2022 ELECTION IN CONTEXT**

The 2022 election followed in the shadow of racially-discriminatory gerrymandering in the redistricting process, numerous state laws that made it more

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<sup>3</sup> LDF has been an entirely separate organization from the NAACP since 1957.

<sup>4</sup> 347 U.S. 483 (1954).

<sup>5</sup> 321 U.S. 649 (1944).

difficult for people of color around the country to vote, and threats to election workers—all fueled by a false narrative asserting stolen elections and the reluctance on the part of some accustomed to power to accept the increasingly inclusive, multi-racial democracy the U.S. can and must become.

In the previous federal election in 2020, Black and brown voters faced significant barriers to the ballot across the country.<sup>6</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>7</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 narrative that the election had been stolen, the January 6<sup>th</sup> insurrection attempted to thwart the peaceful transfer of power and undermine trust in our democracy.

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<sup>6</sup> Thurgood Marshall Institute, *Democracy Defended*, NAACP LDF (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>7</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!', THE 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, BUSINESS 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, BUSINESS 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, THE 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).



Legislators then introduced more than 400 bills in nearly every state aiming to restrict the franchise.<sup>8</sup> In 2021 and 2022, 24 states enacted a total of 45 laws that roll back voting rights and erect new barriers to the ballot.<sup>9</sup> Through 2021, seventeen states enacted 32 laws to criminalize, politicize, or interfere with election administration.<sup>10</sup> At least 12 similar laws across seven states were added in 2022.<sup>11</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 elections officials.<sup>12</sup>

Many of these laws achieved their intended effect. In Georgia, despite a high primary turnout in 2022, the participation gap between Black and white voters was wider than at any point in the past decade.<sup>13</sup> And in Texas, of the 25,000 ballots in the primaries that were returned or rejected, a disproportionate number belonged to Latino and Black voters.<sup>14</sup>

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<sup>8</sup> *Resource: Voting Laws Roundup: December 2021*, BRENNAN CENTER FOR JUSTICE (Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>

<sup>9</sup> *Id.*; Brennan Center for Justice, *Voting Laws Roundup: December 2022* (Dec 19, 2022), [https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022#footnote6\\_5ixmthi](https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022#footnote6_5ixmthi); Memorandum from the States United Democracy Center, Protect Democracy, and Law Forward to Interested Parties (Dec. 23, 2021), at 2, [https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-report-update\\_12232021-year-end-numbers.pdf](https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-report-update_12232021-year-end-numbers.pdf)

<sup>10</sup> Memorandum from the States United Democracy Center, Protect Democracy, and Law Forward to Interested Parties (Dec. 23, 2021), at 2, [https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-report-update\\_12232021-year-end-numbers.pdf](https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-report-update_12232021-year-end-numbers.pdf)

<sup>11</sup> Brennan Center for Justice, *Voting Laws Roundup: December 2022* (Dec 19, 2022), [https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022#footnote6\\_5ixmthi](https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022#footnote6_5ixmthi)

<sup>12</sup> Memorandum from the States United Democracy Center, Protect Democracy, and Law Forward to Interested Parties (Dec. 23, 2021), at 2, [https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-report-update\\_12232021-year-end-numbers.pdf](https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-report-update_12232021-year-end-numbers.pdf)

<sup>13</sup> Sara Loving & Kevin Morris, *Georgia's Racial Turnout Gap Grew*, BRENNAN CENTER FOR JUSTICE (Dec. 16, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/georgias-racial-turnout-gap-grew-2022>

<sup>14</sup> Kevin Morris & Coryn Grange, *Disenfranchisement and Racial Disparities in the 2022 Texas Primary*, THE BRENNAN CENTER FOR JUSTICE (October 20, 2022),



### III. OBSTACLES FOR BLACK VOTERS IN THE 2022 ELECTION

#### A. Elections Took Place in Discriminatory Districts

After the Supreme Court undercut the heart of the federal Voting Rights Act, states have taken steps to draw discriminatory districting maps to disenfranchise Black and brown voters. Of the nine states that were previously under the purview of Section 5, six of these states faced lawsuits challenging their maps for racial discrimination.<sup>21</sup> Though these challenges are still ongoing, in litigation led by LDF's clients alone, courts in Alabama, South Carolina, and Louisiana (all states previously covered by the VRA's preclearance protections)<sup>22</sup> found that the maps created by state legislatures were discriminatory. However, as a result of pending Supreme Court litigation, injunctions requiring legislatures to redraw maps—including injunctions prior to the 2022 election in Alabama and Louisiana—have been frozen, resulting in the usage of discriminatory maps.

In 2021, Alabama enacted a redistricting plan for its seven congressional districts. The new map resulted in Black Alabamians—who comprise 27% of the state's population—forming the majority in only one of the state's seven districts. The impact of this map is that Black Alabamians were only given the meaningful opportunity to elect their preferred candidate in 14% of the state's congressional districts, as opposed to white Alabamians who had this opportunity in 86% of the state's congressional districts.<sup>23</sup> LDF's clients Greater Birmingham Ministries, Alabama State Conference of the NAACP, and several individuals filed a lawsuit challenging the state's redistricting plan under Section 2 of the Voting Rights Act and demanding that the state create a second district that gives Black Alabamians an equal chance to see their preferred candidates represent them in Congress.<sup>24</sup>

[4NDI&feature=emb\\_logo](#)

<sup>21</sup> *Cases*, ALL ABOUT REDISTRICTING, [https://redistricting.ils.edu/cases/?cycles%5B%5D=2020&sortBy=-updated\\_page=1](https://redistricting.ils.edu/cases/?cycles%5B%5D=2020&sortBy=-updated_page=1)

<sup>22</sup> Thurgood Marshall Institute, *Democracy Defended*, NAACP LDF (Oct. 6, 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>23</sup> See Stipulation of Facts, *Milligan v. Merrill*, No. 2:21-cv-01530-AMM (N.D. Ala. 2021), ECF No. 53.

<sup>24</sup> Compl., *Milligan v. Merrill*, No. DC - 775038/000001 - 16632740 v1 para. 3-7, (N.D. Ala. Nov. 15, 2021), available at <https://www.naacpldf.org/wp-content/uploads/COMPLAINT-Milligan-v.-Merrill-1.pdf>.

A three-judge panel in the District Court of the Northern District of Alabama agreed unanimously with the plaintiffs' allegations, finding that the map likely violated Section 2 of the VRA and granting a preliminary injunction that required the state to draw a new map.<sup>25</sup> However, the Supreme Court froze the preliminary injunction by a 5-4 decision pending a merits decision in the case.<sup>26</sup> The result of this freeze is that until the Supreme Court issues an opinion in the *Merrill v. Milligan* case, which was argued in October 2022, Alabama is using a map that has been held to be discriminatory as the basis for elections in the state. As expected under this map, Alabamians elected only one Black Member of Congress in 2022 out of seven seats—in a state that is nearly 30% Black.<sup>27</sup>

Similarly, LDF clients Louisiana State Conference of the NAACP, Power Coalition for Equity and Justice and nine individual voters challenged Louisiana's 2022 congressional map, alleging that it dilutes the power of Black Louisianans and unlawfully deprives Black voters of a meaningful opportunity to elect their candidates of choice, violating Section 2 of the Voting Rights Act.<sup>28</sup> The discriminatory map was vetoed by Louisiana Governor Bel Edwards, but the legislature voted to overturn the veto. 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 panel of the Fifth Circuit Court of Appeals in New Orleans

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<sup>25</sup> Preliminary Injunction Memorandum Opinion and Order, [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), *Milligan v. Merrill*, No. 2:21-cv-01530-AMM (Dist. Ct. N.D. of Alabama).

<sup>26</sup> [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) Applications for Stays or Injunctive Relief, [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), *Merrill v. Milligan*, Nos. 21A375 (21–1086) and 21A376 (21–1087) (595 U.S. 2022)

<sup>27</sup> *Members of the U.S. Congress*, CONGRESS.GOV, <https://www.congress.gov/members?q=%7B%22member-state%22%3A%22Alabama%22%2C%22congress%22%3A118%7D>

<sup>28</sup> <https://www.naacpldf.org/wp-content/uploads/Complaint-Filed-Copy.pdf> Compl. for Decl. and Injunctive Relief, *NAACP Louisiana State Conference v. Ardoin*, No. C-71683725 (19th Judicial District Court Parish of East Baton Rouge Mar. 15, 2022), <https://www.naacpldf.org/pressrelease/lawsuit-filed-challenging-new-texas-law-targeting-voting-rights/>.

agreed.<sup>29</sup> The court’s determination required legislators to draw a new map with two districts where Black voters can elect candidates of choice to be used during upcoming elections, while litigation continues.<sup>30</sup> On June 28, 2022, the U.S. Supreme Court granted Louisiana’s bid to temporarily halt the district court’s ruling, and reinstated the discriminatory maps for the upcoming election season.<sup>31</sup>

In 2021, South Carolina enacted new post-Census maps for its congressional districts and state-level districts. LDF brought suit on behalf of the South Carolina State Conference of the NAACP and an individual voter, claiming that the districts in the congressional map were racially gerrymandered and designed with a discriminatory intent, and deny Black voters an equal opportunity to participate in the political process.<sup>32</sup> In January 2023, the United States District Court for the District of South Carolina held unanimously that District 1 of South Carolina’s congressional map had “bleached” Black voters out of a district and made a “mockery” of traditional districting principles.<sup>33</sup> The court ruled that the legislature had unconstitutionally set out to achieve an artificially low target Black population in this district and that the plaintiff’s 14th Amendment rights were violated. As a result of the injury caused by this congressional map, the court 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,

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<sup>29</sup> Ruling and Order, <https://www.naacpldf.org/wp-content/uploads/Robinson-v.-Ardoin-Ruling-and-Order-Preliminary-Injunction.pdf>, NAACP Louisiana State Conference v. Ardoin, No.3:22-cv-00211-SDD-SDJ (Dist. Ct. Middle District of Louisiana); *Ardoin v. Robinson*, No. 21A814, (5th Cir. Jun. 28, 2022).

<sup>30</sup> Ruling and Order, <https://www.naacpldf.org/wp-content/uploads/Robinson-v.-Ardoin-Ruling-and-Order-Preliminary-Injunction.pdf>, NAACP Louisiana State Conference v. Ardoin, No.3:22-cv-00211-SDD-SDJ (Dist. Ct. Middle District of Louisiana). *U.S. Supreme Court*

<sup>31</sup> *U.S. Supreme Court Reinstates Louisiana’s Discriminatory Congressional Map*, NAACP LDF, <https://www.naacpldf.org/press-release/u-s-supreme-court-reinstates-louisianas-discriminatory-congressional-map/> (Jun. 28, 2022).

<sup>32</sup> *Trial Wraps Up in Voting Rights Case Challenging South Carolina’s Congressional Map*, NAACP LDF, (Nov 29, 2022). <https://www.naacpldf.org/press-release/trial-wraps-up-in-voting-rights-case-challenging-south-carolinas-congressional-map/>

<sup>33</sup> Findings of Fact and Conclusions of Law, <https://www.aclu.org/wp-content/uploads/legal-documents/order-south-carolina-state-conference-of-the-naacp-v-alexander.pdf>, pg 15, *South Carolina State Conference of the NAACP v. Alexander*, No.: 3:21-cv-03302-MGL-TJH-RMG (United States District Court for the District of South Carolina Columbia Division Jan. 6, 2023).

the 2022 elections were held prior to the lower court's ruling, and hence took place under the discriminatory map.<sup>34</sup>

### B. Mass Challenges to Voter Eligibility

Over the last two years, there has been a dramatic and concerning increase in the use of frivolous mass challenges to voter eligibility as a tactic to disenfranchise eligible voters, sow mistrust in our democracy, and inject turmoil into the mechanics of election administration.<sup>35</sup> Mass voter challenges have long been a tactic to suppress political participation, especially by Black voters and other voters of color.<sup>36</sup> In many cases, these mass challenges are orchestrated by extremist organizations that proliferate disinformation among the electorate.<sup>37</sup> The harm caused by these mass challenges is manifold: from grouping the consideration of a number of challenged voters and thus foreclosing any individualized consideration; to disrupting election administration by forcing already-overworked election officials to adjudicate thousands of challenges in the lead-up to Election Day; to potentially removing voters from the voting rolls based on unverified, third-party information indicating a change of address, often times falling far below the requisite burden of proof in violation of the National Voter Registration Act;<sup>38</sup> to the ad-hoc notice and procedures utilized to adjudicate these challenges; and perhaps most concerning, the long-term impact of

<sup>34</sup> Jurisdictional Statement, [https://vhdsfhf2oms2wensvk7sdv3so.blob.core.windows.net/thearp-media/documents/SC\\_22-807\\_1.pdf](https://vhdsfhf2oms2wensvk7sdv3so.blob.core.windows.net/thearp-media/documents/SC_22-807_1.pdf), *Alexander v. The South Carolina State Conference of the NAACP*, No. 22-, (Supreme Court, Feb. 2023).

<sup>35</sup> Kate Hamilton, *Frivolous Mass Challenges to Voter Eligibility Damaging to Democracy*, CAMPAIGN LEGAL CENTER (Oct. 6, 2022), <https://campaignlegal.org/update/frivolous-mass-challenges-voter-eligibility-damaging-democracy>

<sup>36</sup> Jonathan Brater, *Voter Purges: The Risks in 2018*, Brennan Center 1, 1-2 (2018), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Voter\\_Purges\\_The\\_Risks\\_in\\_2018.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Voter_Purges_The_Risks_in_2018.pdf); see also Laughlin McDonald, A VOTING RIGHTS ODYSSEY: BLACK ENFRANCHISEMENT IN GEORGIA 1, 52-54 (2003) (describing the historical origins of Georgia's voter challenge laws).

<sup>37</sup> Nick Corasanti & Alexandra Berzon, *Activists Flood Election Offices With Challenges* THE NEW YORK TIMES (Sept. 28, 2022), <https://www.nytimes.com/2022/09/28/us/politics/election-activists-voter-challenges.html>

<sup>38</sup> The Eleventh Circuit has held that a removal is "systematic" if it does "not rely upon individualized information or investigation to determine which names from the voter registry to remove." *Arcia v. Florida Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014). The Court noted that a "[m]ass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices" qualified as a "systematic" removal under federal law. *Id.* at 1344.

chilling voter participation because of fear of being challenged or being placed on a challenged list and facing unnecessary hurdles even where people are entitled to vote.

*Georgia*

Frivolous mass challenges to voter eligibility often rely on speculation, innuendo, or vague objections as the basis to challenge large numbers of voters without providing supporting evidence. For instance, prior to the special election for the U.S. Senate in Georgia in January 2021, one extremist organization orchestrated a massive statewide voter challenge effort to attempt to disqualify over 360,000 registered voters residing in all 159 Georgia counties, based on debunked and unreliable methodologies.<sup>39</sup> Some counties received multiple waves of challenges in the days leading up to the election. In response to these voter challenges, LDF and partner organizations wrote to officials in all 159 counties, urging them to reject these challenges and outlining why the challenges were baseless, untimely, and potentially discriminatory under federal and state law.<sup>40</sup> While the vast majority of these challenges were rejected by election officials or by courts,<sup>41</sup> an innovative voter suppression tactic had emerged.

On March 25, 2021, following a rushed and non-transparent legislative process, the Georgia legislature passed Senate Bill 202 (“S.B. 202”), a 98-page omnibus bill that, among other anti-voter provisions, codified the ability of any voter in a county to bring an unlimited number of challenges.<sup>42</sup> Georgia has long allowed

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<sup>39</sup> Jonathan Brater, *Voter Purges: The Risks in 2018*, Brennan Center 1, 1-2 (2018), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Voter\\_Purges\\_The\\_Risks\\_in\\_2018.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Voter_Purges_The_Risks_in_2018.pdf); see also Laughlin McDonald, A VOTING RIGHTS ODYSSEY: BLACK ENFRANCHISEMENT IN GEORGIA 1, 52-54 (2003) (describing the historical origins of Georgia’s voter challenge laws).

<sup>40</sup> Thurgood Marshall Institute, *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) at pg 91.

<sup>41</sup> Jonathan Raymond, *Cobb County Election Board Denies Hearing for Challenges Against Thousands of Voters*, 11Alive (Dec. 18, 2020), <https://www.11alive.com/article/news/politics/elections/cobb-county-voter-challenge-details/85-3d7ff8c2-5e76-423d-8a65-3bb78ce10d82>.

<sup>42</sup> Georgia Code § 21-2-229, 230; On March 30, 2021, LDF filed a lawsuit challenging other provisions of S.B. 202 under the Voting Rights Act and other laws, on behalf of several organizations including the Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Inc, Georgia ADAPT, Georgia Advocacy Office, and Southern Christian Leadership Conference. *Civil Rights Groups Sue Georgia Over New Sweeping Voter Suppression Law*, NAACP LDF (Mar.

residents to contest the registration of other voters within the county where they live; but post-2020 there has been a drastic increase that was further cemented by S.B. 202. There were at least 65,000 of these challenges across the state in 2022.<sup>43</sup> One man alone challenged the eligibility of 31,000 Forsyth County voters in 2022.<sup>44</sup> At the eleventh hour, the Forsyth County Board of Elections dismissed over 15,000 voter challenges due to the rapid-response advocacy from the ACLU of Georgia and local partners.<sup>45</sup> Nonetheless, 600 of the challenges were still upheld, at least some of which appeared to disenfranchise eligible voters.<sup>46</sup> For example, Barbara Helm, an eligible voter, who was unhoused and sleeping in her car, lost her ability to vote based on these challenges because she lacked a residential address and had registered to vote using a post office in Cumming.<sup>47</sup> In the weeks surrounding this event, both Gwinnett and Cobb Counties voted to throw out thousands of similar challenges brought before them by extremist groups seeking to circumvent the strict processes that protect the accuracy of voter rolls.<sup>48</sup>

30, 2021), <https://www.naacpldf.org/press-release/civil-rights-groups-sue-georgia-over-new-sweeping-voter-suppression-law/>

<sup>43</sup> *Mass Voter Challenges in Georgia*, BRENNAN CENTER FOR JUSTICE (Feb. 3, 2023), <https://www.brennancenter.org/our-work/research-reports/mass-voter-challenges-georgia>; Mark Niese, *Eligibility challenges impede several Georgia voters at the polls*, THE ATLANTA JOURNAL-CONSTITUTION (Nov. 1, 2022), <https://www.ajc.com/politics/several-georgia-voters-report-hurdles-after-eligibility-challenges/WOUAH77TLRBD5A5HLLFSJV3S44/>

<sup>44</sup> Testimony of Damon T. Hewitt, Before the Subcomm. on Elections, 2022 Lookback Series: Successes in the 2022 Midterm Elections (Mar. 10, 2023), at 13, <https://cha.house.gov/sites/evo-subsites/cha.house.gov/files/evo-media-document/damon-hewitt-house-admin-elections-subcommittee-testimony-3.10.23.pdf>.

<sup>45</sup> Dorrie Toney, *Press Release: THE ACLU OF GEORGIA COMMENDS FORSYTH COUNTY'S DISMISSAL OF THOUSANDS OF VOTER CHALLENGES, URGES MORE ACTION TO REVERSE CHALLENGES SUSTAINED IN SEPTEMBER*. (Oct. 11, 2022), ACLU GEORGIA, <https://www.acluga.org/en/press-releases/press-release-aclu-georgia-commends-forsyth-countys-dismissal-thousands-voter>

<sup>46</sup> Mark Niese, *Eligibility challenges impede several Georgia voters at the polls*, THE ATLANTA JOURNAL-CONSTITUTION (Nov. 1, 2022), <https://www.ajc.com/politics/several-georgia-voters-report-hurdles-after-eligibility-challenges/WOUAH77TLRBD5A5HLLFSJV3S44/>

<sup>47</sup> Mark Niese, *Eligibility challenges impede several Georgia voters at the polls*, THE ATLANTA JOURNAL-CONSTITUTION (Nov. 1, 2022), <https://www.ajc.com/politics/several-georgia-voters-report-hurdles-after-eligibility-challenges/WOUAH77TLRBD5A5HLLFSJV3S44/>

<sup>48</sup> Jonathan Raymond, *Cobb County Election Board Denies Hearing for Challenges Against Thousands of Voters*, 11Alive (Dec. 18, 2020), <https://www.11alive.com/article/news/politics/elections/cobb-county-voter-challenge-details/85-3d7ff8c2-5e76-423d-8a65-3bb78ce10d82>.



While Georgia counties largely rejected frivolous mass challenges, they were not without cost. In addition to the real risk that eligible voters can be disenfranchised by challenges based on flawed or incomplete data, they cost both election officials and voting rights attorneys and advocates precious time and effort at exactly the time those resources could be deployed to ensure seamless and equitable participation by all eligible voters.<sup>49</sup>

### *Florida*

In Florida, voters faced the novel phenomenon of Supervisors of Election (“SOEs”) themselves filing challenges against voters’ eligibility in the final weeks before the election, prompted by late-breaking allegations received from state officials. Lists containing the names of hundreds of voters were sent by the Florida Office of Election Crimes and Security to County Elections Supervisors in October 2022 urging that the named voters be screened and possibly prevented from voting.

Public records requests submitted by LDF revealed that at least 14 SOEs submitted voter challenges against at least 2,370 Florida voters during the 30-day period before November 8, 2022, general election.<sup>50</sup> Furthermore, based on documents provided in response to these public records requests, we understand that these challenges were entirely or in large part prompted by letters from the Office of Election Crimes and Security providing lists of purportedly ineligible voters to the SOEs.<sup>51</sup> The vast majority of these SOE-initiated voter challenges were based on past felony convictions that allegedly rendered the voter ineligible; and a small portion were based on mental incapacity, death, double-voting in past elections, or residing at a non-residential address. In all cases, SOEs used boilerplate language in the oaths required by Florida law to accompany any challenge, and did not specifically describe the basis of the voters’ ineligibility in the oath. For example, in one county, the asserted basis for SOE-initiated voter challenges was “Possible Felon – Potentially Ineligible to Vote” with no further detail or explanation. In another county, the asserted basis for SOE-initiated voter challenges was “potentially

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<sup>49</sup> Andrew Garber, Jennifer Lee, & Bryan P. Tyson, *Letter to State Board on Challenges Guidance SEB*, BRENNAN CENTER FOR JUSTICE (Feb. 3, 2023), <https://www.brennancenter.org/sites/default/files/2023-02/Letter%20to%20State%20Board%20on%20Challenges%20Guidance%20SEB%20Final.pdf>

<sup>50</sup> See *infra* Appendix A (letter to Florida Supervisors of Elections).

<sup>51</sup> See *infra* Appendix A (contains examples of letters and resulting action from Brevard County).

ineligible to be registered and vote based on F.S. 98.075(5),” again, with no further detail or explanation.

Issuing mass challenges based upon “possible” felony conviction status is especially irresponsible in Florida where the mere fact of a prior felony conviction does not mean that a registrant is ineligible to vote.

The SOEs who initiated voter challenges employed a range of approaches with respect to providing notice to challenged voters.<sup>52</sup> Some SOEs provided detailed notice to at least some challenged voters; these SOEs sent challenged voters a letter explaining that they have been challenged and included a copy of the challenge oath and substantial documentation concerning the voter’s status.<sup>53</sup> It appears that these SOEs provided voters with all documentation that was relied upon to evaluate the voters’ eligibility.<sup>54</sup> Other SOEs provided limited notice to challenged voters; these SOEs merely sent voters a copy of the challenge oath but did not provide any information about the basis for the challenge.<sup>55</sup> Finally, a few SOEs provided no notice at all to challenged voters.<sup>56</sup> In those counties, voters would learn that they had been challenged by their SOE only if they showed up to vote, at which point they were provided with the challenge oath. With notices going out as late as the last weekend before Election Day, voters were often left with no time to address the challenge.<sup>57</sup> Using inconsistent and in many cases inadequate ad hoc and problematic procedures to notify voters about their inability to vote erects a barrier to the ballot and chills participation.

In addition to the SOE-initiated challenges, LDF identified one major example of a private-party frivolous mass challenge in Florida in the 2022 general election. An individual voter challenged the eligibility of 2,257 voters in Pinellas County in the

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<sup>52</sup> See *infra* Appendix A.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> James Call and John Kennedy, *Florida election crimes unit sends out last-minute felons-removal list, causes confusion*, TALLAHASSEE DEMOCRAT, (Nov. 4, 2022), <https://www.tallahassee.com/story/news/politics/elections/2022/11/04/florida-desantis-election-crimes-unit-removal-felons-voting-rolls/8256072001/>

days before the November election. Thankfully, based on prior advocacy by LDF and state-based partners, the Pinellas County SOE followed our recommendations for how to handle such a challenge and rejected it outright. The SOE's rejection of this challenge prevented large numbers of voters from being disenfranchised and allowed for compliance with applicable federal and state laws by ensuring that voters targeted by frivolous mass challenges were permitted to cast regular ballots rather than provisional ballots.<sup>58</sup>

### C. Problems at Polling Places

Beyond unfair districts that diluted their voices and mass challenges that threatened their places on the rolls, Black voters faced obstacles at their polling locations in 2022. Below is a brief review of some of these obstacles in Georgia, Louisiana, Mississippi, South Carolina, and Texas.

#### *Georgia*

Changes in polling locations between early voting and Election Day led to ongoing voter confusion and delays in Georgia during the November elections. LDF's PTV team was on the ground with election protection partners to assist voters at a handful of polling locations that were not in operation on Election Day. LDF filed an Open Records Request with the Georgia Secretary of State's office weeks before the election to receive a list of polling locations statewide but did not receive a list from the office until after the election, well past the deadline for responding to open records requests.

#### *Louisiana*

Across Louisiana, there were hundreds of changes to assigned polling locations during the 2022 election cycle. These changes were disproportionately focused in three parishes with significant Black populations: 27 in Iberia where 32% of the voting age population is Black, 31 in St. Landry (42% Black), and 26 in St. Martin (23% Black).<sup>59</sup> In effect, 39% of the changed polling place assignments were in

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<sup>58</sup> A process that could effectuate mass removals is systematic. *See N. Carolina State Conference of NAACP*, No. 1:16-CV-1274, 2018 WL 3748172 (concluding that counties that sustained mass challenges also violated the NVRA's 90-day provision).

<sup>59</sup> *See* U.S. Census Bureau, 2020 Decennial Census. Redistricting Data PL 94-171 <https://www2.census.gov/programs-surveys/decennial/2020/data/>

parishes that represent less than 5% of the state's population.<sup>60</sup> Many of those changes were complicated—for example, in St. Martin voters once assigned to a single polling place were divided among three new polling stations. To minimize future problems resulting from late polling place changes, throughout 2022 LDF partnered with state-based partners including Power Coalition for Equity and Justice to advocate for the enactment of Act 652, which requires that election officials, including the Secretary of State, publish notices of poll site changes on their websites and provide instructions for voters to opt-in to receive electronic alerts of changes to their polling locations.<sup>61</sup>

Accessibility at polling places was a consistent issue that LDF's PTV team observed when on the ground during the Louisiana General election on December 10, 2022.<sup>62</sup> There was a lack of accessible parking and entrances at many poll sites. Though many doors to sites were propped open for voters, broken cement, uneven gravel, and obscured ramps prevented voters with accessibility needs from freely accessing polling sites. For example, in LaSalle Parish polling sites were located on grassy lots with no pavement, or curb cut, among other accessibility concerns.

At the Community Commitment Center in Orleans Parish, a wooden ramp installed for accessible access was unstable and broken in the middle. The PTV team reported this concern and had the ramp removed to provide for alternative accommodation. LDF has since worked with state partners to request a more sturdy temporary ramp be utilized.

### *Mississippi*

Poll site changes affected thousands of Mississippi voters ahead of the 2020 election due to omissions or inaccurate reporting of those changes on the Secretary of State's online poll site locator. Unfortunately, this problem remained unsolved during the June 2022 Primary Elections and well into the November 2022 General Election. Leading up to the June Primary, there were 70 changes to polling places, including

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<sup>60</sup> Louisiana Secretary of State, *Polling Location Changes*, [https://electionstatistics.sos.la.gov/Data/Polling\\_Location\\_Changes/2022%20Polling%20Location%20Changes.pdf](https://electionstatistics.sos.la.gov/Data/Polling_Location_Changes/2022%20Polling%20Location%20Changes.pdf)

<sup>61</sup> H.B. 1065, 2022 Leg., Regular Sess. (La. 2022).

<sup>62</sup> See *infra* Appendix A (examples of accessibility issues uncovered in Louisiana).

48 precinct relocations, 15 closures, and 8 new precincts.<sup>63</sup> Many changes were not reflected in the Statewide Election Management System (“SEMS”) at all, and some changes were incorrectly reported or recorded in SEMS. Calls to the circuit clerks and election commissioners revealed errors in the April 2022 SEMS updates. Throughout the period leading up to the November 2022 Election, Mississippi voters continued to receive misinformation regarding their voting locations. Because SEMS serves as the data source for the online poll site locator, this means that the locator reported incorrect information to voters seeking information about how and where to vote.

LDF sent the Mississippi Secretary of State letters demanding a remedy to the systematic misinformation about polling locations in the Mississippi online poll locator.<sup>64</sup> This issue affected over 65,000 voters in 2020 and persisted in the 2022 elections. Local news outlets highlighted this issue as a result of LDF’s advocacy, emphasizing that poll site changes disproportionately affect Black voters, and the need for a remedy to the mass voter confusion and disenfranchisement.<sup>65</sup>

As a result of our advocacy, the Secretary of State conducted local outreach to county officials across the state to confirm that polling locations were accurately reported to voters as is statutorily required. To supplement this effort, LDF sent a letter to all local officials regarding their reporting obligations and discouraging further last-minute and discriminatory changes to polling locations. These efforts resulted in fixes to the online poll locator, publication of polling locations for Mississippi voters in local news outlets, and additional guidance being posted on local elections’ websites that reduced many closures.<sup>66</sup>

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<sup>63</sup> Ashton Pittman & William Pittman, Mississippi Election Officials Made 70 Polling Place Changes Since 2020, MPF Finds, MISS. FREE PRESS (June 3, 2022), <https://www.mississippifreepress.org/24350/mississippi-electionofficials-made-70-polling-place-changes-since-2020-mfp-finds>. (describing changes in polling places from the 2020 election).

<sup>64</sup> Tanner Lockhead, *Re: Urgent Need for Reporting Polling Site Changes*, NAACP LDF (Oct. 14, 2022), <https://www.naacpldf.org/wp-content/uploads/Reply-letter-obligation-and-authority-to-act.pdf>

<sup>65</sup> Ashton Pittman & William Pittman, *Madison County Moves 2,000 Black, Hispanic Voters to Crowded Precinct With Little Warning*, MISS. FREE PRESS (Oct 29, 2020), <https://www.mississippifreepress.org/6492/madison-county-moves-2000-black-hispanic-voters-to-crowded-precinct-with-little-warning> (describing disproportionate impact of voting site changes on communities of color in Mississippi); Robert McDuff, *The Voting Rights Act and Mississippi*, 17 REV. OF L. & SOC. JUST. 475, 480 (2008) (describing a broader history of discrimination in voting, including through discriminatory changes in polling locations).

<sup>66</sup> Ashton Pittman & William Pittman, *Mississippi Election Officials Made 98 Polling Place Changes Since 2020, Investigation Finds*, MISS. FREE PRESS (Nov. 4, 2022),

Despite advocacy by LDF and coalition partners in Mississippi, there were still problems related to polling location changes on Election Day in November. At Precinct 45, in majority-Black Hinds County, voters were directed to the wrong polling location and the correct polling location was misidentified by the Secretary of State. LDF engaged in rapid response work to send a mass text message to the 2,600 voters in that precinct to inform them of the polling location change.

#### *South Carolina*

During the November General Election, LDF was on the ground in Charleston, Richland, and Greenville as part of our Election Protection efforts. The PTV team received reports of delayed poll site openings throughout South Carolina. Richland County faced particularly egregious delays on Election Day, with the polling place at Greenview Park, opening 90 minutes late. In response, LDF reached out to the South Carolina Election Commission to request that they counsel Greenview Park to extend their hours, but they declined to do so, stating there was no statutory authority in place to extend polling place hours on a county-wide basis. In order to mitigate the confusion and delay for voters, LDF's PTV team initiated a targeted text messaging campaign to Black voters in Richland County, reminding them that if they are in line by 7pm, they can vote and should stay in line.

#### *Texas*

In Texas, polling places across Bell County opened extremely late for the 2022 general election after polling machines encountered technical issues.<sup>67</sup> In Harris County, the most diverse county in the state, multiple locations opened more than one hour late, and, in at least one instance, a location did not open until four hours past the scheduled 7:00 a.m. opening of polls.<sup>68</sup> The failure to open on time resulted in voters at worst being disenfranchised, and at best being forced to travel further and stand in longer lines.

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<https://www.mississippifreepress.org/24350/mississippi-electionofficials-made-97-polling-place-changes-since-2020-investigation-finds>

<sup>67</sup> Joey Horta & Joel Leal, *Bell County polling locations to stay open until 8 PM after early morning issues*, 25ABC, (Nov. 8, 2022), <https://www.kxxv.com/hometown/bell-county/bell-county-officials-address-early-morning-technical-delays-at-polling-locations>.

<sup>68</sup> Alex Ura, *Texas Supreme Court ruling opens possibility that late Harris County ballots won't be counted*, THE TEXAS TRIBUNE, (Nov. 8, 2022), <https://www.texastribune.org/2022/11/08/texas-harris-county-polls-close-8-pm/>

Three hours before the close of the polls in Harris County, the Texas Civil Rights Project and ACLU of Texas filed an emergency petition and application seeking a court order extending voting hours at polling locations across the County, on behalf of Texas Organizing Project (TOP).<sup>69</sup> TOP had to divert limited resources towards having additional members and staff at polling locations to inform voters about the delays and advising them to make other plans to vote if possible, rather than spending time on other crucial get-out-the-vote efforts.

Less than an hour before polling locations were set to close, the court granted a temporary restraining order (“TRO”) that extended voting hours one hour beyond the 7:00 p.m. closing time to accommodate voters who were still standing in line.<sup>70</sup> Any voter who was in line before 7:00 p.m. was able to cast a traditional ballot, while those who got in line between 7:00 to 8:00 p.m. were able to cast a provisional ballot. However, despite this advocacy by civil rights groups, the State immediately appealed the TRO, and the Texas Supreme Court issued a stay order for the one-hour polling place extension. By the time the stay order was issued, it was already past 8:00 p.m. and the close of the extended polling hours. Attorney General Paxton then filed suit asking the Texas Supreme Court to throw out votes cast by Harris County voters during the extended polling place hours. Notably, Attorney General Paxton did not seek to throw out votes cast by voters in predominantly white Bell County, which also extended its polling hours by one hour.<sup>71</sup>

The Texas Supreme Court ordered Harris County to separately identify the number of “later cast votes” for each candidate in each race and for or against each

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<sup>69</sup>Original Pet. and App. for Temp. Restraining Order, Temp. Inj, and Perm. Inj., *Texas Organizing Project v. Harris County, Texas*, (D.C. Harris County, TX Nov. 8, 2022), <https://www.democracymocket.com/wp-content/uploads/2022/11/2022-11-08-petition-.pdf>

<sup>70</sup>Temp. Restraining Order, *Texas Organizing Project v. Harris County, TX*, No. 2022-73765 (District Court of Harris County, TX Nov. 8, 2022), <https://www.democracymocket.com/wp-content/uploads/2022/11/2022-11-08-order-2.pdf>

<sup>71</sup>Jen Rice, *Texas AG moves forward with last-ditch effort to block late-cast Harris County votes*, HOUSTON CHRONICLE (Nov. 22, 2022), <https://www.houstonchronicle.com/politics/election/2022/article/texas-attorney-general-block-harris-county-votes-17601227.php#>

proposition.<sup>72</sup> The county ultimately certified the results just in time for the state's canvassing deadline and counted the nearly 2,000 later cast votes.<sup>73</sup>

Because of various election administration issues, long lines remained a top issue in Texas during the November election. Voters experienced an hour to two hours wait in some locations such as UT Austin.<sup>74</sup> Causes of the long lines varied from broken machines or scanners, delayed openings, lack of proper curbside voting procedures, and inadequate staffing.

#### D. Rollbacks to Early Voting

Black communities are increasingly utilizing multiple voting options to participate in the political process.<sup>75</sup> The lack of mail-in and early voting options in several states limited those seeking to participate in the election to voting on Election Day, causing long lines and resulting in a heightened risk of disenfranchisement due to election administration hurdles.<sup>76</sup> Through public education campaigns and legislative advocacy, South Carolinians mobilized and passed two weeks of early

<sup>72</sup> Misc., *IN RE: STATE OF TEXAS; from Harris County*, No. 22-0997 (Sup. Ct. of TX), <https://www.democracymocket.com/wp-content/uploads/2022/11/supreme-court-of-texas-orders-11-08-2022.pdf>

<sup>73</sup> Natalia Contreras, "Texas Supreme Court orders Harris County to include more than 2,000 late-cast ballots in certified election results," THE TEXAS TRIBUNE (Nov. 22, 2022), <https://www.texastribune.org/2022/11/22/harris-county-midterm-count-2022-late-ballots/#:~:text=Texas%20Supreme%20Court%20orders%20Harris.time%20for%20the%20canvassing%20deadline>.

<sup>74</sup> Chase Karacostas, *Voting wait time across Central Texas already exceeding an hour in some areas*, COMMUNITY IMPACT (Mar. 3, 2020), <https://communityimpact.com/austin/central-austin/election-texas-2020-primary/2020/03/03/voting-wait-times-across-central-texas-already-exceeding-an-hour-in-some-areas/>

<sup>75</sup> See e.g. Geoffrey Skelley, *A Record Number of Black Americans Could Vote Early This Year*, FIVETHIRTYEIGHT (Sep. 21, 2020), <https://fivethirtyeight.com/features/a-record-number-of-black-americans-could-vote-early-this-year/>; Katanga Johnson, *Early voting brings one million Black voters to Georgia polls*, REUTERS (Oct. 30, 2020), <https://www.reuters.com/article/us-usa-election-georgia-voting/early-voting-brings-one-million-black-voters-to-georgia-polls-idUSKBN27F36Z>; Steven Rosenfeld, *Mailed ballots boosted 2020's turnout--will they work in 2022?*, FULCRUM (Mar. 10, 2022), <https://thefulcrum.us/voting-by-mail>

<sup>76</sup> Testimony of Marcia Johnson, Before Committee on Rules and Administration, State and Local Perspectives on Election Administration (Mar. 28, 2023), <https://www.rules.senate.gov/imo/media/doc/Marcia%20Johnson%27s%20Senate%20Rules%20Committee%20Testimony%203.24%20-%20Revised%20Clean.pdf>



voting in May 2022.<sup>77</sup> As a result of providing flexible voting opportunities South Carolinians were better able to exercise their right to vote in the November 2022 election.<sup>78</sup> In other PTV states, however, new restrictions on early voting impeded Black voters' ability to exercise this fundamental right.

*Texas*

Despite unprecedented barriers in 2020,<sup>79</sup> Texas's voter turnout for the 2020 general election broke records as the highest in almost thirty years, up 6.6 percentage points from voter turnout in 2016.<sup>80</sup> Importantly, early voting, both in person and through the mail, was a key factor in this increase in turnout, accounting for more than 9.7 million of the 11.3 million votes cast (over 85%).<sup>81</sup> Instead of building on the progress of increased voter turnout by Latino and Black people, on September 1, 2021, the Texas legislature passed S.B.1 which eliminated several accessible, common sense voting methods, including "drive-thru" voting and 24-hour early voting—both

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<sup>77</sup> S.E. Jenkins, *New S.C. voting law establishes early voting, restricts absentee voting*, WMBF NEWS (May 13, 2022), <https://www.wmbfnews.com/2022/05/13/new-sc-voting-law-establishes-early-voting-restricts-absentee-voting/>.

<sup>78</sup> Molly McBride, *Early voting turnout breaks records across South Carolina*, LIVE5WCSC (Nov. 4, 2022), <https://www.live5news.com/2022/11/04/early-voting-turnout-breaks-records-across-south-carolina/>.

<sup>79</sup> Matt Harab & Andrew Schneider, *Who's to Blame for Long Lines on Super Tuesday? Depends on who You Ask*, Houston Public Media (March 5, 2020), <https://www.houstonpublicmedia.org/articles/news/politics/election2020/2020/03/04/362662/local-officials-explain-long-lines-on-super-tuesday/>; Jen Rice, *TSU Voters Waited Hours to Cast a Ballot on Super Tuesday. Harris County Says it Won't Happen Again*, Houston Public Media (Oct. 30, 2020, 5:29 AM), <https://www.houstonpublicmedia.org/articles/news/politics/election2020/2020/10/29/384985/voting-problems/>.

<sup>80</sup> Shannon Najmabadi & Mandi Cai, *Democrats hoped high turnout would usher in a blue wave across Texas. It didn't.*, THE TEXAS TRIBUNE (Nov. 7, 2020), [https://www.texastribune.org/2020/11/04/texas-voter-turnout-democrats/?utm\\_campaign=trib-social&utm\\_content=1604542193&utm\\_medium=social&utm\\_source=twitter](https://www.texastribune.org/2020/11/04/texas-voter-turnout-democrats/?utm_campaign=trib-social&utm_content=1604542193&utm_medium=social&utm_source=twitter)

<sup>81</sup> See Jeremy Schwartz & Mandi Cai, *Texas is on track for record turnout in this election after breaking early voting records*, KSAT (Oct. 31, 2020, 12:02 PM), <https://www.ksat.com/news/texas/2020/10/31/texas-is-on-track-for-record-turnout-in-this-election-after-breaking-early-voting-records/>, and *Texas Presidential Election Results 2020*, NBC News, <https://www.nbcnews.com/politics/2020-elections/texas-president-results> (last updated Mar. 31, 2021).

methods that proved invaluable for Black and Latino voters in Texas's largest cities in 2020.<sup>82</sup>

### *Georgia*

The opportunity to cast ballots at advance voting locations during weekend hours has proven critical for Georgia voters. More than 2 million voters cast ballots through advance voting in the 2021 runoff election.<sup>83</sup> Weekend voting options are especially important for Georgia's Black voters, who utilize this option at substantially higher rates than other voters; in Georgia's 2021 U.S. Senate runoff election, Black voters were nearly twice as likely as white voters to vote on Saturday.<sup>84</sup>

However, because of S.B. 202, which became law in Georgia on March 25, 2021, the time for early voting in the 2022 election was limited to just five mandatory days (compared to 17 mandatory days in previous elections), with discretion among county election officials to offer a limited number of additional days.<sup>85</sup> Limiting opportunities for early voting falls particularly harshly on voters of color, who face substantially longer wait times than white voters.<sup>86</sup>

Additionally, ahead of the 2022 December Runoff Election, the Georgia Secretary of State issued a last-minute bulletin further limiting the availability of early voting by prohibiting counties from exercising their discretion to offer early

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<sup>82</sup> Compl. for Decl. and Injunctive Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00848 (W.D. Tex. Sept. 7, 2021), ECF No. 1, available at <https://www.naacpldf.org/wp-content/uploads/HoustonJustice-et-al.-v.-Abbott-et-al.-Complaint.pdf>; see also Press Release: *Lawsuit Filed Challenging New Texas Law Targeting Voting Rights*, NAACP LDF (Sept. 7, 2021), <https://www.naacpldf.org/pressrelease/lawsuit-filed-challenging-new-texas-law-targeting-voting-rights/>.

<sup>83</sup> New Georgia Runoffs Data Finds That More Black Voters Than Usual Came Out. Trump Voters Stayed Home, Wash. Post (Jan. 29, 2021), <https://www.washingtonpost.com/politics/2021/01/29/new-georgia-runoffsdata-finds-that-more-black-voters-than-usual-came-out-trump-voters-stayedhome/>.

<sup>84</sup> Michael C. Herron & Daniel A. Smith, *The Racial Politics of Early In-Person Voting in Georgia*, J. Election Admin. Rsch. & Practice (2022).

<sup>85</sup> Election Integrity Act, SB202, § 28, <https://legiscan.com/GA/bill/SB202/2021>

<sup>86</sup> First Amended Complaint, Sixth Dist. of the African Methodist Episcopal Church v. Kemp, No. 1:21-cv-01284-JPB (N.D. Ga. May 24, 2021), ECF No. 83.

voting on Saturday, Nov. 26.<sup>87</sup> This bulletin contradicted the Secretary of State's own interpretation of the law during the 2021 runoff election, when the office permitted counties across the state to provide advance voting on Saturday, December 26th, the day after the Christmas holiday.<sup>88</sup> LDF filed an amicus brief in support of plaintiffs in a suit challenging that interpretation, emphasizing the racial disparities that would result from the Secretary's incorrect interpretation of state law and urging the court to apply the democracy canon as a tool to interpret any ambiguities in state law.<sup>89</sup> Further, LDF's PTV team sent letters to each of Georgia's 159 counties encouraging them to maximize advance voting offerings. on Sunday, Nov. 27 and prior to the Thanksgiving holiday.<sup>90</sup> The Georgia Supreme Court ultimately declined to overturn a lower court's ruling in favor of the plaintiffs, holding that counties could provide Saturday early voting.<sup>91</sup>

As a result of this litigation and LDF's advocacy efforts, 27 counties ultimately exercised their discretion to offer advance voting on Saturday, Nov. 26th, and over 70,000 Georgians were able to cast ballots that day. Many counties also exercised their discretion to offer advance voting on Sunday, Nov. 27th and over 87,000 Georgians voted that day.<sup>92</sup>

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<sup>87</sup> Georgia law states that advance voting for runoff elections shall commence "[a]s soon as possible prior to a runoff from any general primary or election but no later than the second Monday immediately prior to such runoff and shall end on the Friday immediately prior to each primary, election, or runoff." See Ga. Code Ann. § 21-2-385(d)(1).

<sup>88</sup> See LIST | Early Voting Locations Around Atlanta for Georgia Senate Runoffs, 11Alive (Dec. 9, 2020), <https://www.11alive.com/article/news/politics/elections/list-early-votinglocations-around-atlanta-georgia-senate-runoffs/85-6e82565b-0e57-4fb5-a09a0866a18236de> (updated Jan. 3, 2021).

<sup>89</sup> Brief of Amici Curiae, *Democratic Party of Georgia v. State of Georgia*, No. S23M0376, (S. Ct. Nov 23, 2022), <https://www.democracymocket.com/wp-content/uploads/2022/11/2022.11.23-Brief-of-Amici-Curiae-NAACP-Legal-Defense-KH745068x9D7F4.pdf>.

<sup>90</sup> John Cusick, *Re: Advance Voting for the December 6, 2022 Runoff Election*, NAACP LDF (Nov. 15, 2022), <https://www.naacpldf.org/wp-content/uploads/2022/11/15-FINAL-Letter-re-Runoff-Advance-Voting25.pdf>

<sup>91</sup> Order Granting Decl. and Inj. Relief, *Democratic Party of Georgia v. State of Georgia*, No. 2022CV372734, (Sup. Ct. GA Nov. 18, 2022), <https://www.democracymocket.com/wp-content/uploads/2022/11/KH744536-1.pdf>

<sup>92</sup> *Data Hub - December 6, 2022 Runoff*, GEORGIA SECRETARY OF STATE BRAD RAFFENSPERGER, <https://sos.ga.gov/data-hub-december-6-2022-runoff>

E. Restrictions on Absentee and Mail Voting*Florida*

Following the 2020 election, Florida joined a trend of states introducing legislation targeted at cutting off pathways to the ballot box that Black and brown voters used successfully in the most recent election. For example, after an election where Black voters in Florida cast mail-in ballots at a rate higher than in 2016 and 2018, Florida enacted S.B. 90 in 2021, which imposes a long list of new constraints on mail voting.<sup>93</sup> The law severely limits the availability and accessibility of mail ballot drop boxes and requires voters to include their state ID number or Social Security Number on their mail ballot application without providing an alternative for voters who lack such information. It also limits who can assist voters with returning their mail ballots.<sup>94</sup> The Legislature enacted S.B. 90 despite there being no evidence of fraud or irregularities in the 2020 Florida elections.

Options such as mail in voting are particularly important in a state such as Florida where elections typically take place during hurricane season, presenting a significant risk of Election Day disruption. For example, in Lee County, which was especially hard-hit by Hurricane Ian shortly before the election, the Supervisor of Elections was forced to consolidate the county's 99 polling places (many of which were severely damaged) to just 12 locations. This was particularly concerning for the predominantly Black community of Dunbar, where the only polling place in the community (at the Fort Myers Regional Library) was closed. In-person voting was already not readily accessible to many members of this community because the location was 3 miles away or a 55-minute walk for those without access to transportation; and the hurricane made this worse.<sup>95</sup> LDF successfully advocated for placement of a drop box for vote-by-mail ballots in the Dunbar neighborhood (which was ultimately used by 235 voters), and LDF and partners worked to educate voters and provide rides to the polls.

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<sup>93</sup> Election Integrity Act, SB202, § 27

<sup>94</sup> *Case: LDF's Lawsuit Challenging Florida's S.B. 90*, NAACP LDF (May 6, 2021), <https://www.naacpldf.org/case-issue/florida-naacp-v-lee/>

<sup>95</sup> See Appendix A for visual representation of polling place location and closure.

*Texas*

In Texas, S.B. 1 eliminated methods and opportunities of voting disproportionately used by Black and Latino voters, burdening or effectively disenfranchising these voters by raising the time, cost, and risk associated with exercising their constitutional right to vote.<sup>96</sup> The law also erected barriers to voting for individuals with disabilities such as requiring an individual who provides voting assistance to fill out a form reporting his or her name, address, relationship to the voter, and whether he or she received any form of compensation.<sup>97</sup> The person assisting the voter would have to fill out such a form for every voter he or she assists, adding time and paperwork, and also subjecting this person to criminal liability for any incorrect form filled out on behalf of a voter. Further, S.B. 1 required voters to provide their Texas driver's license, personal identification card, or election identification certificate number on their mail ballot application and their mail ballot return carrier envelope.<sup>98</sup> If they do not have these identification numbers, they must provide the last four digits of their Social Security number. And if they have none of the above, they must affirm a statement to that effect.<sup>99</sup> Voters must use the same identifying number throughout every stage of the process or their materials—whether the mail ballot application or the mail ballot—will be rejected.<sup>100</sup> This can cause problems for voters who may not remember which particular identifying number they utilized at a prior stage.

In the wake of S.B.1 passing, the Secretary of State did not provide sustained investment into voter education across Texas' 254 counties; rather, both voters and

<sup>96</sup> Lacy Crawford, Jr., *Texas S.B. 1 Discriminates Against Voters of Color*, LAWYER'S COMM. C.R. UNDER LAW (Sept. 7, 2021), <https://www.lawyerscommittee.org/texas-sb-1-discriminates-against-voters-of-color/>; Testimony of Marcia Johnson, Before Committee on Rules and Administration, State and Local Perspectives on Election Administration (Mar. 28, 2023), <https://www.rules.senate.gov/imo/media/doc/Marcia%20Johnson%27s%20Senate%20Rules%20Committee%20Testimony%203.24%20-%20Revised%20Clean.pdf>

<sup>97</sup> Compl. for Decl. and Inj. Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00848, (W.D. Texas Sept. 7, 2021), <https://www.naacpldf.org/wp-content/uploads/Houston-Justice-et-al.-v.-Abbott-et-al.-Complaint.pdf>

<sup>98</sup> Tex. Elec. Code §§ 84.002, 86.002.

<sup>99</sup> Tex. Elec. Code §§ 84.002, 86.002.

<sup>100</sup> Testimony of Hani Mirza, Before the Subcomm. On Elections, (Mar. 17, 2022), <https://docs.house.gov/meetings/HA/HA08/20220317/114504/HHRG-117-HA08-Wstate-MirzaH-20220317.pdf>

local elections officials were left with a patchwork implementation process that left the burden on everyday Texans to educate themselves about the convoluted changes to the Election Law.<sup>101</sup>

During the March 2022 Primary Election, the first statewide elections since S.B.1 was enacted in December 2021, a record number of absentee applications and mail ballots were rejected. Some reports indicated that 12,000 applications and 25,000 ballots were rejected during the March primary.<sup>102</sup> To put that number in context, during the March 2022 Primary, the statewide mail ballot rejection rate was 12.38%, a staggering 12 times higher than in the 2020 Presidential Election where the U.S. Election Assistance Commission reported Texas' mail ballot rejection rate to be 0.8%, and 1.5% in the prior Midterm Election of 2018.<sup>103</sup>

Based on public records requests, we now know that the overwhelming majority of mail-in ballot rejections were due to the new ID number requirements imposed by S.B. 1 and that Latino, Asian, and Black voters were significantly more likely to have their mail ballot applications rejected than white voters.<sup>104</sup> Even when voters successfully applied to vote by mail, voters of color were far more likely to have their mail ballots rejected. This combination of application and mail ballot rejections left voters of color at least 30% more likely to have an application or mail ballot rejected than white voters.<sup>105</sup>

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<sup>101</sup> The Texas Vote - Understanding The Value of Public Voter Education In Texas, Our Vote Texas, (2022).

<sup>102</sup> Nick Corasanti, *Mail Ballot Rejections Surge in Texas, With Signs of a Race Gap*, THE NEW YORK TIMES (Mar. 18, 2022), <https://www.nytimes.com/2022/03/18/us/politics/texas-primary-ballot-rejections.html>

<sup>103</sup> Ashley Lopez, *Texas officials say they're rejecting fewer mail ballots than the primary's big spike*, NPR (Nov. 4, 2022), <https://www.npr.org/2022/11/04/1134435571/texas-mail-ballot-rejections-general-election>

<sup>104</sup> Kevin Morris, *Records Show Massive Disenfranchisement and Racial Disparities in 2022 Texas Primary*, BRENNAN CENTER FOR JUSTICE (Oct. 20, 2022), <https://www.brennancenter.org/our-work/research-reports/records-show-massive-disenfranchisement-and-racial-disparities-2022-texas> (19 percent of Asian voters, 16.6 percent of Black voters, and 16.1 percent of Latino voters had either their applications to vote by mail or their mail ballots rejected in the March 2022 primary under new requirements in S.B. 1).

<sup>105</sup> *Id.*

The ballot rejection rate in the November 2022 election was more than three times that of the 2020 Presidential election prior to the implementation of S.B.1.<sup>106</sup> Conservative estimates found that almost 10,000 mail-in ballot voters were disenfranchised in Texas's largest counties.<sup>107</sup>

#### F. Heightened Criminalization of Voting

In 2021, 32 laws were enacted in 17 states that criminalize various aspects of the election process or allow state legislatures to politicize or otherwise interfere with elections.<sup>108</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 election officials.<sup>109</sup>

#### *Texas*

Criminalization provisions included in S.B. 1 enacted in 2021 expose good-faith election officials to unreasonable risk for doing their jobs. For example, Texas' S.B.1 contains a provision that exposes election officials who take action to prevent poll watchers from harassing voters to possible criminal sanctions.<sup>110</sup> This provision was included even though the Texas Election Code contains specific provisions designed to protect voters from exactly such interference—and it is election officials' responsibility to enforce these provisions at a given polling location.<sup>111</sup> The new law

<sup>106</sup> Alexa Ura, "At least 18,000 Texas mail-in votes were rejected in the first election under new GOP voting rules," TEXAS TRIBUNE (Mar. 11, 2022), <https://www.texastribune.org/2022/03/11/texas-mail-in-voting-lawsuit/>.

<sup>107</sup> Taylor Goldenstein, "10,000 mail ballots rejected in large Texas counties as new ID requirement is phased in," HOUSTON CHRONICLE (Nov. 13, 2022), <https://www.houstonchronicle.com/politics/election/2022/article/New-Texas-law-leads-to-10-000-rejected-mail-17577757.php>.

<sup>108</sup> Memorandum from 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-reportupdate\\_12232021-year-end-numbers.pdf](https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-reportupdate_12232021-year-end-numbers.pdf).

<sup>109</sup> *Id.*

<sup>110</sup> Compl. for Decl. and Injunctive Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00848 (W.D. Tex. Sept. 7, 2021), ECF No. 1.

<sup>111</sup> Tex. Election Code §§ 33.057, 33.058.

thus puts good-faith election officials in a no-win situation where they are at risk of criminal penalties for trying to fulfill their duties and has led many election workers to decide to stop volunteering to staff polling locations. LDF is challenging the law on behalf of the Houston Area Urban League, Houston Justice, Delta Sigma Theta Sorority, Inc., The Arc of Texas, and an election judge.<sup>112</sup>

With 254 counties across the state, the law was also not implemented in a uniform manner, resulting in confusion and fear among some elections administrators.<sup>113</sup> Reports from LDF's election protection efforts indicate there was an increase in staffing shortages at polling locations, indicating a chilling effect from S.B.1 on potential election workers.

### *Florida*

In January 2022, Florida Gov. Ron DeSantis, with the backing of the state legislature, implemented a new Office of Election Crimes and Security ("OECS"), a special police force to investigate election crimes. The Office is housed within the Department of State and includes sworn special agents from the Department of Law Enforcement with the authority "to see that violators of the Florida Election Code are apprehended and punished."<sup>114</sup> Considering the long history of law enforcement in Florida serving directly or indirectly as a tool of voter intimidation and the absence of any evidence of widespread wrongdoing by voters in Florida's past elections, the move raises serious concerns of voter intimidation and a potential chilling effect on political participation.

Among the targets of the new OECS are returning citizens, *i.e.*, individuals who have felony convictions. In 2018, Florida voters enacted Amendment 4 to the Florida Constitution, restoring the right to vote of returning citizens who have served all terms of their sentences, with the exception of those convicted of murder or certain sexual crimes. The State then passed legislation under which the words "all terms of

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<sup>112</sup> *Lawsuit Filed Challenging New Texas Law Targeting Voting Rights*, NAACP LDF (Sept. 7, 2021), <https://www.naacpldf.org/press-release/lawsuit-filed-challenging-new-texas-law-targeting-voting-rights/>.

<sup>113</sup> Tahera Rahman, *Central Texas election workers prepare for voters, poll watchers and possible disruptions*, KXAN (Nov 8, 2022), <https://www.kxan.com/news/your-local-election-hq/central-texas-election-workers-prepare-for-voters-poll-watchers-possible-disruptions/>.

<sup>114</sup> *LDF Sends Letter Opposing Florida's Restrictive Voting Bill and Proposed Office of Elections Crime and Security*, NAACP LDF (Feb. 3, 2022), <https://www.naacpldf.org/news/ldf-sends-letter-opposing-floridas-restrictive-voting-bill-and-proposed-office-of-election-crimes-and-security/>.



sentence” require citizens to pay all their judicially mandated legal financial obligations (“LFOs”) in connection with their convictions in order to register and vote, abrogating the franchise of more than 774,000 returning citizens who cannot afford to pay their court-imposed debts. This pay-to-vote system has been termed an “administrative train wreck.”<sup>115</sup> It is “sometimes hard, sometimes impossible” for returning citizens to determine whether they are eligible to vote because of Florida’s complex rules about eligibility and the state’s inability to tell returning citizens whether they owe disqualifying LFOs.<sup>116</sup>

On August 18, 2022, five days before the state primary elections, OECS together with the Florida Department of Law Enforcement and local police conducted highly publicized arrests of at least 20 returning citizens for allegedly voting while ineligible more than two years earlier. Governor DeSantis held a campaign-style press conference at a Broward County courthouse at which he appeared with more than a dozen uniformed law enforcement officers to proclaim the arrests as the “opening salvo” and not the “sum total.”<sup>117</sup> He also announced that he had tapped the State’s Office of Special Prosecutions (“OSP”) to prosecute the returning citizens who were arrested because “people weren’t getting prosecuted” by local prosecutors.

DOS and OECS submitted a legislative budget request on October 14, 2022, for fiscal year 2023-2024 in which they requested 27 full time positions and \$2,285,837 in funding.<sup>118</sup> On February 15, 2023, Governor DeSantis signed Senate Bill 4B (SB4B), which ostensibly confers authority on the OSP to prosecute alleged voter fraud identified by OECS.<sup>119</sup> SB4B was passed during a special legislative session because judges dismissed four cases prosecuted by OSP against returning

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<sup>115</sup> *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1239 (N.D. Fla. 2020).

<sup>116</sup> *Id.* at 1241.

<sup>117</sup> Sam Sachs, ‘Opening salvo’: DeSantis announces 20 arrests for voter fraud in Florida, WFLA (Aug. 18, 2022) <https://www.wfla.com/news/florida/desantis-to-make-major-announcement-at-broward-courthouse/>; Bianca Fortis, *A Government Official Helped Them Register. Now They’ve Been Charged with Voter Fraud*, PROPUBLICA (July 21, 2022), <https://www.propublica.org/article/florida-felonies-voter-fraud>; Press Release, Fla. Department of Law Enforcement, *In case you missed it: FDLE arrests convicted murders, sex offenders for voting illegally* (Aug. 18, 2022), <http://www.fdle.state.fl.us/News/2022/August/In-case-you-missed-it-FDLE-arrests-convicted-murde>.

<sup>118</sup> State of Florida, Expenditures by Issue and Appropriation Category, at 44 (Fla. 2013-2014) <http://floridafiscalportal.state.fl.us/Document.aspx?ID=24605&DocType=PDF>.

<sup>119</sup> Fla. Stat. § 16.56(1).

citizens. The judges held that that OSP had no authority to prosecute alleged misconduct that was limited to a single judicial circuit.<sup>120</sup>

Although some courts have found that the amendment to Fla. Stat. § 16.56(1) exceeds the constitutional authority granted to OSP by the Florida Constitution and advocates for returning citizens contend should be held not to expand OSP authority, the effort to broaden the reach of OSP shows that Florida plans to redouble its efforts to prosecute returning citizens in the future, even where local prosecutors have declined to prosecute.

#### **IV. CONGRESS MUST ACT TO RESTORE AND STRENGTHEN PROTECTIONS FOR BLACK VOTERS**

Black voters' experiences in the 2022 elections confirms the urgent need for Congress to both restore and strengthen the Voting 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. The Freedom to Vote: John R. Lewis Act (FTV:JRLA) enjoyed significant support in both chambers of the last Congress before facing a filibuster.<sup>121</sup> Several provisions of that legislation would directly address the problems described above.

##### **A. Protections against discriminatory districts**

The discriminatory district maps drawn following the 2020 Census provide a key example of why it is essential for Congress to restore and strengthen the full protections of the Voting Rights Act. All three of the states where LDF has litigated post-Census redistricting cases were required to "preclear" their voting changes as

<sup>120</sup> *State of Florida v. Wood*, Order on Mot. to Dismiss, Case No. 13–2022-CF-015009–0001-XX (11th Fla. Cir. Ct. Oct. 21, 2022); *State of Florida v. Miller*, Order on Mot. to Dismiss, Case No. 13–2022-CF-015012–0001-XX (11th Fla. Cir. Ct. Dec. 12, 2022); *State of Florida v. Hubbard*, Order Granting Defendant's Motion to Dismiss Due to Lack of Subject Matter Jurisdiction, Case No. 22008077CF10A (17th Fla. Cir. Ct. Dec. 23, 2022); *State of Florida v. Washington*, Order Granting Mot. to Dismiss, Case No. 2022-CF-009611-A-O (9th Fla. Cir. Ct. Feb. 13, 2023).

<sup>121</sup> *Summary: H.R. 5746--117th Congress (2021-2022)*, CONGRESS.GOV (Jan. 13, 2022), <https://www.congress.gov/bills/117/congress/house-bill/5746?s=2&r=1&q=%7B%22search%22%3A%5B%22%5C%22freedom+to+vote%3A+john+r+lewis+act%5C%22%22%5D%7D>.

covered jurisdictions under the Voting Rights Act prior to the 2013 *Shelby County* decision invalidating its coverage framework.<sup>122</sup>

The FTV:JRLA provides additional important protections for voters of color as well: Sections 9001 and 9002 restore and strengthen Section 2 of the VRA; and Section 5003 lays out mandatory criteria for drawing congressional districts and prioritizes protecting voters of color from vote dilution.<sup>123</sup>

#### B. Protections against frivolous challenges

The National Voter Registration Act already provides voters with strong protections regarding when and how they may be removed from voter rolls.<sup>124</sup> The FTV:JRLA amends Section 8 of the NVRA to further strengthen these protections by requiring verifications and clarifying that certain unreliable indicators are not a legal basis for removal.<sup>125</sup> In addition, the FTV:JRLA prohibits the practice of voter “caging” which is often used as a predicate for mass challenges.<sup>126</sup> This involves sending mass mailings to voters and using undelivered mail to assemble a purge or challenge list.<sup>127</sup>

Finally, the FTV:JRLA requires states to provide voters with the opportunity to register to vote during early vote and on Election Day,<sup>128</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.

#### C. Protections against polling location changes

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<sup>122</sup> *Jurisdictions Previously Covered by Section 5*, THE UNITED STATES DEPARTMENT OF JUSTICE (Nov. 9, 2021), <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>

<sup>123</sup> FTV:JRLA §§ 9001, 9002, 5003.

<sup>124</sup> 52 U.S. Code § 20507

<sup>125</sup> FTV:JRLA § 1911.

<sup>126</sup> FTV:JRLA § 1901.

<sup>127</sup> Justin Levitt, *A Guide to Voter Changing*, BRENNAN CENTER FOR JUSTICE (Jun. 29, 2007), <https://www.brennancenter.org/our-work/research-reports/guide-voter-caging>

<sup>128</sup> FTV:JRLA § 1031.

Restored preclearance 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 FTV:JRLA creates minimum standards for notifying voters about polling place changes or closures for federal elections.<sup>129</sup>

D. Minimum standards for early voting & 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 FTV:JRLA contains strong minimum standards for states to provide robust early vote and vote-by-mail opportunities.<sup>130</sup> For example, the legislation requires nearly two weeks of early voting opportunities that include weekends.<sup>131</sup>

V. CONCLUSION

Last year we held the first federal election to take place both in the shadow of the growing false narrative around stolen elections and also after the first post-Census redistricting in six decades without the full protections of the Voting Rights Act. The specific challenges Black voters experienced in the 2022 elections described above highlight a broader truth: although the latest federal election was not characterized by widespread breakdowns in basic administration, it also did not feature the equal access to the ballot that our Constitution requires.

Some have sought to portray the 2022 elections as an unmitigated success and in so doing justify recent anti-voter laws and undercut the need for federal action. Yet if we take the concepts of equal protection under the law and one person, one vote seriously, we simply cannot deem elections successful when disparities in turnout by race persist; several elections have taken place using district maps courts have found

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<sup>129</sup> FTV:JRLA § 1601.

<sup>130</sup> FTV:JRLA § 1201; 1301-05.

<sup>131</sup> *Id.* at § 1201.

discriminatory; and voters across the country still confront unnecessary barriers to the ballot, and face them unequally based upon race and geography. Black voters' experience in the 2022 elections confirmed the urgent need for Congress to act to both restore and strengthen the VRA and to adopt minimum standards for federal elections.

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*Sent via email*

October 10, 2022

**Re: Preparing for Frivolous Mass Challenges to Voter Eligibility**

To all Florida Supervisors of Elections:

The NAACP Legal Defense and Educational Fund, Inc., NAACP Florida State Conference, Common Cause Florida, All Voting is Local, LatinoJustice PRLDEF, American Civil Liberties Union of Florida, Protect Democracy, Campaign Legal Center, Lawyers' Committee for Civil Rights Under Law, Southern Poverty Law Center, and Demos write to provide you with recommendations and best practices to prepare for the risk that your office receives frivolous mass challenges to voter eligibility under Fla. Stat. § 101.111 during the 30-day period prior to the November 8, 2022 general election.

Frivolous mass challenges—especially if they target large numbers of voters—threaten to generate significant administrative burdens for your office, sow confusion and distrust among voters, contribute to longer lines at early voting sites and polling places, exacerbate racial disparities in political participation, and increase complexity, cost, and risks in the post-election canvass of provisional ballots.

Your office should never require voters to cast provisional ballots on the basis of mass challenges to voter eligibility that are frivolous or otherwise fail to comply with the requirements for challenges under Fla. Stat. § 101.111. We are providing this letter to help you prepare for the possibility of mass challenges to voter eligibility in your county and to offer recommendations and best practices to mitigate the risks posed by these challenges.

**I. Frivolous Mass Challenges to Voter Eligibility Represent a Growing Threat to Our Democracy and to Election Administration.**

Over the last two years, there has been a dramatic and concerning increase in the use of frivolous mass challenges to voter eligibility as a tactic to disenfranchise eligible voters, engender mistrust in our democracy, and inject turmoil into the mechanics of election administration.<sup>1</sup> This is occurring both across the country and here in Florida. In many cases, these mass challenges are orchestrated by fringe or extremist organizations that promote baseless conspiracy theories.

**a. Frivolous Mass Challenges to Voter Eligibility Often Follow Similar Patterns.**

Frivolous mass challenges to voter eligibility often follow similar patterns. First, an organization (often a fringe or extremist organization) produces lists of large numbers of purportedly ineligible voters—sometimes thousands of voters in each county. Then, the organization’s members—often without disclosing their affiliation with the organization—submit lists of challenged voters to their local election officials and demand that the challenged voters be removed from the voter rolls or forced to cast provisional ballots. The submission is often in the form of a spreadsheet containing a list of purportedly ineligible voters (although sometimes the submission contains a separate declaration for each challenged voter). Due to the mass scale of these challenges, the submissions often follow a common template, assert the same basis for large numbers of voters, and fail to provide evidence to support the challenges. After these submissions are filed, the organization or its members may harass election officials by phone, email, or at public meetings to pressure election officials to act on their submissions.

Frivolous mass challenges to voter eligibility often rely on speculation, innuendo, or vague objections as the basis to challenge large numbers of voters without providing supporting evidence. For instance, prior to the special election for the U.S. Senate in Georgia in January 2021, one extremist organization orchestrated a massive statewide voter challenge effort to attempt to disqualify over 360,000 registered voters residing in all 159 Georgia counties, based on debunked and unreliable methodologies.<sup>2</sup> Some counties received multiple waves of challenges in the days leading up to the election. The vast majority of these challenges were rejected by election officials or by courts.<sup>3</sup> Moreover, similar challenges were

<sup>1</sup> See, e.g., Nicholas Riccardi, *Voter Challenges, Records Requests Swamp Election Offices*, Associated Press, Sept. 17, 2022, available at <https://apnews.com/article/2022-midterm-elections-voting-georgia-presidential-florida-df8e7f00418a35c70c9d53fa3a260111>.

<sup>2</sup> See NAACP Legal Defense and Educational Fund, Inc., *Democracy Defended* at 90-91, [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>3</sup> *Id.*; Jonathan Raymond, *Cobb County Election Board Denies Hearing for Challenges Against Thousands of Voters*, 11Alive (Dec. 18, 2020), <https://www.11alive.com/article/news/politics/elections/cobb-county-voter-challenge-details/85-3d7ff8e2-5e76-423d-8a65-3bb78ce10d82>; Order at 2, *Majority Forward, et al. v. Ben Hill County Board of Elections, et al.*, No. 1:20-cv-00266-LAG (M.D. Ga. Dec. 30, 2020), <https://www.democracymocket.com/wp-content/uploads/sites/45/2020/12/05313970510.pdf>. Final Order at 28, *Majority Forward, et al. v. Ben Hill County Board of Elections, et al.*, No. 1:20-cv-00266-LAG (M.D. Ga. Jan. 04, 2020), [https://www.democracymocket.com/wp-content/uploads/sites/45/2020/12/show\\_temp.pl\\_-3.pdf](https://www.democracymocket.com/wp-content/uploads/sites/45/2020/12/show_temp.pl_-3.pdf).



recently filed in several Florida counties prior to the August 2022 primary. These kinds of frivolous challenges threaten to disrupt election administration by relying on incomplete and unsupported accusations that are easy to make but time-intensive and costly to disprove.

**b. Frivolous Mass Voter Challenges to Voter Eligibility Are Based on Deeply Flawed Methodologies.**

The organizations that orchestrate mass voter challenges rely on deeply flawed and thoroughly debunked methodologies to develop lists of voters to challenge. The most common methodology is to compare voter registration data to National Change of Address (“NCOA”) data and challenge any registered voter who appears to have filed a change of address form without a corresponding change in their permanent voter registration address.<sup>4</sup> As you are likely aware, these types of comparisons are an inaccurate and unreliable means to determine voter eligibility because there are numerous routine and lawful reasons a voter might make such a change. Voters may change their mailing address for other purposes without impacting their voting eligibility at the prior address—for example, someone who has temporarily moved to care for a family member, moved to temporary accommodations during home repairs or after a natural disaster, or is a member of the armed services stationed out of state. Any of these individuals might wish to receive their mail temporarily at a location other than their permanent registration address. NCOA data may also be inaccurate in other ways—for example, a change of address filed by one member of a household has sometimes been shown to appear in the NCOA database as a change of address for all members of the household.

Challengers may also generate lists by comparing voter registration lists with various state databases, such as property ownership records. In some cases, challengers may also send canvassers door-to-door to ask residents for their registration information to compare against the rolls. As with NCOA comparisons, these types of methodologies are highly unreliable and are not sufficient to provide a good-faith basis for a challenge. In addition, voters may be targeted for challenges selectively based on race or other improper characteristics, and acting on such challenges could run afoul of statutory and constitutional protections.

**II. Voter Challenges Must Not Be Considered if the Challenger Fails to Comply with the Specific Requirements Under Florida Law.**

Each of these minimum requirements under Fla. Stat. § 101.111 must be met on the face of a challenge before an SOE should take any action on the challenge, including by requiring a challenged voter to cast a provisional ballot:

*First*, any challenges must be filed with the SOE “no sooner than 30 days before an election.”<sup>5</sup> With respect to the upcoming general election, any challenges received prior to Sunday, October 9, 2022 must be disregarded.

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<sup>4</sup> *True the Vote Partners with Georgians in Every County to Preemptively Challenge 364,541 Potentially Ineligible Voters*, True The Vote (Dec. 18, 2020), <https://truethetovote.org/true-the-vote-partners-with-georgians-in-every-county-to-preemptively-challenge-364541-potentially-ineligible-voters>.

<sup>5</sup> Fla. Stat. § 101.111(1)(c).

*Second*, the challenger must be a “registered elector or poll watcher” in your county.<sup>6</sup> Prior to taking any action on a challenge, you must verify that individual who submitted the challenge is, in fact, a registered elector or poll watcher in your county. Challenges may not be submitted by an organization, and any challenge submitted by an individual who is not a registered elector or a registered poll watcher in your county must be disregarded.

*Third*, the challenger must submit a separate written oath for each challenged voter, which must adopt the precise language for the oath, set forth in the law as follows:

<p>OATH OF PERSON ENTERING CHALLENGE</p> <p>State of Florida                  County of _____</p> <p>I do solemnly swear or affirm that my name is _____; that I am a member of the _____ Party; that I am a registered voter or pollwatcher; that my residence address is _____, in the municipality of _____; and that I have reason to believe that _____ is attempting to vote illegally and the reasons for my belief are set forth herein to wit: _____</p> <p>_____(Signature of person challenging voter)</p> <p>Sworn and subscribed to before me this _____ day of _____, _____(year) .</p> <p>_____(Clerk of election)</p>
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If a challenger fails to file a separate written oath for each challenged voter or submits an oath containing language that does not precisely match the language provided in the law, then the challenge is legally defective and must be disregarded. To be clear, submitting a spreadsheet listing allegedly ineligible voters, even if accompanied by a single oath, does not comply with Florida law.

*Fourth*, the challenger must provide a specific basis for the challenge which, if true, would render the voter ineligible to vote.<sup>7</sup> If the challenger fails to assert any basis, the challenge is legally defective and must be disregarded. Even when the challenger asserts some basis for the challenge, if the alleged basis would not actually render the voter ineligible, the challenge is legally defective and must be disregarded.<sup>8</sup>

<sup>6</sup> Fla. Stat. § 101.111(1)(a).

<sup>7</sup> Fla. Stat. § 101.111 obligates the challenger to provide the SOE with “the reasons for my belief” that the voter is attempting to vote illegally. It follows that a failure to provide a reason, or providing a reason that does not render the voter ineligible, renders the challenge invalid. This requirement is necessary to enable SOEs to make an initial assessment about the potential validity of a challenge *on the face of the submission*, and thus to avoid expending scarce administrative resources on speculative or under-supported challenges.

<sup>8</sup> Under Florida law, if the basis for the challenge is that the person’s legal residence is not in that precinct, the SOE is required to provide the voter with an opportunity to execute a change of legal residence in order to cast a regular ballot. If the change of legal residence is such that the person

*Finally*, Florida law requires SOEs to distinguish between “frivolous” and “good faith” challenges. The submission of frivolous challenges is prohibited under Florida law, which provides: “Any elector or poll watcher filing a frivolous challenge of any person’s right to vote commits a misdemeanor of the first degree, . . . Each instance where any elector or poll watcher files a frivolous challenge of any person’s right to vote constitutes a separate offense.”<sup>9</sup> By contrast, electors and poll watchers are not subject to liability for an action “taken in good faith.” Therefore, even if a challenger complies with the technical requirements under Florida law, your office should conduct a preliminary examination of the submission to determine whether it is frivolous *before* taking any further action. If, based on your preliminary examination, the submission contains frivolous challenges, you should immediately report that individual to your State Attorney, and you need not take any further action on the submission.<sup>10</sup> Critically, any voter who is challenged in a submission that you assess to be frivolous should be permitted to cast a regular ballot.<sup>11</sup>

### III. Your Office Can Avoid Potential Violations of Law by Permitting Voters Targeted by Frivolous Mass Challenges to Cast Regular Ballots.

Your office can ensure compliance with applicable federal and state laws by ensuring that voters targeted by frivolous mass challenges are permitted to cast regular ballots rather

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is then properly registered for that precinct, the person shall be allowed to cast a regular ballot. If the change of legal residence places the person in another precinct, the person shall be directed to the proper precinct to vote. If such person insists that he or she is currently in the proper precinct, Florida law provides that the person must be allowed to cast a provisional ballot. Fla. Stat. § 101.111(1)(b)(2). However, federal law imposes additional standards that must be met before any registered voter can be prevented from casting a regular ballot based on a challenge to their legal residence. In particular, any attempt to verify legal residence must comply with the National Voter Registration Act, 52 U.S.C. § 20501 *et seq.* (“NVRA”), including Section 8 of that statute, which contains specific procedures and prerequisites for determining that a voter’s address is no longer valid, and which also limits the circumstances under which a voter may be prevented from casting a ballot on that basis. *See* 52 U.S.C. § 20507. Potential liability under the NVRA is discussed below in Part III of this letter.

<sup>9</sup> Fla. Stat. § 101.111(2).

<sup>10</sup> Your preliminary examination of a mass voter challenge submission does not need to be comprehensive or overly burdensome. Rather, you only must do enough to conclude that the challenges are frivolous. A challenge that fails to state the specific basis for the challenged voter’s ineligibility is frivolous. In the case of mass challenges, even where a basis for ineligibility is asserted, we recommend that you perform a facial review of a random selection of the challenges based on information in your records, and if you find that there is no evidence to substantiate the challenges, you should refer the matter to your State Attorney and take no further action on the entire submission.

<sup>11</sup> State law does not require you to force all challenged voters to cast provisional ballots. Rather, state law grants you discretion to allow challenged voters to cast either provisional ballots or regular ballots. Fla. Stat. § 101.111 only provides that a challenged voter “shall be allowed to cast a provisional ballot.” This statute safeguards the right of the voter to cast a provisional ballot, but does not limit the discretion of the SOE to permit a challenged voter to cast a regular ballot, especially if the challenge is one the SOE has determined to be frivolous. The SOE’s discretion to allow voters who have been subjected to frivolous or unsupported challenges to cast a regular ballot is critical to the proper functioning of Florida’s election infrastructure. Otherwise, bad-faith actors could compel an entire election to conducted by provisional ballot simply by filing frivolous mass challenges against every voter.

than provisional ballots. We also recommend that your office refrain from providing any support or guidance to any individuals or organizations who submit challenges and limit any communication with such individuals or organizations to the extent not otherwise required by law. Several federal and state laws may be implicated if you require challenged voters to cast provisional ballots on the basis of a frivolous mass voter challenge, or otherwise act on frivolous challenges or provide support to individuals engaging in such challenges, including the following:

*First*, the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution prohibit government officials from burdening the right to vote without justification.<sup>12</sup> Any decision to require a voter to cast a provisional ballot on the basis of a frivolous voter challenge imposes a burden on that voter that is not supported by any legitimate justification, and may therefore violate the U.S. Constitution.

*Second*, the Voting Rights Act (“VRA”) prohibits voting standards, practices, or procedures, including challenges to voter eligibility and voter purges, that were enacted with a racially discriminatory intent or have a racially discriminatory result.<sup>13</sup> Mass challenges to voter eligibility have long been a tactic to suppress political participation, especially of Black voters and other voters of color.<sup>14</sup> Accordingly, if your office acts on frivolous mass challenges to voter eligibility by requiring challenged voters to cast provisional ballots—particularly where you have no knowledge of how or why the challenged voters were targeted, or cannot determine that the challenges are good faith and nonfrivolous—you may be in violation of the VRA.

*Third*, the National Voter Registration Act (“NVRA”) prohibits the systematic removal of voters from the rolls on the grounds of change of residence within 90 days of a federal election. *See* 52 U.S.C. § 20507(c)(2)(A) (“A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters”).<sup>15</sup> In addition, the NVRA prohibits denying a regular ballot to a voter based on an alleged change in residence unless and until the statute’s specific notice procedures have

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<sup>12</sup> *See Burdick v. Takushi*, 504 U.S. 428 (1992) (“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>13</sup> *See* 52 U.S.C. § 10301.

<sup>14</sup> Jonathan Brater, *Voter Purges: The Risks in 2018*, Brennan Center 1, 1-2 (2018), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Voter\\_Purges\\_The\\_Risks\\_in\\_2018.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Voter_Purges_The_Risks_in_2018.pdf); *see also* Laughlin McDonald, A VOTING RIGHTS ODYSSEY: BLACK ENFRANCHISEMENT IN GEORGIA 1, 52-54 (2003) (describing the historical origins of Georgia’s voter challenge laws).

<sup>15</sup> A process that could effectuate mass removals is systematic. *See N. Carolina State Conference of NAACP*, No. 1:16-CV-1274, 2018 WL 3748172 (concluding that counties that sustained mass challenges also violated the NVRA’s 90-day provision).

been followed.<sup>16</sup> Therefore, systematic removals of voters from the rolls on the basis of mass challenges may violate the NVRA.

*Fourth*, if frivolous voter challenges are submitted by individuals or groups who seek to deter voting by violence or intimidation, any support or cooperation your office provides to those challengers could implicate longstanding federal laws prohibiting conspiracies to interfere with voting rights. *See* 42 U.S.C. § 1985(3).

*Fifth*, because submission of frivolous voter challenges is a crime under Florida law, if your office provides any support or guidance to challengers, or takes any action on such a submission (including by requiring challenged voters to cast provisional ballots), your office may be aiding and abetting in the challenger's criminal activity.

This is not an exhaustive list. Entertaining frivolous voter challenges may create concerns or potential liability under other provisions of state and federal law. By allowing voters targeted by frivolous mass challenges to cast regular ballots, and by refraining from providing support or guidance to individuals who submit challenges, your office can minimize the risk of violating the law.

\* \* \*

In the interest of promoting public transparency, we request that you immediately post any challenges on your website. We also request that you inform us if you receive challenges in any form (even if they do not comply with state law or are otherwise frivolous). We may submit open records requests on a regular basis to learn whether challenges have been filed, but please feel free to reach out to us if there is anything we can do to reduce the burden of these requests on your office.

We welcome the opportunity to discuss our recommendations in greater detail or answer any questions you may have. Feel free to contact Michael Pernick at (917) 790-3597 or [mpernick@naacpldf.org](mailto:mpernick@naacpldf.org).

Sincerely,

Michael Pernick  
 Michael Skocpol  
 Amir Badat  
 NAACP Legal Defense & Educational Fund, Inc.  
 40 Rector Street, 5th Fl.  
 New York, NY 10006  
 (917) 790-3597  
[mpernick@naacpldf.org](mailto:mpernick@naacpldf.org)

Adora Obi Nweze  
 President, NAACP Florida State Conference  
 P.O. Box 101060  
 Fort Lauderdale, FL 33310

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<sup>16</sup> 52 U.S.C. 20507(a)(4), (d), (e).

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NAACP Legal Defense and Educational Fund, Inc. ("LDF")

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression.

NAACP Florida State Conference

Founded in 1909, the NAACP is the nation's oldest and largest nonpartisan civil rights organization. Its members throughout the United States and the world are the premier advocates for civil rights in their communities. In 1941, the NAACP Florida State Conference was formed as the 1st State Conference in the nation.

Common Cause Education Fund, Inc.

Common Cause is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. We employ grassroots organizing, coalition building, research, policy development, public education, lobbying and litigation to win reform at all levels of government.

#### All Voting is Local (AVIL)

All Voting is Local, a nonpartisan organization, exists to expose and dismantle threats to voter freedom in order to make voting safe, fair, and accessible, to build a democracy for us all. For more information about All Voting is Local, visit <https://allvotingislocal.org>.

#### LatinoJustice PRLDEF

LatinoJustice PRLDEF. LatinoJustice PRLDEF (formerly known as the Puerto Rican Legal Defense and Education Fund) is a national civil rights organization founded in 1972 with the goal of changing discriminatory practices via advocacy and litigation.

#### American Civil Liberties Union of Florida

The American Civil Liberties Union (ACLU) is our nation's guardian of liberty, working daily in courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed to all people in this country by the Constitution and laws of the United States. The mission of the ACLU of Florida is to protect, defend, strengthen, and promote the constitutional rights and liberties of all people in Florida.

#### Protect Democracy

Protect Democracy is a nonpartisan nonprofit organization formed in late 2016 with an urgent and explicit mission: to prevent American democracy from declining into a more authoritarian form of government. Because our democracy depends on free and fair elections, Protect Democracy has worked to ensure that all eligible voters are free to vote and have their votes counted.

#### Campaign Legal Center

Campaign Legal Center (CLC) is a nonpartisan organization that advances democracy through law at the federal, state and local levels, fighting for every American's rights to responsive government and a fair opportunity to participate in and affect the democratic process. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive and accountable government.

#### The Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to mobilize the nation's leading lawyers as agents for change in the Civil Rights Movement. Today, the Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity,



and power to make the promises of our democracy real. For more information, please visit <https://lawyerscommittee.org>.

Southern Poverty Law Center

The SPLC is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people.

Dēmos

Through cutting-edge policy research, inspiring litigation and deep relationships with grassroots organizations, Demos champions solutions that will create a democracy and economy rooted in racial equity. Our name means “the people.” It is the root word of democracy, and it reminds us that in America, the true source of our greatness is the diversity of our people.

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November 5, 2022

«Voter\_Name\_FML»  
 «Mailing\_Address»  
 «Mailing\_Address2»  
 «Mailing\_Address3»  
 «Mailing\_City\_State» «Mailing\_Zip\_Country»

Registration #«Certificate»

Per Florida Statute 98.075(5), the Florida Department of State has submitted your name to the Brevard County Supervisor of Elections office as having been convicted of a felony – see enclosed documents. Individuals with a felony conviction, who have not had their rights restored, are not eligible to vote in Florida.

If you feel you have received this letter in error, please complete and return the attached *Voter Acceptance or Denial of Eligibility Form* **within 30 days of receipt**. Your failure to provide documentation that you are not the individual indicated on the enclosed paperwork, or the information regarding the felony conviction or restoration is inaccurate, may result in the determination of your ineligibility as a registered voter in Brevard County and your removal from the statewide voter registration system. You have the right to request a hearing if you deny the accuracy of the information regarding the felony conviction.

Thank you for your prompt attention to this matter. The Brevard County Supervisor of Elections office is committed to ensuring the registration rolls in our county are up-to-date and as accurate as possible. Should you have any questions or need assistance, please contact our office at (321) 290-VOTE (8683).

Sincerely,

Tim Bobanic  
 Brevard County Supervisor of Elections

Enclosure: Eligibility Form

**Resources to help confirm Amendment 4 sentence completion obligations:**

Brevard County Clerk of the Circuit Court: [administration@brevardclerk.us](mailto:administration@brevardclerk.us) or 321-637-5413  
 Florida Department of Corrections: [dc.state.fl.us](http://dc.state.fl.us) or 850.488.5021  
 Florida Commission on Offender Review: [fcor.state.fl.us](http://fcor.state.fl.us) or 850.922.0000

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<b>Mailing Address</b>	<b>Supervisor of Elections - Titusville</b>	<b>Supervisor of Elections - Viera</b>	<b>Supervisor of Elections - Melbourne</b>	<b>Supervisor of Elections – Palm Bay</b>
P.O. Box 410819	400 South Street 1F	2725 Judge Fran Jamieson Way	1515 Sarno Road	450 Cogan Dr SE
Melbourne, FL 32941-0819	Titusville, FL 32780-7610	Bldg. C, Level 1	Melbourne, FL 32935-5293	Palm Bay, FL 32909-6869
Toll Free: (800) 579-4780	Telephone: (321) 264-6740	Viera, FL 32940-6605	Telephone: (321) 255-4455	Telephone: (321) 952-6328
	Fax: (321) 264-6741	Telephone: (321) 633-2124	Fax: (321) 255-4401	Fax: (321) 952-6332
		Fax: (321) 633-2130		
		<a href="http://www.VoteBrevard.gov">www.VoteBrevard.gov</a>		



5 de noviembre de 2022

«Voter\_Name\_FML»  
 «Mailing\_Address»  
 «Mailing\_Address2»  
 «Mailing\_Address3»  
 «Mailing\_City\_State» «Mailing\_Zip\_Country»

N.º de inscripción «Certificate»

De acuerdo con el Estatuto de Florida 98.075(5), el Departamento de Estado de Florida envió su nombre a nuestra oficina para indicarnos que usted fue sentenciado por un delito mayor. Consulte los documentos adjuntos. Las personas con una sentencia por delito mayor a quienes no se les han restituido sus derechos no son elegibles para votar en Florida.

Si cree que recibió esta carta por error, llene y devuelva el *Formulario de Aceptación o Negación de Elegibilidad del Votante* que se adjunta en un **plazo de 30 días a partir de la fecha de recepción**. Si no entrega documentación que pruebe que usted no es la persona que se indica en la documentación adjunta; que ya se restituyeron sus derechos de votación; o información que indique que la sentencia por delito mayor no es correcta, es posible que se determine que usted no es elegible como votante inscrito en el Condado de Brevard y que se le elimine del sistema de inscripción de votantes a nivel de estado. Usted tiene derecho a solicitar una audiencia si niega la exactitud de la información sobre la sentencia por delito mayor.

Agradecemos su pronta atención a este asunto. La Oficina del Supervisor Electoral del Condado de Brevard se compromete a garantizar que las listas de inscripción de nuestro condado sean las más precisas y estén lo más actualizadas posible. Si tiene alguna pregunta o requiere ayuda, no dude en llamar a nuestra oficina al (321) 290-VOTE (8683).

Atentamente  
 Tim Bobanic  
 Oficina del Supervisor Electoral del Condado de Brevard

Anexos: Formulario de Elegibilidad

**Recursos para ayudar a confirmar su cumplimiento de sentencia y obligaciones de acuerdo a la Enmienda 4:**

Secretario del Tribunal de Circuito del Condado de Brevard: [administration@brevardclerk.us](mailto:administration@brevardclerk.us) o 321-637-5413

Departamento de Correcciones de Florida: [dc.state.fl.us](http://dc.state.fl.us) o 850.488.5021

Comisión de Revisión de Infractores Delincuentes de Florida: [fcor.state.fl.us](http://fcor.state.fl.us) o 850.922.0000

Dirección postal	Supervisor de Elecciones,	Supervisor de Elecciones,	Supervisor de Elecciones,	Supervisor de Elecciones, Palm Bay
P.O. Box 410819	Titusville	Viera	Melbourne	450 Cogan Dr SE
Melbourne, FL 32941-0819	400 South Street 1F	2725 Judge Fran Jamieson Way	1515 Sarno Road	Palm Bay, FL 32909-6869
Llamada sin costo: (800)	Titusville, FL 32780-7610	Bldg. C, Level 1	Melbourne, FL 32935-5293	Teléfono: (321) 952-6328
579-4780	Teléfono: (321) 264-6740	Viera, FL 32940-6605	Teléfono: (321) 255-4455	Fax: (321) 952-6332
	Fax: (321) 264-6741	Teléfono: (321) 633-2124	Fax: (321) 255-4401	
		Fax: (321) 633-2130		
		<a href="http://www.VoteBrevard.gov">www.VoteBrevard.gov</a>		





**FORMULARIO DE ELEGIBILIDAD DEL VOTANTE**

Si no regresa este formulario en un plazo de treinta (30) días, su nombre puede ser eliminado del sistema de inscripción de votantes.

**ESCRIBA EN LETRA DE IMPRENTA**

N.º DE INSCRIPCIÓN DE VOTANTE: \_\_\_\_\_

NOMBRE DEL VOTANTE: \_\_\_\_\_  
APELLIDO                      PRIMER NOMBRE                      SEGUNDO NOMBRE

FECHA DE NACIMIENTO: \_\_\_\_/\_\_\_\_/\_\_\_\_ NÚMERO DE SEGURO SOCIAL: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

DIRECCIÓN DEL VOTANTE: \_\_\_\_\_  
 \_\_\_\_\_

NÚMERO DE TELÉFONO: (CASA) (\_\_\_\_) \_\_\_\_ - \_\_\_\_ (TRABAJO) (\_\_\_\_) \_\_\_\_ - \_\_\_\_

SEXO:  MASCULINO     FEMENINO                      RAZA: \_\_\_\_\_

**Marque la declaración a continuación que corresponda a su caso:**

- Estoy de acuerdo con su información y no exijo una audiencia Administrativa.
- No estoy de acuerdo con su información, pero no exijo una audiencia Administrativa.
- Solicito audiencia Administrativa en la Oficina del Supervisor Electoral del Condado de Brevard para presentar evidencia al Supervisor Electoral con respecto a mi elegibilidad para votar debido a lo siguiente:** Yo nunca he recibido una sentencia por un delito mayor; me arrestaron por un delito mayor, pero nunca he recibido la sentencia de un tribunal de justicia por ningún delito mayor; me arrestaron por un delito mayor, pero el tribunal redujo todos los cargos a un delito menor; recibí una sentencia por un delito mayor, pero el tribunal retuvo el fallo para todos los delitos mayores; recibí una sentencia por un delito mayor, pero se restituyeron mis derechos civiles relacionados con el voto y recibí un Certificado de Restauración de Derechos Civiles firmado por la Oficina de Clemencia Ejecutiva de Florida.

**NO ES POSIBLE ACEPTAR EL FORMULARIO SIN UNA FIRMA Y FECHA VÁLIDA**

\_\_\_\_\_  
 FIRMA DEL VOTANTE

\_\_\_\_\_  
 FECHA

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*Sent via email*

March 31, 2023

Re: SOE-Initiated Voter Challenges

To all Florida Supervisors of Elections:

The Legal Defense Fund (“LDF”), the NAACP Florida State Conference, All Voting is Local Florida, the American Civil Liberties Union of Florida (“ACLUFL”), Brennan Center for Justice at NYU School of Law, Common Cause Florida, All About the Ballots, Demos, and Florida Rising Together, write to provide you with recommendations to the extent that you choose to utilize the provisions Fla. Stat. § 101.111 to initiate challenges against voters in your county in future elections (“SOE-initiated voter challenges”). While we have concerns about any use of SOE-initiated voter challenges, and encourage you to consider alternatives, we understand that many Supervisors of Elections (“SOEs”) may feel obliged to use this procedure again in future election cycles. The recommendations in this letter are intended to help you limit the risk of inadvertent harms to your office and to voters in your county from any further use of this procedure.

**I. Supervisors of Elections Filed Numerous Challenges Against Registered Voters During the 2022 General Election, Using Improvised Procedures That Differed County to County**

Based on responses to public records requests submitted by LDF, prior to the 2022 general election at least 14 SOEs submitted voter challenges against at least 2,370 Florida voters pursuant to Fla. Stat. § 101.111 during the 30-day period before



the November 8, 2022, general election. The vast majority of these SOE-initiated voter challenges were based on past felony convictions that allegedly rendered the voter ineligible. A small portion of these challenges were based on mental incapacity, death, double-voting in past elections, or residing at a non-residential address. Based on documents provided in response to public records requests submitted by LDF, we understand that these challenges were entirely or in large part prompted by letters from the Office of Election Crimes and Security providing lists of purportedly ineligible voters to the SOEs.

In all cases, SOEs used boilerplate language in the challenge oaths, and did not specifically describe the basis of the voters' ineligibility in the oath. For example, in one county, the asserted basis for SOE-initiated voter challenges was "Possible Felon – Potentially Ineligible to Vote," with no further detail or explanation. In another county, the asserted basis for SOE-initiated voter challenges was "potentially ineligible to be registered and vote based on F.S. 98.075(5)," again, with no further detail or explanation.

The SOEs who initiated voter challenges employed a range of approaches with respect to providing notice to challenged voters. Some SOEs provided detailed notice to at least some challenged voters. These SOEs sent challenged voters a letter explaining that they have been challenged, and included a copy of the challenge oath and substantial documentation concerning the voter's status. It appears that these SOEs provided voters with all documentation that was relied upon to evaluate the voters' eligibility. Other SOEs provided limited notice to challenged voters. These SOEs merely sent voters a copy of the challenge oath, but did not provide any information about the basis for the challenge. Finally, a few SOEs provided no notice at all to challenged voters. In those counties, voters would learn that they had been challenged by their SOE only if they showed up to vote, at which point they were provided with the challenge oath.

## II. SOE-Initiated Challenges During the 2022 Election Had Troubling Features that Risk Harm to SOEs and Voters

We have a range of concerns with the practice of SOE-initiated voter challenges and how it was implemented during the 2022 general election:

- Inadvertent errors. There is a danger that SOEs will inadvertently challenge eligible voters, especially when these challenges are filed based on information received en masse from state officials without further investigation by the SOE. Importantly, *the mere fact of a prior felony conviction does not mean that a registrant is ineligible to vote*, unless that conviction is for certain statutorily enumerated crimes involving murder or felony sexual offenses or the registrant owes certain court debts. Moreover, calculating whether someone still has outstanding court debts can be notoriously tricky,

especially given the multiple and often imperfect recordkeeping systems that exist to track this information.<sup>1</sup>

- Lack of notice to voters. As explained above, although some SOEs provided detailed notice to challenged voters, many SOEs provided insufficient notice to voters or even no notice at all. In some counties, voters would not even learn that they were challenged until they showed up to vote. These practices risk disenfranchising voters by depriving potentially eligible voters of information they could use to correct the record or cure their eligibility (for example, by paying outstanding fines and fees of which they may not be aware). And they deprive *all* challenged voters—even those who may in fact be ineligible—of crucial information they may need to make informed choices.
- Lack of time to correct issues. Many counties waited until after the start of early voting to file substantial numbers of SOE-initiated voter challenges. In some cases, SOE-initiated voter challenges were not filed until just days before the election. Even in counties where voters were provided with notice of the challenge, these late-breaking challenges denied voters time to address any issues that purportedly rendered them ineligible to vote.
- Intimidation. SOE-initiated voter challenges may have an intimidating effect not only on challenged voters, but also on other voters who learn of these challenges and become concerned that they may also be challenged. This danger of intimidation is particularly acute given that these challenges may be filed in the final days before a general election, when early and mail voting are underway. Especially given recent highly publicized arrests and prosecutions of people who allegedly voted while ineligible, the deterrent effect of these challenges risks deterring eligible voters from exercising their rights.
- Conflict of interest. SOE-initiated voter challenges raise concerns over a potential conflict of interest, because SOEs file the challenge against the voter and also serve as a member of the canvassing board that considers whether to count provisional ballots cast by challenged voters.
- Lack of specificity. All SOEs who submitted challenges used boilerplate language in the oaths. This approach may violate the requirement under Fla. Stat. § 101.111 that the challenger must provide a specific basis for the challenge that would render the voter ineligible to vote.<sup>2</sup> Some boilerplate oaths also asserted only “potential” ineligibility as the basis for challenges, even though Fla. Stat. § 101.111(1)(a) requires affirmation of a reason to

<sup>1</sup> We discuss common mistakes and best practices for determining whether a felony conviction renders a voter ineligible in greater detail in the **Appendix** to this letter.

<sup>2</sup> See *October 10, 2022 Letter to Florida Supervisors of Elections re Preparing for Frivolous Mass Challenges to Voter Eligibility*, available at <https://www.naacpldf.org/wp-content/uploads/2022.10.10-Letter-re-Frivolous-Mass-Voter-Challenges.pdf>.

believe that a voter “is” ineligible. This use of imprecise boilerplate language can create a misimpression among members of the public that use of generic and imprecise form language on a challenge oath is not grounds to reject a challenge.

- Circumvention of residency requirements. In some cases, SOE-initiated voter challenges may also risk inappropriately circumventing Fla. Stat. § 101.111’s requirement that challengers must be registered to vote (or registered poll watchers) in the county where the challenge is filed.<sup>3</sup> This residency requirement is important to protect local election processes from interference by outside agitators. But an individual, including a state official, who is not registered in your county cannot satisfy the residency requirement, and is therefore ineligible to originate a challenge under §101.111. Therefore, an SOE-initiated challenge based solely on information received from an ineligible individual, without independent verification by the SOE, effectively nullifies the residency requirement and is invalid.

### III. If SOEs Continue to File Voter Challenges, SOEs Should Adopt Practices that Can Mitigate These Potential Harms

For the reasons explained above, we strongly urge you to take all possible steps to avoid and/or minimize the use of SOE-initiated voter challenges. However, to the extent you feel constrained to use this procedure in the future, we urge you to take the following steps:

- Provide specific details to voters. SOEs should include detailed and specific information on the challenge oath that is particularized to each voter, rather than vague, generalized, conclusory, or hypothetical allegations. For example, if an individual is challenged based on unpaid fines, fees, court costs, and restitution in connection with a past felony conviction (“fines or fees”), the challenge oath should include the specific information about the conviction, including the amount of any unpaid fines or fees, the jurisdiction(s) where those financial obligations are due, and the source(s) of information relied upon. And to the extent an individual is challenged based on a felony conviction, the challenge oath should identify the date, court, and crime of conviction. Similarly, if an individual is challenged based on mental incapacity, the challenge oath should include specific information about the judicial finding of mental incapacity. *Using generic or boilerplate language on challenge oaths is not sufficient.*<sup>4</sup>
- Provide prompt notice with supporting documentation. SOEs should provide written notice to challenged voters by mail as soon as the challenge is filed, and include all supporting documentation that you relied on. Some SOEs

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<sup>3</sup> *See id.*

<sup>4</sup> Fla. Stat. § 101.111.

already followed this best practice by providing voters with (i) a letter explaining that they have been challenged, providing information on the challenge procedure, and explaining in plain language the basis for the challenge and opportunities to contest the challenge; (ii) a copy of the challenge oath; and (iii) a copy of all supporting documentation in the SOE's possession that supported the challenge. This practice should be adopted by all SOEs.

- Refer voters with past felony convictions to additional resources. To the extent voters are challenged on the basis of past felony convictions, as noted above, determining eligibility can be notoriously tricky given the nuances of state law and deficiencies of current recordkeeping systems. A modernized and more reliable statewide system for assessing voter eligibility based on past felony convictions would reduce the need for these challenges, to the benefit of SOEs and voters alike. However, in the meantime, SOEs should direct challenged voters to a hotline that has been established by the League of Women Voters of Florida (407-710-5496; [canivote@lwvfl.org](mailto:canivote@lwvfl.org)). Voters with past felony convictions who have questions about their voting eligibility should submit a request for an advisory opinion to the Division of Elections.<sup>5</sup> If the Returning Citizen would like assistance in obtaining an advisory opinion, they can apply for assistance from the Florida Rights Restoration Coalition ("FRRC") here: <https://floridarrc.com/finesprogram/assistance/>. If someone is ineligible to vote because of their inability to pay outstanding financial obligations, they can also request assistance using the foregoing link. These important resources should be identified in the initial notice provided to challenged voters, and also made available to voters who call your office with questions or concerns about their eligibility.
- Follow best practices for assessing eligibility based on felony convictions. Prior to filing any challenges against voters on the basis of past felony convictions, SOEs should consider and adhere to best practices for evaluating eligibility, and be aware of the common situations in which state records may be misleading. Many of these are explained in nonpartisan guidance published by LDF, ACLU, ACLUFL, and the Brennan Center for Justice, key points of which are summarized in the **Appendix** to this letter.<sup>6</sup>
- Post information about voter challenges promptly online. SOEs should immediately announce receipt of any voter challenges on the SOE website. This allows non-profit organizations that provide voter assistance to review

<sup>5</sup> You may advise challenged voters of their right to seek an Advisory Opinion from the Florida Division of Elections. See Florida Division of Elections, *Constitutional Amendment 4/Felon Voting Rights*, available at <https://dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4felon-voting-rights/>.

<sup>6</sup> *What You Need to Know: Determining Someone's Eligibility to Register and Vote Under Amendment 4 and SB 7066* (Aug. 2022), cited above and available at <https://www.naacpldf.org/wp-content/uploads/FL-A4-Resource.pdf>.

those challenges and provide assistance to voters if necessary, and will also mitigate the burden on your office of responding to public records requests seeking this information. At a minimum, SOEs should post a notice on the website indicating that voter challenges were filed, including name of the challenger, the number of voter challenges, the grounds for those challenges, and the date the voter challenges were filed. This could also be accomplished by posting copies of voter challenges, with redactions of identifying information to protect the privacy of individual challenged voters.

- File any challenges as early as possible. SOEs should submit any challenges as early as possible during the 30-day statutory period under Fla. Stat. § 101.111, in order to provide voters with notice and a sufficient opportunity to address any issues that may render them ineligible.
- Independently assess before filing challenges. Whenever possible, SOEs should independently review and verify any information received from state officials and independently verify that a challenge is warranted *before filing the challenge*. This is particularly important in cases where the challenger relies on information provided by individuals who reside outside the county and thus would be ineligible to challenge the voter themselves.
- Designate others to handle potential voter challenges. To mitigate conflict-of-interest and transparency concerns, SOEs who feel compelled to initiate challenges should consider delegating responsibility for preparing and filing these challenges to a deputy SOE. Ideally, this would be someone one who can recuse themselves from subsequent canvassing of a challenged vote if necessary. Regardless of whether the challenge is filed by the SOE or a deputy SOE, it is important to indicate on the challenge oath that the challenge is being submitted by an election official.

\* \* \*

We welcome the opportunity to discuss our recommendations in greater detail or answer any questions you may have. Feel free to contact Godfre Blackman at (347) 852-0002 or [gblackman@naacpldf.org](mailto:gblackman@naacpldf.org) and Michael Skocpol at (202) 249-2168 or [miskocpol@naacpldf.org](mailto:miskocpol@naacpldf.org).

Sincerely,

Michael Pernick  
 Michael Skocpol  
 Amir Badat  
 Godfre Blackman  
 NAACP Legal Defense & Educational Fund, Inc.  
 40 Rector Street, 5th Fl.  
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Executive Director  
Florida Rising/Florida Rising Together

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Estee Konor  
Dēmos, Associate Director of Litigation  
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ekonor@demos.org

Abdelilah Skhir  
American Civil Liberties Union of Florida  
4343 W. Flagler St., Ste. 400,  
Miami, FL 33134  
www.aclufl.org

Legal Defense Fund

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression.

NAACP Florida State Conference

Founded in 1909, the NAACP is the nation's oldest and largest nonpartisan civil rights organization. Its members throughout the United States and the world are the premier advocates for civil rights in their communities. In 1941, the NAACP Florida State Conference was formed as the 1st State Conference in the nation.

All Voting is Local

All Voting is Local, a nonpartisan organization, exists to expose and dismantle threats to voter freedom in order to make voting safe, fair, and accessible, to build a democracy for us all. For more information about All Voting is Local, visit <https://allvotingislocal.org>.

Brennan Center for Justice at NYU Law School

The Brennan Center is a nonpartisan law and public policy institute based in New York City that seeks to improve our systems of democracy and justice. The Brennan

Center has a long record of supporting efforts to reform felony disenfranchisement laws at the state and federal levels, including in Florida.

Common Cause Florida

Common Cause Florida is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process.

All About the Ballots

All About the Ballots is a Florida-based community-focused grassroots initiative working to engage, educate and empower Black voters to become civically involved to improve issues impacting our communities, which include jobs security, food security, financial security through living wages, accessible and affordable health care and housing, wellness, education, racial and environmental justice, and racial equity. For more information about All About the Ballots, visit [Allabouttheballots.org](http://Allabouttheballots.org)

Dēmos

Dēmos is the think tank for the racial justice movement. Through research, advocacy, strategic communications, litigation, and deep partnerships with grassroots organizations across the country, we build power for Black and brown communities.

Florida Rising Together

Florida Rising Together is a 501c3 organization dedicated to advancing economic and racial justice across the state by building power in historically marginalized communities. Our organization develops leaders that will help shift power so communities get to decide their own destinies.

The American Civil Liberties Union of Florida

The American Civil Liberties Union is our nation's guardian of liberty, working daily in courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed to all people in this country by the Constitution and laws of the United States. The mission of the ACLU of Florida is to protect, defend, strengthen, and promote the constitutional rights and liberties of all people in Florida.



## APPENDIX

Adjudicating challenges to eligibility based on prior felony convictions is complex due to intricacies of Florida’s implementation of SB 7066 in conjunction with Amendment 4. In this section, we provide some guidance and identify best practices to consider—as well as some common misunderstandings and pitfalls to avoid—as you determine eligibility based on felony convictions you may encounter.<sup>7</sup>

### I. Difficulties in identifying potentially disqualifying felonies

The first step in assessing eligibility is always to identify the specific prior felony conviction or convictions that allegedly disqualify the voter. Only certain specified felonies are automatically disqualifying; for most types of felony convictions, further analysis is necessary to determine whether a particular conviction actually renders a voter ineligible.<sup>8</sup> That analysis may include:

- **Analyzing state law of other jurisdictions.** If the relevant conviction occurred outside Florida, you will generally need to determine whether the voter would be eligible to vote under the law of the state where the conviction occurred.<sup>9</sup> Considering reputable sources, you will find that in many states, eligibility is restored automatically upon release from incarceration, and in others, it is restored upon discharge from parole and/or probation. Correctly assessing out-of-state rights restoration can be quite tricky, so we urge you to consult the resources from nonpartisan national voting rights organizations that are linked in this footnote.<sup>10</sup>

<sup>7</sup> This guidance is an attempt to summarize general principles and best practices for determining eligibility under Amendment 4 and SB 7066. It is informed by the signatories’ collective experience interpreting Amendment 4 and SB 7066 and advising returning citizens on their rights and responsibilities. It is not offered or intended as legal advice.

<sup>8</sup> Only felony convictions affect voting rights. If the allegedly disqualifying prior conviction is a misdemeanor, the challenged voter never lost their voting rights and their ballot should be allowed.

<sup>9</sup> See Florida Division of Elections, *Constitutional Amendment 4/Felon Voting Rights* (last accessed Nov. 2, 2022), <https://dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4felon-voting-rights> (“A felony conviction in another state makes a person ineligible to vote in Florida only if the conviction would make the person ineligible to vote in the state where the person was convicted.”); see also Legal Defense Fund et al., *What You Need to Know: Determining Someone’s Eligibility to Register and Vote Under Amendment 4 and SB 7066*, at 10 (Aug. 2022), <https://www.naacpldf.org/wp-content/uploads/FL-A4-Resource.pdf>.

<sup>10</sup> For a state-by-state guide to other states’ policies on restoration of voting rights, see Brennan Center for Justice, *Can People Convicted of a Felony Vote? Felony Voting Laws by State* (last updated March 7, 2023), <https://www.brennancenter.org/our-work/research-reports/can-people-convicted-felony-vote-felony-voting-laws-state>. If a returning citizen was convicted in a jurisdiction that is light blue or dark blue on the Brennan Center’s map (and was not convicted of a felony in Florida or barred from voting in another state), they are eligible to vote in Florida. If a returning citizen was convicted in a jurisdiction that is orange on the Brennan Center’s map and they have been discharged from parole and/or probation (and were not convicted of a felony in Florida or barred

- **Confirming there actually was a conviction.** Only an adjudication of guilt for a felony affects voting rights. This means the person must have been actually convicted of the felony, either at trial or after pleading guilty. There is no loss of voting rights if: (1) the person was only convicted of a misdemeanor; (2) the person was charged with a felony, but the charges were dropped; (3) the person pleaded guilty but adjudication was withheld; (4) the person pleaded guilty but imposition of sentence was suspended; or (5) the person is on probation because they were convicted of a misdemeanor or they were charged with a felony but adjudication was withheld.<sup>11</sup>
- **Checking if the conviction is categorically disqualifying even after completion of the sentence.** Generally, a person with a felony conviction has their voting rights restored upon completion of their sentence. However, felony convictions for *murder* or a *felony sexual offense* as specified under SB 7066 are categorically disqualifying, even after completion of the sentence, unless the voter receives a grant of executive clemency. The list of offenses that qualify as murder or a felony sexual offense can be found at Fla. Stat. § 98.0751(2)(b) and (c).<sup>12</sup> But note that even the automatically qualifying offenses listed by statute can require careful parsing—although some convictions plainly qualify, others require case-specific analysis to determine.

## II. Difficulties in determining when legal financial obligations (LFOs) have been completed

For all other felony convictions, the person’s voting eligibility is restored when the terms of their sentence have been completed. That means: (1) the person has successfully completed any custodial sentence in jail or prison; (2) the person has successfully completed any term of probation, parole, or community control; and (3) the person has satisfied the relevant legal financial obligations (or “LFOs”) associated with their original conviction and sentence.<sup>13</sup> This means that a person who is currently incarcerated or serving a term of probation, parole, or community control for a felony conviction is not eligible to vote.

When the only remaining sentencing terms are financial obligations, however, federal courts have acknowledged that it is much harder to tell whether those have

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from voting in another state), they are eligible to vote in Florida. For additional guidance on determining restoration of voting rights in all 50 states, see also Campaign Legal Center, *Restore Your Vote: I Have a Felony Conviction*.

<sup>11</sup> *What You Need to Know: Determining Someone’s Eligibility to Register and Vote Under Amendment 4 and SB 7066*, at 10.

<sup>12</sup> *What You Need to Know: Determining Someone’s Eligibility to Register and Vote Under Amendment 4 and SB 7066*, at 10.

<sup>13</sup> See Fla. Stat. § 98.0751(2)(a).

been satisfied.<sup>14</sup> Consider the following information and best practices as you consider whether a voter is ineligible because of unpaid LFOs.

***Evidence of unpaid financial obligations may be incomplete, out-of-date, or otherwise inaccurate.*** The records available to determine the payment status of any relevant financial obligations are notoriously spotty in Florida. Here are several common evidentiary pitfalls you should consider:

- ***Records may be out of date.*** If a challenger or state agency has provided records purporting to show that a qualifying financial obligation remains unpaid, you should carefully note the date of those records and make every effort to double-check that they are up to date.<sup>15</sup> A voter may have fulfilled an LFO since the record was generated, or had an LFO forgiven.
- ***Court dockets may not reflect all payments.*** Even relatively recent and seemingly authoritative records, such as a court docket, may be incomplete. That is largely because Florida courts routinely refer court fines and fees to third-party debt collection agencies.<sup>16</sup> Payments that a voter properly made directly to one of these private debt collectors may not be reflected in court systems, especially if those payments were used by the debt collector to fulfill service fees, late fees, or other privately imposed costs.<sup>17</sup> Similarly, qualifying restitution payments made directly to private parties may not appear in official records for various reasons.
- ***Criminal history reports provided by the Florida Department of Law Enforcement may be incomplete or inaccurate.*** You should be wary of relying exclusively on Criminal History Records provided by the Florida Department of Law Enforcement to make determinations of eligibility. Though a helpful starting point, they have several limitations. Namely: (1) it is unclear how often these reports are updated; (2) they can be difficult to accurately interpret; and, most importantly, (3) the information they contain is often

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<sup>14</sup> *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1208 (N.D. Fla. 2020) (“Determining how much a person convicted of a felony in Florida was ordered to pay as part of a criminal sentence is not as easy as one might expect. It is sometimes easy, sometimes hard, sometimes impossible. Determining how much a person has paid, especially given the State’s byzantine approach to calculating that amount, is more difficult, but this, too, is sometimes easy, sometimes hard, sometimes impossible.”), *vacated on appeal by Jones v. Governor of Fla.*, 975 F.3d 1016, 1047 (11<sup>th</sup> Cir. 2020) (en banc) (acknowledging “difficulties in proving the facts that determine a felon’s eligibility” in Florida); see also *What You Need to Know: Determining Someone’s Eligibility to Register and Vote Under Amendment 4 and SB 7066*, at 3 (explaining that it can be “exceedingly difficult to obtain basic information a person needs to be able to determine their ability to register and vote”).

<sup>15</sup> For suggested best practices for obtaining up-to-date records, see *What You Need to Know: Determining Someone’s Eligibility to Register and Vote Under Amendment 4 and SB 7066*, at 4–6. See Fla. Stat. § 28.246(6).

<sup>17</sup> For further elaboration on why the records of debt collectors may not accurately reflect the voter’s eligibility, see discussion below of the “First Dollar” rule.

incomplete, particularly when it comes to outstanding LFOs.<sup>18</sup> You should not rely solely on an FDLE criminal history record to determine that a voter is ineligible because of outstanding LFOs.

***Savings Clause—you must resolve doubts in favor of eligibility.*** Potential legal ambiguity about the scope of a person’s outstanding financial obligations should be resolved in favor of the voter. SB 7066 *explicitly* directs that the law should be interpreted in favor of the voter. It provides that: “For the purpose of determining a voter registrant’s eligibility, the provisions of this section [Fla. Stat. § 98.0751] shall be strictly construed. If a provision is susceptible to differing interpretations, it shall be construed in favor of the registrant.”<sup>19</sup>

***The “Four Corners” rule—financial obligations count only if they are part of the original judgment and sentence.*** The “Four Corners” rule provides that only terms “contained in the four corners of the sentencing document” must be paid to restore voting rights.<sup>20</sup> So the financial obligations that must be satisfied to restore voting rights are generally limited to: (1) court-ordered fines that are included in the judgment or sentencing document; (2) court costs, fees, and charges connected with the felony conviction that were assessed at the time of sentencing; and (3) court-ordered restitution to the victim of an offense.<sup>21</sup> All of these count only if the relevant obligation appears on the face of the judgment or sentencing documents.<sup>22</sup>

***Felony debts only—LFOs that cannot specifically be allocated or attributed to a felony conviction do not count.*** LFOs that are ordered as part of a misdemeanor conviction do not count. It is common for people to have financial obligations associated with cases in which they were convicted of a combination of felony and related misdemeanor offenses. If the sentencing document(s) you have do not disaggregate which obligations arise from the felony conviction and which arise from the misdemeanor conviction, the Division of Elections’ guidance indicates that the only financial obligations that should be counted against the voter are those that

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<sup>18</sup> *What You Need to Know: Determining Someone’s Eligibility to Register and Vote Under Amendment 4 and SB 7066*, at 5.

<sup>19</sup> Fla. Stat. § 98.0751(4).

<sup>20</sup> Fla. Stat. §98.0751(2)(a); the statute further states that “full payment” requires payment only of “the amount specifically ordered by the court as part of the sentence.”

<sup>21</sup> Financial obligations that should not be considered include: (1) interest charges; (2) collection fees; (3) “convenience” fees; (4) monthly probation costs; (5) room and board for work-release programs; (6) fees for GPS monitoring; and (7) other fees and costs that are assessed post-conviction by third-party debt collection agencies.

<sup>22</sup> Under a straightforward application of the “Four Corners” rule, failure to pay restitution or fines should not affect eligibility to vote when those obligations are reflected only in other documents. See *What You Need to Know: Determining Someone’s Eligibility to Register and Vote Under Amendment 4 and SB 7066*, at 5.

are statutorily authorized to be imposed if an individual has been convicted of a felony.<sup>23</sup>

*The “First Dollar” rule—every payment counts towards restoration of voting, no matter how the payment is classified.* When determining whether a voter has paid the necessary amount, the state has indicated that you must consider *all payments* the voter has made, regardless of how they are classified.<sup>24</sup> In other words, any payment made by the voter should be credited toward the obligation imposed in the original sentence, even if the payment is not accounted that way in official records. For example, even payments designated as “interest” or “financing fee” or additional costs imposed by a private debt collector should be credited towards the terms of the original sentence.<sup>25</sup>

This “First Dollar” rule follows logically from the “Four Corners” rule, and helps ensure that voters are not improperly required to satisfy post-judgment fees in order to have their eligibility restored.<sup>26</sup> Importantly—as the Division of Elections guidance cited in this footnote recognizes—official records such as a court docket may continue to show an outstanding balance even if a voter has fully satisfied their obligations.<sup>27</sup> That means that *you should not rely solely on the appearance of an outstanding balance to conclude that a voter is ineligible*. More careful analysis is needed, accounting for all known payments made by the voter (and the possibility that the voter may have made payments that are not captured by the records in evidence before you, as discussed above).

<sup>23</sup> Div. of Elections Final Response to Request for Advisory Op. F-20-6 (Aug. 17, 2020), available at <https://files.floridados.gov/media/703431/f-20-6-redacted-final-response-to-ao.pdf>.

<sup>24</sup> See *Jones v. Governor of Fla.*, 975 F.3d 1016, 1040 (11th Cir. 2020) (en banc) (“Under this policy, the State credits all payments a [person with a felony conviction] makes for any obligations related to his sentence toward the original obligation imposed in the sentence.”), vacating *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1225 (N.D. Fla. 2020) (“[A]n individual would be required only to make total payments on any related obligation, whether or not included in the sentence itself, that added up in the aggregate to the amount of the obligations included in the sentence. Put differently, the State decided to retroactively reallocate payments, now applying every payment to the obligations in the original sentence, regardless of the actual purpose for which the payment was made or how it was actually applied.”).

<sup>25</sup> See *What You Need to Know: Determining Someone’s Eligibility to Register and Vote Under Amendment 4 and SB 7066*, at 16.

<sup>26</sup> See *id.*

<sup>27</sup> See <https://dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4/felon-voting-rights> (last accessed Nov. 2, 2022); see also, e.g., Div. of Elections Final Response to Request for Advisory Op. F-20-6 (Aug. 17, 2020), available at <https://files.floridados.gov/media/703431/f-20-6-redacted-final-response-to-ao.pdf>.

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A-4

1

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Individual Voter/Elector Challenge Ineligible/Illegal Voter Registration  
**Date:** Friday, October 21, 2022 7:10:33 PM  
**Attachments:** [Individual Voter/Elector Challenge Ineligible/Illegal Voter Registration.msg](#)

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Good evening, [REDACTED]

We have received your 2,257 individual voter challenges. We note that each challenge is identical except for the challenged voter's name, registration number, and residential address. Each challenge alleges that the voter is attempting to vote illegally. The basis for each allegation is that the voter's residential address on file has been reported "vacant for 90 or more days."

Indeed, 'vacancy' is not specified in the Florida Election Code as a reason to disqualify a voter. See, [Title IX, Florida Statutes: VOTER RESIDENCY \(state.fl.us\)](#). Therefore, your mass voter challenge based on the fact that a voter's legal residence has been reported 'vacant for 90 or more days' is facially insufficient pursuant to Section 101.111, Florida Statutes.

Your mass voter challenge, attached, is disregarded.

Sincerely,

[REDACTED]  
[REDACTED]  
Representing Julie Marcus, Supervisor of Elections  
13001 Starkey Rd., Largo, FL 33773  
(727) 464-5751

[REDACTED]  
*Find us on [Facebook](#) ~ Follow us [@VotePinellas](#)*

*Under Florida law, email addresses are public records. If you do not want your email address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. -- F.S. 668.6076*

*Conforme a la legislación de Florida, las direcciones de correo electrónico son registros públicos. Si no desea que su correo electrónico se divulgue como respuesta a una solicitud de registros públicos, no envíe un correo electrónico a esta entidad. En su lugar, póngase en contacto con esta oficina por teléfono o por escrito. -- F.S. 668.6076*

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**From:** [REDACTED]  
**Sent:** Friday, October 21, 2022 11:46 AM  
**To:** [REDACTED]  
[REDACTED]  
[REDACTED]  
**Cc:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
**Subject:** Individual Voter/Elector Challenge Ineligible/Illegal Voter Registration

**CAUTION:** *This message has originated from outside of the organization. **Do not** click on links or open attachments unless you are expecting the correspondence from the sender and know the content is safe.*

Good Morning,

According to Florida Statute **101.111 Voter challenges.**—

(1)(a) Any registered elector or poll watcher of a county may challenge the right of a person to vote in that county. The challenge must be in writing and contain the following oath, which shall be delivered to the clerk or inspector:

The attached .pdf file consists of 2,257 individual voter challenges made in writing that contain the required oath.

Florida Statutes state that "electors or poll watchers shall not be subject to liability for any action taken in good faith and in furtherance of any activity or duty permitted of such electors or poll watchers by law"

If there is an issue with my voter challenges please feel free to contact me directly so I can remedy the challenges in a timely manner.

Warmest regards,

██████████

 [VOTERS LEGAL RESIDENCE IS A VACANT PROPERTY MOR...](#)



**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Individual Voter/Elector Challenge Ineligible/Illegal Voter Registration  
**Date:** Monday, October 24, 2022 5:05:02 PM  
**Attachments:** [SATURN\\_NOT\\_LEGAL\\_ADDRESS\\_NO\\_UNIT.pdf](#)  
[RE: Individual Voter/Elector Challenge Ineligible/Illegal Voter Registration.msg](#)

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Good afternoon, [REDACTED]

We have received the attached mass voter challenge ("SATURN\_NOT\_LEGAL\_ADDRESS\_NO\_UNIT.pdf"). As with your first mass voter challenge predicated upon voters' legal residence being 'vacant for 90 or more days,' this challenge based upon voters' addresses failing to have "an apartment, unit, suite, room, dormitory room number or any other specifier," is facially insufficient.

Section 97.053(5)(a)2, Florida Statutes states: "Failure to include a distinguishing apartment, suite, lot, room, or dormitory room or other identifier on a voter registration application does not impact a voter's eligibility to register to vote or cast a ballot, **and such an omission may not serve as the basis for a challenge to a voter's eligibility** or reason to not count a ballot."

Your second mass voter challenge, attached, is disregarded. Please be aware that pursuant to Section 101.111(2), Florida Statutes, "**Any elector or poll watcher filing a frivolous challenge of any person's right to vote commits a misdemeanor of the first degree [...]**"

Sincerely,

[REDACTED]  
[REDACTED]  
Representing Julie Marcus, Supervisor of Elections  
13001 Starkey Rd., Largo, FL 33773  
(727) 464-5751  
[masmith@votepinellas.gov](mailto:masmith@votepinellas.gov)  
Find us on [Facebook](#) ~ Follow us [@VotePinellas](#)

Under Florida law, email addresses are public records. If you do not want your email address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. -- F.S. 668.6076  
Conforme a la legislación de Florida, las direcciones de correo electrónico son registros públicos. Si no desea que su correo electrónico se divulgue como respuesta a una solicitud de registros públicos, no envíe un correo electrónico a esta entidad. En su lugar, póngase en contacto con esta oficina por teléfono o por escrito. -- F.S. 668.6076

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**From:** [REDACTED]  
**Sent:** Friday, October 21, 2022 3:26 PM  
**To:** [REDACTED]  
[REDACTED]  
**Cc:** [REDACTED]

[REDACTED]

**Subject:** Re: Individual Voter/Elector Challenge Ineligible/Illegal Voter Registration

**CAUTION:** *This message has originated from outside of the organization. Do not click on links or open attachments unless you are expecting the correspondence from the sender and know the content is safe.*

On Fri, Oct 21, 2022 at 11:46 AM [REDACTED] wrote:

Good Morning,

According to Florida Statute **101.111 Voter challenges.**—

(1)(a) Any registered elector or poll watcher of a county may challenge the right of a person to vote in that county. The challenge must be in writing and contain the following oath, which shall be delivered to the clerk or inspector:

The attached .pdf file consists of 2,257 individual voter challenges made in writing that contain the required oath.

Florida Statutes state that "electors or poll watchers shall not be subject to liability for any action taken in good faith and in furtherance of any activity or duty permitted of such electors or poll watchers by law"

If there is an issue with my voter challenges please feel free to contact me directly so I can remedy the challenges in a timely manner.

Warmest regards,

[REDACTED]

[VOTERS LEGAL RESIDENCE IS A VACANT PROPERTY MOR...](#)

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A-5

**Inaccessible and Problematic Polling Sites**

At the Community Commitment Center in Orleans Parish (pictured below), a wooden ramp installed for accessible access remained unstable and broken in the middle. We reported this concern and had the ramp removed to provide for alternative accommodation.



Meanwhile, in LaSalle Parish (among others) polling sites were located on grassy lots with no pavement, among other accessible concerns.



*The Nina R. Boyette polling site at 111 S. Roberts Road in Jonesville (LaSalle Parish).*

#### **Changed polling locations**

There were hundreds of changes to assigned polling locations this election which were disproportionately focused in a three parishes with significant Black populations:

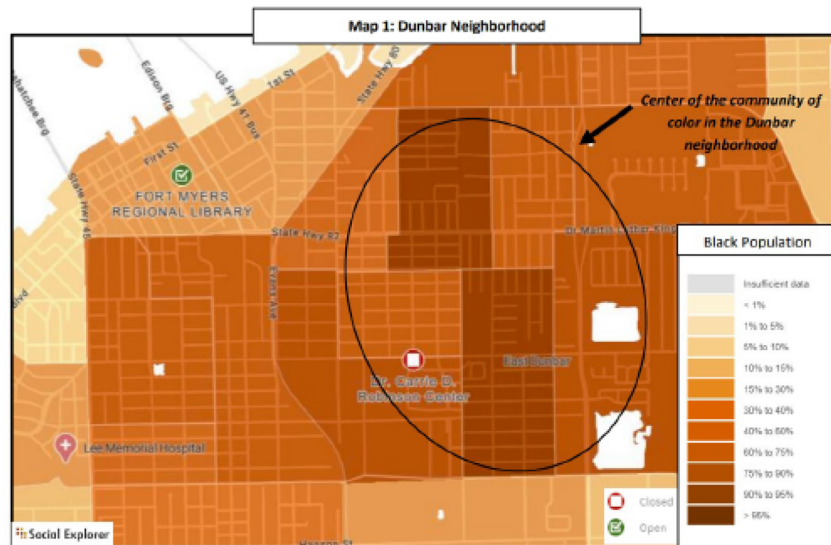






**Poll Closures and New Drop Box in Lee County**

After LDF and partners sent a [letter](#) on October 31 to the Lee County Supervisor of Elections, the SOE agreed to add a new ballot drop box in the Dunbar neighborhood, a predominantly Black community in Fort Myers. This is critical for Black voters in Fort Myers, who have been severely impacted by the devastation of Hurricane Ian. Voters in this neighborhood had previously been able to vote at the Dr. Carrie D. Robinson Community Center, but this building was severely damaged by the storm and cannot be used as a polling place this year. As shown in the map below, this closure severely impacts Black voters in the Dunbar neighborhood, as the only open location in the area is the Fort Myers Regional Library, which is 3 miles away (a 55-minute walk). Although it is far from ideal, a new drop box in Dunbar will make it much easier for voters in this community to return their vote-by-mail ballots. On Saturday, November 5, the coalition sent out a mass text to 3,000 voters in and near Dunbar to let them know about the new drop box.



Source: LDF PTV Team Early Voting Report, 2022 Midterm Elections

**Senate Committee on Rules and Administration**  
State and Local Perspectives on Election Administration  
March 28, 2023  
Questions for the Record  
**Secretary Toulouse Oliver**

Chairwoman Klobuchar

New Mexico is a member of the Electronic Registration Information Center - or ERIC - a nonpartisan organization created to help states work together to improve the accuracy of voter registration records. ERIC has traditionally had broad support from election officials from both parties, including Georgia Secretary of State Brad Raffensperger who recently noted how ERIC has helped states to maintain more accurate voter rolls.

- *Based on your experience overseeing state and local elections, how does ERIC improve the administration of elections in New Mexico and other states?*

My Office is pleased with our membership in ERIC and we know it helps our election administrators maintain accurate and up-to-date voter information. Maintaining accurate voter data is an essential function of election administrators and ERIC has been a boon to our continual list maintenance work in New Mexico. Using the data provided by member states through ERIC has allowed my Office (in conjunction with our state's county clerks) to identify over 393,000 out-of-date records since 2017. Our membership in ERIC also improves voter registration in New Mexico by providing us with information to contact potentially eligible but unregistered voters with instructions on how to register. The data matching and subsequently improved voter rolls results in efficiencies like less returned mail, fewer provisional ballots on Election Day, and shorter lines at polling places.



**Senate Committee on Rules and Administration**  
State and Local Perspectives on Election Administration  
March 28, 2023  
Questions for the Record  
**Mr. Howard Knapp**

Chairwoman Klobuchar

You said during the hearing that “the biggest issue we have in South Carolina in regards to poll workers is the harassment that they received during the primaries from observers and watchers.”

- Can you expand on the challenges that you are seeing in South Carolina with respect to recruiting and retaining poll workers, and what you think should be done in response to these kinds of threats and abusive conduct?

Director Knapp

To expand on my comments, I need to clarify that South Carolina is facing two main problems right now: the harassment of front-line poll workers at the polls on election day, and the mass exodus of professional election officials in the state and local offices.

Since January 2021, [over 22 local county election directors](#) have left their positions in South Carolina, and I have been told more plan to retire or resign this year. In my office, the S.C. State Election Commission (“SEC”), we have had complete turnover on the agency management team and out of the 30 staff that were working at the SEC in January 2021, seven remain. In other words, while over half of South Carolina county directors have quit, the SEC has seen turnover exceeding 75%. While the reasons for these departures vary from planned retirements to increased pressure and baseless scrutiny, the impact of the unprecedented loss of knowledge and experience has been felt statewide.

Another tactic we’ve seen in the last two years is the weaponization of Freedom of Information Act/public records requests. Activists are purposefully inundating the SEC and county election offices with so many FOIA requests that it’s nearly physically impossible to both comply with the FOIA requirements and do one’s job of preparing for and administering elections. Our agency alone has seen an increase of over 500% in FOIA requests in the last two years. I’ve even had activists tell me directly that these are purposeful campaigns whose sole purpose is to “make life hell” for county directors and staff so that they will leave and be replaced by the activists.

To combat the turnover and to ensure our elections remain secure, efficient, accessible, and accurate, we have instituted additional training, support, and professional development at the state level. I am also seeking additional funding from the S.C. General Assembly to establish a formal training division that will be able to step in and train new county staff quickly and efficiently in order to minimize errors or mistakes during an election cycle.

In addition to the departure of full-time officials, South Carolina's past two election cycles have also seen counties struggle to recruit and retain election day poll workers. While the November 2022 elections went smoothly, the June primaries were a different story. We had activist groups in some of our biggest counties physically confront poll workers, threaten them, and even call the police on the poll workers—alleging that the poll workers were committing voter fraud (all unfounded). We had poll watchers and observers screaming at poll workers in the polling place.

These workers are integral to the success of in-person election day operations, and it is paramount that we establish a climate in which both our poll workers and voters feel welcome, safe, and comfortable voting.

In response to the small, but very vocal minority that seeks to undermine our elections through intimidation, threats, and misconduct, it is important that election officials, poll workers, and voters have a common understanding of election protocols and procedures that are followed uniformly across county lines. This starts with a set of strong, common-sense rules of conduct at the polls and cooperation from election officials and law enforcement on when to step in to curb inappropriate behavior. I drafted, and my Commission approved, a set of poll watcher and observer guidelines that make it clear what is allowed and not allowed to happen in a polling place. The SEC has also been working with our State Law Enforcement Division and our local police chiefs and sheriffs associations to make sure all of the stakeholders are on the same page. The SEC also invested in public messaging campaigns to inform the public on the importance of voting civilly. Taken together, I think these efforts are why the November 2022 elections went a lot smoother than the primaries. I'm not sure if any of these efforts could be done nationally, but any effort that keeps polling places safe while ensuring transparency would be welcome by election officials.

Finally, as I mentioned in my testimony, some South Carolina counties have increased the pay of poll workers, which has been shown to help recruitment significantly—the simple truth is people will put up with more if you pay them more. It might be helpful if Congress (through the EAC HAVA grants) gave states more money for poll workers in federal elections.

It was a pleasure meeting you, other members, and your staff in March. Thank you for the opportunity to appear before you. I am available to assist your office and committee staff in any way I can.

All the best,

Howie



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POLITICS & GOVERNMENT

# SC elections officials are leaving in record numbers. What will it mean for midterms?

BY ZAK KOESKE AND JOSEPH BUSTOS

UPDATED SEPTEMBER 19, 2022 7:34 AM



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Mail-in voting is a hot topic in the 2020 election season, which has been disrupted by a coronavirus pandemic that altered primaries and conventions. But it's important to know what mail-in voting is and why some people are for and against it. BY META VIERS



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*COLUMBIA, S.C.*

As director of the Dorchester County Board of Elections, Todd Billman saw himself as a community advocate working to advance the democratic process by conducting efficient, fair and accurate elections.

He was passionate about the work, having climbed the ranks from part-time employee to director in just eight years, and aspired to a long, fulfilling career in election administration.

Then came the 2020 election cycle, and with it a surge of public scrutiny and skepticism about his work like he'd never experienced.

"It came to a point where I went from a job no one knew existed to a job where

everyone thought they knew how to do it better,” said Billman, 41, who resigned in January and now works as an account manager for an election software company.

Billman is one of 22 South Carolina election directors across 19 counties who have left office since the 2020 general election. Two others have announced plans to leave at the end of the year.

“People like me are now seen as the problem, not part of the solution,” Billman said. “I always wanted to be part of the solution, and at this point, I didn’t see that changing because of the political climate.”

The state historically turns over less than a handful of director positions every couple years, said State Election Commission Deputy Executive Director Chris Whitmire, who called the recent departures “unprecedented.”

“A lot of institutional knowledge has walked out the door,” he said. “We’ve never seen even close to this as far as the turnover.”

The exodus of election officials is not unique to South Carolina. A [recent survey of nearly 600 local officials](#) across the country found that one in five reported they were unlikely to continue serving through the 2024 presidential election.

Escalating attacks on the integrity of the election system, intensifying political divisions in the country and excessive job-related stress were among the top reasons officials cited for leaving the profession, according to the survey conducted on behalf of the [Brennan Center for Justice](#).

Each departing director in South Carolina had their own reasons for leaving. The polarized political climate and persistence of discredited 2020 election fraud claims played a role for some, but not all directors.

A few left to take jobs running elections in larger counties or were hired by the State Elections Commission. Others moved into the private sector or retired.

The exodus of election directors, which left South Carolina with 17 counties where the chief election administrator had never conducted a statewide general election, could have significant implications for the midterm elections in November.

Because there’s no uniform standard for election directors, academic credentials

and professional experience vary widely between individuals. Some are high school graduates with limited work experience while others have advanced degrees, Whitmire said.

The State Election Commission has worked to train the new directors, four of whom had never worked in an elections office prior to being hired, but there's only so much that can be gained from orientations, workshops and walk-throughs.

"You have to learn by doing," Whitmire said. "All of the weird situations, the unique situations you can run into and you have to determine how to handle. A lot of that comes from experience."



The first Democratic primary voters of the morning check in at the Meadowfield Elementary polling place on Saturday, February 29, 2020. Polls open at 7 a.m and close at 7 p.m. Joshua Boucher [jboucher@thestate.com](mailto:jboucher@thestate.com)

#### **WHY ARE ELECTION OFFICIALS LEAVING?**

State and local elections officials have come under a deluge of pressure since 2020, when COVID-19 upended the country and forced leaders to adapt public elections

to protect the safety of voters and poll workers.

Adding to the stress of conducting a massive civic event amid a deadly pandemic, opinions about proposed modifications to the election process were irreconcilably split, often along partisan lines.

Democratic politicians in the state by and large supported [expanding mail-in voting](#), eliminating the witness signature requirement on absentee ballots and using drop boxes to collect those ballots as a means of ensuring voters could safely participate in the electoral process.

Republicans, on the other hand, were [largely skeptical of such attempts to ease access](#), arguing they would exacerbate voter fraud and diminish election integrity, a concern that has animated the party for years.

Elections officials were caught in the middle, asked to implement a dizzying series of new measures – [some of which changed by the day based on court decisions](#) – and under increasing strain from people of all political stripes.

The situation only intensified after the votes were counted on Election Day, as former President Donald Trump and other prominent Republicans and right-wing media outlets began relentlessly pushing the unfounded theory that the election was stolen.

“After the election, certainly, election officials didn’t get a big pat on the back,” Whitmire said. “We’ve received a lot of criticism from groups and individuals who doubted the results of the 2020 general election, and that has been stressful for election officials, not just in South Carolina, but across the United States.”

The myth of the stolen election, which inspired [rioters to storm the U.S. Capitol on Jan. 6, 2021](#), persists despite multiple recounts and audits finding no evidence of systemic voter fraud.

Even in a red state like South Carolina, which Trump won by nearly 12 percentage points and where Republicans expanded their majorities in the Legislature in 2020, [skepticism about the election abounds](#).



A "Stop the Steal" rally at the South Carolina State House on Wednesday, January 6, 2021. Protestors gathered as federal lawmakers meet for a joint session to certify the Electoral College vote, which some protestors do not want to happen. Tracy Glantz [tglantz@thestate.com](mailto:tglantz@thestate.com)

Whitmire said he initially assumed election deniers wouldn't challenge results and processes in a state their preferred candidate won, but now realizes he was naive.

"We expect scrutiny, scrutiny's a good thing. It makes us better," he said. "But what we've been getting is unprecedented, baseless, unfair scrutiny. We're dealing with beliefs rooted in lies."

Public interest in elections and the processes that undergird them has increased markedly since 2020, driven by people convinced the system is corrupt and skeptical of the motivations and loyalties of election workers.

Officials are fielding countless questions about computer systems, election



machinery and ballot processing protocols. Tours of elections offices and public tests of voting equipment that previously had drawn scant interest now attract considerable attention. And public record requests seeking documents referenced in the latest election conspiracies are [pouring into state and county voter offices](#), overwhelming officials in the process.

As of Friday, the State Election Commission had received a record 159 Freedom of Information Act requests this year, roughly 5 times the typical volume, according to Whitmire.

The vast majority are “frivolous,” he said, and seek information related to election integrity. Many contain identical language and appear to have been submitted by devotees of prominent election deniers who have asked followers to flood elections offices with requests that some have described as denial-of-service attacks on local government, a reference to a type of cyber bombardment meant to paralyze a computer network.

“No offices, state or county, are really equipped to handle that volume,” Whitmire said. “I don’t think any organization is equipped to handle a 500% increase, an exponential increase in any work output.”

In addition to the avalanche of inquiries, officials have reported an uptick in threats and intimidation from election skeptics who accuse them of perpetrating an elaborate cover-up.

The vast majority of local election officials who responded to the Brennan Center survey reported that the frequency of threats against election workers had increased in recent years. One in six local election officials have experienced threats and nearly one in three reported knowing an election worker who had left their job at least in part due to threats, intimidation or fear for their safety, according to the survey.

The U.S. Justice Department’s Election Threats Task Force, which just wrapped up its first year of work, [reviewed more than 1,000 contacts reported as hostile or harassing by the election community](#), according to an August news release. Approximately 11% of those cases met the threshold for a federal criminal investigation and charges have been filed in four of those cases, the department said.

Charleston County Elections Director Isaac Cramer, who has worked in the elections office since 2014, said he'd never been harassed or threatened until Election Day 2020, when a man who had missed the voter registration deadline accused him of acting illegally and threatened to attack him.

"We had to get a security guard involved," he said. "I was shaking. You're trying to be calm in the moment, but you just don't know. You worry about your safety first."

Cramer said he's since grown accustomed to threats and intimidating behavior and now trains poll workers to be acutely aware of their surroundings and report suspicious activity.

During this year's primaries, he said he called police on a group of poll watchers who were harassing election workers and creating an environment that made it difficult for them to do their jobs. Two weeks later, during a runoff, the same observers, who are members of a local group that contests the outcome of the 2020 election, were out again in force.

"For all of you on the team tomorrow observing the polls, Good Hunting," a June 27 Facebook post by one of the group's leaders reads. "You know what you are looking for. We have the enemy on their back foot, press the attack. Forward."

The next day, the group's members barged into polling places with cameras and video recording devices asking to inspect election equipment. They brought police officers with them to report what they claimed were broken or missing seals on voting machines that they accused election officials of using to tamper with votes.

"That's intimidating," Cramer said. "If someone runs into your polling place with a camera, you don't know what they're doing. If I'm just doing this as my civic duty to give back to the community to serve this county and country, I don't want to do that anymore."

While Whitmire said he wasn't aware of any explicit death threats against South Carolina election workers, he said repeated attacks on their integrity had nonetheless taken a toll.

He shared a series of emails a man sent last year to the former York County elections director in which he claimed the county's results were "riddled with fraud" and exhorted her to come clean about her role in subverting the election.

"We will Not rest until the individuals that participated in this treason are held accountable," the man wrote. "If you or anyone else is aware of fraud, now would be a great time to come forward and perhaps cut a deal. This will Not end well."

Multiple elections officials expressed frustration that their attempts to engage with skeptics and clear up any misconceptions about the process often failed to satisfy them.

"It is maddening because using logic and common sense and trying to talk through things doesn't work," Whitmire said. "At the end of the day, it feels like you're arguing religion with someone and it's not going to be a fruitful conversation at all because they have beliefs and facts don't matter."

Billman, the former Dorchester County director, said he spent many hours responding to public record requests and meeting with disgruntled voters in an attempt to clear up any misconceptions, but ultimately concluded that nothing he could do or say would convince them the process wasn't rigged.

He said he knew it was time to step away from the job last year after he snapped at an election denier during a public test of voting equipment.

The woman, who had been traveling the state observing the process in various counties, asked Billman to open the ballot scanning machine to prove there wasn't a modem inside. He declined because doing so would have rendered the equipment inoperable.

She accused him of hiding something. So he asked rhetorically if she had a brain. Prove it, he said he told her. If he couldn't see it, he wouldn't believe it.

"I realized when I was that harsh with someone I had lost my trust and patience in people," Billman said.

It's not surprising that some election workers are leaving their jobs, given the level of disrespect and scrutiny they face on a daily basis, said Lynn Teague, vice

president for issues and action with the South Carolina League of Women Voters.

“Who wants to go to work and be accused every day of some terrible behavior?” she said. “We are deeply concerned about election workers being demonized unfairly.”

Teague said the League has audited elections for years, and while it occasionally finds defects, none have pointed to fraud or would have changed the outcome of an election.

“The notion that our county and state officials are somehow plotting to create defective elections, which is an accusation that’s actually being made, is concerning,” she said. “We’ve seen very dedicated people in these positions and usually their primary intention is to make sure everyone who can vote does vote and does so without undue trouble within the law.”

Cramer said he knew what he was in for when he accepted the Charleston County election director’s job in April 2021, but understands why so many others in his shoes have moved on with their lives.

“Every day you go to work and everyone sees you as the bad guy,” he said. “You’re hiding something, you’re doing something wrong and you’re under immense scrutiny 24/7, even though you’ve done nothing wrong.”

Inspired to work in elections by his immigrant mother’s own U.S. citizenship journey, Cramer said he remains passionate about the work and has stuck with it because he believes counties need experienced directors to instill stability in the voting process.

However, even he admits he’s become more circumspect in recent years when discussing his job with strangers.

“Most of the time when I meet people I say I work for the local county government, and usually that suffices,” Cramer said. “Because it’s such a polarizing issue right now, and to be a public servant in elections, no matter where you are, people have an opinion about it.”



South Carolina election officials demonstrate how to use a new \$51 million voting system, slated to be in place for all 2020 elections. The new machines will replace the state's aging, paperless system that has drawn increasing scrutiny and raised questions about whether a system that leaves no paper trail could be vulnerable to hacking. Tom Barton [tbarton@thestate.com](mailto:tbarton@thestate.com)

### THE RISKS OF INEXPERIENCED ELECTION DIRECTORS

With the midterms fast approaching, county election directors are ramping up training in preparation for November.

Clarendon County elections director Sharmane Anderson, a 40-year-old lawyer who had never worked in an elections office until last month, said she feels confident conducting her first election and credited guidance she's gotten from the State Election Commission and colleagues in neighboring counties.

"I'm feeling pretty good," said Anderson, who believes her legal background and experience as a poll worker should serve her well in the role. "Of course, the day of (the election) that very well may be different, but we're trying to do as much preparation as we can beforehand to ensure the election moves as smoothly as possible."

Whitmire said the State Election Commission has been doing everything in its power to prepare new directors, nearly half of whom have never been through a statewide general election.

“We’re doing director trainings and we have area reps who work directly with those directors, monthly calls with all the directors and we’ll increase the frequency as we go from here forward to the general,” he said. “It’s a challenge, and we’re working hard to overcome it.”

New directors must learn everything from preparing and testing voting equipment to proofing, printing and mailing out absentee ballots. They’re responsible for fulfilling FOIA requests, recruiting and training poll workers, and, of course, responding to any of the unexpected twists that inevitably occur on Election Day.

“Elections are really complicated, especially in this day and age,” said Rachel Orey, associate director of elections at the Bipartisan Policy Center, a Washington, D.C.-based think tank. “They’ve gotten more complicated over time as the scale of cyber security threats have increased, as public skepticism has increased.”

In addition to mastering administrative tasks, election directors also must excel at communicating with the public, especially in the event mistakes are made, because election deniers often seize on minor issues during vote tabulation to claim officials are manipulating results, Orey said.

“If there is an issue in tabulation, (new directors) may lack the institutional knowledge to explain what occurred and what steps are in place to secure the process,” she said. “It’s that kind of public-facing aspect that may be more difficult for new election directors to accomplish.”

A more pernicious, albeit less likely risk of relying on an inexperienced election director, she said, is the possibility they may unwittingly provide bad actors access to voting machines.

There’s a growing concern among election administrators that law enforcement officers who have been recruited by election denialism groups will attempt to access voting equipment on Election Day, Orey said.

“It’s not always easy if you’re new in this position and this law enforcement officer is asking for access to your equipment and you think you just have to do it.” she said.

Longtime Beaufort County elections director Marie Smalls, who serves as president of the South Carolina Association of Registration and Election Officials, an industry trade group, said she’s confident new directors will rise to the occasion.

Between training from the State Election Commission and consultation with more experienced colleagues across the state, Smalls said new election directors have all the tools they need to succeed.

“They may not do a stellar job,” she said. “But I think they will have enough support where they can conduct their election with some sense of certainty that they’re doing the right thing.”

This story was originally published September 16, 2022, 2:32 PM.



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Zak Koeske is a state government and politics reporter for The State. Before joining The State in 2020, Zak covered education, government and policing issues in the Chicago area. He’s also written for publications in his native Pittsburgh and the New York/New Jersey area.



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