



**LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W**

**STATEMENT OF DAMON T. HEWITT
PRESIDENT AND EXECUTIVE DIRECTOR
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

U.S. SENATE COMMITTEE ON RULES AND ADMINISTRATION

**HEARING ON
ADMINISTRATION OF UPCOMING ELECTIONS**

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I. Introduction

Chairwoman Klobuchar, Ranking Member Blunt, and Members of the Senate Committee on Rules and Administration, my name is Damon T. Hewitt and I am the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today on the administration of the recent and upcoming primary elections and the November midterm elections.

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 voice, opportunity, and power to make the promises of our democracy real. The Lawyers' Committee convenes the nation's largest nonpartisan voter protection effort, the Election Protection coalition, which includes the voter assistance hotline 1-866-OUR-VOTE. The Election Protection Program works with over one hundred national, state, and community partners to provide Americans from coast to coast with comprehensive voting information and resources. Our work gives us unique insights into patterns that happen at the state and local level nationwide. Too often, what we are seeing is an erosion of infrastructure and access to the democratic process.

My message for this Committee is simple. Election laws that perpetuate attacks, and impose criminal penalties or hefty fines on election administrators who are trying to do their jobs in good faith are wrong. Voting laws that impose unnecessary hurdles for Black voters and other voters of color to overcome are wrong. Such laws not only deter well-meaning citizens from serving as election officials, they also make it harder for voters to vote. These laws, which have often emerged in states where voting is racially polarized, are a formula for drastically heightened levels of racial discrimination. They give hyper partisan actors the ability to weaponize the power of the criminal law to sweep aside neutral election administrators and disenfranchise Black voters and other voters of color. Put simply, these laws undermine democracy.

II. How State Legislation Passed Over the Past Two Years Will Negatively Impact Election Administrators, Leading to Staffing Shortages, Longer Lines, and Less Resources in Black Communities and Communities of Color

2022 is the first year that voters nationwide will be casting their ballots in federal elections since state legislatures across the country began enacting a wave of restrictive voting bills in response to record levels of voter participation during the 2020 election. Throughout 2021 and the beginning of this year, states enacted bills banning drop boxes, restricting early voting hours, shortening the window of time that voters have to request absentee ballots, creating new criminal and financial

penalties for election administrators, and giving partisan poll watchers unfettered access to the polls. These laws will have negative impacts on election administrators, who will be forced to understand and apply a host of new counter-intuitive election requirements and restrictions for the first time, and voters, who will face new barriers to the ballot box. In states across the country from Georgia to Texas to Florida, election administrators from both parties spoke out against many of the bills, warning state lawmakers that the laws would negatively impact election administrators' ability to do their jobs. Election administrators warned legislators that imposing these suppressive requirements and penalties would deter people from serving as election workers, ultimately making it harder for voters to vote.¹ In many instances, state lawmakers failed to heed election administrators' warnings and the impacts of these changes will come to light during this year's primary and midterm elections.

Black voters and other voters of color typically bear the brunt of irreparable harm when elections are poorly administered. Even before the 2020 election, Black and Latinx voters faced staffing and resource issues at polling places that make election administration more difficult, such as long lines, polling place closures and fewer electoral resources.² The suppressive new requirements and rules enacted by state legislatures over the past two years that make election administration more taxing for election workers are likely to magnify the issues that communities of color have historically faced at the polls. Furthermore, these newly enacted laws have already had and will continue to have a chilling effect on patriotic citizens who would otherwise serve as election administrators. People who have worked as election administrators and workers for decades are retiring at a rapid rate due to fear of prosecution, intimidation, and violence. In fact, 1 in 5 local election officials have already declared that they will likely step down before the 2024 elections.³ This mass exodus of election officials and election workers is certain to lead to staffing shortages that will require polling places to be closed or consolidated – a practice that has disproportionately happened in Black communities and other communities of color.⁴

A. *New Felonies and Fines for Election Workers*

¹ Anthony Izaguirre, *Election Officials Face Fines, Charges in GOP Voting Laws*, ASSOCIATED PRESS <https://apnews.com/article/donald-trump-laws-elections-voting-health-4cb9244c381f1031c9ce20610c79a931> (May 8, 2021)

² Hannah Klain et al., *Waiting to Vote: Racial Disparities in Election Day Experiences*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/waiting-vote> (June 3, 2020).

³ Miles Parks, *1 in 5 Local Election Officials Say They're Likely to Quit Before 2024*, NPR, <https://www.npr.org/2022/03/10/1085425464/1-in-5-local-election-officials-say-theyre-likely-to-quit-before-2024> (March 10, 2022).

⁴ *Democracy Diverted: Polling Place Closures and the Right to Vote*, LEADERSHIP CONFERENCE EDUC. FUND, (September 2019), <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

At least ten states have enacted laws establishing new criminal penalties or fines for election workers since the 2020 election.⁵ These laws criminalize multiple aspects of election administration from—from counting ballots and interacting with poll watchers, to absentee voting and collaborating with third-party non-profits to encourage voter registration and education.⁶ The criminalization of election administration is an alarming trend, especially considering the targets. Most nonsupervisory election workers are nonpartisan volunteers over the age of 60.⁷ These attacks on election administrators have not occurred in a vacuum. In many states, the object of these laws is clear – to target election administrators and workers in cities and counties with a large number of Black voters and other voters of color.

During the 2020 election, there were repeated attacks on the way that elections were administered in some of America’s Blackest big cities. When former President Donald Trump attempted to get the election results in Georgia overturned, infamously asking Georgia Secretary of State Brad Raffensperger to “find” more votes, he took aim at Fulton County in particular, whose county seat and largest city is Atlanta.⁸ In Pennsylvania, the former President took aim at Philadelphia, after the Republican city commissioner Al Schmidt stated that he had not seen any evidence of voter fraud during the presidential election.⁹ In Michigan, the former President took aim at Detroit, where he falsely claimed that there were more votes cast than

⁵ Ryan Teague Beckwith, *U.S. Election Officials Face Their Biggest Threat Yet — Jail Time*, BLOOMBERG, <https://www.bloomberg.com/news/articles/2022-04-19/jail-threat-dangles-over-election-officials-in-new-gop-vote-laws> (April 20, 2022).

⁶ Ohio Voter Collaboration Ban, <https://codes.ohio.gov/assets/laws/reviced-code/authenticated/35/3501/3501.054/9-30-2021/3501.054-9-30-2021.pdf>; Andrew J. Tobias, *Ohio AG Yost Says State Law Change Criminalizes Partnerships Between Elections Officials and Private Groups, But Most Routine Work is OK*, CLEVELAND.COM, <https://www.cleveland.com/news/2022/01/ohio-ag-yost-says-state-law-change-criminalizes-partnerships-between-elections-officials-and-private-groups-but-most-routine-work-is-ok.html> (January 6, 2022).

⁷ Michael Barthel and Galen Stocking, *Older People Account for Large Shares of Poll Workers and Voters in U.S. General Elections*, PEW RES. CTR., <https://www.pewresearch.org/fact-tank/2020/04/06/older-people-account-for-large-shares-of-poll-workers-and-voters-in-u-s-general-elections/> (April 6, 2020).

⁸ Hope Yen et al., *AP Fact Check: Trump’s Made-Up Claims of Fake Georgia Votes*, ASSOCIATED PRESS, <https://apnews.com/article/ap-fact-check-donald-trump-georgia-elections-atlanta-c23d10e5299e14daee6109885f7dafa9> (January 3, 2021).

⁹ <https://twitter.com/AllisonLHedges/status/1326525180949237760?s=20&t=TAhw0GvyhepiE8YOYwRlFw>; A guy named Al Schmidt, a Philadelphia Commissioner and so-called Republican (RINO), is being used big time by the Fake News Media to explain how honest things were with respect to the Election in Philadelphia," he tweeted. "He refuses to look at a mountain of corruption & dishonesty. We win!" —Donald J. Trump (@realDonaldTrump) November 11, 2020; Natasha Brown, ‘Completely Ridiculous Allegations’: Philadelphia City Commissioner Al Schmidt Defends Election Integrity After President Trump’s Tweet, CBS Philly, <https://philadelphia.cbslocal.com/2020/11/11/philadelphia-city-commissioner-al-schmidt-defends-election-integrity-after-president-trumps-scathing-tweet/> (November 11, 2020).

there were people living in the city.¹⁰ As of 2020, Atlanta was approximately 49.8% Black, Detroit was approximately 77.1% Black, and Philadelphia was approximately 41.4% Black.¹¹ It is no coincidence that the false claims of election maladministration and voter fraud focused on those cities.

It should be expected that the enforcement of the new criminal laws and fines for election administrators and workers will target communities with a large percentage of Black voters and other voters of color as well. It is certainly the case that there is a racial tinge to the enforcement of voting related crimes and fees for voters. One only need to look towards the prosecution of Crystal Mason in Texas and Pamela Moses in Tennessee, two Black women who were prosecuted for attempting to vote under each state's confusing guidelines for voter eligibility.¹² Further, in Florida, after a majority of the state's voters agreed that previously incarcerated citizens should be able to vote, the State legislature passed a new law requiring them to pay their fines and fees before they could do so.¹³ It is through this lens that the imposition of criminal penalties and fines for election administrators and election workers should be viewed. Bad actors can target election administrators and workers of color through selective enforcement of new crimes and fines, just as they have often targeted voters of color.

Florida is one of several states that passed new laws criminalizing and financially penalizing election administrators since 2020. Specifically, Florida enacted SB 90 into law in 2021, which among other things requires each drop box in the state to be continuously monitored by an election worker and imposes new requirements for when and how elections workers can retrieve ballots from drop-boxes.¹⁴ Failure to comply with these costly requirements will lead to a financial penalty of up to \$25,000 for election supervisors.¹⁵ That fine is approximately half a year's pay for many election supervisors in Florida and there is no requirement that

¹⁰ In Detroit, there are FAR MORE VOTES THAN PEOPLE. Nothing can be done to cure that giant scam. I win Michigan! — Donald J. Trump (@realDonaldTrump) November 18, 2020; Todd Spangler, *Trump Again Falsely Claims He Won Michigan and That Detroit Had More Voters Than People*, DETROIT FREE PRESS <https://www.freep.com/story/news/politics/elections/2020/11/25/donald-trump-false-claims-detroit-voters/6426412002/> (November 25, 2020).

¹¹ QuickFacts: Philadelphia, PA; Detroit, MI; Atlanta, GA, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/philadelphiacitypennsylvania.detroitcitymichigan.atlancitygeorgia/PST045221>.

¹² Timothy Bella, *She Was Told She Could Vote Again After Felony Convictions. Now She's in Prison for Trying*, WASH. POST, <https://www.washingtonpost.com/nation/2022/02/04/tennessee-pamela-moses-voting-fraud-prison/> (Feb. 4, 2022).

¹³ Curt Anderson, *Judges: Florida Felons Can't Vote Until They Pay Fines, Fees*, ASSOCIATED PRESS, <https://apnews.com/article/florida-voting-rights-elections-courts-voting-b4f68dd4f11a6df4430fbd74ae93de3> (September 11, 2020).

¹⁴ S.B. 90. <https://www.flsenate.gov/Session/Bill/2021/90/BillText/e2/PDF>

¹⁵ *Id.*

the supervisors or their employees intentionally or even carelessly violate the state's suppressive drop box restrictions to be penalized with the fine.¹⁶

One county elections supervisor who has served for 28 years described this provision of SB 90 as putting “the fear of God into elections administrators.”¹⁷ He also explained how the requirements of the law make election administration more difficult. Instead of assigning volunteers to monitor drop-boxes or using video surveillance as Florida counties have done in the past, election supervisors will now be forced to assign senior staff who would otherwise be focused on more complex election administration tasks to monitor drop boxes to ensure compliance with SB 90.¹⁸

Another elections administrator explained that in order to avoid being fined under SB 90 for violating the new drop box requirements, she would be forced to remove her county's drop box all together. “I could not give up one of my staff members to just sit at our drop box all day long, nor could I afford with my budget to hire another staff member just to do that...There's no way a county my size could afford it.”¹⁹ Ultimately, every single one of Florida's 67 county elections administrators – both Republicans and Democrats – spoke out against SB 90 as making election administration unnecessarily onerous and voting unnecessarily harder– yet the state still enacted the omnibus bill.²⁰

B. Bans on Collaboration with Nonprofit Nonpartisan Voter Engagement Groups and the Need for Election Administration Funding

Another troubling trend from states across the country following the 2020 election has been bans on collaboration between election officials and non-partisan, nonprofit groups on voter education and voter registration. Elections offices across the country are severely underfunded. In light of their limited resources, collaboration with nonpartisan nonprofit groups to encourage citizens to register to vote and educate registered voters on the voting process is essential. Yet, states like Ohio and Kansas have banned this kind of collaboration, leading election officials in those states to refrain from partnering with organizations to encourage nonpartisan voter outreach in their communities of interest.

¹⁶ Ryan Teague Beckwith, *U.S. Election Officials Face Their Biggest Threat Yet — Jail Time*, BLOOMBERG, <https://www.bloomberg.com/news/articles/2022-04-19/jail-threat-dangles-over-election-officials-in-new-gop-vote-laws> (April 20, 2022).

¹⁷ *Id.*

¹⁸ Nick Corasaniti, *Jail Time and Big Fines: G.O.P. Seeks Harsh Penalties for Poll Worker*, N.Y. TIMES, <https://www.nytimes.com/2021/05/15/us/politics/republican-voting-bills-poll-workers.html> (May 15, 2021).

¹⁹ Grace Banahan, *Florida Supervisors of Elections Oppose Controversial Voting Bill 'SB 90'*, WUFT, <https://www.wuft.org/news/2021/04/21/supervisors-of-elections-oppose-voting-bill/> (April 21, 2021)

²⁰ *Id.*

In Kansas for example, nonpartisan nonprofit organizations such as the League of Women Voters were forced to halt all voter registration drives and voter outreach²¹ after the state legislature enacted bills that vaguely prohibit volunteers from engaging in activity that “would cause another person to believe” that they are an election official.²² Any individual who violates this law could face felony charges, up to 17 months in prison, and a \$100,000 fine.²³

Ohio enacted a law, HB 110, explicitly criminalizing partnerships between election officials and any non-governmental organizations which has already had serious consequences.²⁴ The official analysis of the bill from the Ohio Legislative Service Commission states that the bill “prohibits the Secretary of State or a board of elections from working with a citizen group to hold a voter registration drive, conduct a voting education program, or recruit poll workers.”²⁵ In Ohio, faith-based groups including churches, synagogues, and mosques have historically partnered with local election officials to educate their members and the public at large on elections and conduct voter registration drives.²⁶ Yet, the collaboration ban in HB 110 prohibits these faith-based groups from working with their county election officials to promote or encourage voting.

This is problematic for voters and election administrators alike. Election administrators do not have the time or resources to reach all of the voters and potential voters that nonprofit nonpartisan organizations can. By preventing county election officials from collaborating with these organizations, Ohio’s new law will force election administrators to spend more of their already limited time answering questions about voting and voter registration, educating the public about the voting process, and hosting their own voter registration drives.

²¹ Sherman Smith, *Kansas Groups Halt Voter Registration Drives to Avoid Being Jailed Under New Law*, KANSAS REFLECTOR, <https://kansasreflector.com/2021/07/01/kansas-groups-halt-voter-registration-drives-to-avoid-being-jailed-under-new-law/> (July 1, 2021)

²² HB 2183 http://www.kslegislature.org/li/b2021_22/measures/documents/hb2183_enrolled.pdf.

²³ Noah Taborda, *Attorneys Debate Potential for Kansas Election Law to Chill Voter Registration Efforts*, KANSAS REFLECTOR, <https://kansasreflector.com/2022/04/07/attorneys-debate-potential-for-kansas-election-law-to-chill-voter-registration-efforts/> (April 7, 2022)

²⁴ House Bill 110, Final Analysis, Ohio Legislative Service Commission Page 429 – 430 of 499. “The act prohibits a public official responsible for administering or conducting an election from collaborating with, or accepting or expending any money from, a nongovernmental person or entity for any costs or activities related to voter registration, voter education, voter identification, get-out-the-vote, absent voting, election official recruitment or training, or any other election-related purpose...”

²⁵ *Id.* at 430.

²⁶ Morgan Trau, *Religious Groups, Legislators Butt Heads On New Election Law*, OHIO CAPITAL JOURNAL, <https://ohiocapitaljournal.com/2022/02/25/religious-groups-legislators-butt-heads-on-new-election-law/> (February 25, 2022).

The Lawyers' Committee recently signed a letter asking Congress for \$20 billion in funding for election administration.²⁷ These funds were necessary before the wave of voting legislation banning collaboration with nonprofit nonpartisan civic groups and they are certainly necessary now.²⁸ Black communities and other communities of color are more likely to be underfunded and lack the infrastructure needed to administer elections.²⁹ Congress must ensure that local elections offices are adequately funded so that these communities receive the resources they need to administer elections efficiently.

C. Laws that Negatively Impact Election Administrators Equally Harm Voters and Vice Versa

The negative impact that new state voting bills have had and will continue to have on election administration and voters should not come as a surprise to state legislators or anyone else because, as explained above, election administrators across the country and across party lines spoke out against them before and immediately after they were passed. Nationwide, state legislatures either passed laws affecting election administration without seeking input from local election officials or failed to heed election officials' warnings that the new laws would create serious problems for voters. In Georgia, Texas, and Florida, election officials raised the alarm in legislative hearings about the impact of the voting bills their state legislatures eventually passed. Legislators' failure to listen to election administrators is one of the many reasons that election officials are retiring or resigning in droves.³⁰ Election workers and administrators literally and figuratively serve as the eyes and ears on the ground at polling places. They understand the impact that voter suppression and election administration criminalization laws have on voters and themselves in real time.

i. Texas

Before the Texas state legislature passed SB 1, county election officials raised the alarm that the omnibus bill's new vote-by-mail ID requirements would lead to significant ballot rejection problems.³¹ During a legislative hearing for SB 1 in the

²⁷ Election Infrastructure Organizational Letter, July 22, 2021, <https://www.lwy.org/sites/default/files/2021-07/Election%20Infrastructure%20Organizational%20Letter.pdf>.

²⁸ Eryn Hurley, County Officials Ask Congress to Provide Additional Funding to Administer and Secure Elections, <https://www.naco.org/blog/county-officials-ask-congress-provide-additional-funding-administer-and-secure-elections>, National Association of Counties (August 3, 2020).

²⁹ Richard Wolf, *Polling Places Lack Resources, Civil Rights Group Says*, ABC NEWS, <https://abcnews.go.com/Politics/story?id=5989869&page=1> (October 8, 2008).

³⁰ Michael Wines, *After a Nightmare Year, Election Officials Are Quitting*, N.Y. TIMES, <https://www.nytimes.com/2021/07/02/us/politics/2020-election-voting-officials.html> (July 2, 2021).

³¹ Jessica Huseman, *The Texas Election Bill Contains a New Obstacle to Voting That Almost No One Is Talking About*, TEXAS MONTHLY, <https://www.texasmonthly.com/news-politics/texas-election-bill-contains-new-voting-obstacle/> (July 26, 2021).

Texas House, Chris Davis, the elections administrator from Williamson County tried to explain to state legislators that the ID requirements in SB 1 were unworkable. Specifically, he warned that the law, which requires voters to submit either their driver's license number or the last four digits of their social security number would penalize any voter who could not remember which of those two numbers they used when they first registered to vote.³² "I challenge any person on the committee: do you remember what you filled out when you got your voter registration? I certainly don't. And I'm in the business of this. And if [the numbers] don't match, we're rejecting," warned Davis.³³

Despite this warning, none of the House committee members – Democrat or Republican – asked Davis questions about the potential for increased vote by mail rejections.³⁴ What followed was predictable – record high vote by mail ballot rejections across the state of Texas during the state's March primaries. 12.38 percent of all vote by mail ballots in the Lone Star State were rejected during the March 1 primary election, a rate nearly 12 times higher than the rejection rate in the 2020 election.³⁵ Voters across party lines were affected by ballot rejections, with 12.87 percent of Democratic vote by mail ballots being rejected and 11.77 percent of Republican vote by mail ballots being rejected.³⁶ However, there was a clear racial gap in vote by mail rejections, with Black voters in Harris County being 44% more likely to have their ballots rejected than white voters.³⁷ The results in El Paso County were exactly what Williamson County election administrator Chris Davis predicted, despite the fact that Williamson County is over 500 miles away from El Paso County: 70 percent of El Paso's rejected vote by mail ballots were from voters who registered over 25 years ago and 17 percent of El Paso's rejected ballots were from voters who registered at least 50 years ago, making it impossible for them to remember which, if any, identification number they wrote on their voter registration application.³⁸ Advocates expect these rates to increase in November when far more Texas voters will cast their ballots not only in races for Congress, but statewide elections—including for Governor.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Ashley Lopez, *Almost 25,000 Mail-in Ballots Were Rejected in Texas for its March 1 Primary Election*, NPR, <https://www.npr.org/2022/04/06/1091267343/almost-25-000-mail-in-ballots-were-rejected-in-texas-for-its-march-1-primary-ele> (April 6, 2022)

³⁶ *Id.*

³⁷ Nick Corasiniti, *Mail Ballot Rejections Surge in Texas, With Signs of a Race Gap*, N.Y. TIMES, <https://www.nytimes.com/2022/03/18/us/politics/texas-primary-ballot-rejections.html> (March 18, 2022).

³⁸ Molly Smith, *New Texas Voting Law Disenfranchised Some of El Paso's Longest-Tenured Voters*, EL PASO MATTERS, <https://elpasomatters.org/2022/03/28/new-texas-voting-law-disenfranchised-some-of-el-pasos-longest-tenured-voters/> (March 28, 2022).

SB 1 also included new requirements for voter assistants who help voters with disabilities at the polls. Specifically, SB 1 changed the oath that voter assistants must give, forcing them to swear under penalty of perjury that they have not been compensated to assist the voter.³⁹ This provision is problematic because oftentimes, voters with disabilities' assistants are their paid personal attendants or caregivers who assist them in their day-to-day activities.⁴⁰ While the text of SB 1 includes a carve out for paid attendants and caregivers, that carve out is not explicitly stated in the oath.⁴¹ Therefore, many caregivers and attendants may mistakenly think it applies to them and refuse to sign the oath. This unnecessary requirement will disproportionately, if not exclusively, affect voters with disabilities.

We sued Texas officials on behalf of the Texas State Conference of the NAACP, Common Cause Texas, three election judges, one voter assistant and one Harris County voter over SB 1 because we knew the bill would disenfranchise Texas's Black, Latinx, and other voters of color, as well as the election workers who serve in those voters' communities.⁴² SB 1 gives unfettered access to partisan poll watchers by creating new criminal penalties for election administrators or workers who attempt to remove them or "obstruct" them, strips local election administrators' power to take executive action in emergency situations, and exposes voter assistants to increased surveillance and administrative complexities. SB 1 also restricts nearly every method of voting that Texas voters of color used overwhelmingly in 2020. The law limits early voting and ballot drop boxes, prevents election officials from distributing absentee ballots, and bans drive-thru voting. While the provisions of SB 1 will hinder the ability of all Texans to vote, these new restrictions intentionally and disproportionately impact communities of color.

We alleged in our lawsuit that SB 1's vague provisions expand "the ability of poll watchers to harass and intimidate voters in polling places—tactics that are designed primarily to impact voters of color" and "transform the polling place from its community-oriented culture to a hyper-partisan, toxic, and fearful space where emboldened poll watchers challenge voters, tell election judges how to do their jobs,

³⁹ Shelly Brisbin, *Voters with Disabilities Concerned About SB 1's Impact on Getting Assistance at the Polls*, TEXAS STANDARD, <https://www.texasstandard.org/stories/voters-with-disabilities-concerned-about-sb-1s-impact-on-getting-assistance-at-the-polls/> (February 25, 2022).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Texas' SB 1 Discriminates Against Voters of Color, Lawyers' Committee for Civil Rights Under Law, <https://www.lawyerscommittee.org/texas-sb-1-discriminates-against-voters-of-color/> (September 7, 2021).

and intimidate voters, particularly voters of color.”⁴³ Our lawsuit is currently pending in state court.

ii. Georgia

Georgia is another state where election administrators across party lines have spoken out against recently passed state laws that make election administration more difficult.⁴⁴ Despite the fact that Secretary of State Brad Raffensperger and Georgia elections official Gabriel Sterling confirmed that there was no evidence of widespread voter fraud in Fulton County or anywhere else in Georgia during the 2020 election,⁴⁵ the state legislature passed SB 202, which not only increased criminal penalties for election administrators in Georgia, but also included state takeover provisions that allow members of the State Elections Board – the majority of whom are appointed by the state legislature – to completely takeover election administration in counties and fire career election administrators.⁴⁶ These provisions were clearly meant to target Fulton County and other counties with a significant Black population in Georgia.

The Election Protection program has already received reports that SB 202 is leading to widespread problems in Georgia. Voters have contacted the Election Protection hotline to express their frustration with Georgia’s new law that makes it harder for voters to request an absentee ballot. In 2020, nearly 30 percent of Black voters in Georgia voted by mail, while only 24 percent of white voters cast their ballot by mail.⁴⁷ Recognizing this shift, Georgia included several provisions that make it harder to vote by mail in SB 202. One of these provisions requires any voter who wishes to vote absentee to print out a hard copy of an absentee ballot application, sign it with a pen, and then either return it by mail or scan the application after signing it in ink and upload it online.⁴⁸ Previously, voters could simply apply for an absentee

⁴³ *Texas State Conference of the NAACP et al v. Greg Abbott*, Cause No. 2021-57207, <https://www.lawyerscommittee.org/wp-content/uploads/2021/09/2021-09-07-Original-Petition.timestamped.pdf>.

⁴⁴ Maya King and Nick Corasaniti, *Local Election Officials in Georgia Oppose G.O.P. Election Bill*, N.Y. TIMES, <https://www.nytimes.com/2022/03/28/us/politics/georgia-election-bill.html> (March 28, 2022).

⁴⁵ Bart Jansen, *Georgia Election Official: Trump Legal Team 'Intentionally Misled' Voters on Election Fraud*, USA TODAY, <https://www.usatoday.com/story/news/politics/elections/2021/01/04/gabriel-sterling-trump-team-misled-voters-election-fraud-georgia/4130374001/> (Jan. 4, 2021).

⁴⁶ Domingo Morel, *As Georgia’s New Law Shows, When Black People Gain Local Power, States Strip That Power Away*, WASH. POST, <https://www.washingtonpost.com/politics/2021/04/01/georgias-new-law-shows-when-black-people-gain-local-power-states-strip-that-power-away/> (April 1, 2021).

⁴⁷ Kevin Morris, *Georgia’s Proposed Voting Restrictions Will Harm Black Voters Most*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/georgias-proposed-voting-restrictions-will-harm-black-voters-most> (March 6, 2021).

⁴⁸ Absentee Ballot Request, Georgia Secretary of State, <https://securemyabsenteeballot.sos.ga.gov/s/>.

ballot online without printing and scanning the form.⁴⁹ This requirement will only increase the volume of paper absentee ballot applications that county elections offices across the state will have to process by hand and decrease access to absentee voting for Black voters and other voters of color who do not access have printers or scanners at home and would otherwise have to pay money to meet this strenuous requirement. Another provision of SB 202 is also having a negative impact even before primary election day in Georgia. The provision that cut the window for voters to request an absentee ballot by more than half from 180 days before an election to just 78 days before an election has unnecessarily restricted the time that voters have to request absentee ballots and that election administrators have to process requests and send the ballots out.⁵⁰

We sued Georgia officials over SB 202 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 in federal court.⁵¹ We specifically sued over SB 202's provisions allowing the State Elections Board to "take over county election boards, which would give the State Elections Board unprecedented authority to target jurisdictions with a large population of Black voters and other voters of color."⁵² In December, the court denied the State's attempt to dismiss our case, allowing our clients to move forward with their claims and finding that the organizations we represent "have stated a plausible discriminatory purpose claim."

When the state legislature seemed poised to pass a second round of restrictions this year, one Republican member of the Forsyth County board of elections warned state lawmakers in Georgia "you're going to cause me to lose poll workers...I have 400 poll workers that work for our board. That is 400 people that I could see telling me after May, 'Have a nice life,' and it's hard enough to keep them right now."⁵³ Despite these bipartisan warnings, state lawmakers in Georgia passed an election

⁴⁹ Patricia McKnight, *Georgia Sued Over Rule That Absentee Ballot Applications Be Signed in Ink*, NEWSWEEK, <https://www.newsweek.com/georgia-sued-over-rule-that-absentee-ballot-applications-signed-ink-1702733> (May 2, 2022).

⁵⁰ S.B. 202, <https://www.legis.ga.gov/api/legislation/document/20212022/201498>

⁵¹ Georgia's SB202 is a Culmination of Concerted Efforts to Suppress the Participation of Black Voters and Other Voters of Color, Lawyers Committee for Civil Rights Under Law, <https://www.lawyerscommittee.org/georgias-sb202-is-a-culmination-of-concerted-efforts-to-suppress-the-participation-of-black-voters-and-other-voters-of-color/> (March 29, 2021).

⁵² Georgia State Conference of the NAACP et al v. Brad Raffensperger et al, <https://lawyerscommittee.org/wp-content/uploads/2021/03/2021-03-28-complaint-as-filed-with-temporary-case-number.pdf>

⁵³ Maya King and Nick Corasaniti, *Local Election Officials in Georgia Oppose G.O.P. Election Bill*, N.Y. TIMES, <https://www.nytimes.com/2022/03/28/us/politics/georgia-election-bill.html> (March 28, 2022).

police force bill that gives the Georgia Bureau of Investigations the power to investigate any violation of the state’s election code, which will almost certainly include investigations of elections workers and administrators in Georgia’s predominantly Black counties.⁵⁴ In fact, elections administrators warned state legislators that involving the GBI would throw a wrench in their efforts to run elections smoothly. Specifically, Douglas County Election Director Milton Kidd warned that allowing the GBI to initiate investigations “could have a ‘chilling effect’ on poll workers and voters who might fear becoming targets of unfounded fraud accusations.”⁵⁵ The GBI could also target election administrators and poll workers for making minor, innocent administrative mistakes, prosecuting those individuals for the kinds of slip ups that do not affect the final vote count in any way.

iii. Florida

Florida similarly doubled down on its efforts to make voting harder and election administration more difficult during the 2022 legislative session by creating an election integrity police unit to enforce the new requirements in SB 90. Florida’s new election police under the “Office of Election Crimes and Security” will have the power to investigate any “election law violations” or undefined “election irregularities.”⁵⁶ Instead of the traditional approach to maintaining fair and neutral election administration, the open-ended authority that Florida’s election police have will tempt partisan abuse, foment needless conflict and potentially lead to intimidation of Black voters and other voters of color. Moreover, Florida’s failure to define “election irregularities,” which suggests that an individual can be investigated even if there is no evidence that they actually committed an election law violation, opens the door for these election police to investigate election administrators and poll workers without cause.⁵⁷ The criminalization of election administration will only serve to magnify the fear that these hard-working Floridians already feel.

iv. Pennsylvania

⁵⁴ Brad Dress, *Georgia Lawmakers Pass Bill Empowering Election Force to Investigate Voter Fraud*, THE HILL, <https://thehill.com/news/3259631-georgia-lawmakers-pass-bill-empowering-election-force-to-investigate-voter-fraud/> (April 5, 2022).

⁵⁵ Stanley Dunlap, *Poll Supervisors Fret as Senate Considers Another Election Overhaul*, GEORGIA RECORDER, <https://thecurrentga.org/2022/03/22/poll-supervisors-fret-as-senate-considers-another-election-overhaul/> (March 22, 2022).

⁵⁶ S.B. 524. <https://www.flsenate.gov/Session/Bill/2022/524/BillText/er/PDF>; “The phrase “election irregularities” used throughout the nearly 50-page law is vague, undefined, and would seem to give the new police force and investigators a lot of leeway in terms of what they investigate...” Fabiola Cineas, *Florida’s New Election Police Unit is the Scariest Voter Suppression Effort Yet*, VOX, <https://www.vox.com/2022/5/3/23048665/florida-election-police-voting-rights> (May 3, 2022).

⁵⁷ *Id.*

In Pennsylvania, Governor Tom Wolf was forced to veto a bill that would have made voting and election administration more difficult in the Keystone State.⁵⁸ Last year, the Pennsylvania legislature passed HB 1300, which would have limited drop boxes, moved the voter registration deadline up from 15 days before election day to 30 days before, and given voters less time to request mail-in ballots.⁵⁹ The bill would have also eliminated the state's permanent mail voting list.⁶⁰ Although the bill was ultimately not enacted due to the Governor's veto, the fact that the state legislature passed the bill is indicative of the nationwide trend to make it harder to vote and for voters to have their votes counted by election administrators and workers. Importantly, these efforts came after the targeted false claims of voter fraud in Philadelphia, which is Pennsylvania's largest city and sits in the county with the largest percentage of Black voters.

III. Election Disinformation Puts Election Officials and Election Workers in Danger and Risks Discouraging Voters from Casting their Ballots

Election disinformation is seriously impacting election administration and having an outsized effect on Black voters and communities of color. As we saw during the 2020 election, election disinformation puts election workers and election officials in real danger. Misinformed voters who do not understand how elections work or the rules that election workers must follow have baselessly accused election workers of fraud and targeted them and their families.

A. Disinformation Deters Black Voters and Other Voters of Color from Voting

Election disinformation and misinformation – from false allegations of fraud to intentionally incorrect information about when and where to vote to false information about the way ballots are counted and processed – threaten the voting process from all angles. Many of the threats of violence against election officials across the country are fueled by disinformation about the way voting works or the power that election officials have to change election outcomes.⁶¹

In 2020, we sued two citizens who made robocalls to purposely disenfranchise Black voters on behalf of the National Coalition of Black Civic Participation and

⁵⁸ Mark, Scoloro, *Wolf Vetoes GOP Bill with Voter ID, Other Elections Changes*, ASSOCIATED PRESS, <https://apnews.com/article/pa-state-wire-business-bills-elections-government-and-politics-8400bdb8742fe7a04b3b469c7136b498> (June 30 2021).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Matt Vasilogambros, *Disinformation May Be the New Normal, Election Officials Fear*, PEW RES. CTR, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/09/21/disinformation-may-be-the-new-normal-election-officials-fear> (September 21, 2021).

individual plaintiffs in federal court.⁶² Our lawsuit alleges that the defendants' actions were racially motivated, given the contents of their phone calls and their targeting of communities with large Black populations. Many of the calls' falsehoods, which included warnings that if voters voted by mail, their personal information would be leaked to police departments, were based on systemic inequities that are particularly likely to resonate with and intimidate Black voters. Our lawsuit asks the court to immediately prohibit the defendants from engaging in additional voter intimidation robocalls. In October of 2020, the court granted our request for a temporary restraining order and the final outcome of case is currently pending.

B. Unprecedented Threats of Violence Against Elections Officials and Election Workers

Widespread election disinformation has fueled threats against election workers and elections administrators across the country. During the 2020 election, Al Schmidt, the former Republican city commissioner of Philadelphia, and his family received anti-Semitic death threats targeting him and his family. Schmidt, his wife, and his three kids were forced to leave their homes immediately after the election for safety and a 24-hour security detail remained at both his and his parents' houses long after the election. Some of the worst threats read as follows:

“You lied. You a traitor. Perhaps 75cuts and 20bul-lets will soon arrive.”

“ALBERT RINO SCHMIDT WILL BE FATALLY SHOT,”

“HEADS ON SPIKES. TREAS-ON-OUS SCHMIDTS.”

“tell the truth or your three kids will be fatally shot.”

The last message threatening to shoot his kids also included Schmidt's home address, the names of each of his children, and a picture of his house.⁶³ Threats of violence were not limited to Al Schmidt alone - Philadelphia's election workers were also nearly the target of a violent, coordinated mass shooting. Shortly after Election Day, the FBI received a tip that two men in Philadelphia were making threats against the Philadelphia Convention Center, where ballots were still being counted.⁶⁴ Philadelphia police arrested these two men, who had driven up all the way from

⁶² Ian Wiener, Civil Rights Group seeks Temporary Restraining Order to Stop Voter Intimidation Robocalls, Invokes Anti-Klan Act, Lawyers' Committee for Civil Rights Under Law, <https://www.lawyerscommittee.org/civil-rights-group-seeks-temporary-restraining-order-to-stop-voter-intimidation-robocalls-invokes-anti-klan-act/> (October 22, 2020).

⁶³ Aila Slisco, 'RINOs Stole Election, We Steal Lives': Pennsylvania GOP Commissioner Details Death Threats, NEWSWEEK, <https://www.newsweek.com/rinos-stole-election-we-steal-lives-pennsylvania-gop-commissioner-details-death-threats-1643300> (October 27, 2021).

⁶⁴ Miguel Martinez-Valle, Two Arrested With Guns After Police Get Tip of Convention Center Threat, NBC PHILADELPHIA, <https://www.nbcphiladelphia.com/news/local/two-arrested-after-police-get-tip-of-convention-center-threat/2587411/> (November 6, 2020).

Chesapeake, Virginia after finding them parked near the Convention Center in a truck covered in QAnon stickers and armed with two loaded semi-automatic Beretta pistols, one semi-automatic AR-15 style rifle, and ammunition. If the FBI never received a tip, these two men may have unleashed unfathomable violence upon the election workers and administrators inside the Convention Center, citizens who serve as the backbone of the American democratic process. One must be reminded why Al Schmidt and Philadelphia's elections process was specifically targeted: Philadelphia County has a higher number and higher percentage of Black residents than any other county in the state of Pennsylvania.⁶⁵ This example serves as a reminder that election administrators of color are not the only ones who may be targeted; white election administrators who work in counties or cities with large populations of Black people and other people of color may also face harassment and threats based on whose votes they are counting.

In Georgia, election workers and administrators in counties with large percentages of Black voters directly faced threats of violence. After Rudy Giuliani spewed hateful lies and an election fraud conspiracy theory targeting two Black women, Shaye Moss and her mother Ruby Freeman, who served as election workers in Fulton County, they began receiving significant threats. Moss described how she would give her phone to her son and when he would answer, people would "call him all kinds of racial slurs, and say[] what they[] were going to do to him."⁶⁶ A stranger knocked on Moss's grandmother's door and told her that they were there to make a citizen's arrest, forcing Moss to call the police and leading her grandmother to scream out in fear.⁶⁷

An anonymous caller called Fulton County's elections director at the time, Rick Barron, and threatened, "I don't know what we do these days. Is it firing squad? Is it hanging for treason...Boy, you better run."⁶⁸ Fulton County Commission Chairman Robb Pitts, a Black man who has defended Fulton County elections as being secure has received so many death threats since 2020 that his police chief recommended he have a 24-hour security detail leading up to this year's primary and midterm elections.⁶⁹ One of the death threats he received read as follows:

⁶⁵ America Counts Staff, Pennsylvania Population Hit 13 Million in 2020, U.S. CENSUS BUREAU, <https://www.census.gov/library/stories/state-by-state/pennsylvania-population-change-between-census-decade.html> (August 25, 2021).

⁶⁶ Johnny Kauffman, *'You Better Run': After Trump's False Attacks, Election Workers Faced Threats*, NPR, <https://www.npr.org/2021/02/05/963828783/you-better-run-after-trumps-false-attacks-election-workers-faced-threats> (February 5, 2021).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Fulton County Commission Chairman Gets 24-Hour Security Due to Ongoing Threats*, FOX 5 ATLANTA, <https://www.fox5atlanta.com/news/fulton-county-commission-chairman-gets-24-hour-security-due-to-ongoing-threats> (February 10, 2022).

"Thank you for being so f---ing stupid and crooked that you got caught in the middle of this massive election fraud. The penalty for treason is death. Do you have a preference for hanging, firing squad or execution?"⁷⁰

These kinds of threats have no place in American democracy and are eerily reminiscent of days past, when Black voters and other voters of color had to withstand violent attacks in order to exercise their fundamental right to vote. Congress must act to protect election workers and elections administrators in order to ensure that the upcoming primary and midterm Congressional elections run smoothly.

C. Poll Watcher Laws Passed in States Will Make it More Difficult for Election Workers to Administer Elections and Make it Easier for Bad Actors to Intimidate Election Workers.

Over the past year and a half, many states have passed laws that give partisan actors increased—even borderline unfettered—access to election workers, administrators, and voters during the voting and ballot counting processes. It is important to note that many poll watcher laws have their roots in the disenfranchisement of Black voters immediately following reconstruction.⁷¹ Yet, it is also important to draw a clear distinction between poll watchers who intend to make sure elections run smoothly and poll watchers who intend to sow chaos into our elections by targeting Black voters and other voters of color and polling places in their communities.

Political parties and candidates' usage of poll watchers to inflict violence upon Black voters is well documented throughout American history. In Mississippi in 1875, white poll watchers in Meridian, Mississippi went on a violent rampage to stop Black voters from casting their ballots.⁷² In 1920 in Ocoee, Florida, poll watchers ordered several Black men who showed up to vote to leave. After being turned away twice, one of the Black voters returned with a gun, which ultimately resulted in white men massacring at least 50 Black Floridians in retaliation.⁷³ In the 1940s in Taylor County Georgia, poll watchers informed a mob of white men that they watched a Black veteran vote in the Democratic primary. Shortly thereafter, four white men murdered that Black veteran in his home and nailed a sign to a local Black church that read "The First N----- to Vote Will Never Vote Again."⁷⁴

⁷⁰ *Id.*

⁷¹ Emily Eby and Joaquin Gonzales, Opening the Floodgates for Racial Intimidation, Disenfranchisement, and Violence by Expanding Poll Watcher Authority, Texas Civil Rights Project, <https://txcivilrights.org/wp-content/uploads/2021/05/TCRP-Poll-Watcher-Report.pdf>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

It is important to view state laws granting poll watchers unfettered access to the elections process through this lens. Today, poll watchers may not only use this newfound access to target Black voters and other voters of color, they may also use it to target Black election workers and other election workers of color or election workers and elections administrators who work in communities with a large number of Black voters and other voters of color. In fact, there is already evidence that poll watchers will do just that. In 2020, Common Cause Texas obtained video footage of a Harris County Republican Party presentation recruiting poll watchers for the 2020 election, where the presenter expressed the need for volunteers with “the confidence and courage” to staff polling places in Harris County’s predominantly Black and Brown communities.⁷⁵ The presenter specifically singled out a polling place at Wheeler Avenue Baptist Church in Houston’s historically Black third-ward as a problem area – a church that once hosted Rev. Dr. Martin Luther King Jr. and continues to serve a cornerstone of Houston’s Black community.⁷⁶

Since 2020, several states have passed new laws that will embolden poll watchers and make election administration more difficult. In 2021 alone, at least 40 bills in 20 different states were introduced that would expand the powers of poll watchers. These bills grant poll watchers access not only to watch voters at polling places, but to observe the ballot counting process and ballot processing activities such as signature matching. As described above, Texas’s SB 1 created a criminal offense for election workers or administrators who “obstruct” a poll watcher’s view in a manner vaguely defined as “mak[ing] observation not reasonably effective”.⁷⁷ These laws will make it easier for poll watchers to intimidate voters and election workers, particularly those in Black communities and communities of color.

IV. When There is an Election Administrator and Poll Worker Shortage, Voters Suffer

The results of new criminal and financial penalties for elections administrators and workers, new police forces with special power to investigate and prosecute those individuals, and unprecedented threats of violence and intimidation against these individuals are predictable: an unprecedented shortage of election workers and administrators. This shortage of election workers and administrators will inevitably lead to problems for voters such as longer lines at the polls, polling place closures, and polling place consolidation.

⁷⁵ Teo Armus and Derek Hawkins, *Video Shows Texas GOP Official Seeking ‘Army’ of Volunteers to Monitor Polls in Mostly Black and Hispanic Houston Precincts*, WASH. POST, <https://www.washingtonpost.com/nation/2021/04/08/texas-voting-gop-poll-watchers/> (April 8, 2021).

⁷⁶ *Id.*

⁷⁷ S.B. 1, <https://capitol.texas.gov/tlodocs/872/billtext/pdf/SB00001F.pdf#navpanes=0>.

The election worker shortage is already disrupting election administration all over the country. Alaska is being forced to conduct a statewide election primarily by mail in June because election officials in the state have not been able to find the 2,000 workers they need to hold an in-person election.⁷⁸ In Southwestern Ohio, one in four elections administrators have quit.⁷⁹ In Kansas, one in four election administrators have either quit or lost re-election since November.⁸⁰ In Pennsylvania, 21 elections directors or deputies either already left their posts or plan to leave.⁸¹ Election administrators have cited increased threats, the increase of election disinformation, and newly enacted laws making election administration more difficult as reasons for leaving their positions.⁸²

One third of all election administrators reported feeling unsafe or being harassed on the job during the 2020 election cycle and 45 percent of the election officials who are eligible to retire by 2024 already plan to do so.⁸³ This is not business as usual for election administrators or election workers – nearly 80% of local election officials have said that threats against them have increased in recent years.⁸⁴ It is a crisis that puts the free and fair elections process, the foundation of American democracy, at risk all over the country and particularly threatens the voting process in Black communities and other communities of color.

In Texas, poll worker shortages in Dallas during the state’s March 1 primary led some Black voters to wait up to 4 hours in line to vote.⁸⁵ Dallas County’s elections administrator admitted that during the March primary, only 628 election judges showed up, when the county needed 936 to administer the elections efficiently. As a result, eight sites that were supposed to be open during the March primary never opened.⁸⁶ One Dallas County election judge explained that some of her former colleagues heard about bills introduced in the Texas legislature in 2021 that included

⁷⁸ Fredreka Schouten and Kelly Mena, *Midterm Mess: States Grapple with Poll Worker and Paper Shortages*, CNN, <https://www.cnn.com/2022/03/29/politics/midterm-election-shortages-ctzn/index.html> (March 29, 2022).

⁷⁹ Michael Wines, *After a Nightmare Year, Election Officials are Quitting*, N.Y. TIMES, <https://www.nytimes.com/2021/07/02/us/politics/2020-election-voting-officials.html> (July 2, 2021).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Zach Montellaro, *‘Potential Crisis for Democracy’: Threats to Election Workers Could Spur Mass Retirements*, POLITICO, <https://www.politico.com/news/2021/06/16/election-workers-mass-retirements-494790> (June 6, 2021).

⁸⁴ *Local Elections Survey March 2022*, BRENNAN CTR FOR JUST., <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>.

⁸⁵ Bret Jaspers, *Wait Times, Worker Shortage in March has Dallas County Leaders Scrambling Ahead of May Elections*, KERA NEWS, <https://www.keranews.org/news/2022-04-12/wait-times-worker-shortage-in-march-has-dallas-county-leaders-scrambling-ahead-of-may-elections> (April 12, 2022)

⁸⁶ *Id.*

new criminal penalties for election workers and thought “oh my God I could go to jail” if they served as judges in the March 2022 primary.⁸⁷ That fear led many experienced election judges to sit this year out.

In Georgia, a significant number of county elections administrators retired or resigned after the state enacted SB 202. The chief county elections administrators in the three counties that include Macon,⁸⁸ Augusta,⁸⁹ and Atlanta⁹⁰ – three of the four largest cities in the state of Georgia– all resigned. They had each served in their roles for 10, 28, and 8 years respectively. The former elections director in Macon-Bibb County cited “rapidly changing elections laws” as making her job overwhelmingly stressful and motivating her decision to resign.⁹¹

Black voters and other voters of color will ultimately suffer due to the shortage of election workers and vacancies of chief county election officials across the country. Congress must act immediately to ensure these individuals’ safety so that they can be confident they will not face intimidation, threats or physical violence for simply making sure America’s democratic process runs smoothly. Congress can accomplish this by passing legislation to protect election administrators.

V. Some States Have Taken Steps to Improve Election Administration

Not all states are making election administration worse. Kentucky, a state with a Republican controlled legislature, passed bipartisan voting bills that will make voting and election administration easier two years in a row.⁹² In 2021, Kentucky enacted a law establishing 3 days of early voting for all registered voters in the state and this year, the state followed up by enacted a law expanding those 3 days to 6 days of early voting.⁹³ This year, the state also passed a budget providing \$12.5 million over the next two years to help counties offset the cost of purchasing new voting machines. Kentucky also expanded legal protections for election workers to

⁸⁷ *Id.*

⁸⁸ Liz Fabian, *Macon-Bibb Elections Supervisor Resigns Due to Stress, Workload, New Election Laws*, WMAZ-TV, <https://www.13wmaz.com/article/news/local/macon-bibb-elections-supervisor-resigns/93-8fc78126-6601-4de6-b46e-cbc56f8ae5> (January 10, 2022)

⁸⁹ Susan McCord, *Lynn Bailey, Richmond County elections chief, announces retirement after 28 years*, THE AUGUSTA CHRONICLE, <https://www.augustachronicle.com/story/news/local/2021/06/15/lynn-bailey-director-elections-richmond-county-augusta-ga-to-retire/7698364002/> (June 15, 2021).

⁹⁰ Jeff Amy and Kate Brumback, *Election Director in Georgia’s Fulton County Resigning*, ASSOCIATED PRESS, <https://apnews.com/article/elections-voting-georgia-atlanta-0980431ec0eeba03471216fc264895ee> (November 3, 2021).

⁹¹ Liz Fabian, *Macon-Bibb Elections Supervisor Resigns Due to Stress, Workload, New Election Laws*, WMAZ-TV, <https://www.13wmaz.com/article/news/local/macon-bibb-elections-supervisor-resigns/93-8fc78126-6601-4de6-b46e-cbc56f8ae5> (January 10, 2022)

⁹² Bruce Schreiner, *Kentucky Secretary of State Praises Latest Election Bills*, ASSOCIATED PRESS, <https://apnews.com/article/2022-midterm-elections-elections-voting-kentucky-legislature-c9b67b56546d41975e0de283ce1cea84> (March 31, 2022).

⁹³ *Id.*

protect them from intimidation in the midst of increased threats.⁹⁴ These positive reforms by the state of Kentucky, implemented by a Republican controlled legislature and signed by a Democratic governor show that states and this Congress can work across party lines to make voting and election administration easier.

Other states are working hard to pass legislation that protects election workers from violence.⁹⁵ In March, Oregon’s state legislature passed HB 4144, a bill expanding protections for election administrators in the state.⁹⁶ The bill, which received unanimous bipartisan support, allows election workers to keep their home addresses private and came after Oregon’s Secretary of State found that 10 of the 13 front-line workers on her Elections Division staff experienced harassment or threats while doing their jobs.⁹⁷

It is imperative that more state legislatures pass legislation to protect their election workers and administrators, but it is even more imperative that Congress passes federal legislation to protect these dedicated Americans.

VI. Administering Elections for Language Minority Voters

A. Section 203 of the Voting Rights Act Determinations

In December of last year, the U.S. Census Bureau issued a notice of determination identifying the jurisdictions subject to the language assistance provisions of Section 203 of the Voting Rights Act to replace the previous determinations made in December 2016.⁹⁸ Congress enacted Section 203 of the Voting Rights Act to address literacy and language barriers resulting from unequal educational opportunities.⁹⁹ This provision requires that covered jurisdictions provide limited-English proficient voters in covered language groups with the same voting information and assistance offered to voters in English.¹⁰⁰ As a result of the

⁹⁴ *Id.*

⁹⁵ Barbara Rodrigues, *Election Workers Face Increased Threats and Intimidation, Some States are Trying to Protect Them*, THE 19TH, <https://19thnews.org/2022/03/states-protect-election-workers-increasing-threats/> (March 30, 2022)

⁹⁶ Jamie Parfitt, *Oregon Legislature Passes Election Worker Safety Bill, Sending it to Gov. Brown's Desk*, KGW NEWS, <https://www.kgw.com/article/news/politics/elections/oregon-legislature-election-worker-safety-bill-protections-threats/283-78416db7-d5d7-4d2b-bd1d-caae2c31500b> (March 3, 2022).

⁹⁷ *Id.*

⁹⁸ See Dep’t of Commerce, U.S. CENSUS BUREAU, *Voting Rights Act Amendments of 2006, Determinations Under Section 203*, 86 Fed. Reg. 69611 (Dec. 8, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26547.pdf>.

⁹⁹ See generally 52 U.S.C. § 10503(a) (“The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation....”).

¹⁰⁰ 52 U.S.C. §§ 10503(b) – (c).

December 2021 Section 203 determinations, a “total national population of 24,244,810 voting-age citizens, residing in ... 331 covered jurisdictions [are] required to provide minority language assistance.”¹⁰¹ That is a net increase of about 4.4 million voters, or approximately 22.3 percent more than the number of limited-English proficient citizens covered in 2016.¹⁰²

Language assistance programs play a vital role in providing linguistic resources for language minority voters and supporting equitable access to the political process. A fully functioning and effective language assistance program typically cannot be implemented over night. Instead, jurisdictions that anticipate being covered by Section 203 because of demographic changes that are apparent in the community are well-advised to take action early to develop a program in collaboration with community partners from the impacted language groups. Newly covered jurisdictions that fail to do so cannot escape liability. As a federal court explained, “shortage of time will not necessarily shield election officials from the diligent assertion of rights under the Act. It is Congress's intention to eradicate voting discrimination with all possible speed.”¹⁰³ In March of this year, Dallas County was required to offer election materials in Vietnamese for the first time under Section 203 of the Voting Rights Act after being notified in December 2021.¹⁰⁴ In light of their requirement to act as quickly as possible, Dallas County began outreach to Vietnamese community groups in the area immediately after they were notified and hired a Vietnamese translator a little over a month later in mid-January.¹⁰⁵ During the upcoming primary elections and November midterm elections, jurisdictions must ensure that counties properly translate election materials so that language minorities are able to understand and complete their ballots in their native languages.

Lack of sufficient language materials and assistance also remains prevalent in jurisdictions that have been long covered by Section 203. In Alaska, limited-English proficient plaintiffs proved that election officials had failed to provide effective voting materials, information and assistance in three regions of the state. The case was settled in 2015.¹⁰⁶ Nevertheless, federal observers have documented continued non-

¹⁰¹ See Dep't of Commerce, *Census Bureau Releases 2021 Determinations for Section 203 of the Voting Rights Act*, U.S. CENSUS BUREAU (Dec. 8, 2021), available at <https://www.census.gov/newsroom/press-releases/2021/section-203-voting-rights-act.html>.

¹⁰² *Id.*

¹⁰³ *Chinese for Affirmative Action v. Leguennec*, 580 F.2d 1006, 1008 (9th Cir. 1978).

¹⁰⁴ Jessica Huseman and Charles Scudder, *Dallas County Now Required to Offer Election Materials in Vietnamese*, VOTEBEAT, <https://www.votebeat.org/2022/2/21/22944418/dallas-county-vietnamese-bilingual-ballots-vra-language> (Feb 21, 2022).

¹⁰⁵ *Id.*

¹⁰⁶ Stipulated Judgment and Order, *Toyukak v. Treadwell*, No. 3:13-cv-00137-SLG (D. Alaska Sept. 30, 2015), No. 235; see also James Thomas Tucker, Natalie Landreth & Erin Dougherty-Lynch, “*Why Should I Go Vote Without Understanding What I Am Going to Vote For?*” *The Impact of First*

compliance, including: the absence of pre-election outreach in most villages, preventing voters from being informed of what was on the ballot ahead of Election Day; lack of poll worker training; inadequate staffing of bilingual poll workers, including several villages with no translator and others in which the translator was only available on-call or in-person for a few hours; and failure by election officials to provide required written translations at many locations.

Little, if any, information about ballot measures is provided to Native voters before Election Day, including translation of those measures into Native languages or simplification so voters can understand them. The first time that many Native voters see or hear about a ballot measure is on Election Day when they vote. However, electioneering prohibitions often are cited as the reason for not explaining ballot measures to Native voters at voting locations. As a result of these, and other issues, the parties agreed to extend court oversight over the settlement agreement through the end of 2022, over seven years after the agreement was entered by the court.

B. Arizona's Documentary Proof of Citizenship Bill

Some states, like Arizona, are also suppressing Latinx and other language minority voters. Arizona recently passed a bill, HB 2492, adding its own citizenship verification requirements to the federal voter registration process – a practice that the U.S. Supreme Court has already ruled is illegal.¹⁰⁷ The National Voter Registration Act allows voters to register to vote in federal elections using the federal voter registration form, which requires them to affirm that they are U.S. citizens under penalty of perjury. HB 2492, on the other hand will allow election officials to request additional documentation from these federal-only voters such as their birth certificate or their naturalization papers before registering them to vote.

After Arizona tried to pass a similar law in 2004, we sued in federal court on behalf of our clients and eventually won at the Supreme Court in 2013.¹⁰⁸ In that case, *Arizona v. Inter Tribal Council of Arizona*, the Supreme Court affirmed that Arizona cannot supersede federal law by imposing more requirements than the NVRA requires for voter registration.¹⁰⁹ In the midst of this new, clearly illegal and discriminatory law, we will continue to work to protect our clients' and other voters of color's right to vote.

Generation Voting Barriers on Alaska Natives, 22 MICH. J. RACE & LAW 327, 376-77 (2017) (summarizing the requirements under the Stipulated Judgment and Order).

¹⁰⁷ Jane C. Timm, *Arizona Gov. Ducey to Test Federal Courts with New Proof of Citizenship voting rule*, NBC NEWS, <https://www.nbcnews.com/politics/elections/arizona-gov-ducey-test-federal-courts-new-proof-citizenship-voting-rul-rcna22273> (March 30, 2022).

¹⁰⁸ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

¹⁰⁹ *Id.*

VII. Conclusion

The 2022 election cycle will present challenges to voters and election administration that this country has never faced before – from intimidation of election workers and administrators, to rampant disinformation, to staffing shortages, to unprecedented restrictions on voters – but these elections must go on. Congress must act immediately to ensure that the 2022 midterm elections are administered safely and adequately funded so that our democracy can continue to function and so that Black voters and other voters of color have equal access to the fundamental, precious right to vote.