

October 2, 2015

**Hon. Robert Bentley**  
Governor of the State of Alabama

**Hon. Spencer Collier**  
Secretary of the Alabama Law Enforcement Agency

**Hon. John C. Merrill**  
Alabama Secretary of State

Alabama State Capitol  
600 Dexter Avenue  
Montgomery, AL 36130

Dear Governor Bentley, Secretary Collier, and Secretary Merrill:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”)<sup>1</sup>, on behalf of Greater Birmingham Ministries and the Alabama State Conference of the National Association for the Advancement of Colored People, writes to raise our grave concerns regarding the State’s intended closures of thirty-one (31) driver’s license-issuing offices across the State of Alabama, predominantly in rural counties with large Black populations, high poverty rates, and little to no public transportation. By issuing driver’s licenses, these offices provide the most accessible way for Alabama’s Black residents to secure the most common form of photo identification (“photo ID”) required by state law, Alabama Code Section 17-9-30. By closing these offices, the State will drastically reduce the number of sites where potential voters can obtain photo ID, creating a substantial and disproportionate burden on Black people’s ability to participate in the political process in Alabama.

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<sup>1</sup> Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the rights of Black people and other people of color. LDF has been involved in nearly all of the precedent-setting litigation related to securing the right to vote for people of color in the State of Alabama and elsewhere. *See, e.g., Shelby County, Ala. v. Holder*, 570 U.S. 2 (2013) (LDF defending the constitutionality of Sections 4(b) and 5 of the Voting Rights Act); *Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015) (LDF successfully challenging Texas’s voter ID law under Section 2); *Martin v. Kohls*, 444 SW 3d 844 (Ark. 2014) (LDF as amici in support of a successful challenge to Arkansas’s photo ID law) *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012) (LDF representing successful defendant-intervenors to block and mitigate the discriminatory impact of South Carolina’s photo ID law under Section 5).

LDF has been a separate entity from the NAACP, and its state branches, since 1957.



These planned closures are consistent with Alabama’s long, egregious and ongoing pattern of racial discrimination against Black voters.<sup>2</sup> Given the importance of these offices as accessible locations where people can obtain the photo ID needed to vote, we urge you to keep these offices open to protect against the foreseeable negative impact of the closures on Black voters’ opportunity to participate equally in the political process in likely violation of Section 2 of the Voting Rights Act of 1965 (“VRA”) and the U.S. Constitution.

As the State is well aware, the offices at issue are concentrated in Alabama counties in which Black voters comprise the majority of the electorate.<sup>3</sup> Within those counties, Black voters tend to be impoverished, lack access to public transportation, and continue to bear the effects of racial discrimination in all of areas of their lives, including education, employment and health. Equal access to the political process to secure the representation of their choice is critical to address these life realities.

Last year, however, Alabama began enforcing a photo ID law, which severely limits the forms of ID acceptable for voting. Alabama did so despite the State’s own analysis, which found that approximately 20 percent of registered voters, or 500,000 people, lack Alabama driver’s licenses or non-driver photo IDs.<sup>4</sup> Black voters likely account for a disproportionate share of the

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<sup>2</sup> See, e.g., *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. \_\_\_, 135 S. Ct. 1257 (2015) (LDF as amici in support of a successful challenge to Alabama’s legislative redistricting); *Chapman v. Gooden*, 974 So. 2d 972 (Ala. 2007) (LDF successfully challenging the Secretary of State’s illegal interpretation of the felon disfranchisement law in Alabama); *Dillard v. City of Greensboro*, 956 F. Supp. 1576 (M.D. Ala. 1997); *Dillard v. City of Foley*, 926 F. Supp. 1053 (M.D. Ala. 1995); *Harris v. Siegelman*, 695 F. Supp. 517 (M.D. Ala. 1988) (LDF successfully enjoining discriminatory Alabama polling place laws); *Dillard v. Crenshaw County*, 649 F. Supp. 289 (M.D. Ala. 1986), *aff’d*, 831 F.2d 246 (11th Cir.1987) (LDF successfully challenging discriminatory Alabama state laws that had infected the methods of election in hundreds of counties, school boards, and cities); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (LDF successfully challenging legislative redistricting in Alabama); *Sellers v. Wilson*, 123 F. Supp. 917 (M.D. Ala. 1954) (LDF successfully challenging voter registration requirements in Alabama); *Davis v. Schnell*, 81 F. Supp. 872 (S.D. Ala.), *aff’d*, 336 U.S. 933 (1949) (LDF successfully challenging literacy tests in Alabama); *Mitchell v. Wright*, 154 F.2d 924 (5th Cir. 1946) (LDF challenging voter identification requirements in Alabama).

<sup>3</sup> See, e.g., John Archibald, “Alabama sends message: We are too broke to care about right and wrong,” Alabama Media Group, Sept. 30, 2015, available at <http://bit.ly/1j11Yku>; Kyle Whitmire, “Voter ID and driver’s license office closures black-out Alabama’s Black Belt,” Alabama Media Group, Sept. 30, 2015, available at <http://bit.ly/1O8Zpa7>; Kyle Whitmire, “Voter ID: What Oregon Gets Right and Alabama Gets Wrong,” Alabama Media Group, Oct. 2, 2015, available at <http://bit.ly/1KWyTeh>.

<sup>4</sup> Associated Press, “New photo voter IDs to be available at county registrars’ offices and from traveling van,” Alabama Media Group, March 10, 2014, available at <http://bit.ly/1hgy2wf>. The Secretary of State estimated that half of those 500,000 adults own one of the other acceptable forms of photo ID



500,000 registered voters whom the photo ID law may exclude from voting.<sup>5</sup> Given the significant number of affected voters, Secretary Merrill’s admission that most people use driver’s licenses to vote,<sup>6</sup> and the lack of indication that the State has closely studied the relationship between driver’s licenses offices and voting,<sup>7</sup> it is incredible that the State has decided to eliminate Black voters’ access to driver’s license offices in eight of the ten counties with the highest percentage of Black registered voters. The planned closures very likely violate Section 2 of the VRA and the U.S. Constitution.<sup>8</sup>

Secretary of State Merrill incorrectly suggests that county boards of registrars’ offices and the mobile ID-issuing program offer Black voters a viable and equal alternative for obtaining the required photo ID.<sup>9</sup> For example, many of the Black residents affected by the closures in

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under the state law, *id.*, but even that assessment brings the total number of individuals affected by the photo ID law to 250,000 people.

<sup>5</sup> See, e.g., Jon C. Rogowski & Cathy J. Cohen, *Black and Latino Youth Disproportionately Affected by Voter Identification Laws in the 2012 Election* at 5 (Feb. 28, 2013), available at <http://bit.ly/1KWafFJ> (“Over 85 percent of white youth have a driver’s license, compared with 71.2 percent of Black youth and 67.0 percent of Latino youth.”); Justin Levitt, Brennan Center for Justice, *Fast Facts on the Impact of Photo ID: The Data*, (2008), available at <http://bit.ly/1L9pP9j> (summarizing poll data showing that 25 percent of Black voting-age citizens, 16 percent of Hispanic voting-age citizens, and only 8 percent of whites nationwide lack a current government issued photo ID).

<sup>6</sup> Lee Roop, “State says closing driver’s license offices won’t limit access to voter I.D. cards,” Alabama Media Group, Sept. 30, 2015, available at <http://bit.ly/1OdjCvq>.

<sup>7</sup> Under the National Voter Registration Act (NVRA), Alabama’s driver’s license offices must also provide voters with an opportunity to register to vote. Indeed, Alabama recently settled a NVRA claim challenging the Secretary of State’s failure to provide the required opportunities for voter registration at social services offices. The Associated Press, “Alabama reaches settlement with voters rights groups over federal motor voter law”, Alabama Media Group, Jan. 8, 2014, available at <http://bit.ly/1krpG5b>.

<sup>8</sup> See, e.g., *Chisom v. Roemer*, 501 U.S. 380, 408 (1991) (Scalia, dissenting) (“If, for example, a county permitted voter registration for only three hours one day a week, and that made it more difficult for blacks to register than whites, blacks would have less opportunity ‘to participate in the political process’ than whites, and [Section] 2 would therefore be violated . . . .”); *United States v. Marengo County Com’n*, 731 F.2d 1546, 1569-70 (11th Cir. 1984) (holding that the fact “that the County Board of Registrars was open only two days a month except in election years . . . unquestionably discriminated against blacks”); *United States v. Palmer*, 356 F.2d 951, 952 (5th Cir.1966) (“[I]n a parish where most white persons of voting age are registered and most Negroes of voting age are not registered, we cannot take seriously a registrar’s wry defense that since the office was closed to applicants of both races, there was no discrimination.”).

<sup>9</sup> Roop, *supra*.



Macon, Greene, Sumter, Lowndes, Bullock, Perry, Wilcox, and Hale counties are rural and live outside the county seat; however, no mobile ID units are presently scheduled to visit these counties.<sup>10</sup> Indeed, last September, we wrote to the Secretary of State to describe the similar, myriad problems for Black voters related to the limited hours and locations of the registrars' offices and mobile ID units.<sup>11</sup> Both places are largely inaccessible to the 13.8 percent of Black households in Alabama, as compared to 4 percent of white households, which have no access to a vehicle.<sup>12</sup> The lack of a vehicle is a particularly difficult burden to overcome in Alabama, which invests no state money in public transportation, and which, in 2011, ranked 48th nationwide in intercity transit access for rural residents because 844,000 rural residents had no access to intercity transit services.<sup>13</sup>

In addition, the State strongly discourages people from even seeking out the voter ID card by notifying people that the cards can *only* be used for voting and forcing people who apply for the card to swear under the penalty of a felony conviction that they lack a driver's license or any other ID. Some voters may prefer a driver's license (rather than a voter ID card) to use for voting, driving, and as a general form of identification. These problems undoubtedly contribute to the fact that only 5,070 voter ID cards were issued by the Secretary of State and county registrars ahead of the November 2014 elections<sup>14</sup>—utterly failing to bridge the gap for the hundreds of thousands of voters who lack driver's licenses or non-driver ID cards and falling far short of the Secretary of State's own modest goal of issuing 12,000 cards.<sup>15</sup> There is no reason to believe that Secretary Merrill's efforts in this non-election year have been any more effective. County registrar's offices and mobile ID offices do not offer the affected Black voters equivalent alternatives.

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<sup>10</sup> Alabama Photo Voter Identification, "Mobile ID Locations", <http://alabamavoterid.com/mobileLocations.aspx> (last visited Oct. 2, 2015).

<sup>11</sup> Letter to the NAACP Legal Defense Fund to Alabama Secretary of State, at 4-8 (Sept. 9, 2014), available at [http://www.naacpldf.org/files/case\\_issue/AL%20Photo%20ID%20-%202014.09.03.14%20Ltr%20LDF%20to%20Ala%20Secy%20of%20State.pdf](http://www.naacpldf.org/files/case_issue/AL%20Photo%20ID%20-%202014.09.03.14%20Ltr%20LDF%20to%20Ala%20Secy%20of%20State.pdf).

<sup>12</sup> *Id.* at 7-8.

<sup>13</sup> *Id.*

<sup>14</sup> NAACP Legal Defense Fund and Center for American Progress, *Battle to Protect the Vote* at 10 (2014), available at [http://www.naacpldf.org/files/publications/The Battle to Protect the Vote.pdf](http://www.naacpldf.org/files/publications/The%20Battle%20to%20Protect%20the%20Vote.pdf).

<sup>15</sup> Barnett Wright, New Alabama state ID law may pose some problems for Jefferson County, Alabama Media Group, Jul. 17, 2013, available at <http://bit.ly/1GppwBG>.



Moreover, the historical background leading up to the racially discriminatory closures of these driver's license offices lead us to question the intent of Alabama officials. The photo ID law was initially passed in 2011 in the midst of a highly racially-charged legislative session.<sup>16</sup> The decision to enforce the photo ID law was first announced on June 25, 2013—the same day as the *Shelby County v. Holder* decision.<sup>17</sup> In the 2014 elections, the first time that the photo ID law was in effect, Alabama voter turnout reached a shameful nadir, plummeting to the lowest it had been in decades.<sup>18</sup> Additionally, LDF determined that at least 629 voters had their ballots discarded solely because of the photo ID law; many of these Alabama citizens voted in the same “Black Belt” counties — Macon, Greene, Sumter, Lowndes, Bullock, Perry, Wilcox, and Hale — in which the State has now slated to close driver's license offices.<sup>19</sup> It is clear that Alabama officials' timing of these announcements — to implement the photo ID law in 2014 and close driver's license offices in 2015 — have purposefully coincided with the effective suspension of the State's preclearance obligations under Section 5, which would have prevented both the implementation of the photo ID law and these discriminatory office closures.<sup>20</sup> In the absence of

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<sup>16</sup> For example, the Alabama Legislature that enacted the photo ID law in 2011 included high-ranking Senators who a federal court later found had pursued a deliberate scheme “to maintain and strengthen white control of the political system,” and who demonstrated a “deep-seated racial animus and a desire to suppress [B]lack votes” by manipulating the turnout in the 2010 elections. *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345-47 (M.D. Ala. 2011). That same 2011 legislature also enacted House Bill 56, an anti-immigrant law that included a voter identification requirement, and which a federal court later enjoined after finding that “the legislative debate on [House Bill] 56 was laced with derogatory comments about Hispanics.” *Central Ala. Fair Housing Center v. Magee*, 835 F. Supp. 2d 1165, 1185-94 (M.D. Ala. 2011), *vacated on other grounds*, No. 11-16114- CC, 2013 WL 2372303 (11th Cir. May 17, 2013) (mootness).

<sup>17</sup> In *Shelby County*, the U.S. Supreme Court immobilized Section 5 of the VRA, which, prior to the decision, acted as American Democracy's discrimination checkpoint: requiring states like Alabama with a history of racial discrimination in voting to seek permission from a federal court in Washington, D.C. or the U.S. Department of Justice before they could enforce potentially discriminatory voting laws. In the past, the U.S. Department of Justice used Section 5 to repeatedly block past attempts by Alabama to close or limit access to voter registration and identification offices. U.S. Dep't of Justice, Civil Rights Division, Voting Section, *Alabama Voting Determination Letters*, available at [http://www.justice.gov/crt/records/vot/obj\\_letters/state\\_letters.php?state=al](http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=al).

<sup>18</sup> *Battle to Protect the Vote*, *supra*, at 10.

<sup>19</sup> Letter to the NAACP Legal Defense Fund to Alabama Secretary of State, *supra*, at 9-10.

<sup>20</sup> *Alabama Voting Determination Letters*, *supra* (listing all Alabama Section 5 objections, including a half dozen objections to attempts to restrict the times and places for voter registration and re-identification).



Section 5, we believe that Alabama's repeated and flagrant violations of the VRA may compel us to challenge its decisions under Section 2 and the U.S. Constitution in order to prevent further acts of racial discrimination.

Given the strong likelihood that the State's actions violate the VRA and the U.S. Constitution, as well as the potential need for immediate legal action on our part, we ask for the opportunity to meet with your offices in person *as soon as possible*. Please respond *in writing* by **October 9, 2015** to this request, and lay out the legal or factual basis (if any) for Alabama's decision.

Sincerely,

A handwritten signature in black ink that reads "Sherrilyn A. Ifill". The signature is written in a cursive, flowing style.

Sherrilyn A. Ifill  
President and Director Counsel  
NAACP LEGAL DEFENSE  
& EDUCATIONAL FUND, INC.