



February 19, 2021

*Sent via email*

Special Committee on Election Integrity  
Georgia House of Representatives  
131-A State Capitol  
Atlanta, Georgia 30334

**Re: Opposition to Provisions in House Bill 531**

Dear Chair Fleming and Committee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) and SPLC Action Fund write to express in the strongest possible terms our opposition to certain provisions in House Bill (“H.B.”) 531. This bill was only made available to the public through social media a few hours before yesterday’s hearing and *less* than twenty-four hours before today’s hearing. In response to historic participation in the November 2020 presidential and January 5, 2021 runoff elections in Georgia, we are deeply concerned that the legislature is considering a bill poised to create unnecessary barriers and burdens on voters that disproportionately impact racial minority, low-income, elderly, rural, disabled and/or student voters—rather than foster ways to expand political participation on the heels of ever-grown participation by Georgians in elections. Moreover, the legislature is considering H.B. 531 without affording the public the ability to meaningfully provide input and contribute to the legislative process. Under these and other circumstances, H.B. 531 is likely to violate several federal laws, including the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution and the Voting Rights Act of 1965.

As nonprofit, nonpartisan civil rights and racial justice organizations, our aim is to ensure that all voters, particularly Black voters and other voters of color, have full, meaningful, and non-burdensome access to the one fundamental right that is preservative of all other rights: the right of citizens to access the ballot box and elect candidates of their choice. In this way, the vote is both a tangible measure of what we are and aspire to be as a nation. For these reasons, we, along with other voting rights and pro-democracy groups, have enthusiastically supported the expansion of equitable voting options, including absentee voting.

Absentee ballots have been critical to ensuring that voters have equitable and safe access to the ballot box, especially for elections during the COVID 19 pandemic, which has had particularly dire impact on Black and other communities of color. Absentee vote-by-mail voting, for example, set records for the November 3, 2020 general election.<sup>1</sup> Yet H.B. 531 is written to undermine and limit absentee ballot access, especially for voters of color. Although we have concerns about several provisions within the current iteration of H.B. 531, in this letter we focus your attention on Section 8, which relates to the proposed photo identification requirement (“photo ID requirement”) for absentee voting.<sup>2</sup> For the reasons detailed below, we urge you, at a minimum, to remove the photo ID requirement in H.B. 531.

*First*, the purported justifications for the photo ID requirement for absentee voting are pretextual. Supporters of this photo ID requirement have argued that it is necessary to protect against voter fraud. But in reality, vote-by-mail is a safe, secure, reliable, and accessible method of voting that has been used by members of our military since the Civil War.<sup>3</sup> Five states currently conduct all elections entirely by mail, and at least 21 other states allow certain smaller elections to be held entirely by mail.<sup>4</sup> Forty-seven states hold elections with vote-by-mail procedures that do not include a photo ID requirement. Since 2000, more than 250 million votes have been cast via mail ballots in all 50 states.<sup>5</sup> Notwithstanding false claims to the contrary, fraud rates are infinitesimally small.<sup>6</sup> The same is true in Georgia. According to multiple statements by Governor Kemp,<sup>7</sup> Lieutenant Governor Duncan,<sup>8</sup> Secretary

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<sup>1</sup> *Record Amount of Absentee Ballots Requested for Georgia Runoff Elections*, WSB-TV (Nov. 23, 2020), <https://www.wsbtv.com/news/local/record-amount-absentee-ballots-requested-georgia-runoff-elections/6Q3C72ADE5CXVDDMIXV5TGJLAA/>.

<sup>2</sup> As detailed below, the environment in which H.B. 531 has been introduced has not been open and transparent. H.B. 531 was only available on social media a few hours before yesterday’s hearing at 3:00 p.m., and today’s hearing is less than twenty-four hours since that time. Accordingly, we plan to supplement our testimony as we review H.B. 531’s other provisions more closely.

<sup>3</sup> Alex Seitz-Wald, *How Do You Know Voting by Mail Works? The U.S. military’s Done it Since the Civil War*, NBC News (Apr. 19, 2020), <https://www.nbcnews.com/politics/2020-election/how-do-you-know-voting-mail-works-u-s-military-n1186926>.

<sup>4</sup> *Colorado, Hawaii, Oregon, Washington and Utah Conduct Elections Entirely by Mail*. AllMail Elections (aka Vote-By-Mail), National Conference of State Legislatures (Mar. 24, 2020) <https://www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx>; *Preparing Your State for an Election Under Pandemic Conditions*, Brennan Center for Justice (last updated Jun. 29, 2020) <https://www.brennancenter.org/our-work/research-reports/preparing-your-state-election-under-pandemic-conditions#t3>.

<sup>5</sup> Wendy R. Weiser and Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, Brennan Center for Justice (Apr. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

<sup>6</sup> *Id.*

<sup>7</sup> Katherine Fung, *Gov. Kemp Says Ga. Fraud Claims ‘Have Left the Barn,’ After Trump Calls for His Resignation*, Newsweek (Dec. 30, 2020), <https://www.newsweek.com/gov-kemp-says-ga-fraud-claims-have-left-barn-after-trump-calls-his-resignation-1558140>.

<sup>8</sup> Greg Bluestein, *Duncan Pushes Back on False Voter Fraud Claims: ‘We’re Better Than This,’ Atlanta Journal-Constitution* (Dec. 1, 2020), <https://www.ajc.com/politics/politics-blog/duncan-pushes-back-on-false-voter-fraud-claims-were-better-than-this/GSNRMYELPBBADHZ5RQ7LDTVHCE/>.

of State Raffensperger,<sup>9</sup> and Georgia Voting Systems Manager Gabriel Sterling,<sup>10</sup> there was no evidence of widespread vote-by-mail fraud in Georgia, nor has there ever been.<sup>11</sup> These statements and findings underscore why Georgia’s vote-by-mail laws and procedures remain safe, secure, and reliable.

H.B. 531’s proponents have failed to identify or offer concrete facts and data to corroborate vague claims that vote-by-mail procedures in Georgia are not secure. Georgia has relied on vote-by-mail procedures for decades. Equally telling, the motivations behind this bill are suspect because it was introduced immediately *after* Georgia voters generally—and especially Georgia voters of color—dramatically increased their use of absentee voting in the November 2020 general election and January 2021 runoff elections. Simply put, the photo ID requirement is a solution in search of a problem.

*Second*, H.B. 531’s photo ID requirement would impose restrictions on ballot access that would be outright barriers if not burdensome to many voters. In its current form, H.B. 531 would require voters to provide a Georgia driver’s license or state ID card number, or a photocopy or electronic image of another acceptable form of photo ID when *applying* for an absentee ballot. The bill therefore requires all absentee ballot voters who do not have a driver’s license or state ID to provide a photocopy or electronic image of a photo ID to obtain and cast a vote-by-mail ballot. This requirement creates a barrier for voters who do not have an acceptable photo ID and burdens voters who would need to obtain them to vote absentee. Moreover, voters who lack access to printers, scanners, copiers, or internet access would have difficulty complying with this photo ID requirement to vote absentee.

These harms would not be borne equally among voters. Indeed, enactment of H.B. 531 unduly burdens the fundamental right to vote of racial minority, low-income, elderly, rural, disabled, and student voters—all populations who disproportionately face challenges accessing DMV offices, a photocopier, and the ability to pay for photocopies, or a polling place to vote in-person. For instance, 16.6% of Georgia’s voting-age citizens who lack access to a vehicle live more than 10 miles

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<sup>9</sup> Quinn Scannlan, ‘We’ve Never Found Systemic Voter Fraud, Not Enough to Overturn the Election.’ *Georgia Secretary of State Raffensperger Says*, ABC News (Dec. 6, 2020), <https://abcnews.go.com/Politics/weve-found-systemic-fraud-overturn-election-georgia-secretary/story?id=74560956>.

<sup>10</sup> Miles Parks, *Georgia Election Official: Don’t Let Misinformation ‘Suppress Your Own Vote,’* NPR (Jan. 4, 2020), <https://www.npr.org/2021/01/04/953321408/georgia-election-official-dont-let-misinformation-suppress-your-own-vote>.

<sup>11</sup> *3rd Strike Against Voter Fraud Claims Means They’re Out After Signature Audit Finds No Fraud*, Secretary of State (Dec. 29, 2020), [https://sos.ga.gov/index.php/elections/3rd\\_strike\\_against\\_voter\\_fraud\\_claims\\_means\\_theyre\\_out\\_after\\_signature\\_audit\\_finds\\_no\\_fraud](https://sos.ga.gov/index.php/elections/3rd_strike_against_voter_fraud_claims_means_theyre_out_after_signature_audit_finds_no_fraud).

from a state-ID issuing office.<sup>12</sup> Almost all of these citizens live in rural areas where public transportation is unavailable.<sup>13</sup> These areas also house high concentrations of people of color and people living in poverty.<sup>14</sup> The same groups of people would face similar challenges in accessing a photocopier to copy their ID, which H.B. 531 would require of voters without a driver's license or state ID. For the elderly, people with disabilities, students, and others who cannot physically cast a ballot in-person and therefore rely on vote-by-mail, the burden of H.B. 531's ID requirements on the right to vote is particularly acute. Such exacerbating factors and their impact on people of color and other historically disenfranchised groups have led stringent ID requirements adopted by other states to be invalidated as violating the U.S. Constitution or the Voting Rights Act of 1965.<sup>15</sup>

Tellingly, H.B. 531 also comes in the wake of a historic election in which Black Georgians comprised 30.3% of absentee voters, and a total of 36.7% of voters by mail were Georgians of color; where more than 17% of absentee voters were under thirty-five years old.<sup>16</sup> Because Black and Latino voters have been found to experience longer wait times compared to white voters for in-person voting options,<sup>17</sup> vote-by-mail options will continue to be a critical option moving forward to avoid long lines and wait times. These options were equally critical to voters with disabilities who otherwise could be forced to wait in very long lines and may face other accessibility challenges with in-person voting. Moreover, Georgia had a 66% increase in total turnout for the 2020 general election, and that included a 523% increase in mail-in ballots, and a 22% increase in early in-person voting.<sup>18</sup> Knowing these participation rates, the disparate impact of photo ID laws on historically disenfranchised groups, and the lack of a legitimate basis for enacting this law, H.B. 531 seeks to and will harm the right to vote of people of color, the elderly, people with disabilities, low-income people, rural residents, and students.

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<sup>12</sup> Keesha Gaskins & Sundeep Iyer, *The Challenge of Obtaining Voter Identification*, Brennan Center for Justice (2012), at 4, [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Challenge\\_of\\_Obtaining\\_Voter\\_ID.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Challenge_of_Obtaining_Voter_ID.pdf).

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 1, 5.

<sup>15</sup> See, e.g., *North Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222 (4th Cir. 2016) (finding North Carolina voter ID law was motivated by discriminatory racial intent, and noting “legislatures cannot restrict access to the franchise based on the desire to benefit a certain political party” (internal citations omitted)); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (finding Texas voter ID law was racially discriminatory under the Voting Rights Act); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017) (finding Texas voter ID law was enacted with racially discriminatory purpose).

<sup>16</sup> U.S. Elections Project, *Georgia Early Voting Statistics*, <https://electproject.github.io/Early-Vote-2020G/GA.html> (last updated Nov. 5, 2020).

<sup>17</sup> Hannah Klain, Kevin Morris, & Rebecca Ayala, *Waiting to Vote*, Brennan Center (June 3, 2020), <https://www.brennancenter.org/our-work/research-reports/waiting-vote>.

<sup>18</sup> Georgia Votes, <https://www.georgiavotes.com/2020-general/> (last updated Jan. 5, 2021).

These harms are likely to be exacerbated by additional provisions within H.B. 531. As a few examples, H.B. 531 also seeks to restrict and limit the availability of drop boxes and early voting opportunities, including prohibiting counties from holding early voting on a Sunday. Notably, in at least 2014, 2016, and 2018, the legislature has repeatedly attempted to cut early voting opportunities, including Sunday voting, that Black Georgians are well-known to use.<sup>19</sup> If passed, the prospect of these provisions, combined with the photo ID requirement, pose an intolerable and discriminatory obstacle to accessing the ballot box for Georgia voters, especially to voters of color.

*Third*, and related, any bill, particularly one as here, with such far reaching implications for the fundamental right to vote cannot be properly assessed and evaluated without understanding its full impact. LDF and SPLC have not been able to identify any analysis conducted by this Committee or the Georgia General Assembly that a photo ID requirement will not disproportionately harm voters of color and other voting groups. Accordingly, before any additional hearing or Committee vote, the Georgia General Assembly must study, analyze, and publicly identify the negative human and fiscal impact of H.B. 531.

*Fourth*, the legislative environment in which H.B. 531 has been offered calls for the rejection of this bill as it is neither open nor transparent. The forty-eight page bill was only available through postings on social media hours before members of this Committee held a hearing at 3:00 p.m. yesterday. Equally troubling, this Committee's hearing today at 9:30 a.m. is being held less than twenty-four hours before H.B. 531 was introduced. This rushed and non-transparent process will prevent the public from meaningfully assessing the bill and discussing it with family, friends, colleagues, and elected officials. This Committee's meeting today also does not appear to be providing any opportunities for the public to provide public comments or testimony through remote means, including through a call-in or videoconference option. These restrictions exclude community members who, for example, may not be able to attend in-person hearings because they do not live in or near Atlanta, are concerned about contracting COVID-19, and/or have family or work obligations that prevent them from attending a 9:30 a.m. or earlier hearing. It is imperative that you hear from and listen to *all* community members who desire to provide public testimony—either oral or written—during your Committee hearing. For these reasons, in addition to requesting today's hearing be postponed until Monday, February, 22, we also request the Committee does *not* vote on H.B. 531 until at least Monday as well. Equally important, this Committee must post clear guidelines for providing and receiving public input well in advance of any hearing.

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<sup>19</sup> See, e.g., *Democracy Diminished: State and Local Threats to Voting* Post-Shelby County, Alabama v. Holder 1, 21-22 (Nov. 13, 2020), <https://www.naacpldf.org/wp-content/uploads/State-local-responses-post-Shelby-11.12.20-final.pdf>.

*Fifth*, the photo ID requirement may violate federal law. The facts recited above, including the sequence of events, procedural departures from ordinary legislative process, the lack of any neutral justification for the proposals, the timing of the effort to impose this restriction on absentee voting, and the disparate impact on Black voters and other voters of color, suggest the photo ID requirement embodied in H.B. 531 may violate the Fourteenth and Fifteenth Amendments to the U.S. Constitution and the Voting Rights Act of 1965. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977); 52 U.S.C. 10301. The photo ID requirement's burdening the right to vote without any legitimate state interest may also violate the First and Fourteenth Amendment to the U.S. Constitution.<sup>20</sup>

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We agree that our elections must be safe and secure. But H.B. 531's photo ID requirement does nothing to enhance elections security. Instead, it is a calculated attempt to minimize the participation of voters of color and other voters in the political process following the historical turnout in recent elections. Its enactment would create unnecessary barriers, burdens, and disproportionately impact the voting rights of people of color, the elderly, people with disabilities, low-income people, rural residents, and/or students.

Our democracy requires free and open access to the sacred right to vote. That path, as demonstrated through recent Georgia elections, must harness, rather than restrict, access to the ballot box. And that goal can only be accomplished by voting no and withdrawing H.B. 531's photo ID requirement immediately.

We ask that you consider this information and extend an invitation to discuss it further with you. We are eager to work with you to ensure Georgia voters have equal access to the fundamental right to vote.

Sincerely,

/s/ John S. Cusick

John S. Cusick, Litigation Fellow

Michael Pernick, Redistricting Counsel

Sam Spital, Director of Litigation

Leah C. Aden, Deputy Director of Litigation

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<sup>20</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)).

NAACP Legal Defense & Educational Fund, Inc.  
40 Rector Street, 5th Fl.  
New York, NY 10006  
(917) 858-2870  
[jeusick@naacpldf.org](mailto:jeusick@naacpldf.org)

/s/ Pichaya Poy Winichakul  
Nancy G. Abudu, Deputy Legal Director  
Pichaya Poy Winichakul, Staff Attorney  
Voting Rights Practice Group  
SPLC Action Fund  
PO Box 1287  
Decatur, GA 30031-1287  
(470) 597-3010  
[nancy.abudu@splccenter.org](mailto:nancy.abudu@splccenter.org)  
[poy.winichakul@splccenter.org](mailto:poy.winichakul@splccenter.org)

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.

SPLC Action Fund

The SPLC Action Fund is dedicated to fighting hate and bigotry and to seeking justice in our society. Using lobbying, grassroots organizing, and other forms of advocacy, the SPLC Action Fund works toward the day when the ideals of equal justice and equal opportunity will be a reality for everyone.