

March 15, 2021

*Sent via email*

Senate Judiciary Subcommittee  
The Senate of South Carolina  
101 Gressette Senate Office Building  
Columbia, SC 29202

**Re: Opposition to S. 236 and S. 113**

Dear Subcommittee Chair Campsen and Subcommittee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to express our opposition to S. 113 and S. 236. We are concerned that the enactment of these bills would create unnecessary barriers and burdens that will disproportionately impact Black voters and other voters of color, as well as elderly and disabled voters, and may violate federal laws, including the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, the Voting Rights Act of 1965, and the Americans with Disabilities Act.

**I. S. 236 – Polling Place Consolidation and Closure in Municipal Elections and Resulting Burdens on Voters**

Under current South Carolina law, any precinct with 500 or more registered voters must have its own polling place for municipal elections and is accordingly not permitted to “pool” with other precincts in a single polling place.<sup>1</sup> S. 236 would increase that threshold *by a factor of six*, so that only precincts with 3,000 or more registered voters would be required to have their own polling place in municipal elections. S. 236 would also *double* the maximum size of pooled precincts from 1,500 registered voters to 3,000 registered voters. Moreover, S. 236 would amend current law to allow polling places that serve pooled precincts to be situated five miles away from the nearest part of any pooled precinct, rather than three miles. These provisions are concerning for at least the following two reasons.

*First*, S. 236 will lead to the consolidation and closure of polling places in municipal elections because municipalities will be permitted to assign a larger number of registered voters to each polling place *and* locate pooled polling places farther away from the precincts they serve. South Carolina currently protects against polling place closures by limiting both the size of precincts that can be served by a single polling place and the maximum number of voters who can be

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<sup>1</sup> See S.C. Code Ann. § 7-7-1000.

assigned to pooled precincts. S. 236 would weaken those protections and lead to polling place closures which—as evidenced in other states—is likely to be especially burdensome for Black voters and other voters of color.<sup>2</sup> Indeed, this bill would explicitly allow municipalities to situate polling places in locations that are less convenient and accessible to voters by increasing the maximum permissible distance between pooled polling places and the precincts they serve. The prospect of polling place closures and less convenient polling place locations is likely to reduce voter turnout,<sup>3</sup> and is especially concerning for Black voters and other voters of color in South Carolina, who are less likely to have access to a car and are more likely to rely on walking or public transportation.<sup>4</sup>

*Second*, under S. 236, polling places could be expected to accommodate *six times as many voters*, leading to a risk of severe practical impediments at polling places that would be required to serve a dramatically expanded number of voters. Such practical impediments include, among other things, a lack of sufficient parking, a lack of poll workers, and/or a shortage of equipment or supplies, all of which could lead to longer lines and voting delays. S. 236 takes no steps to protect against these risks. These issues will only exacerbate the long lines that many South Carolina voters—and especially voters of color—have been subjected to in recent elections.<sup>5</sup>

It is unclear what goal S. 236 is intended to achieve. To the extent the bill is intended to reduce costs to the state or municipalities, no evidence has been presented that the current law is unduly expensive or burdensome to municipalities. Without a clear understanding of why this bill is necessary and an analysis of its impact across the state, we are concerned that S. 236 would

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<sup>2</sup> See *Democracy Diverted: Polling Place Closures and the Right to Vote*, The Leadership Conference Education Fund (Sept. 2019), <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

<sup>3</sup> Enrico Cantoni, *A Precinct Too Far: Turnout and Voting Costs*, Am. Econ. J.: Applied Econ., Vol. 12, No. 1 (Jan. 2020) (concluding that a quarter mile increase in polling place distance reduces turnout by 2 to 5 percent).

<sup>4</sup> Black South Carolinians are more likely to commute to work using public transportation or on foot. See U.S. Census Bureau, 2019 5-Year American Community Survey (“ACS”), Tables B08105A and B08105B. According to the 2019 ACS, 24.5% of Black residents in South Carolina live below the poverty level, in contrast to just 10.9% of white residents, and are therefore less able to afford a car or other means of transportation. *Id.*, Tables A13001A and A13001B.

<sup>5</sup> See Carrie Levine, Partheek Rebala, “*I Wanted My Vote to be Counted*”: *In South Carolina a Peek at COVID-19’s Impact on Elections*, The Center for Public Integrity (June 22, 2020), <https://bit.ly/3bJNrVK>; *Some SC Voters See Long Lines, Power Outages at Polls*, WLTX News 19 (Nov. 3, 2020), <https://bit.ly/3bLegc4>; *Democracy Defended: Analysis of Barriers to Voting in the 2018 Midterm Elections*, NAACP Legal Defense and Educational Fund, Inc., <https://bit.ly/38E5BGw>; Hannah Klain, Kevin Morris, Max Feldman, and Rebecca Ayala, *Waiting to Vote*, Brennan Center for Justice at New York University School of Law (June 3, 2020), <https://bit.ly/3czjx5N> (noting that in 2018, 31 of 46 counties exceeded the maximum of 250 voters per machine allowed by the state, with more than 2.5 million South Carolinians residing in counties with an inadequate number of machines).

likely impose substantial burdens on voters and disproportionately on Black voters and other voters of color.

## II. S. 113 – Imposition of New Barriers on Absentee Voters

S. 113 would impose new barriers on absentee voting by (i) barring anyone except for immediate family members from returning completed absentee ballots on behalf of another voter; and (ii) explicitly banning the use of absentee ballot drop boxes. These proposals are not supported by any neutral interest in election integrity or administration. Instead, they would simply burden absentee voting. Notably, these proposals come in the first legislative cycle after unprecedented levels of Black voter participation by absentee ballot in the 2020 election in South Carolina. Last November, Black voters in South Carolina relied on absentee ballots at higher rates than the rest of the voting population,<sup>6</sup> and a record-breaking 397,542 Black voters cast absentee ballots (representing 29.8% of all absentee ballots cast in South Carolina).<sup>7</sup> These provisions will burden absentee voters—including the unprecedented numbers of Black voters who relied on absentee ballots—in at least two ways.

*First*, S. 113 would ban third-party absentee ballot collection, leaving only a narrow exception for immediate family members to return completed absentee ballots for voters. South Carolina law *already* imposes severe restrictions on who can collect absentee ballots on behalf of voters: Only a person who is an authorized representative of the voter and completes SEC Form 1050 can collect and return an absentee ballot for another voter.<sup>8</sup> Current law also prohibits political candidates, including staff and reimbursed volunteers, from serving as authorized representatives to collect and return absentee ballots on behalf of voters.<sup>9</sup> These provisions are more restrictive than the majority of other states, which impose no restrictions on third-party absentee ballot collection.<sup>10</sup> S. 113 would take these restrictions to a new extreme by banning third-party absentee ballot collection altogether, with only a narrow exception for immediate family members. The current requirements in South Carolina law are more than sufficient to ensure election integrity because they provide for a paper record of each person who returns an absentee ballot on behalf of a voter. Indeed, no evidence has been presented of voter fraud in South Carolina involving third party absentee ballot collection under current law.

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<sup>6</sup> South Carolina’s citizen voting age population is only 26.6% Black, which is markedly less than the 29.8% of absentee ballots that were cast by Black voters. See U.S. Census Bureau, 2019 5-Year ACS, Citizen Voting Age Population.

<sup>7</sup> See *Historical Absentee Reports*, South Carolina Election Commission, <https://bit.ly/3qM74Ro>.

<sup>8</sup> See *SEC Form 1050, Authorization to Return Absentee Ballot*, South Carolina Election Commission, <https://bit.ly/3th6lZY>.

<sup>9</sup> S.C. Code Ann. § 7-15-385.

<sup>10</sup> Who Can Collect and Return an Absentee Ballot Other Than the Voter, National Conference of State Legislatures, <https://bit.ly/3cvVHrt>.

Third-party ballot collection is especially important for Black voters and other voters of color, who are less likely to have access to a vehicle,<sup>11</sup> and may have more difficulty returning absentee ballots without assistance. Third-party absentee ballot collection is also particularly important for voters who lack easy access to polling places for in-person voting, including elderly or disabled voters. These voters are more likely to rely on trusted third parties, such as home health aides or nonprofit organizations, to serve as their authorized representative to collect and return their ballots.

*Second*, S. 113 would ban municipalities from offering voters the option to return their absentee ballots to drop boxes. Unlike many other states—which permit voters to deposit completed absentee ballots in secure drop boxes—South Carolina law does not currently address whether municipalities can offer drop boxes to voters.<sup>12</sup> S. 113 would effectively codify a total ban on drop boxes by requiring completed absentee ballots to be returned to election officials during office hours at a county board of elections or an extension office.

Rather than enacting legislation to ban drop boxes, South Carolina should adopt provisions to provide voters across the state with the opportunity to return absentee ballots to secure drop boxes. The United States Department of Homeland Security (“DHS”) has endorsed drop boxes as a “secure and convenient means for voters to return their mail ballot” and recommends that states provide one drop box for every 15,000 to 20,000 voters.<sup>13</sup> Drop boxes are an especially important option for Black voters and other voters of color, who may face more difficulty voting in person due to work or other obligations during normal business hours.<sup>14</sup> Drop boxes are also important for Black voters and other voters of color, who are less likely to have access to a vehicle,<sup>15</sup> because it will allow them to return an absentee ballot to a drop box that may be closer than their polling place.

The combined effects of S. 236 and S. 113 are particularly concerning. S. 236 is likely to reduce the number of polling places, increase lines and wait times, and make it more difficult for voters to cast their ballots in person during municipal elections, all of which would likely prompt more voters to rely on absentee ballots. At the same time, S. 113 would create new barriers to absentee

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<sup>11</sup> *See supra* n. 3.

<sup>12</sup> The State Senate has previously rejected proposals to allow election officials to use drop boxes. See Jeffrey Collins, SC Senate Oks No-Excuse Absentee Voting; Rejects Drop Boxes (Sept. 2, 2020), <https://bit.ly/3qR6b9T>.

<sup>13</sup> *See Ballot Drop Box*, Cybersecurity and Infrastructure Security Agency, <https://bit.ly/2OQGxoz>.

<sup>14</sup> M. Keith Chen, Kareem Haggag, Devin G. Pope, and Ryne Rohla, *Racial Disparities in Voting Wait Times: Evidence from Smartphone Data* (Nov. 14, 2019), <https://bit.ly/2Nq6lro> (concluding that Black voters suffer from longer wait times than other voters, which may be explained by the fact that Black voters have less flexible jobs and can only vote in the early morning or evening).

<sup>15</sup> *See supra* n. 3.

ballot voters and make the absentee ballot process more cumbersome. Individually, and in combination, these bills would disproportionately harm voters of color and will also create additional burdens for disabled and elderly voters.

### III. Rushed Process

We are also concerned with the rushed and non-transparent process through which these bills are being considered. The Subcommittee only first provided notice of this meeting on the Senate website on Friday, March 12, 2021, just two business days before the subcommittee was scheduled to meet. The lack of sufficient notice makes it difficult for the public to engage with the bills and provide the subcommittee with meaningful comment and feedback.

### IV. Potential Violation of Federal Law

The facts recited above, including the foreseeable disparate impact on Black voters and other voters of color, as well as disabled voters, the lack of any neutral justification for the proposals, and the rushed process, suggest the provisions embodied in S. 236 and S. 113, individually and collectively, raise concerns under the Fourteenth and Fifteenth Amendments to the U.S. Constitution, the Voting Rights Act of 1965, and the Americans with Disabilities Act. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977); 52 § U.S.C. 10301; 42 § U.S.C. § 12101. These same provisions burden the right to vote without any legitimate state interest, which also raise concerns under the First and Fourteenth Amendment to the U.S. Constitution. *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)).

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Please feel free to contact Michael Pernick at (917) 790-3597 or by email at [mpernick@naacpldf.org](mailto:mpernick@naacpldf.org) with any questions or to discuss these concerns in more detail.

Sincerely,

*/s/ Michael Pernick*

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NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.