

April 14, 2021

*Sent via email*

House Judiciary Committee, Election Laws Subcommittee  
South Carolina House of Representatives  
110 Blatt Building  
Columbia, SC 29201  
HJudElectionLaws@schouse.gov

**Re: Opposition to H.4150 and Support for H.3822**

Dear Subcommittee Chair Jordan and Subcommittee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to express our opposition to H.4150 and our support for H.3822. Early voting is a valuable and beneficial policy that is long overdue in South Carolina. However, H.4150’s unequal implementation of early voting—combined with the bill’s needless cuts in absentee-voting eligibility—would likely deny or burden Black voters in South Carolina an equal opportunity to participate in the political process. Unless H.4150 is amended to provide equitable early-voting opportunities and to preserve current absentee-voting eligibility, this Subcommittee should oppose it. By contrast, H.3822 deserves this Subcommittee’s full support. Its commonsense reforms would benefit all South Carolina voters and make meaningful progress toward providing equal access to the sacred right to vote.

**I. H.4150 – Unequal Implementation of Early Voting and Needless, Discriminatory Restrictions on Absentee Eligibility.**

H.4150 would adopt sweeping changes to the conduct of elections in South Carolina. Among other things, it would implement an unequal system of early voting, enact a statutory ban on drop boxes, and impose extreme and potentially discriminatory reductions to absentee ballot eligibility.<sup>1</sup>

**a. South Carolina Should Adopt Early Voting in a Manner That Does Not Result in Racial Disparities.**

South Carolina is one of only six states that do not offer pre-Election Day in-person voting options for all registered voters.<sup>2</sup> Early voting is essential to ensuring voters can safely, securely, and freely participate in our democracy. Early voting provides an important mechanism that gives voters the option to

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<sup>1</sup> See H.4150, South Carolina General Assembly (2021-2022).

<sup>2</sup> See *State Laws Governing Early Voting*, National Conference of State Legislatures, <https://bit.ly/3uzP2nq>.

cast their ballots without facing the crowds and long lines on Election Day, as well as the flexibility to balance personal and professional obligations that make voting on Election Day untenable for many voters. Early voting opportunities also reduce the number of voters left who still may cast their ballot on Election Day, thereby reducing crowding at the polls on Election Day. Indeed, the Presidential Commission on Election Administration, a bipartisan commission of experts, has recommended early voting opportunities to both improve voters' experiences with voting and promote confidence in election administration across the country.<sup>3</sup> According to the Commission, "early voting offers Americans opportunities to participate in the electoral process that simply cannot be afforded by the [typically] contained twelve-hour period of the traditional Election Day."<sup>4</sup>

Although we are pleased to see this Subcommittee consider enacting early voting, H.4150's provisions are deeply concerning because they would likely result in troubling racial disparities in the availability of early in-person voting, including with respect to the quantity and placement of early voting locations, the days on which early voting would be available, and the hours in which early voting locations would be open.

- i. H.4150's framework for setting the number of early voting locations in each county would likely result in significant racial disparities.*

H.4150 provides a framework for setting the precise number of early voting locations that each county must offer.<sup>5</sup> In practice, this framework is likely to result in significant racial disparities.

*First*, under the framework, larger counties that are home to significant communities of color will be forced to accommodate a greater number of registered voters in each of its early voting locations. In the three counties in the state with the largest number of registered voters of color—Richland, Greenville, and Charleston—the average number of registered voters per early voting

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<sup>3</sup> *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, Presidential Comm. on Election Administration, 1, 56 (Jan. 2014), <https://stanford.io/3sfPHJv> (identifying as a key recommendation "states should expand opportunities to vote before Election Day").

<sup>4</sup> *Id.* at 55-56.

<sup>5</sup> See H.4150, Section 1.A., establishing the following framework for the number of early-in-person voting locations per county based on the number of registered voters:

1 - 49,999 voters: one location

50,000 - 99,999 voters: two locations

100,000 - 149,999 voters: three locations

150,000 - 199,999 voters: four locations

200,000 - 249,999 voters: five locations

250,000 - 299,999 voters: six locations

In no case may a county establish more than six early in-person voting locations.

location would be, respectively, 46,634, 58,510, and 51,758.<sup>6</sup> This is substantially higher than the average county, which would only be required to provide one early voting location per 30,475 registered voters.<sup>7</sup> As a result, South Carolina's largest Black communities will be served by early voting locations that are forced to accommodate a substantially greater number of voters, leading to longer lines and wait times that will likely disproportionately burden Black voters and other voters of color.

*Second*, under this framework, voters in predominantly Black counties will be forced to drive longer distances to access early voting sites. In the 23 counties with the highest percentage of registered voters of color, each early voting location would serve, on average, a 532 square mile region.<sup>8</sup> In contrast, in the 23 counties with the lowest percentage of registered voters of color, each early voting location would serve, on average, a 363 square mile region.<sup>9</sup> As a result, Black voters and other voters of color will be forced to drive longer distances to access an early voting location. Rural Black counties will be especially hard hit. For instance, Williamsburg County (68.2% registered voters of color) will only be permitted to have one early voting location, even though the county covers 934 square miles. Orangeburg County (65.7% registered voters of color) will only be permitted to have two early voting locations, even though the county covers 1,106 square miles – larger than the state of Rhode Island.<sup>10</sup> And Hampton County (56.8% registered voters of color) will only be permitted to have one early voting location, even though the county covers 560 square miles.<sup>11</sup>

*Third*, the framework fails to provide any flexibility to permit counties to provide additional early voting locations to address local circumstances. For instance, Darlington County has two major population centers: Darlington City and Hartsville City, each of which are home to significant numbers of Black voters. Darlington County may wish to provide one early voting location in each of these cities, but the rigid framework in H.4150 would prohibit this commonsense approach and require Darlington County to only offer one early voting location.<sup>12</sup>

Instead of a rigid framework, this bill should be amended to set a minimum number of early voting locations in each county and permit counties to exceed that number.<sup>13</sup> This bill should also be amended to require counties to

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<sup>6</sup> See Appendix 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> The land area in the State of Rhode Island is 1,034 square miles. See *State Area Measurements and Internal Point Coordinates*, U.S. Census Bureau, <https://bit.ly/3t6pSMY>.

<sup>11</sup> See Appendix 1.

<sup>12</sup> *Id.*

<sup>13</sup> Nearly all states that provide for early voting permit counties to add additional early voting locations beyond a statutory floor. See, e.g., N.M.S.A. §1-6-5(G) (requiring New Mexico

ensure that early voting locations are situated in locations that are accessible to all communities in light of access to transportation and other circumstances that impact the ability to participate politically.<sup>14</sup>

ii. *The exclusion of Sunday voting will be especially burdensome on Black voters because it prevents “Souls to the Polls.”*

H.4150 mandates early voting during weekdays as well as the final Saturday before the election but does not permit any voting on Sunday. This approach prohibits the “Souls to the Polls” movement, which is widely known across the country as a practice in which Black voters worship together on Sunday morning and then march or share rides to vote. As one recent article explained:<sup>15</sup>

“Souls to the Polls” is “a small group of churches working together to mobilize voters that would let their voices be heard in a community whose voices mattered.” Though this movement began officially in the 1990s, its spirit traces its roots to using Sundays as a refuge from the week during enslavement. Sunday offered some variety, as well as limited opportunities to exercise autonomy. This was especially true of Sunday worship, as faith and spirituality were central to sustaining life and building culture amid inhumane conditions.

Across the country, churches have provided Black congregants with critical transportation and logistical help through Souls to the Polls.<sup>16</sup> We are concerned that by barring Sunday voting, H.4150 would prevent South Carolina’s

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counties to provide a minimum of 12 locations for counties with more than 200,000 registered voters and a minimum of 4 locations in counties with less than 200,000 registered voters); N.Y. Elec. Law § 8-600 (requiring New York Counties to provide at least one early voting location for every 50,000 registered voters); *see also* Fla. Stat. § 101.657 (permitting Florida counties to add additional early voting locations); G.A. Code § 21-2-380 (permitting Georgia counties to add additional early voting locations); N.C.G.S.A. §163-227.2 (permitting North Carolina counties to add additional early voting locations).

<sup>14</sup> For instance, states such as Florida and New York explicitly require counties to place early voting locations at sites to ensure all voters have equitable access. *See* Fla. Stat. § 101.657 (early voting locations “must be geographically located so as to provide all voters in that area with an equal opportunity to cast a ballot”); N.Y. Elec. Law § 8-600 (“Polling places for early voting shall be located so that voters in the county have adequate and equitable access, taking into consideration population density, travel time to the polling place, proximity to other early voting poll sites, public transportation routes, commuter traffic patterns and such other factors the board of elections deems appropriate”).

<sup>15</sup> Rebecca Brenner Graham, *Attacking Sunday Voting is Part of Tradition of Controlling Black Americans*, Wash. Post (Mar. 4, 2021), <https://wapo.st/3uIYbtV>.

<sup>16</sup> Nick Corasaniti and Jim Rutenberg, *In Georgia, Republicans Take Aim at Role of Black Churches in Elections*, N.Y. Times (Mar. 6, 2021), <https://nyti.ms/3t9Kxjc>.

Black voters from benefitting from Souls to the Polls like other Black voters across the country.

*iii. Early voting hours will not provide sufficient options to Black voters.*

H.4150 mandates that all early voting occur between 8:30 A.M. and 5:00 P.M., prohibiting any early morning or evening voting. These limited hours are especially problematic for Black voters, who are likely to encounter more difficulty taking time off from work to vote.<sup>17</sup> Early morning and evening options are important for all voters, but are especially important for Black voters, many of whom will require this flexibility in light of work or other obligations during normal business hours.

**b. H.4150’s Drop Box Ban Denies South Carolina Voters a Secure and Convenient Option.**

H.4150 bans counties from offering voters the option to return their absentee ballots to drop boxes. Unlike many other states—which explicitly permit voters to deposit completed absentee ballots in secure drop boxes—South Carolina law does not directly address whether municipalities can offer drop boxes to voters.<sup>18</sup> 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>19</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. Drop boxes are also important for Black voters and other voters of color, who are less likely to have access to a vehicle, because it

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<sup>17</sup> South Carolina’s Black households have an average income of \$48,637, barely more than half the average income of South Carolina’s white households (\$82,984), making it more difficult for Black voters to take time off to work. See *A14009, Average Household Income by Race*, 2019 American Community Survey 5-Year Estimates, United States Census. See also *Operation PUSH v. Allain*, 674 F. Supp.1245, 1256 (N.D. Miss. 1987), *aff’d sub. nom. Operation PUSH v. Mabus*, 932 F.2d 400 (5th Cir. 1991) explaining that lower-income workers “are likely to be working for an hourly wage and are less likely to be able to take off from work” to vote at appointed times than workers in higher-paying, salaried jobs).

<sup>18</sup> The South Carolina Legislature has previously rejected proposals to explicitly allow election officials to use drop boxes. See Jeffrey Collins, *SC Senate Oks No-Excuse Absentee Voting; Rejects Drop Boxes*, Associated Press (Sept. 2, 2020), <https://bit.ly/3qR6b9T>.

<sup>19</sup> See *Ballot Drop Box*, Cybersecurity and Infrastructure Security Agency, <https://bit.ly/2OQGxoz>.

will allow them to return an absentee ballot to a drop box that may be closer than their polling place.<sup>20</sup>

**c. H.4150's Reduction of Absentee-Voting Eligibility Would Disproportionately Harm Black and Elderly Voters and Serves no Legitimate State Interest.**

H.4150 proposes to restrict access to absentee voting in two main ways. *First*, H.4150 raises the age of absentee ballot eligibility from 65 to 75. *Second*, H.4150 abolishes numerous categories of absentee-voting eligibility, including for those who are on vacation, experiencing a death in the family, or attending a sick or physically disabled person. These changes are deeply concerning and likely to result in racial disparities in access to absentee voting.

*i. Raising the Absentee Ballot Eligibility Age From 65 to 75 Would Be Especially Harmful to Black Voters.*

H.4150 terminates absentee-eligibility for voters between the ages of 65 and 75. This change would harm thousands of older voters—by one count, more than 10 percent of South Carolina's population is aged 65-74<sup>21</sup>—many of whom have relied on absentee in-person or absentee-by-mail voting for several election cycles and would likely be confused and burdened if H.4150's passage prevented them from doing so now. Further, raising age-based eligibility for absentee voting from 65 to 75 would be especially harmful to Black voters.

The average life expectancy of Black Americans is significantly shorter than the average life expectancy of white Americans.<sup>22</sup> These disparities stem from health inequities, disparities in access to medical care, and other continuing effects of racial discrimination<sup>23</sup>—and have been further exacerbated by the

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<sup>20</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%).

<sup>21</sup> *See How Old Is Your State?*, Seniorliving.com (Dec. 18, 2019), <https://www.seniorliving.org/how-old-your-state/>.

<sup>22</sup> Nazleen Bharmal et al., *State-Level Variations in Racial Disparities in Life Expectancy*, 47 Health Serv. Res. 544, Tbls. S1 & S2 (Feb. 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3393007/> (data tables are accessible through links at end of article).

<sup>23</sup> Alen Nelson, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*, 94 J. Nat'l Med. Assoc. 666 (Aug. 2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2594273/pdf/jnma00325-0024.pdf>; Howard K. Koh, Garth Graham & Sherry A. Glied, *Reducing Racial And Ethnic Disparities: The Action Plan From The Department Of Health And Human Services*, 30 Health Affairs (Oct. 2011), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2011.0673>; see also Max Roberts, Eric N. Reither & Sojung Li, *Contributors to the black-white life expectancy gap in Washington D.C.*, 10 Scientific Reports (2020), <https://www.nature.com/articles/s41598-020-70046-6.pdf>.

COVID-19 pandemic.<sup>24</sup> In South Carolina, the disparity is stark. Life expectancy for white South Carolinians is 77.6 years, but for Black South Carolinians is 74.5 years.<sup>25</sup> Thus, if implemented, H.4150 would raise the age of eligibility for absentee voting *beyond the life expectancy of Black South Carolinians*.<sup>26</sup>

*ii. Elimination of Many Absentee Ballot Eligibility Categories Will be Especially Harmful to Black Voters.*

H.4150 also eliminates many of the categories for absentee ballot eligibility. Although these changes will harm all voters, they will be especially harmful to Black voters, in at least three ways.

*First*, H.4150 eliminates the right of governmental employees, their spouses, and dependents to cast an absentee ballot. This restriction will likely result in racial disparities—approximately one in five Black adults work in government, compared to one in seven white adults.<sup>27</sup>

*Second*, H.4150 eliminates the right to cast absentee ballots for voters with work obligations. This restriction will also likely result in racial disparities, because Black voters are likely to encounter more difficulty taking time off from work to vote than white voters.<sup>28</sup>

*Third*, H.4150 eliminates the right of voters to cast absentee ballots if they are attending sick or physically disabled persons. This restriction will likely result in further racial disparities. There are severe and well-documented racial disparities in health care and disability status in South Carolina, and Black South Carolinians are more likely to have a disability and less likely to be covered by health insurance than white South Carolinians.<sup>29</sup> As a result, Black

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<sup>24</sup> Theresa Andrasfay & Noreen Goldman, *Reductions in 2020 US life expectancy due to COVID-19 and the disproportionate impact on the Black and Latino populations*, PNAS 2021 Vol. 118 No. 5 (Feb. 2, 2021), <https://www.pnas.org/content/118/5/e2014746118>.

<sup>25</sup> University of Wisconsin Population Health Institute, *County Health Rankings & Roadmaps: South Carolina 3* (2021), [https://www.countyhealthrankings.org/sites/default/files/media/document/CHR2021\\_SC.pdf](https://www.countyhealthrankings.org/sites/default/files/media/document/CHR2021_SC.pdf).

<sup>26</sup> The effects would be especially severe with respect to Black voters: Currently, 19.9% of white South Carolinians are over 65, and thus eligible to vote by absentee without an excuse under current law, compared to only 7.8% of Black South Carolinians. In comparison, 13.0% of white South Carolinians are over 75 and would be eligible to vote by absentee without an excuse under H.4150, compared to only 4.7% of Black South Carolinians. See *B01001A and B01001B, Sex by Age*, 2019 American Community Survey 5-Year Estimates, United States Census.

<sup>27</sup> See Deborah Bach, *Blacks Hit Hardest by Public-Sector Job Losses During Recession*, *Study Finds*, UW News (Aug. 24, 2015), <https://bit.ly/3uIptRm>.

<sup>28</sup> See *supra* note 17.

<sup>29</sup> See *supra* notes 22-23; see also *Thomas v. Andino*, No. 3:20-CV-01552-JMC, 2020 WL 2617329, at \*3 (D.S.C. May 25, 2020) (“Compared to whites, black Americans experience higher death rates, and higher prevalence rates of chronic conditions.”) (citation omitted); *B018101A and B018101B, Age by Disability Status*, and *C27001A and C27001B, Health*

voters are more likely to have caretaker responsibilities and may encounter more difficulty voting in person.

*iii. H.4150's Restrictions on Absentee Ballot Eligibility Serve No Legitimate State Interest.*

The November 2020 general election was conducted under the extraordinarily challenging circumstances of a global pandemic. Yet, in South Carolina, turnout still broke records.<sup>30</sup> South Carolina Election Commission Director Marci Andino recently testified that the 2020 general election “was probably the best, smoothest general election that [she] can remember,” despite being conducted “under the worst of circumstances.”<sup>31</sup>

Notably, the 2020 general election was also unique in that all registered voters in South Carolina were eligible to vote by absentee ballot, after legislative action, extensive litigation, and other advocacy.<sup>32</sup> This expansion of absentee-voting access proved invaluable for many. More than 1.3 million South Carolina voters cast their ballots through a form of absentee voting in the fall of 2020, doubling the state’s previous record and exceeding the number of votes cast in person on Election Day.<sup>33</sup> According to a spokesperson for the South Carolina Election Commission, “the fact that . . . so many voters voted before the election” using in-person absentee voting or absentee voting by mail “certainly aided” state and local officials in administering “a successful Election Day.”<sup>34</sup>

In light of this record of successful absentee-voting elections in South Carolina, there is no legitimate basis for imposing the extreme restrictions on absentee ballot eligibility contained in H.4150. Any purported justifications for H.4150’s changes to absentee voting are especially suspect because they are being considered immediately after South Carolina voters in general—and

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*Insurance Coverage Status by Age*, 2019 American Community Survey 5-Year Estimates, United States Census.

<sup>30</sup> Patrick Phillips, *Senators reviewing South Carolina elections praise 2020 vote*, WMBF News (March 26, 2020), <https://www.wmbfnews.com/2021/03/26/senators-reviewing-south-carolina-elections-praise-vote/> (“State election officials said the total voter turnout of 2.5 million was a new record, breaking the record of 2.1 million set in 2016.”).

<sup>31</sup> Jeffrey Collins, *Senators reviewing S Carolina elections praise 2020 vote*, AP News (March 25, 2021), <https://apnews.com/article/technology-senate-elections-general-elections-elections-coronavirus-pandemic-55dfafbf3aaa9c0496a8be1a80b28210>.

<sup>32</sup> See S.C. Election Comm’n, *New Absentee Ballot Rules for the 2020 General Election* <https://www.scvotes.gov/new-absentee-rules-2020-general-election>; see generally *Middleton v. Andino*, No. 3:20-cv-1730 (D.S.C.); No. 20-2022 (4th Cir.); No. 20A55 (Sup. Ct.).

<sup>33</sup> S.C. Election Comm’n, *Absentee Voting History (1998-2020)*, [https://www.scvotes.gov/sites/default/files/Absentee%20Voting%20History%20\(1998-2020\).pdf](https://www.scvotes.gov/sites/default/files/Absentee%20Voting%20History%20(1998-2020).pdf).

<sup>34</sup> Emily Wakeman, *SC Election Commission calls Election Day a success*, WIS News (Nov. 4, 2020), <https://www.wistv.com/2020/11/04/sc-election-commission-calls-election-day-success/>.

especially Black voters—cast absentee ballots in the fall 2020 general election at unprecedented levels.<sup>35</sup>

**d. The Combined Effects of H.4150’s Potentially Harmful Early Voting Framework and Curtailment of Absentee Voting Are Especially Harmful.**

The interacting effects of H.4150’s provisions are especially concerning. The bill not only fails to provide equal access to early voting, but also restricts absentee-voting eligibility in potentially harmful ways, limiting opportunities to participate in the political process for Black voters as compared to white voters, especially with respect to rural voters, senior voters, and voters with disabilities. Among the likely results of H.4150 are crowded polling places, outright disenfranchisement, and long lines and wait-times—particularly at voting locations that predominantly serve Black voters. These foreseeable and likely discriminatory impacts raise concerns under the Fourteenth and Fifteenth Amendments to the U.S. Constitution, Section 2 of the Voting Rights Act of 1965, and Title II of the Americans with Disabilities Act. *See* U.S. Const. amends. XIV, XV; 52 § U.S.C. 10301; 42 U.S.C. § 12131.<sup>36</sup> These same provisions also burden the right to vote without furthering any legitimate state interest, which raises additional concerns under the First and Fourteenth Amendments to the U.S. Constitution. *See Burdick v. Takushi*, 504 U.S. 428 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

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<sup>35</sup> *Supra* note 33; *see also, e.g.*, Matt More, *Absentee voting in South Carolina by the numbers*, WFF4 (Nov. 3, 2020), <https://www.wyff4.com/article/absentee-voting-in-south-carolina-by-the-numbers/34553012> (“Absentee turnout is higher for Black voters in South Carolina than the overall population.”).

<sup>36</sup> The Voting Rights Act was enacted to reach laws through which states would “resort to facially neutral tests that took advantage of differing social conditions. Property tests, literacy tests, residence requirements, the poll tax, and disqualification for conviction of certain crimes all fell into this category.” *Underwood v. Hunter*, 730 F.2d 614, 619 (11th Cir. 1984) (citation omitted). Uniform laws of general application, such as an undue limitation on the hours of registration or access to a means of voting, can have a discriminatory result in violation of Section 2 even when the same procedures apply to all persons. *See, e.g., League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 244-47 (4th Cir. 2014) (“LWVNC”) (Section 2 applied to the elimination and reduction of certain voting tools, including cutting a week of early voting, that applied to all voters). Section 2’s coverage thus “extends beyond formal or official bars to registering and voting” and applies not only to elections as a whole but, rather, to each and “any phase” of “the political processes leading to nomination and election[.]” S. Rep. No. 97-417, at 30 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 207. A violation of Section 2 is established whenever, based on the totality of circumstances, one or more phases in these “political processes . . . are not equally open to participation by members of [a racial, ethnic, or language minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.*; 52 U.S.C § 10301(b).

## II. H.3822 – Building on 2020’s Successes by Implementing Sensible, Safe Reforms that Facilitate Access to the Franchise.

According to a recent analysis by the Center for Election Innovation and Research, South Carolina is currently on pace to operate one of the nation’s least accessible election systems by 2022.<sup>37</sup> H.3822 would prevent this by implementing commonsense and nonpartisan reforms that would enable South Carolina voters to continue enjoying the flexible and secure options for pre-Election Day voting that made 2020 successful. Among other helpful reforms, the bill would provide all registered voters with the option to vote using an absentee ballot, either in-person or by mail. Crucially, it would provide an opportunity for qualified voters to correct simple errors that might otherwise prevent their ballots from being counted—and remove the needless requirement that ballots be signed by another person as a witness. H.3822 would also provide a secure process for qualified South Carolinians to register to vote and cast their ballots on the same day during the in-person absentee voting period. It would support the fair administration of existing law by ensuring that formerly incarcerated people know the procedures by which they may regain their voting rights. And it would correct a glaring oversight in the state’s existing voter ID law by enabling students at South Carolina’s colleges and universities to confirm their identities by showing the photographs on their student IDs.

These and other measures in H.3822 are consistent with best practices in election administration across the country.<sup>38</sup> Their enactment would meaningfully improve access to voting opportunities for eligible South Carolinians—particularly for Black voters and other voters of color, many of whom face greater burdens than white voters in accessing the franchise. In

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<sup>37</sup> Ctr. For Election Innovation & Research, *How Easy is it to Vote Early in Your State?* (Apr. 12, 2021), <https://electioninnovation.org/research/early-voting-availability-2022/>.

<sup>38</sup> For example, under H.3822, South Carolina would join 34 states that do not require a justification in order to cast an absentee or mail ballot. Nat’l Conf. of State Legislatures, *VOPP: Table 1: States with No-Excuse Absentee Voting* (May 1, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>. Similarly, South Carolina would join 15 states—including Florida and Georgia—that offer voters the opportunity to correct an error on a submitted absentee ballot. cure procedures. Nat’l Conf. of State Legislatures, *VOPP: Table 15: States That Permit Voters to Correct Signature Discrepancies* (Sept. 21, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-15-states-that-permit-voters-to-correct-signature-discrepancies.aspx>. South Carolina would also join the vast majority of states—including Florida, Georgia, and Texas—that do not impose a witness requirement on absentee ballots. Nat’l Conf. of State Legislatures, *VOPP: Table 14: How States Verify Voted Absentee Ballots* (Apr. 17, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>. Finally, the majority of states do not require a photo ID in order to vote, but of those that do, it is a best practice to permit student IDs to satisfy the requirement. *Id.* For example, states such as Alabama, Florida, Georgia, and North Carolina all permit voters to use student IDs. Nat’l Conf. of State Legislatures, *Voter Identification Requirements | Voter ID Laws* (Aug. 25, 2020), <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

2020, South Carolinians overwhelmingly demonstrated their understanding that the right to vote is of fundamental importance—and that our democracy depends on its exercise. This Subcommittee should not neglect this opportunity to ensure that the fundamental right to vote, “preservative of all rights,”<sup>39</sup> becomes more accessible—not less accessible—for South Carolina residents. Accordingly, the Subcommittee should support H.3822.

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For the foregoing reasons, we respectfully urge this Subcommittee to oppose H.4150 as written and support H.3822.

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.

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<sup>39</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

Appendix 1

County	Total registered <sup>1</sup>	White registered	Nonwhite registered	Percent nonwhite	H 4150 early voting locations	Voters per early voting location	Land area of county (sq mi) <sup>2</sup>	Land area per early voting location (sq mi)
Abbeville	16,572	11,811	4,761	28.7%	1	16,572	508	508
Aiken	122,061	88,859	33,202	27.2%	3	40,687	1,073	358
Allendale	5,735	1,256	4,479	78.1%	1	5,735	408	408
Anderson	130,796	107,842	22,954	17.5%	3	43,599	718	239
Bamberg	9,495	3,462	6,033	63.5%	1	9,495	393	393
Barnwell	14,189	7,581	6,608	46.6%	1	14,189	548	548
Beaufort	141,311	113,805	27,506	19.5%	3	47,104	587	196
Berkeley	148,708	102,547	46,161	31.0%	3	49,569	1,098	366
Calhoun	10,948	6,148	4,800	43.8%	1	10,948	380	380
Charleston	310,550	228,729	81,821	26.3%	6	51,758	919	153
Cherokee	35,397	26,839	8,558	24.2%	1	35,397	393	393
Chester	21,822	13,117	8,705	39.9%	1	21,822	581	581
Chesterfield	27,500	17,264	10,236	37.2%	1	27,500	799	799
Clarendon	23,680	12,297	11,383	48.1%	1	23,680	607	607
Colleton	26,636	16,022	10,614	39.8%	1	26,636	1,056	1,056
Darlington	44,737	25,087	19,650	43.9%	1	44,737	561	561
Dillon	19,398	9,277	10,121	52.2%	1	19,398	405	405
Dorchester	113,536	79,287	34,249	30.2%	3	37,845	575	192
Edgefield	18,330	11,979	6,351	34.6%	1	18,330	502	502
Fairfield	16,097	6,958	9,139	56.8%	1	16,097	687	687
Florence	93,317	50,450	42,867	45.9%	2	46,659	800	400
Georgetown	47,976	34,105	13,871	28.9%	1	47,976	815	815
Greenville	351,061	268,650	82,411	23.5%	6	58,510	790	132
Greenwood	42,792	28,788	14,004	32.7%	1	42,792	456	456
Hampton	12,985	5,612	7,373	56.8%	1	12,985	560	560
Horry	259,511	223,743	35,768	13.8%	6	43,252	1,134	189
Jasper	22,189	13,061	9,128	41.1%	1	22,189	656	656
Kershaw	44,262	31,725	12,537	28.3%	1	44,262	726	726
Lancaster	68,524	52,087	16,437	24.0%	2	34,262	549	275
Laurens	42,188	30,482	11,706	27.7%	1	42,188	715	715
Lee	11,773	4,293	7,480	63.5%	1	11,773	410	410
Lexington	201,751	162,089	39,662	19.7%	5	40,350	699	140
Marion	21,615	8,510	13,105	60.6%	1	21,615	489	489
Marlboro	18,209	7,785	10,424	57.2%	1	18,209	480	480
McCormick	7,697	4,872	2,825	36.7%	1	7,697	360	360
Newberry	24,667	16,869	7,798	31.6%	1	24,667	631	631
Oconee	55,838	50,390	5,448	9.8%	2	27,919	625	313
Orangeburg	58,312	19,988	38,324	65.7%	2	29,156	1,106	553
Pickens	77,576	69,990	7,586	9.8%	2	38,788	497	249
Richland	279,804	127,413	152,391	54.5%	6	46,634	756	126
Saluda	12,068	8,593	3,475	28.8%	1	12,068	452	452
Spartanburg	206,740	152,724	54,016	26.1%	5	41,348	811	162
Sumter	72,920	33,901	39,019	53.5%	2	36,460	665	333
Union	17,366	11,483	5,883	33.9%	1	17,366	514	514
Williamsburg	21,842	6,936	14,906	68.2%	1	21,842	934	934
York	199,205	150,261	48,944	24.6%	4	49,801	682	171

<b>Average number of voters per early voting location</b>	30,475
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<b>Average land area per early voting location</b>	
23 counties with highest % nonwhite voters	532 sq mi
23 counties with lowest % nonwhite voters	363 sq mi

<sup>1</sup> *South Carolina Voter Registration Demographics, Statewide Demographics by Race*, South Carolina Election Commission, <https://bit.ly/324tDqw>.

<sup>2</sup> *County Information*, South Carolina Association of Counties, <https://bit.ly/3d6l9p1>.