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Submitted via email to the Senate State Affairs Committee

March 22, 2021

Senate State Affairs Committee
Texas Senate
Sam Houston Building, Rm. 380
201 E. 14th St.
Austin, TX 78701

RE: LDF Opposition to Senate Bill 7

Dear Chair Hughes, Vice Chair Birdwell and Members of the State Affairs Committee,

The NAACP Legal Defense and Educational Fund (“LDF”) writes to express our strong opposition to Senate Bill 7 (“S.B. 7”)¹. This bill proposes to eliminate straight ticket voting, voting mega centers, and drive thru voting, roll back early voting access, prohibit the distribution of early voting ballot applications, and curtail curbside voting. S.B. 7 simultaneously paves the way for pre-1965 voter intimidation by empowering “watchers” to roam freely around polling stations, checking voters’ ballots and recording them on video. Although characterized by its proponents as a means to “standardize” election administration, in practice, S.B. 7 a) severely limits how the state’s 254 counties are able to respond to their different communities’ interests and needs by eliminating flexible early voting hours, structures and distribution methods, while b) imposing burdens and barriers to the ability of Black and Latino Texans in particular to participate in the political process. This misguided standardization rationale should not disguise the bill’s real purpose: to intimidate, discourage, and minimize the political power of millions of Texas, disproportionately people of color, students, those living in rural communities and individuals with disabilities.

The individual and cumulative effects of S.B. 7 are not a matter of speculation; the elimination of straight ticket voting alone, after nearly a century of the practice because of Texas’s unusually lengthy ballots, on Black and Latino Texans was made clear to the State last year in litigation in federal court.² These provisions, combined

¹ S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021).

² *Texas Alliance for Retired Ams. v. Hughes*, No. 5:20-CV-128, 2020 WL 5747088 (S.D. Tex. Sept. 25, 2020) (granting preliminary injunction prohibiting enforcement of House Bill 25 which eliminated straight-ticket voting); stayed on *Purcell* grounds by *Texas Alliance for Retired Ams. v. Hughes*, 976 F.3d 364 (5th Cir. 2020).



with provisions ensuring that voting will take longer,³ operate to discourage and frustrate in person voting. S.B. 7 also takes aim at the state's 254 county registrars, pitting every county registrar against the voters in their district by requiring registrars, through threat of a criminal prosecution, weighty monetary fine or loss of employment, to remove voters in their district from the voter rolls on flimsy evidence.⁴

The harmful provisions of S.B. 7 will affect voters in every corner of Texas, even those who reside in the districts of members of this committee. As detailed below, S.B. 7 may also violate various provisions of the Voting Right Act of 1965, the Americans with Disabilities Act of 1990, the Ku Klux Klan Act of 1871 and the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution.

I. S.B. 7's Provisions Drastically Limit Early Voting Hours and the Ability of Low-Income Voters to Obtain an Early Voting Application, Eliminate Voting Mega Centers and Drive Thru Voting, and will Disproportionately Harm Black and Latino Voters.

Among S.B.7's most concerning provisions are those that will: (1) reduce early voting hours; (2) cut the number of voting machines available at polling locations, irrespective of the size of and number of voters that the polling location serves; (3) eliminate most drive thru voting; and (4) severely limit the distribution of applications for an early voting ballot. These provisions of S.B. 7 target methods and tools for voting used by Black and Latino voters, particularly those used in the 2020 election in which these voters participated in record numbers.⁵ S.B. 7's provisions

³ *Texas Alliance for Retired Ams.*, 2020 WL 5747088 at *17 ("Texans already wait a long time to exercise their right to vote (Dkt. No. 6-3 at 8, 11, 13–14). Increasing wait times at the polls further could cause more Texans to leave polling place lines before they have exercised their fundamental right to vote (id.). Forcing Texas voters to stand in longer lines and increasing their exposure to a deadly virus burdens the right to vote."); *see also* S.B. 7, 87th Leg. Reg. Sess. (Tex. 2021) (Section 3.05, amending Tex. Election Code § 43.007 such that "Each countywide polling place in a county must have approximately the same number of voting machines as each other countywide polling place in the county.").

⁴ S.B. 7, § 1.05 (amending Tex. Election Code § 18.065 such that "(f) A registrar is liable to this state for a civil penalty of \$100 for each violation corrected by the secretary of state under Subsection (e). The attorney general may bring an action to recover a civil penalty imposed under this section."); S.B. 7, § 4.01 (amending Tex. Election Code §§ 31.126, 31.127 such that "(b) An election official may be liable to this state for a civil penalty if the official: (1) is employed by or is an officer of this state or a political subdivision of this state; and (2) violates a provision of this code. (c) A civil penalty imposed under this section may include termination of the person's employment and loss of the person's employment benefits.").

⁵ *See, e.g.*, Matt Goodman, *Election Day Arrives on the Heels of Historic Early Voting Turnout in North Texas*, DMagazine (Nov. 2, 2020, 11:22 AM), <https://www.dmagazine.com/frontburner/2020/11/election-day-2020-dallas-county-north-texas/>; John Engel, *Travis County Finalizing Plan for Five Mega Voting Centers*, KXAN (Aug. 31, 2020, 9:59PM), <https://www.kxan.com/news/your-local-election-hq/travis-county-finalizing-plan-for-five-mega-voting-centers/>; Garrett Brnger & Misael Gomez, *Mega Voting Centers a Go For November Election, County Commissioners Looking at More Voting Options*, KSAT (Aug. 14, 2020, 8:13PM),

also ensure long wait times at the polls, which a federal court in Texas found would likely disproportionately affect Black and Latino voters and discourage their participation in elections.⁶ S.B. 7’s discriminatory and burdensome effects on Black and Latino voters are well-documented and foreseeable.

A. Severe Cuts to Early Voting Hours

In the 2020 presidential election, the Texas Secretary of State’s office estimated that 9,693,079 Texans cast their ballots during the state’s early voting period.⁷ Because Black and Latino voters may be more likely to experience poverty, have inflexible job schedules, lack adequate childcare and transportation, shorter lines at the polls and more opportunities to vote outside of normal business hours or on Election Day disproportionately benefit these voters. Likewise, Black and Latino voters are more likely to reside in urban centers.⁸ As a result, laws and policies aimed at minimizing the political influence of urban jurisdictions disproportionately harm the political influence of Black and Latino voters.⁹

Texas offers early voting by personal appearance and by mail. Early voting by personal appearance is available to any qualified voter.¹⁰ Texas law currently requires most main early voting polling places to remain open “for at least 12 hours on each weekday of the last week of the early voting period.”¹¹ In smaller counties, Texas law currently allows county election officials to determine which hours early voting is to be conducted.¹²

S.B. 7 ends the discretion many urban counties, with higher Black and Latino populations, used to expand early voting by personal appearance by prohibiting any polling place from offering more than 12 hours of early voting, but also prohibiting those 12 hours of early voting from occurring at a time other than between 7:00 AM and 7:00 PM.¹³ Thus, S.B. 7 changes the current minimum required early voting

<https://www.ksat.com/news/local/2020/08/15/mega-voting-centers-a-go-for-november-election-county-commissioners-looking-at-more-voting-options/>.

⁶ *Texas Alliance for Retired Ams. v. Hughes*, No. 5:20-CV-128, 2020 WL 5747088 (S.D. Tex. Sept. 25, 2020).

⁷ Jakob Rodriguez, *Here’s How Texans Voted in the 2020 Election by Age, Race and More, According to AP’s VoteCast*, KSAT (Nov. 3, 2020, 10:17 PM), <https://www.ksat.com/news/local/2020/11/04/heres-how-texans-voted-in-the-2020-election-by-age-race-and-more-according-to-aps-votecast/>.

⁸ William H. Frey, *The Millennial Generation: A Demographic Bridge to America’s Diverse Future*, Brookings Inst., https://www.brookings.edu/wp-content/uploads/2018/01/2018-jan_brookings-metro_millennials-a-demographic-bridge-to-americas-diverse-future.pdf; Ruth Igielnik & Abby Budiman, Pew Charitable Trusts, *The Changing Racial and Ethnic Composition of the U.S. Electorate*, <https://www.pewresearch.org/2020/09/23/the-changing-racial-and-ethnic-composition-of-the-u-s-electorate/> (last visited Mar. 20, 2021).

⁹ *Id.*

¹⁰ Tex. Election Code § 82.005.

¹¹ Tex. Election Code § 85.005.

¹² § 85.005(b).

¹³ S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021) (Section 3.13 amending Tex. Election Code § 85.005 such that “voting may not be conducted earlier than 7 a.m. or later than 7 p.m.”; Section 3.14 amending

hours into the new absolute maximum and ensures counties do not provide voters with sufficient opportunities to vote after work. Limiting the hours of early voting and prohibiting early voting from occurring outside of peak work hours will disproportionately affect the ability of Black and Latino voters to vote in person, particularly those voters whose working hours are not flexible, who do not have access to childcare or transportation, and who otherwise may be more likely to experience poverty.

B. Elimination of Voting Mega Centers

S.B. 7 takes aim at the voting mega centers that many large jurisdictions in Texas have used in recent election cycles, including in the 2020 election to respond to a pandemic which has not yet abated, to ensure voting was safe, efficient and readily available in densely populated urban jurisdictions.¹⁴ The areas in Texas where mega centers have been relied upon likewise have significantly higher Black and Latino populations.

Section 3.05 of S.B. 7 eliminates the possibility of such mega centers by requiring that “[e]ach countywide polling place in a county must have approximately the same number of voting machines as each other countywide polling place in the county.”¹⁵ This eliminates the creation of voting mega centers because these centers necessarily had more voting machines than other polling locations in the county. This provision of S.B. 7 takes direct aim at a method of voting that Black and Latino voters disproportionately used in 2020.¹⁶ Urban centers in Texas are some of the fastest growing locations in the United States – Dallas and Houston are now the fourth and fifth most populous cities in the nation.¹⁷ In 2020, voting mega centers were made available in cities like Dallas, Houston, San Antonio and Austin with high Black and Latino populations. For example, four mega centers were available in each of Travis County and Bexar County to ensure more parking, voting machines and staff to help ensure that the lines moved faster.¹⁸

Tex. Election Code § 85.006 (c) and (e) such that voting on Saturday or Sunday “may not be conducted earlier than 7 a.m. or later than 7 p.m.”).

¹⁴ S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021) (Section 3.05 amending Tex. Election Code § 43.007 “Each countywide polling place in a county must have approximately the same number of voting machines as each other countywide polling place in the county.”)

¹⁵ S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021) (Section 3.05 amending Tex. Election Code § 43.007).

¹⁶ Lauren Drewes Daniels, *In Dallas County’s First Five Days of Early Voting, Mail-In Ballot Up 60%*, Dallas Observer (Oct. 19, 2020, 4:00 AM), <https://www.dallasobserver.com/news/dallas-county-early-voting-mail-in-ballot-count-up-60-11956340>.

¹⁷ Kristie Wilder, *Dallas and Houston Are Now Fourth and Fifth Most Populous in the Nation*, U.S. Census Bureau (Apr. 18, 2019), <https://www.census.gov/library/stories/2019/04/two-texas-metropolitan-areas-gain-one-million-people.html>.

¹⁸ *Here’s Where You Can Vote Early in Austin and Central Texas*, Statesmen News Network (Feb. 17, 2020, 4:14 PM), <https://www.statesman.com/news/20200217/herersquos-where-you-can-vote-early-in-austin-and-central-texas>; RJ Marquez, *How AT&T Center Will Transform to Become Mega Voting Site in Bexar County*, KSAT (Sept. 11, 2020, 12:21 PM),

Eliminating voting mega centers and the attendant machines available at them will also ensure longer lines at the polls. The voting mega centers which S.B. 7 eliminates were located in urban centers with significantly higher Black and brown populations than the areas surrounding them. Long lines at the polls, in turn, have been shown to discourage Black and Latino voters, who are more likely to have inflexible job schedules, lack childcare and transportation, and who are otherwise more likely to live in poverty, from casting a ballot. Not only will the elimination of such voting mega centers harm the many voters who were able to vote efficiently and effectively in person in 2020 as a result of their availability, it will disproportionately harm the rapidly growing urban centers in the state which have significantly higher Black and Latino populations.

C. Elimination of Drive Thru Voting

S.B. 7 prohibits drive thru voting, notably used in the 2020 presidential election by over 120,000 voters in Harris County, by barring voting from taking place “in a tent or other temporary movable structure or a parking garage, parking lot, or similar facility designed primarily for motor vehicles.”¹⁹ Drive thru voting is used in urban centers in Texas, which are home to disproportionately more Black and Latino Texans, and has provided critical voting access to elderly voters and voters with disabilities. Texas law has also long permitted the practice of placing polling places in parking garages throughout the state, a practice S.B. 7 would end without explanation.

Texas law currently allows for the creation of temporary branch polling places during early voting and for county election officials to use “movable structure[s]” as polling places.²⁰ These provisions of Texas law allowed Harris County to develop a plan, with input from both major political parties, to use tents as polling places, giving voters the option of driving up into these movable structures and safely casting a ballot.²¹

S.B. 7’s prohibition on drive thru voting comes on the heels of the Texas Republican Party’s attempt to have some 127,000 ballots invalidated that were voted at a drive-thru polling location, and the Fifth Circuit and Texas Supreme Court separately and categorically denying the requests.²² Methods of voting like drive thru voting that make voting by personal appearance easier, safer, and more accessible disproportionately benefit elderly, disabled, and Black and Latino voters, who are less able to wait in long lines to vote, including for reasons described above. S.B. 7’s total elimination of this method of voting, despite its widespread popularity and both

<https://www.ksat.com/news/local/2020/09/08/how-att-center-will-transform-to-become-mega-voting-site-in-bexar-county/>.

¹⁹ S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021) (Section 3.06 amending Tex. Election Code § 43.031(b); Section 3.16 amending Tex. Election Code § 85.061; Section 3.17 amending Tex. Election Code § 85.062).

²⁰ Tex. Election Code § 85.062.

²¹ See *Hotze v. Hollins*, No. 4:20-cv-03709, 2020 WL 6437668 (S.D. Tex. Nov. 2, 2020).

²² *Id.*; *In re Hotze*, 610 S.W.3d 909 (Tex. 2020) (denying mandamus and emergency stay requested by Harris County Republican Party).

a federal court and the Texas Supreme Court rejecting any invalidation of ballots voted in this manner, will disproportionately harm the state’s Black and Latino voters, and may reveal a discriminatory purpose in violation of the U.S. Constitution.

D. Elimination of Distribution of Early Voting Ballot Applications

S.B. 7 also takes aim at Texas voters’ access to early voting applications by preventing any election official from “distribut[ing] an application form for an early voting ballot to a person who did not request an application”²³ or from using “public funds to facilitate the distribution by another person of an application form for an early voting ballot to a person who did not request an application.”²⁴ S.B. 7 goes on to prevent the early voting clerk from making any “attempt to solicit a person to complete an application for an early voting ballot by mail, whether directly or through a third party.”²⁵

Texas law previously allowed election officials to send applications to every registered voter within their jurisdiction. During the COVID-19 pandemic in particular, election officials used this ability to ensure low-income voters, who are disproportionately Black and Latino, had easy access to an application form, which they might otherwise be unaware of or unable to download and print. This practice also ensured that fewer people were required to vote in person on Election Day, which served to mitigate long lines at the polls and the corresponding spread of the coronavirus. S.B. 7 eliminates this possibility entirely, without any apparent justification. More broadly, these provisions of S.B. 7 could hinder third-party voter registration efforts, like registration conducted by church groups, sororities like Delta Sigma Theta, or the League of Women Voters in concert with county election officials, which disproportionately serve as a means of enfranchisement to low income, and Black and Latino voters.

S.B. 7’s provisions exponentially increase the time associated with in-person voting and will burden the right to vote of the nearly 9,693,079 Texans who chose to vote early in the 2020 presidential election. It is no accident that these provisions will disproportionately curtail the participation of Black and Latino voters who availed themselves of the specific opportunities to vote that S.B. 7 all but eliminates – early voting, drive thru voting, voting in mega centers, and early voting as a result of an application sent by a local election official or third-party. The intent and predictable result of S.B. 7 likely violates Section 2 of the Voting Rights Act as well as the First and Fourteenth Amendments to the U.S. Constitution.

²³ S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021) (Section 2.03 amending Tex. Election Code § 84.0111(a))

²⁴ *Id.* (Section 2.03 amending Tex. Election Code § 84.0111(b)).

²⁵ S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021) (Section 2.01 amending Tex. Election Code § 84.011).

II. S.B. 7's Provisions Eliminating Straight-Ticket Voting Will Disproportionately Harm Black and Latino Voters.

S.B. 7 attempts to eliminate straight-ticket voting once and for all by setting out that “voting system ballots may not be arranged in a manner that allows a political party’s candidates to be selected in one motion or gesture.”²⁶

Straight ticket voting can be a critical tool for voters across Texas to effectively engage in the political process. A century’s old practice in the state, Texans have relied on the ability to cast their votes for all candidates of their preferred party with a single click of a single box at the top of their ballot because in Texas, ballots often include as many as 95 races in a single county.²⁷ In a partisan line vote, H.B. 25 in 2017 eliminated the 100-year-old practice, but promptly faced court scrutiny, and was enjoined by a federal district in 2020. Although the Fifth Circuit stayed the lower court’s injunction, the Court’s reasoning was that the injunction was entered too close to an upcoming election.²⁸ But the Plaintiffs in that case demonstrated powerful evidence that the provision would have a discriminatory effect on Black and Latino voters and that **H.B. 25 was enacted with discriminatory intent.**²⁹

Texas State Senator Judith Zaffirini herself has explained that:

“[L]ong waits at polling places already are huge problems in some parts of Texas, especially in urban areas where many voters line-up to vote for many races on the ballot. On the first day of early voting for the November 2016 election, for example, long waits—sometimes hours—were reported in Bexar, Harris, Nueces, and Denton counties. Lines and ballot fatigue can exhaust voters’ patience, and eliminating the straight-party option would only make things worse and cause many either to skip down-ballot races altogether or not go to the polls at all. The effect would be to suppress voting and voter turnout.”³⁰

²⁶ S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021) (Section 3.19 amending Tex. Election Code § 124.002).

²⁷ *Texas Alliance for Retired Ams*, 2020 WL 5747088 at *1 (“Texans’ reliance on [straight ticket voting] likely stems from Texas’ exceptionally lengthy ballots, which sometimes list as many as 95 races in a single county”).

²⁸ 976 F.3d at 566-67; *see also Texas Alliance for Retired Ams. v. Hughs*, No. 5:20-cv-128, 2020 WL 6601593 (S.D. Tex. Oct. 26, 2020) (granting Plaintiffs’ request for clarification “that the preliminary injunction entered on September 25, 2020 applies only to in-person voting during the November 2020 general election.”)

²⁹ 2020 WL 6601593 at *15 (“Plaintiffs’ complaint clearly alleges specific facts relevant to the *Arlington Heights* and *Gingles* factors (Dkt. No. 1-4 at 16-101). Traditionally, bills that make changes to Texas electoral law are heard before the Senate State Affairs committee (Dkt. No. 1 at 15). Here, the legislator presented this bill to the Senate Business & Commerce Committee (id. at 15–16). Additionally, the author of HB 25, contrary to customary practice, did not take a position on proposed amendments (id.). Plaintiffs’ complaint also shows that despite requests and concerns from legislators and members of the community about the potential effects HB 25 could have on minority voters, proponents of HB 25 did not engage with those concerns.”)

³⁰ Tex. S.J., 8th Leg., Reg. Sess., Sen. Zaffirini (May 18, 2017).

Straight ticket voting has been such a critical tool for voters in Texas that, in the 2018 general election, some two-thirds of voters—*over 5.6 million Texans*—used straight ticket voting when they cast their ballots.³¹ The final elimination of straight ticket voting as an option will ensure longer lines at the polls in all future elections, making it more difficult for Black and Latino voters who are more likely to “(1) live in poverty, (2) have less flexible job schedules, (3) lack access to transportation, and (4) lack access to child care assistance” to cast a ballot in person.³² Coupled with S.B. 7’s rollbacks of the hours, machines and structures available for early voting, this bill ensures that voting will take significantly more time and consequently, will be less available to Black and Latino voters.

III. S.B. 7’s Provisions Empowering Partisan “Watchers” to Record and Roam Freely Around Polling Locations Will Result in Voter Intimidation.

Election administration should not be partisan, yet S.B. 7 deputizes political operatives with cameras, empowering them to freely harass and intimidate voters.

Although Texas law places limitations on who can serve as a poll watcher – requiring that poll watchers be appointed by either a candidate for office, a political party, or a proponent or opponent of a ballot measure³³ – S.B. 7 deputizes and empowers these political operatives to roam freely³⁴ and record voters in polling locations,³⁵ which gives them the ability, if not the right, to engage in voter intimidation. S.B. 7 specifically eliminates Texas’ previous restrictions on watchers recording voters in polling locations, providing opportunities for watchers to target and harass voters using their images from the polling locations.

Texas law already allows partisan watchers to observe when an election worker provides assistance to a voter at the polls and gives watchers the ability to examine

³¹ 2020 WL 6601593 at *10.

³² 2020 WL 6601593 at *12 (“African-American and Hispanic voters in Texas are ‘more likely to, among other things (1) live in poverty, (2) have less flexible job schedules, (3) lack access to transportation, and (4) lack access to child care assistance’. Even on election day, this class of voters faces important constraints on their time. Consequently, long wait times at the polls, Plaintiffs argue, will cause these voters to leave polling-place lines more quickly or forgo their fundamental right to vote altogether.”) (internal citations omitted).

³³ Tex. Election Code § 33.001 (“In this code, “watcher” means a person appointed under this subchapter to observe the conduct of an election on behalf of a candidate, a political party, or the proponents or opponents of a measure.”)

³⁴ S.B. 7, § 3.03 (amending Tex. Election Code § 33.056 such that “(a) Except as provided by Section 33.057, a watcher is entitled to observe any activity conducted at the location at which the watcher is serving. A watcher is entitled to sit or stand [~~conveniently~~] near enough to see and hear the election officers conducting the observed activity, except as otherwise prohibited by this chapter. (e) Except as provided by Section 33.057(b), a watcher may not be denied free movement within the location at which the watcher is serving.”).

³⁵ S.B. 7, § 3.01 (amending Tex. Election Code § 33.006(b) such to eliminate the following provision: “~~(b)(6) contain an affidavit executed by the appointee stating that the appointee will not have possession of a device capable of recording images or sound or that the appointee will disable or deactivate the device while serving as a watcher~~”).

the ballots of voters who have received assistance from election workers.³⁶ But currently, watchers are not allowed to record voters and are not allowed to intrude upon the area where a voter is preparing his or her ballot.³⁷ S.B. 7 does away with these limitations entirely. Indeed, S.B. 7 would make it a Class A misdemeanor for any election worker to “distance or obstruct the view of a watcher in a way that makes observation reasonably ineffective” or to “knowingly refuse[] to accept a watcher for service.”³⁸ These provisions of S.B. 7 create the opportunity for widespread challenges of lawful voters and will particularly intimidate Black and Latino voters who are more likely to be the subject of such challenges.³⁹

S.B. 7 positions Texas’ partisan “watchers” to engage in precisely the type of intimidating conduct that led to a decades long court order.⁴⁰ Until 2018, the Republican National Committee (“RNC”) was bound by a federal consent decree that barred it from engaging in poll monitoring without court approval. This consent decree resulted from the RNC’s use of election monitoring provisions to challenge and intimidate Black and Latino voters lawfully casting their ballots in New Jersey. And it is precisely this type of threatening conduct that S.B. 7 empowers by deputizing partisan poll watchers to roam around polling locations, never to be impeded, with the ability to record voters and harass them using these recordings even after they leave the polling location.

Black and Latino Texans in 2020 faced a significant increase in instances of harassment and intimidation, including by armed groups, surrounding the presidential election,⁴¹ and S.B. 7 would legalize some of this behavior. S.B. 7 opens

³⁶ Tex. Election Code § 33.057 (“(a) A watcher is entitled to be present at the voting station when a voter is being assisted by an election officer, and the watcher is entitled to examine the ballot before it is deposited in the ballot box to determine whether it is prepared in accordance with the voter’s wishes. (b) A watcher may not be present at the voting station when a voter is preparing the voter’s ballot or is being assisted by a person of the voter’s choice.”).

³⁷ *Id.*

³⁸ S.B. 7, § 3.04 (amending Tex. Election Code § 33.061 to add “An offense under Subsection (a) includes an action taken to distance or obstruct the view of a watcher in a way that makes observation reasonably ineffective.”) *See* Tex. Election Code § 33.061 (“(a) A person commits an offense if the person serves in an official capacity at a location at which the presence of watchers is authorized and knowingly prevents a watcher from observing an activity the watcher is entitled to observe. (b) An offense under this section is a Class A misdemeanor.”).

³⁹ Nicolas Riley, *Voter Challenges*, Brennan Ctr. for Justice (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf.

⁴⁰ *Democratic Nat’l Comm. et al., v. Republican Nat’l Comm. et al.*, No. 2:81-cv-03876-DRD-SDW, ECF No. 43-5, <https://www.brennancenter.org/sites/default/files/2020-07/1982%20consent%20decree.pdf> (requiring, among other things, the Republican National Committee to “(d) refrain from giving any directions to or permitting their employees to campaign within restricted polling areas or to interrogate prospective voters as to their qualifications to vote prior to their entry to a polling place; (e) refrain from undertaking any ballot security activities in polling places or election districts where racial or ethnic composition of such districts is a factor in the decision of conduct, or the actual conduct of, such activities there and where a purpose or significant effect of such activities is to deter qualified voters from voting.”)

⁴¹ *See, e.g.,* Kevin Krause & Charles Scudder, *Far-right Extremists Pose Rising Threat in North Texas around Election*, FBI’s Dallas Office Says, *The Dallas Morning News* (Oct. 1, 2020, 8:16 PM),

the flood gates, and may indeed incite, partisan poll watchers to engage in conduct that violates the Voting Rights Act of 1965 and the Ku Klux Klan Act of 1871.

IV. Potential Violations of Federal Law.

S.B. 7's harmful provisions curtailing early voting hours, structures, and ballot application distribution, as well as the bill's prohibition on straight ticket voting, will have a known, predictable and disproportionate impact on Black and Latino voters, as well as voters with disabilities, that cannot be justified by any legitimate state interest. This result should not be countenanced for any reason, but it is particularly not justified by the aim of "standardization," when such an aim is not practicable or necessary, nor at all reasonable given the extreme costs to Texas voters, particularly voters of color. Nor have any of the opportunities for nor methods of voting that S.B. 7 seeks to eliminate been cause for election integrity or security concerns, even despite court challenges raising the specters of these issues.

This suggests that provisions of S.B. 7 may violate the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, the Americans with Disabilities Act of 1990 and the Voting Rights Act of 1965.⁴² S.B.7's provisions relating to "watchers" may also violate the Ku Klux Klan Act of 1871⁴³ and the Voting Rights Act's

<https://www.dallasnews.com/news/crime/2020/10/01/far-right-extremists-pose-rising-threat-in-north-texas-around-election-fbis-dallas-office-says/>; Angela Kocherga, *Racism, Hate Crimes Weigh On Latino Voters' Minds In El Paso*, Texas Standard (Oct. 22, 2020, 10:05 AM), <https://www.texasstandard.org/stories/racism-hate-crimes-weigh-on-latino-voters-minds-in-el-paso/>; *Coalition Urges US to Protect Voters from White Supremacist Threats*, Human Rights Watch (Oct. 7, 2020, 6:00PM), <https://www.hrw.org/news/2020/10/07/coalition-urges-us-protect-voters-white-supremacist-threats#>.

⁴² *Burdick v. Takushi*, 504 U.S. 428 (1992) (under the *Anderson-Burdick* standard, a court will weigh 'the character and magnitude of the asserted injury' ... against 'the precise interests put forward by the State as justifications for the burden imposed by its rule.' The rigorousness of the Court's inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights); *Anderson v. Celebrezze*, 460 U.S. 780 (1983); U.S. Const. amend XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."); U.S. Const. amend XV, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."); 52 § U.S.C. 10301 ("No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color").

⁴³ 42 U.S.C. § 1985 ("If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in

prohibition on any person, whether or not acting under color of law, “intimidate[ing], threaten[ing], or coerc[ing], or attempt[ing] to intimidate, threaten, or coerce any person for voting or attempting to vote”.⁴⁴

For the reasons described above, LDF respectfully urges you to vote “no” to S.B. 7. Please feel free to contact Kathryn Sadasivan by email at ksadasivan@naacpldf.org with any questions or to discuss these concerns in more detail.

Sincerely,

/s/ Kathryn C. Sadasivan

Kathryn C. Sadasivan, Redistricting Counsel

Catherine Meza, Senior Counsel

Lisa Cylar Barrett, Director of Policy

Leah Aden, Deputy Director of Litigation

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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.

favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States”).

⁴⁴ 52 U.S.C. § 10307 (b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 10302(a), 10305, 10306, or 10308(e) of this title or section 1973d or 1973g of Title 42.1”).