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*Submitted via email to the House Elections Committee*

March 25, 2021

House Elections Committee  
Texas House of Representatives  
Texas Capitol Extension Bldg.  
1100 Congress Ave, EXT E2.144  
Austin, TX 78701

**RE: LDF Opposition to House Bill 6**

Dear Chair Cain, Vice Chair Gonzalez, and Members of the House Elections Committee,

The NAACP Legal Defense and Educational Fund (“LDF”) writes to express our strong opposition to House Bill 6 (“H.B. 6”)<sup>1</sup>. This bill appears to transfer authority for the safety and integrity of elections to partisan poll watchers, including by preventing an election judge from removing a watcher from a polling place for any reason other than for an offense related to election fraud, which could encourage voter intimidation.<sup>2</sup> H.B. 6 also repeatedly uses the phrase “purity of the ballot box” to justify its aim of emboldening partisan watchers.<sup>3</sup> Comparable language regarding the “purity of the ballot box” that is found in the Texas Constitution has deep ties to calls by white legislators’ in the state to ensure the “purity of the Anglo-Saxon race” by, among other tactics, disenfranchising Black Texans.<sup>4</sup> The discretion H.B. 6 affords partisan operatives, particularly in a state with a long and well documented history of official and unofficial discrimination against Black and Latino voters under

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<sup>1</sup> H.B. 6, 87th Leg., Reg. Sess. (Tex. 2021).

<sup>2</sup> H.B. 6 § 3.03 (amending Tex. Election Code § 33.0015 such that “The purpose of this chapter is to preserve the purity of the ballot box in accordance with Section 4, Article VI, Texas Constitution, by providing for the appointment of watchers to observe the conduct of an election and call to the attention of an election officer potential irregularities or violations of law in the conduct of the election.”); H.B. 6 § 3.01 (amending Tex. Election Code § 32.075 to add that “A presiding judge may not: (1) have a watcher appointed under Subchapter A, Chapter 33, removed from the polling place; or (2) require a watcher appointed under Subchapter A, Chapter 33, to leave the polling place.”); H.B. 6 § 3.02 (amending Tex. Election Code § 32.077(D) such that “A poll watcher may be removed from a polling place only if the poll watcher engages in activity that would constitute an offense related to election fraud, including an offense under Chapter 276.”).

<sup>3</sup> See, e.g., H.B. 6 § 1.02; Tex. Const. Art. VI, § 4 (“In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box; and the Legislature shall provide by law for the registration of all voters.”).

<sup>4</sup> Bruce A. Glasrud, *Child or Beast?: White Texas’ Views of Blacks 1900-1910*, 15 E. Tex. Historical J. 38 (1977).

the guise of “purity”, creates a substantial risk of operating to intimidate and disproportionately disenfranchise voters of color. H.B. 6 may also empower conduct prohibited by federal law and the U.S. Constitution.

### **I. H.B. 6’s Provisions Insulating Partisan Poll Watchers from Most Oversight Will Encourage Voter Intimidation.**

H.B. 6 claims it will “preserve the purity of the ballot box ...by providing for the appointment of watchers to observe the conduct of an election and call to the attention of an election officer potential irregularities or violations of law.”<sup>5</sup> Texas law already empowers appointed watchers to ensure that election officials are made aware of irregularities and potential violations of law.<sup>6</sup> Instead, H.B. 6 attempts to, among various harmful provisions, shield partisan poll watchers from all but the most limited oversight.

Although Texas law currently 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 measure<sup>7</sup> – H.B. 6 potentially empowers these watchers to engage in voter intimidation by establishing that watchers can *never* be removed from or asked to leave a polling location, including by an election judge, unless the watcher engages in conduct constituting election fraud.<sup>8</sup> So, even though Texas law currently prohibits watchers from conversing with a voter or “communicat[ing] in any manner with a voter regarding the election,” H.B. 6 would actually prevent an election judge from removing a watcher on those grounds.<sup>9</sup> During elections in 2020, Black and Latino Texans already faced a significant increase in instances of harassment and intimidation, including by armed groups associated with a political party.<sup>10</sup> In the 2020 presidential election alone, the non-

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<sup>5</sup> H.B. 6 § 3.03 (amending Tex. Election Code § 33.0015).

<sup>6</sup> Tex. Election Code § 33.058 (“(b) A watcher may call the attention of an election officer to any occurrence that the watcher believes to be an irregularity or violation of law and may discuss the matter with the officer.”).

<sup>7</sup> 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.”).

<sup>8</sup> An offense under Chapter 276 does create include “if, in retaliation against a voter who has voted for or against a candidate or measure or a voter who has refused to reveal how the voter voted, the person knowingly:(1) harms or threatens to harm the voter by an unlawful act.” Tex. Election Code § 276.001.

<sup>9</sup> Tex. Election Code § 33.058 (“While on duty, a watcher may not (2) converse with a voter; or (3) communicate in any manner with a voter regarding the election.”).

<sup>10</sup> 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), <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,

partisan Election Protection coalition received some 267 reports of voter intimidation in Texas, many of which were reports of intimidation concerning armed citizens or organized demonstrators close to polling locations.<sup>11</sup> This intimidation escalated on Election Day 2020. For example, voters in Hidalgo County reported that two men with visible firearms were walking around a polling location and speaking with voters, despite clear signs at the location that no firearms were allowed.<sup>12</sup>

In this way, H.B. 6 positions Texas' partisan "watchers" to engage in the type of intimidating conduct that led to a decades long court order.<sup>13</sup> 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.

H.B. 6's provisions shielding partisan watchers from being removed from a polling place for otherwise unlawful conduct may indeed incite watchers to engage in conduct that violates at least the Voting Rights Act of 1965<sup>14</sup> and the Ku Klux Klan Act of 1871.<sup>15</sup>

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2020, 6:00PM), <https://www.hrw.org/news/2020/10/07/coalition-urges-us-protect-voters-white-supremacist-threats#>.

<sup>11</sup> Judy Bao, *Voter Intimidation in Texas During the 2020 General Election*, Tex. Civil Rights Project (Feb. 2021), <https://txcivilrights.org/wp-content/uploads/2021/02/Voter-Intimidation-report.pdf>.

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

<sup>13</sup> *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.").

<sup>14</sup> 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").

<sup>15</sup> 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 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").

## **II. H.B. 6’s Reliance on the “Purity of the Ballot Box” Rationale Evinces Racially Discriminatory Intent, Past and Present.**

H.B. 6’s repeated appeals to notions of the “purity of the ballot box” underscore its likely discriminatory purpose. The Texas Constitution of 1876 that included language regarding the power of the legislature to “preserve the purity of the ballot box” was motivated by racial animus, intended to disenfranchise Black Texans, and continues to operate as a tool to disenfranchise Black Texans today.

Notions of “purity” have been used throughout Texas’ history to justify racially discriminatory laws and policies. In the Texas election of 1873, “[t]he Democrats were determined to overthrow the Radical regime supported by Negro suffrage” and practiced open fraud and intimidation to secure their re-election.<sup>16</sup> The Texas Constitution of 1876 was drafted by white Democrat to ensure the election of delegates from that party and was opposed by twelve Republicans, six of whom were Black.<sup>17</sup> Evincing the motivations of the legislators who drafted the state Constitution to include a provision requiring the state to ensure the “purity of the ballot box”, Senator Joseph Bailey, who was elected to the Texas House of Representatives in 1891, stated in 1904 “I believe more in the purity of the Anglo-Saxon race than in the principles of democracy.”<sup>18</sup> The same year that the legislature penned Texas’ Constitution to require the state to protect the “purity of the ballot box,” over two dozen Black Texans were lynched.<sup>19</sup> Lynching occurred throughout Texas, even decades after 1876.<sup>20</sup>

And in Texas, using the pretext of preventing voter fraud in order to justify disenfranchisement has ties to the state’s history of racially motivated voter suppression, including (1) all-White primaries; (2) secret ballots; (3) poll taxes; and (4) re-registration and voter purges.<sup>21</sup> Following the Civil War, Texas developed a dual structure of society that operated to deny equal opportunities to Black Texans in all aspects of life, including public education, employment, and voting.<sup>22</sup> In 1902, when the legislature amended the Texas Constitution to make payment of a poll tax

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<sup>16</sup> Lawrence Delbert Rice, *The Negro in Texas 1874-1900* 22 (1968).

<sup>17</sup> *Id.* at 26.

<sup>18</sup> Glasrud, *supra* note 4.

<sup>19</sup> The Fort Griffin Vigilante Movement, Lynching In Texas, <https://www.lynchingintexas.org/cashion> (last accessed March 24, 2021).

<sup>20</sup> Equal Justice Initiative, *Lynching in America: Confronting the Legacy of Racial Terror*, <https://lynchinginamerica.eji.org/report/> (last accessed March 24, 2021).

<sup>21</sup> *Veasey v. Abbott*, 830 F.3d 216, 292 (5th Cir. 2016) (rehearing en banc) (Dr. Burton, testifying to Texas’ history of official discrimination in voting and the Fifth Circuit Court of Appeals finding that, with respect to the state’s photo ID law which the State justified as a measure to prevent voter fraud, that the “Legislature had access to data from the 2008 and 2010 elections when considering SB 14, which showed that ‘of the millions of votes cast in both of those elections, there were perhaps four referrals for in person voter impersonation’ and that ‘one, if not two individuals ... had been officially charged and may have accepted responsibility for impersonation.’”).

<sup>22</sup> *United States v. Texas*, 252 F. Supp 234 (W.D. Tex. 1966).

a precondition to the right to vote, its primary purpose was to “disenfranchise the Negro and the poor white supporters of the Populist Party.”<sup>23</sup> In May 1923 the Texas legislature enacted a law which explicitly stated that “in no event shall a negro be eligible to participate in a Democratic party primary election held in the State of Texas.”<sup>24</sup> The law was later struck down by the Supreme Court as violating the Fourteenth Amendment to the U.S. Constitution.<sup>25</sup>

H.B. 6’s emphasis on ballot box “purity” harkens back to a time in Texas when Black Texans were subordinated in all aspects of life, including in voting. H.B. 6 will help continue this legacy.

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For the reasons described above, and those submitted to this committee by our colleagues from the Mexican American Legal Defense and Educational Fund, the Texas Civil Rights Project, and others, LDF respectfully urges you to vote “no” to H.B. 6. Please feel free to contact Kathryn Sadasivan by email at [ksadasivan@naacpldf.org](mailto:ksadasivan@naacpldf.org) with any questions or to discuss these concerns in more detail.

Sincerely,

*/s/ Kathryn C. Sadasivan*

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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

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<sup>23</sup> 252 F. Supp. at 245.

<sup>24</sup> *Nixon v. Herndon*, 273 U.S. 536 (1927).

<sup>25</sup> *Id.*

Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.