

February 17, 2014

By email

Chairman Amy Carter
House Government Affairs Committee
Georgia General Assembly
218 State Capitol
Atlanta, GA 30334

Re: House Bill 891

Chairman Carter and other Members of the House Government Affairs Committee:

On behalf of the undersigned signatories—League of Women Voters of Georgia, Georgia State Conference of the NAACP, Delta Sigma Theta Sorority, Inc., Southern Region, Southern Christian Leadership Conference, Georgia Chapter, Asian American Legal Advocacy Center, Inc. of Georgia, Georgia Coalition for the People’s Agenda, Alpha Kappa Alpha Sorority, Inc., ACLU of Georgia, Southwest Georgia Project for Community Education, Inc., Georgia Association of Latino Elected Officials, Georgia Women’s Actions for New Directions, the Rainbow PUSH Coalition, African American Ministers in Action, Georgia Peace and Justice Coalition, the Peacemaking and Justice Committee of Oakhurst Presbyterian Church, the Presbyterian Peacemaking Partnership, Georgia Coalition of Black Women, Georgia Women for a Change, Inc., Georgia Equality/Equality Foundation of Georgia, and Georgia Rural Urban Summit—the NAACP Legal Defense and Education Fund, Inc. (LDF)¹ writes to express in the strongest possible terms our opposition to proposed House Bill 891, which members of the Georgia General Assembly introduced recently on January 31, 2014.² As you know, HB 891, if

¹ Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the voting rights of Black people. LDF has been involved in nearly all of the precedent-setting litigation related to securing voting rights for people of color. See, e.g., *Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013) (LDF defending Section 5 of the Voting Rights Act before the U.S. Supreme Court).

Notably, in 2012, LDF successfully represented the Florida State Conference of the NAACP and Black voters in *Florida v. United States*, 885 F. Supp.2d 299 (D.D.C. 2012), in which a three-judge federal court rejected Florida’s proposal to dramatically reduce its early voting period for five counties by reducing the number of early voting days from twelve (12) to eight (8). Critically, Black voters in Florida used the early voting period to vote in historic numbers in the 2008 elections, with more than half of them casting ballots during the nearly two week early voting period.

Other signatories to this letter, League of Women Voters and ACLU, also intervened to block Florida’s restrictive early voting changes.

LDF uses legal, legislative, public education, and advocacy strategies to promote the full, equal, and active participation of Black people in America’s democracy. LDF has been a separate entity from the NAACP, and its state branches, since 1957.

² H.B. 891, 152 2nd Gen. Assemb. Reg. Sess. (Ga. 2014).

passed, would substantially restrict advance voting days for municipal elections from at least fifteen (15) to, incredibly, just six (6) days.³

As nonprofit, nonpartisan civil rights and advocacy organizations, our aim is to ensure that all voters, in particular people of color, as well as the poor, elderly, young, and disabled, have full, equal, and active access to the one fundamental right that is preservative of all other rights: the right to access the ballot box and elect candidates of their choice. It is our strong belief that Georgia should be providing more opportunities for voters to access the ballot box, including by, among other things, facilitating expansive opportunities for early voting, not sharply reducing them, as HB 891 proposes. Indeed, the Presidential Commission on Election Administration, a bipartisan commission of experts, recently recommended the *expansion* of early voting opportunities as a means to both improve voters' experiences with voting and promote confidence in election administration across the country.⁴ According to the Commission, "[s]tated simply, early voting offers Americans opportunities to participate in the electoral process that simply cannot be afforded by the contained twelve-hour period of the traditional Election Day."⁵

We write, therefore, to urge you to oppose this proposed bill, which promises to undermine hard-fought progress to expand access to the ballot in Georgia, and, in the process possibly run afoul of federal and state laws.

Importantly, this legislation was introduced fewer than eight months following the *Shelby County, Alabama v. Holder* ruling, in which the Supreme Court, in a devastating opinion, declared Section 4(b), the "coverage provision" and a core protection against voting rights discrimination, unconstitutional. By striking Section 4(b), the Supreme Court rendered ineffective Section 5, the "preclearance provision" of the Voting Rights Act. Before the *Shelby* decision, for forty-eight years, Georgia's voters benefited from the protections afforded by Section 5 of the Voting Rights Act, namely all of Georgia's voting changes were submitted for "preclearance" to the federal government *before* their implementation to ensure that they were free of racial discrimination. Before *Shelby*, it is not clear whether HB 891 would have been precleared under Section 5 because of the impact that its restrictions would have on voting opportunities particularly for Black and other people of color in Georgia.

³ Under existing state law, fifteen (15) is the minimum number of early voting days that cities must offer. Ga. Code Ann. § 21-2-385(d)(1). Notwithstanding, some municipalities offer more than the minimum required days of early voting.

Notably, the average early voting period across states is nineteen (19) days. Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration* ("American Voting Experience"), at 56, (Jan. 2014), <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

⁴ See *American Voting Experience*, *supra* n.3, at introductory letter (identifying as a key recommendation "measures to improve access to the polls through *expansion* of the period for voting before the traditional Election Day") (emphasis added).

⁵ *Id.* at 54-55 ("Having chosen the day and time for voting that is convenient for them, early voters are described as being in a more 'celebratory' frame of mind than under the often rushed circumstances they face on Election day when they must vote at a specific location on a specific day.").

In the wake of the *Shelby* decision, however, LDF and civil rights advocates and the communities that we represent—people of color, the poor, elderly, young, and disabled—nevertheless have access to powerful tools to combat discriminatory voting changes, such as Sections 2 and 3(c) of the Voting Rights Act, the U.S. Constitution, and/or state laws that can be used to challenge the implementation of discriminatory voting changes.⁶ Proposed HB 891, if implemented, has the potential to be discriminatory for the following reasons.

First, though the proposed bill would not limit the early voting period for Georgia’s consolidated cities (*e.g.*, Athens, Augusta, Columbus, Cusseta, Georgetown, Macon, Statenville, and Preston),⁷ and would apply only to municipal elections (*i.e.*, not county, state or federal elections), there, nonetheless, are hundreds of municipalities to which HB 891 may apply.⁸ To be sure, there are millions of voters in these municipalities,⁹ a substantial percentage of whom are people of color and the young, who could be adversely impacted by this proposed measure.¹⁰

Second, HB 891, if passed, is very likely to impact a substantial numbers of Black voters and other voters of color for whom the early voting period is an important channel through which to participate in Georgia’s political process. In the 2012 presidential elections, for example,

⁶ Section 2 of the Voting Rights Act prohibits voting standards, practices, or procedures that were either enacted with a racially discriminatory *intent*, or that have racially discriminatory *results*. See 42 U.S.C. § 1973(a) (Section 2 as amended prohibits a state or a political subdivision from using any “standard, practice, or procedure,” that “results in denial or abridgement of the right of any citizen of the United States to vote on account of race or color”). One of the chief purposes of Section 2 is to prohibit practices that directly *deny* the exercise of the right to vote, as may be the case here with the proposed severe cuts to early voting opportunities.

Section 3(c) of the Voting Rights Act provides an avenue to “bail in” jurisdictions and require them to preclear voting changes upon a finding of intentional discrimination. 42 U.S.C. § 1973a(c).

The Fourteenth and Fifteenth Amendments of the U.S. Constitution provide for the fundamental right to vote and prohibit voting practices adopted with a discriminatory purpose. U.S. Const. amends. XIV & XV.

Georgia’s Constitution explicitly grants the right to vote. Ga. Const. art. II, § 1, ¶ II (“shall be entitled to vote.”).

⁷ These consolidated cities, under state law, can choose to be treated as counties for election purposes.

⁸ Despite that the proposed bill is unclear about how many municipalities may be impacted, excluding the consolidating cities, it is worth noting that there are 535 municipalities in Georgia. See New Georgia Encyclopedia, *Georgia’s City Government*, (Aug. 20, 2013), <http://www.georgiaencyclopedia.org/articles/government-politics/georgias-city-governments>.

⁹ U.S. Census, *March 2011 Estimates of Georgia’s Cities*, <http://www.census.gov/popest/data/cities/totals/2011/tables/SUB-EST2011-03-13.xls>.

¹⁰ Not only is Georgia’s population growing generally, but also its population figures reflect that it is becoming more racially/ethnically diverse and this minority population is younger than the white population. Georgia Municipal Association, *Census Data Indicates Challenges for Cities*, (June 6, 2011), <http://www.gmanet.com/Paper.aspx?CNID=61717> (relying on the 2010 Census, reporting that the number of “Black[] [people] grew by 25 percent to account for 30.5 percent of the state’s population,” the number of “Hispanic[] [people] grew 96.1 percent to account for 8.8 percent of the state’s population,” and the number of “Asian[] [people] grew 81.6 percent to account for 3.2 percent of the population.”).

Black voters comprised nearly 35 percent of all early voters in Georgia.¹¹ Significantly, a member of the General Assembly, David Knight, expressed that “more than 75 percent of all early voting occurs in the last three weeks of an election.”¹²

Third, the adverse effects of proposed HB 891, if passed, may be exacerbated by the widespread polling place closures that have been reported throughout Georgia,¹³ which promise to cause election administration challenges at the polls, including voter confusion¹⁴ and long lines at the polls,¹⁵ each of which could make exercising the right to vote for many Georgians unnecessarily difficult. According to the Presidential Commission on Election Administration, “[t]he benefits of pre-Election Day voting can only be realized . . . if jurisdictions do not, at the same time, overly reduce resources dedicated to Election Day.”¹⁶ These bipartisan experts emphasized that “expansion of pre-Election Day voting should not come at the expense of adequate facilities and resources dedicated to Election Day.” Therefore, individually, cuts to early voting or closing/consolidating polling places, and collectively, cutting early voting and closing/consolidating polling places, pose an intolerable challenge to access to democracy in Georgia that the groups on whose behalf this letter is written, listed above, cannot stand.

¹¹ Jim Galloway, *Black voters cast more than one-third of 1.9 million early Georgia ballots*, Political Insider, (Nov. 5, 2012), <http://blogs.ajc.com/political-insider-jim-galloway/2012/11/05/black-voters-cast-more-than-one-third-of-1-9-million-early-georgia-ballots/>.

¹² David Knight, *Press Release*, (Feb. 28, 2011), <http://www.davidknightforgeorgia.com/2011/02/28/house-passes-legislation-improving-early-voting/>.

¹³ See, e.g., Spencer Woodman, *Voting Rights at Risk in Georgia: After the Supreme Court’s controversial decision, civil rights advocates say voting in the state is under attack*, The Rolling Stones, (Nov. 4, 2013), <http://www.rollingstone.com/politics/news/voting-rights-at-risk-in-georgia-20131104> (reporting that the City of Athens is considering eliminating nearly half of its 24 polling places, and replacing them with only two early voting centers—both of which would be located inside police stations, locations community members believe would intimidate voters of color and take three-hour bus rides to reach); *id.* (reporting that Morgan County, after initially considering eliminating over half of the County’s polling places, ultimately eliminated more than a third of them, which one city council member expressed would disfranchise low-income, voters of color, many of whom lack cars); *id.* (reporting that Baker County, a majority-Black county with high poverty rates, considered eliminating four of its five polling places and, thus, requiring some voters to travel upwards of 20 miles to vote).

¹⁴ Having a limited in-person advance voting period (of 6 days) for municipal elections only if HB 891 is implemented *and* a relatively more expansive in-person advance voting period (of 21 days) for county, state and federal elections, pursuant to existing state law is certain to cause voter confusion. See Ga. Code Ann. §§ 21-2-381, 21-2-384 and 21-2-385.

¹⁵ See *American Voting Experience*, *supra* n.3, at 55 (“Early in-person voting allows election authorities to use the facilities available to them for longer periods of time to relieve some of the traffic that would occur on Election Day. Similarly, for jurisdictions facing crisis in the acquisition of new voting machines, extending the early voting period will allow the jurisdiction to service more voters per machine.”)

¹⁶ *Id.* (“[I]f jurisdictions overcompensate by significantly reducing the number of polling places, staff, and other resources available for Election Day,” expanding early voting will not relieve the congestion on Election Day.).

Finally, HB 891's lead sponsor Representative Barry Fleming's "financial relief" justification as a basis for proposing such a restrictive limitation on early voting for municipalities,¹⁷ weighed against the denial and/or abridgement of the right to vote that it may cause, is unpersuasive, particularly, where, as here, any cost-saving measures have not been substantiated. LDF was unable to identify *any* analysis conducted by the General Assembly demonstrating that restricting early voting for municipal elections, as proposed by HB 891, would be a substantial cost-saving measure for the impacted cities.¹⁸ Again, even if such an analysis existed, any potential cost-saving to Georgia's cities likely cannot outweigh the substantial harm to voters, in particular people of color, the poor, elderly, young, and disabled, through the severe reduction to the early voting period as proposed by HB 891.¹⁹ LDF also was unable to identify *any* analysis conducted by the General Assembly that considered the discriminatory impact that proposed HB 891 may have on Georgia's marginalized communities, including people of color, the poor, elderly, young, and disabled. In light of the drastic reduction in early voting opportunities for municipal elections proposed by HB 891, the failure to detail the alleged cost-saving, and consider its real-world implications for many Georgia voters, compels us to collectively oppose this measure in the strongest possible terms.

Please note that we are prepared to take decisive, public action in opposition to this proposed legislation, the mere introduction of which has caused us great concern, if this legislation proceeds through the legislative process and ultimately is enacted. We are hopeful that we can resolve this critical matter promptly and amicably, given the limited number of days

¹⁷ Walter C. Jones, *Georgia lawmaker seeks shorter early-voting for small cities*, ONLINEATHENS (Feb. 4, 2014, 11:24 PM), <http://m.onlineathens.com/general-assembly/2014-02-04/georgia-lawmaker-seeks-shorter-early-voting-periods-small-cities>.

¹⁸ To the contrary, it is possible that early voting opportunities are cost-effective. A 2008 study of early in-person voting found that in 117 of 159 Georgia counties "[i]ncreasing the hours of operation for early voting sites . . . appears to be the most cost-effective measure for boosting turnout." Diana Kasdan, *Early Voting: What Works*, Brennan Center for Justice at New York University School of Law, at 14 (2013), available at http://www.brennancenter.org/sites/default/files/publications/VotingReport_Web.pdf (citing M.V. Hood III & Charles S. Bullock III, *An Examination of Efforts to Encourage the Incidence of Early In-Person Voting in Georgia*, 2008, 10 Election L. J. 103, 110 (2011)).

¹⁹ Reportedly, cities have complained about the costs of staffing poll workers on early voting days with low turnout. Jones, *supra* n.17. However, it remains entirely unclear whether any cities have documented any of these costs and purportedly low turnout rates.

HB 891 also is rigid in its application. The proposed bill does not provide for a more flexible approach that allows small cities to cut early voting days if they are not being used, while allowing more populated cities (e.g., Atlanta), where a longer period is useful to voters, to keep the existing early voting period.

Even still as discussed above, on balance, the benefit to early voting for municipal voters likely far outweighs any costs to them as taxpayers.

left in this legislative session, and that you will stand with us in opposing this measure. We, therefore, request that you respond to this letter *in writing* by **Friday, February 28, 2014**.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. P. Haygood', with a long horizontal stroke extending to the left.

Ryan P. Haygood
Director, Political Participation Group

Leah C. Aden
Assistant Counsel, Political Participation Group

NAACP Legal Defense and Educational Fund, Inc.

Cc: *By email*
Members of the House Governmental Affairs Committee

Buzz Brockway, Vice Chairman, House Governmental Affairs Committee
Darlene K. Taylor, Secretary, House Governmental Affairs Committee
Tyrone Brooks, Member, House Governmental Affairs Committee
Barry Fleming, Member, House Governmental Affairs Committee
Hugh Floyd, Member, House Governmental Affairs Committee
Mark Hamilton, Member, House Governmental Affairs Committee
Dustin Hightower, Member, House Governmental Affairs Committee
E. Culver "Rusty" Kidd, Member, House Governmental Affairs Committee
John Meadows, Member, House Governmental Affairs Committee
Alisha Thomas Morgan, Member, House Governmental Affairs Committee
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Jay Powell, Member, House Governmental Affairs Committee
Bruce Williamson, Member, House Governmental Affairs Committee

By email
Other Interested General Assembly Members

Stacey Abrams, Representative, Georgia General Assembly
Andrew Welch, Representative, Georgia General Assembly
Ben Harbin, Representative, Georgia General Assembly

By email
Voter Advocates Representing Organizations Opposed to HB 891

Elizabeth Poythress, President,
League of Women Voters of Georgia

Francys Johnson, President,
Georgia State Conference of the NAACP

Donna Bowman, Regional Social Action Coordinator,
Delta Sigma Theta Sorority, Inc., Southern Region

Reverend Samuel Mosteller,
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